

October 7, 2022

VIA EMAIL

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

VIA EMAIL

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

Re: “Follow-Up on Recommendations from Report No. 19-01, *Audit of the Department of Land and Natural Resources’ Land Conservation Fund,*” Report No. 22-11

Dear President Kouchi and Speaker Saiki:

Please find attached our “Follow-Up on Recommendations from Report No. 19-01, *Audit of the Department of Land and Natural Resources’ Land Conservation Fund,*” Report No. 22-11. The audit was performed pursuant to section 23-7.5, Hawai'i Revised Statutes, and is a report on the Department of Land and Natural Resources' implementation of recommendations made in Report No. 19-01, *Audit of the Department of Land and Natural Resources’ Land Conservation Fund,* published in January 2019.

The report is accessible through the Office of the Auditor's website at:
<https://files.hawaii.gov/auditor/Reports/2022/22-11.pdf>.

If you have questions about the report, please contact me.

Very truly yours,

Leslie H. Kondo
State Auditor

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Attachment

ec/attach: Members of the Senate
Members of the House of Representatives
Carol Taniguchi, Senate Chief Clerk
Brian Takeshita, House Chief Clerk

Follow-Up on Recommendations from Report No. 19-01, *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. 22-11
October 2022



OFFICE OF THE AUDITOR
STATE OF HAWAII



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, documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

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To improve government through independent and objective analyses.

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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.

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PHOTO: DEPARTMENT OF LAND AND NATURAL RESOURCES

Follow-Up on Recommendations from Report No. 19-01, *Audit of the Department of Land and Natural Resources' Land Conservation Fund*

Section 23-7.5, Hawai'i Revised Statutes, requires the Auditor to report to the Legislature annually on each audit recommendation more than one year old that has not been implemented by the audited department or agency. Our follow-up process consists of both requests to agencies for their own assessment of implementation of our audit recommendations, and "active" follow-ups conducted by our office. First, annually, we ask agencies to report the status of their implementation of our audit recommendations. Second, we conduct an "active" follow-up two to three years after issuance of the audit report containing the recommendations where we independently assess the agency's progress in implementing each recommendation and issue a separate follow-up report, like this one. We also compile agencies' implementation status in a consolidated report issued annually, which contains both self-reported and "active" follow-up results.

We found that the department implemented 6 of the recommendations, partially implemented 2 of the recommendations, and 2 recommendations were not implemented and remain open. We additionally found 3 recommendations were not implemented because the department disagrees with the recommendation.

This report presents the results of our review of 13¹ recommendations made to the Department of Land and Natural Resources in Report No. 19-01, *Audit of the Department of Land and Natural Resources' Land Conservation Fund*, which was published in January 2019.

The Department of Land and Natural Resources' Land Conservation Fund

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 dedicated 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 has delegated that responsibility to its Division of Forestry and Wildlife (DOFAW). In 2006, the Legislature established a nine-member Legacy Land Conservation Commission (Commission) to advise DLNR and the Board of Land and Natural Resources (Land Board) on public and private proposals for the acquisition of interests and rights in land having value as a resource to the State. The Commission also advises on requests for grants from the Land Conservation Fund to qualifying state or county agencies and nonprofit land organizations for the preservation of lands having value as a resource to the State. Additionally, the Legislature 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. In 2015, through Act 84, the Legislature capped the funding for the Land Conservation Fund at 10 percent of the state conveyance tax or \$6.8 million, whichever is less. The Land Conservation Fund has other potential funding sources in addition to conveyance tax proceeds, including bond proceeds, private contributions, and revenue from the operation or sale of conservation land.

Why we did the 2019 audit

Our audit of DLNR's Land Conservation Fund was conducted pursuant to Act 209, Session Laws of Hawai'i 2017. Act 209 required the Auditor to conduct a performance audit of DLNR's Land Conservation

¹ In Report No. 19-01, we offered 12 recommendations to the Legacy Land Conservation Program, including 2 separate recommendations that were part of Recommendation No. 3. In this report, we assessed the program's implementation of each part of Recommendation No. 3 separately. For that reason, we report on our review of 13 recommendations.

Fund and Special Land and Development Fund. Report No. 19-01 focused on the Land Conservation Fund and the Legacy Land Conservation Program. Report No. 19-12 focused on the Special Land and Development Fund. A report on the status of DLNR’s implementation of the recommendations in Report No. 19-12 will be issued separately.

