

## **Minutes of the June 2, 2008, Legacy Land Conservation Commission Meeting**

**DATE:** Monday, June 2, 2008

**TIME:** 9:00 a.m. to 3:00 p.m.

**PLACE:** Room 322b, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai`i

### **COMMISSION MEMBERS PRESENT:**

Dr. Dale B. Bonar, Chair

Dr. Carl J. Berg

Ms. Lori Buchanan

Dr. Joan E. Canfield

Dr. Charles (“Chip”) Fletcher

Mr. Kaiwi Nui

Dr. Robert J. Shallenberger

Ms. Karen G.S. Young

### **STAFF:**

Julie China, Deputy AG

Paul Conry, DLNR, DOFAW

Ian Hirokawa, DLNR, Land Division

Randall Kennedy, DLNR, DOFAW

Molly Schmidt, DLNR, DOFAW

Melissa Sprecher, DLNR, DOFAW

Laura H. Thielen, Chairperson, DLNR

### **PUBLIC:**

Denise Antolini, City & County of Honolulu Clean Water & Natural Lands Commission

Glenn Bauer, City & County of Honolulu Clean Water & Natural Lands Commission

Lea Hong, Trust for Public Land

Cynthia Rezentes, Oahu Land Trust

### **MINTUES:**

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

The members of the Commission and staff introduced themselves.

Chair Bonar moved Item 5 to 1:00 p.m. and Item 8 to just before 1:00 p.m.

ITEM 2. Approval of minutes from February 6, 2008, Legacy Land Conservation Commission meeting.

Member Young added revision to page 5. Member Shallenberger requested a grammatical change to page 2. Chair Bonar requested a change in the wording regarding prioritization process on page 4. Member Berg made a motion to accept the minutes as amended, Member Young seconded the motion, all were in favor.

ITEM 3. Discussion of Fiscal Year 2008 approval process and May 9, 2008, Board of Land and Natural Resources meeting.

Ms. Schmidt briefed the Commission on the status of FY08 awards, stating that the awards had been approved by the Governor.

Ms. Schmidt also stated that the May 9, 2008, Board approval of the awards had gone well. A few members of the public had expressed concerns over whether the Ke Aupuni Lokahi applicants had the authority to submit an application, and that the DOFAW response had been to amend the submittal to add an extra condition for the receipt of award, which would require award recipients to submit evidence of the authority of their representative at the time of the grant agreement.

Member Young asked if the deed restrictions had been accepted by the Board, Ms. Schmidt replied that they had.

Chair Bonar stated that a number of people had appeared to testify on the KAL project. He stated that there had been some concerns over the long-term management of the project. Chair Bonar asked Ms. Schmidt if any further concerns had been stated over the projects and their ability to close within two years, Ms. Schmidt replied that there had not. Chair Bonar stated that the Maui and Molokai projects had received approval for the additional funds requested from Maui County.

Chair Bonar stated that one of the concerns of the legislators had been assurance of the long-term protection of the lands acquired with State funds. He stated that fee ownership, conservation easements, and deed restrictions had been discussed as possible solutions. Chair Bonar asked Ms. Schmidt whether any further discussion had been held with the legislators regarding protection of lands. Ms. Schmidt replied that there had not, and that the DOFAW approach was to provide stronger deed restrictions for the current year, and to consult with the Senate President and Speaker of the House in future years on whether further protection is required.

Member Young asked whether Ms. Schmidt or Mr. Hirokawa had any feedback on how deed restrictions affect the sale process. Mr. Hirokawa stated that putting the deed restriction would not affect the proposed transaction, but would affect any future sales.

Member Kaiwi asked whether any conservation easements had been approved by or consulted on with the Native Hawaiian community. Ms. Schmidt replied that no easement document had been drafted; if a conservation easement is demanded by the legislators, then it will be drafted at that point, and subject to a review process.

Chair Bonar stated that the review of an easement document should be a Commission responsibility.

Member Shallenberger asked whether the Commission would have a role assessing restrictions or easements are worded properly. Chair Bonar stated that his view was that would be the responsibility of DOFAW and Land Division (LD), and that the

Commission would be advisory, and could make recommendations. Ms. China stated that the Commission could make recommendations, but that DOFAW and LD would produce a document for review by the Attorney General, and subject to review by other involved agencies.

Chair Bonar asked whether the Commission would want to see a draft if such a process occurred. Member Shallenberger stated that some of the wording had not been satisfactory to him. The reference to resources under section one, specified as those relating to “purposes for which an awardee was awarded a grant,” may not be satisfactory. He asked whether, if resource values for each property were being identified for permanent protection, the Commission ought to have a role in properly selecting and wording the resource values to be protected.

Ms. Schmidt stated that the project application is included as an attachment to the grant agreement, and that no additional wording was added to specify which resources are protected. Ms. Schmidt stated that any additional wording would have to be in an easement to have legal effect. She added that deed restrictions could refer back to the grant agreement.

Ms. China stated that [in the deed restrictions] the program currently refers back to the grant agreement with the project application attached. Awardees are held to whatever they stated in the application.

Member Berg stated that such a reference was worthless, and that the Commission should be involved in forming the language.

Mr. Hirokawa stated that perhaps applicants should be held to what they state in the application.

Member Shallenberger stated that he would like to ensure that the language is stated appropriately. Chair Bonar stated that a memorandum of understanding might be useful in specifying the Commission’s intent for the protection of resources. Chair Bonar added that more specificity sometimes comes with more loopholes.

Member Young stated that the resources listed in the statute did not seem that complicated. Chair Bonar stated that there could be a large range of specifics for each resource.

