

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

May 11, 2012

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawai'i

Board Members:

**SUBJECT: REQUEST FOR FINAL APPROVAL TO ADOPT HAWAII ADMINISTRATIVE RULES, CHAPTER 13-140, "LEGACY LAND CONSERVATION PROGRAM RULES", FOR THE ADMINISTRATION OF THE LEGACY LAND CONSERVATION PROGRAM AND PROCEDURES AND CRITERIA FOR THE LEGACY LAND CONSERVATION COMMISSION, INCLUDING THE FOLLOWING SUBCHAPTERS:**

**SUBCHAPTER 1. GENERAL PROVISIONS - TO SET FORTH THE PURPOSE OF THE PROGRAM, CONTAINS A STANDARD PROVISION RELATING TO SEVERABILITY, DEFINES TERMS REGULARLY USED IN THE PROPOSED CHAPTER, AND DELEGATES AUTHORITY FROM THE DEPARTMENT TO THE DIVISION FOR THE ADMINISTRATION OF THE LEGACY LAND CONSERVATION PROGRAM (LLCP).**

**SUBCHAPTER 2. PROGRAM ADMINISTRATION - TO ESTABLISH THE LLCP, SETS FORTH THE ADMINISTRATION OF GRANTS AND PLANNING ACTIVITIES FOR THE PROGRAM, AND CLARIFIES THE AVAILABILITY OF THE LLCP RECORDS FOR THE PUBLIC.**

**SUBCHAPTER 3. LEGACY LAND CONSERVATION COMMISSION PRACTICE AND PROCEDURE - TO CLARIFY THE PROCEDURES OF THE COMMISSION, INCLUDING MEETING ADMINISTRATION, QUORUM, COMMUNICATIONS, AND REQUIREMENTS RELATED TO THE SUNSHINE LAW.**

**SUBCHAPTER 4. LAND ACQUISITION GRANTS - TO SET FORTH THE PROCEDURES, ELIGIBILITY REQUIREMENTS, AND POST-AWARD REQUIREMENTS FOR LAND ACQUISITION GRANTS THROUGH THE LLCP. THE SUBCHAPTER INCLUDES PROVISIONS RELATING TO DEED RESTRICTIONS, REPORTING REQUIREMENTS, GRANT DISBURSEMENT, AND OTHER POLICIES FORMED TO PROTECT THE STATE'S INTERESTS IN ADMINISTERING PUBLIC FUNDS UNDER CHAPTER 173, HRS.**

SUBCHAPTER 5. CRITERIA FOR LAND ACQUISITION GRANTS - TO SET FORTH THE PROCEDURES, ELIGIBILITY REQUIREMENTS, AND POST-AWARD REQUIREMENTS FOR LAND ACQUISITION GRANTS THROUGH THE LLCP. THE SUBCHAPTER INCLUDES PROVISIONS RELATING TO DEED RESTRICTIONS, REPORTING REQUIREMENTS, GRANT DISBURSEMENT, AND OTHER POLICIES FORMED TO PROTECT THE STATE'S INTERESTS IN ADMINISTERING PUBLIC FUNDS UNDER CHAPTER 173, HRS.

SUBCHAPTER 6. OPERATIONS, MAINTENANCE, AND MANAGEMENT GRANTS - TO SET FORTH THE PROCEDURES, ELIGIBILITY REQUIREMENTS, AND POST-AWARD REQUIREMENTS FOR OPERATIONS, MAINTENANCE, AND MANAGEMENT GRANTS THROUGH THE LLCP.

SUBCHAPTER 7. CRITERIA FOR OPERATIONS, MAINTENANCE, AND MANAGEMENT GRANTS - TO SET FORTH THE STATUTORY PRIORITIES AND THE CRITERIA THAT THE COMMISSION APPLIES IN ADVISING THE DEPARTMENT AND THE BOARD AND MAKING RECOMMENDATIONS TO THE BOARD REGARDING LAND ACQUISITION GRANTS. THE SUBCHAPTER INCLUDES PROVISIONS RELATING TO GRANT DISBURSEMENT, MONITORING, AND OTHER POLICIES FORMED TO PROTECT THE STATE'S INTERESTS IN ADMINISTERING PUBLIC FUNDS UNDER CHAPTER 173, HRS.

SUBCHAPTER 8. ENFORCEMENT - TO DESCRIBE HOW THE BOARD MAY ACT UPON BREACH BY AN AWARDEE OF CONTRACTUAL AGREEMENTS OR DEED RESTRICTIONS, AND CLARIFIES THAT STATUTORY PROVISIONS AND CONTRACTUAL AGREEMENTS OR DEED RESTRICTIONS WILL BE ENFORCED BY THE BOARD.

#### SUMMARY:

The Division of Forestry and Wildlife ("Division") requests Board approval to adopt Hawaii Administrative Rules (HAR) Chapter 13-140, "Legacy Land Conservation Program Rules."

#### BACKGROUND:

The Legacy Land Conservation Program (LLCP), created by Legislature in 2005 and 2006, provides grants to State agencies, counties, and nonprofit land conservation organizations for the acquisition and protection lands having value as a resource to the State. Chapter 173A, HRS, authorizes rulemaking for the LLCP and the Legacy Land Conservation Commission ("Commission") under the Board's. Subsequent to the last major revision to Chapter 173A, HRS, in 2008, the Division and Commission underwent a process of reviewing policies, procedures, and criteria in order to form a draft set of administrative rules.

The Commission formed a Subcommittee on Rules and Management Funds (“Subcommittee”) to draft sections within the purview of the Commission (criteria and Commission procedures) and advise on sections within the purview of the Division (procedures for the overall program). Pursuant to the statutory authority, the Commission and Subcommittee drafted sections within the purview of the Commission (criteria and Commission procedures – Subchapters 3, 5, and 7) and the Division drafted provisions within the purview of the Department (procedures for the overall operation of the program – all remaining subchapters).

The Commission approved a final draft of the subchapters within its purview at a public meeting on April 18, 2011. Subsequently, the Division sent the draft rules to the Department of the Attorney General (AG) for comment. The Division revised several sections of the rules according to comments received from the AG and presented the revised version to the Commission on October 27, 2011. The Commission stated that, although it had specific comments to various sections of the rules drafted by the Division, it supported moving forward with the rulemaking process. In order to expedite the rulemaking process, on November 11, 2011, the Division requested the Board’s approval to hold public hearings, with the recommendation that the Division consider the Commission’s remaining comments as part of public comment in the rulemaking process.

The Board approved these recommendations of the Division on November 11, 2011, and on February 7, 2012, Governor Abercrombie approved the Department’s request to hold public hearings for the draft rules.

Notice of public hearing appeared on February 25, 2012, in the Saturday editions of The Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald, meeting the legal requirement of publication thirty days in advance of the public hearing. Notice of the public hearing was posted on the websites of the Department, the Division, and the Office of the Lieutenant Governor.

The Division held six public hearings at the following dates and locations: March 27, 2012, in Honolulu; March 27, 2012, in Hilo; March 28, 2012, in Kona; March 28, 2012, in Lihue; March 29, 2012, in Kahului; and March 30, 2012, in Kaunakakai. Pursuant to Chapter 91, HRS, the Division kept record of oral testimonies and also received written testimony up to fifteen day after the last public hearing, until April 14, 2012.

#### DISCUSSION:

The Division received oral testimony (minutes attached hereto as Attachment C) from three individuals and written testimony (copies attached hereto as Attachment D) from four individuals and the Office of Hawaiian Affairs. Comments were also received by Office of Planning prior to public hearing, these comments (Attachment E) have been considered as part of the public comment process and the Office of Planning has received notice of this meeting and a draft of this submittal. All testimony received was generally in support of the adoption of the rules, with specific recommendations for clarification or improvement. Although many of the comments received were in regard to matters of policy that are controlled by statute, several comments requesting further clarification of language used in the rules. Several of these comments were adopted and incorporated into the attached Chapter 13-140, HAR.

As mentioned above, comments were also received by the Legacy Land Conservation Commission prior to public hearing, and pursuant to the preference of the Commission, were incorporated into the process as public comment so as to allow the rulemaking process to continue. The Commission's recommendations (at its October 27, 2011, meeting) were as follows:

1. The Commission recommended the following: in Subchapter 4, "Land Acquisition Grants," in sections 13-140-34, sections (c)(1)(ii) and (c)(2)(ii), the term "landowner" is used; add a definition for this term to clarify that it includes all interests in land that may potentially be disposed. The Commission voted to approve this recommendation with eight members in favor, one opposing.
2. The Commission recommended the following: in Subchapter 4, "Land Acquisition Grants," in section 13-140-24 (a), change "the department may require awardee" to "the department shall require awardee;" in Subchapter 4, "Land Acquisition Grants," section 13-140-32 (a), change "the department may monitor the awardee" to "the department shall monitor the awardee;" and in Subchapter 6, "Operations, Maintenance, and Management Grants," in section 13-140-49 (a), change "the department may require status reports" to "the department shall require status reports." The Commission voted to approve this motion with five members in favor and four members opposed.

The Commission then recommended advancing the rules through the rulemaking process, together with previous recommendations; the Commission voted to approve this motion with eight members in favor, one abstaining. The Division refrained from adopting these recommendations, as the first would be the substantive introduction of a new definition, and the second would change the intended meaning of the provision; the provision is meant to explicitly state that the Department interprets the statute as granting authority to the Department to monitor, the provision is not intended to create long-term affirmative duties for the Department that require ongoing staff or financial resources not committed by legislature.

