

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

June 23, 2023

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

Board Members:

SUBJECT: ANNUAL REVIEW OF GRANTS FROM THE LAND CONSERVATION FUND FOR EACH PROJECT THAT HAS BEEN PENDING FOR OVER FIVE YEARS:

- (A) LLCP 2013-02, DLNR DIVISION OF STATE PARKS, ULUPŌ HEIAU BUFFER, DISTRICT OF KO'OLAUPOKO, ISLAND OF O'AHU, TAX MAP KEY NUMBER (1) 4-2-103:038
- (B) LLCP 2017-03, HAWAIIAN ISLANDS LAND TRUST, KEPLER KE'ANAE LO'I CONSERVATION EASEMENT, DISTRICT OF KO'OLAUPOKO, ISLAND OF MAUI, TAX MAP KEY NUMBER (2) 1-1-003:041
- (C) LLCP 2015-01, THE WAIPA FOUNDATION, KALUANONO AT WAIPĀ, DISTRICT OF HALELE'A, ISLAND OF KAUA'I, TAX MAP KEY NUMBER (4) 5-6-004:010 (**INFORMATION ONLY**)

SUMMARY

The Division requests that the Board review two grants from the Land Conservation Fund for projects that have been pending for over five years, and, for each grant, to either (1) defer action on the grant until the next annual review of grants for projects that have been pending for over five years, (2) impose new conditions for grant completion on the Awardee, or (3) terminate the grant. The Division also provides information about one discontinued grant.

BACKGROUND

A 2019 performance audit of the Department's Legacy Land Conservation Program ("LLCP"), available at <http://files.hawaii.gov/auditor/Reports/2019/19-01.pdf>, included a recommendation that LLCP "[I]mplement a policy that places a reasonable limit on the time a project, whether proposed by a state, county, or nonprofit organization, can remain pending." The Department's response to this recommendation indicated that

"[t]he Department will conduct an annual review of each LLCP project that has been pending for over five years, and will present that review to the Board for discussion and possible action. This review will help determine the extent to which the various agencies and non-profits who are responsible for completing these transactions are still working diligently to complete them, and the likelihood of completion within a reasonable time frame."

The Department recently completed its fifth annual review of grants from the Land Conservation Fund for projects that have been pending for over five years, and now presents its review to the Board:

- (A) LLCP 2013-02, DLNR DIVISION OF STATE PARKS, ULUPŌ HEIAU BUFFER, DISTRICT OF KO'OLAUPOKO, ISLAND OF O'AHU, TAX MAP KEY NUMBER (1) 4-2-103:038

On March 8, 2013, under agenda item C-1, the Board approved a \$1 million grant from the Land Conservation Fund for the State's acquisition of approximately 3.44 acres at District of Ko'olaupoko, Island of O'ahu. The Legacy Land grant application estimated total project costs at \$2 million. The Board submittal from the Division explained that:

The buffer abuts the north and east sides of Ulupō Heiau, the largest platform heiau structure on O'ahu. Ulupō Heiau is listed on the National and Hawaii Registers of Historic Places. Culturally significant springs are located around the heiau and nearby springs were used to irrigate the lo'i kalo between the heiau and the Kawainui fishpond. Acquisition of the land for inclusion into Ulupō Heiau State Park preserves the cultural landscape and historical setting of the heiau, and also allows State Parks to provide better management of visitation and cultural education programs and better coordination with neighboring land uses. Plans for the park include walking paths to assist understanding and visitation of the restored site.

The Board reviewed this grant on four previous occasions, each time deferring action until the next annual review (January 25, 2019, under agenda item C-1; January 10, 2020, under agenda item C-1; March 12, 2021, under agenda item C-1; and June 24, 2022, under agenda item C-1).

The Department and the landowner/seller, YMCA of Honolulu, have not agreed on a purchase price for the property. Prior to acquisition, Departmental conditions would include YMCA completion of a Phase 2 Environmental Site Assessment and, if required by the State Department of Health, subsequent remediation of contamination. The Division of State Parks has secured \$800,000 in matching funds from (1) the federal Land and Water Conservation Fund (\$550,000, ending September 30, 2024) and (2) the Castle Foundation (\$250,000, ending December 31, 2023). Available funds of over \$1.7 million exceed the \$1,375,100 value currently assessed by the City & County of Honolulu for real property taxation purposes.

The Department's submittal for the Board's first annual review of this grant included a letter dated November 17, 2018, from the Department to the YMCA, outlining several steps for project completion. The status of these steps, and of additional required due diligence, is summarized below. To complete a transaction at a purchase price equal to existing, secured funding (as supported by the Department's updated appraisal), the Division of State Parks would have to complete the transaction no later than December 31, 2023.

