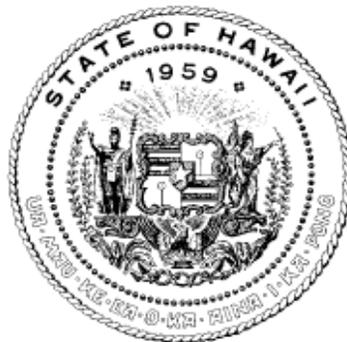


**REPORT TO THE THIRTY SECOND LEGISLATURE
STATE OF HAWAII
2023 REGULAR SESSION**

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



Prepared by:

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

In response to Section 173A-5, Hawaii Revised Statutes

Honolulu, Hawaii

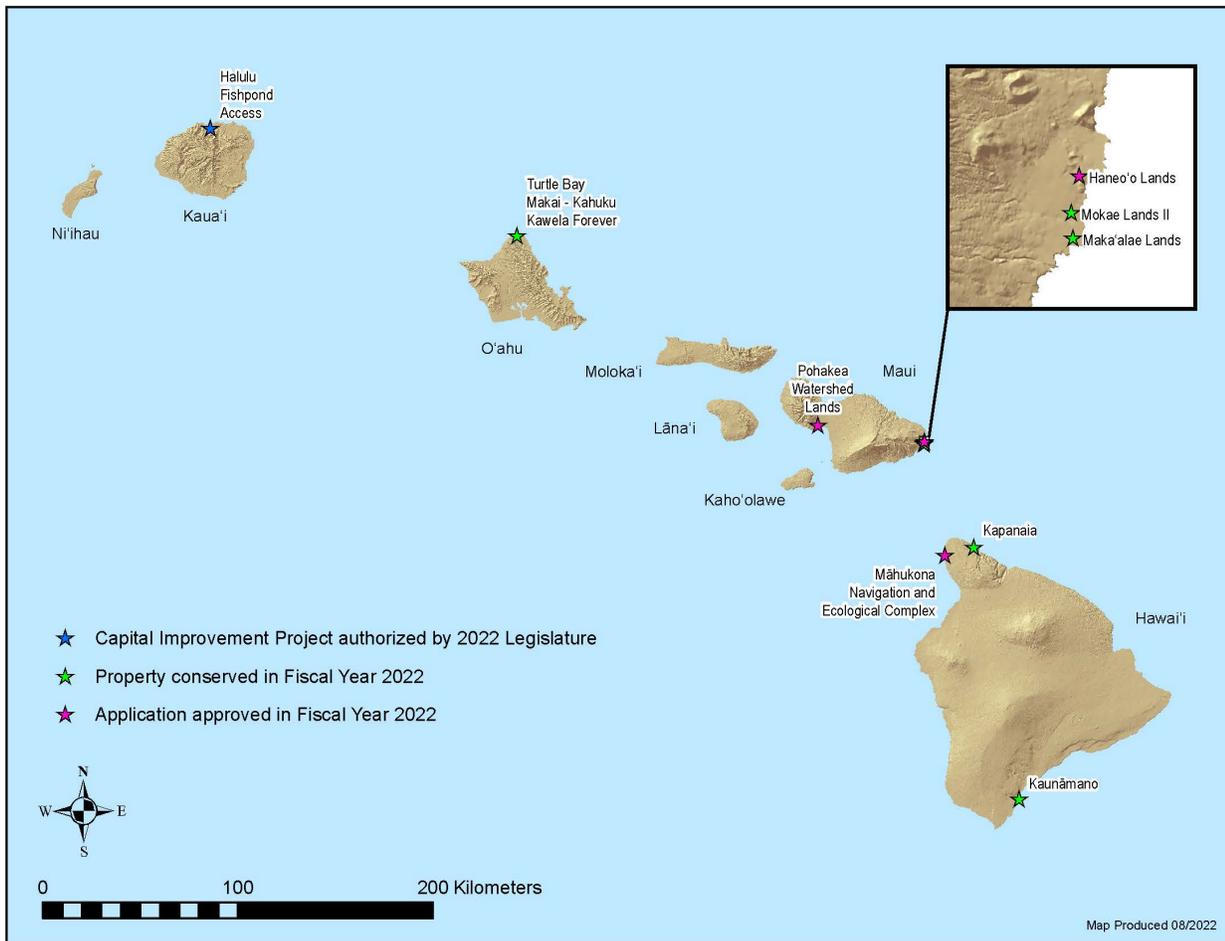
October 2022

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

OVERVIEW

In Fiscal Year 2022, 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 Kapanāia (District of Kohala, Island of Hawai‘i); Kaunāmano (District of Ka‘ū, Island of Hawai‘i); and Maka‘ālae and Mokae (District of Hāna, Island of 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 Mahukona (District of Kohala, Island of Hawai‘i), Pohakea Watershed (District of Wailuku, Island of Maui), and Haneo‘o (District of Wailuku, Island of Maui), while the 2022 Legislature appropriated \$400,000 from the Land Conservation Fund for land acquisition at Halulu (District of Halele‘a, Island of Kaua‘i). For more information about these properties, see the map below and descriptions that begin on page four.

Map of Fiscal Year 2022 Conservation Transactions



PURPOSE

The Legislature established the Land Conservation Fund ("Fund") in 2005 to provide permanent adequate funding for land conservation by dedicating proceeds from the real estate conveyance tax to the Fund. See [2005 Hawai'i Session Laws Act 156](#), Section 1 at 387. Recognizing that despite "the value of Hawaii's natural resources to its economy, culture, and quality of life . . . an alarmingly small amount of money is invested each year to protect our natural capital base," the 2005 Legislature, per Act 156, also found that:

- The preservation, protection, and enhancement of the State's land, coastal areas, and natural resources are of central importance for current and future residents and for the state economy.
- [Article XI, Section 1](#) of the Constitution of the State of Hawai'i sets forth the State's duty to conserve and protect Hawai'i's natural beauty.
- Adequate funding to conserve land for watershed protection, coastal preservation, flood prevention, parks, habitat protection, cultural preservation, agricultural production, and open space and scenic resources is necessary to ensure protection of these lands and resources for future generations.

