

Committee on Beneficiary Advocacy and Empowerment

Trustee Kaleihikina Akaka, *Chair*Trustee Keola Lindsey, *Vice Chair**Members*

Trustee Leina'ala Ahu Isa, At-Large

Trustee Dan Ahuna, Kaua'i / Ni'ihau

Trustee Keli'i Akina, At-Large

Trustee Luana Alapa, Moloka'i / Lāna'i

Trustee Carmen Hulu Lindsey, Maui

Trustee Brendon Kalei'aina Lee, At-Large

Trustee John Waihe'e IV, At-Large



**STATE OF HAWAII'  
OFFICE OF HAWAIIAN AFFAIRS**

**MEETING OF THE  
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT**

**DATE:** Wednesday, September 15, 2021**TIME:** 1:30 p.m.**PLACE:** Virtual MeetingViewable at [www.oaha.org/livestream](http://www.oaha.org/livestream) OR

Listen by phone: (213) 338-8477,

Webinar ID: 864 0827 3707

**Due to the threat of COVID-19, Governor Ige issued the Emergency Proclamation Related to the COVID-19 Response, dated August 5, 2021 that suspends parts of Hawai'i Revised Statutes Chapter 92, Public Agency Meetings and Records to, among other things, enable boards to conduct business without any board members or members of the public physically present at the same location.**

**The OHA Board of Trustees and its Standing Committees will hold virtual meetings until further notice. The virtual meetings can be viewed and observed via livestream on OHA's website at [www.oaha.org/livestream](http://www.oaha.org/livestream) or listen by phone: (213) 338-8477, Webinar ID: 864 0827 3707**

**AGENDA**

- I. Call to Order
- II. Public Testimony on Items Listed on the Agenda\* (Please see page 2 on how to submit written testimony or provide oral testimony online. Oral testimony by phone will **not** be accepted)
- III. Approval of Minutes
  - A. August 4, 2021
  - B. August 18, 2021
- IV. Unfinished Business
- V. New Business
  - A. Action Item BAE #21-04: To Approve the First Term Native Hawaiian Revolving Loan Fund Board of Directors, Maui Island (Wayne Wong) and Hawai'i Island (Kristin Kahaloa) Nominations
  - B. OHA Federal Legislative Positioning – Matrix† - Advocacy (Washington, D.C. Bureau)
- VI. Announcements
- VII. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at



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telephone number (808) 594-1772 or by email at: [rainag@oha.org](mailto:rainag@oha.org) no later than three (3) business days prior to the date of the meeting.

Meeting materials will be available to the public on Friday, September 10, 2021 and posted to OHA's website at: [www.oha.org/bae](http://www.oha.org/bae)

In the event that the livestream public broadcast is interrupted and cannot be restored, the meeting may continue as audio-only through the phone and Webinar ID provided at the beginning of this agenda.

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

**\* Public Testimony on Items Listed on the Agenda must be limited to matters listed on the meeting agenda.**

Hawai'i Revised Statutes, Chapter 92, Public Agency Meetings and Records, prohibits Board members from discussing or taking action on matters not listed on the meeting agenda.

Testimony can be provided to the OHA Board of Trustees either as: (1) written testimony emailed at least 24 hours prior to the scheduled meeting, or (2) live, oral testimony online during the virtual meeting.

(1) Persons wishing to provide written testimony on items listed on the agenda should submit testimony via email to [BOTmeetings@oha.org](mailto:BOTmeetings@oha.org) at least 24 hours prior to the scheduled meeting. Any testimony received after this deadline will be late testimony and will be distributed to the Board members after the scheduled meeting. Due to COVID- 19, please do not fax, mail, or hand-deliver written testimony

(2) Persons wishing to provide oral testimony online during the virtual meeting must first register at: [https://us06web.zoom.us/webinar/register/WN\\_9gp8gs\\_bSamtgp\\_SemKGg](https://us06web.zoom.us/webinar/register/WN_9gp8gs_bSamtgp_SemKGg)

You need to register if you would like to orally testify. Once you have completed your registration, a confirmation email will be sent to you with a link to join the virtual meeting, along with further instructions on how to provide oral testimony during the virtual meeting. The registration page will close during the Public Testimony or Community Concerns agenda item. Oral testimony by telephone/landline will not be accepted at this time.

To provide oral testimony online, you will need:

- (1) a computer or mobile device to connect to the virtual meeting;
- (2) internet access; and



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(3) a microphone to provide oral testimony.

Oral testimony online will be limited to five (5) minutes. Once your oral testimony is completed, you will be asked to disconnect from the meeting. If you do not sign off on your own, support staff will remove you from the Zoom meeting. You can continue to view the remainder of the meeting on the livestream or by telephone, as provided at the beginning of this agenda.

Please visit OHA's website for more detailed information on how to submit Public Testimony OR Community Concerns at: <https://www.oha.org/how-to-submit-testimony-for-oha-bot-meetings/>

A handwritten signature in blue ink, reading "Kaleihikina Akaka".

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Trustee Kaleihikina Akaka, Chair  
Committee on Beneficiary Advocacy and Empowerment

**9/9/2021**

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Date

Committee on Beneficiary Advocacy and Empowerment

Trustee Kaleihikina Akaka, *Chair*Trustee Keola Lindsey, *Vice Chair**Members*

Trustee Leina'ala Ahu Isa, At-Large

Trustee Dan Ahuna, Kaua'i / Ni'ihau

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**MEETING OF THE  
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**STATE OF HAWAII**  
OFFICE OF HAWAIIAN AFFAIRS  
560 N. NIMITZ HIGHWAY, SUITE 200  
(VIRTUAL MEETING - VIA ZOOM WEBINAR)

COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT  
MINUTES

August 4, 2021 1:30 p.m.

ATTENDANCE:

Chairperson Kaleihikina Akaka  
Vice-Chairperson Keola Lindsey  
Trustee Leina'ala Ahu Isa  
Trustee Keli'i Akina  
Trustee Luana Alapa  
Trustee Brendon Kalei'aina Lee  
Trustee C. Hulu Lindsey  
Trustee John Waihe'e, IV

Brandon Mitsuda  
Mark Watanabe

ADMINISTRATION STAFF:

Hussey, Sylvia, Ka Pouhana / CEO  
Brown, Casey / COO  
Hinck, Ramona / CFO  
Wong, Sterling / Chief Advocate  
Tanaka, Wayne / Public Policy Manager  
Gushiken, Raina, Senior Legal Counsel  
Ohta, Everett, Assistant Legal Counsel  
Brad Ka'aleleo Wong, Program Specialist  
Chak, Kevin, IT

EXCUSED: Trustee Dan Ahuna

BAE STAFF:

I. CALL TO ORDER

Chair **Akaka** calls the Committee on Beneficiary Advocacy and Empowerment meeting for Wednesday, August 4, 2021 to order at **1:30 p.m.**

Chair **Akaka** notes for the record that PRESENT are:

MEMBERS			AT CALL TO ORDER (1:30 p.m.)	TIME ARRIVED
CHAIR	KALEIHIKINA	AKAKA	PRESENT	
VICE-CHAIR	KEOLA	LINDSEY	PRESENT	
TRUSTEE	LEINA'ALA	AHU ISA	PRESENT	
TRUSTEE	DAN	AHUNA	EXCUSED	
TRUSTEE	KELI'I	AKINA	PRESENT	
TRUSTEE	LUANA	ALAPA	PRESENT	
TRUSTEE	BRENDON KALEI'AINA	LEE	PRESENT	
TRUSTEE	CARMEN HULU	LINDSEY	PRESENT	
TRUSTEE	JOHN	WAIHE'E, IV	PRESENT	

At the Call to Order, **EIGHT(8)** Trustees are PRESENT, thereby constituting a quorum.

II. PUBLIC TESTIMONY on Items Listed on the Agenda\*

None

### III. APPROVAL OF MINUTES

1. March 10, 2021

**Chair Akaka** recognizes Trustee Lee.

**Trustee Lee:** I move that we put on the table the minutes from March 10, 2021 meeting.

**Chair Akaka:** Yes

**Trustee Lee:** So is it open for discussion now Madam Chair?

**Chair Akaka:** Yes, we can have it open for discussion, mahalo.

**Trustee Lee:** So the minutes for the March 10, 2021 meeting were moved for approval at our previous meeting and then tabled until today and now that we have it off the table I'm looking at the minutes Madam Chair, and no corrections have been made. The corrections that were pointed out in the previous meeting three months ago still shows that my vote for the roll call for the minutes of the February 3rd meeting still indicate that I voted yes when I voted kanalua. So the minutes that have been tabled all of these months came back to us exactly the same without any changes being made.

**Chair Akaka:** Yes, so we'd be happy to clarify so we went back and looked at the recording and it is accurate, the minutes as they are.

**Trustee Lee:** So the recording reflects that I didn't vote kanalua?

**Chair Akaka:** Yes, that you voted aye. We can provide you the recording if you'd like to view it.

**Trustee Lee:** Yeah, Madam Chair I would appreciate that.

**Chair Akaka:** Yes, and our Corporation Counsel has had an opportunity to view it as well. So we can make that happen for you.

**Trustee Lee:** Thank you, Madam Chair.

**Chair Akaka:** You're welcome Trustee Lee

**Board Chair Hulu Lindsey:** Madam Chair, I'd like to move that we approve the minutes of March 10, 17 and 24.

**Chair Akaka** recognizes Trustee Lee.

**Trustee Lee:** The March 10th minutes are already before us so we have to vote on that before we take up 17 and 24.

**Board Chair Hulu Lindsey:** Then I'll second it because there was no second to that.

**Trustee Lee:** There was no second needed Trustee Hulu Lindsey. The motion was made at a previous meeting and then you made the motion to table it, so all I did was move to put it back on the table, no second is necessary for that. The Chair so stipulated so we just need to vote now on the March 10th meeting minutes.

**Chair Akaka:** Mahalo for that, so can we please have the **roll call** Brandon for March 10.

							1:36 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA					X	
DAN	AHUNA						EXCUSED
KELI'I	AKINA			X			
LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE	1				X	
CARMEN HULU	LINDSEY			X			
VICE CHAIR KEOLA	LINDSEY				X		
JOHN	WAIHE'E, IV			X			
CHAIR KALEIHIKINA	AKAKA			X			
TOTAL VOTE COUNT				5	1	2	1

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

**Trustee Ahu Isa:** I wanted to hear what happens after he hears the recording.

**Vice Chair Lindsey:** I don't know why we are voting on minutes when one of our Trustees is questioning what's in there so I'm going to vote no on that until that gets clarified. Thank you, Madam Chair.

2. March 17, 2021

3. March 24, 2021

**Board Chair Hulu Lindsey:** I'd like to move that we approve the minutes of March 17.

**Chair Akaka:** Yes, is there a second?

**Trustee Akina:** Second

**Trustee Lee:** Madam Chair, I'd like to amend the motion if it pleases Trustee Hulu Lindsey to include the minutes of March 24th. Unless she wants to just make a new motion so we have to vote on the amendment.

**Board Chair Hulu Lindsey:** No, I was just wondering if anybody had questions it would be appropriate for us to take it one at a time. But I'd be happy to make a new motion to approve March 17 and 24.

**Trustee Akina:** I consent as the second.

**Chair Akaka:** Alright then if we could please have the roll call for approval of minutes for the 17th and 24th of March.

							1:39 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA						EXCUSED
KELI'I	AKINA		2	X			
LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY	1		X			
VICE CHAIR KEOLA	LINDSEY			X			
JOHN	WAIHE`E, IV			X			
CHAIR KALEIHIKINA	AKAKA			X			
TOTAL VOTE COUNT				8	0	0	1

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

**Chair Akaka** recognizes Trustee Lee.

**Trustee Lee:** Before before we move off of this agenda item number three, can I inquire with the Committee Chair where the minutes for the April 7th, April 14th, April 28th and June 9th meetings are? How come we don't have those to approve today, it's August.

**Chair Akaka:** Sorry, can you please repeat those again.

**Trustee Lee:** I'm inquiring with the Committee Chair where the minutes for the April 7th, the April 14th, April 28th and June 9th minutes are how come they're not before us for approval, it's August now.

**Chair Akaka:** Mahalo, we are queuing them up for the next meeting.

**Trustee Lee:** How come they're not here Madam Chair, they're on our website. The draft minutes are posted on our website. So how come we don't have them for the committee to approve.

**Chair Akaka:** We will have them for the next meeting, mahalo.

**Trustee Ahu Isa:** A point of clarification or point of personal privilege. I think once when I was on the Board of Education, the minutes in the law by law says you have to have it done within a certain period of time for us to be I think a month for the Board of Education minutes to be.

**Chair Akaka:** I think it might be about 40 days or so. Everett can you please provide clarification on that.

**Assistant Senior Legal Counsel Ohta:** This is Everett Ohta, Assistant Senior Legal Counsel. Sunshine law requires that the minutes of a meeting be posted to a public website of the Board are made available within 40 days of the agenda. I'm sorry of the the meeting to which they apply. So them being available on the OHA website satisfies that requirement.

**Trustee Lee:** Madam Chair, can I get clarification from counsel. So if I understand it correctly right, it does not stipulate whether it's draft minutes or approved minutes correct?

**Assistant Senior Legal Counsel Ohta:** Chair, to answer Trustee Lee's question, the minutes need to be posted whether in draft or approved form.

**Trustee Lee:** Right so we are in compliance because those minutes, the draft minutes are posted which is why my inquiry. Why they're not here for approval because they're done, it's been five months. My concern Counsel is just that we don't know when our next meeting is going to be. So because we had a meeting scheduled today and it's been five months. I was wondering why we don't have them for us to approve because we don't know when our next meeting is going to be.

**Assistant Senior Legal Counsel Ohta:** That is just a matter of scheduling to get those minutes for approval before this committee.

**Chair Akaka:** Mahalo, Everett.

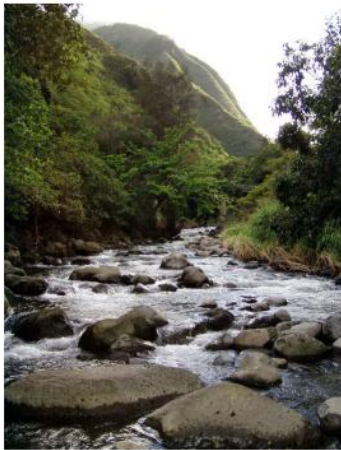
IV. UNFINISHED BUSINESS

NONE

V. NEW BUSINESS

**A. Presentation by OHA attorney Pamela Bunn, Esq. Re: the background and status of OHA participation in the Nā Wai 'Ehā (Maui) litigation and related matters.**

**Assistant Senior Legal Counsel Ohta:** I would like to introduce Pam Bunn, partner with the Dentons Law Firm. She is on the Zoom to provide a presentation which provides background and update on the status of the Nā Wai 'Ehā litigation and proceedings. Pam has been OHA's attorney on this matter pretty much since the beginning and works in close coordination with Corp Counsel, and our OHA Public Policy team, particularly the Public Policy Manager was unavailable due to a conflicting hearing for this committee meeting. Pam will be going over the history of Nā Wai 'Ehā. You know it is a long history that has really spanned decades now. But she will provide that and help everyone understand where we are in the proceedings and kind of what to expect going forward so with that, Pam.



## Nā Wai ‘Ehā

Update on Status; Upcoming  
Proceedings

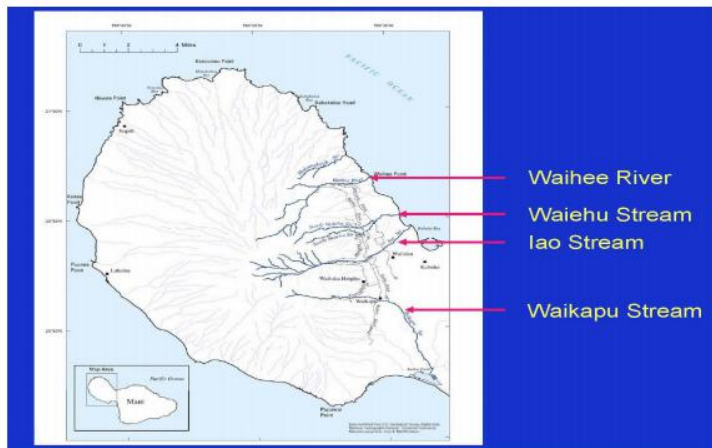
OHA Board of Trustees  
Committee on  
Beneficiary Advocacy  
and Empowerment

August 4, 2021

大成 DENTONS Pamela W. Bunn

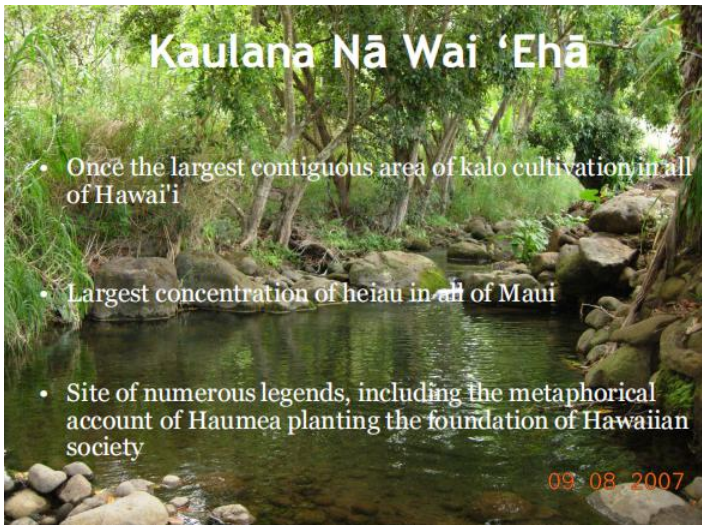
**OHA Attorney Pamela Bunn:** I'm Pam Bunn and as Everett has told you it's been my honor and privilege to represent OHA for more than 15 years now in this. So good afternoon Chair Akaka, Vice Chair, Trustee's staff. Thank you for having me here today. I know that some of you will have seen some of these slides. I have kind of an ever morphing slideshow as things go on. Although I know that some of you are newer than others. And so I try to start towards the beginning because it's one cohesive story. We'll see how it goes, feel free to stop me at any time if you have questions because if I get too far ahead then you might forget what they are.

