

REPORT TO THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

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



Prepared by

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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

Honolulu, Hawaii

November 2011

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

PURPOSE

Act 156, Session Laws of Hawaii (SLH) 2005, amended Section 173A-5, Hawaii Revised Statutes (HRS), by authorizing the transfer of 10% of all taxes imposed and collected under Section 247-1, HRS, to be credited to the Land Conservation Fund (LCF) and used to acquire lands having value as a resource to the State. Act 254, SLH 2006, further amended Chapter 173A, HRS, by establishing a nine-member Legacy Land Conservation Commission (Commission) to advise the Department of Land and Natural Resources (Department) and Board of Land and Natural Resources (Board) regarding requests for grants from LCF and proposals to use LCF for acquisitions of interests in land, and to recommend to the Board the acquisitions of interests or rights in certain lands having value as a resource to the State.

Act 254, SLH 2006, also mandated that the Department prepare and periodically revise a plan for the acquisition of land having value as a resource to the State. Pursuant to Section 173A(5)(j), HRS, this annual report includes:

- A summary of all interest or rights in land acquired during the preceding fiscal year;
- A summary of what value each newly acquired land has as a resource to the State;
- Proposals for future land acquisitions, including a summary of the resource value that the land may possess;
- A financial report for the preceding fiscal year; and
- Objectives and budget projections for the following fiscal year.

INTERESTS OR RIGHTS IN LAND ACQUIRED DURING THE PRECEDING FISCAL YEAR

For the Fiscal Year (FY) 2011 application cycle, the Legacy Land Conservation Program (LLCP) advertised approximately \$4 million in project funding from LCF for the purchase of lands having value as a resource to the State. Nonprofit land conservation organizations, county agencies, and state agencies applied for funding for five separate resource land acquisition projects for the September 16, 2010, application deadline.

After conducting site visits and public decision-making meetings, the Commission recommended four prioritized applicants for funding a total of approximately \$4.45

million. In December 2010, the Department sought the consultation of Senate President Shan Tsutsui and Speaker of the House of Representatives Calvin Say regarding the Commission's recommendations, pursuant to Chapter 173A, HRS. The Legislators responded in writing, agreeing with the recommendations of the Commission.

On February 11, 2011, based on the recommendations of the Commission and the consultation with members of Legislature, the Board approved the recommended projects for grant funding, subject to certain terms and conditions. The Department requested approval from the Governor for release of funds for the projects; the Governor subsequently approved the grants on April 27, 2011.

The Governor approved the release of \$4,450,000 in funding for the following projects:

1. County of Hawaii for Kaiholena, in North Kohala, Island of Hawai'i, at \$1,650,000 for the acquisition of 76.55 acres, to protect of open space, cultural and archeological sites, and coastal resources;
2. Trust for Public Land (TPL) and Livable Hawai'i Kai Hui for the Hāwea Heiau Complex and Keawāwa Wetland in Honolulu, Island of O'ahu, at \$325,000 for the purchase of five acres to preserve native bird habitat, wetlands, and cultural sites;
3. TPL and Maika'i Kamakani 'O Kohala for Kauhola Point in North Kohala, Island of Hawai'i, at \$975,000 for the acquisition of 27.546 acres, to preserve cultural sites, recreational areas, and coastal lands; and
4. TPL and the North Shore Community Land Trust for Turtle Bay Mauka Lands in Ko'olauloa, Island of O'ahu, at \$1,500,000 for a conservation easement over 469 acres, to protect productive agricultural lands.

The approved grants are being administered according to program requirements and are being brought to closure by the parties. Nonprofit and county grant recipients have two years from the date of their respective grant agreements to bring projects to closure. Pursuant to Chapter 173A, HRS, deed restrictions are placed on each property, and the Board must approve any transfer of lands away from the original awardee. Upon the sale of a property, an amount of the net proceeds proportionate to the original award must be returned to LCF.

