
Auditor's Summary

Audit of the Office of Hawaiian Affairs

Report No. 23-04



PHOTO: MAP DATA: GOOGLE, USGS

THE OFFICE OF HAWAIIAN AFFAIRS (OHA) considers land to be of utmost importance to Native Hawaiians and core to the Hawaiian worldview. The significance of land to OHA is stated in many of its documents, including the *Board of Trustees Executive Policy Manual* as well as OHA's current strategic plan. On its website, OHA declares: "Land is not a commodity to be exploited, it is a relative that is respected and cared for and, who, in turn, cares for us."

In *Audit of the Office of Hawaiian Affairs*, Report No. 23-04, we examined certain OHA activities with respect to land, including both its commercial properties and legacy lands. Specifically, we report our findings with respect to OHA's process to identify and select commercial properties to acquire, OHA's development of those commercial properties, including its Kaka'ako Makai lands, and OHA's oversight and management of its legacy lands, which include culturally significant properties.

What we found

We found that OHA has not fully developed its Commercial Property and Legacy Land Programs, neglecting to establish and adopt foundational strategies and policies to guide its real estate activities, strategies and policies that OHA, itself, identified as "guiding principles" more than a decade ago. According to OHA, these foundational components are supposed to guide

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land acquisition and disposition, as well as the management and use of OHA's lands. Yet, in October 2021, OHA purchased two commercial properties, 500 N. Nimitz Highway and a partial interest in the adjacent Iwilei Business Center, for \$47 million. Without these guidelines and criteria, these acquisitions were ad hoc, featuring strategies and criteria created to facilitate the acquisition. The Chairperson acknowledged that real estate policies would provide OHA with a roadmap; but, as of now, she said, "practice dictates policy."

Despite its stated intent to redevelop the 500 N. Nimitz Highway and Iwilei Business Center properties in the future, OHA appears to have little understanding of the potential costs to do so. For example, OHA's environmental study prior to purchasing its interest in the Iwilei Business Center identified the likelihood of soil contamination, recommending a more thorough evaluation before redevelopment; however, OHA did not pursue the matter further to gain a better understanding of the extent of environmental contamination or an estimate of the cost to remediate any contamination that would be required before redeveloping the property.

We also found that OHA is no closer to developing its Kaka'ako Makai lands than it was 10 years ago when it accepted those lands from the State. However, by the end of our audit window, OHA had spent more than \$6.5 million on consulting contracts – one of which was flagged as potential waste in a forensic review – and had no conceptual master plan to show for the expense. Moreover, we found OHA's desire to include prohibited residential development in its Kaka'ako Makai plans to be a significant obstacle.

In our review of the Legacy Land Program, we found that OHA's lax oversight and management of its legacy land stewards and stewardship agreements increased the risk that culturally significant properties "core" to OHA's mission may be misused; it also puts OHA's trust assets at risk. For instance, OHA failed to renew stewardship agreements, creating "gaps" when stewards were allowed to occupy and use OHA's legacy properties without *any* agreement. Those agreements detail OHA's expectations regarding the stewards' use of the culturally significant lands as well as requirements that stewards must meet.

We also found that, even when agreements were in place, OHA did not enforce their terms, permitting, for instance, stewards to use the properties without providing OHA copies of certificates of insurance showing that the stewards have the required insurance coverage and allowing a steward even to deny OHA access to its own property.

Why did these problems occur?

OHA itself recognized the need for and importance of the foundational policies – which it has referred to as "guiding principles" – in its Real Estate Vision, Mission, and Strategy Plan in 2007, in its *Executive Policy Manual* in 2012, in its Land Committee's policies in 2014, and more recently in its board Bylaws in 2020; however, it has yet to develop and implement any. It appears that OHA

– starting with its trustees – has not made developing and implementing its real estate strategy and other guiding policies a priority.

