
Progress, But Transparency Issues Persist: Follow-Up on Recommendations Made in Report No. 12-03, Management Audit of the Natural Energy Laboratory of Hawai'i

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

Report No. 15-04
May 2015



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 HAWAII

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

**The authority's
contribution to
Hawai'i's economy
increased by 40 percent
from \$87.7 million in
2010 to \$122.8 million
in 2013**

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Progress, But Transparency Issues Persist: Follow-Up on Recommendations Made in Report No. 12-03, *Management Audit of the Natural Energy Laboratory of Hawai'i* Report No. 15-04, May 2015

The 2008 Legislature amended the Auditor's governing statute to require follow-up reporting on recommendations made in various audit reports to ensure agency accountability over audit recommendations. The purpose of this change was to apprise the Legislature annually of recommendations not implemented by audited agencies, and to require such agencies to submit a written report not later than 30 days after issuance of our report explaining why the recommendation was not implemented and the estimated date of its implementation.

NELHA continues to develop and diversify the Hawai'i economy but transparency issues remain

Our review focused on NELHA's implementation of 28 audit recommendations made in Report No. 12-03, *Management Audit of the Natural Energy Laboratory of Hawai'i*. This report details each recommendation, its status, and actions taken related to the recommendation. We deemed 17 recommendations closed (61 percent), five open (18 percent), three open but in progress (11 percent), and two no longer applicable (7 percent). One recommendation was made to the Legislature and was not assessed.

New plans, old issues

In 2012, we found that after nearly 40 years of existence, NELHA had yet to live up to its creators' vision. The many shifts in its purpose and focus had the agency struggling to clearly articulate its mission and objectives. The authority was lacking in mission-critical plans and policies such as a master plan, financial plan, and administrative rules; and its policies and procedures manual was seriously out of date. We also found that the authority's board suffered from high turnover and a lack of training. In addition, tenant representatives' voting on items related to rate setting appeared questionable.

We also found the authority continued to struggle with the Sunshine Law. Timely access to minutes was not consistent, and there were problems with both the use and documentation of executive sessions. In addition, we found a number of operational issues. The authority's performance reporting was inadequate; its website was outdated and incomplete; lease rent rates were not uniform; the transparency of seawater pumping rates had improved, but controls on calculations were lacking; and internal fiscal controls were needed.

Our follow-up review found that NELHA has since adopted a master plan, revised its strategic plan, and updated its distributed energy resources strategy. These plans are guiding the authority towards developing the Hawai'i Ocean Science Technology Park's infrastructure for clean energy technology business and investment. We also noted that NELHA has achieved its fourth consecutive year of operational self-sustainability, and the authority's contribution to Hawai'i's economy increased by 40 percent, from \$87.7 million in 2010 to \$122.8 million in 2013. The authority has also updated its Project Initiation Packet for prospective tenants, and implemented a leasing policy as well as a seawater rate analysis methodology. Finally, minutes we reviewed indicate the authority has made significant improvement in its compliance with Sunshine Law requirements.

However, some issues raised in our 2012 audit remain. NELHA has yet to adopt administrative rules, which are necessary for the authority to lawfully carry out and enforce its policies and programs. The authority has still not updated its 1998 policies and procedures manual. In addition, the two tenant representatives on the board have continued to vote on items affecting lease rents and water rates, which may be in violation of statute and the State Ethics Code. NELHA's executive director told us he intends to work on these documents in the coming months.

**Progress, But Transparency
Issues Persist: Follow-Up on
Recommendations Made in
Report No. 12-03, *Management
Audit of the Natural Energy
Laboratory of Hawai'i***

A Report to the
Governor
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the State of
Hawai'i

Submitted by

THE AUDITOR
STATE OF HAWAI'I

Report No. 15-04
May 2015

Foreword

This is a report on our follow-up review of the recommendations we made to the Natural Energy Laboratory of Hawai‘i (NELHA) in Report No. 12-03, *Management Audit of the Natural Energy Laboratory of Hawai‘i*, released in May 2012. We conducted our work pursuant to Section 23-7.5, Hawai‘i Revised Statutes, which requires the Auditor to report to the Legislature on each recommendation the Auditor has made that is more than one year old and has not been implemented by the audited agency. We wish to express our appreciation for the cooperation and assistance extended to us by NELHA’s management, its board chair, and others whom we contacted during the course of our review.

Jan K. Yamane
Acting State Auditor

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Chapter 1

Introduction

To ensure agency accountability over audit recommendations, the 2008 Legislature amended the Auditor's governing statute to require follow-up reporting on recommendations made in various audit reports. The purpose of this change was to apprise the Legislature of recommendations not implemented by audited agencies. Section 23-7.5, Hawai'i Revised Statutes (HRS), now requires the Auditor to report to the Legislature annually on each audit recommendation more than one year old that has not been implemented by the audited agency.

