

## **Minutes of the December 14, 2007, Legacy Land Conservation Commission Meeting**

**DATE:** Friday, December 14, 2007

**TIME:** 8:00 a.m. to 4:00 p.m.

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

### **COMMISSION MEMBERS PRESENT:**

Dr. Dale B. Bonar, Chair

Dr. Carl J. Berg

Dr. Joan E. Canfield

Dr. Charles ("Chip") Fletcher

Mr. Herbert ("Monty") Richards

Dr. Robert J. Shallenberger

Mr. Kaiwi Nui

Ms. Karen G.S. Young

### **STAFF:**

Molly Schmidt, DLNR, DOFAW

Linda Chow, Deputy AG

Ian Hirokawa, DLNR, Land Division

Randall Kennedy, DLNR, DOFAW

### **PUBLIC:**

Steven Lim, Carlsmith Ball, LLP

Scott Fisher, Maui Coastal Land Trust

Gary Maunakea-Forth, MA`O Organic Farms

Cheryse Sana, Waianae

Halona Kaopuiki, Kaū

David Smith, DLNR/DOFAW

Gregory Dunn, Hawaii Nature Center

Abbey Mayer, Moloka`i Enterprise Community, Ke `Aupuni Lokahi

Collette Machado, Moloka`i Land Trust

Danny Miller, Kaū Preservation

Jim Spielman, Kaū Preservation

James Leary, CTAHR, Univ. of Hawaii

Jenifer Benck, Carlsmith Ball, LLP

Kukui Maunakea-Forth, MA`O Organic Farm

Earl Louis, Kaū Preservation

Jody Kaulukukui, The Nature Conservancy

Gary Blaich, Kauai Public Land Trust

Jenifer Luck, Hawaii Island Land Trust

Lea Hong, Trust for Public Land

Casey Carmichael, Hawaii Nature Center

Harry Yada, County of Hawaii

Bob Jacobson, County Council, County of Hawaii

David Santisteven, Lualaba Eco-friendly Alliance of Farms (LEAF)

### **MINTUES:**

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

Chair Bonar called the meeting to order and the Commission members and staff introduced themselves.

**ITEM 2. Approval of Legacy Land Conservation Commission meeting minutes from September 27, 2007, and November 6, 2007, meetings.**

Member Canfield moved to approve the draft meeting minutes from September 27, 2007, and November 6, 2007, meetings. Member Young seconded, all were in favor.

**ITEM 3. Disclosure by members of the Commission of any potential conflicts of interest involving 2007-2008 projects.**

Chair Bonar stated that he would recuse himself from decisions regarding Maui Coastal Land Trust and that Member Fletcher would act as Chair in his absence. Chair Bonar stated that he would not rank proposals that he had a conflict with and the same would be true for any other members citing a conflict. Chair Bonar mentioned that the Commission consulted with the Ethics Commission staff and with statisticians in determining the method of ranking and recusal, to avoid both real and perceived conflicts of interest in deciding whether to recuse themselves. Member Shallenberger disclosed a conflict with the TPL/Honouliuli project on Oahu, stating that his employer, The Nature Conservancy, had a leasehold interest in the property and could stand to benefit.

Member Young stated that her daughter works for MA‘O Organic Farm. She had contacted the Ethics Commission staff and had been informed that she need not recuse herself because her daughter is not a dependent. Member Young had called two times to verify this information. She asked if any other Commission members had an issue with this connection and Chair Bonar asked if she felt she could be a fair and impartial judge. Member Young replied “yes.” Members Berg, Canfield, and Fletcher stated that they had no conflicts of interest. Chair Bonar stated that Members Richards and Kaiwi would be arriving shortly and would discuss any potential conflicts regarding those members at that time.

Member Shallenberger asked whether it would be necessary to remove himself from the room when TPL/Honouliuli was discussed. Ms. Chow stated that it is suggested, but not necessary, however a member’s presence in room may influence other commission members. Member Berg stated that members ought to stay in the room and refrain from participation while a project was being presented, but ought to leave when deliberation occurred. Ms. Chow stated that Member Berg was correct.

**ITEM 4. Discussion of 2007-2008 project recommendation methodology (a list of applicants is attached to this agenda).**

Chair Bonar summarized the order of presentations and testimony as arranged on the agenda, stating the Commission would like to hear project presentations but preferred to limit it to new information to preserve time. The Commission would hear testimony following any project presentations, then discuss site visits, then go into deliberations.

Chair Bonar reviewed the time limits on testimony and their purpose. Chair Bonar asked if any presenters had a time conflict. Mr. Blaich mentioned an 11:15 a.m. appointment. Chair Bonar stated that he would stick to the order of projects on the list attached to the agenda unless presenters had time limitations.

Chair Bonar stated that each Commission member had reviewed the applications using criteria forms and would be using a one-to-five scale for ranking projects. He stated that some of the

lower-ranked projects may not receive full funding, depending on how much was left over (from \$4.7 million available) from the top-ranked projects.

Member Fletcher stated that members with conflicts may need to recuse themselves from any post-ranking discussions regarding project ties or apportionment of funding. Ms. Chow confirmed this.

Chair Bonar mentioned that, in past discussions, the Commission had unanimously agreed that the best project should be funded, rather than trying to apportion to a specific island or resource value. He stated that the Commission may have until May/June to re-apportion funds from any recommended project that did not come together as expected.

Chair Bonar stated for the benefit of the public attending the meeting that unrewarded funds will go back to Land Conservation Fund. Member Berg stated that the Commission gives its recommendations to the BLNR for final action, and that a consultation process with the Senate President and Speaker of the House also occurs. Chair Bonar discussed last year's process. Ms. Collette Machado asked whether a majority was required to pass a project, and whether the Chair votes. Chair Bonar and Ms. Chow replied that quorum (5) was required to pass a project and that the Chair was a voting position. She stated that the Commission was advisory to the Board of Land and Natural Resources.

