
Audit of the State Historic Preservation Division of the Department of Land and Natural Resources

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

Report No. 02-20
December 2002



THE AUDITOR
STATE OF HAWAII

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.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds are existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.
9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

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

Audit of the State Historic Preservation Division of the Department of Land and Natural Resources

Report No. 02-20, December 2002

Summary

The Department of Land and Natural Resources' Historic Preservation Division is entrusted with protecting Hawaii's unique cultural and historic resources. During FY2001-02, the division spent nearly \$1.4 million to administer the department's historic preservation program. Division responsibilities include identifying, evaluating, registering, regulating, interpreting, acquiring, and managing historic or cultural properties. Historic properties include burial sites, traditional cultural places, architectural structures, and objects such as locomotives. Senate Concurrent Resolution No. 79, Senate Draft 1 of the 2002 Regular Session requested the Auditor to conduct a programmatic and financial audit of the division.

We assessed the effectiveness with which the State Historic Preservation Division is managed to achieve its mission. We also assessed whether the division manages its financial resources effectively.

The division's regulatory activities include review of development proposals to assess the effect of change on historic and cultural sites. The review process assists a determination of what preservation efforts, if any, will be required of developers. We found that untimely and inconsistent archaeological reviews compromised the division's ability to protect Hawaii's unique historic sites and artifacts. Projects were delayed for months and sometimes years. One developer lost \$200,000 in loan interest payments as a result of project delays. We also found that diverse standards are applied when reviewing the archaeological reports. Disparate review standards threaten the division's ability to protect historic sites.

Inconsistent standards also plague the division's burial program. In one case, a division employee gave differing explanations as to how he arrived at the decision to relocate human skeletal remains at an upscale development project. The explanations are especially troublesome since the staff person, who is also a church minister, accepted a \$1,000 check from the project developer. The funds were allegedly for the employee's church, but made out to the employee/minister personally. The employee's acceptance of the check creates a potential conflict of interest and raises ethical concerns.

The division also failed to ensure the safekeeping of historical artifacts in its custody. For example, the division did not have an inventory of architectural and art pieces collected from demolished or renovated sites, including Iolani Palace and the Hawaii Theater. Furthermore, the division's inventory of human skeletal remains is piecemeal and does not routinely provide geographical information required by the Native American Graves Protection and Repatriation Act. The inadequate inventory of human skeletal remains coupled with overcrowded storage conditions makes it difficult for the division to account for all remains and to ensure their timely re-interment.

The department chair and division administrator also failed to uphold their trust duties when they allowed division employees to misuse and exploit the division's limited resources. Staff appear to routinely misuse sick leave and were paid overtime that was



either unjustified or not approved. Division employees came forward under Hawaii's Whistleblower Protection Act and alleged that staff were abusing sick leave, vacation leave, overtime, and tampering with government records. The department failed to adequately investigate the allegations. In fact, the department allowed the staff in question to retain custody of the department leave records despite allegations that they were tampering with these records.

The administrator also allowed staff to engage in outside employment during state time. For example, the archaeology branch chief routinely teaches courses at the University of Hawaii during his normal work hours without using any leave. As a result, the department paid the chief \$3,665.88 for time he actually spent teaching seven university courses. The university paid him \$29,484.19 for teaching the courses. Similarly, the Kauai archaeologist used state time to perform work for an outside employer.

The division also failed to adequately protect state property from fraud, waste, and theft. The division's master list of state property is unreliable and does not account for all items in its custody. The division was unable to account for all items we randomly selected from the master list. Moreover, inadequate controls failed to ensure that state vehicles and gasoline charge cards are limited to official business.

The division administrator's cavalier management style has put the State to risk of losing federal grants, which comprise 40 percent of the division's funding. The administrator caused the State to lose over \$65,000 when he failed to subgrant these federal funds to local certified governments as required by federal law. Furthermore, the division did not prioritize the adoption of administrative rules that would allow it to collect user fees authorized by the 1998 Legislature. The administrator estimated that \$60,000 to \$100,000 could have been collected annually had the fees been adopted.

Recommendations and Response

We recommended that the governor intervene to ensure that the management of the State Historic Preservation Division is improved. We also recommended that the department chair and division administrator take steps to improve the protection of the state's historic properties and to prevent the misuse, abuse and theft of the division's limited resources.

Although the department questioned the credibility of our audit report, it did not take exception to any of our audit recommendations. Rather, it agreed to generally implement these recommendations, but reported that the implementation of many of our "well intended recommendations either will require additional resources or will lead to deficiencies in other vital program areas."

The department's allegations that our report contains many factual errors and is culturally insensitive are without merit. The department's statements are an attempt to discredit our audit findings. In addition, we note that the department's response seeks to defend against our findings by offering new information. We will not address the department's newly introduced information because it was not evaluated during the audit process.

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State Auditor
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Submitted by

THE AUDITOR
STATE OF HAWAII

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Foreword

This audit of the State Historic Preservation Division of the Department of Land and Natural Resources was conducted in response to Senate Concurrent Resolution No. 79, Senate Draft 1 of the 2002 Regular Session. Our audit focused on the State Historic Preservation Division's protection and preservation of the state's historical resources, and its management of its financial resources.

We wish to express our appreciation for the cooperation and assistance extended to us by the officials of the Department of Land and Natural Resources.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

Protecting and preserving Hawaii's unique historical and cultural properties, while allowing for social and economic development, is a function of state government. The 1989 Legislature established in the Department of Land and Natural Resources a division responsible for administering a comprehensive historic preservation program for the state. The department's State Parks Division was responsible for managing the program until 1990, when the State Historic Preservation Division was officially created for this purpose.

Long-standing and recurring concerns over the management and operations of the division prompted the Legislature in Senate Concurrent Resolution No. 79, Senate Draft 1 of its 2002 Regular Session to request the Auditor to conduct a program and financial audit of the division. The request specifies that the audit examine project review procedures, personnel practices and staffing, plans to secure federal and private funding, fiscal controls, and the status of draft historic preservation administrative rules.

Background

The U.S. Congress adopted the National Historic Preservation Act of 1966 in response to the increasing frequency with which development resulted in historic properties being lost or substantially altered. This act attempted to address the detrimental effect that rapid development can have on the nation's historic heritage by establishing a grant program to assist states with their historic preservation programs and activities. Since 1968, over \$1 billion in grant funds have been awarded to 59 states, territories, Indian tribes, local governments, and the National Trust for Historic Preservation. The National Park Service of the U.S. Department of the Interior administers and oversees these grant awards. Approximately 40 percent of the funding dedicated to Hawaii's historic preservation program has generally been obtained through federal grants.

During FY2001-02, Hawaii received \$651,274 in federal funds for its historic preservation program; general and special funds brought the program's total funding to \$1.5 million. The division spent approximately \$1.4 million to administer the program that year. Exhibit 1.1 shows the division's revenues and expenditures by fund type for FY2001-02.

Exhibit 1.1
Historic Preservation Revenue and Expenditures
FY2001-02

Funding Source	Appropriations	Percent of Total Appropriations	Expenditures	Percent of Total Expenditures
General funds	\$750,181	50%	\$749,249	54%
Special funds	\$111,431	7%	\$48,590	3%
Federal funds	\$651,274	43%	\$596,778	43%
Total	\$1,512,886	100%	\$1,394,617	100%

Source: Act 259, Session Laws Hawaii 2001, June 30, 2002, MBP430 Report, Department of Accounting and General Services, and the State Historic Preservation Division.

***The State Historic
Preservation Division
is responsible for
protecting historic
properties***

The 1976 Legislature declared that the preservation, restoration, and maintenance of historic and cultural properties in a spirit of stewardship and trusteeship for future generations are a matter of public policy. The State Historic Preservation Division is responsible for fulfilling this obligation through a comprehensive program that sustains reminders of earlier times and links the past to the present. Division responsibilities include identifying, evaluating, registering, regulating, interpreting, and acquiring and managing historic or cultural properties.

Chapter 6E, Hawaii Revised Statutes (HRS) defines historic properties as any building, structure, object, district, area, or site that is over 50 years old. Historic properties include archaeological sites, such as ruins of prehistoric houses, trails, rock art, religious structures, fishponds, irrigated taro fields, and shipwrecks. They also include burial sites; traditional cultural places, such as plant gathering areas or hills and waterfalls associated with deities or with oral histories; architectural structures, such as government buildings, residences, and bridges; and objects such as locomotives. The division preserves these properties through regulatory activities, public education, and research.

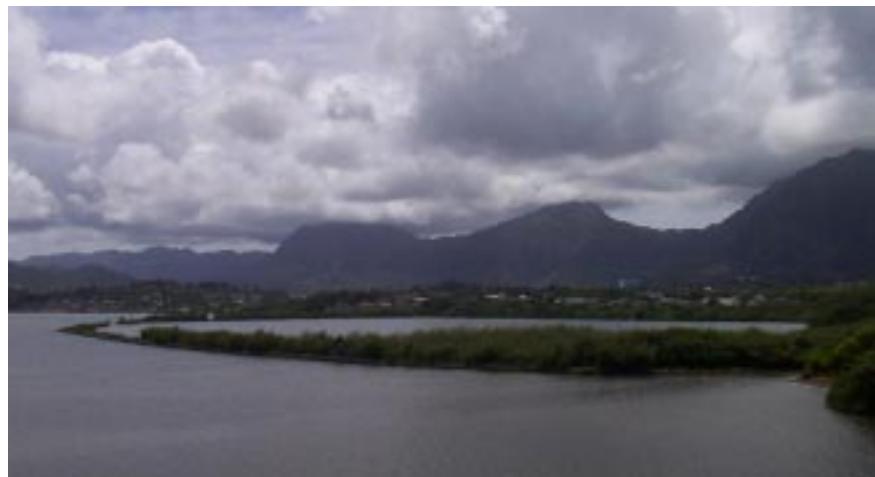
The review process identifies historic sites and determines their significance

The majority of the division's resources are dedicated to its regulatory function. Regulatory activities include the review of all construction, alteration, disposition, or improvement plans for public historic properties, and for privately owned properties that are listed on the Hawaii Register of Historic Places.



The State Historic Preservation Division is responsible for protecting sites that have cultural or historical significance. Long-term preservation efforts include ensuring public access, maintenance, and signage as shown in this photograph of the Ulupo Heiau. The division also posts informational boards at sites, including this heiau, to develop the public's understanding of their historical significance.

The State Historic Preservation Officer nominates historic sites to the National Register of Historic Places. The division assisted in having the He'eia Fishpond placed on the register in 1973 because of its cultural value.



This Manoa home, an example of the English Tudor style of architecture, is included on the Hawaii Register of Historic Places. The Hawaii Historic Places Review Board in the Department of Land and Natural Resources maintains the register. Homeowners whose homes are listed on the state register receive property tax credits to assist them in the home's upkeep.

The division annually reviews approximately 2,200 development proposals to assess the effect of change on the state's cultural assets, and to ensure that treatment and mitigation plans are implemented when appropriate. As Exhibit 1.2 shows, the review process includes identifying historic sites, determining their significance, preparing mitigation plans, and verifying the successful completion of mitigation.