Legislative Request

The 2008 Legislature intended to provide itself greater oversight over the implementation of audit recommendations. Act 36, Session Laws of Hawai'i (SLH) 2008, was modeled after a 2006 California law that enabled legislators to use agencies' claims of progress against audit recommendations in their budget discussions.

The Hawai'i Legislature asked the Auditor to report annually, for each unimplemented recommendation: (1) the agency that was audited; (2) the title and number of the audit report containing the recommendation; (3) a brief description of the recommendation; (4) the date the audit report was issued; and (5) the most recent explanation provided by the agency regarding the status of the recommendation.

In addition, agencies notified by the Auditor that a recommendation is considered not implemented must submit a written report to the Auditor, the Senate president, and the speaker of the House of Representatives within 30 days of being notified by the Auditor. The report must also include an explanation of why the recommendation was not implemented and an estimated date of when it will be implemented.

Objectives of the Review

1. Validate the claims made by agencies regarding implemented audit recommendations.
2. Report to the Legislature on audit recommendations not yet implemented.

Criteria

We relied on Chapter 23, *Auditor*, HRS; *GAO-07-731G Government Auditing Standards*, U.S. Government Accountability Office (GAO), December 2011 Revision; and *How to Get Action on Audit Recommendations*, U.S. General Accounting Office, July 1991, in the conduct of our review.

The GAO's criteria are especially useful for our purposes, since GAO also reports on the status of recommendations not fully implemented. GAO's reports are intended to "help congressional and agency leaders determine the actions necessary to implement the open recommendations so that desired improvements to government operations can be achieved." In particular, GAO reports on whether:

- Monitoring and follow-up are done by staff members responsible for, and knowledgeable about, the recommendation;
- Each recommendation is followed up on an ongoing basis, with at least semi-annual updates, and an individual recommendation follow-up plan is developed for each assignment; and
- Results intended by each recommendation and benefits expected from its implementation are defined as a basis for determining the adequacy of implementation.

Scope and Methodology

We based our scope and methodology on GAO's guidelines in *How to Get Action on Audit Recommendations* (1991). According to GAO, saving tax dollars, improving programs and operations, and providing better service to the public represent audit work's "bottom line." Recommendations are the vehicles by which these objectives are sought. However, it is action on recommendations—not the recommendations themselves—that helps government work better at less cost. Effective follow-up is essential to realizing the full benefits of audit work.

Our review, conducted between December 2014 and March 2015, focused on the Natural Energy Laboratory of Hawai'i Authority's implementation of our recommendations in Report No. 12-03, *Management Audit of the Natural Energy Laboratory of Hawai'i Authority*, which we issued in May 2012. We followed standard office procedures for conducting reviews pursuant to the Office of the Auditor's *Manual of Guides* and generally accepted government auditing standards. Those standards require that we plan and perform our work to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our objectives. We believe

the evidence we obtained provides a reasonable basis for our conclusions based on our review objectives.

Determining progress

The rate of progress of a recommendation's implementation depends on the type of recommendation. While some fall fully within the purview of an audited agency and can be addressed relatively quickly, others may deal with complex problems and involve multiple agencies, resulting in a long implementation period. Therefore, ample time should be afforded to agencies implementing recommendations in order for a follow-up system to be useful and relevant. In addition, GAO has found that action on recommendations usually occurs within the first three years. After that time, few recommendations are implemented.

With those observations in mind, we have determined an active follow-up effort is most effective and relevant if conducted three years after publication of an initial audit report. Too short an interval between audit report and follow-up might not give agencies enough time to implement a complex recommendation; too long might allow agencies to lose valuable personnel and institutional knowledge needed to conduct an adequate follow-up.

This review included interviews with selected administrators, managers, and staff from the authority. We examined the authority's policies, procedures, records, and relevant documents to assess and evaluate whether its actions adequately fulfilled our recommendations. Our efforts were limited to the inquiry, testing, and reporting on implementation of recommendations made in Report No. 12-03. We did not explore new issues or revisit old ones that did not relate to our original recommendations.

Identifying key recommendations

The extent of work done to verify implementation depends on the significance of individual recommendations. For instance, GAO notes that while all audit recommendations should be aggressively pursued, some are so significant that added steps are needed to implement them. The significance of a recommendation depends on its subject matter and the specific situation to which it applies. Significance can be addressed in terms of dollars; however, dollars are only one measure, and not necessarily the most important one. For instance, recommendations to ensure safe operations often take precedence, since their implementation could prevent the loss of life, substantial bodily injury, or environmental contamination.

