

REPORT TO THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

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

December 2010

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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 annual 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) 2010 application cycle, the Legacy Land Conservation Program (LLCP) advertised approximately \$3.0 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 14 separate resource land acquisition projects for the September 16, 2009, application deadline.

After conducting site visits and public decision-making meetings, the Commission recommended eight prioritized applicants for funding a total of approximately \$3.8 million. On December 23, 2009, Department staff and Commission Chair Dale Bonar met with Senate President Colleen Hanabusa, Speaker of the House of Representatives Calvin Say, and Senate Vice President Russell Kokubun to seek the consultation of these legislators regarding the Commission's recommendations, pursuant to Chapter 173A, HRS. The legislators agreed with the recommendations of the Commission, however, the legislators also recommended imposing a March 31, 2010, deadline on the applicants for securing the matching funds that were detailed in the project proposals.

On March 11, 2010, based on the recommendations of the Commission and the consultation with members of Legislature, the Board approved the recommended projects for grant funding, subject to a March 31, 2010, deadline on the applicants for securing their respective matching funds. One applicant was unable to secure the matching funds by the deadline; the Department requested approval from the Governor for release of funds for the remaining seven projects. The Governor approved seven grants on June 3, 2010.

The Governor approved the release of \$3,267,380 in funding for the following projects:

- (1) County of Hawai'i and The Trust for Public Land, \$945,000 for the acquisition of 10.61 acres on the Island of Hawai'i, coastline lot within Pao'o ahupua'a, North Kohala District.
- (2) Department of Land and Natural Resources, Division of Forestry & Wildlife, \$500,000 for the acquisition of a conservation easement over 614 acres on the Island of Moloka'i, East Moloka'i, Kainalu; mauka of Kamehameha V Highway.
- (3) Kaua'i Public Land Trust and the County of Kauai, \$800,000 for the acquisition of 0.74 acre on the Island of Kaua'i, on Hanalei Bay directly next to the Hanalei Pier, to be held by the County of Kauai.
- (4) Kona Historical Society, \$255,592 for the acquisition of 2.11 acres on the Island of Hawai'i, South Kona, makai of Mamaloahoa Highway.
- (5) The Trust for Public Land and Oahu Land Trust, \$500,000 for the acquisition of a conservation easement over 107.73 acres on the Island of O'ahu, ahupua'a of Ka'alaea, in the Ko'olaupoko District, to be held by the Oahu Land Trust.
- (6) Malu Aina Center for Non-Violent Education and Action and the Hawaii Island Land Trust (HILT), \$231,788 for the acquisition of 11.14 acres on

the Island of Hawai‘i, Puna District; ten miles south of Hilo, makai side of Highway 11, with a conservation easement to be held by HILT.

- (7) HILT, \$35,000 for the acquisition of conservation easements over 6 acres on the Island of Hawai‘i, Puna District; in Hawaiian Orchid Island Estates adjacent to Kahauale‘e Natural Area Reserve.

The approved 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. Pursuant to Chapter 173A, HRS, deed restrictions are placed on each property, and the Board must approve any transfer of lands away from the original awardee. Upon the sale of a property, an amount of the net proceeds proportionate to the original award must be returned to LCF.

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.

County of Hawai‘i and The Trust for Public Land, \$945,000 for the acquisition of 10.61 acres on the Island of Hawai‘i, North Kohala District.



The County of Hawaii (County) and Trust for Public Land (TPL) requested funding for a parcel of land, TMK (3) 5-7-001:005, in North Kohala, Island of Hawaii, for the protection of coastal, cultural, natural, and recreational values. The land is being acquired by the County with technical assistance from TPL and \$960,000 in secured matching funding

from the County. The land will be held by the County as a park and managed in consultation with agencies, organizations, and community groups that have a long-standing relationship with the land and resources.

Acquisition of this land will protect significant cultural sites from development and maintain the natural landscape and views of the Kohala coastline makai of Akoni Pule Highway in a matter consistent with County plans and community wishes. At least 27 archeological and cultural sites have been identified on the property,



including habitation structures, terraces, burials, canoe sheds and a shrine. The County plans to use the guidance of neighboring community groups in maintaining ocean access and ensuring appropriate management of the historic sites.

Department of Land and Natural Resources, Division of Forestry & Wildlife, \$500,000 for the acquisition of a conservation easement over 614 acres on the Island of Moloka‘i, East Moloka‘i, Kainalu.



The Department of Land and Natural Resources’ Division of Forestry and Wildlife (DOFAW) requested funding for acquisition of a conservation easement over a parcel of land, TMK (2) 5-7-005:022, in Kainalu, East Molokai, Island of Molokai, for the protection of watershed, habitat, natural areas, and agricultural production. The conservation easement will be purchased by DOFAW with approximately \$3,524,000 in secured matching funds from

private sources and federal grants, including the Forest Legacy Program and Recovery Land Acquisition Program. The conservation easement will be held by DOFAW and monitored for the protection of the watershed, habitat, natural, and agricultural values of the land. The owner will continue ranching activities, watershed protection, and habitat restoration for the preservation of native species.