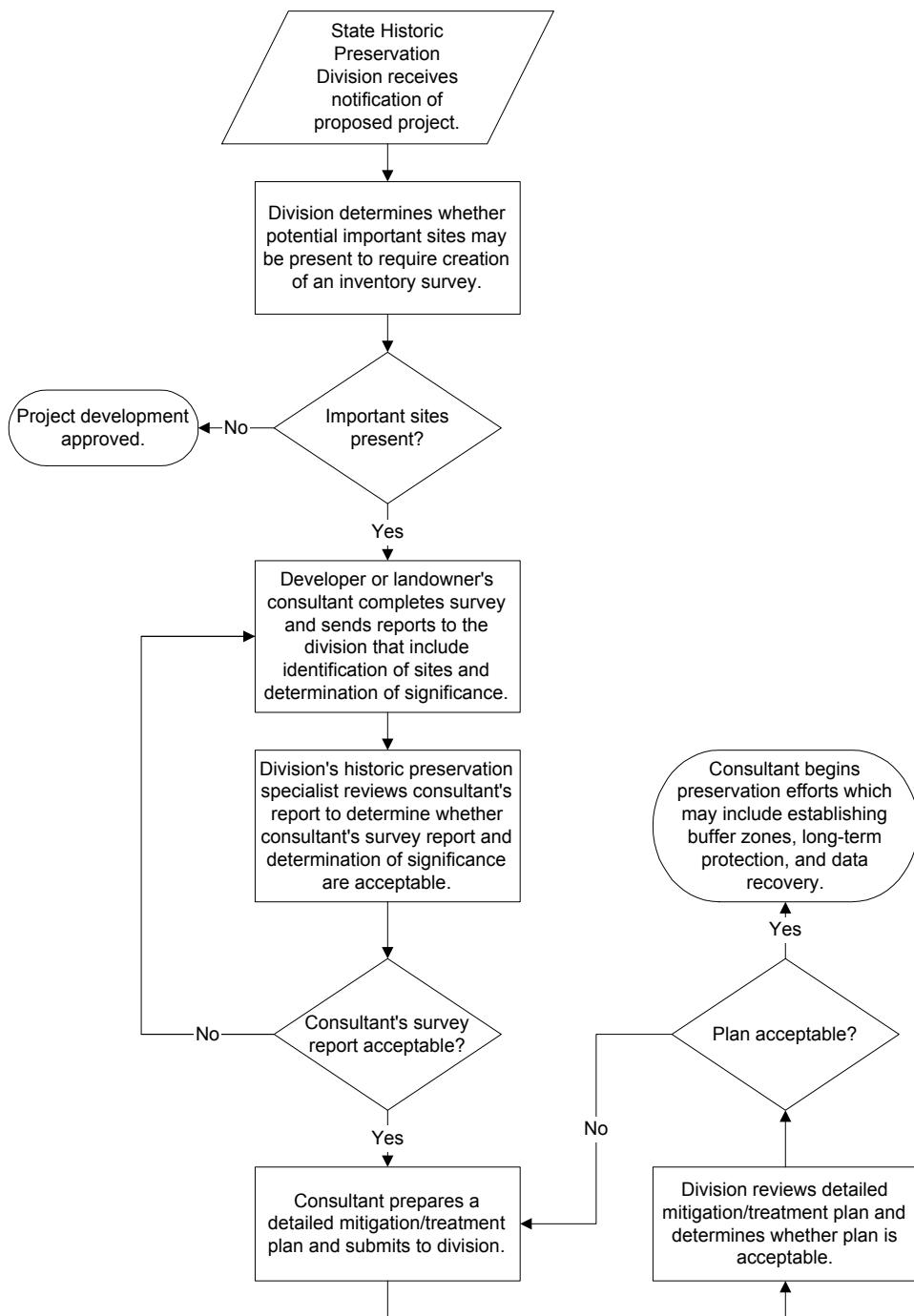
Mitigation generally involves preservation or data recovery. Preservation plans must include the creation of a buffer zone to ensure that a site's physical and visual settings are retained. The plan must also identify interim protection measures to be implemented during construction and long-term preservation measures. When the division agrees that data recovery is a sufficient form of mitigation, the developer's archaeological consultant retrieves a reasonable amount of significant information from the site through archaeological, architectural, or traditional cultural documentation. This may include photographing and mapping a site and also physically recovering remnants from a site.

Regulatory duties include protection of burial sites

The division's regulatory duties also include protecting prehistoric and historic burial sites that are neither maintained, nor actively used, as cemeteries. The division and burial council decide whether to preserve in place or relocate human skeletal remains that are identified either during the survey review process or inadvertently at a later time. The division reviews preservation plans for any non-Hawaiian skeletal remains that are identified *during* a survey phase. For skeletal remains of Hawaiian ancestry, five burial councils, representing Hawaii, Maui/Lanai, Molokai, Oahu, and Kauai/Niihau, recommend to the division whether to preserve in place or relocate. For skeletal remains that are inadvertently discovered, the division decides whether to keep in place or relocate. The division may maintain custody of remains that are to be reinterred after a burial treatment plan is approved or following the completion of a development project.

Developers are expected to bear the costs of regulation

The Legislature intended that private developers would help fund the regulatory functions of the division. Section 6E-3(15), HRS, requires the division to collect fees to help defray costs associated with regulating archaeological activities and reviewing proposed government projects and other projects that may affect historic properties, aviation artifacts, and burial sites.

Exhibit 1.2**Project Development Review Process for Public and Private Property Listed on the Hawaii Register of Historic Places**

Note: This is a simplified overview of the review process.

Source: *Protecting Our Past, The Historic Preservation Development Review Process*, State Historic Preservation Division.

In keeping with its intent that developers help fund regulatory functions of the division, the Legislature has decreased general funds designated for historic preservation over the years. For FY1995-96, the Legislature reduced the program's general fund appropriation from \$1.3 million during the previous year to \$607,710. The decrease was initially in response to a statewide budget reduction and the department's plan to privatize the historic preservation program. Although privatization is no longer being considered, the Legislature has not restored general funds, choosing instead to defray the costs of regulation through collected fees, which are to be deposited into the State Historic Preservation Fund. However, the division's overall budget decreased from nearly \$1.8 million during FY1994-95 to \$1.2 million during FY2001-02 because the department had not promulgated administrative rules that would allow it to collect user fees.

Organizational structure and staffing

The Legislature reduced the division's authorized position count from 18 to 13 full-time equivalent positions during FY1995-96, the same year for which it also reduced the program's general funds by about \$700,000. Although the Legislature has not restored the positions, the division administrator has created additional positions that are exempt from civil service law.

During July 2002, the division employed 28 staff, 15 in temporary positions. Of these, a private developer funds two of the full-time positions, and the U.S. Air Force funds a third full-time position. Staff who fill these three positions are primarily assigned to specific projects involving the private or public entity that funds their respective positions. The division funds all the remaining positions.

A majority (23) of the division's staff, including all temporary staff, are exempt from civil service law. The remaining five staff—three clerical employees, an administrative assistant, and a branch chief—work in civil service positions.

Role of the state historic preservation officer

The chair of the Board of Land and Natural Resources serves as the state historic preservation officer and is responsible for the overall administration of the historic preservation program. The state historic preservation officer is also responsible for working with the federal government and other states on matters of historic preservation. Daily supervision of the historic preservation program is the responsibility of the division administrator, who reports directly to the state historic preservation officer.

The division is organized into three branches

The division is organized into the archaeological, historical and cultural, and architectural branches. Each branch chief reports directly to the division administrator and supervises professional staff who carry out the regulatory, education, and research functions of the branch. The Archaeology Branch is further divided into six sections, including an inter-agency archaeology section and five sections representing the various islands. In addition, five burial councils are administratively attached to the division and receive clerical assistance from department staff.

The Hawaii Historic Places Review Board is administratively attached to the division. The board is responsible for deciding whether properties nominated for entry into the Hawaii Register of Historic Places are significant to Hawaiian history, architecture, archaeology, and culture.

Exhibit 1.3 shows the division's organizational structure.

Objectives of the Audit

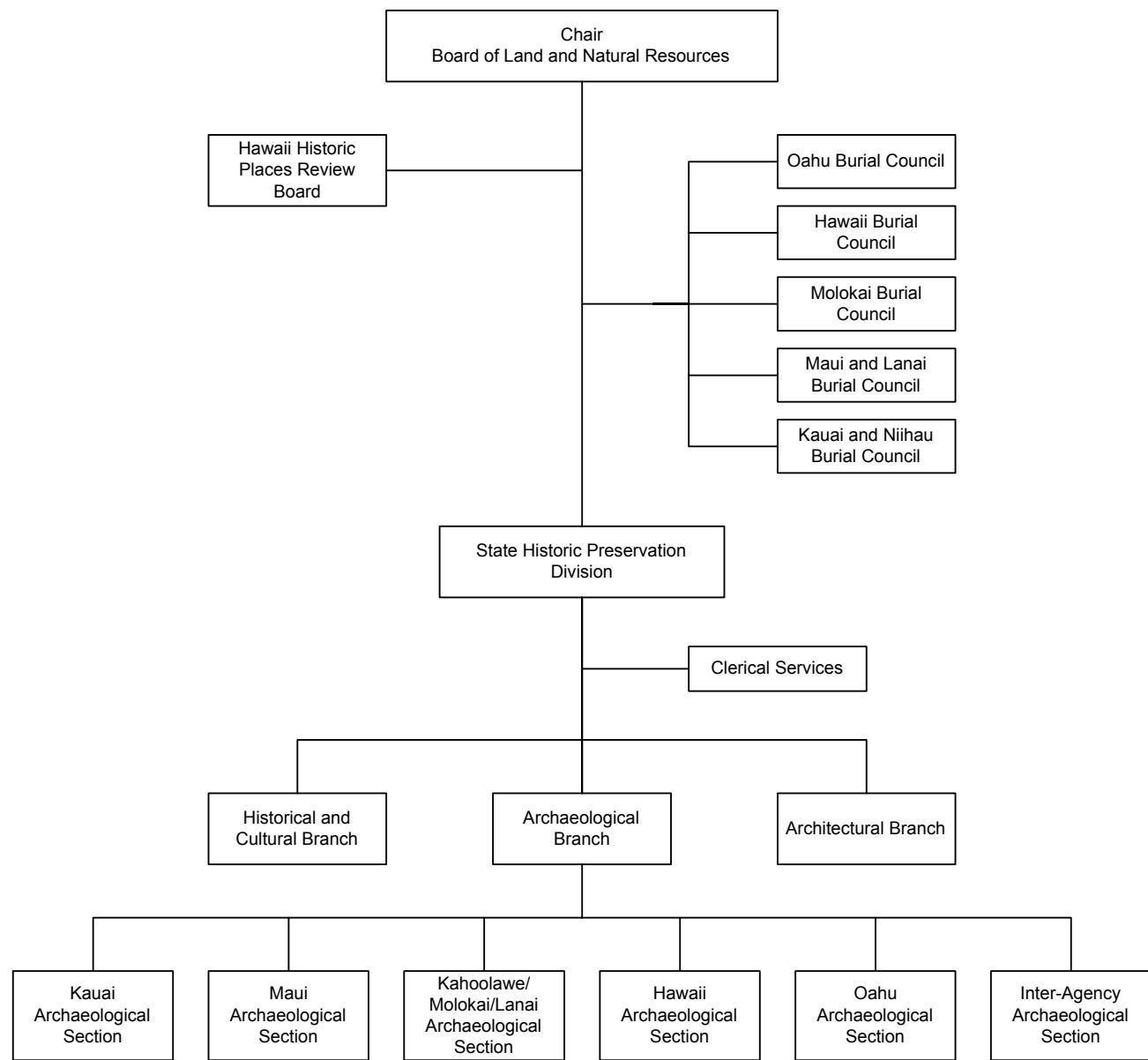
1. Assess the effectiveness with which the State Historic Preservation Division is managed to achieve its mission.
 2. Assess whether the State Historic Preservation Division manages its financial resources effectively.
 3. Make recommendations as appropriate.
-

Scope and Methodology

To assess the division's ability to protect and preserve the state's historical resources, we reviewed archaeological and burial review and decision-making processes. We interviewed staff, reviewed project files, and made observations of the division's curation of human skeletal remains and historical artifacts.

We also conducted fieldwork to assess the effectiveness of the division's management of its personnel and financial resources. We reviewed official leave records of all staff employed by the division during November and December 2001, who remained employed during August 2002, to test the reliability of information presented in those records. We also reviewed leave patterns for approximately 20 percent of the division's staff. We tested inventory controls by selecting a judgmental sample of items included on the division's detailed inventory of state property. For this review, we selected both high-cost items and items we deemed as particularly susceptible to theft. We also interviewed federal

Exhibit 1.3
Organization of the State Historic Preservation Division



Source: Position Organization Chart, State Historic Preservation Division.

and state officials to obtain information regarding national standards and to assess the state historic preservation officer's management of federal grants. We reviewed state and federal laws, administrative rules, personnel files, purchase orders, and professional archaeological standards. Fieldwork also included interviews with division staff, the department's personnel and fiscal staff, developers, and private archaeological firms.

Our work was performed from June 2002 through September 2002 in accordance with generally accepted government auditing standards.

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Chapter 2

The Department of Land and Natural Resources' Gross Mismanagement of the State Historic Preservation Division Fails to Serve the Public's Interest

State and federal laws recognize the importance of balancing development and progress with the preservation of cultural and historic properties. Chapter 6E, HRS, requires the Department of Land and Natural Resources to administer a state historic preservation program in a spirit of stewardship and trusteeship for future generations. However, the department has not upheld these trust obligations and has instead mismanaged the program and state resources at the expense of the public good. Specifically, the State Historic Preservation Division's deficient review process and inadequate management controls place historic properties and human skeletal remains at risk of physical loss, and unnecessarily expose developers to financial loss.

Summary of Findings

1. The Department of Land and Natural Resources mismanages the State Historic Preservation Division, thereby jeopardizing the protection of Hawaii's unique cultural and historical properties and unfairly exposing private developers to risks of financial loss.
2. The department enabled division staff to misuse and exploit historic preservation resources. Although the division has recently implemented controls to address this serious concern, further improvements are needed to reduce the risk of theft, fraud, abuse, and lost revenue. Division staff were also allowed to miss funding opportunities.

Mismanagement of the State Historic Preservation Division Exposes Historic Properties and Artifacts to Potential Losses

The division's untimely and inconsistent archaeological reviews compromise the program's mission

The Department of Land and Natural Resources' lax management of the State Historic Preservation Division prevents the division from balancing growth and development with the preservation of Hawaii's unique cultural and historical resources. Untimely and inconsistent archaeological reviews compromise the program's mission and foster an environment conducive to corruption. Moreover, the division's insufficient management controls jeopardize the preservation and safekeeping of historic artifacts and human skeletal remains.

