



**U.S. Department of the Interior
Office of Inspector General**

AUDIT REPORT

**FOLLOWUP OF RECOMMENDATIONS
CONCERNING THE
HAWAIIAN HOMES COMMISSION,
OFFICE OF THE SECRETARY**

**REPORT NO. 00-I-500
JUNE 2000**

EXECUTIVE SUMMARY

**Followup of Recommendations Concerning
the Hawaiian Homes Commission,
Office of the Secretary
Report No. 00-I-500
June 2000**

BACKGROUND

The Hawaiian Homes Commission Act of 1920 (42 Stat. 108) was enacted in July 1921 "to rehabilitate native Hawaiians on lands given the status of Hawaiian home lands." The Act was administered by the Hawaii territorial government until the Hawaiian Islands became a state in 1959. At that time, the State of Hawaii assumed responsibility for the administration of the Home Lands Program through the Department of Hawaiian Home Lands (DHHL), which was headed by the Hawaiian Homes Commission, a policy-making board. Additional State and Federal legislation related to Hawaiian home lands was enacted in 1995.

As of June 30, 1998, the DHHL owned about 197,673 acres of land on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii and had issued 5,189 residential leases; 1,057 agricultural leases; 301 pastoral leases; 118 general leases; and 94 revocable permits, which included permits for agricultural, pastoral, and commercial purposes. For the fiscal year ended May 31, 1999, the DHHL had total revenues of \$126.4 million and expenditures of \$55.7 million. In addition, the DHHL reported outstanding direct loans of \$48.9 million and guaranteed loans of \$127.8 million.

OBJECTIVE

The objective of our audit was to determine whether the U.S. Department of the Interior, the State of Hawaii, the Attorney General of Hawaii, and the Hawaiian Homes Commission had satisfactorily implemented the eight recommendations contained in our March 1992 audit report "Hawaiian Homes Commission, Office of the Secretary" (No. 92-I-641).

RESULTS IN BRIEF

Of the eight recommendations contained in the March 1992 report, we found that seven recommendations had been resolved and implemented and one recommendation had been withdrawn. The followup report did not contain any recommendations.



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

JUN 16 2000

AUDIT REPORT

Memorandum

To: Assistant Secretary for Policy, Management and Budget

From: Roger La Rouche *Roger LaRouche*
Acting Assistant Inspector General for Audits

Subject: Audit Report on Followup of Recommendations Concerning the Hawaiian Homes Commission, Office of the Secretary (No. 00-I-500)

This report presents the results of our followup review of recommendations concerning the Hawaiian Homes Commission. The objective of our audit was to determine whether the U.S. Department of the Interior, the State of Hawaii, the Attorney General of Hawaii, and the Hawaiian Homes Commission had satisfactorily implemented the eight recommendations contained in our March 1992 audit report "Hawaiian Homes Commission, Office of the Secretary" (No. 92-I-641) and whether any new recommendations were warranted.

BACKGROUND

The Hawaiian Homes Commission Act of 1920 (42 Stat. 108) was enacted in July 1921 "to rehabilitate native Hawaiians on lands given the status of Hawaiian home lands." The Act was administered by the Hawaii territorial government until the Hawaiian Islands became a state in 1959. At that time, the State of Hawaii assumed responsibility for the administration of the Home Lands Program through the Department of Hawaiian Home Lands (DHHL), which was headed by the Hawaiian Homes Commission, a policy-making board.

In 1991, the Legislature accepted the Governor's "Action Plan to Address Controversies under the Hawaiian Home Lands Trust and Public Land Trust." The Governor convened a task force composed of representatives from the DHHL, the Office of State Planning, the Department of Land and Natural Resources, and the Department of the Attorney General. The task force was responsible for verifying title claims, determining whether improper uses were still in existence and whether these uses should be canceled or continued if authorized by the Commission, conducting appraisals and determining appropriate compensation for past and continued use of Hawaiian home lands, and pursuing all options for the return of lands and compensation from the Federal Government for wrongful actions during the territorial period. The task force's actions led to 16,518 acres of public lands being conveyed by the State to the Hawaiian Homes Commission.

In June 1995, the Governor approved Act 14, which, among other provisions, reaffirmed the State's intent to resolve controversies related to the Hawaiian home lands trust that arose through July 1, 1988; prohibited any and all future claims against the State; and established a trust fund to provide "a substantial, secure, and predictable funding source for the department of Hawaiian home lands." Act 14 required the State to make annual deposits of \$30 million for 20 years into the trust fund, beginning in fiscal year 1996.

