

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

April 23, 2021

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

Board Members:

SUBJECT: AMEND PRIOR BOARD ACTION OF JANUARY 22, 2021, AGENDA ITEM C-1, APPROVAL FOR GRANT AWARDS FROM AVAILABLE FUNDS IN THE LAND CONSERVATION FUND, AS REQUESTED IN APPLICATIONS TO THE FISCAL YEAR 2021 LEGACY LAND CONSERVATION PROGRAM AND AS RECOMMENDED BY THE LEGACY LAND CONSERVATION COMMISSION, FOR THE ACQUISITION OF INTERESTS AND RIGHTS IN SPECIFIC PARCELS OF LAND HAVING VALUE AS A RESOURCE TO THE STATE, FOR:

- A. KE AO HALI'I (SAVE THE HĀNA COAST), \$1,581,700, FOR THE ACQUISITION OF APPROXIMATELY 30.3 ACRES AT HĀNA, MAUI (MAKA'ALAE LANDS), TAX MAP KEY NUMBERS (2) 1-4-012:002 AND (2) 1-4-010:030, :032, AND :034

SUMMARY

The Division recommends that the Board amend its action of January 22, 2021, Agenda Item C-1, that approved a grant award from the Fiscal Year 2021 Land Conservation Fund for Ke Ao Hali'i for the acquisition of interests and rights in land having value as a resource to the State (Maka'ala'e Lands). The proposed amendments would (a) facilitate a partial award of Fiscal Year 2021 grant funds to Ke Ao Hali'i for the acquisition, if practicable, and (b) clarify a procedural requirement that a Legacy Land Conservation Program grant agreement for acquisition of fee title by a county or a private entity must include a signature from a prospective, private holder of a conservation easement as a Consenting Party to the Grant Agreement.

BACKGROUND

Based on a recommendation from the Legacy Land Conservation Commission, the Board, at its meeting held January 22, 2021, under agenda item C-1, approved a Fiscal Year 2021 ("FY21") grant award from available funds in the Land Conservation Fund for Ke Ao Hali'i, for the acquisition of approximately 30.3 acres at Hāna, Maui (Item A, Maka'ala'e Lands, full award, \$1,581,700), subject to standard conditions, including:

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- 1)c. execution of a grant a grant agreement with the Board, including . . .
 - (ii) a signature from each prospective easement holder as a Consenting Party to the Grant Agreement.

Partial Award

After the January 22, 2021 Board meeting, a nonprofit awardee of Fiscal Year 2020 grant funds withdrew from the contracting process. Theoretically, this made \$900,000 in Fiscal Year 2020 ("FY20") grant funds available for the subject acquisition as the Board-approved first alternate for FY20 grant funds (Board meeting held April 24, 2020, under agenda item C-3, Recommendations 2)a and 3)). The Department is seeking to encumber these newly available FY20 funds for the subject acquisition, and wishes to assure that a partial award of FY21 funds, in the amount of \$681,700 or more, would not contradict the Board's earlier decision.

Consenting Party Signature

As described above, the grant agreement signature process described in the Board's standard condition 1)c.(ii) assures that a Consenting Party receives pre-conveyance notice of statutory requirements and deed restrictions concerning (1) Board approval to dispose of, encumber title/interests in, or convert the use of the conservation easement, and (2) revenue sharing with the State for the net proceeds of an easement sale. The Legacy Land Conservation Program ("LLCP") began implementing this signature requirement for Fiscal Year 2020 grants from the Land Conservation Fund under the Department's authorization "to proceed with all due diligence and negotiations necessary to carry out the Fiscal Year 2020 Legacy Land Conservation Program grants and acquisitions approved by the Board and the Governor" (Board meeting held April 24, 2020, under agenda item C-3, Recommendation 6) and in accordance with Section 13-140-24(c), Hawai'i Administrative Rules ("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.").

DISCUSSION

The Legacy Land Conservation Program ("LLCP"), in consultation with the Deputy Attorney General assigned to the LLCP and with Maui County Deputy Corporation Counsel, determined that standard condition 1)c.(ii), as cited in the BACKGROUND section above, need not apply to the County of Maui as a prospective easement holder for a Legacy Land grant award as long as the State and County continue to agree that the current language used in conservation easement deed restrictions adequately protects their respective interests.

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RECOMMENDATION

That the Board approve amendment of its action of January 22, 2021, Agenda Item C-1, to read as follows:

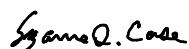
- 1) Authorize the Chairperson to enter into agreements and encumber Fiscal Year 2021 funds from the Land Conservation Fund with Ke Ao Hāli'i for up to \$1,581,700 for the acquisition of approximately 30.3 acres at Hāna, Maui, with a conservation easement held by Hawaiian Islands Land Trust and co-held by the County of Maui if the County so requires (Item A, Maka'ala'e Lands – using a total of up to \$1,581,700 from beneath the Fiscal Year 2021 spending ceiling for the Legacy Land Conservation Program, subject to:
 - a. compliance with Chapter 173A, Hawai'i Revised Statutes;
 - b. compliance with Chapter 343, Hawai'i Revised Statutes;
 - c. execution of a Grant Agreement with the Board, including:
 - (i) a clause stating that "[A]fter a community engagement process, and in the interim during the process, the Awardee shall implement reasonable managed public access, mauka-makai and lateral, on a nondiscriminatory basis", and
 - (ii) a signature from each prospective private easement holder as a Consenting Party to the Grant Agreement;
 - d. certification of an appraisal by the Department;
 - e. insertion of Legacy Land Conservation Program restrictions and covenants into the deeds as a condition of contractual agreements with the grant recipients;
 - f. approval of the Grant Agreement and of the Deeds by the Attorney General's office;
 - g. the availability of funds;
 - h. the approval of the Governor; and
 - i. such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:



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