Division staff are responsible for enhancing the preservation of Hawaii's history for the public benefit. In carrying out the division's mission, staff assess the potential impact development projects may have on historic and cultural sites and decide what preservation efforts, if any, will be required of developers. For example, staff may require developers to preserve important sites in place or to recover and document information from sites that will be destroyed. The division's review process is designed to identify significant historic properties in project areas and to develop and execute preservation plans in the public's interest. However, untimely and inconsistent reviews prevent the division from fulfilling this mission and compromise the division's ability to protect historic sites and artifacts from loss. Moreover, poor record keeping by burial program staff has contributed to costly project delays and prevented the timely re-interment of human skeletal remains in the division's custody.

The division's review of archaeological reports is untimely

The division's archaeologists are responsible for reviewing reports submitted by developers' archaeologists. These reports include inventory surveys of historic sites, assessments of each site's significance, and mitigation plans. Although the division currently does not have policies requiring these reports to be reviewed within a specific timeframe, the division attempts to review project applications within 30 days of receipt, and archaeological reports within 45 days of receipt.

Both division staff and private archaeologists informed us that report reviews often exceed the 45-day standard. We reviewed 41 projects and found it not unusual for reviews to be delayed for months and sometimes years. In one case, the division took four months to respond to a county request to conduct emergency work to remove large boulders located "precariously" above a highway.

Although the division reports that it has improved its timeliness in reviewing reports, we found reviews conducted during 2002 that had

sometimes been delayed by years. In one case, the division accepted a consultant's revised report without further review because two years had elapsed since the report was submitted. Exhibit 2.1 highlights a few of the delays we identified.

The Board of Land and Natural Resources recently approved administrative rules that would require division staff to respond to developers' reports within specified timeframes. If approved by the governor in their current form, these rules will allow developers to proceed with their projects when division staff do not provide written responses to developers' reports within required timeframes or as otherwise agreed. Establishing acceptable timeframes for review can help to reduce lengthy delays; however, accepting reports without adequate review is inconsistent with the division's mission of protecting historic sites.

Administrative decisions caused excessive backlogs in Hawaii archaeological reviews

The division administrator poorly manages the division's workload and has made decisions that have contributed to an excessive archaeological review backlog for the island of Hawaii. For example, the administrator directed the Hawaii lead archaeologist to spend 80 percent of his time developing a historic preservation management plan for Mauna Kea, despite an existing backlog of Hawaii archaeological reviews that required the archaeologist's attention. The department chair also signed a memorandum of agreement with the University of Hawaii's Institute for Astronomy on February 1, 1999 to provide the institute with a final historic preservation plan by November 1999. In exchange, the division would receive \$72,813 to pay a portion of the salary of the two division staff assigned to the project. However, the administrator did not use the resulting salary savings to obtain help in performing the normal work duties of the reassigned staff, but instead allowed the Hawaii backlog to grow.

In its March 27, 2002 testimony to the Senate Committee on Water, Land, Energy and Environment, the division reported that only 6 percent of the Hawaii reviews it conducted over a six-week period were timely. The division informed the committee that the backlog was a result of the "head archaeologist for Hawaii County having devoted most of a year to preparing an archaeological study on Mauna Kea." As indicated above, the plan was to be completed by November 1999, yet remained outstanding at the time of our fieldwork in August 2002. The division also reported to the Legislature that it was working to eliminate its backlog by June 2002 through the use of overtime. However, as of August 2002 the backlog continued, with staff working overtime only sporadically.

Exhibit 2.1
Archaeology Review Delays

Project	Type of Report Submitted by Firm or Other Outside Entity	Date Report Submitted	Date Report Reviewed by Division	Time Elapsed Before Report Reviewed
H-3 Highway Halawa, Oahu	Revised Inventory Survey ¹	2/97	2/10/98	About 1 year
	Revised Inventory Survey	5/6/99	2/8/02	2 years and 9 months
Kahekili Highway – Makamaka Ole Gulch, Maui	Proposed Highway Improvements	2/22/00 Submitted by County of Maui Engineering Division	7/6/00 Field Inspection by Division Archeologist Review letter sent 7/7/00	4½ months ²
Lahaina Courthouse, Maui	Revised Report on Archaeological Investigations, 2 nd Draft ¹	6/29/00	4/2/01	9 months
	Revised Report on Archaeological Investigations, 3 rd Draft	5/17/01	12/19/01	7 months ³
Honokahua Lahaina, Maui	Report documenting data recovery excavations	6/19/00	5/15/02	Almost 2 years ⁴
Kealia 2 Ahupua'a South Kona, Big Island	Revised Inventory Survey ¹	6/01	2/11/02	7-8 months
Ke`eke`e Ahupua'a South Kona, Big Island	Revised Report on Data Recovery Excavations ¹	6/99	2/11/02 Not reviewed. Report was accepted because of the delay	About 2 years and 8 months
Honokohau North Kona, Big Island	Revised Inventory Survey, 3 rd draft ¹	4/8/98	2/9/99	10 months
	Revised Inventory Survey, 4 th draft	3/10/00	2/12/01	11 months
Kaloko North Kona, Big Island	Revised Inventory Survey ¹	12/21/99	2/11/02	Over 2 years and 2 months

¹Submittal date of the initial report is unknown.

²The division took four months to respond to a rush request that involved emergency work to remove large boulders situated precariously above a highway.

³Review was for minor revisions requested previously.

⁴Review took almost two years, even though the division's archaeologist indicated that the report was "well-written" and accepted it with the understanding that only minor revisions need be made.

We found that the administrator also allowed archaeologists who could have helped eliminate the review backlog to engage in outside employment during their normal work hours, as we discuss in more detail later.

Disarrayed burial files cause project and re-interment delays

The department is responsible for ensuring the protection of prehistoric and historic human skeletal remains that are identified in archaeological surveys or inadvertently discovered. When skeletal remains are inadvertently found at a project site, work is halted until the department decides whether the remains should be preserved in place or relocated. The department must approve the developer's preservation or mitigation plan before work can resume. However, the division is unable to effectively oversee this process because it has allowed its burial file system to fall into chaos. We reviewed 22 burial case files and found they contained sparse information, which prevents staff from tracking the status of burial cases. Most of the files we reviewed failed to identify when cases were initiated, decisions made, and subsequent actions taken.

When division staff lose track of burial cases, development projects and the re-interment of skeletal remains are delayed. For example, during July 2002 a developer's archaeologist inquired about the status of a burial treatment plan submitted several years earlier. Upon reviewing burial council files, staff realized that the division had approved the developer's revised burial treatment plan in November 1999 but had failed to notify the developer of the decision. The division essentially lost track of this case because it had not established a file for it. Consequently, the developer's work was delayed for over two years.

In another case, the division took custody of skeletal remains that were inadvertently discovered on a private landowner's Big Island property. When the landowner notified the division of the discovery, he informed the division that he was willing to re-inter the bones on his property. Although the division assumed custody of the bones, it lost track of this case until a year later, when the landowner reminded the division that no action had yet been taken.

Burial program staff acknowledged that their case files are inadequate. They informed us that some cases may have more than one file because there is no standard procedure for filing cases, resulting in staff using different filing systems. For example, a case may be filed by family name, site name, or Hawaiian land division. The division plans to end this disorganized practice by implementing a system that files cases by the tax map key number of the property on which the remains are discovered.

Untimely reviews expose developers to risk of financial loss

Development review delays can adversely affect developers, who must halt construction pending the division's review and acceptance of required reports. These delays are not without costs. Developers must absorb any financial losses resulting from construction delays. Although most archaeological firms and developers we interviewed could not quantify specific dollar amounts lost as a result of the division's untimely reviews, these costs can be exorbitant. For example, one developer lost \$200,000 in loan interest payments as a result of project delays. The division acknowledges that these delays can adversely affect developers, and wrote several letters of apology for the delayed reviews and for any inconvenience the "long overdue response[s] may have caused."

Inconsistent reviews can lead to the development of a quid pro quo culture

Archaeologists employed by private firms and the division informed us that the division's archaeological reviews are inconsistent. At the time of our fieldwork, administrative rules that would establish legal standards for archaeological reviews remained in draft form; however, the archaeology branch chief informed us that division staff have been directed to follow these as yet unadopted standards. Nevertheless, our analysis of archaeological reviews indicates that diverse standards are applied when reviewing the archaeological reports submitted by private firms.

Some archaeological reports are rejected when they fail to contain information required by the draft rules, while other reports are accepted with similar deficiencies. In one case, the division required a developer's consultant to revise its archaeological inventory survey because it failed to identify settlement patterns, which identify the spatial distribution of sites. However, one month earlier the division merely reminded a different consultant that this information should be included in *future* reports and accepted the deficient survey.

Adequate supervision and oversight of the review process is necessary to address these inconsistencies, which jeopardize the division's ability to protect historic resources. Although the branch chief informed us that he reviews the work of all branch archaeologists in order to ensure consistency among reviews, disparate application of review standards continues to threaten the division's ability to protect historic sites. Inconsistency may lead to favoritism and can foster a climate in which decisions are made on a *quid pro quo* basis.

Inadequate oversight of burial staff also compromises independence of the review process. Although the burial program director informed us that staff usually discuss with each other whether remains should be preserved in place or relocated, there is no requirement that they do so. This is of concern since preservation in place can have enormous financial impact on developers who may be forced to alter their construction plans. Given the significant impact these determinations can have on developers, proper oversight is needed to prevent developers from swaying staff's decisions.

Staff acceptance of a developer's cash donation appears unethical

In one case, a burial program staff member decided that some skeletal remains inadvertently discovered at a multi-million dollar development in Kona should be removed from the site. Because this project is located on a site containing over 200 Hawaiian burials, state law required the division to give high priority to preserving the burials in place. The staff member gave inconsistent explanations as to how he arrived at the decision to relocate some of the burials.

He initially stated that the developer had disturbed the burial site, and that relocation would ensure the bones remained together. This explanation is illogical, and not included in the criteria for evaluating requests to preserve in place or relocate. The employee later indicated that the decision to relocate was made because run-off in the area subjected the remains to possible harm. These inconsistent explanations are suspect since the employee, who is also a church minister, accepted a \$1,000 check from the project developer. The check was allegedly for the minister's church, but made out to the employee/minister personally.

Recovered historic artifacts and burial remains are at risk of loss

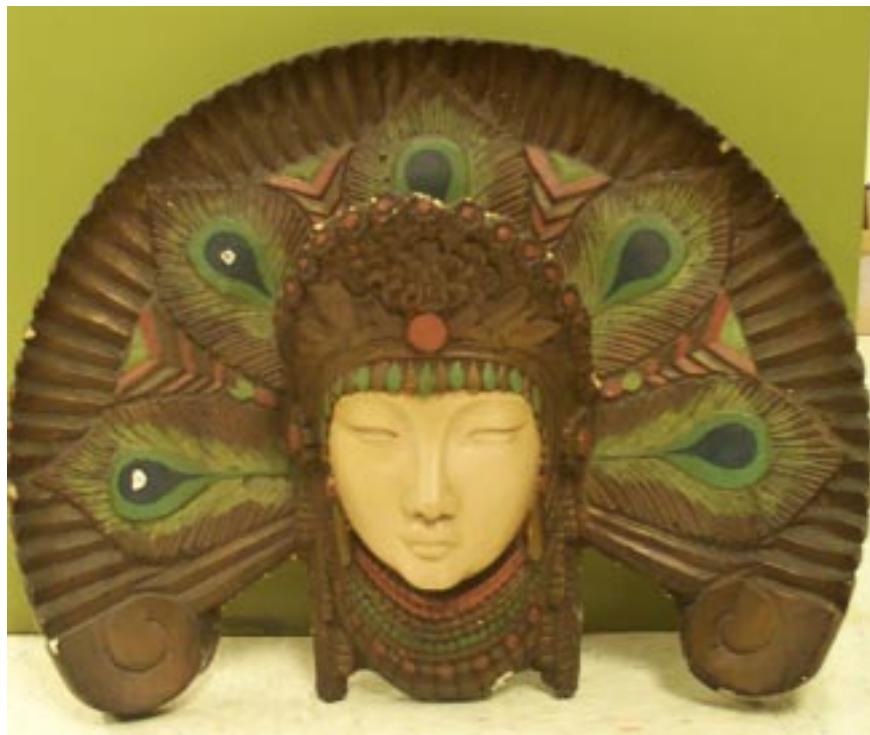
The division maintains artifacts and information recovered from historic sites for future generations. The division also maintains facilities that serve as repositories for human skeletal remains awaiting re-interment. However, the division is unable to account for all historical artifacts, human skeletal remains, and funerary objects in its custody, thereby compromising its ability to protect these artifacts from loss. Furthermore, poor storage practices and the lack of curation standards can result in damage to and loss of historic artifacts and human remains.

The division does not maintain an inventory of historical artifacts in its custody

Although the division maintains custody of historic artifacts, it does not inventory any of these items in accordance with standard curation

guidelines. A statewide inventory of *all* historic artifacts in the division's custody would help to protect these objects from permanent loss and theft.

