

PHONE (808) 594-1888
BOARD OF TRUSTEES
Colette Y. Machado, *Chairperson*
Brendon Kalei'aina Lee, *Vice Chairperson*
Leina'ala Ahu Isa, *At-Large*
Dan Ahuna, *Kaua'i & Ni'ihau*
Kalei Akaka, *O'ahu*
Keli'i Akina, *At-Large*
Carmen Hulu Lindsey, *Maui*
Robert K. Lindsey, Jr., *Hawai'i Island*
John Waihe'e IV, *At-Large*



FAX (808) 594-1868

**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS**

MEETING OF THE BOARD OF TRUSTEES

DATE: Thursday, April 11, 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. Approval of Minutes
 - A. March 7, 2018[†]
 - B. March 21, 2018[†]
- III. Public Testimony*
- IV. Unfinished Business
 - A. CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities
- V. New Business
 - A. Committee on Beneficiary Advocacy and Empowerment
 1. 2019 OHA Legislative Positioning – Matrix 2**[†], April 10, 2019
 2. 2019 Federal Legislative Updates – Matrix 3**[†], April 10, 2019
 - B. Committee on Resource Management
 1. Action Item RM #19-02: Amendment to Extend the Time of Performance for OHA Contract #3284[†]
 2. Action Item RM #19-03: Approval of BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee's duties and responsibilities, 1st Reading. [†]
 - C. Consultation with Kumabe HR LLC to assist the Board in conducting its performance appraisal of OHA's CEO pursuant to Section III of Contract 3147 (if necessary, the Board will recuse into Executive Session to consult with Board Counsel Robert G. Klein, Esq., *Pursuant to HRS §92-5(a)(4)*).
- VI. Executive Session[†]
 - A. Consultation with attorneys William Yuen, Esq., Judy Tanaka, Esq., and Board Counsel Robert G. Klein, Esq., re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding OHA's role as a member of Hi'ilei Aloha LLC and Ho'okele Pono LLC and management options for those LLCs in light of the Minute Order issued in *Andrew Walden v. Hi'ilei Aloha LLC, Ho'okele Pono LLC, and Hi'ipaka LLC. Pursuant to HRS §92-5(a)(4)*.



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS**

- B. Consultation with Board Counsel Robert G. Klein, Esq. on questions and issues pertaining to the Resource Management Committee of the OHA-BOT's powers, duties, privileges, immunities and liabilities regarding OHA Contract #3284. *Pursuant to HRS §92-5(a)(4).*
- C. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities relating to the Trustee Protocol Allowance policy. *Pursuant to HRS §92-5(a)(4).*
- D. Consultation with Board Counsel Robert G. Klein, Esq. and Kumabe HR LLC re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the Board's obligations and responsibilities to conduct its performance appraisal of OHA's CEO in accordance with Section III of Contract 3147. *Pursuant to HRS §92-5(a)(4).*
- E. Approval of Minutes
 - 1. March 7, 2019
 - 2. March 21, 2019

VII. Community Concerns*

VIII. Announcements

IX. 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: Trustees may establish or revise an OHA position on ANY proposed bill / resolution / executive message currently moving through the state legislature or other relative elected body. The Matrices, which are available for public review in the meeting room at this stated meeting, provide a brief description of each bill, the bill's number, the bill's title, the bill's intent, and the proposed and specific OHA position on each measure, current through 4/10/19. However, the Trustees both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrix, as well as those that time does not permit to be placed on the Matrix, in order to discharge their fiduciary obligations as Trustees of the Office of Hawaiian Affairs

† 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.

Colette Y. Machado
Trustee Colette Y. Machado
Chairperson, Board of Trustees

4/5/19
Date

Office of Hawaiian Affairs
Board of Trustee Meeting
April 11, 2019
10:00 am

- II. Approval of Minutes
 - A. March 7, 2018
 - B. March 21, 2018

The minutes were listed incorrectly on the Agenda. The correct minutes will be put on the next BOT meeting agenda for approval.

Office of Hawaiian Affairs
Board of Trustee Meeting
April 11, 2019
10:00 am

V. New Business*

- A. Committee on Beneficiary Advocacy and Empowerment
 - 1. 2019 OHA Legislative Positioning – Matrix 2, April 10, 2019
 - 2. 2019 Federal Legislative Updates – Matrix 3, April 10, 2019

** - The committee report for V.A.1. and 2. will be forwarded to the Board of Trustees following its approval at the BAE Committee Meeting scheduled for April 10, 2019.*

OFFICE OF HAWAIIAN AFFAIRS
Committee on Beneficiary Advocacy and Empowerment (BAE)
COMMITTEE REPORT

April 10, 2019

The Honorable Colette Y. Machado, Chair
Board of Trustees
Office of Hawaiian Affairs

Chair Machado,

Your Committee on Beneficiary Advocacy and Empowerment, having met on April 10, 2019 and after full and free discussion, recommends approval of the following two actions to the Board of Trustees:

MOTION #1:

To approve Administration's recommendations on **NEW BILLS** (Items 1 - 2) and **BILL POSITIONS FOR RECONSIDERATION** (Item 3); as well as

ADD:

- HCR 132 / SCR 174 as COMMENT

on the OHA Legislative Positioning Matrix dated April 10, 2019, as amended.

Bills that were discussed					
ITEM #	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			New Bills		
ADD	HCR 132		REQUESTING A STUDY ON THE SIGNIFICANCE OF TRADITIONAL HAWAIIAN PRACTICES, INCLUDING THE MAKAHIKI, AND THEIR EFFECT ON THE PERPETUATION OF NATIVE HAWAIIAN CULTURE.		COMMENT
ADD	SCR 174		REQUESTING A STUDY ON THE SIGNIFICANCE OF TRADITIONAL HAWAIIAN PRACTICES, INCLUDING THE MAKAHIKI, AND THEIR EFFECT ON THE PERPETUATION OF NATIVE HAWAIIAN CULTURE.		COMMENT

1	SB1223	RELATING TO AFFORDABLE HOUSING ON HAWAIIAN HOME LANDS.	Extends the sunset date of Act 141, Session Laws of Hawaii 2009, as amended, which requires each county to issue affordable housing credits to the Department of Hawaiian Home Lands, until July 1, 2024. Extends the sunset date of Act 98, Session Laws of Hawaii 2012, as amended, which requires the counties to issue affordable housing credits for each residential unit, or if allowed under the county's affordable housing program, vacant lot, developed by the Department of Hawaiian Home Lands, until July 1, 2024. (SB1223 HD1)	MONITOR	
2	GM740		Submitting for consideration and confirmation to the Board of Education, Gubernatorial Nominee, DAMIEN BARCARSE, for a term to expire 06-30-2022.	SUPPORT	
ITEM #	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			Bill Positions for Reconsideration		
3	SB1530	RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY.	Makes the conversion of the means of financing for the Hawaii Community Development Authority staff from the Hawaii community development revolving fund to the general fund contingent upon the Hawaii Community Development Authority developing and submitting a plan to transfer its control of the Kakaako Community Development District to the City and County of Honolulu. (SB1530 HD2)	COMMENT > MONITOR	

MOTION #2:

To approve Administration's recommendations on:

- OHA FED 1: S. 256 / H.R. 912; and
- OHA FED 2: S. 467 / H.R. 1191, both as SUPPORT

on the Federal Legislative Matrix dated April 10, 2019.

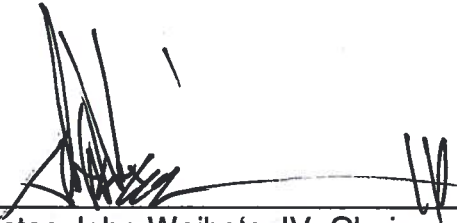
OHA NO.	BILL NO.	MEASURE TITLE	DESCRIPTION	RECOMMENDED ACTION
OHA FED 1	<u>S. 256</u>	Esther Martinez Native American Languages Program Reauthorization Act	Amends the Native American Programs Act of 1974 to reauthorize the program for up to \$13 Million in federal appropriations through Fiscal Year (FY) 2024, and also increases the length of grants from three to five years. Decreases the number of required Native students in Native American language nests and Native American language survival schools.	Support
	<u>H.R. 912</u>			
OHA FED 2	<u>S. 467</u>	Native American Suicide Prevention Act of 2019	For any state receiving grants or under a cooperative agreement under the Public Health Service Act to implement an early intervention and prevention strategy, a state or eligible entity must collaborate with tribes, tribal organizations, urban Indian organizations, and Native Hawaiian health care systems in developing and implementing the strategy.	Support

Relevant attachments are included for your information and reference.

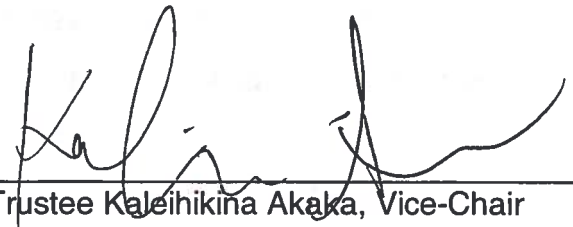
Attachment(s):

- BAE Roll Call Vote Sheet – 2019 OHA LEGISLATIVE POSITIONING – Matrix 2**†
- BAE Roll Call Vote Sheet – 2019 FEDERAL LEGISLATIVE UPDATES – Matrix 3**†

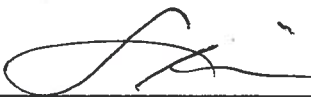
Respectfully submitted:



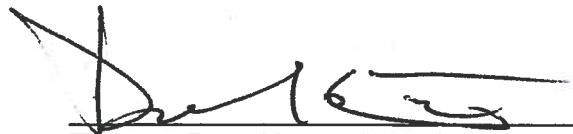
Trustee John Waihe'e, IV, Chair



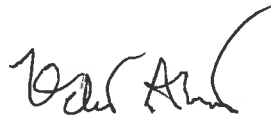
Trustee Kaleihikina Akaka, Vice-Chair



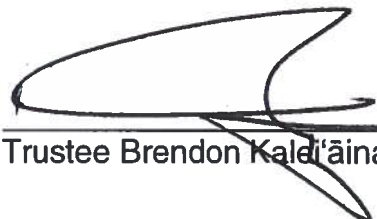
Trustee Leina'ala Ahu Isa, Member



Trustee Dan Ahuna, Member



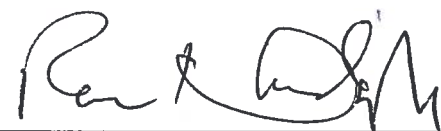
Trustee Keli'i Akina, Member



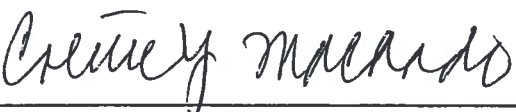
Trustee Brendon Kalei'aina Lee, Member



Trustee Carmen Hulu Lindsey, Member



Trustee Robert K. Lindsey, Jr., Member



Trustee Colette Y. Machado, Member

Roll Call Vote Sheet

COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT (BAE)	DATE: April 10, 2019 MOTION: 2:36 p.m. VOTE: 2:37 p.m.
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AGENDA ITEM:

V. New Business

A. 2019 OHA Legislative Positioning – Matrix 2†**

MOTION #1:

To approve Administration's recommendations on *NEW BILLS* (Items 1 - 2) and *BILL POSITIONS FOR RECONSIDERATION* (Item 3); as well as

ADD:

- HCR 132 / SCR 174 as COMMENT

on the OHA Legislative Positioning Matrix dated April 10, 2019, as amended.

Bills that were discussed					
ITEM #	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			New Bills		
ADD	HCR 132		REQUESTING A STUDY ON THE SIGNIFICANCE OF TRADITIONAL HAWAIIAN PRACTICES, INCLUDING THE MAKAHIKI, AND THEIR EFFECT ON THE PERPETUATION OF NATIVE HAWAIIAN CULTURE.		COMMENT
ADD	SCR 174		REQUESTING A STUDY ON THE SIGNIFICANCE OF TRADITIONAL HAWAIIAN PRACTICES, INCLUDING THE MAKAHIKI, AND THEIR EFFECT ON THE PERPETUATION OF NATIVE HAWAIIAN CULTURE.		COMMENT

1	SB1223	RELATING TO AFFORDABLE HOUSING ON HAWAIIAN HOME LANDS.	Extends the sunset date of Act 141, Session Laws of Hawaii 2009, as amended, which requires each county to issue affordable housing credits to the Department of Hawaiian Home Lands, until July 1, 2024. Extends the sunset date of Act 98, Session Laws of Hawaii 2012, as amended, which requires the counties to issue affordable housing credits for each residential unit, or if allowed under the county's affordable housing program, vacant lot, developed by the Department of Hawaiian Home Lands, until July 1, 2024. (SB1223 HD1)	MONITOR	
2	GM740		Submitting for consideration and confirmation to the Board of Education, Gubernatorial Nominee, DAMIEN BARCARSE, for a term to expire 06-30-2022.	SUPPORT	
ITEM #	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			Bill Positions for Reconsideration		
3	SB1530	RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY.	Makes the conversion of the means of financing for the Hawaii Community Development Authority staff from the Hawaii community development revolving fund to the general fund contingent upon the Hawaii Community Development Authority developing and submitting a plan to transfer its control of the Kakaako Community Development District to the City and County of Honolulu. (SB1530 HD2)	COMMENT > MONITOR	

AMENDMENT:

MEANS OF FINANCING:

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA	1		X			
VICE-CHAIR KALEIHIKINA	AKAKA		2	X			
KELI'I	AKINA			X			
BRENDON KALEI'AINA	LEE			X			
HULU	LINDSEY			X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO			X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				9	0	0	0

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

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

Attachment B

Roll Call Vote Sheet

**COMMITTEE ON
BENEFICIARY ADVOCACY AND EMPOWERMENT
(BAE)**

DATE: April 10, 2019

MOTION: 2:50 p.m.

VOTE: 2:51 p.m.

AGENDA ITEM:

V. New Business

B. 2019 Federal Legislative Updates – Matrix 3†**

MOTION #2:

To approve Administration's recommendations on:

- **OHA FED 1: S. 256 / H.R. 912; and**
- **OHA FED 2: S. 467 / H.R. 1191, both as SUPPORT**

on the Federal Legislative Matrix dated April 10, 2019.

OHA NO.	BILL NO.	MEASURE TITLE	DESCRIPTION	RECOMMENDED ACTION
OHA FED 1	<u>S. 256</u>	Esther Martinez Native American Languages Program Reauthorization Act	Amends the Native American Programs Act of 1974 to reauthorize the program for up to \$13 Million in federal appropriations through Fiscal Year (FY) 2024, and also increases the length of grants from three to five years. Decreases the number of required Native students in Native American language nests and Native American language survival schools.	Support
	<u>H.R. 912</u>			
OHA FED 2	<u>S. 467</u>	Native American Suicide Prevention Act of 2019	For any state receiving grants or under a cooperative agreement under the Public Health Service Act to implement an early intervention and prevention strategy, a state or eligible entity must collaborate with tribes, tribal organizations, urban Indian organizations, and Native Hawaiian health care systems in developing and implementing the strategy.	Support
	<u>H.R. 1191</u>			

AMENDMENT:**MEANS OF FINANCING:**

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA	1		X			
VICE-CHAIR KALEIHIKINA	AKAKA		2	X			
KELI'I	AKINA			X			
BRENDON KALEI'ĀINA	LEE			X			
HULU	LINDSEY			X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO						Departed at 2:40 p.m.
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				8	0	0	1

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

DISCUSSION:

Office of Hawaiian Affairs
Board of Trustee Meeting
April 11, 2019
10:00 am

V. New Business*

B. Committee on Resource Management

1. Action Item RM #19-02: Amendment to
Extend the Time of Performance for
OHA Contract #3284
2. Action Item RM #19-03: Approval of BOT
executive policy amendments relating to
a Trustee Protocol Allowance to cover
expenses incurred in the course of a
trustee's duties and responsibilities, 1st
Reading.

** - The committee report for V.B.1. and 2. will be forwarded to the Board of Trustees following its approval at the RM Committee Meeting scheduled for April 10, 2019.*

**MEETING OF THE
COMMITTEE ON RESOURCE MANAGEMENT
COMMITTEE REPORT**

April 10, 2019

The Honorable Colette Machado,
Chairperson Board of Trustees
Office of Hawaiian Affairs

Madame Chair Machado,

The Committee on Resource Management, having met on April 10, 2019 and after full and free discussion, recommends approval of the following action to the Board of Trustees:

To approve RM #19-02 to authorize and approve an amendment to extend the Time of Performance for OHA Contract #3284 from April 30, 2019 to December 16, 2019. Moreover, any document requests to OHA, either outstanding or new requests, if any, shall be responded to as soon as possible, but in no case after April 29, 2019 such that the timeline for performance by CLA is not extended further.

Relevant attachments are included for your information and reference.

Attachment(s):

- 1) Action Item RM #19-02
- 2) RM #19-02 Roll Call Vote Sheet

Trustee Dan Ahuna, Chair

Trustee Kalei Akaka, Member

Trustee Leina'ala Ahu Isa, Member

Trustee Robert Lindsey, Member

Trustee Keli 'i Akina, Member

SIGNATURE NOT AVAILABLE

Trustee Colette Machado, Member

Trustee Hulu Lindsey, Member

Trustee John Waihe'e, IV, Member

Trustee Brendon Lee, Member

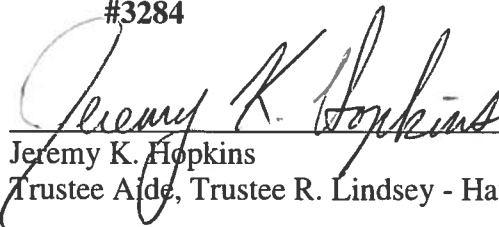


Action Item
Committee on Resource Management
April 10, 2019

RM #19-02

Action Item Issue: Amendment to Extend the Time of Performance for OHA Contract #3284

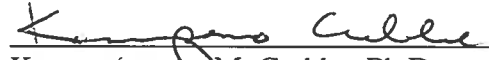
Prepared by:


Jeremy K. Hopkins
Trustee Aide, Trustee R. Lindsey - Hawaii

4/4/19

Date

Reviewed by:


Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

4/4/19

Date

Reviewed by:


Dan Ahuna
Chair, Committee on Resource Management

4-4-19

Date

I. Action:

To authorize and approve an amendment to extend the Time of Performance for OHA Contract #3284 from April 30, 2019 to December 16, 2019.

II. Issue:

Whether or not the Resource Management Committee should authorize and approve an amendment to extend the Time of Performance for OHA Contract #3284 from April 30, 2019 to December 16, 2019.

III. Background and Discussion:

The Board of Trustees executed OHA Contract #3284 on September 5, 2018. The Time of Performance of the contract was through April 30, 2019. In OHA Contract #3284 under Attachment S-2 titled "Time of Performance," subsection C. states the following.

C. This Contract may be modified, amended, or extended due to such factors as a delay in obtaining records requested, circumstances outside of either parties control, or other unforeseeable factors upon mutual

agreement of the parties hereto. Any modification, amendment or extension shall be contingent upon satisfactory performance by CONTRACTOR and subject to the availability of funds for compensation payable for services performed and costs and expenses incurred, if any, beyond the initial term of this Contract. The CONTRACTOR agrees to notify the Contractor Coordinator of any delays in obtaining requested records or gaining access to the OHA and or LLC staff for interviews and or questions.

Due to a delay in the contractor obtaining records requested and circumstances outside of either parties control, a no cost extension of time is requested by the contractor and the contract monitor in order to complete the work detailed in OHA Contract #3284. This should allow adequate time to complete the work.

IV. Recommended Action:

To authorize and approve an amendment to extend the Time of Performance for OHA Contract #3284 from April 30, 2019 to December 16, 2019.

V. Time frame:

The no cost extension of the Time of Performance for OHA Contract #3284 will be effective upon approval of RM #19-02 and the signing of contract amendment between parties outlined in OHA Contract #3284.

