



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
Giorgio F. Caldarone – Vice Chairperson
Kim Falinski
William Reese Liggett
Elliott “Kai” Raymond Markell
William Kamana’olana Mills
Jason Kekahi “Kahi” Pacarro

Meeting Minutes

Friday, February 14, 2020

9:00 a.m.

Mission Memorial Building Hearings Room

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

Commissioners Present – William Reese Liggett, Elliot “Kai” Raymond Markell, Kim Falinski (arrived at 9:02 a.m.) and William Kamana’olana Mills.

Commissioner Excused – Jason Kekahi “Kahi” Pacarro, Vice-Chairperson Giorgio Caldarone

Staff Resources Personnel Present

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

Guests

Sandra Pfund, Director, Department of Land Management
John Morgan, Kualoa Ranch

Chair Broder Addressed the Clean Water and Natural Lands Advisory Commission (“CWNL”)

Chair Broder explained to the Commissioners the reason no CWNL meetings were held since July 19, 2019.

Clean Water and Natural Land Meeting Schedule - Chair Broder asked the Commissioners their preference on establishing the remaining CWNL meetings for 2020 to be held on either the second Friday of every month or the third Friday of every month.

- Commissioner Liggett stated he prefers meetings to be held on the second Friday of every month.
- Other commissioners stated that there is no preference.
- Chair Broder requested that BFS reschedule the remaining 2020 CWNL meetings to be held on the second Friday of every month.

APPROVAL OF THE JULY 19, 2019 MEETING MINUTES

Without any objections, the minutes of the July 19, 2019 meeting were approved, 5-0 (AYE: Broder, Falinski, Liggett, Markell and Mills; Nay: None; Abstain: None).

PRESENTATION BY THE DEPARTMENT OF BUDGET AND FISCAL SERVICES

Aaron Honda, staff personnel of BFS informed the Commission that one new application was received. After BFS' review process, the application was determined to be incomplete and the applicant was notified. BFS sent a letter to the applicant highlighting the areas of the application that needed additional information or clarification that would provide in greater detail on how the applicant's request fulfills the purposes of the Clean Water and Natural Lands Fund ("Fund").

Commissioner Falinski asked if the incompleteness is due to any difficulties with providing reports or documents. Honda responded no. Honda stated that he is hopeful that the application will be ready for the next meeting. Chair Broder stated that if the application isn't ready to be presented, she'll be more inclined to have the next meeting in April.

PRESENTATION BY THE DEPARTMENT OF LAND MANAGEMENT ("DLM") OF THE USE OF FUNDS FROM THE CLEAN WATER AND NATURAL LANDS FUND, TO INCLUDE UPDATE OF THE HO`ĀLA `ĀINA KŪPONO PROJECT AND THE DEPARTMENT OF PLANNING AND PERMITTING PROJECT

Director Pfund briefly described the Department of Land Management's process after the Commission has submitted its recommendations to the City Council.

Director Pfund presented a photo and a frame from the Trust for Public Land of the `Āina Haina Nature Preserve. Director Pfund described the 9.5 acres of land, the history of how the land was purchased using monies from the Fund and the role the community played in being able to protect the land.

Ho`āla `Āina Kūpono

Director Pfund stated that DLM received a draft conservation easement for the property and is negotiating with Ho`āla `Āina Kūpono as to the terms and condition of the Conservation Easement ("CE"). Director Pfund stated that Hawaiian Islands Land Trust ("HILT"), headed by Laura Kaakua, will be the Administrative Holder. Director Pfund explained to the Commission how the CE will establish recorded restrictions for the use of the property, which includes no commercial activities and public access. An appraisal will be conducted once DLM determines that the restrictions under the CE on the property are fair. The appraiser will determine whether or not the restrictions justify the Fund amount of \$650,000 that was approved by City Council. To ensure that the CE value equals to \$650,000, there needs to be a significant amount of CE restrictions.

Director Pfund stated that she feels the CE draft addresses those restrictions. However, DLM would like to have the property be open to the public once or twice a month. Due the surrounding property owners, Director Pfund expressed that there needs to be a balance between public access and the rights of the neighbors. DLM is getting close to finalizing the terms. Once finalized the CE draft will be submitted to the appraiser. Once a value is determined, DLM will provide an update to the Commission.

