

Minutes of the October 13, 2010, Legacy Land Conservation Commission meeting

DATE: October 13, 2010

TIME: 9:00 a.m. to 1:00 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. Carl J. Berg (at Kauai Videoconference Center (VCC))

Dr. Dale Bonar (at Maui VCC)

Ms. Lori Buchanan (at Oahu VCC)

Dr. Charles (“Chip”) Fletcher (at Oahu VCC)

Mr. Kaiwi Nui (at Oahu VCC)

Mr. Herbert (“Monty”) Richards (at Big Island VCC)

Ms. Karen G.S. Young (at Oahu VCC)

COMMISSION MEMBERS ABSENT:

Dr. Joan E. Canfield

Dr. Robert J. Shallenberger

STAFF:

Ian Hirokawa, DLNR, Land Division (at Oahu VCC)

Molly Schmidt, DLNR, DOFAW (at Oahu VCC)

PUBLIC:

Kevin Chang, Office of Hawaiian Affairs (at Oahu VCC)

Lea Hong, Trust for Public Land (at Oahu VCC)

Collette Machado, Office of Hawaiian Affairs (at Oahu VCC)

MINTUES:

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

Chair Bonar called the meeting to order. Members of the Commission, staff, and members of the public introduced themselves.

ITEM 2. Approval of July 19, 2010, Legacy Land Conservation Commission meeting minutes.

Ms. Schmidt stated that there had been one revision from Member Canfield (absent). Chair Bonar asked that any further revisions be given to Ms. Schmidt. Member Berg motioned to approve the minutes as amended, Member Young seconded. All were in favor.

ITEM 3. Discussion of the Fiscal Year 2011 Legacy Land Conservation Program timeline, process, site visits, and meetings; possible formation of task forces for site visits to proposed project locations.

Chair Bonar asked Ms. Schmidt to take the lead on this item. Ms. Schmidt pointed out the handouts that had been distributed: a table to assist in arranging visits, and a memo from Chairperson Thielen, approving travel for visits. Ms. Schmidt stated that the Commission was approved for travel within the cost limits in the memo. She stated that meeting dates had already been covered; however, she could go over them. Chair Bonar asked her to repeat the dates. Ms. Schmidt stated that the meetings would be Dec. 2 from 9 to 4 and Dec. 3 from 8 to 1 in Honolulu, in the Boardroom. She added that the legislative consultation meeting had not been set; however, the target month was January.

Ms. Schmidt continued: for this meeting, the goal is to set up task forces for site visits. The Commission needed to set up the task forces at a public meeting (today), then conduct the visits and report back at a second public meeting. At the third public meeting, the Commission could make decisions based on the results of the visits. She added that Member Canfield had volunteered to be assigned to Oahu sites.

Chair Bonar asked whether the Commission had to have at least two members do a site visit in order to be considered a task force. Ms. Schmidt replied yes. He asked what the difference between subcommittees and task forces were. Ms. Schmidt replied that subcommittees had to operate under Sunshine, meaning that the meeting and its records had to be public. Task forces did not have to be Sunshined, however, if the Commission were to use task forces, they would have to set the task force up at a Sunshined meeting, report the results at a second meeting, and could act on the info at the third meeting. Chair Bonar stated that task forces could be set up today, the second meeting would be Dec. 2, and the third meeting would be Dec. 3. He asked whether anyone would not be attending the December meetings. Ms. Schmidt replied that, so far, everyone could attend.

Chair Bonar stated that Member Canfield would be assigned to Oahu sites. He stated that he would like to attend the Maui site. He asked if there were any members that would prefer to conduct site visits off-island. Member Berg replied that he would like to attend the Maui site. The Commission members stated their preferences (recorded in the table below).

