



Clean Water And Natural Lands Advisory Commission

CITY AND COUNTY OF HONOLULU

530 South King Street, Room 208 • Honolulu, Hawaii 96813

COMMISSIONERS

Sherry P. Broder – Chairperson
Jason Kekahi “Kahi” Pacarro – Vice Chair
Chris Cramer
Keli’iahonui Kotubetey
William Reese Liggett
William Kamana’olana Mills
Jamie Tanimoto

Meeting Minutes
Friday, August 12, 2022
9:00 a.m.
Meeting Held Virtually

CALL TO ORDER – Chair Sherry Broder called the meeting to order at 9:00 a.m.

Commissioners Present – Sherry Broder, Jason Kekahi “Kahi” Pacarro, Chris Cramer, Keli’iahonui Kotubetey, William Reese Liggett, William Kamana’olana Mills, Jamie Tanimoto

Staff Resources Personnel Present

Dawn Spurlin, Deputy Corporation Counsel
Tammy Namihira, Budget and Fiscal Services (BFS)

Guests

Danielle Schaffner, Department of Land Management (DLM)
Catherine Taschner, Department of Land Management (DLM)

Chair Broder called the meeting to order and welcomed Chris Cramer as the new Commissioner. The Commissioners were asked to introduce themselves when they did.

APPROVAL OF THE MEETING MINUTES FOR JULY 8, 2022

The minutes of the July 8, 2022 were approved 6-0 (AYE: Broder, Pacarro, Kotubetey, Liggett, Mills, Tanimoto; NAY: None; ABSTAIN: Cramer).

DEPARTMENT OF BUDGET AND FISCAL SERVICES PROVIDED AN UPDATE ON NEW APPLICATIONS, CWNL FUND PROMOTION LETTER AND FUND ACCOUNTING

Ms. Namihira shared that BFS did not receive any new applications.

She also stated that she will finalize the promotional letter and send to Chair Broder for her review and signature. She is still working on the list of recipients which included City Council members, Neighborhood Board Chairs and the State Legislature.

Chair Broder asked if there were any objections or any revisions that needed to be made to the promotional letter. There were none. Chair Broder asked Ms. Namihira to send the list of recipients to the Commissioners for their review and input.

Ms. Namihira then shared that she received an accounting of the Fund since its inception in 2008. She shared two worksheets with the first showing a summary of the balance, allocations and pending transactions and the second showing the revenue and expenditures. She explained that the current unaudited Fund balance as of June 30, 2022 is \$46,711,278.77 and after the Real Property Tax allocation for Year End 2023 (June 30, 2023) it will be \$54,235,518.77. Within the next two years, there is a little over \$35 million that is allocated and may be used. She further explained that spreadsheet received from accounting shows a year by year breakdown of revenue and expenses. One thing to note was an expenditure for payroll, which is budgeted from the Department of Land Management (DLM) and is allowed to receive from this fund.

Chair Broder asked how come DLM is allowed to receive payroll from this fund. Ms. Namihira was unsure why.

Chair Broder asked if BFS is allowed to receive payroll from this fund since it has been doing most of the work.

Ms. Namihira replied no and stated that the information will be sent to the Commissioners for their information.

Chair Broder commented that this is exactly what the Commission wanted to see and thanked Ms. Namihira for her research and hard work.

Commissioner Kotubetey also expressed his gratitude.

FOR DISCUSSION AND/OR ACTION ON COMMISSIONER MILLS' COMMISSION EXPIRATION

Commissioner Mills' commission is set to expire in October and Chair Broder asked Commissioner Mills if he is interested in still being on the Commission.

Commissioner Mills expressed his desire to continue to serve on the Commission if the rest of the Commissioners would allow him to continue since he was chosen by the members.

Chair Broder stated that she would like to see Commissioner Mills continue but noted that there should be a call for anyone interested in applying. She stated that if there were no other interested applicants, then the Commission would vote at the next meeting so there would not be a vacancy.

Chair Broder added that a Resolution should be done for Commissioner Markell thanking him for his service and reviewed at the next meeting.

PRESENTATION – OVERVIEW OF MAKALI'I AND PALAWAI LANDS BY TPL

Ms. Reyna Ramolete-Hayashi from the Trust for Public Lands (TPL) shared a brief overview and summary of the presentations given last month for the two applications. She once again shared maps of the areas and lands that the two applicants along with the State Department of Land and Natural Resources (DLNR) are wanting to acquire. She also shared a chart of the project structure for each project breaking down the acreage, the project manager and buyer, the future owner and steward and the future conservation easement (CE) holders.

She further explained that when the City is not the owner, the City does requires a CE. Hawaii Land Trust (HILT) has expressed its willingness to co-hold the CE with the City. She asked if Laura Kaakua from HILT wanted to add anything in their role.

