

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5

FORESTRY AND WILDLIFE

PART 4 LEGACY LAND CONSERVATION PROGRAM

CHAPTER 140

LEGACY LAND CONSERVATION PROGRAM RULES

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SUBCHAPTER 1

GENERAL PROVISIONS

§13-140-1 Purpose. The purpose of this chapter is to govern the administration of the legacy land conservation program established pursuant to section 173A-6, HRS, and govern grants from the land conservation fund established pursuant to sections 173A-5 and 173A-9, HRS. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-6, 173A-9)

§13-140-2 Definitions. As used in this chapter, unless otherwise provided or required by context:

"Agricultural easement" is an interest in real property that has the purpose of preserving or protecting land for agricultural use and is either authorized under chapter 198, HRS, or has been defined

in nature and scope by the laws or rules of a federal, county, or State grant program that will provide matching funds for a land acquisition grant from the fund.

"Awardee" means a grant applicant that has been awarded grant funding pursuant to section 173A-9, HRS.

"Board" means board of land and natural resources.

"Commission" means the legacy land conservation commission.

"Conservation easements" means conservation easements under chapter 198, HRS.

"Critical habitats" means areas designated as such under the federal Endangered Species Act of 1973 (7 U.S.C. § 136, 16 U.S.C. § 1531, et seq.).

"Division" means the division of forestry and wildlife.

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

"Fund" means the land conservation fund established under section 173A-5, HRS.

"Grant agreement" means contract.

"In-kind" means donated.

"Land acquisition grants" means funds granted for:

- (1) The acquisition of:
  - (A) Land in fee;
  - (B) Permanent conservation easements under chapter 198, HRS; and
  - (C) Agricultural easements; and
- (2) Reasonable costs related to the purchase of the property.

"Land" means the earth, water, and air, above, below, or on the surface, and includes easements and rights in land, and any improvement on land.

"Management grants" means funds granted for the operation, maintenance, and management of lands acquired with funds from the land conservation fund.

"Nonprofit land conservation organization" means an organization that protects "resource value" as defined herein or "land having value as a resource to the State" as defined under section 173A-2, HRS, as

part of its activities or mission and has been determined and designated to be a nonprofit organization by the Internal Revenue Service.

"Program" means the legacy land conservation program.

"Resource value" means watershed, coastal area, beach, ocean access, habitat, cultural site, historic site, recreational, public hunting, park, natural area, agricultural production, open space, and scenic characteristics or benefits. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §173A-7)

§13-140-3 Delegation of authority. Department responsibilities as listed in this chapter for the administration of the legacy land conservation program are hereby delegated by the department to the division. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §173A-7)

§13-140-4 Severability. If any provision of this chapter 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 of application, and to this end the provisions of this part are severable. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §173A-7)

## SUBCHAPTER 2

### PROGRAM ADMINISTRATION

§13-140-5 Legacy land conservation program; established. There is established a program pursuant to section 173A-6, HRS, to:

- (1) Plan for and execute the purchase or acquisition by eminent domain of land having value as a resource to the state; and

- (2) Administer grants from the fund to nonprofit land conservation organization, county and state agency applicants. [Eff 7/21/12]  
(Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-6, 173A-9)

§13-140-6 Grants from the land conservation fund. (a) The board may make grants from the fund for the purposes enumerated under chapter 173A, HRS.

(b) The department shall recommend to the board specific parcels of land to be acquired. The department shall consult with the senate president and the speaker of the house of representatives and may consult with the legacy land conservation commission prior to making recommendations.

(c) Awards shall be subject to the approval of the governor. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-2.5, 173A-5, 173A-9)

§13-140-7 Resource land acquisition planning. Pursuant to section 173A-3, HRS, the department shall prepare and periodically revise a plan for the acquisition of land under the program. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§91-2, 173A-3)

§13-140-8 Public records. (a) Public records of the program and the commission shall be available for inspection at the offices of the division, subject to the limitations prescribed in chapters 92 and 92F, HRS.

