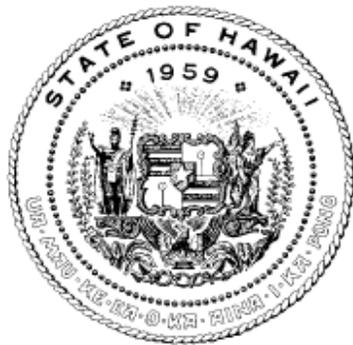


**REPORT TO THE THIRTY FIRST LEGISLATURE
STATE OF HAWAII
2022 REGULAR SESSION**

**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

October 2021

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

OVERVIEW

In Fiscal Year 2021, the Legacy Land Conservation Program and its partners achieved several key objectives for preserving, protecting, and enhancing land having value as a resource to the State, including successful completion of important conservation transactions at Hakipu‘u Lo‘i Kalo (Ko‘olaupoko, O‘ahu), Pia Valley Natural Area Reserve (Kona, O‘ahu), and Kamehamenui Forest (Kula, Maui). As recommended by the Legacy Land Conservation Commission and the Division of Forestry and Wildlife, the Board of Land and Natural Resources approved new grant awards for land acquisitions at Maka‘alae and Mokae (Hāna, Maui) and at Kiolaka‘a (Ka‘ū, Hawai‘i), while the 2021 Legislature appropriated \$2 million for State land acquisition at Nā Wai ‘Ehā (Wailuku, Maui). For more information about these properties, please see the map on page two of this report and the descriptions that begin on page five.

While processing the new Fiscal Year 2021 grant awards, we completed our first-ever implementation of back-up/contingency procedures that allow the Department of Land and Natural Resources to shift an encumbrance of grant funds from one project, that chooses to discontinue its award, to another project that was approved for contingency funding from the same fiscal year (see this report, page 10). Another first-time experience for the program was gaining approval from the Board of Land and Natural Resources for a landowner to buy out State interests in property previously acquired with a grant from the Land Conservation Fund. This will result in the landowner, Wai‘anae Community Re-development Corporation, paying back to the State a portion of grant funds in order to remove a portion of the property from the Legacy Land Conservation Program and accept federal grant funds to construct a new farm processing and training facility thereupon. *See* Board of Land and Natural Resources, September 25, 2020, Item C-1, [Submittal](#) and page 2, [Minutes](#).



Photos posted at www.maoorganicfarms.org/our-farm; *see also* www.schatz.senate.gov/news/press-releases/waianae-to-receive-16-million-to-build-new-farming-facility-creating-200-jobs.

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.

Subsection 173A-5(h), HRS.

Section 173A-2 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." Subsection 173A-5(i) and Section 173A-9 establish a land acquisition grant program that is open to state agencies, counties, and nonprofit land conservation organizations.

The 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 in 2006 (*see* 2006 Hawai'i Session Laws Act 254, Section 1 at 1088-1089);
- consultation with the President of the Senate and the Speaker of the House of Representatives (*see* Subsection 173A-5(i) and Section 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 of Land and Natural Resources ("DLNR") administers and manages the Land Conservation Fund ("Fund") and the Legacy Land Conservation Program ("LLCP") in accordance with:

- [Chapter 173A](#), Hawai'i Revised Statutes ("HRS"), Acquisition of Resource Value Land;
- [Chapter 13-140](#), Hawai'i Administrative Rules, 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, DLNR secured approval from the Board of Land and Resources ("BLNR") 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* 2005 Hawai'i Session Laws Act 156, Section 9. Since that time, the LLCP processed over 110 completed grant applications for land acquisition.

As of June 30, 2021, BLNR—based on recommendations from the Legacy Land Conservation Commission, DLNR's Division of Forestry and Wildlife, and public testimony—had approved 68 of these applications for funding. The Governor approved 65 of the 68 applications that the BLNR approved, which resulted in releases of funding for the acquisition of 62 properties (three properties were funded through multiple applications). Among these 62 properties, LLCP has completed 37 acquisitions; 11 acquisitions remain active; applicants discontinued 12 acquisitions; and BLNR terminated 2 acquisitions.

For additional information about the Legacy Land Conservation Program, please visit dlnr.hawaii.gov/ecosystems/llcp, or contact:

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

ANNUAL REPORT

Subsection 173A-5(l), Hawai'i Revised Statutes ("HRS"), paragraph (2), requires that the Board of Land and Natural Resources ("BLNR") "[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 subsection 173A-5(l), HRS, paragraph (3), BLNR makes copies of the annual report available to the public via the Department of Land and Natural Resources ("DLNR") website (*available at* dlnr.hawaii.gov/reports) and upon request.

