

## **Minutes of the October 14, 2013, Legacy Land Conservation Commission Meeting**

Date: October 14, 2013

Time: 10:00 a.m. to 2:00 p.m.

Place: Room 132, Kalanimoku Bldg., 1151 Punchbowl St., Honolulu, Hawaii

### **COMMISSION MEMBERS PRESENT:**

Ms. Lori Buchanan

Dr. Joan E. Canfield

Dr. John Sinton

Mr. Kaiwi Nui

Dr. Robert Shallenberger

### **COMMISSION MEMBERS ABSENT:**

Mr. Thorne Abbott

Mr. Herbert (“Monty”) Richards

### **STAFF:**

Carli Gardner, DLNR, DOFAW

Jordan Jokiel, DLNR, DOFAW

Molly Schmidt, DLNR, DOFAW

Ian Hirokawa, DLNR, Land Division

### **PUBLIC:**

Dan Purcell

### **MINUTES:**

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

Legacy Land Conservation Commission (“Commission”) members, staff, and members of the public introduce themselves.

ITEM 2. Approval of the Legacy Land Conservation Commission meeting minutes from May 21, 2013.

Member Canfield moved to approve the May 21, 2013, meeting minutes. Member Sinton seconded the motion. All were in favor.

ITEM 3. Discussion of the Fiscal Year 2014 Legacy Land Conservation Program timeline, process, site visits, and meetings; possible formation of task forces for site visits to proposed project locations.

Ms. Schmidt stated that the actual content discussion was not put on the agenda; however, she briefly stated that there were seven project applications, travel and site visits would be on Oahu and Hawaii Island.

Chair Kaiwi asked Ms. Schmidt if the Public Land Development Corporation (PLDC) was removed as a consulting agency from LLCC, Ms. Schmidt confirmed.

Ms. Schmidt gave a general timeline of the approval process for LLCC recommendations. Ms. Schmidt stated that the timeframe for Commission's reviews needed to be established. An explanation was given regarding the importance of the required reviews. The best dates for the reviews appeared to be Monday December 2, 2013 and Tuesday December 3, 2013. Members agreed on these dates.

At the last meeting, Commission members requested that 2014 applicants provide their availability for site visits. Ms. Schmidt handed out an updated applicant availability form. Members discussed the dates and assigned a task force to each site visit. It was decided that Members Buchanan, Sinton, Richards, and Shallenberger would attend the Manu Lani Lava Tube and Kuamoo visits on Hawaii Island on the date of Monday, November 25, 2013; Member Abbott was assigned as an alternate. Members Abbott, Buchanan, Canfield, and Sinton were placed on the task force for Hooulu Ola and Aina Haina Nature Preserve visits on Sunday, October 27, 2013. Members Abbott, Buchanan, Canfield, and Chair Kaiwi were scheduled for the Helemano and Pupukea Mauka visits on Wednesday, November 13, 2013. Members Abbott, Buchanan, Canfield, and Chair Kaiwi were placed on the task force for the Hakipuu Loi Kalo site visit on Tuesday, November 19, 2013.

Member Buchanan moved to approve the set task forces and schedule. Member Sinton seconded the motion. All were in favor.

Chair Kaiwi asked Ms. Schmidt if there were any bills this session that pertained to Legacy Land, she stated that there were none she was aware of.

ITEM 4. Review by staff of status of the development of a grant cycle, timeline, and procedures for the disbursement of management funds grants through the Legacy Land Conservation Program.

Ms. Schmidt discussed a brief background on the LLCP management funds topic. To review, in 2008, a statutory change passed to allow funds to be granted for management, maintenance and operations from Legacy Land to applicants that had previously received land acquisition grants from Legacy Land. The management funds grants were limited to five percent of the previous year's revenues, roughly \$200,000 max. Ms. Schmidt mentioned that there were no mandates requiring the Commission to give out the funds; therefore, distribution was optional. The management funds had some administrative issues that land acquisition grants did not. The grants for management funds were considered subject to procurement laws as "goods and services." Request for Proposal (RFP) was stated as an option for distributing the funds; however, when Legacy Land dealt with RFP's they faced an issue adhering to both the Sunshine Law and Procurement Laws. Under procurement statutes, this process was to be kept private, however, to involve the Commission under Sunshine Laws, the process had to be made public.

