

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

April 26, 2019

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

Board Members:

SUBJECT: APPROVE A GRANT FROM AVAILABLE FUNDS IN THE LAND CONSERVATION FUND, AS REQUESTED IN AN APPLICATION TO THE 2018-2019 LEGACY LAND CONSERVATION PROGRAM, FOR THE PAYMENT OF \$1,500,000 IN DEBT SERVICE ON THE TURTLE BAY REIMBURSABLE GENERAL OBLIGATION BONDS

AND

DELEGATE AUTHORITY TO THE CHAIRPERSON TO APPROVE FUTURE ANNUAL GRANTS FROM AVAILABLE FUNDS IN THE LAND CONSERVATION FUND, AS REQUESTED EACH YEAR IN AN APPLICATION FILED BY A NONPROFIT LAND CONSERVATION ORGANIZATION, FOR THE PAYMENT OF \$1,500,000 IN DEBT SERVICE ON THE TURTLE BAY REIMBURSABLE GENERAL OBLIGATION BONDS

SUMMARY

The Division recommends that the Board approve \$1,500,000 in Legacy Land Conservation Program grants, from available funds in the Land Conservation Fund, for the reimbursement of debt service on the State's Turtle Bay reimbursable general obligation bonds (total payment \$1,500,000), as required by statute. The Division also recommends that the Board delegate authority to the Chairperson to approve subsequent annual grants for the same amount from the same funds for the same purpose.

BACKGROUND

Section 173A-5(h)(2), Hawai'i Revised Statutes (Haw. Rev. Stat.) establishes that one of the four allowable uses of the Land Conservation Fund is "[t]he payment of any debt service on state financial instruments relating to the acquisition of interests or rights in land having value as a resource to the State." Under Haw. Rev. Stat. § 171-171(c), "[t]he reimbursable general obligation bonds issued to acquire the [Turtle Bay] conservation easement and other real property interests shall be payable from the transient accommodations tax revenues allocated to

the Turtle Bay conservation easement special fund established by section 171-172 and from moneys from the land conservation fund.” To implement this mandate, Haw. Rev. Stat. 173A-13 directs that “[n]otwithstanding any laws to the contrary: (a) “Beginning July 1, 2015, a nonprofit land conservation organization shall file an application annually with the board requesting \$1,500,000 from the land conservation fund to be used for the reimbursement of debt service on the Turtle Bay reimbursable general obligation bonds until the bonds are fully amortized.” On September 24, 2018—in response to the Department’s annual request for an application—The Trust for Public Land, a nonprofit land conservation organization, filed an application in partnership with the Department, requesting said amount for said purpose.

As required by Haw. Rev. Stat. § 173A-5(i)(7), the application included the results of applicant consultation with the Department (DLNR), the Department of Agriculture (HDOA), and the Agribusiness Development Corporation (ADC) “regarding the maximization of public benefits of the project, where practicable.” HDOA and ADC replied that “[w]e do not wish to comment on the proposed grant.” DLNR replied that “[w]e do not object to the proposed grant” and attached comments from the Division of Aquatic Resources (DAR# 5774-8; please see Attachment 1).

The Legacy Land Conservation Commission (LLCC) reviewed the grant application, including the results of agency consultations, a field visit, and public testimony. In accordance with Haw. Rev. Stat. § 92-2.5(a)(1), concerning permitted interaction of members to investigate a matter relating to the official business of their board, the LLCC held a public meeting on May 14, 2018 (Meeting 59), during which it assigned a group of commissioners as a task force to conduct a field visit to Turtle Bay, and appointed a lead commissioner for the group (Agenda Item 6f, which the LLCC added to its agenda during the meeting). The LLCC held a second public meeting on October 12, 2018 (Meeting 60), during which the assigned group reported on the findings and recommendations of its field visit (Agenda Item 2). The group noted that care of the public areas is conducted at high levels; restoration activities such as removing invasives and planting natives are helping to establish nesting areas for albatross and other seabirds to increase production of viable eggs; and community participation in the work days has also increased demonstrating a positive community contribution to restoration of the area. The group expressed its concern about two signs that it encountered regarding mountain bike responsibility and liability on Turtle Bay trails, which were unclear regarding the terms and conditions of trail usage.

The LLCC held a third public meeting on October 12, 2018 (Meeting 61) during which it discussed the field visit report, viewed a brief presentation by The Trust for Public Land, and received supporting testimony from North Shore Community Land Trust and State Representative Sean Quinlan (District 47). The LLCC issued a recommendation that the Board approve the Turtle Bay grant application (Agenda Item 2). Subsequent to this third public meeting, The Trust for Public Land reported back that in response to LLCC observations, Turtle Bay management instructed a mountain biking vendor to remove the unclear signs from the approved major trail systems that are covered in the Conservation Agreement.