Ms. Kaakua stated that HILT is looking forward to partnering with the City in co-holding the CE over the Palawai and Makali'i lands to ensure annual monitoring into perpetuity and that the vision, hopes and dreams of these parcels can continue on for hundreds of years. She shared that HILT currently holds 50 CEs that they monitor annually and provide support and education to the land owners as boards and staff may change.

REVIEW OF PRESENTATION – ACQUISITION OF MAKALI'I PARCELS BY KAULUAKALANA

Mr. Kaleo Wong and Ms. Maya Saffery of Kauluakalana briefly did an overview of the many stories which entails

the history and cultural significance of these lands. Mr. Wong again shared its mission of restore and grow healthy relationships between people and place through aloha aina practices, of retelling their Kailua-specific stories, replanting and eating their ancestral foods and caring for the sacred sites, lands and waters of their beloved ahupua`a of Kailua.

Kauluakalana's work is focused on aina education and aina restoration and they welcome thousands of keiki to kupuna, professionals and ohana to engage in aina activities on the aina. The center of the work is based on the land called Kukanono which is a fifteen acre parcel that runs from the base of Ulupo heiau down to the banks of Kawainui. This parcel has been restored to lo`i kalo. Because of the success of the restoration of Kukanono, they have recently been given a right of entry permit to restore a twenty five acre parcel called Manu, to do similar work. It is located just below Castle hospital across Kalaniana`ole Highway. They have been doing this work for close to ten years and are part of a longer succession of people who have done the work and hope to do work on Makali`i, which is a little over 59 acres. A slide showing the proximity of the three parcels were shown and noted that these parcels are not only connected through the flow of fresh water but the stories that tie these places together.

The vision for Makali`i is to not only return these places to the people, but return the water and the abundance to these places so they can feed a community once again.

REVIEW OF PRESENTATION – ACQUISITION OF PALAWAI LANDS BY HO`OKUA`AINA

Mr. Dean Wilhelm of Ho`okua`aina once again shared its mission and vision of creating a culture of individual and community well-being using the konohiki management system. The organization is dedicated and focused on growing kalo on the land and uses Hawaiian values-based teaching, do youth mentorship and use kalo farming in feeding a community.

The organization has established educational programs in which it shares with area schools and work with challenged youths who learn while working on the lands. It has also established a partnership with Windward Community College in having students lean and work on the land and offer paid internships.

Currently three acres of lo`i are being farmed and Ho`okua`aina is one of the main producers of kalo on the island of Oahu. This area was once the breadbasket in the heart of the Ko`olau Poko region and is amazing to think that these lands still exist with a stream that is still abundant and flowing and that there is an opportunity as a community to preserve the lands and to create the foundation and infrastructure for future generations.

The Palawai project will consist of acquiring 116.49 acres adjacent to parcels already owned by Ho`okua`aina and 50 acres is prime lo`i kalo lands.

Mr. Wilhelm encourages everyone who has questions or would like to learn more to come to the area and hopefully feel and envision the same thing they do.

Ms. Ramolete-Hayashi reiterated Mr. Wilhelm's statement that this is an exciting opportunity and the fact that these lands are undeveloped and available for conservation at this time is phenomenal. To have these two organizations step up and are willing to take this on is very exciting.

She stated that the different resources on the properties that fit exactly in alignment with the purposes of the CWNL fund were detailed during the last meeting and are outlined in the applications.

Chair Broder asked if there were any questions from the Commissioners. There were none. She then congratulated them on putting together an incredible package.

Commissioner Kotubetey first apologized for his absence at the last meeting and thanked Ms. Ramolete-Hayashi and the team for sharing all the information and presentation. He stated that kind of like the Paiko application a few months ago, this is a no brainer and checks all the boxes that the Commission is charged with in dispersing the funds. He was very impressed with all of the unanimous support received by various state and county agencies as well as many businesses and community organizations in Kailua.

He specifically asked about a testimony submitted by the Oahu branch manager of DOFAW and that in the last paragraph stated that "if the land were to be subdivided as proposed, it would block the ability of mauka to makai management of the Kawainui drainage and the community would not be able to participate in active management and utilization of the lands in perpetuity. This is a once in a lifetime opportunity that we have with these applications." He asked if someone could help him understand this statement as he didn't know the history and is curious of what she was referring to "if the land were to be subdivided as proposed". He stated that he sees the vision going forward and is completely in support of that but is just curious as to what the letter was referring to.

Ms. Ramolete-Hayashi stated that the land is owned by HRT, which is an arm of the Weinberg Foundation and several years ago it submitted subdivision applications for these lands for the purposes of subdividing, developing and selling them off. It is only because of Hui Maunawili Kawainui and others in the community coming out and opposing the subdivision applications that things got delayed and the subdivision did not get approved. Because of the community passion and resistance, HRT is now a willing seller and partner to sell and TPL is currently in negotiations with them and should take a few more months to complete. She thanked the community for being amazing advocates.

Ms. Deborah Pope stated that the community has been keeping an eye on the 1,000 acres of that land and its management or lack thereof for many years. In 2016 the risk of subdivision was real and the application was submitted and resubmitted, then expired. Very grateful to these organizations for giving them a new opportunity on how they look at these lands and am delighted that they have a willing seller.

