

**2016 Legacy Land Conservation Commission Minutes, MEETING 53**  
**State of Hawaii Department of Land & Natural Resources, Division of Forestry & Wildlife**

**DATE:** December 12, 2016  
**TIME:** 9:08 AM – 11:29 AM  
**PLACE:** 1151 Punchbowl Street  
Room 132 (Board Room)  
Kalanimoku Building  
Honolulu, HI 96813

**COMMISSIONERS PRESENT:**

Ms. Theresa Menard (Chair)  
Mr. Thorne Abbott (Vice-chair)  
Mr. Butch Haase  
Dr. John Sinton  
Mr. Rick Warshauer  
Ms. Kanoë Wilson  
Dr. Wendy Wiltse  
Ms. Marjorie Ziegler

**COMMISSIONERS ABSENT:**

None

**STAFF:**

**Department of Land and Natural Resources, Division of Forestry and Wildlife**

Kirsten Gallaher (RCUH)  
Kristy Lam (KUPU)  
David Penn (Program Specialist, Legacy Land Conservation)

**PUBLIC:**

Michelle Galimba (Kuahiwi Ranch)  
Lea Hong (Trust for Public Land)  
Chana Ane (Living Pono Project)  
Hoapili Ane (Living Pono Project)  
Mercer Vicens (Living Pono Project)  
Keoni Fox (Ala Kahakai Trail Association)  
Laura Kaakua (Trust for Public Land)  
Alex Kelepolo (County of Hawai'i)  
Tim Tybuszewski (North Shore Community Land Trust)  
Noa Ching (Hawai'i Department of Agriculture)  
Scott Fisher (Hawaiian Islands Land Trust)

## **MINUTES:**

### **ITEM 1. Call to Order; Purpose; Public Notice; Introductions – Welcome Commissioner William “Butch” Haase; Quorum**

Chair Menard sounded the pū to open the meeting; welcomed the commissioners; and thanked them for their service. At the Chair’s invitation, the commissioners, agency staff, and members of the public introduced themselves.

Chair Menard recited Section 173A-1, Hawai‘i Revised Statutes (HRS), regarding the purpose of the enabling legislation for the Legacy Land Conservation Program (LLCP). At the Chair’s request, Penn noted that the Commission fulfilled the legal requirements for public notice and quorum as follows:

- In accordance with Section 92-7(a), HRS, the public notice included an agenda that listed all of the items to be considered at the meeting; the date, time, and place of the meeting; and the purpose of an executive session, if necessary. A public folder that contains the meeting materials is available in the meeting room.<sup>1</sup>
- In accordance with Section 92-7(b), HRS, agency staff filed the notice in the Office of the Lieutenant Governor and in the Board of Land and Natural Resource’s (BLNR) office at least six calendar days before the meeting date, and posted the notice at the site of the meeting.
- Section 92-7(e), HRS, requires that the Commission maintain a list of names and addresses of persons who request notification of meetings and mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed. Agency staff fulfilled this requirement by consolidating existing LLCP contact lists and distributing a copy of the notice to the consolidated list via email. Staff requests that persons attending today’s meeting request notification of future meetings by indicating on the sign-in sheet a preferred mailing address, email address, or fax number for receiving such notification.
- Section 13-140-12, Hawai‘i Administrative Rules (HAR), requires that at least five members of the Commission be present at a meeting in order to make decisions. Eight commissioners are present, thus constituting a quorum.

### **ITEM 2. Announcements**

At the Chair’s request, Penn announced that:

- The Governor’s office is vetting a candidate for the remaining vacancy on the Commission, which requires membership in a statewide agricultural association, and hopefully the Governor will appoint that candidate before the next Commission meeting.

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<sup>1</sup> The meeting materials filed in the public folder, or available elsewhere in the meeting room, included meeting notice, agenda, and sign-in sheet; governing statutes and administrative rules; 2017 Report to the Legislature; Fiscal Year 2017 Budget Worksheet; Application Summary; field visit reports; application materials; ranking form; tally forms; excerpts from the Department’s exemption list (HRS 343).

- Periodic literature received from The Trust for Public Land (TPL) and the Hawaiian Islands Land Trust (HILT) is available for commissioners. Commissioners may contact agency staff or the land trust organizations to continue receiving the literature.

At the Chair’s invitation (requested out of order under item 3), Commissioner Ziegler announced that recent amendments to the City Charter require that the City change its process for administering the Clean Water and Natural Lands Fund (CWNLF), which may affect applicants to the LLCP that seek matching funds from the CWNLF. Under the new process, the City Department of Budget and Fiscal Services will screen applications to the CWNLF, and will then refer qualifying applications to the CWNLC for review. The CWNLC will consist of three commissioners appointed by the Mayor, three appointed by the City Council, and one appointed by the other six.