VI. Attachments:

- A.** Office of Hawaiian Affairs Timeline of Engagement Events as of April 2, 2019.
- B.** Office of Hawaiian Affairs Contract & Disbursement Review (Proposal B-3): Tentative Timetable (Updated 4/2/2019)

Office of Hawaiian Affairs
Timeline of Engagement Events
As of March 8, 2019

No.	Date	Relevant Entity	Event	Method	Details
1	7/28/2017	OHA	Request for Statement of Qualifications	Upload	OHA distributed to Auditing Service Firms the Request for Statement of Qualifications. From: Trustee C. Huli Lindsey. Request for Statement of Qualifications SOQ No. RM 2017-35 Auditing Services.
2	8/16/2017	OHA	Proposal Submission	Mailed	CLA provided OHA with a Statement of Qualifications and Expression of Interest - SOQ No. RM2017-35 for: Office of Hawaiian Affairs of the State of Hawaii.
3	8/21/2017	OHA	Addendum 01	Email	OHA distributed addendum No. 1 to Request for Statement of Qualifications SOQ No. RM 2017-35 Auditing Services - Update due date to 9/8/2017.
4	8/24/2017	OHA	Addendum 02	Email	OHA distributed addendum No. 2 to Request for Statement of Qualifications SOQ No. RM 2017-35 Auditing Services - Update due date to 9/15/2017.
5	9/5/2017	OHA	Addendum 03	Email	OHA distributed addendum No. 3 to Request for Statement of Qualifications SOQ No. RM 2017-35 Auditing Services - Update submittal format.
6	4/19/2018	OHA	Request that CLA review a Confidentiality and Non-Disclosure Agreement (NDA)	Email	Albert emailed to Ernie a copy of a Confidential and Non-Disclosure Agreement (NDA). Ernie forwarded the email and attachment to Jenny Dominguez (CLA) for review and discussion.
7	4/20/2018	OHA	Delivery of signed NDA to OHA	Email	Jenny sent to Albert a scanned copy of the signed NDA requested by OHA.
8	4/23/2018	OHA	OHA confirmation of receipt of the NDA	Email	Albert confirmed receipt of the signed NDA and indicated that he would get it signed by OHA.
9	5/11/2018	OHA	Request for CLA to submit the name of the CPA licensed in the State of Hawaii	Email	Phyllis emailed Ernie to inform him that she was able to confirm with the State of Hawaii Department of Commerce and Consumer Affairs, Professional & Vocational Licensing (DCCA/PVL), that CLA does possess a Firm Permit to Practice (FPTP) for the State of Hawaii. Phyllis then requested that Ernie provide the name of the CPA who is licensed in the State of Hawaii as required by the State of Hawaii DCCA/PVL.
10	5/23/2018	OHA	Scheduling Meeting with Negotiating Committee	Email	Phyllis emailed Ernie to inquire about CLA's availability for a meeting with the negotiating committee on either May 30th or June 1st.

Office of Hawaiian Affairs
Timeline of Engagement Events
As of March 8, 2019

No.	Date	Relevant Entity	Event	Method	Details
11	5/30/2018	OHA	Introductory Video Conference with OHA	Video Conference	CLA held a video conference with OHA representatives. The purpose of the conference was to meet the OHA representatives and begin the communication process. During this meeting, CLA described the initial documents that would be needed in order to prepare a scope of work for OHA's consideration. A follow up email was sent to Phyllis to coordinate CLA's visit as part of the contract negotiation process. An additional follow up email was sent to Phyllis to request in writing the documents mentioned during the call.
12	6/1/2018	OHA	OHA's Introduction to LLCs	Email	Phyllis communicated that all contact and information request for the LLCs was forwarded to ES&A, the LLC's attorney.
13	6/1/2018	LLCs	Contact by ES&A	Email	LLC's attorney, Anna Elento-Sneed of ES&A, introduced herself to CLA. Provided information about the LLCs being private, 501(c)(3) nonprofit corporations organized and doing business under Hawaii law.
14	6/4/2018	OHA	Coordination of initial visit with OHA	Email	The visit to OHA was scheduled for 6/6/2018 and 6/7/2018.
15	6/4/2018	LLCs	Coordination of initial visit ES&A	Call	Ernie Cooper and Jenny Dominguez held a phone conference with Anna Elento-Sneed (ES&A). Gained a high-level understanding of the LLCs and coordinated for an in person meeting for 6/7/2018. This visit was to understand the LLCs in sufficient detail to be able to draft a scope of work as requested by OHA. The meeting for 6/7/2018 was confirmed by an email from Ms. Elento-Sneed to Ernie. In the email, Ms. Elento-Sneed informed Ernie that the LLCs required that CLA sign NDAs before any records could be provided.
16	6/6/2018 6/7/2018	OHA	Meeting with OHA Representatives	In-Person Meeting	CLA met with OHA representatives to gain an introductory understanding of the financial process and procedures used by OHA including: procurement process, payment requests, HRS, line of businesses, primary sources of revenue, grant programs.
17	6/7/2018	LLCs	Meeting with LLC Representatives	In-Person Meeting	CLA met with LLC representatives to gain understanding of the LLCs and how they function and how and when they were established. Discussed each of the LLCs. Understood the general oversight process. Was informed that the LLCs are covered by private laws and need to not disclose certain information.
18	6/8/2018	OHA	Receipt of Documents	Email	CLA began receiving documents from OHA that include organizational charts and the list of contracts for 1/1/2012 to 6/30/2016.

**Office of Hawaiian Affairs
Timeline of Engagement Events
As of March 8, 2019**

No.	Date	Relevant Entity	Event	Method	Details
19	6/8/2018	LLCs	OHA's direction to LLCs to not copy OHA on communication with CLA	Email	Phyllis emailed ES&A to inform them that all communications and required documents may be between CLA and the LLCs only and that OHA's Trustees did not need to be copied on those communications.
20	6/8/2018	LLCs	CLA Delivery of signed NDAs to ES&A	In Person	CLA delivered copies of signed NDAs for Hi'ilei Aloha LLC, Hi'ipaka LLC, Ho'okele Pono LLC, and Ho'okipaipai LLC to the offices of ES&A.
21	6/12/2018	LLCs	Provision of Access to LLC financial records	ShareFile	CLA was granted access to a ShareFile that contained certain financial information for the LLCs.
22	6/18/2018	OHA	Receipt of Documents	Email	CLA was sent the OHA check registers for 5 years (2012 - 2016).
23	6/21/2018	OHA	Receipt of Documents	Email	CLA was sent the contract list for 7/1/2011 through 12/31/2011.
24	6/21/2018	OHA	CLA's delivery of Initial Scope of Work Proposals	Email	CLA provided OHA with scope of work proposals with three different scenarios: A, B, and C.
25	7/6/2019	OHA	CLA's delivery of draft timeline to OHA	Email	CLA provided OHA with a draft timeline for the work to be performed for consideration by the contract negotiating committee. Timeline based on contract execution date of 7/16/18, and documents requested to be received by CLA by 8/3/2018.
26	9/5/2018	OHA	CLA's receipt of executed contract	Email	Phyllis emailed CLA to inform that the contract had been fully executed and that CLA may commence work.
27	9/6/2018	OHA	Planning Kick-off call	Conference Call	CLA representatives held a project kick off call with OHA Trustees Hulu Lindsey and John Waihee.
28	9/6/2018	LLCs	Planning Kick-off call	Conference Call	CLA had a call with the LLC's legal counsel (ES&A) to schedule a project kick-off conference call with LLC representatives.
29	9/10/2018	LLCs	Kick-off conference call	Conference call	Discussed scope of work as it relates to the LLCs, discussed timeline, documents to be downloaded from the ShareFile portal, document request list. LLC required that CLA allow the LLCs to identify which information is considered confidential.
30	9/14/2018	OHA	CLA's delivery of document request list	Email	CLA provided the document request list to OHA and established the protocol for secure document transmittal.
31	9/14/2018	LLCs	CLA's delivery of LLCs document request list	Email	CLA emailed to ES&A a document request list for the LLCs. The email contained a listing of documents already obtained by CLA through the ShareFile portal.
32	9/17/2018	LLCs	CLA's request for call re LLCs documents	Email	CLA emailed Trustee Hulu Lindsey to request a conference call to discuss concerns expressed by ES&A about CLA sharing LLCs' documents with OHA.
33	9/18/2018	LLCs	CLA's delivery of document request list	Email	CLA provided ES&A with an updated document request list.

Office of Hawaiian Affairs
Timeline of Engagement Events
As of March 8, 2019

No.	Date	Relevant Entity	Event	Method	Details
34	9/18/2018	OHA	OHA's communication of intention to complete document request	Email	OHA informed CLA that it received the document request list and was preparing to obtain from staff to provide to CLA.
35	9/27/2018	LLCs	Document Request list	Email	ES&A communicated to CLA it would provide documents requested.
36	9/27/2018	LLCs	Communication Re LLCs	Email	Trustee Hulu Lindsey communicated that she would not receive documents for the LLC; however, she would be allowed to physically view documents for the LLCs.
37	10/1/2018	OHA	Planning Interviews	Call	CLA held a phone call between CLA and Trustee Hulu Lindsey in preparation for the interviews to be conducted the next week.
38	10/2/2018	OHA	Receipt of some of the requested documents	Email	OHA provided CLA with some of the requested documents via LeapFILE and communicated that OHA was still working on the outstanding items. The document request list was updated by OHA for the documents provided.
39	10/2/2018	OHA/LLCs	Planning interviews	In CLA Office	The week leading to the onsite interviews, CLA focused on preparing for the interviews by reviewing documents and records received to date.
40	10/8/2018	OHA/LLCs	OHA on-site interviews	In Person	CLA was on site to conduct interviews of certain OHA/LLCs employees. The only interview not conducted as originally planned was that of Mr. Kamana 'Opono Crabbe. Ten minutes after the interview was scheduled to begin, CLA was informed that Mr. Crabbe had an urgent matter that prevented him from meeting with CLA on that day.
41	10/11/2018	LLCs	ES&A's Letter to CLA	Email	CLA received letter from ES&A explaining the LLC's legal status and relationship to OHA. Described concern over the negative impact of CLA's work on the LLCs. ES&A explained that it is its opinion that "any action that CLA takes that results in the expansion of OHA's access to information will have a profoundly negative impact on the LLC's legal position in ongoing litigation and other legal proceedings."
42	10/12/2018	OHA	Request for Documents	Email	After conducting on-site interviews of OHA employees, CLA provided an updated document request list.
43	10/13/2018	OHA	Trustee Hulu Lindsey's communication regarding document request	Email	Trustee Hulu Lindsey expressed concerns that for one of the items on the document request list, OHA may not be able to provide information to reconcile general ledger received to audited financial statements. Also communicated that the quarterly statements from LLCs to OHA should be the ones received by OHA (to be provided by OHA and not the LLCs).
44	10/14/2018	OHA	Receipt of news article forwarded by Hulu Lindsey	Email	Trustee Hulu Lindsey forwarded a news article titled "Lawsuit OHA-Owned Corporations Must Comply with Open Records Laws."

Office of Hawaiian Affairs
Timeline of Engagement Events
As of March 8, 2019

No.	Date	Relevant Entity	Event	Method	Details
45	10/16/2018	OHA	CLA's response to Trustee Hulu Lindsey	Email	CLA communicated to Trustee Lindsey that it was working with Gloria Li on obtaining the reconciliation between the GL and the audited financial statements and communicated that CLA received the quarterly statements from the LLCs and had requested the outstanding quarterly reports from OHA as per the LLCs request.
46	10/16/2018	OHA	OHA's response on request for documents	Email	OHA communicated that it was following up on the document request list received and it would provide comments and communicate when the documents would be provided to CLA.
47	10/17/2018	OHA	Trustee Hulu Lindsey's request to be updated on the status of the document request list	Email	Trustee Hulu Lindsey forwarded CLA email with document request lists from 10/16/2018 and directed Gloria Li to request the reconciliation from the auditors in order to provide to CLA. Trustee Lindsey then forwarded to CLA her communication to Gloria and requested that CLA keep her posted.
48	10/23/2018	OHA	CLA's follow up on status of document request	Email	CLA emailed OHA to follow up on the status of documents requested. No documents had been received since the request made on 10/16/2018.
49	10/25/2018	OHA	CLA's delivery of project status report #1, and invoice	Email	CLA provided Trustees Hulu Lindsey and John Waihee with the first status report of the work performed to date, and provided invoice # 1932916. CLA mentioned that it is waiting for quite a few documents and some financial information from both OHA and the LLCs. CLA explained that it would continue to reach out to Phyllis requesting an update. CLA communicated that it was waiting for further information from ES&A regarding when the LLCs may be able to provide the additional records requested.
50	10/25/2018	OHA	CLA's follow up on status of document request	Email	Trustee Hulu Lindsey requested that Phyllis provide CLA with a date of when the requested documents would be provided. She did this by responding to an email she received from Phyllis, who communicated that she is working on obtaining the documents requested and providing permission for CLA to contact Gloria by phone to discuss the reconciliation between GL and audited financial statements.
51	10/29/2018	OHA	Receipt of news article forwarded by Hulu Lindsey	Email	Trustee Hulu Lindsey forwarded OHA news articles published by the Hawai'i Free Press. CLA replied and informed her that CLA is keeping an eye on news articles pertaining to OHA. On 10/31/2018, Trustee Hulu Lindsey replied that the check registers for 2017 were mentioned in one of the articles she forwarded.
52	10/30/2018	OHA	Trustee Hulu Lindsey's inquiry on status of document request	Email	Trustee Hulu Lindsey emailed CLA to check in on the status of the documents requested. CLA responded that it has received two of the 18 items requested from the date of CLA's #1 Status Update to Trustee Hulu Lindsey.

**Office of Hawaiian Affairs
Timeline of Engagement Events
As of March 8, 2019**

No.	Date	Relevant Entity	Event	Method	Details
53	11/6/2018	OHA	Confirm interview of OHA employee	Email	CLA emailed OHA to confirm interview with Mr. Crabbe on 11/14/2018 from 10:30 am to 12:30 pm.
54	11/9/2018	OHA	CLA's receipt of two of the documents requested	Email	OHA provided CLA with some of the requested documents via LeapFILE and communicated that OHA anticipated providing the remainder of the requested documents by Wednesday or Thursday of the following week (11/14/2018 or 11/15/2018).
55	11/13/2018	LLCs	Interview LLC Employee	In Person	CLA interviewed Mona Bernardino concerning the LLCs. Present in this interview was Anna Elento-Sneed of ES&A, legal counsel for the LLCs.
56	11/14/2018	OHA	Confirm interview of OHA employee	Email	OHA informed CLA that Mr. Crabbe would be available for the interview with CLA later that day (11/14/2018) at the starting time scheduled but would be available for only one hour.
57	11/14/2018	OHA	Interview of OHA employee	In Person	CLA interviewed Kamana 'Opono Crabbe concerning OHA only (not able to discuss LLCs without ES&A being present). Present in this interview was Albert Tiberi. Mr. Tiberi provided CLA with one of the documents included in the document request list provided to OHA on 10/8/2018.
58	11/16/2018	OHA	CLA's request for additional documents	Email	CLA provided OHA with an updated document request list including five additional items requested as a result of the interview conducted on 11/14/2018.
59	11/20/2018	OHA	CLA's follow up on status of document request	Email	CLA requested that OHA send any documents as they become ready. CLA also followed up on the status of the documents that OHA mentioned on 11/9/2018 would be provided to CLA by the Wednesday or Thursday of the following week (11/14/2018 or 11/15/2018).
60	11/26/2018	OHA	CLA's Request for assistance with reconciliation	Email	CLA provided Ms. Li with the Excel document which Ms. Li requested during CLA's visit. She would use this document to assist with the reconciliation of the GL to the audited financial statements. CLA informed Ms. Li that this request was also included in the request list provided to Ms. Ono-Evangelista. Ms. Li downloaded the provided document on 12/4/2018.

Office of Hawaiian Affairs
Timeline of Engagement Events
As of March 8, 2019

No.	Date	Relevant Entity	Event	Method	Details
61	11/27/2018	OHA	CLA's delivery of project status report #2 and invoice	Email	CLA communicated that before it could select the sample of contracts and disbursements for testing, CLA must obtain the remaining financial documents/information on the request lists sent to OHA through 11/16/18. The documents and data requested (such as the Ki'i data and the reconciliation from the general ledger to the audited financial statements) are important for ensuring that CLA has received complete general ledger data and to fully analyze contract and disbursement data before selecting a sample. CLA communicated that it was initially informed by ES&A that the requested documents that did exist would be provided; however, on 10/12/2018, before any additional documents were provided, CLA was informed by ES&A that CLA would not be provided any additional documentation until the LLC's concerns over the impact of this project on the LLCs were resolved.
62	11/29/2018	OHA	Notification that Trustee Hulu Lindsay will likely not remain as the RM Committee Chair	Email	Trustee Hulu Lindsey notified CLA that she was re-elected as a trustee and believed that she would no longer be the Resource Management Committee Chair. She apologized for CLA not having received payment on the outstanding invoice and communicated that OHA would be requesting additional information on the invoices in order to be able to process the payment. She stated that she would be asking Judge Klein about the issue with the LLCs.
63	12/6/2018	OHA	CLA's receipt of four documents	Email	Ms. Ono Evangelista communicated that she had sent four documents to CLA via secure transfer.
64	12/13/2018	OHA	OHA's communication to CLA of New RM Committee Chair	Email	OHA provided CLA with a letter that communicated a new Resource Management Committee Chair, Trustee Lei Ahu Isa, and Vice-Chair, Robert Lindsey. OHA requested that all communication and correspondence be directed to both of them.

Office of Hawaiian Affairs
Timeline of Engagement Events
As of March 8, 2019

No.	Date	Relevant Entity	Event	Method	Details
65	12/14/2018	OHA	CLA's request for conference call with new RM Committee Chair and Vice-Chair	Email	CLA contacted the new RM Committee Chair, Trustee Lei Ahu Isa, and Vice-Chair, Robert Lindsey and requested to have a conference call to introduce CLA and to provide them with the current status of the project.
66	12/14/2018	OHA	RM Committee Chair communication of unavailability for a conference call and request for in-person meeting	Email	Trustee Lei Ahu Isa communicated to CLA that she would be traveling for the holidays and was not available for a conference call. She requested an in-person meeting and that CLA travel to Hawaii for this meeting.
67	12/17/2018	OHA	CLA's request for RM Committee Chair's availability for in-person meeting	Email	CLA responded to Trustee Lei Ahu Isa to agree to an in-person meeting and to request her and Trustee Robert Lindsey's availability after the holidays for in-person meeting. Trustee Lei Ahu Isa responded that she would inform CLA of her availability once she returned to Hawaii after her holiday away from Hawaii.
68	1/14/2018	OHA	CLA's follow up request for RM Committee Chair's availability for in-person meeting	Email	CLA emailed Trustee Lei Ahu Isa to follow up regarding the requested in-person meeting and to request her and Trustee Robert Lindsey's availability. Trustee Lie Ahu Isa responded that they were working with Trustee Hulu Lindsey on getting CLA's invoices paid and that there is no need to meet in person.
69	1/15/2018	OHA	CLA's follow up on status of document request	Email	CLA followed up with Phyllis Ono-Evangelista regarding the status of documents requested and to ask if she had reviewed CLA's questions from 12/7/2018 to which Phyllis had mentioned she was drafting a response.
70	1/16/2019	OHA	CLA receipt of request from a reporter to comment on status report sent to OHA	Email	CLA received an email from a reporter with Honolulu Civil Beat requesting comments. CLA forwarded the email to Trustee Lei Ahu Isa and mentioned that CLA's policy is not to comment or communicate with the press on any of our clients.
71	1/23/2019	OHA	OHA's communication to CLA of interim RM Committee Chair	Email	CLA was notified that Trustee Ahu Isa resigned her Chairmanship of the Resource Management Committee and Trustee Robert Lindsey is the interim Chairman of the committee.
72	2/1/2019	OHA	CLA's follow up on status of document request	Email	CLA followed up with Phyllis Ono-Evangelista regarding the status of documents requested and to ask if she had reviewed CLA's questions from 12/7/2018 to which Phyllis had mentioned she was drafting a response.
73	2/8/2019	OHA	OHA's communication to CLA of new RM Committee Chair	Email	CLA was notified that Trustee Dan Ahuna was voted by the OHA Board of Trustees as the new Resource Management Committee Chair and Trustee Robert Lindsey remained as the Vice-Chair.

Office of Hawaiian Affairs
Timeline of Engagement Events
As of March 8, 2019

No.	Date	Relevant Entity	Event	Method	Details
74	2/18/2019	OHA	CLA's follow up on status of document request	Email	CLA followed up with Phyllis Ono-Evangelista regarding the status of documents requested.
75	3/12/2019	OHA	Meeting with RM Committee	In-Person Meeting	CLA meeting with RM Committee Leadership at OHA office.