VALUE THAT EACH NEWLY ACQUIRED LAND HAS AS A RESOURCE TO THE STATE

Chapter 173A, HRS, instructs the Department and Commission to use Legacy Land funds to protect land having value as a resource to the State. The definition of "land having value as a resource to the State," under Section 173A-2, HRS, 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.

The Commission reviews projects for resource lands and selects lands listed as “priority” under Section 173A-2.6, HRS. The resource values which make each project a priority under Section 173A-2.6, HRS are explained below.

County of Hawaii for Kaiholena, in North Kohala, Island of Hawai‘i, at \$1,650,000 for the acquisition of 76.55 acres, to protect of open space, cultural and archeological sites, and coastal resources



The County of Hawaii requested funding to purchase 76.55 acres in Kaiholena, North Kohala, Island of Hawai‘i. The County is providing about \$2.9 million in matching funds from its open space fund to complete the acquisition.

Under Section 173A-2.6, HRS, LLCPL is mandated to prioritize the protection of lands containing cultural or archaeological sites or resources that are in danger of theft or destruction, as well as lands having exceptional value due to the presence of unique aesthetic resources.

Acquisition of these lands will protect coastal open space from development and consequently help maintain healthy reef ecosystem along the Kohala coast, where several threatened and endangered species are found. The acquisition will preserve many intact pre-contact Hawaiian cultural and archeological sites and current cultural and recreational uses of the property, which contains a portion of the Ala Kahakai National Historic Trail. Kaiholena is home to over 200 documented archeological sites, including two heiau, an ahu and a holua; this property has the highest concentration of cultural sites on the North Kohala coast.



The County of Hawai‘i will hold the land as a county park and intends to maintain the current public access uses of fishing, swimming, snorkeling, and hiking; and will continue existing partnerships with local community organizations and agencies to steward the property’s cultural and archeological resources.

Trust for Public Land (TPL) and Livable Hawai‘i Kai Hui for the Hāwea Heiau Complex and Keawāwa Wetland in Honolulu, Island of O‘ahu, at \$325,000 for the purchase of five acres to preserve native bird habitat, wetlands, and cultural sites



Livable Hawai‘i Kai Hui and TPL requested funds to purchase five acres in Haha‘ione Valley, Maunaloa (Hawai‘i Kai), mauka of Kuapā Pond (Hawai‘i Kai Marina), Island of O‘ahu. The Hui and TPL are seeking

matching funding through the City and County of Honolulu's Clean Water and Natural Lands Fund.

Under Section 173A-2.6, HRS, LLCP is mandated to prioritize the protection of lands having exceptional value due to the presence of unique and valuable cultural or archaeological resources; as well as lands having habitats for threatened or endangered species of flora, fauna, or aquatic resources.

The acquisition of this land will protect a spring-fed estuarine wetland that is nursery ground for young fish and shellfish and habitat for Hawaiian moorhen ('alea 'ula). The purchase will protect a portion of a heiau, petroglyphs, terraces and fishpond remnants, as well as active cultural uses of the property. Livable Hawai'i Kai Hui will hold the land. The Hui plans to allow current cultural practices on the property to continue, and to restore cultural and natural resources on the property. The Hui plans to restore the agricultural terraces where appropriate and repair the fishpond gate (mākāhā), and will work with native plant specialists to reforest the area with native plants.

The Hui is a local nonprofit organization, tax-exempt under 501(c)(3) of the Internal Revenue Code (IRC). The Hui is organized for charitable, educational, and scientific purposes, including encouraging grass roots organization, community awareness and education of laws, rules and regulations that guide sensible growth and development to enhance the quality of life for residents, focusing on the preservation of the agricultural lands in Kamilonui Valley, natural watersheds and adequate open spaces and community stewardship for the protection of watersheds, wetlands, natural and scenic resources and cultural and historic areas in East Honolulu.



TPL is a nonprofit organization under 501(c)(3) of the IRC. TPL's mission in Hawai'i is protecting shorelines, heritage, and working lands for the future of Hawaii's people. TPL works with local communities and agency partners in Hawai'i to conserve: (1) Shoreline/coastal lands, (2) Native heritage lands that perpetuate Hawaii's culture, and (3) Working lands that help Hawaii replace imports, and lead it to self-sufficiency in food, water, energy, and other goods."

