State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

June 22, 2018

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Board Members:

SUBJECT: REQUEST TO AMEND A GRANT FROM THE LEGACY LAND CONSERVATION PROGRAM TO KA HULI O HĀLOA (CONTRACT NO. 63824) BY SUBSTITUTING HO'ĀLA 'ĀINA KŪPONO CORPORATION FOR KA HULI O HĀLOA AS THE GRANT AWARDEE, TAX MAP KEY NUMBERS (1) 4-9-003:003 AND (1) 4-9-003:004, KO'OLAUPOKO, O'AHU

SUMMARY:

Through the Legacy Land Conservation Program, the Board of Land and Natural Resources awarded funds to Ka Huli O Hāloa, a nonprofit land conservation organization, for the purchase of 1.5 acres of coastal lands in Ko'olaupoko, Island of O'ahu for the protection of agricultural, cultural, and historic resources. On behalf of Ka Huli O Hāloa, the Division seeks approval to substitute a different nonprofit land conservation organization, Ho'āla 'Āina Kūpono Corporation, for Ka Huli O Hāloa as the Legacy Land Conservation Program grant awardee.

BACKGROUND:

At its meeting on March 28, 2014, under agenda item C-1, the Board authorized the Chairperson to enter into a Legacy Land Conservation Program (LLCP) grant agreement with Ka Huli O Hāloa (KHOH) and to encumber $350,000 in Fiscal Year 2014 (FY14) LLCP funds for Hakipu'u Lo'i Kalo – a purchase of 1.5 acres in Ko'olaupoko, Island of O'ahu, for the protection of agricultural, cultural, and historic resources that the Legacy Land Conservation Commission ranked second for the FY14 grant cycle (Exhibit A, Board Submittal; see pages 2-3 (Background and Discussion), 6-7 (Recommendation 2(a)), and Attachment 1 (Fiscal Year 2014 Legacy Land Conservation Commission Project Rankings). The Board minutes include testimony, delivered by The Trust for Public Land (TPL), indicating that KHOH would like to partner with area schools, including Hakipu'u Learning Center, to steward the property, with the goal to keep the Lo'i Kalo in active cultivation and be a community resource and a way to teach and carry on [lo'i kalo] practices (see Exhibit B, excerpt from Board Minutes).

In its 2013 application, KHOH estimated the value of property at $1,000,000 (see Exhibit C, Grant Agreement for Contract Number 63824, as amended; the application is "Exhibit A" within

this exhibit). In reviewing the application, a permitted interaction group from the Legacy Land Conservation Commission visited the property with five project representatives, and noted both the landowner's "interest in maintaining the use of this property in a manner honoring her late husband [Marvin H. Fukumitsu] and the generations of his family that have grown kalo there," and that "the commitment from those present and the organizations and community they represent were quite compelling" (Exhibit D, Hakipu'u Lo'i Kalo Site Visit Report). During subsequent decisionmaking by the Legacy Land Conservation Commission, its Chair noted that "this project would be a success for multiple families" (Exhibit E, excerpt from Commission minutes).

The Board and KHOH entered into a LLCP grant agreement on March 20, 2015, and amended the agreement on March 15, 2017, and again on March 16, 2018, to extend the time of performance. As amended, the grant agreement states that KHOH "shall complete acquisition of the Property and record the conveyance no later than March 20, 2019." The grant agreement (Exhibit C) includes the KHOH grant application as its "Exhibit A" and the due diligence Checklist for LLCP Projects as its "Exhibit B." In the midst of a delay in accessing matching funds, the original landowner/willing LLCP seller was financially unable to continue holding the property, and TPL stepped in to purchase the property as a bridge or temporary owner, to "preserve the opportunity to protect these lands that represent the only lo'i left in Hakipu'u that have been in continuous cultivation since ancient times, and a place for community and our youth to come together and perpetuate Hawaiian cultural practices" (see Exhibit F).

In this situation, under Section 13-140-27, Hawai'i Administrative Rules (Haw. Admin. R.), "[i]f 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." Exhibit F includes evidence that the new landowner (TPL) supports the acquisition of the land by KHOH, and the willing seller letter from the original landowner, Gloria S. Fukumitsu, provides evidence that the original landowner supports the acquisition of the land by KHOH (see Exhibit A within Exhibit C).