Member Shallenberger suggests that the applicants be allowed to submit a revised form.

Member Fletcher stated that the application already covered what specific resources are covered, and asked whether a second description would conflict.

Chair Bonar stated that the point would be to provide more detail, as in an easement.

Member Canfield asked whether a deed restriction could be to the same level of detail. Chair Bonar stated that it could be in specific instances.

Chair Bonar asked whether a memorandum of understanding (MOU) or similar document added to the agreement would be helpful in protecting the resources. Ms. China stated that it may not provide additional protections; the grant agreement incorporates the entire application. A conservation easement would go into a lot more detail, and could include specifics of protection. She stated that the grant agreement would be the tool for holding applicants to protection.

Member Shallenberger asked whether conservation easements could require active management or if they only can preserve status quo. Ms. China stated that the contract would incorporate any promised management actions stated in the application. Member Shallenberger asked whether it could be applied to the next owner down the line.

Chair Bonar stated that the inclusion of more detail in the application may be helpful.

Member Buchanan asked whether applicants were required to file an annual report. Chair Bonar stated that a deed restriction did not include yearly monitoring like a conservation easement. Member Buchanan stated that the issue was then enforcement, and that she was not certain that a MOU would be the right tool. She stated that the application process would be the place to address these issues.

Member Fletcher asked whether the application is supposed to inform the Commission with regard to conservation issues. Not with regard to future landowner restrictions. It is not designed to require the applicant to restrict land use.

Chair Bonar stated he did not know specific terms of the grant agreement and asked Ms. Schmidt whether the grant agreement specified future performances on the properties. Ms. Schmidt replied that, before SB3102 passed, the only provisions relating to future performance in the statute were the ones that required the seller to see the Board's permission to sell or dispose of the property and return a proportionate amount of funds to the Land Conservation Fund (LCF) After the current consultation process, where the Senate President and Speaker of House had requested stronger protection, SB3102 was drafted to provide it. Ms. Schmidt asked Chair Bonar to repeat his question. Chair Bonar stated that the application states the current state of property but does not ask for future performance. Member Shallenberger stated that the management sections do inquire about future performance.

Chair Bonar asked whether the request in the application for management planning would bind applicants.

Ms. China stated that her opinion was that it is required to protect the values stated in the application.

Chair Bonar stated that it is a slippery slope and it is usually very difficult to assign landowners the responsibility of management... deed restrictions open up a murky situation to deal with in the future, but that he understands that DLNR does not have the resources to monitor conservation easements in the future.

He stated that the highest level of assurance for the protection of the land would be familiarity with it, getting on it year after year and taking note of any changes.

Member Kaiwi asked what the “appropriate state agencies” language meant and whether cultural resources could be protected through easements. He stated that the heiau at Waimea had taken very active management to restore. He questioned whether the State was the entity that ought to have this role. He stated that perhaps the State should share title.

Ms. Schmidt stated that she was not sure how to comply with the request for more State ownership, because in her opinion, the statute anticipated a different type of program. She said that one way to ensure more permanent protection might be to favor funding conservation easements.

Chair Bonar stated that the challenge would be to make sure the nonprofit entities would hold to management when the State has little oversight. Member Shallenberger asked about the effect of the easement on the land, value-wise. Some owners (buyers) might not be able to afford the reduction in value of the land. Chair Bonar responded that the value of the land should not be an issue for the nonprofits. Sometimes it is more the liability than an asset to hold a conservation easement.

Ms. Hong stated that all acquisition grant programs face this issue and that none of them acquire easements because of the burden of the process and issues of what the government would be taking away in terms of value. Ms. Hong stated that applicants may not understand that by virtue of accepting the grant, their lands would be reduced in value up to one-third. The more money the program saves on bureaucracy then on saving land...many of these programs require deed restrictions.

Ms. China stated that the language going into the next round of Legacy Land awards is very similar to NOAA and other grant programs.

Mr. Hirokawa stated that Land Division treats conservation easements as State acquisitions, would have to be properly surveyed and other costs would be involved.

Chair Bonar stated that there is a puka in ensuring that land will be protected and a limited ability to enforce, and is there a good way of enhancing enforcement or providing more clarity to all parties involved. He stated that the best thing might be to ask for more information on the grant application, which would become part of the grant agreement with award recipients. This would be discussed under Item 6.

Member Shallenberger stated that there should be a commitment on the part of the buyer to manage. Chair Bonar asked Ms. China whether future owners could be held to active management. Ms. China stated that an affirmation in the application form could make a stronger case. Chair Bonar stated that this would be addressed under item 6.

ITEM 4. Discussion and possible action regarding rulemaking by the Commission, including, but not limited to, planning an approach to the process, delegating tasks, and the possible formation of task forces or subcommittees.

Chair Bonar asked Ms. Schmidt whether she had a presentation relating to the rulemaking process. Ms. Schmidt reviewed the Commission's statutory authority for rulemaking, and read the definition of "rule." She summarized the statute as stating that Commission "shall" adopt rules relating to criteria and "may" adopt rules relating to procedures involving the public. She stated that the Commission could decide whether it wanted to focus on criteria or additionally get into the area of creating procedures for involving the public.

Ms. Schmidt stated that she could draft rules and propose them to the Commission, but did not want to miss the step of consulting on what the goals and scope of rulemaking would be.

Chair Bonar stated that the Commission could deal with procedural stuff later. He asked whether the Commission really had to create a rule to enforce testimony time limits. Ms. China replied that it does.

