
Follow-Up to the Study of Revenue Entitlements to the Department of Hawaiian Home Lands

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Report No. 99-13
March 1999



THE AUDITOR
STATE OF HAWAII

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii 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.
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6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds and 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.

Hawaii'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.



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OVERVIEW

Follow-Up to the Study of Revenue Entitlements to the Department of Hawaiian Home Lands

Report No. 99-13, March 1999

Summary

Hawaii's State Constitution entitles the Department of Hawaiian Home Lands (DHHL) to 30 percent of receipts derived from the leasing of sugarcane lands and/or from water licenses. These funds are transferred to the Native Hawaiian Rehabilitation Fund for improving the conditions of native Hawaiians.

House Concurrent Resolution No. 143, House Draft 3 of the 1998 legislative session requested the Auditor to conduct a follow-up audit of its 1991 *Study of Revenue Entitlements to the Department of Hawaiian Home Lands*, Report No. 91-9.

Although some progress has been made since our last study, we found the Department of Land and Natural Resources (land department) and the Department of Hawaiian Home Lands still fails to give adequate attention to the revenue entitlements for sugarcane lands and water licenses. As a result, the Department of Hawaiian Home Lands has not received all revenues to which it is entitled from sugarcane lands and water licenses, and trust obligations fail to be met.

Both departments are not complying with their 1980 Memorandum of Understanding that established the departments' respective responsibilities for sugarcane entitlements. The land department lacks a comprehensive inventory of sugarcane lands and water licenses and related leases, permits, and licenses, and does not provide sufficient information on entitlements to the DHHL. The land department also lacks formal policies and procedures to manage and monitor the entitlements owed to DHHL.

The Department of Hawaiian Home Lands also lacks complete information on sugarcane leases and water licenses. It has not provided the staff support to the land department as called for in the memorandum.

We also found that both departments have failed to sufficiently plan for the future use of sugarcane lands. Finally, we found that the land department has not developed clear valuation procedures for sugarcane lands exchanged between public agencies when trust obligations are involved.

Recommendations and Response

We recommended that the Department of Land and Natural Resources develop a comprehensive inventory that identifies all sugarcane lands and water licenses along with their respective leases and permits. The land department should also develop formal rules, policies, and procedures to manage sugarcane lands and water licenses. We also recommended that both departments comply fully with the terms

and conditions of the 1980 Memorandum of Understanding, and evaluate the adequacy of the memorandum after full compliance has been achieved. Both departments also should develop formal procedures to plan jointly for the future use of sugarcane lands that are subject to DHHL entitlement.

Finally, we recommended that the Legislature require an appraisal of all public lands, where trust obligations are involved, before such lands are conveyed to another government agency.

The Department of Hawaiian Home Lands generally agreed with our findings and recommendations. It stated that the report should serve as a useful tool for improving its ability to effectively monitor and verify revenue entitlements into the Native Hawaiian Rehabilitation Fund.

The Department of Land and Natural Resources agreed with a majority of the findings of our report but disagreed with some of the recommendations and questioned other parts of the report. The land department expressed concern that the time and effort to comply with the entitlement requirements may not be cost effective. The land department agrees that there is a need for a comprehensive inventory of sugarcane lands and water licenses, formal policies and procedures, and a formal planning component, but disagrees on the need to notify DHHL of lease rent decreases, increases or waivers. The land department also disagreed with our recommendation that the Legislature require an appraisal of all public lands, where trust obligations are involved, before such lands are conveyed to another government agency.

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Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 99-13
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Foreword

This report was prepared in response to House Concurrent Resolution No. 143, House Draft 3 of the 1998 legislative session that directed the Auditor to conduct a follow-up on its 1991 report, *Study of Revenue Entitlements to the Department of Hawaiian Home Lands*, Report No. 91-9.

We wish to express our appreciation for the cooperation and assistance extended to us by officials and staff of the Department of Land and Natural Resources, Department of Hawaiian Home Lands, and others whom we contacted during the course of the audit.

Marion M. Higa
State Auditor

Table of Contents

Chapter 1 Introduction

Background	1
Objectives of the Audit	4
Scope and Methodology	4

Chapter 2 The Department of Land and Natural Resources and the Department of Hawaiian Home Lands Have Not Given Adequate Attention to Revenue Entitlements for Sugarcane Lands and Water Licenses

Summary of Findings	7
The Department of Hawaiian Home Lands Is Not Receiving Its Full Revenue Entitlement from Sugarcane Leases, Permits, and Water Licenses	8
The Department of Land and Natural Resources Has Not Followed Our Recommendations	17
Conclusion	19
Recommendations	19

Notes	21
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Responses of the Affected Agencies	23
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Exhibits

Exhibit 1.1	Native Hawaiian Rehabilitation Fund, Sources of Revenue, FY1993-94 through FY1997-98	4
Exhibit 2.1	Leases and Permits in Non-Compliance with Entitlement Requirements	15

Chapter 1

Introduction

The Office of the Auditor conducts follow-up audits to inform the Legislature and the governor about actions taken by state agencies in response to our prior audit reports. This audit follows up on our 1991 report, *Study of Revenue Entitlements to the Department of Hawaiian Home Lands*, Report No. 91-9. The original study was initiated pursuant to Senate Concurrent Resolution No. 51, Senate Draft (S.D.) 1, House Draft (H.D.) 1 of the 1990 legislative session. The 1998 Legislature was concerned that if the Department of Hawaiian Home Lands and the Department of Land and Natural Resources (land department) had not adopted our 1991 recommendations, a possible result might be a diversion of revenues from the Hawaiian Home Land's trust fund. As a result, the 1998 Legislature passed House Concurrent Resolution No. 143, H.D. 3 requesting the State Auditor to conduct a follow-up on its 1991 report.

Background

Hawaii's State Constitution entitles the Department of Hawaiian Home Lands to 30 percent of receipts derived from the leasing of sugarcane lands and/or from water licenses. These funds are transferred to the Native Hawaiian Rehabilitation Fund. Article XII of the Constitution also states that state receipts derived from the leasing of such sources shall continue to be so transferred whenever sugar lands and water licenses are sold, developed, leased, utilized, transferred, set aside, or otherwise disposed of for purposes other than the cultivation of sugarcane.

Hawaii's public lands, state agencies that receive entitlements and manage public lands, and the decline of sugar lands are described as follows.

Public lands in Hawaii

The public lands entrusted to Hawaii consist of those lands ceded to the United States as a result of the annexation of the Republic of Hawaii (July 7, 1898). These lands were later returned to the State of Hawaii under the Admission Act (March 18, 1959). Hawaii's land trust also includes other lands acquired through purchase, exchange, or condemnation. The lands are held as a public trust for the purposes of supporting public schools and other public educational institutions, improving the conditions of native Hawaiians, developing farm and home ownership, making public improvements, and providing lands for public use. Sugarcane lands are included in the public land trust.

Hawaii's public land trust consists of approximately 1.2 million acres of which all but about 17,000 acres are managed and controlled by the Department of Land and Natural Resources. As part of its responsibility

for managing public trust lands, the land department is responsible for managing sugarcane lands and ensuring that the Department of Hawaiian Home Lands receives 30 percent of the state receipts from the leasing of sugarcane lands and from water licenses. The body of public lands does not include those under the control of the University of Hawaii, the Hawaii Housing Authority, the Department of Hawaiian Home Lands, or the Department of Transportation.

Categories of land

State lands fall into several categories.

- Public lands—state-owned lands managed by the land department that include ceded and federal lands returned to the State and other lands acquired through purchase, exchange, or condemnation.
- Ceded lands—lands belonging to the Hawaiian Republic that were ceded to the United States upon annexation in 1898 that are part of today's public land trust. The Office of Hawaiian Affairs is entitled to 20 percent of the revenues from these ceded lands.
- Department of Hawaiian Home Lands or "available" lands—lands set aside for the Hawaiian Homes Commission in 1920. These lands are either designated for purposes of native Hawaiian homesteading or under sugarcane leases and are managed by the land department. The department is entitled to 100 percent of the lease revenues.
- Sugarcane or protected lands—public lands in sugarcane production from which the Department of Hawaiian Home Lands is entitled to 30 percent of lease revenues. Sugarcane lands are a part of the public land trust. The term protected lands means all state lands that on November 7, 1978 were leased for the cultivation of sugarcane.
- Other sugarcane lands—state lands disposed of after November 7, 1978 for the cultivation of sugarcane of which the Department of Hawaiian Home Lands is also entitled to 30 percent of receipts.

State agencies that receive revenue entitlements and manage public lands

The Department of Hawaiian Home Lands was established in 1959 to administer the Hawaiian Homes Commission Act of 1920 that placed native Hawaiians on available lands for homesteading. Under the Admission Act of March 18, 1959, the State of Hawaii assumed the duties of management and disposition of Hawaiian home lands, adopting the Hawaiian Homes Commission Act as a provision in its State Constitution and agreeing not to reduce or impair its funds.

Hawaiian home lands comprise approximately 200,000 acres on Oahu, Maui, Kauai, Molokai, and Hawaii. Along with managing these lands, the Department of Hawaiian Home Lands also manages non-homestead land and income properties. It is also supposed to maintain a comprehensive land inventory.

The Department of Land and Natural Resources manages all state-owned lands (public lands) for the social, environmental, and economical well-being of Hawaii's people as authorized under Chapter 171, Hawaii Revised Statutes. The land department also ensures that public lands are used in accordance with the State's goals, policies, and plans. Lands not set aside for specific use by other government agencies are managed by the department's Land Division. The division is responsible for state lands made available to the public through fee sales, leases, licenses, grants of easement, right-of-entries, and month-to-month tenancies, or kept as open space areas. The division is required to maintain a comprehensive inventory of all state-owned lands, manage and dispose of public lands, plan and establish their value, transmit revenues from sugarcane lands and water licenses to the Department of Hawaiian Home Land's Native Hawaiian Rehabilitation Fund, and plan and dispose of such land. The fund's revenues have declined over the years in proportion to the slow demise of sugarcane cultivation.

