

**2019 Legacy Land Conservation Commission Minutes, Meeting 64  
State of Hawai'i Department of Land & Natural Resources, Division of Forestry & Wildlife**

**DATE:** April 22, 2019  
**TIME:** 8:45 AM  
**PLACE:** DLNR Board Room 132  
Kalanimoku Building  
1151 Punchbowl St.  
Honolulu, Hawaii 96813

**COMMISSIONERS PRESENT:**

Mr. Thorne Abbott (Chairperson)  
Mr. William "Butch" Haase (Vice Chairperson)  
Mr. Frederick Warshauer  
Ms. Angela Hi'ilei Kawelo  
Mr. Jacob Tavares  
Ms. Wendy Wiltse

**COMMISSIONERS CONFIRMED TO BEGIN IN JULY PRESENT:**

Ms. Beryl Blaich  
Ms. Kai Lucas

**STAFF:**

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

**NOTETAKERS:**

Katarina Ruiz  
Jamie Gruenwald

**PUBLIC:**

Lea Hong (The Trust for Public Land)  
Raeanne Cobb-Adams (The Trust for Public Land)

**MINUTES:**

**ITEM 1. Call to Order**

Vice Chair Abbott called the meeting to order. Mr. David Penn stated the meeting was properly noticed according to the Public Notice by Subsections 92-7(a), (b), and (e), Hawai'i Revised Statutes and Quorum was present by Subsection 173A-2.4(b), Hawai'i Revised Statutes. Introductions were done of the commission, staff, and other attendees.

**ITEM 2. Elect Chairperson and Select Vice Chairperson**

(Subsection 173A-2.4(a), Hawai'i Revised Statutes and Section 13-140-15, Hawai'i Administrative Rules)

Commissioner Haase nominated Vice Chair Abbott for Chairperson. Commissioner Tavares seconded. All were in favor.

Chairperson Abbot nominated Commissioner Haase for Vice Chair. Commissioner Warshauer seconded. All were in favor.

**ITEM 3. Program Updates (Staff report in Board Packet**  
**a. Incoming Commissioners/Commissioner Trainings**  
**b. Budget/Legislature**  
**c. Properties Conserved**  
**d. Staff Activities**

a. Incoming Commissioners and Commissioner Trainings

Mr. Penn announced that Commissioner Tavares was reconfirmed for a second term starting in July. Ms. Kauai Lucas was confirmed for a 2 year appointment starting on July 1<sup>st</sup>. Beryl Blaich, representing Kauai, is confirmed for a 2 year term and John Sinton, returner to the commission, was confirmed for a 4 year term. Mr. Penn emphasized the goal to have as much overlap as possible in the qualifications so adequate representation continues across the commission.

Mr. Penn informed commissioners of the mandatory Native Hawaiian Law training on June 7<sup>th</sup> required within 1 year of appointment. The General Ethics training held on O‘ahu on May 17<sup>th</sup> and October 22<sup>nd</sup>, and Maui on May 3<sup>rd</sup> with sign-ups through the State Ethics Website was also recommended. Mr. Penn addressed the possibility of a Sunshine Law Training or hosting a parliamentarian to train the commission on the parliamentary procedures and Robert’s rules of order.

Mr. Penn noted that staff will be attending the Hawaii Congress of Planning Officials in Maui from September 11-15 and Chair Abbott inquired about LLCP participation and volunteered his help. Mr. Penn shared that they plan to organize a panel and have county representatives from the open space funds have a forum focusing on the resource land acquisition plan, LLCP partners, and purposes for which the funds can be used. Mr. Penn also mentioned LLCP’s participation in the Hawaii Agriculture Conference from October 15-16. Commissioner Tavares volunteered his help with this conference. Site visits and LLCP meetings need to work around these events.

b. Budget/Legislature

Mr. Penn shared that the bottom line is \$4,414,125 for the recommendation. The appropriation is \$6,965,748 million for FY 19 including \$1.5 million in debt service to Turtle Bay, \$659,485 for the Greenwell Garden Grant (a partial award for 2018), \$223,354 in payroll (currently operating at 2-3% but can be up to 5%), and 0.2 FTE for RCUH hire (Casey Ching) to assist.