In response to questions from fellow commissioners, Commissioner Ziegler explained that there is no word from the City about a start date for the new process. The Charter amendment established a deadline for commencing the CWNLC nomination process (January 5, 2017), only, not for completing the appointment process. Commissioner Ziegler, and Penn, no longer serve on the CWNLC. Commissioner Ziegler will not reapply for the CWNLC because she was a commissioner since the CWNLC was created in 2008 and has served the full length of her terms. Penn was preparing to resign from the CWNLC before the Charter amendment effectively ended his term of service. Commissioner Ziegler and others will follow the process; she is worried maintaining checks and balances, fairness, and transparency.

### **ITEM 3. Staff Report**

Chair Menard recognized Penn, who presented the following staff report, with support from Kristy Lam and Kirsty Gallaher:

#### Land Acquisition – Counties and Nonprofit Land Conservation Organizations

- Transaction closed for Kahuku Coastline, in Ka‘ū, Hawai‘i (FY12-07). The U.S. Fish and Wildlife Service (USFWS) Recovery Land Acquisition Program and the County of Hawai‘i Open Space Program provided matching funds. The County now holds title to the property, and recently coordinated a field trip to work on management planning with partners, including DLNR. The LLCP received, and is reviewing, the required post-closing documents.
- Mao Farms, O‘ahu—which acquired land through an application from the Wai‘anae Community Redevelopment Corporation in the earliest years of the LLCP (FY08-01)—recently applied for a construction loan from the U.S. Department of Agriculture (USDA) to expand agricultural capacity on that land. The documents that govern the LLCP funding award (warranty deed, statute, and grant agreement) establish that the BLNR must approve a disposition of the property, and that revenue from a disposition must be shared with the State. Ma‘o Farms, as a good actor, consulted staff about its application to USDA to determine whether or not Board approval was required to use the land as collateral for the construction loan. Staff worked with the Deputy Attorney General and USDA to reach a conclusion that Board approval was not required, and staff is expecting

to receive final draft documents for final closure. The State had to assure that it was first in line for receiving certain types of revenue from the property, i.e. leasing of land, under the loan agreement.

- HILT submitted a timely self-monitoring report for Maunawila Heiau, Ko‘olauloa, O‘ahu (FY12-02). Historically, the LLCP requested that awardees submit a report every other year. Presently, the LLCP is reevaluating its monitoring requirements and process.
- Eight pending grant agreements are in various stages of completion:
  - Wai‘ōpae, Puna, Hawai‘i by Hawai‘i County (FY15-03) went back to the Department of Accounting and General Services (DAGS) for a final notice to proceed on the contract. It is one of the contracts for which the LLCP is using FY17 funds, due to the lapse of FY15 funds.
  - Contract for Kalua‘aha Ranch Conservation Easement by Moloka‘i Land Trust (FY15-05) is in review. It is one of the contracts for which the LLCP is using FY17 funds, due to the lapse of FY15 funds.
  - Contracts pending completion include Pu‘ukua, (FY16-01), by Hi‘ipaka LLC (Waimea Valley) and The Trust for Public Land (TPL), and Hakipu‘u Lo‘i Kalo, Ko‘olauapoko, O‘ahu (FY14-02), by a nonprofit group and TPL.
  - Kaluanono, Waipā, Kaua‘i (FY15-01) and Kānewai Springs, O‘ahu (FY16-02) are in litigation. Will move forward on grant agreements once outcomes are determined. Additional discussion for Kānewai Springs later in the agenda [see Item 5, below].
  - The grant agreement for Ho‘oulu Ola, Honolulu, O‘ahu (FY14-03) expired because the applicant did not come back within 90 days of expiration to request an extension. Although difficult, staff is working with the applicant to process a request for a retroactive extension with the Department of the Attorney General. Commissioner Sinton commented about owner’s desire to sell the property. Commissioner Ziegler added that City Council raided its Clean Water and Natural Lands Fund in FY15 and bumped two projects, including this one, out of the budget. Penn noted that money from the City Clean Water and Natural Lands Fund was put back into the City’s FY16 budget, such that City funding ends at the end of this fiscal year unless the City Council re-authorizes the appropriation.

In response to a question from Commissioner Sinton, Penn noted that the Kuamo‘o acquisition (FY14-01) closed already and the program there is off and running.

