

## **Minutes of the June 18, 2009, Legacy Land Conservation Commission Meeting**

**DATE:** Thursday, June 18, 2009

**TIME:** 8:30 a.m. to 12:30 p.m.

**PLACE:** Videoconference locations:

- Oahu: Kalanimoku Videoconference Center, Kalanimoku Building  
1151 Punchbowl Street, Room B10, Honolulu, Hawaii
- Big Island: Hilo Videoconference Center, Hilo State Office Building  
75 Aupuni Street, Basement, Hilo, Hawaii
- Maui: Wailuku Videoconference Center, Wailuku Judiciary Building  
Wailuku Judiciary Bldg., 2145 Main St., 1st Floor, Wailuku, Hawaii
- Kauai: Lihue Videoconference Center, Lihue State Office Building  
3060 Eiwa Street, Basement, Lihue, Hawaii

### **COMMISSION MEMBERS PRESENT:**

Dr. Dale B. Bonar, Chair  
Dr. Carl J. Berg  
Dr. Joan E. Canfield  
Dr. Charles (“Chip”) Fletcher  
Mr. Kaiwi Nui  
Mr. Herbert (“Monty”) Richards  
Dr. Robert J. Shallenberger  
Ms. Karen G.S. Young

### **COMMISSION MEMBERS ABSENT:**

Ms. Lori Buchanan

### **STAFF:**

Julie China, Deputy Attorney General  
Ian Hirokawa, DLNR, Land Division  
Randall Kennedy, DLNR, DOFAW  
Molly Schmidt, DLNR, DOFAW  
Ati Jeffers-Fabro, DLNR, DOFAW  
Nancy McMahon, DLNR, Historic Preservation

### **PUBLIC:**

Jim Albertini, Malu Aina  
Lea Hong, Trust for Public Land  
Corey Harden  
Wally Inglis, Malu Aina  
Galen Kelley  
Jennifer Luck, Kauai Public Land Trust  
Cynthia Rezentes, Oahu Land Trust

## **MINTUES:**

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

ITEM 2. Approval of Legacy Land Conservation Commission meeting minutes from the December 18, 2008, and December 19, 2008, meetings.

Chair Bonar entertained a motion to approve the minutes from the December 18, 2009 and December 19, 2009, meeting minutes. Ms. Schmidt stated that there had been some revisions since she had last distributed the drafts to Commission members and read the revisions aloud.

Chair Bonar called the meeting into recess for five minutes while technical support staff repaired the videoconference visual connections. Chair Bonar called the meeting back into session.

Ms. Schmidt stated that Member Young had sent questions regarding the KPLT project on December 19, 2009, minutes. She had wanted to know if the numbers were correct. Ms. Schmidt read the text aloud, and asked if the members had a correction. Member Berg and Ms. Luck conversed and stated that the “2.5 million” figure should be “\$1 million” in regards to the open space funding.

Ms. Schmidt summarized the remaining corrections that had been turned in by Members Berg and Young. Member Shallenberger stated that a quote in the December 18, 2009, minutes had been incorrectly attributed to him. Ms. Schmidt stated she would remove it.

Member Canfield moved to approve the minutes as amended. Member Young seconded this motion and all were in favor.

ITEM 3. Discussion of the Fiscal Year 2010 Legacy Land Conservation Program timeline, process, budget, and forms, and possible recommendations from the Commission to the Department on the Grant Application and Instructions.

Chair Bonar asked Ms. Schmidt to brief the Commission on any information relating to Item 3. Ms. Schmidt stated that DLNR had cancelled most commission and board travel for upcoming months. Any travel would have to receive approval, and this may affect the Commission meetings for the upcoming grant cycle.

She stated that the Chairperson could approve forms and a timeline for Fiscal Year 2010 (FY10) and the Board would approve the request for applications. In response to a question from Chair Bonar, she stated that generally, under procurement policies, requests for proposals must receive Board approval.

She added that the videoconference equipment was only available up to three months in advance and asked the Commission members to be extra-flexible in providing available dates for upcoming meetings.

Chair Bonar asked if Ms. Schmidt had a set of proposed dates for the upcoming FY10. Ms. Schmidt read through a list of proposed dates for Commission meetings: July 29<sup>th</sup> request for applications, September 9<sup>th</sup> deadline, September 18<sup>th</sup> information due to Commission, potential Commission

meeting October 13 through 16<sup>th</sup>, potential site visits October 19<sup>th</sup> through November 30<sup>th</sup>. Ms. Schmidt added that preliminary title reports, if requested, could be returned from staff in mid-November. She proposed December 1<sup>st</sup> through 11<sup>th</sup> for the Commission's recommendation meeting or two recommendation meetings.

Chair Bonar asked the Commission for feedback on the dates listed. Member Kaiwi mentioned that the Hawaii Conservation Conference would fall on the request for proposals. Chair Bonar asked if there was additional need for the Commission to meet before the request for proposals. Ms. Schmidt stated that revisions to forms were the only needed actions, which could be done today.