Chair Bonar suggested using the current criteria. He asked Ms. Schmidt whether she had a list of some of those things. Ms. Schmidt stated that most of the criteria discussion had been surrounding the revision of the evaluation form; however there were a few additional policy items that had come up that she had a list of.

He asked Ms. China whether the Commission could propose the application itself as a rule. Ms. China said that it would make sense to do this now; however, amending the application in the future would be difficult. The point was to allow people to see what the rule is when looking at the administrative rules.

Member Shallenberger asked whether it was possible to refer to the form in the rule, and then make revisions to the form. Ms. China stated that further form revisions would then have to go through the lengthy rulemaking process. Member Young asked whether the rule could reference "the most current" application. Ms. China stated that members of the public would then have to read the rule and then track down the application. Chair Bonar stated agreement. Ms. China stated that Ms. Schmidt could work off of what was in the application.

Chair Bonar stated that Members Shallenberger and Canfield had already put a lot of brainpower into producing the application and evaluation forms.

Chair Bonar stated that it would be handy to see a list of the criteria. Ms. Schmidt stated that there was the evaluation form plus a few items discussed at past meetings. She stated that task forces or subcommittees could be formed to resolve any unresolved policy issues.

Member Shallenberger asked whether the Commission could revise things on the spot in the future. Ms. China replied that it could not if the policy was in rule form.

Member Shallenberger asked about not referring to the evaluation form but describing the process in the rules, to allow flexibility. Ms. China stated that that this would be more an issue of the Commission's process and duties than the criteria it applies.

Member Shallenberger asked whether the Commission could reference the nine criteria in the statute, but not get as specific as the actual form that the Commission uses to gather information.

Chair Bonar stated that the conundrum was that the Commission is evaluating the best possible project and has adopted that as a criterion, however, if it changes from year to year, and applicants are not aware, they will be upset.

Ms. Hong stated that rules would act as the Constitution of the Commission, and that they should not be so specific as to hamstring the Commission in getting its job done, but that they should lay out principles so that public can see. Don't want to incorporate the application, but do want to be transparent about what criteria will be. Most rules for similar programs list the criteria and leave flexibility to get more specific. Or can state the criteria as listed in the statute.

Chair Bonar asked whether the application had to be passed through as a rule. Ms. China said no.

Ms. Hong said that other programs change the specifics almost yearly, but the rules stay the same.

Member Canfield stated that the Commission could start by taking the language of the statute, and maybe add on a little, but keep flexibility.

Ms. Rezentes stated that, because of the statewide nature of the program, any change made to rules would have to go through statewide public notice and comment process. Rules should be general guiding factors, but nothing that would change from year to year.

Chair Bonar stated that the balance is between what is legally acceptable and allows flexibility.

Member Kaiwi stated that, with regard to HRS §173A-2.5, and agreement on the process, he did not yet concur on the process. He stated that, if the Commission is talking about rules, he wanted to know how far the State will go to enforce these rules in the cultural

preservation of sites, and that perhaps a Hawaiian cannot advance rules until the answer to this is known.

Chair Bonar stated that the Commission could not do anything counter to State laws or rules. Member Kaiwi stated that as far as we are doing criteria, the one of nine that is culture is handicapped and watered down.

Member Fletcher stated that this may be another reason for the Commission to stick as close to the statutory language, and maintain as much non-specificity and flexibility as possible in forming rules.

Ms. Schmidt stated that the question is how much of a rule does there need to be under the statutory mandate to form rules. Ms. China stated that rules, in many cases, simply reflect solely the wording of the statute. This approach would leave the most flexibility.

Chair Bonar stated that he was in favor of being as unspecific as is permissible. Member Fletcher stated that Ms. Schmidt could draft the rules.

Chair Bonar requested that staff present the Commission with proposed draft rules based on the Commission's discussion.

Member Kaiwi asked whether, as part of a religious or spiritual cultural practice, access to a certain area could be prohibited with a rule.

Ms. Antolini replied that the Commission may be able to impose cultural protections on awardees as a condition of award. It could be project specific or included in the criteria. The Constitutional provisions, although ambiguous, are supreme, so there is still an overlying Constitutional right.

Ms. Hong stated that some grant programs require public access; however, there may be instances where this is not desirable.

Chair Bonar added that he had seen the need for this in wetlands during bird breeding season, and it may be appropriate to handle this on a case-by-case basis.

Chair Bonar stated that staff could bring a proposal to the Commission, and the Commission could move on from this item.

Ms. Schmidt asked for clarification. Chair Bonar stated that several policy matters had been decided (e.g. fair market value, no clouded title) and these things could fall under general rules. Ms. Schmidt stated that they don't need to be rules for these additional policy considerations, and that she would not draft something that the Commission did not want, and would stick to the criteria unless otherwise directed. Chair Bonar stated that a list of policy considerations would be useful.

The Commission took a 15-minute break and reconvened. Chair Bonar brought Item 6 up for discussion.

ITEM 6. Discussion and possible action regarding the Commission's decision-making procedures for Fiscal Year 2009, including, but not limited to the following subjects: application and evaluation materials, appraisal review, site visits, public outreach.

Chair Bonar asked Ms. Schmidt if she had any points to present on this item. Ms. Schmidt stated that she wanted to see if the Commission had revisions to the application and evaluation forms. The plan was to go to the Board with the Fiscal Year (FY) '09 documents and approval.

Chair Bonar asked whether this needed to be done. Ms. Schmidt responded that she had gone to the Board for approval in FY07, because the program was new, and in FY08, because the process had changed. If the process was to remain the same for the next few years, she could seek approval of the process and not have to go back for approval yearly.

