

## **Minutes of the December 6, 2012, Legacy Land Conservation Commission Meeting**

Date: December 6, 2012

Time: 9:00 a.m. to 2:00 p.m.

Place: Room 132, Kalanimoku Bldg., 1151 Punchbowl St., Honolulu, Hawai'i

### **COMMISSION MEMBERS PRESENT:**

Mr. Thorne Abbott

Dr. Carl J. Berg

Ms. Lori Buchanan

Dr. Joan E. Canfield

Mr. Kaiwi Nui

Mr. Herbert ("Monty") Richards

Ms. Karen Young

### **COMMISSION MEMBERS ABSENT:**

Ms. Rebecca Alakai

Dr. Robert J. Shallenberger

### **STAFF:**

Ian Hirokawa, DLNR, Land Division

Randall Kennedy, DLNR, DOFAW

Molly Schmidt, DLNR, DOFAW

### **PUBLIC:**

Laura Ka'akua

Sophie V. Schweitzer

Noa Ching

Jesse Vega

Michele McDonald

Kevin Kinvig

Martha Yent

Richard Ha

### **MINUTES:**

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

Legacy Land Conservation Commission ("Commission") members, staff, and members of the public introduced themselves.

Chair Kaiwi noted that Member Richards was not present, but would be joining the meeting shortly.

Chair Kaiwi suggested moving agenda items 5, 6, and 7 to before Item 2. Member Canfield moved, Member Young seconded, all were in favor.

ITEM 5. Review, discussion, and possible action relating to the implementation of Act 284, Session Laws of Hawaii 2012, including the agency consultation process, timeline, and review of any related input from Fiscal Year 2013 participants.

Chair Kaiwi stated that this topic had been contentious at the last meeting; he asked that the Commission be sensitive to the time limitations at this meeting. Ms. Schmidt stated that, per the Commission's request, she had asked the deputy Attorney General (AG) to attend this meeting, however, the AG had a schedule conflict and couldn't attend; however, she had offered to attend the next meeting if it were scheduled with her coordination.

Chair Kaiwi asked the Commission felt the AG's presence was necessary for the discussion. Member Berg indicated that he preferred the AG be present. Member Canfield seconded, all were in favor. Chair Kaiwi reiterated that the item would be considered at a future meeting with the AG presence.

ITEM 6. Review, discussion, and possible recommendations regarding the amendment of Chapter 13-140, Hawaii Administrative Rules, "Legacy Land Conservation Program Rules" to reflect the passage of Act 284, SLH 2012, and to clarify related procedures.

Ms. Schmidt stated that this item followed along the same lines as the last meeting – the required rule change was to bring the rules in conformity with Act 284, 2012. The Commission might also prefer to have the AG present for this topic. Member Young made a motion deferring the item to the next meeting. Member Canfield seconded, all were in favor.

ITEM 7. Announcements.

Member Buchanan asked Ms. Schmidt if she had sent the Annual Report to the entire Commission, as she had been the only one to request it. Chair Kaiwi asked if it was a DLNR duty as opposed to a Commission duty, Ms. Schmidt confirmed that staff had been doing the annual report for the past six years, it was available online. Member Buchanan stated that the subject matter involved the Commission. Chair Kaiwi asked if there was anything that needed attention in the report. Ms. Schmidt stated that she did not think so; it had typically been a staff duty within DLNR to report on the accomplishments of various programs. It had not occurred to her previously to consult the Commission; however, she could if they wanted. It would require a timely meeting if the Commission wanted to work with the staff's deadline.

Member Richards entered the meeting.

Ms. Schmidt stated that Commission had also requested a follow-up with Fiscal Year 2013 agencies and organizations, asking input from those that had participated in the consultation

process. She stated that four agencies and organizations had replied to the inquiry, the results were in a spreadsheet in the Commission's meeting documents.

Member Canfield asked if Ms. Schmidt expected further responses. Ms. Schmidt stated that she had not been as persistent as she could have been in tracking down each group for a response, however; maybe their lack of response was their preferred answer.

Chair Kaiwi asked if consideration could be given to the Commission to comment on the annual report. He asked if a motion was necessary. Ms. Schmidt stated that it was not and that this request was doable, however, she asked that the Commission be available to meeting within a reasonable period to allow staff to meet deadlines. Member Canfield asked the timeframe. Ms. Schmidt stated that he would have to complete the draft report a month early and get it to the Commission at the October meeting.

Chair Kaiwi asked for further announcements. Ms. Schmidt stated that she had followed up on Member Buchanan's request from yesterday. She had checked with Scott Fretz, the former Wildlife Manager at DOFAW to ensure that she had described the Access and Acquisitions Coordinator position correctly and he had confirmed it was correct and offered to follow up with Member Buchanan. Member Buchanan said that would be fine.