## Nā Wai ‘Ehā - The Four Waters



So the Nā Wai ‘Ehā case, there are two important water cases on Maui. One is in East Maui, that's not the Nā Wai ‘Ehā case, although it has many of the same players. The Nā Wai ‘Ehā case concerns the four great waters of West Central Maui. So from north to south, they are Waihe'e River, Waiehu Stream, what used to be called the 'Iao Stream, but has now been restored to its rightful name of Wailuku River and the southernmost is Waikapū Stream.





## The Problem



This area is very prominent and important in the cultural history of Maui. It was once the largest contiguous area of kalo cultivation in all of the islands. It has the largest concentration of Heiau and it's the site of numerous legends. The problem is that the early sugar growers who recognize the value of Nā Wai 'Ehā waters and they devised ingenious ways to harvest those waters out of the streams and transport them to the dry central isthmus where they were primarily growing sugar. This is Wailuku River looking upstream and the river is coming towards you, there is a grate across the stream and a big vault under the grate. The water just drops through and gets carried out into in this case it's Waihe'e ditch and then there's also Spreckels ditch.

In recent times, the waters of Nā Wai 'Ehā have been controlled by two companies: HC&S and Wailuku Water Company



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## Impacts of Diversions

- Traditional and customary Hawaiian rights are impaired
  - Some kuleana holders struggle to grow kalo with insufficient water, and some cannot grow kalo on their kuleana land at all
  - Lack of mauka to makai flow interrupts the life cycles of the native stream organisms, such as 'o'opu, 'ōpae, and hihīwai, making these organisms unavailable for gathering
  - Lack of streamflow has dried up coastal springs and wetlands
  - Lack of discharge at the mouths of the streams impairs the nearshore marine environment, diminishing traditional resources such as limu
- Other public trust uses, such as recreation, are impaired
- Recharge to the 'Īao Aquifer, which provides the drinking water for Central Maui, is decreased

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Now the predecessors of these companies used to control the water. But since the early 1920s. I would say the waters of Nā Wai 'Ehā have been primarily controlled by HC&S and Wailuku Water Company, which previously was Wailuku Agribusiness and before that Wailuku Sugar.

The impacts of the diversions have been devastating on traditional and customary rights. There are Kuleana users that don't have enough water to grow kalo. Some couldn't grow it at all, some with inadequate water. The diversions of the streams interrupt the life cycle of the native species because they are amphidromous. They need to get upstream to spawn and the spawn needs to float downstream. So a lot of 'o'opu, 'ōpae, hihīwai were no longer available for gathering. The diversions also caused the coastal springs and wetlands to dry up and except for extreme rain events and the lack of discharge at the mouth of the streams affected the estrogen ecosystems and disrupted things like limu and other things that have their life cycle in the estuary. It also

affected other public trust uses and it certainly affects the recharge to the 'Āo Aquifer which is where most of Central Maui 's drinking water comes from.

### OHA's goals for Nā Wai 'Ehā

1. Re-establish year round flows in the streams of Nā Wai 'Ehā, from the summit of Pu'u Kukui and Mauna Kahalawai till they reach the Pacific Ocean
2. Return Public Trust resources to public control and management
3. Secure permanent stewardship & funding for the watersheds so there will be streams for the future

September 20, 2007

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### Petition to amend the IIFS

- Interim Instream Flow Standards define the amount of water required to remain in a stream to support Public Trust uses
- In 1980s, State set them at status quo – amount flowing at time
- Petition to amend the IIFS was filed by Community Groups on June 26, 2004
- This petition resulted in contested case hearing, in which OHA intervened

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I highlighted the date on this slide so you can see how long ago we actually launched into litigation on this. This was in 2007 and these were OHA's goals for basically what turned out to be almost two decades worth of litigation. The first is to reestablish the year round flows in the Nā Wai 'Ehā streams from the mountain to the ocean on a year round basis. The second goal was to return these public trust resources to public control and management and the third goal was to secure permanent stewardship and funding for the watersheds so that there will be streams for the future.

The first step in securing Mauka to Makai flow was a petition to amend the IIFS. IIFS are interim instream flow standards and they're basically the amount of water that is required to remain in a stream in order to support the public trust uses. When the water flow was adopted in like 1986 it just had status quo IIFS's. It just basically said the amount of water in the stream shall not be diminished below what it is today. So any more water in the stream after the water probe was enacted requires an amendment to the IIFS. So that's what this petition was. It was filed in July of 2004 by the community groups who are Hui o Nā Wai 'Ehā and Maui Tomorrow. And the Water Commission then set a contested case hearing and OHA intervened in that hearing.

### First CCH Milestones

- December 3, 2007 Evidentiary hearing commenced on Maui
  - 23 hearing days
  - Testimony from 80 witnesses
  - 600 exhibits received in evidence
- October 14, 2008 Evidentiary hearing closed
- April 9, 2009 Proposed Decision issued
- May 11, 2009 Parties filed exceptions
- October 15, 2009 Hearing on exceptions
- June 10, 2010 CWRM Final Decision

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	Proposed Decision (4/9/09)	Final Decision (6/10/10)
• Waihe'e River	14 mgd	<b>10 mgd</b>
• Waiehu Stream	3.5 mgd	<b>2.5 mgd</b>
• 'Āo Stream	13 mgd	<b>0</b>
• Waikapū Stream	4 mgd	<b>0</b>
• <b>TOTAL</b>	<b>34.5 mgd</b>	<b>12.5 mgd</b>

(The IIFS for Waikapū Stream would be conditional upon flow reaching Kealia Pond within 120 days)



So the first contested case was in December of 2007 and it went through late 2008. It was 23 days, we had dozens of witnesses, hundreds of exhibits. Doctor Miike was the hearings officer and many of you will recognize the name. He used to at one time be the Director of Health for the State of Hawai'i. He issued a proposed decision relatively quickly from he took from October to the following April. Then the parties filed exceptions to the decision. And after hearing on the exceptions, the full Commission votes on the final decision.

The proposed decision you can see is the comment of the column on the left, Doctor Miike proposed to restore 35,500,000 gallons per day to Nā Wai 'Ehā streams. The bigger streams getting more, the smaller getting less. The final decision cut that in less than half, far less than half, it would have restored no water at all to Wailuku River or to Waikapū stream. Despite the number of kuleana users trying to grow kalo on those streams. This was Laura Thielen and it was Governor Lingle at that time in 2010.

Supreme Court of Hawai'i.  
In re 'ĪAO GROUND WATER MANAGEMENT AREA HIGH-LEVEL SOURCE WATER USE  
PERMIT APPLICATIONS and Petition to Amend Interim Instream Flow Standards of Waihe'e River  
and Waiehu, 'Īao, and Waikapu Streams Contested Case Hearing.  
No. SCAP-30603.  
Aug. 15, 2012.

In reviewing Hui/MTF's and OHA's points of error, the court concludes that the Commission on Water Resource Management erred in several respects.

*First*, in considering the effect of the IIFS on native Hawaiian practices in Na Wai 'Eha, the Commission failed to enter findings of fact and conclusions of law regarding the effect of the amended IIFS on traditional and customary native Hawaiian practices in Na Wai 'Eha, and regarding the feasibility of protecting any affected practices.

*Second*, the Commission's analysis of instream uses was incomplete, as it focused on amphidromous species and did not fully consider other instream uses to which witnesses testified during the hearings.

*Third*, the Commission erred in its consideration of alternative water sources and in its calculation of diverting parties' acreage and reasonable system losses.

*The court must vacate the Commission's June 10, 2010 Findings of Fact, Conclusions of Law, Decision and Order, and remand the case for further proceedings.*

128 Hawai'i 228, 231-32, 287 P.3d 129, 132-33.

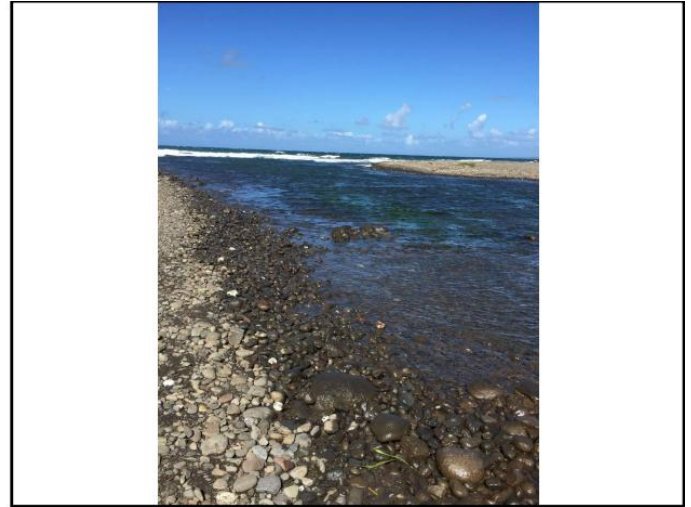
So OHA joined the community groups in appealing it and the Hawai'i Supreme Court absolutely agreed with us that the water Commission had erred primarily because it didn't give full consideration to traditional and customary Native Hawaiian rights and the feasibility of protecting them. So you can see down at the bottom, the court vacated the Commission's decision and remanded the case for further proceedings. Remanding basically means you're going back into another contested case hearing. So this was 2012 at this point when the Hawai'i Supreme Court made this decision.

	Proposed Decision (4/9/09)	Final Decision (6/10/10)	Mediated IIFS (4/17/14)
• Waihe'e River	14 mgd	10 mgd	10 mgd
• Waiehu Stream	3.5 mgd	2.5 mgd	2.0 mgd*
• Wailuku River	13 mgd	0	10 mgd*
• Waikapū Stream	4 mgd	0	2.9 mgd
• TOTAL	34.5 mgd	12.5 mgd	24.9 mgd

By 2014, we still haven't had another contested case hearing, and since the amended IIFS was really just the first step in what you'll see is a much bigger process. This was really holding things up. I mean by this point it was already seven years since we started the first contested case. So we got together and we suggested to it was Director Aila at the time, that you know nobody would be the first to say it, but the parties might be willing to negotiate and see if we could just resolve this ourselves. So he very wisely got Robbie Alm who is a very good mediator and we had a few meetings and we reached mediated IIFS and that's the green column at the right of slide. The the mediated IIFS were designed to make sure that there would be water at the mouths of the stream, so it would be Mauka to Makai flow on a year round basis and everybody agreed to these which meant there was no appeal, it meant we could move on. We had gotten past that hurdle.



So this is Waihe'e River towards the mouth and it's flowing into the ocean. This is after the restoration. It may have taken until early 2015 before it actually was restored.



This is why Waiehu Stream at the mouth flowing into the ocean. This is why Wailuku River flowing into the ocean.



And this is a little bit different. Waikapū Stream does not flow directly to the ocean. It flows into Keālia Pond, and then when there's enough water in Keālia Pond it breaks through and flows into the ocean. And even the springs and the wetlands got restored. This is by Duke Sevilla's House, which is near the mouth of the 'Īao Stream, or Wailuku River. It had been completely dried up as I said, except for very heavy rains prior to the restoration. Streams flowed Mauka to Makai, wetlands came back. The studies that have been done of the native species in the streams showed increases in population.



## OHA's goals for Nā Wai 'Ehā

1. Re-establish year round flows in the streams of Nā Wai 'Ehā, from the summit of Pu'u Kukui and Mauna Kahalawai till they reach the Pacific Ocean
2. Return Public Trust resources to Public Control and Management
3. Secure permanent stewardship & funding for the watersheds so there will be streams for the future

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## Petition to Designate Nā Wai 'Ehā as a Surface Water Management Area

- Designation effective April, 2008; first and only surface water designation in Hawai'i
- Required all users of Nā Wai 'Ehā water to apply for Water Use Permits by April, 2009
- Before permits can be issued for off-stream use, CWRM needs to know how much water is available

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And so we were ready to move on to the next step which was returning the public trust resources to public control and management. These things were kind of going on simultaneously. The first step in this process was to designate Nā Wai 'Ehā Streams as a surface water management area because under our water code the Commission only has authority to delegate in a designated management area. We have what's called a bifurcated code. Sometimes it seems like we took the worst of all possible worlds and combined them, but I don't think that was the intent. But unless an area is a designated water management area, the Commission can't regulate it. This is the first surface water designation ever in Hawai'i. It had never been done before and it became effective on April 8th, 2008, which means that everybody had to submit water use permits by April 8th, 2009, and there were hundreds as can be imagined. But before any of the permits can be issued for off stream use the Commission needs to know how much water is available. So we first have to look at what is not available.

## Water Unavailable for Offstream Use:

- Water that is required to remain in the stream to satisfy IIFS
- Water required to satisfy appurtenant rights
- Water required to satisfy Traditional and Customary ("T&C") rights

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## Appurtenant (or Kuleana) Rights:

- The "rights to the use of water utilized by parcels of land at the time of their original conversion into fee simple land." *Reppun v. Bd. of Water Supply*, 65 Haw. 531, 551, 656 P.2d 57, 71 (1982).
- Kuleana rights are "incidents of land ownership", and constitute "an easement in favor of the [property with an appurtenant right] as the dominant estate." *Id.* (quoting *Peck v. Bailey*, 8 Haw. 658 (1867) (brackets in original)).
- Kuleana rights are expressly protected and preserved by the Hawai'i Constitution (Art. XI, § 7) and the State Water Code (HRS § 174C-101(d)), and their exercise is a public trust purpose.

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So water for offstream use is not available if it's required to remain in the streams to satisfy the IIFS, or if it's required to satisfy appurtenant rights or if it's required to satisfy traditional and customary rights. So we started looking at those things and holders of appurtenant rights and traditional and customary rights were also being asked to get permits. So they applied for permits as well even though there is a very good argument that it's not required under the code, the Commission wanted it because it helped them with the management of this whole big unit at once to know how much water is going to be needed. So appurtenant rights, they're sort of a property right. It's like an easement, it's not a personal right it's a right that belongs to a piece of property and

it's the right to use the amount of water that was being used on the property at the time of the Māhele. It's expressly protected by the Hawai'i Constitution. It's protected by the state water code. I think of it as something like an easement. You know it's something that comes with the property. Sometimes when you buy property you have an easement across your neighbors driveway or something like that. In this case, it's an easement to use the amount of water that was being used at the time of the Māhele.

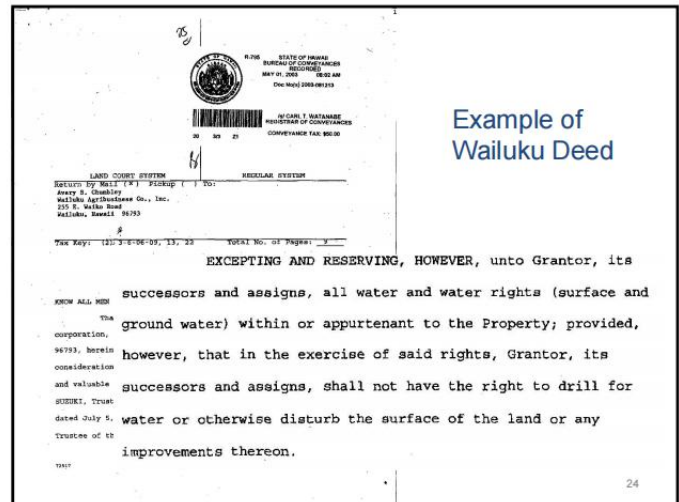
### Extinguishment of Kuleana Rights:

In *Reppun*, Chief Justice Richardson held that an attempt to sever appurtenant rights from a parcel by reserving the rights in a deed had the effect of extinguishing the rights:

"We find, however, that while no appurtenant rights were effectively transferred in this case, *the deed that attempted to reserve such rights had the effect of extinguishing them.*

*Reppun*, 65 Haw. at 552, 656 P.2d at 71 (emphasis added).

