

Minutes of the December 14, 2011, Legacy Land Conservation Commission Meeting

Date: December 14, 2011

Time: 9:00 a.m.-1:00 p.m.

Place: Room 322C, Kalanimoku Bldg., 1151 Punchbowl St., Honolulu, Hawai'i

COMMISSION MEMBERS PRESENT:

Dr. Carl J. Berg

Dr. Dale Bonar

Ms. Lori Buchanan

Dr. Joan E. Canfield

Mr. Kaiwi Nui

Mr. Herbert ("Monty") Richards

Dr. Robert J. Shallenberger

Ms. Karen G.S. Young

STAFF:

Ian Hirokawa, DLNR, Land Division

Molly Schmidt, DLNR, DOFAW

Cassandra Smith, DLNR, DOFAW

PUBLIC:

Brenda Baker

Laura Ka'akua

Lea Hong

Cynthia K.L. Rezentes

David Smith

Andrew Nowacki

Jean Rasor

Kaleo Paik

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

As Chair Bonar was not yet present, Member Berg stood in as Vice-Chair. Members of the Commission and staff introduced themselves.

Chair Bonar and Member Young were absent.

ITEM 2. Disclosure by members of the Commission of any potential conflicts of interest involving Fiscal Year 2012 (FY12) projects (please see the list of applicants attached to this agenda).

Members stated that they had no conflict, except for Member Richards, who stated that he had a conflict regarding the two Kuka'iau projects.

Ms. Schmidt stated that Chair Bonar was not yet present, but had announced a conflict regarding the Maunawila project yesterday. Vice-Chair Berg added that Member Young was also not yet present, but had stated no conflicts at yesterday's meeting.

ITEM 3. Discussion of the process and method by which the Commission will form recommendations to the Department and Board of Land and Natural Resources regarding FY12 project funding.

Vice-Chair Berg described the ranking process, stating that forms used by the Commission to rank the projects on a scale of one to five would be given to staff to average and divide by the number of votes in order to reach a project ranking. Members having a conflict would abstain from scoring that project. He added that the lowest score would warrant the highest ranking. The Commission would review the results of the ranking and vote on a resulting recommendation to make to the Board of Land and Natural Resources regarding project selection.

He asked if there were questions. A member of the public stated he would like to introduce himself and provide testimony regarding the Ala Kahakai Trail Association's project when the time is appropriate.

Staff pointed out that the meeting documents for today were available, including the Interim Evaluation Form and the Ranking Form mentioned by Vice-Chair Berg.

Vice-Chair Berg stated that the Interim Evaluation Forms were used by Commission members to examine the projects; the Ranking Form went into public record with each member's score for each project.

ITEM 4. Discussion by members of the Commission of the FY12 project applications and supplementary materials and recommendations to the Department and Board of Land and Natural Resources regarding funding for FY12 project applicants (please see the list of applicants attached to the agenda).

Vice-Chair Berg stated that Member Kaiwi would have to leave the meeting early, and therefore would provide his comments on all of the projects at once, prior to the Commission going through project-by-project.

Member Kaiwi stated that he had his votes available and would first go through his comments.

Ms. Schmidt stated that she did not support Member Kaiwi's participation in the ranking if he would not be present for the actual motion and vote by the Commission.

Vice-Chair Berg stated that he questioned Ms. Schmidt's point of view. He stated that the voting could be tabulated, and the final recommendation and vote would be made by those present.

Ms. Schmidt stated that she was only there to provide advice to the Commission, not to make the decision, and she thought the best practice would be to have all members present for the vote.

Member Canfield asked why the numbers from the ranking forms could not be used. She added that it was a multiple step process, and all present would be voting. Vice-Chair Berg agreed with Member Canfield. He stated that the Commission recognized that Member Kaiwi did not have an actual vote, however, the members that are present can use the information he provides in forming their own votes.

Ms. Schmidt said she understood. Member Richards added that Member Kaiwi had also been present at the full meeting yesterday. He did not think Member Kaiwi ought to be treated as not having been present for the whole thing.

Ms. Schmidt stated that she was only speaking with regard to what she thought the best procedure would be.

Member Kaiwi suggested advancing the meeting by presenting his comments; the Commission could make the call later on in the meeting. Member Canfield agreed.

Member Buchanan agreed and stated that this was a Sunshine Law meeting, and Member Kaiwi's comments and participation were in the record, and his votes also would be.

Vice-Chair asked for Member Kaiwi to proceed. Member Kaiwi stated his appreciation for the passion of all community members for the various projects. He stated that he had a particular focus on cultural issues, and it was the main focus in his decision-making. He was disappointed in the Kahuku Coastal project with regard to the Cave Conservancy of Hawaii's (CCH) involvement. A fellow Commission member had spoken yesterday about the inappropriateness of their involvement. He had thought that CCH would have adapted its communication and approach after its last experience before the Commission a few years back. The language used during the presentation was intrusive. For CCH's edification, he stated his point of view: they speak of spelunking caves; it is like entering a beautiful lady without an introduction or relationship. To speak of owning this part of the earth is beyond us, we would not say something of this nature. Research and science are beneficial to the community as a whole, however, there is a limit, a sanctity of space that CCH needs to be cognizant of, and aware of how and why it is kept that way. There is a reason.

