

Minutes of the December 3, 2010, Legacy Land Conservation Commission Meeting

DATE: December 3, 2010

TIME: 8:00 a.m. to 1 p.m.

PLACE: Room 426, 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

Mr. Kaiwi Nui

Mr. Herbert ("Monty") Richards

Dr. Robert J. Shallenberger

Ms. Karen G.S. Young

STAFF:

Ian Hirokawa, DLNR, Land Division

Molly Schmidt, DLNR, DOFAW

Leah Laramée, DLNR, DOFAW

Randall Kennedy, DLNR, DOFAW

Public:

Scott Fisher

Helen Nielsen

Laura Ka'akua

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

Chair Bonar called the meeting to order and welcomed the attendees to the Legacy Land Commission (LLC) meeting for December 3, 2010. He explained that the purpose of the meeting was to come to recommendations based on the last meeting that was held yesterday, of the proposals that were put in for the Fiscal Year 2011 (FY11) LLC awards. He asked that the Commission and staff introduced themselves. Introductions were made.

ITEM 2. Disclosure by members of the Commission of any potential conflicts of interest involving Fiscal Year 2011 (FY11) projects (a list of applicants is attached to this agenda).

Chair Bonar explained that item two on the agenda was disclosure; one of the items on today's agenda, item 6, is a request for an amendment to the grant for Maui Coastal Land Trust (MCLT). Chair Bonar stated that he will have a major conflict with this and will not be present for the discussions and deliberations by the commission. He explained that Mr. Fisher and Ms. Nielsen will do the presentation. Chair Bonar asked if any of the other commission members had any conflicts of interest. None of the Commission members report a conflict.

Member Bonar explained that Member Fletcher who will not be in attendance of the meeting is the Vice Chair and would have taken the seat as Chair. In his absence the Commission will need someone to sit in as chair. Chair Bonar stated that he did not know the protocol. Member Richards moved that Member Kaiwi step in as Chair. Member Berg seconded the motion. Member Buchanan moved that all nominations be closed.

Chair Bonar asks for a vote; all are in favor.

Item 3. Commission recommendations regarding FY11 projects to the Board of Land and Natural Resources for funding from the Land Conservation Fund.

Chair Bonar explained that the Commission will look at the recommendations for the projects that were heard yesterday. He asked Ms. Schmidt what is available to the Land Conservation Fund for the commission to be considering.

Ms. Schmidt explained that every year around July and August, LLCP starts asking for applications and works out a program budget with Paul Conry, DOFAW Administrator. This year \$4 million was the amount that was agreed to however he did say that if there was additional funding we could take a second look around about the time that LLCP is giving out funds. The only things limiting funds are program ceiling, what else is being expended for other reasons and the monies in the fund. There are enough moneys in the fund; LLCF is not limited by any of those things until \$4.3 million to \$4.4 million. It is safe to say around \$4.3 million however there is no official ok from Mr. Connery on that yet. There is a minimum of \$4 million available and a maximum of \$4.3.

Chair Bonar reminded the Commission that the agenda for the day's meeting was to come up with their recommended list. Following past procedures that could be recommending funding for a project at less then they have asked. That was a question that was directed at the projects yesterday, if only partial funding was available would that be workable. The Commission will score rankings here, using individual rankings for a combined order. That order will need to meet the total amount available would then be the resolution that the commission would pass recommending to BLNR as the Commission is simply the advisory committee. BLNR will consider it; part of the duty by statute is for consultation with the legislature. In mid January Ms. Schmidt, Mr. Randall Kennedy and myself sit with the Speaker of the House, the President of the Senate and other members of the legislature, to give them an update on what the commission recommended. Up until this point there they have always given the rubber stamp. And then it comes back to BLNR for approval and works its way up to the governor's office. This will be the procedure that will be followed again this year unless the administration decides to handle things differently.

Chair Bonar asked Ms. Schmidt if there are extra score sheets. Ms. Schmidt confirmed that she brought extra score sheets and hands them out to those who need them.

Chair Bonar reminds the Commission that the score sheets become official parts of the record. After the score sheets are handed in Ms. Schmidt will have them accessible to

anyone who would want to look at them. From the score sheets Ms. Schmidt will tabulate all the individual numbers and come up with the order. The commission will view that and have a final discussion to ensure the commission is happy with the results and discuss the break up of funding. Chair Bonar tells the commission that they will now look at each project and to see if there are further questions or comments.

Ms. Schmidt explained that some testimony came in mid-day yesterday and introduced additional written testimony from Kaleo Paik, in support of Hāwea, and the Hawaii Agriculture Research Center (HARC) for Turtle Bay.

Chair Bonar began reviewing the applications starting with Kaiholena from County and Hawaii, North Kohala beach, 76 acres. He reminded the Commission that the application was revised to request \$1.65 million. The County match would bring the total cost to \$4.595 Million. Member Canfield asked what the answer was when Chair Bonar asked what the County of Hawaii would do if they received partial funding. She asked if they could draw more from the county pot. Member Young stated that they said they would take what they could get. Member Berg added that they said they had \$3.05 million in the county fund but that was for all projects not just for Kaiholena. Chair Bonar explained that there have been title issues with the Kawa land which was a Legacy Land project two years ago and if that project was to ripen immediately it would be at the top of the list to close so there would be less than the \$2.9 million in the county fund available now but they have another 2% coming in July. Kaiholena is a part of their master plan so my understanding is that these are considered high priority and they will get to them as quickly as they can.

Member Shallenberger added that there is the possibility of buying one parcel instead of two. The County of Hawaii has already revised it down to two. Chair Bonar explained that would require the Commission to request an amendment. Ms. Schmidt clarified that an amendment would be the minimum necessary and that the application might have to go through the same process that projects need to go through when they have substantive changes.

Chair Bonar asked if there were any other questions or comments for Kaholena; there were none. He told Member Canfield that the Commission would come back to the issue of funding after the voting process. Chair Bonar asked if there were any questions or comments on the 5 acre Haweā complex at Maunalua. Member Canfield stated that when talking about the Turtle Bay project yesterday Ms. Hong made it seem like there were no problems in land a match funding from City and County of Honolulu. She asked if that was a general comment that applied to Haweā. She also asked if any one in the room knew how many projects or how much money was available to the City and the County of Honolulu fund. Chair Bonar asked Ms. Schmidt if she had been to CWNL meetings. Ms. Schmidt said that she had not but that their decision making meeting was going to take place of December 10, 2010. Chair Bonar asked Ms. Ka'akua if she had gone to the CWNL meeting. Ms. Ka'akua confirmed that she had and said there are enough funds to cover the entire county project that applied for county funding this year.

Member Shallenberger asked if the commission knew what projects applied to the county fund. Member Berg explained that what the commission knows is that there is enough money to cover the projects but they don't have to give that money out. They may not approve of projects that the Commission might. Ms. Ka'akua clarified that the three applicants that applied to the County fund this year were all from Trust for Public Land (TPL). The first was Haweā the second was Turtle Bay and the third was the Galbraith Estate lands surrounding Kukaniloko. Though TPL cannot speak for the commissioners they seem very supportive of all three projects and there is enough money to cover all three requests. Chair Bonar stated that presumably next Friday the commission will know what that decision is. What the commission can do is do what was done with Paukūkalo last year and approve subject to confirmation of matching funds received by a certain date. Last years deadline was March 31st and that's what the legislature consultation said. The Commission can consider that when making their decision.