In response to a recommendation from the State Office of the Auditor (Report No. 19-01), the financial report for the preceding fiscal year reports transactions that transferred funds into and out of a DLNR trust account (this report, page 18).

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



I am delighted to have been able to play a part in securing the future of Pia Valley as a protected wilderness. On behalf of myself and my family I would like to thank our state conservationists and all who protect and defend our vital wild lands and the sanctuary they provide for their plant and animal inhabitants. Patricia Godfrey, Land Donor

Awardee/Owner: [DLNR-Division of Forestry and Wildlife](#) (fee title)
Acreage: **300**
Tax Map Key Number: (1) 3-7-003:003
FY19 Funding awarded: \$ 66,500 (full funding)
FY19 Funding expended: \$ 9,517
Matching funds expended: \$ 368,000 (land value donation, private funds)
Conservation purpose: See § 173A-5(g), HRS:

- (1) Watershed protection
- (2) Natural areas
- (3) Habitat protection
- (4) Open spaces and scenic resources
- (5) Recreational and public hunting areas

DLNR News Release: dlnr.hawaii.gov/blog/2021/02/02/nr21-023
Additional Information: <https://vimeo.com/463609639>
[Report to the 2020 Legislative Session](#), pages 8-9

Kamehamehenui Forest, Kula District, Island of Maui (LLCP 20-xx, CIP)

Owner: [DLNR-Division of Forestry and Wildlife](#) (fee title)
Acquisition Partner: [The Trust for Public Land](#)
Acreage: **3,433.7**
Tax Map Key Numbers: (2) 2-3-005:002 and :014
CIP Funding Expended: **\$3,000,000**
DLNR News Release: dlnr.hawaii.gov/blog/2020/09/09/nr20-136
Additional Information: dlnr.hawaii.gov/blog/2020/10/13/nr20-163



Our Maui delegation worked very hard to secure state funding to help with the purchase of the 3,433-acre Kamehamehenui property in upper Kula. This area is beloved by many and we want to make sure that it is protected for future generations.

Senator J. Kalani English



I am proud to have been part of this collaborative effort.

Thanks to the efforts of DLNR, TPL, and federal funding, this spectacular property will be preserved in perpetuity for the benefit of the public.

Representative Kyle Yamashita

Turtle Bay Makai – Kahuku Kawela Forever, Ko‘olaupua District, O‘ahu (LLCP 21-00)

Awardee: State Department of Land and Natural Resources ("DLNR")
Partners: [The Trust for Public Land](#), [North Shore Community Land Trust](#), BRE-Turtle Bay Resort and successors, City & County of Honolulu

Conservation purpose: Protect natural resources, maintain public access ([Act 121, 2015](#))
FY21 Funding expended: \$ 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

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 about five miles of undeveloped shoreline.



Images from North Shore Community Land Trust

DLNR's Division of Forestry and Wildlife ("DOFAW") holds the conservation easement, and monitors it in partnership with North Shore Community Land Trust. DLNR'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 secured from the U.S. Army Compatible Use Buffer Program. In accordance with [Chapter 173A-13](#), Hawai‘i Revised Statutes, The Trust for Public Land—a nonprofit land conservation organization—submitted the required yearly debt service grant application for \$1.5 million from the Land Conservation Fund.



Additional Information:

files.hawaii.gov/dlnr/meeting/submittals/150925/D-18.pdf
governor.hawaii.gov/newsroom/news-release-agreement-reached-on-future-of-turtle-bay-conservation-lands

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

For the Fiscal Year 2021 application cycle, the Legacy Land Conservation Program advertised the availability of approximately \$3.2 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 twelve separate resource land acquisitions totaling \$19,787,000. After conducting field visits and public decision-making meetings, the Legacy Land Conservation Commission recommended full funding for two grants (up to \$3,056,700 total, as funds are available) and partial funding for another grant (up to \$875,000, as funds are available), and recommended eight grants as back-ups/contingencies for the available funding, in the order ranked, as presented below:

Full Funding

1. **Ke Ao Hali'i, *Maka'ala'e Lands***, Hāna, Maui (LLCP 21-01, \$1,581,700 awarded/encumbered)¹
2. **Ala Kahakai Trail Association, *Kiolaka'a***, Ka'ū, Hawai'i (LLCP 21-02, \$1,475,000 awarded/encumbered)

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

- ~~3. Ala Kahakai Trail Association, *Manaka'a Fishing Village*~~, Ka'ū, Hawai'i (LLCP 21-03, up to \$875,000, not awarded)
Ala Kahakai Trail Association withdrew this application prior to the final BLNR approval process. Although the landowner sold fee title to a different private buyer, Ala Kahakai Trail Association acquired a conservation easement over the property using other sources of funding.

