

## **Minutes of the April 18th, 2011 Legacy Land Conservation Commission Meeting**

**DATE:** April 18th, 2011

**TIME:** 12:00 p.m. to 4:30 p.m.

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

### **COMMISSION MEMBERS PRESENT:**

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

Dr. Charles ("Chip") Fletcher

### **COMMISSION MEMBERS ABSENT:**

Dr. Dale Bonar

### **STAFF:**

Ian Hirokawa, DLNR, Land Division

Randall Kennedy, DLNR, DOFAW

Molly Schmidt, DLNR, DOFAW

Leah Laramee, DLNR, DOFAW

### **PUBLIC:**

Laura Ka'akua

Ms. Deborah Pratt

### **MINUTES:**

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

Ms. Schmidt announced that Chair Bonar was unable to attend the meeting. In his place Member Richards called the meeting to order and asked Member Berg to act as a temporary chairperson. The Commission asked if they could put the meeting on hold until Member Fletcher and Member Kaiwi arrived. Ms. Schmidt stated that she was not sure what affect this pause would have under the Sunshine Law. She then called the Offices of Information Practices, which informed her that as long as there is not a significant burden on the public in terms of making them wait for the meeting to start then it is okay to allow the delay the start of a meeting. The burden to the public approximation is an hour, and as the meeting was only ten minutes in, it is acceptable for the Commission to wait for the arrival of the other members.

Member Fletcher arrived and Ms. Schmidt informed him that Chair Bonar was not able to attend and the first order of business should be to vote for a new Vice Chair for the purposes of this meeting. Member Richards made a motion to appoint Member Fletcher

as acting Vice Chair for the meeting. Member Berg seconded the motion. The vote was unanimous in favor.

Chair Fletcher asked the Commission members, staff and members of the public to introduce themselves. Introductions were made.

**ITEM 2. Approval of Legacy Land Conservation Commission meeting minutes from December 2, 2010, and December 3, 2010; and approval of meeting minutes from Legacy Land Conservation Commission Subcommittee on Rules and Management Funds from February 10, 2011.**

Chair Fletcher asked if there was any discussion on the minutes. Ms. Schmidt explained that there were three sets of meeting minutes; minutes from the December 2, 2010, and December 3, 2010, Commission meetings and the minutes from the February 10, 2011, Subcommittee meeting. Member Berg informed the Commission that he had sent in comments and corrections to the minutes, but what he found lacking was that the rank ordering of the projects was recorded but the numerical basis for that ordering was not reported in the meeting minutes. He stated that he thought it would be useful to have those in there so that in future years people will be able to see how the numbers added up as there was often a discrepancy between the top ranked projects and the lower ranking ones. He pointed out that this would be especially useful to have a reference to show senators and representatives if they have questions after-the-fact of how the Commission came to the conclusion. Member Shallenberger asked Member Berg if he intended to record the individual rankings given by each Commission member. Member Berg clarified just the sum total of all the rankings – not everyone’s individual scores, but for the point of the minutes just the average of all the individual rankings. Member Shallenberger agreed that that would be helpful as the candidates are going to want to know what they can do to improve or where they are in the list. Chair Fletcher stated that this is not something that the Commission has done in the past but that perhaps it is a good practice to adopt. Member Berg thought it would be easy enough to add that in as a table now. He didn’t think it was necessary to go back to all the previous years but a table with the rank orders and their numbers would be a good addition from hereon out. Chair Fletcher asked if there was a place in the minutes where Member Berg would think that would fit in. Member Buchanan suggested making the table and addendum to the minutes. Member Berg said that he would put them right in the minutes where we make the discussion and we say here is the rank ordering. Ms. Schmidt identified the place for the table in the paragraph immediately before the outcome of the rankings as discussed. Chair Fletcher asked what page it was located on. Ms. Schmidt wasn’t sure and began to look through her notes.

Member Richards asked if the Chair would like a motion to approve the December 2, 2010, minutes and amend the December 3, 2010, minutes to include the aforementioned table. Chair Fletcher said he would first like to see the section where the table would be inserted and if there was any more discussion on the December 2, 2010, meeting.

Ms. Schmidt said page 13 in the December 3<sup>rd</sup> meeting, or page 70 in the entire packet handout, would be where the table would be inserted. Member Canfield asked where exactly the table would go. Ms. Schmidt indicated the paragraph that stated “Chair Bonar called for a ten minute break, during that time staff tabulated scores.” She identified the section soon after that probably either somewhere in the first paragraph would include the table. Member Berg showed the only thing that was in there was Chair Bonar asking Ms. Schmidt to summarize the ranking. Ms. Schmidt agreed and said the place for them would be on page thirteen after the break. Chair Fletcher asked if there were further comments of that issue or any other discussion on the December 3<sup>rd</sup> meeting. Ms. Schmidt informed the Commission that Members Young and Shallenberger has submitted corrections that were mainly typos and clarifications but no substantive changes. Member Canfield added that she had noted typos but did not submit them as she felt this was not necessary. Chair Fletcher asked if there were any other comments on the minutes. Member Richards moved that the minutes from the December 2<sup>nd</sup> Commission meeting be approved. Member Young seconded. All were in favor.

Member Canfield moved that the minutes from the December 3<sup>rd</sup> Commission meeting be approved with the suggested additions. Member Shallenberger asked if he could make a comment before that happened. He continued that in the same paragraph about summarizing the ranking there is a comment there that Ms. Schmidt ran through the one through four totals, is the Commission suggesting that they put the applicants’ rankings only or that we identify in sequence the funds. Member Berg clarified that he suggested to only include the ranking on it. Chair Fletcher asked if there was a second to the motion Member Young seconded. The vote was unanimous and the motion passed.

Ms. Schmidt asked the Commission if they had any comments on from the February Subcommittee meeting minutes. Member Shallenberger asked if only the people who attended the Subcommittee meeting would be able to approve them. Ms. Schmidt explained that the whole Commission, in order to have the Commission acting on something, needs to vote on something. However whether or not you adopt the meeting minutes is discretionary; our practice has been to give everybody a chance to review edits and that kind of thing before they are considered a final. If the members of the Subcommittee are fine with it then an informal consensus will suffice and they will be posted on the web. Member Canfield stated that would be fine with her. Member Shallenberger added that he was happy with them as long as they included the changes. Ms. Schmidt confirmed the meeting minute would now be place on the web. Chair Fletcher asked if there needed to be any formal action on the subcommittee minutes. Ms. Schmidt confirmed that it was not necessary.

**ITEM 3. Update from staff regarding 2011 Legislative Session; discussion and possible action by the Commission.**

Ms. Schmidt updated the Commission on all of the bills that were either tangentially related or directly effected the Legacy Land Conservation Program.

House Bill (HB) 324 establishes the South Kona Wilderness Area. There was an act that was passed previously similar to this. The bill talks about land acquisition and of protecting that area. It is something that may come up in future proposals. It is alive and the House disagreed with the Senate's edits to the draft so it will go into conference.

Senate Bill (SB) 120 HD1 would reduce the portion of the conveyance tax going into the land conservation fund from its current 10 percent to 5 percent, a 50 % reduction in funding.

Member Berg asked if this would be a permanent reduction. Ms. Schmidt responded that the bill sunsets in 2013. Chair Fletcher asked if Ms. Schmidt could discuss the origin of the bill and some of the discussion around it. Ms. Schmidt said she did not know the exact origin of the bill but she speculated that it was a combination of the fiscal crisis and in one form of the bill there being some text discussing land acquisition not being a big priority. As far as any formal comments on the purpose or the reason for that bill that would be it. Chair Fletcher asked Mr. Kennedy if he had something to add. Mr. Kennedy added to what Ms. Schmidt had said about the original language of the bill and that it was from HB808. He explained that the Legislature tends to combine similar bills to create one major bill as far as funding goes. They seem to be identifying SB120 as a bill to put the changes to all special funds in. They added section 8 to SB120 that took language from HB808 and it basically is the same thing in its original but tentative version but in the hearing they changed it from zero to five percent. That was a compromise from the previous bill. Mr. Conry was at the hearing until 9:00 p.m. and the justification was that to keep the program and staff going and have a limited amount of funding to have projects so you can continue the program to a certain level next year. After July 1, 2013, just have to ramp up to where it is now. The upside is that the staff and the program will continue on and the downside is Legacy Land will miss the opportunity to get a lot of bargain basement conservation deals during the recession but the Legislature needs to make decisions on how to balance the budget.

Mr. Paul Conry, Administrator, Division of Forestry and Wildlife, apologized for his tardiness and explained he was at an Environmental Council Exemption Committee meeting. He informed the Commission that a couple of the things that played into any of the issues with the Legacy Program was when the last couple of briefings with Legislature, when they have been in the shortage of funds mode, every year they have asked when you are cutting the budgets and asking whether land acquisition is necessary. DOFAW has consistently placed the same arguments that LLCP is a great program it matches and brings in federal funds; it has had some unique opportunities and needs resources to take advantage of opportunities as they have come up. Underlying that is the thought that if the Legislature is going to cut someplace this could be something that has actions in the future and could hold off expenditure of these funds until the economy improves. It is one of the things to put on the table, that you want to continue a base level of funding because you don't want to there are projects that are in various stages of implementation. The staff must be maintained the program cannot be zeroed out because it will take years to restart it. There needs to be a base level of funding and it is also nice to have some money for acquisition so the program can still take advantage of some of

the opportunities that come up, be that matching with federal funds or whatever, but there is an opportunity to continue the program. In this regard the original proposal was to zero it out, the House looked and that and listened to the testimony that was provided, Trust for Public Land (TPL) came in and provided testimony at the same time and so the House went half way, to a 5 percent reduction. DOFAW had told them to take 2 percent which would allow the program to continue plus give a little bit of money but they went to 5 percent based on the testimony. Mr. Conry said he thought that the 5 percent would allow the program to keep its continuity. He added an additional issue that was up was a push from the Senate that LLCP doesn't have all of its rules in place so perhaps the program should put a temporary hold on future acquisitions until all the rules are in place so there will be no question as to how the Commission is making its decisions. DOFAW said they were doing a darn good job, there may be a few bumps here or there, but once the rules are in process and getting some experience with what the program should and has to deal with while developing the rules. At this point the Commission should know all the issues it has to deal with so that was another underlying current. Mr. Conry stated that if the program can hold for the five percent for a couple of years and still have funding for some projects to proceed, as long as the Legislature doesn't raid every single dime that is in the program. Right now if you sit there and look at it the program is waiting for the Governor to approve to acquisitions for this fiscal year, the budget is sitting at about \$5.2 million. Once the governor approves \$4.2 of that gets encumbered. Those are the numbers that the legislature is looking at as far as what's available. At the same meeting that they are hearing the testimony on whether or not to raid the Legacy fund they are also talking about raiding the Tobacco Prevention Fund and many more so it is the classic can that you give pinning up the environment against public services and education; it's just the legislators weighting that. Mr. Conry said that he spoke to one of the Committee members, the Water, Land, and Ocean Resources Vice Chair, Representative Har, who is on the House Committee, about the Legacy bill that was there and she said not to worry the House will not kill it but to understand that they have to get some money someplace.

Member Berg asked what was happening with the Invasive Species Committee monies that have been taking out of the Legacy fund and if it would continue at the same level. Mr. Conry said that is what was identified as the base, if you take everything it would not be able to continue but it was estimated that even 2 percent would provide over one million dollars. The estimated full revenue coming in next year is going to be around \$8-10 million which would give Legacy \$4.5 million. Ms. Schmidt thought that \$4.2 was the estimate. Mr. Conry said that at 2 percent that would be about a million and that combined with the million dollars that LLCP has in cash carry-over would leave enough for expenses for administrative costs, around \$250,000 so that would then leave \$1.75 million in the pot. DOFAW told the Legislation that at that level of funding Legacy can continue that form.

Member Berg asked about the Natural Area Reserve System (NARS) and how the program had been hit. Mr. Conry explained NARS have not been on the radar. He wasn't sure if the Legislature had not identified the revenue going in or the raids on the cash budgeted this far in the budget, the Legacy portion in the budget was the only one that showed up on the radar. Mr. Kennedy added that a raid to take away the NARS fund

showed up on the earlier versions of the bill that were changed. Mr. Conry said there are bills in front of the committees that are tied to the special funds so the conference committees could decide to raid. They have a bill that they could probably tap on raids of any special fund that they needed to in order to make the budget. It's the final days of Legislature that need to stay tuned and be on guard. DOFAW's basic recommendation is that we have to maintain the base level of funding. It would be nice to continue operation and it would be nice to provide a reduced amount of opportunities over the fiscal year.

Member Berg said that he is seeing on Kauai is the land prices are still plummeting, its minimum of 30 percent decrease since the peak and a lot of it is at 50 percent and just not moving. There are a lot of opportunities that the Kauai Open Space Committee and the County is targeting and looking at, but they too are being opportunistic from this list of things which one of those do deal now and Legacy has to be there for them if suddenly bargain basement deal comes in, or in case something come up for foreclosure. There's nothing on Kauai at the moment but the Maui project – this piece is coming up for foreclosure and they really are never going to have this opportunity again. It is extremely important to have this program at a minimum of 2 percent. Five percent would be great to just pick out the sweetest deal. Mr. Kennedy added that is why it is so good to have the Legacy program in place because its essentially been the hub of land acquisition for quite a few years now and it has the cash to going along with it, too, because it's the connection between the federal government and the counties. The Oahu Program has sufficient funds so they can take advantage of this opportunity but they don't have the capacity of LLCP.