Chair Bonar asked if there were any questions about the Kauhola project in North Kohala east of Hawi. Member Berg stated that his main question was that it didn't seem like there were any matching funds at the moment and they were applying and talking to some private concerns about it but there were no guarantees and no money there whatsoever. In this case this is different in the one that we just discussed; if we allocate that \$975,000 there is no matching funds and no guarantee that project will get it in a timely fashion. Member Canfield added that the landowner gave a deadline of January 1st. Member Berg continued that if the commission puts the money up but don't meet the deadline of January 1st, three weeks away, then it is not very likely that it will proceed so we have encumbered that amount of money in an iffy project. Member Shallenberger commented it is interesting that it was said there was a January deadline and she said they were negotiating an option. He asked if that was going to happen not. Chair Bonar said it deepened upon if got a favorable response from the Commission. Chair Bonar mentioned again the Board of Land and Natural Resources (BLNR) could pass it contingent, or put it down the list depending what happens to the others. This was one that had great potential even if there were no match funds or current agreement with the landowner. Member Kaiwi stated that he didn't care for this one because landowner, like Paukūkalo, was hitting the fan financially so as a result there are exploring venues to recover financial difficulties. Out of that calamity comes a willingness to do conservation and cultural restoration; it's kind of hokey to me. Chair Bonar stated in the fairness of the project what they demonstrated over the last twenty years, not building their dream house on the property and opening the land to the public. That balanced it out for me. Member Kaiwi commented with a luakini like Ohau in that area it is odd that if you don't do your research why you would want to put something like that in that kind of area. It's like putting a house at ground zero, it doesn't make sense if you just do basic research of what had happened in that area. Member Berg responded that he understood what Member Kaiwi was saying, but there was a different perspective 20 years ago. Over the past 20 years we have seen such a cultural renaissance here, that I'm not excusing the people but they weren't coming from a culture that appreciated what was on the land. Nobody told them. He said that he is impressed that they have for the past 20 years made the property available to the public, opened it up and kept it clean, I am not as upset about the fact that the option to get the land is through financial difficulties. Member Kaiwi said that a

telling sign was the camper that took bones and passed away; how many signs do you need whether you are from this culture or not to tell you that something else is going on.

Chair Bonar asked if there were any other comments. Member Shallenberger stated that Kauhola is one of the more threatened projects. He had talked to the landowner quite a bit and she is desperate to get out of this. Chair Bonar stated that the reality is some of these things bring opportunity and your standpoint is you probably know the land better since you have been out there. Member Shallenberger explained that he doesn't know the cultural side, what I see and what they described is significant destruction associated with the sugarcane period when they just leveled the place. They hope to learn more about the land but I don't think they have a clue what it's supposed to look like. I'm talking more from the public resource standpoint, open space vista, biology, recreation, and all those kinds of things. Chair Bonar asked for further comments Member Richards stated that he thinks it is an opportunity to pick up a very valuable piece of land that has cultural significance. If we are not able to make it work then it looks like they are in a real financial bind, they are going to move it, they are going to turn it into money some way. What its going to be cut as, hoses or what, it will be gone so that has to be looked at; this may be the last chance. Member Buchanan agreed with Member Richards and Member Shallenberger that this is an opportunity. It is important to assess the cultural destiny and go with what they say because it is more important for them. She said that she ranks this project higher because if this place was on Moloka'i and was where she fished and picked 'opihi, I would go through dire straits to save it from anything.

Chair Bonar asked if there were any more comments; there were none. He asked for comments on Paukūkalo the Wailuku piece that was presented last year as well. Chair Bonar stated for the record Randall Kennedy joined the meeting.

Member Young expressed her worry for the position that the property is in. It is up for foreclosure auction but there is no certainty as to when the auction will be or what the starting price will be. Member Canfield added that it sounded like TPL didn't want to get involved until the foreclosure has happened. Member Shallenberger stated that he had problems with the uncertainty of the matching funds. It sounded that there had been no progress in finding additional money since last year.

Chair Bonar commented that Member Canfield and he were on the site visit last year. This is a parcel that Maui Coastal Land Trust has been talking to the landowner about very early on, Waiehu, LLC. It is a terrific place, the wetlands are very degraded and need a lot of work but the potential could be enormous it could be another Waihe'e or Kalama Pond. Having it entirely surrounded by Hawaiian community and DHHL it's natural. Part of the reason that the asking price of \$4 million is too much, no one is going to pay that. It's on the water you could put high end houses down there and you're not going to get people building high end houses in an area like that. One of the big disappointments is two or three times I have called over to the office there because they could have gotten matching funds, there were some opportunities to do that, through wetland mitigations and other, but I never got a call back. There are folks I have spoken with who might even be interest in being the bridge for that and I didn't get a response

back. My big concern is that the Neighborhood Place of Wailuku who are doing some neat stuff is not the right group to steward the property. There are things that need to be done to handle a substantial property like this. If the commission can get some convincing evidence, here is where the matching funds would come from, a solid plan, and able to talk to the landowner, creditor or foreclosure, whoever as we did last year place this as the top project. It is difficult for me to do that based on the experience I have seen on the property there.

Member Kaiwi explained the he, Member Berg, and Member Buchanan couldn't have been more explicit about furnishing some kind of management plan. The DHHL representative had a one pager that didn't say anything much. We were clear with the community there, it doesn't matter if its written on a napkin, just bring a management plan to the Commission hearing so that the Commission can have an understanding of what the applicant can or cannot do. It was disappointing that they didn't follow some of the mana'o that was provided. Member Buchanan stated that she is surprised that DHHL is not stepping up more as they will be the owner. They are light years away from natural resource management and I have an issue with that. Member Berg commented that what Member Buchanan and Member Kaiwi's comments highlight is that there is no management plan and the neighborhood group is not efficient in management issues. They may be doing very well with community outreach projects but we don't have DHHL or anyone else who really has a good long term management goals. Its disappointing because the property needs to be saved but it doesn't look like DHHL wants to step in or the community doesn't want to step in but no one is there; there is a vacuum. We see this vacuum because nothing has changed over the past year. Ms. Canfield asked if it was appropriate for the commission to send something in writing to DHHL expressing how we feel, or encouraging so they can better support what we are trying to do. Chair Bonar said that he thought the Commission very clearly gave Mr. Manuel the message yesterday. I was glad he came but was disappointed no one from the neighborhood came. Mr. Manuel is good but he is a messenger at this point. Chair Bonar stated that he didn't know the advisability or the legality of sending a letter but the meeting is public record and was sure that things would be conveyed back, as their partner is here today. There is a willingness to work with them but there has to be things coming from the other side.

Member Buchanan pointed out that the Wailuku group hadn't even had a discussion with DHHL. So the stewards that are stewarding the three acres out of the whole parcel haven't even had a discussion with DHHL yet, that is problematic for me as well. Member Kaiwi stated that he did not was to cast doubt on the community's ability to manage but it's the execution to get here that I am concerned about, and that is part of management. But the actual hands on management I don't want to question that. Member Shallenberger interjected that he thought one could question that. The difference between management and habitat development, you have to get to a place that you can manage and that takes aggressive action. Chair Bonar stated that he didn't think the community group knew what it would cost to do everything that needed to be done. Member Richards pointed out that there is a new head man at DHHL. If the new head man were to read and get some ideas we may get some action. He is going to be looking around.

Something like this, not addressing it directly to him but making sure that he gets the opportunity to see what the commissions concerns have been, this may give him a program that he can win on. It is already partway there he just needs to put a little bit of effort behind it and it's a whole new deal.

Chair Bonar said that the commission can recommend that Ms. Schmidt, DOFAW, and the appropriate folks go have a heart-to-heart and explain with the other project there, unofficially whatever is appropriate, to convey that the commission has a great deal of empathy for the project but you got to move.

Member Kaiwi asked Ms. Ka'akua if she felt that the community was receptive to DHHL being the land owner. Ms. Ka'akua asked if by the community Member Kaiwi meant the more regular users of the place. Member Kaiwi confirmed. Ms. Ka'akua answered that the community are receptive but there is a concern that the tremendous work they have been doing for a number of years will be overlooked. The Commission's feedback is on target, especially Ms. Buchanan's feedback about the meeting and communication and the need to really plan. TPL is hoping that with the new chair they will be able to sit down and work through everything so that the project can be an inclusive effort. Chair Bonar suggested that if community had seen the presentation from Haweā, or Kauhola and how focused the community was that would give the commission a great deal more comfort. Member Shallenberger stated that he would like to see the community work with DHHL on other projects. There is no capacity issue or an inability to manage to a level we have been talking about, it's a question of deciding to do that and take the project on is something that takes significant input.

