

Minutes of the April 14, 2009, Meeting of the Legacy Land Conservation Commission Subcommittee on Rules and Management Funds

COMMISSION MEMBERS PRESENT:

Dr. Robert J. Shallenberger, Chair
Dr. Joan E. Canfield
Dr. Dale B. Bonar
Ms. Lori Buchanan

STAFF:

Paul Conry, DLNR, DOFAW
Molly Schmidt, DLNR, DOFAW

VISITORS:

Cynthia Rezendes, Oahu Land Trust

AGENDA

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

Members of the Subcommittee, staff, and visitors introduced themselves.

ITEM 2. Approval of March 12, 2009, Legacy Land Conservation Commission Subcommittee meeting minutes.

This item was deferred until the next meeting.

ITEM 3. Review of March 12, 2009, Legacy Land Conservation Commission Subcommittee meeting progress and outcomes.

Chair Shallenberger stated that he had gone over the minutes from the last meeting and reviewed Ms. Schmidt's various approaches to the draft rules. He had sought a way to structure the drafts instead of approaching the topics piecemeal. Ms. Schmidt responded that the drafts are structured the way they are for a reason: they are organized according to the statutory mandates for the promulgation of rules. Chair Shallenberger stated that the law was the foundation for the rules; however, he preferred to take a more holistic approach to the rulemaking. Instead of debating where rules were required or not, should try to cover bases that appear important, and then investigate if they had missed something important. He stated that he was concerned that the Subcommittee rulemaking should be guided by the principles of meeting rules requirements without unnecessarily binding themselves in.

Chair Shallenberger passed out an outline to serve as a framework to allow the Subcommittee to discuss what might be missing.

Ms. Schmidt asked if the purpose was to see where the content of the three drafts would fit into the outline. Chair Shallenberger stated that Ms. Schmidt had produced some materials that did not make the overall framework clear. He wanted to be sure that all of the bases were covered in a comprehensive framework.

Member Canfield stated that it was an outline for one entire draft of rules. Chair Shallenberger agreed. Ms. Schmidt asked if this draft was then an outline of rules for the entire Legacy Land Conservation Program. Chair Shallenberger asked her to clarify.

Ms. Schmidt stated that the Legacy Land Conservation Program (“Program”) was set up by a provision in the statute and refers to the entire grant program. The statute also sets up the Legacy Land Conservation Commission (“Commission”), which is a part of the Program. Member Canfield asked if the rules could be one set. Member Bonar added that the entities were not separable. Ms. Schmidt stated to Member Canfield that they probably could be, she was not sure and had not looked into it much. Member Canfield stated that this approach would be more efficient. Ms. Schmidt stated that the three drafts would eventually go into one set of rules; she needed to check with someone within the Department of Land and Natural Resources (“Department”) on how to appropriately organize and codify them. The reason she had separated them out is because there is a separate purpose or mandate behind each category of rule.

She asked if the Subcommittee was trying to assert more control over these rules for the Program. Chair Shallenberger stated that he had looked at Ms. Schmidt’s drafts and noticed a lot of redundancy in the first section of each set. Ms. Schmidt stated that these parts of the rules were customs for each subchapter that is done. Chair Shallenberger asked if it was boilerplate language, Ms. Schmidt replied that it was. She stated that the only substantive bit was the definitions. Chair Shallenberger stated that one of the first sections had included a substantive provision establishing the Program. He stated that one draft contained rules on the application and award process and another contained criteria. Since criteria are a part of the review process, shouldn’t they be incorporated into one draft?

Ms. Schmidt replied that, realistically, they are part of the same process, but that there are different authorities under the statute for who promulgates what.

Member Bonar stated that the Subcommittee could just make a list of policy recommendations and let staff put it in the appropriate rule format. Ms. Schmidt stated that she might not be articulating the reasons for the present drafts properly.... Member Bonar added that there were no titles on the drafts. Ms. Schmidt stated that the files were titled.

Ms. Schmidt stated that if the Subcommittee wanted to reorganize how the process of drafting rules would be done, it might take some time, and she was not sure the purpose it would serve.

Chair Shallenberger stated that he had thought Ms. Schmidt has provided drafts as a way to organize materials, however, now it sounded like these divisions are necessary. Ms. Schmidt agreed. She stated that, per the agreement of the Subcommittee at the last meeting, she had produced drafts of the three subject matters to demonstrate more clearly where the division between the topics lay. There were actually two drafts of the criteria rules so that the Commission could see the progression from the criteria in the evaluation form to the final result.

Member Bonar stated that it was still very confusing to have subject matter divisions. The appropriate breaking up of the drafts could be done in the end by staff. He just wanted to know what the substance was.

Ms. Schmidt stated that they could start over in discussing the topic. She summarized what had been discussed and decided at the last meeting. She stated that the guiding policy which had been stated in regards to rules was meeting the mandate without binding in the Commission. She stated that it made more sense to her to go by the different mandates or subject matters because it would shed light on the minimum of what is required. Chair Shallenberger asked her to specify the subject areas. Ms. Schmidt stated that the Commission shall promulgate rules for criteria under Chapter 173A, HRS; the Commission may promulgate procedural rules under Chapter 173A, HRS, and Chapter 91 HRS; and then, as a Program, under Chapter 91, HRS, the Department should promulgate rules for procedures relating to the public. Chair Shallenberger asked if the Program was mandated to form rules. Ms. Schmidt stated that they could probably get away without doing it in reality; however, if making a good faith effort to comply with the statute, the Program should promulgate rules.

Member Bonar asked whether the Commission could have one set of rules to address this. Ms. Schmidt replied that it could, however, the draft had temporarily been divided into sections to illustrate the divisions between subject matter.

Chair Shallenberger asked about the redundant provisions in each draft. Ms. Schmidt asked the group to refer to the flowchart she had distributed. Member Buchanan asked whether items should be left out. Ms. Schmidt stated that the drafts were not at all complete; they were just a proposal so that the Subcommittee would have something to look at and work off of. She restated the purpose for the multiple drafts of criteria rules.

ITEM 3. Discussion and possible action on draft rules for the Legacy Land Conservation Commission and possible advisory recommendations on rules relating to the procedure for the Legacy Land Conservation Program.

Ms. Schmidt stated the topics of the four drafts: criteria draft 1, criteria draft 2, Commission procedure, Program procedure. The Subcommittee had wanted to know the distinction between criteria and procedure at the last meeting, these drafts demonstrated this distinction. She stated that the Subcommittee had also requested definitions of

“criteria” and “procedure” at the last meeting. She read the definitions of “criteria” and “priorities.”

Chair Shallenberger asked where things that did not fit into the criteria would fall. Member Buchanan suggested that they would all be criteria. Member Bonar stated that there were priorities and then secondary considerations.

