

REPORT TO THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2009
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

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PURPOSE

Act 156, Session Laws of Hawaii (SLH) 2005, amended Section 173A-5, Hawaii Revised Statutes (HRS) by authorizing the transfer of 10% of all taxes imposed and collected under Section 247-1, HRS, to be credited to the Land Conservation Fund (LCF) and used to acquire lands having value as a resource to the State. Act 254, SLH 2006, further amended Chapter 173A, HRS, by establishing a nine-member Legacy Land Conservation Commission (Commission) to advise the Department of Land and Natural Resources (Department) and Board of Land and Natural Resources (Board) regarding requests for grants from LCF and proposals to use LCF for acquisitions of interests in land, and to recommend to the Board the acquisitions of interests or rights in certain lands having value as a resource to the State.

Act 254, SLH 2006, also mandated that the Department prepare and periodically revise a plan for the acquisition of land having value as a resource to the State. Pursuant to Section 173A(5)(j), HRS, this report includes:

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

INTERESTS OR RIGHTS IN LAND ACQUIRED DURING THE PRECEDING FISCAL YEAR

For the Fiscal Year (FY) 2008 application cycle, the Legacy Land Conservation Program (LLCP) advertised \$4.7 million in project funding from LCF for the purchase of lands having value as a resource to the State. Nonprofit land conservation organizations,

county agencies, and state agencies applied for funding for 12 separate resource land acquisition projects for the October 17, 2007, application deadline.

At its December 14, 2007 and February 6, 2006 meetings, the Commission recommended five prioritized applicants for funding, listing the next projects down the list as alternates. On March 5, 2008, Department staff and Commission Chair Dale Bonar met with Senate President Colleen Hanabusa, Speaker of the House of Representatives Calvin Say, Senator Russell Kokubun, and Representative Kenneth Ito to seek the consultation of these legislators regarding the Commission's recommendations, pursuant to Chapter 173A, HRS. The Legislators agreed with the Commission regarding the funding of the first five grants listed below.

On May 9, 2008, based on the recommendations of the Commission and the consultation with members of the Legislature, the Board approved the following projects for grant funding:

The Wai'anae Community Re-development Corporation (MA'O Organic Farm) at \$737,300 for the acquisition of 11 acres in Lualualei Valley, Wai'anae, Island of O'ahu;

The County of Hawai'i at \$1,500,000 for the acquisition of 550.871 acres in Kāwā, District of Ka'ū, Island of Hawai'i;

The Kaua'i Public Land Trust at \$700,000 for the acquisition of 20.532 acres fronting Kāhili Beach, North Shore, Island of Kaua'i;

The Maui Coastal Land Trust at \$994,724 for the acquisition of 128 acres in Nu'u Makai, southeast shore, Island of Maui; and

Ke `Aupuni Lokahi, Inc. (Moloka'i Enterprise Community) at \$767,976 for the acquisition of 196.40 acres to be held by Moloka'i Land Trust, in Kawaikapu, Mana'e, Island of Moloka'i.

Governor Linda Lingle approved these grants on May 27, 2008. The grants are being administered according to program requirements and are being brought to closure by the parties. Nonprofit and county grant recipients have two years from the date of their respective grant agreements to bring projects to closure.

In addition to providing consultation on the proposed FY 2008 projects, the Senate President and Speaker of the House of Representatives prior recommended stronger protections for future projects funded through LLCP. In response, the Department introduced legislation (Senate Bill 3102) during the 2008 Legislative Session, proposing language that would allow the Department to institute stronger legal protections on lands acquired with LCF funds. Governor Lingle signed this bill into law as Act 139, SLH 2008.

VALUE THAT EACH NEWLY ACQUIRED LAND HAS AS A RESOURCE TO THE STATE

The definition of “land having value as a resource to the State,” under Section 173A-2, HRS, 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.

Wai‘anae Community Re-development Corporation (MA‘O Organic Farm) at \$737,300 for the acquisition of 11 acres in Lualualei Valley, Wai‘anae, Island of O‘ahu.

