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

May 25, 2007

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

Board Members:

SUBJECT: REQUEST FOR APPROVAL OF THE GRANT AND PROJECT PROPOSAL SELECTION PROCESS FOR THE FISCAL YEAR (FY) 2007 LEGACY LAND CONSERVATION PROGRAM APPLICATION REVIEW

SUMMARY:

This Board Submittal requests approval of the Legacy Land Conservation Program's FY 2007 grant and project proposal selection process.

BACKGROUND:

The Legacy Land Conservation Program (LLCP), created by Act 156, SLH 2005, is currently in the position to begin the review of grant applications and project proposals submitted for Fiscal Year 2007. For several months, the review of these grants and proposals has been awaiting the appointment and confirmation of the Legacy Land Conservation Commission ("Commission"). Under Hawaii Revised Statutes, Chapter 173A, the Commission must provide the Board with advice and recommendations on any project proposals and requests for grants from the Land Conservation Fund (LCF). The Senate confirmed the current Commission members on April 25, 2007. Oaths of office were administered to these members immediately before the Commission's orientation meeting on May 7, 2007. At the orientation meeting, the Commission decided upon a course of action to produce recommendations on FY 2007 project applications at its next meeting on May 18, 2007.

In addition to the Commission's recommendations, HRS, Chapter 173A, requires additional steps in process of awarding funds from the LCF. Under Chapter 173A, a consultation with the Senate President and the Speaker of the House and the approval of the Governor are required.

DISCUSSION:

The Department proposes the following process and timeline for the review of LLCP FY 2007 grant requests and project proposals prior to their submission to the Board:

LLCP Review Process for Grants to Nonprofits and Counties:

- LLCP issued request for project applications in September 2006 for October 2006 deadline
- Applications went to LLCP Coordinator upon deadline – initial check for completeness conducted
- Application sent to Commission members for review on May 9, 2007
- Commission met on May 18, 2007, to discuss and rank projects based on statutory criteria
  - Commission makes recommendations on projects for priority funding and amounts
- Department consults with Senate President and Speaker or representative of the House to discuss the Commission's recommendations and provide feedback for submittal to the Board
- Submittal to Board for action of approval of projects based on Commission's recommendations and feedback from Senate President and House Speaker
  - Board grants authority, conditioned upon the additional reviews and approvals mentioned below, for the Department to enter into grant agreements with the Board-approved nonprofit or county grant recipients
- Department seek Governor's approval of all grants to counties and non-profit land conservation organizations
- Department encumbers the funds based on agreement with non-profits and/or county agencies by purchase order and/or a blanket encumbrance.
- Land Division (with Board approval) procures an appraisal for projects needing State-contracted appraisals
- Land Division certifies an appraisal for each project
- Board approves contracts with grant recipients
- Legal documents (deed and contract) reviewed and approved by the Attorney General's office

Variations for Department Proposals under BLNR authority:

- As above, except:
  - Board authorizes Department to enter into a purchase agreement with seller under HRS §173A-4
  - Land Division processes the acquisition under its usual procedures, subject to review and approval by the Attorney General's office

The above process will include all approvals and consultations required under HRS, Chapter 173A.

RECOMMENDATION:

1. That the Board review and approve the process for review of FY 2007 LLCP grant applications.

Respectfully submitted,

PAUL J. CONRY, Administrator
Division of Forestry and Wildlife

Attachments:

Exhibit A: Hawaii Revised Statutes, Chapter 173A
Exhibit B: "Legacy Land Conservation Commission Confirmed and Beginning Duties May 7, 2007," DLNR Press Release, May 4, 2007

APPROVED FOR SUBMITTAL:

ALLAN A. SMITH, Interim Chairperson
Board of Land and Natural Resources

CHAPTER 173A - ACQUISITION OF RESOURCE VALUE LANDS

(This is an unofficial copy Chapter 173A, Hawaii Revised Statutes. Official text of Chapter 173A can be found in the Hawaii Revised Statutes and its supplements.)

Section

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[§173A-1] Purpose. The State has provided for the regulation of land use and development throughout the State under the provisions of the land use law, and has provided through that law for the controlled regulation of land use and development of lands which have natural, environmental, recreational, scenic or historic value. However, these 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 of the 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. [L 1973, c 77, §1]

§173A-2 Definitions. As used in this chapter:

"Board" means the board of land and natural resources.