ITEM 2. Disclosure by members of the Commission of any potential conflicts of interest involving Fiscal Year 2013 (FY13) projects (please see the list of applicants attached to this agenda).

Chair Kaiwi stated that, unless something had happened overnight, he expected that the Commission would have no conflicts, as was reported yesterday. Member Abbott stated that he had checked with the AG's office and had no conflict. The rest of the members echoed that they had no conflicts.

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 FY13 project funding.

Chair Kaiwi asked Ms. Schmidt to review the process. Ms. Schmidt stated that the Commission assessed project applications using its criteria, which were in rule form for the first time this year. The Commission then used the ranking form, with a one to five ranking assigned for each project. The numbers are then averaged out and projects are ranked, the Commission then forms a recommendation to fund the projects as ranked.

Member Canfield asked if they'd be operating under the assumption that \$2.8 million is available. Ms. Schmidt confirmed, and stated that the Commission had, in the past, used wording that allowed them to recommend funding projects to the full extent of the funding available.

Ms. Schmidt stated that ranking forms and a tally sheet were available in the meeting documents. Chair Kaiwi reminded Commission members that notes referred to at the meeting became public record.

ITEM 4. Discussion by members of the Commission of the FY13 project applications and supplementary materials and recommendations to the Department and Board of Land and Natural Resources regarding funding for FY13 project applicants (please see the list of applicants attached to this agenda).

Chair Kaiwi suggested going in order to talk about one project at a time. Members agreed. Member Canfield asked for an update on the whereabouts of Member Shallenberger. Member Berg stated that he had left last night for the Big Island due to a family medical emergency, he would not participate in the ranking but had felt that his participation in the discussion yesterday was fruitful.

Member Buchanan whether Member Shallenberger could participate. Ms. Schmidt stated that a member had left in the past after participating in all discussions and had ranked projects in the meeting but left before the vote. In this case, Member Shallenberger was not able to participate in all discussions.

Chair Kaiwi thanked Member Berg for the update and moved the discussion to the Hamakua Springs project. He asked for comments. Member Berg stated that he had thought well of the project due to the management plan, the history of the farm, the securing matching funds, and the NRCS participation in the appraisal, management plan, and match. He respected NRCS's active involvement.

Member Canfield stated that the materials were impressive and well thought through.

Chair Kaiwi emphasized that the proposal was good and Mr. Kinvig's effort to make changes at the policy level was also reassuring, especially for this project where Mr. Ha had a record of success; it makes sense for the polices to make sense to the farmer. Mr. Ha had used "mahi'ai", which means "farmer" in Hawaiian, this model is a good model for ag, he hoped Director Nakatani would consider adopting some of the practices.

Member Young stated that she appreciated Mr. Ha's model farm and supported the idea of self sufficiency.

Member Richards stated that he wanted to disclose that he was a director of the soil and water conservation district and was also a member of a group chaired by Mr. Ha relating to electricity. If either of these relationships presented a conflict, he would step back. He added that he thought Mr. Ha's approach was tremendous and he would like to offer full support.

Chair Kaiwi asked for the Commission's thoughts. Mr. Kinvig stated that the Soil and Water Conservation Districts were independent partners of NRCS and were incorporated under the State and not a subset of NRCS, with no responsibility or role in how funds are obligated.

Member Richards stated that the other group chaired by Mr. Ha to push for cheaper power on the Big Island. He didn't think it was a conflict but wanted to be open and get comment.

Ms. Schmidt read from the Ethics Guide for members of State boards and commissions, stating that the Ethics code prohibits a board or commission member from taking official action that directly affects a business or undertaking in which the board or commission member has a substantial financial interest, or a private undertaking in which the board or commission member is engaged as legal counsel, advisor, consultant, or representative.

Chair Kaiwi stated that he did not see the group as directly relating to the matter at hand. Mr. Ha stated that the group was called the Big Island Community Coalition. It was a grassroots organization with a budget of \$300, basically, a group of concerned citizens.

Member Richards stated that he had thought it better to disclose the information up front lest it be mischaracterized later by detractors.

Member Canfield stated that she hoped Mr. Ha's efforts would cause inspiration across islands.

Member Abbott stated that it was a great example of sustainable farming and also a legacy for the future, plus the tomatoes were great.