Member Shallenberger stated that the dates looked good. Chair Bonar asked Ms. Schmidt to send a post-meeting email to determine availability. Ms. Schmidt agreed, and recommended that the Commission resolve whether it would do site visits. Member Fletcher asked if the Commission should assume site visits were not possible. Ms. Schmidt stated that travel would not be, but site visits might be. The State may still be able to reimburse for mileage, at least. Chair Bonar stated that the Commission should wait until an October meeting to discuss site visits, given that they did not currently know where the applicants would be.

Chair Bonar asked if there was further information on the FY10 process, forms, etc., from staff. Ms. Schmidt stated that the available budget was not final until the end of June, however, the current estimate was up to \$2.5 million available for grants. Additionally, if the FY09 awards that did not receive Governor's approval, that would be an extra \$1.4 million. Together it would be \$3.9 million, however, this was an estimate, not the final amount.

Member Berg asked whether the three unapproved projects could still succeed. Chair Bonar stated that this discussion would fall under Item 7, however, his understanding was that there was very little hope at this point.

Member Young asked how the leftover funding from last year's grant cycle would affect the available amount this year. Chair Bonar added that extra funds from last year had been assigned to a project. Ms. Schmidt stated that the amount announced took the unencumbered cash balance from last year, together with FY10 estimated revenues, into account. She added that the current revenue estimate being used might be too optimistic.

Chair Bonar asked what the budget ceiling for the program was. Ms. Schmidt stated that it was \$5.1 million; however, the ceiling amount did not indicate the amount of funding available. Chair Bonar stated that the availability of funding would be clearer in July, however, for now, the \$3.9 figure would serve as an estimate.

Chair Bonar asked about revisions to forms. Ms. Schmidt stated she had a list of proposed revisions to forms, and that members could refer to the forms while she listed the revisions. Chair Bonar confirmed that all members had access to the forms. Ms. Schmidt stated that general format and date revisions would be made, and text stating the character limit numbers would be added to the boxes where character limits were in effect. She stated she would add a checkbox for the preliminary title report requirement. She stated that, where applicants intended that a separate entity hold and manage the land, documentation of the nonprofit status of this applicant must be added, therefore, another checkbox would be added requiring nonprofit documentation from managing entities as well as applicants.

Chair Bonar asked whether the intended holder needed to be an applicant. Ms. Schmidt stated that some applicants applied on behalf of other entities, and later found that they could not transfer the land for value because of a provision in the Legacy Land statute. One way to fix this issue would be to have both entities be applicants right from the start. Chair Bonar asked how this would work out – whether there would be two separate applications or two applicants signing the same application. Ms. Schmidt stated that the latter would be best, she had hoped to address it during the rulemaking discussions, but sooner would be better. Chair Bonar asked Ms. China if she had comments on this, Ms. China did not. He asked if any Commission members had comments, they did not. He told Ms. Schmidt that amending the application would be fine.

Ms. Schmidt continued that page 3 of the application would ask applicants to attach a title report. Page 10 would “unshade” the boxes after subtotal and estimated cost of property.

She moved to revisions to the instructions, stating that the date and format would be revised. Applicants would be required to submit scans and hard copies of the documents. Chair Bonar asked Ms. China if there were problems with requiring scans. Ms. China stated that it was more a policy issue. Chair Bonar asked if there were any further comments. Member Kaiwi stated that he would like to suggest a revision to another part of the application. He stated that number 5 relating to cultural resources had, historically, been neglected by applicants, which had forced him to do his own research on the issue. He stated that it was the Commission’s kuleana to ensure that the information in this area, and the other areas on the application, was known with regards to properties being funded.

Chair Bonar asked Mr. Hirokawa if he had found, in the past, that applicants had not included sufficient information on resources that was then revealed during Mr. Hirokawa’s due diligence review. Mr. Hirokawa replied that he did not typically do research that would reveal this type of information, unless it would arise as title issue.

Member Kaiwi explained that past applicants did not know the meaning of names like “Hanalei,” or other place names relating to their projects, or the historical uses of the land. The Commission could require this type of research using minimum character limits.

Member Shallenberger stated that this issue did apply to cultural and many other resource areas, the Commission should motivate applicants to provide the information. He did not think minimum character limits was the right method and suggested adding a checkbox under number 5.

Chair Bonar stated that there was nothing to be said for some items, however, he supported Member Shallenberger’s checkbox idea. He gave some examples of what could be asked: whether the property was listed on the national historic register, whether there was a resource inventory, etc.

Member Shallenberger suggested putting language in the instructions to indicate that the Commission would take this issue seriously.

Member Fletcher stated that the wording only asked for cultural and historic “sites,” whereas the Commission was also interested in the significance of the location, which would require broader historical research. He suggested adding “and significance” after “sites.”

Member Shallenberger stated that he liked this recommendation, however, the recommendation applied to all 10 of the resource areas. He suggested including something in the instructions.

Chair Bonar stated that expanding the expectations on what applicants would include was a slippery slope. He asked whether an one resource area should be extensively looked into when the main purpose of the project was to protect another resource.

