
Audit of the Office of Hawaiian Affairs

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

Report No. 23-04
March 2023



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

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Foreword

Our audit of the Office of Hawaiian Affairs was conducted pursuant to Section 10-14.55, Hawai‘i Revised Statutes, which requires the Auditor to conduct an audit of the Office of Hawaiian Affairs at least every four years.

We express our appreciation to the trustees, administrators, and staff of the Office of Hawaiian Affairs, and other individuals whom we contacted during the course of our audit, for their cooperation and assistance.

Leslie H. Kondo
State Auditor

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PHOTO: MAPS DATA: GOOGLE, USGS, LDEO, COLUMBIA, NSF, NOAA, SIO, NOAA, U.S. NAVY, NGA, GEBCO, SOEST/UH/M

Audit of the Office of Hawaiian Affairs

Introduction

THE OFFICE OF HAWAIIAN AFFAIRS (OHA) CONSIDERS LAND to be of utmost importance to Native Hawaiians and core to the Hawaiian worldview. The significance of land to OHA is stated in many of its documents, including the *Board of Trustees Executive Policy Manual* as well as OHA’s current strategic plan. On its website, OHA declares: “Land is not a commodity to be exploited, it is a relative that is respected and cared for and, who, in turn, cares for us.” And OHA’s strategic plan describes ‘āina (land and water) as one of the “three foundations” that can impact Native Hawaiian wellbeing.

To help fulfill its responsibilities to beneficiaries, both to protect culturally significant lands as well as to grow revenues to support those cultural lands and other OHA programs, OHA started two “programs” under its Land Division. Those programs – a Commercial Property Program and a Legacy Land Program – direct and oversee OHA’s activities with respect to land and support OHA’s mission to better the conditions of Native Hawaiians.

In this audit, we examined certain OHA activities with respect to land, including both its commercial properties and legacy lands. Specifically, we report herein our findings with respect to OHA’s process to identify and select commercial properties to acquire, OHA’s development of those commercial properties, including its Kaka’ako Makai lands, and OHA’s oversight and management of its legacy lands.

“Land is not a commodity to be exploited, it is a relative that is respected and cared for and, who, in turn, cares for us.”

– Office of Hawaiian Affairs website

While OHA refers to both its Commercial Property Program and Legacy Land Program – and includes both in its organizational chart – neither has been fully developed, leaving critical elements missing. For example, OHA has yet to establish and adopt a Real Estate Strategy, a Real Estate Business Plan, or a Real Estate Investment Policy, policies and procedures that OHA itself identified as “guiding principles” more than a decade ago. According to OHA, these foundational components are supposed to guide land acquisition and disposition, as well as the management and use of the land it has acquired. They are the guideposts and guardrails that are intended to provide OHA with direction and guidance while protecting it from misspending and unnecessary risk.

Nevertheless, in October of 2021, OHA announced its purchase of a commercial property at 500 N. Nimitz Highway (500 N. Nimitz) together with a partial interest in the adjacent Iwilei Business Center, which consisted of three industrial condominium units, for \$47 million. We are unclear how OHA was able to consider, let alone make, such a purchase without these guiding principles and the criteria that come with them.

Similarly, the Legacy Land Program does not have the policies and procedures to guide the divestment of a legacy or programmatic property if that property no longer aligns with OHA’s mission, vision, and strategic priorities. Also missing are any criteria that would be used to make such an assessment. More importantly, the Legacy Land Program fails to consistently follow the procedures it has governing stewards on its legacy lands and fails to consistently enforce the terms of the agreements it has with those stewards.

For three of its four legacy lands – i.e., the significant cultural lands – OHA has developed stewardship arrangements with community groups that allow those groups to use and maintain the properties. While the form of the agreements governing those arrangements seems in line with the Legacy Land Program’s purpose and its Standard Operating Procedures, OHA does not require its stewards to comply with certain material terms of their agreements; OHA does little, if anything, to enforce those terms. Consequently, OHA’s approach in managing those arrangements and overseeing its stewards has created substantial risk – unnecessary risk – to the properties, to OHA, and ultimately to its beneficiaries.

OHA’s management and oversight simply do not reflect the significance of its lands, both its cultural jewels and its significant investment properties. This management and oversight – or lack thereof – raise questions about whether trustees are fulfilling, or are even aware of, their fiduciary and statutory duties to beneficiaries.

Chapter 1

Background

Office of Hawaiian Affairs

OHA was created as a semi-autonomous self-governing entity during the 1978 Constitutional Convention to better the conditions of Native Hawaiians through advocacy, research, funding, the coordination of programs and activities throughout state government, and the receipt of reparations. The newly formed agency was granted the authority to control real and personal property set aside or conveyed to the agency and given the duty to hold those assets in trust for Native Hawaiians.¹ Both the Constitution of the State of Hawai‘i and the Hawai‘i Revised Statutes (HRS) grant OHA the authority to acquire property, or any interest therein, to use, sell, lease, or dispose of, in order to carry out its purpose. OHA also has the power to enter into leases, contracts, or any other transactions with any individual or corporation.

In 2007, OHA amended real estate guidelines that called for expanding the agency’s land portfolio by proactively pursuing Hawaiian properties and becoming “the catalyst to transform Hawai‘i land stewardship.” Today, according to OHA, it is the 13th largest landowner in the state, holding more than 27,000 acres of land in trust for more than a half-million beneficiaries in Hawai‘i and beyond.²

The Value of ‘Āina

OHA’s 2020-2035 strategic plan identifies ‘āina (land and water) as one of three foundations, along with ‘ohana (family) and mo‘omeheu (culture), that can impact Native Hawaiian wellbeing. The value of ‘āina to Native Hawaiians is emphasized in the strategic plan. As OHA says in another context, “Land is not a commodity to be exploited, it is a relative that is respected and cared for and, who, in turn, cares for us. Mālama ‘āina expresses our kuleana to care for the land and to properly manage the resources and gifts it provides. Aloha ‘āina expresses our love for this land and beyond that, our love of country – the sovereign nation stolen away but ever in our hearts.” Pivotal moments in Hawaiian history

¹ The Hawai‘i Constitution and HRS refer to OHA’s beneficiaries as “native Hawaiians and Hawaiians.” We refer to OHA’s beneficiaries, collectively, as “Native Hawaiians” in this report.

² OHA’s beneficiaries include all Native Hawaiians, regardless of blood quantum. In a 2015 article citing 2013 U.S. Census statistics, Pew Research Center reported that there were more than 560,000 Americans who identified as all or part-Native Hawaiian, including 298,000 residing in Hawai‘i.

have helped shape this perspective on ‘āina, such as the 1848 Māhele (land division) that replaced traditional land management practices with Western concepts of land ownership; the 1893 overthrow of the Hawaiian monarchy, which five years later led to 1.8 million acres of lands being “ceded” to the United States upon annexation; and the 1959 Admissions Act, when 1.4 million acres of ceded lands were transferred back to the new State of Hawai‘i to be held in trust for Native Hawaiians and the general public.

Ceded land revenues have been a point of contention between OHA and the State of Hawai‘i from the start. The State’s inconsistency in providing OHA its share of ceded land income from the public land trust has led to cash settlements in 1993 and 2006 to account for more than \$150 million in past due payments, while another settlement in 2012 conveyed to OHA lands in Kaka‘ako Makai valued at \$200 million to address further past due claims.

The Kaka‘ako Makai acquisition represented OHA’s entry into commercial real estate. As stated on the agency’s website: “Since 2012, we have dramatically changed our approach to real estate by emphasizing the importance of engaging in property transactions that are fiscally responsible and financially viable. The new commercial property dimension to our land holdings represents our commitment to building a strong and diverse asset base for our beneficiaries.”

OHA’s properties currently fall under two programs – Commercial Property and Legacy Land. The Commercial Property Program oversees OHA’s income-generating properties – 30 acres of land in Kaka‘ako Makai and three properties in Iwilei, all on O‘ahu. According to OHA, income from the Commercial Property Program is needed to offset the costs of protecting, maintaining, and improving its Legacy Land Program properties, which do not generate revenue themselves. The Legacy Land Program’s stated purpose is to protect, maintain, and improve OHA’s historically and culturally significant “legacy” properties, which currently include a cultural preserve on Maui and, on the Big Island, one of the few remaining tracts of lowland rainforest in Hawai‘i. The program also oversees properties with “programmatically” uses, such as the Waialua Courthouse on O‘ahu, which serves as a community gathering place.

In 2021, the value of OHA’s real estate portfolio – based on information from real property assessment divisions in all counties and real property tax records – totaled \$421.9 million; the agency’s real property assets include four commercial properties on O‘ahu and eight legacy and programmatic properties on four islands. We did not include Waimea Valley in our calculations. (See “Waimea Valley – an OHA property held at arm’s length” on page 11.)

Board of Trustees

OHA is governed by a Board of Trustees (board) comprised of nine members chosen in statewide elections for staggered four-year terms. The board is led by a chairperson (Chairperson) and a vice-chairperson who are selected by its members. Of the nine trustees, the islands of O‘ahu, Kaua‘i, Maui, Moloka‘i, and Hawai‘i are each represented by one trustee, and four trustees are elected to at-large (e.g., statewide) seats. The *Board of Trustees Executive Policy Manual*, revised February 2012, states the board “shall constitute a body corporate and each Trustee shall have the legal responsibility of a fiduciary in the management of OHA funds subject to the [Board of Trustees’] control and management.” The *Executive Policy Manual* is intended to serve as a reference document with easy access to OHA Bylaws and policy documents and to ensure that OHA pursues its mandate “in an efficient and effective manner.”

Standing Committees

Each OHA trustee sits on the board’s two standing committees, which are led by a chairperson and vice-chairperson. OHA’s Committee on Resource Management is required to oversee the use and conditions of OHA’s real estate and execute policy for the proper use of those lands; it is required to develop policies and criteria for OHA’s land acquisitions, dispositions, development, management, and the use of real property in which OHA has an interest. The committee also must develop policies relating to OHA’s real estate asset allocation, desired returns, and balancing OHA’s real estate portfolio including legacy lands, corporate real property, programmatic lands, and investment properties; and, develop policies for OHA’s ownership, financing, and development of real property, including capital improvements, debt management, economic development, investment and spending policies, and forms of ownership of real property.

OHA’s Committee on Beneficiary Advocacy and Empowerment concentrates on OHA’s legislative efforts and is required to develop policies and programs relating to land use, housing, the environment, and natural resources. This committee is focused on encouraging beneficiaries to participate in governance; advocating for beneficiaries on issues that affect Native Hawaiians; developing policies and programs to promote health, self-sufficiency, education, and native rights; and evaluating OHA’s programs to ensure they have a positive impact on beneficiaries.

Office of Hawaiian Affairs’ Revenues and Assets

OHA trustees have legal control over OHA’s property, holding the agency’s assets in trust for its beneficiaries. In 1981, OHA established the Native Hawaiian Trust Fund to account for its share of ceded land revenues from the public land trust. The public land trust, held by the State, was created to include approximately 1.4 million acres of land that had been ceded

Art. XII, Sec. 5, of the Constitution of the State of Hawai‘i describes the trust relationship OHA has with its beneficiaries, stipulating that OHA “shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.”

Trustees' Fiduciary Duties

Trustees must manage OHA's financial, land, and property assets prudently; must exercise the highest standard of care, acting diligently and on a fully informed basis; and must comply with requirements of the Hawai'i Uniform Prudent Investor Act.

AS FIDUCIARIES, OHA trustees are legally obligated to act with the utmost responsibility over the assets they manage on behalf of OHA's beneficiaries. Each trustee has a fiduciary obligation to perform all duties with the highest standard of care and to act in the best interests of OHA and its beneficiaries. Trustees must generally act diligently, with due care, and on a fully informed basis. As asset managers, OHA trustees have specific fiduciary duties to manage financial, land, and property assets prudently.

OHA's *Executive Policy Manual* states that the board "shall act in a fiduciarily reasonable and prudent manner pursuant to the Hawai'i Uniform Prudent Investor Act." It also reflects the board's determination that OHA shall have a distinct board-approved "Risk Management Policy" ... to assist in decision making processes that will minimize potential losses, satisfy the Hawai'i Uniform Prudent Investor Act (Chapter 554C, HRS), improve the management of existing uncertainty and the approach and priorities to new opportunities, thereby helping to maximize OHA's available resources." That section of the *Executive Policy Manual* then directs the reader to "See Appendix 4" for the OHA Risk Management Policy. While there is an Appendix 4 with that title, the appendix is blank except for the title.¹

The Hawai'i Uniform Prudent Investor Act requires trustees to consider a number of factors when investing and managing trust assets:

1. The general economic conditions;
2. The possible effect of inflation or deflation;
3. The expected tax consequences of investment decisions and strategies;
4. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interest in closely held enterprises, tangible and intangible personal property, and real property;
5. The expected total return from income and the appreciation of capital;
6. Other resources of the beneficiaries;
7. The needs for liquidity, regularity of income, and preservation or appreciation of capital; and
8. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

Section 554D-902(c), HRS.² The law also requires trustees to "make a reasonable effort to verify facts relevant to the investment and management of trust assets." Section 554D-902(d), HRS.

¹ The Chief Executive Officer is responsible for maintaining and updating the Policy Manual in a timely manner, no less than annually, by adding new or amended policies and deleting abolished policies.

² Chapter 554C, HRS, was recodified as Part IX, Chapter 554D, HRS.

to the United States when Hawai'i was annexed in 1898, then conveyed to the State of Hawai'i through the 1959 Admissions Act; the public land trust also includes income and proceeds generated from ceded lands to be used for specific purposes. According to the Hawai'i Constitution, OHA receives a pro rata share of revenue from the sale, lease, or other disposition of ceded lands which "shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians"; in 1980, the Legislature determined OHA's share would be 20 percent. Nevertheless, for at least 17 years, OHA's public land trust revenue was capped by the Legislature

as an “interim” measure at \$15.1 million. In 2022, that annual amount was increased by the Legislature from \$15.1 million to \$21.5 million.

OHA’s Native Hawaiian Trust Fund Investment Policy Statement, amended in August 2021, emphasizes OHA’s role as trustee of its beneficiaries’ assets. According to the investment policy, “The overall goal of the Fund is to provide superior investment returns to sustain the beneficiaries in perpetuity and to uphold OHA’s mission.” To ensure that trust resources are available for future spending, the board has established a spending policy that limits withdrawals from the fund in any given fiscal year to 5 percent of the trust fund’s 20-quarter rolling average market value. Withdrawals from the trust fund are used to pay for operational expenses and grant awards, and to support OHA initiatives. As of June 30, 2021, the balance of the Native Hawaiian Trust Fund was \$485.4 million.

In addition to public land trust income, OHA receives funding through appropriations from the state general fund, federal grants, and other miscellaneous income. OHA reported a total net position of \$686.8 million for the fiscal year ending June 30, 2021.

OHA’s Vision and Strategic Plan

As the leaders of the agency, OHA trustees are required, by law, to “develop and continually update a strategic plan for the office” that includes certain mandatory elements. For example, the trustees must establish in the plan “long-range goals for the office’s programs” and “priorities and alternatives for the office’s programs.” OHA’s strategic plan must also contain the organization of OHA’s “administrative and program structure, including the use of facilities and personnel.”

The 2020 Annual Report states OHA’s vision, “Ho‘oulu Lāhui Aloha,” is to raise a beloved nation by focusing on the wellbeing of the Hawaiian community through conduct, stewarding lands, and fulfilling the responsibility to care for families. OHA suggests that, according to Hawaiian ancestors, successfully maintaining unity requires careful observation, knowledge gathering, and informed decision-making. OHA weaves Hawaiian concepts and values throughout its strategic plan to connect the agency’s current actions to ancestral traditions, further emphasizing the point by including two pages of the eight-page plan in ‘ōlelo Hawai‘i (Hawaiian language).

OHA’s 2020-2035 strategic plan, “Mana i Maui Ola” (strength to wellbeing), includes the “foundations” of ‘āina (land and water), ‘ohana (family), and mo‘omeheu (culture). OHA asserts these foundations serve as the basis for its plans to effect change in the directions of education, health, housing, and economics. (See “OHA’s Strategic Plan: Short but Not to the Point” on page 8.)



Source: Office of Hawaiian Affairs

OHA’s Strategic Plan: Short but Not to the Point

It is so concise that it lacks elements specifically required by statute.

OHA’S STRATEGIC PLAN is strategically vague – at least in some respects. The current strategic plan weighs in at a total of 4 pages (not including the cover page and the ‘ōlelo Hawai‘i (Hawaiian language) translation). It is extremely concise, lacking elements specifically required by statute for OHA’s strategic plan, for example, an account of OHA’s administrative and program structure.

Moreover, while OHA’s strategic plan contains long-range goals for its programs, which it calls “directional outcomes,” as well as “priorities and alternatives” for its programs, the plan does not include any detailed guidelines for how the agency may achieve its goals or any benchmarks to gauge success. OHA acknowledges the need for what it refers to as tactical plans, which presumably would outline specific short-term actions the agency must take in order to achieve its long-range vision, but the Director of the Land Division (Land Director) admitted that those created so far “are high level” and “don’t really get into the details.” OHA has stated it will be monitoring progress on the plan and implementing three-year, data-driven check-ins to reflect and adjust.

There appears to be some confusion within OHA regarding the number of strategies in the

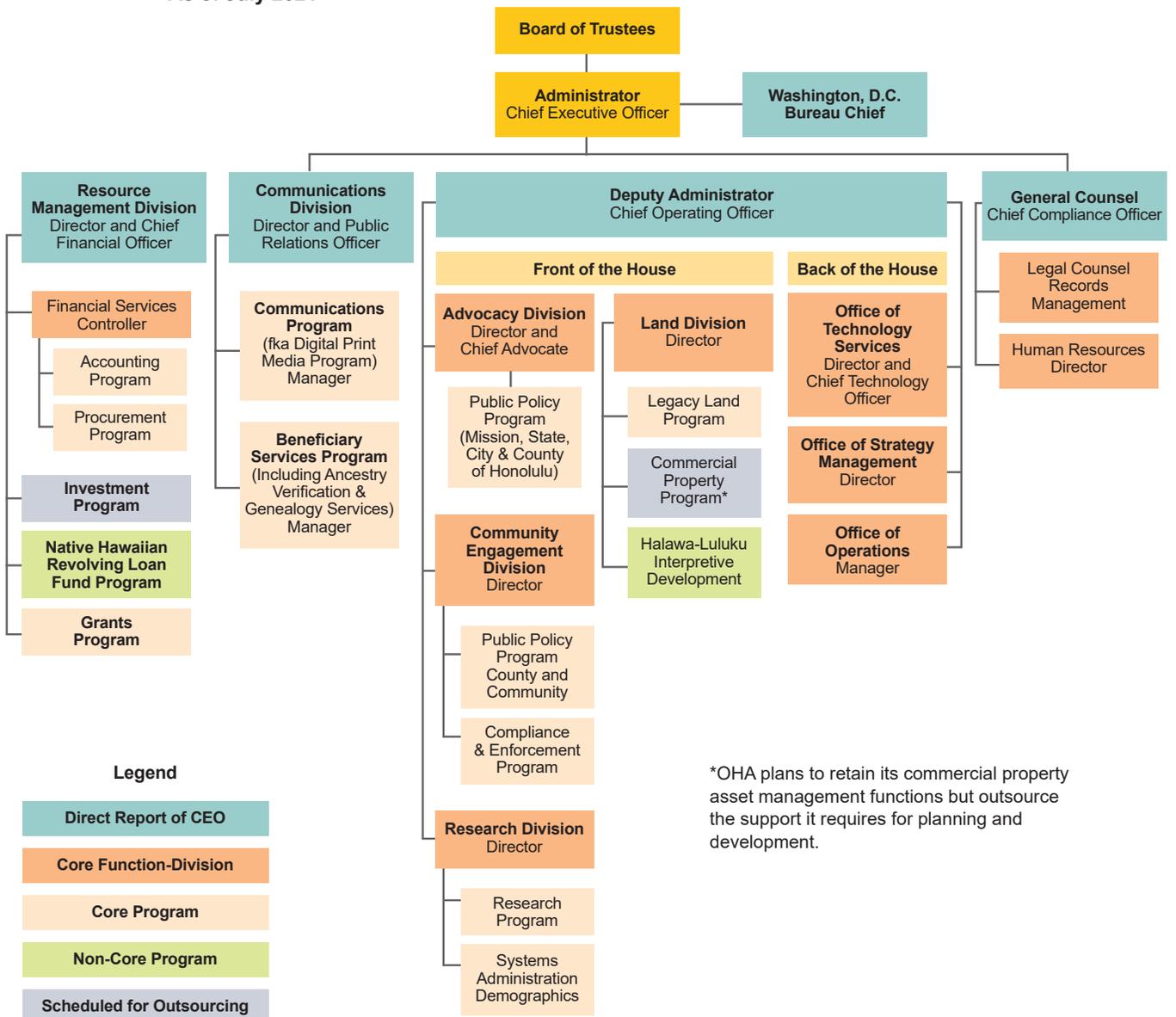
agency’s strategic plan. The plan itself lists eight strategies. The Land Director spoke of the creation of an endowment policy and provided us with a Microsoft PowerPoint slide titled “Strategic Outcomes (Endowment),” which listed “Strategy 9” and “Strategy 10,” as though those strategies were a continuation of those in the strategic plan. When we spoke with the Chairperson in May 2022, she told us she was not aware of additional strategies 9 and 10.

The Board of Trustees approves the strategic plan. But it does not review or approve the more detailed plans to implement the strategic plan that the administration creates. While some level of delegation from the board (policy level) to the administration (implementation level) is necessary, the trustees have no means to ensure that the administration’s implementation of the broad, aspirational strategic plan, as reflected in the action plans, is consistent with the board’s vision even though the fiduciary duty remains with the trustees. If the administration formulates and implements short-term plans with no, or virtually no, board input, the trustees should consider whether they are fulfilling their fiduciary and statutory responsibilities to beneficiaries.

Administration

An administrator – the chief executive officer (CEO) of OHA – is appointed by the board and leads OHA’s administration. The CEO is assisted by a chief operating officer (COO), a chief financial officer (CFO), a general counsel, and the directors of eight divisions: (1) Advocacy; (2) Land; (3) Research; (4) Communications; (5) Community Engagement; (6) Strategy Management; (7) Human Resources; and (8) Technology Services.

Exhibit 1: Office of Hawaiian Affairs Organization Chart
As of July 2021



Source: Office of Hawaiian Affairs

In 2018, OHA had a total of 179 staff positions, some of which were unfilled or frozen at the time. In April 2021, the CEO began reorganizing the administrative staff. As of January 2022, OHA had a total of 153 staff positions, a decrease of 26 positions from 2018.

Land Division

OHA’s Resource Management – Land Division (Land Division) is the Administration’s section responsible for assisting the trustees in their duties related to the overall acquisition, management, and stewardship of OHA’s real estate, which at the time of this audit consisted of more than 26,400 acres statewide.³ The Land Division oversees OHA’s Legacy Land Program, Commercial Property Program, and Hālawā Luluku Interpretive Development Program.⁴

Exhibit 2 Office of Hawaiian Affairs Real Estate Landholdings

Property	Island	Acreage	State Land Use Classification	Method of Acquisition
LEGACY LANDS				
Kūkaniloko	O’ahu	5.00	Agriculture	Executive Order
Pahua Heiau	O’ahu	1.15	Urban	Deed
Waialua Courthouse	O’ahu	1.06	Urban	Lease
Wahiawā Lands	O’ahu	511.55	Agriculture	Deed
Palauea Cultural Preserve	Maui	20.74	Agriculture	Deed
Ho’omana	Kaua’i	0.81	Urban	Lease
Kekaha Armory	Kaua’i	1.46	Urban	Executive Order
Wao Kele o Puna	Hawai’i	25,855.89	Conservation	Deed
Subtotal		26,397.66		
COMMERCIAL PROPERTIES				
Kaka’ako Makai	O’ahu	29.09	Urban	Deed
Nā Lama Kukui	O’ahu	4.98	Urban	Deed
500 N. Nimitz	O’ahu	3.92	Urban	Deed
Iwilei Business Center*	O’ahu	NA	Urban	Deed
Subtotal		37.99		
Total		26,435.65		

*Fractional interest of about 26 percent.

Source: Office of Hawaiian Affairs

³ Not including Waimea Valley. (See “Waimea Valley – an OHA property held at arm’s length” on page 11.)

⁴ The Hālawā Luluku Interpretive Development Program is a cooperative effort between federal and state agencies to mitigate the impact to cultural and archaeological resources due to the construction of Interstate H-3. OHA’s role is to facilitate the management and execution of mitigation plans. We did not review the program because it was outside the scope of this audit.



Waimea Valley – an OHA property held at arm’s length

OHA sometimes includes the Waimea Valley lands in its list of legacy land properties – as recently as March 2022 – and other times does not.

OHA ACQUIRED WAIMEA VALLEY in 2006 through a partnership with the U.S. Army, the Department of Land and Natural Resources, the City and County of Honolulu, and the Trust for Public Land. OHA’s cost was \$3.9 million of the overall purchase price of \$14 million. A year later, OHA transferred the title to the 1,875-acre property to Hi’ipaka LLC, a subsidiary of Hi’i Aloha LLC, which now manages all activities in Waimea Valley. OHA is the sole member of Hi’i Aloha LLC.

OHA sometimes includes the Waimea Valley lands in its list of legacy land properties – as recently as March 2022 – and other times does not. Trustees and others we spoke with had varying views on whether Waimea Valley is a legacy landholding – or whether it is even owned by OHA.

According to OHA, a study of Waimea Valley conducted by Archaeological Consultants of the

Pacific identified 78 sites of interest, including religious sites and shrines, house lots, agricultural terraces, and fishponds. OHA acquired the property as a way of preserving the land for its cultural value, to protect traditional and customary rights, and to perpetuate the Native Hawaiian people and culture. So not only would one expect the property to be categorized as a legacy property, but the historic valley would be considered one of the crown jewels of the Legacy Land Program’s portfolio. Not quite.

According to the COO, until OHA establishes a real estate policy, the classification of Waimea Valley will remain an open question. He told us that in conversation, people will say it’s a legacy land because it has cultural significance. But it is an LLC that operates at arms-length from OHA, so from a business point of view it is not a legacy land.

The Director of the Land Division (Land Director) is responsible for the oversight, strategic direction, planning, and development of the portfolio's commercial and legacy land properties, including assisting the trustees in the development and implementation of policies for the acquisition, use, management, and disposition of these landholdings and improved properties.

Commercial Property Program

The purpose of OHA's Commercial Property Program is to generate revenue to preserve, protect, and maintain OHA's lands; fund OHA's Legacy Land Program; and provide supplemental funding for OHA-sponsored programs for its beneficiaries. This purpose is alluded to in several board policies and procedures, including but not limited to the Committee on Land and Property Policy Guidelines and the Native Hawaiian Trust Fund Investment Policy Statement's Hawai'i Direct Investment Policy.

OHA became a commercial property owner in 2012 when the agency accepted 30 acres of Kaka'ako Makai land valued at \$200 million as a settlement with the State to resolve long-standing claims on past due ceded land revenues. Later that year, OHA purchased Nā Lama Kukui in Iwilei (formerly the Gentry Pacific Design Center), an approximately 5-acre mixed-use property that houses commercial tenants as well as OHA's headquarters. Management of these commercial properties is under contract with private companies – CBRE, Inc. and Colliers International, respectively – that provide real estate marketing, leasing, and management services.

According to OHA's website, acquiring those first two commercial properties changed how OHA considered real estate: "It meant that for the first time ever our real estate portfolio would include land holdings that allow us to generate revenue to help offset expenses from primarily legacy land made up of conservation, preservation and culturally important properties."

In October 2021, OHA announced its \$47 million purchase of a property located at 500 N. Nimitz and a partial interest in the adjacent Iwilei Business Center. The newly acquired mixed-use properties are located next to OHA's Nā Lama Kukui property in Iwilei. The 500 N. Nimitz property houses national retail chains while Iwilei Business Center includes three industrial condominium units.

Legacy Land Program

OHA’s real estate portfolio includes lands with historical and cultural significance to Native Hawaiians. Kūkaniloko, seated at the piko (center) of O‘ahu, preserves birthstones where generations of high-ranking ali‘i (royalty) were born. Pahua Heiau, in Maunaloa, may have once been a fishing shrine or agricultural heiau and today is used for educational and cultural purposes. The Palauea Cultural Preserve, on Maui, is believed to include the remnants of an ancient fishing village. These properties, along with “programmatically” lands intended for educational, agricultural, and community uses, fall under OHA’s Legacy Land Program, which is charged with preserving and protecting the lands.

OHA’s Legacy Land Program currently oversees eight of OHA’s landholdings which can involve, among other things, paying for management, maintenance, and improvements to the sites. These properties are not expected to generate revenue – OHA measures their value in impact to OHA, rather than dollars. The Standard Operating Procedures for the Legacy Land Program include a section that explains the expected return on investment for the legacy lands: “This is a critical piece to clarify. Most individuals will focus on the financial and human resource outlays and want to see financial returns on those outlays. In the business of Legacy and Programmatic land management, we often deal with social, cultural, educational, ecological and environmental returns on investment. [The Legacy Land Program] must understand the value of these [returns on investment] and clearly communicate how they deliver impact in ways that are of value to OHA.”