Member Kaiwi arrived and introduced himself. He mentioned a conflict with the TPL/Honouliuli project and stated that he would recuse himself.

**ITEM 5. Optional presentations by applicants of new information or clarification of information concerning their proposal. Applicants should limit presentations to a maximum of 10 minutes to allow for questions from the Commission. (Public testimony on projects is appropriate under this item. The Commission requests that individual testimonies be limited to 3 minutes).**

Chair Bonar called for any presentations or testimony on the MA'O Organic Farm/Lualualei project. Mr. Gary Maunakea-Forth used a brief PowerPoint presentation to discuss background on the MA'O Organic Farms program and the project proposal. He stated that the program was about helping youth grow while teaching farming skills and producing goods for organic markets. He stated that farms in Hawaii were threatened and that it was difficult for rural communities to hold onto their identity without farms. He stated that the lease they currently held would expire and that they had been in discussions with the landowner regarding the parcel proposed for acquisition. He mentioned a business plan, project funding, expanding operations, stated that the project is ready to go, agreement of sale in place, match funds secured, organic certification submitted for consideration.

Member Canfield asked about the appraisal. Mr. Maunakea-Forth stated that the appraisal had come in at \$825,000, and the sale price is set at \$959,000 and would not go down. Mr. Hirokawa stated that he did not believe that the Department would allow for grants for over FMV acquisitions.

Member Kaiwi stated that the application should have addressed cultural values more clearly. Member Fletcher asked what the farm's source of water was. Mr. Maunakea-Forth answered that it was the City and County of Honolulu, about 4,500 to 5,000 gallons a day. He stated that composting was done to organic certification standards. Member Fletcher mentioned erosion control and Mr. Maunakea-Forth talked about their mulching practices and soil-protection efforts.

Member Berg asked if there had been any chemical use by the previous owner of the parcel. Mr. Maunakea-Forth stated that the soil hadn't been used since prior to 1986 for chicken farming, and that fungicide and some herbicide use was likely, but that MA'O Organic can remediate the soil if necessary.

Mr. Maunakea-Forth talked about the program's effectiveness in helping youth reach college.

Chair Bonar asked if the lands leased currently would still be used. Mr. Maunakea-Forth stated that they would carry on leasing the land but may not be able to buy.

Chair Bonar asked for other testimony regarding the MA'O Organic Farm/Lualualei project.

Mr. James Leary, a recent Ph.D. from UH Manoa and presently faculty at the College of Tropical Agriculture and Human Resources (CTAHR), stated that he was in charge of research on agriculture throughout Hawaii and bringing in federal funding for this research. He stated that he had found that many funders want active on-farm research. Has been successful in working with MA'O Organic to receive funds. Many grants involve both research and education and MA'O has this advantage to receive future funds and is currently providing a service to the University and CTAHR as a research site.

Cheryse Sana, a participant of MA'O Organic Farm Youth Leadership Program and recent graduate of Waianae High School as class salutatorian, testified that she participated in the program to learn about culture, kuleana, and how people are rooted back to the land. She stated that she had learned a lot about the connection between farming, the effects of loss of resources, and cultural values through the Leadership Program.

Ms. Lea Hong, Trust for Public Land, spoke briefly in support of the MA'O Organic Farm project, mentioning that the support from the agricultural community had been key in the passage of the Legacy Lands act.

Ms. Kukui Maunakea-Forth talked about how she had the opportunity to aspire as a young person because of strong cultural values and a belief in her own potential. Opio in our community do not have equal opportunities and we have the kuleana to give this to our young people. She stated how important college education had become since youth could no longer learn at the knees of their kupuna, and that she was proud to be part of a program that helped them in this way.

Member Richards arrived and introduced himself. He stated that he would be recusing himself from action on the TPL/Honouliuli project.

Chair Bonar recused himself from the discussion on Maui Coastal Land Trust/Nuu project and Member Fletcher took over as Chair.

Mr. Scott Fisher of Maui Coastal Land Trust (MCLT) presented additional information on the MCLT/Nuu project. He stated that the appraisal came in at \$5.5 million dollars and that the owner had agreed to sell for \$4 million. MCLT has raised \$2,794,500 for the project. He stated that Kaupo Ranch has made it clear that they must sell the property, and there is potential for subdivision and development, however Kaupo wishes to sell for conservation purposes and may

even support some management. Mr. Fisher stated that MCLT had made efforts to reach out to the local community, and that his location near to the remote property might make management less difficult.

Member Young asked the exact acreage of the acquisition, as there were conflicting numbers on the application. Mr. Fisher stated that 78 acres had been agreed to and MCLT was hoping to increase to 128 acres, which wouldn't increase the costs because of the unproductive nature of the land, however, is desirable to MCLT for preservation of archeological sites.

Member Shallenberger asked about management issues. Mr. Fisher stated that MCLT would replicate what it had done at Waihee, using federal Wetland Conservation Program, Natural Resource and Conservation Service funds, and State DLNR funds. Regarding actual management, Mr. Fisher stated that someone would be on the ground 2 to 4 days a week and that the local community would be asked for assistance and guidance. He stated that there would be a management plan similar to Waihee's.

Member Canfield asked whether endangered waterbirds nested on the property. Mr. Fisher stated that MCLT had seen coots and stilts, and that koloa had been seen there, but not nesting. Member Berg asked if the ducks were hybrid or koloa. Mr. Fisher stated he was unsure. Member Berg asked if the area was in a tsunami zone, Mr. Fisher replied that it partially was.