What we found in 2019

Our audit 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 had used the Land Conservation Fund to pay the salary of an employee who was doing work unrelated to the Legacy Land Conservation Program. Additionally, the program had not tracked or reported to the Legislature the balances of moneys from the Land Conservation Fund that it 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, 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 Land Board on the use of the same limited moneys to fund its projects. We found 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, was far less transparent and accountable than the program’s grant award process. We found DOFAW’s unique role and special relationship with the Land Board conferred an advantage relative to other grant applicants, especially given the limited pool of moneys available annually from the Land Conservation Fund.

Our first recommendation called upon the department to prepare and implement a Resource Land Acquisition Plan that complies with Section 173A-3, Hawai‘i Revised Statutes (HRS). We also recommended that the department develop and implement policies

Definition of Terms

WE DEEM recommendations:

Implemented

where the department or agency provided sufficient and appropriate evidence to support all elements of the recommendation;

Partially Implemented

where some evidence was provided but not all elements of the recommendation were addressed;

Not Implemented

where evidence did not support meaningful movement towards implementation, and/or where no evidence was provided;

Not Implemented - N/A

where circumstances changed to make a recommendation not applicable; and

Not Implemented - Disagree

where the department or agency disagreed with the recommendation, did not intend to implement, and no further action will be reported.

and procedures regarding grants, contracts, and projects. Other recommendations were in the areas of fiscal oversight, the need for a centralized filing system, Sunshine laws, and administrative rules.

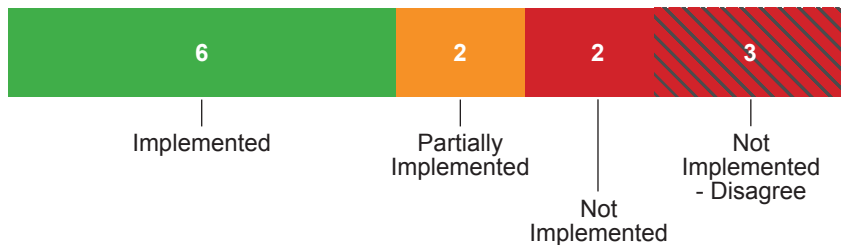
What we found in 2022

Our follow-up on DLNR's implementation of the recommendations made in Report No. 19-01, conducted between April and July 2022, involved examining relevant documents and records, interviewing relevant department personnel, and evaluating whether the department's actions addressed the recommendations.

The following analysis covers 12 recommendations to the Legacy Land Conservation Program, including 2 separate recommendations that were part of Recommendation No. 3. In this report, we assessed the program's implementation of each part of Recommendation No. 3 separately. For that reason, we report on our review of 13 recommendations.

We found that the department implemented 6 of the recommendations, partially implemented 2 of the recommendations, and 2 recommendations were not implemented and remain open. We additionally found 3 recommendations were not implemented because the department disagrees with the recommendation.

Exhibit 1 Audit Recommendations by Status



Source: Office of the Auditor

Recommendations and their status

Our follow-up efforts were limited to reviewing and reporting the implementation status of our audit recommendations. We did not explore new issues or revisit old ones that did not relate to the original recommendations. The following details the audit recommendations made and the current implementation status of each recommendation based on our review of information and documents provided by the department and other publicly available information.

Recommendation 1

The Legacy Land Conservation Program should prepare and implement a Resource Land Acquisition Plan to comply with Section 173A-3, HRS.

Partially Implemented

Comments

This recommendation was meant to address our finding that the Legacy Land Conservation Program had never prepared a Resource Land Acquisition Plan as required by Section 173A-3, HRS. We observed in Report No. 19-01 that when it created the Commission in 2006, the Legislature directed DLNR to prepare and periodically revise a Resource Land Acquisition Plan, intended to be a planning document to guide the Land Board in its acquisition of land for conservation. The development and implementation of “a conservation land acquisition strategic plan” was included as part of the Legacy Land Conservation Program Manager’s job description. The audit found DLNR never prepared a Resource Land Acquisition Plan, even though the department was aware that it was required to do so.

In response to this recommendation, the program states that it is now preparing a Resource Land Acquisition Plan, which it planned to complete during FY2022. The department states that the Resource Land Acquisition Plan is intended to be a long-term functional plan to guide the Land Board (and its advisory Legacy Land Conservation Commission, consulting/partner agencies, applicants, and legislators) in acquiring land having value as a resource to the State.

