

Legacy Land Conservation Commission Meeting Minutes

DATE: August 18, 2015

TIME: 12:00 p.m. – 4:00 p.m.

PLACE: Room 132 (Board Room), Kalanimoku Bldg., 1151 Punchbowl St., Honolulu, Hawai'i (moved to DOFAW Meeting Room after start of meeting due to technical difficulties).

VIDEOCONFERENCE LOCATION: Division of Forestry and Wildlife Kauai Branch Conference Room, 3060 Eiwa Street, Room 306, Lihue, HI 96766

COMMISSION MEMBERS PRESENT:

Mr. Thorne Abbott
Ms. Lori Buchanan
Ms. Theresa Menard
Mr. John Sinton
Mr. Rick Warshauer
Ms. Wendy Wiltse
Ms. Marjorie Ziegler

STAFF:

Katie Ersbak, DLNR, DOFAW
Kirsten Gallaher, DLNR, DOFAW
Ian Hirokawa, DLNR, Land Division
Malama Minn, DLNR, Land Division
Molly Schmidt, DLNR, DOFAW
Emma Yuen, DLNR, DOFAW

PUBLIC:

Ms. Lea Hong
Ms. Angela Anderson
Mr. Doug Cole

MINUTES:

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

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

Ms. Schmidt made an announcement that Member Menard and Ms. Anderson had joined the meeting via teleconference, but due to technical difficulties with the videoconferencing system in the venue, the meeting would be recessed and reconvened in the Division of Forestry and Wildlife Meeting Room.

As the Vice-Chair (in the absence of the previous Chair, Kaiwi Nui Yoon), Member Buchanan called the meeting to order.

An oath of office was taken by the new Commission members: Members Warshauer, Wiltse and Ziegler. Ms. Schmidt announced that legislative appointments to the positions were usually done in May.

ITEM 2. Approval of Legacy Land Conservation Commission meeting minutes from March 31, 2015 meeting.

Member Buchanan motioned to approve the minutes as drafted, as no revisions had been received. Member Abbott seconded; all were in favor.

ITEM 5. Briefing by staff on 2015 Legislative Session outcomes affecting the Commission or the Legacy Land Conservation Program and possible Commission discussion and decision-making regarding the following acts:

- a. Act 84, Session Laws of Hawaii 2015, Relating to Disposition of Tax Revenues;**
- b. Act 121, Session Laws of Hawaii 2015, Relating to the Transient Accommodation Tax; and**
- c. Act 169, Session Laws of Hawaii 2015, Relating to Training.**

Due to scheduling constraints, it was agreed that Item 5 be addressed first.

Ms. Schmidt provided an overview of the Acts pertaining to the Legacy Land Conservation Program which was linked to the last legislative session:

- a. Act 84

Ms. Schmidt spoke about Act 84, related to the disposition of tax revenues. The Land Conservation Fund had previously been funded using 10% of the State's land conveyance tax. The spending ceiling was usually capped at \$5.1 million, but this change resulted in the Land Conservation Fund being capped at 10% or \$6.8 million annually. Because the spending authority was only up to \$5.1 million, it was not anticipated that this would have a significant impact in the near future. The proportion of the money going to the rental housing trust fund had been increased from approximately 30% to 50%. The Natural Area Reserves (NAR) System special fund had also been removed to general funds.

Member Ziegler noted that in two years \$20 million would effectively be removed from the NAR fund and that after the next biennium, the \$20 million would not be part of the base budget. This would require requesting funding from the legislature every two years. Member Sinton added that the \$1.5 million earmarked for the Turtle Bay project annually could not come out of the difference between the \$5.1 million spending ceiling and \$6.8 million cap on the Land Conservation Fund.

b. Act 121

Ms. Schmidt outlined Act 121, which revolved around the Turtle Bay conservation easement fund to provide reimbursement for the Makai acquisition, which has yet to close. Starting July 1 2015, a Non-Profit Organization is required to file an application with the Board of Land and Natural Resources annually, until the bonds are fully amortized or paid back. The bill also sets aside \$1.5 million in Hawai'i tourism authority funding. The Committee report for the bill names the Trust for Public Land as the entity which must apply for the \$1.5 million annually from the Legacy Land Conservation Program. This is to be submitted as an application annually and it is assumed that it would be subjected to the normal process.