"Department" means the department of land and natural resources.

"Land" means the earth, water, and air, above, below, or on the surface, and includes easements and rights in land, and any improvement on land.

"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. [L 1973, c 77, §2; am L 2005, c 156, §3]

[§173A-2.4] Legacy land conservation commission. (a) There is established within the department of land and natural resources a legacy land conservation commission. The commission shall consist of nine members, with at least one member from each of the counties, who shall be appointed in the manner and serve for the term set forth in section 26-34 as follows:

(1) Four of the members of the commission shall be persons possessing scientific qualifications as evidenced by an academic degree in wildlife or marine biology, botany, forestry, ecology, resource management, biogeography, zoology, or geology;

(2) One member shall be a person possessing membership in an environmental organization organized in the State;

(3) One member shall be a person possessing membership in a land conservation organization organized in the State;

(4) One member shall be a person possessing membership in a statewide agricultural association; and

(5) One member shall be a person knowledgeable about native Hawaiian culture.

The chairperson of the natural area reserves system commission shall serve as an ex officio voting member and the chairperson of the commission. The members shall receive no compensation for their services on the commission but shall be entitled to reimbursement for necessary expenses, including travel expenses, incurred in the discharge of their duties.

(b) Any action taken by the commission shall be by a simple majority of its members. Five members of the commission shall constitute a quorum.

(c) Except as otherwise provided in this chapter, the commission shall be subject to sections 26-34, 26-35, 26-35.5, and 26-36.

(d) The commission may adopt rules pursuant to chapter 91 to carry out its duties. [L 2006, c 254, pt of §1]

[§173A-2.5] Responsibilities of the legacy land conservation commission. The responsibilities of the commission shall include, but not be limited to:

(1) Advising the department and the board on any proposal, public or private, for the acquisition of any interest or rights in land having value as a resource to the State;

(2) Advising the department and the board on 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;

(3) Recommending to the board the acquisition of interests or rights in certain lands having value as a resource to the State; and

(4) Reviewing and adopting rules relating to the criteria it applies in advising the department and the board and making recommendations to the board regarding land acquisitions and grants made pursuant to this chapter. [L 2006, c 254, pt of §1]

[§173A-2.6] Land acquisition priorities. In advising the department and the board, the commission shall give the following lands priority in its recommendations for acquisitions:

(1) Lands having exceptional value due to the presence of:

(A) Unique aesthetic resources;

(B) Unique and valuable cultural or archaeological resources; or

(C) Habitats for threatened or endangered species of flora, fauna, or aquatic resources;

(2) Lands that are in imminent danger of development;

(3) Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;

(4) Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;

(5) Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction; and

(6) Lands that are unique and productive agricultural lands. [L 2006, c 254, pt of §1]

§173A-3 Resource land acquisition plan. In consultation with the senate president and speaker of the house of representatives, the department shall prepare and, from time to time, revise a plan for the acquisition of land having value as a resource to the State. This plan shall guide the board in acquiring such land in the exercise of its powers under this chapter. 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. [L 1973, c 77, §3; am L 2006, c 254, §2]

§173A-4 Authority to acquire and convey. (a) In consultation with the senate president and speaker of the house of representatives, the board may acquire, by purchase, gift, or the exercise of the power of eminent domain as authorized by chapter 101, any land having value as a resource to the State. Such acquisition is hereby declared to be for a public use.

(b) The board may, subject to chapter 171, in consultation with the senate president and speaker of the house of representatives, and with the approval of the governor, sell, lease, or otherwise convey any such land subject to terms and conditions that it deems appropriate and that will ensure that the transferee shall not use the land in a manner that is inconsistent with the purposes for which it was acquired by the board. The terms and conditions shall run with the land and shall be binding on the transferee's heirs, successors, and assigns. The board may seek enforcement of the terms and conditions in any court of appropriate jurisdiction. [L 1973, c 77, §4; am L 2006, c 254, §3]

§173A-5 Land conservation fund. (a) A land conservation fund, hereinafter called "fund", is hereby established.

(b) The proceeds from the sale of any general obligation bonds, authorized and issued for purposes of this chapter, shall be deposited in or credited to the fund.

(c) Any net proceeds or revenue from the operation, management, sale, lease, or other disposition of land or the improvements on such land, acquired or constructed by the board under the provisions of this chapter, shall also be deposited in or credited to the fund.

