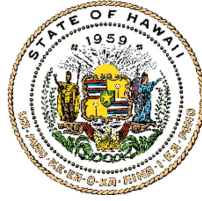


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DEPT. COMM. NO. 188

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
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

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

P.O. BOX 621
HONOLULU, HAWAII 96809

December 19, 2023

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of
Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of Relating To The Legacy Land Conservation Fund and Legacy Land Conservation Program report as required by Section 173-5, Hawaii Revised Statutes (HRS), a copy of this report has been transmitted to the Legislative Reference Bureau and the report may be viewed electronically at <https://files.hawaii.gov/dlnr/reports-to-the-legislature/2024/FW24-Legacy-Land-Report-FY23.pdf>.

Sincerely,

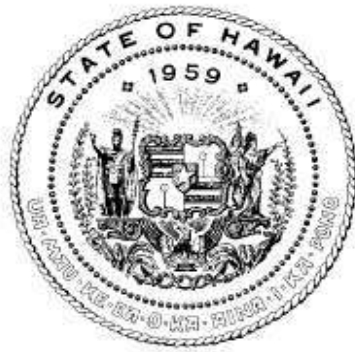
A handwritten signature in black ink, appearing to be "Dawn N.S. Chang", written in a cursive style.

DAWN N.S. CHANG
Chairperson

Enclosure

**REPORT TO THE THIRTY SECOND LEGISLATURE
STATE OF HAWAII
2024 REGULAR SESSION**

**RELATING TO THE LAND CONSERVATION FUND
AND
THE LEGACY LAND CONSERVATION PROGRAM**



Prepared by

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

In response to Section 173A-5, Hawaii Revised Statutes

Honolulu, Hawaii

December 2023

RELATING TO THE LAND CONSERVATION FUND
AND
THE LEGACY LAND CONSERVATION PROGRAM

OVERVIEW

In Fiscal Year 2023, the Legacy Land Conservation Program and its partners continued working together to preserve, protect, and enhance land having value as a resource to the State, including the successful purchase of over 1,800 acres at Kiolaka‘a (District of Ka‘ū, Island of Hawai‘i) and payment of \$1.5 million for State debt service obligations at Turtle Bay (District of Ko‘olauloa, Island of O‘ahu). As recommended by the Legacy Land Conservation Commission and the Division of Forestry and Wildlife, the Board of Land and Natural Resources approved new grant awards totaling \$6,350,000 for four acquisitions – two at District of Ko‘olaupoko, Island of O‘ahu (Pālāwai and Makali‘i); one at District of Halele‘a, Island of Kaua‘i (Kamealoha Kuleana); and one at District of Kona, Island of Molokai (Mākoelau 5th Parcel). The 2023 Legislature amended the authorization of a 2022 capital improvement project appropriation to enable a pending expenditure of \$400,000 from the Land Conservation Fund for land acquisition at Halulu Fishpond Access (District of Halele‘a, Island of Kaua‘i). The map shown below, and associated descriptions that begin on page six of this report, provide additional information about these properties.

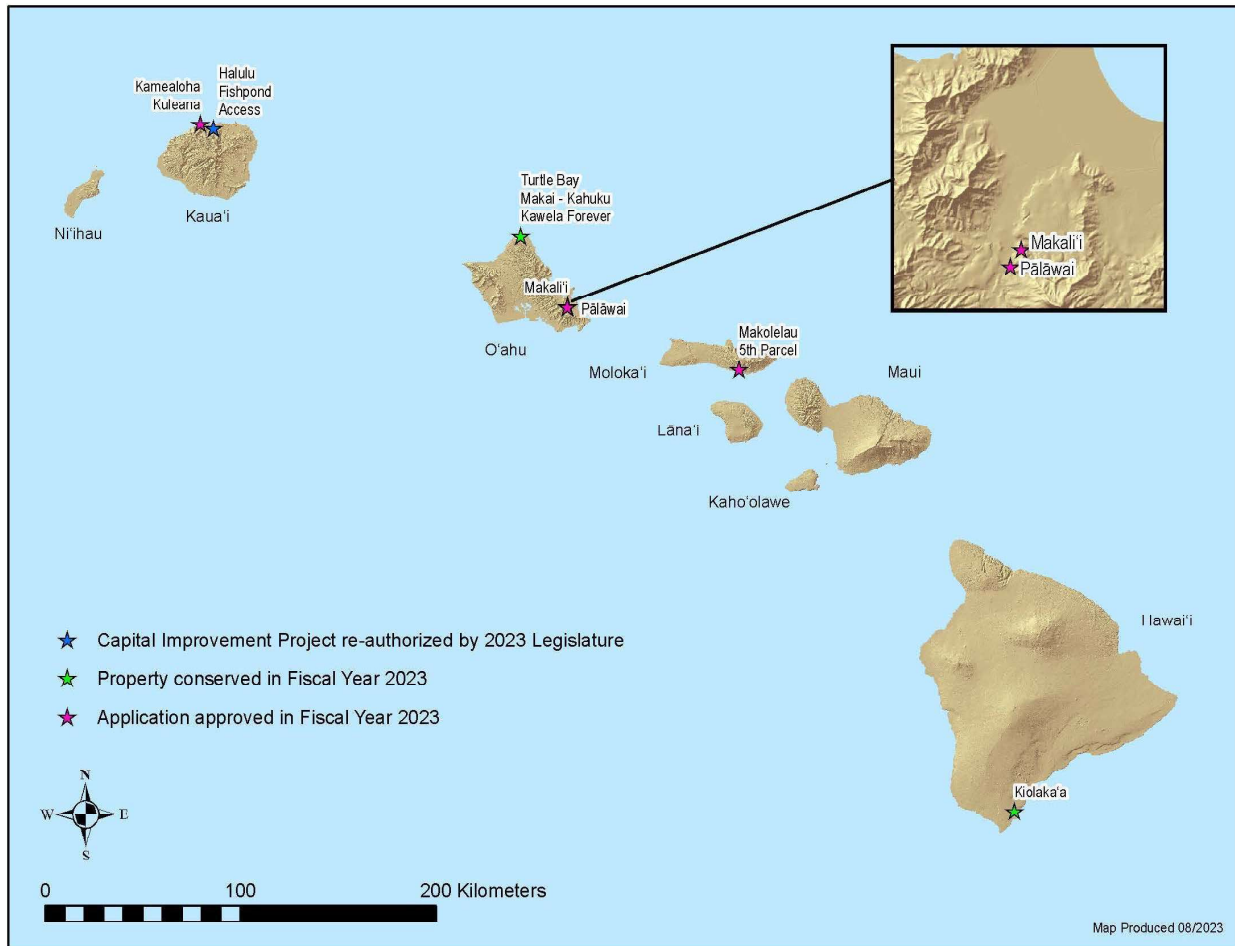
The 2023 Legislature assigned a unique ID (LNR102) for the Legacy Land Conservation Program and increased the Fiscal Year 2024 operating budget by nearly 11% to over \$8.9 million. However—when poised to pass an important, sorely needed measure for increasing the amount of annual conveyance tax revenue paid into the Land Conservation Fund—the conference committee for [House Bill 908](#) did not release the bill, despite strong public support and favorable recommendations from all House and Senate subject matter and money committees. Annual conveyance tax revenue for the Land Conservation Fund remains capped at an all-time low of \$5.1 million. When capped at this low level, revenue is not adequate for supporting government and nonprofit demand for grant funds and is far less than the current annual spending authorization.