Mr. Fisher stated that the additional acres contained burial sites but an archeological survey had not been conducted. He stated that the appraisal had been done on the lesser amount of acreage.

Member Kaiwi stated that MCLT had shown a good balance of tradition and modern in its stewardship of Waihee. He stated that Mr. Fisher was correct in stating that there were cultural sites in the area and mentioned a specific family and asked whether MCLT had consulted any lineal descendents linked to the area. Mr. Fisher stated that he had contacted lineal descendents of families in the area but not that specific family. He stated that Kaupo, the closest community, would be consulted for the preservation and protection of cultural resources, the ecological restoration, and education efforts concerning the area. Member Kaiwi asked whether MCLT would allow access to the Native Hawaiian community. Mr. Fisher replied yes.

Member Fletcher asked for additional testimony. Chair Bonar returned to the room. After a five minute break, Chair Bonar asked if there was testimony for the County of Hawaii/Kawa Bay project.

Mr. Harry Yada, Property Manager for the County of Hawaii, briefly described the project. He stated that the completion of this project would complete the protection of the coast from Honoapo to Punaluu. He mentioned that the County had met with the owner and that he had a handshake agreement on the price of the property, which was less than the amount stated on the application. Based on that price, and the award of funds from Legacy the County could see the completion of the acquisitions by next year. He stated that the owner, Ed Olson, would contribute a portion of the sale proceeds back to the community and improvements on the properties. He stated that the County had enough money available to fund a management plan for the area.

Member Shallenberger asked about the status of the RLA funds. Mr. Yada stated that Ms. Hong would answer.

Member Fletcher asked whether Mr. Abel Lui was connected to this parcel. Mr. Yada stated that Mr. Lui claims some title to all of this area, and his house was situated on the parcel awarded funding last year. Mr. Yada stated that he had a preliminary title report and that attorneys were currently scrutinizing the issue of title. Member Fletcher asked about the relationship between the County and the Lui family. Mr. Yada stated that previous owners had stated that Mr. Lui had no claim, but that he could not state for certain until the attorneys produced results.

Chair Bonar stated that any information Mr. Yada could provide to demonstrate clear title would help the Commission. Mr. Yada stated that there was a quiet title action and settlement with one parcel, but that this parcel is not included in the project proposal.

Member Richards stated that C. Brewer had owned the land for a very long time. Mr. Yada stated that the County had no interest in purchasing land with unclear title, but at this point, would try to move ahead until situation clarified. Chair Bonar asked if there were exceptions on the title report... Mr. Yada stated that there had been a claim in the 80s but there had been no result from the claim.

Member Young asked what Mr. Hirokawa had found regarding title research on this year's parcels proposed for acquisition. Mr. Hirokawa asked Mr. Yada about last year's Kawa parcel. Mr. Yada stated that he could not speak to the matter until hearing from the County's attorneys.

Member Kaiwi stated that he was interested in what relationship the county proposed to have with the host culture in the area. Member Kaiwi stated that Mr. Lui came to the land as a steward and did not perceive property lines, and that government should seek to meet the Lui family halfway instead of expecting them to view the situation from a lawyer's standpoint. He asked: how will the family be incorporated into the management plan?

Mr. Yada stated that the mayor looked at the situation and told the county that he was willing to work with the family. The County's interest is to protect the land for the public, and hoped to work with Mr. Lui and the entire community.

Member Kaiwi stated that working with the appropriate family will assist the County with the caretaking of cultural sites, because, culturally speaking, not any family can access the site. He urged the County to incorporate the right people at the beginning of the process.

Member Berg asked about the status of the funding from the County. Mr. Yada stated that the County was able to purchase a parcel and had another in escrow from last year... in terms of what the owner of the land had agreed to, the County will have enough money to complete the sale with or without the RLA money.

Mr. Yada stated that the Kawa parcels were the highest priority on the county list.

Member Young asked what the price had been reduced to. Mr. Yada stated that he was not comfortable disclosing the amount based on the handshake agreement. Chair Bonar asked if any potential Legacy award could be reduced to create the possibly of funding more projects. Mr.

Yada stated that until he had an agreement he could not state whether the award should be reduced and that looking to 2009 was beyond his viewpoint.

Member Young stated that she had witnessed Mr. Lui's house structure on the property. Mr. Yada stated that the structure was on another (last year's) parcel and was not a permanent structure.

Chair Bonar asked Mr. Hirokawa the State policy on expending funds on parcels where the title was not clear. Mr. Hirokawa stated that it was not always forbidden but may depend on a higher level policy decision.

Member Shallenberger stated that the Commission had not made clear title a condition of award, and ought to be cautious about applying it as a condition.

Chair Bonar asked the next project to present.

Ms. Hong spoke about the County of Hawaii/Kawa project and showed a brief PowerPoint of sites on the property. She pointed out how cultural sites showed signs of having been cared for. She stated that RLA funds should be available if Congress continues to fund the program at current levels. She stated that title to the properties in question had been quieted in a previous court action. She talked about the chain of title to the Kawa property funded last year, stating that there was some evidence that title was clear.

Member Kaiwi responded that title can move around, but who is responsible for the management of the land?

Ms. Hong stated that the owner would potentially donate access easements and management funding, and that a community organization had also been interested in participating.

Mr. Yada stated that the County Dept. of Parks and Recreation had expressed interest in managing the recreational areas. Ms. Hong stated that she had seen kolea and endangered petrel on the property.

Mr. Bob Jacobson stated that he had spoken to mayor, who wants to work with Mr. Lui. He stated that he believes there is quiet title... he stated that there was a need to respect and honor man and that his health was not well. Mr. Jacobson stated his support for this project as it would protect the coastline up to Punaluu.

