

Legacy Land Conservation Commission Minutes

DATE: February 29, 2016

TIME: 12:00 p.m. to 4:00 p.m.

PLACE: Room 132 (Board Room), Kalanimoku Bldg., 1151 Punchbowl St., Honolulu, Hawai'i

TELECONFERENCE LOCATIONS:

Hilo Division of Forestry and Wildlife Conference Room, 19 E. Kawili St. Hilo, HI 96720

Kauai Division of Forestry and Wildlife Conference Room, 3060 Eiwa St, Room 306, Lihue, HI 96766

Maui Division of Forestry and Wildlife Conference Room, 1955 Main Street, Room 400, Wailuku, HI 96793

COMMISSION MEMBERS PRESENT:

Ms. Lori Buchanan (Chairperson)

Dr. John Sinton (Vice-Chairperson)

Ms. Wendy Wiltse

Ms. Marjorie Ziegler

Mr. Rick Warshauer

Mr. Thorne Abbott

COMMISSION MEMBERS PRESENT via TELECONFERENCE:

Ms. Theresa Menard

Ms. Kanoe Wilson

STAFF:

Ms. Kirsten Gallaher, DLNR, DOFAW

Ms. Chauncey Hirose-Hulbert, DLNR, DOFAW

Ms. Leah Laramee, DLNR, DOFAW

Ms, Emma Yuen, DLNR, DOFAW

Mr. Ian Hirokawa, DLNR, DOFAW

Ms. Malama Minn, DLNR, DOFAW

Ms. Julie China, Deputy Attorney General

PUBLIC:

Mr. David Penn, DLNR, DOFAW (applicant)

Mr. Stephen Rafferty, Trust For Public Land

MINUTES:

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

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

Chairperson Buchanan noted that fellow Commission members had confirmation hearings, which may infringe on the meeting time. Ms. Gallaher confirmed that there were confirmation hearings for members Warshauer, Wilson and Wiltse.

In light of this, Chair Buchanan asked to move ITEM 3 of the agenda to later in the meeting in case it impacted on the election of a new chairperson.

Ms. Gallaher also mentioned the Deputy Attorney General, Ms. Julie China, would only be able to attend the earlier portion of the meeting and requested that ITEM 7, dealing with LLCP rules and statues, be moved up in the agenda.

Chair Buchanan requested the following changes to the meeting agenda: moving ITEM 3 to the end of the meeting and moving ITEMS 7 and 8 up to replace ITEM 3. Hearing no objections, the order of agenda items was changed.

ITEM 2. Approval of Legacy Land Conservation Commission meetings minutes form the December 2, 2015, and December 3, 2015, meetings.

Member Menard requested page numbers be added to the minutes in the future.

For the December 2 minutes, the content-related corrections came on page 13, in which “divided it into 40 acre parcels” was removed from the sentence, and on page 16 clarified that she had been asking about the intended Forest Reserve status. The word “adjacent” was removed and replaced “and the intended forest reserve status,” on page 20 the word “might” was replaced with “is” in reference to the Superfund site.

Chair Buchanan asked if there were any other corrections to the December 2 minutes before moving on.

Member Wilson requested the okina be used appropriately when taking minutes since some were only apostrophes.

Seeing no other comments, Vice Chair Sinton moved to approve the minutes. Member Warshauer seconded. All were in favor.

For the December 3 minutes the content-related corrections came on page 5 in which “routing a debt service project” was added to the sentence to clarify the statement. Member Wilson also restated some apostrophes needed to be replaced with okinas in these minutes as well.

Seeing no other comments, Member Warshauer moved to approve the minutes. Member Wiltse seconded. All were in favor.

Due to the absence of the Deputy Attorney General, the Commission moved to ITEM 4.

ITEM 4. Update from staff, discussion, and possible action regarding the Fiscal Year, 2017 Legacy Land Conservation Program grant cycle, including the review of timeline, forms, and procedures to be implemented.