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Example of  
Wailuku Deed

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Now our boys Supreme Court has said in its touchstone decision on appurtenant rights that appurtenant rights can also be severed. Because, well I'll correct that a little bit, but since it's a right that's attached to the property, when you try to detach the right from the property it results in the right being extinguished. The way that this often happened, particularly in Nā Wai 'Ehā was when Wailuku Sugar Company or Wailuku Agribusiness for then Wailuku water company sold land, they typically did it with a deed reservation and what they did was they reserved all water and water rights to themselves. So it's like okay, I'm selling you this property, but I'm keeping the water rights I'm keeping any appurtenant rights. And according to the Hawai'i Supreme Court decision in the *Reppun* versus the Board of Water Supply case, that means the rights are extinguished because the rights can't be used other than in association with the property. So trying to separate them from the property extinguishes them.

### T & C Right to Cultivate Kalo

The Water Code provides that "Traditional and customary rights of ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter" and defined T&C rights to include "the cultivation or propagation of taro on one's own kuleana[.]"

HRS 174C-101(c).

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### This was the First Time CWRM Determined Appurtenant Rights

The Water Code expressly protects appurtenant rights, but before this case, the Commission had never:

- promulgated rules to implement the mandated protection
- inventoried appurtenant rights; or
- actually made a determination of the existence or quantification of an appurtenant right

Consequently, it took a decade in this case, because the Commission devised the procedures as it went.

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The traditional and customary right to cultivate kalo is different because it's a personal right. It belongs to the person and not to the property, and it's the rights of ahupua'a tenants who are Native Hawaiian to conduct these various practices, including the cultivation of kalo and including, you know this is the version of it that's in the water code, but in the Constitution and the statutes it also includes the right to gather 'ōpae, and I think pick thatch, gather thatch, things like that and it covers a broad range of rights but the water code specifically provides for traditional customary right to cultivate kalo.

As with the first time that there was ever a surface water designation, this was also the first time that the Water Commission determined appurtenant rights. In the amount of time since the code was enacted in 1986, so we're talking more than 20 years by this point. They hadn't promulgated rules on how they were going to make this decision. There had never been an inventory of appurtenant rights. You know what appurtenant rights existed at the time of the Māhele there was nothing like that. And they had never actually made a determination of the existence for quantification of an appurtenant right. In this case it was kind of like building the plane while you were flying it. I mean, that's why it took ten years to actually have appurtenant rights determinations made.

#### First Phase of Appurtenant Rights Determinations- "Provisional Recognition":

- OHA assisted many kuleana users in Nā Wai 'Ehā to document their appurtenant rights
- Dr. Miike was appointed Hearings Officer for the appurtenant rights determinations
- Appurtenant rights were determined in two phases –
  1. the existence of the right (recognition);
  2. the amount of water the kuleana is entitled to (quantification)

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#### Phase 1 - CWRM's 12/31/14 Order:

COMMISSION ON WATER RESOURCE MANAGEMENT  
STATE OF HAWAII

PROVISIONAL RECOGNITION OF APPURTENANT RIGHTS, NA WAI EHA	) Case No. CCH-MA13-02
SURFACE WATER MANAGEMENT AREA, WAIHEE, WAIHEHU, IAO, WAIKAPU STREAMS, MAUI, HAWAII	) NA WAI EHA
	) PROVISIONAL ORDER ON CLAIMS THAT PARTICULAR PARCELS HAVE APPURTENANT RIGHTS

NA WAI EHA  
PROVISIONAL ORDER ON CLAIMS THAT PARTICULAR PARCELS HAVE APPURTENANT RIGHTS

On October 14, 2014 and November 21, 2014, the Hawaii Commission on Water Resource Management ("Commission") conducted due process hearings on Maui on the

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And it couldn't have been done without OHA's assistance. I mean, from things like the Kipuka Database, which all of the beneficiaries who were applying used and a lot of the big corporations that were trying to approve or get approval for their appurtenant rights, they used it. Again, Dr. Miike was the hearings officer and there were two phases to the determination. The first they called it provisional recognition. It's just we're going to recognize whether or not this piece of property has appurtenant rights and then they saved for a later day the quantification. But I just, I can't emphasize how instrumental OHA was in this. OHA staff helped people get their documentation together. They worked with the Water Commission staff who had lots of questions about things. They did a fabulous job and I just can't even think about how this would have gotten done without that kind of assistance.

So this was the only order on the provisional recognition. So it took from 2011 when we kind of started talking about the process until 2014. Most of the appurtenant rights claimants had to take time off work. They had what they called due process hearings, and those were on Maui and the claimants had to come in and answer any questions that the Commission had, so it was a lengthy process. But by 2014 they had made the provisional determinations, which again had nothing to do with the quantity of water, just we provisionally decide that you have your property has this right.



### Phase 2 - Contested Case Hearing

- Quantification of appurtenant rights was by contested case hearing, which included *all* Nā Wai 'Ehā water users
- Well over 100 parties, from individual kuleana users to corporate diverters and large landowners
- Each kuleana user was required to present written and oral testimony and exhibits regarding the amount of water used on the parcel at the time of the Māhele

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### OHA was Instrumental in Helping Nā Wai 'Ehā Kuleana Users Meet the Challenges

- Preparing testimony and exhibits
- Logistical issues
- Procedural fairness
- Communication
- Expert witnesses
- Water is a “zero sum” proposition
- Persuading the Hearings Officer and Creating a record

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Phase two of that was another contested case hearing. And this they called this kind of an integration contested case hearing because they were also trying to decide on the permit applications, decide on traditional and customary rights and they were also asked to go back and take another look at the IIFS because it was sort of in this time frame. Well, it was a little bit later in the process, but when HC&S announced it was going to stop growing sugar and so then a petition went in to say okay while we're doing all this other stuff, while we're doing the permitting, the appurtenant rights, the traditional and customary rights, let's amend the IIFS again too, because there's now going to be much more water. All of the the kuleana users were required to show up just in case anybody wanted to cross examine them about their appurtenant rights.

So again, it was a big undertaking and again OHA played a lead role because there were so many challenges. You know in the first contested case, a lot of OHA beneficiaries were witnesses. In this contested case, they were actually parties, they weren't witnesses, they were parties, and parties had a lot of challenges to meet. They had to prepare testimony and exhibits. There were lots of logistical issues about where the hearing was going to be, what day do I have to take off work. There were issues with procedural fairness. Things like service of process or how is somebody without an Internet connection living in Waikapū going to serve 120 other parties. So there were that kind of issues. Communication expert witnesses and of course the goal of the whole thing, which was to persuade the hearings officer and create a record. Again, OHA staff were instrumental and also partnered up with the law school clinic so these people got a lot of help and they absolutely needed it. I mean, there is no question about it. These are all pro save people and you know legal proceedings are confusing enough. They're confusing for lawyers. So a lot of people on the OHA staff helped, OHA partnered with the law school clinic and a lot of the clinic members helped. It was definitely a group effort.

### Water is a “Zero-Sum” Proposition

- Priorities mandated by law needed to be strictly enforced:
  - Priority for kuleana use over commercial use
  - No priority for extinguished kuleana rights
  - Priority for T&C kalo cultivation
- Diverters needed to be held to their burdens of proof

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### Importance for All Kuleana Users

- This proceeding will set precedent
- Procedurally, establishing an appurtenant right cannot be so burdensome that it impairs the ability to exercise the right
- Substantively, this proceeding will establish legal precedent regarding:
  - extinguishment of appurtenant rights
  - T&C right to cultivate kalo

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I just wanted to talk for a minute about water being a zero sum proposition which makes it very difficult because there are clear priorities that are or needed to be and had not been until this case strictly enforced. Kuleana use needs to be prioritized over commercial use, and you can't be giving priority to fully honor rights or appurtenant rights that have been extinguished. There also need to be more priority for traditional and customary kalo cultivation, and most of all holding the diverters to their burdens of proof.

And as I was saying that the difficulty for these people to do it themselves and fortunately they didn't have to, is that procedurally if this is the type of procedure that's going to be used to do these things, I mean at some point it gets so burdensome that it impairs the ability to exercise the right. You know, if exercising your appurtenant right requires you to know how to do title research and provide the documentation and show up at a hearing. I mean, at what point is the right being denied? So the two big things that OHA hoped to establish substantively in this proceeding were that Reppun is still the law of Hawai'i. If appurtenant rights are attempted to be severed, they are extinguished, and we wanted the Commission to focus much more on the traditional and customary right to cultivate kalo.

### Second CCH Milestones

- July 11, 2016      Evidentiary hearing commenced on Maui
  - 11 hearing days, 103 witnesses
  - New IIFS Petition to Increase IIFS
  - HC&S announces cessation of sugar cultivation
- October 14, 2016      Evidentiary hearing closed
- November 1, 2017      Proposed Decision issued
- January 5, 2018      Parties filed exceptions
- November 19, 2019      Hearing on exceptions
- June 10, 2021      CWRM Final Decision

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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Case Number CCH-MA 15-01

HEARINGS OFFICER'S  
PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION & ORDER

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So the second kind of integrated contested case hearing was held in the summer of 2016. Doctor Miike issued his proposed decision in November of 2017. The parties filed their exceptions in early 2018 and there was hearing on those exceptions in late 2019. And last month we got the final decision. Oh, and I had the date wrong. We had the final decision on June 30th, 2021, so almost two years after the hearing on the exceptions.



I just was showing you the caption how they. This is the hearings officer's proposed decision and you know they've loaded in the integration of the appurtenant rights with the IIFS and the permitting and it was just a big catch all.

### High Points of Proposed Decision

- Awarded permits based on T&C rights
- Established priority for T&C rights and appurtenant rights exercised for kalo cultivation over other offstream uses
- Increased IIFS for Waihe'e River by 4 mgd

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### Low Points of Proposed Decision

- Imposed an additional condition required to prove T&C rights, resulting in 2/3 of T&C applicants being denied
- Awarded permits for extinguished appurtenant rights, including golf courses and "gentlemen's estates"
- Limited permits for kalo cultivation to less water than expert testified was needed
- No restoration for other streams

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The high points of the proposed decision, and again this is Dr. Miike's decision that we got back in 2017. He actually awarded permits based on traditional and customary rights, which had never been done before, and he not only awarded the permits, but he established a priority category for those permits. So traditional or customary rights and appurtenant rights being used to grow kalo were given priority over all other off stream uses, commercial uses, even the county drinking water. He also increased the IIFS for Waihe'e River by 4,000,000 gallons a day.

The low points and there were a few. He imposed an additional requirement in order to exercise traditional and customary rights. These are rights that belong to ahupua'a tenants. Dr. Miike had it firmly in his mind and could not be shaken that in order to be an ahupua'a tenant your ancestors needed to be tenants of the same ahupua'a and engaging in the same practice that you proposed to engage in on the same land. It's not a requirement that's found anywhere in the law. It's not in the Constitution. It's not in any case. The result of it was that out of the 40 people that applied for traditional and customary rights and applied for permits based on traditional and customary rights, only 13 of them were awarded. He also awarded permits for extinguished appurtenant rights. These are two big golf courses by Wailuku Country Estates, which is, you know you can call it gentlemen's states or fake farms, but it's you know it's an agricultural subdivisions with mansions. And he limited the water for kalo cultivation to 100,000 gallons per day, per acre per day, which is far less than our expert determined was needed. And there was no restoration for any of the other streams, or no further restoration.

## HC&S Sale to Mahi Pono

- Proposed Decision awarded 13.5 mgd of surface water to HC&S for “bioenergy crops,” and required it to use 3 mgd from Well 7.
- In May, 2019, Mahi Pono sought to substitute for HC&S, and threatened to reopen the contested case for more “protracted litigation” in an attempt to be awarded more water for diversified agriculture than HC&S was awarded.
- OHA vehemently opposed reopening.

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## Settlement with Mahi Pono

- Following August 2019 hearing on Mahi Pono motion, CWRM granted the motion for substitution.
- Both at the hearing and in the written order, CWRM urged Mahi Pono to attempt to reach a resolution with OHA and the Community Groups of disputed issues.

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After the proposed decision, it's seen as sold its property to Mahi Pono, who I'm sure many of you have heard of and Mahi Pono brought a motion in 2019 to basically substituting for HC&S. There really should be nothing wrong with that. They now have the interest in eight seconds permit, and there's no reason you know not to just let them show up and substitute in. Then they started threatening though that you know they were going to. There was going to be protracted litigation because they were going to try to reopen the contested case. And proved that they needed more water than the 13.5 million gallons a day that the Commission had awarded to HC&S. OHA of course vehemently opposed that.

But we did ultimately reach a settlement with Mahi Pono. There was a hearing on Mahi Pono's motion in August of 2019, and the Commission granted the motion, which was expected, but went pretty far in urging Mahi Pono to attempt to reach a resolution with OHA and the community groups.

### BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

#### STATE OF HAWAII

Surface Water Use Permit Applications, ) Case No. CCH-MA-15-01  
Integration of Appurtenant Rights and )  
Amendments to the Interim Instream Flow ) STIPULATION AND ORDER  
Standards, Nā Wai 'Ehā Surface Water ) REGARDING SWUPA 2206  
Management Areas of Waihe'e, Waiehu, 'Iao, )  
and Waikapū Streams, Maui )

#### STIPULATION REGARDING SWUPA 2206

HUI O NĀ WAI 'EHĀ and MAUI TOMORROW FOUNDATION, INC. (collectively, the "Community Groups"), OFFICE OF HAWAIIAN AFFAIRS ("OHA"), and MAHI PONO, LLC ("Mahi Pono"), collectively, the "Parties," by and through their respective attorneys or representatives, hereby stipulate as follows:

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FILED  
Commission on Water Resource Management  
12:21 pm, June 28, 2021  
An errata to this decision was filed on June 30, 2021

### COMMISSION ON WATER RESOURCE MANAGEMENT

#### STATE OF HAWAII

Surface Water Use Applications, )  
Integration of Appurtenant Rights ) Case Number CCH-MA 15-01  
and Amendments to the Interim Instream )  
Flow Standards, Nā Wai 'Ehā Surface )  
Water Management Areas of Waihe'e )  
River, Waiehu Stream, Wailuku River )  
(previously known as 'Iao Stream) )  
and Waikapū Stream, Maui )

#### FINDINGS OF FACT,

#### CONCLUSIONS OF LAW, AND DECISION & ORDER

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So we negotiated for several months. We reached this agreement literally on the eve of the hearing on the exceptions to the proposed order. Mahi Pono actually made several important commitments. I mean there are pages of them, but the ones that stood out in my mind is that they committed to closing the low flow channel in Spreckels Ditch where it crosses Wailuku River which at times would impede water getting to the mouth of the river. So closing that up was important. They agreed to help the community members restore the po'owai at the North Waihe'e pāwai which had been damaged badly by floods, so they agreed to lend their help and

engineering expertise with that. They agreed to fully monitor all of their diversions and all of their uses. They agreed to survey any potential waste and devote an initial \$250,000 to remediating that waste. So they made substantial commitments. OHA and the community groups in exchange said that we would not oppose a water allocation of 9.35 million gallons per day, which was the acreage times 2500 gallons per acre per day, which is what has been used as the water duty for diversified agriculture. So that's what diversified ag got in the Waiāhole case. I mean, that's just kind of the standard number for diversified ag. We also agreed that the number could be increased to 11.2 million gallons per day provided that Mahi Pono met all its commitments and provided in addition that they had established an average pumping from their well of 4.5 million gallons per day. So if they use their whole 9.35 of surface water, plus they pumped 4.5 million gallons of water for a year and still needed more water than we would give them, then we would not oppose them receiving an additional 500 gallons per acre per day. So that would bring it up to 11.2. As I said we reached this stipulation the day before the hearing on the exceptions. When we went to the hearing it was announced and discussed and the Commission cheered and everybody was happy. That has been about all that has happened since late 2019 until now, when the final decision came out on June 28.

### The Good News

- The Commission applied the appropriate standard for determining T&C rights
- Increased by 50% the amount of water awarded for kalo cultivation
- Agreed to follow *Reppun* decision that reservation of appurtenant rights extinguishes them

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### The Bad News

- The Commission imposed an “after the fact” requirement for appurtenant rights claimants to prove their entire chain of title before receiving a permit
- The Final Decision contains some obvious mistakes
- The Final Decision did not restore any additional water to any stream beyond the 2014 mediated IIFS Agreement

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The good news about the final decision and a lot of it was great news. The Commission applied the appropriate standard for determining traditional and customary rights, which meant that everybody who was a legitimate ahupua'a tenant and wanted to grow kalo got water to do it. They increased the amount of water for kalo by 50% so from 100,000 gallons per acre per day to 150,000 gallons per acre per day and they agreed to follow the *Reppun* decision that reservations of appurtenant rights extinguished the rights.

The bad news is that they imposed an after the fact requirement for appurtenant rights claimants to prove their entire chain of title before receiving a permit. This was something that was extensively discussed back in 2010, 2011 when we were trying to set up what the process would be to make these mass decisions and OHA and the community groups were always very clear that no, a title search back, you know, for the entire chain of title, you can't require that it costs thousands of dollars and it takes several years, and the community members are not going to be able to do that. And the Commission agreed at that point. So to see this sneak into the decision, you know after the fact, when nobody had noticed it was coming was a little bit surprising. The two other problems were that the decision contained a few obvious mistakes and didn't restore any additional water beyond the 2014 mediated agreement. It in fact did not increase the IIFS of Waihe'e river as Dr. Miike would have done, it just put it back to what was agreed to in 2014.

