

REPORT TO THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

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

October 2012

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

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 the 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) 2012 application cycle, the Legacy Land Conservation Program (LLCP) advertised approximately \$4.5 million in project funding from the 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 nine separate resource land acquisition projects for the September 16, 2011, application deadline.

After conducting site visits and public decision-making meetings, the Commission recommended eight prioritized applicants for funding a total of approximately \$4.6

million. In January 2012, the Department sought the consultation of Senate President Shan Tsutsui and Speaker of the House of Representatives Calvin Say regarding the Commission's recommendations, pursuant to Chapter 173A, HRS. The Legislators responded in writing, agreeing with the recommendations of the Commission.

On May 11, 2012, 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 certain terms and conditions. The Department requested approval from the Governor for release of funds for the projects; the Governor subsequently approved the grants on May 30, 2012.

The Governor approved the release of \$4,600,000 in funding for the following projects:

1. Kalauao Valley; Department's Division of Forestry and Wildlife (DOFAW), at \$192,750 for purchase 635 acres of in Honolulu, Island of O'ahu, for the protection of forested watershed and critical habitat.
2. Maunawila Heiau; Hawaiian Islands Land Trust (HILT) at \$650,000 for acquisition of 9.08 acres in Ko'olauloa, Island of O'ahu, for the protection of Maunawila Heiau.
3. Ka'ena Point Natural Area Reserve Cove Extension; DOFAW, at \$86,450 for purchase of 0.75 acre in Waialua, Island of O'ahu, for protection of a sand dune ecosystem and intertidal flora and fauna adjacent to the Ka'ena Point Natural Area Reserve.
4. Kuka'iau Ranch Forest Legacy Conservation Easement Project; The Nature Conservancy (TNC) and DOFAW, at \$600,000 to fund the acquisition (by DOFAW) of a conservation easement over 3,688 acres in Hamakua, Island of Hawai'i, to restrict operations on portions of the property to sustainable forestry practices.
5. Kaiholena South; the Ala Kahakai Trail Association (AKTA) at \$1,449,555 for purchase of 34.63 acres in North Kohala, Island of Hawai'i, for protection of coastal lands, cultural resources and a portion of the Ala Kahakai National Historic Trail.
6. Kuka'iau Acquisition & Palila Habitat Restoration; TNC at \$1,000,000 for the purchase of 4,469 acres in Hamakua, Island of Hawai'i, for the protection of watershed and endangered Palila bird habitat.
7. Kahuku Coastal Property; County of Hawai'i at \$621,245 to purchase 3,127.95 acres in Ka'u, Island of Hawai'i, for the protection of shoreline, coastal access, and natural area adjacent to Manuka 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 the LCF.

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

Chapter 173A, HRS, instructs the Department and Commission to use Legacy Land funds to protect land having value 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. The Commission reviews projects for resource lands and selects lands listed as “priority” under Section 173A-2.6, HRS. The resource values which make each project a priority under Section 173A-2.6, HRS, are explained below.

Kalauao Valley; DOFAW, at \$192,750 for purchase 635 acres of in Honolulu, Island of O‘ahu, for the protection of forested watershed and critical habitat.



DOFAW, applied for funds to purchase 635 acres of forested watershed in Honolulu, Island of O‘ahu. The land is mauka of Aiea and Keaiwa Heiau and contains parts of the Aiea Loop Trail and Aiea Ridge Trail and is within the Ko‘olau Mountains Watershed Partnership management area. DOFAW is seeking matching funding from the Forest Legacy program, the federal Recovery Land Acquisition program, and the City and County of Honolulu’s Clean Water Natural Lands Fund.

Under Section 173A-2.6, HRS, the Legacy Land Conservation Program is mandated to prioritize lands having exceptional value due to the presence of habitats for threatened or endangered species of flora, fauna, or aquatic resources.

