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Committee on Asset and Resource Management

Trustee Rowena Akana, *Chair*

Trustee John D. Waihe'e, IV, *Vice-Chair*

Members

Trustee Lei Ahu-Isa

Trustee Dan Ahuna

Trustee Peter Apo

Trustee S. Haunani Apoliona

Trustee Carmen Hulu Lindsey

Trustee Robert K. Lindsey, Jr.

Trustee Colette Y. Machado

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HIGHWAY, SUITE 200
HONOLULU, HAWAII 96817

MEETING OF THE COMMITTEE ON ASSET AND RESOURCE MANAGEMENT (ARM)

DATE: Tuesday, February 24, 2015

TIME: 10:00 a.m.

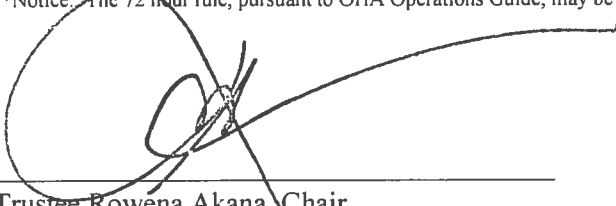
PLACE: OHA Board Room, Suite 200
560 N. Nimitz Hwy.
Honolulu, HI 96817

AGENDA

- I. Call to Order
- II. Community Concerns / Beneficiary Comments*
- III. Approval of Minutes
A. February 3, 2015
- IV. New Business**
A. Action Item ARM #15-03: Hu'ena Power, LLLP.
B. Action Item ARM #15-04: Benefit for Moanikeala Akaka in recognition for her past service as an OHA Trustee.
C. Action Item ARM #15-05: Benefit for Clarence Ching in recognition for his past service as an OHA Trustee.***
- V. Unfinished Business**
A. Presentation by Ka Pouhana Kamana'o pono Crabbe, Ph.D., on OHA's Organizational, Operational, & Investment Strategies.
- VI. Announcements
- VII. Adjournment

*Notice: Persons wishing to testify are requested to submit 10 copies of their testimony to the CEO at 560 N. Nimitz Hwy., Honolulu, HI 96817 or fax to 594-1868 48 hours prior to the scheduled meeting. Oral testimony shall be limited to five minutes.

**Notice: The 72 hour rule, pursuant to OHA Operations Guide, may be waived for distribution of new committee materials.



Trustee Rowena Akana, Chair
Committee on Asset and Resource Management

2/19/15

Date

*** AMENDED

LIEUTENANT GOVERNOR'S
OFFICE

15 FEB 19 AIO:21

Office of Hawaiian Affairs
560 No. Nimitz Highway, Suite 200
Honolulu, HI 96817

Committee on Asset & Resource Management

MINUTES OF MEETING OF FEBRUARY 24, 2015

TRUSTEES PRESENT:

TRUSTEE ROWENA AKANA, CHAIR ARM COMMITTEE
TRUSTEE JOHN WAIHE'E, IV, VICE CHAIR ARM COMMITTEE
TRUSTEE LEI AHU ISA
TRUSTEE DAN AHUNA
TRUSTEE CARMEN HULU LINDSEY

TRUSTEES EXCUSED:

TRUSTEE PETER APO
TRUSTEE HAUNANI APOLIONA
TRUSTEE COLETTE MACHADO
TRUSTEE ROBERT LINDSEY

BOT STAFF:

ANI PANG
CLAUDINE CALPITO
DAYNA PA
KAUI WAILEHUA
LEHUA ITOKAZU
NATHAN TAKEUCHI

CAPSUN POE
CRAYN AKINA
DAVIS PRICE
LADY GARRETT
LOUISE YEE-HOY
REYNOLD FREITAS

ADMINISTRATIVE STAFF:

KAMANA'OPONO CRABBE, CEO
ERNEST KIMOTO, CC
LISA WATKINS-VICTORINO, RES
MOMILANI LAZO

KAWIKA BURGESS, COO
HAWLEY IONA, CFO
MEHANA HIND

DAVID OKAMOTO, INVT
GARETT KAMEMOTO
KRISTEN ANDERSON

EDWINA MINGLANA, HR
JOHN KIM
STERLING WONG

GUESTS:

RODNEY LEE, PKF PACIFIC HAWAII LLP

PAUL SHIRAGA, PKF PACIFIC HAWAII LLP

I. CALL TO ORDER

Chair Akana called the meeting to order at 10:09 a.m. Trustees present are Ahu Isa, Ahuna, Akana, Hulu Lindsey, and Waihe'e constituting a quorum of five (5) Trustees.

Chair Akana said I seek a motion for a 72-hour waiver for Action Items IV.A and IV.B.

Moved by Trustee Hulu Lindsey, second by Trustee Ahu Isa to waive the 72 hour rule of the OHA Operations Guide for the distribution of new committee materials for agenda items IV. A. and IV. B. Hearing no objection, motion passed.

II. COMMUNITY CONCERNS / BENEFICIARY COMMENTS

There were no Community Concerns / Beneficiary Comments.

III. APPROVAL OF MINUTES

Moved by Trustee Waihe'e, second by Trustee Ahuna to approve the committee minutes of February 3, 2015. Hearing no objection, motion passed.

IV. NEW BUSINESS

A. Action Item ARM #15-03: Hu'ena Power, LLLP.

Chair Akana said you have with you an opinion that I received late yesterday afternoon from William McCorriston. So based on the opinion, the McCorriston firm suggests that if OHA is going to make a business decision to fund what they're asking, that we should have them sign off on an agreement to release us of any liability resulting from the signature on the term sheet. I'm just making a statement based on the opinion. There are two things, the submission of their expenses, which is what they're asking for, the consultants, management and accounting comes to \$129,120 and then the legal fees are \$65,000 I think. Something like that. So I leave it up to the committee.

Trustee Ahuna said you know on number two on the action item? On page two of two. It says this payment will be used towards the purchase of five percent of Huena. So, what are we talking about in this sense? Are we investing in something going on in the future? Is that's what's happening?

Chair Akana said this is for the committee to decide, if we're going to do this then we will keep our five percent share.

