

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

October 27, 2023

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Board Members:

SUBJECT: REQUEST APPROVAL OF THE RESOURCE LAND ACQUISITION
PLAN TO GUIDE THE BOARD IN ACQUIRING LAND HAVING VALUE
AS A RESOURCE TO THE STATE IN THE EXERCISE OF ITS POWERS
UNDER CHAPTER 173A, HAWAII REVISED STATUTES

BACKGROUND:

The Department's Legacy Land Conservation Program ("LLCP") provides grants to State agencies, counties, and nonprofit land conservation organizations for acquiring interests or rights in land (fee title, conservation easements, or agricultural easements) to protect land and preserve resource values for public benefit. Section 173A-5(g), Hawaii Revised Statutes ("HRS") establishes the scope of these acquisitions as the preservation of:

- (1) Watershed protection;
- (2) Coastal areas, beaches, and ocean access;
- (3) Habitat protection;
- (4) Cultural and historical sites;
- (5) Recreational and public hunting areas;
- (6) Parks;
- (7) Natural areas;
- (8) Agricultural production; and
- (9) Open spaces and scenic resources,

and § 173A-2.6 establishes the types of land to which the Legacy Land Conservation Commission ("LLCC") shall give priority in advising the Department and Board about recommended land acquisitions:

- (1) Lands having exceptional value due to the presence of:
 - (A) Unique aesthetic resources;
 - (B) Unique and valuable cultural or archaeological resources; or

- (C) Habitats for threatened or endangered species of flora, fauna, or aquatic resources;
- (2) Lands that are in imminent danger of development;
- (3) Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;
- (4) Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;
- (5) Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction; and
- (6) Lands that are unique and productive agricultural lands.

In addition, Section 13-140-39, Hawai'i Administrative Rules establishes fourteen criteria that the LLCC may consider in forming its recommendations for acquisitions.

Pursuant to Section 173A-3, HRS, the LLCP prepared a *Resource Land Acquisition Plan* ("*Plan*", **Exhibit A**) that shall guide the Board in acquiring land having value as a resource to the State in the exercise of its powers under Chapter 173A. ""Land having value as a resource to the State" 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" (§ 173A-2). The LLCC, and LLCP constituents, discussed the *Plan* in six public meetings held between April 2019 and May 2022, and the LLCP hosted an interactive, online forum for participants in the 2020 Hawaii Conservation Conference, *Place-Based Conservation Planning: A Forum to Help Identify and Prioritize Resource Needs and Guide Decisions for State-Funded Acquisition of Private Land*. The Department submitted the *Plan* for consultation with the Senate President and Speaker of the House of Representatives through a letter dated April 6, 2023.

DISCUSSION

A key feature of the *Plan* is an online interactive map of resource values and land conservation status. A user can access the map to explore areas of interest and view/edit data layers, which LLCP can update to incorporate the most recent and readily available information. The written portion of the plan provides context and background regarding the Legacy Land Conservation Program, and identifies and describes the data layers used to represent and analyze the spatial distribution of resource values and land conservation protections. The plan is a "living document" that LLCP may update through (1) studies relating to the need for land having value as a resource to the State (aka "resource value land"), (2) consideration of any plan relating to the acquisition of resource value land that has been prepared by any state or county agency, and (3) integration with LLCP governing authorities, internal manuals, and public-facing grant application forms and guidance documents.

RECOMMENDATIONS:

That the Board of Land and Natural Resources:

1. Approve the Resource Land Acquisition Plan to guide the Board in acquiring land having value as a resource to the State in the exercise of its powers under Chapter 173A, Hawai'i Revised Statutes.

Respectfully Submitted,



DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson

Attachment:

Exhibit A: Resource Land Acquisition Plan



Legacy Land Conservation Program

Hawai'i Department of Land and Natural Resources



Resource Land Acquisition Plan

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I. Introduction

The State of Hawai'i Legacy Land Conservation Program ("Legacy Land") provides grants to nonprofit land conservation organizations, counties, and State agencies for the acquisition of land and conservation easements for the protection of natural, environmental, recreational, scenic, cultural, historic, and agricultural resource values. This Resource Land Acquisition Plan ("Plan") guides the prioritization of grant awards for acquiring lands to protect Hawai'i's resources.¹

The Plan narrative presented here is accompanied by an interactive online planning tool that empowers decision-makers and applicants to analyze resource values, as well as gaps in available protection. This ArcGIS Online WebMap application, *available at* <https://arcg.is/aG11W>, displays the various data layers referenced in the Plan to show overlap among resource values, direct attention to where various resources are concentrated, and identify where resources are unprotected by regulatory mechanisms.



The Wai'anae Community Re-Development Corporation (WCRC) purchased 11 acres in Lualualei Valley, Wai'anae, Island of O'ahu, for the protection of agricultural lands and expansion of WCRC's MA'O Organic Farms.

II. The Legacy Land Conservation Program

The Hawai'i State Legislature created the Legacy Land Conservation Program to encourage agencies and nonprofits to protect the State's cultural, natural, and agricultural resources. Legacy Land offers funding to State agencies, counties, and nonprofit organizations to help them accomplish the State's land preservation goals. The Land Conservation Fund, which is primarily funded by a portion of the real estate conveyance tax, provides the funding for the program.



The Hawaiian Islands Land Trust used Legacy Land funds to purchase 81.447 acres in Nu'u makai, southeast shore, Island of Maui, for the protection of coastal wetlands, wildlife habitat, and cultural resources.

The Legacy Land Conservation Program provides grants for fee acquisitions and conservation easements. Fee ownership of land refers to the broadest possible ownership interest in land, where the owner holds all interests and value in the land. A conservation easement is a partial interest in the land where the landowner retains some uses and the buyer acquires some of the land value; the landowner and the buyer (a land trust or government agency) agree to permanently limit certain uses of the land to protect its conservation values.² The Land Conservation Fund can also support the operation, maintenance, and management of lands acquired through the program that is necessary to protect, maintain, or restore resources at risk on these lands, or that provides for greater public access and enjoyment of these lands. However, funding for management grants must not exceed five percent of the annual fund revenues of the previous year. Administrative costs and debt servicing for bond-funded State land acquisitions are also allowable uses of the Land Conservation Fund.

Application Process

Funding available to the program is set annually by the State Legislature. State agencies, counties, and nonprofit land conservation organizations are eligible to apply for grant funding. A county or nonprofit grant recipient must provide matching funds of at least 25% of the total project costs.

The Legacy Land Conservation Commission, a volunteer, nine-member State commission subject to Sunshine Law, meets annually to recommend projects for funding to the Board of Land and Natural Resources. This Commission provides an in-depth review of the various projects, conducts field visits, and considers public testimony.

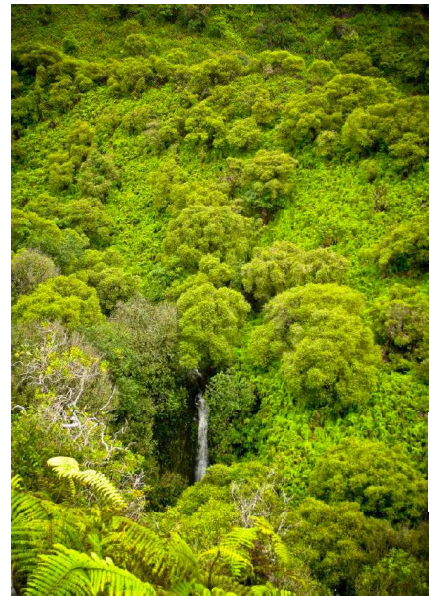
Criteria that the Legacy Land Conservation Commission may consider in recommending Legacy Land Grant Awards (Section 13-140-39, Hawai'i Administrative Rules)

- (1) Completeness of the acquisition application;
- (2) Acquisition of interests or rights in land having value as a resource to the State for the preservation of the following nine purposes listed in §173A-5, HRS:
 - (A) Watershed protection;
 - (B) Coastal areas, beaches, and ocean access;
 - (C) Habitat protection;
 - (D) Cultural and historical sites;
 - (E) Recreational and public hunting areas;
 - (F) Parks;
 - (G) Natural areas;
 - (H) Agricultural production; and
 - (I) Open spaces and scenic resources;
- (3) Linkage of protected acreage of similar resources;
- (4) Opportunities for appropriate public access and enjoyment;
- (5) Presence of environmental hazards;
- (6) Feasibility of a project within the two-year acquisition timeframe;
- (7) Cost of acquisition;
- (8) Proportion of matching funds being leveraged;
- (9) Urgency of need to acquire;
- (10) Status and adequacy of management planning;
- (11) Community support for acquisition;
- (12) Completeness of acquisition funding;
- (13) Connection to regional planning and protection efforts; and
- (14) Capacity for long-term management.