Project title	Applicant	Location	LLCC Members
Kaiholena	County of Hawaii	North Kohala, Hawai‘i;	Chip Fletcher Monty Richards (lead) Rob Shallenberger
Hāwea Heiau Complex and Keawāwa Wetland	TPL & Livable Hawaii Kai Hui	Ko‘olaupoko, Honolulu District, O‘ahu;	Joan Canfield Chip Fletcher Karen Young (lead) Kaiwi Nui
Kauhola Point Coastal Property	TPL & Maika‘i Kamakani ‘o Kohala	North Kohala; Hawai‘i;	Chip Fletcher Monty Richards (lead) Rob Shallenberger
Paukūkalo Coastal Wetlands	TPL & Dept. of Hawaiian Homelands (DHHL)	Paukūkalo, Wailuku, Maui;	Dale Bonar Kaiwi Nui (lead) Carl Berg Lori Buchanan
Turtle Bay Mauka Ag. Land	TPL & The North Shore Community Land Trust (NSCLT)	Ko‘olaupoko, O‘ahu	Joan Canfield Chip Fletcher Karen Young (lead)

Chair Bonar asked whether other members could be substituted in for current members after the meeting. Ms. Schmidt stated no. Chair Bonar asked for a motion to create task forces for site visits as listed. Member Richards motioned, Member Berg seconded, and all were in favor.

Chair Bonar asked whether it was okay to set up the travel arrangements after the meeting. Ms. Schmidt stated that it was, and that she would send an email with all of the necessary contact information attached. Chair Bonar then assigned a Commission member as the “lead” in coordinating each visit (recorded above). He suggested using Doodle to arrange the visits.

ITEM 4. Update from staff, discussion, and possible action regarding the disbursement of management funds from the Legacy Land Conservation Program.

Ms. Schmidt stated that she would brief the Commission on Items 4 and 5 together under the Item 5 since they were closely related.

ITEM 5. Update from staff, discussion, and possible action regarding draft rules for the Legacy Land Conservation Commission and the Legacy Land Conservation Program.

Ms. Schmidt stated that she had included a list of the Commission's comments from the previous meeting on the rules for the administration of the program. She would use this format when presenting the Commission's comments to the Board in a submittal. Chair Bonar asked whether legal review of the rules had occurred. Ms. Schmidt stated that it was in progress. She had gone to Paul Conry, DOFAW Administrator, with the Commission's comments: some had been incorporated, some had not. A draft of rules, with the changes in track editing, was included in the handouts. She offered to go through the list, Commission members agreed. Ms. Schmidt referred the following list:

Previous comments included the following:

- Add "attorneys fees" as allowable match for land acquisition grants
- DOFAW should have a routing monitoring and inspection program for land acquisition grants
 - *Annual* visits to property, perhaps incorporate DOCARE
- Add baseline documentation as match and expenditure for land acquisition grants
- Cross out "reimbursement" in "Payment" provision for land acquisition grants
- Move "60 day" language from "Monitoring" provision to "Reporting" provision for land acquisition grants
- Remove section (d) because is redundant and confusing – in "Sale, lease, disposal" provision for land acquisition grants
- For the "Eligible expenditures" provision (page 15) for management grants, change wording to: "professional services, including management planning"
 - Member Fletcher suggests giving a month to comment on the management plan, circulate to acceptable professionals
- In "Payment" provision for management grants, get rid of percent limit
- Omit the "deed restrictions" typo on page 19

Ms. Schmidt went through the list of Commission comments on rules and pointed out where changes had or had not been made. Ms. Schmidt stated that attorney's fees had been added as allowable match, with limiting language. Chair Bonar asked whether pro bono attorney's fees could be reimbursed. Ms. Schmidt replied no and added that attorney's fees had not been included under eligible expenditures of grant funds.

Regarding the monitoring and inspection recommendation, Ms. Schmidt stated that DOFAW had not adopted it. Chair Bonar stated that the Commission needed to discuss this issue; he found this response to be lacking in conservation value. He asked Ms. Schmidt how the Commission should respond.

Member Young asked what was currently being done to monitor. Chair Bonar replied that nothing was being done, which is why the Commission needed to respond. He added that this approach was out of sync with what was done in the land protection community and that there was potential for abuse. He asked Ms. Schmidt how the Commission should rebut the rebuttal it had received. Ms. Schmidt stated that she would first

communicate what was being done currently: the program uses a self-report form to monitor, it had been distributed to the Commission at the last meeting, the holder of the land fills out the form every two years. Additionally, the program requests resource value documentation when the land is acquired. She added that she had comments regarding an annual monitoring procedure, but would reserve them until the Commission had given feedback.

Chair Bonar asked whether the Commission's specific recommendation on monitoring had been rejected by DOFAW. Ms. Schmidt confirmed. He asked whether an alternative had been provided, Ms. Schmidt stated that her guess was that the current practice was the alternative. She added that her concern with annual monitoring was conducting the visits when actual enforcement might not be possible – unlike conservation easements held by land trusts, the current setup for State grants did not include a systematic and enforceable approach to monitoring specific resources. She added that conservation easements were designed to be enforceable; maybe the Commission ought to be discussing this.

