
Audit of the Hawai'i State Foundation on Culture and the Arts

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

Report No. 14-11
November 2014



THE AUDITOR
STATE OF HAWAII

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. Financial audits attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. Management audits, which are also referred to as performance audits, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called program audits, when they focus on whether programs are attaining the objectives and results expected of them, and operations audits, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. Sunset evaluations evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. Sunrise analyses are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. Health insurance analyses examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. Analyses of proposed special funds and existing trust and revolving funds determine if proposals to establish these funds are existing funds meet legislative criteria.
7. Procurement compliance audits and other procurement-related monitoring assist the Legislature in overseeing government procurement practices.
8. Fiscal accountability reports analyze expenditures by the state Department of Education in various areas.
9. Special studies respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawai'i's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



THE AUDITOR

STATE OF HAWAI'I

Kekuanao'a Building

465 S. King Street, Room 500

Honolulu, Hawai'i 96813



Office of the Auditor
465 S. King Street
Rm. 500
Honolulu, HI 96813
Ph. (808) 587-0800

Jan K. Yamane
Acting State Auditor
State of Hawai'i

“Everybody is interested in art and that’s the most fun part, rather than getting into budget, policy, and strategic planning types of things.” – former SFCA Planning and Budget Committee chair

Recommendations

Responses

Prior Audits

For the full text of this and other reports, visit our website:
<http://auditor.hawaii.gov/>

Audit of the Hawai‘i State Foundation on Culture and the Arts

Report No. 14-11, November 2014

SFCA’s poor planning and oversight undermine its accountability for public arts resources

Commission is disinterested in planning and neglected Sunshine Law

The commission lacks training, bylaws, and other mechanisms to focus its attention on policy and planning, and subsequently, focuses its efforts on operations such as art acquisition. As a result, the commission adopted an unrealistic strategic plan that did not provide for artist fellowships, and failed to address more than \$4 million in accumulated funds dedicated for the arts. Additionally, its \$75,000 strategic plan lacks targeted objectives for gauging performance and the foundation does not have a system for ensuring strategic plan performance is monitored and reported. Without a target-based performance reporting framework, the foundation cannot demonstrate it uses its resources efficiently and effectively, potentially undermining its ability to engender public trust and advocate for public and private funding and programs.

The commission has also failed to ensure its deliberations and actions are conducted as openly as possible in compliance with the State’s open meetings law, and that its annual report recommends legislative action as required by law. This lack of transparency disregards the public’s right to know.

The foundation needs to improve its management of arts resources

The foundation’s strategic priorities include managing assets to ensure that the foundation is strong, sustainable, capable of achieving its goals, and increasing public accessibility to arts and culture. Its major assets include about \$3 million per year in Works of Art Special Fund revenues and a collection of nearly 6,300 pieces of artwork. The foundation needs to improve its management to ensure the accountability, accessibility, and protection of these resources. Neither the foundation nor the state comptroller actively monitors amounts due from state agencies to the Works of Art Special Fund, and the Department of Budget and Finance’s attempts to track such transfers are inadequate. Agencies failed to remit funds resulting in a potential loss of \$147,213 in public arts revenues, and in one instance, the special fund received \$100,000, when it should have received just \$100. We also found that the foundation is not accountable for maximizing accessibility of public art and that mechanisms to safeguard the foundation’s digital assets are missing. Failure to implement copyright safeguards increases the potential for copyright infringement, undermines public trust, and increases the foundation’s liability.

Agency responses

Regarding the commission’s focus on arts operations rather than strategic planning and governance, the chair said that surveys were sent to residents and eight focus groups were held during the strategic planning process. This misses our point that there was a lack of documentation that the strategic plan was vetted in public meetings prior to its adoption. The chair stated that, adjusting for inflation, the Works of Art Special Fund balance actually fell rather than rose over the review period. She also noted that art projects can take up to eight years to complete and are not bound by fiscal periods. The chair misses our point that the commission has not planned how to utilize its surplus arts funds.

Regarding our finding that the commission has not decided what to do with nearly \$3 million in unencumbered, surplus special funds, the executive director said that if the SFCA expended the full amount of the ceiling, there would be a shortfall within a few years. He misses our point that the lack of a spending plan for those funds undermines the foundation’s credibility should it seek added resources and exposes those funds to legislative efforts to redirect unused special fund moneys.

The Department of Accounting and General Services responded that the Department of Budget and Finance is primarily responsible for enforcement of the 1 percent assessment to the Works of Art Special Fund. DAGS said it will work with B&F to develop a process to ensure accurate accounting and compliance.

Audit of the Hawai'i State Foundation on Culture and the Arts

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

Submitted by

THE AUDITOR
STATE OF HAWAI'I

Report No. 14-11
November 2014

Foreword

This report on our audit of the Hawai‘i State Foundation on Culture and the Arts was conducted pursuant to Act 138, Session Laws of Hawai‘i (SLH) 2014. The act required the Auditor to conduct a financial and management audit of the foundation including data on the Works of Art Special Fund, art acquisition and inventory methods, acquisition and expenditure costs, and best management practices.

We wish to express our appreciation for the cooperation and assistance extended to us by members of the Hawai‘i State Foundation on Culture and the Arts’ commission, executive director, and staff, and other individuals whom we contacted during the course of our audit.

Jan K. Yamane
Acting State Auditor

Table of Contents

Chapter 1 Introduction

Background.....	1
Prior Audits.....	9
Objectives of the Audit	10
Scope and Methodology	10

Chapter 2 SFCA’s Poor Planning and Oversight Undermine Its Accountability for Public Arts Resources

Summary of Findings	12
Commission Is Disinterested in Planning and Neglected Sunshine Law in Adopting a Strategy That Does Not Account for Accumulated Arts Funds.....	12
The Foundation Needs to Improve Its Management of Arts Resources to Ensure Their Accountability, Accessibility, and Protection.....	27
Conclusion.....	38
Recommendations.....	38

List of Appendices

Appendix A	SFCA Inventory Values by Category, as of December 31, 2013.....	43
Appendix B	SFCA Chart of Expenditures, FY2011–FY2013	45

Response of the Affected Agency.....	47
---	-----------

List of Exhibits

Exhibit 1.1	State Foundation on Culture and the Arts Commission Standing Committees	2
Exhibit 1.2	Photo of University of Hawai‘i Cancer Center Sculpture Dedication, June 2014	4
Exhibit 1.3	SFCA Organizational Chart	5

Exhibit 1.4	SFCA Revenues by Funding Source, FY2011–FY2013	6
Exhibit 1.5	Works of Art Special Fund Financial Data, FY2011–FY2013 (in thousands).....	7
Exhibit 1.6	Transfers-In to the Works of Art Special Fund (WASF), FY2013	7
Exhibit 1.7	SFCA Encumbrances and Expenditures, FY2011–FY2013	8
Exhibit 1.8	Artwork Conservation Costs, FY2011–FY2013	8
Exhibit 2.1	Works of Art Special Fund Balances, FY2011–FY2013	14
Exhibit 2.2	SFCA Goal and Strategies	19
Exhibit 2.3	Illinois Arts Council Goal and Objectives	20
Exhibit 2.4	SFCA Measures of Effectiveness.....	21
Exhibit 2.5	Output and Outcome Measures Defined	22
Exhibit 2.6	SFCA Commission Non-Compliance with Chapter 92, HRS, FY2012–FY2014	24
Exhibit 2.7	Allowable Exceptions From Open Meeting Requirements	25
Exhibit 2.8	SFCA Construction Allotments That Did Not Transfer Moneys to the Works of Art Special Fund, FY2011–FY2013	29
Exhibit 2.9	Photo of SFCA Relocatable Works of Art Storage Facility.....	33
Exhibit 2.10	Photo of Huc-Mazelet Luquiens Prints	35

Chapter 1

Introduction

This audit of the State Foundation on Culture and the Arts was conducted pursuant to Act 138, Session Laws of Hawai‘i (SLH) 2014, which required the Auditor to conduct a financial and management audit of the foundation that included gathering data on the Works of Art Special Fund, art acquisition and inventory methods, acquisition and expenditure costs, and best management practices.

Background

The foundation was established in 1965 and is administratively attached to the Department of Accounting and General Services (DAGS). Chapter 9, Hawai‘i Revised Statutes (HRS), requires the foundation to stimulate culture, art, history, and humanities throughout Hawai‘i. Duties include but are not limited to:

- Assisting in coordinating the plans, programs, and activities of individuals, associations, corporations, and agencies concerned with the preservation and furtherance of culture and the arts and history and the humanities;
- Appraising the availability, adequacy, and accessibility of culture and the arts and history and the humanities to all persons throughout the State and devising programs whereby culture and the arts and history and the humanities can be brought to those who would otherwise not have the opportunity to participate;
- Establishing an individual artist fellowship program to encourage artists to remain and work in Hawai‘i and to reaffirm the importance of Hawai‘i’s artists and their cultural and economic contributions to the state;
- Submitting an annual report with recommendations to the governor and Legislature that includes progress and accomplishments made in the humanities during the year; and
- Administering operations of the state art museum.

Mission, organization, and programs

The foundation’s mission is to promote, perpetuate, preserve, and encourage culture and the arts as central to the quality of life of the people of Hawai‘i. The foundation adopted a five-year strategic plan in July 2013 that was based on a legislatively mandated study.

The foundation is headed by a commission, composed of nine members, who are appointed and may be removed by the governor. Each member’s term runs for four years, from July 1 to June 30. At least one member must be from each of the counties of Hawai‘i, Kaua‘i, and Maui. The governor appoints the commission’s chairperson from among its members. The commission appoints the foundation’s executive director, who administers private and governmental grants. The commission is organized into standing committees as shown in Exhibit 1.1.

**Exhibit 1.1
State Foundation on Culture and the Arts Commission Standing Committees**

Committee Name	Function
Administrative Standing Committee	Makes policy recommendations related to evaluating the executive director and administration of the foundation.
Planning and Budget Standing Committee	Develops policies to ensure financial integrity of the foundation through proper allocation and expenditure of funds in a manner consistent with the commission’s policies and objectives, and ensures funds are properly expended under a budget previously approved by the commission.
Grants and Programs Standing Committee	Makes policy recommendations relating to the Biennium Grant Program and other designated programs.
Art in Public Places and Hawai‘i State Art Museum Standing Committee	Makes policy recommendations on initiatives relating to the Art in Public Places program, the Hawai‘i State Art Museum, and the Friends of the Hawai‘i State Art Museum.
Communication Advisory Committee	Markets and promotes the foundation.

Source: State Foundation on Culture and the Arts

The **Office of the Executive Director** plans, organizes, directs, coordinates, and controls the activities and programs of the foundation in accordance with policies, procedures, priorities, and instructions of the commission. As of December 31, 2013, the foundation had 21.5 full-time equivalent (FTE) staff positions organized under the executive director and in the Art in Public Places, Designated Programs, and Support Services programs.

The **Art in Public Places (APP)** program established in 1967, is designated 1 percent of the construction and renovation costs of all capital improvement projects (CIP) for the acquisition of works of art. The program’s purpose is to acquire and manage art to enhance the environmental quality of state buildings for the enjoyment and educational enrichment of the public. The program also is meant to support, promote, and recognize excellence of the state’s diverse cultural, creative, and traditional artists; create, display, and maintain in both public places and the state art museum works of art that represent the

diversity and excellence of the state's artistic expression; and provide the fullest possible access to the highest quality aesthetic and educational experiences available to all citizens of the state.

The foundation obtains artwork via commission, purchase, and donation. In FY2013, the foundation finalized the commission of four artworks for \$1.3 million, purchased 60 relocatable pieces of art for \$119,312, and accepted 27 gifted artworks valued at \$2 million. Works of art for museum and public display are exempt from Chapter 103D, HRS, the State procurement law. All artwork acquisitions approved by the foundation's commission must fit the scope of the collection and meet the following criteria:

- **Quality:** The inherent quality of the work must be of the highest caliber;
- **Style and nature:** The artwork must be appropriate in scale, material, form, and content for both the immediate and general environment in which it is placed;
- **Permanence:** Consideration must be given to structural and surface soundness and permanence in terms of relative proof against theft, vandalism, weathering, or excessive maintenance or repair costs; and
- **Diversity:** The foundation will strive, in the overall program, to attain reasonable diversity in style, scale, media, and materials represented.

The APP program commissions artwork in three ways: directly, through limited competition, and via open competition. An Art Advisory Committee is convened for each building or space selected as a site for commissioned art, and each committee makes commissioned art development and design recommendations and reviews artists' submittals. An Acquisition Award Selection Committee is convened to select relocatable works of art for the APP collection from public galleries, studios of master artists, gifts, and other approved sources. Commissioners review and approve art acquisitions at multiple phases.

As of June 6, 2014, the program's collection consisted of 6,293 works of art. Some pieces are commissioned for permanent installation at a specific facility, such as a public school, community college, library, or airport. Exhibit 1.2 shows a dedication ceremony for a permanent sculpture at the University of Hawai'i Cancer Center in June 2014.