Closing recommendations

In accordance with GAO guidelines, we consider recommendations “closed” for the following reasons:

- The recommendation was effectively implemented;
- An alternative action was taken that achieved the intended results;
- Circumstances have so changed that the recommendation is no longer valid; or
- The recommendation was not implemented despite the use of all feasible strategies.

While these and other guidelines provide the basic ground rules for our review efforts, we recognize that effective follow-up needs to be tailored to particular recommendations and the results they seek.

Definition of terms

Closed: Recommendation has been addressed and implemented.

Open: Work on the recommendation has not started or cannot start because a precursor event has not occurred.

Open but in progress: Agency has taken action, but implementation of the recommendation is not complete.

Open and likely not to be pursued: Agency has no intention of pursuing implementation of the recommendation.

Not applicable: Recommendation is no longer applicable.

Did not assess: Did not assess recommendation implementation.

Summary of recommendations

Of the 28 recommendations in Report No. 12-03, 17 were deemed closed (61 percent), five were open (18 percent), three were open but in progress (11 percent), two were no longer applicable (7 percent), and one was not assessed (3 percent). This report details each recommendation, its status, and actions taken related to the recommendation. Exhibit 1.1 shows the status of the 28 recommendations.

Exhibit 1.1
Status of Recommendations in Report No. 12-03,
Management Audit of the Natural Energy Laboratory
of Hawai'i Authority

Status of Recommendation	No. of Recommendations	Percent of Total
Closed	17	61%
Open	5	18%
Open but in progress	3	11%
Open and not likely to be pursued	0	0%
Not applicable	2	7%
Did not assess	1	3%
Total	28	100%

Source: Office of the Auditor

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Chapter 2

NELHA Continues to Progress Toward Meeting Its Mission but Transparency Issues Persist

We released Report No. 12-03, *Management Audit of the Natural Energy Laboratory of Hawai‘i Authority* (NELHA), in May 2012. Our audit focused on the authority’s management practices and controls as well as its compliance with state and federal laws, rules, and regulations. We found that after nearly 40 years of existence, NELHA had yet to live up to its creators’ vision. The many shifts in its purpose and focus had the authority struggling to clearly articulate its mission and objectives. The authority was lacking in mission-critical plans and policies, and its board continued to elude compliance with ethics and sunshine laws.

As of fiscal year 2013, NELHA has achieved its fourth consecutive year of operational self-sufficiency. In addition, a recent economic impact report noted that the authority’s contribution to Hawai‘i’s economy surged by 40 percent, from \$87.7 million in 2010 to \$122.8 million in 2013. NELHA has also adopted a master plan, revised its strategic plan, and updated its distributed energy resources strategy. These plans have guided the authority towards developing the Hawai‘i Ocean Science Technology (HOST) Park’s infrastructure for incubation of research projects as part of an integrated test-bed for clean energy technology business and investment. The authority has also updated its Project Initiation Packet (PIP) for prospective tenants, leasing policy, and seawater rate analysis and methodology, all of which are posted on the NELHA website.

However, our follow-up review also found that some issues raised in our 2012 audit remain unaddressed. NELHA has yet to work on its administrative rules, which are necessary for the authority to lawfully carry out and enforce its policies and programs. In addition, the two tenant representatives on the board have continued to vote on items affecting lease rents and water rates, which may be in violation of NELHA’s statute and the State Ethics Code.

Background

Our 2012 audit was prompted in large part by the Legislature’s concerns about the authority’s lack of accountability in setting seawater rates. The Legislature asked the Auditor to conduct a program, performance, and financial audit of NELHA that included its general operations; compliance with Chapter 92, Hawai‘i Revised Statutes (HRS) (known as the “Sunshine Law”); development and implementation of comprehensive plans to secure funding from both federal and private

sources to sustain fiscal viability; and its internal budgeting and fiscal controls to ensure effective and appropriate expenditures of both legislative appropriations and federal funds.

NELHA's purpose was clouded by transparency and accountability issues

In 2012, we found the authority was lacking in mission-critical plans and policies such as a master plan, financial plan, and administrative rules; and its policies and procedures manual was seriously out of date. We also found that the authority's board suffered from high turnover and a lack of training. In addition, tenant representatives had been voting on items related to rate setting, which may have been in violation of both NELHA's statute and the State Ethics Code.

We also found the authority was struggling with Sunshine Law requirements. Timely access to minutes was not consistent, and there were problems with both the use and documentation of executive sessions.

In addition, we found a number of operational issues. The authority's performance reporting was inadequate; its website was outdated and incomplete; lease rent rates were not uniform; the transparency of seawater pumping rates had improved but controls on calculations were lacking; and internal fiscal controls were needed.