Trustee Hulu Lindsey said so on top of the \$600,000, we add this to our investment. Part of the five percent that we originally approved. You know the five percent that we approved to invest was really one point two five million, but it was supposed to be paid in different increments depending on certain things happening. So we already gave \$600,000 and this hundred eighty-eight is not part of the second request, well it is part of the second request of four hundred thousand, but our attorneys don't think that the project has met the criteria for the four hundred thousand to be paid out. So because the project would like to keep its standing to do maybe legal filings, they have to continue the process and they're asking our help in paying for the expenses for that continuance and I think that total is a hundred eight-eight thousand, of expenses. So we're not suggesting the four hundred thousand, but.

Trustee Ahuna said and that would be a onetime fee?

Chair Akana said yes.

Trustee Ahuna said and we would obtain a release, some type of release form, from them saying we don't have to invest in any future?

Chair Akana said yep.

Trustee Hulu Lindsey said I believe that's what it is. That's what the attorney said.

Trustee Ahuna said so basically you think we can align both of these together? Is that what I'm hearing? You can do that?

Trustee Hulu Lindsey said yeah. We could.

Chair Akana said yeah, the opinion is based on that action item. I sent the action item to him with the list of expenses and I received the reply yesterday.

Trustee Ahu Isa said so the confidential letter was sent to the Board of Trustees prior to this letter, as I read it, said that we should, if we pay this one eighty-eight, we should make sure that we are a minority partner in this in case the future viability of this project going forward. Now this letter today says different. It says to reduce our liabilities, so the minimum should be to release us.

Kamana'opono Crabbe, Ka Pouhana/CEO said right.

Trustee Ahu Isa said so two different.

Trustee Ahuna said yeah, I'm trying to balance it out.

Trustee Hulu Lindsey said well I'm just wondering if that's good for us because if we have legal recourse after this action today, we may not have, with the signing of a release, we may not have a standing within the legal recourse.

Trustee Ahuna said is there anybody that can speak on behalf of this letter to explain to us more about the, appropriate for OHA to reimburse Huena for expenses incurred in taking a position adverse to OHA with respect to the additional four hundred thousand? I just want to, for me, I want to figure out like, okay, we want to stay within this partnership with this group. Okay, what will this partnership include? What are they looking to the future to partner in?

Chair Akana said Ernie, could you come to the table?

Trustee Ahuna said so moving forward on the future of what is our leveraging opportunity.

Chair Akana said it's either or, right? I mean, you explain.

Corp. Counsel Ernie Kimoto said good morning Madame Chair and Trustees. As disclosed earlier when I was called to the table, earlier I had opined that a term sheet does not create a binding, it's a nonbinding agreement that informs the Board and the Trustees of what the project is all about and I still hold to view that the limited liability partnership and that agreement is really what is going to bind OHA. The term sheet itself also says that the final award group and that decision is to be made shortly, is what signals when OHA moves forward to sign the partnership agreement. I understand Bill McCorriston's thinking that this is just a business decision, sort of on the side of the term sheet, but if I understand the question, to me is what is the consequence of seeking this release that Bill McCorriston is asking you to sign off on, but my basic position early on was the term sheet was a nonbinding agreement. So, in that

sense, Bill McCorrison and I disagree on what needs to be done as a next step. The question of whether or not the one eight-eight, seven nine eight requested by Huena Power is part of the term sheet obligation is in question because, as Bill puts it, and you mention, the Chair, this is purely a business matter not related to the term sheet, but in my view, it's part of the project, because Huena Power came in over their letterhead as Huena Power and I'm saying that if the committee and the Board were to do anything that should follow Bill's advice and seek a release from the term sheet and then if that is done, then the question of whether or not OHA can release the funding to Huena Power can be made after consultation with Board Attorney concerning fiduciary responsibilities in this context.

Chair Akana said okay, thank you Ernie. I think I got it. Alright, so there's basically two things, one, if we're going to stay partners with Huena, then in my view, we would have to go all the way. Huena is offering us an opportunity to get out by just asking for fees for what they incurred in order to make the last filing which was January fifteenth and at that time we were still their partners. According to Mr. McCorrison and his earlier opinion, the term sheet can be binding and most courts would honor it, especially since we gave six hundred thousand. So the question here is, if we decide to give Huena the one eighty-eight, it would be with a proviso that they would sign a release, prepared by the McCorrison firm, releasing OHA of any liability regarding the responsibilities spelled out in the term sheet. So that is what is before us today. That, however, does not preclude OHA from suing Hawaiian Electric individually because of their process being flawed. In the study done by independent company hired by HELCO, they opined that because the formula that Hawaiian Electric provided was not a clear formula and was very confusing, they predicted that all bids would most likely be thrown out. And so, from the very beginning it appears Hawaiian Electric was disingenuous. So, Trustees, to me, if we go ahead and approve the one eighty-eight as a business venture, we would attach a proviso to it for Huena to sign releasing us from any liability regarding the term sheet.

Trustee Ahuna said I wanted to get a feeling of the Board right now about, is there a, do we have to wait for a certain step to happen. They award the final group yet? Is there a step where we have to weigh? I don't want to push anything today.

Trustee Hulu Lindsey said yeah, I know what you're saying.

Trustee Ahuna said is there an obligation or is there not? I don't know. I heard both sides. Which is great.

Trustee Waihe'e said can I make the motion. Madam Chair, I move that your Committee on Asset & Resource Management approves and recommends that the Board of Trustees approve and authorize a funding request of \$188,798.37 for Hu'ena Power, LLLP.

Trustee Hulu Lindsey said second.

Trustee Waihe'e said I have a question. Ernie, I don't have the term sheet available. Hopefully you know it better from memory. The only thing I remembered in the term sheet was, only because it's what we're talking about, was I remember there was something about the three payment schedule.

Kamana'opono Crabbe, Ka Pouhana/CEO said installments.

Trustee Waihe'e said what else was on the term sheet besides those things?

Corp. Counsel Ernie Kimoto said as most term sheets go, they explain the general relationship between the partners. It doesn't describe who the partners are going to be, when the project starts or anything

like that. As I recall, generally speaking, the term sheet says that the initial investment from OHA will be \$600,000 to be followed by \$400,000 provided that the Huena Power group received the award and the joint liability, joint partnership agreement is executed between the parties and that's why the legal opinions to this point say that is the key and that is the receipt of the award and the signing of the joint power, joint liability agreement by both sides. Of course, that hasn't been done because I, officially, I don't think HELCO has announced the final award group.

Trustee Waihe'e said when we're released from obligations under the term sheet does that mean we lose our five percent interest in the company?

