

**2018 Legacy Land Conservation Commission Minutes, Meeting 61  
State of Hawai'i Department of Land & Natural Resources, Division of Forestry & Wildlife**

**DATE:** October 12, 2018  
**TIME:** 9:15 AM  
**PLACE:** Conference Room IIT#3 (Iliahi Room)  
Interisland Terminal, Daniel K. Inouye International Airport  
300 Rodgers Boulevard  
Honolulu, Hawai'i

**COMMISSIONERS PRESENT:**

Ms. Theresa Menard  
Mr. Thorne Abbott  
Mr. Frederick Warshauer  
Mr. William "Butch" Haase  
Mr. Jacob Tavares

**COMMISSIONERS ABSENT:**

Ms. Wendy Wiltse  
Ms. Kanoë Wilson  
Ms. Angela Hi'ilei Kawelo

**STAFF:**

**Department of Land and Natural Resources, Division of Forestry and Wildlife**  
David Penn (Program Specialist, Legacy Land Conservation)  
Lissette Yamase (KUPU)

**PUBLIC:**

Ms. Lea Hong (The Trust for Public Land)  
Mr. Gary Maunakea-Forth (MA'O Organic Farms)  
Ms. Laura Kaakua (The Trust for Public Land)  
Stephen Rafferty (The Trust for Public Land)  
Bill Byrns (Attorney for Wai'anae Community Re-Development Corporation)

**MINUTES:**

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

Chair Menard sounded the pū to call the meeting to order. Penn stated that the meeting is adherent to the State open meetings law. Penn introduced new public members who joined the meeting and confirmed the quorum is intact.

**ITEM 2. 2018-2019 Application for Debt Service Grant, Department of Land and Natural Resources, Turtle Bay Makai, Kahuku-Kawela Forever**

Chair Menard announced the second item regarding a debt service grant of 1.5 million for Turtle Bay Makai, Kahuku-Kawela Forever and noted multiple TMK numbers within 173-13 Hawaii Revised Statutes. Mr. Penn explained that the DLNR fiscal office is hoping to process the grant quickly to encumber funds before the end of the fiscal year and described next steps following the meeting to get money transferred into the Turtle Bay easement special fund.

Chair Menard asked for public testimony on the item to which Lea Hong, State director of the Trust for Public Land provided testimony in support of the debt service grant.

Key points of her presentation and power point included:

- Kawela Bay to Kahuku Point consists of 7-8 miles of shoreline used by fishers, the public, and native species. The area includes a turtle nesting area and birthing site for a monk seal and her children.
- A map of the area illustrated conserved areas and excluded areas on either side of the hotel.
- The shoreline setback increased by 150 feet.
- Figures regarding restorative action were provided by Tim Tibowsky and included: 16,000 volunteers, 5,200 volunteer areas, 7,000 native plants planted, 9,500 lbs. of marine debris removed, 90,000 lbs. of invasive plants removed.
- Restoration of the area has proven to be a great community building project including participation from the community, schools, military, businesses, etc.
- Funding totals to 45 million, with 37 million from the state and 1.5 from Legacy Lands.

Chair Menard questioned where the sign discussed in session 60 was and Commissioner Haase and Lea Hong concluded it was by Keiki pool where the state land starts. Chair Menard asked for Ms. Hong's opinion of the sign and Ms. Hong agreed with the commission that it was confusing and stated she would notify Turtle Bay, but that the State has the lease and should follow up. Vice-Chair Abbott noted for the record that there were at least two signs.

Chair Menard asked if there were any more questions and if there was any additional public testimony.

Commissioner Haase moved to recommend the board approve the grant application. Commissioner Warshauer seconded. All were in favor.

**ITEM 3. Recommendation to BLNR to amend a 2017-2018 application for a land acquisition grant from the land conservation fund from Wai'anae Community Redevelopment Corporation to incorporate the construction and operation of a solar power generating facility by existing licensee at Wai'anae, O'ahu TMK (1) 8-7-010:006.**

Penn provided some background on the item.

- \$750,000 was encumbered for a land acquisition grant to the Waianae Community Redevelopment Corporation for full-scale agricultural production on the property at the close of last year.

- Previously unnoticed, the title report noted an exception to the coverage for an agreement from January 2016 which identified the property as the site of a solar development project.
- An unrecorded solar license agreement existed between the previous land owner and a limited liability company encumbering 2 acres of the property.
- This solar license agreement proposes the development and operations of a solar generated facility with a revenue stream in license fees to the Waianae Community Redevelopment Corporation and MA'O farms and to the Land Conservation Fund through the revenue sharing provisions in the Legacy Land Grant agreement.

