

January 4, 2019

**VIA EMAIL**

The Honorable Ronald D. Kouchi  
Senate President  
415 South Beretania Street  
Hawaii State Capitol, Room 409  
Honolulu, Hawaii 96813

**VIA EMAIL**

The Honorable Scott K. Saiki  
Speaker, House of Representatives  
415 South Beretania Street  
Hawaii State Capitol, Room 431  
Honolulu, Hawaii 96813

Re: **Audit of the Department of Land and Natural Resources' Land Conservation Fund, Report No. 19-01**

Dear President Kouchi and Speaker Saiki:

We are attaching a copy of our *Audit of the Department of Land and Natural Resources' Land Conservation Fund*, Report No. 19-01, along with a copy of the Auditor's Summary, which has also been uploaded to the Legislature's web-based application.

This report is being issued pursuant to Act 209, Session Laws of Hawaii 2017, which requires the Auditor to conduct a performance audit of DLNR's Land Conservation Fund and Special Land Development Fund. This audit report focuses on the Land Conservation Fund and the Legacy Land Conservation Program. Our report on the Special Land and Development Fund will be released at a later date.

The report and summary are also accessible through the Office of the Auditor's website at:

<http://files.hawaii.gov/auditor/Reports/2019/19-01.pdf>

and

<http://files.hawaii.gov/auditor/Overviews/2019/19-01AuditorSummary.pdf>.

If you or other Legislators would like a printed version of the report, please let me know.

Very truly yours,

Leslie H. Kondo  
State Auditor

LHK:emo

Attachments

cc/attach: Senators  
Representatives  
Brian Takeshita, House Chief Clerk  
Carol Taniguchi, Senate Chief Clerk

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# Auditor's Summary

## Audit of the Department of Land and Natural Resources' Land Conservation Fund

Report No. 19-01



PHOTO: DEPARTMENT OF LAND AND NATURAL RESOURCES

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**In FY2017, the Land Conservation Fund's cash balance was \$27.8 million, of which approximately \$16.6 million sits idle, not reserved for grant awards or program expenses.**

**IN 1973, THE LEGISLATURE** laid the foundation for a land conservation program and fund, formalizing the importance of protecting and preserving the natural beauty and historic significance of Hawai'i's lands through State-funded acquisition and management. In 2005, the Legislature provided the land conservation program with a dedicated funding source – ten percent of conveyance tax collected – and repurposed an existing fund, renaming it the Land Conservation Fund, for the express purpose of acquiring land having resource value to the State. The Land Conservation Fund and the associated Legacy Land Conservation Program are administered by the Department of Land and Natural Resources (DLNR), which delegated that responsibility to its Division of Forestry and Wildlife (DOFAW).

### What We Found

In our audit, we found that DLNR and DOFAW have struggled to properly manage the Legacy Land Conservation Program, hampering its effectiveness. For example, we found that the program missed fiscal deadlines to create and execute contracts for conservation grant awards, which caused funding for those grants to lapse and triggered a “domino effect” of improperly committing anticipated future appropriations to fund previous awards; the department mistakenly paid a total of nearly \$685,000 for State central service fees – a cost the Land Conservation Fund had been statutorily exempt from since 2015; and DLNR has used the Land Conservation Fund to pay the salary of an employee who is doing

work unrelated to the Legacy Land Conservation Program. In addition, the program has not tracked or reported to the Legislature the balances of Land Conservation Fund moneys transferred to a DLNR trust account.

We also found that DOFAW sought and/or obtained funding from the Land Conservation Fund for its own projects outside of the Legacy Land Conservation Program's grant award process, which is an almost year-long, public process that includes funding recommendations by the Legacy Land Conservation Commission. In those cases, DOFAW acted as an applicant advocating its own projects for funding through the Legacy Land Conservation Program

grant award process; after the Commission prioritized other applicants' projects in front of its projects, DOFAW acted as advisor to the Board of Land and Natural Resources (Land Board) on the use of the same limited moneys to fund its projects. The practice of reprioritizing, and in some cases substituting its judgment for that of the nine Governor-appointed and Senate-confirmed commissioners, each of whom possesses certain statutorily-required professional and cultural expertise, is far less transparent and accountable than the program's grant award process. DOFAW's unique role and special relationship with the Land Board confer an advantage relative to other grant applicants, especially given the limited pool of resources available from the Land Conservation Fund.

### Why Did These Problems Occur?

We found that the department did not have a transition plan to help ensure the seamless operations of the Legacy Land Conservation Program when the former Program Manager resigned, which even the department acknowledges is the cause of many of the program's management issues that we report. Moreover, the department appears to misunderstand its ability to commit future funds – i.e., moneys that it does not have. The department simply cannot commit moneys until those funds are appropriated to the program through the Legislature's budget process.

We also found that the department has not developed a Resource Land Acquisition Plan, which the Legislature directed DLNR to prepare and periodically update when it created the Legacy Land Conservation Commission and the program's dedicated funding source. Without a long-range plan, the program and DLNR's land conservation actions lack a clear, consistent, and transparent direction and purpose; without a plan, DLNR's management of the program and its use of the Land Conservation Fund is arbitrary, opaque, and may be inconsistent with the State's long-term land conservation goals. The need for a plan is magnified by the relatively fluid composition of the Land Board and the importance of the State's mission of stewardship over public lands.

### Why Do These Problems Matter?

Hawai'i has long recognized the concept of government ownership and management of land as a conservation tool. The purpose underlying Hawai'i's land conservation efforts is set forth in Section 173A-1, HRS:

***[T]hese lands, though protected by the land use law, may in many instances require placement under public ownership and management in order that they can be made accessible to all people of the State. The purpose of this chapter is to provide for the acquisition and management of such lands in those instances in which such acquisition and management are considered necessary by the State.***

Without a clear roadmap in place, there is an increased risk that decisions regarding land acquisitions will be arbitrary and inconsistent, and subject to change with each new board, commission, and department head. Although some flexibility and adaptability are necessary, the determination of what is the State's "best interest" in this regard should not be so reliant on subjective understanding and personal biases.

After a little more than a decade in existence, the Legacy Land Conservation Program has awarded 58 projects with \$47.3 million in grant moneys. Only about half of these projects have reached completion – i.e., land purchased and conserved. Almost a third of the awards are still pending. Since the acquisition of conservation land can be a complicated process, and considering the relative infancy of the program, it is difficult to determine if the program is achieving its statutory purpose.

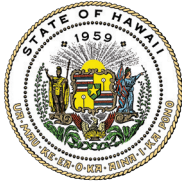
# Audit of the Department of Land and Natural Resources' Land Conservation Fund

A Report to the Governor  
and the Legislature of  
the State of Hawai'i

**Report No. 19-01**  
January 2019



**OFFICE OF THE AUDITOR**  
STATE OF HAWAI'I



## OFFICE OF THE AUDITOR STATE OF HAWAII

### Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

### Our Mission

*To improve government through independent and objective analyses.*

We provide independent, objective, and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management and expenditure of public funds.

### Our Work

We conduct performance audits (also called management or operations audits), which examine the efficiency and effectiveness of government programs or agencies, as well as financial audits, which attest to the fairness of financial statements of the State and its agencies.

Additionally, we perform procurement audits, sunrise analyses and sunset evaluations of proposed regulatory programs, analyses of proposals to mandate health insurance benefits, analyses of proposed special and revolving funds, analyses of existing special, revolving and trust funds, and special studies requested by the Legislature.

We report our findings and make recommendations to the Governor and the Legislature to help them make informed decisions.

*For more information on the Office of the Auditor, visit our website:*  
<http://auditor.hawaii.gov>

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## Foreword

Our audit of the Department of Land and Natural Resources' Land Conservation Fund was conducted pursuant to Act 209, Session Laws of Hawai'i 2017. Act 209 requires the Auditor to conduct a performance audit of DLNR's Land Conservation Fund and Special Land and Development Fund. This audit report focuses on the Land Conservation Fund and the Legacy Land Conservation Program. Our report on the Special Land and Development Fund will be released at a later date.

We express our sincere appreciation to the officers and staff of the Department of Land and Natural Resources, members of the Board of Land and Natural Resources and the Legacy Land Conservation Commission, and other individuals whom we contacted during the course of our audit, for their cooperation and assistance.

Leslie H. Kondo  
State Auditor



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PHOTO: DEPARTMENT OF LAND AND NATURAL RESOURCES

# A Little Less Conservation: Audit of the Department of Land and Natural Resources' Land Conservation Fund

## Introduction

**H**AWAI'I HAS LONG RECOGNIZED the concept of government ownership and management of land as a conservation tool. In 1973, the Legislature laid the foundation for a land conservation program and fund through passage of Act 77, formalizing the importance of protecting and preserving the natural beauty and historic significance of Hawai'i's lands through State-funded acquisition and management. Act 77, as amended, is codified as Chapter 173A, Hawai'i Revised Statutes (HRS). The purpose of the law is set forth in Section 173A-1, HRS:

*[T]hese lands, though protected by the land use law, may in many instances require placement under public ownership and management in order that they can be made accessible to all people of the State. The purpose of this chapter is to provide for the acquisition and management of such lands in those instances in which such acquisition and management are considered necessary by the State.*

**“[T]hese lands, though protected by the land use law, may in many instances require placement under public ownership and management in order that they can be made accessible to all people of the State.”**

**– Section 173A-1, HRS**

It was not until over three decades later, in 2005, that the Legislature passed Act 156, which provided the land conservation program with a dedicated funding source – 10 percent of conveyance tax collected – and repurposed an existing fund, renaming it the Land Conservation Fund, for the express purpose of acquiring land having resource value to the State.<sup>1</sup> As detailed in the statute, the Land Conservation Fund was established to support the land conservation program by funding purchases of interests in land having value as a resource to the State for preservation; debt service on State bonds issued to acquire those lands; operation, maintenance, and management of those lands; and administration costs of the land conservation program. Annual administration costs paid out of the fund cannot exceed 5 percent of annual fund revenues from the previous fiscal year. The Legislature has annually appropriated \$5.1 million from the fund to the Department of Land and Natural Resources (DLNR) for land conservation program-related uses, essentially establishing a program spending cap of \$5.1 million per year.

In 2006, the Legislature further formalized the State's land conservation program, passing Act 254. Act 254 established a nine-member Legacy Land Conservation Commission (Commission) with specific scientific, environmental, land conservation, agricultural, and native Hawaiian cultural expertise to advise DLNR and the Board of Land and Natural Resources (Land Board) on:

1. Any proposal, public or private, for the acquisition of any interest or rights in land having value as a resource to the State; and
2. Any requests for grants from the Land Conservation Fund to a qualifying state or county agency or nonprofit land conservation organization for the preservation of lands having value as a resource to the State.

The Act also set forth land acquisition priorities for the Commission to consider in making recommendations and empowered the Commission to adopt rules to carry out its duties. For purposes of this report, we will refer to the State's land conservation program funded by the Land Conservation Fund and administered by DLNR as the "Legacy Land Conservation Program." The Legacy Land Conservation Program was established by Section 13-140-5, Hawai'i Administrative Rules (HAR).

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<sup>1</sup> This funding source has since been amended, and is currently set at "ten per cent or \$6,800,000, whichever is less," of conveyance tax collections. The Land Conservation Fund has other potential funding sources in addition to the conveyance tax proceeds, including bond proceeds, private contributions, and revenue from operation or sale of certain conservation land.

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DLNR (not the Commission) has promulgated detailed rules governing the administration of the Legacy Land Conservation Program, including policies, procedures, and the process for consideration and awarding of land acquisition grants. This vetting and deliberation are central to the Legacy Land Conservation Program’s grant award process, which is a nearly year-long effort that begins every July, when the program opens the annual grant application period, and concludes the following spring with approval of grant awards by the Governor.

The Land Conservation Fund and Legacy Land Conservation Program are administered by DLNR, which delegated that responsibility to its Division of Forestry and Wildlife (DOFAW). DOFAW’s mission is to “responsibly manage and protect watersheds, native ecosystems, and cultural resources and provide outdoor recreation and sustainable forest products opportunities, while facilitating partnerships, community involvement and education.” In furtherance of this mission, DOFAW has sponsored land acquisition projects on its own behalf, some of these funded by the Land Conservation Fund through the Legacy Land Conservation Program.

In our audit, we found that DOFAW, and therefore DLNR, has struggled to properly manage the Legacy Land Conservation Program, hampering its effectiveness. We found that there is no Resource Land Acquisition Plan, which is required by law. Without a plan in place, the program and DLNR lack an overall direction and purpose. In addition to this broader issue, we found several more specific concerns with program implementation and financial management. For instance, program staff missed fiscal deadlines to create and execute contracts for grant awards, triggering an improper “domino effect” of borrowing future funds, using anticipated future appropriations to fund previous awards. This practice reduced the funding available for future projects. In addition, program staff have not been tracking or reporting the balances of Land Conservation Fund moneys transferred to a DLNR trust account to the Legislature. We also found that, during fiscal years (FY) 2016 and 2017, department staff mistakenly paid a total of nearly \$685,000 for State central service fees – a cost the Land Conservation Fund had been statutorily exempt from since 2015. Moreover, we found that DLNR has used the Land Conservation Fund’s limited administrative budget to support the salary of an employee who is doing work unrelated to the Legacy Land Conservation Program.