In November 1995, the U.S. Congress enacted the Hawaiian Home Lands Recovery Act of 1995 (Public Law 104-42), which authorized the United States to convey certain real property to the DHHL in exchange for full settlement and release of all claims arising from or relating to United States ownership and continued use of real property identified as "available lands" for native Hawaiians under the Hawaiian Homes Commission Act of 1920. On August 31, 1998, the United States and the State of Hawaii entered into a memorandum of agreement to implement the Hawaiian Home Lands Recovery Act of 1995.

As of June 30, 1998, the DHHL owned about 197,673 acres of land on the islands of Kauai, Oahu, Molokai, Maui, and Hawaii and had issued 5,189 residential leases; 1,057 agricultural leases; 301 pastoral leases; 118 general leases; and 94 revocable permits, which included permits for agricultural, pastoral, and commercial purposes. For the fiscal year ended June 30, 1999, the DHHL had total revenues of \$299.2 million and expenditures of \$80.1 million. In addition, the DHHL reported outstanding direct loans of \$48.9 million and guaranteed loans of \$127.8 million.

SCOPE OF AUDIT

The scope of the audit included a review of actions taken by the U.S. Department of the Interior, the State of Hawaii, the Attorney General of Hawaii, and the Hawaiian Homes Commission to implement the eight recommendations contained in our March 1992 audit report. To accomplish our audit objective, we interviewed officials and/or reviewed records at the State of Hawaii's Office of the Governor; the State's Office of the Auditor; the Departments of Hawaiian Home Lands, Accounting and General Services, and the Attorney General; and the Hawaiian Homes Commission. In addition, we interviewed officials from the U.S. Department of the Interior's Office of the Secretary and Office of Insular Affairs; the U.S. Departments of Housing and Urban Development and Veterans Affairs; and the U.S. Small Business Administration.

The audit was conducted in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances.

As part of the audit, we evaluated the Commission's internal controls related to the DHHL's financial and operational management of the Hawaiian Home Lands Program to the extent that we considered necessary to accomplish the audit objective. With regard to the prior audit recommendations, we did not identify any internal control weaknesses. During our followup audit, however, we identified internal control weaknesses related to the collection

of delinquent loans and property taxes owed by Hawaiian Home Land lessees and to the legal limit on the total amount of the outstanding guaranteed loans made to Hawaiian Home Land lessees. These weaknesses will be discussed in a separate audit report on the Department of Hawaiian Home Lands.

PRIOR AUDIT COVERAGE

Our March 1992 audit report had eight recommendations: three recommendations to the Secretary of the Interior, three recommendations to the Governor of Hawaii, one recommendation to the Attorney General of Hawaii, and one recommendation to the Hawaiian Homes Commission. In addition to our March 1992 audit report that was the subject of this followup audit, in December 1993, the State's Office of the Auditor issued the audit report "Management and Financial Audit of the Department of Hawaiian Home Lands" (No. 93-22), which stated that (1) the Commission had not asserted its authority to direct and hold the DHHL accountable for effectively managing the program, resulting in the ineffective collection of delinquent loans, and (2) the DHHL continued to guarantee loans, even though it had exceeded the statutory limit by more than \$5.8 million. Our current audit disclosed that both deficiencies still existed, and those issues will be discussed in our separate audit report on the Department of Hawaiian Home Lands.

RESULTS OF AUDIT

Of the eight recommendations made in the March 1992 report, we found that seven recommendations had been resolved and implemented and one recommendation had been withdrawn (see the Appendix), as discussed in the paragraphs that follow.

Prior Audit Report Recommendations

Recommendation A.1. The Secretary of the Interior [should] direct appropriate Department of the Interior officials to establish an oversight system for monitoring the State of Hawaii's activities in discharging State trust obligations in regard to the Hawaiian Homes Commission Act.

The prior audit found that the Department did not effectively fulfill its oversight responsibility to ensure that the State discharged its trust obligations for the Hawaiian Home Lands Program. A 1983 Federal-State Task Force had recommended that the United States (1) be aware of the manner in which the State manages and disposes of trust lands, (2) satisfy itself that the State is not abusing its responsibilities as trustee, and (3) institute proceedings against the State for breach of trust if the State fails to properly discharge its responsibilities. Although this 3-part statement of the responsibilities was to be reflected in the Department's decision making as lead agency and in the duties assigned to the official who was designated as the Department's point of contact, the Department had not effectively fulfilled its oversight responsibilities.

In our followup review, we found that in February 1992, the Secretary appointed a Designated Officer to monitor compliance with the Hawaiian Homes Commission Act. The Department had also implemented a monitoring system that involved (1) reviewing and approving all land exchanges under the Act and (2) reviewing any amendments to the Act requested by the State. Under the Act, such amendments are required to be reviewed by the Secretary. Therefore, we consider the recommendation resolved and implemented, and no further action is required.

Recommendation A.2. The Secretary [should] inform the State of Hawaii of the types of assistance that the Department is willing to provide and identify the circumstances which will or will not require reimbursement.