Chair Bonar stated that the same thing needed to be true of fee properties – the stated uses in the grant needed to be set as permanent uses unless the holder follows a given process for transferring the land or changing the use. He added that, without regular visits, the intent of the grant and the commitment to protection would be lost.

Member Young asked whether the State would monitor if the grant were for a conservation easement. Ms. Schmidt replied that it might be good to get a legal expert in to talk about this in specifics. Her experience had been that a conservation easement included provisions that were specific enough to be monitored and enforced. If the Commission wanted the resources to be protected, in her opinion, it would need to have the full picture: legal enforceability and continued funding for monitoring, including a long-term departmental mandate. Government agencies did not have the same IRS requirements that land trusts did regarding annual monitoring. Chair Bonar stated that the public would be there to require it. He stated that it would come down to the contracts for the grants, and what was written in these contracts. He asked whether the contracts included some enforceability of its terms. Ms. Schmidt replied that it did, it included deed language that restricted sale or transfer of the lands, plus they required the holder of the land to protect the resources in accordance for the purposes that it had been awarded a grant. In order to interpret this somewhat vague language on resource protection, one would have to look at the application, which was attached to the contract as an exhibit. The application still did not contain specific terms for protection, and she thought this was the problem. If the protection of a coastal hala forest was funded, and the forest then cut down, the program might be able to determine that the contract terms had been violated, but she was not sure about lesser degrees of violations.

Chair Bonar stated that he agreed, however, how would the program even determine the forest had been cut down? Ms. Schmidt stated that they would not be able to enforce if the resource value documentation had not been done. Chair Bonar stated that it was a matter of follow-up and stated that they needed to think 20 to 30 years from now. He

agreed that a legal expert, or maybe a panel, could be consulted. Even for DLNR's conservation easements, not having a protocol would guarantee problems down the line.

Member Richards asked why the DOCARE folks could not be consulted. Chair Bonar asked Ms. Schmidt to respond. Ms. Schmidt replied that generally, in her limited experience, it seemed that state departments did not take up duties that were not included under their mandated duties from legislature. She added that a clear definition of this responsibility would need to occur; she was not sure whether it was currently in the statute. Chair Bonar asked Ms. Schmidt how the Commission could get the DLNR to take this monitoring up as a cause. Ms. Schmidt replied that putting it into law would be a start. Chair Bonar agreed and asked how the Commission could get the DLNR to initiate this. Ms. Schmidt asked for clarification: was Chair Bonar asking how to get the DLNR to write a law giving itself responsibility for annual monitoring? Chair Bonar confirmed. Ms. Schmidt thought that the Commission's powers, as a commission, were to make recommendations to DOFAW, DLNR, or the BLNR. Member Berg stated that DOFAW had already rejected the Commission's recommendation; he and Chair Bonar were asking what the next step in creating a law would be. Ms. Schmidt stated that she saw two routes: to draft and advocate for the law, or, to approach the DLNR with a recommendation. Chair Bonar stated that the Commission was headed down the second route and asked how, when DOFAW had already refused the recommendation, to continue to advocate. Ms. Schmidt stated that Chair Bonar could sit down with the DOFAW Administrator or the DLNR Chairperson. Chair Bonar asked whether Paul Conry was currently standing in for a deputy, Ms. Schmidt confirmed.

Member Young asked whether the State would not monitor its conservation easements. Ms. Schmidt replied that nonprofit land trusts had an IRS requirement to monitor at least annually, State agencies did not, and may not choose to hold themselves to the same level. Chair Bonar stated that the IRS was not relevant. Member Young asked if land trusts self-reported. Chair Bonar replied that they did not, a staff member from the land trust would.

Chair Bonar stated to Ms. Schmidt that he wanted DLNR to hold itself to the same standards as the rest of the conservation community. Ms. Schmidt replied that she had no disagreement with Chair Bonar. Chair Bonar said that he would like a recommendation from the Commission, if the members were willing, to recommend to the DLNR to incorporate a monitoring function into Legacy Land awards.

