

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**

**MEETING OF THE COMMITTEE ON
 RESOURCE MANAGEMENT**

DATE: Wednesday, November 20, 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. New Business
 - A. Approval of Minutes
 - 1. July 31, 2019
 - 2. September 25, 2019
 - 3. November 6, 2019
 - B. Action Item RM #19-18: Approval of Reimbursement Proposal from State Street Bank for Inaccurate Accounting and Performance Reporting.
 - C. Action Item RM #19-19: Approval for investment consultant, Segal Marco Advisors, to initiate an active core fixed Income Manager search.
 - D. Action Item RM #19-20: Approval of the Non-OHA Executive Managers' Selection and Seating Process for Hi'ilei Aloha, LLC.
 - E. Workshop #1: Kakaako Makai Overview, Programmatic Elements, Sequence and Options
- IV. Announcements
- V. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at telephone number 594-1772 or by email at: rainag@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

11/12/2019

 Date

DRAFT

**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
September 25, 2019
10:04 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:

Gloria Lee
Grace Chen
Keola Lindsey
Lisa Victor
Miles Nishijima
Raina Gushiken
Ray Matsuura
Sylvia Hussey, COO
Lehua Itokazu
Alyssa Kau
Carol Ho'omanawanui
Claudine Calpito
Paul Harleman
Maria Calderon
Melissa Wennihan
Brandon Mitsuda
Kauikeaolani Wailehua
Kama Hopkins
Priscilla Nakama
Nathan Takeuchi

Guest and Community:

Kurt Klein, Board Counsel
Alvin Akee

I. CALL TO ORDER

Chair Ahuna – Calls the Committee on Resource Management to order at 10:04 am, noting for the record the following Trustees present:

	Present	Excused	Comments
TRUSTEE LEI AHU ISA			Arrived 10:07 am
TRUSTEE KALEI AKAKA	X		
TRUSTEE KELI 'I AKINA	X		
TRUSTEE BRENDON KALEI 'AINA LEE	X		
TRUSTEE HULU LINDSEY	X		
TRUSTEE ROBERT LINDSEY	X		
TRUSTEE JOHN WAIHE'E	X		
CHAIRPERSON DAN AHUNA	X		
TOTAL	8		
At the Call to Order, there are eight (8) Trustees present.			

II. PUBLIC TESTIMONY

None.

Chair Ahuna mentioned the 72-hour rule pursuant to OHA BOT operations manual, section 49, shall be waived for distribution of new committee materials item III. C.

III. NEW BUSINESS

A. Action Item RM #19-14: Action Regarding the Economic Development Policy Implementation Procedures

Chair Ahuna asks calls up Sylvia Hussey to discuss action item RM#19-14.

Sylvia Hussey explained and had further discussion on the action item and implementation procedures in depth.

Trustee Akina wants to suggest and propose amendments to action item, with regard to the role of Trustees making the final decision.

Trustee Lee states point of order, asks if Trustee Akina can hold off until there is a motion on the table.

Chair Ahuna calls for motion.

Trustee Lee moved.

Trustee Waihee seconded.

Trustee Akina suggests his amendment on page 10. Wants Administration and not the Board to conduct preliminary review of economic development projects.

Trustee Lee asks did anyone second the amendment.

Chair Ahuna states no one seconded the amendment.

Trustee Machado states Trustee Akina did not make a motion.

Trustee Akina makes a motion for his suggested amendments on page 10. Wants Administration and not the Board to conduct preliminary review of economic development projects.

Chair Ahuna states it does not say that.

Trustee Lee and **Trustee Hulu Lindsey** state they want to comment, but no one seconded.

Chair Ahuna asks if anyone wants to second.

Chair Ahuna said no one seconded so amendment dies. We can still proceed with discussion.

Trustee Machado seconded Trustee Akina's motion for discussion.

Trustee Hulu Lindsey states Trustee Akina is reading this the wrong way.

Chair Ahuna & Trustee Waihee agree too.

Trustee Hulu Lindsey further explains why she disagrees with what Trustee Akina is suggesting. I will not be in favor of what he is suggesting.

Trustee Lee states this action does not talk to any type of review, this is the procedure in action necessary for either entity to bring this forward to the RM committee and then to decide how to disseminate this to Administration. So this is not Board level action.

Chair Ahuna thanks Trustee Lee.

Trustee Waihee states his view and will not support amendment either.

Chair Ahuna had further discussions with members regarding due diligence, then called for vote.

Chair Ahuna reminded the committee that there is a motion to amend.

Trustee Robert Lindsey stated all opportunities for those that are deemed worthy to be analyzed, we should always give it to Administration.

Trustee Machado asks Trustee Akina, since I seconded the motion for discussion are you satisfied with the discussion we had. Can we move forward? I would like to remove my motion, so we don't have to amend the whole process and the original motion.

Trustee Akina states thank you and I am very satisfied with the way Sylvia described the process, I am confused about the language because it seems to me that were able to delegate to the RM committee a process that we all want the Administration to perform.

Sylvia Hussey offered suggestion on the wording in the action item.

Trustee Lee states that does not answer Trustee Akina's question.

Trustee Lee states it might be helpful if Trustee Akina took a look at our Bylaw's which stipulate the due diligence of the RM Committee. The maker of this action item assumes that we know our Bylaw's and the Bylaw's state in the RM committee that its their job to delegate these type of projects to the Administration. That is the job of the RM committee.

Trustee Akina thanked Trustee Lee. I am fine with the discussion and comments, and to answer Trustee Machado's question I would like to relinquish my amendment.

Trustee Machado states so I withdraw my second.

Chair Ahuna state so Trustee Machado and Trustee Akina both withdrew their motions, we are now back to the original motion.

Chair Ahuna calls for the vote.

Trustee Lee, MOVED, SECOND by Trustee Waihe'e MOTION: Administration recommends the Board of Trustees (BOT) approve the Economic Development Policy implementation procedures as detailed in Attachment A.						
	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON	1		X			

KALEI 'AINA	LEE					
TRUSTEE HULU	LINDSEY			X		
TRUSTEE ROBERT	LINDSEY			X		
TRUSTEE COLETTE	MACHADO			X		
TRUSTEE JOHN	WAIHE'E	2		X		
CHAIRPERSON DAN	AHUNA			X		
TOTAL VOTE COUNT				9		
MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED						
Motion passes with nine (9) YES votes.						

B. Action Item RM #19-15 – Action Regarding the Debt Management Policy Implementation Procedures.

Chair Ahuna calls Sylvia to discuss action item RM #19-15.

Sylvia Hussey calls explains action item and calls for Trustee Aide Paul Harleman to discuss the action item he prepared. Asks if there are any questions

Chair Ahuna entertains a motion for Administration recommends the Board of Trustees (BOT) approve the Debt Management Policy implementation procedures as detailed in Attachment A.

Trustee Akina thanks the following people for their work, Paul Harleman, Rodney Lee, Lucas Sayin, Gil Berger, Wes Machida, Calbert Young, Ray Matsuura on action item mentioned.

Trustee Lee, MOVED, SECOND by Trustee Robert Lindsey						
MOTION: Administration recommends the Board of Trustees (BOT) approve the Debt Management Policy implementation procedures as detailed in Attachment A.						
	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI 'AINA LEE	1		X			
TRUSTEE HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY		2	X			
TRUSTEE COLETTE MACHADO			X			

TRUSTEE JOHN	WAIHE'E			X		
CHAIRPERSON DAN	AHUNA			X		
TOTAL VOTE COUNT				9		
MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED						
Motion passes with nine (9) YES votes.						

C. Action Item RM #19-17 – Realignment #1 of the OHA Biennium Budget for the Fiscal Biennium Periods 2019-2020 (FY20) and 2020-2021 (FY21)

Chair Ahuna calls Sylvia Hussey forward to discuss action item RM #19-17 Realignment #1 of the OHA Biennium Budget for the Fiscal Biennium Periods 2019-2020 (FY20) and 2020-2021 (FY21).

Sylvia Hussey discussed action item RM #19-17 Realignment #1 of the OHA Biennium Budget for the Fiscal Biennium Periods 2019-2020 (FY20) and 2020-2021 (FY21).

Meeting goes into recess at 10:42 am.

Meeting reconvenes at 10:54 am.

Chair Ahuna states we will now call for the motion.

Trustee LEE, MOVED, SECOND by Trustee MACHADO, Motion #1:

Approve OHA's Total Operating Budget Realignment #1 for fiscal year 2020 as outlined in ATTACHMENT #1.

1. **Transfer \$2,000,000** in cash from the Kaka`ako Makai cash account to the Native Hawaiian Trust Fund for use when needed in realizing OHA's Total Operating Budget Realignment #1 as outlined in ATTACHMENT #1;
2. **Designate \$1,445,000** in unspent, unencumbered funds (fka Fiscal Reserve) from FY 2018, for the purposes noted below:
 - a) **\$500,000** to support Disaster Recovery;
 - b) **\$500,000** in support of funding the audit by the State Auditor as required by State of Hawaii's Act 37/HB172;
 - c) **\$100,000** for the purposes of repatriation (e.g., iwi kupuna, moe pu, funerary items), beyond current fiscal biennium project;
 - d) **\$120,000** for litigation contingencies; and

e)\$225,000 for possible fringe rate increases beyond current FY 2020 budgeted 63% fringe rate; and						
3. Activate seven (7) frozen OHA staff positions and proceed with implementing the proposed Organizational Charts dated 9/4/19 as illustrated in ATTACHMENT #4.						
	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI 'AINA LEE	1		X			
TRUSTEE HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE COLETTE MACHADO		2	X			
TRUSTEE JOHN WAIHE'E				X		
CHAIRPERSON DAN AHUNA			X			
TOTAL VOTE COUNT			8	1		
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with eight (8) YES votes, one (1) NO vote.						

Trustee LEE, MOVED, SECOND by Trustee MACHADO, Motion #2: To move to bifurcate to reimburse Trustee Hulu Lindsey, \$758.12 utilized in support of beneficiaries impacted by the Kauaula, Maui fire in August 2018.						
	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA				X		
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI 'AINA LEE	1		X			
TRUSTEE HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE COLETTE MACHADO		2	X			
TRUSTEE JOHN WAIHE'E				X		
CHAIRPERSON DAN AHUNA			X			

TOTAL VOTE COUNT			7	2		
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED Motion passes with seven (7) YES votes, two (2) NO votes.						

**Trustee LEE, MOVED, SECOND by Trustee MACHADO,
Motion #3: To approve to reimburse to Trustee Hulu Lindsey, \$758.12 utilized
in support of beneficiaries impacted by the Kauaula, Maui fire in August 2018.**

	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA					ABSTAINED	
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI 'AINA LEE	1		X			
TRUSTEE HULU LINDSEY						RECUSED
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE COLETTE MACHADO		2	X			
TRUSTEE JOHN WAIHE'E				X		
CHAIRPERSON DAN AHUNA			X			
TOTAL VOTE COUNT			6	1	1	1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED Motion passes with six (6) YES votes, one (1) NO vote, one (1) ABSTENTION, one (1) RECUSED.						

IV. Adjournment

Trustee Akaka, MOVED, SECOND by Trustee Hulu Lindsey, Motion to adjourn.						
	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE KALEI AKAKA	1		X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI 'AINA LEE			X			
TRUSTEE HULU LINDSEY		2	X			
TRUSTEE ROBERT LINDSEY			X			

TRUSTEE COLETTE MACHADO			X			
TRUSTEE JOHN WAIHE'E			X			
CHAIRPERSON DAN AHUNA			X			
TOTAL VOTE COUNT			9			
MOTION: <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED Motion passes with nine (9) YES votes.						

Chair Ahuna hearing no objections, adjourned meeting.

Meeting adjourned at 11:09 am.

Respectfully Submitted,

Claudine Calpito, Trustee Aide
Committee on Resource Management

Dan Ahuna, Chairperson
Committee on Resource Management

Approved: RM Committee meeting _____

OFFICE OF HAWAIIAN AFFAIRS

Action Item

Committee on Resource Management

November 20, 2019

RM - # 19-18

Action Item Issue: Approval of Reimbursement Agreement between State Street Bank and the Office of Hawaiian Affairs for Inaccurate Accounting and Performance Reporting

Prepared by:



Raymond Matsuura, CFA
Pou Kako'o Mahele Kumupa'a, Investment Manager

11/8/19

Date

Reviewed by:

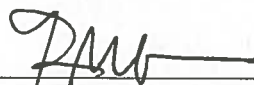


Gloria Li,
Ka Pou Kihi Kanaloa Wai Kūikawā, Interim CFO

11/8/19

Date

Reviewed by:



Raina P.B. Gushiken,
Ka Paepae Puka, Senior Corporate Counsel

11/8/19

Date

Reviewed by:



Lisa Watkins-Victorino, PH.D
Ka Pou Nui Kūikawā, Interim COO

11/12/19

Date

Reviewed by:



Sylvia M. Hussey, ED.D
Ka Pouhana Kūikawā, Interim CEO

11/12/19

Date

Approved by:



Trustee Dan Ahuna,
Luna Ho'omalua Komike, RM Chairperson

11/13/19

Date

I. Proposed Action:

Administration recommends the Board of Trustees (BOT) approve the reimbursement agreement between State Street Bank (State Street) and the Office of Hawaiian Affairs (OHA) for inaccurate accounting and performance reporting.

II. Issue:

Whether or not the BOT should approve the reimbursement agreement between State Street and OHA for incorrect accounting and performance reporting.

III. Background:

On February 13, 2017, OHA Investment staff executed its semi-annual rebalancing of the Native Hawaiian Trust Fund (NHTF) which involved the newly funded State Street Global Advisor (SSGA) index mutual funds that previously replaced the Goldman Sachs Asset Management (GSAM) funds. Part of the rebalancing transactions included: 1) the sale of \$4mm of the Standard & Poor's 500 Index mutual fund; 2) the sale of \$4mm of the ACWI Ex-US Index mutual fund; and 3) the purchase of \$8.1mm of the Aggregate Bond Index mutual fund. Unfortunately, the transactions for the three SSGA mutual funds were not reported to State Street from SSGA and remained unrecorded by State Street in the accounting/performance reports when the second semi-annual rebalancing was done in September 2017. The failure to record the rebalancing transactions by State Street Bank from SSGA was not recognized sooner due to lack of experience in operational procedures by the relatively new investment staff. In a memo to the Chief Financial Officer (CFO), David Laeha, dated March 1, 2018, Investment staff explained in depth the rebalancing requirements, monitoring oversight, actions taken to remedy the error and the preventative measures recommended (Attachment A). Since then, the following preventative measures have been implemented by OHA: SSGA is required to notify all impacted parties on transfer of funds, Investment Staff works with Accounting Manager on reconciling inter-fund transfers and tie-out custodian statements with investment manager monthly reports.

At the same time, State Street was notified of the reporting discrepancy and the error was escalated to Lauren Atkins, Vice President, for a resolution. A summary of the events from State Street was emailed to the CFO on April 23, 2018 (Attachment B).

Segal Marco Advisors also identified this discrepancy in the performance reports during their work as the new replacement for State Street performance reporting in late 2017.

Action Item #19-18 State Street reimbursement agreement

OHA began running parallel reports and terminated State Street performance reporting in November of 2018.

After numerous discussions and proposals for reimbursement from May to August 2018 for this error, Lauren Atkins provided a letter to the CFO, dated September 9, 2018 outlining the summary of events and the impact (Attachment C). By this time OHA's investment consultant, Glenn Ezard, had left Segal Marco Advisors and the new consultant, John Marco, suggested that one of his colleagues, Rosa Lima, attempt further negotiations. State Street had acknowledged the realized loss from the sale of \$5mm of the \$8.1mm purchased in the Aggregate Bond Fund was a reimbursable expense. Subsequently, the remaining \$3.1mm was sold at the next rebalance in November 2018. Additional line item errors on the performance report were identified and summarized in the letter dated March 18, 2019 whereby State Street proposed a reimbursement to OHA in the amount of \$326,327. 50 (Attachment D).

When the initial State Street reporting error was discovered, OHA stopped payment on all outstanding invoices and decided not to pay until the issue was formally settled. During this period the custody and performance reporting (until terminated) expense continued to accumulate but has not exceeded the amount OHA is owed by State Street. An email from Jessica Baker, Vice President, summarized the outstanding invoices (Attachment E).

IV. Discussion:

Numerous discussions have taken place between OHA and State Street over this matter. State Street acknowledged its mistakes but did not admit to any liability or wrongful conduct and has taken a narrow view of what costs should be reimbursed to OHA by State Street. A change in custodian may be warranted in the future, but is not being recommended as part of this action item at this time.

V. Analysis:

State Street limited the amount of reimbursement to realized losses incurred by OHA and line item errors on the performance report.

Action Item #19-18 State Street reimbursement agreement

	Base Net Amount	Shares	Base Unit Price 9/8/17	Base Unit Price 9/8/18	Loss
State Street Aggregate Bond Index	\$ 5,000,000	520,833.333	9.97	9.6	\$ (192,708.33)
State Street Aggregate Bond Index	\$ 3,100,000	322,916.667	9.97	9.6	\$ (119,479.17)
	\$ 8,100,000				\$ (312,187.50)
Performance fee reimbursement:					
Impacted Aggregates		8		625	\$ 5,000.00
Impacted Composites		4		1000	\$ 4,000.00
Board Report		1		5000	\$ 5,000.00
Refund for inaccurate AUM bill					\$ 140.00
					\$ 14,140.00
Total:					\$ 326,327.50

VI. Recommended Action:

Administration recommends the BOT approve the reimbursement agreement between State Street Bank and OHA and authorize the Interim Chief Executive Officer to execute the Confidential Settlement and Release Agreement attached hereto as Attachment F.

VII. Alternative Action:

Decline to approve the reimbursement agreement between State Street and OHA.

VIII. Time Frame:

Immediate action is recommended to settle this outstanding issue from February 2017.

IX. Attachments:

Attachment A - Summary memo to CFO from Investment Manager (3/1/18).

Attachment B - Summary memo to CFO from State Street Bank (4/23/18).

Attachment C - Updated summary memo to CFO from State Street Bank (9/9/19).

Attachment D - State Street reimbursement proposal (3/18/19).

Attachment E - State Street email summary of outstanding invoices (9/25/19).

Attachment F - Confidential settlement and release agreement.



OFFICE OF HAWAIIAN AFFAIRS
Interoffice Memorandum

Date: March 1, 2018

To: David Laeha, Ka Pou Kihi Kanaloa Wai, Chief Financial Officer

From: Ray Matsuura, Pou Kāko‘o Mahele Kumupa‘a, Investment Manager

Subject: **Enhanced Liquidity Account Semi-Annual Rebalancing September Discrepancy**

Background:

On September 7, 2017 OHA Staff issued letters of directions to rebalance the NHTF. This rebalancing was intended to realign the portfolio back to its strategic target and also to consolidate funds in order to reduce fees. The process consisted of two main components. The first was a consolidation of accounts, and the second was to transfer funds. OHA's passive real asset fund ("HWA5") of \$7.8M was to be consolidated into the Enhanced Liquidity Account ("ELA"). OHA's other passive US Govt Bond Index ("HWA4") of \$6M was also to be consolidated into ELA. The mutual fund trades consisted of two redemption transaction of \$8.9M, totaling \$17.8M, from two of State Street Global Advisors' ("SSGA") S&P 500 fund and Global Equity ex-US fund. A buy transaction of \$14.8M to SSGA's Aggregate bond fund. A wire of the remaining \$3M to ELA.

The wire of \$3M ultimately did show up in the accounting statement. Attached are the transaction tickets highlighting each transaction. The rebalancing was completed; however, the composite reports provided by State Street Bank did not reflect the expected changes in market value. As the market values in the composite reports are used for the rebalancing of the portfolio, OHA Staff did not recognize the discrepancy until February 2018. Coupled with this discrepancy in the composite reporting, the accounting statements issued by State Street Bank did not reflect the changes in the rebalancing of the portfolio. The only evidence of the rebalancing was the wire transfer of \$3M into ELA. This was identified by our Accounting Manager who started in January. The Analyst and Accounting Manager both worked with SSGA and State Street Bank to resolve the issue. The investment consultant had also identified the discrepancy around the same time and was working with both State Street Bank and SSGA as well, unknowingly to OHA Staff. Upon further investigation an earlier transaction between the mutual funds had occurred, on February 13, 2017 OHA Investment Staff issued letters of directions to rebalance mutual funds invested with SSGA. The transaction were two redemptions of SSGA's S&P 500 fund and Global Equity ex-US fund of \$4M totaling \$8M and a purchase of SSGA's Aggregate bond fund of \$8M. Currently, OHA

Staff and the investment consultant are now working together with SSGA and State Street Bank to have the issue resolved with the expectation of having accounting statements reissued, composite report reissued, and including new procedures ensuring that this issue would not occur again.

It is OHA Investment Staff's responsibility to monitor the performance of the NHTF and review reporting prepared by the consultant, custodian, and advisors. OHA Investment Staff failed to identify the differences in market value focusing on returns generated by funds and do not currently receive reporting by SSGA on the passive portfolio. Going forward, OHA Investment Staff will follow up after a rebalance to ensure that market values are properly reflected on the composite reports. Staff is also currently working with SSGA to receive performance and market value reporting on the passive portfolio. Accounting statements generated by the custodian will be sent over a month after the close of the previous month (ie, January statements are provided to OHA by March). The Accounting Manager had identified the \$3M wire from the statement with no previous transaction and brought the issue to the analyst who worked with both SSGA and State Street Bank to resolve, which began the investigation into the issue that ultimately resulted in identifying this discrepancy. Going forward, we will continue to work closely with the accounting team when investment statements are provided and will prioritize any issues immediately.

OHA is currently seeking an explanation on the reason for the mutual fund transactions not appearing in the accounting or composite custodian reports. The process normally begins with SSGA providing activity statements to State Street Bank who will record the transactions into its accounting system. The State Street performance team will take the performance statement sending it to OHA. As SSGA and State Street Bank are both under the State Street Corporation, staff is surprised by the lack of communication between both organizations.

On March 9, OHA met with representatives from the three parties involved with the discrepancy (State Street Bank, State Street Performance, and SSGA). Access between SSGA and State Street Bank for reporting statements did not exist between the organizations. SSGA has provided the performance team with all transactions from inception and has ensure that statements will be received sent by SSGA to both State Street Bank and Performance for reconciliation. State Street Performance will have re-issued performance statements provided to OHA and State Street Bank will provide a Net Asset Value ("NAV") reinstatement letter. OHA and Segal will be monitoring the progress of State Street's deliverables and receive updates.

Recommendation:

1. OHA Investment Staff will include the accounting manager in the process of the transfer between funds.
2. OHA Investment Staff will reconcile transfers of funds to custodian statements.
3. SSGA will notify all parties on the transfer of funds.
4. Accounting manager will verify the transfer within the accounting bank statement provided the custodian.

RM:dz



April 23, 2018

David Laeha
Office of Hawaiian Affairs
560 N. Nimitz Highway, Suite 200
Honolulu, HI 96817

Dear Mr. Laeha,

This is a summary of the SSgA transactions which occurred in February 2017 and September 2017 for which State Street Bank and Trust Company ("State Street") did not receive monthly statements.

High Level Summary:

During the months of February 2017 and September 2017, State Street did not receive statements from SSgA for three of the Office of Hawaiian Affairs ("OHA") SSgA investments and as a result, the transactions related to a rebalance were not captured on State Street's monthly accounting reports delivered to OHA. This resulted in incorrect performance reporting for February 2017 through December 2017.

Business Areas Impacted:

Performance, Custody and Accounting

Impact Analysis:

Total Plan Impacts			
Effective Date	Old Return	Revised Return	Difference in Bps
JAN-2017	1.523664	1.524	0.000
FEB-2017	1.465369	1.458	-0.008
MAR-2017	0.942673	0.908	-0.034
APR-2017	1.007149	0.989	-0.018
MAY-2017	1.055982	1.016	-0.040
JUN-2017	0.71007	0.698	-0.012
JUL-2017	1.910977	1.852	-0.059
AUG-2017	0.63912	0.651	0.012
SEP-2017	1.505011	1.344	-0.161
OCT-2017	1.096891	0.950	-0.146
NOV-2017	1.396749	1.257	-0.140
DEC-2017	1.43268	1.363	-0.070

STATE STREET

Identified Resolution Solution:

State Street's accounting group worked with SSgA to obtain electronic access to OHA's monthly statements for pricing, reinvested dividends, and transaction capture. This is designed to ensure that all transactions are captured and to guard against inconsistencies with performance reporting.

Investigation Period Summary / Series of Events:

- 2/13/2018 – OHA consultant Segal Marco contacts State Street Performance about HWAB SSGA mutual funds market value discrepancies. Performance redirects to Client Service because they source their information from accounting records.
- 2/13/2018 – State Street Accounting does not have manager statements. Client Service contacts SSGA client support for the manager statements. SSGA provides statements and client service sends to accounting to update the records.
- 2/21/2018 – State Street Accounting confirms the accounting records have been updated.
- 3/16/2018 – Client Service sends revised valuation letter to OHA for the accounting records and State Street Performance sends revised reports to OHA.

Preventative/Corrective Actions:

State Street booked the identified transactions to our accounting system to bring the shares in line for all investments. State Street's accounting group worked with State Street Performance to have the monthly performance reports rerun from February 2017 going forward and delivered this updated information to OHA. State Street's accounting group immediately reached out to SSgA to obtain electronic access to the monthly statements for the OHA funds. State Street management has reinforced the importance of pricing with statements. We have taken internal steps designed to prevent recurrence of this situation moving forward by revising the monthly statement distribution.

We apologize for any inconvenience this may have caused OHA. Please let me know if you would like any additional information.

Best Regards,



Lauren Atkins

Vice President



September 19, 2018

David Laeha
Office of Hawaiian Affairs
560 N. Nimitz Highway, Suite 200
Honolulu, HI 96817

Dear David,

Below is State Street Bank and Company's ("State Street") response to Office of Hawaiian Affairs ("OHA") request for reimbursement related to inaccurate performance reporting for three SSgA funds in which OHA invests.

High Level Summary

- State Street did not receive monthly transaction statements for three of OHA's SSgA investments from the initial purchase in November 2016 until February 2018. Instead, the assets on the monthly accounting records were priced using Bloomberg.
- Rebalances occurred during February 2017 and September 2017 that were not captured on State Street's monthly accounting reports.
- OHA received incorrect performance reporting for February 2017 through December 2017.

Summary of Events

- In November 2016, OHA invested in three new SSgA registered funds: State Street Global Eq ex-US Index K, State Street Equity 500 Index K, and State Street Aggregate Bond Index K. State Street priced the assets using Bloomberg.
- On February 13, 2017 OHA traded in the three SSgA funds using State Street market values as recorded on the monthly accounting statements. The accounting market values were accurate at this time as this was the first trading activity since the initial buys.
- On September 8, 2017, OHA traded in the three SSgA funds using State Street market values as recorded on the monthly accounting statements.
- On February 13, 2018, OHA's consultant, Segal Marco, contacted State Street Performance about HWAB SSGA mutual fund's market value because the 2017 rebalance transactions were not reflected on the monthly accounting statements.
- On February 21, 2018, after receiving statements from SSGA, State Street's accounting records were updated to reflect post 9/8/17 trading values.
- On March 16, 2018, State Street sent a revised valuation letter to OHA for the accounting records and State Street Performance sent revised performance reports to OHA.
- On April 13, 2018, OHA traded \$5,000,000 out of the SSgA Aggregate Bond Index fund.
- On April 30, 2018, State Street was presented with Segal Marco's calculation and methodology capturing incidental damages claimed as a result of the incorrect performance reporting.

Impact

As a result of the incomplete share reconciliation there was a realized loss on the sell in the Bond fund in April 2018. That calculation is set forth below:

Security Long Name		Fund	Shares	Base Unit Price 4/12/18	Base Unit Price 9/8/17	Gain/Loss	Base Net Amount
STATE STREET AGGREGATE BOND INDEX	SELL	HWAB	520,833.333	9.60	9.97	(192,708.33)	5,000,000

State Street's calculations above are based on actual trading activity that occurred in the fund HWAB. Based on this calculation, State Street is offering to reimburse OHA in the amount of \$192,708.33.

If I can be of further assistance please feel free to reach out at 816-871-3596 or by e-mail at LJAtkins@statestreet.com.

Sincerely,



Lauren Atkins
State Street Global Services Vice President



March 18, 2019

Raymond Matsuura
Office of Hawaiian Affairs
560 N. Nimitz Highway, Suite 200
Honolulu, HI 96817

Dear Raymond,

We are writing to confirm State Street Bank and Company's ("State Street") response to Office of Hawaiian Affairs ("OHA") request for reimbursement related to performance reporting for three SSgA funds in which OHA invests. We previously provided a memorandum to OHA on April 23, 2018 outlining the timeline of the events surrounding the reporting and we provided a second memorandum on September 20, 2018 with a reimbursement proposal. Since that time, we have participated in multiple discussions with OHA and Segal Marco (OHA's consultant) to come to an agreement for reimbursement. Our proposal is detailed below:

Impact

As a result of the incomplete share reconciliation the following has been documented:

- Realized loss on the April 2018 sell in the bond fund - \$192,708.33
- Realized loss on the November 2018 sell in the bond fund - \$119,479.17

Although we do not feel we are responsible for these losses, we would like to resolve this issue and offer a satisfactory amount given our valued relationship with OHA. Accordingly, we have reconsidered your request and would like to offer reimbursement for the above amounts, as well as the following fee credits:

- Performance fee reimbursement for 2017
 - Impacted Aggregates 8 @ 625 - \$5,000
 - Impacted Composites 4 @ 1000 - \$4,000
 - Board Report 1 @ 5000 - \$5,000
- Refund for inaccurate AUM billed in 2017 - \$140

The total proposed reimbursement to OHA is **\$326,327.50**.

This offer is not an admission of any liability or wrongful conduct by State Street. We hope that our offer is amenable and representative of our good faith effort to meet the needs of OHA. Please note that this reimbursement is contingent on OHA's payment of outstanding State Street invoices from November 2017 through the current period.

Global Services



If I can be of further assistance please feel free to reach out at 816-871-3596 or by e-mail at LJAtkins@statestreet.com.

Sincerely,

A handwritten signature in dark ink, appearing to read "L Atkins", written in a cursive style.

Lauren Atkins
State Street Global Services Vice President

Raymond Matsuura

From: Baker, Jessica <JL.Baker@statestreet.com>
Sent: Wednesday, September 25, 2019 11:22 AM
To: Raymond Matsuura <raymondm@oha.org>; Raina Gushiken <rainag@oha.org>
Cc: Rooney, Joseph <JCRooney@statestreet.com>
Subject: RE: Office of Hawaiian Affairs Check In

Aloha Ray,

While we are working with our legal department on the changes to the settlement and release agreements you asked for in separating the outstanding invoices and the payment of the settlement release agreement, I wanted to follow up you in regards to the outstanding invoices listed below and when we could anticipate payment of the invoices.