Member Kaiwi paused as Chair Bonar and Member Young entered the meeting and introduced themselves.

Chair Bonar stated for the record that he has a conflict with the Maunawila proposal. Member Young stated no conflicts. Vice-Chair Berg updated the members on the progress of the meeting. Chair Bonar stated his agreement that Member Kaiwi's rankings could be incorporated. Vice-Chair Berg turned the leadership of the meeting over to Chair Bonar.

Member Kaiwi continued. He stated that CCH's declaration of ownership over the cave openings was not appropriate, and this feeling had affected his ranking. He hoped that CCH and other groups would demonstrate more sensitivity in the future.

He encouraged the Commission to examine management over acreage in reviewing proposals. He added that presenters and members had both made references to "piles of rocks" when speaking; this had irked him. We view these places, such as Kaena, as living spaces, connected to living things and stories that connect to our heritage and culture. There are levels of understanding to be attained yet in discussing projects. He also encouraged the Commission to favor project had incorporated the community as a part of the management plans, not just outsiders and mainlanders. Projects involving our fragile and rare cultural and natural resources must incorporate the community, those that are here must be involved in protecting fragile places because they understand the kuleana and sensitivities that come with it.

Chair Bonar asked where “pile of rocks” had been mentioned. Member Kaiwi stated with regard to pokahu at Kaena. Chair Bonar added that it might be difficult for some to recognize, however, they should at least start with the presumption that a resource might not only be what it first appears to be.

Member Berg stated that he had not meant any disrespect when he had used the phrase, he had thought it aptly indicated how they had been treated, having been moved during tower construction. Member Kaiwi stated that a citizen with family connections to the area had later approached him and told him their name and history. Things can be damaged and retain their place in a family. The kuleana is to bring them back to their former place, which can only be done through proper understanding and engagement.

Member Kaiwi gave his ranking form to Chair Bonar. Chair Bonar thanked Member Kaiwi for his thoughts and attendance.

Chair Bonar stated that testimony must be focused and short as possible. Folks at yesterday’s meeting had repeated themselves, belabored points, etc., and the repetition did not add further understanding, the Commission was already listening attentively. He asked the Commission what order the testimony on this item should be taken, the preference was to have it all now.

Bill Moore introduced himself as the representative of the current owner of the Kakuku Coastal property. He stated that CCH was not a part of the official project, CCH had come forward to state its interest in engaging with the County of Hawaii in the future. The current owner had not granted permission for CCH to enter the property.

Chair Bonar thanked Mr. Moore.

Aric Arakaki introduced himself as National Park Service (NPS) staff and a board member for the Ala Kahakai Trail Association (AKTA) and stated he would like to clarify a few items for the Commission. First, AKTA, the applicant, would be the managing entity for the land. Secondly, the AKTN had a cooperative agreement and the backing of the NPS for the property; AKTA had a sufficient operating budget and would be ready to manage the property. Third, the NPS would be assisting with several aspects of management and the AKTA would have its full support.

Chair Bonar asked whether the Board of AKTA had discussed what would happen if AKTA disbanded. Mr. Arakaki stated that he did not think this specific discussion had occurred; however, any nonprofit had the potential to disband.

Chair Bonar stated that nonprofits in land conservation were constantly looking at what entity could assume responsibility in the event of a nonprofit dissolving. AKTA could examine this issue as it developed its management plans.

Gail Byrne stated that she would answer Chair Bonar’s question. AKTA belonged to a national association. The national association would not let the local one fail. The bylaws do address what happens to assets in the event of dissolution. She stated that they also already had the necessary insurance.

Member Shallenberger stated that Mr. Arakaki had responded to some of his concerns from yesterday, regarding the nonprofit’s long term existence; however, he wanted to add that his biggest concern was

the potential problems that could occur from many agencies working together, competing for resources and control.

Mr. Arakaki responded that NPS had a lot of experience with this issue. Cooperative agreements are in place and can be further implemented to help manage these relationships.

Chair Bonar stated that the Commission emphasized the issue because of the experiences of its members.

Ms. Byrne responded that the County of Hawaii did not have the capacity to manage, but the community and AKTA did. The legal framework is in place. The North Kohala community had been incredibly functional as a community and had demonstrated its capacity for working together to manage its lands.

Member Berg asked what AKTA's matching funds were.

Ms. Byrne stated that half a million dollars would come from the landowner, and an international conservation group had committed to help AKTA to raise the rest (\$150,000). Chair Bonar asked whether the Commission had received it, Ms. Byrne and Ms. Schmidt confirmed that it had.

Member Berg thanked Ms. Byrne.

Jean Rasor stated that there are pieces at Kaiholena that have already been established, and some that have disappeared. It is a high value property. This is one of the coastal pieces, prime real estate, however, he would speaking from a spiritual and Hawaiian point of view. These lands are also important to lineal descendants, but he would not focus on that. Years ago, Ms. Bryne had contacted him in relation to the county council regarding these lands. He believed that that was a kahea, a call from ancestors, to protect these lands. Previously, the focus was on other areas, but that does not mean the ancestors were there. Why were they willing to give up these lands for some of the most kapu places in Hawai'i? Kualoa on O'ahu, for example. A mapmaker that was an artist and scholar had learned from his grand-uncle almost every significant site on the Big Island. Why? These were trusted stewards of Kamehameha. It goes back two generations when he asked them to come over.

