

Minutes of the June 20, 2011, Legacy Land Conservation Commission Meeting

DATE: June 20, 2011

TIME: 12:00 p.m. to 4:00 p.m.

PLACE: Room 322B, Kalanimoku Bldg., 1151 Punchbowl St., Honolulu, Hawai`i

COMMISSION MEMBERS PRESENT:

Dr. Dale B. Bonar, Chair

Dr. Carl J. Berg

Ms. Lori Buchanan

Dr. Joan E. Canfield

Mr. Kaiwi Nui

Ms. Karen G.S. Young

Dr. Charles (“Chip”) Fletcher

COMMISSION MEMBERS ABSENT:

Mr. Herbert (“Monty”) Richards

Dr. Robert J. Shallenberger

STAFF:

Ian Hirokawa, DLNR, Land Division

Molly Schmidt, DLNR, DOFAW

Leah Laramee, DLNR, DOFAW

Randall Kennedy, DLNR, DOFAW

Paul Conry, DLNR, DOFAW

Public:

Cynthia Rezentes, Hawaiian Islands Land Trust

Roderick Becker

Sabrina Nasir

Amy Sojot

Brenda Baker

MINUTES:

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

Chair Bonar called the meeting to order at 12:15 p.m. Commission members and staff introduced themselves.

Chair Bonar introduced the agenda and asked the asked attendees to raise their hands if they have questions or testimony during the meeting.

Item 2. Approval of Legacy Land Conservation Commission meeting minutes from April 18, 2011.

Chair Bonar asked if there were any comments on the minutes from April 18, 2011. There were none. Chair Bonar asked Ms. Schmidt if she had received any comments on the minutes. She had not. Member Berg moved to approve the minutes, Member Canfield seconded. Member Young asked if grammatical errors would be corrected in the minutes. Ms. Schmidt said in the interest of time efficiency most minute errors were overlooked as long as the minutes sufficiently convey what happened at the meeting. Chair Bonar asked if there was a State requirement that the minutes be so detailed. Ms. Schmidt explained that under Sunshine Law the minutes have to convey an accurate account of what happened at the meeting. Member Fletcher stated that it didn't seem necessary for the minutes to be so detailed and would probably save a lot of time if they were not as extensive. Ms. Schmidt explained that it did take more time to paraphrase but the comments were noted. Member Buchanan commented that she loved verbatim minutes and before she joined the Commission she read all of the minutes from the Commission meetings so she knew beforehand where all the members' views were.

Chair Bonar called for a vote on the minutes. The minutes were unanimously approved. Chair Bonar told the Commission to send any comments or corrections to the minutes to Ms. Schmidt.

Item 3. Update from staff regarding the disbursement of management funds from the Legacy Land Conservation Program and draft rules for the Legacy Land Conservation Commission and the Legacy Land Conservation Program.

Chair Bonar asked Ms. Schmidt for the staff update. Ms. Schmidt explained that in 2008 some legislation passed to allow Legacy Land Conservation Program (LLCP) to give management fund grants from the Land Conservation Fund (LCF) in addition to land acquisition grants, however, management fund grants are subject to procurement laws. In order to go through and do that under the Chapter 173A, HRS, process LLCP had to approach State Procurement for an exemption. LLCP had received a partial exemption, which means LLCP still has to go through procurement processes; however, LLCP is exempt from some parts to allow the Commission to make recommendations. To be specific, to do the RFP process, a lot of times proposals and discussions regarding them have to remain private, up until the last minute, when they announce the recipient. LLCP has received an exemption from procurement to use the Commission meetings to make the recommendations on projects because of public meeting Sunshine Law requirements.

Chair Bonar asked if that meant that the Commission needed to go out for competitive bids. Ms Schmidt explained that it would be the sealed proposal process so there are certain things that still need to be ironed out. She recommended that the Subcommittee meet to hack out the details. She explained that RFP criteria have to have some sort of numerical assignment and LLCP does have to follow some of the other parts of the RFP process. Member Canfield asked what the criteria were for. Ms Schmidt explained it was criteria for management fund grants. Chair Bonar asked if an applicant were to come in for management money for one of the Legacy projects, \$50,000 to do a big plan, would that have to go through a RFP and others could come in and bid on doing that instead of the organization that is holding the land? Ms. Schmidt said the entire process did not have

to go out to RFP, just the management grants themselves, so the Commission will have to put out a request for proposals saying that LLCP has management fund grants available. It will be a competitive process but will be limited, as per the statute, to recipients of Legacy Land funds for acquisition. It creates more processes and paperwork that staff will have to deal with. The only other thing that may be an issue is that in order to work with procurement process, rules and statute, the Department's Chairperson will have to formally adopt the Commission's recommendation because he is the chief procurement officer of the Department, in order to make the processes work together.