The prior audit found that the 1983 Federal-State Task Force had recommended that the State and the United States each make matching contributions of \$25 million annually to survey the lands to be awarded and to design and construct needed site improvements, such as roads, water, utilities, and sewer systems. Neither the State nor the United States, however, had made the required matching contributions. The prior audit also found that the Hawaiian Homes Commission Act did not require the Federal Government to make contributions of funds or services and that recent Federal assistance provided to the Commission had been minimal. In 1989, the Commission received Community Development Block grants totaling \$1.2 million from the U.S. Department of Housing and Urban Development for the purpose of constructing road and drainage improvements on homestead lands.

In our followup review, we found that the Department had subsequently entered into agreements with the DHHL to provide technical assistance on investigating the groundwater resources on Molokai. A preliminary study of the Kualapuu Aquifer on Molokai began in April 1992 to compile well construction information and to design a groundwater availability study. A subsequent study on groundwater resources in Molokai was performed by the U.S. Geological Survey in October 1996. In addition, in a February 1992 letter to the the Office of Inspector General, the Designated Officer stated that "we have often made known to the Department of Hawaiian Home Lands our willingness to provide technical assistance from Interior's resources. . . . Our position has therefore been that we stand ready to help." Since our March 1992 report, Interior has not provided the DHHL with any financial assistance or required that the DHHL provide reimbursement for technical assistance received. Accordingly, we consider the recommendation resolved and implemented, and no further action is required.

Recommendation A.3. The Secretary [should] determine and inform the Congress of any amendments to the Act, enacted by the State of Hawaii, which diminish the benefits to native Hawaiians or are otherwise contrary to the intent of the Act.

The prior audit found that improper land transfers and improper land use occurred and that 1980 correspondence from the U.S. Departments of Justice and the Interior indicated that basic problems continued in the State's administration of the Hawaiian Homes Commission Act. The intent of the recommendation was to ensure that any future amendments to the Act

did not result in transfers or uses of Hawaiian home lands that would further diminish the benefits available to native Hawaiians.

In our followup review, we found correspondence indicating that the Department had reviewed amendments to the Act and that none of the amendments diminished benefits to the native Hawaiians. Therefore, we consider the recommendation resolved and implemented, and no further action is required.

Recommendation A.4. The Governor of the State of Hawaii [should] direct the Hawaiian Homes Commission to develop a comprehensive home lands infrastructure development plan that provides for the systematic preparation of lots for use and occupancy.

The prior audit found that the State's performance as trustee for the Hawaiian Home Lands Program was "highly deficient" in terms of meeting the needs of its beneficiaries. Specifically, the Commission had not made significant progress in awarding homestead lots because it did not have a comprehensive land use or infrastructure development plan.

In our followup review, we found that in a June 4, 1992 letter to the Office of Inspector General, the Governor concurred with the recommendation and stated that he "will direct" the DHHL "to develop such plan." On July 16, 1999, the Governor approved the expenditure of \$100,000 to update the DHHL's general plan. Section 4.05 of the request for the proposals required potential contractors to "compile and summarize existing information relating to land use for the Hawaiian home lands inventory." The section further stated, "Summary profiles shall include, but not be limited to, land, water, infrastructure, financing, beneficiary information, etc." On August 12, 1999, a contract to update DHHL's general plan was awarded. Therefore, we consider the recommendation resolved and implemented, and no further action is required.

Recommendation A.5. The Governor [should] propose legislation, based on the results of the Homes Commission's infrastructure development plan, to sufficiently fund the Home Lands Program in accordance with the State Constitution.

Recommendation A.6. The Governor [should] propose legislation to provide adequate funding to the Hawaiian Homes Commission's Hawaiian home loan fund.

The prior audit found that the Commission did not provide adequate financial assistance to lessees who were awarded homesteads during an accelerated application program. Also, lessees who were selected to receive homesteads after the acceleration period did not receive a homestead award unless they qualified for a Federal Housing Administration or Farmers Home Administration loan guaranteed by the DHHL. These deficiencies occurred because the Commission changed its policy from distributing usable land and providing financial assistance to constructing turn-key houses for sale only to beneficiaries who qualified for Federal Housing Administration or Farmers Home Administration loans. As a result, of the 1,731 beneficiaries who were awarded residential lots during the acceleration program, only 105 had built homes, and native Hawaiians were denied homestead awards unless they qualified for home loans from sources external to the Commission.