Jim Spielman of Kaū Preservation stated that he had spent hours on the beach and with Mr. Lui. He stated that the overall community would revolt if Mr. Lui was forced off of land, especially the youth and the surfers.

Mr. Earl Louis stated that he lived in the area and that Kawa is special place. The abundance of fresh water and abundance of fish... and that fish from there is especially delicious. He stated that back in the 70s his family fought for a right of way with property owner Okuna. He stated that the bottom line is that Kawa is unique and precious place and that Mr. Lui is a good steward should stay and protect land.

Ms. Colette Machado requested that the Moloka‘i project be moved ahead on the agenda. Chair Bonar stated that the Moloka‘i and Kauai projects would be moved ahead.

Gary Blaich of Kauai Public Land Trust and Jenifer Luck gave testimony in support of the Kauai project. Mr. Blaich provided a handout and photos of the property, and explained how the proposed acquisition fit into KPLT’s plan for preserving the coastal area adjacent to the Kilauea Point National Wildlife Refuge. Mr. Blaich stated that the landowner waited seven years to sell the property and that RLA funds had been secured in the amount of \$2.7 million... the appraisal in at \$3.4 million.

Member Shallenberger asked about management plans. Mr. Blaich responded that there were both short and long-term management plans. He stated that the lands had been authorized for inclusion to the Refuge. He stated that the current “coastal preserve” phrase is an interim label until lands are officially made part of the national refuge.

Member Canfield asked whether the condo ownership scheme that Mr. Hirokawa had mentioned would cause issues. Mr. Blaich stated that all three parcels to be acquired were a part of the scheme, and that KPLT could dissolve/extinguish the scheme after acquiring.

Member Berg asked if Mr Blaich had the CC&Rs (codes, covenants, and restrictions) for the property. Mr. Blaich stated that KPLT’s attorney had a copy.

Member Young asked about the status of the match. Mr. Blaich summarized the matching funds.

Chair Bonar asked if the landowner was comfortable with the appraised value. Mr. Blaich said that the owner was amenable, but had been disappointed in the appraised value, so no bargain sale was likely.

Chair Bonar called for testimony on the next project.

Mr. Abbey Mayer, executive director of the Moloka‘i Enterprise Community (MEC), presented testimony on the Moloka‘i Land Trust (MLT) / Ke `Aupuni Lokahi project. He passed out some informational materials, including a letter of commitment from the landowners for the fair market appraised value price as reported by Hallstrom Group. He stated that preliminary approval on the subdivision application was granted. He stated that the section of the property containing kuleana parcels would be retained by the landowner.

Mr. Mayer stated that Ke `Aupuni Lokahi would not be using federal FRPP funds, but that USDA may assist with management funds. He stated that there were a plant inventory and stream survey and that there was no stewardship plan in place, but that the land trust has a model for creating plans. He stated that for a 16-acre parcel from Moloka‘i Properties Limited, the land trust had brought in visitors to help with restoration and stewardship. He mentioned the letters of support included in the materials and stated that the newly-preserved Dunbar Ranch was a direct neighbor, increasing the preservation value of this property.

Member Shallenberger asked about the difference between the agreed upon purchase price and the market price. Mr. Mayer stated that they were working on subdividing... and that the purchase price was prior to subdivision... the owner would retain 16 acres and the remaining 196



acres would be sold to the land trust. The appraisal was on the 196 acres that the land trust will purchase.

Member Shallenberger asked whether plans included fencing. Mr. Mayer stated that some areas would do well with fencing, but that MLT would have to work with the community to create a plan. A botanist had recommended fencing. Member Shallenberger asked how fencing and ungulate control and subsistence hunting in proposals would be reconciled. Mr. Mayer stated that this issue could be determined after the land trust gets community feedback.

Member Fletcher asked whether the property had been deforested. Mr. Mayer stated that the lower reaches had been deforested and the above area was native, in healthy condition with some invasives.

Chair Bonar asked about access and ownership, and whether access would be through the 16-acre piece. Mr. Mayer replied yes; and that there was no practical access except for the road depicted in the photos/maps. Mr. Mayer stated that a previous owner had been Brownie Gilman, who had acquired in 1920s.

Member Kaiwi stated that he had been impressed that MLT demonstrated community involvement and stewardship and knows cultural sites as well as anyone and their family involvement is top-notch. Mr. Mayer stated that MLT was organized around community involvement.

In response to questions from the Commission, Mr. Mayer stated that MLT is looking at private funds and donors, but that FRPP funds would not be used. They are looking at MEC set-aside funds and has raised \$500,000 per year last few years that MLT would be willing to allocate those funds to this project. The owner wants to close by end of 2008.

Mr. Halona Kaopuiki stated that he was born and raised on Moloka'i and that Moloka'i has the most fish ponds in Hawaii. He stated that the Commission does the total package as a funder for cultural and natural resources, and that he would bring to them the spiritual and cultural value of the land. He talked about the history of the west side, his family and kupuna. He talked about the lifestyle on Moloka'i and the unique qualities of the land and resources, and briefly told the Commission about moolelo concerning the area.

Ms. Machado stepped forward to inform the Commission on MLT. She talked briefly about MLT's staff and their expertise, stating that there were always five or more Hawaiians on the board to try to represent the makeup of demographics on the island of Moloka'i. She mentioned MEC set-aside funds of over half a million dollars and additional set aside funds for legal counsel. Ms. Machado stated that despite criticism of Lau'au point, they had developed reputable land trust with protection and management as its priority. She talked about how meaningful it was to her to have a non-Hawaiian family willing to dedicate its land to Hawaiians, given that she grew up in a time when wasn't reputable to be Hawaiian with only approximately 4% of Hawaiians in college and many in jail. Ms. Machado stated that part of the MLT mission is research, to get history intact, to teach conservation, and that MLT has received criticism for Lau'au point but that the land trust has been able to generate resources and support and planned to hire more staff.