TPL and Maika'i Kamakani 'O Kohala for Kauhola Point in North Kohala, Island of Hawai'i, at \$975,000 for the acquisition of 27.546 acres, to preserve cultural sites, recreational areas, and coastal lands



Maika'i Kamakani 'O Kohala and TPL requested funds to purchase 27.546 acres at Kauhola Point, North Kohala, Island of Hawai'i. Maika'i Kamakani and TPL are seeking matching funding from the County of Hawaii. The acquisition will protect undeveloped shoreline, coastal access to a surf break,

and many cultural remains, including iwi kupuna, the past site of Ohau heiau, and sites associated with Kamehameha the Great.

Under Section 173A-2.6, HRS, LLCP is mandated to prioritize the protection of land that is in imminent danger of being modified, changed, or used in a manner to diminish its value.

The lands to be acquired by Maika'i Kamakani 'O Kohala contains important natural and cultural resources, including over 2,000 feet of undeveloped shoreline, coastal access to a surf break, iwi kupuna, the past site of Ohau Heiau, and culturally-important sites associated with Kamehameha the Great. The North Kohala community uses the site for camping, fishing, surfing, opihi and limu gathering, and nature watching (whales, monk seals, green seal turtles). The landowners were unable continue the financial support and responsibility of stewarding the land as a community resource, and have provided the North Kohala community an opportunity to preserve the land for the community prior to placing the property on the open market.

Maika'i Kamakani 'O Kohala will hold the land and ensure that public access is to the property is maintained for recreational and cultural purposes and will work with the local community to create a long term management plan for the area. Maika'i



Kamakani 'O Kohala's mission is responsibility and accountability to Native Hawaiian values. Maika'i Kamakani 'O Kohala is a local nonprofit organization, tax-exempt under 501(c)(3) of the IRC.

TPL and the North Shore Community Land Trust for Turtle Bay Mauka Lands in Ko'olauloa, Island of O'ahu, at \$1,500,000 for a conservation easement over 469 acres, to protect productive agricultural lands

The North Shore Community Land Trust (NSCLT) and TPL requested funds for the acquisition of an agricultural conservation easement over Turtle Bay Mauka Lands in Ko'olauloa, Island of O'ahu. Matching funds are being sought from the Army's Compatible Use Buffer program, NRCS's Farm and Ranchland Protection Program, and the City and County of Honolulu's Clean Water and Natural Lands Fund. The conservation easement will permanently protect the land for agricultural production.



Under Section 173A-2.6, HRS, LLCP is mandated to prioritize the protection of lands that are unique and productive agricultural lands, as well as lands having resources that are in danger of being modified, changed, or diminished.

The land, located across Kamehameha Highway mauka of the Turtle Bay Resort, is currently leased for agricultural production; however, it is at constant threat of conversion to non-agricultural uses. Land on O‘ahu under active agricultural cultivation is steadily declining; it decreased by 44% from 1982 to 2005. Through the agricultural conservation easement process, the agricultural uses of this land will be protected. The landowner and tenant farmers will also be required to work with NRCS on a soil conservation plan to avoid sedimentation and runoff into streams that run through the property and to the ocean at Kawela Bay and Kahuku Point, thereby protecting nearshore water quality.

NSCLT will hold the conservation easement and work with the landowner to develop a soil conservation plan. NSCLT is a local nonprofit organization, tax-exempt under 501(c)(3) of the IRC. The mission of NSCLT is to protect, steward, and enhance the natural landscapes, cultural heritage, and rural character of ahupua‘a from Kahuku Point to Ka‘ena.