Ms. Gallaher stated before the next grant cycle began the application forms must be reviewed in order to change the dates and address any concerns with the application procedures and forms. Ms. Gallaher explained all the forms and asked Commission members if they had any comments. Member Abbott asked if the all the PDF packets could be combined into one. Ms. Gallaher stated that some forms were Excel files and could not be combined, while others needed to be separately given to agencies.

Member Menard asked Ms. Gallaher to give examples of changes made to the application forms. Ms. Gallaher listed all the changes to the Commission.

Member Abbott asked if on page 7 (2.3), pertaining to the funding available, should be “and/or” instead of just “and.” Member Abbott also requested the changes be made on page 8 too. Member Menard stated the “and” was directly from the Rules, to which Member Abbott then suggested it could be left the way it was.

Member Abbott also requested on page 4, second paragraph that the Commission add, “however providing a full record of comments helps the Commissions in its deliberations.”

Mr. Penn asked if it would be helpful to reference the Statue or Administrative Rules in the grant guide if the language is pulled directly from the Statues or Rules. Ms. Gallaher replied that those references could be added to the document.

Member Ziegler asked if there should be language in the application forms about late information given by the applicants. Ms. Gallaher stated there was language already in the application that warned applicants that an incomplete application may result in rejection. Chair Buchanan and other Commissioners agreed; the FY16 grant cycle had large amounts of supplemental information that was given to Commissioners close to the decision-making meetings, which made processing all the information difficult.

Member Warshauer reiterated the frustrations by the Commission on the volume of information received late in the application process. Furthermore, he asked if it would it be possible to have a two-week deadline before the rankings meetings for applicants to provide all their information. Ms. Gallaher asked other members of staff if they had any comments on this suggested deadline.

Vice Chair Sinton mentioned it might be difficult to have a deadline for additional information because site visits may cause come conflicts. Ms. Gallaher stated this was important due to possible changes in the deadlines for application materials on page 12 of the application forms.

Ms. Gallaher explained the deadlines for the applicant’s forms and asked Commission members if those dates needed to be changed to leave more time for site visits. Ms. Gallaher asked other members of staff on their time requirements for reviewing applications.

Ms. Minn replied that staff did review the applications, but only to make sure the applications were complete; the review was not substantive. Ms. Gallaher suggested that the current October meeting could be moved to the end of September to create more time for site visits.

Member Ziegler mentioned that this year may be difficult for that because of the IUCN (International Union for the Conservation of Nature) Congress will be held in September of this year. Ms. Gallaher asked Ms. Laramie if she knew of any conflicts. Ms. Laramie replied that although Congress finished on the 10th, neighbor island excursions would still take place until September 14th.

With the arrival of the Deputy AG, this item on the agenda was paused in order to address the items of which Ms. China would have insights on. The discussion moved to ITEM 7.

ITEM 7. Discussion on Legacy Land Conservation Program rules and statutes.

Ms. Gallaher noted that this item had been requested by Commission members during the December meetings.

Member Menard asked if the Commission had the power to reject an application since the Commission's role was to advise the Board of Land and Natural Resources (BLNR) on the completeness of the applications. Ms. China replied that staff could have the power to reject the application. In the Administrative Rules for the program it does state that the application must be complete. In general, program staff had been lenient because if the applicants were not well prepared, their applications would usually drop out of the program or be ranked low by the Commission.

Ms. Minn reiterated that the language remained flexible because completeness of the application is usually directly related to the ranking of the project. So those projects which were lacking in information or late in getting additional information to Commission members, usually did not rank highly for funding.

Member Ziegler stated she did not feel comfortable ranking a debt service project among acquisition projects during the December meetings. Although the Legacy Land fund could be used for debt service (according to the Statute), the Administrative Rules didn't describe the procedure to rank and award debt service projects.