Exhibit 1.2
Photo of University of Hawai'i Cancer Center Sculpture
Dedication, June 2014



Source: Office of the Auditor

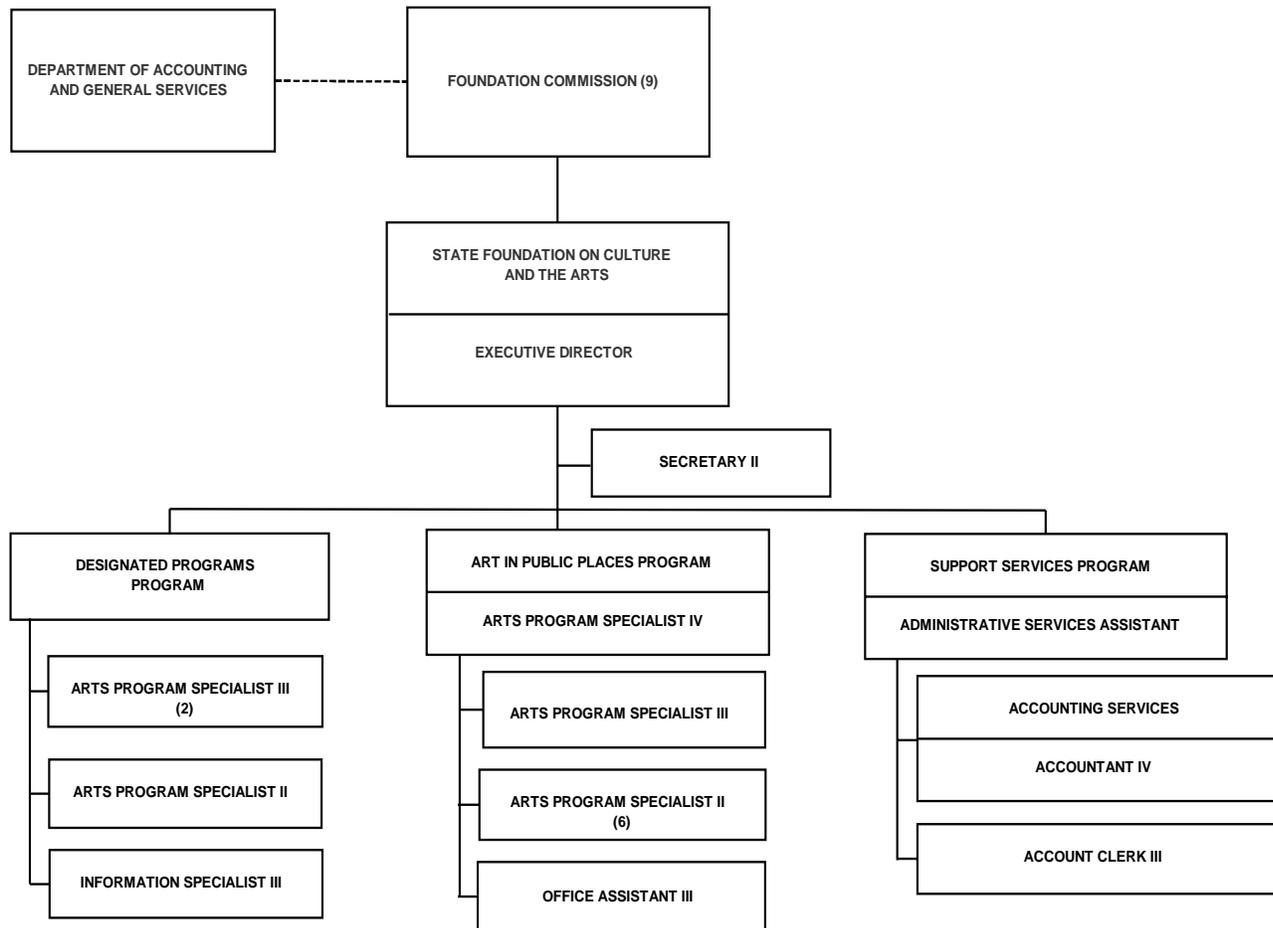
Most “relocatable” works of art are temporarily installed in public spaces and rotated among State buildings on a four- to ten- year schedule. The total collection is valued at approximately \$31.8 million. A current valuation of artwork by island and medium is provided at Appendix A.

Designated Programs program is responsible for planning and conducting special studies and research; and developing and directing programs, conferences, workshops, publications, and related activities to promote culture and the arts and history and the humanities. The program also identifies and documents folk, ethnic, and traditional arts and artists in Hawai‘i and develops and administers individual grants, fellowships, and the arts education program. The **Grants Program**, one of the foundation’s original programs, is a primary means of supporting culture, arts, history, and humanities projects in the state. In FY2013, the foundation awarded 66 organizations statewide \$560,426 in grants. The **Folk Arts Program**, created in 1983, assists in perpetuating folk traditions in the state and promotes public awareness of folk arts by conducting festivals, hosting exhibits, and printing publications about folk arts.

The **Support Services** program is responsible for preparing the foundation’s operating budget, conducting long-range planning, drafting administrative rules and procedures, compiling and analyzing the

operational effectiveness of the foundation’s programs, and preparing narrative and financial reports. The program also advises the executive director on personnel matters; administers fiscal requirements of the Works of Art Special Fund; coordinates all procurements; provides accounting services; and oversees grant contracts. Exhibit 1.3 depicts the foundation’s organizational structure.

**Exhibit 1.3
SFCA Organizational Chart**



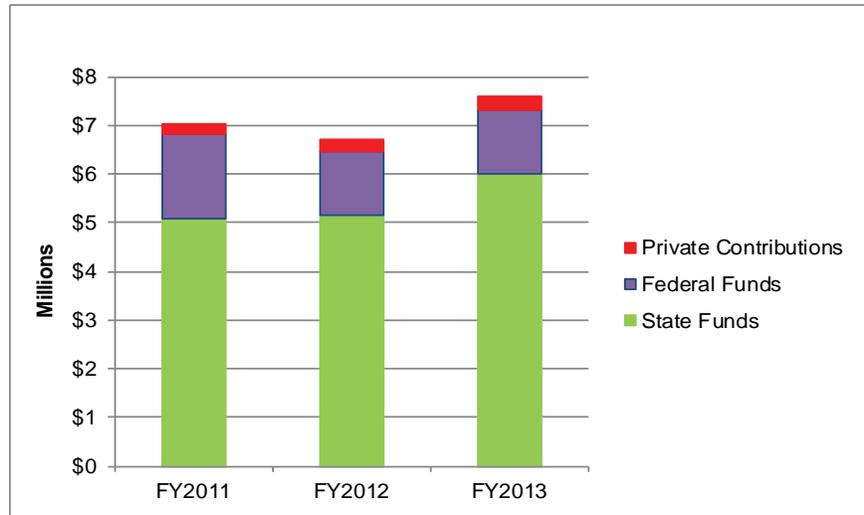
Note: The foundation is administratively attached to DAGS.

Source: State Foundation on Culture and the Arts

Funding and expenditures

The foundation and its programs are funded through the Works of Art Special Fund, appropriations from the Legislature, grants from the National Endowment for the Arts, and contributions from private sources. Exhibit 1.4 shows total foundation revenues by funding source.

Exhibit 1.4 SFCA Revenues by Funding Source, FY2011–FY2013



Source: Office of the Auditor

The Works of Art Special Fund receives 1 percent of state funds appropriated for construction and renovation capital improvement projects. Some capital improvement costs, such as those associated with roads, waterworks, airfields, walls, and piers, are excluded from the fund's 1-percent assessment. Also excluded are Department of Transportation appropriations from the (airline) Passenger Facility Charge Special Fund and the Rental Motor Vehicle Customer Facility Charge Special Fund. Capital improvement costs for facilities not owned by the State are also excluded from the assessment.

The bulk of the foundation's funding comes from its Works of Art Special Fund. The fund can only be used for:

- Costs related to the acquisition of works of art, including any consultant or staff services required to carry out the art in public places and relocatable works of art programs;
- Site modifications, display, and interpretive work necessary for the exhibition of works of art;
- Upkeep services, including maintenance, repair, and restoration of works of art; and
- Storing and transporting works of art.

Year-end balances of the Works of Art Special Fund ranged from \$4.3 million in FY2011 to \$4.8 million in FY2013. Exhibit 1.5 shows Works of Art Special Fund beginning balance, revenues, interest, expenditures, and ending balances for FY2011 to FY2013.

Exhibit 1.5
Works of Art Special Fund Financial Data, FY2011–FY2013
(in thousands)

	<u>FY2011</u>	<u>FY2012</u>	<u>FY2013</u>
Beginning Balance	\$4,391	\$4,348	\$4,688
Revenues	2,082	3,647	2,751
Interest	99	27	13
Expenditures	(2,395)	(3,312)	(2,675)
Transfers*	<u>171</u>	<u>(22)</u>	<u>0</u>
Ending Balance	\$4,348	\$4,688	\$4,777
Encumbrances	\$1,506	\$1,427	\$1,817

* Transfers for FY2011 and FY2012 are to and from the Public Works Division for work primarily related to the No. 1 Capitol District Building, with any savings returned to the Works of Art Special Fund.

Source: State Foundation on Culture and the Arts annual reports

Assessments from the University of Hawai‘i, Department of Education, and Department of Accounting and General Services’ capital improvement projects consistently accounted for a significant portion of the total 1 percent assessments received by the Works of Art Special Fund from FY2011 through FY2013. Exhibit 1.6 shows a list of assessments received by the Works of Art Special Fund, by agency, in FY2013.

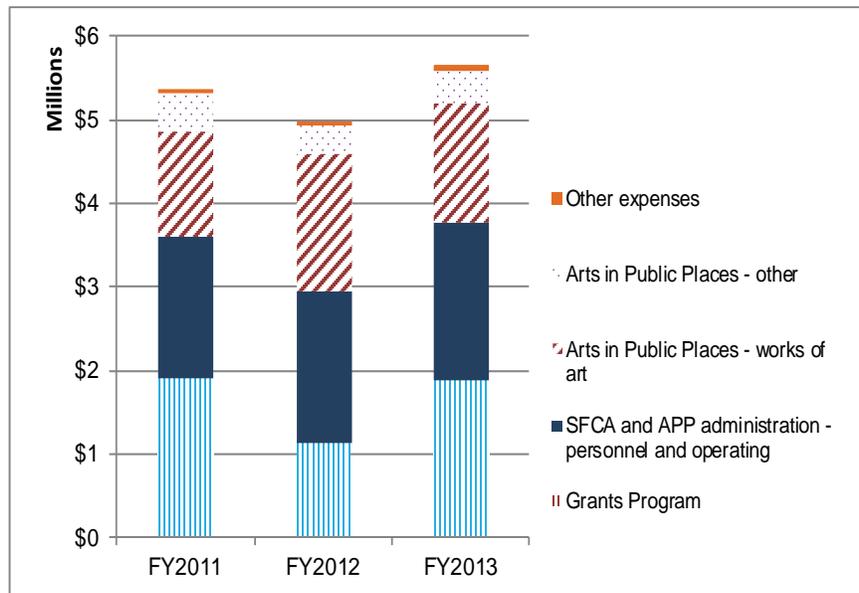
Exhibit 1.6
Transfers-In to the Works of Art Special Fund (WASF), FY2013

State Agency	Assessments Transferred to the WASF (1% of Appropriations)
Department of Education	\$1,210,020
Department of Accounting and General Services	\$662,573
University of Hawai‘i	\$398,100
Judiciary	\$135,550
Department of Health	\$131,333
Department of Transportation	\$107,754
Department of Defense	\$91,624
Department of Agriculture	\$6,250
Total WASF revenue	\$2,743,204

Source: State Foundation on Culture and the Arts

Exhibit 1.7 shows the foundation’s encumbrances and expenses for FY2011 through FY2013. A detailed chart of these expenditures is provided at Appendix B.

**Exhibit 1.7
SFCA Encumbrances and Expenditures, FY2011–FY2013**



Source: State Foundation on Culture and the Arts

Costs associated with exhibiting and conserving works of art for FY2011 to FY2013 are shown in Exhibit 1.8.

**Exhibit 1.8
Artwork Conservation Costs, FY2011–FY2013**

	<u>FY2011</u>	<u>FY2012</u>	<u>FY2013</u>
Exhibition Services – Relocatable Works of Art	\$52,171	\$45,332	\$44,497
Total Conservation Services	133,487	9,658	2,400
Hawai'i State Art Museum Gallery Operations	<u>321,575</u>	<u>325,759</u>	<u>364,317</u>
Total	\$507,233	\$380,749	\$411,214

Source: State Foundation on Culture and the Arts annual reports

Prior Audits

We conducted audits of the foundation in 1976 and 1999. Our 1976 *Management Audit of the State Foundation on Culture and the Arts*, Report No. 76-3, found that the foundation had not been able to adequately develop plans, programs, policies, and criteria that would assist it in achieving its basic mission. We also found inadequacies in the foundation's management of its works of art collection. There were no guidelines or policies for selecting relocatable works of art. Management of the art collection was unsystematic and there was no one complete, accurate inventory of the State's collection of relocatable works of art. Because the foundation lacked policies, criteria, and procedures for its grants-in-aid program, grants were awarded inconsistently. Also, the foundation did not evaluate the effectiveness of the activities it funded.

We recommended that the foundation establish policies and procedures for selecting works of art and develop and implement systematic procedures for the proper care, maintenance, and display of the State's art collection. We also recommended that the state comptroller and the foundation develop a consistent method for computing the amount to be set aside from each capital improvement appropriation; and that the foundation develop and implement systematic procedures for inventorying and registering works of art and recording all information needed for proper management and control of its collection.

Our 1999 *Audit of the State Foundation on Culture and the Arts*, Report No. 99-3, found that clearer direction would enable the foundation to meet its challenges. The foundation needed to focus on ensuring its programs addressed its mission and met objectives. Programs had not been reviewed and their purposes had not been clearly defined. The commission did not have policies and guidelines for its own operations. Position descriptions and administrative rules were outdated. Inventories had not been conducted, and grants needed monitoring. We also found that the foundation's relocatable works of art—then totaling more than 4,900 pieces—should be more accessible to the public. The foundation had not ensured those pieces were sufficiently rotated to educate the public and stimulate interest in the arts. Finally, we found that Section 103-8.5, HRS, which established the Works of Art Special Fund, needed to be revisited. Commission members did not agree on how the fund should be used, and responsibilities for calculating the amount to be transferred, initiating the transfer, and monitoring compliance were not clearly specified. Some state agencies did not transfer money to the fund as required and the foundation did not know how much agencies owed.