NELHA was making progress under new management

Despite the many issues it faced, in 2012, we found the authority had been making progress under new management. Marketing, tenant relations, and alternative revenue streams were being addressed. Self-sufficiency had been reached for operations, but the authority was still reliant on State funding for capital improvement projects. In addition, critical issues such as a new frontage road and fresh water allocation needed to be addressed in order for the authority to move forward.

Status of Recommendations

Report No. 12-03 included 28 recommendations to the chair of the NELHA Board of Directors, the executive director, tenant representatives to the board, and the Legislature. We found steps have been taken to implement 20 of these recommendations (72 percent).

Planning and operations continue to improve but NELHA still lacks essential administrative rules

In 2012, we made several recommendations to the board and executive director to adopt administrative rules and update NELHA's policies and procedures. Adopting administrative rules is necessary for the authority to effectively implement its statutory powers. Updated policies and procedures are needed to carry out administrative rules. Without administrative rules in place, the authority's recently completed PIP,

leasing policy, and seawater rate analysis may be subject to nullification or possible legal challenge. In our follow-up review, the executive director acknowledged that nothing has been done on the administrative rules, and NELHA's policies and procedures manual has not been updated since our 2012 audit. We find this troubling because at the conclusion of the 2012 audit, the authority said it intended to adopt administrative rules. However, the executive director now says that he will devote time in the coming months to drafting administrative rules and updating the policies and procedures manual. Since action has yet to be taken, we deem Recommendation Nos. 5, 12, and 13 **Open**.

In an effort toward achieving greater transparency, we recommended that the board establish a uniform land-rate structure based on a Dilmore curve and make it available to relevant stakeholders. On November 20, 2012, the board approved a new leasing policy based on a 90 percent Dilmore curve adjustment to land valuations. The leasing policy, which is posted on NELHA's website, provides an upward adjustment of the rental rate for smaller properties and a downward adjustment for larger properties. Therefore, we deem Recommendation Nos. 6 and 20 **Closed**.

We made two recommendations concerning capital improvement plans to allow for future expansion of the HOST Park. As we recommended, NELHA secured \$9.7 million in funding from the 2013 Legislature to widen Queen Ka'ahumanu Highway and build a new access road. The NELHA executive director stated that construction is scheduled to start shortly, pending sign-off on a Memorandum of Understanding by all parties to the agreement. Therefore, we deem Recommendation No. 8 **Closed**.

In 2014, the Legislature awarded NELHA \$2.5 million in funding for the exploratory phase of a new potable water well project, the purpose of which is to ensure current and future tenants have continued access to fresh water. NELHA is seeking to leverage this funding by partnering with the Hawai'i Housing, Finance, and Development Corporation (HHFDC) to share in development costs and the resultant available water. On September 26, 2014, NELHA held an information gathering and planning meeting with the County of Hawai'i Department of Water Supply and other stakeholders. The next steps are for NELHA and HHFDC to review well production capacities and planned water usage and negotiate the terms of the partnering agreement. Therefore, we deem Recommendation No. 9 **Open but in progress**.

We also recommended that NELHA staff who participate in procurement activities undergo required training and that NELHA develop a detailed plan of action to prevent procurement violations. The authority has since developed a comprehensive training program, which includes

staff procurement position levels, mandatory and recommended State Procurement Office workshops, training completion dates, and repeat training intervals. Therefore, we deem Recommendation No. 10 **Closed**.

We also recommended that NELHA follow through with its published plans to create a strategic business and financial plan. During our follow-up, we noted that NELHA has indeed adopted a master plan, revised its strategic plan, updated its distributed energy resources strategy, and developed a long-term vision plan. The renewed focus is for NELHA to maintain its seawater system, provide infrastructure for incubation of research projects, and grow its existing micro-grid by adding additional power generation and storage. In late 2014, NELHA started constructing a new \$4.5 million incubator/accelerator office building on its research campus. The new building will provide office space for up to 17 new businesses and is scheduled to be completed in Fall 2015. Exhibits 2.1, 2.2, and 2.3 show the current administration building, the new building under construction, and an architect's rendering of the completed new building.

Exhibit 2.1
Photo of Old Administration Building



Source: NELHA

Exhibit 2.2
Photo of Incubator Building Under Construction



Source: NELHA

Exhibit 2.3
Architect's Rendering of Incubator Building



Source: NELHA

Although NELHA's Master Plan includes conceptual financial plans, the authority has not been able to complete a financial plan that includes a set of matrices and milestones, including the cost of maintaining and replacing existing infrastructure, planned infrastructure development, organizational changes, and projected occupancy. Therefore, we deem Recommendation No. 11 **Open but in progress**.