(b) Public records printed or reproduced by the department, the division, or the commission, for the purposes of this program shall be given to any person requesting the same and paying 50 cents per page or fraction thereof. [Eff 7/21/12] (Auth: HRS §173-2.4)(Imp: HRS §173A-2.5)

### SUBCHAPTER 3

#### LEGACY LAND CONSERVATION COMMISSION PRACTICE AND PROCEDURE

§13-140-9 Purpose. These rules provide the procedures that the commission undergoes in advising the department and the board and making recommendations to the board regarding land acquisitions and grants made pursuant to chapter 173A, HRS. [Eff 7/21/12] (Auth: HRS §173A-2.4) (Imp: HRS §173A-2.5)

§13-140-10 Meetings. (a) The commission may meet in any part of the State of Hawaii.

(b) Meetings of the commission may be scheduled at the request of:

- (1) Three or more members of the commission;
- (2) The chairperson; or
- (3) The division.

(c) Meetings of the commission shall be open to the public and held in accordance with chapter 92, HRS. [Eff 7/21/12] (Auth: HRS §173-2.4) (Imp: HRS §173A-2.5)

§13-140-11 Notice. The commission shall give public notice of any meeting in accordance with chapter 92, HRS. [Eff 7/21/12] (Auth: HRS §173-2.4) (Imp: HRS §173A-2.5)

§13-140-12 Quorum. Any action taken by the commission shall be by a simple majority of its members. Five members of the commission shall constitute a quorum. [Eff 7/21/12] (Auth: HRS §173-2.4) (Imp: HRS §§173-2.4, 173A-2.5)

§13-140-13 Minutes. Minutes of commission meetings shall be kept in accordance with the requirements of section 92-9, HRS. [Eff 7/21/12] (Auth: HRS §173-2.4)(Imp: HRS §173A-2.5)

§13-140-14 Communications. Written communications to the commission should be addressed to the commission and submitted through the division. [Eff 7/21/12] (Auth: HRS §173-2.4)(Imp: HRS §173A-2.5)

§13-140-15 Vice-chairperson. The commission may select a vice-chairperson to act on behalf of the chairperson. [Eff 7/21/12] (Auth: HRS §173-2.4)(Imp: HRS §173A-2.5)

§13-140-16 Testimony. In order to allow persons to have an equal amount of time to testify, the chairperson may limit the amount of time for testimony per individual or per issue. [Eff 7/21/12] (Auth: HRS §173-2.4)(Imp: HRS §173A-2.5)

#### SUBCHAPTER 4

#### LAND ACQUISITION GRANTS

§13-140-17 Eligible applicants. (a) State agencies, county agencies, and nonprofit land conservation organizations may apply for land acquisition grants.

(b) The entity that will hold title to the interest in land must be the applicant and supply all required documentation for application. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)



§13-140-18 Eligible lands. The board may award land acquisition grants for the acquisition of interests in land, in either fee or conservation easements, having value as a resource to the State for the preservation of:

- (1) Watershed protection;
- (2) Coastal areas, beaches, and ocean access;
- (3) Habitat protection;
- (4) Cultural and historical sites;
- (5) Recreational and public hunting areas;
- (6) Parks;
- (7) Natural areas;
- (8) Agricultural production; or
- (9) Open spaces and scenic resources. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-19 Eligible expenditures. For land acquisition grants, eligible expenditures of grant funds shall be limited to the following:

- (1) The purchase of land in fee, permanent conservation easements under chapter 198, HRS, or agricultural easements at or below fair market value as determined by a department-approved appraisal;
  - (2) Appraisals;
  - (3) Land surveys;
  - (4) Title insurance and title report; and
  - (5) Environmental inspections and assessments.
- [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-20 Matching funds. (a) Where the awardee of a land acquisition grant is a county agency or nonprofit land conservation organization, the board shall require additional matching funds of at least twenty-five per cent of the total project costs. Matching funds may be in the form of:

- (1) Direct moneys;
- (2) A combination of public and private funds;

- (3) Land value donation;
- (4) In-kind contributions; or
- (5) Any combination of the above.

(b) For land acquisition grants, matching funds costs shall be limited to the following:

- (1) Land or conservation easements at or below fair market value as determined by a department-approved appraisal;
- (2) Appraisals;
- (3) Land surveys;
- (4) Title insurance and title report;
- (5) Environmental inspections and assessments;
- (6) Escrow fees, excluding taxes;
- (7) Baseline documentation for conservation easements; and
- (8) Attorneys' fees for the review and drafting of acquisition-related documents.