Member Kaiwi stated that he was not suggesting extensive research. He mentioned recent events in Hawea, on Oahu. The resources are priceless, and now they are gone. He wanted to make sure that there would at least be one sentence stating “There is no cultural value to this area.” He had made it clear in his presentation to the Commission that every inch of Hawaii has cultural value. Applicants should be required to address the topic.

Chair Bonar stated that this argument could be made for all of the resource values. Member Fletcher stated that one Commission member was addressing just one of the areas, so a blanket approach to all resources was not being suggested. He stated that he had not noticed the same deficiencies in the coastal resources, which was his interest area.

Ms. Schmidt asked whether, since the point was to get the applicant to elaborate on a certain subject, the issue could be addressed as an essay on section G, as either a separate number or part of one of the other essays. Member Shallenberger asked her to clarify. She stated that, since the goal is to make a point in asking for particular information, and Section G talks about more about “significance” and “importance”, the Commission could add a question asking applicants to briefly describe the historic and cultural significance of the property.

Member Berg stated that the item would fit better under section G, than under number 5 where there was a little block for short-form answers. Member Fletcher agreed.

Chair Bonar stated that the question would need to be prefaced with Member Kaiwi’s point that all areas of this State have cultural underpinnings. The application could then ask the question. He asked whether members were in agreement.

Members Kaiwi and Young agreed. Chair Bonar asked if this approach would address Member Kaiwi’s concerns. Member Kaiwi stated that he had not intended that this be done just to satisfy his concern; this information could be used in management plans.

Chair Bonar asked whether a synopsis of how to determine cultural and historical values could be included to assist less-experienced applicants. Member Kaiwi cautioned against relying on specific measures of cultural context. Chair Bonar asked how to guide applicants in completing the requirement, whether checking with Ahu Moku Councils, etc., would be the right approach. Member Kaiwi stated that checkbox list could be provided, but he did not want to do the work for the applicants. Chair Bonar asked if they could guide them toward completing the right requirement. Member Kaiwi stated that he could provide something to Ms. Schmidt within a few days. Chair Bonar asked whether the Commission needed to review what was added. Member Fletcher stated that he was fine with Member Kaiwi’s suggestion. Member Berg stated that he would like to see what was added as a courtesy. Member Shallenberger stated he would like to see it, too, although he believed there were deficiencies in all categories, this one was worded to be too site-oriented. It

would not hurt to have a statement in the application or instructions to encourage applicants to expand on cultural and historical significance.

Chair Bonar asked Ms. Schmidt to develop something along these lines, and stated that more-specific language could be developed for the future.

Member Richards stated that he approves of the suggestion, but would like an opportunity to respond to what is being drafted. He suggested a 24-hour opportunity to respond. Chair Bonar asked Ms. China if these actions needed to be taken at a Sunshined meeting. Ms. China replied that they did. Member Richards stated that he would be fine with approving what Member Kaiwi wrote.

Ms. Schmidt stated that she was opposed to having another meeting to resolve the issue. Member Kaiwi stated that he was done already anyway and began to read the draft addition to the application. The recommendation included two series of checkboxes [copies are available from program staff upon request]. The first series of checkboxes asked questions about cultural and historical significance of the property being acquired and surrounding properties. The second series asked about sources from which to seek information on cultural and historical significance of sites.

Chair Bonar asked how relevant the questions asked in the first series were to the Commission's considerations of certain agricultural properties, and how much work would need to be undertaken by the applicants to answer these questions.

Member Kaiwi replied that the questions were intended to clarify whether properties being acquired were part of an area that previously was used by royalty and contained major heiau or would have been a Luluku area with agricultural and fishing terraces. He wanted to guide applicants in performing cultural research.

Member Fletcher stated that most applicants seemed more experienced or educated in the Western and scientific disciplines; Member Kaiwi was offering guidance in an area that many applicants would not be familiar with. He supported Member Kaiwi and pointed out that this was part of Member Kaiwi's role in the Commission. He stated that it would aid, not hinder, applicants.

Member Young asked whether someone would be willing to offer assistance to applicants in filling out the section. Ms. Schmidt stated that would be her job and added that there would be an administrative review of the addition to the application, not for content, but just for format and feasibility.

Chair Bonar stated that his concern was that the recommendation was not entirely fleshed out, and would prefer to put in something general this year. Member Kaiwi stated that this would be OK. Members Canfield and Young agreed. Member Shallenberger added that Member Kaiwi could finish revising the item today if the edit was contained within question 5.

Chair Bonar asked Member Kaiwi's opinion.

Ms. Schmidt tested the document scanner equipment at neighbor island locations. Chair Bonar called a 5-minute break.

Ms. Schmidt proposed moving on with staff's proposed amendments to the Fiscal Year 2010 forms while Member Kaiwi finished his proposed addition. Chair Bonar agreed. Ms. Schmidt stated that the Subcommittee on Rules and Management Funds also had a list of policies that had come up in Commission discussions, and had gone through this list to determine the items that related to the application forms and process. She could bring these up, too, if the Commission wanted.