Native Hawaiian Rehabilitation Fund

The Native Hawaiian Rehabilitation Fund receives 30 percent of the receipts derived from sugarcane lands and water licenses. The Department of Hawaiian Home Lands administers the fund, using the money solely for the rehabilitation of native Hawaiians. This includes educational, economic, political, social, and cultural processes so that the general welfare and conditions of native Hawaiians are thereby improved and perpetuated. Exhibit 1.1 lists the revenues deposited into the Native Hawaiian Rehabilitation Fund for fiscal years 1993-94 through 1997-98. Despite the high amounts during the FY1995-96 period from the sale of sugarcane lands for housing development purposes, actual sugarcane land revenues are modest.

Decline of sugar land

Sugar's major role in Hawaii's historical, cultural, and economic development has declined. Over the past decade, Hawaii's sugar production drastically declined; the number of farms producing sugar went from 120 in 1986 to only 7 in 1996. Similarly, of the 24 sugar companies and mills in 1990, only 10 remained as of December 1997. Large sugar companies such as Ka'u Agribusiness, McBryde Sugar Company, Oahu Sugar Company, and Waialua Sugar Company have all ceased operations.

Exhibit 1.1**Native Hawaiian Rehabilitation Fund****Sources of Revenue, FY1993-94 through FY1997-98**

	Water Licenses	Leases of sugarcane lands	Sales of sugarcane lands	Total
FY1993-94	\$92,134	\$430,918	-----	\$523,052
FY1994-95	\$121,499	\$191,127	\$8,360,407*	\$8,673,033
FY1995-96	\$61,346	\$470,940	\$1,539,000**	\$2,071,286
FY1996-97	\$129,932	\$98,109	-----	\$228,041
FY1997-98	\$99,407	\$105,905	-----	\$205,312

*Received as the department's 30% entitlement for the Maui housing projects, Villages of Leialii, Waihikuli, and Lahaina.

**Received as the department's negotiated share of revenues pursuant to Act 14, SLH 1995 for Kauai lands at Hanapepe.

**Objectives of the
Audit**

1. Review the extent to which the findings and recommendations contained in our prior study are being addressed.
2. Assess the Department of Land and Natural Resources' and Department of Hawaiian Home Lands' ability to identify and monitor revenue entitlements from water licenses.
3. Make recommendations as appropriate.

**Scope and
Methodology**

This follow-up audit focused on the Department of Land and Natural Resources' and the Department of Hawaiian Home Lands' ability to manage and monitor sugarcane lands and water licenses and their accompanying revenue entitlements. We examined the valuation process for sugarcane lands and both departments' efforts to plan for the future use of sugarcane lands. As part of our work, we reviewed relevant statutes, administrative rules, policies, procedures, and other legislative documents related to the Department of Hawaiian Home Lands' entitlement to revenues from sugarcane lands and water licenses. We conducted interviews and reviewed files at the Land Division and Fiscal Office of the land department and at the Land Management Branch of the Department of Hawaiian Home Lands. We reviewed mission statements, functional statements, organizational charts, policies, procedures, and other memoranda related to revenue entitlements. We also reviewed documents related to the planning of sugarcane lands and appraisal requirements when public lands are exchanged between government agencies.

We assessed the files of general leases and revocable permits for sugarcane lands and water licenses. We initially reviewed 39 of 82 (45 percent) general leases, revocable permits, and water licenses identified by the land department as subject to revenue entitlements. However, our total population was decreased to 65 because 17 of the leases and permits were determined to be either outside the scope of our follow-up audit or no longer current. Thus, our sample size increased to 60 percent, or 39 of 65 eligible leases and permits. Thirteen of the 39 files reviewed were for water licenses and the remaining 26 were sugarcane leases or permits. When citing examples in this report, we identify whether the case was a general lease or revocable permit.

Our scope included revenue entitlements to the Department of Hawaiian Homes Lands and other transactions for the period of FY1992-93 through FY1997-98.

Our work was performed from June 1998 through October 1998 in accordance with generally accepted government auditing standards.

Chapter 2

The Department of Land and Natural Resources and the Department of Hawaiian Home Lands Have Not Given Adequate Attention to Revenue Entitlements for Sugarcane Lands and Water Licenses

This chapter presents the findings and recommendations of our follow-up audit of the management of revenue entitlements to the Department of Hawaiian Home Lands. Despite some progress since our last report, both the Department of Land and Natural Resources (land department) and the Department of Hawaiian Home Lands have not ensured that entitlements are being transferred to the Department of Hawaiian Home Lands (DHHL). The land department lacks adequate management and monitoring controls and the Department of Hawaiian Home Lands has not verified the entitlements it has received. Furthermore, neither department is sufficiently planning for the future use of sugarcane lands. As a result, the Department of Hawaiian Home Lands is not receiving all income owed to it, and trust obligations are not being fulfilled.

Summary of Findings

1. Although some progress has been made since our last study, the Department of Land and Natural Resources still fails to adequately monitor sugarcane leases, permits, and water licenses. The Department of Hawaiian Home Lands still fails to meet its trust obligations by verifying entitlements and still does not receive all income to which it is entitled.
2. Despite resolving the valuation of exchanged sugarcane lands with the Housing Finance and Development Corporation, the Department of Land and Natural Resources has not followed our recommendations to plan for the future use of sugarcane lands or establish valuation procedures.

The Department of Hawaiian Home Lands Is Not Receiving Its Full Revenue Entitlement from Sugarcane Leases, Permits, and Water Licenses

In our 1991 study of revenue entitlements to the Department of Hawaiian Home Lands, we found that not all income to which the department was entitled was received nor was it verified for accuracy. Despite some improvements by the land department, we found that this condition persists today. The land department lacks adequate management controls and has not sufficiently monitored entitlements owed to the Department of Hawaiian Home Lands. Similarly, the Department of Hawaiian Home Lands has not verified the entitlements it has received. As a result, the Department of Hawaiian Home Lands is not receiving all income it is owed from sugarcane lands and water licenses, and trust obligations are not being fulfilled.

The Department of Land and Natural Resources has made some progress since our last study

Despite various problems encountered by the land department to manage and monitor the sugarcane land leases and water licenses, we note that the department has improved its overall organization of lease and permit files since our previous audit. In 1996, our office found problems with the lease and permit files maintained by the department's Land Division. Our *Follow-up Audit of the Financial Audit of the Department of Land and Natural Resources*, Report No. 96-13, described the Land Division's poor record management and how it made compliance review difficult. Master files were poorly organized, various documents in the lease files were often improperly filed together, and correspondence was also filed with original lease documents. Aids to facilitate file review and management of leases, such as lease summary sheets, were non-existent. This lack of organization made quick review of lease files difficult for land department staff.

In this audit, we found that the Land Division has substantially improved the organization of its files. Lease and permit files are now organized and segregated into three sections (original documents, correspondence, and liability insurance/performance bond). Of the 39 files we reviewed, 37 contained summary sheets with pertinent lease information such as its terms, a tax map key, the annual rent, and rental reopenings. In addition, 31 of the 39 files contained land valuations/appraisals. By improving the organization of its files, the land department can better manage and monitor leases and permits as well as maintain accurate information on revenue entitlements. We encourage the department to continue these efforts in maintaining lease and permit files. The department should ensure that all files contain summary sheets detailing pertinent information and that files are organized to facilitate the reviews necessary to ensure that revenue entitlements are determined correctly.

The Departments of Hawaiian Home Lands and Land and Natural Resources still do not comply with the 1980 memorandum

The 1980 memorandum of understanding between the Department of Hawaiian Home Lands and the Department of Land and Natural Resources established basic responsibilities for each department in implementing the State's constitutional requirements for sugarcane land entitlements. Article XII of the State Constitution requires 30 percent of the state receipts derived from sugarcane lands continue to be transferred to the Native Hawaiian Rehabilitation Fund whenever such lands are sold, developed, leased, utilized, transferred, set aside, or otherwise disposed of for purposes other than the cultivation of sugarcane. The effective date of the provision was determined by the attorney general's office to be November 7, 1978. It was also determined that the provision applies to sugarcane and water leases, licenses, revocable permits, lands classified as sugarcane or contributory, but not to pasture and other uses; if receipts from land in pasture or other uses can be differentiated.

In accordance with the memorandum, the land department is required to keep up-to-date files of the following information:

1. Protected lands;
2. State lands disposed of subsequent to November 7, 1978, for cultivation of sugarcane lands; and
3. Water licenses, permits, or other instruments authorizing the use of government owned water in existence or effective on November 7, 1978, and/or issued subsequent to November 7, 1978.

The file on protected lands shall include, among other things, a copy of the lease and any necessary appurtenant maps and descriptions disposing of lands for the cultivation of sugarcane. A similar file shall be kept for state lands. The land department files are to contain a summary sheet of state lands in sugarcane cultivation. The land department is also to provide proper notice to the Department of Hawaiian Home Lands on any action to be taken on the use or disposition of state and protected lands.

The Department of Hawaiian Home Lands is responsible for verifying the accuracy of the land department files on sugarcane leases and permits and water licenses. In accordance with the memorandum, the Department of Hawaiian Home Lands was also to "provide an appropriate position at DLNR to assist in the effective implementation of the memorandum of understanding."¹ We found that both departments still fail to comply with their respective responsibilities in accordance with the memorandum.

The Department of Land and Natural Resources lacks a comprehensive inventory of sugarcane leases and water licenses

As custodian of state public lands, the Board of Land and Natural Resources is responsible for ensuring that the land department maintains an inventory of public lands. We found that the land department does not have a comprehensive inventory of all sugarcane lands, state lands disposed of subsequent to November 7, 1978 for sugarcane purposes, or water licenses. Moreover, we found that the land department's information on such leases and permits is inconsistent and incomplete, and does not satisfy the requirements of the memorandum of understanding.

We reviewed the Land Division's list of leases and permits from which the Department of Hawaiian Home Lands receives entitlement—a total of 82 general leases and revocable permits. Sixty-four of these leases/permits are for sugarcane, agricultural, or some other type of use, while 18 are for water use. In our review, we found 4 leases that are no longer in effect and 21 leases and permits from which the Department of Hawaiian Home Lands is not receiving any entitlements, despite the fact that the lands meet the 30 percent entitlement criteria.

