



COMMITTEE ON RESOURCE MANAGEMENT
Dan Ahuna, Chairperson
Robert K. Lindsey, Jr., Vice Chairperson
Leina'ala Ahu Isa, At-Large
Kalei Akaka, O'ahu
Keli'i Akina, At-Large
Brendon Kalei'aina Lee, At-Large
Carmen Hulu Lindsey, Maui
Colette Y. Machado, Moloka'i/Lāna'i
John Waihe'e IV, At-Large

**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS**

WORKSHOP OF THE COMMITTEE ON RESOURCE MANAGEMENT

DATE: Wednesday, February 27, 2019
TIME: 10:00 am
PLACE: OHA Board Room, Nā Lama Kukui
560 N. Nimitz Hwy., Suite 200
Honolulu, HI 96817

AGENDA

- I. Call to Order
- II. Public Testimony*
- III. Approval of Minutes[†]
 - A. January 9, 2019
- IV. New Business[†]
 - A. Workshop: Conducted by SPIRE (Certified Public Accountants for Fiscal Sustainability) on structure, decision points related to OHA financial policies and rules.
- V. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Albert Tiberi at telephone number 594-1754 or by email at: albertt@oha.org no later than three (3) business days prior to the date of the meeting.

*Notice: Persons wishing to provide testimony are requested to submit 13 copies of their testimony to the Chief Executive Officer at 560 N. Nimitz, Suite 200, Honolulu, HI, 96817 or fax to 594-1868, or email BOTmeetings@oha.org 48 hours prior to the scheduled meeting.

Persons wishing to testify orally may do so at the meeting, provided that oral testimony shall be limited to five minutes.

[†] Notice: The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for distribution of new committee materials.

[‡] Notice: This portion of the meeting will be closed pursuant to HRS § 92-5.

Trustee Dan Ahuna
Chairperson, Committee on Resource Management

Date

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Trustee Dan Ahuna
Chairperson, Committee on Resource Management

2/20/19

Date

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Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	CP: Completed	TS: Terminated by system
HR: Host receive	PR: Polled remote	RP: Report	FA: Fail	G3: Group 3
WS: Waiting send	MS: Mailbox save	FF: Fax Forward	TU: Terminated by user	EC: Error Correct

**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Hwy, Suite 200
HONOLULU, HI 96817**

**Minutes of the Office of Hawaiian Affairs Committee on Resource Management
February 27, 2019
10:00 am**

ATTENDANCE:

Trustee Dan Ahuna, Chairperson
Trustee Robert Lindsey, Vice-Chair
Trustee Leina'ala Ahu Isa
Trustee Kalei Akaka
Trustee Keli'i Akina
Trustee Brendon Kalei'aina Lee

Trustee Carmen Hulu Lindsey
Trustee Colette Machado
Trustee John Waihe'e

STAFF PRESENT:

Everett Ohta
Kamana'opono Crabbe, CEO
Lisa Victor
Miles Nishijima
Raymond Matsuura
Scott Hayashi
Sterling Wong
Sylvia Hussey, COO
Lehua Itokazu
Carol Ho'omanawanui
Lopaka Baptiste
Claudine Calpito
Ron Porter

Maria Calderon
Paul Harleman
Melissa Wennihan
Kauikeaolani Wailehua
Zuri Aki
Lei Ann Durant
Kama Hopkins
Kauikeaolani Wailehua

Guest and Community:

Rodney Lee – SPIRE Hawaii
Lucas Sayin – SPIRE Hawaii
Lani Nakazawa – SPIRE Hawaii

I. CALL TO ORDER

Chair Ahuna – Calls the Committee on Resource Management to order at 10:00 am, noting for the record the following Trustees present:

	Present	Excused	Comments
TRUSTEE LEI AHU ISA	X		
TRUSTEE KALEI AKAKA	X		10:01 arrived
TRUSTEE KELI 'I AKINA	X		
TRUSTEE BRENDON KALEI 'AINA LEE	X		
TRUSTEE HULU LINDSEY		X	
TRUSTEE ROBERT LINDSEY	X		
TRUSTEE JOHN WAIHE'E			10:03 arrived
CHAIRPERSON DAN AHUNA	X		
TOTAL	6	1	
At the Call to Order, there are eight (6) Trustees present.			

II. PUBLIC TESTIMONY

None.

III. APPROVAL OF MINUTES

A. January 9, 2019

Trustee Robert Lindsey, MOVED, SECOND by Trustee Ahu Isa						
	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA		X	X	X		
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON LEE			X			
TRUSTEE HULU LINDSEY						X
TRUSTEE ROBERT LINDSEY	X		X			
TRUSTEE COLETTE MACHADO			X			
TRUSTEE JOHN WAIHE'E			X			

CHAIRPERSON DAN	AHUNA		X			
TOTAL VOTE COUNT			8	1	0	1
MOTION: <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED						
Motion passes with seven (8) YES votes, none (0) NO votes						

I. New Business

A. Workshop: Conducted by SPIRE (Certified Public Accountants for Fiscal Sustainability) on structure, organization and decision points related to OHA financial policies and rules.

