



February 18, 2022

VIA EMAIL

The Honorable Ronald D. Kouchi
Senate President
415 South Beretania Street
Hawai'i State Capitol, Room 409
Honolulu, Hawai'i 96813

VIA EMAIL

The Honorable Scott K. Saiki
Speaker, House of Representatives
415 South Beretania Street
Hawai'i State Capitol, Room 431
Honolulu, Hawai'i 96813

Re: Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Office of Hawaiian Affairs, Report No. 22-02

Dear President Kouchi and Speaker Saiki:

Please find attached a copy of Report No. 22-02, *Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Office of Hawaiian Affairs*, along with a copy of the Auditor's Summary.

This report presents a five-year summary for each special fund, revolving fund, trust fund, and trust account maintained by the Office of Hawaiian Affairs, evaluates the original intent and purpose of each fund and account, and determines the degree to which each fund and account achieves its stated and claimed purpose.

The report is accessible through the Office of the Auditor's website at:
<https://files.hawaii.gov/auditor/Reports/2022/22-02.pdf>.

The summary is also accessible through the Office of the Auditor's website at:
<https://files.hawaii.gov/auditor/Overviews/2022/22-02AuditorSummary.pdf>.

If you have any questions about the report, please contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Leslie H. Kondo", is written over a horizontal line.

Leslie H. Kondo
State Auditor

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Attachments

cc/attach: Members of the Senate
Members of the House of Representatives
Carol Taniguchi, Senate Chief Clerk
Brian Takeshita, House Chief Clerk

Auditor's Summary

Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Office of Hawaiian Affairs

Report No. 22-02

One Office of Hawaiian Affairs special fund should be closed.

OUR REVIEW of the two special funds, one revolving fund, and one trust fund of the Office of Hawaiian Affairs (OHA) found one special fund did not meet criteria and should be closed.

Section 23-12, Hawai'i Revised Statutes (HRS), requires the Auditor to review all existing special, revolving, and trust funds every five years. Reviews are scheduled so that each department's funds are reviewed once every five years. Although not mandated by statute, we included trust accounts as part of our review. This is our sixth review of the revolving funds, trust funds, and trust accounts of OHA. It is our second review of the special funds of OHA, since Act 130, Session Laws of Hawai'i 2013, amended section 23-12, HRS, to require review of special funds along with revolving funds and trust funds.

We used criteria developed by the Legislature and by our office based on public finance and accounting literature. For each fund and account, we present a five-year financial summary, the purpose of the fund or account, and conclusions about its use. We did not audit the financial data, which is provided for informational purposes. We do not present conclusions about the effectiveness of the programs or their management, or whether the program should be continued.

Reporting Shortfall

We noted that OHA did not file statutorily required reports for administratively created non-general funds totaling at least \$15 million. Accurate and complete reporting will greatly improve the Legislature's oversight of these funds.

Agency response

OHA acknowledged our recommendations related to the closing of the trust fund and stated they are working with the Department of Accounting and General Services to close this fund.



FUND TYPES

SPECIAL FUNDS

are used to account for revenues earmarked for particular purposes and from which expenditures are made for those purposes.

REVOLVING FUNDS

such as loan funds, are often established with an appropriation of seed money from the general fund and must demonstrate the capacity to be self-sustaining.

TRUST FUNDS

such as a pension fund, invoke the State's fiduciary responsibility to care for and use the assets held to benefit those with a vested interest in the assets.

TRUST ACCOUNTS

are typically separate holding or clearing accounts and are often used as accounting devices for crediting or charging state agencies or projects for payroll and other costs.

OHA disagreed with our assertion that the reporting of Non-General Funds is required by section 37-52.5, HRS, stating that the Native Hawaiian Revolving Loan Fund is a federal fund and for various reasons should not be included with information annually required to be reported to the Legislature. We disagree. Section 37-52.5, HRS, applies to any fund or account that is administratively established, and is “the criteria for the establishment and **continuance** of administratively established accounts and funds.” OHA should report to the Legislature, annually, its administratively created funds and accounts, irrespective as to when those funds and accounts were established, as required by section 37-52.5(b), HRS.

Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Office of Hawaiian Affairs

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

Report No. 22-02
February 2022



King Iiuaolu
1854-1855



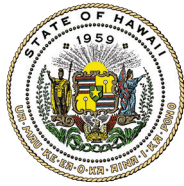
King Kalakaua
1863-1891



Queen Liliuokalani
1891-1893



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

Our Mission

To improve government through independent and objective analyses.

We provide independent, objective, and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management, and expenditure of public funds.