Back-up/contingency for full funding

4. Ke Ao Hali'i, *Mokae II Lands*, Hāna, Maui (LLCP 21-04: \$2,752,500 requested, \$294,000 awarded)²
- ~~5. Molokai Land Trust, *Mapulehu: Valley to Summit*~~, Kona, Molokai
Molokai Land Trust withdrew this application during the BLNR approval process; see footnote 1.
6. Department of Land and Natural Resources ("DLNR"), *Nā Wai 'Ehā*, Maui³
7. DLNR, *Hāloa 'Āina - Royal Hawaiian Sandalwood Conservation Easement*, Kona, Hawai'i
8. Waipā Foundation, *Halulu Fishpond Access*, Halele'a, Kaua'i
- ~~9. Hawaiian Islands Land Trust, *Waikalua Loko I'a Conservation Easement*~~, Ko'olaupoko, O'ahu
Hawaiian Islands Land Trust withdrew this application after receiving sufficient funding for the acquisition from the City & County of Honolulu Clean Water and Natural Lands Fund and other sources.
10. DLNR, *Keone'o'o*, Honua'ula, Maui

¹ Ke Ao Hali'i will use only \$681,700 of this amount because after Molokai Land Trust discontinued its Fiscal Year 2020 grant for Mapulehu (partial award, \$900,000), Ke Ao Hali'i received a back-up/contingency award of those same Fiscal Year 2020 funds for its Maka'ala'e acquisition. The remaining \$900,000 in Fiscal Year 2021 funds that Ke Ao Hali'i doesn't use for Maka'ala'e will be shifted, through the back-up/contingency award process, to Ke Ao Hali'i's Mokae II acquisition. See footnote 2 below.

² DLNR expects that Ke Ao Hali'i will receive an additional \$900,000 in Fiscal Year 2021 grant funds through the back-up/contingency award process for funds that will become available from the Maka'ala'e acquisition. See footnote 1 above.

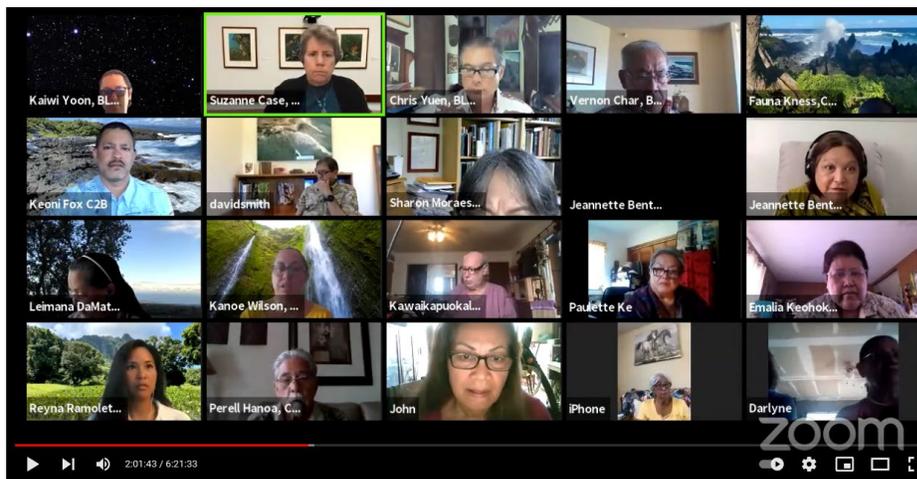
³ The 2021 Legislature appropriated \$2,000,000 from the Fiscal Year 2022 Land Conservation Fund for DLNR's effort to acquire 10,000 acres at Nā Wai 'Ehā, West Maui "to protect important forested watershed, native forest and the water resources they provide; and all project related cost; provided that the County of Maui makes a good faith effort to support the project" (Act 88, Part IV, Capital Improvement Projects, Section 26, Item K.7). The map on page 2 of this report shows the location of this specific, legislatively authorized land acquisition. This appropriation for a DLNR capital improvement project, when expended, comes 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.

DLNR consulted with the Senate President and the Speaker of the House of Representatives regarding the Commission's recommendations, in accordance with Chapter 173A, Hawai'i Revised Statutes ("HRS"). The legislators met with DLNR representatives and responded in writing, offering no objections or other comments regarding the recommendations of the Commission. Then, the Board of Land and Natural Resources, and lastly, Governor Ige, approved the Commission's recommendations, and DLNR encumbered funds for two grants for full funding (numbers 1 and 2 above) and one grant for partial funding (number 4 above), based on the total funds available from the Fiscal Year 2021 budget allotment. The map on page 2 of this report shows the location of the property to be acquired for each of the three grants encumbered with FY21 operating funds.