Kamana'opono Crabbe, Ka Pouhana/CEO said in the term sheet, Trustee? And if we sign this particular release we would lose our five percent interest?

Trustee Waihe'e said do we lose our five percent?

Corp. Counsel Ernie Kimoto said any share or equities in the term sheet? That's why there's a question whether or not the term sheet is really binding. The partnership agreement and the joint liability agreement is what describes OHA's actual share in the company, if it is formed. Other than that, it would be just conversation. The agreement is what locks us in. And that is why the counsels have been saying that the limited liability limited partnership agreement is very important. So even if the term sheet says that is the intention, what really will obligate to observe their responsibilities and duties to OHA would be the partnership agreement.

Trustee Hulu Lindsey said I'm just going to assume that the term sheet is legal. I think my question is, if we don't sign a proviso, if the conditions upon payment of the monies are not met in this term sheet, we will not be obligated to pay any more money towards Huena, but we would still retain our five percent interest.

Corp. Counsel Ernie Kimoto said no. The limited liability limited partnership agreement is the one that will control what interest survives after this first phase, after award of the Request for Proposal and the contract for our purchase agreement. Short of that, you won't find any attorneys that say you'll get a five percent share in equity of whatever remains of Huena Power. They can't say that because the partnership agreement is what controls.

Trustee Ahu Isa said Madame Chair, we should not be discussing, according to Mr. McCorriston's letter, the future viability of project. Should OHA negotiate its future relationship with Huena and reduce such agreement to writing. We did seek an opinion from Mr. McCorriston and this is what he gave us. So I don't know why we're debating this part of it. I'm sure he studied the future viability also because we know we're not in Executive Session but I guess this is public knowledge that they did lose the majority funding for this. So even if they get approval of this, they cannot go forward. If we don't sign this it leaves OHA open to future liabilities with this in case they do not preform. Thank you Madame Chair.

Trustee Ahuna said question. You know where you say we have a five percent interest. If we don't get the RFP, what is the interest now that we're looking at?

Chair Akana said you lose the interest. If they don't get the contract, they've lost the bid.

Trustee Ahuna said okay.

Chair Akana said therefore, we lose our money, unless we decide to sue Hawaiian Electric because there's cause for lawsuit because the way they devised the formula, no one could come in at twelve cents per kilowatt hour. They knew that when they put out the bid and so I think the independent study proved that, the state study said that, so Hawaiian Electric is looking at a lot of lawsuits regarding this RFP. In any case, because we did invest, it's like venture capital. We did invest, we're entitled to sue Hawaiian Electric for putting out a bid that no one really could win. You know, Ormat on the Big Island, they probably can produce it at twelve percent because they already have their facility. And then you have to question Hawaiian Electric's real intent because now they're trying to merge with a company that doesn't do geothermal. They do wind and solar. So I think one way or another, OHA has the opportunity to file a legal lawsuit against Hawaiian Electric, whether we are part of Huena or not.

Kamana'opono Crabbe, Ka Pouhana/CEO said that's what I wanted to ask, so it's clear.

Trustee Waihe'e said Ernie, this is not an official legal opinion, but if we pulled out and then Huena doesn't get the contract and then we try to sue, aren't they going to say, this is the same company you didn't want to be partners with that we didn't give the contract to, how are you going to say that now we should have? I mean when you guys didn't even have any faith in them. Couldn't they argue that if we tried to sue them?

Corp. Counsel Ernie Kimoto said you raise a good point. That's called standing, as to whether or not whether OHA has standing to sue HELCO, our almost partnership is with IDG/Huena Power and the legal relationship is confined to the partnership agreement that, if you decided to sign, that's going to be signed. But the ability for OHA to sue HELCO to get its \$600,000, I don't see that in the cards to tell you the truth. As a matter of fact, if you go through some of the statements by Talbert, who is the Counsel for IDG, she was asked the question whether or not OHA will get back its \$600,000 back and her flat answer was no. That was dedicated to preparing RFP and just that and in her statement I think she was suggesting also that that six hundred thousand buys no equity in the company because there is not partnership agreement promising that. So if you want to pursue the question of whether or not OHA can recover this six hundred thousand, that might be a separate issue that counsel can research. I can say that in the past when companies have gone out of business, even in an investment situation, and Quality Homes is one of them, the company filed for bankruptcy and we claimed creditor's status for the investment that we put in, but that's the only experience that I think OHA has had in the past with this kind of investment.

Chair Akana said but Ernie, we're not talking about suing Huena, we're talking about suing Hawaiian Electric, but let me say this, you keep going back to the LLP not being signed. The fact that six Trustees voted for this and then, without us knowing, an attorney was hired after the fact and giving advice to the Administrator not to sign that contract. In an opinion by Mr. McCorriston that preceded this one, he spells out very clearly that the intent of the parties, if six Trustees were called before the courts, we'd all have to swear that our intent was to sign that contract. The fact that one Trustee or maybe two decided to go hire a separate attorney and give advice to the Administrator not to sign the contract after two-thirds of the Board voted and instructed the Administrator to sign all documents. That was not done. So, I think it's really clear from his first opinion that if Huena sued OHA for the remaining amount of money, they probably would get it because we'd have to tell the truth. That the intentions of the Trustees were to be partners with Huena and we expected our Administration to follow suit with signing the contract. The fact that that contract was not signed is not the fault of the Trustees. It is the fault of one or two Trustees who deliberately did this behind the backs of the majority of Trustees. So this is going to be a ugly kind of situation in the end. So at this table right now, we have a decision. We either

approve the amount of one eighty-eight and we get them to sign a release, our money would not be release unless they sign the release, releasing OHA of any liability, or I leave it up to you.

Trustee Ahu Isa said is there a motion on the table?

Chair Akana said yes there is a motion.

Trustee Ahuna said so the future of the five percent interest, we want to give money with the interest of this five percent, but yet, I don't get it.

Trustee Hulu Lindsey said we're investing more money in an interest we're not going to have?

Trustee Ahu Isa said to help them pay their bills because they just want to pau already. If we're going to wait, PUC, Randy Iwase has to be. Anyway, it goes on and on. It's going to be forever and for Huena incurring more and more expenses, you know?

Trustee Ahuna said me too but, you know, when you go on to page 3 and need a two thirds vote, six people. You got five here today.

Chair Akana said at the Board table. You only need three to get out of this committee.

Trustee Ahuna said I want to make sure we all on the same page. I mean, that's all. Looking forward.