We recommended the Legislature amend Section 9-2, HRS, to clarify the respective roles of the commission, executive director, and foundation staff; and consider reviewing Section 103-8.5, HRS, to specify who is

responsible for calculating the 1 percent due to the Works of Art Special Fund and remedies for noncompliance. We also recommended the executive director develop a tracking system to identify which capital improvement projects should be assessed, which projects had transferred the 1 percent into the fund, whether the amount of the transfer was correctly calculated, which departments were delinquent, and how much was due to the fund. We also recommended the executive director establish policies and procedures for rotating works of art between State buildings throughout the state and for displaying art in publicly accessible areas in public buildings.

Objectives of the Audit

1. Assess the adequacy of the State Foundation on Culture and the Arts commission's planning and oversight.
2. Assess whether the foundation has adequately managed its resources.
3. Make recommendations as appropriate.

Scope and Methodology

Our audit primarily focused on the foundation's planning, oversight, and resource management during FY2011–FY2013. Because there was no independent financial audit conducted for the foundation, its affiliates, or pass-through entities, we did not determine whether such an audit was substandard as requested in Act 138, SLH 2014.

We conducted interviews with board members, office personnel, and other stakeholders as applicable. We reviewed strategic plans, contracts, performance measures, and other documentation as appropriate; and judgmentally reviewed items for compliance with applicable policies, procedures, and other relevant criteria.

Our audit was performed from May 2014 through September 2014 and conducted pursuant to the Office of the Auditor's *Manual of Guides* and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Chapter 2

SFCA's Poor Planning and Oversight Undermine Its Accountability for Public Arts Resources

Two of the State Foundation on Culture and the Arts' primary resources for fulfilling its mission to promote and preserve culture and the arts are the Works of Art Special Fund, and a collection of nearly 6,300 pieces of artwork. We found that the foundation cannot assure that it receives all moneys due to it by law, and that it maximizes public access to its growing collection of art. Our findings in the areas of planning, oversight, and public art accessibility are troublesome as we found similar problems in both our 1976¹ and 1999² audits of the foundation. Our 1999 report in particular found that the foundation commission focused on operational matters, some state agencies did not transfer money to the Works of Art Special Fund, and the foundation's collection of artwork should be more accessible.

Identical problems persist today. Although the foundation has since adopted a strategic plan and a rotation policy for increasing the accessibility of its collection of art, its commission still devotes a majority of its time on acquiring and displaying art. The lack of regular budget and strategic planning discussions caused the commission to adopt a strategic plan that does not set expectations for foundation performance. Instead, the foundation's success is gauged on whether activities are conducted, rather than goals accomplished. As a result, the foundation cannot demonstrate its effective and efficient use of state resources to promote arts and culture, nor can it adequately develop and implement improvements in strategy to effectively channel foundation activities and programs. In addition, the foundation's strategic plan is based on a \$75,000 consultant report that contained an unrealistic proposal for filling fund-raising and marketing needs and that did not address how to utilize \$3 million in surplus public arts funds. The commission has also failed to comply with sunshine law, disregarding the public's right to know, and has not proposed legislative actions to preserve and further arts and culture, as required by law.

We also found that the state comptroller's outdated and unclear guidance for complying with Works of Art Special Fund requirements has led to both underpayments and overpayments for the arts. The foundation is unable to identify and remedy such inaccurate payments because it takes a passive approach to monitoring compliance with the Works of Art Special Fund assessment on Capital Improvement Projects (CIP) appropriations. The foundation also lacks information necessary to

¹ Report No. 76-3, *Management Audit of the State Foundation on Culture and the Arts*.

² Report No. 99-03, *Audit of the State Foundation on Culture and the Arts*.

identify optimal sites for displaying and maximizing public accessibility to the State's art collection. Lastly, the foundation has not implemented safeguards to protect artists' rights, which increases the potential for copyright infringement, betrays the trust of artists, and increases foundation liability.

The foundation's continued planning and oversight deficiencies undermine accountability for its primary public arts resources, which inhibits its ability to garner support for arts among the public, private foundations, and state policymakers.

Summary of Findings

1. The Hawai'i State Foundation on Culture and the Arts commission is not interested in strategic planning, focusing instead on operational tasks such as art acquisition and display. As a result, the commission has adopted an unrealistic strategic plan that provides little guidance on managing and promoting public arts.
2. The foundation has not ensured the accountability, accessibility, and protection of arts resources. Moneys transferred into the arts fund are not monitored, accessibility to public art is not maximized statewide, and safeguards meant to protect art and artists' copyrights have not been implemented.

Commission Is Disinterested in Planning and Neglected Sunshine Law in Adopting a Strategy That Does Not Account for Accumulated Arts Funds

The commission lacks training, bylaws, and other mechanisms to focus its attention on policy and planning, and subsequently, focuses its efforts on operations such as art acquisition. As a result, the commission has adopted an unrealistic strategic plan that disparages staff, does not provide for artist apprenticeships, and fails to address accumulated surplus arts funds. Additionally, the strategic plan lacks targeted objectives for gauging performance and the foundation does not have a system for ensuring that strategic plan performance is monitored and reported. Without a target-based performance reporting framework, the foundation cannot demonstrate that it uses resources efficiently and effectively.

The commission has also failed to ensure its deliberations and actions are conducted as openly as possible in compliance with the State's open meetings law, and that its annual report recommends legislative action as required by law. This lack of transparency disregards the public's right to know.

Commission focuses on arts operations rather than strategic planning and governance

As a governing body, the commission is responsible for establishing policy and programs and for overseeing the foundation in its mission to promote, perpetuate, preserve, and encourage culture and the arts as central to the people of Hawai'i's quality of life. Commission members exercise authority over the foundation through the appointment of an executive director who is responsible for developing and administering foundation programs under the commission's direction. This board-executive system, established in Chapter 9, Hawai'i Revised Statutes (HRS), and supported by best practices, splits foundation governance by providing the commission with policy-making and oversight roles while leaving administrative and executive duties to the executive director. We found, however, the commission focuses on art acquisition and display and grants rather than the strategic direction of the organization. Specifically, the commission has no plans for spending surplus arts funds. Its strategic plan unrealistically addressed fundraising and marketing needs, and was adopted with little public input. These planning deficiencies followed the commission's failure to properly utilize its Planning and Budget Committee or adopt basic board tools—such as training and bylaws—to foster regular discussions of budget and strategic planning issues. In the end, the foundation cannot demonstrate that it uses resources efficiently and effectively, thereby potentially weakening its ability to generate public trust, advocate for public and private funding and programs, and fully realize its mission to promote the arts.

Commission's lack of a plan for spending surplus funds undermines credibility and exposes accumulated money for use on non-arts purposes

The foundation's largest source of funding comes from its Works of Art Special Fund, which provides more than \$4 million each year to be used for buying, displaying, maintaining, and storing art. Historically, the special fund has collected more revenue than is spent by the Arts in Public Places program operations. We found the commission has not decided what to do with nearly \$3 million in unencumbered, surplus special funds or whether to cap the size of its collection. Between 1999 and 2014, the foundation's art collection grew from 4,900 pieces to nearly 6,300; meanwhile, the Works of Art Special Fund balance rose from \$4.54 million in 1997 to \$4.78 million in 2013. Exhibit 2.1 shows the Works of Art Special Fund balances for FY2011–FY2013.

Exhibit 2.1 Works of Art Special Fund Balances, FY2011–FY2013

	<u>FY2011</u>	<u>FY2012</u>	<u>FY2013</u>
Beginning balance	\$4,391,245	\$4,348,033	\$4,688,024
Ending balance	\$4,348,033	\$4,688,024	\$4,776,956
Encumbrances	\$1,506,430	\$1,426,904	\$1,816,654
Unencumbered balance	\$2,841,603	\$3,261,120	\$2,960,302

Source: State Foundation on Culture and the Arts annual reports

The commission's strategic plan recognizes a need to optimize the fund to suit foundation needs and potentially seek revisions to Chapter 9, HRS, to enable reuse of the Works of Arts Special Fund for other purposes. However, the commission has yet to identify how to use the special fund's nearly \$3 million surplus. Instead, the money is being kept as insurance against possible revenue shortfalls. As the foundation's governing board, the commission is responsible for ensuring that public resources are spent in an effective and efficient manner. The commission chair acknowledged that there should be a plan to spend the surplus, but she did not know who was responsible for deciding how to spend the money. "How do we use it and how to divvy it up? I don't know the answer to that," the commission chair said. The lack of such a spending plan could undermine the foundation's credibility should it seek added resources, and exposes surpluses to future legislative efforts to redirect unused special funds for other purposes.

Commission's plan for fundraising and marketing to promote public arts is based on a \$75,000 report proposing unrealistic staffing changes

In July 2013, the foundation adopted a strategic plan based on a study conducted pursuant to Senate Concurrent Resolution (SCR) 57 of the 2012 legislative session. The resolution called on the foundation to study its role and placement as an agency, recommend changes to its programs and infrastructure to leverage public and private financing, and develop a sustainable funding model. We found that the resulting report proposed increasing funding and marketing via an organizational change that contradicts civil service laws and union requirements. Further, the report, which cost nearly \$75,000, did not address staffing or organizational needs to ensure the agency complied with, or sought elimination of, statutory duties that it no longer performs. In effect, the \$75,000 study identified organizational issues, but did not propose realistic solutions.

The SCR 57 report was forwarded to the Legislature in December 2013 by the commission chair and then-executive director. The report says there is a pressing need, but lack of funding, for marketing and communication and resource development positions to support the foundation's strategic plan. The report recommends that communication and resource development roles be filled with private contractors using savings generated from consolidating two occupied civil servant positions, the registrar and collections manager. The report also contains remarks that disparage the foundation's unionized staff. The report's analysis of the foundation's strengths and weaknesses states that "dysfunctional staff dynamics resulting from unionization [make it] difficult to accomplish much" and that "if staff does not change its mindset nothing will change." The report also identifies agency restructuring as an opportunity "to solve the union problem."

The foundation's current executive director told us he does not plan to implement the report's proposed reorganization, which he characterized as "union-busting." The foundation chair said the proposal was a response to staff resistance to providing digital photos of the collection; however, she acknowledged that such a move is not likely to happen because of civil service laws and union protection. By proposing an unrealistic, anti-union recommendation, the commission has failed to ensure it is fulfilling its basic legal and ethical responsibilities. Further, because the SCR 57 report takes an adversarial tone towards the foundation's civil service staff, it risked causing animosity while failing to address organizational problems.

The foundation's strategic plan also does not address restoring artist fellowships, a statutory duty it no longer performs. The foundation underwent an organizational restructure in 2010 when ten positions (37 percent of its staff positions) were eliminated due to budget cuts. In addition to the 2010 reduction-in-force, the foundation discontinued visual and performance artists awards and its \$5,000 artist fellowships. However, the provision of fellowships is one of the foundation's statutory duties. As a result, there is an expectation among some community members that the foundation should provide such recognition, according to the foundation's executive director and folk arts coordinator. Although the foundation no longer provides fellowships, it does provide assistance in the form of letters of support for artists nominated for other honors such as local or national living treasure awards. If the foundation's activities no longer align with its governing law, we urge the commission to propose appropriate statutory amendments or to request restoration of resources so the foundation can comply with its existing duties.

Commission's five-year strategic plan was adopted after relatively little public discussion

The commission's discussion of the SCR 57 report started in October 2012 and culminated nine months later in July 2013 when it adopted its five-year strategic plan. During that period the commission held relatively few public discussions on the plan compared to the number of discussions it held on Arts in Public Places operational matters. For example, between October 2012 and July 2013 the commission held five general meetings on the strategic plan, but no Planning and Budget Committee discussions. Two of the general meetings included discussions conducted in executive session. In contrast, operational issues including art acquisition were publicly discussed at all five general meetings during the same period and in all five Arts in Public Places Committee meetings. During FY2013, the foundation discussed and purchased 60 pieces of art, and completed four artwork commissions, at a combined cost of \$1.4 million.

The commission's committees are meant to aid in developing policy recommendations on culture and arts matters. However, we found no indication that discussions on strategic planning occurred at the commission's Planning and Budget Committee, or that the committee has any planning responsibilities. Based on agendas posted for public meetings, the Planning and Budget Committee met just twice between October 2012 and July 2013, and neither agenda contained items on strategic planning. According to the commission chair, the Planning and Budget Committee rarely meets because there is no reason for it to meet. The chair acknowledged the commission's time is consumed with looking at art and that more time needs to be devoted to considering "bigger" planning issues. A former Planning and Budget Committee chair also acknowledged the commission spends relatively little time discussing planning. "Everybody is interested in art and that's the most fun part, rather than getting into budget, policy, and strategic planning types of things," the former commissioner said. This approach runs counter to best practices for governance that call on a board to stay at the level of generality and plan for long-range developments. The commission's lack of regular budget and strategic planning discussions resulted in the adoption of a strategic plan that failed to address organizational issues or account for spending surplus special fund revenue.

Commission lacks bylaws and training to guide planning and policy

The planning deficiencies we identified were the result of the commission's failure to properly utilize its Planning and Budget Committee, or adopt basic board tools such as bylaws and training

that could focus commission discussions toward planning and policy matters. According to draft commission bylaws dated November 2005, the Planning and Budget Committee was to meet quarterly and develop the agency's strategic plan and address matters related to its effective implementation. Although the bylaws were not adopted by the board, they indicate the commission considered charging the committee with responsibility for developing and implementing a strategic plan, and for ensuring implementation via regular meetings.

We further determined the commission lacks a formal training program, a statement of policies, and executive session and committee minutes, and therefore is ill-equipped to perform its policy-making and oversight roles. According to *Governing Boards*, a board should have at least three kinds of written records to guide efforts toward policy-making: bylaws, a statement of policies, and minutes. Bylaws are rules established to guide the procedure of the board and a statement of policies compiles decisions about recurrent problems. Board and committee minutes are an indispensable record of the deliberations and decisions of a board. As we note later in this report, the commission did not comply with responsibilities to document its deliberations in conformance with sunshine law.