Mr. Wilhelm added that what's important to note is that there has been a shift since at first it was being in opposition of the Weinberg subdivision plans and now it has come to where they are really in support and want to be behind these efforts. He mentioned that they were invited to breakfast a few weeks before by the seller's Baltimore based board of directors to share about who they were and what their vision is. It seems that there was a lot more support on the seller's part and it is a different climate now than seven years ago. He stated that the letter is true in that should the lands be subdivided for the plans that they previously had, it would be gone forever.

Chair Broder asked if there were any other questions or clarifications needed.

Commissioner Cramer stated that he echoed Commissioner Kotubetey's sentiments and it's almost a slam dunk and it's such a strong proposal, and in his opinion, something that the Commission should strongly support. He has been aware of the efforts for a long time and it's a really strong proposal that they should get behind.

Chair Broder asked Ms. Ramolete-Hayashi what TPL needed the Commission to do next.

Ms. Ramolete-Hayashi stated that a resolution in support of the funding by the Commission would be appropriate.

Chair Broder asked how much were they are looking at from the Commission.

Ms. Ramolete-Hayashi went back and shared the slide which depicted the breakdown of the projects and the requested funding. She explained that based on a couple of different initial appraisals, the fee simple values are \$8.3 and \$4.4 million and based on past estimates, the values of the CE would be around \$6.2 and \$3.3 million because it removes most of the development potential of these lands and protects it in perpetuity.

Chair Broder asked if the Weinberg Foundation would be contributing the differential between the \$8.3 and \$4.4 million, the fee simple value versus the CE value.

Ms. Ramolete-Hayashi stated that the applicants are planning to apply for the State Legacy Land Conservation fund for matching funding and it would be great to have the recommendation from the Commission and the funds allocated by the City Council, since the Legacy Land program applications is to open this month. If they could show that they have the initial matching funding, then it would make for a really strong Legacy application.

Chair Broder asked if the total amount needed is \$9.5 million.

Ms. Ramolete-Hayashi confirmed that that is the approximate amount.

Chair Broder asked if they would be applying for any other funding besides the CWNL and State Legacy funds and if the Weinberg Foundation can contribute anything more than the difference between the fee simple value and CE value since they are a 501c (3) and they do try to help the community.

Ms. Ramolete-Hayashi stated that they are currently in negotiations with HRT and the purchase prices will depend on a separate appraisal which still needs to be completed. They have previously discussed the subject of the seller's willingness to donate the remainder of the land value if they were not able to raise the full value amount. This is still up for discussion and she would share with them that the Commission did ask about their willingness to do so. She also mentioned that in addition to the state legacy fund, they are also looking into applying for the Community Forest program that's under the U.S. Forest Service, particularly for Makali'i, which has a lot of forested area. This program is very interested in supporting agroforestry and native forestry projects from indigenous and native communities.

Chair Broder commented that it sounds fantastic. She also stated that she didn't mean to imply any criticism of the Weinberg Foundation because they use a lot of their money in poor and low income communities and do a lot for the homeless in Hawaii.

She asked if the Commission voted on 25% of the requested amount would that get them started with the Legacy Land program as it seems like they have other opportunities for applications. She stated that she is hoping that the CWNL Commission does get more applications for projects so is 25% of the \$9.6 million what they are looking for to take the next step.

Ms. Ramolete-Hayashi stated that they are actually looking for full funding because there is so little money in the state legacy fund, which she believes to be a range of \$3-5 million for the entire state, not just Oahu. The CWNL fund has sufficient funds to cover this request and the City would own a CE in perpetuity. They also anticipate the CE will value at somewhere between 65-75% of the fee value.

Chair Broder commented that it seems like the state legacy fund has money to spend but does so only on the neighbor islands and hasn't seen much on Oahu. She asked what she thought they would be able to get from the Community Forest program.

Ms. Ramolete-Hayashi stated that this program would be a back up to the state legacy program so if they are unable to get legacy funding, which is estimated at about 25% of the fee value, they would go the Community Forest program but it would not be close to the funding that they would be able to get from the CWNL fund.

Chair Broder asked that if they are able to obtain 25% from the Community Forest program, would it be like \$2.5 million or \$2 million of the estimated CE value or the fee simple value.

Ms. Ramolete-Hayashi confirmed that it would be 25% of the fee value and that the ask of the City is the full value of the CE, which is 65-75% of the fee value.

Chair Broder asked how much they would apply for with the Community Forest program.

Ms. Ramolete-Hayashi stated that it is not known at this time but for the state legacy land fund, they would be applying for the remainder. For Makali'i it would be \$1.1 and for Palawai, it would be \$2+ million.

Chair Broder stated that is was confusing because the Commission is used to paying for the CE value, not the fee simple value but sounds like you are asking to pay the fee simple value.