The division's collection includes architectural and art pieces from demolished or renovated sites, including Iolani Palace and the Hawaii Theater. Although many of these artifacts may not have significant commercial value, the division collects items it identifies as having immeasurable historical value. Therefore, the division should ensure that adequate controls are established to protect these artifacts from loss and theft.



This art deco light sconce was removed from the Hawaii Theater during the theater's restoration. Although division staff salvaged the light sconce, it is neither catalogued nor inventoried by the division.

Human skeletal remains and associated funerary objects are not adequately inventoried

The Native American Graves Protection and Repatriation Act (NAGPRA) required the division to compile an inventory of *all* native Hawaiian remains and associated funerary objects in its custody by November 1995. The inventory must identify the geographical and cultural affiliation of these artifacts to the extent possible. However, the division's inventory of human skeletal remains is piecemeal and fails to ensure that geographical and cultural affiliation information is preserved.

The burial program's inventory of human skeletal remains generally includes information on remains disinterred on Oahu only. Archaeologists assigned to each island maintain separate inventories of human remains that are not always shared with the burial program staff. These fragmented inventories make it difficult for burial staff to manage the timely re-interment of skeletal remains statewide.

Burial program staff are also unable to account for all skeletal remains listed on their inventory. Staff could not locate two of 35 items (6 percent) we randomly selected from the inventory list during our July 2002 site visit. Moreover, we had no assurance that staff correctly located 80 percent of the skeletal remains selected from that list. Although they showed us containers in which they claimed the remains were stored, 80 percent of these containers were not labeled to identify the contents, and 26 percent did not identify the specific geographical location the remains were recovered from. Descriptive information is needed to accurately match skeletal remains to an inventory list. The division should adopt standard procedures to label, catalogue, and inventory human remains. This would improve the division's ability to properly account for and manage remains in its care.

The division has also failed to establish an inventory of funerary artifacts in its custody, thereby exposing these items to increased risks of theft and loss. For example, burial program staff informed us that the division has in its custody two *lei niho palao'a*, Hawaiian necklaces that signify the head of a household. Division archaeologists found these artifacts when they removed the skeletal remains of what is believed to be a Hawaiian chiefess from a burial site. Although the staff described these items as priceless, the division has not taken adequate measures to prevent their loss, such as inventorying them. The division administrator informed us that artifacts are kept in a locked room; however, this does not address the division's failure to account for them.

The division's failure to establish an inventory of skeletal remains and funerary objects in its custody could result in civil penalties. NAGPRA authorizes the Secretary of the Interior to fine the division .25 percent of

its budget or \$5,000, whichever is less. An additional penalty of \$100 per day may also be assessed for continued violations. As of August 2002, the federal government had not penalized the State for not establishing an inventory.

Human skeletal remains and historical artifacts are stored under unacceptable conditions

Skeletal remains are stored on each island in locked division facilities. Although National Park Service repository standards discourage overcrowding that could lead to loss or damage of artifacts, our site visit to the Oahu facility revealed that it is disorganized and overcrowded. Consequently, burial program staff had difficulty locating bones listed on the inventory. We were informed that overcrowding of skeletal remains is also a problem at the division's Maui facility. The division's failure to re-inter remains in a timely manner contributes to overcrowding in storage facilities. During August 2002, the division had in its custody skeletal remains that it had stored anywhere from a few weeks to nine years.

Staff also informed us that skeletal remains on Kauai are stored in a rusting container that does not adequately protect the remains from deterioration. Skeletal remains stored at the Oahu facility may also be at risk of decomposition because many are stored in non-acid free paper bags, which accelerate this process.

The division also stores historical and cultural artifacts without protecting them from damage. For example, two garbage bags filled with empty soft drink cans were placed on a large historical lamp fixture. Although the division has since removed the bags, it has yet to develop and implement acceptable curation standards.

The Department Allowed Staff To Misuse Historic Preservation Resources and Miss Funding Opportunities

Management is responsible for ensuring that taxpayers' dollars are spent for their intended purposes, and not for the personal benefit of government employees. Failure to accept this duty can create an environment in which theft, waste, and misuse of government resources is an acceptable and common practice. The department chair and division administrator shirked this duty and instead allowed the widespread misuse and waste of the division's limited resources. Moreover, the chair and administrator neglected to secure additional program resources, which stifled the division's ability to fulfill its mission of protecting historic properties.

***Employee leave,
overtime, and
compensatory time off
are poorly managed***

Proper accounting of employees' leave, overtime, and compensatory time off ensures sound financial management. The department's lax management of vacation and sick leave has increased the State's overall costs since leave that is used is not always accounted for. Moreover, the department made only half-hearted efforts to uncover employees' fraudulent use of leave. Its bungled investigation of alleged abuses is inexcusable.

In the absence of sound leadership and adequate oversight, staff appear to have routinely misused sick leave and were paid for overtime that was either unjustified or not approved. Furthermore, the administrator permits staff to use state time to tend to personal matters and to engage in outside employment.

The department bungled its investigation of alleged fraudulent leave records

During February 2000, the then-chair of the department received a complaint from four division employees, who came forward under Hawaii's Whistleblowers' Protection Act, alleging that the division's clerical staff were abusing vacation leave, sick leave, and overtime, and were tampering with government leave records. Specifically, the employees alleged the department routinely paid the clerical staff for overtime they did not work, and that the clerks did not report sick and vacation leave on their official leave records. Moreover, the whistleblowers alleged that the clerks falsified their leave records by deleting references to sick and vacation leave they had taken. This practice would have increased the accrued leave balances of these staff, creating a greater financial liability than the State should have to bear. The then-chair directed the department's fiscal office to investigate the allegations, and as a result, the fiscal office conducted an internal review from June 2000 through September 2000.

However, the department's investigation into the allegations was substandard. For example, the department allowed the clerical staff to retain custody of all department leave requests and records despite allegations that they were tampering with these records. Normal investigative protocol would require that those records be seized as a means of preventing further tampering and destruction of key documents. Apparently, document destruction did occur in this case. We were unable to review staff leave requests and overtime records for the period preceding the department's investigation; a division clerk reported that she had disposed of them.

Furthermore, the then-chair did not continue the department's investigation to determine whether any criminal activity had taken place, as recommended by the department's internal auditor. The then-chair's

decision not to proceed as recommended indicates he was not committed to identifying or addressing employee fraud. That chair has since resigned; however, the newly appointed chair has dismissed the seriousness of these allegations and stated that he will not revisit decisions that were made by his predecessor. As of August 2002, the department has not taken any further steps to investigate the clerical staff's and administrator's roles in the alleged fraudulent activities.

Leave records do not account for all leave taken

Although we were unable to obtain leave records of employees for the period investigated by the department, we did obtain a travel confirmation for one of the clerks, which we compared to her official leave record. According to her travel itinerary, the clerk was not on Oahu on September 17, 1999; yet this absence is not recorded on her official leave record.

We also reviewed leave requests and official leave records for 23 division employees for the period of November through December 2001. We compared sick and vacation leave recorded on these documents to the administrative assistant's calendar, which included notations of employees' leaves. For 65 percent of the staff, we found discrepancies between leaves reported on the calendar, approved leave requests, and official leave forms. Approximately a third of the staff took vacation or sick leave without this information being recorded on their official leave record. One employee was on vacation for four days during December 2001 without submitting a leave approval request. Consequently, the division did not debit his official leave record for the 32 hours he was on leave. Failure to debit employees' leave records increases the State's financial obligations because the State must pay for the leave at a future time, and possibly at a higher salary rate.

The department now requires the division to reconcile approved leave requests with employee leave balances, as a means of ensuring that all leave used by employees is accounted for. However, this control is not foolproof, as it does not prevent employees from taking leave without submitting leave requests. Use of a daily sign-in/sign-out log can address this deficiency because it accounts for actual employee attendance. Therefore, a daily attendance log, rather than leave requests, should be reconciled with official leave records. When discrepancies are noted, employees should be reminded to submit their leave requests for approval as required by collective bargaining unit agreements. The department should charge employees who fail to submit employee sick and vacation leave requests within five days of returning to work with unauthorized leave without pay.

Patterns of sick leave abuse are not investigated

Our review of employees' leave records identified extensive patterns of sick leave occurring immediately preceding or following weekends. For example, we examined sick leave patterns of five division employees and found that approximately 70 percent of sick leave used by four employees between January and July 2002 occurred immediately before or after a weekend. The fifth employee also exhibited this sick leave pattern for 80 percent of the sick leave she used during this period. We also found employees tended to use their sick leave before or after holidays and scheduled vacations. The department has not investigated these ongoing questionable patterns of leave, and has not required staff exhibiting such patterns of abuse to submit medical documentation for their illnesses.

Clerical staff were allowed to work overtime without adequate justification

The department's internal auditor reviewed overtime payments made to three clerical staff between July 1999 and August 2000. During September 2000, the auditor reported that the administrator had routinely approved five hours of overtime for each clerk during each pay period between July 1990 and August 2000 without justifying the purpose of or necessity for the overtime.

The department's auditor also confirmed the whistleblowers' allegation that the administrator approved clerical staff timesheets while he was on an extended vacation. The administrator also approved the timesheets of a clerk who claimed she worked overtime on days she was on leave for the entire workday. These timesheets are suspect and indicate the administrator signed them without ensuring that the clerks actually worked the hours they reported as overtime.

Staff were paid for unauthorized overtime

In an attempt to address allegations of improper use of overtime, the department required the chair to approve all overtime requests, effective October 2000. We reviewed all overtime payments made during FY2001-02 and found that staff were paid for overtime not approved by the chair. An archaeologist was paid \$293.48 for unapproved overtime. Clerical staff received a combined total of \$127.31 for unauthorized overtime during that year. The fiscal office reported that the clerical staff might have worked the overtime previous to the October 2000 directive. However, this is unlikely, as it would mean that the clerks worked the overtime at least ten months prior to receiving payment for it.

The administrator reportedly allowed staff to conduct personal errands during work hours

The division administrator has reportedly allowed staff to conduct personal errands during state work hours. A former supervisor of the clerical staff informed us that the division administrator confirmed that staff could go shopping during state hours provided they finished their work. This former employee reports that it was common practice for all employees, not just clerical staff, to conduct personal errands such as banking during work hours without taking leave. She informed us that she told the division administrator that he could have done more to better manage the staff.

This former employee was not alone in bringing staff abuse of state time to the division administrator's attention. A former volunteer reports having met with the administrator twice to discuss the clerical staff's practice of shopping during work hours. This former volunteer claimed she was left to answer the telephone after receiving only one hour of training, while the clerical staff went shopping for an hour and a half. The volunteer reports that when the administrator was made aware of this abuse, he condoned the staff's behavior by responding that the clerks work hard.

The administrator acknowledged that he engaged in two conversations with the volunteer, but downplayed the issue as an interoffice personality conflict. The administrator informed the department's personnel officer in a November 14, 2000 memo that he suggested to the volunteer that she "should be more careful in her interpretations of both personal relationships in the office and the use of office time, as her perceptions did not necessarily have a grasp of all the facts and circumstances surrounding the various actions."

Staff are allowed to engage in outside employment during state time

In addition to conducting personal errands during state time, division employees also engaged in outside employment during work hours for which the division compensated them. For example, the archaeology branch chief routinely teaches courses at the University of Hawaii during his normal work hours without using any leave. The division paid the branch chief \$3,665.88 between Spring 1997 and Spring 2000 for time he actually spent teaching seven university courses for which he was paid \$29,484.18. The branch chief informed us that he used compensatory time off during the time he spent teaching courses; however, his official leave records do not indicate that compensatory time off was in fact used. Moreover, the division has only recently

begun to require approval for compensatory time off. Instead, the division administrator allowed the branch chief to make up his work hours on an honor system.

The Kauai archaeologist also used state time to perform work for an outside employer. The division administrator was aware that the archaeologist was paid to conduct internal quality control reviews for a private firm, yet allowed these additional duties to interfere with the archaeologist's state responsibilities. In fact, the administrator allowed the archaeologist to modify her work schedule from normal state business hours (Monday through Friday) to accommodate her outside employment when she informed the administrator that she would work for the private firm on Sundays and Mondays.

Although the administrator approved a work schedule that would require the archaeologist to conduct her state responsibilities for eight hours a day between Tuesday and Saturday, he did not ensure that she worked the hours for which the State compensated her. Staff who oversaw her work for the private firm informed us that her work schedule with the firm dictated that she maintain ten-hour workdays between Monday and Thursday of each week. This work schedule conflicted with her modified work schedule. Although the administrator received reports that the archaeologist was working for a private firm during state hours, he did little to investigate the matter and only asked the archaeologist to respond to the allegations. The archaeologist continued to misrepresent her outside employment work schedule, and the administrator accepted her explanation without confirming the information with the firm that employed her.

The division does not adequately protect and maintain its resources

State administrative rules for inventory management prescribe procedures that govern the management, control, and disposal of state property. These procedures require the division to maintain an updated master inventory list, conduct an annual physical inventory of all state property, and report the loss or theft of such property. The rules also stipulate that state property be used only by authorized personnel for official state business, and that a care and preventive maintenance schedule be developed. However, the division administrator, who also serves as the division's designated property custodian, has not implemented or enforced adequate internal control procedures to ensure the accountability for all state property as required by these rules.