Member Shallenberger suggested moving Item 7 up to immediately after Item 4 so that members of the public that had come for this discussion would not have to wait around. Chair Bonar asked if the Commission was in agreement. Member Canfield motioned to move Item 7 to follow Item 4 and Member Young seconded. All were in favor.

Ms. Schmidt continued under Item 3. She stated that applicants would be required to submit pdfs of application materials this year. Next, she proposed adding language to the application instructions to inform applicants of the proper way to handle situations where multiple parcels were being considered, but only some of the parcels would be acquired. She stated that, since switching, adding, or dropping parcels from applications after the deadline hurt the Commission's ability to assess projects, applicants should be encouraged to submit an application for each potential acquisition, so that they could later drop a parcel without having to revise a project application.

Member Young asked if there would be a limit on applications that could be submitted. Ms. Schmidt replied no.

Member Shallenberger stated that switching had been allowed before the decision-making meeting in the past and this could be done again. Ms. Schmidt stated that the Commission could do what it wanted in this regard, the intent of the proposed revision was to inform applicants of the best way to submit. Member Shallenberger replied that the proposal was fine, he was suggesting that the Commission not waste time considering projects that would be dropped, by informing applicants that projects should be dropped before the Commission meets to decide recommendations.

Member Canfield asked if the opening of the decision-making meeting would be the deadline. Member Shallenberger replied yes. Chair Bonar opined that this would be fair to applicants. Member Canfield asked if applicants would have to have a single project at the meeting. Chair Bonar stated that applicants could go with more than one if they thought the projects were feasible.

Ms. Schmidt stated that she did not think it was a good idea to institute a second deadline. Chair Bonar stated that this deadline would be for withdrawing projects, not adding them. Member Berg stated that there would be a deadline before the final meeting for pulling applications to avoid applicants competing with themselves or using meeting time to discuss the projects. Member Young asked whether the deadline should be the testimony meeting, that is, the second to last meeting. Chair Bonar stated agreement. Members Berg and Canfield agreed.

Chair Bonar asked if the Commission was in favor of adding the proposed language. Ms. Schmidt suggested saving the motion until all proposed changes were listed. She continued that the instructions would state that awards would be subject to the availability of funds, would include details on the preliminary title report requirement, and would require managing entities to be co-applicants and submit the required forms. Chair Bonar specified that co-applicants would sign the same application, not submit separate ones. Ms. Schmidt agreed.

Chair Bonar asked if Member Kaiwi had finished his proposed addition. Ms. Schmidt put his handwritten proposal on the document reader and read the proposal aloud:

Section G. 3. Briefly describe the cultural significance and historic uses of the property. As guidance, please consider the following information:

- Name of area; translation and possible interpretation
- Known pre-contact history and land uses
- Neighboring areas/ahupua'a information and its relationship to the site being considered

The following resources are available to assist in research: Office of Hawaiian Affairs (OHA), State of Hawaii Historic Preservation Division (SHPD), University of Hawaii Center for Hawaiian Studies, Kamehameha Schools / Bishop Estate, Bishop Museum.

Member Shallenberger asked where the change would occur in the application. Ms. Schmidt stated it would fall under Section G. Chair Bonar asked if the questions only applied to Native Hawaiian historical names, Member Kaiwi stated it could apply to any site. Member Shallenberger stated that he had thought this would fall under Section D., Number 5. Member Canfield added that a longer character limit would be more appropriate under Section G. Member Young asked if they should increase the page limit under Section G. Member Shallenberger stated that Section G. was supposed to be broader than just cultural significance. Member Canfield stated that this was covered under Section G, Number 1. Chair Bonar asked the Commission if it should come under Section D.5.

Ms. Schmidt asked Member Kaiwi if this included an essay, and if it could come as an additional Section I. Chair Bonar stated that D5 would be about sites, Section I would be about significance. Member Kaiwi stated he was fine with this.

Member Canfield stated that there should be a page limit. Ms. Schmidt asked if there was to be a text reply or just checkboxes. Member Shallenberger suggested putting the checkboxes as examples in parentheses. Chair Bonar agreed. There was a brief discussion of page limit and the Commission settled on two pages.

Ms. Schmidt clarified that the proposed addition would become Section I with a page limit of two pages. Members confirmed.

Chair Bonar asked if the Commission needed to hear any of the proposed changes again before deciding to approve. Member Canfield suggested hearing the language of the proposed item on imposing a deadline for dropped projects. After some discussion, the Commission settled on: "Switching, adding, or dropping parcels of land from a project application will not be allowed past deadline; applicants anticipating a change in the project area may submit multiple applications, however, any withdrawal of projects should be done before the Commission meets to receive testimony on projects." The deadline for withdrawal of projects is the opening of the Commission meeting to receive testimony.

Chair Bonar asked for a motion to approve proposed changes, as discussed, and subject to review by counsel, for the Fiscal Year 2010 grant cycle. Member Berg moved, Member Young seconded. All were in favor.