Ms. Ramolete-Hayashi stated that the estimated value listed is the CE value that the City would own.

Chair Broder asked if the Weinberg Foundation would get a write off for the difference between the CE value and the fee simple value.

Ms. Ramolete-Hayashi stated that it would if it decided to donate that value. If it didn't then TPL would need to cover the difference with the other programs. The other programs wouldn't cover the value of the CE, it would cover the remaining value of the fee simple.

Chair Broder asked if she knew what the assessment was with Weinberg giving them part of it and thought they would get some type of tax write off.

Ms. Ramolete-Hayashi commented that if TPL bought the CE from Weinberg, they wouldn't get the tax write off but if they donated a portion of the value of either the CE or the fee simple, then they could claim a tax write off.

Ms. Kaakua stated that although we would like all landowners to donate as much as they can towards these conservation projects, there's no commitment from the current landowner to make any donation so to not squander this opportunity to purchase these lands for farming and agriculture, they would have to raise not just the full fee simple value but even more money to cover all of the projects costs. The requested amounts are in their overall budget and is significant amounts but it is not the entire budget as they would still need to raise the difference between the CE value and the fee simple value.

Vice-Chair Pacarro asked where the differential between the CE value and the fee value come from.

Ms. Ramolete-Hayashi stated that they would apply for the state legacy conservation program for the difference. If they didn't receive funding, then would apply for the Community Forest program.

Vice-Chair Pacarro asked why not come to the City and ask for the full amount.

Ms. Ramolete-Hayashi stated that the City can't pay more than the appraised value of the CE. The City would pay only what the value of the CE or real property interest and that would happen after the Commission makes the recommendation to the City Council to approve the funding. When that is approved, then they would negotiate the CE, which could be adjusted, depending on what the appraised value of the CE is.

Vice-Chair Pacarro commented that growing up in Kailua and passing the area almost daily, it is shocking that these lands could be potentially subdivided into gentlemen estates and the value that is being asked seems like a very fair amount to be paying to preserve this land in perpetuity.

He further commented that he can't imagine it remaining in the existence of the state that it is currently in or potentially even made better to become more of an agricultural opportunity and educational stewardship location and although there has been a lot of talk about how much the contribution should be as a Commission, he wanted to voice his support of these projects and being able to allocate the full amount of the \$6.2 and \$3.3 million.

Commissioner Liggett commented that he saw important testimony from the Department of Land Management and thought it needed to be discussed. He asked Ms. Namihira to share it.

Ms. Namihira stated that she would need to locate it but in the meantime informed Chair Broder that there were oral testifiers signed up so if they wanted to hear that while she looked for the DLM testimony. Ms. Deborah Pope had spoken earlier and asked if she wanted to testify now.

Chair Broder commented that before the testifier spoke, she wanted to clarify with Vice-Chair Pacarro that she was not making any recommendations about how much money should be spent, only trying to clarify what the applicants were asking for especially since they had stated other possible granting entities for funding. Her probing was because she wanted to know exactly what was going on and what was being proposed.

Ms. Deborah Pope spoke on behalf of Hui Maunawili Kawainui, which also submitted written testimony, and stands in full support of this initiative by Ho'okua'aina and Kuauluakalana.

Chair Broder thanked her for her testimony and stated that everyone was moved by the project and what the community is trying to accomplish.

Ms. Namihira shared DLM's two written testimonies and stated that Deputy Director Taschner was on the meeting and available to answer any questions and provide testimony also.

Chair Broder noted that it seems like the entire amount is being recommended.

Ms. Taschner commented that she would be able to walk through the testimony which would be more helpful. She stated the DLM had the opportunity to review the two applications and are recommending approval by the Advisory Commission. Although the applications are separate, they are related so as she goes through the testimony, she will refer to them jointly.

She began that the request of each application is 75% of the fee value, assuming that that is the value of the CE. That kind of flat percentage is discouraged by the IRS and DLM recommends that the Commission grants only funds for what the CE is appraised at.

She then went through each criteria and analyzed the application if it met the fund's purposes.

For point A, its protection of watershed lands to preserve water quality and water supply, the applications do meet those criteria and one thing that was recommended was that because each of these properties are part of the larger Maunawili lo'i and forest, that there be some cooperation and coordination between the parties to ensure long term protection of watershed in perpetuity.

Chair Broder asked how would that work and wouldn't the Board of Water Supply be responsible for water. If part of the goal is to protect the watershed on the Windward side, would there be a government agency that monitors this?

Ms. Kaakua stated that all laws still apply and the landowners would still have to follow with no exception.

Mr. Wilhelm stated that it seems that these projects are in line with a number of the commissioners' desires, interests or values and as what Commissioner Pacarro points out that, the value of what they are asking the City to fund is really relatively small and compared it to not finding a house on Kailua beach for under \$10 million.

