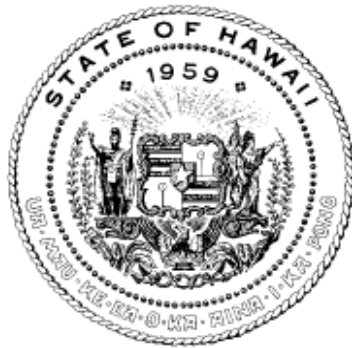


**REPORT TO THE THIRTIETH LEGISLATURE
STATE OF HAWAII
2020 REGULAR SESSION**

**RELATING TO THE LAND CONSERVATION FUND
AND
THE LEGACY LAND CONSERVATION PROGRAM**



Prepared by

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

In response to Section 173A-5, Hawaii Revised Statutes

Honolulu, Hawaii

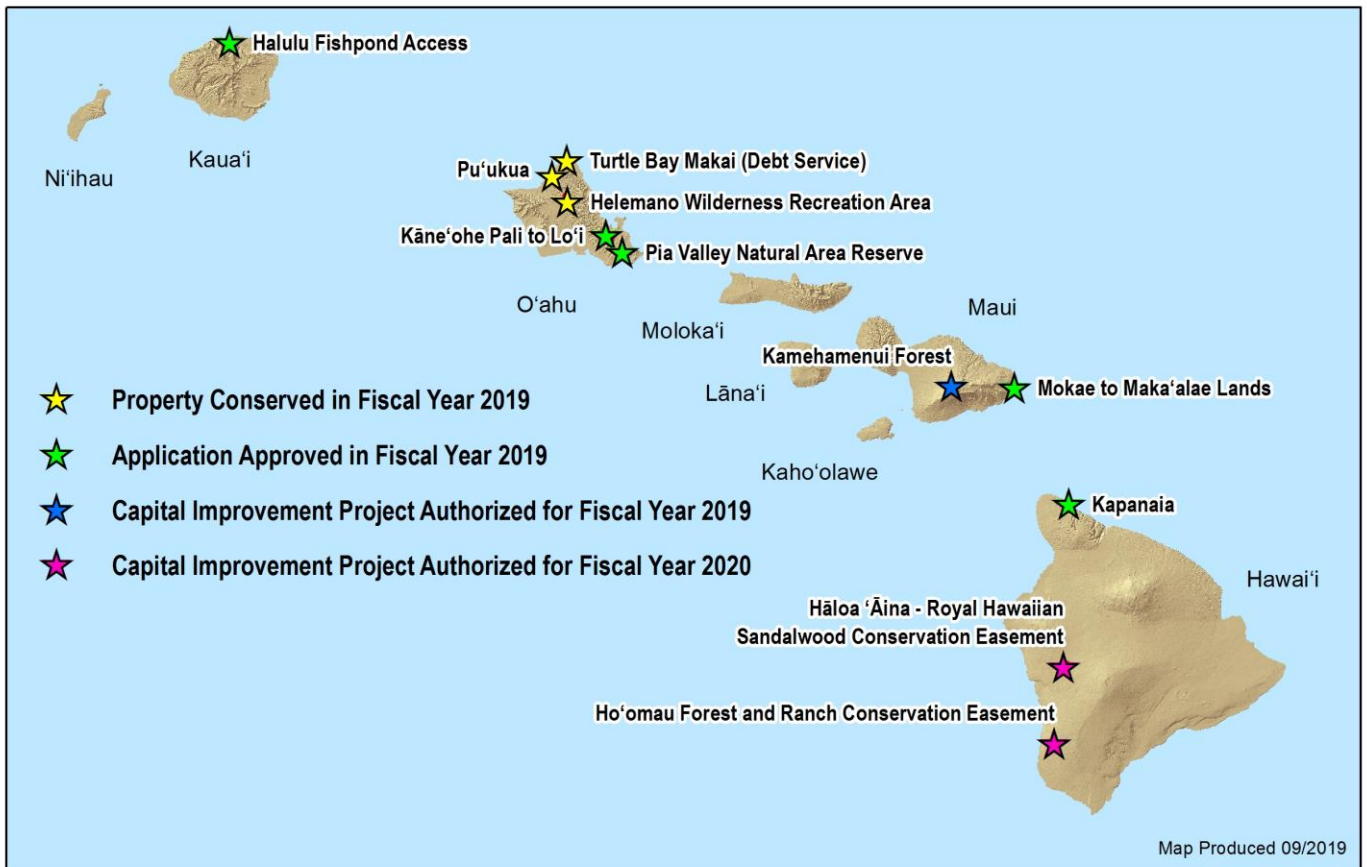
November 2019

RELATING TO THE LAND CONSERVATION FUND
AND
THE LEGACY LAND CONSERVATION PROGRAM

PURPOSE

The Land Conservation Fund ("Fund") was established by way of Act 156, Session Laws of Hawaii (SLH), 2005, to provide permanent adequate funding for land conservation by dedicating proceeds from the real estate conveyance tax to the Fund. Recognizing that despite "the value of Hawaii's natural resources to its economy, culture, and quality of life ... an alarmingly small amount of money is invested each year to protect our natural capital base" the 2005 Legislature, through Act 156, also found that:

- The preservation, protection, and enhancement of the State's land, coastal areas, and natural resources are of central importance for current and future residents and for the state economy.
- Article XI, Section 1 of the Constitution of the State of Hawai'i sets forth the State's duty to conserve and protect Hawai'i's natural beauty.
- Adequate funding to conserve land for watershed protection, coastal preservation, flood prevention, parks, habitat protection, cultural preservation, agricultural production, and open space and scenic resources is necessary to ensure protection of these lands and resources for future generations.