Member Young asked Ms. Schmidt if there were still some projects that have not yet closed because there is a need to have the program in place. Member Fletcher commented that the Oahu Program has looked at LLCP to follow how they should structure everything, from a-z. It's worrisome that LLCP has been seen as a target. It's understandable given the recession that all of the special funds are being scrutinized. To the extent that this program has been singled out beyond that, though, is very surprising because the Commission and staff have all taken extreme care, a lot of discussion and a lot of attention to detail has been taken every step of the way and for that to be misconstrued as going too slowly where it is really an example of a body trying to take the most care possible and learn from experience speaks to one thing to me. The Commission and staff are all either scientists or community people that are used to doing things properly and based on that, life should go on without interruption. Chair Fletcher suggested that perhaps LLCP was failing to advocate for the program sufficiently. He said he feels that if he knows he is doing a good job, that should be sufficient, but in the world of politics that is not necessarily sufficient for something to go forward. Half of the members are off island so it is very difficult to get over to the Legislature and there is a turnover in the Legislature that occurs as well, so there are new people coming into the Legislature that weren't privy to the conversation that generated the program. He suggested that LLCP put a little more effort into beating its own drum. He wasn't sure how to do that but said the lesson he is taking away from this is not to expect that life will continue without having to work at it. The Commission and staff should stand up and wave its hands and let people know what a great job they are doing.

Member Berg asked if there was a need or opportunity for the Commission members to go to the legislature and testify in front of one of the Committees. Mr. Conry explained that at this point everything has moved into the conference stage so the phase for public testimony is over. But everyone has a legislator and if one has any questions they are free to contact them. One of the steps that DOFAW is taking is to put the program on firm footing as far as the administrative rules and all that, that kind of is going to be the next step to put it firmly in place and get a foundation to go forward in the future. If and when any questions come up or even if there are issues being raised that is what has to be done to do make sure the program can achieve the most benefits to the public, to make sure it can stand on its own and hopefully provide another 20 years of great public benefit.

Chair Fletcher noted that Member Kaiwi Nui was now present and accounted for. Ms. Schmidt explained to Member Kaiwi that the Commission had covered the bills that are alive in the legislature, specifically SB120 which would cut the Legacy Land conveyance tax revenues from 10 to 5 percent. Member Berg asked when the final decision on the budget will be made. Mr. Conry said he thought it would be in the next few weeks. Chair Fletcher congratulated Ms. Schmidt on the exemplary job she had done keeping the Commission up to date on the legislative activity. Mr. Conry said the legislature adjourns in the first week of May. Ms. Schmidt added that there will be a final decking deadline. She also added that there are two Commission members for nomination but the Governors Office and Board of Commissions is somewhat overwhelmed this year and she wasn't sure if any Governor's Messages have been submitted this year for specific members up for re-nomination. She explained that there had been one nomination submitted and withdrawn and in the absence of that the Governor's Office is able to appoint members in the interim so if there is no Senate hearing for either of the members up for re-nomination that would be what they would do.

Mr. Conry commented as far as the outreach, as the Commission goes through the rule making process the Commission is going to actively invite and encourage the legislators and their staff to be involved. There will be opportunity for discussing the draft rules and to just interact with legislators in the process. Chari Fletcher agreed that was a good idea.

Chair Fletcher asked if Ms. Schmidt was finished with her legislature update. Ms. Schmidt confirmed she was. Chair Fletcher asked if there were any more comments on item three, there were none.

**ITEM 4. Update from staff regarding the disbursal of management funds from the Legacy Land Conservation Program and draft rules for the Legacy Land Conservation Commission and the Legacy Land Conservation Program; discussion and possible action by the Commission on draft rules.**

- a. Status update on progress of draft rules**
- b. Discussion of any remaining concerns on the topics of enforcement, grant monitoring, and conservation easements**

Chair Fletcher asked for an update from Ms. Schmidt. Ms. Schmidt explained the update from staff would regard the dispersal of management funds from the Legacy Land Conservation Program and draft rules, both in the same item because they are related. She informed the commission that at the last subcommittee meeting in February there was a request for a review of the timeline, the things that the Commission hopes to accomplish regarding the rules as well as the current status and what the Commission will do in the future. She told the Commission she started to work on the rules officially in June of 2008 at the Commission meeting. At that meeting staff briefed the Commission on the rule making process and the scope and statutory authority for making rules. The Commission at that time requested a draft that would echo what the statute had in it and also asked staff to generate a list of all the policies that the Commission had discussed that might need to be addressed in rules. Staff did that and brought it back at the October 2008 meeting in which they provided a flow chart, draft rules from other programs as an example and a list of the policies discussed by the Commission at other meetings. The Subcommittee was tentatively formed to handle rules and issues related to the management funds for legislation that had passed just recently, allowing LLCP to give out 5 percent for operations maintenance management funding. At that point the Commission took the list of the policies that the staff had generated, added a couple of things onto it and handed it to the Subcommittee. There was one more Commission meeting before the Subcommittee met for the first time which confirmed the membership and selected Member Shallenberger to be the Chair of the Subcommittee. The Subcommittee met once in March 2009 and again in April. The first Subcommittee meeting was planning and discussion on how to separate and deal with the different topics that were being addressed. The Subcommittee then requested drafts from staff. Staff produced some drafts for the next Subcommittee meeting in April. Ms. Schmidt checked with the Commission that this update was what the Commission had in mind. The Commission confirmed it was. Ms. Schmidt continued. At the April meeting, staff gave our three drafts. The reason that it was separated out it be cause there are three provisions in the Legacy Land statute that address what rules should be made by whom and how. There is a section in 173A-2.5 that says the Commission should make criteria or rules relating to the criteria that it uses. In 173A-2.4 is says the Commission should make rules relating to their duties. In provision seven it says the BLNR may make rules implementing the chapter, 173A, so it broke it down in the three different sections and the Subcommittee handled the criteria and somewhat the procedures while staff worked on the overall administrative rules for the program. At that meeting the Subcommittee reviewed and approved draft procedures and discussed how to work on criteria and got some of the polices that needed to be developed thought out further and also decided to recommend to the full Commission that it advise the DLNR to defer management funds awards until all the policy and issues could be handled. Before the next Commission meeting which was in June 2009 the staff worked on the first draft of program rules and the Subcommittee added some revisions to the Commission's procedures and so those were developed between those two meetings. The Commission in June 2009 heard a list of policies developed by the Subcommittee, advised DLNR to defer the awards of management funds until the procedures were in place. Between August 2009 and March 2010 staff did some reviewing of the procedure rules and circulated them to Land Division and got suggestions on revisions, etc., and tried to come up with the policy on

proposing how management funds should work. The next Subcommittee meeting was in March 2010, at that point the Subcommittee firmed up and decided to recommend the draft procedural rules to the Commission and Member Shallenberger proposed drafting criteria, which he did after the meeting and handed it over to staff to put into more official format for distribution at the next Subcommittee meeting. The next Subcommittee meeting May 2010 the criteria were added to the draft rules and all the rules were discussed and some comments were listed for the full Commission meeting. At the Commission meeting in July, the Commission approved the Subcommittees rules and submitted a bunch of comments on the draft procedural rules to DLNR. At that point the staff took all of those revisions, worked on those revisions, and submitted them again in the December meeting in 2010 and at that point there was a decision to have the Subcommittee meet again in February. Between those two times staff sent the draft rules to the AG for preliminary comments and worked on the preliminary comments and responses. The Subcommittee looked at the AG's preliminary comments to the Subcommittee rules like the criteria and procedure. Ms. Schmidt informed the Commission that that brought them up to date. She continued to inform the Commission that the task for the day was to look at all the revisions, the staff revisions and responses to the AG's comments, the Subcommittee's revisions and responses to the AG's comments and also some additional provisions that have been added by the Department to the procedural rules to address some of the things that came up, some comments that were received during the back and forth with the Senate and also one issue that arose in the interim was also addressed with a new rule provision. She explained that the idea today was to get the draft into the official rule making process and go to public hearing. The first step in that is to go to the AG's office again for approval to go to public hearing. Ms. Schmidt asked if there were any questions or comments. Member Berg asked if there is a final set of amended draft rules. Ms. Schmidt explained that in the packets given to each Commission member there is a copy of the rules and there is track editing showing what has been revised since the last time the rules were reviewed. In order to keep clear what edits were made in response to AG's comments and what new provisions have just recently been done by DLNR, those are in a separate document. To clarify there are draft rules and in a different document there are additional provisions but there are two sets of additional draft provisions. One is in the meeting packet, page 101, things that are proposed for adding to the draft rules and at the last minute another issue was nipped in the bud by adding some language. Member Kaiwi asked Ms. Schmidt if the section on page 107 was the AG comments. Ms. Schmidt responded that the edits are in fact responses to the AG's comments.

Member Shallenberger said he thought it was worth pointing out that some of the stuff on page 101 is issues that came up in discussion that the Subcommittee felt the full Commission should handle. Ms. Schmidt added that the Subcommittee dealt with the suggestions for the revisions for the AG and made those changes and that is in the draft that you have in track editing. Since that subcommittee meeting these additional draft provisions that you have as well as page 101 in the packet are additional since the Subcommittee meeting so the Subcommittee hasn't seen these yet. However a lot of the provisions were drafted in response to things that were discussed at the Subcommittee meeting as policies that needed to be addressed. Member Buchanan asked if these

provisions were drafted by staff. Ms. Schmidt confirmed that it was with approval from DOFAW.

Chair Fletcher asked what actions Ms. Schmidt required not. Ms. Schmidt explained that the Commission is responsible for the Commissions procedure and criteria. The department is responsible for the rest of the rules relating to procedure for the program. The correct way to make motions for this is to adopt the rules for the Commission, or revise and adopt, and for the rest of the rules comment or make a recommendation to DLNR. The confusion between the different areas of responsibility are why the drafts were separate at the beginning, later on it became too confusing to have separate drafts. Member Canfield asked Ms. Schmidt which set of rules should be looked at first. Ms. Schmidt suggested that the Commission go through the entire draft in order or she could point out the specific things that the Subcommittee addressed at their meeting. Chair Fletcher asked Ms. Schmidt to go through the whole thing and said he was still confused at the various items in the packet. Ms. Schmidt clarified that she had kept things separate because there were some things that the Subcommittee hasn't taken any action on yet, and she wanted to keep that understanding. She suggested that the Committee go through the rules and then those provisions can come in after the entire draft. Member Shallenberger suggested that Ms. Schmidt point out where the provision appears. Ms. Schmidt said that she would try to do that but she may miss the marker and have to go back. Member Canfield asked if the Commission was going to start on 107. Ms. Schmidt confirmed and explained that after the Commission will address additional provisions set one and additional provisions set two. Chair Fletcher explained that page 101 was a separate item and the additional sheet that was passed out was a separate item. Member Buchanan asked if the 107 packet had been approved by the Subcommittee. Chair Fletcher explained that initially it was but that it went back and forth through internal staff and then to AG. Ms. Schmidt said she believed the last time it was looked at was in July and since then it has been sent back to the Subcommittee and the commission again so the Subcommittee has seen the entire draft as it is but the provisions on the handout were additions that the subcommittee has not seen. Ms. Schmidt thought it would be best to skip the outline and go to the content. She suggested that the Commission skim the draft and bring up any questions or comments when they arise. Member Canfield said she had a typo on page 111 where the critical habitat definition was added. The word "the" needs to be added in the second line under the "Endangered Species Act" reference.

Ms. Schmidt asked if there were any questions on the definitions in the first two provisions, there were none. She asked if there were any questions on delegation of authority or severability, there were none. She asked if there were any questions on program administration. Member Canfield had a typo correction on page 114 on the top third line after inspections you need to add an "at." Member Shallenberger said he had asked a question at the Subcommittee meeting about the first reference to imminent domain. Ms. Schmidt asked him if he was referring to the first provision after program administration. Member Shallenberger confirmed. Ms. Schmidt explained that the language is taken directly from the statute and if it's in the statute it cannot be disposed of. Member Shallenberger said he didn't want to dispose of it he just wanted to know the background. Ms. Schmidt asked if the Commission was clear on the program

administration section. She continued on to the subchapter on Legacy Land practice and procedure. Member Canfield asked if an “s” would be added to procedure to create procedures, she was unclear if practice states the use of a singular or plural. Member Kaiwi asked why the public record provision was put elsewhere. Ms. Schmidt explained they were taken out of the Commission section and put in so it would apply to the entire program. Member Canfield explained that it was put on the previous page. Ms. Schmidt moved on to the land acquisitions grants subchapter. Member Shallenberger had a question about the section on quorum and asked what the statute said, was it specifically nine members to be appointed? He said he did not understand there was another person applying now. Member Richards explained that there were two people whose terms were up. Ms. Schmidt read from the statute “Any action taken by the Commission shall be by simple majority of its members, five members of the Commission shall constitute a quorum.” Member Shallenberger asked what the statute said about total membership. Ms. Schmidt read “...that the Commission shall consist of nine members...”

Chair Fletcher commented that the methodology of ranking is not spelled out in the rules and doesn’t need to be. Ms. Schmidt explained that it would be something that is specifically under the Commission’s area of authority. It would be addressed in the subchapter on priorities and criteria. Whether it needs to be is a question. Member Shallenberger said that was a question that was posed to the AG early on, if there is criteria on which decisions are made is that adequate? Or does the Commission have to establish how the criteria are used. Chair Fletcher asked if the comments have been to the AG. Ms. Schmidt confirmed that it had been to the AG for a preliminary review but not an official review or approval of any sort. The draft rules are still going to go to the AG. Ms. Schmidt said she wasn’t sure if she ever said for sure whether or not the Commission had to establish how the criteria are used. Chair Fletcher said that every time the Commission asks the AG about ranking and voting they were told criteria is where the emphasis should be put and the actual methodology was under the Commission’s authority. Ms. Schmidt said she thought the AG’s response would be that it is a policy issue and not a legal one.

Member Kaiwi asked where the AG was and whether the Commission covers his or her involvement in the program. Ms. Schmidt explained that initially the Commission had an AG assigned to the Commission and then over time when furloughs were implemented that was one of the duties that were kind of taken off the plate for the AG. Chair Fletcher said that in the first meeting or two the Commission was told that the AGs would sit in until they felt they had the comfort level that the Commission could function autonomously and they no longer need to sit in. Member Berg added that the AGs were there if the Commission had questions. Chair Fletcher agreed and said that the Commission had come to a standard operating level of expertise; the AGs were not really needed here when resources were thin. Member Canfield added that anything that needed to come to the Commission’s attention was covered. Member Kaiwi said he was teasing out for the economy of time the bouncing around to the AG and then it comes back. He didn’t want to waste anyone’s time. Ms. Schmidt asked to respond to that specifically and said that a lot of the things that need AG approval are things that are going to take that

amount of time no matter what because they will want to have formal comment on things through the formal process, not at a Commission meeting. If there is something needing AG review it will have to be the standard submitted in hard copy kind of thing. She added if there is ever a particular meeting that the Commission feels they would like an AG present to let he know so that she can at least make a request.