In regard to the development of Kaka‘ako Makai, OHA’s insistence on building housing has prevented it from adopting a comprehensive conceptual master plan for the properties. While OHA has spent a considerable amount of time and money on efforts to lift Kaka‘ako Makai’s housing restrictions, it does not appear to have a vision for Kaka‘ako Makai that does not include housing. In the meantime, an interim use plan for one of Kaka‘ako Makai’s lots failed.

Despite Legacy Land Program provisions assigning responsibility to Legacy Land Agents for managing stewards’ compliance with stewardship agreements, we found that OHA defers much of the management of and authority over its legacy lands to the stewards themselves. For example, during a scheduled visit, the steward of Kūkaniloko prohibited our audit team – and OHA representatives – from visiting the birthstones site and Piko zone. OHA complied with the steward’s decision even though the non-exclusive right of entry agreement states that others have the right to enter and use the property, and the steward “shall not otherwise interfere with their use and enjoyment of the property.”

Why do these problems matter?

As fiduciaries, OHA trustees are legally obligated to act with the utmost responsibility over the assets they manage on behalf of OHA’s beneficiaries. Each trustee must perform all duties with the highest standard of care and to act in the best interests of OHA and its beneficiaries. Trustees must act diligently, with due care, and on a fully informed basis.

Since 2007, OHA has recognized the need to have a real estate strategy and corresponding policies that, among other things, would guide OHA’s land acquisitions, dispositions, development, management and use. OHA has repeatedly referred to policies relating to the appropriate allocation of the different types of real estate and balancing its real estate portfolio. Those missing strategies and policies are intended to guide OHA’s real estate activities, not only its selection and acquisition of commercial properties but also its acquisition of culturally significant lands. Without these strategies and policies, OHA has no principles to guide trustees or OHA staff – and as a result, OHA’s actions are ad hoc.

In 2007, OHA controlled only a few legacy lands and the need for these real estate strategies and policies may have been theoretical. However, in 2012, OHA acquired lands in Kaka‘ako Makai in settlement of an outstanding \$200 million ceded lands revenue debt and later that same year, purchased the Gentry Pacific Design Center, which OHA renamed Nā Lama Kukui. And in 2021, OHA spent \$47 million to acquire the 500 N. Nimitz Highway property and the partial interest in the Iwilei Business Center – without any criteria to assess the appropriateness of the acquisition or to compare other possible real estate investment properties. OHA is now the 13th largest landowner in the State.

The need and importance of these real estate strategies and policies is no longer theoretical as OHA moves to develop these properties. And, if another property “falls into OHA’s lap,” as OHA described its purchase of the 500 N. Nimitz Highway and Iwilei Business Center properties, OHA needs policies to minimize its risk and to ensure that trustees are fulfilling their fiduciary and statutory duties.

OHA’s failure to develop a conceptual master plan for its lands in Kaka’ako Makai after more than a decade seems to reflect a similar misunderstanding about the need for and importance of a long-range vision or strategy. Without a conceptual master plan, much of OHA’s lands lay vacant or underutilized, which likely means, among other things, reduced revenues to OHA. Instead, OHA has contracted with three different consultants since it acquired the Kaka’ako Makai lands to develop plans for the properties; yet, even a proposed interim use for one of OHA’s properties was scuttled after OHA learned that it needed to obtain a Special Management Area (Major) Use Permit – but not before it had spent \$700,000 on two large tents specifically for that interim use.

In regards to the legacy lands, these properties are the culturally significant, including Kūkaniloko, the birthing site used by generations of Hawaiian chiefesses, which OHA describes as “one of the most sacred sites in Hawai‘i,” the Pahua Heiau, which may have once been a fishing shrine or agricultural heaau, and the Palauea Cultural Preserve, believed to be the remnants of an ancient fishing village. OHA’s lax management and oversight have created substantial and unnecessary risk that the stewards will use these cultural jewels in ways that are inconsistent with OHA’s intent as well as liability to OHA, and ultimately its beneficiaries.