Public records of BLNR approval: January 22, 2021, Item C-1, [Submittal](#) and pages 2-3, [Minutes](#)
 April 23, 2021, Submittals for Items [C-1](#) and [C-2](#), and pages 5-9, [Minutes](#)



01.22.2021 Board of Land and Natura Resources Land Board Meeting



Zoom Meeting

659 views · Streamed live on Apr 23, 2021

LIKE DISLIKE SHARE SAVE

Maka‘alaie, Hāna District, Island of Maui (LLCP 21-01)

Awardee: Ke Ao Hali‘i (Save the Hāna Coast)
Acreage: **30.3** (fee simple + conservation easement)
Tax Map Key Numbers: (2) 1-4-010:030, :032, :034; (2)1-4-012:002
FY21 Funding requested: \$ 1,581,700
FY21 Funding awarded: **\$ 1,581,700** (full award)
Estimated Matching Funds: **\$ 1,571,700** (County of Maui Open Space Fund, private funds, in-kind services)
Conservation Easement: Willing/Intended Holders:
 Hawaiian Islands Land Trust (Administrative Holder)
 County of Maui (Co-Holder)



Ke Ao Hali‘i is working to protect an eighteen parcel area that stretches from Mokae, adjacent to Hāmoa Beach, to Waioka Pond (Venus Pool), bound by the ocean and the Hāna Highway. The four parcels at Maka‘alaie include ocean front pastureland—intermittently used for grazing cattle—and the remains of the Reciprocity Sugar Mill (closed 1902), old stables, and other settlements. Areas adjacent to Waiokapia Stream are rocky, more heavily treed, and subject to flooding, and have been identified as archaeologically significant. The coastal area consists of tide pools and rocky outcroppings with easy access to the sea. These are prime fishing and gathering spots for Hāna residents. A line of Cook Pines just inshore from the beach provides excellent shade and is a popular camping spot for local families.

In its review of the Maka‘alaie application, DLNR's Division of Aquatic Resources ("DAR") stated "DAR is very supportive of this effort and any future efforts to use legacy land funds to help acquire important coastal lands." The Division of Forestry and Wildlife's review noted that "We emphasize the importance of the public benefits that this proposed application will provide by creating and protecting opportunities for communities to experience natural areas."

Land Acquisition Priorities (Section 173A-2.6, HRS) as self-identified in approved application:

- (1)(A) exceptional value: Unique aesthetic resources
- (1)(B) exceptional value: Unique and valuable cultural or archaeological resources
- (1)(C) exceptional value: Habitats for threatened or endangered species of flora, fauna, or aquatic resources
- (2) imminent danger: of development
- (3) imminent danger: of being modified, changed, or used in a manner to diminish its value
- (4) critical habitats for threatened or endangered species that are in imminent danger of harm or negative impact
- (5) danger: theft or destruction of cultural or archaeological sites or resources
- (6) unique and productive: agricultural lands

Kiolaka‘a, Ka‘ū District, Island of Hawai‘i (LLCP 21-02)

Awardee: [Ala Kahakai Trail Association](#)
Partner: [The Trust for Public Land](#)
Acres: **1,841.3** (fee simple + conservation easement)
Tax Map Key Numbers: (3) 9-4-001:008, :009, :016, :017, :023
FY20 Funding awarded: **\$ 1,475,000** (full award)
Estimated Matching Funds: **\$ 1,551,000** (County of Hawai‘i, private funds)
Conservation Easement: County of Hawai‘i (Willing/Intended Holder)

Kiolaka‘a is an undeveloped property south of Wai‘ōhinu Town which includes makai portions of Kiolaka‘a and Wai‘ōma‘o ahupua‘a. Beginning at Ka‘alu‘alu Bay, it stretches over 4.5 miles inland to the 700 foot elevation. In ancient times, the bay was an important landing for canoes. Its surrounding waters and fishpond provided an abundance of marine resources. During the plantation era, the lands were used to pasture cattle and goats, starting with Ka‘alu‘alu Ranch. Ka‘alu‘alu became the main port in Ka‘ū for the import of goods and export of cattle. The landscape is partially covered by a pahoe-hoe lava flow, two a‘a lava flows, and wind deposited Pahala ash and sand from Waikapuna. The mauka portion supports an intact native dryland forest with many rare species while the makai portion includes native coastal plants which flourish among the cultural sites and extensive ancient trail network. Kapenako waterhole provides potable water and its anchialine pools are home to ‘ōpae ‘ula. Mauka portions of the property are licensed for cattle grazing. Ka‘alu‘alu is a popular camping spot for the community. The makai areas are used for beach access, hiking, fishing, and gathering.