PROPOSALS FOR FUTURE LAND ACQUISITIONS, INCLUDING A SUMMARY OF THE RESOURCE VALUE TO THE STATE

Applications for the current 2011-2012 (FY12) LLCP grant process were due September 16, 2011. LLCP staff reviewed applications for completeness and, pursuant to Section 173A-2.5, HRS, has delivered them to the Commission for consideration. A list of all FY12 proposals for future land acquisitions is available per request to the LLCP at (808) 586-0921, or molly.e.schmidt@hawaii.gov. Basic information on proposed projects is also available at: <http://hawaii.gov/dlnr/dofaw/llcp/legacy-land-conservation-program-projects-new>. The Commission is scheduled to produce project recommendations in late December, 2011. A list of Commission-recommended project proposals will be available at that time.

FINANCIAL REPORT FOR THE PRECEDING FISCAL YEAR

Status of LCF for FY11:

Beginning cash balance of LCF on July 1, 2010	\$10,571,109
Revenue to LCF in FY11	\$ 4,796,117
Transfer to HISC in FY11	\$ 400,000
Expenditures during FY11	\$ 4,793,454
Outstanding previous year encumbrances	\$ 3,222,380
<u>FY11 outstanding encumbrances at year end</u>	<u>\$ 4,451,883</u>
Cash balance minus outstanding encumbrances	\$ 2,499,509
Ending cash balance as of June 30, 2011	\$10,173,772

For FY11, revenues totaled \$4,796,117. Expenditures and encumbrances totaled \$4,895,188; this amount fell within the authorized spending cap of \$5,100,000. An amount of \$4,450,000 was encumbered or expended as awards to counties and nonprofit land conservation organizations for the acquisition of interest or rights in lands having value as resource to the State. Pursuant to the State budget and Act 209, SLH 2010, an amount of \$400,000 was transferred from LCF for use by the Hawai'i Invasive Species Council and related programs. An amount of \$127,783 was expended on salaries and administrative costs; an amount of \$318,406 was levied for special fund assessments (central service fees).

Grant awards

County of Hawaii	\$1,650,000
Livable Hawai'i Kai Hui	\$ 325,000
Maika'i Kamakani 'O Kohala	\$ 975,000
<u>North Shore Community Land Trust</u>	<u>\$1,500,000</u>
Total grant expenditures and encumbrances	\$4,450,000

Salary costs

Salaries, full year at 2.0 FTE	\$ 118,683
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Administrative expenses

Commission training and travel	\$ 6,656
Fees, publications, equipment, and staff travel	\$ 2,005
Other	\$ 439

Special Fund Assessment

Central Service Fees	\$ 318,406
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Total expended/encumbered **\$4,896,189**

The Department may use up to five percent of the revenue of LCF from the previous year to administer the Program to cover costs such as travel, training, and materials and supplies. FY10 revenue totaled \$4,160,999, allowing administrative costs of up to \$208,049 during FY11. Administrative expenses and encumbrances in FY11 totaled \$9,100. The administrative budget funded travel costs related to the Commission, which met six times as a full commission and once as a four-member subcommittee during the fiscal year to accomplish its duties, as well as fees, publications, and staff travel. The Legislature, through the administrative budget (Act 1900, SLH 2006), created two temporary civil service positions to staff LLCP. These salary costs totaled \$118,683 in FY11. The fund was also assessed the statutorily required central service fees of 5% on revenue and 2% on expenditures which totaled \$318,406 for FY11.

OBJECTIVES AND BUDGET PROJECTIONS FOR THE FOLLOWING FISCAL YEAR

The Department, through LLCP, plans to accomplish five main objectives in FY12.

Objectives

The Department's primary objectives for LLCP in FY12 are: (1) To bring state acquisitions receiving FY09 and FY10 funds to closure and to provide support to FY10 and FY11 nonprofit and county grant recipients; (2) To effectively coordinate the award of FY12 grant funds towards the acquisition of lands having high value as a resource to the State; (3) To build and improve LLCP through promulgating program rules and with the support of the Commission (4) To implement administrative procedures for LLCP pursuant to changes mandated by Act 139, SLH 2008; and (5) To continue with planning activities that support the acquisition and protection of lands having value as a resource to the State.