Member Young asked about lands being used as a match. Ms. Schmidt asked if the Commission should make sure that they are covering everything. She asked if the Commission was satisfied with all the provisions prior to the match. The Commission confirmed. Member Canfield asked which page Member Young was referring to. Chair Fletcher informed her it was page 117. Member Shallenberger said he was hesitant to say but asked about on the bottom of page 116 the additional reference to agricultural easements. Ms. Schmidt said that she did not have an answer to that and apologized, but she did not ask the question. Member Shallenberger explained the context of the discussion and stated that the question was what is an agriculture easement and who administers them and there was nothing that could preclude the State or anyone else to take a conservation easement on agricultural lands. The Subcommittee left it hanging as to whether or not the Commission needed to include the phrase conservation easement and if so it needed to be written everywhere that conservation easement was. Member Berg asked Member Shallenberger if his feeling was that conservation easement would be sufficient. Member Shallenberger responded that it is his understanding that as there have been a lot of conservation easements taken out on agricultural land that it is not only possible but a tool that has been used for a very long time. He added that he forgot who specifically raised the question of agriculture easements as a separate document. Ms. Schmidt said that she had and explained that she wanted an answer from the AG's office on what an agricultural easement is that is going to be eligible under a program that isn't going to be a conservation easement. She clarified, if there are agricultural easements not under Chapter 198 what are they and what can people apply for is the question. She explained that her impression was that agricultural easements usually refer to conservation easements with agricultural focus since agriculture is on of the purposes of 198 which is the conservation easement statute. That is something that can hopefully be submitted to the AG's office as a question. Member Berg asked if the question would be if the Commission could delete agricultural easements from the statute. Ms. Schmidt explained that the Commission could not in fact do that because it is in the statute. The Commission is bound to have it as it is in the statute but finding out what it means would be helpful. Member Richards commented there are conservation easements that are very different then any agricultural easements. With conservations easements there is not very much you can do. With agricultural easements you can still farm. Member Shallenberger disagreed and said there are conservation easements written to allow agricultural practices to occur. Member Berg said one cannot have an agricultural easement which then is basically conservation. Ms. Schmidt said she thought that all conservation easements under Chapter 198 are done a certain way because they are authorized to be a certain way under law. When one does an agricultural easement it can be done under Chapter 198. One can write a Chapter 198 agricultural easement specifically for agricultural purposes and leave out a lot of the other purposes like historic or natural protection. A lot of times when people say agricultural easements they are referring to conservation easements with an agricultural purpose, but then there are agricultural

easements and conservation easements in the statute, one of the reasons may be because the year that that language was put into the statute was the same year that the agricultural language was added to the conservation easement statute so perhaps somebody was attempting to cover all the bases by making sure it was there so if it didn't make it into the conservation statute there would be something called agricultural easements anyways. Member Richards asked Ms. Schmidt to get it cleared up. Ms. Schmidt agreed and explained that the Commission just needs the AG's interpretation of what the Commission would be doing with that language.

Member Shallenberger asked if, when the Commission gets an answer from the AG if there would be a way to change the definition so that everywhere it was applied it will be there consistently. Ms. Schmidt asked if she should ask the AG's office for a definition of agricultural easements. Member Shallenberger explained that as there is already conservation easement in there, there should be agricultural easement in there if it's different. That is the confusion, if somebody put it in there to cover the bases it may in fact cover everything done under conservation easements. Every way in which the Commission wants to bind the landowner in a perpetual way conservation easements have been done and will continue to be done in all the purposes of an agricultural easement. Member Kaiwi asked how this ensures that the new landowner, the steward, abides by section 106. In other words, once they touch a heiau that is an undertaking. So theoretically 106 would be triggered. Does that pull back the comfort level at which the Commission can award the grants? Ms. Schmidt asked for clarification of what 106 deals with. Member Kaiwi explained that it deals with national historic preservation. A lot of the people who submit identify cultural and historic places that might be on the National Register. Some have even gone as far to say that there are bones at their site, so there are known burial issues. That's why conservation easements don't necessarily attenuate to everything that is important to us as a Commission. Ms. Schmidt agreed and explained conservation easements would be an outcome of what's required by law under Chapter 198 and then what's agreed upon between the landowner selling the easement and the land trust or agency that is taking it. Member Kaiwi explained that it was just a question gnawing on his mind that he wasn't able to make the connection. Member Shallenberger commented that one of the challenges is that conservation easements are generally restrictive documents and they encourage conservation practices but they don't require them. That landowner whether they have an easement or not is subject to whatever law that applies. Ms. Schmidt said at least going through LLCP, a public process, they have to bring some information to light and expose any underlying legal issues that they may have. Member Kaiwi said he could imagine the case where one is liable for X and knows there is a heiau that he would not want to touch with a ten foot pole, conservation easements suggest that one should do something, national law 106 says one must. He said he wanted to make sure that new landowner X takes care of his kuleana if the Commission entrusts that this person is the right steward. He continued to say the Commission has had applicants that will remain unnamed, that he has had his concerns about and that is why he brought it up but again he can't make the connection. Member Shallenberger commented that most easements he had been involved with have had some language to say this does not remember any existing responsibilities or create an exemption for new discoveries. Member Kaiwi said he was talking about the case where

the applicant knew they didn't want to touch it. Ms. Schmidt said that LLCP, as a grant program, is mainly here as an incentive program to get people to do something but not necessarily a regulator. Ways to address these types of concerns would be in the process of making decisions to award funds. Chair Fletcher said that is where he was going, it is a selection process. He asked to what degree has the Commission written it in stone so that they can have guarantees that the Commission has put their kuleana in this activity. Member Kaiwi said that the Commission had never gone there and they are just talking. Chair Fletcher said it is an important area to address to strengthen the Commission selection. Member Berg said he felt the Commission had done a tremendous increase addressing this in the selection process and thanked Member Kaiwi for making them aware of this.

Member Young asked if someone does have a heiau on their property does it have to be registered and reported so that people are aware that there is a heiau that needs caring for and that it would then fall under certain rules. Member Kaiwi explained that there are criteria to get it registered and that there were pros and cons to doing so, that is not the key issue. The primary issue is that, though they don't have to register a site, 99 percent of applicants have identified, yes, there are cultural sites. By law, cultural religious native Hawaiian sites may trigger a section 106 process, the minute they touch they stuff they have to go to consultation out of good faith and good practice. He said that was his worry. Say he is now landowner X he knows it's there; he cuts the grass around it and may even put some signs around it. Trying to change the perception, when you are landowner X you understand that you will follow the law now, not that the previous one wasn't, but time has gone by that 106 and even section 4F at the federal level it is an undertaking. Those kinds of triggers are never brought up but he thought it would be a good time so if there was counsel within DLNR they'll have the Historic Preservation Division staff come over here and tell the Commission what 106 is. Ms. Schmidt asked if that is something that the Commission should have at a future meeting. Member Kaiwi said yes because those are laws that have teeth. Chair Fletcher commented one way to approach it is to serve notice, and while it may not be something to worry about in the rules but perhaps as part of the procedure the Commission could think about a document, something simple to hand out that serves notice to the new landowner, now they are responsible. Member Berg said he thought that could be found in part in the application process where the Commission is specifically asking the applicants to identify the cultural significance of a property and not just the fiscal act of something there but the whole cultural impact which does put them on notice that they need to know and be responsible for what's on the property. Member Kaiwi commented that a lot of the applicants do not know that 106 may be triggered, for example, Hawaii Kai. He wondered if they know what kind of can they are opening by taking on this kuleana, especially that one with high external pressures.

Member Berg didn't think the issue needed to be addressed in the draft rules but that it is something that the Commission should think more about in the application process, being more explicit about putting them on notice, if they are acknowledging in their application cultural resources then they must be aware of the fact that 106 may be triggered. Chair Fletcher said that was leading him further down the digression the Commission was taking, The Commission has not really put on the table as a commission

the agricultural aspect. What kind of agricultural does the Commission want? Early in the Commission's history the Commission split up over the issue of genetically modified organisms (GMO) and industrial agricultural versus local organic farming. To what degree do we want to bring these issues up and talk about them as a body that is making decisions? Coastal land use, watershed land use, its not just native Hawaiian, there is a long pathway to travel when it come to what sort of activities on lands do we want to applicant to understand that is consistent with the money that LLCP awards. Member Kaiwi added community involvement to the list, it is public money, the community should be a part of it. Member Shallenberger reiterated that the only binding tool is the conservation easement. That becomes binding as a function of what you can negotiate as a landowner. Keep in mind that the easement is perpetual so the next landowner will also comply with every issue specified. All the Commission can do is restrict and inform there is no provision to give money for management. He wasn't sure where the other Commission members were speculation where to deal with the additional issues but he felt it should be in the negotiation phase leading up to a proposal. For a legitimate landowner to apply for funding they would need to agree to go under a conservation easement. Chair Fletcher said he agreed with that. Member Berg said it is not our position as a Commission to put those conditions together since the Commission does not write the easement the Commission doesn't have any input on that. Member Kaiwi asked if the Commission could still recommend things to the Board of Land and Natural Resources ("Board") for consideration. Member Berg said that the Commission has done in the past where they made a statement that the Commission is not in favor of GMO. Ms. Schmidt said conservation easements depending on who is holding the easement will be written by that party. If the Commission wrote a grant to the Agribusiness Development Corporation (ADC) then it would be the board writing the easement. Member Young asked if Ms. Schmidt meant the Board. Ms. Schmidt confirmed and said when she was speaking of Board she meant Board of Land and Natural Resources and if it is granted to a non-profit, the non-profit writes the conservation easement. If DLNR takes an easement then it is a State agency which had responsibility. The Commission is not necessarily responsible for writing easements. Member Kaiwi added that the Commission can still suggest.

Ms. Schmidt thought that some of the issues the Commission had might be addressed in some of the provisions that were drafted. Member Young asked on page 11 where it said "lands donated as a match will be subject to the same requirements," whether that meant that the lands that are being donated have to have all the other things, such as watershed protection, on them. Ms. Schmidt explained when land is acquired, LLCP goes into the grant agreement with them and they are subject to that, and there are parts to the statute relating to how the land can be used in the future, or whether or not it can be sold. Member Young said it had to do with matching funds, for example, the initial Cave Conservancy project had land that they were donating as their match but the land was not contiguous or part of the parcel that was being sought. Ms. Schmidt if the provision in question was "F". Member Young confirmed and said she had a question about land donation in general, when land has been donated as part of the match it had to be that the applicant had a parcel they wanted to purchase and the parcel and the seller was willing to contribute or discount a portion of the parcel. But maybe this could mean any land that has value as far as being watershed and so forth, she asked Ms. Schmidt if that is what the

provision means. Ms. Schmidt explained that it was not but what it was saying was without anything else, the provision in section F is saying when land is donated, when that is approved by the Commission and comes through everything it will be subject to the same restrictions as if it would be purchased through Legacy Land. Say Cave Conservancy or some other organization come to LLCP and says we want these five acres and we want to donate those five acres, for the purposes of how LLCP restrict the land use and what is done with the grant agreement is going to be as if the organization was purchasing all 10. So the deed restrictions that would normally go into land being acquired with Legacy Land funds will also go into the lands donated so that they are looking at the whole thing as a project in its entirety so the organization is getting five acres and also giving five acres. The only thing that the provision is getting at is making sure the deed restrictions go into the donated land too but whether or not lands have to be contiguous to be considered as match, this doesn't address that at all.

Member Fletcher asked if lands did need to be contiguous to be considered a match. Ms. Schmidt said she did not believe that there was anything in program rules relating to that. That would fall under criteria as there is no official policy on it but if you look at some of the criteria, contiguous or creation of a corridor or something to that effect is in it. Member Shallenberger said he thought it would be unnecessarily limiting opportunities by making it contiguous. Member Fletcher asked what sort of guarantees the Commission has that matching lands are not in a degraded state. Ms. Schmidt explained that it is at the same level as the lands to be purchased. If one was to go to a site to inspect that they would go to the other site, too, to look at the project as a whole rather than looking at the donated lands as purely fiscal match value. She asked if that took care of peoples' concerns on the matching section. It did.

Ms. Schmidt explained to the Commission that the Subcommittee had asked that the provision on page 118 right after matching funds be clarified. The provision regarded eligible costs, matching funds and federal coordination. It used to just say "federal coordination." The idea is that in some situations, say someone does baseline documentation and does it in house as they are submitting documentation and say "I have a receipt for six dollars from 7-eleven getting a lunchtime musubi." Instead of taking all of the Commission's rules and trying to get down to the nitty gritty this will hopefully allow LLCP to borrow the federal grant guidelines and the federal grant circulars that say what permissible costs are. In any gray areas the idea is to use the federal grant guidelines because they are pretty detailed and tested. Member Shallenberger said that it has potential barring on the question of who is going to take on an easement because there are federal guidelines on what a qualifying easement over. Ms. Schmidt responded by pointing out the provision says the department may, so in situations the intent of the provision is not to do any of that but to borrow policy in gray areas where the Commission needs further guidance to what can and cannot be allowed. Member Shallenberger asked if this meant that not to be subject to it. Ms. Schmidt clarified that though federal guidelines discuss permissible holders for conservation easements, the provision is about eligible costs, matching funds, and federal coordination. Member Shallenberger asked if the issue of permissible holders was dealt with anywhere else. Ms. Schmidt answered it is covered by the statute which specifies non-profit land

conservation organization, state agencies and county agencies are permissible holders. Member Shallenberger said that the Commission has been making awards to new organizations that have no history. Ms. Schmidt added there is also a draft rule relating to what a non-profit conservation organization is, which is in the definitions. Member Shallenberger commented that the Commission members have all been nervous about how temporary a group may be. There are three ways to deal with that, sit back and live with it or provide some of your own scrutiny and make some policy decisions on if they qualify or not, or follow a federal statute which is how land trust organizations pass muster under federal law. Ms. Schmidt asked if Member Shallenberger was referring to the IRS regulations. Member Shallenberger confirmed. Ms. Schmidt explained the draft rules definition for non-profit land conservation organization means “An organization that protects land having value as a resource to the state as defined under the statute as part of its activities or mission and has been determined and designated to be a non-profit organization by the IRS.”