Land Acquisition Priorities (Section 173A-2.6, HRS) as self-identified in approved application:

- (1)(A) exceptional value: Unique aesthetic resources
- (1)(B) exceptional value: Unique and valuable cultural or archaeological resources
- (1)(C) exceptional value: Habitats for threatened or endangered species of flora, fauna, or aquatic resources
- (2) imminent danger: of development
- (3) imminent danger: of being modified, changed, or used in a manner to diminish its value
- (4) critical habitats for threatened or endangered species that are in imminent danger of harm or negative impact
- (5) danger: theft or destruction of cultural or archaeological sites or resources
- (6) unique and productive: agricultural lands

Mokae II, Hāna District, Island of Maui (LLCP 21-04)

Awardee: [Ke Ao Hali'i \(Save the Hāna Coast\)](#)
Acreage: 32.7 (fee simple + conservation easement)
 Tax Map Key Numbers: (2) 1-4-010:008, :009, :010, :012
 FY21 Funding requested: \$ 1,863,300
FY21 Funding awarded: \$ 294,000 (partial award)
Estimated Matching Funds: \$ 310,993 (County of Maui Open Space Fund, private funds, in-kind services)
 Conservation Easement: Willing/Intended Holders:
 Hawaiian Islands Land Trust (Administrative Holder)
 County of Maui (Co-Holder)

At Mokae II, three of the four parcels are a combination of ocean front pastureland, intermittently used for grazing cattle, and cultural/historic landscapes that include a number of historic settlement sites and the ruins of a manager's building. The southern property line of parcel :012 abuts the intermittent Waiokapia Stream, but the banks are high and less inclined to flooding. The coast includes the pool from the stream, with a rough pebble beach and easy access to the sea, frequented by surfers. This is a prime fishing spot for Hāna residents and a popular camping spot for local families.



A review of the Mokae II application by DLNR's Division of Aquatic Resources found that "These coastal lands are very important for the local Hana community to recreate, and practice customary gathering and subsistence harvest. It is important to keep these lands in open conservation use, allowing for continued and controlled access." The Division of Forestry and Wildlife's review noted that "Our biological assessments indicate that the subject lands support priority values, with a high potential to provide habitat and connectivity for native flora and fauna in the area, including threatened and endangered species. Our surveys noted a number of locations where opportunities to protect and restore endangered plants and seabirds could be initiated. We believe that acquisition of those lands by this applicant, as part of the suite of connected lands in the area, holds the best potential to ensure that those opportunities for native species protection are realized."

Land Acquisition Priorities (Section 173A-2.6, HRS) as self-identified in approved application:

- (1)(A) exceptional value: Unique aesthetic resources
- (1)(B) exceptional value: Unique and valuable cultural or archaeological resources
- (1)(C) exceptional value: Habitats for threatened or endangered species of flora, fauna, or aquatic resources
- (2) imminent danger: of development
- (3) imminent danger: of being modified, changed, or used in a manner to diminish its value
- (4) critical habitats for threatened or endangered species that are in imminent danger of harm or negative impact
- (5) danger: theft or destruction of cultural or archaeological sites or resources
- (6) unique and productive: agricultural lands

GRANT ADMINISTRATION – LAND ACQUISITION

The Department of Land and Natural Resources ("DLNR"), Division of Forestry and Wildlife—with assistance from DLNR-Land Division, DLNR-Administrative Services Office, and the Department of the Attorney General—administers approved grant awards in accordance with numerous legal requirements and program procedures. At the close of Fiscal Year 2021, funded awards for ten properties remained open, including:

- two state agency land acquisitions (fee simple);
- one county land acquisition (fee simple); and
- seven nonprofit land acquisitions (six fee simple, one conservation easement).

DLNR anticipates that awardees may be able to complete as many as four of these open grants during the next fiscal year, covering one county land acquisition 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 DLNR-Land Division staff to perform buyer's due diligence according to "Standard BLNR Acquisition Procedures," subject to final approvals from the Department of the Attorney General and the Board of Land and Natural Resources ("BLNR"). DLNR 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 DLNR may choose to extend for additional one-year periods. In order to complete a county/nonprofit land acquisition, the grantee works with DLNR-Division of Forestry and Wildlife staff to perform buyer's due diligence according to the "Checklist for Legacy Land Conservation Program (LLCP) Projects" (which is part of the grantee's contract with the State), subject to final approvals from the BLNR Chairperson, the Department of the Attorney General, and the DLNR-Division of Forestry and Wildlife Administrator.