We requested and reviewed a draft of the department’s Resource Land Acquisition Plan. The draft appears to address the eight priority land types mentioned in Section 173A-2.6, HRS, and provides guidance on how to assess the resource values for these eight land types. The program is also developing a web-based mapping tool (WebMap) to, among other things, help identify lands with high-priority resource values and to analyze statewide distributions of Legacy Land Resource values. The program states WebMap is intended to empower decision-makers and applicants in decision-making about awards of land acquisition grants.

The Commission offered comments on the content of a draft of the Resource Land Acquisition Plan during its April 1, 2022, meeting, but the Commission did not vote on the draft Resource Land Acquisition Plan at that meeting. The program stated that the Commission discussed a second draft of the Resource Land Acquisition Plan at its

May 6, 2022, meeting, but draft meeting minutes to document this meeting are still in preparation and were not available for our review.

While the program appears to be actively working on a Resource Land Acquisition Plan, the plan that we were provided was still a draft. As such, we deem this recommendation to be partially completed.

Recommendation 2

The Legacy Land Conservation Program should 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.

Implemented

Comments

This recommendation addresses the Legacy Land Conservation Program's failure to encumber funds for approved projects in a timely manner. This failure resulted in the lapse of \$2.2 million dollars in awards for three FY2015 projects. These grants were encumbered under a "blanket encumbrance," meaning that the funds were encumbered prior to the finalization of an associated contract. Blanket encumbrances lapse if a contract for the acquisition is not entered into within one year of the end of the fiscal year in which the funds were encumbered. The \$2.2 million in lapsed funds fell through the cracks at a time when the former Legacy Land Conservation Program Project Manager resigned and three DOFAW staff were temporarily assigned to pick up the former Project Manager's workload. The lapse of these encumbered funds led to a situation in which the program had already approved funding for five projects with its FY2016 appropriation. Since the FY2015 funding had lapsed, the FY2016 moneys were insufficient to fund all the approved grants from both FY2015 and FY2016. Rather than asking applicants to reapply for funds, the program chose to commit money it *anticipated* the Legislature would appropriate to the program in future fiscal years, FY2017 and FY2018, to fund the grants it had approved in FY2015 and FY2016. This practice left the Land Conservation Fund with less than \$2.9 million for the FY2017 grant cycle; the audit found the Legacy Land Conservation Program Manager and the Commission nevertheless committed to \$4.4 million in grant awards that fiscal year. To prevent blanket encumbrances from lapsing in the future, we recommended that the program develop and implement written policies and procedures governing the grant award and blanket encumbrance processes to ensure that project contracts are executed in a timely manner.

In response to this recommendation, the department stated that it updated its existing policies and procedures to execute contracts for new and continuing projects on time. Among other things, this included procedures for the grant award process, procedures for the blanket encumbrance process, procedures for contract

execution, procedures for contract amendments to extend the time of performance, and procedures for other terms and conditions for contract amendments. The program stated it is also following other existing internal procedures and conforming with ongoing changes in policies and procedures in the executive branch. In addition, the program has committed to train a DOFAW Planner to shadow the Legacy Land Conservation Program Specialist in case the Program Specialist needs assistance. The program provided our office with an additional set of procedures for contract amendments on July 8, 2022.

We reviewed the policies and procedures developed by the program that govern the grant award and blanket encumbrance processes to ensure that project contracts are executed on time and blanket encumbered funds do not lapse. In determining whether these policies and procedures were in fact implemented, we confirmed implementation in our follow-up of the department's implementation of Recommendations 3 (Part 1), 9, and 12, discussed below.

Recommendation 3

Part 1:

The Legacy Land Conservation Program should develop clear and well-defined policies and procedures between the Legacy Land Conservation Program and DOFAW regarding distribution of Land Conservation Fund moneys.

Implemented

Comments

This two-part recommendation was written in response to a 2018 incident in which DOFAW requested budget money to fund three of its own projects (Kamehamehanui Forest/Kula Forest Reserve; Hāna Forest Reserve project; Waimea Forest/Pupukea Forest Reserve) through capital improvement grants from the Land Conservation Fund rather than through the General Fund. The Legacy Land Commission was created to provide input on the grant award process for land acquisitions by qualifying state and county agencies and nonprofit land conservation organizations seeking funds from the Land Conservation Fund. The three DOFAW projects had previously been considered by the Commission but were not fully funded. Although the Legislature and the then-Governor approved the use of money from the Legacy Land Conservation Fund for these land acquisitions, the use of Land Conservation Fund moneys for these acquisitions occurred outside of the Legacy Land Conservation Program grant award process, superseding the decision-making authority of the Commission. The audit noted concerns about the advantages and special treatment DOFAW received, which at a minimum do not promote confidence in the process by applicants or the general public.