Photo credit - Ala Kahakai Trail Association

Anchialine pool at Kiolaka‘a (District of Ka‘ū, Island of Hawai‘i), purchased November 2022

Map of Fiscal Year 2023 Conservation Transactions – Legacy Land Conservation Program



PURPOSE

The Legislature established the Land Conservation Fund ("Fund") in 2005 to provide permanent adequate funding for land conservation by dedicating proceeds from the real estate conveyance tax to the Fund. See [2005 Hawai'i Session Laws Act 156](#), Section 1 at 387. Recognizing that despite "the value of Hawaii's natural resources to its economy, culture, and quality of life . . . an alarmingly small amount of money is invested each year to protect our natural capital base," the 2005 Legislature, per Act 156, also found that:

- The preservation, protection, and enhancement of the State's land, coastal areas, and natural resources are of central importance for current and future residents and for the state economy.
- [Article XI, Section 1](#) of the Constitution of the State of Hawai'i sets forth the State's duty to conserve and protect Hawai'i's natural beauty.
- Adequate funding to conserve land for watershed protection, coastal preservation, flood prevention, parks, habitat protection, cultural preservation, agricultural production, and open space and scenic resources is necessary to ensure protection of these lands and resources for future generations.

The enabling legislation for the Land Conservation Fund, codified as [Chapter 173A](#), Hawai'i Revised Statutes ("HRS"), provides that the Fund shall be used for:

- (1) the acquisition of interests or rights in land having value as a resource to the State;
- (2) the payment of debt service on state financial instruments relating to the acquisition of interests or rights in land having value as a resource to the State;
- (3) annual administration costs for the Land Conservation Fund; and
- (4) costs related to the operation, maintenance, and management of lands acquired by way of the Land Conservation Fund.

Subsection 173A-5(h), HRS.

Section 173A-2 explains that "'land having value as a resource to the State' includes land having natural, environmental, recreational, scenic, cultural, agricultural production, or historic value, and may also include park and trail systems that provide access to any such land." Subsection 173A-5(i) and Section 173A-9 establish a competitive land acquisition grant program that is open to state agencies, counties, and nonprofit land conservation organizations.

The Legacy Land Conservation Program conducts an extensive annual public process to review, vet, prioritize, and fund grant applications for use of the Land Conservation Fund. The process includes:

- application review, field visit reports, public testimony, and recommendations provided by the Legacy Land Conservation Commission, which the Legislature established in 2006 (*see* 2006 Hawai'i Session Laws Act 254, Section 1 at 1088-1089);
- consultation with the President of the Senate and the Speaker of the House of Representatives (*see* Subsection 173A-5(i) and Section 173A-9, HRS);
- review, public testimony, and approval provided by the Board of Land and Natural Resources (*Id.*);
- review and recommendation by the Department of Budget and Finance; and
- review and approval by the Governor (*see* Section 173A-9, HRS).

PROGRAM HISTORY – LEGACY LAND CONSERVATION

The Department of Land and Natural Resources ("DLNR") administers and manages the Land Conservation Fund ("Fund") and the Legacy Land Conservation Program ("LLCP") in accordance with:

- [Chapter 173A](#), Hawai'i Revised Statutes ("HRS"), Acquisition of Resource Value Land;
- [Chapter 13-140](#), Hawai'i Administrative Rules, Legacy Land Conservation Program Rules; and
- other state and federal governing authorities, particularly:
 - [Chapter 171](#), HRS (Public Lands, Management and Disposition of);
 - [Chapter 198](#), HRS (Conservation Easements);
 - rules of a partnering federal land conservation program that would govern a transfer of a permanent conservation easement, *see* Section 173A-9, HRS.

In 2006, DLNR secured approval from the Board of Land and Resources ("BLNR") and the Governor for the inaugural use of the Fund to acquire land having value as a resource to the State, in accordance with terms specified by the legislature for expending its initial appropriation from the Fund. *See* 2005 Hawai'i Session Laws Act 156, Section 9. Since that time, the LLCP processed 125 completed grant applications for land acquisition.

As of June 30, 2023, BLNR has approved 76 of these applications for funding, based on recommendations from the Legacy Land Conservation Commission, DLNR's Division of Forestry and Wildlife, and public testimony. Across multiple administrations, various Governors approved 73 of the 76 applications that BLNR approved, which resulted in releases of funding for the acquisition of 70 properties (three properties were funded through multiple applications). Among these 70 properties, LLCP and its partners have completed 44 acquisitions; 10 acquisitions remain active; applicants discontinued 14 acquisitions; and BLNR terminated two acquisitions.

For additional information about the Legacy Land Conservation Program, please visit dlnr.hawaii.gov/ecosystems/llcp, or contact:

Legacy Land Conservation Program
Telephone: (808) 586-0921
Email: legacyland@hawaii.gov

ANNUAL REPORT

Subsection 173A-5(l), Hawai'i Revised Statutes ("HRS"), paragraph (2), requires that the Board of Land and Natural Resources ("BLNR") "[p]repare and submit an annual report to the governor and the legislature at least twenty days prior to the convening of each regular session [that] shall include:

- (A) A summary of all interests or rights in land acquired during the preceding fiscal year;
- (B) A summary of what value each newly acquired land has as a resource to the State;
- (C) Proposals for future land acquisitions, including a summary of the resource value that the land may possess;
- (D) A financial report for the preceding fiscal year; and
- (E) Objectives and budget projections for the following fiscal year."

In accordance with subsection 173A-5(l), HRS, paragraph (3), BLNR makes copies of the annual report available to the public via the Department of Land and Natural Resources ("DLNR") website (*available at* <https://dlnr.hawaii.gov/reports>, organized by reporting year) and upon request.

In response to a recommendation from the State Office of the Auditor (Report No. 19-01), the financial report for the preceding fiscal year reports transactions that transferred funds into and out of a DLNR trust account (this report, page 22).

(A) and (B) INTERESTS OR RIGHTS IN LAND ACQUIRED DURING THE PRECEDING FISCAL YEAR AND RESOURCE VALUE SUMMARY

During Fiscal Year 2023, the Land Conservation Fund contributed \$2,400,000 from previous fiscal years for one land acquisition by a nonprofit land conservation organization (see Resource Value Summaries, below) and transferred \$1,500,000 to the Turtle Bay Conservation Easement Special Fund as annual reimbursement for debt service on a state financial instrument relating to the acquisition of interests or rights in land having value as a resource to the State (*see [Section 173A-13, HRS](#)*). State property interests at Turtle Bay, acquired in 2015, include 52+ acres of land (fee simple) at Kawela Bay—which the State leased back to Turtle Bay resort operators for 65 years—and a perpetual conservation easement covering 568+ acres, all fronted by +/- five miles of undeveloped shoreline. To date the Land Conservation Fund has contributed \$12 million, total, for this endeavor, with \$19.5 million more in payments due over the next thirteen years.



Photo Credit – North Shore Community Land Trust

"Hinahina kū kahakai is one of the many unique and beautiful native plants found along the Kahuku coast."