Ms. China clarified that an applicant could still withdraw at any time. Chair Bonar stated that the wording could be changed to imply this. The Commission settled on: “The Commission strongly encourages any projects be withdrawn at this point.”

#### ITEM 7. Discussion and possible action regarding the Governor’s approval of proposed Fiscal Year 2009 Legacy Land Conservation Program projects.

Chair Bonar referred to the Governor’s letter, dated May 20, 2009, stating that the Governor had approved certain projects, but had not approved grants to three organizations for reasons specified in the letter. He stated that he had spoken to several DLNR staff and several legislators, and all had felt that there was very little chance of the approval for these projects coming through before the end of the fiscal year. He referred to the State’s fiscal situation, and stated that the money in the Land Conservation Fund (LCF) could be taken for other uses within the State budget. His impression was there was intent to hold an amount in the LCF as an abeyance in case of a further shortfall of State funding. He said that there had been a suggestion that the Commission cooperate with this strategy in order to retain funding in the next fiscal year. He stated that there was no guarantee that this strategy would work, but it had been discussed. He asked for comments from the Commission members on the requests from the non-approved applicants that the Commission attempt to seek the Governor’s approval again.

Member Shallenberger asked whether DLNR Chairperson Thielen had taken a position. Chair Bonar stated that DLNR had no designs of going forward with this and did not think it a possibility. Member Shallenberger asked if the other funds were at risk. Chair Bonar stated that each Council of Revenue projection issued had predicted decreased revenues, so this may be a possibility.

Mr. Jim Albertini, Malu Aina, thanked the Commission for their support and stated that the need for food self-sufficiency would increase as the economy worsened. He stated that funds would be wisely spent on the Malu Aina project and that he would like the Commission to attempt to contact the Governor on this issue.

Chair Bonar asked Mr. Albertini if he had gotten any feedback from other areas of the government. Mr. Albertini stated that Malu Aina had sent a letter to the Governor and had copied the Commission in an additional letter. He stated that the Governor had not responded, however, he had received a very positive letter from Senator Russell Kokubun in support of Malu Aina. He stated that the timeframe for action was very short, and Ms. Schmidt had stated that the last feasible dates for getting the paperwork in would be June 18 or 19. He stated that a petition had been circulated and several hundred signatures passed on to the Governor.

Chair Bonar stated that Senator Kokubun had checked the laws to see whether the LCF was an “attachable” special fund that could be taken for other uses; he had confirmed that it was. A senate bill passed in the first week of June had allowed this attachment to occur.

Mr. Albertini added that Representative Maile Shimabukuro had also written the Governor to urge the release of funds.

Ms. Jennifer Luck thanked the Commission and updated the Commission on KPLT’s efforts to get an approval from the Governor. She stated that several supporters of KPLT had attempted to contact the Governor without any success. She stated that KPLT had secured the \$1.85 million from the County

of Kauai, the County Council was sending a letter to inform the Governor of the County's support. The Mayor of Kauai sent a letter as well. They had considered a petition, but time had lapsed at this point.

Chair Bonar asked Mr. Albertini if matching funds had been secured for the project. Mr. Albertini replied that they had.

Mr./Ms. Corey Harden stated that he/she had been a supporter of the Malu Aina project, and added that the Governor's decision would look foolish in the long term when food security became an issue. He/she thanked the Commission for its support and urged it to further action.

Mr. Wally Inglis stated that he was a board member of Malu Aina. He stated that the Governor's premise for withholding the funds had been, in part, a decrease in revenues to the LCF. This premise was false, as the funds to the LCF may actually increase after the changes to the conveyance tax this session, and the legislation to cut the revenues to the LCF had failed.

Member Young agreed and stated that, if the program were to just fund State projects, this would not be true to the statutory intent for the program. She requested that the Commission find a way to be fair to the nonprofits that applied to the program, perhaps by favoring them in the upcoming round.

Chair Bonar stated that he thought the entire Commission agreed with the interpretation of the Governor's last sentences. It was not certain what the revenues to the LCF would be at this point. He asked that the Commission discuss Member Young's suggestion. He added that the Commission's role was advisory, and the most it could do was send a letter pointing out the matching funds for these projects were secure. He stated that his opinion on the next cycle was that the Commission ought to continue to fund the best projects. He asked the Commission to answer whether the Commission wanted to send a letter.

Ms. Galen Kelley spoke on behalf of Malu Aina, asking the Commission to do anything within its power to get the Governor to reconsider. She added that, sometimes, making noise was much more effective than complacency. The Commission was a bridge between the people and the bureaucracy – it would be helpful if it could speak on the applicants' behalf. She added that the farmer was a valuable asset, and did not know what could be a higher priority than feeding the people. She added that the Governor had included a message on the last State pay stub encouraging people to buy fresh, buy local, and support local farms. She remarked that in the big picture, with the vulnerability and lack of sustainability, anybody standing up for the farmer is a hero.

Member Fletcher asked Ms. Schmidt the current balance of the LCF. Ms. Schmidt estimated that the unencumbered cash balance at the end of the fiscal year would be about \$1.6 million. Member Fletcher asked whether the Commission could generate a letter to the Land Board recommending that the awards be made with these existing funds.