### Mistakes:

- New requirement for all documents in chain of title may be a mistake/misunderstanding based on CWRM politics in 2010-2012 period.
- After announcing that extinguished appurtenant rights would not be recognized, CWRM recognized 6 MGD in appurtenant rights for Wailuku Country Estates subdivision.
- Mahi Pono

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### Mahi Pono Surface Water Allocation

Proposed Decision	Stipulation	Final Decision	Errata (6/30/21)
13.5 MGD	9.35 MGD	13.5 MGD	4.98 MGD

The Errata also requires Mahi Pono to take 1 MGD of the surface water allocation from Spreckels Ditch at Wailuku River, which Mahi Pono has closed pursuant to the Stipulation

I want to talk just a little bit about the mistakes, you know, the new requirement for a full chain of title search. That could be a mistake or a misunderstanding. The way things were in the 2010 to 12 time period when this was being hammered out. I don't know if any of you knew Bill Tam, but he was the Deputy Director and he and AG did not see eye to eye, so they often didn't talk to each other and refused to talk to each other. So he has gone and she is still there and she might have put this in without fully understanding that no, this was not acceptable and we had all agreed this wasn't going to be required. So hopefully that's a mistake. The other one was that they were very clear that they were not going to be recognizing any appurtenant rights that had been extinguished by a deed reservation, but yet they recognized 6,000,000 gallons a day of appurtenant rights for Wailuku Country Estates you know, the gentleman estates which had its appurtenant rights extinguished.

The other mistake, and perhaps the most consequential, at least in terms of timing, was their mistake with Mahi Pono. The proposed decision would have given Mahi Pono 13.5 million gallons per day. The stipulation we reached with Mahi Pono would have given them 9.35 million gallons per day, and when the final decision came out it would have given them 13.5 million gallons per day, which is far more than they agreed that they could get by with. They noticed the decision within days and filed what's called an errata. It basically says, yeah, we we made a mistake in our decision, this is what it should say. The errata only gives Mahi Pono just under 5,000,000 gallons a day. Mahi Pono insists that that is existential, it cannot do business with that. The errata also requires Mahi Pono to take 1,000,000 gallons of water a day from the low flow diversion in Spreckels ditch at Wailuku River, which they've sealed up so they can't really do that.



## Where are we Now?

Motions for Reconsideration are pending:

OHA & Community Groups jointly requested reconsideration/correction of requirement for full title search and chain of title requirement and recognition of Wailuku Country Estates' extinguished appurtenant rights;

Mahi Pono sought reconsideration of its surface water allocation

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## What's Next?

- Consideration of appeal (deadline is 30 days after decision on motions for reconsideration)
- PUC Proceedings – in 2007 or 2008, PUC opened a docket to determine whether Wailuku Water Company was a public utility, and WWC petitioned for a CPCN. Proceedings stayed pending the outcome of the permitting decisions
- Implementation and enforcement

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So where we are now is that there are motions for reconsideration pending and the motion for reconsideration tolls the time within which you have to determine whether you want to file an appeal. So OHA and the community groups filed a joint request for reconsideration. Both of the requirement for a full title search and the recognition of Wailuku Country Estates appurtenant rights and Mahi Pono of course sought reconsideration basically of the errata that reduced its surface water allocation.

So what's next? The most immediate thing will be that once the Commission makes its decision on the motions for reconsideration, then OHA will have 30 days to determine whether it wants to file an appeal. I did not indicate any need for an executive session today because I'm really not prepared to give you any cogent advice on that at this point. I still think we need to know what the Commission is going to do on the motions. We're also in the process. One difference between the final decision and the proposed decision is that Dr. Miike is very anal about numbers and charts and graphs, and he goes through in great detail in very many charts how much water would be going where, how, what percentage of the time there wouldn't be enough water. I mean, that's all been stripped out of the final decision, so we're also undergoing the process of trying to figure that out. What is this going to look like? Because they the Commission made some judgment calls that were different than what Dr. Miike would do so yeah they didn't put water back in the streams, but they increased the amount of water for kalo cultivation. And so we kind of have to look at some of those tradeoffs, but that is something that will come. Something else that's going to come, but perhaps not quite as immediately is PUC proceedings. Back in 2007 or 2008, when we were having the original contested case hearing. The PUC opened a docket to determine whether Wailuku Water Company should be treated as a public utility because it sold water delivery services. Maybe not to the public, but to people that wanted them. And in response to that one, Wailuku Water Company filed a petition for a certificate of public convenience and necessity, which it would require in order to act as a public utility. This proceeding has been stayed for over a decade now. Basically, what the PUC said was, well you know, let's see what the Commission does about the permits. I mean, how can we determine whether there's a public convenience and necessity if we don't know where the water is going and who's permitted to have it so they put it off down the road. What's going to be the problem there or what's shaping up to be a problem there is that public utilities need to treat their customers the same. So you know they have tariffs, the tariff rate that the PUC has to approve. Right now there are a lot of kuleana uses. They get their water from Wailuku Water Company, from the ditch because through the course of history Wailuku Water Company has basically destroyed the traditional 'auwai that these users used to get their water from. So as a convenience to Wailuku Water Company they didn't want to use the 'auwai system and they put everything towards the ditch and they redesigned the whole system to meet their own convenience. And in exchange they provide water to some of the kuleana users. The fight in the PUC is going to be whether they are entitled to be paid for that and it's going to be a big fight and I think there is a very good historical and cultural argument that no, they should not have to pay for that. So the PUC is going to be put in

perhaps an awkward position trying to figure out what to do about that. How to align, you know tariffs and the way it's used to dealing with public utilities with appurtenant rights and which are basically easements. So that is something to look forward to. The biggest thing though I think is going to be implementation and enforcement of the decision. Well, the Water Commission staff as dedicated as they are, they don't really have the resources to chase Wailuku Water Company down and make sure that they're always complying with the IIFS. For a while we had some pretty good monitors that you know they were like live gauges and you could log in online and you can see where the stream flow was. They proved to be not able to withstand some of the flooding that we've had on Maui, and that Maui has had in the past few years, so that continues to be a big issue.

### OHA's goals for Nā Wai 'Ehā

1. Re-establish year round flows in the streams of Nā Wai 'Ehā, from the summit of Pu'u Kukui and Mauna Kahalawai till they reach the Pacific Ocean
2. Return Public Trust resources to public control and management
3. Secure permanent stewardship & funding for the watersheds so there will be streams for the future

September 20, 2007

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So I just wanted to come back to OHA's original goals. I would say that we have pretty much secured year round stream flows from mauka to makai. We have returned these public trust resources to public control and management. They're now firmly within the control of the Water Commission and not Wailuku Water Company. The last one is still a work in progress. We do not have permanent stewardship and funding. We're working it. And with that, any questions?

**Trustee Akina:** I don't have a question, I just wanted to thank you for all the hard work and you know, continuing to just push forth the case. Thank you so much for all you've done.

**OHA Attorney Pamela Bunn:** Thank you, Trustee. As I said at the beginning, it has been an honor and a privilege, and I truly mean that.

**Board Chair Hulu Lindsey:** Pam, I'm the Maui Trustee, I had heard that the County of Maui was planning to purchase the transition lines from Wailuku Sugar, do you know anything about that?

**OHA Attorney Pamela Bunn:** Trustee, that has been talked about for many years. It was a who's the mayor, two mayors ago. It was one of his pet projects because he believed that the County of Maui could have all the water it wanted if it took over the transmission system.

**Board Chair Hulu Lindsey:** Arikawa

**OHA Attorney Pamela Bunn:** That's right, and you know it has been discussed I think at some points I think there was Council approval of spending money for an appraisal of the system and it is still under discussion.

There has also been discussion about perhaps trust for public lands or somebody like that being able to help with it. I'm not sure that Wailuku Water Company has always been reasonable about what it's been asking and the system, I mean, face it, it's hundreds of years old. It needs work, it's very leaky. So it is quite an undertaking and it would take, I believe, a government entity and a pretty big investment. On the other hand, it's infrastructure week. You know, I think now is perhaps a good time to be looking to do things like that. So as far as anything firm, no, I don't know firmly it's going to happen but it continues to be discussed.

**Board Chair Hulu Lindsey:** Yeah, I think the water company has asked too much money of the County considering the condition of the transition lines.

**OHA Attorney Pamela Bunn:** I agree

**Board Chair Hulu Lindsey:** That's where the disagreement was. Thank you.

**Chair Akaka:** Any other questions trustees? I don't see any, mahalo nui Pam for your presentation and all your hard work on this it is truly appreciated.

**OHA Attorney Pamela Bunn:** Thank you, Chair. Thank you for having me.

**Chair Akaka:** CEO, anything else to be shared or Everett on this?

**Ka Pouhana Hussey:** Everett did you have any closing before we transition Chair Akaka to the next agenda item?

**Assistant Senior Legal Counsel Ohta:** No except to thank Pam. I know she's left the call, but she's certainly been our committed counsel through all of this various iterations of the case. It's taken a lot of work to get us to this point. But as you noted from Pam's presentation, a lot of the work and decision making, particularly by the Water Commission is really pressed incentivizing so it was very important for OHA to certainly be a partner in this case with the community groups to ensure that these processes are set and community focused as they'll be used and relied on going into the future for different communities across the islands, so thank you.

**B. Update and Discussion re: Island Burial Councils, Burial Sites Working Group, Working Group/Task Force Appointments as per 2021 Legislative Session, and Overview of Statutorily Created Boards and Commissions with Seats Reserved for OHA Representation.**

**Chair Akaka** yields the floor to Ka Pouhana Sylvia Hussey.

**Ka Pouhana Hussey** yields the floor to Chief Advocate Sterling Wong and Compliance and Enforcement Manager Kai Markell.

## Today's Agenda Item

- Update and Discussion re:

- 1) Island Burial Councils,
- 2) Burial Sites Working Group,
- 3) Working Group/Task Force Appointments as per 2021 Legislative Session, and
- 4) Overview of Statutorily Created Boards and Commissions with Seats Reserved for OHA Representation

## 1) Island Burial Council Nominations

- BAE#21-02 will seek approval of OHA's 2021 nominations for IBCs:
  - O'ahu
  - Maui/Lāna'i
  - Moloka'i
- Action Item scheduled for next BAE Committee meeting (Aug. 18)

**Chief Advocate Sterling Wong:** Aloha, Sterling Wong, Chief Advocate for the Office of Hawaiian Affairs. I have Kai Markell on the line. I am going to share my screen for this presentation. So as been mentioned for this agenda item, we have four sort of topics for it. Update and discussions on Island Burial Councils, Burial Sites Working Group, Working Group and Task Force appointments from the 2021 legislative session and an overview of sort of boards and commissions with OHA seats created by law. To get us started I'm gonna kick it to Kai Markell our Compliance Enforcement Manager to go over the first topic, which is Island Burial Council nominations, with that I'll turn over to Kai.

**Compliance and Enforcement Manager Markell:** Thank you, Sterling and thanks for running the PowerPoint so I'll let you know when to switch the slides. So Aloha Chair, Vice Chair, Trustees and Administration. I'm going to just run through the Burial Council nomination process and OHA's role. Some of you are familiar with this from previous presentations and others may not. So we're coming forward with some names to appoint to the Island Burial Councils. Particularly the O'ahu Island Burial Council, Maui, Lāna'i and Moloka'i. We have an action item scheduled in August of 18th of this month.

## HRS § 6E-43.5

### Island Burial Councils

- Act 306 amended Chapter 6E, HRS based upon events at Honokahua, Kapalua, Maui
  - Established in DLNR 5 island burial councils:
    - Hawai'i,
    - Maui/Lāna'i,
    - Moloka'i,
    - O'ahu, and
    - Kaua'i/Ni'ihau,
  - Created geographic regions and landowner reps

So the Island Burial Councils were established in 1990, when Act 306 amended chapter 60 after the events at Honokahua in which 1100 men, women, children and infants were systematically excavated and exhumed to site the hotel, the Kapalua Ritz Carlton. And after protests, including on O'ahu at the Capitol, Governor John Waihe'e moved forward with Act 306 with the Legislature to amend the historic preservation laws and give protection to unmarked burials you know, so a burial in a cemetery at Punchbowl like my grandmother, you couldn't go try and dig her up without being arrested quickly. But my grandfather, who was in an unmarked



burial at Ko'olau Cemetery in Moloa'a, you could dig him up and you know give his po'o, his skull to Bishop Museum and put the rest of his iwi in a trash bag and things happen like that back then, it was horrendous. So part of the protections was creating the Island Burial Councils and there are five of them, Hawai'i, Maui/Lāna'i, Moloka'i, O'ahu and Kaua'i/Ni'ihau and part of the council's formation was to create geographic regions representing the various moku of each island. Because caring for iwi really is a family kuleana and they also of course had landowner reps because the legislation itself was controversial and land owners want to have quick disposition of burials found especially in construction projects. Previously, you could have one landowner rep to every three geographic regional representatives. So some councils had 15 members with literally 12 regional reps and 3 landowner reps and although the law creates the burial councils, their jurisdiction comes from common law. And common law allows next of kin to have a right to claim a deceased body, so it really is a family 'ohana jurisdiction that the Burial Councils exercise.

## HRS § 6E-43.5

### Island Burial Councils

- Determine the preservation or relocation of **previously identified** Native Hawaiian burial sites; not **inadvertent discoveries**;
- Assist DLNR in the inventory and identification of Native Hawaiian burial sites;
- Make recommendations regarding appropriate management, treatment, and protection of Native Hawaiian burial sites, and on any other matters relating to Native Hawaiian burial sites;

These Burial Councils, their biggest number one charge is to determine whether to preserve in place or relocate previously identified Native Hawaiian burial sites, so only Native Hawaiian burial sites and previously identified which means you know they're there. How do you know they're there? Because they may be recorded in history books, it may be a well known cemetery that people have talked about for generations. It may be barrels that were found by archaeologists during an archaeological survey of a piece of land. And they end up having to go to the Burial Council and the Burial Council is the only body that can determine whether you preserve in place or relocate those burials. Of course it's an administrative decision, then there's a right for reconsideration and there's an appellate process that you can appeal it through Circuit Court and up to the Supreme Court. The other word, inadvertent discoveries, was a concession that the land owners and development community made in 1989 and 1990 that burials that nobody knew were there that you just find in the middle of your construction project, have a right to a quick disposition within two to three days, depending on if it's one or more individuals, and that's become a point of contention in recent years, that classification of burials. So they also have an important function to help SHPD and the DLNR in inventorying and identifying Native Hawaiian burial sites. So the O'ahu Island Burial Council and Maui/Lāna'i are working on that for shoreline erosion. You know where there's beaches like Kuao, Hamakuapoko on Maui, Ka'a'awa on O'ahu, where you've had dozens and sometimes hundreds of burials wash out over the decades. Inadvertent discovery is defined as unanticipated finding of remains and no one can say that after 108 kūpuna came out in a beach that is unanticipated, that more show up or not show up. So that's something that's again trying to fulfill their mission of helping identify burials even on places before a developer purchased the land, so they know that there's a lot of burials there before you invest in the land. They also make recommendations to the department on appropriate management, treatment and protection of Native Hawaiian burial sites on any other matters, so that's really broad.

## HRS § 6E-43.5 Act 276 (2013) (An OHA Bill)

- o Amended council composition requirements
  - o 9 total members (Moloka'i: 5 total members)
  - o 1 rep per region; 6 regional reps (Moloka'i: 4 regional reps)
  - o Up to 3 landowner/developer representatives (Moloka'i: up to 1 landowner/developer representative)
- o Amended quorum requirements
  - o 5 members required to conduct business (Moloka'i: 3 members)

## OHA's Role in IBC Nominations

### o §6E-43.5 provides that:

- o Appointment IBC members shall be made by the Governor from lists for each council submitted by DLNR and OHA.
- o At all times, at least two of the regional representatives of each council shall have been appointed from a list of nominees submitted to the Governor by OHA

So back in 2013, OHA put forward a bill to amend Chapter 6E and it had to do with some of the quorum issues. Some councils were unable to meet because, like Moloka'i had a hard time finding large land owner reps over there, there was just a handful and thus Moloka'i was defunct for four or five years. They couldn't meet. So in 2013 it was amended to 9 total members instead of 15 max. Moloka'i has five and you have one rep per region and then up to three landowner development representatives. However, if there is no landowner rep, we can also fill it with the regional rep and double up like a large moku that may need two representatives. And it amended the quorum requirements, so only five members required to conduct business. And on Moloka'i, three. So we have three on Moloka'i now. OHA last year moved forward Keomailani Hanapi Hirata to add to the two Moloka'i Burial Council members, so they finally have three and they can conduct business now.

So OHA's role, appointments are made by the Governor from a list, and the list is submitted by DLNR and OHA. So this is how the law reads and this is how the rules read. The Governor will receive a list from OHA if we choose to send one, we're not mandated, but it submits a list, then he has to pick at least two, he or she has to pick two members from OHA's list on each council. That came in the amendments of 2013. It used to be at least 20% of the Council had to be from OHA's list. So at all times at least two of the regional representatives of each Council should have been appointed from a list of nominees submitted to the Governor by OHA. So DLNR puts their names in and OHA puts are names in.

