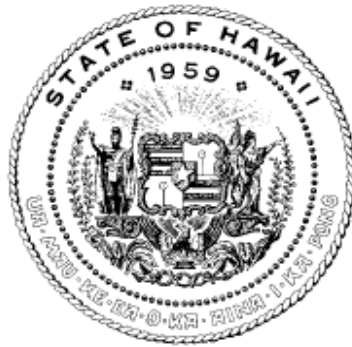


REPORT TO THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

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 2013

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) 2013 application cycle, the Legacy Land Conservation Program (LLCP) advertised approximately \$3 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 six separate resource land acquisition projects for the September 17, 2012, application deadline.

After conducting site visits and public decision-making meetings, the Commission recommended four prioritized applicants for funding a total of approximately \$3,344,707 million. In January 2013, the Department sought the consultation of Senate President Donna Mercado Kim and Speaker of the House of Representatives Joseph Souki regarding the Commission's recommendations, pursuant to Chapter 173A, HRS. The legislators responded in writing, agreeing with the recommendations of the Commission.

On March 8, 2013, 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 approved the grants on April 17, 2013.

The Governor approved the release of \$3,344,707 in funding for the following projects:

1. Hamakua Springs Purchased Conservation Easement; Hawaiian Islands Land Trust (HILT), at \$198,707 for purchase of a conservation easement over 264.942 acres in south Hilo, Island of Hawai‘i, for the protection of agricultural lands.
2. Acquisition of Buffer for Ulupo Heiau; Department’s Division of State Parks, at \$1,000,000 for acquisition of 3.44 acres in Ko‘olaupoko, Island of O‘ahu, for the protection of a buffer for Ulupo Heiau.
3. Vipassana Hawaii Purchased Conservation Easement; HILT, at \$1,000,000 for purchase of a conservation easement over 254.517 acres in North Kohala, Island of Hawai‘i, for protection of agricultural lands and coastal open space.
4. Whitmore Agricultural Lands; The Trust for Public Land (TPL) and State of Hawai‘i Agribusiness Development Corporation (ADC), at \$1,146,000 to fund the acquisition (by ADC) of 456 acres in Waialua, Island of O‘ahu, to support agricultural production.

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

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.

Hamakua Springs Purchased Conservation Easement



HILT applied for \$198,707 for the purchase of a conservation easement over 264.942 acres in south Hilo, Island of Hawai‘i, for the protection of agricultural lands. HILT is proposing to provide 75% of the total project costs for the acquisition. The federal Natural Resources Conservation Service (NRCS) will provide approximately half of the funds through its Farm and Ranchland

Protection Program, and the landowner will provide reduction in price from the appraised fair market value of the conservation easement.

Under Section 173A-2.6, HRS, LLCP is mandated to prioritize lands that are unique and productive agricultural lands.

The conservation easement on the Hamakua Springs Country Farm would restrict development on the 265-acre of the farm and would encourage continued agricultural uses of this land containing productive soils. The landowner would continue its current practices in promoting food sustainability by leasing lands to community members that distribute crops locally. The conservation easement would also contribute to the protection of watershed and stream values on the land, including watersheds associated with Waimaauou Stream (and Alia and Waiaama Streams bordering the land on the north and south).

The landowner plans to construct a hydroelectric facility to reduce cost of farming operations, promote energy self-sufficiency, and reduce fossil fuel reliance.



HILT will inspect the farm once a year to ensure that the conditions of the conservation easement are upheld. 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.

Acquisition of Buffer for Ulupo Heiau

The Division of State Parks applied for \$1,000,000 for acquisition of 3.44 acres in Ko‘olaupoko, Island of O‘ahu, for the protection of a buffer for Ulupo Heiau. The Division is proposing to provide 50% of the total project costs through private foundation funds and other grants.

Under Section 173A-2.6, HRS, LLCP is mandated to prioritize lands having exceptional value due to the presence of unique and valuable cultural or archaeological resources; as well as lands containing cultural or archaeological sites or resources that are in danger of theft or destruction.



The buffer abuts the north and east sides of Ulupo Heiau, the largest platform heiau structure on Oahu. Ulupo Heiau is listed on the National and Hawaii Registers of Historic Places. Culturally significant springs are located around the heiau and nearby

springs were used to irrigate the lo‘i kalo between the heiau and the Kawainui fishpond. Acquisition of the land for inclusion into Ulupo Heiau State Park preserves the cultural landscape and historical setting of the heiau, and also allows the Division to provide better management of visitation and cultural education programs and better coordination with neighboring land uses. Plans for the park include walking paths to assist understanding and visitation of the restored site.



Vipassana Hawaii Purchased Conservation Easement

HILT applied for \$1,000,000 for purchase of a conservation easement over 254.517 acres in North Kohala, Island of Hawai‘i, for protection of agricultural lands and coastal open space. HILT is proposing to provide 75% of the total project costs for the acquisition. NRCS will provide the largest portion of matching funds through its Farm and Ranchland Protection Program, and the landowner will provide reduction in price from the appraised fair market value of the conservation easement.



Under Section 173A-2.6, HRS, LLCP is mandated to prioritize lands that are in imminent danger of development as well as lands that are unique and productive agricultural lands.

The conservation easement on the Vipassana Hawaii property would limit residential development to one or two residences and a mediation center, and would allow for agricultural activities that are consistent with the protection of habitat for monk seals and sea birds, watersheds associated with the Halawa and Halelua Gulches, and cultural and historic resources. Grazing and crop activities will be guided by a conservation plan done in coordination with the NRCS with the goal of protecting soils and other agricultural values.

HILT will inspect the farm once a year to ensure that the conditions of the conservation easement are upheld. HILT is a local nonprofit organization, tax-exempt under 501(c)(3) of the IRC. HILT's mission is to protect the lands that sustain us for current and future generations.