Kamana'opono Crabbe, Ka Pouhana/CEO said Madame Chair, documents were forwarded either to McCorriston or to yourself but we, Administration, have not had a chance to view what Huena is claiming of one hundred eighty-eight thousand seven hundred ninety-eight. I'm just stating that we haven't received any documentation.

Chair Akana said we'll get you a copy. That was kind of like a last minute, they were sending all this stuff to us and we had to try to compile it. So alright, we have a motion on the floor to award them this amount to help them defray their expenses for putting forth the last bid that they were called to do. That was January fifteenth, I suppose, and at that time OHA was still considered a partner.

Trustee Ahuna said are we going to get a recommendation from Administrative Staff or no?

Chair Akana said we got a legal opinion and we have to [inaudible]. According to this, he says that if we go ahead and do this that we are making a business decision.

Trustee Ahuna said Chair, if I may, this is a tough decision that's why because you're asking us to invest money that we know we're not going to get back.

Chair Akana said I'm not asking you. I'm telling you this is what's before us and everybody can vote.

Trustee Hulu Lindsey said this thing from Bill McCorriston, it says OHA should negotiate its future relationship with Huena and reduce such agreement to writing. So it doesn't say we're going to lose our five percent. I think it's negotiable. That's the way I look at it. So this negotiation can occur prior to our giving the money that we approve. We have to keep our five percent for the hundred eighty-eight that we're going to give otherwise why are we giving it if we're going to lose it automatically? That doesn't make sense.

Trustee Waihe'e said but then he says that minimum, we obtain a release from Huena regarding any obligations per the term sheet. So I'm wondering what does that do if? And that's minimum. So what's the maximum? Can we get the release and still keep the five percent?

Trustee Hulu Lindsey said yeah, that's kind of what I'm thinking of.

Chair Akana said okay, Trustees. Why don't we do this? Why don't we have a meeting with Huena and Mr. McCorrison to figure out what OHA would want to do, if we're going to continue the relationship or sever it based on that decision we decide what to do.

Trustee Ahuna said so we're going to defer this?

Chair Akana said well I'm asking for your opinions here.

Trustee Ahuna said I mean, here me out. For me, I wouldn't mind listening to Huena as beneficiaries and if they need help cleaning up things, I'd be more than happy to listen, but I'm kind of getting thrown off by this five percent and all of this and the investment and we have to make a business decision. It's really tough right now. Especially with five people here. A lot of questions.

Trustee Waihe'e said if we pass it now though, it goes to the Board and then it will be at the Board level.

Chair Akana said let them figure it out.

Trustee Waihe'e said yes.

Trustee Hulu Lindsey said how about subject to negotiation? If the negotiations don't go, there's no more money. How's that?

Chair Akana said you okay with that?

Trustee Ahu Isa said sorry but I remember our last meeting that we were going to say we're going to ask McCorrison for a ruling and we're going to go with that because this is going to go on and on since I first came on this Board. Even if we get them to the table, I tell you it's going to go on and on. This is a way Huena is saying help us out, pay for the legal fees. Let us go. They got business in New Zealand. They got to get on with their life. We can't be dragging this out. So I really thought that was it when you said the final, that's what McCorrison said, if the minutes I remember.

Chair Akana said we have an action on the table and John, your motion was to approve that amount, right? Do you want to amend it to say subject to a proviso with Huena releasing OHA of its obligations.

Trustee Hulu Lindsey said it should just be subject to negotiations for the future relationship like McCorrison has here.

Chair Akana said whatever. Amend it.

Trustee Waihe'e said so Hulu can make that motion to amend and I'll second it.

Trustee Ahuna said and what are we accomplishing when we do that?

Trustee Hulu Lindsey said we're accomplishing giving them the money subject to negotiating our interest in the project.

Trustee Ahuna said I was just talking about what is our interest in the project?

Trustee Hulu Lindsey said we're still at five percent.

Trustee Ahuna said and where is that investment going if they don't get that RFP?

Trustee Hulu Lindsey said if they don't get the RFP, we have a standing to sue HECO and get our money back hopefully.

Trustee Ahu Isa said I don't like to talk about lawsuits because that's our beneficiary money that keeps going to pay all these attorneys. Every time we get a reading it gets postponed to the next meeting and the next meeting and in the meantime, our beneficiary trust, I'm new to this so I'm just looking at the trust dwindling down, down, down, attorneys are making all the money off of our Native Hawaiian Trust Fund. That's all. Thank you.

Trustee Hulu Lindsey said I'll make the motion

Chair Akana said alright. You rescind yours.

Trustee Waihe'e said yes I rescind. Let's do it that way.

Trustee Hulu Lindsey **MOVED, SECOND** by **Waihe'e** to approve and authorize a funding request of \$188,798.37 using the Hawaii Direct Investments Policy for Hu'ena Power, LLLP, subject to negotiating our future relationship with Hu'ena Power, LLLP, and reduce such agreement to writing.

Chair Akana said okay it's moved and seconded. Roll call vote.

Trustee Ahuna said wait, is there discussion or anything?

Chair Akana said we've had enough discussion.

Trustee Ahuna said wait, because Ernie came over here and said something totally different from what we're talking about. So I just want clarity. I'm telling you. I just want clarity instead of rushing this thing because tomorrow is a whole another day.

Trustee Hulu Lindsey said what's your question?

Trustee Ahuna said my question is what are we trying to accomplish today? I mean, if it's the five percent interest that we're worried about, you know, we're trying to continue, where is that? Somebody show me how we're going to get that. Show me.

Chair Akana said it's subject to negotiation. That's what she's saying. You got to negotiate it.

Trustee Hulu Lindsey said well the RFP hasn't even been given out yet. But we're still in a five percent investment.

Trustee Ahuna said okay, so my thing, we wait for that time and then we make the decision. We have to wait for the RFP to come out. Somebody to get the RFP, right? No? We're not going to wait? Why are we pushing it? We still got to wait for the RFP.

Trustee Hulu Lindsey said well they incurred these expenses because of the second RFP that HECO asked for so they need that money to pay for the second RFP. That's what they're asking us in their letter over here. So that's why it's a business decision and not part of our investment decision.

Chair Akana said okay, roll call vote.