## OHA Nomination Process OHA Nomination Process (cont.)

- o Collaborative effort:
  - o **Community Engagement**
    - o Outreach
  - o **Compliance Enforcement**
    - o Applicant review/training
  - o **Public Policy**
    - o Senate confirmation testimonies
- o Candidate Selection
  - o Each candidate is scored based on their experience in and "understanding of the culture, history, burial beliefs, customs and practices of Native Hawaiians in the region" they seek to represent
    - o (as demonstrated candidate's resume and letter of intent)
  - o Community and regional representation
  - o Eagerness and willingness to voluntarily serve

So OHA has struggled over the last 30 years of fulfilling this function. There actually was a time when names would just go up to the administrator and sign a letter and give over 10 names to DLNR for them to review and compare with their list and also to send straight to the Governor. Now for the last decade, we've been bringing it before the Board and allowing the Board to kind of look at their names and support their names and the confirmation or nominations. So internally we have a collaborative effort between Community Engagement for

outreach to get people in review the initial applications, help beneficiaries. Compliance Enforcement does actually review of the applicants and their burial knowledge, and we also help train those who need training and then Public Policy handles the legislative, the Senate confirmation testimonies.

So you know the law requires that a candidate have an understanding of the culture burial beliefs. It's actually in the laws and rules. Not everybody has the same level of understanding of burial practices, so we're very concerned in getting people who want to serve and want to be willing to serve, that's the number one priority. They show a commitment that they want to take care of the kūpuna. Right, which Mary Kawena Pukui is our most cherished possession. Second is if anybody lacking in iwi we're willing to help bring them up to speed, and that's another function that we try and do. So we go through and we score everybody and we discuss it. Make sure they represent their region, their willingness to serve.

## OHA Nomination Process (cont.)

- Collaborative Assessment and Scoring
- Candidates Submitted for BAE & BOT Approval

## Appointment Process

- OHA nominees transmitted to Governor's Office of Boards and Commissions and DLNR
- Governor must appoint 2 regional representatives on each council from OHA nominee list
- Senate confirms
  - During current session for regular appointees
  - During following session for interim appointees

It's a collaborative assessment. Different parts of OHA weigh in and sometimes research and community engagement and then make sure the candidates who make the list are brought to the BAE and BOT for an approval to put in our letter which goes to the Governor, letting them choose.

So we work with the Governor's office, boards and commissions. When that relationship has waxed and waned over the over the decades as well depending on who's in that seat, as well as the Governor. The Governor supposed to appoint two representatives from OHA's list, and then it goes through the Senate confirmation. During the current session, so we will submit by December 1st a whole other list and then hopefully they'll get confirmed during the Senate session of 2022. However, there are interim appointees as well, so mentioning Moloka'i, we were able to get Keo Hanapi Hirata on, but at the same time La'akea Poepoe, he expired in June, so we're technically back down to two members again. However, he's being considered as an interim to hold that place until he can be nominated officially and confirmed by the Senate next year. Why he wasn't put in this session is one of the issues we have. I mean clearly as he's pretty new, he was expiring this past June and he could have easily made the Senate confirmation of this session and started his term. But now he's going to have like a staggered term which creates people leaving in the middle of a Senate session. Sometimes their term runs out, so that's one of the issues we're dealing with.

So I'm just going to sum up real quick that we have some names coming for O'ahu, one from Moloka'i, one from Maui/Lāna'i. They needed a Lāna'i Rep for several years now and they reached out to us and we have a Lāna'i name. There's still some dysfunction right now like the OIBC has four members who were appointed who never came through OHA. Two expressed interest and we never even were able to vet them and bring them to the Board and the Governor placed him on the Burial Council. So that in it of itself isn't problematic because these are some good people who applied. But what is problematic is that there's great confusion now between the Office of the Governor, SHPD and OHA's roles in the process, and apparently people are applying straight to the Governor's Office and he's picking and choosing and putting people on the Burial Council we have no knowledge about their basic understanding of burial beliefs and customs and practices that the law and rules require. There was also some issue about DLNR not submitting a separate list, but just supporting OHA's list and when you co mingle our list how can you show that two Council members are from

OHA's list and the rest are from DLNR's list when the list is commingled, and they're looking at our past list over the last five years, very few of our people got on councils, so I'm clearly questioning whether even two members of each council now currently is from OHA, which is again in violation of the law and statute. So we need to have a sit down with the Office of the Governor and straighten this out and determine what basis are they appointing people. And the other thing is we're bringing Hina forward again. Hina was a Chair of O'ahu IBC, decade long experience. The board approved her in 2016. We brought her name forward two years ago for reappointment. So technically the Board already supports her, but we're bringing her specifically back onto this agenda because it appears that she may have been targeted her seat and there's all this disruption now on the OIBC of who represents what region. And if you remember what Sterling is going to talk about next is the burial sites working group. The genesis of that was the protest earlier in the year by the Burial Council heads about all the stuff going on with the Burial Councils. The lack of support, the politics, the lack of AG legal advice and the working group is really a byproduct of this process here, the burial council. I'm going to end with that. If there's any questions.

**Chief Advocate Sterling Wong:** So just to be clear on the August 18th meeting we will be bringing a bunch of names forward per our you know 10 year process relating to this for these three councils, and we will have names so we'll go through them again at that time. If there's no questions Chair, I'll go through the next slide.

**Chair Akaka:** Yes mahalo Sterling and mahalo Kai for your presentation.

**Board Chair Hulu Lindsey:** I was thinking if a member of advocacy could make a meeting with the governor's lady that is in charge of boards and commissions and go through the statutes requiring DLNR and OHA to have separate lists and that they picked from separate lists. Sometimes they need to be reminded.

**Chief Advocate Sterling Wong:** Madam Chair, I think that Chair Hulu Lindsey brings up a fantastic point. We actually met with. I won't name names, but the Office of Boards and Commissions from the Governor's Office I think in like November. We try to keep an open discussion with them and clearly you know, Kai's been monitoring the Island Burial Council meetings and I think a lot of the intel he's providing about some of the confusion and issues we have with the quorum and IBC composition issues are coming from his monitoring of those meetings and we're hearing some disturbing things Madam Chair about how the Office of Boards and Commissions is sort of implementing this so I think we will you know, do exactly what you're requesting Madam Chair. We'll probably be setting up another meeting with that office. Having said that I think once the Board approves these names, I think we will include in that letter submitting these names I think we want to get on record and have some strong mana'o shared with that office about what our positions are and how this law reads and is interpreted and should be implemented, so I think those two actions both an in person meeting preceded by a letter would be helpful. You know, making sure that OHA is on record with our concerns. So Madam Chair your mana'o is clearly valid.

**Board Chair Hulu Lindsey:** And that's only one problem of Island Burial Councils. I'm sure you'll touch on the next one where SHPD is not cooperative.

**Chair Akaka** recognizes BAE Vice Chair Lindsey.

**Vice Chair Lindsey:** I got two questions, one I noticed that no Hawai'i Island Burial Council names are being put forth in the action item and I just wanted to confirm we've taken a look at that council and it's operating and we got folks in place for that council to be holding meetings?

**Compliance and Enforcement Manager Markell:** Yes, Trustee Lindsey that Hawai'i Island Burial Council is functioning right now and functioning at a high level. So again, there is a lot of confusion right now between DLNR's list of nominees whose terms are expiring, who they're putting forth and that communication is broken down such that at any point we can move forward and ask for interim appointees. But the whole process is really kind of in disarray at this point and the hard part is we work collaboratively. As Sterling mentioned we



had a great meeting with SHPD and the Office of the Governor, the end of 2020 and then all of a sudden everything kind of broke down. So we need to be collaborative in getting the names forward and the seats and everything for the Burial Councils, but at the same time, as Chair mentioned, we're dealing with a whole host of complaints about SHPD and it's very antagonistic on another level, which creates tensions between our staff and their staff. So it's a little problematic at this point, but if that answers your question.

**Vice Chair Lindsey:** It does Kai, thank you. Thank you, Madam Chair.

**Chief Advocate Sterling Wong:** Madam Chair if there's no additional questions, I'll go on to the next item if that's okay.

**Chair Akaka:** Yes, mahalo Sterling.

## 2) Burial Sites Working Group

- BAE #21-03 will seek approval of OHA's Burial Sites Working Nomination
  - Aug. 18 BAE Meeting
- "A representative of the **Hawaiian community** familiar with and experienced with the burial sites program to be appointed by the Office of Hawaiian Affairs" (SR171)

## Burial Sites Working Group

- SR171 and HR113 both adopted, but different
  - Both essentially request OHA convene a Burial Sites Working Group
  - Final report due before 2022 Legislative Session
  - Combined SR171/HR113 scopes of work and compositions

**Chief Advocate Sterling Wong:** So let's go on to the next item in the agenda, Burial Sites working group. We will be presenting an action item on August 18th to the BAE Committee for the Board approval relating to a Hawaiian community representative for this working group. A little bit of background on the actual working group. As the BAE Committee will recall, there were two competing resolutions from this past legislative session looking to create a Burial Sites Working Group and this was as Kai mentioned earlier in response to I think the strong community concerns, the press conference and the like at the beginning of session relating to long standing concerns about SHPD and DLNR's implementation of the burial sites program, particularly with the Island Burial Councils and you know their management of burial sites. So two resos passed. They were sort of competing really with different sorts of asks and things so, but essentially both requested OHA to convene a Burial Sites Working Group. And these are resos by the way not laws. So both resos asked for some sort of final report to be due to the Legislature prior to the 2022 legislative session. So what staff did was and this was a really unique session where we have a situation where we have two competing resolutions. Usually there's a concurrent resolution. We combined both reso's scopes of work and compositions and I'll walk you through that really quick.

## Scope of Work

- "Study and analyze the allegations of mismanagement by DLNR's SHPD" (SR171);
- "Determine a recommended course of action to address and resolve the allegations of mismanagement by DLNR's SHPD" (SR171);
- "Review and recommend improvements to the workings of the IBCs, which are administratively attached to SHPD, and how to implement them" (HR113);
- "Determine ways to strengthen protections and improve resources for Native Hawaiian burials" (HR113);
- "Examine ways to improve the implementation of the IBCs' duties and responsibilities and to better understand and determine their relationship to SHPD and its management" (HR113);
- "Review existing statutes and administrative rules pertaining to the IBCs and ways to develop their implementation" (HR113); "Provide recommendations on the development of a statewide survey and inventory that documents historic properties where burial sites exist or may exist, including properties owned by the State or the counties" (HR113).

## Composition (14 members)

- OHA CEO or CEO's designee
- One individual from **each IBC**, \*Total of five members;
- A representative of **Huliauapa'a**
- Dean or designee of UH **Richardson School of Law**
- **History and Culture Branch Chief** of DLNR's SHPD
- DLNR's **SHPD Burials Specialist**
- One member from **Attorney General's Office**
- One representatives of **large landowners and developers**, appointed by the Governor
- One **Native Hawaiian cultural practitioner**, to be selected by Huliauapa'a
- A representative of the **Hawaiian community** familiar with and experienced with the burial sites program to be appointed by OHA

So there's essentially six points combined between the two resos. You can see them here. I won't go through them individually, but basically, as I said earlier and I think what Kyle was alluding to, they are asking this working group to sort of evaluate mismanagement and concerns related to DLNR and SHPD's implementation of the burial sites program looking specifically at the IBC'S and the supports they're getting administratively. Also reviewing these existing statutes and administrative rules relating to IBCs and Hawaiian burials, and ultimately it's supposed to sort of get all this information, review it vet it and evaluate and produce some sort of report with recommendations to the Legislature.

The compositions called for in both resos sort of compete. So what we did was we took two, both resos, the compositions and we sort of meshed them together. We ended up with this 14 member composition. So I'll just go through them. So OHA's CEO who was actually identified as the Chair but and that person is going to be Kai Markell. I think our most qualified and experienced person on this issue. But we are going to hand over. The goal is to hand over the chairmanship to the rest of the Working Group to select the Chair among themselves so they can take sort of, you know, let the community lead on this issue. There will also be individuals nominated from each IBC. If there are questions about that, Kai can sort of answer that because he's been following that. Huliauapa'a is an organization that was really leading the charge on this effort at the beginning of session and throughout so they have a representative as well. UH Law School will have a representative. There will be a couple representatives from SHPD. They're listed there as well. You know the Attorney Generals. Support of you know the burial sites program in the IBCs has been a major concern, especially you know these IBCs and what not are state entities and they're supposed to be given legal support by the Attorney General's Office, and so that's why the Attorney General is included in here. Also, one representative from large land owners and developers to be appointed by the Governor. That sort of jibes with IBC composition. And then the two last ones, a Native Hawaiian cultural practitioner to be selected by Huliauapa'a and then I highlighted as it pertains to this presentation, a Hawaiian community member familiar with and experienced with burial sites program to be appointed by OHA, so that's what the action item we're going to be presenting at the next meeting is going to be about. It's specifically for this Hawaiian community representative.

## Nomination Process

- Goal: fair and transparent
- June 18 announcement on OHA web and social media platforms
  - OHA requested interested individuals to submit a resume and a letter of intent, detailing:
    - Why [they] want to serve on the Burial Sites Working Group
    - What experience or expertise can they bring to the Burial Sites Working Group
- By July 2, 2021 deadline: 18 applicants

## Nomination Process

- Four-person OHA panel consisting of Community Outreach; Compliance Enforcement; Land, Culture and History staff reviewed applications
- OHA staff evaluated the applicants against the following criteria:
  1. Complete Application (Letter of Interest and Resume);
  2. Demonstrated Experience in Iwi Kūpuna issues (practitioner, advocacy, number of years);
  3. Demonstrated knowledge in Native Hawaiian burial practices;
  4. Demonstrated knowledge and understanding of legal framework surrounding burial councils and historic preservation; and
  5. Experience on island burial councils.
- Staff will recommend the highest scoring applicant to the Board for approval

So our goal was to create sort of a fair and transparent process to make sure, much like our IBCs create a fair and transparent process. Make sure we get the best people in these positions. You know to represent our beneficiaries needs and to quell any sort of concerns about, you know to be honest, like sort of accusations about OHA friends and family and we're putting people on these things that aren't qualified. So we want to create a fair and transparent process. So what we did was we did a two week kāhea sort of a solicitation into the community. We posted on our social media platforms and our web asking people to apply. We had and you can see here we requested people to interested applicants to submit a resume and a letter of intent. We asked two specific questions for them to detail in their letter of intent. Why they want to serve on this working group and also what kind of experience and expertise they could bring to the working group. So by July 2nd we got 18 applicants which I would say is pretty robust. I didn't actually think we're going to get that much, so I think that illustrates that there's a lot of interest within the community about the work of this working group. So the nomination process in a large part, I think follows the IBC nomination process we just presented a four person panel internally from OHA consisting of a community outreach, compliance, enforcement and land culture and history from our research program staff, they reviewed the applications.

They vetted the applications through sort of a five point criteria process. You can see that here, so it's making sure they had a complete application, letter of interest and resume, demonstrated experience in iwi kūpuna issues, demonstrated knowledge in Native Hawaiian burial practices, demonstrated knowledge and understanding in legal framework surrounding IBCs and historic preservation issues and also experience on Island Burial Councils. Staff reviewed all 18 applicants and we are, we'll in the action item at the next BAE committee be providing our recommendation based off the highest score of this vetting process.

## Notification to Applicants

- Once the Action Item is provided to BAE staff for meeting folders, a letter notifying the 17 applicants will be sent (Friday, Aug. 13)
- Burial Sites Working Group will offer opportunities for those 17 applicants as well as the rest of the public to provide/share their mana'o

## Burial Sites Working Group

- BAE #21-03 will seek approval of OHA's Burial Sites Working Nomination
  - Aug. 18 BAE Meeting

And you know, because there were so many applicants. You know one of our concerns was to make sure we mālama sort of the applicants who have expressed interest in participating, and so what we will be doing is when the action item is submitted to the BAE and sort of public in that way we will be sending a sort of template letters to all 17 applicants notifying them that they weren't selected. Similar to, I think the grants process, making sure they know that they weren't selected and that the board will be considering another

name and so that will go out on the auspicious date of Friday the 13th next week and and then you know, I think to assuage concerns you know about, you know, sort of this robust interests and make sure they still have a place in this process. You know, the burial sites working group, and we're not the chair of the group we're not going to be the long term chair of the group, but I think we will impress upon the working group that they need to provide opportunities for these 17 applicants as well as the rest of the public to be able to provide their mana'o and share their mana'o on their experience and expertise relating to the scope of work of the working group specific to burial sites and IBCs and historic preservation. So we want to make sure that you know, even though these people unfortunately didn't make the recommendation that they're still going to be able to have, you know their voices heard and really participate in the process and sort of shape this moving forward. And as you know, the working groups just they're not going to make any decisions, they're just going to make recommendations and to the extent that they're making amendments on laws or administrative rules there of course is the public process to get those laws and rules adopted and implemented. So this is just really the first step. Once you know we send our report to the Legislature, should the Legislature pursue any of these recommendations they got to introduce a bill and you know, go through that entire legislative process to get the bill through. Community members and the public will definitely participate in that process and provide their mana'o on the shaping of those laws. Administrative rules similarly, have a public process through, I think. Chapter 92.