Our Work

We conduct performance audits (also called management or operations audits), which examine the efficiency and effectiveness of government programs or agencies, as well as financial audits, which attest to the fairness of financial statements of the State and its agencies.

Additionally, we perform procurement audits, sunrise analyses and sunset evaluations of proposed regulatory programs, analyses of proposals to mandate health insurance benefits, analyses of proposed special and revolving funds, analyses of existing special, revolving and trust funds, and special studies requested by the Legislature.

We report our findings and make recommendations to the Governor and the Legislature to help them make informed decisions.

For more information on the Office of the Auditor, visit our website:
<https://auditor.hawaii.gov>

Foreword

This is a report of our review of the special funds, revolving funds, trust funds, and trust accounts of the Office of Hawaiian Affairs.

Section 23-12, Hawai‘i Revised Statutes (HRS), requires the Auditor to review all existing special, revolving, and trust funds, once every five years. Although not mandated by statute, we include trust accounts as part of our review. This is our sixth review of the revolving funds, trust funds, and trust accounts of the Office of Hawaiian Affairs. It is our second review of its special funds since section 23-12, HRS, was amended by Act 130, Session Laws of Hawai‘i 2013, to include reviews of special funds.

We wish to express our appreciation for the cooperation and assistance extended to us by the Office of Hawaiian Affairs.

Leslie H. Kondo
State Auditor

Table of Contents

Chapter 1	Introduction	1
	Description of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts.....	2
	Criteria for Reviewing Special Funds, Revolving Funds, Trust Funds, and Trust Accounts	3
	Objectives of the Review	4
	Scope and Methodology	4
Chapter 2	Office of Hawaiian Affairs	7
Chapter 3	Observations on the Office of Hawaiian Affairs Reporting and Accounting for Funds	17
	The Office of Hawaiian Affairs Did Not Report a Non-General Fund as Required by Law	17
	The Office of the Auditor’s Comments on Response from the Office of Hawaiian Affairs	19
Attachment 1	The Office of Hawaiian Affairs Response.....	21

List of Exhibits

Exhibit 2.1	Cash Balances for the Office of Hawaiian Affairs’ Non-General Funds FY2017 – FY2021 (in millions)	7
Exhibit 2.2	Office of Hawaiian Affairs Fund and Account Totals by Type, FY2021	8
Exhibit 2.3	Office of Hawaiian Affairs Fund Not Meeting Criteria.....	9

Exhibit 3.1	OHA Administratively Created Non-General Fund Not Reported to the Legislature.....	18
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Chapter 1

Introduction

This review encompasses the special funds, revolving funds, trust funds, and trust accounts administered by the Office of Hawaiian Affairs (OHA). Section 23-12, Hawai‘i Revised Statutes (HRS), requires the Auditor to review each state department’s special, revolving, and trust funds every five years. For each fund, the Auditor’s review must include:

1. An evaluation of the original intent and purpose of the fund, both as expressed by the Legislature and as understood by the expending agency;
2. The degree to which the fund achieves its stated and claimed purposes;
3. An evaluation of the fund’s performance standards as established by the agency; and
4. A summary statement reflecting total fund transactions in the preceding five fiscal years, including the fund balance at the beginning of each fiscal year, total deposits and withdrawals, amount of interest earned, total expenditures made from the fund, and the ending balance for each fiscal year.

This is our sixth review of the Office of Hawaiian Affairs’ revolving funds, trust funds, and trust accounts.¹ It is our second review of the Office of Hawaiian Affairs’ special funds, since Act 130, Session Laws of Hawai‘i (SLH) 2013, amended section 23-12, HRS, to require review of special funds along with revolving funds and trust funds. Although not mandated by section 23-12, HRS, we have included trust accounts as part of our review. Trust accounts, like special, revolving, and trust funds, are funded outside of the general fund appropriation process and are therefore generally subject to less legislative scrutiny than the State’s General Fund. We last examined these funds and accounts in 2016.

¹ Prior to 2013, section 23-12, HRS, did not require reviews of departments’ special funds.

Description of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts

Special funds

Section 37-62, HRS, defines a special fund as one that is “dedicated or set aside by law for a specified object or purpose, but excluding revolving funds and trust funds.” According to the State’s Accounting Manual, special funds are funds used to account for revenues earmarked for particular purposes and from which expenditures are made for those purposes.

Revolving funds

Section 37-62, HRS, defines a revolving fund as one “from which is paid the cost of goods and services rendered or furnished to or by a state agency and which is replenished through charges made for the goods or services or through transfers from other accounts or funds.” Activities commonly financed through revolving funds include loan programs, which are initially established by general fund seed moneys and are then replenished through the repayment of loans.