Penn introduced Gary Maunakea-Forth from the Waianae Community and MA'O farms, Bill Byrns the attorney, and Stephen Rafferty, and Lea Hong from Trust for Public Land for questions.

Commissioner Haase questioned Mr. Rafferty if they were aware of the agreement during the application process. Mr. Rafferty responded that the title report was looked at and submitted and they were vaguely aware of the solar agreement, but did not focus on the details and worked quickly because the land owner had others interested. They also did not know the agreement was active due to the inactivity on the property. Trust for Public Land acquired the property and then they entered talks with the solar developer selling it to a large utility company, AES. Mr. Rafferty supported the solar agreement for its contribution of \$20,000/year to the Legacy program, permanent protection, and property returning to MA'O farms when the lease terminates.

Commissioners and Mr. Rafferty discussed the amount of revenue going to MA'O farms and Legacy Land each year with the agreement, confirming that \$21,000 will go to Legacy Land and \$10,000 will go to MA'O. Mr. Rafferty stated that having AES nearby with MA'O farms acquiring larger properties down the street will present more solar opportunities and decent neighbors.

Commissioner Warshauer clarified with Mr. Rafferty that the current property is restrictive zoning allowing agriculture and rezoning is not needed. They also clarified the solar farm does not need to be rezoned because it is a permitted use.

Vice-Chair Abbott asked how many mega-watts will be produced, if a special use permit is required, and if that power will be sold back to the grid with what distribution of proceeds. Mr. Rafferty confirms that 500 kilowatts are produced and lease proceeds go towards the solar power company, but lease rent goes to Legacy Land or MA'O. Commissioner Tavares questioned about the percentage of revenue generation to which Mr. Rafferty clarified that Legacy Lands gets a contribution in proportion to the contribution of the funds put in for that project.

Vice-Chair Abbott described a scenario to inquire if Legacy Lands will also profit from agricultural activities. Mr. Rafferty replied that only a few acres for 25-30 years will be taken out of agricultural production and Mr. Penn added that Legacy Lands does not share in the revenue from crops.

Vice-Chair Abbott inquired about what happens after their 25 years, to which Mr. Rafferty replied that they are required to take all their equipment off the property. Commissioners question Mr. Rafferty regarding the equipment, the current state of the property, and potential for farms to be involved.

Chair Menard asked if there are any environmental hazards associated. Mr. Rafferty replied that solar panels are present on many agricultural lands because they generally sit in place and require little maintenance. This would also build relationships with AES to ensure a decent neighbor. Mr. Rafferty acknowledged that less land would be in production during this time, but the land would still be conserved in perpetuity and that parcels of comparable size in Waianae are not available at this time.

Chair Menard asked for any further testimony from the public. Mr. Byrns came forward.

Vice-Chair Abbott asked a few questions to clarify the ray insulation area in regard to their site visit, the legacy lands property, and the neighboring property.

Commissioner Tavares voiced that the Waianae Community Redevelopment Corporation should have known about an agreement in place since 2015 and that the addition to the application does not address the objectives of Legacy Land. Commissioner Tavares asked what other benefits, besides revenue generation, may offset the negative addition to the application. Mr. Rafferty replied that open space would be available and people can volunteer to do work on the farm, though recreation would not be the highlight. Commission Tavares responded that recreation is a big focus of the commission and that agriculture is being reduced without any similar positive aspects added to it to which Vice-Chair Abbott clarified with Mr. Rafferty the percentage of the property being lost. Mr. Rafferty apologized for the oversight and Vice-Chair Abbott recalled something about the agreement being said on the site visit two years ago, but acknowledged it was an understandable oversight.

Vice-Chair Abbott expressed his support for the project if two years ago, Mr. Byrns had come with a proposal reduced by 10% but discussed a concern regarding permissible agricultural use from a State perspective. Vice-Chair Abbott articulated that many activities such as recreation are considered agricultural activities and the commission should be mindful of what specific agricultural operations they are trying to preserve in the future. Vice-Chair Abbott expressed his continued support despite the oversight.

Chair Menard asked Mr. Byrns if he would like to present. Mr. Byrns shared that the current solar licensee has requested to record the solar license agreement or a short form so they may sell to AES, the large company buying the partial and inventory. The licensee is a special purpose entity Oahu SPE101-14 LLC.