Member Sinton noted that if the Turtle Bay project was funded, this really only left approximately \$3 million to give out to other projects (after the administration budget, central services deductions and grants budgets are removed from the \$4.5 million). Member Warshauer asked about the term for the bond. Ms. Schmidt replied that it was approximately \$35 million from the state, which worked out to roughly 12 years plus interest.

Member Ziegler asked if legislature expending Legacy Land funds needed to be consistent with the recommendations of the Commission. Ms. Schmidt replied that the LLCC performed an advisory role to the Board of Land and Natural Resources, but that decision-making authority didn't rest with the Commission, although the expenditure of Legacy Land funds must be consistent with the recommendations / priorities of the Commission.

Ms. Lea Hong provided an overview of what had occurred during the 2014/2015 legislative session. The state was committing only \$35 million, with the Trust for Public Land willing to commit \$3.5 million but told that only \$2.5 million was required. The County had committed \$7.5 million. At the time, David Ige had been the Chair of the Senate Ways and Means Committee. It was envisaged as a way to offset the debt of the HCC as there were issues related to revenue bonds and higher interest rates. \$40 million was a relatively small issuance (as it was not backed by general funds, only transient accommodation tax). A lot of tinkering had occurred with regards to financing. The \$35 million was now envisaged as general obligation bonds, with an estimated \$3 million of debt service (\$1.5 million from the transient accommodation tax and \$1.5 million from the Legacy Land Conservation Program. Various other benefits had been negotiated, including an increase in the excluded acreage in the latest deal. The House Finance Chair, Sylvia Luke, had wanted the Legacy Land Conservation Program to pay for the debt service entirely, and was insistent that the Legacy Land Conservation Program had been created for this purpose, to which Mr. Cole and Ms. Hong had been strongly opposed. There had also been push-back from the Hawai'i Tourism Authority about using its funding. The \$1.5 million option had been proposed and the legislators were made aware of the fair and transparent process required for the Legacy Land Conservation Program.

Mr. Cole added that a lot of time had been spent meeting with House Representatives and Senators as the Program as a whole was under threat. They had advocated for the program and the process, and had opposed removing the fund, but also opposed earmarking funds for the Turtle Bay project, and believed it should be ranked along with other projects annually.

Member Abbott asked if, given that the role of the Commission was only an advisory one, the Commission ranking the project the lowest would be considered a reasonable outcome. Ms. Schmidt provided an overview of the process, whereby the Commission produces recommendations based on a ranked list, then recommends the projects in the order ranked to the extent that funding becomes available. Staff draft letters to the Senate and House Representatives including the ranked lists and binder with the applications, but they had not to date provided comments or elected to meet. The recommendations were an attachment to the Board submittal at one of the regularly scheduled meetings of the Board of Land and Natural Resources. The Governor made the final approval.

Member Abbott asked if the Board could find other funds to support the project, or if the funding of this project could go directly to the Board and bypass the Legacy Land Conservation Program; Ms. Schmidt replied that although there were no administrative rules directly related to debt service, the language stated that the money was required to come from the Land Conservation Fund. Ms. Hong added that all of the statutes referred to the Board, even though all other programs fed up to the Board. Mr. Cole stated that it was his understanding that Rep. Sylvia Luke has envisaged it as a Legacy Land process.

Ms. Schmidt confirmed that she had consulted the Attorney General, who suggested that it would be considered a Legacy Land application. Ms. Hong added that although there had been some disagreement on the process of funding the Turtle Bay project, she felt it was still a great project which would compete extremely well. Mr. Cole added that it had high levels of recreational and natural resource value, and potentially cultural too. The U.S. Fish and Wildlife Service had been investing staff time and funds for restoration work at Kahuku Point and a lot of endangered plants at the site had been doing well. Albatross were known to nest there and monk seals gave birth annually on the shoreline. Member Warshauer mentioned that he had been involved in coastal vegetation surveys and that one of the richest areas was between Kahuku point and Kahuku town.