Fund	Client	Invoice Number	Invoice Date	Invoice Age	Fees	OOPs	Total
HWAC	Office of Hawaiian Affairs	1608094745	10/20/2016	1069	0	691.38	\$ 691.38
HWAC	Office of Hawaiian Affairs	1711094745	1/16/2018	616	18050.57	44.12	\$ 18,094.69
HWAC	Office of Hawaiian Affairs	1712094745	3/29/2018	544	19107.15	44.31	\$ 19,151.46
HWAC	Office of Hawaiian Affairs	1801094745	6/28/2018	453	18280.61	44.36	\$ 18,324.97
HWAC	Office of Hawaiian Affairs	1802094745	7/12/2018	439	18432.49	45.44	\$ 18,477.93
HWAC	Office of Hawaiian Affairs	1803094745	7/26/2018	425	18741.97	129.13	\$ 18,871.10
HWAC	Office of Hawaiian Affairs	1804094745	8/2/2018	418	18778.58	47.12	\$ 18,825.70
HWAC	Office of Hawaiian Affairs	1805094745	8/15/2018	405	18270.01	17.62	\$ 18,287.63
HWAC	Office of Hawaiian Affairs	1806094745	10/31/2018	328	19166.02	76.69	\$ 19,242.71
HWAC	Office of Hawaiian Affairs	1807094745	11/12/2018	316	18625.78	77.74	\$ 18,703.52
HWAC	Office of Hawaiian Affairs	1808094745	12/19/2018	279	18604.17	17.42	\$ 18,621.59
HWAC	Office of Hawaiian Affairs	1809094745	12/31/2018	267	18873.58	213.53	\$ 19,087.11
HWAC	Office of Hawaiian Affairs	1810094745	1/7/2019	260	18677.64	65.79	\$ 18,743.43
HWAC	Office of Hawaiian Affairs	1811094745	1/17/2019	250	19086.58	44.64	\$ 19,131.22
HWAC	Office of Hawaiian Affairs	1812094745	7/15/2019	71	7889.96	9.62	\$ 7,899.58

Jessica Baker, Vice President
 State Street Global Services | Institutional Investor Services | 801 Pennsylvania Avenue, 2nd Floor, Tower 1, Kansas City, MO 64105
 P +1 816 871 7207 | j.baker@statestreet.com
www.statestreetglobalservices.com

Go green. Consider the environment before printing this email.
 The information contained in this email and any attachments have been classified as limited access and/or privileged State Street information/communication and is intended solely for the use of the named addressee(s). If you are not an intended recipient or a person responsible for delivery to an intended recipient, please notify the author and destroy this email. Any unauthorized copying, disclosure, retention or distribution of the material in this email is strictly forbidden.

CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT

This Confidential Settlement and Release Agreement ("Agreement") is entered into this _____ day of October 2019, by and between STATE STREET BANK AND TRUST COMPANY ("State Street") and OFFICE OF HAWAIIAN AFFAIRS ("OHA") (collectively, "the Parties").

WHEREAS, State Street and OHA are parties to a Custodian Contract dated December 31, 2010, pursuant to which State Street provides custody and accounting services to OHA, and a fee schedule dated December 31, 2010, pursuant to which State Street provides performance services to OHA;

WHEREAS, a dispute has arisen regarding performance reporting provided to OHA by State Street (the "Disagreement")

WHEREAS the Parties wish to fully and finally resolve any and all disputes between them relating to the Disagreement.

NOW, THEREFORE, the Parties agree as follows:

1. Payment. Within ten (10) business days of the payment by OHA to State Street of \$252,154.02 to satisfy outstanding custody invoices owed to State Street by OHA, State Street shall cause to be paid to OHA, by wire transfer, the sum of \$326,327.50 in full settlement of all claims or potential claims between the Parties in relation the Disagreement. State Street's obligation to pay OHA shall not take effect unless and until OHA satisfies its obligation to pay the outstanding custody invoices to State Street.
2. Release. In consideration of the foregoing, OHA on behalf of itself and its past, present, and future successors, predecessors, parents, subsidiaries, and affiliates, and the officers, directors, managers, trustees, shareholders, employees, agents, advisors, participants, beneficiaries, representatives, and attorneys of each of the foregoing (the "OHA Releasing Parties"), hereby release and forever discharge State Street, its successors, predecessors, parents, subsidiaries and affiliates, and each of the foregoing's officers, directors, managers, trustees, shareholders, employees, agents, affiliates, advisors, beneficiaries, representatives, and attorneys (the "State Street Released Parties"), from any and all claims, counterclaims, demands, damages, expenses, losses, costs, obligations, liabilities, actions, causes of action, or suits of whatever kind or nature, civil or criminal or administrative, in law or at equity or on the basis of any written or oral agreement, including any claims for contribution or indemnification arising from current or potential third party claims, which the OHA Releasing Parties now have or ever had, whether directly or in any representative capacity, relating to the Disagreement, including without limitation any claims for breach of contract, breach of fiduciary or other duty, or breach of any law, rule, or regulation relating in any way directly or indirectly to the Disagreement (collectively, the "Released Claims").
3. No Admission of Liability. This Agreement is a compromise intended to avoid any current or future disputes relating to the Disagreement between the Parties and is not an admission of any liability or

wrongful conduct by State Street, such liability or conduct being expressly denied by State Street. Further, the fact of or terms of this Agreement shall not be offered, construed, or deemed to be evidence of a presumption, concession, or admission of liability or wrongful conduct by State Street in any civil, administrative, or any other proceeding.

4. Confidentiality. The Parties agree that the terms of this Agreement are strictly confidential, and that they shall not disclose the terms to any other person or entity, except if ordered to do so by a Court of competent jurisdiction, or if disclosure is required by statute, rules, regulations, or other applicable law, or any action to enforce the Agreement. Except as provided aforesaid, the Parties agree to inform any third party that requests information about this Agreement that its terms are confidential. OHA agrees that any violation of this paragraph will cause immediate and irreparable harm and shall entitle State Street to an immediate injunction without any further showing of harm and shall also entitle State Street to whatever damages are permitted by law.
5. Choice of Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of interest provisions.
6. Sufficiency of Consideration. The Parties acknowledge that the covenants contained in this Agreement provide good and sufficient consideration for every promise, duty, release obligation, agreement and right contained in this Agreement.
7. Complete Agreement. This Agreement constitutes the entire agreement and understanding between and among the Parties regarding the matters addressed herein. No representation, promise, understanding, or agreement of any kind whatsoever regarding the matters referenced herein that is not set forth in this Agreement has been relied upon by any party or shall be valid, binding or enforceable.
8. Authority. OHA represents and warrants that he, she, or it has full power and authority to enter into this Agreement and to make the release described in Paragraph 2 on behalf of themselves and on behalf of all entities or persons described in Paragraph 2. The Parties acknowledge that this representation and warranty is a material term of this Agreement and forms the basis for the amount of the payment described in Paragraph 1.
9. Severability. If any term or provision of this Agreement is held to be invalid or unenforceable, that term or provision shall be ineffective and severable to the extent of such invalidity or unenforceability and the remaining terms and provisions shall continue in full force and effect.

IN WITNESS HEREOF, each of the Parties hereto has executed this Settlement Agreement by a duly authorized representative of such Parties

STATE STREET BANK AND TRUST COMPANY

By:

Title:

OFFICE OF HAWAIIAN AFFAIRS

By: Sylvia M. Hussey, Ed.D.

Title: Interim Chief Executive Officer

APPROVED AS TO CONTENT:

By: Ray Matsuura

Title: Investment Manager

APPROVED AS TO FORM:

By: Raina P.B. Gushiken

Title: Senior Legal Counsel

OFFICE OF HAWAIIAN AFFAIRS
Action Item

Committee on Resource Management
November 20, 2019

RM - # 19-19

Action Item Issue: Approval for investment consultant, Segal Marco Advisors, to initiate an active core fixed income manager search.

Prepared by:



11/7/19

Raymond Matsuura, CFA

Date

Pou Kako'o Mahele Kumupa'a, Investment Manager

Reviewed by:



NOV 07 2019

Gloria Li,

Date

Ka Pou Kihi Kanaloa Wai Kūikawā, Interim CFO

Reviewed by:



November 7, 2019

Raina P.B. Gushiken,

Date

Ka Paepae Puka, Senior Corporate Counsel

Reviewed by:



11/8/19

Lisa Watkins-Victorino, PH.D

Date

Ka Pou Nui Kūikawā, Interim COO

Reviewed by:



11/12/19

Sylvia M. Hussey, ED.D

Date

Ka Pouhana Kūikawā, Interim CEO

Approved by:



11/13/19

Trustee Dan Ahuna,

Date

Luna Ho'omalua Komike, RM Chairperson

Action Item #19-19- Approval for investment consultant to initiate an active core fixed income manager search.

I. Proposed Action:

Administration recommends the Board of Trustees (BOT) approves Segal Marco Advisors to begin the search process for an active core fixed income manager.

II. Issue:

Whether or not the BOT should approve the recommendation to begin the search to hire an active core fixed income manager to replace the current State Street Global Advisors (SSGA) Aggregate Bond Index mutual fund (SSFEX) and Commonfund Western Asset Management Company (WAMCO) high yield bond fund.

III. Background:

Market research reveals inefficiencies in the fixed income markets which presents opportunities for active management to add value over passive investment in an index fund. Incorporating an active global bond strategy could increase potential earnings while minimizing marginal risk.

OHA's passive investment in SSFEX was made with the proceeds from the termination of Goldman Sachs Asset Management (GSAM) fund management in October 2016. The market value of the fund as of June 30, 2019, is \$27.2 mm. The fund has been primarily a source of income and liquidity within the Native Hawaiian Trust Fund (NHTF). The BOT recently approved an amendment to the Investment Policy Statement (IPS) to update the investment manager selection process (Action Item #19-13). The adoption of the current IPS allows for broader search for investment managers by the consultant.

The two active managers for the NHTF, JP Morgan and Commonfund, both have fixed income strategy mandates. JP Morgan (\$28.5 mm) has a broad global multi-sector discretionary strategy. Commonfund is limited to investment in the WAMCO short-duration high yield fund (\$5.9 mm). This allocation was from a previous hedging strategy to invest in private credit funds.

Action Item #19-19- Approval for investment consultant to initiate an active core fixed income manager search.

Total NHTF as of June 30, 2019:	\$383,890,461	
<u>Manager</u>	<u>Allocation</u>	<u>Pct.</u>
JP Morgan Fixed Income Funds (Consolidated)	\$28,842,656	7.5%
State Street Aggregate Index Fund	\$27,215,581	7.1%
Commonfund (WAMCO)	<u>\$5,965,355</u>	1.6%
Total Global Fixed Income	\$62,023,592	16.2%

IV. Discussion:

The recommendation is to add a core fixed income manager for the NHTF to achieve a higher rate of return. The current allocation to fixed income is 16.2% of the NHTF. It is expected that the new manager will replace SSFEX which is comparable to JP Morgan's current target weighting of 7.5%. Funding is also expected to come from liquidating the WAMCO fund.

Total manager fees are expected to increase marginally with this transaction. However, it is also anticipated that, on a net-of-fees basis, the active strategy will outperform the passive index fund over the longer term. As a reminder, the consultant receives no commission or fee for their manager recommendation and the BOT retains the option to not approve any of the managers presented.

Analysis:

Unlike equity index funds, market studies have shown that there are greater inefficiencies within the global bond markets with active management having greater potential to outperform the broader fixed income indices. Active fixed income managers have more flexibility for decisions regarding the direction of rates, credit quality, and sector over/under weights relative to a broad index fund. Please refer to attachment A for Segal Marco Advisors analysis/recommendation. A more technical research paper on active versus passive management from PIMCO is also provided (attachment B).

V. Recommended Action:

To approve and authorize Segal Marco Advisors to begin a search for an active core fixed income manager.

Action Item #19-19- Approval for investment consultant to initiate an active core fixed income manager search.

VI. Alternative Action:

- A. Decline to approve and authorize Segal Marco Advisors to begin a search for an active core fixed income manager.
- B. Approve and authorize another entity.
- C. Take no action.

VII. Time Frame:

Immediate action is recommended. If approved, Segal Marco Advisors will begin the manager search immediately.

VIII. Attachments:

Attachment A - Segal Marco Advisors active fixed income management recommendation.

Attachment B - PIMCO research report on active versus passive in fixed income market.

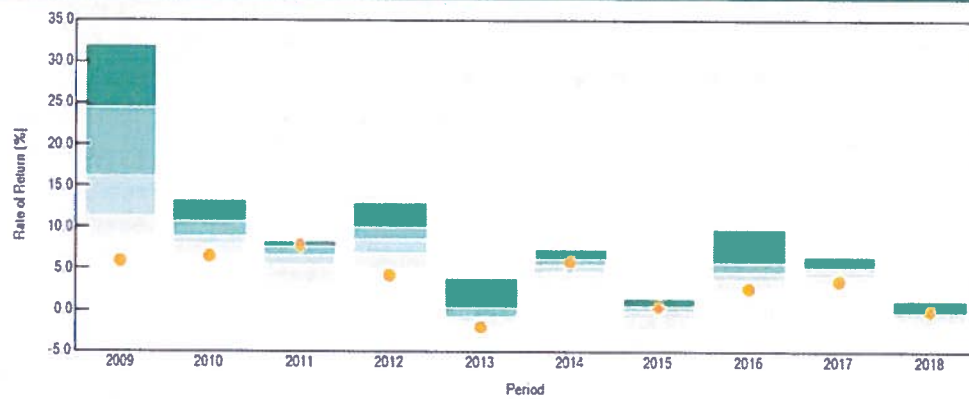
We (Segal Marco Advisors) recommend active management in the core fixed income markets. The Aggregate Index is constructed by allocating to sectors based on the total amount of borrowers rated BBB or better in the US. The result is that the index is nearly 70% government issued and government backed bonds which are currently near historically low yields. Active managers, particularly “Core Plus”, have shown a strong track record of being able to outperform the index (net of fees). “Core Plus” managers invest in the same bonds represented by the core index plus they can put up to a certain percentage (often 25-35%) of bonds in sectors such as international, below investment grade (BB or lower), and unrated securities. It is important to note that the managers have the flexibility to go down to 0% in any of the given plus sectors when market conditions aren’t favorable.

Please see below showing the performance of the Core Plus Fixed Income Universe vs the Aggregate Index as of 12/31/18. Each time period includes investable active manager products. While in any given calendar year can yield differing results, the long term numbers show that more than 72% or more of that universe has outperformed the index in the trailing 3, 5, 7, & 10 year annualized periods.

Due to this demonstrated ability to outperform the index over long periods of time, we recommend replacing the SSFEX and WAMCO investments with a “Core Plus” fixed income manager.



eV US Core Plus Fixed Inc Net Return Comparison
Ending December 31, 2018



	Return (Rank)									
5th Percentile	32.0	13.3	8.2	13.0	3.9	7.4	1.4	9.7	6.5	1.3
25th Percentile	24.5	10.8	7.7	10.1	0.4	6.2	0.5	5.8	5.2	-0.2
Median	16.1	8.8	6.7	8.6	-0.8	5.5	-0.1	4.6	4.7	-0.6
75th Percentile	11.4	7.9	5.6	6.9	-1.2	4.7	-0.8	3.7	4.2	-1.0
95th Percentile	8.7	6.6	3.0	4.9	-2.0	3.6	-2.4	2.5	3.5	-1.7
# of Portfolios	58	61	54	64	65	71	71	84	80	77
B8gBarc US Aggregate TR	5.9 (99)	6.5 (96)	7.8 (17)	4.2 (96)	-2.0 (96)	6.0 (35)	0.5 (22)	2.6 (93)	3.5 (95)	0.0 (21)

April 2017

Bonds Are Different: Active Versus Passive Management in 12 Points

AUTHORS

Jamil Baz
Managing Director
Global Head of
Client Analytics

Ravi Mattu
Managing Director
Global Head of Analytics

James Moore
Managing Director
Head of the Investment
Solutions Group

Helen Guo
Vice President
Client Analytics

Opinions in the active-passive investment debate have drifted poles apart over recent years. We revisit this discussion by contrasting equity and fixed income markets in the U.S. We look at performance numbers and find that, unlike their stock counterparts, active bond mutual funds and exchange-traded funds (ETFs) have largely outperformed their passive peers after fees. We offer conjectures as to why bonds are different from stocks. This may be due to the large proportion of noneconomic bond investors, the benchmark rebalancing frequency and turnover, structural tilts in fixed income space, the wide range of financial derivatives available to active bond managers, and security-level credit research and new issue concessions. At a macro level, we believe that a purely passive market would cause severe market risk and resource misallocations. Realistically, neither passive nor active investors can fully dominate at equilibrium. Of course, passive management has its virtues. Yet there is reason to believe that, unchecked, passive management may encourage free riding, adverse selection and moral hazard.

POINT #1 – ACTIVE BOND FUNDS AND ETFS LARGELY OUTPERFORMED THEIR MEDIAN PASSIVE PEERS

Despite the general presumption of underperformance, more than half of the active bond mutual funds and ETFs beat their median passive peers in most categories over the past 1, 3, 5, 7 and 10 years, with 63% of them outperforming over the past 5 years. In contrast, only 43% of active equity mutual funds and ETFs outperformed their median passive peers over the past 5 years. Taking the three largest categories within fixed income for the same 5-year period, 84%, 81% and 60% of active funds and ETFs outperformed their median passive peers in intermediate-term, high yield and short-term categories, respectively. Within equity, most active funds and ETFs in each of the three largest categories – large growth, large blend and large value – underperformed (see Figure 1).

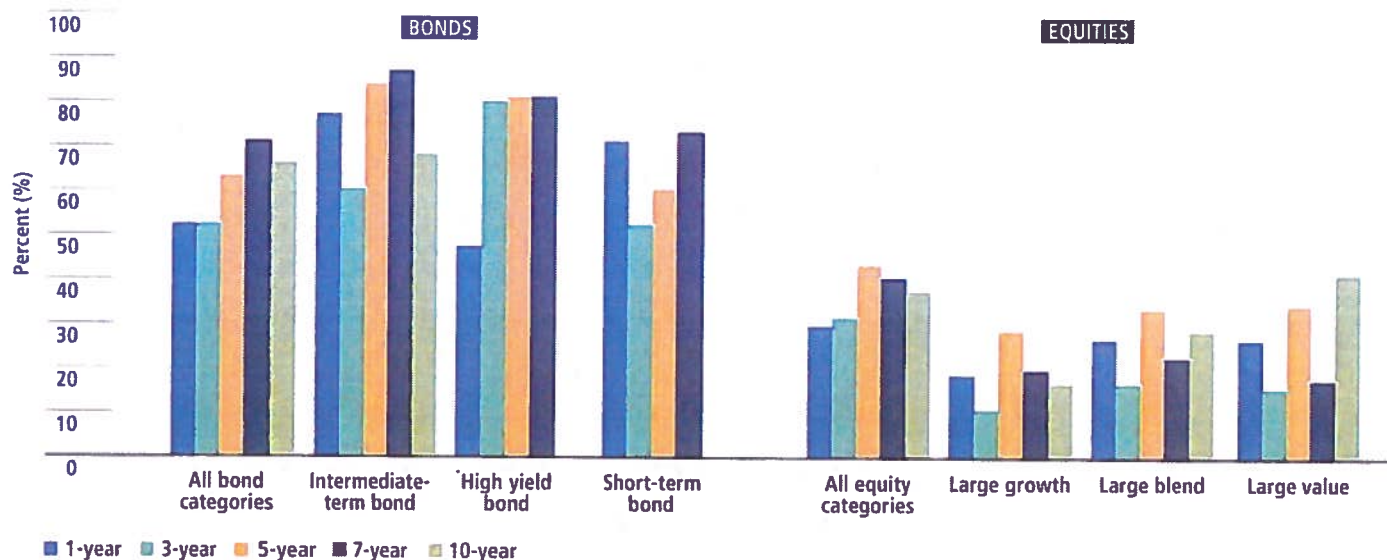
These results should come with one caveat. The fact that active bond funds and ETFs outperformed passive does not necessarily mean all active outperformed passive. Active bond managers also include non indexed investors such as central banks, commercial banks, large parts of the insurance industry and retail. Some of these investors operate under tight constraints which may affect their performance (more on this in Point #4).

POINT #2 – ACTIVE BOND FUNDS AND ETFS LARGELY OUTPERFORMED THEIR BENCHMARKS EXCEPT WHEN THE COST OF BENCHMARK REPLICATION WAS PROHIBITIVE

Figure 2 shows the percentages of active mutual funds and ETFs that outperformed their primary prospectus benchmarks after fees for the past 1, 3, 5, 7 and 10 years; it shows the aggregated results for broad bond and equity groups and each of the three largest categories within bonds and equity.

Again, more than half of the active bond mutual funds and ETFs beat their benchmarks in most categories over the past 1, 3, 5 and 7 years, with 61% of them outperforming over the past 5 years. This stands in strong contrast with equity results, where only 35% of active funds and ETFs outperformed their benchmarks over the past 5 years. Taking the three largest categories within fixed income for the same 5-year period, 82% and 84% of active funds and ETFs in the Intermediate-Term Bond and Short-Term Bond categories outperformed their benchmarks while only 25% in the High Yield Bond category outperformed. Within equity, most active funds and ETFs in each of the three largest categories – large growth, large blend and large value – underperformed.

Figure 1: Percentage of active mutual funds and ETFs that outperformed their median passive peers after fees



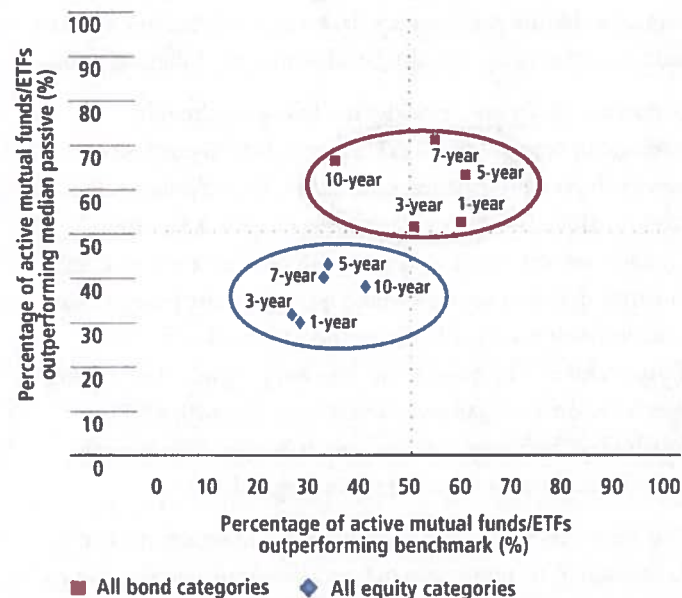
Source: Morningstar Direct as of 31 December 2016. Past performance is not a guarantee or a reliable indicator of future results. The three largest categories are based on numbers of active mutual funds and ETFs with at least one-year return histories. Based on Morningstar U.S. ETF and U.S. Open-End Fund categories (institutional shares only). To avoid potential survivorship bias, we included funds and ETFs that were live at the beginning of each sample period but were liquidated or merged as of 31 December 2016. For the High Yield Bond and Short-Term Bond categories, 10-year outperformance numbers are not available due to the lack of passive peer groups. Chart is provided for illustrative purposes and is not indicative of the past or future performance of any PIMCO product.

Note that active bond funds and ETFs may underperform their benchmarks but still outperform median passive peers. Consider the High Yield Bond category. Although the percentage of active funds and ETFs outperforming their benchmarks for this category appears low, 81% outperformed their median passive peers over the same 5-year period. This indicates the difficulty of replicating the performance of high yield benchmarks, possibly due to the lower liquidity of the market and the high transaction costs for all but the largest issues.

The 10-year period started with what is considered by many to be the worst global financial crisis since the 1930s. During this period, market liquidity dried up and bid-ask spreads widened, dramatically increasing trading costs for both active and passive investors. Because benchmark returns do not reflect these frictional costs, it is more challenging to beat the benchmarks, especially in the relatively illiquid and inefficient market. This may explain the underperformance of active bond funds versus their benchmarks over the 10-year period.

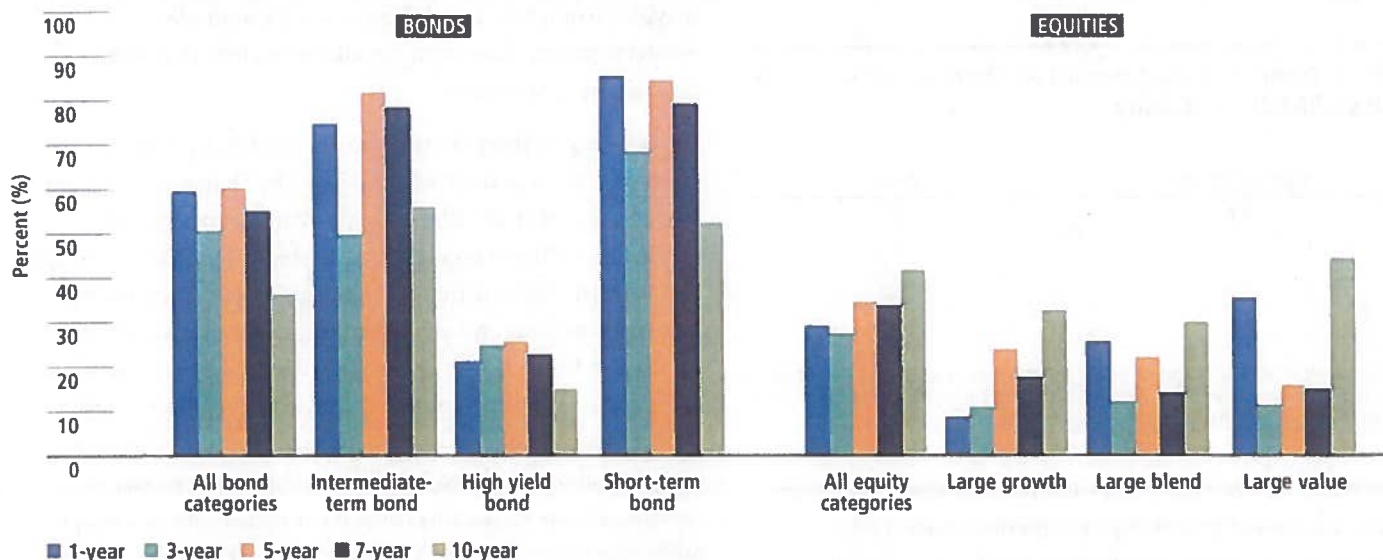
Figure 3 summarizes the two types of outperformance measures for broad bonds and equity groups. The percentages of active bond funds and ETFs outperforming their benchmarks and those outperforming their median passive peers over the past 1, 3, 5 and 7 years all exceeded 50%; more than half outperformed their median passive peers over the past 10 years. In contrast, the percentages for active equity funds and ETFs for both measures and over all time periods considered were less than 50%.

Figure 3: Outperformance over benchmarks and outperformance over median passive peers after fees



Source: Morningstar Direct as of 31 December 2016. Past performance is not a guarantee or a reliable indicator of future results. Based on Morningstar U.S. ETF and U.S. Open-End Fund categories (institutional shares only). To avoid potential survivorship bias, we included funds and ETFs that were live at the beginning of each sample period but were liquidated or merged as of 31 December 2016. Some categories contain funds with a wide range of benchmarks. Chart is provided for illustrative purposes and is not indicative of the past or future performance of any PIMCO product.

Figure 2: Percentage of active mutual funds and ETFs that outperformed their primary prospectus benchmarks after fees



Source: Morningstar Direct as of 31 December 2016. Past performance is not a guarantee or a reliable indicator of future results. The three largest categories are based on numbers of active mutual funds and ETFs with at least one-year return histories. Based on Morningstar U.S. ETF and U.S. Open-End Fund categories (institutional shares only). To avoid potential survivorship bias, we included active funds and ETFs that were live at the beginning of each sample period but were liquidated or merged as of 31 December 2016. Some categories contain funds with a wide range of benchmarks. Chart is provided for illustrative purposes and is not indicative of the past or future performance of any PIMCO product.

POINT #3 – ACTIVE MANAGERS SHOULD BE EVALUATED OVER A LONG HORIZON

It is important for bond fund managers to show some healthy skepticism for the performance data – not only because the data could be self-serving, but also because they are inherently noisy.

To illustrate this point, consider the following thought experiment: Suppose that a skilled hypothetical portfolio manager has an information ratio of 0.5. The volatility of the active portfolio is 4.0% and that of the index is 3.3%. The correlation of the portfolio return with the index return is 0.9. Note that all these numbers would be empirically plausible for an active bond manager in the top quartile ranked by risk-adjusted alphas. The question is, how long would it take for the hypothetical active manager to beat the index with a 90% probability? The answer, it turns out, is 7 years. (We show the mathematics behind this example in Appendix 1).

What does it all mean? First, this example illustrates the reality of a low signal-to-noise ratio in bond asset management. Given the higher tracking error and lower information ratios displayed in manager performance, it is even lower for equities. Second, it shows that managers are typically evaluated over too short a time frame: Over 1 year, this hypothetical manager would have a 69% probability of outperforming and over 3 years, the probability would rise to 80%. And third, the answer is very sensitive to assumptions. Table 1 illustrates the relationship between the time it takes to outperform the index with 90% confidence and the information ratio under the volatility and correlation assumptions described above.

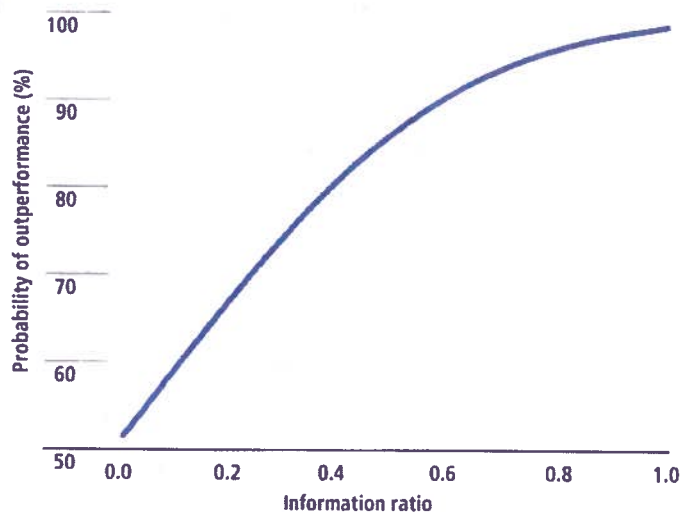
Table 1: Number of years needed for the manager to beat the index with 90% confidence

Information ratio	Years
0.7	3.5
0.5	7.0
0.3	20.0
0.2	48.0

Source: PIMCO. Hypothetical example for illustrative purposes only. Table is provided for illustrative purposes and is not indicative of the past or future performance of any PIMCO product.

If we fix the horizon at 5 years with the same risk assumptions, it appears that the probability of outperformance is an increasing and concave function of the information ratio, as one would expect (see Figure 4).

Figure 4: Probability of outperformance in 5 years



Source: PIMCO. Hypothetical example for illustrative purposes only. Chart is provided for illustrative purposes and is not indicative of the past or future performance of any PIMCO product.

POINT #4: IT IS NOT JUST ABOUT ACTIVE VERSUS PASSIVE

The straw man in the active-passive debate stems from a short paper by William Sharpe titled “The Arithmetic of Active Management”: If passive is defined as holding the market portfolio, and active is everything not passive, then it trivially follows that active managers as a whole, like passive managers, hold the market portfolio at any time. Both groups will therefore generate the same returns before fees. To the extent that active fees are higher than passive fees, passive managers will outperform active managers, on average. Plain and simple, but maybe too much so. It is difficult not to be reminded of Einstein’s quote: “Everything should be made as simple as possible, but not simpler.”

