

City and County of Honolulu
Clean Water and Natural Lands Commission

Second Annual Report to the City Council
December 10, 2010



Kūkaniloko
Photo by Kelley Uyeoka

City and County of Honolulu
Clean Water and Natural Lands Commission
530 S. King Street, Rm. 202
Honolulu, Hawaii 96813

December 10, 2010

Honorable Chair Nestor Garcia and
Members of the City Council
Honolulu City Council
530 South King Street
Honolulu, Hawaii 96813

Dear Chair Garcia and Members of City Council:

The Clean Water and Natural Lands Commission thanks you for your support this past year as we completed the second round of Clean Water and Natural Lands Fund projects funding recommendations.

Please find attached our Second Annual Report to the City Council. As with the first funding cycle, the Commission again worked diligently to apply the priorities for fund expenditures to its application process, guidelines, policies, and practices in a fair, balanced, and transparent manner.

We look forward to working with the City Council and the Mayor in the third year to refine the prioritization process, improve communication about the work of the Commission, and to ensure the projects selected for funding are successful.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Marjorie Ziegler, Chair 2009-2010
Benton Keali'i Pang, Chair 2010-2011
Clean Water and Natural Lands Commission

Commissioners:

**Denise E. Antolini, Glenn R. Bauer, Kevin K.J. Chang, Jody L. Ka'ulukukui,
Benton Keali'i Pang, Marjorie F.Y. Ziegler**

Former Commissioners:

Alan T. Takemoto, Mitch D'Olier, Hans J. Krock

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Introduction

The Clean Water and Natural Lands Commission is pleased to submit this Second Annual Report to the Honolulu City Council.

In 2006, the City's Clean Water and Natural Lands Fund ("Fund") was established by O'ahu voters by Charter Question 3, enacted as Section 9-204, Chapter 6, Article IX, Revised Charter of the City and County of Honolulu.

Pursuant to the charter amendment, the City Council passed Bill 9 (2007), CD2, which was signed into law as Ordinance 07-18 (Art. 6-62, ROH). According to Ordinance 07-18, the purpose of the Fund is to provide for or to otherwise acquire real estate or any interest therein for land conservation in the city for the following purposes:

- Protection of watershed lands to preserve water quality and water supply;
- Preservation of forests, beaches, coastal areas and agricultural lands;
- Public outdoor recreation and education, including access to beaches and mountains;
- Preservation of historic or culturally important land areas and sites;
- Protection of significant habitats or ecosystems, including buffer zones;
- Conservation of land in order to reduce erosion, floods, landslides, and runoff; and
- Acquisition of public access to public land and open space.

Ordinance 07-18 provided that "All expenditures from this fund shall be made consistent with the priorities established by a commission created by council resolution or, in the absence of a commission, with the priorities established by the council by resolution."

The nine-member Commission was first convened in April 2008, under the authority of Resolution 07-355, CD 1, to "advise and assist the Council in its efforts to set priorities and policies for expenditures and the Council's efforts to ultimately approve specific expenditures from the Clean Water and Natural Lands Fund." Please refer to the First Annual Report to the City Council dated June 30, 2009. The document provides a history and background of the procedures adopted by the Commission.

The Commission's website is www.honolulu.gov/council/cbc/cwnl.htm and includes the following information: About the Clean Water and Natural Lands Commission, the 2009/2010 Applications, 2009/2010 Application for Funding, Agendas, Minutes, Communications, Documents Establishing the Commission, Members, and Contact information. The web site and the Commission's email list of "interested persons" have been invaluable tools for keeping people informed about the Commission's process and progress.