Review of the Legislative Reference Bureau was also requested, and corresponding edits for format and style were made by staff.

The Division has made the following minor edits to the draft rules that were approved for public hearings on November 11, 2012:

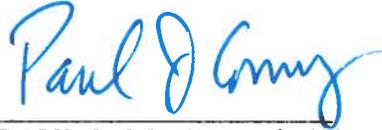
- Formatting edits at the recommendation of the Legislative Reference Bureau staff
- HAR 13-140-2: clarified "nonprofit land conservation organization"
- HAR 13-140-28: deleted the undefined term "accredited" in reference to nonprofit land conservation organizations
- HAR 13-140-28: to fix an error in the use of the term "grant," that is, deleting "grant" where "proposed project" is intended

The Division recommends that these edits, which have been incorporated into the attached Chapter 13-140, HAR, be adopted into the final draft, and the final draft approved for adoption.

#### RECOMMENDATIONS:

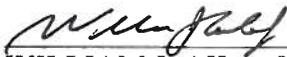
That the Board grant final approval for the adoption of Hawaii Administrative Rules, Chapter 13-140, "Legacy Land Conservation Program Rules."

Respectfully submitted,



PAUL J. CONRY, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson  
Board of Land and Natural Resources

ATTACHMENTS:

- Attachment A: Chapter 13-140, HAR, Legacy Land Conservation Program Rules, Ramseyer Draft (dated May 11, 2012)
- Attachment B: Script for March 2012 public hearings for the adoption of Chapter 13-140, HAR, Legacy Land Conservation Program Rules
- Attachment C: Oral testimonies submitted at public hearings
- Attachment D: Written testimonies submitted during 15-day comment period
- Attachment E: Comments from the Office of Planning, dated December 22, 2011

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5

FORESTRY AND WILDLIFE

PART 4 LEGACY LAND CONSERVATION PROGRAM

CHAPTER 140

LEGACY LAND CONSERVATION PROGRAM RULES

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Subchapter 8 Enforcement

§13-140-55 Breach of grant agreement  
§13-140-56 Breach of deed restrictions  
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## SUBCHAPTER 1

## GENERAL PROVISIONS

§13-140-1 Purpose. The purpose of this chapter is to govern the administration of the legacy land conservation program established pursuant to section 173A-6, HRS, and govern grants from the land conservation fund established pursuant to sections 173A-5 and 173A-9, HRS. [Eff \_\_\_\_\_] (Auth: HRS §173A-7) (Imp: HRS §§ 173A-5, 173A-6, 173A-9)

§13-140-2 Definitions. As used in this chapter, unless otherwise provided or required by context:

"Agricultural easement" is an interest in real property that has the purpose of preserving or protecting land for agricultural use and is either authorized under chapter 198, HRS, or has been defined in nature and scope by the laws or rules of a federal, county, or State grant program that will provide matching funds for a land acquisition grant from the fund.

"Awardee" means a grant applicant that has been awarded grant funding pursuant to section 173A-9, HRS.

"Board" means board of land and natural resources.

"Commission" means the legacy land conservation commission.

"Conservation easements" means conservation easements under chapter 198, HRS.

"Critical habitats" means areas designated as such under the federal Endangered Species Act of 1973 (7 U.S.C. § 136, 16 U.S.C. § 1531, et seq.).

"Division" means the division of forestry and wildlife.

"Department" means the department of land and natural resources.

"Fund" means the land conservation fund established under section 173A-5, HRS.

"Grant agreement" means contract.

"In-kind" means donated.

"Land acquisition grants" means funds granted for:

- (1) The acquisition of:
  - (A) Land in fee;
  - (B) Permanent conservation easements under chapter 198, HRS; and
  - (C) Agricultural easements; and
- (2) Reasonable costs related to the purchase of the property.

"Land" means the earth, water, and air, above, below, or on the surface, and includes easements and rights in land, and any improvement on land.

"Management grants" means funds granted for the operation, maintenance, and management of lands acquired with funds from the land conservation fund.

"Nonprofit land conservation organization" means an organization that protects "resource value" as defined herein or "land having value as a resource to the State" as defined under section 173A-2, HRS, as part of its activities or mission and has been determined and designated to be a nonprofit organization by the Internal Revenue Service.

"Program" means the legacy land conservation program.

"Resource value" means watershed, coastal area, beach, ocean access, habitat, cultural site, historic site, recreational, public hunting, park, natural area, agricultural production, open space, and scenic characteristics or benefits. [Eff ]  
(Auth: HRS §173A-7) (Imp: HRS §173A-7)

§13-140-3 Delegation of authority. Department responsibilities as listed in this chapter for the administration of the legacy land conservation program are hereby delegated by the department to the division.

[Eff ] (Auth: HRS §173A-7) (Imp: HRS §173A-7)

§13-140-4 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of application of this part which can be given effect without the invalid provision of application, and to this end the provisions of this part are severable. [Eff  
 ] (Auth: HRS §173A-7) (Imp: §§ 173A-7)

## SUBCHAPTER 2

### PROGRAM ADMINISTRATION

§13-140-5 Legacy land conservation program; established. There is established a program pursuant to section 173A-6, HRS, to:

- (1) Plan for and execute the purchase or acquisition by eminent domain of land having value as a resource to the state; and
- (2) Administer grants from the fund to nonprofit land conservation organization, county and state agency applicants. [Eff  
 ] (Auth: HRS §173A-7) (Imp: HRS §§ 173A-5, 173A-6, 173A-9)

§13-140-6 Grants from the land conservation fund. (a) The board may make grants from the fund for the purposes enumerated under chapter 173A, HRS.

(b) The department shall recommend to the board specific parcels of land to be acquired. The department shall consult with the senate president and the speaker of the house of representatives and may consult with the legacy land conservation commission prior to making recommendations.

(c) Awards shall be subject to the approval of the governor. [Eff  
 ] (Auth: HRS §173A-7) (Imp: HRS §173A-2.5, 173A-5, 173A-9)

§13-140-7 Resource land acquisition planning. Pursuant to section 173A-3, HRS, the department shall prepare and periodically revise a plan for the acquisition of land under the program. [Eff ] (Auth: HRS §173A-7) (Imp: HRS §§ 91-2, 173A-3)

§13-140-8 Public records. (a) Public records of the program and the commission shall be available for inspection at the offices of the division, subject to the limitations prescribed in chapters 92 and 92F, HRS.

(b) Public records printed or reproduced by the department, the division, or the commission, for the purposes of this program shall be given to any person requesting the same and paying 50 cents per page or fraction thereof. [Eff ] (Auth: HRS §173-2.4) (Imp: HRS §173A-2.5)

### SUBCHAPTER 3

#### LEGACY LAND CONSERVATION COMMISSION PRACTICE AND PROCEDURE

§13-140-9 Purpose. These rules provide the procedures that the commission undergoes in advising the department and the board and making recommendations to the board regarding land acquisitions and grants made pursuant to chapter 173A, HRS. [Eff ] (Auth: HRS §173A-2.4) (Imp: HRS §173A-2.5)

§13-140-10 Meetings. (a) The commission may meet in any part of the State of Hawaii.

(b) Meetings of the commission may be scheduled at the request of:

- (1) Three or more members of the commission;
- (2) The chairperson; or
- (3) The division.

(c) Meetings of the commission shall be open to the public and held in accordance with chapter 92, HRS. [Eff ] (Auth: HRS §173-2.4) (Imp: HRS §173A-2.5)

§13-140-11 Notice. The commission shall give public notice of any meeting in accordance with chapter 92, HRS. [Eff ] (Auth: HRS §173-2.4) (Imp: HRS §173A-2.5)

§13-140-12 Quorum. Any action taken by the commission shall be by a simple majority of its members. Five members of the commission shall constitute a quorum. [Eff ] (Auth: HRS §173-2.4) (Imp: HRS §173-2.4, 173A-2.5)

§13-140-13 Minutes. Minutes of commission meetings shall be kept in accordance with the requirements of section 92-9, HRS. [Eff ] (Auth: HRS §173-2.4) (Imp: HRS §173A-2.5)

§13-140-14 Communications. Written communications to the commission should be addressed to the commission and submitted through the division. [Eff ] (Auth: HRS §173-2.4) (Imp: HRS §173A-2.5)

§13-140-15 Vice-chairperson. The commission may select a vice-chairperson to act on behalf of the chairperson. [Eff ] (Auth: HRS §173-2.4) (Imp: HRS §173A-2.5)

§13-140-16 Testimony. In order to allow persons to have an equal amount of time to testify, the chairperson may limit the amount of time for testimony per individual or per issue. [Eff ]  
(Auth: HRS §173-2.4) (Imp: HRS §173A-2.5)

#### SUBCHAPTER 4

#### LAND ACQUISITION GRANTS

§13-140-17 Eligible applicants. (a) State agencies, county agencies, and nonprofit land conservation organizations may apply for land acquisition grants.