We assessed the adequacy of the division's internal controls to protect state property from theft, loss, misuse, and damage and concluded that inadequate controls have resulted in staff's inability to account for all state property within the division. Moreover, the administrator failed to implement adequate management controls to prevent unauthorized use of

state vehicles and gasoline charge cards, and failed to develop maintenance guidelines to promote the lifespan of the division's vehicles.

The division does not account for all resources

We reviewed the division's inventory master list and found it to be unreliable. For example, two of the division's 17 vehicles were not identified on the list. We also conducted a physical inventory of 20 items selected from this list and found the division could not account for over half of the items. The original cost of the missing property, which included a printer, camera, and video camcorder, totaled \$48,257.

The division's administrative assistant informed us that some of the missing property might have been disposed of or located at the division's neighbor island offices. Administrative rules require that property inventory records identify each item's physical location. Because the division does not document this information, the administrative assistant could not state with certainty that the missing items were located in another office. Furthermore, administrative rules forbid agencies from disposing of property without first requesting and receiving approval. The division administrator is authorized to approve the disposal of controlled items and supplies; however, the State's chief procurement officer must approve the disposal of equipment. The division is also required to maintain records to account for disposed property. The division did not have records documenting the disposal of the property missing during our site visit.

The division's inability to account for state property is in part caused by its failure to conduct physical inventories. The division informed us that it had not completed a physical inventory of state property in its custody during FY2001-02. Consequently, the division did not identify missing items included on its master inventory. Therefore, it did not investigate the loss or possible theft of these items. The administrative assistant informed us that the division plans to conduct a physical inventory during FY2002-03.

The division does not protect state property from unauthorized use

The division has not established adequate policies and procedures to prevent the unauthorized use of state vehicles and gasoline charge cards. Although vehicle usage logs are maintained for the vehicles assigned to Oahu, staff on the neighbor islands do not use such logs. Furthermore, staff do not always document the odometer reading prior to and after using state vehicles on Oahu.

The division should require all staff to complete prescribed vehicle usage logs by documenting the vehicle license number, driver's name, destination, purpose of travel, and odometer readings prior to and after completing the travel. This information can be used to monitor the reasonableness of vehicle usage. Furthermore, gasoline invoices could be reconciled to each vehicle's mileage to assess the reasonableness of the charges. The division currently relies on service station attendants to ensure that gasoline charge cards are used only to refuel the state vehicles they are assigned to. This is an inadequate control since it is in the attendant's interest to promote, not disallow, the sale of gasoline.

The division does not adequately maintain state vehicles

Preventive maintenance can help to reduce future costs and enhance driver safety. However, the division does not perform basic maintenance such as oil and filter changes. Our review of the division's maintenance file revealed that over half of the division's 17 vehicles had not received any type of maintenance during FY2001-02. Vehicles should normally be serviced quarterly or as recommended by the manufacturer.

Maintenance ensures that vehicles remain operable and can help to avoid future costly repairs. Failure to maintain vehicles can also compromise the safety of staff who drive or ride in these vehicles. Approximately 63 percent of the division's vehicles based at the Kapolei office during July 2002 had safety checks that had expired anywhere from 1.5 to two years prior to our visit.

We also found the division does not repair vehicles needing service. We observed the division's vehicles based at Kapolei during June 2002 and found two of eight vehicles had flat tires. We inspected one of the vehicles two months later, and found that it had not been repaired.

Staff are not held accountable for their performance

Staff who are held accountable for their performance and behavior are less likely to misuse state resources and break the public's trust. The State's performance appraisal system was designed to improve government by discussing expectations and providing employees with feedback that recognizes excellent work and identifies areas needing improvement. However, the division does not consistently assess employees' performance to improve its operations. Instead, staff are allowed to do as they please without consequence. Outdated position descriptions provide employees with inadequate direction. Furthermore, supervisors neither routinely discuss their expectations with staff nor provide staff with feedback that could be used to improve their performance.



The flat tire on this State Historic Preservation Division vehicle was not repaired over a two-month period.

Performance appraisals are not conducted

The Department of Human Resources Development's supervisory manual for the State's performance appraisal system requires that civil service employees be evaluated annually. The manual also requires supervisors to meet with these employees at the beginning of the performance appraisal period to discuss job duties, performance categories, expectations, and goals. We found the division has deficiencies in both areas.

The division administrator failed to complete performance appraisals for four of five civil service employees although a year earlier the department chair had directed all supervisors to complete the appraisals on a timely basis. At the time of our review, two of the staff had never been evaluated. The most recent evaluations for the remaining staff were completed eight years earlier. Although the chair warned that supervisors who failed to complete the timely appraisal of staff would be subject to appropriate disciplinary action, no action has been taken against the division administrator. The administrative assistant currently supervises three of these staff and completed their performance appraisals after our review. However, the completed assessments are unreliable since they cover periods of time ranging from two to four months in which the administrative assistant was not employed by the division and therefore, unaware of the staff's performance.

Although the department does not require supervisors to complete performance appraisals for its 23 staff exempted from civil service, it does require that supervisors certify these staff's satisfactory performance. At the time of our review the department had not established personnel files for three new hires. We reviewed the remaining staff's personnel files and found supervisors had not certified the satisfactory performance for 25 percent of these staff.

Position descriptions do not adequately reflect job duties

We compared position descriptions for approximately a third of the division's staff to their actual job duties and found that 86 percent of the descriptions were outdated. For example, 71 percent of the staff in our sample no longer perform the duties identified in their official position descriptions. An employee who serves primarily as the division's public information officer informed us that he does not compile inventories or prepare nominations for the Hawaii Register of Historic Places, as indicated by his official job description. Another historic preservation specialist no longer conducts field surveys and reviews as stated in his position description. This employee devotes his time primarily to developing an archaeology inventory on the division's Geographic Information System (GIS). The division cannot fairly assess the performance of these staff when their expectations and duties are not clearly identified. The archaeology branch chief informed us that he is updating the position descriptions for all staff in his branch. The division should consider reviewing and updating all staff's position descriptions.

The division administrator is derelict in managing federal grants

As discussed in Chapter 1, about 40 percent of the division's funding is derived from federal grants. However, the division administrator's cavalier management style has put the State at risk of losing these funds. The division administrator does not ensure that applications for the Historic Preservation Fund grant, the primary source of the division's federal funds, are submitted on time. Furthermore, the administrator caused the State to lose over \$65,000 when he failed to subgrant federal funds to the counties as required by federal law.

Untimely and incomplete federal grant applications placed the State at risk of losing funds

The National Park Service awards historic preservation grants to states and tribal historic preservation offices to assist in their efforts to protect and preserve historic properties. Grants are awarded under a formula that considers population, area, and the number of historic resources identified in the last census. Hawaii's annual allotment is approximately \$450,000.

Although the division administrator informed us that additional positions are needed to improve division operations, he failed to protect and secure the receipt of federal funds that could be used to increase the division's staffing. During May 1998, the National Park Service informed a former department chair that the State had failed to apply for grant funds within the required timeframes, and had not met grant-reporting requirements since federal FY1994-95. Although the National Park Service wrote that "A clear and sustained pattern over a number of years has developed, and it is obvious that the situation is not improving," the division again failed to submit its 1999 grant application on time. The National Park Service expressed concern during April 1999 that half of the fiscal year had elapsed without the division submitting its grant application. We first reported the department's failure to submit federal grant applications for the Historic Preservation Fund during April 2000, in Report No. 00-11, *Financial Audit of the Department of Land and Natural Resources*. That audit reported the division incurred over \$350,000 in expenditures for five months before obtaining federal approval in May 1999.

Although the division has since improved the timely submittal of its grant applications, the National Park Service more recently raised concerns regarding allegations of mismanagement of grant funds. On October 22, 1999, the park service threatened to withhold FY1999-2000 grant funds until receipt of an explanation for complaints that had been brought to the parks service's attention. These complaints included allegations of untimely reviews, inadequate staff supervision, potential conflicts of interest, and staff's failure to work the 40-hour workweek for which they were paid.

As discussed throughout this report, we confirmed many of these allegations. However, the chair at that time responded on January 6, 2000 that he had investigated the allegations and found no evidence of mismanagement or conflicts of interest. The then-chair also stated, "Some of the issues do not seem on their face to be directly related to matters for which NPS (National Park Service) has an oversight responsibility." Upon receiving this response, the National Park Service released the FY1999-2000 grant funds.

Poor grant management resulted in the loss of over \$65,000

Federal law requires the State to award at least 10 percent of the historic preservation grant funds it receives from the National Park Service to certified local governments. The counties of Kauai and Maui are the only two local certified governments in Hawaii. The division awards the funds to one county in one year, and the other county in the subsequent year.

However, the division administrator failed to subgrant these funds as required during two fiscal years and was forced to return the funds, which totaled \$66,008, to the National Park Service. As a result, Hawaii needlessly lost \$32,836 during FY1998-99 and \$33,172 during FY1999-2000 because of the administrator's poor grant management.

Generating program revenues is not a priority for the administrator

Although the Legislature authorized the division to generate much-needed revenues through the adoption of user fees in 1998, the rules that propose these fees were only recently approved by the Board of Land and Natural Resources and have yet to be reviewed by the governor. The administrator has estimated that \$60,000 to \$100,000 could be collected annually once the fees are adopted.

The department chair informed us that an earlier version of the rules privatized the division's functions. The proposed rules were later amended to address the issue of user fees. The department chair claims that these changes and disagreements among affected parties have delayed finalization of the rules. However, given the administrator's overall lack of management and inattention to detail, it appears that securing revenue sources is not a priority for the administrator.

Conclusion

The State Historic Preservation Division of the Department of Land and Natural Resources is entrusted with protecting Hawaii's irreplaceable cultural and historic sites. However, the department chair and division administrator have failed to uphold their trust duties and instead allowed division employees to misuse and exploit the division's limited resources. Moreover, the department's unconvincing and superficial efforts to resolve long-standing delinquencies in its development review process and its lax resource management warrant the governor's intervention. Failure to address the department's mismanagement can result in irreparable consequences as historic sites are lost or development is unnecessarily delayed.

Recommendations

1. The governor should ensure that the Department of Land and Natural Resources improves the management of the State Historic Preservation Division. Specifically, the governor should:
 - a. Direct the department to report on the implementation of our audit recommendations to the 2003 Legislature;

- b. Issue a memorandum to all division staff that specifies that abuse and misuse of division resources will not be tolerated. The governor should warn staff that suspected abuses will be referred for criminal investigation and appropriate disciplinary actions taken; and
 - c. Remind both the department chair and the division administrator of their managerial duties and obligations. Should the chair and division administrator prove unable or unwilling to disallow staff from placing their personal interests before that of the division, the governor should consider replacing the staff currently in these positions with individuals who have exhibited competent leadership.
2. The department chair and division administrator should improve the protection of historic properties by:
- a. Ensuring that all burial and archaeological reviews are conducted expeditiously. To facilitate these timely reviews, the division administrator should immediately forbid staff from engaging in outside employment during the division's hours of operations and use the funds received from the University of Hawaii's Institute of Astronomy to hire additional staff to assist in eliminating the Hawaii archaeological review backlog;
 - b. Developing clear guidelines and adequate oversight for archaeological reviews to ensure consistency and fairness in these reviews, and to avoid the establishment of a *quid pro quo* environment;
 - c. Referring the possible bribery of a former division employee who accepted cash donations from one developer to the prosecutor's office for criminal investigation;
 - d. Requiring division staff to inventory *all* historic artifacts in the division's custody in accordance with recommended curation guidelines. Containers storing human skeletal remains should be appropriately labeled to identify the contents and the specific geographical location from which the remains were disinterred;
 - e. Developing a statewide inventory record of all native Hawaiian skeletal remains and associated funerary objects in its custody, as specified in the Native American Graves Protection and Repatriation Act. In order to facilitate the timely re-interment of human skeletal remains, inventory records should track the date remains were disinterred and identify specific geographical burial sites;

- f. Developing curation policies that ensure human skeletal remains and historical artifacts are stored under acceptable conditions; and
 - g. Requiring the burial program director to improve and organize the division's burial files. Specifically, all burial cases should be filed using a single filing system. Duplicate case files should be streamlined so that all information can be found in one file. Furthermore, key decisions and pertinent information should be maintained in each burial file to ensure that cases are adequately tracked to facilitate their timely resolution.
3. The department chair and division administrator should establish adequate management controls to protect historic preservation resources from misuse, abuse, and theft. Specifically, the chair and administrator should:
- a. Direct all division staff to use daily sign in/out sheets;
 - b. Direct the division's administrative assistant to routinely reconcile the daily sign in/out records with employees' official leave records. Staff who fail to report leave within five days of returning to work should be charged leave without pay;
 - c. Establish procedures for investigating patterns of sick leave that indicate potential abuse. Staff suspected of abusing leave should be required to provide medical documentation of their illnesses;
 - d. Approve employees' overtime timesheets only when the overtime claimed is approved by the department chair;
 - e. Hire a fraud investigator to determine the extent of government leave and overtime records destroyed following the department's internal investigation of alleged employee fraudulent overtime claims and leave abuses. The fraud investigator should interview the division administrator and clerical staff as recommended by the department's internal auditor to assess whether fraudulent activities did in fact occur. Should the investigator confirm that criminal activities took place, appropriate disciplinary and follow-up action should be taken;
 - f. Direct the division's administrative assistant to update and maintain the division's inventory record of state property. The administrative assistant should immediately conduct a physical inventory of all state property and investigate discrepancies between property on-hand and property identified on the division's master inventory list;