In its Standard Operating Procedures, the Legacy Land Program strongly suggests “that OHA commit a specified percentage of the income from all of OHA’s Commercial Properties perpetually.” The CEO affirmed that revenues from the Commercial Property Program are intended to provide funding for the Legacy Land Program.

Three of OHA’s properties are described as “legacy” lands for conservation, preservation, and cultural significance. Another three properties are categorized as “programmatically” lands that may be used for agriculture, education, health and human services, housing, or other community purposes. Additionally, OHA has the 5-acre Kūkaniloko site, but it classifies the 511-acre property that surrounds Kūkaniloko as both legacy and programmatic land; the agricultural-zoned parcel serves as a buffer to protect the Kūkaniloko’s birthstones and is being considered for programmatic uses, such as “culturally nuanced agriculture.” OHA refers to the 511-acre property as its “Wahiaiwā Lands.”

Legacy Land Program is responsible for two types of landholdings

Legacy Lands

- Conservation and preservation lands
- Cultural lands

Programmatic Lands

- Agricultural lands
- Community lands
- Educational lands
- Health and human services lands
- Housing lands

Source: Office of Hawaiian Affairs



PHOTO: ISTOCK.COM

Source: Office of Hawaiian Affairs

Kūkaniloko Birthstones

IN ANCIENT TIMES, Kūkaniloko consisted of stones, many with man-made basins, which were used to support a chiefess while she gave birth. Immediately after birth, the child was taken to a temple dedicated to the god Lono, located on the grounds of Kūkaniloko, for the cutting of the piko (umbilical cord) and purification. Sacred drums were sounded to announce the birth, and the piko of the newborn ali'i were left at Kūkaniloko.

Kūkaniloko is believed to be the spiritual center of O'ahu and spiritually connected to other sacred sites in Hawai'i and the Pacific. In addition, it is believed that Kūkaniloko has also been used as a place of learning for kāhuna (priestly experts), lua (martial art) practitioners, and kilo (astrologers). It has been suggested that Kūkaniloko was considered a pu'uhonua (place of refuge).

The Legacy Land Program oversees eight properties on four islands:

- **Pahua Heiau** in Maunaloa, O'ahu, acquired in 1988, is used for educational and cultural activities; OHA, in partnership with contracted stewards, also protects the culturally significant site.
- **Waialua Courthouse** in Hale'iwa, O'ahu, leased from the Department of Land and Natural Resources (DLNR) since 1998, serves as a gathering place for beneficiary organizations.
- **Kekaha Armory** in Kekaha, Kaua'i, transferred to OHA via executive order in 1998, is used for Hawaiian cultural and educational purposes.
- **Wao Kele o Puna** in Puna, Hawai'i Island, was acquired in 2006 to protect cultural resources and Native Hawaiian customary rights.
- **Wahiawā Lands**, on O'ahu, acquired in 2012, surround and protect Kūkaniloko from incompatible development and are zoned for agricultural use.
- **Palaeua Cultural Preserve** in Kīhei, Maui, was acquired in 2012 to protect and preserve cultural sites and is used for educational purposes.

-
- **Ho‘omana** in Kapa‘a, Kaua‘i, leased from DLNR since 2016, is used to provide community services for youth with special needs.
 - **Kūkaniloko** in Wahiawā, O‘ahu, transferred to OHA via executive order in 2020, to protect a traditional birthing site used by generations of high-ranking ali‘i, is described by OHA as one of the most sacred places for Native Hawaiians.

Impetus

This audit of OHA was conducted under Section 10-14.55, HRS, which requires the Auditor to conduct an audit of OHA at least once every four years. This is our seventh performance audit under this mandate.

Prior Audits

In Report No. 18-03, *Audit of the Office of Hawaiian Affairs*, we reviewed OHA policies and actions on the use of its Kūlia Initiatives, Fiscal Reserve, CEO Sponsorships, and Trustee Allowances. In 2022, we followed up on OHA’s progress in addressing the 39 recommendations we made in Report No. 18-03 and found 11 recommendations were implemented, 13 were partially implemented, 9 were not implemented, and 6 were no longer applicable due to changed circumstances.

We found issues raised in our 2013 audit were still germane as we conducted this audit. Report No. 13-07 is especially relevant as we first raised questions about OHA’s real estate strategy nearly ten years ago. That report identified issues related to OHA’s real estate portfolio, acquisitions, landholdings, stewardship, policies, board governance, and the creation of a land and property management division.

In Report No. 13-07, *Audit of the Office of Hawaiian Affairs and Report on the Implementation of State Auditor’s 2009 OHA Recommendations*, we found the board had not established adequate organizational infrastructure before expanding OHA’s real estate holdings. We found that, although the board recognized the need for a strategic approach to real estate investment and management when it adopted OHA’s Real Estate Vision, Mission, and Strategy Policy (2007) (Real Estate Vision), the board had not implemented the policies specifically referred to in the Real Estate Vision. We found the board had never developed a real estate strategy or approved a proposed real estate business plan or investment policy. The board also never proposed an alternative plan that could have supplied more

We found issues raised in our 2013 audit were still germane as we conducted this audit. Report No. 13-07 is especially relevant as we first raised questions about OHA’s real estate strategy nearly ten years ago.

staff guidance. We found that OHA's pursuit of real estate acquisitions without established criteria or adequate policies increased the risk that acquisitions would fail to comport with OHA's land strategy.

We also found OHA had been remiss in setting up other infrastructure needed to invest and manage its real estate portfolio. For example, when briefed on plans in 2008, the board rejected a proposal by an OHA consultant to create a more than 50-person land and property management division and to divide OHA's investment funds between corporate securities and real estate. By the time of the 2013 audit, OHA's real estate assets had grown exponentially to include Kaka'ako Makai, Nā Lama Kukui, and some Galbraith Estate Lands in Central O'ahu; at that time, we estimated OHA was Hawai'i's 13th largest landowner by acreage. We concluded, in part, that OHA trustees had not set up land acquisition and management infrastructure to support its increased landholdings and status. Evidence cited in the report included significant stewardship expenses which were not offset by revenue from OHA's real estate portfolio.

Audit Objectives

1. Describe OHA’s process to identify and select potential commercial property acquisitions during calendar years 2019 through 2021;
2. Describe OHA’s development of commercial properties, including the planning of development during calendar years 2019 through 2021;
3. Describe OHA’s oversight and management of legacy land stewardship contracts and stewards during calendar years 2019 through 2021; and
4. Make recommendations as appropriate.

Audit Scope and Methodology

This audit focused on OHA’s Resource Management – Land Division, and more specifically, its process to identify commercial property acquisitions, the development of commercial properties, including planning for development, and its oversight and management of legacy land stewards and stewardship agreements during calendar years 2019 through 2021 – where appropriate, prior years or the current calendar year were included.

We conducted interviews with seven of the nine trustees and members of OHA’s administration, including the CEO, COO, CFO, Interim General Counsel, Land Director, and Integrated Assets Manager. We conducted site visits of OHA’s real estate assets on O‘ahu, reviewed documents such as relevant laws, policies and procedures, board minutes (regular and executive session), stewardship agreements, consulting contracts and reports prepared by OHA’s consultants, program financial information, legislative history, and other criteria relating to OHA’s commercial property acquisitions, planning, and development, and oversight and management of its legacy landholdings.

Our audit was performed from July 2021 through July 2022 in accordance with generally accepted government auditing standards.⁵ Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions.

⁵ Our findings and recommendations are based on evidence gathered during fieldwork. However, for informational purposes, certain footnotes and sidebars refer to statements and documents OHA posted to its website or provided to the news media after we completed fieldwork that do not align with information the agency had provided to our audit team earlier.

Summary of Findings

1. Without a real estate strategy or land acquisition policies, OHA's approach to identifying and acquiring commercial properties is ad hoc, raising questions about the prudence of trustee action.
2. Since receiving Kaka'ako Makai, OHA is on its fifth chairperson, second chief executive officer, and third consultant but is no closer to actually developing the property than it was 10 years ago.
3. OHA's lax oversight and management of its legacy land stewards and stewardship agreements increase the risk that culturally significant properties "core" to OHA's mission may be misused; it also puts OHA's trust assets at risk.

Chapter 2

In October of 2021, OHA purchased two commercial properties for \$47 million: 500 N. Nimitz and a partial interest in the adjacent Iwilei Business Center. The newly acquired mixed-use properties are located in Iwilei, next to OHA’s Nā Lama Kukui property, home to its headquarters, and across the street from the Institute for Human Services and other social service agencies. The 500 N. Nimitz property has national retail chain tenants while OHA’s interest in the Iwilei Business Center includes overflow parking and industrial warehouse space. The properties are also located in close proximity to the proposed Iwilei and Chinatown rail transit stations. So, for OHA, the acquisition provides an opportunity to “scale up its redevelopment plans” – especially affordable housing.

However, we found OHA made these purchases without the foundational policies and procedures that OHA itself had identified more than a decade earlier as needed guiding principles. These policies, guidelines, and criteria and other guideposts and guardrails would provide the agency with direction and guidance while protecting it from misspending and unnecessary risk. Instead, OHA’s acquisition of the 500 N. Nimitz and Iwilei Business Center properties was ad hoc, featuring strategies and criteria created to address the matters at hand.

OHA has touted the future redevelopment potential of the properties, including for transit-oriented development as well as housing for Native Hawaiians. However, without those policies and procedures, which OHA describes as “guiding documents,” there is no clear, board-approved direction as to how those properties fit in any real estate strategy, investment strategy, or other plan. In fact, OHA bought the properties – justifying their purchase by the proximity to Nā Lama Kukui and the potential redevelopment – without any actual plan for their future use and only limited analysis about the prudence of the investment. (See “Trustees’ Fiduciary Duty” on page 6.) More significantly, despite its stated intent to redevelop the properties in the future, OHA appears to have little understanding of the potential costs to do so. For example, OHA purchased a fractional interest (about 26 percent) in the Iwilei Business Center; at least 75 percent of the industrial condominiums must agree to any redevelopment of the property. Not only did OHA not assess whether other owners would agree to redevelopment, OHA did not consider the cost to acquire sufficient interest in the Iwilei Business Center to redevelop the property. In addition, OHA’s environmental study identified the likelihood of soil contamination, recommending a more thorough evaluation before redevelopment; however, OHA did not pursue

the matter further to gain a better understanding of the extent of environmental contamination or an estimate of the cost to remediate any contamination that would be required before redeveloping the property.

We also found that OHA is no closer to developing its Kaka‘ako Makai lands than it was 10 years ago when it accepted those lands from the State. During that time, OHA has gone through five changes in board leadership and two CEOs and has contracted with three different consultants to guide them through the development of Kaka‘ako Makai. To date, OHA has spent more than \$6.5 million on planning, much of it on plans it has yet to use and may never use. Despite the effort and expense, OHA has yet to adopt a master plan or other long-range plan that would allow it to begin development of the lands.

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

We also found that, even with agreements in place, OHA did not enforce the terms of those agreements, allowing, for instance, stewards to use the properties without providing OHA copies of certificates of insurance that evidence that the stewards have the required insurance coverage, and even deny OHA access to its own property.

Finding No. 1 - Without a real estate strategy or land acquisition policies, OHA's approach to identifying and acquiring commercial properties is ad hoc, raising questions about the prudence of trustee action.

In 2007, OHA adopted its Real Estate Vision, Mission, and Strategy Policy (Real Estate Vision), a guiding document for land acquisitions that articulated OHA's mission, vision, strategic goals, and priorities. The Real Estate Vision was part of an effort to establish policies intended to put OHA on a solid foundation in anticipation of subsequent real estate transactions, such as the 2012 acquisition of Kaka'ako Makai, the \$200 million ceded land settlement with the State of Hawai'i.

The strategy component of the Real Estate Vision contains sections calling for OHA to champion best practices, increase its real estate portfolio, establish a superior real estate organization and infrastructure, and build a strong financial foundation for its real estate involvements. While the document provides general guidelines, it is missing clear objectives, goals, or performance measures. It names certain foundational real estate components, however, the document does not include those components. For instance, the Real Estate Vision's best practices component specifically calls for OHA to have a Real Estate Strategy that will be consistent with OHA's mission, values, goals, and resources. In addition, according to the Real Estate Vision, the implementation of the real estate strategy should be guided by a corresponding OHA Real Estate Business Plan and OHA Real Estate Investment Policy.

The document also calls for a Real Estate Allocation Model to prioritize spending on four types of properties: legacy land made up of conservation, preservation, and culturally important properties; real estate for corporate purposes; lands for OHA programs; and investment lands. Fifteen years later, OHA has yet to develop *any* of these foundational real estate components.

In 2012, OHA significantly expanded its real estate holdings without having developed a Real Estate Strategy, Real Estate Business Plan, or Real Estate Investment Policy.

Six years after OHA adopted its Real Estate Vision, we reported that, although the board recognized the need for a strategic approach to real estate investment and management when it adopted the Real Estate Vision in 2007, the board neglected to implement policies called for in the proposed strategy. In Report No. 13-07, *Audit of the Office of Hawaiian Affairs and Report on the Implementation of State Auditor's*

2009 OHA Recommendations, we reported that OHA had significantly expanded its real estate portfolio, acquiring about 30 acres in Kaka‘ako Makai and purchasing the nearby Gentry Pacific Design Center, subsequently renamed Nā Lama Kukui (4.98 acres), as well as the Galbraith Estate lands in Central O‘ahu (511 acres) and the then-pending donation of Palauea Cultural Preserve in Kīhei, Maui (20 acres).

Specifically, we raised concerns about whether OHA was following its own policies in its acquisitions of the Galbraith Estate – once used for pineapple cultivation – and Palauea, the remnants of a fishing village. When evaluating those transactions, Land and Property Management Program staff used a proposed real estate allocation model that the board had never adopted. OHA acquired the Galbraith Estate lands, which surround the historically significant Kūkaniloko site, knowing that the property needed water infrastructure and soil remediation work; trustees approved the purchase without estimates of those future costs. We also found the board approved the Palauea land donation from Palauea Developers after considering immediate management costs but without information on long-term management expenses and whether transferred funding for the parcels would be sufficient to cover those costs.

We concluded that such pursuit of real estate acquisitions without adequate criteria and policies increased the risk that the acquisitions would not comport with OHA’s land strategy at a time when the office was pursuing a larger role as a landowner. We also noted that, prior to 2008, OHA had hired a consultant to develop a real estate business plan and investment policy; however, the board did not approve a real estate business plan or investment policy proposed by the consultant and did not propose an alternative plan that could serve as guidance to staff. Instead, in 2010, the board amended the Native Hawaiian Trust Fund Investment Policy Statement to include an investment policy governing certain real estate investments; however, our audit pointed out that the one-page policy lacked guidelines for asset allocation, portfolio composition, return expectations for different property types, and portfolio reporting, features of the more comprehensive policy that was aborted in 2009.

We noted that “the approach left OHA with significant legacy land stewardship costs and a real estate portfolio in which income properties did not produce enough to pay for legacy land expenses.” We recommended that the board follow through on the promises in its 2007 Real Estate Vision by developing a robust real estate investment policy that includes elements such as a spending policy; long-term return goals; asset category definitions; prohibited investments; portfolio reporting requirements; and asset allocation guidelines outlining an optimal mix of legacy, programmatic, corporate, and investment properties, along with return expectations for each asset class.

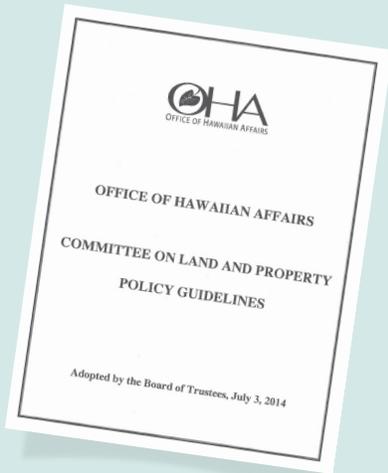
In response to the report, the then-board Chairperson said, “given the importance of ‘āina and its connection to Hawaiian culture and people, OHA intends to further develop our land policies to integrate cultural and commercial values that best support our lāhui.” She further commented about “the need to find the most prudent [land] investments, do the required due diligence, and in the case of Kaka‘ako Makai, shepherd the acquisition through the political process.”

In 2014, OHA again recognized the importance of establishing a Real Estate Strategy, Real Estate Business Plan, Real Estate Investment Policy, and balanced Real Estate Portfolio. But it did not develop or establish them.

Almost a year after our 2013 audit, in July 2014, the board adopted OHA’s Committee on Land and Property Policy Guidelines (2014). The guidelines state, “it is prudent to establish certain general policy guidelines, procedures, and project best practices governing land acquisitions, dispositions, development, management, and use by the Office of Hawaiian Affairs,” and doing so would provide general guidance for the Committee on Land and Property to better implement OHA’s Real Estate Vision. These general policy guidelines specify the need for a Real Estate Strategy, a Real Estate Business Plan, and a Real Estate Investment Policy, all crucial components identified seven years earlier.

The policy guidelines specify that the Real Estate Strategy would guide the committee’s overall strategy with respect to (a) the targeted balance of OHA’s real estate portfolio among the four property categories, (b) the maintenance, preservation, and protection of OHA lands, and (c) the acquisition, development, operation, and disposition of OHA lands. Once established, according to the policy guidelines, the Real Estate Strategy “shall be considered the *guiding principle* of the committee” (emphasis added). In addition, the Real Estate Strategy is supposed to be periodically reviewed (no less than every three years) by the committee and, as appropriate, adjusted, modified or supplemented to address the changing real estate environment in Hawai‘i, the evolving and changing needs and requirements of OHA, and any changes which may occur from time to time in balancing OHA’s real estate portfolio among its four property categories.

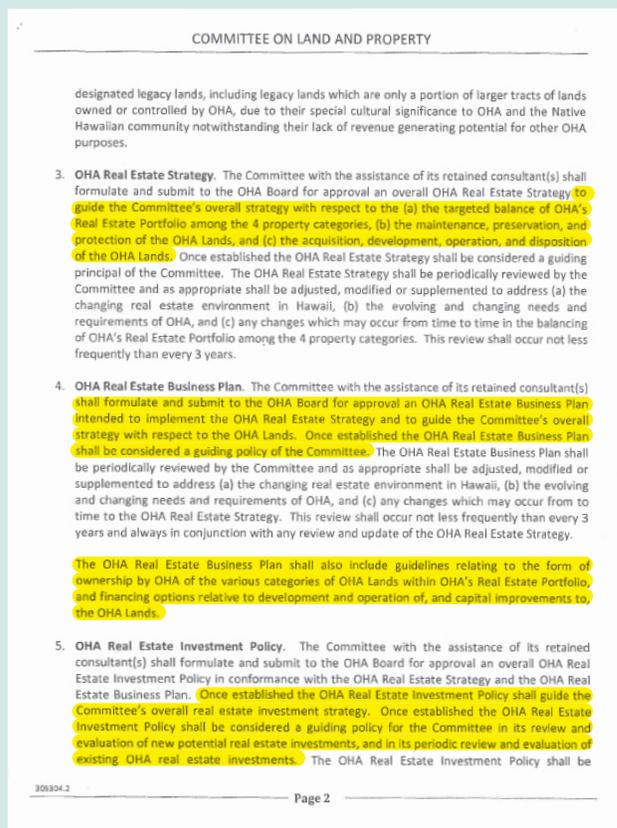
In addition, the Real Estate Business Plan is intended to “implement the OHA Real Estate Strategy and to guide the Committee’s overall strategy with respect to the OHA Lands”; the Real Estate Investment Policy is intended to guide the Committee’s overall real estate investment strategy and to be “a guiding policy for the Committee in its review and evaluation of new potential real estate investments,



Still a Good Idea

In 2014, OHA guidelines reiterated the importance of establishing certain general policy guidelines, procedures, and project best practices governing land acquisitions, dispositions, development, and management. As of 2022, OHA had not done so.

ACCORDING TO the Committee on Land and Property Policy Guidelines, the establishment of an OHA Real Estate Strategy, an OHA Real Estate Business Plan, and an OHA Real Estate Investment Policy are considered the “general guidelines,” which once established, should guide the acquisition, disposition, development, management, and use of land for OHA. However, besides articulating the necessity for them, the Committee on Land and Property Policy Guidelines provides few details on the principles themselves.



Report source: Office of Hawaiian Affairs, highlighting by the Office of the Auditor

and in its periodic review and evaluation of existing OHA real estate investments.” The Policy Guidelines again refer to “changes which may occur from time to time in the balancing of OHA’s real estate portfolio among the 4 property categories,” emphasizing the need for OHA to continually update its overall strategy.

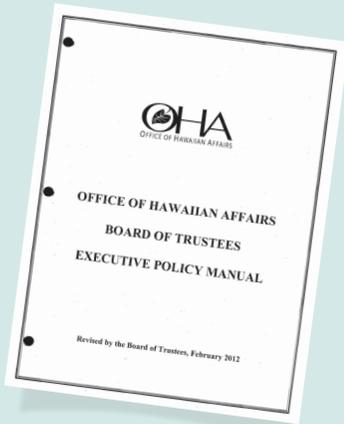
Within a year of being established, the Committee on Land and Property was replaced by the Committee on Resource Management, which, according to OHA’s Bylaws, is responsible for establishing and updating all investment policies. The Committee on Resource Management still relies on the Policy Guidelines for guidance, but it has yet to establish a Real Estate Strategy, Real Estate Business Plan, or Real Estate Investment Policy.

In 2018, OHA represented that it was in the process of finalizing standard operating procedures for real estate acquisitions and management operations, which would address our audit recommendations. OHA expected to complete them by the end of FY2019. It did not.

In June 2018, we followed up on the status of OHA’s implementation of the recommendations made five years earlier in Report No. 13-07, *Audit of the Office of Hawaiian Affairs and Report on the Implementation of State Auditor’s 2009 OHA Recommendations*. In response to our inquiries, OHA claimed to have made significant efforts to implement the recommendations from our 2013 audit, fully implementing 7 recommendations and partially implementing 15 of the 23 total recommendations. The agency disagreed with one recommendation related to tracking grant status and did not intend to implement it.

For the four recommendations related to the development and adoption of policies to implement the agency’s Real Estate Vision – an effort OHA initiated in 2007 and reaffirmed in 2014 – OHA claimed that all four were being addressed in various stages of development and expected to complete some policies by the end of 2018 and others by the end of FY2019 (June 30, 2019). As a result, we categorized all four recommendations as “partially implemented.”

As previously stated, during our audit work for this report, we found that OHA had neither developed nor established a Real Estate Strategy, a Real Estate Business Plan, or a Real Estate Investment Policy – vital components of a real estate policy and the foundation for its Land Division programs. Therefore, OHA’s representations that completion and approval of these policies were imminent appear to have been misguided.



Drawing a Blank

The *Board of Trustees Executive Policy Manual* was supposed to contain OHA's long-promised Real Estate Strategy, Real Estate Business Plan, and Real Estate Investment Policy. Instead of policies, we found blank pages.

DURING THE COURSE OF THIS AUDIT, in response to our request for OHA's Real Estate Strategy, Real Estate Business Plan, and Real Estate Investment Policy, the administration provided us with the *Board of Trustees Executive Policy Manual* (2012), which OHA told us contains overarching governing documents from which all other policies and procedures are developed and implemented. However, in our review, we could not find specific references to the Real Estate Strategy, Real Estate Business Plan, or Real Estate Investment Policy, which we subsequently determined have not been completed; the *Executive Policy Manual* did have a reference to the OHA Land Acquisition and Management Policy, which says "OHA *shall have* a distinct BOT approved 'Land Acquisition and Management Policy' . . . whose purpose is to provide guidelines for OHA's acquisition and management of land and to ensure the alignment of land acquisition and management with the State Constitution, statutes, and the policies establishing and guiding OHA, as well as the OHA Strategic Plan." That section provides no information on the policy itself, instead directing the reader (which presumably includes trustees, OHA administration, and OHA Land Division staff) to "See Appendix 5." Appendix 5, however, has no content.

We also found sections in the *Executive Policy Manual* referring to two other policies – OHA Investment Policy and OHA Risk Management Policy – which we thought might contain relevant information on real estate investment.

Both paragraphs describe the purposes of the policies. For example, the purpose of the OHA Risk Management Policy is "to assist in decision making processes that will minimize potential losses, satisfy the Hawai'i Uniform Prudent Investor Act (Chapter 554C, HRS), improve the management of existing uncertainty and the approach and priorities to new opportunities, thereby helping to maximize OHA's available resources." However, like OHA's Land Acquisition and Management Policy, aside from describing the purposes of the policies, neither paragraph includes any other information or specifics about the policies. They refer to appendices at the end of the document (Appendices 3 and 4, respectively) that also include no content.

When we asked the CEO if we had been given an out-of-date version of the *Board of Trustees Executive Policy Manual* (2012) or if the attachments containing these policies had been misplaced, she told us that, while amendments and updates to board policies and procedures are codified in board action items, OHA has never incorporated those board-approved amendments into existing policies and procedures manuals. She said the board's policy and operational manuals are outdated and described the *Board of Trustees Operations Manual* (2007) as "hugely outdated."

However, the CEO affirmed that, rather than misplaced, OHA had yet to develop a Real Estate Strategy, a Real Estate Business

The Chairperson acknowledged that established real estate policies would provide OHA with a roadmap for its operations; however, as of now, she affirmed “practice dictates policies.”

Plan, or a Real Estate Investment Policy, and recommended that we speak with the Chairperson, who was a member of the Land and Property Committee when the Policy Guidelines were adopted in 2014, to understand why that never happened.

According to the Chairperson, the Land and Property Committee had hired a lawyer to draft the real estate policies, but the committee was disbanded after only a year of operation. She admitted that OHA's policies were “derelict” but pointed out that OHA is currently understaffed and, she explained, too busy to stop and take the time needed to amend and update its policies and procedures. She acknowledged that established real estate policies would provide OHA with a roadmap for its operations; however, as of now, she said, “practice dictates policies.”

3070 Investment
OHA Investment Policy
3.7.a. OHA shall have a distinct BOT approved “Investment Policy” with its own review and maintenance schedule. The purpose of the OHA Investment Policy is twofold: 1) to ensure OHA and its investment managers have a clear and mutual understanding of the objectives and policies of the Native Hawaiian Trust Fund; and 2) the BOT have stated standards and guidelines to evaluate the performance of the investment managers in order to meet their fiduciary responsibility to monitor the investment and performance of the Funds. (See Appendix 3).

(See Appendix 3).

Appendix 3 – OHA Investment Policy

3080 Risk Management
Risk Management Policy
3.8.a. OHA shall have a distinct BOT approved “Risk Management Policy” with its own review and maintenance schedule. The purpose of the OHA Risk Management Policy is to assist in decision making processes that will minimize potential losses, satisfy the Hawaii Uniform Prudent Investors Act (Chapter 554C, HRS), improve the management of existing uncertainty and the approach and priorities to new opportunities, thereby helping to maximize OHA's available resources. (See Appendix 4).

Appendix 4).

Appendix 4 – OHA Risk Management Policy

3090 Land Acquisition and Management
Land Acquisition and Management Policy
3.9.a. OHA shall have a distinct BOT approved “Land Acquisition and Management Policy” with its own review and maintenance schedule. The purpose of the Land Acquisition and Management Policy is to provide guidelines for OHA's acquisition and management of land and to ensure the alignment of land acquisition and management with the State Constitution, statutes, and the policies establishing and guiding OHA, as well as the OHA Strategic Plan. (See Appendix 5).

(See Appendix 5).

Appendix 5 – OHA Land Acquisition and Management Policy

Report source: Office of Hawaiian Affairs

Policy Hunt

To identify the latest version of a policy, OHA administration searches through a Microsoft Excel spreadsheet and a Microsoft Teams archive to determine its “genealogy.”

THE CEO ACKNOWLEDGED that OHA needs centralized management of its governing documents, which is the reason one of the new positions created in its recent reorganization was a policy and records management specialist. According to the CEO, in the interim, OHA relies on an “as-is” process that tracks the “genealogy” of a policy by comparing a policy from the *Executive Policy Manual* against all board action items that may have updated, amended, or rescinded that policy.

When we asked the CEO if there is a control log to aid in the search, one that tracked a board-approved policy and monitored relevant board-approved action items that have updated, amended, or rescinded the policy, she said OHA had a Microsoft Excel spreadsheet that contains all the committee and board action items since 2014. She also directed us to a Microsoft Teams site created two years before, which contains the recording of board meetings and their approved action items.

We note that the version of the board’s *Executive Policy Manual* that was provided to us was last revised in 2012, so it does not include amendments approved by the board in 2016, 2018, and 2021. The board’s *Operations Manual* was published in 2007. The document provided to us (which we understand is the same as maintained by trustees) does not include amendments approved by the board in 2018.