Commissioner Haase questioned the effects of the switch in licensee on the proceeds going towards Legacy Lands fund to which Mr. Byrns responded that the license agreement is not owned by MA'O so the same terms would be in place. Penn clarified additional questioning by Commissioner Haase by stating that MA'O does not own the property and will not have any revenue sharing provisions until it is the actual owner.

Commissioner Haase expressed concern approving a project that benefits the Legacy Land fund for conflict of interest reasons and with involvement of the transfer of interest to a third party. Commissioner Haase asked for the staff to look into verifying a new value subject to provisions of revenue sharing with the additional transfer. With more parties involved, it is important for all rules to be followed as Legacy's connection extends. Mr. Penn assured that the Deputy Attorney General have been looped in and Mr. Byrns responded that they have worked with Penn through the process to figure out a way to make minimal impact on the Legacy Lands Program.

Vice-Chair Abbott questioned DLNR staff whether it was possible to restructure the proposal without that portion of land and if Legacy Lands may have potential liability risks. Mr. Penn replied that they provide the grant to purchase the property but do not hold an interest in the property itself other than to ensure it is being used for which the money was rewarded. Commissioners discuss amending the original proposal and how that effects the value. Commissioner Haase requests they stick with the original, but that when staff recommend the decision to the board, they look carefully into multiple transfers of interest and that the program interests are being met.

Commissioner Warshauer inquired about the appraisal of the property to which Mr. Byrns replied that he would double check, but thought the solar license was referenced in the license. Mr. Byrns explained the benefit MA'O gains by having use of the water meter the licensee put in place because only one is allowed on the property. MA'O is also allowed to run water lines through the solar array. Mr. Rafferty clarified that the appraisal did not take into account the solar array because they were unaware of it but that a re-appraisal will take that into account and increase the value off the other two acres. Commissioner Warshauer questioned the increase in value and Mr. Rafferty explained that the price was fixed and acquired by Trust for Public Land due to pressure from the land owner and would have been purchased for another use.

Mr. Rafferty apologized to the commission on the issue but hoped that they would address the bigger picture of MA'O and the potential with acquiring this parcel as a step to moving toward their goals.

At Chair Menard's request, Mr. Penn clarified that without the Commission's recommendation, they could take it to the board without the recommendation or address the item at the next meeting.

Vice-Chair Abbott and Commissioner Tavares made requests for the future to more accurately define procedures for adjustments in land use in regard to decision-making by the commission. Mr. Penn reminded the commission the rankings of those who received the money the previous year and asked if this amendment to the application would have dropped its ranking. Commissioner Tavares expressed support for the MA'O project, but suggested all applicants be reopened for consideration if new factors need to be considered in the future.

(Part II 59:00)A speaker made an additional comment that if they had been aware of the agreement, they would have changed the application to read the true amount of agricultural land. They spent time trying to figure out who held the license, but there are many of them within the

community. The application did reflect threats from other land uses. Interest in solar is extreme and they wanted to guarantee preservation of the land for 20+ years and agricultural use in perpetuity. Projections now land at around 12 acres of agricultural land after infrastructure. Ms. Hong added that the license would only be 25 years, which is a short time in terms of the land, so the land would be protected for agriculture in perpetuity; the solar farm is just temporary. Solar also does not have poisonous side effects like other land uses.

Chair Menard asked if there was any further discussion of testimony and if the commission was ready to vote.

Chair Menard moved to recommend the board approve the amendment of the application. Vice-Chair Abbott seconded. All were in favor.

**ITEM 4. Form Permitted Interaction Groups for Field Visits  
2018-2019 Applicants for Land Acquisition Grants**

Permitted Interaction Groups

- 9 applications (one is a repeat), 8 field visits
- 4 commissioners per visit, one leader for each (each commissioner does ~4 visits), 2 alternates
- Assign groups and leaders, leaders work with program office to coordinate travel

Kapanaia (11/09) – **Hi‘ilei**, Jacob, Butch, Thorne Alt. Rick, Kanoe

Ho‘omau (11/08) – **Rick**, Kanoe, Butch, Thorne Alt. Jacob, Wendy

Hāloa ‘Āina (11/20 – 21 or 11/26-30) – **Jacob**, Hi‘ilei, Kanoe, Wendy Alt. Thorne