The Commission's recommendations are presented to the Senate President and House Speaker for consultation. Consultation results and Commission recommendations are then presented for approval to the Board of Land and Natural Resources in a public meeting, and the Board's decision is forwarded to the Governor for final approval and release of funding.

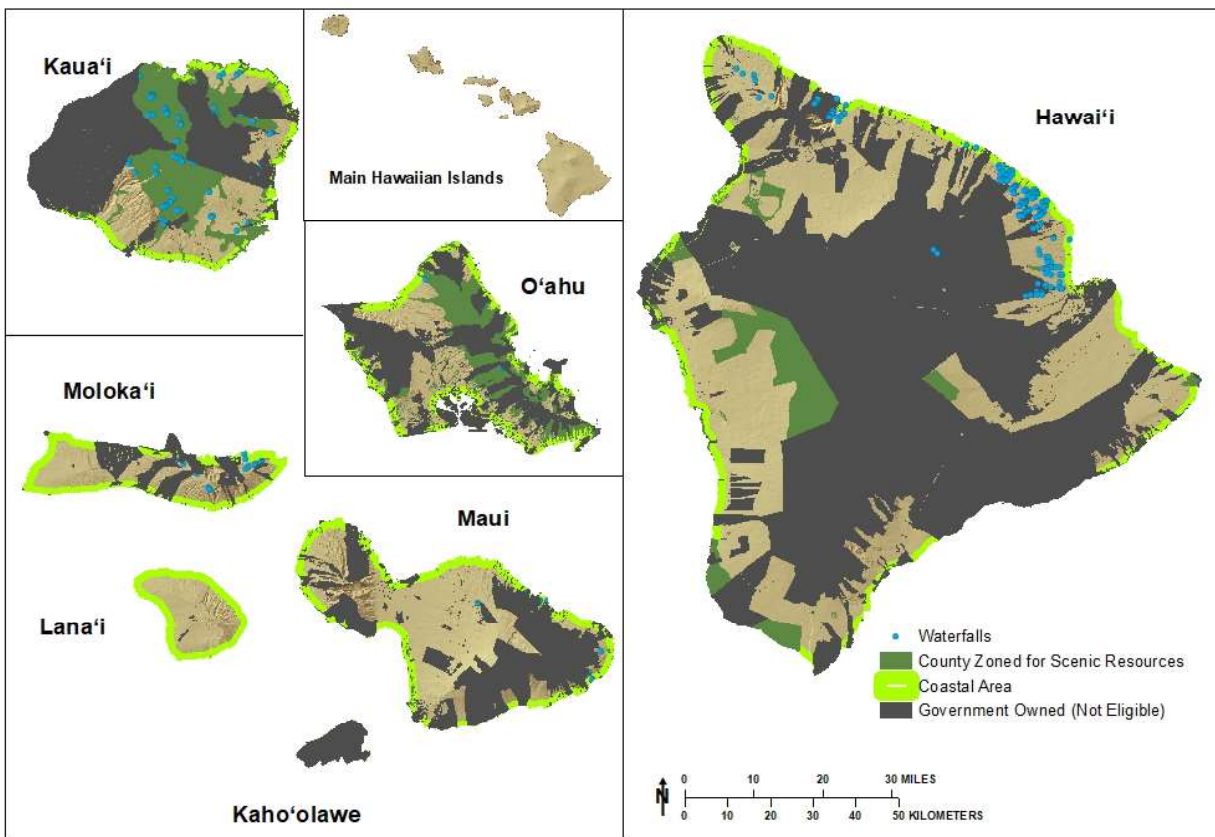
III. Resource Priorities

Section 173A-2.6, Hawai'i Revised Statutes, establishes nine types of lands that should be prioritized for acquisition. The maps shown below provide recommendations about how various data layers could be organized to identify several of the resource values reflected in these priorities. We encourage readers to use the WebMap to explore overlap among resource values and protective designations, as well as to zoom in on particular lands of interest.



Molokai Land Trust and Ke 'Aupuni Lokahi purchased 196.4 acres in Mana'e, Island of Molokai, for the protection of watershed, cultural, and natural resources including Kawaikapu waterfall.

Unique Aesthetic Resources



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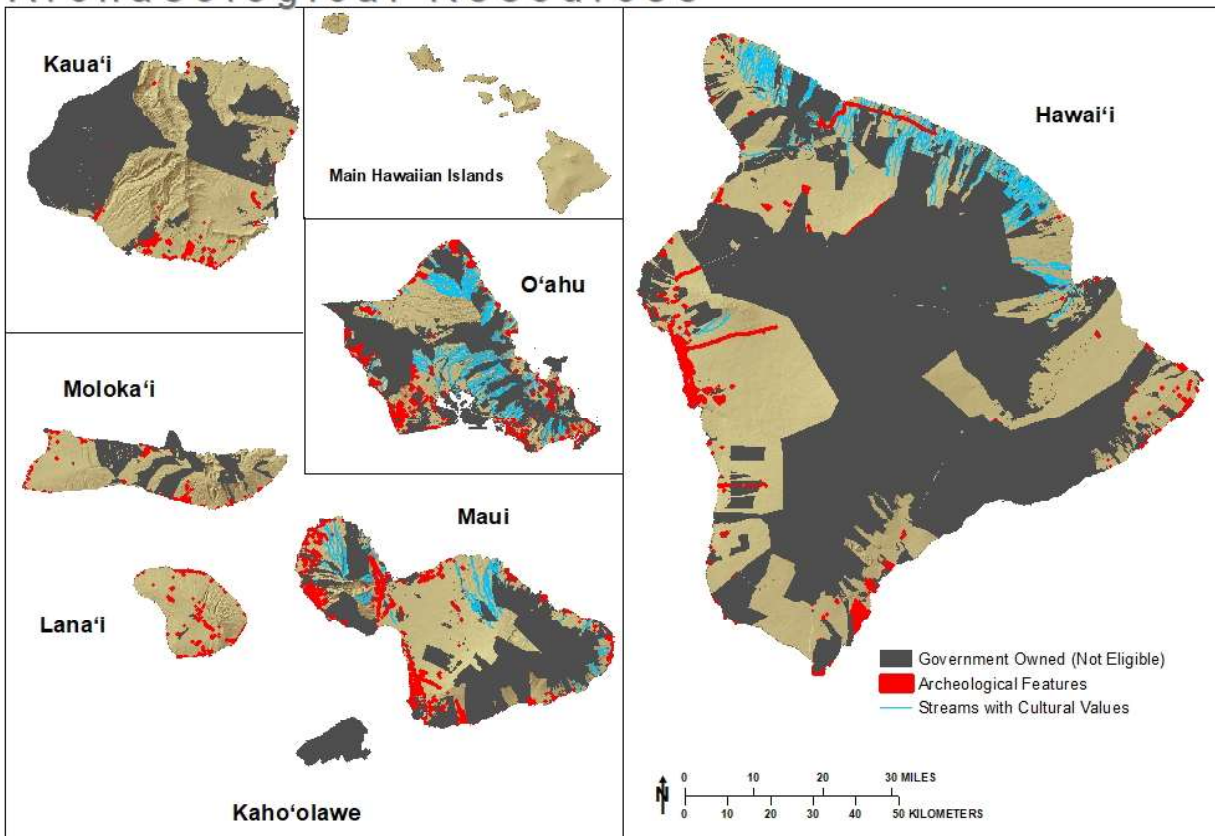
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When prioritizing aesthetic values, information available to decisionmakers may include public testimony, county plans that designate areas for their scenic qualities through zoning, and various data layers that identify scenic features, such as coastlines and waterfalls.