#### Land Acquisition – State Agencies

- DOFAW held a public hearing on November 16, 2016, for adding Kalauao Valley, O‘ahu (FY12-01) to the ‘Ewa Forest Reserve. The Hearing Master’s report is completed and decision-making will take place at the next BLNR meeting on January 13, 2016. In response to a question from Commissioner Ziegler, Penn noted that DOFAW did not use the money that the City budgeted for the acquisition from the Clean Water and Natural Lands Fund (CWNLF).
- Pua‘ahala Watershed Acquisition, Kamalō, Moloka‘i (FY15-04) is furthest along, pending completion of the appraisal, followed by approval by the federal sponsors at USFWS and negotiation with the landowner.
- Staff met with Land Division, working toward moving along with older state projects.

- Helemano Wilderness project was awarded the maximum amount of \$2 million from the USFWS Habitat Conservation Plan Land Acquisition program, marking the first time that the State received this particular award. The Habitat Conservation Plan (HCP) group in DOFAW worked hard on the application, referencing the existing HCP for bats on O‘ahu. DOFAW is still working on funding and expects that a Capital Improvement Project (CIP) request is coming from DLNR into the legislature.

Commissioners and staff discussed timelines for land acquisition funded by the LLCP, and factors affecting those timelines. Key points of discussion:

- It can take four years or longer to complete an acquisition, or it might not happen at all.
- The fastest completion time was within one year of the award.
- Quick completion is facilitated by fewer partners; not involving the City Clean Water and Natural Lands fund; timely submission of due diligence documents by the awardee.
- If federal funds are involved, then a higher standard of appraisal is required.

#### National Land Conservation Conference

Penn and Deputy Attorney General Julie China attended the National Land Conservation Conference in Minnesota in October. Penn participated in a field trip to a private forest reserve operated by a Benedictine monastery at Saint John’s University. Materials from the conference can be made available to commissioners at a later time. The next conference will be held during late October 2017, in Denver. Useful sessions at the conference included:

- Minnesota Multi-Faceted Approach to Prioritizing Land Easements
  - adds a free-market aspect to the conservation easement acquisition process
  - employs criteria for valuing an easement in non-monetary terms
  - the program and the landowner agree on an easement design and its valuation (numerator), then the landowner bids on the amount of funding that it will accept for the purchase of that easement (denominator)
- Workshop on Communicating Impact with Strategic and Financial Dashboards
- Conservation Easements
- Purchase and Sale Agreements
- Private Easements over Public Lands

#### Budget

Penn handed out the “Fiscal Year 2017 Budget Worksheet,” a work in process that will be covered more thoroughly under Item 5, below. He reminded the commission that the report to the legislature for 2017, covering FY16 activity, is available. Page 7 of that report indicates a \$16.3 million balance in the Land Conservation Fund at the start of FY16. During the year, the fund received \$6.7 million in conveyance tax revenue (slightly below the \$6.8 million revenue cap); the legislature authorized \$5.1 million in LLCP spending; and DLNR expended and encumbered the entire authorized amount, including \$4.3 million in grants, \$153,000 in administration costs, and roughly \$596,000 in central service fees that department pays on revenues going into fund (5%) and expenditures going out (2%). The combined total of \$749,520 for administration and central service fees is much higher than the \$153,488 total in FY08, and has shown a consistent upward trend over the years. This increase is most likely related to the rising costs of the program, for personnel and other things, and to the accelerated

pace of closings, which generate central service fees when DLNR draws on the encumbered funds for payment. Some of these figures are plugged in to the budget worksheet.

#### **ITEM 4. Chair's report**

Chair Menard welcomed those attending the meeting. She mentioned that the Legacy Land Conservation Commission has been around for over a decade, with over 30,000 acres approved for protection and 48 awards approved for funding through collaboration with 26 organizations thus far, and stated "It's a great program and I'm proud to be involved with it."

Chair Menard noted that in FY16 the legislature made an appropriation from the Land Conservation Fund for land acquisition from above the spending ceiling, without routing it through the land acquisition grant program (\$2 million for land acquisition at Makahanaloa). Penn explained that the legislature can tap above the ceiling for any reason they deem fit that is related to the purpose of the Land Conservation Fund, and has done so in the past.

Chair Menard also expressed her opinion that it would be more efficient to process the Turtle Bay debt service funding by untethering it from the land acquisition grant program, and to simply give it an up-down vote instead. She noted that after subtracting the Turtle Bay debt service from the \$2.2 million of award money that is available this year, only \$700,000 or so remains, due to unfortunate errors. The combined total request from all six applications was \$6.6 million, not counting Turtle Bay. Given the lack of funding, the Commission may be recommending just one or two applications for funding. Chair Menard then summarized the applications as follows:

- A sandalwood forest in unique agricultural production.
- A family owned and productive kalo lo'i.
- A working cattle ranch with some palila critical habitat.
- An open space in imminent threat of development on Maui.
- A site with an abundance of cultural resources and great coastal vegetation.