Conducting broad, open-ended searches for board actions that may *possibly* affect a particular policy using incomplete sources of information is an unreasonable, imprecise, and inefficient exercise – one we refrained from taking on – that is more organizational archaeology than an effective tool of proper governance.

When we asked the CEO how confident she is that OHA is currently conducting business consistent with current, updated, complete board-approved policies, as amended, she replied, “I think it’s an E for effort.”

The board’s Bylaws mandate developing and establishing policies and criteria for land acquisitions, dispositions, development, and management.

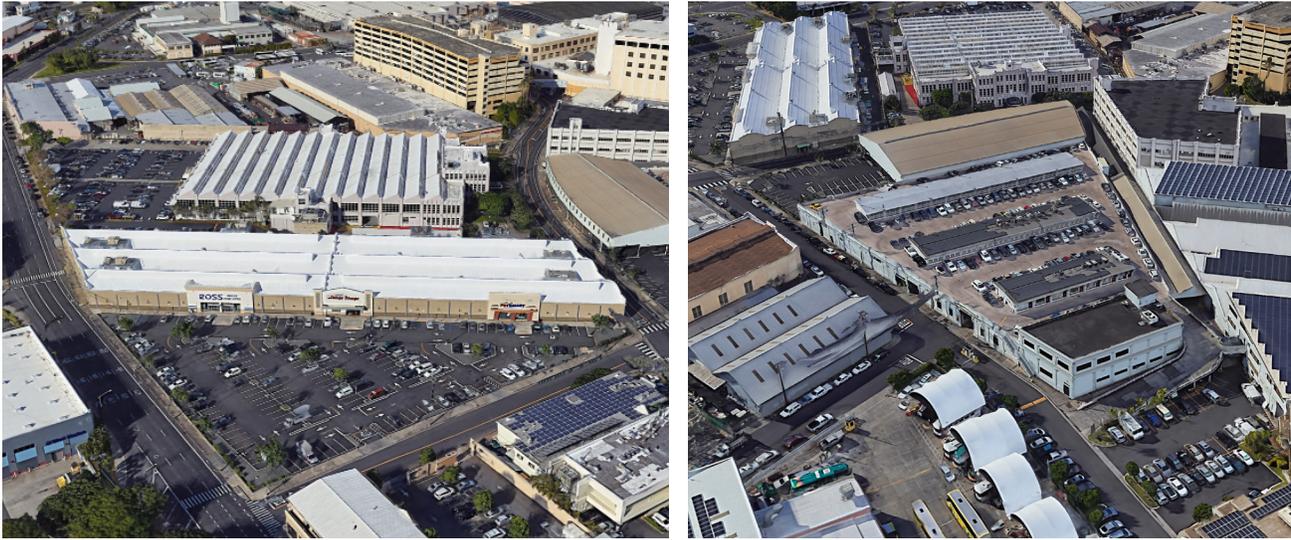
Not only are the development and establishment of a Real Estate Strategy, Real Estate Business Plan, Real Estate Investment Policy, and all the policies and procedures that they entail highly recommended and encouraged, but they are also required by OHA. As previously noted, each OHA trustee is a member of the board’s two standing committees, one of which is the Committee on Resource Management. According to the Office of Hawaiian Affairs Board of Trustees Bylaws, which the board revised and approved as recently as March 2020, the committee is required to oversee the use and conditions of OHA’s real estate and execute policy for the proper use of those lands. This requirement specifically includes developing policies and criteria for OHA’s land acquisitions, dispositions, development, management, and the use of real property in which OHA has an interest. The committee is also responsible for developing policies relating to OHA’s real estate asset allocation, desired returns, and balancing OHA’s real estate portfolio including legacy lands, corporate real property, programmatic lands, and investment properties.

The policies and criteria that the Bylaws direct the committee to develop are not new. They are the same general policies that the board recognized in its Real Estate Vision in 2007 as necessary and important to guide OHA’s decision making relating to real estate and again in 2012 in its *Executive Policy Manual*; they are the same general policies that are described as “prudent to establish” in the Committee on Land and Property Policy Guidelines adopted in 2014.

More than fourteen years after declaring that OHA will model “best practices” in all its “Property Involvements,” the board was still waiting for these foundational policies, many of which OHA itself had individually called “a guiding policy.” As of late 2021, OHA had yet to adopt – let alone establish – these foundational policies.

Yet, in October 2021, OHA paid \$47 million to acquire the 500 N. Nimitz and Iwilei Business Center properties. OHA plowed ahead with the acquisitions despite not having the real estate policies and criteria that the board over a year earlier had directed the committee – whose membership includes all nine trustees – to develop.

When we asked what guidelines the board used in its deliberations over the acquisition, the Committee on Resource Management vice-chairperson responded, “That’s a really good question, because I would sure like to know that, too.”



500 N. Nimitz - Map Data: Google, SOEST/UHM; Iwilei Business Center - Map Data: Google, LDEO-Columbia, NSF, NOAA

OHA purchased 500 N. Nimitz and the Iwilei Business Center properties for \$47 million without long-promised land acquisition policies and criteria to guide its decision-making.

In October of 2021, OHA announced its purchase of the 500 N. Nimitz property together with a partial interest in the Iwilei Business Center, which consisted of three industrial condominium units, for \$47 million. The newly acquired mixed-use properties are located in Iwilei, next to OHA’s Nā Lama Kukui property and across the street from the Institute for Human Services and other social service agencies. The 500 N. Nimitz property has national retail tenants while OHA’s portion of the Iwilei Business Center has one tenant; we note that during the course of our audit, one of the anchor tenants at 500 N. Nimitz vacated its space.

The board made this significant addition to its real property portfolio without the guidance of a Real Estate Strategy, a Real Estate Business Plan, or a Real Estate Investment Policy, which OHA itself characterized as guiding documents. However, acquiring property is only one phase of real estate investment; deciding to hold, sell, or exchange an asset can be the most challenging aspect of owning real estate. (See “After the Acquisition” on page 41.) Therefore, without these fundamental policies in place, OHA also lacks guidance on whether to continue to hold or eventually sell properties in its considerable and growing portfolio; as its portfolio grows, the risks associated with those decisions or indecisions increase as well.

An opportunity drops into OHA's lap.

According to the CEO, the opportunity to purchase 500 N. Nimitz and units in the Iwilei Business Center had “dropped into our lap,” brought to the attention of OHA administration by Colliers International, which was both OHA’s contracted property manager of Nā Lama Kukui as well as a listing agent for the properties. In addition to being somewhat serendipitous, the investment opportunity also appears to have had a sense of urgency to it. According to OHA’s COO, the seller had received seven offers to purchase the properties in a three-week span.

In total, the acquisition was discussed 14 times, including 3 times during Committee on Resource Management meetings and 11 times at board meetings. Most discussions occurred in executive sessions between May 2021 and September 2021. In March 2022, we requested minutes from relevant board meetings, 10 months after the first meeting and six months after the acquisition was completed; at the time, OHA had yet to approve the executive session minutes for all 14 meetings. OHA finally did provide us with those executive session minutes – many of which were heavily redacted – in June 2022, nine months after OHA took title and possession of the properties. From June through September 2021, OHA staff, administration, and outside legal counsel provided updates to the board, including three due diligence reports, none of which OHA made available for our review.

While OHA declined to provide us with the specific information that it considered and the board’s deliberations in deciding to spend \$47 million of trust assets, it did provide us with a copy of the “Iwilei Commercial Property Investment Memorandum.” While the document is undated and its authorship unattributed, it corresponds with the minutes from the board’s September 14, 2021 meeting when the board discussed the final approval of the purchase. To ascertain how, without guiding policies and criteria in place, OHA’s Board of Trustees arrived at its decision in 2021 to purchase 500 N. Nimitz and Iwilei Business Center, we reviewed the memo as well as various unredacted minutes.

OHA administration makes two offers for the properties, then informs the board.

At the May 20, 2021 board meeting, OHA administration initially briefed the board on the potential acquisition of the properties in executive session. The COO disclosed that the administration – without the board’s approval or prior knowledge – had made a \$40 million offer for the properties. He explained that, of the seven offers to purchase the properties, OHA’s was the lowest. He said that the administration had since increased its offer to \$47 million – again without the board’s approval or prior knowledge – to “keep [OHA] in play.” During the

Promises, Promises

Fifteen years ago, in an effort to establish a solid financial footing for its real estate activities, OHA promised to develop a Real Estate Strategy, Real Estate Business Plan, and Real Estate Investment Policy. It never did.

July 2012

OHA accepts 30 acres of Kaka'ako Makai land valued at \$200 million as a settlement with the State to resolve longstanding claims on past due ceded lands revenues.



August 2012

OHA purchases the nearly five-acre Gentry Pacific Design Center for \$21.4 million. In December 2013, OHA moves its operations into a 44,000-square-foot space in the commercial building, which it renames Nā Lama Kukui.

2007

2008

2009

2010

2011

2012

2013

2014



June 2007

OHA adopts its Real Estate Vision, Mission, and Strategy Policy (Real Estate Vision), a guiding document for land acquisitions that articulated OHA's mission, vision, strategic goals, and priorities. The Real Estate Vision was part of an effort to establish policies intended to put OHA on a solid foundation in anticipation of any subsequent real estate transactions. **According to the Real Estate Vision, OHA shall champion real estate best practices by adopting a Real Estate Strategy, Real Estate Business Plan, and Real Estate Investment Policy.**



September 2013

The Office of the Auditor releases Report No. 13-07, *Audit of the Office of Hawaiian Affairs and Report on the Implementation of State Auditor's 2009 OHA Recommendations*. The report finds that the OHA's land management infrastructure is inadequate, unable to support the office's growing portfolio or any future land involvements. The report concludes that **without the policies, procedures, and staff to help guide and support the increased real estate activity, OHA's Board of Trustees cannot ensure that its acquisitions are based on a strong financial foundation.**

Photos: Na Lama Kukui - Map Data: Google, LDEO-Columbia, NSF, NOAA, Data SIO, NOAA, U.S. Navy, NGA, GEBCO, Data SOEST/UHM; Kaka'ako Makai - Map Data: Google, USGS; 500 N. Nimitz - Map Data: Google, SOEST/UHM; Iwilei Business Center - Map Data: Google, LDEO-Columbia, NSF, NOAA

Reports sources: Office of Hawaiian Affairs, Office of the Auditor



October 2021

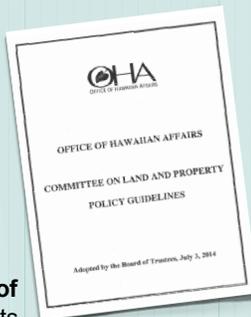
OHA purchases two commercial properties for \$47 million: 500 N. Nimitz and a partial interest in the Iwilei Business Center. The newly acquired mixed-use properties are located in Iwilei, next to OHA's Nā Lama Kukui property, home to its headquarters, and across the street from the Institute for Human Services and other social service agencies. **OHA makes these purchases without the criteria that its long-promised Real Estate Strategy, Real Estate Business Plan, and Real Estate Investment Policy would provide.**

2015 2016 2017 2018 2019 2020 2021 2022 2023

July 2014

OHA's Board of Trustees adopts

OHA's Committee on Land and Property Policy Guidelines (2014). The guidelines state "it is prudent to establish certain general policy guidelines, procedures, and project best practices governing land acquisitions, dispositions, development, management, and use by the Office of Hawaiian Affairs." **According to the guidelines, the yet-to-be-developed Real Estate Strategy, Real Estate Business Plan, and Real Estate Investment Policy would be a "guiding principle" for OHA and its overall real estate strategy.**



June 2018

The Office of the Auditor

releases Report No. 18-08, *Audit of the Office of Hawaiian Affairs' Competitive Grants and Report on the Implementation of 2013 Audit Recommendations*. In the follow-up on the implementation of recommendations calling for OHA to follow through on its real estate vision, mission, and strategy by developing and adopting supporting policies, **OHA represented that it expected those policies and procedures to be completed before the end of fiscal year 2019. These promises were not fulfilled, and to this day OHA has failed to create the promised documents.**



March 2020

The Board of Trustees revises

and approves the Office of Hawaiian Affairs Board of Trustees Bylaws, which requires the board to develop policies and criteria for land acquisitions, dispositions, development, management, and the use of real property. **The policies and criteria are the same general policies that the board recognized as important in its Real Estate Vision in 2007 and again in 2012 in its Executive Policy Manual; they are also the same policies that are described as "prudent to establish" in the Committee on Land and Property Policy Guidelines adopted in 2014.**



meeting, one trustee disclosed that she had learned that a \$52 million offer for the properties had been withdrawn because the potential buyer had learned about the possibility of soil contamination, which the trustee expected would come out in due diligence. In addition, the trustee said that she had spoken with two developers who warned the trustee about the scope of the environmental contamination. “They don’t know how to get it out or how deep it goes,” the trustee said.

The trustee also pointed out that the landowner of the 500 N. Nimitz property leased spaces to certain national retail tenants. Another trustee asked for verification that the land was fee-simple and not leasehold, and if OHA acquired the property, it would “own the dirt.” OHA’s real estate broker (who was also the seller’s broker) confirmed that the acquisition would be a fee-simple purchase. However, OHA completely redacted the trustee’s follow-up question and the response from the Board Counsel. We do know that shortly thereafter, the board unanimously and retroactively approved the administration’s recommendation to make a non-binding offer of \$47 million to purchase 500 N. Nimitz and partial interest in the Iwilei Business Center.

Board deliberates on a \$47 million purchase without long-promised criteria and strategy.

When we asked the CEO and Land Director what OHA uses, if anything, as criteria to guide its real estate decision-making if OHA does not use existing OHA policies such as OHA’s Real Estate Vision, the CEO responded that OHA is currently using practices to inform policy. In addition, the Land Director described portions of the Real Estate Vision to be “high maka maka” (pretentious), explaining that, in 2007, when the policy was adopted, OHA was more of an advocate for the people and their cultural assets rather than a landowner. Now, according to the Land Director, OHA is both and must be pono (righteous, balanced).

We are compelled to note that the Real Estate Vision and the other policies referenced therein are *board-approved* and presumably reflect the trustees’ vision and direction *to fulfill their fiduciary and statutory responsibilities to OHA’s beneficiaries*. While they are responsible for implementing the board’s intent, neither the CEO nor the Land Director have the same fiduciary and statutory duties to OHA’s beneficiaries as imposed on trustees; yet they seem to believe that they have the delegated or other authority to disregard board-approved directives and to substitute their vision for that of the board. However, more importantly, without the policies identified in the Real Estate Vision, whose necessity was further articulated in 2014, and reaffirmed in 2020, OHA is missing its self-described “guiding principle” on which land program operations are built, activities such as acquisitions,

“Rules Were Meant to be Broken”

Before purchasing the 500 N. Nimitz and Iwilei Business Center properties for \$47 million in 2021, OHA removed a \$25 million spending cap on real estate purchases without discussion and without replacing the cap with another spending limit.

ACCORDING TO SECTION 18 of OHA’s Native Hawaiian Trust Fund Investment Policy Statement (2019), OHA was limited to spending \$25 million or no more than 10 percent of the market value of the Native Hawaiian Trust Fund on corporate real estate. This policy had been adopted by the board in 2012, previous to its acquisition of the Gentry Pacific Design Center (now known as Nā Lama Kukui), which it purchased for \$21 million in August 2012.

The revisions to Section 18 were first proposed at a July 22, 2021 Committee on Resource Management meeting during which the COO described “edits” to OHA’s Native Hawaiian Trust Fund Investment Policy Statement as being part of a larger, broader effort by OHA administration to update its policies. Board minutes reflect the COO explained to the committee that policies are living documents, which need to be periodically reviewed so they are reflective of current practices in the market, current regulations, and current circumstances for OHA. “Changes,” he noted, “strengthen OHA, they make OHA more flexible – and bring us up to date with practice.” He did, however, acknowledge that Section 18 was specifically chosen for revision because doing so would enable OHA to make an impending acquisition. The COO described Section 18 as “speaking very much to the time it was drafted,” but did not explain why a \$25 million spending cap was out of date with the current real estate market or incongruous with OHA’s investment strategy. The minutes give no explanation why the administration did not propose a replacement spending limit.

“Rules were meant to be broken,” the trustee said. “We do that all the time.”

The committee unanimously approved the changes to Section 18 with no discussion, passing it on to the board, which, as previously noted, approved the changes at its August 12, 2021 meeting. The vote was again unanimous and held without discussion. We asked a trustee how OHA is able to ensure its activities are “in line” (i.e., aligned with its investment strategy and overall goals) if it changes policy to accommodate an acquisition, rather than having the acquisition comport with existing policies. When discussing the purchase of the 500 N. Nimitz and Iwilei Business Center properties, the trustee referenced the Hawai‘i Direct Investment Policy which required changes in order to make the acquisition. The trustee said that OHA must be able to adjust – “Rules were meant to be broken,” the trustee said. “We do that all the time.”

The trustee’s comment may have been said partly in jest; however, the board’s editing of OHA’s Native Hawaiian Trust Fund Investment Policy Statement – how it did it and when it did it – illustrates a similarly cavalier attitude toward the importance and function of rules.

dispositions, development, management, and land use. Absent such crucial foundational elements, OHA does not seem to have completely established a Commercial Property Program in the first place.

Going forward, we are unsure as to how OHA will be able to navigate what may be the most challenging aspect of real estate ownership: deciding whether to hold or sell the properties. (See “After the Acquisition” on page 41.) Not only does OHA lack a disposition or exit strategy, it also lacks the criteria – policies on asset allocation, portfolio composition, and return expectations – on which those decisions would be based.

Lacking long-promised board-approved policies and criteria to guide real estate acquisitions, OHA administration creates its own for the occasion.

The 500 N. Nimitz and the Iwilei Business Center properties’ potential for the development of housing was pitched by OHA administration as a major attribute. Under the section “Compliance with OHA’s Strategic Plan,” the Iwilei Commercial Property Investment Memorandum reads: “Strategy 6: Support the implementation of the [Hawaiian Homes Commission Act] and other efforts to meet the housing supply needs of Native Hawaiian ‘ohana” (emphasis in original). The memo continues: “The acquisition provides an opportunity to scale up OHA’s redevelopment plans in combination with currently owned Nā Lama Kukui (NLK) property. As part of eventual redevelopment plans, OHA would leverage partnerships to ensure Native Hawaiians can obtain homeownership and/or affordable rentals through an increase in housing supply.”

COMPLIANCE WITH OHA’S STRATEGIC PLAN

The recommendation addresses the following goals of the OHA Strategic Plan:

- **Strategic Direction 3 – Quality Housing.** Strengthened Capability for ‘Ohana to Meet Living Needs, including Housing; Strengthened Effective Implementation of the Hawaiian Homes Commission Act (HHCA).
 - *Strategy 6:* Support the implementation of the HHCA and other efforts to meet the housing supply needs of Native Hawaiian ‘ohana

Consistent? Yes

Comments: The acquisition provides an opportunity to scale up OHA’s redevelopment plans in combination with currently owned Nā Lama Kukui (“NLK”) property. As part of eventual redevelopment plans, OHA would leverage partnerships to ensure Native Hawaiians can obtain homeownership and/or affordable rentals through an increase in housing supply. This will also enhance the ability for Native Hawaiians who so desire to remain in Hawai’i (Strategic Outcome 6.3).

Source: Office of Hawaiian Affairs

We note that OHA’s Strategic Plan makes no specific reference to OHA itself developing housing for Native Hawaiians; in fact, the Chairperson told us that, unlike the Department of Hawaiian Home Lands, OHA cannot develop housing exclusively for Native Hawaiians, which would be discriminatory. Instead, the strategic plan specifically refers to OHA supporting the implementation of the Hawaiian Homes Commission Act and mentions “other efforts” to meet the housing supply needs of Native Hawaiians.

In the memo, under “Principal Merits,” a section that lists favorable investment and strategic attributes, the acquisition is described as a strategic addition to OHA’s real estate portfolio, which “allows OHA to have a larger footprint and will increase development opportunities, along with adjacent [Nā Lama Kukui] property, which in turn provides a greater scale of impact for both housing supply and commercial returns – both of which are strategic outcomes for OHA.”

Also listed as a principal merit is the properties’ location and redevelopment potential. The memo explains that because of the parcels’ proximity to the planned Iwilei and Chinatown rail stations, they present opportunities for enhanced zoning because of expected transit-oriented development. Such high-density development would provide for a “greater appreciation potential of the underlying asset.” According to the memo, this possible redevelopment is OHA’s most “strategic scenario.”



“... and other efforts.”

OHA’S STRATEGIC PLAN makes no reference to OHA developing housing for Native Hawaiians. It does specifically refer to OHA supporting the implementation of the Hawaiian Homes Commission Act, but it mentions “other efforts” to meet the housing supply needs of Native Hawaiians. Despite this omission, OHA administration claimed that its plans to develop housing “neatly aligns” with its Strategic Plan.

Source: Office of Hawaiian Affairs

In “Key Considerations,” a section that discusses possible red flags for the properties, the memo highlights potential environmental issues, pointing out that the historic use of the Iwilei area included petroleum bulk terminals, maritime transportation, and manufacturing, which may have resulted in petroleum hydrocarbons and other related contaminants being in the soil.

As previously noted, this issue was raised by a trustee in May 2021. Subsequent to that discussion, OHA commissioned Phase I Environmental Site Assessments, which validated those concerns. The assessment for the Iwilei Business Center property identified a 75,000-gallon fuel oil underground storage tank and petroleum-impacted soil and groundwater near the property. In addition, a records search done for 500 N. Nimitz found numerous properties with subsurface contamination within a mile radius of the site. (See “Buyer Beware?” on page 39.) Both assessments recommended that if, and when, the properties are redeveloped, soil and groundwater investigation should be conducted.

The memo acknowledges the assessments’ initial findings and recommendations but simply points out that, when OHA redevelops the property, it would have to absorb the extra expense of excavating, disposing, or encapsulating contaminated soil and water. Left unaddressed are the likelihood of contamination and, more importantly, the potential cost of such remediation efforts.

In addition, according to the memo, redevelopment is also complicated by the fact that the three tenants at 500 N. Nimitz have lease options until 2040, which means “immediate redevelopment” is not practical unless OHA has withdrawal rights, renegotiates the leases, or the tenants choose not to extend their lease.

Although not mentioned in the memo, redevelopment is also problematic for the Iwilei Business Center property, where approval by 75 percent of the industrial condominium apartments is required to perform any physical alteration of or additions to the property. OHA purchased a 26.6 percent ownership stake in the Iwilei Business Center, so redevelopment is an option that is not solely in OHA’s control. (See “Buyer Beware?” on page 39.) When we asked the Land Director if the Iwilei Business Center’s other tenants would be amenable to possible redevelopment of the property, he told us that he did not know and did not feel it was fair to speculate. Since the property’s potential for redevelopment weighed heavily on the decision to purchase, it seems that OHA should have made such an inquiry, as well as explore the potential cost to acquire a sufficient interest in the Iwilei Business Center to pursue redevelopment.

Buyer Beware?

The Iwilei Business Center's prime location in the heart of an industrial-commercial area also poses challenges to redevelopment.

THE IWILEI BUSINESS CENTER is an industrial condominium that sits adjacent to 500 N. Nimitz and where OHA acquired 3 of the 12 "apartments" in the condominium. The center was once the home to the Del Monte pineapple plant, which operated from 1917 to 1982. It now features a variety of small businesses. OHA's apartments, which range from 16,000 to 31,000 square feet, are intended for commercial, warehouse, or light industrial uses.

OHA's purchase of the three apartments was part of a "packaged deal" since one apartment, Apartment No. 2, provides overflow parking for the retail tenants of the 500 N. Nimitz property that OHA also acquired. The three apartments were bundled together with 500 N. Nimitz and purchased by OHA for \$47 million in 2021.

A fact sheet on the Iwilei Business Center prepared by real estate brokerage Colliers International (Colliers), identifies the Iwilei Business Center as one of several sites in the area with transit-oriented development potential. Colliers highlighted the site's relatively large size and dual street frontage and access, and noted as well that its industrial-commercial mixed-use zoning is also suitable for new warehouse development. In addition, Colliers called the property a "great investment opportunity," stating that strong demand for the site would be expected from both industrial owner-users and investors. OHA has contracted with Colliers since 2017 to manage its Nā Lama Kukui headquarters, which also houses a number of retail businesses.

However, the Iwilei Business Center's prime location in the heart of an industrial-commercial area also poses significant challenges to redevelopment. Redevelopment of the Iwilei Business Center requires consent from the owners who together hold an aggregate



Photo: Office of the Auditor

75 percent interest in the property; OHA's three apartments amount to a little more than a 26 percent interest. And, since the site was once home to an industrial plant, the risk of finding pollutants on the site is likely high. Indeed, a January 2020 Phase I Environmental Site Assessment of the Iwilei Business Center performed as part of OHA's due diligence identified a 75,000-gallon fuel oil underground storage tank and "petroleum-impacted" soil and groundwater near the properties. The conclusion to the environmental assessment report noted the evidence of widespread contamination in the Iwilei district – including within a mile radius of the Iwilei Business Center – and recommended that a soil and groundwater investigation be conducted at the time of redevelopment.

On September 14, 2021, during a Committee on Resource Management meeting to discuss the acquisition of the 500 N. Nimitz and Iwilei Business Center properties, the COO acknowledged Iwilei's historical environmental contamination issue and pointed out that an initial environmental assessment found contaminants in the properties, but the extent of the contamination remains an unknown. The COO recommended that OHA mitigate this risk by planning to do further testing in the future. "We build it [testing] into our budgets, we build it into our planning, and if we find that – then we simply make a choice to dispose of it or encapsulate it." The COO did not provide an estimate on how much OHA would have to budget for such testing or possible environmental remediation efforts if necessary.

Despite its stated intent to redevelop the properties in the future, OHA has little understanding of the potential costs to do so.

Two days later, the board unanimously approved the \$47 million acquisition of the 500 N. Nimitz property together with three industrial condominium units in the Iwilei Business Center. The redacted minutes from that meeting reveal very little discussion by trustees and no discussion on the redevelopment of the properties. Following the vote, the COO requested that the trustees refrain from mentioning redevelopment of the properties when speaking about the acquisition. Although the COO claimed the purchase was in alignment with the need to increase the housing supply, the COO told trustees, “it’s safer to not send any signal related to redevelopment at this time.”

We interviewed seven of the nine trustees and when we asked why OHA bought the properties, four of the trustees cited the properties’ potential for redevelopment as the reason for the purchase, either for housing or in anticipation of the construction of planned railway stations. The Chairperson said properties could be developed for affordable housing (for Native Hawaiians and Hawaiians), relocating existing tenants to Nā Lama Kukui.

It is not clear why OHA administration felt it necessary to suppress information about the criteria it used to assess the 500 N. Nimitz and Iwilei Business Center properties and its intention to redevelop them. Trustees did not question the COO’s request to not openly discuss redevelopment, and follow-up comments by OHA’s Board Counsel were redacted. What is clear is that OHA administration did little to explore the potential challenges and the costs associated with redevelopment. And the trustees approved the purchase anyway.

After the Acquisition

Deciding to hold, sell, or exchange an asset can be the most challenging aspect of owning real estate.

IN REPORT NO. 13-07, we found that trustees had significantly increased the trust's real estate assets – 10 land parcels with an aggregate value of \$224 million – without providing adequate guidance and other organizational infrastructure to ensure implementation of the 2007 Real Estate Vision. We concluded that, without such guidance, the board was unable to ensure its real estate acquisitions are based on a strong financial foundation.

Nearly 10 years later, with the \$47 million acquisition of the 500 N. Nimitz and Iwilei Business Center properties in the Fall of 2021, OHA continued to add to its real estate portfolio without a Real Estate Strategy, a Real Estate Business Plan, or a Real Estate Investment Policy. And while risks associated with acquiring property without clear and consistent criteria remain, acquisition is only one part of the ownership cycle.

According to the Certified Commercial Investment Member (CCIM) Institute, a leading educational and credentialing commercial real estate organization, deciding to hold, sell, or exchange an asset can be the most challenging aspect of owning real estate. Issues such as property management, tenancy, and capital expenditures require attention and careful consideration. The investor must also understand what is foregone by holding onto an investment; or if the investor sells for cash, how much could be placed elsewhere.

And sometimes those decisions are not solely based on financial considerations. According to the CCIM Institute, it is not unusual to discover that an initially well-suited investment is no longer a good fit at some point in the future, regardless of the property's financial yield. Changing goals that an investor may have for a

particular piece of property – or changing goals for the investor itself – can be the deciding factor in decision-making.

When it adopted its Committee on Land and Property Policy Guidelines (2014), OHA appears to have understood the need for an organization to continually assess its real estate holdings against the current business climate as well as its overall needs and goals, which can also evolve over time. For example, the Policy Guidelines require that the Real Estate Strategy, Real Estate Business Plan, and Real Estate Investment Policy be periodically reviewed and adjusted, modified, or supplemented to address the changing real estate market and the evolving needs and requirements of OHA.