## Appropriation Ceiling

**IN 2005**, Act 156 included an “appropriation ceiling” of \$1.1 million for FY2006; Department of Budget and Finance documents include an appropriation ceiling of \$4 million for FY2007; and \$5.1 million in all subsequent years. In 2015 and 2016, DLNR sought to increase the appropriation ceiling by \$1.7 million, to a total of \$6.8 million. But the Legislature denied the requests.

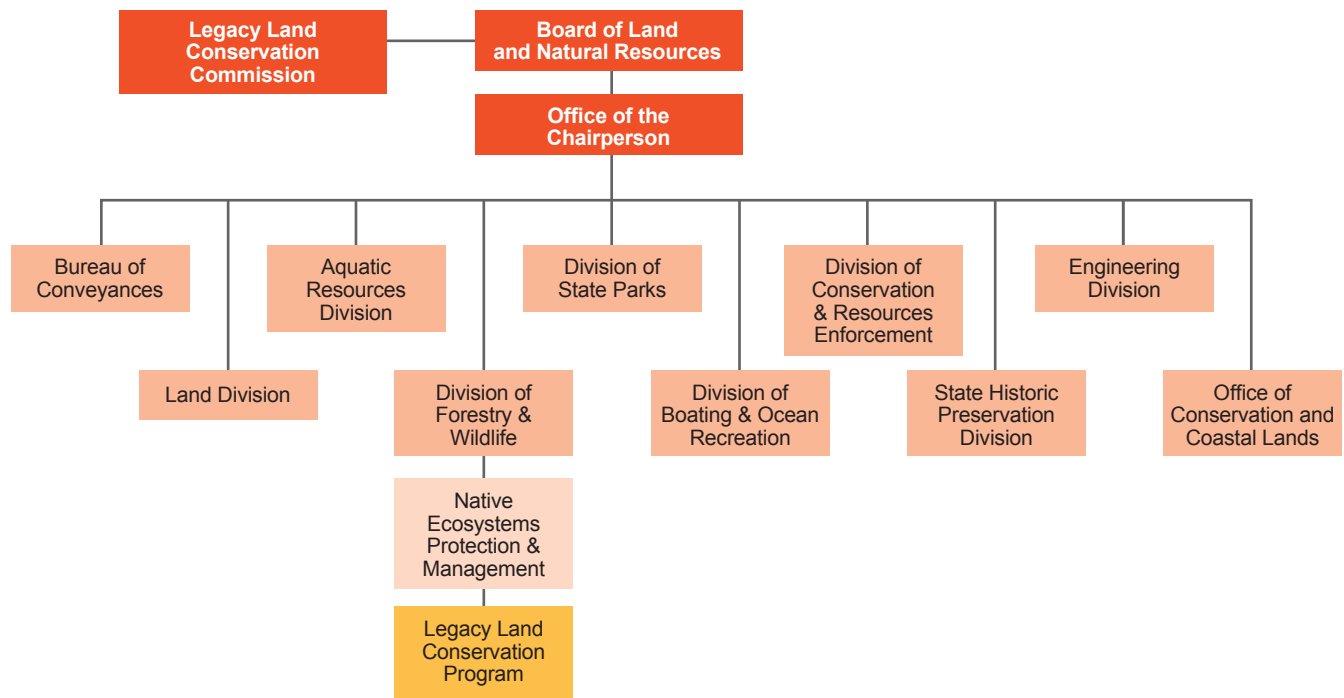
In 2017, DLNR sought to increase the appropriation ceiling for FY2018 by \$2.23 million to cover funding for FY2015 projects that lapsed when DLNR staff missed a fiscal deadline. Additionally, a recurring increase of \$1.7 million was requested to bring the appropriation ceiling equal to expected annual revenues of \$6.8 million. The Legislature denied these ceiling increases.

The appropriation ceiling of \$5.1 million was set by the administration and Legislature in FY2008. The \$5.1 million ceiling essentially became the default spending limit for the fund. Any changes to that amount must be put forward and approved by DLNR and the Legislature during the annual budget process.

In 2018, DLNR was finally able to secure the Legislature’s approval to raise the appropriation ceiling to meet the \$6.97 million in revenues recorded in FY2017. As a result, the ceiling for FY2019 reflected a one-time ceiling increase of \$1.85 million.

We also found that DOFAW sought and/or obtained funding from the Land Conservation Fund for its own projects outside of the Legacy Land Conservation Program grant award process. In these cases, DOFAW secured Land Conservation Fund money while acting in a dual capacity: as an applicant advocating its own projects for funding through the Legacy Land Conservation Program grant process on one hand, while at the same time acting as advisor to the Land Board on the use of the same limited funding. Although this practice may not violate existing rules or laws, as different governing statutes and administrative rules

**Exhibit 1  
DLNR Organization Chart**



Source: Department of Land and Natural Resources

**CENTRAL SERVICE EXPENSES**

**CENTRAL SERVICE EXPENSES** are expenses paid out of certain special funds to the Department of Accounting and General Services (DAGS) for administrative services. Section 36-27(a) (21), HRS states the Land Conservation Fund established

by section 173A-5 is part of an exclusion list for payment for central service expenses. The DLNR Fiscal Management officer believed that the Land Conservation Fund was subject to pay the central service expenses, citing Act 79, Session Laws of Hawai'i 2009. Act 79, struck the Land Conservation

Fund from the exemption list beginning July 1, 2009, but stated Act 79 shall be repealed on June 30, 2015, and HRS 36-27 shall be reenacted in the form in which it read on June 30, 2009.

put both the Commission and DLNR in an advisory role to the Land Board, the practice of reprioritizing and in some cases contradicting the recommendations of the Commission – paths available only to DOFAW and DLNR – is less transparent and accountable than the grant award process. DOFAW’s unique role and special relationship with the Land Board confer an advantage relative to other grant applicants, especially given the limited pool of resources available under the Land Conservation Fund.

As pointed out above, State agencies, counties, and nonprofit organizations may apply for land conservation grants from the Land Conservation Fund to acquire lands for watershed and habitat protection, coastal and cultural preservation, flood prevention, parks, agricultural production, and open space and scenic resources.

Grants awarded to *State agencies* are transferred from the Land Conservation Fund to a DLNR trust account after the Land Board approves funding for those projects, and remain in the trust account until the respective project is either completed (i.e., the agency acquires the property interest) or discontinued.<sup>2</sup> Moneys awarded for discontinued projects should be transferred back from the DLNR trust account to the Land Conservation Fund, as the purpose for which those funds were awarded no longer exists.

For grants awarded to *counties and nonprofit organizations*, the Land Board contracts with the awardee and encumbers the funds based on an executed contract between the county or nonprofit awardee and the Land Board. Contracts are typically not executed before fiscal year end and a “blanket encumbrance” is issued to “reserve” the money. Blanket encumbrances are time-limited – a fully-executed contract is required by the end of the following fiscal year in order for the Department of Accounting and General Services to further encumber the funds

<sup>2</sup> The Department of Accounting and General Services defines a trust account as a separate holding or clearing account for State agencies. Trust accounts also serve as accounting devices to credit or charge agencies or projects for payroll or other costs.

## A Land Conservation Fund Obligation

ON JUNE 12, 2015, the Governor signed Act 121, which authorized the Department of Budget and Finance to issue \$35 million in reimbursable general obligation bonds for the acquisition of a conservation easement and other real property interests in Turtle Bay. The property, located on the North Shore of O’ahu, includes 52-plus acres of land at Kawela Bay, which the State leased back to the nearby Turtle Bay Resort for 65 years. The State also secured a perpetual conservation easement over another 568-plus acres, all fronted by about five miles of undeveloped shoreline. Act 121 also obligated \$1.5 million annually from the Land Conservation Fund to be used to pay the debt service to these bonds. These payments began in 2017 and will continue until 2035, when the bonds are fully amortized. This ongoing obligation has, in effect, reduced the amount of money available for other projects by \$1.5 million each year going forward.

## CONVEYANCE TAX

THE CONVEYANCE TAX, set forth in Section 247-1, HRS, is a State tax imposed on transfers of real property or real property interests, such as assignments of existing leases.

The conveyance tax is a tax on all transfers or conveyances of realty or any interest therein, by way of deeds, leases, subleases, assignments of lease, agreements of sale, assignments of agreements of sale, writings, and any other document, whereby any lands, interest in land, tenements, or other realty

sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, lessee or lessees, sublessee or sublessees, assignee or assignees, or any other person or persons by the person’s or their direction.



for the land acquisition. Moneys awarded to counties and nonprofit organizations remain encumbered in the Land Conservation Fund until either the agency acquires the property interest or the project is discontinued.

These encumbered funds are no longer available to fund other projects, but remain part of the Land Conservation Fund balance until the moneys are disbursed. Similarly, the money transferred to the DLNR trust account for State grant award projects is set aside for a specific project and is not to be used to fund other projects. The Legacy Land Conservation Program does not authorize release of moneys from the Land Conservation Fund or the DLNR trust account until the property is ready to be acquired.

Since FY2006, the Legacy Land Conservation Program has awarded more than \$47.3 million to fund 58 projects. By the end of FY2017, the Legacy Land Conservation Program had completed 31 of these projects; 8 projects had been discontinued; while 19 others, with awards totaling \$11.9 million, were still pending. A complete list of the projects, including the completed acquisitions, are contained in Appendix A.

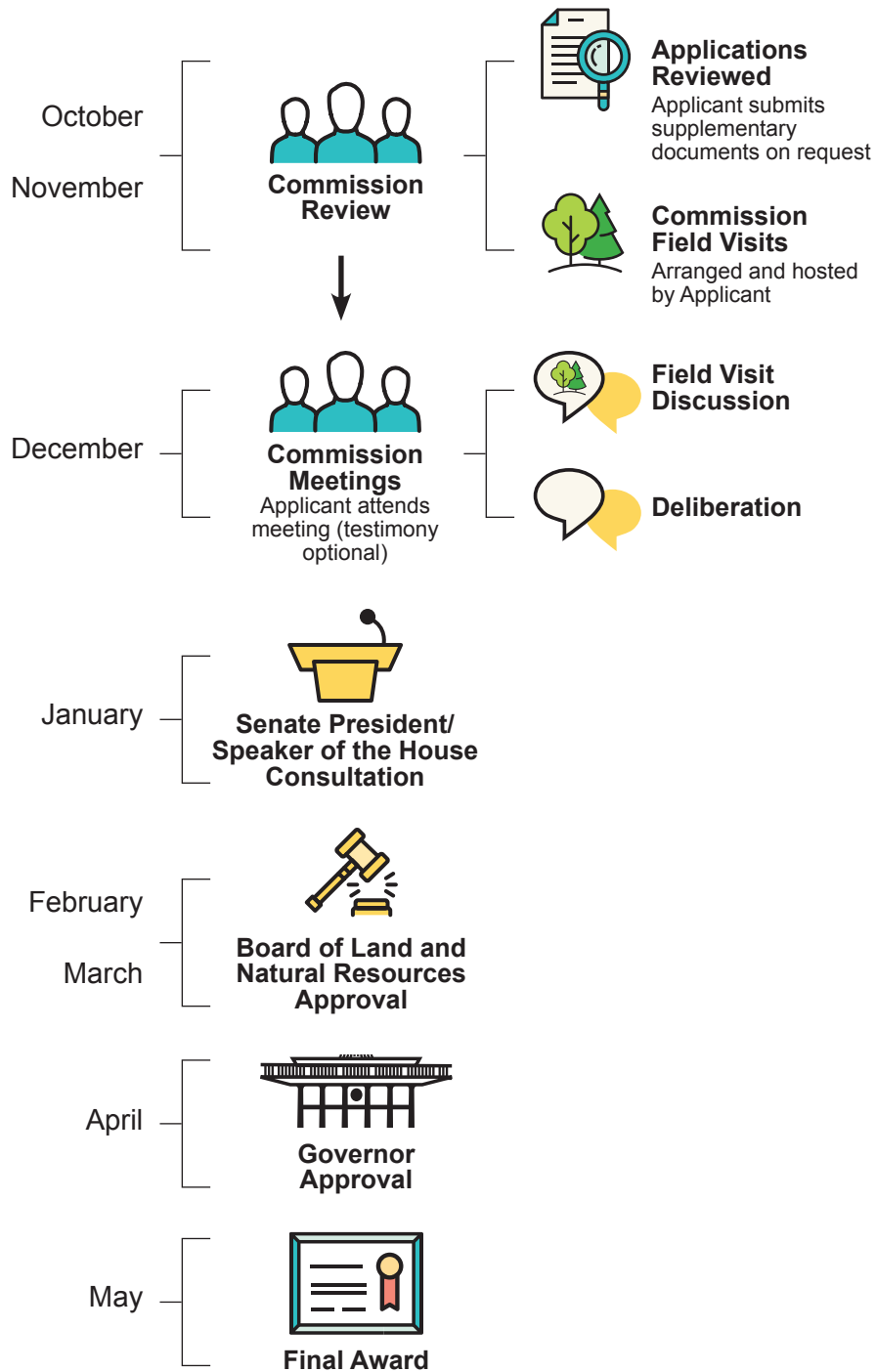
## ENCUMBERED FUNDS

**ENCUMBERED FUNDS** are moneys that have been earmarked for a specific purpose but not yet expended. Each State agency, through the legislative budget process, is appropriated

an amount of funds for the fiscal year, and generally, moneys that an agency does not spend by the end of the fiscal year are returned (or revert) to the source of the appropriation. Encumbering

funds allows the agency to commit moneys appropriated for the current fiscal year, even if the funds are not actually spent or disbursed until after the close of the fiscal year.