So having said that, this is the beginning of the you know, the journey. Well, I wouldn't say it's the beginning, it's part of the journey. There's a long road ahead, lots of opportunities for continued input. Again, Burial Sites Working Group. The nomination from OHA will be coming in an action item at August 18th, the August 18th meeting, and we'll provide the names at that time. Madam Chair, lot to cover right there. So I want to stop, see if there are any mana'o, any questions that we can sort of help answer.

**Chair Akaka** recognizes BAE Vice Chair Lindsey.

**Vice Chair Lindsey:** Hey Sterling, so the product of the working group and you touched on it just now but the product of the Working Group is going to be recommendations in a report to the Legislature. So if any of those, and like you said you know administrative rule changes have their own process and stuff like that. But if any of those are like changes to, or new statutes. I guess timing wise the OHA package would be already well in the works at the time the reports are prepared right. So for the upcoming session, we'd really be looking at a bill getting introduced to address any statutory recommendation like someone else or next year 's OHA's package if there is one.

**Chief Advocate Sterling Wong:** Madam Chair, I think Trustee Lindsey is bringing up a great point and you know, we've administered a number of groups similar to this, so I think Criminal Justice Task Force, Taro Security Task Force, the Elders at OHA, the Bioprospecting task force from the 2000s. You know we have administered similar groups and as Trustee Lindsey did mention the timing. You know what we're going to try and do is what we generally do. This is a non election year. So we'll probably bring our final legislative package to the Board mid October for approval and what we suspect you know when we administer these and we would participate in these working groups, we anticipate that the final report with recommendations would be completed, a draft report by Thanksgiving, so they're a little off. I would say, however, Trustee Lindsey that's not to say if bills and ideas are not identified early on and we can definitely share this with the working group that if they identify them early on, we can actually put them in our package in October. Moreover, non election year. So we don't have to worry about election and you know a reorganization of the Board, so we will have, you know, the full ability from you know November through the beginning of session to bring something to the Board in terms of amendments to the package that have already been approved, that can include some of these working group things, and we've done this in the past, so I want to say when I was the Public Policy Manager, almost every single year I was the manager. We amended the package that had been previously approved in the January prior to the session. I think there's you know, still a lot of opportunities for OHA to include in our package and put our full weight behind some of these legislative ideas if they come out from the



burial working group that the Board is interested in, so I think there's definitely a leeway, an opportunity for us to do that, Trustee Lindsey, and that's a great question.

**Vice Chair Lindsey:** Thank you, Sterling. Thank you, Madam Chair.

**Chair Akaka:** Any other questions? Sterling is there anymore that you would like to present.

### 3) Working Group/Task Force Appointments, 2021 Legislative Session

### 4) Overview of Statutorily Created Boards and Commissions with Seats Reserved for OHA Representation

Board/Commission	Authority	OHA Chair (or designee)	OHA CEO (or designee)	OHA Seat (general)	Current Representative
Behaviorable Health Working Group	Act 154 (S/H 2021)		X "administrator of [OHA]"		Sharde Freitas, Public Policy Advocate
Task Force on Missing and Murdered Native Hawaiian Women and Girls	HCR11/HR12		X		Lisa Watkins-Victorino, Research Director
Maunakea Working Group	HR33			X	Sterling Wong, Chief Advocate
Task Force on 21 <sup>st</sup> Century Data Governance	SCR5		X		Lisa Watkins-Victorino, Research Director
Burial Sites Working Group	SR171/HR113		X		Kai Markell, Compliance Enforcement Manager

**Chief Advocate Sterling Wong:** Yeah, Madam Chair, just two more. Just real brief updates relating to this item. I'll just take them. I'll take the Board through them. So working group task force appointments pursuant to this past session there were five sort of working group task force thing that were created. They're listed here and in terms of appointments. We've got the staff listed here we've sort of appointed or assigned to represent OHA and the working groups. I would say you know most of the working groups just given the sort of the, have not been stood up yet, or if they've had meetings. It's just not real formal meetings yet. So no real updates at this point. But I definitely want to share with the Board an update on who from staff is going to be representing the agency on these. These task forces and working groups that were created just this past session. I'll leave this up if there are any questions. I don't really have substantive like updates. But if there are questions I can try and take them and then maybe come back to the Board at the next meeting or offline with updates if the Board is interested. If any Trustees are interested.

Board/Commission	Authority	OHA Chair (or designee)	OHA CEO (or designee)	OHA Seat (general)	Current Representative
Native Hawaiian Education Council	<a href="#">20 USC § 7514(b)</a>	X			Lisa Watkins-Victorino, Research Director
State Board on Geographic Names	<a href="#">HRS §4E-1</a>	X			Brad Kaaleleo Wong, Papahānaumokuākea Specialist
Community-Based Economic Development Advisory Council	<a href="#">HRS §210D-5</a>	X			Casey Brown, Ka Pou Nui/Chief Operating Officer
Hawai'i Interagency Council on Homelessness	<a href="#">HRS §346-382</a>	X			Colin Kippen, OHA Board Chief of Staff
Hawai'i Correctional System Oversight Commission	<a href="#">HRS §353L-1</a>	X "appointed by the chairperson"			Mark Patterson, Administrator of the Hawai'i Youth Correctional Facility
Hawai'i Climate Change Mitigation and Adaptation Commission	<a href="#">HRS §225P-3</a>		X		Sylvia Hussey, Ka Pouhana/Chief Executive Officer
Dark Night Skies Protection Advisory Committee	<a href="#">Act 185 (SLH 2017)</a>		X "administrat or of [OHA]"		Vacant and needs to be filled when contacted
Temporary Commission on the Thirteenth Festival of Pacific Arts	<a href="#">Act 104 (SLH 2017)</a>		X		Hinaleimoana Wong-Kalu, Community Outreach Advocate
Kaho'olawe Island Reserve Commission	<a href="#">HRS §6K-5</a>			X "a trustee or representative"	Chair Hulu Lindsey
Kāne'ohe Bay Regional Council	<a href="#">HRS §200D-2</a>			X	Letani Peltier, Public Policy Advocate

If not, we're just gonna mosey on into the next one and so this is the overview of boards and commissions that have like sort of long term statutorily been created so that OHA has been sitting on for you know a while now and there's I think 10 here and we have various staff, even Trustees, CEO sitting on these boards and commissions and task forces. One is even federally created with NHEC. Most of them are statutorily or by act created. Just providing the Board with an update on the membership and OHA's representative, representation.

**Chair Akaka** recognizes Trustee Lee.

**Trustee Lee:** This isn't really for Sterling, I think this is more for Ka Pou Nui Casey. Given the transparency that OHA is trying to work towards on our website, it would be great if there was a tab where our beneficiaries could click and find out all the boards and commissions that OHA statutorily has to sit on and who in OHA is seated there so that they could click on that person's name and then forward an email to them because we as Trustees I know we get asked by beneficiaries all the time well, who sits on this board and commission and a lot of times we don't know. We have to go look it up. So it would be great if we could just direct them to the website and then they could see the boards and commissions that OHA statutorily has to sit on or even when task force are created and then they can click on and see who from OHA sits there so that if they have an issue for that board or commission, they know who at OHA to go talk to versus trying to go navigate the whole system of OHA to try to find out who they have to go talk to. Thank you, Madam Chair.

**Chair Akaka:** Mahalo for that recommendation.

**Chief Advocate Sterling Wong:** And Chair with that I think that'll conclude my presentation.

**Chair Akaka:** Well before we go any further on that I would like to say hau'oli lā hānau to our very own Trustee John Waihe'e the 4th, happy birthday.

VI. ANNOUNCEMENTS

**Chair Akaka:** I believe we have our BOT meeting coming up tomorrow.

VII. ADJOURNMENT

**Chair Akaka:** Can I please get a motion to adjourn the meeting.

**Trustee Waihe'e:** So moved, Madam Chair.

**Chair Akaka:** Mahalo, birthday boy.

**Trustee Alapa:** Second

**Chair Akaka:** Mahalo for the second Trustee Luana. Alright, may I please have a **roll call vote** to adjourn.

							3:14 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA						EXCUSED
DAN	AHUNA						EXCUSED
KELI'I	AKINA			X			
LUANA	ALAPA		2	X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY			X			
VICE CHAIR KEOLA	LINDSEY			X			
JOHN	WAIHE'E	1		X			
CHAIR KALEIHIKINA	AKAKA			X			
TOTAL VOTE COUNT				7	0	0	2

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

**Chair Akaka:** The meeting is now adjourned, mahalo members, all in attendance, and to all live streaming. A hui hou kākou, mālama pono.

**Chair Akaka** adjourns the BAE meeting at **3:15 p.m.**

Respectfully submitted,

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Brandon Mitsuda Trustee Aide  
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment (BAE) on 09/15/21.

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Trustee Kaleihikina Akaka  
Chair  
Committee on Beneficiary Advocacy and Empowerment



Committee on Beneficiary Advocacy and Empowerment

Trustee Kaleihikina Akaka, *Chair*Trustee Keola Lindsey, *Vice Chair**Members*

Trustee Leina'ala Ahu Isa, At-Large

Trustee Dan Ahuna, Kaua'i / Ni'ihau

Trustee Keli'i Akina, At-Large

Trustee Luana Alapa, Moloka'i / Lāna'i

Trustee Carmen Hulu Lindsey, Maui

Trustee Brendon Kalei'aina Lee, At-Large

Trustee John Waihe'e IV, At-Large



**STATE OF HAWAII'  
OFFICE OF HAWAIIAN AFFAIRS**

**MEETING OF THE  
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT**

**DATE:** Wednesday, September 15, 2021**TIME:** 1:30 p.m.**PLACE:** Virtual MeetingViewable at [www.oaha.org/livestream](http://www.oaha.org/livestream) OR

Listen by phone: (213) 338-8477,

Webinar ID: 864 0827 3707

**Due to the threat of COVID-19, Governor Ige issued the Emergency Proclamation Related to the COVID-19 Response, dated August 5, 2021 that suspends parts of Hawai'i Revised Statutes Chapter 92, Public Agency Meetings and Records to, among other things, enable boards to conduct business without any board members or members of the public physically present at the same location.**

**The OHA Board of Trustees and its Standing Committees will hold virtual meetings until further notice. The virtual meetings can be viewed and observed via livestream on OHA's website at [www.oaha.org/livestream](http://www.oaha.org/livestream) or listen by phone: (213) 338-8477, Webinar ID: 864 0827 3707**

**AGENDA**

- I. Call to Order
- II. Public Testimony on Items Listed on the Agenda\* (Please see page 2 on how to submit written testimony or provide oral testimony online. Oral testimony by phone will **not** be accepted)
- III. Approval of Minutes**
  - A. August 4, 2021
  - B. August 18, 2021**
- IV. Unfinished Business
- V. New Business
  - A. Action Item BAE #21-04: To Approve the First Term Native Hawaiian Revolving Loan Fund Board of Directors, Maui Island (Wayne Wong) and Hawai'i Island (Kristin Kahaloa) Nominations
  - B. OHA Federal Legislative Positioning – Matrix† - Advocacy (Washington, D.C. Bureau)
- VI. Announcements
- VII. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at

**STATE OF HAWAII**  
OFFICE OF HAWAIIAN AFFAIRS  
560 N. NIMITZ HIGHWAY, SUITE 200  
(VIRTUAL MEETING - VIA ZOOM WEBINAR)

COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT  
MINUTES

August 18, 2021 1:30 p.m.

ATTENDANCE:

Chairperson Kaleihikina Akaka  
Trustee Leina'ala Ahu Isa  
Trustee Dan Ahuna  
Trustee Keli'i Akina  
Trustee Luana Alapa  
Trustee Brendon Kalei'aina Lee  
Trustee C. Hulu Lindsey  
Trustee John Waihe'e, IV

BAE STAFF:

Brandon Mitsuda  
Mark Watanabe

ADMINISTRATION STAFF:

Hussey, Sylvia, Ka Pouhana / CEO  
Brown, Casey / COO  
Hinck, Ramona / CFO  
Wong, Sterling / Chief Advocate  
Tanaka, Wayne / Public Policy Manager  
Gushiken, Raina, Senior Legal Counsel  
Ohta, Everett, Assistant Legal Counsel  
Chak, Kevin, IT

EXCUSED: Trustee Keola Lindsey

I. CALL TO ORDER

Chair **Akaka** calls the Committee on Beneficiary Advocacy and Empowerment meeting for Wednesday, August 18, 2021 to order at **1:32 p.m.**

Chair **Akaka** notes for the record that PRESENT are:

MEMBERS			AT CALL TO ORDER (1:30 p.m.)	TIME ARRIVED
CHAIR	KALEIHIKINA	AKAKA	PRESENT	
VICE-CHAIR	KEOLA	LINDSEY	EXCUSED	
TRUSTEE	LEINA'ALA	AHU ISA	PRESENT	
TRUSTEE	DAN	AHUNA	PRESENT	
TRUSTEE	KELI'I	AKINA	PRESENT	
TRUSTEE	LUANA	ALAPA	PRESENT	
TRUSTEE	BRENDON KALEI'AINA	LEE	PRESENT	
TRUSTEE	CARMEN HULU	LINDSEY	PRESENT	
TRUSTEE	JOHN	WAIHE'E, IV	PRESENT	

At the Call to Order, **EIGHT(8)** Trustees are PRESENT, thereby constituting a quorum.

II. PUBLIC TESTIMONY on Items Listed on the Agenda\*

None

### III. APPROVAL OF MINUTES

- A. April 7, 2021
- B. April 14, 2021
- C. April 28, 2021
- D. June 9, 2021

**Chair Akaka:** Is there a motion to approve these minutes members?

**Trustee Waihe'e:** So moved, Madam Chair.

**Board Chair Hulu Lindsey:** Second

**Chair Akaka:** Alright it has been seconded by our Board Chair Hulu Lindsey. Is there any discussion members? Seeing none, can I please have a **roll call** Brandon.

							1:36 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA			X			
KELI'I	AKINA			X			
LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY		2	X			
VICE CHAIR KEOLA	LINDSEY						EXCUSED
JOHN	WAIHE'E, IV	1		X			
CHAIR KALEIHIKINA	AKAKA			X			
TOTAL VOTE COUNT				8	0	0	1

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

### IV. UNFINISHED BUSINESS

NONE

V. NEW BUSINESS

**A. Action Item BAE #21-02: To Approve the Office of Hawaiian Affairs' 2021 O'ahu Island Burial Council (Skye Razon-Olds, Michelle Makaula-Yee, Kamuela Kala'i, Hinalaimoana Wong-Kalu); Maui/Lāna'i Islands Burial Council (Anthony Pacheco); and Moloka'i Island Burial Council (La'akea Poepoe) Nominations**

**Chair Akaka** recognizes Board Chair Hulu Lindsey

**Board Chair Hulu Lindsey:** I'd like to move that we approve these names.

**Trustee Waihe'e:** Second

**Chair Akaka:** Is there any discussion members? Seeing none, can I please have a **roll call** Brandon.

							1:38 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA			X			
KELI'I	AKINA			X			
LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY	1		X			
VICE CHAIR KEOLA	LINDSEY						EXCUSED
JOHN	WAIHE'E, IV	2		X			
CHAIR KALEIHIKINA	AKAKA			X			
TOTAL VOTE COUNT				8	0	0	1

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

**B. Action Item BAE #21-03: To Approve the Office of Hawaiian Affairs' 2021 Burial Sites Working Group (Kēhaunani Cachola Abad) Nomination**

**Chair Akaka** yields the floor to Ka Pouhana Sylvia Hussey.

**Ka Pouhana Hussey:** Thank you, Chair Akaka. Trustees just for your reference, in the action item in the electronic binder starts on page 90 and I'm going to lateral off to our Compliance and Enforcement Manager Kai as well as our Lead Compliance Specialist Kamakana to go through the overview in support of the action item, Kai.



**Compliance and Enforcement Manager Markell:** Aloha Sylvia and Chair and Trustees. Thank you for the quick approval of the previous action item, I appreciate the confidence. So Kamakana is going to actually present this. This has to do with the Burial Sites Working Group and we do have a PowerPoint that's slightly modified from the one that we presented at the last BAE, and Sylvia has kindly agreed to advance it for us, so I'll turn it over to Kamakana Ferreira at this point to go through the presentation, thank you.

**Lead Compliance Specialist Ferreira:** Yeah, I'm probably going to have to jump ahead because we skipped all the IBC stuff. Aloha Chair Akaka and Trustees.

## 2) Burial Sites Working Group

- BAE #21-03 seeks approval of OHA's Burial Sites Working Nomination
- "A representative of the **Hawaiian community** familiar with and experienced with the burial sites program to be appointed by the Office of Hawaiian Affairs" (SR171)

So prior to getting started with OHA's nominee for the Burial Sites Working Group, we can briefly recap Sterling's presentation from the August 4th meeting unless anybody thinks that's excessive, but I will move quickly and anybody can let me know if I'm moving too quickly. So next slide please.