The enabling legislation for the Land Conservation Fund, codified as Chapter 173A, Hawai'i Revised Statutes ("HRS"), provides that the Fund shall be used for:

- (1) the acquisition of interests or rights in land having value as a resource to the State;
- (2) the payment of debt service on state financial instruments relating to the acquisition of interests or rights in land having value as a resource to the State;
- (3) annual administration costs for the Land Conservation Fund; and
- (4) costs related to the operation, maintenance, and management of lands acquired by way of the Land Conservation Fund.

Section 173A-2, HRS, explains that "land having value as a resource to the State' includes land having natural, environmental, recreational, scenic, cultural, agricultural production, or historic value, and may also include park and trail systems that provide access to any such land." Sections 173A-5(i) and 173A-9, HRS, establish a land acquisition grant program that is open to state agencies, counties, and nonprofit land conservation organizations.

The Department of Land and Natural Resources' ("Department") Legacy Land Conservation Program conducts an extensive public process, annually, to review, vet, prioritize, and fund grant applications for use of the Land Conservation Fund. The process includes:

- application review, field visit reports, public testimony, and recommendations provided by the Legacy Land Conservation Commission, which the Legislature established by way of Act 254, SLH 2006 and codified as Section 173A-2.4, HRS;
- consultation with the President of the Senate and the Speaker of the House of Representatives (*see* Sections 173A-5(i) and 173A-9, HRS);
- review, public testimony, and approval provided by the Board of Land and Natural Resources (*Id.*);
- review and approval by the Department of Budget and Finance; and
- review and approval by the Governor (*see* Section 173A-9, HRS).

PROGRAM HISTORY – LEGACY LAND CONSERVATION

The Department administers and manages the Fund and the Legacy Land Conservation Program ("LLCP") in accordance with:

- Chapter 173A, HRS, Acquisition of Resource Value Land;
- Chapter 13-140, Hawai'i Administrative Rules ("HAR"), Legacy Land Conservation Program Rules; and
- other state and federal governing authorities, particularly:
 - Chapter 171, HRS (Public Lands, Management and Disposition of);
 - Chapter 198, HRS (Conservation Easements);
 - rules of a partnering federal land conservation program that would govern a transfer of a permanent conservation easement, *see* Section 173A-9, HRS.

In 2006, the Department secured approval from the Board of Land and Resources ("Board") and from the Governor for the inaugural use of the Fund to acquire land having value as a resource to

the State, in accordance with terms specified by the Legislature for expending its initial appropriation from the Fund. See SECTION 9 of Act 156, SLH 2005. Since that time, the LLCP processed 96 completed grant applications for land acquisition.

As of June 30, 2019, the Board—based on recommendations from the Legacy Land Conservation Commission ("Commission"), Department's Division of Forestry and Wildlife ("DOFAW"), and public testimony—had approved 66 of these 91 applications for funding. The Governor approved 63 of the 66 applications that the Board approved, which resulted in releases of funding for the acquisition of 60 properties (two properties funded through multiple applications). Among these 60 properties, the LLCP has completed 31 acquisitions; 15 acquisitions remain active; applicants discontinued 12 acquisitions; and the Board terminated 2 acquisitions.

For detailed information about the LLCP, please visit dlnr.hawaii.gov/ecosystems/llcp, or contact:

Legacy Land Conservation Program
Telephone: (808) 586-0921
Email: legacyland@hawaii.gov

ANNUAL REPORT

Section 173A-5(1), HRS, paragraph (2), requires that the Board "[p]repare and submit an annual report to the governor and the legislature at least twenty days prior to the convening of each regular session [that] shall include:

- (A) A summary of all interests or rights in land acquired during the preceding fiscal year;
- (B) A summary of what value each newly acquired land has as a resource to the State;
- (C) Proposals for future land acquisitions, including a summary of the resource value that the land may possess;
- (D) A financial report for the preceding fiscal year; and
- (E) Objectives and budget projections for the following fiscal year."

In accordance with section 173A-5(1), HRS, paragraph (3), the Board makes copies of the annual report available to the public via the Department's website (*available at dlnr.hawaii.gov/reports*) and upon request.

In response to a recommendation from the Office of the Auditor (Report No. 19-01), the financial report for the preceding fiscal year reports transactions that transferred funds to and from the Department trust account (please see page 17).

(A) and (B) INTERESTS OR RIGHTS IN LAND ACQUIRED DURING THE PRECEDING FISCAL YEAR AND RESOURCE VALUE SUMMARY

During Fiscal Year (FY) 2019, the Fund contributed \$1,688,800 from previous fiscal years to acquire interests and rights in land for two properties, and \$1,500,000 from FY 2019 funds to pay for debt service on one state financial instrument relating to the acquisition of interests or rights in land having value as a resource to the State (please see resource value summary for LLCP 19-00, below). The location of each conserved property is shown on the map on page 1 of this report.

Pu‘ukua, Ko‘olauloa District, O‘ahu Island (LLCP 16-01)

Awardee: Hi‘ipaka LLC
Partners: The Trust for Public Land, North Shore Community Land Trust, City & County of Honolulu
Conservation purpose: Watershed protection, cultural and historical sites, natural areas, agricultural production, open space and scenic resources
Conservation Easement: North Shore Community Land Trust, Administrative Holder
City & County of Honolulu, Co-holder
LCF \$: \$ 175,000 for land acquisition

Hi‘ipaka LLC is a nonprofit, limited liability company created to nurture and care for Waimea Valley; its mission is to preserve and perpetuate the human, cultural, and natural resources of Waimea for generations through education and stewardship. Hi‘ipaka LLC consolidated its ownership of the valley by purchasing a 3.75 acre lot near the main entrance that is closely associated with Hewahewa, high priest of the Hawaiian Kingdom under Kamehameha. The property is known as Pu‘ukua in honor of the original kuleana owner that farmed and lived there during the mid-nineteenth century Mahele era. Apart from cultural resources, Pu‘ukua likely functions as a buffer/filtration zone that reduces and cleans runoff that flows into the Waimea River, which is home to almost a dozen endangered ‘alae ‘ula (Hawaiian moorhen).