**Exhibit 2**  
**Guide to the Legacy Land Conservation Program**  
**Grant Award Process**



Source: Compiled by the Office of the Auditor from information provided by the Legacy Land Conservation Program

## Audit Objectives

1. Evaluate the Legacy Land Conservation Program's application and grant award process as well as its monitoring of acquired properties to ensure statutory and contractual compliance.
2. Evaluate program spending and the Land Conservation Fund's balance.
3. Make recommendations as appropriate.

## Impetus, Scope and Methodology

We conducted this audit pursuant to Act 209, Session Laws of Hawai'i 2017 (House Bill No. 839, House Draft 1, Senate Draft 1, Conference Draft 1). Act 209 requires the Auditor to conduct a performance audit of DLNR's Land Conservation Fund and Special Land and Development Fund, including a review of contracts, grants, and memoranda of understanding entered into, awarded by, or otherwise involving those funds during the period July 1, 2015, through June 30, 2017, to determine whether funds were expended in compliance with laws and contractual agreements.

This audit report focuses on the Land Conservation Fund and related Legacy Land Conservation Program during the period FY2016 and FY2017, but, where appropriate, included information from other years. Both are primarily governed by Chapter 173A, HRS, and Chapter 13-140, HAR. Our audit of the Special Land and Development Fund will be issued as a separate report at a later date.

This audit was conducted from June 2017 through July 2018, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. We believe the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To achieve our audit objectives for the Land Conservation Fund, we reviewed relevant statutes, administrative rules, program policies and procedures, and other written guidance related to the fund's activities. We examined contracts and grant awards, financial records, annual reports, public meeting minutes, records of the Commission, and other relevant documents. We also interviewed members of the Land Board, members of the Commission, and DLNR staff who assist in overseeing and administering the Legacy Land Conservation Program.

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## Difficulties encountered during fieldwork

We encountered difficulties in obtaining responses and documentation from the current Legacy Land Conservation Program Manager (Program Manager) relating to the multiple roles he had with the Legacy Land Conservation Program. Immediately before becoming the Program Manager, he worked at DOFAW through a grant administered by the Research Corporation of the University of Hawai‘i. In that capacity, he worked on and submitted grant applications to the Commission on behalf of DOFAW. DOFAW subsequently executed three consecutive purchase orders with him, each in the amount of \$4,999.50, for work involving the Legacy Land Conservation Program. The last of those purchase orders was terminated when he was formally hired as the Legacy Land Conservation Program Manager. During our interviews, the Program Manager refused to answer questions about the purchase orders that he received from DOFAW and the work that he performed in his private capacity under those purchase orders. His refusal to cooperate caused unnecessary delays in our work and, ultimately, forced us to issue a subpoena to compel him to answer questions about the work that he performed relating to the Legacy Land Conservation Program in *any* capacity, including pursuant to the purchase orders with DOFAW. As the current Program Manager, he is required to cooperate with our audit, without the need to compel his cooperation.

## Summary of Findings

1. DLNR has not developed a strategic plan – a legal requirement – to guide the Land Board and the Legacy Land Conservation Program in their conservation efforts.
2. DLNR and DOFAW fail to exercise proper financial management over the Land Conservation Fund, hindering effectiveness, transparency, and accountability.
3. Weaknesses in DLNR’s and DOFAW’s administration of the Legacy Land Conservation Program have resulted in shortfalls and misspending, preventing the program from fulfilling its mission.
4. DOFAW has at times sought and/or obtained Land Conservation Fund funding for its own projects outside of the Legacy Land Conservation Program grant award process. This practice does not technically violate any existing rules or laws, as different governing statutes and administrative rules put both the Legacy Land Conservation Commission and DLNR in an advisory role to the Land Board. However, these options – available only to DOFAW and DLNR – are less transparent and accountable than

the grant award process, and could be perceived as unfair to other grant applicants, especially given the limited pool of resources available under the Land Conservation Fund.

## **DLNR has not developed a strategic plan – a legal requirement – to guide the Land Board and the Legacy Land Conservation Program in their conservation efforts.**

When it created the Commission in 2006, the Legislature directed DLNR to prepare and periodically revise a Resource Land Acquisition Plan – a planning document to guide the Land Board in its acquisition of land for conservation. According to Section 173A-3, HRS, in preparing this plan, “the department may institute studies relating to the need for such land and shall consider any plan relating to the acquisition of such land that has been prepared by any state or county agency.” “Development, revision, and implementation of a conservation land acquisition strategic plan” is a part of the Program Manager’s written job description.

Although fully aware of this legal requirement, DLNR has not prepared such a plan. In its first annual report to the Legislature for FY2007 and again for FY2008, DLNR listed the completion of the Resource Land Acquisition Plan as one of its primary objectives for its next fiscal years.

For seven years, starting in FY2009, DLNR reported that it was “in the process of implementing planning activities that support the coordination of conservation land acquisitions” pursuant to Section 173A-3, HRS, as a primary objective. FY2009 was the first year that a compilation of State and county plans and priorities in relation to conservation land acquisitions was mentioned as a primary objective for the coming fiscal year. In FY2010, FY2011, FY2012, FY2013, and FY2014, DLNR declared that it would produce a draft plan for review by the Senate President and Speaker of the House of Representatives.

In FY2016, DLNR stopped mentioning the requirement in its annual reports altogether.

When we questioned the Program Manager about the status of the Resource Land Acquisition Plan, he said that the program had not completed a plan and had only “thoughts, outlines, and white papers.” He explained that it was not a priority and it was not clear to him whether the development of the plan was the sole responsibility of the Legacy Land Conservation Program.

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Although there are no concrete plans to create a Resource Land Acquisition Plan, the Native Ecosystems Protection and Management (NEPM) Section Manager noted that applicants and commissioners can refer to existing resource plans of other government agencies. She referred us to a compilation of plans on the Legacy Land Conservation Program’s website, which includes more than 50 links to various plans and analyses, including county general plans, environmental studies, and climate change resources.

Compiling links to reference material on a website meets neither the letter nor the spirit of the law. Without such a planning document in place, the program lacks long-term direction or measurable goals. Land acquisition priorities – if there are any – are undefined and the policies and procedures are unfocused. Instead, DOFAW, DLNR, the Commission, and the Land Board are left to their own subjective beliefs as to the program’s goals, policies, and execution.

The need for a long-range plan is magnified given the relatively fluid composition of the Land Board and the importance of the State’s mission of stewardship over public lands. Without a clear roadmap in place, there is an increased risk that Land Board decisions regarding land acquisitions will be arbitrary and inconsistent, and subject to change with each new Land Board. Although some flexibility and adaptability is necessary, the determination of what the State’s “best interest” is in this regard should not be so reliant on subjective understanding.

## **Financial mismanagement hinders the effectiveness of the Land Conservation Fund.**

The Legislature established the Land Conservation Fund out of concern that “an alarmingly small amount of money” was being invested each year to protect natural resources important to Hawai‘i’s economy, culture, and quality of life.<sup>3</sup> For over a decade, the Legacy Land Conservation Program has awarded grants for 58 State, county, and nonprofit organization sponsored-projects (\$47.3 million) that are in various stages of completion. Awards have gone to support the protection of such resources as native forests, watersheds, coastal areas, local farming, and open spaces threatened by development.

We found that poor financial management has hampered the Land Conservation Fund’s ability to achieve its full potential and purpose. For instance, program staff missed fiscal deadlines to create and execute

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<sup>3</sup> See Act 156, Session Laws of Hawai‘i 2005.

contracts for grant awards, triggering an improper “domino effect” of borrowing from future appropriations to fund previously-made awards. In addition, Legacy Land Conservation Program personnel do not track or report the balances of DLNR’s trust account, and therefore report an incomplete picture of encumbered funds to the Legislature. Moneys that should have been returned to the Land Conservation Fund once State projects were discontinued remained in the DLNR trust account. We also found that during FY2016 and FY2017, DLNR mistakenly paid a total of almost \$685,000 from the fund for State central service expenses – a cost the Land Conservation Fund had been statutorily exempt from since 2015. Finally, we found that DLNR has used the Land Conservation Fund’s limited administrative budget to support the salary of an employee who is doing work unrelated to the Legacy Land Conservation Program.

**The program failed to encumber funds for approved projects on a timely basis, resulting in the lapse of \$2.2 million.**

By the end of FY2016, the Legacy Land Conservation Program failed to enter into contracts with county and nonprofit grant recipients for \$2.2 million in awards for three FY2015 projects, which resulted in the \$2.2 million of the awarded funds “lapsing.” Those funds were part of the \$5.1 million appropriated to the Legacy Land Conservation Program in FY2015. The grant awards for these projects were encumbered under a “blanket encumbrance,” which is an interim means of encumbering funds before an associated contract is finalized and executed. Blanket encumbered amounts “lapse,” or become unencumbered, if a contract for the project is not entered within one year following the end of the fiscal year in which they were encumbered. According to one commissioner, these projects “fell through the cracks,” because the former Program Manager resigned in September 2015 and the position was not permanently filled for more than a year. DOFAW officials told us that they scrambled to pick up her work, temporarily assigning three DOFAW staff to serve as interim co-Program Managers.

The Legacy Land Conservation Program had already approved funding for five projects using its FY2016 appropriation, a total of \$4.5 million, before the program realized that the funding awarded in FY2015 had lapsed, and that its FY2016 appropriation was insufficient to fund both the FY2015 and FY2016 grants. To correct its mistake, the program could have requested the three FY2015 awardees to re-apply for funding in the next grant cycle, or refrained from awarding an equivalent amount (\$2.2 million) for new projects in subsequent fiscal years. However, the DOFAW Administrator stated that it was the program’s error and it would have not been fair to the FY2015 applicants. To fund the FY2015 projects, the program was forced to essentially “borrow”

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\$1.9 million and \$314,000 from the amount the program anticipated the Legislature would appropriate for the program in FY2017 and FY2018, respectively, thereby reducing the funds available in those fiscal years for other applicants.

This practice of “robbing for next fiscal year and paying for next year’s grants,” as one commissioner described it, left the Land Conservation Fund with less than \$2.9 million for projects for the FY2017 grant cycle. Instead of adjusting its spending accordingly, DOFAW, the Legacy Land Conservation Program Manager, and the Commission, perhaps anticipating that the Legislature would increase the \$5.1 million spending cap, made recommendations to the Land Board that ultimately led to the commitment of \$4.4 million in grant awards.

However, it was improper for the program to commit money it did not have. Until the Legislature decides the spending priorities of State programs, including the Legacy Land Conservation Program, and appropriates funds for those purposes, a State agency cannot commit funds anticipating it will receive those moneys. When we inquired with the chairwoman of DLNR, she stated that “you can’t use future money to fund a present program.” However, notwithstanding the Land Board’s approval of the FY2015 awards in FY2017 and FY2018, as reflected in the Land Board’s minutes, she was not aware of an instance when the Land Board had ever approved projects with money that is not available.

## BLANKET ENCUMBERANCES

ACCORDING TO the Department of Accounting and General Services’ (DAGS) Accounting Manual, encumbrances generally

*...are obligations in the form of purchase orders, contracts, or other such commitments that do not become liabilities until performance of the conditions stated in the commitment...*

*Encumbrances reserve an appropriation (or a portion of an appropriation) to cover obligations or commitments that have been incurred against the appropriation.’*

[A blanket encumbrance is defined as:]

*“Blanket encumbrance as referred to in this encumbrance policy and procedure is a method of recording encumbrances other than a contract encumbrance*

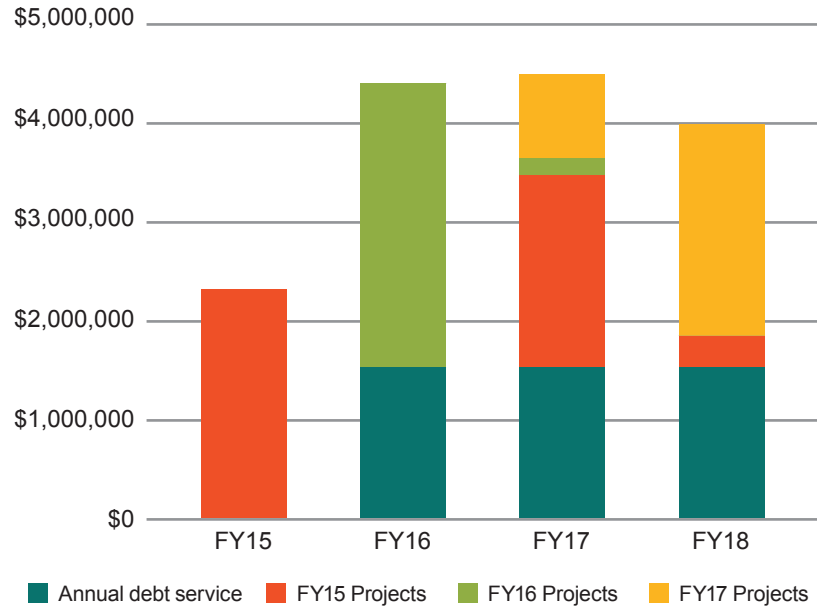
*described under item 4(b)(l) and a purchase order encumbrance described under item 5(b). Blanket encumbrances are recorded in the central accounting records by DAGS Accounting Division only at the end of a quarter or fiscal year...*

*...Any encumbrance recorded in an account subject to a specific lapse date... will be reversed and lapsed to the extent not expended within one year following such lapse date...”*



The following chart provides a breakdown of project expenditures for FY2015-2018.