Upon comparing information on sugarcane and water leases and permits maintained by the Land Division with those kept by the department's Fiscal Office, we found informational discrepancies. Not all leases and permits identified by the Land Division were present in the Fiscal Office's records. This is important since the Fiscal Office is responsible for transferring revenues to the Native Hawaiian Rehabilitation Fund.

In the 21 cases mentioned above, the Fiscal Office was not notified by the Land Division that the leases and permits were subject to the 30 percent entitlement and therefore did not change the account codes needed to effectuate the transfer of entitlement moneys to the Native Hawaiian Rehabilitation Fund. According to the Land Division's internal memorandum on *Procedures for DHHL Entitlement Lands*, land agents are responsible for notifying the Fiscal Office of permits, leases, water licenses, or other encumbrances subject to the 30 percent entitlement once an account is opened. Without accurate and complete information on leases and permits, the Fiscal Office cannot ensure that it transfers the appropriate amounts of money to the Department of Hawaiian Home Lands.

Maintaining a comprehensive inventory of public lands has been a long-standing problem for the land department. Numerous audits, reports, and studies have been conducted over the years which illustrate the department's lack of a complete inventory for public lands. As early as 1979, the State Auditor pointed out inaccuracies in the department's land inventory; in 1986, our office again identified the same problem. Over the years, other organizations such as Deloitte & Touche and R.M. Towill have noted similar inaccuracies.

Departmental staff currently report that they are in the process of automating all information for sugarcane and water leases and permits in an effort to create a more comprehensive inventory. However, this will be a very costly and time-consuming effort, taking up to three years to complete. In the meantime, the land department staff rely on arduous manual procedures to monitor leases and permits. These procedures include using an antiquated index card system, a manual tickler system for tracking leases and permits, and a manual ledger to record leases and permits.

In the absence of a comprehensive inventory, the land department also relies on a 1993 Deloitte & Touche report, *Department of Hawaiian Home Lands Entitlement Study*, that identifies permits and leases for sugarcane lands and water licenses. While this report is a good start, we have concerns about its accuracy and whether all sugarcane lands and water licenses were identified. In fact, Deloitte & Touche stated that the report is only for the informational purposes of the Department of Hawaiian Home Lands. They also stated that the procedures performed in the study were not done in accordance with generally accepted auditing standards.

The lack of a reliable and comprehensive inventory affects the department's ability to ensure the transfer of full entitlements for sugarcane leases, permits, and water licenses. Without an inventory, the department has no basis by which to identify all sugarcane lands and water licenses that require the 30 percent revenue transfer. The Board of Land and Natural Resources needs to ensure that the land department devotes more time and attention to the issue of developing and maintaining a comprehensive inventory.

The Department of Hawaiian Home Lands is not ensuring the accuracy of revenue entitlements received

In accordance with the 1980 memorandum of understanding, the Department of Hawaiian Home Lands is to ensure the accuracy of the revenue entitlements it receives from the land department. We found no evidence that the Department of Hawaiian Home Lands had verified the accuracy of the information contained in the leases and permits. To compound this problem, in 7 of the 39 files we reviewed at the land department, there was also no indication that the lease/permit was subject to the Department of Hawaiian Home Lands' 30 percent entitlement. This is of concern because when a lease or permit comes up for re-opening or re-negotiation there should be some indication in the file that the Department of Hawaiian Home Lands has a monetary interest in the disposition of the land. The Department of Hawaiian Home Lands could then become involved in the decisions being made and allowed to raise concerns if necessary.

Our review of the Department of Hawaiian Home Lands' own files found minimal evidence suggesting that monitoring of leases and permits was taking place. In fact, officials from the Department of Hawaiian Home Lands stated that there is no procedure in place to ensure that they receive current information on the status of protected lands (sugarcane lands). Staff from the department's Land Management Branch noted that the lack of information makes effective monitoring very difficult. However, department staff also noted that the issue of revenue entitlements from sugarcane lands and water licenses has not been a high priority for the department. Rather, the Department of Hawaiian Home Lands has been focusing on developing homestead lands and reducing the size of the waiting list for homestead lands. As a result, the Department of Hawaiian Home Lands continues to struggle with verifying its entitlements revenues. Ultimately, lost revenues to the Native Hawaiian Rehabilitation Fund occur.

Position not provided by the Department of Hawaiian Home Lands

The Department of Hawaiian Home Lands has not provided a position at the land department in accordance with the 1980 memorandum of understanding. The department states that it has recently assigned staff from its Land Management Branch to handle the monitoring of leases and permits from sugarcane lands and water licenses. However this does not appear to be in accordance with the memorandum that calls for a staff member to be placed in the land department.

The Department of Hawaiian Home Lands needs to work more closely with the land department in identifying and maintaining current information on all sugarcane leases, permits, and water licenses. After this is accomplished, the Department of Hawaiian Home Lands then needs to actively monitor such leases and permits for accuracy.

Both departments lack formal rules, policies, and procedures

In our 1991 study, we found that the land department had not established policies and procedures pertaining to the disposition of sugarcane lands and to ensure fair compensation to the Department of Hawaiian Home Lands when land transactions occur. This continues to be a problem for the land department today. We found that the land department lacks a formal policies and procedures manual to guide staff in managing and monitoring leases and permits for sugarcane lands and water licenses. Instead, the department develops procedures in the form of memoranda on an as-needed basis to deal with problems and issues as they arise. For example, the Land Division recently issued a three-page memorandum of *Procedures for DHHL Entitlement Lands* to all land agents in July 1998. We found the procedures to be very general in nature and do not ensure that the Department of Hawaiian Home Lands is notified of actions involving sugarcane lands. The memorandum provides no guidance on

what reports or forms need to be completed or reviewed when identifying and monitoring entitlements from sugarcane lands and water licenses. We also noted that the department's administrative rules do not address the Department of Hawaiian Home Lands' entitlement to revenues from sugarcane lands and water licenses.

Administrative rules, policies, and procedures are important management tools to guide staff in their duties and to ensure consistency in safeguarding revenue-related procedures. Without specific guidance and directions in place, the Department of Land and Natural Resources' staff will continue to experience difficulty in monitoring and managing the Department of Hawaiian Home Lands' revenue entitlements.

We also found that the Department of Hawaiian Home Lands lacks policies and procedures on monitoring leases and permits for sugarcane lands and water licenses, and on planning for the future uses of these lands. Proper monitoring and planning for sugarcane lands should include such duties and responsibilities as maintaining current information on all existing leases and permits for sugarcane lands and water licenses, identifying issues such as the conditions for land use changes, appropriate methods of transaction (exchanges, sales, leases), methods for appraising/valuing lands, and alternative forms of compensation. We found no evidence in the Department of Hawaiian Home Lands' files that this type of analysis occurs.

The department reports that it keeps abreast of issues related to the disposition of sugar lands and water licenses by monitoring the agenda from the meetings of the Board of Land and Natural Resources. This is not a sufficient control measure to ensure that the department receives all income to which it is entitled, nor is the department able to keep apprised of the disposition of such lands. Without policies and procedures, staff lack guidance and directions for monitoring leases and permits, tracking payments, and deciding on the disposition of sugarcane lands to ensure appropriate compensation.

The Department of Land and Natural Resources does not adequately monitor revenue entitlements to the Department of Hawaiian Home Lands

Based on our review of the lease and permit files at the Land Division, we found that the land department is not adequately monitoring leases and permits for sugarcane lands and water licenses. We noted several problems in lease and permit files that support our finding.

First, we found several general leases and revocable permits where the lessee/permittee was using the land without an executed contract. In one case, the permittee had occupied the land for over two years without an executed revocable permit. Although the permit was approved by the land board and the permittee has made regularly scheduled rent payments, the Land Division failed to obtain final approval of the agreement. In another case, the lessee had occupied the land since 1989 without an executed

lease agreement. In each of these cases, we found no evidence of a performance bond in the files. Performance bonds ensure that the State will receive its money from the contractual agreement if its terms are breached or the lessee defaults on the contract. This, in turn, also ensures that the Department of Hawaiian Home Lands receives its 30 percent entitlement.

We also found two other cases where the land department did not transfer appropriate entitlements to the Department of Hawaiian Home Lands. As previously mentioned, the Fiscal Office reported that the Land Division had not provided updated information on annual rent increases. Consequently, the Fiscal Office was not transferring enough money for these leases. According to land department policy, the land agent must provide the Fiscal Office with information on the status of leases and permits. Fiscal Office staff report that their records are currently being updated and a retroactive payment will be made to the Department of Hawaiian Home Lands.

Finally, we found yet another lease in which the lessee had been using sugarcane lands without making annual rent payments for over three years. To date, the lessee has accrued back rent totaling over \$1 million, of which the Department of Hawaiian Home Lands is entitled to 30 percent. Land department staff report that they are currently negotiating with the lessee to arrange lease payments.

Failure to adequately monitor leases and permits and ensure that contractual terms are being met results in a loss of revenue to the Department of Hawaiian Home Lands, as well as to the State of Hawaii. The land department should execute all leases and permits promptly and ensure that required performance bonds are provided before the lessee takes possession of the property. The department needs to ensure that lessees are making required payments and correct revenues are being transferred to the Native Hawaiian Rehabilitation Fund.

***Additional income
owed to the
Department of
Hawaiian Home Lands***

Additional income is owed by the land department. Our review of the Land Division's list of current leases and permits for sugarcane lands and water licenses found 21 leases and permits that merit entitlements to the Department of Hawaiian Home Lands. Eighteen of the contracts were for sugarcane lands while the remaining three were for water licenses. Staff from the land department failed to recognize that these 21 leases and permits were subject to the 30 percent revenue entitlement. Had the land department been more diligent in developing a comprehensive inventory of sugarcane lands and water licenses, this oversight might not have occurred. As shown in Exhibit 2.1, we estimate that from the leases and permits identified, the land department should have deposited at least \$345,000 into the Native Hawaiian Rehabilitation Fund. The majority of these leases and permits were entered into several years ago and

consequently require back payments to the Department of Hawaiian Home Lands. Land Division officials say they are correcting this oversight and will credit appropriate revenues to the Department of Hawaiian Home Lands once back payments have been determined. Subsequent to the completion of our fieldwork, the land department reported that approximately \$316,000 in back payments had been transferred to the Native Hawaiian Rehabilitation Fund.