(b) The entity that will hold title to the interest in land must be the applicant and supply all required documentation for application. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-18 Eligible lands. The board may award land acquisition grants for the acquisition of interests in land, in either fee or conservation easements, having value as a resource to the State for the preservation of:

- (1) Watershed protection;
- (2) Coastal areas, beaches, and ocean access;
- (3) Habitat protection;
- (4) Cultural and historical sites;
- (5) Recreational and public hunting areas;
- (6) Parks;
- (7) Natural areas;
- (8) Agricultural production; or
- (9) Open spaces and scenic resources. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-19 Eligible expenditures. For land acquisition grants, eligible expenditures of grant funds shall be limited to the following:

- (1) The purchase of land in fee, permanent conservation easements under chapter 198, HRS, or agricultural easements at or below fair market value as determined by a department-approved appraisal;
- (2) Appraisals;
- (3) Land surveys;
- (4) Title insurance and title report; and
- (5) Environmental inspections and assessments.

[Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-20 Matching funds. (a) Where the awardee of a land acquisition grant is a county agency or nonprofit land conservation organization, the board shall require additional matching funds of at least twenty-five per cent of the total project costs. Matching funds may be in the form of:

- (1) Direct moneys;
- (2) A combination of public and private funds;
- (3) Land value donation;
- (4) In-kind contributions; or
- (5) Any combination of the above.

(b) For land acquisition grants, matching funds costs shall be limited to the following:

- (1) Land or conservation easements at or below fair market value as determined by a department-approved appraisal;
- (2) Appraisals;
- (3) Land surveys;
- (4) Title insurance and title report;
- (5) Environmental inspections and assessments;
- (6) Escrow fees, excluding taxes;
- (7) Baseline documentation for conservation easements; and
- (8) Attorneys' fees for the review and drafting of acquisition-related documents.

(c) Qualifying entities shall supply evidence of the sources and expenditures of matching funds to the satisfaction of the department prior to distribution of the grant.

(d) Matching fund expenditures must be reasonable and necessary for accomplishing project objectives and the purpose of the program.

(e) Qualifying entities must demonstrate the basis and method for valuation of in-kind contributions. Donated services must be provided by skilled professionals. In-kind contributions must be an integral and necessary part of the approved project.

(f) Lands being donated as matching funds shall be subject to the same requirements and restrictions as lands that are being acquired with grant funds.

(g) In cases where the actual total project costs at time of grant disbursement are less than the estimated total project costs stated in the project application, the department shall require awardees to maintain the same proportion of matching funds to awarded funds that is set forth in the project application. [Eff \_\_\_\_\_ ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-21 Federal coordination. The department may coordinate with federal grant programs by requiring compliance with federal laws, rules, and policies, provided that all applicable state laws, regulations, and policies are complied with. [Eff \_\_\_\_\_ ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9, 173A-12)

§13-140-22 Application. Applicants for land acquisition grants shall submit requests for funding by the annual deadline, using the forms and instructions provided by the department as may be revised from time to time. [Eff \_\_\_\_\_ ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-23 Grant agreement. (a) County and nonprofit applicants that have been awarded land acquisition grant funds by the board and will hold title to the interest in land being acquired, must enter into a grant agreement with the board.

(b) Per the discretion of the board, a state agency that is awarded funds by the board may either:

- (1) Acquire land under the authority of the board; or
- (2) Enter into a grant agreement with the board if the state agency possesses legal authority to conduct land acquisitions.

(c) The grant agreement may contain provisions or attachments relating to the management and protection of the specific resource values for which an award was granted. The department may require awardee to supply evidence of the condition of these resources on the date of acquisition and to supplement thereafter. [Eff \_\_\_\_\_] (Auth: HRS §173A-7) (Imp: §§ 173A-4, 173A-5, 173A-9)

§13-140-24 Awardee forms and requirements. (a) Prior to disbursing funds for land acquisition grants, the department may require awardees to:

- (1) Sign letters of offer from the department to signify acceptance of an award;
- (2) Submit a title report and an appraisal for department review or approval;
- (3) Submit evidence of matching funds;
- (4) Use escrow services;
- (5) Obtain title insurance;
- (6) Provide an accounting and documentary evidence of all grant fund expenditures and project costs;
- (7) Obtain site surveys and assessments;
- (8) Meet any requirements of chapter 343, HRS;
- (9) Submit a copy of the proposed deed along with any baseline documentation and other supporting documentation; and

(10) Submit documentation of resources being protected.

(b) The department may require the use of forms supplied by the department.

(c) The department may require the awardee to meet any other requirements to ensure protection of the State's interests in protecting resource values and ensuring compliance with the terms and conditions of the grant agreement.

(d) The department may require state agencies that do not conduct acquisitions through the department to complete any or all of the requirements for nonprofit and county awardees. [Eff  
] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-25 Title. No award shall be granted for acquisitions of lands having encumbrances or defects of title that the department determines are in conflict with the purposes of the grant. [Eff  
] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-26 Fair market value. No award shall be granted for the acquisition of land at a cost above the fair market value as determined by an appraisal that has been approved by the department. [Eff  
] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-27 Voluntary landowner. If the board awards a land acquisition grant to an awardee that had submitted evidence of the landowner's potential willingness to sell, and the land is transferred to another landowner prior to acquisition by awardee, the awardee must provide evidence that the original landowner and new landowner support acquisition of the land by the awardee. [Eff  
] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-28 Conservation easements, deed restrictions, and covenants. (a) The board may encumber lands acquired with grants from the fund with conservation easements under chapter 198, HRS, or an agricultural easement or deed restrictions or covenants to ensure the long-term protection of the land and its resource values.

(b) The board shall require projects receiving land acquisition grants for fee purchase from the fund to incorporate a conservation easement under chapter 198, HRS, unless:

- (1) The grant is to a county agency or to a state agency; or
- (2) The proposed project already includes a conservation easement to a county agency, state agency, federal agency, or nonprofit land conservation organization.

The board may accept a conservation easement to a county agency, state agency, federal agency, or nonprofit land conservation organization to meet this requirement.

(c) In circumstances where the board does not require a conservation easement, in determining whether to encumber lands acquired with grants from the fund, upon a recommendation from the commission, the senate president and the speaker of the house of representatives, or the department, the board shall consider:

- (1) Whether the long-term protection of the land and its resource values has been sufficiently addressed in the proposed project; and
- (2) Whether the additional encumbrance will adequately achieve the long-term protection of the resources in a way that is appropriate for their intended use. [Eff  
] (Auth: HRS §173A-7) (Imp:  
§§ 173A-4, 173A-5, 173A-9)

§13-140-29 Payment. (a) For land acquisition grants, payments may be made to the awardee upon receipt of reports and invoices that meet the requirements of the grant agreement.

(b) The department may withhold any portion of the payment until all commitments are verified as complete to the satisfaction of the department.

(c) For land acquisition grants to nonprofit land conservation organizations and county agencies, reimbursement will be the method of payment for all costs, except for the cost of land. Payment for the cost of land will not be by way of reimbursement.  
[Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-30 Awardee requirements, post-disbursement. The department may require state, nonprofit, and county awardees of land acquisition grants to:

- (1) Submit a copy of the executed and recorded deed;
- (2) Submit documentation of the escrow transaction; and
- (3) Meet any other requirements to ensure protection of the State's interests. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-31 Deed. A copy of the recorded deed shall be sent to the department within the time specified in the grant agreement. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-32 Monitoring and reporting. (a) After a land acquisition grant is administered to an awardee, the department may monitor the awardee, any additional managing entities, and the land acquired to

determine the status of any resource values protected under the terms of the grant agreement.

(b) The department may require a holding or managing entity of lands acquired through land acquisition grants to submit reports, photographs, forms, or any other documents to determine the status of any resource values protected under the terms of the grant agreement. Awardees shall respond to any such requests from the department within sixty days. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-33 Site visits. (a) By accepting the grant, the awardee agrees that the department may enter lands acquired through land acquisition grants for the purpose of inspecting the condition of the property and resources.

(b) The department shall provide either written or verbal notice to the landowner forty-eight hours prior to entering the land and shall make a record of the visit. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-34 Sale, lease, or other disposal of lands. (a) Prior to any disposal of lands acquired with moneys from the fund, awardees must seek the written approval of the board. Such requests for approval shall be submitted to the department in writing.

(b) As a condition of approval of disposition, the board may require that the new landowner, and any subsequent landowner, enter into a contract with the board for the protection of the resource values.

(c) In deciding whether to approve a disposition, the board may consider the following factors:

(1) If the proposed disposition is for value or consideration:

(A) Whether the disposition will be to an agency or organization that is eligible

- to receive awards under this chapter and chapter 173A, HRS;
- (B) Whether the new landowner will be capable of managing the land in accordance with the purposes for which the board awarded a grant; and
  - (C) Whether the net proceeds of the sale will allow the State to recover its appropriate portion of the funds that were originally contributed pursuant to section 173A-10, HRS; or
- (2) If the proposed disposition is gratis, for no value or consideration:
- (A) Whether the disposition will be to an agency or organization that is eligible to receive awards under this chapter and chapter 173A, HRS; and
  - (B) Whether the new landowner will be capable of managing the land in accordance with the purposes for which the board awarded a grant; and
- (3) Any other factors that may help determine the best interests of the State under chapter 173A, HRS. In determining these factors, the board may use criteria listed under section 13-140-39. [Eff  
] (Auth: HRS §173A-7) (Imp:  
§§ 173A-5, 173A-9)

§13-140-35 Proceeds. (a) Whenever any land acquired with a land acquisition grant is sold by any state agency, county, or nonprofit land conservation organization, that portion of the net proceeds (sale price less actual expenses of sale) of such sale equal to the proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State and redeposited or credited to the fund.