(d) Ten per cent of all taxes imposed and collected by section 247-1 shall be deposited in or credited to the fund every year.

(e) The fund shall be administered and managed by the department.

(f) The acquisition of interests or rights in land having value as a resource to the State for the preservation of:

(1) Watershed protection;

(2) Coastal areas, beaches, and ocean access;

(3) Habitat protection;

(4) Cultural and historical sites;

(5) Recreational and public hunting areas;

(6) Parks;

(7) Natural areas;

(8) Agricultural production; or

(9) Open spaces and scenic resources,

constitutes a public purpose for which public funds may be expended or advanced.

(g) The fund shall be used for:

(1) The acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the establishment of permanent conservation easements under chapter 198; and

(2) Annual administration costs for the fund, not to exceed five per cent of annual fund revenues of the previous year.

(h) Based on applications from state agencies, counties, and nonprofit land conservation organizations, the department, in consultation with the senate president and speaker of the house of representatives, shall recommend to the board specific parcels of land to be acquired, restricted with conservation easements, or preserved in similar fashion. The board shall review the selections and approve or reject the selections according to the availability of moneys in the fund. To be eligible for grants from the fund, state and county agencies and nonprofit land conservation organizations shall submit applications to the department that contain:

(1) Contact information for the project;

(2) A description of the project;

(3) The request for funding;

(4) Cost estimates for acquisition of the interest in the land;

(5) Location and characteristics of the land; and

(6) Other similar, related, or relevant information as may be determined by the department.

(i) For applications approved by the board, the board may acquire land having value as a resource to the State, pursuant to section 173A-4, or the board may award grants from the fund to the qualifying state or county agencies or nonprofit land conservation organizations for the preservation of the real property. Where the recipient of a grant is a county agency or nonprofit land conservation organization, the board shall require additional matching funds of at least twenty-five per cent of the total project costs. Matching funds may be in the form of:

(1) Direct moneys;

(2) A combination of public and private funds;

(3) Land value donation;

(4) In-kind contributions; or

(5) Any combination of the above,

and evidence of these matching funds shall be made available from the qualifying entities prior to distribution of the fund grant.

(j) The board shall:

(1) Track amounts disbursed from the fund;

(2) Prepare an annual report to be transmitted to the governor and the legislature at least twenty days prior to the convening of each regular session of the legislature. The annual report 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; and

(3) Make copies of the annual report available to the public. [L 1973, c 77, §5; am L 2005, c 156, §4; am L 2006, c 254, §4]

[§173A-6] Acquisition of land. The board shall prepare an annual program for the purchase or acquisition by eminent domain of land having value as a resource to the State. [L 1973, c 77, §6]

[§173A-7] Administration and management. The board shall, subject to chapter 171, administer, maintain, and manage any land acquired under the provisions of this chapter, may charge such fees for the use of any such land as it considers to be reasonable, and may construct on such land any improvement which it deems to be necessary to carry out the purposes of this chapter. The board may adopt and from time to time amend regulations implementing the provisions of this chapter. [L 1973, c 77, §7]

[§173A-8] Development of land acquired by the board. On the land acquired under this chapter the board may undertake any development which is consistent with the land use law and all other laws applicable to the land and development.

For purposes of this section, "development" includes (1) any building or mining operation; (2) any material change in use, intensity of use, or appearance of any structure or land; or (3) the division of land into two or more parcels. [L 1973, c 77, §8]

§173A-9 Grants to state agencies, counties, and nonprofit land conservation organizations. After consultation with the senate president and speaker of the house of representatives, and subject to the approval of the governor, the board may make grants to state agencies, counties, and nonprofit land conservation organizations from available funds for the purchase or acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the purchase of permanent conservation easements under chapter 198, and approved for purchase or acquisition by the board. Any land so acquired by any state agency or county may be sold, leased, or otherwise disposed of, subject to chapter 171, with the prior written approval of the board. Any land acquired by any nonprofit land conservation organization under this chapter may be sold, leased, or otherwise disposed of with the prior written approval of the board. Any permanent conservation easement established under this section that includes partnership with a federal land conservation program may be transferred only as provided by rules of the federal program. [L 1973, c 77, §9; am L 2005, c 156, §5; am L 2006, c 254, §5]