The Department forwarded the LLCC recommendation to the Senate President and the Speaker of the House of Representatives, and requested to consult with them about the LLCC recommendation to the Board (letter dated October 19, 2018). The Senate President and the Speaker of the House of Representatives held a consultation meeting with the DLNR Chair and

LLCP staff on December 20, 2018, followed by written replies indicating “no concerns or objections” about the recommendation and the grant award (please see Attachment 4).

DISCUSSION

The State issued the Turtle Bay reimbursable general obligation bonds to fund its acquisition of 52+ acres, plus a conservation easement over 568+ acres, at Ko‘olauloa, O‘ahu (Turtle Bay Resort), as authorized by Act 121 (Session Laws of Hawai‘i, 2015) and the Board (September 25, 2015, Item D-18). Act 121 includes a legislative finding that “the Turtle Bay conservation easement and other real property interests [to be acquired] by the department of land and natural resources ... is land having value as a resource to the State,” thus qualifying the land acquisition for debt service payment via the Land Conservation Fund. The State leased back the fee-simple land that it acquired to the Turtle Bay Resort for 65 years, under lease terms that mirror the terms of the conservation easement for the adjacent lands. The Division of Forestry and Wildlife holds and monitors the conservation easement in partnership with the North Shore Community Land Trust.

The Division notes that HB1292, as introduced in the 2019 Legislature, proposes to streamline the process for payment of debt service on the reimbursable general obligation bonds for Turtle Bay by authorizing the Board to make direct payments from the Land Conservation Fund (from above the annual spending ceiling) to the Turtle Bay Conservation Easement Special Fund. If enacted, this measure would eliminate the requirement for an annual Turtle Bay grant application process and for annual Board approval of a Turtle Bay grant award. However, after its referral to the House Committees on (1) Water, Land, and Hawaiian Affairs and (2) Finance, HB1292 did not move during the 2019 session, but could possibly continue through hearings to enactment in 2020. In the meantime, as an alternative approach to streamlining the process, the Division recommends that the Board delegate authority to the Chairperson to approve each future annual grant award of \$1,500,000 from the Land Conservation Fund to the Division of Forestry and Wildlife—from under the annual spending ceiling for the Legacy Land Conservation Program and as requested in an application submitted to fulfill the requirements of Section 173A-13, Hawai‘i Revised Statutes—to be deposited into the Turtle Bay conservation easement special fund for the payment of debt service on the Turtle Bay reimbursable general obligation bonds (Turtle Bay Makai – Kahuku Kawela Forever), subject to the availability of funds and the approval of the Governor.

Chapter 343, Hawai‘i Revised Statutes, Environmental Review

In 2015, the Legislature found that the acquisition of the Turtle Bay conservation easement and other real property interests by the Department is for the purpose of supporting, encouraging, and enhancing the natural beauty of Oahu's north shore, and is land having value as a resource to the State (Act 121). Thereafter, at its meeting of September 15, 2015, under Agenda Item D-18, the Board (1) determined that because the lands acquired in fee were “unimproved real property,” an environmental assessment was not required for that acquisition (*see* subsection 343-5(a), paragraph 1, HRS), and (2) declared that the acquisition of the conservation easement was exempt from the preparation of an environmental assessment pursuant to DLNR Exemption Class No. 1, Item No. 45 (DLNR Exemption List dated June 5, 2015) for “Acquisition of land or interests in land” (please see approved Exemption Notification,

Attachment 3). The Department believes that (1) in general, its payment of debt service on state financial instruments relating to the acquisition of interests or rights in land does not trigger environmental review requirements under Chapter 343, HRS, and (2) if the payment of debt service on state financial instruments relating to the acquisition of interests or rights in land does trigger environmental review requirements under Chapter 343, HRS, then in this case the Department of Accounting and General Services is responsible for fulfilling those requirements, because the payment of debt service to lenders is made from the state general fund, not from the department's special fund, which merely reimburses the general fund for the payments made to lenders.

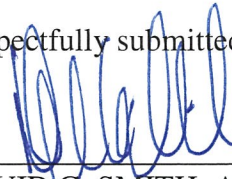
RECOMMENDATIONS

That the Board:

- 1) Approve an award of \$1,500,000 from the Land Conservation Fund, under the FY19 spending ceiling for the Legacy Land Conservation Program, to the Division of Forestry and Wildlife, to be deposited into the Turtle Bay conservation easement special fund for the payment of debt service on the Turtle Bay reimbursable general obligation bonds (Turtle Bay Makai – Kahuku Kawela Forever), subject to the availability of funds and the approval of the Governor.

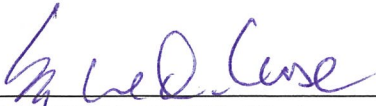
- 2) Delegate authority to the Chairperson to approve each future annual grant award of \$1,500,000 from the Land Conservation Fund to the Division of Forestry and Wildlife—from under the annual spending ceiling for the Legacy Land Conservation Program and as requested in an application submitted to fulfill the requirements of Section 173A-13, Hawai'i Revised Statutes—to be deposited into the Turtle Bay conservation easement special fund for the payment of debt service on the Turtle Bay reimbursable general obligation bonds (Turtle Bay Makai – Kahuku Kawela Forever), subject to the availability of funds and the approval of the Governor.