The map on page 2 of this report shows the location of each property conserved during Fiscal Year 2023 and of each property approved for Fiscal Year 2023 grant funding.

Resource Value Summaries (Properties Conserved during Fiscal Year 2023)

Kiolaka‘a, District of Ka‘ū, Island of Hawai‘i (LLCP 2020-01)



Photo Credit - Shalan Crysdale, The Nature Conservancy

Awardee/Owner: [Ala Kahakai Trail Association](#) (fee title)
Conservation Easement Holder: [County of Hawai‘i](#)
Project Partner: [The Trust for Public Land](#)
Acreage: **1,838+**
Tax Map Key Numbers: (3) 9-5-011:001, :004, :005, :006 and
(3) 9-5-012:001
FY2020 Funding awarded: \$ 2,400,000 (full funding)
FY2020 Funding expended: **\$ 2,400,000**
Matching funds expended: \$ 4,345,210
• County of Hawai‘i Public Access, Open Space, and Natural Resources Preservation Fund
• Seller, Freeman Foundation, and other private funds

Conservation purpose:

See § 173A-5(g), HRS:

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

News Releases: [Big Island Video News](#) [The Ka‘ū Calendar](#)

Additional Information: [Report to the 2021 Legislative Session](#), page 13

**(C) PROPOSALS FOR FUTURE LAND ACQUISITIONS, INCLUDING
A SUMMARY OF THE RESOURCE VALUE THAT THE LAND MAY POSSESS**

For the Fiscal Year 2023 application cycle, the Legacy Land Conservation Program advertised the availability of approximately \$5.9 million in grant funding from the Land Conservation Fund for the purchase of lands having value as a resource to the State ("resource value lands"). From a starting field of eight applications, nonprofit land conservation organizations and State agencies submitted five final applications for acquisition of resource value lands, requesting \$6,955,000, total, from the Land Conservation Fund. After conducting field visits and public meetings, the Legacy Land Conservation Commission ("Commission") recommended partial funding, in equal percentages of amounts requested, for four grants (\$6,350,000 total, as funds are available) and recommended each of the four grants as a back-up/contingency for additional funding, in equal percentages of the amounts available, up to the amounts requested, as presented below:

Partial Funding

Applicant, Property

(at 91.3% of amount requested, with back-up/contingency for additional funding)

1. **Hookuaaina, Pālāwai**
District of Ko'olaupoko, Island of O'ahu
LLCP 2023-01: \$2,900,000 requested, **\$2,647,735 awarded/encumbered**
2. **Kīpuka Kuleana, Kamealoha Kuleana**
District of Halele'a, Island of Kaua'i
LLCP 2023-02: \$1,845,000 requested, **\$1,684,508 awarded/encumbered**
3. **Kauluakalana, Makali'i**
District of Ko'olaupoko, Island of Oahu
LLCP 2023-03: \$1,560,000 requested, **\$1,424,299 awarded/encumbered**
4. **Division of Forestry and Wildlife, Mākolelau 5th Parcel**
District of Kona, Island of Molokai
LLCP 2023-04: \$650,000 requested, **\$ 593,458 awarded/encumbered**

The Department of Land and Natural Resources ("DLNR") consulted with the Senate President and the Speaker of the House of Representatives regarding the Commission's recommendations, in accordance with Chapter 173A, HRS. Written responses from the legislators indicated no objections or other comments regarding the recommendations of the Commission, after which the Board of Land and Natural Resources ("BLNR"), and lastly, Governor Green, approved the Commission's recommendations. DLNR then encumbered partial funding for each of the four approved grants, based on the total funds available from the Fiscal Year 2023 budget allotment. The map on page 2 of this report shows the location of the property to be acquired for each of the four grants encumbered with Fiscal Year 2023 operating funds. Public records of BLNR approval are available online for April 28, 2023 (Item C-1, [Submittal](#), and [Minutes](#), pages 7-11).

Resource Value Summaries (Future Land Acquisitions)

Pālāwai
District of Ko‘olaupoko, Island of O‘ahu (LLCP 2023-01)



Photo credit – The Trust for Public Land

Pālāwai Wetlands & Maunawili Stream, with Konahuanui in the background

Awardee: **Hookuaaina**
Partner: The Trust for Public Land
Acreage: **116.49** (fee simple + conservation easement)
Tax Map Key Numbers: (1) 4-2-006:008 (*por.*), (1) 4-2-007:001, (1) 4-2-008:001
FY2023 Funding Requested: \$ 2,900,000
FY2023 Funding awarded: \$ **2,647,735** (partial award)
Estimated Matching Funds: \$ 5,441,000 (from application, based on funding requested and estimated Total Project Costs)
65% of total project costs

- City & County of Honolulu Clean Water and Natural Lands Fund
- Landowner; The Trust for Public Land; Hawaiian Islands Land Trust; in-kind services

Conservation Easement: City & County of Honolulu (Co-Holder)
Hawaiian Islands Land Trust (Administrative Holder)

The application indicates that Pālāwai (along with the Makali‘i lands, see Resource Value Summary for LLCP 2023-03, below) is part of a larger initiative for "Protecting Maunawili Forest and Lo‘i" (see map below), a longstanding vision of the Kailua community and Hui Maunawili-Kawainui – a coalition of descendants, residents, and eleven Hawaiian cultural and environmental organizations based in Maunawili and Kailua. Since 2017, the Hui has worked to protect these lands threatened by subdivision and development. The Hui seeks to restore the health of Maunawili so that this region can resume its vital and traditional role in the Kailua ahupua‘a as a source of free-flowing freshwater and a place of abundant agriculture and rich cultural resources.

Preserving Pālāwai will aid freshwater stream and wetland restoration. Five tributary streams—Palapu, ‘Oma‘o, ‘Ainoni, Makawao, and Olomana—converge on the property to form the main stem of Maunawili Stream which flows into Kawainui fishpond and wetland and out into Kailua Bay. Restoring lo‘i kalo at Pālāwai will filter sediment, provide ground water recharge and flood control, and create habitat for endemic and endangered waterbirds. Maunawili was once an ‘umeke ‘ai (food basket) and vital food producing region for O‘ahu. In ancient times, the kalo grown at Pālāwai was famed for its sweetness and specifically requested by the ali‘i (chiefs). The Pālāwai property contains approximately 68 acres of Hanalei soil – the most productive soil in Hawai‘i. Hookuaaina will transform these lands back to ‘āina momona (fat, fertile land), perpetuate ‘āina-based education, restore lo‘i kalo and dryland farming, and increase our island's food security.