- g. Require all staff using division vehicles to complete vehicle usage logs that identify the vehicle license number, driver, destination, purpose of travel, and odometer readings prior to and subsequent to completing the travel. The administrative assistant should reconcile gasoline invoices to vehicle usage logs to ensure that payment is made for gasoline purchased only for official state business;
 - h. Develop preventive maintenance standards to extend the life of vehicles and enhance driver safety. The division should immediately obtain required safety checks and repair vehicles that require servicing. The division should also assess whether it is practical and cost-effective to maintain its current fleet of vehicles. Should the division choose to dispose of rather than repair vehicles, Hawaii administrative rules that govern the disposal of state property should be followed; and
 - i. Update position descriptions for all staff and discuss performance expectations prior to and following the completion of regularly scheduled review periods. All staff should be held accountable for their performance and behavior. Appropriate disciplinary action should be taken against supervisors who fail to evaluate staff's performance.
4. The department chair should require the division administrator to proactively seek and secure program revenues by clearly stating that the administrator's continued employment is contingent upon the timely submittal of federal grant applications and the proper oversight of grant receipts.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Land and Natural Resources on December 2, 2002. A copy of the transmittal letter to the department is included as Attachment 1. The department's response is included as Attachment 2.

The department responded that it would generally implement our audit recommendations "as time allows." Resource constraints were cited as a challenge. Unless additional resources are available, implementation of audit recommendations will cause deficiencies in other program areas.

Due to continuing discrepancies in employee leave administration, the department reports that it plans to reopen its investigation of alleged employee leave abuse. It defended its decision not to pursue its initial investigation by stating that its focus was on changing work attitudes and achieving program efficiencies.

Notwithstanding the department's agreement with our audit recommendations, it attacked the overall credibility of our audit report. First, the department believes that our understanding of the state's historic preservation laws is overly simplistic and therefore inaccurate. We reviewed the department's statements and found them to be without merit. For example, the department reports that an obvious mistake includes our statement that "[t]he division's regulatory duties also include protecting prehistoric and historic burial sites that are neither maintained, nor actively used, as cemeteries." Section 6E-41, Hawaii Revised Statutes (HRS), (Prehistoric and historic burial sites) clearly states "At any site, other than a known, maintained, actively used cemetery where human skeletal remains are discovered or are known to be buried and appear to be over fifty years old, the remains and their associated burial goods shall not be moved without the department's approval."

The department questions excerpts from our report regarding the authority of the burial council to determine whether preservation in place or relocation of previously identified native Hawaiian burial sites is warranted. We understand how the department could have misinterpreted our statement. To avoid confusion, the language of the draft report has been clarified.

The department also questions an excerpt from our report wherein we state that the division develops preservation plans for non-Hawaiian skeletal remains. The department criticizes this statement for being false

and states that applicants submit requests to preserve in place or relocate a previously identified non-Hawaiian burial site in the form of a burial treatment plan. We acknowledge that the department's statement may be more accurately worded. However, we contend that the statements in question were taken out of context and misconstrued. To avoid confusion, we made changes to the draft report to lend clarity and accuracy to the restatement of applicable laws and administrative rules.

Second, the department accuses the report of perpetuating stereotypical misconceptions of the law. It raises concerns about statement in our report that all work is halted when remains are found at a project site. Further, it objects to statements that the department must approve the developer's preservation or mitigation plan before work can resume. The department, however, does not raise concerns with our report's findings that untimely reviews expose developers to delays and risk of financial loss. There is no dispute that the department ineffectively oversees the preservation or mitigation plan process and that its case files are inadequate.

Third, the department criticizes Exhibit 2.1 in our report, which highlights delays in report responses. The department states that information is presented too simplistically and ignores the context in which these delays occurred. The department's response does not dispute the reported delays, but instead attempts to justify why they occurred. The primary reasons cited were staff shortages and the concomitant backlog of work.

Fourth, the department's response states that our report is culturally insensitive and favors a scientific perspective. The department accuses our audit of portraying human skeletal remains as "items." This statement is false. Our audit refers to funerary artifacts as items.

Fifth, the department disagrees with our criticisms of the burial sites program's failure to comply with the National Park Service (NPS) repository standards. The standards we refer to are 36 CFR 79, *The Curation of Federally Administered Archaeological Collections*. The department states that this federal regulation does not apply to the division's operations. We disagree. Section 79.3 indicates that the regulations under this CFR apply to collections excavated under the National Historic Preservation Act. Section 79.4 specifies that collections are material remains that may include human remains (such as bone, teeth, mummified flesh, burials and cremations). Although the department "does not view its holding of human remains . . . either as a museum collection nor an archaeological collection," the human skeletal remains in its custody nonetheless subject it to NAGPRA standards.

Sixth, the department states that we broke the trust of the burial program staff by discussing burial artifacts (heirlooms) that we were informed about in strict confidence. We dispute this claim. We did not have an agreement of confidentiality with the burial program staff for *any* of the information they provided to us. Furthermore, the department's attempt to hold us responsible for its failure to reinter the chiefess to her original burial place is unfounded. The report does not disclose the initial burial site of the chiefess. Moreover, the department acknowledges that discovery of the chiefess' remains and burial artifacts was *already* widely disseminated by the scientific community. In fact, this is a contributing reason as to why the division has yet to re-inter the human skeletal remains and funerary artifacts.

Finally, the department indicates that our report "discounts and scoffs" at the behavior of the burial staff who were unable to account for two of 35 burial remains randomly selected from the inventory report. According to the burial staff they located 33 remains within a 30-minute period and were called away to respond to an inadvertent burial find. They report that the two unaccounted for remains were located the following morning. We dispute these claims. The burial program director, the individual who allegedly knows where all remains are stored, was on a burial call during the entire period this audit test was conducted. The burial staff person who assisted us was not able to account for two of the burial remains, indicating a need to improve the program's inventory controls. The program director returned to the office the following day and was able to locate only one of the two remains not accounted for on the previous day.

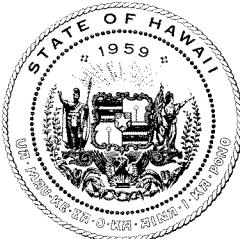
The department acknowledges that "burial staff rely more heavily on their personal relationships with the individuals in their care than on papers in a file." Relying upon burial program staff's recollection is not acceptable and fails to ensure that geographical and cultural affiliation information is preserved. Important information can be lost should staff leave their position.

Accordingly, we conclude that the department's numerous allegations of factual error, cultural insensitivity, and breach of confidence are without merit. The department's statements are an attempt to discredit our audit findings.

Other statements made by the department in its response attempt to defend against our findings. We note, however, that many of these comments introduce new information that was not shared with our office during the audit process. At the time, requests for information did not yield responses. Hence, we will not address newly introduced information because it was not evaluated during the audit process.

ATTACHMENT 1

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

December 2, 2002

C O P Y

The Honorable Gilbert Coloma-Agaran
Chairperson
Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

Dear Mr. Coloma-Agaran

Enclosed for your information are three copies, numbered 6 to 8 of our confidential draft report, *Audit of the State Historic Preservation Division of the Department of Land and Natural Resources*. We ask that you telephone us by Wednesday, December 4, 2002, 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 Tuesday, December 10, 2002.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

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

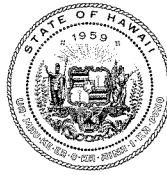
Sincerely,

A handwritten signature in black ink that reads "marion m. higa".

Marion M. Higa
State Auditor

Enclosures

LINDA LINGLE
GOVERNOR OF HAWAII



GILBERT S. COLOMA-AGARAN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621
HONOLULU, HAWAII 96809

December 10, 2002

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND
STATE PARKS
WATER RESOURCE MANAGEMENT

RECEIVED

DEC 10 10 48 AM '02

OFC. OF THE AUDITOR
STATE OF HAWAII

Marion M. Higa
State Auditor
Office of the Auditor
Kekuanaoa Building, Room 500
465 South King Street
Honolulu, Hawaii 96813

Subject: Department of Land and Natural Resources' Comments on the Draft Report on the Audit of the State Historic Preservation Division

Dear Ms. Higa:

The Department of Land and Natural Resources appreciates the opportunity to provide comments.

Generally, the Department will implement the recommendations that are not already in place and will identify those items for the incoming chair and the new Governor. I include here a specific comment and attach some other specific comments on the contents to explain the division's perspective on your observations. I would request that you append both this cover letter and its attachment to your final report.

You describe the Department's handling of a leave record dispute. The Department was faced with a division experiencing bad morale. Lay-offs of twenty five percent of the staff occurred in 1995 within the division and employees continued to be uncertain of their future employment. There were cases of disciplinary actions against employees for insubordination. There were allegations made by groups of employees against each other that work time was not being utilized in a proper manner. In fact, "black books" were being maintained by employees on their own co-workers. Although the alleged fraudulent leave records may be factual, they were removed from the locked desk of the employee who allegedly committed the fraud. The hasty dislocation of division employees to a new work site at Kapolei without adequate funding and necessary numbers of adequately maintained vehicles for transportation to work sites and town were continuing to contribute to the developing bad morale situation.

The Department investigation was handled by personnel and fiscal staff and recommendations and options were discussed with the then-chair. Although the Department could have further investigated the specific situation and other alleged situations, it was more concerned with the future change of work attitudes and efficiency of the program. The Department addressed the issue of the use of work time in a memorandum dated October 30, 2000, which implemented internal controls on vacation, sick leave, and overtime and began plans to fund and dedicate a position concerned with internal controls and grant applications. The position currently exists as an Administrative Assistant V within the division. The former chair made his decision after disclosing his intentions to counsel for the complaining employees; that lawyer took no further action during the remaining tenure of the former chair.

Upon taking the job, I discussed this matter with the former chair and the staff and met with the employees making the allegation and their lawyer. Coupled with my own knowledge of the morale issues within the division, I supported the former chair's decision to a new beginning rather than reopening the old wound.

As it appears that there continues to be discrepancies in employee leave administration, the Department plans to reopen its investigation of all issues identified in your audit as well as other allegations that have been made by various employees of the division and to make any appropriate referrals outside the Department. The incoming chair will be briefed on all items.

Very truly yours,



Gilbert S. Coloma-Agaran
Chairperson

Department of Land & Natural Resources' Comments

on

Audit of the State Historic Preservation Division
of the
Department of Land and Natural Resources

Oscar Wilde's perceptive observation, "The truth is rarely pure, and never simple," is well confirmed by the State Auditor's draft report on the audit of the State Historic Preservation Division. Knowledgeable people will immediately realize the findings of this thirty four page document should be approached with caution, and by no means should be accepted as any semblance of pure and simple truth.

The historic preservation process subtly weaves its way through all levels of the land use regulatory process and entwines itself into the fabric of native Hawaiian sovereignty and cultural perspectives. Perhaps as a result of the program's complexity and multiplicity of players, and audit staffs' unfamiliarity with the field, the report appears to contain numerous misunderstandings of the state historic preservation law, factual errors, cultural insensitivity, and out of context observations.

We also note any consideration and assessment of the resource constraints under which the historic preservation division has operated, and the resulting need to prioritize efforts, is conspicuously absent. The implementation of many of the well intended recommendations either will require additional resources or will lead to deficiencies in other vital program areas.

Many of the factual errors appear to stem from either a misreading or misunderstanding of state historic preservation laws and rules, or the auditors' mere acceptance at face value of misinformation provided by others. Some of the more obvious mistakes include:

1. Page 4: The report states, "The division's regulatory duties also include protecting prehistoric and historic burial sites that are neither maintained, nor actively used, as cemeteries." The division, in accordance with Sections 6E-41 and 43, Hawaii Revised Statutes (HRS), is responsible for the protection of burial sites both in and outside of cemeteries.

2. Page 4: The report states, "The division is responsible for deciding whether to preserve in place or relocate human skeletal remains that are identified either during the survey review process or inadvertently at a later time." This statement contains an important factual error and an omission. For native Hawaiian remains identified during the survey review process, Section 6E-43, HRS, clearly states, "The appropriate island burial council shall determine whether preservation in place or relocation of previously

identified native Hawaiian burial sites is warranted . . . " The factual error is reiterated two sentences later, "five burial councils . . . recommend to the division whether to preserve in place or relocate." The report omitted that burial sites may be considered to be previously identified not only when they are identified during an inventory survey, but also on the basis of oral or written testimony.

