

Minutes of the October 14, 2008, Legacy Land Conservation Commission Meeting

DATE: Tuesday, October 14, 2008

TIME: 11:00 a.m. to 4:00 p.m.

PLACE: Boardroom, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawai'i

COMMISSION MEMBERS PRESENT:

Dr. Dale B. Bonar, Chair

Dr. Carl J. Berg

Ms. Lori Buchanan

Dr. Joan E. Canfield

Dr. Charles ("Chip") Fletcher

Ms. Karen G.S. Young

STAFF:

Linda Chow, Deputy AG

Ian Hirokawa, DLNR, Land Division

Randall Kennedy, DLNR, DOFAW

Molly Schmidt, DLNR, DOFAW

PUBLIC:

Lea Hong, Trust for Public Land

Cynthia Rezentes, Oahu Land Trust

Dave Smith, DLNR, DOFAW

MINTUES:

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

Chair Bonar called the meeting to order at 11:04 a.m.

ITEM 2: Approval of minutes from June 2, 2008, Legacy Land Conservation Commission meeting.

Chair Bonar entertained a motion to approve the June 2, 2008, meeting minutes pending clarification on a comment from Ian Hirokawa, DLNR staff. Member Berg made the motion, Member Young seconded the motion. All were in favor.

ITEM 3: Discussion and planning of site visits to the subject properties of Fiscal Year 2009 (FY09) Legacy Land Conservation Program applications; reporting of additional questions for applicants on FY09 project applications to program staff for post-meeting communication by staff to applicants.

Chair Bonar asked whether all applications were complete, Ms. Schmidt replied that they were.

Chair Bonar asked Ms. Chow how the Commission was to go about getting additional information from applicants. Ms. Chow stated that Commission members could request the information through Ms. Schmidt; the answers from applicants would be returned by Ms. Schmidt as part of a package in preparation for the next meeting, where she could read them into the record and the materials could be discussed.

Chair Bonar asked whether applications and supporting materials were public record. Ms. Schmidt stated that all information was public except personal contact information. Ms. Chow stated that it may be possible to hold back information on the sale price of the land. Ms. Schmidt stated that she would post basic information on the web so that the public would have notice of the applicants and project areas.

Chair Bonar paused the meeting to answer a cell phone call from Member Kaiwi (absent). Chair Bonar relayed the message that Member Kaiwi would not be able to attend the meeting.

Chair Bonar moved the discussion to the topic of site visits. Ms. Schmidt and Ms. Chow clarified the permitted interaction under the law (“task forces”) that would be used for site visits.

Chair Bonar asked how the December 18 and 19 meetings would be run. Ms. Schmidt stated that site visit information would be reported back at this time and that applicants would have the opportunity to do presentations. Ms. Chow emphasized that information gathered on the site visits would need to be discussed on the 18th, and could not be acted upon until the 19th.

Ms. Schmidt stated that Member Richards might not be able to attend on the 19th. Chair Bonar asked whether Member Richards would be able to vote, as he had been able to the previous year. Ms. Schmidt added that Member Richards had attended the meeting last year, but had left early. Member Fletcher added that voting members ought to be present for the new information that is generated in discussion.

Chair Bonar suggested that the members of the Commission write brief summaries to Ms. Schmidt regarding site visits, which Ms. Schmidt could then share with the entire Commission prior to the December 18 meeting.

Chair Bonar stated that, in arranging site visits, conflicts of interest would have to be avoided. He stated that he would not be able to attend the Maui Coastal Land Trust site visit. Member Young stated that she may have an ethical conflict in voting on the Malu Aina project. Chair Bonar asked Ms. Young to coordinate with Ms. Schmidt in contacting the Ethics Commission staff. He added that the Commission’s policy had been to avoid both actual conflicts and any appearance of a conflict of interest.

Chair Bonar asked whether the task force could be formed of absent members. Ms. Chow nodded agreement.

Member Berg stated that he would like to see two other Commission members perform the Kauai site visit, not him, so the Commission would have a broader feel for what is going on in Kauai. He asked whether island residents need to be the ones that visit sites on their respective islands.

The Commission went through the various sites to be visited and assigned member to each site and listing these names on a document.

Chair Bonar entertained a motion to form site visit task forces as described on the document. Member Fletcher made the motion, Member Canfield seconded the motion. All were in favor.

Member Canfield asked about asking questions of the landowner. Ms. Chow stated that the best way to do it would be to pass questions through Ms. Schmidt. Chair Bonar asked whether questions from the public could be passed to site visit teams through Ms. Schmidt. Ms. Chow replied affirmatively.

Ms. Schmidt stated that, for the sake of organizing the last-minute flurry of testimony, she would pass along testimony as letters of support to the Commission up until the week prior to the meeting, at which point items turned in would be labeled testimony. Ms. Chow clarified that all letters turned in would be testimony, so there was no point to this distinction. Chair Bonar suggested encouraging applicants to send in letters as early as possible.