Exhibit 2.1

Leases and Permits in Non-Compliance with Entitlement Requirements

Lease/Permit	Effective Date	Annual Rent (\$)	DHHL 30 Percent Entitlement
KAUAI			
GL 3911	April 1965	515	\$ 5,098
GL 3940	November 1965	925/Yr. For 1st 15 Yr. Then 4,000/Yr.	25,762
GL 4413	October 1974	7,352	52,934
GL 4581	April 1978	163 one time payment	49
GL 4586	May 1978	2,200	13,200
GL 4859	April 1983	500	2,250
GL 5193	1990	3,200	6,720
RP 3625	May 1963	Varies by year	3,259
RP 6795	January 1992	456	820
RP 7004	January 1996	156	93
RP 7090	April 1997	156	46
MAUI			
GL 5262	June 1984	2,011	8,446
GL 4538	July 1976	1,390	9,174
GL 4570	November 1977	100/Yr. First 20 years Then 2,325/Yr.	1,297
GL 4583	March 1978	141 one time payment	42
GL 4599	March 1979	15,750	89,775
RP 5199	January 1974	Varies by year	10,044
RP 5898	January 1982	270	1,296
HAWAII			
GL 5220	November 1992	10,750	19,350
GL 5266	March 1993	32,775	49,162
GL 4316	June 1970	5,500/Yr. First 20 years Then 7,500/Yr.	47,100
TOTAL			\$ 345,917

DHHL: Department of Hawaiian Home Lands

**The total represents estimated moneys owed to DHHL as its 30 percent entitlement of revenues from sugarcane lands and water licenses based on 30 percent of the minimum annual lease rent per year. We did not attempt to determine the yearly annual rent for leases based on the amount of sugar produced, water used, or percentage of land in sugar production as all required information was not available.

The Department of Land and Natural Resources is not providing key information to the Department of Hawaiian Home Lands

The land department is not providing key information to the Department of Hawaiian Home Lands as it relates to sugarcane lands and water licenses. The land department's quarterly fiscal reports on the revenues transferred to the Native Hawaiian Rehabilitation Fund constitute the extent of the information exchanged. We found no evidence that the land department is giving proper notice to the Department of Hawaiian Home Lands on the disposition of sugar lands. In fact, our review of files at the land department and the Department of Hawaiian Home Lands found that there is no formal protocol in place to facilitate the exchange of information on the disposition of sugarcane lands or water licenses. The following examples show the results of poor communications between the two departments.

In one case, the land department decided to reduce the annual rent of a lessee without informing the Department of Hawaiian Home Lands. The Department of Hawaiian Home Lands subsequently sent a letter to the land department noting the loss of revenue to the Native Hawaiian Rehabilitation Fund and the failure to involve the Department of Hawaiian Home Lands in the lease decision. In another case, the land department waived the annual rent of a lessee for two years until 1999. The Department of Hawaiian Home Lands staff reported that they had not received any information on the rent waiver and reiterated that they receive very little information from the land department on the status of sugar leases.

Our 1991 study recommended that a new memorandum of understanding be executed between the Departments of Land and Natural Resources and Hawaiian Home Lands to more clearly define the responsibilities of each department. We note that full compliance with the existing memorandum of understanding may be sufficient at this time, and that the departments should evaluate the existing memorandum's effectiveness after full compliance has been achieved. The land department needs to be more attentive to providing the Department of Hawaiian Home Lands with information for tracking revenue entitlements. Information should include current leases and permits, the terms of the lease agreement, a payment schedule, revenues due to the Department of Hawaiian Home Lands, and any information related actions taken on such leases and permits.

Trust obligations are not being fulfilled

Sugarcane lands are a part of the public land trust for which the land department has certain responsibilities. These responsibilities include "managing, administering, and exercising control over public lands, the water resources, ocean waters . . . and exercising such powers of disposition thereof as may be authorized by law."² The public land trust consists of ceded lands, federal lands returned to the State, and other lands the State acquired through purchase, exchange, or condemnation. These lands are held as a public trust to support public schools, other public educational institutions, the betterment of the conditions for native

Hawaiians as defined in the 1920 Hawaiian Homes Commission Act, the development of farm and home ownership, the making of public improvements, and the provision of lands for public use.

The Department of Hawaiian Home Lands is not receiving all income owed to it from sugarcane lands and water licenses. As a result, trust obligations for the betterment of conditions for native Hawaiians are not being fully met.

The Department of Land and Natural Resources Has Not Followed Our Recommendations

Our previous study recommended that the Department of Land and Natural Resources plan for the future use of sugarcane lands and establish valuation procedures for these lands. We also recommended the land department work with the Department of Hawaiian Home Lands, Office of Hawaiian Affairs, and other affected government agencies in planning for the future use of sugarcane lands. We recommended the land department recognize the Department of Hawaiian Home Lands' entitlement to sugarcane revenues in its plans and give them a voice in the disposition of these lands.

Planning for sugarcane lands is insufficient

We found little evidence of planning for the future use of sugarcane lands at the Department of Hawaiian Home Lands and the land department. The information exchanged between the agencies appeared to be minimal and the Department of Hawaiian Home Lands was hardly involved in decisions relating to the disposition of sugarcane lands.

Our review of files at the Departments of Land and Natural Resources and Hawaiian Home Lands revealed little evidence of plans or discussions for the future use of sugarcane lands. However, officials from the Department of Hawaiian Home Lands report that they are in constant dialogue with the land department staff regarding the disposition of sugarcane lands. We question the extent of these discussions considering the land department does not even provide information on the current status of sugarcane lands and water licenses and actions to be taken on their respective leases and permits. We noted an instance where a Land Division staff member strongly recommended developing a strategy for land use as well as securing and maintaining the land in light of its possible demise for sugarcane cultivation. Yet, no evidence of any follow-up was found.

At one time, the land department did initiate efforts to systematically plan for the future use of sugarcane lands. In 1991, the land department contracted with Deloitte & Touche to develop a *Strategic Land Management Methodology Manual*. The manual was developed to assist the Land Division with advance planning for land dispositions, particularly agricultural lands. The manual was designed to be used by

land agents as a hands-on decision support tool using a step-by-step methodology and framework. However, Land Division staff report that once the manual was completed, it was never utilized by land agents. In fact, the manual has sat unused for the past seven years.

***Clear valuation
procedures do not exist***

In our 1991 study, we also recommended that the Department of Hawaiian Home Lands be compensated for sugarcane lands that were conveyed to the former Housing Finance and Development Corporation. We found that the Department of Hawaiian Home Lands has received its 30 percent entitlement from lands conveyed to the corporation in Lahaina and Honokowai, Maui and Hanapepe, Kauai. Although the entitlement issue for those particular cases has been resolved, clear valuation procedures for future land conveyances between government agencies still do not exist.

The Department of Hawaiian Home Lands has been compensated for exchanged lands

Following our 1991 audit recommendations, the 1992 Legislature appropriated \$925,000, through Act 316, SLH 1992, for the Department of Hawaiian Home Lands' 30 percent entitlement for former sugarcane leases on public lands at Honokowai, Maui. The Department of Hawaiian Home Lands was also directed, through Act 317, SLH 1992, to determine the fair market value of former sugarcane lands at Lahaina, Maui so that it could receive its 30 percent entitlement from the sales of these lands. It subsequently received a total of \$8.3 million for these lands. Finally, the Department of Hawaiian Home Lands also received approximately \$1.5 million for its entitlement to former sugarcane lands at Hanapepe, Kauai. In all cases, the entitlements were determined by establishing the fair market value of the land.

No appraisal requirement for land exchanges between government agencies has been enacted

In our 1991 report, we recommended that the Legislature amend Section 171-95 (disposition to government agencies) of the Hawaii Revised Statutes to require an appraisal of all lands prior to disposition to a government agency. We found that the land department had disposed of sugarcane lands to the Housing Finance and Development Corporation without compensating the Department of Hawaiian Home Lands. We also noted that a clear valuation procedure did not exist for lands conveyed to other government agencies. There was no appraisal requirement when this type of situation occurred.

Our review of Section 171-95, HRS, found that the Legislature has not implemented our recommendation—Section 171-95, HRS, remains silent on the requirement of an appraisal of public lands prior to disposition to a

government agency. One land department official stated that the valuation of public lands that are conveyed to other governmental agencies has historically not been an issue because the conveyance is generally for public purposes. Thus, valuation is moot. However, when land is conveyed to a non-governmental agency, statute requires the land department to conduct an appraisal to determine the value of the land. The same standard should be applied to land transactions between governmental agencies that are bound by trust obligations. Without an appraisal of public lands, a determination of fair entitlements for the Department of Hawaiian Home Lands beneficiaries cannot be made.

Conclusion

The Department of Land and Natural Resources needs to develop a comprehensive inventory of all public lands. This should be the department's first and most important step and should be made a priority. The Department of Hawaiian Home Lands should assist the land department in this effort. As a part of this inventory, the land department needs to maintain up-to-date information on protected lands (sugarcane) and water licenses and the status of their leases and permits. Without a comprehensive inventory, neither department can ensure that the Department of Hawaiian Home Lands receives its full entitlement because it is impossible to determine if all sugarcane lands have been identified. Actions taken on the disposition of sugarcane lands and water licenses can potentially affect the revenues due to the Native Hawaiian Rehabilitation Fund. A reduction or waiver in the lease rent can also adversely affect the amount of revenue transferred to the fund. As a result, the Department of Hawaiian Home Lands is denied potential income and trust obligations to improve conditions for native Hawaiians are not being met.