Ms. Schmidt asked if it is slightly different from what their DHHL's main mission is to be holding this land and be managing the natural and cultural resources or if they see it as different then their mission is, would it make sense for them to give a conservation easement to another organization and a guarantee that that land will be protected and used for purposes for which it was given a grant. Chair Bonar responded that he saw a lot of challenges in doing that but he also didn't know what the legality of it. DHHL has a lot of freedom to do things outside routine permitting county level things. I don't know if a grant agreement from LLCF about the project saying that it always has to be used for a specific process whether that's enough, having another party is always better because it gives an extra set of eyes and ears. Member Shallenberger said that that was his point; he didn't think it's that far from what they have done in other areas where they have worked with Koa control, pigs and enhancing habitat, manipulating land for the benefit of the Hawaiian people as a whole, not the homestead. Chair Bonar reiterated what Mr. Manuel said yesterday that DHHL is evolving it has been getting people houses but they are stretching more to community needs.

Member Young said that Chase seemed to be holding the process up, according to Ms. Hong they hadn't even notified all the people they should in terms of the foreclosure. Chair Bonar pointed out that if one were to walk in with money it might be fine. Member Kaiwi stated that he was trying to elicit even if DHHL point blank said "this is what we are going to do" and the Chairman said "yes" the question I have is more does

the community have that level of trust with any landowner, any entity being a part of that aina. My sense tells me that they have been working this 'aina for a while; they want more ownership than what is being afforded to them now. In that idea they are not ready to play ball. They know what they are doing with the 'aina but they didn't even submit a paper saying here are the players here is the schedule here is what we think, that would have been evidence that they want to play ball. It is very concerning that they didn't show up and they didn't submit anything. Ms. Ka'akua asked the Commission if she could comment on what Member Kaiwi said. Chair Bonar allowed it. Ms. Ka'akua explained that if there was going to be any landowner, Neighborhood Place of Wailuku and the regular users of Paukūkalo would hope that that landowner would be DHHL. A large percentage of the people that go through Neighborhood Place of Wailuku programs are from Paukūkalo and the homestead so it's the same community it's just a matter of setting up regular meetings every month and talking through it. There will be that confidence it's just that there hasn't been that communication set up yet. There is trust in DHHL its is just a matter of hearing from DHHL that they wont be forgotten and their work wont be forgotten. Chair Bonar responded that if that had been conveyed to the Commission it they would have had a much stronger trust in it. He asked for further comments, there were none.

Chair Bonar asked for comments on Turtle Bay agricultural easement. Member Young asked if she could make a correction to her site visit report. Chair Bonar allowed it. Member Young informed the Commission that the report was based on what we were shown on the site visit. We spent most of the time at the tanks and Kawela Bay, both of which are not part of the proposed acquisition. We drove through the edge of the agricultural property, saw what appeared to be encampments, and some small farms. I thought the farms were 1-2 acres but in actuality there is a farmer who has 90 acres. Member Young asked Member Canfield what she thought; Member Canfield stated that she agreed the visit was quick. Member Young continued that she did not get the impression of a vast piece of land. What needs to be corrected is what was said in the report that the farms were generally 1-2 acres because that is what I thought I heard but there is one farmer who has a 90-acre farm.

Member Canfield asked about the status of NRCS match. Member Berg answered that there is no matching from the Army, NRCS or City County. Member Canfield added that Ms. Hong said that the Army money might be there depending on end of the year finances. Member Berg commented that that information would have been useful. Member Canfield asked if there was a timeframe for NRCS decisions. Chair Bonar clarified that the new money is just becoming available for farmland, wetlands and other programs which is a substantial amount. There are opportunities and they look favorably on this project but these things go in with rankings all the way up to Washington, D.C., so there is no certainty. Depending how the project is run as we discussed yesterday it could be a dynamite thing getting people on the land and staying on the land, long term.

Member Young commented that she supported TPL but not the comment about putting restrictions on the land for it to not be GMO land and making that seem to be a barrier for the acquisition of the land. If we don't take a stand now as we have not done all of these

decades when will we. I felt to trivialize that was not okay. Chair Bonar responded that he disagreed, it could be disastrous to our future to put hard statements like that but what I also say is that that is that is something we have never had an open discussion about if there should be a rule about that or not. Member Young clarified that she did not say it needed to be a rule but to express a concern is valid. Chair Bonar agreed, as a personal concern. Member Young said if we don't take a stand now our children and our children's children will be the sufferers. Member Berg added that the representative for the landowner was there, and he was the one that would probably object to any sort of restrictions so maybe bringing this up to him at this time has an effect that we put him on notice as manager of that facility that we have concerns about that, but at the same time as a manager of the property he wants a liberal restrictions on it so Ms. Hong was just pointing out, in a sense speaking for that manager, because by putting restrictions on the property you are restricting the value and its going to cost a lot more. Member Young said that the farmers were not using herbicides and chemicals; they were letting the land lay fallow and doing it the old way. He indicated they should use herbicides and chemicals for more productive results. Chair Bonar said that he thought there was concern was that they could be more productive if using modern techniques. Member Berg said the question was if any kind of restrictions on an agricultural easement are appropriate at this time, whether its GMO or we say they cant use herbicides but is that the commissions role or is it the role of TPL. Chair Bonar comment that the Commission has done more agricultural easements then anyone else in the state. Some of the easements want to do organic and that is included in the easement because the landowner wanted that. Some of the biggest most spectacular protections the Commission has been done, the landowner would not want restrictions like that. Agriculture is a hard enough thing to get dollars on anyway to keep the land in agriculture and all those kinds of restrictions are just simply out of the question. Most of the big farmers and ranchers are very conservative and you have to start to be discussing the issues like alternative energy, things the state approves as used for agricultural lands. You develop an easement to find where both sides can find a win but if you draw a line in the sand like that you are either going to lose the opportunity to protect the land in perpetuity or the expense is going to be far higher.

Member Young said that the site visit report reflects what we saw. I understand that Mr. Cole likes to see an open scenic view, so do we all but \$1.5 million is a lot. It is greater then 1/3 of our budget so it's a nice thing, but a nice expensive thing. Member Kaiwi said that his only intention on bringing up what I did at the time I did was to plant the seed that they are on notice. I didn't want to go any further because that is not our kuleana, but is you take a look at this Commission and all the seats that we hold if in the future, there was a concern the Commission could restrict them if it came to that. I'm not saying that we should have don't it now, or that we should have put restrictions but I would agree with Member Berg that Ms. Hong stepping in was odd, no one suggested putting on restrictions, we were just asking the question. It is death for the landowner to say I can't do this for perpetuity. Member Young is passionate as we all are but there are other ways to attack a problem. Member Young commented that the concerns were made known to the manager but he may not be there in future. Chair Bonar said this is why what goes in that easement is really important. It has to be a clear easement, all of our easements are

for agriculture period but on the other hand if you don't put the houses up you are going to get the view it's just not named specifically. It is why the responsibility of NSCLT is going to be great and hopefully they can come to a good agreement.

Member Richards commented that agriculture is a dynamic field, just because today sugar is grown doesn't mean sugar will be there forever. What is today a GMO product in a few years may be the standard, because its able to do so much better and people will forget if its GMO or not. We have to remember that as we discuss these things, there are a lot of feelings going on, some people are against GMO because of this that and the other but in 15 or 20 years who will remember? Member Young interjected that she will. Member Richards continued Member Young will but unfortunately this is just the way it goes. Some of the finest growing land in State of Hawaii is now known to be at Kapolei. Is that GMO? I don't know but, it was developed. That is why we have to protect agricultural land for agriculture not agriculture land for parking lots and houses. Member Young commented that Chari Bonar had said that BLNR basically rubber-stamps the Commissions recommendations but on one occasion they didn't. The first round, the Commission turned down the ADC application but they came back with HARC and other forces to make sure it got through. Chair Bonar said he had forgotten about that.