Vice Chair Haase inquired about the bills during the legislative session that affected Legacy Land and Mr. Penn responded that the base budget only will be the biennium budget and will return to \$5.1 million for FY 20 and FY 21. They may come back to FY 21 with a supplemental budget request, but they did not pull the Turtle Bay Debt Service from the money available for grants or from the application process.

Chair Abbott brought up the bill to raise the management grant from 5% - 25% and to raise the spending limit from \$6.6 million to \$8.8 million. However, it was bottlenecked at Water, Land,

and Hawaiian Affairs and did not make the schedule. Chair Abbott submitted testimony in support as a private citizen. The bill will remain dormant until next year but Chair Abbott wanted to remind people they should have the ability to make these recommendations.

Mr. Penn informed the commission that the board will take action on approving the grants the following Friday with two submittals, one for Turtle Bay with additional authority delegated to the Chair to do approval in subsequent years, and one for all the other grants based on the commission's recommendation. Written testimony is accepted until 24 hours prior to the meeting.

Chair Abbott asked about the \$156,176 difference between the maximum available and the recommendation and Mr. Penn informed that it pertained to where the commission drew the line on the recommendation to stay within the amount of funds available. Chair Abbott questioned where the \$156,176 difference goes and Mr. Penn confirmed that it stays in the Land Conservation Fund but is not available for spending in current fiscal year. For FY 20, the budget will be the \$5.1 million base budget, but FY 21 may include a supplemental budget request based on the next round of applications (including applications for FY 21). A commission recommendation will be decided before budget request for FY 21 is submitted. Vice Chair Haase inquired about recommending the Board to approve funding above the spending ceiling in the case of time-sensitive acquisition possibilities exceeding their budget capabilities and Mr. Penn responded that the commission may advise the legislature of the situation but would have to work through department protocols to have the budget request go in. Chair Abbott and Vice Chair Haase also discussed the audit's recommendation not to spend funds that are not available.

Mr. Penn addressed that roughly \$109,000 is left for administrative expenses and LLCP is looking to use a majority of the money for a new contract with UH to help with the new resource land acquisition plan. Originally, LLCP planned to use FY 20 and FY 21 funds for this, but the money is available now. If funds are not used, they stay in the Land Conservation Fund unavailable for spending until the legislature does another appropriation.

c. Properties Conserved

Mr. Penn presented the following updates on FY 19 properties conserved.

**Pu'ukua, O'ahu** – Property at Waimea Valley with Hewahewa Ohana to be acquired by Hi'ipaka LLC, a subsidiary of the Office of Hawaiian Affairs. The contract underwent revision to cover the disposition of the property given the termination of the LLC. Chair Abbott noted that the Chair appreciated the invitation from the Trust for Public land to participate in the opening.

**Pua'ahala Watershed, O'ahu** – Property on the South shore of Moloka'i to be acquired by the Division of Forestry and Wildlife. They are currently going through the due diligence process due to some potential environmental contamination in the coastal area. Commissioners had questions about the project and Mr. Penn referred them to the DOFAW contact on the project, Katie Ersbak.

**Kamehamenui, Maui** – Property in Kula, Maui that the Division of Forestry and Wildlife is working with the Trust for Public Land to acquire. They include capital improvement and bond appropriation from the legislature and are in the due diligence phase. DOFAW requested \$3 million above the spending ceiling for this project which was approved by the legislature. However, there are now environmental concerns. The commission questioned Mr. Penn about the process by which DOFAW received funding from the Land Conservation Fund approved by

the legislature above the funds available for the commission's recommendation. Vice-Chair Haase inquired about ensuring fair access to public funds by the public, to which Chair Abbott reminded would come later in the agenda. Commissioner Tavares added that DOFAW emphasized their goal to acquire the property with or without Legacy Land funds. Mr. Penn informed that the lead person for the acquisition is Ms. Irene Sprecher or Ms. Tanya Rubenstein.

Vice Chair Haase noted that within the auditor's report on the grand awardees list, 08-05 for Kawaikapu on Molokai, "Maui Coastal Land Trust" should be corrected to "Molokai Land Trust".