In response, the Legacy Land Conservation Program separated Recommendation 3 into two parts: 1) develop well-defined policies and procedures regarding the distribution of Land Conservation Fund moneys, and 2) require DOFAW to follow Section 173A-5, HRS, and submit a grant application to receive funding rather than going through the executive budget request process.

In implementing Part 1 of Recommendation 3, the Legacy Land Conservation Program, through its administrative rules, requires all state agency grantees to provide a final accounting of total project costs and matching funds prior to closing. The program states that these project costs and matching funds are compared with the initial estimates provided by the agency on the project application.

The program states that state agencies are also required to submit a Legacy Land Resource Value Documentation Form as part of the

pre-acquisition process. This document certifies that the applicant has adequately described the current status and condition of available funding resources through a written statement and photographs taken from identifiable locations on the property. Since the awardee may have limited access to the property prior to acquisition, the awardee must also develop a comprehensive management plan, post-acquisition, that documents the resource values to be protected.

The program also requires that state grantees submit a Legacy Land Project Accounting Form as part of the pre-acquisition process to help ensure fairness and verify the agency's fulfillment of matching fund commitments. This document must be completed and submitted as part of the pre-acquisition due diligence, prior to the Legacy Land Conservation Program review of the draft submittal to the Land Board, so that the Land Board has all necessary information to approve the completion of the awardee's land acquisition.

Upon review of the policies and procedures provided by the program, we deem Part 1 of Recommendation 3 to be implemented.

**Part 2:
Recommendation 3 noted DOFAW should follow Section 173A-5, HRS, and submit a grant application to receive funding rather than submit a budgetary request.**

Not Implemented - Disagree

Comments

The Legacy Land Conservation Program has chosen not to implement Part 2 of Recommendation 3. On February 28, 2020, the Legacy Land Conservation Program provided a response to our request for an update on the status of our recommendations. The Legacy Land Conservation Program stated its belief that the department, on behalf of DOFAW, is allowed to submit budgetary requests for the acquisition of land and that it therefore disagrees with this part of Recommendation 3. The program further argues that the Legislature has shown support for the department by appropriating moneys through budgetary requests from the Land Conservation Fund for acquisitions.

We disagree. The Legislature created the Commission with its expertise, along with an informed, deliberative grant award process to provide input into these decisions. Projects submitted for consideration by DOFAW should be subject to the same award process and require approval from the Commission for funding. Although using budgetary requests to seek funds for land acquisitions may

not violate existing rules or laws, 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. Section 173A-5(i), HRS, states that the department, in consultation with the Senate President and Speaker of the House of Representatives, must recommend selected applications from state agencies, counties and nonprofit land conservation organizations to the Land Board. The Land Board then shall review the selections and approve or reject the applications according to the availability of moneys in the Land Conservation Fund.

We continue to recommend that the department comply with the statute by going through the Commission’s and Land Board’s grant award process for all applications. Land acquisitions funded from the Land Conservation Fund based on approval by the Legislature and Governor circumvent a grant award process that all other qualifying state and county agencies and nonprofit land conservation organizations must complete. 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 annually through the Land Conservation Fund. Following the awards process outlined in Section 173A-5, HRS, ensures that DOFAW avoids real and perceived conflicts of interest in how the Land Conservation Fund is administered.

Recommendation 4

The Legacy Land Conservation Program should 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.

Implemented

Comments

Our 2019 audit found that the program erroneously paid roughly \$685,000 in administrative fees from the Land Conservation Fund, reducing the amount of money available to fund land conservation projects or other program-related expenses. The Land Conservation Fund had been required to pay a special fund assessment for state central service expenses to the Department of Accounting and General Services (DAGS); however, that requirement was repealed in 2015. We found the fund had paid these administrative fees erroneously in FY2016 and FY2017.

A portion of the erroneously paid money (\$519,904) remains in the account administered by DAGS. On July 8, 2018, the department sent a memo to the Department of Budget and Finance requesting assistance to correct the Land Conservation Fund's special fund assessment error. The Finance Director subsequently approved the utilization of the full amount of \$698,652 to be applied towards future non-exempt administrative expense assessments (including costs associated with training) of the Legacy Land Conservation Program until the account has been depleted.