**Exhibit 3  
Budget Funding**



Source: Information provided by the Legacy Land Conservation Program and compiled by the Office of the Auditor

**Trust account balances are not tracked or reported.**

The Land Board is required by law to track, prepare, and submit an annual report including, among other things, a financial report, objectives, and budget projections for the next fiscal year. However, DLNR does not track the balance of the DLNR trust account, which holds Legacy Land Conservation Program funds awarded to State agencies. The trust account is a separate holding account maintained by the DLNR fiscal office from which the Legacy Land Conservation Program draws funds once a State project which was awarded the conservation grant is ready to release funding. The Program Manager believes that DLNR’s fiscal office should monitor the transactions of the trust account, as the account also holds funds for other DLNR activities in addition to Legacy Land Conservation Program moneys. However, we found that DLNR’s fiscal office had repeatedly requested a reconciliation of the program’s portion of the account and never received a reconciliation of the program’s portion of the account until we requested the program to do so. We also found that the DOFAW Administrator is responsible for initiating transfers between the DLNR trust account and the Land Conservation Fund, and no one in the program maintained a transfer listing of all Legacy Land Conservation Program project moneys transferred to the trust account.

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As a result, the Legacy Land Conservation Program does not know what project moneys are held in the DLNR trust account. Additionally, the program is reporting an inaccurate accounting to the Legislature and the public of how much money is held for land conservation acquisitions by not including the DLNR trust account in its report. In FY2017, the Legacy Land Conservation Program did not report \$7.2 million for 12 pending and discontinued State projects held in the DLNR trust account. The Legacy Land Conservation Program reported in its annual report to the Legislature encumbrances and expenditures related to grant awards of \$4.4 million in the Land Conservation Fund for FY2017. Because the Legacy Land Conservation Program reports encumbrances and expenditures related to grant awards for FY2017 in total, we are unable to determine if the \$4.4 million includes any FY2017 money transferred to the DLNR trust account. However, we do not believe that this is the case; because the money is no longer in the Land Conservation Fund, the Program Manager believes he does not need to report the \$7.2 million in the cash balance of the annual report.

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**The Legacy Land Conservation Program does not know what project moneys are held in the DLNR trust account.**

**The program failed to return money from the DLNR trust account to the Land Conservation Fund after projects were discontinued.**

As detailed earlier, moneys awarded to State agencies are transferred from the Land Conservation Fund to a DLNR trust account once the Land Board approves funding of those projects, and remain in the trust account until the project for which the funds were awarded is completed, i.e., the agency acquires the property interest. Moneys held in the trust account are awarded for and intended to be expended from the Land Conservation Fund only for a specific approved project. As such, when a State project is discontinued, moneys awarded for the project should be transferred back from the DLNR trust account to the Land Conservation Fund.

Our review of the trust account found that, of the \$7.2 million held in the account, ten State projects totaling \$5.6 million have not been completed, but an additional \$1.6 million was held in the trust account for two discontinued projects since March 2016 and September 2014. Subsequent to our audit inquiry, the \$1.6 million related to the two discontinued projects was returned to the Land Conservation Fund in February 2018. However, as noted above, because the Legacy Land Conservation Program does not track funds transferred to the trust account, it cannot consistently ensure that funds are properly accounted for.

### **The department erroneously paid administrative fees.**

We also found that over the past two fiscal years, DLNR erroneously paid almost \$685,000 from the Land Conservation Fund for administrative fees. Since 2009, the Land Conservation Fund had been subject to a special fund assessment paid to the Department of Accounting and General Services for central service expenses; however, *the requirement was repealed in 2015*.<sup>4</sup> Nevertheless, for FY2016 and FY2017, the program paid \$337,115 and \$347,411, respectively, in special fund assessment fees. These erroneous payments reduced the amount of money available to fund land conservation projects and program expenses during FY2016 and FY2017.

### **DLNR used the Land Conservation Fund to pay staff who perform duties unrelated to the Legacy Land Conservation Program.**

According to Section 173A-5(h)(3), HRS, the Land Conservation Fund shall be used for “annual administration costs for the fund, not to exceed 5 percent of annual fund revenues of the previous year.” We reviewed documentation from DLNR’s fiscal office and found that, in FY2016 and FY2017, approximately \$194,000 of Land Conservation Fund moneys were used to pay for the salary and fringe benefits of the Project Development Specialist (Project Specialist) whose job entails responsibilities unrelated to the Legacy Land Conservation Program and who reports to the DLNR Land Division’s Special Projects Coordinator, not the Program Manager. The Project Specialist estimates that about 50 percent of her job involves work for the Legacy Land Conservation Program. We also reviewed her position description and found about 30 percent of her job involves coordinating and processing acquisitions of private lands or easements, and another 10 percent of her job is to provide technical assistance to DOFAW in the Legacy Land Conservation Program grant award process. When we discussed the job duties of the Project Specialist with DOFAW’s Native Ecosystems Protection and Management (NEPM) Section Manager, who oversees the Legacy Land Conservation Program, she was surprised to learn that the Project Specialist was not working full-time for the program. Although she oversees the program, the NEPM Section Manager told us that she was not the Project Specialist’s supervisor and did not have the authority to direct her responsibilities.

Regardless of whether the Project Specialist spends 50 percent of her time on work for the Legacy Land Conservation Program as she claims or far less, she should either: (1) be the program’s full-time employee,

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<sup>4</sup> Act 79, Session Laws of Hawai‘i 2009, effective July 1, 2009, which required the Land Conservation Fund to pay the annual special fund assessment fee to the Department of Accounting and General Services, includes a repeal date of June 30, 2015.

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since the Land Conservation Fund pays 100 percent of her salary, or (2) her salary should be paid out of the fund only according to the percentage of her time spent on the Legacy Land Conservation Program.

**Inadequate program management has resulted in budget shortfalls and misspending.**

Our review of the program's operations revealed an unconventional staffing and administration structure, which we found led to inefficiencies in record keeping and coordination of program needs. The Legacy Land Conservation Program has two personnel who work independently and separate from each other, reporting to different supervisors. The Program Manager is responsible for the administration of the entire program, including providing support for the Commission, and oversees conservation grants awarded to county agencies and nonprofit organizations. The Project Specialist is responsible for overseeing grant awards to State agencies. The two employees work in separate divisions, where they each maintain the files of the completed projects under their purview. Neither could readily or completely meet our records requests. For instance, it took the Program Manager more than a month to provide us with the requested project files that he is responsible for. And, in our review of the files, we discovered that several were missing documents or contained incorrect paperwork. In addition, the Program Manager could not provide us with the files for State projects and directed us to the Project Specialist. The Project Specialist informed us that she had just one of the requested project files.

Neither the Program Manager nor the Project Specialist collect or maintain records on pending State-awarded projects. According to them, that responsibility falls to each individual grant awardee, with the Project Specialist only creating project files upon completion of a project. To review the documentation for three pending State projects, we had to request records being maintained by the project awardees directly from those awardees; in these cases, DOFAW's Forestry Program Manager and the NEPM Planner.

The Legacy Land Conservation Program distributes public moneys to acquire private property for the public benefit. This important mission requires that the Legacy Land Conservation Program be accountable for its actions, which includes collecting and maintaining accurate and complete information on both ongoing and completed projects. Without sufficient recordkeeping and monitoring, there is an increased likelihood that funds could be unnecessarily and unreasonably tied up on projects that are not likely to progress or finish; without sufficient recordkeeping and monitoring, staff cannot demonstrate that they are operating effectively; without adequate recordkeeping and monitoring, the program does not have the ability to show that it is a responsible steward of public moneys.

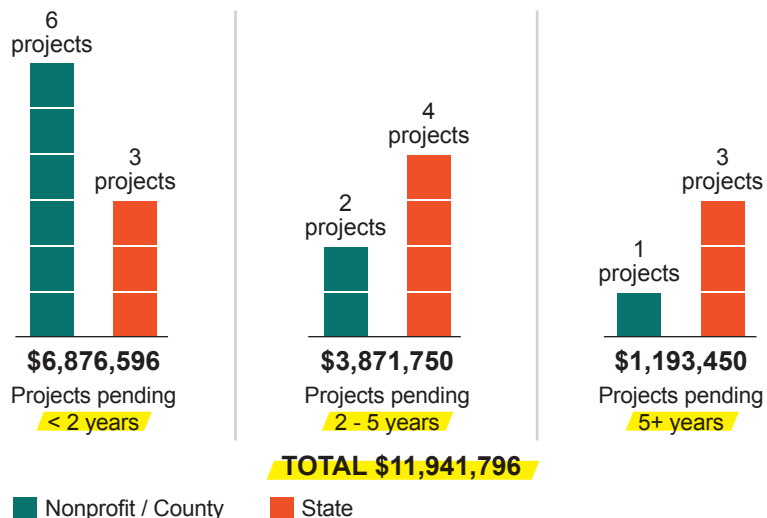
**Money languishes in the Land Conservation Fund, as the program does not monitor grant awards to ensure projects are completed in a timely fashion.**

Contracts that the Legacy Land Conservation Program executes for grant awards with counties and nonprofit organizations require those grantees to complete their respective land acquisitions within two years, but allow for additional extensions upon request. In contrast, State agencies do not enter into contracts with the Land Board, and their grants are not as closely monitored. With no contract stipulating a completion date or other deadline in the grant award, State projects can remain active indefinitely. Although the criteria used by the Commission in forming its recommendations considers the feasibility of a project within the two-year acquisition timeframe, there is no actual requirement to complete a project within that period. In fact, the Legacy Land Conservation Program Manager contends that grants should remain in perpetuity since the program's objectives are to preserve the land in perpetuity. "We don't want to bail out early just because there might be some problem that could be resolved maybe next year, maybe in 5 years, maybe in 20 years. The game is forever," he said.

**In FY2017, the Land Conservation Fund's cash balance was \$27.8 million, of which approximately \$16.6 million sits idle, not reserved for grant awards or program expenses.**

This *laissez-faire* approach is contrary to the grant completion policies of Federal programs such as the U.S. Department of Agriculture's Forest Legacy Program, a conservation program administered by the U.S. Forest Service. According to the Forest Legacy Program, "... states are encouraged to work diligently to acquire the funded tracts within the initial grant period of 2 years. If there is appropriate justification, a grant can be extended to a maximum duration of 5 years to complete the purpose of the grant."

**Exhibit 4  
Pending Projects (as of 5/31/18)**



Source: Information provided by the Legacy Land Conservation Program and compiled by the Office of the Auditor

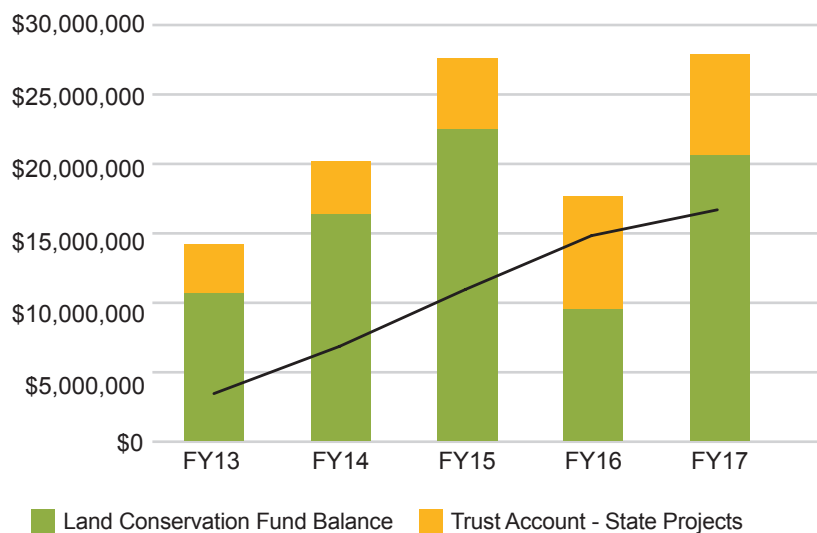
Legacy Land Conservation Program projects can thus linger for years, with their award moneys sitting dormant, earmarked but unused and, perhaps more importantly, unavailable for other uses. We note that the Legacy Land Conservation Program has 10 pending projects tying up funds for more than 2 years – and of these, 7 were awarded to State agencies. By applying for funding for projects that will take many years to complete and allowing awarded projects to linger without restriction, the State is tying up moneys that could be made available to other worthy projects. To that extent, the program’s purpose – to provide for public ownership and management of lands in order that they can be made accessible to all people of the State – is not being completely fulfilled.