Member Berg stated that as an environmental scientist, he was concerned about the push for hydropower and its potential effect on the native endemic fishes and shrimps of the streams. This form of energy is not without its problems. He hoped that NRCS would be looking at stream ecosystems, especially the rare ones in Hawaii, with an eye to preserving and restoring for cultural and environmental values. Putting a hydro plant in the middle of a delicate ecosystem is in conflict with the protection of these values, however, he saw the need for affordable electricity and thought there could be good examples of these values being managed together.

Member Buchanan stated that the reluctance of newer generations to farm was a frequent topic, and on the site visit, Mr. Ha's son in law was continuing in perpetuity what the farm had been doing. He had spoken of his father-in-law's contributions with much reverence and had unknowingly inferred himself as the next generation. She did not doubt that he would carry on the farm's traditions. Both had been knowledgeable about every aspect of the project, Mr. Ha had managed to take care of the next generation within his own family. She did have concerns, however, about the water issues. She was that they were doing well with the overflow and not diverting 100% of the stream and had balanced the historical use by sugar cane companies. It did not seem to be an abrupt change in the stream flow because of the proper diversions.

Member Berg stated that he had seen the sugar industry as extremely disruptive to stream flows and had destroyed many ecosystems. The issue that many had been working on was getting the flows back, and he did not think that the former presence of the sugar industry gave anyone the right to take all of the water. We have to look at traditional and cultural uses as well as the ecological benefits of getting the streams back to the oceans.

Member Buchanan stated that she was glad Mr. Ha had this stream, and it still seemed odd to her that entire streams can be privately owned, however, looking at other examples where half of a TMK goes to a river, and nobody feels kuleana for a stream.... In Pepeekeo, the ag subdivisions were actively catching prawns, hihiwai are in there... somebody caring for the stream is what works, as opposed to the plantation mentality of the past. She agreed with Member Berg.

Member Berg stated that stream restoration programs did not just look at water or erosion alone, they looked at putting rocks in and regaining the look of a beautiful natural stream again.

Chair Kaiwi asked for comments on the Vipassana project.

Member Abbott stated that he applauded the effort and stated that the timing was right for this project, it was a valuable piece of property that would provide amenities for many people over time. It would be great to have this coastline as open space along with public access rather than having a series of gentlemen's estates along the coast. If fencing is required, he encouraged Vipassana to use a nice wood split-rail that is place-appropriate. He was confident that Vipassana would bring together all aspects of the project, especially with NRCS involvement. He added that he also thought the appraisal would be good with NRCS involvement.

Member Berg stated that he had some concerns about the appraisal but would defer to NRCS. He added that he did not see a good specific long-term management plan with this project as the other project had. If some staff were to become unavailable in 5 or 10 years, who would carry out the management of this property? The community has been so successful in protecting the coastal corridor that they would now be strapped for resources to manage it all. He thought the Commission's main goal was to first assure that the land would not be built upon. Some aspect of the proposal were not as well thought-out, however, in terms of the main goal this project was strong.

Member Canfield stated that she felt the same way. She had wanted more detail. Although her application did state that NRCS would be doing a more formal plan.

Member Abbott concurred that things were not as solidified as in other projects, however, he had faith in NRCS and HILT, in that they would not take on something that was a detriment to them. The involvement of these parties gave him confidence that an appropriate management plan would be implemented.

Member Berg stated that this was a good point. At the same time, they misused that trust by not coming in with a better plan.

Member Young stated that she supported protecting all resources lands; however, there must be a way of setting priorities. The Commission had awarded quite a bit of money on that coast. She stated that she was looking at this in light of budget limitations.

Member Richards stated that, as a resident of the Kohala coast, he was concerned that the 254 acres at the end of the road, and there is a tree that did not previously fruit. Now that the

pollinator wasp was present and the tree can fruit and fill the area. If the land is not in use or management, how are we going to address these tree? He stated that he would like to see more planning to address this issue. Furthermore, he had heard the tree can exist up to 10,000 feet elevation; 5,000 alone would take care of the Kohala mountain. There could be quite a problem 20 years from now, given the amount of unmanaged land in Kohala. We already have Kahili ginger as a pest, people from other islands might not be aware.

Ms. McDonald stated that Vipassana was not at all attached to the tree and would be happy to pull it out. Member Richards asked if she was formally stating that Vipassana would pull out the tree. Ms. McDonald replied that she was. Member Buchanan stated it would be good if everyone else would do this. She mentioned that there was another potentially destructive invasive in the area not far away.

Member Buchanan asked staff how the conservation easement would be affected if the organization decided to develop the coastal lands. Ms. Schmidt stated that the conservation easement covered the coastal property and she did not think that they could remove part of the property from the easement. Mr. Kinvig said that landowners entering into a federal conservation easement should not think that there was any way to abrogate it, only for extremely exceptional situations and with much heavy lifting could it be removed. It is perpetual and runs with the property. It would take congressional action to remove it.