Member Fletcher asked if the numeric criteria were something that the Commission will produce through Subcommittee. Ms. Schmidt confirmed and explained as there are already criteria in the draft rules the Subcommittee will look at that and figure out what is appropriate. Member Young asked what the percentage of Legacy Land money that will go to management grants. Chair Bonar said it would be no more than 5 percent but the Commission could determine zero in any given year. Member Young asked once it is settled if it was required to make sure the 5 percent was available. Chair Bonar explained if there was only so much in the whole pot and it was all allocated to the acquisition projects it doesn't require that the Commission give 5 percent to management, it will be a year by year decision by the Commission.

Chair Bonar asked Ms. Schmidt for an update on draft rules. Ms. Schmidt reminded the Commission that they left off the last meeting with recommendations on the draft rules and the entire set of draft rules both the ones that originated from the Commission and the one that originated from the Department with Commission recommendations are at the Attorney General's (AG's) office and the estimate of when they will get back is two weeks or hopefully less. She asked if there should be a Subcommittee meeting prior to the next Commission meeting to review the rules or if the full Commission would like to discuss the rules. Chair Bonar asked if there were any hints whether or not the draft rules were going to come back with major changes on what the Commission proposed. Ms. Schmidt said she did not know, but she assumed there must be because it is an entire chapter of rules. Chair Bonar turned the decision over to staff and the Chair of the Subcommittee. Ms. Schmidt said the next Commission meeting traditionally takes place in October for the initial look at the applications and discussion of site visits. Chair Bonar asked the Commission if leaving the decision to the Subcommittee Chair and Ms. Schmidt was acceptable. They confirmed it was. Member Canfield asked if that was okay timing as far as the time constraints of getting the rules out. Ms. Schmidt explained certain parts of that are out of the Commission's control. Chair Bonar suggested if there was a large amount of pressure to get the rules finished, staff call a special meeting. Ms. Schmidt said she would consult with whoever was appropriate and let the Commission know. Chair Bonar asked Ms. Schmidt if she got any hints of particular significant input on any of the rules to let the Commission members know.

Chair Bonar asked Ms. Schmidt if there was anything else to be covered. Ms. Schmidt said that there would be a wait until the next fiscal year to give out management fund grants. The Commission agreed that this was suitable.

Item 4. Discussion and possible Commission recommendation regarding the placement of conservation easements on fee lands acquired by entities receiving funds through the Legacy Land Conservation Program.

Ms Schmidt said the draft administrative rules had something in them about conservation easements. She explained the reason she put this on the agenda is because it was not initially clear to her whether the LLCP would be implementing it this year or if they would wait for the chance to come through in the draft rule process so that there is time to get public comment, and the Departmental decision was to let it go through the rule making process. There have been a few Departmental discussions on the specifics of how to implement the draft rule. The thoughts so far were that all non profits acquiring land through LLCP would have to have a conservation easement by one of those qualified entities that were listed. That is, any acquisition, whether it is a conservation easement or fee. Chair Bonar said qualified meant a land conservation organization or the government. Ms. Schmidt explained in the draft rules it was listed as an accredited land conservation organization, federal agency, county agency, or state agency.

Chair Bonar asked if there had been discussion about the accredited part. Ms. Schmidt said the Commission had recommended removing the word accreditation, however, the Department preferred to leave it in, but there is still plenty of time for that to go through the rule process. Chair Bonar made it clear that he had not advocated adding in the word accreditation to the rules. Member Young asked about the Department's recommendation to leave accredited in the rules and if Ms Schmidt took the discussion back to the Department. Ms Schmidt said she had taken it back to the Division of Forestry and Wildlife. Member Young asked if this meant Paul Conry. Ms. Schmidt confirmed. Member Buchanan said she thought the addition of accredited to the rules came out of concerns from legislators and had been a compromise on the Department's side. She explained at the last meeting she had expressed concern that it might not work with smaller entities that might not have the clout to do the accreditation. She had received an inquiry from Senator Ryan's office regarding this matter. Member Berg asked if this was after the last meeting. Member Buchannan confirmed. Member Berg said he remembered the discussion clearly and that a member of Senator Ryan's staff, Paul Conry, and Randall Kennedy were in attendance. Member Buchanan said she didn't know if the Department was still moving forward to make that happen and put that in place. She asked if the Commission came to any conclusions or if it was just a discussion. Ms. Schmidt recommended that when the rules come back from the AG's office if there are particular issues the Commission felt they stood apart from the Department on or when the draft is going through make a Commission recommendation that would go on the Board's submittal so that the different opinions are distinguished and made note of for the record and put through the public process.