This is only part of a larger effort to purchase the entire 1,000 acres from Weinberg, which he believes is assessed at around \$33 million. Because this area is essentially the heart of the ahupua`a, support and funding of these projects would be a tremendous boon to the overall effort of acquiring the entire 1,000 acres. If not, it could be in jeopardy of once again going into development.

Chair Broder thanked Mr. Wilhelm for his explanation. She then commented if the Commission should require them to have due diligence to take necessary steps to ensure or promote the healthy water shed or cooperation is enough.

Ms. Ramolete-Hayashi stated that generally these issues would be covered in the content of the CE. After the Commission makes its recommendation and City Council approves, then these technical requirements would be worked into the actual text of the CE so she doesn't believe that the Commission needs to worry about it.

Ms. Taschner continued to explain DLM's recommendations. As to Item B, the preservation of forest, beaches, cultural areas and agricultural lands, DLM agrees that the applicants have offered evidence and narratives to support the claim that the properties will serve agriculturally. DLM wants to ensure that the annual metrics and monitoring reports are submitted.

As to Item C, public outdoor recreational and educational opportunities, including access to beaches and mountains, there is no public access because they are privately owned. DLM wanted to ensure that as part of the approval, manage public access and outdoor, educational and cultural programming be available on the property, which should be reported and included in the annual monitoring efforts.

As to Item D, the preservation of historic and culturally important land areas and sites. The presentation was awesome and gave so much history about the region and the stories shared. One of the sites has an archaeological site and recommends that the Mayor's office of culture and arts be given the opportunity to review the proposed acquisitions, the kind of stories and cultural impacts and will defer to them and to their judgement as to the cultural and historical significance.

As to Item E, protection of significant habitats or ecosystems, including buffer zones. In hearing testimony and the

presentations, it was stated how the restoration efforts will improve the provision of significant habitat on the property. DLM agrees that this criteria has been met.

As to Item F, conservation of lands to reduce the erosion, floods, landslides and runoff. DLM agrees that the proposed activities would contribute to the kind of restoration efforts so this criteria has been met.

As to Item G, acquisition of public access to public land and open spaces. This is somewhat duplicated in an earlier condition and the same would apply.

Ms. Taschner then stated that the next section related to more real estate conditions since these are real estate transactions and real estate based remedies. Since the City is utilizing public funds to acquire real estate interest, if the proposed owners are unable to steward and manage the properties, DLM recommends that a real estate remedy be inserted, which would be that the City and/or HILT, as the administrative holders of the CT, to step in and perform the land management on behalf of the owner at their costs.

The second recommendation is to create a stewardship endowment to be sure that the land is properly managed in perpetuity so creating a separate "rainy day fund" be incorporated into the long term stewardship.

The final recommendation is to have an emergency transfer provision in the event there is a violation of the CE values to ensure that the properties are protected. This would allow either the City or HILT a real estate remedy to come in and protect the properties, which is the goal of everyone here.

She stated that the last two conditions or recommendations relate to some technicalities that can be addressed in the due diligence phase. DLM needs to ensure that it has a title report and survey to review in connection with its due diligence and negotiations.

The last page is a summary of the recommendations relating to the applications and DLM recommends approval for both projects.

Chair Broder asked if there were any questions for Ms. Taschner.

Commissioner Kotubetey thanked Ms. Taschner and stated that he is one of the newer commissioners and is not one who is involved in real estate transaction on a regular basis. He asked if Ms. Taschner could clarify what kind of metrics the owners are to report and has this been asked for with other applicants.

Ms. Taschner responded yes and that other CEs that the City owns and were funded with CWNL funds do require that the landowners submit metrics as part of the annual monitoring efforts. This would include items such as the number of school children that come to the site or the number of volunteer days, etc. She suggested that Commissioner Cramer could probably explain more since Kanewai Springs has some reporting metrics. She confirmed that it is consistent with prior precedent.

Commissioner Kotubetey asked Commissioner Cramer to comment.

Commissioner Cramer disclosed that he has worked with TPL in partnership on past projects and really appreciates the work that they do. He stated that the one thing he wanted to caution on was that when land is put into the CE, there is not a lot of wiggle room, so things might be better stated in the management plan where, as things evolve or change, can be adjusted. When it's in the CE, it's hard to change or hard to work with so need to be sure that the applicants are okay with these proposed conditions because once they are in the CE, they are set in stone and can be challenging. Another other item that was mentioned was about automatically reverting and if there's a violation, the applicant should be given the opportunity to rectify or remediate whatever the violations were rather than just automatically reverting.

Commissioner Cramer continued that he recommends to keep it simple. The more reporting or reporting of a lot of metrics will take time away from growing food or working with keiki that come through the program. So what is the goal in reporting and what is wanted for the reporting requirements? If it is to make sure that the owners are upholding the requirements, is there a way to satisfy that without generating a lot of additional reporting and work for these small community groups because it can become burdensome, especially if they would need to report the

same information to the state legacy lands or other programs. This will involve not only this process but multiple processes, which will take a lot of time away from their initial goal, which is stewarding and maintaining the land.