Ms. Schmidt asked if there were any questions or comments for the application and grant agreement section on page 187. Member Berg commented that page 120 says under “c.” “Cost of land will not be reimbursed,” in red. He asked if in this case the Commission was assuming that all of the monies put out will be for the purchase itself. Ms. Schmidt asked if Member Berg was looking at the payment provision. He confirmed. She explained the cost of the land will not be reimbursed so LLCP does advances for land but not for other items. Because the Commission has that list of due diligence that it is looking over one way to make sure that the applicant does not just hop in and buy the land is to make sure that the funds are not released until they complete the due diligence list. At the same time LLCP understands that land is expensive and trying to make it a reimbursement is also not an option. Member Young claimed that was not made clear in that statement. Ms. Schmidt agreed that it could be explained further and said that the rule statement was mostly just a tool the Commission could use to make sure that it is enforceable but in terms of explaining to applicants why and what can be done; the grant guidelines would be a better place. Since LLCP has deed restrictions that are desired to have in the deed, one of the things to do is to have the AG’s office to review the deed before giving out funds. There are several safeguards set up, so if someone goes ahead and buys the land before going through all of the safeguards then they do not get funds. Member Young asked if it could be stated into the sentence. Ms. Schmidt replied in terms of trying to make it more clear to people it might be better to do it in the grant guidelines.

Member Shallenberger asked whether, regarding page 121, the thing about site visits is that the purpose may be not just to inspect the condition of the property and resources but compliance with the terms of the deed that is kind of unusual. Ms. Schmidt responded in terms of monitoring and recording and site visits. Doing the baseline documentation and then monitoring the land would not be LLCP’s kuleana unless LLCP was holding the conservation easement. If State Parks decided to take a conservation easement then that would be their responsibility to go with their baseline and mark off their report. The Commission could request their baseline documentation and their monitoring reports if there was a desire to see if their monitoring reports held water. Member Shallenberger asked Ms. Schmidt if she was talking about a project where the State doesn’t have a

conservation easement. Ms. Schmidt explained what was being covered here is that LLCP can request documents relating to the land and can visit the property, so if it were a conservation easement LLCP could request their baseline documentation reports and monitoring reports. Member Kaiwi asked for how long could LLCP do this, what is the term of this? Member Shallenberger explained that the authority to enforce the conservation easement is perpetual. Member Kaiwi asked if the Commission wouldn't add compliance. Ms. Schmidt said one of the issues is the discrepancy between what people are starting to want out of this program and how the statute is set up. LLCP is giving grants and not able to do anything that the statute does not give the specific authority to do. For example, if LLCP does not have something in 173A that says LLCP can do this then LLCP is not able to create a power for itself out of thin air. She continued to say the Commission has to creatively use other statutes, like the conservation easement statute. Member Shallenberger said on the one hand it authorizes the State to go into conservation easement with the land owner and then by definition it allows enforcement under the terms of the easement because that is required. Ms. Schmidt asked if that meant Mr. Shallenberger was suggesting every time grant money is used for a property you give a conservation easement. Member Shallenberger said he only thought it necessary if there is not comfort in the way it is being handled and the organization that is taking on a property. He said he sound a lot of the discussion originated from folk at the legislature and elsewhere being concerned that the Commission did not have enough control over what happened after the money was given. Ms. Schmidt said she thought it had been discussed before by the Commission quite a bit and has also been echoed by senators and legislators. Member Shallenberger asked if it had been suggested that all the lands be under a State easement. Ms. Schmidt said she thought that had been a suggestion, yes. Member Shallenberger said he thought that it was coming from a good place trying to make sure that the money is well spent, which is not to say that a conservation easement with TPL or TNC or organizations the Commission feel comfortable with aren't going to be enforced. Ms. Schmidt explained when the program was set up it was to be a grant program which funds conservation easements and funds the acquisitions. If it was set up to be a program that takes conservation easements that would be a separate program because taking conservation easements isn't just about the money, it's about long term follow-through, monitoring, and legal and technical expertise. What the Commission has in statute right now isn't that program. Member Berg added the Commission may want it, but doesn't have it and DLNR doesn't necessarily want to take on that responsibility and the staffing of continual monitoring and compliance; it's not in the statute for the Legacy Land Program. Member Kaiwi commented that it echoed back to the fundamental question does the state have the capacity to do this.

Mr. Kennedy pointed out that all the land trusts and other divisions already serve that purpose and deal with that process and in a lot of cases there may be exceptions. Ms. Schmidt thought when it comes to LLCP as a grant program giving people an incentive to do a certain action because this is an action the Commission and BLNR think worthwhile if there is not a feeling of comfort about a project then it should not be recommended for funding. Member Shallenberger commented things of that capacity had been included in the Commissions discussions, management, planning and all the things that would be

expected of a conservation easement but the Commission had never said anything that would preclude them from deciding that it doesn't need to be a state issue to be a legitimate conservation organization but he believed the Commission was there not just to buy land but to protect it and protecting it means ensuring it's managed appropriately over time, and there are a few ways to get to that comfort level and one of those is a conservation easement.

Member Young said she didn't totally read Laura Thielen's departing summary for her work but the underling theme was that there are not enough funds for DLNR to maintain the lands they had and any further lands the state requires should have something that provides for the maintenance or care. Ms. Schmidt added that Honouliuli that came with an endowment of sorts and some other projects that are starting to come through are coming with that. Member Young said that was Ms. Thielen's recommendation that there always be that portion or provision that deals with some sort of care for the land. Ms. Schmidt suggested that be an additional question the Commission ask on the application, whether or not there is an endowment on the land. She said she believed the Commission covered it in the essay type questions. One of the things that is being proposed is a new provision for one of the rules which gets to the conservation easement and the enforcing part, just FYI. She said she knew it was being discussed at the moment but there were still the rest of the rules to get through and there was something that would trigger the discussion later.

Member Kaiwi commented on the Commission can enforce it from a conservation standpoint but can it be enforced by a funding source standpoint. Ms. Schmidt said it could. Member Kaiwi asked Ms. Schmidt to repeat what she said about the Commission's ability to enforce effectively. Ms. Schmidt explained in general her understanding is that as a State agency doing anything LLCP cannot go off and do anything randomly. If there is not statutory authority to do something then there is no authority to do anything. Legislature gives LLCP the laws to abide by. Member Kaiwi said his direct question was can one look at it from a funding source standpoint. In other words if the State is giving money shouldn't the State have the wherewithal to make sure that it is being used correctly? Ms. Schmidt agreed that it should and what the Commission is doing now is contract with the grant agreements and deed restrictions. To be able to do something that is regulatory, that requires statutory authority. What the Commission has is an incentive to provide in giving people money. When LLCP gives the applicants money there are contracts that say if the land is used not for the purposes for the grant, there is not actually statutory authority to say that either. What the Statute does have is payback provisions which say if this land is ever disposed, permission must be granted from the Board and a proportion of the proceeds come back. Then looking at the statute and seeing that the purpose for LLCP is protecting land what is also written into the deed restrictions is if the land is ever used not in accordance with the purpose for which the money was granted, there is not actually a specific penalty listed because it cannot. Chair Fletcher said there is an enforcement section in the back also. Ms. Schmidt said that was what she was hoping to save this conversation for.

Ms. Schmidt reminded the Commission they were on monitoring and reporting, site visits and sale lease and other disposal, proceeds, revenue. She continued to move on to the criteria for land acquisition grants. Chair Fletcher pointed out the priorities are not ranked. Ms. Schmidt asked if he was referring to the statutory priorities. Chair Fletcher confirmed and referred her to page 123. Ms. Schmidt said she thought earlier on the Commission had asked the AG and the AG had said that 1 through 6 are equally weighted. Chair Fletcher asked if this was also the case for the rules. Ms. Schmidt said for the criteria she believed that by default if there is no weight given then they are not. Chair Fletcher said he was referring to the priorities, the term priorities suggests it's a list of prioritized items. Ms. Schmidt said no she thought that it was a list of things to spending funds as apposed to things that are not on the list.

Ms. Schmidt moved on to the operation, maintenance, and management grants section. Member Young said on page 18, number 12, is it redundant to number one or do is it meant to be focused on funding. Chair Fletcher thought they sounded like two different applications. Member Young said she knew the focus is on funding but wasn't sure if that was meant to be written as it was. Member Shallenberger said he thought that one may have slipped through the crack. Ms. Schmidt suggested that it may have been staff error there because she did not see where it would fit in. Ms. Schmidt asked if the recommendation was to delete that one. Member Young said to put the funding in number one if the focus was to be funding. Member Canfield suggested there may be something else in the previous draft that was different. Member Young said she thought the whole application should be changed. Member Berg asked if what is being asked was do they have all the funding? Do they have the matching funds? He suggested staff check to see what was there in previous editions. Ms. Schmidt said she could do that and pointed out a separate number 8, regarding portion of matching funds being leveraged. Member Berg said that he found it ambiguous, he did not know what it used to mean or how it got in there so it should be checked in last year's edition or the year before to see where this came from. Member Shallenberger said the last time the rules were reviewed was in February and the Commission had been moving them around, cutting and pasting them and he thought that one just slipped through the cracks. Member Berg asked if it there was anything in 1 through 14 that asks "Do you have the funds?" Ms. Schmidt read "proportion of matching funds being leveraged." Member Berg said that is not the same. Ms. Schmidt suggested "feasibility of an acquisition in a two year time frame." Member Berg said what is required is a question that is direct: "Do you have the funds." Chair Fletcher asked if that was inherent to the application itself. Member Berg responded if you look at the history and especially the last go around there were some applications that were filled out but there were no funds at all. He didn't think it was inherent. Member Shallenberger asked if the Commission was assuming that there are funds and by the time they are required they will be there. Member Berg said he thought perhaps number 12 was trying to address that. Is there just a question in the wording here that has changed over time. He asked whether there is something of intent that should be there and the intent is "do you have funds." Chair Fletcher asked if the wording would be completeness of acquisition funding. Member Berg said it could by taking out the word application number 12 completeness of acquisition funding would sound good. Chair Fletcher

commented it would actually be a criteria. Ms. Schmidt asked if the Commission was in agreement to remove the word application from criteria 12. The Commission was.

Member Shallenberger asked if on the bottom of page 19, in eligible expenditures, if the Commission discussed the idea of retroactive funding. In other words if somebody has been involved in a project for a while and has already done their environmental assessment and management plan the Commission shouldn't be handing out money for work done prior to the application. Ms. Schmidt said she didn't think it had been addressed and didn't think that any applicants had submitted for funds spent before approval. She asked if Member Shallenberger was asking if a applicant received an award on June 8, 2006, and they tried submit for something that was incurred before that then they could do that. Member Shallenberger confirmed and added one of the criteria the Commission was looking at, compliance, and the ability to comply when the Commission looks at these proposals whether the requirements are possible. Ms. Schmidt said she thought the applicant would have to state it in the proposal if it is an approved cost, that is one hurdle, and if their property is matched versus if it's submitting a grant expenditure that they are requesting reimbursement for. Member Canfield asked what if the applicant completed the work between the time they apply and the time they are awarded the funds. She thought that should be okay. Ms. Schmidt explained that situations like this are why the Commission threw in the federal language for types of reimbursement and matching funds issues that might be unresolved like smaller questions like this so that LLCP can borrow off of federal policy, also operation, maintenance and management grants are subject to procurement unlike land acquisition so that will be potentially addressed by that statute. Ms. Schmidt added that in the update she missed that staff is still in the process of requesting exemption from management grants from the state procurement office. She thought the most likely outcome will be a partial exemption so LLCP will be going through procurement. Member Canfield asked Ms. Schmidt if she had an idea of when that might get settled. Ms. Schmidt said she hoped it would be soon. Chair Fletcher called a eight minute break to return at 2:10 p.m.

Chari Fletcher called the meeting back into order. He reminded the Commission that they left off on page 19, operation, maintenance, and management grants. Ms. Schmidt said she thought the Commission left off discussing when costs can be incurred. That is something that the Commission does not have in the rules but something that could be handled in the grant agreement or by referring to the federal policies. Member Shallenberger said he liked Member Canfield's idea that costs can be incurred from the date of application. It would encourage legitimate work. Chair Fletcher asked if that would be after B or after the word "expenditures." Ms. Schmidt asked if the recommendation was that this be in the rules. Member Shallenberger said yes, why not put it under eligible expenditures. Member Canfield said you could do under the A statement before the colon. Ms. Schmidt said she thought it better to throw it in as a C just to clarify because it's a different topic then the other ones. Member Shallenberger suggested no funding will be provided for work undertaken before submission of application. Member Richards questioned the start being the submission of application. Member Shallenberger explained that he Commission had been discussing how some applicants might be doing things throughout the process which the Commission should

encourage, the earlier the better. Ms. Schmidt said it was a tough call. Member Richards said if the contract is ongoing and they apply does the Commission want them to call off the tractors or tell them to wait until they are funded. Member Young asked if the Commission would tell them to wait until the Commission received something. Member Canfield explained that was the reason the Commission was considering funding from the date they submit the application. Chair Fletcher asked Member Richards how far back he would allow applicants to be reimbursed and how it would be defined. Member Richards said if the applicant, the normal operator, has the money to go ahead and finish the job that would be ok; he is not asking money for that job. He would have to take care of that or if there was a death in the family partway through and the airs' come through and they go and finish it. He wasn't sure how finely the Commission wanted to cut it but it would be pretty hard to have a project worked partway through and call everything off and let it sit there and say "Gee folks we have an application and hope we get it." It would make it tougher in the Commission if it went to the site and saw a job that nobody has worked on for six months or a year but there already is something that has to be finished. Member Canfield asked the other kinds of sources applicants go to for match is it more likely or less likely they could get earlier expenditures to be reimbursed from those sources. She asked if it was harder in the federal case for instance. Member Berg said it probably was and in the county also. Ms. Schmidt said she didn't really know the different programs have different rules. Member Canfield said that LLCP might want to be potentially more lenient in some cases and may want to leave it out of the rules so the Commission has a little more flexibility. Also if people reapply, what happens to something that happens between the first and second application? Ms. Schmidt suggested in lieu of making a snap judgment on it right now it may be a good idea to put a little time into thinking about what federal guidelines are, and what other state programs do. She thought that for this the Commission might be under the procurement statute and what ever they allow. It will be treated like a request for proposals, the RFP process. Member Canfield suggested if this is just in relationship to operations maintenance management it may be acceptable. Ms. Schmidt agreed and added it might be appropriate to treat those two sections differently because maybe for land acquisitions where matching costs are a lot harder to generate. Chair Fletcher asked if that was okay with the Commission. The Commission confirmed it would be.