Chair Ahuna called on Rodney Lee of Spire to the table. Chair Ahuna comments that from the last BOT workshop where the trustees participated in grouping and clustering their values to identify strategic priorities for the upcoming strategic plan, Chair Ahuna states that he clustered everything together as he thought every value was import to him. He tied it to the roles of the trustees that it is the trustees role to make financial and other resources available so that administration can produce value to the communities OHA serves. States that what he wants to accomplish today in this workshop is to empower all trustees to feel comfortable making decisions, which is one of the most important things on the board table, to make good decisions. Chair Ahuna thanks Rodney of Spire for preparing this workshop. Hands the speaking platform to Rodney.

Rodney:

Greets trustees and thanks them for letting him conduct workshop. States he thinks this workshop is one of the more meaningful workshops they will conduct this year. States that policies are a fundamental step in doing what needs to be done. Encourages trustees to participate as much as possible as it is the trustees that need to conduct policy discussions and make policy decisions on guiding OHA. Rodney states he is not asking for decisions today but they would like to structure the conversation to get to a point where policies can be drafted. This is ultimate goal of today's workshop. The three objectives of the workshop: 1) to set a baseline understanding of OHA's primary fiscal policies, 2) To review and discuss the issues, which is an important part of the policy making process to understand the pros and cons of the decisions that are being considered or the types of topics that are being considered, 3) to set an objective towards the development of policies through the discussion itself. The agenda is pretty simple. To do a brief discussion of the issues that surround the policies, where the second part is the activity where trustee participation is greatly appreciated. Rodney states

he and his team would like to capture as much data from the trustees as possible to capture as much of the essence of what the board believes pertaining to the subjects presented. The third part was to go over policy considerations as a result of the discussion.

Introduces Lucas Sayin and Lani Nakazawa from Spire to help in capturing the data presented by the trustees. Asks if there are any questions.

Begins discussion by saying that OHA's fiscal policies are not a one size fits all. It has tried to be, but as OHA has matured over time it is dealing with greater complexity. Many of the fiscal policies address the operational aspects of it but not the activities beyond the operational aspects. What it requires is to be used more used as effective guidelines and directional tools for the board in decision making for the organization itself. The current policies lack parameters making it difficult to consider issues and activities. How do we do this for all fiscal policies?

The first thing they want to make sure is to understand clearly what are policies and how are they different from procedures. Shows a table differentiating the two, and how they are applied. States that policies have a general widespread application and change infrequently. Decisions guided by policy set a long term course. Things can change within the boundaries of the policy, but the policy does not change much. It is a statement of the WHAT and the WHY, not necessarily the HOW or the WHEN. Answers only major operational issues. It is helpful to know where the role of policy begins and ends so that trustees can know the roles they are filling. Expresses that many boards in Hawaii do not understand this and engage in procedural activities, without fully understanding the difference. Procedures are narrow in focus, subject to constant change and continuous improvement, more detailed description of the activities, are about the HOW, WHEN or WHO and sometimes WHAT, they have detailed processes. When the role of policy and procedures are mixed this increases risk and decreases accountability across the organization.

A good policy helps to inform decision making. For example in the case of Na Lama Kukui, what policies are going to be in place that affect the overall decision making of it. He names four policies: Spending policy: how do you intend to fund the future development of the property, the Real Estate Investment Policy: what do you intend to do with it, and what its objective? Economic Development Policy: What is OHA's mindset towards it for asset growth? And a Debt Policy: how to pay its obligations and commitments? These are the four that affect Na Lama Kukui.

Policy discussion are usually difficult to have because they incorporate statements that describe the policy itself, so instead of a discussion they decided on an activity that uses practical applications to discuss policy. It is easier when it is in a context.

Presents the worksheets and asks for participation and feedback saying its is for the trustees to answer, not Spire to answer. Explains that the worksheet is a decision tree and that the steps in the tree are only for consideration.

Trustees should make their own decisions. They will go over the pros and

cons of each decision that will help inform how the policy will be written.
Trustee Bob Lindsey Comment:

Says that he hopes as they work through the activity that they keep in mind the OHA mission laid out in HRS Chapter 10, and always be relating it back to that. And second he says that we all need to be aware of why we need the policies, which is to build the wealth capacity of OHA, knowing that what OHA has in terms of resources currently are not sufficient to meet the man needs of the beneficiaries, in housing, education, health, as well as other areas, so always remember as we talk about policy and procedures, always align to the mission and why we are here.

Rodney:

Expresses thanks for the comment.

Chair Ahuna:

Comments that what Trustee Bob Lindsey said goes back to understanding our roles as trustees.