Mokae to Maka‘alae Lands (11/13-16) – **Butch**, Hi‘ilei, Thorne, Rick Alt. Jacob, Wendy

Waikalua Loko Ia (11/19) – **Wendy**, Kanoe, Rick, Theresa Alt. Thorne, Hi‘ilei

Kaneohe Pali to Lo‘i (11/19 combined with Waikalua) – **Kanoe**, Wendy, Rick, Theresa Alt. Thorne, Hi‘ilei

Pia Valley NAR (10/29) – **Thorne**, Wendy, Butch, Hi‘ilei Alt. Theresa, Kanoe

Haulu Fishpond (12/03) – **Theresa**, Hi‘ilei, Jacob, Wendy Alt. Kanoe, Rick

**ITEM 5. Staff Report – Pending Transactions, Budget Update, Audit Update**

Pending Transactions Update

Kamehamenui – State CIP \$3,000,000 is coming from the Land Conservation Fund but above the ceiling so grant money that has been already appropriated is not impacted.

Commissioner Haase requested to send a notification to Greenwell seeking information on their progress towards the match once the approvals are completed and the offer is sent.

Mr. Penn addressed the closing transactions:

Pu‘ukua, O‘ahu – Working on closing with Trust for Public Land.

Helemano, O‘ahu – Finished writing purchase order for our share of funding; Signing off and closing next week

- DOFAW is not claiming all Legacy Land money so \$336,000 will be going back into the conservation fund after closing (Not to be redirected to unfunded projects or to increase funding this year).

Pua‘ahala, Moloka‘i – Going to BLNR in October for approval of purchase and sale agreement

Mr. Penn addressed the discontinued transactions:

Wai‘opae, Hawai‘i – Lava interfered with the transaction so the contract was terminated. A memo was sent to put the money (\$1,330,000) back into conservation fund but has not transferred yet.

Kalua‘aha, Moloka‘i – The second appraisal was too low for the seller. A memo was sent to put the money (\$500,000) back into conservation fund but has not transferred yet.

1.8 million will be going back into conservation fund.

Commissioners questioned the status of Kūka‘iau ranch to which Mr. Penn followed:

- Unknown status regarding the unearthing of bones on the property remains.
- TNC is looking to transfer the conservation easement to FWS because the AG wanted a government entity to hold the easement.
- The appraisal value must be comparable to the amount available by the state to participate in the deal.
- Federal funds are lost in December so they must work quickly to put this through.

Budget Update – Approved by the Chair

Audit Update – Inform Auditor of Mr. Penn’s upcoming absence.

- LLCP is currently waiting on the report and then has a week to respond, but if portions address the function of the commission, they should be discussed at a future meeting.

Native Hawaiian Law Training – December 7<sup>th</sup> on Maui

Required within 1 year of appointment, each year of term to be safe

- Commissioner Tavares will go
- Commissioner Haase to go on next ethics training

Must register through the law school.

Leah Laramée will be taking control of LLCP communications on temporary assignment while Mr. Penn is absent.

## **ITEM 6. Chair’s Report**

Chair Menard acknowledged the passing of Marjorie Ziegler who formerly served on the commission during 2017 and 2016. She was a conservation warrior, researcher for the Sierra Club Legal Defense Fund, graduate of the geography department, member of the City and County Clean Lands Commission, and executive director for the Conservation Counsel for Hawaii.

Chair Menard announced her stepping down from the commission in December due to work obligations concluding a 5<sup>th</sup> year of applications.

The commissioners agreed to meet in the same location in December.

Mr. Penn shared that the Commission still has a vacancy for a member of an environmental organization and that three vacancies will be open July 1<sup>st</sup> following the stepping down of Chair Menard and Vice-Chair Abbott. LLCP wants to get applications now so the Governor can go to the legislature to get confirmation this session to be ready by July 1, 2019. The guidelines need one person from each county and the governor's message states the appointment for each term.

**ITEM 7. Process, timeline, and materials for grant applications and Commission recommendations, Fiscal Year 2020 and beyond.**

Mr. Penn explained the 2 components of discussion on this item.:

- Changing the timeline of the grant application cycle to issue the recommendation before taking a budget request to the legislature for the following fiscal year. This better answers questions regarding what the money will be spent on regarding applications.
- Changing the content of the applications.

Mr. Penn shared that it did not have to be decided today, but could be revisited in the December meeting.

Commissioners viewed the new drafted timeline.