## A Growing Balance

*Statutory provisions are limiting moneys available to the Legacy Land Conservation Program.*

**UP TO \$6.8 MILLION** per fiscal year is deposited into the Land Conservation Fund for grants to acquire land or conservation easements and for administrative expenses. However, the Land Conservation Fund’s expenditures are capped at \$5.1 million per fiscal year as appropriated by the Legislature. This budgetary constraint limits the amount of funds available to the Legacy Land Conservation Program. For example, since FY2016, the fund has been making an annual \$1.5 million debt service payment for reimbursable general obligation bonds issued to acquire a conservation easement for Turtle Bay, leaving only \$3.6 million available to spend each fiscal year. As a result of the \$5.1 million expenditure cap, in just the past five fiscal years, the Land Conservation Fund’s cash balance has nearly doubled, from \$14.1 million in FY2013 to \$27.8 million in FY2017, of which approximately \$16.6 million sits idle, not earmarked for projects or program expenses.

**Exhibit 5  
Fund Balance**



Source: Office of the Auditor

## **Contracts using Legacy Land Conservation Program funds may have violated State ethics and procurement laws.**

**ON SEPTEMBER 11, 2015**, the former Program Manager resigned from the Legacy Land Conservation Program. In her absence, DOFAW had several employees temporarily assigned to help administer the program while it searched for a replacement, one of whom was its Wildlife Access and Acquisitions Program (WAAP) coordinator. The WAAP coordinator, through his own separate consulting entity, was contracted by DOFAW to assist the Legacy Land Conservation Program. The three purchase orders for this work – which ran consecutively and were for the same scope of services – were each for \$4,999.50, just 50 cents below the \$5,000 threshold that would have required DOFAW to comply with State Procurement Code requirements for small purchases, which include soliciting quotes from at least two other contractors.

The State Ethics Code prohibits employees from soliciting and performing private work for a State department at which the employee is employed. The statute also prohibits an employee from using his State position to give himself an “unwarranted” advantage to secure a contract for himself. See Sections 84-14(d) and 84-13, HRS. We question whether the WAAP coordinator, who was eventually hired in October 2016 as the Legacy Land Conservation Program Manager, may have violated those provisions of the State Ethics Code in seeking out and securing contracts for himself, in his private capacity, with the same State agency at which he worked as the WAAP coordinator.

The WAAP coordinator said that at the time he was technically not a DOFAW employee, as he was an employee of the Research Corporation of the University of Hawai'i (RCUH). Although his paychecks had been issued by RCUH, we note that the funds for his position came from a federal award issued to DLNR. Moreover, he worked out of DOFAW offices alongside DOFAW managers and staff with whom he negotiated and ultimately contracted in his private capacity. The purpose of the State Ethics Code restriction is to prevent employees from receiving an unfair advantage, whether actual or perceived, by contracting in his private capacity with the same employees that he works with in his State capacity, which appears likely to be the case here.

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## **The program does not monitor acquired properties to ensure that awardees are complying with statutory and contractual requirements.**

In 2011, the Legacy Land Conservation Program developed a policy requiring grant awardees to file self-report forms every two years to help ensure that the property is being used in compliance with contractual requirements and continues to serve the conservation purpose for which the grant was awarded. However, we found that the program has not enforced this requirement for several years and has not tracked the submission and filing of these forms.

Because the Legacy Land Conservation Program does not have a system to maintain and track these reports, we searched through hard copy project files to compile a comprehensive tally of the self-report forms. We found that self-report forms were filed for only 5 of the 23 projects that required such reporting during FY2016 and FY2017. There were three projects, the oldest project closing in 2009, that should have filed multiple self-report forms, but had no forms on file. Because of the program's weak administration and poor recordkeeping, it is unclear if these three awardees were notified of the requirement, were aware of the requirement and never filed the forms, or had submitted the forms and the program simply could not locate them.

According to the Legacy Land Conservation Program Manager, enforcing the monitoring policy has not been a priority given the program's more pressing needs. We disagree. As an example, in December 2017, the program inspected the property of a Maui awardee who had been leasing portions of their Hāna property to a ranching operation and to a nonprofit organization for educational programs. Leasing of property purchased with Land Conservation Fund money requires Land Board approval, and the grantee had not obtained such approval. The Legacy Land Conservation Program had long been aware of the leasing issue, having identified the potential contract violation in the grantee's January 2015 self-report. In January 2018 – three years after it was first identified – the matter was brought before the Land Board, which determined that the activities did not appear to violate the terms of the grant agreement. Notwithstanding the eventual resolution of this particular issue, a more proactive approach to monitoring would have identified and addressed this issue much earlier, and helped to ensure that the moneys are being used in accordance with the grant terms and the Legacy Land Conservation Program's primary purpose.



**Inconsistent governing statutes and administrative rules afford DLNR and DOFAW opportunities for program funding not available to other grant applicants, which lack the transparency and accountability of the process required of other applicants.**

The responsibilities of the Legacy Land Conservation Commission are set forth in Section 173A-2.5, HRS. These include, but are not limited to:

1. **Advising DLNR and the Land Board** on:
  - a. any proposal, public or private, for the acquisition of any interest or rights in land having value as a resource to the State;
  - b. any requests for grants from the fund to a qualifying State or county agency or nonprofit land conservation organization for the preservation of lands having value as a resource to the State;
2. **Recommending** to the Land Board the acquisition of interests or rights in certain lands having value as a resource to the State; and
3. **Reviewing and adopting rules** relating to the criteria the Commission applies in advising DLNR and the Land Board and making recommendations to the Land Board regarding land acquisitions and grants made pursuant to Chapter 173A, HRS.

However, the statutory section pertaining to the Land Conservation Fund, Section 173A-5(i), HRS, provides that, based on applications from State agencies, counties, and nonprofit land conservation organizations, **DLNR**, in consultation with the Senate President and the Speaker of the House, shall recommend to the Land Board specific parcels of land to be acquired, restricted with conservation easements, or preserved in similar fashion. Thus, it appears that there is an inconsistency as to the responsibilities of the Commission and those of DLNR regarding recommendations to the Land Board.

DLNR has also promulgated administrative rules pertaining to the Legacy Land Conservation Program. Notably, under Section 13-140-3, HAR, DLNR delegated its responsibilities as set forth in Chapter 173A, HRS, for the administration of the Legacy Land Conservation Program to DOFAW.

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The administrative rules of the Legacy Land Conservation Program contain provisions relating to grants from the Land Conservation Fund that appear to be inconsistent with the responsibilities of the Commission as set forth in Chapter 173A, HRS, giving advisory responsibility to DLNR (and therefore DOFAW) rather than the Commission. Subsection 13-140-6(b), HAR, provides that DLNR **shall** recommend to the Land Board specific parcels of land to be acquired, and DLNR shall consult with the Senate President and the Speaker of the House, and *may* consult with the Commission, prior to making recommendations to the Land Board. These inconsistencies allow DLNR and DOFAW to make recommendations to the Land Board separate and apart from those made by the Commission, and without going through the grant process. In some cases, this has resulted in awards made in favor of DLNR and/or DOFAW's own projects that were inconsistent with the recommendations made by the Commission after their year-long vetting and evaluation process. All of these projects compete for the same limited \$5.1 million pool of funds available from the fund in any given year.

In creating the Commission, the Legislature appears to have determined the need to have diverse expertise and varied perspectives in consideration of the projects most deserving of protection for conservation purposes. DLNR/DOFAW's recommendations do not have the benefit of this expertise. We cite some examples in the following sections of this report.

**2015: DOFAW redirected \$600,000 from a discontinued project to fund one of its own projects.**

In FY2012, the Commission recommended to the Land Board funding grants for two separate projects relating to the Kuka'iau Ranch on Hawai'i Island's Hāmākua Coast. The first grant of \$1 million was awarded to a nonprofit, and the funds encumbered, for the fee purchase of an upper portion of the ranch. The second grant was awarded to DOFAW for \$600,000, and those funds were transferred to a DLNR trust account to be held for the acquisition of a conservation easement over a lower portion of ranch land. However, about three years later, both projects were discontinued.

In September 2015, DOFAW became interested in assuming the project involving the upper portion of the ranch, applying to the Commission for \$1.35 million in program funding. Later that year, the Commission recommended allocating just \$25,000 of the \$1.35 million request, which was all that was left under the fund's spending limit after funding of higher-ranked projects. Notwithstanding the Commission's recommendation, in September 2016, DOFAW requested and was granted Land Board approval to reallocate the \$600,000 from its

**Since FY2006, the Legacy Land Conservation Program has awarded more than \$47.3 million to fund 58 projects. By the end of FY2017, the program completed 31 of these projects, 8 projects have been discontinued, while 19 others, with awards totaling \$11.9 million, are still pending.**

discontinued easement project (the lower portion of the ranch) to their new project. We note that the \$600,000 should have been returned from the DLNR's trust account to the Land Conservation Fund in 2015, when the project was discontinued.

According to the DOFAW Administrator, keeping funding in the DLNR trust account gives the division the ability to keep projects with multiple funding sources alive. While other matching grants expire, the division can provide its projects with some funding assurance as they apply or re-apply for additional funding. The NEPM Section Manager noted that circumstances can suddenly change, and projects once considered dead are sometimes unexpectedly revived, and having available funding gives DOFAW the ability to save projects she referred to as "Hail Marys."

Neither the DOFAW Administrator nor the NEPM Section Manager believed that retaining moneys from discontinued projects in the trust account deprived other deserving grant applicants of funding opportunities. Both felt that transferring money back into the Land Conservation Fund, which has a spending cap and an ever-growing balance, would not make much of a difference in that regard as the returned money would be inaccessible due to the spending cap. Neither the statute nor rules provide such discretion to DOFAW.

**2016: DOFAW recommended its own project to the Land Board for consideration.**

On September 30, 2016, DOFAW submitted an application seeking more than \$700,000 in additional funding for the aforementioned Kuka`iau Ranch project, which it said would enable the land acquisition to close. About a month later, at its October 21, 2016, meeting, the Commission assigned various commissioners to visit the sites of seven applicant-projects, which were seeking a total of \$8.8 million in funding that year. DOFAW's \$700,000 request was one of the sites to be visited.

At the December 12, 2016, meeting, the lead commissioner and another commissioner who had gone on the field visit reported on the site visit to Kuka`iau Ranch. Among those who testified at this meeting was the DOFAW Administrator, who shared the division's plans to eventually open the ranch lands for public access and hunting. The following day, the Commission ranked DOFAW's project second out of the five projects before them; but there was only enough money in FY2017 to fund a portion of the top-ranked project, approximately \$840,000. The Senate President and the Speaker of the House of Representatives were consulted, and approved this recommendation. However, on May 26, 2017, DOFAW added its own recommendation to the official submittal for consideration by the Land Board. Contrary to the Commission,

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DOFAW recommended that its own project be awarded the total amount of its request, with the Commission's top recommended project receiving only \$100,000, the remainder of the available FY2017 funds. The Land Board approved DOFAW's recommendation.

According to the DOFAW Administrator, he felt compelled to intervene because he believed that the Commission had not properly considered all the "facts on the table," such as the funding deadlines of the various grant proposals. He contends that the proceedings of the Commission's meeting were particularly rushed and chaotic that day, and at the time, DOFAW believed that its project was on a "short fuse," since it could have lost access to Federal funding if it did not secure State funding.

The DOFAW Administrator also pointed out that the Commission's role is to advise the Land Board, which ultimately makes the final decisions, and he sees his role as much the same. Since DOFAW administers the Legacy Land Conservation Program and prepares the submittal of recommendations to the Land Board, he took that as an opportunity to add an alternative recommendation for the Land Board to consider.

"And I just had an alternative proposal, which the board saw as being the more practical alternative, and they took it. So, the Commission was advising the board, and I was advising the board," he said.

We note that in this instance, DOFAW was both administrator of and applicant to the Legacy Land Conservation Program. Like other applicants, DOFAW had the opportunity to voice its support for its project during the December 12, 2016, Commission meeting. Unlike other applicants, DOFAW was able to make a direct appeal to the Land Board. The practice may not have technically violated any existing law or rule. However, the advantages and special treatment DOFAW took, at a minimum, do not promote confidence in the process by applicants or the general public. The Legislature created a Commission, with diverse expertise, to make recommendations to the Land Board in order to allow varied specialties and views to have input into the process. Setting this process aside and allowing one person (the DOFAW Administrator) to decide what is in the best interest of the State seems to run contrary to the purpose underlying the Commission's creation.