Chair Bonar asked for further comments. Member Berg stated he was most concerned about was that that they don't have funding from army to protect strikers from falling on it, they do not have money from NRCS and they do not have money from City and County set up yet so in fact they don't have any matching funds set up here. Member Canfield commented that hopefully in a week's time they will have some funding. Member Berg responded they will have funding from one of the sources but they are just applying for the NRCS money. Member Canfield said that NRCS is a big pot and the project is likely to get some of it because if you remember Sunset Ranch, NRCS said they were looking for projects because they are trying to justify their program in Hawaii. Member Berg stated that NRCS didn't tell them this today.

Ms. Schmidt asked if something had changer with the FRPP that they need matching funds before they can commit their own. Chair Bonar answered every time the Farm Bill comes out there are different twists in policy that DC does. What they were trying to say was "we cannot commit any funds until we see your match in the bank" and that was true last year and we should have asked Mr. Whitt but it's the D.C. office that is the problem not the local NRCS folk. Mr. Whitt has been trying to work with the counties and what LLC is doing is you can coordinate timing in these things as some of the counties tried to do the same thing and you get caught between a rock and a hard spot. That may be the case, but it isn't certain. Member Canfield said that she anticipated that all three chunks will come through. Chair Bonar agreed and stated that he thought NRCS is behind the project and the Army as well because of the striker, the military has been partners for a lot of different things. Member Canfield stated that if they are going to do urban warfare and set up right there they want to make friendly neighbours. Chair Bonar said that since one of the things the Commission looks at is, does this have a high probability of getting done in two years, we should think about that as we rank our personal score sheets. Member Kaiwi stated that this project is the only of the five going for agriculture in a big

way and agriculture is part of the commission's kuleana. He didn't appreciate the manager talking about English as a second language I don't think that is appropriate and I don't think that is fair to the farmers that are out there. I know that there may be language barriers but I think as a project manager he needs to find a way to communicate, you don't disparage somebody because they don't speak English. I just wanted to put that out there and maybe TPL could communicate that. Member Shallenberger and Chair Bonar commented that they had the reverse reaction. Member Shallenberger sated that he was impressed that they had the opportunity. Member Kaiwi said that it was the way it was said. Member Canfield commented that on the sight visit the manager struck here as being very genuine. He used to be a farmer on the neighboring land and is head of the neighborhood community association. He has lived there all his like and has good roots to the farmers and the land, and I was really struck by his empathy for these brand new immigrants that are in a really hard place that are just trying to survive and they are given shelter and an opportunity to make a living. My sense was that he was really helping out. His point was they he was trying to help their farming practices by enabling them to read the labels in the store. Chair Bonar added that it will also help them communicate better with each other so they can plan strategies.

Member Young commented that she had an issue with the landowner not reaching out to the community to see if there are local farmers who would like to lease the land. Chair Bonar responded they inherited all the leases and there has not been any turn over. Member Young felt that it didn't look like all of the land was being used and the farmers were struggling and productivity was low.

Member Buchanan commented that she didn't get that sense. When the project manager referred to the minimum use of herbicide it was a good thing, leaving the land fallow was a good thing. The hotel being the buyer and with the slow foods movement I thought that was a good thing and he saw it as a benefit, but he wanted them to be more productive because now they can only fill one order from one restaurant. He kept talking about this flood plan; my question was how many acres is that going to take away from agriculture. It seemed that was a big issue and the whole purpose of the agricultural easement was to put the flood plan into effect. I have no sense of what that project would look like or how many acres it will take out of agriculture. I feel that if there were any Hawaiians wanted to farm the land they would have sought it out. Member Young said that what she understood from the manager was that he wanted the farmers to use more herbicide to make more food. Member Berg added one of the reasons they teach them English is so that they can use the herbicides and pesticides better. And increase productivity. They never said that they want to give organic produce to the hotel. Member Young said there is a roadside food stand but it is supplemented by products from Costco. Member Canfield said that she was frustrated on the site visit she wanted to know more about what NRCS was planning for the flood plan. The response was it wouldn't be done until after funding was secured but when you are there on the land you see that the two streams are nonexistent unless there are flood events but it was not made clear how much acreage would be taken by the flood control. Chair Bonar asked if the manager brought up the used of a detention pond. Member Canfield confirmed. Chair Bonar asked if he said what

size the pond would be. Member Canfield said that she assumed that it would be small because there isn't a lot of water.

Member Shallenberger stated that he used to manage the refuges down the street, and flooding is an annual event, bigger every four or five years, so they are smart to put thought into how they will handle it.

Member Kaiwi asked if there was a sense of why there was no outreach to the surrounding community to get local farmers. Ms. Ka'akua said that it was only because there are not enough farms or space.

Member Young said that she felt she should have insisted on seeing the rest of the land – walking would have been fine. Member Canfield said that the manager was reluctant to take them because the farmers wouldn't like it and he did tell us history of different farmers and different crops. Chair Bonar commented that it suppressed him that after reading the site visit report and then seeing the how many utilized fields there are.

Member Canfield asked if the NRCS grant was contingent on a flood control plan. Chair Bonar clarified that it is solely for conservation but it is not clear whether that means they will put in a flood plan. Member Canfield wondered if getting a match from NRCS was because they were representing the need for flood control. Chair Bonar comment that there are other opportunities.

Chair Bonar asked if there were other commented. Member Buchanan asked if he had reminding them that agriculture could include solar panels. Chair Bonar confirmed.

Member Canfield referred back to Paukūkalo at looking at it to potential to DHHL to step up more then they have and turn it into something that the Commission would like it to be that could be in our thinking as we rank. Chair Bonar added the commission is requesting that it be conveyed to them how critical the Commission sees that being. Member Canfield commented further that it would avoid getting the kiss of death because of current problems.

Chair Bonar asked for further comments. There were none. He asked the Commission members to circle, for each of the five, their individual ranking. All five of them could be threes. Chair Bonar asked Ms. Schmidt for clarification that the ranking is not putting them in one through five but ranking them each on an individual basis. Ms. Schmidt confirmed. Chair Bonar asked the Commission to make their markings very clear and to put their names at the top of the score sheets. Ms. Schmidt explained that number five is the lowest score and number one is exemplary.

Member Kaiwi asked if anyone did the math on how much is available. Ms. Schmidt stated that the max is \$4.3. The total request is \$4.95 and if the max is available then there is \$4.3, which leaves \$650,000 short. If it's \$4 million, then its \$950,000 short. Ms. Schmidt added that these figures took into consideration the County of Hawaii's revision.

Member Kaiwi asked if the commission were to come up short then the County of Hawaii would come up with the money. Chair Bonar said they rather have less money than nothing. Member Young stated that this is taxpayer's money and the commission represents the taxpayers so it has to be a serious consideration if the commission is going to give someone one and a half million dollars. The Commission agreed.

Chair Bonar called a ten minute break at 9:12am and asked Ms. Schmidt and Mr. Hirokawa to tabulate the scores so when the commission came back they could start discussing numbers.

Chair Bonar calls the meeting back to order at 9:21am. He asks Ms. Schmidt to summarize the ranking and explain what that means for funding. Ms. Schmidt explained that they looked at everyone's scores just in case someone recued themselves. Kaiholena was ranked the highest, followed by Haweā at number two, Kauhola at number three, Turtle Bay at number four, and Paukūkalo in fifth place. She explained that the finding for projects one through four totals to \$ 4,445,000 over the budget which pushes number five, Paukūkalo, off the running.