ITEM 4. Discussion and possible action regarding rulemaking by the Commission, including, but not limited to, review and comment on a tentative first draft, discussion of next steps in process, and possible delegation of policy-forming or drafting tasks related to rulemaking to individuals, task forces, or subcommittees.

Per a request from Chair Bonar, Ms. Chow clarified the differences between task forces and subcommittees, and stated that task forces required three meetings and were not required to meet under sunshine requirements whereas subcommittees must meet with public notice.

Chair Bonar stated that the Commission had proceeded without rules for the sake of expediency, with the understanding that its policies would have to be codified. He added that a change to the law may also be relevant to the rules that the Commission would form; the act that had passed in 2008 (Act 139, SLH 2008) stated that funds could now be deposited into the Land Conservation Fund and that 5% of previous year revenues could be used for grant awards funding operations or management on Legacy Land properties. Chair Bonar stated that there were items that needed to be discussed regarding the use of the management funds. Chair Bonar stated that DLNR Director Laura Thielen has assured him that the Department would look to the Commission for recommendations for the use of these funds.

Chair Bonar mentioned the Legacy Land deed restrictions that had been affected by Act 139 and stated there would be a need for investigation of the future ramifications of these deed restrictions and other property protections for Legacy Land projects. He asked Ms. Schmidt whether she had anything to add under the item.

Ms. Schmidt stated that, per the request of the Commission at the last meeting, she had produced a draft of rules that echo the statute, as well as a list of policy items that had been discussed at previous Commission meetings.

Chair Bonar, referring to the list of policy items, stated that they were just discussions, not set in stone.

Member Buchanan asked about the need for rules for the policies guiding how the Commission reviews applications.

Ms. Schmidt stated that procedural rules would be done through the Department under HRS, Chapter 91, whereas the Commission had the power to form rules relating to criteria under HRS, Chapter 173A.

Member Fletcher read a quote from Member Kaiwi regarding the Commission's approach to criteria: Member Kaiwi had asked the Commission members to look past their various areas of expertise to choose most pono projects. Member Fletcher stated that it was an excellent overarching philosophy and asked how to encapsulate that idea in the rules.

Ms. Chow stated that this philosophy was already inherent in the Commission's use of the combined expertise of its members in its recommendation process. Chair Bonar stated that the Oahu Clean Water and Natural Lands Commission was addressing this question right now. The Legacy Land Conservation Commission had worked thus far to balance values for the whole outcome... however; he had a hard time seeing how to phrase this concept as criteria. Chair Bonar stated that it may be a better statement of philosophy rather than a criterion, but that a subcommittee could address it.

Chair Bonar asked Ms. Schmidt whether, in her opinion, a subcommittee should be formed. Ms. Schmidt stated that the answer depended on what approach the Commission wanted to take with the current draft and list of policy matters. Chair Bonar stated that his perception was that the Commission had already discussed most of the issues; the draft language could be worked on by a subcommittee in one or two meetings and brought back to the Commission for discussion.

Member Fletcher asked whether the Commission wanted the rules to reflect the method of selection. Ms. Schmidt stated that procedural matters would fall under another rulemaking process, but that there was no reason why the Commission could not start this as well.

Ms. Chow stated that procedural rules needed to be adopted by the Board, not the Commission (unlike criteria), but that the Commission could form a recommendation.

Chair Bonar suggested that the subcommittee could handle both.

Ms. Chow stated that the ranking and grading systems, if only internal, and if they would not affect the public, could be adopted as a matter of policy rather than as rules. Chair Bonar stated that, if the process could just be policy, that would be fine.

Chair Bonar stated that the subcommittee could focus the rulemaking on the criteria, but the subcommittee could work also on the procedures.

Member Canfield asked Ms. Chow to clarify which procedures and policies needed to be Board-approved. Ms. Chow stated that the statute mandated that the Commission create criteria, all else would be under Board purview.

Chair Bonar stated that Ms. Schmidt could assist with drafting recommendations on procedures. Per a question from Member Canfield Ms. Schmidt clarified that it was the agency that had the power to form rules relating to procedure, however, rules relating to the Commission might be useless without the Commission's input.

Chair Bonar stated that the function of the subcommittee would be to form rules relating to criteria and discuss policy recommendations on related rulemaking. Chair Bonar entertained a motion to establish a subcommittee for the purpose of rulemaking. Member Berg made the motion. Member Young seconded the motion. All were in favor.

Members Buchanan, Canfield and Chair Bonar were assigned to the subcommittee. Chair Bonar asked Ms. Schmidt to survey absent members regarding their interest in serving on the subcommittee. Ms. Schmidt asked Ms. Chow whether the absent members could join post-meeting. Ms. Chow stated that they could.

Chair Bonar asked whether any of the members of the public in attendance wanted to testify on the item. Members of the public in attendance indicated that they did not want to testify.

ITEM 5: Discussion and possible action regarding the Commission's participation in the Resource Land Acquisition Plan.