This land is the gateway to Waimea Valley. If it had been developed for residential use, not only would the natural feel of Waimea be harmed, but our ability to control access to protect Waimea’s numerous and significant cultural resources would be jeopardized.

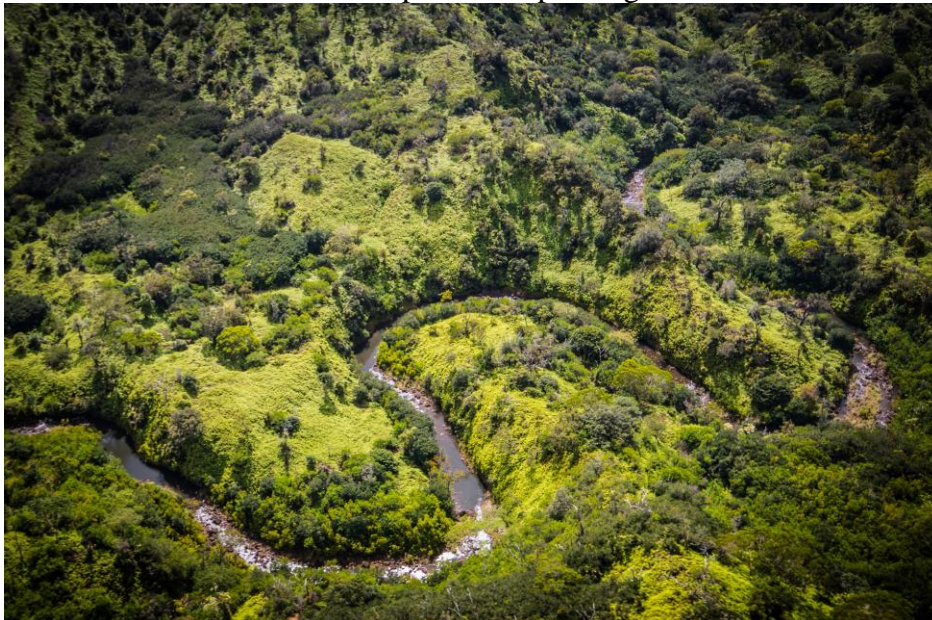
Richard Pezzulo, Executive Director, Hi‘ipaka LLC

**Helemano Wilderness Recreation Area, Waialua District, O‘ahu Island
(LLCP 14-04 and 16-03)**

Awardee: State Department of Land and Natural Resources
Partners: The Trust for Public Land; Dole Food Company, Inc.; Kawaiiloa Wind, LLC; U.S. Department of Agriculture (Forest Service); U.S. Department of Defense (Navy); U.S. Department of the Interior (Fish & Wildlife Service)
Conservation purpose: Watershed protection, parks, natural areas, habitat protection, agricultural production, open space and scenic resources, recreational and public hunting areas
LCF \$: **\$ 1,513,800** for land acquisition

The Department purchased approximately 2,823 acres of leeward Ko‘olau lands from Dole Food Company, Inc. The Board has approved the property for addition to the existing, 4,600 acre Poamoho section of ‘Ewa Forest Reserve. This acquisition enables and enhances public access and enjoyment for recreation, hunting, and educational purposes; secures critical watersheds, native species habitat, and central O‘ahu open space; and provides a location that can serve as a hub for local forestry products to supply artisans and cultural practitioners with much-needed materials.

In working with stakeholders to develop a management plan for the property, the Department will explore opportunities for designating and operating a Timber Management Area, a Public Hunting Area, road and trail components of the Nā Ala Hele Trail and Access System, and other public amenities such as much-needed campsites and picnic grounds.



Watersheds and forests are the very foundation of our lives in these islands. This partnership is a terrific win for the community and the environment. The Legacy Land Conservation Program leveraged more than \$13 million in matching funding from federal and private partners to make this purchase possible. We will continue to create opportunities to improve and sustain the ‘āina for everyone to enjoy. Governor David Y. Ige

**Turtle Bay Makai – Kahuku Kawela Forever, Ko‘olaupia District, O‘ahu Island
(LLCP 19-00)**

Awardee: State Department of Land and Natural Resources
Partners: The Trust for Public Land, North Shore Community Land Trust,
BRE-Turtle Bay Resort, City and County of Honolulu
Conservation purpose: Protect natural resources, maintain public access (Act 121, 2015)
LCF \$: **\$ 1,500,000** for the annual payment of debt service
on state financial instruments relating to
the acquisition of interests or rights in land
having value as a resource to the State

Turtle Bay Makai is a highly significant and important property for residents and visitors on the North Shore of O‘ahu. The property acquired by the State includes 52+ acres of land (fee simple) at Kawela Bay—which the State leased back to the Turtle Bay resort operators for 65 years—and a perpetual conservation easement over 568+ acres, all fronted by five miles of undeveloped shoreline. Treasured and beloved for its natural beauty, habitat for native species, recreational value, and rich cultural history, community members fought for decades to limit resort development in the area. This ground-breaking and innovative acquisition is part of a broader state, county, community, and nonprofit effort to work out a voluntary negotiated solution with the landowner to conserve sensitive natural areas and widely used recreational areas.



Image from North Shore Community Land Trust

DOFAW holds the conservation easement, and monitors it in partnership with North Shore Community Land Trust. The Department’s Land Division has jurisdiction over the State fee simple land at Kawela Bay, where DOFAW assists with lease management. Funding for this landmark conservation transaction included a \$35 million state bond issue and \$2.5 million that The Trust for Public Land (“TPL”) secured from the United States Army Compatible Use Buffer Program. In accordance with Section 173A-13, HRS, TPL—a nonprofit land conservation organization—submitted the required yearly debt service grant application for \$1.5 million from the Fund.