For land acquisition grants, Chapter 173A, Hawai'i Revised Statutes ("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);
- 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);
- BLNR approval of a sale, lease, or other disposition of the acquired property (Section 173A-9); and
- sharing the proceeds of a sale, lease, or other disposition of the acquired property with the State (Section 173A-10).

In addition, Chapter 13-140, Hawai'i Administrative Rules, authorizes DLNR 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 BLNR's enforcement authority (*see also* Section 173-11, HRS, General Powers).

DISCONTINUED GRANTS AND OTHER APPROPRIATIONS

During Fiscal Year 2021, funding for a discontinued grant to a nonprofit land conservation organization was unencumbered, raising the unencumbered cash balance of the Land Conservation Fund by \$900,000:

- LLCP 14-03, Ho'oulu Ola (discontinued)
Kōkua Kalihi Valley Comprehensive Family Services, grantee
 - See [Report to the 2015 Legislature](#), pages 5-6

Funding encumbered for a Fiscal Year 2020 grant that was discontinued by a nonprofit land conservation organization was shifted to a back-up project, allowing \$900,000 to remain encumbered and available for program purposes:

- LLCP 20-02, Mapulehu (discontinued)
Molokai Land Trust, awardee
 - See [Report to the 2021 Legislature](#), page 14
 - Funding now encumbered for LLCP 20-03, Maka'alaie
Ke Ao Hali'i, grantee
See [Report to the 2021 Legislature](#), page 12, and this report page 9

Capital improvement project funding appropriated from the Land Conservation Fund for a State agency land acquisition lapsed at the end of Fiscal Year 2021, such that \$1,972,000 will return to the Land Conservation Fund during Fiscal Year 2022:

- LLCP 17-xx, Makahanaloa (discontinued)
Department of Land and Natural Resources
 - After the 2021 Legislature re-funded this project with a Fiscal Year 2022 bond-funded appropriation, the seller sold the property to a private party.

ANNUAL REVIEW OF ACQUISITIONS PENDING FOR OVER FIVE YEARS

In response to a recommendation from the State Office of the Auditor (Report No. 19-01), the Legacy Land Conservation Program initiated a procedure to submit grants approved more than five years ago for annual review and possible action by the Board of Land and Natural Resources ("BLNR"). On March 12, 2021, under agenda item C-1 (see [Submittal](#) and page 5, [Minutes](#)), BLNR reviewed a grant awarded to the Department of Land and Natural Resources, State Parks Division:

ACTION DEFERRED: LLCP 13-02, Ulupō Heiau Buffer

(D) FINANCIAL REPORT FOR THE PRECEDING FISCAL YEAR

Fiscal Year 2021 ("FY21") presented two major setbacks for the financial health of the Land Conservation Fund ("Fund") and the Legacy Land Conservation Program ("LLCP"). First, the cap on revenues distributed to the Fund from collections of real property conveyance taxes (as established by subsection 247-7(1), Hawai'i Revised Statutes) fell by 25%, from \$6.8 million to \$5.1 million,⁴ effectuating a 18.69% decline for the Fund's actual FY21 revenue from conveyance tax.⁵ Second, the unencumbered cash balance of the Fund fell \$15 million via legislatively-induced transfer to the General Fund.⁶ However, the 2021 Legislature compensated for these losses, in part, by raising LCF spending ceilings \$3,732,670 for the 2021-2023 biennium (\$866,315 for Fiscal Year 2022 and \$2,866,315 for Fiscal Year 2023). See [Act 88](#), Section 3.K.29 (page 50, line 15).

Estimated Status of the Land Conservation Fund for Fiscal Year 2021

A. Beginning cash balance (from FY14+FY15+FY17+FY18+FY19+FY20)	\$ 30,274,777
FY21 Revenue from:	
• Conveyance Tax	\$ 5,100,000
• State Investment Pool	\$ 179,420
• Revenue Sharing (for dispositions of conserved properties)	\$ 22,595
B. Total FY21 Revenue	\$ 5,302,015
FY21 Expenditures for:	
• Program Operations (includes \$1,500,000 for Turtle Bay and \$350,000 for Hakipu'u)	(\$ 2,124,933)
• Transfer out to General Fund pursuant to Act 87 (2021)	(\$ 15,000,000)
• Other Transfers (includes \$3,000,000 CIP appropriation, LLCP 20-xx, Kamehamenui Forest)	(\$ 3,007,675)
C. Total Expenditures	(\$ 20,132,608)
D. Outstanding encumbrances from prior years	(\$ 5,410,250)
E. FY21 outstanding encumbrances at year end	(\$ 3,373,200)
F. Ending Cash Balance (A+B+C)	\$ 15,444,184
G. Unencumbered Cash Balance (F+E+D)	\$ 6,660,734