Ms. Schmidt explained that she had drafted the criteria rules with the statutory priorities in mind; for every criterion, she made the effort to ensure it fit under the priorities. The criteria determine whether the project should be a priority. They are tests.

Chair Shallenberger stated that draft 1 was a mixed bag. Ms. Schmidt stated that she had done this draft just to demonstrate the progression from the evaluation form to draft 2. Member Bonar suggested getting rid of draft 1 and working on draft 2. Ms. Schmidt agreed and referred to the resource value criteria listed in draft 1, stating that they had each had mentioned expansion or linkage of similar resources. In draft 2, this consideration had been taken out of all of the resource value descriptions and made into its own criterion, to avoid repetition.

Member Shallenberger stated that the Commission had broken down the resource values into specific descriptions in order to let applicants know how they'd be interpreted. Ms. Schmidt asked if Chair Shallenberger if he thought the resource value descriptions should be included as criteria. Chair Shallenberger asked what the downside of including them would be. Ms. Schmidt stated that it might constrain them eventually, but she had just eliminated the description for the sake of brevity, and she had a hard time phrasing the descriptions as criteria.

Member Bonar stated he favored lumping rather than splitting so that the Commission would not have to change the rules in the future. Chair Shallenberger agreed with Member Bonar and stated that his concern was that applicants have notice on the details; however, the descriptions were in the application form as well, so they will.

Ms. Schmidt asked whether the concern was being fair to the public. Chair Shallenberger stated that it was the balance of providing notice without overly constraining future actions of the Commission.

Member Bonar stated that having the detailed descriptions in the application was a good way to address the issue. Ms. Schmidt added that the criteria in the draft also fit under the priorities, whereas a description of the resources did not really fall under the priorities.

Ms. Rezendes added that she would change the wording of the resource values, and aim towards wording things. Also, she favored simplicity, and this issue did not have to be complicated. Member Canfield stated that she felt that the Subcommittee had come to agreement on phrasing the terms simply. Member Shallenberger added that the list of resources mixed nouns with verbs, which was confusing. Ms. Schmidt agreed that the

wording was not the best; however, it came straight from the statute, so they might have to justify any changing of the wording.

The Subcommittee suggested crossing off some of the wording in the resource values that they felt to be redundant. Ms. Schmidt stated that she did not think that they should attempt to change the wording, since it came straight from the statute.

Chair Shallenberger stated taking the laundry list of policy issues and checking them against the drafted criteria. Member Bonar stated that he wanted to be sure nothing was missing as well.

The Subcommittee disposed of draft 1 of the criteria rules and worked off of draft 2. Ms. Schmidt reminded the Subcommittee that this draft was just a rough proposal and that it was up to the Subcommittee to decide what would be on the list.

Member Bonar requested rephrasing the criterion on management plans. He recommended “adequacy of management planning.” The group agreed.

Ms. Schmidt asked if the group wanted to go through the draft at the meeting or take it home. The Subcommittee requested to do it at the meeting with Ms. Schmidt keeping record.

Chair Shallenberger asked about the definition of “land conservation organization.” Ms. Schmidt stated that it was in another draft, and requested that the group stick to draft 2 of the criteria. Definitions for this draft would only be used to clarify terms contained in the draft. Chair Shallenberger asked Ms. Schmidt to clarify how the drafts fit together. Ms. Schmidt stated that the Program procedure would encompass everything, the Commission procedure would address the operation of the Commission alone, and the criteria would only address decision-making. Ms. Schmidt stated that whether an organization is a “land conservation organization” belonged in the Program procedure rules because the Board would be giving the awards.

Chair Shallenberger stated that his concern was how the drafts would be “integrated” as Ms. Schmidt had mentioned earlier. Would there be three sets of definitions? Ms. Schmidt stated that there would be three sets of definitions.

The Subcommittee and Ms. Schmidt discussed their differences in approach to the topic. Subcommittee members preferred to refer to Chair Shallenberger’s drafted overview, whereas Ms. Schmidt stated that she was worried about veering away from the format she had planned for the meeting. She stated that she would continue to work off of the drafts, and the Subcommittee members could refer to Chair Shallenberger’s drafted overview if it helped. Member Bonar clarified that the members were approaching from the standpoint of substantive issues and were not interested in the rules format.

Ms. Rezendes stated that Ms. Schmidt was asking the Subcommittee to work its way through the drafted criteria for wording approval. Ms. Schmidt agreed.

Member Bonar stated that the first section was a list of the statutory priorities, and the wording was straight from the statute. Chair Shallenberger stated that “critical habitat” needed to be defined under the federal definition. Ms. Rezendes pointed out the proper location for the definition and Member Buchanan gave a sample definition. Ms. Schmidt took note of the recommendation.

Member Bonar stated that the “unique and productive agricultural land” priority might need defining if the federal definition would be the default, because Hawaii’s agricultural lands were different from those in other areas of the country. Member Canfield asked if it referred to some USDA criteria. Member Bonar said yes. Ms. Rezendes warned against interpreting statutory terms specifically. Chair Shallenberger stated that the wording was poor. The group decided to leave it undefined and move on.

Ms. Schmidt stated that another thing to check for besides wording was that the criteria relate back to the priorities.

Chair Shallenberger asked where the word “appropriate” had come in to the criterion on public access. Ms. Schmidt stated that she thought it had been on the evaluation form, and had put it in red because she thought it to be vague. Chair Shallenberger stated that the word was not necessary. Member Bonar stated that, without this word, the public might interpret that there was a requirement for public access in all cases, whereas it would only be favorable in some.

Ms. Rezendes added that public access would be unwanted for some projects, like on an organic farm.

Ms. Schmidt asked whether the group wanted to keep the meaning of the word “appropriate,” but change the word itself to something less vague. Several Subcommittee members stated that “appropriate” was the preferred word, Member Buchanan stated that a definition might be suitable. Ms. Schmidt suggested that the Subcommittee wait to see whether the AG’s office had a problem with it.

Ms. Schmidt recorded “adequacy of management planning” as the preferred nomenclature for a criterion.

Chair Shallenberger asked why “community benefit” and “community support” are stated in two separate criteria. Ms. Schmidt stated, to preface the discussion, she had added both of them, neither were on the evaluation form. Member Canfield suggested dropping the former phrase (number 12 on criteria draft two), because community support implies community benefit.

Ms. Schmidt stated that removal was fine, but wanted to explain why she had initially included it: there may be some projects with support letters from some sectors, yet may not benefit the entire community.

Member Canfield asked whether any one person could state community support when everyone has a different perspective. Ms. Rezentes asked whether there could be a project with a community benefit that the community does not support because it is initiated by a State agency. Member Bonar stated that this situation was possible.

Member Canfield stated that the Commission reviews letters of support, which goes straight to the criterion of community support, and encompasses community benefit. Ms. Schmidt added that it might be fair to drop “community benefit” as a criterion because the reason for the existence of the Program was that Legislature had already decided that protecting lands of the types listed in statute provided a community benefit. Member Bonar stated that it mattered to him whether there was community support. Member Shallenberger added that all of the priorities and criteria were already aimed to determine the benefit.