He told a story. The young boy, out riding with the old man, asked what the old man was thinking about as he looked off into the distance. The old man said that he wondered if he was still there.

Member Young thanked Mr. Rasor and other members of the public for offering their knowledge. She stated that the Commission had its limits in awarding funding. Despite what Member Kaiwi had said earlier, she had reviewed the projects in light of acreage: 34 acres for about \$1.4 million, the Kahuku project was 3,000 acres for \$1.2 million. The Commission had to acknowledge the numbers in addition to other factors.

Chair Bonar stated the difficulties of judging apples against oranges, as well as the audacity of managing something in perpetuity.

Doug Cole thanked the Commission for its acute questions to the applicants at yesterday's meeting. He stated he would respond to some of the Commission's comments on the North Shore Community Land Trust's (NSCLT) project. The NSCLT was working on a pro forma, examining affordable

farming lease rates, and had worked on how to use the revenues toward property management. He stated that NSCLT had existing expertise on land management and would form partnerships to gain access to expertise on agricultural land management. NSCLT's board member had managed Waimea Valley for the last 20 or 30 years, a member had worked with the Kokua Hawaii Foundation, and Mr. Cole was licensed and had experience in residential property management, and understood the nature of the landlord-tenant relationship.

Right now, about 20,000 acres are for sale on the North Shore of Oahu and prices are very high. It is not feasible for a agricultural enterprise to buy that land for agriculture at a profitable rate.

Chair Bonar referred to a past example where Office of Hawaiian Affairs had unexpectedly garnered huge expenses in management when taking over land and stated that there was such a range of issues to be dealt with in this project, and an organization that was not used to the management of such land needs to be looking at all of the numbers.

Mr. Cole stated that NSCLT could address emergency expenses on a reasonable scale. Chair Bonar referred to another example of how an organization supporting agriculture had struggled to find the right kind of land and the right people.

Chair Bonar asked for additional comments.

Member Young stated that, regarding the Kaena presentation by the applicants, she had thought there was a lot of reverence by the State personnel toward the land and resources, and that any misuse of language may have been unintentional. Member Canfield agreed. Member Buchanan stated that she had thought Member Kaiwi was stressing that a certain level of understanding of cultural resources needed to be achieved, and that applicants were falling short of this level. Whether the Department of Land and Natural Resources' (DLNR) leadership changes from year to year is immaterial, because the constant was middle management. She had seen gradual change for the better, however, every year, when DLNR returns for funding, the Commission can ask the same of DLNR as it asks of nonprofits. The State has deeper pockets, but are they managing their land appropriately? Sometimes they are not the best stewards. When there is a recession, it affects agencies and nonprofits, and it is in these times that the community will step up to manage its resources, out of kuleana. Now that we are going in the right direction, what is the plan, 100 years from now, to add the cultural component into the management of resources? If an applicant cannot answer, it is time to worry.

Chair Bonar stated that a single presenter's impromptu answer may not have reflected the capacity or thoughts of the entire group. He added that Member Buchanan had a point; applicants need to be listening and pay attention to the specifics.

Member Buchanan stated that the NPS at Kalaupapa on Molokai had functioned for over 20 years without a management plan, the local manager deserved credit for this.

Chair Bonar stated that the Commission had been designed by legislature to have a strong Hawaiian voice. The Natural Area Reserve Commission, set up in the 1970s, did not include that. He hoped that this Commission could help the DLNR hear more of the Hawaiian point of view.

Member Berg stated that the Commission conducted site visits and listened to presentations that were often repetitive, and it had to look at the history of organizations returning as well, which is a large range of sources of information to digest and make decisions.

Member Shallenberger stated that an observation over the last few years is the common strengths and weaknesses of proposals. One issue has been getting community groups to function together – it is a challenge – and many proposals cite community support without it having had a chance to work yet. Another issue is public access. In some cases it is an afterthought instead of a carefully planned use. For some resources, public access is the threat, and creates a management challenge that is hard to deal with. The third issue is match. Matching funds are not always a demonstrator of community support. It has to do with good timing, proposal writing, good thinking well in advance – it often seems like an afterthought to come to Legacy Land after seeking funding from other sources – it is sad that matching funds ends up being a heavy factor in the ranking process, but it is real. These observations do not directly deal with cultural or natural resource values, however, we need to think about it.

Chair Bonar stated that these were factors in a projects likelihood of success, which is one of the set criteria the Commission weighs, however, the Commission still reexamines the issue for every project.

Leah Laramee of the DLNR Division of Forestry and Wildlife stated that she had a response for a question that had arisen the day before. She indicated the ownership of a parcel that a Commission member had asked about.

Chair Bonar stated that he would like to run down the list of projects for further discussion. The first project was Kaiholena South. No comments. Kahuku Coastal.