(C) **PROPOSALS FOR FUTURE LAND ACQUISITIONS, INCLUDING A SUMMARY OF THE RESOURCE VALUE THAT THE LAND MAY POSSESS**

For the FY 2019 application cycle, the LLCP advertised the availability of approximately \$4.5 million in grant funding from the Land Conservation Fund for the purchase of lands having value as a resource to the State. Nonprofit land conservation organizations and state agencies applied for grant funding for nine separate resource land acquisitions totaling \$7,494,125. After conducting field visits and public decision-making meetings, the Commission recommended full funding for four land acquisition grants (up to \$4,494,125 total, as funds are available), and recommended five additional land acquisition grants as back-ups/contingencies for the available grant funding, in the order ranked, as presented below:

Full Funding:¹

1. Department of Land and Natural Resources ("Department"), Pia Valley Natural Area Reserve, Kona, O'ahu
2. County of Hawai'i, Kapanaia, Kohala, Hawai'i
3. Ke Ao Hali'i (Save the Hāna Coast), Mokae to Maka'alaie, Hāna, Maui
4. DLNR, Kāne'ohe Pali to Lo'i, Ko'olaupoko, O'ahu

Partial Funding, with back-up/contingency for full funding:

5. *Waipā Foundation, Halulu Fishpond Access, Halele'a, Kaua'i*

Back-up/contingency for full funding:

6. The Nature Conservancy, Ho'omau Forest and Ranch Conservation Easement, Kona, Hawai'i
7. *Department, Ho'omau Forest and Ranch Conservation Easement, Kona, Hawai'i²*
8. *Department, Hāloa 'Āina - Royal Hawaiian Sandalwood Conservation Easement, Kona, Hawai'i²*
9. Hawaiian Islands Land Trust, Waikalua Loko I'a Conservation Easement, Ko'olaupoko, O'ahu

The Department consulted with the Senate President and the Speaker of the House of Representatives regarding the Commission's recommendations, in accordance with Chapter 173A, HRS. The Legislators met with Department representatives and responded in writing, offering no objections or other comments regarding the recommendations of the Commission. Then, the Board, and lastly, Governor Ige, approved the Commission's recommendations, and the Department encumbered funds for four grants for full funding (numbers 1-4 above) and one grant for partial funding (number 5 above), based on the total funds available from the FY 2019 budget allotment. The location of each of the five encumbered grants is shown on the map on page 1 of this report.

¹ In addition, the 2018 Legislature appropriated \$3,000,000 from the Land Conservation Fund for DLNR acquisition of 3,277 acres at Kula, Maui (Act 53, Section 5, Capital Improvement Project K.8.01, Kamehamehenui Forest Acquisition, Addition to Kula Forest Reserve).

² The 2019 Legislature appropriated \$1,100,000 from the Land Conservation Fund for DLNR acquisition of two conservation easements in Kona, Hawai'i. Act 40, Section 4, provides \$1,000,000 for *Hāloa 'Āina - Royal Hawaiian Sandalwood* (Capital Improvement Project K.6) and \$100,000 for *Ho'omau Forest and Ranch* (Capital Improvement Project K.7).

The location of each specific, legislatively authorized land acquisition is shown on the map on page 1 of this report. These appropriations for DLNR capital improvement projects, if expended, would come from the unencumbered cash balance in the Land Conservation Fund, above and independent from the annual spending ceiling for the Legacy Land Conservation Program, which covers competitive grants from the Land Conservation Fund.

**1. Pia Valley Natural Area Reserve
Kona District, O‘ahu Island (LLCP 19-01)**

| | |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Awardee: | DOFAW |
| Acreage: | 300 (fee simple) |
| Funding requested: | \$ 66,500 |
| FY19 Funding awarded: | \$ 66,500 (full funding) |
| Matching \$ secured: | \$ 0 |
| Matching \$ pending: | \$ 368,000 (private funds, land value donation) |
| Conservation purpose: | See § 173A-5(g), HRS: (1) Watershed protection (3) Habitat protection (5) Recreational and public hunting areas (7) Natural areas (9) Open spaces and scenic resources |

Pia Valley contains unique lowland mesic (moist) ‘ōhi‘a and uluhe-dominated forest ecosystems in the leeward Ko‘olau mountains, providing habitat for extremely rare plants and animals, some found nowhere else in the world. The Department’s Plant Extinction Program actively conserves fourteen species in Pia; DOFAW’s O‘ahu Botanist collects genetic material from five rare plant species in Pia; and the Snail Extinction Prevention Program conserves two endangered snail species that occur only in Pia, including the last known wild individual of *Achatinella bulimoides* (photo below). Pia is a biodiversity hotspot that harbors federally-designated critical habitat for seventeen species, borders other State and private protected areas, and is valuable as a location to study critically endangered species and monitor species conservation efforts.



The property contains watershed forests designated by the Department as Priority 1, where groundwater recharge services water supply for east O‘ahu. State ownership and management will contribute to implementation of the State’s 30x30 Watershed Forests Target Plan and the Department’s Rain Follows the Forest Plan, and fencing to remove feral pigs and facilitate native ecosystem restoration would help to enhance watershed health and protect receiving waters from polluted runoff. As public land, this area would continue to benefit the community through the Department’s Nā Ala Hele Program that manages the adjacent Hawai‘i Loa Trail.

At its meeting of July 30, 2015, under agenda item 2, the Department's Natural Area Reserves System Commission recommended that the Pia Valley parcel be designated as a Natural Area Reserve.