⁴ In 2015, the Legislature established maximum amounts for distributing conveyance tax revenue among certain non-general funds—including a \$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). The 2020 Legislature, in response to the COVID-19 pandemic emergency, tightened down the revenue cap for the Land Conservation Fund to \$5.1 million ([Act 9](#), Section 5 at page 62). For fiscal years 2007-2015, revenue was not capped, and the Land Conservation Fund simply received a straight ten percent of total conveyance tax revenue. For fiscal years 2011-2020, ten percent of total conveyance tax revenue neared or exceeded \$6.8 million in fiscal years 2014-2019. See [Department of Taxation Annual Report, 2019-2020](#) (Chart 1.16, page 29).

⁵ For Fiscal Year 2021, collections of State conveyance tax revenue totaled \$62,724,577 (a 2.64% increase from Fiscal Year 2020) and reached \$51,000,000 (and the \$5.1 million Land Conservation Fund cap, representing 8.13% of total collections) late in the third quarter. See State Tax Collection and Distribution Reports, available at <https://files.hawaii.gov/tax/stats/monthly/2021fyr1.pdf> and files.hawaii.gov/tax/stats/monthly/202103collec.pdf. Under the previous Land Conservation Fund cap (10% of total collections or \$6.8 million, whichever is less), Fiscal Year 2021 distributions to the Land Conservation Fund would have been over \$6.27 million instead of \$5.1 million.

⁶ The 2021 Legislature determined that this amount was the minimum held "in excess of the requirements" of the Land Conservation Fund, and authorized the Director of Finance to transfer the full amount, "or so much thereof as may be necessary for fiscal year 2020-2021," from the Land Conservation Fund to the General Fund ([Act 87](#), Section 2, see table row 60).

As shown in the table above, FY21 revenues for the Fund totaled \$5,302,0155, including \$5,100,000 from conveyance tax, \$179,420 from participation in the State investment pool, and \$22,595 from revenue sharing for dispositions of interests in land previously acquired with grants from the Fund (lands also known as "conserved properties"). An additional \$2,030,975 is slated for return to the Fund in Fiscal Year 2022 from lapsed CIP appropriations, unspent funds, and settlement proceeds for Department of Land and Natural Resources projects. Expenditures and encumbrances for the FY21 Legacy Land Conservation Program totaled \$5,126,781, which equaled the authorized allotment of \$5,126,781 (see table below). DLNR encumbered and expended \$4,850,700 of this total amount as grant awards for the acquisition of interest or rights in lands having value as resource to the State, including debt service obligations.

Under subsection 173A-5(h), HRS, paragraph (3), annual administration costs for the Land Conservation Fund may not exceed five per cent of annual conveyance tax revenues from the previous year (in this case, a \$255,000 cap for FY21 administration costs). In FY21, DLNR expended \$46,634 for administration costs and expended \$229,447 for FY21 personnel costs (2.0 FTE). The FY21 administrative budget funded program-wide online training at the 2020 National Land Conservation Conference (twenty registrants), program registrations for the 2020 Hawai'i Conservation Conference (four registrants, online), and staff training at the Eighth Symposium on Legal Topics in Land Conservation (Deputy Attorney General and Program Specialist, online); program support services; subscription fees for the online grant application portal; and operating supplies.

FY21 Grant awards	
Total grant expenditures and encumbrances	\$ 4,850,700
FY21 Personnel costs	
Salaries, benefits, assessments	\$ 229,447
FY21 Administrative expenses⁷	
Commission and staff training and travel	\$ 3,028
Services, fees, and supplies	\$ 43,606
Total FY21 funds expended/encumbered	\$ 5,126,781

⁷ As a result of Department efforts to implement recommendation 4 (return of administrative fees) from the 2019 legislative audit report, the Director of Finance—in a memo to the Chairperson dated July 26, 2019—noted that "Pursuant to Comptroller's Memorandum No. 97-26, entitled "Accounting for Revenue Refunds and Expenditure Reimbursements," expenditure for prior-year reimbursements may be reduced against current expenditures" and "approved the utilization of \$698,652 for CSA [Central Services Assessment] for the LCF [Land Conservation Fund] to be applied towards administrative expense assessment, as necessary, until that account is depleted." Pursuant to this approval, the Department applied \$42,066 towards the FY21 administrative expense assessment, and \$178,748 total as of FY21.