Chair Bonar stated that the Commission would have to write the Governor directly in order to make a difference in time. Member Fletcher suggested ignoring the deadlines in generating a recommendation anyway. Member Shallenberger asked what the rationale would be for singling out Malu Aina. Ms. Schmidt stated that KPLT was at number 4, Malu Aina was tied at 5 and KHS was tied at 6. Chair Bonar stated that the placement of these projects in the next grant cycle was a discussion that must occur, additionally, the Board was not in a position to help as it had already

recommended the projects to the Governor. The Commission's best shot was to approach the Governor. Member Fletcher stated that this was fine, but did not think that the Commission needed to be hampered by the "porous administrative history" it had. He felt Malu Aina deserved special consideration. Member Young added that it was the only project that had been fully agricultural values.

Chair Bonar asked if Member Fletcher was suggesting FY10 funding for the projects. He stated that putting these projects ahead of all other projects in the next cycle flies in the face of all of the Commission's current policies. He asked whether the Commission wanted to approach the Governor.

Ms. Hong asked if Chair Bonar had shared the Wenton-Park legal memo with everyone. She stated that the legislators had done an analysis, and the Governor had the ultimate authority on these projects. Chair Bonar stated that the issues had been discussed. He added that DLNR had suggested cooperation as a strategy for retaining funds for the upcoming year.

Member Berg stated that the Commission should push for all three projects. He stated that the reality of the situation would be that the Governor would take the available funds. He did not think there was potential for saving money in the LCF, and there would not be money available for allocation in the upcoming year. He suggested sending a letter that day, pointing out the time-sensitivity of the projects and their importance.

Ms. Hong suggested that the Commission push the evidence of the matching funds, this was the argument she had used in advocating for the Trust for Public Land projects.

Member Canfield asked whether there was further evidence that the Governor had approved the MCLT grant because of the federal funds. Chair Bonar stated that he did not know. Ms. Hong stated that her discussions with the Budget and Finance director had indicated this.

Member Kaiwi asked what the State would gain from federal Farm and Ranchland Protection Program (FRPP) as opposed to Malu Aina, which favored slow food growth and sustainability. He asked if this point belonged in the letter.

Chair Bonar stated that the federal FRPP funds came through MCLT as a technicality; Ms. Hong and the North Shore Community Land Trust had been the leads on this project. Ms. Hong stated that she felt the FRPP project was excellent and that all lands had value; she thought that the secured match that would continue to come to the State for the benefits of its people had help the project receive approval.

Member Fletcher suggested writing the letter in support of KPLT and Malu Aina. Chair Bonar asked about the third project, Kona Historical Society (KHS), and the status of their matching funds. Ms. Schmidt stated that KHS had told her the match was secured and these funds were private.

Chair Bonar asked Mr. Albertini whether the matching funds could be demonstrated. Mr. Albertini replied yes.

Chair Bonar asked Ms. Luck whether KPLT's matching funds could be demonstrated. Ms. Luck replied yes, however, the project would still be \$700,000 short, and had submitted an application to NOAA for the remainder.

Chair Bonar asked the Commission which projects ought to be recommended in a letter. Member Shallenberger asked for clarification on the evidence of match. Mr. Albertini stated that Malu Aina had letters and emails demonstrating the various commitments. Member Berg stated that KPLT had a firm commitment from the County and could get a letter.

Member Richards stated that the Commission must send a letter to the Governor or nothing would be done. He stated that the Commission should push for all of the projects, beginning with the agricultural project. He made a motion to proceed with writing a letter immediately.

Ms. Schmidt stated that she could not speak with KHS, she had only had a conversation over the phone, and would need to check back in with them on documentary evidence.

Member Berg seconded Member Richards' motion. Chair Bonar asked Ms. China if the Commission had to request permission to use DLNR letterhead. Ms. China stated that there was no legal protocol on the matter, but that the Commission ought to check with the Chairperson. Ms. Schmidt stated that the Commission had been using DOFAW letterhead, and that anything going out on this letterhead would need to be approved by DOFAW Administrator Paul Conry. She added that the Commission might be able to use a separate letterhead.

Member Shallenberger asked why the Commission was worried about letterhead. Chair Bonar stated he could send it out as the Chair and could either use their own letterhead or DLNR's. He would relay it to Paul Conry and Laura Thielen either way.

Ms. Schmidt asked whether the Commission would write this letter at the meeting. Member Fletcher stated he would draft the letter and listed off some points that would be in the letter.

Chair Bonar asked for a vote on Member Richards' motion to recommend to the Governor funding the projects in a letter.

Member Shallenberger suggested pointing out that her conveyance tax argument did not hold water. Chair Bonar agreed, mentioning that the figures he had seen projected increased revenues.

Member Richards stated that the letter should be written in a kind way.

Member Canfield asked whether this action would bear on the Commission's discussion of how to treat the projects in FY10. Chair Bonar replied that this would be a separate discussion.