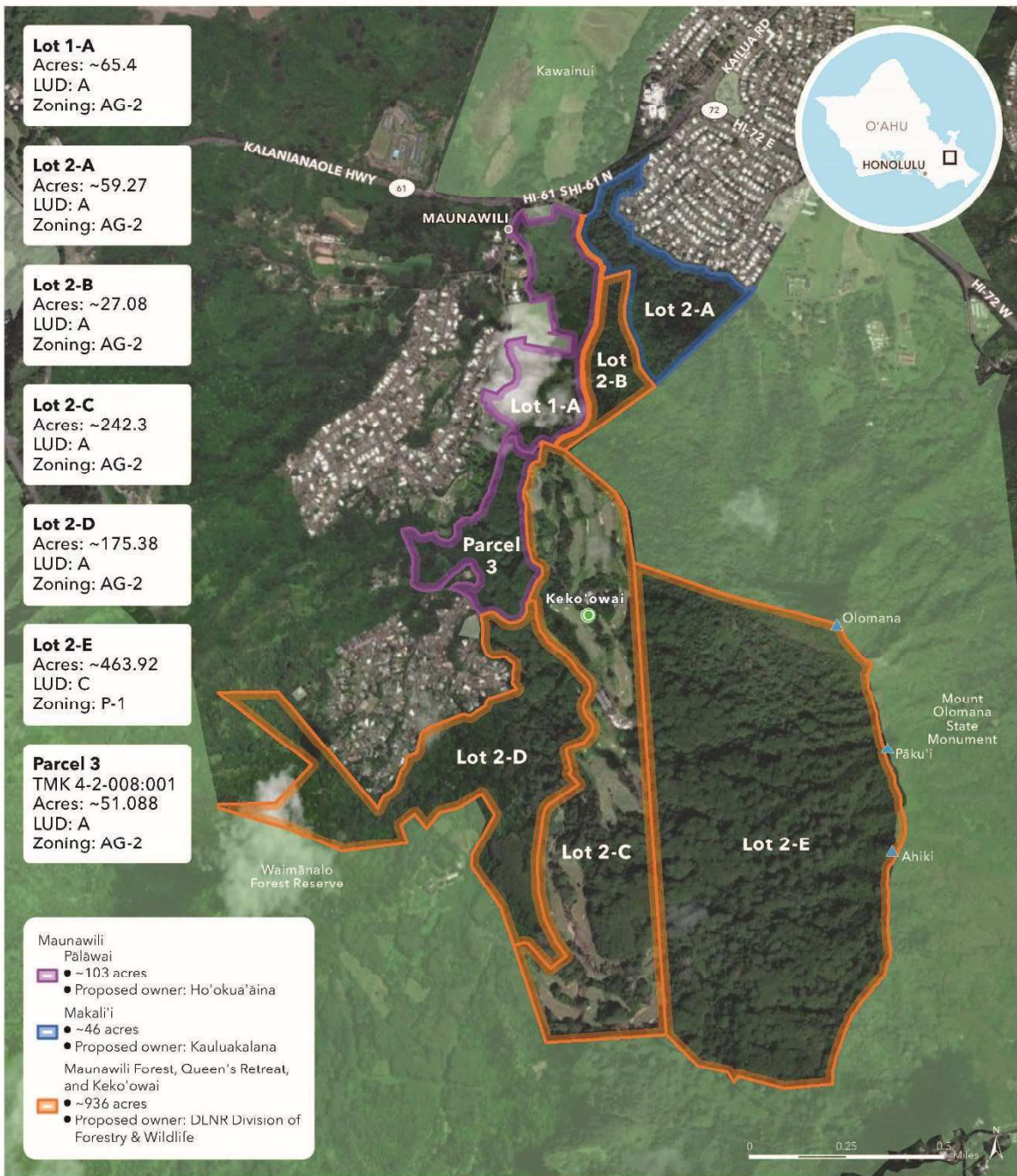
Land Acquisition Priorities (Section 173A-2.6, HRS)

as self-identified in approved application:

- (1)(A) exceptional value: Unique aesthetic resources
- (1)(B) exceptional value: Unique and valuable cultural or archaeological resources
- (1)(C) exceptional value: Habitats for threatened or endangered species of flora, fauna, or aquatic resources
- (2) imminent danger: of development
- (3) imminent danger: of being modified, changed, or used in a manner to diminish its value
- (4) critical habitats: for threatened or endangered species that are in imminent danger of harm or negative impact
- (5) danger: theft or destruction of cultural or archaeological sites or resources
- (6) unique and productive: agricultural lands



Photo credit - The Trust for Public Land



Maunawili Forest & Lo'i

proposed consolidation & subdivision

KAILUA, KO'OLAUPOKO, O'AHU HAWAII'

December 8, 2022. Copyright © Trust for Public Land. Trust for Public Land and Trust for Public Land logo are federally registered marks of Trust for Public Land. Information on this map is provided for purposes of discussion and visualization only. www.tpl.org



**Kamealoha Kuleana
District of Halele‘a, Island of Kaua‘i (LLCP 2023-02)**



*1892 photo of hale (house) on Kamealoha Kuleana with Makana in the background
by Alfred Mitchell (Bishop Museum)*

Awardee: [Kīpuka Kuleana](#)
Partner: The Trust for Public Land
Acreage: **3.45** (Conservation Easement)
Tax Map Key Number: (4) 5-9-003:009
FY2023 Funding requested: \$ 1,845,000
FY2023 Funding awarded: **\$ 1,684,508** (partial award)
Estimated Matching Funds: \$ 652,000 (from application, based on funding requested and estimated Total Project Costs)
26.1% of Total Project Costs

- County of Kaua‘i Public Access, Open Space, and Natural Resources Preservation Fund
- Applicant; Landowner; The Trust for Public Land

Kamealoha is located within the Limahuli watershed, in the ahupua‘a of Hā‘ena, within Halele‘a moku, on the north shore of Kaua‘i. This parcel stretches from Kūhio Highway ma kai of Limahuli Garden to the coast. It is the northwestern-most kuleana in the main Hawaiian islands still held by descendants of the original Māhele claimants. The structure of the Kamealoha Kuleana conservation transaction enables descendant ‘ohana to retain ownership of the property

through Kīpuka Kuleana's acquisition of a conservation easement, an important step forward in protecting this historic, culturally significant ‘āina from sale and development and in codifying the rights of lineal descendants to continue serving as caretakers and educators of this ‘āina: the people of place.

Limahuli watershed is managed mauka to makai by National Tropical Botanical Garden and Hui Maka‘āinana o Makana. Limahuli Stream, which borders Kamealoha, is one of the healthiest in Hawai‘i, home to all five species of ‘o‘opu. Kamealoha sits at the base of Makana, a prominent peak and site of ‘ōahi fire brand ceremonies. The home of Hailama, the last teacher of ‘ōahi, was located partially at Kamealoha from the early 1900s to the 1950s, hosting many visitors. An intact terraced lo‘i system spans the entire property, with an ‘auwai running along the eastern border. Traditional land use was kalo farming, cultivation of other Polynesian cultivars such as ‘uala, a base for coastal fishing, and a habitation site. Hā‘ena has become a state-wide model for community-based management of tourism as well as the near shore fishery fronting this ‘āina.