Commissioner Haase noted that if they choose to move forward, a recommendation should be made that the notification gets sent out ASAP regarding potential new deadlines for the applications. Mr. Penn replied that it would still be subject to the chair's approval and he would rather announce a definitive decision.

Commissioner Haase brought up previous discussions regarding adding a box for hazard zones within the application. Mr. Penn informed that additional questions were added regarding different types of hazards including seismic, lava inundation, sea rise exposure, etc. but refinement is needed.

Vice-Chair Abbott requested clarification regarding the July 19, 2019 legislative consultation to which Mr. Penn responded that the commission makes its decision in May, then the budget is effective on July 1<sup>st</sup> and they can go to the President of the Senate and Speaker of the House and present what the commission recommended. Usually this consultation is in the form of letters back and forth.

Mr. Penn brought up the objective to have recommendations ready before the legislature session starts. To hit this goal by 2021, both the 2020 and 2021 application processes would be running at the same time.

Key points to this discussion among Commissioners and Mr. Penn:

- The statute says there is an annual application process (not clear whether calendar or fiscal).
- Commissioner Haase voiced that projects may not be ready to apply this year and does not want to deprive them of an opportunity to gain funding for the following year.



- Vice-Chair Abbott commented on the positive effects of aligning their timeline with the legislative session such as evidence that there is a higher demand for funding than the money allows, examples of projects that may relate to particular legislators, and promotion for the program.
- LLCP can put in a supplemental budget request for fiscal year 21 and have another application process based on the additional funding. However, they cannot get BLNR approval for fiscal year 21 until July 1, 2020.
- Mr. Penn clarified with the commissioners the following schedule:
  - The project deadline is moved up and the process to solicit projects for 2020 starts in January.
  - At the same time, projects for 2021 are requested.
  - Chosen applicants will be presented to the legislature before the 2020 session, which sets the budget for 2021.
  - In order to incorporate the Commission's recommendations in the budget request for FY21, they need to have a recommendation by September 2019. The Commission will have between May and August to make that decision for FY21.
  - Projects will need to submit for FY 21 before March 29<sup>th</sup>, 2019 deadline.
- Vice-Chair Abbott questioned whether this new system would be better from a management standpoint to which Mr. Penn replied that it works better for staff because they have more time during the fiscal year to take care of all the transactions.
- Commissioners discussed the difficulty of having to do double the amount of site visits within a short period of time and question if during the transition year, the timetable can be expanded a few months. Mr. Penn replied that it may be a possibility.
- The Commissioners discussed possible difficulties in duplicate applicants that are applying for both years.
- Commissioners expressed concerns with projects meeting their match funding.
- Mr. Penn explained that legislature (CIP money) is good for 2 years and there is a way to extend it and federal funding is good for 2-3 years up front and can renew up to 5 years or sometimes more.
- Chair Menard questioned the affects of partial funding in FY 20 on their application for the following year. Mr. Penn responded that they have a project summary sheet of total cost and matching funds and amend the application on the submittal of the application. Chair Menard reiterates the process of one round of voting and then giving them the opportunity to adjust the total before the next round of voting.

Commissioner Haase moved to recommend the board approve the new proposed schedule and upon approval, notification is sent out to the pool of applicants, organizations, and entities of Legacy Land. Commissioner Tavares seconded. All were in favor.

Commissioners reviewed the application materials for future applicants.

Mr. Penn noted the following changes that would like to be made within the application process:

- Applicants requested clearer instructions about how to convey multiple tax map key parcels involved.
- A Maui applicant wanted to know how to explain land donation of parcels as a match.
- Clarification of what kind of maps and photos to include with form 5 is needed.

- How to provide information to sellers and real estate agencies about the process?
- Special instructions should be specified for state grantees but that may be a change in the Board's policy as opposed to the program's procedures.
- One of the Commissioners requested identifying the source of the title to the land.

Vice-Chair Abbott requested that rural state land use is mentioned and that sea level rise exposure area (SLXRA) is also included. He also requested the SNA reference area uses the Office of Planning website to parcel specifically.

Commissioners expressed difficulty with the application portal and requested a PDF document on a flash drive. Mr. Penn informed that we are not allowed to plug them into the State computer and that some of the application files are huge to which the Commission asked if they can be condensed in some way. Mr. Penn replied that the leader of PIG are asked to pay extra attention to their applications.

The Commission decided to hold the next meeting on December 10<sup>th</sup> and 11<sup>th</sup> in the same location.

Meeting is adjourned.