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 competitive 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 recommendation 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 113 completed grant applications for land acquisition.

As of June 30, 2022, BLNR has approved 71 of these applications for funding, based on recommendations from the Legacy Land Conservation Commission, DLNR's Division of Forestry and Wildlife, and public testimony. The Governor approved 68 of the 71 applications that BLNR approved, which resulted in releases of funding for the acquisition of 65 properties (three properties were funded through multiple applications). Among these 65 properties, LLCP and its partners have completed 43 acquisitions; 9 acquisitions remain active; applicants discontinued 11 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(1), 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(1), 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 <https://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).

(A) and (B) INTERESTS OR RIGHTS IN LAND ACQUIRED DURING THE PRECEDING FISCAL YEAR AND RESOURCE VALUE SUMMARY

During Fiscal Year 2022, the Land Conservation Fund ("Fund") contributed \$6,609,021 from previous fiscal years for one land acquisition by a county and three land acquisitions by nonprofit land conservation organizations (see Resource Value Summaries, below), and transferred \$1,500,000 for Fiscal Year 2022 to the Turtle Bay Conservation Easement Special Fund as annual reimbursement for debt service on a state financial instrument relating to the acquisition of interests or rights in land having value as a resource to the State (see [Act 23](#) of the 2022 Legislature). The State property at Turtle Bay, acquired in 2015, 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 covering 568+ acres, all fronted by about five miles of undeveloped shoreline (photos below).



Photo: [The Trust for Public Land](#)



Photo: [North Shore Community Land Trust](#)

The map on page 1 of this report shows the location of each property conserved during Fiscal Year 2022, and each property approved for Fiscal Year 2022 grant funding.