**Fiscal Year 2021 transactions that transferred funds into and out of
a Department of Land and Natural Resources trust account (T-907)**

In Fiscal Year 2021, the Department of Land and Natural Resources—in completing its acquisition for Pia Valley Natural Area Reserve, O‘ahu—didn't spend \$ 56,983 of the funds originally transferred to T-907 from the Land Conservation Fund. Transfer of this amount from T-907 back to the Land Conservation Fund requires additional fiscal processing, and will be accounted for in the 2022 annual report to the Legislature.

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

Objectives

The highest priority for the Fiscal Year 2022 ("FY22") budget was to double the spending ceiling for the Legacy Land Conservation Program ("LLCP") to strengthen LLCP buying power as land prices and market competition continue to escalate. Governor Ige included this increase in the Executive Biennium Budget Request for 2021-2023 (\$10,224,752 total appropriation per fiscal year) and the 2021 Legislature responded with more modest increases that provide total appropriations of \$5,991,067 for FY22 and \$7,991,067 for Fiscal Year 2023. Key LLCP objectives for FY22 are:

- (1) complete two prior-year grants for State agency land acquisitions (\$1.7 million for over 951 acres, total);
- (2) provide support for completing seven prior-year grants for county and nonprofit land acquisitions (over \$4.9 million for over 1,900 acres, total);
- (3) coordinate the award, encumbrance, and expenditure of FY22 grant funds towards the acquisition of lands having value as a resource to the State (approximately \$4.1 million available);
- (4) coordinate the solicitation of grant applications for Fiscal Year 2023 grant awards (approximately \$6.1 million available);
- (5) implement selected recommendations from the 2019 performance audit of the Land Conservation Fund (State of Hawai‘i Office of the Auditor, Report No. 19-01); and
- (6) continually improve program operations, including:
 - enhancing and expanding monitoring of properties conserved with grants from the Land Conservation Fund;
 - training additional staff as back-up for program operations; and
 - re-adjusting the grant application schedule so that the annual application cycle for an upcoming fiscal year opens after the Board of Land and Natural Resources completes its grant approval process for the current fiscal year.

Budget Projections

The most recent estimates from the State Council on Revenues (September 7, 2021) suggest that the total amount of conveyance tax revenue collected annually in Fiscal Years 2022-2028 will range from 9.37% less than Fiscal Year 2021 collections (in Fiscal Year 2022) to 43.7% greater than Fiscal Year 2021 collections (in Fiscal Year 2028), with the Land Conservation Fund receiving its full \$5.1 million distribution in each year. See [Estimates of General Fund Revenue](#). Therefore, the Department of Land and Natural Resources ("DLNR") anticipates that \$5.1 million of annual conveyance tax revenue will continue to flow to the Land Conservation Fund for the next seven years; interest on total cash balance will accumulate in accordance with State investment returns; and revenue sharing from dispositions of conserved properties will continue to provide at least \$21,226 per year in additional revenue. Also, if a State agency discontinues an existing grant or CIP appropriation, then those grant funds or CIP funds will return to the Land Conservation Fund and be reported, for fiscal year 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 Land Conservation Fund, DLNR recommends that the Legislature raise the spending ceiling of the Land Conservation Fund for future years in order to help this important and popular program maintain its purchasing power and meet public demand. DLNR's annual Legacy Land Conservation Program budget requests for future years will be based on (1) the required \$1.5 million payment for Turtle Bay debt service; (2) estimated expenses for program personnel and administration; and (3) recommendations issued by the Legacy Land Conservation Commission ("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 Fiscal Year 2021 ("FY21"), the Legacy Land Conservation Program ("LLCP") enabled the Land Conservation Fund to contribute \$361,417 from previous fiscal years to pay for one State land acquisition (Pia Valley Natural Area Reserve, O'ahu) and one land acquisition by a nonprofit land conservation organization (Hakipu'u Lo'i Kalo, O'ahu), and \$1,500,000 from FY21 funds to pay 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 \$3,350,700 in FY21 funds for three newly-approved grants for future land acquisitions valued at \$9,919,700 (estimated total costs) that are slated to conserve over 1,900 acres (total area) on the islands of Hawai'i (one grant) and Maui (two grants). The LLCP also administered existing grant awards, contracts, and state financial accounts that would provide \$7,110,250 from previous fiscal years for eight pending land acquisitions valued at \$16,118,818 (estimated total costs) and conserving 1,562 additional acres (total area).