I strongly support this acquisition given the cost and benefits to the public at large, as well as the native flora and fauna that would benefit from the area being designated and managed as a Natural Area Reserve (provided public access is maintained).
 Commissioner Thorne Abbott, Legacy Land Conservation Commission Meeting 62

**2. Kapanāia
 Kohala District, Hawai‘i Island (LLCP 19-02)**

| | |
|------------------------------|-------------------------------------------------|
| Awardee: | County of Hawai‘i |
| Acreage: | 83 (fee simple) |
| Funding requested: | \$ 1,452,000 |
| FY19 Funding awarded: | \$ 1,452,000 |
| Matching \$ secured: | \$ 1,484,000 (County of Hawai‘i) |
| Matching \$ pending: | \$ 0 |
| Conservation purpose: | See § 173A-5(g), HRS: (3) Habitat protection |

A major purpose in the purchase of this land is to honor its place in Hawaiian history and to make that history available to scholars and to the children of Hawai‘i. Because of its ties to King Kamehameha I, this land is one of the most valuable and significant historical places in the entire State. The land is a premier fishing and gathering area for Kohala, and the North Kohala Community Development Plan (Hawaii County Ordinance 08-151) declares this area as Priority One for preservation of public access.

Kapanaia was protected from mechanized activities while surrounding lands took part in sugar cultivation. Vegetation atop the cliff was primarily hala trees and naupaka which overhung the cliff's edge providing habitat for a variety of sea birds by anchoring soil to the rocks. Koai'a (tropic birds), petrels, and terns make their nests in the cliff area and kōlea (golden plovers) and i'o (hawks) are also present. Many generations utilize the stream for fishing 'o'opu (goby) and 'ōpae (freshwater shrimp).



Endangered Hawaiian monk seals have been seen ashore. In addition, the area carries huge historical significance for Hawaiian communities, and purchase of the land would enhance access to the recreational and cultural/historic landscape. The area is heavily laden with historic remnants of early kula gulch settlements and the Kamehameha era, including Kapālama heiau on Kaheo Point, which is among the largest platform/pavement type of heiau known. The County of Hawai'i and the community of Kohala pursue this acquisition to make valuable biological and cultural resources available for educational programs by Hawaiian scholars and schools; fishing; hiking; maintenance and restoration projects for the trail and heiau; agriculture; and removal of trash and invasive species.

Kapanaia is one of the most beloved places and the people of Kohala consider it to be public. The State of Hawai'i has the opportunity to make it that way officially in perpetuity.
 Fred Cachola, Kohala Lihikai



This place had a significant role in Kamehameha's journey from a child to a mature adult and the stories associated with the landscape represent the same decisions young people face every day. Kehau Abad, Kohala Lihikai

**3. Mokae to Maka‘alae Lands
Hāna District, Maui Island (LLCP 19-03)**

Awardee: **Ke Ao Hali‘i (Save the Hāna Coast)**
Acreage: **27** (fee simple + conservation easement)
 Funding requested: \$ 2,225,625
FY19 Funding awarded: **\$ 2,225,625** (full funding)
 Matching \$ secured: \$ 0
 Matching \$ pending: \$ 741,875 (County of Maui; private funds)
 Conservation purpose: See § 173A-5(g), HRS:



- (1) Watershed protection
- (2) Coastal areas, beaches, and ocean access
- (3) Habitat protection
- (4) Cultural and historical sites
- (5) Recreational and public hunting areas
- (7) Natural areas
- (8) Agricultural production
- (9) Open spaces and scenic resources

The property is oceanfront pasture-land that slopes to the sea with numerous platforms, unique rock formations, and old growth hala, indicating an ancient settlement area. The property provides access to the shoreline, which is of utmost importance to community members who fish, gather marine resources, and use the area recreationally. In addition, one section of the beach is eroding away and frequently exposes human remains and soil stratifications with li‘ili‘i (small round stones) that are meaningful to the archaeological history of the area. Previous archaeological surveys and investigations indicate three nearby heiaus and other sensitive areas such as disturbed human burials. Ke Ao Hali‘i has funding support to organize aerial investigations and use non-invasive tools to further map the archaeology of the parcel. Though decades of sugarcane and ranching degraded most of the native vegetation, scientists see potential for re-introduction of native vegetation and seabirds. The Mokae area and surrounding ocean resources are affected by the flooding and erosion that occur directly mauka of the parcel, and efforts to improve and control runoff are of interest. Ke Ao Hali‘i plans to restore native habitats in conjunction with strategic cattle grazing by working with Hāna Ranch to determine the best use of the land. The undeveloped oceanfront lands, rare to Hawai‘i, are in keeping with Hāna’s idyllic nature of verdant pastures and stunning ocean and mountain vistas.

The mission with this project is to grow Hawaiians that understand customs, traditions, and history of the people as time moves on. This land gives the community the opportunity to do so. Regardless of who owns the land, Hawaiians will find their way to the ocean, but as it gets harder over time to access, future generations may get blocked. If Hawaiians are not connected to the land and ocean, lots of things will be lost.
 "Irish" O'Hara, Ke Ao Hali‘i



**4. Kāne‘ohe Pali to Lo‘i
Ko‘olaupoko District, O‘ahu Island (LLCP 19-04)**

| | | |
|------------------------------|-----------------------|---------------------------------------------|
| Awardee: | DOFAW | |
| Acreage: | 948 | (fee simple) |
| Funding requested: | \$ 700,000 | |
| FY19 Funding awarded: | \$ 700,000 | (full funding) |
| Matching \$ secured: | \$ 0 | |
| Matching \$ pending: | \$ 278,000 | (federal grants; City & County of Honolulu) |
| Conservation purpose: | See § 173A-5(g), HRS: | |
| | (1) | Watershed protection |
| | (3) | Habitat protection |
| | (4) | Cultural and historical sites |
| | (5) | Recreational and public hunting areas |
| | (7) | Natural areas |
| | (8) | Agricultural production |
| | (9) | Open spaces and scenic resources |