However, OHA has yet to develop, let alone implement, the policies and criteria needed to guide its real estate decisions. The board once again affirmed the importance and priority of those policies and criteria in its Bylaws, most recently revised in 2020 – the same types of policies and criteria first described in 2007 in OHA's Real Estate Vision and again in 2014 as part of the Committee on Land and Property Policy Guidelines. Similar to the CCIM Institute's perspective, the board appears to have understood that land acquisitions, dispositions, development, management, and use of real property as well as real estate asset allocation, desired returns, and balancing OHA's real estate portfolio are all critical factors that OHA, as a landowner and investor, must consider. And, as it recognized in 2014, any policies and criteria that the board may ultimately adopt must be periodically reviewed to ensure that OHA's land holdings continue to align with its strategic plan and, importantly, trustees' fiduciary and statutory duties.

“New Era of Accountability” – Same Old Problems

A recent forensic review found 22 instances of fraud, waste, and abuse totaling more than \$7.3 million. A continuing lack of foundational real estate program components may pose bigger risks.

ON NOVEMBER 10, 2022, OHA announced the release of a report by the tax and audit firm Plante Moran that identified 22 transactions with evidence of fraud, waste, and abuse totaling more than \$7.3 million. OHA contracted Plante Moran to analyze 38 of its transactions from fiscal years 2012 through 2016 identified in 2019 by the accounting firm CliftonLarsonAllen LLP as suspect.

Of the 38 transactions, two were related to Kaka’ako Makai, including a \$2.95 million contract with WCIT Architecture (WCIT) to create a conceptual master plan for OHA’s Kaka’ako Makai parcel. Following the approval of the conceptual master plan, OHA had hoped to issue a Request for Proposals to select a site developer. Plante Moran found that plans WCIT had developed “are still unused to this day, due to OHA’s actions.” Plante Moran questioned whether those plans are still viable and concluded that, until utilized, they “are considered waste.” And, as we report, one trustee told us that the plan created by WCIT was put in a closet. OHA is now on its *third* consultant since 2013 to again help the agency in its planning and development of its Kaka’ako Makai lands: by April 2022, that contract has increased by more than \$3 million.

In its November 10, 2022 press release about the Plante Moran report, OHA did not explain why it was not using the WCIT conceptual master plan or even whether it was still viable. OHA also did not give any update on its plan for its Kaka’ako Makai lands. However, OHA heralded the release of the Plante Moran report as the beginning of a “new era of accountability.” The Chairperson stated, “OHA is positioned to serve its beneficiaries better than ever before after a thorough overhaul of its policies, procedures and practices under the leadership of a new executive team.”

Under the subheading of “Better stewardship through tighter system and controls,” the press release listed eight “improvement steps” OHA has

taken since December 2019 to better align policies, procedures, and practices. However, none of the “improvement steps” address OHA’s long-missing and long-promised policies and procedures mentioned throughout this report.

While the 22 instances of fraud, waste, and abuse identified by Plante Moran should certainly be concerning to OHA, its beneficiaries, and the public, those transactions, combined, amounted to about \$7.4 million. In this report, we described OHA’s spending of \$47 million to purchase the property at 500 N. Nimitz and a fractional interest in the Iwilei Business Center. That significant investment in commercial properties – more than six times the total found by Plante Moran – was completed without the policies and procedures that OHA itself describes as the “guiding principles” for its overall real estate strategy. Those missing policies and procedures – which include the OHA Real Estate Strategy, the OHA Real Estate Business Plan, and the OHA Real Estate Investment Policy – are specifically referred to in the policy guidelines adopted for the board’s Committee on Land and Property and generally referred to in OHA’s *Board of Trustees Executive Policy Manual*.

And OHA is well-aware that its real estate strategy is only partially formed, if that: in 2013, almost a decade ago, we reported that the then-COO acknowledged that we had “hit the nail on the head” in identifying the lack of real estate policies; and in 2018, OHA represented that it expected those policies and procedures to be completed before the end of fiscal year 2019. Without these foundational components, OHA’s acquisition of real estate will continue to be reactive. (See “An opportunity drops into OHA’s lap.” on page 31.) But, more importantly, without criteria to assess potential real estate opportunities in the future – lands for investment, cultural, or programmatic uses – its risk for fraud, waste, and abuse will remain significant.

Finding No. 2 - Since receiving Kaka‘ako Makai, OHA is on its fifth chairperson, second chief executive officer, and third consultant, but is no closer to actually developing the property than it was 10 years ago.

When OHA acquired its Kaka‘ako Makai properties in 2012, it anticipated that the lands would generate revenue to further the agency’s mission to better conditions for Native Hawaiians. The acquisition was intended to settle past due ceded land payments of approximately \$200 million. It was OHA’s first foray into commercial property ownership (and its first landholding under its Commercial Property Program), a responsibility the agency has said it was apparently unprepared for.

Lacking in-house expertise, OHA hired outside consultants – different consultants – to help with the planning and development of its Kaka‘ako Makai properties in 2013, again in 2015, and yet once more in 2021, under a different chairperson each time. One trustee told us that everyone who worked on the 2013 and 2015 plans has since departed OHA, including the CEO and board chairpersons from those periods, and the plans are sitting in a closet. Commenting that one of the Kaka‘ako Makai studies cost OHA \$3.8 million, the trustee added, “A lot of money has been wasted. This [administration] is very different from the previous.”

OHA’s Chairperson told us she anticipates a full buildout of Kaka‘ako Makai within 10 years and stated there was no ceiling or cap on funding for the development of OHA’s 30 acres. This timeframe appears unrealistic given the status of OHA’s planning efforts and in light of statements made by others within the organization. For instance, the CFO told us that there has been very little planning on the financial aspects of developing Kaka‘ako Makai, despite a requirement in OHA’s Board of Trustees’ Bylaws (2020) to “develop policies and programs for OHA’s ownership and development of real property, including capital improvements, debt management, economic development, investment and spending policies and forms of ownership for OHA’s real property.”

Other OHA policies discussed previously also require OHA to develop a strategy, business plan, and investment policy to realize its Real Estate Vision, as well as a more general investment policy to govern use of the Native Hawaiian Trust Fund.

Regardless of whether release of a Kaka‘ako Makai plan is imminent, OHA has not budgeted for development. According to OHA’s CFO,

aside from an amount in the budget for the current fiscal year, there are no funds earmarked for future construction. Furthermore, we found OHA has yet to adopt a comprehensive conceptual master plan for its Kaka‘ako Makai properties and has also faltered in its attempt to implement an interim use plan. (See “Under the Big Top” on page 49.) Meanwhile, community members advocate for a community-vetted conceptual master plan for Kaka‘ako Makai, the plan the Hawai‘i Community Development Authority (HCDA) adopted in 2011 – months before the settlement with OHA was approved. The 2011 plan recognizes the prohibition on residential development, but HCDA noted that it incorporates few alternatives for generating income and attracting investment: “Residential and hotel uses could generate significant private investment, but these uses are not allowed. Other private commercial uses such as office or retail/restaurant could support private investment, but the extent of these uses that the market can support is somewhat limited at this time.”

We asked OHA to provide all plans for the development of its other commercial properties – Nā Lama Kukui, 500 N. Nimitz, and the Iwilei Business Center. OHA confirmed it does not have development plans for any of these properties. Although staff had mentioned “rebranding plans” for Nā Lama Kukui, the CEO explained OHA intended to repaint, not rebrand, the building.

OHA “buys” real estate expertise.

The CEO said that OHA did not have the resources, skill sets, or knowledge in-house when it became a commercial property owner in 2012: “Because of the settlement we now have a responsibility. We were OHA taking care of legacy lands and suddenly we have commercial and have to think like a business.” As the CEO explained, OHA now is “buying” the expertise rather than payrolling it; instead of planning for development, OHA relies on consultants to guide them. It is unclear what benefit OHA has reaped from this guidance; despite an abundance of planning, there has been little actual development on the properties.

OHA has so far contracted three different teams of consultants to create a framework, visualize possibilities, and identify strategies for the development of its Kaka‘ako Makai lands. In April 2013, OHA entered into a \$150,000 contract with Rider Levett Bucknall Ltd., which formed a consulting project team, Hui O Kukuluāe‘o, to develop a “strategic action plan” for OHA’s Kaka‘ako Makai lands.⁶ The resulting plan,

⁶ Rider Levett Bucknall Ltd. assembled Hui O Kukuluāe‘o, a team of land management development experts, including Group 70 International, Inc. and Sanford Murata, Inc., to prepare the OHA Kaka‘ako Makai Strategic Action Plan, which was completed in October 2013.

intended to be a foundational document, provided baseline information and outcomes of initial assessments of land use opportunities intended to guide OHA in its decision-making and shape the future development of Kaka‘ako Makai. Hui O Kukuluae‘o included recommendations to OHA leadership about the agency’s responsibilities as the land steward for its Kaka‘ako Makai parcels, including for OHA to formulate and adopt objectives for the property, to use those objectives to develop a master plan for the property, and, once developed, to hire a development entity to develop the master plan over phases. Hui O Kukuluae‘o also recommended that OHA prepare a “comprehensive financial proforma and capital financing plan” for its development of the Kaka‘ako Makai lands.

In 2014, OHA hired Kuhikuhi Pu‘uone Collaborative to prepare a conceptual master plan. The scope of services for the \$2.9 million contract included an overview of “relevant information, past studies, and previously completed plans for Kaka‘ako Makai.” The consultant’s background overview described principles, guidelines, and other information from earlier planning efforts that OHA might consider including in a conceptual master plan, project schedules, and market analysis. However, according to the Chairperson, this consultant ignored a conceptual master plan from the 2013 planning effort and created a new conceptual master plan that was too extensive and “not workable.” We note some misunderstanding in the Chairperson’s assertion: OHA’s board has never approved a conceptual master plan. Hui O Kukuluae‘o’s planning effort in 2013 culminated in the OHA Kaka‘ako Makai Strategic Action Plan and was “meant to establish a foundation upon which succeeding efforts can be developed and expanded.” And, while Kuhikuhi Pu‘uone Collaborative held community meetings across the state to present a conceptual master plan in 2016, that effort apparently stalled; when we asked to see the conceptual master plan, OHA pointed us to HCDA’s plan from 2011.

Developing Kaka‘ako Makai: 10 years, \$6.5 million, and counting

After three planning efforts, still no signs of development.



Fisherman's Wharf, 2014

PHOTO: OLIVIER KONING

April 2012

Governor Abercrombie signs Senate Bill No. 2783 into law, transferring 10 parcels of land in Kaka‘ako Makai from the State of Hawai‘i to the Office of Hawaiian Affairs to settle ceded land revenue claims dating back to 1978. **OHA expects the land will become a revenue source to grow its programs.**

April 2013

OHA hires Rider Levett Bucknall Ltd. for \$150,000 to prepare a “Strategic Management Framework Plan” to guide OHA with its planning, management, dispositions, and development of the property. Rider Levett Bucknall assembles a consulting team, including Group 70 International, Inc. and Sanford Murata, Inc., to join in the undertaking. The plan synthesizes the consulting team’s findings, analyses, and conclusions into a **recommended strategic action plan for the property that balances OHA’s goals with external forces, while being flexible and agile to respond to shifts in market and economic conditions and to changes in OHA’s leadership direction over time.**

December 2014

OHA hires WCIT Architecture for \$2.9 million to prepare a conceptual masterplan that builds off of the framework plan prepared by Rider Levett Bucknall. The heart of the conceptual master plan is supposed to consist of **conceptual land use scenarios that consider three alternatives that include and exclude residential development.**

July 2016

OHA adds supplemental tasks to its contract with WCIT. The new duties include **assessing the financial effect on the Conceptual Master Plan if residential uses are not allowed at Kaka‘ako Makai.** WCIT is also required to analyze and suggest new “Highest and Best” uses for parcels that originally were planned for residential uses and provide data to support the new suggested uses. The contract delivery date is extended to December 10, 2017.

August 2016

WCIT’s work is put on hold. According to OHA’s (former) Resource Manager & Land Assets Director, WCIT later presented its findings to the Board of Trustees in closed session; however, **OHA is unable to provide the deliverables or the minutes of the closed session.**

2010

2011

2012

2013

2014

2015

2016



Fisherman's Wharf, 2023

PHOTO: OFFICE OF THE AUDITOR

September 2021

OHA retains another consultant, Kuilei Consulting Inc. (Kuilei), for \$200,000. Duties include a review of Kaka'ako Makai's vision plan, summarizing, and synthesizing the work performed by OHA's previous consultant. Kuilei is also to assist OHA in developing a **vision that integrates financial feasibility, political reality, community and stakeholder input, and other goals** deemed relevant by OHA. The contract terms end on September 20, 2023.

February 2022

OHA revises its contract with Kuilei, increasing the number of contract hours per month from 60 hours to 240 hours. As a result, **compensation increases from \$200,000 to \$800,000.**

March 2022

OHA revises its Kuilei contract once again, this time to add \$400,000 in costs associated with the development of an interim use of Lot A, a parcel along Ward Avenue and adjacent to the Kaka'ako waterfront. The interim development is to accommodate space for 33 food trucks; picnic tables; a multipurpose tent to accommodate banquet seating for 300-plus people as well as 550 parking stalls. (See "Under the Big Top" on page 49.) The contract maximum is now **\$1.2 million.**

April 2022

Costs associated with Lot A increase by another \$2.3 million for a total of \$3.5 million. According to OHA, accommodating banquet seating for 300-plus people requires two tents. OHA budgeted a main tent (80' x 160') for \$500,000 along with a second tent (30' x 40') for \$200,000. Unfortunately, because of the large sizes of the tents, the use of Lot A no longer qualifies as "interim" and OHA is forced to sell the tents and must develop an alternate use. OHA expects its use of Lot A will still involve food trucks.

September 2022

OHA's Joint Committee on Resource Management and Beneficiary Advocacy and Empowerment discuss proposed actions for the 2023 legislative session, including a new effort to seek repeal of the residential prohibition. The joint committee recommends approval of **an additional \$1.3 million "estimated outreach budget" for OHA's consultant Kuilei.** Among other things, the proposed budget earmarks more than \$540,000 to promote and publicize the residential repeal campaign: \$132,000 for a third-party communications consultant, \$231,000 for marketing, and \$191,000 for advertising.

2017

2018

2019

2020

2021

2022

2023

In 2021, OHA retained yet another consultant, Kuilei Consulting, Inc. (Kuilei), to support its development of Kaka‘ako Makai and its other commercial properties.⁷ According to its response to OHA’s request for proposals for an “in-house” development consultant, “Kuilei was organized specifically to develop Kaka‘ako Makai and its other landholdings.” The resulting contract requires Kuilei to “create synergy among the OHA’s Real Estate Vision, Mission, and Strategy Policy; Committee on Land and Property Policy Guidelines; Kaka‘ako Makai Policy; and the OHA’s Vision and Mana i Maui Ola: OHA’s 15-Year Strategic Plan for 2020-2035.” Yet, as previously discussed, OHA has never created the policies and criteria intended to underlie the agency’s 2007 Real Estate Vision and its 2014 Committee on Land and Property Policy Guidelines; both documents call for a real estate strategy, business plan, and investment policy. And OHA also has not prepared detailed tactical plans that would guide OHA’s implementation of its strategic plan.

OHA is treading water on development of Kaka‘ako Makai.

Since receiving its Kaka‘ako Makai lands in 2012, OHA has spent more than \$6.5 million on separate planning initiatives begun in 2013, 2015, and 2021. The agency’s current contract with Kuilei, which began September 2021, was for \$200,000; by April 2022, supplements to the contract had increased its value to \$3.5 million. OHA’s three-phase contract with Kuilei calls for (1) a strategic or vision plan that considers planning, funding, civil engineering, and architecture and an assessment of the impact of residential zoning on certain properties; (2) an implementation strategy; and (3) actual implementation. The original 24-month contract ends on September 20, 2023, but OHA has the option to extend the contract up to a maximum of 60 months. The contract also requires Kuilei to help OHA develop a vision “that integrates

⁷ In a November 30, 2022 column published by Honolulu Civil Beat, Kuilei’s CEO described a Kaka‘ako where everyone from keiki to kūpuna can live, work, and play. Whereas the previous consultant’s background report included OHA’s 2012 Kaka‘ako Makai Policy, which specifically calls for “maximizing revenues and total returns to increase OHA’s programmatic reach,” Kuilei’s CEO had this to say about the revenue generating potential of the Kaka‘ako Makai lands:

But we are also pragmatists who recognize that these lands must yield revenues that can feed the other programs OHA funds in education, health care, housing and economic development.

OHA is not interested in following the herd and simply maximizing profit. Rather, OHA is driven to deliver value through smart, thoughtful use of its assets so that it can fulfill its duty to its beneficiaries. Our research shows that people of all ethnicities are delighted by what we might do to perpetuate Hawaiian culture and prioritize the well-being of those who have been kept waiting for far too long.

How we develop Kakaako Makai is about more than getting a financial return on investment. It’s about bending the moral arc of the universe here in Hawaii a little more towards justice.



Source: Office of Hawaiian Affairs

Under the Big Top

A “fast as practical” interim use for an Ala Moana Boulevard lot, which featured \$700,000 for tents, quickly folds.

SINCE ACQUIRING its Kaka’ako Makai lands, OHA has relied on consultants to “guide” the agency through the planning process. We found OHA’s current consultant, Kuilei, has not always steered OHA in the right direction. In its Preliminary Analysis of Current Conditions, Development Options and Next Steps, Kuilei recommended OHA “start something as fast as practical to increase the ‘warm bodies’ in Kaka’ako Makai” and identified short-term opportunities to increase revenue from OHA’s Kaka’ako Makai lands while supporting future development.

Kuilei’s interim use proposal included “activating” a lot visible from Ala Moana Boulevard with 33 food trucks, 17 picnic tables, a multipurpose tent that could accommodate banquet seating for more than 300 guests, and 550 parking stalls. Following Kuilei’s guidance, OHA budgeted \$700,000 for two large tents, anticipating the space would be used for daytime and evening cultural events and concerts and could help the agency determine a permanent use for the lot. OHA planned to take over a Special Management Area (SMA) permit that current onsite food trucks already had in place to facilitate its interim use of the space.

The SMA permitting system regulates development within county-designated SMAs extending from the shoreline inland, including commercial areas, hotels, and subdivisions. An SMA Minor Permit applies to developments within the SMA with a construction value of \$500,000 or less, and the process does not require a public hearing. An SMA Major Permit is required for developments within the SMA with a construction value exceeding \$500,000 and the process requires a public hearing.

Kuilei and OHA were not aware that an SMA Major Permit was required because of the significant size and cost of the tents until *after* OHA purchased the tents. According to the Chairperson, OHA has an SMA Minor Permit for its on-site food trucks and the process to obtain the necessary SMA Major Permit would take one year and require a public hearing. Instead of implementing Kuilei’s proposal to “support the brand and identity, create a buzz, establish sense of place and generate needed temporary revenue for OHA,” the agency must sell or repurpose the tents and come up with another interim use for the oceanfront lot, which is still expected to involve food trucks.

Exhibit 3
Office of Hawaiian Affairs' Kaka'ako Makai Lands and Surrounding Landowners



Source: Office of Hawaiian Affairs

financial feasibility, political reality (e.g., residential or non-residential), community and stakeholder input, and other goals deemed relevant by the OHA.”

Despite the effort and expense, OHA has yet to adopt a conceptual master plan that would allow it to begin – or even plan for – development on the lands it has now owned for more than a decade. Without any type of plan for Kaka‘ako Makai, OHA continues to periodically restart what it characterizes as a planning process.

One significant impediment in OHA’s planning has been the agency’s desire to build residential units on its Kaka‘ako Makai properties, which has been prohibited by law since 2006 – six years *before* OHA accepted the 30 acres. OHA has lobbied to have the law amended to allow residential development on its lots since 2012, to no avail. At least three bills that would amend or repeal the prohibition on residential development have died in the Legislature.

The Chairperson identified two lots on Ala Moana Boulevard, including one across the street from Kamehameha Schools’ 400-foot SALT condominium, that she would like OHA to use for workforce housing. However, during the same discussion, the Chairperson told us that OHA could work on developing other properties while waiting for the law to change in the agency’s favor: “We have enough lands to develop, and we can wait 10 years until things change; we are not in a rush. We would like to master plan but we cannot master plan without lots being able to have residential.” OHA may have other properties to develop but, as previously discussed, the board lacks the required real estate and investment policies necessary to ensure *any* development on *any* of its lands are in keeping with the agency’s strategic plan and the trustees’ fiduciary and statutory duties.

In its preliminary analysis dated November 15, 2021, Kuilei provided an overview of broader political and community-based considerations. Summarizing six weeks of discussions with select community and political stakeholders, Kuilei reported that development preferences generally support the HCDA plan with no residential development and that garnering support from the general public for unpermitted residential uses could prove difficult. Kuilei also cautioned that, if the Legislature approves residential use on OHA’s lands only, as was proposed during the 2021 Legislative session in Senate Bill No. 1334, the exception could face a court challenge for being unfair to other surrounding landowners.

Further impeding OHA's progress in Kaka'ako Makai is a lack of consensus among trustees regarding the development on OHA's 30 acres, which is compounded by the absence of policies that would clearly define the Commercial Property and Legacy Land programs. As noted earlier, trustees have very different expectations for Kaka'ako Makai. Trustees have mentioned possible development opportunities including workforce housing, a surf museum, a home for the Hawai'i Voyaging Society, a boutique hotel, and a gathering place for indigenous people of Polynesia and visiting dignitaries. According to OHA's consultant, Kuilei, one area of agreement among OHA trustees, staff, and stakeholders is a Hawaiian culture center and marketplace; similar elements were incorporated into HCDA's community-based conceptual master plan for Kaka'ako Makai.

But despite some areas of consensus, as OHA's Chairperson stated, the agency cannot – and apparently will not – master plan without residential entitlements that the agency has been unable to secure for more than a decade. If OHA is, in fact, holding off on master planning in Kaka'ako Makai until the Legislature lifts the prohibition on residential development, the agency's oceanfront property in its prime location will likely remain underutilized until political winds shift and the agency is able to move forward with planning and implementation.

Finding No. 3 - OHA's lax oversight and management of its legacy land stewards and stewardship agreements increase the risk that culturally significant properties "core" to OHA's mission may be misused; it also puts OHA's trust assets at risk.

OHA's Legacy Land Program reflects the importance of land to Native Hawaiians and OHA. The program is charged with protecting and preserving the agency's cultural land resources and is responsible for, among other things, monitoring, managing, and maintaining the cultural lands owned or controlled by OHA. These cultural lands – the jewels of OHA's legacy landholdings – include Kūkaniloko, the birthing site used by generations of Hawaiian chiefesses, which OHA describes as "one of the most sacred sites in Hawai'i."

We found that for three of its four legacy lands – i.e., the significant cultural lands – OHA has developed written stewardship arrangements with community groups that allow those groups to use and maintain the properties. While the form of the written agreements governing those arrangements seems in line with the Legacy Land Program's purpose and the Standard Operating Procedures, as we report below, OHA does not consistently require its stewards to comply with all the terms of their agreements; and OHA does little, if anything, to enforce a number of those terms. Consequently, OHA's approach in managing those arrangements and overseeing its stewards has created substantial risk – unnecessary risk – to the properties and to OHA. OHA's management and oversight do not reflect the significance of the lands, these cultural jewels. Its management and oversight of the stewards – or lack thereof – raise questions about whether trustees are fulfilling their fiduciary and statutory duties to beneficiaries.

The Legacy Land Program relies on stewards for the day-to-day management of four of its properties.

The Legacy Land Program was created in 2014 as part of OHA's Resource Management – Land Assets Division to protect and preserve natural and cultural resources on OHA's lands; land that OHA manages for programmatic purposes, which include agriculture, education, health and human services, housing, or other community needs, are also the responsibility of the program.

At the time of our audit, the Legacy Land Program included eight properties that OHA owned or leased, three of which OHA classified as legacy lands and another three properties categorized as programmatic

Part of the 'Ohana

OHA CONSIDERS LAND to be of special significance to Native Hawaiians and has recognized the connection that Native Hawaiians have with land as a foundational strength. OHA describes land as "a relative that is respected and cared for and, who, in turn, cares for us" and the importance of mālama 'āina, meaning to take care of the land. "Malama 'aina expresses our kuleana [or responsibility] to care for the land and to properly manage the resources and gifts it provides."

lands. An additional property in Wahiawā of more than 500 acres is zoned for agricultural use, and it serves as a buffer to protect the eighth property, Kūkaniloko.

OHA's recent reorganization eliminated the Legacy Land Program Manager position and redefined legacy land "specialists" as legacy land "agents." OHA has positions for three legacy land agents, with each agent responsible for managing one or more of the program's properties; their duties include the oversight of third-parties with agreements to manage and maintain some of the properties on OHA's behalf. One property in the Legacy Land Program, the almost 26,000 acre Wao Kele O Puna on Hawai'i Island, is managed in part under a contract with Forest Solutions, Inc.; four of the properties have "stewards," each with different rights and responsibilities. For example, the University of Hawai'i maintains the Palaua Cultural Preserve in Kīhei, Maui, under a revocable, non-exclusive right-of-entry; in contrast, under a contract, OHA pays Digital Moku to perform "stewardship services" for the Puhua Heiau in East O'ahu. The Hawaiian Civic Club of Wahiawā conducts activities on the Kūkaniloko birthstones site for cultural and educational purposes under a non-exclusive right-of-entry. During our audit window, one steward, the Waialua Civic Club of Hawai'i, had been using the historic Waialua Courthouse for meetings and other activities through an arrangement based on an oral understanding with OHA.

OHA's Legacy Lands Program Standard Operating Procedures describe the program's purpose: "to monitor, manage, maintain, plan for, and otherwise develop OHA's Legacy Landholdings in a risk averse and meaningful way that aligns with OHA's vision, mission, and strategic priorities." The program is responsible for developing visions, missions, and goals for each of OHA's legacy and programmatic properties. From those visions, missions, and goals, the program is tasked with creating and implementing comprehensive management plans, strategies, and action plans that, among other things, honor the cultural and ecological significance of the land and its cultural/lineal descendants; and enable bridging traditional Hawaiian values, guiding principles, and historic uses of the land with current and future land use patterns.

The Standard Operating Procedures include a section concerning individual, community, or group "stewarding" of OHA property. The section describes OHA's relationship with its stewards as "contractual" and requires that the relationship always be "in the best interest of the property and OHA's mission." While the form of the contractual relationship is not prescribed, the Standard Operating Procedures do require that the contractual relationship "clearly outline the responsibilities of both OHA and the steward and indemnify OHA of any liability that may result from the actions of the steward." According to the procedures, it is the Legacy Land Program agent's responsibility

to manage the steward “on a day-to-day basis and ensure the steward is being compliant with the stewardship agreement.”

Stewardship agreements contain provisions to protect OHA from liability arising from the stewards’ activities.

OHA reported that four of the properties under the Legacy Land Program have stewards: the Pahua Heiau in Maunaloa, O‘ahu; the Waialua Courthouse in Hale‘iwa, O‘ahu; the Palauea Cultural Preserve in Kīhei, Maui; and the Kūkaniloko birthstones in Wahiawā, O‘ahu. OHA has a contract with the steward for the Pahua Heiau; the agreements with the stewards for the Palauea Cultural Preserve and the Kūkaniloko birthstones are in the form of a non-exclusive right-of-entry; and OHA’s arrangement with the steward for the Waialua Courthouse is verbal, not written.

We reviewed the contract for the Pahua Heiau and the right-of-entry agreements for the Palauea Cultural Preserve and the Kūkaniloko birthstones. We determined that the terms in those documents were consistent, generally, with the stated purpose of the Legacy Land Program, which is to manage, maintain, and monitor OHA’s legacy landholdings in a risk averse and meaningful way. The provisions in those documents comported with the broad requirement that the responsibilities of OHA and the steward be outlined in the agreements and that OHA be protected from liability arising from the steward’s actions on the property. For example, the contract with Digital Moku includes a Scope of Services section describing the education and outreach as well as the vegetation and landscape management responsibilities of the steward; it also incorporates OHA’s General Conditions, which require, among other things, that Digital Moku “defend, indemnify and hold harmless OHA” and maintain specific amounts and types of insurance. Digital Moku must name OHA as an additional insured on the required policies and provide current certificates of insurance as evidence of its compliance.

Similarly, the two one-year agreements executed with the Hawaiian Civic Club of Wahiawā granting a non-exclusive right-of-entry to enter Kūkaniloko include a paragraph describing the allowable activities on the property; in another paragraph the steward acknowledges others have the right to enter and use the property with OHA’s approval and the Hawaiian Civic Club of Wahiawā agrees not to interfere. Other paragraphs require the steward to defend, indemnify, and hold OHA harmless from claims and damages arising out of its use of the property; to be responsible for damages to the property arising out of its use; to maintain certain insurance coverage naming OHA as an additional insured; and to provide a certificate of insurance that demonstrates the steward’s compliance with the insurance requirements. The agreement

with the University of Hawai‘i relating to the Palauea Cultural Preserve is similar, although certain provisions were modified because of the University’s status as an agency of the State of Hawai‘i. For example, according to the agreement, the University is not authorized to indemnify, defend, or hold OHA harmless, and for that reason, those provisions in the agreement were deemed to be “null and void.”