Recommendations

1. To more effectively manage and monitor revenue entitlements to the Department of Hawaiian Lands, the Department of Land and Natural Resources should:
 - a. Identify, through a comprehensive inventory, all sugarcane lands, state lands, and sugarcane lands disposed of subsequent to November 7, 1978. This inventory should include a complete and accurate list of all leases and permits for sugarcane lands and water licenses.
 - b. Comply fully with the 1980 memorandum of understanding by maintaining up-to-date information on leases and permits for sugarcane lands and water licenses, ensuring that sufficient information is given to the Department of Hawaiian Home Lands on any action taken on the use or disposition of state lands and

sugarcane lands, and affording the Department of Hawaiian Home Lands an opportunity to participate in the decision-making process for the disposition of sugarcane lands. When full compliance is achieved, the departments should evaluate the adequacy of the existing memorandum to ensure that the Department of Hawaiian Home Lands receives its full revenue entitlements.

- c. Develop formal rules, policies, and procedures to assist staff with the management of sugarcane lands and water licenses. This would include clear policies and procedures for maintaining files, identifying and monitoring sugarcane lands and water licenses, transferring revenues to the Native Hawaiian Rehabilitation Fund, and providing the Department of Hawaiian Home Lands timely information on land actions affecting their revenue entitlements.
 - d. Work with the Department of Hawaiian Home Lands to develop formal procedures to plan for the future use of sugarcane lands. These procedures should ensure that the Department of Hawaiian Home Lands is involved in the planning process prior to the disposition of any lands. The Department of Land and Natural Resources should report to the 2000 Legislature on its progress towards developing policies and procedures for the overall management of sugarcane lands and water licenses.
2. To more effectively verify the revenue entitlements it receives, the Department of Hawaiian Home Lands should comply with the 1980 memorandum of understanding and assist the Department of Land and Natural Resources in identifying and maintaining up-to-date information on the leases and permits for sugarcane lands and water licenses. Once this is done, the department should verify the accuracy of the entitlements it receives.
 3. The Legislature should amend Section 171-95, HRS to require an appraisal of all public lands, where trust obligations are involved, conducted in accordance with current uniform standards of professional appraisal practice, before such lands are conveyed to another governmental agency.

Notes

Chapter 2

1. Memorandum of Understanding, Department of Hawaiian Home Lands and Department of Land and Natural Resources, Honolulu, Hawaii, January 22, 1980, p. 4.
2. Hawaii Revised Statutes, Volume 3, Chapter 171, Section 3, Honolulu, Hawaii, 1993.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted drafts of this report to the Department of Land and Natural Resources and the Department of Hawaiian Home Lands on February 22, 1999. A copy of the transmittal letter to the Department of Land and Natural Resources is included as Attachment 1. A similar letter was sent to the Department of Hawaiian Home Lands. Responses of the Department of Land and Natural Resources and Department of Hawaiian Home Lands are included as Attachments 2 and 3 respectively.

The Department of Land and Natural Resources agreed with a majority of the findings in our report, but disagreed with some of our recommendations and questioned other parts of the report. The land department agreed with the need for a comprehensive inventory of sugarcane lands and water licenses, formal policies and procedures for these types of entitlements, and better planning for the future use of sugarcane lands. The land department also outlined steps and alternative methods to adequately administer the DHHL 30 percent entitlement.

The land department noted that 2 of the 21 leases and permits found to be in non-compliance with the entitlement requirements had been incorrectly identified, and 12 additional leases had been included as precautionary measures although it was not clear to the department whether they were subject either in whole or part to the entitlement requirements. In addition, the land department contended that of the approximately \$345,000 identified as unpaid entitlements, approximately \$48,000 was in error and an additional \$155,000 was questionable. We note that the lease and permit list was provided to us by the land department with no qualifications. Furthermore, we were informed by the land department after fieldwork was completed that approximately \$316,000 had been transferred to the Native Hawaiian Rehabilitation Fund in October 1998, representing entitlement payments for 16 of the 21 leases.

With regard to our finding that the land department is not providing key information to the Department of Hawaiian Home Lands, the land department stated that its procedural memorandum issued in June of 1998, for DHHL 30 percent entitlements, is appropriate and sufficient. The land department also stated that the Department of Hawaiian Home Lands should not be informed of rent waivers because they are addressed in the Land Board Submittals which are sent to DHHL. However, we found that the land department's current procedures do not ensure an adequate exchange of information between the two departments. In addition, the land department's response notes that 7 of the 21 cases

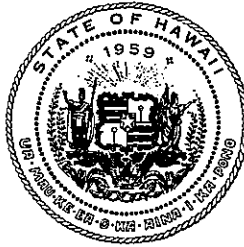
missing entitlement payments resulted because they were overlooked by the land agents—the same parties responsible for notification under the department’s procedural memorandum.

The land department also disagreed with our recommendation that the Legislature amend Section 171-95, HRS, to require an appraisal of all public lands before such lands are conveyed to another government agency. The land department’s position is that the State is not obligated to compensate either the Office of Hawaiian Affairs or Department of Hawaiian Home Lands where public trust, protected lands, are used to fulfill any one or more of the trust purposes. The land department contends our recommendation would support compensation to the Department of Hawaiian Home Lands for all land transactions. We disagree. Our recommendation specifically states that an appraisal would be required when lands are conveyed to another government agency “where trust obligations are involved.” This would help ensure that the State’s public land trust obligations are observed by properly determining the value of land transactions between government agencies that affect the public land trust. Such appraisals are already required for lands conveyed to non-public entities. Requiring valuations for conveyances between government agencies would ensure that the public land trust is not being adversely affected by the transactions.

Finally, the land department expressed concern that the time and effort to comply with the entitlement requirements may not be cost effective, especially in light of the declining revenues from sugarcane lands. However, we note that the entitlement is still a requirement of the State Constitution, and thus the responsibility of the Departments of Land and Natural Resources and Hawaiian Homes Lands to comply.

The Department of Hawaiian Home Lands generally agrees with the findings and recommendations of our report and stated that the report should serve as a useful tool for improving its ability to effectively monitor and verify revenue entitlements to the Native Hawaiian Rehabilitation Fund. The department also stated that it is willing to assist the Department of Land and Natural resources in identifying and compiling up-to-date information on sugarcane lands and water licenses and agrees to participate with the Department of Land and Natural Resources in developing formal procedures to plan for the future use of sugarcane lands. Finally, the department concurs with the need to develop formal procedures to gather information on sugarcane lands and water licenses to verify its revenue entitlements.

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



MARION M. HIGA
State Auditor

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

February 22, 1999

COPY

The Honorable Timothy Johns, Chairperson
Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Johns:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Follow-Up to the Study of Revenue Entitlements to the Department of Hawaiian Home Lands*. We ask that you telephone us by Wednesday, February 24, 1999, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Wednesday, March 3, 1999.

The Department of Hawaiian Home Lands, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this 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,

Marion M. Higa
State Auditor

Enclosures



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621
HONOLULU, HAWAII 96809

March 5, 1999

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT
WATER RESOURCE MANAGEMENT

Ref.: LD-DSM

Ms. Marion Higa
Office of the Legislative Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

RECEIVED

MAR 5 4 10 PM '99

OFF. OF THE AUDITOR
STATE OF HAWAII

Dear Ms. Higa:

Subject: Follow-Up to the Study of Revenue Entitlements to the Department of
Hawaiian Home Lands

Thank you for the opportunity to respond to the draft report, *Follow-Up to the Study of Revenue Entitlements to the Department of Hawaiian Home Lands* ("Follow-Up Study") which studied the Department of Hawaiian Home Lands (DHHL) 30% entitlement pursuant to Article XII, Section 1 of the Hawaii State Constitution ("30% entitlement").

Our response is organized into three major sections: first, we respond directly to the Follow-Up Study's findings and recommendations, second, we delineate the steps that must be taken in order to adequately administer the DHHL 30% entitlement, and third, we explore the costs associated with these steps. We feel that these three sections, taken together, will provide a fuller understanding of this entitlement to enable lawmakers to make appropriate, informed decisions.

To clarify the terminology used in our response, we note the following. Pursuant to Article XII, Section 1 of the State Constitution, there are three situations under which DHHL is entitled to 30% of State receipts: 1) leasing of lands in sugarcane cultivation, which we hereinafter refer to as "sugarcane leases", 2) water licenses, and 3) leasing of lands that were in sugarcane cultivation as of November 7, 1978 but are leased for other uses, which we hereinafter refer to as "protected lands". It should be noted the Follow-Up Study used different terminology.

Section 1: Response to Findings and Recommendations

1. DLNR lacks a comprehensive inventory.

The Follow-Up Study found that the Department of Land and Natural Resources (DLNR) lacked a comprehensive inventory and recommended that DLNR identify all

"sugarcane lands, state lands, and sugarcane lands disposed of subsequent to November 7, 1978", including a complete and accurate list of all leases and permits for "sugarcane lands" and water licenses.

It is our understanding that this finding encompasses sugarcane leases, water licenses, leases and permits on protected lands, and the protected lands itself.

Our current process of identifying dispositions of land which are subject to the DHHL 30% entitlement is cumbersome and imprecise. While the accounts receivable system will allocate rental receipts and transfer such revenues to DHHL, the difficulties lie in the manual nature of the preceding steps. For leases and permits on protected lands, land agents must manually check the listing of tax map key (TMK) numbers on the 1993 Deloitte and Touche report, *Department of Hawaiian Home Lands Entitlement Study* (hereinafter "1993 Deloitte and Touche report") and then, if approved by the Land Board, submit a memorandum to notify the Fiscal Office that the DHHL 30% entitlement applies. Furthermore, we acknowledge the limitations of the 1993 Deloitte and Touche report, but use it as the most definitive TMK-based inventory.

In Section 2 of our response, we delineate the steps to more accurately and efficiently develop and maintain an inventory of protected lands and track these lands to ensure that revenues from leases and permits are transferred to DHHL.

With regard to the 21 cases cited as not having entitlements transferred to DHHL, we note the following.

Prior to the start of this audit, we had performed a cross check between the 1993 Deloitte and Touche report and our State Land Inventory to ensure that revenues from all applicable leases and permits on protected lands were being transferred to DHHL. Based on our review, we provided a comprehensive listing of leases and permits subject to the DHHL 30% entitlement to the Office of the Legislative Auditor (OLA). It is our understanding that OLA used this list to verify whether 30% of revenues were being transferred to DHHL and did not verify, where protected lands were concerned, whether entitlements to DHHL were actually owed by validating that a portion or all of the leased premises actually sits on protected lands.