Member Berg stated that the situation was similar to the DLNR's failed maintenance of the dams that it was to inspect regularly. The State has remedied this issue through legislation, this situation was comparable. The Commission could use the example of the dams to demonstrate how bad things could go. Member Fletcher stated that he agreed with Member Berg and thought Chair Bonar should meet with Chair Thielen. He added that it might be helpful to document other conservation programs throughout the country in a simple table to demonstrate standards. Ms. Schmidt added that she had looked at some programs and hadn't seen programs that perform the monitoring without the legal mandate to do so.

Chair Bonar stated that he would send out two things: a report done ten years ago comparing different protection programs and a report on State agencies. The failure of state agencies in some states had prompted a response, like the Center for Natural Lands Management in California.

Member Kaiwi stated that he did not think anyone doubted the passion or logic behind having monitoring. He asked whether there was an urgency or benefit to making the recommendation now, or whether the Commission should assemble research. He added that, unless there was a timing concern, the Commission should strive to be progressive and solution-oriented in its approach. Chair Bonar replied that the only limitation was that fact that getting an item through legislature takes multiple attempts. He added that he agreed with Member Kaiwi, there was good data to support. He would like this to be included in the legislative package for upcoming session. He asked the Commission how it felt.

Member Richards agreed that the State should have an input in the monitoring of conservation easements. He added that he did not think it would be beneficial to bring the reservoirs and dams into it, and that the issue had plenty of merit on its own.

Member Young agreed and stated that there might not be enough knowledge about Legacy Land. It is not a well-known program. In approaching the Chair or the legislators, there needs to be a list of projects and briefing on the program. There needs to be more publicity. She asked whether the contract clarified that the funds were from Legacy Land.

Ms. Schmidt replied that she would be happy to carry out any suggestions for publicity; currently she had a few brochures and handouts and was open to improving. Chair Bonar stated that brochures and handouts were helpful and publicity was always a struggle.

Chair Bonar asked for further comments on his suggested recommendation.

Ms. Schmidt added that she recognized that the Commission was going in one direction already; however, they could also consider that the statute currently gave the BLNR the ability to take conservation easements over properties. The Commission could make the recommendation to the Department to take conservation easements over the properties that come in. Chair Bonar asked what good it would do to hold the conservation easement if the DLNR did not monitor. Ms. Schmidt agreed that it did not address the entire problem; however, she was looking at the bigger picture – having everything in place that was needed to make the monitoring worthwhile, including enforceability. Chair Bonar replied that he presumed the DLNR would have enforceability if it was written into the grant agreement, however, this was a legal question for the AG's office – maybe Lea Hong would have insight.

Member Buchanan stated that she was not surprised Mr. Conry had said no, she had thought maybe he would not want to be tasked with this duty. Regarding DOCARE, she

had thought previous Commission discussions included some comment that DOCARE was not equipped with the correct resource knowledge for these visits. These items had come up because the Commission had felt the resource value documentation lacked the quality of a true site inspection. In addition to recommending to the Board a legal change, perhaps the Commission could recommend that Commission members have the option to inspect lands acquired with Legacy funds in the interim. Chair Bonar asked Ms. Schmidt if this suggestion was feasible. Ms. Schmidt stated that she did not see a problem with it, but she would have to double-check with the AG's office.

Chair Bonar requested a resolution that DLNR explore the avenues for making annual monitoring of properties acquired, whether in conservation easement or fee, through the Legacy Land program, a responsibility of DLNR to ensure that lands in the future are being property stewarded. Member Berg made this motion, Member Young seconded.

Ms. Schmidt repeated the wording and Chair Bonar revised. Member Fletcher asked whether it would be appropriate to bring in other State agencies and divisions, like the State Survey office and Attorney General's office. Chair Bonar stated that there was a trend in the nation: a view that conservation easements, as part of the charitable trust doctrine, ought to be accepted by a state's attorney general. Chair Bonar stated that DLNR was responsible for State lands; it ought to be the responsible agency. Member Fletcher asked about the possibility of including partner agencies. Chair Bonar asked for comment from Ms. Schmidt or Lea Hong.

Ms. Schmidt suggested including "and partner agencies" after "DLNR" in the resolution. Chair Bonar agreed. Member Fletcher stated that cultural resources could be included, which would be OHA's responsibility. Member Kaiwi stated that there needed to be a stipulation for cultural access issues; perhaps the Commission needed to wordsmith it more. Member Fletcher added that they could also wait to vote at a future meeting. Chair Bonar stated that, if the resolution of the Commission were taken, the wordsmithing of the legislation itself would be the important thing. They could convey these things at this time. Chair Bonar asked Ms. Schmidt if he was correct. Ms. Schmidt agreed.