Mr. Penn presented the following updates on FY 18 properties conserved.

**Ma'o Farms, O'ahu** – Legacy Land is working to finish the contract to get funds encumbered by the end of June. The contract will include special language incorporating the board's approval of sharing revenue stream from the solar farm license.

**Greenwell Garden, Hawai'i Island** – The contract is predicted to that day or the following day and will be sent out for processing over the next couple of months.

Mr. Penn presented the following updates on FY 17 properties conserved.

**Waikapuna, O'ahu** – The County of Hawai'i, the Ala Kahakai Trail Association, and the Trust for Public Land came back to the commission to discuss a wastewater treatment facility on the property that would greatly benefit the community of Na'ālehu. Their application was amended and LLCP is working with the parties involved. They've encountered some due diligence issues but the site remains stable under the contract as long as they keep renewing it and process the amendments accordingly.

**Kepler Keanae Lo'i, Maui** – The contract is currently being processed.

**Makahanaloa, Hawai'i Island** – This land acquisition is a 1700 acre parcel, narrow strip of ahupua'a in Hilo next to Kaiwiki Forest Reserve. Another parcel also owned by a spinoff of Finance Factors is directly mauka extending up to Hakalau Wildlife Refuge. This acquisition increases access to Kaiwiki Forest Reserve and acreage of contiguous public hunting area. It started as a CIP project for DOFAW but the legislature switched it over to the Land Conservation Fund. The acquisition is still in the process of being negotiated with the landowner.

Mr. Penn presented the following updates on FY 15 properties conserved.

**Pupukea Mauka, O'ahu** – State's acquisition of Waimea Forest is moving ahead, but it is undetermined when they will close.

**Hakipu'u, O'ahu** – The acquiring organization returned to the commission with a request to replace the original grantee with a new grantee. The final documentation from the new grantee to finalize the contract amendment is finished and the acquisition is set to be completed soon.

**Kokua Kalihi Valley, O'ahu** – The organization has extended their contract again, but LLCP is unaware of the status of the acquisition.

**Ulupo Heiau Buffer, O'ahu** – The State and the landowner (YMCA) are still undergoing negotiations. Subdivision is being considered due to the issues with activities, parking, drainage,

and historic and cultural concerns. Mr. Penn volunteered to reach out to the lead within DOFAW, State Parks, or Land Division of the acquisition if the Commission required more details. Chair Abbott expressed concerns about the subdivision and volunteered to assist if needed.

Mr. Penn addressed discontinued grants.

**Upper Kūka‘iau Ranch, Hawai‘i Island** – The acquisition is no longer occurring and the money is coming back into the Land Conservation fund from the Trust fund. The property was a DOFAW initiative with a conservation easement held by The Nature Conservancy consisting of 4000+ acres on the slopes of Mauna Kea above Paauilo with an old Koa forest previously cleared for ranching. Matching funds were provided by US Fish and Wildlife Service (USFWS) and National Fish and Wildlife Foundation (NFWF) due to Palila critical habitat at the top of the parcel. Two LLCP grants from FY 2016 and FY 2017 totaling \$700,000 and a previous grant from FY 2012 were received but landowner and State were unable to agree on terms of the deal. Commissioner Warshauer inquired about implications for the completion of the fence around the Mauna Kea Forest Reserve to which Mr. Penn responded that historic concerns limit the construction of the fence but discussions with the landowner to fence on the ranch lands without property ownership are ongoing.

**Ka‘ena, O‘ahu** – The property under acquisition was a cove near Ka‘ena Natural Area Reserve. The private landowner intended to donate it, but the State could not accept the donation due to back taxes on the property. North Shore Community Land Trust stepped in and paid the taxes on the property allowing it to be successfully donated to the State without LLCP funds needed.

Mr. Penn explained the new procedures implemented by the Chair to seek board approval for LLCP grants that were awarded over 5 years ago. The two that were reviewed were the Ulupo Heiau from 2013 and the Kukuipahu Heiau from 2009. The Board voted to pursue Ulupo Heiau but terminated the Kukuipahu grant for \$7,000. All transfers back into the Land Conservation fund were completed. Upon Board approval, two State awardees will have money from the Land Conservation fund transferred to the trust fund and the other two awardees will go through the process to encumber funds for the next fiscal year.