Strategic plan lacks measurable targets, clouding accountability for maximizing art assets and increasing access to arts

Goals and objectives are the building blocks for government performance management and reporting. Goals are what an agency wants to achieve, while objectives are specific outcomes, or results, that identify how those goals should be achieved. Preferably, objectives are quantifiable and measurable, so they can be compared to what a government agency expects to achieve, such as an established target, according to Governmental Accounting Standards Board (GASB) guidelines. The achievement of objectives indicates progress toward the long-term realization of goals. Therefore, agencies should develop objectives with consideration of how to measure progress.

The foundation's SCR 57 report acknowledged a need for a strategic approach that uses measurable, definable outcomes; however, the commission did not adopt such an approach. Instead, we found the foundation's strategic plan contains ambiguous objectives that fail to foster the development of proper performance measures. We also found the commission has not held staff accountable for performance reporting. Absent such a framework, the foundation is left with an anecdotal, non-systematic approach to monitoring performance that blocks accountability for achievement of strategic goals. Without proper performance reporting, the foundation cannot demonstrate the effective and efficient use of resources, nor can it adequately develop and implement improvements in strategy to effectively channel foundation activities and programs.

The commission has not set expectations needed to hold the foundation accountable for its performance

The importance of goals, objectives, and performance measures is recognized in Act 100, SLH 1999. Act 100 is designed to improve state government effectiveness and efficiency by requiring state departments and agencies to develop and submit an annual report to the Legislature containing goals, objectives and policies, and a process for measuring performance. We found that the foundation's 2014 Act 100 report, and the 2013 strategic plan that served as its basis, do not identify targeted, specific objectives conducive to monitoring progress against strategic goals. Because the commission has failed to set such expectations, the foundation cannot be held accountable for its performance against strategic goals.

The foundation's 2013 strategic plan identifies a vision, mission, and five strategic priorities, or goals. The plan does not contain objectives, but has 25 strategies for implementing goals. We found that none of those strategies establish targeted outcomes, or benchmarks, needed to quantifiably measure how goals are to be achieved. For instance, the goal to "build capacity and maximize assets to ensure the [foundation] is strong, sustainable, and capable of achieving goals" has five strategies with vague outcomes. One strategy, "secure new revenue sources to satisfy the artistic and cultural needs of Hawai'i," seeks to diversify and develop funding sources, but does not target the amount of money the foundation should raise. Another strategy, to "increase stewardship of the Art in Public Places Program and [Hawai'i State Art Museum]," discusses lending artwork to non-state agencies and increasing museum attendance, but does not set targets for gauging the success of either effort. Exhibit 2.2 shows an example of a foundation strategic plan goal and strategies that vaguely specify how the related goal is to be achieved.

Exhibit 2.2 SFCA Goal and Strategies

Goal: Advance the arts and culture in Hawai'i through advocacy

Strategies:

Reaffirm the leadership role: With a strong understanding of the value and public benefit of a strong arts and cultural sector, the HSFCA can use its position to promote the importance of the Arts as key to the quality of life in Hawai'i. Leadership at all levels will communicate how the Arts contribute to statewide priorities and how every citizen benefits.

Better harness the power and talent of Commissioners: As representatives of the people of Hawai'i both geographically and demographically, HSFCA Commissioners are uniquely qualified to serve as agency "field agents." Commissioners will further develop advocacy and communications plans to build stronger relationship bridges between O'ahu and the Neighbor Islands.

Assign Advocacy to the Commission's Marketing & Communications Committee: Working closely with the Executive Director and appropriate staff, the Commission's Marketing & Communications Committee will oversee advocacy, government and constituent relations. This committee will unify messages and build a strong case for support tied to statewide funding priorities.

Source: State Foundation on Culture and the Arts 2013 strategic plan

The foundation's Act 100 report did contain objectives; however, they often set a low bar for gauging success. For example, the goal to "advance the arts and culture in Hawai'i through advocacy" had objectives that include "*continue* full schedule of commissions work, art rotations, and acquiring new works for the Art in Public Places Collection (emphasis added)," and "*continue* museum initiatives: Art Bento, Art Lunch, Second Saturdays, First Fridays, and themed exhibitions (emphasis added)."

According to the National Assembly of State Arts Agencies Strategic Planning Toolkit, the hallmarks of an excellent plan include measurability: vague goals risk producing vague results. Effective plans build measurability into goals, objectives, and strategies. This has become more important as state and private agencies have increased demands for accountability, measurable outcomes, and specific evaluation strategies. Exhibit 2.3 shows an example of a clear goal and related measurable objectives from an Illinois Arts Council plan.

Exhibit 2.3

Illinois Arts Council Goal and Objectives

Goal: To lead Illinois in developing awareness and support of accessible, quality art programs

Objectives:

Establish three key partnerships and test their effectiveness in accomplishing IAC (Illinois Art Council) goals.

Increase grants to underserved geographic areas by 50 percent.

Increase to 75 percent the number of council members who communicate with elected officials on behalf of the council, assist staff in community outreach and participate in the governor's awards.

Source: National Assembly of State Arts Agencies Strategic Planning Toolkit

Commission neither receives nor requires reports to monitor progress and achievement of strategic goals

Guidelines developed by GASB suggest that government service efforts and accomplishments reporting should focus on key measures that provide a basis for assessing program performance and the achievement of major goals and objectives. Reports need to be supported by comparisons that assist in assessing performance over time, or against internally established targets. We found the ambiguous objectives of the foundation's strategic plan fail to foster the development of proper performance measures. Further, the commission has not ensured that staff report on program performance against strategic goals. Consequently, the commission relies on an anecdotal, non-systematic approach to performance monitoring in which success is gauged on whether activities were conducted, rather than whether goals were accomplished.

We were told that the foundation tracks progress against strategic plans in a staff-prepared annual evaluation of strategic plan progress. However, we found that staff did not prepare such reports for FY2012 or FY2013. Additionally, the foundation lacks a basis for such reporting, because it did not require programs to report on achievement of strategic goals.

We also were told that progress is tracked in the foundation's Act 100 report, budget variance report, and regular executive director reports at commission meetings. However, we concluded that these reports did not include measureable achievements of goals and objectives and therefore were not conducive to monitoring what goals and objectives were achieved. For example, the foundation's 2014 Act 100 report contains four categories of performance measures, none of which were tied to

strategic plan goals. Additionally, there was no single, consolidated report for each measure and neither the foundation's executive director nor the commission chair were familiar with the report's contents. The commission was provided executive director reports during FY2013 that purported to describe staff efforts and accomplishments relative to strategic goals. However, those reports did not include performance measures or provide results in the context of whether goals were accomplished.

We found that the foundation's December 2013 budget variance report contained targeted measures of effectiveness established in the foundation's multi-year Program and Financial Plan. However, the budget variance report was not provided to the commission by staff. Additionally, those measures focused on program outputs and do not tie results to achievement of strategic goals. For example, the variance report includes outputs such as the number of grants awarded. *Outputs* measure the quantity or quality of services, while *outcomes* measure changes in behavior brought about by programs. Exhibit 2.4 lists the foundation's six measures of effectiveness.

Exhibit 2.4 SFCA Measures of Effectiveness

1. Number of grants awarded
2. Number of persons impacted by SFCA biennium grants program
3. Federal funds obtained as a percentage of program funds
4. Number of projects benefitting Neighbor Island, rural and underserved residents
5. Number of visitors to Hawai'i State Art Museum
6. Number of commissions and relocatable works of art placed in state buildings

Source: State Foundation on Culture and the Arts variance report (December 2013)

Government accomplishment reports are most effective when they include both output and outcome measures, according to GASB. Exhibit 2.5 contains detailed explanations and examples of output and outcome measures.

**Exhibit 2.5
Output and Outcome Measures Defined**

Performance measure	Definition	Examples
Output measures	Measure the quantity of services provided; a quality requirement may be included.	Number of lane-miles of road repaired or the number of lane-miles of road repaired to a certain minimum satisfactory condition.
Outcome measures	Measure the results associated with the provision of services; may include measures of public perceptions of results.	Percentage of roads in good or excellent condition, or the residents' rating of the smoothness of the roads.

Source: Government Accounting Standards Board Suggested Guidelines for Voluntary Reporting

In the absence of formal reporting on strategic goal accomplishment, commissioners monitor progress via their involvement in grants, awards, and other activities. Additionally, grant, art commission, art show selection, art acquisition, folk arts, and other staff reports are provided at commission meetings. We reviewed samples of the reports and determined that they neither provide information on results in the context of targets, nor tie performance to achievement of strategic goals.

The reporting deficiencies that we identified stem from a lack of policies or procedures needed to hold staff accountable for performance. Additionally, we determined that the foundation is not required to report results against strategic goals and objectives. The requirement for the foundation's annual report in Chapter 9, HRS, calls for accomplishments to be presented generally, but not in the context of goals and objectives.

Commission does not properly document public meetings or advocate for actions to preserve and further arts and culture

Foundation staff and commissioners do not understand and have not properly applied the State's open meetings law, also called the sunshine law, and thus have not conducted their discussions, decisions, and actions as openly as possible, resulting in a lack of documented commission discussions and presentation material relating to its July 2013 strategic plan. Because the commission failed to properly document its deliberations and actions, the commission's decisions are not transparent, do not provide the public and foundation sufficient information on proceedings and actions, and are at greater risk of legal challenges.

Commission jeopardizes public trust by not complying with state open meetings laws

The foundation is subject to the State's open meetings law in Chapter 92, HRS, which is intended to protect the people's right to know. The law states that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of governmental agencies—shall

be conducted as openly as possible. Accordingly, the law declares that provisions requiring open meetings shall be *liberally* construed, while exceptions to open meeting requirements shall be *strictly* construed against closed meetings. The foundation's responsibilities under open meetings law are to keep written minutes of all meetings, and limit closed meetings to those exceptions identified in Section 92-5, HRS. We found that the commission has not consistently complied with these responsibilities over the three-year period that included the timeframe in which it adopted a new strategic plan.

We reviewed foundation commission agendas for FY2012–FY2014 and found agendas for 20 general meetings, of which 19 included an executive session agenda item. One standing committee, the Arts in Public Places Committee, was scheduled to hold 15 meetings during the period. We were unable to review minutes for any executive session or standing committee meetings between FY2012–FY2014 because the commission does not create such records. This violates Section 92-9, HRS, which requires boards to keep written minutes of all meetings.

Additionally, we found that the commission had no minutes for general meetings held on January 14 and March 3, 2014, which also violates Section 92-9, HRS. Both meetings had executive session agenda items. Any such executive sessions, if they were held, also would have been violations of Section 92-4, HRS, which requires that the purpose of an executive session and a vote to enter the executive session be recorded in meeting minutes.

For 18 general meeting where minutes were available, we found 16 instances of non-compliance with Section 92-4, HRS, which requires the purpose of an executive session and vote to enter executive session be recorded in the minutes. We also found three instances when the commission entered into executive session for reasons that did not comport with allowable exceptions under Section 92-5, HRS. The commission also held non-agendized strategic planning-related meetings on August 29 and 30, 2012, during which a brief business meeting was held in at least once instance, according to a September 2012 executive director report. However, there were no agendas or minutes of these meetings, which is a violation of Section 92-9, HRS; and of Sections 92-3 and 92-7, HRS, for failing to make the meetings open to the public and providing written public notice of the meetings. Exhibit 2.6 summarizes the commission's sunshine law violations over our three-year audit period.

Exhibit 2.6
SFCA Commission Non-Compliance with Chapter 92, HRS, FY2012–FY2014

Sunshine law requirement	No. instances of non-compliance, FY2012	No. instances of non-compliance, FY2013	No. instances of non-compliance, FY2014	Total
Purpose of executive session and vote to enter into executive session are recorded in minutes (Section 92-4, HRS)	6	4	6	16
Reason for executive session is permissible (Section 92-5, HRS)	0	3	0	3
Written record of meeting is kept (Section 92-9, HRS)	0	0	2	2
Every board meeting must be open to the public and written public notice must be given in advance (Sections 92-3 and 92-7, HRS)	0	0	2	2
Total	6	7	10	23

Source: Office of the Auditor

In two instances, on November 21, 2012, and January 16, 2013, the commission entered executive session to discuss SCR 57, which was a legislatively mandated strategic plan study. Discussion of strategic plans is not one of the allowable exceptions under open meetings law exemptions articulated in Section 92-5, HRS. Exhibit 2.7 lists the valid purposes for closing a meeting to the public.

Exhibit 2.7**Allowable Exceptions From Open Meeting Requirements**

Section 92-5, HRS, establishes the following exceptions. A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
- To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
- To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
- To investigate proceedings regarding criminal misconduct;
- To consider sensitive matters related to public safety or security;
- To consider matters relating to the solicitation and acceptance of private donations; and
- To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

Source: Hawai'i Revised Statutes

Discussion of the commission's strategic plan in closed executive sessions contributes to a lack of transparency, which jeopardizes the public's trust. Since the commission has not documented its executive session proceedings, there are no minutes for those two meetings. The only executive session documentation we found was a confidential memo prepared by the SCR 57 study's consultant for the commission's executive session on November 21, 2012, which discussed the types of union staffing concerns that would be cited in the final version of the report provided to the Legislature.

Our review of commission agendas and meeting packets determined that the foundation lacks documentation of discussions and presentation materials related to the SCR 57 study during meetings held in March, May, and July 2013. The only SCR 57 study-related materials from the public meetings that we could obtain were presentations for the July 2013 meeting where the strategic plan was adopted.