We recommended that the authority update its Project Initiation Packet, which had last been revised in 2008. In August 2013, NELHA updated its PIP and made it available to prospective tenants via the NELHA website. The rates for land use and support services, which were approved on November 20, 2012, are still in effect. Therefore, we deem Recommendation No. 14 **Closed**.

We recommended that the authority adopt and report meaningful key performance metrics in its annual reports to allow the public and stakeholders to assess program impact and effectiveness. Our review of NELHA's *2013 Annual Report* and discussions with NELHA management confirmed that the report has been greatly expanded to include key accomplishment details. In addition to its annual report, NELHA also posts the economic impact studies conducted by the University of Hawai'i Economic Research Organization (UHERO) on its website. Therefore, we deem Recommendation No. 17 **Closed**.

During our 2012 audit, we found that NELHA had been using the same economic impact analysis numbers in its publications since 2000 and recommended that the authority update this information. The authority subsequently contracted UHERO to conduct updated economic impact reports, which are posted on the NELHA website. The 2013 analysis found that NELHA's economic impact on the Hawai'i economy grew by 40 percent, from \$87.7 million in 2010 to \$122.8 million in 2013. We deem Recommendation No. 18 **Closed**.

We also recommended that NELHA move forward with its plans to update its website to reflect increased land lease rents, seawater rates, and other information in order to improve transparency. Our follow-up found that the authority's website was completely overhauled in 2013 and now includes such information. Therefore, we deem Recommendation No. 19 **Closed**.

We made two recommendations regarding seawater rates, the subject of which prompted concerns of accountability and was the impetus for the 2012 audit. The first recommendation was to establish internal controls in seawater calculations, which were being manually compiled using Excel spreadsheets. We further recommended the conversion to a database for greater accuracy. Our follow-up found that the authority has been successfully testing a new Supervisory Control and Data Acquisition database, which will be fully implemented after several more months of testing. Since the authority has not yet completed its conversion to the database system, we deem Recommendation No. 21 **Open but in progress**.

Our second recommendation was that seawater rates be made publicly available. Our current review found that NELHA's 2012 Strategic Plan

added a new strategy of establishing a seawater rate structure that covers operational costs and provides for long-term maintenance requirements of the seawater distribution system. In 2014, NELHA initiated an analysis of seawater rates. The final seawater rate analysis, which is posted on NELHA's website, recommended no changes to the current rate structure. Therefore, we deem Recommendation No. 22 **Closed**.

Exhibit 2.4
Photo of Seawater Distribution System



Source: Friends of NELHA

We made a recommendation to the authority that because of its use of both Quickbooks and the State of Hawai'i's Financial Accounting Management and Information System (FAMIS) accounting system, reconciliations between the two should be routinely performed. However, we since learned that NELHA no longer uses Quickbooks and now relies solely on FAMIS/Datamart for financial reporting purposes. Therefore, we deem Recommendation No. 23 **Closed**.

We recommended that the authority continue implementing its stated plans to market and promote NELHA to prospective tenants. In our follow-up, we found the authority's administration has carried out its intentions to develop a strategy for identifying prospective projects and clients and has devised a marketing plan to target the demographics identified. In accordance with its *Distributed Energy Resources Strategy*

Update, NELHA is constructing a new incubator building (pictured in Exhibit 2.3), working on microgrid and energy storage projects, and forging ahead with partnerships to execute these energy plans. The focus of marketing efforts is clients in areas where NELHA has a competitive advantage especially in the area of alternative energy ventures. Therefore, we deem Recommendation No. 24 **Closed**.

Compliance with Sunshine Law has improved but conflict of interest issues remain

We recommended that the board chair ensure new board members are oriented to and trained on NELHA's statute; its roles, responsibilities and mission; the board's roles and responsibilities; and requirements of the Sunshine Law (Chapter 92, HRS). The authority has updated its new board member orientation guide to include board meeting minutes and Sunshine Law training. We also confirmed that new board members who were seated in 2013 received the orientation and training. Therefore, we deem Recommendation Nos. 1 and 2 **Closed**.

To encourage the board's compliance with Sunshine Law, we made several recommendations regarding recording board meetings and executive sessions. Our current review found that the authority has made significant improvement in this area. Staff members responsible for meeting minutes follow a guidance sheet from the Office of Information Practices. We found that recording of members present and excused, individual votes in non-unanimous actions, and the reason and statutory reference for executive sessions are now routinely reflected in board minutes. In addition, NELHA's deputy attorney general has attended all board meetings to advise on Sunshine Law matters. Therefore, we deem Recommendation Nos. 4, 15, and 16 **Closed**.