3. Page 4: The report states, "The division develops a preservation plan for any non-Hawaiian skeletal remains that are identified during a survey phase." This is false. Section 13-300-34, HAR, specifically states, "(b) The applicant shall submit a request to preserve in place or relocate a previously identified non-Hawaiian burial site to the department in the form of a burial treatment plan." and "(c) The applicant shall consult with the department in the development of the burial treatment plan."

The difficulty in correctly representing the historic preservation program's statutory responsibilities at the very start of the document is troubling on several levels. When the straight-forward, black and white nature of the legal mandates are simplified and inaccurately presented, the credibility of the report's later interpretation of more complex situations suffers.

The misunderstanding of the law recurs in several other locations in the report. In these instances the report reads almost as a disengenuous attempt to undermine the mission of the division, and hamper its ability to protect burial sites. The audit perpetuates stereotypical misconceptions of the law, while purporting to report fact.

1. The statements on page 15, are especially bothersome, "when remains are found at a project site all work is halted until the department decides whether the remains should be protected or relocated." (emphasis added) Section 13-300-40(c)(1), HAR, clearly indicates that only activity in the immediate area of the discovered human remains should cease.

2. The report's very next sentence further compounds the initial error by stating as fact, "The department must approve the developer's preservation or mitigation plan before work can resume." This is not true. Section 6E-43.6(a), HRS, stipulates that only work in the immediate area must cease and only until the requirements of subsections (b) through (d) have been met. These three sub-sections require the reporting of the burial to the department, police and medical examiner/coroner; and the department's gathering of sufficient information; and require department decisions be made within one to three days, depending on the number of burials and the islands upon which they are located. Thus the law provides for the handling of discovered human remains in a timely manner without unduly impacting a construction project.

The shutting down of an entire construction project when human remains are discovered is one of the most common and inflammatory rumors which pervades the construction industry. It promotes unreasonable fears of monetary loss and delay which, in turn, may lead to the non-reporting of inadvertent discoveries, concealment, and inappropriate treatment of human remains. As such, this is one of the basic

misconceptions the department strives to combat, and it is most disheartening the audit report perpetuates and validifies such an erroneous viewpoint.

3. Exhibit 1.2, on page 5, perpetuates another common misconception, that only properties listed on the Hawaii Register of Historic Places need to undergo historic preservation review. Sections 6E-8 and 6E-42, HRS, both clearly state that departmental review is required of any state or county project or permit which may affect an historic property. Historic property is defined as "any building, structure, object, district, area, or site, including heiau and underwater sites, which is over fifty years old." There is no legal reference that a property be on the Hawaii register to trigger a historic preservation review. In addition, the flow chart presented would not apply to historic properties listed in the Hawaii Register. Almost the entire left column would be eliminated as the registration process already identifies and establishes the significance of the property. Thus the chart fosters two popular misconceptions in one image: It engenders (a) a fear in property owners that if historic properties are placed in the Hawaii Register of Historic Places that they will be subject to excessive government regulation, and (b) that if a property is not listed in the Hawaii Register they do not have to submit it to the department for review.

The report raises the issue of timeliness of archaeological review, and asserts this compromises the division's ability to protect historic properties (p. 12), and exposes developers to financial loss (p.11). Although some archaeological reports may be reviewed as time allows, projects are rarely delayed and historic properties do not go unprotected as a result of staff not providing reviews. When delays do occur it is usually the result of a staff vacancy, and even then, when critical delays are brought to the division's attention an attempt is made to expeditiously provide a response. Because of limited staff and resources, reports may be prioritized for review in order to provide division comments at appropriate junctures in the land use review process.

Exhibit 2.1, which highlights examples of delays in report responses, should have placed these tardy responses in the context of division constraints and priorities. Instead it has been simplistically presented as evidence that delays occur in report reviews. Rather than seek an understanding of how the division prioritizes its workload, or investigate the rationale behind delays, the audit report concludes, "untimely and inconsistent reviews prevent the division from fulfilling this mission [to identify and preserve historic properties] and compromise the division's ability to protect historic sites and artifacts from loss." (p. 12) A more in-depth consideration of the projects presented on Exhibit 2.1 reveals the results of division activities appear to run contrary to the audit report's conjectural conclusions.

H-3, Halawa Valley Inventory Report: This was one of the most complicated and lengthy archaeological projects reviewed by the Archaeology Branch in the past twenty years. When the initial draft of the report was submitted in February 1997, six years after the field work had been completed, the SHPD Oahu archaeologist had just resigned. The remaining knowledgeable staff did not have time to review this multi-volume report, and after discussions with the archaeological consultant and Federal

Highways, it was decided to have private archaeologists undertake the review. Procurement alone took to July 1997. The three private review archaeologists did not submit their reviews until August 1997, October 1997, and January 1998. These then had to be integrated into a cogent response to Federal Highways. The cover letter was four pages in length and the detailed comments extended for 101 pages. It took the archaeological consultant over a year to amend the report in response to the comments. When it was resubmitted in May 1999, it included several new chapters not included in the initial report. At this point the report was strictly an academic exercise, as all the significant sites had been protected, and the Highway was in operation. Also during 1999, the Hawaii Island archaeologist was working on Mauna Kea and the Maui archaeologist position was vacant from June 1999 through March 2000. Needless to say, the H-3 Inventory Report review was wisely made a low priority.

The four Hawaii Island reports cited as delinquent all result from the 1999 backlog resulting from the Hawaii Island Archaeologist's working on the Mauna Kea project on the island of Hawaii. This project was a major priority considering the need to work towards some sort of resolution concerning the mountain's use for astronomical and cultural purposes. SHPD staff was selected to do this project because of his impeccable background and distinguished knowledge of the sites located in this unique environment. Although the audit report, in hind sight, questions the use of staff for this purpose (p. 13), a complex historic preservation issue, paramount to the Island of Hawaii, involving the protection of a significant cultural landscape, has been successfully addressed. The importance of developing a Mauna Kea management plan was recognized in Audit Report 98-6, which focused exclusively on this subject.

The audit report questions why the moneys saved as the result of the contract between the University and DLNR were not expended to have staff work overtime to remain current with the Hawaii Island reviews. 1999 was a period when neither the Legislature nor the Office of Hawaiian Affairs were funding two authorized burial positions. The savings were utilized to cover program budget shortfalls.

Kahekili Highway Makamakaole Gulch inventory report, involving hazardous boulders: Maui County reviews were backlogged as a result of the position vacancy on that island, when the report arrived in February 2000. Because of the backlog, SHPD and Maui County had established a system of verbal communication, so SHPD staff could be informed when report reviews would reach a critical juncture in the land use regulatory process. The County called at the end of June 2000, requesting this project be reviewed. The staff in the recently filled position checked the site on July 6, 2000, and an approval letter was mailed the following day. This is an example of the division's expeditious prioritization of projects when confronted with staff shortages and backlogs.

Lahaina Courthouse is another instance where the field work had been concluded and work completed prior to the acceptance of the inventory report. The office became involved with this project in December 1998, when it had been reported

that bones had been uncovered while trenching a utility line. The staff made a site visit, on December 14, 1998, and the construction trench had already been backfilled. The following day the office wrote the county that the trench should be reopened and its contents archaeologically examined. A scope of work was submitted to the division January 5, 1998, and was approved by the division on the following day. Further details of the scope were agreed to in the field when the branch archaeologist inspected the site work. The archaeological work was completed on the articulated pig bones in early February 1999, and the County was advised in writing of the progress. On May 4, 1999, the report was submitted to the division, after all archaeological field work was satisfactorily completed with SHPD oversight. A letter of July 15, 1999, requesting substantial report revisions, was submitted to the archaeological firm. Several meetings were held between staff and the consultant firm, and the revised report was submitted in July 2000. At this juncture the approval of this report was only to assure academic accuracy, as the project was already completed. The review was given a low priority in order to try to address the still existing Hawaii Island and Maui backlogs. Thus again, this project, when viewed in its entirety, displays expeditious response by the SHPD, and prudent prioritization of workload.

Honokahua data recovery report: This was the controversial project which led to the passage of the state burials protection law in 1990. Thus the submittal of the report in 2000 was close to ten years overdue. The approval of the report was an academic exercise entered into as time allowed, as the project had been long completed and the burials and historic properties preserved.

We cannot respond to the audit comment that one archaeological report was rejected for an inadequate settlement pattern, while another consultant was merely reminded to include such in future reports (p. 16). When called, the Office of the Auditor declined to provide the department with specific information as to which reports were being discussed. We suspect the two superficially divergent responses may relate to the quality of the discussions in the two reports, and/or the import of the discussions to the overall understanding of the project area.

Audit report comments such as, "untimely and inconsistent archaeological reviews compromise the program's mission and foster an environment conducive to corruption" (p. 12) and, "Inconsistency [in applying review standards] may lead to favoritism and can foster a climate in which decisions are made on a *quid pro quo* basis," are supported by no evidence of the presence of such an environment or climate. The one instance of possible impropriety mentioned in the report (p. 17) was investigated by the department, and the staff involved is no longer employed by the State.

The audit report utilizes a straight forward, non-contextual, approach similar to its investigation of archaeological report reviews when discussing the burial files and inventory. In addition, it adopts a highly structured, impersonal, western bias towards the treatment of human remains. The audit report portrays human skeletal remains as

"items" (p. 19), objects of scientific interest, to be tracked, and scientifically curated (p. 20). The burials program staff thought they communicated to the audit staff that the bones are not scientific objects, but people, individuals with spirits who once walked these islands and therefore need to be treated as human beings. The issue of appropriate treatment of human remains was a heated debate which fractured the historic preservation division along lines of scientific and cultural definitions of appropriate behavior.

It appears the audit report favors a scientific approach rather than a culturally sensitive perspective. The audit report criticizes the burials sites program for not complying with National Park Service (NPS) repository standards (p.20). As the audit report does not provide the specific standard, we suspect it is referring to Part 1 Appendix F, "Checklist for the Preservation and Protection of Museum Collections" in the NPS's internal "Museum Handbook." The only other citation might be 36 CFR 79, "The Curation of Federally Administered Archaeological Collections." Neither of these federal documents apply to the operations of the SHPD, and the division certainly does not view its holding of human remains in anticipation of reburial as either a museum collection nor an archaeological collection. The division would appreciate more space to house the human remains, and had obtained a building at Diamond Head for a brief time, but other State priorities resulted in a displacement to the current space. We work within the confines provided to us by the State.

The audit report also castigates the burial program for not placing the bones in acid free bags to better preserve them (p. 20) in accordance with the best curational standards. If the intent is to afford the bones the highest protection against deterioration, as suggested in the report, there appears to be little value in utilizing acid free paper bags, so long as the present practice of storing the remains with their associated, mana laden soil continues. Is the audit report also advocating the removal of the bones from their soil? Perhaps even scrubbing the bones to remove any decay causing filth? Only then would curation in acid free bags make any sense. Best curational standards, if followed, would also dictate placing human remains on climate controlled shelves rather than back in the ground. The scientific preservation of recovered skeletal remains, is at the diametric opposite end of the pole from the cultural position adopted by the department.

The burials program is a round cultural peg, which has been inserted into a square bureaucratic hole. Burial program staff are constantly tasked with forming an interface between cultural practices and expectations and governmental procedures and requirements. The program was instituted after Honokahua in order to introduce a Hawaiian cultural perspective into the government decision making process, as least with regards to ancestral remains. In its language and attitudes the audit report appears to ignore any sense of balance, and by setting forth governmental expectations without consideration of cultural values, implicitly advocates the reduction of the Legislatively intended cultural perspective.

Perhaps the most disappointing page in the audit report is page 19, when a rather important burial good is discussed. Burial staff shared information on these precious family possessions with the audit staff in strict confidence. They were discussed to illustrate the conflicts the division must regularly face in addressing cultural and scientific values, Hawaiian and western perspectives, and as a basis for a discussion about the looting of burial sites. The discovery of these endearing heirlooms was widely disseminated by the scientific community. The spread of this information has resulted in placing these articles and the burial itself at risk of theft should they be reinterred. The division had hoped to find a way to allow this high ranking person to return to her original burial place with her personal possessions; however, the audit report's widespread publicizing of the presence of these valued items precludes this option and leaves the department little choice but to relocate this chiefly individual, despite the fact that the law was drafted to afford such individuals greater protection from such disturbance. The audit staff's breaking of a trust, merely to make the point that two highly prized items awaiting reburial, whose presence was to remain confidential, were not included in a publicly accessible inventory is unconscionable.

SHPD burials staff treat human remains entrusted into their care as people, indeed as family, as many of these remains have no known direct descendants alive today. Staff care for the remains of these humans as if they were their own family, an incredibly heavy individual relationship and cultural responsibility. For staff their State position is more than a bureaucratic routine; it entwines into and becomes their lives. Every decision they make, they need to question if this is the right thing to do, or will they and those close to them be held accountable by the greater Hawaiian community and the spiritual world. They establish a personal relationship with those entrusted in their care.