Chair Bonar asked if Ms. Schmidt would seek approval for the long term. Ms. China reiterated that Board approval was needed if there was a change for the program, and that Ms. Schmidt could seek approval for long term.

Member Berg asked if the program was at this point. Ms. China stated that the Commission could address it under this item.

Ms. Schmidt asked whether the Commission was interested in reconsidering how it does site visits. She stated that it had come up in the discussion of the Ke 'Aupuni Lokahi (KAL) project; the site visits had helped demonstrate that the Commission had diligently reviewed projects.

Chair Bonar stated that timing should be the first topic discussed. Ms. Schmidt stated that Board approval could be sought at the end of July, request proposals on August 1, and have the deadline set September 5. Chair Bonar asked how much time was given last year, Ms. Schmidt replied six weeks. Chair Bonar and other members stated that applicants should be given six weeks again.

Member Fletcher asked if the opportunity for site visits would be cut, Chair Bonar responded that the process was starting earlier this year, which would provide more time.

Member Berg suggested September 15 as a deadline. Ms. Schmidt recorded the change and continued to announce dates, stating that applications would be checked and turned over to the Commission by September 30.

Ms. Schmidt asked how the Commission wanted to conduct the schedule. Chair Bonar asked if last year's process had worked effectively. Ms. Schmidt stated that she had not felt pushed but that the legislative consultation process had prolonged the process too close to the fiscal year deadlines.

Member Shallenberger stated that he had felt he hadn't gotten the benefit of information on other members' site visits and would like to dedicate more time.

Chair Bonar stated that the Commission could plan on two meetings and would have extra time this year.

Member Berg asked if two months (October, November) would be enough time for site visits. Several members approved.

Ms. Schmidt stated that last year's recommendations had taken until February 6.

Member Canfield suggested that the decision-making meetings be back-to-back. Chair Bonar asked whether the Commission could hold these meetings in December.

Member Young asked Ms. Schmidt what the timing needed to be for the BLNR meeting. Ms. Schmidt stated that the Senate President and Speaker of the House consultation could take a month or so to schedule an appointment, and then approval could be sought at the next BLNR meeting.

Ms. Schmidt asked if the Commission would pick dates at this meeting. The Commission discussed different dates and settled on December 18 and 19, 2008, for recommendation meetings to be held by the Commission.

Chair Bonar introduced the topic of site visits, stating that he had felt last year's process was cost-effective and fair. He asked if there were strong reasons for all Commission members to go to all sites. Member Berg stated that group visits would be public meetings and public access would have to be provided. Ms. Schmidt added that there might be liability concerns for private landowners allowing public access. Member Canfield stated that, given the unknown number of applications, two members per site might be a workable method. Member Buchanan stated that logistics could be worked through, and asked if money would be a concern.

Member Berg stated that he would not be able to do 13 or 14 site visits within two months. Member Shallenberger stated that he liked the method of sticking to the respective islands that the Commission members lived on, and stated that there should be at least conference call discussion of how visits would be conducted after the applications are received.

Ms. Schmidt suggested a meeting in October.

Member Buchanan stated that it would be good to anticipate any controversy surrounding projects; members could have the added benefits of colleagues on how to deal with it.

Member Young asked if they were constrained financially. Ms. Schmidt stated that she did not anticipate any financial constraints unless some sites required special access to remote areas.

Member Fletcher asked if groups of people could visit sites separately. Chair Bonar stated that those visits would need to be “Sunshined.”

Member Shallenberger suggested picking an October date; the Commission chose October 14, 2008, as the meeting for coordination of site visits and discussion the need for more information on any of the projects.

Chair Bonar moved the conversation on to the topic of application revisions. Ms. Schmidt asked whether the Commission would object to putting applications online. Member Berg stated that the Commission had already discussed this and chose not to. Chair Bonar stated that this grant review is already more public than any other he had previously had experience with.

Member Young asked why Ms. Schmidt had asked the question. Ms. Schmidt stated that a member of the public had inquired about the possibility. Member Fletcher asked why not. Ms. Schmidt stated that, although the Office of Information Practices (OIP) had not stated the information was confidential, some applicants may prefer the information not be posted. Chair Bonar asked whether applications were posted for any other programs. Ms. Schmidt stated that she was not aware of any.

Chair Bonar asked Ms. China which information was confidential. Ms. Schmidt stated that the OIP had said that none of the information needed to be kept confidential excepting person contact information, but that the program was not required to post applications on the web. Ms. China stated that the public would make a request under the State’s Uniform Information Practices Act (UIPA) and the State agency had a certain number of days to respond.

Ms. Schmidt asked whether it would be a good idea to list the projects on the website so that members of the public would know to request information if a specific area of interest was to be affected. The Commission approved.

Member Berg asked Ms. Schmidt if having the entire application process be online was a possibility. Ms. Schmidt stated that she may have to work with other divisions and agencies to see what the possibilities are, and would report back at the next meeting.

Chair Bonar asked what changes should be made to the application, starting to page 1. Member Shallenberger stated that he had suggested a change at past meetings and asked if Ms. Schmidt had taken a record. Ms. Schmidt said that she had not recorded the change mentioned by Member Shallenberger.

Chair Bonar asked where the new fair market value policy would be inserted in the documents. Ms. Schmidt replied that it would be in the Grant Application Instructions.

Chair Bonar asked where the Commission's policy on clear title would be, and suggested putting it in the instructions. Ms. Schmidt asked if Chair Bonar meant that the requirement should be absolutely clear title. Mr. Hirokawa suggested requiring that the seller have legal authority to sell the land to the applicant, since some of the legal issues that may arise might not be evident in the title report. Ms. Schmidt asked whether the requirement should be in the instructions or on the application. Chair Bonar stated that he preferred both, and that he wanted an explanation from applicants regarding any clouds to title.