Members Bonar and Canfield discussed the merit of adding “community support” to the evaluation form. Member Buchanan stated this criterion was very important to her. The other members agreed. Ms. Schmidt stated a desire for a better way to determine support than a last-minute flood of letters, like a petition. Member Buchanan stated that a letter indicated some time and effort had been spent, petitions did not always do this. Member Canfield asked whether support could be a criterion if it wasn’t in the Grant Application or evaluation form. Ms. Schmidt stated that the Grant Application Instructions stated that additional materials could be supplied, plus the open and public nature of Commission meetings made it a public right. Additionally, the Commission could add it to the Grant Application. Member Bonar agreed with this suggestion. Ms. Schmidt stated that this topic should be brought up at the next Commission meeting.

Member Buchanan confirmed that the Subcommittee had kept number 11 and dropped number 12.

Member Bonar asked for clarification on the wording of the resource values. Ms. Schmidt asked that the Subcommittee not edit the statutory language. Member Bonar stated that the wording was frustrating, but he would not argue with the statute.

Ms. Schmidt suggested that the Subcommittee go through the rest of the rules drafts before running down the list of policies. Chair Shallenberger moved on to the draft of Commission procedural rules. Ms. Schmidt commented that she thought that these rules were a bit unnecessary since they were all written in law somewhere, however, this appeared to be what most other State commissions had done.

Member Buchanan stated that the term “member” should be defined, since it is used in the rules. Member Shallenberger agreed. Member Bonar stated that the term was in the statute as well. Ms. Schmidt stated that providing a definition may help and would not hurt.

Member Buchanan asked if the rules covered the Sunshine Law. Member Bonar replied that they did. Member Shallenberger asked whether the rules spoke to right of the public

to be heard. Ms. Rezendes replied that it was covered by the rule referring to Chapter 92, HRS. Ms. Schmidt added that it was most efficient to refer to the law itself.

Member Buchanan asked if there needed to be rules for appeals or contests to the Commission's recommendations. Ms. Schmidt stated that she did not think that this was needed, because the Commission was advisory to the Board; the Board had the power to approve awards, and it had its own process for contests and appeals to decisions. She stated that she would double-check with the AGs.

Member Canfield stated that the rules were straightforward; she did not see any need for revisions. Some members indicated agreement. Ms. Schmidt asked if the Subcommittee was finished with the review of this draft; the members replied that it was.

Ms. Schmidt stated that the Program rules draft was a "really rough" draft; it needed more work, and review from other Department divisions. Ms. Rezendes referred to the definition of "land conservation organizations" and asked if all nonprofits but those having IRC §501(c)(3) status would be excluded. Ms. Schmidt stated that she had put the term under the list of definitions solely to indicate that it may need to be discussed and defined, and that Ms. Rezendes should ignore the current definition. Member Bonar commented on an appropriate definition of "land conservation organization." Ms. Schmidt stated that the purpose of the draft had been to provide a rough skeleton and demonstrate the divisions between the subject matters, and it was not an adequate demonstration of what the rules would be; so reviewing the specific provisions at this point might be a waste of time. She stated that the draft was not at a point where it was ready for Subcommittee review and offered to bring an improved draft at the next meeting. Member Bonar suggested that the Subcommittee add comments to this draft as it went through the list of policies.

Ms. Schmidt stated that she still wanted to look at other state programs and see whether their rules could be helpful in improving this Program's draft. She suggested skipping reviewing this draft because management funds would also need to be included in the Program administration and the group did not currently have a process or criteria in place for that.

Ms. Schmidt provided an explanation for the inclusion of "total projects costs" under the definitions section. Member Bonar stated that acceptable matching funds would also have to be considered. Member Canfield asked if there was a generally accepted practice. Ms. Schmidt replied that the statute outlined acceptable matching funds as in-kind services, other grant funds, cash monies, or land value donations. "In-kind services" created problems if not defined because applicants might request compensation for activities not performed by qualified professionals. She stated that she would want to seek advice from other experienced grant programs on this issue. Member Bonar stated that he was ambivalent on the issue. Member Canfield asked if the amount spent on in-kind services should be capped. Member Bonar stated that some federal programs do this. Ms. Schmidt stated that the State needed paperwork for everything that is submitted

as a cost. The group discussed possible forms of in-kind services and various pros and cons of narrowing the definition of this term.

Ms. Schmidt asked if the group was ready to move on to the list of policies. Member Buchanan asked if there was any case where the Program would give money to private entities. Ms. Schmidt stated that the Program could not award to private for-profit entities. She added that the statute stated “nonprofit land conservation organizations.” Member Bonar stated that cultural resources were meant to be included. What matters is what the applicants see when they read the term, and whether an award would be withheld from an entity that was not a traditional land trust. Ms. Schmidt stated that the statute stated “land conservation organization,” but also clearly indicated that cultural and historical resources are to be protected. Member Bonar stated that he was concerned that an attorney would, at some point, decide to eliminate a nonprofit from consideration for not being the right kind of land conservation organization.

Member Shallenberger stated that he did not think the term “land conservation organization” eliminated other resources from being protected. Member Bonar stated that he was worried about the intersection with federal definitions.

Ms. Rezendes added that the Commission should add its general purpose to its rules.

Member Buchanan asked for clarification on the provisions relating to monitoring. Ms. Schmidt stated that on some grants, monitoring of an organization is done because the funds are being dispersed in partial amounts. For this Program, the funds are given out all at once, however, the capacity of the organization to manage the lands is a big factor in the receipt of an award, so the Program had reserved the right to request an organization’s paperwork relating to the project for a limited time after the award. Member Bonar stated that the Department does not have the best history of monitoring the resources themselves. Ms. Schmidt stated that monitoring resources was difficult for this program because the Department was not holding a conservation easement, which would contain specific provisions on what, where, and how monitoring is to be done. All that this Program had to guide monitoring were boxes checked on an application. Member Canfield stated that it was outside the purview of the statute. Ms. Schmidt agreed and added that they were still trying to maintain the greatest level possible under the statute. Member Bonar stated that it was a question for the AGs. Also, the Program had deed restrictions, but if monitoring was going to be done well, conservation easements would be needed. Ms. Schmidt stated that attempts to enforce might fail if the initial documentation is too vague.

Member Shallenberger added that resource value indicators might be important in demonstrating the long-term success of the Program. Member Bonar suggested talking to Land Division about monitoring. Ms. Schmidt stated that it would probably pass this responsibility along to the division requesting the acquisition. She stated that Sheri Mann had probably thought a lot about the issue in working with Forest Legacy Program. Member Shallenberger stated that the Forest Stewardship Program had strong enforcement. Member Canfield stated that it should be a discussion at a future

Commission meeting. Member Bonar added that the Program's deed restrictions included a provision allowing a conservation easement to be issued at disposition.