Chair Bonar called for a vote on the motion made by Member Richards. All were in favor. Member Canfield stated that her vote would be subject to a reading of the final letter. Chair Bonar told Ms. Schmidt that he would contact Laura Thielen and Paul Conry immediately following the meeting to ask about letterhead. He asked Mr. Albertini and Ms. Luck to submit funding pledges to Ms. Schmidt and asked Ms. Schmidt to request this documentation from KHS. Ms. Schmidt agreed. She asked who would sign the letter. Chair Bonar stated that he could add an electronic signature and Ms. Schmidt could hand-deliver the letter. Ms. Schmidt stated she would work with Chair Bonar on this.

Member Fletcher stated he would need extra time to finish the letter. Chair Bonar called a 5-minute break.

ITEM 4. Report from the Subcommittee on Rules and Management Funds on how to advise the Department and the Board on the disbursement of management funds grants through the Legacy Land Conservation Program; and possible Commission action regarding this report.

Chair Bonar asked Ms. Schmidt to update the Commission. Ms. Schmidt reported that the Subcommittee had met twice on March 12, 2009, and April 14, 2009. The first meeting had been planning and discussion on how to accomplish the duties of the Subcommittee and the April 14 meeting had gotten more in-depth.

The outcome of the Subcommittee's discussion on management funds was that the Subcommittee informally advise the Commission to recommend to the DLNR that the DLNR to abstain from awarding management funds for FY10, or until the Commission can review procedures and form criteria for awards. She stated that the recommendation was loosely worded because the Subcommittee had been scheduled to meet again before this Commission meeting to refine the recommendation, but this meeting had been cancelled.

Member Shallenberger, as the Chair of the Subcommittee, stated that Ms. Schmidt had characterized the meetings accurately. He stated that the Subcommittee could not reach agreement on the procedure for management funds and had opted to not award these funds in the next fiscal year. He stated that many issues had arisen that still needed to be resolved by the Subcommittee, and that the same issues would likely be re-hashed at a full Commission meeting.

ITEM 5. Update from the Subcommittee on Rules and Management Funds on the formation of draft rules for the Legacy Land Conservation Commission and recommendations on procedural rules for the Legacy Land Conservation Program.

Member Shallenberger asked Ms. Schmidt to provide an update. Ms. Schmidt stated that the Subcommittee had reviewed drafts on the Commission criteria and procedures. She had created three different drafts of rules under the different subject areas and legal authorities: Commission criteria, Commission procedures, and Program procedures. At the first meeting, the Subcommittee had spent time discussing the divisions; in order to demonstrate the differences, Ms. Schmidt had drafted a set of rules for each subject area. She had used the Commission evaluation form to draft criteria. The Subcommittee had revised the draft of the criteria, and had no comments on the draft of Commission procedures. She stated that she was still working on the Program procedural rules, and still needed to consult with other staff on these rules.

Member Shallenberger stated that it was important for the Commission to know that there was discussion on format and why the rules needed to be drafted in three different sets. He had tried to consolidate them into a single draft, however, Ms. Schmidt had requested that the rules remain in different drafts until she could determine how they fit within the administrative rules format. He asked Ms. Schmidt what the timeline would be for the procedural rules draft. Ms. Schmidt stated that she wanted to pass the draft by several staff and it could be ready by the next Subcommittee meeting, which was not yet scheduled.

Member Shallenberger asked Ms. Schmidt whether anything on the list of policies the Subcommittee had developed needed to be discussed. Ms. Schmidt stated that the Subcommittee had gone through a list of all policies discussed and pointed out the ones that related to application forms and process. She

had brought this list and could go through it. Chair Bonar stated Ms. Schmidt should run through the list. He added that the management funds process and considerations had been more complex than the Subcommittee could solve in the short term. He asked Ms. Schmidt to run through the list.

Ms. Schmidt stated that the following topics had been brought up on April 14, 2009, as relating to the application: iwi discoveries, culture as a watered-down criterion, preliminary title reports (she mentioned this item had been covered in previous discussion). The following had been discussed in relation to instructions: acquisition boundary areas (this item had been covered). The following had been discussed in relation to process: last-minute additions to application information, missing information, new and updated information, and reapportionment of funds from failed projects.

Member Shallenberger asked Ms. Schmidt what discussion there had been on the last topic. She recalled that the Subcommittee had questioned whether the Commission needed to reevaluate the topic, and there had been comment that the Commission just needed to provide a close-ended recommendation. Chair Bonar stated that this issue had been covered. Member Shallenberger stated that the Commission could try out the proposed method of handling the acquisition boundary question to see how it works. Chair Bonar restated how the Commission had chosen to handle this. He added that iwi discoveries may have been covered by earlier discussion on Member Kaiwi's proposed addition to the application. He asked what the Commission could do with this item. Member Kaiwi stated that iwi was not mentioned in the application. He suggested that applicants be asked about known burials. Chair Bonar stated that he thought that it was mentioned. Member Canfield clarified that "burial caves" were referred to under D.5. Chair Bonar suggested adding "burials." After some discussion, the Commission settled on adding "burials" to the items listed in D.5.