Chair Bonar asked Ms. Schmidt to add the appropriate language to the application. Ms. Hong suggested that the instructions state that any clouds to title must be cleared by the time of closing; otherwise, it may be a burden for applicants.

Chair Bonar stated that he wanted an explanation for any cloud on title. Ms. Hong stated that many applicants may not know the answer to the question at the time of application.

Member Young asked Ms. Hong what her take on the fair market value issue was. Ms. Hong stated that most programs state that an appraisal or supplement thereto must be completed by closing.

Chair Bonar asked how the members felt about putting a clear title request in the instructions and application. Member Shallenberger stated that there may be a date by which the Commission would want to have a preliminary title report. Chair Bonar stated that that could be true of the appraisal, too. Because the Commission is ranking and setting up alternates, if the Commission were to cull these applicants prior to Board approval, applicants lower on the list would have time to prepare.

Ms. Schmidt stated that, since title reports were subject to DLNR review, it may not be helpful to have them prior to the time when DLNR is willing and able to review them.

Chair Bonar stated that a preliminary title report (PTR) could be done to spot red herrings. Member Shallenberger agreed, stating that alternates should have time to prepare. Chair Bonar reviewed the timeline, and stated that the applicants would have until February before the Board decided. Chair Bonar asked if DLNR LD would review the appraisals before Board approval. Ms. Schmidt stated that she had thought LD had decided not to do this. Mr. Hirokawa stated that LD was not satisfied with giving quasi-reviews without going through the entire process required for review.

Chair Bonar stated that having a project fail after Board approval due to an easily-spotted issue with title or appraised value would be a real shame, when the Commission could re-devote the funds if review were done prior to award.

Mr. Hirokawa stated that the Chairperson signs the appraisal approval, so the issue may be best taken up from that point, he was not sure it would be good to issue any sort of approval without the entire process going through.

Member Kaiwi stated that the Commission stood to look inefficient if problems arise after the Board approval.

Ms. Hong agreed that it did not make sense for the State to wait until after Board approval for appraisal review.

Chair Bonar stated that the conversation needed to be held at higher levels.

Member Kaiwi asked whether clear title should be a primary consideration, given that applicants can't buy what the sellers don't own.

Member Young asked if there was a list of State-approved appraisers that may be useful. Mr. Hirokawa stated that, for the purposes of this program, LD would review all appraisals on an equal basis.

Chair Bonar stated that Yellowbook appraisals are required for federal reviews. He asked if the State could provide a list of certified appraisers.

Mr. Hirokawa asked whether the Commission wanted the appraisals and title reports reviewed before projects went to the Board. He asked whether, if a bad appraisal occurred, if all awardees would be held back.

Chair Bonar stated that the Commission could have a prioritized list, conditioned on the fact that reports are approved. He asked Ms. Schmidt if projects had to go to the Board together or could go separately. Ms. Schmidt stated that they could, but it would cause some difficulties with the process.

Chair Bonar asked whether the appraisal had to be done before or after the grant agreement was signed. Ms. Schmidt stated that the appraisal had to be done before the issuance of a check, but could be done after the grant agreement was signed.

Member Young asked if any projects had fallen through. Ms. Schmidt stated that none had fallen through due to appraisal or title review.

Ms. Schmidt stated that in the future, applicants would most likely be signing the grant agreement before conducting the appraisal.

Ms. Hong stated that some of the organizations applying for the money would not be equipped to pay for title and appraisal upfront, and could be iced out by bigger organizations that have the funds.

Member Fletcher stated that the Commission could leave the matter up to staff as a technical issue.

Chair Bonar stated that he would caution that approving projects that fall through would make the entire program look bad. He stated that he would discuss the appraisal review issue with the Chairperson.

Member Shallenberger asked if the Commission would still ask the question in the application. Chair Bonar said “yes.”

Chair Bonar asked Ms. Antolini how long she would be able to attend the meeting. He moved to Item 7a.

ITEM 7. Briefing by Program staff on:

- a. City and County of Honolulu Clean Water and Natural Lands Commission
- b. Fiscal Year 2007 project status
- c. Fiscal Year 2008 approval process
- d. Potential land acquisition workshops

Ms. Antolini provided information on the new City and County of Honolulu Clean Water and Natural Lands Commission (CWNLC) for the Commission members. She briefed the Commission on CWNLC’s authority and duties and listed the members of CWNLC and their respective backgrounds. She stated that CWNLC met every two weeks and had set up permitted interaction groups to handle some of the commission’s duties, and had been inviting other groups to present information at its meetings.

Glenn Bauer stated that he was a member of the Permitted Interaction Group that is looking at process, it would be meeting Thursday to discuss how to go about this; he is currently testing out ranking process on Honouliuli.

Member Berg stated that all of the islands are different and each has found major handicaps in the way they are set up. It would be pretty useful to learn from this. These programs should all be integrated and learning from each other.

Ms. Antolini stated that this would be CWNLC’s *pro bono* student’s first project.

Member Berg asked whether CWNLC had the authority to spend the money. Ms. Antolini stated that money had been set aside in the budget for them.

Member Berg asked who had the final authority for approval. Ms. Antolini stated that the City Council had this authority.

Member Young asked what the funds were for, specifically. Ms. Antolini stated the funds were for acquisition of real estate or any interest therein.

Chair Bonar suggested that CWNLC do everything it can to avoid politicization of the process. Ms. Antolini stated that she was interested in creating a fair and balanced process.