Member Berg asked where Vipassana could build. Mr. Kinvig stated that buildings and construction for agriculture and the meditation center would be clarified up front, and after the conservation easement was put on, there would be no further buildings except as specified in the easement. Member Berg stated that his concern was whether the conservation easement would allow future owners to build residences on the coast.

Ms. McDonald stated that Vipassana was willing to give up its right to develop on that lot and had already committed to HILT. Mr. Kinvig stated that NRCS did not necessarily require this, but would put it into the easement once it is negotiated. Member Berg stated that this resolved his concerns about preserving both ag and the coastal view planes.

Member Abbott stated that he did not know Hawaii County's code, however, Maui allowed ag conservation which allowed fallow lands. He thought that might be appropriate for coastal parcels but not for the rest of the property. He encouraged active use of the land for agriculture, possibly in consultation with Mr. Ha. He added that the oceanfront parcel was Conservation zoned. At minimum, developers would have to go to DLNR. Anything over a 3,000 square foot area would have to do an Environmental Assessment, which includes public review.

Member Canfield asked how long the NRCS funds would be available if State match was not devoted this year. Mr. Kinvig stated that the cooperative agreement with HILT lasted 18 months, signed in September, giving them until next year's fiscal year. They could ask for extensions, but when that happens, it is difficult for him to obtain additional federal funds for use on other projects in Hawaii. Mr. Vega added that Vipassana's organizational budget would not allow for that time frame, in terms of the time frame that they needed the resources to manage

the land responsibly. This conservation plan needed to happen within the next six to nine months.

Chair Kaiwi stated that Vipassana's desire to welcome cultural practitioners and the Kohala community, given the cultural sites on the land, is encouraging. The passion and desire to be contemplative about the land, through whatever spiritual means, is a good thing. He shared some of the previous comments about the realities of land management. In spiritual fervor, however, the comment about selling the coastal lands had jarred him.

Mr. Vega stated that the points had been good regarding some items lacking in the proposal. He stated that some of the other applicants were true farmers and businesspeople with a strategy for making a livelihood. Vipassana was not farmers, but they did approach the project with the intention of caring for the land and offering the land to local farms and the community for ag and culture and recreation. It was a different orientation, but not necessarily a bad one.

Member Canfield stated that she had looked for more information on the cultural resources, especially given that HILT had this expertise and was the applicant.

Ms. McDonald stated that she cared deeply about the management of the land and the protection of the coastal lands, the organization had not initially realized the tremendous amount of resources need to manage land effectively. Only desperation would lead them to sell the coastal lands, her deepest feeling was to protect the place.

Chair Kaiwi stated that the passion was there, however, the planning is not. He asked if Vipassana would make a formal commitment. Mr. Vega stated that it depends on the time frame, and he did not know if this was the process for the program.

Chair Kaiwi said it may be possible for Vipassana to solidify the management plan and come back to the Commission. Member Canfield stated that she did not think they had this flexibility to reevaluate. Ms. Schmidt stated that there was a fairness issue. Chair Kaiwi stated it would be a decision made more on faith, not an actual procedure.

Member Young asked if he meant to withhold partial funding. Ms. Schmidt asked if Chair Kaiwi meant to have a discussion or wanted a procedure implemented. Chair Kaiwi said that he wanted to know what the options were since the Commission could not discuss this issue later. Member Berg stated that the Commission did not have the flexibility, they could only recommend the project submitted or not. Chair Kaiwi said that he was trying to get at various items that needed to be committed in full or not, e.g., appraisal or deed, and see where this fit. Member Berg stated it would come down to the deficiencies in the project being weighed by the Commission in accordance with its criteria. A low rank for the project would possibly result in its not being funded this cycle. Otherwise, an applicant can withdraw and come back in a following year.

Ms. Schmidt stated that maybe some of the frustration felt was due to the fact that the Commission was concerned with one specific conservation tool: land acquisition; whereas it generally took a combination of tools to reach goals and make a whole project work.

Member Abbott stated that the Commission was ranking and recommending projects to the Board, however, as part of the process, the applicant was also learning how to improve the project and improve stewardship. Maybe the Commission can't condition its approval, however, it can ask applicants to be mindful of their suggestions.

Member Richards asked to be excused for another engagement.

Chair Kaiwi asked for further comments. Member Canfield stated it was great that so many Vipassana members had been present to answer questions. Chair Kaiwi moved the discussion to the Whitmore project.