Member Kaiwi asked why DOFAW wanted to leave accredited in the rules. Ms. Schmidt said she thought it was primarily because it is the only existing standard for land trusts to verify that they are up to a certain level of competence. Member Berg agreed and added there is only one accreditation entity out there and the Commission's comment was that their rules might not be applicable to Hawaii situations. He said his impression at the last

meeting was that Mr. Conry said that is what the legislators really wanted because it was the most clear-cut and objective way of doing it.

Member Kaiwi asked if it was a bones issue who would set that bar. Ms. Schmidt asked if the question was whether it was a NAGPRA issue. Member Kaiwi confirmed and added as far as the stewardship of those bones goes, how does the accreditation extend to cultural practices that are beyond the breath and experiences of the Board of Land and Natural Resources and DLNR? Ms Schmidt said she didn't know the answer as to what the Land Trusts accreditation standards were regarding NAGPRA issues but the outcome of the last discussion had something to do with whether or not that should be included in the application process which is timely as the Commission is discussing that today. Staff opinion is that since LLCP is a grant program and is providing an incentive to do something, if they are not doing something that the Commission thinks they should do, the funding should be withheld. The Commission cannot act as a regulatory body in terms of enforcing laws on people in that particular way so if the Commission does want something of that nature it would be a good time to address it in the decision-making process.

Chair Bonar said generally in the land trust world, culture isn't a big deal, at least in the mainland, however, this is NOT the case here in Hawaii! Here, we include the sections saying that applicants must follow all State and federal laws and that archeological surveys have to be done before doing anything on the land so if the conservation easements are written correctly those things get mentioned, but that's an important distinction to make. Member Young asked beyond the hassle of putting all that into the application, is there a cost to having the conservation easement and what is it?

Chair Bonar said that they have ranged from \$12,000 to \$100,000. Member Young asked if this was annual fee. Chair Bonar explained that it is one fee that goes in the bank to support all future activities because conservation easements are perpetual. Member Young asked if someone applies for \$500,000 then they would have to add on some money to it for them to have an appropriate application. Chair Bonar said that was presumably what would happen. -- the applicant would need to come up with additional funds from their matching funds.) It is something the Commission is discussing with DLNR because DLNR holds easements on some non-Legacy Land projects but DLNR doesn't do significant monitoring enforcement as is done in the land trust world. Something that has been discussed in the past is if DLNR could be contracting trusts or cultural organizations to do monitoring but the question is who pays the bulldog. Member Young asked who was going to pay the conservation fee. If it is a small organization that is already having to keep track of every penny how are they going to come up with the extra fees? Ms. Schmidt said that is why the whole issue of taking conservation easements or requiring the conservations easement to be taken for Legacy Land projects, even though its just for non-profits its probably a bigger discussion just because of those costs. There have been suggestions that there be a fee of some sort deposited to a fund in order to provide for monitoring down the road however State funds aren't necessarily the same as private. Chair Bonar added that private entities can put money in the bank to build up a permanent fund but he believes the state can't do that easily without very

specific statutory authority, because otherwise it's a credit bank. Member Young said otherwise the entity would have to put it in to the proposed budget. Chair Bonar confirmed. Member Young asked if that would be included in the 25 percent they are responsible for or if it would be other than that. Ms. Schmidt said that could be a possibility but would have to consult the AG's to see how they interpret the statute to see if that's permissible or not. Member Young said in her mind that was a very critical question for the smaller organizations to have to come up with 25 percent as is and then add on the \$12,000 additional. Member Berg said using the term accredited organizations there are not going to be small organizations that are accredited. Chair Bonar asked if Member Young was talking about the people doing the project. Member Young said she was not talking about some big organization that can assign somebody to do that but the people who run small organizations that also have to add this on.

Chair Bonar explained if an organization is asking the State to give them land that they are going to look after forever; if they can't plan on something like that, how good of a background do they have to say 'yes we are going to look after this forever'? It's the same reason LLC asks for management plans. Member Young said she understood that, but this is an additional cost. Chair Bonar said this was part of the real cost of taking care of land forever. Member Berg suggested this could be part of the management plans grants. Member Buchanan asked if an organization would even be submitting the application if they weren't accredited first. Chair Bonar explained the organizations applying for the money do not have to be accredited. The discussion is only addressing the holder of the conservation easement if it wasn't a State entity. Member Young said there is only one entity that is accredited that she is aware of. Chair Bonar said this was only for the moment and it was not clear if it would be permitted anyway. One of the things that the Commission could say is that within five years the organization needs to be accredited. Hawaiian Island Land Trust (HILT) is the only accredited entity. Neither The Nature Conservancy (TNC) nor the Trust for Public Land (TPL) are, it's early on in the process, but it can be talked about when the rules come back. Member Young said it would be good to list who is accredited. Member Buchanan said it might be a discrimination issue. Chair Bonar said it was no different than saying that when you go to a doctor they have to have a Hawaii state license.