Chair Bonar asked Ms. Sprecher how long her presentation on CREP would run, and moved Item 8 to immediately after lunch. Chair Bonar asked Ms. Schmidt to finish up the items under Item 7. Ms. Schmidt stated that she had attended the Oahu Land Trust mixer and had some handouts for the Commission. She stated that the Fiscal Year 2007 Grant agreements were just wrapping up, and that the Carlsmith acquisition would close at the end of June. She stated that DOFAW staff had been discussing land acquisition workshops as a possibility, and asked the Commission members to provide feedback on this issue if interested.

Member Young asked if Ms. Schmidt would be involved. Ms. Schmidt stated that she would be involved with other people.

Ms. Sprecher stated that the Division had been discussing this as part of its landowner incentive workshop series, but had too much on the agenda to include this topic.

Ms. Schmidt stated that she had thought that land acquisition workshops may not be appropriate for landowners when most grant programs did not allow private landowners to be the applicants.

Ms. Sprecher stated that the division had contemplated the workshop for private landowners so they understand how much work goes into the acquisition process.

Member Young stated that it may be useful to smaller agricultural nonprofits.

Member Shallenberger stated that conservation easement seminars had been conducted on the Big Island.

Chair Bonar mentioned that one had been hosted at the law school last year, and that it had been a good thing for local attorneys to be involved. He suggested putting PowerPoint presentations on the web.

Ms. Schmidt asked whether the legal education might be useful for landowners, whereas grant program information would be more appropriate for nonprofits.

Chair Bonar stated that Legacy Land and other grant program education would be the most useful expenditure of staff time.

Member Young asked if it was appropriate for Commission members to educate people about the program. Ms. China stated that she could. Ms. Schmidt stated that she could as long as the assistance does not venture too far into assisting a particular applicant with the process.

Ms. Schmidt stated that her job duties included outreach, and that a group could invite her to do a presentation.

Chair Bonar asked if Item 7 was finished. Ms. Schmidt added that the Agribusiness Development Corporation (ADC) had decided to conduct its own acquisition without the assistance of Land Division. Mr. Hirokawa added that ADC had signed some agreements with NRCS that made them the more appropriate acquiring entity.

Chair Bonar called a 15-minute recess.

ITEM 8. Background and information on the Conservation Reserve Enhancement Program in Hawaii and possible partnership with the Legacy Land Conservation Program by Melissa Sprecher, Forester, Division of Forestry and Wildlife.

Ms. Sprecher briefed the Commission on the Conservation Reserve Program (CRP) and Conservation Reserve Enhancement Program (CREP) and then stated that the program may be able to cooperate with the Legacy Land Conservation Program by donating funds over the next two years. A percentage of funds provided by the State of Hawaii as a match for the federal CREP funds would be available to the LLCP to fund conservation/agricultural easements. The use of the funds would have to support the goals of CREP, which are broad and include reducing of stream sedimentation, increasing coral reef diversity, protecting habitat and eliminating invasive. The funds could be donated to any conservation/agricultural easement project that is ranked by the Commission and fits CREP criteria. Ms. Sprecher stated that, using these extra CREP funds for eligible projects can help Legacy Land funds stretch farther.

Member Canfield asked whether the funds would fade after a few years, Ms. Sprecher replied that they would.

Member Berg asked if the entity would have to be a nonprofit, and stated that he knew some Hanalei farmers that could use the funding, but they are private landowners.

Ms. Sprecher stated that a county or the State could also receive funds. In the case of private landowners, if the landowner was interested in the State holding the title, it might work.

Mr. Conry stated that one of the reasons DOFAW became interested in this is that the CREP programs are set up to make payments to landowners, and this is another way to get money to landowners and set aside easements. One of goals is to get riparian areas set aside in perpetuity, so management can continue. If the Legacy Land Conservation program is giving out easement funding... this additional funding can augment those purchases and free up other funds for funding additional projects.

Member Shallenberger asked whether DOFAW saw this working in concert with this new tax credit legislation. Mr. Conry replied that it could. He added that a permanent easement is a pretty big commitment on the part of landowners.

Member Shallenberger asked whether there would be an adjusted gross income cap limit on the CREP funds. Ms. Sprecher stated that enrolled members would be subject to this, as are other Farm Bill program recipients.

Ms. Schmidt asked whether CREP funds could be used as a match in acquisitions that used federal grant funds. Ms. Sprecher replied that the funds can be used in a project with federal funds, but cannot be counted as matching funds for the purposes of another federal grant program.

Mr. Conry stated that these funds would work well in concert with other funds.

Member Shallenberger asked what the timing was for getting out the funds. Ms. Sprecher stated that they are aiming for the end of summer, but that it may take longer... the federal program is currently reviewing the State agreement. DOFAW was envisioning donating the funds in March or April of next year, the next fiscal year.

Member Young asked if the application would need revising to include these funds.

Ms. Sprecher stated that it would be up to the Commission's discretion, but that she had not envisioned changing the process.

Chair Bonar asked whether these funds originated as federal funds given to the State.

Ms. Sprecher stated that the State provided these funds. Mr. Conry added that the money was coming from the Forest Stewardship special fund, through the conveyance tax, budgeted out at \$250,000 a year. If the program gets full enrollment, \$250,000 goes to annual rental payment, however, in the first few years, there will be a slow enrollment build-up, so these funds will likely be available for the Legacy Land program.

Chair Bonar asked whether the money would stay with the LLCP if not spent in the first few years. Ms. Sprecher replied that the LLCP had approximately 20 years to spend it.