Chair Abbott asked for questions or comments from the public. None were presented.

d. Staff Activities

Mr. Penn shared that it was a busy legislative session in regards to written testimony, bills, and the budget process. The Helemano acquisition resulted in a small stream of revenue for the Land Conservation fund due to a rancher on the property allowed to continue his/her work following the acquisition. Ma‘o Farms has a similar situation with their solar license agreement. To address issues regarding conservation easement requirements for the department, Attorney General, Julie China, and Mr. Penn will be attending a conservation easement-focused symposium in June after which they will come back to the commission to further discuss how to address easements moving forward. The commission discussed requiring more information about the planned conservation easements upfront in the application to which Mr. Penn and Vice Chair Haase informed that it would be difficult and expensive for the applying organizations to do so. The commission further discussed how conservation resources under protection with each acquisition should be identified and that those drafting the in-perpetuity conservation easement should be looking ahead to comply with changing county codes and rules. Mr. Penn explained how it is most convenient if there is an existing conservation easement in place and a baseline

report can be presented. Mr. Penn clarified the following: 1.Land acquisition grants without conservation easements are those where the State or County is acquiring the property in fee 2.A private land conservation organization can hold an easement over the property of another organization and 3.A branch of the State cannot hold an easement over its own holdings.

Mr. Penn addressed the Senate Concurrent Resolution asking DLNR to create a “hall of fame” and induct the late former commissioner Marjorie Ziegler. Vote will be soon. No other comment or question on Agenda Item #3.

Chair Abbott proposed to switch the order of the agenda Item 6 “Form Permitted Interaction Group for Turtle Bay Makai Field Visit” and Item 4 “Discussion and Possible Recommendations” then to revisit item 3a “Incoming Commissioners” to accommodate to Commissioner Wiltse’s late arrival. All were in favor.

**ITEM 6. Form Permitted Interaction Group for Turtle Bay Makai Field Visit**  
(Subsection 92-2.5(b)(1), Hawai‘i Revised Statutes)

Mr. Penn explained how the Permitted Interaction Groups (PIG) are a requirement under the Sunshine Law for commissioners to do investigations to report back to the commission. The process includes 3 public meetings: 1. Establish the PIG 2. Present report with no discussion or questions 3. Deliberation and action. The commission discussed who would go on the site visit. Without knowing the final date for the visit, the commissioners decided that Commissioner Wilson would be the lead, with incoming commissioners Kauai Lucas, Beryl Blaich, and John Sinton, if available. The alternates are Commissioner Warshauer and Vice Chair Haase. The commission shared with the new commissioners the role of the lead (to put together the report and coordinate the visit) and the purpose of the visits (to investigate the application).

**ITEM 3a. Incoming Commissioners/Commissioner Trainings**

To revisit Item 3a Chair Abbott invited questions from the incoming commissioners present, Kauai Lucas and Beryl Blaich.

Ms. Lucas asked for clarification between special funds and Mr. Penn explained the difference between the Land Conservation Fund and the DLNR Trust fund for State land acquisitions and how/when the money is transferred between the two when deals close or fall through. Ms. Lucas questioned the cycle of how money goes to and from the Land Conservation fund and Vice Chair Haase described that money not used goes back into the Land Conservation fund and remains until future allocation by the legislature, but will eventually go towards land acquisition according to Statute. Commissioner Warshauer referred back to the spending ceiling discussion and how the Commission has a limited amount available to grant each FY despite the amount in the fund. The Commission explained how they can only recommend a portion of the total \$20 million in the Land Conservation fund and Mr. Penn explained the overall process of how LLCPC requested an increase in the spending ceiling. Vice Chair Haase added that individuals can reach out to their congressional delegation and request changes in the rules as well. Mr. Penn and Chair Abbott reiterated that the allocated amount includes Turtle Bay debt service and administrative costs so the remaining amount is what is available for funding.