The Kalauao Forest has been designated as Critical Habitat for the endangered O‘ahu ‘Elepaio and ten species of plants. The Forest is dominated by Koa and ‘Ohia and the valley has been identified by United States Fish and Wildlife Service as potential habitat for federally listed Hawaiian tree snails. The valley and the bordering Kalauao stream support a healthy population of native Hawaiian insects which serve as predators for disease carrying mosquitoes and food for native forest birds.

In the short term, DOFAW intends to add the currently unmanaged Kalauao Valley into DOFAW’s inventory



of managed lands. Longer term goals include converting the parcel into a natural area reserve or a forest reserve under DOFAW and managing the area for native species and ecosystem protection, research, public education, and recreation.

Maunawila Heiau; Hawaiian Islands Land Trust (HILT) at \$650,000 for acquisition of 9.08 acres in Ko‘olauloa, Island of O‘ahu, for the protection of Maunawila Heiau.



The Hawaiian Islands Land Trust (HILT) applied for funds for the acquisition of 9.08 acres containing Maunawila Heiau in Ko‘olauloa, Island of O‘ahu. HILT is seeking matching funds from the landowner (in the form of a reduction in price from the appraised value) and the City and County of Honolulu’s Clean Water and Natural Lands Fund.

Under Section 173A-2.6, HRS, the Legacy Land Conservation Program is mandated to prioritize

lands having exceptional value due to the presence of unique and valuable cultural or archaeological resources.

The Maunawila Heiau is one of the remaining relatively intact heiau in the Ko‘olauloa region. The current landowner has agreed to allow the Ko‘olauloa Hawaiian Civic Club to begin clearing overgrowth from the heiau with the supervision of an archeologist. HILT intends to hold the property in perpetuity and work with community organizations to clear and steward the heiau and to allow access to the cultural sites. Initial plans include conducting an archeological survey and then working with community organizations to draft a management plan.

HILT is a local nonprofit organization, tax-exempt under 501(c)(3) of the Internal Revenue Code (IRC). HILT’s mission is to protect the lands that sustain us for current and future generations.

Ka‘ena Point Natural Area Reserve Cove Extension; DOFAW, at \$86,450 for purchase of 0.75 acre in Waialua, Island of O‘ahu, for protection of a sand dune ecosystem and intertidal flora and fauna adjacent to the Ka‘ena Point Natural Area Reserve.



DOFAW, requested funds for the purchase of 0.75 acre near Ka‘ena Point in Waialua, Island of O‘ahu. The shoreline parcel is adjacent to the Ka‘ena Point Natural Area Reserve and the Ka‘ena Point State Park.

Under Section 173A-2.6, HRS, the Legacy Land Conservation Program is mandated to prioritize lands having exceptional value due to the presence of unique aesthetic resources as

well as habitats for threatened or endangered species of flora, fauna, or aquatic resources.

The parcel is part of a sand dune ecosystem contains naupaka and intertidal flora and fauna. Currently erosion from nearby off-road driving drains out in the parcel. The beach is a resting area for the Hawaiian monk seal. The area has been recommended by the NARS Commission for inclusion in the Natural Area Reserve System (NARS). After acquisition, DOFAW NARS staff will manage the parcel under its mandate to preserve in perpetuity specific land and water areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites, of Hawaii. The land would also be included within the Department's action plan for the larger Ka'ena Point Stewardship Area.

Kuka'iau Ranch Forest Legacy Conservation Easement Project; TNC and DOFAW, at \$600,000 to fund the acquisition (by DOFAW) of a conservation easement over 3,688 acres in Hamakua, Island of Hawai'i, to restrict operations on portions of the property to sustainable forestry practices.



TNC and DOFAW, requested funds for the acquisition of a conservation easement over 3,688 acres in Hamakua, Island of Hawai'i. DOFAW is seeking federal Forest Legacy funding as match.

Under Section 173A-2.6, HRS, the Legacy Land Conservation Program is mandated to prioritize the protection of lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value, as well as lands that are unique

and productive agricultural lands.