Ms. Schmidt discussed a few obstacles pertaining to the distribution of the management funds. Then it was explained that under HRS 103-105, Sunshine Law does not apply when there are Procurement Laws in effect and it was stated that the Division of Forestry and Wildlife

(DOFAW) approved this. However, the Commission still faced a few hurdles regarding the procurement code.

Staff agreed to look into the remaining issues: the definition of a government employee in terms of the RFP evaluation process; the role of contract administrator on an RFP committee; public works laws; HRS Chapter 343; reevaluating the Commission's rules in terms of the Legacy Land goals to distribute management funds; and researching the efficiency of the RFP process.

Ms. Schmidt apologized for not having the information on those issues ready by this month's meeting.

At the last Commission meeting Chair Kaiwi asked for specific follow-ups on executive session; Ms. Schmidt explained that executive session can be used when necessary and if the law permits it, such as procurement. It was mentioned that prior to holding an executive session it would be a good idea to hold a sunshine meeting in order to publicly explain what is being done and why.

The discussion of sole-source funding as a possible method of procurement continued from the previous Commission meeting. The issue with sole-source was the contract term limit of one-year along with demonstrating a single source for management fund distribution. Ms. Schmidt asked how the commission would make a fair process without holding a competition. Member Shallenberger restated that the management funds would be given to the members who had already received land acquisition funds and therefore, demonstrated sole-source recipients. Ms. Schmidt explained that the process is where the confusion began. The Commission would determine who received the funds based on a competition process; however, then listing that recipient as the "sole-source" would not be accurate.

Member Sinton agreed that it would be difficult to do sole-source when a competition was involved. Member Canfield asked if the Commission could state that the competition was between projects rather than receiving vendors in order to use sole-source funding. Member Shallenberger asked if the process would get complicated because some of the applicants for management funds would be state agencies. This issue was one brought up on past Commission meetings and was a main contributor to the lack of management fund distribution in previous years. Member Shallenberger was in support of management fund distribution if the commission could figure out the legality of the issue.

Chair Kaiwi asked staff to explore more into sole-source given the discussion and information provided in this meeting.

Chair Kaiwi asked Ms. Schmidt if the procurement would be administered by the Division of Forestry and Wildlife and who the Procurement Head would be as the Commission's capacity as signatory? Ms. Schmidt stated that the Commission is always under the administration of the Department, so Chair Aila would need to be consulted for approval of any procurement.

Ms. Schmidt explained that she still needs to look into how applicable RFP and sole-source processes would be for the Commission and also, how to work in all parties who would be a part of the statute as a reviewer in the RFP process.

Member Canfield asked if there were any issues similar to the Legacy Land and management fund distribution issues already existing within the department. Ms. Schmidt stated that there were similar grant programs in place but those programs did not have a public commission that needed to be adhered to. She stated that most programs under the Division of Forestry and Wildlife use the RFP process. Chair Kaiwi then asked if the RFP scoping could be written in a way to encourage the appropriate applicant. Member Shallenberger agreed with Chair Kaiwi and said that the basic premise of how to distribute and to receive applications for management funds was to tailor the RFP scoping to fit only those applicable for funding.

Member Sinton asked if it was reasonable that someone other than the landowner, or agency who acquired the land, could manage the property. Member Shallenberger explained that it was assumed the manager of the land would be under the oversight of the landowner. Member Shallenberger also mentioned Chapter 343, HRS, applying for SMA permits, and Section 7 and stated that it would be worth looking into what other regulatory processes apply when utilizing federal dollars.

Ms. Schmidt's concern with Chapter 343 at the time of the last meeting was the issue of State agencies having exemptions to acquire certain lands while non-profits do not have those same exemptions when applying for the land acquisitions. She followed up with Chapter 343 from the last Commission meeting and she mentioned that the non-profits would probably be able to use the exemptions presented on the DLNR exemption list; however, staff agreed to explore more into the logistics of the land exemptions listed by other departments.