Chair Bonar called for testimony on the next project and reminded the project applicants that they also have the opportunity to present before the BLNR.

David Smith, the Oahu District Manager for the DLNR, DOFAW, presented testimony on the DOFAW/Hamakua project. He stated that the application had asked for the full amount of funding but had also asked for RLA funds. He stated that the project would be ready to go as soon as it was funded and that the project ranked third in its region for RLA funding. If RLA funding comes in as expected, the proportion of funding will be 60% RLA funds and 40% Legacy Land funds.

Member Shallenberger asked what would happen if the project were not funded. Mr. Smith replied that a retirement home may be built on the land. He stated that the owner had a duty to make money for its trust.

Member Berg asked if there was any protection on the land in the form of an easement. Mr. Smith replied that the easement on the property was a slope easement belonging to the county for a roadway.

Member Canfield asked what amount Mr. Smith was asking for. Mr. Smith stated that \$482,000 would be the amount needed if RLA funds come through. Chair Bonar asked about the likelihood of a landowner donation. Mr. Smith responded that the owner was a trust with a fiduciary duty to get FMV for the property.

Member Canfield asked where the land would be developed. Mr. Smith stated that an elder care facility would wrap around the entire parcel. Mr. Smith mentioned cultural resources on the property and stated that representatives of the Hawaiian community were looking to put a burial mound on property. He stated that the parcel is mostly watershed and reforestation, only a small amount is marsh.

Member Kaiwi stated that it was incorrect to state that the area “was” a prime area for native Hawaiians in the past... it “is” a prime area for native Hawaiians. Mr. Smith stated that Chuck Burrows is a source of cultural expertise for DOFAW at Hamakua.

Member Young asked about funding and tax assessed value. Mr. Smith stated that DOFAW would not find out about RLA funding until March, and that the county tax value is lower than the Yellowbook (federal appraisal standard) appraised value.

Member Berg stated that the property seems to have minimal value as forest, as it was degraded and not pristine. Mr. Smith stated that normally DOFAW would not even take a 20-acre parcel, but the point of this project is the exceptional educational value and public interface because it is right there in Kailua town... the parcel ties together scenic open space, watershed, endangered species, and high restoration value.

Member Berg asked how the project fits in with Legacy Land priorities if it is degraded. Mr. Smith stated that wetlands are threatened, and that the land has recreational and scenic value... a jewel in the midst of an urban environment.

Member Shallenberger stated that his perspective was that this was a key resource piece as a functioning watershed and place to view waterbird species in an urban environment; however, it falls under Legacy Land priorities as a threatened piece of land.

Member Fletcher stated that the state had lost one-third of its wetlands over the past century ... and that this parcel had been successfully restored and the species had come back in the midst of an urban environment.

Member Richards stated that his experience had been that unless the State steps up to protect these places they will be gone.

Chair Bonar called for the next project, stating that there had been a request to move testimony on the County of Hawaii/Punaluu project up the agenda. Chair Bonar called a brief break. Upon return, the Commission informally decided to skip a lunch break in hopes of completing all testimony.

Mr. Bob Jacobson, Council member for the County of Hawaii, presented information on the three County of Hawaii/Punaluu projects. Mr. Jacobson stated that the fact that several attorneys had arrived at the meeting to represent the developer's interests signaled how threatened the property actually was. He stated that the County was working on partnership with Bishop Estate and the Office of Hawaiian Affairs (OHA) to purchase/manage. He stated that there is no appraisal but is currently listed for sale and developers have the first option to buy. He stated that the acquisition was complicated but worth the effort. He stated that the acquisition was not first on the county's open space list, but near the top. He talked briefly about the value of the land and any liabilities associated with it. He then talked about proposed management and the huge community and scientific community support for the project. He talked about how the Honoapo project had spurred protection of Kaū coastline.

Member Canfield asked if there was a willing seller. Mr. Jacobson stated that he had no letter from the owners but that the land was on the market. He stated that the county also had the power of eminent domain. Member Berg asked if there was clear title. Mr. Jacobson stated that he thought C. Brewer had bought it from Bishop Estate and he was fairly certain title was clear.

Member Berg asked about management. Mr. Jacobson stated that nonprofits specific to the area will probably have a hand in management and public access will be available.

Member Berg asked about endangered species. Mr. Jacobson stated that hawksbill turtles, green sea turtles, monk seals, and some sea birds had been on the property.

In response to a question about willing seller, Mr. Jacobson talked about the circumstances surrounding the acquisition.

Member Shallenberger asked: how far mauka? Mr. Jacobson stated that these three parcels do not touch golf course. Member Young asked whether development could move forward. Mr. Jacobson stated that he does not consider their EIS high quality and that a number of respected individuals had put in complaints. The special management area (SMA) permit will be handled by Land Use Commission.

Member Canfield asked about the differences in the figures on the applications between the acquisition costs and matching funds sheets. Mr. Jacobson stated that the FMV had been problematic, so the County had asked for a smaller amount to increase chances of funding.

Chair Bonar asked if the county funds were secured. Mr. Jacobson stated that it was uncertain if Kawa would be funded or if additional funds would be provided from elsewhere. He stated that they were looking at different sources.

Chair Bonar asked for additional testimony on the Punaluu project.

Mr. Louis stated that above Punaluu there are five different puus, between and below the puus there is a huge crater filled with fresh water. It is a very pristine and unique area, there are three kuleanas, his family been there eight generation from mahele. They are the alii mokus that manage the land. When in 1960s Bishop Estate did land swap for Hilo land, they developed golf course, condos in 70s , sold in late 80s for \$33 million. A Japanese firm purchased the property and sold to owners for \$2.5 million dollars and they did nothing with it for several years until Sea Mountain 5 developed and destroyed the place.