The land is watershed on the northern flank of Mauna Kea and is currently used for ranching, forestry, and agriculture. It contains remnant stands of old growth 'ohi'a, cultural sites, including sites and caves. The conservation easement will restrict operations on portions of the property to sustainable forestry practices. The landowner's current lessee, Hawaiian Legacy Hardwoods, intends to increase its leased lands from 1,000 to 3,600 acres. A Forest Stewardship Management Plan is being completed for the area, with the primary management objective of restoring a biologically and economically viable forest system that can serve as a model for forest restoration through the State.



Kaiholena South; the Ala Kahakai Trail Association (AKTA) at \$1,449,555 for purchase of 34.63 acres in North Kohala, Island of Hawai‘i, for protection of coastal lands, cultural resources and a portion of the Ala Kahakai National Historic Trail.



The Ala Kahakai Trail Association (AKTA) applied for \$1,449,555 in grant funding for the purchase of 34.63 acres in North Kohala, Island of Hawai‘i. AKTA will use a combination of private, nonprofit, and National Park Service funding to complete the acquisition.

Under Section 173A-2.6, HRS, the Legacy Land Conservation Program is mandated to prioritize lands having exceptional value due to the presence of unique aesthetic resources, as well as lands containing cultural or archeological sites or resources that are in danger of theft or destruction.

The coastal parcel is within the ahupua‘a of Kaiholena, adjacent to land being purchased by the County of Hawaii for open space protection, and contains coastal access trails and a portion of the Ala Kahakai National Historic Trail. The land also contains cultural sites and is within view of the Lapakahi State Historical Park. AKTA plans to support the existing partnerships of local community organizations and public agencies to manage and care for the land. Stewardship work is guided by the National Parks Service Ala Kahakai Trail Management Plan and informed by the North Kohala community.



AKTA is a local nonprofit organization, tax-exempt under 501(c)(3) of the IRC. The AKTA’s mission is to support and guide a community-managed trail that honors those who came before and perpetuates for those to follow – with protocols and respect for Hawaii’s past, present and future.

Kuka‘iau Acquisition & Palila Habitat Restoration; The Nature Conservancy (TNC) at \$1,000,000 for the purchase of 4,469 acres in Hamakua, Island of Hawai‘i, for the protection of watershed and endangered Palila bird habitat.



The Nature Conservancy (TNC) applied for \$1,000,000 in grant funding to purchase 4,469 acres in Hamakua, Island of Hawai‘i. TNC has secured match from Acres for America and is seeking funding from the Army Compatible Use Buffer program.

Under Section 173A-2.6, HRS, the Legacy Land Conservation Program is mandated to prioritize lands providing critical habitats for threatened or endangered species that are in imminent danger or being harmed or negatively impacted.

The upper portion of the property is within federally-designated Palila bird habitat, forested with māmane. The land is within the Mauna Kea Watershed Partnership and contains the headwaters of many streams that run to the ocean. The land is currently protected by a conservation easement; however, the underlying fee owner is selling this restricted interest. A portion of the property is fenced and managed by the State of Hawaii for Palila. TNC is seeking to acquire the land for intensive management, in order to increase māmane stands that support the Palila population. TNC plans, in the long term, to transfer the property to public ownership after reforestation.



TNC is a nonprofit organization, tax-exempt under 501(c)(3) of the IRC; its mission is to conserve the lands and waters on which all life depends.

Kahuku Coastal Property; County of Hawai‘i at \$621,245 to purchase 3,127.95 acres in Ka‘ū, Island of Hawai‘i, for the protection of shoreline, coastal access, and natural area adjacent to Manuka Natural Area Reserve.



The County of Hawai‘i applied for funds to purchase 3,127.95 acres of coastal land in Ka‘ū, Island of Hawai‘i.

Under Section 173A-2.6, HRS, the Legacy Land Conservation Program is mandated to prioritize lands...having exceptional value due to the presence of unique aesthetic resources as well as habitats for threatened or endangered species of flora, fauna, or aquatic resources.