Data sources used:

1. Kaua'i County General Plan: Zoned Natural or Parks and Recreation.³
2. Maui County General Plan: Zoned Open Space or Park-Golf Course.⁴ Note that large areas, likely in natural settings, are labeled "interim" and are not otherwise categorized.
3. City and County of Honolulu: Zoned Country District, or P-1 or P-2 (Preservation).⁵
4. Hawai'i County: Zoned Open District.⁶
5. Coastline (buffer).⁷
6. Waterfalls.⁸

Unique and Valuable Cultural or Archaeological Resources



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Mapping cultural resources is particularly challenging. Many archeological resources have been mapped, but data entered in the State Geographic Information System ("GIS") is incomplete. In addition to the limited data sources provided, community input and narratives should be heavily relied upon to identify cultural and archaeological values.

Data used for prioritization include:

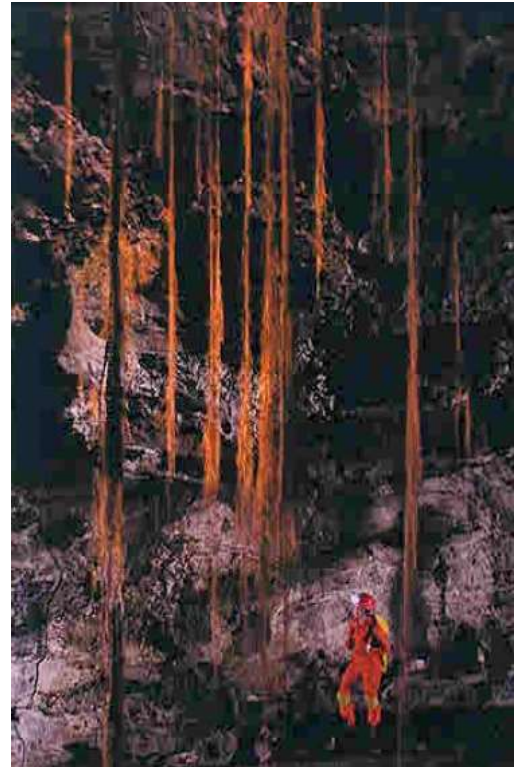
1. State Inventory of Historic Places: The data provided by the State Historic Preservation Division ("SHPD") does not represent every site that has been recorded, as only approximately

a third of known sites have been converted to a GIS layer thus far. Additionally, there may be cultural sites in Legacy Land project areas that have not yet been entered into the GIS. Also, the data provided does not include features within lands controlled by the federal Department of Defense.

2. Hawai‘i Stream Assessment designation of Streams with Cultural Values.⁹ Criteria applied in this assessment include:
 - a. Changes in stream management would affect the resource.
 - b. The resource was functionally dependent on the stream.
 - c. The resource was in close proximity to the stream.

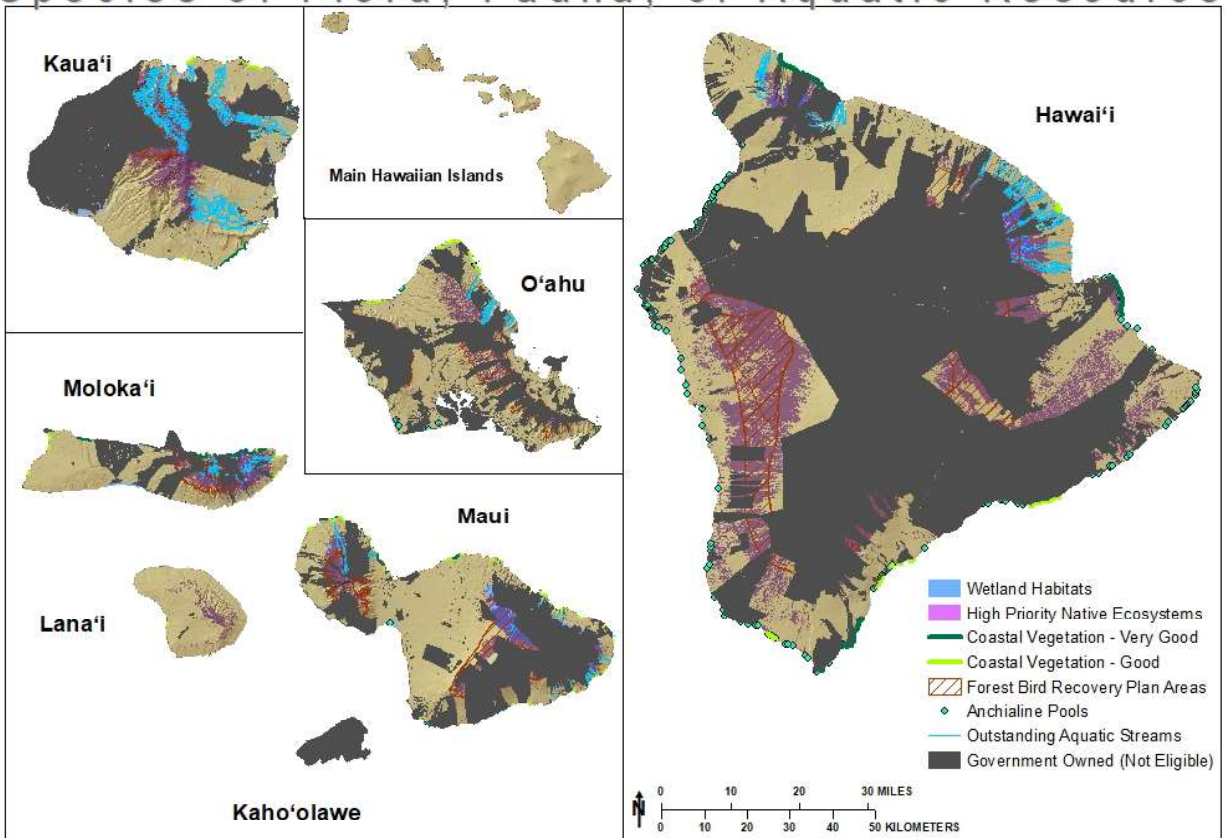
Additional references that could be used to prioritize cultural and archaeological resource values include:

1. [State Historic Preservation Plan](#): SHPD revises this plan to provide a vision for historic preservation within the State. It serves as a guide for effective decision making, for coordinating historic preservation activities within Hawai‘i, and for communicating statewide historic preservation goals, policies and objectives.
2. [Historic Preserves Program Plan \(1993- Unofficial\)](#): Detailed plan for a preserves program. *Files available at SHPD.*
3. [Historic Preservation Library, Bibliography Database](#): Records of federal, State, and local development plans, permit applications, and land use approvals. Where historic properties were thought to be probable, inventory surveys were conducted. *Available through the bibliography database at the SHPD Library.*
4. [Mana i Maui Ola](#): Office of Hawaiian Affairs 15-year Strategic Plan for 2020-2035.
5. Maui County [Shoreline Access Inventory \(2005\)](#): Identifies specific locations that have value for shoreline access.
6. [Shoreline Public Access](#): This webpage provides information about shoreline public access in Hawai‘i and the Hawaii Hawai‘i Coastal Zone Management Program's five year public access enhancement strategy.
7. [State Comprehensive Outdoor Recreation Plan \(2021\)](#): Provides the technical basis and planning assumptions for making decisions about State and county programs, county plans, and land use amendments. An update is required every five years for the State to qualify to receive federal grants from the Land and Water Conservation Fund to expand outdoor recreation opportunities statewide.