We also made two recommendations to ensure that tenant representatives recuse themselves from voting on setting lease rents, water rates, and utility rates. In our follow-up, we found that the two tenant representatives to the board have continued to vote on issues relating to leases, subleases, and water rates. Measures on which they voted included: a consent to mortgage a sublease; a consolidation of three properties into a single sublease; adjustments of fixed rental fees and subletting; a request to sublease an additional 14 acres; a one-year extension for discounted seawater rate; requiring a lessee to pay the normal rate until a seawater study is completed; extension of a sublease; and the approval of a lease. In Report No. 12-03, we cited Section 227D-2(b), HRS, which states that tenant members must be recused from voting on setting lease rents, water rates, or utility rates but may participate in discussions. The board chair told us this issue will be placed on the agenda for the next scheduled meeting. Because this issue has yet to be addressed, we deem Recommendation Nos. 3 and 27 **Open**.

Other sources of revenue have fallen through

We made several recommendations concerning the authority's pursuit of revenue-diversification projects, including "wheeling" (the sale of electricity), cell phone tower concessions, and the sale of gravel.

We recommended that NELHA seek clarification regarding its ability to sell electricity to tenants without being considered a public utility. Subsequent to our audit, the 2013 Legislature passed Act 261, which provides that landlords and lessors who install renewable energy systems on their property and provide, sell, or transmit electricity generated from those renewable energy systems to tenants or lessees on the premises are exempted from the definition of a public utility. According to NELHA's executive director, because the Kailua-Kona area is saturated with photovoltaic systems, Hawaiian Electric Light Company does not allow NELHA to generate more electricity than it consumes. As a result, NELHA is working on establishing an energy storage test bed with National Renewable Energy Laboratory grant funds. NELHA is also able to generate one megawatt of power through ocean energy thermal conversion and is exploring ways to wheel this power to its tenants. Therefore, we deem Recommendation No. 7 **Closed**.

We also recommended that the authority pursue the recommendation in its master plan to locate future cellular telephone tower concessions on acreage away from the authority's administration building, and then enter into leases as appropriate to increase the authority's revenues. At the time of our audit, the existing cell phone tower was located in close proximity to NELHA's administrative offices, posing a potential health risk. That cell phone tower has since been relocated to another site outside of NELHA property. Therefore, Recommendation No. 25 is **Not applicable**.