Chair Broder is hoping that the conservation easement draft will provide sufficient public access and that although she understands the concern of the neighbors, protecting the property for conservation purposes is the main goal and the public should be able to access the property since public monies were used.

Director Pfund stated that the current draft allows for fifteen public access days a year.

Chair Broder asked if there is a limit on the amount of people that can be on the premise during public access days. Director Pfund stated that the CE draft doesn't specify an amount but it focuses on providing the opportunity for public access.

Chair Broder asked how schools will be notified about access to the property for educational purposes. Director Pfund stated that the CE will require that school groups be accommodated in addition to the fifteen public access days. Chair Broder inquired if the CE draft imposes a requirement on how many school access days will be offered. Director Pfund said that the CE draft does not address that issue and asked Chair Broder if she would like to have language put into the CE draft to address her question. Chair Broder responded that there should be a minimum number of school access days established because if left open, there will be no incentive to invite schools onto the property.

Chair Broder asked if the CE draft addresses the protection for indigenous plants and wildlife and if so, will it be the responsibility of the organization to care for the plants and wildlife that occupy the property. Director Pfund stated that there were no findings of endangered species and that the applicant's purpose was to maintain and create a perpetual use for lō`i farming.

Chair Broder asked that in regards to crop cultivation, will the CE establish a minimum size area that will be reserved just for lō`i farming. Direct Pfund answered that instead of putting a specific number, the CE will state that the use will predominately be for lō`i farming. Chair Broder and Commissioner Falinski stated the use of the word "*predominately*" is vague.

Chair Broder asked if Corporation Counsel has an opportunity to review the CE draft. Director Pfund stated yes.

Commissioner Liggett stated that maybe the language needs to state 50% of the crop must be used for lō`i farming. Director Pfund replied that the City would like to see most of the crops being farmed be lō`i.

Chair Broder asked if it is possible for DLM to circulate to the Commission the CE draft for review. Director Pfund answered that she will check with COR. Chair Broder asked what if the Commission has comments. Director Pfund stated that DLM can wait for those comments.

Commission Falinski stated that using the term such as "cultural crops" will suffice to describe that other crops planted on the property is specific to the Hawaiian culture.

Director Pfund read a portion of the CE draft that addressed farming on the property and defined some of the goals and objectives to perpetuate the practice of the Hawaiian culture.

John Morgan representing Kualoa Ranch, explained his concerns about a nearby fishpond and the fishpond wall that is owned by Kualoa Ranch and is somewhat adjacent to the Fukumitsu property and about 100 feet from the ocean. There is concern that with added public access days, the public will assume that access to the fishpond and the fishpond wall is open to the public. Morgan stated that there are no access rights to anyone else other than to Kualoa Ranch. With an increase for public access days, Kualoa Ranch does not want any distortion on who owns the fishpond and the fishpond walls and wants ensure its protection.

Director Pfund stated that language can be included in the CE draft to address Kualoa Ranch's concerns and make it clear that the fishpond and the fishpond wall is a restricted area and not a public access.

Chair Broder suggested a combination of language in the CE document and clear signage near the fishpond and fishpond wall could be used to deter people from accessing the area.

Director Pfund added that in many of DLM's management agreements, language is inserted to address such concerns. DLM can ensure that language will be put into the agreement that will make it clear that it will be the administrative holder's responsibility to monitor and ensure that on public access days, guest and attendees do not infringe on the rights of the surrounding property owners by trespassing or accessing the fishpond and the fishpond wall.

Department of Planning and Permitting ("DPP")

Director Pfund stated that the Search of Title that was attached to the application shows ownership since the mid-1800 and that at some point, indicated a break in title. Director Pfund explained that in order to transact the acquisition, DLM would normally require a Certified Title Policy and Title Insurance to protect the City from any issues related to a claim against title. This is a City standard policy.

Director Pfund noted that in order to move forward, there are two options:

1. Seller provide to the City a company that will be able to provide title insurance; or
2. Condemnation

Director Pfund briefly discussed each option.

Commissioner Markell stated that providing title insurance for this property will be an expensive process.

Chair Broder commented that for a quiet title case, by law, everyone has to be notified and that by going through condemnation, it may be a way to skirt that law.

Director Pfund responded that according to Corporation Counsel, it is her understanding that if the City decided to go through the condemnation process, only an attempt needs to be made to find the heirs to the property.