Moreover, the contract and the right-of-entry agreements are one-year arrangements and require reporting by the stewards of their activities on the properties. The one-year term of the agreements and reporting requirements appear to be a reasonable means for OHA to periodically review and ensure that the steward used and maintained the property as intended, consistent with the Legacy Land Program’s stated purpose – i.e., to manage, maintain, and monitor OHA’s legacy landholdings in a risk averse and meaningful way.

OHA does not ensure compliance with stewardship agreements.

While the written agreements seem to provide reasonable assurance that the lands are managed, maintained, and monitored in a risk averse and meaningful way – the stated purpose of the Legacy Land Program – OHA’s management of those agreements and its oversight of the stewards has been, at best, negligent and inconsistent with the Standard Operating Procedures, and it raises questions about whether trustees are fulfilling their statutory responsibilities and fiduciary duties with respect to those properties.

OHA’s agreement with one of its stewards was oral and undocumented.

Before describing OHA’s oversight of the three stewards operating (at least for some portion of our audit period) under written agreements, we first are compelled to question OHA’s stewardship arrangement with the Waialua Civic Club, its steward of the Waialua Courthouse property. Throughout the three-year period of our audit (2019 through 2021), OHA’s stewardship arrangement with the Waialua Civic Club was an oral, undocumented agreement.

OHA acquired its interest in the Waialua Courthouse in 1998 through a 35-year lease with DLNR. The CEO told us that DLNR “just sent” the property to OHA along with Ho‘omana and Kekaha Armory, both programmatic properties on Kaua‘i, speculating that there must have been a relationship between the OHA board chair and the chairperson of the Board of Land and Natural Resource. She characterized the history of the leases with DLNR, saying “OHA just seemed to be a dumping ground.” The CEO questioned whether the Waialua Courthouse

property was “strategically” aligned with the Legacy Land Program’s purpose and said she had asked the Land Director “to really look at the legacy portfolio to see if it can be given back to DLNR.”

Whether or not the Waialua Courthouse aligns with OHA’s vision, OHA’s lease extends for another decade, through March 31, 2033. While OHA may not consider the property to be culturally significant, it does recognize the historic significance of the building and, under the terms of the lease, OHA has significant responsibilities to protect and maintain the property. Moreover, OHA may be responsible and liable for damages to the property and people arising from its steward’s use of the property.

OHA’s willingness to allow the steward to use the property based solely on an oral arrangement does not align with the Legacy Land Program’s stated purpose of monitoring, managing, and maintaining the program’s lands in a risk averse and meaningful way, consistent with OHA’s vision, mission, and strategic priorities or with the provisions in the Standard Operating Procedures relating to stewards. The Standard Operating Procedures direct that the relationship between OHA and a steward is a “contractual” one, intended to “clearly outline the responsibilities of both OHA and the steward” and to ensure that OHA is indemnified of any liability that may arise from the steward’s actions.

While an oral arrangement arguably may be “contractual,” it is not the type of agreement required by the Standard Operating Procedures; rather than managing the property in a risk averse way, OHA’s risk is heightened without documentation to avoid misunderstandings or miscommunications about OHA’s expectations and the steward’s responsibilities; it does not protect the property from damage or OHA from potential liability caused by the steward’s use. We question how OHA, an organization with more than \$800 million in assets, can operate such a significant program in such a seemingly careless manner, one that places its property and OHA’s trust assets at risk. That same question continues to be raised in our discussion of OHA’s management of its written stewardship agreements and oversight of those stewards below.

OHA allowed stewards to use its properties despite unclear or lapsed agreements.

While OHA had written agreements with its other stewards for at least some portion of our audit period, we found that OHA does not actively manage those agreements or consistently enforce terms that are specifically intended to protect both the property and OHA. In fact, in one instance, it is unclear what terms were actually agreed upon by OHA and the steward. Moreover, as already noted, OHA allowed

stewards on one legacy property for the duration of our three-year audit period but executed no stewardship agreement with those stewards for the entire three years, while two other legacy properties were not covered by stewardship agreements for extended periods during our audit period. (See Exhibit 5 on page 60.) Yet, OHA allowed the stewards to continue their use of the respective properties.

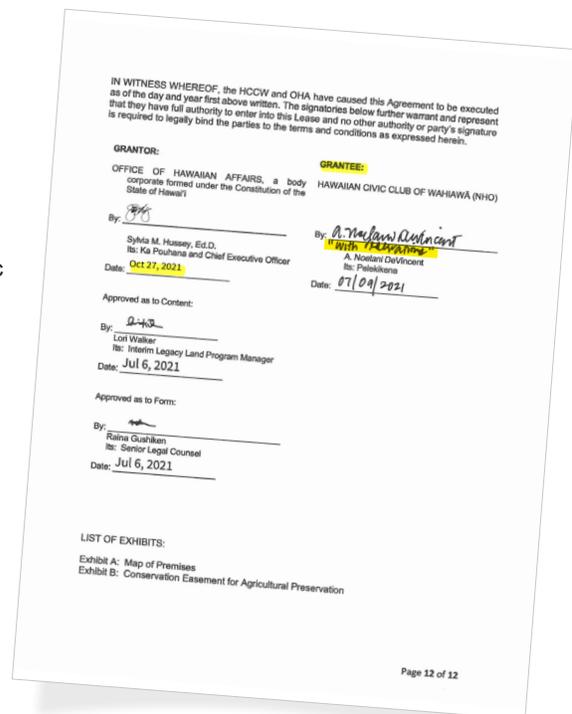
OHA entered into an agreement that a steward signed “with reservations.”

For parts of our audit period, OHA had stewardship agreements with the Hawaiian Civic Club of Wahiawā, granting it a non-exclusive right-of-entry to Kūkaniloko for cultural and educational purposes. As previously described, Kūkaniloko is one of the most sacred places in Hawai‘i for Native Hawaiians, the “piko” (center or navel cord) of O‘ahu.

On one of the two agreements, below the signature of the Hawaiian Civic Club of Wahiawā is a handwritten notation: “WITH RESERVATIONS.” That agreement, dated July 1, 2021, was executed by the Hawaiian Civic Club of Wahiawā on July 9, 2021. OHA signed the agreement more than three months later on October 27, 2021, apparently agreeing to the “reservations.” However, it is unclear what “with reservations” means; the document is silent as to what the Hawaiian Civic Club of Wahiawā intended by the notation or what OHA understood and agreed to.

**Exhibit 4
Reservations Accepted**

OHA ENTERED into a stewardship agreement with the Hawaiian Civic Club of Wahiawā after it signed that agreement “with reservations.” It is unclear what “with reservations” means; the document is silent as to what the Hawaiian Civic Club of Wahiawā intended by the notation or what OHA understood and agreed to.



Report source: Office of Hawaiian Affairs

When we asked OHA’s Interim General Counsel what “with reservations” meant, he told us that the Hawaiian Civic Club of Wahiawā’s position is that its members have genealogical ties not just to the birthstones site but to the larger surrounding areas; he said the club members believe their genealogical ties, which predate statehood, trump any kind of formal title or other means of establishing ownership or management interest in those properties. The Interim General Counsel said he believes that signing the agreement “with reservations” is how the group reconciles their position regarding what they believe to be their superior rights to these properties with wanting to maintain their ties to those areas.

According to the Interim General Counsel, “with reservations” is a kind of “middle ground” that allows the group to continue to work with OHA, given their strong ties to the site. He believes that the group sees it as their way of not relinquishing prior or other claims by signing the agreement.

While we recognize OHA may believe it is appropriate to acknowledge and be sensitive to the Hawaiian Civic Club of Wahiawā and its members’ belief that they have an interest in and a right to use the Kūkaniloko birthstones and surrounding property, trustees have the legal responsibility of a fiduciary in the management of OHA and its assets, which means they must act prudently by exercising reasonable care and caution to protect trust assets. Kūkaniloko and the surrounding property are under OHA’s management and control. As such, OHA should dictate the conditions for their use – not the steward. In choosing to maintain the status quo by entering into an agreement with the steward “with reservations,” OHA introduced ambiguity to the agreement. That raises questions about how those “reservations” affect the agreement – what are the steward’s reservations, and what terms, if any, apply to the steward’s use of the property?

OHA’s reluctance to address this issue with the steward, acquiescing to a so-called “middle ground,” is emblematic, in a way, of OHA’s management of the agreement and lands. We report below that the steward denied OHA and our audit team access to the property, notwithstanding the steward’s acknowledgement in the right-of-entry agreement that others have the right to enter and use the property with OHA’s approval and that the steward will not interfere with that use and enjoyment of the property.

OHA failed to renew its stewardship agreements, which outline basic management requirements.

We also found that two of the three written arrangements OHA had with legacy lands stewards during our audit period had significant gaps, meaning there were extended periods during which OHA allowed those stewards to use its properties – all deemed to be culturally significant by OHA – without *any* agreement. Specifically, during our 3-year audit window, stewards on those legacy properties were not covered by stewardship agreements for a cumulative total of 35 months – almost 3 years. The Hawaiian Civic Club of Wahiawā, stewards of Kūkaniloko, did not have any agreement with OHA for 21 months of our 36 month audit period.

Exhibit 5 below shows the periods, or gaps, when stewarded properties lacked stewardship agreements.

**Exhibit 5
Office of Hawaiian Affairs Gaps in Written Agreements for Legacy Landholdings with Stewards**

Property (Steward)	Agreement Term	Gap Period (Duration)
Pahua Heiau (Digital Moku)	Jun 2018 – Apr 2022	None
Kūkaniloko (Hawaiian Civic Club of Wahiawā)	Jun 2019 – Jun 2020 Nov 2021 – Jun 2022	Jan 2019 – May 2019 (5 mos) Jul 2020 – Oct 2021 (16 mos)
Palauea Cultural Preserve (UH Maui College)	Jul 2018 – Oct 2020	Nov 2020 – Dec 2021 (14 mos)

Source: Office of the Auditor

OHA told us that some stewards were absent from some of the legacy lands during a portion of the COVID-19 pandemic. The gaps in agreements, however, did not correspond exactly with the COVID-19 lockdowns, which were first ordered by the Governor starting at the end of March 2020. Moreover, there were significant periods when stewards were on, or permitted to be on, the legacy properties without a stewardship agreement.

No matter the cause, the absence of an executed stewardship agreement very simply means that there is no agreement; there are no terms to govern the expectations and responsibilities of OHA and the stewards; there are no terms that are enforceable; and both the property and OHA are at risk. Those failures by OHA to ensure that stewards were covered by stewardship agreements and complying with their requirements result in what the Land Director admitted was significant risk or liability for OHA.

Stewardship groups lacked required certificates of liability insurance for significant portions of three calendar years.

Even when OHA and its steward had a signed agreement, we found that numerous contractual terms and conditions in the agreements were not consistently enforced by OHA. For example, similar to the missing stewardship agreements, gaps in mandated insurance coverage plagued the stewarded legacy lands.

For the three-year audit period, OHA did not have copies of the certificates of insurance showing that stewards were continuously covered by insurance and, as importantly, that OHA was covered under the stewards' policies. Those certificates of insurance evidence that a steward has both the type and the amount of insurance coverage to minimize the risk to the legacy property as well as to OHA. As noted above, the contract with Digital Moku, the steward for the Pahua Heiau, and the right-of-entry agreement with the Hawaiian Civic Club of Wahiawā, the steward for Kūkaniloko, not only include provisions requiring insurance, but also require the stewards to provide OHA with certificates of insurance showing the required insurance coverage and to name OHA as an additional insured.

Exhibit 6 below shows the periods for which OHA had and did not have certificates of insurance for each of its properties with stewards, excluding the Palauea Cultural Preserve whose steward is the University of Hawai'i. The right-of-entry agreement for the Palauea Cultural Preserve does not require the University of Hawai'i to procure insurance, and because it is a state agency, the University is not authorized to indemnify, defend, and hold OHA harmless.⁸ We included the Waialua Civic Club, OHA's steward for Waialua Courthouse, in the list below; however, because that arrangement is oral, we are unclear whether the Waialua Civic Club is required to procure insurance under its agreement. As reflected below, the missing certificates of insurance were for a cumulative period of 54 months – almost 4.5 years.

⁸ Insurance certificates were required by the Preserve's stewardship agreement only when "university agents" (as distinct from university employees) were using the property. OHA reported that no university agents were on the property in the last three years. Nonetheless, the Preserve had insurance coverage gap issues, albeit of a different kind. Authorized university students and selected high school students were permitted on the property as guests. OHA's legacy land procedures require that "all guests that OHA authorizes to enter OHA property should sign a waiver." Those procedures even give an example: "If a school group visits" a particular legacy land, "the school should sign a right-of-way entry agreement and each attendee on the trip should sign a waiver." OHA admits it does not require waivers or personal indemnification agreements for the students visiting the Palauea Cultural Preserve.

**Exhibit 6
Office of Hawaiian Affairs Gaps in Certificates of Insurance for
Legacy Landholdings with Stewards**

Property (Steward)	Insurance Coverage	Gap Period (Duration)
Pahua Heiau (Digital Moku)	Jan 2019 – Dec 2021	None*
Waialua Courthouse (Waialua Civic Club of Hawai'i)	None	Jan 2019 – Dec 2021 (36 mos)
Kūkaniloko (Hawaiian Civic Club of Wahiawā)	Jul 2019 – Jun 2020 Jul 2021 – Jun 2022	Jan 2019 – Jun 2019 (6 mos) Jul 2020 – Jun 2021 (12 mos)

Source: Office of the Auditor

*Note: Three days before we were scheduled to publish this report, and four days after our exit conference, OHA provided us with additional certificates of insurance (COI) for Digital Moku – certificates that OHA could not locate or provide to us last June when we asked for them. In response to these sudden, last-minute submissions, we asked OHA to provide us with an explanation of how, when, and where the COIs were located by OHA, together with the dates on which OHA received each COI. OHA did not respond. Prior to the last-minute submissions, we showed an insurance gap for Digital Moku of 23 months. In light of the submissions, we have changed Exhibit 6 to show no gap for that steward, and we have adjusted cumulative totals in the text accordingly.

While a steward’s failure to provide the certificate of insurance does not necessarily mean the steward did not have the required insurance, it does mean that OHA has no means to confirm – or even know – whether the steward had complied with the insurance requirements in the stewardship agreement. Providing OHA with current certificates of insurance is *required* by the agreements; it is not discretionary. In fact, OHA regards the failure to provide it with current certificates of insurance as a material breach of the stewardship agreements. To put that in perspective, the gaps during which OHA did not have certificates of insurance (summarized in Exhibit 6 above) constitute 77 cumulative months of material defaults left unaddressed by OHA.

OHA failed to enforce various additional terms in the stewardship agreements.

We also found that OHA failed to require stewards to abide by other provisions of the stewardship agreements. The examples are numerous, only some of which we describe below.

The agreement governing the Palauea Cultural Preserve requires quarterly reports to OHA. OHA admits no such reports were provided. The same stewardship agreement requires a detailed use plan and a maintenance plan, both to be approved in writing by OHA prior to the University of Hawai'i Maui College using the property pursuant to the stewardship agreement. Neither a use plan nor a maintenance plan was provided to OHA – nor did OHA require these plans to be produced.

In our review of the right-of-entry agreements with the Hawaiian Civic Club of Wahiawā, the steward for Kūkaniloko, we found many instances where OHA did not enforce the terms of the agreements.

1. The right-of-entry agreements allow the steward to trim existing vegetation and to clean up the property; however, they also prohibit the steward from removing trees without first obtaining written approval from OHA. The agreements also prohibit the steward from constructing improvements of “any kind or nature” on the property without OHA’s express prior written consent.

OHA discovered that the Hawaiian Civic Club of Wahiawā had planted trees in what OHA initially thought was the firebreak that OHA had cleared. It is unclear whether the steward had requested, and OHA had given, prior written approval to plant the trees. But if OHA had given the Hawaiian Civic Club of Wahiawā the required prior written permission for planting trees, we question the adequacy of OHA’s oversight of the stewards and the project. Alternatively, if OHA had not given the required prior written permission for the tree-planting, and yet the Hawaiian Civic Club of Wahiawā had gone ahead with the project, we again question OHA’s oversight of the stewards.

Similarly, the steward brought boulders from the Koa Ridge residential development in Waipio and deposited them on the property for the apparent purpose of constructing a rock wall. The Land Director told us that there is no historic evidence of the prior existence of a rock wall on the Kūkaniloko birthstones land, that Koa Ridge where the rocks came from is not the same ahupua‘a as Kūkaniloko, and that the issue about the rock wall had led to struggles with OHA’s conceptual master plan for the property.

The fact that the Hawaiian Civic Club of Wahiawā nonetheless planted trees suggests that OHA is not exercising adequate oversight over, and enforcement of, the terms in the stewardship agreements. In addition, if such activities occurred within the gap periods when no stewardship agreement was in place, or in the gap periods when the Hawaiian Civic Club of Wahiawā had no insurance coverage, then OHA’s failure to exercise adequate oversight and management of the steward might have resulted in damage to the property or significant risk of liability to OHA.

2. The stewardship agreements require the Hawaiian Civic Club of Wahiawā to submit to OHA a written report that details the steward’s use of the legacy property at the end of the one year term of the agreement. That report is supposed to include, at a minimum, the dates and times of each use of the property, a

description of the activity, the outcome or results of the activity, and the number of participants. As we noted previously, the reporting requirement appears to be a means for OHA to assess whether the steward's use of the property over the past year was consistent with OHA's vision, the right-of-entry agreement, and the overarching purpose of OHA's Legacy Land Program. No such reports were provided. OHA's lax enforcement of the reporting requirements and other contract terms effectually cedes some authority to stewards that OHA, as landowner and fiduciary, should retain for itself. Inadequate oversight also introduces unnecessary risk that these wahi pana – the sacred and celebrated lands that OHA is committed to preserve and protect – could be misused or damaged.

3. The stewardship agreements grant the Hawaiian Civic Club of Wahiawā “a non-exclusive right of entry to enter upon the premises.” That non-exclusive right is explained in paragraph 9 of the agreement, entitled “Acknowledgement of Use by Other Persons.” In that paragraph, the Hawaiian Civic Club of Wahiawā “acknowledges” that others have the right to enter and use the property and that the Hawaiian Civic Club of Wahiawā “shall not otherwise interfere with their use and enjoyment of the property.” Another part of the agreement requiring the steward to exercise due care and diligence also requires the steward to not interfere with the activities customary to OHA's operations.

On September 7, 2021, our audit team attempted to visit Kūkaniloko, accompanied by OHA's Land Director, acting Legacy Land Manager, and two of its Legacy Land Agents. Upon arrival, the Land Director informed the group that the Hawaiian Civic Club of Wahiawā was prohibiting the group from visiting the birthstones site and Piko zone. According to the steward, bad mana was present at the two sites in the morning prior to arrival. Consequently, the visit was limited to the Kupu zone, a 23-acre portion of a larger 511-acre site used for experimental tree crops. After touring the Kupu zone, the audit team asked the Land Director whether sufficient time had lapsed for the negative mana to leave the birthstones site. The Land Director responded, “Uncle didn't think so.”

OHA granted the Hawaiian Civic Club of Wahiawā a *non-exclusive* right-of-entry; the agreement does not give the steward the exclusive right to the property, nor the power to exclude anyone approved by OHA to be there, least of all OHA itself. Nevertheless, OHA's Land Director, who had planned to visit the birthstones site himself, accepted the steward's decision to deny access to the property. At least on that day, OHA refused

to enforce the unambiguous terms of the stewardship agreement; OHA allowed the steward to ignore those terms and to refuse OHA – the agency tasked by law to control and manage the property – access to the property.

As these examples illustrate, some of the responsibility for failures to enforce the terms of the stewardship agreement belongs to the Land Agents, who are charged under the program’s standard operating procedures with managing “the steward on a day-to-day basis,” ensuring “the steward is being compliant with the stewardship agreement,” and managing “the activities of the steward throughout the term” of the agreements. As for the failure to initiate or renew written stewardship agreements, or to ensure stewards are covered by current insurance, with the certificates of insurance on file with OHA, the responsibility for that may belong elsewhere – perhaps with those charged with the responsibility for overseeing the Land Agents, namely, the Integrated Assets Manager and the Land Director. The problem appears to stem partly from lax or negligent enforcement of stewardship agreement terms and partly from the program’s standard operating procedures, which do not assign responsibility with sufficient clarity for timely initiating and renewing of the agreements and also for ensuring the certificates of insurance that evidence current insurance.

Program staff’s confusion over roles and responsibilities contributed to lack of oversight of stewards and their compliance with stewardship agreements.

Despite Legacy Land Program provisions assigning responsibility to Legacy Land Agents for managing stewards’ compliance with stewardship agreements, we found that OHA staff have different understandings as to who is responsible for administering or managing stewardship agreements, including who has responsibility to ensure each one-year stewardship agreement is initiated and renewed in a timely fashion and who has responsibility to ensure stewards provide current certificates of insurance.

We spoke to the Interim General Counsel and the Land Director about who is responsible for ensuring that the stewards have valid agreements before allowing them to access and use the properties. The Interim General Counsel acknowledged that OHA incurs potential liability when the stewards are conducting activities on OHA legacy land properties without the benefit of a stewardship agreement. But he noted that gaps in the agreements would need to be brought to his office’s attention by others, and he stated that responsibility would fall to staff who are overseeing the contracts. He also told us he was unaware that there were any gaps in the coverage of the stewardship agreements during our three-year audit window. When we spoke to the Land Director, he

told us he believed the General Counsel's office would be responsible for checking whether there is a current certificate of insurance for each steward and making sure it is updated. He also stated that the Legacy Land Agents would be responsible for noticing gaps in the stewardship agreements and notifying the General Counsel's office. After that, he said, it would be the responsibility of the Integrated Assets Manager and, finally, his own responsibility.

Given the sizable number and length of the recurrent gaps in stewardship agreements and in insurance coverage, we found that the lines of authority and responsibility concerning the task of renewing stewardship agreements and verifying current certificates of insurance were either unclear, insufficiently defined, or poorly understood. OHA lacks policies and procedures that define with sufficient clarity and precision the roles and responsibilities of the Legacy Land Agent, the Legacy Land Manager, the Integrated Assets Manager, the General Counsel, or others with respect to the management and oversight of the stewards and the stewardship agreements – especially with regard to the need to initiate and renew written stewardship agreements and to ensure current steward-provided liability insurance. In short, OHA must take a more active role in overseeing and managing its stewards, stewardship agreements, and legacy properties, which includes providing clarity to all parties about their roles and responsibilities to ensure that nothing falls through the cracks and that use of OHA's properties does not increase the agency's liability risk. More direct oversight and involvement would also help ensure that the activities of the program and its stewards align with OHA's vision, mission, and strategic priorities, which will better protect its legacy properties and its trust assets.

Conclusion

In “Why It’s Time for OHA to Develop Kaka’ako Makai,” an article in the March 2021 issue of OHA’s newsletter, the *Ka Wai Ola*, an OHA trustee writes how Kaka’ako Makai was intended to be an economic engine, generating significant wealth for the betterment of Hawaiians. However, the trustee points out that, after years of planning, virtually no development has taken place at Kaka’ako Makai. In contrast, just across the street sit private developers’ “carefully planned and skillfully executed” projects. Later in the article, the trustee announces that the board has recently established a special committee to investigate the development of policies and strategies relating to OHA’s Kaka’ako Makai properties. The action, he writes, “reflects a shared sense of urgency among the Trustees to realize the potential of Kaka’ako Makai to produce needed revenues for Hawaiians.”

We are unfamiliar with this special committee and its work, but we are very familiar with the stasis of OHA’s land programs and its subsequent calls for action and reform.

In 2007, the OHA Board of Trustees adopted its Real Estate Vision, Mission, and Strategy Policy (Real Estate Vision), a guiding document for land acquisitions that articulated OHA’s mission, vision, strategic goals, and priorities. The Real Estate Vision was part of an effort to establish policies intended to put OHA on a solid financial footing in anticipation of subsequent real estate transactions, such as the acquisition of Kaka’ako Makai. Chief among the measures the Real Estate Vision called for was the establishment and adoption of a Real Estate Strategy, a Real Estate Business Plan, or a Real Estate Investment Policy, the components of a policy infrastructure that OHA would later collectively identify as a “guiding principle” for its land program.

Five years later, OHA significantly expanded its land portfolio with the acquisition of Kaka’ako Makai along with the Gentry Pacific Design Center (now known as Nā Lama Kukui) as well as other non-commercial properties. OHA did so without its promised Real Estate Strategy, a Real Estate Business Plan, or a Real Estate Investment Policy. In Report No. 13-07, *Audit of the Office of Hawaiian Affairs and Report on the Implementation of State Auditor’s 2009 OHA Recommendations*, released in September 2013, we noted the lack of such an organizational infrastructure and concluded that the pursuit of real estate acquisitions without adequate criteria and policies increased the risk that the acquisitions would not comport with OHA’s land strategy at a time when the office was pursuing a larger role as a landowner.

Following our 2013 audit, the board adopted OHA's Committee on Land and Property Policy Guidelines (2014), which reiterated the necessity for establishing a Real Estate Strategy, a Real Estate Business Plan, and a Real Estate Investment Policy, all crucial components identified seven years earlier. According to OHA, these critical and foundational elements to its Commercial Property Program are supposed to guide land acquisition, disposition, as well as the management and use of the land it has acquired. However, OHA never followed through on its own directive, despite claims to having done so.

In October of 2021, OHA purchased \$47 million in commercial property at 500 N. Nimitz together with a partial interest in the adjacent Iwilei Business Center, which consisted of three industrial condominium units. We are unclear how OHA was able to consider, let alone authorize, such a significant investment without the guiding principles and the criteria that come with them. As with other OHA land acquisitions, there is no clear, board-approved direction as to how those properties fit in any real estate strategy, investment strategy, or other plan. More significantly, despite its stated intent to redevelop the properties in the future, OHA appears to have little understanding of the feasibility or the potential costs to do so.

OHA's scant progress in Kaka'ako Makai helps illustrate the consequences of acquiring and managing land without real estate policies and long-range plans to provide direction to existing and future trustees and administrators. OHA is on its fifth board chairperson and second CEO since accepting the Kaka'ako Makai settlement a decade ago and, amid those shifts in leadership, has retained three different teams of consultants for separate planning efforts. By the end of our audit window, OHA had spent more than \$6.5 million on consulting contracts – one of which was flagged as potential waste in a forensic review – and had no conceptual master plan to show for the expense. Moreover, we found OHA's desire to include prohibited residential development in its Kaka'ako Makai plans to be a significant obstacle; thus far OHA has prioritized lobbying the Legislature for residential entitlements rather than developing a plan based on allowed uses.

Regarding the Legacy Land Program, when we analyzed its policies and procedures, we found that OHA's lax oversight and management of its legacy land stewards and stewardship agreements increase the risk that culturally significant properties "core" to OHA's mission may be misused. For three of its four legacy lands – i.e., the significant cultural lands – OHA has developed written stewardship arrangements with community groups that allow those groups to use and maintain the properties. While the form of the written agreements governing those arrangements seems in line with the Legacy Land Program's purpose and its Standard Operating Procedures, OHA simply does not

consistently require its stewards to comply with all the terms of their agreements; and OHA does little, if anything, to enforce a number of those terms. Moreover, we found OHA allowed stewardship agreements to lapse, meaning stewards continued to use the legacy properties without *any* valid agreement. Consequently, OHA's approach in managing those arrangements and overseeing its stewards has created unnecessary risk to the properties and to OHA.

Since as early as 2007, OHA has been aware of the general necessity of establishing elemental policies and criteria that guide land acquisitions, dispositions, development, management, and use of real property it has acquired. Such policies and criteria are required by OHA's own bylaws. They are the guideposts and guardrails that are supposed to provide OHA with direction and guidance and apply to all aspects of OHA's land activities, whether it is the development of Kaka'ako Makai, the purchase of additional commercial properties, or management, acquisition, and disposition.

OHA considers land to be of utmost importance to Native Hawaiians, and core to the Hawaiian worldview. As we did nearly a decade ago, we urge OHA to establish the essential, foundational policy infrastructure on which all its land policies and procedures should be based.

Recommendations

OHA's Board of Trustees should:

1. Develop and adopt policies that align with OHA's statutorily required strategic plan to guide OHA's decisions relating to real property that include:
 - a. Goals and objectives of OHA's ownership or control of real estate, generally.
 - b. Goals and objectives of each type or classification of real estate defined by OHA. OHA defines its real estate landholdings as a variety of property types, including (1) corporate real estate; (2) investment property; (3) legacy lands; and (4) programmatic lands. As such, our recommendations below are relevant to these four property types as defined by OHA.
 - c. See Real Estate Vision, Mission, and Strategy Policy adopted in 2007; Committee on Land and Property Policy Guidelines adopted on July 3, 2014; and Board of Trustee Bylaws approved March 2020.
 - d. The allocation of each property type in relation to OHA's overall real estate portfolio.
 - e. Criteria relating to acquisition for each property type which should include, for example, location (e.g., local, national, international) and other considerations (e.g., land area, zoning, availability of infrastructure, development potential, environmental issues, etc.)
 - f. Criteria relating to use of each property type (e.g., no golf courses, etc.)
 - g. Criteria relating to the return on investment, as applicable, for each property type (e.g., rates of return, etc.)
 - h. Criteria relating to disposition of each property type (e.g., hold/sell analyses, etc.)
 - i. For property types whose goals and objectives include development, criteria relating to development of each property type (e.g., current land use, development potential, utilities, access, etc.)
 - j. Criteria relating to the funding of real property acquisitions (e.g., favorable financing, etc.)