Trustee Hulu Lindsey MOVED, SECOND by Waihe'e to approve and authorize a funding request of \$188,798.37 using the Hawaii Direct Investments Policy for Hu'ena Power, LLLP, subject to negotiating our future relationship with Hu'ena Power, LLLP, and reduce such agreement to writing.						
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA/ ABSTAIN
LEI	AHU ISA				X	
DAN	AHUNA					X
PETER	APO					EXCUSED
HAUNANI	APOLIONA					EXCUSED
HULU	LINDSEY	1		X		
ROBERT	LINDSEY					EXCUSED
COLETTE	MACHADO					EXCUSED
JOHN	WAIHEE		2	X		
CHAIR ROWENA	AKANA			X		
TOTAL VOTE COUNT				3	1	1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with three (3) YES votes, one (1) no vote, one (1) abstain and four (4) excused.						

B. Action Item ARM #15-04: Benefit for Moanikeala Akaka in recognition for her past service as an OHA Trustee.

Chair Akana said the next action was a request made to the Chair and research done by the Chair's office.

Trustee Waihe'e MOVED, SECOND by Trustee Ahu Isa to approve and authorize a single, lump sum benefit payment to former Trustee Moanikeala Akaka for past service as an OHA Trustee, to appropriate the sum of \$56,300 to fund the benefit, and to authorize OHA's Chief Executive Officer to take all necessary and appropriate actions to process and to disburse payment to former Trustee Moanikeala Akaka.

Trustee Ahuna said so we want to give her \$56,000? Ernie, help me out with this one.

Corp. Counsel Ernie Kimoto said Madame Chair and Trustees, I was requested by Chair's office to prepare a one person action item and that's the one before you, for the committee and the Board to consider a benefit for former Trustee Moanikeala Akaka. The amount was not specified, however for discussion purposes in this action item we agreed that the equivalent of one year's salary for current Trustee would be a starting point for discussion. That sum was rounded up to the nearest one hundred and that's where you have the sum of fifty six thousand three hundred.

The background for former Trustee Akaka, we have it in detail here, which I'll quickly summarize and it's discussed in this very short action item. In about 2004, former Trustee Moanikeala Akaka made a request to our CEO at the time, Clyde Namuo, requesting for retirement benefits. Our research at the time shows that she was not qualified for the Employee Retirement System because she fell outside of the times authorized for membership in the ERS. With that we replied in a memo to former Trustee Akaka. There's a period of time that went by and she renewed her request for some assistance. This time not so much in the form of a retirement but in the form of a benefit. And so you'll notice in the action item talks about a benefit, not a retirement. If you would like, there's a detailed background memorandum that was prepared for her case as well as a confidential privileged legal memorandum from the firm of Alston Hunt talking about a retirement or let's say a benefit for former Trustees who are not eligible for the Employee Retirement System. So the research shows that, and the recommendation from Alston Hunt is that we cannot legally create a so-called qualified retirement plan for former Trustee Akaka. That would mean such things as tax deferred plans such as we see in regular employment. We cannot create or duplicate the Employee Retirement System, that's a matter of statute. And so the conclusion was, is that the benefits to Trustee Akaka would be in the form of what's called unqualified benefits. The main concern in unqualified benefits is that the former Trustee would have tax liability and be responsible for taking care of state and federal taxes on the funds or benefits that OHA would provide to her. The amount was intended to be a onetime amount. It could be broken up into installment payment, but it was intended to be a onetime amount. Because we don't know what Trustee Akaka's tax liabilities are, she may want to receive parts of the benefit in installments spread over a number of years and timed to fall within a certain part of her tax year, but we didn't have any information on that part so what the fifty-six thousand three hundred is is a unqualified benefit amount. Where tax responsibilities will be with former Trustee Akaka and divided into payments that would be determined by discussion between her and the Office of Hawaiian Affairs. The sum, as I mention, is variable, we're not locked in, the law doesn't require that this is the payment so it would be up to the committee and ultimately the Board to determine what the amount is.

Chair Akana said okay, Trustees, let me explain about this. It came from the Chair's office and everybody who knows Moani, she's relentless. She will continue to pound on you until you answer her. Anyway, when I came into OHA in 1990, there was no salary, no retirement, nothing. We got \$100 a meeting. And so in 1993 when we got our settlement, we also began lobbying for our salaries which we eventually got, but we were not allowed into the state retirement system, which was really ridiculous. All of our employees were admitted into the retirement system but the Trustees were not. And so it was somewhere in nineteen ninety something that we were finally able to get into the state retirement system and those of us who had served nine years, I had already served nine years, was allowed to buy back our past years all except for two. And when we first put in our retirement bills, we tried for several years, we included the past Trustees, but the legislature just red inked them out and we did feel that the Trustees who served the first ten, eleven, twelve without compensation should have been compensated because they served for free. And those were tough years. Those ten years, twelve years. But the legislature did not allow them into the retirement system. So people like Moani Akaka who served twelve years didn't get retirement. Moses Keale served sixteen, he didn't get retirement. Rod Burgess,

Mr. Burgess' father, didn't get retirement and they were all entitled to retirement as far as I'm concerned. And so this onetime payment to Moani, I think is deserving and it should have been done for all for all of the past Trustees who put in their time and received no compensation.

Trustee Ahu Isa said can we do this where we put it in an IRA or something so she doesn't have to pay the taxes on it?

Chair Akana said that's a good question. Ernie, if OHA put the money in a IRA and she could collect so much each year, would that defer taxes. How would that work? Hawley, do you know?

CFO Hawley Iona said my recommendation would be to consider putting it in an annuity, not necessarily and IRA for her.

Chair Akana said but even if you went into an annuity, every time you took out money you would have to pay taxes on the money you take out.

CFO Hawley Iona said the same could apply to an IRA because [inaudible].

Trustee Hulu Lindsey said I just wanted to say if it's put into an IRA, only so many thousand can go into an IRA on an annual basis.

Trustee Ahuna said structure wise, I think this needs to be exclusive from everything because in fifteen years, I might be coming up to this table.

Trustee Hulu Lindsey said no, you cannot because you are part of the system today.

Trustee Ahuna said I know but today, my system they take out money from me for my benefits. Back then, they didn't take out money from them. So I'm going to come back, even though I serve four years I'm going to come back and I'm going to ask for money. I don't know what's the difference. The governance structure is what I'm saying. If we're going to do this we've got to be exclusive. It has to be like separate. We cannot just be throwing things all over the place.