*The Cave Conservancy of Hawai‘i received Legacy Land funds to purchase three acres near Kula Kai View Estates, Island of Hawai‘i, to protect lava tunnel access and natural and cultural lava tube resources.
PC: Peter and Ann Bosted*

Habitats for Threatened or Endangered Species of Flora, Fauna, or Aquatic Resources



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Extensive mapping exists that documents locations where suitable habitat remains for supporting rare and valuable terrestrial and aquatic species. Data used for prioritization include:

1. Wetland habitat (excluding streams).¹⁰
2. High-priority native ecosystems.¹¹ These areas are the "Priority Areas for Conservation of Native Biodiversity" – Category 1: Intact Native Ecosystems, Highest Biodiversity, as mapped with the Hawai'i Gap Analysis and LANDFIRE datasets. The [Hawai'i Forest Action Plan](#) notes that these areas have the most intact ecosystem structures and functions, have historically documented high plant diversity, and contain some of the most important areas for conserving forest birds.
3. Hawai'i Stream Assessment designation of Streams with Outstanding Aquatic Resources Values.¹² The criteria applied for this assessment relied on the presence of native gobies, absence of introduced species, and whether a stream was dammed, diverted, or channelized.
4. Coastal Assessment – Good or Very Good Habitat Quality Condition.¹³ The "high priority native ecosystem" layer generally does not include coastal vegetation quality, which is difficult to detect in aerial imagery mapping. This Coastal Assessment layer categorizes areas that have high coastal native vegetation values.
5. Forest Bird Recovery Plan. These are areas most important for native forest bird habitat.¹⁴
6. Anchialine Pools. Included for their unique aquatic fauna.¹⁵



Ae'o (Hawaiian Stilt; Himantopus mexicanus knudseni) and 'alae ke'oke'o (Hawaiian Coot; Fulica alai) at Hāmākua marsh, Kailua, Island of O'ahu where the Department of Land and Natural Resources, Division of Forestry and Wildlife, used Legacy Land funds to purchase 67 acres for the protection of natural habitat, watershed, and scenic open space.

In addition to the data layers used to portray these important areas, documentation of many other efforts to identify and prioritize habitat quality and value is available, including:

1. Department of Land and Natural Resources, Division of Forestry and Wildlife. The 2015 [Hawai'i State Wildlife Action Plan](#) ("SWAP") provides information on the distribution and abundance of species of greatest conservation need; identifies the location and condition of key habitats for these species; describes the major threats to these species and/or their habitats; proposes conservation actions to conserve these species and their habitats; and recommends methods to monitor the effectiveness of the conservation actions. The SWAP is structured to present this information on a variety of levels, from landscape to island to species.
2. Department of Land and Natural Resources, Division of Aquatic Resources. The Hawai'i Watershed Atlas ranks watersheds on a 1-10 scale and also contains species lists and compiles information from prior assessments.
3. The Nature Conservancy of Hawai'i High Islands Ecoregional Plan, 2018. Native natural communities are mapped and ranked, including terrestrial, coastal, and aquatic habitat.
4. U.S. Fish and Wildlife Service Recovery Plans and Critical Habitat Designations show areas of importance to individual species.
5. Department of Land and Natural Resources, Division of Forestry and Wildlife. The [Hawai'i Forest Action Plan](#) (2016)¹¹ addresses key themes in the conservation of native biodiversity, including Benefits and Services, Threats, Trends, Present Conditions, Priority Issues and Areas, and Data Gaps and Opportunities.

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6. [Forest Legacy, Amended Assessment of Needs](#) (2018): Assesses natural resources and land-use trends for forested areas statewide.
7. [Hawai'i Aquatic Invasive Species Management Plan](#) (2003): Identifies feasible, cost-effective management practices to be implemented by State, federal, county, nongovernmental, private, and volunteer entities for the environmentally sound prevention and control of aquatic invasive species.
8. [Forest Land Enhancement Program Hawai'i State Priority Plan](#): Contains information on forest resources and management goals and mechanisms.
9. [Water Resource Protection Plan](#) (Hawai'i Commission on Water Resource Management, updated 2019): The objective of the Water Resource Protection Plan is to protect and sustain groundwater and surface water resources, watersheds, and natural stream environments statewide. The plan is a comprehensive study of occurrence, sustainability, conservation, augmentation, and other resource management measures.
10. [Hawai'i Coastal and Estuarine Land Conservation Plan](#) (2014): This federal initiative enables states to permanently protect coastal and estuarine lands by providing matching funds for community-based projects to acquire property from willing sellers. This plan provides a framework for identifying coastal and estuarine land conservation priorities and defines the process for acquiring such lands.
11. [Strategic Plan for Wetland Conservation in Hawai'i](#) (Pacific Coast Joint Venture, 2006): A plan for conserving waterbirds and wetlands, designed to protect, restore, increase, and enhance all types of wetlands, riparian habitats, and associated uplands throughout the Pacific Coast region to benefit birds, fish, and other wildlife. Protection through acquisition is one of the six major strategies to accomplish this goal.

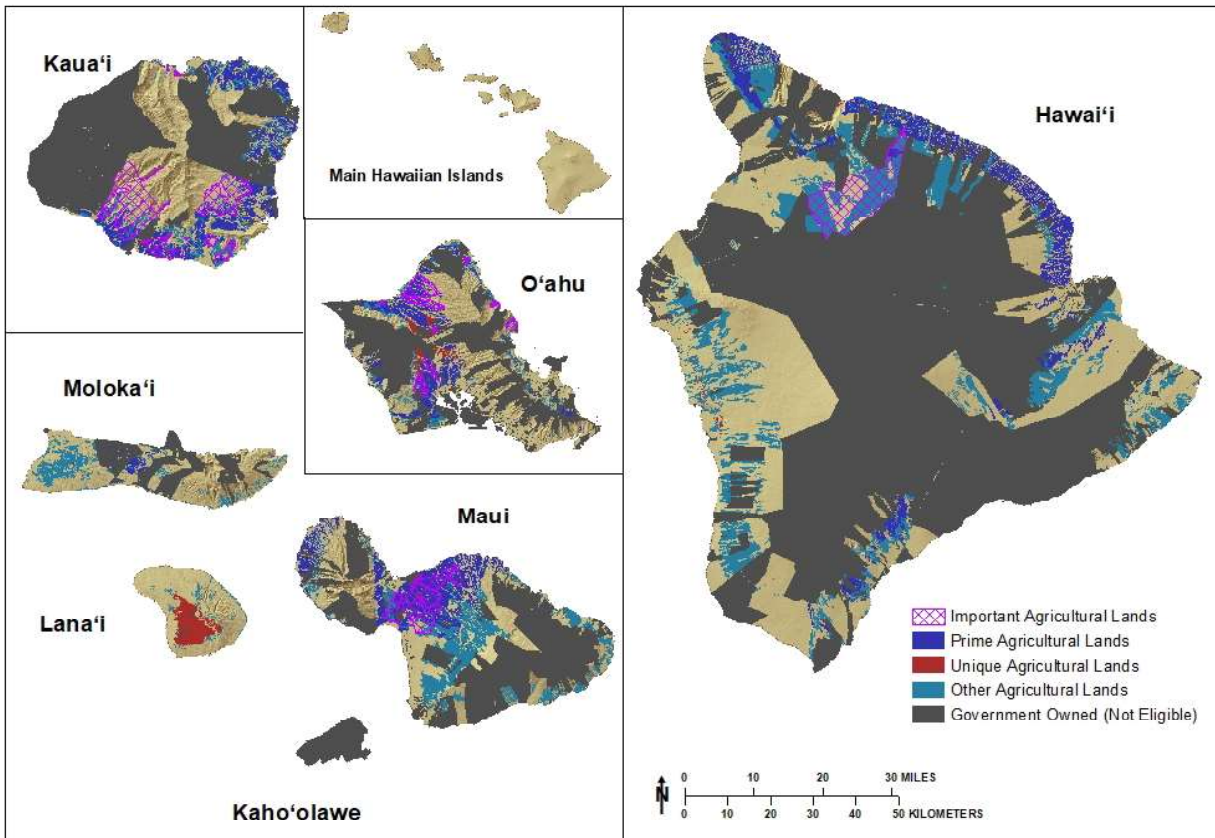


The Division of Forestry and Wildlife used Legacy Land funds to purchase 3,582 acres of land in Honouliuli, Wai'anae Mountain Range, Island of O'ahu, for the protection of forest, watershed, and wildlife habitat.