Ms. China replied that Statute 173 A-13 stated that they ("nonprofit land conservation organization") would apply for \$1.5 million for the Legacy Land Conservation Fund; however Members Ziegler and Menard were correct in stating there is no language in the Administrative Rules on how to rank and award a debt service project simply because no one had anticipated this use of the fund when the Rules were created. In reciting Statute 173 A-2.5 (2), the fund is not just for acquisition or maintenance. The Rules had always been more specific than the Statutes. In knowing that the Turtle Bay application would be reoccurring, than it would be up to the Commission to decide to add Rules to address this debt service project. There could be a subcommittee created to amend or add Rules. Although a lengthy process, it may be worth it since the debt service application would likely be taking place for approximately thirteen years. If the Commission decided not to amend or add any Rules, it would rely on the Statute for the award of the debt service project.

Chair Buchanan commented that during the ranking process, she had recommended Commission members rank that particular project just like any other project, because in the end, the Commission only played an advisory role; the BLNR making the final decision. Also, Chair Buchanan was not inclined to change the Administrative Rules because it may open the door to further use of the fund for debt service projects.

Member Ziegler asked if the Turtle Bay project had received funding in the past (not for debt service) to which Ms. China replied that it had not.

Member Ziegler questioned the language used for debt service with have any lands of interest to the state. Mr. Hirokawa replied that under the HRS §172 A-2 doesn't not list "economic development" as criteria for land valuable to the state.

Member Menard asked about HRS 173A and the language of "not with any laws to the contrary." Member Menard viewed the Administrative Rules not having debt service listed to be in conflict with the

HRS 173A. Ms. China replied that the Statue always trumped the Rules; furthermore, there is still only one fund, so it would not matter if the acquisition and debt service projects were to be ranked separately or together.

ITEM 8. Requested changes to previously funded Legacy Land projects.

With no objections, Chair Buchanan recessed for five minutes to inform Ms. China about the requested changes.

Project 201005: Fong Plantation

Mr. Rafferty gave a brief overview of the application and the changes. The acreage and parcel are the same, but the TMK was now different from the initial application.

Member Ziegler asked to clarify if this was only a change to the TMK or an extension to the project as well. Ms. Gallaher replied that it was only to change the TMK.

Member Warshauer moved to accept these changes. Member Abbott seconded. All were in favor.

Project 201404: Helemano

Mr. Rafferty gave a brief overview of the application and the changes.

Chair Buchanan clarified that the project lost 218 acres from the Dole subdivision, but gained another 1,414 acres. Mr. Rafferty believed those numbers to be correct.

Ms. Gallaher clarified that the FY16 project was recommended for full funding by the Commission, so the applicant was asking to approve changes to the previous FY14 application to reflect the most up to date acreage, etc.

Member Wiltse asked if the change in acreage would change the purchase price. Mr. Rafferty replied that it would; but it would up to the applicant to find more funding due to the increased acreage. There was no intention of reapplying to this fund.

Member Ziegler asked about Habitat Conservation Plans to which Mr. Rafferty stated there would be no taking from the proposed area, but there would be mitigation for the windmills in the area.

Chair Buchanan commented about combining the funding which had been approved in different grant cycles. The initial project had changed considerably; even though there is a huge increase in acreage, using the funds from the original project application is still concerning. Ms. Gallaher replied that the proposed changes were to ensure the previously-funded application matched the most up to date application from the FY16 grant cycle.

Mr. Rafferty clarified location and benefits to the project. Chair Buchanan did not disagree with this; however, suggested previous acreage had more recreational benefit and local representative support.

Member Abbott could understand Chair Buchanan's opinion, but protecting the access to those mauka lands had been the key reason to partially fund the project in the past. So although he agreed Chair

Buchanan's argument was valid, he suggested the reasoning for funding the project had remained the same.

Member Warshauer also mentioned there was concern on the site visit about purchasing viable agricultural land, however, these changes seemed to improve that situation.

Member Wilson asked when the actual purchase may take place, to which Mr. Rafferty replied most likely during the 2017 calendar year.

Member Abbott moved to accept these changes. Member Warshauer seconded. All were in favor.

ITEM 4. Update from staff, discussion, and possible action regarding the Fiscal Year, 2017 Legacy Land Conservation Program grant cycle, including the review of timeline, forms, and procedures to be implemented (continued).

Member Wiltse stated she would have to check her calendar to make sure the earlier meeting time would be available.