As appealing as Sharpe’s arithmetic is, the deficits of the argument (some of them acknowledged by Sharpe himself) are obvious. To start with, the distinction between active and passive is wanting in bond space. At a minimum, one can divide the investors’ universe into three categories: passive, economic and noneconomic. This is because noneconomic investors are plentiful in fixed income (see Table 2): Central banks buy bonds to depreciate their currency and boost inflation, growth and asset prices; commercial banks and insurance companies may care more about book yield than total return for a variety of reasons, such as accounting rules, other regulations or a simple preference for predictable, low-turnover portfolios. It is worth

noting that these investors make up a meaningful portion of global bond buyers – roughly 47% of the \$102 trillion global bond market.¹ Similarly, because of their guidelines, both noneconomic constrained investors and passive index buyers may be forced to sell all bonds that fall below the investment grade threshold or be late to the game buying bonds whose upgrade is foreseeable because they must wait for a ratings agency imprimatur. The list goes on and on.

To the extent constraints are binding (most of them are), by construction, economic investors tend to outperform noneconomic investors, as the former buy cheap fallen angels from the latter and sell them expensive high-coupon bonds. Active managers potentially may also be compensated by passive managers for providing them with liquidity around changes in index construction. So while active and passive managers may in theory generate the same returns before fees, the further categorization of investors into three groups illustrates that economic investors may outperform passive investors which, in turn, are likely to outperform noneconomic investors before fees.

POINT #5 – INFORMATION IS VITAL TO TRADING AND REBALANCING

Sharpe's arithmetic implicitly assumes passive investors buy and hold and don't trade securities. In reality, most bond indexes are rebalanced monthly, requiring both active and passive investors to trade, if only because bonds mature, new bonds are issued, and index inclusion and exclusion rules create movement in and out of the index (see Pedersen (2017) for similar arguments for equity). The average turnover rate for the Bloomberg Barclays US Aggregate Bond Index for the past 3 years (as of 31 December 2016) was about 40% per year, half of which was due to new issues of securities. To the extent they do not trade pure noise, active managers seek to be better informed than passive managers. They invest in fixed income strategists, quants, credit analysts and systems to acquire and process relevant information and make better investment decisions. Because their cost of being informed is higher, active managers will typically command higher fees. They also will tend to use their knowledge to seek securities they can buy at a lower offer and sell at a higher bid than passive managers. Given that new securities make up about 20% of the bond market's capitalization every year, a strong active presence in the new bond issuance market has the potential to materially add value for fixed income investors by identifying those issues with the most attractive valuations. Additionally, active bond managers generally strive to secure sizable allocations at concession in the process of syndication of new issues. Last but not least, security-level credit research can provide a decisive advantage in the bond investment process (Worah and Mattu, 2014).

In contrast, most equity indexes are rebalanced annually or quarterly. The annual turnover rate of the S&P 500 index was about 4% for the past year. New issues are generally less than 1% of the market capitalization given that common stocks are generally perpetual securities. Therefore, the contribution of a strong presence in the new issuance market to performance for equity would be much less significant compared with that for bonds. Mauboussin et al. (2017) show a sharp fall in the number of listed stocks in the U.S. since 1996 due to rising listing costs, including higher costs for greater information disclosure. Consequently, listed companies today are bigger, older and better established than they were two decades ago. Mauboussin et al. speculate this trend has contributed to greater informational efficiency and fewer opportunities with material mispricing in the U.S. stock market.

Table 2: Bond holdings by noneconomic investorsⁱⁱ

Investor group	Bond holdings (\$ trillion)	Investment objective
Central banks		
– Foreign exchange	10.8	Stabilize exchange rates
– Reserves		
– Domestic holdings	4.5	Manage money supply
U.S. insurance	4.3	Book yield, predictable income, regulatory driven capital charges
U.S. banks	2.8	
European insurers	5.3	
European banks	4.7	
Asian banks and insurers	12.6	
Other banks and insurers	2.0 – 3.0	
Total	47.0 – 48.0	

Source: Company filings, European Federation, EIOPA, EBA, SNL Financial, Bloomberg and PIMCO. As of 31 December 2016.

There are other assumptions underlying Sharpe's arithmetic that, when violated in reality, may give rise to active management opportunities over passive. For example, Sharpe's work assumes investors have the same investment horizon, risk aversion and tax rate.

In summary, the higher turnover in bond indexes and lower informational efficiency of bond markets help explain why active bond funds have outperformed more often over our sample period than their equity counterparts.

POINT #6 – OFF-INDEX AND ACTIVE SHARE MATTER

Structural tilts, off-index or otherwise, are bond managers' staples in the battle against the index. Duration, yield curve steepeners, high yielding currencies, high yield credit spreads, agency and non agency mortgage spreads, volatility sales and liquidity premia – to name a few – are structural tilts that can be an important source of durable added value.ⁱⁱⁱ

To show that structural tilts are more than urban myths, we correlate excess returns of active bond funds with excess returns from specific factors, specifically duration, investment grade and high yield spreads (see Table 3). The picture that emerges is clear: Active bond funds and ETFs in the largest taxable bond category, Intermediate-Term Bond, are structurally short duration, long investment grade and long high yield exposure against the index (either directly or indirectly through factor tilts not included in the analysis). Regressing excess return against factors (see Appendix 2) also shows that exploiting credit and liquidity risk premia is a particularly important ingredient in the (not so secret) sauce. Adjusted t-statistics and R-squared show that tilts have been central to portfolios beyond a reasonable doubt (Mattu et al., 2016).

Table 3: Summary statistics for excess fund and factor returns (January 2007-December 2016)

	Mean (annualized)	Volatility (annualized)	Correlation			
			Mean ER	Dur	IG	HY
Mean ER	0.4%	1.9%	1.00	-0.52	0.81	0.89
Dur	0.6%	0.8%	-0.52	1.00	-0.40	-0.49
IG	0.1%	1.0%	0.81	-0.40	1.00	0.87
HY	1.0%	2.9%	0.89	-0.49	0.87	1.00

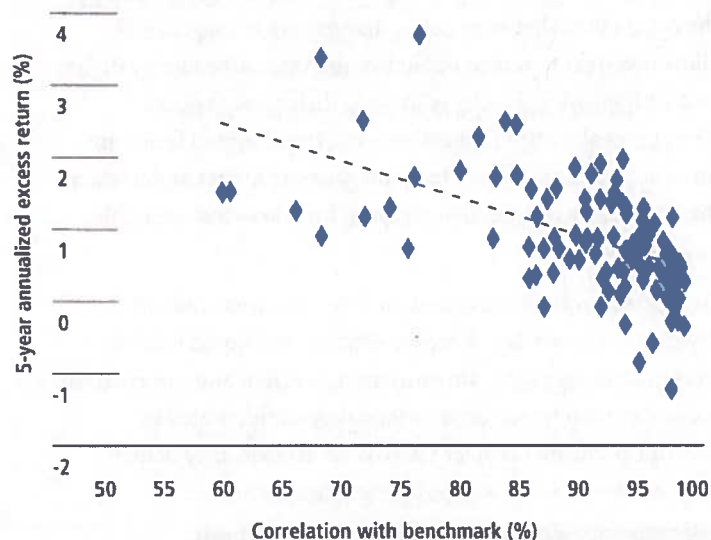
Source: Morningstar and Barclays as of 31 December 2016. Duration: Excess returns of Bloomberg Barclays US Treasury Index over cash (1M OIS), per unit of duration. Investment grade: Excess returns of Bloomberg Barclays US Corporate IG Index over duration-matched Treasuries, per unit of spread duration. High yield: Excess returns of Bloomberg Barclays US Corporate HY Index over duration-matched Treasuries, per unit of spread duration. **Past performance is not a guarantee or a reliable indicator of future results.** Sample consists of average monthly excess returns for active mutual funds and ETFs in "Intermediate-Term Bond" Morningstar category, with Bloomberg Barclays US Aggregate Bond Index as their primary prospectus benchmark and at least 10-year return histories. Table is provided for illustrative purposes and is not indicative of the past or future performance of any PIMCO product.

As is well known, a number of structural tilts are off-index: High yield, as just mentioned, as well as emerging market bonds and currencies, are fertile ground for outperformance opportunities yet are not part of typical bond indexes. This may be another reason active funds have generally done well in fixed income over the sample period. Of course, passive investors can add emerging market and high yield ETFs to their portfolios, but the lack of granularity and the opacity of such ETFs can be problematic, making it difficult to mix and match.

There is a wide range of financial derivatives available to the active bond managers that allow for potentially profitable expressions of investment themes: currency swap basis, futures basis, CDS-cash basis and TBA rolls are such examples. In addition, active bond managers could implement so-called smart strategies such as carry, value and momentum, which have historically displayed substantially positive Sharpe ratios (see, for example, Baz et al., 2015).

A related point is that active share may matter in bond management, meaning that the more portfolio positions differ from the index, the more potential that the fund will outperform. Because we do not have direct access to fund managers' positions, we use the correlation between portfolio returns and index returns as a proxy for the degree of "index hugging" (the higher the correlation, the lower the active share). The correlation between excess returns and portfolio-index return correlations is -0.57 for the past 5 years (see Figure 5). So it may pay to deviate. Or, to put it differently, when an active manager deviates, this may indicate the extent of potentially profitable investment ideas in the portfolio.

Figure 5: A scatter plot of 5-year excess returns against fund-index return correlations



Source: Morningstar and Barclays as of 31 December 2016. Past performance is not a guarantee or a reliable indicator of future results. Sample consists of active U.S. mutual funds (institutional shares only) in "Intermediate-Term Bond" Morningstar category with Bloomberg Barclays US Aggregate Bond Index as their primary prospectus benchmark. Chart is provided for illustrative purposes and is not indicative of the past or future performance of any PIMCO product.

POINT #7 – STRUCTURAL TILTS ARE NOT ALWAYS BETA

We are then left with the obvious question: Is the outperformance alpha or beta? On this point, our indecision is final. Beta, of course, refers to systematic risk factors that need to be remunerated at equilibrium, whereas alpha is defined as residual return in an asset pricing equation and is associated with investing and trading skills.

We are skeptical about this alpha-beta debate because systematic factors, as commonly understood today by both academics and practitioners, have weak theoretical underpinnings. How have some trading strategies graduated to systematic factor status? In other words, what is a systematic factor? A realistic answer may be: whatever has worked in the U.S. over the past few decades. Why is "duration" a systematic factor rather than sunspots? Because duration extension has worked over the past 30 years, as opposed to sunspots. And duration has worked because monetary policy has been accommodative and has allowed large returns from carry, roll-downs and capital gains in bond markets. In other words, betas may well be an artifact of the data sample and the ultimate exercise in data mining (Harvey et al., 2015). To come back to the "systematic duration factor," it has been tested over a period that may well be statistically insignificant because it boiled down to a single monetary experiment.

If all this were true, then systematic factor tilts are less beta and more alpha than investors are prone to think. As to the timing of those tilts, there is a strong presumption that they are alpha.

POINT #8 – A PURELY PASSIVE MARKET WOULD CAUSE SEVERE MARKET RISK AND RESOURCE MISALLOCATIONS

What would financial markets, including equities, look like in a world where asset management is purely passive? Not very compelling, it turns out, and for a reason: In a world where every asset manager is passive, the asset management mandate is to replicate the market. Therefore, all assets get absorbed without due consideration of their characteristics – cash flows, governance and broad risk/return parameters. Prices would cease to be informative the day assets got bought without being analyzed. The market would be subject to a degenerate form of Say's law, under which supply creates its own demand, yet suppliers of securities – bond and equity issuers – are better informed about these securities than are purchasers, in this case passive investors. One can easily see how the market equilibrium would become inherently expensive as passive price takers kept buying everything on supply and correlation across securities increased. This would, of course, lead to capital misallocation on a grand scale (with money chasing expensive assets), to a market crash of sorts and to a collapse in confidence.

POINT #9 – NEITHER PASSIVE NOR ACTIVE INVESTORS CAN DOMINATE AT EQUILIBRIUM

Thankfully, it is hard to see how asset management turns 100% passive. In a classic 1980 paper, Grossman and Stiglitz argue that markets cannot be informationally efficient, meaning that prices cannot perfectly reflect available information. Why can't they? Because if they do, there is no incentive for anyone to acquire and process the information, in which case there is no reason to trade and the market becomes passive. But as new information infiltrates this market, discrepancies arise and it becomes profitable to acquire information and trade the market. Clearly, investors have a stronger incentive to become active when most investors go passive, and vice versa. In a world with noneconomic investors, the math gets more complicated but the cost of on-demand liquidity almost certainly goes up, allowing more rents for economic investors. The pendulum will swing as either the passive or the active population dominates the market.

POINT #10 – PASSIVE MANAGEMENT, UNCHECKED, MAY ENCOURAGE FREE RIDING, ADVERSE SELECTION AND MORAL HAZARD

All it takes is a small proportion of active informed investors to ensure market prices are informative. These investors would be the marginal price setters while passive investors would enjoy a piggyback ride. In this context, information derived from prices is a public good. Active management, then, is a public good as well. And an absence thereof, as outlined above, can lead to undesirable outcomes.

Not only may passive management be guilty of free riding, it may also lead to adverse selection and moral hazard. To the extent that index inclusion rules favor large borrowers in bond space, passive investment, by channeling funds into indexes, results in excess demand for large borrowers' debt. This is a clear case of misdirecting capital toward those who deserve it the least, which is sometimes called the Matthew effect: "For he that hath, to him shall be given: and from him that has not shall be taken even that which he hath." Furthermore, by causing higher prices and lower spreads on the debt of relatively profligate borrowers, a flurry of moral hazards emerge: Governments borrowing at artificially low spreads postpone needed reforms, corporations that overborrow misuse the cash, and so on.

Although on the surface low-fee passive vehicles may benefit savers and pensioners, the reality is more nuanced, to put it mildly. In economic parlance, passive investment produces a host of negative externalities. These grow, likely in a non linear fashion, as the fraction invested passively rises materially. A disturbing implication, well known to economists, is that negative externalities ought to be taxed and positive externalities subsidized – all topics beyond the scope of this paper.

POINT #11 – PASSIVE MANAGEMENT HAS ITS VIRTUES

Passive managers' goal is to replicate the performance of a market index by holding the same securities or a sampling of the securities in the index. They do not need to spend resources to beat the benchmarks. As a result, they usually charge much lower fees than active managers. For many investors who want to focus on other investment decisions, such as asset allocation, and only seek index replication at the asset class level, passive investment provides a cost-effective way to access individual markets.

Active managers play an important role in the economy by helping to allocate capital efficiently. However, there will be times when they overinvest in research and information

acquisition in certain markets or market segments. Having a healthy number of passive choices in each market helps keep this in check. Because most indexes are not directly investable, the competition between active and passive managers will allow investors to screen out active managers that charge higher fees without adding value relative to their passive peers. Cremers et al. (2016) find actively managed mutual funds are more active, charge lower fees and generate higher alpha when they face more competitive pressure from low-cost explicitly indexed funds.

The optimal mix of active and passive investment should depend on the market. A highly efficient and liquid market where active managers' investment in research and information acquisition can no longer be adequately compensated by superior performance over passive, on average, may benefit from less active and more passive management.

POINT #12 – THERE IS NO SUCH THING AS PASSIVE (JUST DIFFERENT SHADES OF ACTIVE)

But you probably know that. In its strict definition, passive investment means owning the market and not trading it. Evidently, none of this is true. The market is an ever-evolving set of assets that need to be traded actively for replication purposes. This is more acute with securities that have finite lives and regularly return capital. And it is nigh impossible to replicate the market, if only because of all its private asset components.

What investors generally mean by passive is not even close to pure passive. For example, the common practice among passive managers of trading at the close of business at months' end, instead of trading evenly during the day, is in itself an active decision with sometimes heavy price consequences. Besides, the most popular example of a passive investment is an S&P 500 ETF, yet the market cap of the S&P 500 index (about \$20 trillion) is less than 10% of world wealth (\$241 trillion in 2014, according to Credit Suisse). The very choice of, say, a passive ETF is an active choice. Investors in passive equity ETFs are, sometimes unwittingly, taking a market view. And because investors often buy and sell these passive ETFs, they are actively timing the market. The asset allocation decision is the most active investment decision an investor can make, as it contributes to the majority of the portfolio return, far more than active decisions at the asset class level can do. Even at the asset class level, there are many active decisions to be made in the selection of passive management and performance benchmarks (Dialynas and Murata, 2006).

Since active management is inevitable, and given the outperformance demonstrated over our sample period, why all the fuss over active management? After all, there is no such thing as passive, just different shades of active management.

CONCLUSIONS

Opinions in the active-passive investment debate have drifted poles apart over recent years. We revisit this discussion by contrasting equity and bonds. We look at performance numbers and find that, unlike their stock counterparts, active bond mutual funds have largely outperformed their median passive peers over our sample period. We offer conjectures as to why bonds and stocks differ.

This may be due to:

- the large proportion of noneconomic bond investors
- benchmark rebalancing frequency and turnover
- structural tilts in fixed income space
- the wide range of financial derivatives available to active bond managers
- security-level credit research and new issue concessions

At a macro level, we believe that a purely passive market would cause severe market risk and resource misallocations. Realistically, neither passive nor active investors can fully dominate at equilibrium. Of course, passive management has its virtues. Yet there is reason to believe that, unchecked, passive management may encourage free riding, adverse selection and moral hazard.

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APPENDIX 1: SIGNAL VERSUS NOISE

Consider a money manager whose portfolio value P follows a geometric Brownian motion:

$$\frac{dP}{P} = \mu_P dt + \sigma_P dW_P.$$

The money manager is trying to beat an index that also follows a geometric Brownian motion:

$$\frac{dI}{I} = \mu_I dt + \sigma_I dW_I.$$

dW_P and dW_I have correlation ρ . The time unit is 1 year.

We can state the values of the processes at time t :

$$P_t = P_0 \exp \left[\left(\mu_P - \frac{1}{2} \sigma_P^2 \right) t + \sigma_P \sqrt{t} Z_P \right],$$

$$I_t = I_0 \exp \left[\left(\mu_I - \frac{1}{2} \sigma_I^2 \right) t + \sigma_I \sqrt{t} Z_I \right].$$

Z_P and Z_I are two standard normal random variables with correlation ρ .

The probability that the manager beats the index at time t :

$$\begin{aligned} P \left(\frac{P_t}{P_0} > \frac{I_t}{I_0} \right) &= P \left(\left(\mu_P - \frac{1}{2} \sigma_P^2 \right) t + \sigma_P \sqrt{t} Z_P > \left(\mu_I - \frac{1}{2} \sigma_I^2 \right) t + \sigma_I \sqrt{t} Z_I \right) \\ &= P \left(\sigma_P Z_P - \sigma_I Z_I > - \left[\left(\mu_P - \frac{1}{2} \sigma_P^2 \right) - \left(\mu_I - \frac{1}{2} \sigma_I^2 \right) \right] \sqrt{t} \right) \\ &= P \left(\frac{\sigma_P Z_P - \sigma_I Z_I}{\sqrt{\sigma_P^2 + \sigma_I^2 - 2\rho\sigma_P\sigma_I}} > - \frac{\left[\left(\mu_P - \frac{1}{2} \sigma_P^2 \right) - \left(\mu_I - \frac{1}{2} \sigma_I^2 \right) \right] \sqrt{t}}{\sqrt{\sigma_P^2 + \sigma_I^2 - 2\rho\sigma_P\sigma_I}} \right) \\ &= \Phi \left(\frac{\left[\left(\mu_P - \frac{1}{2} \sigma_P^2 \right) - \left(\mu_I - \frac{1}{2} \sigma_I^2 \right) \right] \sqrt{t}}{\sqrt{\sigma_P^2 + \sigma_I^2 - 2\rho\sigma_P\sigma_I}} \right) \end{aligned}$$

where Φ is the cumulative distribution function (CDF) of a standard normal random variable. Define the information ratio as the ratio between annualized alpha and tracking error, i.e., $\frac{\mu_P - \mu_I}{\sqrt{\sigma_P^2 + \sigma_I^2 - 2\rho\sigma_P\sigma_I}}$. The probability of outperformance can be estimated given assumptions on the horizon, the information ratio, and the volatility and correlation parameters.

See Ambarish and Siegel (1996) for a more detailed discussion.

APPENDIX 2: SUMMARY OF FUND-SPECIFIC REGRESSIONS OF MONTHLY ALPHAS ON RISK FACTOR RETURNS BY ALPHA QUARTILE (JANUARY 2007–DECEMBER 2016)

Quartiles	Average annualized alpha	Average parameter estimates				Average NW t-stat				Average Adj R2
		Constant	Dur	IG	HY	Constant	Dur	IG	HY	
1st	-0.45%	-0.06%	-0.41	0.05	0.44	-1.29	-1.11	0.46	2.67	48%
2nd	0.27%	0.01%	-0.25	0.22	0.29	0.32	-0.71	0.97	2.56	46%
3rd	0.56%	0.01%	-0.14	0.51	0.45	0.34	-0.35	1.52	3.51	57%
4th	1.19%	0.05%	-0.24	0.45	0.60	1.17	-0.53	1.05	3.18	51%

Source: Morningstar and Barclays as of 31 December 2016.

Duration: Excess returns of Bloomberg Barclays US Treasury Index over cash (1M OIS), per unit of duration.

Investment grade: Excess returns of Bloomberg Barclays US Corporate IG Index over duration-matched Treasuries, per unit of spread duration.

High yield: Excess returns of Bloomberg Barclays US Corporate HY Index over duration-matched Treasuries, per unit of spread duration.

Quartiles are based on 10-year annualized alphas. Newey-West heteroskedasticity and autocorrelation consistent t-statistics (Newey and West, 1987) are reported.

Sample consists of monthly alphas for active mutual funds and ETFs in the "Intermediate-Term Bond" Morningstar category, with Bloomberg Barclays US Aggregate Bond Index as their primary prospectus benchmarks and 10-year return histories.

REFERENCES

- Ambarish, Ramasastry and Lester Siegel. 1996. "Time Is the Essence." *Risk*, 9:41-42.
- Baz, Jamil, Nicolas M. Granger, Campbell R. Harvey, Nicolas Le Roux and Sandy Rattray. 2015. "Dissecting Investment Strategies in the Cross Section and Time Series." SSRN, November 2015.
- Cremers, Martijn, Miguel A. Ferreira, Pedro Matos and Laura Starks. 2016. "Indexing and Active Fund Management: International Evidence." *Journal of Financial Economics*, 120, no. 3: pages 539-560.
- Dialynas, C. P. and A. Murata. 2006. "The Active Decisions in the Selection of Passive Management and Performance Bogeys." *Advanced Bond Portfolio Management: Best Practices in Modeling and Strategies* (eds F. J. Fabozzi, L. Martellini and P. Priaulet). John Wiley & Sons, Inc., Hoboken, NJ, USA.
- Gerakos, Joseph, Juhani T. Linnainmaa and Adair Morse. 2016. "Asset Managers: Institutional Performance and Smart Betas." Working paper.
- Grossman, Sanford J. and Joseph E. Stiglitz. 1980. "On the Impossibility of Informationally Efficient Markets." *The American Economic Review* 70, no. 3.
- Harvey, Campbell R., Yan Liu and Heqing Zhu. 2015. "...and the Cross-Section of Expected Returns." Available at SSRN: <https://ssrn.com/abstract=2249314>.
- Mauboussin, Michael J., Dan Callahan and Darius Majd. 2017. "The Incredible Shrinking Universe of Stocks – The Causes and Consequences of Fewer U.S. Equities." Credit Suisse research paper.
- Moore, James. 2017. "Bonds Are Different." PIMCO Viewpoint. www.pimco.com.
- Mattu, Ravi K., Mukundan Devarajan, Steve Sapra and Dzmitry Nikalaichyk. 2016. "Fixed Income Manager Selection: Beware of Biases." www.pimco.com.
- Newey, Whitney K. and Kenneth D. West. 1987. "A Simple, Positive Semi-Definite, Heteroskedasticity and Autocorrelation Consistent Covariance Matrix." *Econometrica* 55, no. 3.
- Pedersen, Lasse Heje. 2017. "Sharpening the Arithmetic of Active Management." Available at SSRN: <https://ssrn.com/abstract=2849071>.
- Sharpe, William F. 1991. "The Arithmetic of Active Management." *The Financial Analysts' Journal*, 47, no. 1.
- Worah, Mihir P., and Ravi K. Mattu. 2014. "The Secret of Active Portfolio Management." PIMCO Viewpoints. www.pimco.com.

¹ The Bank for International Settlements as of 30 June 2016.

² This table first appeared in Moore (2017).

³ Gerakos et al. (2016) state that the outperformance of their actively managed institutional accounts between 2000 and 2012 is explained almost entirely by tactical factor tilts.

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This paper contains **hypothetical analysis**. Hypothetical and simulated examples have many inherent limitations and are generally prepared with the benefit of hindsight. There are frequently sharp differences between simulated results and the actual results. There are numerous factors related to the markets in general or the implementation of any specific investment strategy, which cannot be fully accounted for in the preparation of simulated results and all of which can adversely affect actual results. No guarantee is being made that the stated results will be achieved.

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Newport Beach Headquarters

650 Newport Center Drive
Newport Beach, CA 92660
+1 949.720.6000

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Action Item
Committee on Resource Management
November 20, 2019

RM #19-20

Action Item Issue: Approval of the Non-OHA Executive Managers' Selection and Seating Process for Hi'ilei Aloha, LLC and revised LLC Manager Position Description

Prepared by:

A handwritten signature in black ink, appearing to read "Raina", is written over a horizontal line.

Raina P.B. Gushiken
Ka Paepae Puka, Senior Legal Counsel

11/13/19

Date

Reviewed by:

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

Gloria Li
Ka Pou Kihi Kanaloa-Wai Kūikawā, Interim Chief Financial Officer

11/13/19

Date

Reviewed by:

A handwritten signature in blue ink, appearing to read "Lisa M. Watkins-Victorino", is written over a horizontal line.

Lisa Watkins-Victorino, Ph.D.
Ka Pou Nui Kūikawā, Interim Chief Operating Officer

11/13/19

Date

Reviewed by:

A handwritten signature in green ink, appearing to read "Sylvia", is written over a horizontal line.

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

11-13-19

Date

Reviewed by:

A handwritten signature in black ink, appearing to read "Dan Ahuna", is written over a horizontal line.

Dan Ahuna
Luna Ho'omalua Kōmike Resource Management, Chair

11/14/19

Date

Action Item: RM #19-20

Approval of the Non-OHA Executive Managers' Selection and Seating Process for Hi'ilei Aloha, LLC and revised LLC Manager Position Description

I. Action

Approval of the Non-OHA Employee Managers' Selection and Seating Process for Hi'ilei Aloha, LLC and revised LLC Manager Position Description.

II. Issue

Whether to approve or not approve the Non-OHA Executive Managers' Selection and Seating Process for Hi'ilei Aloha, LLC and revised LLC Manager Position Description.

III. Discussion

- A. **Background and Context.** The Office of Hawaiian Affairs ("OHA") is the sole member of two limited liability companies, Hi'ilei Aloha LLC ("Hi'ilei Aloha") and Ho'okele Pono LLC ("Ho'okele Pono"). Hi'ilei Aloha is the sole member of two limited liability companies Hi'ipaka LLC ("Hi'ipaka") and Hi'ikualono LLC ("Hi'ikualono"). Ho'okele Pono is the sole member of a single limited liability company Ho'okipaipai LLC ("Ho'okipaipai").

On May 30, 2019, via Action Item RM #19-08, the Board approved, adopted and ratified the: 1) Resolutions of the Board of Trustees Office of Hawaiian Affairs (Resolutions); 2) Articles of Termination and Plans of Dissolution (Reorganization Documents), and 3) LLC Manager Position Description as sole member of two limited liability companies, Hi'ilei Aloha LLC and Ho'okele Pono LLC. *Please see Attachments A and B for the approved Resolutions and LLC Manager Position Description, respectively.*

Also via Action Item RM #19-08, the Board amended the Operating Agreement of Hi'ilei Aloha for OHA to appoint three (3) persons who are not OHA executives to serve as managers ("Managers") of Hi'ilei Aloha, each to serve staggered terms of approximately three (3) years, two (2) years, and one (1) year. The terms shall end on the last day of the month in which each Manager takes office. Subsequently, OHA as the sole member of Hi'ilei Aloha, shall appoint each Manager to serve a new three (3) year term or the remainder of an unexpired three (3) year term.

By Action Item RM #19-08, the Board also ratified and approved the decision of the OHA executives who presently serve as Managers of Hi'ipaka to amend the Operating Agreement of Hi'ipaka to permit Hi'ilei Aloha, as sole member of Hi'ipaka, to appoint three (3) persons who are not OHA executives to serve as managers of Hi'ipaka, each to serve staggered terms of approximately three (3) years, two (2) years, and one (1) year. The terms shall end on the last day of the month in which each Manager takes office. Subsequently, Hi'ilei Aloha shall appoint each Manager to serve a new three (3) year term or the remainder of an unexpired three (3) year term.

Action Item: RM #19-20

Approval of the Non-OHA Executive Managers' Selection and Seating Process for Hi'ilei Aloha, LLC and revised LLC Manager Position Description

Attached hereto as Attachment C is a revised LLC Manager Position Description that reflects the staggering of terms for each Manager to be three (3) years, two (2) years, and one (1) year.

Where the existing LLC Managers are winding down the business affairs of and dissolving Ho'okele Pono, LLC, the work that will be left for the new non-OHA LLC Managers will primarily be to manage and oversee the sole asset of Hi'ilei Aloha which is Hi'ipaka. Hi'ipaka will also be selecting Managers to serve staggered terms of three (3) years, two (2) years, and one (1) year. For purposes of economy and efficiency, the non-OHA LLC Managers selected for Hi'ilei Aloha could also concurrently serve as LLC Managers for Hi'ipaka. After being selected, should the non-OHA LLC Managers for Hi'ilei Aloha determine that it is beneficial for and in the best interest of Hi'ipaka for them to concurrently serve as LLC Managers for Hi'ipaka, the non-OHA LLC Managers for Hi'ilei Aloha have the authority under the Second Amended and Restated Operating Agreement of Hi'ilei Aloha LLC to make that determination.

The Trustees determined that OHA would derive substantial economies and benefits from actions approved via Action Item RM #19-08 on May 30, 2019. This Action Item, RM #19-20, implements the Board's decision to permit persons who are not OHA executives to serve as managers ("Managers") of Hi'ilei Aloha and Hi'ipaka.

- B. Selection and Seating Process.** The roles and responsibilities of a Member Manager are both operational and strategic. Operational activities include bank and check signing authorities, budget approval, contract, disbursement and other approval matters, liquor license administration, audit review, etc. Strategic activities include risk mitigation plan review, annual plan, budget and strategic direction, public, private and community collaborations, etc.