Our followup review disclosed that in the June 4, 1992 letter, the Governor concurred with the recommendation and stated that he "will submit an administration budget request to sufficiently fund the infrastructure development plan." Further, the letter stated that "in the 1992 legislative session, the Governor requested \$25 million for infrastructure development for DHHL" and that the Governor "will work with DHHL to request sufficient capital improvement project funds each legislative session." We also found that in 1995, the Legislature and the Governor approved Act 14 relating to Hawaiian home lands. Section 6 of the Act states that "the State, while not admitting the validity of any claims, hereby resolves and satisfies all controversies and claims encompassed by this Act by: (1) the establishment of the Hawaiian home lands trust fund and the requirement that the State make twenty annual deposits of \$30 million into the trust fund." In addition, Section 7 of the Act states, "Money of the Hawaiian home lands trust fund shall be expended by the department as provided by law upon approval by the commission and shall be used for capital improvements and other purposes undertaken in furtherance of the Act." The Governor's Chief of Staff told us that the DHHL was required to submit an annual capital improvement projects budget to the Governor for his approval but, because of the economic downturn in the State's economy, less funding has been available, which affects not only the DHHL but other governmental agencies. He further stated that he considered the State's settlement of \$600 million (\$30 million for 20 years) to the DHHL to be sufficient for capital improvement projects.

Additionally, DHHL's Administrative Services Officer stated in a February 3, 2000 letter to the Pacific Office of the Office of Inspector General that "significant events" had occurred since the 1992 audit, including the \$600 million settlement and the acquisition of additional lands from the Federal and State governments. The letter further stated that these events provided "new development opportunities . . . to DHHL" and "the department has enjoyed a reliable, consistent source of funding [the settlement funds] for which to plan and develop its lands." Based on these statements, we consider the two recommendations resolved and implemented, and no further action is required.

Recommendation B.1. The Commission [should] suspend implementation of the 10-year plan until (a) a viable needs assessment has been performed that accurately identifies the extent of the eligible native Hawaiian population and of its associated needs and (b) it can be demonstrated that the plan is financially viable.

The prior audit found that the Commission embarked on a highly speculative, \$2.45 billion 10-year plan to construct 14,000 turn-key housing units, primarily in master-planned communities, including single-family dwellings, multi-family units, elderly housing, and rental units. The 10-year plan was undertaken because the Commission had made little progress in its traditional approach of preparing and awarding homestead lots and providing financial assistance to the beneficiaries. However, the 10-year plan was not supported by identified program needs or based on financial feasibility, and the plan imposed additional qualifying criteria on beneficiaries for receiving homestead awards. As a result, the plan (1) would eliminate from the program native Hawaiians who may not qualify financially for mortgage loans and (2) would require families to relocate to less populated and less economically developed islands to receive leases.

In our followup review, we found that in a memorandum dated July 6, 1992 to the Assistant Secretary for Policy, Management and Budget, the Assistant Inspector General for Audits stated that the recommendation was withdrawn based on the June 4, 1992 letter from the Commission's Chairman, which stated that there have been "discussions between staff and the Commission as to the goal of building 14,000 homes over a 10-year period, but a plan to build 14,000 homes has never been presented to the Commission for its review and approval." The Chairman also stated, "We do not view the goal of building 14,000 housing units over a ten-year period as a plan for which present and future resources have been committed." Since the recommendation was previously withdrawn, no further action is required.

Recommendation B.2. The State Attorney General [should] investigate the preliminary dealings between the Department of Hawaiian Home Lands and the private investor and developer to determine whether contracting or other provisions of State law have been violated.

The prior audit found that the Commission may have violated the State's development laws by seeking private financing for the Kawaihae development project. In our followup review, we found that in a February 14, 1992 letter to the Office of Inspector General, the Attorney General stated that the conduct of Commission officials regarding the Kawaihae development project had been investigated and that no violations of State law had occurred. Based on this statement, we consider the recommendation resolved and implemented, and no further action is required.

Since this report does not contain any recommendations, a response is not required.

Section 5(a) of the Inspector General Act (5 U.S.C. app. 3) requires the Office of Inspector General to list this report in its semiannual report to the Congress. In addition, the Office of Inspector General provides audit reports to the Congress.

cc: Honorable Benjamin T. Cayetano, Governor, State of Hawaii
Earl I. Anzai, Attorney General, State of Hawaii
Raymond C. Soon, Chairman, Hawaiian Homes Commission

**STATUS OF RECOMMENDATIONS AND
CORRECTIVE ACTIONS FOR AUDIT REPORT
"HAWAIIAN HOMES COMMISSION,
OFFICE OF THE SECRETARY"
(REPORT NO. 92-I-641)**

<u>Recommendations</u>	<u>Status of Recommendations and Corrective Actions</u>
A.1-A.6	Implemented. No further action is required.
B.1	Withdrawn. No further action is required.
B.2	Implemented. No further action is required.

**ILLEGAL OR WASTEFUL ACTIVITIES
SHOULD BE REPORTED TO
THE OFFICE OF INSPECTOR GENERAL**

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