(b) In the event any such land or other property is leased, rented, or otherwise disposed of, that portion of the rental or proceeds equal to the

proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State and redeposited or credited to the fund. [Eff \_\_\_\_\_] (Auth: HRS §173A-7)  
(Imp: §§ 173A-5, 173A-9, 173A-10)

§13-140-36 Revenue. Any net proceeds or revenue from the operation, management, sale, lease, or other disposition of land or the improvements on the land acquired or constructed by the board under the provisions of this chapter shall be deposited in or credited to the fund. [Eff \_\_\_\_\_]  
(Auth: HRS §173A-7) (Imp: §§ 173A-5)

## SUBCHAPTER 5

### CRITERIA FOR LAND ACQUISITION GRANTS

§13-140-37 Purpose. These rules provide the criteria that the commission applies in advising the department and the board and making recommendations to the board regarding land acquisitions and grants made pursuant to chapter 173A, HRS. [Eff \_\_\_\_\_]  
(Auth: HRS §173A-2.5) (Imp: HRS §173A-2.5)

§13-140-38 Priorities. In advising the department and the board, the commission shall give the following lands priority in its recommendations for acquisitions:

- (1) Lands having exceptional value due to the presence of:
  - (A) Unique aesthetic resources;
  - (B) Unique and valuable cultural or archaeological resources; or
  - (C) Habitats for threatened or endangered species of flora, fauna, or aquatic resources;

- (2) Lands that are in imminent danger of development;
- (3) Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;
- (4) Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;
- (5) Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction; and
- (6) Lands that are unique and productive agricultural lands. [Eff ]  
(Auth: HRS §173A-2.5) (Imp: HRS §173A-2.5, HRS §173A-2.6, HRS §173A-5)

§13-140-39 Criteria. In advising the department and the board, the commission may consider the following criteria in forming its recommendations for acquisitions:

- (1) Completeness of the acquisition application;
- (2) Acquisition of interests or rights in land having value as a resource to the State for the preservation of the following:
  - (A) Watershed protection;
  - (B) Coastal areas, beaches, and ocean access;
  - (C) Habitat protection;
  - (D) Cultural and historical sites;
  - (E) Recreational and public hunting areas;
  - (F) Parks;
  - (G) Natural areas;
  - (H) Agricultural production; and
  - (I) Open spaces and scenic resources;
- (3) Linkage of protected acreage of similar resources;
- (4) Opportunities for appropriate public access and enjoyment;
- (5) Presence of environmental hazards;

- (6) Feasibility of a project within the two-year acquisition timeframe;
- (7) Cost of acquisition;
- (8) Proportion of matching funds being leveraged;
- (9) Urgency of need to acquire;
- (10) Status and adequacy of management planning;
- (11) Community support for acquisition;
- (12) Completeness of acquisition funding;
- (13) Connection to regional planning and protection efforts; and
- (14) Capacity for long-term management. [Eff  
] (Auth: HRS §173A-2.5)  
(Imp: HRS §173A-2.5, HRS §173A-2.6, HRS §173A-5)

#### SUBCHAPTER 6

#### OPERATION, MAINTENANCE, AND MANAGEMENT GRANTS

§13-140-40 Eligible applicants. State agencies, county agencies, and nonprofit land conservation organizations that have acquired lands using a land acquisition grant from the fund may apply for management grants for the operation, maintenance, and management of those lands. [Eff  
] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-41 Eligible uses. Management grant funds may be awarded for operation, maintenance and management costs that:

- (1) Are necessary to protect, maintain, or restore resources at risk on lands that have been acquired using a land acquisition grant from the fund; or
- (2) Provide for greater public access and enjoyment of lands that have been acquired using a land acquisition grant from the

fund. [Eff ] (Auth: HRS  
§173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-42 Eligible costs. (a) For management grants, eligible project costs are to be determined by the department.

(b) Applicants shall supply evidence of costs and expenditures, including documentation demonstrating that a reasonable price has been secured for any goods or services, to the satisfaction of the department prior to distribution of the grant. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-43 Eligible expenditures. (a) For management grants, eligible expenditures of grant funds shall be limited to the following costs:

- (1) Equipment;
- (2) Maintenance and repair;
- (3) Materials and supplies;
- (4) Professional services to prepare a management plan; and
- (5) Professional services to prepare an environmental assessment.

(b) Qualifying entities shall supply evidence of the matching funds to the satisfaction of the department prior to distribution of the grant. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-44 Matching funds. (a) Where the awardee of a management grant is a county agency or nonprofit land conservation organization, the board shall require additional matching funds of at least twenty-five per cent of the total project costs.

Matching funds may be in the form of:

- (1) Direct moneys;
- (2) A combination of public and private funds;
- (3) Land value donation;

- (4) In-kind contributions; or
- (5) Any combination of the above.

(b) Qualifying entities shall supply evidence of the matching funds to the satisfaction of the department prior to distribution of the grant.

(c) For management grants, matching funds costs shall be determined by the department and limited to the following:

- (1) Equipment;
- (2) Maintenance and repair;
- (3) Materials and supplies;
- (4) Professional services to prepare a management plan; and
- (5) Professional services to prepare an environmental assessment.

(d) Qualifying entities shall supply evidence of matching funds sources and expenditures to the satisfaction of the department prior to distribution of the grant.

(e) Matching fund expenditures must be reasonable and necessary for accomplishing project objectives and the purpose of the program.

(f) Qualifying entities must demonstrate the basis and method for valuation of in-kind contributions. Donated services must be provided by skilled professionals. In-kind contributions must be an integral and necessary part of the approved project.

(g) In cases where the actual total project costs at time of payment are less than the estimated total project costs stated in the project application, the department shall require awardees to maintain the same proportion of matching funds to awarded funds that is set forth in the project application.

[Eff ] (Auth: HRS §173A-7) (Imp: §§  
173A-5, 173A-9)

§13-140-45 Federal coordination. The department may coordinate with federal grant programs by requiring compliance with federal laws, rules, and

policies, provided that all applicable State laws, regulations, and policies are complied with. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9, 173A-12)

§13-140-46 Application. Applicants for management grants shall submit requests for funding by the annual deadline, using the forms and instructions provided by the department as may be revised from time to time. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-47 Grant agreement. (a) County and nonprofit applicants awarded management grant funds by the board shall enter into a grant agreement with the board.

(b) Per the discretion of the board, a state agency awarded funds by the board may be required to enter into a grant agreement with the board.

(c) The maximum time of performance for the grant agreement shall be two years, unless an extension is approved by the department in writing. Applicants must request an extension in writing no later than ninety days prior to the deadline for performance. Extensions may be granted at the discretion of the department and the department may reject requests for extensions. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-48 Awardee forms and requirements. (a) Prior to disbursing funds for management grants, the department may require awardees to:

- (1) Sign letters of offer and acceptance from the department to signify acceptance of an award;
- (2) Provide an accounting and documentary evidence of all grant fund expenditures and project costs;

- (3) Complete any applicable requirements under chapter 343, HRS, or other applicable laws;
- (4) Submit reasonable documentation of resources or facilities being protected, maintained, restored, or improved; and
- (5) Meet any other requirements to ensure protection of the State's interests.

(b) The department may require the use of forms supplied by department and may require awardee to submit any additional documentary evidence to demonstrate that requirements of this chapter have been fulfilled. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-49 Monitoring. Any time prior to the disbursement of management grant funds to an awardee, the department may require status reports from the awardee regarding the completion of the awardee's commitments under the grant agreement. Awardee shall respond to any such requests from the department within sixty days. [Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-50 Payment. (a) For management grant payments, incremental payments may be made to the awardee on a quarterly basis, upon receipt of reports that meet the requirements of the grant agreement. Reimbursement shall be the default method of payment.

(b) Requests for advance payment shall be made using a form supplied by the department. The department may deny advance payments for any reason. Any approved advances shall be limited to fifteen per cent of the approved award, or the minimum amount needed, whichever is less. Awardees must demonstrate that the requested advance funds are urgently needed to protect, restore, or maintain resources at risk.

(c) The department may withhold any portion of the payment until all commitments are verified as complete to the satisfaction of the department. [Eff

] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

§13-140-51 Awardee requirements, post-disbursement. (a) The department may require management grant awardees to:

- (1) Submit a final project report evidencing the completion of the project and other information as requested by the department; and
- (2) Meet any other requirements to ensure protection of the State's interests.

(b) The department shall require the awardee to return any unused funds. The awardee shall respond to any such requests from the department within sixty days.