There was a brief pause. Member Buchanan stated that the brief silence that had occurred was telling. For the Hamakua Springs, members had been eager to jump in and offer praise. What had been impressive to her about this project was the match, and the work that had been done to acquire the funding was huge. The 456 acres of prime ag land and revitalizing Wahiawa was important. We've seen what happened along the Hamakua coast, we've learned that when you throw down on monocrops and go belly up, there's no diversified ag to support you. ADC has the backing of the State, they have the ability to get the match and make it work, and nobody else really does. It may not be the type of project that the Commission gets really excited about. Four years ago when she joined the Commission, she had a model in her mind for what conservation looked like. Spending taxpayer money, part of which was her money, she wanted to protect cultural sites, stream ecology... it was difficult for to find the correct balance where brain and heart are concerned.

Member Berg state that there was \$9 million in match; however, none of it was in-hand. Member Canfield offered that the amount from the county was partially through the process. Member Berg stated that the criteria that they had looked at for all of the other projects – landowner willingness, appraisal, match – as much as he wanted ag to succeed, they were about to commit a million without any match.

Member Buchanan stated that they had seen the legislature come out last year to support, and the Governor had indicated his support.

Member Berg said that \$9 million in match was missing. Member Buchanan stated that the presence of the Navy intelligence center offered some security for the buffer monies. Since the previous project using those funds hadn't gone through, they probably had the money. The applicant did not seem concerned. She was not, either.

Chair Kaiwi asked Ms. Laura Ka'akua for an update on match. Ms. Ka'akua stated that they had not heard from the Navy yet, and the City and County of Honolulu's Clean Water Natural Lands Commission (CWNLC) recommended an amount between one and two million, and TPL would ask the Council for the full four million.

Member Buchanan asked how many project were submitted to CWNLC. Ms. Ka'akua stated there had been four or five, and a bigger pot of money was available. She added that she

understood the Commission's limited funds and had to scrutinize carefully. The CWNLC had done the same; however, these projects required a leap of faith from somewhere in order to get initiated. She stated that they were genuinely unable to predict whether they'd receive Navy funding.

Member Berg stated that the fiscal cliff might be what affects the availability of military funds.

Member Abbott asked Ms. Ka'akua how much funding was obligated for Galbraith. Ms. Ka'akua stated that it was a \$13 million general obligation bond, the State funding had covered almost half of the \$25 million purchase price. The other half came from the county, the military buffer program, private donations, and OHA. Member Abbott stated that about \$24 or \$25 million had come from public funding sources. Ms. Ka'akua agreed.

Member Berg stated that one of issues was that all of the agencies were waiting for the others to commit, somebody had to go first. For this Commission, the hard part was knowing that the funding was less than the total requested amount; one of these projects would not get funding.

Member Young stated that she had felt a little guilt over her site visit report, perhaps she could have presented it better. She also shared concerns regarding the public access to the stream, the aquifer's quality, and the likelihood of GMO. After thinking about it, she had decided to support this project: it is ag, it's on Oahu, we need the open view planes, we need land for local farmers. Although Director Nakatani had seemed to have a lesser sense of expertise compared to Mr. Ha, the mission that Director Nakatani stated to support diversified farming, and the understanding the business aspect, the labor aspect, and the encouragement of young people... she had heard him say that initial lease rent could even be free. In Waianae, these needs and the need for access to land and willingness to travel were present. On one hand, she questioned how it would all be done; on the other hand, it required a leap of faith on someone's part to show support. She added that they had given plenty of support to coastline preservation in North Kohala, and there was an economic reality with food self-sufficiency that needed to be recognized. She would be supporting Whitmore.

Member Abbott stated that, in the larger scheme of the Whitmore project, they were requesting about 3% of the funding to make the whole picture work. And this property, with its access to water, is a lynchpin. It's high value on agriculture, however, not high value on some of the other resources. Controlled access to the stream area would have given the Commission an opportunity to look at the project in light of these values. Streams and coastlines were a very finite resource, and they either will or won't have public access. On the other hand, the leveraged match and the public funding involved thus far might have a level of influence that makes this project go. He added that he wanted to be clear that he supported ag as well as coastal and stream protection.

Member Young stated that she had spoken to Ms. Hong yesterday and she had mentioned that they'd thought about setting aside a specific parcel for organic farming, so there was an avenue for input on some of the Commission's concerns.