Resource Value Summaries (Properties Conserved during Fiscal Year 2022)

Kapanaia, District of Kohala, Island of Hawai'i (LLCP 2019-02)



Photo: County of Hawai'i



Photo: Debbie Ward

Awardee/Owner: County of Hawai'i (fee title)
Acreage: 93.1
Tax Map Key Numbers: (3) 5-2-007:004 and :027
FY 2019 Funding awarded: \$ 1,452,000 (full funding)
FY 2019 Funding expended: \$ 1,452,000
Matching funds expended: \$ 1,542,432
(County of Hawai'i Public Access, Open Space, and Natural Resources Preservation Fund; land value donation)

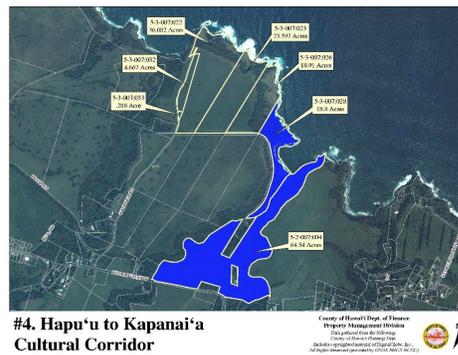
Conservation purpose: See § 173A-5(g), HRS:

(3) Habitat protection

Additional Information: [Report to the 2020 Legislative Session](#), pages 9-10
[Kohala Lihikai](#) (a coalition of community groups and nonprofits working to preserve the Kohala coast and public access)



Photo: Toni Withington



Kaunāmano, District of Ka‘ū, Island of Hawai‘i (LLCP 2020-01)



Awardee/Owner: [Ala Kahakai Trail Association](#) (fee title)
Conservation Easement Holder: County of Hawai‘i
Project Partner: [The Trust for Public Land](#)
Acreage: 1,363+
Tax Map Key Numbers: (3) 9-5-011:001, :004, :005, :006 and
(3) 9-5-012:001
FY2020 Funding awarded: \$ 2,400,000 (full funding)
FY2020 Funding expended: \$ 2,400,000
Matching funds expended: \$ 4,345,210
(County of Hawai‘i Public Access, Open Space, and Natural Resources Preservation Fund;
seller; and other private funds)

Conservation purpose:

See § 173A-5(g), HRS:

- | | |
|--|--------------------------------------|
| (1) Watershed protection | (6) Parks |
| (2) Coastal areas, beaches, and ocean access | (7) Natural areas |
| (3) Habitat protection | (8) Agricultural production |
| (4) Cultural and historical sites | (9) Open spaces and scenic resources |
| (5) Recreational and public hunting areas | |

News Releases:

[Big Island Gazette](#)

[Big Island Video News](#)

[The Ka‘ū Calendar](#)

Additional Information:

[Report to the 2021](#)

[Legislative Session](#), page 13



Maka‘alaie Lands, District of Hāna, Island of Maui (LLCP 2020-03 and 2021-01)



Awardee/Owner: [Ke Ao Hali‘i](#) (Save the Hāna Coast)
Conservation Easement Holders: [Hawaiian Islands Land Trust](#) (Administrative Holder)
County of Maui (Co-Holder)

Acreage: **30.3**
Tax Map Key Numbers: (2) 1-4-010:030, :032, :034; (2)1-4-012:002
FY2020+FY2021 Funding awarded: \$ 1,581,700 (full award, see page 10 of this report)
FY2020+FY2021 Funding expended: \$ 1,563,021
Matching funds expended: \$ 1,571,700
(County of Maui Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund; private funds; in-kind contributions)

Conservation purpose: *See § 173A-5(g), HRS:*

- (1) Watershed protection
- (2) Coastal areas, baches, and ocean access
- (3) Habitat protection
- (4) Cultural and historical sites
- (7) Natural areas
- (8) Agricultural production
- (9) Open spaces and scenic resources



News Releases:
[Over 30 Acres of Maui Coastline Protected Maui Now](#)

Additional Information:
[Report to the 2022 Legislative Session](#), page 11

Mokae II Lands, District of Hāna, Island of Maui (LLCP 2021-04)