Chair Bonar called for a vote on the previously-stated resolution, subject to revisions. All were in favor. He asked Ms. Schmidt to send him the written resolution. Member Kaiwi asked what had passed – the original resolution or the idea of wordsmithing and voting in the future. Chair Bonar stated that the idea was to do the wordsmithing at a future date and go forward with the Commission's main intent. If DLNR agrees to take on the duty it may not need to move to legislation.

Member Kaiwi stated that he would like the wording to include that discussions include OHA as they pertain to cultural and Native Hawaiian issues. He wanted the dialogue to remain open with OHA or other appropriate Native Hawaiian entities. Chair Bonar stated that he agreed, however, he thought that it was a bigger picture: for each resource, the appropriate State agency should be consulted. Member Kaiwi reiterated his request.

Chair Bonar stated that he thought that OHA would already be included under the “partner agencies” language.

Member Fletcher stated that he had drafted some generic language: the Commission recommends the establishment of a routine monitoring and inspection program for Legacy Land acquisitions.

Chair Bonar stated that the Commission could go with this language and Member Kaiwi could also go along for the meeting to ensure his points are made. Member Kaiwi clarified that he was not the correct representative for OHA, he wanted the Commission to ensure that cultural considerations are included.

Chair Bonar asked whether Member Fletcher’s language could be adopted in place of the former language. Member Fletcher repeated the language. Ms. Schmidt suggested that Chair Bonar be present in person to clarify the specifics, since the language was now capable of being widely interpreted. Chair Bonar stated that the word “inspection” communicates the point well enough. Member Fletcher stated that he was sure Chair Bonar would attend. Chair Bonar agreed. Ms. Schmidt asked whether the Commission was now adopting the new wording. Chair Bonar stated that the wording had been subject to revisions and asked Members Young and Berg whether they were okay with the change. They replied yes. Chair Bonar stated that the new wording would be adopted, and that this would be fine legally. Member Berg agreed.

Member Buchanan stated that this motion had been a resolution and that an official recommendation to the Board had not been made. She asked whether it should have been, and whether the Commission could do both. Chair Bonar restated that Member Kaiwi’s point about timing. Member Berg stated that they were approving an exploratory conversation with DLNR. Ms. Schmidt asked if it were both a resolution and a recommendation. Member Berg replied yes. Member Buchanan replied that she had not heard of such a motion before. Ms. Schmidt agreed and added that, since things were been done very loosely and informally, so she did not want to push the specifics.

Chair Bonar stated that the current motion gave the Commission enough power to push the idea in their current position as an advisory commission. He asked Ms. Schmidt to continue down the list.

Collette Machado stated to Ms. Schmidt that there was no provision on the agenda to allow for public comment. Ms. Schmidt asked whether it was required, stating that she had been using the same agenda format for years and the AG’s office had approved it – nobody had mentioned that this needed to be included. She added that she could include something if the Commission thought it would be helpful. Ms. Machado told Ms. Schmidt to follow up with the Office of Information Practices. Ms. Schmidt replied that the public had the opportunity to comment on every item of the agenda regardless of whether it is written in the item. Chair Bonar stated that Ms. Machado had a good point, but the Commission regularly accepted testimony on each item as a way of conducting businesses.

Ms. Schmidt asked whether the Commission wanted her to include language under each item in the future. Chair Bonar replied no, and told Ms. Schmidt to either put it in a note at the bottom of the agenda that testimony is accepted on every item or consult the AGs. Member Buchanan added that administrative rules required this language. Ms. Schmidt asked which administrative rules required it.

Ms. Machado stated that she had come because she had comments on adjusting the five percent available for management. Her understanding from today was that the Commission wanted to hold DLNR responsible for all lands acquired with awards to nonprofits for preservation. She stated that, unless the Commission was going to allow some of its monies to go into DLNR to allow for monitoring, it would maybe have a fighting chance. Push hard, however, DLNR may come back to say that it does not have adequate funds for staffing and ask if the Commission could allow its funds to be used for personnel. OHA had been providing \$250,000 to DLNR for Wao Kele O Puna monitoring and management. It's a commitment. There are two full-time staff, equipment, and monitoring. DLNR could probably have gotten this money from legislature. She stated that they should be careful what they push or they might not like the results.