Chair Kaiwi stated that, aside from the politics and the resources and the culture, at the end of the day, food sovereignty has a crucial effect on everyone. The term 'aina contains "ai", meaning "to consume." People can't eat coastlines. Jokes aside, culture survives through practice, and if the practice of 'aina is to have a chance, then the investment of ag and farming is important. It is part of a larger plan and he hoped that the partners would succeed for the good of food sovereignty. Without the ability to take care of basic needs, we can't protect streams and coasts. Aside from politics, he supports this project. His only concern was the amount of military funding – when would it be available? Ms. Ka'akua stated that they would find out for certain before the end of the year. Chair Kaiwi asked what would happen to the funds. Ms. Schmidt stated that the project would have two years, and could request up to a year extension, and if the project failed, the funds would go back into the Land Conservation Fund for expenditure in future years, provided they remained in the Fund.

Member Berg said that if the project was not funded by the military, the State had the opportunity to float a bond for the extra \$5 million if the Commission devoted the funding. The Commission did not need to care about the source of the match, as long as the funding is there. He asked why the State hadn't floated a bond for this project as it had with the surrounding property. Why wouldn't this program's funds be reserved for other projects – including ag projects by other entities?

Member Canfield stated that project proponents had felt that this Commission ought to be putting more money into agriculture. Member Young added that the State had budgetary limits. Member Berg added that the appraisal hadn't been made available; the owner had named its price.

Ms. Ka'akua stated that the size of the projects was what had affected their funding approach – they did not want to approach the Commission for \$13 million, whereas the Whitmore project was smaller and they were confident they could raise the match elsewhere. This would be a showing through one arm of the State, this Commission, that it supports ag on Oahu. It had been a matter of price and project size.

Member Young stated that she had driven past the Dole office to the Navy facilities on accident and she could see why a buffer would be important to them. Member Berg stated that the Pacific Mil Range facility surrounded by 1200 acres of ADC-controlled ag land. The military has set it aside and it can't be used for ag. They don't want you close to the missiles. Through the buffer, they had taken ag land out of ag.

Ms. Ka'akua stated that this would be required to stay in ag if it were to be funded through the State and the county.

Member Abbott commented regarding Chair Kaiwi's earlier remark on coastlines – people would need the coastlines to access the fish. His interpretation of the law is that the Commission is supposed to use its criteria to assess projects and not weight coastlines more than ag more than cultural areas, etc. This proposal was spot-on on farming. But that's it. No further resource values.

Member Canfield stated that past discussions by the Commission had resolved that the number of resources would not be relevant, rather the quality by criteria.

Member Abbott stated that including the other resources would have given more aspects to review for the project, although he does support the project.

Member Buchanan added that the coastline was also important for opihi. Public access issues constantly came up and this is public taxpayer funding. The Kalauao project had included natural resource preservation, management of endangered species and public access. She had felt that agencies operating in their own silos and not collaborating had resulted in a restriction of public access in certain areas. The criteria included public access. The Commission can understand why some projects choose not to have access, but she would hate to see this program head in that direction, and now DOFAW has created another program to work on public access, because we've closed it all off. It makes no sense. When her community says that nobody is listening and they're being locked out, she has a problem. These projects are controversial and the Commission does the best it can, however, she wanted the Commission members to keep community in mind along with public access.

Ms. Ka'akua stated that she appreciated the concerns and ADC and TPL would be willing to address these concerns and balance the community's needs for public access with the farming uses. If this Commission wanted to form a recommendation, it could. The public access issue is often addressed at the end of the project, we'd be happy to address it now.

Member Canfield stated that it had been made clear on the site visit that public access would not be appropriate because of the large problem of theft and vandalism on ag lands. The discussion had been pretty black-and-white, but it would be wonderful if the compromise was possible. Member Young agreed.

Member Abbott stated that the town of Narita, Japan, was remote and isolated. They have a path that everyone takes in the morning through the farm fields that everyone takes in the morning, daily. Hundreds of people do this, and it is of cultural, recreational and aesthetic value. He respects the theft and vandalism issues; however, here was an example of public controlled daytime access. The example was a bit far off, but there's no reason it can't happen here.

Member Young mentioned reservations regarding pesticides and herbicides.

Chair Kaiwi called a 5 minute break and moved the project discussion to Ulupō.

Member Canfield stated that Bill Stone, the head of the YMCA, would be retired next August. He been on the site visit and was the most affable, proactive leader anyone could hope for, it would be nice if this project could be completed while he was still at the helm.

Chair Kaiwi asked Ms. Yent if the \$1 million from Castle was still there. Ms. Yent replied that \$250,000 was available from Castle. Chair Kaiwi asked if they would be short \$750,000, Ms. Yent confirmed. Member Canfield added that the plan was to approach the county. Ms. Yent

added that was one option that would come up in September; they could also explore other opportunities.

