

HAWAI'I COUNTY PUBLIC ACCESS, OPEN SPACE AND NATURAL RESOURCES  
PRESERVATION COMMISSION

MINUTES-REGULAR SESSION

May 11, 2015

West Hawai'i Civic Center  
Building G Conference Room  
74-5044 Ane Keohokalole Highway  
Kailua-Kona, Hawai'i 96740

Present: Chair Timothy DeLozier  
Vice-Chair Barbara Bell  
Commissioner Kai'ena Bishaw II  
Commissioner William Meyers  
Commissioner Cynthia Nazara  
Commissioner Marilyn Nicholson  
Commissioner René Siracusa  
Commissioner Kekaulike Tomich

Others Present: Craig Masuda, Deputy Corporation Counsel  
Hamana Ventura, Property Manager, Finance  
Alexandra Kelepolo, Property Management Technician, Finance

**CALL TO ORDER**

The meeting was called to order by Chair Timothy DeLozier at 10:04 a.m. Mr. DeLozier welcomed and introduced new commissioners Mr. Kai'ena Bishaw (District 2), Ms. René Siracusa (District 5), Ms. Cynthia Nazara (District 7) and Mr. Kekaulike Tomich (District 8).

**STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS**

No one present at this time.

**PRESENTATION BY MS. JANET BRITT, ACQUISITIONS SPECIALIST/HAWAI'I ISLAND DIRECTOR, HAWAIIAN ISLANDS LAND TRUST (HILT) ON WHAT ARE CONSERVATION EASEMENTS AND THE MANY BENEFITS OF ACQUIRING AN EASEMENT VS. FEE SIMPLE ACQUISITION**

Ms. Janet Britt introduced Dr. Richard Bennett, Chairman of the HILT advisory council for Hawai'i island who will also be providing information for today's presentation. HILT works with willing landowners for fee simple acquisition however they mostly work with conservation easements (CE) and to date have protected almost 18,000 acres.

Ms. Britt asked “what is a conservation easement and what does it mean to you. She explained that it is not an access, road or utility easement. A CE is a voluntary legal agreement between a landowner and land trust or government agency and is designed to protect conservation values of property in perpetuity. The landowner can continue to use the land with potential tax benefits in addition to possible limited residential development. In addition, the CE does not allow public access unless the landowner agrees to that provision.

Mr. Rick Bennett, a resident of Hawai‘i island for 15 years and a small farmer, has been involved in land trusts from the early 90’s and spoke of how a CE is a very powerful tool and is being used in counties all over the country to help conserve lands.

Some of the distinct advantages are that it’s more cost-effective than buying land in fee. A CE can be purchased in fee by appraising the value of the land with and without its’ development rights or it can also be donated. In Keōpuka, South Kona, Oceanside 1250 Partners donated a CE on 185 acres of coastal land and were able to take the value of that donation as an income tax deduction under the conservation provisions of the IRS code.

By purchasing a CE rather than fee simple there is a 30% discount, the monies that you have to appropriate could be extended. This will ensure permanent protection of the lands and will run with the deed in perpetuity. The land trust has the fiduciary and legal responsibility as holder to monitor and enforce the terms of a CE. A CE is monitored and inspected annually by staff who works with the landowner and prepares a report.

Ms. Britt noted that the County would be a signatory to the easement and would receive annual reports from HILT. Mr. Bennett added that when HILT sits down with a willing landowner the terms of the CE are mutually negotiated and agreed upon by all parties involved.

Mr. Bennett said that a lot of the CDP’s on this island talk about using CE to protect agricultural lands. The opportunity cost on agricultural lands exceeds the value of operations. If we are going to perpetuate agriculture the land needs to be affordable and CE around the country are being used to remove that speculative value. If the landowner/farmer knows that this land is not developable it changes their perspective.

Ms. Bell asked is the income tax deduction for the owner. Ms. Britt replied yes. Mr. Tomich added that only if the land is donated. Ms. Britt noted that as an example they are asking PONC for 300,000.00 for the HCC Farms CE and the owner is donating 1 million. Ms. Bell clarified that they would get a credit for 1 million and they would receive 550,000.00. Ms. Britt replied yes and noted that the fee market value is 2.6 million for the whole parcel and is subdivided into 14 lots. If you take away the development value, the CE will cost 550,000.00.

Mr. Masuda told Ms. Bell and Ms. Britt that they can’t talk anymore about this property since they are going beyond the agenda item.