(c) Qualifying entities shall supply evidence of the sources and expenditures of matching funds to the satisfaction of the department prior to distribution of the grant.

(d) Matching fund expenditures must be reasonable and necessary for accomplishing project objectives and the purpose of the program.

(e) Qualifying entities must demonstrate the basis and method for valuation of in-kind contributions. Donated services must be provided by skilled professionals. In-kind contributions must be an integral and necessary part of the approved project.

(f) Lands being donated as matching funds shall be subject to the same requirements and restrictions as lands that are being acquired with grant funds.

(g) In cases where the actual total project costs at time of grant disbursement are less than the estimated total project costs stated in the project application, the department shall require awardees to maintain the same proportion of matching funds to awarded funds that is set forth in the project application. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-21 Federal coordination. The department may coordinate with federal grant programs by requiring compliance with federal laws, rules, and policies, provided that all applicable state laws, regulations, and policies are complied with. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9, 173A-12)

§13-140-22 Application. Applicants for land acquisition grants shall submit requests for funding by the annual deadline, using the forms and instructions provided by the department as may be revised from time to time. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-23 Grant agreement. (a) County and nonprofit applicants that have been awarded land acquisition grant funds by the board and will hold title to the interest in land being acquired, must enter into a grant agreement with the board.

(b) Per the discretion of the board, a state agency that is awarded funds by the board may either:

- (1) Acquire land under the authority of the board; or
- (2) Enter into a grant agreement with the board if the state agency possesses legal authority to conduct land acquisitions.

(c) The grant agreement may contain provisions or attachments relating to the management and protection of the specific resource values for which an award was granted. The department may require awardee to supply evidence of the condition of these resources on the date of acquisition and to supplement thereafter. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-4, 173A-5, 173A-9)

§13-140-24 Awardee forms and requirements. (a) Prior to disbursing funds for land acquisition grants, the department may require awardees to:

- (1) Sign letters of offer from the department to signify acceptance of an award;
- (2) Submit a title report and an appraisal for department review or approval;
- (3) Submit evidence of matching funds;
- (4) Use escrow services;
- (5) Obtain title insurance;
- (6) Provide an accounting and documentary evidence of all grant fund expenditures and project costs;
- (7) Obtain site surveys and assessments;
- (8) Meet any requirements of chapter 343, HRS;
- (9) Submit a copy of the proposed deed along with any baseline documentation and other supporting documentation; and
- (10) Submit documentation of resources being protected.

(b) The department may require the use of forms supplied by the department.

(c) The department may require the awardee to meet any other requirements to ensure protection of the State's interests in protecting resource values and ensuring compliance with the terms and conditions of the grant agreement.

(d) The department may require state agencies that do not conduct acquisitions through the department to complete any or all of the requirements for nonprofit and county awardees. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-25 Title. No award shall be granted for acquisitions of lands having encumbrances or defects of title that the department determines are in conflict with the purposes of the grant. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-26 Fair market value. No award shall be granted for the acquisition of land at a cost above the fair market value as determined by an appraisal that has been approved by the department. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-27 Voluntary landowner. If the board awards a land acquisition grant to an awardee that had submitted evidence of the landowner's potential willingness to sell, and the land is transferred to another landowner prior to acquisition by awardee, the awardee must provide evidence that the original landowner and new landowner support acquisition of the land by the awardee. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-28 Conservation easements, deed restrictions, and covenants. (a) The board may encumber lands acquired with grants from the fund with conservation easements under chapter 198, HRS, or an agricultural easement or deed restrictions or covenants to ensure the long-term protection of the land and its resource values.

(b) The board shall require projects receiving land acquisition grants for fee purchase from the fund to incorporate a conservation easement under chapter 198, HRS, unless:

- (1) The grant is to a county agency or to a state agency; or
- (2) The proposed project already includes a conservation easement to a county agency, state agency, federal agency, or nonprofit land conservation organization.

The board may accept a conservation easement to a county agency, state agency, federal agency, or nonprofit land conservation organization to meet this requirement.