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2. Develop and continually update OHA's strategic plan to include an account of OHA's program and administrative structure as required by Section 10-6(a)(1), HRS.
 3. Develop and implement a conceptual master plan for OHA's Kaka'ako Makai lands.
 4. Develop and implement long-range plans for each real property in which OHA has an interest.

OHA's Administration should:

1. Develop documented procedures to implement board-approved policies relating to real property.
2. Prohibit stewards from using OHA property without a valid agreement.
3. Require all agreements with stewards using OHA property to be in writing, with all terms and conditions contained in the agreement.
4. Require stewards to comply with all terms and conditions of agreements.
5. Review and assess stewards' use of OHA property and compliance with the agreement at the end of each term.
6. Develop criteria to determine whether to enter into an agreement, including renewing or extending an agreement, with the steward relating to OHA property.
7. Develop written procedures that assign and describe the responsibilities of OHA managers and staff relating to the oversight of the stewards and management of the agreements with those stewards for use of OHA property. The purpose of the procedures should be to, among other things, monitor stewards' compliance with the terms and conditions of the agreements, including the use of the property, as well as to ensure stewards do not use OHA property without a valid agreement.
8. Develop written procedures to address and enforce non-compliance with the terms and conditions of agreements (e.g., notices of default, eviction, etc.)
9. Develop written procedures or other internal controls that allow and

require regular review by a supervisor or other management personnel of assigned staff's oversight of the stewards and management of the agreements to ensure that assigned staff are performing their responsibilities as management intended.

10. Develop and implement written procedures to ensure that copies of board policies and other OHA procedures maintained by trustees, administration, and other staff are current, up-to-date, and complete (i.e., all approved amendments and other revisions compiled in one document).

Office of the Auditor's Comments on the Office of Hawaiian Affairs' Response to the Audit

WE TRANSMITTED a draft of this report to the trustees and the Chief Executive Officer of the Office of Hawaiian Affairs (OHA) on February 16, 2023. We met with the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, the Interim General Counsel, and other OHA staff to discuss the draft on March 3, 2023. OHA subsequently provided its written response to the draft report along with five attachments, all of which are included in their entirety as Attachment 1.¹

The majority of OHA's response is unrelated to and does not address the draft audit findings. Instead, OHA provides what it characterizes as "background and context," recites the audit's timeline, and describes subsequent actions that it seems to suggest have addressed some of our findings. In the portion that does relate to the draft, many of OHA's comments are non-substantive, involving the word or words that OHA prefers. We do not agree with OHA's word choices. We also do not believe it is meaningful to address or otherwise respond to each of OHA's non-substantive comments about the report. We are confident that the report is supported by sufficient and appropriate evidence, and the words we use are accurate and fitting. We do address OHA's substantive comments below as well as some of the other information in OHA's response. We have revised the report based on some of OHA's comments, which we note below. However, it is important to recognize that OHA does not dispute the findings themselves.

¹ The response says that it is by the trustees and the Chief Executive Officer. ("The Office of Hawaiian Affairs' ('OHA') Trustees and the Chief Executive Officer ('CEO') are pleased to respond to the DRAFT Report of the Audit of the Office of Hawaiian Affairs.") We are compelled to question how the trustees discussed the draft report and their response outside of a properly noticed meeting, which the Sunshine Law, Chapter 92, Hawai'i Revised Statutes, seems to require. While the agenda for the board's meeting on February 23, 2023, includes "Exit Conference with State Auditor, Leslie H. Kondo re: 2021 Performance Audit," the Chairperson told us that the board was not able to meet with us as part of that meeting and recommended that we discuss the draft report with the Chief Executive Officer and her staff, which we did. The board has not posted an agenda for a meeting since its February 23 meeting, and neither of the board's committees have included the audit on their respective meeting agendas.

“Background and Context”

In its response, OHA says that it is providing “background and context for the Board of Trustees (‘BOT’), the organization, beneficiaries, and the general public.” That “background and context” consist entirely of an incomplete list of audits and other reports issued by the Office of the Auditor as well as financial statement audits performed by others. OHA’s purpose in including this material is not entirely clear. We presume OHA is not including the information to purposely suggest that the other audits and reports somehow refute or otherwise minimize the current audit findings. Whatever its purpose, information concerning the prior audits and other types of reports, which include a statutorily mandated review of OHA’s special, revolving, and trust funds, are unrelated and irrelevant to the current audit. For that reason, those prior audits and reports provide no background or context that would help anyone’s understanding of the current audit or its findings.

The background and context relevant and important for trustees, the administration, beneficiaries, and others to understand are in the audit report. For the sake of clarity and precision, we repeat below the relevant background and context about OHA’s years-long promises to establish and adopt a real estate strategy and other foundational policies to guide its real estate activities.

- **In 2007, the board approved OHA’s Real Estate Vision, Mission, and Strategy Policy (Real Estate Vision).** That board-approved policy was intended to describe OHA’s real estate vision and strategy, including, among other things, the board’s intent that it and OHA staff “will model Best Practices in all OHA Property Involvements.” It also identifies the **OHA Real Estate Strategy** whose implementation is supposed to be guided by the **OHA Real Estate Business Plan** and the **OHA Real Estate Investment Policy**. The Real Estate Vision says that “OHA shall prioritize resource allocation by adopting a **Real Estate Asset Allocation Model**” to include OHA’s legacy lands, corporate real estate, programmatic lands, and investment lands. In the section entitled “Mandatory Property Standards,” the Real Estate Vision states, “Every Property Involvement shall be considered in light of and be consistent with the Real Estate Asset Allocation Model and specific decision criteria.” **More than a decade and a half later, OHA still has not developed those strategies, policies, and models referred to in the board’s Real Estate Vision.**
- **In 2012, the board revised its *Executive Policy Manual*,** which is described as a reference document and management tool “designed to provide quick and easy access to OHA Bylaws and policies.” It also notes that “it is the responsibility of the [board] to consider

and set policies for OHA.” Similar to the Real Estate Vision, the *Executive Policy Manual* identifies, by name, policies intended to guide OHA’s “land acquisition and management.” Specifically, the *Executive Policy Manual* directs that “OHA shall have a distinct [board] approved ‘**Land Acquisition and Management Policy**’ with its own review and maintenance schedule” whose purpose “is to provide guidelines for OHA’s acquisition and management of land and to ensure alignment of land acquisition and management with the State Constitution, statutes, the policies established and guiding OHA, as well as the OHA Strategic Plan.” The *Executive Policy Manual* also refers to a board-approved **OHA Investment Policy** and a board-approved **Risk Management Policy** “to assist in decision making processes that will minimize potential losses, satisfy the Hawai‘i Uniform Prudent Investor Act (Chapter 554C, HRS), improve the management of existing uncertainty and the approach and priorities to new opportunities, thereby helping to maximize OHA’s available resources.” The sections of the *Executive Policy Manual* describing these policies refer the reader to appendices that presumably contain the actual policies: “See Appendix 3” (OHA Investment Policy); “See Appendix 4” (Risk Management Policy); and “See Appendix 5” (Land Acquisition and Management Policy). **Appendices 3, 4, and 5 are blank pages. None of those policies existed then or exist now.**

- **In 2013, we issued Report No. 13-07, *Audit of the Office of Hawaiian Affairs and Report on the Implementation of State Auditor’s 2009 OHA Recommendations*.** We found OHA’s land management infrastructure was inadequate, unable to support OHA’s growing real estate portfolio or any future land involvements. The report concludes that without the policies, procedures, and staff to help guide and support OHA’s increased real estate activities, the board cannot ensure that OHA’s acquisitions are based on a strong financial foundation. Among other things, **we recommended that the board develop and adopt a real estate investment policy that includes general objectives, a spending policy, and long-term return goals; and asset allocation guidelines outlining an optimal mix of legacy, programmatic, corporate, and investment properties.** We also recommended that the Chief Executive Officer ensure the land management division implements best practices in its real estate acquisition and management operations. **Those findings from our audit performed a decade ago are, in many respects, virtually identical to our findings in this audit.**
- **In 2014, the board adopted its Committee on Land and Property Policy Guidelines.** Those guidelines, once again, identify the need to develop an **OHA Real Estate Strategy** “to guide the

Committee's overall strategy" with respect to (a) the targeted balance of OHA's Real Estate Portfolio, (b) the maintenance, preservation, and protection of OHA's lands, and (c) the acquisition, development, operation, and disposition of OHA lands; an **OHA Real Estate Business Plan** to implement the OHA Real Estate Strategy and to guide the Committee's overall strategy with respect to OHA lands; and an **OHA Real Estate Investment Policy** to guide the Committee's overall real estate strategy. All three policies are referred to as "a guiding policy"; however, **none of the policies were ever developed.**

- **In 2018, we issued Report No. 18-08, *Audit of the Office of Hawaiian Affairs' Competitive Grants and Report on the Implementation of 2013 Audit Recommendations*.** We assessed whether OHA had implemented the recommendations made in our 2013 audit. OHA represented that, by the end of 2018, it expected to complete some of the real estate-related policies that we recommended in 2013 and the rest by the end of June 2019. **OHA has not completed any of the policies.**
- **In 2020, the board updated its Bylaws, which require the board's Committee on Resource Management to develop policies and criteria for land acquisitions, dispositions, development, management, and use of OHA's real property.** The Bylaws also require the committee to develop **policies relating to real estate asset allocation, desired returns, and balancing of OHA's real estate portfolio** including legacy lands, corporate real property, programmatic lands, and investment properties. **The committee has never developed any of the required policies or established any criteria.**
- **In 2021, the board approved the purchase of 500 N. Nimitz Highway and an approximately 26 percent interest in the Iwilei Business Center for \$47 million – without any of the strategies or policies that the board had referred to as "guiding principles" or other criteria.**

The report similarly includes background and context that are relevant and important to OHA's efforts to develop its Kaka'ako Makai lands (starting at page 43) as well as OHA's oversight of its stewards and its management of the stewardship agreements (starting at page 53).

Draft Report Corrections and Clarifications

Less than one-third of OHA's 18-page response specifically relates to the draft report. Many of the comments are non-substantive, suggesting, for instance, different words or additional information. We do not agree with OHA's suggested word changes and do not see the need to include additional information. While we address the substantive comments below using the numbers that correspond to OHA's numbering starting on page 6 of its response, we do not believe it is necessary to respond to OHA's comments about our word choices and other non-substantive issues. The report is supported by sufficient and appropriate evidence.

Item 2: We revised the report to reflect that OHA's Native Hawaiian Trust Fund Investment Policy Statement was adopted in May 2002 and last amended in August 2021.

Items 5 and 6: We revised the report to reflect OHA's organizational chart as of July 2021 based on the representations by the Chief Executive Officer at the exit conference. We requested a copy of the revised organizational chart as well as other documents that identify the managerial staff who assist the Chief Executive Officer; however, the Chief Executive Officer did not respond to that request.

Item 7: In the sidebar about Waimea Valley on page 11, we report that, after it acquired title to the 1,875-acre property in 2006, OHA transferred the property to Hi'ipaka LLC, which we describe as "a subsidiary of OHA." OHA asserts the report should state that Hi'ipaka LLC is a subsidiary of Hi'ilei Aloha LLC, not OHA. To the uninformed reader, OHA's revision suggests that Hi'ipaka LLC and OHA are unrelated. That is untrue. Hi'ipaka LLC is the sole asset of Hi'ilei Aloha LLC, and OHA is the sole member (i.e., owner) of Hi'ilei Aloha LLC. In addition, Hi'ipaka LLC's managers previously included OHA's Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer, all serving in that capacity only because of their employment at and positions with OHA. The multiple layers of LLCs that OHA created do not change the fact that OHA is the sole owner of and completely controls both LLCs. Accordingly, the description of Hi'ipaka LLC as a subsidiary of OHA is accurate.

Item 9: We revised the report, at page 15, to refer to this audit as our 2021 audit.

Item 10: We revised the report, at page 17, by adding the audit period, CY2019 – CY2021, to each of the audit objectives.

Item 11: Our audit team arranged with OHA to visit OHA's Kūkaniloko property. OHA staff, who included OHA's Land Director, the then-acting Legacy Land Manager (who is now the Integrated Assets Manager), and two Legacy Land Agents, accompanied the team to the site. However, upon arrival, the steward, the Hawaiian Civic Club of Wahiawā, prohibited the group from visiting the site. OHA's current description of the steward's action "as a culturally relevant practice" distorts the visit to the site and ignores both OHA's responsibilities to protect the property, which OHA describes as one of the most sacred sites in Hawai'i, as well as the unambiguous language in the non-exclusive right of entry granted to the steward. In addition, the visit to the property was for purposes of this audit that we are required to perform pursuant to Section 10-14.55, Hawai'i Revised Statutes. By ceding control to its steward, we question whether the trustees and the administration are fulfilling their fiduciary and statutory duties.

Item 15: OHA staff made two offers – \$40 million and \$47 million – to purchase the 500 N. Nimitz Highway property and the partial interest in the Iwilei Business Center, both without the board's approval or knowledge. OHA wants to revise the report to add the word "non-binding," seemingly to suggest that staff's decision to proceed without the board's prior approval was insignificant or immaterial. However, offers to purchase commercial real estate – like residential real estate transactions – are generally contingent on the due diligence conducted by the buyer, among other things. In other words, all such offers are generally non-binding.

Item 17: The Chairperson identified four of OHA's parcels in Kaka'ako Makai for potential residential development. We revised the report to so reflect.

Items 18, 19, and 20: The Waialua Hawaiian Civic Club stewarded the courthouse property for the three years of our audit period. OHA does not dispute that, throughout that period, the Waialua Hawaiian Civic Club's use of the Waialua Courthouse was based on an undocumented, oral agreement. Moreover, at no point during that period was the Waialua Hawaiian Civic Club appropriately insured as required by OHA's Legacy Land Program Standard Operating Procedures. OHA notes that Hi'ipaka LLC subleased the courthouse for a portion of the period, and according to OHA, "therefore, [the Waialua Hawaiian Civic Club] was not required to have a [certificate of insurance] with OHA for those 15 months." Far from requiring a correction, OHA's objection merely redescribes the problem and, in effect, identifies its source: OHA did not require the Waialua Hawaiian Civic Club to have insurance. That is why the gap in insurance coverage for the Property/Steward is listed as 36 months. OHA attempts to excuse its failure to

require insurance from the steward on the theory that for 15 months the Waialua Hawaiian Civic Club had an arrangement with Hi‘ipaka LLC, a sublessor, not OHA. As we noted in our response to item #7 above, Hi‘ipaka LLC is the sole asset of Hi‘ilei Aloha LLC, and OHA is the sole member (i.e., owner) of Hi‘ilei Aloha LLC. In addition, Hi‘ipaka LLC’s sublease from OHA contains the standard provision requiring Hi‘ipaka LLC to provide certificates of insurance to OHA. But when we specifically asked for them, OHA was unable to locate any of Hi‘ipaka LLC’s certificates of insurance.

Items 21 and 22: In June 2022, we requested copies of the certificates of insurance that Digital Moku and the other stewards are required to provide OHA in accordance with the respective stewardship agreements and contracts. OHA provided only two certificates of insurance relating to Digital Moku, one from 2022, which was outside our audit window, and one dated June 2020. The single, one-year certificate of insurance was reflected in Exhibit 6 in the draft report. However, at the exit conference with the Chief Executive Officer and her staff, we were informed, for the first time, that OHA had additional certificates of insurance – documents presumably provided by Digital Moku. Although we requested an explanation from OHA regarding how, when, and where the missing certificates of insurance were located by OHA, and the date on which each was received by OHA, no explanation or other details were provided. We first saw the certificates of insurance provided by Digital Moku as Attachment B1 to OHA’s response to the draft report.

Nonetheless, in light of the last-minute submission, we have revised the first line in Exhibit 6 by adjusting the coverage period in accord with the newly provided certificates of insurance. In addition, in the text we revised downward to 54 months — which is 4.5 years — the cumulative period during which OHA lacked certificates of insurance for its stewarded properties.

Item 24: We revised the report by removing the reference to a rock wall and reflecting that the steward brought rocks from the Koa Ridge residential development in Waipio to the Kūkaniloko property.

OHA Actions Post CY 2019 – CY 2021 Audit Scope Period

OHA lists a number of “actions” that the board and the administration have undertaken, presumably to show that OHA has addressed or is addressing some of the findings in the audit. However, these actions all involve either the formation of a permitted interaction group to “investigate” matters relating to OHA’s Kaka‘ako Makai lands or the

acceptance of a permitted interaction group's report. It is unclear how these board actions address the audit findings.

Accepting the permitted interaction group's report is required by the Sunshine Law before the board can consider the group's recommendations or can take action on the matter investigated by the permitted interaction group. However, none of the actions recited by OHA in its response reflect actual action by the board. For example, while the board seems to have created a permitted interaction group to "investigate" a master plan for Kaka'ako Makai, there is no indication that the board subsequently approved a process to develop a master plan or took any other action related to the matter investigated. Moreover, one of the permitted interaction groups that OHA includes was created to investigate the "activation" of Site A, which is the parcel on which OHA's consultant, Kuilei Consulting Inc. (Kuilei), had proposed to erect a multipurpose tent that could accommodate banquet seating for more than 300 guests. However, as we reported on page 49 ("Under the Big Top"), OHA was unaware that it needed a Special Management Area (Major) permit to implement Kuilei's proposed interim use and, once it became aware of that requirement, decided not to seek the permit. That "action" only seems to confirm the need for the real estate strategy and other related policies that OHA has recognized as necessary – which OHA itself has described as "guiding principles" – but has yet to develop and implement.

The administration reports that OHA "completed a draft master plan at the end of 2022." During our fieldwork, however, we were told that OHA did not have a master plan for its Kaka'ako Makai lands and requested the Land Director inform us of any work that was ongoing to develop Kaka'ako Makai, including a master plan. We look forward to reviewing OHA's conceptual master plan for its Kaka'ako Makai lands when we assess the status of OHA's implementation of the recommendations in two or three years.

Lastly, we are compelled to note that none of the "actions" that OHA describes the board or the administration taking relate to the development and implementation of foundational real estate-related policies. These are the components that the board itself has repeatedly recognized as essential to guide OHA's real estate activities and to ensure that trustees fulfill their fiduciary and statutory duties. Absent these "guiding principles," there is no guidance or, just as importantly, no guardrails.

In 2013, when we first recommended that OHA establish fundamental policies to guide Land Division operations, OHA had just acquired its lands in Kaka'ako Makai and was entering the real estate business on

a large scale. OHA's portfolio has grown substantially since then, most recently, with the acquisition of 500 N. Nimitz Highway and three units in the Iwilei Business Center for \$47 million. And OHA is planning to spend millions more developing Kaka'ako Makai. Yet, OHA's trustees are doing so without guidelines, guardrails, or even a roadmap.

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March 6, 2023

Mr. Leslie H. Kondo, State Auditor
Office of the Auditor
State of Hawaii
Kekuanao'a Building
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

VIA E-MAIL: lao.auditors@hawaii.gov

Re: DRAFT Report of the Audit of the Office of Hawaiian Affairs
Transmitted on February 16, 2023

Dear Mr. Kondo,

The Office of Hawaiian Affairs' ("OHA") Trustees and the Chief Executive Officer ("CEO") are pleased to respond to the DRAFT Report of the Audit of the Office of Hawaiian Affairs electronically transmitted on February 16, 2023. Because the OHA has had a change in Trustees since the initiation of the audit on July 21, 2021, we provide background and context for the Board of Trustees ("BOT"), the organization, beneficiaries and the general public, herein, prior to addressing the DRAFT report itself. We also would like to highlight a few operational initiatives that OHA has implemented following the audit period and the completion of your office's audit fieldwork mid-2022.

As noted in the State Auditor's ("SA") initial correspondence dated July 21, 2021 ("Initiation Letter"), the Office of the Auditor initiated the performance audit of the OHA pursuant to Section 10-14.55, Hawai'i Revised Statutes, which requires the auditor to conduct an audit of OHA at least once every four years, the last audit of OHA was performed in 2017. The Initiation Letter further detailed the intent to submit audit findings and recommendations in a report to the legislature no later than twenty days prior to the convening of the next regular legislative session (presumably 2022).

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Background and Context

Figure 1 on the next page, summarizes the status of OHA audits and reviews conducted by the State Auditor (“SA”) every four and five years, respectively. Financial audit status information is included to comprehensively track audits and reviews of the OHA. Figure 1 is also attached as Attachment A to aid in readability of the table.

	1. Performance Audit 2013 State Auditor	2. Performance Audit 2017 State Auditor		3. Funds Review 2016 State Auditor	4. Performance Audit 2021 State Auditor	5. Funds Review 2021 State Auditor	6. Financial Audit 6/30/2021 N&K CPAs	7. Financial Audit 6/30/2022 N&K CPAs
State Auditor Report No.	13-07 (September 2013)	18-03 (Feb 2018)	18-08 June 2018)	16-10 (December 2016)	23-XX (March 2023)	22-02 (Feb 2022)	N/A	N/A
Primary Focus	Land planning and grant monitoring	Non-Competitive grants (Kulia Initiatives and CEO Sponsorship, Fiscal Reserves, Trustee Allowance	Policies and actions re: Competitive Grants	Special Funds, Revolving Funds, Trust Funds, Trust Accounts	Objectives (CY2019-2021): 1) Legacy Land Stewardship Contracts and Stewards; 2) Process to select potential commercial property acquisitions; and 3) Development of commercial properties, including planning of development	Special Funds, Revolving Funds, Trust Funds, Trust Accounts	17 years of “clean” or “unqualified” opinions from auditors (6/30/2004): Grant Thorton, LLP, PKF Pacific Hawaii LLP, KMH LLP and N&K, CPA’s Inc.	Projected to be 18 years of “clean” or “unqualified” opinions from auditors (6/30/2004): Grant Thorton, LLP, PKF Pacific Hawaii LLP, KMH LLP and N&K, CPA’s Inc.
Follow Up Report No.	18-08 (June 2018)	22-04 (March 2022)	21-10 (Aug 2021)	N/A	N/A	N/A	N/A	N/A
Status to Date	Published	Published	Published	Published	In Progress	Published	Approved via AI RM #22-04, March 22, 2022 Committee on Resource Management meeting including NHRLF Single Audit	Scheduled for the March 22, 2023, Committee on Resource Management, including NHRLF Single Audit

Figure 1: Summary of Audits and Reviews

With the aforementioned background and context, the OHA’s response to the DRAFT Report of the Audit of the Office of Hawaiian Affairs is organized in the following four sections:

- Section I - Timeline of Major Activities Related to the 2021 Performance Audit of the OHA;
- Section II – Draft Report Corrections and Clarifications;
- Section III – OHA Actions Post CY 2019-CY 2021 Audit Scope Period; and
- Section IV – OHA’s Responses to Recommendations in the DRAFT Report.

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I. Timeline of Major Activities Related to the 2021 Performance Audit of the OHA

The following table describes dates and activities as experienced by the OHA:

Table 1: Timeline of Major Activities

Row	Date	Description
A	July 21, 2021	Initiation. Letter from the State Auditor initiating the performance audit pursuant to HRS §10-14.55, with the intention to submit audit findings and recommendations in a report to the legislature no later than twenty days period to the convening of the next regular legislative session.
Planning Phase – Approximately 5 months		
B	July 21, 2021 to December 22, 2021	Activities between the State Auditor’s assigned team members and OHA Administration during this time included: initial and follow up document requests and production; interviews with Administration staff; ¹ interviews with Trustees as coordinated directly with the SA and individual Trustees, site visits, information briefings ²
C	December 22, 2021	Letter from the State Auditor indicating completion of the planning phase, and development of the following audit objectives, as a result of interviews, site visits and review of provided documents, relating to OHA’s Resource Management – Land Division: <ol style="list-style-type: none"> 1. Describe OHA’s oversight and management of legacy land stewardship contracts and stewards (CY³2019-CY2021); 2. Describe OHA’s process to identify and select potential commercial property acquisitions (CY2019-CY2021); 3. Describe OHA’s development of commercial properties, including planning of development (CY2019-CY2021); and 4. Make recommendations as appropriate.
Fieldwork Phase – Approximately 6 months		

¹ CEO (Sylvia Hussey), COO (Casey Brown), CFO (Ramona Hinck), former Land Director (Kalani Fronda), Integrated Assets Manager (Lori Walker)

² Information briefings re: ceded lands inventory work by former Research staff member Zach Smith, and public land trust presentation by Everett Ohta, Corporate Counsel on August 16, 2021.

³ CY=Calendar Year

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Row	Date	Description
D	January 2022 to April 2022	Continuation of SA and OHA fieldwork activities (e.g., document requests, interviews, document production, additional activities).
E	May 9, 2022 ⁴	Correspondence from OHA to SA Office re: 2021 Performance Audit (July 2021 – December 2021 Planning; January 2022 to present Fieldwork) document production.
F	May 13, 2022	Correspondence from SA Office to OHA re: 2021 Performance Audit (July 2021 – December 2021 Planning; January 2022 to present Fieldwork) response to May 9, 2022 letter.
G	May 30, 2022	Correspondence from OHA to SA Office re: 2021 Performance Audit of the Office of Hawaiian Affairs Correspondence, Dated May 13, 2022, including clarifications re: status of document production, including physical space at NLK, document existence, contextual documents and file naming conventions; fieldwork phase – due diligence, including confidential and confidential, attorney-client privileged documents discussed by the OHA Board in executive session; fieldwork phase – plans for development; and OHA administration multiple engagement.
H	June 2022	Interviews of OHA Administration staff
No contact from or interaction with SA and OHA from June 2022 to January 2023 – Approximately 7 months		
I	January 9, 2023	Letter from State Auditor’s Office notifying OHA of their intention to use the attached <i>Investment Memorandum: Iwilei Commercial Property Investment</i> to support the SA description of OHA’s acquisition of the N. Nimitz Highway and Iwilei Business Center properties (collectively Iwilei Properties), and asked OHA to confirm confidentiality status.
J	January 11, 2023	Response letter from OHA to SA Office, acknowledging the Investment Memorandum as attached is no longer considered confidential at this point.
K	January 30, 2023	Letter from the State Auditor’s office notifying OHA of the draft report undergoing their quality control review, and the expectation to provide “the draft report to you before the end

⁴ Note: The first ten days of the month of May 2022, both Plante Moran and SA engagement teams were and planned to be on site, respectively, at Na Lama Kukui at the same time.

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Row	Date	Description
		of next week” ⁵ . The letter also requested an exit conference between February 15, 2023 and February 21, 2023 with comments from OHA on the draft, no later than February 23, 2023. ⁶
L	February 22, 2023	Confirmed via e-mail and at the Board Chair’s direction for Administration to meet with the State Auditor for the exit conference.
M	March 3, 2023	Administration held exit conference with the State Auditor at Nā Lama Kukui.

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⁵ Note: The end of “next week” from the January 30, 2023 letter is no later than Friday, February 10, 2023, however, as noted, the report was emailed on Thursday, February 16, 2023, a week later.

⁶ Post correspondence with the SA and Chair and considering the rescheduled February 16th Board meeting, the exit conference with the SA and Board was tentatively set for Thursday, February 23, 2023 at 10:00 a.m. but deferred by the Board Chair.

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II. Draft Report Corrections and Clarifications (Attachment B)

A. Organization of Attachment B. Attachment B aggregates identified corrections and/or clarifications raised based on the review of the DRAFT report since its electronic issuance on February 16, 2023. The spreadsheet at Attachment B is organized with the following headers and was discussed in the Exit Conference on Friday, March 3, 2023:

1. Item	Line number for tracking purposes
2. Report Page #	Page number of the DRAFT Report for reference
3. Paragraph, Section, Area	Specific area of the DRAFT Report identified
4. DRAFT Report Statement, Label, Comment	AS IS statement, label or comment in the DRAFT Report
5. Correction or Clarification	Classification of the OHA Comment/Response
6. OHA Comment/Response	OHA’s comment, response to the identified item needing correction and/or clarification

B. Detailed Items at Attachment B. Attachment B, includes the following correction or clarification classification details:

1. **Page 4, paragraph 3, 1st sentence, correction:** "The Kaka'ako Makai acquisition....".
 Kaka'ako Makai was not acquired, replace "acquisition" with "conveyance".
2. **Page 7, paragraph 2, 1st sentence, correction:** The IPS was originally adopted in May 2003, and last amended in August 2021; therefore, please insert, “..originally adopted in May 2003, and was last amended in...”, so the sentence correctly reads, “OHA’s Native Hawaiian Trust Fund Investment Policy Statement, adopted in May 2003, and last amended in August 2021,”
3. **Page 8, paragraph 2, 2nd sentence, clarification:** Please insert the following footnote: The Land Director that was part of the engagement, separated from the organization in July 2022.
4. **Page 8, last paragraph, correction:** There are several means (vs. no means as stated in the draft) by which the Trustees track the implementation of strategies, tactics and operational activities aligned with the strategic plan, these means include: 1) Implementation of Policy 3040 Planning, Programming, Budgeting System (PPBS), including Financial Planning; 2) Implementation of Policy 3045 Budget Management Policy, including Budget Management, Budget Evaluation, Biennium Budget Realignment and Adjustments and Multi-Year, Carryover; 3) Quarterly reports to the Trustees

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by Administration, including financial statements, budget variances, grants active and closed, open purchase orders and contracts, recommendations and implementation and individual trustee protocol allowance. Bridging strategic actions and operational transactions are two additional newly developed key mechanisms for the Board to ensure the plan is being implemented and also whether strategies are working as intended: A) OHAs tactics and B) OHAs Strategic Report. The Strategic Report is designed to track and share both tactical progress (quarterly) and strategic progress (annually) and is intended to be a part of the FB 24-25 planning and budgeting activities.