Awardee: [Ke Ao Hali‘i](#) (Save the Hāna Coast)
Conservation Easement Holders: [Hawaiian Islands Land Trust](#) (Administrative Holder)
County of Maui (Co-Holder)
Acreage: **32.7**
Tax Map Key Numbers: (2) 1-4-010:008, :009, :010, and :012
FY2021 Funding awarded: \$ 294,000 (partial award)
FY2021 Funding expended: \$ **1,194,000** (\$900,000 added from unused funds for LLCP 2021-01, see page 10 of this report)
Matching funds expended: \$ 2,590,758
(County of Maui Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund; private funds)

Conservation purpose: See § 173A-5(g), HRS:

- (5) Watershed protection
- (6) Coastal areas, baches, and ocean access
- (7) Habitat protection
- (8) Cultural and historical sites
- (7) Natural areas
- (8) Agricultural production
- (9) Open spaces and scenic resources



News Releases: [Hana Community News](#)
[Maui Now](#)
Additional Information:
[Report to the 2022 Legislative Session](#), page 13

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

For the Fiscal Year 2022 application cycle, the Legacy Land Conservation Program advertised the availability of approximately \$4.2 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 submitted final applications for three resource land acquisitions totaling \$6,658,525.^{1,2} After conducting field visits and public decision-making meetings, the Legacy Land Conservation Commission ("Commission") recommended full funding for two grants (\$4,000,000 total, as funds are available) and partial funding for a third grant (\$247,500 as funds are available), and recommended the third grant as a back-up/contingency for the available funding, as presented below:

Full Funding

1. **Hawaiian Islands Land Trust, Mahukona Navigation and Ecological Complex**, District of Kohala, Island of Hawai'i (LLCP 2022-01, \$3,000,000 awarded/encumbered)
2. **Division of Forestry and Wildlife, Pohakea Watershed**, District of Wailuku, Island of Maui (LLCP 2022-02, \$1,000,000 awarded/encumbered)

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

3. **Ke Ao Hali'i, Haneo'o Lands**, District of Hāna, Island of Maui (LLCP 2022-03: \$675,000 requested; up to \$675,000 awarded; \$247,500 encumbered)²

The Department of Land and Natural Resources ("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 written responses indicated no objections or other comments regarding the recommendations of the Commission. Then, the Board of Land and Natural Resources ("BLNR"), 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 3 above), based on the total funds available from the Fiscal Year 2022 budget allotment. The map on page 1 of this report shows the location of the property to be acquired for each of the three grants encumbered with Fiscal Year 2022 operating funds. Public records of BLNR approval are available online for May 13, 2022 (Item C-1, [Submittal](#), and pages 6-7, [Minutes](#)) and June 24, 2022 (Item C-2, [Submittal](#), and pages 9-10, [Minutes](#)).

¹ Several other prospective applicants initiated the application process but did not submit a final application, for reasons such as: property sold on the open market; willing seller withdrew to seek open market opportunities; property conserved with other sources of funding; strategic prioritization of many applications from one applicant.

² Ke Ao Hali'i applied for a grant of over \$2.658 million to acquire five parcels. The seller sold four parcels to a different buyer the day before the Legacy Land Conservation Commission met to review and rank the Fiscal Year 2022 applications. Ke Ao Hali'i then revised its application to cover the single available parcel remaining.

Resource Value Summaries (Future Land Acquisitions)

**Mahukona Navigation and Ecological Complex
District of Kohala, Island of Hawai‘i (LLCP 2022-01)**

Awardee: [Hawaiian Islands Land Trust](#)
Acreage: **642.46** (fee simple + conservation easement)
Tax Map Key Numbers: (3) 5-7-002:011, :027, :036, :037
(3) 5-7-003:001; :002, :003, :007, :008, :010, :018
FY2022 Funding Requested: \$ 3,000,000
FY2022 Funding awarded: \$ **3,000,000** (full award)
Estimated Matching Funds: \$ **16,277,084**
(County of Hawai‘i Public Access, Open Space, and Natural Resources Preservation Fund ; U.S Fish & Wildlife Service; private funds)
Conservation Easement: County of Hawai‘i (Willing/Intended Holder)