Member Shallenberger asked about the threat to the property. Mr. Moore replied that a neighboring property had been slated for development as a resort. The County General Plan had supported it. The State opposed it. It included two different projects: about 3,000 total hotel units, 3,000 residential units, a golf course, an airport. The developers were working with the land use process to seek the necessary boundary amendments. The Land Use Commission had approved subject to certain conditions in 1992 or so. The process had come very close and then unraveled.

Chair Bonar asked about the price of smaller parcels mauka of the property. Mr. Moore replied that the parcels were about three acres, and could run up to \$30,000 on the market. Chair Bonar asked if the zoning was county open space – no development unless for public infrastructure. Mr. Moore stated that the very upper portion was zoned for agriculture, about 400 acres. It is conceivable one could get a CDUA permit for one house. Mr. Moore stated that the county did not have regulatory authority to make it open space and conservation.

Member Young asked if the other 50% of costs was secured. Chair Bonar said it was. Mr. Moore agreed that the County was sure of the funding.

Chair Bonar asked for comments on Kaena Point. Member Young stated that she has lived in the Waianae area and has never seen it in such good condition.

Chair Bonar stated he would recuse himself for the Maunawila Heiau discussion and left the room.. Member Berg stated that he had been impressed by the local community's efforts to save this place and its cultural meaning. He stated that the comments about the larger area, including the location of the school in what used to be a pond, was illuminating, however, he couldn't reconcile the idea of public access and management of a sacred area. How would they create parking and trail usage without degrading the site? And what happens if trail access and parking are not feasible? This would reduce the value of this aspect of the project.

Member Canfield stated that Member Kaiwi had said that he did not feel the sacredness of the site could not be reconciled with the planned public uses. She stated that the applicant was available to comment.

Davianna McGregor stated that, at this point, prior to completion of the management plan and the involvement of the community in completing it, it may not be appropriate to encourage that kind of access. Member Berg asked about parking. She stated that the neighborhood had been extremely cooperative, however, if increased public access is planned, there may be benefit to increasing parking. As the dense hau in the lower portion of the property is cleared, they may have a better idea of parking feasibility. The management plan will be driven by what is revealed as we clear the area. Member Berg stated that his experience at Haena had been that the community is not driven by the need to get tourists to the location, rather, they had looked at restricting access and parking. Member Berg stated that what had not come across originally was that the community was the driver here. He thanked Ms. McGregor.

Member Shallenberger asked who would be calling the shots in the future management of the property. Ms. McGregor stated that it would be the Hawaiian Islands Land Trust, however, it had been the community that had kept in touch with the family and advocated not to sell, they have organized an association, they want to use it as the cornerstone to open up the history of that ahupua'a. She stated that this effort has really been driven by the community, and at some point they would like a written formal letter which agrees on everyone involved responsibilities. She also stated that she herself would remain involved along with her department and students of the University of Manoa, as well as the Koolauloa Civic Club who were involved in restoring a heiau in Punaluu. Member Buchanan stated she wasn't concerned about the management of the property because of the community support and their willingness to work there and get dirty; and also that as far as the parking issue there is an old house sits on the edge of the property that is near the road that would be a good location for that. There needs to be access to start working on all the overgrowth on the property.

Chair Bonar returned to room and asked if there were any comments on the Kalauao project. Member Shallenberger stated he shared the same concerns with Member Buchanan in regards to DOFAW management, but anytime the State has an opportunity to secure forested watershed areas they should go for it. He hopes they can work closely with Kamehameha Schools on either side of the property. Member Berg stated that looking at this as a biologist the property is amazing and it needs to be preserved before anything else happens. Chair Bonar stated it will be exciting to see what types of cultural resources are in this valley.

Chair Bonar asked if there was any further discussion on the Kahuku Mauka lands. Member Shallenberger stated he had a concern about the public access to the property. Member Berg said he was concerned that there wasn't an appraised value for the property yet, and there is no willing seller

yet because there is no agreed upon price. Also the management plan and insurance haven't been worked out yet and he is uncomfortable with the preliminary nature of this.

Chair Bonar asked if there were any comments regarding the Kukaiau project. Member Richards left the room. Chair Bonar stated the C.E. projects on the lower portions of the property is requesting 600,000 dollars. Member Berg asked Ms. Schmidt if she could clarify the matching funds status. Ms. Schmidt said she would have to look back at the application. Member Canfield stated that yesterday they said they were very confident they would have it. Member Berg stated his concern was that the Forest Service is not going to get any money this year with budget cuts. Ms. Kaulukukui from the Nature Conservancy stated they were right on the cusp of receiving money but wasn't sure if it would be partial or not. She stated that also if the all of the match doesn't go through they have been raising private funds that they would be able to put to this; also that land owner is willing to make a donation. Member Shallenberger wanted to point out that many of the projects they see don't have a track records or evidence of financial support to follow through, but this one is unique in the sense that the company that has a lease on the property now has already demonstrated what it can do. He has a strong feeling that they will be successful, and at least everyday they are putting trees in the ground so that has to count for something. Chair Bonar stated one thing he noticed about this project was that they had a realistic management plan that looked like it would be successful and showed that ongoing support for the project; it was a business application but in an environmentally sensitive way. Member Young said she was somewhat struck when Mr. Henshaw stated he would rather have both projects funded even if they were at lower amounts. Member Shallenberger stated he thought he might have said that because the projects are both very different and they have different strategies for dealing with them. It is one of several projects in the Hamakua area that are trying to reforest the areas that were originally covered in koa. Chair Bonar said if he had to rank them both the lower portion because, if unprotected, it will just be ranch land. The upper portion already does have a conservation easement, which restricts development. The lower portion has a higher degree of threat, however, the whole thing together is quite a vision.