Trust funds

Section 37-62, HRS, defines a trust fund as one in which “designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.” Trust funds invoke a fiduciary responsibility of state government to care for and use the assets held only for those designated to benefit from the funds. A pension fund is an example of a trust fund. Contributions and payments are to be held for the beneficiaries of the pension fund. Another example is tenants’ security deposits, which are held in trust for the future benefit of tenants and landlords. Until forfeited or returned, deposits are the property of the tenants and should be accounted for accordingly.

Trust accounts

The Department of Accounting and General Services (DAGS) defines a trust account as a separate holding or clearing account for state agencies. Trust accounts also serve as accounting devices to credit or charge agencies or projects for payroll or other costs.

Criteria for Reviewing Special Funds, Revolving Funds, Trust Funds, and Trust Accounts

Special and revolving fund criteria

In 2002, the Legislature set the requirements for establishing and continuing special and revolving funds. Sections 37-52.3 and 37-52.4, HRS, state that special and revolving funds may only be established by statute. The criteria used to review special and revolving funds are the extent to which each fund:

- Serves a need, as demonstrated by: (a) the purpose of the program to be supported by the fund; (b) the scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and (c) an explanation of why the program cannot be implemented successfully under the general fund appropriation process;
- Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries, or a clear link between the program and the sources of revenue – as opposed to serving primarily as a means to provide the program or users with an automatic means of support, removed from the normal budget and appropriation process;
- Provides an appropriate means of financing for the program or activity that is used only when essential to the successful operation of the program or activity; and
- Demonstrates the capacity to be financially self-sustaining.

Trust fund and trust account criteria

Unlike the requirements for special and revolving funds, the law is silent on whether a trust fund or trust account must be established by statute. The criteria used in this report to review trust funds and trust accounts are the extent to which each fund and account:

- Continues to serve the purpose and intent for which it was originally created, and
- Meets the definition of a trust fund or trust account, respectively.

The first criterion is derived from the objectives of section 23-12, HRS, which requires the Auditor to evaluate the original intent of each fund and the degree to which each fund achieves its stated purpose. The second criterion assesses whether a fund is held by the State only for the benefit of those with a vested interest in the assets or an account is held as a separate or clearing account.

Objectives of the Review

1. Identify and review all special funds, revolving funds, trust funds, and trust accounts of the Office of Hawaiian Affairs.
2. For each special fund, revolving fund, trust fund, and trust account, determine whether the fund or account meets the respective criteria.
3. Provide a five-year (FY2017 – FY2021) unaudited financial summary for each fund and account of the Office of Hawaiian Affairs.

Scope and Methodology

We reviewed all special funds, revolving funds, trust funds, and trust accounts directly administered by the Office of Hawaiian Affairs during the five-year period under review (FY2017 – FY2021). Funds and accounts included those established by statute as well as by administrative authority. Funds that had no balances or activity during the review period are not presented.

To identify funds subject to this review, we used a variety of sources, including our prior reviews, accounting reports from DAGS, non-general fund reports, legislative budget briefing documents, and other records. To gain an understanding of fund operations, we reviewed applicable agency administrative rules and interviewed key fiscal and program personnel, as necessary.

We obtained a summary statement for each fund that reflects total fund transactions in the preceding five fiscal years (July 1, 2016 to June 30, 2021), including beginning fund balances, total revenues, amount of interest earned, total expenditures, transfers, and ending fund balances for each fiscal year. We requested explanations for discrepancies between ending balances for FY2016 reported in our last review and opening balances reported for FY2017. We did not audit the Office of Hawaiian Affairs' financial data, which we provide for informational purposes only.

Procedures were performed on each fund using relevant criteria as stated above. We reviewed fund information for consistency with the intent of each fund's use. We reviewed information on performance standards established for the funds or accounts and performed other procedures as necessary.

Where appropriate, we relied on our prior reports, including Report No. 16-10, *Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Office of Hawaiian Affairs*.

Our review was conducted from August 2021 to December 2021. Recommendations were made where applicable.