Chair Bonar asked what Ms. Sprecher would like from the Commission. Mr. Conry asked for a measure of support. Member Young motioned to support the concept of adding the funds to Legacy for the purposes described. Member Shallenberger seconded the motion and all were in favor. The motion passed.

ITEM 5. Discussion and possible action regarding Senate Bill 3102 and its impact on the Program and Commission.

Chairperson Thielen mentioned that, regarding the last item, Legislature generally looked at whether a program could move funds expeditiously when deciding whether or not to appropriate more funding. The Commission should not, in general, bank on having current funds available in future years, even though these funds are located in a special fund.

Chair Bonar introduced Item 5 and stated that the Governor's office had asked for feedback from him on the signing of SB3102. He talked about the bill and its effects, stating that the Commission had some concerns about the provision that allows 5% of the previous year's revenues to be dedicated to maintenance or management. He stated that the Trust for Public Lands had also had concerns. He stated that, during session, language about management was removed from bill, but then was replaced at the last moment. His concerns are that this is a way for the money could get siphoned off, that it decreases Legacy's ability to leverage funds, and could affect the future of the program. He stated that he was interested in exploring a way for the Commission to have a say in the ways the monies are spent.

He stated that the Commission had been looking closely at whether the recipients of funds are equipped with the resources and planning to manage the lands. He asked for comments from the Commission members. He stated that there is already not enough money for management of lands, and there ought to be a huge push for this funding, but that should be an independent push, not taking from one form of protection (acquisition) to pay another (management).

Chairperson Thielen asked for a chance to comment before they made a decision, but would like to hear their points of view first.

Member Fletcher asked whether the program "must" spend the funds on maintenance and management, and whether the funds are limited to agencies, and what the mechanism would be for access to the funds.

Member Shallenberger stated that he supported the use of the funds, but would like to see the process tightened up. He stated that the provision made a clear statement that an organization or agency can't just buy lands without providing for maintenance and management. He wanted to see this articulated through the process, to be certain the money gets to the ground.

Member Young stated that she like the provision relating to the receipt of funds into the LCF. She stated that the amount for management was a small fraction, and that there are steps in place to make sure that the funds are spent according to priority, with land acquisition being the first priority.

Chair Bonar asked whether management funds could be siphoned off.

Member Berg stated that the worst case scenario he could envision is that the DLNR would take these funds immediately, to be spent on DLNR projects. The Commission is advisory, and would not be able to stop this. He stated that the \$250,000 is a meaningful amount for some land acquisition projects. On the other hand, if the Commission had discretion, it could specify that these monies would be spent on the right projects. He recommended that the Commission pass a resolution asking the provision to be stricken from the bill.

Chairperson Thielen stated that the Governor cannot strike particular items; she could either sign or veto the bill.

Member Canfield stated that she had the same concerns as Member Berg and Chair Bonar.

Member Kaiwi stated that the Commission might be making some assumptions. He stated that applicants in the past had seemed to have some concerns about how to fund management, and this could provide an answer. He urged the Commission to consider carefully before assuming, and to have some faith.

Member Fletcher stated that he appreciated the reminder that the Commission should not operate based on fear, however, setting aside 5% was not sufficiently addressing management. Throwing money at a project falls short of a comprehensive means of addressing management. Member Shallenberger agreed, but stated that this money could be used as seed money to implement proper planning and leverage matching management funds.

Chair Bonar stated that he saw some political danger in the situation; it may diminish future ability to generate more funds for the management side.

Member Young stated that management issues, seemed to her, to be a lack of manpower on the lands already held... she did not know if this was the proper way to address the problem.

Member Buchanan stated that the purpose of the Commission is to acquire land, not manage land... that is why the Commission holds it to the nonprofits to be accountable. She stated that it is not the Commission's responsibility, but it still has to make sure applicants that it funds for acquisition are using the money responsibly. If a nonprofit comes to the Commission for land, it must have a good plan for management. That is what is lacking from application.

Member Buchanan stated that, if nonprofit has sufficient community support, or other support and means to manage and do what it is acquiring land for, it would have the money. She stated that the money would be better spent toward acquisition.

Chair Bonar stated that the appropriate use of the funds may be to provide to applicants to do management planning. He asked how Member Buchanan felt about this.

Member Buchanan stated that, if she were to come in and ask for the money, she would have the plan in place.

Chairperson Thielen stated that the Commission had raised very good questions. She apologized on behalf of the DLNR for submitting this bill without putting it in front of the Commission. She stated that she had supported the submittal of the bill and had discussed the bill with Chair Bonar when it was in front of legislature. He had same

concerns and at that point. During session, the 5% disappeared and she did not know how the provision got put back in. She stated that although it was the Commission's main purpose to acquire lands, they were acquiring special lands, which can't be preserved without putting funds into management. While applicants should have a plan for management, to some degree every land trust plan is based on faith and hope that will be able to manage over time, but there is no guarantee. Language was put in to address concerns and to reassure that funds would not just be for solely for DLNR.

Chairperson Thielen read the language of the bill to the Commission and stated that the funds were not solely for DLNR. The language limited the use of funds to specific management purchase. Also, the language limits spending to 5% of the previous year's revenues, the program is not required to spend 5%. It is only for Legacy projects, it is very specific management purposes. We did not think that this money would cover 100% of management costs for anyone. Recipients may be able to leverage with other management funding the way acquisition funds are leveraged.

She stated that the Department and the Commission can create a way for the Commission to make recommendations and can put that method into administrative rule so that the Commission has some assurance... this was the understanding of how process was to be followed. She added that applicants would come to the Commission with proposals and recommendations would go through the land board. DLNR can't siphon off money at beginning of year; it is a Land Board decision.