In a letter dated April 6, 2018, Ka Huli o Hāloa (KHOH) requested "to amend the existing Legacy Land Grant Agreement 14-02 for Hakipu'u Lo'i Kalo to replace KHOH with the 501(c)3 nonprofit Ho'āla 'Āina Kūpono as the grantee." The current landowner and willing seller, The Trust for Public Land, in a letter dated May 4, 2018, indicated its support for the requested amendment. Ho'āla 'Āina Kūpono Corporation (HAKC), in a letter dated May 8, 2018, indicated that it "would like to support the effort to protect the Hakipu'u Lo'i Kalo by becoming the future nonprofit landowner, and working in partnership with area schools, Hakipu'u descendants including the Fukumitsu 'ohana, and the broader Ko'olau community to care for this significant place," noting that "[a]ll partners in this effort have asked [HAKC] to take on this kuleana of landowner and manager moving forward." Enclosed with HAKC's letter was its 501(c)(3) determination letter from the Internal Revenue Service and a statement of HAKC's Vision, Mission, and Values. In a letter dated May 10, 2018, the Fukumitsu 'ohana of Hakipu'u, O'ahu requested that the Legacy Land Conservation Commission support the requested amendment, noting that "Ho'ala 'Āina Kūpono's land stewardship experience and

positive working relationships with our 'ohana will help carry this effort forward, and are what is needed at this time" (Exhibit F, letters and enclosures).

At its meeting on May 14, 2018, under agenda item 2, the Legacy Land Conservation Commission decided to recommend the amendment of a grant from the Land Conservation Fund to Ka Huli O Hāloa by substituting Ho'āla 'Āina Kūpono for Ka Huli O Hāloa as the grant awardee for Legacy Land Conservation Program 14-02, Hakipu'u Lo'i Kalo, O'ahu, Tax Map Key Numbers (1) 4-9-003:003 and (1) 4-9-003:004. In letters dated May 22, 2018 and June 4, 2018, respectively, the Speaker of the House of Representatives, Scott K. Saiki, and the President of the Senate, Ronald D. Kouchi, advised the Chairperson of "no concerns or objections" to the proposed amendments (Exhibit G).

DISCUSSION:

The Division's proposed amendment to the existing grant agreement would replace Ka Huli O Hāloa (KHOH) with Ho'āla 'Āina Kūpono Corporation (HAKC) as Awardee, such that HAKC would complete the required due diligence for the conservation transaction and acquire fee simple ownership of the property from the current landowner, The Trust for Public Land (TPL). As explained to the Legacy Land Conservation Commission by TPL and 'Ohana Fukumitsu, given the roles of 'ohana members that actively steward and work the ancestral land and those of other 'ohana members serve on the board of KHOH (the organization that would own the land under the existing grant agreement), the main reasons for amending the LLCP grant agreement are to (1) help avoid future conflicts and preserve family relationships and (2) continue, expand, and tighten the close and productive working relationships between the 'ohana and HAKC, the organization that would own the land under the amended grant agreement.

Although the proposed amendment does not involve the "disposal of lands acquired with moneys from the [Legacy Land Conservation] fund," the factors that the Board may consider in deciding whether to approve such a disposition may be relevant, such as:

(1) eligibility to receive awards under Haw. Admin. R. § 13-140 and Chapter 173A, Hawai'i Revised Statutes (*see* Haw. Admin. R. § 13-140-34(c)(1)(A));
(2) capability for managing the land in accordance with the purposes for which the board awarded a grant (*see* § 13-140-34(c)(1)(B)); and
(3) best interests of the State (*see* § 13-140-34(c)(3)), based on criteria listed under § 13-140-39, such as:
    - status and adequacy of management planning, § 13-140-39(10);
    - community support, § 13-140-39(11);
    - connection to regional planning and protection efforts, § 13-140-39(13); and
    - capacity for long-term management, § 13-140-39(14).

Based on HAKC's leadership, track record, and corporate documentation, the Division believes that HAKC is eligible to receive LLCP awards as a nonprofit land conservation organization that protects resource value for "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 . . . as part of its activities or mission and has been determined and designated to be a nonprofit organization by the Internal Revenue Service" (*see* definitions for "nonprofit land conservation organization" and "resource value," § 13-140-2, and Exhibit H). Part of HAKC's mission is to "restore our collective kuleana (responsibility) to mālama 'āina, mālama 'ohana, and ho'oikaika pilina kānaka (care for the land, our families, and strengthen community relationships)" (see Exhibit F), which the Division deems equivalent to "protects land having value as a resource to the State as defined under section 173A-2, HRS" (*see* § 13-140-2). HAKC is known primarily for its work with the community in restoring Huilua Fishpond at Kahana, O'ahu; participating in planning for the future management of Ahupua'a o Kahana State Park; and running the Kahana Kilo Kai Program for Community-based Ocean Monitoring and Education, Mālama Kahana work days, and the annual Kahana 'Ohana Lawai'a Camp each summer, with funding support from Conservation International and others (information available at https://www.conservation.org/publications/Documents/CI_Hawaii-Lawaia-Ohana-Camp-Factsheet.pdf).