## Where the Sun Didn't Shine

**WE BECAME AWARE** of the above sequence of events – the original ranking of projects by the Commission and announcement of DOFAW's plan to make an alternate recommendation to the Land Board – by reviewing the minutes of the December 13, 2016, Commission meeting and May 26, 2017, Board Submittal. Several Commission meeting minutes were not posted on the Legacy Land Conservation Program's website, and we had to request from the Program Manager the minutes. We received both typed transcripts and audio recordings. We note that the last set of minutes posted on the program's website are those for the December 12, 2016, meeting, the day before the Commission announced its FY2017 project rankings.

According to Chapter 92, HRS, also known as Hawai'i's Sunshine Law, opening up governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. The Sunshine Law is Hawai'i's open meetings law, and it requires boards and commissions to keep written minutes of all meetings, which shall give a true reflection of the matters discussed at the meeting and the views of the participants. As of July 1, 2018, boards have the option of posting a recording of the entire meeting along with a written summary. Written or recorded minutes are required to be posted online within 40 days after the meeting.

As of November 2018, the Program Manager had yet to post any additional meeting minutes after December 12, 2016.

### **2018: DOFAW requested budget moneys to fund its own projects, which had previously been considered and not fully funded by the Commission.**

During the 2018 Legislative Session, DOFAW sought to fund three of its projects by submitting them as capital improvement projects (CIP) in DLNR's FY2019 budget request. The request was to fund these projects not from the general fund, but from \$7 million of the Land Conservation Fund's growing balance not subject to the \$5.1 million annual spending cap. One project, the Kamehamenui Forest, Kula Forest Reserve (\$3 million requested), had previously been ranked third out of eight grant applications by the Commission, which recommended that if any of the FY2018 awards fell through, that the funding go toward the project as an alternate. The Hāna Forest Reserve project (\$2 million requested) had also been considered by the Commission for funding and was ranked seventh out of eight grant applications. The third project, Waimea Forest, Pupukea Forest Reserve (\$2 million requested) had already been awarded more than \$400,000 by the Commission in FY2015.

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The Legislature partially granted DOFAW's request. On April 25, 2018, the Legislature passed House Bill No. 1900, Supplemental Appropriations Act of 2018, approving \$3 million for the acquisition of Kamehamenui Forest. An additional \$2 million was secured through county and general obligation bond funds for the project.

The DOFAW Administrator and NEPM Section Manager contend that they act in the "best interest of the State" and explore all avenues of available funding. However, the Legislature created the Commission, with its expertise, along with an informed, deliberative grant award process to provide input into these decisions. Although this \$3 million land acquisition out of Land Conservation Fund was approved by the Legislature and signed by the Governor, it was executed outside of the Legacy Land Conservation Program grant award process.

## Conclusion

After a little more than a decade in existence, the Legacy Land Conservation Program has awarded 58 projects with \$47.3 million in grant moneys. Only about half of these projects have reached completion – i.e., land purchased and conserved. Almost a third of the awards are still pending. Since the acquisition of conservation land can be a complicated process, and considering the relative infancy of the program, it is difficult to determine if the program is achieving its statutory purpose.

What is clear is that the Land Conservation Fund balance has been growing at a rapid rate, and that the fund is being mismanaged and potentially misused. In addition, inconsistent governing statutes and administrative rules have afforded DLNR and DOFAW additional access to program funding not available to other grant applicants. These alternative funding opportunities lack the transparency, accountability, and the expertise and participation of the wider community, all hallmarks of the Legacy Land Conservation Program's grant award process created by the Legislature.

If the Legacy Land Conservation Program's purpose is to award grants to protect and preserve as much land as possible through acquisition and management, the Legislature should consider increasing the fund's appropriation ceiling to a more appropriate level; however, this change should be contingent upon significant improvements to the Legacy Land Conservation Program's management of the fund and the administration of its grants.

## Recommendations

The Legacy Land Conservation Program should:

1. Prepare and implement a Resource Land Acquisition Plan to comply with Section 173A-3, HRS.
2. Develop and implement written policies and procedures – including internal controls – governing the grant award and blanket encumbrance processes to ensure that project contracts are executed on time and blanket encumbered funds do not lapse.
3. Develop clear and well-defined policies and procedures between the Legacy Land Conservation Program and DOFAW regarding distribution of Land Conservation Fund moneys. For instance, DOFAW should follow Section 173A-5, HRS, and submit a grant application to receive funding rather than submit a budgetary request.
4. Work with the DLNR fiscal office to request the Department of Accounting and General Services to return the \$684,526 in administrative fees erroneously paid to it in FY2016 and FY2017.
5. Maintain a record of the transfer of funds to and from the DLNR trust account and report these transactions to the Governor and the Legislature in the program's annual report as required by Section 173A-5(l)(2), HRS.
6. Review personnel spending and position assignments and implement changes as needed to ensure that Land Conservation Fund moneys are used for only for administrative and other costs directly related to the Legacy Land Conservation Program.
7. Maintain a centralized file system and establish a records retention policy for all awarded projects, including pending, completed, and discontinued projects.
8. Implement a policy that places a reasonable limit on the time a project, whether proposed by State, county, or nonprofit organization, can remain pending.
9. Provide commissioners with background information and history on each applicant, including how many grants they have received from the Legacy Land Conservation Program, how long it has taken them to complete projects, and any outstanding or discontinued projects – a practice employed by the Federal Forest Legacy Program to help its panelists make final decisions on project recommendations.
10. Post Commission meeting minutes in compliance with the Sunshine Law.
11. Promulgate administrative rules to implement the above recommendations.

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The Legacy Land Conservation Commission should:

1. Limit the amount of the grants that it recommends be funded from the Land Conservation Fund to the anticipated balance of the amount appropriated by the Legislature for the fiscal year. The Commission should not recommend awards that exceed the anticipated balance of the current fiscal year appropriation.

The Hawai'i State Legislature should:

1. Review current statutes and administrative rules which place both DLNR and the Commission in an advisory role to the Land Board regarding use of Land Conservation Fund moneys, and consider whether the current structure best meets the purposes and goals of the Legacy Land Conservation Program.





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# Office of the Auditor's comments on the Department of Land and Natural Resources' Response to the Audit Findings

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**WE PROVIDED A DRAFT OF THIS REPORT** to the Department of Land and Natural Resources (DLNR) and met with the Chairperson of the Board of Land and Natural Resources, the Legacy Land Conservation Program Manager, and the Land Division's Special Projects Coordinator to discuss our audit findings. The Division of Forestry and Wildlife's (DOFAW) Native Ecosystems Protection and Management Section Manager and the DLNR Fiscal Officer also participated in the meeting via telephone. The department provided a written response to the draft report of our audit, which is included in its entirety as Attachment 1.

The department generally seems to agree with the majority of our findings and represents that it is taking steps to implement many of the recommendations; however, in several instances, DLNR's statements are inconsistent or contradictory and seem to reflect the department's misunderstanding of the audit findings.

For instance, the department acknowledges what it characterizes as "a brief period of shortcomings" that resulted in, among other things, the program allowing \$2.2 million in grant awards to lapse, meaning that the moneys committed to those conservation projects were no longer available to fund those projects. However, the department states that, since that time, it has "refined its process" to allow the Board of Land and Natural Resources (Land Board) to "fill a funding gap" for projects which the Land Board, in a prior fiscal year, approved and committed funds to support. The Land Board cannot create a budget deficit or "funding gap" by committing to fund conservation projects when the program does not have, at that moment, sufficient moneys to cover the amount of the grant award. The program can only commit the funds it has been appropriated for that fiscal year. It simply cannot commit funds that it does not have, which the department's "refined" process seems to attempt to support.

Similarly, the department agrees that it has used the Land Conservation Fund to pay the salary of the Program Specialist, many of whose responsibilities are unrelated to the Legacy Land Conservation Program; however, the department's cavalier response to the audit finding appears to reflect a significant misunderstanding about the limited use of special

fund revenues. Special funds, such as the Land Conservation Fund, are created by the Legislature for a specific purpose, and the moneys in a special fund can only be used to support that purpose. It is not simply a difference in our “method of accounting,” as DLNR tries to characterize our finding. The Land Conservation Fund must be used to support the Legacy Land Conservation Program, not activities in the department’s Land Division.

DLNR represents that it will issue a Request for Proposals in fiscal year (FY) 2020 – i.e., sometime after July 1, 2019 – “to prepare a Scope of Work and cost estimate for developing a resource land acquisition plan”; will seek an appropriation for FY2021 to pay for the development of a Resource Land Acquisition Plan; and then will issue a Request for Proposals to develop the plan. Based on that timeline, it appears unlikely that the department will develop a Resource Land Acquisition Plan before mid-2021, more than two years from today.<sup>1</sup> DLNR apparently does not understand the importance and urgency of a comprehensive and transparent Resource Land Acquisition Plan to guide its land conservation efforts and the use of the Land Conservation Fund. DLNR insists that the program currently is guided by “existing resource plans,” specifically Chapter 13-5-140, Hawaii Administrative Rules (HAR). First, the Legislature directed the department to prepare a Resource Land Acquisition Plan in 2006 – over 12 years ago. That document is intended to provide clear, transparent, and consistent policy guidance to the Land Board in its acquisition of land for conservation purposes as well as the Legacy Land Conservation Commission, DLNR, and DOFAW in their respective duties. Second, Chapter 13-5-140, HAR, clearly is not a “resource plan,” as DLNR’s response claims. Rather, the administrative rules cited by the department simply regurgitate the statute, Chapter 173A, Hawaii Revised Statutes, and provide no plan to guide the Land Board in acquiring lands for conservation purposes.

Importantly, a proper Resource Land Acquisition Plan will likely help to address our observation about the “competing” recommendations for use of the Land Conservation Fund. As we observed, DOFAW and the department have substituted its opinion for that of the Legacy Land Conservation Commission and its nine Governor-appointed, Senate-confirmed members by recommending grant awards and other uses of the Land Conservation Fund that are contrary to the Commission’s recommendations or outside of the Legacy Land Conservation Program’s grant process. Without a clear and consistent land acquisition plan, DOFAW, DLNR, the Commission, and the Land Board have no

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<sup>1</sup> As we reported, in its FY2010, FY2011, FY2012, FY2013, and FY2014 annual reports to the Legislature, DLNR declared that it would produce a draft plan for review by the Senate President and the Speaker of the House of Representatives. In FY2016, the department stopped mentioning the requirement of producing a Resource Land Acquisition Plan.

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resource to prioritize projects competing for funding from the Land Conservation Fund.

The department also claims that it maintains records of all transfers to and from the Land Conservation Fund and the DLNR trust account. However, that position conflicts with the information that we obtained during our audit work. As we reported, moneys awarded to State agencies for land conservation projects are transferred from the Land Conservation Fund to a DLNR trust account. When we asked the Program Manager for the State projects that made up the balance in the DLNR trust account, he could not provide those to us and directed us to DLNR's fiscal office; however, the fiscal office told us that it had asked the program to reconcile the balance of the Land Conservation Fund moneys in the trust account and never received a response to that request. Without clear and consistent reporting of the Land Conservation Fund moneys in the DLNR trust account, those moneys are generally obscured from legislative oversight.

Lastly, we are compelled to address the department's response to our observation that the contracts DOFAW entered into with a State employee to assist the Legacy Land Conservation Program may have violated State ethics and procurement laws. The department asserts that it complied with ethics laws because the contractor was not a DLNR employee, stating that "[a] DLNR employee did not gain personal benefit" from the contracts. That argument, however, ignores the State Ethics Code's underlying purpose: to preserve public confidence in State employees and, more generally, State government. To achieve that purpose, the statute prohibits a State employee from, among other things, using his status as an employee to gain an unfair advantage, specifically stating that an employee cannot use his State position to secure a contract for himself. Because of the inherent advantage an employee enjoys, another section of the State Ethics Code expressly prohibits an employee from contracting with the State agency at which he is employed.

There is no dispute that the contractor was a State employee, employed by the Research Corporation of the University of Hawai'i through a federal grant that the department had received; that he worked fulltime at DOFAW alongside the DOFAW managers and staff with whom he negotiated and ultimately contracted in his private capacity as well as to whom he reported in both his State and private capacities. Clearly, he gained a "personal benefit" from the contracts with DOFAW.

DLNR's refusal to recognize and acknowledge that the circumstances surrounding these contracts raise legitimate questions about whether the employee benefited because he was working at DOFAW is concerning – more so because DOFAW did not solicit other proposals to perform

the work for which it contracted with the employee. The department cannot simply choose to ignore the reasonable perception that the circumstances suggest the employee may have gained an inherent advantage because of his relationship with those who awarded the contract. That unwillingness to examine whether its actions fostered public confidence in those actions is detrimental to the department and, more generally, to State government.