Member Abbott thanked Ms. Hong for efforts at the legislature. Although the cap had been raised, the ceiling hadn't been, and it was suggested that the legislature might react favorably to such a request. Ms. Schmidt replied that a ceiling increase had been requested. Because the funding source had remained a special fund, every year 10% of the land conveyance tax is directed into the fund (regardless of whether it can be spent – which is determined by the cap). The spending ceiling had remained the same at \$5.1 million for the past few years; however, the excess funding hadn't been raided (although it had been in previous years). Ms. Hong added that the Trust for Public Land had made inquiries about increasing the ceiling as it had seemed like there might have been an error based on the reactions of the legislators in the previous session. Member Ziegler confirmed that many of the legislators had felt bad because they hadn't known what was going on. The legislation had originally only dealt with the caps on the fund, and the public and many of the other legislators felt like they did not have a chance to review. Member Buchanan added that the Department of Land and Natural Resources had been without a Chairperson for most of the beginning of the session, and there had been confusion among some of the legislators around the budget options. This could hopefully be avoided in the next session. Member Warshauer thanked everyone for the explanations.

c. Act 169

Ms. Schmidt stated that Act 169 requires several state boards and Commissions including the Legacy Land Conservation Commission to complete a training course focused on native Hawaiian land rights and access. The course is a single day's training on a Saturday and was last offered on August 1, 2015. The next one will be held in the second week of January. Member Abbott added that it was a good legal analysis of what the public trust means in the State of Hawai'i.

ITEM 3. Overview of the Legacy Land Conservation Program grant cycle for new Commission members.

Ms. Schmidt provided an overview of the Legacy Land grant cycle for the benefit of the three new Commission members.

The Legacy Land Conservation Program was a state grant funding source for land acquisition and resource protection through Conservation Easement and fee purchase. Funding could be acquired by non-profit, county or state land organizations, and there was no maximum or minimum request, but it was only limited by other organizations competing for the funding. It was a statutory requirement for non-profit and county organizations to supply at least 25% in the form of matching funds.

Member Wiltse asked if the funds were solely for acquisition. Ms. Schmidt replied that they were for acquisition and closely related costs, for example appraisals and title surveys. The statute did allow for grants of management funds, although the Commission was initially not in favor of going through with management grants (based on lower funding availability at the time). In 2014, staff provided a detailed cost-benefit analysis, and the overall Commission decision was again not to implement. Ms. Schmidt had included a brief overview of the cost-benefit analysis for background reading.

Member Warshauer asked if there was any preference in the statute for fee acquisition versus conservation easements. Ms. Schmidt replied that there was not.

The Legacy Land Conservation Program was created by Act 56 in 2005; the previous act was revised to be funded by the Land Conservation Fund. Act 254 in 2006 created the Legacy Land Commission. Additional chapters had been added at a later stage, including administrative rules. The Legacy Land Conservation Commission was actually separate from the Division of Forestry and Wildlife (DOFAW). Land Division staff provided technical advice to DOFAW staff on land matters. If an application was for county or state acquisition, the Land Division would assist in carrying out the acquisition (along with the applicant division).

Member Ziegler asked if the state was required to go through the applications process in the same way as other entities. Ms. Schmidt replied that although the LLCP coordinator was based in DOFAW, the

State went through the same applications process. The state was not required to provide matching funds, but as this was a consideration in the rankings process, matching funds were usually sought by the state.

Ms. Schmidt provided an overview of the state agency consultation process. Applicants were required to submit a project summary to three state agencies, which had the opportunities to provide comments regarding the public benefits of the project. During the 2012/2013 Fiscal Year cycle, there was a legislative change. Applications were now due September 15, with applicants required to have a basis showing how the value of the property was derived, with a list of matching funds, the title report and condition of the property, environmental hazards and liabilities, seller awareness and willingness to sell, and the final holder of land's signature. Commission members received an online link to applications. Requests for hard copies could be put forward to the Program Coordinator. Access to the portal was available shortly after the deadline and access to hard copies a few weeks after. A meeting in October is held to determine site visit arrangements.