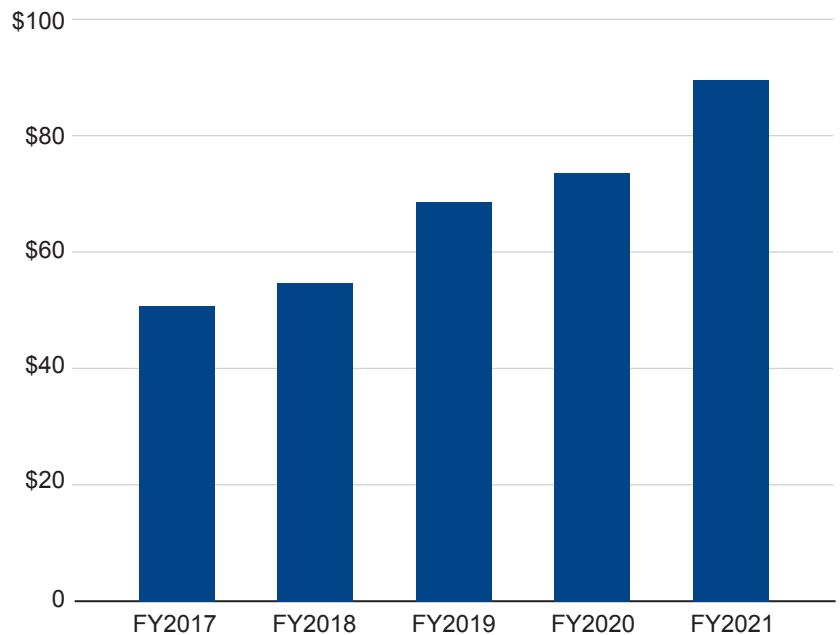
Chapter 2

Office of Hawaiian Affairs

This chapter presents the results of our review of 2 special funds, 1 revolving fund, and 1 trust fund of OHA. Funds which had no balances or activity during the review period are not presented. Total fund fiscal year-end balances for OHA amounted to at least \$51 million per year during the period reviewed.

Exhibit 2.1 summarizes the totals for these fund balances at the end of each fiscal year.

Exhibit 2.1
Cash Balances for the Office of Hawaiian Affairs’
Non-General Funds FY2017 – FY2021 (in millions)



Source: Office of the Auditor

Exhibit 2.2 presents totals for the combined revenue and interest, expenses and transfers, and ending fund balances for the different fund types for FY2021.

In FY2021, the special funds, revolving funds, and trust funds collected approximately \$103 million and spent or transferred approximately \$87 million.

Exhibit 2.2
Office of Hawaiian Affairs Fund and Account Totals by Type,
FY2021

Fund Type	Revenue and Interest	Expenses and Transfers	FY2021 End Cash Balance
Special Funds	\$0	\$0	\$326,000
Revolving Funds	2,024,000	2,733,000	15,448,000
Trust Funds/ Trust Accounts	101,270,000	84,655,000	74,464,000
Total	\$103,294,000	\$87,388,000	\$90,238,000

Source: Office of the Auditor

For each fund, we present a five-year financial summary, the purpose of the fund, and conclusions about its use and whether it meets the definition of a special fund, revolving fund, or trust fund. This review does not include an assessment of the effectiveness of the program or its management. Funds are presented in alphabetical order.

Exhibit 2.3 presents OHA funds that did not meet criteria for continuance and should be closed or reclassified.

Exhibit 2.3
Office of Hawaiian Affairs Fund Not Meeting Criteria

Fund Name	Fund Type	FY2021 Ending Balance	No longer serves original purpose and/ or does not serve a need	No clear nexus between benefits sought and user charges or a clear link between the program and revenue sources	Inappropriate financing mechanism	Not financially self-sustaining	Does not meet special fund, revolving fund, trust fund, or trust account definition
Native Hawaiian Rights Fund (Not in S/T)	Special Fund	\$325,754	✓				
Total		\$325,754					

Source: Office of the Auditor

***Native Hawaiian
Revolving Loan Fund
(revolving fund)***

***Administratively
established***

Financial Data for Fiscal Years 2017 – 2021 (in thousands)

	FY2017	FY2018	FY2019	FY2020	FY2021
Beginning Balance	\$13,808*	\$15,525	\$16,392	\$15,864	\$16,158
Revenues	3,076	2,485	2,108	1,813	1,467
Interest	420	501	580	614	556
Expenditures	(1,779)	(2,119)	(3,216)	(2,133)	(2,733)
Transfers	0	0	0	0	0
Ending Balance	\$15,525	\$16,392	\$15,864	\$16,158	\$15,448
Encumbrances	\$202	\$138	\$162	\$216	\$202

Investment Balances for Fiscal Years 2017 – 2021 (in thousands)

	FY2017	FY2018	FY2019	FY2020	FY2021
Long-Term Investments**	\$13,527	\$13,551	\$13,759	\$14,625	\$14,670
Total Ending Fund Balance***	\$29,052	\$29,943	\$29,623	\$30,783	\$30,118

*FY2017 beginning balance reflects only the cash balance from the State's Financial Accounting and Management Information System (FAMIS). FY2016 ending balance as previously reported in Report No. 16-10 included long-term investment balances, which are now separately presented.