Mr. Razor spoke about a kupuna that had been raised as a paniolo, he could help lend some historic background to this property. Kukaiau Ranch ... those lands contain a portion of the only trail that circles the entire summit of Maunakea, those lands, at the time of Kamehameha the Great, belonged to the most powerful kapuna in existence. The owner has been trying to sell the land for years, 40-acre ranchettes, he keeps losing money. The land itself was very important. Maybe time is not of the essence here, because waiting on it might result in a fire sale. Plus, the landowner had some violations regarding road cutting above the conservation line.

Chair Bonar asked for the main point. Mr. Razor responded that the Commission had indicated it was concerned about best value, and these are facts they should note.

Member Buchanan asked Mr. Henshaw what might happen when the trees are full-grown and provide habitat – what happens to the occupants when the trees are cut?

Mr. Henshaw said that a portion of the trees stay and a portion are taken. Chair Bonar stated that wildlife could move to the remaining trees. Ms. Kaulukukui stated that TNC was working with U.S. Fish and Wildlife Service on Safe Harbor Agreements. Also, hotels and other businesses were buying the trees that would remain. For the remaining ones, scientists were designing and planning the best way to remove them. On the upper area, no intent to harvest the trees on that land. And no intent to sell carbon credits.

Member Canfield stated some frustration with the match. It seems they should have lowered their request. Chair Bonar stated that they needed to do it in case one didn't come in. He asked Ms. Kaulukukui what funding would be dropped if it all came in.

Ms. Kaulukukui stated that she did not know, however, TNC really needed the State match to secure the federal. The ACUB funding was the most secure. RLA hadn't been funded the previous year. Chair Bonar stated that TNC needed the local match.

Member Berg asked what might happen to the federal military budget. Ms. Kaulukukui didn't think the ACUB funding was subject to recent budget cuts.

Chair Bonar asked if there were other questions. Ms. Kaulukukui responded to a question – the Acres for America funding is from Walmart and administered through the National Fish and Wildlife Foundation (NFWF), a nonprofit. Chair Bonar stated it was non-federal match.

Mr. Hirokawa commented on the interaction with the State of restrictions imposed from this funding. Member Berg commented on his past experience with NFWF funding.

Member Richards re-entered the meeting.

Chair Bonar asked Ms. Schmidt about the funding status. Ms. Schmidt stated that the March 30, 2012, estimate was \$3.7 million. In previous years, the program had been working down an unencumbered balance. It was a lot smaller this year, especially since new legislatively-authorized draws on the fund. There is also a possibility funds from projects from previous years that no longer were able to proceed might come through and supplement the total ... to \$4.4 million.

Chair Bonar stated that the estimated range was \$3.7 to \$4.4 million. He added that funding not expended would go back into the LCF for use in future years, however, legislature can take the funding or authorize other uses for it. Ms. Schmidt added that \$400,000 per year for the last two years went to the Hawaii Invasive Species Council, and that a million had been taken the previous year for the general fund. Chair Bonar reiterated that the minimum would be \$3.7 million.

Chair Bonar stated that Commission members would use the ranking forms to rank projects, excepting where there was a recusal due to a conflict. Ms. Schmidt would take the members' scores and divide by the number of members voting to reach a score. This had been what statisticians had advised on calculating the ranking. The Commission would then discuss the resulting rankings in light of the cutoff for funding. The Commission may want to have a look at readjusting the funding for projects. Ms. Schmidt stated that she disagreed with adjusting the amount, since the amount of match and the amount of the request were criteria used in reaching a decision. Chair Bonar stated that it had been done in previous years. Ms. Schmidt stated that it had been done at the bottom of the list only; no projects had been reduced out of their ranked order. Chair Bonar stated that this statement was inaccurate – the Nu'u project had taken a hit. Ms. Schmidt stated that it had been tied with another project at the funding cutoff, so only the last two projects, which had been tied at the bottom of the list, were equally reduced. Member Young asked if awards were adjusted it would be from the bottom. Ms. Schmidt agreed that this was staff's recommendation – the first projects listed should be funded at the requested amount, reductions made at the bottom of the list where the funding ran out – this is in keeping with the process and criteria. Member Young stated that a number of good

applications presented a difficulty – a high request for the best project would disallow funding for the rest. Member Berg stated that only the lower projects had been reduced in the past. Chair Bonar stated that he had served on a number of grant panels and it was very typical to give reductions down the line. He was not opposed to this practice. On one hand, it might be a legal call, on the other, it may be a policy which the Commission should figure out for itself.