#### **ITEM 5. Review the process and criteria for forming recommendations to the Board of Land and Natural Resources regarding applications for funding**

Chair Menard recognized Penn to review the Commission process and criteria for forming its recommendations. Staff distributed the Application Summary, which was created based on the information in the applications, and can be discussed further in the next meeting [Agenda 54]. Penn stated that this year the program received six applications with a total of \$8,096,860 requested, including Turtle Bay Makai. Meeting process, as worked on with Chair, for the rest of the meeting:

1. Because of Sunshine Law requirements, the Commission will not discuss the field visit reports when they are presented. Each field visit leader will present a report. Although the

public is welcome to testify about anything on agenda, the Commission prefers to hear public testimony about the applications during the next meeting [Agenda 54].

2. At the next meeting [Agenda 54], go through applicant presentations, with public testimony, and Commission discussion.
3. Ranking and tally of applications. Staff distributed one ranking form and two versions of the tally form (spreadsheet and final recordkeeping for scores).

As suggested by Chair Menard, and based on previous discussion with the Deputy Attorney General about voting procedure, staff recommended an initial yes/no vote on Turtle Bay Makai. If the Commission votes yes, then it will rank the remaining five applications, only. If the Commission votes no, then it will rank all six applications in one process. Recommendations for the submittal to the Land Board will be for full funding as funds are available. As it did in previous years, the Commission may wish to recommend that lower ranking applications can be eligible for funding if the higher ranked applications fold or withdraw. Penn indicated that the ranking can be sustained until the money comes around. The budget situation will be discussed in more detail before the Commission formulates its recommendations.

Penn reminded the Commission about the statutory definition of a public purpose for expended the funds, and recited the nine LLCP preservation purposes: watershed protection; coastal areas, beaches, and ocean access; habitat protection; cultural and historical sites; recreational areas and public hunting areas; parks; natural areas; agricultural production; and open spaces and scenic resources.

Penn also recited the statutory criteria for prioritizing recommendations:

- (1) Lands having exceptional value due to the presence of: (A) Unique aesthetic resources; (B) Unique and valuable cultural or archaeological resources; or (C) Habitats for threatened or endangered species of flora, fauna, or aquatic resources;
- (2) Lands that are in imminent danger of development;
- (3) Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;
- (4) Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;
- (5) Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction; and
- (6) Lands that are unique and productive agricultural lands.

Penn highlighted the keywords from the criteria, such as “exceptional value,” “imminent danger,” “danger of theft or destruction,” and “unique and productive.”

#### Kānewai Springs, Honolulu, O‘ahu (FY16)

Penn reviewed the status and issues of the Kānewai Springs lawsuit, and discussed with the Commission the LLCP’s proposal for resolving these issues within a broader, programmatic context, particularly in conjunction with the Commission’s review of this year’s applications and with possible changes to the application review process in future years. Overall, the Commission expressed discomfort, and a lack of expertise, regarding staff’s proposal that the Commission advise DLNR about the propriety of declarations—to be made by the BLNR—that each award of

FY17 funds for land acquisition is exempt from the requirement to prepare an environmental assessment (EA) under Chapter 343, HRS.

In the Kānewai Springs case, a neighboring property owner filed an action against the Kānewai Springs applicants and their partners—including the DLNR—that is still in court. The neighbor claimed that the BLNR's decision to declare the acquisition exempt from preparing an EA under Chapter 343, HRS, was not correct. We don't have a decision yet from the court yet, however both sides filed motions and the court held a hearing on one of them. Another hearing on the neighbor's motion is scheduled for January.

Staff distributed a handout with excerpts from the Department's exemption list. Under Chapter 343, an EA is required for certain types of actions that trigger the statute's environmental review requirements. An agency may declare its action exempt from the requirement to prepare an EA if the action will probably have minimal or no significant impact on the environment. The Department's exemption list is created to address that. In this case, DLNR Exemption Class 1.49 establishes that the award of grants under the Legacy Land statute will probably have minimal or no significant impact provided that the grant does not fund an activity that causes any material change of use of land or resources beyond that previously existing.

The issue is what constitutes that material change. Attorneys for The Trust for Public Land presented arguments to the court about what is and what is not material change, and why the acquisition of land, per the application and the Board's decision, was not a material change.