**Long-Term Investment balances were previously reported as part of the financial data table. However, OHA was unable to provide investment activity (i.e., revenues, interest, expenditures, transfers) for the years under review. As such, we present only ending long-term investment balances.

***Total Ending Fund Balance is the sum of ending cash balances and ending long-term investment balances per FAMIS.

This fund serves the purpose for which it was created and meets the criteria for a revolving fund. Administratively established in 1988 with funding by OHA and a series of grants from the United States Administration of Native Americans (ANA), the fund provides financing for the startup or expansion of Hawaiian-owned businesses unable to secure financing from conventional lending institutions or unable to obtain small business training and technical assistance. In 2007, loan offerings were expanded to include consumer loans and consumer lines for education and home improvement. In 2011, a revolving line of credit for qualified Hawaiian-owned businesses and for Native Hawaiian consumers and a debt consolidation program were approved. In FY2013, the Hua Kanu Loan Program was created; the program offers financing of up to \$1 million and is available for highly qualified Native Hawaiian

owned business applicants. Revenues for this fund were from principal repayments from loans, interest earned from loans and investments, loan fees, and recovery of loans written-off. Expenditures consisted of loan disbursements, loan application fees, legal services, technical assistance, investment management, bad debt, personnel, and various overhead costs.

Native Hawaiian Rights Fund
(Not in state treasury)
(special fund)

Administratively established

Financial Data for Fiscal Years 2017 – 2021 (in thousands)

	FY2017	FY2018	FY2019	FY2020	FY2021
Beginning Balance	\$326	\$326	\$326	\$326	\$326
Revenues	0	0	0	0	0
Interest	0	0	0	0	0
Expenditures	0	0	0	0	0
Transfers	0	0	0	0	0
Ending Balance	\$326	\$326	\$326	\$326	\$326
Encumbrances	\$0	\$0	\$0	\$0	\$0

This fund no longer serves the purpose for which it was created and should be closed. The fund was administratively created by OHA in 1987 to hold attorney's fees and costs recovered by the Native Hawaiian Legal Corporation's Land Title Project. According to OHA, it now has a direct legal services contract with the Native Hawaiian Legal Corporation in place and the balance in the fund was transferred to the Public Land Trust on July 14, 2015. While the fund has been inactivated internally, the fund still exists in FAMIS, no longer serves the purpose for which it was created, and should be closed.

***Planning and Research
(special fund)***

***Administratively
established***

Financial Data for Fiscal Years 2017 – 2021 (in thousands)					
	FY2017	FY2018	FY2019	FY2020	FY2021
Beginning Balance	\$1	\$0	\$0	\$0	\$0
Revenues	0	0	0	0	0
Interest	0	0	0	0	0
Expenditures	0	0	0	0	0
Transfers	(1)*	0	0	0	0
Ending Balance	\$0	\$0	\$0	\$0	\$0
Encumbrances	\$0	\$0	\$0	\$0	\$0

*The fund was closed in FY2017 and the remaining balance was transferred to the Public Land Trust.

This fund was closed in FY2017 and the remaining balance of \$750 was transferred to the Public Land Trust. The fund was administratively created.

**Public Land Trust
Proceeds (Not in state
treasury)
(trust fund)**

**Hawai'i State
Constitution,
Article XII, Section 4**

Financial Data for Fiscal Years 2017 – 2021 (in thousands)

	FY2017	FY2018	FY2019	FY2020	FY2021
Beginning Balance	\$29,857*	\$35,345	\$38,262	\$52,881	\$57,849
Revenues	120,744	117,781	148,722	145,795	101,251
Interest	50	54	52	37	19
Expenditures	(115,306)	(114,918)	(134,155)	(140,864)	(84,655)
Transfers*	0	0	0	0	0
Ending Balance	\$35,345	\$38,262	\$52,881	\$57,849	\$74,464
Encumbrances	\$23,579	\$24,850	\$24,524	\$31,775	\$20,586

Investment Balances for Fiscal Years 2017 – 2021 (in thousands)

	FY2017	FY2018	FY2019	FY2020	FY2021
Long-Term Investments**	\$352,408	\$373,951	\$368,656	\$380,631	\$377,586
Total Ending Fund Balance***	\$387,753	\$412,213	\$421,537	\$438,480	\$452,050

*FY2017 beginning balance reflects only the cash balance from the State's FAMIS. FY2016 ending balance as previously reported in Report No. 16-10 included long-term investment balances, which are now separately presented. Additionally, the Hawaiian Projects Fund (S-320) balances were reported separately in the prior review. During this review, the balances are combined with the Public Land Trust Fund.