**Office of Hawaiian Affairs
Contract & Disbursement Review (Proposal B-3): Tentative Timetable (Updated 4/2/2019)**

Beginning Date	End Date	Number of Business Days	Milestone/Description
WORK ACCOMPLISHED TO DATE			
1. Wednesday, September 5, 2018	Wednesday, September 5, 2018	1	Execute contract between OHA and CLA
2. Wednesday, September 5, 2018	Friday, September 14, 2018	8	Prepare document request list; Conduct phone interviews to assess available electronic data (purchasing; accounting; IT)
3. Friday, September 14, 2018		Milestone 1: Submit document request list to OHA/LLCs	
4. Monday, September 17, 2018	Friday, September 21, 2018	5	OHA/LLCs to provide requested documents and data
5. Monday, September 24, 2018	Friday, October 5, 2018	10	Review documents provided; Prepare for process and risk assessment interviews; Preliminary data analytics
6. Monday, October 8, 2018	Friday, October 12, 2018	5	CLA Team On-Site in Hawaii: Conduct process and risk assessment interviews
7. Monday, October 15, 2018	Friday, October 19, 2018	5	Document interviews

UPDATED TIMETABLE			
1. Tuesday, March 12, 2019	CLA MEETING WITH RESOURCE MANAGEMENT COMMITTEE LEADERSHIP		
2. Monday, April 29, 2019	DUE DATE OF ALL OUTSTANDING DOCUMENTS FROM OHA/LLCs: Balance of timetable is dependent on OHA and the LLCs providing the balance of the outstanding documents and financial data by this date		
3. Monday, April 29, 2019	Friday, May 10, 2019	10	Perform additional data analytics; Select sample of contracts and disbursements for testing
4. Friday, May 10, 2019		Milestone 2: Submit sample selection to OHA/LLCs	
5. Monday, May 13, 2019	Friday, May 31, 2019	15	OHA/LLCs to gather supporting documentation for contracts and disbursements
6. Monday, June 3, 2019	Friday, June 14, 2019	10	CLA Team On-Site in Hawaii: On site testing of contracts and disbursements (week 1 and 2)
7. Monday, June 17, 2019	Friday, July 12, 2019	20	CLA Team Home while OHA/LLCs gather additional support
8. Monday, July 15, 2019	Friday, July 26, 2019	10	CLA Team On-Site in Hawaii: On site testing of contracts and disbursements (week 3 and 4)
9. Friday, July 26, 2019		Milestone 3: Interim briefing to RM Committee Leadership	
10. Monday, July 29, 2019	Friday, August 9, 2019	10	CLA Team Home while OHA/LLCs gather additional support
11. Monday, August 12, 2019	Friday, August 23, 2019	10	CLA Team On-Site in Hawaii: On site testing of contracts and disbursements (week 5 and 6)
12. Monday, August 26, 2019	Friday, September 6, 2019	10	Close out open items; Review of work; Finalize testing and results
13. Monday, September 9, 2019	Friday, September 13, 2019	5	Discussion/meeting with RM Committee Leadership on results of work
14. Friday, September 13, 2019	Monday, October 28, 2019	32	Prepare draft report
15. Monday, October 28, 2019		Milestone 4: Submit draft report to RM Committee Leadership	
16. Monday, October 28, 2019	Friday, November 8, 2019	10	RM Committee Leadership review draft report
17. Monday, November 11, 2019	Friday, November 15, 2019	5	Discuss draft report with RM Committee Leadership
18. Monday, November 18, 2019	Wednesday, November 27, 2019	8	Finalize report
19. Wednesday, November 27, 2019		Milestone 5: Issue final report to RM Committee Leadership	
20. Monday, December 2, 2019	Friday, December 6, 2019	5	CLA On-Site in Hawaii: Presentation to RM Committee Leadership



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, April 10, 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. Executive Session[†]
 - A. Consultation with Board Counsel Robert G. Klein, Esq. on questions and issues pertaining to the Resource Management Committee of the OHA-BOT's powers, duties, privileges, immunities and liabilities regarding OHA Contract #3284. *Pursuant to HRS §92-5(a)(4).*
 - B. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities relating to the Trustee Protocol Allowance policy. *Pursuant to HRS § 92-5(a) (4).*
 - C. Consultation with attorneys William Yuen, Esq., Judy Tanaka, Esq., and Board Counsel Robert G. Klein, Esq., re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding OHA's role as a member of Hi'ilei Aloha LLC and Ho'okele Pono LLC and management options for those LLCs in light of the Minute Order issued in Andrew Walden v. Hi'ilei Aloha LLC, Ho'okele Pono LLC, and Hi'ipaka LLC. *Pursuant to HRS §92-5(a)(4)*
- IV. New Business[‡]
 - A. Action Item RM #19-02: Amendment to Extend the Time of Performance for OHA Contract #3284
 - B. Action Item RM #19-03: Approval of BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee's duties and responsibilities.
 - C. Presentation of the audited financial statements and independent auditor's report; and report of independent certified public accountants in accordance with government auditing standards and uniform guidance, of the Office of Hawaiian Affairs for the fiscal year ended June 30, 2018.
- 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

Date

Office of Hawaiian Affairs
560 N Nimitz Hwy. Ste. 200
Honolulu, HI 96817

Action Item

COMMITTEE ON RESOURCE MANAGEMENT (RM)	DATE: April 10, 2019 Motion: Vote:
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AGENDA ITEM: IV. New Business [†] A. Action Item RM #19-02: Amendment to Extend the Time of Performance for OHA Contract #3284	
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MOTION: To approve RM #19-02 to authorize and approve an amendment to extend the Time of Performance for OHA Contract #3284 from April 30, 2019 to December 16, 2019. Moreover, any document requests to OHA, either outstanding or new requests, if any, shall be responded to as soon as possible, but in no case after April 29, 2019 such that the timeline for performance by CLA is not extended further.	
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AMENDMENT:	
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MEANS OF FINANCING:	
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TRUSTEE	1	2	‘AE (YES)	A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI AHU ISA			X			
KALEI AKAKA			X			
KELI ‘I AKINA					X	
BRENDON LEE		X	X			
HULU LINDSEY	X		X			
ROBERT LINDSEY			X			
COLETTE MACHADO			X			
JOHN WAIHE‘E			X			
CHAIR DAN AHUNA			X			
TOTAL VOTE COUNT			8		1	

MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED

DISCUSSION:	

MEETING OF THE
COMMITTEE ON RESOURCE MANAGEMENT

COMMITTEE REPORT

April 10, 2019

The Honorable Colette Machado,
Chairperson Board of Trustees
Office of Hawaiian Affairs

Madame Chair Machado,

The Committee on Resource Management, having met on April 10, 2019 and after full and free discussion, recommends approval of the following action to the Board of Trustees:

Approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a Trustee's duties and responsibilities as shown in Attachment "A" and Corresponding and Conforming Changes to BOT Operations Manual as shown in Attachment "B."

Relevant attachments are included for your information and reference.

Attachment(s):

- 1) Action Item RM#19-03
- 2) RM #19-03 Roll Call Vote Sheet



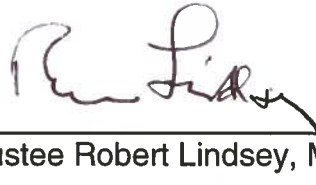
Trustee Dan Ahuna, Chair



Trustee Kalei Akaka, Member



Trustee Leina'ala Ahu Isa, Member



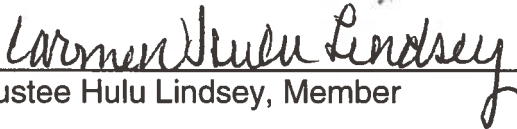
Trustee Robert Lindsey, Member



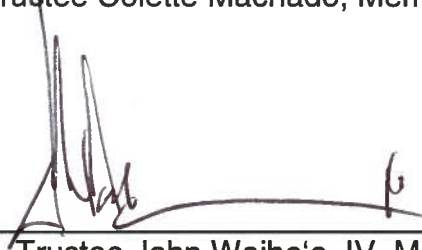
Trustee Keli 'i Akina, Member

SIGNATURE NOT AVAILABLE

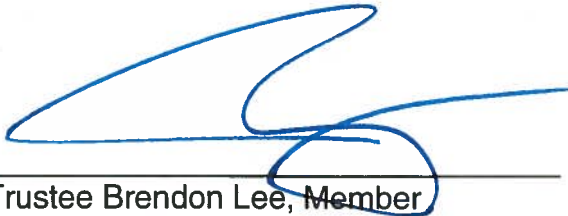
Trustee Colette Machado, Member



Trustee Hulu Lindsey, Member



Trustee John Waihe'e, IV, Member



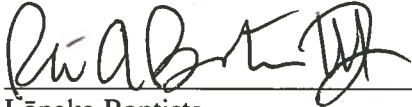
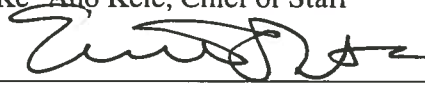
Trustee Brendon Lee, Member

OFFICE OF HAWAIIAN AFFAIRS
Action Item

Committee on Resource Management
April 10, 2019

RM #19-03

Action Item Title: Approval of BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee's duties and responsibilities.

Prepared By:		<u>04/05/19</u>
	Lōpaka Baptiste Ke Kua Kāko'o, Trustee Aide	Date
Reviewed By:		<u>04/05/19</u>
	Carol Ho'omanawanui Ke 'Aho Kele, Chief of Staff	Date
Reviewed By:		<u>04/05/19</u>
	Everett Ohta Pōhaku Kihī, Kānāwai Pili Nohona a me Nā Pono 'Ōiwi, Counsel for Environmental Law and Native Rights	Date
Reviewed By:		<u>04/05/19</u>
	Kamana'opono M. Crabbe, Ph.D. Ka Pouhana, Chief Executive Officer	Date
Reviewed By:		<u>04/05/19</u>
	Robert G. Klein Pōhaku Kihī Nui, Board Counsel	Date
Reviewed By:		<u>04/05/19</u>
	John Waihe'e IV Ke Kua, Trustee At-Large Ad Hoc Committee on Grants and Sponsorships, Vice-Chair	Date
Reviewed By:		<u>04/05/19</u>
	Colette Y. Machado Ke Kauhuhu, Board of Trustees Chair Ad Hoc Committee on Grants and Sponsorships, Chair	Date
Reviewed By:		<u>04/05/19</u>
	Dan Ahuna Luna Ho'omalua o ke Kōmike RM, RM Committee Chairperson	Date

I. ACTION ITEM

Approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee's duties and responsibilities as shown in Attachment "A" and Corresponding and Confirming Changes to the BOT Operations Manual as shown in Attachment "B."

II. ISSUE

Whether or not Section 3.5.n. of the OHA Board of Trustees Executive Policy Manual should be amended along with corresponding and conforming changes to Section X.42 of the OHA Board of Trustees Operations Manual in order to establish new criteria and procedures for a Trustee Protocol Allowance that complies with OHA's mission, OHA's policies, trustees' fiduciary duties, and applicable state law.

III. DISCUSSION

History

The OHA BOT first established a Trustee allowance on June 28, 1991. The action taken by the BOT established an allowance for each Trustee to cover incidental expenses connected to Trustee functions and duties and adopted governing guidelines. The annual allowance funding was set at \$7,200 per Trustee, allotted on a semi-annual basis. The source of funds was from OHA special funds.

The purposes of the Trustee allowance were (a) To develop and maintain an ongoing communication network with beneficiaries and the general public; and (b) To promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues. Then-BOT Counsel Sherry P. Broder provided the then OHA Administrator with a legal opinion regarding the proper structure and use of the Trustee Annual Allowance on May 29, 1991.

In 1993, a Trustee protocol allowance was added to Section 10-9, Hawai'i Revised Statutes by the Hawai'i State Legislature. The applicable language reads:

[Members of the OHA board:]

- (4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a member's duties and responsibilities.

The language to put a Trustee protocol allowance into law was not in the first draft of the authorizing legislation, which originated in the Senate as legislation related to Trustee compensation (salary). Language relating to a Trustee protocol allowance first arose during a House hearing in the House Committee on Hawaiian Affairs. However, the inclusion of this allowance language raised concerns on the floor of the House of

Representatives. Representatives spoke both against and in favor of the allowance account, and ultimately, the language passed into law.

In response to the Hawai‘i State Auditor’s (“State Auditor”) 2001 audit of OHA and concerns regarding the Trustee Allowance Program, the now-inactive Committee on Policy and Planning, chaired by Trustee John Waihe‘e IV, pursued a measure which would have made the Trustee allowance a reimbursable fund. That action did not receive the votes to pass Committee, and did not advance to the BOT for consideration.

In 2013, the BOT expanded the use of the fund with the passage of Action Item ARM #13-11, in response to Trustees’ desires to provide funds to recipients who were otherwise ineligible for OHA grants. The combined fund of allowances and sponsorship funds became the Trustee Sponsorship and Annual Allowance Fund (TSAAF), with funding set at \$22,200 per Trustee.

A moratorium was placed on the TSAAF on February 27, 2018, in response to concerns raised in State Auditor Report No. 18-03.

Ad Hoc Committee on Grants and Sponsorships discussions, findings, and recommendations

On August 1, 2017, the OHA BOT approved the formation of the Ad Hoc Committee on Grants and Sponsorships (“Ad Hoc Committee”), with Trustee Colette Y. Machado as Chair, Trustee John Waihe‘e IV as Vice Chair, and David Laeha, Lōpaka Baptiste, Misti Pali-Oriol, and Monica Morris as members, passed with six yes votes and three excused absences. The Ad Hoc Committee was created consistent with Hawai‘i Revised Statutes §92-2.5(b)(1). The review of the TSAAF fell within the purview of this Ad Hoc Committee.

The issuance of the State Auditor’s Report No. 18-03 in February 2018, raised an immediate need to review of the TSAAF and CEO-initiated sponsorships. In a proactive response to concerns raised by the State Auditor in its report, the BOT took the cautious measure of placing a moratorium on the TSAAF on February 27, 2018 via Action Item BOT #18-01. That moratorium, effective February 27, 2018, on both the TSAAF and CEO-initiated sponsorships, also called for the immediate return of the unused balance of each Trustee’s TSAAF allotment to OHA. This moratorium remains in effect. The moratorium passed with six yes votes and three no votes.

The Ad Hoc Committee convened, with the assistance of support staff, to review existing policies, review external guidelines, and to discuss a proposed revised policy. The Ad Hoc Committee reviewed the policies of other elected bodies, along with current OHA policies and guidelines, Trustee fiduciary duties, the state ethics code, and audits conducted of other governing bodies.

In its September 20, 2018 memorandum to the OHA Board of Trustees, the Ad Hoc Committee made the following recommendations:

- Rename the allowance to the Trustee Protocol Allowance (TPA) to match the statutory language contained in Hawai'i Revised Statutes § 10-9;
- Revert to the original purposes of the Trustee allowance – establishing a communication network and promoting a broader understanding and participation in the resolution of Native Hawaiian issues;
- Set the current level for the TPA at \$7,200.00 per Trustee seat, which was the funding level prior to enactment of policy amendments in Action Item ARM #13-11;
- Do not reallocate the leftover balance of the budgeted TSAAF funds totaling \$135,000 (\$15,000 per Trustee seat), which represented the remaining Trustee “sponsorship” portion of the funds, until the BOT takes a future vote on how those remaining funds are to be disbursed;
- Make the TPA a reimbursable fund;
- Specify allowable and disallowable expenses; and
- Establish an appeal process when determinations made by the Administration disallows an expenditure.

The detailed discussion and analysis in the Ad Hoc Committee's September 20, 2018 memorandum on its findings and recommendations related to the TPA, which was distributed to the BOT at its October 2, 2018 meeting, provides the basis for the proposed policy amendments in Attachment A.

Summary of the October 11, 2018 Board of Trustees Discussions on the Ad Hoc Committee's findings and recommendations related to the proposed TPA policy amendments

Following the dissemination of the Ad Hoc Committee's finding on October 2, 2018, the OHA BOT held discussions on the TPA on October 11, 2018. The Trustees offered the following specific suggestions to change or edit the draft TPA policy:

- Have the BOT Chair approve expenditures for each Trustee; and
- Increase the total TPA amount per Trustee from \$7,200 to \$12,000 annually. Another option is to increase the total TPA amount per Trustee to \$13,804 annually, the same amount as the Hawai'i Senate.

Two suggestions were made to defer the approval of the proposed TPA policy amendments until either the BOT drafts policies for the Trustee sponsorship portion that can be reviewed concurrently or until the Trustees have had more time to discuss the proposed TPA policy. Neither recommendation was adopted by formal BOT action and the matter was referred to the Resource Management Committee for further review and action.

Approving this action item as it is currently written will implement the following:

- The February 27, 2018, moratorium on Trustee allowances will be lifted and the TPA policy will be effective upon the approval of the second reading of this action item by the Board of Trustees.

- Each Trustee Protocol Allowance account begins with a fund of \$7,200, available on a reimbursable basis for eligible expenses, which are prescribed under the policy amended by this action item.
- The TPA is available per fiscal year cycle (July 1 through June 30). The TPA shall be retained by OHA. Unspent amounts in the TPA fund will lapse at the end of the fiscal year and will not carry over. Each TPA will start on July 1.
- Trustees will have access and be able to utilize TPA funds beginning July 1, 2019.
- The CEO shall be guided by the TPA policy to develop internal guidelines and procedures for the use and administration of the TPA, including reporting requirements, required documentation, and auditable record keeping.
- The budgeted TSAAF funds for FY2019, totaling \$199,800 (\$22,200 per Trustee seat), will remain under continued moratorium until the BOT decides how those remaining funds are to be reallocated in FY2019, or such TSAAF funds will lapse into fiscal reserve.
- The moratorium on the Trustee and CEO-initiated Sponsorships will remain in place.

IV. ALTERNATIVES

- A. Approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee's duties and responsibilities as shown in Attachment "A" and Corresponding and Conforming Changes to the BOT Operations Manual as shown in Attachment "B"
- B. Do not approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee's duties and responsibilities as shown in Attachment "A" and Corresponding and Conforming Changes to the BOT Operations Manual as shown in Attachment "B"
- C. Take no action

V. RECOMMENDATION

Approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee's duties and responsibilities as shown in Attachment "A" and Corresponding and Conforming Changes to BOT Operations Manual as shown in Attachment "B."

The approval of this Executive Policy Amendment effectively lifts the moratorium on Trustee allowance that was enacted by the Board of Trustees in BOT #18-01 on February 27, 2018; however, the moratorium on Trustee sponsorships and CEO-initiated sponsorships remain in place until further action is taken on these policies.

VI. TIMEFRAME

Immediate action is recommended.

The amended OHA BOT Executive Policy relating to Trustee Protocol Allowance will take effect immediately upon approval by the BOT at its second reading approved by a majority (5) vote of all the members to which the BOT is entitled, pursuant to the OHA Board of Trustees Executive Policy Manual (Revised, February 2012), Subseries 1020 Policy Formation, Subsection 1.2.a.

The TPA is available for use beginning July 1, 2019.

VII. FUNDING SOURCE

The TPA is set at \$7,200 per Trustee seat and totals \$64,800 for all nine (9) Trustees. Funding will be budgeted in the FY2020 & FY2021 Biennium Budget.

VIII. ATTACHMENT

- A. Proposed amendments to OHA Board of Trustees' Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.
- B. Conforming Changes to the OHA Board of Trustees' Operations Manual, Section X. Fiscal, Subsection 42. Trustee Sponsorship and Annual Allowance Procedures
- C. The Ad Hoc Committee on Grants and Sponsorship's memorandum to the OHA Board of Trustees dated September 20, 2018 regarding its findings and recommendations to the Trustee Sponsorship and Annual Allowance Fund

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees' Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

The current OHA BOT executive policy relating to Trustee Sponsorship and Annual Allowance Fund (TSAAF) is found in Action Item ARM #13-11 dated November 20, 2013, Attachment A (note: approved changes are not incorporated yet into the manual).

Changes and edits to the OHA BOT Executive Policy are displayed as follows:

- New text that is added or inserted is displayed in underline or underscore; and
- Text that is deleted is displayed in ~~strike through~~.