According to the department, a total of \$178,748 has been applied as of FY2021. In FY2020, the department applied \$136,682 towards other non-exempt assessments. DLNR's 2022 Report to the Legislature includes a footnote that the department applied \$42,066 toward the FY2021 administrative expense assessment.

\$698,652	Total Credit Available
136,682	Applied toward 2020 assessment
<u>42,066</u>	Applied toward 2021 assessment
\$519,904	Unused Credit balance

Although there is still an outstanding balance of \$519,904 available in the DAGS account, we deem Recommendation 4 to be implemented as the program has successfully initiated a process to recover and use this money for Legacy Land Conservation Program administrative expenses.

Recommendation 5

The Legacy Land Conservation Program should 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.

Implemented

Comments

Recommendation 5 was intended to address our audit finding that trust account balances were not tracked or reported. A DLNR trust account holds Legacy Land Conservation Program funds awarded to state agencies from the Land Conservation Fund, in addition to moneys for other DLNR activities. However, neither DLNR nor the Legacy Land Conservation Program track the Land Conservation Fund moneys held in the DLNR trust account separately from amounts for activities unrelated to the Legacy Land Conservation Program. The Program Manager felt that the DLNR fiscal office should be responsible for monitoring trust account transactions, yet DLNR’s fiscal office had requested the program to provide a reconciliation of the program’s funds in the account numerous times with no responses from the program. We found that the program did not maintain an accounting or other listing of the Legacy Land Conservation Program moneys transferred to the trust account, although the DOFAW Administrator was responsible for initiating transfers between the Land Conservation Fund and the DLNR trust account. This resulted in the Legacy Land Conservation Program being unaware of how much program money was in the DLNR trust account, limiting legislative oversight of the program and these funds. The program also did not include the program moneys that had been transferred to the DLNR trust account in its annual program and fund reports to the Legislature.

We reviewed the department’s 2020, 2021, and 2022 annual reports to the Legislature relating to the Land Conservation Fund and Legacy Land Conservation Program and confirmed that the department is reporting transfers to and from the DLNR trust account in those reports. Therefore, we deem Recommendation 5 to be implemented.

Recommendation 6

The Legacy Land Conservation Program should review personnel spending and position assignments and implement changes as needed to ensure that Land Conservation Fund moneys are used only for administrative and other costs directly related to the Legacy Land Conservation Program.

Not Implemented - Disagree

Comments

Recommendation 6 was based on an audit finding that the Legacy Land Conservation Project Development Specialist position was 100% funded from the Land Conservation Fund, yet at the time of our audit, the then-Project Development Specialist estimated that only 50% of the specialist's time was spent on Legacy Land Conservation Program work. The position description for the Project Development Specialist dictated that 30 percent of the job involved coordinating and processing acquisitions of private lands or easements, and another 10 percent of the job was to provide technical assistance to DOFAW in the Legacy Land Conservation Program grant award process. We recommended that this position should either be a dedicated, full-time employee of the program or the percent of the salary for this position funded by the Land Conservation Fund should be based on the percentage of time spent on Legacy Land Conservation Program work.

To evaluate the status of Recommendation 6, the program provided a status update dated July 8, 2022, which included an updated Project Development Specialist Position description. This updated position description included calculations of approximate portions of Land Conservation Fund-funded staff time dedicated to work unrelated to the Legacy Land Conservation Program and a calculation of personnel spending and position assignments. The program also included a summary of its rationale for these calculations and the updated position description.

The program entertained three different alternatives to address Recommendation 6, which included: (1) moving the Project Development Specialist from the Land Division to DOFAW while retaining 100% of the position funding from the Land Conservation Fund; (2) reclassifying this position so that half of the funding comes from the Land Conservation Fund and half would come from the Special Land and Development Fund, so that this position could remain in the Land Division; and (3) creating a timesheet for this position to track how much time is spent by the Project Development

Specialist on the Land Conservation Fund or the Special Land and Development Fund to determine the percentage of salary to be allocated from each of these funds.