Member Kaiwi expressed his hope was that the intention was pure and pono and not to choose a select group. The irony he saw in the State requiring this – they couldn't take the kuleana when they took 'aina away from us – not meant to be said in a vicious way, just the way in which they steward iwi kupuna, wahi pana, he hoped it was pono. Ms. Schmidt said that she thought Mr. Conry's intention was to demonstrate that the recipients are held up to a certain standard that can be verified so that DOFAW can demonstrate this to legislators and the public.

Chair Bonar said that some states such as Colorado don't allow organizations to hold conservation easements unless they hold state level accreditation. It is not as high a level as the national one but it gives them a way of checking. Part of the reason that accreditation came about is because there are these rogue land trusts around that a developer will set up and then they blow off any stewardship of the protected property.

From a national level they are looking at how we know that an organization has the qualities to look after something in perpetuity. Member Kaiwi asked if DLNR would be open to accrediting from a cultural standpoint or developing a program that leads to that place. Ms. Schmidt said she could not speak for DLNR, but thought DLNR might be open to accepting a program that did that, but may not be open to administering it. Mr. Kennedy said having some sort of state accreditation may be an option, expanding and meeting the goals of DLNR on some level. Chair Bonar said the Commission could supply DLNR with information on what other states are doing but it does take time and resources.

Chair Bonar asked if the Commission agreed that they would look at the issue in more detail once it came back from the AG's office. The Commission agreed.

Item 5. Discussion of the Fiscal Year 2012 Legacy Land Conservation Program timeline, process, budget, and forms, and possible recommendations from the Commission to the Department on the Grant Application and Instructions and related forms.

Ms. Schmidt informed the Commission that in their packets they had all the forms from FY11, grant application forms and instructions, the Commission's evaluation form that it has been using and the land acquisition grant guidelines that are usually done by staff. Staff has one proposal for revisions for the application on the last page. Although the criteria and priorities are being followed, sometimes it is not immediately apparent to people because it's not direct as in 'here are the statutory priorities and a list and here is the box being checked'. She suggested something that is very explicit to demonstrate that priorities are being considered on the application is something that might be helpful. Member Berg commented that in the past most of the applicants have just checked every one of them and gave some sort of hokey justification for most of them. It didn't really seem like it was in any way selective or that they discriminated one from the other. They all wanted the money and they figured that they better make the project as important as possible so they just checked them all. Ms Schmidt said it was up to the Commission to review that. Member Berg said he didn't see that what staff is proposing is going to improve anything. Member Canfield said that it seem to just duplicate what was already there. Chair Bonar said he thought Ms. Schmidt's argument is that when people look at it from the outside they say where does it say 'x,y,z'. One could sit there and point out this one is one page 4, this one if on is on page 9, etc. What this does is give the checkbox, the quick look. Information that is in the application now that can be looked at and say: have they made the argument that the lands really are in imminent danger of development? Member Berg asked if there should be a little box under each thing for them to fill in or do you want them to have that have them check off the one box and somehow designate which one they are explaining. Ms. Schmidt explained first of all the box needs to be at least a half page large but this is just a draft, and whether that is done is up to the Commission. She thought it was fine to just leave one box.

Chair Bonar said the boxes are already in there for each of these things, for example the agriculture and historical site, which would be the second to the last. They already have boxes to put information in. He thought that if the new sheet went on the face page of the application it would work. Ms Schmidt explained that it was a hurdle to get over before

moving on to the rest of the application, because if they can't check one of the boxes then they should not be applying. Member Canfield asked if this should go with the checklist on page two. Ms. Schmidt suggested it be thrown somewhere between that and section A. Chair Bonar said that staff had tried very hard to make an application that is very straightforward, but the extra add-ons would also be very helpful. Ms. Schmidt said that it would also help staff because every year staff must write a legislative report explaining what the value of each project is to the public. To have it summarized in a ready to use format instead of having to pull it from different parts of the application would be helpful. When staff writes annual reports to legislature, what they (the legislators) want to know is how the recommended proposals meet the priorities that legislature gave. Chair Bonar suggested that what she could do with each one of those is say see application page so and so where the box is where they are going to do it later, if they look and say "yeah, I've checked the box" but it also notes where to go in the application to see what they have said about it. Member Canfield pointed out then there wouldn't be an extra comment area. Chair Bonar said that would be his recommendation. Member Canfield agreed because if she was an applicant she would wonder why she had to cover all of the stuff here and plus do it again later.