He stated, that if forced to choose between the Punaluu and Kawa properties, he would save Punaluu. He stated that throughout history, Kaū has never been defeated... all the people from the Big Island come to Punaluu for natural beauty and are educated about old Hawaii.

Member Berg asked how many people used the beach at Punaluu. Mr. Louis answered 1,200 a day, about 34,000 a month. He added that burial caves, hoary bats, kolea, three different heiau are all located in the area. He talked about how visitors can see the fresh cold water from under Punaluu flowing out into the ocean.

Danny Miller from Kaū Preservation testified for Punaluu. He stated that the goal is to preserve all 80 miles because it is a rarity in a world, and that they chose these three parcels because are most critical. It is the only public beach park in Kau and one of the only accessible black sand beaches in the State. He stated that the most amazing thing about Punaluu is the amount of water flowing out; the other major aspect is the educational value from a cultural standpoint. He mentioned the unique heiau in the area. He stated that the reason that supporters are here is that there is a proposed development and the situation is critical.

Mr. Spielman, testifying for Punaluu, stated that he would ignore notes and talk from heart. He stated that it is irreverent and wrong to allow that property to be developed commercially, and that the issue is partially an ethereal thing, and not earthly and practical. He spoke about people that had been involved in preservation efforts.

Steve Lim of Carlsmith Ball, LLC, testified. He stated the current owner is SM Investment Partners and that his client is Sea Mountain 5 (SM5). He stated that SM5 has a binding contract to purchase the area in question ... During county proceedings on the Punaluu resolution... SM5 testified that would not be willing to sell only a portion of the project because to chop it up would destroy the project. He stated that whether people like or don't like the SM5 project, Punaluu is recognized by everyone, including his client, as special place. SM5 sees a property that has been zoned resort for 20 years now with a deteriorating water system and deteriorating

sewage plant, and SM5 proposes to bring new infrastructure and develop to it into a world class resort.

He stated that the owner was not willing to sell any small portion, and although they respect Earl Louis' and Pele Hanoa's relationship to the property, SM5 has a different perspective on how to protect it.

Chair Bonar asked about the appraisal... \$3.5 million by real estate appraiser... nonconforming preexisting use.

Member Kaiwi stated that he was glad to hear the cultural aspects of the property ... adding lands to an open space portfolio is weak in his opinion.

Chair Bonar called for the next project. Mr. Gregory Dunn presented information on the Hawaii Nature Center (HNC)/Makiki project. He talked about the funding and support for the project. Member Shallenberger asked about fundraising strategy for the planned changes to the property. Mr. Dunn estimated that one-third of the funds would come from DLNR and estimated the entire cost would be \$10 million.

Member Canfield asked whether HNC had gotten funds from Weinberg before. Mr. Dunn said yes, the way the grant works is have to prove you've raised two-thirds of the money before even asking for funds. Chair Bonar asked if neighbors were in support of the project. Mr. Dunn replied that they were.

Chair Bonar called for the next project.

Ms. Lea Hong presented information on the TPL/Honouliuli project. She stated that TPL had an appraisal completed and Army Compatible Use Buffer (ACUB) funds ready to go. She stated that multiple holders were available for the property if OHA was not available— both The Nature Conservancy and DOFAW. She stated that the project would not receive U.S. Fish and Wildlife Service funding. She stated that due diligence materials would be released in January 2008 and that OHA's board could not make a recommendation to its Board until it has these materials.

Chair Bonar asked if army funding was secure. Ms. Hong stated that it was. Member Canfield asked if OHA was still the best bet as landowner. Ms. Hong stated that she though OHA was still interested, and may be the best ownership entity in terms of partnerships.

Jody Kaulukukui of The Nature Conservancy (TNC) testified that TNC would act as a holder if needed. She stated that the Army is best management source and that TNC would take lease and keep fee ownership. She stated that the biggest threat to preserve is the potential loss of resources if there is no manager there. Ms. Hong added that TNC did make a commitment to donate back any interest from the leasehold.

Chair Bonar called for the next project.

Ms. Hong used a PowerPoint to present information on the TPL/Lapakahi project. She stressed the need for management and stated that the applicant had a tentative agreement with the Reich trust. The appraisal had come in at \$2.5 million. To apply for LWCF funding, applicants can't apply without match. She stated that Martha Yent of State Parks is administering the grant and is

pretty confident in receiving the funds. It is the last piece of the park to be acquired, lots of community organizations willing to get out to the land and remove threats.

She stated that Lapakahi is on the Hawaii County open space list but at a much lower ranking than Kawa. There was \$800,000 available from State Parks and \$44,000 from TPL. Ms. Hong stated that the landowner indicated, tentatively, that it was interested in the appraised amount

Member Shallenberger asked what threats existed to the land. Ms. Hong replied that the current landowner is marketing for residential potential. This would be “domino parcel” in a pristine and archeologically important area. Development is allowed under rules if developer obtains a Conservation District Use Permit. Management funding sources may be available and, given the motivated community, a hui would probably form to manage.

**ITEM 6. Discussion by members of the Commission of the 2007-2008 applications, including any discussion of site visits to the 2007-2008 project sites by Commission members.**

Chair Bonar stated that the Commission would review site visits by project as listed on the table attached to the agenda.

Members Young and Canfield discussed their visit to the MA‘O Organic Farm project site. Member Canfield commented that on the farm’s current leased site, relations with the landowner were not so good, the farm would work to use HUD funds to refurbish house at new site. She commented on the good energy and partnerships and impressive program.