Ms. Schmidt stated that things had been thrown in the draft to indicate what appropriate subject matter for Program procedures would be, the content of the rules themselves hadn't been thought out yet. She stated that there would be a lot of big topics, and would probably take a lot of discussion time. She suggested leaving it for the next meeting.

Chair Shallenberger moved the Subcommittee to discussion of the list of previously-discussed policies. The Subcommittee went through the list of policies created for the October 14, 2008, Commission meeting. They discussed each policy in terms of its relation to rulemaking and whether it needed to be addressed in another format.

The group discussed applicants' flexibility to accept less funding. They discussed whether it would be an internal procedure not fitting for rules. Ms. Rezendes stated that programs she had worked with often chose to partially fund projects. Member Shallenberger asked whether all projects would be subject to reductions or just the lowest-ranked projects. The members discussed pros and cons of reducing awards. Member Buchanan mentioned the practical difficulties of reducing awards at the last minute. Member Bonar suggested adding to the application or not asking the applicants. Ms. Schmidt read the definition of "rule" from Chapter 91, HRS, to demonstrate where the term "internal" came into play. The Subcommittee skipped the item as an internal procedure not appropriate for rulemaking.

The members moved down the list, skipping items that were not appropriate for rulemaking, or that had already been addressed.

Member Shallenberger asked whether the Commission wanted to define what type of agriculture was acceptable, given former comments on genetically engineered crops. Member Bonar stated that he did not believe there would be support from the Board or the legislators on this. Member Shallenberger agreed it would not be appropriate for a rule.

The group recommended adding the gathering of last-minute information from applicants as a procedure. They discussed the line between material updates and incomplete required materials. Ms. Schmidt stated that the Sunshine Law gave people the right to testify at the last minute. She added that it might be a good idea to institute a rule on the deadline to make sure it would be enforceable. She would ask the attorney general's office if it was a good idea. She talked about her concerns from the last applicant cycle. Chair Shallenberger moved the discussion to the next item.

The Subcommittee discussed fairness between big and small applicants, balance between islands, and balance between resources. Ms. Schmidt stated that this item did not need to go into a specific rule, as it would be come down to the ground in a different form. For example, the Program did not require appraisals initially so that smaller nonprofits with greater issue affording an appraisal (for an acquisition that may not be funded) would not

be iced out of consideration. Ms. Schmidt stated that the consideration was not in the priorities. Chair Shallenberger stated that one of three things would happen: the Commission puts this policy into rule, ignores it, or leave it to individual members. He stated that it was important to acknowledge that it could influence decisions. He stated that, for all “balance issues,” since there was no guidance in the statute for forming these policies, it would be inappropriate for rulemaking. Ms. Schmidt agreed and added that she could increase publicity or outreach efforts if the Commission felt a particular group was underrepresented.

The Subcommittee discussed reapportionment of funds from failed projects to new projects. Ms. Schmidt stated that the issue often comes down to the administrative procedure and what time is left to seek another approval. Member Canfield asked whether the Board could approve more projects than funding was available for; she had thought the AG said they could not. Ms. Schmidt stated she would have to go back and review the Board submittal, but she had thought that the Board approved the projects in order ranked, with a contingency that if one dropped out, the funding would move to the next project down the list. She stated she could not remember exactly how it had been done. Member Bonar stated that they could have one or two alternate projects. Ms. Schmidt stated that the problem was tying up the loose ends. She was troubled by issues that might arise, but as long as all of these were taken care of, it could probably be done. Member Canfield asked if any of this needed to be a part of rulemaking. Member Shallenberger stated that the Subcommittee did not have the answer to the question of what, exactly, needs to be in rule form and what would go elsewhere. Ms. Schmidt stated that she wanted to put the basics into rules and have the rules refer to documents on policies that might change from year to year. She had seen that other states’ programs do this, so she thought it would be feasible. For example, create a rule that refers to the annual application and instructions and where it will be located. She stated that there would have to be a good faith effort to put the right topics into rule form.

The group discussed the idea of ordering priorities instead of weighting them equally.

Member Bonar stated that he was aware of the policy relating to fair market value, but not bargain sales. He asked if there was a policy on bargain sales. Ms. Schmidt stated that she was not sure why bargain sales had been included, except that it had been mentioned along with fair market value discussions.

The Subcommittee discussed the consideration of clear title. Member Bonar asked whether the Commission should even consider projects not having clear title and whether Land Division would accept anything less than clear title. Ms. Schmidt replied that the term was not necessarily defined; the clarity of title comes in various degrees. Chair Shallenberger read the question relating to clear title as it was stated on the application. The Subcommittee decided that the item was fairly encompassed in the criterion on completing projects in a two-year time frame.

The discussion moved to what to do about information that is missing from application materials upon deadline. Member Shallenberger suggested making the instructions more

clear that incomplete applications will be rejected. Ms. Schmidt gave some examples to gauge how strict the Subcommittee wanted to be. Member Bonar stated that any required information that is missing should result in the rejection of the application; clarification would be okay. Member Canfield added that Ms. Schmidt was available for consultation prior to deadline, so applicants already had the chance to check in with her on any questions. Ms. Schmidt stated that she could just pass the applications along to the Commission in whatever condition they arrived. Member Canfield asked why Ms. Schmidt would not continue to vet them. Member Bonar responded that the real question was whether Ms. Schmidt should track down missing information. Member Canfield stated that she favored a hard and fast deadline. Chair Shallenberger stated that the checklist was key for many other programs. Ms. Schmidt asked whether the idea was for her to reject applicants with missing information. The members said yes. Ms. Schmidt asked whether she should notify applicants that information was missing if they turned the application in ahead of deadline. Member Bonar stated that all that Ms. Schmidt should look for is “completeness.” Ms. Schmidt stated that they should clarify what, exactly, the standard of “completeness” would be, and notify applicants, or there might be problems. Member Bonar agreed. Member Canfield suggested just having the checked items be required. Ms. Schmidt stated that this was a good distinction, and asked what the result should be if a section of the application is left blank. Member Canfield asked whether the application checklist covered everything. Ms. Schmidt stated that there might be a fine line that has to be dealt with if an applicant sent in a half-blank application or something; she did not want to have the discretion of rejecting an applicant without a standard in place. She stated that she could foresee an applicant getting rejected by her, then going to the Commission to voice a complaint, in which case she would look like the “bad guy.” She suggested passing the applications to the Commission and letting them make the call. Member Shallenberger stated that the Commission would need to agree on what the standard is. Member Bonar suggested that Ms. Schmidt pass the applications as-is through to the Commission; the Commission could consider whether the materials were in by the time of the first meeting. Member Canfield stated that it was helpful to have the materials ahead of time so there was time for reviewing them; so it was helpful to have Ms. Schmidt review the applications for completeness. Ms. Schmidt suggested leaving this topic for the next full Commission meeting. The Subcommittee members agreed. Member Buchanan asked Ms. Schmidt if checking the applications over had been too cumbersome. Ms. Schmidt stated that it had worked out so far; however, it put part of the responsibility for applicants’ completions on her instead of the applicants. Member Buchanan stated that, in her experience, it was appropriate to put the burden on the applicants. Ms. Schmidt stated that she would be willing to do the review and provide a staff recommendation to the Commission on whether the application should be rejected, if wanted. Ms. Schmidt added that she would like to think about it before the next meeting. Member Bonar suggested running through the application at the next meeting.