In the meantime, pending a decision by the court, and in order to nip these kinds of problems in the bud, staff is asking the Commission, in its decisions and recommendations, to weigh in on the issues of no significant impact and no material change. Penn noted that in the Kānewai Springs case, the parties cited to the Commission's minutes, including the statements of individual commissioners, with regard to facts that relate to these issues.

Staff recommended that in the course of reviewing the applications and producing the recommendations, commissioners decide whether or not to make a statement, specific to each application, about these issues. Commission input would then be incorporated into the LLCP submittal to the BLNR, in which the LLCP will request that the BLNR (which makes the ultimate decision) declare that each award of an LLCP grant is exempt from the requirement to prepare an EA. Penn inquired about the commission's thoughts on addressing this issue in reviewing the FY 17 applications and giving recommendations to the BLNR.

Substantive points of discussion:

- Definition of material change: Waiting for the judge. However, for example, the Kānewai Springs property includes a single-story residence. The application indicates that the applicant would like to tear down and rebuild. The City imposed conditions on its financial participation in the acquisition, including limiting the rebuild to the existing footprint. If the applicant rebuilds a one story home within the existing footprint, is that a material change or not (Penn)?
- Neighbor thought its privacy would be compromised with the public going in and out of the property (Menard). Privacy was a different, but related issue about whether the

neighbor had an environmental interest that would be harmed by the land acquisition. Also the defendant's motion talked about divorcing the prospective/aspirational activities that are not necessarily going to happen versus the bare fact of the land acquisition (Penn).

- It would be best to provide a statement for each application reviewed by the commission because it is always possible that the Commission's recommendation, the Department's recommendation, and the Board's decision will be three different things. Having the information in there will help staff to write the Board submittal and will help the BLNR to make its decision. We are talking about revising the application process for next year, so it is more transparent and particular (Penn).
- A slippery slope. It is very clear in the law that this is an exempt activity. There may be other reasons why the neighbor is contesting the Kānewai Springs decision. Where is the benefit to the Board from the Commission's comments? The Commission's comments would be a waste of time and would not be very meaningful from a legal standpoint (Abbott).
- The commission is not competent in deciding any legal exemption and it is beyond my expertise (Sinton). Commissioner Haase also agreed. It would be a more standardized and consistent evaluation if it was done by staff then passed on to the Board directly (Warshauer). Some commissioners may not feel that they are qualified to make such statements and be hesitant to grant exemption without knowing planned actions on the land. Typically the Commission is focused on other criteria during the review process, but perhaps change in use is something to look at in the future (Menard).
- When seeking to declare an exemption, the Deputy Attorney General is strict about citing to the exemption list **and** noting consultation that was accomplished with outside agencies and individuals having jurisdiction or expertise as to the propriety of the exemption. We would not say in the Board submittal that the Commission declared or recommended an exemption, just that the Department consulted with the Commission on this particular issue (Penn).
- Staff discussed the consultation concept with the Deputy Attorney General. DLNR makes the assessment and passes its recommendation to the BLNR which is the determining agency for declaring an exemption. Staff is basically the applicant for the exemption. If the Deputy Attorney General thought that this was not a worthwhile and legal endeavor, we would not be discussing it at this meeting (Penn).
- The language of the submittal comes directly from the enabling legislation approved by the chair and division administrator. Then the submittal goes to the Board, where the Deputy Attorney General will review it. Staff's evaluation requires consultation with agencies and individuals having jurisdiction or expertise on the propriety of the exemption. Commission members are very well qualified in regard to the propriety of the exemption to assess material change in existing conditions when talking about land conservation acquisitions (Penn).
- Exemption no. 49 is more specific to what the Commission does and applies to any grant from the program, compared to exemption no. 45 (Penn).
- Penn confirmed that "no significant impact to the environment..." is a general application to all exemptions (Ziegler). There is also a global exemption from HRS Chapter 343 entirely for acquisition of unimproved land, and an exemption under the fishpond statute (Penn).

- What about the agencies that the applicant must consult with during the application process (Abbott)? The pre-consultation for FY17 is already finished, so we didn't have the opportunity to ask them about HRS 343 this round, but next year we might. This conversation may be premature, but staff will come back at a future meeting with application materials for next year. A HRS 343 component for the applicants' agency consultation process for next year is being considered (Penn).
- From past applications that our organization participated in, the post-acquisition management activities has been part of the process of review. Restoration activity does constitute material change to land activity, could that be a conflict with the grant language (Haase)? Material change in the context of the purpose of HRS 343 involves one that would generate a significant negative impact on the environment. We wouldn't have HRS 343 if the concern was about positive impact on the environment. The definition of "negative impact" is subjective and changes on a case by case basis, depending on perspective, e.g. reforestation with natives v. removing feral animals to aid reforestation (Ziegler).
- Commissioner Warshauer asked if the Commission may end up in court too if it participates in the Department's exemption declaration. Penn suggested this would not be the case because the commission is not declaring anything exempt; it is merely advising (Penn).
- Hesitant to without thinking about
- Eligible funds from the land grant can also be expended on the development of an EA (Menard). However, no one has approached the commission to request funds for an EA and it would probably be premature for an applicant to do so (Penn/Ziegler).
- Would be different for applications for management funds.