DELETE (Current approved policy)

~~Trustee Sponsorship and Annual Allowance Fund (TSAAF)~~

~~3.5.n.—Increasingly complex and diverse OHA projects such as investments, land development and management, and partnership agreements require enhanced capacity to immediately communicate and maintain communications with beneficiaries through electronic media and traditional communications methods.~~

~~1.—Each Trustee is allowed such amounts of the TSAAF as provided by the Board of Trustees to be used for incidental expenses connected with Trustee duties to include:~~

~~a.—developing and maintaining an ongoing communication network with beneficiaries and the general public such expenditures may include:~~

~~(1) Copying and postage costs incurred in communicating with constituents.~~

~~(2) Renting of facilities to meet with beneficiaries if OHA facilities are not available within reasonable vicinity of the activity or event location.~~

~~(3) Facsimile, telecommunications, and other means of communications with constituents.~~

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

~~b. promoting a broader understanding of Hawaiian issues within the Hawaiian community and among the general public and to encourage participation in the resolution of those issues;~~

~~c. covering the costs connected with social and charitable functions a Trustee is expected to support and may included sponsoring or assisting a faith based organization's halau, youth group, extracurricula after school activities and sports activities provided those activities do not involve religious practices or activities.~~

~~d. covering official travel, registration fees, and associated costs to attend conferences, seminars or meetings;~~

~~e. to provide support for beneficiaries in their personal quest for self improvement, capacity building, and for education;~~

~~f. providing funding to purchase school and educational supplies and materials, audio visual presentation equipment, capacity building aids for schools and organizations which may include:~~

~~(1) Repairing, replacing, and purchasing of computer hardware including peripherals such as printers, scanners, modems, routers, and external hard drives for beneficiary organizations~~

~~(2) upgrade or purchase software for beneficiary organization use.~~

~~g. providing compassionate assistance to beneficiaries and their families for emergencies, natural disasters, and in their times of need. Examples of compassionate assistance may include but may not be limited to financial assistance for funeral or burial services, eye glasses and vision aids, hearing aids, dentures, personal care items, and wheel chairs, unmet needs of the elderly and persons with disabilities.~~

~~2. Expenditures from the TSAAF may be disallowed for any of the following reasons: because they are contrary to OHA's mission to better the conditions of Hawaiians or because it contravenes this OHA policy or the law. The following~~

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

~~expenditures are specifically disallowed by this policy:~~

~~a. any services provided and goods received for the personal benefit of the Trustee and/or immediate family members.~~

~~b. Trustee's computer hardware and software.~~

~~c. Trustee's general office equipment and furniture.~~

~~d. grants and donations to religious and faith based organizations for religious activities.~~

~~3. The annual TSAAF for each Trustee shall be \$7,200.00 plus any additional amount approved in its Total Operating Budget for this express purpose. Unspent amounts in the Fund shall be returned to the OHA treasury via the OHA CEO. Each Trustee's account will be replenished each year to a minimum of \$7,200.00.~~

~~4. Each Trustee will submit to the OHA CEO quarterly reports of expenditures made from the TSAAF. As much documentation that can be provided for each expenditure should be attached to the quarterly reports. Documentation may include initial requests for assistance from a beneficiary or grantee, brochures or flyers or pictures depicting the events sponsored, and expressions of thanks and gratitude for the Trustee's grant or sponsorship.~~

~~5. It is not intended that the Trustee Sponsorship and Allowance Fund supersede, replace, diminish, or reduce the statutory compensation allowed to Trustees as provided for in Chapter 10, Hawai'i Revised Statutes, as amended. It is also not intended to be used for personal gain by a Trustee, which could result in converting the personal use portion of the fund as additional taxable income that will be reported to the Internal Revenue Service.~~

~~6. The CEO shall be guided by this policy to develop internal guidelines and procedures for the use and administration of the fund including reporting requirements and auditable record keeping.~~

~~7. The Fund created by this policy will be called the OHA Board of Trustees'~~

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

~~Sponsorship and Annual Allowance Fund and the report of expenditures will be called the
Trustee Quarterly Sponsorship and Annual Allowance Expenditure Report.~~

ADD/INSERT (Trustee Allowance Protocol Policy Amendments)

Trustee Protocol Allowance (TPA)

3.5.n. Each Trustee is allowed a Trustee Protocol Allowance (TPA) to be used to cover expenses that are reasonably related to a Trustee's official duties and responsibilities (i.e., the normal and ordinary types of expenditures that a Trustee is reasonably expected to incur in performing his or her representational and fiduciary duties), that are consistent with OHA's mission to better the conditions of Native Hawaiians, and that comply with applicable laws and OHA policies. Use of the TPA for personal purposes or purposes that are not reasonably related to a Trustee's official duties and responsibilities is prohibited, and such personal use may violate the Fair Treatment law under the state Ethics Code, Section 84-13, Hawai'i Revised Statutes (HRS) and may result in the personal use portion of the allowance being converted to additional taxable income that must be reported to the Internal Revenue Service.

The purpose of the TPA is to develop and maintain an ongoing communication network with beneficiaries and the general public, to promote a broader understanding of Native Hawaiian issues within the Native Hawaiian community and among the general public, and to encourage participation in the resolution of those issues; provided that such communications comply with applicable laws and OHA policies, such as the Board of Trustees' Code of Conduct and restrictions related to campaign activities.

1. Each Trustee is allowed an annual allowance, referred to as the "Trustee Protocol Allowance" or "TPA" and as provided by HRS 10-9(4), in an amount determined by the Board of Trustees, to be used to cover expenses incurred in the course of a Trustee's official duties and responsibilities. Allowable uses of TPA funds are:
 - a. Communication expenses dedicated solely to OHA business:

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

- (1) Service plans for home office internet, home office phone and fax, and cellular phone, and
 - (2) Web-based communication services;
- b. Copying and postage costs;
- c. Office supplies;
- d. Books and reference materials;
- e. Renting of meeting facilities, if OHA facilities are not available within a reasonable vicinity of the activity or event location, and related expenses, such as security services, cleaning or maintenance charges, and rental of equipment. Meetings must be organized and attended by a Trustee or Trustee's staff to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees;
- f. Reasonable expenses for food and beverages, provided that if the food or beverage expenses have been reimbursed by another source, such as per diem, then reimbursement for that portion from the TPA is prohibited:
 - (1) Purchased for a meeting or function, which includes one or more person(s) who are not a Trustee or an employee of OHA, the purpose of which is to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees; or
 - (2) Purchased for Trustees and staff who are required to be present at a Board or Committee meeting that extends through the lunch or evening hours. Expenses for food and beverages consumed by a Trustee or staff as part of their daily work during the scope of their normal work day shall not be reimbursed;
- g. Reasonable expenses for lei and gifts, which are customarily exchanged with fellow officials, honorees, special guests, and dignitaries at an event; and

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

- h. Reasonable expenses related to a Trustee's official travel, registration fees, and associated costs to attend conferences, seminars, or meetings, which shall comply with existing OHA travel guidelines and approvals; provided that if the travel cost or associated expenses have been reimbursed by another source (example: per diem), then reimbursement for that portion from the TPA is prohibited.
- 2. Certain expenditures may be found to be inappropriate uses of the TPA because: the expenditure appears to be more personal in nature or otherwise does not appear to be reasonably related to a Trustee's official duties and responsibilities; the expenditure is contrary to OHA's mission to better the conditions of Native Hawaiians; or the expenditure contravenes OHA policies or the law. The following expenditures are specifically disallowed by this policy:
 - a. Food or beverages for Trustees and staff only, except when reasonably related to a Trustee's or staff member's official duties, e.g., purchase of meals for Trustees and staff who are required to be present at a Board or Committee meeting that extends through the lunch or evening hours. Food or beverages purchased to thank or appreciate staff or for social occasions or events, such as birthday celebrations, farewell parties, or retirement parties, are personal expenses and are not reasonably related to a Trustee's official duties;
 - b. Alcoholic beverages;
 - c. Political or charitable contributions;
 - d. Expenses related to campaign activities;
 - e. Expenses which are personal in nature, such as dry cleaning expenses, transportation costs to and from work (including mileage), legal fees and costs, monthly parking costs for employee or Trustee parking, and airline club membership and lounge access;
 - f. Gifts: purchase of retirement gifts; thank you or appreciation gifts; bereavement, funeral, or sympathy gifts or flowers; welcome gifts; farewell gifts; anniversary gifts; birthday gifts; congratulation gifts; and any other gifts

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees' Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

The current OHA BOT executive policy relating to Trustee Sponsorship and Annual Allowance Fund (TSAAF) is found in Action Item ARM #13-11 dated November 20, 2013, Attachment A (note: approved changes are not incorporated yet into the manual).

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DELETE (Current approved policy)

~~Trustee Sponsorship and Annual Allowance Fund (TSAAF)~~

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~~(1)—Copying and postage costs incurred in communicating with constituents.~~

~~(2)—Renting of facilities to meet with beneficiaries if OHA facilities are not available within reasonable vicinity of the activity or event location.~~

~~(3)—Facsimile, telecommunications, and other means of communications with constituents.~~

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

~~b. promoting a broader understanding of Hawaiian issues within the Hawaiian community and among the general public and to encourage participation in the resolution of those issues;~~

~~c. covering the costs connected with social and charitable functions a Trustee is expected to support and may included sponsoring or assisting a faith based organization's halau, youth group, extracurricula after school activities and sports activities provided those activities do not involve religious practices or activities.~~

~~d. covering official travel, registration fees, and associated costs to attend conferences, seminars or meetings;~~

~~e. to provide support for beneficiaries in their personal quest for self improvement, capacity building, and for education;~~

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~~(1) Repairing, replacing, and purchasing of computer hardware including peripherals such as printers, scanners, modems, routers, and external hard drives for beneficiary organizations~~

~~(2) upgrade or purchase software for beneficiary organization use.~~

~~g. providing compassionate assistance to beneficiaries and their families for emergencies, natural disasters, and in their times of need. Examples of compassionate assistance may include but may not be limited to financial assistance for funeral or burial services, eye glasses and vision aids, hearing aids, dentures, personal care items, and wheel chairs, unmet needs of the elderly and persons with disabilities.~~

~~2. Expenditures from the TSAAF may be disallowed for any of the following reasons: because they are contrary to OHA's mission to better the conditions of Hawaiians or because it contravenes this OHA policy or the law. The following~~

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

~~expenditures are specifically disallowed by this policy:~~

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~~b. Trustee's computer hardware and software.~~

~~c. Trustee's general office equipment and furniture.~~

~~d. grants and donations to religious and faith based organizations for religious activities.~~

~~3. The annual TSAAF for each Trustee shall be \$7,200.00 plus any additional amount approved in its Total Operating Budget for this express purpose. Unspent amounts in the Fund shall be returned to the OHA treasury via the OHA CEO. Each Trustee's account will be replenished each year to a minimum of \$7,200.00.~~

~~4. Each Trustee will submit to the OHA CEO quarterly reports of expenditures made from the TSAAF. As much documentation that can be provided for each expenditure should be attached to the quarterly reports. Documentation may include initial requests for assistance from a beneficiary or grantee, brochures or flyers or pictures depicting the events sponsored, and expressions of thanks and gratitude for the Trustee's grant or sponsorship.~~

~~5. It is not intended that the Trustee Sponsorship and Allowance Fund supersede, replace, diminish, or reduce the statutory compensation allowed to Trustees as provided for in Chapter 10, Hawai'i Revised Statutes, as amended. It is also not intended to be used for personal gain by a Trustee, which could result in converting the personal use portion of the fund as additional taxable income that will be reported to the Internal Revenue Service.~~

~~6. The CEO shall be guided by this policy to develop internal guidelines and procedures for the use and administration of the fund including reporting requirements and auditable record keeping.~~

~~7. The Fund created by this policy will be called the OHA Board of Trustees'~~

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

~~Sponsorship and Annual Allowance Fund and the report of expenditures will be called the
Trustee Quarterly Sponsorship and Annual Allowance Expenditure Report.~~

ADD/INSERT (Trustee Allowance Protocol Policy Amendments)

Trustee Protocol Allowance (TPA)

3.5.n. Each Trustee is allowed a Trustee Protocol Allowance (TPA) to be used to cover expenses that are reasonably related to a Trustee's official duties and responsibilities (i.e., the normal and ordinary types of expenditures that a Trustee is reasonably expected to incur in performing his or her representational and fiduciary duties), that are consistent with OHA's mission to better the conditions of Native Hawaiians, and that comply with applicable laws and OHA policies. Use of the TPA for personal purposes or purposes that are not reasonably related to a Trustee's official duties and responsibilities is prohibited, and such personal use may violate the Fair Treatment law under the state Ethics Code, Section 84-13, Hawai'i Revised Statutes (HRS) and may result in the personal use portion of the allowance being converted to additional taxable income that must be reported to the Internal Revenue Service.

The purpose of the TPA is to develop and maintain an ongoing communication network with beneficiaries and the general public, to promote a broader understanding of Native Hawaiian issues within the Native Hawaiian community and among the general public, and to encourage participation in the resolution of those issues; provided that such communications comply with applicable laws and OHA policies, such as the Board of Trustees' Code of Conduct and restrictions related to campaign activities.

1. Each Trustee is allowed an annual allowance, referred to as the "Trustee Protocol Allowance" or "TPA" and as provided by HRS 10-9(4), in an amount determined by the Board of Trustees, to be used to cover expenses incurred in the course of a Trustee's official duties and responsibilities. Allowable uses of TPA funds are:
 - a. Communication expenses dedicated solely to OHA business:

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

- (1) Service plans for home office internet, home office phone and fax, and cellular phone, and
 - (2) Web-based communication services;
- b. Copying and postage costs;
- c. Office supplies;
- d. Books and reference materials;
- e. Renting of meeting facilities, if OHA facilities are not available within a reasonable vicinity of the activity or event location, and related expenses, such as security services, cleaning or maintenance charges, and rental of equipment. Meetings must be organized and attended by a Trustee or Trustee's staff to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees;
- f. Reasonable expenses for food and beverages, provided that if the food or beverage expenses have been reimbursed by another source, such as per diem, then reimbursement for that portion from the TPA is prohibited:
 - (1) Purchased for a meeting or function, which includes one or more person(s) who are not a Trustee or an employee of OHA, the purpose of which is to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees; or
 - (2) Purchased for Trustees and staff who are required to be present at a Board or Committee meeting that extends through the lunch or evening hours. Expenses for food and beverages consumed by a Trustee or staff as part of their daily work during the scope of their normal work day shall not be reimbursed;
- g. Reasonable expenses for lei and gifts, which are customarily exchanged with fellow officials, honorees, special guests, and dignitaries at an event; and

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

- h. Reasonable expenses related to a Trustee's official travel, registration fees, and associated costs to attend conferences, seminars, or meetings, which shall comply with existing OHA travel guidelines and approvals; provided that if the travel cost or associated expenses have been reimbursed by another source (example: per diem), then reimbursement for that portion from the TPA is prohibited.
- 2. Certain expenditures may be found to be inappropriate uses of the TPA because: the expenditure appears to be more personal in nature or otherwise does not appear to be reasonably related to a Trustee's official duties and responsibilities; the expenditure is contrary to OHA's mission to better the conditions of Native Hawaiians; or the expenditure contravenes OHA policies or the law. The following expenditures are specifically disallowed by this policy:
 - a. Food or beverages for Trustees and staff only, except when reasonably related to a Trustee's or staff member's official duties, e.g., purchase of meals for Trustees and staff who are required to be present at a Board or Committee meeting that extends through the lunch or evening hours. Food or beverages purchased to thank or appreciate staff or for social occasions or events, such as birthday celebrations, farewell parties, or retirement parties, are personal expenses and are not reasonably related to a Trustee's official duties;
 - b. Alcoholic beverages;
 - c. Political or charitable contributions;
 - d. Expenses related to campaign activities;
 - e. Expenses which are personal in nature, such as dry cleaning expenses, transportation costs to and from work (including mileage), legal fees and costs, monthly parking costs for employee or Trustee parking, and airline club membership and lounge access;
 - f. Gifts: purchase of retirement gifts; thank you or appreciation gifts; bereavement, funeral, or sympathy gifts or flowers; welcome gifts; farewell gifts; anniversary gifts; birthday gifts; congratulation gifts; and any other gifts

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

for Trustees, staff, and others, except for gifts purchased in compliance with subsection 1.g., above;

- g. Tickets for recreational or entertainment events and fundraisers;
 - h. Membership fees and dues for business, community or social organizations;
 - i. Financial support, grants, loans, or sponsorships, whether direct or indirect, to individuals, groups, or organizations;
 - j. Any expenses reimbursed from another source that would otherwise duplicate payment or reimbursement;
 - k. Any services provided and goods received for the personal benefit of the Trustee or his or her immediate family members, other Trustees or their immediate family members, and OHA employees;
 - l. Computer hardware and software;
 - m. General office and communication equipment; and
 - n. General office furniture.
3. The annual TPA for each Trustee shall be \$7,200.00, or other amount approved by the Board, per fiscal year cycle (July 1 through June 30). The TPA shall be retained by OHA. Unspent amounts in the TPA fund will lapse at the end of the fiscal year and will not carry over. Each TPA will start on July 1.
4. To utilize the TPA retained by OHA, Trustees must submit a request for reimbursement or a request for an advance; provided that such an advance will be payable directly to a merchant or vendor only. Trustees must show that the primary purpose of the expenditure is in support of or a result of an official Trustee duty consistent with the allowable expenses listed above. The Trustee shall be required to fill out a certification form in which the Trustee certifies that the claimed reimbursement or advance is true and correct and that it complies with applicable laws and OHA policies.

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

5. In processing a request for reimbursement or advance, OHA Administration may request additional information necessary to determine compliance of a claimed expenditure with applicable laws and OHA policies. The approval by OHA Administration of a request for reimbursement or advance shall not be construed to mean that an expenditure complies with the state ethics code; the final authority on the ethics code is the Hawai'i State Ethics Commission. It is the responsibility of the individual Trustee to ensure compliance with the state ethics code and Trustees are encouraged to consult with the state Ethics Commission on questions related to compliance with the state ethics code.
6. Items purchased with TPA funds are the property of OHA. Non-perishable and non-consumable items purchased with the TPA, except for gifts purchased in compliance with subsection 1.g., above, shall be surrendered to the OHA Administration upon the Trustee's separation from OHA.
7. A TPA expense must be deducted from the same fiscal year's allocation in which the expense was incurred. A prior year's expense cannot be paid from the current or a future fiscal year's TPA allocation. Each Trustee is responsible for paying any TPA expenses incurred that are in excess of a given fiscal year's TPA allocated amount.
8. The use of the TPA to purchase goods or services in the amount of \$2,500 or more shall be from businesses that provide proof of compliance with state and federal taxes and the Department of Labor and Industrial Relations (DLIR), and are also in good standing with the Department of Commerce and Consumer Affairs (DCCA). Further, the purchase of goods or services in the amount of \$5,000 or more shall be in accordance with all applicable laws and administrative rules governing procurement.
9. In cases where an expenditure is determined to be impermissible by OHA Administration, the Trustee or the CEO may consult with the Hawai'i State Ethics Commission, as necessary. The Trustee may appeal the determination made by OHA Administration, in writing, to the Chairperson of the BOT. The Chairperson shall render a written decision on the appeal within seven (7) business days, which shall be final.

ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

10. This policy is subject to the Board of Trustees' Code of Conduct and sanctions contained therein.
11. OHA Administration shall compile and transmit to the OHA BOT a quarterly report of expenditures made by each Trustee from his or her TPA. The quarterly report of expenditures shall also be posted to OHA's public website in a timely manner thereafter.
12. It is not intended that the TPA supersede, replace, diminish, or reduce the statutory compensation allowed to Trustees as provided for in Chapter 10, Hawai'i Revised Statutes, as amended.
13. The CEO shall be guided by this policy to develop internal guidelines and procedures for the use and administration of the TPA, including reporting requirements, required documentation, and auditable record keeping.
14. The Fund created by this policy will be called the OHA Board of Trustees' Protocol Allowance Fund and the quarterly report of expenditures will be called the Trustee Quarterly Protocol Allowance Expenditure Report.

ATTACHMENT B

Corresponding and Confirming Changes to the BOT Operations Manual, Section X. Fiscal, Subsection 42. Trustee Sponsorships and Annual Allowance Procedures

The current Trustee Sponsorship and Annual Allowance Procedures adopted to the OHA BOT Operations Manual is found in Action Item ARM #13-11 dated November 20, 2013, Attachment B (note: approved changes are not incorporated yet into the manual).

Changes and edits to the OHA BOT Executive Policy are displayed as follows:

- New text that is added or inserted is displayed in underline or underscore; and
- Text that is deleted is displayed in ~~strike through~~.