Rodney:

Asks if there any more questions or contributions.

Trustee Ahu Isa:

Asks Rodney to explain the difference between policy and procedure in greater detail.

Rodney:

Refers to slide #5: States that generally policy overall guidelines and direction. The WHAT and the WHY, and why is it meaningful in relation to the mandate you've been given under the formation of what OHA is doing and the mission that you are trying to accomplish. Its broad in general. Covers a wide spectrum.

Trustee Ahu Isa:

Asks Rodney to give an example of a policy and a procedure.

Rodney:

Suggests that he will use an example from outside OHA as a precaution. Uses a policy for education, that says that safety is of utmost importance,

which is a general statement. A procedure would say here is what we do; are we going to place guards at every level, are we going to use metal detectors.

Trustee Ahu Isa:

Expresses that OHA might need to go out into the community to draft or change policy and have a hearing. Asks if this is true for OHA.

Rodney:

States that he believes the process and openness of the OHA BOT meetings fulfills this requirement.

Ka Pouhana:

States perhaps we should get Justice Klein's input of the matter.

Justice Klein:

States that when you are a State Agency you are subject to Chapter 91, that gives quasi-legislative and quasi-judicial authority, which means you act like a legislature and pass rules for your agency which requires public input through public hearings, and you can conduct contested case hearings as if you were a judiciary on somebody's rights or privileges. States OHA is not like that, OHA does not grant permits, we are not subject to chapter 91, so we don't have to rule make or adjudicate as if we were.

Trustee Ahu Isa:

Seems the State is uses the "quasi" in the case of OHA at their convenience.

Trustee Lee:

Asks clarification on OHA BOT requirements for Public Testimony.

Justice Klein:

States that OHA BOT Public Testimony is a requirement that meets the Sunshine Law, not Chapter 91.

Trustee Ahu Isa:

Clarifies that OHA is a Trust Fund, which is different than a State Agency, but that everything that applies to a State Agency applies to OHA.

Justice Klein:

Clarifies that OHA is a State Agency that has fiduciary obligations to beneficiaries of the Trust. So when people ask are we an agency or are we a trust, OHA is a State Agency according to the US Supreme Court in Rice v. Cayetano, so you are subject to the Constitution and that is why the elections that did not allow non-Hawaiians to vote was in violation of the 15th Amendment. But you are a Government unlike other Government Agencies because you have fiduciary obligations in the manner you handle the ceded lands trust fund. So you have aspects of both.

Chair Ahuna:

Comments that this discussion and workshop is to get trustees to be able to make decisions on creating as much value for the beneficiaries as possible through policy decisions. This conversation will frame the discussion so that everyone is moving in the same direction. Brings the discussion back to Rodney.

Rodney:

Poses the question on how to treat the Na Lama Kukui balloon payment and the fundamental issue of how to treat it. This will dictate what you can do with the asset. Does OHA keep the asset in the Trust? This is driven by your philosophy of how you intend to use your assets in general. How do you treat real assets? Poses this question to the board. Rodney says his understanding was that OHA acquired Na lama Kukui was as an opportunity to build equity and house OHA itself. So there are two different objectives for NLK, one is an investment and the other is operational. So this has implications for how to pay the debt. The intended use of NLK will determine to treat the debt that was taken to acquire the asset. Poses the question again to the board, what do they think NLK is intended to be, an investment or for operational use?

Chair Ahuna:

Is the first answer Rodney's question by saying that given the location of NLK it seems be more of a commercial asset than an operational asset. Expresses that NLK is not the only place to house OHA offices. There are other lands and properties we could use to do that.

Trustee Machado:

Answers NLK is intended to generate revenue.

Rodney:

Reiterates Trustee Machado's answer that it is intended to generate revenue. Rodney also reiterates another unidentified Trustee that NLK is an

investment.

Chair Ahuna:

States that he believes NLK is a liability as well. If something bad happens OHA is still responsibility.

Rodney:

Agrees, and states that it is an asset of the trust and is collateralized by the trust fund so this exposes the trust to liabilities. There is exposure.

Trustee Akina:

Says that it seems most of the conversation at the board reveals that most see NLK as an investment property like Kakaako Makai. Operational use for office space is a secondary issue.

Trustee Bob Lindsey:

NLK is the best commercial asset we have in our inventory at the moment. We should be looking at ways to increase the value of the asset so that it can contribute more to our mission.

Trustee Waihee:

Sees it an investment.

Trustee Machado:

With the debt service it's like a liability.

Rodney:

Yes, against the entirety of the trust.

Trustee Akina:

Asks to clarify, that the commercial loan out on NLK is \$24 million, the C&C has appraised NLK at \$48 million. Poses the question that is it necessarily the case that the loan is a liability against the trust or more specifically it could be collateralized completely with the value of the property?