Member Berg suggested that the Commission could decide not to do number four. Ms. Schmidt explained that now that the Commission had ranked the projects they needed to decide if they wanted to award the last projects from the list. Chair Bonar suggested that the Commission could offer partial funding to other projects. Ms. Schmidt said that had to be done with applicants present to say if it's okay to reduce the project they applied for. Member Canfield explained that they had been asked at the previous meeting. Ms. Schmidt added that the problem was that the project that was approved does not have that information on it. There needs to be an amendment grant agreement to work out what funding will be. What they need to do is redo pages and hand them in again.

Member Canfield asked if the Commission had given reduced funding to a project before. Ms. Schmidt answered that they had in FY08. Member Canfield asked if this was not the same process. Chair Bonar stated that Ms. Schmidt's point is clarification of paperwork. The projects need to be re-filed but you can check with the Attorney General and see what's acceptable. I would be surprised if we couldn't do that all the way. Member Young commented that it would just be more work for Ms. Schmidt. Ms. Schmidt stated that she is not concerned about the work but about the paperwork going through the proper process.

Chair Bonar stated that the Commission will look to see what the basis for these changes will be. Member Richards added that if the number one concern is projects receiving matching funds it would seem like putting a deadline on projects to get the funding in time may put some projects dead in the water and then make way for the other projects. Chair Bonar stated that the issue could be discussed further.

Ms. Schmidt expressed concern that the Commission was changing the basis of judging project so the ranking that was assigned to each project will have changed. Chair Bonar stated that he had taken that into consideration and on every grant panel he has been on it

has been necessary to have the ability to adjust. He added that it may be that the Attorney General comes back to the Commission with a different decision. Member Richards pointed out that it is possible for the Commission's recommendations to be turned down. Chair Bonar added that the Commission is only advisory. Ms. Schmidt stated to the Commission that she was informing them that if they were trying to stick to a process they should stick to their original ranking. Chair Bonar said he understood. He asked Ms. Schmidt to write the rankings of each project on the white board with the totally funds requested by each project and a subtotal after each ranking. Ms. Schmidt did so. It showed Kaiholena at number one asking for \$1.65 million, Haweā second for \$325,000 subtotal \$1.975 million, Kauhola third at \$975,000 subtotal \$2.95 million, Turtle Bay fourth at \$1.5 million subtotal \$4.45 million, and Paukūkalo last at \$500,000 final total \$4.95 million. Member Berg asked again what was the highest estimate of the funding available. Ms. Schmidt said it was fair to say \$4.3 million. Member Berg reiterated what Member Richards said about projects not being able to get matching funds in a short amount of time, and suggested that the Commission could put a cutoff date on all of the projects and set a deadline and see which will fall out. Member Canfield added that this would prevent the Commission from having to give partial funding. Chair Bonar commented that this was done with Paukūkalo last year. Member Berg added that this action does not bring the Commission down to the limits of the available funding and wondered how that would work out. Member Young asked Ms. Ka'akua when the City and County would make their decision on funding. Ms. Ka'akua said it would be done on the 10th of this month.

Chair Bonar stated that the Commission had to look at the reality that the normal time to use the money is two years and the Commission would not want to put conditions on a project unless it was a really high risk. Mr. Hirokawa added that a March 31st deadline might be too short even for the top-ranked project Kaiholena. Chair Bonar responded that he was convinced that project would go through. Mr. Fisher added that county funds are not guaranteed until June of next year. Member Canfield asked if it was possible to just simplify things and made a motion to fund the projects by rank until the funds run out and let all residual funds go partial funding of the remaining projects. Member Richards asked if the stipulation that the funds be used in two years could be added to the motion. Chair Bonar explained that the two year stipulation was already a part of all LLCP's grants. Ms. Schmidt confirmed this but explained that they could add a provision that the projects could not receive an extension to their grant time that was possible. Member Richards moved for discussion. Member Buchanan seconded.

Member Young stated that the Commission had to drop Paukūkalo from the funding process. Chair Bonar said that the Commission could separate that out in the motion. He stated he felt the order the Commission has put the projects in it the appropriate order. He added that if the actual amount of funding was \$4.3 million then it is his personal view the board should fund the first three projects and reduce funding for number four. Member Shallenberger added that this would allow the first three projects to go the full extent. Member Berg asked if one of the projects were to fall through would the money go to the other projects that did not receive funding. Member Shallenberger asked when the landowner of Kauhola would owner see money and asked if the January 1st deadline

they had set would be problematic. Member Richards commented that the promise of funds from the Commission would give the owners something to go to the bank with. But if the Commission funds the first three projects and wait two years to see if the funding would fall through the banks wouldn't want to be involved with the project.

Member Shallenberger asked Ms. Ka'akua if the appraisal on Turtle Bay recent. Ms. Ka'akua referred to the date listed in the application. Member Young informed him the date of the last appraisal was July 19, 2010, and it was done by CVS. Ms. Ka'akua stated that she did not know the full name of CVS offhand. Member Canfield stated that she did not feel there was a huge sense of urgency on the Turtle Bay Project unless the hotel changed hands. She added that nothing on the urgency of the project was reported in at the site visit. She suggested that the project would still survive if they didn't receive all the funding requested of the commission. Chair Bonar added that there seemed to be flexibility from the other funders to make up the remainder of the funds. He asked Ms. Schmidt if the motion could be worded such that the commission approved Turtle Bay at this point for the difference between what the first three have and what the maximum available is and if one of the first three should drop out that money could then be allotted to the Turtle Bay Project. Member Young commented that in doing so it may give Turtle Bay leverage for other moneys. Ms. Schmidt suggested wording. Member Berg stated that if they don't have the money they get whatever is left in the fund but if one of the three drops out then there is more money available. Without having to specify the exact funding about it gives us working room because we don't know if the fund is \$4.0 million or \$4.3 million. So are decision is just the availability of money, they will get whatever is leftover. Chair Bonar asked when the Commission would be able to know what funding is available. Ms. Schmidt said that it could be known as soon as Mr. Paul Conry was available. Chair Bonar asked if the maximum funding available would be \$4.4 million. Ms. Schmidt corrected that the maximum available would be \$4.3 million and perhaps \$4.4 but a second look would have to be taken. Chair Bonar asked if the understanding is then that it would fund fully going down and the last on the list would have the availability of whatever was the cap of spending.

Member Kaiwi asked Chair Bonar if the Commission's recommendation to BLNR of partial funding to Turtle Bay, placed on the bottom, communicated the Commission's support for project. Chair Bonar confirmed. Member Berg added that BLNR could look at the Turtle Bay project and say that there is a high concern for agriculture and it is a priority and then put it on the top of the list, taking all the money for the ones below, pushing number three to number four who then gets the scraps. Member Young stated that one million is a good sum of money, it's not scraps. Member Canfield asked if Member Berg was suggesting that the Commission not include Turtle Bay in the recommendation. Member Berg answered that he was just asking a question.

Chair Bonar asked if there was other specific discussion about the resolution right now. He asked that Ms. Schmidt reread the motion. Ms. Schmidt stated that the original motion from Member Canfield stated the Commission recommends to funds projects in the order ranked one through four. Chair Bonar stated that it needed to be included that if there was not enough money to fully fund all the projects then that comes off the lowest ranked

project. Ms. Schmidt amended the motion to state the Commission recommends to fund projects in the order ranked one through four as funds are available. Chair Bonar asked that it be made clear that the last project, Turtle Bay would receive whatever funding was available after the first three were funded. Member Richards asked Chair Bonar if it was necessary to state the two year rule. Chair Bonar said that it was already a part of the policy and all applicants understood this as part of the criteria. Member Young asked if it was necessary to state that the projects acquire the matching funds by June. Chair Bonar answered that the discussion had eliminated that clause.