DELETE

(Current approved procedures)

~~42. Trustee sponsorship and annual allowance procedures~~

~~42.a.—Each Trustee is allowed an annual amount as provided by the Board to be used for developing and maintaining an ongoing communication network with beneficiaries (and the general public), to promote a broader understanding of Hawaiian issues within the Hawaiian community and among the general public, and to encourage participation in the resolution of those issues.~~

~~42.b.—Any part of the allowance that is used for personal gain by a Trustee or Trustee's immediate family may be subject to IRS rules and State of Hawaii taxation.~~

~~42.c. Procedures~~

~~42.c.1. On the first working day of the fiscal year (OHA's fiscal year is July 1 through June 30) the CEO shall arrange to have deposited in each Trustee's checking account the amount of the BOT approved allowance for that year, provided that the Trustee Quarterly Sponsorship and Annual Allowance Expenditure Report (TQSAAER) received from the Trustees are up to date for all previous quarters and any unexpended funds are returned with the TQSAAER for the quarter ending June 30.~~

~~42.c.2. Trustees prepare and submit TQSAAER to the OHA Chief Financial Officer within fifteen (15) calendar days of the end of a quarter.~~

ATTACHMENT B

Corresponding and Confirming Changes to the BOT Operations Manual, Section X. Fiscal, Subsection 42. Trustee Sponsorships and Annual Allowance Procedures

~~42.c.3. The OHA CEO or his/her designee reviews each TQSAER for compliance with OHA Executive Policy Manual and Chapter 10, HRS. Trustees are notified of any expenditure(s) that does/do not comply with the OHA Board of Trustees Executive Policy Manual and Hawaii Revised Statutes Chapter 10 and must reimburse OHA and must amend the quarterly expenditure report. Reports in compliance are forwarded to the OHA Comptroller for filing. All TQSAER are maintained by OHA for six (6) years after audit.~~

~~42.c.4. Trustees must return any unexpended funds with the TQSAER for the quarter ending June 30 of each year. Non-compliance will be reported to the BOT Chair and other appropriate authorities.~~

ADD/INSERT

(Trustee Protocol Allowance Procedures Amendments)

42. Trustee Protocol Allowance Procedures

42.a. Each Trustee is allowed a Trustee Protocol Allowance (TPA) to be used to cover expenses that are reasonably related to a Trustee's official duties and responsibilities (i.e., the normal and ordinary types of expenditures that a Trustee is reasonably expected to incur in performing his or her representational and fiduciary duties), that are consistent with OHA's mission to better the conditions of Native Hawaiians, and that comply with applicable laws and OHA policies. Use of the TPA for personal purposes or purposes that are not reasonably related to a Trustee's official duties and responsibilities is prohibited, and such personal use may also violate the Fair Treatment law under the state Ethics Code, Section 84-13, Hawai'i Revised Statutes (HRS) and may result in the personal use portion of the allowance being converted to additional taxable income that must be reported to the Internal Revenue Service.

42.b. The purpose of the TPA is to develop and maintain an ongoing communication network with beneficiaries and the general public, to promote a broader understanding of Native Hawaiian issues within the Native Hawaiian community and among the general public, and to encourage

ATTACHMENT B

Corresponding and Confirming Changes to the BOT Operations Manual, Section X. Fiscal, Subsection 42. Trustee Sponsorships and Annual Allowance Procedures

participation in the resolution of those issues; provided that such communications comply with applicable laws and OHA policies, such as the Board of Trustees' Code of Conduct and restrictions related to campaign activities.

- 42.c. The annual TPA for each Trustee shall be \$7,200.00, or other amount approved by the Board, per fiscal year cycle (July 1 through June 30). The TPA shall be retained by OHA. Unspent amounts in the TPA fund will lapse at the end of the fiscal year and will not carry over. Each TPA will start on July 1.
- 42.d. To utilize TPA funds, Trustees must submit a request for reimbursement or a request for an advance; provided that such an advance will be payable directly to a merchant or vendor only.
- 42.e. The CEO shall be guided by Trustee Protocol Allowance policy to develop internal guidelines and procedures for the use and administration of the TPA, including reporting requirements, required documentation, and auditable record keeping.



OFFICE OF
HAWAIIAN AFFAIRS
STATE OF HAWAII
RECEIVED-BOT

2018 SEP 21 P 5:46

OFFICE OF HAWAIIAN AFFAIRS
Interoffice Memorandum

DATE: September 20, 2018

TO: OHA Board of Trustees

FROM: Trustee Colette Y. Machado
Chair, Ad Hoc Committee on Grants and Sponsorships

SUBJECT: Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund

Background

Since 1991, the Office of Hawaiian Affairs ("OHA") has made individual annual allowance funds available to each Trustee on the Board of Trustees ("BOT"). In 1993, these funds were codified through the passage of legislation at the Hawai'i State Legislature, with language allowing for Trustee use of a protocol allowance being placed into Section 10-9, Hawai'i Revised Statutes. This purpose of this fund was expanded by BOT action in 2013 to include a sponsorship allowance, creating the Trustee Sponsorship and Annual Allowance Fund ("TSAAF").

On August 1, 2017, the OHA BOT approved the formation of the Ad Hoc Committee on Grants and Sponsorships ("Ad Hoc Committee"), with Trustee Colette Y. Machado as Chair, Trustee John Waihe'e IV as Vice Chair, and David Laeha, Lōpaka Baptiste, Misti Pali-Oriol, and Monica Morris as members, passed with six yes votes and three excused absences. The Ad Hoc Committee was created consistent with Hawai'i Revised Statutes §92-2.5(b)(1). The TSAAF is under the purview of this Ad Hoc Committee.

The issuance of the State Auditor's Report No. 18-03 in February 2018, raised an immediate need to review of the TSAAF and CEO-initiated sponsorships. In a proactive response to concerns raised by the Hawai'i State Auditor ("State Auditor") in his report, the BOT took the cautious measure of placing a moratorium on the TSAAF on February 27, 2018. That moratorium, effective February 27, 2018, on both the TSAAF and CEO-initiated sponsorships, also called for the immediate return of the unused balance of each Trustee's TSAAF allotment to OHA. This moratorium remains in effect. The moratorium passed with six yes votes and three no votes.

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OHA Board of Trustees
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The Ad Hoc Committee convened, with the assistance of support staff, to review existing policies, review external guidelines, and to discuss a proposed revised policy. This report serves as the Ad Hoc Committee's findings and recommendations for the Trustee allowance.

Dates of Convened Meetings

Thursday, January 25, 2018
Thursday, February 15, 2018
Thursday, March 1, 2018
Thursday, March 15, 2018
Thursday, April 5, 2018
Tuesday, April 10, 2018

Friday, April 27, 2018
Friday, May 25, 2018
Wednesday, July 18, 2018
Tuesday, August 14, 2018
Tuesday, August 28, 2018
Thursday, September 14, 2018

Support Staff and Research Materials

In addition to the Ad Hoc Committee members, several members from the Administration staff were present at meetings to provide support in subject matter expertise and in program operations knowledge. These staff members were Everett Ohta from Corporation Counsel, Controller Gloria Li, and Public Relations Officer Sterling Wong. BOT staff Melissa Wennihan, Crayn Kauahi Akina, Carol Ho'omanawanui, Laurene Kaluau-Kealoha, and Dayna Pa provided logistical and technical support.

The Ad Hoc Committee studied, examined, and consulted with a variety of existing materials and publications. These included existing internal OHA policies, as well as those related to allowance expenditures for elected officials of other legislative bodies. These materials are:

- Section 10-9, Hawai'i Revised Statutes
https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/HRS0010/HRS_0010-0009.htm
- Action Item ARM #13-11, "Approval of BOT Executive Policy Amendment relating to Trustee Sponsorship and Annual Allowance Fund as shown in Attachment "A" and Corresponding and Conforming Changes to BOT Executive Policies as shown in Attachment "B"
- Action Item PP-09.01, Committee on Policy & Planning (March 30, 2001) (not adopted).
- OHA Trustee Sponsorship and Annual Allowance Fund, Internal Guidelines and Procedures, May 2016
- Report No. 18-03, Audit of the Office of Hawaiian Affairs, A Report to the Governor and the Legislature of the State of Hawai'i, February 2018
<http://files.hawaii.gov/auditor/Reports/2018/18-03.pdf>
- Hawai'i State Ethics Commission, Application of the State Ethics Code to Use of Legislative Allowance Fund, June 5, 2014
<https://ethics.hawaii.gov/wp-content/uploads/2014/06/LegislativeAllowanceFunds.pdf>

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- Guidelines on the Use of Legislators' Annual Allowance, posted July 24, 2014
<http://ethics.hawaii.gov/wp-content/uploads/2014/07/LegAllowance.pdf>
- 2015-2016 Administrative and Financial Manual of the Senate, State of Hawai'i, Adopted January 21, 2015
<https://www.capitol.hawaii.gov/docs/AdminManual.pdf>
- Report No. 12-07, Audit of the Policies and Procedures Relating to the Honolulu City Council's Annual Contingency Allowance, Office of the City Auditor, City and County of Honolulu
https://www.honolulu.gov/rep/site/oca/oca_docs/council_annual_contingency_allowance_final_report.pdf

Historical Information

The OHA BOT first established a Trustee allowance on June 28, 1991. The action taken by the BOT established an allowance for each Trustee to cover incidental expenses connected to Trustee functions and duties and adopted governing guidelines. The annual allowance funding was set at \$7,200 per Trustee, allotted on a semi-annual basis. The source of funds was from OHA special funds.

The purposes of the Trustee allowance were (a) To develop and maintain an ongoing communication network with beneficiaries and the general public; and (b) To promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues. Then-BOT Counsel Sherry P. Broder provided the then OHA Administrator with a legal opinion regarding the proper structure and use of the Trustee Annual Allowance on May 29, 1991.

In 1993, a Trustee protocol allowance was added to Section 10-9, Hawai'i Revised Statutes by the Hawai'i State Legislature. The applicable language reads:

[Members of the OHA board:]

(4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a member's duties and responsibilities.

The language to put a Trustee protocol allowance into law was not in the first draft of the authorizing legislation, which originated in the Senate as legislation related to Trustee compensation (salary). Language relating to a Trustee protocol allowance first arose during a House hearing in the House Committee on Hawaiian Affairs. However, the inclusion of this allowance language raised concerns on the floor of the House of Representatives. Representatives spoke both against and in favor of the allowance account, and ultimately, the language passed into law.

In response to the Hawai'i State Auditor's 2001 audit of OHA and concerns regarding the Trustee Allowance Program, the now-inactive Committee on Policy and Planning, chaired by Trustee John Waihe'e IV, pursued a measure which would have made the Trustee allowance a

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reimbursable fund. That action did not receive the votes to pass Committee, and did not advance to the BOT for consideration.

In 2013, the BOT expanded the use of the fund with the passage of ARM #13-11, in response to Trustees' desires to provide funds to recipients who were otherwise ineligible for OHA grants. The combined fund of allowances and sponsorship funds is the present-day TSAAF of \$22,200 per Trustee seat.

As previously stated earlier in this report, a moratorium was placed on the TSAAF on February 27, 2018, in response to concerns raised in State Auditor Report No. 18-03.

State Auditor Reviews of OHA Trustee Allowances

In its 2001 audit of OHA, the Hawai'i State Auditor raised concerns regarding OHA's Trustee Allowance Program. The State Auditor found that certain Trustees co-mingled the annual allowance with personal funds; made interest-free personal loans for themselves and family members; spent allowances on questionable expenses; and did not always return unspent annual allowances. The State Auditor noted that "[t]hese trustees appear to have failed to uphold their responsibility of loyalty, and may have instead spent funds of personal needs and interests."

The State Auditor indicated that advancing allowances created issues, and therefore recommended that Trustee allowances be disbursed on a reimbursable basis.

In its 2005 audit of OHA, the State Auditor found that the same issues identified in the 2001 audit continued. The auditor again recommended disbursing Trustee allowances on a reimbursable basis.

In its February 2018 audit of OHA, the State Auditor found that the rules governing Trustee allowances are "broad and arbitrarily enforced, resulting in many instances of questionable spending." The State Auditor further noted that policies and procedures for the program are "incomplete" and "inconsistent, contradictory, and include undefined terminology, which is subject to varying interpretations by trustees and the Administration." The State Auditor also found that the Administration allowed noncompliant spending.

In both the 2005 and 2018 reports, the State Auditor stated that while trustee allowance expenditures are small and just a fraction of OHA's overall spending, they are reflective of broader issues of how OHA manages trust funds.

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In 2018, the State Auditor offered the following recommendations for the Trustee allowance program:

OHA Board of Trustees

1. In general: *(page 44)*

- d. Provide greater transparency into OHA's administration of trust assets, including OHA's fiscal year budgets and actual expenditures, specific information regarding the Grants, Sponsorships, and other funding awarded by OHA, OHA's investment portfolio holdings and returns, and expenditures by trustees using Trustee Allowances. Consider posting such information on OHA's website or some other similarly accessible public portal.

5. With respect to Trustee Allowances: *(pages 46-47)*

- a. Amend the Trustee Allowances policy to restrict the use of Trustee Allowances to expenses incurred by trustees relating to their communication with beneficiaries and the public, as was the original purpose of the Trustee Allowances, and reduce the Trustee Allowances to an amount determined by the board to be reasonably necessary for that purpose.
- b. Prohibit the use of Trustee Allowances to provide financial support, direct or otherwise, to individuals, groups, or organizations. Require requests for financial support by individuals, groups, or organizations to be approved by the board and funded through a program other than Trustee Allowances.
- c. Work with the Administration to more clearly define procedures related to the use and administration of Trustee Allowances.
- d. Require trustees to seek reimbursement of expenses; do not disburse the total amount of Trustee Allowances to trustees at the beginning of the fiscal year or otherwise advance any funds to trustees.
- e. Review and amend, as needed, the sanctions established in the Code of Conduct for violations of Trustee Allowance policies and procedures and establish a process to ensure enforcement of sanctions to appropriately address such violations.
- f. Ensure that the purpose and use of Trustee Allowances aligns and is consistent with:
(a) OHA's mission; (b) OHA's policies and procedures; (c) trustees' fiduciary duties; and (d) State laws.

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OHA Administration

5. **With respect to Trustee Allowances:** (page 48)
- a. Monitor and review trustees' use of Trustee Allowances and ensure expenditures using Trustee Allowances comply with the Trustee Allowances policy.
 - b. Establish procedures to more clearly define the Administration's role and procedures for administering and monitoring the use of Trustee Allowances.
 - c. Report to the board the specific expenditures approved and reimbursed to each trustee using Trustee Allowances.
 - d. Create a formal appeal process for trustees to request a second determination of whether they are entitled to reimbursement of expenses using Trustee Allowances, for instance, through staff whose regular duties do not involve review and approval of Trustee Allowances.

Discussion and Findings

The work of this Ad Hoc Committee to review the TSAAF was considerable. The Ad Hoc Committee acknowledged the importance of considering all the recommendations of the 2018 State Auditor's report, while taking consideration of Trustee expectations, as well as OHA's unique role and how it differs from other elected legislative bodies. In order to have a strong base of comparisons, the Ad Hoc Committee reviewed the policies of other elected bodies, along with current OHA guidelines, Trustee fiduciary duties, the state ethics code, and audits conducted of other governing bodies.

In order to expedite meetings, the Ad Hoc Committee adopted a process in which they agreed to policy concepts, but a smaller team would draft the precise language to match those objectives. The drafted language was brought back to the full Ad Hoc Committee for review and consent. This agreement, and agreement to specific policies in the Ad Hoc Committee's draft policy recommendation, were all unanimous decisions of the Ad Hoc Committee.

The Ad Hoc Committee agreed that the name of the allowance should be the Trustee Protocol Allowance (TPA) to match the purpose of the statutory language contained in Section 10-9 of Hawai'i Revised Statutes. The Ad Hoc Committee agreed that it would recommend reverting to the original purposes of the Trustee allowance – establishing a communication network and promoting a broader understanding and participation in the resolution of Native Hawaiian issues, as recommended by the State Auditor.

The Ad Hoc Committee also decided to recommend that the current level for the TPA be set at \$7,200.00 per Trustee seat, which was the funding level prior to enactment of ARM #13-11.

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Importantly, the Ad Hoc recommends that the leftover balance of the budgeted TSAAF funds, which represented the remaining Trustee “sponsorship” portion of the funds, not be reallocated until the BOT takes a future vote on how those remaining funds are to be disbursed. Those funds total \$135,000 (\$15,000 per Trustee seat). Until action is taken, the remaining “sponsorship” funds should remain under continued moratorium

The Ad Hoc agreed that the Trustee Protocol Allowance should be a reimbursable fund, which also satisfies longstanding recommendations of the State Auditor and aligns with the administration of similar allowance funds. The audits of the State Legislature’s Legislative Allowance, and the Honolulu City Council’s Annual Contingency Allowance provided much direction in suggestable models and summaries of other allowance accounts from other jurisdictions. Across the board, these allowance accounts were not up-front disbursements, but instead reimbursements for allowable expenditures.

Specific allowable and disallowable expenses were drawn from existing internal OHA guidelines as well as from the Legislative Allowance of the Hawai‘i State Senate. Conversations with Administration staff also provided areas in which clarity and additional direction was needed for fiscal staff.

The Ad Hoc Committee agreed to create an appeals process was created, which the Ad Hoc Committee believed should also include a review by the Hawai‘i State Ethics Commission.

At the suggestion of Trustee John Waihe‘e IV, Vice Chair of the Committee, the report was sent to the Hawai‘i State Ethics Commission for their review. Additionally, the Ad Hoc Committee unanimously agreed that review should include OHA Corporation Counsel, and Justice Robert G. Klein, the BOT Counsel. Recommendations made by Judge Klein and by the staff of the Hawai‘i State Ethics Commission were considered, and many of the recommendations were incorporated into the final draft as it was considered and approved by the Ad Hoc Committee.

Recommendation

The Ad Hoc Committee, by a unanimous affirmative vote on September 13, 2018, approved its recommendation in the form of draft policy for a revised protocol allowance, the Trustee Protocol Allowance (“TPA”). This policy has been reviewed by BOT Counsel Robert G. Klein, the OHA Corporation Counsel Albert Tiberi and Everett Ohta, as well as the staff of the Hawai‘i State Ethics Commission, led by Executive Director Dan Gluck.

The draft TPA policy, which would amend section 3.5.n of the OHA Executive Policy Manual, is attached to this report.

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Under the draft TPA policy, allowable expenses include:

- Communication expenses dedicated solely to OHA business:
 - Service plans for home office internet, home office phone and fax, and cellular phone, and
 - Web-based communication services;
- Copying and postage costs;
- Office supplies;
- Books and reference materials;
- Renting of meeting facilities, if OHA facilities are not available within a reasonable vicinity of the activity or event location, and related expenses such as security services, cleaning/maintenance charges, and rental of equipment. Meetings must be organized and attended by a Trustee or Trustee's staff, to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees;
- Reasonable expenses for food and beverages, provided that if the food or beverage expenses have been reimbursed by another source, then reimbursement for that portion from the TPA is prohibited:
 - Purchased for a meeting or function, which includes one or more person(s) who are not a Trustee or an employee of OHA, the purpose of which is to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees; or
 - Purchased for Trustees and staff who are required to be present at Board or Committee meetings that extend through the lunch or evening hours. Expenses for food and beverages consumed by a Trustee or staff as part of their daily work during the scope of their normal work day shall not be reimbursed;
- Reasonable expenses for lei and gifts, which are customarily exchanged with fellow officials, honorees, special guests, and dignitaries at an event; and
- Reasonable expenses related to a Trustee's official travel, registration fees, and associated costs to attend conferences, seminars, or meetings, which shall comply with existing OHA travel guidelines and approvals; provided that if the travel cost or associated expenses have been reimbursed by another source (example: per diem), then reimbursement for that portion from the TPA is prohibited.

Disallowed uses of the TPA include:

- Food or beverages for Trustees and staff only, except when reasonably related to a Trustee's or staff member's official duties, e.g., purchase of meals for Trustees and staff who are required to be present at Board or Committee meetings that extend through the lunch or evening hours. Food or beverages purchased to thank or appreciate staff or for social occasions or events such as birthday celebrations, farewell or retirement parties, are personal expenses and are not reasonably related to a Trustee's official duties.
- Alcoholic beverages;
- Political or charitable contributions;
- Expenses related to campaign activities;

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- Expenses which are personal in nature such as dry cleaning expenses, transportation costs to and from work (including mileage), legal fees and costs, monthly parking costs for employee or Trustee parking, and airline club membership and lounge access;
- Gifts: purchase of retirement gifts, thank you/appreciation gifts, bereavement/funeral/sympathy gifts or flowers, welcome gifts, farewell gifts, anniversary gifts, birthday gifts, congratulation gifts, and any other gifts for Trustees, staff, and others, except for gifts purchased in compliance with subsection 1.g. above;
- Tickets for recreational or entertainment events and fundraisers;
- Membership fees and dues for business, community or social organizations;
- Financial support, grants, loans, or sponsorships, whether direct or indirect, to individuals, groups or organizations;
- Any expenses reimbursed from another source to avoid duplicate payment/reimbursement;
- Any services provided and goods received for the personal benefit of the Trustee and/or immediate family members, other Trustees and/or their immediate family members, and OHA employees;
- Computer hardware and software;
- General office and communication equipment; and
- General office furniture.