Rodney:

Let me be more clear about the liability. Initially the purchase of NLK is a lean

against the property and a portion of the trust. However, the risk it poses as part of the trust and not unprotected, means that the liability vs. the risk is higher than the liability is. The risk, because it is collateralized by portions of the trust means that the risk is high.

Trustee Akina:

So liability is not so much a financial liability because we could have it completely collateralized but rather it is a liability of potential risk that things may happen on and to the property, ultimately affecting the trust. All activities of the modern world contain risk. Poses the question if Spire has done any risk analysis to see how that risk compares to mitigating for the risk, such as additional insurance.

Rodney:

Yes, you can get insurance, but it will be more costly. It will have to be vetted against the overall net revenues as they are today. Given the current state of revenue, additional insurance would be very detrimental to the asset. They would have to wait for admin to reach out to do such a detailed analysis. There are other trusts that do use large insurance policies and they are very expensive, to the tune of \$2 million per year. It can get very pricey. Brings the conversation back following a decision tree that has one path of keeping NLK in the trust and the other placing it in a subsidiary legal structure. Starts to go down the decision tree on the left side (see slides) which is the path of putting in it another legal structure other than the trust fund. Poses the question if OHA is willing to have partners. Poses the question to the trustees is OHA willing to work with partners in developing NLK?

Trustee Machado:

Asks, what would the partners do?

Rodney:

In many cases land owners maintain the interest of the property and they have a third party developer develop the rest of it. So the owner does not finance the entirety of the development.

Trustee Machado:

So our revenue we take in would be less right?

Rodney:

Not necessarily.

Trustee Lee:

That is similar to a lot of the real estate investment deals that Kamehameha Schools does. They own the land and they subcontract out the construction and development work to someone else so KS doesn't front the bill for that. And they give up a portion of the proceeds but not the entirety; and at the end of the day KS still owns the land.

Chair Ahuna:

What are some of the values that our people benefit from when KS does that?

Trustee Lee:

One is mitigated risk, because the developer now takes on the risk of the development, not KS. The overall long term perpetual investment is preserved because KS retains the ownership of the land.

Chair Ahuna:

Asks Pouhana, in our administrative recommendations would that be something that we would be looking at here at OHA or are there other methods that we have for our investments and liabilities?

Ka Pouhana:

I believe that has been brought before the board previously in terms of consideration and the benefits and the perpetual sustainability of our trust fund. Whether or not to keep it within our current structure or the benefits of moving to another legal structure was to mitigate risk to the trust fund. So those would be options and this exercise is helpful to get to a policy.

Trustee Machado:

One of the short falls is that of we bring in partners and turn NLK into a condominium when the rail gets in then that's a whole different ball park. Right now NLK is providing ground lease for people to use our property and this also serves as our corporate headquarters; when Kakaako was provided to OHA we were looking at the FSB building to house OHA because of height limits. We are not even at that juncture yet to consider that kind of move. That maybe happen in the next 5-10 years, not any sooner.

Rodney:

Policies in general reflect long term directions and bets. For many of the Native Hawaiian trusts they provide ground leases to the hotels, they don't take on the costs of building the hotels. What they do after 55 years is they retain the asset and recover the asset after the 55 years and reassess what they would like to do with it. You don't even take on the burden of raising the funds. In the case of some of the trust funds, if the building were to cost \$300 million to build, that's the developers' responsibility to raise that capital. And your trust is not burdened with any responsibility for development.

Trustee Lee:

Policies, because they are general, if OHA were to develop a policy of seeking out and moving into partnerships for development, that does not mean that OHA must do it. It only says it is a possibility of OHA wanted to go that route. Whether OHA does it or not is a separate matter. That would be procedures.

Trustee Akina:

It is would interesting to him to know what kind of policy decisions OHA come to in regards to Kakaako in terms of engaging partners there. Asks Rodney if he's heard of anything policy decisions.

Rodney:

Not that he's aware of.

Trustee Akina:

So we're in the same discussion situation as NLK right now.

Rodney:

All different lands, whether programmatic/ legacy lands have different considerations that might be contained within the asset of the trust that makes sense to insure because there is no up-side, there is only risk. So the board has indicated thus far that NLK is an investment. Going to the next question: would you be willing to have partners? To help improve the economic return on the investment.

Trustee Lee:

Another good example of partnerships is legacy lands. KS owns Heeia fishpond, and they entered into a partnership with a non profit who raises its own funds to reestablish and refurbish the fishpond, which is not a profitable entity. And KS expended very little money for that.

Rodney:

Excellent example.

Trustee Bob Lindsey:

In my mind we need to have partners because clearly we don't have a land base like KS has and we don't have the financial capacity where we can do things by ourselves. So it would be best to partner with others.

Ka Pouhana:

Following Trustee Lee, we have 5 legacy lands, and there has been discussion in the past that operationally there is risk that we as a state agency carrying that on and whether or not those lands put the trust fund at risk which would make logical sense to consider the subsidiary option.