Administration proposes the following selection and seating process, activities and timeline with a target to 'seat' the new non-Executive, non-OHA employee Hi'ilei Aloha Managers, **by January 31, 2020:**

Date	Action	Function
No later than Friday, 11/29/2019	Publish recruitment for three (3) Hi'ilei Aloha LLC Manager Positions, with staggered terms of 3 years, 2 years, and 1 year. Request for a resume and three letters of recommendation/reference, no later than Friday, January 3, 2019 deadline. Administration, at its discretion, may extend the deadline for applications.	OHA HR

Action Item: RM #19-20**Approval of the Non-OHA Executive Managers' Selection and Seating Process for Hi'ilei Aloha, LLC and revised LLC Manager Position Description**

Beginning with date of publication (i.e., no later than November 29, 2019)	Share information, prospect, cultivate, encourage and invite members of the community to respond to the recruitment posting for LLC Managers.	OHA Administration, Hi'ilei Aloha and Hi'ipaka leadership
Monday, 12/23/2019	Begin reviewing, vetting and follow up of references of Applicants, assembling recommendations for the Board	OHA HR, Administration
TBD, RM Committee Meeting, January 2020 or later if needed but in no event later than March 2020	Present an Action Item, with Administration recommendations for Board review and action.	OHA Administration
No later than 30 business days after Board action	<ul style="list-style-type: none">• Update operating documents (e.g., agreements, liquor license application, signature cards)• Schedule orientation and on-boarding actions for new LLC Managers	Existing LLC Managers ¹ and Counsel for the LLCs

IV. Recommended Action

Approve the Non-OHA Executive Managers' Selection and Seating Process for Hi'ilei Aloha, LLC and revised LLC Manager Position Description.

V. Alternative Actions

Take no action or defer actions/timeline.

VI. Funding

No funding is required as the process will be completed with existing OHA resources.

¹ Existing LLC Managers currently comprised of Interim CEO, COO and CFO

Action Item: RM #19-20

Approval of the Non-OHA Executive Managers' Selection and Seating Process for Hi'ilei Aloha, LLC and revised LLC Manager Position Description

VII. Timeframe

This action shall be effective immediately upon approval by the Board of Trustees.

VIII. Attachments:

- A. Resolutions of The Board of Trustees Office of Hawaiian Affairs
- B. Hi'ilei Aloha LLC Manager Position Description as approved in May 2019
- C. Revised Hi'ilei Aloha LLC Manager Position Description as proposed in November 2019

ATTACHMENT "A"

**Approved Resolutions as of May 30, 2019
Via Action Item RM #19-08**

RESOLUTIONS
OF
THE BOARD OF TRUSTEES
OFFICE OF HAWAIIAN AFFAIRS

Adopted: May 30, 2019

WHEREAS, the Office of Hawaiian Affairs (“OHA”) is the sole member of two limited liability companies, Hi`ilei Aloha LLC (“**Hi`ilei Aloha**”) and Ho`okele Pono LLC (“**Ho`okele Pono**”), Hi`ilei Aloha is the sole member of two limited liability companies Hi`ipaka LLC (“**Hi`ipaka**”) and Hi`ikualono LLC (“**Hi`ikualono**”), and Ho`okele Pono is the sole member of a single limited liability company Ho`okipaipai LLC (“**Ho`okipaipai**”); and

WHEREAS, the OHA executives who presently serve as managers (“**Managers**”) of Hi`ilei Aloha, Ho`okele Pono, Hi`ipaka, Hi`ikualono and Ho`okipaipai have offered to resign as Managers, and the Trustees of OHA desire to amend the Operating Agreements of Hi`ilei Aloha and Hi`ipaka to permit persons who are not OHA executives to serve as managers of Hi`ilei Aloha, and to ratify and approve the decision of the OHA executives who presently serve as Managers of Hi`ipaka to amend the Operating Agreement of Hi`ipaka to permit persons who are not OHA executives to serve as managers of Hi`ipaka; and

WHEREAS, the Trustees desire to establish criteria for candidates to replace OHA executives as Managers of Hi`ilei Aloha and Hi`ipaka, and to recruit replacement Managers in order that OHA executives may resign as Managers of Hi`ilei Aloha and Hi`ipaka; and

WHEREAS, the Trustees desire to dissolve Ho`okele Pono on or before October 31, 2019, following the completion of the Department of Defense Procurement Technical Assistance Center (“PTAC”) grant to Ho`okipaipai on or about September 30, 2019, and to ratify and approve the decision of the OHA executives who serve as Managers of Ho`okipaipai to dissolve prior to Ho`okele Pono’s dissolution; and

WHEREAS, the Trustees desire to ratify and approve the decision of the OHA executives who serve as Managers of Hi`ilei Aloha to dissolve Hi`ikualono at any time, as that entity is inactive; and

WHEREAS, the Trustees have reviewed the following documents, all of which documents relate to the transactions described above, and which documents are collectively referred to as the “**Reorganization Documents**”:

- (a) A proposed Second Amended and Restated Operating Agreement of Hi`ilei Aloha LLC to be executed by the managers of Hi`ilei Aloha and a proposed position description (“**Position Description**”) for Manager of Hi`ilei Aloha;
- (b) A proposed Fourth Amended and Restated Operating Agreement of Hi`ipaka LLC to be executed by the managers of Hi`ipaka;

(c) Proposed Articles of Termination and Plan of Dissolution of Ho`okele Pono LLC to be executed by the Managers of Ho`okele Pono;

(d) Proposed Articles of Termination and Plan of Dissolution of Ho`okipaipai LLC to be executed by the Managers of Ho`okipaipai; and

(e) Proposed Articles of Termination and Plan of Dissolution of Hi`ikualono LLC to be executed by the Managers of Hi`ikualono.

WHEREAS, the Trustees have determined that OHA will derive substantial economies and benefits from the foregoing reorganization, which benefits justify the approval of the required Reorganization Documents.

NOW, THEREFORE, BE IT RESOLVED that the Trustees:

1. Authorize and approve the Second Amended and Restated Operating Agreement of Hi`ilei Aloha LLC and Position Description as described above; and
2. Authorize and approve the Fourth Amended and Restated Operating Agreement of Hi`ipaka LLC as described above; and
3. Authorize and approve the proposed Articles of Termination and Plan of Dissolution of Ho`okele Pono LLC as described above; and
4. Authorize and approve the proposed Articles of Termination and Plan of Dissolution of Ho`okipaipai LLC as described above; and
5. Authorize and approve the proposed Articles of Termination and Plan of Dissolution of Hi`ikualono LLC as described above.

FURTHER, RESOLVED, that the Managers of Hi`ilei Aloha are authorized to execute the Second Amended and Restated Operating Agreement, the Managers of Hi`ipaka are authorized to execute the Fourth Amended and Restated Operating Agreement and the Managers of Ho`okele Pono, Ho`okipaipai and Hi`ikualono are hereby authorized to execute and deliver the respective Articles of Termination and Plan of Dissolution, to notify the Attorney General of the State of Hawai`i and Internal Revenue Service of their intent to dissolve and to distribute the remaining assets of Ho`okele Pono and Ho`okipaipai to OHA, and the remaining assets of Hi`ikualono to Hi`ilei Aloha, both OHA and Hi`ilei Aloha as qualifying organizations under Section 501(c)(3) of the Internal Revenue Code, with such changes to the Reorganization Documents as may be required and approved by the Managers and executing the same, such approval by the person or persons executing the same to be conclusively evidenced by his or her execution and delivery of the same.

FURTHER, RESOLVED, that the Trustees approve of the Position Description for Manager of Hi`ilei Aloha and Hi`ipaka and authorize OHA staff to commence recruitment for these positions.

FURTHER, RESOLVED, that the Trustees approve of and accept all the terms and provisions contained in the Reorganization Documents and that the Managers be and they are hereby authorized to negotiate the terms of the terminations and dissolutions with the Attorney General and the Internal Revenue Service and negotiate such additional terms and conditions as may be required, and to execute and file all of the Reorganization Documents required with such changes thereto as may be required and approved by the Managers, such approval by the Managers to be conclusively evidenced by their execution and delivery of the same.

FURTHER, RESOLVED, that the Managers be and are hereby authorized in each and every respect to observe and perform all of the covenants, provisions, terms and conditions upon the part of Hi`ilei Aloha, Hi`ipaka, Ho`okele Pono, Ho`okipaipai and Hi`ikualono to be observed and performed under the Reorganization Documents, and that the Managers be and they are hereby authorized to execute and deliver the Reorganization Documents, a certified copy of this Resolution and any other such corporate papers, certificates and documents as may be required on behalf of Hi`ilei Aloha, Hi`ipaka, Ho`okele Pono, Ho`okipaipai and Hi`ikualono, and to do all such things and take any and all such other actions as may be necessary, proper, appropriate or convenient in order to effectuate the intent of this Resolution and consummate these transactions.

FURTHER, RESOLVED, that any and all other actions heretofore taken by any Manager on behalf of OHA in connection with or relating to the transactions are and the same are hereby ratified and confirmed as the proper and binding actions of OHA.

SECOND AMENDED AND RESTATED OPERATING AGREEMENT

of HI'ILEI ALOHA LLC (MANAGER-MANAGED)

This Operating Agreement ("Agreement"), made and entered into as of September 26, 2007, and amended and restated as of May 30, 2019 is made by and between OFFICE OF HAWAIIAN AFFAIRS, a body corporate and instrumentality of the State of Hawai'i, whose address is 560 N. Nimitz Hwy #200, Honolulu, Hawai'i 96817 ("Member"), and HI'ILEI ALOHA LLC, a Hawai'i limited liability company, whose address is 711 Kapi'olani Boulevard, 5th Floor, Honolulu, Hawai'i 96813 (the "Company").

ARTICLE I FORMATION OF COMPANY

1.01 Formation. The Company shall be, or has been, organized as a Hawai'i limited liability company, by executing and delivering Articles of Organization to the Department of Commerce and Consumer Affairs of the State of Hawaii ("DCCA") in accordance with and pursuant to Chapter 428 of the Hawaii Revised Statutes (the "Act").

1.02 Name. The name of the Company is HI'ILEI ALOHA LLC.

1.03 Principal Place of Business and Fax Number. The principal place of business of the Company is 711 Kapi'olani Boulevard, 5th Floor, Honolulu, Hawai'i 96813. The Company may locate its place(s) of business and registered office at any other place or places as the Manager(s) may deem advisable.

1.04 Registered Office and Registered Agent. The Company's initial registered office shall be at 711 Kapi'olani Boulevard, 5th Floor, Honolulu, Hawaii 96813, and its initial registered agent was Clyde W. Nāmu'o. The registered office and registered agent may be changed by the Manager(s) by filing the address of the new registered office and/or the name of the new registered agent with the DCCA pursuant to the Act.

1.05 Term. The Term of the Company shall be from the filing of the Articles of Organization with the DCCA until dissolved in accordance with either the provisions of this Operating Agreement or the Act.

ARTICLE II BUSINESS OF COMPANY

2.01 Non-profit Company. The Company is intended to operate as a nonprofit limited liability company exempt from federal income tax under Sections 501(a) and 501(c)(3) of the Internal Revenue Code and to which deductible contributions may be made under Section 170(c)(2) of the Internal Revenue Code. The Company shall not engage in any activity not permitted to be carried out by a company exempt from federal income tax under Sections 501(a) and 501(c)(3) of the Internal Revenue Code to which deductible contributions may be made under Section 170(c)(2) of the Internal Revenue Code.

2.02 Purposes. The Company is formed and shall be operated exclusively to further the following exempt purposes:

- a. to study the history and culture of the Hawaiian people, including their ancestral and modern lifestyles, traditions, customs, practices, activities, values and beliefs (including, by way of example, agricultural and farming, hunting, gathering, fishing, nourishment, housing, language, music, dance, religion, economy, trade, social and governmental practices);
- b. to educate the Hawaiian people and all people on the history and culture of the Hawaiian people as described in Section 2.02.a, including, for example, through educational tours, lectures, displays, models, demonstrations, courses, pamphlets, books, employment opportunities, and scientific studies;
- c. to scientifically investigate and study, and to educate the Hawaiian people and all people as to, the plants, land and water resources, fish and marine resources, birds, animals and other wildlife, and ecosystems endemic or early introduced to the Hawaiian Islands, and their role in Hawaiian history, civilization and culture, and to preserve, protect, enhance, and encourage the propagation and protection of such endemic life in protected and appropriate natural surroundings;
- d. to preserve, protect, enhance, develop and promote Hawaiian historical, archaeological, environmental, cultural, spiritual and religious values, customs, practices, resources and sites;
- e. to educate, train, assist and prepare Hawaiians for leadership in government, business and community affairs;
- f. to receive contributions and pay them over to organizations which are described in Section 501(c)(3) and exempt from taxation under Section 501(a) of the Internal Revenue Code;
- g. such other religious, charitable, scientific, literary, educational and other purposes permitted by Section 501(c)(3) of the Internal Revenue Code as may be determined by the Member from time to time;
- h. to manage and assist the carrying out of these exempt purposes either by the Company or by related companies formed to carry out solely one or more of these exempt purposes; and
- i. to have and exercise all of the powers conferred by law on limited liability companies of Hawaii, but only to the extent permitted for a company described in Section 501(c)(3) of the Internal Revenue Code and exempt from federal income tax under Section 501(a) of the Internal Revenue Code, and to which deductible contributions may be made under Section 170(c)(2) of the Internal Revenue Code.

2.03 Nonpartisanship; Noninvolvement in Lobbying. The purposes of the Company shall be pursued without political partisanship or lobbying, and the Company shall not become

involved in, nor shall any of its funds be used for, the support of or opposition to any candidate or appointee for public office or to lobby for or against any governmental legislation, rule, or regulation.

ARTICLE III

NAMES, ADDRESS, FAX NUMBER AND E-MAIL ADDRESS OF MEMBER

3.01 The name, address, and electronic mail address of the Member of the Company are as follows:

Name:

Address:

Office of Hawaiian Affairs

560 N. Nimitz Hwy #200

Honolulu, Hawai'i 96817

E-mail address: info@oha.org

ARTICLE IV

RIGHTS AND DUTIES OF MANAGERS

4.01 Management. The business and affairs of the Company will be managed by three (3) managers (the "Managers"). The Managers shall have the power and authority to manage and control the business of the Company and to bind the Company, subject to the limitations in Section 4.11 below and any limitations contained in the Act. Except for situations in which the approval of the Member is required by this Operating Agreement, the Managers have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Company's business. The Managers may make decisions and take actions only with the consent of all Managers, unless the matter concerns a decision regarding a matter of an amount or value of less than \$50,000.00 or unless otherwise provided in this Operating Agreement (e.g., Section 4.06 below), in which event the decision and/or action of a single Manager alone will be sufficient to bind the Company, subject to the provisions of Section 4.12 below.

4.02 Managers. The Company shall have three (3) Managers. Following the resignation of the current Managers, the Member shall appoint three (3) Managers, each to serve staggered terms of approximately three (3) years, two (2) years, and one (1) year. The terms shall end on the last day of the month in which each Manager takes office. Subsequently, the Member shall appoint each Manager to serve a new three (3) year term or the remainder of an unexpired three (3) year term. The Managers shall not be OHA employees, and can only be removed for cause.

4.03 Certain Powers of Managers; Restriction on Member's Authority. Without limiting the generality of Section 4.01, and subject to the limitations contained in Section 4.11, the Managers shall have the power and authority on behalf of the Company to:

a. acquire or lease any real or personal property from any Person, whether or not such Person is directly or indirectly affiliated or connected with the Managers or any Member;

b. borrow money for the Company from banks, other lending institutions, or the Member on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, mortgage, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

c. construct, operate, maintain and improve any real and personal property owned by the Company;

d. prepay, in whole or in part, refinance, amend, modify or extend any mortgages or trust deeds affecting the assets of the Company and in connection therewith to execute for and on behalf of the Company any extensions, renewals or modifications of such mortgages or trust deeds;

e. purchase liability and other insurance to protect the Company's property and business;

f. hold and own Company real and personal properties in the name of the Company;

g. invest Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;

h. at the direction of the Member, sell, exchange or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan as long as such disposition is not in violation of, or a cause of a default under, any other agreement to which the Company may be bound, the Act, or Section 501(c)(3) of the Internal Revenue Code;

i. execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments; mortgages or deeds of trusts; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments and bills of sale; leases; and any other instruments or documents necessary or desirable to the business of the Company;

j. employ accountants, legal counsel, managing agents, tradespeople, contractors, subcontractors or other Persons to perform services for the Company;

k. enter into any and all other agreements on behalf of the Company, in such forms as the Managers may approve; and

l. do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Operating Agreement or by the Managers, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Managers to act as an agent of the Company in accordance with the preceding sentence.

4.04 Liability for Certain Acts. The Managers shall perform their respective duties as Managers in good faith, in a manner they reasonably believe to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. No Manager shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence or willful misconduct by said Manager.

4.05 Members and Managers; Limited Duty of Loyalty. The duty of loyalty of any Member or Manager of the Company is not violated by participation in the formation, management, performance of services for, employment by, or actions in support of any of the following entities:

- a. Office of Hawaiian Affairs, or
- b. any other entity (existing currently or in the future) of which Office of Hawaiian Affairs or Hi'i lei Aloha LLC is a member, which is intended to further the purposes of Office of Hawaiian Affairs as described in Chapter 10 of the Hawaii Revised Statutes.

Except as stated above, neither the Member(s) (to the limited extent of the managerial authority under Section 4.11 hereof) or Managers of the Company shall compete with the Company in the conduct of the Company's business before the dissolution of the Company, nor during any period in which such person or entity participates in the winding up of the Company's business. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Managers or Member(s) or to the income or proceeds derived therefrom.

4.06 Bank Accounts. The Managers may from time to time open bank accounts in the name of the Company, and the Managers shall be signatories thereon. Checks and drafts of less than \$10,000.00 may be executed by any Manager, and checks and drafts of \$10,000.00 or more shall be signed by two or more Managers.

4.07 Indemnity of the Managers.

a. Subject to the limitations and conditions provided in this Section 4.07, each Person ("Indemnified Person") who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative ("Proceeding"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he, she, or a Person of whom he or she is the legal representative, is or was a Manager of the Company or is or was serving as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another entity that is or was a Manager shall be indemnified by the Company against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable costs and expenses (including, without limitation, attorneys' fees) actually incurred by such Indemnified Person in connection with such Proceeding if such Indemnified Person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The

termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal action or proceeding, that the Indemnified Person had reasonable cause to believe that his conduct was unlawful.

b. To the extent that an Indemnified Person has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Section 4.07.a., or in defense of any claim, issue or matter therein, he will be indemnified against expenses (including attorneys' fees) actually and reasonably incurred in connection therewith.

c. Any indemnification under this Section 4.07 (unless ordered by a court) shall be made by the Company only as authorized in the specific case, upon a determination that indemnification is proper in the circumstances because he has met the applicable standard of conduct set forth therein. Such determination shall be made by the sole Member. If there is no disinterested Member, then the determination shall be made by the Company's independent legal counsel, whose fees must be paid by the Company.

d. Indemnification under this Section 4.07 shall continue as to an Indemnified Person who has ceased to serve in the capacity which initially entitled such Indemnified Person to indemnity hereunder. The rights granted pursuant to this Section 4.07 shall be deemed contract rights, and no amendment, modification or repeal of this Section 4.07 shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal.

e. The right to indemnification conferred by this Section 4.07 shall include the right to be paid or reimbursed by the Company for the reasonable expenses incurred in advance of the final disposition of the Proceeding and without any determination as to the Indemnified Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred in advance of the final disposition of a Proceeding shall be made only upon delivery to the Company of a written affirmation by such Indemnified Person of his good faith belief that he has met the standard of conduct necessary for indemnification under this Section 4.07 and a written undertaking, by or on behalf of such Indemnified Person, to repay all amounts so advanced if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified under this Section 4.07 or otherwise.

4.08 Reimbursement to Managers. The Company shall reimburse the Managers for all ordinary, necessary, and direct expenses incurred by the Managers on behalf of the Company in carrying out the Company's business activities.

4.09 Execution of Documents. Any document or instrument of any and every nature, including without limitation, any agreement, contract, deed, lease, promissory note, mortgage or deed of trust, security agreement, financing statement, pledge, assignment, bill of sale and certificate, which is intended to bind the Company or convey or encumber title to its real or personal property shall be valid and binding for all purposes only if executed by two or more of the Managers as provided in Section 4.01 above.

4.10 Delegation of Manager's Authority. Notwithstanding the provisions of this Article IV, the Managers may delegate in writing authority to one or more of the Company's employees, agents or independent contractors to write checks, sign contracts and other documents described in Section 4.09, hire and fire personnel, or take such other actions on behalf of the Company as may be necessary or useful to the management and operation of the Company, subject to such financial limits or other limitations as the Managers shall describe in such written authorization, and subject to the limitations on the Managers' authority as set forth in Section 4.11.

4.11 Limitations on Managers' Authority. Only a writing executed by 100% of the Members may:

- a. add new Members;
- b. authorize the sale or mortgage of any interest in real estate held by the Company;
- c. authorize any lease, license, or occupancy, extending more than 10 years;
- d. provide any salary, bonus, loan or other benefit, other than reimbursement of costs, to any Manager;
- e. authorize the sale, exchange or disposition of all or substantially all of the assets of the Company as part of a single transaction or plan, which may be carried out as long as such disposition is not in violation of, or a cause of a default under, any other agreement to which the Company may be bound, the Act, or Section 501(c)(3) of the Internal Revenue Code;
- f. authorize the dissolution of the Company; or
- g. amend this Operating Agreement and the Articles of Organization of the Company.

Once 100% of the Members' written authorization is received by the Company, the Managers shall have the authority to bind the company by negotiating and signing any documents necessary or useful to carry out the Member-authorized transaction. The Member's written authorization will be effective if executed by Member's Chief Executive Officer on behalf of Member.

4.12 Deadlock/Conflict. If for any reason (a) one of the Managers is disqualified from rendering a decision or taking an action on behalf of the Company as a result of a conflict of interest, and (b) the two remaining Managers are unable to agree, then the decision or action of the most senior Manager in time of service shall control in the absence of a conflict of interest or other circumstance which, under policies adopted by the Company, would disqualify said Manager from rendering the decision or taking the action, in which case the decision or action of the next most senior Manager in time of service shall control.

If for any reason all of the Managers are disqualified from rendering a decision or taking an action on behalf of the Company as a result of a conflict of interest, their designee shall, after

exercising due diligence in accordance with the procedures set forth in the Company's policy on Financial Conflicts of Interest, render the decision or take the action in question.

4.13 Resignation. Any Manager of the Company may resign at any time by giving written notice to the Member. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later date specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

ARTICLE V

MEMBERS; RIGHTS AND OBLIGATIONS OF MEMBER

5.01 Member. The Office of Hawaiian Affairs, a body corporate and instrumentality of the State of Hawai'i and hence a Qualifying Organization within the meaning of Section 5.02 below, is the sole Member of the Company ("Initial Member").

5.02 Qualifying Organization. As used herein, the term "Qualifying Organization" shall refer to any entity which is described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section 501(a) of the Internal Revenue Code, a governmental unit, or wholly-owned instrumentality of a state or political subdivision thereof.

5.03 Membership Limited to Qualifying Organizations. No entity may be or become a Member of this Company, and no direct or indirect transfer of a membership interest may be made to any entity, except a Qualifying Organization.

5.04 Admission of Additional Members. Additional members may be admitted to the Company upon the consent of the existing Member only if they are Qualifying Organizations as defined in Section 5.02. This Operating Agreement is designed exclusively for a single member limited liability company, and the existence of more than one member would require very substantial revision of this Operating Agreement, and would require the written agreement of all Members. No entity shall be deemed to have been admitted as an additional member of the Company unless that entity's signature appears on this Agreement as duly amended or restated and unless that entity's signature has been duly notarized.

5.05 Cessation of Member as Qualifying Organization. If a Member at any time shall cease to be a Qualifying Organization, then the Company will be dissolved and terminated unless and until its Members are Qualifying Organizations, and then only if State law permits the continuation or reinstatement of the Company.

5.06 Enforcement of Rights. A Member shall expeditiously and vigorously enforce all of its rights in the Company and pursue all legal and equitable remedies to protect its interests in the Company.

5.07 Limitation of Liability. Each Member's liability shall be limited to the full extent set forth in this Operating Agreement, the Act and other applicable law.

5.08 Company Debt Liability. A Member shall not be personally liable for any debts or losses of the Company beyond his, her or its respective capital contributions except as otherwise required by law.

5.09 List of Members. Upon the written request of any Member, the Managers shall provide a list showing the names, addresses and Membership Interests of all Members.

5.10 Company Books. The Managers shall maintain and preserve, during the term of the Company, the accounts, books, and other relevant Company documents. Upon reasonable written request, any Member shall have the right, at any time during ordinary business hours, to inspect and copy, at the requesting Member's expense, the writings listed in Section 8.04, and any other Company documents if and to the extent required by Hawai'i law.

ARTICLE VI MEETINGS OF MEMBERS

6.01 Meetings of and Voting by Members.

a. If there is more than one Member, each Member shall have a vote as shall be determined by amendment to this Operating Agreement pursuant to Section 5.04 above.

b. A meeting of the Member(s) may be called at any time by any Manager. Not less than five (5) nor more than thirty (30) days before each meeting, a Manager shall give written notice of the meeting to the sole Member, or if there is more than one Member, to each Member entitled to vote at the meeting. The notice shall state the time, place and purpose of the meeting. If any Member so requests, a Manager shall arrange for any Member to participate by telephone or any other voice communications medium, so long as the communications arrangements enable all Members to hear each other. The presence in person or by proxy or by any voice communications medium of Members holding not less than a Majority Interest shall constitute a quorum.

c. Except as otherwise specifically provided in this Operating Agreement, the affirmative vote of Members holding a Majority Interest shall be required and sufficient to approve any matter coming before the Members, including matters which under the Act (but for this Operating Agreement provision) would require unanimous consent of the Members.

d. In lieu of holding a meeting, the Members may vote or otherwise take action by written consent of the Members. Faxed signatures on consents are valid. Prompt notice of the taking of the action without a meeting by less than unanimous consent shall be given in writing to those Members who were entitled to vote but did not consent in writing.

ARTICLE VII CONTRIBUTIONS TO THE COMPANY

7.01 Contribution of Cash in Exchange for Membership. Immediately after the parties have signed this Agreement, Member shall contribute cash in the amount of \$100,000 to the Company, in full compensation for its membership in the Company.

7.02 Possible Future Contributions; Member Not Obligated. The Member expects to contribute to the Company Member's real estate and related holdings located in Pūpūkea and Waimea, District of Koʻolauloa, City and County of Honolulu, State of Hawaii, and may in the future contribute other assets to the Company, all of which shall be used and operated in accordance with the Company's exempt purposes. However, the Member has no duty to make any contribution of capital or property to the Company under any circumstance or for any reason.

7.03 Additional Funding. If the Managers determine at any time that there is a need for additional funds to meet the expenses and obligations of the Company, the Managers shall give written notice (the "Cash Needs Notice") to the sole Member, or if there is more than one Member, to each Member of the amount of additional funds needed together with such information as may be necessary to evidence the need for the funds and the proposed uses thereof (the required amount of funds are referred to as the "Required Funds"). Any Member may, but is not obligated to, contribute or loan any Required Funds on terms to be agreed upon between the Member and the Company. The Managers shall not loan any funds to the Company.

ARTICLE VIII DISTRIBUTIONS, SALARIES, LOANS, RECORDS AND RETURNS

8.01 Limitation upon Distributions. No distribution or return of capital contributions may be made and paid if the financial condition of the Company does not permit such action under Hawaii law (currently Hawaii Revised Statutes Section 428-406). No assets of the Company may be transferred, granted or distributed, whether directly or indirectly, to any entity other than a Qualifying Organization, except in exchange for fair market value. The Company shall not distribute any assets, other than in exchange for fair market value, to any Member which has ceased being a Qualifying Organization or governmental unit or instrumentality.

8.02 Salaries. Neither the Managers nor any Member shall be entitled to receive a salary for services rendered to the Company, unless the salary and its amount are consented to in writing by the Member.

8.03 Loans to Company. Nothing in this Operating Agreement prevents any Member from making secured or unsecured loans to the Company by agreement with the Managers.

8.04 Records. At the expense of the Company, the Managers shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company will keep at its principal place of business the following records:

a. A current list of the full name and last known address of each Member setting forth the amount of cash each Member has contributed, a description and statement of the agreed value of the other property or services each Member has contributed or has agreed to contribute in the future, and the date on which each became a Member;

b. A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

c. Copies of the Company's federal and state income tax returns and reports, if any, for the three (3) most recent years and of any financial statements of the Company for the three (3) most recent years; and

d. Copies of the Company's currently effective written Operating Agreement and all amendments thereto.

8.05 Returns and Other Elections. The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Internal Revenue Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, will be furnished to the Member within a reasonable time after the end of the Company's fiscal year upon the Member's written request. All elections permitted to be made by the Company under federal or state laws will be made by the Managers in their sole discretion.

ARTICLE IX TRANSFERABILITY

9.01 General. Except as may otherwise be specifically permitted in this Operating Agreement, no Member shall have the right to:

a. sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration all or any part of its membership interest; or

b. gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) all or any part of its membership interest.

ARTICLE X DISSOLUTION AND TERMINATION

10.01 Dissolution.

The Company shall be dissolved upon the occurrence of any of the following events:

a. The occurrence of an event specified in Section 1.05; or

b. By written resolution of the Member or, if there is more than one Member, by written agreement of all Members.

10.02 Winding Up, Liquidation and Distribution of Assets.

a. Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall promptly proceed to wind up the affairs of the Company.

b. Upon the dissolution and winding up of the Company, its assets remaining after payment of, or provision for payment of, all debts and liabilities of the Company, shall be

distributed to the Member if the Member continues to be a Qualifying Organization, and otherwise shall be distributed to one or more other Qualifying Organizations, preferably Qualifying Organizations furthering the Company's purposes, such that the assets will continue to be devoted to tax-exempt purposes.

c. Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

d. The Managers shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets, subject to the limitations contained in Section 10.02.b.

10.03 Articles of Termination. When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed pursuant to the provisions of this Article X, Articles of Termination, as required by the Act, shall be executed and filed with the DCCA.

10.04 Effect of Filing of Articles of Termination. Upon the filing of articles of termination with the DCCA, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company in accordance with the provisions of this Article X.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.01 Merger and Conversion. The Company shall not merge with, or convert into, an entity that is not exempt from taxation under Sections 501(a) and 501(c)(3) of the Internal Revenue Code.

11.02 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be in writing and deemed to have been sufficiently given or served for all purposes if (a) delivered personally to the party, or to an officer or partner of a party that is an Entity, (b) sent by electronic mail during normal business hours to the electronic mail address set forth in this Operating Agreement, or (c) sent by first class, registered or certified mail, return receipt requested, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Operating Agreement. Except as otherwise provided in this Operating Agreement, any such notice shall be deemed to be given two (2) business days after the date on which the same was deposited in the United States mail, addressed and sent as described above.

11.03 Application of Hawai'i Law. This Operating Agreement, and its interpretation, shall be governed exclusively by its terms and by the laws of the State of Hawai'i and specifically the Act.

11.04 Amendments. This Operating Agreement and the Company's Articles of Organization may not be amended except by the written consent of the sole Member, or if there is more than one Member, all of the Members. Any amendments to this Operating Agreement and the Company's Articles of Organization must be consistent with Section 501(c)(3) of the Internal Revenue Code.