Mr. Penn clarified that the State can also receive money for acquisition through the legislature as a CIP request in which case the money can come from general funds, the Land Conservation fund, or wherever the legislature ultimately decides. Chair Abbott explained the ranking process for the advisory recommendation by the commission but that the Board of Land and Natural Resources (BLNR) has to approve it and that DOFAW may also make their own recommendation (to be discussed in the later

portion of the meeting). Ms. Blaich inquired about the role of contracts and Mr. Penn laid out the process by which approvals for the acquisition are made, contracts are properly drafted and accepted, and the money is encumbered and processed. Using a previous circumstance as an example, Mr. Penn demonstrated how the legislature could approve a bill allowing property to be acquired by the State using Land Conservation funds above the spending ceiling or how a branch of DLNR could go to BLNR and directly request an acquisition using money from the Land conservation fund. Commissioner Warshauer inquired about the fastest pathway for the State to acquire land and Mr. Penn described some other options, all of which take time. Ms. Lucas asked how much the Turtle Bay Debt Service total is and LLCP and the commission were unsure.

Break for lunch.

Chair Abbott called the meeting to order. Chair Abbott made a motion to move up Item 5. “Application Deadline, Meeting Schedule, and Field Visit Schedule”. Vice Chair Haase seconded. All were in favor.

#### **ITEM 5. Application Deadline, Meeting Schedule, and Field Visit Schedule**

Chair Abbott invited Mr. Penn to inform the commission about the application. Mr. Penn informed that the application deadline is not yet announced, but opening up the application period is LLCP’s first priority. The initial decision-making meeting was set for the week of September 9, 2019. Mr. Penn went through the timeline of the entire process from the application period, to establishing PIGS, to coordinating and enacting field visits, to decision-making. Due to feedback and the deliberation of two-cycles worth of applications, the decision-making meeting will be scheduled for 2.5 – 3 consecutive days. Mr. Penn explained the objective for reviewing the next two cycles of applications at once would be to present the commission’s recommendation with the budget request for the following legislative session. This would put the LLCP application schedule on track for the following fiscal year.

Mr. Penn shared that orientation materials would be distributed to incoming commissioners for travel, scheduling, etc. He reiterated the requirement of the Native Hawaiian Law training course, Ethics training, and Oath of office prior to service. The aim is to get applications out by April 30<sup>th</sup> and have them due by July 30<sup>th</sup>. Commissioners expressed that because there are two years-worth of applications, applicants should be given as much time as possible. Mr. Penn emphasized the importance of completing the recommendation by the first or second week of September to have the final number for when the budget meeting process starts. Mr. Penn suggested adjusting the draft schedule to make July 22<sup>nd</sup> the application deadline. Commissioners talked over possible dates for the next meeting.

Vice Chair Haase moved to set the date of the next meeting on Tuesday, July 30, 2019. Commissioner Wiltse seconded. All were in favor.

The commission discussed their concern of the time crunch for field site visits given their evaluation of two fiscal years of applicants. The commission also noted the scheduling difficulties for last years’ field visits and requested more staff assistance with the next round of visits. Mr. Penn confirmed that the field visit schedule will be established on July 30<sup>th</sup> and visits can start on August 5 ending on August 30 or September 6.

Mr. Penn laid out rough future meeting agendas:

Meeting 65: Hear the Turtle Bay PIG report

Meeting 66: Vote on Turtle Bay and schedule PIG visits based on applications (same day as 65)

Meeting 67: Hear PIG reports

Meeting 68: Decision making (back to back with 67)

Vice Chair Haase clarified with Mr. Penn that more time will be given for the PIG reports and decision-making meetings than the standard 2-day allotment. Commissioners discussed possible dates and locations for meetings 67 and 68. Chair Abbott made a motion to have meetings 67 and 68 over the course of September 4-6. Vice Chair Haase seconded. All were in favor.

Commissioners discussed scheduling for site visits. Vice Chair Haase shared that he is only available during the first and last week of August, Commissioner Kawelo shared that she will only be available the last two weeks, and Commissioner Wiltse shared she is unavailable the first week. Mr. Penn reviewed logistics of the site visits with commissioners including how each commissioner should be the lead on at least one and the need for 1-4 commissioners on each visit should be present. Vice Chair Haase requested that LLCP have a proposed schedule for next round of applications to present at the July 30<sup>th</sup> meeting so commissioners can plan accordingly. Chair Abbott voiced the difficulties in having commissioners coordinate and plan the field visits. Mr. Penn noted commissioners' concerns.