The Wai‘anae Community Re-development Corporation (WCRC) requested funding for a parcel of land, tax map key (TMK) 8-6-008:004, in Lualualei Vally, Oahu, for the protection of its agricultural values. The parcel is being acquired from the Takeno Takahashi Trust and WCRC has secured \$250,000 in matching private funds for this project. WCRC is purchasing the property for the expansion of MA‘O Organic Farm operations and intends to manage the property according to its organic farm plan.

WCRC’s strategic mission is to plan and implement community-based economic development projects in the Leeward Oahu community of Waianae that create employment opportunities through education and empowerment. WCRC is a nonprofit organization exempt from federal taxation under 501(c)(3) of the Internal Revenue Code (IRC).

The County of Hawai‘i at \$1,500,000 for the acquisition of 550.871 acres in Kāwā, District of Ka‘ū, Island of Hawai‘i.

The County of Hawaii is requesting funding for three parcels of land, TMK (3) 9-5--016:025, TMK (3) 9-5-016:006, TMK (3) 9-5-017:005, at Kawa Bay, District of Ka‘ū, on the southeast tip of the Island of Hawaii, for the preservation of watershed, coastal, habitat, cultural, recreational, and open space values. A two-acre spring-fed freshwater intertidal pond and numerous springs are located on the property, along with Ke‘eku Heiau, portions of the Ala Kahakai Trail, and endangered Hawksbill turtle nesting sites. The County of Hawaii is purchasing the land from the Edmund C. Olson Trust No. II, and is bringing approximately \$6,180,000 in matching federal, county, and land value donation funds to the project.

Kaua‘i Public Land Trust at \$700,000 for the acquisition of 20.532 acres fronting Kāhili Beach, North Shore, Island of Kaua‘i.

The Kaua‘i Public Land Trust (KPLT) is requesting funding for the purchase of a parcel, TMK (4) 5-1-005:016, fronting Kahili (otherwise known as Rock Quarry) Beach located on the north shore of Kaua‘i, for the protection of its watershed, coastal, and habitat values. The property includes bluffs, coastal dunes, intertidal wetland, and lowland forest. KPLT is purchasing the property from Louise Zweben and has secured \$2,759,181 in matching federal funds for the acquisition. KPLT plans to develop a

management plan in cooperation with the adjacent Kilauea Point National Wildlife Refuge to manage the area for endangered species recovery, watershed protection, and native species habitat restoration.

KPLT's mission is working with others to use land conservation tools to preserve Kaua'i's places of the heart. KPLT is a nonprofit organization exempt from federal taxation under 501(c)(3) of the IRC.

Maui Coastal Land Trust at \$994,724 for the acquisition of 128 acres in Nu'u Makai, southeast shore, Island of Maui.

The Maui Coastal Land Trust (MCLT) is requesting funding for the purchase of portions of two parcels of land, TMK (2) 1-8-001:001, TMK (2) 1-7-004:003, in Nu'u Makai, located on Maui's south east shore between Kanaio and Kaupo at the foot of Haleakala, for the protection of coastal, wetland, habitat, historical, and cultural values. Resources include 5,000 feet of pristine coastline, burial sites, petroglyphs, remnant walls, and a fishing shrine. MCLT is purchasing the property from Kaupo Ranch and has secured \$4,790,000 in matching federal grant and land value donation funds. MCLT plans to work closely with the Kaupo community to draft a management plan that reflects the need to both protect and restore the fragile ecosystem and take into account the community's values and vision.

MCLT's mission is to preserve and protect coastal lands in Maui Nui (Maui, Moloka'i and Lana'i for the benefit of the natural environment and of current and future generations. MCLT is a nonprofit organization exempt from federal taxation under 501(c)(3) of the IRC.

Ke `Aupuni Lokahi, Inc. (Moloka'i Enterprise Community) at \$767,976 for the acquisition of 196.40 acres to be held by Moloka'i Land Trust, in Kawaikapu, Mana'e, Island of Moloka'i.