## Burial Sites Working Group

- SR171 and HR113 both adopted, but different
  - Both essentially request OHA convene a Burial Sites Working Group
  - Final report due before 2022 Legislative Session
  - Combined SR171/HR113 scopes of work and compositions

As you are aware, Senate Resolution 171 and House Resolution 113 were both adopted during this year's legislative session to request that OHA convene a burial sites working group to basically assess allegations of mismanagement by SHPD regarding the administration of burial sites program review and recommend improvements regarding the operation of the Island Burial Councils and review and recommend improvements on existing statutes and administrative rules, pertaining to the IBC'S. The findings and recommendations would then be presented in a report before the 2022 legislative session. Next slide, please.

## Scope of Work

- "Study and analyze the allegations of mismanagement by DLNR's SHPD" (SR171);
- "Determine a recommended course of action to address and resolve the allegations of mismanagement by DLNR's SHPD" (SR171);
- "Review and recommend improvements to the workings of the IBCs, which are administratively attached to SHPD, and how to implement them" (HR113);
- "Determine ways to strengthen protections and improve resources for Native Hawaiian burials" (HR113);
- "Examine ways to improve the implementation of the IBCs' duties and responsibilities and to better understand and determine their relationship to SHPD and its management" (HR113);
- "Review existing statutes and administrative rules pertaining to the IBCs and ways to develop their implementation" (HR113);  
"Provide recommendations on the development of a statewide survey and inventory that documents historic properties where burial sites exist or may exist, including properties owned by the State or the counties" (HR113).

As you'll see here there's specific language regarding the scope of work. I just kind of explained it in a nutshell. But OHA basically hybridized the two resos in a way that we thought was most effective for their overall purpose. Next slide, please.

## Composition (14 members)

- OHA CEO or CEO's designee
- One individual from **each IBC**, \*Total of five members;
- A representative of **Huliāuapa'a**
- Dean or designee of UH **Richardson School of Law**
- **History and Culture Branch Chief** of DLNR's SHPD
- DLNR's **SHPD Burials Specialist**
- One member from **Attorney General's Office**
- One representatives of **large landowners and developers**, appointed by the Governor
- One **Native Hawaiian cultural practitioner**, to be selected by Huliāuapa'a
- A representative of the **Hawaiian community** familiar with and experienced with the burial sites program to be appointed by OHA

Similarly, the resos also had differences in proposed working group composition, but again OHA hybridized the two resos in a way that we thought were most effective. So far we have designees from most of these slots except for responses from the Attorney General's Office and the Governor's Office, but we intend to start the group with or without their participation. Next slide, please.

- A representative of the **Hawaiian community** familiar with and experienced with the burial sites program to be appointed by OHA

## Nomination Process

- Goal: fair and transparent
- June 18 announcement on OHA web and social media platforms
  - OHA requested interested individuals to submit a resume and a letter of intent, detailing:
    - Why [they] want to serve on the Burial Sites Working Group
    - What experience or expertise can they to bring to the Burial Sites Working Group
- By July 2, 2021 deadline: 18 applicants

For the reason we're here today, you will see that part of this 14 person committee includes representative of the Hawaiian community to be selected by OHA. To select this individual we sought to create a fair and transparent process as we've done for IBC nominations in the past. On June 18th an announcement went out to interested individuals who then submitted their resume and letter of intent. We had a pretty good turn out and got a total of 18 applicants I think by July 2nd. We then had a four person committee evaluate the applicants based on application completeness, demonstrated experience in iwi kūpuna issues, demonstrated knowledge in Native Hawaiian burial practices, demonstrated knowledge and understanding legal framework surrounding Burial Councils and experience on Island Burial Councils. The total scores were assigned and then the committee discussed the results. As a result of the process, we are proud to present the nomination of Kēhaunani Abad as the most qualified applicant. Just to highlight some of her experience and expertise. She has served 12 years in the O'ahu Island Burial Council, was an active member of Hui Mālama that focused on repatriation burial efforts, has a PhD in anthropology and has published numerous articles regarding cultural sites and burials, has prepared numerous amounts of testimony and declarations for advocacy efforts to protect iwi kūpuna and has an in depth familiarity with historic preservation and environmental laws. She is also available here for questions and to perhaps share a statement regarding the nominations. But before we get to that real quick, we would like to say that many of the non selected applicants, many of which who were very well qualified and still participate in the working group by providing testimony or informational materials for consideration. With that said, if there's no questions, I can turn it over to Kēhau.

**Chair Akaka:** Any questions members?

**Chair Akaka** recognizes Board Chair Hulu Lindsey

**Board Chair Hulu Lindsey:** I'd like to move that we approve the Office of Hawaiian Affairs 2021 Burial Sites Working Group nomination of Kēhaunani Cachola Abad.

**Trustee Ahuna:** Second

**Chair Akaka:** It has been moved and seconded, can we please have a **roll call vote**.

							1:44 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA		2	X			
KELI'I	AKINA			X			
LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY	1		X			
VICE CHAIR KEOLA	LINDSEY						EXCUSED
JOHN	WAIHE'E, IV			X			
CHAIR KALEIHIKINA	AKAKA			X			
TOTAL VOTE COUNT				8	0	0	1

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

**Chair Akaka:** I also would like for Kēhau to have an opportunity to speak if she'd like to.

**OHA Nominee Kēhaunani Cachola Abad:** Mahalo Chair, aloha Trustees, Ka Pouhana, my friends that I missed very much of the OHA Ohana. It's nice to see you folks and it's a big privilege and honor to be able to serve in this role. Thank you for having the faith in me, mahalo nui and as I was talking to some folks, it's something I conveyed that I'm very passionate about and I will be a work horse to get as much done as we can possibly do. And I'm at your service and at the services of our lāhui.

### C. 2020 Legislative Session Report† and 2021 Legislative Session Preparation - Advocacy (Public Policy)

**Chair Akaka** yields the floor to Ka Pouhana Sylvia Hussey.



**Ka Pouhana Hussey:** Thank you, Trustee. Trustees in the electronic packet, the extensive report starts on page 111 of the 317 page binder for the meeting and Wayne our Public Policy Manager will take us through the staff report in summary, Wayne.

**Public Policy Manger Tanaka:** Thank you Ka Pouhana, good afternoon everyone. It's good to see everyone again. I have a PowerPoint presentation so I will share screen now. So most of you should have seen a version of this before, so every year after the legislative session and after the veto deadline passes, we kind of put together a presentation to kind of summarize the work that we did over the past several months and also to kind of provide a road map for how we will be developing next year's legislative package.

## OUTLINE

- 2021 OHA Legislative Package Development and Outcomes
- 2021 Non-OHA Legislative Package Advocacy and Outcomes
- 2022 Package Development and Considerations

So real quick outline I'll go over our 2021 legislative package and the outcomes of that package. And then I'll talk a little bit about our advocacy on all the other thousands of measures that aren't in our package that we reviewed and advocated on and then after that I'll go through looking forward what will be, what our activities will be looking like and what our timeline will look like to develop our package for next legislative session.

## OHA 2021 Legislative Package

- OHA Legislative Package
  - Pre-package internal/external outreach (July-September)
  - Vetted proposals (~40)/drafted measures
  - Procured OHA Executive Team, BAE and BOT Approval
    - Oct. 7– BAE legislative concepts workshop (non-action)
    - Oct. 21– 2021 Legislative Package final language approval by BAE
    - Oct 29 – 2021 Legislative Package final language approval by BOT (3 bills, 1 resolution)

So just a quick recap of timeline from last year. So in 2020 starting from July August, we began our internal external outreach to guide our ideas and issues for consideration in our package. We got about 40 proposals and so we vetted through them. We came up with a short list of four that we decided to include in our package, and so first we did a kind of a legislative concept workshop in October with the BAE. It's not an action item, but

it's more for us to kind of get a sense of how the committee feels about the concepts that we're thinking of pursuing and then a couple weeks later we then submitted an action item with draft bills that would comprise our package for the 2021 session and we got final approval last year of our package on October 29th and the timing for last year was such that we could get final approval before the November election. This year there is no election, so we have a little more time.

- Oct.-January: Pre-session outreach (community, legislators)
- Advocacy throughout session
  - Jan. 20 (Opening) – April 29 (Sine die)
  - June 21 – Governor deadline for veto notice (for bills passed on or after April 9)
  - July 6 – Governor deadline for final approval or veto
  - Testifying, meet with lawmakers, executive branch officials, community, and Governor
- Collaborate with other Paia, partners to help guide advocacy
- Update agency, BAE/BOT on progress

So once we had a package set, you know we did pre session outreach to the community, to legislators trying to let them know what our priorities are. And then once session started in the 20th, we began advocating to push our package through the process. Just as a recap, the Governor's deadline to indicate what bills he may veto was June 21st and on July 6th that was his deadline to act on his vetoes. And so throughout this entire time, including up to the veto, we're testifying on our package and meeting with lawmakers, committee chairs other executive branch officials suggesting concerns that have arisen. And also the community and the Governor. And through this we also collaborate within the agency with other paia who have expertise in some of these areas and also to our partners outside of agency to help like guide our advocacy on the package. And as you can recall, you know during session we're meeting almost every week to kind of update you folks on the progress of our package, and so you know I won't go over our bills again because I think we're all quite familiar with them.

**OHA-1** OHA Biennium Budget Bill (FY21-22 and FY22-23)

**OHA-2** CIP Request for OHA's Wahiawā Lands

**OHA-3** Expungement of Houselessness-Related Criminal Records

**OHA-4** Data Governance Resolution

**Passed**

**OHA-1 (HB204/Act 29)**

- Amendments:
  - No GF for BOT, Admin Operations
  - Maintained historical provisos and appropriations for legal, education, social services (approx. \$1.5M)
  - Included additional funds for beneficiary occupancy-ready housing (\$500K)
  - Included \$200K for follow-up to the CLA contracts and LLC financial review
  - ALSO: Allows access to FY20-21 general funds

**OHA-4 (SCR5) adopted unamended**

But you know we did a budget bill, we had a CIP request for our Wahiaw'a lands which was a repeat of a bill we introduced last year. We also had a measure to help break the cycle of houselessness and the criminalization of houselessness which kind of exacerbates the problems and the challenges that we face and that Native Hawaiians may disproportionately face with regards to houselessness and criminalization. And then we had a resolution to kind of take steps to improve the way that the state collects, processes, shares and houses data, especially data with regards to Native Hawaiians and specifically disaggregated from other Pacific Islanders. And as you may recall, we did have two of these package measures passed, and the first was our budget bill which had some amendments. So it took out all of our operating and administrative appropriations but it did maintain the historical provisos with regards to social services, legal services and education, and also include an extra half million per year for our beneficiaries' occupancy ready housing needs. Also another 200,000 for a follow up report on the CLA contracts and financial. And as I think was highlighted, you know multiple times. We were also able to get amendments in there to also access the FY2021 funds that were not released due to the failure of the auditor to submit audit to the legislature as required for the release of those funds. In addition to our budget bill, we also had our data governance resolution adopted unamended by both chambers.

## OHA 2021 Coordinated Advocacy

- **SB1384/HB546** 'Aha Pūnana Leo representation on the Early Learning Board
- **SB1260, HB1111** Pretrial Reform
- Passed
- **SB1384 (Act 173)** – "Hawaiian medium early learning service provider representative" on ELB exempt from standard two-term limit; sunset date



And then also too, we did have a couple of measures that we considered part of our coordinated advocacy, so these are measures that aren't formally included in our package, but because of their importance, we would support them and advocate for them to an extent commensurate with our package so as you recall, one of them was to provide a more consistent and continuous voice for Hawaiian emersion early learning service providers and early learning board and the other was to kind of adopt the recommendations of the HCR137 pre trial reform task force and oversight commission with regards to cash bail and addressing the substantial punitive impacts of cash bail for indigent defendants who have not been convicted but are waiting trial. And so of these two, the measure relating to the early learning board and the representation for Hawaiian early learning service providers did pass. It allows them now to be exempt from the two term limit, which essentially prevents any individual from serving in that seat for more than four consecutive years. It does have a sunset date so we'll have to go back and try to remove that so that you know this exemption can continue to ensure a consistent, continuous voice on the early learning board. But just having this measure on the books will probably make that a lot easier of a lift.

## 2021 OHA Legislative Package vs. Past OHA Legislative Packages

Year	Package Measures	Enacted	Percent Enacted	Description/Notes
2021	4(+2)	2(+1)	50% (50%)	HB204 OHA Budget SCR5 Data Governance Resolution (SB1326 'Aha Pūnana Leo on the Early Learning Board)
2020	6	1	17%	SB2193 Employment Discrimination
2019	5	2	40%	HB172 OHA Budget SB192 Unsecured Bail
2018	4	0	0%	N/A
2017	3	1	33%	HB335 OHA Budget
2016	5	1	20%	HCR 188 Urging The Convening of a Public Land Trust Revenues Negotiating Committee
2015	7(+1)	4 (+1)	57% (71%)	HB209 OHA Budget HB207 Native Hawaiian Law Training Course SB434 Traditional Hawaiian Farming HB206 Hawaiian Plants in Landscaping (SB913 Incarcerated Parent Data)

And so it was a pretty you know, relatively good year. So this table you have probably seen a version of it from last year, but this just compares the success of our package this most recent session with that of prior sessions. So with two of our package measures enacted and one of our two coordinated advocacy measures enacted. That's a 50% success rate, which is pretty good. We haven't seen that since 2015. Last year, just again it was a little bit unusual because of the pandemic and you know essentially there are very few bills that passed just because the legislature had to focus on bills and measures that would specifically help us deal with the pandemic and navigating through it. But otherwise yeah, it was a pretty successful year looking back.

## 2021 OHA Legislative Package vs. Past OHA Legislative Packages

Year	Package Measures	Enacted	Percent Enacted	Description/Notes
2014	7 (+1)	2	28% (25%)	HB1616 Social Determinates of Health HB1618 Board of Land and Natural Resources
2013	11 (+2)	6 (+2)	54% (61%)	SB403 OHA Bond Authority SB407 Island Burial Council SB409 'Ōlelo Hawai'i Month HB218 Native Hawaiian Justice Task Force HB222 OHA Budget HCR 20 <sup>th</sup> Anniversary of Apology Resolution (HB868 TANF Asset Limits) (HB1133 PLDC Repeal)
2012	12 (+1)	0 (+1)	0% (8%)	(SB2783 \$200 Million Kaka'ako Settlement)
2011	10	3	30%	SB400 OHA Budget HB397 Act176 Amendments SB986 Criminal Justice Task Force
2010	14	0	0%	N/A
2009	19	4	21%	HB899 Bond Authority HB900 OHA Budget HB1005 Publicity Rights HCR27 Criminal Justice Study



This is just more historical information on what we've been able to pass over the years. 2013 was pretty exciting. I think we got like 6 out of 11 of our package measures and we had two advocacy bills that we also were able to get past. You'll note that back in 2005-2008 like we had a lot of package a lot of measures in our packages like 29, 28 like I think we've come to realize that that's kind of a relatively unmanageable number of bills, so you know since then we've kind of tapered off to focus more on a shorter list of priorities.

## OHA Package vs. Other Packages

Rank	Package	Bills			Resolutions			Total Measures (Bills + Resolutions)		
		# Bills	Bills Passed	Percent Passed	# Resos	Resos Adopted	Percent Adopted	Measures	Measures Passed	Percent Passed
1	Judiciary	6	5	83%	0	0	0%	6	5	83%
2	Honolulu Police Dept.	4	3	75%	0	0	0%	4	3	75%
3	Office of Hawaiian Affairs	3	1	33%	1	1	100%	4	2	50%
4	Campaign Spending Commission	8	4	50%	0	0	0%	8	4	50%
5	County of Hawai'i	0	0	0	2	1	0%	2	1	50%
6	Women's Legislative Caucus	5	2	40%	2	1	0%	7	3	43%
7	Honolulu Prosecuting Attorney	11	4	36%	0	0	0%	11	4	36%
8	Governor	205	56	27%	10	10	100%	215	66	31%
-	C&C of Honolulu	4	1	25%	0	0	0%	4	1	25%
-	Kupuna Caucus	5	1	20%	0	0	0%	5	1	20%
-	Office of Elections	6	1	17%	0	0	0%	6	1	17%
-	County of Kaua'i	6	1	17%	0	0	0%	6	1	17%
-	Deaf and Blind Task Force	7	1	14%	2	0	0%	9	1	11%
-	Keiki Caucus	5	0	0%	5	0	0%	10	0	0%
-	State Fire Council	9	0	0%	0	0	0%	9	0	0%
-	Hawai'i State Assoc. of Counties	8	0	0%	0	0	0%	8	0	0%
-	Legislative Native Hawaiian Affairs Caucus	5	0	0%	0	0	0%	5	0	0%
-	Maui County Council	5	0	0%	0	0	0%	5	0	0%

This is a table comparing the success of our package this year with other entities legislative packages. So again, we did pretty good at 50% passage rate. We came in 3rd I think yeah. Matched with the Campaign Spending Commission which only had one resolution of its two resolutions that were introduced.