Ms. Siracusa asked what if something happens to a landowner and they have to sell the property, do they have to disclose the CE to the new buyer. Ms. Britt replied yes, it’s on the title report and will run with the land in perpetuity.

Ms. Siracusa asked what if the buyer decides to do something to the land anyway and since monitoring is only once a year a lot of damage can be done in that time. Has that ever happened and how would you handle that. Mr. Bennett replied that it did happen in California a few years ago with a forest CE, where a D9 showed up to bulldoze a forest of redwood trees and the eyes and ears of the community worked by making some calls and stopping it before any damage could be done.

Ms. Siracusa noted that a CE does not allow public access however some of the parcels purchased by PONC require public access since they are in coastal areas and in that case a CE might not be the best way to go. What would be the criteria be that the Commission should be looking at for a CE as opposed to a fee simple acquisition. Ms. Britt replied that if the CE is for an ocean parcel, public access would be required; if it's a coffee farm it wouldn't be required since the CE would be to protect the agricultural lands. In regards to the public access issue it would be determined on a case by case basis. If PONC felt that public access was required it would be considered.

Ms. Britt thanked the Commission for their time.

### **APPROVAL OF MINUTES**

Mr. DeLozier asked if there are any changes to the minutes.

**Motion: Commissioner Nicholson moved to approve the minutes of March 9, 2015, regular session. Seconded by Vice-Chair Bell; Commissioner Siracusa abstained from the vote, all other members voted aye, motion carried.**

Mr. DeLozier asked if there are any changes to the minutes for the public hearing.

**Motion: Commissioner Meyers moved to approve the minutes of March 9, 2015, public hearing revising the Administrative Rules for PONC. Seconded by Commissioner Nicholson; Commissioner Siracusa abstained from the vote, all other members voted aye, motion carried.**

### **STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS**

Mr. Kevin McCabe, a realtor from Kona is here to represent the lender of a 250-acre property to be considered by the Commission. The property is located just south of Miloli'i in South Kona, has ocean frontage and sits between Miloli'i village and Honomalino Bay.

Purchase of this property would open up access to Honomalino Bay which would benefit the public. As a result of foreclosure, it is now owned by the lender and is currently listed for 1.75 million. An archaeological report has been done and there are features on the property. The 250 acres consists of 4 separate parcels and is zoned mostly agriculture and conservation near the ocean.

The previous owner had an application in for a subdivision under a Planned Unit Development with Planning Dept. and did obtain approval for 25 5-acre lots near the highway.

Ms. Siracusa asked if they will be able to see the archaeological report and also if there was a biological report done. Mr. McCabe replied that the previous owner did order one which was completed however did not pay for it so they don't have the report.

Mr. McCabe asked for clarification of the biological report. Ms. Siracusa replied a botanical survey, native species, animal, insect, birds, etc. Mr. McCabe replied that he thinks it was included as part of the report, however without the report he can't answer that question.

Mr. DeLozier noticed that there are four separate TMK's and in the nomination form there are two maps. On one map there are three lots and one lot on the other map. Mr. McCabe noted that the lot above connects to the highway and there is an easement from the highway that comes down and connects to the top piece which is approximately 220 acres and the three pieces below runs to the ocean.

Ms. Nicholson noted that the trail from Miloli'i to Honomalino traverses this property and asked where is this property in relation to the old cemetery. Mr. McCabe replied that it's about 200 yards pass the cemetery if you're coming from Miloli'i. There are two coastal trails, fishermen's trail runs by the water and above that there is a public easement that is excluded from the title report.

Ms. Nicholson asked if the road from the highway is the same one that the residents of Honomalino use for access. Mr. McCabe replied that they use a road to the south, there is no road on this property, it would have to be put in and to get to the ocean a road would have to be bulldozed.

Mr. DeLozier asked if there's an appraisal or title report available, it would help the Commission with their assessment. Mr. McCabe replied that he will look into that.

Ms. Bell asked if acquiring this property would make the access public. Mr. McCabe replied that the Ala Kahakai Trail traverses through the property and is used by the public to access Honomalino.

Ms. Nazara asked who would put the road in. Mr. McCabe replied that there are no plans to put in the road at this time.