Commission Members

The Commission has a total of nine members, who are appointed by the City Council based upon criteria set forth in Reso. 07-355 CD1. The current and former commissioners are:

- Denise E. Antolini (Chair 2008-2009): Term expires: April 17, 2011¹
- Glenn R. Bauer (Vice-Chair 2009-2010): Term expires: April 17, 2012²
- Kevin K.J. Chang: Term expires: April 17, 2011
- Mitch D'Olier (Vice Chair 2008-2009): Resigned May 2010 (open)
- Jody L. Kaulukukui: Term expires: April 17, 2011
- Hans J. Krock: Term expired: April 17, 2010 (open)
- Alan T. Takemoto: Term expired: April 17, 2010 (open)
- Marjorie F. Y. Ziegler (Chair 2009-2010): Term expires April 17, 2012³
- Benton Keali'i Pang: Term expires April 17, 2012

The Commission wishes to thank Commissioners Hans J. Krock, Mitch D'Olier, and Alan Takemoto for their important work and valuable service. The Commission welcomed Dr. Benton Keali'i Pang to the Commission in August 2009. The Commission currently has three available positions open and interested persons have been invited to apply to the City Council Chair.

Commission Meetings

Since the appointment of the Commission members and the first meeting on April 17, 2008, the Commission has conducted regular meetings in the Council Committee Meeting Room on the second floor of Honolulu Hale.

Initially, the Commission was assisted through the office of the Chair of the City Council by staff liaison Lee Ann Bowman under Chair Marshall, and then Brysen Poulton under

¹ Ms. Antolini was the Chair of the Commission from April 17, 2008 to June 5, 2009.

² Mr. Bauer's first term expired April 17, 2009. He was reappointed for a second term on April 22, 2009 by Council Chair Todd Apo.

³ Ms. Ziegler's first term expired April 17, 2009. She was reappointed for a second term on April 22, 2009 by Council Chair Todd Apo.

Chair Apo. Mr. Polton left in 2009 and the staff liaison position has since been very ably supported by Ms. Heather Murakami, of the Office of Council Services (OCS). During its meetings, the Commission received many helpful suggestions and testimony from the public and engaged in discussion with a number of invited guests from agencies, public interest groups, businesses, and community members. Some of the Commission meetings were attended by members of the City Council and their staff members. The Commission held a total of nine meetings over a twelve-month period, from July 2009 through the end of June 2010, as follows:

July 24, 2009	12:30 pm -2:30 pm
August 28, 2009	12:30 pm- 2:30 pm
September 25, 2009	12:30 pm- 2:30 pm
October 9, 2009	12:30 pm -2:30 pm
October 23, 2009	12:30 pm -2:30 pm
November 6, 2009	12:30 pm -2:30 pm
November 20, 2009	12:30 pm -2:30 pm
January 15, 2010	12:30 pm -2:30 pm
May 7, 2010	12:30 pm -2:30 pm

Subsequent to the completion of the second funding cycle, the Commission has held four regular meetings -- on July 16, 2010; October 15, 2010; November 19, 2010; and December 10, 2010 -- to consider the third cycle of applications to the Fund, which opened on August 2, 2010 and closed on October 2, 2010. The results of that cycle will be addressed in the Commission's forthcoming third annual report.

Commission Training and Presentations

On August 12, 2009, commission member Kevin Chang attended a meeting of various land conservation organizations held by the Natural Resource Conservation Services and the Department of Forestry and Wildlife. The purpose of the meeting was to discuss the coordination of funding cycles, particularly deadlines, of the various state-wide funding sources. In addition, the Commission welcomed public testimony at every meeting and received live and written testimonies at its November 20, 2009 meeting with regard to particular projects seeking support from the Fund. (Written testimony from all of the Commission meetings is posted on the web site under "Communications.")

Commissioner Kevin Chang presented information on the Clean Water and Natural Land Fund program at the Hawaii State Association of Counties annual conference on June 25, 2010.