§173A-10 Proceeds of sale, lease, or other disposition. Whenever any such land is sold by any state agency, county, or nonprofit land conservation organization, that portion of the net proceeds (sale price less actual expenses of sale) of such sale equal to the proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State. In the event any such land or other property is leased, rented, or otherwise disposed of, that portion of the rental or proceeds equal to the proportion that the grant by the State bears to the original cost of the land or other property shall be paid to the State. Any proceeds received by the State pursuant to this section that were originally paid out of the fund pursuant to section 173A-9 shall be redeposited in or credited to the fund. This section shall not apply to rents of property protected by permanent conservation easements established by grants from the fund. [L 1973, c 77, §10; am L 2005, c 156, §6]

[§173A-11] General powers. In carrying out its functions under this chapter the board may do all things necessary, useful, and convenient in connection with the acquisition, administration, maintenance, and management of lands having value as a resource to the State, subject to all applicable laws, and may provide any necessary assistance to any county in the acquisition of land having value as a resource to the State. The authority to acquire land which is conferred by this chapter is in addition and supplemental to any authority to acquire land which is conferred on the board by any other chapter. [L 1973, c 77, §11]

[§173A-12] Federal and other grants. The board and any county may comply with any condition, regulation, restriction, or requirement imposed by the United States or any other governmental agency, or by any person in any program providing grants or other funds for the acquisition of land having value as a resource to the State. [L 1973, c 77, §12]

DEPARTMENT OF LAND AND NATURAL RESOURCES

News Release

LINDA LINGLE
GOVERNOR

PETER T. YOUNG, CHAIRPERSON
Phone: (808) 587-0401
Fax: (808) 587-0390

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LEGACY LAND CONSERVATION COMMISSION CONFIRMED AND BEGINNING DUTIES MAY 7, 2007

HONOLULU – The newly-appointed members of the State Legacy Land Conservation Commission (Commission) will meet at 9:30 a.m. on Monday, May 7, 2007, in the Kalanimoku state office building at 1151 Punchbowl St., room 132.

The Commission is part of the Department of Land and Natural Resource's (DLNR) Legacy Land Conservation Program (LLCP), a state program that provides funding to state and county agencies and non-profit land conservation organizations to acquire property having natural or cultural resource value.

The lands may be acquired for the conservation of watersheds; coastal areas, beaches, and ocean access; habitat protection; cultural and historic sites; recreational and public hunting areas; parks; natural areas; agricultural production; and open spaces and scenic resources.

Members' first task will be to attend State Ethics and Sunshine Law training, and then consider how to best perform their responsibilities under the law.

The Commission's responsibilities include recommending to the Board of Land and Natural Resources (BLNR) the acquisition of interests or rights in certain lands. They will also advise the department and the Land Board on proposals and grant requests to acquire any interest or rights in land having resource value to the State.

The Commission will meet later in May to review and discuss projects submitted for the Fiscal Year (FY) 2007 application cycle that closed in October, 2006. The FY 2007 application cycle will provide approximately $4.8 million in grants through a competitive process.

(more)

The Commission will recommend projects for funding to the Board of Land and Natural Resources. Projects are also subject to consultation with the Senate President and Speaker of the House, and the approvals of the Attorney General and the Governor.

"This Commission has a large role in the protection of resource lands for the benefit of the people of Hawai'i," said Allan Smith, DLNR interim chairperson. "It is heartening to have these very capable and esteemed members of the community serving on this Commission."

As a group, the Commission members possess: Native Hawaiian cultural expertise; membership in land conservation organizations, agricultural associations, and environmental organizations; and five advanced degrees in scientific disciplines.

The newly confirmed members of the Commission include: Chairperson Dale Bonar, Maui; Carl Berg, Kaua'i; Joan Canfield, O'ahu; Charles Fletcher, O'ahu; Herbert "Monty" Richards, Hawai'i island; Robert Shallenberger, Hawai'i Island; Wesley Kaiwi Nui Yoon, O'ahu; and Karen G.S. Young, O'ahu.

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For more information, media may contact:
Molly Schmidt
Legacy Land Conservation Fund Coordinator
Phone: (808) 586-0921
Email: molly.e.schmidt@hawaii.gov

Deborah Ward
DLNR Public Information Specialist
Phone: (808) 587-0320