(c) In circumstances where the board does not require a conservation easement, in determining

whether to encumber lands acquired with grants from the fund, upon a recommendation from the commission, the senate president and the speaker of the house of representatives, or the department, the board shall consider:

- (1) Whether the long-term protection of the land and its resource values has been sufficiently addressed in the proposed project; and
- (2) Whether the additional encumbrance will adequately achieve the long-term protection of the resources in a way that is appropriate for their intended use. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-4, 173A-5, 173A-9)

§13-140-29 Payment. (a) For land acquisition grants, payments may be made to the awardee upon receipt of reports and invoices that meet the requirements of the grant agreement.

(b) The department may withhold any portion of the payment until all commitments are verified as complete to the satisfaction of the department.

(c) For land acquisition grants to nonprofit land conservation organizations and county agencies, reimbursement will be the method of payment for all costs, except for the cost of land. Payment for the cost of land will not be by way of reimbursement. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-30 Awardee requirements, post-disbursement. The department may require state, nonprofit, and county awardees of land acquisition grants to:

- (1) Submit a copy of the executed and recorded deed;
- (2) Submit documentation of the escrow transaction; and

- (3) Meet any other requirements to ensure protection of the State's interests. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-31 Deed. A copy of the recorded deed shall be sent to the department within the time specified in the grant agreement. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-32 Monitoring and reporting. (a) After a land acquisition grant is administered to an awardee, the department may monitor the awardee, any additional managing entities, and the land acquired to determine the status of any resource values protected under the terms of the grant agreement.

(b) The department may require a holding or managing entity of lands acquired through land acquisition grants to submit reports, photographs, forms, or any other documents to determine the status of any resource values protected under the terms of the grant agreement. Awardees shall respond to any such requests from the department within sixty days. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-33 Site visits. (a) By accepting the grant, the awardee agrees that the department may enter lands acquired through land acquisition grants for the purpose of inspecting the condition of the property and resources.

(b) The department shall provide either written or verbal notice to the landowner forty-eight hours prior to entering the land and shall make a record of the visit. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-34 Sale, lease, or other disposal of lands. (a) Prior to any disposal of lands acquired with moneys from the fund, awardees must seek the written approval of the board. Such requests for approval shall be submitted to the department in writing.

(b) As a condition of approval of disposition, the board may require that the new landowner, and any subsequent landowner, enter into a contract with the board for the protection of the resource values.

(c) In deciding whether to approve a disposition, the board may consider the following factors:

- (1) If the proposed disposition is for value or consideration:
  - (A) Whether the disposition will be to an agency or organization that is eligible to receive awards under this chapter and chapter 173A, HRS;
  - (B) Whether the new landowner will be capable of managing the land in accordance with the purposes for which the board awarded a grant; and
  - (C) Whether the net proceeds of the sale will allow the State to recover its appropriate portion of the funds that were originally contributed pursuant to section 173A-10, HRS; or
- (2) If the proposed disposition is gratis, for no value or consideration:
  - (A) Whether the disposition will be to an agency or organization that is eligible to receive awards under this chapter and chapter 173A, HRS; and
  - (B) Whether the new landowner will be capable of managing the land in accordance with the purposes for which the board awarded a grant; and
- (3) Any other factors that may help determine the best interests of the State under chapter 173A, HRS. In determining these factors, the board may use criteria listed



under section 13-140-39. [Eff 7/21/12]  
(Auth: HRS §173A-7) (Imp: HRS §§173A-5,  
173A-9)

§13-140-35 Proceeds. (a) Whenever any land acquired with a land acquisition grant is sold by any state agency, county, or nonprofit land conservation organization, that portion of the net proceeds (sale price less actual expenses of sale) of such sale equal to the proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State and redeposited or credited to the fund.