We would like to clarify that our cross check found the 21 cases cited and that:

- Two (2) cases were given to OLA as DHHL 30% entitlement lands in error due to a fiscal report which was printed using erroneous option codes. As such, contrary to the Follow-Up Study's finding on these two cases (GL S-4316 and GL S-4570), these leases are not subject to the DHHL 30% entitlement.
- Eight (8) cases are easements for utility, roadway, water transmission lines and similar other types which, only in some part, cross a parcel or plat that is

indicated as protected lands in the 1993 Deloitte and Touche report. We were uncertain as to whether easements would be subject to the DHHL 30% entitlement and included them on the list as a precautionary measure.

- Four (4) cases are leases or permits which may or may not be subject to the DHHL 30% entitlement depending on the specific location of the leased premises in relation to the protected lands. For some of the protected lands, the 1993 Deloitte and Touche report only identified plats, not specific parcels. The tax map key (TMK) numbers of these four leases or permits happened to fall in such a plat and without examining and comparing the actual maps, an accurate determination cannot be made as to whether the DHHL 30% entitlement applies or whether a certain proportion of the rental receipts are owed based on the proportion of the leased premises which sits on protected lands. We discuss methods of performing these tasks in Section 2 below.
- Seven (7) cases were leases or permits overlooked by the land agents, subsequently found in our review and then corrected with our Fiscal Office in October 1998.

It should be noted that based on the above information, the Follow-Up Study's assertion that DLNR "should have deposited at least \$345,000 into the Native Hawaiian Rehabilitation Fund" would be reduced by \$48,397 and put another \$154,885 into question.

These examples depict how difficult it is to easily and accurately identify which leases and permits, in whole or in part, are subject to the DHHL 30% entitlement. Section 2 of our response explores these issues in greater detail.

2. DLNR lacks a formal policies and procedures manual.

The Follow-Up Study found that DLNR lacks a formal policies and procedures manual to guide staff in managing and monitoring leases and permits for "sugarcane lands" and water licenses and recommended that DLNR develop formal rules, policies, and procedures to assist staff with the management of "sugarcane lands" and water licenses, including policies and procedures for maintaining files, identifying, and monitoring "sugarcane lands" and water licenses, transferring revenues to DHHL and providing DHHL timely information on land actions affecting their revenue entitlements.

The Land Division is currently implementing a \$2 million project to plan, design, and implement a new computer system to assist in the management of State lands. As part of this project, consultants have documented the Division's current workflow processes and re-engineered these workflows to streamline the processes using best management practices. Based on the design of the new computer system, procedures for all workflows will be documented. At that time, the Follow-Up Study's

recommendation to develop a formal policies and procedures manual will be addressed. Due to the fluidity of the processes and procedures as the Land Division progresses through this computerization project, we believe that it would be more efficient to complete the manual concurrently with this project.

3. DLNR is not adequately monitoring revenue entitlements to DHHL.

The Follow-Up Study found that DLNR is not adequately monitoring leases and permits for sugarcane lands and water licenses and cited examples where lessees or permittees were using the land without an executed lease or permit, DLNR had not transferred appropriate entitlements to DHHL, and a lessee had not been making annual rent payments for over three years.

As a general comment, the Land Division has initiated efforts to improve its fundamental management practices to better perform its mandates in a timely, efficient, fair and professional manner. In large part due to the September 1996 *Follow-Up Audit of the Financial Audit of the Department of Land and Natural Resources* by the Office of the Legislative Auditor, several initiatives have been started. Some of these efforts include improving records management procedures (including those reported in the Follow-Up Study), computerization of the Land Division functions (which will include the development of a formal procedures manual), and standardization of Land Board submittals (which now include DHHL entitlement status).

Given that, we offer the following specific comments on the examples cited.

With regard to unexecuted leases and permits, the Land Division has identified this as an area of improvement in the disposition of all leases and permits. In the past, obtaining an executed document was not always a priority with rights-of-entry being issued in the interim. We are now suffering backlash from these lax policies as we are finding that, in some cases, documents do not get executed for one reason or another. Management now reviews Board submittals to ensure that interim rights-of-entry are authorized only in restricted cases. Furthermore, the Land Division envisions that the new computer system will provide for internal controls which will prevent opening new lease accounts where a document has not been fully executed.

The Follow-Up Study cited the case in which a lessee had occupied the land since 1989 without an executed lease agreement. This disposition involved the sale of easements and water license for hydroelectric plant operations (the plant itself was to be located on private lands). The applicant has been unable to obtain the necessary stream alteration permit from the Commission on Water Resource Management and therefore has neither used the water nor occupied the easements (which cannot be located without the permit). It is our understanding that land management policy at that time was to obtain Board approval prior to the applicant obtaining the required Water Commission permits. Current policy is to require the applicant to obtain water

use and stream alteration permits prior to obtaining Land Board approval for the water disposition. This change would resolve the problems encountered in this case. Furthermore, the start date of the water license had been set by staff as the date of sale at auction which prompted the billings. Upon consultation with the Department of the Attorney General and the applicant, we will determine the status of this project and whether reimbursement of the paid rent amounts would be in order since the applicant has never used the water or easements or been issued an agreement.

For the two cases cited where DLNR had not transferred appropriate entitlements to DHHL, it is our understanding that these were cases in which rental reopenings had been completed after the start date for the new rent, and, therefore, the Fiscal Office was notified to increase the rent retroactively. Upon receipt of payments, 30% of revenues were transferred to DHHL in compliance with Article XII, Section 1.

In the case where a sugar lessee had not been making annual rent payments for over three years, we comment that the Land Board approved issuance of a new lease, and the Administration has been engaged in ongoing negotiations on this lease. Where leases still in sugarcane cultivation are concerned, there are additional social, economic, and resource issues which must be taken into consideration. While we recognize the importance of collecting rent on all leases, this lease has required sensitive handling because of such issues.

4. DLNR is not providing key information to DHHL.

The Follow-Up Study found that DLNR is not providing key information to DHHL relating to "sugarcane lands" and water licenses and recommended that DLNR ensure that sufficient information is given to DHHL on any action taken on the use or disposition of state lands and sugarcane lands.

In our procedural memorandum of June 10, 1998, we delineated that land agents would be responsible for: 1) requesting comments from DHHL on any disposition subject to the DHHL 30% entitlement, 2) indicating the DHHL 30% entitlement on Board submittals, and 3) providing DHHL a copy of the Board submittal prior to the Board meeting. We believe such notification in the disposition of leases and permits subject to the DHHL 30% entitlement is appropriate and sufficient.

With regard to the administration of leases, we anticipate that basic information regarding leases and permits subject to the 30% entitlement will be more easily transferable to DHHL with the integrated database system we are developing. Currently, information is limited to those data fields which are inputted into the Fiscal Office's accounts receivable system for the purposes of billing and receipts. With the information on integrated databases, more comprehensive reports can be provided.

With regard to rental reopenings on auctioned leases, we disagree with the Follow-Up Study that DHHL should be notified, since reopenings are conducted in accordance

with lease provisions. Furthermore, rent waivers are addressed in the Land Board submittal when approval is obtained to sell a lease at public auction. DHHL would have the opportunity to express any comments at that time.

5. Lack of planning for the future use of sugarcane lands.

The Follow-Up Study found little evidence of planning for the future use of "sugarcane lands" at DLNR and DHHL and recommended that DLNR work with DHHL to develop formal procedures to plan for the future use of "sugarcane lands" and report back to the 2000 Legislature on its progress.

As part of its computerization project, the Land Division conducted Re-engineering Workshops in January to conceive of new and better ways to administer all public lands under its jurisdiction. At these workshops, an overall lack of planning was identified for all State lands. In recent history, there has been no planning component within DLNR's land management function. With neither the time nor the expertise to engage in meaningful planning for State lands, land agents play a purely reactive, custodial role in managing State lands.

We would like to add a planning function to our workflow processes for all State lands under our jurisdiction. In our biennium budget request, the Land Division has requested the conversion of one Planner position from general to special funds. This request may serve as the beginning of a full-fledged planning function which would oversee planning issues for all State lands under the jurisdiction of the Land Division.

Quite obviously, a major planning issue facing the State are the lands which are coming out of sugarcane cultivation. With a land management planning function, the 1991 Deloitte and Touche *Strategic Land Management Methodology Manual* should also be revisited.

6. Valuation procedures for land conveyances between government agencies do not exist.

The Follow-Up Study found that clear valuation procedures for future land conveyances between government agencies still do not exist and recommended that the Legislature amend Section 171-95, HRS, to require an appraisal of all public lands before such lands are conveyed to another government agency.

We disagree with this recommendation for the following reasons.

Most of the lands which are subject to the DHHL 30% entitlement are part of the public land trust, and therefore, our comments apply to these lands only.

Pursuant to Section 5(f) of the Admission Act, the lands, proceeds and income of the public trust lands shall be managed and disposed of for **one or more** of the five trust purposes: for the support of the public education, for the betterment of the conditions

of native Hawaiians, for the development of farm and home ownership, for the making of public improvements, and for the provision of lands for public use.

Consequently, it is our position that the State is not obligated to compensate either the Office of Hawaiian Affairs or DHHL where public trust, protected lands are used to fulfill any one or more of the trust purposes.

The Follow-Up Study asserts that DLNR should conduct appraisals of all land transactions between governmental agencies and that "without an appraisal of public lands, a determination of fair entitlements for the Department of Hawaiian Home Lands beneficiaries cannot be made" (p. 19). These statements imply that compensation is, in some way, owing to DHHL even where public trust, protected lands are used to fulfill trust purposes other than for the betterment of native Hawaiians.

Based on our position, there would be no need for appraisal of most inter-governmental land dispositions where public trust land is being used in fulfillment of one or more trust purposes. In the event a disposition to a government agency conveys land out of the public land trust, an appraisal would be appropriate.

Also, while OHA and DHHL would be invited to comment on such dispositions, the Land Board has the broader mandate of weighing the interests and needs of all of the public land trust purposes. As such, their recommendations would be considered but may not always be adopted.