The commission chair was not aware the commission is required to keep minutes of executive sessions and standing committee meetings and acknowledged an unfamiliarity with open meeting requirements. We determined that foundation staff and commissioners are not familiar with, and therefore do not fully understand and apply, the State's sunshine law. The State Office of Information Practices, which assists agencies in complying with Chapter 92, HRS, has no training records for foundation staff or commissioners from January 2011 through June 2014. Three different foundation staff recorded commission meeting minutes during the period reviewed; however, none of them attended sunshine law compliance training.

Commission chair and executive director unaware of annual report requirement to advocate for action

The foundation is held accountable for its activities and accomplishments through an annual report that includes devising and recommending legislative and administrative action for the preservation and furtherance of culture and the arts and history and the humanities. Specifically, the foundation is to "submit an annual report with recommendations to the governor and Legislature, prior to February 1, of each year." We reviewed the foundation's 2012–2013 annual report against the foundation's statutory requirements and determined the annual report does not comply with the governing statutes because it contains no recommendations to the Legislature. As a result, the foundation does not avail itself of a useful tool to advocate for changes in resources to support its mission to promote and further culture, arts, history, and the humanities. The report also could be utilized as a mechanism to propose changes to the foundation's governing law to eliminate duties the agency no longer performs, such as providing recognition to local artists through fellowships.

The executive director and commission share responsibility for making legislative recommendations. According to the foundation's functional statement, the commission's responsibilities include recommending legislative and administrative action. The foundation's executive director is responsible for making recommendations on agency goals, policies, rules, and legislative proposals. The executive director told us that including recommendations in the annual report would be "a good way to push for agency needs." However, both the chair and executive director said they were unfamiliar with the statutory requirement that the annual report contain recommendations to the Legislature.

We note that neither foundation staff nor the commission have formal training programs in place to ensure compliance with foundation duties and organizational functions. Further, our interviews with the foundation executive director and three commissioners confirmed that there is no formal training for commissioners.

The Foundation Needs to Improve Its Management of Arts Resources to Ensure Their Accountability, Accessibility, and Protection

The foundation's strategic priorities include managing assets to ensure that the foundation is strong, sustainable, capable of achieving its goals, and increasing accessibility to arts and culture. We found the foundation needs to improve its management to ensure the accountability, accessibility, and protection of these resources. Neither the foundation nor the state comptroller actively monitors amounts due from state agencies to the Works of Art Special Fund, and the Department of Budget and Finance's attempts to track such transfers are inadequate. We also found that the foundation is not accountable for maximizing accessibility of public art and that mechanisms to safeguard the foundation's digital assets are missing. These failures to implement copyright safeguards promised to artists increases the potential for copyright infringement, undermines public trust, and increases foundation liability.

Neither the foundation's director nor the state comptroller track whether agencies remit funds for art as required by law

Section 103-8.5, HRS, established the Works of Art Special Fund and CIP requires agencies to deposit 1 percent of the construction costs of capital improvement projects into the fund. The section makes the foundation's executive director and the state comptroller, who heads the Department of Accounting and General Services (DAGS), responsible for tracking amounts due from each agency to the Works of Art Special Fund. We found that both the foundation and DAGS do not track special fund compliance, and instead rely on the Department of Budget and Finance (B&F) to monitor whether agencies comply with the requirement. We further found that B&F failed to ensure moneys were properly directed to public art. Consequently, the foundation cannot assure that it is receiving all moneys set aside by statute, nor can it identify and remedy inaccurate payment of funds for public arts. Furthermore, we found that guidance issued by the comptroller in 1990 to assist agencies in applying the 1 percent requirement is outdated, unclear, and has resulted in underpayments and overpayments for the arts.

Foundation does not know whether it receives all moneys set aside by statute and cannot remedy inaccurate payments of funds for public arts

Between FY2011 and FY2013, the 1 percent Works of Art Special Fund assessment generated \$8.5 million in revenues, or about \$2.8 million annually. The foundation is responsible for tracking public arts funds owed by agencies and for administering the special fund, which constitutes the only source of funding for the Arts in Public Places program. We found that the foundation lacks policies and procedures for monitoring capital improvement appropriations and reconciling whether agencies accurately calculate and transfer portions of eligible

construction and renovation spending to the special fund. As a result, the foundation lacks a framework for tracking special fund compliance and is therefore unable to assure that it receives all moneys set aside by statute to support public arts. In the absence of a system for monitoring agencies' compliance with this statutory requirement, the foundation has limited its compliance tracking to recording and reconciling special fund deposits against the amounts recorded in the state accounting system.

We found that the foundation has not assigned the duty for tracking statutory amounts due from each agency to the Works of Art Special Fund to its executive director; this responsibility is not articulated in either the office of the executive director's functional statement or position description. We also found that both the foundation's executive director and accountant mistakenly believe they do not have adequate information to track agency compliance with special fund requirements. They claim to be unable to determine the completeness and accuracy of amounts transferred into the special fund, because the foundation lacks data for appropriations subject to the 1 percent assessment. We determined the foundation receives construction allotment information that could be used to monitor the accuracy of funds transferred into the Works of Art Special Fund. However, foundation staff were unaware they received such information and it can be used for monitoring.

We further found that the foundation has not enforced its policy requiring agencies to provide quarterly reports on works of art-related construction appropriations. The foundation's policy manual calls for departments and agencies receiving funds for capital improvements to provide the foundation with quarterly reports on construction appropriations and their availability as works of art funding sources. Such reports would equip the foundation with the information necessary for compliance monitoring and increase agencies' accountability for their compliance with the works of art special fund law. However, the foundation has never attempted to impose this reporting requirement upon state agencies.

The Works of Art Special Fund law also makes the state comptroller responsible for ensuring that each agency calculates and remits funds to the Works of Art Special Fund in a timely manner. However, DAGS has limited its role to providing the foundation with copies of works of art-related allotment requests. We also found that the state comptroller relies on agencies to follow the criteria and procedures set forth in a 1990 comptroller's memorandum.

State agencies disregard requirement to fund public arts

The Works of Art Special Fund law provides that the portion of construction appropriations designated for works of art is to be calculated at the time an appropriation bill is signed into law. Agencies receiving

capital improvement appropriations are responsible for calculating the 1 percent owed and transferring this money into the Works of Art Special Fund, yet neither the foundation nor DAGS actively monitors compliance with this requirement. Instead, monitoring compliance with the Works of Art Special Fund law is primarily performed by B&F, which reviews requests for capital improvement allotments and calculates the amount owed to the fund. B&F then compares its estimate to the agency's calculation and investigates any discrepancies. During our audit, we found 25 instances where agencies failed to transfer money to the arts fund as required by law. Because the foundation does not monitor the completeness and accuracy of transfers into the Works of Art Special Fund, it cannot identify such instances or take action to ensure that money is transferred into the special fund as appropriate.

We selected 30 requests for construction allotments B&F received from other agencies during FY2011 through FY2013 and reviewed legislative appropriation acts to determine whether the moneys were subject to the 1 percent set-aside for works of art. We found that four requests for construction funds were not accompanied by corresponding requests to transfer the 1 percent into the Works of Art Special Fund. We also determined that a the finance director and governor allowed three of the allotment requests to proceed without art fund assessments even though there was no evidence those projects were exempt from the art fund requirement. A former governor allowed the fourth request to proceed. These missteps resulted in a potential loss of \$147,213 in public arts revenues, as shown in Exhibit 2.8.

**Exhibit 2.8
SFCA Construction Allotments That Did Not Transfer Moneys to the Works of Art Special Fund, FY2011–FY2013**

Allotment Advice Date	Allotment Advice No.	Construction Allotment	Amount Due to WASF (1% of Allotment)	Actual WASF Payment
November 2010	11-0116	\$1,027,257	\$10,273	\$0
March 2011	11-0231	\$294,000	\$2,940	\$0
August 2012	13-0017	\$3,400,000	\$34,000	\$0
September 2012	13-0030	<u>\$10,000,000</u>	<u>\$100,000</u>	<u>\$0</u>
Totals		\$14,721,257	\$147,213	\$0

Source: Office of the Auditor

We also found that B&F approved two Department of Transportation (DOT) transfers to the Works of Art Special Fund for projects at the Kahului and Kona airports that amounted to less than 1 percent of the projects' construction funds. We determined that B&F did so without obtaining sufficient evidence that DOT properly excluded the funds from the 1 percent assessment. These oversights resulted in a potential loss of \$20,246 in public arts revenues.

We separately determined that neither the foundation nor B&F has tracked whether transfers into the Works of Art Special Fund that were wrongly disallowed by the prior administration were subsequently remitted to the fund. During FY2010 and FY2011, a previous comptroller and governor disallowed 19 transfers of works of art funds totaling \$1 million assessed by various agencies. In at least one case, the decision was subsequently reversed, resulting in an additional \$140,000 in Aloha Stadium construction money being paid to the special fund in FY2012. According to B&F, other previously disallowed transfers may have been subsequently paid into the special fund pursuant to an April 2011 comptroller memo; however, the foundation's director reported that this issue remains unresolved. The foundation should work with DAGS and B&F to identify and track the previously disallowed transfers that are still due to the special fund.

The foundation and DAGS told us they are collaborating with B&F to establish a system for monitoring compliance with the works of art set-aside requirements that may impose new reporting requirements so agencies receiving construction appropriations will provide information needed to verify the accuracy of their special fund transfers.

Outdated, unclear guidance results in underpayments and overpayments to the Works of Art Special Fund

In 1990, the state comptroller issued Comptroller's Memorandum No. 1990-21, establishing criteria and procedures to help agencies comply with the Works of Art Special Fund requirement in the law. We found that agencies were either not aware of, or had varying interpretations of, criteria in the memo, which has never been updated. Consequently, agencies remitted inaccurate payments to the fund. This resulted in both underpayments that diverted funds from away from public arts as well as overpayments to the fund that inappropriately took funds away from state construction projects.

According to the memo, appropriations that were originally made for purposes other than construction, but are changed by later appropriations to permit the construction of or addition to state buildings, are subject to the 1 percent set-aside. We found that agencies sometimes requested to reallocate authorized appropriations between construction costs and other project costs, such as design and equipment. However, the memo is silent on how to treat reallocations of capital improvement project appropriations that change the amount authorized for construction costs, particularly when such reallocations are not approved through legislative acts. This has led to inconsistencies in appropriation amounts used to calculate 1 percent liabilities, with some assessments based on original appropriations and others based on reallocated amounts. For example, we found one instance in which the special fund should have received

\$100 based on the original appropriation for the development of the Culinary Institute of the Pacific, but received \$100,000 instead. On the other hand, we also found four instances in which reallocations reduced the total construction appropriation and the related works of art funds set-aside, which we estimated resulted in about \$41,000 less for the special fund.

We also found that agencies need more guidance on determining which appropriations are subject to the 1 percent assessment. The comptroller's memo states that appropriations for "sitework (utilities), renovations, modernization, or other changes" to an existing building are subject to the 1 percent assessment, but does not specify the type of work that qualifies as such construction. Further, the comptroller's memo does not define the term "sitework." For example, the memo states that incidental utility sitework is subject to works of art assessment, but later states that sitework limited to utilities is excluded. These unclear guidelines have led agencies to improperly include or exclude appropriations from their 1 percent works of art funds calculations. We found two instances in which the finance director or governor disapproved \$12,300 in transfers that agencies improperly assessed on sitework construction costs. We also found one instance in which an agency assessed, and the finance director and governor wrongly approved, works of art funds for sitework appropriations that should have been excluded from the 1 percent requirement. This oversight resulted in the wrongful diversion of \$8,000 in project funds to the Works of Art Special Fund.

Expanding and clarifying the comptroller's memo could help ensure that agencies correctly and consistently apply the Work of Arts Special Fund requirements. The foundation is aware of 19 transfers of works of art funds totaling \$1 million that were assessed by various agencies during FY2010 and FY2011 that were disallowed by the then-comptroller and governor on the basis that the 1 percent requirements did not apply to the appropriations for those types of construction projects. In February 2011, the foundation requested the state comptroller to reverse that decision, which the foundation said was based on a faulty interpretation of the fund's legal requirements. The comptroller's April 2011 response acknowledged DAGS' deviation from the requirements under Comptroller's Memorandum No. 1990-21 and that the transfers should have been allowed.

Foundation is not accountable for maximizing accessibility of public art

The purpose of the foundation's Art in Public Places (APP) program is to acquire and manage works of art and to ensure they are accessible, preserved and appropriately used to enhance public state buildings and spaces for the enjoyment, educational, and cultural enrichment of the public. The program distributes works of art among state facilities on all islands. The program's objectives include providing all citizens the

fullest possible access to the highest quality aesthetic and educational art experiences available. In 1999, we found that the foundation lacked policies and procedures to ensure works of art were sufficiently visible and accessible to the public. Our current audit found that the foundation has since adopted, but not enforced, policies to place and rotate artwork among state facilities. Subsequently, some sites are allowed to keep artwork for decades. Additionally, there are currently no procedures in place that address how the foundation is to enforce its rotation policies. The foundation also did not require artwork display sites to submit surveys of estimated public visitation. As a result, the foundation lacks the information necessary to identify optimal sites for displaying the State's art collection and maximizing public accessibility to the State art collection.

Some offices have been allowed to keep relocatable artwork for more than a decade

The foundation's rotation policy calls for artwork to be periodically relocated so that the public has sufficient access to the collection. According to the APP program's Collection Management Policy Manual, relocatable works of art should not remain at the same display site location for more than ten years. However, we found that offices that have been given the discretion to keep works of art in the same place for more than a decade. We reviewed a report of the APP's entire collection of 5,860 pieces of relocatable works that included the last dates of installation for each work of art. We also found that 1,424 pieces (24 percent) of the APP inventory had remained in the same location for more than ten years, of which 106 pieces (2 percent) had been at the same display site for more than 20 years. Exhibit 2.9 shows one of the foundation's storage facilities, which hold pieces of the APP collection that are not on display.