The annual TPA for each Trustee shall be \$7,200.00, or other amount approved by the Board, per fiscal year cycle (July 1 through June 30). The TPA shall be retained by OHA. Unspent amounts in the TPA fund will lapse at the end of the fiscal year and will not carry over. Each TPA will start on July 1.

The full draft proposed TPA policy is included as an attachment to this memo. Enactment of this policy lifts the moratorium on the Trustee allowance, but moratoriums on Trustee sponsorships would remain in effect until policies are addressed for those areas. The moratorium on CEO-initiated sponsorships also remains in effect.

The Ad Hoc Committee recommends that this draft TPA policy be considered by the Resource Management ("RM") Committee as an Action Item. If passed at the RM level, the policy will be referred to the BOT for consideration and final passage.

Attachments

1. Draft Trustee Protocol Allowance ("TPA") Policy, passed by the Ad Hoc Committee on Grants and Sponsorships on September 13, 2018
2. Letter from Hawai'i State Ethics Commission Executive Director Dan Gluck to OHA Chair Colette Y. Machado, Dated September 5, 2018
3. OHA Committee on Policy and Planning Action Item #PP-09.01 (with Attachments A and B only)

ATTACHMENT 1

ATTACHMENT C to ACTION ITEM RM #19-03
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Trustee Protocol Allowance (TPA)

3.5.n Each Trustee is allowed a Trustee Protocol Allowance (TPA) to be used to cover expenses that are reasonably related to a Trustee's official duties and responsibilities (i.e., the normal and ordinary types of expenditures that a Trustee is reasonably expected to incur in performing his or her representational and fiduciary duties), that are consistent with OHA's mission to better the conditions of Native Hawaiians, and that comply with applicable laws and OHA policies. Use of the TPA for personal purposes or purposes that are not reasonably related to a Trustee's official duties and responsibilities are prohibited and may also violate the Fair Treatment law under the state Ethics Code, Section 84-13, Hawai'i Revised Statutes (HRS).

The purpose of the TPA is to develop and maintain an ongoing communication network with beneficiaries and the general public, to promote a broader understanding of Native Hawaiian issues within the Native Hawaiian community and among the general public, and to encourage participation in the resolution of those issues; provided that such communications comply with applicable laws and OHA policies, such as the Board of Trustees' Code of Conduct and restrictions related to campaign activities.

1. Each Trustee is allowed an annual allowance, referred to as the TPA and as provided by HRS 10-9(4), in an amount determined by the Board of Trustees, to be used to cover expenses incurred in the course of a Trustee's official duties and responsibilities. Allowable uses of TPA funds are:
 - a. Communication expenses dedicated solely to OHA business:
 - (1) Service plans for home office internet, home office phone and fax, and cellular phone, and
 - (2) Web-based communication services;
 - b. Copying and postage costs;
 - c. Office supplies;
 - d. Books and reference materials;
 - e. Renting of meeting facilities, if OHA facilities are not available within a reasonable vicinity of the activity or event location, and related expenses such as security services, cleaning/maintenance charges, and rental of equipment. Meetings must be organized and attended by a Trustee or Trustee's staff, to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees;

Draft 9/13/18 – subject to adoption by the OHA Board of Trustees

ATTACHMENT I

Chair Machado's September 20, 2018 Memo to BOT regarding
Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund

ATTACHMENT C to ACTION ITEM RM #19-03
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- f. Reasonable expenses for food and beverages, provided that if the food or beverage expenses have been reimbursed by another source, then reimbursement for that portion from the TPA is prohibited:
 - (1) Purchased for a meeting or function, which includes one or more person(s) who are not a Trustee or an employee of OHA, the purpose of which is to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees; or
 - (2) Purchased for Trustees and staff who are required to be present at Board or Committee meetings that extend through the lunch or evening hours. Expenses for food and beverages consumed by a Trustee or staff as part of their daily work during the scope of their normal work day shall not be reimbursed;
 - g. Reasonable expenses for lei and gifts, which are customarily exchanged with fellow officials, honorees, special guests, and dignitaries at an event; and
 - h. Reasonable expenses related to a Trustee's official travel, registration fees, and associated costs to attend conferences, seminars, or meetings, which shall comply with existing OHA travel guidelines and approvals; provided that if the travel cost or associated expenses have been reimbursed by another source (example: per diem), then reimbursement for that portion from the TPA is prohibited.
2. Certain expenditures may be found to be inappropriate uses of the TPA because: the expenditure appears to be more personal in nature or otherwise does not appear to be reasonably related to a Trustee's official duties and responsibilities; the expenditure is contrary to OHA's mission to better the conditions of Native Hawaiians; or the expenditure contravenes OHA policies or the law. The following expenditures are specifically disallowed by this policy:
- a. Food or beverages for Trustees and staff only, except when reasonably related to a Trustee's or staff member's official duties, e.g., purchase of meals for Trustees and staff who are required to be present at Board or Committee meetings that extend through the lunch or evening hours. Food or beverages purchased to thank or appreciate staff or for social occasions or events such as birthday celebrations, farewell or retirement parties, are personal expenses and are not reasonably related to a Trustee's official duties.
 - b. Alcoholic beverages;
 - c. Political or charitable contributions;
 - d. Expenses related to campaign activities;
 - e. Expenses which are personal in nature such as dry cleaning expenses, transportation costs to and from work (including mileage), legal fees and costs, monthly parking

Draft 9/13/18 – subject to adoption by the OHA Board of Trustees

ATTACHMENT I

Chair Machado's September 20, 2018 Memo to BOT regarding
Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund

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costs for employee or Trustee parking, and airline club membership and lounge access;

- f. Gifts: purchase of retirement gifts, thank you/appreciation gifts, bereavement/funeral/sympathy gifts or flowers, welcome gifts, farewell gifts, anniversary gifts, birthday gifts, congratulation gifts, and any other gifts for Trustees, staff, and others, except for gifts purchased in compliance with subsection 1.g, above;
 - g. Tickets for recreational or entertainment events and fundraisers;
 - h. Membership fees and dues for business, community or social organizations;
 - i. Financial support, grants, loans, or sponsorships, whether direct or indirect, to individuals, groups or organizations;
 - j. Any expenses reimbursed from another source to avoid duplicate payment/reimbursement;
 - k. Any services provided and goods received for the personal benefit of the Trustee and/or immediate family members, other Trustees and/or their immediate family members, and OHA employees;
 - l. Computer hardware and software;
 - m. General office and communication equipment; and
 - n. General office furniture.
3. The annual TPA for each Trustee shall be \$7,200.00, or other amount approved by the Board, per fiscal year cycle (July 1 through June 30). The TPA shall be retained by OHA. Unspent amounts in the TPA fund will lapse at the end of the fiscal year and will not carry over. Each TPA will start on July 1.
4. To utilize the TPA retained by OHA, Trustees must submit a request for reimbursement or a request for an advance; provided that such an advance will be payable directly to a merchant/vendor only. Trustees must show that the primary purpose of the expenditure is in support of or a result of an official Trustee duty consistent with the allowable expenses listed above. The Trustee shall be required to fill out a certification form in which the Trustee certifies that the claimed reimbursement or advance is true and correct and that it complies with applicable laws and OHA policies.
5. In processing a request for reimbursement or advance, OHA Administration may request additional information necessary to determine compliance of a claimed expenditure with applicable laws and OHA policies. The approval by OHA Administration of a request for reimbursement or advance shall not be construed to mean that an expenditure complies with

Draft 9/13/18 – subject to adoption by the OHA Board of Trustees

ATTACHMENT I

Chair Machado's September 20, 2018 Memo to BOT regarding
Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund

ATTACHMENT C to ACTION ITEM RM #19-03
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the state ethics code; the final authority on the ethics code is the Hawai'i State Ethics Commission. It is the responsibility of the individual Trustee to insure compliance with the state ethics code and Trustees are encouraged to consult with the state Ethics Commission on questions related to compliance with the state ethics code.

6. Items purchased with TPA funds are the property of OHA. Non-perishable and non-consumable items purchased with the TPA, except for gifts purchased in compliance with subsection 1.g, above, shall be surrendered to the OHA Administration upon the Trustee's separation from OHA.
7. A TPA expense must be deducted from the same fiscal year's allocation in which the expense was incurred. A prior year's expense cannot be paid from the current or a future fiscal year's TPA allocation. Each Trustee is responsible for paying any TPA expenses incurred that are in excess of a given fiscal year's TPA allocated amount.
8. The use of the TPA to purchase goods and/or services in the amounts of \$2,500 or more shall be from businesses that provide proof of compliance with State and Federal taxes and the Department of Labor and Industrial Relations (DLIR), and are also in good standing with the Department of Commerce and Consumer Affairs (DCCA). Further, the purchase of goods and/or services in amounts of \$5,000 or more shall be in accordance with all applicable laws and administrative rules governing procurement.
9. In cases where an expenditure is determined to be impermissible by the OHA Administration, the Trustee or the CEO may consult with the Hawai'i State Ethics Commission, as necessary. The Trustee may appeal the determination made by the OHA Administration, in writing, to the Chair of the BOT. The Chair shall render a written decision on the appeal within seven (7) business days, which shall be final.
10. This policy is subject to the Board of Trustees' Code of Conduct and sanctions contained therein.
11. The OHA Administration shall compile and transmit to the OHA BOT a quarterly report of expenditures made by each Trustee from his or her TPA. The quarterly report of expenditures shall also be posted to OHA's public website in a timely manner thereafter.
12. It is not intended that the TPA supersede, replace, diminish, or reduce the statutory compensation allowed to Trustees as provided for in Chapter 10, Hawai'i Revised Statutes, as amended.
13. The CEO shall be guided by this policy to develop internal guidelines and procedures for the use and administration of the TPA including reporting requirements, required documentation, and auditable record keeping.

Draft 9/13/18 – subject to adoption by the OHA Board of Trustees

ATTACHMENT I

Chair Machado's September 20, 2018 Memo to BOT regarding
Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund

ATTACHMENT C to ACTION ITEM RM #19-03
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14. The Fund created by this policy will be called the OHA Board of Trustees' Protocol Allowance Fund and the report of expenditures will be called the Trustee Quarterly Protocol Allowance Expenditure Report.

Draft 9/13/18 – subject to adoption by the OHA Board of Trustees

ATTACHMENT 1
Chair Machado's September 20, 2018 Memo to BOT regarding
Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund

ATTACHMENT 2

April 10, 2019



HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813
50th ANNIVERSARY 1968-2018

September 5, 2018

Colette Y. Machado
Chairperson, Office of Hawaiian Affairs
560 N. Nimitz Hwy., Suite 200
Honolulu, Hawai'i 96817
Via Email: everetto@oha.org

Re: Response to request for guidance regarding draft policy for the use of the Office of Hawaiian Affairs Board of Trustees' protocol allowance

Dear Chair Machado,

Thank you for providing us with the opportunity to provide feedback on the draft policy ("Draft Policy") regarding the use of the Office of Hawaiian Affairs ("OHA") Board of Trustees' protocol allowance ("TPA"). My colleagues and I sincerely appreciate your efforts to promote the highest ethical standards within OHA, and we are grateful for the opportunity to work with you on this important project.

You ask "whether any part of the policy is inconsistent with the Hawai'i Code of Ethics." On behalf of the staff of the Hawai'i State Ethics Commission ("Commission"), I see no part of the Draft Policy that is inconsistent with Hawai'i Revised Statutes ("HRS") chapter 84, the State Ethics Code. However, I respectfully offer a few suggestions for your consideration.

1. Legislature's Rules re: Legislative Allowances

If you have not already done so, you may wish to review the Legislature's rules on legislative allowances. The Senate's rules are available at <https://www.capitol.hawaii.gov/session2016/docs/2015-2016SenateAdminManual.pdf> (see Sec. 1.3, "Legislators' annual allowance," and Exhibit 1A, "Guideline Memorandum on Annual Allowances," p. 78 of 123 of the overall PDF document). The House's rules are available at <https://www.capitol.hawaii.gov/docs/HouseAdminManual.pdf> (see Sec. 1.3, "Legislator's annual allowance," and "Guidelines Memorandum for Annual Allowance," p. 16 of 108 of the overall PDF document).

2. Membership Dues

You have represented that memberships in organizations such as Hawaiian Civic Clubs and the National Congress of American Indians help to further OHA's mission, and I do not believe that the Commission would disagree: policy decisions regarding how to further OHA's mission are within the purview of OHA Trustees and will not be second-guessed by the Commission. The Commission's only concern would be that individual Trustees are somehow

ATTACHMENT C to ACTION ITEM RM #19-03

April 10, 2019

Colette Machado
Chairperson, Office of Hawaiian Affairs
September 5, 2018
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gaining a personal benefit from membership or are seeking membership in organizations that only tangentially benefit OHA; indeed, this is the reason why the Commission discourages individual legislators from using their legislative allowances to join membership organizations (except for “legislative and governance organizations,” including the Council on State Governments and the National Conference on State Legislatures).

Rather than having individual Trustees decide whether to use OHA funds to join membership organizations, the Board of Trustees may wish to consider making those decisions as a Board – that is, using generalized OHA funds, rather than individual TPA funds, to join organizations – and deciding as a Board which Trustees/employees should represent OHA at any membership organizations’ functions. This would avoid any appearance that individual Trustees are deriving a personal benefit from the membership and ensures that Trustees do not duplicate each other’s efforts in supporting worthy causes.

3. Food purchases

Paragraph 1(i) contains very good language regarding reimbursement from another source (“provided that if the travel cost or associated expenses have been reimbursed by another source (example: per diem), then reimbursement for that portion from the TPA is prohibited”). We respectfully recommend that similar language be included in paragraph 1(g). This may be redundant, but it may be helpful to include this language in multiple locations to ensure that both Trustees and employees avoid seeking *per diem* or other reimbursement for meals that are provided by another source.

Additionally, paragraph 1(g) appears to cover a rather broad range of topics; as such, you may wish to consider including more language and/or examples in paragraph 1(g) to further clarify the situations in which these expenditures are allowable. For example, the Senate’s rules on legislative allowances state: “Expenses for usual and customary food and beverage items consumed by staff and other persons as part of their daily work during the scope of their normal work day shall not be reimbursed.” See Hawaii State Senate, “Guideline Memorandum on Annual Allowances,” available at <https://www.capitol.hawaii.gov/session2016/docs/2015-2016SenateAdminManual.pdf> (pp. 78-79 of 123 of the overall PDF document). If there are special circumstances under which Trustees and staff must work through mealtimes, then OHA funds may be used to pay for Trustees’/staff’s meals. However, Trustees and employees should not arrange meetings at mealtime to justify an expenditure of OHA funds for their personal benefit.

4. Caveat re: Ethics Code

You may wish to consider adding a disclaimer that the Ethics Commission has jurisdiction over the Ethics Code, such that an OHA fiscal officer’s approval of an expense does not necessarily mean that the expenditure complies with the Ethics Code. While we fully anticipate that expenditures made in compliance with the Draft Policy will also satisfy the current Ethics Code, the Ethics Commission has the specialized expertise to determine whether an expenditure complies with HRS chapter 84. OHA Trustees and employees are *more* than welcome to contact the Commission for guidance on expenditures should they have any

ATTACHMENT 2

Chair Machado's September 20, 2018 Memo to BOT regarding

Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund

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Chairperson, Office of Hawaiian Affairs
September 5, 2018
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lingering concerns: my colleagues and I are more than happy to provide fast, confidential guidance on any such questions.

5. Publication of expenditures

You may wish to consider publishing Trustees' expenditures on OHA's website contemporaneously (or as quickly as is practicable) to provide additional transparency. The Honolulu City Council publishes Councilmembers' contemporaneous travel and expense reports on its website. See <http://www.honolulu.gov/component/content/article/172-site-ccl-cat/1740-ccl-view-council-members.html?Itemid=597>. We respectfully suggest that OHA do the same for its Trustees: these expenditures are public records, and the knowledge that expenditures will be published contemporaneously (or as quickly as feasible) will help to discourage improper expenditures.

* * * * *

I wish to thank you for your commitment to promoting the highest ethical standards within OHA, and for this opportunity to comment on the Draft Policy. As always, please let me know how my colleagues and I can be of further assistance.

Very truly yours,



Daniel M. Gluck
Executive Director and General Counsel

ATTACHMENT 2

ATTACHMENT 3

Office of Hawaiian Affairs
ACTION ITEM

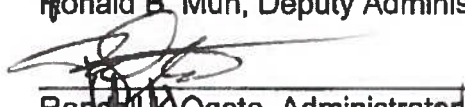
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Meeting: Committee on Policy & Planning

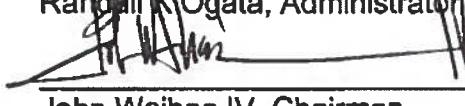
Date: Friday, March 30, 2001

Prepared by: 

Ronald B. Mun, Deputy Administrator Date

Reviewed by: 

Randall K. Ogata, Administrator Date

Reviewed by: 

John Waihee IV, Chairman Date
Committee on Policy and Planning

I. Action

To approve and adopt an Office of Hawaiian Affairs Trustee Allowance policy wherein funds are disbursed on an actual expenditure reimbursable basis in lieu of the existing system of prepayment and quarterly reporting.

This policy shall be inserted in the Office of Hawaiian Affairs Administrative and Financial Manual of Guides.

II. Issue

Should the Office of Hawaiian Affairs replace the existing policy of prepayment and quarterly reporting of Trustee Allowance expenditures with a system in which funds are disbursed on an actual expenditure reimbursable basis?

III. Discussion

The Office of Hawaiian Affairs Trustee Allowance system was initially established on June 28, 1991. (Attachment A) The allowance was implemented to cover incidental expenses incurred by Trustees for the following purposes:

To develop and maintain an ongoing communication network with beneficiaries on the general public; to promote a broader

ATTACHMENT C to ACTION ITEM RM #19-03
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understanding of Hawaiian issues; and to encourage participation in the resolution of those issues.

Funds were to be prepaid in the amount of \$3,600.00 on a semi-annual basis, with quarterly reporting requirements.

On February 1, 1996, the Board of Trustees clarified guidelines for the use, accounting and disposition of non-perishable purchases. (Attachment B)

It is these amended or clarified guidelines that currently govern the use and disposition of the trustee annual allowance. (Attachment C)

In March 2001 however, the Auditor of the State of Hawaii questioned the misuse of the allowance by various trustees. (Attachment D) Specifically she found:

We reviewed trustee expense reports for calendar years 1996 through 1999, and found numerous questionable transactions that did not appear to meet the purpose of the trustee expense account. For example, two trustees used their allowances to make interest-free personal loans exceeding a combined total of \$8,000 to themselves and family members. Another trustee spent over \$1,000 on beauty salon services over a three-year period. These trustees appear to have failed to uphold their responsibility of loyalty, and may have instead spent funds for personal needs and interests.

We also found that certain trustees did not always return unspent annual allowances to OHA, although policy requires that they do so. These trustees returned only half of the \$24,250 in unspent allowances between calendar years 1996 and 1999. This is after spending \$231,171 in annual allowances over those four years.

The Auditor also suggested the following remedial action:

OHA should consider disbursing trustee expenses funds on an actual expenditure reimbursement basis. This would help to ensure that these funds are used only for allowable purposes, and reduce the opportunity to use such funds for personal expenses.

ATTACHMENT C to ACTION ITEM RM #19-03
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Subsequently, the OHA Response to State Auditor Report stated"

OHA staff will be recommending a reimbursable allowance plan as opposed to the existing policy of a prepayment at the beginning of the year. Thus, (sic) a reimbursement plan would allow for greater scrutiny of expenditure. (Attachment E)

It is within the context of these events that this action item was prepared.

Basically what is suggested is reimbursement for actual expenditures incurred by the trustees for legitimate and allowable purposes set forth. By eliminating prepayment of the allowance at least three major problems would be addressed:

1. No co-mingled funds
2. No requirement to repay unspent funds
3. No income tax or W-2 on unspent funds not returned

Instead of quarterly reports, reimbursement forms would be required within ten days of the expenditure. The forms would require the approval of the Chairperson of the Board, and in the case of the Chairperson, the approval of the Administrator and Chief Financial Officer prior to disbursement of a reimbursement. This heightened scrutiny and the fact that expenditures are "out of pocket" should tend to mitigate the misuse and personal use of allowance funds.

Finally, pre-approval of expenditures is encouraged to avoid the embarrassment, cost and possible audit of improper spending. Note however, that pre-approval does not guarantee reimbursement as the Request for Reimbursement form accompanied with the pre-approval if available is still required to be filed and approved. (Attachment F)

At the present time, \$7,200 per trustee is budgeted for the trustee allowance.