Policy on Priorities, Matrix, and Ranking Factors

The Commission continues to use the documents and procedures adopted in September 2008, as slightly revised in 2009, to guide its review and evaluation of projects submitted for funding. The final versions of these documents are attached to this report and are also available on the Commission's web site. The Policy on Priorities, the Application, and Matrix are based on the seven purposes of the Fund, as stated in the Revised Ordinances of Honolulu (ROH) 6-62 and Resolution 07-355 CD1. On July 15, 2009, the City Council adopted Council Resolution 08-246 CD1 (2009) clarifying, as previously understood by the Commission, that the funding priorities "are all of the purposes set forth in Resolution 07-355 which shall be considered equally and not ranked in any particular order."

In reviewing projects seeking funding, the Commission considered the Matrix (or resource value) score and five "other factors": (a) urgency of the acquisition opportunity; (b) funding matches; (c) consistency with other City and County of Honolulu priorities; (d) need and ability to satisfy long-term maintenance and stewardship, and (e) geographic diversity among Council districts.

2009B Cycle Applications

Delay in getting the program up and running in fiscal year 2008 prevented the commission from making its recommendations until late in that first fiscal year. With experience and procedural efficiencies gained, the Commission started a new cycle in shorter time in Fall 2009, calling it the "2009B" application cycle. The Commission used the prior Application and Guidelines with minimal changes and continued to use the same ranking process from the prior cycle. In addition Chair Ziegler was able to obtain the pro bono design services to create a brochure for the Clean Water and Natural Lands program. The deadline for receipt of applications was September 30, 2009. Additional media advisories and coverage are posted on the Commission's web site under "Communications." A two-page document called "Guidelines for Applicants" was also distributed through the web site.

Initially, the Commission received six applications:

- (1) Queen's Retreat (The Trust for Public Land)
- (2) Wai'anae property (Siobahn Corp.)
- (3) Fong Plantation (The Trust for Public Land)
- (4) Wai'anae Land Trust Property #1 (Wai'anae Land Trust)
- (5) Wai'anae Land Trust Property #2 (Wai'anae Land Trust)

(These applications are posted on the Commission's web site as communications M-0698 through M-0703 (2009).) Subsequently, the Trust for Public Land withdrew its Queen's Retreat Project and Siobahn Corp withdrew its Wai'anae project from consideration.

The Commission assigned members to conduct site inspections in the following small permitted interaction groups at the remaining projects:

- 1) Kevin Chang, Benton Keali'i Pang, and Hans Krock (Siobahn).
- 2) Glenn Bauer, Marjorie Ziegler, and Denise Antolini (Fong Plantation).
- 3) Jody Kaulukukui, Alan Takemoto, and Mitch D'Olier (Wai'anae Land trust projects #1 and #2).

On November 20, 2009, the Commission held a meeting at which the commissioners reported on their site visits, applicants were allowed time to provide supplemental testimony, and the public had an opportunity to provide oral and written comments. At this meeting, the Commission was informed by the Trust for Public Land, a current applicant, of an existing disagreement between the City Council and the City Administration over the following issues:

- 1) The administration desired more say over the process by which commissioners were chosen;
- 2) The administration had concerns about the process under which applications are analyzed; and,
- 3) The administration was concerned that the commission is not attached to an executive branch department.

In light of the above unresolved issues, the Commissioners ranked the remaining projects and finalized its recommendations (Fong Plantation being the only recommended project at \$1.1 million). However, at the request of applicant The Trust for Public Land, the Commission deferred official transmission of its recommendation to the City Council until March 1, 2010.

Having received no response on these matters from either the City Council or Administration, the Commission sent a letter to the Mayor on January 11, 2010 requesting any information or update on the Administration's concerns.

On January 15, 2010, City Council Chair Todd Apo appeared before the Commission to report that the situation between the Administration and the City Council had not changed and disagreement about the relationship of the Administration to the Commission continued.