Land Acquisition Priorities (Section 173A-2.6, HRS)

as self-identified in approved application:

- (1)(A) exceptional value: Unique aesthetic resources
- (1)(B) exceptional value: Unique and valuable cultural or archaeological resources
- (1)(C) exceptional value: Habitats for threatened or endangered species of flora, fauna, or aquatic resources
- (2) imminent danger: of development
- (3) imminent danger: of being modified, changed, or used in a manner to diminish its value
- (4) critical habitats: for threatened or endangered species that are in imminent danger of harm or negative impact
- (5) danger: theft or destruction of cultural or archaeological sites or resources
- (6) unique and productive: agricultural lands



Lo‘i terrace wall at Kamealoha Kuleana

Makali'i
District of Ko'olaupoko, Island of O'ahu (LLCP 2023-03)



Legacy Land Conservation Commissioners enter Makali'i for a field visit

Awardee: [Kauluakalana](#)
Partner: The Trust For Public Land
Acreage: **59.27** (fee simple + conservation easement)
Tax Map Key Number: (1) 4-2-006:001, (1) 4-2-006:008 (*por.*)
FY2022 Funding requested: \$1,560,000
FY2022 Funding awarded: **\$1,424,299** (partial award)
Estimated Matching Funds: \$2,935,000 (from application, based on funding requested and estimated Total Project Costs)
65.3% of Total Project Costs

- City & County of Honolulu Clean Water and Natural Lands Fund
- Landowner; The Trust for Public Land; Hawaiian Islands Land Trust; in-kind services

Conservation Easement: City & County of Honolulu (Co-Holder)
Hawaiian Islands Land Trust (Administrative Holder)

Makali'i is part of a larger initiative for "Protecting Maunawili Forest and Lo'i" (along with the Pālāwai, described above for LLCP 2023-01, including map) that aims to safeguard critical waterways, dozens of cultural and historic sites, and fertile agricultural and conservation lands, and return them to community-based stewardship for restoration and sustainable agriculture. The property is home to Makali'i spring and possibly several other springs, as well as a small protected valley. The valley is bounded by an elevated hill, the lower slopes of the Olomana mountain range, and the Maunawili stream. The property contains remnant stands of kalo (taro), mai'a (banana), 'ulu (breadfruit), 'ohi'a'ai (mountain apple), niu (coconut), kukui, 'awapuhi (shampoo ginger), la'i (ti leaf), avocado, mango, papaya, jabong, pickle tree, tamarind, and hala (pandanus tree). But due to years of neglect, the land is currently overgrown in invasive trees and vegetation. The landowner acquired the property in 2000, and it has not been in active use since the last farmers were evicted in 2012. Abandoned and derelict structures still standing are sometimes used by the houseless population.

Land Acquisition Priorities (Section 173A-2.6, HRS)

as self-identified in approved application:

- (1)(A) exceptional value: Unique aesthetic resources
- (1)(B) exceptional value: Unique and valuable cultural or archaeological resources
- (1)(C) exceptional value: Habitats for threatened or endangered species of flora, fauna, or aquatic resources
- (2) imminent danger: of development
- (3) imminent danger: of being modified, changed, or used in a manner to diminish its value
- (4) critical habitats: for threatened or endangered species that are in imminent danger of harm or negative impact
- (5) danger: theft or destruction of cultural or archaeological sites or resources
- (6) unique and productive: agricultural lands



Makali‘i is blessed with abundant water sources, in need of rehabilitation



Mākolēlāu 5th Parcel
District of Kona, Island of Molokai (LLCP 2023-04)

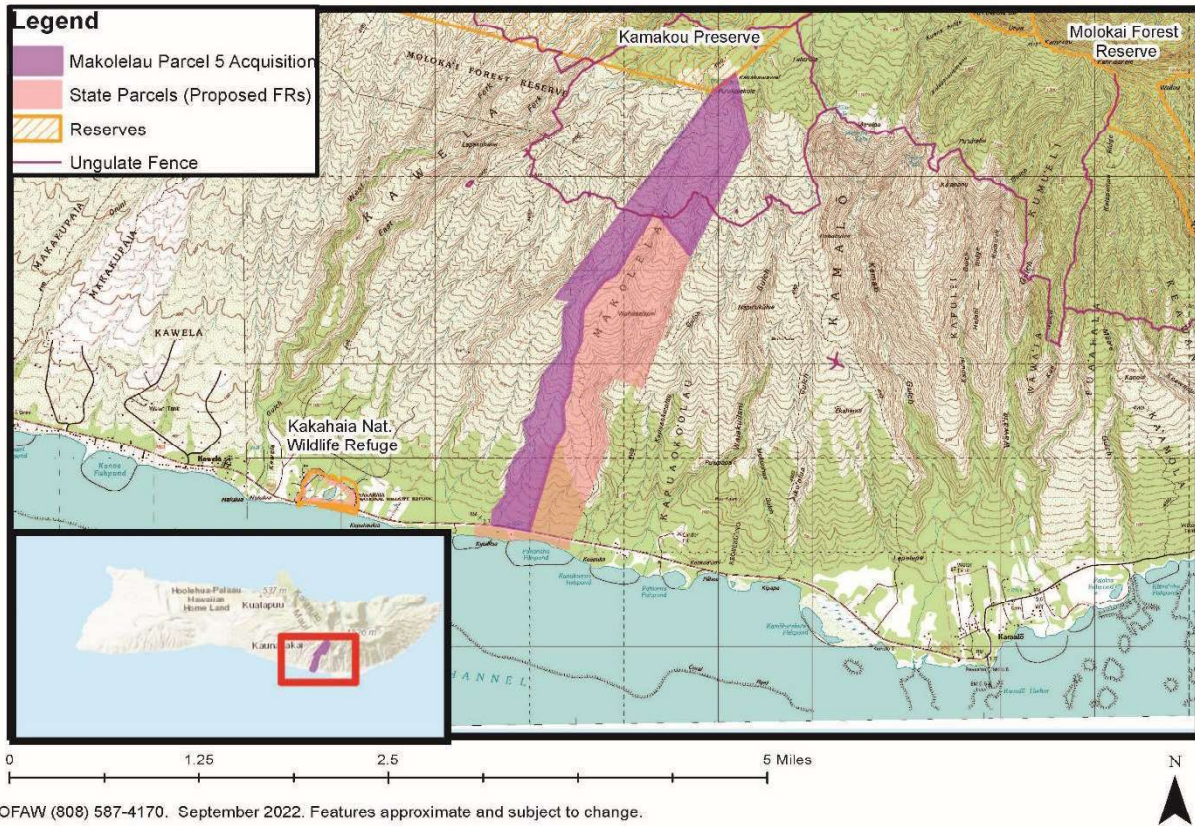


Photo credit – Evelyn Wight

Awardee:	Division of Forestry and Wildlife
Acreage:	515.75 (fee simple)
Tax Map Key Number:	(2) 5-5-001:015
FY2023 Funding requested:	\$ 650,000
FY2023 Funding awarded:	\$ 593,458 (partial award)
Estimated Matching Funds:	\$ 0 (from application, based on funding requested and estimated Total Project Costs)

Mākolēlāu 5th parcel is a strategic link for connecting a much larger network of conservation lands. This acquisition is the final step in a larger acquisition that contributed over \$2.3 million in matching funds from the U.S. Fish and Wildlife Service (Recovery Land Acquisition grant) and the seller (land value donation) for The Nature Conservancy's ("TNC") purchase of five Mākolēlāu parcels totaling over 1,045 acres. TNC donated four of these parcels to the State, and the State now seeks to purchase the 5th parcel for conservation benefits and to secure legal access to the other four parcels, all as an addition to the Molokai Forest Reserve. The Division of Forestry and Wildlife will use other State funds from operating accounts to cover the difference between the amount requested and the partial award amount.