Chair Broder added that without title insurance, the current property owners will not be able to sell the property to anyone.

CLEAN WATER AND NATURAL LANDS ADVISORY COMMISSION TO DISCUSS WAYS TO INCREASE PUBLIC AWARENESS OF THE CLEAN WATER AND NATURAL LANDS FUND

Commissioner Liggett expressed his frustration with the lack of projects and commented that the Commission seems unapproachable compared to the open system that was once run by City Council. Commissioner Liggett recommended that the Commission perform some outreach by attending various Neighborhood Board meetings to educate the community about the available Fund.

Chair Broder asked if BFS can be of assistance if a commissioner wants to attend a Neighborhood Board meeting. Honda responded yes.

Commissioner Liggett described the process of a Neighborhood Board meeting to the Commission. Commissioner Liggett's explained that his intent to do a presentation is to encourage the various boards and meeting attendees to talk to other organizations that they may know who may be able to use the Fund.

Commissioner Liggett described an issue within Wawamalu Beach which involves removing vehicles off of City's park property.

Chair Broder inquired if there is any possible way for the Commission to assist with the issue Commissioner Liggett has been working on.

Council Spurlin stated that the use of the Fund under the Charter provides that the Fund can only be used to purchase or acquire a property and not for repairs or renovations. Counsel Spurlin added that in order to expand the use of the Fund for repair or renovation, an amendment to the Charter is required.

Commissioner Mills asked if the process to obtain the Fund is too complicated. Commissioner Mills also stated that the application process limits the potential applicants applying to those who have experience.

Counsel Spurlin noted that in regards to the State Land Legacy programs, the Trust for Public Land ("TPL") is the one organization that consistently applies for State funding.

Chair Broder suggested to invite non-profit organizations who are active in requesting for State conservation funding to future CWNL meetings. These organizations can talk about current projects they are working on and to provide the Commission with recommendations on how to generate interest to encourage others to apply for the Fund.

Commissioner Falinski agrees that only a handful of people know how to do conservation real estate.

Commissioner Markell described the relationship and connection the Office of Hawaiian Affairs ("OHA") has had with past CWNL applicants and how he can use his influence to direct more people to the CWNL Fund.

Chair Broder asked if the CWNL can work with OHA's grant programs and suggested that Commissioner Markell talk to someone involved with the grant programs at OHA.

Commissioner Falinski stated that she believes Waianae and the Gold Coast are completely underserved and is inclined

to go to a Neighborhood Board that serves the Waianae community.

Commissioner Mills stated that he wouldn't mind if the TPL were to attend a meeting to discuss some of the projects it was involved in and give the Commission feedback and recommendations.

Chair Broder requested that an invitation be extended to the TPL so that it can be placed on the agenda for the next meeting.

Chair Broder asked BFS to contact Vice-Chairperson Caldarone to inquire if the Weinberg Foundation has any projects or know of any organizations that would be able to take advantage of the Fund.

Chair Broder also stated that if any commissioner wants to invite other organizations to the next CWNL meeting to let BFS know.

Clean Water and Natural Land Meeting Schedule

- Future meetings will be scheduled for the second Friday of every month.

ANNOUNCEMENTS

The next meeting will be on March 13, 2020 at 9:00 a.m. at the Mission Memorial Building Hearings Room.

ADJOURNMENT – The meeting was adjourned at 10:13 a.m.

Respectfully Submitted,

Aaron Honda

APPROVED:

Chair Sherry P. Broder

Date

The minutes of the Commission Meeting on February 14, 2020 were approved at the March 13, 2020 Commission Meeting.

	<u>Aye</u>	<u>No</u>	<u>Comment</u>
Sherry P. Broder	<input type="checkbox"/>	<input type="checkbox"/>	
Giorgio F. Caldarone	<input type="checkbox"/>	<input type="checkbox"/>	
Kim Falinski	<input type="checkbox"/>	<input type="checkbox"/>	
William Reese Liggett	<input type="checkbox"/>	<input type="checkbox"/>	
Elliott "Kai" Raymond Markell	<input type="checkbox"/>	<input type="checkbox"/>	
William Kamana'olana Mills	<input type="checkbox"/>	<input type="checkbox"/>	
Jason Kekahi "Kahi" Pacarro	<input type="checkbox"/>	<input type="checkbox"/>	