Ms. Schmidt said that if one looks at the statute, the different types of lands that can be protected are in a list of 1 to 9 and so the boxes that have been laid out in section d are those resources. In a separate section of the statute there are the priorities. This does not directly match up with the criteria list so in trying to do it that way it might be more complicated and might not line up perfectly. Member Fletcher agreed and said that they should be expanded upon in the application but there should also be a quick check-off, but as an applicant, he would be confused if there was different wording on one thing then the other. Ms. Schmidt explained that the boxes in the application don't necessarily descend from the statutory priorities, but she saw Member Fletcher's point. It might create a mess. Chair Bonar said it was the criteria versus priorities problem that the Commission has had from the very beginning. Ms. Schmidt explained that what they were discussing weren't criteria but types of resources that can be protected, eligible for Legacy Land funds, priorities are the priorities, and criteria are the things under each priority that the Commission uses to make a decision.

Member Fletcher asked if it was possible to do this but make sure that the language is the same. Ms. Schmidt explained the resources she listed in the statute is "protecting these lands is a public purpose for which these monies can be spent." This is basically a hurdle the applicants need to get over, they have to be protecting some of these resources but it is not necessarily the priority list. Chair Bonar asked if information on each of the things on the list is in the application as it is set up now. Ms. Schmidt said she would like to take a close look at the application before she answered the question. Member Fletcher asked where it the applicant would say the site is in imminent danger of development? Member Canfield said the application asks the applicant to discuss that at the very end in G2. Ms. Schmidt explained that the criteria do address the priorities and explains things that are considered there however she didn't think it would not be a good idea to connect the dots from each of those. Member Canfield asked if it would work for staff and the legislation if there were just the check boxes and not the narrative area. Ms. Schmidt explained that

this was just a suggestion for the Commission's consideration. Member Canfield said that the checkboxes were okay but she was hesitant on the narrative part. Chair Bonar agreed and added that it is an easy thing for the applicant to do especially if it's up front and it starts them thinking about those things. Ms. Schmidt suggested the wording "demonstrate this in your application" in lieu of the narrative box. Chair Bonar suggested the last sentence at the top could say to be sure in the application to point out XYZ. Member Berg added what needs to be pointed out is that those are the priorities and not the criteria so there isn't confusion on the applicant's part. Member Fletcher said that will already be opaque because there isn't a heading called criteria.

Member Young suggested perhaps 1c and number 4 could be made concise as they sort of say the same thing. Member Canfield said one of them talks about critical habitat. Ms. Schmidt said thought she saw her point the main purpose of recommending this is to have something stating the statutory priorities. That's the way the statute is written.

Member Fletcher said if the change suggested would help staff then he proposed that the Commission go forward and modify in the future as needed. Ms. Schmidt clarified that this was subject to the Commission's recommendations and the language state "demonstrate this in your application." Member Fletcher confirmed.

Chair Bonar asked if there were other specific things within the applications forms that staff wished to discuss. Ms. Schmidt pointed out that the Department is going through the rulemaking process and will let those rules go through the public comment process and all the different steps before enforcing those policies because they might change as a result of the process. She asked the Commission if they wanted to follow the same suit (?) when they had their criteria and rule form. Chair Bonar said that after the AG's comments are returned would be the appropriate time to make adjustments. Member Canfield asked when the applications go out. Ms. Schmidt said they usually go online by the end of July. Member Canfield said this would be before the Commission could deal with the AG's comments. Ms. Schmidt confirmed. Chair Bonar asked if there was any problem with staff incorporating that into the application. Ms. Schmidt said there was not. Chair Bonar asked if the Commission comfortable with giving staff to proceed in that way. Ms. Schmidt asked if the Commission would make a motion. Member Fletcher moved that the Commission accept staff recommendation for application revision and adjust as the Commission moves forward in the future. Member Canfield seconded. Chair Bonar asked for further comment. There was none. Chair Bonar asked for a vote. The vote was unanimous in favor.