Member Shallenberger referred to the policy list item on continuity, stating that the Subcommittee had already covered this one with a criterion.

Member Bonar stated that the topic of long-term management had been a very high priority criterion for him. Member Shallenberger stated that the detailed question on the application gave sufficient notice that the Commission would be looking at this criterion.

Member Shallenberger read the consideration on “arbitrariness and capriciousness.” Ms. Schmidt stated that the Commission could technically do whatever it wanted, however, if the Board were to rely on its decisions and decision-making process, affected members of the public could make complaints to the Board based on their reliance on the Commission’s process. Member Shallenberger stated that he had thought the Commission was already doing everything it could to eliminate arbitrariness and capriciousness from its process. Ms. Schmidt agreed and stated that she had just wanted to clarify how the consideration would relate to the Commission.

Member Bonar read “semi-quantitative analysis” from the list. The members recalled that this consideration had involved whether a numerical system was appropriate for the ranking process and that this item had already been resolved.

Member Shallenberger read “types of agricultural lands” from the list. The members stated that the item had come up in relation to the 2007 application from the Agribusiness Development Corporation. Member Buchanan asked whether, prior to her appointment, the Commission had considered “important agricultural land” designations. Member Shallenberger stated the Commission had to work with the wording of the statutory priority “unique and productive agricultural lands.”

Member Shallenberger read “eminent domain” from the list. Ms. Schmidt stated that she had thought the Commission had agreed to deal with this on a case-by-case basis, and that the Commission was asking for a landowner letter, which alerts them to any “unfriendly” condemnations. Member Shallenberger asked why the Commission had left this door open. Member Bonar stated that the Commission had wanted to deal with the situation on a case-by-case basis.

Member Bonar read “repeat applicants” from the policy considerations list. Member Shallenberger stated that he had thought the concern was whether the occurrence of repeated awards to the same entity would give the impression of unfairness. Member Bonar stated that, if the Commission was judging on the quality of the project applications, and one entity was repeatedly putting in the best ones, that should be a sign that the rest of the applicants needed to get their act together.

Member Bonar read “political landscape of a project.” He stated that past political pressures hadn’t fazed the Commission much, and it could be a consideration for the Board. Ms. Schmidt stated that the item could be included under the “community support” criterion. The members briefly discussed past projects and related political pressures. Ms. Schmidt added that the criterion “likelihood of closing within two years” might also come to bear on this issue. Member Shallenberger stated that the item was not appropriate as a rule in itself and the other members agreed.

Member Bonar asked why “iwi discoveries” had been added to the list. Member Shallenberger stated that he assumed it referred to a discovery of cultural resources on a project site. Member Bonar asked if the Commission ought to see if there was a burial treatment plan in place for such projects. Ms. Schmidt asked whether it would be part of a management plan or separate. Member Bonar replied that it could be part of a management plan. Member Canfield asked if the Commission should specify this request on the application. Member Shallenberger stated that it asked for cultural resource information. Member Bonar stated that it ought to be part of the management plan. Member Buchanan asked if State rules or law took care of the issue. Ms. Schmidt stated that they would have to obey any laws regardless. Member Bonar stated it should be included on the application. Member Shallenberger read from the last question on the application, which asked about the inclusion of cultural resource value planning on the property. Member Bonar asked if the Commission ought to specify “iwi,” due to the sensitivity of this issue. Ms. Schmidt stated that the group could bring it to attention at the next Commission meeting. Member Buchanan stated that it would be nice to see some awareness on the part of the applicant of the various permitting issues. Members agreed to recommend a sentence to the application at the next Commission meeting.

The members agreed that they had already addressed the next few policies on the list.

Ms. Schmidt addressed the “pono” consideration, stating that Member Bonar had stated at a meeting that the philosophy was difficult to put into rule form. Member Shallenberger talked about how the community and environmental groups worked together for the Lapakahi project to show support, and how this coordination demonstrated “pono.”

The group went down the next few items. Member Bonar stated that “cultural preservation” was addressed in previous topics, but was trying to remember the specifics of Commission Member Kaiwi’s comments. Member Canfield stated that she thought Member Kaiwi had wanted to see applicants answer the “culture” question in a more specific format than they had in the past. Member Buchanan commented that the consideration had been included under the management plan question. Member Shallenberger asked if the consideration ought to be separated out further. Member Bonar stated that there was no land in the islands that did not have cultural underpinnings; they would always have to be sensitive to how culture tied in. Member Canfield stated that an applicant applying for critical habitat may not know under the current application that they ought to specify how cultural concerns will be addressed. Ms. Schmidt asked whether the consideration fit into a rule. Members stated that it did not. She suggested that the Subcommittee leave it until the next Commission meeting to discuss. They agreed.

Member Bonar read the issue “preliminary title reports” from the list. Member Canfield asked whether members would want to require a preliminary title report by the application deadline. Member Bonar stated that it would be nice to have the information while making a decision. Member Shallenberger asked when the State did the review. Ms. Schmidt stated that it was currently done after a grant was awarded, before funds

were dispersed. Ms. Schmidt stated that it might be an appropriate burden for the applicant – if they didn't have clean title, they would end up suffering the consequences. Member Bonar stated that, if the Commission could verify this information in advance, the monies could be awarded to projects with a better chance of success. Member Shallenberger pointed out that it could be due by deadline or by the Commission's review meeting. Ms. Schmidt asked whether the Commission would review the title reports themselves. Member Bonar stated that, since the Program was supporting a staff member in Land Division (LD), he would expect them to do this work. Ms. Schmidt stated that she had thought the Commission had asked Mr. Hirokawa, and he had stated that it was not feasible. Member Bonar stated that he would speak with the LD administrator. Ms. Schmidt stated that she had thought that LD preferred not to do review preliminary reports because they provided an insufficient basis for decision-making. Member Bonar stated that LD could just search for red flags. Member Canfield agreed. Member Bonar stated that there were not that many applications. Ms. Schmidt stated that they were worried about the final product, not the work involved. Ms. Schmidt stated that her opinion was that land trusts should not be seeking to acquire lands without knowing whether they could gain sufficient title, it seemed like a bad practice. Member Bonar insisted that LD take a look at title. Member Canfield suggested reserving the item for the next full Commission meeting. Member Buchanan asked for clarification on the proposed requirement and the group responded.