On February 22, 2010, the Mayor made the following statement in his State of the City address: "Clean Water. At the top is the Clean Water and Natural Lands Fund, where we are proceeding with one of the recommendations of the commission bearing that name. The group created the template for community input on the use of the fund, and we will be moving ahead with a partnership involving the federal and state governments,

conservation groups, and owner of Sunset Ranch to preserve that agricultural open space. By the way, we're also proposing to use Clean Water money to buy land in Nanakuli for a park. Yes, Nanakuli has parks, but they're beach parks. What the community needs is space for active recreation and that's the goal we are pursuing." He also announced: "To further leverage the anticipated federal money that will come from the national partnership I just mentioned, we're looking for opportunities to use our Affordable Housing and Clean Water and Natural Lands funds. We're working on a package of City tools, such as funding, planning, and zoning, to help create livable communities that will include affordable housing, open space, pedestrian and bicycle-friendly paths, and a sustainable environment, while also making this vision appealing to private developers to participate with us in this exciting venture."

The Commission had not been not aware of the Mayor's remarks, of any such plans for Nanakuli Park, or use of CWNL funds for transit-oriented development by the Administration, nor was any subsequent communication made to the Commission about such project requests to the Fund. (A lawsuit was filed by the Nanakuli landowner in July 2010 suggesting, among other concerns, that the Mayor's proposed acquisition violated the Charter requirements with regard to the Clean Water and Natural Lands Fund. The Commission is not involved in that lawsuit and the current status of that lawsuit is not known to the Commission.)

On March 5, 2010, Rix Mauer III, Director of Budget and Fiscal Services, reported to the City Council, as required under ROH Ch. 6, Section 6-62.4 (Mayor must submit a report to the City Council on the Clean Water and Natural Lands Fund), stating that: "For the Fiscal Year 2011, no monies from the Fund are included in the Operating Budget. However, in the FY 11 Capital Improvement Program (CIP) \$3 million from the Fund is programmed in Preservation and Conservation Lands (Project No. 2009041) to finance projects consistent with the Revised Ordinances of Honolulu. As delineated in the FY11 Executive Capital Budget and Program Bill, Proviso Section 14, a public infrastructure map amendment will be submitted to the City Council for adoption prior to July 1, 2010, for projects to be financed with the Fund." This report was not provided to the Commission until three months later, after the Commission made an inquiry, on June 28, 2010. The report apparently was referring to the Nanakuil Park project, and made no reference to the Commission's earlier recommendations to the City Council.

The Commission's positive recommendation on the Fong's Plantation application (\$1.1 million) was forwarded in final form to the City Council on March 18, 2010.

At the Commission's May 7, 2010 meeting, it reported the following updates on the expenditure of funds from cycle 1 (2009):

The council funded projects were:

- | | | |
|----|-------------------------------------|----------------|
| a. | Kukaniloko - Galbraith Lands Around | \$2,000,000.00 |
| b. | Sunset Ranch | \$ 609,425.00 |
| c. | Honouliuli Preserve | \$ 92,043.50 |
| d. | Kunia Agricultural Research Station | \$ 400,000.00 |

Acquisition of an easement for Sunset Ranch is headed toward closing, along with the city's release of necessary funds, sometime in June.

The city administration was very cooperative and willing to release the funds for the Honouliuli Preserve project. After corporation counsel required the city to obtain an easement, the budgeted amount was unacceptable to the state of Hawaii, which was acquiring the Preserve for \$4.3 million, to justify granting the city an easement. The applicant did not draw on the \$92,000 CWNL funds and found other funding.

Discussion between the applicant and the city continues on Kukaniloko.

There was no report on the Kunia parcel.

In addition, at the May 7, 2010 meeting, the Commission made the following conclusions about the Nanakuli park proposal:

a. The commission encourages the administration to submit its proposed Nanakuli park project to the commission via the application process. A request from the administration to use the fund for a park in Nanakuli was submitted in the mayor's version of Bill 16 (2010), the executive capital budget and program for the fiscal year July 1, 2010 to June 30, 2011.

b. The commissioners reported that the administration wants to restructure the commission from one purely appointed by the council to one which may include appointees of the mayor. Any restructuring would be the responsibility and task of the council.

c. Ms. Antolini moved that all projects including administration-initiated projects be submitted to the commission through its regular application and review process, including the proposed Nanakuli park project and any potential rail-related projects, because the commission believes the currently CWNL application process is fair, transparent, public, and community-friendly. The motion was adopted.