(b) In the event any such land or other property is leased, rented, or otherwise disposed of, that portion of the rental or proceeds equal to the proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State and redeposited or credited to the fund. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9, 173A-10)

§13-140-36 Revenue. Any net proceeds or revenue from the operation, management, sale, lease, or other disposition of land or the improvements on the land acquired or constructed by the board under the provisions of this chapter shall be deposited in or credited to the fund. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5)

## SUBCHAPTER 5

### CRITERIA FOR LAND ACQUISITION GRANTS

§13-140-37 Purpose. These rules provide the criteria that the commission applies in advising the department and the board and making recommendations to the board regarding land acquisitions and grants made

pursuant to chapter 173A, HRS. [Eff 7/21/12] (Auth: HRS §173A-2.5) (Imp: HRS §173A-2.5)

§13-140-38 Priorities. In advising the department and the board, the commission shall give the following lands priority in its recommendations for acquisitions:

- (1) Lands having exceptional value due to the presence of:
  - (A) Unique aesthetic resources;
  - (B) Unique and valuable cultural or archaeological resources; or
  - (C) Habitats for threatened or endangered species of flora, fauna, or aquatic resources;
- (2) Lands that are in imminent danger of development;
- (3) Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;
- (4) Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;
- (5) Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction; and
- (6) Lands that are unique and productive agricultural lands. [Eff 7/21/12] (Auth: HRS §173A-2.5) (Imp: HRS §§173A-2.5, 173A-2.6, 173A-5)

§13-140-39 Criteria. In advising the department and the board, the commission may consider the following criteria in forming its recommendations for acquisitions:

- (1) Completeness of the acquisition application;
- (2) Acquisition of interests or rights in land having value as a resource to the State for the preservation of the following:

- (A) Watershed protection;
  - (B) Coastal areas, beaches, and ocean access;
  - (C) Habitat protection;
  - (D) Cultural and historical sites;
  - (E) Recreational and public hunting areas;
  - (F) Parks;
  - (G) Natural areas;
  - (H) Agricultural production; and
  - (I) Open spaces and scenic resources;
- (3) Linkage of protected acreage of similar resources;
  - (4) Opportunities for appropriate public access and enjoyment;
  - (5) Presence of environmental hazards;
  - (6) Feasibility of a project within the two-year acquisition timeframe;
  - (7) Cost of acquisition;
  - (8) Proportion of matching funds being leveraged;
  - (9) Urgency of need to acquire;
  - (10) Status and adequacy of management planning;
  - (11) Community support for acquisition;
  - (12) Completeness of acquisition funding;
  - (13) Connection to regional planning and protection efforts; and
  - (14) Capacity for long-term management. [Eff 7/21/12] (Auth: HRS §173A-2.5) (Imp: HRS §§173A-2.5, 173A-2.6, 173A-5)

## SUBCHAPTER 6

### OPERATION, MAINTENANCE, AND MANAGEMENT GRANTS

§13-140-40 Eligible applicants. State agencies, county agencies, and nonprofit land conservation organizations that have acquired lands using a land acquisition grant from the fund may apply for management grants for the operation, maintenance, and

management of those lands. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-41 Eligible uses. Management grant funds may be awarded for operation, maintenance and management costs that:

- (1) Are necessary to protect, maintain, or restore resources at risk on lands that have been acquired using a land acquisition grant from the fund; or
- (2) Provide for greater public access and enjoyment of lands that have been acquired using a land acquisition grant from the fund. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-42 Eligible costs. (a) For management grants, eligible project costs are to be determined by the department.

(b) Applicants shall supply evidence of costs and expenditures, including documentation demonstrating that a reasonable price has been secured for any goods or services, to the satisfaction of the department prior to distribution of the grant. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-43 Eligible expenditures. (a) For management grants, eligible expenditures of grant funds shall be limited to the following costs:

- (1) Equipment;
- (2) Maintenance and repair;
- (3) Materials and supplies;
- (4) Professional services to prepare a management plan; and
- (5) Professional services to prepare an environmental assessment.

(b) Qualifying entities shall supply evidence of the matching funds to the satisfaction of the department prior to distribution of the grant. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-44 Matching funds. (a) Where the awardee of a management grant is a county agency or nonprofit land conservation organization, the board shall require additional matching funds of at least twenty-five per cent of the total project costs. Matching funds may be in the form of:

- (1) Direct moneys;
- (2) A combination of public and private funds;
- (3) Land value donation;
- (4) In-kind contributions; or
- (5) Any combination of the above.

(b) Qualifying entities shall supply evidence of the matching funds to the satisfaction of the department prior to distribution of the grant.

(c) For management grants, matching funds costs shall be determined by the department and limited to the following:

- (1) Equipment;
- (2) Maintenance and repair;
- (3) Materials and supplies;
- (4) Professional services to prepare a management plan; and
- (5) Professional services to prepare an environmental assessment.