Ms. Machado stated that public meetings were lacking in the Legacy Land program's policies. As part of Molokai Land Trust (MLT), she had to bear the burden. When Molokai community, including Member Buchanan, had not supported a MLT project, it came up that MLT should have public meetings, so it had held public informational meetings. Legacy Land, however, did not require these public meetings of its applicants. She asked whether it was possible to include provisions that recipients of Legacy Land awards have to have on-island public info meetings. She stated that Mr. Dunbar had gotten two grants from the program with no on-island public meetings. She asked the Commission to consider what was fair. She told Ms. Schmidt that she should conduct these public meetings on-island. Ms. Machado stated that if anything ever came up in legislative session, she would be there, bird-dogging to ensure that these changes were made. For every award that is given.

Ms. Machado stated that Member Kaiwi had been correct; Mr. Kevin Chang would be the correct consultation from OHA. She repeated that her main wish was that public meetings be held on each island for each project awarded funding through Legacy Land. She added that the Chair Bonar ought to be careful what was pushed for. DLNR was now receiving \$250,000 per year from OHA for Wao Kele.

Member Buchanan asked for clarification: would Ms. Machado want the Commission to conduct on-island meetings, or the applicants to the program to conduct on-island meetings? Ms. Machado replied that the Legacy Land program should conduct joint meetings on-island for each of the projects. The public should know the stewardship plan, the details of the conservation easement, and the commitment from the parties involved.

Member Kaiwi stated to Chair Bonar that this issue also speaks to his cultural concerns stated earlier. In all fairness, it is a good recommendation; it could be added on to the present motion originating from Member Fletcher.

Chair Bonar replied that he thought that the Rules Subcommittee ought to address this issue because it included a balancing of several other considerations, and would require further discussion prior to bringing it to DLNR. He requested that the item be given to the Subcommittee for consideration.

Ms. Lea Hong apologized for arriving late and asked if she had missed earlier discussion regarding the concerns over the current reporting practice – was it thought to be inadequate or suspect? Member Fletcher replied that there was a concern that there was not a strong inspection and monitoring procedure that would guarantee land protection in the long term. Ms. Hong asked if the current self-reporting procedure was annual, Ms. Schmidt replied bi-annual.

Chair Bonar stated that there had been instances of abuse in other state programs across the country which had prompted a trend of improving monitoring for state grant programs. They were trying to look ahead ten or twenty years so that this program would not face the same issues. Member Young stated that biannual reporting seemed a bit far apart and commented that the self-reporting should be at least annual. Ms. Schmidt added that the current policy had only been instituted recently and communicated to the Commission at its last meeting. Chair Bonar agreed with Member Young and added that the main concern here was turning self-reporting into an inspection to ensure long-term continuity.

Member Kaiwi stated that the previous suggestion from Ms. Machado to do an on-island project presentation could factor into this issue – it would allow the public to understand and participate in project oversight in the long term. He added that he was concerned about delegating this important issue to the Rules Subcommittee. Chair Bonar agreed that this issue was important and stated that the reason for delegation was to deal with all aspects of that issue. He added that Maui County Parks Department had required the public meeting of the MLT, not the State Legacy Land program; however, it was an important issue.

Member Buchanan stated that The Nature Conservancy's conservation easements that were held by the State's Natural Area Partnership Program were monitored by DLNR staff. She asked Ms. Schmidt how this was done. Ms. Schmidt replied that the State held the conservation easements, and she was not sure, but thought that the administrative rules required monitoring.

Chair Bonar asked Ms. Schmidt whether the monitoring had been a part of the legislation or the administrative rules. Ms. Schmidt did not know for certain. Chair Bonar stated that they should see whether the model fits for Legacy Land and asked Ms. Schmidt to follow up. He asked her to continue down the list of Commission comments on rules.

Ms. Schmidt stated that baseline documentation was added as an allowable matching funds expenditure but not as an eligible grant funds expenditure. Chair Bonar commented that there were legal reasons for this; Ms. Schmidt added that there was some difficulty in reimbursing for baseline done in-house, since it could potentially include a wide range of costs.