Member Abbott asked if there were options to use Legacy Land funds to leverage private donations. Ms. Yent mentioned that Terry George of Castle Foundation offered to use his network to seek additional funding. The YMCA goes to Castle for funds a lot, so she was not sure where this would go. Ms. Yent stated that Dr. Burrows had offered to solicit community donations. Ameron Hawaii has been supportive in the past; she thought that he had been thinking of organizations like that.

Member Canfield agreed that Mr. George had been positive about seeking funds. Ms. Yent stated that the acquisition was really just the first step in addressing the management issues, and also with enabling the YMCA to address some of its issues with parking and community traffic.

Member Abbott asked if the neighboring community would contribute to the improvement of its situation. Ms. Yent stated that she did not seem them as very active in this venue, she wasn't sure. Member Abbott asked if Ms. Yent was confident in getting match. Ms. Yent stated that she was, given federal LWCF, Castle support, and potential city support – there were discussion ongoing with use of these county funds. Mr. Hirokawa stated he had not meant that the county funds were not an option, he had meant that there was an additional burden with the use of these funds.

Chair Kaiwi stated that there was no good cultural easement that he had seen to date. Mr. Hirokawa stated he couldn't say for sure until something was proposed.

Member Abbott encouraged the use of CELCP funds, given that the site was adjacent to wetlands.

Chair Kaiwi asked if they had tried reaching out to Native Hawaiian organizations. Ms. Yent said she hadn't approached OHA because she wasn't sure that OHA would not seek ownership of the property. Part of the problem right now was that joint ownership wasn't working well. She had checked to see if there would be any reciprocal funding from the State's support for Kukaniloko, but hadn't received an answer.

Member Young stated that the work done by Ahahui Mālama I Ka Lōkahi and the Hawaiian Civic Club was wonderful; her reservations were regarding match.

Member Abbott stated that it was disappointing that the match had fallen through at this point, however, there is also rightness with the timing and this project is meeting all of the other criteria. He felt he would rank this project at the highest ranking, especially because of the high community use and involvement, the need for resolution of land use conflicts, and the timing.

Member Berg asked if part of the problem was a concern about the appraised value. Ms. Yent said there had been two factors: a belief that the appraisal was too high and a reluctance to donate to a project when they'd donated the land to begin with.

Member Berg said that the feasibility of the project within a 2-year time frame, cost of the acquisition, proportion of match, urgency of need to acquire must be considered. One of his concerns is that the match is not there. The parking lot and the drain issue would also require funds – where is this money going to come from? This wasn't in the application.

Ms. Yent stated that they could not obligate State funds until the State owns the property. Member Berg stated that poor financial status of DLNR State Parks – about half a million in road repair, etc., -- it came to almost a sizable amount of the money going toward the purchase. Without having money for management lined up, it's hard for the Commission to know how to assess this project.

Ms. Schmidt stated that, as a DLNR employee, it seemed to her that recent legislative sessions had resulted in funding for “shovel-ready” projects using CIP funds. She asked Ms. Yent to correct if this info was wrong. Ms. Yent stated that State Parks had done really well in the last biennium with CIP. Parks also received \$900,000 a year from the Hawaii Tourism Authority (HTA) for use in the high visitation parks. Ms. Yent stated that she could not guarantee funding. Member Berg stated that it helped to know what the possibilities are. Member Canfield added that they had already successfully partnered with HTA for the brochure.

Member Buchanan concurred with Member Abbotts earlier comments. The State has to own this land now to manage and enforce. DOCARE is the entity with the ability to do this kind of enforcement. We can wait and let the issues become more contentious and let some of the cultural values be lost... or we can address the urgency here. The project meets criteria and the State will make management a priority.

Chair Kaiwi thanked members for their comments. He indicated where the ranking forms could be found. The Commission members filled in the ranking forms and handed them to Ms. Schmidt for recording and averaging the scores.

Ms. Schmidt recorded scores on an enlarged visual as follows:

<p><b>Hamakua Springs Purchased CE</b></p> <p>Scores: 2 2 1 2 1 1 1</p> <p>Total: 10</p> <p>Average: 1.42857</p>	<p><b>Whitmore Agricultural Lands</b></p> <p>Scores: 4 1 3 3 4 2 2</p> <p>Total: 19</p> <p>Average: 2.71429</p>
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<p><b>Vipassana Hawaii Purchased CE</b></p> <p>Scores: 2 3 2 3 2 3 3</p> <p>Total: 18</p> <p>Average: 2.57143</p>	<p><b>Acquisition of Buffer for Ulupo Heiau</b></p> <p>Scores: 1 4 2 2 1 1 2</p> <p>Total: 13</p> <p>Average: 1.85714</p>
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The scores resulted in the following rankings:

Rank	Project title	Agency/org:	District - Island	CE / fee	held by	Size (acres)	LL Request
1	Hamakua Springs Purchased CE	Hawaiian Islands Land Trust	South Hilo, Island of Hawaii	CE	HILT	264.942	\$198,707
2	Acquisition of Buffer for Ulupo Heiau	State of Hawaii, DLNR, Division of State Parks	Ko'olaupoko, Island of O'ahu	fee	SP	3.44	\$1,000,000
3	Vipassana Hawaii Purchased CE	Hawaiian Islands Land Trust	North Kohala, Island of Hawaii	CE	HILT	254.517	\$1,000,000
4	Whitmore Agricultural Lands	The Trust for Public Land & State of Hawai'i Agribusiness	Waialua District/Moku, Central O'ahu	fee	ADC	456	\$1,146,000

		Development Corporation					
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Ms. Schmidt read the rankings to the Commission per Chair Kaiwi’s request. She added that the estimated funding available is \$2,800,000. With this estimate, funding the projects as listed would result in awards of the requested amounts for the first three projects listed, and an award of \$601,293 to the fourth project listed. In the past, the Commission had worded its recommendation to fund projects in the order ranked, to the extent that funds are available, in order to allow the maximum amount of funding to be put towards the projects.

Member Berg moved that the Commission make a recommendation the Board of Land and Natural Resources that the projects be funded as ranked, depending upon the availability of funds. Member Young seconded, all were in favor.

Chair Kaiwi stated that it was worth noting that the \$2.8 million was an estimate. Ms. Schmidt stated that the amount would not have to be finalized until the submittal to the Board was drafted, usually in February or March. When that date drew closer they would be able to look at conveyance tax revenues and reassess. She would keep them informed. Member Berg asked whether a shortage would result in the first three projects being funded, with extra funds going to the fourth project. Chair Kaiwi confirmed. Member Young stated that this approach was good because it gave what they had to allow project to leverage other funds.

Member Berg asked staff for a review of the remaining approval process. Ms. Schmidt stated that, under statute, the next step in the process was to consult with the Senate President and House Speaker. Member Berg asked when this would happen. Ms. Schmidt stated that staff usually drafted the request letter to the legislators and managed to send it from the Chair’s office within a week of the Commission meeting. The Department then waited to hear back regarding whether the legislators would prefer a meeting or written consult, usually this happened by the end of January. Member Berg asked if the current reshuffling of leadership in the House would present an issue. Ms. Schmidt stated that she was not sure; however, her understanding was that the reigning Speaker remained as such until a vote occurred during session.

Ms. Schmidt stated that after the consultation process, the recommendations of the Commission and the results of the consultation would go the Board of land and natural resources for decision-making at a public meeting, usually in February or March. At that time, applicants and supporters can submit further testimony to the Board. She would send an email to applicants with this information. Following this step, final awards were subject to the approval of the Governor.

Chair Kaiwi asked for further questions or comments. Mr. Vega asked at what junctures a change to the recommendation might occur. Ms. Schmidt stated that any of the steps were meaningful and had potential to rearrange the recommendations. In previous years, for the

majority of instances, the Commission's recommendations have gone unchanged, however, in one year there was a legislative consultation that affected the Board's approval and in another year there was a case of the Governor not approving some projects on the list. Member Berg stated that overall, the Commission's recommendations had been approved, and the timing would rely on the other participants.

Mr. Vega asked if further information to BLNR on the management planning would be helpful. Member Berg agreed and stated that they had the opportunity to strengthen proposals. Member Buchanan advised them to attend the meeting and wait for questions rather than inserting information at the meeting. Member Richards reiterated that the Commission's role was advisory, the process was not over until it was over.

#### ITEM 8. Adjournment.

Chair Kaiwi moved to close the meeting. Ms. Schmidt stated that she had one more announcement: Rebecca Alakai had been chosen by the Natural Area Reserves System Commission (NARSC) to serve as its liaison on the Legacy Land Conservation Commission, pursuant to a law that had passed last session. Ms. Alakai was now a member of the Commission. She had not been able to attend these meetings due to a previously-scheduled trip; however, she would plan to attend the next meeting in February or March.

Chair Kaiwi asked if there had been further discussion of a cultural seat on the NARSC. Mr. Kennedy, Program Manager for the NARS, stated that First Deputy Esther Kia'aina had supporting forwarding a bill to the Governor as part of his package. He thought that the likelihood of advancement was good.

Member Richards motioned to adjourn, Member Young seconded, all were in favor.