5. **Page 9, Exhibit 1-OHA Organization Chart, corrections:** The recommended reference change to “July 2021” is because the Board of Trustees approved the OHA Biennium Budget for the Fiscal Biennium Periods 2021-2022 (FY 22) and 2022-2023 (FY 23) via Action Item RM #21-08A, June 30, 2021, which approved the FY22 (begins on 7/1/2021), FY23 budget reflecting the reorganized organization as illustrated in the organizations charts provided to the SA. Organization charts are labeled August 2021 to illustrate those were the organization charts as of the transmission date, if the SA office prefers to use “August 2021” vs. “July 2021” in the report, OHA can support that. Also, instead of counting the number of directors, OHA recommends that the section be restated as follows, knowing that the CEO, COO, CFO, General Counsel and HR Director comprise the Executive Leadership Team (ELT)--

Administration

An administrator---the chief executive officer (CEO) of the OHA---is appointed by the board and leads the OHA’s administration. The CEO is assisted by a chief operating officer (COO), chief financial officer (CFO), general counsel and human resources director. Administration’s management team include directors and managers of Advocacy, Communications, Community Engagement, Research, Land, Strategy Management, Technology Services and Operations functions.

6. **Page 9, Exhibit 1-OHA Organization Chart, clarification:** Commercial Property Program box is identified as “Scheduled for Outsourcing”. Please add footnote: “OHA plans to retain its commercial property asset management functions but outsource the support it requires for planning and development.”
7. **Page 11, paragraph 1, 3rd sentence, correction:** "A year later, OHA transferred title to the 1.875-acre property to Hi'ipaka LLC, a subsidiary of OHA, which now manages all activities in Waimea Valley." Hi'ipaka LLC is a subsidiary of Hi'ilei Aloha LLC, not OHA; please correct "OHA" with "Hiilei Page 13, last paragraph, clarification: Aloha LLC".
8. **Page 13, last paragraph, clarification:** "Additionally, OHA has the 5-acre Kūkaniloko site,"; on February 21, 2020, via Executive Order 4624, the Governor set aside 5.000 acres at the lands at Wahiawa, Oahu for the public purpose of preserving and maintaining the historic Kūkaniloko Birthstones Site.

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9. **Page 15, side bar, Paragraph 2 under Prior Audits, correction:** "...as we conducted our 2022 audit."; from the July 2021 Initiation Letter, last audit was 2017, replace "2022" with "2021".
10. **Page 17, Audit Objectives section, clarification:** While the order of the audit objectives is different from the July 21, 2021 Initiation Letter, please insert "(CY2019-CY2021)" at the end of audit objective 1, 2 and 3 for consistency.
11. **Page 20, last paragraph, last sentence and Page 59, last paragraph, correction:** "...and even deny OHA access to its own property." (20); "We report below that the steward denied OHA and our audit team access to the property,...." (59). OHA has not been denied access to its properties. The community recommended that no visitors should be allowed onto the most sacred area of the Wahiawa property, the actual birthstones. This is a culturally relevant practice and OHA agreed with the recommendation that no visitation by any group should occur at that time.
12. **Page 22, first paragraph, 2nd line, correction:** "..we reported that OHA had significantly expanded its real estate portfolio, acquiring about 30 acres in Kaka'ako Makai..."; OHA did not acquire the 30 acres in Kaka'ako Makai, replace "acquiring about" with "with the conveyed"
13. **Page 23, first line, clarification:** "In response to the report, the then-board Chairperson said..."; Please clarify who the "then-board Chairperson" is referencing. If the reference is to: a) former Board Chairperson, Colette Machado, please respectfully footnote, "then-board Chairperson" with "Died in May 2022"; or b) former Trustee Oswald Stender, then reference with "Died in February 2022". If the reference is to any Board Chairperson that is still alive, no edits recommended.
14. **Pages 26 and 27, sub-heading and references throughout, correction:** References to missing or blank policy pages for the Investment Policy; as noted in Note 2 above, the IPS was originally adopted in May 2003, and last amended in August 2021; therefore, please insert, "...originally adopted in May 2003, and was last amended in...", so the sentence correctly reads, "OHA's Native Hawaiian Trust Fund Investment Policy Statement, adopted in May 2003, and last amended in August 2021, ...", and provided to the State Auditor.
15. **Page 31, section header, "OHA administration..." and last paragraph, correction:** Insert "non-binding" in the: 1) section header: so it now reads, "OHA administration makes two non-binding offers..."; 2) after "\$40 million", so it now reads "...made a \$40 million non-binding offer..."; and 3) before "...offer to \$47 million" so it now reads, "...increased its non-binding offer to \$47 million..."
16. **Page 31, second paragraph, 4th sentence, correction:** "OHA finally did provide us with those executive session minutes--many of which were heavily redacted..."; The report fails to provide further context that Executive Session minutes were redacted of attorney-client privileged communications, which OHA has consistently limited its redactions to, but to which the Auditor's office continues to litigate.

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17. **Page 51, fourth paragraph, 1st sentence and 2nd sentence, clarification:** "The Chairperson identified two lots on Ala Moana Boulevard ...", "OHA is eyeing another four parcels for potential residential development..."; OHA never intended to put residential development on all of its makai parcels and only identified three lots - Lot I, E and F/G for residential development. OHA never intended to put residential development on all of its makai parcels and only identified three lots - Lot I, E and F/G for residential development.
18. **Page 56, fourth paragraph, correction:** "Throughout the three-year period of our audit (2019 through 2021), OHA's stewardship arrangement with the Waialua [Hawaiian] Civic Club was an oral, undocumented agreement."; The arrangement with Waialua Hawaiian Civic Club (WHCC) was not "throughout" the audit window period (2019-2021). WHCC's arrangement for the Courthouse existed under Hi'ipaka's sublease until Hi'ipaka terminated 03/2020; Courthouse closed during the pandemic until WHCC resumed operating from there in 2021.
19. **Page 57, third paragraph, line 1, correction:** "OHA's willingness to allow the steward..."; WHCC's arrangement for the Courthouse existed under Hi'ipaka's sublease until Hi'ipaka terminated 03/2020; Courthouse closed during the pandemic until WHCC resumed operating from there in 2021.
20. **Page 62, Exhibit 6, correction:** Waialua Courthouse (Waialua Civic Club of Hawai'i), Gap Period (Duration), Jan 2019 - Dec 2021 (36 mos);
21. The "gap period" for WHCC Certificates of Insurance (COI), incorrectly illustrated at Exhibit 6, is between Jan 2019 – Dec 2021, a total of 36 months. Hi'ipaka subleased the Waialua Courthouse between Jan 2019 – Mar 2020, therefore, WHCC was not required to have a COI with OHA for those 15 months. Thereafter, WHCC did not return to the courthouse until 2021, a verbal agreement resulted in a 12 month gap for the calendar year 2021. A correction footnote to explain the sublease arrangement and WHCC compliance with OHA COI requirements, and correctly identifying the "gap period" for the calendar year 2021 of 12 months vs. 36 months.
22. **Page 62, Exhibit 6, correction:** Pahua Heiau (Digital Moku), Gap Period (Duration), Jan 2019-Apr 2020 (16 mos), Jan 2021-Dec 2021 (7 mos) - 23 mos; Upon receipt of the DRAFT report and the Exhibit 6 representation of the "gap period" for Pahua Heiau, Certificates of Insurance (COI) were subsequently located and provided to the State Auditor on March 6, 2023 and included as Attachment B1 herein; therefore, there should be no "gap period" for this property and steward.
23. **Pages 61, 62, last sentence of last paragraph, page 61, Exhibit 6, and last sentence of first paragraph, page 62, correction:** "...the missing certificates of insurance were for a cumulative period of 77 months - almost 6.5 years."
Based on the corrections noted at Items 20 and 21 above, including related corrections to Exhibit 6, the elimination of 23 months for Digital Moku and 36 months for WHCC, would recompute the references to "77 months" to be "18 months" as identified in Exhibit 6 with Kukaniloko (Hawaiian Civic Club of Wahiawa).

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24. **Page 63, fourth paragraph, first sentence, correction:** “Similarly, the steward constructed a rock wall...”; The donated boulders have not been moved since the approved and documented donation, and the steward did not construct a rock wall.
25. **Page 64, second paragraph, last sentence, correction:** "The problem appears to stem partly from lax or negligent enforcement of stewardship agreement terms and partly from the program's standard operating procedures, which do not assign responsibility with sufficient clarity for timely initiating and renewing of the agreements..."; The Legacy Lands Program (LLP) Standard Operating Procedures (SOP) Section 8.7 identifies the Team Members involved in Contract and Budget Tracking to include the LLP Specialists and LLP Manager. Subsection 8.7.3.2. further details the process for tracking Active Contracts and POs through the team Contract and Budget Tracking excel spreadsheet and the Active Contracts and POs tab therein: "All LLP Specialists should check this tab at least monthly to make sure all contract and PO[']s do not expire prematurely."
26. **Page 67, second paragraph, clarification:** The report indicated, "We are unfamiliar with this special committee and its work,..." Trustee Akina provided the following for clarification, the special committee was a Permitted Interaction Group (PIG) formed in 2021. Trustee Akina refers you to OHA's Board of Trustees Meeting on January 28, 2021 at the following link: Board of Trustees (BOT) Meetings - The Office of Hawaiian Affairs (OHA). Please see the meeting agenda and meeting folder (012821-BOT-Electronic-Folder.pdf (oha.org)) which includes "Action Item BOT #21-01: Approve the Formation of a Permitted Interaction Group to Investigate the Development of Land and Commercial Property Policies and Strategies relating to the development of OHA's Nā Kukui and Kaka'ako Makai properties." The Permitted Interaction Group (PIG) was formed to investigate the activation of Kaka'ako Makai Site E, 919 Ala Moana Blvd. The PIG members included Trustee Hulu Lindsey, Trustee Isa, Trustee Waihee IV, and Trustee Akaka. One of the PIG's conclusions was that Lot E is the second of two lots identified for activation. The PIG's conclusion was to "pursue an activation strategy requiring minimum investment and relying on existing permitted uses for Kaka'ako Site E, 919 Ala Moana Blvd."

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III. OHA Actions Post CY 2019-CY 2021 Audit Scope Period

- A. **Board of Trustees.** The Board of Trustees, through a series of land and commercial property (“LCP”) permitted interaction groups, subsequent reports and operational budgetary actions, moved the work of Ka‘kaoko Makai, intentionally and incrementally, and the following action item references are provided:
1. **LCP #1 – Formation, Action Item BOT #21-01⁷:** Approve the Formation of a Permitted Interaction Group to Investigate the Development of Land and Commercial Property Policies and Strategies relating to the Development of OHA’s Nā Lama Kukui and Kaka‘ako Makai Properties, January 28, 2021;
 2. **LCP #1 – Report, Action Item BOT #21-03:** Accept the Report of the Land and Commercial Property Permitted Interaction Group, April 15, 2021;
 3. **LCP #2 – Formation, Action Item BOT #21-05:** Approve the Formation of a Permitted Interaction Group to Investigate: and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner, April 15, 2021;
 4. **LCP #2 – Report, Action Item BOT #21-07:** Accept the Report of the Permitted Interaction Group re: to Investigate and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner, June 24, 2021;
 5. **LCP #3 – Formation, Action Item BOT #21-14:** Approve the Formation of a Permitted Interaction Group to Investigate the Initial Steps in the First Phase of Work for the Development of Kaka‘ako Makai, October 26, 2021;
 6. **LCP #3 – Report, Action Item BOT #21-15⁸:** Accept and Implement the Report of the Permitted Interaction Group re: to Investigate the Initial Steps in the First Phase of Work for the Development of Kaka‘ako Makai, November 4, 2021;
 7. **LCP #4 – Formation, Action Item BOT #22-01:** Approve the Formation of a Permitted Interaction Group to Investigate the Activation of Kaka‘ako Makai Site A, January 13, 2022;

⁷ The scope of the work included the following: (1) Development, alignment, and updates related to land and commercial property policies and strategies relating to the development of OHA’s Nā Lama Kukui and Kaka‘ako Makai; (2) Implications of other fiscal policies’ impact on land and commercial properties (e.g., investment, spending) relating to the development of OHA’s Nā Lama Kukui and Kaka‘ako Makai properties.

⁸ The report recommended that policy work efforts be delegated to the Administration.

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8. **LCP #4 – Report, Action Item BOT #22-02:** Accept and Implement the Report of the Permitted Interaction Group to Investigate the Activation of Kaka’ako Makai Site A, 1101 Ala Moana Blvd, February 10, 2022;
 9. **LCP #5 – Formation, Action Item BOT#22-04:** Approve the Formation of a Permitted Interaction Group re: to investigate Activation of Kaka’ako Makai Site E, March 10, 2022;
 10. **LCP #5 – Report, Action Item BOT #22-14:** Accept and Implement the Report of the Permitted Interaction Group to Investigate the Activation of Kaka’ako Makai Site E, 919 Ala Moana Blvd, August 18, 2022;
 11. **LCP #6 – Formation Action Item BOT#22-16:** Approve the formation of a Permitted Interaction Group re: to investigate a Master Plan of Kaka’ako Makai, September 15, 2022; and
 12. **LCP #6 – Report Action Item BOT#22-18:** Accept and Implement the Report of the Permitted Interaction Group to Investigate a Master Plan of Kaka’ako Makai, October 27, 2022.
- B. **Administration.** The OHA calls to the SA’s attention, the following activities, that occurred post the audit scope period:
1. **Page 12, paragraph 3, last sentence:**

From the DRAFT Report: "Management of these commercial properties is under contract with private companies - CBRE, Inc., and Colliers International..."

OHA’s Comment to the DRAFT Report: Currently, management of both these commercial properties is under contract with Colliers International.
 2. **Page 18, Finding 2**

From the DRAFT Report: “Since receiving Kaka'ako Makai OHA is no closer to actually developing the property....”

OHA’s Comment to the DRAFT Report: Since agreeing to receive these lands in lieu of cash in 2012, OHA's Trustees have been focused on ensuring the Hakuone lands are developed to its fullest potential. The difference between full potential and as-is potential is significant. So much so that it could be argued that it’s a mistake to not spend the time fighting for the rights to unlock the full potential of Hakuone. Moreover, OHA has performed its greatest amount of due diligence in 2022 and also explored master plan scenarios in late 2022. The results will give Trustees a clearer path forward to further their planning and begin to execute development. OHA is absolutely closer to development than it was 10 years ago.

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3. Pages 26-28:

From the DRAFT Report: Executive Policy Manual out of date and policies tracked via spreadsheet.

OHA's Comment to the DRAFT Report: Updated EPM with consolidation of previously adopted policies of the BOT was published January 2023.

4. Page 52, paragraph 2, 1st sentence:

From the DRAFT Report: "Despite the effort and expense, OHA has yet to adopt a conceptual master plan that would allow it to begin"...

OHA's Comment to the DRAFT Report: As noted on page 48, the State Auditor uses data relevant information data subsequent to the audit period, e.g., a November 30, 2022, Civil Beat article to emphasize OHA's spend on development (Footnote 7). OHA completed a draft master plan at the end of 2022.

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III. OHA's Responses to Recommendations in the DRAFT Report

A. State Auditor Recommendations - OHA's Board of Trustees should:

1. Develop and adopt policies that align with OHA's strategic plan to guide OHA's decisions relating to real property that include:
 - a. Goals and objectives of OHA's ownership or control of real estate, generally.
 - b. Goals and objectives of each type or classification of real estate defined by OHA (i.e., for legacy lands, corporate real estate, programmatic lands, and investment properties).
 - c. The allocation of each type or classification of real estate (i.e., legacy lands, corporate real estate, programmatic lands, and investment properties) in relation to OHA's overall real estate portfolio.
 - d. Criteria relating to acquisition for each type or classification of real property, which should include, for example, location (e.g., local, national, international) and other restrictions (e.g., no golf courses).
 - e. Criteria relating to use of each type or classification of real property.
 - f. Criteria relating to the return on investment, as applicable, for each type or classification of real property.
 - g. Criteria relating to disposition of each type or classification of real property.
 - h. Criteria relating to development of each type or classification of real property (for those types or classifications of real property whose OHA's goals and objectives include development).
 - i. Criteria relating to the funding of real property acquisitions.
2. Develop and continually update OHA's strategic plan to include an account of OHA's program and administrative structure as required by Section 10-6(a)(1), HRS.
3. Develop and adopt a conceptual master plan for OHA's Kaka'ako Makai lands.
4. Develop and adopt long-range and short-range plans for OHA's 500 N. Nimitz Highway property.
5. Develop and adopt long-range and short-range plans for OHA's Iwilei Business Center apartments.

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B. OHA Responses to Board of Trustees' Recommendations from the DRAFT Audit Report

With the 2019 Board Governance and 2021 Policy Frameworks established, policy recommendations, including those in the DRAFT report by the SA, are a part of the Board's continuing implementation work, and scheduled to be specifically addressed in the coming calendar year, see below for further context.

1. Board Governance Framework

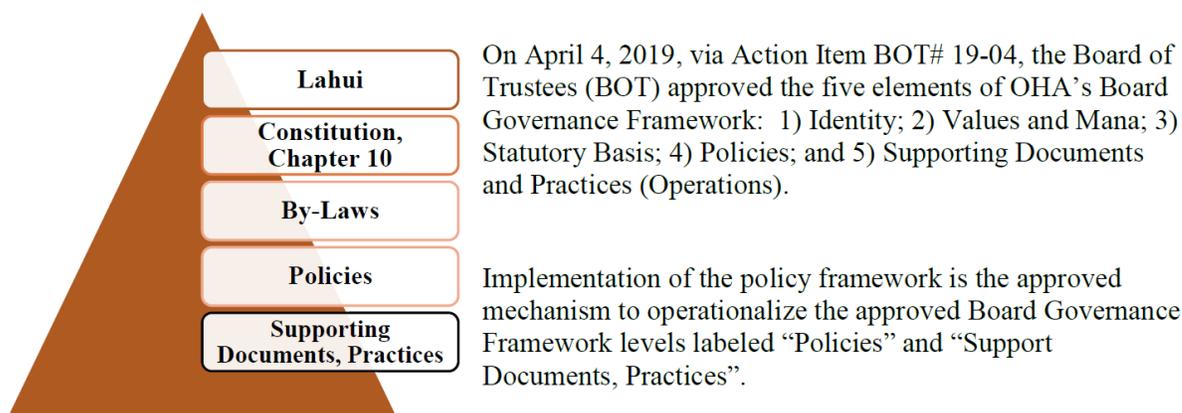


Figure 2: Executive Policy

2. OHA Policy Framework

On December 9, 2021 (1st reading), then December 29, 2021 (2nd reading), via Action Item BOT #21-18, *Approve and Implement the OHA Policy Framework*, the Board: A) Approved the OHA Policy Framework, based on the approved Board Governance Framework, with the following components: 1) L-Lāhui Level policies; 2) T-Trustee Level policies; 3) C-CEO Level policies; 4) Inventory of Policies; 5) Business Processes (listed within each policy); 6) Standard Operating Procedures for each business process; and 7) Systems, documentation, desktop procedures, manuals as depicted at Attachment A⁹; and Approved the policy guidelines as contained in the newly drafted Policy of Policies at Attachment B¹⁰.

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⁹ Attachment A referenced in the Action Item is Attachment C of this letter.

¹⁰ Attachment B referenced in the Action Item is Attachment D of this letter.

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C. State Auditor Recommendations - OHA's Administration should:

1. Develop documented procedures to implement board approved policies relating to real property.
2. Prohibit stewards from using lands owned or controlled by OHA without a valid agreement.
3. Require all agreements with stewards using lands owned or controlled by OHA to be in writing, with all terms and conditions contained in the agreement.
4. Require stewards to comply with all terms and conditions of agreements.
5. Review and assess stewards' use of the land and compliance with the agreement at the end of each term.
6. Develop criteria to determine whether to enter into an agreement, including renewing or extending an agreement, with the steward relating to property owned or controlled by OHA.
7. Develop written procedures that assign and describe the responsibilities of OHA managers and staff relating to the oversight of the stewards and management of the agreements with those stewards for use of those lands owned or controlled by OHA. The purpose of the procedures should be to, among other things, monitor stewards' compliance with the terms and conditions of the agreements, including the use of the property, as well as to ensure stewards do not use lands owned or controlled by OHA without a valid agreement.
8. Develop written procedures to address non-compliance with the terms and conditions of agreements.
9. Develop written procedures or other internal controls that allow and require regular review by a supervisor or other management personnel of assigned staff's oversight of the stewards and management of the agreements to ensure that assigned staff are performing their responsibilities as management intended.
10. Develop written procedures to ensure that copies of Board of Trustees' policies and other OHA procedures maintained by trustees, administration, and other staff are current, up-to-date, and complete (i.e., all approved amendments and other revisions compiled in one document).

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D. OHA Responses to Administration Recommendations from the DRAFT Audit Report

1. Executive Policy Manual

The Executive Policy Manual (“EPM”), as depicted at right, was aggregated and published by the Board of Trustees. Policy changes, subsequent to the last EPM publication of February 2012, were tracked via action items by Corporate Counsel (“CC”). CC has since incorporated all EPM impacted policy changes into one new EPM document published at the end of January 2023, with Administration distributing it to the Board shortly thereafter.

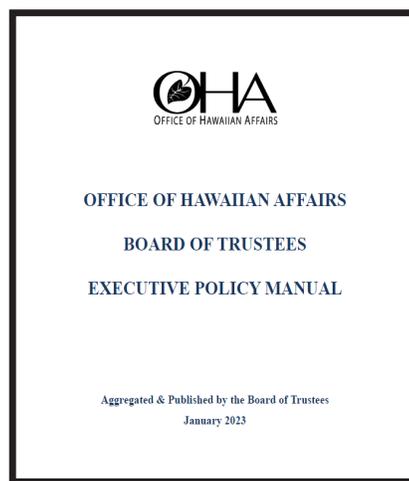
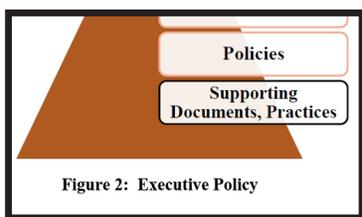


Figure 3: Executive Policy Manual

As the Board Policy Framework was approved in December 2021, and the issuance of the aggregated and updated EPM, continuing policy work include mapping, cross-walking and migrating policies and/or policy language from the EPM to the approved Policy Framework, eventually sunsetting the EPM document itself, creating and populating a new electronic policy framework location, accessible to internal and external stakeholders.

2. OHA Responses to Administration Recommendations in the DRAFT Report



a. **Policy Work.** As noted earlier, with the 2019 Board Governance and 2021 Policy Frameworks established, policy recommendations, including those in the DRAFT report by the SA, are a part of the Board’s continuing implementation work, and scheduled to be specifically addressed in the coming calendar year.

b. **Business Processes, Procedures.** As noted earlier in Figure 2, provided as Attachment C, Policy Framework and illustrated at right in Figure 4, are a part of the Administration’s continuing implementation work, and scheduled to complement the related policy work.

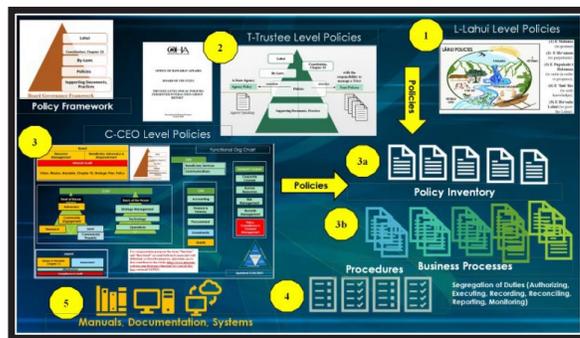


Figure 4: Policy Framework Depiction #2

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If there are any questions or desire to discuss these matters further, please do not hesitate to contact Dr. Hussey via e-mail at sylviah@oha.org or telephone at 808-594-1973.