Penn recited the language that could be incorporated into the Board submittal, and offered to print it out during lunch to be available for Commissioners when conducting the application review process.

## **ITEM 6. Field Visit Reports**

Staff distributed the field visit reports. Chair Menard noted that the Commission shall not discuss the reports, or question the presenters or testifiers, at this time.

### *A. Hāloa 'Āina (Easement), Hawai'i*

Chair Menard presented her report for the November 4, 2016 field visit to Hāloa 'Āina (3 pages), as accompanied by commissioners Sinton, Warshauer, and Wiltse, and landowner/applicant Wade Lee. Key points of the presentation, as accompanied by maps and photos projected in the meeting room, included:

- The property is the site of the former Hōkūkano Ranch located in South Kona. It includes a visitor shop, processing facility (five acres), a cultural and historical site at Kīkī'ae'ae, and approximately 3,000 acres of forest at 3,000-5,000 foot elevation. The commissioners observed endangered species (i'o) on the property.

- Dead or dying sandalwood is being harvested to create various products. Sandalwood oil is the main product with one ton of wood producing one liter of sandalwood that retails for \$20,000. The production process employs five people and uses propane-powered machines at costs of \$350 per hour. Mr. Lee has outplanted more than three million sandalwood trees.
- The property is in threat of development, as foreshadowed by the gentleman's estates encountered on the way there.
- Feral ungulates exist in surrounding land, but partial fencing, and hunting, have successfully kept them out of the property. Mr. Lee would like to complete fencing all around the property to keep ungulates out permanently.
- Meets the criteria that address exceptional value of land, endangered species, imminent danger to development, and unique and productive agriculture lands; no other place that produces sandalwood at this magnitude.
- Mr. Lee seeks to protect this rare, native dry forest with 25%-60% canopy cover. He is currently partnering with Kamehameha Schools for salvage harvesting on adjacent land. By establishing links to other acreage with similar resources, *Hāloa 'Āina* could connect with three other projects to place 30,000 contiguous forest acres under management
- The Lee family owns the property, but the conservation easement, held by DOFAW, would restrict development/subdivision of the property and limit timber harvesting by requiring that the property remain 75% forested.
- Guided public access is arranged for cultural practitioners and other visitor requests.
- Application is complete; No environmental hazards present.
- Feasible to complete within a two year time frame if \$3 million of funding is received from the Federal Forest Legacy Program. Two adjacent landowners have received funding from this program.
- Urgency is relatively high because the land is zoned agricultural and the County of Hawai'i would allow cutting down all trees without a permit or harvest planned. Monthly mortgage is \$160,000; therefore, if the landowner declares bankruptcy or defaults on a loan, the bank can harvest the collateral.

Additional reporting by other commissioners that participated in the field visit included:

- Commissioner Wiltse added that only senescent/dead sandalwood trees are harvested because the oils are most concentrated when the tree is stressed and dead.
- Commissioner Warshauer thinks that the threat of subdivision is a red herring because it is particularly difficult to gain approvals for subdividing in remote areas that lack water.
- Commissioner Sinton identified two goals of the application: to ensure that the property remains forested, via restoration efforts, and that working capital is available to continue fencing the rest of the property to keep out the wild cattle, horses, and bison, that chomp trees.

#### *B. Kepler Ke'anae Lo'i (Easement), Maui*

Commissioner Sinton presented his report for the November 9, 2016 field visit (1 page), as accompanied by commissioners Abbott, Wilson, and Warshauer; landowner Dr. Kepler; and Scott Fisher from HILT. Key points of the presentation, as accompanied by maps and photos projected in the meeting room, included:

- The applicant, HILT, would acquire a conservation easement over a six acre property on the iconic Ke‘anae peninsula containing 36 lo‘i kalo, 24 of which have been in recent production.
- A functional water system feeds the lo‘i kalo. Farmers in this region harvest kalo for corn as well as luau leaf. Dr. Kepler is seeking farmers.
- Challenges with invasive species, such as apple snails which affect plants and create harmful and discouraging working conditions for farmers.
- The threat of development exists, just how imminent is not known, but it is developable agricultural land, therefore, Dr. Kepler wants to make sure that the land is not developed.