Member Canfield stated that she wanted to add the item "accepting acquisition boundary areas" to the list from a later discussion. Member Bonar asked if the group could cover the "CREP" (Conservation Reserve Enhancement Program) item first. He stated that those funds could now come into the Land Conservation Fund (LCF) and asked if they required State match. Ms. Schmidt stated that the funds were already State funds that had been appropriated as a match for federal CREP funds and were required to be expended on conservation easements within the CREP project area lands. Member Shallenberger asked what the concerns were regarding these funds. Ms. Schmidt stated that the idea was to deposit these funds into the LCF and have them go through the Program's award process. The Commission would have to consider another layer of administrative concerns on which funds could be used for what and how this would affect rankings. She stated that she had thought that these funds were being provided as match for federal activities that were being done elsewhere, so she needed to check with Irene Sprecher to determine if these funds could be used as match on projects receiving funds from other federal programs. She gave an example of how the Commission could conduct its ranking process while using CREP funds. Member Bonar asked if CREP could be handled separately. Member Shallenberger asked if Irene could attend the next meeting to re-explain the program. Ms. Schmidt referred the members to the State's CREP website for a map of CREP lands.

Member Shallenberger moved the discussion to the subject of acquisition boundary areas. Member Bonar provided an example of a project where acquisition boundaries might be acceptable. He stated that this approach would not take care of the "willing landowner" issue. Member Shallenberger stated that the Commission could take this right up to the decision day. Member Bonar added that an application could talk about the entire

acquisition area. The downfall of the last round's acquisition area project had been that it focused only on one area. Member Shallenberger stated that there should be adequate information for whatever area. He stated that Kawa would be a good example – the applicant was trying to accomplish the same resource protection objective with each acquisition, but the applicant did not have the deal finalized on the application deadline. He stated the need for a narrow defined area and a list of tax map keys to be considered. He stated that he had seen the single-parcel approach hurt a number of projects. Member Bonar stated that this issue needed to be taken to the next full Commission meeting. Member Canfield added that this was not necessarily a rules issue. Member Shallenberger offered to bring materials on the U.S. Fish and Wildlife Service (FWS) acquisition boundary approach. He stated that FWS had used this approach in part to establish priorities by resource protection. He stated that he thought this approach to be better for the resources.

Ms. Schmidt stated that this issue might go to the heart of how the whole Program is run, and asked if they needed to hold off on rulemaking, setting deadlines, etc. How the Program considers a project "complete" might be affected. How would leverage be assessed if the applicant did not know what project it would acquire? Member Shallenberger stated that an applicant could turn in multiple applications together. Ms. Schmidt stated that, if this could be done without further complicating the Program or making it less efficient, it would be fine. Member Shallenberger stated that if an applicant hadn't figured out the deal by the time the Commission considered applications, they would be out of luck. Ms. Schmidt stated that the Punalu'u project had done this, and this approach sounded feasible.

Member Shallenberger asked if the "new or updated info" consideration had been sufficiently discussed. Member Bonar stated that it would go to the next Commission meeting's discussion of the application. Member Shallenberger stated that members would like to see updated information; however, a limit on how much information is provided and when might be preferable.

Ms. Schmidt suggested a recap of the progress under this agenda item before moving to the next one. She stated that there would be a new draft of criteria rules, the draft of Commission procedures would stay the same as there was no comment, the draft of Program procedures would be improved by staff before further Subcommittee review. She asked if there was anything else. Member Shallenberger asked about the definition of nonprofit land conservation organization, Ms. Schmidt replied that this definition would be in the Program procedures draft. She stated that items on the policy list that had been determined to relate to the Grant Application would be discussed at the next Commission meeting.

The Subcommittee took a 5-minute break.

ITEM 4. Discussion and possible advisory recommendations on the process for the disbursement of management funds through the Legacy Land Conservation Program.

Ms. Schmidt stated that the Subcommittee had agreed that staff would produce drafts to work off of for this meeting. Ms. Schmidt stated that she had not drafted guidelines, but had created a rough draft of a grant application and instructions for disbursing management funds. She distributed these drafts. She mentioned that Ms. Rezendes had requested a legislative history of Act 139, SLH 2008. Ms. Schmidt sought Ms. Rezendes' help in distinguishing the order of the conference committee reports and explaining the history. After attempting to explain the history of the drafts, Ms. Schmidt summarized that the legislative history did not provide much additional insight, except to provide additional confirmation that the management funds were meant to be disbursed through the grant process.

Member Bonar stated that the Commission would review the grants. Ms. Schmidt stated that the Subcommittee had encountered some issues with the process at the last meeting, including that the lands must be already-acquired, per the AG's office. Member Bonar stated that the applicants could submit for acquisition and management funds simultaneously, with the understanding that management funds would not be awarded until the acquisition closes. Ms. Schmidt stated that she preferred not to do things that way if they were not supposed to award to projects that hadn't closed yet. Member Bonar asked why the Program would award acquisition funds to projects that hadn't closed yet. He stated that the management funds could be awarded after the acquisition closed. Ms. Schmidt asked why he wanted to do things that way. Member Bonar stated that he saw the funding of management plans as one of the best uses of these funds, and this would allow them to pursue a management plan right after acquisition. Member Shallenberger stated that he had thought the intent was to make sure that Legacy lands were given a means to ensure that they are well-managed, and that someone could fill out an application form with the inclusion of an additional 5% for management. Ms. Schmidt asked where Member Shallenberger had gotten the idea that this was the intent of the Act. Member Shallenberger stated that this had been his interpretation of the "not more than 5% may be spent on management" limitation. It could be applied generically across the Board on a per-project basis. He stated that the Commission would not want to encourage any project lacking a management plan to go ahead with management actions. Ms. Schmidt stated that it was not a bad idea; however, the Commission was using the existence of a management plan as a criterion for acquisition funding. Member Shallenberger stated that it was a criterion, not a deal-breaker.

Ms. Schmidt stated that the funds were for closed projects under the statute. Member Bonar stated that it could still be granted to un-closed projects, but dispersed after closing. Ms. Schmidt stated that awarding for management plans also would take review of the management plans to ensure a quality product for the money awarded. Member Shallenberger stated that they were not reviewing anything else, why this? Ms. Schmidt stated that it was taxpayer money, due diligence needed to be done to ensure they were used for the purpose. Member Bonar stated that the Program was not doing this anyway with the acquisition funds. Ms. Schmidt disagreed and stated that the purpose of the contract and due diligence checklist was to ensure the acquisition was done properly. Member Bonar stated that DLNR did not send staff to monitor the sites. Ms. Schmidt

stated that the Program was a land acquisition program, not a resource monitoring program, which is why it ensured that the land was acquired.