Exhibit 2.9**Photo of SFCA Relocatable Works of Art Storage Facility**

Source: Office of the Auditor

Generally, the foundation loans artwork for a four- to ten-year period. After four years, the APP program contacts loan recipients to determine whether they want to keep the art in place or exchange it for another piece. However, according to APP program staff, loan recipients are allowed to keep artwork in excess ten years as long as an artwork's condition is not at risk. Between calendar years 2011 through 2013, 30 of the 200 display sites (15 percent) on the island of O'ahu declined new installations of art. Of the 30 sites that declined new artwork, eight were allowed to keep the same pieces, meaning the artwork was kept from rotating for more than ten years.

Allowing loan recipients to hold onto artwork indefinitely also prevents sought-after pieces from rotating to other sites across the state, thereby reducing the public's ability to view and enjoy those pieces of art. The objectives of the APP program cannot be met if the foundation cannot sufficiently rotate its collection of artwork among state offices.

Foundation is missing reports needed to assure that art is placed in buildings frequented by the public

To receive artwork, an office or agency must complete a survey that includes an estimate of its facility's public visitors per day. A display site must receive at least ten public visitors per day to qualify for a loan of artwork. We found the foundation does not have accurate or complete information regarding the public's access to artwork display sites and therefore cannot ensure that public art is promoted to the widest audience possible.

We reviewed a sample of records for display sites statewide as of August 2014 to assess whether the foundation enforces policies governing artwork rotation and surveys of public visitation. We found that more than half of the sites currently displaying relocatable artwork throughout the state lacked a display site survey. Although APP policies require the submission of a display site survey before receiving a loan of artwork, the foundation does not take a proactive approach in ensuring that its records for each designated display site are complete and accurate.

We found that 20 of the 36 sites files we reviewed (56 percent) did not contain display site surveys. Additionally, two sites that did contain surveys did not include the public visitation estimates as required. One site predicted it would receive just six daily public visitors, but received a loan of artwork anyway. We further determined the foundation does not make an effort to collect missing information once a display site is registered. Rather, the foundation informally waives the survey requirement until there is a physical change to the display site itself, such as new construction or a change of office location. Without information regarding public traffic to a display site, the foundation cannot identify optimal sites to promote viewership and enjoyment of the state's art collection. As a result, pieces may be languishing in under-trafficked offices and agencies around the state.

The foundation has not held a Neighbor Island exhibit of its growing art collection since 2009

There are three venues through which the foundation brings art to the public: (1) the online gallery of the entire APP collection, (2) the Hawai'i State Art Museum, and (3) the artwork distributed amongst display sites throughout the state. The APP program's Collection Management Policy Manual establishes a relocatable exhibits program as a means to develop temporary exhibitions using relocatable works of art. The manual states that the development of an exhibits program was increasingly necessary to highlight works of art in the growing APP collection. Exhibitions are currently limited to the island of O'ahu, where the foundation displays artwork at the Hawai'i State Art Museum.

The APP manual calls for establishing gallery spaces in State buildings in each county to feature traveling exhibitions. Traveling exhibitions increase the accessibility of the APP collection to the general public on all islands. The last Neighbor Island artwork exhibition, however, was held in 2009. APP program staff expressed difficulties finding adequate space that meets the foundation's display site requirements. Staff also said that Neighbor Island gallery spaces that meet the program's display sites requirements would require charging entrance fees, which runs contrary to the APP's mission of increasing public access to the arts. We

note that exhibition expenses are an allowable use of the Works of Art Special Fund, which had a nearly \$3 million unencumbered balance at the end of FY2013.

Bringing the APP collection to the Neighbor Islands via traveling exhibitions would help the foundation fulfill its strategic goal to increase accessibility to arts and cultural programs for underserved groups. Additionally, traveling exhibitions would provide a venue to present individual pieces of the APP collection that may not be otherwise displayable unless presented as a whole collection. For example, the Huc-Mazelet Luquiens collection makes up 665 pieces (11 percent) of the entire APP collection of relocatable artwork. Due to the size of each piece in the Luquiens collection (each print measures only a few square inches), however, displaying them at individual sites across the state would be unfeasible. Exhibit 2.10 is a photo of a print from the Huc-Mazelet Luquiens collection.

Exhibit 2.10
Photo of Huc-Mazelet Luquiens Prints



Source: Office of the Auditor

The foundation has not adopted safeguards to protect artists' rights, which undermines the public's trust and increases liability

The foundation makes its entire APP collection available through the foundation's website. Images of artwork online are shown in low resolution to help guard against potential misuse, but high-resolution images of the APP collection can be requested for limited use. Copyright to these images is generally owned by artists, not the foundation. In exchange for a license to use and reproduce artwork in the APP

collection, the foundation agrees to provide artists certain protections from potential copyright violations. We found the foundation has failed to implement the safeguards it has promised to artists increasing the potential for copyright infringement, undermining public trust, and increasing foundation liability.

Foundation has not protected artists' rights as promised in licensing agreements

Once a piece of artwork is recommended for acquisition into the APP collection, the foundation enters into a non-exclusive license with its artist. The license does not transfer ownership of the artist's copyright to the foundation and only authorizes the foundation to permit third parties to use and reproduce the images for archival, documentary, and educational purposes. The license granted to the foundation by the artist is irrevocable, royalty-free, and endures for the entire term of the artwork's copyright. As part of the terms of the license, the foundation agrees to provide several safeguards to protect the copyrighted artwork. For example, reproduction by the foundation or a third party for commercial purposes is prohibited unless the artist provides prior written consent. We found the foundation failed to implement common safeguards to mitigate liabilities from copyright violations.

We reviewed the foundation's standard licensing agreements and found the agency complied with just three of seven copyright-related requirements. For instance, it does not notify website users that the contents displayed can only be used for personal, educational, and non-commercial use. Nor does the foundation notify website users that contents may not be reproduced without permission of the foundation and the copyright holder. The foundation also does not include an overall copyright notice on all print and electronic publications included on its website. Finally, the foundation has allowed the reproduction and alteration of an image from its collection in connection with commercial activity without the copyright holder's prior written consent.

Although APP policies recognize and discuss at length the scope of copyright, they do not address how the foundation is to provide copyright protection for the artwork in its care, nor has the foundation adopted procedures to manage digital assets such as high-resolution archived images and its online gallery. Lacking such policies, the foundation has failed to safeguard artists' copyrights as promised in license agreements with artists. Foundation staff told us they are currently developing such policies.

Foundation lends photographs without monitoring whether artists' rights are protected

The foundation authorizes third parties to reproduce images for limited purposes by approving photographic material requests. Requestors must submit their request via the foundation's standard photographic material request form. Under terms and conditions in photographic material request forms, requestors agree to several terms and conditions meant to protect images from copyright infringement. The request or loan is an authorization for a one-time use of photographic material. Also, duplication of the issued photographic material is prohibited. We found the foundation relies on requestors to self-report compliance with photographic material request terms and conditions that protect images from copyright infringement.

We reviewed all photographic material request forms received and approved by the foundation for FY2013 to determine whether the foundation ensured compliance with the terms and conditions of the agreements. We found the foundation approved photographic material request forms that were incomplete, lacking specificity, and bundled. More importantly, we found that the foundation passively monitors compliance with the photographic material request forms.

Requestors that receive images also agree to provide the foundation a complimentary free copy of the publication in which the authorized image appears within 30 days of publication. However, the collections manager noted that the agency does not monitor receipt of these copies and does not pursue requestors for copies. A review of the image reproduction is conducted only if a copy is received; however, such reviews are limited to checking for owner and copyright credits. The foundation does not examine the image for alterations, which are prohibited under the terms and conditions of the request and loan forms.

A standard term of both the request and loan forms states that the APP program reserves the right to refuse permission for further reproductions or loans from any requester, if, in its opinion, adherence to the terms of previous agreements was not upheld. Because the foundation does not monitor compliance with these terms, it is in no position to deny the use of images to requestors who infringe upon copyrights.

In one instance that drew media attention and public criticism in 2013 that occurred under a previous executive director, the foundation allowed the reproduction of artwork from the APP collection in connection with commercial activities without the artist's prior written consent. This unauthorized reproduction of artwork for an October 2013 event also included unauthorized alterations to the copyrighted material. The reproduced artwork was a cropped photograph from the APP collection

used to market a promotional event presented by the foundation. Although this matter is outside the scope of this audit, we mention this event because it highlights the need for clear policies and procedures.

Current policies and procedures do not require the submission of a photographic material request when those requests are generated by staff; only verbal approval from the collections manager or registrar is required. Further, there are no monitoring mechanisms in place used to track digital photographs released to requestors. The foundation's passive monitoring of photographic material requests increases the potential for copyright infringement, undermines public trust, and increases foundation liability.

Conclusion

In this, our third audit of the State Foundation on Culture and the Arts, we found, as in both our 1976 and 1999 audits, that the commission still struggles to fulfill its proper role in guiding the organization. Continued planning and oversight deficiencies undermine accountability for the foundation's primary public arts resources—the Works of Art Special Fund and a nearly 6,300-piece art collection. Rather than focus on planning and policy, the commission disproportionately devotes its efforts to arts operations.

We urge the commission to improve its strategic planning to achieve better accountability for the Works of Art Special Fund, and achievement of strategic goals. We also urge the foundation to improve its oversight of Works of Art Special Fund compliance, and to determine and propose, if needed, recommendations to change statutes to reduce special fund assessment, or allow broader use of surplus monies. Finally, the commission must embrace its responsibility to conduct and document its decision-making publically and openly as required by law.

Recommendations

1. The State Foundation on Culture and the Arts commission should:
 - a. Adopt a strategic plan that:
 - i. Conforms to Act 100, SLH 1999, requirements by including targeted, measurable objectives;
 - ii. Contains action plans for each objective detailing how, when, and by whom each objective will be achieved;
 - iii. Accounts for organizational changes needed to ensure fulfillment of all mandated duties and maximizes special fund revenues; and

- iv. Utilizes surplus Works of Art Special Fund moneys.
- b. Evaluate and document whether Section 103-8.5, HRS, needs to be amended to allow for broader use of the Works of Art Special Fund;
- c. Evaluate and document whether Chapter 9 (*Foundation on Culture and the Arts*), HRS, needs updating; and if so, propose legislative changes, if appropriate. This should include seeking to eliminate statutory duties that are no longer performed;
- d. Ensure that its decisions and actions are publically advertised, openly conducted, and properly documented in conformance with the sunshine law, Chapter 92 (*Public Agency Meetings and Records*), HRS;
- e. Utilize its Planning and Budgeting Committee as a resource to regularly discuss and propose planning and budgeting policies and actions by ensuring the committee holds regular meetings, and by tasking the committee with responsibility for developing the foundation's strategic plan and matters related to its effective implementation;
- f. Adopt bylaws and a handbook of policy decisions;
- g. Adopt and implement policies to ensure that the foundation is accountable for program performance and achievement of strategic goals; and
- h. Amend its written policy to specify the maximum period that a state agency can retain relocatable artwork for display.

2. The foundation's executive director should:

Regarding the strategic management of the organization,

- a. Propose to the commission recommendations to the Legislature for inclusion in the foundation's annual report that suggest foundation actions to promote and further culture, arts, history, and the humanities;
- b. Develop and implement procedures to ensure that strategic plan progress reports include performance measures that are based on objectives provided by commissioners, and are in keeping with Act 100, SLH 1999, and best practices;

- c. Adopt a formal training program for staff and commissioners that includes duties under both Chapters 9 and 92, HRS;

Regarding the Works of Art Special Fund,

- d. Evaluate and document whether there is a need to propose legislative changes that address enforcement of requirements under Section 103-8.5 (*Works of Art Special Fund*), HRS, which may include penalties for non-compliance and requirements for agencies to develop and implement internal policies and procedures to ensure compliance;
- e. Develop and implement policies and procedures for monitoring compliance with Section 103-8.5, HRS. The foundation should also consider coordinating compliance monitoring efforts with the Department of Budget and Finance;
- f. Work with the Department of Accounting and General Services to resolve the issue of transfers into the Works of Art Special Fund that were disallowed due to faulty interpretation of the Works of Art Special Fund law and to identify and track amounts still due to the fund;

Regarding maximizing public access to the foundation's APP collection,

- g. Adopt procedures to better facilitate enforcement of the foundation's artwork rotation policy;
- h. Enforce the foundation's policy that all active display sites must have complete and accurate display site surveys on file prior to executing future or renewed artwork loan agreements;

Regarding protection of the foundation's digital assets,

- i. Include on the foundation's website all agreed-to notifications listed in its non-exclusive licenses, specifically:
 - i. A notification to users that the contents displayed may only be used for personal, educational, and non-commercial use;
 - ii. A notification to users that nothing may be reproduced without the permission of the foundation and the copyright holder;

- iii. An overall copyright notice;
 - j. Establish policies and procedures within the foundation's digital asset management plan regarding usage by both third parties and foundation staff; and
 - k. Establish policies and procedures that ensure active monitoring of the foundation's photographic material requests.
3. The Department of Accounting and General Services should:
- a. Develop and issue a new comptroller's memo that provides updated and more detailed guidance for complying with Section 103-8.5, HRS, and ensure all agencies are aware of the statutory requirements. Revisions to the memo should include:
 - i. Expanding and clarifying the guidance on which type of construction projects are subject to the 1 percent Works of Art Special Fund requirement. This should including a definition of "sitework" and guidance on how to interpret the term and identifying what is classified as sitework. It should also include defining the type of work that constitutes renovations, modernization, or other changes to an existing building;
 - ii. Add guidance on the treatment of appropriations subsequently reallocated between cost elements via allotment advices rather than legislative acts;
 - iii. Develop and implement new reporting requirements for agencies receiving construction appropriations to ensure that the foundation receives all information necessary for monitoring compliance with Works of Art Special Fund assessments;
 - iv. Add or revise DAGS' criteria and procedures as necessary to address any other common compliance issues that the Department of Budget and Finance has identified as part of its monitoring efforts;
 - b. Evaluate and document whether it is feasible to create automated controls in the state accounting system that require a management override in order to process capital improvement project allotment requests that do not include works of art assessments.