Trustee Waihe'e said have we ever looked at amending chapter eighty-eight to put her in the system so we could advocate?

Chair Akana said I don't think she has the money to buy back.

Trustee Ahuna said do we have a legacy grant or something?

Chair Akana said no, this will be a onetime grant.

Trustee Hulu Lindsey said she's the only one that qualifies?

Chair Akana said we have Rodney here who's one of our consultants. Rodney?

Rodney Lee, PKF PACIFIC HAWAII LLP said [Inaudible - did not speak into a microphone].

Chair Akana said so Mr. Administrator, the sum is fifty-six thousand so if she got maybe twenty thousand at a time the tax burden would be less right, rather than getting fifty-six and then getting whacked with the big tax at that point.

Kamana'opono Crabbe, Ka Pouhana/CEO said that's correct.

Chair Akana said so if we go ahead and approve this, perhaps a conversation with Administration on how she would want this payout to occur.

Trustee Ahuna said is there any other Trustees coming forward?

Corp. Counsel Ernie Kimoto said Trustee nominated Mr. Clarence Ching. If you'd like to see the surviving former Trustees of OHA, I have it on page six and seven of this hand out.

Trustee Ahuna said I'm just worried. Is this just for this person or going to be more Trustees? I mean, I don't know.

Corp. Counsel Ernie Kimoto said Trustee it was only intended for one person.

Trustee Ahuna said okay, thank you.

Chair Akana said I did advocate for Clarence Ching who served longer than Moani but we couldn't get the paperwork done in time

Trustee Ahu Isa said only these two served ten years or longer?

Chair Akana said Joe Kealoha served maybe four years. The others didn't serve, they weren't really vested. These guys did though. Clarence Ching and her.

Trustee Hulu Lindsey said they wouldn't have gotten into the retirement system anyway.

Corp. Counsel Ernie Kimoto said yes, but in some cases as Trustee Akana points out, their service during the volunteer trustee period, then 1993 came in and some trustees were eligible for salaries, so.

Chair Akana said the sad thing about this is the retirement system figured our retirement in the year we got our salary. So all the years that we didn't have salaries, we didn't get credited. So that's what happened. And those of us that could buy back some of the years, we did.

Trustee Ahu Isa said this might set precedence because I served on the Board of Education for eight years. We got \$100 a meeting, no retirement. This might open the doors and all of the people who served years on the Board of Ed like OHA in the early days might say OHA did that, we can do that too. Anyway, it's my opinion. Thank you Chair.

Chair Akana said okay Trustee Ahuna and then I think we're ready to vote.

Trustee Ahuna said okay, so will this make it exclusive so like nobody else could come or like what if somebody only has four years? What would be the payment rate for the four years?

Chair Akana said no, they wouldn't qualify.

Trustee Ahuna said under what, qualified? We're talking about trying to give money away.

Corp. Counsel Ernie Kimoto said Trustee, we can't prevent people from not coming to OHA. We can't tell them to not show up.

Trustee Ahuna said if this happens I'm going to. I promise you. Why not?

Corp. Counsel Ernie Kimoto said yes, I know. One of the reasons we don't call it a retirement is because of that. And we call it a benefit and the idea was to create a onetime benefit for Trustees. That doesn't prevent others from coming and making a request for the same benefit. To me, the only limitation would be one, they're beneficiaries of the Trust and secondly they're former Trustees that fall within the period of time that they'd be eligible. My suggestion is that we create a policy, a Board Executive Policy on how to deal with requests that come in the future.

Trustee Ahuna said there it is, right there.

Corp. Counsel Ernie Kimoto said the other thing as Trustee Akana mentioned, amending chapter eighty-eight, which would take this project into the legislature. And so there were some recommendations that agreed with that approach. To take it to the leg. and get approval for setting up a plan, but that would be for the committee and the Board to consider.

Chair Akana said okay, we have a motion on the floor. Let's have a roll call vote.

Trustee Waihe'e MOVED, SECOND by Trustee Ahu Isa to approve and authorize a single, lump sum benefit payment to former Trustee Moanikeala Akaka for past service as an OHA Trustee, to appropriate the sum of \$56,300 to fund the benefit, and to authorize OHA's Chief Executive Officer to take all necessary and appropriate actions to process and to disburse payment to former Trustee Moanikeala Akaka.							
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA/ ABSTAIN	EXCUSED/ ABSENT
LEI	AHU ISA		2	X			
DAN	AHUNA					X	
PETER	APO						EXCUSED
HAUNANI	APOLIONA						EXCUSED
HULU	LINDSEY			X			
ROBERT	LINDSEY						EXCUSED
COLETTE	MACHADO						EXCUSED
JOHN	WAIHEE	1			X		
CHAIR ROWENA	AKANA			X			
TOTAL VOTE COUNT				3	1	1	4
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED							
Motion passes with three (3) YES votes, one (1) no vote, one (1) abstain and four (4) excused.							

C. Action Item ARM #15-05: Benefit for Clarence Ching in recognition for his past service as an OHA Trustee.

Item IV. C. was deferred.

V. UNFINISHED BUSINESS

A. Presentation by Ka Pouhana Kamana'opono Crabbe, Ph.D., on OHA's Organizational, Operational, & Investment Strategies

Kamana'opono Crabbe, Ka Pouhana/CEO went over pages 1, 2, and 3 of the "1 OHA, OHA 1" presentation, a continuation of the PKF Analysis.

Hawley Iona, CFO said so just confirming what Pouhana is saying, so it's actually forty-two million is what Trustees have authorized over the nine year period and the only caveat there is an authorization versus an actual outlay are two different things. I know there was a period of time in which an authorization was made for \$3 million for Kakaako Makai Planning, this was probably around fiscal year '06 and only a small amount got actually disbursed. Putting things into perspective, this slide shows what we could have peaked at if we did not authorize [Inaudible - was not speaking at the Board table].

Trustee Hulu Lindsey said 2006, \$3 million?

Hawley Iona, CFO said that's correct.

Trustee Hulu Lindsey said for Kakaako Makai?

Hawley Iona, CFO said for Kakaako Makai Master Planning.

Trustee Hulu Lindsey said why would OHA have spent three million in 2006?

Hawley Iona, CFO said I don't know what the circumstances were. I don't know if Ernie would remember the circumstances. But it was, my understanding we were [Inaudible - was not speaking at the Board table]

Trustee Hulu Lindsey said I see. It was being considered with other properties as well. Okay.