### **WRITTEN COMMUNICATION**

Communication No. 15-003: Suggestion Form received on March 11, 2015 from Kevin McCabe, re: Lands of Kalihi, Tax Map Keys: (3) 8-9-03:05; 8-9-10:01, 02 & 08

**Motion: Vice-Chair Bell moved to accept and file Communication No. 15-003. Seconded by Commissioner Nicholson; all other members voted aye, motion carried.**

Communication No. 15-004: Letter dated March 19, 2015 to Council Chair Dru Kanuha and Members of the County Council from Mayor Billy Kenoi, re: Nomination of David K. Bishaw II, Council District 2; Cynthia S. Nazara, Council District 7 & Kekaulike P. Tomich, Council District 8 to PONC

**Motion: Commissioner Nicholson moved to accept and file Communication No. 15-004. Seconded by Vice-Chair Bell; all other members voted aye, motion carried.**

Communication No. 15-005: Letter dated March 23, 2015 to Chair DeLozier & PONC from Joseph and Kelly Vitorino, re: Nomination of Niuli'i in North Kohala on the 2014 Prioritized List (w/various attachments)

Ms. Bell asked if this communication was forwarded to anyone. Ms. Kelepolo replied that this letter is for their information and Finance will retain a copy in their files.

**Motion: Vice-Chair Bell moved to accept and file Communication No. 15-005. Seconded by Commissioner Nicholson; all other members voted aye, motion carried.**

### **CHAIRPERSONS REPORT**

Mr. DeLozier had nothing to report.

**Recess: 10:49 a.m.**

**Reconvened: 11:03 a.m.**

### **DEPARTMENT OF FINANCE REPORT**

Mr. Ventura reported that the balance in the PONC Fund is about 4.8 million and about 1.2 million in the PONC Maintenance Fund.

We expect to close two purchases this year, for Kahuku we are working on the due diligence for the federal grant and the deadline to receive those funds is by September 30<sup>th</sup>. In regards to Pohoiki, we are still awaiting land court approval for the subdivision and are expecting to close this year however the time table is not exact due to the judicial process.

Mr. Meyers asked if the Commission would be able to attend the Conservation Conference in Hilo this year. Mr. Ventura replied that he will review the information and get back to them. Mr. Tomich will be attending and said that this year it will be in Hilo, everyone involved with conservation is present, federal, state, non-profits and community members and it provides a lot of information.

Mr. Meyers also asked if the commissioners would be able to have business cards. Mr. Ventura replied that he will also look into that.

Ms. Bell asked for an update of the Vacationland land trust. Mr. Ventura replied that last week the Turtle Bay acquisition in O'ahu went through so HILT agreed to put up half of the 3 million to be paid each year so LLCP will have to put in 1.5 million. There should be adequate funds available to fund the Wai'opae acquisition. Ms. Bell asked if we anticipate acquisition in 2016. Mr. Ventura replied yes.

### **OFFICE OF CORPORATION COUNSEL'S REPORT**

Mr. Masuda re-iterated that any acquisition in land court takes a long time; there is only one judge and one clerk for the state. Revisions were made to the map and re-submitted so we just have to wait.

Mr. Ventura asked Mr. Masuda to explain the difference between a regular system purchase and land court purchase. Mr. Masuda replied that in regular system, you get a deed, file it and have it recorded and it should take about two months. In the land court process, everything needs to be submitted and must be very specific. It's a judicial function, if something is incorrect to correct errors or file anything you have to petition the court prior to it being recorded.

Mr. Ventura asked is it true that land court purchases are guaranteed by the State. Mr. Masuda replied yes and no, it's guaranteed that it's been vetted through the court system but they will not compensate you for any error.

## **NEW BUSINESS**

### **➤ County of Hawai‘i Ethics Presentation to PONC by Deputy Corporation Counsel Craig Masuda**

Mr. Masuda told the Commission that the ethics guidelines also covers them as commissioners and must be followed. There are eight major categories: Gifts, Gifts Disclosure, Confidential Information, Favoritism/Fair Treatment; Supplemental Compensation; County Resources, Financial Transactions with Subordinates & Conflicts of Interest. Since not all of these apply to this Commission, Mr. Masuda will summarize those that do.

In regards to disclosure of confidential information it can be very important in dealing with land or planning issues. For example if you hear about someone selling property or an easement, a CE can be looked at as an impediment to a development right, it can influence the purchase price of the property so it shouldn't be discussed. Also, the commissioners shouldn't be involved in the actual purchase or financing of any parcels that come to PONC for consideration.

- County property or county personnel cannot be used for your own personal gain.
- Avoid going to a major landowner or company that comes before the board inviting them to a fundraiser, this would be improper solicitation.
- Acceptance of gifts of aloha is okay, something small and nominal. However if a gift is being given with the intent to influence you don't accept it.