Ms. Schmidt stated that she was not telling the Commission what they can or can't do. She was saying that this was her recommendation, in keeping with having a non-arbitrary, non-capricious method of making decisions. Even though the Commission was advisory, the Board relied on its work to approve projects. Once the Commission ranks projects based on its criteria, to arbitrarily pull amounts of funding from projects in the list outside of the order ranked does not follow the decision that they've made to rank them.

Member Berg suggested that the Commission move on – it may be a moot point. Chair Bonar agreed, and said the Commission would pass Ms. Schmidt the forms. Ms. Schmidt suggested the Commission take a break while she calculated the scores. Chair Bonar called a break.

Chair Bonar called the meeting back into order. Ms. Schmidt posted the scores on a displayed tally sheet as follows:

<p>Kaiholena South Scores: 2 2 2 2 3 2 2 2 Total: 17 Average: 2.125</p>	<p>Kalauao Valley Scores: 2 1 1 1 1 1 1 1 Total: 9 Average: 1.125</p>
<p>Kahuku Coastal Property Scores: 4 1 5 1 3 1 2 2 Total: 19 Average: 2.375</p>	<p>Kahuku Mauka Agricultural Lands Scores: 3 3 3 4 4 3 4 4 Total: 28 Average: 3.500</p>
<p>Ka'ena Point NAR Cove Extension Scores: 2 3 4 1 1 1 3 1 Total: 16 Average: 2.000</p>	<p>Kuka'iau Ranch Forest Legacy CE Project (1 recusal) Scores: 2 3 2 2 1 3 1 Total: 14 Average: 2.000</p>
<p>Maunawila Heiau (1 recusal) Scores: 2 1 1 2 2 2 1 Total: 11 Average: 1.571</p>	<p>Kuka'iau Acquisition & Palila Habitat Rest. (1 recusal) Scores: 2 3 2 2 2 3 2 Total: 16 Average: 2.286</p>

The scores from the tally sheet resulted in the following ranking:

Rank	Project title	Agency/org	District & Island	Fee /CE	Acres	LL Request
1	Kalauao Valley	DLNR DOFAW	Honolulu, Island of O‘ahu	fee	635.00	\$192,750
2	Maunawila Heiau	Hawaiian Islands Land Trust (HILT)	Ko‘olauloa, Island of O‘ahu	fee	9.08	\$650,000
3&4 (tied)	Ka‘ena Point NAR Cove Extension	DLNR, Division of Forestry and Wildlife (DOFAW)	Waialua, Island of O‘ahu	fee	0.75	\$86,450
3&4 (tied)	Kuka‘iau Ranch Forest Legacy CE Project	The Nature Conservancy (TNC) & DLNR DOFAW	Hamakua, Island of Hawai‘i	CE	3,688.00	\$600,000
5	Kaiholena South	Ala Kahakai Trail Association (AKTA)	North Kohala, Island of Hawai‘i	fee	34.63	\$1,449,555
6	Kuka‘iau Acquisition & Palila Habitat Restoration	The Nature Conservancy (TNC)	Hamakua, Island of Hawai‘i	fee	4,469.00	\$1,000,000
7	Kahuku Coastal Property	County of Hawai‘i	Ka‘ū, Island of Hawai‘i	fee	3,127.95	\$1,214,000
8	Kahuku Mauka Agricultural Lands	The Trust for Public Land (TPL) & North Shore Community Land Trust (NSCLT)	Ko‘olauloa, Island of O‘ahu	fee	248.00	\$500,000

Chair Bonar asked where the funding cutoff would be. Member Canfield stated that the total ask was about \$5.7 million. The Commission members worked through the math and commented that the amount of projects one through six was \$3,978,755, just above the lower range of what may be available. Chair Bonar suggested that the Commission recommend funding the projects in the order ranked at the amount requested, to the extent that funds are available around March 30. He then asked if there was a feeling among the Commission members that any of these projects should not be on the list at all. Member Richards stated that this would have shown in the voting – a large gap in the scores would indicate that.

Chair Bonar entertained a resolution that the rankings be the order that projects are funded in, as far as funding is available. If only partial funding were available for a project on this list, it should be applied, even if the last project on the list would not receive its full requested amount, it should get the remaining amount available.

Member Berg asked if this statement could be two resolutions. Member Richards agreed, in case that there were problems with the second one.

Chair Bonar restated the first motion: that DLNR fund the projects in ranked order at the full amount. Member Shallenberger commented that Ms. Schmidt had written the tied projects incorrectly on the dry erase board; the error was discussed and fixed. Ms. Schmidt suggested that the Commission double-check the numbers; the Commission went through the amounts again. Chair Bonar stated that if funding were up in the higher range, the Kahuku Coastal project would receive partial funding.

Member Young moved on the previously stated motion and Member Richards seconded. All were in favor.

Chair Bonar stated he would entertain a motion that, if there were additional funds after fully funding projects in the order ranked that would only partially fund the next project on the list, that funding go to this project in the partial amount available. Member Young motioned, Member Canfield seconded. Chair Bonar explained the motion to Ms. Schmidt in different terms, and stated that the Commission was trying to ensure that the partial funds would be used. All were in favor.