Recess 10:48 AM (moved by Wiltse, seconded by Menard, unanimous approval)

Reconvened 10:54 AM

*C. Upper Kūka‘iau Ranch (Fee), Hawai‘i*

Commissioner Wilson presented her report for the November 23, 2016 field visit (1 page), as accompanied by Commissioner Warshauer; landowner representative David De Luz, Jr; Cheyenne Perry from the Mauna Kea Watershed Alliance; and numerous DLNR and County of Hawai‘i staff.

Key points of the presentation, as accompanied by photos projected in the meeting room, included:

- The ranch is a fixture on the Hāmākua coast, founded around 1885, currently owned by the De Luz ‘ohana. It has been a working ranch for over 130 years, originally part of 30,000 acres that stretch from the ocean up to Mauna Kea. The lower two-thirds later went into sugarcane production and the upper third remained ranch lands, with operations scaled back in recent years due to drought and economic conditions. In 2009 The Nature Conservancy secured a conservation easement that restricts development and management activities on the two larger, upper-portion parcels.
- Located on the Northern flank of Mauna Kea, Hāmākua district, above Mana Road and abutting the Mauna Kea Forest Reserve, the property includes two ahupua‘a – Kūka‘iau and Koholālele – covering 4,469.585 acres, with three major pu‘u that ring the upper portions. Beautiful views from Pu‘u Kihe down to the ocean.
- The Coast Guard completed an environmental study at Pu‘u ‘Iolehaehae, within a one mile radius around the pu‘u.
- A recent Archaeological Inventory Survey identified cultural features and historical structures, including burial sites such as Pu‘u Keahuonāiwi. A Burial Treatment Plan will be presented to the Hawai‘i Island Burial Council within a couple of years. Natural resources include forested mauka conservation area, koa-mamāne forest containing rare native and endemic species, Pu‘u Mali palila mitigation area on northern end, and Hakalau Wildlife Refuge on southern end. Forest restoration activity is ongoing.
- Mr. De Luz Jr. expressed a sense of urgency for selling the property due to family health concerns and talked about possibilities for future operations.
- David Smith, DOFAW Administrator, shared plans and hopes to open up the land for public access and public hunting.
- Opportunity to create a legacy for future generations.

#### *D. Ho‘oulu ‘Āina (Fee), Maui*

Vice-chair Abbott presented his report for the November 9, 2016 field visit (2 pages), as accompanied by commissioners Sinton, Wilson, and Warshauer. Key points of the presentation, as accompanied by maps and photos projected in the meeting room, included:

- The property is 240 acres of agricultural/urban land slated for 466 homes (correction to written report that states 240 homes) including 90 affordable homes.
- The development, by Sterling Kim, has not yet started construction. The property is very overgrown, with some macadamia nut trees, and a road network that facilitates dumping.
- Matching funds \$882,838 (25%), Legacy Land request \$2,648,514 (75%), total acquisition cost \$3,531,352. Application is for fee simple acquisition, not a conservation easement (correction to application).
- For real property tax purposes, Maui County assessed the property value at \$2.28 million. The landowner/bank is asking for \$5.9 million, but the range of value of the property is hard to determine.
- Surrounded by Hawaiian homesteads, older residential neighborhood, and agricultural properties, some growing flowers/fruits, with big houses.
- Across the street is a farm run by Maui Economic Opportunity (MEO), which helps disadvantaged individuals and is considered a very successful program.
- Waiehu stream and Sprecklesville ditch run through the property, however there is no water allocation from them to agricultural or urban activities on the property.
- Mr. Kim obtained urban zoning for part of the property through a 201G fast track process with the County Council. However, urban development would create a lot of traffic into Wailuku, so the Council required that the developer construct a new, alternate route, including repair of the dilapidated ‘Īao valley bridge, which will be costly.
- From a development standpoint for affordable housing, the property is not very threatened, due to the lack of water supply and centralized wastewater. However, it is very threatened in the case of larger agricultural subdivision lots.
- Ho‘oulu ‘Āina has a great history and is well-respected in the community for working with disadvantaged individuals, troubled youth, and formerly incarcerated individuals.
- The applicant does not have a lot of funding for operations, but has been told that if it has the property, funding may be possible.