The property is adjacent to the southern portion of the Manuka Natural Area Reserve (NAR), and is currently used for NAR access, fishing, diving, camping, and related activities. There is over a mile of ocean frontage and an anchialine pond complex situated in a volcanic crack within the property. Part of the shore is accessible for fishing and gathering, part contains an accessible black sand beach. There is a known Hawksbill Turtle nesting ground and the endangered Hawaiian monk seal has been observed on the shoreline of this property as well.

The acquisition will provide a permanent legal public access to the shoreline as well as southern portion of Manuka NAR. At this



time, access to the property is used by the public, however; the public has no legal rights to this access. The County plans to allow continued access to the shoreline for fishing, hiking, and recreational and cultural purposes. In the long term, the County will work with the local community and federal and state agencies to plan for future uses and management of the area.

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

Applications for the current 2012-2013 (FY13) LLCP grant process were due September 17, 2012. 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 FY13 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-new>. The Commission is scheduled to produce project recommendations in December, 2012. A list of Commission-recommended project proposals will be available at that time.

FINANCIAL REPORT FOR THE PRECEDING FISCAL YEAR

Status of LCF for FY12:

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|--|--------------------|
| Beginning cash balance of LCF on July 1, 2011 | \$7,696,388 |
| Revenue to LCF in FY12 | \$4,216,099 |
| Reimbursement of prior period expenditures in FY12 | \$ 125,250 |
| Transfer to HISC in FY12 | \$ 380,000 |
| Transfer to PLDC in FY12 | \$ 135,000 |
| Transfer to PILS in FY12 | \$ 275,000 |
| Expenditures during FY12 | \$1,269,995 |
| Outstanding previous year encumbrances | \$4,265,592 |
| <u>FY12 outstanding encumbrances at year end</u> | <u>\$3,727,697</u> |
| Cash balance minus outstanding encumbrances | \$1,984,423 |
| Ending cash balance as of June 30, 2012 | \$9,977,742 |

For FY12, revenues totaled \$4,216,099. Expenditures and encumbrances totaled \$4,997,692; this amount fell within the authorized spending cap of \$5,100,000. An amount of \$4,600,000 was encumbered or expended as awards to counties and nonprofit land conservation organizations for the acquisition of interest or rights in lands having value as resource to the State. Pursuant to the State budget and Act 209, SLH 2010, an amount of \$380,000 was transferred from the LCF for use by the Hawai'i Invasive

Species Council and related programs. Pursuant to Act 54, SLH 2011, and Act 55, SLH 2011, amounts of \$135,000 and \$275,000 were transferred from the LCF for use by the Public Land Development Corporation and Public Lands Inventory System, respectively. An amount of \$144,375 was expended on salaries and administrative costs; an amount of \$246,420 was levied for special fund assessments (central service fees).

Grant awards

| | |
|---|-------------|
| DOFAW | \$ 192,750 |
| Hawaiian Islands Land Trust | \$ 650,000 |
| DOFAW | \$ 86,450 |
| DOFAW | \$ 600,000 |
| Ala Kahakai Trail Association | \$1,449,555 |
| The Nature Conservancy | \$1,000,000 |
| County of Hawaii | \$ 621,245 |
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| Total grant expenditures and encumbrances | \$4,600,000 |

Salary costs

| | |
|--------------------------------|------------|
| Salaries, full year at 2.0 FTE | \$ 123,295 |
|--------------------------------|------------|

Administrative expenses

| | |
|---|-----------|
| Commission training and travel | \$ 8,162 |
| Fees, public notices, equipment, and staff travel | \$ 11,356 |
| Due diligence expenses | \$ 1,562 |

Special Fund Assessment

| | |
|--------------------------|------------|
| B&F Central Service Fees | \$ 246,420 |
|--------------------------|------------|