Ms. Schmidt asked the Commission if they would like her to cover the budget. Chair Bonar asked her to. Ms. Schmidt said estimated revenues for next year were roughly \$4 million; however the legislation that went through this year affects that. There is the \$400,000 a year that goes to the Invasive Species Councils until the end of fiscal year 2013. For the Land Development Corporation, now Act 55, LCF will be supporting three staff positions, the estimate that the act gave was approximately \$135,000 however that breaks down to about \$45,000 per person per year, however if benefits are added in that would be quite low-paid staff. She assumed the total would be more than that and the

language is written \$135,000 a year or necessary to fund the positions. Chair Bonar asked what the purpose of the positions was. Member Young asked if the funding included Ms. Schmidt's position. Ms. Schmidt said it did not. Member Young asked if that then meant that there would be four people under Ms. Schmidt. Ms. Schmidt explained that this was entirely separate from LLCP. Member Kaiwi asked Ms. Schmidt to go over the purpose of the corporation. Ms. Schmidt said she didn't have a lot of information on that but she could send the links to the bills after the meeting. Mr. Hirokawa said it was meant to work for the development of public lands in an environmentally responsible manner. He continued to explain that it is governed by its own board but is under DLNR administratively. Member Berg asked if it was similar to the Agribusiness Development Corporation. Mr. Hirokawa said it was. Member Canfield asked if this was created by the legislature. Mr. Hirokawa said that it was something the Department came up with. Ms. Schmidt said that \$135,000 per year was realistically going to be probably going to be around \$160,000. Chair Bonar asked what the number of the bill was. Ms. Schmidt said it was SB1555, now Act 55. Member Fletcher asked if the Governor signed it. Mr. Hirokawa confirmed. Member Kaiwi asked who offered the bill.

Mr. Paul Conry joined the meeting and Chair Bonar asked him to explain the Land Development Corporation and why LLCP was paying for it. Mr. Conry said it was one of the bills that went through and they looked all session as to where to fund it and at the end of the session there were two to three bills that they sat down and discussed how to fund and using LLCP funds is what came out.

Chair Bonar asked if there was a Public Land Development Corporation or if it was set by the statute. Mr. Conry said it would be established by the statute. Chair Bonar asked if it was going to be separate from DLNR. Mr. Conry said that it will probably be within the Department to get an entire entity that is focused on entrepreneurial use of state lands. He said that one has the most potential to wean off of Legacy. Right now it's been set up but there are two or three others that been set up and the question was put to the legislature what was the intention of the legislature for the future of the organization. Chair Bonar said initially it was presented as \$68,000 or so and now its three positions and probably nearer \$200,000.

Ms. Schmidt said there were two more bills. SB23 has not been signed by the Governor but funds the Aha Kiole Council's Executive Director at \$64,500 per year or more. Member Young asked if that came out of LLCP funding. Ms. Schmidt confirmed. Member Young asked what the council was. Chair Bonar explained the council was set up to help establish the Aha Moku Councils; they had a five-year mandate to do that. Member Young asked if ADC was the same one that applied to LLCP. Chair Bonar said it was. Member Young asked if that was the one that was going to have the council. Ms. Schmidt explained that Agribusiness Development Corporation is totally separate. Mr. Conry said the plan was to create a development corporation in DLNR to help identify which unencumbered lands could be put to productive use and generate more income. Member Young asked what kind of public use. Mr. Conry gave the example of state park facilities, if they are put out to concession and improve the conditions at the same time rather than relying government employees and increasing staff. Chair Bonar asked if this

came in from the legislature and someone turned it in at the end. Mr. Conry said it was a bill that was there all the way through the session and they were looking at how they were going to fund it and all the funding decisions came at the end of the session. Chair Bonar asked if DLNR have any input into it. Mr. Hirokawa said that DLNR had concerns because of the testimony because it is duplication a lot of what land division already does and the cost of running staff. Initially DLNR asked for an appropriation, how much it would cost to fund staff, they had a \$2,000,000 out of the general fund and it ended up being 135,000 under LLCP fund. Mr. Conry said once it gets up and running what it will be able to do is generate revenue that can be self supporting. The goal is to have it be generating lots of excess additional revenue to help support DLNR management. Member Fletcher asked if the use of LLCP funds sunset with that expectation. Mr. Conry said it is only in this year's budget.

Ms. Schmidt moved on to Act 54, the Public Lands Information System. She explained that both the previous acts used the same amount of funds for two years and are done after FY13. Act 54 is also done by FY 13 but its two different amounts for FY12 and FY13. The allocation for FY12 is \$275,000 or however much is necessary, and \$85,000 for the next year for the establishment and maintenance of a computerized statewide public land trust database and funding for one staff person for a database and application developer.