Ms. Schmidt asked the Commission if they were voting to not fund Paukūkalo. Member Canfield asked the Commission if there was a desire to not fund Turtle Bay at all. The Commission members confirmed that they would like to give Turtle Bay as much funding as possible. Member Berg asked if with the motion as it is the Commission recommends funding to projects one through four in the order that they are ranked as funds are available could BLNR change the rankings and put number four first meaning the money would be taken out of Kauhola and if that money was taken out it would basically defunct Kauhola. Chair Bonar said that they could put Paukūkalo as number one as well. Member Kaiwi asked if BLNR had ever funded contrary to the Commission's recommendation. Ms. Schmidt said that they did for ADC in FY07, but other than that they have not. She clarified that the Commission is advisory whereas the Board has a legal duty not to make arbitrary or capricious decisions which is why it's important your process not be either, as they rely on your process, so I don't think they would do that. Member Canfield asked, given that the only time they have done something different than recommended by the Commission was on an agricultural project that HARC was behind I wonder what the likelihood is that they would do it again. Chair Bonar commented that BLNR had Senator Hanabusa and some other politicians there in front of them telling them to do so. Ms. Schmidt pointed out that it was one thing to not recommend a project when the funding is available it is another thing to step in and tell project one through four that your project is better, that would be pretty gutsy. Member Canfield pointed out that the Turtle Bay Project is not as intimately connected as to HARC as the other was. Member Kaiwi added that there are political pressures assigned to Turtle Bay. Ms. Schmidt suggested it would encourage LLCP to cough up every last penny that is available. Chair Bonar stated that his concern is if the Commission did put a matching fund deadline on a project and none of them could leaving that kind of excess funding available is dangerous thing to do.

Member Shallenberger asked if the Commission was comfortable to show sufficiently the record of why the Paukūkalo project ranked low and what they have to do to become competitive. Chair Bonar answered that yesterday's testimony and questions and answers as well as today's comments are more than enough. Member Berg added at the site visit the members laid out what needed to be done. Member Canfield commented that there is no record for that. Chair Bonar pointed out that all they have said in the last two days is in the record and it will get conveyed clearly. Member Berg asked if Ms. Ka'akua would do so. Ms. Ka'akua asked the Commission if it would be possible for her to make a comment for Turtle Bay. One of the Commissioners mentioned the different matching fund sources possibly having that flexibility to possibly fund at a higher level. It might be

helpful to the Turtle Bay Project to be able to have a clear picture so that we could go out and work to get those remainder funds. The language that Member Canfield had suggested earlier to fully fund one through three with the remainder of the funds available for the fourth project that kind of clear picture would help us in approaching matching fund sources for the remainder of the funds.

Member Berg commented what was written into that motion was the fact that it was totally unclear whether matching funds are going to come up for two or three so how much is going to be available for four is really unclear. Member Canfield suggested that Ms. Schmidt find out from Mr. Conry what the funds available are now so that the Turtle Bay project would have a number to work with. Chair Bonar added that the projects do not have to come up with matching funds for two years so Turtle Bay project may not know for two years if more funding is available to them. The only important number is what Mr. Conry says is our cap. He stated that he liked the way Ms. Ka'akua stated the motion as it makes it clearer that projects ranked one to three will be fully funded and the residual to four and hopefully we will know what that number is soon. He asked Mr. Hirokawa to call down to Mr. Conry to find out what funds are available.

Member Young asked Ms. Schmidt if the money is actually there and if it was collecting interest. She clarified that the question was to see if money left over would collect interest to allow for more money in the years to come. Ms. Schmidt answered projecting funds to the end of the year, projecting revenues and expenditures is the way the money available is calculated. There isn't a recent statement available of what exactly in the fund but from what can be told by the numbers is that by the end of the year it will be about \$1.8 leftover if \$4 million is encumbered for grants. There is a ceiling of \$5.1 million and have to subtract from that ceiling certain central services fees and the administrative budget so while our grant is at \$4.0 million now we could raise it to about \$4.3 and even to \$4.4, however, what I have permission for right now is \$4.0. Member Young asked if there was an advantage to spending it all. Chair Bonar said that there is one advantage if the Commission doesn't spend it the money should stay in the account it doesn't go into the general fund the trouble is that the legislation is trying to balance a budget and where there are pots of money left unused they could go and take it. Ms. Schmidt added that last year LLCP lost \$1 million to the general fund and they did put in that language that allows the Invasive Species Committees to take \$400,000 and that's not going to sunset until 2013. Given there is an authority in the statute that can take funds it is better to use it all. Chair Bonar agreed that is the reason the Commission does not want to leave a big bank account sitting there.

Member Berg commented that the wait to see if matching funds to fall though my not be too long as Kauhola might get sold out on January 1st then it maybe a done deal and suddenly the Commission has another million. Ms. Ka'akua asked if she could clarify that the January 1st deadline was a deadline imposed upon TPL by the landowner that TPL secure some funding promise towards them so that they will have some hope. If there is not promise of funding by January 1st then on that day list the property on the open market. The June date is the financial reality of the landowner and TPL will have to work with them to refinance or close within that timeframe. Member Berg asked if the

decision of this Commission today to allocate the money is sufficient to keep them on the hook. Ms. Ka'akua confirmed. Member Berg added realizing and expressing to them that the legislature, BLNR and the Governor have to approve, at that the Commission has a history of working well with all of these entities. Ms. Ka'akua stated that the Commission's recommendation puts Kauhola in a much better position. TPL can now have those extra months to keep the land off the market and approach different funding sources.

Mr. Hirokawa returned to the meeting and informed the staff that Mr. Conry was in a staff meeting and would contact the Commission when he was out.

Member Kaiwi stated that since there is a high level of confidence that number one Kauhola would find funding, and Mr. Van Bergen stated if he shouldn't find full county funding he would find funding elsewhere. Instead of the Commission giving partial funding to Turtle Bay, should the Commission change the ranking? Ms. Schmidt stated that she found this inadvisable because the process you use to rank the projects put Kauhola at number one so why would you risk its position and put it to number four. Member Canfield agreed and stated that there is a good reason why number four is number four.

Ms. Ka'akua informed the Commission that it would be helpful if the Turtle Bay project had a number to take to the matching funders. Chair Bonar said that they will find out as soon as possible. He asked if Ms. Schmidt could read the motion as it stood now. Ms. Schmidt informed the Commission that there were two motions on the table. The first to fund projects ranked one through four as funds are available. The second to fully fund projects one through three with remaining funds for project four. Chair Bonar asked which of the two was there a motion made and a second for. Member Canfield said that the second one was the one she proposed. There was disagreement from members of the Commission. Chair Bonar asked if for clarity the motion-maker could restate the motion. Ms. Schmidt stated that the most favored motion is to fund projects one through four in the order ranked as funds are available. The Commission corrected Ms. Schmidt. Ms. Schmidt corrected and restated the motion: to fully fund projects one through three with remaining funds for project number four. Chair Bonar asked if Member Buchanan would second that motion again. Member Buchanan stated that the Commission was still in discussion and they might want to tie into the motion is a discussion about any residual funds. Member Berg said it didn't matter as it all goes to number four. Member Shallenberger added that the residual funds go to number four up to what they requested. Member Buchanan stated that since it is up to what they requested there may still be residual funds that the Commission may want to clean up now. Member Canfield answered that the only way the Commission would do that would be to give funding to Paukūkalo and that has not been included in the motion. Chair Bonar said that his understanding was if one of the first three projects were to drop out that money would be left in the fund for next year. Member Buchanan said she thought that it would be better to give funds to Paukūkalo rather than leaving funds in the account but if that is what the board wants that is what they want. Member Canfield said that the Commission could vote the motion down and include Paukūkalo. Chair Bonar stated that he felt very

uncomfortable approving Paukūkalo right now under any circumstances given the current situation. Member Young asked Member Buchanan if she was expressing concern to encourage Paukūkalo to continue work. Member Buchanan said that she was just trying to clean up the funding and maybe that would give them a shot in the arm to get to work we all know they have no money.