The main thing to remember is that if it smells wrong, you will know it before it starts.

### **➤ Sunshine Law Presentation to PONC by Deputy Corporation Counsel Craig Masuda**

Mr. Masuda told the commissioners that the most important thing to remember is that the sunshine law protects the public's right to know. Since they as a Commission have some control over how funds will be spent to acquire properties that increases the public's rights to know. Mr. Masuda summarized what can affect this Commission:

- Discussions, deliberations and decisions between commissioners must be conducted at a public meeting unless sub-committees are created.
- Commitments or asking for commitments on a vote cannot happen in any form under any circumstance.
- Every meeting must be opened unless in executive session (discuss duties and liabilities of the board or personnel issues) is allowed. What's being recorded is confidential; however the minutes will become public information once it's over.
- Do not discuss board business at lunch.
- No caucuses, polling, telephone or e-mail discussions.

Ms. Bell asked in regards to board business, what if a property has already been ranked and has been on the list from years ago would that still be considered. Mr. Masuda replied yes and noted that although it's on the list, the prioritization could still be changed.

- No serial communication is allowed, be careful to not reply to all, it's a violation of the sunshine law.
- Reports made by the ad hoc committee for site visits should be submitted to the Commission as a whole.
- Private donations will not be a matter for executive session; it will be part of the board discussion.
- If videoconferencing is done in the future and there are some members in Hilo and Kona and connection is lost; the meeting is shut down regardless of whether there's still a quorum.
- In regards to testimony, you might want to consider limiting to 3 minutes and make sure that the testifier stick to the agenda topic being discussed.
- The agenda must be posted six days prior and must be described in enough detail for the public to know what is being discussed at the meeting.
- The agenda can only be amended by 2/3 of the vote.
- The minutes do not have to be kept verbatim, and must be available within 30 days of the meeting.

Ms. Nazara asked if she saw Mr. DeLozier outside of the meeting, would she be able to discuss a board item. Mr. Masuda replied that you can have a general discussion however if it's asking him to change a vote on an item that will be coming up at a meeting that wouldn't be recommended.

➤ **Commissioners to report to Commission on any community meetings and/or Community Development Plan (CDP) Committee meetings attended for public outreach**

Ms. Siracusa reported that she's a member of the Puna CDP and they are working on a land management plan and outreach for the Vacationland Land Trust acquisition.

Ms. Bell reported that she attended the South Kohala CDP to present on PONC and explained the process. She also talked about the commissioner vacancies and also noted that to date there hasn't been any properties acquired with PONC in their district.

Mr. Meyers reported that he and Ms. Kelepolo attended the Puna CDP and took brochures and a display to explain about PONC and answer any questions. He also attended the Game Management Advisory Commission meeting with Ms. Kelepolo and answered questions about PONC.

Mr. DeLozier met Council Member Valerie Poindexter at a neighborhood association meeting and will follow-up with a meeting and once the Hāmākua CDP is established will attend those meetings.

Ms. Nicholson is going back and forth with Council Member Maile David to do a PONC presentation at a future community meeting.

Ms. Bell asked if the budget allows, business cards would be a good thing to have since a lot of people have heard of PONC but are not that familiar. We could include the mission statement on the card also along with their name and contact information. Mr. Masuda noted that it's a good idea as long as the budget can support it.

### **ANNOUNCEMENTS**

The next meeting is scheduled for Monday, July 13, 2015, 10:00 a.m. in the Hawai'i County Building, Puna Conference Room, 25 Aupuni Street, Suite #1501, Hilo, Hawai'i.

Mr. DeLozier noted that back in January the ad hoc committee members were voted on and now that we have new commissioners they can look at having this listed as an agenda item to give the new members an opportunity to be on this committee. They will also discuss if site visits will be conducted for properties submitted this year for consideration.

Ms. Bell will not be present for the July meeting however will be back in August and available for site visits if necessary.

Ms. Kelepolo will follow up with Mr. Van Bergen to attend the July PONC meeting and provide an update on issuance of the stewardship grants by Parks & Recreation.

Ms. Nicholson asked if they should decide in advance to restrict testimony to 3 minutes. Mr. Masuda replied that it can be the call of the Chair at the meeting since we will not have time to do another rule change.

### **ADJOURNMENT**

**Motion: Commissioner Siracusa moved to adjourn the meeting. Seconded by Commissioner Nicholson; all other members voted aye, motion carried.**

Meeting adjourned at 12:00 p.m.

Respectfully submitted,

Alexandra Kelepolo  
Property Management Technician