Chair Bonar asked Ms. Schmidt to summarize the item. Ms. Schmidt explained that a provision in chapter 173A, Hawaii Revised Statutes, mandated the creation of a resource land acquisition plan. She stated that there may be overlap with the Commission's duties in recommending projects, so she wanted to get the Commission's input on the process for forming this plan.

Ms. Chow stated that participating in this plan would create a conflict for the Commission. She stated that the Department would be coming to the Commission for

approval on projects, so consulting with the Commission may result in favoritism towards Department projects. Members of the Commission agreed with Ms. Chow.

Chair Bonar suggested that the Commission's input to the plan be in the form of its criteria. Ms. Chow added that this input be in the form of rules. He asked that Ms. Schmidt relay the Commission's current progress on forming criteria and rules to those involved in the planning process.

Chair Bonar added that people outside of DLNR see a need for the unification of planning efforts within the department. Ms. Chow added that many divisions have already done the work of planning, Ms. Schmidt would need to bring efforts together.

ITEM 6: Discussion and possible action regarding the administrative structure and process for awarding grants for management funding through the Legacy Land Conservation Program.

Chair Bonar stated that this item could be handed to the subcommittee or handled presently. Ms. Schmidt stated that grants of management funds would have to go through the procurement process unless she could receive an exemption from the State Procurement Board for Legacy Land grants. She stated that the procurement statute conflicted with the process created by the Legacy Land statute, so the program would have a good case for an exemption.

Chair Bonar stated that none of the applications currently in front of the Commission were requesting management funds. Member Berg asked whether the Department could take the funds if the program did not currently have any procedures in place for the award. Chair Bonar listed some items that could be considered regarding procedure for disbursing management funds.

Ms. Chow suggested including criteria for award of management funds in rules.

Chair Bonar asked whether management funds could only be asked for along with the applications for land acquisition funding. Ms. Chow replied that it was flexible.

Member Berg suggested making requests for management funds only simultaneous with requests for land acquisition funds so that the Commission could decide a budget.

Member Berg suggested generating a list of ideas so that Ms. Schmidt would have an idea of what to prepare for once the exemption is sought. Commission members and staff suggested the following:

- Monies would be best spent forming management plans (Chair Bonar)
- Must lands already be acquired to receive funds? (Ms. Schmidt)
- Only consider use of funds for management after land acquisition needs satisfied (Member Fletcher)
- Management funds could be considered under separate and later budget

- Keep the process unified for both types grants (same application form) (Member Berg)
- Land acquisition should be the priority use of Legacy Land funds (Member Young)

Ms. Schmidt recommended that the Commission wait for an exemption to be granted and any other administrative limitations to be made apparent before formulating a recommendation on process. Chair Bonar replied that these suggestions could give Ms. Schmidt some guidance in seeking an exemption and investigating the process.

Member Fletcher suggested using the funds available for land acquisition and using any leftover amount that cannot be used to fully fund an acquisition project for management purposes. Member Berg added that he wanted all information to come in on one form at one time.

Members Canfield and Buchanan added that the emphasis should be on land acquisition funding, not management funding. Chair Bonar stated that the bottom line for the Commission is that acquisition is most important use of the funds in the Land Conservation Fund. He added a request that the Commission proceed in accordance with whatever statutory or procedural requirements to establish this policy.

Ms. Chow suggested adding these policies as narrow criteria for the use of the funds in the rulemaking process. The Commission would thus have a basis for recommending or not recommending any projects that come in.

Chair Bonar stated that this matter could be referred to the subcommittee that had been formed for rules.

Chair Bonar asked Mr. Hirokawa about a statement he had made at the June 2, 2008, Commission meeting as reflected by the minutes. Mr. Hirokawa clarified that he had been speaking about the conveyance of any conservation or agricultural easement to the State, not the conveyance of an easement to nonprofits or counties. Chair Bonar discussed about survey requirements on State acquisitions.

ITEM 7: Set next meeting date(s).

Ms. Schmidt and the Commission discussed room reservations and start/end times for the next Commission meetings on December 18 and 19, 2008.

ITEM 8: Announcements.

- a. Innovation Award at HCC.
- b. Update on projects by Legacy Land Conservation Program Coordinator.
- c. Seeking volunteer for next meeting's presentation from a Commission member.

Ms. Schmidt stated that the Commission had received an Innovation Award at the 2008 Hawaii Conservation Conference, and that Chair Bonar had accepted the award on behalf of the Commission.

Ms. Schmidt stated to the Commission that the two remaining nonprofit award recipients (Kona Historical Society and Cave Conservancy of Hawaii), had come near closure for Fiscal Year 2007, and stated that no Fiscal Year 2008 projects had closed yet.

Member Young asked how much the LLCP ended up funding the Kona Coffee Farm Project for (in 07), as they are applying again this cycle. Ms. Schmidt replied that they were being awarded about \$287,250.

Ms. Schmidt stated that Member Canfield had volunteered to present information on her area of professional expertise at the next meeting. Ms. Schmidt stated that it would be on the agenda, but that the Commission could opt out if time was short.

ITEM 9: Adjournment.

Chair Bonar concluded the meeting at 1:00 p.m.