Commissioner Kotubetey thanked Commissioner Cramer for his perspective on the reporting for community organizations. He commented that all of the commissioners are volunteers and he is not necessarily trained to make recommendations based on these legal conditions but wanted to express his full support for the requested funding of approximately \$10 million for the parties and trusts that HILT and DLM will work out these issues prior to closing.

Commissioner Mills stated that his is also in full support of this endeavor and movement.

Ms. Taschner commented that because these are public monies, the City has a fiduciary responsibility to ensure that the public monies are spent appropriately and the reporting requirements are on an annual basis and in many cases, the City's requirements duplicates the legacy land requirements so the same material can be distributed to both the City and State.

Commissioner Tanimoto thanked Ms. Taschner for her comments as it was very enlightening and answered some of the questions that were brought up before. She expressed her full support of the CEs at \$9.5 million as she thinks it's a steal and to see those areas protected and the work that is being done to continue is worth it.

Chair Broder asked if there were any other questions.

Commissioner Cramer commented that since there are similar goals with the legacy land process, it would really help the applicants if there is a way to work in tandem or try to align with the processes as much as possible.

Chair Broder asked if there were any other comments. She then stated that she had two points, the first being that the one thing that she found most moving and important about these projects were about the statements made of having healthy water sheds and protecting the health of the ahupua`a. In regard to Ms. Taschner's first point, she would like to see expansion to include due diligence on behalf of the organizations to take necessary steps to ensure the healthy watershed protection of the significant habitats, which is in line with what the Commission has been told, rather than just leave as written. Her second comment was that because public monies are being used and the Commission has been concerned about public access to some of the past projects, she hopes that public access will not mean the public will only be allowed once a month or only to a certain group of people.

Chair Broder asked if there were any other comments and asked if anyone wanted to make a motion.

Commissioner Kotubetey made a motion to fully support the two applications as proposed.

Commissioner Mills seconded.

Chair Broder asked if there were any discussions on the motion as stated and it does not include any of DLM's recommendations. She asked Commissioner Kotubetey to clarify what his motion was.

Commissioner Kotubetey confirmed that his motion was to support the applications as submitted.

Commissioner Liggett asked if there is any discussion on the motion and didn't know how they could ignore the DLM comments and thinks that it should be part of the motion.

Chair Broder asked if he wanted to move to amend the motion to include DLM's comments and recommendations.

Commissioner Liggett confirmed that he wanted to include DLM's points in the motion.

Vice-Chair Pacarro seconded the amendment.

Chair Broder asked if there were any other comments.

Commissioner Mills commented that there are now two motions on the floor.

Chair Broder stated that there is a motion and an amendment to the motion. So first, a vote would be needed on the amendment to motion.

Commissioner Kotubetey asked for discussion, if the amendment would be to approve the recommendations or think about them as recommendations.

Chair Broder stated that she thinks that the motion to amend is to include in the main motion subject to DLM's recommendations and if there was anything wrong with one of them, then the Commission would welcome the return of it for input as necessary. City Council can also do they want to and not necessarily listen to the Commission.

Commissioner Cramer asked if the applicants had any comments on the recommendations.

Ms. Ramolete-Hayashi recommended that the Commission support the funding and cautioned about inserting conditions at this stage when the applicants haven't had the opportunity to review the DLM testimony prior to the meeting and while some of the recommendations are completely in alignment with what the applicants have already proposed, some are new and they would like the opportunity to take a closer look at it. Generally these types of conditions are negotiated when the applicants have legal counsel advising them, which wouldn't occur until City Council makes the recommendations on the CE. Therefore it would be a challenge to insert conditions at this stage.

Commissioner Mills commented that he is in agreement with Ms. Ramolete-Hayashi in that the CWNL advisory commission is to make a recommendation to the City Council and then the applicant and the City would be to negotiate the terms and conditions instead of locking it in at this point. This should be a negotiation between the City and the applicant after a vote has already been taken.

Chair Broder asked if there were any other comments.

Commissioner Liggett wanted to hear Corporation Counsel's response to the discussion.

Chair Broder asked Deputy Corporation Counsel Dawn Spurlin if she had any comments on the role of the Commission.

Ms. Spurlin stated that she believes that the last resolution for Paiko Ridge included recommendations.

Chair Broder stated that she did not mean to disappoint anyone and overall the commission is enthusiastic about the proposal and wondered if the meeting should be rolled over until next week Friday so the applicants would have a chance to comment on DLM's protocols and if something can be worked out and move forward together.

Ms. Namihira commented that if a special meeting were to be held, it couldn't be held on Friday since the agenda needs to be posted at least six days in advance.

Chair Broder commented that that wouldn't work since it would need to be posted today then asked if it could be posted today or if the meeting can be recessed and call it back to order next week without adjourning. She asked Ms. Spurlin to confirm.

Ms. Spurlin confirmed that the meeting could be recessed, just do not adjourn the meeting.