On May 24, 2010, this Commission's recommendation on the Fong Plantation was considered by the Budget Committee of the City Council, which passed the following budget item as part of Bill 16 (2010):

Provision of funds for the acquisition of land for land conservation purposes consistent with the Revised Ordinances of Honolulu Chapter 6, Article 62. Funds for this project may be used for the Fong Plantation and may include acquisition of land for an active park in the Leeward area such as the Nanakuli area, provided that such acquisition shall specify that such lands may never be used for a landfill.

On June 9, 2010, the City Council passed the budget (Bill 16, CD2), with the same references to the Fong Plantation and Nanakuli park.

On June 30, 2010, at the request of the Administration, the City Council Budget Commission considered Resolution 10-149, “recommending that the Mayor appoint a Clean Water and Natural Lands Advisory Commission to advise the city administration on the expenditure of moneys in the fund.” The Commission and an individual commissioner submitted testimony expressing opposition and concern about this resolution, which would replace the existing Commission. The Budget Committee deferred the resolution.

At its July 16, 2010 meeting, the Commission discussed the Budget Committee’s consideration of the issues and concluded:

Resolution 10-149 – Relating to Advisory Bodies for the Use of Moneys in the Clean Water And Natural Lands Fund was deferred in the Budget Committee on June 30, 2010. The chair reported that while the commission did not receive notice of the resolution in time for the commission to testify, the chair and Ms. Kaulukukui testified at the meeting as individuals. All of the testimony received by the Budget Committee was in opposition to the resolution, including written testimony submitted by the chair and Ms. Antolini (Misc. Com. 1006 and Misc. Com. 1002, respectively).

Ms. Kaulukukui moved that the Commission write a letter to the council stating its position that the commission supports 1) the commissioners having qualifications similar to those set forth in Resolution 07-355, CD1; 2) the application review process which has been developed by the Commission be kept intact; and 3) the commissioners be retained through their existing terms and new commissioners appointed as openings on the commission occur to maintain some institutional knowledge on the Commission. The Commission has no opinion on who it reports to or who the appointing authority is. The Commission further authorizes the chair, Ms. Antolini, or other member of the Commission to testify on behalf of the Commission at the council or committee meeting to which Resolution 10-149 is referred to regarding its position on the aforementioned items.

On November 10, 2010, Resolution 10-149 CD1 was again heard by the Council Budget Committee, along with Resolution 10-302, which would have restructured the Commission. The Commission and individual commissioner again submitted testimony expressing opposition and concern about these resolutions and requesting deferral. Managing Director Doug Chin, on behalf of the new Mayor Peter Carlisle, also requested deferral to allow the new Administration the opportunity to work with the Commission and the Council on these matters.

Community Support and Suggestions

During its review of the 2010 applications, the Commissioners greatly appreciated the support received from applicants, the public, and the City Council. Although the

Commission encountered numerous challenges along the way, the vast majority of the feedback was very positive.

The Commission has implemented suggestions from the last funding cycle including an extension of time to submit applications.

The Commission also moved up the application cycle in order to provide its recommendation to the Council much earlier in the 2010 City budget process. Applications for the third cycle were accepted on August 2, 2010 with a deadline of October 2, 2010. Testimony in support of applications took place on November 19, 2010 with the Commission decision-making meeting completed on December 10, 2010.

The Commission has also made attempts make the process as paperless and digitized as possible for the next cycle, including, e.g., providing the applications on disk to Commissioners, posting PDF versions to the web site, and maintaining minimal hard copies for public review.