The National Tropical Botanical Garden (NTBG) used Legacy Land funds to purchase 169.87 acres of land in Honomā'ele, Hāna, on Island of Maui. NTBG has integrated the protection and restoration of native coastal plant communities on the land.

Unique and Productive Agricultural Lands



DLNR-DOFAW (808) 587-4170. December 2021.

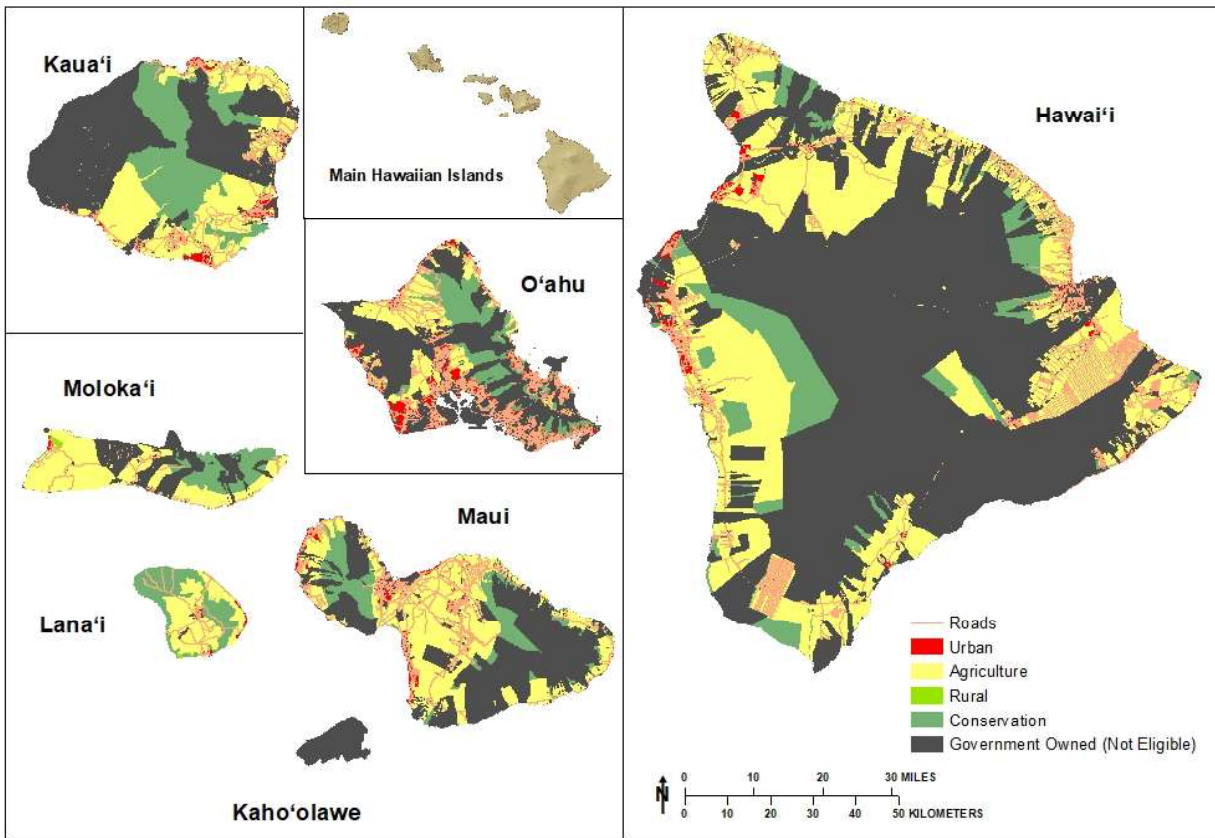
Data used for prioritization include:

1. Important Agricultural Lands: Lands Classified as Important Agricultural Lands ("IAL") by the State Land Use Commission. This layer depicts docketed lands that established IAL. IAL designation serves to promote, conserve, and protect agricultural lands and assure the availability of agriculturally suitable lands. The polygons represent petitions to the Land Use Commission for declaratory orders designating lands as IAL pursuant to Hawai'i Revised Statutes Sections 205-44 and -45 and Hawai'i Administrative Rules Sections 15-15-98, -99, -120, and -121. IAL boundaries were compiled by the State Land Use Commission. IAL depicted in these files are not official and are merely representations for presentation purposes only. An official designation of IAL may be obtained through the State Land Use Commission. Updated by the Hawai'i Statewide GIS Program, October 2020.
2. Agricultural Lands of Importance to the State of Hawai'i.¹⁶ This analysis includes:
 - a. Prime Agricultural Land – Land which has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops economically when treated and managed according to modern farming methods.
 - b. Unique Agricultural Land – Land that has the special combination of soil quality, location, growing season, moisture supply, and is used to produce sustained high quality and of high yields of a specific crop when treated and managed according to modern farming methods.

c. Other Important Agricultural Lands – Land other than Prime or Unique Agricultural Land that is also of statewide or local importance for agricultural use.

3. [Soils of Hawai'i](#) (University of Hawai'i College of Tropical Agriculture & Human Resources, 2007): Report with descriptions of the soil orders found in the Hawaiian Islands and maps of the soil order locations on each island. *Not mapped for this analysis but could be cited/used to demonstrate agricultural value.*

Lands in Imminent Danger of Development



DLNR-DOFAW (808) 587-4170. December 2021.

Section §173A-2.6, Hawai'i Revised Statutes priorities include:

2. Lands that are in imminent danger of development;
3. Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;
4. Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;
5. Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction.



The Livable Hawai'i Kai Hui (LHKH) used Legacy Land funds to purchase five acres including the Hāwea heiau complex and Keawāwa wetland in Maunaloa, Island of O'ahu, for the protection of the natural and cultural resources such as this petroglyph.

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Land use regulations largely influence the likelihood that lands can be developed or modified. Additionally, suitable access for development actions can facilitate the conversion of these resources.

Data used for prioritization include:

1. Roads.¹⁷
2. State Land Use District Boundaries – Zoning designations can help to protect land from being converted to other uses, but land use zoning does not always reflect the actual resources present on the land, and zoning can also be changed. Under existing zoning, land within the Urban Land Use District is generally the most likely to be developed and converted to residential or commercial use. Lower intensity development is allowable in the Agricultural and Rural districts, but agricultural zoning would still allow conversion of forest to plantation or pasture. The Conservation District has the highest levels of protective restrictions on development, where danger of development would generally be less imminent than elsewhere, but incremental degradation of conservation values is possible through land management actions (or lack thereof).
3. Special Management Area Boundaries ("SMA") – Land within an SMA has additional regulatory requirements that can limit development.

Additional references for assessing development risk include:

1. [Hawaii Coastal Erosion Management Plan](#) (Department of Land and Natural Resources, "COEMAP"): COEMAP seeks to improve the efficiency and effectiveness of coastal erosion management in Hawai'i. Land acquisition is identified as a tool for accomplishing this goal.
2. [Islands on the Edge: Housing Development and Other Threats to America's Pacific and Caribbean Island Forests](#) (U.S. Department of Agriculture, 2014): Provides an overview of expected housing density changes and impacts to private forests, including the vulnerability of island forests to development, invasive species, and wildfires. Sixty-six percent of the forests in Hawai'i are on private land.