**Long-Term Investment balances were previously reported as part of the financial data table. However, OHA was unable to provide investment activity (i.e., revenues, interest, expenditures, transfers) for the years under review. As such, we present only ending long-term investment balances.

***Total Ending Fund Balance is the sum of ending cash balances and ending long-term investment balances per FAMIS.

This fund meets the criteria of a trust fund and continues to serve the purpose for which it was originally created. The fund, also known as OHA's Native Hawaiian Trust Fund, was established in 1981 to account for OHA's portion of revenues derived from the Public Land Trust. For this review, we have included the balances of all accounts funded with public land trust funds (as legislatively and board mandated); figures in the table above represent the total revenues and expenditures related to the Public Land Trust.

Revenues included an annual sum of \$15.1 million which represents OHA's pro rata share of the revenues from the Public Land Trust as stated in Act 178, SLH 2006. Additional revenues consisted of dividend and interest income from investments; interest earned from the Consumer

Micro-Loan Program; and lease and other revenues generated from commercial properties. Expenditures of this fund consisted of OHA's operating and program costs, plus grant and sponsorship funding for the benefit of Native Hawaiians.

Chapter 3

Observations on the Office of Hawaiian Affairs Reporting and Accounting for Funds

As we reported in our *Study of the Transfer of Non-general Funds to the General Fund*, Report No. 12-04, special, revolving, and other types of non-general funds collectively represent about half of the State's operating budget – moneys that are not subject to the same level of legislative scrutiny as the general fund. Accurate and complete reporting of all funds, as required by law, would greatly improve the Legislature's oversight and control of these funds and provide increased budgetary flexibility. Fund reports are one of the primary means through which the Legislature tracks non-general funds. The reports are used to monitor fund balances and identify excess moneys for possible transfer to the general fund.

The Office of Hawaiian Affairs Did Not Report Non-General Funds as Required by Law

During our review of the Office of Hawaiian Affairs non-general funds, we noted noncompliance with statutory requirements required by section 37-52.5, HRS.

Section 37-47, HRS, requires departments to submit to the Legislature an annual report of each non-general fund account, including information such as the intended purpose of the fund, current program activities supported by the fund, and financial data. The Director of Finance annually issues a memorandum requesting all departments complete and submit Form 37-47, *Report on Non-General Fund Information*, to the Department of Budget and Finance for each of their non-general funds. The Department of Budget and Finance compiles a report of all non-general fund accounts and submits it to the Legislature prior to the start of each legislative session.

We did not identify any issues related to reporting required by section 37-47, HRS.

Section 37-52.5, HRS, requires the Judiciary and any department that administratively establishes a new fund or account to submit a report to the Legislature. The report must be filed within 30 working days of a fund or account's creation and should include a justification for the fund or account and identification of its sources of revenue. In addition,

prior to the start of each legislative session, the law also requires each department to submit to the Legislature a listing of all administratively established funds or accounts along with a statement of their revenues, expenditures, encumbrances, and ending balances for each fund or account. This report is separate and distinct from the non-general fund report required under section 37-47, HRS.

As shown in Exhibit 3.1, OHA had non-general funds that were administratively created with balances totaling approximately \$15.45 million that was not reported to the Legislature as required by section 37-52.5, HRS.

Exhibit 3.1
OHA Administratively Created Non-General Funds Not Reported to the Legislature

Fund Name	Fund Type	HRS 37-52.5 (Admin Created)	FY2021 Ending Balance (rounded)
Native Hawaiian Revolving Loan Fund	Revolving Fund	✓	\$15,448,000
Total			\$15,448,000

Source: Office of the Auditor

The Office of the Auditor's Comments on Response from the Office of Hawaiian Affairs

Comments on Agency Response

WE TRANSMITTED a draft report of this review to the Office of Hawaiian Affairs (OHA) and met with OHA's Chief Executive Officer, Chief Financial Officer, and acting Corporation Counsel to discuss the draft report. OHA subsequently provided a written response to the draft report, which is attached in its entirety (Attachment 1).

A. OHA (Special) Fund Not Meeting Criteria

OHA acknowledged our recommendations related to the closing of the trust fund and stated they had notified the Department of Accounting and General Services (DAGS) to close this fund.