11.05 Execution of Additional Instruments. Each Member may be required to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with any laws, rules or regulations.

11.06 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

11.07 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

11.08 Waivers. No party's undertakings or agreements contained in this Operating Agreement shall be deemed to have been waived unless such waiver is made by an instrument in writing signed by an authorized representative of the other Member. Failure of a party to insist on strict compliance with the provisions of this Operating Agreement shall not constitute waiver of that party's right to demand later compliance with the same or other provisions of this Operating Agreement. A waiver of a breach of this Operating Agreement will not constitute a waiver of the provision itself or of any subsequent breach, or of any other provision of this Operating Agreement.

11.09 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative, and the use of any one right or remedy by any party shall not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights the parties may have.

11.10 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

11.11 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

11.12 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company or of the Members.

11.13 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the sole Member and the Company have executed this Operating Agreement on the date first written above.

APPROVED AS TO CONTENT:

OFFICE OF HAWAIIAN AFFAIRS, a body
corporate and instrumentality of the State of
Hawai'i

Director, Land Management
Office of Hawaiian Affairs

By _____
Name: _____
Its _____
Sole Member

APPROVED AS TO FORM:

HI'ILEI ALOHA LLC, a Hawaii limited
liability company

Senior Staff Attorney
Office of Hawaiian Affairs

By _____
Name: _____
Its Manager

By _____
Name: _____
Its Manager

Company

HI`ILEI ALOHA LLC

POSITION DESCRIPTION

Position Title: **Manager of Hi`ilei Aloha LLC (Volunteer)**

Reports To: **Office of Hawaiian Affairs, As Member of Hi`ilei Aloha LLC**

Effective Date: _____, 2019

GENERAL OVERVIEW OF POSITION DUTIES

The Manager, who will be one of a board of three appointed managers, is expected to direct and oversee the Chief Operating Officer ("COO") of Hi`ilei Aloha LLC (the "Company"), and oversee the Company's business affairs, subject to limitations in the Company's operating agreement ("Operating Agreement") or by law. The Manager may be tasked with oversight of additional companies of which the Office of Hawaiian Affairs or the Company is a member ("Member").

Except for situations in which approval of the Member is required by the Operating Agreement, the Manager will have authority, power and discretion to oversee the business, affairs and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business.

PART-TIME POSITION, TERM AND SERVICE WITHOUT REMUNERATION

This is a part-time position in which the Manager is expected to devote approximately 3-5 hours per month. The Manager shall serve for an initial term of _____ year(s) and thereafter in accordance with the terms of the Operating Agreement.

The Manager shall serve without remuneration except the Company shall reimburse a Manager for ordinary, necessary, and reasonable direct expenses incurred by the Manager on behalf of the Company in carrying out the Company's business activities.

ESSENTIAL DUTIES & RESPONSIBILITIES

1. Manager's authority: The Manager has the authority to manage and oversee the Company's COO and the Company's business. The Manager reviews the COO's recommendations and makes decisions consistent with the Operating Agreement, the Company's annual objectives, the approved budget and best practices.
2. Review of Operations: At least once a month, meets with the COO and executive staff to review overall Company operations to ensure the business is progressing in a culturally appropriate manner and in compliance with acceptable business practices. Oversees Company use and maintenance of facilities and property. Assigns projects and requests reports as needed.
3. Strategic Plan and Company Objectives: Reviews and approves Company's Long Range and annual objectives, goals, policies and programs. Ensures compliance with Operating Agreement.
4. Budgeting and Finance: Reviews and approves operating and capital budgets. Monitors Company's implementation of approved budgets. Reviews financial reports, including income statements, balance sheets, and reports, tax returns; and reports for government regulatory agencies or other compliance purposes. Oversees investment of Company funds and approves large Company expenditures.
5. Human Resources, Risk Management and Contracts: Oversees Company handling of human resources-related issues, risk management claims and liabilities and Company contractor utilization.
6. Performs other duties as assigned by the Member.

KNOWLEDGE, SKILL AND ABILITIES

1. Must have good working knowledge of strategic management, financial, accounting and planning, and business systems.
2. Must be able to work well with others.
3. Must be organized and a self-starter. Must exercise independent judgment to prioritize projects and respond to situations as they arise without direct supervision.
4. Must project a professional demeanor.
5. Must have good oral and written communication skills.

MINIMUM QUALIFICATIONS

EDUCATION, TRAINING AND/OR EXPERIENCE

1. Must possess a bachelor's degree or equivalent work experience.
2. Experience in business administration is desirable.
3. Five years of administrative experience that involved management and oversight of professional staff and responsibility for the development, management, execution and coordination of program policies and activities. Administrative experience shall include but not limited to oversight of staff and work performance, budget planning and development, project management, understanding of contract management, risk management, human resources processes and procedures, high level strategic planning, collaboration with subordinates to develop professional development plans, and experience engaging various stakeholders of the professional, academic and Native Hawaiian communities.
4. Three years of administrative or executive level experience in non-profit organization governance and management of non-profit organizations.

HOW TO APPLY:

To apply for this position, download, complete and submit this fillable application form [insert link] along with a resume and cover letter to:

OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Highway, Suite 200
Honolulu, Hawai'i 96817
Attention: Human Resources

Or via email: ohahr@oha.org

An Equal Opportunity Employer

FOURTH AMENDED AND RESTATED OPERATING AGREEMENT
of
HI'IPAKA LLC
(MANAGER-MANAGED)

This Operating Agreement ("Agreement"), made and entered into as of December 5, 2007, and amended and restated on May 30, 2019, is made by and between HI'ILEI ALOHA LLC, a Hawai'i limited liability company, whose address is 711 Kapi'olani Boulevard, 5th Floor, Honolulu, Hawai'i 96813 ("Member"), and HI'IPAKA LLC, a Hawai'i limited liability company, whose address is 711 Kapi'olani Boulevard, 5th Floor, Honolulu, Hawai'i 96813 (the "Company").

ARTICLE I
FORMATION OF COMPANY

1.01. Formation. The Company shall be, or has been, organized as a Hawai'i limited liability company, by executing and delivering Articles of Organization to the Department of Commerce and Consumer Affairs of the State of Hawai'i ("DCCA") in accordance with and pursuant to Chapter 428 of the Hawai'i Revised Statutes (the "Act").

1.02. Name. The name of the Company is HI'IPAKA LLC.

1.03. Principal Place of Business. The initial principal place of business of the Company is 711 Kapi'olani Boulevard, 5th Floor, Honolulu, Hawai'i 96813. The Company may locate its place(s) of business and registered office at any other place or places as the Manager(s) may deem advisable.

1.04. Registered Office and Registered Agent. The Company's initial registered office shall be at 711 Kapi'olani Boulevard, 5th Floor, Honolulu, Hawai'i 96813, and its initial registered agent was Clyde W. Nāmu'o. The registered office and registered agent may be changed by the Manager(s) by filing the address of the new registered office and/or the name of the new registered agent with the DCCA pursuant to the Act.

1.05. Term. The Term of the Company shall be from the filing of the Articles of Organization with the DCCA until dissolved in accordance with either the provisions of this Operating Agreement or the Act.

ARTICLE II
BUSINESS OF COMPANY

2.01. Non-profit Company. The Company is intended to operate as a nonprofit limited liability company exempt from federal income tax under Sections 501(a) and 501(c)(3) of the Internal Revenue Code and to which deductible contributions may be made under Section 170(c)(2) of the Internal Revenue Code. The Company shall not engage in any activity not permitted to be carried out by a company exempt from federal income tax under Sections 501(a) and 501(c)(3) of the Internal Revenue Code to which deductible contributions may be made under Section 170(c)(2) of the Internal Revenue Code.

2.02. Mission. The mission of the Company is:

E mālama a e ho'omau i nā waiwai kānaka, mo'omeheu, a kūlohelohe o Waimea, O'ahu no kēlā hanauna, kēia hanauna ma o ka ho'ona'auao a me ka ho'okahu 'ana.

Preserve and perpetuate the human, cultural, and natural resources of Waimea, O'ahu for generations through education and stewardship. (English translation)

2.03. Purposes. The Company has been formed and shall be operated exclusively to further the following exempt purposes:

- a. to fulfill the mission of the Company articulated in Section 2.02 above;
- b. to carry out such other religious, charitable, scientific, literary, educational and other purposes permitted by Section 501(c)(3) of the Internal Revenue Code as may be determined by the Member from time to time;
- c. to manage and assist the carrying out of these exempt purposes either by the Company or by related companies formed to carry out solely one or more of these exempt purposes; and
- d. to have and exercise all of the powers conferred by law on limited liability companies of Hawai'i, but only to the extent permitted for a company described in Section 501(c)(3) of the Internal Revenue Code and exempt from federal income tax under Section 501(a) of the Internal Revenue Code, and to which deductible contributions may be made under Section 170(c)(2) of the Internal Revenue Code.

2.04. Nonpartisanship; Noninvolvement in Lobbying. The purposes of the Company shall be pursued without political partisanship or lobbying, and the Company shall not become involved in, nor shall any of its funds be used for, the support of or opposition to any candidate or appointee for public office or to lobby for or against any governmental legislation, rule, or regulation.

ARTICLE III NAME, ADDRESS AND FAX NUMBER OF MEMBER

3.01. The name, address and electronic mail address of the Member of the Company are as follows:

Name:

HI'ILEI ALOHA LLC

Address:

711 Kapi'olani Blvd., 5th Floor
Honolulu, Hawai'i 96813

ARTICLE IV RIGHTS AND DUTIES OF MANAGERS

4.01. Management. The business and affairs of the Company will be managed by three (3) managers (the "Managers"). The Managers shall have the power and authority to manage

and control the business of the Company and to bind the Company, subject to the limitations in Section 4.11 below and any limitations contained in the Act. Except for situations in which the approval of the Member is required by this Operating Agreement, the Managers have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the Company's business. The Managers may make decisions and take actions only with the consent of all Managers, unless the matter concerns a decision regarding a matter of an amount or value of less than \$50,000.00 or unless otherwise provided in this Operating Agreement (e.g., Section 4.06 below), in which event the decision and/or action of a single Manager alone will be sufficient to bind the Company, subject to the provisions of Section 4.12 below.

4.02. Managers. The Company shall have three (3) Managers. Following the resignation of the current Managers, the Member shall appoint three (3) Managers, each to serve staggered terms of approximately three (3) years, two (2) years, and one (1) year. The terms shall end on the last day of the month in which each Manager takes office. Subsequently, the Member shall appoint each Manager to serve a new three (3) year term or the remainder of an unexpired three (3) year term. The Managers shall not be OHA employees, and can only be removed for cause.

4.03. Certain Powers of Managers; Restriction on Member's Authority. Without limiting the generality of Section 4.01, and subject to the limitations contained in Section 4.11, the Managers shall have the power and authority on behalf of the Company to:

- a. acquire or lease any real or personal property from any Person, whether or not such Person is directly or indirectly affiliated or connected with the Managers or any Member;
- b. borrow money for the Company from banks, other lending institutions, or the Member on such terms as the Managers deem appropriate, and in connection therewith, to hypothecate, mortgage, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums;
- c. construct, operate, maintain and improve any real and personal property owned by the Company;
- d. prepay, in whole or in part, refinance, amend, modify or extend any mortgages or trust deeds affecting the assets of the Company and in connection therewith to execute for and on behalf of the Company any extensions, renewals or modifications of such mortgages or trust deeds;
- e. purchase liability and other insurance to protect the Company's property and business;
- f. hold and own Company real and personal properties in the name of the Company;

g. invest Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;

h. at the direction of the Member, sell, exchange or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan as long as such disposition is not in violation of, or a cause of a default under, any other agreement to which the Company may be bound, the Act, or Section 501(c)(3) of the Internal Revenue Code;

i. execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments; mortgages or deeds of trusts; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of the Company's property; assignments and bills of sale; leases; and any other instruments or documents necessary or desirable to the business of the Company;

j. employ accountants, legal counsel, managing agents, tradespeople, contractors, subcontractors or other Persons to perform services for the Company;

k. enter into any and all other agreements on behalf of the Company, in such forms as the Managers may approve; and

l. do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Operating Agreement or by the Managers, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Managers to act as an agent of the Company in accordance with the preceding sentence.

4.04. Liability for Certain Acts. The Managers shall perform their respective duties as Managers in good faith, in a manner they reasonably believe to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. No Manager shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, reckless or willful misconduct or a knowing violation of law by said Manager.

4.05. Members and Managers, Limited Duty of Loyalty. The duty of loyalty of any Member or Manager of the Company is not violated by participation in the formation, management, performance of services for, employment by, or actions in support of any of the following entities:

- a) Office of Hawaiian Affairs, or
- b) Hi'ilei Aloha, LLC, or

c) any other entity (existing currently or in the future) of which the Office of Hawaiian Affairs or Hi'ilei Aloha LLC is a member, which is intended to further the purposes of the Office of Hawaiian Affairs as described in Chapter 10 of the Hawai'i Revised Statutes.

Except as stated above, neither the Member(s) (to the limited extent of the managerial authority under Section 4.11 hereof) or Managers of the Company shall compete with the Company in the conduct of the Company's business before the dissolution of the Company, nor during any period in which such person or entity participates in the winding up of the Company's business. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Managers or Member(s) or to the income or proceeds derived therefrom.

4.06. Bank Accounts. The Managers may from time to time open bank accounts in the name of the Company, and the Managers shall be signatories thereon. Checks and drafts of less than \$10,000.00 may be executed by any Manager, and checks and drafts of \$10,000.00 or more shall be signed by two or more Managers.

4.07. Indemnity of the Managers.

a. Subject to the limitations and conditions provided in this Section 4.07, each Person ("Indemnified Person") who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative ("Proceeding"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he, she, or a Person of whom he or she is the legal representative, is or was a Manager of the Company or is or was serving as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another entity that is or was a Manager shall be indemnified by the Company against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable costs and expenses (including, without limitation, attorneys' fees) actually incurred by such Indemnified Person in connection with such Proceeding if such Indemnified Person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal action or proceeding, that the Indemnified Person had reasonable cause to believe that his conduct was unlawful.

b. To the extent that an Indemnified Person has been successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to in Section 4.07.a., or in defense of any claim, issue or matter therein, he will be indemnified against expenses (including attorneys' fees) actually and reasonably incurred in connection therewith.

c. Any indemnification under this Section 4.07 (unless ordered by a court) shall be made by the Company only as authorized in the specific case, upon a determination that

indemnification is proper in the circumstances because he has met the applicable standard of conduct set forth therein. Such determination shall be made by the sole Member. If there is no disinterested Member, then the determination shall be made by the Company's independent legal counsel, whose fees must be paid by the Company.

d. Indemnification under this Section 4.07 shall continue as to an Indemnified Person who has ceased to serve in the capacity which initially entitled such Indemnified Person to indemnity hereunder. The rights granted pursuant to this Section 4.07 shall be deemed contract rights, and no amendment, modification or repeal of this Section 4.07 shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal.

e. The right to indemnification conferred by this Section 4.07 shall include the right to be paid or reimbursed by the Company for the reasonable expenses incurred in advance of the final disposition of the Proceeding and without any determination as to the Indemnified Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred in advance of the final disposition of a Proceeding shall be made only upon delivery to the Company of a written affirmation by such Indemnified Person of his good faith belief that he has met the standard of conduct necessary for indemnification under this Section 4.07 and a written undertaking, by or on behalf of such Indemnified Person, to repay all amounts so advanced if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified under this Section 4.07 or otherwise.

4.08. Reimbursement to Managers. The Company shall reimburse the Managers for all ordinary, necessary, and direct expenses incurred by the Managers on behalf of the Company in carrying out the Company's business activities.

4.09. Execution of Documents. Any document or instrument of any and every nature, including without limitation, any agreement, contract, deed, lease, promissory note, mortgage or deed of trust, security agreement, financing statement, pledge, assignment, bill of sale and certificate, which is intended to bind the Company or convey or encumber title to its real or personal property shall be valid and binding for all purposes only if executed by two or more of the Managers as provided in Section 4.01 above.

4.10. Delegation of Manager's Authority. Notwithstanding the provisions of this Article IV, the Managers may delegate in writing authority to one or more of the Company's employees, agents or independent contractors to write checks, sign contracts and other documents described in Section 4.09, hire and fire personnel, or take such other actions on behalf of the Company as may be necessary or useful to the management and operation of the Company, subject to such financial limits or other limitations as the Managers shall describe in such written authorization, and subject to the limitations on the Managers' authority as set forth in Section 4.11.

4.11. Limitations on Managers' Authority. Only a writing executed by 100% of the Members may:

- a. add new Members;

- b. authorize the sale or mortgage of any interest in real estate held by the Company;
- c. authorize any lease, license, or occupancy, extending more than 10 years;
- d. provide any salary, bonus, loan or other benefit, other than reimbursement of costs, to any Manager;
- e. authorize the sale, exchange or disposition of all or substantially all of the assets of the Company as part of a single transaction or plan, which may be carried out as long as such disposition is not in violation of, or a cause of a default under, any other agreement to which the Company may be bound, the Act, or Section 501(c)(3) of the Internal Revenue Code;
- f. authorize the dissolution of the Company; or
- g. amend this Operating Agreement and the Articles of Organization of the Company.

Once 100% of the Members' written authorization is received by the Company, the Managers shall have the authority to bind the company by negotiating and signing any documents necessary or useful to carry out the Member-authorized transaction. The Member's written authorization will be effective if executed by all Managers of the Member on behalf of the Member. If one of the Managers is also a manager of the Member, that will not alter the application of this Section.

4.12. Resignation. Any Manager of the Company may resign at any time by giving written notice to the Member. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later date specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

4.13. Deadlock/Conflict. If for any reason (a) one of the Managers is disqualified from rendering a decision or taking an action on behalf of the Company as a result of a conflict of interest, and (b) the two remaining Managers are unable to agree, then the decision or action of the most senior Manager in time of service shall control in the absence of a conflict of interest or other circumstance which, under policies adopted by the Company, would disqualify said Manager from rendering the decision or taking the action, in which case the decision or action of the next most senior Manager in time of service shall control.

If for any reason all of the Managers are disqualified from rendering a decision or taking an action on behalf of the Company as a result of a conflict of interest, their designee shall, after exercising due diligence in accordance with the procedures set forth in the Company's policy on Financial Conflicts of Interest, render the decision or take the action in question.

ARTICLE V
MEMBERS; RIGHTS AND OBLIGATIONS OF MEMBER

5.01. Member. Hi`ilei Aloha LLC, a Hawai`i limited liability company, is the sole Member of the Company ("Member").

5.02. Qualifying Organization. As used herein, the term "Qualifying Organization" shall refer to any entity which is described in Section 501(c)(3) of the Internal Revenue Code and exempt from taxation under Section 501(a) of the Internal Revenue Code, a governmental unit, or wholly-owned instrumentality of a state or political subdivision thereof.

5.03. Membership Limited to Qualifying Organizations. No entity may be or become a Member of this Company, and no direct or indirect transfer of a membership interest may be made to any entity, except a Qualifying Organization.

5.04. Admission of Additional Members. Additional members may be admitted to the Company upon the consent of the existing Member only if they are Qualifying Organizations as defined in Section 5.02. This Operating Agreement is designed exclusively for a single member limited liability company, and the existence of more than one member would require very substantial revision of this Operating Agreement, and would require the written agreement of all Members. No entity shall be deemed to have been admitted as an additional member of the Company unless that entity's signature appears on this Agreement as duly amended or restated and unless that entity's signature has been duly notarized.

5.05. Cessation of Member as Qualifying Organization. If a Member at any time shall cease to be a Qualifying Organization, then the Company will be dissolved and terminated unless and until its only Member or Members are Qualifying Organizations, and then only if Hawai`i law permits the continuation or reinstatement of the Company.

5.06. Enforcement of Rights. A Member shall expeditiously and vigorously enforce all of its rights in the Company and pursue all legal and equitable remedies to protect its interests in the Company.

5.07. Limitation of Liability. Each Member's liability shall be limited to the full extent set forth in this Operating Agreement, the Act and other applicable law.

5.08. Company Debt Liability. A Member shall not be personally liable for any debts or losses of the Company except as otherwise required by law.

5.09. List of Members. Upon the written request of any Member, the Managers shall provide a list showing the names, addresses and Membership Interests of all Members.

5.10. Company Books. The Managers shall maintain and preserve, during the term of the Company, the accounts, books, and other relevant Company documents. Upon reasonable written request, any Member shall have the right, at any time during ordinary business hours, to inspect and copy, at the requesting Member's expense, the writings listed in Section 8.04, and any other Company documents if and to the extent required by Hawai`i law.

ARTICLE VI MEETINGS OF MEMBERS

6.01. Meetings of and Voting by Members.

a. If there is more than one Member, each Member shall have a vote as shall be determined by amendment to this Operating Agreement pursuant to Section 5.04 above.

b. A meeting of the Member(s) may be called at any time by any Manager. Not less than five (5) nor more than thirty (30) days before each meeting, a Manager shall give written notice of the meeting to the sole Member, or if there is more than one Member, to each Member entitled to vote at the meeting. The notice shall state the time, place and purpose of the meeting. If any Member so requests, a Manager shall arrange for any Member to participate by telephone or any other voice communications medium, so long as the communications arrangements enable all Members to hear each other. The presence in person or by proxy or by any voice communications medium of Members holding not less than a Majority Interest shall constitute a quorum.

c. Except as otherwise specifically provided in this Operating Agreement, the affirmative vote of Members holding a Majority Interest shall be required and sufficient to approve any matter coming before the Members, including matters which under the Act (but for this Operating Agreement provision) would require unanimous consent of the Members.

d. In lieu of holding a meeting, the Members may vote or otherwise take action by written consent of the Members. Faxed signatures on consents are valid. Prompt notice of the taking of the action without a meeting by less than unanimous consent shall be given in writing to those Members who were entitled to vote but did not consent in writing.

ARTICLE VII CONTRIBUTIONS TO THE COMPANY

7.01. Contribution of Cash in Exchange for Membership. Immediately after the parties have signed this Agreement, Member shall contribute cash in the amount of \$100,000 to the Company, in full compensation for its membership in the Company.

7.02. Member Not Obligated. The Member has no duty to make any contribution of capital or property to the Company under any circumstance or for any reason.

7.03. Additional Funding. If the Managers determine at any time that there is a need for additional funds to meet the expenses and obligations of the Company, the Managers shall give written notice (the "Cash Needs Notice") to the sole Member, or if there is more than one Member, to each Member of the amount of additional funds needed together with such information as may be necessary to evidence the need for the funds and the proposed uses thereof (the required amount of funds are referred to as the "Required Funds"). Any Member may, but is not obligated to, contribute or loan any Required Funds on terms to be agreed upon between the Member and the Company. The Managers shall not loan any funds to the Company.

ARTICLE VIII
DISTRIBUTIONS, SALARIES, LOANS, RECORDS AND RETURNS

8.01. Limitation upon Distributions. No distribution or return of capital contributions may be made and paid if the financial condition of the Company does not permit such action under Hawai'i law (currently Hawai'i Revised Statutes Section 428-406). No assets of the Company may be transferred, granted or distributed, whether directly or indirectly, to any entity other than a Qualifying Organization, except in exchange for fair market value. The Company shall not distribute any assets, other than in exchange for fair market value, to any Member which has ceased being a Qualifying Organization or governmental unit or instrumentality.

8.02. Salaries. Neither the Managers nor any Member shall be entitled to receive a salary for services rendered to the Company, unless the salary and its amount are consented to in writing by the Member.

8.03. Loans to Company. Nothing in this Operating Agreement prevents any Member from making secured or unsecured loans to the Company by agreement with the Managers.

8.04. Records. At the expense of the Company, the Managers shall maintain records and accounts of the operations and expenditures of the Company. At a minimum, the Company will keep at its principal place of business the following records:

a. A current list of the full name and last known address of each Member setting forth the amount of cash each Member has contributed, a description and statement of the agreed value of the other property or services each Member has contributed or has agreed to contribute in the future, and the date on which each became a Member;

b. A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

c. Copies of the Company's federal and state income tax returns and reports, if any, for the three (3) most recent years and of any financial statements of the Company for the three (3) most recent years; and

d. Copies of the Company's currently effective written Operating Agreement and all amendments thereto.

8.05. Returns and Other Elections. The Managers shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Internal Revenue Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, will be furnished to the Member within a reasonable time after the end of the Company's fiscal year upon the Member's written request. All elections permitted to be made by the Company under federal or state laws will be made by the Managers in their sole discretion.

ARTICLE IX TRANSFERABILITY

9.01. General. Except as may otherwise be specifically permitted in this Operating Agreement, no Member shall have the right to:

- a. sell, assign, pledge, hypothecate, transfer, exchange or otherwise transfer for consideration all or any part of its membership interest; or
- b. gift, bequeath or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) all or any part of its membership interest.

ARTICLE X DISSOLUTION AND TERMINATION

10.01. Dissolution.

The Company shall be dissolved upon the occurrence of any of the following events:

- a. The occurrence of an event specified in Section 1.05; or
- b. by written resolution of the Member or, if there is more than one Member, by written agreement of all Members.

10.02. Winding Up, Liquidation and Distribution of Assets.

a. Upon dissolution, an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Managers shall promptly proceed to wind up the affairs of the Company.

b. Upon the dissolution and winding up of the Company, its assets remaining after payment of, or provision for payment of, all debts and liabilities of the Company, shall be distributed to the Member if the Member continues to be a Qualifying Organization, and otherwise shall be distributed to one or more other Qualifying Organizations, preferably Qualifying Organizations furthering the Company's purposes, such that the assets will continue to be devoted to tax-exempt purposes.

c. Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated.

d. The Managers shall comply with all requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets, subject to the limitations contained in Section 10.02.b hereof.

10.03. Articles of Termination. When all debts, liabilities and obligations of the Company have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets of the Company have been distributed pursuant to the

provisions of this Article X, Articles of Termination, as required by the Act, shall be executed and filed with the DCCA.

10.04. Effect of Filing of Articles of Termination. Upon the filing of Articles of Termination with the DCCA, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The Managers shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company in accordance with the provisions of this Article X.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.01. Merger and Conversion. The Company shall not merge with, or convert into, an entity that is not exempt from taxation under Sections 501(a) and 501(c)(3) of the Internal Revenue Code.

11.02. Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Operating Agreement shall be in writing and deemed to have been sufficiently given or served for all purposes if (a) delivered personally to the party, or to a manager, officer or partner of a party that is an entity, (b) sent by electronic mail during normal business hours to the electronic mail address set forth in this Operating Agreement, or (c) sent by first class, registered or certified mail, return receipt requested, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Operating Agreement. Except as otherwise provided in this Operating Agreement, any such notice shall be deemed to be given two (2) business days after the date on which the same was deposited in the United States mail, addressed and sent as described above.

11.03. Application of Hawai'i Law. This Operating Agreement, and its interpretation, shall be governed exclusively by its terms and by the laws of the State of Hawai'i and specifically the Act.

11.04. Amendments. This Operating Agreement and the Company's Articles of Organization may not be amended except by the written consent of the sole Member, or if there is more than one Member, all of the Members. Any amendments to this Operating Agreement and the Company's Articles of Organization must be consistent with Section 501(c)(3) of the Internal Revenue Code, as the same may be amended from time to time or any similar successor statute.

11.05. Execution of Additional Instruments. Each Member may be required to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with any laws, rules or regulations.

11.06. Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

11.07. Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

11.08. Waivers. No party's undertakings or agreements contained in this Operating Agreement shall be deemed to have been waived unless such waiver is made by an instrument in writing signed by an authorized representative of the other Member. Failure of a party to insist on strict compliance with the provisions of this Operating Agreement shall not constitute waiver of that party's right to demand later compliance with the same or other provisions of this Operating Agreement. A waiver of a breach of this Operating Agreement will not constitute a waiver of the provision itself or of any subsequent breach, or of any other provision of this Operating Agreement.

11.09. Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative, and the use of any one right or remedy by any party shall not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights the parties may have.

11.10. Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

11.11. Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

11.12. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company or of the Members.

11.13. Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the sole Member and the Company have executed this Operating Agreement on the date first written above.

HI'ILEI ALOHA LLC, a Hawai'i limited liability company

By _____
Its Manager

By _____
Its Manager

Member

HI'IPAKA LLC, a Hawai'i limited liability company

By _____
Its Manager

By _____
Its Manager

Company

Nonrefundable Filing Fee \$25.00

No personal or business checks accepted.

Payment of the filing fee should be **ONLY** in the form of **CASH, CERTIFIED/CASHIER'S CHECK, BANK/POSTAL MONEY ORDER OR CREDIT CARD (VISA OR MasterCard).**

Make check or money order payable to DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS. Dishonored Check Fee \$25.00.



ARTICLES OF TERMINATION

(Section 428-805, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, submitting these Articles of Termination, certify as follows:

1. The name of the limited liability company is:

Ho'okele Pono LLC

2. Please check one:

☐ The notice was published on:

(Month Days Year)

in the

; OR

(Name of Newspaper)

- ☒ Publication was not made.

3. All debts, obligations, and liabilities of the limited liability company have been paid and discharged or adequate provision has been made therefor.
4. All the remaining property and assets of the limited liability company, if any, have been distributed among its members in accordance with their respective rights and interests.
5. There are no suits pending against the limited liability company in any court, or adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against the limited liability company in any pending suit.
6. The limited liability company's business has been wound up.
7. The legal existence of the limited liability company is terminated effective on the date and time of filing these Articles of Termination or on a later date and time, not more than 30 days after the filing, if so stated. The effective date cannot be before the date of filing these Articles of Termination. Termination is effective (check one):

- ☒ on the date and time of filing these Articles of Termination; OR

☐ on _____, at _____ m., Hawaiian Standard Time.

(Month Day Year)

which is not more than 30 days after these Articles of Termination is filed.

We certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that we have read the above statements, we are authorized to make this change, and that the statements are true and correct.

Signed this _____ day of _____, _____

(Type/Print Name & Title)

(Type/Print Name & Title)

(Signature)

(Signature)

SEE INSTRUCTIONS ON REVERSE SIDE. Articles must be signed and certified by at least one manager of a manager-managed company or by at least one member of a member-managed company.

Instructions: Articles must be typewritten or printed in **black ink**, and must be **legible**. The articles must be signed and certified by at least one manager of a manager-managed company or by at least one member of a member-managed company. All signatures must be in **black ink**. Submit original articles together with the appropriate fee.

Line 1. State the full name of the limited liability company.

Line 2. Check whether the notice of intent to terminate was published or not. **DO NOT CHECK BOTH.**

If the notice was published once a week for four successive weeks in a newspaper of general circulation in the State of Hawaii, list the four dates (month, days and year) of publication and the name of the newspaper in which the notice was published.

Line 7. Check whether the termination is to be effective on the date and time of filing these Articles of Termination or on a subsequent date and time. If a later date is selected for the effective date of termination, give the date (month, day and year) and time that the termination will be effective. The date cannot be prior to the filing of these Articles of Termination and cannot be more than thirty (30) days after the filing of these Articles of Termination.