The proposed Mahukona Navigation and Ecological Complex is part of a coastal ecosystem that encompasses the ancient Kohala Field System. Since the mid 1900’s, this area has been slated for large scale resort and residential development. The lands of Mahukona serve as a piko and power source for ancient and today’s non-instrumental navigators throughout the Pacific. This is the centerfold/core significance of these lands—the navigational importance and the resurgence and living cultural practice of non-instrumental navigation attributed to it. Spanning six ahupua‘a along the North Kohala coastline, including Mahukona, Hihiu, and Kaoma from the south, and Kamano, Kou, and Kapa‘a Nui to the north, the acquisition presents Hawai‘i with a tremendous opportunity to protect the engrained and universal cultural and conservation values of the land in perpetuity.

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



Photo: Greg Asner

Pohakea Watershed Lands, District of Wailuku, Island of Maui (LLCP 2022-02)

Awardee: Division of Forestry and Wildlife
Partner: The Trust for Public Land
Acreage: 257.8 (fee simple)
Tax Map Key Number: (2) 3-6-001:018
FY2022 Funding requested: \$ 1,000,000
FY2022 Funding awarded: \$ 1,000,000 (full award)
Estimated Matching Funds: \$ 7,300,134
(County of Maui Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund; private funds, in-kind contributions)



The Pohakea Watershed Lands span two ahupua'a—Ukumehame and Wailuku—located at the base of Mauna Kahalawai, across the highway and mauka of Mā'alaea Harbor. Part of the Mā'alaea Conservation Corridor, the property connects with nearby landmarks such as Kealia National Wildlife Refuge, the National Marine Whale Sanctuary, Maui Ocean Center, Pacific Whale Foundation headquarters, and a petroglyph site on adjacent state land. This project is important for public safety. Under public ownership, the Division of Forestry and Wildlife will manage the land to decrease risks from wildfire, erosion, and flooding, and to ensure long term health of watersheds, wetlands, and coastal marine areas. State acquisition and co-stewardship with community groups will guarantee that the scenic open space property near major population centers and tourist attractions will forever remain a source of inspiration and treasured community resource for open space, recreation, and agriculture. Protecting the coastal plain from development has been a community priority for decades.

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



Haneo‘o Lands, District of Hāna, Island of Maui (LLCP 2022-03)



Awardee: [Ke Ao Hali‘i \(Save the Hāna Coast\)](#)
Acreage: **8.58** (fee simple + conservation easement)
Tax Map Key Number: (2) 1-4-007:015
FY2022 Funding requested: \$ 675,000
FY2022 Funding awarded: **\$ 247,500** (partial award)
Estimated Matching Funds: **\$ 237,500**
(County of Maui Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund Open Space Fund, private funds, in-kind contributions)
Conservation Easement: Willing/Intended Holder: Uncertain

Ke Ao Hali‘i will continue to use the land for cattle grazing, while fencing/protecting historical sites and suspected remnants of heiau and burials to deter any desecration, pending further investigation. Hāna descendants express a strong sense of kuleana to protect these lands from private development. The Haneo‘o lands are a significant part of Hāna’s culture and spiritual connections to the ancestors; the inspirational beauty and feeling it gives residents and visitors is precious. Ke Ao Hali‘i intends to inform and inspire the public to be aware of these historical treasures and safeguard them.

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 ("DOFAW")—with assistance from DLNR-Land Division, DLNR-Administrative Services Office, and the Department of the Attorney General ("ATG")—administers approved grant awards in accordance with numerous legal requirements and program procedures. At the close of Fiscal Year 2022, funded grant awards for nine properties remained open, including:

- three state agency land acquisitions (fee simple); and
- six nonprofit land acquisitions (five fee simple, one conservation easement).