Member Bonar asked how the Program could ensure management planning funds had been properly used. Ms. Schmidt stated that the Program would not give the funds until the recipient could prove proper use. Member Bonar asked if the Program would only reimburse. Ms. Schmidt stated that many grant programs used reimbursement to ensure proper use of funds, and specified that she was not stating that Legacy Land had to do reimbursement. Member Bonar stated that he disliked reimbursements and thought that this was a terrible idea. Ms. Schmidt stated that she understood that the Subcommittee members wanted to make things as easy as possible on the applicants; however, the Program still has a duty to make sure the moneys are spent properly.

Member Shallenberger stated that, if the Commission funded a management plan, it would want to see that the work gets done as soon as possible. The question was whether the Commission could make this work or would it have to wait a year.

Ms. Schmidt stated that she understood that this use of funds was the members' preferred use, however, there were other things to considerations for not awarding them in this particular way: first, trying to figure out whether the management plan had been completed satisfactorily might be an issue.

Member Shallenberger stated that it was odd that Ms. Schmidt was focusing so intently on ensuring the funds were well-spent when there was little assurance that funds awarded for acquisition were well-spent.

Ms. Schmidt stated that the Program gave awards for the acquisition of property, and that is one thing that they can and do assure. The statute did not state that the Department could go in and monitor the specific resources to ensure that they are well-managed. If they did not have the authority to enforce management, what were they supposed to do? She reviewed the Grant Agreement held the award recipient to performing the acquisition of the property.

Member Bonar asked if Ms. Schmidt was stating that the Program cannot give advance money for a management plan. Ms. Schmidt stated that she was not stating that. She was trying to ask how the Program could ensure with management plans that the Program had gotten what it had paid for, because the Program has a responsibility to make sure that happens. Member Bonar stated that it could review the plans. Ms. Schmidt asked who had the expertise to review management plans for nine different types of resource lands. Member Bonar stated that DLNR did.

Ms. Schmidt asked Member Bonar to assume for a moment that management plans are an acceptable use and asked if that was then all the funds could be used for under the statute. Member Bonar stated that the Subcommittee hadn't discussed that yet. Ms. Schmidt replied that, maybe, instead of just focusing in on something that the Subcommittee wants, it could step back a little bit, look at what the law says, and take it from there.

Member Shallenberger stated that the law said the funds could only be spent on lands acquired. Member Bonar added that it had to be used for operations, maintenance, and management. He stated an example of management: removal of invasive species. He then asked Ms. Schmidt if funds could be advanced for this given purpose. Ms. Schmidt stated that she wasn't going to deny or confirm that at this point. Lots of grant programs work on a reimbursement basis. The reason they do this is that handing over large sums of taxpayer money to somebody who might lose it, and then having to sue them to get it back is not an efficient use of time or effort. Member Bonar stated that every grant program allows for advances. Ms. Schmidt asked which programs. Member Bonar stated that the State programs allow for this. Ms. Schmidt asked which ones. Member Bonar stated that the invasive species grants and DOA grants had been. Ms. Rezentes stated that DOH does grants on a reimbursement basis. Ms. Schmidt stated that she did not want the discussion to turn into an argument. She stated that advance payments might be possible, but may not be good policy.

Paul Conry, DOFAW Administrator, entered the meeting to update the Subcommittee on Fiscal Year 2009 grants. He stated that the request for approval had made it from the Dept. of Budget and Finance to the Governor's office, where it was currently pending approval.

Ms. Schmidt asked Mr. Conry to comment on the pros and cons of doing grants on advance or reimbursement bases. She asked whether DOFAW had a duty to ensure funds were expended on items that could be verified to have been completed to a certain standard. Member Bonar clarified that the group had been discussing management fund grants. Ms. Schmidt added that her opinion was that grants should be done on a reimbursement basis as a default, and in advance when a need can be demonstrated. She disagreed with advance payments as a default. Mr. Conry stated that many DOFAW-administered grants were done as reimbursements; however, there are some programs that allow applicants to apply for advance payments, like the new federal stimulus payments. Ms. Rezentes asked about Kaulunani grants. Ms. Schmidt stated that the last RFP had referred to reimbursements. Mr. Conry asked if she was referring to a hardship situation. Ms. Schmidt stated that they wanted to make sure smaller nonprofits weren't "iced out" of being eligible for funds. Mr. Conry asked if it were an issue at this point.

Member Bonar stated that the group had been looking at management plans as one of the ways to help smaller groups do management plans. He didn't think that these groups could front the money. The group had been arguing about monitoring the product. Ms. Schmidt stated that the Forest Stewardship Program had a technical review committee to review its management plans. Mr. Conry asked if the Forest Stewardship funds were advanced. Chair Shallenberger replied that they were reimbursed. He added that the small group doing a management plan might also need funding to implement it afterwards. He had supported including a management plan award in the acquisition application so that the applicant would have the money to start management right off.

Ms. Schmidt stated that the problem with putting it in the acquisition application was that they would need to wait for the acquisition to close, and that they would then be awarding funds that might not be used for another two years. It seemed to make more sense to wait. And when using a set of criteria to award management funds, how would the Commission judge projects that have management funds awards against those that don't?

Member Shallenberger stated that an applicant with the foresight to include the exact amount needed for a management plan would have a better proposal in his eyes.

Mr. Conry stated that he could see partial advance payments as an approach to making sure progress is made without leaving the applicant with no funds for a long period of time.

Member Bonar stated that they were also issues with being able to monitor. Mr. Conry stated that some contracts withheld 10% of the payment until satisfaction was guaranteed. Member Bonar stated that they were still not sure how to determine the quality of the product. Member Bonar asked whether there was any law that prevented what he wanted to do. Mr. Conry replied that it was a matter of policy. He added that matching funds could also be a consideration, as a way to help a nonprofit gain momentum.

Member Shallenberger stated that he had thought the purpose of the new law was to make management funds an important part of this process. Ms. Schmidt stated that the group also needed to look at all of the different types of resources, and make sure that all applicants would have equal access to the funds. Member Shallenberger stated that he did not disagree, he would just be more comfortable with a program that integrated the need for management along with acquisition. He restated that the sudden concern for taxpayer funds was odd since the acquisition awards were large and resources were not monitored for this.

Ms. Schmidt stated that she would personally like to see the resources monitored, but the Program had not gotten the teeth in the statute to do that. She was pretty comfortable with the fact that they were getting the land, which is what the funding was for. She explained that her recent unease was due to the fact that they were now doing something else, where they would not get an end product, like a chunk of land, with Program restrictions in the deed, to assure that funds were expended properly. She stated that her concern was, whatever the use of the funds, to be able to ensure that they were expended properly.

Member Shallenberger stated that he would consider, in his rankings, the ability of the owner to manage the land, because it was not good enough to just own the land.