O māua me ka ha'aha'a,



Carmen Hulu Lindsey
Chair, Board of Trustees



Sylvia M. Hussey, Ed.D.
Ka Pouhana, Chief Executive Officer

Attachments

- A – Figure 1 – Summary of Audits and Reviews
- B – Table of Corrections-Clarifications
- B1 – Digital Moku COIs
- C – Policy Framework
- D – Policy Guidelines, Policy of Policies

cc: Board of Trustees, Office of Hawaiian Affairs

	1. Performance Audit 2013 State Auditor	2. Performance Audit 2017 State Auditor	3. Funds Review 2016 State Auditor	4. Performance Audit 2021 State Auditor	5. Funds Review 2021 State Auditor	6. Financial Audit 6/30/2021 N&K CPAs	7. Financial Audit 6/30/2022 N&K CPAs
State Auditor Report No.	13-07 (September 2013)	18-03 (Feb 2018)	16-10 (December 2016)	TBD 23-XX (February 2023)	22-02 (Feb 2022)	N/A	N/A
Primary Focus	Land planning and grant monitoring	Non-Competitive grants (Kulia Initiatives and CEO Sponsorship, Fiscal Reserves, Trustee Allowance)	Special Funds, Revolving Funds, Trust Funds, Trust Accounts	Objectives (CY2019-2021): 1) Legacy Land Stewardship Contracts and Stewards; 2) Process to select potential commercial property acquisitions; and 3) Development of commercial properties, including planning of development	Special Funds, Revolving Funds, Trust Funds, Trust Accounts	17 years of "clean" or "unqualified" opinions from auditors (6/30/2004): Grant Thornton, LLP, PKF Pacific Hawaii LLP, KMH LLP and N&K, CPA's Inc.	18 years of "clean" or "unqualified" opinions from auditors (6/30/2004): Grant Thornton, LLP, PKF Pacific Hawaii LLP, KMH LLP and N&K, CPA's Inc.
Follow Up Report No.	18-08 (June 2018)	22-04 (March 2022)	N/A	N/A	N/A	N/A	N/A
Status to Date	Published	Published	Published	In Progress	Published	Approved via AI RM #22-04, March 22, 2022 Committee on Resource Management	Preliminarily Scheduled for the March 22, 2023, Committee on Resource

Attachment B
 DRAFT Report of the Audit of the Office of Hawaiian Affairs Received Electronically on February 16, 2023
 Identified Corrections and/or Clarifications

Item	Report Page #	Paragraph, Section, Area	DRAFT Report Statement, Label, Comment	Correction or Clarification	OHA Comment/Response
1	4	Paragraph 3, 1st sentence	"The Kaka'ako Makai acquisition..."	Correction	Kaka'ako Makai was not acquired, replace "acquisition" with "conveyance".
2	7	Paragraph 2, 1st sentence	"OHA's Native Hawaiian Investment Policy Statement, adopted in August 2021..."	Correction	The IPS was originally adopted in May 2003, and last amended in August 2021; therefore, please insert, "...originally adopted in May 2003, and was last amended in...", so the sentence correctly reads, "OHA's Native Hawaiian Trust Fund Investment Policy Statement, adopted in May 2003, and last amended in August 2021, ..."
3	8	Paragraph 2, 2nd sentence	"...but the Director of the Land Division (Land Director)..."	Clarification	Please insert the following footnote: The Land Director that was part of the engagement, separated from the organization in July 2022.
4	8	Last Paragraph	"...the trustees have no means to ensure that the administration's implementation of the broad..."	Correction	There are several means (vs. no means as stated in the draft) by which the Trustees track the implementation of strategies, tactics and operational activities aligned with the strategic plan, these means include: 1) Implementation of Policy 3040 Planning, Programming, Budgeting System (PPBS), including Financial Planning; 2) Implementation of Policy 3045 Budget Management Policy, including Budget Management, Budget Evaluation, Biennium Budget Realignment and Adjustments and Multi-Year, Carryover; 3) Quarterly reports to the Trustees by Administration, including financial statements, budget variances, grants active and closed, open purchase orders and contracts, recommendations and implementation and individual trustee protocol allowance. Bridging strategic actions and operational transactions are two additional newly developed key mechanisms for the Board to ensure the plan is being implemented and also whether strategies are working as intended: A) OHAs tactics and B) OHAs Strategic Report. The Strategic Report is designed to track and share both tactical progress (quarterly) and strategic progress (annually) and is intended to be a part of the FB 24-25 planning and budgeting activities.
5	9	Exhibit 1: Office of Hawaiian Affairs Organization Chart	"As of January 2021"; "An administrator--the chief executive officer (CEO) of OHA--is appointed by the board and leads OHA's administration. The CEO is assisted by a chief operating officer (COO), a chief financial officer (CFO), a chief advocate and the directors of six divisions: (1) Land; (2) Research; (3) Communications; (4) Community Engagement; (5) Strategy Management; and (6) Human Resources."	Correction	The recommended reference change to "July 2021" is because the Board of Trustees approved the OHA Biennium Budget for the Fiscal Biennium Periods 2021-2022 (FY 22) and 2022-2023 (FY 23) via Action Item RM #21-08A, June 30, 2021, which approved the FY22 (begins on 7/1/2021), FY23 budget reflecting the reorganized organization as illustrated in the organizations charts provided to the SA. Organization charts are labeled August 2021 to illustrate those were the organization charts as of the transmission date, if the SA office prefers to use "August 2021" vs. "July 2021" in the report, OHA can support that. Also, instead of counting the number of directors, OHA recommends that the section be restated as follows, knowing that the CEO, COO, CFO, General Counsel and HR Director comprise the Executive Leadership Team (ELT)-- <i>Administration</i> An administrator--the chief executive officer (CEO) of the OHA--is appointed by the board and leads the OHA's administration. The CEO is assisted by a chief operating officer (COO), chief financial officer (CFO), general counsel and human resources director. Administration's management team include directors and managers of Advocacy, Communications, Community Engagement, Research, Land, Strategy Management, Technology Services and Operations functions.
6	9	Exhibit 1: Office of Hawaiian Affairs Organization Chart	Commercial Property Program box is identified as "Scheduled for Outsourcing"	Clarification	Please add footnote: "OHA plans to retain its commercial property asset management functions but outsource the support it requires for planning and development."
7	11	Paragraph 1, 3rd Sentence	"A year later, OHA transferred title to the 1.875-acre property to Hi'ipaka LLC, a subsidiary of OHA, which now manages all activities in Waimea Valley."	Correction	Hi'ipaka LLC is a subsidiary of Hi'iilei Aloha LLC, not OHA; please correct "OHA" with "Hiilei Aloha LLC".
8	13	Last Paragraph	"Additionally, OHA has the 5-acre Kukaniloko site,"	Clarification	On February 21, 2020, via Executive Order 4624, the Governor set aside 5,000 acres at the lands at Wahiawa, Oahu for the public purpose of preserving and maintaining the historic Kukaniloko Birthstones Site.
9	15	Side bar, Paragraph 2 under Prior Audits	"...as we conducted our 2022 audit"	Correction	From the July 2021 Initiation Letter, last audit was 2017, replace "2022" with "2021".
10	17	Audit Objectives		Clarification	From the July 2021 Initiation Letter, insert "(CY2019-CY2021)" at the end of audit objective 1, 2 and 3 for consistency.
11	20, 59	Last paragraph, last sentence; also p.59, last paragraph	"...and even deny OHA access to its own property." (20); "We report below that the steward denied OHA and our audit team access to the property...." (59)	Correction	OHA has not been denied access to its properties. The community recommended that no visitors should be allowed onto the most sacred area of the Wahiawa property, the actual birthstones. This is a culturally relevant practice and OHA agreed with the recommendation that no visitation by any group should occur at that time.
12	22	First paragraph, 2nd line	"...we reported that OHA had significantly expanded its real estate portfolio, acquiring about 30 acres in Kaka'ako Makai..."	Correction	OHA did not acquire the 30 acres in Kaka'ako Makai, replace "acquiring about" with "with the conveyed"
13	23	First line	"In response to the report, the then-board Chairperson said..."	Clarification	Please clarify who the "then-board Chairperson" is referencing. If the reference is to: a) former Board Chairperson, Colette Machado, please respectfully footnote, "then-board Chairperson" with "Died in May 2022"; or b) former Trustee Oswald Stender, then reference with "Died in February 2022". If the reference is to any Board Chairperson that is still alive, no edits recommended.
14	26, 27	subheading and multiple references	Investment Policy found to be missing	Correction	As noted in Note 2 above, the IPS was originally adopted in May 2003, and last amended in August 2021; therefore, please insert, "...originally adopted in May 2003, and was last amended in...", so the sentence correctly reads, "OHA's Native Hawaiian Trust Fund Investment Policy Statement, adopted in May 2003, and last amended in August 2021, ...", and provided to the State Auditor.
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Attachment B
 DRAFT Report of the Audit of the Office of Hawaiian Affairs Received Electronically on February 16, 21
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Item	Report Page #	Paragraph, Section, Area	DRAFT Report Statement, Label, Comment	Correction or Clarification	OHA Comment/Response
17	51	Paragraph 4, 1st sentence and 2nd sentence	"The Chairperson identified two lots on Ala Moana Boulevard ...", "OHA is eyeing another four parcels for potential residential development..."	Clarification	OHA never intended to put residential development on all of its makai parcels and ultimately identified three lots - Lot I, E and F/G for residential development as part of its 2023 legislative actions.
18	56	Paragraph 4	"Throughout the three-year period of our audit (2019 through 2021), OHA's stewardship arrangement with the Waialua [Hawaiian] Civic	Correction	The arrangement with Waialua Hawaiian Civic Club (WHCC) was not "throughout" the audit window period (2019-2021). WHCC's arrangement for the Courthouse existed under Hi'ipaka's sublease until Hi'ipaka terminated
19	57	Paragraph 3, 1st sent	"OHA's willingness to allow the steward..."	Correction	WHCC's arrangement for the Courthouse existed under Hi'ipaka's sublease until Hi'ipaka terminated 03/2020; Courthouse closed during the pandemic until WHCC resumed operating from there in 2021.
20	62	Exhibit 6	Waialua Courthouse (Waialua Civic Club of Hawaii'), Gap Period (Duration), Jan 2019 - Dec 2021 (36 mos)	Correction	The "gap period" for WHCC Certificates of Insurance (COI), incorrectly illustrated at Exhibit 6, is between Jan 2019 - Dec 2021, a total of 36 months. Hi'ipaka subleased the Waialua Courthouse between Jan 2019 - Mar 2020, therefore, WHCC was not required to have a COI with OHA for those 15 months. Thereafter, WHCC did not return to the courthouse until 2021, a verbal agreement resulted in a 12 month gap for the calendar year 2021. A correction footnote to explain the sublease arrangement and WHCC compliance with OHA COI requirements, and correctly identifying the "gap period" for the calendar year 2021 of 12 months vs. 36 months.
21	62	Exhibit 6	Pahua Heiau (Digital Moku), Gap Period (Duration), Jan 2019-Apr 2020 (16 mos), Jan 2021-Dec 2021 (7 mos) - 23 mos	Correction	Upon receipt of the DRAFT report and the Exhibit 6 representation of the "gap period" for Pahua Heiau, Certificates of Insurance (COI) were subsequently located and provided to the State Auditor on March 6, 2023 and included as Attachment B1 herein; therefore, there should be no "gap period" for this property and steward.
22	61, 62	last sentence of last paragraph, page 61; Exhibit 6; and last sentence of first paragraph, page 62	"...the missing certificates of insurance were for a cumulative period of 77 months - almost 6.5 years."	Correction	Based on the corrections noted at Items 20 and 21 above, including related corrections to Exhibit 6, the elimination of 23 months for Digital Moku and 24 months for WHCC, would recompute the references from "77 months" to be "30 months".
23	63	Paragraph 4, 1st sent	"Similarly, the steward constructed a rock wall..."	Correction	The donated boulders have not been moved since the approved and documented donation, and the steward did not construct a rock wall.
24	65	Paragraph 2, last sentence	"The problem appears to stem partly from lax or negligent enforcement of stewardship agreement terms and partly from the program's standard operating procedures, which do not assign responsibility with sufficient clarity for timely initiating and renewing of the agreements..."	Correction	The Legacy Lands Program (LLP) Standard Operating Procedures (SOP) Section 8.7 identifies the Team Members involved in Contract and Budget Tracking to include the LLP Specialists and LLP Manager. Subsection 8.7.3.2 further details the process for tracking Active Contracts and POs through the team Contract and Budget Tracking excel spreadsheet and the Active Contracts and POs tab therein: "All LLP Specialists should check this tab at least monthly to make sure all contract and PO[s] do not expire prematurely."
25	67	Paragraph 2	"We are unfamiliar with this special committee and its work..."	Clarification	Trustee Akina provided the following for clarification, the special committee was a Permitted Interaction Group (PIG) formed in 2021. Trustee Akina refers you to OHA's Board of Trustees Meeting on January 28, 2021 at the following link: Board of Trustees (BOT) Meetings - The Office of Hawaiian Affairs (OHA). Please see the meeting agenda and meeting folder (012821-BOT-Electronic-Folder.pdf (oha.org)) which includes "Action Item BOT #21-01: Approve the Formation of a Permitted Interaction Group to Investigate the Development of Land and Commercial Property Policies and Strategies relating to the development of OHA's Nā Kukui and Kaka'ako Makai properties." The Permitted Interaction Group (PIG) was formed to investigate the activation of Kaka'ako Makai Site E, 919 Ala Moana Blvd. The PIG members included Trustee Hulu Lindsey, Trustee Isa, Trustee Waihee IV, and Trustee Akaka. One of the PIG's conclusions was that Lot E is the second of two lots identified for activation. The PIG's conclusion was to "pursue an activation strategy requiring minimum investment and relying on existing permitted uses for Kaka'ako Site E, 919 Ala Moana Blvd."



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/31/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER JHC Services, Inc dba John H. Connors Insurance 500 Ala Moana Blvd 2-303 Honolulu, HI 96813		CONTACT NAME: Clare Pili PHONE (A/C, No, Ext): 808-534-7333 E-MAIL ADDRESS: cpili@connorshawaii.com FAX (A/C, No): 808-521-5995	
INSURED Ann Marie Kirk dba Digital Moku 7104 Pīlaa Place Honolulu HI 96825		INSURER(S) AFFORDING COVERAGE INSURER A: Mount Vernon Fire Insurance Co NAIC# 26522 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

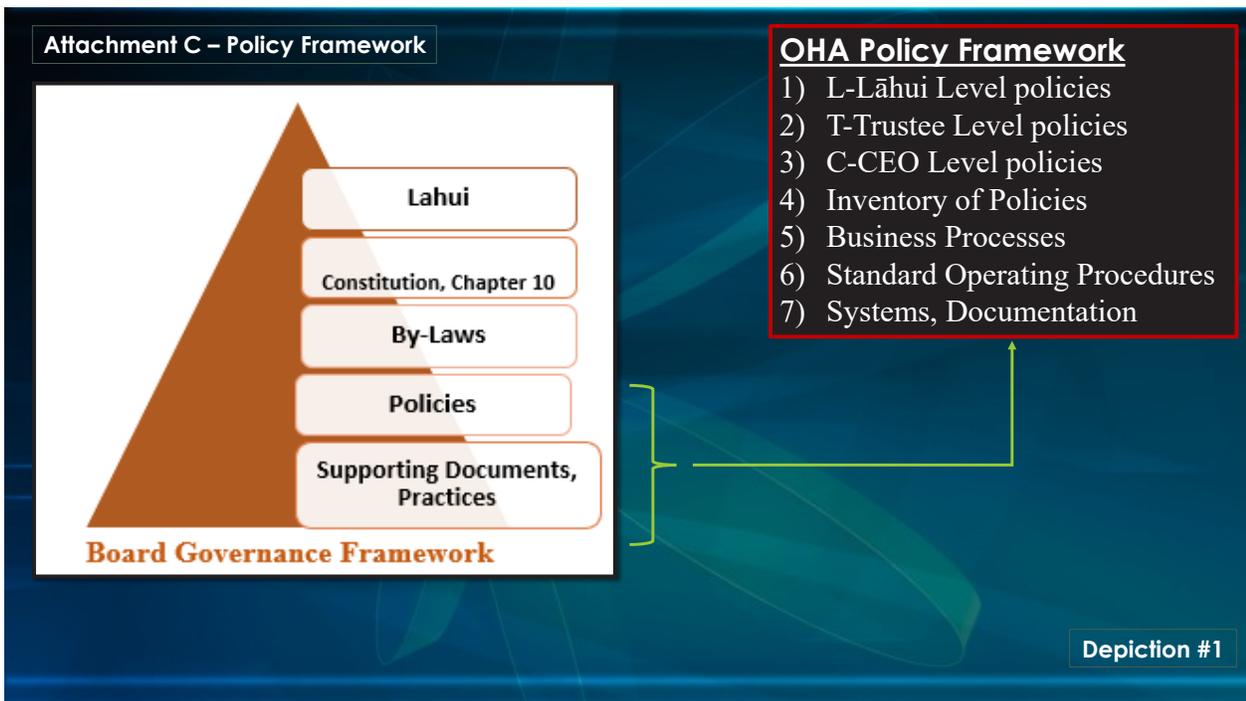
COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

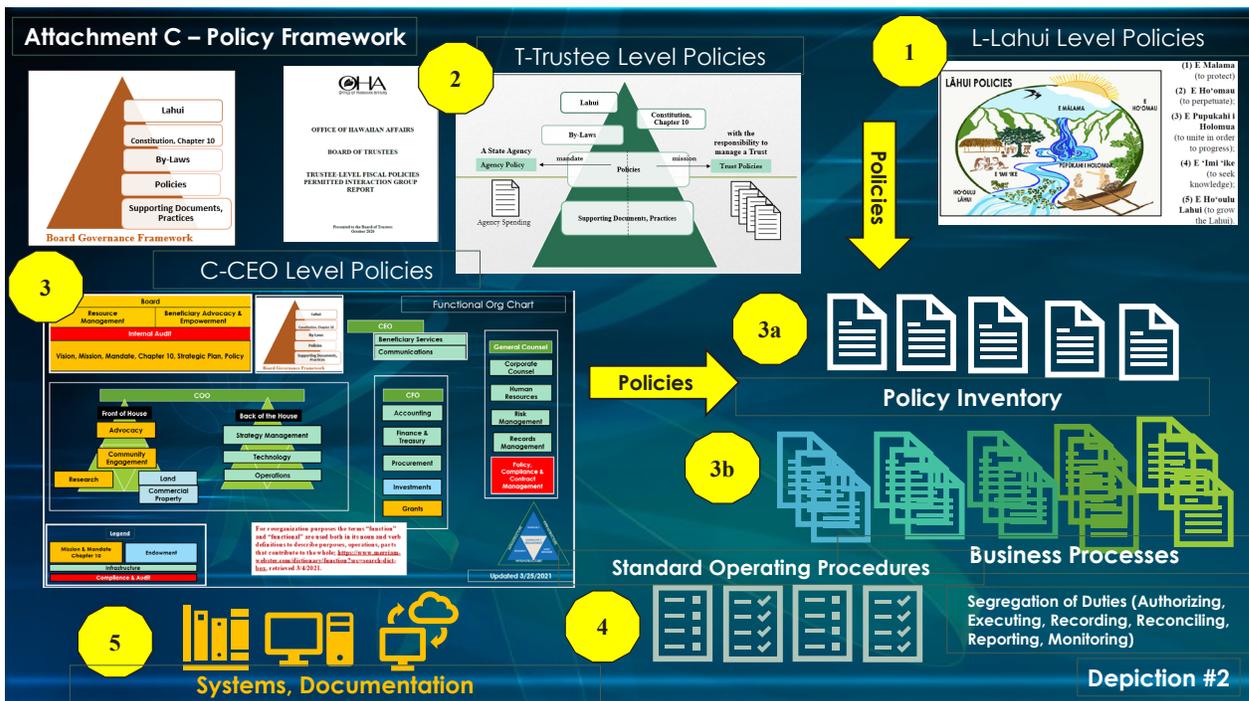
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		CL 2731171	5/29/18	5/29/19	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ Excluded GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Excluded
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in HI) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
<small>* This insurance contract is issued by an insurer which is not licensed by the State of Hawaii and is not subject to its regulation or supervision. If the insurer is found insolvent, claims under this contract are not covered by any guaranty fund of the State of Hawaii.</small>						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Pahua Heiau
 OHA's employees and trustees, representatives and agents are named as an additional insured to the extent set forth in the policy provisions. The General Liability policy is primary and any insurance afforded by the additional insured shall be deemed excess and non-contributory.

CERTIFICATE HOLDER Office of Hawaiian Affairs 560 North Nimitz Hwy Honolulu HI 96817	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: President
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ATTACHMENT D

Policy Guidelines, Policy of Policies

Subject: Provides overarching policy guidelines, definitions and accountabilities to aid in the implementation of the policy framework as a mechanism to operationalize the approved Board Governance Framework.

Scope: Organization

Responsible Organizational Unit: Board of Trustees

Effective Date: Upon 2nd reading of the Policy by the Board of Trustees

Date Reviewed/Revised: 2nd reading date of the Policy by the Board of Trustees

Next Scheduled Review Date: No later than two (2) years from the effective date, unless circumstances warranted otherwise (e.g., Chapter 10 change).

Policy Administrator or Owner: Board Chair

I. POLICY AND GENERAL STATEMENT

It is the policy of the Office of Hawaiian Affairs (OHA) to operationalize the Board Governance Framework consisting of the following five elements: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations) in a policy-based manner.

Elements of the OHA Policy Framework, based on the approved Board Governance Framework, including the following components: 1) L-Lāhui Level policies; 2) T-Trustee Level policies; 3) C-CEO Level policies; 4) Inventory of Policies; 5) Business Processes (listed within each policy); 6) Standard Operating Procedures for each business process; and 7) Systems, documentation, desktop procedures and manuals.

II. POLICY GUIDELINES

The purpose of this policy is to provide overarching policy guidelines, definitions and accountabilities to aid in policy development and implementation such that policies: 1) Retain Trustee authority unless specifically delegated; 2) Align to the Board Governance Framework in support of the OHA's mission; 3) Cascade to consistent accountability levels (e.g., Board, Administration); 4) Achieve accountability by identifying the responsible parties; 5) Detail implementation and administration; 6) Connect to related business processes and procedures; and 7) Communicate clear and concise information by leveraging technology.

ATTACHMENT D

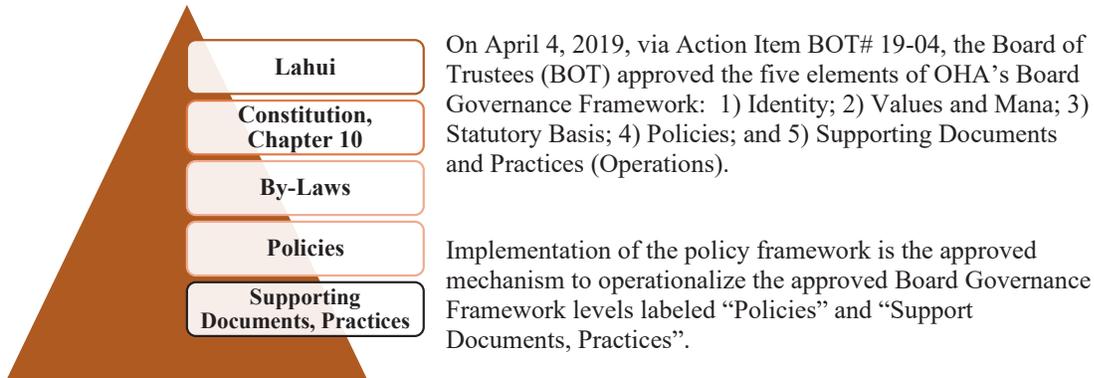
II. DEFINITIONS

- A. Lāhui:** A term or descriptor that should not be conceived of as having multiple meanings, but rather as having a meaning that encompasses and includes concepts that require multiple words in English; and have different meanings such as “nation” and “race.” In using the word “lāhui,” we did not mean “the nation” or “the race” or “the people.” Rather, when used, the word “lāhui,” means the inclusive broad concept of “lāhui,” which includes the English expressed concepts of “nation,” “race,” and “people.”
- B. Governance:** Establishment of policies, and continuous monitoring of their proper implementation, by the members of the governing body of an organization. It includes the mechanisms required to balance the powers of the members (with the associated accountability), and their primary duty of enhancing the prosperity and viability of the organization.
- C. Policy:** Prudence or wisdom in the management of affairs; management or procedure based primarily on material interest; a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body.¹
- D. L-Lāhui Level Policy:** L-Lāhui level policies articulate the Hawaiian cultural foundation of the organization as a basis for the *kaumaha* (heavy weight, sadness) or significant *kuleana* (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding ‘āina, water, wahi pana and iwi kupuna, strengthen ‘ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts.
- E. T-Trustees Level Policy:** T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA’s Trustee role as a result of the Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics); and focus on statutory and strategic perspectives.
- F. C-Level Policy:** C-CEO level policies guide and direct operations such as facilities, health, safety, compensation, recruitment, procurement, contracting, technology, data retention, asset protection, risk management.
- G. Policy Initiator:** The Board Chair or if delegated, the Administrator, who identifies an organization level issue and assigns the development of a policy proposal.
- H. Policy Administrator or Owner:** The Policy Administrator (or Owner) is the Board Chair or if delegated, the Administrator, whose jurisdiction covers the subject matter of the policy.
- I. Process:** A series of actions that produce something or that lead to a particular result.

¹ <https://www.merriam-webster.com/dictionary/policy>, retrieved October 31, 2021

- J. Procedure:** A guideline or series of interrelated steps in a process: taken to help implement the policy; should identify and link to the specific policy(ies) and process(es); is written in a consistent format that is easy to follow and accessible by those who need to follow the procedures; and should be reviewed and updated as necessary to ensure agreement with the most revision of the policy. Procedures related to technical systems (e.g., Oracle Fusion, business travel) should be developed and implemented at the time of the system implementation.
- K. Practice:** The action(s) of actors in the policy system that: complete or carry out implementation activities or performance of the procedure (i.e., practice); should be compliant with the written procedure(s); and understands that non-compliance (i.e. misalignment of procedure and practice) introduces risk (e.g., reputation, internal control, legal) to the organization and undermines the integrity of policy(ies), process(es), and procedure(s).
- L. Stakeholder:** Internal (e.g., employees, administration, board staff, Board of Trustees) and/or external (e.g., beneficiaries, contractors) community members, who are affected by the policy developed and implemented.

III. MO‘OKŪ‘AUHAU – Board Governance Framework



IV. SCOPE AND DELEGATION OF AUTHORITY

- A. Hawaii Revised Statutes, Chapter 10 [§10-1] Declaration of purpose.** (a) The people of the State of Hawai‘i and the United States of America as set forth and approved in the Admission Act, established a public trust which includes among other responsibilities, betterment of conditions for Native Hawaiians. The people of the State of Hawai‘i reaffirmed their solemn trust obligation and responsibility to native Hawaiians and furthermore declared in the state constitution that there be an office of Hawaiian affairs to address the needs of the aboriginal class of people of Hawaii. (b) It shall be the duty and responsibility of all state departments and instrumentalities of

ATTACHMENT D

state government providing services and programs which affect native Hawaiians and Hawaiians to actively work toward the goals of this chapter and to cooperate with and assist wherever possible the office of Hawaiian affairs.

- B. **Hawaii Revised Statutes, [§10-3]** Hawai‘i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people, including: (1) The betterment of conditions of native Hawaiians; (2) The betterment of conditions of Hawaiians; (3) Serving as the principal public agency responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian Homes Commission; (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians; (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and (6) Serving as a receptacle for reparations.²
- C. **Retention of Authority:** The Board of Trustees retains all powers, duties and responsibilities as outlined in Chapter 10, subject to specific delegation(s) of authority, documented in policy.
- D. **Delegation of Authority:** The Board of Trustees may delegate policy development, implementation, monitoring and evaluation activities to Administrator, who may then further delegate to operational functions, units and systems. Both policy/authority delegations—BOT to Administrator and subsequently to Operations---shall be documented in policy and communicated and updated in accordance with the specific policy.

IV. RELATED POLICIES

- A. *TBD - Policy B-2021-002: Retention and Delegation of Authority – Trustees*
- B. *TBD - Policy C-2021-001: Retention and Delegation of Authority – Administration*

V. CONTACTS

The Policy Administrator or Owner is:

Organizational Unit	Position
Board of Trustees	Board Chair

² HRS §10-3; see also HRS §10-1.

VI. POLICY FRAMEWORK

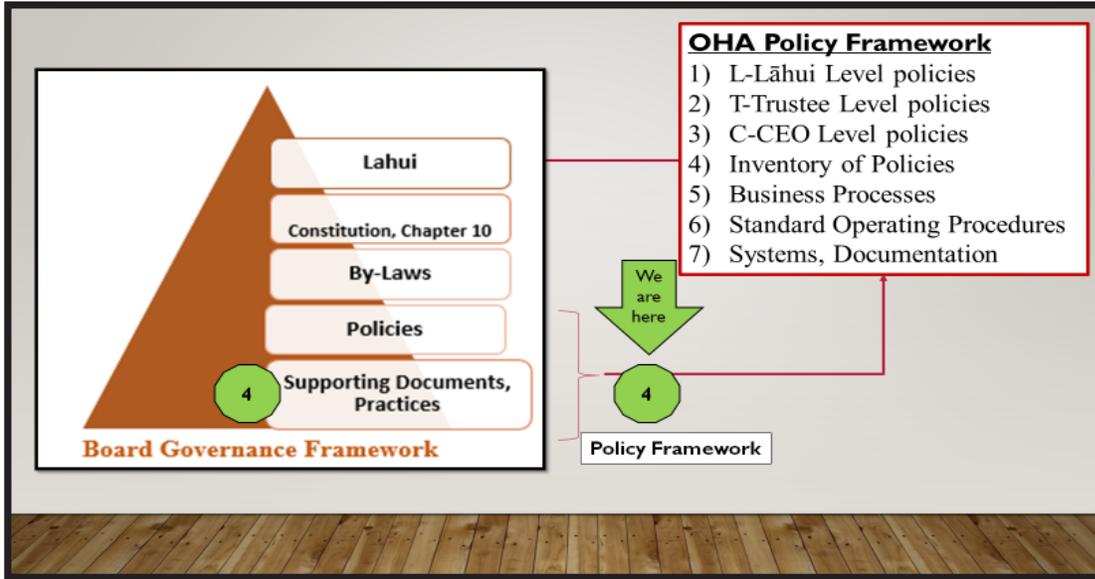


Figure 1: OHA Policy Framework Elements (Depiction 1)

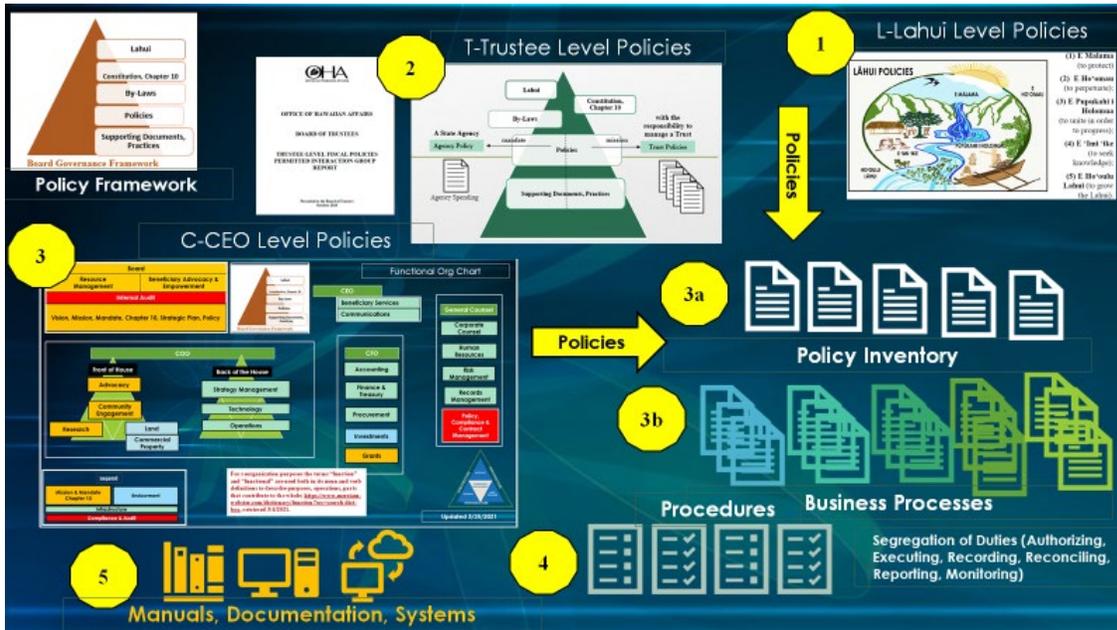


Figure 2: OHA Policy Framework Elements (Depiction 2)