DLNR anticipates that awardees may be able to complete as many as five of these open grants during the next fiscal year, covering one or two state land acquisitions 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 ATG 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-DOFAW 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 ATG, and the DLNR-DOFAW 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

As reported last year, 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 2020-02, Mapulehu: Valley to Summit (Island of Molokai, discontinued)
Molokai Land Trust, Awardee
 - See [Report to the 2021 Legislature](#), page 14
 - Funding encumbered for LLCP 2020-03, Maka'alaie Lands (Island of Maui)
Ke Ao Hali'i, back-up Grantee
See [Report to the 2021 Legislature](#), page 12; [Report to the 2022 Legislature](#), page 11; and this report page 7

Thereafter, because the Fiscal Year 2021 application for Maka'alaie Lands received full funding from Fiscal Year 2021 funds (as LLCP 2021-01), \$900,000 of that Fiscal Year 2021 grant was shifted to a back-up project, allowing full utilization of Fiscal Year 2020 and Fiscal Year 2021 grant funds:

- LLCP 2021-01, Maka'alaie Lands (received Fiscal Year 2020 funds, see above)
 - *Ke Ao Hali'i, Awardee*
 - Funding encumbered for LLCP 2021-04, Mokaie II Lands (Island of Maui)
Ke Ao Hali'i, back-up Grantee
See [Report to the 2022 Legislature](#), page 13, and this report page 8

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 \$1,975,400 returned to the Land Conservation Fund during Fiscal Year 2022:

- LLCP 2017-xx, Makahanaloa (Island of Hawai'i, discontinued)
Department of Land and Natural Resources (Capital Improvement Project)
 - After the 2021 Legislature re-funded this project with a bond-funded appropriation, the seller sold the property to a private party.

A review of accounting for Fiscal Year 2020 determined that a settlement agreement between the Department of Land and Natural Resources and the seller of lands acquired at Helemano Wilderness Recreation Area (LLCP 2016-03, Island of O'ahu) resulted in a transfer of \$3,892.20 from the Forest Stewardship Fund to the Land Conservation Fund, previously unreported (9.98% of total settlement amount, see Board of Land and Natural Resources Agenda Item C-3, January 10, 2020, [Submittal](#) and pages 7-8, [Minutes](#)).

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 June 24, 2022, under agenda item C-1 (see Item C-1, [Submittal](#), and page 9, [Minutes](#)), BLNR reviewed a grant awarded to the Department of Land and Natural Resources, State Parks Division:

ACTION DEFERRED: LLCP 2013-02, Ulupō Heiau Buffer

(D) FINANCIAL REPORT FOR THE PRECEDING FISCAL YEAR

Estimated Status of the Land Conservation Fund for Fiscal Year 2022 (as of September 2022)

A. Beginning cash balance (FY17+FY18+FY19+FY20+FY21)	\$ 16,694,184
FY22 Revenue from:	
• Conveyance Tax	\$ 5,100,000
• Discontinued CIP	\$ 1,975,400
• State Investment Pool	\$ 121,441
• Revenue Sharing (for dispositions of conserved properties)	\$ 62,783
• Prior Years' Revenues (State Investment Pool) that posted in FY22	\$ 7,998
B. Total FY22 Revenue	\$ 7,267,622
FY22 Expenditures for:	
• Program Operations (Prior year land acquisition grants)	(\$ 6,609,021)
• Program Operations (FY22 Turtle Bay debt service plus State agency land acquisition)	(\$ 2,500,000)
• Program Operations (FY22 Payroll plus FY21 and FY22 administrative costs)	(\$ 252,314)
C. Total Expenditures	(\$ 9,361,337)
D. Outstanding encumbrances from prior years	(\$ 2,175,643)
E. FY22 outstanding encumbrances at year end	(\$ 3,247,500)
F. Ending Cash Balance (A+B+C)	\$ 14,600,469
G. Unencumbered Cash Balance (F+E+D)	\$ 9,177,328