COMPLETED

- YMCA subdivided its property and created a distinct 3.2 acre parcel for conveyance to the State
- Engineering assessment of existing storm drainage performance (recommended minimum safety measures that would cost State Parks \$250,000-\$300,000)
- Phase 1 Environmental Site Assessment (found Department of Health records of lead, onsite, that exceeded acceptable levels)
- Preliminary Title Report (identified an encumbrance (easement) that provides driveway access to a neighboring property)
- Department's Appraisal update (reflecting increased Fair Market Value)

PENDING (next steps)

- Phase 2 Environmental Site Assessment
 - subsequent site remediation if required
- Purchase and Sale Agreement
- Escrow Account Number and Instructions
- Pro Forma title insurance policy
- LLC acceptance of Environmental Inspection, Project Accounting, and Resource Value Documentation forms
- Attorney General approval of a draft final warranty deed, including LLC deed restrictions
- Board approval of the acquisition, based on review of due diligence and draft final conveyance documents
- Recordation of conveyance from the YMCA to the State

(B) LLC 2017-03, HAWAIIAN ISLANDS LAND TRUST, KEPLER KE'ANAE LO'I CONSERVATION EASEMENT, DISTRICT OF KO'OLAUPOKO, ISLAND OF MAUI, TAX MAP KEY NUMBER (2) 1-1-003:041

At meetings held during 2017 (May 26, under agenda item C-1, and July 28, under agenda item C-2), the Board approved a \$210,000 grant from the Land Conservation Fund to Hawaiian Islands Land Trust for the acquisition of a conservation easement over approximately 6.12 acres at District of Ko'olaupoko, Island of Maui (excluding the area of an existing home), for the protection of cultural resources, agricultural resources, and natural wetland habitat. The Board submittals from the Division of Forestry and Wildlife, referencing the grant application, explained that:

"The property includes the small lo'i originally belonging to the chief Ke'anae, from which it is reported that the entire ahupua'a took its name . . . [and] both the native Hawaiian coot ('Alae Ke'oke'o) and the native Hawaiian Stilt (Ae'o) are known to occur here on a regular basis." The easement, if acquired, "will prohibit further residential development and will protect the unique soils that are present on the Property . . . [and] the agricultural use of the land in perpetuity . . . [under a] management plan . . . to actively farm the lo'i kalo." However, although the grant application states that "[t]he . . . ancient kalo lo'i at Ke'anae will be permanently conserved because conservation easement will prevent uses incompatible with agricultural production," it also indicates that "[t]he easement requires only that the land remain in agricultural production, but does not specify the crop grown."

After unforeseen funding delays, the State entered into its contract with Hawaiian Islands Land Trust on May 10, 2018, making today's submittal the Board's first review of the grant. In a letter dated March 13, 2023, Hawaiian Islands Land Trust ("HILT") indicated that:

- matching funds from public and private funding sources to cover the full project budget are secured [including key support from the U.S. Department of Agriculture, Natural Resources Conservation Service, Agricultural Conservation Easement Program-Agricultural Land Easement];
- drafting of the conservation easement is in its final phase; and
- project partners expect to close the transaction this calendar year,

and expressed its vision for the impact of this project:

HILT strongly supports the desire of Ke'anae and Wailua Nui 'ohana to ensure lo'i lands are preserved in perpetuity. As the waters were recently returned to the streams of East Maui and with approximately 150 acres of lo'i complexes on the Ke'anae peninsula and 300 acres of lo'i complexes in Wailua Nui, HILT hopes the protection of the Kepler's Ke'anae Lo'i opens the door for future opportunities to ensure Ke'anae and Wailua Nui remain in active lo'i kalo cultivation for generations to come.

- (C) LLCP 2015-01, THE WAIPA FOUNDATION, KALUANONO AT WAIPĀ, DISTRICT OF HALELE'A, ISLAND OF KAUA'I, TAX MAP KEY NUMBER (4) 5-6-004:010 (**INFORMATION ONLY – GRANT DISCONTINUED BY AWARDEE**)

The time of performance for the Board's LLCP Grant Agreement with The Waipa Foundation for acquisition of Kaluanono at Waipā, District of Halele'a, Island of Kaua'i (Contract No. 66451, as amended) ended on September 23, 2022. In its letter to the Division dated October 26, 2022, The Waipa Foundation formally acknowledged its "decision to withdraw from the Legacy Land Conservation Program Agreement [with] the State of Hawai'i for the fee purchase of Kaluanono in Waipā, Kaua'i." Fiscal

processing ensued, and the total contract amount of \$398,250 is now part of the unencumbered cash balance in the Land Conservation Fund.