Ms. Ka'akua asked what would happen if a higher-ranked project did not secure its matching funds by a certain deadline. Chair Bonar stated that this situation had occurred two years ago, there had been a deadline for match. Ms. Ka'akua asked if this process would happen automatically. Ms. Schmidt stated that, in the former situation, the Senate President and House Speaker had recommended a March 30 matching fund deadline requirement for that year only and the Board had adopted it.

Chair Bonar stated that if a project dropped out of the running prior to the Board's approval, funding could move down the list in the order ranked. Ms. Schmidt agreed and stated the Board generally acted on approvals in March.

Chair Bonar stated that there was another issue for this year: a senator had expressed concern over the lack of rules for the program, the Department had responded by promising that it would complete rulemaking prior to approving awards this year. The Commission was only an advisory group; the actual funding wasn't awarded until March when the Board acted. Ms. Schmidt added that the Governor was the final step in the approval process. Chair Bonar added that the Board could add conditions. He stated that funding may be unencumbered from projects lapsing in previous fiscal years, Ms. Schmidt was waiting to hear on whether these funds could be used.

Member Berg stated that money would have to come in prior to the Board meeting.

Ms. Ka'akua asked whether applicants would have to go before the Board and demonstrate that match is secured. Ms. Schmidt stated that the only thing that had been done affecting projects at this point were be the rankings of the Commission, to her knowledge, a matching funds deadline was not a part of the process. Unless someone introduces it as part of the process.

Mr. Cole asked whether projects that had not secured match would impact other projects. Ms. Schmidt stated that a project that withdrew prior to the Board meeting might be able to affect other projects.

Member Young asked whether the Commission needed another motion to account for the contingency of additional funding available. Chair Bonar stated it was not necessary, the Commission had in effect stated that it saw all projects as viable, to be prioritized in the order ranked.

Chair Bonar called for additional comments on the item, and then moved to the next item.

ITEM 5. Presentation by Laura Ka'akua, Native Lands Field Representative, The Trust for Public Land (TPL), Hawaiian Islands Program, regarding proposed changes by Livable Hawaii Kai Hui and TPL to the Hāwea Heiau and Keawāwa Wetland project, approved for funding by the Legacy Land Conservation Program in Fiscal Year 2011; and, possible advice or recommendations by the Commission to the Department or Board of Land and Natural Resources regarding this proposal.

Chair Bonar stated that the Commission had received the note from TPL and had read the announcement that had come out regarding the development.

Member Canfield stated she'd make an announcement while Ms. Ka'akua set up. This summer would mark the end of her second term; she wanted to thank the Commission and staff for a very rewarding experience. Chair Bonar added he'd be leaving as well. Member Richards stated that he'd have to go before the Senate for confirmation, so he might be leaving as well. Chair Bonar stated that his term would be up as a result of his term on the NARS Commission being up. Hopefully, legislation would allow the separation of these two positions, and the Commission would be able to elect its own chair.

Ms. Kaakua stated that she was the Native Lands Manager for TPL and she had presented to the Commission at the last meeting regarding an update on the Hawea project. She had disclosed two aspects of the project that TPL and Livable Hawaii Kai Hui (LKHK) hadn't know of at the time of application: the driveway would be raised rather than at-ground, and a water retention and runoff system would affect the southern corner of the property to be acquired. At the last meeting, this Commission had stated though resolution that it was concerned regarding the height of the driveway, scope of the water retention system, and effects of the wetland and stewardship.

Also, the developer has stated that it was pausing its development plans for the moment but would proceed with the sale of the neighboring parcel to TPL. TPL and LKHK would still be moving forward, however, the fate of the adjacent condo is unclear. A parent Korean development corporation had cited international economic depression as a factor, as well as a desire to focus on other projects. Ms. Ka'akua would be focusing on the transfer of the preservation parcel. She stated she had come to address concerns and answer questions.

Chair Bonar asked if there was new information. Ms. Ka'akua stated that more specific info was available on driveway dimensions, but she would answer any questions first.

Member Shallenberger asked if there was a time window for use on the existing permits for the development. Ms. Kaakua stated that there were many permits, she was not sure of the various

timeframes. Member Shallenberger asked if there was potential for something worse than had already been discussed. Ms. Ka'akua stated that it was not what TPL and LHKH had agreed to. If the developer followed the letter of the law and was later granted more permission for a more extensive development, it would have to be addressed through that process, with the entire community. She didn't think LHKH would support that as a community organization. There was not anything in agreement between TPL and the developer that would allow the aspects of the project within their control to grow.

Member Berg asked if there was a possibility the land would go elsewhere, given the financial strain. Ms. Ka'akua stated that TPL had pursued a commitment for that reason – to at least complete the sale of the parkland. They've committed to sell the five acres to TPL, they've also committed to other entities regarding affordable housing. Halae Ka Lae had committed to a significant donation, so when the deal went on hold, TPL had emphasized holding onto a deal.

Ms. Ka'akua displayed some visuals and discussed the driveway. She stated that the highest point was marked at about 14.82 feet, it could not exceed these measurements. LHKH would push for smaller measurements, this was the worst-case scenario.