Trustee Machado:

Maybe it would require some intel and research on how DHHL has developed their lands.

Rodney:

Yes, the entire property in Kapolei is under a lease which the proceeds go to DHHL.

Trustee Machado:

That model is quite successful. We have no track record on whether we can be good partners yet. To be honest with you Howard Hughs may be interested in talking with us about Kakaako, but we are high risk, so we are still new on the block.

Trustee Lee:

Correct me if I'm wrong Rodney, but I don't think on the partner side to what Chair Machado is saying, there is not much risk for us being new to the block because we would have very little to do with the partnership itself. We are just the provider of the land. So even though we are new to the game, a developer wouldn't say because you're new to the game we don't want to work with you. The developer would look at the value of the location, and say we don't really care how new you are, we really want that location., so we will consider entering into a partnership with you because we want a part of that land.

Rodney:

Part of that is bringing it back to the discussion of the policy and why it is important is because a partner would look at OHA and see through its policies if OHA is able to fulfill their side of the partnership.

Trustee Lee:

So we are now where DHHL was in 2004.

Rodney:

Exactly.

Trustee Bob Lindsey:

I think it would serve us well if we looked at future opportunities, we have shipping, air and rail transportation all within our proximity, so we need to try to look into the future and bring together a think tank of business partners to talk about other opportunities for us at NLK.

Rodney:

The importance of this discussion is that we want policies that give the broader community a clear sense of what your intent is. When that intent is clear then it's easy to have discussions about what can we do together. We have mapped out some options here: hypothetical scenarios and paths. The main question is if you had to keep an asset and you had debt on it, what would you do and what would you not do? Policies can define both what you do and do not allow. Let's imagine if you kept NLK in the trust fund, you still have to deal with the debt, what would you do and not do?

Trustee Lee:

We would have to build a more robust policy on insurance, to limit liability.

Rodney:

Part of the policy making process is to understand the pros and cons on all potential paths. So, we all agree it's an investment, now if we keep it in the trust how do we deal with it? Trustee Lee says we would need to increase the overall insurance policy and take on that cost.

Trustee Lee:

The basic question for that line too is insurance vs. liability.

Rodney:

Yes, that and how you pay for it.

Trustee Lee:

Even if we LLC'd it like we did with Waimea, OHA could still fund it. OHA could still fund it either way. It comes down to one of two questions: Is it financially prudent to develop an insurance liability policy? cause we don't have one, or a conscience thing that KS shared with us, would they be willing in good conscience to walk away from a liability? If the answer is yes, then you LLC it and insulate yourself from the liability, if the no matter what happens on the property, if we believe we were wrong and in good conscience we are not going walk away from it and we are going to pay, then why isolate it? It would go against our core value not to pay when it was our fault. So we would keep it within the trust and develop an insurance policy to protect us from the case where we did something wrong and we are going to pay out.

Rodney:

Yes, exactly.

Chair Ahuna:

On the map above where is OHA situated at the present moment? I want everyone know where we are.

Trustee Lee:

Yes, we are on the right side, where NLK sits within the trust.

Trustee Akina:

And we are here to discuss how we are going to handle the debt on NLK.

Trustee Machado:

So given the latest on security issues, and its impact on our tenants, they may want to vacate this vicinity because it is too risky for their customers.

Rodney:

Yes, they may express that being in the same building as OHA is a risk to them, either they stay and OHA goes or vice versa.

Trustee Machado:

So because of them we are increasing the security through the police dept. We need to put in all these measure so they feel secured, and that is a big liability and cost to us since the Atooi incident.

Trustee Lee:

Another liability is the new appraisal of NLK at \$48 million. Which will be passed on in a way of fees for the tenants since they pay the property tax. Which will increase rents, and NLK may not be financially viable for them.

Trustee Akina:

Asks, what is the potential for partnership or collaborators or contracts when NLK is part of the trust?

Rodney:

Great question, so a lot of that is dictated by the procurement process and the sunshine law. It's tough but not impossible, because developers do not generally want to disclose the intent of the property ahead of the other processes like entitlement and overall land use. So it's much more difficult we believe to entice partners to participate as an asset of the trust fund. They also want to establish firm contracts meaning there is clear economic benefit. So exposing that through the sunshine law for the developer might deter them from partnering.

Trustee Lee:

But it's possible because DHHL does it.

Rodney:

Yes it is possible, but they have to be willing to go through that exercise and be willing to understand the parameters in which they have to engage OHA. It is not expedient though.

Trustee Lee:

Does HCDA have to go through these same procurement processes.

Justice Klein:

No.