Ms. Schmidt summarized the bills and said all together the amount of the bills add up to \$470,500 for the first year and \$284,500 in the second but they are probably minimums and not the actual amounts. Member Canfield pointed out that it meant that the Commission did not have \$4,000,000 to work with. Mr. Kennedy said the spending cap stays at \$5.1 million but how much revenues are created is another question. Ms. Schmidt said looking at the general LLCP budget, the 5 percent administration budget, the central services fees, invasive species chunk and results of recent legislation might drop available funds to \$2.5 to \$3 million depending on what is left through the unencumbered balance from this year and the revenues from next year. Mr. Conry asked what the projected revenue for the next year was. Ms. Schmidt said it was approximately \$4 million. Mr. Conry said that the current cash in the fund can be carried over, and what the Department had done was look at what is the cushion for that amount, looking at the bills that passed and what they will do because they come out of that pot, isn't reducing that amount that could be spent on projects its just coming out of the cash that is accumulating.

Chair Bonar asked Ms. Schmidt could read the line item which was allocating money for having a centralized GIS again. Ms. Schmidt read, "The Public Lands Information System or Act 54 would take \$275,000 or so ever much that may be necessary in fiscal year 12 and \$85,000 or so ever much that may be necessary in fiscal year 13 for establishment and maintenance of a computerized land trust database and funding for one staff position for database navigation developer". Chair Bonar asked where that would be housed. Ms. Schmidt was not sure but thought it would likely be located in Land Division. Mr. Hirokawa said that his recollection was that it would not move forward if OHA did not provide matching funds but he was not clear on the final decision. Chair

Bonar explained that all the land conservation groups were talking about having one place that everyone can have their data and draw from it there. He added that there is likely a lot of funding from the outside that can be brought in like foundation funding and other sources. This is something that would be extremely handy to everybody to have access to. Chair Bonar asked Mr. Conry, as DLNR starts talking about this to keep in mind that the land conservation groups are doing the same and there is a lot of potential in it. Mr. Conry said there was a lot of interest in these bills that's why they went through and got signed. One of the questions will be where would the sustaining funding come? Right now it's a biannual budget there isn't a sunset on it but there isn't a long term budget. When the next biannual budget is created that's where the administration will sit down and see how far beyond FY13 this will be funded. Chair Bonar expressed his concern over LLCP being eroded. As much as land costs here, and this is the source for the matching funds for federal grants, and every chunk of these takes away the ability to protect land in Hawaii. Mr. Conry said that going through the list one can see which of these will require consistent funding and which are feasibly self-supporting. The Development Corporation is self supporting, that is the intent. The land database will have a continuing personnel cost. And now it comes down to the discussion of what's the best, most appropriate way to support that, should it be cost share, should it be a policy decision that it will continue to come out of the LLCP fund. The other one was the Aha Moku Councils and that will be a continuing personnel cost.

Member Kaiwi suggested in regards to OHA and the inventory database the Department might want to look at OHA's current effort. OHA has already partnered with Kamehameha Schools (KS) and others so they have already begun; they are not waiting for DLNR. So maybe that is why the money has not been approved. He named the person to contact at OHS. He asked if the council is under DLNR oversight. Mr. Conry said it was. Member Kaiwi said it sounded duplicative. Mr. Conry asked if they were advisory to the board. Mr. Hirokawa said it wasn't and his understanding was that it is managed by its own board. They will grant the corporation of special powers so there is somewhat of a difference there because of the discretion this corporation has to develop. In terms of zoning, it is similar to ADC where it has its own entities so there is a little bit of special powers that the Department in itself doesn't have. Member Berg said in Kauai that is worrisome because ADC has come in and taken over development of lands which seem to contradict the goal of DLNR to protect natural resources. They are going out and exploiting natural resources and taking the water use. ADC was set up to secure the water resources, which was not necessarily of benefit the stream fauna or the taro farmers but it has different mandates and that's what unfortunately the new land corporation also looks like; looking at the land not under the DLNR strict guidance of protecting the natural resources. DLNR has spun off another corporation that can work in opposition to DLNR's mandate. Member Canfield said it was generating State revenue on DLNR lands. Chair Bonar said that was the frightening thing, that Land Conservation Fund moneys would now be used on commercial type things on State lands. He asked if those were the types of things the Commission would give grants to protect the land there.