LLCP will use this funding to cover the bulk of an existing \$400,000 Capital Improvement Project appropriation for The Waipa Foundation's acquisition of a nearby property (Halulu Fishpond Access) by adding it the \$50,000 secured in an existing grant agreement with The Waipa Foundation (for LLCP 2019-05 that began on April 20, 2020), pending enactment of the 2023 legislature's budget bill (which amends the existing appropriation language) and subsequent approvals and allotments from the State Department of Budget and Finance.

DISCUSSION

- (A) LLCP 2013-02, DLNR DIVISION OF STATE PARKS, ULUPŌ HEIAU BUFFER, DISTRICT OF KO'OLAUPOKO, ISLAND OF O'AHU, TAX MAP KEY NUMBER (1) 4-2-103:038

After spending ten years pursuing this acquisition, the Division of Forestry and Wildlife believes that without a contractual agreement that binds the parties to a purchase price that is supported by the State's most recent appraisal, the transaction will take substantial additional time and resources to complete. Acquisition of Ulupō Heiau Buffer is an important and compelling component of ongoing landscape-level conservation in the Kailua area, and it seems likely that the Division of State Parks would be able to secure other sources of funding for this venture, including future re-application to the Legacy Land Conservation Program if necessary. To date, the Division of State Parks has expended approximately \$64,410 of the \$1 million grant award, leaving \$935,590 that could be returned to the Land Conservation Fund to help mitigate a severe shortfall of cash projected for Fiscal Year 2025 and provide much-needed funding for other equally worthy projects.

- (B) LLCP 2017-03, HAWAIIAN ISLANDS LAND TRUST, KEPLER KE'ANAE LO'I CONSERVATION EASEMENT, DISTRICT OF KO'OLAUPOKO, ISLAND OF MAUI, TAX MAP KEY NUMBER (2) 1-1-003:041

The Division of Forestry and Wildlife believes that Hawaiian Islands Land Trust—with support from the U.S. Department of Agriculture, Natural Resources Conservation Service—is working diligently to complete this transaction, and is likely to complete it within a reasonable time frame.

RECOMMENDATIONS

That the Board:

- 1) Terminate a grant from the Land Conservation Fund for LLCP 2013-02 to DLNR Division of State Parks for Ulupō Heiau Buffer at District of Ko‘olaupoko, Island of O‘ahu, Tax Map Key Number (1) 4-2-103:038.
- 2) Defer action, until the 2024 annual review, on a grant from the Land Conservation Fund for LLCP 2017-03 to Hawaiian Islands Land Trust for Kepler Ke‘anae Lo‘i Conservation Easement at District of Ko‘olaupoko, Island of Maui, Tax Map Key Number (2) 1-1-003:041.

Respectfully submitted,



DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson
Board of Land and Natural Resources

ADDITIONAL INFORMATION

ITEM C-1(A)

June 23, 2023

**Memo from Division of State Parks
to Division of Forestry and Wildlife (June 13, 2023)**

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES

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DAWN N. S. CHANG
CHAIRPERSON
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

June 13, 2023

MEMORANDUM:

TO: David G. Smith, Administrator
Division of Forestry and Wildlife

FROM: Curt A. Cottrell, State Parks Administrator

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

SUBJECT: Discontinue Legacy Land Conservation Program Grant 2013-02
Land Acquisition for Ulupō Heiau Buffer

The Division of State Parks greatly appreciates Legacy Land Conservation Program efforts in support of the Ulupō Heiau grant award, and hereby provides official notice of our decision to discontinue Legacy Land Conservation Program Grant 2013-02, Land Acquisition for Ulupō Heiau Buffer (LLCP 2013-02), Kailua Ahupua'a, Ko'olaupoko District, Island of O'ahu.

Although our divisions and Land Division are working diligently to complete this acquisition, it will likely take considerable additional time for the State (Buyer) and YMCA of Honolulu (Seller) to agree on a purchase price, sign a purchase and sale agreement, perform all required due diligence, and close a transaction. Regardless of purchase price and the terms of a purchase and sale agreement, remaining due diligence requirements include a Phase 2 Environmental Site Assessment (and, possibly, subsequent site remediation) and the resolution of title matters and access/parking issues that, as now understood, may not afford sufficient protection for the State's future interests in the property. The Division believes that it can use the additional time consumed to raise funds from other sources that will replace the existing \$1 million grant award, including the Land and Water Conservation Fund, thereby freeing up additional funds that the Legacy Land Conservation Program can utilize for other high-priority land acquisitions.

cc: David Penn, Legacy Land Conservation Program
Van Matsushige, Land Division