Member Berg asked Ms. Schmidt is she thought that would be covered on page 21 in the red. Ms. Schmidt confirmed. She said she appreciated the issue being brought up. She asked if there were any questions on the next set of provisions, application and grant agreement. Member Young asked if there was a reason that the applicants were given three years on page 21, letter C. Ms. Schmidt said she thought that was something that came up after looking at other grant programs and thinking about the amount of funding that is available. She believed three years was actually pretty generous in terms of what to allow people for small grants. She added what might change for that is if and when the Commission gets an exemption for procurement they decide to allow a specific amount of time that might affect this. The process requires requesting the exemption every cycle so if they give LLCP a three year exemption or a two year exemption, hopefully it won't have to change and will just work with what the Commission has got.

Ms. Schmidt asked for comments on awardee forms and requirements or monitoring and payment. There were none. She asked for comments on awardees requirements post-disbursement. There were none. Ms. Schmidt moved on to criteria. She explained the AG didn't have any preliminary comments on the land acquisition criteria but did have some on comments on the management criteria so the changes are the Subcommittees revisions of those comments. Most of it was kind of wordsmithing to avoid any redundancy. Member Berg said he had a comment on page 26 B. Ms. Schmidt asked if he was referring to the section under enforcement. Ms. Schmidt asked if the Commission members were all satisfied with the criteria. Member Young asked what page they were on. Ms. Schmidt informed her they were currently on page 26, the last page, assuming there are not comments on the criteria. The Commission had no comments. Member Berg asked what the word *sunder* was referring to. Member Canfield informed him it was typo the "s" needs to move to the end of function. She added that she didn't think that there was a need for a quotation mark at the end of the sentence. Ms. Schmidt explained that it is needed because it indicated the end of the rules. Member Canfield asked where the opening quote was. Ms. Schmidt informed her it was on the first page of the rules page 107 of the entire handout, the top of 102 is the beginning of the quote.

Chair Fletcher directed the Commissions attention back to page 24 under priorities and read "In advising the Department and the Board the Commission shall use the following lands priority in its recommendations." Ms. Schmidt suggested that it should say "...shall give the following lands priority..." Member Fletcher said that the quote makes the following section a prioritized list and asked if that is what the commission wants. Ms. Schmidt reviewed the section. Member Canfield said to her it sounded like all of the lands. Chair Fletcher repeated the passage "...shall use the following lands priority..." Ms. Schmidt said she thought that there may be a typo in there and said she would check. Member Shallenberger said on page 17 Staff used "the Commission shall *give* the following lands priority." Ms. Schmidt said that was the way it was written in the statute and made the correction.

Member Kaiwi stated that the enforcement chapter kicks back to provisions in the rules. Chair Fletcher asked if Member Kaiwi wanted to mess with it. Member Kaiwi said that Mr. Hirokawa had had some ideas of how to do some compliance vis-à-vis the contract. Ms. Schmidt explained that her understanding of what Mr. Hirokawa was suggesting was adding penalty provisions into the contract, there should not be an issue with that unless the AG's have an issue with it. She explained there are different ways to go about things and there are regulatory type things where somebody crosses the line of some sort and enforce some sort of power on them whether it is stopping the action or giving a fine, that kind of thing. The Commission does not have any regulatory authority under the statute, just to clarify, but what it does have is deed restrictions and contract (under the Board). Things that the Commission can do under deed restrictions and contract are allowable but the Commission is limited by the fact that it does not have any regulatory authority. She informed the Commission that she checked with the DLNR penalties coordinator who is responsible for doing the civil penalties rules and he agreed with the fact that the Commission cannot actually create things that are not in statute and put them in the rules. Member Fletcher asked Member Kaiwi what his concern was. Member Kaiwi explained

his concern was as new landowner X there is no entity that will cross check you to see if you are compliant to applicable laws and in his world especially in cultural preservation laws. Chair Fletcher reiterated that the Commission is not statutorily charged with the ability to cross check. Member Kaiwi said in that case when the applicant come in he would ask them is they are aware of section 106 laws and their plan of action. Ms. Schmidt explained that she didn't mean to answer Member Kaiwi's question because she wasn't sure she understood exactly what he was asking for. She said she got the general idea but when he said cross check what did he have in mind? Chair Fletcher said he thought Member Kaiwi wanted to ensure compliance, the Commission is giving the land away, how does it ensure that the land will be managed in the way dictated? Ms. Schmidt said ensuring compliance is the end result that is wanted and the methods that were discussed, going through and doing that is also a question. She said she thought the Commission already discussed putting something in the application as a way to put the applicants on notice. Member Shallenberger said the confusion was to him there are only two vehicles that the state can control, one is through the contract for transferred money and the other is through an easement if the state happens to be the holder of the easement. If they are not which has been the case of many of the places the Commission has given grants, unless there is something specific in the contract, the only thing that applies is what would apply either way in the existing laws. Chair Fletcher asked if Mr. Conry, Mr. Kennedy, or Mr. Hirokawa if they could answer the question when the Commission gives money to someone who gets some land how does the Commission know 15 years from now they are still compliant with the intent. Mr. Kennedy answered percentage-wise, a lot of the acquisitions are using federal dollars and 106 applies there so that is one protection. There is another set of laws. Chair Fletcher asked what happens if the project doesn't use federal dollars. Mr. Conry said that set would be concerned about applying with the historic preservation statutes. Chair Fletcher understood it was governed by an existing set of laws. Mr. Conry suggested part of the evaluation process could be asking how the applicants are going to, and what benefits are you going to provide for the public, if there is a cultural aspect to the acquisition, if they are willing to provide additional access. Member Shallenberger pointed out that would only deal with the first owner what the Commission is trying to do is to put some things in the agreement to go with the land. Member Richards commented that DLNR has its own conservation officers that have the police powers so those can immediately be effective, it doesn't need to go through the length of time of going through the local police force. Chair Fletcher said it is the whole enforcement issues that is another can of worms in itself. But it seem like there are existing land use laws that would govern. Member Kaiwi said it was all developed from page 15, the purpose of inspecting the condition of the property and its resources. He said that he had asked how long does that last and Ms. Schmidt had said it is not a statutory authority of the Commission. Ms. Schmidt asked Member Kaiwi to repeat the question and her answer. Member Kaiwi referred her to page 15 "By accepting the grant the authority agrees that the department may enter lands acquired through land acquisition grants for the purpose of inspecting the property and resources." Ms. Schmidt said she believed at some point in referring to conservation easements somebody may have answered that it was perpetual. Ms. Schmidt said there was no end time on the contract and the hope is that it will last as long as they have LLCP funds. Ms. Schmidt said she was not going to answer the legal question but she could tell the Commission

that it may be a gray area as to what happens if they come back and give their money back and dispose of the land. As long as they have LLCP money and land then the contract continues. Ms. Schmidt asked if Mr. Hirokawa had any comments. Mr. Hirokawa added one of the things, if the landowner sells their land, the Board will have to approve that. He thought that if it went to the Board, the Board would have the successor also sign a grant agreement that holds them accountable. As long as there are natural resources that need protecting and you would want to ensure that in perpetuity. Another point is when it comes to the historical preservation laws, with a grant contract it is limited to the values that they came forward to protect. For example watershed protection or open space and LLCP funded them on that, it isn't clear if LLCP can enforce for other areas. If it's a term of the agreement LLCP can enforce upon it but if it is something else all together LLCP wouldn't have a lot of weight to go that other route. LLCP is bound by the terms of the contract how they can enforce. Member Shallenberger said he thought it would be difficult to enforcing the second land owner without deed restrictions. Mr. Hirokawa explained that LLCP would have deed restrictions in the deed but as an added protection when they come to the board to get the sale approved the Board would explain that as a condition of the sale land owner two has to enter into the same agreement as the first landowner. Landowner two would have the same deed restrictions and sign the same grant agreement. Even though the owner has changed LLCP's rights over them have not. Ms. Schmidt explained if somebody did come back to the Board and the Board did approve their disposal of the land without it going to a new non-profit or county or state agency that would be holding it to protect the resources, in that situation she wondered if LLCP would be able to do anything under the contract after that. She didn't think so.

Member Kaiwi asked if LLCP could have a boiler plate in the contract mentioning section 106 and that the laws still apply. Ms. Schmidt asked if the specific result Member Kaiwi wanted from this is to make sure the landowner is complying and in order to do that there is going to be some sort of online inspection. Member Kaiwi agreed. Ms. Schmidt said she was not familiar enough with the law to comment. Member Kaiwi said Kawa and Lapakahi are riddled with sites. Ms. Schmidt added that she thought the best way to do that is to give applicants advance notice in the application rather than hold it over them as a condition of receiving funds as a surprise on the tail end. Member Kaiwi asked who was checking the Cave Conservancy and who monitors. Member Berg said enforcement is a huge problem. Ms. Schmidt said she agreed with the things Member Kaiwi wants. She also thinks as a grant program that is an incentive for people to do a certain action, the best way, approach number one, even though LLCP will use other approaches, should be to withhold funding if the Commission cannot vouch for them, if their land protection is questionable or if their motives or any of that is questionable. Member Young added that when Commission members go on a site visits someone is going to be a guide, for example the Cave Conservancy – you have to have a guide, but the visit then is guided by what they decide to show you, so there is a risk to that regard. It would be better if the Commission members could say I will see what I want to see. She continued to use the last site visit she attended as an example, the landowner was concerned about the privacy of the farmers and she felt somewhat like, “yes, but you are asking for a huge bunch of money, we have a right to see whatever part we would like to

see.” She said it was difficult and she understood the limitations of staffing and so forth but when the Commission is here it is in limbo. The Commission is really trusting the integrity of the applicants. Therefore the applicants have to be really solid, including the people that apply and the people who will take over after them. Ms. Schmidt responded one of the reason that conservation easements keep coming up is because that is the tool. LLCP has the grant agreements and the grant agreements say “protection of the resources as specified in the application.” The application is attached and then everyone is well aware of what the application says. Generally speaking, in order for things to hold up in court they need to be specific. For example, for a conservation easement, your baseline statement says the land has topsoil which is 4 inches deep and will be maintained by restricting erosive activities, and the baseline documentation shows the soil and takes the picture. The conservation easement has a provision restricting erosive activities and topsoil shall be maintained and then when the monitoring is done there is a photo every year that demonstrates that it is still there. When there is a grant agreement with a bunch of vague descriptions of what the resources are but not exactly what the landowner will be doing to protect those resources and no exact baseline documentation to go back. When people do baseline pretty often people take GPS points that are very specific so that it hold up later on when people are trying to find out if there has been a violation. The monitoring that LLCP could do with the grants, without this whole scheme of things is not very strong, which is why conservation easements are trying to keep them in the projects that are being awarded funds so that there is always the tool even if it is not DLNR that holds the tool, but there will be somebody to make sure that something is happening on the property when they are supposed to. Member Kaiwi suggested instead of being reactive, what about a more proactive stance where, one of the strengths of the Commission is it composed of people from various disciplines. What if the applicants went though a presentation line so that they know culturally speaking this is what they should be looking for, so there is some kind of documentation that the Commission did tell the applicant x. Member Kaiwi stepped out of the meeting.

Member Young said she thought it was great that the Commission was airing the issues beyond the written word of what the concerns are or what has been learned from the applicants and the application process. Obviously all the issues cannot be addressed because it is too much but it speaks to why we have to at least the program continue because it can at least the monitor the land acquired. Member Shallenberger commented that Member Kaiwi speaks to the idea of making sure the people the Commission deals with understand that they have land management responsibilities that go beyond the focus of their contract. The reality is LLCP is not adding any or taking away any of those requirements other then those specifically identified in the grant agreement. So section 106, the Endangered Species Act and the variety of things that may affect activity on the land, they were liable before they went into it and they are liable after they come out of it. Ms. Schmidt said she didn’t think it would be good for the long existence, efficiency and feasibility of this program to try address all of the different environmental or cultural or agricultural things that aren’t being addressed in their own areas under this program. She said she understood that it can be a tool to some extent to try and provide transparency as to what going on on pieces of land but to try and make this the enforcement tool for all of those different laws will overwhelm the program. Member Shallenberger said that is the

dilemma that one goes through when deciding if the provisions put into a grant agreement are adequate or does it need to be taken to the next step and cover it by a easement which has legal provisions and processes already on it.

Chair Fletcher suggested that the Commission move on to the other items unless there are specific actions that the Members want to take. Member Shallenberger said he had one more issue and asked where b came from under enforcement on page 26. Ms. Schmidt said b was simply direct language in the statute but it was discussed a little bit. In thinking over what the Commission Members have said not being able to do anything without the proper statutory authority the language in the statute what seemed most fitting to this provision in terms of providing some authority is the exact language in b right here. She explained that she took it out of the statute and put it in b so that people would see that there was a connection of what the Commission is trying to do and where the authority is coming from.