1. Currently, the Department is working with FY08, FY09, FY10, FY11 grant recipients to ensure the proper disbursement of grant funds. One FY08 grant awardee, five FY10 grant awardees, and four FY11 grant awardees are in the process of meeting LLCP requirements in order to receive grant funds and acquire the respective properties. Two FY09 State acquisitions and one FY10 state acquisition are currently undergoing due diligence and are expected to close within the next year and a half.
2. Staff is currently assisting the Commission with its review of FY12 applications. After the Commission produces recommendations, the Department will seek the consultation of the Senate President and Speaker of the House of Representatives; and will then submit the Commission's recommendations and any additional consultation comments to the Board for approval. Upon approval of the Governor, grant funds awarded by the Board will be encumbered.
3. The Department is currently promulgating administrative rules for LLCP and is providing administrative support to the Commission in the promulgation of rules relating to the development of the Commission's project selection criteria based

on the project selection priorities listed under Section 173A-C, HRS. The Department and the Commission have produced draft rules and will continue through the rulemaking process to receive appropriate input and publish final rules.

4. The Department will continue the implementation of Act 139, SLH 2008, by providing an administrative framework and corresponding administrative rules for the award of up to 5% of the previous years revenues for the management and operation of lands acquired under LLCP. The Department has worked with the Commission to produce a proposed process and will seek appropriate comment and approval in FY12 for implementation in FY13.
5. Pursuant to Section 173A-3, HRS, the Department is in the process of implementing planning activities that support the coordination of conservation land acquisitions in the State and guide the Board in the acquisition of land having value as a resource to the State. In the past two years, the Department has researched and gathered information on land acquisition planning, partnerships, and conservation tools, and presented this information in a poster format at the 2011 Hawai'i Conservation Conference. In FY12 the Department will present the draft plan to the Senate President and Speaker of the House of Representatives for review.

Budget Projections

The Board may award approximately \$4 million in grant funding to county agencies, state agencies, and nonprofit land conservation organizations, subject to the availability of funds. Funding will continue to be used to administer the program (less than or equal to 5% previous year's revenues) to fund Commission travel, staff training, and operational costs such as supplies and materials. LCF will also continue to support salaries for two civil service positions (one in the Departments' Land Division and one in the Division of Forestry and Wildlife) and cover Central Services Fee assessments.

Additionally, one act emanating from the 2010 Legislative Session and two acts from the 2011 Legislative Session affect the budget projections for FY11 and future years. Act 209, SLH 2010, revised Chapter 173A, HRS, to allow the use of LCF for two additional purposes: 1) Invasive species control and mitigation by the invasive species council under Chapter 194, HRS; and 2) Reforestation and sediment run-off mitigation. Pursuant to the state budget, \$400,000 per year is transferred from LCF to the Hawaii Invasive Species Council and related programs. Act 55, SLH 2011, and Act 54, SLH 2011, designate a total of \$410,000 from LCF to help pay for two new initiatives (Public Land Development Corporation and Public Lands Information System). The Department will proceed in cooperation with other appropriate agencies to carry out the intent of these mandates.

CONCLUSION

LLCP provided \$4,450,000 in grant funding for the acquisition of interests in four properties, which will result in the protection approximately 578 acres of land and threatened or unique natural, cultural, recreational, and agricultural resources. The commitment of these funds will help secure approximately \$7.6 million in matching federal, county, and private funds for these acquisitions; resulting in about \$12 million in land and acquisition costs secured for \$4.45 million in State funds spent. The Program offers great promise for the future, and is positioned to take advantage of federal land acquisition funds. The Program should be supported and continued.

For detailed information on LLCP (<http://www.hawaii.gov/dlnr/dofaw/llcp/>), please contact LLCP, Department of Land and Natural Resources, Division of Forestry and Wildlife, 1151 Punchbowl Street, Room 224, Honolulu, HI, 96813, by telephone, at (808) 586-0921, or by email, at molly.e.schmidt@hawaii.gov.