(d) Qualifying entities shall supply evidence of matching funds sources and expenditures to the satisfaction of the department prior to distribution of the grant.

(e) Matching fund expenditures must be reasonable and necessary for accomplishing project objectives and the purpose of the program.

(f) Qualifying entities must demonstrate the basis and method for valuation of in-kind contributions. Donated services must be provided by skilled professionals. In-kind contributions must be

an integral and necessary part of the approved project.

(g) In cases where the actual total project costs at time of payment are less than the estimated total project costs stated in the project application, the department shall require awardees to maintain the same proportion of matching funds to awarded funds that is set forth in the project application. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-45 Federal coordination. The department may coordinate with federal grant programs by requiring compliance with federal laws, rules, and policies, provided that all applicable State laws, regulations, and policies are complied with. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9, 173A-12)

§13-140-46 Application. Applicants for management grants shall submit requests for funding by the annual deadline, using the forms and instructions provided by the department as may be revised from time to time. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-47 Grant agreement. (a) County and nonprofit applicants awarded management grant funds by the board shall enter into a grant agreement with the board.

(b) Per the discretion of the board, a state agency awarded funds by the board may be required to enter into a grant agreement with the board.

(c) The maximum time of performance for the grant agreement shall be two years, unless an extension is approved by the department in writing. Applicants must request an extension in writing no later than ninety days prior to the deadline for performance. Extensions may be granted at the

discretion of the department and the department may reject requests for extensions. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-48 Awardee forms and requirements. (a) Prior to disbursing funds for management grants, the department may require awardees to:

- (1) Sign letters of offer and acceptance from the department to signify acceptance of an award;
- (2) Provide an accounting and documentary evidence of all grant fund expenditures and project costs;
- (3) Complete any applicable requirements under chapter 343, HRS, or other applicable laws;
- (4) Submit reasonable documentation of resources or facilities being protected, maintained, restored, or improved; and
- (5) Meet any other requirements to ensure protection of the State's interests.

(b) The department may require the use of forms supplied by department and may require awardee to submit any additional documentary evidence to demonstrate that requirements of this chapter have been fulfilled. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-49 Monitoring. Any time prior to the disbursement of management grant funds to an awardee, the department may require status reports from the awardee regarding the completion of the awardee's commitments under the grant agreement. Awardee shall respond to any such requests from the department within sixty days. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-50 Payment. (a) For management grant payments, incremental payments may be made to the awardee on a quarterly basis, upon receipt of reports

that meet the requirements of the grant agreement. Reimbursement shall be the default method of payment.

(b) Requests for advance payment shall be made using a form supplied by the department. The department may deny advance payments for any reason. Any approved advances shall be limited to fifteen per cent of the approved award, or the minimum amount needed, whichever is less. Awardees must demonstrate that the requested advance funds are urgently needed to protect, restore, or maintain resources at risk.

(c) The department may withhold any portion of the payment until all commitments are verified as complete to the satisfaction of the department. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

§13-140-51 Awardee requirements, post-disbursement. (a) The department may require management grant awardees to:

- (1) Submit a final project report evidencing the completion of the project and other information as requested by the department; and
- (2) Meet any other requirements to ensure protection of the State's interests.

(b) The department shall require the awardee to return any unused funds. The awardee shall respond to any such requests from the department within sixty days. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-9)

## SUBCHAPTER 7

### CRITERIA FOR OPERATIONS, MAINTENANCE, AND MANAGEMENT GRANTS

§13-140-52 Purpose. These rules provide the criteria that the commission applies in advising the department and the board and making recommendations to



the board regarding grants of operations, maintenance, and management funds made pursuant to chapter 173A, HRS. [Eff 7/21/12] (Auth: HRS §173A-2.5) (Imp: HRS §173A-2.5)

§13-140-53 Priorities. In advising the department and the board, the commission shall give the following lands priority in its recommendations for awards of funds for operations, maintenance, and management:

- (1) Lands having exceptional value due to the presence of:
  - (A) Unique aesthetic resources;
  - (B) Unique and valuable cultural or archaeological resources; or
  - (C) Habitats for threatened or endangered species of flora, fauna, or aquatic resources;
- (2) Lands that are in imminent danger of development;
- (3) Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;
- (4) Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;
- (5) Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction; and
- (6) Lands that are unique and productive agricultural lands. [Eff 7/21/12] (Auth: HRS §173A-2.5) (Imp: HRS §§173A-2.5, 173A-2.6, 173A-5)

§13-140-54 Criteria. In advising the department and the board, the commission may consider the following criteria in forming its recommendations for awards of funds for maintenance, management, and operations:

- (1) Completeness of the management grants application;
- (2) Operation, maintenance and management of land having a value as a resource to the State for the preservation of the following:
  - (A) Watershed protection;
  - (B) Coastal areas, beaches, and ocean access;
  - (C) Habitat protection
  - (D) Cultural and historical sites;
  - (E) Recreational and public hunting areas;
  - (F) Parks;
  - (G) Natural areas;
  - (H) Agricultural production; and
  - (I) Open spaces and scenic resources;
- (3) Linkage of protected acreage of similar resources;
- (4) Cost of proposed operations, maintenance, and management activities;
- (5) Proportion of matching funds being leveraged;
- (6) Urgency of need for proposed operations, maintenance, or management activities;
- (7) Feasibility of achieving proposed objectives;
- (8) Short-term and long-term efficacy of proposed actions;
- (9) Community support for the proposed activities;
- (10) Feasibility of mitigating any environmental hazards;
- (11) Role and necessity of the proposed activities in:
  - (A) Achieving the protection, maintenance, or restoration of resources at risk, or
  - (B) In providing for greater public access and enjoyment;
- (12) Status and adequacy of management planning;
- (13) Presence and role of activity in existing plans or the ability of organization to implement any planning activities that are funded; and

- (14) Benefit of the proposed activity to the region. [Eff 7/21/12] (Auth: HRS §173A-2.5) (Imp: HRS §§173A-2.5, 173A-2.6, 173A-5)

## SUBCHAPTER 8

### ENFORCEMENT

§13-140-55 Breach of grant agreement. Upon a breach of the grant agreement, the board may impose sanctions against the awardee including, but not limited to:

- (1) Suspension of all grant payments; and
- (2) Suspension of the awardee's participation in state grant programs;

until such time as all breaches are cured to the board's satisfaction. Sanctions may also include repayment of all state funds expended and any sanctions included as provisions of the grant agreement. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-5, 173A-7, 173A-11)

§13-140-56 Breach of deed restrictions. Upon a breach of a deed restriction imposed as a condition of the grant, the board may impose sanctions against the awardee including, but not limited to:

- (1) Suspension of the awardee's participation in State grant programs until such time as all breaches are cured to the board's satisfaction; and
- (2) Repayment of all state funds expended.  
[Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-4, 173A-5, 173A-7, 173A-9, 173A-11)

§13-140-57 Enforcement. (a) The board shall have the authority to enforce any:

- (1) Provision of this chapter;
- (2) Term or condition of the grant agreement;  
and
- (3) Term or condition of any conservation easements, agricultural easements, deed restrictions, and covenants placed by the board or department on lands acquired in whole or in part with land acquisition grant from the fund.

(b) In carrying out its function under this chapter and chapter 173A, HRS, the board may do all things necessary, useful, and convenient in connection with the acquisition, administration, maintenance, and management of lands acquired through a land acquisition grant. [Eff 7/21/12] (Auth: HRS §173A-7) (Imp: HRS §§173A-4, 173A-5, 173A-7, 173A-9, 173A-11)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-140, Hawaii Administrative Rules, on the Summary Page dated May 11, 2012, was adopted on May 11, 2012, following public hearings held on March 27, 2012, in Honolulu; March 27, 2012, in Hilo; March 28, 2012, in Kona; March 28, 2012, in Lihue; March 29, 2012, in Kahului; and March 30, 2012, in Kaunakakai, after public notice was given in The Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald on February 25, 2012.

The adoption of chapter 13-140 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/

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WILLIAM J. AILA, JR.  
Chairperson  
Board of Land and Nature Resources

APPROVED:

/s/

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NEIL ABERCROMBIE  
Governor  
State of Hawaii

7/10/12

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

/s/ Julie China

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Deputy Attorney General

7/11/12

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Filed