Chair asked which issue Ms. Schmidt would like to address next. Ms. Schmidt answered the one in the packet already because it will jump to the issue the Commission had been discussing. She directed the Commission to page 101 of the packet. Ms. Schmidt said she wanted to wait for Member Kaiwi to return as the subject seemed close to him. Member canfield offered a typo correction in page 106 to move the and in the first number one. Ms. Schmidt made the correction. Member Shallenberger pointed out one that depending on if staff finds out the answer to the question about agriculture easements could be adding agriculture easements to all sections of this chapter. He continued that in talking about agricultural easements before they have all be in addition to conservation easements and deed restrictions.

Chari Fletcher recommended the meeting continue as there was only an hour left. Ms. Schmidt addressed the issue brought up by Member Shallenberger. She thought if agricultural easements were anything they would be different in conservation easements in their ability to provide long term protection because if it isn't going to be a conservation agricultural easement and not under chapter 198 then it would be something that might be 20 years like with programs through NRCS who do agricultural easements that they fund for a given number of years. She thought the language was an attempt to work with those programs and agricultural easements might not fit into the long term protection in the same way but wasn't sure about that until she received an answer from the AG. Member Shallenberger clarified that he wanted to have them together or not and they are not consistent at this point. Ms. Schmidt explained in any situation in all the rules where agricultural easement deed restriction ect. Are stated they are all stated together. In this one however the Commission did say conservation easement separately and took it apart from the other protections. She said she would check on that with the AG's office to make sure that is the way to go.

Ms. Schmidt explained sections b and c on the first page state "The board shall require projects receiving land acquisition grants for fee projects from the fund to incorporate a conservation easement unless it is to a county agency or a state agency or the project already includes a conservation easement to a county agency, state agency or accredited

non-profit land conservation organization.” Member Canfield asked Ms. Schmidt if she would put an “or” in there as to not misconstrue it as and. Ms. Schmidt did. She explained the effect of it is making conservation easements mandatory except for county or state acquisitions and the ideal she believed, in implementation is to have projects come forward with a conservation easement as part of the proposal so that they have the time to plan for that in the scope of the entire project as opposed to just having one slapped on somewhere at the end of the process.

Member Shallenberger asked if the definition of non-profit spoke to the issue of IRS restrictions. Ms. Schmidt explained that a non profit has to be a 501(c)(3) under the IRS code. Member Berg pointed out that it said that in the section as well. Member Shallenberger said it needed to be clear to people what accredited means. Ms. Schmidt thought that perhaps accredited need to be defined, she thought in this situation it would refer to non-profit land conservation organizations that have received accreditation through that Land Trust Alliance process. She explained that accreditation is not an IRS requirement but one that is just for land trusts. Member Berg asked if this was the first time the Commission has seen it. Ms. Schmidt said it was and said the definition clearly stated would be as defined by the land trust alliance accreditation procedures or processes. Member Shallenberger asked what happens in a situation where it is not accredited. Ms. Schmidt explained then they are not a permissible holder of the conservation easement. For the purposes of the one provision if a small organization came forward and wasn't accredited but wanted to be the holder on another non-profit then that wouldn't hold water for this. Member Shallenberger asked in the situations where TNC or TPL comes in a nursemaids for a small non-profit along to make the acquisition happen, unless TPL or TNC is willing to take on the conservation easement then either the State has to do it. Mr. Kennedy explained TNC are finalizing the process of accreditation. Member Berg commented a bunch of previous grants would not fit under that so really down the line what this is saying is LLCP really cannot be giving funding to... Ms. Schmidt clarified that it is still possible to give funding, for example to MA'O Organic Farms it's just whoever is holding the conservation easement over that is going to be accredited. Member Berg said if MA'O Organic Farms or any of the other programs who want to be independent and don't want to give that easement to big brother then they cant go that route. It is putting in a real elimination process because LLCP is expecting that everyone has a conservation easement. But it says the only ones that can get conservation easements are those defined by the land trust alliance. That means that nobody better else apply unless they are in a land trust alliance. Mr. Conry corrected Member Berg and said it would then go into default that the state would be the holder of the conservation easements, it would either be a federal, State, county or an accredited non-profit. So what could happen would be a single holder or even a joint holder of a conservation easement. So it could be the small entity that could be up front agreeing to carry out all the provisions and if they cant live up to that then the state would be co-owner and responsible for it. Member Young said it sounds like people can't even apply if they don't chose option one. Ms. Schmidt said that is what she was actually suggesting that when projects come for funding that they incorporate a conservation easement from one of those entities as a part of that process. Mr. Conry added that someone will hold the conservation easement for them. If they are not accredited then they are going to need an

agency to do so. Member Young said this was just more hoops to jump through. Ms. Schmidt said part C addresses the situation where there is a conservation easement but in the interest of efficiency the Commission being able to make a decision on a project and being able to use the criteria which involves the long term protection of the land the Commission needs to know what the entire process is from the get go. Member Young clarified that the applicant would have to be a dual applicant if they are small, they have to partner with someone so there would be dual application or else they would have to negotiate with whoever is going to hold the conservation easement to be a partner with them. Ms. Schmidt confirmed and said it was similar to the application for Malu 'Aina and the former Hawaii Island Land Trust (HILT). They both signed the application and the grant agreement. If they don't have accreditation they have to come in with a partner. Member Shallenberger didn't think it was realistic to require applicants to already have a partner, there are a lot of things that they may not have don't that the Commission members say they have to do before the contract is signed. Ms. Schmidt suggested another option is part c where "upon a recommendation from the Commission or the Senate President, Speaker of the House or the Department, the Board can decide not to put a conservation easement on." Then there is two decision making criteria under that for in what situations would that happen. Member Canfield said it is sort of like the exception. Ms. Schmidt responded though she may not be in the majority on this issue she felt instead of having a conservation easement slapped on after the applicant have gone from application in August/September to Commission recommendations in December would be detrimental. At that point before the Board somebody decides they need to have a conservation easement on their project. If groups are seeking funding from other organizations, whether or not there is going to be a conservation easement on the project is an important thing to know up front. Other funding sources have different type of restrictions they put on the deed and different requirements. Member Richards commented that at least the Commission is letting them know, they can say that they are not interested. If they accept the conservation easement then maybe it will get the money to make the required payments with their money, but he didn't think the projects should be required to have a conservation easement. Member Berg said it had to be right out in the request for proposals. Ms. Schmidt pointed out that these rules do not make it mandatory but she was suggesting it because she thought it would be really good to know what the project is when you are in the approval process because long term protection is one of the criteria.

Member Young asked for clarification, Ms. Schmidt said these rules do not require a conservation easement but the rules say "...shall require." Ms. Schmidt agreed and read the rule "...shall require projects receiving land acquisition grants for fee purchase from the fund to incorporate a conservation easement." That is by the time it gets to the board. Member Shallenberger asked what would be the circumstances that the Board would not require a conservation easement. Ms. Schmidt suggested if someone would come back to say they have already purchased property and their non-profit is going under and they want to under the payback provisions and BLNR approval provisions dispose of the property to another nonprofit and go into a grant agreement with that new organization at that time LLCP could put a conservation easement on that property. Member Canfield

asked if it would just be for subsequent landowners but not at the time of application to have the exception. Ms. Schmidt said she didn't see any other way.

Mr. Conry explained one of the things DLNR is hearing from legislation is that they want to see conservation easements on the acquisitions to be sure they are secure. The hierarchy plays out there well, the conditions that the federal, state, or county put on and then the conservation easement if it's held to a accredited non profit sets a bar that all acquisitions will have conservation easements. Member Shallenberger asked if Mr. Conry was saying that the other positions such as deed restrictions are not adequate, the way they read is like they are alternatives. Ms. Schmidt explained that in the situation a conservation easement is granted. Member Shallenberger said he wanted make sure that he understands the DLNR position is in. Are they really arguing for legal conservation easement on ever piece of land whether it be state county or non-profit? Mr. Conry said that the feedback is so. Member Shallenberger said he felt it would promote a dialogue between DLNR and TPL or anyone else because they don't want to hold a conservation easement in every case. Member Berg asked if DLNR was going to pay the organizations to take conservation easements. Mr. Conry explained that is what the organizations are set up to do. If they don't want to do it and the state says it doesn't have the resources and the county or feds don't want it, it won't go through.

Member Young asked what the cost to the non-profit to have a conservation easement. Is there a charge? Member Shallenberger explained there were costs that incur in the process such as developing a baseline report and then monitoring. Sometimes they can include a certain portion of money that can go for that. Member Young asked if that had to be in the budget as proposed, so when they submit a budget proposal at the application it has to be in the budget, money for arranging for a conservation easement. Ms. Schmidt answered that it is under their discretion to add it in the budget or not, some projects come in and they just include the cost of the land and the appraisal, other projects some in and there is the appraisal phase one ect. Member Young asked if the conservation easement is required, or highly recommended to be seriously considered then they would have to put that into their budget because that is what the application will say. Chair Fletcher stated it cuts both ways. It is a bar, a standard. There maybe a case or two in the Commissions passed that there were questions about whether or not the organization is going to be able to toe the line as intended. Deed restrictions ect. are supposed to set that level but this is an additional level. It cuts the other way in that well seeming mom and pop operations may not be able to cut the mustard. There is a line of tension, Member Kaiwi was expressing concern over long term preservation of the land but the other way it cuts is low budget operations that are still exactly the sort of operation where the support may not be able to reach this level for financial reasons.

Member Young asked about Malu 'Aina because she heard it was not going through. Ms. Schmidt explained that the awardee had had some issues with the landowner and some financial deadlines that landowner was working with. Member Young asked if HILT was of assistance to them. Ms. Schmidt explained the conservation easement goes toward the long-term protection of the property. She said in working with the landowner that is something they would probably be involved in since they are going to be a part of the

long term picture. Member Richards said he was confused between the conservation easement and agricultural easements. He requested that Ms. Schmidt write a short paragraph on both of them for the Commission to read. Ms. Schmidt said she was working on getting that from the AG's office. She explained the confusion stems from that there are agricultural easements that are conservation easements. There are a bunch of reasons to have a conservation easement, to protect natural things, agricultural things, and historic things but it has to have that purpose in order to have a conservation easement. There are conservation easements that may be agricultural easements, and also has been inserted into the statute, the language agricultural easement in addition to conservation easement, sort of inferring that there is something else that is an agricultural easement that is not a conservation easement. She explained what she needed to get from the AG's office and transfer to the Commission is an explanation of what an agriculture easement that is not a conservation easement is for the purposes of the program. Member Richards said as a landowner it is necessary to find out.

Member Shallenberger said in looking at the draft for the eligible expenditures for the acquisition agreement and eligible expenditures for management and neither of them adequately describes cost associated with preparing conservation easements. They say appraisals, land surveys, title insurance, environmental inspections and there is some overlap but there are some specific things that they have to do for the baseline report and the Commission should make sure they are covered. Ms. Schmidt said she thought baseline documentation was discussed along with attorney's fees. She said this information would be in the land acquisition grants subchapter starting on page 115. Member Shallenberger said there are eligible expenditures but then there are also matching funds. Ms. Schmidt explained permissible matching funds can be attorney's fees for drafting and reviewing documents that are related to the acquisition and escrow fees. Member Canfield asked if this was on page 117. Ms. Schmidt confirmed. Member Shallenberger said the Commission may want to cover itself by adding "with other activities associated with securing a conservation easement." Member Canfield highlighted number 8 under B as an appropriate section. Ms. Schmidt said she understood she was just confused because the Commission had already discussed this and put things in and taken things out and had a final call made. She stated that she knew that baseline documentation was part of that. Member Shallenberger said that could be under environmental inspections and assessments. Ms. Schmidt said in terms of matching funds in addition to allowing things that are really important for the acquisition and for the applicants or awardees it is also important to get things in there that are verifiable, so if things have been removed it is probably because there was a concern whether or not that was verifiable. Member Canfield pointed out that there wasn't the whole new situation about requiring conservation easements. Ms. Schmidt responded that conservation easements are already one of the things that Legacy Land already funds therefore those types of costs would have already been covered. She wondered who decided to take out baseline documentation as she thought the Commission had decided to leave it in so perhaps she made a mistake somewhere. She said she would note it as a recommendation from the Commission and look back to see what the notes on that were. Ms. Schmidt said the only thing that she thinks would be under there in terms of costs that could be for conservation easements but not for fee would be baseline documentation. Member Berg

asked if she was looking under matching funds. Ms. Schmidt said she was. Member Berg pointed out that the document does say conservation easements shall be covered. Member Canfield said that may be referring to the easement itself and not the preparation for it. Ms. Schmidt explained that it meant the value of the land so if it were an appraised conservation easement. She continued to say the only thing that may be conservation cost that isn't included in there would be baseline documentation. Member Berg asked if the Commission was agreeing to add associated costs associated with conservation easements. Member Shallenberger said it would allow for the covering of other things such as field assessments. Member Canfield asked if it was also needed under the management side. Member Shallenberger said it was probably needed under the eligible expenditures. An eligible expenditure is one definition for works that are entitled to receive funds. Ms. Schmidt said she thought that has already been decided to not allow baseline documentation because, specially under expenditures because, if somebody does it in house there is a very gray line on what does and does not get reimbursed. In terms of keeping a good eye on where the state funds are going, the decision is to fund things that are black and white and easily evidenced so matching funds are a slightly lesser standard. Member Shallenberger said he was much less worried about contracting for baseline surveys then he was for attorney's fees. Ms. Schmidt explained attorneys fees are what you generate when one drafts a conservation easement. Member Berg said he understood that its there and legitimate but it is hard to pin down. Member Shallenberger told Member Canfield that he did feel the inclusion of conservation easement fees has to be included into the management section. Ms. Schmidt asked in giving a management grant when would Legacy land fund a conservation easement. Member Canfield stated that it was already required. Member Shallenberger said the Commission wouldn't give the management grant except with a project that had already been funded.

Member Canfield referred back to the language on page 101 on c 1 and asked if it should be changed from insufficiently to sufficiently, the circumstances in which to fund without a conservation easement. She indicated that under number 2 it in the positive sense so it would match. Ms. Schmidt said that covers the first provision.