IV. Alternatives

- a. Approve and adopt an Office of Hawaiian Affairs Trustee Allowance policy wherein funds are disbursed on an actual expenditure reimbursable basis in lieu of the existing system of prepayment and quarterly reporting.
- b. Decline to change the existing Trustee Allowance policy of prepayment and quarterly reports.

V. Recommendation

ATTACHMENT C to ACTION ITEM RM #19-03
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Approve and adopt an Office of Hawaiian Affairs Trustee Allowance policy wherein funds are disbursed on an actual expenditure reimbursable basis in lieu of the existing system of prepayment and quarterly reporting. (Attachment G)

VI. Time Frame

As soon as possible

VII. Funding

No new funding required

Attachments

- A. - Action Item and BOT minutes dated June 28, 1991
- B. - Action Item dated January 30, 1996 and BOT minutes dated February 1, 1996
- C. - Trustee Allowance Disbursement letter dated January 5, 2001
- D. - Audit of the Office of Hawaiian Affairs, March 2001, pages 14 and 15
- E. - OHA Response to State Auditor Report, February 12, 2001, pages 9 and 10
- F. - Request for Pre-Approval of Trustee Allowance
- G. - Proposed Amendments to Chapter 3

ATTACHMENT C to ACTION ITEM RM #19-03
April 10, 2019

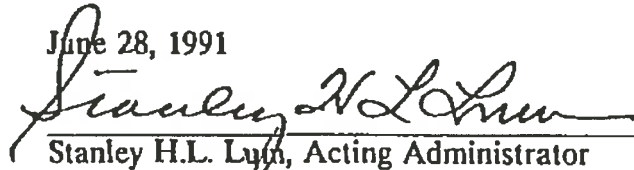
OFFICE OF HAWAIIAN AFFAIRS

Action Sheet

Meeting: Board of Trustees

Date: June 28, 1991

Prepared by:


Stanley H.L. Luan, Acting Administrator

Reviewed by:

Abraham Aiona, Chairman
Committee on Budget, Finance, Policy and Planning

I. Action Item:

Allowance for incidental expenses. Establishing an allowance for each member of the Board of Trustees to cover incidental expenses connected with Trustee function and duties and adopting governing guidelines.

II. Background Information

The Budget, Finance, Policy and Planning Committee took up the subject of an allowance for Trustees to cover activities incident to their office on May 10, 1991, and decided to recommend the adoption of an allowance, provided guidelines to govern the use of the allowance are developed and legal advice as to the propriety of using special funds for this purpose. The guidelines have been developed. Sherry Broder, counsel to the Board has issued a legal supporting opinion. The recommendation of the Committee is now ready for presentation to the Board.

III. Issue:

1. In the performance of the functions and duties of Trustee, business expenses, excluding per diem, air and ground transportation, are incurred. Expenses such as business meals, social and cultural functions.
2. An allowance for incidental expenses is a standard practice by much of the private sectors and is provided to each member of the State legislature.
3. An allowance will enhance the ability of each Trustee to perform his or her duties by reducing or eliminating out of pocket cost.

ATTACHMENT C to ACTION ITEM RM #19-03
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IV. Means of Financing:

Special funds.

Annual Allowance
July 1 to December 30, 1991

<u>Trustee</u>	<u>Amount</u>
Rowena Akana	\$ 3,600
Abraham Aiona	3,600
Moanikeala Akaka	3,600
Frenchy DeSoto	3,600
Louis Hao	3,600
Clayton Hee	3,600
Kamaki Kanahele	3,600
Thomas Kaulukukui, Sr.	3,600
Moses Keale, Sr.	3,600
Sub-Total	\$32,400

V. Discussion:

The allowance will be subject to year end federal and state taxes. As such individual record keeping is very important.

VI. Time Frame:

Once appropriated and approved as to legality by the Board's Counsel, the allowance would be made available within 10 calendar days.

VII. Attachments:

Exhibit A: Memorandum from Sherry P. Broder, Esq., Subject: "Legal Review of the 'Annual Allowance' Established by the Committee on Budget, Finance, Policy and Planning, May 10, 1991."

Exhibit B: Chapter 3, Annual Allowance (new) for the Administrative and Financial Manual of Guides.

April 10, 2019

EXHIBIT "A"

SHERRY P. BRODER
ATTORNEY AT LAW
A LAW CORPORATION

OCEAN VIEW CENTER
PENTHOUSE 3
707 RICHARDS STREET
HONOLULU, HAWAII 96813

CONFIDENTIAL

TELEPHONE: (808) 631-1411
(808) 844-1139
FAX: (808) 631-8411

M E M O R A N D U M

TO: Richard K. Paglinawan
Administrator
Office of Hawaiian Affairs

From: Sherry P. Broder

Date: May 29, 1991

Subject: Legal Review of the "Annual Allowance" Established by the
Committee on Budget, Finance, Policy and Planning, May
10, 1991

This memorandum is written in response to your request of May 17, 1991, for a review of the action taken by OHA's Committee on an Annual Allowance for each Trustee. According to Section 3.2 of the Committee's proposal, this fund could be spent for the following purposes: "to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues." Examples of permitted expenditures might, therefore, include funds to allow each Trustee to send mailings to OHA beneficiaries directly, funds to hire meeting halls within which individual Trustees could meet with beneficiaries, funds to hire staff to coordinate contacts between individual Trustees and the beneficiaries and to allow each Trustee to respond to their inquiries directly, as well as other means of communication.

April 10, 2019.

In my professional judgment, this action--if approved by the full Board--would be legitimate and ~~should not be considered for legal problems~~. Two questions need to be addressed in order to understand the legal framework within which the OHA trustees must act: (1) What limits does the nature of the trust that generates OHA's resources impose on the ability of the Trustees to spend or allocate those resources? (2) What limits do the constitutional and statutory provisions impose on the ability of the Trustees to spend or allocate OHA's resources?

(1) The funds OHA can draw upon have certain built-in restrictions on their use. Legislatively-authorized general funds must be used for the purposes identified by the legislature at the time of authorization. Revenues derived from the public land trust proceeds must, according to H.R.S. Section 10-13.5, be used "for the betterment of the conditions of native Hawaiians," who are for this purpose defined as half-blood Hawaiians (H.R.S. Section 10-2). Although it can be argued that the limitation in Section 10-13.5 is too narrow and constitutes a violation of the trust established in the 1898 Joint Resolution of Annexation of an infringement on the basic right of self-governance of the Hawaiian people, such an argument raises complex political and legal issues and is certain to be divisive in the Hawaiian Community. Accordingly, the Trustees should ensure that the 5(f) funds they receive benefit the native Hawaiians.

At the present time, it is clear that OHA may expend 5(f)

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funds for the benefit of native Hawaiians only. Native Hawaiian Trusts Judicial Relief Act, H.R.S. Chapter 673, commonly referred to as the "right to sue bill by native Hawaiians and Hawaiian Individuals and Organizations" states that OHA must administer this trust "in the sole interest of its beneficiaries." Nevertheless, OHA is not required to maximize revenues to the native Hawaiian public trust, so long as the trust is administered "in the sole interests of its beneficiaries." Furthermore, the State may provide collateral benefits to non-beneficiaries, "but only so long as the primary benefits are enjoyed by beneficiaries, and the collateral benefits are enjoyed by beneficiaries, and the collateral benefits do not detract from nor reduce the benefits enjoyed by the beneficiaries." Section 673-1(b)(1).

This requirement of administration for the "sole interest of its beneficiaries" has also been established in case law by Hawaii Supreme Court with regard to the Hawaiian Home Lands Trust. In Ahuna v. Department of Hawaiian Home Lands, 64 Haw. 327, 338, 640 P.2d 1161 (1982), the Hawaii Supreme Court stated that "[O]ne specific trust duty is the obligation to administer the trust solely in the interest of the beneficiary."

To limit judicial challenges, the Trustees should seek to tie their expenditures of the public land trust proceeds to identifiable benefits that will be received by the native Hawaiians whenever possible.

(2) OHA was designed by the 1978 Constitutional

ATTACHMENT C to ACTION ITEM RM #19-03
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Convention to be a semi-autonomous entity with substantial independent control of its resources. This decision was reinforced by the legislature which stated in 1979, in what is now Section 10-4 of the Hawaii Revised Statutes, that OHA "shall be a separate entity independent of the executive branch." OHA's Trustees may allocate OHA's resources for the benefit of its beneficiaries so long as the Trustees determine that it is in the ~~the~~ interests of its beneficiaries, unless their action is explicitly in conflict with a constitutional or statutory provision designed to limit OHA's activities. I am enclosing with this memorandum an opinion letter written by Jon M. ~~Jon M.~~ Dyke on November 5, 1990 on a related subject which discusses in detail the reasons that support this conclusion.

Unless, therefore, an explicit statutory or constitutional provision limits OHA's Trustees, they may allocate resources and spend resources for communication and participation as described in the Committee's proposal. Are there any explicit limitations that would restrict their ability to establish an "Annual Allowance"?

H.R.S. Section 10-9 establishes the compensation rate per meeting for the Trustees and in addition authorizes them to receive "transportation fares" and "personal expenses" (or per diem) for their travel. It is not, however, written in language that indicates that this list is meant to be exhaustive. It does not, in other words, indicate that the Trustees cannot also receive other appropriate expenses for other legitimate purposes.

ATTACHMENT C to ACTION ITEM RM #19-03
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H.R.S. Section 10-12 authorizes the Administrator to hire staff to carry out the functions of OHA. Is this provision meant to be exclusive, or does it permit the Trustees to hire their own staff as well to assist them in their legislative functions, to carry out the purposes identified in Section 3.2 of Chapter 3 on the "Annual Allowance"? The language of H.R.S. Section 10-12 does not indicate that this provision is meant to be exclusive, and analogies to other legislative bodies--such as the county councils in Hawaii--illustrate that it is usual and usual for legislators to have their own staff assistants.

It would appear, therefore, that nothing in the Hawaii Revised Statutes or the Hawaii State Constitution prohibits the establishment of the "Annual Allowance."

To summarize, the creation of an "Annual Allowance" for individual Trustees appears to be a legitimate expenditure of OHA's resources. The actual uses of these funds may need to be monitored, however, to ensure that the expenditures are in fact in the ~~best interests of the beneficiaries of the fund.~~

Chapter 3. Annual Allowance

Sec. 3.1. Scope of Chapter. The Board may, from time to time, appropriate sufficient funds for an annual allowance to each trustee. This chapter establishes and implements the annual allowance.

Sec. 3.2. Purposes. The purposes of the annual allowance are as follows: to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues.

Sec. 3.3. Annual Allowance. Each trustee is allowed such amount as provided by the Board to be used for any purpose set forth under Sec. 3.2. The use of the allowance is subject to reporting or accounting, and the amount of the allowance is not subject to reduction or adjustment by per diem, air or ground transportation payments, or compensation. The allowance is available no later than ten calendar days after the effective date of trustees appropriating funds for the annual allowances. In the case of a trustee who fills a vacancy after the specified ten-day period, the allowance is payable no later than ten calendar days after the trustee is appointed by the Board or Governor.

Sec. 3.4. Accounting. Each trustee will prepare a quarterly report within ten calendar days of the quarter's end on annual allowance expenditures. All reports shall be filed with the chairperson, and such reports shall be subject to annual audits and be included as a part of the financial report of the expenditures of OHA as a whole. Whenever possible,

ATTACHMENT C to ACTION ITEM RM #19-03
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Chapter 3. Annual Allowance
Page 2

quarterly reports shall be supported by invoices, receipts or other similar documents. OHA Form No. _____, 'Quarterly Allowance Report', shall constitute the report form. Any unexpended annual allowance shall be returned to OHA no later than 10 working days following the expiration of the term of office or a vacancy that may occur through any other cause.

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Office of Hawaiian Affairs
Quarterly Allowance Report
Quarter Ending _____

Trustee _____ Filing Date _____

Item No. _____	Paid To _____	Balance For'd	_____
For _____		Amount	_____
		Balance	_____

Item No. _____	Paid To _____	Balance For'd	_____
For _____		Amount	_____
		Balance	_____

Item No. _____	Paid To _____	Balance For'd	_____
For _____		Amount	_____
		Balance	_____

Item No. _____	Paid To _____	Balance For'd	_____
For _____		Amount	_____
		Balance	_____

Item No. _____	Paid To _____	Balance For'd	_____
For _____		Amount	_____
		Balance	_____

Form No. _____

Page ____ of ____

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MINUTES OF THE REGULAR MEETING OF
THE BOARD OF TRUSTEES OF
THE OFFICE OF HAWAIIAN AFFAIRS

HELD AT THE CAMERON CENTER
95 MAHALANI STREET
WAILUKU, HAWAII

June 28, 1991

The Trustees of the Office of Hawaiian Affairs met on the Island of Maui, in the County of Maui, State of Hawaii, on Friday, June 28, 1991, at 9:15 A.M.

The meeting was called to order by Chairman Clayton H. W. Hee. The pule was offered by Trustee Thomas Kaulukukui. On roll call, those present and excused were as follows:

ROLL CALL

Present: Trustee Abraham Aiona
Trustee Moanikeala Akaka
Trustee Rowena N. Akana
Trustee A. Frenchy DeSoto
Trustee Louis Hao
Trustee Clayton H. W. Hee
Trustee Kamaki A. Kanahelo, III
Trustee Thomas K. Kaulukukui, Sr.

Excused: Trustee Moses K. Keale, Sr.

Others Present: Stanley H. L. Lum, Dep Adm

Trustee Aiona requested that the agenda be amended to add under New Business, "Resolution for Keanae School". Trustee DeSoto MOVED, SECONDED by Trustee Aiona to approve the agenda as amended. Motion CARRIED unanimously.

AMENDMENTS TO
AGENDA

Trustee Kaulukukui MOVED, SECONDED by Trustee Akana to approve the minutes of May 31, 1991, as circulated. Motion CARRIED unanimously.

APPROVAL OF
MINUTES

The Chairman reported that he has just one item for action which will be taken up under New business, Item B.

CHAIRMAN'S
REPORT

Deputy Administrator Stanley Lum reported on the following items:

ADMINISTRATOR'S
REPORT

ATTACHMENT 3

ATTACHMENT C to ACTION ITEM RM #19-03
April 10, 2019

Board of Trustees
June 28, 1991
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1. Personnel Appointments. Mr. Lum introduced Ms. Christina Zarobe to the members. Christina is OHA's new Assistant Editor. Mr. Lum also advised the Board that Mr. Scott Exo has been hired on an emergency hire basis as a Grants Application and Management Specialist in the Planning and Research Division. Also for the summer, the Native Hawaiian Revolving Loan Fund has hired Ms. Heidi Ho as an intern.
2. Past Due Entitlement - Audit. OHA's independent audit of the results by the State's audit. We have reached agreement with the Office of State Planning that the funds (\$100,000) appropriated in Act 304 will be used to cover other independent audits.
3. Kalapana Displacements - HB 865; SB 1434. HB 865 deals with making available to those persons displaced from Kalapana low interest loans for areas of lessor volcanic risks. SB 1434 allows long term leases of state lands in the Kikela-keokea area made available to Hawaiians from Kalapana. No monies were appropriated with this bill.
4. Hawaii County Economic Opportunity Council. Received a letter from Mr. George Yokoyama with regards to the Keaukaha self-help housing. Some lots are in the tsunami inundation zone and as a result, there needs to be some construction changes. Mr. Yokoyama is asking if OHA could assist with an additional \$7,000.
5. Sovereignty - Grant Proposal to ANA. A coalition of groups, including OHA, have forwarded a sovereignty grant to ANA. OHA has \$70,000 to attract new grants, and we have indicated that these funds are available for matching funds if ANA so requires.
6. Senate Committee on Energy and Natural Resources Hearing.
 - A. July 1, 1991 - State Capitol - National Shoreline

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Park.

- B. July 23, 1991 - Washington, D. C. - Tentative Agenda: All Amendments to HHC Act except Purpose Clause.

The Chairman reported that he and Mr. Lum have met with Senator Akaka's staff, and that administration is redrafting OHA's testimony for July 1, 1991, amplifying some of the concerns raised.

7. Kepoo v. Burgess, et al. Decision. Decision was successfully concluded, and this exhausts Mr. Kepoo's remedy within the State.
8. Price IV - Petition to U.S. Supreme Court. A petition has been submitted to the supreme court on behalf of the trustees named.
9. Trustee Presentation Skills Workshop. A new schedule has been arranged with Pam Chambers with the first workshop scheduled for Tuesday, July 9, 1991, at 2:30 p.m.
10. Others. Ms. Sherry Broder had suggested that a press release be issued on the Kepoo case.

Trustee Aiona reported on the following action items from the Budget, Finance, Policy and Planning Committee.

**BUDGET, FINANCE,
PLANNING & POLIC**

Trustee Aiona MOVED, SECONDED by Trustee DeSoto that the Board favorably act on and recommend the appropriation of \$45,000 in special funds for the contracting of Mr. Lawrence S. Okinaga, attorney at law, of Carlsmith, Ball, Wichman, Case, Mukai & Ichiki, in order to begin addressing the many tasks, the Committee will be needing with professional, legal and technical advice, research, recommendations and work products of the highest quality. Motion CARRIED unanimously.

LAWRENCE OKINAG.

A short recess was called by the Chairman - 9:40 - 9:45.

RECESS

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Trustee Aiona MOVED, SECONDED by Trustee DeSoto to approve a one year allocation of \$33,444 from special funds to Child and Family Services for the Waianae Coast Teen Network/Hawaii Island Teen Service Project. The Child and Family Services is requesting said amount to continue its program of health education and counseling for pregnant and parenting teens, their partners and families in the Waianae, Hilo and Kona areas. Motion CARRIED unanimously.

**CHILD & FAMILY
SERVICES**

Trustee Aiona MOVED, SECONDED by Trustee DeSoto to issue a proposal to lease 1,700 square feet for general office purposes in the Pacific Brewing building located at the corner of Imi Kala and Eha Streets with the following conditions:

**PACIFIC BREWING
BUILDING**

1. The landlord also negotiates direct leases with Alu Like, Inc., Department of Hawaiian Home Lands and Hui No Ke Ola Pono.
2. Office space to be built out to needs of tenant.
3. First right to lease additional space.
4. An option to purchase the property at appraised value no sooner than two years from the date a lease agreement is executed.

Also to appropriate \$103,499 from special funds for the fiscal year ending June 30, 1992, and \$39,021 for the fiscal year ending June 30, 1993. Motion CARRIED unanimously.

Trustee Aiona MOVED, SECONDED by Trustee Kanahale for the hiring of Administrative Aides for Trustees of the Office of Hawaiian Affairs and to provide funding from special funds so that the Trustees may best serve the beneficiaries of OHA. The Administrative Aides will be acquired by contract with compensable time not to exceed on the average 20 hours per week. Motion CARRIED unanimously.

**ADMINISTRATIVE
AIDES**

Trustee Aiona MOVED, SECONDED by Trustee Akana to approve establishing an allowance for each member of the Board of Trustees to cover incidental expenses connected with trustee functions and duties and adopting governing guidelines. The annual allowance of \$7,200 per trustee will be allotted on a semi-annual basis with special funds designated as the source of funds. Motion CARRIED.

**TRUSTEE'S
ALLOWANCE**

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Trustee DeSoto voted 'no'.

Trustee Hao reported that there were no action items from the Economic Development and Land Committee, however, there was one announcement. That the Committee will be holding a workshop on July 6, 1991, at 9:00 in the OHA Conference Room on the Memorandum of Agreements relative to land issues.

ECONOMIC
DEVELOPMENT & LAND

Trustee Kaulukukui reported that there were no action items from the Education and Culture Committee, however, he wanted to report that staff should be completing the criteria for scholarships by the end of June.

EDUCATION &
CULTURE

Trustee Akaka reported that there were no action items from the Health and Human Services Committee. Trustee Akaka stated that the members did go over the budget for this committee and that \$3,800 was approved to print brochures relating to Hawaiian health problems.

HEALTH & HUMAN
SERVICES

Trustee DeSoto reported on the following action items from the Legislative Review Committee.

LEGISLATIVE REVIEW

Trustee DeSoto MOVED, SECONDED by Trustee Hao that the Office of Hawaiian Affairs oppose the proposed reapportionment formula for the following reasons:

REAPPORTIONMENT

1. That the use of registered voters as the population base is a likely violation of U.S. Supreme Court rulings related to 'one person, one vote'.
2. That the use of an adult population of individuals '18 years of older' will significantly penalize and under-represent Native Hawaiians during the ten years that the new districts are in force because Native Hawaiians have a proportionally-higher number of 'under 18' individuals.
3. By using the adult voter population, Native Hawaiian communities are penalized and more likely to become part of a 'canoe district'.
4. All 'canoe districts' act to deprive Native Hawaiians of

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appropriate representation by attempting to submerge our population with a non-associated population.