The proposed conservation easement covers a critical watershed that, if preserved in its forested state, prevents soil from eroding and damaging near-shore coral reef ecosystems and historic Hawaiian fishponds. The parcel contains headwaters for two major stream systems and supports upper elevation wetlands, which provide rich soils and groundwater recharge to the Island’s single aquifer. The property also provides habitat for 18 federally listed threatened or endangered species and contains remnants of historic Hawaiian village sites, including a heiau, lo‘i kalo, and hale moe.



Kaua‘i Public Land Trust and the County of Kauai, \$800,000 for the acquisition of 0.74 acre on the Island of Kaua‘i, on Hanalei Bay, to be held by the County of Kauai.

The Kaua‘i Public Land Trust (KPLT) and the County of Kauai requested funding for a parcel of land, TMK (4) 5-5-001:011, in Hanalei, Island of Kaua‘i, for the protection of its recreational, open space, and natural values. KPLT has secured approximately \$3,070,000 million in funding from the County of Kauai and from the owner in the form of a land value donation. The County of Kauai will hold and manage the property as part of Black Pot Beach Park for the protection of its coastal, open space, and recreational

values. KPLT is nonprofit corporation and is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code (IRC).

The acquisition of this parcel on Hanalei Bay, located next to Black Pot Beach Park,



would protect the public’s access to one of the most popular ocean recreation spots on Kaua‘i. The parcel is adjacent to the Hanalei Pier (on the National Register of Historic Places) and Hanalei River (one of 14 designated American Heritage Rivers) and represents an opportunity to enhance and protect the scenic and recreational values of the area for the benefit of Hawaii’s residents and visitors.

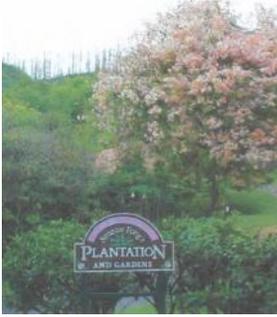
Kona Historical Society, \$255,592 for the acquisition of 2.11 acres on the Island of Hawai‘i, South Kona.

The Kona Historical Society (KHS) requested funding for a parcel of land, TMK (3) 8-1-004:074, in Kona Mauka, Island of Hawai‘i, for the promotion of the farm’s historical and cultural values. The parcel is being acquired from a private owner by KHS. KHS has secured approximately \$160,000 in matching private funds for the acquisition. KHS plans to use the property as an open-air museum that presents daily life on a typical Kona ranching homestead and also as a building site for a climate-controlled facility for storage and archiving of historical artifacts, documents, and public records. KHS’s mission is to collect and preserve information about the history of the Kona district. KHS is nonprofit corporation and is exempt from federal taxation under section 501(c)(3) of the IRC.

The acquisition of this land protects the setting for the adjacent 1870s H.N. Greenwell Store and promotes the living history operations done at the store and neighboring coffee farm to educate local youth and visitors on the unique farming and ranching heritage of Kona. Currently, KHS is providing space to the community for collections, artifacts, and exhibits; however, this archive is full to capacity. This property would be used to improve archiving and preservation of historic collections and to buffer the Greenwell Store (National Historic Register of Historic Places) from any incompatible modern developments.



The Trust for Public Land and Oahu Land Trust, \$500,000 for the acquisition of a conservation easement over 107.73 acres on the Island of O‘ahu, Ko‘olaupoko District, to be held by the Oahu Land Trust.



The Oahu Land Trust (OLT) and the Trust for Public Land (TPL) requested funding for the purchase of a conservation easement over a parcel of land, TMK (1) 4-7-007:015, for the protection of agricultural, watershed, and open space values. OLT and TPL have secured \$1,657,050 in matching funds from private and county sources. The conservation easement will be held by OLT for the protection of its agricultural and open space values, which, due to its zoning and location, are vulnerable to loss through development. The owner will continue to operate the property as a scenic tropical garden offering guided tours and rental facilities. OLT’s mission is to protect and perpetuate Oahu’s natural and cultural heritage by actively working with communities to acquire and conserve land. OLT is a nonprofit corporation and is exempt from federal taxation under section 501(c)(3) of the IRC.

The proposed conservation easement over the Fong Plantation would protect a lush tropical garden that fosters the continued growth and cultivation of hundreds of productive fruit trees, as well as tropical flowers and native plants. Conservation of this plantation is key in maintaining the rural character of windward O‘ahu. The conservation easement will allow the Fong family to continue commercial activities (guided tours, lei-making classes, and facility rentals for luaus and receptions) that are consistent with the protection of the agricultural and scenic values of the property.