[Eff ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-9)

#### SUBCHAPTER 7

#### CRITERIA FOR OPERATIONS, MAINTENANCE, AND MANAGEMENT GRANTS

§13-140-52 Purpose. These rules provide the criteria that the commission applies in advising the department and the board and making recommendations to the board regarding grants of operations, maintenance, and management funds made pursuant to chapter 173A, HRS. [Eff ] (Auth: HRS §173A-2.5) (Imp: HRS §173A-2.5)

§13-140-53 Priorities. In advising the department and the board, the commission shall give the following lands priority in its recommendations for awards of funds for operations, maintenance, and management:

- (1) Lands having exceptional value due to the presence of:
  - (A) Unique aesthetic resources;
  - (B) Unique and valuable cultural or archaeological resources; or
  - (C) Habitats for threatened or endangered species of flora, fauna, or aquatic resources;
- (2) Lands that are in imminent danger of development;
- (3) Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;
- (4) Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;
- (5) Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction; and
- (6) Lands that are unique and productive agricultural lands. [Eff ]  
(Auth: HRS §173A-2.5) (Imp: HRS §173A-2.5, HRS §173A-2.6, HRS §173A-5)

§13-140-54 Criteria. In advising the department and the board, the commission may consider the following criteria in forming its recommendations for awards of funds for maintenance, management, and operations:

- (1) Completeness of the management grants application;
- (2) Operation, maintenance and management of land having a value as a resource to the State for the preservation of the following:
  - (A) Watershed protection;
  - (B) Coastal areas, beaches, and ocean access;
  - (C) Habitat protection
  - (D) Cultural and historical sites;
  - (E) Recreational and public hunting areas;

- (F) Parks;
- (G) Natural areas;
- (H) Agricultural production; and
- (I) Open spaces and scenic resources;
- (3) Linkage of protected acreage of similar resources;
- (4) Cost of proposed operations, maintenance, and management activities;
- (5) Proportion of matching funds being leveraged;
- (6) Urgency of need for proposed operations, maintenance, or management activities;
- (7) Feasibility of achieving proposed objectives;
- (8) Short-term and long-term efficacy of proposed actions;
- (9) Community support for the proposed activities;
- (10) Feasibility of mitigating any environmental hazards;
- (11) Role and necessity of the proposed activities in:
  - (A) Achieving the protection, maintenance, or restoration of resources at risk, or
  - (B) In providing for greater public access and enjoyment;
- (12) Status and adequacy of management planning;
- (13) Presence and role of activity in existing plans or the ability of organization to implement any planning activities that are funded; and
- (14) Benefit of the proposed activity to the region.

[Eff ] (Auth: HRS §173A-2.5) (Imp:  
HRS §173A-2.5, HRS §173A-2.6, HRS §173A-5)

## SUBCHAPTER 8

### ENFORCEMENT

§13-140-55 Breach of grant agreement. Upon a breach of the grant agreement, the board may impose sanctions against the awardee including, but not limited to:

- (1) Suspension of all grant payments; and
- (2) Suspension of the awardee's participation in state grant programs;

until such time as all breaches are cured to the board's satisfaction. Sanctions may also include repayment of all state funds expended and any sanctions included as provisions of the grant agreement.

[Eff \_\_\_\_\_ ] (Auth: HRS §173A-7) (Imp: §§ 173A-5, 173A-7, 173A-11)

§13-140-56 Breach of deed restrictions. Upon a breach of a deed restriction imposed as a condition of the grant, the board may impose sanctions against the awardee including, but not limited to:

- (1) Suspension of the awardee's participation in State grant programs until such time as all breaches are cured to the board's satisfaction; and
- (2) Repayment of all state funds expended.

[Eff \_\_\_\_\_ ] (Auth: HRS §173A-7) (Imp: §§ 173A-4, 173A-5, 173A-7, 173A-9, 173A-11)

§13-140-57 Enforcement. (a) The board shall have the authority to enforce any:

- (1) Provision of this chapter;
- (2) Term or condition of the grant agreement; and
- (3) Term or condition of any conservation easements, agricultural easements, deed restrictions, and covenants placed by the board or department on lands acquired in whole or in part with land acquisition grant from the fund.

(b) In carrying out its function under this chapter and chapter 173A, HRS, the board may do all

things necessary, useful, and convenient in connection with the acquisition, administration, maintenance, and management of lands acquired through a land acquisition grant." [Eff \_\_\_\_\_ ] (Auth: HRS §173A-7) (Imp: §§ 173A-4, 173A-5, 173A-7, 173A-9, 173A-11)

2. The adoption of chapter 13-140, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on May 11, 2012, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
WILLIAM J. AILA, JR.  
Chairperson  
Board of Land and Nature Resources

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

**Script for public hearings for proposed adoption of Chapter 140, Hawaii Administrative Rules, Legacy Land Conservation Program Rules**

**PUBLIC HEARING FOR ADOPTION OF A CHAPTER 13-140, HAWAII ADMINISTRATIVE RULES, LEGACY LAND CONSERVATION PROGRAM RULES**

Location \_\_\_\_\_ Date \_\_\_\_\_

**I. Introduction, Procedures, and Conduct for Public Hearing**

**A. Call to Order**

- 1) “It is now \_\_\_\_ p.m. and this public hearing is called to order.
- 2) This is a formal public hearing on administrative rules for the Department of Land and Natural Resources.
- 3) My name is \_\_\_\_\_ and I work with \_\_\_\_\_ in the State Department of Land and Natural Resources.
- 4) The Board of Land and Natural Resources has appointed me to function as the Hearings Officer of this public hearing on its behalf.
- 5) At this time, I would like to introduce other DOFAW employees present tonight. (If applicable).
- 6) As a reminder, please sign-in on the sheet provided so we will have a complete record of the persons attending this hearing. There is a column indicating those who wish to present testimony on the proposed rules. Please print your name on the testimony sheet. I will call the names in the order in which they are listed to hear the testimonies.”

**B. Purpose**

- 1) “The purpose of this hearing is to provide the public with the opportunity to present comments on the new chapter of rules for the administration of the Legacy Land Conservation Program, as well as the procedure and project-selection criteria for the Legacy Land Conservation Commission.”

**C. Approvals and Notices of Public Hearing**

- 1) “Approval to hold public hearings on the proposed administrative rules was obtained from the Board of Land and Natural Resources on November 10, 2011, and from Governor Abercrombie on February 7, 2012.
- 2) Notice of public hearing appeared on February 25, 2012, in the Saturday editions of the The Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald, meeting the legal requirement of publication thirty days in advance of the public hearing. In additions, notice of the public hearing was posted on the websites of the Lieutenant Governor’s office, the Department of Land and Natural Resources, and the

Division of Forestry and Wildlife.

D. Conduct of Hearing

- 1) “In the conduct of this hearing, we will proceed as follows:
- 2) First, there will be a short informational presentation on the proposed rules.
- 3) After the informational presentation, I will call on those who signed the list to testify. (Receive list of people who have signed up to present testimony from staff).
- 4) After these persons have presented their testimonies, I will open the floor to anyone else who wishes to speak.
- 5) We will limit testimony to three minutes per speaker. Please keep your statement brief and on the subject to allow others an opportunity to testify. You may submit additional testimony in writing on or before April 14, 2012, to Department of Land and Natural Resources, Division of Forestry and Wildlife, Legacy Land Conservation Program, 1151 Punchbowl Street, Room 325, Honolulu, Hawaii 96813. This date and address are also available in the hearing notice.
- 6) Please raise your hand to be recognized, if you have a question or comment on the designation and the floor is open.
- 7) When given the floor, please present your name and comments clearly. We ask that you do this because we are recording the hearing to prepare the minutes.
- 8) Please be reminded that this is not a courtroom or adversarial type of proceeding, but a public hearing to gather testimonies. Thus, cross-examination or party-to-party rebuttals will not be allowed.
- 9) If you have a question, please direct your questions to me.
- 10) We expect that there may be differing opinions and we respect them. We want to hear them so that we can understand everyone’s concerns and viewpoints.
- 11) Are there any questions about the format for this evening?”

E. Case Summary & Informational Presentation

- 1) “Copies of the proposed rules are available at the door. Please feel free to take a copy. The proposed rules are available online at: <http://hawaii.gov/dlnr/rules>.”
- 2) (Presentation: Summary of Proposed Rules)

The Legacy Land Conservation Program (LLCP) provides grant funding from the Land Conservation Fund for the acquisition of lands, including conservation easements, for:

Watersheds protection  
Parks

Coastal areas, beaches, and ocean access  
Natural areas  
Habitat protection  
Agricultural production  
Cultural and historical sites  
Open spaces and scenic resources  
Recreational and public hunting areas

Grants from the Land Conservation Fund are available through Legacy Land Conservation Program to State agencies, counties, and non-profit land conservation organizations seeking funding to acquire lands that have value as a resource to the State of Hawai'i. County agency and nonprofit land conservation organization grant recipients must provide matching funds of at least 25% of the total project costs.

The proposed draft Legacy Land Conservation Program Rules include eight subchapters. I'll explain the general contents of each subchapter.

Subchapter 1 includes the general provisions that are found in most sets of rules. These rules set forth the purpose of the program, define terms regularly used in the proposed chapter, and delegate authority from the Department to the Division of Forestry and Wildlife for the administration of the Legacy Land Conservation Program ("LLCP").

Subchapter 2 officially establishes the LLCP and sets forth the activities of the program (administration of grants and land acquisition planning) and includes information on how members of the public can access public documents.

Subchapter 3 establishes procedures for the Legacy Land Conservation Commission, including meeting administration, quorum, communications, and requirements related to open meeting laws.

Subchapter 4 sets forth the procedures and policies relating to the administration of land acquisition grants through the LLCP. This subchapter includes provisions on land acquisition award eligibility and application requirements, as well as post-award requirements deed restrictions, reporting requirements, grant disbursement, monitoring, and other policies formed to ensure that State funds are used to serve the statutory purposes.