Chair Broder commented that a notice would not need to be posted. She then stated that Friday was holiday and asked if Thursday would be okay so that everyone would have the opportunity to comment on the recommendations.

Commissioner Kotubetey commented that while the Paiko application had it included in the Commission's recommendations, it does sound like these types of issues and recommendations that were brought forth will get

worked out later in the process so there wouldn't be any harm in approval today because these things would be worked out.

Ms. Taschner commented that DLM raised these comments at this time so the Commission has the opportunity to consider the issues that may be important to consider at this time. For example, the funding condition is something that should be considered and this gives the Commission the opportunity to give its feedback and input on this transaction.

Chair Broder commented that Commissioner Kotubetey is trying to make it a win win for all and have TPL and DLM figure out what they really want, what needs to be included and what is livable and maybe come back with an agreed upon proposal but she is unsure.

Commissioner Kotubetey asked Ms. Ramolete-Hayashi if this is the main corpus of their funding to acquire the properties.

Ms. Ramolete-Hayashi confirmed and stated that they are definitely looking for the majority of funding to come from this fund because it is so well resourced and the applications are completely aligned with all of the purposes of the fund. She appreciates DLM's commitment to thoroughly review but also cautioned that negotiating CEs normally take a really long time and her fear with trying to negotiate conditions at this time may cause serious delays.

Commissioner Tanimoto commented that it should be noted that DLM's recommendations is that it recommends the Commission to include the recommendations, they are not binding conditions at this point and because these are quite reasonable, she doesn't see the need to delay the vote with or without recommendations. She would like to see a vote with these recommendations.

Chair Broder commented that that was very helpful in pointing out that these are only recommendations and if the Commission recommends these conditions, it's not binding and only advisory and the details can be worked out later and so perhaps that would meet everyone's goal. She asked if there were any other comments.

Commissioner Liggett commented that he would like Ms. Spurlin's opinion on what's the correct way for the Commission to proceed.

Chair Broder commented that she thinks it's up to the Commission but asked for Ms. Spurlin to comment.

Ms. Spurlin commented that it would be up to the Commission.

Chair Broder asked if they were ready for a vote on the amendment to the main motion, which is to include the recommendations.

Commissioner Mills asked if the recommendations become binding if the Commission adopted these recommendations.

Chair Broder confirmed that it would not be binding and still exist as recommendations because that is what they're called. That's DLM's definition and the Commission is only advisory and can't pass anything that's mandatory.

Ms. Kaakua commented that in her experience, the City Council gives great deference to this Commission and usually the same recommendations for funding will be included verbatim in the Council's motion. Because the applicants have not had the opportunity to review the language of DLM's testimony, if they would have to go before Council and oppose certain parts of the Commission's recommendations, it would have the appearance that there is conflict when there really isn't and would look awkward. She suggested a deferral so that a proposal that everyone is comfortable with can be brought since the applicants as landowners and stewards would be the ones to live with these terms in perpetuity.

Chair Broder commented that her and maybe as well as some other Commissioners' initial reaction was that there's a lot of merit in these recommendations and would want to exercise their due diligence and thought maybe

give the applicant the opportunity to really study them. But now thinking that a resolution which enumerates these recommendations clarifies that the commission is passing them on for further consideration and that they are only recommendations. That's why she thought they needed a little more time. She then asked for everyone's thoughts.

Commissioner Mills asked if it would be possible to have the motion where the Commission approves the full funding pending negotiation between the applicants and DLM or something along those lines, not adopting the recommendations.

Commissioner Tanimoto agreed with Commissioner Mills' proposal.

Commissioner Kotubetey also agreed.

Chair Broder asked how it would be worded.

Commissioner Mills commented that it would amend Commissioner Kotubetey's original motion to include language pending discussions between the applicant and DLM regarding DLM's recommendations to the CWNL advisory commission.

Chair Broder stated that Commissioner Mills would ask Commissioner Liggett to withdraw his motion and instead have a motion to amend the original motion to include pending discussions between DLM and the applicant regarding its recommendations to the CWNL Advisory Commission. She asked for Ms. Taschner's opinion.

Ms. Taschner commented that in theory that's totally fine so DLM could talk to the applicants further and could be on the same team as everyone wants to preserve properties in perpetuity.

Chair Broder asked Commissioner Liggett if he was agreeable to that.

Commissioner Liggett withdrew amendment.

Chair Broder asked Commissioner Mills if he is moving the amendment pending discussions with DLM and the applicant regarding its recommendations to the CWNL Advisory Commission.

Commissioner Mills moved the motion.

Commissioner Cramer seconded.

Ms. Spurlin asked Chair Broder to clarify if the Commission is approving funding subject to the resolution of these issues as she did not understand the timing.

Chair Broder confirmed that it's pending discussions between the applicant and DLM on it's recommendations to the CWNL Commission.

Ms. Spurlin asked that because the Commission will be submitting a draft resolution to Council, does that mean the Commission is recommending expenditure of the funds, so the pending discussions has nothing to do with the resolution? How does this work?