The property extends from the Pali Highway and Lookout to the Ha‘ikū boundary of the Kāne‘ohe Forest Reserve, intersecting with the Honolulu Forest Reserve at the Ko‘olau summit. The watershed area serves as a key freshwater source, where several freshwater springs and perennial streams coexist with water development tunnels, pumping stations, and storage reservoirs. Erosion rates are high due to heavy rainfall over sheer cliffs and steep terrain, magnified by the shallow root systems of invasive plants and uprooting



of the understory by feral pigs. The property includes areas of federally designated critical habitat for over 45 endangered species including ‘elepaio, damselflies, Hawaiian hoary bat, and numerous endemic plant species. Many documented and undocumented cultural sites including heiau, ahu, lo‘i terraces, and ‘auwai contribute to its cultural landscape value. Future management plans include increasing cultural site protection with active community care of the existing features, as well as facilitating a strong community interest in resuming historic agricultural practices for crops such as kalo, pineapple, rice, and banana. DOFAW would work with community partners to increase recreational access, restore hiking trails, and manage access for hunting and cultural practice.

A section of Kekele trail runs the length of the property and is named for a benevolent chiefess. The name is associated with famous hala growth in the area and new generations of this hala may still be on these lands. Laura Kaakua, The Trust for Public Land

**5. Halulu Fishpond Access
Halele‘a District, Kaua‘i Island (LLCP 19-05)**

Awardee: **Waipā Foundation**
Acreage: **0.25** (fee simple + conservation easement)
 Funding requested: \$ 650,000
FY19 Funding awarded: **\$ 50,000** (partial funding)
 Matching \$ secured: \$ 21,500 (landowner; private funds)
 Matching \$ pending: \$ 590,000 (County of Kaua‘i)
 Conservation purpose: See § 173A-5(g), HRS:
 (1) Watershed protection
 (2) Coastal areas, beaches, and ocean access
 (3) Habitat protection
 (4) Cultural and historical sites
 (7) Natural areas
 (8) Agricultural production
 (9) Open spaces and scenic resources



Halulu Fishpond Access sits within the coastal plain of Waipā ahupua‘a and includes a portion of Halulu Fishpond, fed by Wai‘oli Stream and emptying into Hanalei Bay, with important estuarine habitat for many native fish such as ‘ama‘ama and āholehole. Waipā Foundation uses the land for access to its management activities at Halulu Fishpond and Hanalei Bay. The area

surrounding Halulu provides valuable ecosystem services and community spaces for festivals, gatherings, and educational programs. Waipā Foundation already manages a majority of the Waipā ahupua‘a, so acquiring the access would connect the landscapes promoting contiguous and integrated watershed management. The property also demonstrates cultural and land tenure history, being previously awarded as a kuleana lot.

If Waipā Foundation does not protect and acquire the property, it will likely be purchased for residential development and use, further threatening public shoreline access, and possibly provoking community conflict. Waipā Foundation would incorporate Halulu Fishpond Access into its Master Site Plan and Strategic Plan, and public benefits would include safeguarding community access to Halulu Fishpond and Hanalei Bay—to protect against harm to resources

and culturally inappropriate uses—and managing access for public use during community festivals and educational, recreational, and youth programs.



GRANT ADMINISTRATION – LAND ACQUISITION

DOFAW, with assistance from the Land Division, the Department's Administrative Services Office, and the Department of the Attorney General ("AG")—administers approved grant awards in accordance with numerous legal requirements and program procedures. At the close of FY 2019, fifteen funded awards remained open, including:

- five awards for state agency land acquisitions (all fee simple)
- one award for county land acquisition (fee simple)
- nine awards for nonprofit land acquisition (eight fee simple, one conservation easement).

The Department anticipates that awardees may be able complete as many as seven of these open grants during the next fiscal year, covering four state agency land acquisitions and three nonprofit land acquisitions. A land acquisition grant to a State agency remains open until the agency grantee completes or discontinues the conservation transaction. In order to complete a State agency transaction, the agency grantee works with the Land Division staff to perform buyer's due diligence according to "Standard Board of Land and Natural Resources Acquisition Procedures," subject to final approvals from the AG and the Board. The Department administers a grant to a county or a nonprofit land conservation organization through a contractual grant agreement that has an initial two-year performance period, which the Department may choose to extend for additional one-year periods. In order to complete a county/nonprofit land acquisition, the grantee works with DOFAW to perform buyer's due diligence according to the "Checklist for Legacy Land Conservation Program Projects" (which is part of the grantee's contract with the State), subject to final approvals from the Board Chairperson, the AG, and the DOFAW Administrator.

For land acquisition grants, Chapter 173A, HRS, establishes requirements for:

- a conservation easement, agricultural easement, deed restriction, or covenant that shall run with the land and be recorded with the land to ensure the long-term protection of land having value as a resource to the State and preserve the interests of the State (Section 173A-4, HRS);
- a county or a nonprofit grantee to provide matching funds of at least twenty-five per cent of the total project costs (Section 173A-5, HRS);
- BLNR approval of a sale, lease, or other disposition of the acquired property (Section 173A-9, HRS); and
- sharing the proceeds of a sale, lease, or other disposition of the acquired property with the State (Section 173A-10, HRS).

In addition, Chapter 13-140, HAR, authorizes the Department to monitor the status of resource values protected under the terms of a grant agreement by requiring a grantee to submit documentation thereof, and by conducting site visits for the purpose of inspecting the condition of the property and resources (Sections 140-32 and 140-33, respectively). Sections 140-55 and 140-56 provide remedies for a breach of a grant agreement or a deed restriction, respectively, and Section 140-57 sets forth the Board's enforcement authority (*see also* Section 173-11, HRS, General Powers).