Subchapter 5 sets for the statutory priorities and the criteria that the Legacy Land Conservation Commission applies in advising the department and the Board of Land and Natural Resources and making recommendations to the Board regarding land acquisition grants.

Subchapter 6 sets forth the procedures, eligibility requirements, and post-award requirements for grants to State agencies, counties, and nonprofit land conservation organizations for operations, maintenance, and management activities on lands acquired using land acquisition grant funds from the LLCP.

Subchapter 7 sets for the statutory priorities and the criteria that the Legacy Land Conservation Commission applies in advising the department and the Board and making recommendations to the Board regarding grants for operations, maintenance, and

management activities on lands acquired using land acquisition grant funds from the LLCP.

Subchapter 8 contains provisions clarifying the remedies available to the Board in the case of a breach by an awardee of a contractual agreement or deed restriction imposed by the Board, or the violation of any provision of Chapter 173A, HRS (“the Legacy Land statute”).”

## **II. Testimony on Proposed Rules**

### **A. Public input**

- 1) “Now that we have explained what is being proposed, we’d like to proceed to getting your comments and testimony.
- 2) I have the list of persons who have signed up to present testimony on the designation and will call each person to testify in the order listed.
- 3) Please state your name, if you are an individual or representing an organization, and present your testimony.”
- 4) (Call testifiers in order of the list, listen to their testimony.)
- 5) “Please send the written testimonies to:

Department of Land and Natural Resources  
c/o Legacy Land Conservation Program, Division of Forestry and Wildlife  
1151 Punchbowl Street, Room 325  
Honolulu, HI 96813

This address is also available on the DLNR website.

- 6) (Once you go through the list): We have now completed the list of those who signed up to give testimony. Is there anyone else present who would like to provide testimony? If so – please come up and state your name clearly.
- 7) (When there are no additional people desiring to give testimony): There are no additional people desiring to give testimony?”

## **III. Adjournment**

### **A. Decision-making information**

- 1) “After considering your comments and other testimonies, and should it be decided to go ahead with or without changes, the Division will submit the proposed administrative rules to Board of Land and Natural Resources for adoption with recommendations.
- 2) Should the Board decide to adopt the administrative rules, we will send the rules to the Department of the Attorney General for legal review. After this department’s approval, the

Division will send the rules to the Governor for final approval and signature.

- 3) If approved as described, the Division will file certified copies with the Office of the Lieutenant Governor.
- 4) Ten days after filing, the administrative rules will become effective and have the force and effect of law. Questions?"

B. Adjournment of public hearing

- 1) "On behalf of the Board of Land and Natural Resources and the Division of Forestry and Wildlife, thank you for attending this public hearing.
- 2) The public hearing is adjourned. Time: \_\_\_\_\_.
- 3) Please drive home carefully."

## **Minutes for the Public Hearings on Proposed Rulemaking: Adoption of Chapter 13-140, Hawaii Administrative Rules, Legacy Land Conservation Program Rules**

The script for each of the six public hearings conducted to gather comments is the same for each location. The testimony and questions submitted under roman number two, "II. Testimony on Proposed Rules," of the script (attached as Exhibit B) are listed by location below, as well as any responses to questions or variances by public hearing officers from the script.

### **March 27, 2012, Honolulu**

Hearing officer: Ian Hirokawa

#### Attendees:

Andrew Chianese  
Onaona Thoene  
Brenda Baker  
Kylie Wager  
Lora Reeve  
Richard Fuller  
Carey Anderson  
Nathan Anderson

Mr. Ian Hirokawa called the hearing to order at 5:30 p.m. Mr. Hirokawa welcomed attendees, introduced Division of Forestry and Wildlife staff member Molly Schmidt, and read the script. In addition to reading the script, Mr. Hirokawa recommended that, instead of asking questions regarding the rules, those presenting testimony make a statement regarding the clarity of the rule. If the meaning of a given rule is unclear, it would be most helpful to the Department to have this information in the form of testimony.

Mr. Hirokawa stated that he would accept testimony of those signed in, in the order listed. Mr. Hirokawa observed that nobody signed in to the hearing had signed in to present testimony. He asked if there was anyone present that had not signed in or that would like to testify orally. Richard Fuller stated that several of those present were at this hearing as part of a law school class assignment.

Kylie Wagner asked if she could ask questions about the rules as part of testimony.

Ms. Schmidt stated that the purpose of the hearing was to gather public comment, and that she could answer general questions but did not want to venture too far into interpreting the rules in details, as that would be the job of the attorney general when the rules passed, and she could not ensure that her interpretation would be correct. She suggested that, in areas where the rules were unclear, Kylie Wagner restate the questions as statements regarding the clarity of the rules. Kylie Wagner stated that she was with the UH Administrative Law class. She stated that she thought that the definition of the term "acquisition" was unclear; she wanted to know if it included fee simple and conservation easements. In draft HAR 13-140-39, regarding acquisition

criteria, it was unclear whether this was an exhaustive list or if the Commission would be allowed to consider other factors.

Mr. Hirokawa thanked Ms. Wagner and asked for further comments.

Ms. Brenda Baker stated that she was with Senator Pohai Ryan's office. In terms of subchapter 5 on priorities, is the list of priorities in order that there were meant to be given importance? In regard to the matching funds, she asked if the entity would provide 50% match, that is, if the 25% of the funds would be matched by 25% from the grantee to equal the entire amount?

Ms. Schmidt stated she would take these as comments at present, for the purposes of the hearing, and could follow up with the Senator's office at a later date. Mr. Hirokawa stated that some of the questions could be answered, but they wanted to keep a clear record of what was meant to be testimony at the hearing.

Mr. Hirokawa called again for testimony, then went through information regarding the remaining rulemaking procedures to be accomplished.

Ms. Wager asked what steps the Division would play. Mr. Hirokawa reiterated the steps the Division would take prior to passing the rules.

Ms. Onaona Theone asked what sort of general projects the program envisioned. Ms. Schmidt stated that the program had been in operation since 2006 and all projects funded thus far had been posted on the website. Mr. Hirokawa clarified that the rules were establishing as law the procedure and policy for the program, but would not dictate the specific projects selected.

Ms. Wager asked who had been given the authority to draft the rules. Ms. Schmidt stated that, generally, the authority to draft administrative rules is given to a specific program by statute. She stated that the authority for each specific rule could be found at the end of the rule, for Legacy land Conservation Program rules it was mostly Section 173A-7, Hawaii Revised Statutes, however some of the authority for drafting had been delegated to the Legacy Land Conservation Commission under a separate statutory provision. Both were underneath the authority of the Board of Land and Natural Resources, and approval was granted by the Board for the rulemaking process. The drafting process had been a combination of staff and the Legacy Land Conservation Commission.

Mr. Hirokawa asked again for any further testimony. He then stated he would hold the hearing open in case any members of the public wishing to testify were running late. He thanked the present attendees for coming.

Members of the administrative law class approached staff with general questions regarding the Legacy Land Conservation Program.

No further members of the public came forward to testify.

Mr. Hirokawa called the meeting to close at 6:30 p.m.

**March 27, 2012, Hilo**

Hearing officer: Randall Kennedy

Attendees: none present

Mr. Randall Kennedy called the meeting to order at 6:00 p.m. No members of the public were present. The hearing was held open for attendees until 6:45 p.m.

**March 28, 2012, Kona**

Hearing officer: Randall Kennedy

Attendees:

Janet Britt  
Tim Britt  
Alex Kelepolo

Mr. Randall Kennedy called the meeting to order at 5:30 p.m., introduced DOFAW staff member Leah Laramée, read the script, and called for testimony. Nobody came forward to testify. Mr. Kennedy called again for testimony, and then stated that he would proceed to answer any questions about the rules or the program.

Ms. Janet Britt stated her name for the record and asked Mr. Kennedy whether the State owned all of the mineral rights, and whether a letter was required, and if the State would subordinate those rights. Mr. Kennedy stated that the State would not, generally. Ms. Britt stated that a letter was sometimes required from a geologist. Mr. Kennedy stated that the federal Farm and Ranchland Protection Program used to request these items; however, he would have to follow up and get back to her. He stated that there were not many minerals in Hawaii, he would get back to her. Mr. Kennedy discussed some of the history of mineral rights subordination requests. Mr. Kennedy then spoke about the merits of the Legacy Land Conservation Program and stated that the County of Hawaii had received several grants. He added that DOFAW staff had successfully submitted proposals for federal grant funds for match for a Legacy project in the County of Hawaii.

Mr. Kennedy called again for further testimony. There was none. Mr. Kennedy completed the public hearing script and adjourned the meeting at 6:00 p.m.

**March 28, 2012, Lihue**

Hearing officer: Molly Schmidt

Attendees: none present

Ms. Molly Schmidt called the meeting to order at 5:30 p.m. No members of the public were present. The hearing was held open for attendees until 6:20 p.m.

**March 29, 2012, Kahului**

Hearing officer: Molly Schmidt

Attendees:

Dale Bonar (Legacy Land Conservation Commission member)

Ms. Molly Schmidt welcomed attendees and called the meeting to order at 6:15 p.m. She introduced Cassie Smith, Division of Forestry and Wildlife Americorps Intern. She called for public testimony. Nobody came forward. Ms. Schmidt called again for testimony. Ms. Schmidt adjourned the meeting at 6:15 p.m.