Malu Aina Center for Non-Violent Education and Action and the Hawaii Island Land Trust (HILT), \$231,788 for the acquisition of 11.14 acres on the Island of Hawai‘i, Puna District; with a conservation easement to be held by HILT.

Malu ‘Aina Center for Non-Violent Education and Action (Malu ‘Aina) requested funding for a parcel of land, TMK (3) 1-7-002:016, south of Hilo in the Puna District, Island of Hawai‘i, for the protection of its agricultural, natural habitat, and open space values. The parcel is being acquired from a private owner and Malu ‘Aina has secured approximately \$77,262 in matching private funds and land value donation for the acquisition. Malu ‘Aina plans to manage the land for the preservation of its agricultural values and the expansion of its community-



supported organic farming operations. Malu ‘Aina will provide a conservation easement to HILT to ensure the long-term protection of the land. Malu ‘Aina and HILT are nonprofit organizations exempt from federal taxation under section 501(c)(3) of the IRC. Malu ‘Aina is an all-volunteer nonprofit organization that grows food to share with people in need and works for justice, peace and preserving the environment. HILT’s motto is “Malama Ka Aina, Pulama Na Mea Oiwi,” (“care for the land, cherish the spirit and the culture of the land and its people”).

This acquisition of this farmland would protect county-zoned Important Agricultural Land for agricultural production. Malu ‘Aina seeks to acquire this property, which is adjacent to its current 22-acre organic farm, to actively farm the land and promote food self-sufficiency and sustainability. The property would be used to grow affordably-priced food for sale at local farmers’ markets and provide educational opportunities to volunteers and interns. To ensure permanent protection for the agricultural values of the land, Malu ‘Aina will donate a conservation easement to HILT.



HILT, \$35,000 for the acquisition of conservation easements over 6 acres on the Island of Hawai‘i, Puna District.

HILT requested funding for five conservation easements over parcels of land, TMKs (3) 1-1-029:001, (3) 1-9-009:052, (3) 1-9-009:053, (3) 1-9-014:035, and (3) 1-9-014:036, in the community of Volcano in the Puna District, Island of Hawai‘i, for the protection of forest canopy, native bird habitat, natural areas, and scenic resources. HILT has secured \$30,000 in matching private funds for this project, including a total estimated land value donation of \$20,000 from landowners donating easements. HILT will hold and monitor the five conservation easements for the preservation of native forest and plant communities in perpetuity. The owners will continue present activities and residences while cooperating with HILT to maintain the forest canopy.

These conservation easements will preserve an intact forest canopy in the Volcano area to create a “wildlife corridor” for native birds, insects and plants to travel or propagate along the southern flanks of Mauna Loa.



Landowners frequently cut native canopy to let more light into their lots, however, this practice fragments the forest and affects the movement of wildlife. Conservation of this native ohia forest canopy will maintain the connected habitat and extend the effects of the conservation activities occurring in the neighboring Kahaauale‘a Natural Area Reserve, Ola‘a Forest Reserve, and Hawai‘i Volcanoes National Park.

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

Applications for the current 2010-2011 (FY11) LLCP grant process were due September 16, 2010. 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 FY11 proposals for future land acquisitions is available per request to 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-new>. The Commission is scheduled to produce project recommendations in late December, 2010. A list of Commission-recommended project proposals will be available at that time.

FINANCIAL REPORT FOR THE PRECEDING FISCAL YEAR

Status of LCF for FY10:

Beginning cash balance of LCF on July 1, 2009	\$8,001,962
Revenue to LCF in FY10	\$4,160,999
Outstanding previous year encumbrances	\$4,572,265
Expenditures during FY10	\$ 823,855
<u>FY10 outstanding encumbrances at year end</u>	<u>\$7,339,645</u>
Cash balance minus outstanding encumbrances	\$3,999,461
Ending cash balance as of June 30, 2010	\$11,339,106

For FY10, revenues totaled \$4,160,999. Expenditures and encumbrances totaled \$3,389,170; this amount fell within the authorized spending cap of \$5,100,000. An amount of \$3,267,380 was encumbered or expended as awards to state agencies, counties, and nonprofit land conservation organizations for the acquisition of interest or rights in lands having value as resource to the State. An amount of \$121,790 was expended on salaries and administrative costs.