Schedule recap:

April 30 – Application period opens  
July 22 – Application period closes  
July 29 – Turtle Bay field visit  
July 30 – Meeting 65 and 66  
September 4-6 – Meeting 67 and 68

**ITEM 4. Discussion and Possible Recommendations  
Audit Report No. 19-01, Land Conservation Fund**

Mr. Penn introduced the audit report and the recommendations made regarding LLCP.

The single recommendation to pertaining to the commission was: “Legacy Land Conservation Commission should limit the amount of the grants that it recommends to be funded from the Land Conservation Fund to the anticipated balance of the amount appropriated by the legislature for the fiscal year. The Commission should not recommend awards that exceed the anticipated balance of the current fiscal year appropriation.” The department’s response indicated disagreement with the suggestion due to current efforts by LLCP to rework their scheduling to present a recommendation with the legislative budget request. The Commission and Mr. Penn discussed altering language of the recommendations to indicate to BLNR the projects worthy of funding despite the spending ceiling which limits the amount of projects they can recommend. Mr. Penn referred to the board submittal for the FY 19 projects which demonstrate similar language, but reminded that because the Commission is advisory, they can say whatever they want. It is ultimately up to BLNR to not approve award money that is unavailable.

Ms. Hong inquired how long each award stays on the books before being recycled back into the Land Conservation fund. Mr. Penn informed that the State (as approved by the Chair) or the grantee can terminate the contract for use of LLCP awarded funds at any time. If the deal doesn’t close, the money will be unencumbered and go back into the Land Conservation fund. Mr. Penn shared that the auditor compared LLCP with the Forest Legacy program’s 5-year timespan and LLCP agreed to go back to BLNR for projects that have extended over 5 years for approval to continue or to terminate. Chair Abbott reiterated the need for individuals to take time during the legislative session to make their representatives aware of the projects in their district which could potentially be awarded funds.

Another recommendation stated “Legacy Land conservation program should provide commissioners with background information and history on each applicant including how many grants they have received from the Legacy Land Conservation Program, how long it has taken them to complete projects, and any outstanding or discontinued projects.” Commissioner Warshauer questioned which organizations this



referred to given that many small community groups partner with larger organizations such as Trust for Public Land when applying. Mr. Penn informed that whoever is listed as the applicant should provide that information, but usually the partners, which are typically larger organizations, also include their background and history of successes. Chair Abbott confirmed that the purpose of this addition would be to assess an organization's capacity to fulfill the acquisition and due to familiarity with many of the larger organizations, a broad, open-ended question added to the application would suffice. Mr. Penn reminded the commission of the specific information requested by the auditors including grants received, amount of time to complete each project, and outstanding/discontinued projects. Commissioners discussed the purpose and need of this information, what implications could be made for the applicants based on it, and how it could be verified by LLCP staff. Vice Chair Haase suggested LLCP provide commissioners with State-reported histories of each applicant with Legacy Land funding. Vice Chair Haase and Commissioner Tavares voiced how additional information may not be needed due to the voluntary inclusion of management plans in the applications, site visits, and overall process of the commission. Mr. Penn clarified the recommendation by the Commission for LLCP to provide additional track record information for each of the applicants.

The Commission discussed the next recommendation to "Develop clear and well-defined policies and procedures between the Legacy Land conservation Program and DOFAW regarding distribution of Land Conservation Fund moneys. For instance, DOFAW should follow Section 173A-5 HRS, and submit a grant application to receive funding rather than submit a budgetary request." In response, the department questioned why DOFAW was singled out among all state agencies and noted that it would inhibit legislator's abilities to advocate for their constituents for CIP requests. The availability of multiple state funding options for state land acquisition provides flexibility enhancing the state's ability to fulfill its statutory purpose. Commissioners discussed the authority of DOFAW to present their own recommendations to the board and how this may be an unfair advantage to private nonprofit conservation organizations. Chair Abbott and Vice Chair Haase expressed support for DOFAW as a public agency managing public assets. Commissioner Warshauer inquired about DOFAW going to the legislature to use funds above the spending ceiling to not compete with the general pool and Mr. Penn responded that they typically look at many options of funding to increase their chances and that LLCP projects have also been submitted as CIP requests in the past by legislators.

