



Form 5b

2018-2019 Agency Consultation for Land Acquisition: Department of Agriculture

To: Scott Enright, Chairperson
State of Hawai'i Department of Agriculture
Office of the Chairperson
1428 South King Street
Honolulu, HI 96814

Please return completed form to Applicant.

Applicant: _____

Application Title: _____

Point of Contact: _____

Postal Address: _____

Email Address: _____

Phone: _____

Fax: _____

Date: _____ (no later than August 10, 2018)

Subject:

I. Request for Consultation regarding Land Conservation Fund Grant Application for Land Acquisition (Section 173A-5, Hawai'i Revised Statutes)

II. Request for Advice concerning the propriety of exempting the action (award of grant funding) from the requirement to prepare an environmental assessment (Section 343-6, Hawai'i Revised Statutes)

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Advice Not Requested ("unimproved land")

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In order to help the Legacy Land Conservation Commission and the Board of Land and Natural Resources to process and prioritize applications for funding, the Legacy Land Conservation Program (LLCP) requests that a consulting agency complete this form (Part I, and Part II if applicable) and return it—with comments, if any, on agency letterhead—to the Applicant at the address listed above, **no later than September 10, 2018**. Thank you!

The LLCP expects that a consulting agency will base its responses on the information presented in the attached Form 5 (Information from Land Acquisition Grant Applicant, including maps and photos). Please contact the Applicant directly with questions regarding the proposed land acquisition (Form 5), and contact the LLCP at 586-0921, or legacyland@hawaii.gov, with questions regarding agency consultation and the grant process.

If the Applicant does not receive an agency response before September 10, 2018, then the application will indicate that the agency “Did Not Respond” to Part I and “Did Not Advise” regarding Part II (if applicable). Please note that a lack of agency response does not affect the prioritization of an application.

I. Request for Consultation regarding Land Conservation Fund Grant Application (Section 173A-5, Hawai'i Revised Statutes)

Subsection 173A-5(i), Hawai'i Revised Statutes (HRS), requires that an application for a land acquisition grant from the Land Conservation Fund include “(7) Results of the applicant's consultation with the staff of the department [of land and natural resources], the department of agriculture, and the agribusiness development corporation regarding the **maximization of public benefits** of the project, where practicable” (emphasis added). The attached Information Form (Form 5) describes the proposed land acquisition grant for which we request agency consultation.

The Legacy Land Conservation Program (LLCP) suggests that a consulting agency consider the **maximization of public benefits** within the context of:

- (a) The criteria that the Legacy Land Conservation Commission (LLCC) may consider in forming its recommendations for acquisitions (Section 13-140-39, Hawai'i Administrative Rules, see page 18), particularly:
- (3) Linkage of protected acreage of similar resources;
 - (4) Opportunities for appropriate public access and enjoyment;
 - (5) Presence of environmental hazards;
 - (9) Urgency of need to acquire;
 - (10) Status and adequacy of management planning;
 - (11) Community support for acquisition;

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- (13) Connection to regional planning and protection efforts; and
- (14) Capacity for long-term management.

(b) The lands to which the LLCC shall give priority in its recommendations for acquisition (Section 173A-2.6, HRS):

- (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.

(c) The appropriate legal mechanisms to ensure the long-term protection of the land and to preserve the interests of the State (see Section 173A-4, HRS). In particular, would the consulting agency be willing to accept/hold a conservation easement, agricultural easement, deed restriction, or covenant that runs with the land, or would an exemption from the easement requirement be more appropriate?

FOR AGENCY USE ONLY	
<input type="checkbox"/>	We do not object to the proposed project
<input type="checkbox"/>	We do not wish to comment on the proposed project
<input type="checkbox"/>	Comments attached
Signed: _____	Date: _____
Name: _____	
Title: _____	

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II. *Request for Advice concerning the propriety of exempting the action (proposed award of grant funding) from the requirement to prepare an environmental assessment (Section 343-6, Hawai'i Revised Statutes)*

An award of grant funding from the Land Conservation Fund for land acquisition is an action that proposes a use of State funds that can trigger the requirement to prepare an environmental assessment under [subsection 343-5\(a\), Hawai'i Revised Statutes](#) (HRS). However, the acquisition of unimproved real property does not trigger the requirement, and other acquisitions may be exempt from the requirement under the combined authority of [Section 343-6, HRS](#) (see subsection (a) paragraph (2)); [Section 11-200-8, Hawai'i Administrative Rules](#) (see page 9) and Exemption Class 1 on the Exemption List for the Department of Land and Natural Resources (DLNR), [Action Types 45](#) (acquisition of land, see page 5) and/or [49](#) (the award of grants from the Land Conservation Fund, see page 5), when accompanied by "the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption" (subsection 11-200-8(a), HAR).

The exemption for Action Type 49 applies only when "the grant does not fund an activity that causes any material change of use of land or resources beyond that previously existing." However, the governing authorities for this exemption do not define "material change of use." DLNR's Division of Forestry and Wildlife (DOFAW) believes that (1) the "activity" of land acquisition funded by a grant from the Land Conservation Fund merely enables the possibility of—rather than "causes" with certainty—a future "change of use" action by an awardee that takes ownership of a property, and (2) such land acquisition is thus exempt from the preparation of an environmental assessment. Importantly, a post-acquisition "change of use" action would be subject to environmental review requirements under Chapter 343, HRS, subsequent to and independent of the acquisition, if applicable at that time to that action. And, please note that in conjunction with its most recent approval of grant awards from the Land Conservation Fund for land acquisition, the Board of Land and Natural Resources approved DOFAW's recommendation to declare that approved awards of grant funds from the Legacy Land Conservation Program "will probably have minimal or no significant effects on the environment" and are exempt from the requirement to prepare an environmental assessment ([April 27, 2018, Item C-1](#), see recommendations 6 and 7 on pages 15-16).

The attached Information Form (Form 5) describes the proposed land acquisition grant for which we request advice concerning the propriety of exempting the action (proposed award of grant funding) from the requirement to prepare an environmental assessment.



**Legacy Land
Conservation Program**

Hawai'i Department of Land and Natural Resources

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<input type="checkbox"/>	We advise that the proposed exemption is proper
<input type="checkbox"/>	We advise that the proposed exemption is not proper (Explain in Comments)
<input type="checkbox"/>	We do not have an opinion about the propriety of the proposed exemption
<input type="checkbox"/>	Please resubmit the request for advice about the propriety of the proposed exemption after the Legacy Land Conservation Commission reviews the completed application
<input type="checkbox"/>	Comments attached
Signed: _____	Date: _____
Name: _____	
Title: _____	