B. OHA is Unable to Provide Investment Activity (i.e., Revenues, Interest, Expenditures, Transfers) For the Years Under Review

In response to our note that OHA was unable to provide us with specific information about its investment activity for the Native Hawaiian Revolving Loan Fund and the Public Land Trust Proceeds (trust fund), OHA claims that, because of the deadlines set by DAGS to submit fiscal information to be recorded in the State's Financial Accounting and Management Information System (FAMIS), certain of OHA's financial activity and adjustments for June (which is the end of the state's fiscal year) is recorded in the FAMIS data for the following fiscal year. That explanation, however, is misleading and disingenuous.

First, OHA did not raise the explanation during our meeting, which, as we explained to OHA, was the purpose of the meeting, i.e., to discuss concerns OHA may have about the draft report. Second, and more importantly, at the beginning of our review, we provided OHA with a spreadsheet of the fiscal information about each of OHA's funds from FAMIS and asked OHA to confirm the accuracy of the information based on OHA's accounting records. While OHA may close its fiscal year after DAGS closes the State's fiscal year, OHA had the opportunity to, but did not, update the information about its long-term investments. OHA was unable to "tie" the information in the spreadsheet to any of

its financial records. We had multiple meetings with OHA's CFO to explain how she might obtain the information; but she did not provide the information to us, and we therefore reported the ending balances as reflected in FAMIS. Accordingly, we believe the notes about OHA's investment activity for the Native Hawaiian Revolving Loan Fund and the Public Land Trust Proceeds (trust fund) – specifically, that OHA was unable to provide the revenues, interest, expenditures, and transfers relating to its investments for the five-years we reviewed – are accurate.

C. Public Land Trust Interim Amount

OHA requested that we modify a sentence in Chapter 2 regarding the Public Land Trust revenues. However, the sentence as written in our report is consistent with Act 178, SLH 2006. OHA's suggested modification is not in line with Act 178, SLH 2006.

D. OHA Did Not Report Non-General Funds as Required by Law

Finally, OHA disagreed with an observation about the reporting of Non-General Funds as required by section 37-52.5, HRS, stating the Native Hawaiian Revolving Loan Fund is a federal fund and for various reasons should not be included with information annually required to be reported to the Legislature. We disagree. By its plain and unambiguous language, section 37-52.5, HRS, is “the criteria for the establishment and continuance of administratively established accounts and funds.” Section 37-52.5(b), HRS, states, “[e]xcept for the judiciary, each department or agency, at least twenty days prior to the convening of each regular session, shall submit a report to the legislature.” Stated differently, section 37-52.5(b), HRS, requires OHA to annually submit a list of all administratively established funds or accounts to the Legislature along with a statement of their revenues, expenditures, encumbrances, and ending balances. And, the reason for the requirement is equally clear. The Legislature has no information about funds and accounts that OHA establishes, including the amounts held in those funds and accounts; the required reporting provides the Legislature with visibility into administratively created funds and accounts, regardless of when those funds and accounts were established.

Instead of objecting to the transparency such reporting provides, OHA should report to the Legislature, annually, its administratively created funds and accounts, irrespective as to when those funds and accounts were established, as required by section 37-52.5(b), HRS.

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February 11, 2022

Leslie H. Kondo
State Auditor
465 S. King Street, Room 500
Honolulu, Hawai'i 96813-2917
Via Email: les.kondo@hawaii.gov

Aloha Mr. Kondo:

Mahalo for your recent transmittal of the draft report on your review entitled *Review of Special Funds, Revolving Funds, Trust Funds, and Trust Accounts of the Office of Hawaiian Affairs* ("OHA"). We would like to respond to the findings noted in your review as follows:

A. OHA (Special) Fund Not Meeting Criteria

In Exhibit 2.3 on page 9, and also referenced on page 12 of the draft report, your office notes that the Native Hawaiian Rights Fund (NHRF), "*No longer serves original purpose and/or does not serve a need, and therefore should be closed or reclassified.*" On March 23, 2021, OHA's Board of Trustee approved Action Item RM #21-02, to close the NHRF, given the inactivity and it no longer serving its intended purpose. On July 14, 2021, OHA notified the State Department of Accounting and General Services (DAGS) who replied that, "Appropriations cannot be closed but will be purged by FAMIS when we run the process. It is not completed frequently." During this fund's review, OHA inquired with the State Auditors if they knew how to close an inactive fund, to validate the response from DAGS, and they were not aware of the process. Therefore, OHA returned to and followed up with DAGS again last week, to ask when the next purge activity would occur, and according to DAGS, the last purge was in 2019. OHA was not provided a definitive date by DAGS. Therefore, OHA awaits the date and time DAGS completes its purge activities.