DISCONTINUED GRANTS

During FY 2019, funding for five discontinued grants to a State agency returned to the Fund from the Department's Trust Fund (total \$1,456,796), and funding for two discontinued grants to other entities (one to a county and one to a nonprofit land conservation organization) was unencumbered (total \$1,830,000), raising the unencumbered cash balance of the Fund by \$3,286,796, total.

- LLCP 09-03, Kukuipahu Heiau Buffer, \$7,000
DLNR, Division of State Parks, grantee
 - terminated by Board of Land and Natural Resources (January 25, 2019, Item C-1)
- LLCP 12-03, Ka'ena Point Natural Area Reserve Cove Extension, \$86,450
DLNR, Division of Forestry and Wildlife ("DOFAW"), grantee
 - acquired via land donation (partnership with North Shore Community Land Trust)
- LLCP 15-03, Wai'ōpae, \$1,330,000 (*County of Hawai'i, grantee*)
 - terminated by Chairperson per contract provisions after lava inundation
- LLCP 15-05, Kalua'aha, \$500,000
 - discontinued by *Moloka'i Land Trust, grantee*
- LLCP 17-02, 16-05, and 12-04, Upper Kūka'iau Ranch, \$1,363,346
 - discontinued by *DLNR-DOFAW, grantee*

ANNUAL REVIEW OF ACQUISITIONS PENDING FOR OVER FIVE YEARS

In response to a recommendation from the Office of the Auditor (Report No. 19-01), the LLCP initiated a new, annual procedure to submit grants approved more than five years ago for review

and possible action by the Board. On January 25, 2019, under agenda item C-1, the Board reviewed two grants awarded to the Department's Division of State Parks:

ACQUISITION TERMINATED: LLCP 09-03, Kukuipahu Heiau Buffer
 ACTION DEFERRED: LLCP 13-02, Ulupō Heiau Buffer

(D) FINANCIAL REPORT FOR THE PRECEDING FISCAL YEAR

Of the real property conveyance taxes that the State collects each fiscal year, ten percent or \$6,800,000, whichever is less, is credited to the Land Conservation Fund. See subsection 247-7(1), Hawai'i Revised Statutes.³ For FY 2019, collections of state conveyance tax revenue totaled \$85,965,039, and reached \$68,000,000 (and the \$6.8 million Fund cap) early in the fourth quarter. See State Tax Collection and Distribution Reports, available at files.hawaii.gov/tax/stats/monthly/201906collec.pdf and files.hawaii.gov/tax/stats/monthly/201904collec.pdf.

Estimated Status of the Fund for FY 2019

| | |
|----------------------------------------------------------------------------------------|----------------------|
| Beginning cash balance of the Fund on July 1, 2018 | \$ 30,098,288 |
| Revenue to the Fund in FY 2019 (from conveyance tax) | \$ 6,800,000 |
| Revenue to the Fund in FY 2019 (from discontinued acquisitions, funded in prior years) | \$ 1,792,996 |
| Revenue to the Fund in FY 2019 (from interest) | \$ 102,573 |
| Revenue to the Fund in FY 2019 (from revenue sharing for lease of public land) | \$ 241 |
| Total revenue to the Fund in FY 2019 | \$ 8,695,810 |
| Expenditures during FY 2019 | (\$ 2,517,167) |
| Outstanding previous year encumbrances | (\$ 4,698,764) |
| FY19 outstanding encumbrances at year end | (\$ 4,399,814) |
| Cash balance minus outstanding encumbrances | \$ 27,003,353 |

FY 2019 Fund revenues totaled \$8,695,810, including \$1,456,796 that the Department returned to the Fund from five discontinued/terminated grants and \$336,200 that the Department returned to the Fund from its savings on a completed land acquisition for Helemano Wilderness

³ In 2015, the State Legislature established maximum amounts for distributing conveyance tax revenue among certain non-general funds—including the \$6.8 million revenue cap for the Land Conservation Fund—with the intent to (1) make forecasts of general funds more reliable, (2) increase legislative oversight of the agencies and programs supported by the non-general funds, and (3) subject such an agency or program to competition for limited public funds if the agency or program wants more than the amount automatically distributed to its non-general funds (Act 84, Section 3 and Section 1, available at www.capitol.hawaii.gov/slh/Years/SLH2015/SLH2015_Act84.pdf).

For fiscal years 2007-2016, revenue was not capped, and the Land Conservation Fund simply received a straight ten percent of total conveyance tax revenue. Ten percent of total conveyance tax revenue exceeded \$6.8 million in fiscal years 2014, 2015, 2017, 2018, and 2019. See Department of Taxation Annual Report, 2017-2018 (Chart 1.16, page 28), available at files.hawaii.gov/tax/stats/stats/annual/18annrpt.pdf.

Recreation Area, O'ahu (please see table below, "FY 2019 transactions that transferred funds ..."). Expenditures and encumbrances for the Legacy Land Conservation Program totaled \$6,916,981, which did not exceed the authorized allotment of \$6,970,361. DLNR encumbered or expended \$6,653,610 as grant awards for the acquisition of interest or rights in lands having value as a resource to the State, including debt service obligations.