Member Kaiwi stated his admiration for the fact that the farm actually used the things that they are trying to conserve. Member Fletcher commented that he was pleased to see this project after last year, that this is almost a dream agriculture project in terms of being in line with the program’s goals.

Chair Bonar stated that the elephant in the room is that the landowner will not take less than stated amount and appraisal is lower. Member Shallenberger suggested giving the applicant two months to cut a deal at or below FMV. Member Kaiwi added that this applicant was the only one that brought a young native Hawaiian that can attest to the program.

The Commission agreed that the MA‘O project, if ranked, would be recommended only on the condition that they provide a legitimate appraisal that is at or above the agreed upon sales price or if they are able to persuade the seller to come down to an appraised FMV.

Members Fletcher and Kaiwi discussed their visit to MCLT/Nuu project site. Member Fletcher stated that he had found the site to be fantastic in terms of resources... wetland with about 30% invasive plants... surrounding is landscape, coastline is unique vertical lava flows. Member Kaiwi stated that he had also gone to Waihee and the work done there had been impressive and stunning. He said that there had been a very patient and methodic restoration process, but added that he was worried about the management of the Nuu parcel due to the size and location of the parcel. Member Fletcher stated that the Nuu parcel is far away and required about 15 minutes on dirt road before you get to it. He stated that it was the only wetland on south shore Maui, however, the management plan had some visible challenges.

Member Berg commented that MCLT was able to do massive restoration at Waihee because the community was right there. In this case it might not be as proactive as a restoration project unless they have the organization to take it on. Member Shallenberger stated that he was nervous about wetland management because he knew how much commitment it can take, however he thought the wetland is important enough that they can do it. Member Fletcher mentioned that Mr. Fisher of MCLT lived nearby the site and can go over couple times a week

Member Young stated that sections G and H of the application were not submitted until requested.

Member Kaiwi stated that Mr. Fisher had a good balance of traditional and contemporary knowledge, important to link up with community.

Members Shallenberger and Richards discussed their visit to the County of Hawaii/Kawa project site. Member Shallenberger stated that what wasn't clear in Ms. Hong's comments is that it is a rough separate road to get there. He stated that Kawa is a terrific place, but that he supported Kaū Preservation's goals of 80 miles of protected coastline. He stated that Kawa was not a good native coastal strand... upslope is virtually all exotic, so is not protecting vegetation, is protecting shoreline. He commented that the heiau is very special and public access would be popular in the community and that it was an important hawkbill beach.

Member Berg stated that the Commission is now sensitive to management issues and has expressed that to the county. Member Shallenberger stated that the management plan will have to cover multiple things, however, landowner Ed Olson is very community oriented and that the project is striking while the iron is hot with a cooperative landowner. Chair Bonar stated that the project deals with resources that are not so threatened right away but are going to be soon. Member Kaiwi was hoping that applicant would refer to the Ala Kahakai Trail and address what Punaluu and Kawa project proponents are doing together to take care of the trail.

Members Berg and Fletcher discussed their visit to the KPLT project site. Member Berg stated that they had went to adjacent landowner for overview and walked down bluff along beach and saw numerous stone sites and could see how this property tied into other beach properties. Member Berg stated that the parcel was one little piece to tie together preserve and that KPLT has gotten the community together to manage the area. For many years the homeless lived there, but the community has recently taken it back, cleaned it, and maintained it. He stated that a large part of the site is a bluff that might not be developed if KPLT does not buy it. Member Fletcher stated that a significant portion of the purchase is nearly vertical land, but if they can build on it they will, and several acres are on beach and quite build-able. He stated that the bluffs were heavily vegetated and while there were not many birds on that property there were on adjacent cliffs.

Member Shallenberger commented that it was an original FWS objective to protect that property from 20 years ago. He stated that one of the reasons that the albatross are on adjacent cliffs is that is where they're released.

Members Fletcher and Canfield discussed their visit to the site of the Hamakua project. The Commission discussed the lack of properties with pristine recourses intact. Member Canfield stated the uses for waterbird habitat restoration and education. Member Fletcher stated that, if the RLA grant comes in, the project will only need \$447,000.

Member Kaiwi stated that when this project talks about community, it is talking about the Kailua community, and asked how this affected the decision.

Members Canfield and Fletcher talked about their visit to the site of the Hawaii Nature Center/Makiki project. Member Fletcher stated that he had a problem with spending this much money for what was essentially a driveway; that it was an excellent project but outside the purview of this funding program. Member Young stated that she thought that the applicant was planning to build a 15K sq ft structure. Chair Bonar stated that the HNC project was not appropriate for Legacy Land, but perfect for CIP funding.

Members Canfield and Fletcher discussed their visit to Honouliuli. They stated that they had seen elepaio and many resources on the property, that there are 30 people that work there and that the Army management funding will continue for decades. Member Berg stated that the matching fund information was vague. Chair Bonar stated that hopefully OHA will be able to spring, Commission members must consider this individually in our rankings.

Members Shallenberger and Richards discussed their site visit to the Lapakahi project site. Member Shallenberger stated that the area had a good community group to care for it and this group could help to preserve the cultural resources on the site without a transfer of ownership. He stated that he was surprised that the group was not trying harder to preserve the site under its current ownership.

Chair Bonar and Member Kaiwi discussed their site visit to the MLT project. Chair Bonar mentioned the kuleana issues. Member Young stated that she was concerned about the match. Member Shallenberger stated that the upper habitat on the parcel was very intact... but that the land trust may be biting off more than they can chew in terms of management, they would have to make decisions about use. Chair Bonar stated that the parcel was on Moloka'i, therefore issues will be resolved like others on Moloka'i. Member Kaiwi stated that it had been encouraging to see both sides come together and do what is right for the aina.