Ms. Schmidt stated that just because the acquisition process may be flawed in that it didn't give the Program the right to monitor the lands, does not give the Program the right not to monitor what it is doing with its management funds.

Ms. Schmidt asked the group to start at the beginning, looking at the statutory provision, and go through the topic in an organized fashion. She asked if the group agreed that the process should not ice out applicants due to organization size or resource protection goals. They agreed. She stated that it then needs to be set up broadly enough that anyone can apply. She added that it was fine that the group was adamant about a specific use, and asked if they would bear with her in looking at the forms she had created and why.

The group referred to the management grant application. Ms. Schmidt explained the following: the previous acquisition application could be attached along with an update to avoid repetition of information; the wording of the statute had been broken down to specify allowable uses, a project summary, along with statutory goals of the funding, resource value protection goals.

Member Buchanan asked whether they had a statement of resource protection from the original application. Member Shallenberger added that specific protection was not committed to, only description of resources present.

Ms. Schmidt stated that part of the problem was that, unless there was a specific resource protection commitment, like in a conservation easement, there is no way to go back later on and enforce it, because it is all too vague. Member Shallenberger stated that this had been his point. Ms. Schmidt stated that the Program therefore attached the Grant Application to the Grant Agreement, because this was the most detail that the applicant ever went into.

Ms. Schmidt continued to go through the draft management application. She stated that the application asked for deliverables and measures of effectiveness, because they would need proof that the work had been done. She stated that there needed to be a basis for drawing up the contract after the grant had been awarded, the application would have to be specific enough that the contract could fairly state what the grant had been awarded for and hold applicants to it.

The group looked at the draft management grant instructions. Ms. Schmidt stated that she had thought calling the application a pre-proposal was one idea, she was not sure if it was good.

Member Shallenberger asked about using the funds to apply for Conservation District Use Permits. The draft application was asking whether they had these permits, when they might be applying for these funds. Ms. Schmidt stated that she was not sure if there was any law or policy against using State funds to fund applications for approval to State agencies, she would have to look into it.

She stated that she was not opposed to the idea of management plans, but she was not sure if the Program would be able to ensure the quality of the management plan. She asked if the Commission wanted to take on the responsibility of reviewing. Member Bonar stated that DLNR could do it. Ms. Schmidt stated that DLNR staff didn't all work for this Program.

Member Bonar stated that his solution would be to not award management funds at all. Member Buchanan asked if this would be a permissible recommendation to the Board.

Member Buchanan specified that the recommendation would be that the Commission needed to come up with criteria, and would not be ready for the upcoming year, so it would recommend holding off for a year. Ms. Schmidt replied that this seemed like a good idea. Member Canfield added that this was a good idea for this year.

Ms. Schmidt stated that, from the administrative standpoint, enumerating the acceptable uses of the funds would be the easiest way to plan for being able to monitor the uses of the funds. On the other hand, how could the Program limit the uses of the funds when the statute made the awards so broad, with all nine types of resource lands?

Member Bonar stated that these types of issues were what the Commission needed policies about. Member Shallenberger added that they should not focus on the language so much as to lose sight of the original intent of the new law.

Ms. Schmidt stated that she did not think it was a good approach to take a stance against the language of the law. If the Commission wanted to take a stance against it later on in its criteria or rankings, fine. She stated that she did not personally like the change in the law at all, since it made the Program more work and much less efficient, but it was what they were working with. Member Shallenberger stated that he thought the materials were good, but didn't like the direction that it had moved from where the intent had started. Member Canfield added that one reassurance was that applicants would have had to have received an acquisition award from the Commission first.

Member Buchanan stated that the management grant application was depending on the original acquisition grant application. Member Bonar stated that this was complicated. Ms. Schmidt replied that this draft was just a first proposal to work off of. Member Bonar stated that he was referring to the entire process and all of the complications: repeat applicants, award amounts. He added that there would be a low amount of funding this year.

Ms. Schmidt stated that, if the Commission wanted to make a recommendation not to award management funds, they should do it as soon as possible. Member Shallenberger stated that they should specify their reasoning. Member Bonar added that he would recommend acquisition always be the first consideration.

Ms. Schmidt stated that she had a proposed process that she had read to them last time. She stated that it described the process as follows: an announcement of the 5% amount, along with the note that this was an "up to" amount and acquisition would be considered first. Remaining amounts that could not be awarded to fund an entire project. This was how Member Fletcher had suggested it be done.

Member Bonar stated that it was a lot of work for the applicants, a separate application process later might be appropriate. Member Canfield agreed to a separate deadline. Chair Shallenberger stated that this would be a lot of process for a small result. If it could have been a part of the application package, it would have been a paragraph. Ms. Schmidt had made it into something else.

Member Bonar and Chair Shallenberger discussed how many applicants would be applying. Member Bonar asked Ms. Schmidt how many projects had closed. She replied approximately five.

Ms. Schmidt stated that she did not know how to make the process less work. Even if it was a small simple addendum to the acquisition application, the Program would still have to institute a way of making sure it was getting a solid product from the applicant, which required some information on their part. She could see a process of an award based on a pre-proposal, but somebody would later have to go back to get detailed information from the applicant to enter the contract. She didn't see how to award funds without pinning applicants down to some sort of reviewable activity.

Member Bonar stated they needed to bypass it for this year until they dealt with these issues. Ms. Schmidt stated that it would also affect rulemaking. The Commission might be able to recommend bypassing the process this year, but should not stop working on it, as this would affect rulemaking progress.

Ms. Schmidt asked if the Subcommittee wanted to recommend bypassing this year's process at the next Commission meeting. The members agreed. She added that they could work on the wording of the recommendation at that meeting.

Member Buchanan asked for clarification on some of the application questions, Ms. Schmidt clarified.

Member Shallenberger stated that the members should look at the draft management funds forms and provide comments to Ms. Schmidt.

Member Shallenberger wanted to know whether the funds could be part of a current acquisition project. Member Bonar stated that they needed to know whether the funds could be awarded prior to closing. Ms. Schmidt stated that she thought she had already given the answer, but could ask again. She stated that she didn't think that the Board could award funds against the language of the statute, but she saw the point of the question. The idea was not to award funds for something that might never happen, and she needed to encumber funds at the end of the year with a specific project in mind. Member Shallenberger stated that as long as the projects are tied together, he doesn't see why it makes a difference. Ms. Schmidt stated that she saw his point. She asked if the purpose was to make sure there would management plan awards. Chair Shallenberger stated that the purpose was to ensure necessary management actions could be done right away after acquisition.

Ms. Rezendes added that they should consider the State Procurement Code in figuring how payments could be done. Ms. Schmidt stated that she had looked at other procurement contracts, and added that the idea of planning this process had been so that they could get a procurement exemption.

ITEM 5. Announcements.

The Subcommittee skipped this item.

ITEM 6. Adjournment.

Member Shallenberger adjourned the meeting.