The Division believes that HAKC is capable of managing the land in accordance with LLCP grant purposes, is well-supported by the community, and is well-connected with regional planning and protection efforts, based on documentation submitted and presented by HAKC (*see* Exhibit H), discussion led by the Legacy Land Conservation Commission, and staff research. Collectively, the directors of HAKC have land management expertise, extensive cultural knowledge and cultural education experience, and strong commitment to the community-centric vision and plan for the future that is shared with 'Ohana Fukumitsu, the current land owner (The Trust for Public Land), the former landowner (Gloria S. Fukumitsu), and the current awardee (Ka Huli O Hāloa):

- Kahiau Wallace, President (Education Director, Kāko'o 'Ōiwi)
- Kealaulaokamamo Leota, Vice-President (Program Manager, Paepae o He'eia)
- Shaelene Kamakaala, Secretary (Program Coordinator, DLNR Community Based Fisheries Area, Research Corporation of the University of Hawai'i)
- Rachel Soares, Treasurer (Alaka'i and Kahu, Pūnana Leo o Ko'olauloa)
- Mark Alapaki Luke (Division Chair, Kūlana Hawai'i, Honolulu Community College)
- Hinano Teragi Tangaro (Nursery Specialist/Taro Propagator, Waimea Valley, O'ahu)
- Maluhia Fukumitsu ('Ohana Fukumitsu, descendants of Hakipu'u, O'ahu)

The Legacy Land Conservation Commission, after confirming that HAKC does not have experience as a landowner, scrutinized the status and adequacy of management planning for the property and HAKC's financial and managerial capacity for long-term land ownership and management. Under the current lease from TPL to KHOH, about 70% of the property is under active kalo production, including four lo'i in planted production phase and two lo'i in fallow production phase. Through a handshake agreement with Kualoa Ranch, a neighboring landowner, taro is also grown on adjacent Ranch lands.

If the Board approves the Division's proposed amendment to the grant agreement, then TPL will terminate its lease with KHOH and sign a new lease with HAKC for the interim transition period before TPL completes a sale to HAKC. TPL expressed its commitment to continue helping

HAKC with capacity building as they move forward with land ownership, and noted that TPL already secured a property tax exemption for nonprofit owners that will help to keep HAKC expenses at a manageable level (about $600/year at present rates). Other expenses include liability insurance for special events (which HAKC already covers for activities like its summer camp at Kahana), general liability insurance, and miscellaneous operating expenses, altogether totaling to a bare minimum operating budget of about $2,000/year.

HAKC clarified for the Commission that it is an all-volunteer organization that does not employ paid staff and runs on a very lean operating budget that is sourced from very small grants (largest to date at $50,000, from Kamehameha Schools) and community resourcefulness. A commissioner with close ties to the organization noted that "their structure fits very well with the 'ohana that's on the land there," and expressed "support [for] that effort and that model" of "kauhale and families on the land doing the work, because that's what they're ancestors have done" and appreciation "that there are nonprofits that exist like this, that are able to function and operate very minimally and stay real true to their vision and mission." Future upkeep and maintenance of the property will hopefully include rebuilding the existing house to accommodate visitor groups and a live-in caretaker – a heavy financial lift that would require a full capital campaign, with ongoing bills for utility service.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

At its meeting on March 28, 2014, the Board, under item C-1 on its agenda, approved the Division's recommendation to declare that the award of Legacy Land Conservation funds is exempt from the requirement of Chapter 343, Hawai'i Revised Statutes, for the preparation of an environmental assessment (Exhibit A, Staff submittal to Board of Land and Natural Resources, see page 7, Recommendation 4).

RECOMMENDATION:

That the Board approve the substitution of Ho'āla 'Āina Kūpono Corporation for Ka Huli O Hāloa as the Awardee for Legacy Land Conservation Program Grant Agreement, Contract Number 63824, subject to approval by the Attorney General.

Respectfully submitted,

David Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Exhibit A:	Staff submittal to Board of Land and Natural Resources, March 28, 2014, Item C-1 (unanimously approved as submitted)
Exhibit B:	Minutes, Board of Land and Natural Resources, March 28, 2014, excerpt for Item C-1
Exhibit C:	Legacy Land Conservation Program Grant Agreement, Contract Number 64704, as amended
Exhibit D:	Hakipu'u Lo'i Kalo Site Visit Report, Legacy Land Conservation Commission
Exhibit E:	Minutes, Legacy Land Conservation Commission, December 3, 2013, excerpt for Item 4
Exhibit F:	Letters to the Legacy Land Conservation Program/Legacy Land Conservation Commission from Ka Huli o Hāloa, The Trust for Public Land, Ho'āla 'Āina Kūpono (with enclosures), and 'Ohana Fukumitsu
Exhibit G:	Consultation letters from House Speaker and Senate President
Exhibit H:	Ho'āla 'Āina Kūpono Corporation Governing Documents, insurance documents, business registration, and bios/resumés for Directors