Filing Fees: *Filing fee (\$25.00) is not refundable. No personal or business checks accepted.* Payment of the filing fee should be **ONLY** in the form of **CASH, CERTIFIED/CASHIER'S CHECK, BANK/POSTAL MONEY ORDER OR CREDIT CARD (Visa or MasterCard)**. Make checks payable to DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS. Dishonored Check Fee \$25.00.

For any questions call (808)586-2727. Neighbor islands may call the following numbers followed by 6-2727 and the # sign: Kauai 274-3141; Maui 984-2400; Hawaii 974-4000, Lanai and Molokai 1-800-468-4644 (toll free).

Fax: (808)586-2733 Email Address: breg@dcca.hawaii.gov

NOTICE: THIS MATERIAL CAN BE MADE AVAILABLE FOR INDIVIDUALS WITH SPECIAL NEEDS. PLEASE CALL THE DIVISION SECRETARY, BUSINESS REGISTRATION DIVISION, DCCA, AT 586-2744, TO SUBMIT YOUR REQUEST.

ALL BUSINESS REGISTRATION FILINGS ARE OPEN TO PUBLIC INSPECTION. (SECTION 92F-11, HRS)

PLAN OF DISSOLUTION

HO'OKELE PONO LLC A HAWAII LIMITED LIABILITY COMPANY

This Plan of Dissolution (the "Plan") is for the purpose of effecting the complete liquidation and dissolution of HO'OKELE PONO LLC, a Hawaii limited liability company (the "Company") in accordance with Hawaii Revised Statutes ("HRS") Chapter 428, Uniform Limited Liability Company Act, pursuant to the following:

1. Adoption of Plan. This Plan shall be deemed adopted by the Company upon its approval by the Managers and the Member of the Company. The Company shall be dissolved, completely liquidated, and terminated pursuant to the terms and conditions of this Plan.

2. Distribution of Assets/Payment of Liabilities. The Managers shall proceed to wind up the Company's affairs, to collect and reduce possession of its assets, and to pay or provide for payment of its liabilities. After payment of all known liabilities, the remaining assets of the Company shall be transferred to its Member, OFFICE OF HAWAIIAN AFFAIRS, a body corporate and instrumentality of the State of Hawai'i (EIN _____). The address of OFFICE OF HAWAIIAN AFFAIRS is 560 N. Nimitz Hwy. #200, Honolulu, Hawai'i 96817, Attention: _____.

3. List of Assets. The Company's assets are minimal and consist of _____ . None of the Company's assets are restricted-use.

4. No Publication of Notice to Creditors. There are no creditors of the Company. Consequently, there will not be any publication of notice to creditors of the dissolution of the Company.

5. Cessation of Business Activities. As of the date of adoption of this Plan by the Managers and the Member, the Company shall not engage in any business activities. The Managers shall continue solely for the purpose of winding up and liquidating the business and affairs of the Company as permitted by HRS Chapter 428.

6. Dissolution. Articles of Termination shall be filed with the Department of Commerce and Consumer Affairs, State of Hawai'i.

7. Authorization of Necessary Acts. The Managers shall carry out and consummate the Plan, and shall have the power to adopt all resolutions, execute all documents, and file all other forms and papers, and take all other action it deems necessary or desirable for the purpose of effecting the dissolution of the Company and the complete liquidation of its business, assets, and affairs.

[END OF PLAN OF DISSOLUTION]

Nonrefundable Filing Fee: \$25.00

No personal or business checks accepted.

Payment of the filing fee should be **ONLY** in the form of **CASH, CERTIFIED/CASHIER'S CHECK, BANK/POSTAL MONEY ORDER OR CREDIT CARD (VISA OR MasterCard).**

Make check or money order payable to **DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**. Dishonored Check Fee \$25.00.

**ARTICLES OF TERMINATION**

(Section 428-805, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, submitting these Articles of Termination, certify as follows:

1. The name of the limited liability company is:

Ho'okipaipai LLC

2. Please check one:

☐ The notice was published on: _____
(Month Days Year)
in the _____ ; OR
(Name of Newspaper)

☒ Publication was not made.

3. All debts, obligations, and liabilities of the limited liability company have been paid and discharged or adequate provision has been made therefor.
4. All the remaining property and assets of the limited liability company, if any, have been distributed among its members in accordance with their respective rights and interests.
5. There are no suits pending against the limited liability company in any court, or adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against the limited liability company in any pending suit.
6. The limited liability company's business has been wound up.
7. The legal existence of the limited liability company is terminated effective on the date and time of filing these Articles of Termination or on a later date and time, not more than 30 days after the filing, if so stated. The effective date cannot be before the date of filing these Articles of Termination. Termination is effective (check one):

☒ on the date and time of filing these Articles of Termination; OR

☐ on _____, at _____ .m., Hawaiian Standard Time,
(Month Day Year)

which is not more than 30 days after these Articles of Termination is filed.

We certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that we have read the above statements, we are authorized to make this change, and that the statements are true and correct.

Signed this _____ day of _____, _____

(Type/Print Name & Title)

(Type/Print Name & Title)

(Signature)

(Signature)

SEE INSTRUCTIONS ON REVERSE SIDE. Articles must be signed and certified by at least one manager of a manager-managed company or by at least one member of a member-managed company.

Instructions: Articles must be typewritten or printed in **black ink**, and must be **legible**. The articles must be signed and certified by at least one manager of a manager-managed company or by at least one member of a member-managed company. All signatures must be in **black ink**. Submit original articles together with the appropriate fee.

Line 1. State the full name of the limited liability company.

Line 2. Check whether the notice of intent to terminate was published or not. **DO NOT CHECK BOTH.**

If the notice was published once a week for four successive weeks in a newspaper of general circulation in the State of Hawaii, list the four dates (month, days and year) of publication and the name of the newspaper in which the notice was published.

Line 7. Check whether the termination is to be effective on the date and time of filing these Articles of Termination or on a subsequent date and time. If a later date is selected for the effective date of termination, give the date (month, day and year) and time that the termination will be effective. The date cannot be prior to the filing of these Articles of Termination and cannot be more than thirty (30) days after the filing of these Articles of Termination.

Filing Fees: *Filing fee (\$25.00) is not refundable. No personal or business checks accepted.* Payment of the filing fee should be **ONLY** in the form of **CASH, CERTIFIED/CASHIER'S CHECK, BANK/POSTAL MONEY ORDER OR CREDIT CARD (Visa or MasterCard)**. Make checks payable to DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS. Dishonored Check Fee \$25.00.

For any questions call (808)586-2727. Neighbor islands may call the following numbers followed by 6-2727 and the # sign: Kauai 274-3141; Maui 984-2400; Hawaii 974-4000, Lanai and Molokai 1-800-468-4644 (toll free).

Fax: (808)586-2733 Email Address: breg@dcca.hawaii.gov

NOTICE: THIS MATERIAL CAN BE MADE AVAILABLE FOR INDIVIDUALS WITH SPECIAL NEEDS. PLEASE CALL THE DIVISION SECRETARY, BUSINESS REGISTRATION DIVISION, DCCA, AT 586-2744, TO SUBMIT YOUR REQUEST.

ALL BUSINESS REGISTRATION FILINGS ARE OPEN TO PUBLIC INSPECTION. (SECTION 92F-11, HRS)

PLAN OF DISSOLUTION

HO`OKIPAIPAI LLC A HAWAII LIMITED LIABILITY COMPANY

This Plan of Dissolution (the "Plan") is for the purpose of effecting the complete liquidation and dissolution of HO`OKIPAIPAI LLC, a Hawaii limited liability company (the "Company") in accordance with Hawaii Revised Statutes ("HRS") Chapter 428, Uniform Limited Liability Company Act, pursuant to the following:

1. Adoption of Plan. This Plan shall be deemed adopted by the Company upon its approval by the Managers and the Member of the Company. The Company shall be dissolved, completely liquidated, and terminated pursuant to the terms and conditions of this Plan.

2. Distribution of Assets/Payment of Liabilities. The Managers shall proceed to wind up the Company's affairs, to collect and reduce possession of its assets, and to pay or provide for payment of its liabilities. After payment of all known liabilities, the remaining assets of the Company shall be transferred to OFFICE OF HAWAIIAN AFFAIRS, a body corporate and instrumentality of the State of Hawai'i (EIN _____), the Member of its Member, HO`OKELE PONO LLC, a Hawai'i limited liability company. The address of OFFICE OF HAWAIIAN AFFAIRS is 560 N. Nimitz Hwy. #200, Honolulu, Hawai'i 96817, Attention: _____.

3. List of Assets. The Company's assets are minimal and consist of _____. None of the Company's assets are restricted-use.

4. No Publication of Notice to Creditors. There are no creditors of the Company. Consequently, there will not be any publication of notice to creditors of the dissolution of the Company.

5. Cessation of Business Activities. As of the date of adoption of this Plan by the Managers and the Member, the Company shall not engage in any business activities. The Managers shall continue solely for the purpose of winding up and liquidating the business and affairs of the Company as permitted by HRS Chapter 428.

6. Dissolution. Articles of Termination shall be filed with the Department of Commerce and Consumer Affairs, State of Hawai'i.

7. Authorization of Necessary Acts. The Managers shall carry out and consummate the Plan, and shall have the power to adopt all resolutions, execute all documents, and file all other forms and papers, and take all other action it deems necessary or desirable for the purpose of effecting the dissolution of the Company and the complete liquidation of its business, assets, and affairs.

[END OF PLAN OF DISSOLUTION]

No personal or business checks accepted.

Payment of the filing fee should be ONLY in the form of **CASH, CERTIFIED/CASHIER'S CHECK, BANK/POSTAL MONEY ORDER OR CREDIT CARD (VISA OR MasterCard).**

Make check or money order payable to DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS. Dishonored Check Fee \$25.00.

**ARTICLES OF TERMINATION**

(Section 428-805, Hawaii Revised Statutes)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, submitting these Articles of Termination, certify as follows:

1. The name of the limited liability company is:

Hi'ikualonó LLC

2. Please check one:

☐ The notice was published on:

(Month

Days

Year)

in the

; OR

(Name of Newspaper)

☒ Publication was not made.

3. All debts, obligations, and liabilities of the limited liability company have been paid and discharged or adequate provision has been made therefor.
4. All the remaining property and assets of the limited liability company, if any, have been distributed among its members in accordance with their respective rights and interests.
5. There are no suits pending against the limited liability company in any court, or adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against the limited liability company in any pending suit.
6. The limited liability company's business has been wound up.
7. The legal existence of the limited liability company is terminated effective on the date and time of filing these Articles of Termination or on a later date and time, not more than 30 days after the filing, if so stated. The effective date cannot be before the date of filing these Articles of Termination. Termination is effective (check one):

☒ on the date and time of filing these Articles of Termination; OR

☐ on _____, at _____ .m., Hawaiian Standard Time,
(Month Day Year)

which is not more than 30 days after these Articles of Termination is filed.

We certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that we have read the above statements, we are authorized to make this change, and that the statements are true and correct.

Signed this _____ day of _____, _____

(Type/Print Name & Title)

(Type/Print Name & Title)

(Signature)

(Signature)

SEE INSTRUCTIONS ON REVERSE SIDE. Articles must be signed and certified by at least one manager of a manager-managed company or by at least one member of a member-managed company.

Instructions: Articles must be typewritten or printed in **black ink**, and must be **legible**. The articles must be signed and certified by at least one manager of a manager-managed company or by at least one member of a member-managed company. All signatures must be in **black ink**. Submit original articles together with the appropriate fee.

Line 1. State the full name of the limited liability company.

Line 2. Check whether the notice of intent to terminate was published or not. **DO NOT CHECK BOTH.**

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Line 7. Check whether the termination is to be effective on the date and time of filing these Articles of Termination or on a subsequent date and time. If a later date is selected for the effective date of termination, give the date (month, day and year) and time that the termination will be effective. The date cannot be prior to the filing of these Articles of Termination and cannot be more than thirty (30) days after the filing of these Articles of Termination.

Filing Fees: *Filing fee (\$25.00) is not refundable. No personal or business checks accepted.* Payment of the filing fee should be **ONLY** in the form of **CASH, CERTIFIED/CASHIER'S CHECK, BANK/POSTAL MONEY ORDER OR CREDIT CARD (Visa or MasterCard)**. Make checks payable to DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS. Dishonored Check Fee \$25.00.

For any questions call (808)586-2727. Neighbor islands may call the following numbers followed by 6-2727 and the # sign: Kauai 274-3141; Maui 984-2400; Hawaii 974-4000, Lanai and Molokai 1-800-468-4644 (toll free).

Fax: (808)586-2733 Email Address: breg@dcca.hawaii.gov

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ALL BUSINESS REGISTRATION FILINGS ARE OPEN TO PUBLIC INSPECTION. (SECTION 92F-11, HRS)

PLAN OF DISSOLUTION

HI'IKUALONO LLC A HAWAII LIMITED LIABILITY COMPANY

This Plan of Dissolution (the "Plan") is for the purpose of effecting the complete liquidation and dissolution of HI'IKUALONO LLC, a Hawaii limited liability company (the "Company") in accordance with Hawaii Revised Statutes ("HRS") Chapter 428, Uniform Limited Liability Company Act, pursuant to the following:

1. Adoption of Plan. This Plan shall be deemed adopted by the Company upon its approval by the Managers and the Member of the Company. The Company shall be dissolved, completely liquidated, and terminated pursuant to the terms and conditions of this Plan.
2. Distribution of Assets/Payment of Liabilities. The Managers shall proceed to wind up the Company's affairs, to collect and reduce possession of its assets, and to pay or provide for payment of its liabilities. After payment of all known liabilities, the remaining assets of the Company shall be transferred to its member, HI'ILEI ALOHA LLC, a Hawai'i limited liability company (EIN _____). The address of HI'ILEI ALOHA LLC is 711 Kapi'olani Boulevard, 5th Floor, Honolulu, Hawai'i 96813, Attention: Manager.
3. List of Assets. The Company's assets are minimal and consist of _____ . None of the Company's assets are restricted-use.
4. No Publication of Notice to Creditors. There are no creditors of the Company. Consequently, there will not be any publication of notice to creditors of the dissolution of the Company.
5. Cessation of Business Activities. As of the date of adoption of this Plan by the Managers and the Member, the Company shall not engage in any business activities. The Managers shall continue solely for the purpose of winding up and liquidating the business and affairs of the Company as permitted by HRS Chapter 428.
6. Dissolution. Articles of Termination shall be filed with the Department of Commerce and Consumer Affairs, State of Hawai'i.
7. Authorization of Necessary Acts. The Managers shall carry out and consummate the Plan, and shall have the power to adopt all resolutions, execute all documents, and file all other forms and papers, and take all other action it deems necessary or desirable for the purpose of effecting the dissolution of the Company and the complete liquidation of its business, assets, and affairs.

[END OF PLAN OF DISSOLUTION]

ATTACHMENT "B"
LLC Manager Position Description
Via Action Item RM #19-08

HI'ILEI ALOHA LLC

POSITION DESCRIPTION

Position Title: Manager of Hi'ilei Aloha LLC (Volunteer)

Reports To: Office of Hawaiian Affairs, As Member of Hi'ilei Aloha LLC

Effective Date: May 2019

GENERAL OVERVIEW OF POSITION DUTIES

The Manager, who will be one of a board of three appointed managers, is expected to direct and oversee the Chief Operating Officer ("COO") of Hi'ilei Aloha LLC (the "Company"), and oversee the Company's business affairs, subject to limitations in the Company's operating agreement ("Operating Agreement") or by law. The Manager may be tasked with oversight of additional companies of which the Office of Hawaiian Affairs or the Company is a member ("Member").

Except for situations in which approval of the Member is required by the Operating Agreement, the Manager will have authority, power and discretion to oversee the business, affairs and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business.

PART-TIME POSITION, TERM AND SERVICE WITHOUT REMUNERATION

This is a part-time position in which the Manager is expected to devote approximately 3-5 hours per month. The Manager shall serve for an initial term of three year(s) and thereafter in accordance with the terms of the Operating Agreement.

The Manager shall serve without remuneration except the Company shall reimburse a Manager for ordinary, necessary, and reasonable direct expenses incurred by the Manager on behalf of the Company in carrying out the Company's business activities.

ESSENTIAL DUTIES & RESPONSIBILITIES

1. Manager's Authority: The Manager has the authority to manage and oversee the Company's COO and the Company's business. The Manager reviews the COO's recommendations and makes decisions consistent with the Operating Agreement, the Company's annual objectives, the approved budget and best practices.
2. Review of Operations: At least once a month, meets with the COO and executive staff to review overall Company operations to ensure the business is progressing in a culturally appropriate manner and in compliance with acceptable business practices. Oversees Company use and maintenance of facilities and property. Assigns projects and requests reports as needed.
3. Strategic Plan and Company Objectives: Reviews and approves Company's Long Range and annual objectives, goals, policies and programs. Ensures compliance with Operating Agreement.
4. Budgeting and Finance: Reviews and approves operating and capital budgets. Monitors Company's implementation of approved budgets. Reviews financial reports, including income statements, balance sheets, and reports, tax returns; and reports for government regulatory agencies or other compliance purposes. Oversees investment of Company funds and approves large Company expenditures.
5. Human Resources, Risk Management and Contracts: Oversees Company handling of human resources-related issues, risk management claims and liabilities and Company contractor utilization.
6. Performs other duties as assigned by the Member.

KNOWLEDGE, SKILL AND ABILITIES

1. Must have good working knowledge of strategic management, financial, accounting and planning, and business systems.
2. Must be able to work well with others.
3. Must be organized and a self-starter. Must exercise independent judgment to prioritize projects and respond to situations as they arise without direct supervision.
4. Must project a professional demeanor.
5. Must have good oral and written communication skills.

MINIMUM QUALIFICATIONS

EDUCATION, TRAINING AND/OR EXPERIENCE

1. Must possess a bachelor's degree or equivalent work experience.
2. Experience in business administration is desirable.
3. Five years of administrative experience that involved management and oversight of professional staff and responsibility for the development, management, execution and coordination of program policies and activities. Administrative experience shall include but not limited to oversight of staff and work performance, budget planning and development, project management, understanding of contract management, risk management, human resources processes and procedures, high level strategic planning, collaboration with subordinates to develop professional development plans, and experience engaging various stakeholders of the professional, academic and Native Hawaiian communities.
4. Three years of administrative or executive level experience in non-profit organization governance and management of non-profit organizations.

HOW TO APPLY:

To apply for this position, download, complete and submit this fillable application form [insert link] along with a resume and cover letter to:

OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Highway, Suite 200
Honolulu, Hawai'i 96817
Attention: Human Resources

Or via email: ohahr@oha.org

An Equal Opportunity Employer

ATTACHMENT "C"
Revised LLC Manager Position Description

HI'ILEI ALOHA LLC

POSITION DESCRIPTION

Position Title: Manager of Hi'ilei Aloha LLC (Volunteer)

Reports To: Office of Hawaiian Affairs, As Member of Hi'ilei Aloha LLC

Effective Date: November 2019

GENERAL OVERVIEW OF POSITION DUTIES

The Manager, who will be one of a board of three appointed managers, is expected to direct and oversee the Chief Operating Officer ("COO") of Hi'ilei Aloha LLC (the "Company"), and oversee the Company's business affairs, subject to limitations in the Company's operating agreement ("Operating Agreement") or by law. The Manager may be tasked with oversight of additional companies of which the Office of Hawaiian Affairs or the Company is a member ("Member").

Except for situations in which approval of the Member is required by the Operating Agreement, the Manager will have authority, power and discretion to oversee the business, affairs and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business.

PART-TIME POSITION, TERM AND SERVICE WITHOUT REMUNERATION

This is a part-time position in which the Manager is expected to devote approximately 3-5 hours per month. Each Manager appointed by the Member shall serve staggered terms of approximately three (3) years, two (2) years, and one (1) year. The terms shall end on the day of the month in which the Manager takes office. Subsequently, the Member shall appoint each Manager to serve a new three (3) year term or the remainder of the unexpired three (3) year term. in accordance with the terms of the Operating Agreement.

The Manager shall serve without remuneration except the Company shall reimburse a Manager for ordinary, necessary, and reasonable direct expenses incurred by the Manager on behalf of the Company in carrying out the Company's business activities.

ESSENTIAL DUTIES & RESPONSIBILITIES

1. Manager's Authority: The Manager has the authority to manage and oversee the Company's COO and the Company's business. The Manager reviews the COO's recommendations and makes decisions consistent with the Operating Agreement, the Company's annual objectives, the approved budget and best practices.
2. Review of Operations: At least once a month, meets with the COO and executive staff to review overall Company operations to ensure the business is progressing in a culturally appropriate manner and in compliance with acceptable business practices. Oversees Company use and maintenance of facilities and property. Assigns projects and requests reports as needed.
3. Strategic Plan and Company Objectives: Reviews and approves Company's Long Range and annual objectives, goals, policies and programs. Ensures compliance with Operating Agreement.
4. Budgeting and Finance: Reviews and approves operating and capital budgets. Monitors Company's implementation of approved budgets. Reviews financial reports, including income statements, balance sheets, and reports, tax returns; and reports for government regulatory agencies or other compliance purposes. Oversees investment of Company funds and approves large Company expenditures.
5. Human Resources, Risk Management and Contracts: Oversees Company handling of human resources-related issues, risk management claims and liabilities and Company contractor utilization.
6. Performs other duties as assigned by the Member.

KNOWLEDGE, SKILL AND ABILITIES

1. Must have good working knowledge of strategic management, financial, accounting and planning, and business systems.
2. Must be able to work well with others.
3. Must be organized and a self-starter. Must exercise independent judgment to prioritize projects and respond to situations as they arise without direct supervision.
4. Must project a professional demeanor.
5. Must have good oral and written communication skills.

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EDUCATION, TRAINING AND/OR EXPERIENCE

1. Must possess a bachelor's degree or equivalent work experience.
2. Experience in business administration is desirable.
3. Five years of administrative experience that involved management and oversight of professional staff and responsibility for the development, management, execution and coordination of program policies and activities. Administrative experience shall include but not limited to oversight of staff and work performance, budget planning and development, project management, understanding of contract management, risk management, human resources processes and procedures, high level strategic planning, collaboration with subordinates to develop professional development plans, and experience engaging various stakeholders of the professional, academic and Native Hawaiian communities.
4. Three years of administrative or executive level experience in non-profit organization governance and management of non-profit organizations.

HOW TO APPLY:

To apply for this position, download, complete and submit this fillable application form [insert link] along with a resume and cover letter to:

OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Highway, Suite 200
Honolulu, Hawai'i 96817
Attention: Human Resources

Or via email: ohahr@oha.org

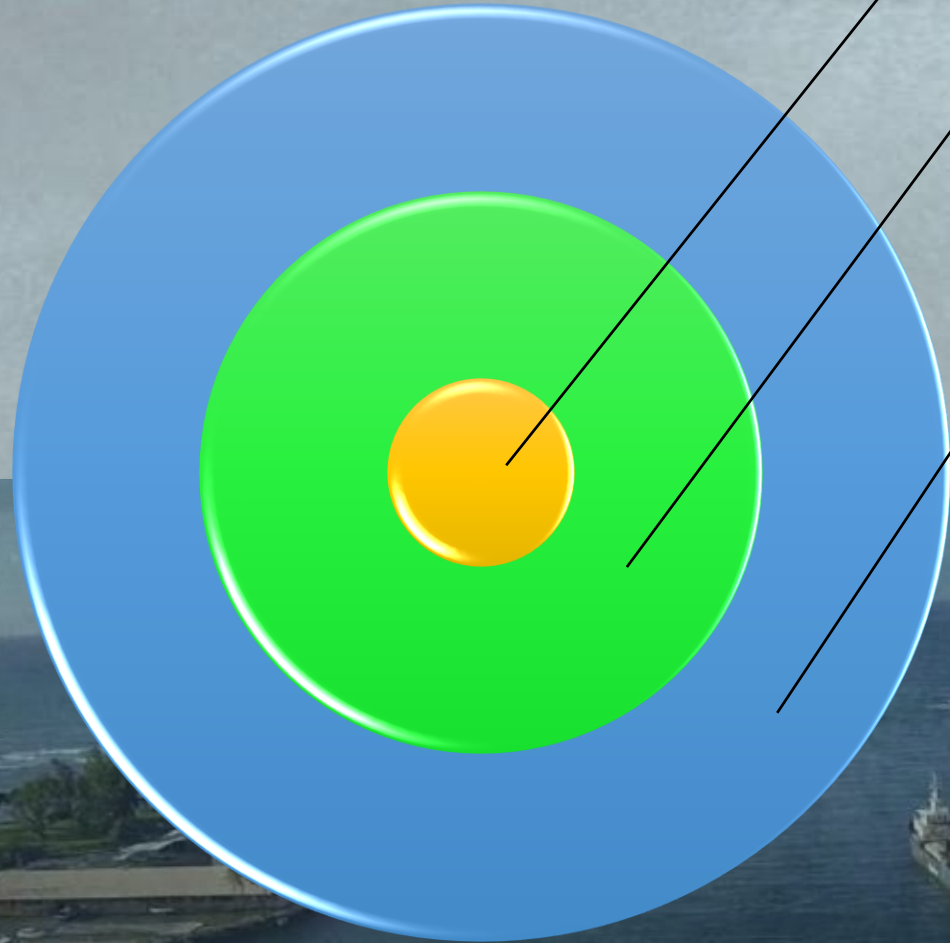
An Equal Opportunity Employer

Kaka‘ako



Makai

Kaka'ako Makai



Why? – Need for strategically aligned, Trustee approved Kaka'ako Makai plan

What? – Decisions about programmatic elements, lot by lot sequence, and business model

How? – 3 Workshops (November and December 2019) and 1 Action Item (January 2020)

The What?

3 - *Key Decision Areas*

I
PROGRAMMATIC
ELEMENTS

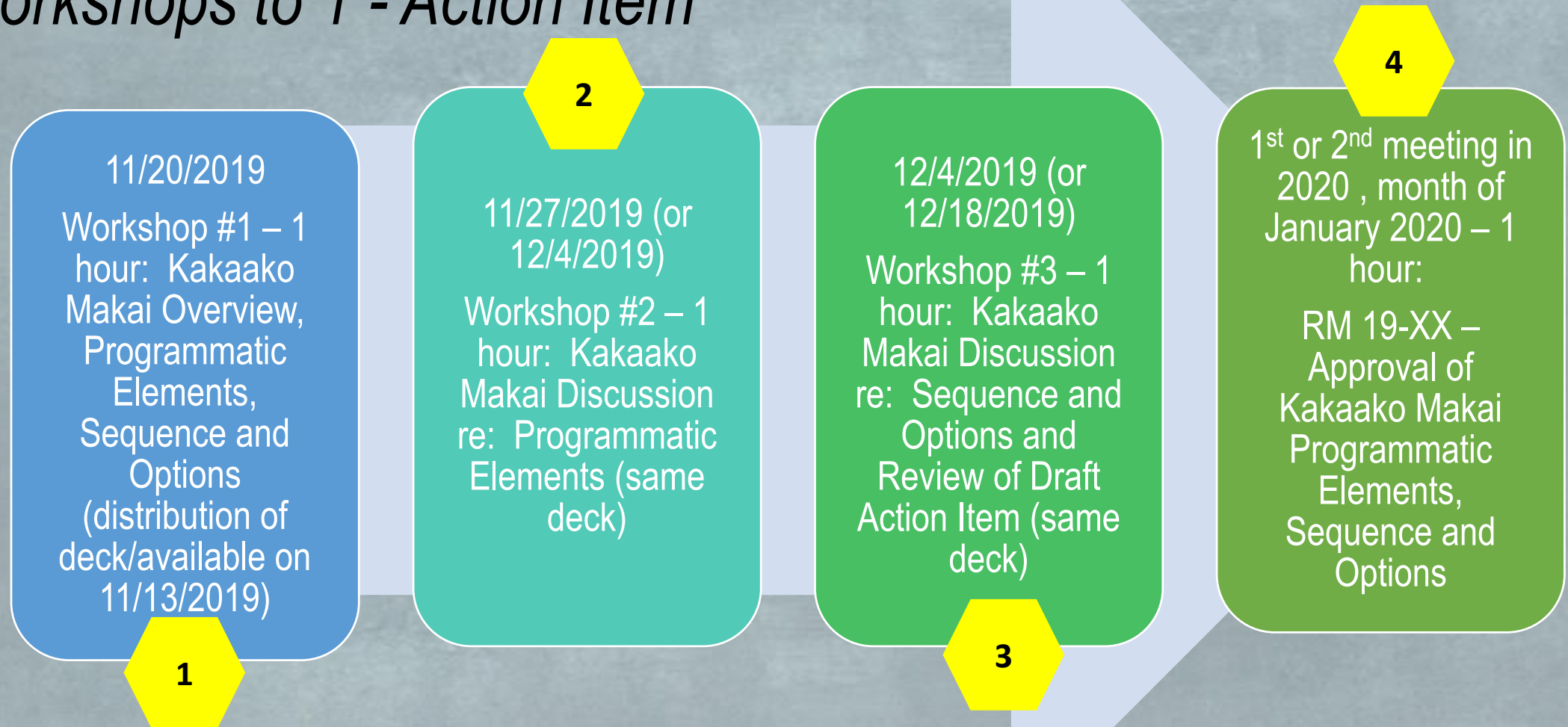


III
BUSINESS
MODEL

II
LOT BY LOT
SEQUENCE

The How? and the When?

3 - Workshops to 1 - Action Item



Land Assets staff – Miles Nishijima, Jonathan Ching and Lee Miller available for individual meetings with no more than two (2) Trustees or Trustees' staff from 11/13/19 to 01/15/20.


























NEED

Why? – Need for strategically aligned, Trustee approved Kaka`ako Makai plan

- Setting Context
- What's Happened Since 2012?
 - + In the Organization
 - + With the Policy
 - + At the Legislature
 - + With Planning Process

Kaka'ako Makai Development Timeline Overview

<p>Land Transfer</p> <p> KM Policy Adopted</p>	<p><i>April – Oct.</i></p> <p> OHA's Strategic Action Plan</p>	<ul style="list-style-type: none"> Land Division Created  Conceptual Master Plan Begins  OHA Requests Residential  	<ul style="list-style-type: none"> Pae 'Āina Engagement  RM Committee Presentation  	<p>April</p> <p> Commercial Property Manager Leaves</p>	<p>OHA Decides to Proceed w/Existing Entitlements </p> <p>OHA Asks HCDA to be EIS Accepting Authority </p>	<ul style="list-style-type: none"> Master Plan Contract Expires  	<p>February</p> <p> Commercial Property Manager Leaves</p>
2012	2013	2014	2015	2016	2017	2018	2019
<ul style="list-style-type: none"> Balance Rev. Generation w/OHA's Strat. Goals  Create a Haw. Place Embrace Community 	<ul style="list-style-type: none"> Cultural Context for Development  Baseline Development Strategy Basis for Conceptual Master Plan 	<ul style="list-style-type: none"> Legislature Denies Residential Use  WCIT Selected for Conceptual Master Plan  	<p> </p> <p>OHA Stops Pursuing Additional Entitlements</p>	<p>September</p> <p> Commercial Property Manager Starts</p>	<ul style="list-style-type: none"> Pae 'Āina (Report Back)  Begin Work on Design Guidelines  	<ul style="list-style-type: none"> Plans not finalized Design Guidelines not completed. EIS and SMA not completed \$1mil of contract unspent) 	<p></p> <ul style="list-style-type: none"> Regroup Set Strategic Course Holomua




Kaka'ako Makai Policy: Guide Management & Development

1) Relationship to OHA's Vision and Strategic Priorities

- A. Maximize revenues while providing economic development opportunities for Native Hawaiians.**
- B. Incorporate Native Hawaiian culture in design elements and purposes.**
 - i. Proceed with the mindset to transfer the assets to the Nation;
 - ii. Raise an architectural landmark/signature that signifies KM as a Hawaiian Place;
 - iii. Create a sense of Nation.