Commission Acquisition and Management Concerns

The Commission has continuing concerns regarding communication with and between the City Council and the Mayor regarding the Commission and the use of the Clean Water and Natural Lands Fund. The Commission wishes to reiterate specific recommendation as stated in last year's annual report:

“The Commission looks forward to working with all concerned parties to ensure the success of the Fund priorities and program. One specific example of an opportunity for cooperation would be to have City Council members and the Mayor's representatives attend future site visits for projects that apply during the next cycle. In addition, City Council members, the Mayor, and their staff should be encouraged to continue to attend Commission meetings and be in direct contact with the Commission Chair and Vice-Chair.”

Further, in light the differing views over the need for Resolutions 10-149 and 10-132, the Commission continues to recommend that communications between the Commission, the City Council, and the Administration improve. The Commission believes the system it created three years ago under the framework of the Charter Amendment, Ordinance 07-18 (2007), and Resolution 07-355, CD 1 (2007) provides a fair and transparent process equivalent to or exceeding best practices in similar programs nationwide. ROH 6-62.5(a) provides that: “All expenditures from this fund shall be made consistent with the priorities established by a commission created by council resolution or, in the absence of a commission, with the priorities established by the council by resolution.” The City Council endorsed the Commission's priorities and process in its July 15, 2009 Resolution 08-246CD1, which found the Commission's advisory work “consistent” with the provisions of Resolution 07-355, CD1.” The Commission therefore recommends that the current system remain in place and that the City Council and the Administration consult

with each other in filling the commission's open seats before the next round of applications are received. The Commissioners request that the application process and commissioner qualification requirements, in particular, be retained, and that the independence and transparency of the process be considered paramount if any restructuring is considered by the Administration or Council.

Looking Forward: 2010-2011 Cycle

The Commission looks forward to completing the third application cycle on time and to improved communications with the new Administration and the City Council regarding the Commission's role in ensuring the proper expenditures from the CWLN Fund.

An outstanding issue that needs to be addressed, in addition to more regular communication, is the use of the Fund for minimal administrative support and outreach expenses. As the Commission stated at its May 7, 2010 meeting and has discussed often since it was established: "A portion of the CWNL fund may be used by the commission for its expenses." Revised Ordinances of Honolulu 6-62.5 (c) states: "At any given time, no more than five percent of the monies in this fund shall be used for administrative expenses." This language implies that a small percentage of the fund *may* be used for administrative expenses. This provision should provide the basis for further discussions about any administration support or costs related to the Commission. Specifically, the Commission would also like to follow up with the City Council on the following items: "the specific process to access and use CWNL funds for such items as production, printing, and reprinting of the commission's brochure."

In conclusion, despite the concerns that surfaced during the term of the former Administration about the appropriate process for funding projects from the CWNL Fund and the appointment process for, and structure of, the Commission, the Commissioners believe that -- through the efforts of the many stakeholders who supported this process -- they have been largely successful in establishing fundamentally fair and transparent processes that will continue to best serve the people of the City and County of Honolulu.

Background Documents

Available on the Commission Web Site

www.honolulu.gov/council/cbc/cwnl.htm

Relevant Law:

- Charter Question 3 (2006) (creating RCH, Article IX, Section 9-204)
- Revised Ordinances of Honolulu 07-18 (2007) (amending Chapter 6) (June 6, 2007)
- Resolution 07-355 CD1 (adopted Feb. 2, 2008)
- Resolution 08-246 CD1 (adopted July 15, 2009)

Commission Documents:

- Policy on Priorities (M-1861, 2008)
- Guidelines for Applicants (M-0267, 2009)
- 2009-2010 (Cycle 2009B) Application
- 2009B Applications (M 0698, 0699, 0700, 0701, 0702, 0703)
- Jan. 11, 2010 Letter from Chair Ziegler to Mayor Hannemann
- March 18, 2010 Letter from Chair Ziegler to Council Chair Apo (final recommendations)