Mr. Penn inquired with the Commission as to strategies to managing the surplus of money currently within the Land Conservation fund and how much they'd like to keep in the cash balance for a "rainy day". Commissioner Tavares suggested exploring language that could allow for an exception to standard procedures to gain access to more funding in the event of a once in a lifetime situation for a nonprofit or the county. Vice-Chair Haase stated that the safety net should be increased to 20-25% of the current value which would fall around \$5M. Chair Abbott recommended that a strategy is developed for circumstances such as Turtle Bay where the funds of the program were used for circumstances appropriate to the program without the Commission being directly involved.

Mr. Penn brought up the Resource Land Acquisition Plan to receive input from the Commission. A rough timeline was shared with the Commission to complete the plan and address the auditor's recommendations within 2 years. Mr. Penn inquired how to proceed, what to include, and the overall scope of the plan. The Resource Land Acquisition Plan will guide BLNR in acquiring land in the exercise of its power, whether through LLCP or otherwise, and needs to contain information required to do so. Commissioner Warshauer noted that it's the applicants that provide the information that goes under review and generally do not follow any plans. Vice Chair Haase proposed developing a statewide greenprint of a conservation resource evaluation and Ms. Blauch added that the information may exist but may only be shared internally within organizations such as HILT, TNC, TPL, etc. Chair Abbott

articulated support of the Commission's current process and confidence that they have a criteria/plan allowing them to decide which lands to protect on a project to project basis though it may not be formally laid out in a plan. He also recommended skipping the RFP to develop the scope of the work and "just doing the work". Vice Chair Haase noted that within the RFP, a scope of work can be provided and they can choose the scope of work through the proposals. Commissioner Warshauer recommended using the plan to focus on the process and procedures rather than properties of priority for protection. Mr. Penn spoke about efforts on the staff side to pull language addressing resource land acquisition from an inventory of planning documents. In regards to a large contract, it helps to write a scope of work for a smaller contract first so there's something to work with when they put out for the larger bid. Commissioner Kawelo expressed that despite the prioritization of land, it's important to make sure there are people with the capacity to care for and manage it. Commissioners agreed that the people part of the equation is as equally important. Commissioner Kawelo supported a smaller-scale plan both affordable and could satisfy the auditors request. Mr. Penn reiterated to the Commission the need to brainstorm what type of guidance the board should be provided with in this plan, the interim solution being other insightful plans posted to the website to identify possible priority areas for conservation. Commissioner Warshauer proposed looking at this plan with two different lenses, priorities of DLNR and priorities of local communities to present to the board the value of each approach. Chair Abbott and Commissioner Tavares discussed the Important Ag Lands (IAL) designation and how they may be addressed as priority acquisitions. Mr. Penn shared that the costs for the contract for the Resource Land Acquisition Plan would come from additional leftover money in FY 20 and the spending ceiling increase in FY 2021. Commissioner Warshauer expressed concern that a lot of time and money would be put into the planning process only to not be used or consulted once completed. Chair Abbott noted the consequences of having to address a concrete plan which leaves little room for rare circumstances, like Pia, that may be beneficial acquisitions without being priorities according to the plan. Vice Chair Haase emphasized the community support within each application which serves to preselect the priority lands for each community. Vice Chair Haase shared his organizations ranking system for land acquisition and proposed a similar, quick assessment way to rank each parcel/project.

In conclusion, Mr. Penn shared the auditor's final response. "If the Legacy Land Conservation Program's purpose is to award grants to protect and preserve as much land as possible through acquisition and management, the legislature should consider increasing the fund's appropriation ceiling to a more appropriate level. However, this change should be contingent upon significant improvements to the programs management of the fund and administration of its grants." The other component in regard to the plan, "Importantly, a proper resource land acquisition plan will likely help to address our observation about the competing recommendations for the use of the Land Conservation Fund. As we observed, DOFAW and the department had substituted its opinion for that of the Legacy Land conservation Commission and its nine Governor-appointed, Senate confirmed members by recommending grant awards and other uses of the Land conservation Fund that are contrary to the Commission's recommendations or outside of the Legacy Land Conservation Program grant process. Without a clear and consistent land acquisition plan, DOFAW, DLNR, the Commission, and the Land Board have no resource to prioritize projects competing for funding from the Land Conservation Fund.