2) Design and Use, Including Cultural Values

- A. Create a Hawaiian Sense of Place**
 - i. Connect physical structures and environment to socio-psychological, cultural & spiritual aspects that connects the past, present & future;
 - ii. Consider trajectory of historical uses of the area;
 - iii. Incorporate cultural uses;
 - iv. KM to be a meeting place for Native indigenous leaders of the Western hemisphere and Pacific Islands;
 - v. Encourage uses and activities that attract beneficiaries and locals;
 - vi. Incorporate cultural identity of the area.



Kaka‘ako Makai Policy: Guide Management & Development

2) Design and Use, Including Cultural Values (cont.)

B. Balance pono and commerce

- i. Encourage cohesiveness among parcels/projects;
- ii. Establish priority for qualified Hawaiian business and professionals;
- iii. Incorporate mixed uses;
- iv. Use green technology (environmentally friendly);
- v. Prioritize the use of indigenous plants.

C. Collaborate with other Native Hawaiian organizations

- i. Work with KS on potential partnerships on adjoining properties;
- ii. Work with other Alii Trusts.

3) Revenue Generation and Proceeds

A. Balance near-term revenue generation for programmatic use with long-term vision.

- i. Create revenue stream for strategic priorities
- ii. Allocate funds for grants (and LLP) (requires policy update)
- iii. Set leases and contractual arrangements at market value.

Kaka‘ako Makai Policy: Guide Management & Development

4) Timetable and Process

A. Key Planning Considerations

- i. Have an overall conceptual plan before considering or initiating major proposals;
- ii. Establish a timeline for tasks that need to be accomplished.

B. Key execution considerations

- i. Engage professional – finance, real estate, marketing, development, etc.;
- ii. Maintain the momentum, in keeping with fiduciary duties.

C. Transparency and communication Kuleana

- i. Embrace community engagement – ensuring dialogue with community and neighbors;
- ii. Have a robust communications and information-sharing infrastructure.

Kaka'ako Makai Policy: Guide Management & Development

5) Governance and Decision-making

- A. Vision for master-planning and property management
 - i. Implement knowledge-based decision-making;
 - ii. Establish efficient management;
 - iii. Act in ways that are consistent with KM being a flagship of actions, values and leadership.
- B. Accountability
 - i. Lead with people who have financial, management, and development expertise;
 - ii. Complete an annual budget and a 5-year management and operating budget.

Update and Maintenance: The CEO is responsible for the update and maintenance of this policy. A review shall be done minimally on an annual basis to insure that amendments or changes in law are duly incorporated; or as requested by the BOT Chair or Chair of a Standing Committee

Status/Effective Date: September 20, 2012



OFFICE OF HAWAIIAN AFFAIRS
KAKA'AKO MAKAI POLICY

First Reading: August 30, 2012
Second Reading: September 20, 2012



OFFICE OF HAWAIIAN AFFAIRS
REAL ESTATE VISION, MISSION,
AND STRATEGY POLICY

First Reading: May 17, 2007
Second Reading: June 6, 2007

Vision: A vision statement describes the organization as it would appear in a future successful state. When developing a vision statement, try to answer this question: If the organization were to achieve all of its strategic goals, what would it look like 10 years from now? An effective vision statement is inspirational and aspirational. It creates a mental image of the future state that the organization wishes to achieve. A vision statement should challenge and inspire members.



Vision: Kaka`ako Makai is a Culture & Commerce Center

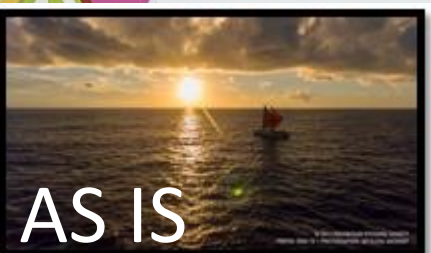
Mission Statement. A mission statement explains the organization's reason for existence. It describes the organization, what it does and its overall intention. The mission statement supports the vision and serves to communicate purpose and direction to members, vendors, collaborators and other stakeholders. Both Vision and Mission should help with answering the question of "Why?" in all of the organization's strategies, activities, resource investments and development.

Mission: Kaka`ako Makai exists to:

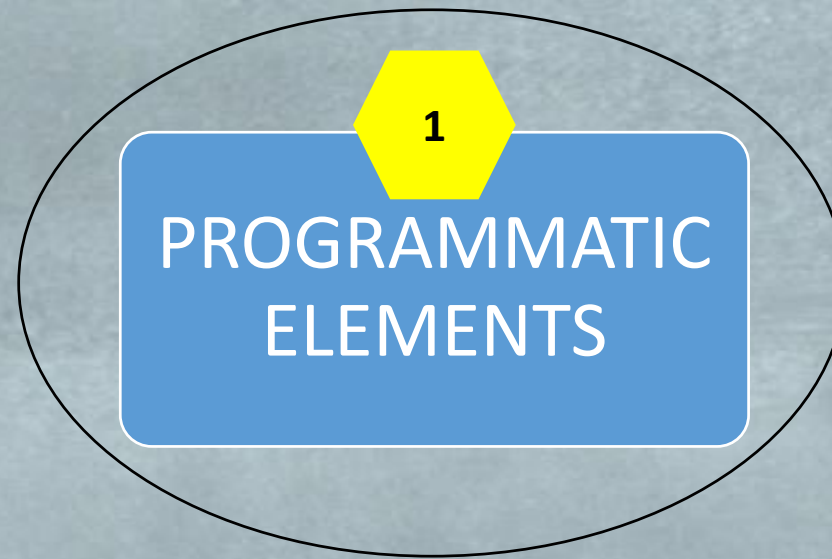
- 1) Create accessible/meaningful impacts for 'ohana, mo`omeheu and `aina;
- 2) Maximize revenue generation for the Native Hawaiian Trust Fund;
- 3) Blend culture and commerce spaces, activities and experiences; and
- 4) Serve as a commercial attraction for the broader community.

How:

- 1) Finalize programmatic elements;
- 2) Sequence development lot by lot;
- 3) Determine business model;
- 4) Implement, monitor, report, adjust



- Key Decision Areas



What should
OHA Include in
the KM
Development?

KAKA'AKO MAKAI: *What to include at Kakaako Makai?*

14

RECOMMENDATIONS RE: PROGRAMMATIC ELEMENTS

Recommendations based on:

- Allowable and compatible uses;
- Feasibility; and
- Alignment with "Center for Culture and Commerce"

1. New OHA Headquarters	8. Places for Cultural Practice & Display
2. Native Hawaiian Center of Business/Incubator	9. Certified Kitchen & Imu
3. Gathering, Performance, & Entertainment Spaces	10. Open/Naturally Vegetated Spaces
4. Small, Medium, & Large Meeting Spaces	11. Utilize Native Landscaping, include Community Garden
5. Overnight Accommodations	12. Observation Deck
6. Museum that Honors Native Hawaiian Culture	13. Home for Hokulea, Hikianalia and other Waa.
7. World-Class Saltwater Aquarium	14. Automated Dry-Stack Boat Storage



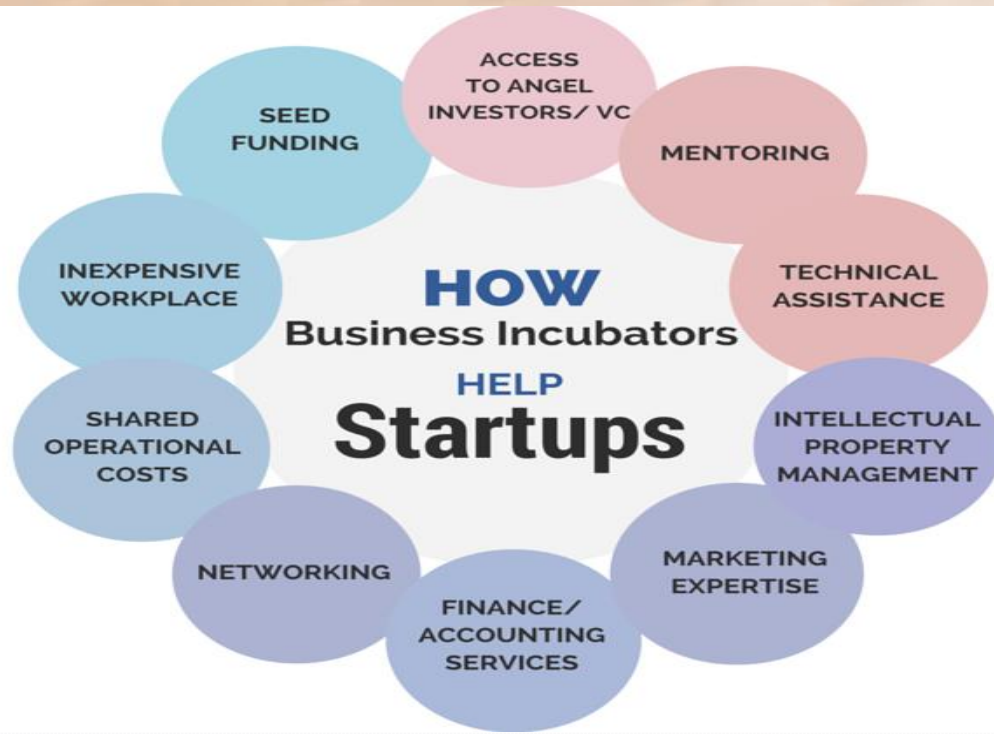
1. NEW OHA HEADQUARTERS

- 45,000 sf (based on existing)
 - Boardroom/Trustee Offices
 - Administrative Offices/Workspaces
 - Meeting Rooms
 - Protocol Spaces
 - Lumi 'Āina
 - Front Desk and Waiting Area
 - Parking (suggest 90 stalls)
 - Secured



2. NATIVE HAWAIIAN CENTER OF BUSINESS/INCUBATOR

Create business/incubator spaces for Native Hawaiian and other business to start and grow near Honolulu's business district. 1 or 2 (5,000 – 10,000 sf)



- Provide financial assistance, building business plans, assessing financial needs, provide loan financing, small business administration, other business advisors part of center
- Provide coworking space opportunities, to allow small business to network and build relationships with others
- Provide “pop up” opportunities for businesses to test their products within retail/entertainment venue areas



3. GATHERING, PERFORMANCE, AND ENTERTAINMENT SPACES

Multi-purpose,
Indoor/Outdoor, or Outdoor
for cultural performances,
parties, concerts, events, etc.;
Examples:

- Ballroom w/outdoor space
- Waikiki Shell (2,400-seat capacity plus lawn)
- Blaisdell Concert Hall (2,158-seat capacity)
- Blaisdell Arena (7,700 to 8,800-seat capacity)
- Hawaii Theater (1,350-seat capacity)
- Andrews Amphitheater (5,500-seat capacity)
- Stan Sheriff Center (10,300-seat capacity)
- Edith Kanakaole Stadium (5,000-seat capacity)
- Maui Arts and Cultural Center (1,200-seat Castle Theater)



4. SMALL, MEDIUM, AND LARGE MEETING SPACES

Multi-purpose and potentially convertible indoor spaces that can be used for meeting, education, convention, etc. These spaces would be available for use/rent at an affordable rate by beneficiaries, community and tenant

Examples:

- Small: something like Pukui classroom/meeting room
 - Size range: 250 to 500 square feet
 - How many: 4-6
- Medium: Something like Boardroom
 - Size range: 1,500 (Maui Ola) to 2,000 square feet
 - How many: 2-4
- Large: Something like Coral Ballroom at Hilton Hawaiian Village
 - Size range: 27,000 to 45,000 square feet, with banquet kitchen
 - How many: 1





5. OVERNIGHT ACCOMMODATIONS

Would require variance for Hotel Use, and would provide places to stay for people, help to provide customers for on-site business, and enable social impact. 1 or 2 (sizes tbd)

- It is intended that Kakaako Makai will have an official area to greet dignitaries in a traditional manner, the intent is to provide informal overnight accommodations.
- House students that are part of short term work study programs that will be held at Kakaako Makai, beneficiaries that travel to O'ahu for medical services, sports teams, etc.



6. MUSEUM THAT HONORS NATIVE HAWAIIAN CULTURE

Museums that celebrate Hawaii's history, arts, culture, music, etc.

Examples:

- Surf, Hawaiian music, hula museums
- Provide educational opportunities
- Host community events
- Intended for both local and visitors as an attraction
- One or two size tbd



7. WORLD CLASS SALTWATER AQUARIUM

Provide a Native Hawaiian perspective of what an aquarium should be, educate on, and showcase. 1 size tbd.

Examples:

- Provide educational opportunities; aquatic health, how to raise fish, how fish used in Native Hawaiian diet, etc.
- Host community events
- Intended as attraction for both locals and visitors



8. PLACES FOR CULTURAL PRACTICE AND DISPLAY

Indoor or Outdoor spaces where cultural practitioners can demonstrate their practices, provide education, and display their work

Examples:

- Outdoor: Multiple locations can be included in the open spaces or landscaped areas. (300-500sf)
- Indoor: Spaces that would allow for long-term or revolving exhibits. 1 space in a prominent common space in each building (200-400 sf)





9. CERTIFIED KITCHEN AND IMU

- Provide certified kitchen for start up businesses (e.g. bakery, food trucks), beneficiary, and community use. 2 or 3 (2,000-40,00sf)
 - Utilized in conjunction with communal spaces for use by Native Hawaiian events and activities
- Provide a dedicated community imu and prep-area (with potential cover/smoke mitigation) for cultural, fundraising, educational opportunities, visitor attraction. (1,000 – 1,500 sf)



10. OPEN/NATURALLY VEGETATED SPACES

An open and naturally vegetated area that enables diversified use. This area that can be used for protocol and welcoming of dignitaries, notable people/groups, visitors, and our beneficiaries;

Examples:

- Community Events Lawn (25,000+ square feet) with a large pā hula
- Amphitheater
- Maori Marai outdoor spaces
 - Size range 25,000sf enable 4,000 pax

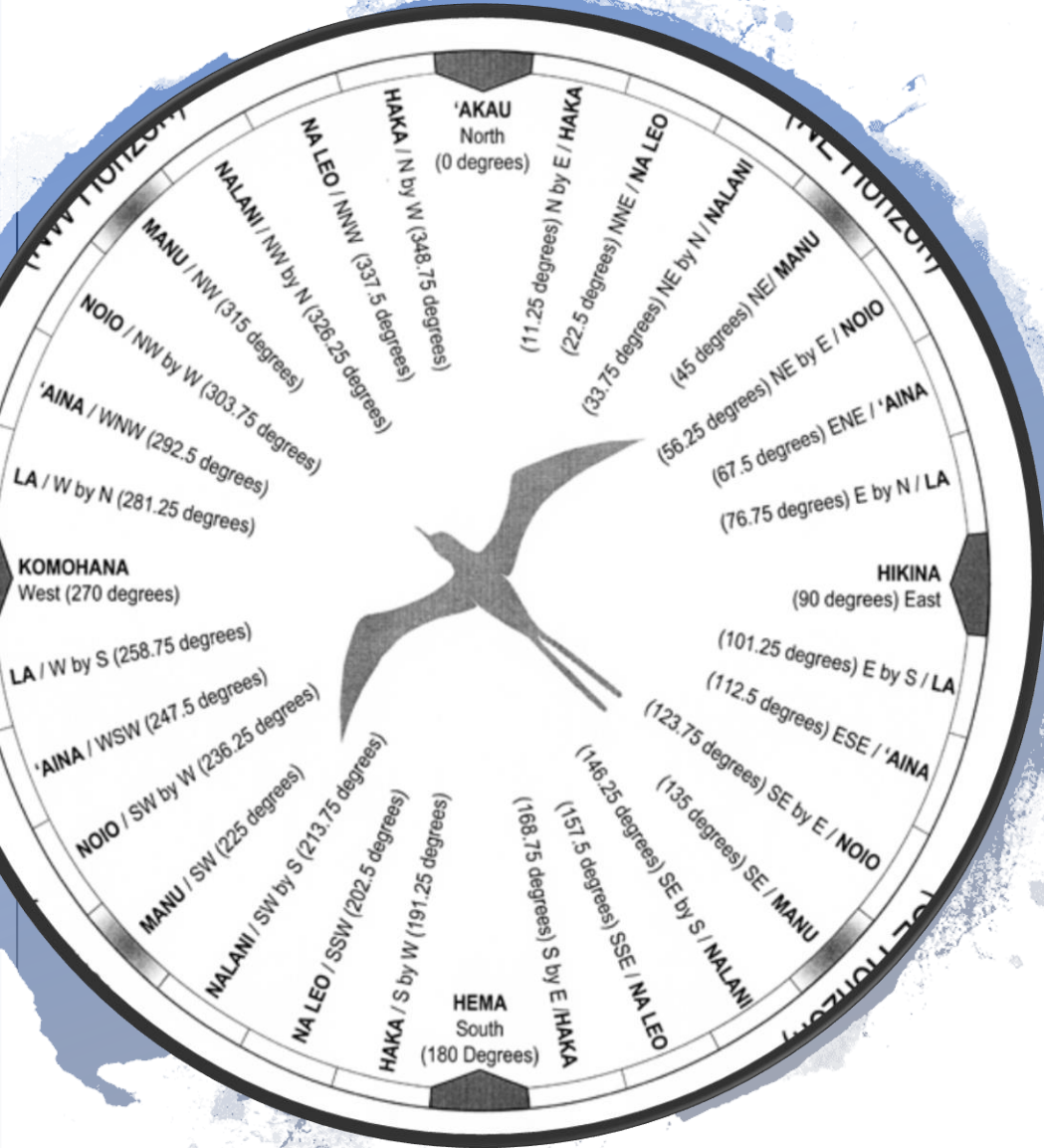
11. UTILIZE NATIVE LANDSCAPING, INCORPORATE COMMUNITY GARDENS

To be incorporated into the landscaping of the site and engaged by OHA beneficiaries /community for use. Gardens should include native and canoe plants used for cultural practices.

- Provide educational opportunities
- Native practitioners can utilize landscape for medicinal, cultural uses
- Multiple garden areas (2 or more) ranging between 500 – 1,500sf.



12. OBSERVATION DECK



The observation deck(s) are intended to connect people to place, educational purposes, and to observe prominent features/celestial elements, and take in the view. These can be located at the top of one or more of the taller buildings with 200ft height limits.

- Intended for both locals and visitors as an attraction
- To include intuitive Hawaiian wayfinding/navigation elements and a place to observe the surroundings including celestial elements



13. A HOME FOR OUR VOYAGING CANOE

Provide waterfront berth for Hōkūleʻa and Hikianaliʻa; symbols of Native Hawaiian pride and success in ocean navigation (size requirements tbd)

- Intended for both locals and visitors as an attraction
- Educational opportunities; wayfinding and navigation
- Host community events

Automatic Boat Rack Storage Systems



Vertical Yachts Storage System

Smaller foot print of the building — no need for a wide aisle to accommodate both boat and fork lift.

14. AUTOMATED DRY-STACK BOAT STORAGE

Provide waterfront boat storage rental space to improve conditions for boat owners that live in the urban area. (size tbd)

- Provides access to ocean for boaters
- Alternate source of revenue



1

PROGRAMMATIC
ELEMENTS

Where would
things be
located at KM?

- Key Decision Areas

3

BUSINESS
MODEL

2

LOT BY LOT
SEQUENCE

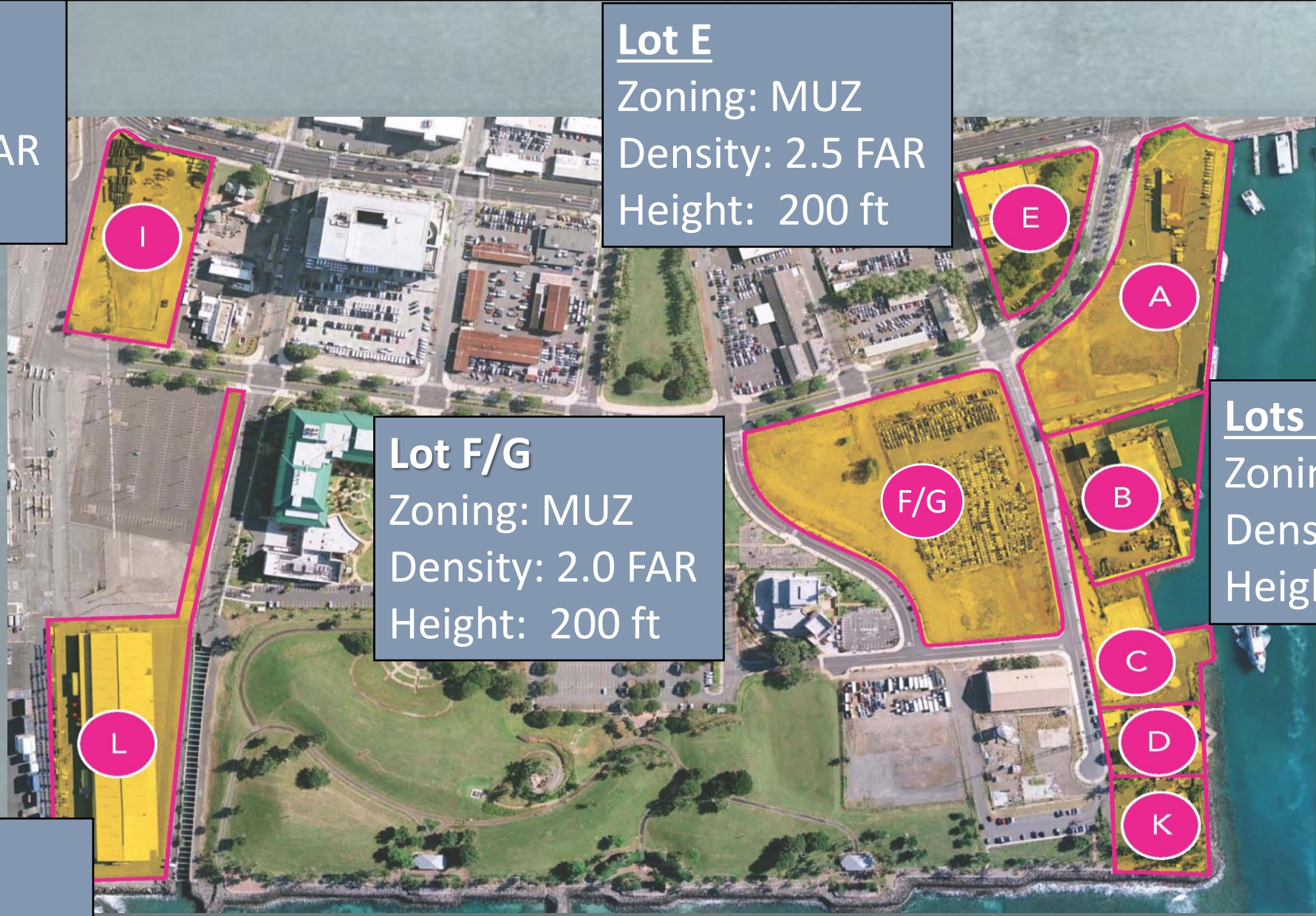
Lot I
Zoning: MUZ
Density: 3.5 FAR
Height: 200 ft

Lot E
Zoning: MUZ
Density: 2.5 FAR
Height: 200 ft

Lot F/G
Zoning: MUZ
Density: 2.0 FAR
Height: 200 ft

Lots A, B, C, D, & K
Zoning: WC
Density: 1.5 FAR
Height: 65 ft

Lot L
Zoning: MUZ
Density: 0.60 FAR
Height: 45 ft



Kaka'ako Makai: Zoning, Density, and Height Limits

Proposed Land Use by Parcel:





Lot	Lot A	Lot B	Lot C	Lot D	Lot E	Lot F/G	Lot I	Lot K	Lot L
Approximate Size	4.394 acres	2.378 acres	1.769 acres	0.938 acres	2.200 acres	7.531 acres	3.256 acres	1.358 acres	5.266 acres
Zoning	Waterfront Commercial (potential hotel See Note A)	Waterfront Commercial	Waterfront Commercial	Waterfront Commercial	Mixed-Use Commercial (potential OHA HQ/residential (Note B))	Mixed-Use Commercial (potential hotel note i)	Mixed-use Commercial (potential sale to City for a sewer pump station)	Waterfront Commercial	Mixed-Use Commercial
Maximum Density	1.5 FAR	1.5 FAR	1.5 FAR	1.5 FAR	2.5 FAR	2.0 FAR	3.5 FAR	1.5 FAR	0.06 FAR
Height Limit	65 ‘	65 ‘	65 ‘	65 ‘	200‘	200‘	200‘	65 ‘	45 ‘
Proposed Phasing	Phase 1	Phase 1	Phase 1	Phase 3	Phase 1 or 2	Phase 1	N/A or Phase 2	Phase 2	Phase tbd (Note C)

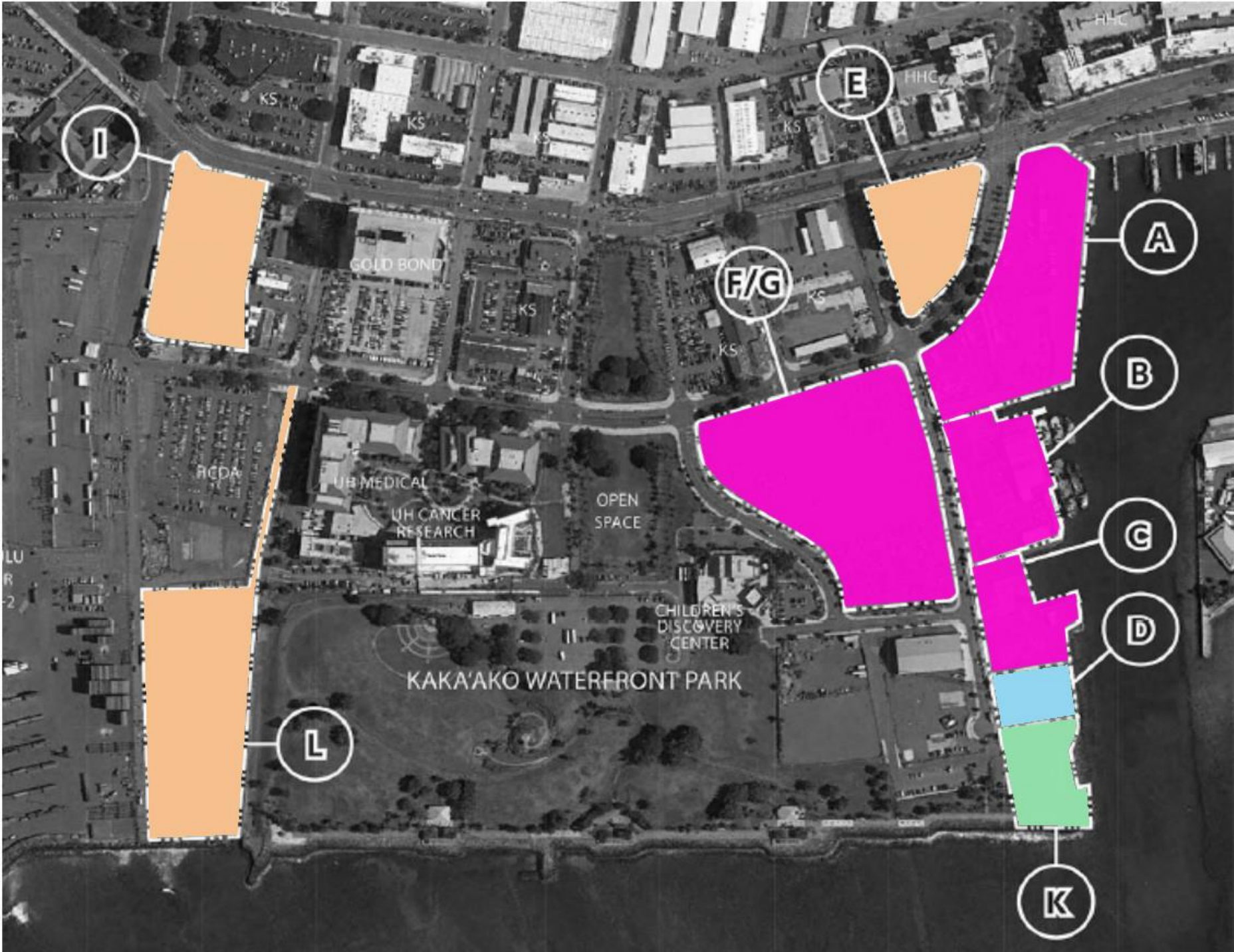
Note A: Will need to get a zoning variance for hotel.

Note B: Dependent on transfer of regulatory authority from HCDA to City. Anticipate residential to be allowed.