The program rejected all three of these scenarios in favor of the current funding situation. Scenario 1 was deemed likely to weaken the ability of the Legacy Land Conservation Specialist to interact with and learn from the Land Division staff. This scenario was also perceived as likely to “weaken Land Division staffing resources.” Scenario 2 was rejected because of the fluctuation of the workload of the Legacy Land Conservation Specialist and the overlap between work dedicated to state land acquisition and acquisitions granted from the Land Conservation Fund. Finally, Scenario 3 was rejected because the division does not have a timekeeping system that would allow an employee to use different activity codes to report how much time is spent dedicated to each funding source. It appears the program did not entertain a scenario in which the percentage of the salary for this position could be split between the Land Conservation Fund and the Special Land and Development Fund, based on the percentage of staff hours dedicated to activities for each of these funds based on the updated Position Description.

The program justified rejecting these scenarios in favor of the status quo in which the Land Conservation Fund Program Development Specialist is 100% funded from the Land Conservation Fund. The program based its determination on the fact that several individuals within the Land Division whose positions are funded through sources other than the Land Conservation Fund work on Legacy Land Conservation Program activities, resulting in “well over 1.0 FTE of staff services that directly benefit the Legacy Land Conservation Program.”

We disagree. The Land Conservation Fund is a *special fund* that was created by statute in 2005 to provide funding for land conservation. Specifically, the Land Conservation Fund exists to fund 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. Special funds hold moneys earmarked for the purpose for which they are created and are not pots of moneys that can be spent for expenditures outside of their statutory purposes. The Land Division staff who work on Legacy Land Conservation Program matters are funded through the Special Land and Development Fund, whose purpose may be sufficiently broad to include the Legacy Land Conservation Program-related activities.

Based on the information provided by the program described above, we deem Recommendation 6 to be “Not Implemented - Disagree.”

While the department reviewed personnel costs and position assignments, the exact percentage of total staff time of the Legacy Land Conservation Program Project Development Specialist appears unclear and may fluctuate depending on program needs and the position remains 100% funded by the Land Conservation Fund.

Recommendation 7

The Legacy Land Conservation Program should maintain a centralized file system and establish a records retention policy for all awarded projects, including pending, completed, and discontinued projects.

Partially Implemented

Comments

This recommendation was based on our review of Legacy Land Conservation Program operations which revealed an unconventional staffing and administration structure. We found that this led to inefficiencies in recordkeeping and coordination of program activities. The Legacy Land Conservation Program has two staff who work independently and separately from each other, reporting to different supervisors. The Program Manager and the Project Specialist work in separate divisions (DOFAW and the Land Division), where they each maintain 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 for which the Program Manager was responsible. Further, in our review of the files, we discovered several were missing documents or contained incorrect paperwork. The Program Manager could not provide us with the files for state projects and directed us to the Project Specialist who could only produce one of the requested project files. In addition, we had to request records for three pending state projects from the agencies that were awarded the grants since neither the Program Manager nor Project Specialist maintained those records.

In response, the department said that it implemented a file centralization process that it describes as a “collaborative effort” between DOFAW and the Land Division. The department further noted that complete and readily available records for all awarded projects can be retrieved from either DOFAW or Land Division files, depending on record type. The Legacy Land Conservation Program’s centralized file system includes two main categories: Legacy Land Conservation Program Properties and Legacy Land Conservation Program Operations. The folders are further sub-categorized according to program areas. The database of program information is drawn from project applications completed, pending, discontinued, unfunded, and withdrawn. Digital files are stored and retrieved in SharePoint, a Microsoft cloud-based collaboration and document management platform. Original copies of documents relating to properties acquired for conservation are kept in the Land Division or DOFAW vaults.

With respect to a records retention policy, the Legacy Land Conservation Program determined its highest priority is records associated with land acquisitions completed through a Legacy Land Conservation Program grant agreement approved by the Land Board. Recorded documents that convey fee title or a conservation easement to a grantee, or grantee interests in fee title to another entity via a conservation easement are referenced by the contract number for the Legacy Land Conservation Program agreement. These original contract documents and certain associated records must be retained permanently and secured against loss or damage.

Associated Legacy Land Conservation Program records to be retained with original Legacy Land Conservation Program contract documents include copies of conveyance documents, appraisals, final accounting forms, escrow settlement statements, environmental inspections, resource value documentation, monitoring self-report, and compliance records. These documents are retained in electronic form within DOFAW's SharePoint archive and are backed up on a program cloud storage and encrypted hard drives.