The requirements of Sunshine Law pertain to public notice of meetings and public access to documents. Any time the Commission will meet or discuss matters, members of the public are permitted to be there. The only time when this does not apply is when a Task Force (2 – 4 members) has been formed, in which case the Commission may attend site meetings without being required to invite members of the public. 5 members constituted a quorum.

The grant cycle consisted of three meetings: one to arrange site visits October, followed by consecutive meetings in December to discuss site visits and hear testimony (which is encouraged on the first day) and then rank applications on the final day. Ms. Schmidt would send out an online poll to determine Commission members' availability.

There were different forms of guidance for ranking projects: the statute contained priorities in terms of the types of lands to be considered, and provides them with an equal weighting. Applicants must show which priority their application is meeting. Criteria have also been put forth in the administrative rules. Because the types of resources to be protected vary so widely, there are also criteria such as costs, matching funds, community support and benefits. During the rankings process, Commission members first recuse themselves for any projects for which they might have a conflict of interest (if in doubt, a state hotline was available to help determine that). The ranking sheets are named, and form part of the public record. All of the scores are averaged, following which proposals are ranked. In the past there had been some issues, for example where projects had been tied at the funding cutoff. In such cases, both projects were reduced proportionately to make use of the remaining funds.

DOFAW then sends the proposed projects to the legislators. Thereafter, the funding recommendations are submitted to a Board of Land and Natural Resources meeting (occurring twice a month, usually in February / March). Projects are subject to final approval of the Governor, usually by the end of May.

The Department of Land and Natural Resources DLNR encumbers funds before the end of the fiscal year, which consists of a blanket encumbrance whereby letters of award are issued. Thereafter, the paperwork is sent to the DLNR Fiscal Office to approve the encumbrance. The Program Coordinator worked with grantees to complete the grant agreements for acquisitions.

Commitments for grantees. Contains deadlines for acquisition, usually given 2 years to close but issue a lot of extensions. Sets out terms and conditions for payment. Checklist of requirements for grantee to complete before funding can be disbursed.

Non-profit and county applicants are required to submit the appraisal (including conducting an independent appraisal review, working with the Land Division to verify it). The Legacy Land Conservation Program cannot provide funding towards any acquisitions over the fair market value. Member Ziegler asked if the project would stall if the acquisition costs went above the fair market value. Ms. Schmidt confirmed this but added that if the project was appraised for a higher price and landowner lowered it, it could still go through.

Member Wiltse asked what would happen if the grantees couldn't raise sufficient funding by the deadline. Ms. Schmidt replied that the Commission criteria on matching funds were a major factor in decision-making, and the money unfortunately couldn't be given to the next best project because of state encumbrance requirements. Member Buchanan added that it was therefore important for the Commission to be able to assess the likelihood of the application going through during the applications process (i.e. degree of support for the project and good track record of the applicant).

Ms. Schmidt stated that a title review was required. As part of the grant conditions, grantees were asked to add restrictions to the deed (based on what's in the Legacy Land statute, including protection for the resources, approval for permission to sell, release, and the return of proceeds from disposal back to the Legacy Land Conservation Program (according to the same proportion of the grant originally provided to the applicant).

Ms. Schmidt provided an overview of deed restrictions and conservation easements. In 2012, language was passed that came along with consultation process. The rules are laid out in the applications process, and applicants are allowed to propose their own conservation easements as part of project. Ms. Minn stated that the exact provisions within the conservation easement were subject to public (Sunshine Law). Management was not technically a Legacy Land grant requirement. If every conservation easement were to be Sunshined, it would take more than a year. Member Warshauer asked how, given the Commission might not be privy to the details of conservation easements, informed decisions regarding funding projects could be made. Member Buchanan replied that during the applications process, the applicants were asked about management recommendations. The Commission used their judgement to vet the applicant and determine the likelihood of management plans being carried out (for example looking at funding and resources available to the applicant for management). Some projects have applied multiple

times for funding and improved their applications each time. Ms. Minn added that in some of projects, staff was involved in formulating the provisions of conservation easements. Unless the applicant had approached with parameters which were fully set out, staff was usually involved in the process. Member Abbott added that the recommendations were based on what was presented to the Commission members during the process. Member Wiltse stated that conservation easements involved paying landowner to protect land from development and implement some practices, and could be less costly than an acquisition. Ms. Minn stated that conservation easements on agricultural land in danger of development could be valued very highly, as one 'jump' in land use was not seen as a significant hurdle to developers. Changing from preservation to industrial, for example, would be seen as very unlikely. Subdivision is a county prerogative and was done through an appraisal process. A third party appraisal review was usually utilized to ensure the same methodology was used. It was preferred that the end holder of the land was a part of the application process.