Makolelau Acquisition



The resulting five-parcel forest reserve property will connect Kawela ahupua‘a to the west (over 8,200 acres, which includes TNC's Kamakou Preserve) with the Kamalō and Kapualei managed area to the east (5,200 acres), thereby creating a managed corridor of over 13,500 acres and completing a series of protected areas encompassing the south shore of the island. Mākolēlau includes native mesic forest and shrubland, with federally designated Critical Habitat for two forest bird species and thirty-eight plant species. A conservation ungulate fence—which encloses the 2,500-acre Kamalō-Kapuālei unit—bisects the property, and a 4WD road provides management access from the main highway.

Adjoining properties include dryland forest and shrubland, as well as two culturally and ecologically important fishponds. Management agreements with adjacent Kawela Plantation to the west and Kamehameha Schools to the east facilitate landscape-scale conservation actions such as invasive species control, fencing and hooved animal removal, and endangered species monitoring and outplanting. Through a collaborative network of conservation partnerships, restoration and preservation efforts will transcend ownership boundaries, creating tangible results at large and meaningful scales. This includes management of upland conservation ungulate fences that span multiple landowners and protect the remaining upland watershed forests and dozens of endangered species.

As a condition for its approval of this grant, the Board of Land and Natural Resources required that (1) the Department engage in a community outreach and dialogue process to develop a management plan for the Makolelau 5th parcel, and (2) the community outreach management plan be completed within 24 months of closing on the land acquisition deal.

Land Acquisition Priorities (Section 173A-2.6, HRS)

as self-identified in approved application:

- (1)(A) exceptional value: Unique aesthetic resources
- (1)(B) exceptional value: Unique and valuable cultural or archaeological resources
- (1)(C) exceptional value: Habitats for threatened or endangered species of flora, fauna, or aquatic resources
- (3) imminent danger: of being modified, changed, or used in a manner to diminish its value
- (4) critical habitats: for threatened or endangered species that are in imminent danger of harm or negative impact
- (5) danger: theft or destruction of cultural or archaeological sites or resources

GRANT ADMINISTRATION – LAND ACQUISITION

The Department of Land and Natural Resources ("DLNR"), Division of Forestry and Wildlife ("DOFAW")—with assistance from DLNR-Land Division, DLNR-Administrative Services Office, and the Department of the Attorney General ("ATG")—administers approved grant awards in accordance with numerous legal requirements and program procedures. At the close of Fiscal Year 2023, funded grant awards for ten properties remained open, including:

- Three state agency land acquisitions (fee simple); and
- Seven nonprofit land acquisitions (five fee simple, two conservation easements).

DLNR anticipates that awardees may be able to complete as many as six of these open grants during the next fiscal year, covering one or two state land acquisitions and three or four nonprofit land acquisitions. A land acquisition grant to a State agency remains open until the agency grantee completes or discontinues the conservation transaction. In order to complete a State agency transaction, the agency grantee works with DLNR-Land Division staff to perform buyer's due diligence according to "Standard BLNR Acquisition Procedures," subject to final approvals from the ATG and the Board of Land and Natural Resources ("BLNR"). DLNR administers a grant to a county or a nonprofit land conservation organization through a contractual grant agreement that has an initial two-year performance period, which DLNR may choose to extend for additional one-year periods. To complete a county/nonprofit land acquisition, the grantee works with DLNR-DOFAW staff to perform buyer's due diligence according to the "Checklist for Legacy Land Conservation Program (LLCP) Projects" (which is part of the grantee's contract with the State), subject to final approvals from the BLNR Chairperson, the ATG, and the DLNR-DOFAW Administrator.

For land acquisition grants, Chapter 173A, Hawai'i Revised Statutes ("HRS"), establishes requirements for:

- a conservation easement, agricultural easement, deed restriction, or covenant that shall run with the land and be recorded with the land to ensure the long-term protection of land having value as a resource to the State and preserve the interests of the State (Section 173A-4);

- a county or a nonprofit grantee to provide matching funds of at least twenty-five per cent of the total project costs (Section 173A-5);
- BLNR approval of a sale, lease, or other disposition of the acquired property (Section 173A-9); and
- sharing the proceeds of a sale, lease, or other disposition of the acquired property with the State (Section 173A-10).

In addition, Chapter 13-140, Hawai‘i Administrative Rules, authorizes DLNR to monitor the status of resource values protected under the terms of a grant agreement by requiring a grantee to submit documentation thereof, and by conducting site visits for the purpose of inspecting the condition of the property and resources (Sections 140-32 and 140-33, respectively). Sections 140-55 and 140-56 provide remedies for a breach of a grant agreement or a deed restriction, respectively, and Section 140-57 sets forth BLNR's enforcement authority (*see also* Section 173-11, HRS, General Powers).

DISCONTINUED GRANTS AND OTHER APPROPRIATIONS

- LLCP 2013-02, Ulupō Heiau Buffer (discontinued)
Division of State Parks, Awardee
 - See [Report to the 2014 Legislature](#), pages 3-4

In advance of the 2023 annual review of acquisitions pending for five years or more (see next section below), the Division of State Parks discontinued its \$1 million grant for acquiring Ulupō Heiau Buffer, O‘ahu (the oldest active grant in the Legacy Land Conservation Program portfolio), noting for the Division of Forestry and Wildlife that:

Although our divisions and Land Division are working diligently to complete this acquisition, it will likely take considerable additional time for the State (Buyer) and YMCA of Honolulu (Seller) to agree on a purchase price, sign a purchase and sale agreement, perform all required due diligence, and close a transaction The Division believes that it can use the additional time consumed to raise funds from other sources that will replace the existing \$1 million grant award, including the Land and Water Conservation Fund, thereby freeing up additional funds that the Legacy Land Conservation Program can utilize for other high-priority land acquisitions.

Discontinuance of this grant resulted in the addition of \$951,250 in unspent grant funds to the unencumbered cash balance of the Land Conservation Fund (see page 22 of this report).

- LLCP 2015-01, Kaluanono (discontinued)
The Waipa Foundation, Awardee
 - See [Report to the 2016 Legislature](#), pages 4-5

The Waipa Foundation, in a letter notifying the Division of Forestry and Wildlife to discontinue its grant for acquiring land at Kaluanono, Kaua‘i (the second-oldest active grant in the Legacy Land Conservation Program portfolio), explained that The Waipa Foundation "will approach this transaction hopefully through a partnership or long term lease from the landowner, and not as a purchase, therefore it will not require Legacy Land funds. I do hope that these funds can become available to another of the many amazing projects and programs that your program

supports." Discontinuance of this grant canceled the encumbrance of \$398,250 (the full amount of the grant award) within the Land Conservation Fund.