Hawley Iona, CFO said but only sixty thousand was spent.

Trustee Hulu Lindsey said that was turned down, that offer, right?

Kamana'opono Crabbe, Ka Pouhana/CEO said yeah, and I think there were other, even before I came to OHA, there was some kind of consideration of one of the parcels being OHA Corporate Office or something. Building?

Kamana'opono Crabbe, Ka Pouhana/CEO continued to go over pages 4, 5, 6, 7, 8, 9 of the "1 OHA, OHA 1" presentation, a continuation of the PKF Analysis.

Kamana'opono Crabbe, Ka Pouhana/CEO went on to give a summary of the "Approaches toward achieving our strategic results: FY2012-2014."

Chair Akana said on these statistics, this doesn't necessarily mean that OHA caused this effect. This is research, purely research, right?

Kamana'opono Crabbe, Ka Pouhana/CEO said that's a good question, Trustee, is because we actually started. Research, we turned over these exact baselines to be implemented into our strategic results in grants. So in all of the competitive grants, they must, in their applications, articulate or demonstrate how are they going to use our money for their program to achieve this result. Now, you're partially correct, like, was it only OHA that specifically contribute to this? No, but what we're trying to do is to assess what is our fiscal and then our social impact regarding our contribution. And that's something we need to work on in providing to you and our community more clarity, but what we're trying to do is assess at a global level how effective we are, at least OHA, with our contribution to the pot. Okay?

Kamana'opono Crabbe, Ka Pouhana/CEO continued to give a summary of the "Approaches toward achieving our strategic results: FY2012-2014."

Trustee Waihe'e said Ka Pouhana, at the last update we had on the strat results all the Ho'okahua Waiwai, they were lower than the original baseline, but now it rebounded, it looks like. What happened between?

Kamana'opono Crabbe, Ka Pouhana/CEO said because we had old data, Trustee, and I'll bring up Lisa. We recently updated this and what we had to do is, the data from grants, we had to go through a very arduous process to collect that data as well as the data that is compared to our baseline.

Trustee Waihe'e said I mean, that's good news. But we didn't do anything different in terms of our grants or.

Kamana'opono Crabbe, Ka Pouhana/CEO said no, I think the difference is, as she'll explain, we collected more recent data.

Lisa Watkins-Victorino said so just to build on what Ka Pouhana has been saying. Since we're capturing population level data, what you saw in the earlier presentation was up through 2012, but now that we have all the way up to 2014 data you'll see the state level data has changed. Which means it's much, much better. So we're actually one point two to one point six percent away from the targets that OHA had set previously. So as you just mentioned, Trustee, it's good news

Trustee Waihe'e said it's very good news.

Lisa Watkins-Victorino said it really changes the status.

Kamana'opono Crabbe, Ka Pouhana/CEO said but you do bring up a good point. The biggest challenge for OHA, and this was stated in one of the Auditor's reports, I believe in 2009 or previous, is that we had challenges with our grants program in terms of lack of monitoring, lack of providing data to show the results and the impact, so all of that has been a growing process for us from 2010 until 2012. By 2011, research handed off the data and then that data was inputted into the grants process so that beneficiaries know that the money that we are investing in the community must go to help us achieving these specific strategic results and the reason why it's important is now, we're working towards a full system of collecting that data.

Lisa Watkins-Victorino said so we really have to rely on either census data or state population databases and so their release isn't always quite timely with how we would like.

Trustee Ahuna said I would just like to mention too that the biennium started on 2012, all of the results will come out on the 14th.

Kamana'opono Crabbe, Ka Pouhana/CEO said correct.

Trustee Ahuna said and that's what triggered all that information. When they started, it was all a baseline from the past. That's why we're getting the updated information.

Kamana'opono Crabbe, Ka Pouhana/CEO said right.

Lisa Watkins-Victorino said and wherever possible, this has been updated with state or census level data.

Kamana'opono Crabbe, Ka Pouhana/CEO continued to give a summary of the "Approaches toward achieving our strategic results: FY2012-2014."

David Okamoto, Investment Transactions Manager went over pages 1 to 11 of the "Evaluation of OHA's Spending & Investment Policies" presentation.

Chair Akana said so you're calculating the inflation rate to be three percent per year?

David Okamoto, Investment Transactions Manager said the long term assumption is three, right, so the equation in the front is one of the long term assumptions. On some of the other pages we'll look at what inflation actually was.

David Okamoto, Investment Transactions Manager continued to go over pages 11 to 25 of the "Evaluation of OHA's Spending & Investment Policies" presentation.

Chair Akana said you know the Wao Kele o Puna property on the Big Island, we were paying for a very long time, two positions in DLNR to manage Wao Kele o Puna. Do we calculate those funds into one of these categories or is that still occurring or how does that work?

David Okamoto, Investment Transactions Manager said that's in core operating budget. So that would not be on the commercial property line. That would be in the core operating. So the first line below the blue. That's where those would come out from.

Chair Akana said so in the operating budget, we still have two positions?

Kamana'opono Crabbe, Ka Pouhana/CEO said no, only one.

Chair Akana said well why are we paying DLNR?

Kamana'opono Crabbe, Ka Pouhana/CEO said we actually cancelled that contract, because we did a monitoring of it and they were not living up to the deliverables.

Chair Akana said and what about the vehicles that they had?

Kamana'opono Crabbe, Ka Pouhana/CEO said one was returned here. They had purchased it, we had it returned back to OHA and there's another one on Hawaii Island.

Chair Akana said there's one more on Hawaii Island?

Kamana'opono Crabbe, Ka Pouhana/CEO said yes.

Chair Akana said but OHA is in possession of it.

Kamana'opono Crabbe, Ka Pouhana/CEO said yes.

Chair Akana said when did this occur? When did you folks stop?

Kamana'opono Crabbe, Ka Pouhana/CEO said 2013?

Hawley Iona, CFO said yes that would have been [Inaudible - was not speaking at the Board table]

Chair Akana said my understanding of that initial agreement when the Board took this over, the positions were supposed to be temporary to train our people to take over and then the MOU was supposed to disappear. We should not be involved anymore with DLNR. For all these years we've been paying for those positions plus cars.

Kamana'opono Crabbe, Ka Pouhana/CEO said right.