Ke `Aupuni Lokahi, Inc., (KAL) is requesting funding for the purchase of a parcel of land, TMK (2) 5-7-005:021, mauka of Kamehameha V. Highway, Mile 17, bordering on the Kawaikapu/Kainalu Stream, Mana'e, Moloka'i, for the for the protection of watershed, cultural, and scenic values. The property ranges form sea level to 2,100 ft elevation and includes the Kawaikapu Waterfall. KAL is purchasing the property from Gregory and Tracy Gordon, and is contributing \$351,000 in matching private funds. KAL is applying on behalf of the Moloka'i Land Trust (MLT), the intended holder of the property. MLT intends to implement access and management plans and to create an inventory of cultural sites. The mission of the MLT is to protect and restore the land, natural and cultural resources of Moloka'i, and to perpetuate the unique native Hawaiian traditions and character of the island for the benefit of the future generations of all Moloka'i, particularly native Hawaiians.

The mission of KAL is to protect the Island of Moloka'i and its environmental, cultural and historic resources, and to improve the general welfare of Moloka'i's people by

supporting and sponsoring projects consistent with these goals. KAL is a nonprofit organization exempt from federal taxation under 501(c)(3) of the IRC.

PROPOSALS FOR FUTURE LAND ACQUISITIONS, INCLUDING A SUMMARY OF THE RESOURCE VALUE TO THE STATE

Applications for the current 2008 (FY 2009) LLCP grant process were due September 15, 2008. LLCP staff reviewed applications for completeness and, pursuant to Section 173A-2.5, HRS, has delivered them to the Commission for consideration. A list of all FY 2009 proposals for future land acquisitions is available per request to the LLCP at (808) 586-0921, or molly.e.schmidt@hawaii.gov. Basic information on proposed projects is also available at: <http://hawaii.gov/dlnr/dofaw/llcp/legacy-land-conservation-program-projects>. The Commission is currently scheduled to produce project recommendations in late December, 2008. A list of recommended project proposals will be available at that time.

FINANCIAL REPORT FOR THE PRECEDING FISCAL YEAR

Status of Land Conservation Fund (LCF) for FY 2008 (S-08-317)

Beginning cash balance of LCF on July 1, 2007	\$ 8,937,565
Revenue to LCF in FY08	\$ 4,246,825
Outstanding FY 2007 encumbrances	\$ 3,169,750
Expenditures during FY 2008	\$ 153,481
FY 2008 encumbrances at year end	\$ 4,700,466
Ending cash balance as of June 30, 2008	\$13,030,909
Cash balance minus outstanding FYs 2007 & 2008 encumbrances	\$ 5,160,693

For FY 2008, revenue totaled \$4,246,825 and expenditures and encumbrances totaled \$4,853,951, slightly less than revenues and within the authorized spending cap of \$5,100,000. An amount of \$4,700,000 million was encumbered for awards to state agencies, county agencies, and nonprofit land conservation organizations for the acquisition of interest or rights in lands having value as resource to the State.

Grant budget

Wai‘anae Community Re-development Corporation	\$ 737,300
County of Hawai‘i	\$1,500,000
Kaua‘i Public Land Trust	\$ 700,000
Maui Coastal Land Trust	\$ 994,724
<u>Ke `Aupuni Lokahi, Inc.</u>	<u>\$ 767,976</u>
Total grant funding provided:	\$4,700,000

Administrative budget

Salaries, full year at 1.0 FTE and partial year 0.25 FTE	\$91,688
LLCP staff travel and training	\$ 5,364
Training and travel for supporting staff	\$ 5,049
Legacy Land Conservation Commission travel	\$ 5,209
Program costs (equipment, UH contract)	\$6,980
<u>Overhead for Division of Forestry & Wildlife</u>	<u>\$ 129</u>
Total administrative expenditures	\$114,419
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<u>Special fund assessment</u>	<u>\$ 39,069</u>
Total administrative costs:	\$153,488

The Department may use up to five percent of the revenue of LCF from the previous year to administer the Program. FY 2007 revenue totaled \$4,832,850, with allowable administrative costs of up to \$241,643 during FY 2008. Administrative costs totaled \$153,488 or 3.2% of FY 2007 revenues. The Legislature, through the General Appropriations Act of 2006, authorized the creation of two temporary civil service positions to implement LLCP. The Department filled the first position in FY 2007 and the second in FY 2008. The largest expense to the administrative budget was the provision for salaries for these positions. The Department also used administrative funds to provide staff training in currently-developing area of conservation land acquisition. The administrative budget also funded travel costs related to the Commission, which met six times during the FY to accomplish its duties. Administrative costs are expected to increase in FY 2009 when both positions are funded for the full fiscal year.

