

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-147
Hawaii Administrative Rules

January 22, 1999

SUMMARY

Chapter 13-147, Hawaii Administrative Rules,
entitled "Park Acquisition Trust Fund", is adopted to
read as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 6 STATE PARKS

CHAPTER 147

PARK ACQUISITION TRUST FUND

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- §13-147-3 "Acquire a park" program; established
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- §13-147-8 Disposition of property having
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immunity from liability
- §13-147-9 Deposit of funds
- §13-147-10 Earmarked and excess funds; time
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- §13-147-14 Donor recognition
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§13-147-1 Purpose. The purpose of this chapter is to establish a park acquisition trust fund (trust fund) where private contributions are accumulated to acquire private lands for new or expanded state parks. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-2 Definitions. As used in this chapter unless the context clearly indicates otherwise:

"Board" means the board of land and natural resources, or a designee.

"Chairperson" means the chairperson of the board of land and natural resources, or a designee.

"Chairperson" means the chairperson of the board of land and natural resources, or a designee.

"Contributions" means money, gifts, or property donated or otherwise bequeathed to the state for the acquisition of lands of resource value for use as State parks.

"Department" means the state department of land and natural resources.

"Donor" means person(s) making contributions.

"Person" means an individual, business association, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

"Property" means non-cash assets such as financial securities, personal and real property.

"State" means the State of Hawaii.

[Eff May 15 1999] (Auth: HRS §184-3.5 (Imp: HRS §184-3.5)

§13-147-3 "Acquire a Park" program; established.

The department establishes an "acquire a park" program to:

- (1) Encourage state residents to assist in the acquisition by condemnation of private lands for the state parks system. This clause does not preclude similar assistance by non-resident or otherwise out-of-state, including foreign, persons;
- (2) List proposed lands of resource value to the State to expand existing or create new park lands. Such list may be amended by the chairperson from time to time, subject to the provisions of section 13-147-12;
- (3) Advertise such identified proposed park land in newspapers of general circulation in the state and in the county(ies) in which these proposed acquisition(s) are situated. Advertisement may also be made on other appropriate broadcast and electronic media, including the Internet; and
- (4) Establish a trust fund to receive contributions and earn interest income to carry out acquisition purpose. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-4 Administration. The trust fund shall be administered by the board. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-5 Trust fund assets. The trust fund assets shall consist of:

- (1) Contributions received by and deposited with the State for the acquisition of specified private lands for a particular proposed or existing park(s);
- (2) Contributions received by and deposited with the State for the acquisition of unspecified private lands for state park purposes; and
- (3) Interest earned or accrued on invested trust fund moneys; provided that invested moneys shall be limited to guaranteed interest accounts or, if certificates of deposit, shall not be of a term that would jeopardize timely expenditure of invested principal toward an earmarked private land acquisition for state park purposes. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-6 Trust fund expenditures. The trust fund assets shall be expended for any of the following purposes by board action:

- (1) Condemnation of private lands to create a new state park(s);
- (2) Condemnation of private lands to expand an existing state park(s); and
- (3) Costs of administering the trust fund. Such expenditures of fund monies shall be limited to earned interest amounts available in the fund at the time of expenditure. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-7 Election to take payment or delivery.

(a) The chairperson may decline to receive any property reported under this part which the chairperson considers to have a value less than the expense of giving public notice and of a sale to convert the property to cash. If the chairperson elects not to receive custody of the property, the donor shall be

notified within one hundred twenty days after filing a report for such election.

(b) A similar election and report can be made at the chairperson's discretion when the monetary or property donation is accompanied by conditions unacceptable to the chairperson, as determined by the chairperson in the chairperson's sole discretion. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-8 Disposition of property having insubstantial commercial value; immunity from liability. If the chairperson determines after investigation that any property delivered under this part has commercial value of less than one hundred dollars (\$100.00), the chairperson may destroy or otherwise dispose of the property at any time, provided a report of such circumstance and destruction is prepared and retained by the department. No action or proceeding may be maintained against the State or any officer, employee, or agent of the State, or against any donor for or on account of any action taken by the chairperson pursuant to this section. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-9 Deposit of funds. The department shall promptly deposit in the trust fund all funds accepted by the chairperson. Trust fund monies may be deposited into interest bearing accounts. In the instance of non-monetary properties accepted by the chairperson, once custody is secured, the fiscal officer shall consult with the department of budget and finance to ascertain an appropriate means to convert such property to cash for deposit into the fund, and then make such conversions. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-10 Earmarked and excess funds; time limitation. (a) The department may apply private funds toward the condemnation of other state park(s) in the county for which the contribution was intended, if no condemnation action has been initiated for specified private lands within five years after the receipt of the contribution.

(b) When excess private funds are available for the acquisition of specified private lands, that land must be acquired before any excess private funds may be used for other acquisitions within the county in which the specified private land is located. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-11 Matching funds. The department may utilize federal, state, or local government appropriation(s) that may become available to carry out any proposed park acquisition. Such appropriation(s) shall be used to supplement private monies accumulated for the acquisition, using the private monies first. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-12 Delisted park lands. The chairperson may remove from the list established by section 13-147-3(2), private lands previously identified to expand existing or create new park lands, provided that no such delisting shall occur if contributions totaling at least \$10,000 is on deposit in the trust fund to acquire such listed land and the time limitation described in section 13-147-10 has not been exceeded. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-13 Conveyance of park lands. The board may, subject to chapter 171, Hawaii Revised Statutes, and with the approval of the governor, sell, lease, or otherwise convey lands acquired pursuant to these rules, subject to terms and conditions which it deems appropriate and which will insure that the transferee will not use the land in a manner which is inconsistent with the purposes for which it was acquired by the board. The department shall provide that such terms and conditions shall run with the land and shall be binding on the transferee's heirs, successors, and assigns. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-14 Donor recognition. The board may recognize the contribution of the donor(s) pursuant to

section 13-146-27; provided that no park acquired or existing park added to pursuant to these rules shall be named for, by, or after a donor. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-15 Enforcement. The chairperson may bring an action in a court of competent jurisdiction to enforce the provisions of this part. [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

§13-147-16 Severability. If any provision of this part or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of application of this part which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable." [Eff May 15 1999] (Auth: HRS §184-3.5) (Imp: HRS §184-3.5)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-147, Hawaii Administrative Rules, on the Summary Page dated January 22, 1999, was adopted on January 22, 1999, following public hearings held on June 15, 16, 17, 18, 22 and 23, 1998, after public notice was given in the Honolulu Advertiser, the Hawaii Tribune-Herald, The Maui News, and The Garden Island News on May 12, 1998.

The adoption of chapter 13-147 shall take effect ten days after filing with the Office of the Lieutenant Governor.


TIMOTHY E. JOHNS, Chairperson
Board of Land and Natural Resources

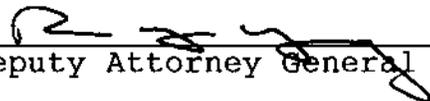

BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: May 4, 1999
MAY 05 1999
Filed

LIEUTENANT GOVERNOR'S
OFFICE

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APPROVED AS TO FORM:


Deputy Attorney General