B. OHA is unable to provide investment activity (i.e., revenues, interest, expenditures, transfers) for the years under review

In a footnote for the Native Hawaiian Revolving Loan Fund (page 10 of the draft report, footnote **) and for the Public Land Trust Proceeds (page 14 of the draft report, footnote **) it was noted that *OHA is unable to provide investment activity (i.e., revenues, interest, expenditures, transfers) for the years under review.* The reason for this is because the balances reported on FAMIS are for at a point of time. For example, for fiscal year 2021,

Leslie H. Kondo, State Auditor
Review of Special Funds, Revolving Funds,
Trust Funds, and Trust Accounts
February 11, 2022
Page 2

Comptroller's Memorandum No. 2021-06 establishes submittal deadlines for accounting documents that must be recorded in FAMIS by the close of fiscal year 2021. Journal Vouchers were due by July 8, 2021, 10:00 a.m. OHA submitted journal vouchers up to May 31, 2021, because June 30, 2021, was not closed. It is not uncommon for June's activity and adjustments to be recorded in FAMIS in the following DAGS fiscal year. Although investment revenues, interest, expenditures, and transfers are reported in the proper category on the draft report, the amounts reported are at a point in time and not necessarily in the proper fiscal year per OHA's financial records. Therefore, to report the investment amounts separately is not possible as one DAGS fiscal year would include prior OHA fiscal year activities and adjustments and also not all of the OHA fiscal year activities and adjustments for the DAGS fiscal year.

C. PUBLIC LAND TRUST INTERIM AMOUNT

In Chapter 2, on page 14 of the draft report, please insert at the end of the first sentence of the last paragraph, "...an interim amount of...", so the entire first sentence of the last paragraph reads, "Revenues included an annual sum of \$15.1 million which represents *an interim amount of* OHA's pro rata share of the revenues from the Public Land Trust as stated in Act 178, SLH 2006."

D. OHA Did Not Report Non-General Funds as Required by Law

In Chapter 3, on page 17 of the draft report, your office notes non-compliance with statutory HRS 37-52.5 that *requires the Judiciary and any department that administratively establishes a new fund or account to submit a report to the Legislature. The report must be filed within 30 working day of a fund or account's creation and should include a justification for the fund or account and identification of its sources of revenue. In addition, prior to the start of each legislative session, the law also requires each department to submit to the Legislature a listing of all administratively established funds or accounts along with a statement of their revenues, expenditures, encumbrances, and ending balances for each fund or account. This report is separate and distinct from the non-general fund report required under section 37-47, HRS.*

We are not in agreement with this finding.

For all intents and purposes, HRS 37-62 defines the Native Hawaiian Revolving Loan Fund (NHRLF) as a Revolving fund. Special funds are also defined and exclude revolving funds and trust funds. Federal funds means financial aid received or reasonably anticipated to be received from the federal government. Based on these definitions and per HRS 37-62, NHRLF is a Federal Revolving fund. The HRS 37-52 provisions are applicable to Special funds and not Revolving funds. Furthermore, according to the 2021 SRT Fund Review,

Leslie H. Kondo, State Auditor
Review of Special Funds, Revolving Funds,
Trust Funds, and Trust Accounts
February 11, 2022
Page 3

Preliminary Inventory form that was filled out, Revolving, Trust and Federal funds are excluded with this review.

The Native Hawaiian Revolving Loan Fund (NHRLF) program was established in 1988 and predates the reporting requirements for new administratively established accounts, which was enacted by the Legislature through Act 178 in 2002. OHA did not find an amendment to 37.52-5 that retroactively requires NHRLF to now comply under this state statute. On page 2 of the draft report describing Revolving funds, NHRLF was not established by general fund seed moneys. NHRLF was jointly funded by OHA and a series of seven grants from the Administration for Native Americans¹. It is a federal fund and is externally audited. A single audit is required if a non-federal entity (e.g., not-for-profit organization, state and local government, tribe or institution for higher education) spends greater than \$750,000 of federal funds in a fiscal year. Every year, a Single Audit of the Native Hawaiian Revolving Loan Fund is filed with the Federal Audit Clearinghouse.

We appreciate the diligence your office demonstrated during this review. OHA staff reports that your office was exemplary in our mutual working relationship. We appreciate the thoroughness and professionalism they demonstrated, and we look forward to continuing constructive joint efforts in future engagements as we continue to fulfill our mission to better the conditions of Native Hawaiians.

‘O maua me ka ‘oia‘i‘o,



Carmen “Hulu” Lindsey
Chair, Board of Trustees



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

¹ An Office of the Administration for Children & Families under the U.S. Department of Health and Human Services