Member Warshauer clarified that purpose of the meeting adjustment was to have more time to review the applications. Ms. Gallaher replied that the application deadline would remain the same, but the meeting in which Commission members organized their site visits would be moved to the end of September rather than October; this would allow for earlier site visits and more time to review applications.

Chair Buchanan asked for a motion to accept the dates to the application form. Vice Chair Sinton moved to approve the application dates, Member Wiltse seconded. All were in favor.

Mr. Penn suggested that language be placed in the application to alert applicants about possible complications and necessary documents in closing their projects if they were to seek matching funds from the City and County of Honolulu, Clean Water and Natural Lands fund. Although it was not the responsibility for the Commission to do this, changing requirements and legal documents needed for DOFAW/DNLR/DAGS had made it difficult to close those projects recently.

Chair Buchanan asked Mr. Penn to repeat the suggested sections for the language to be placed in the application forms and elaborate on what specifically he was requesting. In summary, Mr. Penn stated the requirements and grant agreement with the State were clear, but the Clean Water and Natural Lands fund was somewhat different and with that difference, the City was not always comfortable with the language required by the State.

Member Warshauer asked if this was happening in other counties, to which Mr. Penn replied he had only seen this difficulty the O'ahu, but had not looked into other projects in neighboring counties because he had not handled those projects.

Member Abbott asked if there were concise language that could be added to this application. Mr. Penn replied that the language could be put together but it was currently not under his scope of duties right now.

Ms. Gallaher stated if any language was to be added to the applicant forms, it should be added in the presence of Commission members at the meeting.

Vice Chair Sinton believed language should be added now, but that language should be general to not single out Honolulu specifically. Ms. Gallaher stated that, if it were helpful, another flyer could be created with this information and could be put on the website.

Mr. Penn mentioned that the Land Board had recently delegated authority to the Department Chairperson to resolve current difficulties with outstanding projects with the City and County of Honolulu. Although it had not been an impediment to funding, it had taken a lot of staff hours to prevent it from becoming one.

Member Wilson clarified that the Clean Water and Natural Lands Commission had its own application process similar to the Legacy Land program, but had not come together to address projects that were applicable to both Commissions.

Ms. Minn had negotiated extensively with staff at the City and County about these types of projects. In her opinion, it came down to staff not completely understanding the importance of Conservation Easements. It could be beneficial to advise applicants not to seek funding from the City and County for easements, but only for the acquisition of land. They preferred tangible land interests.

Mr. Rafferty thanked staff for their hard work on negotiating the issues between the City and County and State, but would stress that the City and County funding was critical to these projects and it would be detrimental to discourage applicants from seeking that funding for O'ahu projects.

Chair Buchanan asked if the Honolulu City Council had been supportive of the Clean Water and Natural Lands Commission in the past, to which Member Ziegler replied they had.

Vice Chair Sinton suggested there didn't seem to be any reason to change the language in the application forms because of these difficulties. While it was viewed as an important issue, Legacy Land should not make changes to its application forms because of it. Member Abbott and Chair Buchanan agreed.

Member Menard asked for the removal of "may be rejected" from the application form and replacement with language using something similar to "may result in low ranking" since it may not only be rejected at all. Member Abbott agreed with the addition of some similar language. Chair Buchanan believed the language was taken from the statute itself and is not inclined to make those changes.

Member Menard believed the application could not result in rejection if no one was willing to reject it. Member Wiltse agreed with the language of Member Menard. Chair Buchanan replied that the language stated it "may" be rejected, not that it "shall" be rejected. Ms. Gallaher also stated that the previous Legacy Land Planner, Molly Schmidt, said she had not previously rejected an application.

Member Menard also mentioned a possible grammatical error on page 3. Ms. Gallaher noted the error and would change it.

Member Menard stated she did not feel completely comfortable voting on these forms since she had not had much time to review them, to which Ms. Gallaher replied that the content has remained the same,

apart from formatting changes. Chair Buchanan also commented that there was really no more time for scheduled meetings to consider any changes.