Chair Bonar asked Ms. Schmidt if the points relating to application and instructions had been covered. She thought so.

Member Young asked whether the reduction in funding over the next years had been discussed in relation to the use of funds for acquisition rather than management. Ms. Schmidt stated that it had been discussed but no decision had been made. Member Canfield stated that this had been the feeling of the members but no decision was made. Ms. Schmidt added that it had been a long discussion, however, the summary was that there were differing points of view, plus a possible conflict with the intent of the statute and agreement had not been reached.

Ms. Schmidt asked if the Commission would make a recommendation to DLNR on deferring management funding. Chair Bonar confirmed that this had been the Subcommittee's intent. He entertained a motion to recommend to DLNR to delay funding of management proposals until policies and procedures are in place. Member Shallenberger moved, Member Canfield seconded. All members were in favor. There was some discussion on the wording of the recommendation.

Member Berg asked whether DLNR could still raid the LCF for management funds. Chair Bonar stated that the BLNR could do what it pleased, although Chairperson Thielen had promised the Commission that this would not happen without Commission consultation. Chair Bonar asked Ms. China whether the BLNR could spend the funds, up to 5% for management grants. Ms. China agreed.

Member Shallenberger asked whether a nonprofit was precluded from coming in with a request for management funds for a management plan. Chair Bonar stated that it was not precluded necessarily.

His preference would be that this be denied as the policies and procedures would not be in place. The Commission would have to decide.

Chair Bonar asked Ms. Schmidt if the management proposal needed a vote. After some discussion, she determined that the item on burials needed a vote. Chair Bonar entertained a motion to add “burials” to Section D.5. Member Canfield motioned, Member Young seconded. All were in favor.

Ms. China asked if the Commission still needed to vote on the management funds recommendation. Chair Bonar stated that this had been covered.

ITEM 6. Discussion of possible meeting restrictions and scheduling of future meetings, including possible action in arranging site visits for the upcoming Fiscal Year 2010 grant cycle.

Member Young asked if there had been a change in the deadline due to the new cultural sites research requirement. Ms. Schmidt reviewed the dates that had been chosen and determined that applicants had slightly less time than last year to complete requirements. Member Young requested more time for the applicants. Member Canfield asked whether the RFP could be moved. Ms. Schmidt stated that she could get the RFP out on July 28 at earliest; however, she could set the deadline later instead. After some discussion, staff and the Commission revised the deadline to September 16. Staff would give the applications to the Commission on September 25.

Chair Bonar made a motion to accept the timeline as discussed. Member Young moved, Member Canfield seconded. All were in favor.

Chair Bonar asked if Member Fletcher had finished the letter to the Governor. Member Fletcher stated he had and read it aloud to the Commission. Chair Bonar suggested that all three organizations have evidence of matching funds in hand to add to the letter. The Commission revised wording, corrected some titles, and checked the accuracy of some of the facts in the letter. Chair Bonar stated he would work with Paul Conry, Laura Thielen, and Ms. Schmidt to get the letter out by the next day.

ITEM 8. Updates and announcements.

- a. 2008 Legislative Session updates
- b. Conservation Reserve Enhancement Program (CREP) funding
- c. Additional announcements

Chair Bonar asked Ms. Schmidt to give an update on the legislative session. Ms. Schmidt stated that HB1741 turned into Act 59 and increased the revenues into the LCF. SB882 became Act 79, which removed the LCF’s central services exemption and removed the LCF’s interest revenues from the fund. Overall, it was difficult to determine the final effect: revenues were decreasing but would be increased by Act 59, however, a central services fee and removal of interest revenue would decrease revenues.

Ms. Schmidt continued, stating that the Senate had confirmed the appointments of Members Berg and Young until 2013.

Ms. Schmidt stated that there would be no CREP funding in FY10.

Ms. Hong invited the Commission to MA'Ō dedication on Thursday, September 17, 2009. She would send information to Ms. Schmidt for the Commission.

Member Kaiwi thanked Ms. Hong for her work protecting the program during the legislative session. She attributed the success to Chair Bonar and Mr. Mark Fox of The Nature Conservancy.

Member Young asked for clarification on the central services exemption. Ms. Schmidt stated that the government took overhead in the form of "central services fees." Chair Bonar added that is was "overhead." Ms. Schmidt stated that the LCF had been subject to a 2% fee and now would be subject to an additional 5%. Ms. Hong added that this had happened to nearly all special funds, not just the LCF.

Member Kaiwi stated that any videotape of the meeting ought to be edited to include only the time periods where meeting is in session. Ms. Schmidt agreed. Chair Bonar stated that staff would keep the Commission up to date on the status of program funding.

Member Shallenberger asked Ms. Schmidt about the minutes for Subcommittee meetings. Ms. Schmidt stated that the drafts could be approved at a Subcommittee meeting.

Ms. Schmidt requested that Commission members be as flexible as possible with their schedules in order to accommodate scheduling meetings in the videoconference centers.

ITEM 9. Adjournment.