Trustee Kanahele spoke in favor of the motion because he has great concerns of Molokai being attached to Oahu. It would be a detriment to the Island of Molokai. Trustee Hao also spoke in favor of the motion because being from Molokai which is a rural community, it is very different from Oahu. Having one island connected to another is a problem. Motion CARRIED unanimously.

Trustee Kanahele reported that there were no action items from the OHA Relations Committee.

OHA RELATIONS

Trustee Hee reported on the following items on the Status and Entitlements and Housing Committee.

STATUS &
ENTITLEMENTS &
HOUSING

1. A letter was sent to Ms. Norma Wong asking for a price for Pohukaina and the AAFES Building. Also the lands on the western edge of Kewalo Basin and lands on the eastern shore of Keehi Lagoon.
2. There is a large map in the Chairman's office showing the state controlled lands along the airport complex.
3. A Mr. Jim Funaki is representing the Housing Finance and Development Corporation in the negotiations of OHA's revenue entitlements from certain ceded lands at Kealahou, Kona, Hawaii and at Lahaina, Maui.

Trustee DeSoto MOVED, SECONDED by Trustee Aiona to oppose the proposed Ka' Iwi National Shoreline Park. The Chairman reported that staff is preparing testimony to be delivered on July 1, 1991. The testimony speaks in opposition of the proposal and it seeks to clarify OHA's position to give back federal surplus lands. Motion CARRIED unanimously.

KA 'IWI SHORELINE

Chairman Hee reported on the reorganization of the committee structure and MOVED for first reading approval. Trustee Aiona SECONDED the motion. Motion CARRIED unanimously.

REORGANIZATION

ATTACHMENT 3

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Trustee Aiona MOVED, SECONDED by Trustee DeSoto to issue a Resolution in support of the Keanae Community's concern in the closing of Keanae School on September 19, 1991. Trustee Aiona's main concern was the cultural values. Trustee Kanahele also spoke in favor of the motion because of the cultural sensitivity of the Hawaiian children. Motion CARRIED unanimously.

KEANAE SCHOOL

Chairman Hee referred to the Education and Culture Committee the Proposal from the Native Hawaiian Historic Preservation (Task Force) Council for consideration back to the full Board. If the Committee has any concerns, they are to work with Trustee Kanahele, who is a member of the Council.

NATIVE HAWAIIAN
HISTORIC
PRESERVATION
(TASK FORCE)
COUNCIL

Mrs. Mei Ling Akuna asked to speak before the Board against the action the Board just took on Keanae School. Mrs. Akuna, who is a former valedictorian and class president of Keanae School, is for the closing of the school because of the following reasons:

MEI LING AKUNA

1. The children's academic grades are very low.
2. The parents are very uncooperative.
3. Most children are not from Keanae.

Executive Session - 10:35 a.m.
Regular Session Reconvened - 11:40 a.m.

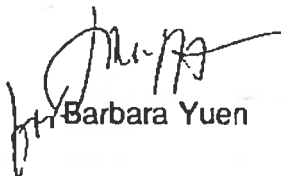
EXECUTIVE
SESSION

There were no action items taken in Executive Session which required ratification.

There being no further business, the meeting adjourned at 11:44 a.m.

ADJOURNMENT

Respectfully submitted,

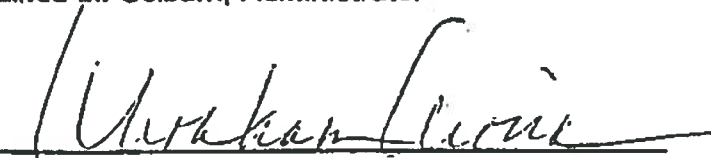

Barbara Yuen

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OFFICE OF HAWAIIAN AFFAIRS ACTION ITEM

MEETING: BUDGET, FINANCE & POLICY COMMITTEE
January 30, 1996

PREPARED BY: 
Linda M. Colburn, Administrator

REVIEWED BY: 
Trustee Abraham Aiona
Chair, Budget, Finance & Policy Committee

I. ACTION ITEM

To discuss and appropriately amend Title I, Chapter 3 of the Administrative & Financial Manual of Guides ("Manual of Guides") relating to *Annual Allowance* (see Exhibit "A") to provide clearer, more specific guidelines and to ensure such guidelines fully comport with requirements of the federal and state taxing authorities and opinions issued by the Hawai'i State Ethics Commission.

II. ISSUE

The trustees have raised a number of questions relating to the use of the annual allowance, reporting requirements to OHA and taxing authorities, and the disposition of non-perishable items purchased with allowance funds. These questions are timely posed and demonstrate the need to review, revise and clarify the policies and procedures set forth in Chapter 3 of the Manual of Guides.

III. DISCUSSION

The provisions which currently control the use and disposition by trustees of their annual allowance were approved by the Board on June 28, 1991, approximately four and one-half years ago. Although attempts have been made periodically to update Title I, Chapter 3, no amendments have been enacted since June, 1991.

1. **Use of Annual Allowance.** Questions have been raised as to what types of items and/or services may be purchased with annual allowance funds. Section 3.2 is

ATTACHMENT C to ACTION ITEM RM #19-03
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not specific in this regard. Rather, it broadly states that:

"The purposes of the annual allowance are ... to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues."

In her letter dated May 29, 1991 (see Exhibit "B"), Sherry P. Broder, Esq. advised that:

"... examples of permitted expenditures might, therefore, include funds to allow each Trustee to send mailings to OHA beneficiaries directly, funds to hire meeting halls within which individual Trustees could meet with beneficiaries ...".

The trustees' annual allowance is somewhat analogous to the annual allowance issued to State legislators. With respect to the disposition of the allowance, Chapter 24-1, Hawai'i Revised Statutes states, in part:

"§24-1. Allowance for incidental expenses. Each member of the legislature shall receive an annual allowance of \$5,000, which amount is to cover incidental expenses connected with legislative duties ..."

The Citizen's Committee on the Allowance for Personal Expenses of Members of the Legislature described the legislative expenses requiring an allowance as:

"expenses such as meals required by meetings held early or late in the day, ... expenditures connected with social, political, and charitable functions which a legislator is expected to attend, postage for newsletters, and other mailings to constituents, ..."

The foregoing are some examples of annual allowance expenditures deemed permissible. Ms. Broder cautions in her May 29, 1991 letter that trustees must remain mindful that the expenditures comport with the purpose for which trust funds may be used.

2. **Accounting and Return of Unused Allowance.** The annual allowance was appropriated to provide trustees with readily accessible funds from which to pay incidental expenses incurred in connection with the performance of their duties as trustees. As in the case of legislative allowances, these funds were not intended as additional compensation or salary on which the trustees are required to pay taxes. In order to clearly differentiate the annual allowance as an "allowance" versus compensation, the funds must be accounted for on no less than an annual basis and

ATTACHMENT C to ACTION ITEM RM #19-03
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any unused or excess portion must be returned. Attached for your perusal as Exhibit "C" is a letter from Teresa Beedle dated January 28, 1992.

3. **Disposition of Non-Perishable Purchases.** On December 10, 1993, the Hawai'i State Ethics Commission issued its Advisory Opinion No. 93-6 (see Exhibit "D") in response to an inquiry from Russell Blair. Among other things, the Opinion addresses the disposition of non-perishable items purchase with allowance moneys. The Opinion states, in pertinent part:

"... non-perishable items purchased with the legislative allowance should be considered state property. They should be treated no differently than other pieces of state property at the legislature. ... Accordingly, non-perishable items purchased with the legislative allowance should be placed on inventory and remain with the Senate when a senator leaves office. ... It is for the State to decide how to allocate or dispose of these items."

In light of the similarities between the trustees' allowance and the legislative allowance, it seems advisable to establish a policy that states all non-perishable items purchased with OHA funds should be reported, upon acquisition, to the Administrative Services Offices for inclusion in OHA's inventory and, upon a trustee's departure, remain with the Office for disposition.

4. **Other Considerations.** It has come to the attention of Administration and members of the Board that a particular trustee appears to have been utilizing a disproportionately large quantity of stationery, copying paper and postage, has monopolized the photocopying equipment on the 5th floor, and, by the sheer volume of mailouts requested, has taken up a disproportionately large amount of the ASO staffs' time and energy. Attached as Exhibit "E" and incorporated by reference are charts itemizing the quantity of postage, supplies and photocopies by trustee.

Due to the actions of this trustee, the funds appropriated to line items such as postage and office supplies are being expended at an unprecedented rate. If such expenditures continue at the present level, the funds appropriated will be depleted prior to the end of the fiscal year; Administration will be forced to request additional trust funds in order to maintain the Agency's operations.

IV. ALTERNATIVES

1. Do not amend Title I, Chapter 3 of the Manual of Guides.
2. Amend Title I, Chapter 3 to clarify the use, accounting procedures, and

ATTACHMENT C to ACTION ITEM RM #19-03
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disposition of non-perishable items purchase with allowance moneys. Attached as Exhibit "F" and incorporated by reference, is a proposed amendment to Chapter 3. New language is underscored; language to be deleted is bracketed. [Accountable Plan]

3. Amend only portions of Title I, Chapter 3 in the manner to be determined in the course of the Committee's discussions.

V. RECOMMENDATION

Administration recommends that Alternative 2 be approved by the Committee and forwarded to the Board for its consideration.

This Alternative 2 offers language clarification, addresses questions which trustees have raised regarding use and reporting requirements, ensures a greater degree of conformity to federal and state tax regulations, and provides a reasonable avenue for the funding of trustees' expenses which are not directly related to his or her duties as a member of OHA's Standing Committees or, in the case of the Chairperson, the Board.

VI. SOURCE OF FUNDING

Administration does not anticipate a need for additional funding to implement Alternatives 1 or 2.

VII. TIMEFRAME

Within thirty days following review and approval by the Board's counsel and other persons deemed appropriate by the Board.

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Chapter 3. Annual Allowance

Sec. 3.1. Scope of Chapter. The Board may, from time to time, appropriate sufficient funds for an annual allowance to each trustee. This chapter establishes and implements the annual allowance.

Sec. 3.2. Purposes. The purposes of the annual allowance are as follows: to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues. — =

Sec. 3.3. Annual Allowance. Each trustee is allowed such amount as provided by the Board to be used for any purpose set forth under Sec. 3.2. The use of the allowance is subject to reporting or accounting, and the amount of the allowance is not subject to reduction or adjustment by per diem, air or ground transportation payments, or compensation. The allowance is available no later than ten calendar days after the effective date of trustees appropriating funds for the annual allowances. In the case of a trustee who fills a vacancy after the specified ten-day period, the allowance is payable no later than ten calendar days after the trustee is appointed by the Board or Governor.

Sec. 3.4. Accounting. Each trustee will prepare a quarterly report within ten calendar days of the quarter's end on annual allowance expenditures. All reports shall be filed with the chairperson, and such reports shall be subject to annual audits and be included as a part of the financial report of the expenditures of OHA as a whole. Whenever possible,

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Chapter 3. Annual Allowance
Page 2

quarterly reports shall be supported by invoices, receipts or other similar documents. OHA Form No. _____, 'Quarterly Allowance Report', shall constitute the report form. Any unexpended annual allowance shall be returned to OHA no later than 10 working days following the expiration of the term of office or a vacancy that may occur through any other cause.

ATTACHMENT C to ACTION ITEM RM #19-03

April 10, 2019

05:29.91 03:15 PM *S. BRODER 808 5318411 P01

SHERRY P. BRODER
ATTORNEY AT LAW
A LAW CORPORATION

OCEAN VIEW CENTER
PENTHOUSE 3
707 RICHARD STREET
HONOLULU, HAWAII 96813

CONFIDENTIAL

TELEPHONE: (808) 531-1411
(808) 544-1138
FAX: (808) 531-6411

M E M O R A N D U M

TO: Richard K. Paglinawan
Administrator
Office of Hawaiian Affairs

From: Sherry P. Broder

Date: May 29, 1991

Subject: Legal Review of the "Annual Allowance" Established by the
Committee on Budget, Finance, Policy and Planning, May
10, 1991

This memorandum is written in response to your request of May 17, 1991, for a review of the action taken by OHA's Committee on an Annual Allowance for each Trustee. According to Section 3.2 of the Committee's proposal, this fund could be spent for the following purposes: "to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues." Examples of permitted expenditures might, therefore, include funds to allow each Trustee to send mailings to OHA beneficiaries directly, funds to hire meeting halls within which individual Trustees could meet with beneficiaries, funds to hire staff to coordinate contacts between individual Trustees and the beneficiaries and to allow each Trustee to respond to their inquiries directly, as well as other

ATTACHMENT 3

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05.29.91 03:15 PM *S. BRODER 808 5318411 P02

In my professional judgment, this action--if approved by the full Board--would be legitimate and should not raise any major legal problems. Two questions need to be addressed in order to understand the legal framework within which the OHA trustees must act: (1) What limits does the nature of the trust that generates OHA's resources impose on the ability of the Trustees to spend or allocate those resources? (2) What limits do the constitutional and statutory provisions impose on the ability of the Trustees to spend or allocate OHA's resources?

(1) The funds OHA can draw upon have certain built-in restrictions on their use. Legislatively-authorized general funds must be used for the purposes identified by the legislature at the time of authorization. Revenues derived from the public land trust proceeds must, according to H.R.S. Section 10-13.5, be used "for the betterment of the conditions of native Hawaiians," who are for this purpose defined as half-blood Hawaiians (H.R.S. Section 10-2). Although it can be argued that the limitation in Section 10-13.5 is too narrow and constitutes a violation of the trust established in the 1898 Joint Resolution of Annexation of an infringement on the basic right of self-governance of the Hawaiian people, such an argument raises complex political and legal issues and is certain to be divisive in the Hawaiian Community. Accordingly, the Trustees should ensure that the 5(f) funds they receive benefit the native Hawaiians.

At the present time, it is clear that OHA may expend 5(f)

April 10, 2019

05.29.91 03:15 PM *S. BRODER 808 5318411 RUJ

funds for the benefit of native Hawaiians only. Native Hawaiian Trusts Judicial Relief Act, H.R.S. Chapter 673, commonly referred to as the "right to sue bill by native Hawaiians and Hawaiian Individuals and Organizations" states that OHA must administer this trust "in the sole interest of its beneficiaries." Nevertheless, OHA is not required to maximize revenues to the native Hawaiian public trust, so long as the trust is administered "in the sole interests of its beneficiaries." Furthermore, the State may provide collateral benefits to non-beneficiaries, "but only so long as the primary benefits are enjoyed by beneficiaries, and the collateral benefits are enjoyed by beneficiaries, and the collateral benefits do not detract from nor reduce the benefits enjoyed by the beneficiaries." Section 673-1(b)(1).

This requirement of administration for the "sole interest of its beneficiaries" has also been established in case law by Hawaii Supreme Court with regard to the Hawaiian Home Lands Trust. In Ahuna v. Department of Hawaiian Home Lands, 64 Haw. 327, 338, 640 P.2d 1161 (1982), the Hawaii Supreme Court stated that "[O]ne specific trust duty is the obligation to administer the trust solely in the interest of the beneficiary."

To limit judicial challenges, the Trustees should seek to tie their expenditures of the public land trust proceeds to identifiable benefits that will be received by the native Hawaiians whenever possible.

(2) OHA was designed by the 1978 Constitutional

April 10, 2019

05:29.91 03:15 PM *S. BRODER 808 5318411 PU4

Convention to be a semi-autonomous entity with substantial independent control of its resources. This decision was reinforced by the legislature which stated in 1979, in what is now Section 10-4 of the Hawaii Revised Statutes, that OHA "shall be a separate entity independent of the executive branch." OHA's Trustees may allocate OHA's resources for the benefit of its beneficiaries so long as the Trustees determine that it is in the sole interests of its beneficiaries, unless their action is explicitly in conflict with a constitutional or statutory provision designed to limit OHA's activities. I am enclosing with this memorandum an opinion letter written by Jon M. [REDACTED] on November 5, 1990 on a related subject which discusses in detail the reasons that support this conclusion.

Unless, therefore, an explicit statutory or constitutional provision limits OHA's Trustees, they may allocate resources and spend resources for communication and participation as described in the Committee's proposal. Are there any explicit limitations that would restrict their ability to establish an "Annual Allowance"?

H.R.S. Section 10-9 establishes the compensation rate per meeting for the Trustees and in addition authorizes them to receive "transportation fares" and "personal expenses" (or per diem) for their travel. It is not, however, written in language that indicates that this list is meant to be exhaustive. It does not, in other words, indicate that the Trustees cannot also receive other appropriate expenses for other legitimate purposes.

April 10, 2019

05:29.91 03:15 PM *S. BRODER 808 5318411 RUB

H.R.S. Section 10-12 authorizes the Administrator to hire staff to carry out the functions of OHA. Is this provision meant to be exclusive, or does it permit the Trustees to hire their own staff as well to assist them in their legislative functions, to carry out the purposes identified in Section 3.2 of Chapter 3 on the "Annual Allowance"? The language of H.R.S. Section 10-12 does not indicate that this provision is meant to be exclusive, and analogies to other legislative bodies--such as the county councils in Hawaii--illustrate that it is proper and usual for legislators to have their own staff assistants.

It would appear, therefore, that nothing in the Hawaii Revised Statutes or the Hawaii State Constitution prohibits the establishment of the "Annual Allowance."

To summarize, the creation of an "Annual Allowance" for individual Trustees appears to be a legitimate expenditure of OHA's resources. The actual uses of these funds may need to be monitored, however, to ensure that the expenditures are in fact in the sole interests of the beneficiaries.

Office of Hawaiian Affairs
560 N Nimitz Hwy. Ste. 200
Honolulu, HI 96817

Action Item

COMMITTEE ON RESOURCE MANAGEMENT (RM)		DATE: April 10, 2019 Motion: Vote:					
AGENDA ITEM: IV. New Business [†] B. Action Item RM #19-03: Approval of BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee's duties and responsibilities.							
MOTION: Approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a Trustee's duties and responsibilities as shown in Attachment "A" and Corresponding and Conforming Changes to BOT Operations Manual as shown in Attachment "B."							
AMENDMENT:							
MEANS OF FINANCING:							
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI	AHU ISA			x			
KALEI	AKAKA			x			
KELI 'I	AKINA			x			
BRENDON	LEE			x			
HULU	LINDSEY			x			
ROBERT	LINDSEY			x			
COLETTE	MACHADO	x		x			
JOHN	WAIHE'E		x	x			
CHAIR DAN	AHUNA			x			
TOTAL VOTE COUNT				x			

MOTION: [☒] UNANIMOUS [☐] PASSED [☐] DEFERRED [☐] FAILED

DISCUSSION:

Office of Hawaiian Affairs
Board of Trustee Meeting
April 11, 2019
10:00 am

V. New Business

C. Consultation with Kumabe HR LLC to assist the Board in conducting its performance appraisal of OHA's CEO pursuant to Section III of Contract 3147 (if necessary, the Board will recuse into Executive Session to consult with Board Counsel Robert G. Klein, Esq., *Pursuant to HRS §92-5(a)(4)*).

*Note: Material was not received at time of folder distribution.
Once it is received it will be distributed.*

Office of Hawaiian Affairs
Board of Trustee Meeting
April 11, 2019
10:00 am

VI. Executive Session[‡]

- A. Consultation with attorneys William Yuen, Esq., Judy Tanaka, Esq., and Board Counsel Robert G. Klein, Esq., re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding OHA's role as a member of Hi'ilei Aloha LLC and Ho'okele Pono LLC and management options for those LLCs in light of the Minute Order issued in Andrew Walden v. Hi'ilei Aloha LLC, Ho'okele Pono LLC, and Hi'ipaka LLC. *Pursuant to HRS §92-5(a)(4).***
- B. Consultation with Board Counsel Robert G. Klein, Esq. on questions and issues pertaining to the Resource Management Committee of the OHA-BOT's powers, duties, privileges, immunities and liabilities regarding OHA Contract #3284. *Pursuant to HRS §92-5(a)(4).***
- C. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities relating to the Trustee Protocol Allowance policy. *Pursuant to HRS §92-5(a)(4).***
- D. Consultation with Board Counsel Robert G. Klein, Esq. and Kumabe HR LLC re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the Board's obligations and responsibilities to conduct its performance appraisal of OHA's CEO in accordance with Section III of Contract 3147. *Pursuant to HRS §92-5(a)(4).***
- E. Approval of Minutes**
 - 1. March 7, 2019**
 - 2. March 21, 2019**

[‡]- *Any material that is relevant to this section will be distributed at the table during Executive Session.*