In terms of the water retention system, it would take about 0.4 acres of the 5 acre park. Within that area, there'd be an underground storage system. Andrew Nowacki, with Sustainable Resources Group, had been brought on as a local consultant for the system. Member Buchanan asked whether both easements had been recorded. Ms. Ka'akua stated that they were, however, it had never been discussed as part of the development plan. She said that they'd hired the local consultant to review the impact of the water retention system on the wetland, and introduce possible solutions. Ms. Ka'akua showed an image of the system.

Mr. Nowacki stated that they'd independently review the plans for the system and looked at mitigation of impacts on the wetland. It was basically an underground pond, using a series of plastic arches and porous stone bedding to contain water, the system catches roof runoff. He traced the progress of water through the system. The stone filters the runoff from smaller storms. The weir allows water to flow over in bigger storm events into the wetland. This is a common setup for situations with limited space. Member Berg asked about maintenance and whether it would fill up with runoff and silt. Mr. Nowacki had not expensively covered maintenance in the review, however, it is runoff from the roof and parking lot. They had proposed measures to alleviate buildup, focused on quality treatment, measures for more frequent storms. Chair Bonar asked how much cubic feet of water the system could handle. Mr. Nowacki stated that it was designed for 50-year storm, using SCS measure. City and County of Honolulu requires a certain method. Chair Bonar commented that he did not know what Honolulu would judge as a 50 year storm. Mr. Nowacki stated that computer modeling system was used - - Chair Bonar stated he understood that, he wanted to know the date. Maui had used archaic measurements. Member Berg stated it was NOAA 2009, however, it did not state when isoplats had been generated, it could be outdated. Mr. Nowacki stated that it was designed to detain a 50-year storm... the report is dated August 2011. Member Berg stated that he did not know whether the date applied to the stormwater calculations within the report. The idea of a 50 year storm might be irrelevant if the model is. Member Berg asked who would be responsible if it failed... nobody.

Member Young asked where Halae Ka Lae was in the process. Ms. Ka'akua stated that it intended to build on its three acre property, was not fully set to go. She did not know how long the pause would

be. Member Berg stated that it was still years down the line. Chair Bonar stated that a supposed protected area will annex a wall... had there been any discussion of this? Ms. Ka'akua stated that they had agreed to a tiered/terraced wall for placement of native plants. The aesthetic would still be that of a large, imposing building, however, they were doing small things to ease that effect. LHKH had worked heavily on the landscaping and been successful in most aspects. Unfortunately, within the driveway's puka, they put a Singapore plumeria.

Chair Bonar asked where a flood would go. Mr. Nowacki stated that he had not heard of one of these systems flooding because it would simply leave through the weir to the wetland. Member Berg asked whether the wetland would have drainage. Chair Bonar likened the results to Mapunapuna flooding on Oahu. Member Berg stated that there were two issues: 50 year storms were now 10 year storms, and the retention basin might flood and block the system. Mr. Nowacki stated it was graded and indicated on a visual. Member Berg expressed appreciation for the opportunity to ask questions.

Chair Bonar and Member Berg discussed rainfall projections, government standards, and sources of information.

Mr. Hirokawa asked if the driveway footprint easement could be amended to reduce the size. Ms. Ka'akua stated that it was part of the current contract with the developer, and could be improved in the due diligence process. Mr. Hirokawa asked whether there could be a maintenance and indemnification agreement for LHKH regarding the water system. Ms. Ka'akua stated that it was part of the agreement. She added that a separate maintenance plan was also included.

The Commission thanked Ms. Ka'akua.

Kaleo Paik stated that she had been involved in the project as a cultural expert and had been previously informed by the State Historic Preservation Division administration that it was "a pile of stones." She thanked TPL and the Commission for its efforts, there had been doubts it could be protected. The LHKH and developer had made strides in working together and improving the situation.

Mr. Rasor stated that the previous developer had tried to have community members arrested. He agreed that great progress had been made.

6. Announcements.

Chair Bonar asked if there were announcements. He stated that Ms. Schmidt would handle the administrative progress of the FY12 grants and the upcoming Senate President and House Speaker consultation process was the next step. Ms. Schmidt would keep them informed. He encouraged everyone in the room to pay attention to this legislative session and stay active; it had always been a challenge to keep conservation work supported.

He added that the Governor's new watershed initiative was available online, and had a number of funding proposals associated with it this session.

Ms. Schmidt stated that management funding grants would be talked about at the upcoming Commission meeting. The Commission had also expressed interest in reviewing rules as they go through the process, however, pursuant to an agreement of the Department, rules had to be finished by

March in order to get FY12 grants out, and that public hearings would be coming up soon. Chair Bonar stated that the Department would be working to accelerate the process.

Ms. Schmidt stated the next meeting of the Subcommittee would likely be February.

Member Berg asked Ms. Schmidt to put out scheduling information as soon as possible.

Member Young asked where the rule process was at. Ms. Schmidt stated that DLNR was currently sending a memo to the Governor requesting approval for public hearings, however, before the Governor issues that approval, he needs to hear from several other State agencies and the Small Business Regulatory Review Board.

7. Adjournment.

Chair Bonar adjourned the meeting.