Chair Buchanan requested a motion to accept grant acquisition forms and guidelines. Vice Chair Sinton moved to accept. Member Abbott seconded. All were in favor except Member Menard, who voted against it.

ITEM 6. Legacy Land Conservation Program budget overview and discussion.

Ms. Yuen reviewed, summarized, and listed budget allotments. The overall FY16 Budget was approximately \$5.1 million, including \$4.5 million for grant awards, Central Services fees (for using a Special Fund) of just under \$347,000, and staff costs of under \$221,000. The remainder consisted of DOFAW overheads, staff and commission travel, and supplies and software etc. The budget for FY17 was likely to be similar.

ITEM 5. Legislative update and discussion regarding program ceiling increase requests.

The highlight would be the increase in the spending ceiling.

Member Ziegler clarified that \$4.5 million went to the grants, with remaining funds going to administrative costs, travel, etc. Ms. Yuen stated this was correct. There was \$1.7 million accumulating in the Legacy Land Conservation Fund due to the difference between the spending ceiling and fund cap. The cap is how much could be deposited in the account, but the spending ceiling dictates how much can be spent each year. There was a request at the legislature to increase the spending ceiling to allow the program to make use of some of these accumulating funds.

ITEM 3. Update on Commission members' terms and vacant positions, and election of new Chairperson.

Ms. Gallaher had checked with Boards and Commissions and confirmed each members' term dates.

Ms. Gallaher thanked Chair Buchanan for her eight years of service to the Commission, with this meeting being her last day.

Chair Buchanan asked if there were any recommendations for the Chairperson opening by the Commission.

Vice Chair Sinton recommended that he not be nominated since he was already the Chair of the Natural Area Reserves System Commission.

Vice Chair Sinton nominated Member Menard, Member Abbott seconded. Member Warshauer nominated Member Abbott, Member Wiltse seconded.

All were in favor of Member Menard as Chairperson.

Ms. Gallaher noted she would add an election of a new Vice-Chairperson to the next meeting agenda.

ITEM 9. Announcements.

a. Update on the status of the Fiscal Year 2016 Legacy Land Conservation Program grant cycle

Ms. Gallaher stated she had received the consultation letter from the Senate President/Speaker of the House and could move forward with the Board of Land and Natural Resources submittal for the FY16 project approvals.

Member Menard asked whether the December meeting minutes would be attached to the Board submittal. Chair Buchanan replied that they would not, but staff could be available with the minutes if Board members required further information.

b. Update on the status of the Legacy Land Coordinator position

Ms. Yuen stated the position had been posted internally, and the external noticed would be posted as soon as possible.

c. Update on poster from IUCN World Conservation Congress

Member Menard stated she was just waiting on the format for the electronic poster.

Member Ziegler mentioned she had received a call from Ms. Bernadette Fo of the IUCN Host committee about using this Commission for stories in the run up to the congress. Ms. Gallaher stated she and Ms. Laramee were in contact with Ms. Fo already.

d. Any other informational updates from staff, Commission members, and members of the public

Ms. Hirose-Hulbert wished to reiterate that changing flights required a lot of time and paperwork by staff, so flights must be requested at the latest by the Thursday two-weeks prior to any meeting.

Commission members voiced some concerns about making changes and using their personal accounts to pay for change fees. Staff noted they would clarify with clerical staff and Hawaiian Airlines.

Member Wilson asked if there were any travel limits. Ms. Gallaher replied that there wasn't any limit currently, but Administrative staff recommended trying to utilize other means of communication for certain meetings if this was more convenient.

Member Menard mentioned there was a court summons for any heirs to the land for a previously-funded project (FY15) at Waipa, Kaua'i. If no one were to appear, then the land would remain available to sell. Ms. Gallaher stated they awaiting word from The Trust for Public lands since they were a co applicant on the project.

Member Ziegler asked for clarification on the project. Member Menard replied that it was the Waipa Foundation along with The Trust for Public Land, they were going to purchase the land but at this stage Waioli Farms may also have interest in the land.

ITEM 10. Adjournment.

Chair Buchanan adjourned the meeting at 3:30pm.