IV. Gaps in Protection

The accompanying WebMap can display where protective designations and regulations do not cover areas of high resource value. Examples include:

1. Areas where conservation district boundaries do not cover high priority lands for threatened and endangered species, aquatic habitats, and historic features.
2. Areas where agricultural district boundaries do not cover high priority lands for agriculture, which instead are zoned Urban.
3. Areas where agricultural and conservation district boundaries do not cover high priority areas for aesthetic values.

Additional layers recently added to the WebMap include:

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1. Natural Area Partnership Preserves (Department of Land and Natural Resources): Private lands enrolled in this program are dedicated for conservation in perpetuity through transfer of fee title or a conservation easement to the State or a "cooperating entity" (a private nonprofit land-holding organization, or any other body deemed by the department as satisfactorily able to assist in the identification, acquisition, and management of natural area reserves). Although the dedication may be revoked if state funding is terminated without the concurrence of the landowner and cooperating entity (creating a gap in protection), if a private landowner or cooperating entity elects to withdraw from the program, then the perpetual conservation easement shall remain in effect, avoiding a gap in protection (Chapter 195, Hawai'i Revised Statutes).

2. Environmental Risk Layers: Data layers indicate lands at risk of resource value degradation and loss, creating gaps in protection. For example, coastal lands may lose value in the future when impacted by rising sea levels, and lava inundation presents a wholesale conversion of land values. Layers added include Wildfire Risk Zones, Wildfire Risk Ratings, Coastal Flood Zones with Sea Level Rise of 3.2 feet, Flood Hazard Zones, and Tsunami Evacuation Zones.¹⁸

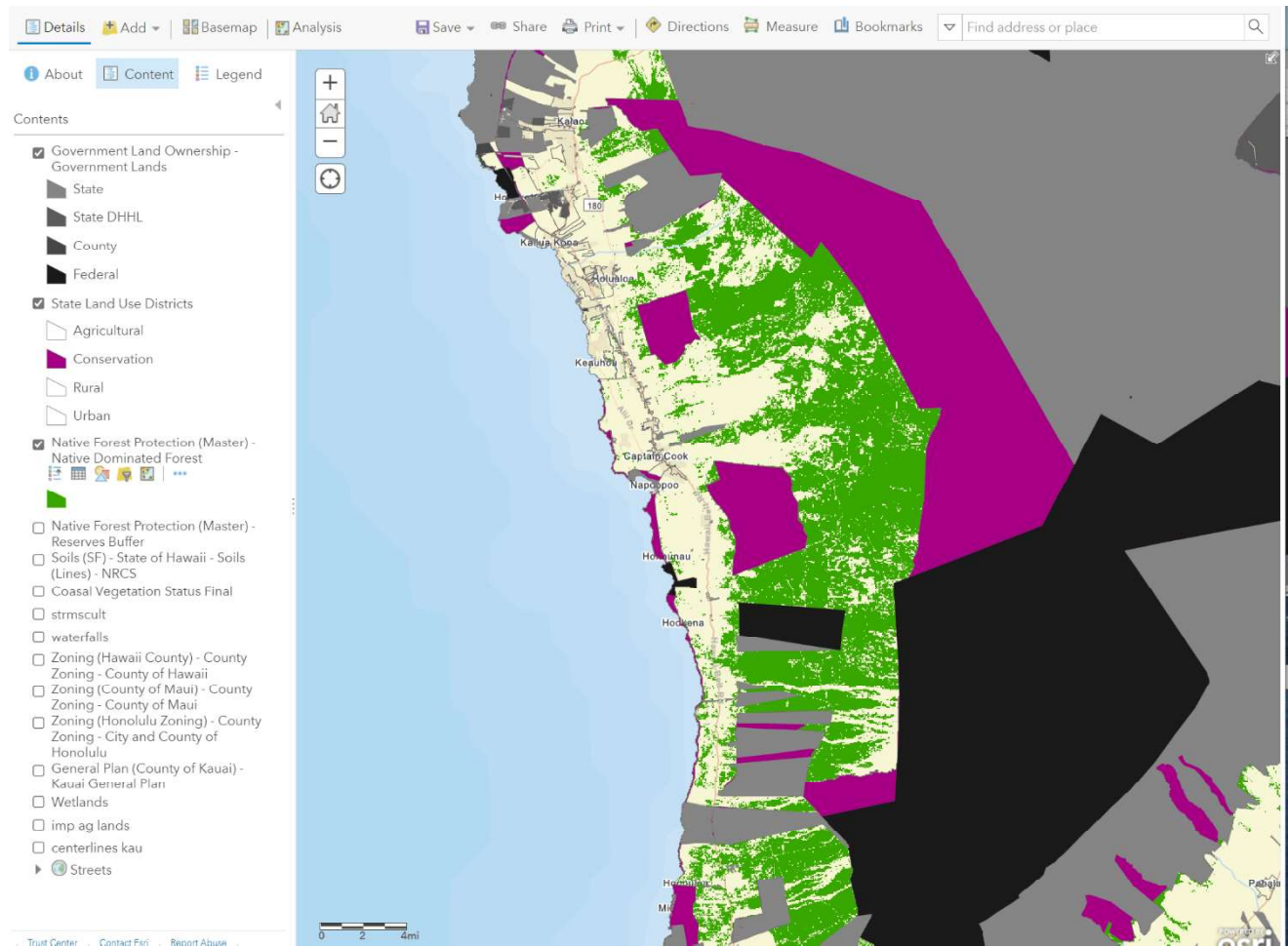
How to use the WebMap

The WebMap contains data layers that a user can display or hide by clicking the box to the left of the layer title. Symbology can also be user-modified (turning layers into different colors or transparencies), as well as the sequence of the layer display (since the layer at the top of the menu will overlay the layers below). Finally, a user can modify the base map to show satellite imagery, topographic maps, or simplified data.

In the example below from South Kona, Island of Hawai'i, government lands are colored dark grey or black. The Conservation District boundary is pink, with other land use districts transparent. Under these layers native forests appear in green. This screenshot shows the largest area of native forest in the State that is not protected by conservation district regulations and thus is most threatened by development and conversion to other uses.

Detailed tutorials for using WebMaps are available online at:

[Get started with Map Viewer Classic—ArcGIS Online Help | Documentation](#)



V. Conservation Tools

A. Land Regulations

Resources requiring protection are located on both private property and public property. In Hawai'i, half of the land is owned by federal and State government agencies and is used for various preservation, agricultural, commercial, military, and residential purposes.

Methods for protecting lands and resources for conservation purposes include laws under which compliance is mandatory, and voluntary incentives and approaches that are available for landowner participation.

Some examples of laws with conservation purposes include:¹⁹

- State land use law and county zoning ordinances
- National Environmental Policy Act and State Environmental Impact Statement Law (environmental assessments and environmental impact statements, and associated cultural impact assessments)
- Federal and State endangered species laws (protection of threatened and endangered species and habitats)

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Some examples of voluntary incentives and approaches are:²⁰

- Tax benefits (property, income)
- Regulatory assurances (Safe Harbor Agreements)
- Technical assistance
- Grant funding for resource management
- Fee land acquisition
- Conservation easements
- Landowner recognition
- Cooperative partnerships between private, public, local, and national entities

B. Acquisition of land and conservation easements

Where regulatory measures are not adequate to achieve desired land protection outcomes, Legacy Land and similar federal and county programs work with potential buyers and willing sellers on land acquisitions. Conservation easement and fee acquisitions are primarily voluntary conservation tools, and their use hinges on a landowner's willingness to participate.

Conservation Easements

A conservation easement is a voluntary, legally binding agreement between a landowner and a government agency or non-governmental conservation organization (the easement holder). The agreement keeps land in natural habitat, agricultural, open space, or other conservation uses. The agreement is customized to meet the objectives of both landowner and easement holder, and is perpetual under State law. An easement is especially applicable in situations where a landowner is not interested in selling land but is willing to dedicate the land to specific purposes and restrict/prohibit other uses. For example, an easement may limit future development while allowing certain agricultural production practices to continue. In Hawai'i, conservation easements are governed and authorized by Chapter 198, Hawai'i Revised Statutes.