Grant awards

County of Hawaii	\$945,000
DOFAW	\$500,000
County of Kauai	\$800,000
Kona Historical Society	\$255,592
Oahu Land Trust	\$500,000
Malu Aina and Hawaii Island Land Trust	\$231,788
<u>Hawaii Island Land Trust</u>	<u>\$35,000</u>
Total grant expenditures and encumbrances	\$3,267,380

Salary costs	
Salaries, full year at 2.0 FTE	\$119,327
Administrative expenses	
Staff and Commission training and travel	\$2,383
Special Fund Assessment	
Central Service Fees	\$202,145
Total expended/encumbered	\$3,591,235

The Department may use up to five percent of the revenue of LCF from the previous year to administer the Program to cover costs such as travel, training, and materials and supplies. FY09 revenue totaled \$2,593,975, allowing administrative costs of up to \$129,699 during FY10. Administrative expenses and encumbrances in FY10 totaled \$121,790. The administrative budget funded travel costs related to the Commission, which met twice as a full commission and twice as a four-member subcommittee during the fiscal year to accomplish its duties. The Legislature, through the administrative budget (Act 190, SLH 2006), created two temporary civil service positions to staff LLCPC. These salary costs totaled \$119,327 in FY10. The fund was also assessed the statutorily required central service fees of 5% on revenue and 2% on expenditures which totaled \$202,145 for FY10.

OBJECTIVES AND BUDGET PROJECTIONS FOR THE FOLLOWING FISCAL YEAR

The Department, through LLCPC, plans to accomplish five main objectives in FY11.

Objectives

The Department’s primary objectives for LLCPC in FY11 are: (1) To bring state acquisitions receiving FY09 and FY10 funds to closure and to provide support to FY08, FY09, and FY10 nonprofit and county grant recipients; (2) To effectively coordinate the award of FY11 grant funds towards the acquisition of lands having high value as a resource to the State; (3) To build and improve LLCPC through promulgating program rules and with the support of the Commission; (4) To implement administrative procedures for LLCPC pursuant to changes mandated by Act 139, SLH 2008; and (5) To continue with planning activities that support the acquisition and protection of lands having value as a resource to the State.

1. Currently, the Department is working with FY08, FY09, and FY10 grant recipients to ensure the proper disbursement of grant funds. Three FY08 grant awardees and six FY10 grant awardees are in the process of meeting LLCPC requirements in order to receive grant funds and acquire the respective properties. Three FY09 State acquisitions and one FY10 State acquisition are currently

- undergoing due diligence and are expected to close within the next year and a half.
2. Staff is currently assisting the Commission with its review of FY11 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. Upon approval of the Governor, grant funds awarded by the Board will be encumbered.
 3. The Department is currently promulgating administrative rules for LLCP and is providing 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-2.6, HRS. The Department and the Commission have produced draft rules and will continue through the rulemaking process to receive appropriate input and publish final rules.
 4. The Department will continue the implementation of Act 139, SLH 2008, by providing an administrative framework and corresponding administrative rules for the award of up to 5% of the previous years revenues for the management and operation of lands acquired under LLCP. The Department has worked with the Commission to produce a proposed process and will seek appropriate comment and approval in FY11 for implementation in FY12.
 5. Pursuant to Section 173A-3, HRS, the Department is in the process of implementing planning activities that support the coordination of conservation land acquisitions in the State and guide the Board in the acquisition of land having value as a resource to the State. In the past two years, the Department has researched and gathered information on land acquisition planning, partnerships, and conservation tools. In FY11, the Department will produce a draft plan for review by the Senate President and Speaker of the House of Representatives.

Budget Projections

The Board may award up to \$4 million in grant funding to county agencies, state agencies, and nonprofit land conservation organizations, subject to the availability of funds. Funding will continue to be used to administer the program (less than or equal to 5% previous year's revenues) to fund Commission travel, staff training, and operational costs such as supplies and materials. LCF will also continue to support salaries for two civil service positions, one in the Department's Land Division and one in DOFAW, and the Central Services Fee.

Additionally, two pieces of legislation enacted as a result of the 2010 Regular Session may affect the budget projects for FY11 and future years. Act 192, SLH 2010, authorized the transfer of \$1,000,000 or so much thereof that may be necessary from LCF to the General Fund in Fiscal Year 2011. Act 209, SLH 2010, revised Chapter 173A,

HRS, to allow the use of LCF for two additional purposes: invasive species control and mitigation by the invasive species council under Chapter 194, HRS; and reforestation and sediment run-off mitigation. The Department will proceed in cooperation with other appropriate agencies to carry out the intent of this new law.

CONCLUSION

LLCP provided \$3,267,380 in grant funding for the acquisition of interests in seven properties, which will result in the protection approximately 752 acres. This grant funding will protect threatened or unique natural, cultural, recreational, and agricultural resources. The commitment of these funds will help secure approximately \$9,478,312 in matching federal, county, and private funds for these acquisitions; resulting in about \$13 million in land and acquisition costs secured for less than \$3.3 million in state funds spent. LLCP offers great promise for the future, and is well positioned to take advantage of federal land acquisition funds. The State LLCP 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.