Section 2: Major Steps in Ensuring DHHL Entitlement is Adequately Administered

To ensure adequate administration of the DHHL 30% entitlement, we have identified the following major steps. These steps deal only with dispositions of protected lands since the identification and tracking of leases in sugarcane cultivation and of water licenses are not anticipated to pose any difficulties with the new computer system envisioned by the Land Division. Furthermore, protected lands are becoming the primary revenue-generating category as lands continue to go out of sugarcane cultivation, and the problems of tracking and monitoring primarily arise with this category.

The major steps we have identified are: 1) interpreting Article XII, Section 1, 2) identifying and tracking of protected lands, 3) planning and disposition of protected lands, and 4) monitoring compliance with the DHHL 30% entitlement.

1. Interpretation of Article XII, Section 1

The first and most fundamental step in adequately implementing the DHHL 30% entitlement is to clearly understand what is required under this Constitutional mandate. Our testimony on House Concurrent Resolution No. 143 at the 1998 legislative session noted that it is of fundamental importance to have certain legal

questions answered by the Attorney General with regard to the DHHL 30% entitlement with respect to what triggers the need to make payments to DHHL on protected lands.

We have sought the legal opinion of the Attorney General on the interpretation of Article XII, Section 1 of the State Constitution in order to seek such clarification and are currently awaiting a response. We have been advised that the issues posed by our request are complex because the wording of key passages in the relevant provisions of law are confusing and ambiguous, but that work on the opinion is ongoing with the prospect of an opinion being issued in several months.

Our disagreement with the Follow-Up Study's recommendation to require an appraisal of all public lands prior to disposition to another government agency illustrates the differing interpretations which Article XII, Section 1 elicits regarding what is owed to DHHL and under what circumstances. We asked the Attorney General whether DHHL is entitled to revenue from protected lands which are leased or set aside to a government agency for a public purpose. Depending on the answer to this question, an appraisal on all dispositions to government agencies may or may not be required.

Another example illustrated by the Follow-Up Study is how much is owed to DHHL in cases where easements, which cross multiple plats and parcels, happen to cross, in some part, protected lands. The Follow-Up Study's finding implies that 30% of revenues from the entire easement is to be transferred to DHHL since the finding that \$345,000 should have been transferred to DHHL includes the eight easements discussed in Section 1 above.

Until such clarification is received, implementation of this mandate can continue to be criticized as "inadequate" since different people will have different opinions on what is owed under this entitlement.

2. Identification and Tracking of Protected Lands.

Administering the DHHL 30% entitlement on protected lands requires that protected lands are first identified and then somehow tracked over time. In order to provide some background on the complexity of these tasks, challenges encountered include:

- DHHL is entitled to 30% of the revenue from lands that were in "sugar cultivation in 1978." According to an Attorney General opinion, these lands do not include lands that were within the lease boundaries but used for non-sugar cultivation purposes, such as, pasture, waste lands, gulches, reservoirs, roads, and ditches. As a result, tracking of the protected lands is complicated since the footprints do not conform with tax map keys or lease boundaries.
- DHHL hired R.M. Towill to prepare air photo maps which identify all the lands in sugar cultivation in 1978. These air photo maps are overlaid on a

U.S.G.S. quad map which shows topographical features, but these maps do not show property lines or tax map key boundaries which are needed to track the protected lands.

- Over time, protected lands will be used for varying uses, put under a variety of encumbrances and subdivided. While the protected land areas remain fixed, these iterations will make tracking of the areas subject to the DHHL entitlement increasingly harder to perform with accuracy since the configuration of protected lands among and within these parcels will change, and consequently the portion of lands upon which 30% of revenues is owed to DHHL on these parcels will change.

Given this, we have outlined three general methods for identifying and tracking the protected lands over time for the purpose of fulfilling this entitlement: 1) use a database to attach the DHHL 30% entitlement status to tax map key (TMK) numbers, 2) manually use maps, or 3) utilize geographic information system (GIS) technology. All three start with the use of the R.M. Towill air photo maps that identify the lands under sugar cultivation in 1978.

Method 1: Use of Database - Tax Map Key

This method involves translating the geographic location of protected lands into the tax map keys (TMK's) and attaching the DHHL 30% entitlement status to those TMK's. Once the field has been established and the TMK's have been encoded, the data can be manipulated to perform various tasks. For instance, where new lease accounts are established on a TMK with the DHHL entitlement status, the database could be programmed to automatically transfer 30% of rental receipts to DHHL. Reports identifying TMK's and the encumbrances on those TMK's could be printed.

The steps that are required to establish and maintain this method include:

- a) Identify all protected lands by tax map key numbers using the air photo maps prepared by R. M. Towill and overlaying the current tax maps.
- b) Develop listing of TMK's by cross checking air photo maps and the 1993 Deloitte and Touche report. Any pasture, waste lands, gulches, reservoirs, roads and ditches would be identified and not included in the TMK's. Where portions of parcels are involved, either percentages must be applied to the TMK numbers or a general rule must be applied (e.g., if at least 51% of the TMK parcel is protected lands, then the entire parcel is given this status).
- c) Create DHHL 30% entitlement database field (database must be interfaced with accounts receivables and other relevant databases).
- d) Input data on TMK's subject to DHHL 30% entitlement.

- e) Upon establishment of lease or permit accounts, 30% of receipts received on the use of these TMK's are automatically allocated and disbursed to DHHL.

While this method would be the least costly system to implement and maintain, it is, by far, the most inaccurate. Protected lands are geographic areas which, in order to be accurately tracked, must be tracked geographically, not by TMK. Tracking lands by TMK number creates a variety of problems when the footprint of the protected lands does not nicely correspond with tax map parcels, which is likely the case for most of the protected lands. In order to provide more accuracy, percentages of parcels can be manually estimated and inputted into the computer system at the cost of additional staff time. Furthermore, the accuracy, over time, as lands are leased and released, subdivided and resubdivided is only going to worsen while an increasing amount of staff time will have to be devoted to tracking the parcels. From a long-term perspective, this method is not cost effective.

Method 2: Manual Use of Maps - Tax Map Key and Air Photos

This method would involve the manual tracking of protected lands using maps.

The steps that are required to establish and maintain this method include:

- a) Identify all protected lands by tax map key numbers using the air photo maps prepared by R. M. Towill and overlaying the current tax maps.
- b) Develop listing of TMK's by cross checking air photo maps and the 1993 Deloitte and Touche report.
- c) As requests are made to use these lands, a cartographer, draftsman, or personnel with such expertise would identify the exact area of "cultivated sugar lands" that will be involved in this request using the air photo maps of 1978 prepared by R. M. Towill and would document and update base maps.
- d) Notify Fiscal Office of percentage of rental receipts to be allocated to DHHL for the leases and permits issued and transfer such receipts to DHHL.

This process will be costly to implement and maintain due to its labor-intensive nature. However, accuracy of tracking the specific areas subject to the DHHL entitlement will be moderate to high. Because of the manual steps in maintaining the maps and in notifying the Fiscal Office, some accuracy may be sacrificed. Effectively, one will need to maintain a manual mapping system that uses the 1978 R.M. Towill air photo maps as a base map. All subsequent dispositions (e.g., leases, permits, easements, licenses, sales) would be recorded and updated on these base maps. Personnel with expertise in cartography would be required.

Method 3: Digitize information - GIS

The most current computer technology, through the Geographic Information Systems (GIS), would allow for accurate tracking of the specific geographic areas of protected lands. GIS technology provides the ability to query and analyze data geographically. Metes and bounds data are digitized to create maps and then tabular data in database files can be added in order to display, query, and summarize the data spatially.

The steps that are required to establish and maintain this method include:

- a) Identify all protected lands by tax map key numbers using the air photo maps prepared by R. M. Towill and overlaying the current tax maps.
- b) Develop listing of TMK's by cross checking air photo maps and the 1993 Deloitte and Touche report.
- c) Digitize the R.M. Towill air photo maps as a base map. To enhance accuracy, metes and bounds descriptions should be used wherever possible.
- d) Prepare or obtain tax map key parcel maps for each of the counties.
- e) As requests are made to use these lands, input metes and bounds into GIS and use the GIS to identify the exact area of "cultivated sugar lands" that will be involved in this request using the digitized information from the R.M. Towill air photo maps.
- f) Transfer 30% of whatever receipts received on the use of these "cultivated sugar lands" to DHHL. The database could be programmed to automatically calculate the revenues due to DHHL based on the specific geographic areas of protected lands and allocate revenues received on those parcels.

Initially, this method will be the most costly of the three methods to implement; however, accuracy will be extremely high. This method also provides for improved access to information, better reliability of information, easier use and manipulation of data, improved ability to conduct planning activities and greater ease for auditing purposes to ensure appropriate revenues are transferred to DHHL. Over the long-term, this method would likely be the most cost effective of all three. For these long-term benefits, we would recommend this method.

3. Planning and Disposition of Protected Lands.

Issues and efforts related to this step have been discussed in earlier sections.

4. Monitoring compliance with the DHHL 30% entitlement.

The adequacy and efficiency of monitoring efforts will largely depend on the method

used to track protected lands. The more sophisticated method (GIS) will allow for improved monitoring since the data will be more accurate and easier to access. Also, less time will be involved in monitoring since internal controls and reporting functions could automatically be programmed into the system.

Section 3: Costs of Administering DHHL Entitlement

Some of deficiencies found in the Follow-Up Study, particularly in the areas of general management practices, will be addressed in the Land Division's overall initiatives to improve its operations. These initiatives include computerization which encompasses the development of a formal procedures manual and improving the access to more reliable information and reorganization which includes adding a planning function to the management of State lands.

To address the more specific activities unique to the DHHL 30% entitlement, we provide the following rough estimates for the implementation of the steps outlined in Section 2 above:

<u>Method</u>	<u>Initial Cost</u>	<u>Annual Cost</u>
TMK-based database	\$60,000	\$0
Manual use of maps	\$60,000	\$4,800-7,200
GIS	\$125-150,000	\$0
DHHL-funded position (SR-22-SR 24, 27.17% fringe)		\$42-48,000

The steps which could be absorbed into the Land Division's existing work processes and personnel do not reflect any costs. The remaining steps, for which estimates have been provided above, would incur costs which are not included in our operating budget. Furthermore, due to the reduction in land management staff by 20% since 1993, the staff position to be funded by DHHL would be needed at least on an interim basis to properly oversee the development and implementation of the tracking method and to ensure adequate administration of the DHHL entitlement.