Fee Simple Land Acquisition

Land acquisition includes the "fee simple" purchase of a land parcel. A fee simple purchase transfers full ownership of the property, including the underlying title, to another party. Fee simple land acquisition may also be the result of a donation, with the landowner realizing tax benefits from the donation. Sometimes a combination of purchase and donation occurs, resulting in a sale of land at below market value, with the landowner donating a portion of the property's value to the buyer.

A fee title purchase is a voluntary transaction between a landowner (seller) and purchaser (buyer) that transfers full interest in real property. A seller generally does not retain ownership of the property and gives up all property rights. The party that holds fee title to a property, whether it is a private individual, public agency, or a nonprofit organization, possesses all rights of ownership, subject to pre-existing encumbrances on the title and future dispositions of owner's property rights.

The process of fee simple land acquisition for conservation purposes is frequently facilitated by a nonprofit organization, such as a land trust, because this type of organization often has access to funding for land purchases, provides expertise in land transactions, and can help to expedite the acquisition process.

C. Comparison / summary

A 2019 article published in the official journal of the Society for Conservation Biology, in presenting an economic analysis of different ownership modes for nature conservation measures in California,²¹ notes that:

Conservation stewardship requires land where measures are implemented for a desired purpose. Setting land aside for conservation has been widely applied, while novel conservation modes (private–public partnerships, private multipurpose land management) may be fundamental to achieve conservation goals. We find that in-fee options have lower costs than easements in the long run. While there are high costs of purchase for in-fee, ultimately, they even out or generate profits. Costs of easements continue growing exponentially overtaking costs of purchase (page 1). Overall, total annual costs, total costs of management, and total annual management costs all show that easements surpass the costs of in-fee properties in the long run, with an exponential growth while costs of in-fee are higher for purchase but decrease substantially after a decade. This suggests that from an economic point of view, easements are not a preferable option, mainly due to the high share of recurrent costs (page 6).

Donations

Fee and conservation easement interests may be sold for value or donated. Donated interests, if they meet the requirements of the U.S. Internal Revenue Code, may be eligible for certain tax deductions and benefits. In the past, charitable donation deductions reduced federal capital gains tax liability, and reductions in federal estate taxes have been available for donations of qualifying property interests.²²

Matching Funds

Applicants often mix federal, State, county, and private funding sources to support the full cost of acquisitions. County funding sources include:

Hawai‘i County [Public Access, Open Space, and Natural Resources Preservation Fund](#): Established by a 2010 amendment to the County Charter, procedures for administering the "PONC" Fund are governed by Article 42 of the County Code. Volunteer Commissioners—appointed by the Mayor and confirmed by the County Council—review public nominations and submit an annual report that prioritizes these nominations for acquisition. Funding for a specific acquisition is authorized by County Council resolution.

Maui County [Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund](#): Grant proposals are routed through the Mayor's Office for screening, including agency review, and approval. Approved proposals are then transmitted to the County Council for approval as a budget appropriation.

Kaua‘i County [Public Access, Open Space, and Natural Resources Preservation Fund](#): An Advisory Commission works with the Planning Department to conduct a community-based process that incorporates Countywide community input for prioritizing acquisitions. The Commission transmits recommendations to the County Council, which then appropriates funding for conservation transactions.

City & County of Honolulu Clean Water and Natural Lands Fund: The Department of Budget and Fiscal Services receives and screens proposals, then submits qualified proposals to an advisory commission that makes recommendations to the City Council for approval. The Department of Land Management then negotiates transaction that result in adding real property interests to the City inventory. Expenditures for land acquisition must be consistent with priorities established by a commission created by Council resolution or, in the absence of a commission, with the priorities established by the Council by resolution.

Various federal funding sources are also available to support land acquisition. Frequently used sources of matching funds include:

Readiness and Environmental Protection Integration Program (REPI): This Department of Defense program supports establishing buffers to encroachments that can limit or restrict military training, testing, and operations.

Endangered Species Recovery Land Acquisition Grant Program: The U.S. Fish and Wildlife Service provides funding to states and territories for the acquisition of threatened and endangered species habitat in support of approved and drafted species recovery plans.

Forest Legacy Program: The U.S. Forest Service partners with state agencies to protect privately-owned land through conservation easements or fee acquisitions.

Land and Water Conservation Fund ("LWCF"): At no cost to taxpayers, the LWCF supports increased public access to and protection for federal public lands and waters — including national parks, forests, wildlife refuges and recreation areas — and provides matching grants to state governments for the acquisition and development of public parks and other outdoor recreation sites. Agencies also partner with landowners to support voluntary conservation activities on private lands.

D. Management Needs

Purchased lands generally need active management to protect the resources for which the land was purchased. Legacy Land is authorized to provide competitive grant funding for land management, limited annually to five percent of prior year revenue from conveyance tax (currently a modest \$255,000 for nearly fifty properties that qualify for a grant). The Legacy Land Conservation Commission ("LLCC") has repeatedly considered the need for management funding (authorized in 2008) versus the initial focus of the program (authorized in 2005) which was established for land purchases, only. Many of the resources targeted for protection by the program will continue to degrade without management, even if legally protected, due to threats like invasive species. For example, non-native hooved animals endanger historic sites by toppling and digging up ancient rock structures and are a key threat to native ecosystems. To date, the program focused its limited resources on land acquisition. However, given a growing portfolio of properties conserved with moneys from the Land Conservation Fund and expressions of interest and need from property owners and the LLCC, Legacy Land intends to begin offering management grants in the current fiscal year (Fiscal Year 2024).

IV. Conclusion

This Plan is a living document that provides guidance for acquiring lands to preserve the resource values identified in Section 173A-5(g), Hawai‘i Revised Statutes, while addressing the land acquisition priorities established in Section 173A-2.6 and considering the land acquisition criteria provided in Section 13-140-39, Hawai‘i Administrative Rules. This Plan provides an interactive and adaptable tool to assist decisionmakers in determining which areas have the highest resource values and which areas are least protected. The online WebMap allows for in-depth analysis of particular parcels proposed for funding and is an innovative planning tool that will be utilized in future funding cycles. The Plan's WebMap tool facilitates Plan implementation by displaying patterns of resource occurrence, protection, threats, and opportunities; identifying gaps in protected landscapes; and providing entryways for gaining knowledge about specific properties.

V. Next Steps

In completing this Plan, DLNR staff researched and drafted narrative sections, then sought input and comment from experts in the various subject areas as well as through a forum held in the 2020 Hawai‘i Conservation Conference. The Legacy Land Conservation Commission reviewed the Plan in various public meetings, and a draft was provided to the Senate President and the Speaker of the House of Representatives for consultation. Periodic updates to the Plan will be completed through similar processes, and integrated with program functions such as rulemaking, grantmaking, contracting, and monitoring.

VI. References

Additional planning references not listed in section II are summarized below:

County of Hawai‘i

[Hawai‘i County General Plan](#) (2005): The blueprint that guides long-term development and directs future opportunities related to land use, zoning amendments, and capital expenditures. The General Plan strives to position Hawai‘i Island for economic progress while preserving the environment and strengthening community foundations. [Update in progress.](#)

[Community Development Plans](#) ("CDP"): A CDP is intended to translate broad General Plan Goals, Policies, and Standards into implementation Actions as they apply to specific geographical regions. A CDP is also intended to serve as a forum for Community input into land use, delivery of government services, and any other matters relating to the planning area. A CDP Action Committee serves as the steward of the community's plan by facilitating implementation and recommending plan updates as needed. Committee members are appointed by the Mayor and confirmed by the Hawai‘i County Council.

County of Maui

[Maui County General Plan](#): The County's principal tool for evaluating public and private projects and their impacts on land use, the economy, environment, infrastructure, and cultural resources. Contains sections covering Population, Land Use, the Environment, and Cultural Resources.