Ka Pouhana:

They are more of a regulating and approval agency. As a follow-up to Rodney's comments to Trustee Akina, we currently do not have any plans on the potential of NLK, but he is correct, currently it is within our structure and we would have to abide by state procurement. We have for the past 2 years developed our RFP for the Kakaako Makai Lot A. Based on the current guidelines of the Kakaako Makai policy we were tasked with looking at the design guidelines and so forth. We discovered a lot of barriers in the 2 years we've been developing the RFP, which the disadvantage is the time to develop it, and the procurement process adds another year, and the final awardee would have to comply with state procurement which is another year and a half. Sharing with you the challenges we have to go through. Now, DHHL, they have greater flexibility because they are not tied down to city and county permitting, so they have greater privileges in bypassing permit. They can bypass the city ordinances to develop their own infrastructure with their own processes and SOP's. So the advantages of moving it into an LLC is you could move much more quicker and have greater opportunity for developing partnerships and more financial vehicles and incentive available.

Trustee Lee:

I would say that is a big one, not to have put on this chart. 10 years of procurement vs. no procurement.

Rodney:

That is a consideration as a matter of procedure, and it is a consideration under the policy of what you allow.

Trustee Lee:

In this instance, the procedure would drive the policy.

Rodney:

Yes, the procedure alone would drive the policy. In the classification we are specifically speaking to an investment. Taking advantage of opportunities requires expediency. If this were a legacy land the timing may not be of the same consideration, so there would be time to make sure integrity of cultural intent is built into the process, and ensure full

transparency is disclosed.

Trustee Akina:

Looking at the left side of the chart, how robust would the controlling interest of OHA be over a subsidiary? That interest should be ownership, purposes and holding the LLC accountable. I think we are going through some issues now that will have lot term implications for how much control OHA will have over its LLC's. Do you see anything problematic?

Rodney:

I will refer to judge on some of those points as the are legal issues, but I will say that within the structure of the LLC's the operating agreement between the LLC and OHA could say a lot about what you are asking.

Justice Klein:

The issue will be defined shortly. If it turns out that LLC's are state agencies for all purposes then effectively you don't have an LLC, you have assets under OHA's control, and subject to liabilities that befall OHA. Whether the subsidiary option is available or not is coming to a conclusion in litigation right now. What we should actually be pushing for is sovereign immunity. We are a state agency and all other state agencies have it. That is a legislative form of insurance that is actually very cheap if you can pass that bill, it's free. We wonder why we don't have sovereign immunity. We took on the burden of the state to manage the trust and its assets that the Admissions Act gave to the state when OHA was created in 1978. We took on that liability with respect to fiduciary duties of running the trust, but we didn't get sovereign immunity.

Trustee Lee:

Did the state have sovereign immunity over these lands when it was under their trust?

Justice Klein

Yes, of course.

Trustee Lee:

Could we not file a suit to get a court ruling saying we should enjoy the same.

Justice Klein:

We don't have sovereign immunity because we are not sovereign. It's an

ongoing battle of whether we really are sovereign. You get sovereign immunity because you are the king, equals you are the state, I say we are a state agency and we should automatically have sovereign immunity. The legislature handles under which conditions it can be sued, but you don't need an LLC if you have sovereign immunity. But we've never considered or pressed that issue.

Trustee Lee:

My question then about sovereign immunity, as Judge knows I've asking tis question since I took office, is if we were to get what I believe and as Judge does we should have it, it doesn't solve our procurement issue. It solves our liability issue, but it will still take us 10+ years to procure.

Trustee Akina:

Thank you, that was very informative. If I understand Judge Klein well, even if we have an LLC structure there are still liability issues we will continue to have.

Justice Klein:

Yeah, but you don't have a lot of other issues. But you have liability issues. But if you treat it like an LLC in management and less control and it doesn't look a pocket in the same pair jeans and there is separation, then an LLC is valuable.

Trustee Akina:

I would agree and that goes back to the operational agreement. I would like to point out that there are still liability issues. Is it the case that we have only the two choices of keeping the asset in the trust fund as it currently stands or placing it in a subsidiary? Or is there some hybrid approach that could be structured?

Rodney:

As people say in finance, there is always a solution, and that is up to OHA to figure that out.

Trustee Lee:

If I understand you Rodney, what you've shown here on this chart is the black and white. There are many grey levels.

Rodney:

By laying out the two polar opposites we can discuss the intricacies between them to determine how defined the policy should be written.

Chair Ahuna:

So you see us going back and forth, how would you see us articulating this policy right now? Would we make it broad for the long term or more detailed?

Rodney:

I will refer you to the financial policies of UCLA Foundation.

We put this in here cause we think it is an interesting way to articulate an investment policy. We are not encouraging this is the direction but if you look at page 4, says real estate. The long term objective of real estate investment is to provide equity-like returns while providing a partial hedge against inflation. It helps diversify the portfolio due to its low correlation with other asset classes. They are spelling out what they believe they are doing with real estate, and they provide a primary benchmark to vet results against. You notice there are no numbers no specific allocations, it's only stating the intent of how real estate plays in the portfolio, in an investment mindset.