Ms. Schmidt moved to the fourth comment on this list. She referred to the draft rules and stated that “reimbursement” was removed and new language added to delineate that land costs are not reimbursement while other acquisition-related costs are.

She continued to the fifth comment, stating that the “60 day” limitation had been clarified by putting together the provisions on reporting and monitoring and adding the 60 day requirement to the second section of that provision. Regarding the sixth comment, the provision had been revised to be more simple and coherent. Section “c” of that provision had been removed.

Ms. Schmidt continued: “the preparation of a management plan” had been added to eligible expenditures of management grants, as part of “professional services.”

Regarding the request to remove a percent limit on advances, the Commission’s suggestion had not been taken and language had been added to clarify the circumstances in which advances were allowable. Ms. Schmidt stated that, lastly, the typo on the final page had been omitted.

Chair Bonar asked whether the rules had been voted to recommend to the BLNR. Ms. Schmidt replied that currently, a form had been submitted to the State Procurement Office requesting an exemption for the granting of management funds, and a draft of the rules had been sent to the Attorney General’s office with a request for preliminary review. Usually, draft rules went to the AG’s with a request for approval for public hearing, however, this draft had gone in with a request for preliminary review because it is an entire chapter of new rules, and will most likely be heavily edited. Chair Bonar asked Ms. Schmidt when the draft would come back, Ms. Schmidt replied that it had been submitted in late September. Chair Bonar added that by the time the draft was back, he will have discussed the monitoring issues with the administration. Ms. Schmidt added that the reply would also be coming in from the procurement office. Chair Bonar stated that once they heard back from these offices, it could come back to the Commission.

Member Kaiwi added a comment on the draft minutes from July 19, 2010. He stated that his focus in criticizing had been on historic preservation matters, not all of the business of DLNR, and asked Ms. Schmidt to correct.

Member Berg asked whether rules and management funds items could be on the agenda for the next meeting. Chair Bonar stated that, as long as there was time, it could be. Ms. Schmidt stated that the second December meeting would be better.

Ms. Hong stated that she had read the previous meeting's minutes and noticed some concern from the Commission regarding DLNR's use of the management funding. She stated that a "purpose" section in the administrative rules might help clarify the intent of these funds and avoid the re-use of them every year by DOFAW. She had always found purpose clauses helpful in clarifying intent.

Chair Bonar added that the concern had included the ability of DLNR to take the five percent off of the top without consulting the Commission. Ms. Schmidt asked Ms. Hong whether the idea was to put a "purpose" provision in the management funds subsection. Ms. Hong replied affirmatively and added that she did not have specific language in mind. Ms. Schmidt stated that, in drafting, she had attempted to create a fair and open process for awarding management grants. In the "program administration" subsection of the rules, a provision relating to awards stated that the BLNR must consult the Commission before awarding funds. She stated that any solutions presented to create a fair and open process would be good, as long as the intent and operation of the program were not warped. Chair Bonar stated that Ms. Hong's point was well-taken.

Mr. Chang stated that he had concerns over whether the management funds grants could dilute the acquisition purpose of the fund. OHA was committed to finding the management funds on its own as part of the planning process for acquisitions. He asked if the five percent could be limited to one-time applicants. Chair Bonar stated that a use of the funds for management planning had been discussed at previous meetings. He added that the Commission shares Mr. Chang's concerns.

Chair Bonar called a 10-minute break. Member Fletcher left the meeting.

Chair Bonar stated that the Commission was still on Item 5. He asked if there were remaining comments from the Commission. Member Young asked whether, as a start, the self-reporting ought to be at least annual instead of biannual. Chair Bonar agreed and stated he would include this issue in his discussion.

Ms. Hong stated that she had the same concerns that Ms. Machado had stated in asking DLNR to fund monitoring. Twenty years from now, monitoring fifty projects will be a large administrative burden. Pushing this issue may potentially divert funding and she did not have faith that the Commission's recommendation would be heeded. DLNR's responsibility to monitor dams included implications of human health and safety and it still did not get done. She couldn't imagine DLNR had enough staff and personnel to accomplish this task if it was not able to monitor dams for safety. Chair Bonar stated that, if the Commission let these issues go now, further down the road it would be totally lost as a concern. Ms. Hong replied that she would advocate for better self-reporting with a potential for site inspection on an as-needed basis. Member Berg stated that Kaloko Dam was evidence that self-reporting as advocated by the current administration does not work, including other self-monitoring reporting policies, e.g., cruise ship wastewater discharge.