V1.5

Community Plans: The Maui County Council adopted nine community plans that establish goals, objectives, policies, and implementing actions for each district, and include revised land use designations.

City and County of Honolulu

O‘ahu General Plan: Guides long-term development in the City and County of Honolulu. Contains sections covering Culture and Recreation, and Natural Environment.

Sustainable Communities Plans: The eight Sustainable Communities Plans provide conceptual, long-range visions and policies to guide land use and infrastructure decisions for each region.

Special Area and Neighborhood Master Plans: These plans give communities the opportunity to define the identity, function, organization, and character of their specific neighborhoods in accordance with the general planning framework provided by their area's Development Plan or Sustainable Communities Plan.

A Greenprint for Hawai‘i-O‘ahu (The Trust for Public Land, 2015): Documents a planning process that emphasizes community opinion and the land's special values.

County of Kaua‘i

Kaua‘i General Plan (2018): Contains policies to guide the future physical development of the County; land regulation amendments; and the review of specific zoning amendment and development applications. Includes park site needs, land use maps, and heritage maps.

State Plans

Hawai‘i State Plan: Chapter 226, Hawai‘i Revised Statutes, establishes a statewide planning system that provides a framework for the implementation of State Plan policies, including State functional plans and guidance on county general plans. The State Plan sets out broad policies and priority guidelines in the areas of the economy, physical resources & environment, and sociocultural development. Twelve State Functional Plans further define the State plan in twelve policy areas. Many of these policy areas relate to land acquisition, such as agriculture, conservation lands, historic preservation, recreation, and water resources. The State Functional Plans were last updated in 1989 and 1991.

Hawai‘i Ocean Resources Management Plan (Coastal Zone Management Program): This plan focuses on resolving coastal issues that are not adequately addressed by existing laws and rules

Hawai‘i 2050 Sustainability Plan (2008): Through Act 8, Session Laws of Hawai‘i 2005, the Legislature created the Hawai‘i 2050 Sustainability Task Force to review the existing State Plan and address the planning needs of Hawai‘i with a view to the year 2050. [Updated in 2018.](#)

Climate Change Impacts in Hawai‘i (University of Hawai‘i Sea Grant College Program, 2014): A summary of current scientific knowledge about climate change and its impacts on Hawai‘i's ecosystems and communities, including marine, coastal, terrestrial, and freshwater ecosystems, built systems, and human health.

[A Framework for Climate Change Adaptation in Hawai'i \(2009\)](#): A collaborative report that focuses on strategies for adaptation, developed by the Ocean Resources Management Plan Working Group with assistance from the University of Hawai'i Center for Island Climate Change Adaptation and Policy.

ENDNOTES

¹ The Department of Land and Natural Resources ("DLNR") administers the Legacy Land Conservation Program as authorized under Chapter 173A, Hawai'i Revised Statutes. Under [Section 173A-3](#), DLNR must create a Resource Land Acquisition Plan to guide the Board of Land and Natural Resources in using Legacy Land funds to acquire "land having value as a resource to the State" (defined in [Section 173A-2](#)).

² Land Trust Alliance Fact Sheet, May 2008, "Basic Facts and Resources for Landowners", available at https://conservationtools.org/library_items/1139/files/1041.

³ County of Kaua'i Long Range Planning Division, 2020. Hawai'i Statewide GIS Program received from County of Kaua'i, December 2020 as part of the 2020 Kaua'i General Plan Update.

⁴ County of Maui, 2020. Hawai'i Statewide GIS Program received from Maui County Department of Planning, created from various Land Zoning Maps and comprehensive zoning ordinances current as of October, 2020. Islands of Maui & Lana'i Land Use Zoning Designations, Maui County Code, Chapter 19 Zoning.

⁵ Honolulu Land Information System (HOLIS), City & County of Honolulu, 2021. City & County of Honolulu Land Use Zoning Designations.

⁶ Hawai'i County Planning Department, 2018. Hawai'i Statewide GIS Program received from the County of Hawai'i Planning Department, created from various district and urban zone maps using the parcel layer, current as of August, 2018.

⁷ USGS Digital Line Graphs, 1983. Extracted by Office of State Planning staff from the 1983 1:24,000 USGS Digital Line Graph.

⁸ USGS Digital Line Graphs, 1983 version. DLNR Division of Aquatic Resources, 2004. Points extracted from the 1983 DLG hydrography layers.

⁹ State of Hawai'i, Commission on Water Resource Management and U.S. Department of Interior, National Park Service, 1990. [Hawaii Stream Assessment](#) (https://files.hawaii.gov/dlnr/cwrmp/publishedreports/R84_HSA.pdf).

¹⁰ U.S. Fish and Wildlife Service, 2021. [National Wetlands Inventory](#) (<https://www.fws.gov/program/national-wetlands-inventory>).

¹¹ Department of Land and Natural Resources, Division of Forestry and Wildlife, 2016. [Hawai'i Forest Action Plan](#) (<https://dlnr.hawaii.gov/forestry/files/2013/09/Hawaii-Forest-Action-Plan-2016-FINAL.pdf>).

¹² See endnote 9.

¹³ The Nature Conservancy of Hawai'i, 2018. [An Ecoregional Assessment of Biodiversity Conservation for the Hawaiian High Islands Ecoregion-Coastal Vegetation](#) (<http://www.hawaiiecoregionplan.info/coastalsystem.html>).

¹⁴ U.S. Fish and Wildlife Service, 2006. [Revised Recovery Plan for Hawaiian Forest Birds](#) (https://ecos.fws.gov/docs/recovery_plan/HI%20Forest%20Bird%20Rec%20Plan%202006.pdf).

¹⁵ The Nature Conservancy of Hawai'i, 2018. [An Ecoregional Assessment of Biodiversity Conservation for the Hawaiian High Islands Ecoregion-Anchialine Pools](#) (<http://www.hawaiiecoregionplan.info/anchpoolNC.html>).

¹⁶ Maps available at <https://planning.hawaii.gov/gis/various-maps>. Methodology explained at <https://scholarspace.manoa.hawaii.edu/server/api/core/bitstreams/dc06a8a4-af6f-410a-837d-d6c5393b693d/content>.

¹⁷ Hawai'i Statewide GIS Program, 2018. County Roads and Nā Ala Hele Trails.

¹⁸ Data from the Hawaii Statewide GIS Program, 2023.

¹⁹ References include:

- Callies, David L., 1988. [Land Use Planning and Priorities in Hawai'i](#). Chapter 35 in Stone, C. P. and D. B. Stone (eds.), 1988. [Conservation Biology in Hawaii](#), University of Hawaii Press (<https://pcsuahawaii.org/books-1988>).
- Department of Land and Natural Resources, Division of Forestry and Wildlife, 2005. Hawai'i's Comprehensive Wildlife Conservation Strategy, Appendix C, [Overview of Management Programs and Existing Regulations](#)" (<https://dlnr.hawaii.gov/wildlife/files/2013/09/CWCS-Appendix-C-Overview-of-Mgmt-Program-and-Regulations.pdf>).

²⁰ Additional information on these conservation tools is available in:

- State of Hawai‘i Office of Planning, March, 1998. Conservation Tools and Strategies: Summary of Financial and Technical Assistance Programs for the Conservation of Natural Resources
- Hummon, C. and Cochran, B., 2005. [Voluntary Conservation Tools and Programs](#), Defenders of Wildlife Final Working Paper

(https://defenders.org/sites/default/files/publications/voluntary_conservation_tools_and_programs.pdf).

²¹ Schöttker, O. and Santos, M.J., 2019. [Easement or public land? An economic analysis of different ownership modes for nature conservation measures in California](#). *Conservation Letters* 12(6), e12647(<https://doi.org/10.1111/conl.12647>).

²² State Tax Credits for Conservation Easements: Hawai‘i and Twelve Other States' Efforts to Encourage Private Land Conservation, Richelle Thomson, Spring 2010, *available at* University of Hawaii School of Law Library, Hawaiian; KFH505.6.C57 M38 2010.