Ms. Schmidt moved on to the sale lease and other disposal of lands. She explained that there had been the additional language added to address in more detail how and why the state would deny a sale. She read and explained the provision. "In deciding whether to approve a disposition the Board may consider the following factors." And then it further breaks it down. "If the proposed disposition is for value..." so if they are selling it and are getting money in return for it, "the board would consider whether the disposition would be to an agency organization that is eligible to receive awards under the legacy land statute and rules..." meaning is it going to be a non-profit, state or county agency, "whether the new entity will be capable of managing the land in accordance with purposes for which the Board awarded the grant; whether the net proceeds of the sale will allow the state to recover it's appropriate proportion of the funds that they originally contributed." She explained if it is a disposition and the non-profit or county or whatnot wants to get rid of the land but they are not going to receive anything in exchange for that the Board can consider if the disposition will be to another agency or organization that is eligible to receive funds under Legacy Land and whether the entity will be capable of

managing the land in accordance with purposes for which BLNR awarded the grant. Number three says any other factors that may help determine the best interest of the state under Chapter 173A. Lastly “in determining these factors the Board may use criteria listed under section blank...” meaning the section that will become the land acquisition criteria.

Mr. Conry explained one of the issues that is pertinent in this section is whether the Board could deny a future sale just because somebody comes in and they say in three months “we will give you back the money but we still want to sell.” On is just providing the steady protection of the states interest so the Board can say “ok well we gave you this money originally to conserve this property in perpetuity.” If someone come along and wants to build a hotel and the awardee says “here is your money back” it gives the Board the ability to say no because it negates the purpose for which the funds were provided. If it is not going to meet that original purpose then the Board doesn’t have to agree.

Member Richards suggested that the entity could make some kind of arrangement with the state or the county or whoever it is and they could say, “okay such and such a percent and we will split it with you or if there is a specific site that the original deal was to preserve then those will be preserved. Mr. Conry said there is always going to be a situation where national security or condemnation or something likes that but they will have to be able to prove a disposition. Member Richards said that would be a tougher one but he still thought the state in this case would be in a damn good position to keep the sights protected. Or at least he hoped that the people in charge in that time would be that way.

Member Young asked about the state itself, if the state has a conservation easement can the state sell the land? Are they exempt from all these things? Ms. Schmidt answered that the funds still have to go back into the Land Conservation Fund per the statute; they are subject to this. Member Young said she was just wondering what would happen if in desperation the state would try to sell a track of land that has a conservation easement whether it would also be subject to the same law. She asked Ms. Schmidt in talking about the statute if these were rules that are a solution for right now? She asked if they were a part of the statute. Ms. Schmidt explained that they are additions to the administration of the program type rules which are technically under the department’s responsibility area. In terms of the new language that has been added the whole purpose of rules is to fill in the policy areas where the statute leaves a little bit of a gray area and how the public how it will be administering something, this is what it is trying to do.

Member Shallenberger said he was trying to figure out what happens in a situation where an accredited non-profit holds an easement over a small non-profit that couldn’t get an easement on its own and the small non profit dissolves and wants out or the accredited non profit wants to get out, its paying too much money it doesn’t have the same values, whatever, how would they do that? If there is a landowner that wants to sell and an easement holder that doesn’t. Ms. Schmidt explained there will be someone who has the underling fee as a conservation easement and the underling fee if they were wanting to sell whatever their land would be worth come back to the Board or just get rid of it and whoever has got it is going to have to come back because the deed restrictions will be on

both. Member Shallenberger said there was a third party in the scenario he was describing and how does that work out. Ms. Schmidt said she assumed that it would come back with the fee owner to give their feedback and comments on what the Board should do in that situation. Member Shallenberger said he thought there would be a real disconnect between easement holders that want to keep the land protected and the landowner who wants to bail. Member Richards said it would be nice if the Commission could solve all of their problems but are only able to referee from a distance.

Member Young said she had only asked the question about the State because she doesn't have the answer. If something is under conservation from the state are they under the same law. Mr. Hirokawa said it is even harder to dispose of State lands than what is found in the rules because a lot of it is secured with federal funds so the state needs to get approval. He said either just Legacy Lands or all state land sales must be approved by the Legislature by two-thirds of a vote so it is practically impossible to sell it off. Mr. Conry said it was subject to legislative decision.

Ms. Schmidt asked if there was any further comment or question on the provision on page 103. There was none. Ms. Schmidt addressed the willing seller policy. "If the Board awards a land acquisition grant to an awardee that had submitted evidence to the landowners potential willingness to sell and the land is sold to another landowner prior to acquisition by awardee funds for the award land acquisition grant shall not be dispersed by the Department unless satisfactory evidence has been submitted to the department that the original landowner and any subsequent landowners remain voluntary in the acquisition." Ms. Schmidt said just stating that without providing example of the implementation is a little confusing. The idea is that if somebody basically come through the process and gave the Commission a letter that said, "Joe is willing to sell the land" and sometime after getting the final award and the Governors approval Joe passes on or Joe sells the land because he finds himself in a tough financial situation and has to get out from under it, as long as Joe provides a letter that says, "I really still support the acquisition of the land by the non-profit from this new owner that may have stepped in" and there is a letter from the new landowner demonstrating that there is still consistent willingness to sell considering that is one of the things that the grant was awarded based on. Chair Fletcher asked if that has happened. Ms. Schmidt said this provision was created in response to the Malu 'Aina/HILT project where they were having some issues with the landowner's financial deadlines and problems. Member Richards asked why make it more complicated, it cant be done, if they have something like that then they can come to the state and say "ok we want a new one" or something like that but they have all the stuff in and the number of people involved will be awful small. Ms. Schmidt said it is always really tempting to say "come back, reapply, this is just too much." Member Richards said if they move too slow then aloha. No money has changed hands so it up to the new guy if he wants to play in that game or not. He said that he would keep it simple. Chair Fletcher asked if this provision just gave guidance because he would hate to blow a good deal because there is no guidance available, it doesn't stand in the way of anything.

Member Shallenberger asked why the Board would care about the original landowner. He said if it were him he would be looking at it right up until the award. He has an active

letter from the landowner saying they are willing to sell for a certain price. Ms. Schmidt thought it was one way of making sure the program does not participate in any type of situation where somebody might have a landowner in an uncomfortable position. Mr. Conry added the scenario could be that one gets into a deal where you have a willing landowner and they have a price set but can't quite come to terms on everything it prevents the entity from stalling out and dragging it on until the landowner goes into bankruptcy and into default. It prevents the program from having to take sides. If one makes an agreement that your going to buy in six months but the entity says they didn't get around to getting all of their due diligence done and the sale is delayed another six months the seller goes into default, they would lose it and it would go to the bank. The entity could buy it from the bank at a better price. Member Fletcher stated that it covers a potential loop hole. It is a minor thing but it does tighten up a potential loophole. Ms. Schmidt added that it is trying to keep the landowner as a partner in the whole thing as apposed to somebody who is on the other end of the negotiation table.

Ms. Schmidt explained that the next section was meant to provide some further information on what happens when a grant agreement has been breached. She read "Breach of the grant agreement shall entitle the Board to impose sanctions against the awardee including but not limited to; suspension of all grant payments, suspension of the awardees participation in state grant programs..." Ms. Schmidt explained that she forgot to put the and in the sentence so the second and in number two gets deleted and put up after number one. She continued, "Until such time that all material breaches are cured..." she asked the Commission to also ignore the word "material" as that was also meant to be taken out. She continued "Until such time all breaches are cured to the Board's satisfaction sanctions may also include repayment of all state funds extended in any sanctions included as provisions of the grant agreement." She said that covers the maximum of what the Commission can do with the grant agreement.

Ms. Schmidt continued to breach of the deed restrictions. She read "Breach of the deed restrictions imposed as a condition of the grant shall entitle the board to impose sanctions against the awardee including but not limited to; suspension of the awardees participation in State grant programs until such time as," again remove material, "all breaches are cured to the boards satisfaction and repayment of all state funds extended." Member Richards asked if taxes would be a deed restriction. Ms. Schmidt responded whether or not the Commission from its small seat within DLNR can force other State grant programs to stop providing awards to the awardee is questionable at this point but the effort would be worthwhile. Ms. Schmidt asked is there were any comments. Member Buchanan said she had a comment on 101 the old administrative part of the conservation easement. Besides wanting to have a definition for agricultural easements having just gone through a ranch on Moloka'i asking the Land Use Commission for a case hearing on agricultural land designations where an unaccredited entity would have taken the easement of that important agricultural designated land which didn't disclose what the agreements were within that. She said all she could read from it was that there was some other acreage on that land that was leased to a rancher for this purpose, then the other ones would have gone for perhaps another year so it got kind of messy. Member Buchanan thought that was what was bothering her about the whole definition part. The whole thing about being accredited, that same entity opted out of being accredited with

the new land trust, so as Chair Fletcher said earlier, Mom and Pop pay their taxes into the land trust. If tomorrow I wanted to take over land and wanted to apply to the Commission that is holding my money from my property tax, for the state to say that I cannot do that because of this clause, I think I would take issue, legally and I would have standing to do so. She continued that is it up to the Commission to make that decision as to whether they wanted to help me because I want part of an accredited or 501c or whatever but they would have to move that further on to the Board of Land of Natural Resources. She said the problem she was having is that basic authority saying that I would not be able to apply for funds that I am untitled to apply for. I would have a legal dispute with this.

Ms. Schmidt said she thought that was an unintended consequence of the authors attempting to have a higher standard for the non-profits that would hold the easement. The idea and the goal is to have these holders of these easements be up to a certain standard where they can be responsible for the very very long term protection of something so if accreditation is going to cause issues for organizations that may be qualified to do that sort of thing in the long term but not necessarily accredited for other reasons then that is probably something the Commission should think about. Member Buchanan said she could come to the Commission and say “My family wants to have a conservation easement, or I want money to purchase this land.” It is up to me to then prove to the Commission whether I can do this, how I do that is my own business. Member Berg said one of the criteria the Commission already had is that the applicant has to be a 501c3 but this next thing is that they have to be accredited. He said he personally has no idea if he agrees with accreditation for that organization. They could be total junk, who gave them authority to say they are a good organization or not. This applies to a number of organizations in the State that have tried to put accreditations out. He said he doesn’t really like the idea of the accreditation part being in there but having simply the 501c3 which defines that that is an organization with a goal of land management is sufficient. He said he thinks it is unintended but the Commission doesn’t want to be discriminatory. Ms. Schmidt agreed that was a good point. Member Berg said that the Commission does deal with the character of the organizations as they come in whether the Commission feels based on their application if the applicant is going to be able to carry on the easement itself. Ms. Schmidt said it does put the Commission in the position of requesting that information at the time of application because that was discussed earlier and was kind of controversial.

Ms. Schmidt asked the Commission if there was a consensus or if there was a Commission recommendation to remove the accreditation term. Member Berg asked if that was the only place it occurred. Ms. Schmidt said it was. Chair Fletcher said what it comes down to is a standard of excellence. He asked if the recommendation emerged out of the legislature. Mr. Conry explained that the concern from the legislature was that the State would hold a conservation easement for absolutely every purchase. Chair Fletcher asked if the Commission was to remove this to what degree is the Commission shooting itself in the foot. Member Buchanan said the State hasn’t been the best land managers anyway. Chair Fletcher agreed. Ms. Schmidt asked if the decision was to remove the entire provision or just the term accreditation. Mr. Conry said the reason accreditation is in there is that it states what standard federal, county and state government if they are

going to be holding the conservation easements or is there another level that has got higher standards that will provide a level of comfort that is going to be carried out and enforced so that national accreditation is the one that could be applied to land trusts. Member Berg said he sees his point but there are no national standards that are applied to the counties that state that they have the same expertise in doing conservation easements. They may fall well below the capabilities of an accredited program. Mr. Conry said the state then is subject to the scrutiny of the legislature. It is basically recognizing the authority and the government entity as being an appropriate overseer of a conservation easement. Member Berg thought the big push from the legislature is that the state holds the conservation easements and holding that accreditation term does not really change very much the thrust of the rest of the guidelines. If the provision is kept what the Commission is saying is that they want the easement to be held by one of these agencies.

Ms. Schmidt asked for clarification on Member Buchanan's concern is it the term accreditation to limit the land trust that this can apply to or is it the whole thing. Member Buchanan responded her concern was limiting the conservation opportunities to people who have already jumped through the hoops. An applicant would have to get married to TPL. If an organization of people were to come forward and apply for those monies, that is taxpayer's money they would have to get married to TPL but when they want to get a divorce they will have a problem because their missions are not consistent. Member Fletcher asked if standards would apply. Member Buchanan continued that the organization would still have to meet all the obligations that are listing in the criteria. They would still be jumping through all the hoops but right now the Commission is adding another layer for protection for the program doesn't help the organization because they have to hook up with someone who has more clout and is more valid. TPL can walk in here and the Commission gives them carte blanche because they have a good reputation but another organization walks in here and say "I want to do this." It is up to them to prove that they meet all the criteria in the rules but now the Commission is placing another burden on the applicants. Now organizations cannot even walk in the door without having to meet with another layer of bureaucracy. If what I am doing is pono, I don't have a problem coming in front of anybody, in front of legislature and saying this is what I want to do.

Chair Fletcher asked Member Buchanan whether when she looks back at the Commission history and at every last organization if she is 110 percent confident. Member Buchanan said she wasn't because the Commission is a body of people who all think differently and we try to make the best decision we can. In the past when there have been monies left over the Commission has said if a project pops up they will fund it. That shouldn't have been done; a blank check shouldn't have just been left open for whatever project pops up. That was a mistake. Member Berg said that over the past five years the Commission has turned down projects not meeting the level of standards and that level of criteria is still there. He wasn't sure if it needed to be made but asked Chair Fletcher if he could make a motion to delete the word accredited from the provision. Ms. Schmidt said the overall organizational recommendation from staff is that whatever the Commission does with the rules they also do not piecemeal but in whole. Member Berg commented that the Commission has been making comments all along so would staff come back with the

finished project for approval. Ms. Schmidt said this was the case. She said she had been assuming that when one member of the commission makes a comment and everyone else gently nods that there is consensus from the Commission. In a situation where there isn't consensus the Commission could single it out and make a separate motion. Member Berg said they haven't actually asked for consensus and didn't know how the other members really felt about it. Ms. Schmidt said a motion may not be appropriate at this time. Member Buchanan said as agricultural easements have not been defined yet the Commission cannot approve the draft rules.