We also recommended that NELHA revisit its request to the Department of Land and Natural Resources for a license to remove and sell gravel from NELHA property. According to the NELHA executive director, the authority has not taken any action because the company that had initially expressed interest in NELHA's gravel reportedly found another source. Therefore, Recommendation No. 26 is **Not applicable**.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
Recommendations to the chair of the Natural Energy Laboratory of Hawai'i Authority's Board of Directors			
(1) Ensure new board members are given orientation and training in relation to NELHA's statute; its roles, responsibilities and mission; and the board's roles and responsibilities as outlined in the authority's policies and procedures manual.	There was no formal training program or comprehensive orientation for new board members as laid out in the policies and procedures manual.	Closed	The authority updated its New Board Member Orientation Guide to include board meeting minutes and Sunshine Law training.
(2) Ensure that all board members are trained in the requirements of Hawai'i's Sunshine Law, Chapter 92, HRS.	Board meeting minutes were not available within 30 days, minutes of executive sessions were not maintained, statutory provisions for executive sessions were not cited, meeting notices were not relayed to stakeholders and public, agenda items were added during meetings, and Sunshine Law training for board members was non-existent.	Closed	The authority updated its New Board Member Orientation Guide to include board meeting minutes and Sunshine Law training.
(3) Ensure that tenant representatives are trained in when and how to recuse themselves from voting in relation to setting rates, as is required by Section 227D-2(b), HRS. The chair should take responsibility for ensuring that all board members are made aware of the interpretation and extent of restrictions on tenant representatives' voting rights, and how recusals are to be effectuated.	Two tenant board members participated in discussions and did not recuse themselves from votes on setting lease rents, water rates, or utility rates.	Open	The two tenant representatives on the board have continued to vote on issues relating to leases, subleases, and water rates.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(4) Recognizing that the board continues to struggle with Sunshine requirements, request that the deputy attorney general assigned to the board provide stronger guidance on and control of board meetings in relation to Sunshine issues.	NELHA's deputy Attorney General provided one formal training session in October 2009, with only seven board members present. The deputy gave only a general short presentation on Sunshine Law at a board meeting in 2011.	Closed	A deputy attorney general is present at all board meetings to advise on matters relating to Sunshine Law.
Recommendations to the board and executive director			
(5) To facilitate transparency, create a compilation of all board-approved policies. Where they are ongoing or broad, these policies should be formalized as administrative rules.	NELHA had no administrative rules to implement the law and effectively exercise and fulfill the intent of its statutory powers.	Open	No work has been done on the authority's draft administrative rules since our 2012 audit.
(6) To facilitate transparency, establish a uniform land rent rate structure based on a Dilmore curve, and base future leases on this structure. This should be codified as a board policy and compiled appropriately.	NELHA's rent deferral policies should be formalized as administrative rules after having been publicly vetted and approved and publicly available. Variations in lease rates had caused problems among tenants, particularly upon renegotiation of existing leases.	Closed	On November 20, 2012, the board approved a new leasing policy based on a 90 percent Dilmore curve adjustment to land valuations.
(7) Seek needed legislative clarification regarding to whom the authority may "wheel" (sell electricity).	The executive director reported to the board in November 2011 that he intended to approach the Legislature to "tweak" the wheeling law so that it is clear to whom the authority may sell electricity without being considered a public utility.	Closed	The 2013 Legislature passed Act 261, which provides that landlords and lessors who install renewable energy systems on their property and provide, sell, or transmit electricity generated from those renewable energy systems to tenants or lessees on the premises are exempted from the definition of a public utility.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(8) Follow through with plans to solicit capital improvement project funding from the Legislature for the purpose of constructing a new frontage road to the Queen Ka'ahumanu Highway.	Widening of Queen Ka'ahumanu Highway and constructing an access road would improve access to the NELHA property.	Closed	NELHA secured \$9.7 million in funding from the 2013 Legislature to widen Queen Ka'ahumanu Highway and build a new access road.
(9) Follow through with published plans to rectify the authority's fresh water allocation to ensure that current and future tenants can be assured of continued access to fresh water.	NELHA was allotted 400,000 gallons of fresh water daily, but used roughly 552,000 gallons per day. The authority's fresh water system was the biggest constraint to expansion of operations.	Open but in progress	In 2014, the Legislature awarded NELHA \$2.5 million for the exploratory phase of a new potable water well project. NELHA is partnering with the Hawai'i Housing, Finance and Development Corporation to share in the development costs and the resultant available water resource.
Recommendations to the executive director			
(10) Ensure that pursuant to the State Procurement Office (SPO)'s advice, all staff participating in procurement activities are provided with a detailed plan of action to prevent recurrence of previous SPO violations.	NELHA had to seek SPO's approval to pay a contractor after the fact and was chastised by SPO for allowing work to continue after the contract had expired.	Closed	NELHA has developed a comprehensive training program, which includes staff procurement position levels, mandatory and recommended SPO workshops, training completion dates, and repeat training intervals.
(11) Follow through with published plans to create a strategic business and financial plan.	The authority's previous master plan was from 1976 and its strategic plan was dated 1993. The authority did not yet have a complete financial plan.	Open but in progress	NELHA has adopted a master plan (2011), revised its strategic plan (2012), updated its distributed energy resources strategy (2013), and developed a long-term vision plan (2014). The authority has not worked on a financial plan and milestones.
(12) Follow through with published plans to establish administrative rules for the authority.	Administrative rules drafted in 1998 had never been completed. There was no repository of publicly available information describing the authority's methods, practices, procedures, and policies.	Open	No work has been done on the authority's draft administrative rules since our 2012 audit.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(13) Update the authority's 1995 policies and procedures manual to ensure it is current, complete, and ultimately aligned with administrative rules.	NELHA's policies and procedures manual had not been updated since it was first published in 1995.	Open	No work has been done on the authority's policies and procedures manual since our 2012 audit.