Members Richards and Shallenberger discussed their site visit to Punaluu. Member Shallenberger stated that it had been hard to sort out locations by the application map, but he could tell by Mr. Jacobson's map that parcels being proposed for acquisition were key parcels. Member Young stated that if the landowner was not willing to sell, the Commission should not recommend the project. Member Canfield stated that the application had not been put together well.

Mr. Smith asked to amend requested amount for the Hamakua project to \$447,000 (match is \$723,000). Chair Bonar noted the change.

**ITEM 7. Commission recommendations regarding 2007-2008 projects to the Board of Land and Natural Resources for funding from the Land Conservation Fund. Depending on time constraints, this item may be rescheduled for a future meeting.**

The Commission members filled out individual ranking forms and turned them into Ms. Schmidt. Members that had recused themselves from certain projects abstained from voting on



those projects. Member Fletcher, Ms. Chow, and Ms. Schmidt averaged the scores and provided the list of ranked projects. **[Please see the attached list for the results of the ranking.]**

Two projects tied for first place and two projects tied for third place. Starting with \$4.7 million, the top projects were fully funded and \$1,763,000 was left to the two projects tied for third place. A sum of \$2,151,800 was requested by the projects in third place, leaving a difference of \$388,800 from the leftover funding available.

Member Canfield proposed reducing the amount awarded to each of the projects in equal proportions. Member Fletcher made the motion, Member Young seconded. Member Kaiwi abstained based on his disagreement with the concept of partially funding a project. All other members were in favor and the motion passed.

Member Berg motioned to fund the five top-ranked projects as discussed (with proportionately reduced amounts for the last two), provided that the Commission may revisit the motion with another meeting if there are any imminent changes in the funding for these recommended projects that may enable the Commission to recommend alternate projects. The motion was seconded and approved unanimously.

**ITEM 8. Set next meeting date(s).**

The Commission discussed the possibility of meeting in early February.

**ITEM 9. Announcements.**

**ITEM 10. Adjournment.**

Member Fletcher moved to adjourn, Member Berg seconded and all were in favor.

**2007-2008 Applicants to the LLCP – LLCC 12/14 Rankings**

rank	Agency/ organization:	Hol der:	Location:	TMK:	Size:	Match \$:	Amount requested:	Total Estimated Project Cost:
(1)	Waianae Community Re-development Corporation (MA'O Organic)	""	86-148 Puhawai Rd., Lualualei Valley, Waianae, Hawaii	8-6-008:004	11 acres	\$250,000	\$737,300	\$987,300
(1)	County of Hawaii	""	Kawa Bay, District of Kau, County of Hawaii on the Southeast tip of the island of Hawaii	(3) 9-5--016:025, (3) 9-5-016:006, (3) 9-5-017:005	550.871 acres	\$6,180,000	\$1,500,000	\$7,680,000
(2)	Kauai Public Land Trust	""	Parcel fronting Kahili (Rock Quarry) beach located on the north shore of Kauai, within proposed Kilauea Coastal Preserve	(4) 5-1-005:016	20.532 acres	\$2,759,181	\$700,000	\$3,459,181
(3)	Maui Coastal Land Trust	""	Nu'u Makai, located on Maui's south east shore between Kanaio and Kaupo at the foot of Haleakala	(2) 1-8-001:001 (portion), (2) 1-7-004:003 (portion)	128 acres	\$4,790,000	\$1,214,300 (rec'd \$994,724)	\$6,004,300
(3)	Ke `Aupuni Lokahi, Inc. (Moloka'i Enterprise Community)	ML T	Mauka of Kamehameha V Hwy, Mile 17, on both the east and west sides of the Kawaikapu/Kainalu stream, Mana'e, Moloka'i. Property ranges form sea level to 2,100 ft elevation including Kawaikapu waterfall	(2) 5-7-005:021	196.40 acres	\$351,000	\$937,500 (rec'd \$767,976)	\$1,288,500
(4)	The Trust for Public Land	State	Lapakahi, North Kohala, ahupua`a of Kaipuha`a and Lamaloloa, southern end of Lapakahi State Historical Park, Island of Hawaii	(3) 5-7-001:0011	17.05 acres	\$844,000	\$1,700,000	\$2,544,000
(5)	DLNR/DOFAW	""	Hamakua hillside (Pu`u O Ehu), adjacent Hamakua Marsh Wildlife Sanctuary, Kailua, Oahu	(1) 4-2-003:017	65.562 acres	\$723,000	\$447,000	\$1,205,000
(6)	The Trust for Public Land	OH A	Honouliuli Preserve is located on the eastern slope of the Waianae Mountain Range above the Pearl Harbor Acquirer, Island of Oahu	9-2-005:013	3,582 acres (portion of a larger 4,969.14 acre parcel)	\$5,300,000 to \$5,800,000	\$1,000,000	\$6,300,000 to \$6,800,000
(7)	Hawaii Nature Center	""	In Makiki Valley on Oahu at the hairpin turn on Makiki Heights Dr.	2-5-020:007	18,000 sq feet	\$605,000	\$1,800,000	\$2,405,000
(7)	County of Hawaii	""	Makai of Higway 11 in the Punalu`u District of Ka`u, on the southeastern coast of the Big Island of Hawaii	(3) 9-6-001:006	5.992 acres	\$130,000	\$125,000	\$255,000
(7)	County of Hawaii	""	Makai of Higway 11 in the Punalu`u District of Ka`u, on the southeastern coast of the Big Island of Hawaii	(3) 9-6-001:003	3.573 acres	\$80,000	\$75,000	\$155,000
(7)	County of Hawaii	""	Makai of Highway 11 in the Punalu`u District of Ka`u, on the southeastern coast of the Big Island of Hawaii	(3) 9-6-001:002	1.953 acres	\$25,000	\$50,000	\$77,500