Ms. Ka'akua commented on the accredited portion of the provisions. The Trust for Public Land, would hate to think that they are required as part of the equation. TPL has been here because they are working with the community groups are too busy. The application process is very stringent; it's hard and takes a lot of time. The community groups are too busy or they are farming or they have jobs and their whole weekend is spent helping to preserve these sights so TPL comes in to help guide them and take care of everything so they can focus on the preservation but if the accredited language is kept then its taking it a step further then it was originally intended. TPL wants to be there for the community organizations but should be built into the bureaucracy of it. Ms. Schmidt said it may also not be appropriate to put in something that is like a non-profit or a non-governmental decision that the Commission will not have any control over as it changes into something that the state rules adopted sight unseen. Chair Fletcher said he would like some guidance in how to change the wording.

Mr. Conry said he wanted to give some overview. He felt that people were getting hung up on the fact that it has to be an accredited organization. That is just one of the opportunities that the state can either accept or not. If the one was interested in utilizing the USDA Farm and Ranchland Protection Program it requires that any easement it gives the federal government holds the easement, that's it. What DOFAW is hearing from the legislature is how to you protect the states so that when you invest the State's resources into this then in 20 years the entity that is holding the easement is going to make sure that the land has been protected and the states interests are protected. You can do it two ways, you can require the State to assume conservation easement over everything like USDA does or the Commission can respond that it is not necessary because they can see that they are comfortable with a variety of different entities that can hold the conservation easements including the federal government, the state government and it could be other or take one step further and the Commission can say it has faith in accredited land trusts. If there is a small land trust that isn't accredited then they can partner with one of those four. They can be the co-holder they don't have to be the primary holder they can be out in front as the primary responsible entity because that our conservation with Maui Coastal Land Trust they are primarily responsible but if they fall down it defaults to the state or to somebody who can step in. Is trying to deal with the issue of how the Commission is going to be certain that the land remains protected.

Member Canfield said that for the record that when it was said that TPL comes in and has carte blanche, that is not the case. She said she can think of several proposals that came in that the Commission turned down. Member Buchanan asked who was the conservation

easement holder for Hawea? Ms. Ka'akua said that the County holds the conservation easement because it requires it. Chair Fletcher said that the Commission did not require a conservation easement for Hawea but they lucked out that because of other triggers there is a conservation easement. He asked if there is a situation where there aren't those other triggers, it's a small organization they get the grant there is not conservation that goes with it, there is no guarantee that they will be here in perpetuity, they could change their politics completely and they have that land. He said he could see both sides. The Commission does not want to cut out the mom and pop projects but want to maintain excellence. The Commission has been discussing, what are the guarantees of perpetuity for these lands.

Member Buchanan asked that as administrative rule change would they go to public comment. Member Schmidt confirmed that all the rules would go to public comment. Member Buchanan said she was wondering why some land trusts opted out of joining the accredited land trusts. She would like to hear what they say what their reasons were for opting out. Ms. Schmidt said that she know it is a extreme minority point at this point but she thinks there is a concern about using something that is not a legal standard in our laws. Accreditation that is done by a non-profit or an association of non-profits. Member Fletcher said that the Commission could drop the word accredited and that would be getting away from it being twice removed from what it means some national standard that has no relevance to the Commission. Member Berg said that he thought that was all the Commission needed to do was simply drop the word accredited if it would help administration a little bit it could be replaced with reputable. Member Shallenberger said there is another definition and it's not a high one but 501c3, and IRS recognized 501c3, there is a bar. Member Buchannan asked if this was an administrative rules change not a Commission rule change. Ms. Schmidt confirmed. Member Buchannan then stated that it is really not up to the Commission but the Commission is working in an advisory capacity so she is satisfied with the discussion.

Ms. Schmidt moved onto the matching funds section. She said that all of the language the Commission had already looked at except the last part down at the bottom G in bold. She read "In cases where the actual total project costs at the time of payment are less then the estimated total project cost stated in the project application. The department shall require awardees to maintain the same proportion of matching funds to awarded funds as is set forth in the application." Meaning that in situation from now on when people come to the Commission and say "we have 75 percent matching funds." And they go through the Commission process and get the recommendation and approval from the Governor and down the road they suddenly drop a chunk of land or a chunk of funding and things shrink, the proportion of awarded funds to matching funds stays the same as what the commission approved. Member Shallenberger asked if the Commission would be able to see first if it was still a valid project. Ms. Schmidt said that it was they type of thing that if the total projects cost of their project is shrinking, there is a number of reasons that could happen, one is the appraisal is a lot less then expected, in this situation it would make sure that the participation is of equal proportion. Ms. Schmidt said in other situations where if half of the acreage has dropped, in passed situations where that has happened the project went back to the Commission, the Senate President/Speaker of the

House and Board for review. That would be another thing, this is just cost shrinkage. Member Fletcher said this was only to make sure the State is not paying more than their fair share that they have agreed to. Member Young asked about the last project that came in where their land was reduced. Ms. Schmidt said that was the situation that she had just mentioned where the project has to go back through the process to seek everyone's approval because it was a significant change. Member Young asked if LLCP's funding would remain the same as far as dollar amount. Ms. Schmidt answered that it did but the total project costs did not shrink by that much.

Member Shallenberger said he had one minor point on 106, for each of the deed restrictions if the Commission is going to continue to add covenants in there then they should probably just cover them both. Anywhere else it's mentioned it lists conservation easement, agricultural easement, deed restriction. Ms. Schmidt asked if Member Shallenberger was saying that the breach of deed restrictions should echo the same language. Member Shallenberger confirmed. Member Young said on page 125 it seems like it should follow somewhere passed 129, in other words you have information on land acquisition and then you have management grants and goes back. It feels like we should be in the subchapter of criteria of operations. Member Shallenberger asked if it was in the same sequence as the other things. Ms. Schmidt said that it goes over all the general rules, all the Commission's rules and then it handles land acquisitions as a chunk. Member Young said that it would be better if it was all land acquisition and all management.

Chair Fletcher said that the rules look like an amendment to the rules the Commission is considering adopting and asked if that was the case. Ms. Schmidt said that they are and she wasn't trying to make the impression that they don't have to do with the Commission's rules. The reason they have been kept separate is because they were done after the subcommittee meeting and are entirely new things that are being introduced. Chair Fletcher asked if the Commission could act on the old rules and save the new rules for further discussion. Ms. Schmidt said she would prefer if the Commission didn't do that because they are trying to get the rules done. Chair Fletcher asked Member Buchanan if she was happy to do so. Member Buchanan responded that she was waiting on the definition of agricultural easement. Chair Fletcher asked Ms. Schmidt what action she would like the Commission to take. Ms. Schmidt said she would prefer if whatever actions the Commission did take would allow the Department to commence the rule making process, meaning, not have to ship the rules through in multiple parts because that won't be tolerated by the AG's office or the other approval steps. Member Fletcher asked if this would mean the Commission voting on the rules as a whole. Ms. Schmidt confirmed and explained that the appropriate steps are as the Commission to adopt the rules that are for the Commission which are the criteria subsections and the procedure for the commission and then provide recommendations to DLNR for the rest of the rules, the procedural rules for the program. How the Commission wants to divide that up is up to them.

Member Canfield asked if the Commission had come to an agreement to this word accreditation, if there was consensus to drop the word. Chair Fletcher said before answering that question he did not understand Ms. Schmidt's last answer, what is the

Department interested in the Commission doing? Ms. Schmidt explained way at the beginning when she divided up the rules into three sections so everyone could see where the divisions lay in responsibility; the Division is responsible for the criteria and for its procedures and the Department is responsible for the administrative rules for the program. Member Fletcher asked if it broke down into criteria, procedures and program. Member Canfield said yes but it's intermixed within the document. Ms. Schmidt said the motion from the commission would be to adopt and approve the criteria and procedures developed by the Subcommittee and whatever advice the Commission wants to provide on the rest of the rules to the Department. Member Berg asked if the question was about the agricultural easements in the first part. Ms. Schmidt said it would be under program rules. There is Commission stuff, Commission procedures and Commission criteria and then there is everything else which is department. Member Fletcher stated the portion of this that deals with Commission procedures and Commission criteria the Commission can consider voting on.

Member Canfield moved that the Commission accept the portions of the material. Member Shallenberger seconded. Chair Fletcher asked for discussion. Member Berg said with the comments that the Commission has added then he agrees. Member Canfield said that did not include the question about agriculture easements. Ms. Schmidt said all of the addition provisions that have been provided are under the program rules and asked what the question with agriculture was. Member Canfield said it was whether to add language about agriculture easements and if it is a part of the Commission portion of rules. Ms. Schmidt said it was not. Member Young asked what the consensus was on the word accreditation. Chair Fletcher explained that was not a part of the vote right now. Ms. Schmidt explained this vote is just considering the procedures for the commission that is like the minutes, testimony, vice chair and the criteria subsections. Member Buchannan said the only other discussion would be if the Commission wanted to have Ms. Schmidt to come back with the changes. Chair Fletcher said his feeling was that there was a community desire for the Commission to move forward on getting the rules passed and going through another round of review like they have been doing which may not be necessary as the changes the commission is to adopt are straightforward. He asked if there was any more discussion. Member Richards called for the question. Chair Fletcher asked for the vote. The vote was unanimous in favor.

Ms. Schmidt asked for the Commissions advice to the Board on the program rules. Chair Fletcher asked Ms. Schmidt which portions of the rules that covered. Ms. Schmidt answered that the draft rules minus criteria and Commission procedure would be included in the vote as well as the addition provisions which have been separated into two chunks, one starting on page 101 and one in the additional handout. Member Young asked if there was only contention with the additional handout with the agricultural easement definition. Ms. Schmidt Confirmed. Chair Fletcher asked which page the agriculture easement question was on. Member Berg informed him it was on page 101 in section C. Ms. Schmidt added that it was all over the rules because it was in the statute. She said the question is whether or not there needs to be a definition in the rules of what an agricultural easement is. Member Berg asked if staff could do that research after the Commission votes and act accordingly. Ms. Schmidt said it that was done there wouldn't

be a way for the Commission to act on it but the Commission could still provide a policy recommendation to guide future actions. Chair Fletcher added an additional issue, striking the word accredited from the rules. Member Canfield made a motion to recommend all the departmental stuff with the proviso that staff figure out what to do with the agricultural definition and insert it as required and that the word accredited be stricken from the rules. Chair Fletcher asked for a second. Member Berg seconded. Chair Fletcher asked for discussion. Member Buchanan said when the Board sees the recommendations for changes they like to see the discussion instead of just the decision and asked for the minutes to be forwarded to the BLNR. Member Kaiwi said that there were too many unknowns for him to make a decision; he would like to be patient let the political tide do what it will and comment after when the Commission has the time and Mana to do so. He asked if it was HRS stuff. Member Buchanan said it was administrative rules and it still has to go to comment. Member Canfield said it cannot go out into public meetings and so forth without the Commission agreeing to it. Member Kaiwi asked Ms. Schmidt if that is true. Ms. Schmidt explained in order to start putting it through the process she needed a cohesive draft. Once it has been sent to the AG and sent for public approval new changes cannot be tacked on. The next step is to give it to the AG and get an approval for public hearing and then there is a Board meeting. She explained in order to move forward she needed approval from the Commission. Chair Fletcher said the motion would send it on its way. Member Berg said it was not an approval but a approval to move it on. Member Buchanan stated the Commission's advice on the proposed rule changes is important because it gives the Board guidance and the Commission may have an opportunity to comment again and they may not. Ms. Schmidt said that is something that should be discussed. Mr. Conry explained what would happen is the Commission makes a recommendation which will come back to the department and they will in turn take it to the board with their recommendation with which the Board will either agree or disagree. It will go to the Board and then go out to public hearing.

Member Richards moved the question. Members Canfield, Fletcher, Young, Shallenberger, and Berg were in favor. Member Buchanan opposed and Member Kaiwi abstained.

Chair Fletcher asked the Commission to pick a date for the next meeting. Ms. Schmidt said she was hoping to go through the rule process and get some feedback on when the Commission wants to meet again. She explained the next step is to go to the AG and get approval for the hearing which technically is done after the Board approves is also a step that has to be done all together. Then there is approval from the legislative reference bureau and the AG's office, there is the Governor and the small business regulatory review approval for public hearing and then finally go to public hearing after putting out public notice. At any of the points where there are revisions, from the AG or from LRB, Legislative Reference Bureau or Small Business Regulatory Review Board, where there are substantive changes to the rules she will assume the Commission will want to see that. The Commission agreed. Ms. Schmidt said as a rough standard that the Commission would like to see the rules again if there are substantive changes which there may be once the AG sees it.

Ms. Schmidt said there is a bit of a push for getting the rules done because the Senate and some of the other legislators are looking at how the Commission is responding to their requests. She said she had status updates on projects and other things but time was short. Member Canfield asked if Ms. Schmidt could email those updates. Ms. Schmidt confirmed.

**ITEM 5. Set next meeting date(s).**

Chair Fletcher asked if the Commission was going to leave the next commission meeting date open to wait for the response from the AG. Ms. Schmidt said that usually the Commission met in June or July there is a meeting to go over forms and the dates for the grant cycle. She said she could do a Doodle poll to find out when would work best. Member Kaiwi said June would be best for him.

**ITEM 6. Announcements.**

Member Young asked if the next group of applicants would still be under the old rules. Ms. Schmidt said they would not have any rules but grant guidelines which are policies written out for people and she has been trying to keep those within the guidelines of the rules.

**ITEM 7. Adjournment.**

Chair Fletcher called the meeting to adjournment at 4:26 p.m.