Moreover, the fact that DOFAW issued three consecutive contracts (or purchase orders) of \$4,999.50 for the employee's private work, each of which was \$0.50 – fifty cents – below the State Procurement Code's threshold of \$5,000 that would have required DOFAW to solicit other quotations raises concerns about the department's lax procurement practices, and as importantly, its seemingly conscious efforts to circumvent the statutory requirements. DLNR's response did not address the procurement code issues raised by its three consecutive purchase orders.

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
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December 24, 2018

Mr. Leslie H. Kondo, State Auditor  
Office of the Auditor  
465 S. King Street, Room 500  
Honolulu, Hawai'i 96813-2917

Dear Mr. Kondo:

Thank you for the opportunity to respond to the draft performance audit report entitled *A Little Less Conservation: Audit of the Department of Land and Natural Resources' Land Conservation Fund*. We offer the following comments:

The Legacy Land Conservation Program (LLCP) is an important, popular, and highly successful public-private partnership that achieves its statutorily authorized program purposes. Since the LLCP obtained a dedicated source of funding in 2005, LLCP has completed thirty acquisitions of land, listed on the LLCP website at <http://dlnr.hawaii.gov/ecosystems/llcp/projects/>, and has closed each transaction within one to five years of funding approval. LLCP performs in a rigorous, transparent, and cost-effective manner that maximizes return on State investments. The Department believes that applicants, grantees, government officials, and others from outside of the Department—that hold extensive on-the-ground knowledge about the impacts of program performance upon their land conservation efforts and community well-being—would readily confirm this.

Financially, please note two significant areas in which LLCP exemplifies proper management and use of the Land Conservation Fund:

1. Matching funds for completed grants from the Land Conservation Fund have exceeded statutory match requirements by over \$38 million. Section 173A-5(j), Hawai'i Revised Statutes, requires that a county or nonprofit grant recipient provide at least 25% of total project costs as matching funds. The total match provided to date by all grant recipients combined is about 180%, over seven times greater than the statutory requirement. LLCP approves the funding up front which allows grantees to leverage the approved funding to obtain significant matching funds with which to finalize the project.
2. LLCP strives to maximize the funding available for land acquisition grants. To date, the Department's expenditures for its administrative costs average only

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CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

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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

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about 3% of the previous year's revenue obtained, compared to the statutory cap of 5%. LLCP has saved nearly \$1.5 million compared to the statutory cap.

The Department responds generally to the audit findings as follows:

1. *Financial Management:*

The Department acknowledges a brief period of shortcomings in Fiscal Years 2016 and 2017 after an approximately year-long period when three key positions<sup>1</sup> were vacant that resulted in lapsed grant funds (\$2.2 million that did not leave the Land Conservation Fund) and unnecessary payment of central service fees (\$684,256).

In 2016, the Department missed a fiscal lapse deadline for contracts worth \$2.2 million. DLNR reported this lapsing of encumbrances in its next annual report to the Legislature. The lapsed funds remained in the Land Conservation Fund, above the spending ceiling authorized for the Department. LLCP sought to correct this lapse by requesting legislative authorization to use the lapsed funds. Because those requests were not granted, in the next fiscal year the Department reduced the amount available for new grant awards and funded the previously approved projects, in order to honor the prior grant commitments. However, as the auditor has pointed out, the Department did not repeat the approval process for those carried over projects in that next year. The Department never encumbered or expended any funds for which it did not already have a legislative budget appropriation.

Since that time, the Department has refined its process and received, on three occasions, approval from the Board of Land and Natural Resources to use a current fiscal year appropriation to fill a funding gap for a project initially approved in a previous fiscal year.

The Department acknowledges that its flexible system of LLCP personnel administration, allocating time among several expert staff as needed, while fair and efficient, does not align with the audit team's expectations for the method of accounting for personnel time paid for with LLCP funds.

2. *DOFAW's role in award process:* The Department's Division of Forestry and Wildlife (DOFAW) has the responsibility and authority to recommend to the Board an action that DOFAW believes is in the best interests of the State, even if it is different from the Commission's recommendation. With respect to one round of awards in June 2017, DOFAW provided the Commission's recommendation to the Board as Option 1, and DOFAW's recommendation due to an expiring large federal match deadline on a project, as Option 2, in a regular sunshine meeting, so that the Board could have the maximum amount of information and background to make its decision. The Board has the ultimate authority and discretion to determine the State's best interests. Furthermore, the applicant whose project would be delayed under DOFAW's recommendation testified in the Board meeting that he did not oppose

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<sup>1</sup> The Program Specialist of the Legacy Land Program, the Program Specialist's supervisor (the Native Ecosystem Protection and Management Section Manager), and the Section Manager's supervisor (the Division of Forestry and Wildlife Administrator)

DOFAW's decision. That application was then fully funded, with additional Board approval, in the next fiscal year.

The Administration also has the authority to include in its proposed executive budget requests to fund land acquisitions, and did so in 2018, identifying Land Conservation Fund balances accrued above the spending ceiling as a source of funds. The Legislature concurred by granting that request for one project. Legislators also have access to alternative funding opportunities that are not available to a LLCP grant applicant, including the Department, by introducing a legislative measure or amending the budget bill to appropriate moneys from the Land Conservation Fund for a specific acquisition of land having resource value to the State.

3. *Ethical behavior:* DLNR followed the ethics code when contracting with a private firm, because the owner of that firm was not a DLNR employee. A DLNR employee did not gain personal benefit from this contracting process. The Department sought guidance from the Hawai'i State Ethics Commission on January 12, 2016, regarding this contracting process, and Ethics Commission staff confirmed that the process followed the ethics code. This advice is documented in Ethics Commission staff filing # AOD 2016-0017, and is based on the fact that the entity awarded the contract was not an employee of the agency (DLNR). Our effort to obtain additional documentation of this filing, as suggested by the audit team, is ongoing.

4. *Unencumbered cash balance of the Land Conservation Fund:* The Department tracks all aspects of the Land Conservation Fund, and provides, in its annual report to the Legislature, information about both the unencumbered balance of the fund and the funding encumbered for approved projects (including State agency projects for which encumbrance occurs as a transfer from the Land Conservation Fund to a Departmental trust fund, that is accounted for as an expenditure).

The audit report critiques the long amount of time it takes to finish land transactions. Land acquisitions can often take years, to appraise, reach agreement with the seller on price and terms, conduct due diligence, and assemble all needed funds. The Department notes that it is the applicant's responsibility to complete these transactions, which often involve multiple funding sources with different closing requirements, many rigorous due diligence steps, and complicated family, business, and tax relationships and consequences.

### **Recommendations and Related Findings**

The Department has reviewed the recommendations and related audit findings and provides the following response.

#### **1. Resource Land Acquisition Plan**

The Department will complete a resource land acquisition plan as provided in Section 173A-3, HRS.



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December 24, 2018  
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- The program is already guided by established plans because it requires that each application identify how the proposed land acquisition meets the goals of existing resource plans (including those referenced in the application materials and others available via the program website). The program's policies, procedures, long-term direction and goals are guided by statute as well as Chapter 13-5-140, Hawai'i Administrative Rules, and the Department reports achievements and future goals for the program to the Legislature on an annual basis.
- In Fiscal Year 2020, the Department will issue a Request for Proposals to prepare a Scope of Work and cost estimate for developing a resource land acquisition plan (RLAP). After completing that contract, the Department would then (1) request an additional lift in its spending ceiling for Fiscal Year 2021, through the Supplemental Executive Budget Request process, to fund a contract for RLAP development, and (2) issue a Request for Proposals to develop the RLAP, and award and administer a contract for RLAP development. LLCP will issue the contracts and complete the plan in consultation with the Senate President and Speaker of the House of Representatives, as required by statute.

## **2. Policies and procedures for the grant award and blanket encumbrance process**

The Department will update its existing, written, internal procedures (provided during the audit process) that guide the grant award and blanket encumbrance process.

- We would format this update in a manner that can readily accommodate continual revision in response to ongoing changes in (1) Department policies and procedures and (2) overlying directives, policies, and procedures imposed by the Legislature, the Department of Accounting and General Services, the Department of Budget and Finance, and the Governor.
- As noted above, the Department agrees with a related finding that LLCP failed to encumber funds on a timely basis for three out of fifty-eight grants approved from 2005 to 2018, resulting in a lapse of \$2.2 million (draft audit report, page 14). During the audit process, the Department explained that these mistakes occurred during a prolonged period (September 2015 to October 2016) of overlapping Department vacancies and turnovers in several key positions, including not just the LLCP Program Specialist (referred to in the draft audit report as the "Program Manager"), but also the Program Specialist's immediate supervisor; the Division of Forestry and Wildlife Administrator; and the Department's Fiscal Management Officer.

## **3. Distribution of Land Conservation Fund monies**

The Department believes that Section 173A-5, Hawai'i Revised Statutes, and other governing authorities, allows a State agency to submit a budgetary request for an appropriation from the Land Conservation Fund for resource land acquisition.

- The Legislature has verified the Department’s position on two occasions: (1) the 2017 Legislature transformed the Department’s budgetary request for \$2 million in general funds for land acquisition into an appropriation from the Land Conservation Fund for the same acquisition and amount, and (2) the 2018 Legislature appropriated \$3 million to the Department, from the Land Conservation Fund, for a Department land acquisition, as requested by the Department through the Executive Budget Request process. The Legislature also directed that the debt service for the Turtle Bay acquisition be funded by the Land Conservation Fund.
- The Department finds that the availability of multiple State funding options for State land acquisition provides for agility and flexibility that enhances the State’s ability to fulfill the statutory purpose of Chapter 173A, which is subtitled as “Acquisition of Resource Value Lands.”

#### **4. Return of Administrative Fees**

The Department will continue its efforts to secure the return of administrative fees levied against the Land Conservation Fund in Fiscal Years 2016 and 2017 (FY16&17). These fees had previously been required throughout the program’s existence, and the Department was unaware of the sunset clause which exempted the Land Conservation Fund after FY15. We are grateful that the audit team alerted us to this oversight.

- Immediately after receiving this alert, the Department acted quickly to (1) confirm the oversight and mistakes with the Department of Budget and Finance; (2) avoid additional payments in Fiscal Year 2018; and (3) initiate efforts to return FY16-17 payments to the Land Conservation Fund.

#### **5. Transfer of funds to and from the Department Trust Account**

The Department maintains records of each transfer of funds to and from the DLNR trust account. The Department will revise LLCP’s annual report to the Legislature to include a synthesis of these records, so as to provide a single record that serves as “a transfer listing of all [LLCP] project moneys transferred to the trust account.”

- As required by statute, LLCP tracks amounts disbursed from the Land Conservation Fund. LLCP reports these amounts to the Legislature, annually, as “Transfers” and “Expenditures.” The Department does track the balance of the DLNR trust account, as a function of the Administrative Services Office. For example, please see page 18 of Audit Report No. 18-19, showing Beginning and Ending Balances for the last five fiscal years.

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December 24, 2018  
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- HRS 173A-5 does not require a report on the trust fund, but the Department does provide in its legislative reports summations of the moneys placed annually in the trust fund by reporting those transactions as encumbrances. The accounting that the Department provided in each of its twelve annual LLCPP reports is accurate and meets statutory requirements, but does not contain the level of detail recommended by the Auditor. The Department will implement the audit team's recommendation.

#### **6. Personnel spending and position assignments**

The Department will review personnel spending and position assignments and implement changes accordingly, as needed.

#### **7. File System and Records Retention Policy**

DOFAW maintains central records for the grant process and overall program functions. The Project Development Specialist maintains central records for state land acquisitions funded by the LLCPP. The Department will continue its ongoing file centralization process, and its ongoing review of records retention policies for an approved grant award.

#### **8. Time limit on a pending project**

The Department will conduct an annual review of each LLCPP 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 can terminate a project that remains pending for an unreasonable time, as determined by the Board.<sup>2</sup>
- After a project grantee enters into a grant agreement with the Board, the Board has the right to terminate the agreement for cause (after reasonable notice of and opportunity to cure default) or without statement of cause (at any time).<sup>3</sup>
- For the thirty completed, grant-funded LLCPP acquisitions to date, the average time to complete a grant was about 2.5 years, and the longest time to complete a grant (which applies to just 3 grants) was 5 years. The current age of approved, pending grants averages about 4 years, ranging from 1 year (two grants approved during FY18) to 10 years (one grant approved during FY09), with just three grants older than 5 years.

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<sup>2</sup> See Sections 173A-9 (Grants) and 173A-11 (General Powers), Hawai'i Revised Statutes.

<sup>3</sup> See General Conditions for Legacy Land Conservation Program Grant Agreements at 15.b.