OBJECTIVES AND BUDGET PROJECTIONS FOR THE FOLLOWING FISCAL YEAR

The Department, through LLCP, plans to accomplish four main objectives for FY 2009 with a budget of \$5.1 million.

Objectives

The Department’s primary objectives for LLCP in FY 2009 are: (1) To bring acquisitions receiving FY 2007 and FY08 funds to closure and to provide support to FY 2007 and FY 2008 nonprofit and county grant recipients; (2) To effectively coordinate the award of FY 2009 grant funds towards the acquisition of lands having high value as a resource to the State; (3) To build and improve LLCP through the provision of support to LLCC; (4) To implement administrative procedures for LLCP pursuant to changes mandated by Act 139, SLH 2008; and (5) To prepare the Resource Land Acquisition Plan.

1. Currently, the Department is working with FY 2007 and FY 2008 grant recipients to ensure the proper disbursement of grant funds. Four remaining FY 2007 acquisitions are poised to close and five FY08 acquisitions are in the process of executing LLCP Grant Agreements and meeting LLCP requirements. The

Department will work with county and nonprofit grant recipients to disburse funds to FY 2007 recipients and assist FY 2008 recipients in meeting LLCP requirements.

2. Staff is currently assisting the Commission with its review of FY 2009 applications. After the Commission produces recommendations, the Department will seek the consultation of the Senate President and Speaker of the House of Representatives; and will then submit the Commission's recommendations and any additional consultation comments to the Board for approval. Pending the approval of the Governor, grant funds awarded by the Board will be administered by LLCP.
3. The Department will continue to provide administrative support to the Commission in the promulgation of rules relating to the development of the Commission's project selection criteria based on the project selection priorities listed under Section 173A-C, HRS.
4. The Department will implement Act 139, SLH 2008, by providing an administrative framework for the changes to LLCP under this Act, including the award of up to 5% of the previous years revenues to LLCP land acquisition award recipients for the management and operation of lands acquired under LLCP, and the acceptance of donations and grants into LCF for disbursement through LLCP.
5. Under Section 173A-3, HRS, the Department must prepare a Resource Land Acquisition Plan to guide the Board in the acquisition of land having value as a resource to the State. This plan must consider all related state and county agency plans. The initial step in the preparation of this plan is consultation and agreement by all involved parties on the process by which the plan is to be completed. After a process is agreed upon, Department staff can create a more concrete and detailed timeline and assignment of tasks to accomplish the plan to the satisfaction of the Department, the Commission, the Board, the Senate President and the Speaker of the House of Representatives.

Budget Projections

In FY 2009, the Board may award \$4.7 million in grant funding to county agencies, state agencies, and nonprofit land conservation organizations. The remaining funds under the \$5.1 million program ceiling will either be used as part of the administrative budget (less than or equal to 5% previous year's revenues) or returned to LCF for future use. LLCP has dedicated its FY 2009 administrative budget to costs related to personnel, partnerships, the Commission, and the maintenance and development of the Program. The budget is funding two LLCP staff positions, one in the Department's Land Division, another in the Department's Division of Forestry and Wildlife. A substantial portion of the budget is committed to the Land Division and the Department of the Attorney General partners for training related to land conservation transactions. Another portion is set aside for the Commission's travel, including visits to project sites. Program costs,

such as equipment, outreach and awareness, and acquisition-related costs are also accounted for in the FY 2009 administrative budget.

CONCLUSION

LLCP provided grants for the acquisition of interests in five properties, resulting in the protection of 906.8 acres of land having value as a resource to the State. Protected resources included a range of values from cultural and agricultural (1) to coastal wetland and threatened and endangered species habitat (3) and watershed (1) values. LLCP brought in approximately \$14,330,181 in matching federal, county, or private funds for these acquisitions. LLCP offers great promise for the future and should be supported and continued.

For detailed information on LLCP (<http://www.hawaii.gov/dlnr/dofaw/llcp/>), please contact LLCP, Department of Land and Natural Resources, Division of Forestry and Wildlife, 1151 Punchbowl Street, Room 224, Honolulu, HI, 96813, by telephone, at (808) 586-0921, or by email, at molly.e.schmidt@hawaii.gov.