Fiscal Year 2022 ("FY2022") 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 annual revenues distributed to the Fund from collections of real property conveyance taxes (as established by subsection 247-7(1), Hawai'i Revised Statutes) remained depressed at \$5.1 million, amounting to a mere 2.7% of total FY2022 revenue from conveyance tax.³

³ For fiscal years 2007-2015, the Land Conservation Fund ("Fund") received a straight ten percent of total annual conveyance tax revenue (uncapped), averaging \$5.151 million per year. In 2015, the Legislature established maximum amounts for distributing conveyance tax revenue among certain non-general funds—including a \$6.8 million annual revenue cap for the 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). Under this revised scheme, for fiscal years 2016-2020 the Fund received only 8.1% of total annual conveyance tax revenue, averaging \$6.68 million per year. The 2020 Legislature, in response to the COVID-19 pandemic emergency, tightened down the annual revenue cap for the Fund from \$6.8 million to \$5.1 million ([Act 9](#), Section 5 at page 62). For fiscal years 2021-2022, the Fund received \$5.1 million per year of annual conveyance tax revenue, amounting to merely 4.1% of

Second, the Fund began Fiscal Year 2022 with an unencumbered cash balance that was \$15 million less than the Fiscal Year 2021 balance due to a legislatively induced transfer to the general fund.⁴ The 2021 Legislature provided partial compensation for these losses by raising the Fund 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 [2021 Budget Worksheet](#) for EXEC HB200CD1, Program ID LNR101, Structure # 110307010000 (page 789 of 1157, Sequence # 100-001). As shown in the table above, FY2022 revenues for the Fund totaled \$7,267,622, including \$5,100,000 from conveyance tax, \$1,975,400 from lapsed CIP funds, \$129,439 from participation in the State investment pool, and \$62,783 from revenue sharing for dispositions of interests in land previously acquired with grants from the Fund (lands also known as "conserved properties").

An additional \$56,983 is slated for return to the Fund in Fiscal Year 2023 from unspent funds for a State agency land acquisition (see this report, page 20). Expenditures and encumbrances for the FY2022 Legacy Land Conservation Program totaled \$6,001,050, matching the authorized allotment of \$6,001,050 (see table below). The Department of Land and Natural Resources ("DLNR") encumbered and expended \$5,747,500 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 FY2022 administration costs). In FY2022, DLNR expended and encumbered \$30,772 for administration costs and \$222,778 for FY2022 personnel costs (2.0 FTE). The FY2022 administrative budget funded program-wide online training at the 2021 National Land Conservation Conference (three registrants); program support services; subscription fees for the online grant application portal; and operating supplies.

total collections and just 2.7% of record-breaking Fiscal Year 2022 collections. See [State Department of Taxation Collections Portal Tax Collection and Distribution Reports](#).

For Fiscal Year 2022, collections of State conveyance tax revenue totaled \$188,418,094 (a 218% increase from Fiscal Year 2021) and reached \$51,000,000 (and the \$5.1 million Fund cap) during September 2021 (first quarter). See [State Department of Taxation Collections Portal Tax Collection and Distribution Reports](#). Under the original Fund formula (10% of total collections, uncapped), Fiscal Year 2022 distributions to Fund would have been over \$18.8 million instead of just \$5.1 million.

⁴ 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).

Table of expenditures and encumbrances, FY2022 Legacy Land Conservation Program

FY2022 Grant awards	
Total grant expenditures and encumbrances	\$ 4,247,500
FY2022 Debt service payment	
	\$ 1,500,000
FY2022 Personnel costs	
Salaries, benefits, assessments	\$ 222,778
FY2022 Administrative expenses⁵	
Commission and staff training and travel	\$ 850
Services, fees, and supplies	\$ 29,922
Total FY2022 funds expended/encumbered	\$ 6,001,050

Fiscal Year 2022 transactions that transferred funds into and out of a Department of Land and Natural Resources trust account (T-907)

During Fiscal Year 2022 DLNR transferred \$1 million from the Land Conservation Fund into a Department trust account (T-907) for a State agency land acquisition at Pohakea Watershed, District of Wailuku, Island of Maui (see this report pages 12-13). In Fiscal Year 2021, DLNR—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 2024 annual report to the Legislature.