So you see the policy statement, it has nothing procedural, it is basically the will of the foundation saying what they want to do with real estate. That's the intent.

Ka Pouhana:

Spire had helped OHA develop a financial model and could you forecast how NLK could impact the trust fund?

Rodney:

We would need more data, but yes. We could forecast out a specific earn based on what generally averaged out in the market. But it depends on the intent of real estate.

That's why these policies matter.

Trustee Lee:

I'm curious, would it make more sense to a) have a real estate policy or b) have a real estate investment policy vs. real estate legacy policy? Should we treat them differently as their management activities would be different and make two policies separating them or have an all-inclusive policy? As an example, what if we decided to treat different LLC's differently?

Rodney:

The 'What' is that you have different lands with different objectives. From time to time OHA gets proposed to take on different types of land and you need to be able to make decisions take the land or not. This would tie back to the intent of how the land will perform under you. Because there of differing objectives you would have to define the objectives of each piece of land. How should it be managed and which house should it sit in? Does it fit under one roof or two different roofs? That where the procedures start to inform whether or not you consider to take the land.

Trustee Lee:

So can our land assets be put in 2 separate bedrooms under one roof? Or do we need to create two roofs?

Chair Ahuna:

That is very important because we cannot forget the social value that is embedded in everything we do.

Rodney:

Policies require logic and structure also. They don't exist in a vacuum. The policies should be aligned in the right house so it decreases confusion about the intent of the proposal. So even if we are talking about a land asset, given the intent, of it maybe since it has a strong cultural advocacy intent to it, the management discussions should be in BAE rather than RM.

Rodney:

Now we are going to move into the next worksheet, which is focused on Kakaako Makai Lot I.

Trustee Ahu Isa:

Discussed with a colleague about ceded lands and OHA's ability to influence the development of them, giving an example of putting solar panels on structures in the harbor. Expressed to answer her colleague's question was difficult. Asks Judge whether there is anything we can do other than sit back and collect 20% revenues from it.

Ka Pouhana:

Expresses that ceded lands still falls under State management, and that OHA is only allotted a percentage of the revenue generated on ceded lands. So OHA does not have the authority to directly make decisions on how best to

generate more revenue on ceded lands.

Rodney:

Proposing another viewpoint on policy making by choosing the example of Lot I where there is more complexity. Now you go from investment to now.....what? So, considering Lot I, does OHA sell Lot I? What does Lot I mean to the organization? Does the possession of the property (ceded lands) play into this decision? What is OHA's belief structure of Lot I for the purposes of OHA?

Trustee Lee:

We don't take this separately from NLK. It is an asset of the trust and putting a hard black and white in favor of a sale is unrealistic given all our discussion of LLC's. So we can move it out of the trust, give up a degree of control, and maintain that the mission of the organization lives on through the LLC. Develop a revenue generating entity that fulfills the same mission that OHA does. Is in favor of setting up a separate entity that will decide on how best to get as much value of Lot I as possible.

Trustee Akina:

Is Lot I integral to the entire Kakaako development? Does it have a value that the property could be replaced if it were sold or traded away. Does it have a legacy aspect to it where it will offer an identity for Hawaiians on the coast? Or is it primarily a financial development opportunity? If that's the case then we look at Lot I as a financial instrument for us.

Trustee Lee:

I agree wholeheartedly with trustee (Akina). Expresses that knowing how valuable Lot I is to the city and county is vital as a land swap would be another option to discuss.

Rodney:

These are discussions for policy making.

Chair Ahuna:

Expresses that he would like to bring to table a discussion about the social aspects of these assets. Beneficiaries come to the table and express the social history of these lands.

Rodney:

The job of the trustees is to align these policies to the mission and the statutes that are given to you. What is missing is the definition of how OHA will achieve these. That should be set in the policies. What are the opinions of the other trustees?

Trustee Ahu Isa:

The city and state are already talking about how changing ownership of Lot I would affect current regulations.

Trustee Bob Lindsey:

Told a story about how Hawaiian leaders were brought together by Ariana Huffington at the Imiloa Astronomy Center on the Big Island to talk about cultural wealth. In crafting policy we should incorporate the financial aspects of wealth as well as the cultural aspects of wealth.

Trustee Machado:

The city and county were not good partners in the first round of Lot I negotiations. They did not negotiate fairly and they did not help at the legislature. We never talked about a ground lease with them because they opposed it from the beginning. But we will have to raise that as a consideration this time around. Whatever we have discussed previously is off the table and that is why we are having this open conversation now. Expressed that she does not want to stand in front of the state and say she wants to sell ceded lands, as this has been something she has opposed for years. Maybe an exchange would be acceptable.

Rodney:

That was very well said and this goes back to the philosophy and intent that OHA needs to be clear on to make the policies. So if the protection of ceded lands is foremost that will determine what you can and cannot do as stipulated in the policy.