Chair Bonar asked if there was further comment. There was none. He asked for a vote on the motion as stated; to fund the first three fully, the fourth to the residual funds that are available up to what was requested. The vote was unanimous.

Chair Bonar said asked Ms. Schmidt if she had what she needed from the Commission in terms of clarity. Ms. Schmidt confirmed.

Item 4. Update from staff, discussion, and possible action regarding the disbursement of management funds from the Legacy Land Conservation Program.

Ms. Schmidt informed the Commission that the request was sent into the State Procurement Office (SPO) but there had been no word back yet. Member Canfield asked if that was to get a waiver to do it how the Commission wanted. Ms. Schmidt confirmed and explained that land acquisition does not fall under the procurement statute but management funds do so in order to give out management funds in the same process that we currently give out acquisition funds we need an exemption from the SPO on the procurement statutes and requirements. Ms. Schmidt asked if she should move onto rules. Chair Bonar confirmed.

Item 5. Update from staff, discussion, and possible action regarding draft rules for the Legacy Land Conservation Commission and the Legacy Land Conservation Program.

Ms. Schmidt informed the Commission that the management funds issue does affect the rules because we are waiting to hear from them whether or not we can have the rules that we have drafted right now for the management funds. The draft rules were sent into the Attorney General's office and the deputy attorney general (AG) had commented on the rules and I have been taking her comments and so far I have gotten through most of them and I am still researching and trying to figure out one of the last ones. The deputy AG did make some comments about the rules that the Commission drafted, the three subsections that the Commission are fully responsible for which are; the criteria for management funds grants; the criteria for land acquisition grants; and the Commission's procedures. Ms. Schmidt informed the Commission that they had copies of the rules with tracked edits so they can see what had changed as well as a list of comments. Chair Bonar asked Ms. Schmidt if she required guidance from the Commission. Ms. Schmidt confirmed and explained that out that most of the revisions made by the deputy AG to the Commission's rules were technical except for the management fund criteria which have some heavy edits. Ms. Schmidt asked the Commission if they would prefer to take the comments and have an additional Subcommittee meeting or deal with the issues now. Chair Bonar suggested that as Ms. Schmidt had not finished her edits and may have more specific questions in the future that the Commission holds a Subcommittee meeting. Ms. Schmidt

explained that she needed to turn in an entire draft to the deputy AG for revision again therefore she required the Commissions revisions before she can turn in the draft. Chair Bonar asked Ms. Schmidt if she had enough information between what she had and the questions she will ask at the subcommittee meeting to finalize the draft for the deputy AG. Ms. Schmidt confirmed. Member Canfield asked if Ms. Schmidt would prefer Subcommittee members to look at the corrections she had done now or wait until the corrections were finished. Ms. Schmidt said that was up to the Commission. Member Shallenberger stated that he would prefer Ms. Schmidt to finish her edits first. The other Commission members agreed. Chair Bonar asked if Ms. Schmidt had any thing else for Item 5. Ms. Schmidt did not. Member Richards informed Chair Bonar that he had to leave the meeting.

Item 6. Briefing by Maui Coastal Land Trust on its request to reduce project acreage for Fiscal Year 2008 approved grant of \$994,724 from the Legacy Land Conservation Program for the acquisition of lands in Nu‘u Makai, Island of Maui, and possible Commission recommendation to the Department of Land and Natural Resources regarding this request.

Chair Bonar introduced the final item on the agenda and excused himself as he had a conflict of interest. Member Kaiwi asked what the number for quorum is. Ms. Schmidt answered five members.

Chair Bonar left the meeting and Member Kaiwi took over as Chair.

Ms. Schmidt informed the Commission that Maui Coastal Land Trust (MCLT) received an award in Fiscal Year 2008 for the acquisition of lands in Nu‘u Makai. She informed the Commission the application, supplementary materials, and December 14, 2007, meeting minutes included so that they could see what their comments were at the time in their information packets. MCLT is seeking to reduce acreage of their project and in order for that to go through the system it requires an amendment to the grant agreement and because it's a substantive change to the project it requires a BLNR submittal and BLNR approval. Prior to putting this in for the BLNR agenda the Chairperson wanted the Commission consulted as well as the Senate President and the Speaker of the House because they are a part of the statutory decision making process.

Scott Fisher, Project Manager of MCLT, and MCLT Board President Helen Nielsen asked the Commission that it approve an amendment to the original grant agreement that specified the protected land at the Nu‘u landing site as 81.477 acres. Mr. Fisher explained that the approval of this amendment is the final hurdle, if the amendment is approved the project will go into closing. The certified appraisal justifies the amount that was asked. The appraisal amount came out at over the requested amount at \$4.03 million and the amount that MCLT is paying is \$4 million.

Member Canfield asked the reason for the change. Mr. Fisher explained that there was an error in the subdivision records. Member Canfield asked what the original acreage was. Mr. Fisher responded 128 acres. The records that the County of Maui had that MCLT

submitted to the LLC has been revised downwards the substantive portion of the refuge where MCLT is actually working is the wetlands. MCLT have been working on the wetlands for two and a half year and has a \$70,000 Recovery and Reinvestment Act grant to do work in the field. MCLT has been monitoring bird populations for four years, predator control and invasive species removal, put in a very sturdy ungulate proof fence, and surveying with GPS archeological sites. There are far more archeological sites then originally thought to the point that our GPS is not accurate enough to distinguish one site from another. Member Shallenberger asked what kind of sites were found. Mr. Fisher answered they found mostly L and C shaped structures. At the upper mauka area in Kaupo, there is a Ph.D. in archeology candidate from University of California Berkley that is surveying upland field system and they are realizing that the Kaupo could possibly more substantial then the Kohala field system. That is not on this property but we are realizing that the population of this area in pre-contact times may have been much larger then we initially knew and that is why you are seeing so many temporary fishing shelters. Member Canfield asked who the landowner upslope was. Mr. Fisher informed her that it is Andy Graham, they call it Nu'u Mauka. Member Canfield asked if there was any possibility that that land would be protected differently, and asked what it was being used for now. Mr. Fisher explained it is a cattle ranch but MCLT would like to see the possibility of managing that land. Currently the property is adjacent to the Haleakala National Park now that the Campbell property has been acquired.

Member Young stated that the letter from MCLT says there is 78 acres and this is dated October 2007. Ms. Nielson explained that he appraisal was done April this year and that showed the revised number. Member Canfield asked where the 128 came from. Ms. Nielsen said that that was the original thought process but the ranch did not have the final subdivision lines properly drawn with the county. When the TMK was requested a lot had to be reconfigured and we realized it was a much smaller portion but the significant portion of it is the wetlands and a lot of the archeological sites, the petroglyphs. Member Shallenberger asked what was on the lands on the outside of the TMK. Mr. Fisher said that it is the majority of the area that MCLT was trying to preserve initially as well. Its lava fields point to the water. The property boundary is an old hale wai with a canoe landing. Member Shallenberger asked if the canoe landing was on or off the site. Mr. Fisher said that it is the boundary. Member Shallenberger asked how would losing the acreage effect plans for management. Mr. Fisher answered the loss of the land would effect management insignificantly because that area is largely an a'ua lava field. The first phase of management is restoration of the pond and the pond is from an ecological perspective very important. The habitat has been increased by 15% -20 % already effect just by removing some of the kiawe that has fallen into the pond. Member Shallenberger asked if stilt could be found in the pond. Mr. Fisher answered that both stilts and coots could be seen to the point, you can't sleep there it's so noisy. What we have been noticing that stilts and coots will fly from Kohala on the Big Island to the pond and then onto Waihe'e and Kanaha. It is disproportionately important. Member Shallenberger asked where the birds are coming from in Kohala. Mr. Fisher informed him that they come from some of the Waikoloa ponds but is not entirely sure of other places. Mr. Shallenberger asked if there were any banded birds. Mr. Fisher said there were not and

said that it is conjecture but you can see them coming in and moving out primarily in the evening. He added that a large colony of Noio were also found at the site

Member Kaiwi asked if MCLT had records of the area and subdivision. Mr. Fisher confirmed. Member Kaiwi asked if at the time the division of the land was outside of their kulana and the parcel was in fact 47 to 50 acres less and the funding amount remains the same at about \$4 million because the appraisal came in the same even though its 50 acres less. Mr. Fisher confirmed. Member Kaiwi asked if in that time they have been doing active management in that area. Mr. Fisher confirmed.