The Legacy Land Conservation Program is in the process of finalizing the retention and disposition policies for completed and pending grants and has been consulting with the General Records Schedules issued by DAGS' Archives Division and Approved Records and Disposition Schedules for DLNR, as compiled by the Archives Division, Records Management Branch. The program is still in the process of implementing the recommendation. Accordingly, we determine Recommendation 7 to be partially implemented.

Recommendation 8

The Legacy Land Conservation Program should implement a policy that places a reasonable limit on the time a project, whether proposed by State, county, or nonprofit organization, can remain pending.

Not Implemented - Disagree

Comments

This recommendation addresses the finding in which we found the Legacy Land Conservation Program had ten pending projects that had been tying up funds for more than two years, seven of which were state projects. Contracts that the 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.

Federal programs such as the U.S. Department of Agriculture's Forest Legacy Program, a conservation program administered by the U.S. Forest Service, encourage states 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.

During our audit, the Legacy Land Conservation Program Manager contended 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 response to our recommendation, the Legacy Land Conservation Program stated that it implemented a procedure whereby, on an annual basis, the agency provides the Land Board with a list of projects that have been pending for over five years. Starting from the January 25, 2019 Land Board meeting, the Legacy Land Conservation Program submitted this information which is captioned "Annual Review of Grants from the Land Conservation Fund for each project that has been pending for over five years – For information, discussion, and possible action." The Land Board submittals include detailed historical information, current status, and recommended course of action for each project.

The Legacy Land Conservation Program has continued this practice annually, as indicated by Land Board meeting minutes for January 10, 2020, March 12, 2021, and the Land Board submittal for the June 24, 2022 meeting. Review of the minutes show that the Land Board has, more often than not, deferred action until the next review rather than terminating the project.

We deem this recommendation to be “Not Implemented - Disagree.” Although the program requires board approval for projects that have not been completed after five years and requires appropriate justification for delays, projects can remain active indefinitely.

Recommendation 9

The Legacy Land Conservation Program should 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.

Implemented

Comments

This recommendation was related to our assessment of the criteria used by the Legacy Land Conservation Commission when evaluating and ranking projects. We compared the program’s evaluation and scoring practices with criteria from the Forest Legacy Program, a conservation program administered by the U.S. Forest Service in partnership with state agencies to encourage the protection of privately-owned lands through conservation easements or land purchases.

We found that, up until the FY2016 grant cycle, members of the Legacy Land Conservation Commission were provided with a six-page project evaluation form to assess each application for completeness; whether the project comported with criteria in statute; whether the land contained environmental hazards; the urgency of the land acquisition in terms of development threats or degradation of natural resources; the cost of the project and status of other funding sources; and the status of any land management plans. The evaluation form also assessed the feasibility of a project, including a checklist for commissioners to denote whether a property was on the market; if it had been appraised within the previous two years; whether the property had a clear title; if the acquisition could realistically be completed within two years; if the project had a signed agreement from the landowner to sell the property or a letter indicating the landowner’s willingness to sell; and if the proposed end-owner of the property had agreed to the acquisition.

However, for the FY2016 to FY2018 grant cycles, commissioners were only provided with copies of relevant portions of the statute and/or administrative rules and given the project ranking form asking them to score each project between one and five, with one indicating “exemplary” and five indicating “lowest.” As a result, there was no substantive record of how commissioners evaluated projects and the rationale behind their project rankings.

In response, the Legacy Land Conservation Program consulted with the Legacy Land Conservation Commission and its constituents in public meetings and subsequently added questions to the grant applications for FY2020, FY2021, and FY2022 that provide commissioners with the recommended background information and history on each applicant. More specifically, the revised online application form now includes background information and history of the applicant, including past performance on grants from the Land Conservation Fund, and other measures of capacity and readiness as requested by the Commission. Accordingly, we deem this recommendation implemented.

Recommendation 10

The Legacy Land Conservation Program should post Commission meeting minutes in compliance with the Sunshine Law.

Not Implemented

Comments

This recommendation addressed our observation that, in 2019, the last minutes of Legacy Land Conservation Commission meetings posted on the Legacy Land Conservation Program website was for a December 12, 2016 meeting. According to Chapter 92, HRS, also known as Hawai‘i’s Sunshine Law, “[o]pening 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 requires boards and commissions to keep written minutes of all meetings which give “a true reflection of the matters discussed at the meeting and the views of the participants.” The minutes of a board’s meeting are required to be posted on the board’s website within 40 days after the meeting.