- Of these three grants, each awarded to State agencies, one of them (LLCP 09-02, Kukuipahu Heiau Buffer) remains pending in order to implement legislation that requires the State “to acquire land sufficient to buffer the sites to be included in the [Kohala Historical Sites State] monument and to provide public access to them.” Act 166, Session Laws of Hawai‘i, 1992. Another (LLCP 13-02, Ulupō Heiau Buffer) is in active negotiation with the landowner; the purpose is to maintain the undeveloped land adjacent to the heiau in open space to promote the historical setting; interpret and share the site with residents and visitors; and provide an outdoor classroom for educational programs and perpetuating Hawaiian cultural traditions in direct association with a significant cultural site and wahi pana. The third project, a proposed addition to Ka‘ena Point Natural Area Reserve, is under review as part of a larger mosaic of land protection in the area.
- About \$16.6 million resides in the unencumbered cash balance of the Land Conservation Fund. The Department has requested authority in its budget requests for incremental increases in the spending ceiling established by the Legislature for the many worthy projects that the Commission deems ready for action.
- The Department notes that it is the sole direct recipient of funding provided to our state through the U.S. Department of Agriculture’s Forest Legacy Program. In response to the audit team’s reliance on Forest Legacy Program grant periods to assess LLCP grant completion policies (page 20, draft audit report), we recently initiated dialogue with the U.S. Forest Service to help assess the effect of grant completion policies on overall program success, comparing the conservation outcomes achieved through LLCP and Forest Legacy in relation to their respective grant completion policies.

#### **9. Applicant Background Information**

The Department will consult with the Legacy Land Conservation Commission and its constituents, in a future public meeting, regarding these recommended additional types of background information and applicant history to future grant application forms, in addition to the information that is now requested on grant application forms.

#### **10. Minutes**

The Department will post Commission meeting minutes in compliance with the Sunshine Law.

#### **11. Administrative Rules**

The Department will review the appropriateness of rules and other methods in use for program management.

Leslie H. Kondo, State Auditor  
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**1. Legacy Land Conservation Commission funding recommendation (page 31)**

The Legacy Land Commission recommends awards to top-ranked projects for the current year's funding amount. The Commission also recommends awards to other projects for which it has received applications and conducted review, and considers worthy of acquisition, as backups. While this hasn't yet happened, should such a backup be necessary, the Board approval will have occurred, but subject to available funding from that year. The next year, if the backup projects have not been funded, the applicants can re-apply and the review and approval process is conducted *de novo*.

- The Department and the Commission believe that its governing authorities do not limit the amount of the grants that the Legacy Land Conservation Commission can recommend be funded from the Land Conservation Fund. The Commission's recommendation to the Board is advisory only, and does not commit funds.
- The Commission recently recommended, and the Chairperson of the Board of Land and Natural Resources approved, a change in the annual timeline for the grant application, review, and recommendation process. The Commission will now issue its funding recommendation for the upcoming fiscal year, rather than for a current fiscal year (which was its previous practice). This will shift the grant approval process to an earlier point in each fiscal year to help avoid missing fiscal deadlines for encumbering approved funds. The timing adjustment will also provide an opportunity to inform the Legislature, during its budgeting process, about the specific projects that contribute to a request that the Legislature raise the spending ceiling for grants from the Land Conservation Fund. The Commission's recommendation will not commit funds, and will be implemented, if approved, subject to funding availability. The awards will not be decided upon by the Board, or committed in an award letter, unless and until the Legislature establishes its appropriation to the Land Conservation Fund for the next fiscal year.

The Department believes that its governing statutes and administrative rules are complementary, not inconsistent.

The Department believes that its Legacy Land Conservation Program (LLCP) has significantly improved management of the Land Conservation Fund and administering LLCP grants, including several recent improvements made based on input received during the audit process.

The Department appreciates the review and perspective of the audit team during the audit process, and the opportunity to pursue further our shared goal of strengthening this crucial program, so that we can continue to protect, forever, irreplaceable lands for the benefit of Hawai'i's people.

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Leslie H. Kondo, State Auditor  
December 24, 2018  
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Please contact me at 587-0401 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Suzanne Case".

Suzanne D. Case  
Chairperson

Attachment A. Department Update to Exhibit A – Grant Awardees 2008 – 2017

Leslie H. Kondo, State Auditor  
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### **Attachment A. Grant Awardees 2008 – 2017**

The Department submits the following updates and additional details concerning its Grant Awardees for the Legacy Land Conservation Program (LLCP):

#### **COMPLETED GRANTS**

Overall, LLCP completed ten grants during the last three years, which is nearly 1/3 of all grants completed during the last thirteen years, most recently:

16-03 and 14-04, DOFAW, Helemano      ~~PENDING~~ COMPLETED

In conjunction with these two grant completions, the Land Conservation Fund now receives additional annual revenue, from its proportional share of grazing license fees that the Division of Forestry Wildlife (DOFAW) collects for private use of a portion of the acquired property. Post-closing excess grant funds are also in the process of returning to the Land Conservation Fund (\$336,200 from LLCP 14-04).

#### **DISCONTINUED GRANTS**

Funds for all discontinued grants to a State agency have returned to the Land Conservation Fund or are in the process of being returned. The grants most recently discontinued are for Upper Kūka‘iau Ranch, totaling \$1,363,346 (LLCP 17-02, 16-05, and 12-04) and for Wai‘opae, \$1,330,000 (LLCP 15-03).

Overall, DOFAW’s incumbent LLCP Program Specialist finalized the discontinuation of eight grants during the last two years, which is over 57% of all grants discontinued during the last thirteen years. The discontinuation process is now up to date.

#### **PENDING GRANTS**

The four longest pending grants (2006-2012) are for Department land acquisitions. Of the other ten pending grants (2014-2018), two from 2015 are for Department land acquisitions, and the other eight are for land acquisitions by nonprofit land conservation organizations (eight different organizations, one grant each).





**Appendix A – Grant Awardees 2006 – 2017**

**SINCE FY2006**, the Legacy Land Conservation Program has awarded more than \$47.3 million to fund 58 projects.

ID	AWARDEE	ENTITY	AMOUNT (\$)	ISLAND	PROPERTY	Status	Date
17-03	Hawaiian Islands Land Trust	NPO	210,000	Maui	Kepler Ke'anae Lo'i	PENDING	
17-02	DOFAW	State	738,346	Hawai'i	Upper Kūka'iau Ranch	PENDING	
17-01	Ala Kahakai Trail Association	NPO	2,000,000	Hawai'i	Waikapuna	PENDING	
17-00	DLNR	State	1,500,000	O'ahu	Turtle Bay Makai	COMPLETED	7/11/2017
16-05	DOFAW	State	25,000	Hawai'i	Upper Kūka'iau Ranch	PENDING	
16-04	DLNR	State	1,500,000	O'ahu	Turtle Bay Makai	COMPLETED	6/29/2016
16-03	DOFAW	State	1,500,000	O'ahu	Helemano	PENDING	
16-02	Maunaloa Fishpond Heritage Center	NPO	1,300,000	O'ahu	Kānewai	COMPLETED	6/21/2017
16-01	Hi'ipaka, LLC	NPO	175,000	O'ahu	Pu'ukua	PENDING	
15-06	DOFAW	State	416,125	O'ahu	Pūpūkea Mauka	PENDING	
15-05	Moloka'i Land Trust	NPO	500,000	Moloka'i	Kalua'aha Ranch	PENDING	
15-04	DOFAW	State	855,625	Moloka'i	Pua'ahala Watershed	PENDING	
15-03	County of Hawai'i	County	1,330,000	Hawai'i	Wai'ōpae	PENDING	
15-02	Livable Hawaii Kai Hui	NPO	1,000,000	O'ahu	Ka Iwi Coast Mauka Lands	COMPLETED	3/31/2017
15-01	Waipā Foundation	NPO	398,250	Kaua'i	Kaluanono at Waipā	PENDING	
14-04	DOFAW	State	350,000	O'ahu	Helemano	PENDING	
14-03	Kokua Kalihi Valley	NPO	900,000	O'ahu	Ho'oulu Ola	PENDING	
14-02	Ka Huli O Hāloa	NPO	350,000	O'ahu	Hakipu'u Lo'i Kalo	PENDING	
14-01	Aloha Kuamo'o 'Āina	NPO	3,000,000	Hawai'i	Kuamo'o	COMPLETED	12/31/2015
13-04	Agribusiness Development Corporation	State	1,146,000	O'ahu	Whitmore Agricultural Lands	DISCONTINUED	3/17/2016
13-03	Hawaiian Islands Land Trust	NPO	1,000,000	Kaua'i	Vipassana Hawai'i	DISCONTINUED	7/1/2014
13-02	DLNR Division of State Parks	State	1,000,000	O'ahu	Buffer for Ulupō Heiau	PENDING	
13-01	Hawaiian Islands Land Trust	NPO	198,707	Hawai'i	Hāmākua Farm	DISCONTINUED	10/19/2014
12-07	County of Hawai'i	County	621,245	Hawai'i	Kahuku Coastal	COMPLETED	11/4/2016
12-06	The Nature Conservancy	NPO	1,000,000	Hawai'i	Upper Kūka'iau Ranch	DISCONTINUED	1/23/2015
12-05	Ala Kahakai Trail Association	NPO	1,449,555	Hawai'i	Kaiholena South	COMPLETED	11/5/2015
12-04	DOFAW	State	600,000	Hawai'i	Lower Kūka'iau Ranch	PENDING	
12-03	DOFAW	State	86,450	O'ahu	Ka'ena Point Natural Area Reserve Cove Extension	PENDING	

Source: Legacy Land Conservation Program

ID	AWARDEE	ENTITY	AMOUNT (\$)	ISLAND	PROPERTY	Status	Date
12-02	Hawaiian Islands Land Trust	NPO	650,000	O'ahu	Maunawila	COMPLETED	7/3/2014
12-01	DOFAW	State	192,750	O'ahu	Kalauao Valley	COMPLETED	8/4/2016
11-04	North Shore Community Land Trust	NPO	1,500,000	O'ahu	Turtle Bay Mauka	COMPLETED	4/4/2016
11-03	Maika'i Kamakani O Kohala	NPO	975,000	Hawai'i	Kauhola	COMPLETED	4/13/2012
11-02	Livable Hawaii Kai Hui	NPO	325,000	O'ahu	Hāwea	COMPLETED	2/14/2014
11-01	County of Hawai'i	County	1,432,000	Hawai'i	Kaiholena [North]	COMPLETED	6/28/2013
10-07	Hawaiian Islands Land Trust	NPO	35,000	Hawai'i	Kīpuka Mosaic	DISCONTINUED	3/21/2013
10-06	Hawaiian Islands Land Trust	NPO	231,788	Hawai'i	Malu 'Āina	DISCONTINUED	12/5/2011
10-05	Hawaiian Islands Land Trust	NPO	500,000	O'ahu	Fong Plantation	PENDING	
10-04	Kona Historical Society	NPO	255,592	Hawai'i	Kona Historical Society II	COMPLETED	9/12/2013
10-03	County of Kaua'i	County	800,000	Kaua'i	Black Pot, Hanalei	COMPLETED	12/22/2010
10-02	DOFAW	DOFAW	500,000	Moloka'i	Kainalu	DISCONTINUED	1/5/2017
10-01	County of Hawai'i	County	945,000	Hawai'i	Pao'o	COMPLETED	11/15/2010
09-05	Maui Coastal Land Trust	NPO	609,425	O'ahu	Sunset Ranch	COMPLETED	7/21/2010
09-04	DLNR Division of State Parks	State	1,250,000	Hawai'i	Lapakahi	COMPLETED	3/18/2011
09-03	DLNR Division of State Parks	State	7,000	Hawai'i	Kukuipahu	PENDING	
09-02	DOFAW	State	450,000	O'ahu	Hāmākua	COMPLETED	1/25/2013
09-01	DOFAW	State	982,957	O'ahu	Honouliuli	COMPLETED	3/31/2010
08-05	Maui Coastal Land Trust	NPO	767,976	Moloka'i	Kawaikapu	COMPLETED	12/7/2009
08-04	Maui Coastal Land Trust	NPO	994,724	Maui	Nu'u	COMPLETED	1/28/2011
08-03	Kaua'i Public Land Trust	NPO	700,000	Kaua'i	Kahili Beach	DISCONTINUED	11/16/2011
08-02	County of Hawai'i	County	1,500,000	Hawai'i	Kāwā II	COMPLETED	11/8/2011
08-01	Wai'anae Coast Redevelopment Corporation	NPO	737,300	O'ahu	Ma'o Farms	COMPLETED	1/30/2009
07-06	Agribusiness Development Corporation	State	1,100,000	O'ahu	Hawai'i Agricultural Research Center Kunia	COMPLETED	10/2/2009
07-05	County of Hawai'i	County	1,214,750	Hawai'i	Kāwā I	COMPLETED	1/30/2008
07-04	Kona Historical Society	NPO	301,000	Hawai'i	Uchida Farm	COMPLETED	11/24/2008
07-03	Cave Conservancy	NPO	154,000	Hawai'i	Kula Kai/Kīpuka Kanohina	COMPLETED	4/26/2011
07-02	National Tropical Botanical Garden	NPO	1,500,000	Maui	Hana/Kahanu	COMPLETED	10/10/2008
07-01	DOFAW	State	430,250	Hawai'i	Carlsmith	COMPLETED	6/30/2008
06-01	Maui Coastal Land Trust	NPO	1,100,000	Moloka'i	Kainalu	COMPLETED	6/13/2007

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