Trustee Akina:

If we did sell Lot I would it cease to be ceded lands?

Trustee Bob Lindsey:

Protecting our ceded lands trust is protecting our credibility as an institution.

Trustee Akaka:

I have great concern when it comes to the issue of selling land, because that is something of value that is an asset that we have that may be financially rewarding in the short term but something that we may never get back. This needs to be taken into consideration. Not the immediate implications but the future repercussions of a sale of land.

Everett Ohta:

In responding to the sale of ceded lands to the City and County, in his opinion they would still be retained under the ceded land trust. Because the City and County is a subdivision of the State it would remain.

Justice Klein:

We had this discussion in front of the legislature and Charlene Aina (AG) and she expressed that a sale would render the land outside of the ceded land trust, (but it was not specified whether the buyer would be a government entity or a private entity).

Rodney:

Now we will go through this issue with respect to the policies. We can talk about rules: an example could be don't take on debt you can't repay, or debt can be taken against a financial asset, but only against an asset for financial gain, or any type of debt should go through a rigorous due diligence. What projects would you take debt on? We would recommend that you not take debt for operational costs.

Trustee Akina:

Have looked at the debt policies of other state agencies?

Trustee Lee:

We've looked at KS's. Maybe it would be better to look at KS's vs. the State.

Trustee Akina:

The key is to abide by good policy.

Rodney:

States usually have different kinds of debt than OHA does. They take on bonds, not commercial loans so much. But it is pertinent to look at their rules. Debt is good when it is used on an asset to leverage for returns.

Trustee Lee:

Started a discussion about the rule of KS and how the percentage of debt applies to the organization as a collective but the application of the debt is not. They do that because they, like us, have legacy lands, so they choose not to leverage off legacy lands. Ran through a scenario of leveraging NLK and Kakaako Makai with a collective debt cap at 10%.

Trustee Akina:

We need a good Spending Policy along with a Debt Policy. Uses the UCLA Foundation as a good example.

Trustee Lee:

Good point Trustee Akina, we could input into the debt policy that spending debt cannot be used for spending and may only be used for investments.

Rodney:

We crossed over into land, investment, spending, and economic development, and the only thing we haven't mentioned is the fiscal reserve. So, the implications of anything we do crosses into all aspects of fiscal management and policy making.

Let's use the distinction between financial and real assets in the investment policy. One is liquid and the other is not. In this case is a blended return desirable? It causes the natural tension of highest and best use. Liquid and illiquid must compete to raise the portfolio. This can also lead to partial hedging.

Trustee Lee:

Discusses the potential option of empowering our LLC's so that the trust drawdown (spending) could decrease as the LLC's increase their impact in the community.

Trustee Bob Lindsey:

He asked a question that the percentages of withdrawal, spending, debt is something that administration would help with?

Rodney:

Yes. Also with a blended return goal you can change your risk profile because you are using a partial hedge when bifurcating financial and real assets. You

can be more or less aggressive. It gives you more options. Causes the natural tension to guide where the money should be moved and gains achieved through multiple ways.

Ka Pouhana:

By defining it a high level along with the core values and beliefs of the organization will help administration operationalize and have greater clarity in terms of on the ground actions.

Rodney:

Where do we go from here, what is next: Spire will document all feedback from the today's workshop.

Lani Nakazawa:

Next steps include taking a look at current OHA policies, because they are not in shape to be easily used. Then correlating them to the examples presented today. Then we can recommend new policies and edits to existing policies.

Rodney:

Then we will draft policies for you and have you look at them, and we can discuss them again.

Trustee Akina:

Can we have adequate time to review the draft policies?

Trustee Machado:

Can we have a definite date moving forward?

Lani Nakazawa:

The policy makers are you the trustees. This is the beginning of the process. Spire will not be making the policies, that responsibility is yours. Spire is here to facilitate that process so now we are gathering data.

Trustee Akina:

Brings up a discussion about the independent audit and its progress.

Chair Ahuna:

We are here to get OHA in to a more financially sound state, and thank you to Spire and all the trustees for participating today.

II. Adjournment

Moved by Trustee Lee, second by Trustee Machado to adjourn. 12:12pm.

Trustee Lee, MOVED, SECOND by Trustee Machado.						
	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA						
TRUSTEE BRENDON LEE	X		X			
TRUSTEE HULU LINDSEY			X			X
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE COLETTE MACHADO		X	X			
TRUSTEE JOHN WAIHE'E			X			
CHAIRPERSON DAN AHUNA						
TOTAL VOTE COUNT			8			
MOTION: <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED						
Motion passes with eight (8) YES votes.						

Respectfully Submitted,



Ron Porter, Trustee Aide
Committee on Resource Management

Dan Ahuna

Dan Ahuna, Chairperson
Committee on Resource Management

Approved: RM Committee meeting 3.27.2019