**March 30, 2012, Kaunakakai**

Hearing officer: Molly Schmidt

Attendees:

Lori Buchanan (Legacy Land Conservation Commission member)

Ms. Molly Schmidt welcomed attendees and called the meeting to order at 4:00 p.m. She introduced Leah Laramee, Division of Forestry and Wildlife staff. She called for public testimony. Nobody came forward. Ms. Schmidt called again for testimony. Ms. Schmidt adjourned the meeting at 5:00 p.m.



comments  
Cory \ (Martha\ ) Harden  
to:  
Molly.E.Schmidt  
03/27/2012 10:22 PM  
Hide Details  
From: "Cory \ (Martha\ ) Harden" <mh@interpac.net>  
To: <Molly.E.Schmidt@hawaii.gov>,

Hi Molly, please acknowledge...I missed the hearing...thx, Cory  
comments on

Proposed Legacy Land Conservation Program Rules, Chapter 13-140  
for hearing 6 PM Tuesday, March 27, 2012

DLNR Forestry and Wildlife Baseyard Conference Room, 19 E. Kawaiili St., Hilo, HI 96720  
by Cory Harden, PO Box 10265, Hilo, Occupied Hawai'i 96721 808-968-8965 mh@interpac.net

130-140-8

50 cents a page for records

*10 to 25 cents would be more reasonable.*

130-140-17

Nonprofits must be land conservation organizations

*Please don't limit it to land conservation nonprofits. About two years ago Malu 'Aina, an organic farm and peace action nonprofit, was awarded a grant to start a community farm. Such farms could be important for food self-sufficiency.*

March 30, 2012

Puananionaona Thoene  
1041 18TH AVE  
Honolulu, Hawai'i 96816  
onaona.thoene@gmail.com  
808.987.0403

Department of Land and Natural Resources  
Division of Forestry and Wildlife  
Legacy Land Conservation Program  
1151 Punchbowl Street, Room 325  
Honolulu, Hawai'i 96813

Subject: Testimony re: adoption of proposed Chapter 13-140, Hawai'i Administrative Rules, Legacy Land Conservation Program Rules

To Whom It May Concern:

My name is Onaona Thoene and I am a second year law student at the William S. Richardson School of Law at the University of Hawai'i at Mānoa. I am submitting this testimony in support of adopting the proposed rules under Chapter 13-140 that were discussed at the public hearing on March 27, 2012 at 5:30 pm at 1151 Punchbowl Street, Room 132, Honolulu, Hawai'i.

As a member of the public and general beneficiary of the Legacy Land Conservation Program (LLCP), I find that it is important to preserve Hawai'i's lands and the natural, cultural, and historical resources that the program intends to support. I am glad that the State of Hawai'i has taken the initiative to set up such a program. There are, however, a few provisions of proposed Chapter 13-140 that should be clarified before they are promulgated by the Department of Land and Natural Resources (DLNR).

First, H.A.R. § 13-140-24 makes reference to complying with environmental assessments but does not make clear whether or not projects pursuant to an LLCP grant would have a special exemption from Chapter 343 environmental review. I assume these projects would trigger Chapter 343 because they are 1) use of state or county lands and funds; and 2) use of land in a conservation district. See H.R.S. Chapter 343-5(1) & (2). The rules should make clear that these projects are not exempt from the environmental review process.

Second, the proposed rules do not detail what happens to the land if the proposed project does not adequately achieve the purposes of the LLCP. Subchapter 8 addresses enforcement in the event of breach of a grant agreement. Sanctions may be imposed and the grantee may be required to repay all grant payments but it is unclear what happens to the land. Does the land remain with the grantee? Or are the lands eligible to be transferred to another grantee or potential grantee to ensure that the purposes of the LLCP are served and that the land is used consistently with those purposes of preserving our important natural and cultural resources? Procedures and mechanisms for transfers to other awardees or back to the care of the state after

breach should be specified so that the public knows that the lands will be returned and used for the intended purposes of the program.

Third, H.A.R. § 13-140-34, the “sale, lease, or other disposal of lands” provision should be clarified as to whether or not lands acquired under LLCP grants can actually be transferred to an entity who is not eligible for an award under this chapter. The provision considers that factor but does not establish whether or not that will bar disposition of lands to a non-awardee. If non-awardees are eligible to acquire such lands, limits on how the land may be used and to what types of organizations may be eligible should be detailed in the rules.

Lastly, the proposed rules do not address whether a non-profit organization that has a really good plan in line with the purposes of the LLCP but cannot meet the required twenty-five percent fund matching requirement would be eligible for a land grant. The fund matching requirement in essence limits this program to those organizations that already have sufficient capital.

In sum, the LLCP is a great program that our state is lucky to have. It is important for LLCP to adopt such rules setting out exactly how funds will be distributed and how recommendations to the board should be made, and what criteria should be used to choose awardees. The Commission should clarify certain provisions in its proposed rules to ensure that the purposes of the LLCP are properly met and the program is not abused.

Thank you for the opportunity to testify on this matter.

April 4, 2012

Department of Land and Natural Resources  
Division of Forestry and Wildlife  
Legacy Land Conservation Program  
1151 Punchbowl Street, Room 325  
Honolulu, HI 96813

Dear Molly Schmidt,

I am a student at the University of Hawai'i William S. Richardson School of Law pursuing a certificate in environmental law. Based on my studies related to climate change law and policy, I generally support the proposed Legacy Land Conservation Program ("LLCP") rules but suggest amending § 13-140-39 to include capacity to adapt to sea-level rise and climate change impacts as one of the criteria that the Legacy Land Conservation Commission ("LLCC") may consider in forming its recommendations for acquisitions. I recommend this change because: (1) sea-level rise and climate change pose serious risks to Hawai'i's coastal, low-lying communities; (2) the amendment would facilitate building resiliency and reducing vulnerability to these impacts; and (3) the amendment would be consistent with the LLCP purpose and priorities.

First, sea-level rise and climate change pose serious risks to Hawai'i's coastal, low-lying communities. In 2007, the Hawai'i legislature found, "climate change poses a serious threat to the economic well-being, public health, natural resources, and the environment of Hawaii." 2007 Haw. Sess. Laws, 24th Leg., Act 234, § 1(a). Sea levels in Hawai'i have risen approximately 0.6 inches per decade over the past century, a trend that is expected to continue and accelerate for several centuries. See, e.g., Chip Fletcher, Center for Island Climate Adaptation and Policy, Hawai'i's Changing Climate, Briefing Sheet 3 (2010). Furthermore, "[c]ontinued sea-level rise will increase marine inundation of coastal roads and communities. Salt intrusion will intensify in coastal wetlands and groundwater systems, taro lo'i, estuaries, and elsewhere. Extreme tides already cause drainage problems in developed areas and Hawaiian communities located at the intersection of intensifying storm runoff and rising ocean waters will endure increased flooding." See, id. at 3-4. Hawai'i decision-makers have been considering adapting to these impacts through law and policy. See, e.g., 2012 Haw. Sess. Laws, 26th Leg., S.B. 2745 S.D. 1 H.D. 1 (proposing the inclusion of climate change adaptation priority guidelines in the Hawaii State Planning Act, Chapter 226, Hawaii Revised Statutes). Through the LLCP, an already successful, uniquely collaborative land conservation program, our island state can become a leader in sea-level rise and climate change adaptation and better protect its people, shorelines, and ecosystems.

Second, amending § 13-140-39 in this manner would facilitate building resiliency and reducing vulnerability to sea-level rise and climate change impacts. The provision would authorize and further encourage land acquisition, conservation, and restoration in areas containing naturally occurring inundation buffers such as beaches, coastal dunes, and wetlands. The Florida Forever program, one of the largest and most successful land conservation programs in the nation,

authorizes land acquisitions that mitigate and adapt to sea-level rise and climate change impacts. See Fla. Stat. §§ 259.105(5)(c), 259.105(17)(d) (2008). Under the Florida Forever program, the state and its partners have acquired and preserved more than 70,000 acres within coastal watersheds and 6,600 acres of fragile coastal resources that provide habitat for native species and build additional resilience through coastal buffering. The Nature Conservancy, *Economic Benefits of Land Conservation, A Case for Florida Forever* 10 (2009). Because Hawai‘i and Florida face similar climate-related risks due to their expansive, low-lying coastlines, Hawai‘i should consider incorporating a provision like Florida’s into the LLCP rules.

Third, amending § 13-140-39 in this manner would be consistent with the LLCP purpose and priorities. As you know, the LLCP purpose is to provide for “controlled regulation of land use and development of lands which have natural, environmental, recreational, scenic or historic value.” Haw. Rev. Stat. § 173A-1 (2006). Statutory priorities include, among other things, lands with unique aesthetic resources, lands in imminent danger of being developed or modified, and lands providing critical habitats for threatened and endangered species. See *id.* § 173A-2.6. Although these priorities do not explicitly mention sea-level rise and climate change adaptation, protecting lands with adaptive capacity such as those containing beaches, coastal dunes, and wetlands is consistent with the statutory purpose to provide for controlled regulation of lands with natural and environmental value.

To conclude, I support the proposed LLCP rules but suggest amending § 13-140-39 to include capacity for adapting to sea-level rise and climate change impacts as one of the criteria that the LLC may consider in forming its recommendations for acquisitions. I welcome you to contact me at [kwager@hawaii.edu](mailto:kwager@hawaii.edu). Thank you for the opportunity to submit testimony.