Note C: Dependent on termination of Next Steps shelter lease

Proposed Phasing

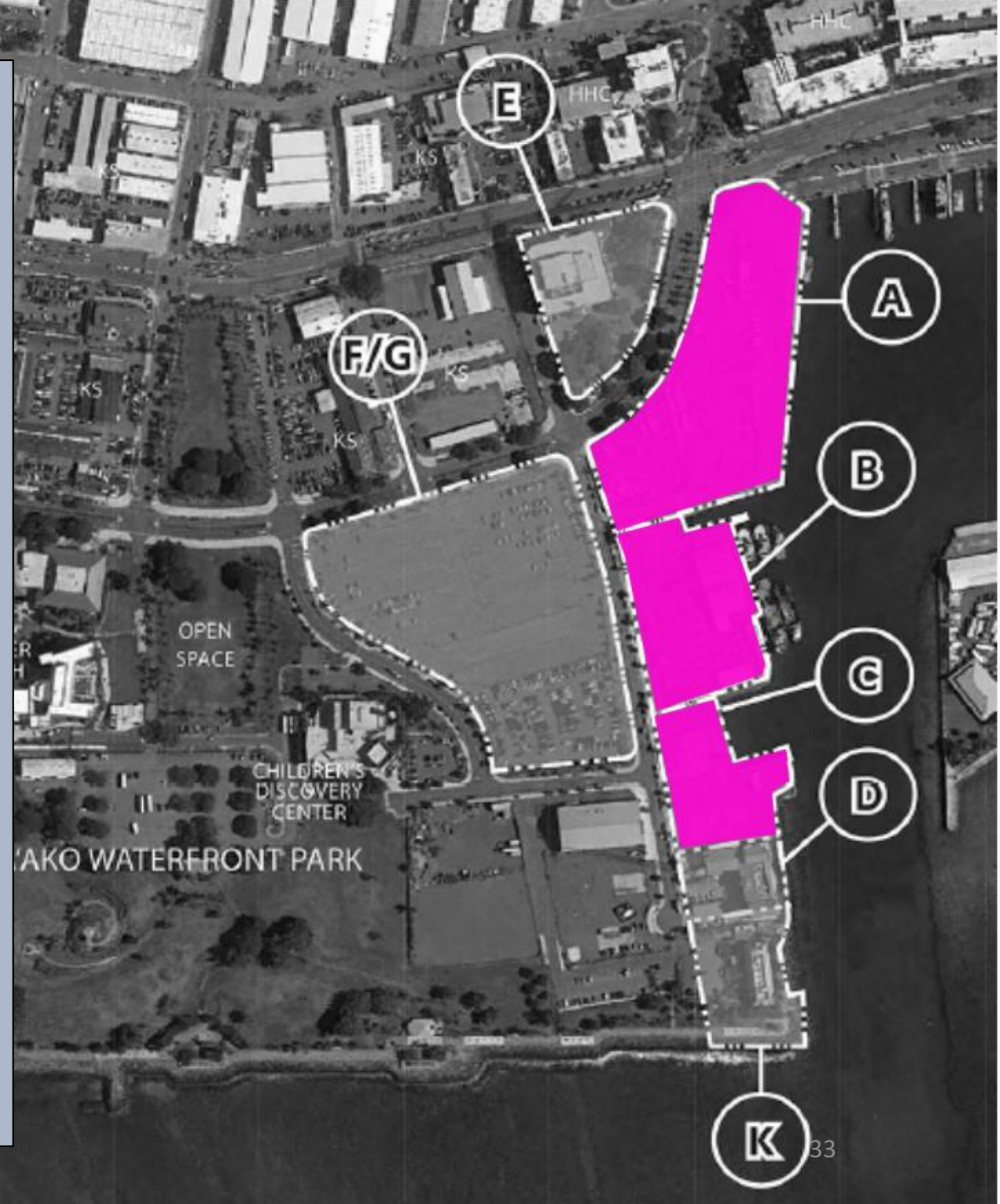
-  PHASE I
2022-2027
-  PHASE I or II
-  PHASE II
2027-2032
-  PHASE III
Post 2042



Lots A, B, and C:

(Phase 1 - Waterfront Commercial):

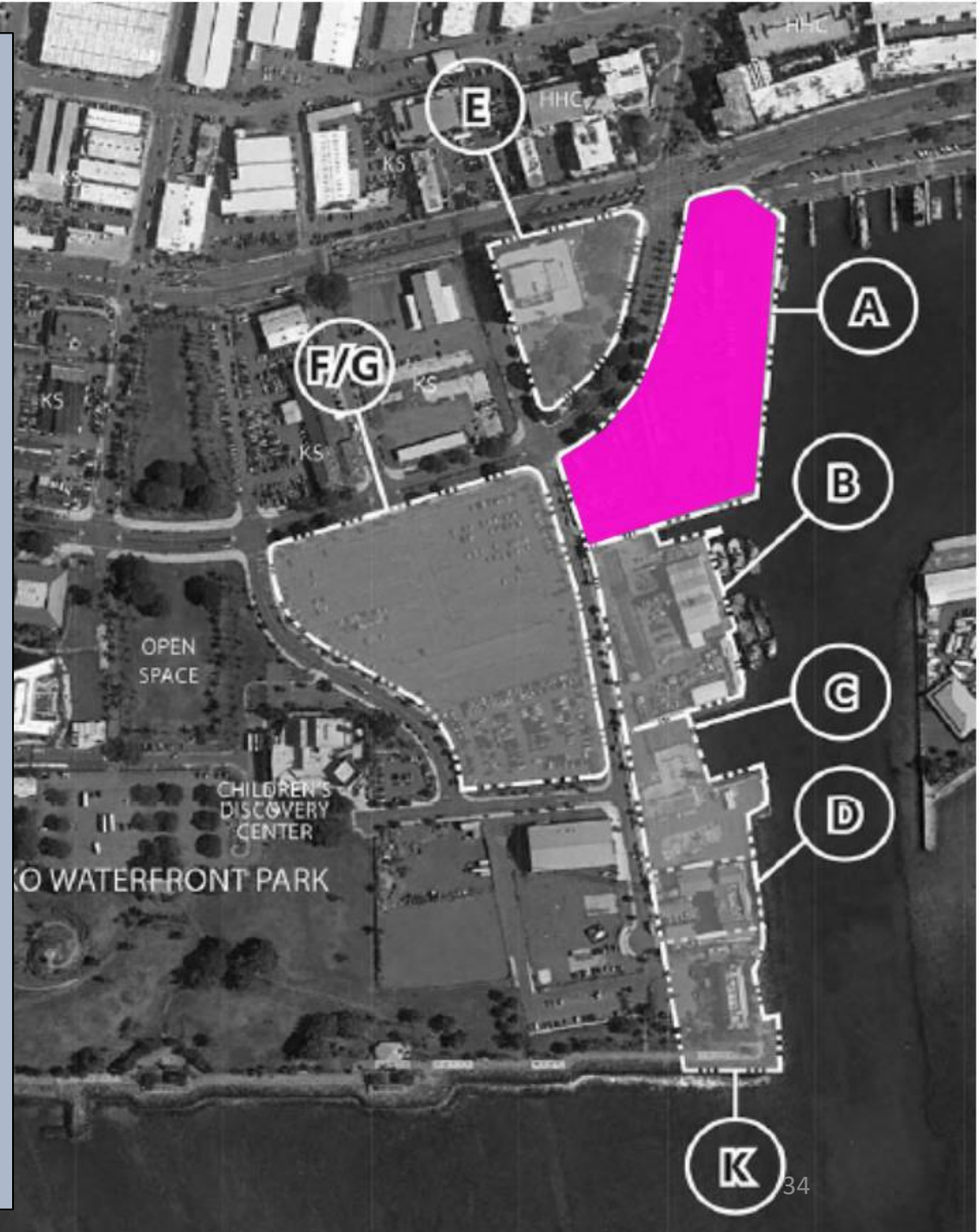
- Assumed to be three or four floors of waterfront retail, restaurant, office and meeting space with maximum FAR.
- Assume that a major parking structure will be on F/G, thus parking may be minimized here with off-site parking on F/G
 - Would include loading/delivery zones for tenants; drop-off area for busses, shuttles, and visitors; emergency service access; and handicapped parking.



Lot A (Phase 1 – Waterfront
Commercial (potential for hotel use));
4.394 acres - 1.5 FAR - 65' height limit
Has the potential for

- Overnight accommodation/Hotel Use. It would require an exemption from the City when it gets regulatory oversight.
- Native Hawaiian center of business/incubator
- World class aquarium
- Indoor meeting/educational spaces
- Museum

PHASE I



Lot B (Waterfront Commercial)
(potential hotel use)

PHASE I

2.378 acres - 1.5 FAR - 65' height limit.

Lot C (Phase 1 – Waterfront Commercial
(potential hotel use);

1.769 acres - 1.5 FAR - 65' height limit.

Has the potential for

- World class aquarium
- Dry-Stacked boat storage
- Indoor meeting/educational spaces
- Museum
- Wa'a and home to Hokulea/Hikianalia
- Place for ceremony



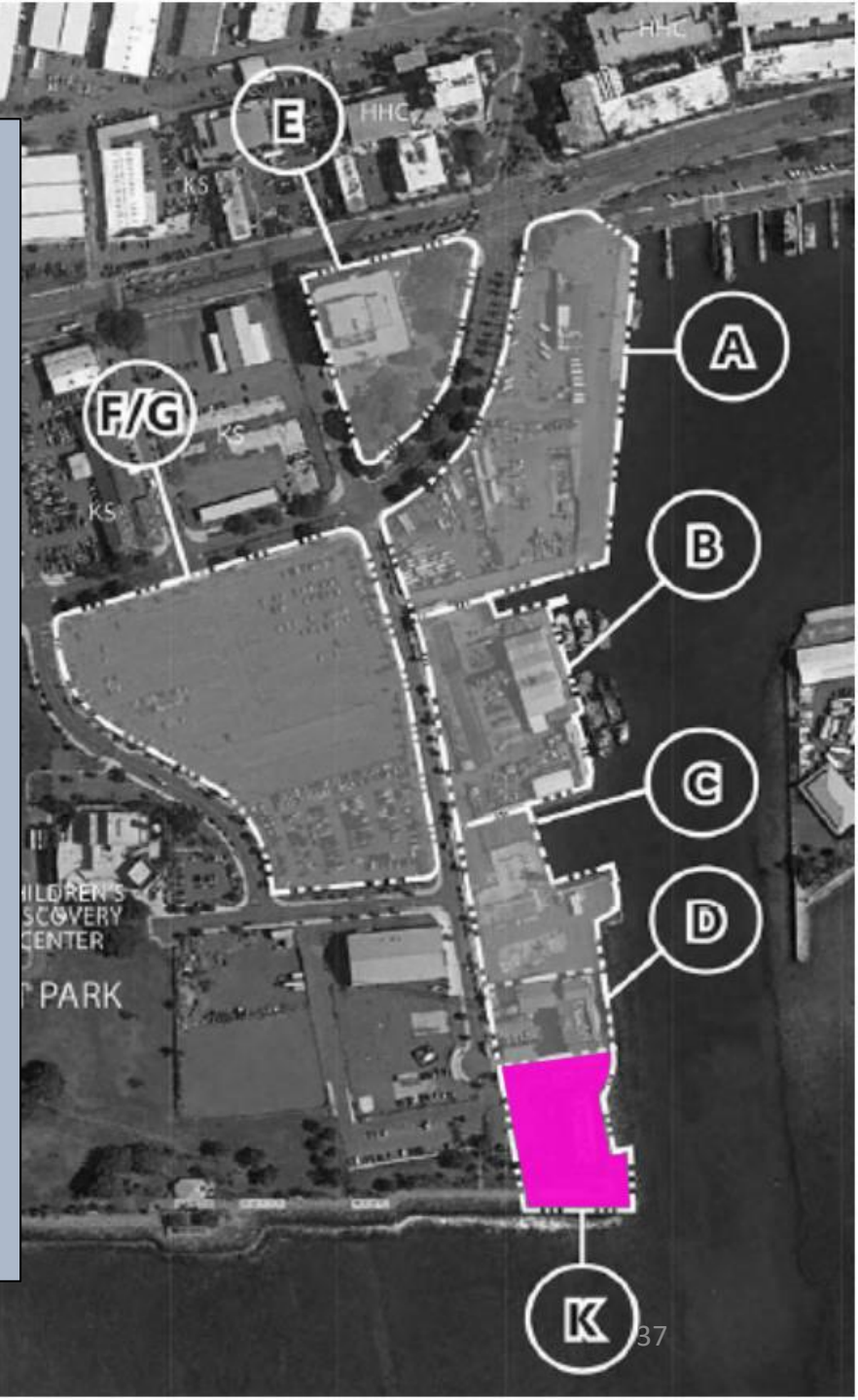
Lot D (Waterfront Commercial): PHASE III
0.938 acres - 1.5 FAR - 65ft height limit.
- Encumbered to 53 by the Sea until 2042;
and Salem Communications until 2035.



Lot K (Waterfront Commercial);
1.358 acres - 1.5 FAR - 65ft height limit.

PHASE II

- Is under a long-term ground lease with the University of Hawaii, and we have reflected the value of the OHA leased fee interest. However, once the lease expires, it is envisioned the site would be developed with a three or four-story waterfront retail and restaurant improvement with 59,000 square feet
- Potential for
 - Surfing museum with ancillary restaurant
 - Open outdoor area for ceremony
 - Maintain access to ocean

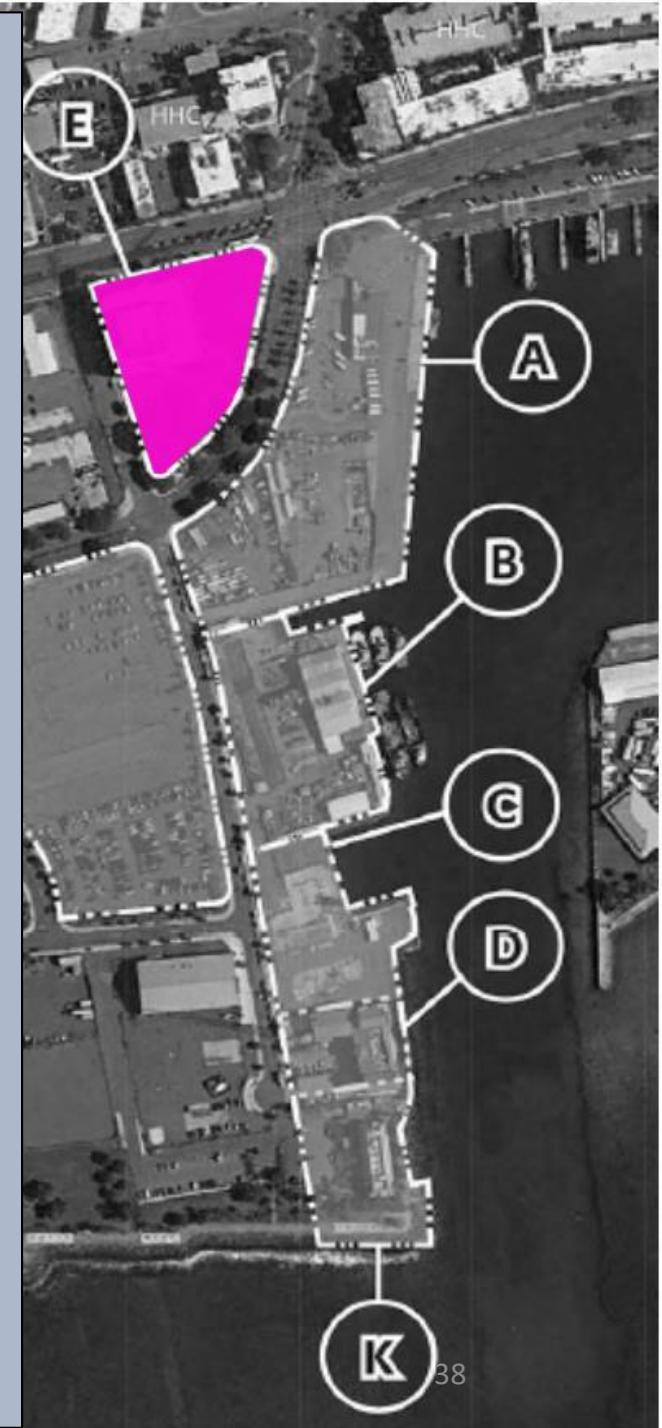


Lot E (Mixed-Use Commercial (potential OHA HQ/residential);

2.200 acres - 2.5 FAR - 200ft height limit.

- May benefit from off-site parking on lot F/G.
- Has potential for high-rise residential and is considered the highest and best use for this property
 - The existing 108,000-sf (AAFES) building is assumed to be land-banked after the Department of Public Safety vacates, perhaps as early as June 2020. Land-banking would last until the transfer of regulatory authority from HCDA to the City, which could result in the allowance of residential use.
- Current conditions
 - Building will fully vacated as early as summer 2020;
 - The building becomes 50-years old in 2019 and eligible for listing on the State Register of Historic Places.
 - Current costs for deferred maintenance of the major infrastructure components (AC, fire alarm system, elevator modernization, electrical/data systems, hazmat abatement) is anticipated to cost approximately \$5-6 million.
- LAD's recommendation is to demolish the building (preferably a developer). Anticipated cost for demo is \$1-2 million.
- Potential location for:
 - New OHA Headquarters (current leased area at NLK is 45,000 sf)
 - Native Hawaiian center of business/incubator
 - Indoor meeting/educational spaces
 - Museum
 - Observation Deck

PHASE I or II



Lots F/G (Mixed-Use Commercial (potential hotel));
7.531 acres - 2.0 FAR - 200' height limit.

PHASE I

- Assumed to have a large parking structure to accomodate parking for other lots as well as its own uses. It is envisioned to have ground floor retail and restaurant and a sky podium capable of accommodating a variety of programmatic uses and/or outdoor entertainment.
 - Could include "Skywalks" connecting the parking garage to lots A, B, C, and possibly E (depending on timing).
- Has the potential for Hotel Use. It would require an exemption from the City when it gets regulatory oversight.
- Potential location of:
 - Observation deck.
 - Performance venue(s)
 - The "Great Lawn" on the Ilalo and Ahui Intersection
 - Place for ceremony with an ahu
 - Indoor/Outdoor Amphitheater with Hula Pa
 - Overnight accomodations/Marae-like functions
 - Museum(s)
 - Busineess incubator and innovation center
 - Imu and commercial kitchen.
 - Indoor/outdoor meeting/educational spaces
 - Primary communal spaces
 - Major landscaped and garden spaces





Lot I (Mixed-Use Commercial):
3.256 acres - 3.5 FAR - 200ft height limit.

- **Proposed for sale to City**
- Has an existing historic coral block wall
- Is adjacent to existing sewer pump station (smelly)
- Potential for
 - Indoor recreation
 - Offsite parking

PHASE N/A
or
PHASE II





Lot L (Mixed-Use Commercial)

5.266 acres - 0.6 FAR - 45ft height limit.

PHASE I, II,
or III

- Is assumed to be used as a mixed-use commercial property.
- Next Step Shelter is expected to relocate by 2022.
- May be considered for
 - New OHA Headquarters
 - Outdoor entertainment attraction (Luau)
 - Oceanfront dining
 - Indoor meeting facilities
 - Entertainment Venue
 - Commercial kitchen and imu
 - Community use spaces (for rent)
 - Business incubator spaces

1

PROGRAMMATIC
ELEMENTS

When might we
expect things to
happen?

- Key Decision Areas

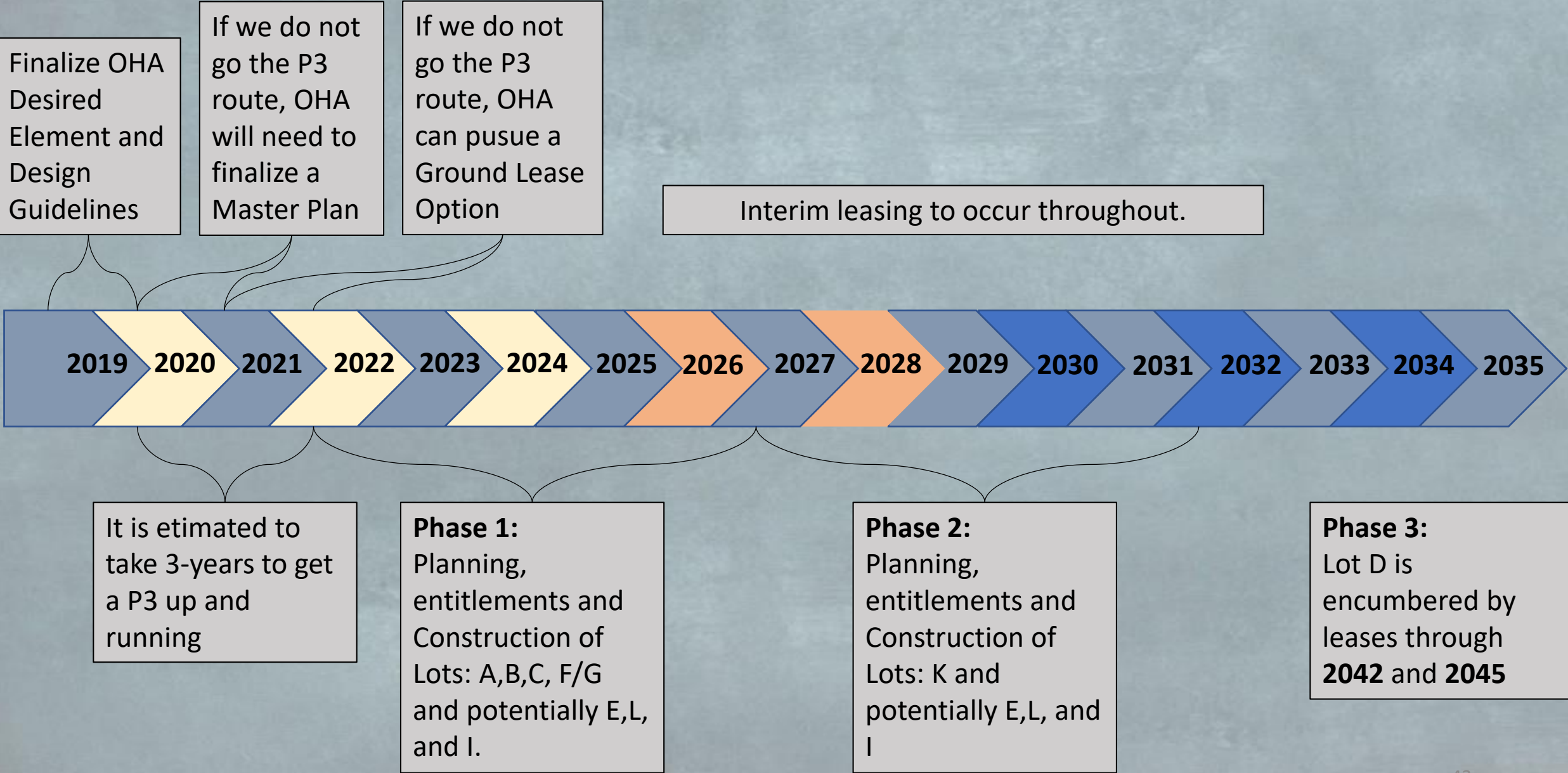
3

BUSINESS
MODEL

2

LOT BY LOT
SEQUENCE

Kaka’ako Makai Projected Development Schedule Through the New Strategic Plan



1

PROGRAMMATIC
ELEMENTS

What is the
business model
that we need to
implement the
development at
KM

The What? - Key Decisions

3

BUSINESS
MODEL

2

LOT BY LOT
SEQUENCE

Business Model Options

A. The OHA as Developer

B. Establish 3rd Party Joint Business Venture (LLC's)

**C. Master Developer,
Ground Lease to the OHA**

**D. Public Private
Partnership**

Business Model Option A

OHA as Developer

<p>Description:</p> <p>OHA creates a Master Plan, finds all funding, secures in-house expertise and 3rd party consultants/contractors/developer to plan, design, permit, build, manage and maintain KM.</p>
<p>Key Takeaways:</p> <ul style="list-style-type: none">• OHA has complete control of the project from concept to completion to management• OHA assumes all of the risks• OHA will need considerable financing and may have to consider a longer development timeline because it will need to develop one project at a time until it considers another
<p>Example:</p> <p>KS, Royal Hawaiian Shopping Center</p>

		Helpful to Success of the Development	Harmful to the Success of the Development
Internal Attributes of the Organization		Strengths	Weakness
		<ul style="list-style-type: none">• As the landowner and developer, OHA would make all decisions• Highest financial returns	<ul style="list-style-type: none">• OHA has never done this before;• OHA currently does not have enough funds;• Minimal in-house expertise;• OHA would be responsible for funding development costs;• OHA takes on all risks (i.e. delays, additional costs, poor performance, debt, repayment, etc.) and exposes the Trust.
External Attributes of the Environment		Opportunities	Threats
		<ul style="list-style-type: none">• OHA could attract non-traditional funders to participate in its development	<ul style="list-style-type: none">• Potential global, national or local economic downturn;• Overall Hawaii real estate market shifts that affect occupancy and leases;• Increasing construction costs have sent many projects over budget;• Cost of financing

Business Model Option B *(contingent on obtaining title insurance)*

Joint Venture (LLC's)

Description:

OHA creates a Master Plan and assigns a subsidiary with the charge of planning, design, permitting, building, managing and maintaining the development.

Key Takeaways:

- OHA benefits from partner experience and clout
- Limit liability to individual project; Insulate the trust.
- Partner can bring other financing resources
- OHA must be okay with LLC structure and limitations

Example

Hi'ipaka, Waimea Valley; Typical Real Estate Model (e.g Howard Hughes)

		Helpful to Success of the Development	Harmful to the Success of the Development
Internal Attributes of the Organization		Strengths	Weakness
		<ul style="list-style-type: none">• Well known model for development• Partner could bring development experience and clout• Easier way to procure services with ability to negotiate• OHA has a voice in the direction and interest in the project• Partner can provide additional financial backing• Limit liability to individual project; insulate the trust.	<ul style="list-style-type: none">• OHA has never done this before• “Arms-length” relationship to the organization• OHA’s trust in establishing an LLC• Partner’s experience in Hawaii or outreach effort needed to build support
External Attributes of the Environment		Opportunities	Threats
		<ul style="list-style-type: none">• Joint venture could attract more interested parties• Joint venture could attract other investors and funding	<ul style="list-style-type: none">• Potential global, national or local economic downturn• Overall Hawaii real estate market shifts that affect occupancy and leases• Increasing construction costs have sent many projects over budget• Cost of financing• Potential public perception of an OHA LLC. (Distrust)

Business Model Option C *(contingent on obtaining title insurance)*

C. Master Developer, Ground Lessee

Description:
OHA creates a Master Plan and selects a Master Developer to be a Ground Lessee. The ground lessee is then responsible for building, managing and maintaining the development.

- Key Takeaways:**
- OHA has very little control after selection of the developer
 - Developer assumes all of the risks
 - Developer is responsible for all financing, construction and management

Example
KS, Pearl Ridge and Kahala Mall

		Helpful to success of the Development	Harmful to the Success of the Development
		Strengths	Weakness
Internal Attributes of the Organization		<ul style="list-style-type: none">• Well known model for development• Developer would bring development experience and clout• Developer is responsible for financial backing of project• Guarantee income to OHA and ownership of assets at the end of lease	<ul style="list-style-type: none">• OHA has less of a voice in the direction and interest in the project• OHA has no involvement with the overall management of the development• Based on economic return of use• Unsure of how much of Hawaiian culture will be infused into the development• Procurement restrictions on OHA's ability to negotiate are unclear
		Opportunities	Threats
External Attributes of the Environment		<ul style="list-style-type: none">• Developer assumes all economic risks• Lessees and tenants will be attracted to developer's reputation and relationships	<ul style="list-style-type: none">• Financial stability of master developer business

Business Model Option D (contingent on obtaining title insurance)

D. Public Private Partnership

Description:

OHA hires a P3 Consultant, Financial Advisory Consultant, Third-Party Counsel, and Underwriter (to secure funding) to work collaboratively to create a master plan that works for OHA and the Private party. OHA then decides how much risk we will take on and passes the rest of the responsibilities to the Private entity. OHA gets its uses and can participate in the interim and can receive income (based on how much money OHA puts in up front); and gains asset at end of term (30 years).

Key Takeaways:

- Brings all the expertise under one umbrella
- Performance based
- Rigorous process with strong controls
- Long and complex procurement process
- Requires an intricate profit-sharing agreement.

Example

Aloha Stadium, OCCC, UH Dorms

		Helpful to success of the Development	Harmful to the Success of the Development
		Strengths	Weakness
Internal Attributes of the Organization		<ul style="list-style-type: none">• P3 creates strong partnership with private sector• Rigorous process with strong controls should keep project in check• Performance based project development• Multiple financing vehicles and performance securities• Potential use of tax-exempt status• Shared risks	<ul style="list-style-type: none">• New to OHA and the State of Hawaii• Long and complex procurement process• P3 projects are generally not profit driven, if that is an objective.• Payback primarily comes back after 30 years. OHA may benefit from revenue generation contingent on initial investment
		Opportunities	Threats
External Attributes of the Environment		<ul style="list-style-type: none">• State is moving toward enabling P3's as a procurement process	<ul style="list-style-type: none">• Potential global, national or local economic downturn• Overall Hawaii real estate market shifts that affect occupancy and leases

Business Model Risk

Business Model	Risk Types					
	Financial/ Economic	Operational/ Management	Construction	Procurement	Maintenance	Direction/ Control
OHA as Developer	High	High	High	High	High	Low
Joint Venture	Moderate	Low	Moderate	Moderate	Low	Moderate
Master Developer / OHA land lease	Low	Low	Low	Low	Low	High
Public Private Partnership	Moderate	Low	Low	Moderate	Moderate	Low

Risk Level	Color
Low	Green
Moderate	Yellow
High	Red

Business Model Consideration Matrix

I. Purpose/Objective

What are the main objectives (financial, operational, programmatic)?

II. Feasibility

How much can the organization afford financially?

IV.A Strategy

How should it accomplish its purpose given its feasibility?

III.A Business Model

Which business model will work best?

III.B Use

Which use types are preferred?

IV.B Development

What is the optimal use based on the objectives?

OHA should consider how these considerations can be answered to create the optimal solution.



How can OHA best answer these questions?

Next Steps



Land Assets staff – Miles Nishijima, Jonathan Ching and Lee Miller available for individual meetings with no more than two (2) Trustees or Trustees' staff from 11/13/19 to 01/15/20.

Kakaako Makai Contact Information

Miles Nishijima
Jonathan Ching
Lee Miller

APPENDIX – GLOSSARY

(See Handout)

Glossary:

AAFES= Army and Air Force Exchange

Boat Storage:

Indoor boat storage utilizing dry stacked storage keeps your boat protected inside a warehouse. Facilities store multiple boats at a time, which are stacked and removed by forklifts or other automated technology. They keep the boats covered and protected from the weather, and typically offer good security features. Boat owners can call ahead to have their boat ready for use. Rates can be based on the area of storage space used and/or monthly rate, plus additional fees to take boat out, put in the water, etc. Dependent upon size of boat, revenue can be \$3,000 to \$6,000 per year per boat.

=====

FAR – (floor area ratio)= The size of the maximum floor area that can be developed on a parcel based on the ratio multiplied by the area (typically in square feet (sf)). e.g if the FAR is 1.5 and the property is 100,000 sf, then the maximum floor area will be 150,000 sf.

Acre to SF conversion: 1 acre = 43,560 sf

Example: Lot A, the FAR is 1.5 and the area is 4.394 acres (4.394 x 43560). Based on the FAR, the largest building that can be built on the lot can have a floor area of approximately 287,104 SF.

=====

Ground Lease: An agreement in which a tenant is permitted to develop a piece of property during the lease period, after which the land and all improvements are turned over to the property owner

=====

Height Perspective: The following examples are provided to help visualize how tall our height limits at KM are.

45' is about the height of a 3-4 story building

65' is about the height of the existing AAFES Building, approximately 5-6 stories

200' is about the height of a 16-18 story building

=====

Joint Venture: Commercial enterprise partnership undertaken jointly by two or more parties which otherwise retain their distinct identities

Limited Liability Company: A limited liability company is a corporate structure in the US whereby the owners are not personally liable for the company's debts or liabilities

=====

Master Developer: Entity that undertakes the responsibility to assemble a team of professionals to address the environmental, economic, private, physical and political issues inherent in complex project development. Success is dependent upon its ability to coordinate and lead the completion of a series of interrelated activities efficiently and at the appropriate time. The developer usually markets the project to the end user, such as a shopping center. Land development poses the most risk but can also be the most profitable, as it is dependent on the public sector for approval and infrastructure and involves a long investment period with no positive cash flow

=====

Public Private Partnership (P3): A public-private partnership is a contract between a public sector entity and private sector entity that outlines the provision of assets and the delivery of services. Procurement of two or more of the project phases are integrated. These project phases range from design and construction to operation and maintenance. Often a consortium of companies with different areas of expertise relating to the various phases is organized. This consortium works within itself to determine to how to complete the project. P3 contracts are outcome based specification; the public sector owner specifies requirements and the private sector partner determines the best way to meet them.

Zoning:

MUZ: Mixed use zoning

WC: Waterfront commercial zoning