4. The Legislature may wish to consider amending Section 9-3(8) HRS, to require the foundation to annually report on its accomplishments in the context of goals and objectives.

Appendix A
SFCA Inventory Values by Category, as of December 31, 2013

	<u>O'ahu</u>	<u>Maui</u>	<u>Hawai'i</u>	<u>Kaua'i</u>	<u>Moloka'i</u>	<u>Lāna'i</u>	<u>Total</u>
Ceramics	\$1,953,092	\$249,669	\$186,051	\$187,914	\$9,342	\$0	\$2,586,068
Collage	204,462	6,240	17,787	3,400	10,010	0	241,899
Drawings	299,855	8,017	26,447	44,335	1,192	1,500	381,346
Paintings	7,262,714	137,501	392,451	197,569	31,887	3,592	8,025,714
Photographs	385,645	8,190	21,140	21,116	12,499	1,450	450,040
Prints	678,881	16,727	40,120	18,883	12,132	11,937	778,680
Sculpture	13,976,301	1,127,481	2,278,412	1,167,185	125,171	32,520	18,707,070
Textiles	<u>468,272</u>	<u>66,294</u>	<u>32,684</u>	<u>19,205</u>	<u>10,085</u>	<u>0</u>	<u>596,540</u>
Total	\$25,229,222	\$1,620,119	\$2,995,092	\$1,659,607	\$212,318	\$50,999	\$31,767,357

Source: Department of Accounting and General Services' Inventory of Property held by SFCA

This page is intentionally left blank.

Appendix B
 SFCA Chart of Expenditures, FY2011–FY2013

	FY2011	FY2012	FY2013
SFCA Administration			
Personnel	\$ 358,643	\$ 383,657	\$ 373,923
Operating	187,179	138,326	170,085
Total SFCA Administration	543,822	521,983	544,008
Grants Program			
State	692,425	812,647	1,638,440
National Endowment for the Arts	697,703	337,495	248,494
Department of Human Services–Temporary Assistance for Needy Families Grant	531,352	-	-
Total Grants Program	1,921,480	1,150,142	1,886,934
Art in Public Places			
Commissioned Works of Art	1,133,352	1,461,108	1,258,175
Relocatable Works of Art - Acquisitions and Exhibition Services	139,657	174,315	169,433
Commissions Conservation Services	133,487	9,658	2,400
Registration	92	18,045	12,907
Administration - Personnel	786,452	797,960	904,367
Administration - Operating	350,093	486,910	435,034
Gallery Operations	321,576	325,759	364,317
Total Art in Public Places	2,864,709	3,273,755	3,146,633
Designated Programs - Operations and Public Information	22,401	15,491	14,560
Private Contributions			
Hawai'i State Art Museum Facility Maintenance	7,007	22,682	8,213
IT/Photography for gifts to the APP collection	-	-	43,612
Scholarship Award	2,000	-	6,000
Events	2,873	1,724	831
Total Private Contributions	11,880	24,406	58,65
TOTAL EXPENSES	\$ 5,364,292	\$ 4,985,777	\$ 5,650,791
Grant and Art in Public Places Program Expenses as a % of Total Expenses	89%	89%	89%

Source: State Foundation on Culture and the Arts annual reports

This page is intentionally left blank.

Response of the Affected Agency

Comments on Agency Responses

We transmitted a draft of this report to the State Foundation on Culture and the Arts' (SFCA) commission chair and executive director, and to the Department of Transportation and the Department of Accounting and General Services (DAGS) on November 10, 2014. A copy of the transmittal letter to the chairperson is included as Attachment 1. We received responses from the chairperson, executive director, and DAGS, which are included as Attachments 2, 3, and 4, respectively.

Commission chair's response

The commission's chair said the commission appreciates the benefits of the audit and that it will wholeheartedly address areas needing improvement. The chair disagreed that the commission's strategic plan was adopted with little public input, noting that 4,000 online surveys were sent to residents and eight focus groups were held during the planning process. While such activities may have provided input prior to creating the strategic plan, our point was that there was a lack of documentation that the commission's Senate Concurrent Resolution (SCR) 57 report and its related proposed strategic plan were vetted in public meetings prior to their adoption.

The chair asserted that the commission does not need bylaws because it is a commission of volunteers attached to a state agency. We disagree. Best practices stipulate that all governing boards should have bylaws. Other attached boards and commissions such as the Office of Hawaiian Affairs and the Hawai'i Tourism Authority Board have bylaws. Furthermore, the commission previously developed and considered bylaws, indicating recognition of a need for them.

Regarding our Works of Art Special Fund findings, the chair stated that, adjusting for inflation, the special fund balance actually fell rather than rose over the review period. She also noted that art projects can take up to eight years to complete and are not bound by fiscal periods. The chair misses our point that the commission has not planned how to utilize its surplus arts funds.

The chair claimed, incorrectly, that our finding about a lack of regular budget and strategic planning discussions resulting in a flawed strategic plan was based on one interview with a former commissioner. As our report states, our finding is based on—among other things—reviews of commission agendas and minutes; various reports, including SCR57; the foundation's strategic plan; and interviews with the current commission chair herself, who acknowledged that the commission does not devote enough discussion to planning.

While the chair said the commission appreciates the demands for measurable outcomes, accountability, and specific evaluation strategies, she mistakenly stated that our report acknowledged finding objectives in the foundation’s strategic plan. We found no such objectives in the strategic plan; but, as we note in our report, the foundation’s Act 100 (SLH 1999) report did contain non-specific objectives.

In response to our finding that the commission has adopted an unrealistic strategic plan that disparages staff, the chair noted SCR 57—the basis of the plan—is the document that contained comments critical of staff and that it was unclear whether commissioners or members of a working group made the comments. The chair did not address the plan’s containing an unrealistic, anti-union recommendation to fill fundraising and marketing needs, which was our point.

The chair also asserted it was not the foundation that allowed an image from its collection to be altered and reproduced without the copyright holder’s written consent, but rather one person, acting alone and in violation of foundation policy, who authorized the misuse of a copyrighted image. While true, this fact is troubling because the single person was the former executive director of the foundation.

Executive director’s response

The SFCA’s executive director welcomed our report as a valuable planning tool. Regarding the foundation’s nearly \$3 million in unencumbered, surplus special funds, the executive director noted the Works of Art Special Fund is a non-lapsing fund with an appropriation ceiling of \$4 million each year and that if the SFCA expended the ceiling’s full amount, there would be a shortfall within a few years. The executive director misses our point that the lack of a plan for spending those funds undermines the foundation’s credibility if it seeks added resources and also exposes those moneys to legislative efforts to redirect unused special fund moneys to the general fund. Regardless of any statutory requirement to lapse moneys to the general fund, it is always within the Legislature’s purview to summarily return unused non-general fund moneys to the general fund.

DAGS’ response

DAGS stated that it and the SFCA have developed draft procedures and criteria for oversight of the 1 percent assessment under Section 103-8.4, Hawai’i Revised Statutes, but that it believes the Department of Budget and Finance (B&F) is primarily responsible for enforcement. DAGS said it will work with B&F to develop a process to ensure accurate accounting and compliance with the statute.

Accordingly, we stand by our findings but made minor technical changes for accuracy, clarity, and style prior to publication.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



JAN K. YAMANE
Acting State Auditor

(808) 587-0800
FAX: (808) 587-0830

November 10, 2014

COPY

The Honorable Barbara Saromines-Ganne
Chairperson
Hawaii State Foundation on Culture and
the Arts Board of Commissioners
250 South Hotel St., 2nd Floor
Honolulu, Hawaii 96813

Dear Ms. Saromines-Ganne:

Enclosed for your information are 8 copies, numbered 6 to 13, of our confidential draft report, *Audit of the Hawaii State Foundation Culture on the Arts*. We ask that you telephone us by Friday, November 14, 2014, on whether or not you intend to comment on our recommendations. Please distribute the copies to the members of the commission. If you wish your comments to be included in the report, please submit your hard copy response to our office no later than 4:30 p.m., Friday, November 21, 2014.

The Department of Transportation, and Department Accounting and General Services, the Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

for Jan K. Yamane
Acting State Auditor

Enclosures



Nov. 21, 2014

Jan Yamane
Auditor
State of Hawaii, Office of the Auditor
465 Capitol S. King Street, Room 500 96813-2917

RECORDED
2014 NOV 24 PM 12:31
OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Yamane:

The Hawaii State Foundation on Culture and the Arts (“the HSFCA Commission”) would like to put on record our concerns with respect to the tone, allegations and inaccuracies of its 2014 Audit. The State of Hawaii can rest assured to have confidence that the Board is aware of its role and what it can do to contribute to the functioning of the HSFCA based on the State’s mandate. The public also needs to have confidence that the auditors are presenting a report that is effective, balanced and useful.

The specific areas of concern that we will focus on include areas pertaining to the evaluation of the Board and performance of the staff. The Board will utilize Audit recommendations to assist us in establishing policy that can help the Executive Director to improve the fulfillment of the HSFCA mission through staff implementation. This is a necessary focus because many times in the audit the mandate repeats the need for the Commission to hold the staff accountable of proper performance measures.

Unfortunately, the content of the audit was at times inaccurate and the tone inappropriate especially towards the Board. Below please find three specific circumstances where we feel the role of auditor was exceeded and an uninformed and non-objective opinion of the auditor became a finding.

Unfair Assertions:

1. On page 13, it states that the Commission’s, “strategic plan was adopted with little public input,” but the Report on SCR57 says that:

The online survey sent to “4,000 Hawaii residents via HSFCA’s compiled database, allied arts agencies, and posting on other social media.” Also “Eight separate focus groups were scheduled for Arts Organizations, Artists, Arts Advocates, Arts Educators, and Native Hawaiian Arts Groups. Two focus groups met on the island of Oahu, two on the island of Maui and one each on the islands of Kauai and Hawaii.” In addition, “private interviews [were held] with digital artists, young artists, and artist work with the elderly”

Plus, representatives of aligned agencies comprised the SCR 57 Working Group whose “recommendations, research findings, constituent needs... drove the development of this Strategic Plan.

We believe the auditor in the field reached this conclusion by looking through the minutes of past meetings. And it is indeed true that discussions regarding the Strategic Plan were at times held during executive session. During our discussion of this point at meetings this week, it came to light that the auditor did not even see the strategic planning binder (an enormous tome complete with all surveys, public meetings, comments from advisory committee, etc) during his field work. His conclusion is based on incomplete and inaccurate information.

2. On page 12, it states that the Commission lacks bylaws and training to guide planning and policy.

As a state agency we would not have by-laws to guide in planning. The use of the word by-laws is inaccurate and misleading. We are not a separate non-profit but a commission of volunteers attached to a state agency. We also participate in conferences and training as commission members. That said, we believe there is a need for a compilation and examination of current policies.

3. On page 12, in a sidebar headline: "Commission... adopt[ed] a strategy that does not account for accumulated arts funds." The paragraph that this headline references says that the plan "fails to address accumulated surplus arts funds." To suggest in the headline that this is an accounting failure is sensationalistic and inaccurate.

In fact, the SP says that "Commissioners will determine how to best optimize this fund to suit current and future needs and, if necessary, seek statute revisions to extend its scope." Further, there is a failure to understand the nature of the "accumulated arts funds," how this balance differs from an unspent appropriation, and why fiscal prudence demands that a balance be maintained.

4. On page 13, "the Works of Art Special Fund balance rose from \$4.54 million in 1997 to \$4.78 million in 2013. If these numbers were adjusted for inflation, they would show a 30% decline in the balance.

5. On page 14, "the report also contains remarks that disparage the foundations unionized staff." This is more accurate than the statement on page 12 that the Strategic Plan contains disparaging remarks. See remarks above regarding statements made in a SWOT analysis

The arts fund monies fund projects that are not bound by fiscal periods. We often have projects that can take 5-8 years to complete, from concept to execution. As a commission we discuss this fund at every meeting, and because of the rolling nature of our projects, we cannot treat it as something that must be expended by June 30 of each year. That said, we do believe that a written explanation with project timelines attached might be useful for a greater public understanding of this fund and its use.

6. On page 16, the allegation based on one interview from a former Commissioner in the summary that, "Everybody is interested in art and that's the most fun part, rather than getting into the budget, policy and strategic planning type of things," became the basis of a conclusion on the same page (16) that the commission "failed to address organizational issues or account for spending surplus special fund revenue."

This is a complex and extended process that involves various department reports. This quote is unrelated to the issues raised. Artifacts and quotes from the heads of these various departments should be the data source to understand and resolve the issues.

Yet, the conclusion is based on one Commissioner's viewpoint without accounting for the many committee meetings many other Commissioners attend to process grants and appropriations.

7. On page 18, one of the findings states from ACT 100, SLH 1999 that, "The plan does not contain objectives, but has 25 strategies for implementing goals." Yet on page 19, the findings contradicts itself when it states, that the "foundation's Act 100 report did contain objectives; however they often set a low bar for gauging success."

The commission appreciates the demands for measurable outcomes, accountability and specific evaluation strategies. Without the objectives based on the mission, there will be no programs to evaluate. A revision of these statements will positively direct the efforts of the Commission towards the formulation of measuring tools and policy.