Chair Kaiwi asked if there were any other questions. Mr. Purcell, public attendee, stated that a risk management approach would be a good mechanism to insure vendors do not abuse the process.

Chair Kaiwi requested more research in order to reconvene on the issue at the next meeting. It was suggested that relevant and appropriate parties, office of informational practices or procurement, be present at the next Commission meeting to discuss the issues at hand.

Chair Kaiwi asked staff where the Commission was on budget. Ms. Schmidt stated that conveyance tax numbers were strong; the Commission would have the maximum amount they could award under their ceiling which equated to roughly \$4.5 million after deductions. There was also a carryover from last year's revenues. Member Buchanan asked Chair Kaiwi and Ms. Schmidt to confirm that the Commission's budget ceiling was \$5.1 million, not \$4.5 million. Ms. Schmidt confirmed the program ceiling was \$5.1 million and stated that \$4.5 million was the grant budget after subtracting the administrative budget and central services reductions. Member Buchanan also asked about raising the program ceiling; however, the deadline for request was missed.

Member Buchanan asked for an update on the temporary staff positions and/or the two civil service positions that were set to be funded through the program budget. Ms. Schmidt confirmed that her position with the Division of Forestry and Wildlife has been made permanent and is one of the civil service positions being funded through the program budget. It was stated that the

second civil service position would be in Land Division; however, it is currently open, Ian Hirokawa formerly occupied that position.

Member Buchanan asked if part of the funds could be delegated to training for Commission members. Ms. Schmidt agreed that there is always available funding for training. It was agreed that training would be put on the agenda.

Member Canfield asked how the Legacy Land workshops on the outer islands have gone. Ms. Schmidt stated that there have been two different series in two different years along with a few single workshops. The Oahu Resource Conservation and Development Council had organized most of the workshops, the last one was on Kauai and there was a large attendance, all others seemed to go well.

Member Shallenberger brought up the topic of radio shows as a means of public outreach. 'Town Square', 'Olelo', and 'The Conversation' were the three options for putting Legacy Land on the radio. Member Canfield mentioned the shows were meant to be informative, not confrontational, and would be a possible option for the Commission to take; however, staff remained hesitant on the idea. Options for outreach remained up in the air.

Member Buchanan brought up an unresolved issue involving non-profit, grassroots organizations and their application process with Legacy Land. The number of non-profit and grassroots organizations that applied for land acquisitions last year was relatively low and was likely due to the difficult approval process for those types of organizations. Last year it was mentioned that if the process was easier for these applicants there would likely be more request for land acquisitions; however, Chair Kaiwi confirmed that the process has not changed and those applicants are still required to gain approval from all listed agencies. Ms. Schmidt stated that the application had listed all the possibilities for non-profits and agencies and if an exemption was requested, the applicant needed to explain why.

Chair Kaiwi asked if there was any other discussion, members had none and staff moved on to Item 5.

ITEM 5. Briefing by Division of Forestry and Wildlife staff member Jordan Jokieli on the Wildlife Program Access and Acquisitions Project.

Staff member Jordan Jokieli thanked the Commission for having him and briefly discussed his background with the Department and the Natural Area Reserves System. He briefed the Commission on the Wildlife Program Access and Acquisitions Project which began in 2011. The basis of this project and the main goal was to allow public access to state lands that were once open to the public but had recently become inaccessible due to various private land barriers. He worked statewide to restore public access to these areas, specifically for hunters.

Mr. Jokieli's work also involved the Recovery Land Acquisition Grant Program which supports endangered species recovery. Mr. Jokieli was interested in learning how to set up and promote more land acquisition projects. It was mentioned that it was difficult for agencies who were awarded the land to gain enough funds to manage the property after it was acquired. Mr. Jokieli hoped to work closely with the Commission to resolve some of the issues faced in the Recovery

Land Acquisition Grant Program. The Commission presented their feedback and suggestions, Chair Kaiwi thanked Mr. Jokiel for his presentation.

ITEM 6. Announcements.

Chair Kaiwi asked Ms. Schmidt about the status of the Governor's Council for Turtle Bay, it was stated that there had not been a meeting called yet.

Chair Kaiwi called for further comments; there were none.

ITEM 7. Adjournment.