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

Objectives

The highest priority for the Fiscal Year 2023 ("FY2023") 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 2022 Legislature responded with more modest increases that provide a total appropriation of \$8,001,246 for FY2023. Key LLCP objectives for FY2023 are:

⁵ 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 \$242,370 towards the FY2022 administrative expense assessment, and \$421,111 total as of FY2022.

- (1) complete two prior-year grants for State agency land acquisitions (\$1.9 million for over 951 acres, total) and provide support for completing two land acquisitions on the island of Maui (\$1,000,000 grant for 257+ acres at Pohakea Watershed and \$2 million CIP for 10,000 acres at Nā Wai ‘Ehā) with the Department of Land and Natural Resources;
- (2) provide support for completing six prior-year grants and one CIP appropriation for nonprofit land acquisitions (\$5.77 million for over 2,500 acres, total);
- (3) coordinate the award, encumbrance, and expenditure of FY2023 grant funds towards the acquisition of lands having value as a resource to the State (approximately \$5.9 million available) and operation, management, and maintenance of lands (\$250,000 total);
- (4) coordinate the solicitation of grant applications for Fiscal Year 2024 grant awards (approximately \$3.1 million or more available from pending biennium budget);
- (5) continue implementing 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
 - strengthen coordination with partnering programs for land acquisition to facilitate planning efforts, shorten acquisition timelines, avoid duplication of effort, and optimize conservation benefits.

Budget Projections

The most recent estimates from the State Council on Revenues (September 6, 2022) suggest that the total amount of conveyance tax revenue collected annually in Fiscal Years 2023-2029 will range from 1.37% greater than Fiscal Year 2022 collections (in Fiscal Year 2024) to 44.27% greater than Fiscal Year 2022 collections (in Fiscal Year 2029), with an average annual increase of 5.47% (*see* [Estimates of General Fund Tax 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 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 (total current value \$5.3 million), then those grant funds or CIP funds will return to the Fund and be added to its unencumbered cash balance.

Given the ongoing escalation of property values and land acquisition costs, and the steady flow of applications for worthy uses of the Fund, DLNR recommends several measures for strengthening Fund buying power in order to help this important and popular program better perform its mission and meet public demand:

- (1) amend Section 247-7(1), Hawai'i Revised Statutes, to raise or eliminate the cap on distributions of conveyance tax revenue to the Fund;
- (2) raise the Fund spending ceiling for future years;
- (3) reduce administrative costs for the Legacy Land Conservation Program by changing the mode of funding for an existing staff position;
- (4) amend Sections 171-171, 171-172, and 173A-13, Hawai'i Revised Statutes to eliminate or reduce the annual payment of Turtle Bay debt service payment from the Fund (by switching payments to a different mode of funding).

DLNR's annual Legacy Land Conservation Program budget requests for future years will be based on (1) the required 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 2022 ("FY2022"), the Legacy Land Conservation Program ("LLCP") enabled the Land Conservation Fund to contribute \$6,609,021 from previous fiscal years to pay for one county land acquisition (Kapaniaia, Island of Hawai'i) and three land acquisitions by nonprofit land conservation organizations (Kaunāmano, Island of Hawai'i, and Maka'alaie and Mokaie II, Island of Maui). The FY2022 Land Conservation Fund provided \$1,500,000 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, Island of O'ahu). The LLCP encumbered \$4,237,500 in FY2022 funds for three newly approved grants for future land acquisitions valued at \$28,489,718 (total estimated costs) that are slated to conserve over 909 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 \$6,993,250 from previous fiscal years for seven pending land acquisitions valued at \$15,913,117 (estimated total costs) and conserving over 12,800 additional acres (total area), including 10,000 acres at Nā Wai 'Ehā, Island of Maui (Act 248 of the 2022 Legislature, Capital Improvement Project Numbers K.7, K.8, and K.9).