Under Section 173A-5(h), HRS, paragraph (3), annual administration costs for the Fund may not exceed five per cent of annual conveyance tax revenues from the previous year (in this case, a \$340,000 cap for FY 2019 administration costs). The Department expended and encumbered \$263,371 for FY 2019 personnel costs and administrative expenses. In addition to personnel costs, the FY19 administrative budget funded staff training at the 2018 National Land Conservation Conference (Deputy Attorney General) and the 7th Symposium on Advanced Legal Topics in Land Conservation (Deputy Attorney General and Program Specialist); travel and operating costs for six meetings of the Commission and for nine field visits by Commission permitted interaction groups; program support services; subscription fees for the online grant application portal; and operating supplies.

| | |
|-------------------------------------------|---------------------|
| Grant awards | |
| Total grant expenditures and encumbrances | \$ 6,653,610 |
| Personnel costs | |
| Salaries, benefits, assessments | \$ 229,969 |
| Administrative expenses | |
| Commission and staff training and travel | \$ 16,598 |
| Services, fees, and supplies | \$ 16,804 |
| Total expended/encumbered | \$ 6,916,981 |

**FY 2019 transactions that transferred funds to and from
the Department trust account (T-907)**

NOTE: S-317 is the Fund

| DATE YYYYMMDD | \$ TO T-907 | FROM | \$ FROM T-907 | TO | NOTES |
|------------------|----------------|-------|------------------|--------|-------------------------------------------|
| 20181015 | | | 1,500,000 | Escrow | LLCP 16-03, Helemano (purchase) |
| 20181015 | | | 13,800 | Escrow | LLCP 14-04, Helemano (purchase) |
| 20190114 | | | 336,200 | S-317 | LLCP 14-04, Helemano (unused funds) |
| 20190114 | | | 86,450 | S-317 | LLCP 12-03, Ka'ena (discontinued) |
| 20190114 | | | 600,000 | S-317 | LLCP 12-04, Upper Kūka'iau (discontinued) |
| 20190114 | | | 25,000 | S-317 | LLCP 16-05, Upper Kūka'iau (discontinued) |
| 20190114 | | | 738,346 | S-317 | LLCP 17-02, Upper Kūka'iau (discontinued) |
| 20190327 | | | 7,000 | S-317 | LLCP 09-03, Kukuipahu (terminated) |
| TOTAL | | | 3,306,796 | | |
| 20190619 | 66,500 | S-317 | | | LLCP 19-01, Pia Natural Area Reserve |
| 20190619 | 700,000 | S-317 | | | LLCP 19-04, Kāne'ohē Pali to Lo'i |
| TOTAL | 766,500 | S-317 | | | For land acquisitions by State agency |

(E) **OBJECTIVES AND BUDGET PROJECTIONS FOR THE FOLLOWING FISCAL YEAR**

Objectives

The highest priority for the FY 2020 budget was to raise the FY 2020 spending ceiling for the Fund to match the total revenue received in FY 2018 plus one-sixth of the accumulated, unencumbered funding retained in and returned to the Land Conservation Fund from discontinued grants and lapsed legislative appropriations (CIP and special legislation) for acquisition of resource value lands. The Governor included this increase in the Executive Budget Request, however the 2019 Legislature did not raise the Fund spending ceiling above its historic base level, resulting in a FY 2020 appropriation of \$5,124,348. Key objectives for implementing the LLCP in FY 2020 are:

- (1) complete prior-year grants for State agency land acquisitions;
- (2) provide support for completing prior-year grants for county and nonprofit land acquisitions;
- (3) coordinate the award, encumbrance, and expenditure of FY 2020 grant funds towards the acquisition of lands having value as a resource to the State;
- (4) implement selected recommendations from the recent audit of the Fund (Office of the Auditor, Report No. 19-01); and
- (5) continually improve program operations, including:
 - o training additional staff as back-up for program operations, and
 - o adjusting the grant application schedule so that recommendations from the Commission are available to inform budget planning and decisionmaking prior to, rather than during, each fiscal year.

Budget Projections

The most recent estimates from the State Council on Revenues (August 29, 2019) suggest that the total amount of conveyance tax revenue collected for FY 2020 will be 4.1% greater than in FY 2019, reaching nearly \$89.5 million, and increasing to over \$111 million by FY 2026 (29.2% greater than in FY 2019). See Estimates of General Fund Revenue, *available at http://files.hawaii.gov/tax/useful/cor/2019gf08-29_attach_1.pdf*. Therefore, the Department anticipates that \$6.8 million of annual conveyance tax revenue will continue to flow to the Fund for the next six years, and that interest will accumulate in accordance with state investment fund returns. Also, if grants to State agencies are discontinued in the future, then those grant funds will return to the Fund and be reported, for accounting purposes, as additional revenue.

Given the ongoing rise in property values and land acquisition costs, and the steady flow of applications for worthy uses of the Fund, the Department recommends that the Legislature raise the spending ceiling of the Fund for future years in order to help this important and popular program maintain its purchasing power and meet public demand. The Department's annual LLCP budget request for FY 2021 and beyond will be based on (1) the required \$1.5 million payment for Turtle Bay debt service; (2) estimated expenses for program administration; and (3) recommendations issued by the Commission to award grant funding for the acquisition of

specific resource value lands, resulting from Commission review, inspection, and ranking of grant applications in a rigorous, transparent process that includes agency consultation and public participation.

CONCLUSION

During FY 2019, the LLCP enabled the Fund to contribute \$1,500,000 from FY 2019 funds to pay for debt service on one state financial instrument relating to the acquisition of interests or rights in land having value as a resource to the State (Turtle Bay, O'ahu). The LLCP encumbered \$4,494,125 in FY 2019 funds for five newly-approved grants for future land acquisitions valued at \$8,578,300 (estimated total costs) that will conserve over 1,358 acres (total area), and encumbered \$659,485 in FY 2019 funds to enable full funding of a grant for future land acquisition that was approved during a previous application cycle (LLCP 18-01b, Amy B.H. Greenwell Ethnobotanical Garden). The LLCP also administered existing grant awards, contracts, and state financial accounts that would provide \$7,630,000 from previous fiscal years for ten pending land acquisitions valued at \$19,894,082 (estimated total costs) and conserving 6,784 additional acres (total area).