(14) Update the Project Initiation Packet (PIP) as appropriate to ensure that this information, which is available on the authority's website, remains current so as not to mislead potential tenants and other stakeholders.	The PIP did not go through the rulemaking process, was limited to setting out the steps involved in receiving and reviewing applications from prospective tenants, and was last updated in 2008.	Closed	In August 2013, NELHA updated its PIP, which is available on the NELHA website and includes current rates for land use and support services.
(15) Ensure that staff responsible for taking minutes of board meetings are aware of the need for, and effectuate, a more consistent style of nomenclature in the minutes.	Inconsistent terminology in the board minutes was confusing, making it difficult to identify which interests were present. It was also unclear whether the board made the distinction between "absent" versus "excused."	Closed	Staff members responsible for minutes are now following a quick review sheet. Minutes now record members present and excused, individual votes in non-unanimous actions, and the reason and statutory reference for executive sessions.
(16) Ensure that staff responsible for taking minutes of board meetings are trained in, and effectuate, the requirements of Hawai'i's Sunshine Law, Chapter 92, HRS.	The authority provided minutes for only seven out of 17 executive sessions. Meeting minutes were not consistently available within 30 days. Five executive sessions were not convened in accordance with the Sunshine Law.	Closed	Staff members responsible for minutes are now following a review sheet. Minutes now record members present and excused, individual votes in non-unanimous actions, and the reason and statutory reference for executive sessions.
(17) Ensure the authority adopts and reports on meaningful key performance indicators in its annual report.	NELHA lacked reporting of meaningful metrics (also known as key performance indicators, or KPIs).	Closed	NELHA's 2013 annual report has been greatly expanded to include key accomplishment details.
(18) Follow through with published plans to have the authority's 2001 economic impact analysis updated.	The authority had been repeating the same economic impact numbers since its CY2000 NELHA Private Tenant Impact report was published in 2002.	Closed	NELHA contracted UHERO to conduct an updated economic impact report covering 2010 and 2013. Both reports are posted on the NELHA website.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(19) Follow through with published plans to update the authority's website. The updated website should include up-to-date and complete information so that potential tenants and other stakeholders have easy access to the authority's mission, services, rates, and performance data.	NELHA's website was both outdated and incomplete. Posted land lease rates were effective as of September 1, 2008, and seawater pumping rates were from 2007.	Closed	The authority's website was completely overhauled in 2013 and now includes most of the information which prospective tenants, legislators, and taxpayers would find meaningful.
(20) Follow through with plans to establish a Dilmore curve-based lease rent policy, and ensure the policy is available to relevant stakeholders.	Variation in lease rates had caused problems among tenants, particularly upon renegotiation of existing leases.	Closed	On November 20, 2012, the board approved a new leasing policy based on a 90 percent Dilmore curve adjustment to land valuations.
(21) Establish and implement internal controls for the calculation of seawater rates. Ideally, the current spreadsheet should be converted to a database to avoid errors inherent in manual calculations.	Monthly seawater pumping fees were calculated by one staff member using an enormous manual Lotus spreadsheet. The use of a more efficient database would save time and reduce errors.	Open but in progress	The authority has been testing a new Supervisory Control and Data Acquisition database which will be fully implemented after several more months of validation and testing.
(22) Ensure the authority makes its seawater pumping rates publicly available and that this information is kept up to date.	Current numerical rates were not published, preventing prospective tenants from accurately estimating what their costs were likely to be.	Closed	In 2014, NELHA initiated an analysis of seawater rates. The final seawater rate analysis, which recommended no changes to the existing rate structure, is posted on NELHA's website.
(23) Reconcile the authority's financial information as reported in QuickBooks and FAMIS.	NELHA used both QuickBooks for in-house reporting to the board and the State's Financial Accounting Management Information System (FAMIS) as its official accounting record, but these were not reconciled.	Closed	NELHA no longer uses Quickbooks and relies solely on FAMIS/Datamart for financial reporting.
(24) Continue implementing stated plans to market and promote NELHA to prospective tenants.	NELHA's 2011 master plan recommended that the authority complement the marketing efforts of the Gateway Center and the Friends of NELHA.	Closed	NELHA has developed a strategy for identifying prospective projects and clients and has devised a targeted marketing plan.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(25) Pursue the recommendation in NELHA's master plan to locate future cellular telephone tower concessions on acreage away from the authority's administration building and then enter into leases as appropriate to increase the authority's revenues.	The tower's proximity to administrative offices may have put staff health at risk.	Not applicable	The telecom company relocated its tower to another site outside of NELHA property.
(26) Revisit the request to the Department of Land and Natural Resources (DLNR) for a license to remove gravel from NELHA property, and pursue the sale of such gravel to interested vendors.	In 2010, NELHA requested authority from DLNR to remove gravel from the NELHA property. Ultimately, the request for authority to remove gravel was not pursued.	Not applicable	The authority has not taken any action on the DLNR license as the company that initially expressed interest in the gravel reportedly found another source.
Recommendation to the tenant representatives to the board			
(27) If in doubt about whether a discussion item constitutes setting a rate, ensure they recuse themselves from a vote to avoid any perception of improper voting, which can jeopardize the validity of such a vote.	Tenant representatives voted on items that affected lease rents, water rates, or utility rates, contrary to statute.	Open	The two tenant representatives to the board have continued to vote on issues relating to leases, subleases, and water rates.
Recommendation to the Legislature			
(28) Amending the composition of the authority's board to reduce the unusually high number of ex-officio members and include public representation in the form of at least two members of the general public.	Thirteen voting members are on the board, six of whom are ex-officio and are often, and sometimes exclusively, represented by alternates. Further, there are no public members—a term of art which is distinct from a member of the public and denotes a member who does not represent any of the special interests involved—on the board.	Did not assess	The Legislature has not passed any bills to amend the board's composition.