Whitmore Agricultural Lands



TPL and ADC applied for \$1,146,000 to fund the acquisition by ADC of 456 acres in Waialua, Island of O'ahu, to support agricultural production. TPL and ADC are proposing to provide 88% of the total project costs of the acquisition. Matching funds would be primarily from the Navy and Army buffer programs and the City and County of Honolulu's Clean Water and Natural Lands Fund.

Under Section 173A-2.6, HRS, LLCP is mandated to prioritize lands that are unique and productive agricultural lands.

The property is classified as "prime" and "unique" agricultural land under Agricultural Lands of Importance to the State of Hawaii (ALISH) System, and is part of a larger plan led by ADC to acquire a 24-acre parcel west of the subject property to renovate existing agricultural packing and processing facilities and acquire an additional 1,700 acres of nearby lands in cooperation with the Office of Hawaiian Affairs for farming. The north fork of Kaukonahua Stream, the longest stream in the State, and Poamoho Stream run through the property. The acquisition of these lands by ADC will protect farm lands for food production in a context that includes the infrastructure and facilities necessary to support farming.



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

Applications for the current 2013-2014 (FY14) LLCP grant process were due September 16, 2013. 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 FY14 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, 2013. A list of Commission-recommended project proposals will be available at that time.

FINANCIAL REPORT – STATUS OF LCF FOR FY13

Beginning cash balance of LCF on July 1, 2012	\$ 9,977,742
Revenue to LCF in FY13	\$ 5,469,815
Revenues withdrawn from LCF ¹	\$ 5,649
Transfer to Hawaii Invasive Species Committee (HISC) in FY13	\$ 400,000
Transfer to Public Land Development Corporation (PLDC) in FY13	\$ 291,800
Transfer to Public Lands Inventory System (PILS) in FY13	\$ 23,000
Expenditures during FY13	\$ 2,594,295
Outstanding previous year encumbrances	\$ 3,975,000
<u>FY13 outstanding encumbrances at year end</u>	<u>\$ 1,199,167</u>
Cash balance minus outstanding encumbrances	\$ 6,958,646
Ending cash balance as of June 30, 2013	\$12,132,813

For FY13, revenues totaled \$5,469,815. Expenditures and encumbrances totaled \$3,793,462; this amount fell within the authorized spending cap of \$5,100,000. \$3,344,707 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, \$400,000 was transferred from LCF for use by HISC and related programs. Pursuant to the State Budget and Act 55, SLH 2011, \$291,000 and \$23,000 were transferred from LCF for use by PLDC and PILS, respectively. \$148,642 was expended on salaries and administrative costs; \$300,113 was levied central service fees pursuant to Section 36-27, HRS.

Grant awards

HILT	\$ 198,707
Division of State Parks	\$ 1,000,000
HILT	\$ 1,000,000
ADC	\$ 1,146,000
<u>Total grant expenditures and encumbrances</u>	<u>\$ 3,344,707</u>

Salary costs

Salaries, full year at 2.0 Full Time Equivalent	\$ 131,878
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Administrative expenses

Commission training and travel	\$ 6,235
Fees, public notices, equipment, and staff travel	\$ 4,480
Due diligence expenses	\$ 5,235
Other programs (watershed)	\$ 814

Special Fund Assessment

Central Service Fee	\$ 300,113
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Total expended/encumbered **\$ 3,793,462**

¹ Accounting error; the Department is working to reverse this error.

The Department may use up to five percent of the revenue of LCF from the previous year to administer LLCP to cover costs such as travel, training, and materials and supplies. FY12 revenue totaled \$4,216,099, allowing administrative costs of up to \$210,805 during FY13. Administrative expenses and encumbrances in FY13 totaled \$16,764. The administrative budget funded travel costs related to the Commission, which met five times during the fiscal year to accomplish its duties, as well as dues, publications, and staff travel. The Legislature, through the State Budget (Act 1900, SLH 2006), created two temporary civil service positions to staff LLCP. These salary costs totaled \$131,878 in FY13. The fund was also assessed the statutorily required central service fees of 5% on revenue and 2% on expenditures which totaled \$300,113 for FY13.

OBJECTIVES AND BUDGET PROJECTIONS FOR THE FOLLOWING FISCAL YEAR

The Department, through LLCP, plans to accomplish five main objectives in FY14.

Objectives

The Department's primary objectives for LLCP in FY14 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 FY14 grant funds towards the acquisition of lands having high value as a resource to the State; (3) To improve the operation of the program with regard to recent legislative changes to LLCP; (4) To resolve complications arising from past legislative changes to 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, FY12, and FY13 awards to bring acquisitions to closure and is providing support to FY10, FY11, FY12, and FY13 nonprofit and county grants to ensure the proper disbursement of grant funds. Five state acquisitions are currently undergoing due diligence and are expected to close within the next year and a half. Eleven 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 FY14 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 has implemented a new consultation process between LLCP applicants and three state agencies as established 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 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. Subsequent to consultation with the Commission, which decided not to participate due to a possible conflict of interest, the Department began research and gathered information on land acquisition planning, partnerships, and conservation tools. In FY14 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 \$4.5 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. LCF will also continue to support salaries for two civil service positions, one in the Department's Land Division and one in the Division of Forestry and Wildlife, and central services fee.

CONCLUSION

LLCP provided \$3,344,707 in grant funding for the acquisition of interests in four properties, which will result in the protection approximately 979 acres of land and threatened or unique natural, cultural, recreational, and agricultural resources. The commitment of these funds will help secure approximately \$13.7 million in matching federal, county, and private funds for these acquisitions; resulting in about \$17 million in land and acquisition costs secured for \$3.34 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 State Legacy Land Conservation Program 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.