Chairperson Thielen stated that the benefit is that the bill allows funds to go in and small part of money to go to management; the detriment is that it opens the door to taking a portion of the funds for management. She stated that Chair Bonar's concern over whether this will be an excuse for legislature not to fund management was valid, however, to not address management is setting up for a situation where no management is done on these lands. It is tough to find money to manage these lands and it is expensive.

Chairperson Thielen stated that the provision is a good thing to have in the bill and encouraged the Commission to work with the Department to set up an established process where the recommendations will run through the Commission and go to the Land Board for a policy vote or administrative rules. She stated that the Department will work with the Commission on this and create document and record for our successors.

Member Fletcher asked if Chairperson Thielen saw raising the program's cap as a possibility. Mr. Kennedy stated that the program's cap already bumped up against the revenue stream.

Chairperson Thielen stated that, if this was the case, then the cap would not be raised past the revenue stream, which would probably not increase on its own over the next few years due to the economy. She stated that the other programs funded by the conveyance tax would be the competition.

Chair Bonar asked whether a donation to the fund would require a cap raise. Mr. Conry stated that it was an annual possibility.

Member Young asked whether the Commission could choose not to spend the funds. Chairperson Thielen responded that the Commission had already elected not to spend funds every year on debt service, so the Commission could apply this precedent to the provision relating to management funds.

Chair Bonar stated that the Commission has criteria it uses for projects... if bill is adopted and the Commission moves ahead and looks at next year and the priorities are to look at acquisition... could the Commission set priorities, limitations, on how funds spent?

Chairperson Thielen stated that the Commission should not unduly restrict the funds until it sees a couple of years of applications.

Member Young stated that there would have to be a separate application form.

Member Berg stated that in the application, applicants could apply for acquisition and management.

Chairperson Thielen suggested focusing on criteria for ranking, but that management funds could be requested in addition to a current application or a past project that had been funded.

Mr. Conry stated that DOFAW had envisioned it would be another opportunity for the Commission to provide recommendations, and weigh in a given year whether acquisition outweighs management needs.

Chair Bonar stated that a mechanism that provides some future protection against misuses of the funds would provide some comfort.

Ms. China stated that under the statute, the board can give you the authority to make recommendations in addition to the ones you are already making.

Member Berg stated that proposals could be entertained when applicants come in for funding, but not as stand-alone proposals.

Chairperson Thielen stated that the Commission could recommend that as a preference, but that is not the way the bill is worded; it is worded to allow both past and present acquisitions.

Member Berg stated that it might be an option for DLNR to route an additional \$250,000 in from other sources to cover the 5%.

Chairperson Thielen stated that it may be a possibility, but that DLNR had only 1% of the State budget, so a better solution would be to get more creative about seeking funding sources for management and acquisition.

Member Young asked what tax credits may be possible.

Chair Bonar stated that there would be tax credits available under federal and State legislation, if passed.

Member Fletcher motioned that the Commission support the bill. Member Young seconded. Chair Bonar asked for discussion. Member Canfield stated for the record that she felt the funds for the Legacy Land program ought to be for acquisition. Seven were in favor, Member Berg opposed, and the motion passed.

Chairperson Thielen reiterated that the Department would work with the Commission to make sure that there would be a process to follow.

Chair Bonar called a five minute recess. He called the Commission back into session. The Commission agreed to move Item 9, "Presentation on Native Plant Biodiversity in Hawaii by Commission member Dr. Joan Canfield, Affiliate Graduate Faculty, Departments of Botany, University of Hawaii at Mānoa" to the next meeting, and moved to Item 6.

The Commission moved to page 2 of the application for revisions. Ms. Schmidt took record of changes that the Commission made to the application.

Member Shallenberger asked if the 5% management funds would be dealt with this year. Chair Bonar stated that the program had not advertised the funding yet. Ms. China stated that administration would initiate the process before it came to the Commission.

Member Fletcher asked whether permitted interaction groups could increase the number on site visits. Ms. China stated that, as long as the three-meeting process for task forces was followed, this could be done.

Ms. Schmidt stated that the Commission already had the meetings set up to allow this.

Ms. Rezendes stated that the Commission could not have discussion at the second meeting; questions were not allowed, only reporting on the visits.

Ms. Schmidt asked whether discussion could not occur at the meeting where reporting was done. Ms. Rezendes suggested contacting OIP for confirmation.

Chair Bonar asked if the evaluation form needed revisions. Member Berg stated that he had not used the form itself, but copied it to a spreadsheet. Chair Bonar stated that the format itself was not important; it was the fact that the Commission had voted to evaluate using those standards that was important.

Member Young asked whether the score sheets were public record. Ms. Schmidt replied that the sheets the Commission members used to rank the projects at the meeting had been handed in to her as public record documents. Copies of the evaluation form used to gather personal notes on the projects were not handed in unless they were used for discussion purposes at a meeting. Ms. China agreed.

ITEM 10. Set next meeting date(s).

The Commission decided to meet next on October 14, 2008.

ITEM 11. Announcements.

Chair Bonar asked for announcements. Ms. Schmidt stated that she was concerned that earmarked funds being donated to the LCF might sway other LCF funds toward the purposes of the earmarked funds. Chair Bonar stated that the issue could be discussed at a future meeting. Member Young stated that there had been a nice article in the May 25<sup>th</sup> Star Bulletin. Member Berg stated that there had been an article in the Hawaiian Airlines magazine about the Kona Historical Society's coffee farm.

ITEM 12. Adjournment.