Ms. Schmidt stated that Chair Bonar's meeting with Chairperson Laura Thielen and Paul Conry might be helpful in outlining the full set of considerations that needed to be weighed in making these decisions at the DLNR, she did not think she had fully communicated the entire picture adequately. Maybe when Chair Bonar came back from this meeting with the full set of information, the discussion could be furthered.

Chair Bonar stated that he agreed, and that even though Ms. Machado's point was a good one, he felt the issue was important enough to push. Like Member Berg, he had very little faith in self-reporting, and thought it would lead to long-term problems that could be forestalled now. Perhaps technology could be used to save staff from on-site inspection, however, these discussions needed to be held. He added that, hopefully, the information from this meeting would be available early enough to allow the Rules Subcommittee to meet in the interim.

ITEM 6. Announcements.

Chair Bonar stated that Ms. Schmidt had sent a link to the proposals and encouraged the Commission members to ask questions of the applicants through Ms. Schmidt. Ms. Schmidt stated that, under Sunshine, she could provide responses from the applicants in advance of the next meeting as part of the meeting materials.

Member Berg asked how much funding would be available. Ms. Schmidt replied \$4 million. He asked how the Commission would deal with a request from one applicant for \$5 million. Ms. Schmidt replied that the applicant had indicated knowledge of this problem. Chair Bonar replied that the Commission had decided that the best project would always be chosen as a product of the ranking process. Adjustments regarding funding would have to be made after ranking. Member Berg stated that the applicant ought to consider this matter in advance – it creates problems for the Commission's ranking criteria in regards to commitment in sale price and matching funds, which ought to be thought out ahead of time. He stated that maybe this project was the first case where the Commission ought to consider budget amounts separate from the ranking.

Chair Bonar stated that projects may come in with adjustments prior to the December 2 meeting and this information could come into consideration.

Member Young asked if this project was the same applicant as for lands in Kawa. Ms. Schmidt replied that the County of Hawaii had received two grants for lands in Kawa, one was closed, the other remained open. Member Young stated that these lands were the ones that had the issues with title and other on-the-ground problems. Ms. Schmidt stated that three projects from Fiscal Year 2008 received extensions, including Kawa. Ms. Hong stated that her understanding was that there were title issues that had arisen and the county was reluctant to accept the title with outstanding issues, but was working to resolve the issues.

Ms. Hong stated that another idea, in relation to monitoring, was to delegate the duty to a statewide nonprofit, like the new land trust, with expertise in the area. Chair Bonar added that it could be contracted out in a cost-effective manner.

Ms. Hong stated that she was interested in working with land trusts and grant programs and organizing legislative site visits to inform legislators on what the Legacy Land fund and land trusts are doing. Chair Bonar stated that he liked the suggestion. Ms. Schmidt stated that a group effort would be good; previously, she had only produced an informational handout for the DOFAW Administrator to use in informing legislators of the program.

Ms. Hong announced that there would be an open house to celebrate the protection of Sunset Ranch on November 21, 2010, from 2pm to 6pm, and that the Commission would receive an invitation by email.

Chair Bonar asked if there were any other announcements.

Ms. Schmidt announced that \$400,000 was being taken from the Land Conservation Fund for the invasive species councils. Although the Commission had received emails from Paul Conry on this issue, she wanted to announce it for the meeting record. She stated that she was more concerned about this raid than the funds being used for management grants. Member Young asked whether the reduction was annual. Ms. Schmidt replied that it sunsets in 2013. Chair Bonar stated that a group had wrested with the issue and thought that it would give better standing with legislature to allow a small reduction in hopes that it would not be made permanent. Ms. Hong asked about the origin of the bill, Ms. Schmidt replied that it had something to do with coquí frogs in Waimanalo at the outset. Ms. Hong asked if the Governor had vetoed it, Ms. Schmidt thought that it had been vetoed and passed by legislature. Chair Bonar stated that he hoped the issue would give them some advantage in the next session. Ms. Schmidt asked the Commission if they thought they had been given sufficient information on the issue. Chair Bonar replied that he did.

Ms. Schmidt offered to give an update on projects, but did not want to keep anyone if they needed to leave.

ITEM 7. Adjournment.

Chair Bonar noted that people needed to leave and adjourned the meeting.