ANNUAL REVIEW OF ACQUISITIONS PENDING FOR OVER FIVE YEARS

In response to a recommendation from the State Office of the Auditor (Report No. 19-01), the Legacy Land Conservation Program initiated a procedure to submit grants approved more than five years ago for annual review and possible action by the Board of Land and Natural Resources ("BLNR"). On June 23, 2023, under its agenda item C-1 (see Item C-1, [Submittal](#), and [audio](#) and [video](#) meeting records), BLNR received notification of two grants discontinued by awardees (see previous section above) and reviewed, for the first time, a grant awarded to Hawaiian Islands Trust ("HILT"):

ACTION DEFERRED: LLCP 2017-03, Kepler Ke‘anae Lo‘i Conservation Easement

The staff submittal for Item C-1 summarizes an update received from HILT indicating that:

- matching funds from public and private funding sources to cover the full project budget are secured [including key support from the U.S. Department of Agriculture, Natural Resources Conservation Service, Agricultural Conservation Easement Program-Agricultural Land Easement];
- drafting of the conservation easement is in its final phase;
- project partners expect to close the transaction this calendar year; and
- HILT strongly supports the desire of Ke‘anae and Wailua Nui ‘ohana to ensure lo‘i lands are preserved in perpetuity. As the waters were recently returned to the streams of East Maui and with approximately 150 acres of lo‘i complexes on the Ke‘anae peninsula and 300 acres of lo‘i complexes in Wailua Nui, HILT hopes the protection of the Kepler's Ke‘anae Lo‘i opens the door for future opportunities to ensure Ke‘anae and Wailua Nui remain in active lo‘i kalo cultivation for generations to come.

Also see [Report to the 2018 Legislature](#), pages 10-11.



Ke‘anae peninsula ([© 2019 Ho‘okuleana LLC](#))

(D) FINANCIAL REPORT FOR THE PRECEDING FISCAL YEAR

**Estimated Status of the Land Conservation Fund for Fiscal Year 2023
(as of September 2023)**

A. Beginning cash balance (FY17+FY18+FY19+FY21+FY22)	\$	14,581,849
FY23 Revenue from:		
• Conveyance Tax	\$	5,100,000
• State Investment Pool	\$	363,625
• Revenue Sharing (for dispositions of conserved properties)	\$	21,226
B. Total FY23 Revenue	\$	5,484,851
FY23 Expenditures for:		
• Program Operations (Prior year land acquisition grants)	\$	(2,400,000)
• Program Operations (FY23 Turtle Bay debt service plus State agency land acquisition)	\$	(2,093,458)
• Program Operations (FY23 Payroll plus administrative costs)	\$	(235,121)
C. Total Expenditures	\$	(4,728,579)
D. Outstanding encumbrances from prior years	\$	(3,497,500)
E. FY23 outstanding encumbrances at year end	\$	(5,756,542)
F. Ending Cash Balance (A+B+C)	\$	15,338,121
G. Unencumbered Cash Balance (F+E+D)	\$	6,084,079

In Fiscal Year 2023 ("FY2023") the financial health of the Land Conservation Fund remained impaired by the depressed cap on annual revenues distributed to the Fund from collections of real property conveyance tax (*see* subsection 247-7(1), Hawai‘i Revised Statutes).¹ Conveyance tax distributions reached the Fund's \$5.1 million cap (as lowered from \$6.8 million by the 2020 Legislature) during January 2023 (third quarter), amounting to 5.5 percent of total FY2023 conveyance tax collections.² The Fund also continues to suffer from the 2021 Legislature's transfer of \$15 million from the Fund to the general fund.³ Under current spending authorizations and revenue cap, the Fund's cash reserves could become fully depleted by FY2027.

¹ For fiscal years 2007-2015, the Land Conservation Fund ("Fund") received a straight ten percent of total annual conveyance tax revenue (uncapped), averaging \$5.151 million per year. In 2015, the Legislature established maximum amounts for distributing conveyance tax revenue among certain non-general funds—including a \$6.8 million annual revenue cap for the Fund—with the intent to (1) make forecasts of general funds more reliable, (2) increase legislative oversight of the agencies and programs supported by the non-general funds, and (3) subject such an agency or program to competition for limited public funds if the agency or program wants more than the amount automatically distributed to its non-general funds ([Act 84](#), Section 3 and Section 1). Under this revised scheme, for fiscal years 2016-2020 the Fund received only 8.1% of total annual conveyance tax revenue, averaging \$6.68 million per year. The 2020 Legislature, in response to the COVID-19 pandemic emergency, tightened down the annual revenue cap \$6.8 million to \$5.1 million ([Act 9](#), Section 5 at page 62). Thereafter, for fiscal years 2021-2023, the Fund received the maximum \$5.1 million per year of annual conveyance tax revenue, amounting to merely 4.46% of total collections. *See* [State Department of Taxation Collections Portal Tax Collection and Distribution Reports](#). The Department believes that the \$5.1 million emergency cap was intended as a temporary measure.

² For Fiscal Year 2023, collections of State conveyance tax revenue totaled \$92,158,411 (a 51 percent decrease from Fiscal Year 2022). *See* [State Department of Taxation Collections Portal Tax Collection and Distribution Reports](#). Under the original Fund formula established by the 2005 Legislature (10 percent of total collections, uncapped), Fiscal Year 2023 distributions to Fund would have been over \$9.2 million instead of just \$5.1 million.

³ The 2021 Legislature determined that this amount was the minimum held "in excess of the requirements" of the Land Conservation Fund, and authorized the Director of Finance to transfer the full amount, "or so much thereof as may be necessary for fiscal year 2020-2021," to the general fund ([Act 87](#), Section 2, see table row 60).

The 2021 Legislature provided partial compensation for these losses by raising the Fund spending ceilings \$3,732,670 for the 2021-2023 biennium (\$866,315 for Fiscal Year 2022 and \$2,866,315 for Fiscal Year 2023).⁴ As shown in the table above, FY2023 revenues for the Fund totaled \$5,484,851, including \$5,100,000 from conveyance tax; \$363,625 from participation in the State investment pool; and \$21,226 from revenue sharing for dispositions of interests in land previously acquired with grants from the Fund (lands also known as "conserved properties"). An additional \$1,011,233 is slated for return to the Fund in Fiscal Year 2024 from unspent funds for two state agency land acquisitions (one completed, one discontinued).

Expenditures and encumbrances for the FY2023 Legacy Land Conservation Program totaled \$8,085,121, matching the authorized allotment (see table below). The Department of Land and Natural Resources ("DLNR") encumbered and expended \$7,850,000 of this total amount as grant awards and debt service obligations for the acquisition of interest or rights in lands having value as resource to the State.

Under subsection 173A-5(h), HRS, paragraph (3), annual administration costs for the Land Conservation Fund may not exceed five per cent of annual conveyance tax revenues from the previous year (a \$255,000 cap for FY2023). In FY2023, DLNR expended and encumbered \$19,788 for administration costs and \$215,333 for FY2023 personnel costs (2.0 FTE). Administration costs included training and travel for the 2022 National Land Conservation Conference (two staff); online training for the 9th Symposium on Advanced Legal Topics in Land Conservation (two staff); staff travel (including Legacy Land Conservation Commission volunteers) for investigating grant applications and monitoring conserved properties; program support services; subscription fees for the online grant application portal; and operating supplies.

FY2023 Grant awards	
Total grant expenditures and encumbrances	\$ 6,350,000
FY2023 Debt service payment	
	\$ 1,500,000
FY2023 Personnel costs	
Salaries, benefits, assessments	\$ 215,333
FY2023 Administrative expenses⁵	
Commission and staff training and travel	\$ 14,260
Services, fees, and supplies	\$ 5,528
Total FY2023 funds expended/encumbered	\$ 8,085,121

⁴[2021 Budget Worksheet](#) for EXEC HB200CD1, Program ID LNR101, Structure # 110307010000 (page 789 of 1157, Sequence # 100-001).