With its western perspective, the audit discounts and scoffs at the behavior of these staff, by making such statements as, "staff could not locate two of thirty five items (6 percent) randomly selected from the inventory list during our July 2002 visit. Moreover we had no assurance that staff correctly located eighty percent of the skeletal remains selected from the list. Although they showed us containers in which they claimed the remains were stored, 80 percent of these containers were not labeled to identify contents and 25 percent did not identify the specific geographical location the remains were recovered from." (p.19). In a room filled with over two hundred individuals, staff located thirty three of thirty five kupuna in a thirty minute period, before having to leave the office in response to an inadvertent burial find. The other two individuals were located the following morning. Although details are not always labeled on the outside, information relating to the remains is included in each receptacle. In addition, as staff explained to the auditors, comprehensive information on each set of remains is contained in archaeological reports which are prepared whenever remains are disinterred. With regard to non identification of specific geographic location, in the exit interview audit staff indicated that some geographic locations were only listed as "Kahala" rather than a specific land parcel. The "Kahala" remains derived from the Bishop Museum collection and that is the only locational

information provided by that institution. Remains from the Bishop Museum account for approximately half of the individuals being currently cared for. In some instances for individuals repatriated from museums around the world, we have only known the island from which they came, and sometimes not even that.

In addition, the audit report finds, "When division staff lose track of burial cases, development projects and the reinterment of skeletal remains are delayed." (p. 15). We do not question the audit report's finding that some burial files may contain "sparse information," (p.15); however, it is a leap to conclude, as the report does, that this paucity of paper "prevents staff from tracking the status of burial cases." (p.15) Because burial staff rely more heavily on their personal relationships with the individuals in their care than on papers in a file does not mean they "lose track of burial cases." (p. 15) There may be far too many burial cases than is humanly possible for staff to expeditiously address, but there is no reduction in cognizance of cultural responsibility.

Furthermore, there is little or no correlation between the maintenance of burial files and the timely reinterment of human remains. Individuals who are ready for reinterment are tracked physically in their repositories. The decision to reinter is based on a multitude of factors, of which the completeness of the documenting paper trail is not one. The burial sites program maintains it is paramount that remains be reinterred under conditions of mutual respect and aloha, with a sense of finality and closure for all involved. It takes little time to excavate a hole and place a body in it, but to do it properly often takes time. In many large and small projects, the design of a reinterment area is incorporated into the project plans, but reinterment often does not transpire until at or near the completion of the project, in order to protect the remains from any possible further disturbance. The division holds these remains until the appropriate moment. The division also holds remains which have eroded from shorelines, been returned by museums, or were discovered in the middle of busy streets. In these instances delays may be incurred in locating an appropriate reinterment site in the vicinity, as it entails gaining agreements with private individuals or agencies with no legal obligations to accommodate the needs of the human remains. Other delays may be incurred when disputes and differences of opinion arise between various parties participating in the frequently emotionally charged reinterment planning. The timely reinterment of individuals is less a filing problem than a staffing one. The need to reinter individuals does not delay projects as there is no intersection with project initiation or continuation, and reinterment.

The audit report cites two examples of the burial sites program's poor filing resulting in delays in reinterment, and, in turn, supposed project delays. (p.15) Although the Office of the Auditor declined to identify the two cases to the department, the department was able to ascertain, through the report's mention of a July 2002 letter and division files, the first mentioned case. The July 2002 letter requested confirmation of a 1999 approval of a revised burial treatment plan. Apparently based solely on this letter, the audit report claims, "the division essentially lost track of this

case because it had not established a file for it. Consequently the developer's work was delayed for over two years." In fact, this case is one of the larger and more complex case files in the burial sites program's possession. The file, approximately four inches thick and encompassing four separate manila folders, consists of correspondence, reports, memoranda, and a complete investigation of the owner's apparent violation of the state burial law, including enforcement reports and Department of Attorney General actions, spanning almost fourteen years of division activity for this one parcel alone, which contained over two dozen burials. The allegation that the developer's project was delayed for two years while he quietly and patiently awaited a single confirmation letter flies in the face of reason.

The audit report discusses compliance with the Native American Graves Protection and Repatriation Act (NAGPRA). It notes an inventory of *all* native Hawaiian remains and associated funerary objects in the division's custody was to be submitted by November 1995. "The division's failure to establish an inventory of skeletal remains and funerary objects in its custody could result in civil penalties. NAGPRA authorizes the Secretary of the Interior to fine the division .25 percent of its budget or \$5,000, whichever is less. An additional penalty of \$100 per day may also be assessed for continued violations. As of August 2002, the federal government had not penalized the State for not establishing an inventory." (pp. 19-20) The division is confident the State is not at monetary risk. NAGPRA was drafted with museum collections in mind. Prior to the November 1995 deadline, the division had Francis McManamon, the person within the NPS Washington D.C. office who was responsible for overseeing the nationwide implementation of NAGPRA, visit its office. He was queried about compliance by the division with the national law, and he expressed the position that the division's approach via implementation of the State law met the intended requirements of NAGPRA, and the State should continue to address burial issues through the burial councils. The law does not apply to SHPD recent holdings, as the law was directed at museum collections held prior to 1995, and did not anticipate continued institutional collection of human remains.

In several other areas the audit report would benefit by further clarification:

1. The audit report states the administrator, "routinely approved five hours of overtime for each clerk during each pay period between July 1990 and August 2000 without justifying the purpose of or necessity for the overtime." There appears to be a typographical error in this sentence as "July 1990" should read, "July 1999." In 1991, the historic preservation division lost its secretary position, when the person who assumed many of the secretarial duties left State employment, the clerical agreed to work five hours overtime each pay period in order to cover the personnel and fiscal responsibilities handled by that position. The moneys paid in overtime were less than the salary increase had one of the three clerical positions been redescribed to that of a secretary. As far as we are aware, the historic preservation division is the only division in State government to operate without the benefit of a secretarial position.

2. The audit report claims that in 2001-2002 unauthorized overtime was paid to division employees, "an archaeologist was paid \$293.48 for unapproved overtime. Clerical staff received a combined total of \$127.31 for unauthorized overtime." Department records can find no evidence of unauthorized overtime being paid.

3 The audit report quotes a sentence from a November 14, 2000, memorandum from the division administrator to the department's personnel officer (p. 24). The offered advice was given in response to the volunteer's trying to instill hostility between two of the clerical staff by telling the one that the other was saying unkind things about her despite their being good friends, and in reporting to the ombudsman an absence of one of the clerks from the office during work hours when in fact the clerk had gone to the post office to mail out materials to board members for a forth coming meeting.

4 The audit report reviews the actions allowing two single parents to adjust their work schedules to accommodate their working a second, limited term, job. One took several hours a week out of his normal schedule to teach Hawaiian archaeology at the university level and made up his time in the evenings and on weekends; the other worked Saturdays rather than Mondays. The former situation was viewed as a benefit to the program. It not only reflected well on the professional stature of a State employee, but also provided another venue for public education on historic preservation. The latter situation involved an employee situated on a neighbor island. Because there was some questioning of the arrangement even though it was approved by the State Ethics Commission, the administrator regularly called her office to check if she was at work. She always answered the telephone or immediately responded when she returned to the office. The administrator was satisfied the State was receiving a full weeks work from the employee and had no reason to inquire with her other employer as to whether they were also satisfied with her work. Again, this work situation was viewed in a positive light as the staff's involvement in her project resulted in higher quality archaeological reports being submitted to the division. In neither case was there any perceptible diminishment in the quality or quantity of the employees' work.

4. The audit report notes that "the division's maintenance file revealed that over half of the division's 17 vehicles had not received any type of maintenance during FY2001-2002" and that "approximately 63 percent of the division's vehicles based at the Kapolei office during July 2002 had safety checks that had expired anywhere from 1.5 to two years prior to our visit." (p. 27) There has not been a Legislative appropriation for an Oahu based historic preservation vehicle since fiscal year 1991, and that vehicle is now operating on Maui. The vehicles the division regularly relies on to undertake State business on Oahu date from 1982, 1988, 1989, 1990, all exceed 100,000 miles. In addition to these four vehicles the division has a number of other vehicles which do not have current safety inspections, have not received any type of maintenance, or have flat tires. These were obtained from other agencies who were deaccessioning them. As explained to the audit staff, these extra vehicles are waiting on stand-by, in the event any of the regularly driven vehicles become too costly to keep

in operation. Considering the age and mileage of the regularly used vehicles, we question the need to provide the division with guidance on how to "promote the lifespan of the division's vehicles." (p. 26).

5. The audit report notes, "position descriptions do not adequately reflect job duties." (p. 29) In citing examples, it mentions people no longer perform certain duties listed in the job description. That is, a person who currently devotes much of his time to developing the Geographic Information System (GIS) for the archaeology branch, "no longer conducts field surveys and reviews." (p. 29) This position has participated in field surveys on Mauna Kea and in Waianae over the past several years. His GIS responsibilities are also included in his job description.

6. The analysis of the SHPD management of federal historic preservation funds commences with an error in fact. It states, "Grants are awarded under a formula that considers population, area, and the number of historic resources identified in the last census." (p.29) The (NPS) formula is based upon population and geographic area so long as the Congressional appropriation does not exceed fifty million dollars. Should it exceed fifty million dollars, Tier II considerations are then considered. One of these considerations is the number of residences over fifty years old which are listed in the latest census. In FY 2001 the appropriation did exceed this amount, but the National Park Service determined to still abide by its basic formula. Thus the amount of federal historic preservation moneys provided to Hawaii is determined by a formula, over which SHPD has no control, and which essentially provides a constant percentage of the annual Congressional appropriation. The only way moneys can be increased is if Congressional appropriations increase. The audit report misrepresents the annual allotment usually received by SHPD. Although FY 2002's allotment was approximately \$450,000, for the previous decade the figure has remained constant at \$320,000-330,000. We anticipate the \$330,000 figure will be close to the amount the State will receive whenever Congress decides to make the FY 2003 appropriation, based on House and Senate proposals going into conference. As correctly noted in the audit report (p.30), ten percent of this amount is awarded to eligible county historic preservation programs.

7. With regard to the ten percent of the federal moneys passed through to the counties, the audit report states, "the division administrator failed to subgrant these funds as required during two fiscal years and was forced to return the funds" (p.31) In order to subgrant these moneys the division needs to receive a grant application from the counties involved. No applications were received by the division in either of these years. County staff turn-overs and more pressing priorities precluded the counties from applying for the funds in these years. The division's staff, which has been without a grants manager since the Reduction in Force in 1995, were sufficiently engaged with their own myriad priorities and were unable to do the counties' work as well. Compared to CZM, CDBG, and other federal grants the historic preservation dollars are incredibly minuscule and not cost effective for the counties to administer, thus they remain a lower priority within the Planning Departments. These funds intended

specifically for the counties, if not expended by the counties are recaptured by the federal government. There was no loss of revenue to the State, and these moneys could not "be used to increase the division's staffing" as the audit report infers. (p.30) The recently created Administrative Assistant position has allowed for increased coordination with the counties with regards to these moneys.

8. The audit report also states, "the National Park Service informed a former department chair that the State had failed to apply for grants within the required timeframes." (p.30) The State has always applied for the annual federal historic preservation grant within the allotted timeframe. The 1999 NPS letter actually stated that the application was "late," as opposed to early. There is no stipulated timeframe in which the federal application has to be submitted, other than prior to the conclusion of the federal fiscal year. April-May-June submittal of the federal grant application was not the result of a "cavalier management style" but rather untimely Congressional appropriations which closely dovetailed with commencement of the Legislature. Attention to Legislative requests and hearings were prioritized over the grant application. Following discussions with the NPS on how to better streamline the grants application process, it was communicated that the public notices and thirty day public comment period upon the grant application could be handled in October, the start of the federal fiscal year, despite the fact no moneys had been appropriated. Since

9. The audit report extracts only a brief, segment of a sentence from the department's response to an NPS letter of October 22, 1999, "Some of the issues do not seem on their face to be directly related to matters for which NPS has an oversight responsibility." (p.30) This comment was made in reference to NPS concerns raised about the operation of the burials program, for which this federal agency provides no funding, oversight, or direction. Furthermore, in the preceding sentences the chair noted, "We thank you for your continuing support of the NPS-SHPO partnership, which we believe has been very effective in protecting the State of Hawaii's irreplaceable cultural resources. Despite our success, we are always looking for ways to improve, and it was in that spirit that I undertook an investigation of the issues raised in your letter, even though some . . ."

Similarly the division appreciates the audit staffs' efforts to indicate directions for possible improvement in our program management and operation. As time allows an inventory of historic artifacts will be undertaken; the computerized burials inventory will be expanded to include the neighbor islands; the burial sites program files will be better organized; the physical inventory record of state property will be updated; and vehicle usage logs will be maintained. Starting in January the division will utilize daily sign in/out sheets, and reconcile these with official leave records. The division will also continue to obtain departmental authorization prior to approving any overtime, and will strive to submit federal grant applications in a rapid manner.