Member Young pointed out that the application says 128 acres but the actual acreage now is 81 but the letter says 71. She asked what the final acreage was. Mr. Fisher confirmed that it was 81. Member Young asked how much funding was received from LLCP. Mr. Fisher told her it \$974,000 was given to purchase the land. Ms. Nielsen informed the Commission that all of the federal grants were released by the AG's office, about \$2.7 million and of the remaining \$220,000. An amount of \$110,000 was through a Freeman Foundation through HCF Hawaii community Foundation and the other \$110,000 from private funders. We are really hoping to have this done by the end of this year because the owners told us that they would like to pull it off the table because they believe that they can sell the property for a higher amount. If you look at the property and the 81 acres there is about 38 acres that is in agriculture, the rest is in conservation. Under the rules right now they can theoretically put in seven two-acre houses. Member Canfield asked if that is what they want to do. Ms. Nielsen confirmed and elaborated that the landowners told MCLT in no uncertain terms that they would like to pull it off the table if it is not complete by the end of they year. Everything is lined up except for the money from the LLCP which needs to be brought up before the BLNR meeting on the 9th and I will meeting Senate President Shan Tsutsui on Wednesday, and Chair Bonar is scheduled to meet with House Speaker Calvin Say because they need to be informed of any changes.

Member Kaiwi asked if the landowner knows what kind of active management has been done on the land. Mr. Fisher confirmed. Member Shallenberger asked if there was a management agreement. Mr. Fisher explained that there is a signed management agreement that allows MCLT to replace the ungulate-proof fence, do predator control and any other work that is deemed necessary that doesn't involve any type of movement. They have taken the cattle off the property which ha been very helpful. Member Canfield asked if the owners were restricting them in any management that they would like to be doing. Mr. Fisher said that there are some goat issues, but with the replacement of the fence that has done most of the work for us. Ms. Nielson elaborated that the landowner is not preventing them from doing any management. Member canfield asked if they still had a good relationship with the landowner. Mr. Fisher confirmed. Ms. Nielsen added that the land owner is trying to reduce the goat and deer population because it's really fighting for all the grass with the cattle. Member Shallenberger asked where all the management money comes from. Mr. Fisher explained that they receive a grant through the Hawaii Wetlands Joint Venture by way of Ducks Unlimited, to an amount of about \$7,000 and we wrote the management plan through that.

Member Kaiwi asked how the capacity was at the moment. Mr. Fisher explained that MCLT is busy. Waihe'e is where the majority of the time is spent but they also work at Kuau to prevent the erosion of a bank to protect the iwi kapuna. Waihe'e needs to be scheduled because often we stay for the weekend and work through the weekend. It has been a good opportunity to work with the local community get them understand what is going on and the history and the importance of it. There is a book that we have been trying to put together to do a cultural tour so people will understand. Member Kaiwi asked for a motion to approve the amendments. Member Berg made a motion to approve the amendments as offered to the grant with respect to the amount of acreage. Member Young seconded. Member Kaiwi asked for discussion. Member Buchanan asked, as she was not a part of the 2007 Commission if she was able to vote now. Ms. Schmidt explained that when the Commission makes an action they act as a Commission so whatever the composition of the Commission is at that time is a Commission action and the individuals are a part of that. Member Kaiwi said that the action is based on the testimony and as a Commission they have a level of trust. That good management is being done on these lands. Member Buchanan asked if to have quorum, Member Kaiwi had to vote. Member Kaiwi asked if the Chair can vote. Ms. Schmidt said that the Chair can vote. She asked if she restate and clarify the motion. The Commission recommends approving the acreage amendments for the MCLT. Member Kaiwi asked for a vote on the motion. All were in favor. Member Kaiwi called a break and asked the Commission members to return at 10:30.

ITEMS 7 & 8. Set next meeting date(s) and Announcements

At 10:40 a.m. Chair Bonar called the meeting back in to session.

Chair Bonar announced that there was a going away party for former the chairperson, Laura Thielen, in 5 minutes and invited the Commission members to join him. He then asked when the next meeting date would be. Ms. Schmidt said that the next meeting was going to be a Subcommittee meeting and so she would just consult the Subcommittee members. The next meeting after that would be regarding rules so if the Subcommittee meeting in January or February would be ideal. Member Kaiwi suggested that Ms. Schmidt use Doodle pole to organize the next Commission meeting.

Ms. Schmidt announced that William Aila, Jr., is the new Chairperson for DLNR and is starting on Monday. Hopefully, he will be available for the Senate and House consultation appointment and we will get to brief him on Legacy Land and all that it does. Member Canfield asked if the session hearings are already scheduled. Mr. Hirokawa explained that it is the legislators' discretion to hold meetings when they want. Ms. Schmidt explained that, ideally, the meeting will happen sometime in early January and go to the board to the late January or early February meeting, provided that they don't end up with a restriction that makes us gather a lot of information from the applicant like the last time. The March 31st restriction had all the applicants provide evidence of their matching funds which took several weeks to organize so we had to go to a later board meeting.

Chair Bonar asked if there were other announcements. Member Young noticed that this year there were fewer applicants and wondered if there was a reason for that. Ms. Schmidt did not know for sure but guessed that with the reorganization of the land trusts they might be less eager to take things on as they have internal business to attend to. Chair Bonar said that they are putting a lot of things on hold because this is a large challenge. Member Canfield asked if that meant that next year the Commission should expect a flood of applicants. Chair Bonar said there are a lot of wonderful projects out there that the land trust has said can we come back to you and talk after the first of the year. Member Berg asked that there is a function of fewer monies available to the counties open space committees and less money available for matching funds. Chair Bonar said that part of it is that MCLT has been working very hard on donations and things that don't require having to buy things. We will be closing on another 11,000 acres within the next two weeks over on Oahu here. There are a number of those going on. Given those opportunities that is where we have been putting our efforts. There are other things out there where people are interested in doing it but are looking for some re-compensation.

Member Shallenberger announced that he is leaving The Nature Conservancy (TNC) next month so it means that he would no longer need to recuse himself on TNC projects.

Member Kaiwi asked the Commission if they also felt that all the applicants had very strong native Hawaiian cultural ties. I am finding at OHA that these requests are increasing. I also sit on the Executive Council Board of Hawaii Restoration Conservation Initiative (HRCI) which is a spin-off of the 1992 Akaka large scale Forest Recovery Act. They are going after the appropriations right now but HRCI relies on culture not sciences. That's the way that HRCI is positioning itself in D.C. is such that they are looking at cultural management systems as a main need with science supporting. It's kind of a new thing on the horizon. Member Young asked if that was an OHA initiative. Member Kaiwi said no, it's a federal thing. Chair Bonar stated that he liked seeing the appreciation and the integration of the projects. One of the guiding principles of MCLT is recognition of the relationship of land and people. The resources are the cultural basis. Member Kaiwi asked if the land trusts were uniting. Chair Bonar confirmed and said that they will be filing merger in next three months. NSCLT, Molokai Land Trust, and Halawa Valley Land Trusts would remain separate but will still collaborate. Member Young asked if MCLT would be able to lend assistance to Paukūkalo. Chair Bonar has said that it has been offered.

Item 9. Adjournment.

Chair Bonar asked for any other announcements. There were none. Chair Bonar called the meeting to adjournment at 10:48 a.m..