As described in the Follow-Up Study, "actual sugarcane land revenues are modest." The annual revenues to DHHL are now approximately \$200-250,000 per year. With the announcement of the closure of Pioneer Mill this week, the demise of the sugar industry in Hawaii is nearing. While revenues to DHHL hovered around \$800,000 in the 1980's, with the transition of lands out of sugarcane cultivation (see attached chart), DHHL's revenues have fallen dramatically. Furthermore, these revenues are not expected to increase greatly in the near future since the protected lands represent the prime agricultural lands in the State.

In addition to the impact on revenues that the trend in sugarcane cultivation has had, we also have a better perspective of what it is going to take to administer this entitlement over time.

When this entitlement was first established in 1921, sugar was the dominant industry in the islands. In 1978, when the Constitutional Convention added the second provision in Article XII, Section 1 of the State Constitution to continue revenues even after the lands went out of sugarcane, we were beginning to understand the downturn which lay ahead for the sugar industry in Hawaii. However, minimal lands were transitioning out of sugarcane cultivation and no one had the experience in trying to track the protected lands over time. Following the Con Con, many of the sugar plantations began closing in the 1980's. Now that nearly all sugar plantations have closed, we have some experience in trying to implement the DHHL entitlement with respect to protected lands and have provided estimates on the resources needed to accurately identify and track protected lands in the years to come.

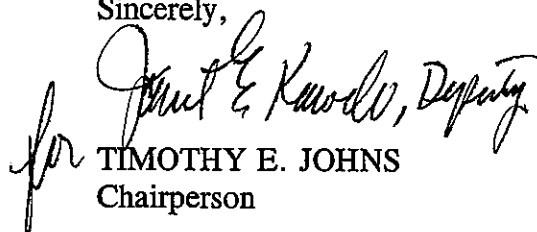
Given this perspective, we are struggling with how much time and effort should be committed to developing and maintaining a tracking system, particularly in light of the increasing complexity and unwieldiness over time as protected lands are leased and released, subdivided and resubdivided. At this point, the annual DHHL revenues of \$200-250,000 represent 1-2% of total Land Division annual revenues. Furthermore, much of the Land Division's responsibilities are non-revenue generating, including acquiring and setting aside lands for public purposes such as schools, parks, forests, harbors, public works, etc. Given these figures and the broader mandates of the Land Division, how much more time and money should be allocated to the DHHL entitlement and at what cost to the many other priorities of the Land Division?

Perhaps there are more cost effective, practical methods of accomplishing the objective of ensuring a permanent revenue stream to DHHL, one that would also provide for better planning on the use of the funds by DHHL. Costs which are now spent on studying, developing, administering, monitoring, and auditing the current entitlement method could then be given to DHHL directly to spend on their programs. Finally, the new mechanism might take a broader view of how this entitlement fits in with the DHHL's overall vision.

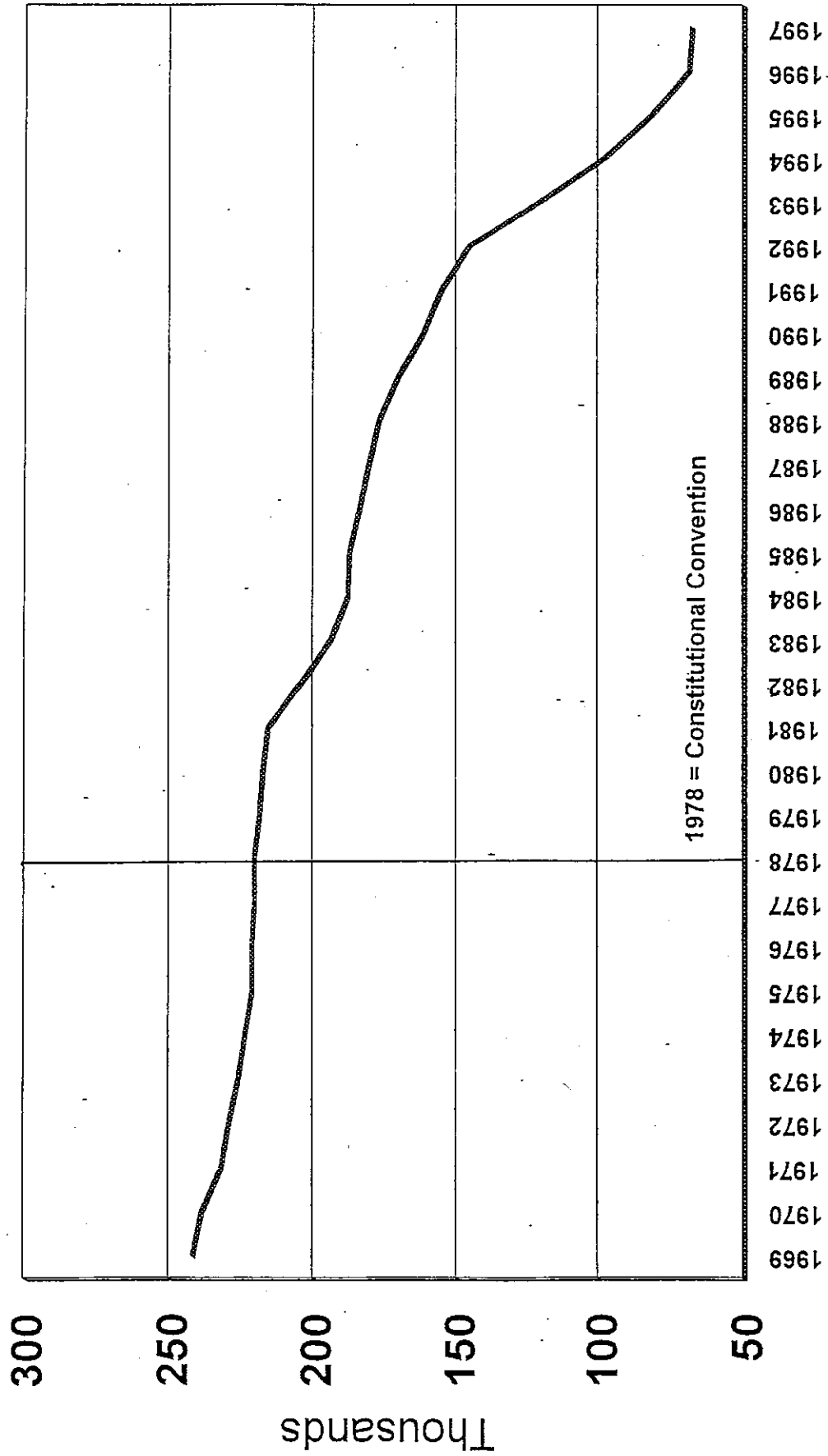
As a final comment, we were very pleased that the Follow-Up Study recognized the improvements made in the Land Division's records management practices. As mentioned earlier, the Land Division has initiated efforts to improve and streamline its fundamental management practices. It is indeed gratifying to receive recognition for these efforts.

Once again, thank you for the opportunity to respond.

Sincerely,


for TIMOTHY E. JOHNS
Chairperson

Sugarcane Acreage



Source: Hawaiian Sugar Planters' Association records.

BENJAMIN J. CAYETANO
GOVERNOR
STATE OF HAWAII



RAYNARD C. SOON
INTERIM CHAIRMAN
HAWAIIAN HOMES COMMISSION

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DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

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March 3, 1999

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OFFICE OF THE AUDITOR
STATE OF HAWAII

The Honorable Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

Thank you for the opportunity to comment on the State Auditor's draft report, *Follow-Up to the Study of Revenue Entitlements to the Department of Hawaiian Home Lands*. We are in general agreement with the findings and recommendations contained in the report, and believe it will serve as a useful tool to the Department of Hawaiian Home Lands (DHHL) in improving our ability to effectively monitor and verify revenue entitlements into the Native Hawaiian Rehabilitation Fund (NHRF).

We would like to offer the following specific comments regarding the Auditor's findings and recommendations:

1. The lack of detailed information on land transactions has made it difficult for DHHL to effectively verify its NHRF revenue entitlement from protected lands. As recommended by the State Auditor, DHHL is willing to assist the Department of Land and Natural Resources (DLNR) with the immediate task of identifying and compiling up-to-date information on leases, permits and water licenses. The establishment of a comprehensive inventory of all sugarcane lands, state lands, and sugar cane lands disposed of subsequent to November 7, 1978 will make it easier to monitor and verify NHRF entitlements.
2. We are also prepared to participate with the Department of Land and Natural Resources in developing formal procedures to plan for the future use of sugarcane lands. DHHL input

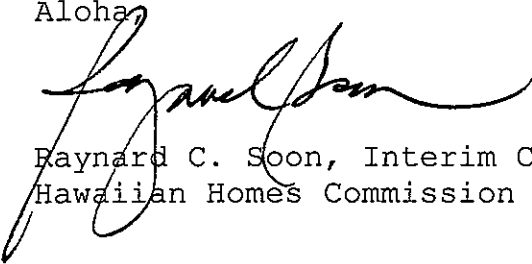
The Honorable Marion M. Higa
March 3, 1999
Page 2

and involvement in this process will help to insure that the impact on NHRF entitlements is fully considered in planning for the future use of protected lands. The nature and scope of DHHL's involvement in this process will need to be determined.

3. Finally, we agree with the need to develop formal procedures to gather information on the disposition of sugarcane lands and water licenses to verify DHHL's NHRF revenue entitlement. We intend to work on the creation of a formal monitoring process in concert with efforts to assist DLNR in compiling an accurate inventory and database of information on the protected lands.

We appreciate the opportunity to comment on the draft report and recognize that implementation of the Auditor's recommendations will help insure that DHHL receives its full NHRF entitlement. DHHL is committed to working with DLNR to improve the management and monitoring of the State's protected lands.

Aloha,



Raynard C. Soon, Interim Chairman
Hawaiian Homes Commission