Ms. Schmidt confirmed with Mr. Conry that the administration thought the unencumbered moneys would cover the costs of all the raids on LLCP funds. Mr. Conry

said that the money taken would not come out of the spending cap for Legacy Land. Ms. Schmidt explained there was always a spending cap but that didn't mean that Legacy Land necessarily had the money to spend. Member Canfield asked if the \$2.5 to \$3 million would be a good guess. Ms. Schmidt said she estimated that \$2.5 would be the lowest amount they would have to work with. Member Young asked if there was existing money already that was unspent. Ms. Schmidt explained funds always go into the LCF, State general funds will get spent to the last cent but special funds will just go back into the fund so there is an unencumbered balance in the fund. Member Young asked what the balance was. Ms. Schmidt answered the estimate was \$800,000 to \$1,000,000. Member Young said she thought LLCP had spent every penny every year. Chair Bonar said this money sometimes comes from projects that don't go through. Ms. Schmidt said LLCP is also limited by the ceiling which is \$5.1 million so the most LLCP will be able to spend every year is, because we have an administrative budget as well as the central services fee \$4.7 or \$4.8 million would be the maximum. Mr. Conry said that if revenue from the 10 percent of the conveyance tax came in at \$6 million dollars then there is more revenue coming in than is being spent and that is where the carry over comes from.

Ms. Schmidt said two projects were extended, the Kahili beach project and the Kawa project. The Recovery Land Acquisition (RLA) Program, US Fish and Wildlife funding, goes through DLNR and Abel Lui, the citizen that has been living on the land, had come into the Board of Land and Natural Resources meeting to file a contested case when the RLA subgrant agreement was before the Board for approval. The general process when a contested case is filed is to consult with the AG's office to see if the citizen filing has the right to a contested case. The grants expire at the end of the year so they are seeking extensions for both the federal and LLCP funding. Chair Bonar asked if the LLCP funds run out at the end of the month. Ms. Schmidt confirmed and said the federal funds run out this in June as well. Member Berg asked what the judge decided on Friday. Mr. Hirokawa said it was decided that he didn't have legal title. Member Berg asked if this meant that the sale could go forth. Mr. Hirokawa said it did and his understanding was that the current landowner was going to pursue a notice to vacate on him. Ms. Schmidt said that she would keep the Commission posted on the RLA extension. She continued to say the Kilauea project isn't going to proceed because there were issues with the landowner. In FY09 everything has closed less two grants, the state Hamakua and Kukuipahu are on the way to closing. In FY10 there are five open grants with no known problems. FY11 grants received the approval from the Governor's office for encumbering the funds.

Chair Bonar asked if Ms. Schmidt knew how many acres have been put into protection. Ms. Schmidt said it was around 7,000 but didn't have the exact number. Member Fletcher asked if Abel Lui was the guy that come in and submitted the contested case, and if they had found he had no standing. Member Young said she thought this was correct, because they didn't recognize the legality of his position, however, in her visit there she was told if the State attempted to evict him he would have the support of the community. Member Kaiwi asked if the County of Hawaii had even tried to work with him. Ms. Schmidt said she would not comment because she did not know the specifics of what the County had done. She believed the BLNR expressed a preference that Mr. Lui be included in the future management of the property. In the RLA subgrant agreement, the Department had

worked in language requiring that the county has to come back to BLNR and review their management plan prior to its finalization.

Member Young asked if Ms. Schmidt had mentioned the BLNR members had been asked to resign. Chair Bonar said that was the news article in the Star Bulletin reported. Member Young asked if this was the entire Board because in terms of continuity it would not have the history of having heard all the testimony. Chair Bonar said his understanding was that he was asking for letters of resignation but it didn't mean he would accept them all.

Ms. Schmidt said there were no more announcements. She would go ahead on the understanding that she would be consulting with Member Shallenberger for the Subcommittee meeting regarding the rules, and, if necessary, plan a Commission meeting in late August.

Mr. Conry said to follow up on the grants, it is very valuable to keep the Board in the loop if there are any issues or contention so they are well informed, that is very good practice and probably makes for much better Board submittals. The Chairperson can be well informed about the potential issues of the purchase. Member Kaiwi asked if Mr. Conry recommend that come from the Commission or individuals. Mr. Conry said it would be good to incorporate into the Board submittal if there are any issues or considerations. Chair Bonar said the minutes were included when the Commission originally voted on the Kawa one submittal. Ms. Schmidt stated she wasn't sure that the minutes were included in the Board submittals; usually just the applications which show where the projects are and the Commissions recommendations are included.

Item 6. Set next meeting date(s).

Chair Bonar told Ms. Schmidt she would determine if a meeting was needed before the October date and she would set that up via doodle poll.

Item 7. Announcements.

Chair Bonar asked if there were any announcements. It was Member Fletcher's birthday.

Item 8. Adjournment.

Chair Bonar called the meeting to a close at 1:22 p.m.