#### *E. Turtle Bay Makai (Debt Service), O‘ahu*

Commissioner Wiltse presented her report for the December 2, 2016 field visit (1 page), as accompanied by commissioners Wilson, Warshauer, and Abbott. Key points of the presentation, as accompanied by maps and photos projected in the meeting room, included:

- Main areas include Kahuku Point and Kawela Bay.
- Legacy Land component of the deal includes a 53 acre fee simple purchase adjacent to Kawela Bay, which is held by DLNR and leased back to Turtle Bay Resort for activities such as weddings. The Resort manages the property, e.g. removing trash and discouraging trespassers.
- Another component is a large, 560 acre area under conservation easement, including the golf course; some areas along the golf course; and a historic wetland that is adjacent to the James Campbell National Wildlife Refuge.

- Another area that is not included in easement is zoned in a way that would allow the development of two new hotels. When those hotels are built, it also triggers development of some parking areas at Kawela Bay and Kahuku Point by the City.
- Enhanced public access and recreation along five miles of coastline is impressive, including eight miles of coastal trails open to the public, with increased parking at the resort to encourage recreation along the coast.
- Cultural sites include burials, [sites associated with] legends, a fishpond, and a fishing shrine.
- Kahuku Point provides habitat for endangered species and other native wildlife. Commissioners observed a monk seal resting on the beach during last year's field visit, and apparently a mother seal pupped on the same beach this year. The whale sanctuary includes offshore marine waters, and four species water birds are present.
- The dunes at Kahuku Point are amazing. Ongoing restoration of native plants for potential seabird nesting is led by the North Shore Community Land Trust. The Land Trust is working with the U.S. Fish and Wildlife Service to put in a predator exclusion fence in the future.
- Some of this area could be turned over to the city to build a city park. The Land Trust is working hard to improve the natural value of the property, so that natural value is well established if and when the County designates the area for park use.
- Kawela Bay is a really attractive area, largely undeveloped, that is a nice recreation resource for the people of O'ahu and is only accessible from parking along the highway and walking in.
- Purchase price was \$45 million. Sources of funding included \$2.5 million from the army, \$7.5 million from the City; and \$35 million from the state. The latter is an obligation bond with \$3 million in annual debt service; \$1.5 million comes from the Land Conservation Fund and the other \$1.5 million from transit accommodation tax revenues. This will continue until \$35 million is paid off.
- Commissioner Warshauer added that the Kahuku area has some of the best coastal vegetation on the island. Because the area behind the coastline was formerly wetlands, the highway was located further inland. It would be good if more of that land can be protected.

*F. Waikapuna (Fee), Hawai'i*

Commissioner Warshauer presented his report for the December 8, 2016 field visit (4 pages), as accompanied by commissioners Sinton, Wilson, and Abbott. Key points of the presentation, as accompanied by maps and photos projected in the meeting room, included:

- The 2,209 acre property consists of two ahupua'a, Kāhilipalinui and Kāhilipaliiki, stretching down from Na'alehu. The Ala Kahakai trail runs through the property, passing mauka atop the bluff. Archaeological features are distributed throughout the site; land use for grazing land has helped to preserve them.
- Contains geographically and geologically interesting landscapes, including older upland lava flows and ash that supported old Hawaiian agriculture; younger lava flows; cliffs; and trails that run throughout property.

- This part of Ka‘ū is Revenue provided by two ranches and cell towers. This is an interesting acquisition, a unique case because these leases will continue to produce revenue, which will provide the new owners with money for management.
- A large number of community partners are involved with fourteen members of the public participating, including the applicant, in the field visit.
- Land was formerly owned by C. Brewer, changed hands a few times, and is now up for sale again.
- Owner is willing to sell to the applicants, but if that does not go through, owner is in the process of consolidation and re-subdivision to create 22 lots, which will change the whole nature of this wild and scenic area and its wide open spaces.
- The property satisfies almost all LLCP evaluative criteria and categories. It is an important piece of a mosaic that is being assembled to protect the Ala Kahakai, the shoreline, and the way of life in that part of Ka‘ū. It would be a bad precedent to see development happen.
- Cultural resources include three springs of different salinities, petroglyphs, cave openings, papamū.
- Contains some of the nicest coastal vegetation on the island, especially to the south of the area visited.
- A very high value for funding because there will only be a short amount of time until applicants proceed on creating subdivisions.
- Multiple partners involved will provide a strong managing entity.

**ITEM 7. Review and approve meeting minutes from October 21, 2016**

The Commission approved, unanimously, the staff’s draft of minutes from October 21, 2016, which incorporated earlier review comments from individual commissioners (moved by Wiltse, seconded by Ziegler).

**ITEM 8. Adjournment**

The meeting adjourned at 11:29 A.M. (moved by Wilson, seconded by Wiltse, with unanimous approval).