Total expended/encumbered **\$4,997,692**

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. FY11 revenue totaled \$4,796,117, allowing administrative costs of up to \$239,806 during FY12. Administrative expenses and encumbrances in FY12 totaled \$21,080. The administrative budget funded travel costs related to the Commission, which met five times as a full commission and once as a four-member subcommittee during the fiscal year to accomplish its duties, as well as fees, public hearing costs, publications, and staff travel. The Legislature, through the administrative budget (Act 1900, SLH 2006), created two temporary civil service positions to staff the LLCP. These salary costs totaled \$123,295 in FY12. The Fund was also assessed the statutorily required central service fees of 5% on revenue and 2% on expenditures which totaled \$246,420 for FY12.

OBJECTIVES AND BUDGET PROJECTIONS FOR THE FOLLOWING FISCAL YEAR

The Department, through LLCP, plans to accomplish five main objectives in FY13.

Objectives

The Department's primary objectives for LLCP in FY13 are: (1) To bring prior-year State acquisitions to closure and to provide support to prior-year nonprofit and county grant recipients; (2) To effectively coordinate the award of FY13 grant funds towards the acquisition of lands having high value as a resource to the State; (3) To implement new legislative changes to the LLCP; (4) To resolve complications arising from past legislative changes to the LLCP; 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 state recipients of FY09, FY10, FY11, and FY12 awards to bring acquisitions to closure and is providing support to FY10, FY11, and FY12 nonprofit and county grant to ensure the proper disbursement of grant funds. Six state acquisitions are currently undergoing due diligence and are expected to close within the next year and a half. Ten nonprofit and county grant awardees are in the process of meeting LLCP requirements in order to receive grant funds and acquire the respective properties.
2. Staff is currently assisting the Commission with its review of FY13 applications. After the Commission produces recommendations, the Department will seek the consultation of the Senate President and Speaker of the House; 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 has implemented a new consultation process between LLCP applicants and four State agencies as mandated by Act 284, SLH 2012. The Department will continue to receive comments on how to improve the integration of this new process into the LLCP approval process.
4. The Department will continue the implementation of Act 139, SLH 2008, by providing an administrative framework for the award of up to 5% of the previous years revenues for the management and operation of lands acquired under the LLCP. The Department has worked with the Commission to produce a proposed process and is currently seeking advice from the State Procurement Office and Office of Information Practices regarding proper implementation of procurement and Sunshine laws.
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 three years, the Department has

researched and gathered information on land acquisition planning, partnerships, and conservation tools. In FY13 the Department will present the draft plan to the Senate President and Speaker of the House of Representatives for review.

Budget Projections

The Board may award approximately \$2.5 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. The 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 statutory central services fee. Pursuant to authority granted by legislative in the 2012 Legislative Session, these civil service positions will convert to permanent positions in FY13.

Additionally, one bill passed by the Legislature in the 2010 Regular Session, two bills passed by Legislature in the 2011, and one bill passed in 2012 affect the budget projections for FY13. Act 209, SLH 2010, revised Chapter 173A, HRS, to allow the use of the 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. Pursuant to the state budget, \$400,000 per year is transferred from the LCF to the Hawaii Invasive Species Council and related programs. Act 55, SLH 2011, and Act 54, SLH 2011, designate a total of \$220,000 from the LCF for civil service positions for two new state programs. Act 106, SLH 2012, designates a further amount of \$350,000 from the LCF for one of the two new state programs. The Department will proceed in cooperation with other appropriate agencies to carry out the intent of this legislation.

CONCLUSION

LLCP provided \$4,600,000 in grant funding for the acquisition of interests in seven properties, which will result in the protection approximately 11,964 acres of land and threatened or unique natural, cultural, recreational, and agricultural resources. The commitment of these funds will help secure approximately \$8.4 million in matching federal, county, and private funds for these acquisitions; resulting in about \$13 million in land and acquisition costs secured for \$4.6 million in state funds spent. The Program offers great promise for the future, and is positioned to take advantage of federal land acquisition funds. The 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.