Hawley Iona, CFO said [Inaudible - was not speaking at the Board table]

Kamana'opono Crabbe, Ka Pouhana/CEO said yeah, and Chair Akana, part of the issue was that, when you say training, I think one of the deliverables was to come up with Administrative Rules for OHA to implement in terms of preserving, protecting Wao Kele o Puna. This discussion was with William Aila, his deputy attorney general and others from Wao Kele o Puna was that, we may not want to adopt state Administrative Rules, so we would want to exercise some autonomy over there, so we were able to kind of re-negotiate the contract, return the money, return the vehicles, so now we manage it by ourselves.

Chair Akana said okay so you've got a temporary MOU right now.

Kamana'opono Crabbe, Ka Pouhana/CEO said yes, because there's still some outstanding projects that we're still working on if I understand.

Chair Akana said but it should be wrapped up by the end of this year, perhaps?

Kamana'opono Crabbe, Ka Pouhana/CEO said I think the LAND will provide a presentation.

Chair Akana said so anyway, my question was the upkeep of that land and the monies that we're spending over there.

Kamana'opono Crabbe, Ka Pouhana/CEO said yeah, where does it go.

David Okamoto, Investment Transactions Manager continued to go over pages 13 to 25 of the "Evaluation of OHA's Spending & Investment Policies" presentation.

Trustee Ahu Isa said, before I depart, page twenty-seven and twenty-eight, you see that huge expenditure, 2013, 2014. Look at that chart. Then you turn the next page and it tells you what it is. Act 195. Seventy percent of that went into Act 195 which is what I was trying to repeal because it doesn't give an end date. It goes on and on and now there's a lawsuit filed, give us the certified list. Charter schools only got thirty percent we could have built facilities for all our charter schools with that money. 2014, Act 195 again, twenty-one percent, charter schools twenty percent. I just want to point that out. Those two huge expenditures and yet it is a state law. Thank you, Chair.

Trustee Ahuna said and I want to add to that. And who is spending the money? OHA.

Trustee Ahu Isa said, yeah, OHA the only one funding.

Trustee Ahuna said I didn't want it to come back to OHA. That's what I'm saying.

Trustee Ahu Isa said repeal it. Stop it. Thank you.

David Okamoto, Investment Transactions Manager continued to go over page 25 of the "Evaluation of OHA's Spending & Investment Policies" presentation.

Trustee Waihe'e said I just want to, just because no one clarified what Lei Ahu Isa was talking about. Those are just fiscal reserve spending though.

Kamana'opono Crabbe, Ka Pouhana/CEO said correct.

David Okamoto, Investment Transactions Manager said yeah, sorry.

Trustee Waihe'e said charter schools, we fund them like one point five every year.

Kamana'opono Crabbe, Ka Pouhana/CEO said correct.

Trustee Ahu Isa said the cost still needs to be clarified. It doesn't address certain issues like end dates.

David Okamoto, Investment Transactions Manager continued to go over page 25 of the "Evaluation of OHA's Spending & Investment Policies" presentation.

Kamana'opono Crabbe, Ka Pouhana/CEO said with that Madame Chair, that concludes our presentation. Just open it up for questions.

Trustee Hulu Lindsey said I see in 2014 and 2015 that we are giving only five hundred sixty-eight thousand to charter schools. Didn't we give one point five?

Trustee Waihe'e said that's from the fiscal reserve.

Kamana'opono Crabbe, Ka Pouhana/CEO said yeah, that's from fiscal reserve.

Trustee Hulu Lindsey said that's where charter school moneys have been coming out of.

Trustee Waihe'e said I think it was funded in the budget.

Kamana'opono Crabbe, Ka Pouhana/CEO said correct. Part of it.

Trustee Hulu Lindsey said so same thing for fifteen?

Chair Akana said we haven't decided yet.

Trustee Hulu Lindsey said so it's in the proposed biennium? I see. Okay.

Chair Akana said thank you very much David. So everybody is on board here. We know we got to lower our spending rate and cut down on our spending.

Kamana'opono Crabbe, Ka Pouhana/CEO said actually David kind of clarified this with me because I think the fiscal reserve may require a Board decision, but the spending policy may not.

David Okamoto, Investment Transactions Manager said so the way the spending policy is written, it's actual language in the document, it does have provisions for fiscal reserve. So if you wanted to eliminate that, obviously you'd have to completely take that out and revise that. The way the spending rate is specified in the policy, it says up to five percent. So you technically don't have to modify that sentence because four and a half is obviously less than five, so.

Chair Akana said but I think we would have to take a position to go to four and a half so that it's a signal to everyone that you don't exceed that four and a half. So if this is the proper time to bring it up, bring it up. Want to make a motion?

Trustee Ahuna said wait, what is this for?

Chair Akana said to reduce the spending policy from five percent to four percent. Oh, you have to be agendized? Okay.

Trustee Ahuna said yeah, let's talk about this.

Kamana'opono Crabbe, Ka Pouhana/CEO said yeah, we're just saying this as a recommendation. I mean, you could have another discussion and agendized it later for full discussion.

Trustee Ahuna said because I mean now the charter school money, we take out the fiscal budget, three's no charter school money is what I'm saying, so. I don't want to make no action item right now, because I want to try to include that in our budget. I don't know how we can do that, through grants or whatever so let's not talk about that right now.

Kamana'opono Crabbe, Ka Pouhana/CEO said I think that's a good example and what David shared is accurate, is if we assume that the board wants to support the continuation of charter school funding, one point five million and we don't have fiscal reserve funding, we would have to take it out of our total operating budget and we would have to make decisions where would that money come from, what pot. Because it was a grant and they are providing data regarding their students, regarding our strategic result, you know, there's some justification in there. But if you add on charter schools and other ones that we've supported in the past, it's going to be challenging.

Chair Akana said we're going to have to make tough choices and we cannot allow what we've done in the past to continue. There's just no way.

Kamana'opono Crabbe, Ka Pouhana/CEO said we agree with that, Chair.

VI. ANNOUNCEMENTS

There were no announcements.

VII. ADJOURNMENT

Trustee Ahu Isa left the meeting at 12:34 p.m.

Quorum was lost.

Chair Akana said okay, we've lost quorum so if there are any announcements let's make them. If not I'm going to adjourn the meeting. Thank you every one.

Respectfully submitted,



Nathan Takeuchi, Aide
Committee on Asset and
Resource Management



Rowena Akana, Chair
Committee on Asset and
Resource Management

Approved: ARM meeting on April 29, 2015.