⁵Department efforts to implement a recommendation from a 2019 legislative audit report, concerning overpayment of administrative fees, resulted in a memo from the Director of Finance to the Chairperson, dated July 26, 2019, noting that "Pursuant to Comptroller's Memorandum No. 97-26, entitled "Accounting for Revenue Refunds and Expenditure Reimbursements," expenditure for prior-year reimbursements may be reduced against current expenditures" and approving "the utilization of \$698,652 for CSA [Central Services Assessment] for the LCF [Land Conservation Fund] to be applied towards administrative expense assessment, as necessary, until that account is depleted." Pursuant to this approval, the Department did not expend FY2023 funds for Land Conservation Fund administrative expense assessment.

**Fiscal Year 2023 transactions that transferred funds into and out of
a Department of Land and Natural Resources trust account (T-907)**

During Fiscal Year 2023 DLNR transferred \$593,458 from the Land Conservation Fund into a Department trust account (T-907) for a State agency land acquisition at Makolelau 5th Parcel, District of Kona, Island of Molokai (see this report pages 15-16).

(E) OBJECTIVES AND BUDGET PROJECTIONS FOR THE FOLLOWING FISCAL YEAR

Objectives

The highest priority for the Fiscal Year 2024 ("FY2024") Legacy Land Conservation Program ("LLCP") budget request was to increase the spending ceiling for the Land Conservation Fund to strengthen LLCP buying power as land prices and market competition continue to escalate. The Executive budget request for FY2024 proposed a 17.7% increase over FY2023 (to \$9,518,725) and the 2023 Legislature responded with a 10.8% increase that provides FY2024 spending authorization for \$8,958,423. Key LLCP objectives for FY2024 are:

- (1) complete one prior-year grant for a State agency land acquisition (\$900,000 for 951+ acres at Kāneʻohe Pali to Loʻi, Oʻahu, LLCP 2019-04) and continue providing support for completing two State agency land acquisitions on the island of Maui (\$1,000,000 grant for 257+ acres at Pohakea Watershed, LLCP 2022-02; and \$2 million CIP for 10,000 acres at Nā Wai ʻEhā Watershed), all with the Department of Land and Natural Resources, Division of Forestry and Wildlife;
- (2) provide support for completing seven prior-year grants and one CIP appropriation for nonprofit land acquisitions (\$5.77 million for over 2,500 acres, total);
- (3) coordinate the award, encumbrance, and expenditure of FY2024 grant funds towards the acquisition of lands having value as a resource to the State (approximately \$6.8 million available) and operation, management, and maintenance of lands (up to \$255,000 total);
- (4) coordinate the solicitation of grant applications for Fiscal Year 2025 grant awards (approximately \$5.8 million or more available from pending biennium budget);
- (5) continue implementing selected recommendations from the 2019 performance audit of the Land Conservation Fund (State of Hawaiʻi Office of the Auditor, Report No. 19-01); and
- (6) continually improve program operations, including:
 - establishing a direct project agreement with the Research Corporation of the University of Hawaiʻi to enhance program capacity for monitoring conserved properties, data management, reporting, and communications;
 - enhancing and expanding monitoring of properties conserved with grants from the Land Conservation Fund;
 - training additional staff as back-up for program operations; and

- strengthening coordination with partnering programs for land acquisition to facilitate planning efforts, shorten acquisition timelines, avoid duplication of effort, and optimize conservation benefits.

Budget Projections

The most recent estimates from the State Council on Revenues (September 7, 2023) suggest that the total amount of conveyance tax revenue collected annually in Fiscal Years 2024-2030 will range from 1.00% greater than Fiscal Year 2023 collections (in Fiscal Year 2029) to 2.19% greater than Fiscal Year 2023 collections (in Fiscal Year 2025), with an average annual increase of 1.46% (see [Estimates of General Fund Tax Revenue](#)). Therefore, the Department of Land and Natural Resources ("DLNR") anticipates that \$5.1 million of annual conveyance tax revenue will continue to flow to the Land Conservation Fund for the next seven years; interest on total cash balance will accumulate in accordance with State investment returns; and revenue sharing from dispositions of conserved properties will continue to provide at least \$21,226 per year in additional revenue. Also, if a state agency discontinues an existing grant or CIP appropriation (total current value \$4.1 million), then those grant funds or CIP funds will return to the Land Conservation Fund and be added to its unencumbered cash balance.

Given the ongoing escalation of property values and land acquisition costs, and the steady flow of applications for worthy uses of the Land Conservation Fund, DLNR recommends several legislative measures for strengthening Legacy Land Conservation Program buying power to help this important and popular program better perform its mission and meet public demand:

- (1) amend Section 247-7(1), Hawai'i Revised Statutes, to restore the annual distribution of conveyance tax revenue to the Land Conservation Fund to ten percent of collections, uncapped, as originally legislated in 2005;
- (2) infuse the Land Conservation Fund with \$1.5 million per year of general funds (recurring) to offset ongoing use of special funds for payment of Turtle Bay debt service;
- (3) raise the Land Conservation Fund spending ceiling for future years; and
- (4) amend Section 171-172(e), Hawai'i Revised Statutes, to provide for equitable sharing of surplus funds secured from the Turtle Bay bonding scheme (estimated at \$15 million when amortization concludes in 2036) between the general fund (currently slated to receive 100% of the surplus funds) and the Land Conservation Fund (which will have contributed half of the surplus cash).

DLNR's annual Legacy Land Conservation Program budget requests for future years will continue to be based on (1) the required payment for Turtle Bay debt service; (2) estimated expenses for program personnel and administration; and (3) recommendations issued by the Legacy Land Conservation Commission ("Commission") to award grant funding for the acquisition of specific resource value lands, resulting from Commission review, inspection, and ranking of grant applications in a rigorous, transparent process that includes agency consultation and public participation.

CONCLUSION

During Fiscal Year 2023 ("FY2023"), the Legacy Land Conservation Program ("LLCP") enabled the Land Conservation Fund to contribute \$2,400,000 from previous fiscal years to pay for one land acquisition by a nonprofit land conservation organization (LLCP 2020-01, Kiolaka'a, Island of Hawai'i). The FY2023 Land Conservation Fund provided \$1,500,000 to pay debt service on one state financial instrument relating to the acquisition of interests or rights in land having value as a resource to the State (Turtle Bay, Island of O'ahu). The LLCP encumbered \$6,350,000 in FY2023 funds for four newly approved grants for future land acquisitions valued at \$15,983,000 (total estimated project costs) that are slated to conserve 695 acres (total area) across the islands of Molokai (one grant), O'ahu (two grants) and Kaua'i (one grant). The LLCP also administered existing grant awards, contracts, and state financial accounts that would provide \$7,597,500 from previous fiscal years for seven pending land acquisitions valued at \$37,543,835 (estimated total project costs) and conserving over 11,860 additional acres (total area) across the islands of Hawai'i (Mahukona Navigation and Ecological Complex), Maui (Kepler Ke'anae Lo'i, Nā Wai 'Ehā Watershed, Haneo'o Lands, and Pohakea Watershed Lands), O'ahu (Kāne'ohe Pali to Lo'i), and Kaua'i (Halulu Fishpond Access).



View of Halulu Fishpond – Looking Makai from Community Access Path