8. On page 12: "the commission has adopted an unrealistic strategic plan that disparages staff"

The strategic plan does not disparage the staff. The SP, in Strategic Priority #5 says, "Deepen staff engagement to maximize productivity. Break down interdepartmental silos to increase knowledge sharing and cooperation." Comments critical of the staff occur in the report on SCR-57 in the context of a SWOT analysis, but it isn't clear whether the participants in the SWOT analysis were commissioners or members of the Working Group. In any case, the nature of the SWOT analysis is that people in a brainstorming session throw out ideas and perceptions, sometimes even ideas that they've heard but may not hold themselves. To state that anonymous statements in a SWOT analysis are a part of the strategic plan is simply untrue. On p. 8, the report on SCR-57 also says, "HSFCA staff members are highly skilled, experienced professionals with a long history of dedicated service to the people of Hawaii." Is the auditor really recommending that a list of statements made during a SWOT analysis be "cleansed" of any statements that might offend someone?

9. On page 36, "the foundation has allowed the reproduction and alteration of an image from its collection in connection with commercial activity without the copyright holder's prior written consent." The foundation did NOT allow this. One person, acting alone and in violation of foundation policy, authorized the misuse of a copyrighted image. The person lost her job, even though it is not clear that she knew that the image from the collection. To blame the foundation for this failure is to ignore the DAGS investigation and is grossly unfair. On page 38, "Although this matter is outside the scope of this audit, we mention this event because it highlights the need for clear policies and procedures." As the DAGS investigation concluded, this incident occurred because someone with executive authority chose to ignore policies and procedures, not because of the lack of them. Since the conclusion the auditor draws from this incident is erroneous and because, as the auditor states, the matter is outside of the scope of this audit, all references to this incident should be deleted.

As a Board of Commissioners, we work to uphold the mission of the HSFCA is to promote, perpetuate, preserve and encourage culture and the arts, history and the humanities as central to the quality of life of the people of Hawai'i. While we understand that the purpose of the Audit is to expose deficiencies which the agency has and/or is undergoing, we believe that such reporting should be weighed against what has been accomplished as well. For example, recent success in

advancing the HSFCA mission in its programs such as the Art in Public Places, Folk Arts, Grants and Artist in the Schools should have been accounted for as well. The public deserves to know what is working in addition to what may not be.

Since September 2014, the complexion of our Board has changed significantly, four of eight members are new and our new Executive Director has only been in place for less than one year. With this new energy and expertise, we are confident that the range of valid concerns raised by the Audit will be addressed immediately.

Response to Recommendations

The State Foundation on Culture and the Arts Commission should:

a. Adopt a strategic plan that:

- i. Conforms to Act 100, SLH 1999, requirements by including targeted, measurable objectives;

We agree that the current plan needs to be re-worked to include specific, timed objectives.

- ii. Contains action plans for each objective detailing how, when, and by whom each objective will be achieved;

Agree.

- iii. Accounts for organizational changes needed to ensure fulfillment of all mandated duties and maximizes special fund revenues, and;

We agree we must insure that all duties of the commission and foundation must be met for the greater public good. We do plan to implement a more structured series of policies for our work.

- iv. Utilizes surplus Works of Art Special Fund moneys.

As discussed above, the special fund is a unique construct within the state and we will work to make the process and timing by which those funds are utilized more transparent to the legislature, the accounting office, and the larger public.

- b. Evaluate and document whether Section 103-8.5, HRS, needs to be amended to allow for broader use of the Works and Special Art Fund;

This is an ongoing discussion at the commission. We will continue to document that discussion and those recommendations.

- c. Evaluate and document whether Chapter 9 (Foundation on Culture and the Arts), HRS, needs updating; and if so, propose legislative changes, if appropriate. This should include seeking to eliminate statutory duties that are no longer performed;

Agree.

d. Ensure that its decisions and actions are publically advertised, openly conducted, and properly documented in conformance with the sunshine law, Chapter 92 (Public Agency Meetings and Records) HRS;

Agree. The commission has been working very hard with the staff of the HSFCA to insure that we are indeed meeting legal requirements of The Sunshine Law and appreciate the auditors encouragement on this topic.

e. Utilize its Planning and Budget Committee as a resource to regularly discuss and propose planning and budgeting policies and actions by ensuring the committee holds regular meetings, and by tasking the committee with responsibility for developing the foundation's strategic plan and matters related to its effective implementation.

We have added two new commissioners to the Planning and Budgeting Committee and have most recently discussed monthly committee meetings across the commission so we can continue to craft and refine our policies for all of our work.

f. Adopt bylaws and a handbook of policy decisions;

We agree that we must compile a list of current policies, make adjustments and additions and then use that newly created document as a road-map for future decision making. We do not agree and therefore need clarification on the need to adopt a set of By Laws as we are a commission attached to a state agency.

g. Adopt and implement policies to ensure that the foundation is accountable for program performance and achievement of strategic goals; and

Agree.

h. Amend its written policy to specify the maximum period that a state agency can retain relocatable artwork for display

We agree and a rework of this policy is already in process.

In summary, we appreciate the benefits of the audit on the HSFCA. We will wholeheartedly address and have already begun to address areas that have been identified as needing improvement.

From our standpoint, the Board will not cease to pursue ways to build a strong art foundation using all efforts from all agencies concerned to propel the Hawaii State Foundation on Culture and the Arts.

Respectfully Submitted,



Barbara Saromines-Ganne
Chair, Hawaii State Foundation on Culture and the Arts



HAWAII
STATE FOUNDATION on
CULTURE and the ARTS

No. 1 Capitol District Building
250 South Hotel Street
Second Floor
Honolulu, HI 96813

Governor
Neil Abercrombie

Comptroller
Dean H. Seki

Chairperson
Barbara Saromines-Ganne

Commissioners
Rai Saint Chu
Joel Guy
Michael Moore
Dean Sakamoto
Karen Tiller Polivka
Sherman Warner
Eva R. Washburn-Repollo

Executive Director
Jonathan Johnson

Telephone
808.586.0300

Fax
808.586.0308

Website
www.hawaii.gov/sfca

November 21, 2014

Jan K. Yamane, Acting State Auditor
State of Hawai'i
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawai'i 96813-2917

2014 NOV 25 AM 8:25

OFFICE OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Yamane,

Thank you for giving me and the staff of the State Foundation on Culture and the Arts the opportunity to review and comment on the preliminary draft for the *Audit of the Hawai'i State Foundation on Culture and the Arts*. We welcome the report as a valuable planning tool to assist in moving the agency forward in pursuit of our mission.

Overall, we appreciate the fresh look at the operations of the State Foundation on Culture and the Arts. We would like to thank your courteous staff for working in an efficient and always friendly manner. We look forward to continuing to fulfill the promise of the Foundation, *To promote, perpetuate, preserve and encourage culture and the arts as central to the quality of life of the people of Hawai'i.*

In order to focus on the constructive elements outlined, my comments concentrate on the recommendations made in the audit.

Sincerely,

Jonathan Johnson
Executive Director

Enclosure

**Response from the State Foundation on Culture and the Arts to the State
Legislative Auditor**

Regarding

Audit of the Hawai'i State Foundation on Culture on the Arts

I. SFCA's response to the Recommendations:

2. The Foundation's Executive Director should:

Regarding the strategic management of the organization,

a. Propose to the commission recommendations to the Legislature for inclusion in the foundation's annual report that suggest foundation actions to promote and further culture, arts, history, and the humanities;

Comments: Concur with reservations. Chapter 9, HRS. suggests using the annual report to convey recommendations to the Governor. In view of SFCA's administrative attachment to DAGS and governance through a policy-making Commission, previous administrators have chosen to propose recommendations to the administration through DAGS and the Commission.

b. Develop and implement procedures to ensure that strategic plan progress reports include performance measures that are based on objectives provided by commissioners, and are in keeping with Act 100, SLH 1999, and best practices;

Comments: Concur. We are addressing the addition of action steps and performance measures for our current strategic plan. In order to engage the community on a new strategic plan process the SFCA would require additional resources.

c. Adopt a formal training program for staff and commissioners that includes duties under both Chapters 9 and 92, HRS.

Comments: Concur.

Regarding Works of Art Special Fund:

d. Evaluate and document whether there is a need to propose legislative changes that address enforcement of requirements under Section 103-8.5, HRS, (*Works of Art Special Fund*), which may include penalties for non-compliance and requirements for agencies to develop and implement internal policies and procedures to ensure compliance;

Comments: Concur.

e. Develop and implement policies and procedures for monitoring compliance with Section 103-8.5, HRS. The foundation should also consider compliance monitoring efforts with the Department of Budget and Finance;

Comments: Concur. The SFCA has begun developing procedures for monitoring compliance in consultation with Department of Accounting and General Services, the Department of Budget and Finance and the Department of the Attorney General. To effect compliance monitoring, additional staff resources will be needed.

f. Work with the Department of Accounting and General Services to resolve the issue of transfers into the Works of Art Special Fund that were disallowed due to faulty interpretation of the Works of Art Special Fund law and to identify and track amounts still due to the fund;

Comments: Concur. The SFCA has identified amounts disallowed under the previous administration and has requested assistance from DAGS in securing the funds owed.

Regarding maximizing public access to the foundation's APP collection,

g. Adopt procedures to better facilitate enforcement of the foundation's artwork rotation policy.

Comments: Concur.

h. Enforce the foundation's policy that all active display sites must have complete and accurate display site surveys on file prior to executing future or renewed artwork loan agreements.

Comments: Concur.

Regarding protection of the foundation's digital assets,

i. Include on the foundation's website all agreed-to notifications listed in its non-exclusive licenses:

- i. A notification to users that the contents displayed may only be used for personal, educational, and non-commercial use.

Comments: Concur.

- ii. A notification to users that nothing may be reproduced without the permission of the foundation and the copyright holder.

Comments: Concur.

- iii. An overall copyright notice.

Comments: Concur.

j. Establish policies and procedures within the foundation's digital asset management plan regarding usage by both third parties and foundation staff.

Comments: Concur. The SFCA is developing a Digital Asset Management Plan to address how the digital assets are stored, how they are accessed and what is required to manage them. Creating the Digital Asset Management Plan will require outside expertise.

k. Establish policies and procedures that ensure active monitoring of the foundations photographic material requests.

Comments: Concur

II. Factual Clarifications

There are some statements in the audit with which the SFCA wishes to comment on or clarify for accuracy. The page numbers refer to the Draft Report.

Page 6: *Special Fund, which provides more than \$4 million each year...*

Clarification: The Works of Art Special Fund currently receives on the average actual cash of \$2.8 million per fiscal year. The \$4 million amount mentioned is the appropriation ceiling, not the revenue.

Page 10: *No audit in FY 2011-FY2013*

Clarification: We perform single line audits every year for Federal, General and Special funds as part of the CAFAR financial audit conducted every year.

Page 11, 16: *Lack of regular Planning & Budget discussions*

Clarification: Prior to FY2012-2013, Planning and Budget meetings were held regularly 3-4 times per year.

Page 13. *We found the commission has not decided what to do with nearly \$3 million in unencumbered, surplus special funds...*

Correction: The Works of Art Special Fund is a non-lapsing fund with an appropriation ceiling of \$4 million each year. Revenue from CIP appropriations are deposited into the Works of Art Special Fund on the average of \$2.8 million each year. If the SFCA was to expend the full amount of the ceiling, there would be a shortfall within a few years. Contributions to the Works of Art Special Fund is based on actual construction appropriations, not the legislative appropriation ceiling.

The commission approves an operational expenditure plan each fiscal year, not to exceed the appropriation ceiling. The SFCA monitors expenditures and the Works of Art Special Fund balance to “ensure that public resources are spent in an effective and efficient manner.”

Page 20: *Staff did not prepare such reports for FY 12 or FY13...the foundation lacks a basis for such reporting because it did not require programs to report...*

Clarification: Reporting on strategic goal implementation was not required in FY 12 and 13 per ED’s decision. Staff do report outcomes, provide staff reports, and share evaluations from participants. Strategic plan benchmarking was conducted for the past decade for our two immediate past plans and is documented.

Page 21: *December 2013 variance report not provided to Commission by staff; variance reports do not reflect outcomes*

Clarification: Reports are shared with the Commission at the discretion of the Committee Chair and Executive Director. We agree with recommendation to develop a tool to report project outcomes.

Page 35: *The foundation has not held a Neighbor Island exhibit of its growing art collection since 2009*

Clarification: We intend to travel exhibits in FY 2015 and FY 2016. Plans are being developed to include an educational component with exhibits for neighbor island schools.

Page 36: *Foundation allowed reproduction and alteration of an image from its collection ...without copyright holder’s prior written consent.*

Clarification: Per the DAGS internal audit division investigation, this situation was attributed to management override, not to lack of adequate policy.

NEIL ABERCROMBIE
GOVERNOR



Dean H. Seki
Comptroller
Maria E. Zielinski
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

November 19, 2014

RECEIVED
2014 NOV 21 AM 8:37
OFF. OF THE COMPTROLLER
STATE OF HAWAII

Ms. Jan Yamane
Acting State Auditor
Kekūanāo‘a Building
465 S. King St., Rm. 500
Honolulu, HI 96813-2917

Dear Ms. Yamane:

We appreciate the opportunity to respond to your draft report entitled, *Audit of the Hawaii State Foundation on Culture and the Arts* which was provided on November 10, 2014. We have reviewed the draft report and offer the following comments in response to your *Recommendations* as they relate to the Department of Accounting and General Services.

While the Department of Accounting and General Services (DAGS) and the Executive Director of the State Foundation on Culture and the Arts have discussed and developed recommended draft procedures and criteria (as well as a draft Comptroller’s Memorandum) for the oversight of the 1% assessment under HRS Section 103-8.5, we believe that the Department of Budget and Finance (B&F) serves as the gatekeeper to ensure enforcement – not DAGS. We have and will continue to work with B & F and the Attorney General’s office to develop and determine a process which ensures an accurate accounting and compliance with State statute.

We appreciate the opportunity to review and comment on your draft report. If you have any questions, please contact me at 586-0400.

Very truly yours,

Maria E. Zielinski
Deputy Comptroller

Cc: Jonathan Johnson
State Foundation on Culture and Arts