Ms. Schmidt added that grants to counties and non-profits would also get an appraisal review. Appraisals were done through two different processes but were all required to meet state standards. Applicants were required to self-report every two years after closing. This included advising staff of any changes in use. The Commission may reserve the right to enter the property and inspect it, which was difficult to administer, now that 41 projects had been funded. But it could be done via 'task forces' of up to four members.

Ms. Schmidt informed the Commission that the Program had limited staff and administrative budgets, and that many of the policy decisions did have an element of ease of administration. There was, however, room to push for things that Commission members felt strongly about. The standard for monitoring conservation easements is an annual site visit. The Legacy Land Conservation Program had been set up as a Grant program but may function as a land acquisition program, and acted to try to seek the most mutually beneficially solutions. The Program had awarded 49 grants for the protection of over 29,000 acres, with the average matching funds leveraged at 60%.

Member Menard asked if any applicants had had their applications rejected because of errors. Ms. Schmidt replied that she could not remember rejecting an application although it could have happened in the early stages of the Program.

Vice-chair Buchanan recessed the meeting for a short break at 2:45pm.

ITEM 4. The election, by members of the Commission, of a chairperson for the Commission pursuant to Section 173A-2.4, Hawaii Revised Statutes.

Vice-chair Buchanan called the meeting to order at 3:00pm and opened the floor for nominations for chair.

Member Abbott nominated Vice-chair Buchanan; seconded by Member Warshauer. Member Sinton recommended that nominations be closed; seconded by Member Abbott. All were in favor. There was no agenda item for the Vice-chair so it would be attended to at a following meeting.

ITEM 6. Announcements

Member Abbott stated that since the Natural Area Reserve Fund was discussed earlier, he thought it would be appropriate to be advised of the fund's future. Member Sinton expressed his dismay at the turn of events, and was unsure of whether it could be interpreted as a first effort to defund conservation, or credit being sought for funding rather than it occurring automatically. In the first biennium, the funding was effectively no worse off than before, but the legislature had effectively broken a promise to the people of the state over a decade ago.

Ms. Minn added that better reporting would ensure that actions were preemptive prior to the legislative session. Having communities where projects were located coming forward to voice their support would also be beneficial. In Member Ziegler's opinion, the Legacy Land Conservation Program might be safe because of its popularity and the Turtle Bay project, although the ceiling could still be lowered in the next session. She added that people confused the Natural Area Reserve Fund with the Natural Area Reserve System, which had not always been popular with hunters and people that used the forests. The Natural Area Reserve System was only incorporated into the Natural Area Reserve Fund back in 2005, however. Conveyance taxes have been raised twice since the initial funding decision. In the next biennium, \$20 million in funding wouldn't be in the budget unless legislators could be convinced. Senator Laura Thielen had given presentations on budgets, and had offered to give budget presentations to any group statewide who wanted to learn.

Ms. Schmidt advised Commission members of ethics training starting on August 26th, 2015. It was highly recommended but would probably be repeated within the year.

The Commission still had two vacancies, for a cultural representative and agricultural association. Ms. Schmidt would send a short write up to Member Ziegler about the positions.

Ms. Schmidt announced that she was leaving the Legacy Land Coordinator position to move back to Wisconsin sometime in early September. Some of the easier duties to pass on would be managing the applications process and she was in the process of putting together a plan for covering duties in the absence of her replacement. The position had been labelled a Program Specialist position so she was confident a suitable replacement could be found. Member Sinton stated that he had taken great comfort in knowing Ms. Schmidt had been taking care of the program; Member Abbott seconded his sentiments. The Commission members thanked Ms. Schmidt for her many years of service and dedication to the Program.

ITEM 7. Adjournment.

Member Buchanan adjourned the meeting.