Chair Broder commented that the intent is that the Commission is only recommending the recommendations and wants to be sure that the City Council are made aware of the recommendations to be considered and vetted.

Ms. Ramolete-Hayashi commented that she thinks the question is the timing and maybe the resolution should state conditions on negotiations with DLM regarding the CE prior to closing, so that it is not interpreted that these things need to be resolved before funding is allocated.

Ms. Spurlin confirmed that she is correct because if the pending negotiations means before Council approves, then the resolution should not be submitted at this time.

Chair Broder asked Ms. Spurlin what should be stated based on her understanding of the interest of the Commissioners to both approve and ensure that the DLM recommendations are fully vetted and considered.

Ms. Spurlin replied that what Ms. Ramolete-Hayashi stated could be used as far as before closing or put it in the transmittal to the Council with the Commission's suggested position expressing the its request that these issues be resolved prior to closing. She didn't know if it should be in the Council resolution, unlike Paiko Ridge, where it was conditioned because there were clearly issues of concern that the money not be expended until certain conditions were met. If that's not the Commission's position right now, then it would not go on the resolution but could go into the supporting testimony to the Council when submitting the resolution. It would be up to the Commission if it believes these conditions need to be addressed before closing, then it should be in the resolutions, but if these are just conditions that need to be discussed, then it doesn't have to be in the resolution, it could be in the accompanying testimony.

Chair Broder commented that she believes the Commission thinks this should be addressed before closing, which is a long way off, and it is not expressing an opinion on whether or not the recommendations should be adopted because it was just received and they are in the same position as the applicant where they have not had time to fully look into it and although they are good recommendations, the full ramifications are unknown.

Commissioner Liggett commented that DLM's recommendations are really part of the CE discussion, except for the very first one, which is very logical that the money that is actually being approved is based on the fee simple appraisal. He asked Ms. Taschner to confirm if this could be left to the CE discussion.

Ms. Taschner confirmed that it would be part of the CE discussion and that this information was provided to the Commission for consideration and what is important to view and condition as part of its approval on the receipt of certain items is up to the Commission.

Chair Broder asked if there be a motion to approve the funding and have a motion to approve sending a cover letter to the Council indicating that DLM's attached recommendations are with the understanding that all of these issues will be negotiated during the development of the CE terms.

Commissioner Mills withdrew his motion.

Commissioner Kotubetey wanted confirmation if they could go back to his original motion for full approval, then Chair Broder could make her motion.

Chair Broder commented that she doesn't want to make a motion when she's going to write a letter.

Commissioner Kotubetey asked if a letter was necessary if Ms. Taschner stated that these items would be taken care of during the CE portion and if the Chair wanted to be sure that it gets taken care of.

Chair Broder stated that she feels that the recommendations are important and wants to be sure it doesn't get lost in the shuffle. That a letter be sent addressing that the Commission recognizes these recommendations as being important and were considered, the Commission along with the applicants did not have enough information to process on deciding on any recommendations and it is the Commission's understanding that it would be included in the CE negotiations. She asked for Commissioner Kotubetey's consent.

Commissioner Kotubetey agreed and stated he still had a motion on the floor so would not be making another motion.

Chair Broder asked if anyone else had a comment. No comments. She then called for a roll call.

Ms. Namihira called roll with 7 AYES.

Commissioner Mills moved for the Chair to draft a letter to the applicant which states that the DLM recommendations be addressed in conjunction with the applicant. He wanted confirmation if that is the correct motion.

Chair Broder stated that the letter would be sent to City Council and asked if there is a second for her to write a letter.

Commissioner Tanimoto seconded the motion.

Chair Broder asked if there was any discussion then asked for a roll call.

Ms. Namihira conducted a roll call. 7 AYES

Ms. Namihira stated that the next meeting is scheduled for Friday, September 8th.

Chair Broder thanked everyone who testified and especially those who are working so hard to bring such an important and wonderful benefit to the community and will be sure to include in her letter how impressed the Commission is with what is being done and their commitment to the community.

Commissioner Mills corrected Ms. Namihira in that the next meeting date should be September 9th as the 8th is a Thursday.

Ms. Namihira confirmed that it is September 9th.

ADJOURNMENT: Meeting was adjourned at 11:22 a.m.

Respectfully Submitted,

Tammy Namihira

APPROVED:

Chair Sherry P. Broder

Date

The minutes of the Commission Meeting on August 12, 2022 were approved at the September 9, 2022 Commission Meeting.

	<u>Aye</u>	<u>No</u>	<u>Comment</u>
Sherry P. Broder	<input type="checkbox"/>	<input type="checkbox"/>	Excused
Chris Cramer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Keli'i Kotubetey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
William Reese Liggett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
William Kamana'olana Mills	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Jason Kekahi "Kahi" Pacarro	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Jamie Tanimoto	<input checked="" type="checkbox"/>	<input type="checkbox"/>	