Vice Chair Haase noted that the process of the Commission ranking the projects and making recommendations to BLNR should remain. He also communicated that should a DOFAW project not be

ranked, that they should come to the Commission again presenting the CIP request and their intend to use money from the Land Conservation fund through other options to make the process as transparent to the public as possible. Mr. Penn informed the Commission that they are not allowed to speak publically about what happens in the division's budget process until its presented in the Governor's executive budget and reads the statute to address this. Chair Abbott suggested discussing the land's benefits and outcomes under these circumstances without addressing the money aspect. Vice Chair Haase suggested involving the executives of the Commission (Chair and Vice Chair) in the decision process, without a public meeting, and brainstormed other ways to work together to come up with a non-competitive solution. Commissioner Tavares added that he wants to ensure the process they take as a Commission is kept and that all agencies keep the overall purpose of the Legacy Land Conservation Commission in mind. Commissioner Kawelo reiterated that the auditor's recommendations are just that and not necessarily demands.

Chair Abbott went over the recommendations:

1. Prepare and implement a Resource Land Acquisition Plan to comply with Section 173A-3, HRS.
2. Develop and implement written policies and procedures – including internal controls – governing the grant award and blanket encumbrance processes to ensure that project contracts are executed on time and blanket encumbered funds do not lapse.  
Chair Abbott expressed gratitude to DOFAW staff, despite policy that could be cleaned up.
3. Develop clear and well-defined policies and procedures between the Legacy Land Conservation Program and DOFAW regarding distribution of Land Conservation Fund moneys. For instance, DOFAW should follow Section 173A-5, HRS, and submit a grant application to receive funding rather than submit a budgetary request.
4. Work with the DLNR fiscal office to request the Department of Accounting and General Services to return the \$684,526 in administrative fees erroneously paid to it in FY2016 and FY2017.  
Mr. Penn mentioned that he knew there was something suspicious about that originally and started asked questions when he first started working with LLC.
5. Maintain a record of the transfer of funds to and from the DLNR trust account and report these transactions to the Governor and the Legislature in the program's annual report as required by Section 173A-5(1)(2), HRS.
6. Review personnel spending and position assignments and implement changes as needed to ensure that Land Conservation Fund moneys are used for only for administrative and other costs directly related to the Legacy Land Conservation Program.
7. Maintain a centralized file system and establish a records retention policy for all awarded projects, including pending, completed, and discontinued projects.  
Mr. Penn noted that he tried to make clear to the auditor that there was not a central file system and things do not happen similarly between DOFAW and Land Division. However, they do have a better understanding of the Land Division file-keep system of State land acquisition and need digital scans from the library to incorporate to DOFAW's library.
8. Implement a policy that places a reasonable limit on the time a project, whether proposed by State, county, or nonprofit organization, can remain pending.
9. Provide commissioners with background information and history on each applicant, including how many grants they have received from the Legacy Land Conservation Program, how long it

has taken them to complete projects, and any outstanding or discontinued projects – a practice employed by the Federal Forest Legacy Program to help its panelists make final decisions on project recommendations.

Chair Abbott reiterated their agreement to encompass the history of the applicant.

10. Post Commission meeting minutes in compliance with the Sunshine Law.

Chair Abbott requested that meeting notes get posted more quickly.

11. Promulgate administrative rules to implement the above recommendations.

Chair Abbott encouraged that although the audit recommends not spending money they don't have, that they should take advantage of opportunities. He added that legislative improvement should focus on increasing the spending ceiling.

Mr. Penn added that it is not for the staff, division or department to advise on how to work with the legislature, but that there is strength in numbers around a particular issue or organization.

Meeting Adjourned at 4:15 PM

DRAFT