Respectfully,



Kylie W. Wager  
J.D. Candidate 2014  
William S. Richardson School of Law

April 9, 2012

Andrew D. Chianese  
445 Kaiolu Street #1103  
Honolulu, HI 96815

Department of Land and Natural Resources  
Division of Forestry and Wildlife  
Legacy Land Conservation Program  
1151 Punchbowl Street, Room 325  
Honolulu, Hawaii 96813

To Whom it May Concern:

I attended the March 27<sup>th</sup> public hearing at the Kalanimoku Building, I have reviewed the proposed Chapter 13-140 Legacy Land Conservation Program Rules, and I would like to submit the following comments for your consideration.

The purpose of this chapter is to govern the administration of the legacy land conservation program established under Hawaii Revised Statute Section 173A-6. This statute authorizes the purchase or acquisition of land having value as a resource to the State. As the administration of this program is focused on the development and maintenance of the State's resources, I believe it is imperative for the enforcement section of Subchapter 8 to grant much more authority to the board.

*Section 13-140-55 Breach of grant agreement. Upon a breach of the grant agreement, the board may impose sanctions against the awardee including, but not limited to: (1) suspension of all grant payments; and (2) Suspension of the awardee's participation in State grant programs; until such time as all breaches are cured to the board's satisfaction. Sanctions may also include repayment of all State funds expended and any sanctions included as provisions of the grant agreement.*

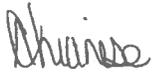
If a title holder has breached the agreement, I believe the board needs the authority to issue an injunction on the holder, allowing the board to ensure the breaching activity ends, and that necessary restorative actions are implemented. Withholding payments, even the forced repayment of funds, is not in furtherance of the purpose of this chapter, which is to preserve the State's valuable resources. If a title holder, in breach of the agreement, begins to damage the property's resources, withholding payments will hardly be an equitable remedy, especially if the breach occurs early in the grant's life. If the board has the authority to issue an injunction, the board would be able to ensure the resources' protection throughout the life of the grant.

*Section 13-140-57 Enforcement. (b) In carrying out its function under this chapter and chapter 173A, HRS, the board may do all things necessary, useful, and convenient in connection with the acquisition, administration, maintenance, and management of lands acquired through a land acquisition grant.*

The enforcement section should explicitly authorize the board to be able to revoke the grant and the title, should a breach occur. While the section does allow "all things necessary," this could be viewed as vague, because "necessary" is not clearly defined. The section needs to clearly authorize the board to regain ownership of the title to the property should a breach occur. I feel it is imperative that once a grant has been issued, the board has the ability to regain title to the property should a breach occur. Again, this will ensure the maintenance and development of the State's valuable resources, the purpose of the chapter.

Thank you for your time, and your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Chianese".

Andrew D. Chianese



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
711 KAPI'OLANI BOULEVARD, SUITE 500  
HONOLULU, HAWAII 96813

April 13, 2012

Molly Schmidt  
Department of Land and Natural Resources  
Division of Forestry and Wildlife  
1151 Punchbowl Street, Room 325  
Honolulu, HI 96813

Aloha mai e Molly Schmidt,

I write on behalf of the Office of Hawaiian Affairs (OHA) to provide comments on the proposed administrative rules for the state's Legacy Land Conservation Program. The rules implement Chapter 173A, Hawaii Revised Statutes, the purpose of which is to provide for the acquisition and management of lands which have natural, environmental, recreational, scenic or historic value. OHA has reviewed the draft rules and offer the following comments, which address our interest in conserving 'āina to protect and manage Hawai'i's natural and cultural resources, which our beneficiaries' traditional practices rely upon.

However, we note that state lawmakers are currently considering legislation (SB2378) that if enacted would require these proposed administrative rules to be updated to reflect any amendments to Chapter 173A. We look forward to also participating in that process should it be necessary.

OHA's Comments:

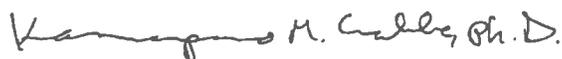
- We are concerned with the use to the term "accredited nonprofit land conservation organization" in §13-140-28. We note that the proposed rules do not contain a definition for a "accredited nonprofit land conservation organization" and this term is not used anywhere else in the rules. This term is vague and may unreasonably limit the organizations eligible for the Legacy Land Conservation Program. We ask that the term "nonprofit land conservation organization," which does have a definition in the proposed rules, be used instead.

- §13-140-28(b) should be amended as follows:
  - The board shall require projects receiving land acquisition grants for fee purchase from the fund to incorporate a conservation easement under chapter 198, HRS, unless ~~the grant~~:
    - (1) the grant is to a county agency or to a state agency; or
    - (2) the land already includes a conservation easement to a county agency, state agency, federal agency or accredited nonprofit land conservation organization.
- We recommend that the definition of “Nonprofit land conservation organization” on page 6 be amended to expressly include organizations that manage cultural sites, such as heiau, lo‘i and fishponds. We assume that the proposed rules as currently drafted would include Native Hawaiian organizations whose missions are not necessarily to “protect” land in the Western sense, but to sustainably manage ‘āina and cultural resources to perpetuate traditional practices. However, we believe the definition could be amended to make this clearer.
- §13-140-24(c)’s language that the department may “require [an] awardee to meet any other requirements to ensure protection of the state’s interests in protecting resources values and ensuring compliance with the terms and conditions of the grant agreement” may be too broad. Perhaps this rule could be amended to list specific other requirements that the department may impose on awardees.
- We recommend §13-140-38(5) be amended as such:

Lands containing cultural or archaeological sites or resources that are under threat, or in danger of theft or destruction, or continued degradation, or can be restored and be put to its traditional use.

Mahalo for the opportunity to provide comments. Should you have any questions, please contact Senior Public Policy Advocate Sterling Wong by phone at 594-1834 or via email at [sterlingw@oha.org](mailto:sterlingw@oha.org).

‘O wau iho nō me ka ‘oia‘i‘io,



Kamana‘opono M. Crabbe, Ph.D.  
Ka Pouhana, Chief Executive Officer  
Office of Hawaiian Affairs



# DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

NEIL ABERCROMBIE  
GOVERNOR  
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DIRECTOR  
MARY ALICE EVANS  
DEPUTY DIRECTOR  
JESSE K. SOUKI  
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OFFICE OF PLANNING

## OFFICE OF PLANNING

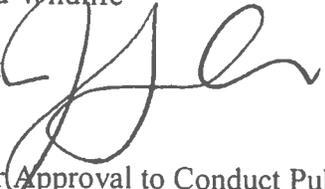
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Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846  
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Ref. No. P-13484

December 22, 2011

To: Paul J. Conry, Administrator  
Department of Land and Natural Resources  
Division of Forestry and Wildlife

From: Jesse K. Souki, Director  
Office of Planning 

Subject: Request to Governor for Approval to Conduct Public Hearings for the Adoption of a New Chapter of Hawaii Administrative Rules for the Legacy Land Conservation Program

We have reviewed the above referenced document to hold public hearings for the establishment of Hawaii Administrative rules, Chapter 13-140, and have no objections on conducting public hearings for the proposed new chapter. However, we have a few comments regarding the new proposed Chapter 13-140 as follows.

1. Page 17. Subchapter 5, Criteria For Land Acquisition Grants. 13-140-38, Priorities. We note that while coastal, beach, and ocean access is considered to be a resource and eligible for land acquisition grants, this is not specifically listed as a priority within this section. We would highly recommend that this should be added and suggest the following addition:
  - a. (7) Lands that provide access to beaches, and other coastal and recreational areas.
2. Page 19. Subchapter 6, Operation, Maintenance, and Management Grants. 13-140-41 (2). As indicated by this section, grants would be available for providing "for greater public access and enjoyment of lands that have been acquired using a land acquisition grant from the fund" for Management grant funds. However, we note that in section 13-140-43, under Eligible expenditures that no construction costs would be considered eligible for grant moneys under this subchapter. So items that would enhance the public enjoyment of the resource would not be eligible. such as providing graveled parking areas and/or comfort stations and shower areas.

3. Page 19-20. Subchapter 6, Operation, Maintenance, and Management Grants. 13-140-44 Matching Funds. “(f) Qualifying entities must demonstrate the basis and method for valuation of in-kind contributions. Donated services must be provided by skilled professionals. In-kind contributions must be an integral and necessary part of the approved project.” This section seems to exclude regular maintenance of the area needed to keep the area clean, etc, by employees and/or volunteers on a daily basis as part of the 25 percent matching funds needed to qualify for this type of grant. Maintenance of the resource is such an integral part of maintaining the value and usability of the resource that it would seem contrary to not allow this activity as part of the matching funds.
  
4. Page 23-24. Subchapter 7 Criteria for Operations, Maintenance, and Management Grants. 13-140-53 Priorities and 13-140-54 Criteria. We note that in section 54 (B) Coastal areas, beaches, and ocean access, is listed as a criteria, but this is not included as a Priority in section 13-140-53. Similar to our comment in No. 1 above, we suggest that this should be added and suggest the following addition:  
(7) Lands that provide access to beaches, and other coastal and recreational areas.

Thank you for allowing us the opportunity to comment on this document. If you have any questions, please contact Lorene Maki of our staff at 587-2888.