In response, the department noted that minutes for Commission meetings numbered 60 to 70, which are meeting minutes for the period July 2018 to February 2020, have been posted on its website. We accessed the Commission’s website on April 27, 2022 and verified that the minutes for Commission meetings through November 25, 2019 were posted. According to the Legacy Land Conservation Program, draft written minutes for Meeting Nos. 71 (December 21, 2020) through 76 (April 1, 2022) are being prepared and will be posted upon completion and final approval. Because the Commission is continuing to struggle with posting meeting minutes within 40 days after the meeting as required by the Sunshine Law, we deem this recommendation to be not implemented.

Recommendation 11

The Legacy Land Conservation Program should promulgate administrative rules to implement the above recommendations.

Not Implemented

Comments

This recommendation addressed an inconsistency between the administrative rules of the Legacy Land Conservation Program and the responsibilities of the Commission as set forth in Chapter 173A, HRS, that gave DLNR (and therefore DOFAW) the responsibility to advise the Land Board on grant applications rather than the Commission. Subsection 13-140-6(b) of the Hawaii Administrative Rules provides, among other things, that DLNR *shall* recommend to the Land Board specific parcels of land to be acquired and *may* consult with the Commission prior to offering its recommendations to the Land Board. These inconsistencies allowed DLNR and DOFAW to make recommendations to the Land Board that are separate and apart from those made by the Commission, which ranks proposed projects at the end of the Commission's grant process. The audit found in some cases, the practice had 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 its year-long vetting and evaluation process. The audit noted that all of these projects competed for the same limited \$5.1 million pool of funds available in any given year.

In response, the program stated it generally agrees that it would be appropriate to promulgate administrative rules to help implement certain audit recommendations and to address other evolving program concerns. The program represents, once it completes its implementation of other audit recommendations, the Legacy Land Conservation Program will vet a conceptual rulemaking proposal with division administrators, the department chairperson, the Department of the Attorney General, and the Legacy Land Conservation Commission to help decide a future course of action. As the program has not yet implemented administrative rules, we deem this recommendation to be not implemented.

Recommendation 12

The Legacy Land Conservation Commission should 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.

Implemented

Comments

This recommendation addressed the program's failure to timely encumber funds for approved projects which resulted in the lapse of \$2.2 million dollars. The audit found at the end of FY2016, the Legacy Land Conservation Program failed to timely enter into contracts with county and nonprofit grant recipients for \$2.2 million in encumbered awards for three FY2015 projects; the failure to timely enter into contracts resulted in \$2.2 million of awards "lapsing." The program committed to funding the FY2015 projects, which because of the \$5.1 million spending ceiling, reduced the available funds for the subsequent fiscal year. Instead of reducing the amount available to fund projects, the Commission recommended – and the Land Board approved – the maximum amount of funding, which exceeded the Land Conservation Fund's spending ceiling. The Commission used moneys from the future fiscal years to fund those projects. This strategy of "robbing from next year's budget to pay for this year's projects," as one commissioner described it, continued into FY2017 and FY2018. As a result, program administrators had to scramble to achieve multiple approvals from the Land Board and the Governor to release funds and approve projects, when it was not always clear when funding for those awards would be available.

Beginning with its application cycle for FY2021 grant awards, the Commission now ranks and recommends grant awards for future fiscal year appropriations. The standard wording of a Commission recommendation is now "in the order ranked, as funds are available." For FY2021, the Legacy Land Conservation Program advertised the availability of approximately \$3.2 million in grant funding from the Land Conservation Fund for the purchase of lands having value as a resource to the State. Nonprofit land conservation organizations and state agencies applied for twelve separate resource land acquisitions totaling \$19.8 million. After conducting field visits and public decision-making meetings, the Commission ranked the applications and recommended full funding for the top two grants totaling \$3,056,700, as funds are available, and partial funding for another

grant up to \$875,000, as funds are available. An additional eight grants were recommended as back-ups/contingencies in the order ranked. In October of 2021, the Legacy Land Conservation Program submitted a supplemental budget request for additional funding to fund back-up/contingency recommendations. The Legacy Land Conservation Program believes that presenting the back-up/contingency recommendations provides a substantive basis for legislative consideration for future budget requests.

We believe the Commission's new process of ranking recommendations along with the provision that grants will only be awarded for projects within that year's spending ceiling in the order ranked satisfies our recommendation and therefore deem this recommendation implemented.