Respectfully submitted,



DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

ATTACHMENTS:

- Attachment 1: Comments from the Division of Aquatic Resources (DAR# 5774-8)
- Attachment 2: Letters from the President of the Senate (January 30, 2019) and the Speaker of the House of Representatives (January 23, 2019)
- Attachment 3: DLNR Exemption Notification, Acquisition of private land and conservation easement from Turtle Bay Resort, LLC, dated September 25, 2015

Attachment 1
April 26, 2019

DAR# 5774-8

Comments

The Division of Aquatic Resources (DAR) greatly appreciates particular facets of this project. Enhanced public access to the shoreline and additional public parking is especially appealing to DAR. In recent years shoreline public access and parking at these points of access has become more of an issue with Hawaii's fishermen. The Turtle Bay Makai - Kahuku Kawela Forever project addresses both of these issues, an effort that is not only valued by DAR, but Hawaii's fishermen as well.

However, DAR suggest a more comprehensive understanding of the aquatic (marine, fresh-water, and brackish-water) resources of the conservation easement area from Kawela Bay to Kahuku Point, in an effort to balance the use and conservation of the aquatic resources of this area. In general we feel that this project is a move in a positive direction towards defining this balance of use and conservation of Hawaii's aquatic resources.

Attachment 2
April 26, 2019



The Senate
Office of the President

STATE CAPITOL
HONOLULU, HAWAII 96813

January 30, 2019

Via Electronic Transmission: suzanne.case@hawaii.gov

Suzanne D. Case
Chair
Department of Land and Natural Resources
Kalanimoku Building
Honolulu, Hawaii 96813

Re: Legacy Lands Conservation Commission
Waianae Community Re-Development Corporation and Turtle Bay Debt Service

Pursuant to your letter dated October 19, 2018 relating to the Legacy Land Conservation Commission's recommendation to approve a grant award of \$1.5 million from 2019 Legacy Land Conservation Program for a 2019 debt service payment on the Turtle Bay reimbursable general obligation bonds, and letter dated November 1, 2018 relating to the Legacy Land Commission's recommendation to amend a grant application and grant award to Waianae Community Re-Development Corporation for the 2018 Legacy Land Conservation Program fiscal year, please be advised that I have no concerns or objections relating to the aforementioned matters.

Thank you for your attention to this matter, and if there are any questions, please do not hesitate to contact myself or my office.

Sincerely,

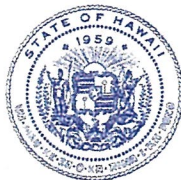
RONALD D. KOUCHI
Senate President

cc: David Penn – david.penn@hawaii.gov

SCOTT K. SAIKI
Speaker

Attachment 2
April 26, 2019

Phone No.: (808) 586-6100



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL, ROOM 431
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

January 23, 2019

Ms. Suzanne D. Case
Chairperson
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

Dear Chair Case:

Thank you for your letter regarding the Legacy Land Conservation Commission recommendation to approve a grant award of \$1.5 million, from available funds in the Fiscal Year 2019 budget, for the Fiscal Year 2019 payment of debt service on the Turtle Bay reimbursable general obligation bonds through the Legacy Land Conservation Program.

As discussed at our meeting on December 20, 2018 with Senate President Ronald D. Kouchi, I have no concerns or objections relating to the grant award for Turtle Bay debt service as recommended by the Legacy Land Conservation Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Saiki".

Scott K. Saiki
Speaker of the House

RECEIVED
2019 JAN 31 PM 1:13
DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Attachment 3
April 26, 2019

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 25, 2015

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Approval for Acquisition of a Perpetual Conservation Easement over Private Lands of the Turtle Bay Resort and Set Aside to the Division of Forestry and Wildlife; and Approval of Acquisition of Private Lands, and Sixty-Five (65) Year Direct Lease and Right of Entry to Turtle Bay Resort, LLC, for the Acquired Private Lands

Project / Reference No.: PSF 13OD-098

Project Location: Kahuku, Koolauloa, Oahu, Tax Map Keys (1) 5-6-003:various; 5-7-001:various; 5-7-006:various

Project Description: Acquisition of private land and conservation easement, issuance of right of entry and direct lease.

Chap. 343 Trigger(s): Use of State Funds and State Land.

Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject requests are exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing":

Acquisition of Conservation Easement:

Item No. 45: "Acquisition of land or interests in land".

Direct Lease:

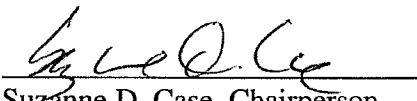
Item No. 47: "Leases of state land involving negligible or no expansion or change of use beyond that previously existing".

Right of Entry:

Item No. 51: "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing".

Recommendation:

It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.


Suzanne D. Case, Chairperson
Date 9/16/15