## Non-OHA Measures

- Pre-session coordinate with subject matter staff
- Pre-session outreach with community stakeholders, agencies, subject matter experts on their priorities
  - Pre-session bill review, comments
- Review all measures introduced
  - 2021: 2,820 bills, 845 resolutions and concurrent resolutions, and 313 Governor's Messages for nominations introduced
  - Key Priorities: Programs and policies directly benefitting OHA beneficiaries including: PLT revenues, "ceded" lands claims, DHHL, historic preservation biocultural resource management and protection, criminal justice, health and COVID-19 response; STOP bad bills
  - SLAMMED from January – early March

So that's pretty much it for a package summary, I'll talk a little bit now about all of the non OHA package measures that we reviewed and recommended positions on and advocated accordingly. And so you know this part of the process involves our pre session outreach, so both within the agency and with outside stakeholders and other agencies and subject matter experts. So now as we you know as we outreach for legislative ideas as we share our approved package with the community, we're able to get a sense of what their priorities may be and what may be coming down the pipes and so that kind of gives us a heads up on some of the bills that we review. But there's a lot of bills so you know in 2021 there are about 2100 bills that were introduced and this is all right at the beginning of session before the bill introduction cut off, so we're pretty busy. New folks had a lot of recommendations to kind of review during that period and throughout session, resolutions and Governor nominations are also introduced at the legislature, so we're always looking out for those and evaluating them as well. We do have some key priority areas that we focus on, so anything that impacts OHA or anything that names OHA we flag right away. Public Land Trust is a huge issue as is protecting the claims of our beneficiaries the ceded lands corpus, you know DHHL had a pretty robust package this year and so we did what we could to support their efforts as well. Historic preservation actually had a lot of activity as you've already seen with the working group that Kamakana just talked about. There's always a number of other measures that seem to come up where they try to streamline laws that protect iwi kūpuna and you know, irreplaceable cultural sites in order to facilitate or fast track development. So we also want to keep an eye out for and play defense on those kinds of proposals. Measures impacting the aina and bio cultural resources that are beneficiaries depend upon are also very, you know, high priority and in recent years too criminal justice has been a big issue, health and of course the COVID-19 response are also things that we look out for.

A big priority for us is also to stop bad bills. Bills that may have such a negative impact on our beneficiaries or our mission that we would take a position of oppose and so that's also another kind of gauge of our successes is the extent to which we can stop all bad bills from becoming into law and unfortunately we had two bills that we opposed that did pass this session and I'll talk about them in a little bit.

## Non-OHA Measures

- Procure BAE, BOT approval of recommended positions
  - Matrices
- Update BAE weekly
  - Change positions as necessary
- Advocate on various levels (oral/written testimony; meetings with lawmakers, community, agencies)

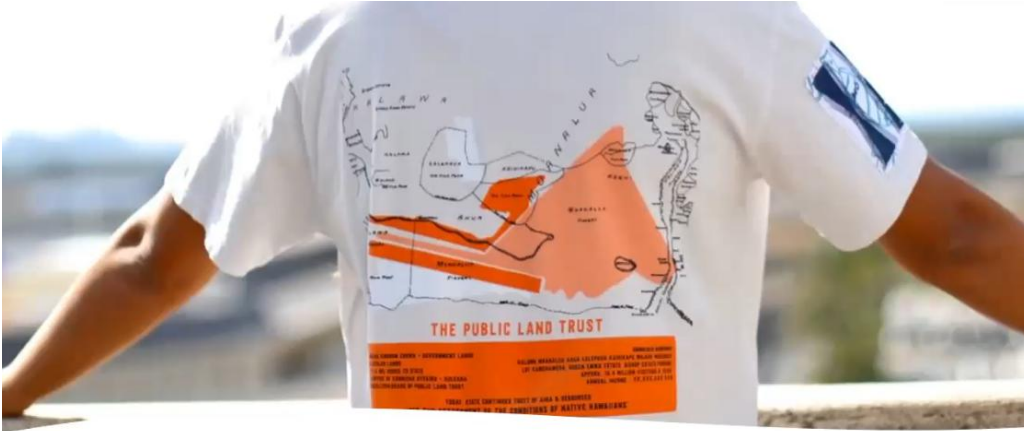
And for these non-OHA measures, as you know we also come to you on an almost weekly basis to give you our recommendations on what positions we think the agency and the Board should take and have BAE and BOT review those recommendations and affirm them or modify them as appropriate. Once we have those positions set then we advocate you know in various ways. So we provide written testimony. We provide oral testimony on high priority measures or package bills. Things that name OHA, anything we oppose we try to show up and testify orally, and of course we're meeting on the side with lawmakers, meeting with other

agencies, stakeholders, experts to kind of help you know coordinate and guide our advocacy throughout session.

## Non-OHA Measures

2021 Legislative Session							
	Measures Introduced	Measures Tracked by OHA	OHA Positions				
			Support	Support with Amendments	Monitor	Comment	Oppose* *latest form
<b>Total:</b>	<b>3,978</b>	<b>929</b>	<b>262</b>	<b>12</b>	<b>535</b>	<b>78</b>	<b>42</b>
Bills:	2,820	658	133	8	414	64	39
Resos:	845	233	107	4	105	14	3
GMs:	313	38	22		16		
<b>Total:</b>	<b>793</b>	<b>42</b>	<b>73</b>	<b>3</b>	<b>85</b>	<b>15</b>	<b>2</b>
Bills Passed*:	239	12	15	1	45	9	1
Resos Adopted:	266	7	36	2	27	6	1
GMs Confirmed:	288	23	22		15		

And so this is just kind of a summary table of these non-OHA measures and how they shook out. So we supported about 260-270 measures, bills, resolutions, gms of those about 73-75 passed. We ended up opposing at the end of Session 42 measures of which only two passed, as I mentioned before. It's never great when an oppose bill passes, but that's you know, I think that we're able to successfully defend against the rest of those bad bills and resolutions that was relatively successful and good thing. I do want to note that we opposed more than 42 bills, but every time we oppose the bill, we almost always have recommendations as to how the bill could be amended to address the concerns and to extent that these concerns the bills were amended, and they did adopt recommendations, would stop opposing them, and so our position would change to comment or monitor or even support sometimes, and so that 42 figure you see does not include the bills that we oppose, but we're able to successfully turn into a non opposed measure.



## Notable Non-OHA Measures: Public Land Trust

**SB321 SD2 (SUPPORT):** RELATING TO INCREASING THE PAYMENT AMOUNT FOR THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF THE PUBLIC LAND TRUST

- Recognizes 20% of PLT revenues averages approx. \$40M/year over last decade
- Lifts \$15.1M "cap" on Native Hawaiians' pro rata share
- Transfers CFTHA funds to OHA (\$25M)
- Establishes PLT Negotiating Committee

**Passed out of Senate; no hearings in House**

I'll just go and hit on some examples of non-OHA bills that you know we were paying a lot of attention to during session or that are otherwise notable. So this obviously isn't every important bill that we advocated on. But just in interest of time, I'm just going to highlight a few. So of course we did see a Public Land Trust bill this year that's very similar to our own package measure from 2019. So as you recall, this measure would have lifted the \$15.1 million cap on Native Hawaiian's pro rata share of land trust revenues. Will have transferred all of the monies that we return to this state as exceeding that \$15.1 million cap back to OHA. So that would be about 25 million and would have established a negotiating committee so that we could kind of build an agreement as to what this \$15.1 million cap should be lifted be increased or what that minimum should be increased to and notably the preamble to this measure recognized that looking over the past ten years, 20% of Public Land Trust revenues is that the state historically agreed, should be subject to Native Hawaiian's pro rata share averaged out to about \$40 million a year, which is you know, obviously way higher than \$15.1 million. So that was promising to note. Unfortunately, even though this bill passed out of the Senate, it didn't get any hearings in the House. What's interesting is I think if you can recall HB402 which is the last time a bill like this was introduced. It actually made it out of the House, but then it wasn't successful in the Senate or it made it to conference but then it never passed. So unfortunately the House didn't choose to move this measure this year.





## Notable Non-OHA Measures: Public Land Trust

**SB1317 SD1 (OPPOSE):** RELATING TO INCREASING THE PAYMENT AMOUNT FOR THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF THE PUBLIC LAND TRUST

- Diverts PLT revenues to DHHL
- Lifts \$15.1M cap and transfers CFTHA to DHHL
- Establishes PLT Negotiating Committee to Include DHHL
- Conflates independent state obligations under the PLT and to provide sufficient sums to DHHL
- Violates OHA BOT constitutional prerogative over Native Hawaiians' pro rata share of the PLT

**Passed out of Senate; no hearings in House**

A very similar bill would have also lifted the cap, would have transferred out the funds that we returned as exceeding the cap and established negotiating committee. But the problem with this measure is that instead of OHA receiving those funds, it would have been the Department Hawaiian Homelands and so essentially it would have violated the Board of Trustees Constitutional prerogative to determine how Native Hawaiian share of Public Land Trust should be administered and what it really did was conflate the independent and separate obligations of the state to provide sufficient funds for Department of Hawaiian Homelands, as well as account for Native Hawaiian share of the Public Land Trust and to transfer that share to the Office of Hawaiian Affairs. And so because of those concerns, we vigorously opposed this measure. Unfortunately, while it did pass out of the Senate, it did not have any hearings in the House and died.



## Notable Non-OHA Measures: Public Land Trust

**SB1334 SD2 (SUPPORT):** RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY

- Allows residential on six parcels in Kaka'ako Makai
- Raises height limit to 400' on two parcels
- Would allow OHA to realize the revenue potential envisioned in the \$200M settlement of PLT claims up to June 30, 2012

**Passed out of Senate; no hearings in House**

You're well aware also to that you know in relation to the Public Land Trust we did have a bill that almost the entire agency kind of came together to support the passage of which was our Kaka'ako Makai bill. Quick recap, it would have allowed residential on six of the parcels that we have in Kaka'ako Makai. It would have increased the height limit to 400 feet for two of those parcels, and by doing so would have allowed OHA to realize the revenue generating potential that was envisioned when we received this property as a result to settle the \$200 million back to Public Land Trust amounts that the state acknowledged it owed OHA at the time. Unfortunately, this bill, while it passed out of the Senate, again it did not receive any hearings in the House.



## Notable Non-OHA Measures: Public Land Trust

### **HR111 HD1 (OPPOSE): CONVENING A WORKING GROUP TO DISCUSS THE FUTURE DEVELOPMENT PLANS IN KAKA'AKO MAKAI**

- Convenes a Kaka'ako Makai Working Group to discuss future development in Kaka'ako Makai; working group to include legislative appointees (4), BLNR Chair, HCDA Chair, OHA Chair
- Violates trust responsibility of OHA BOT to administer trust corpus solely for the interests of beneficiaries
- Undermines Native Hawaiian self-determination
- Unilaterally seeks to undo historic settlement agreement years in the making
- Possible land exchange would put us back to square 1

**Adopted by House; OHA will not participate**

And then finally, this is a measure that we also opposed in the past. So this is one of the two that we were not able to kill, and it's a single body resolution, so only the House adopted it, but it's a resolution that urges a convening of a working group to discuss the development of Kaka'ako Makai and as we emphasized to the Legislature, this resolution essentially overrides the Constitutional prerogative again of the Board of Trustees to determine how trust assets are to be administered. It also in a lot of ways represented a unilateral attempt by the Legislature to kind of undo the historic settlement and all of the work that went into it when we agreed to receiving Kaka'ako Makai in 2012. There is a land exchange that was contemplated in the reso as well, and you know our concern is that this essentially just puts us back on square one in terms of you know having to do due diligence, having to figure out what kind of talents are needed, having to fight for those entitlements potentially, so we really were not, the agency was not interested in any kind of exchange as contemplated in this resolution, and so we expressed these concerns and we told them we're not going to participate and they passed it anyways and so my understanding is that we are not going to participate in this working group.



## Notable Non-OHA Measures: “Ceded” lands

### **HB499 HD2 SD2 (Act 236)(OPPOSE): RELATING TO LEASE EXTENSIONS ON PUBLIC LAND**

- Authorizes BLNR, Hawaiian Homes Commission to extend 65-year leases (industrial, commercial, resort, mixed-use, government) for 40 years at a time
- 40-year extensions foreclose Native Hawaiian claims from being negotiated for generations at a time
- 100+ year leases of “ceded” lands will lead to their alienation

**Passed & became law without the Gov’s signature (Act 236)**

### **See also SB1 SD2 (OPPOSE): RELATING TO HOUSING**

- “ALOHA Homes measure” authorizing 99-year leases of “ceded” lands
- Century-long leases effectively alienate “ceded” lands
- No accountability to Native Hawaiian claims

**Died in House**

Moving on to some bills regarding ceded lands or you know, like Hawaiian Kingdom government crown lands that were taken under threat of bloodshed during the overthrow and then ceded to the United States. So there are a number of bills that contemplated encumbering these stolen ceded lands for you know a century at a time if not longer. So we were able to kill all but one of them, which is HB499. That's now Act 236. It became law without the Governor's signature. So while he did not veto it as we were hoping and asking him to, he did not sign it so it became law and this measure allows for 40 year lease extensions on almost any kind of leases issued by the Board of Land Natural Resources as well as the Hawaiian Homes Commission by extension. And you know our concerns is that these four year lease extensions are going to foreclose the ability of any kind of Native Hawaiian self governing entity to negotiate their claims to these lands for generations at a time, and also too as we've seen, even with 65 year leases, once you give a lessee super long continuous leasehold interest in land even and including public and stolen ceded lands. They're almost always gonna fight very, very hard to convert those lands into like into a fee sale or essentially alienate those lands which we have a policy to oppose. So given that this bill passed and given our existential concerns about the potential erosion and loss of Hawaiian claims to these stolen ceded lands, we will now have to monitor BLNR meeting agendas. Hopefully work with DLNR staff so that any lease extension proposals can at least mitigate any impacts it may have on Native Hawaiian claims to the ceded lands. And if not that then you know try to raise objections before the Board as we're going through the lease approval process or lease extension approval process and you know and then to the extent necessary may have to consider other types of options interventions if there's something bad that we see coming down the pipes. And again, just wanted to remind the Board that we will be seeing these additional proposals for long term leases, 99 year leases which are in effect a fee sale of lands. So 99 year leases of ceded lands, or you know, they'll foreclose Hawaiians from negotiating for those lands for a century at a time. They will also again lead to a sense of entitlement expectation amongst lessees that you know they should own these lands eventually. And so again, we're very concerned. Fortunately we were able to kill all of the proposals that have these 99 year lease provisions. We did have a compromise language that would have allowed for long term leases, but subject to conditions approved by the Board of Trustees. Unfortunately, we were not able to persuade the Legislature that Hawaiians should have a seat at the table when they're you know, disposing of Hawaiian lands for a century at a time. I do think that one of the bright spots of HB499 and its passage was that we saw a tremendous amount of engagement and awareness raising amongst not just you know our beneficiaries, but in the larger community here in Hawai'i about what the ceded



lands even are and the history behind them. I mean even Stanford Carr they wrote in their op ed that they talked about ceded lands. So hopefully that awareness and engagement will continue on and will help us run successful defense in future sessions, including in the next session when, if and when these 99 year lease proposals get introduced.



## Notable Non-OHA Measures: DHHL

### **HB753 HD1 SD2 (Act 197) (SUPPORT):** RELATING TO SCHOOL IMPACT FEES

- Exempts DHHL housing developments from school impact fees
- Will allow DHHL's funds to be dedicated more fully to housing beneficiaries, rather than be captured by the state
- May save hundreds of thousands of dollars for certain projects
- DHHL already plans for educational needs, and allows DOE schools to be built or maintained on DHHL lands

**Passed and signed into law (Act 197)**

So moving on to the Department of Hawaiian Homelands, they had a pretty robust package. Unfortunately, most of those measures died, the one that did pass was signed into law as Act 197. This would exempt DHHL housing developments from school impact fees, which can be up to, you know, hundreds of thousands of dollars per development. So this measure will allow DHHL to more fully dedicate its funds towards fulfilling its mission like building housing, getting our mutual beneficiaries off of the wait list. I just want to note that DHHL does already plan for educational needs as it does its developments. So in a lot of ways school impacts are already accounted for. DHHL also lets DOE maintain schools, public schools on DHHL lands so it's not like DOE is getting shortchange by this measure.



## Notable Non-OHA Measures: 'Āina

### **HB1019 HD2 SD2 CD1 (Act 46) (SUPPORT):** RELATING TO OCEAN STEWARDSHIP

- From 2024-2029, requires commercial ocean operators to charge a fee of \$1 (adjusted every 5 years) for each passenger, and deposited into a new Ocean Stewardship Special Fund for marine management and protection activities
- Millions of dollars per year may be generated to protect our aquatic biocultural resources
- 20% of fees collected to be set aside and transferred to OHA as public land trust revenues

**Passed and signed into law (Act 46)**



With regards to bio cultural resources, there are actually a suite of bills that we supported that passed in this area. I think one that's worth noting is HB1019, which was signed into law as Act 46, and so for a period of five years this bill will require any holder of a commercial ocean operator permit, so basically an ocean tour operator to charge a fee of \$1.00 per passenger and this fee will be deposited into an ocean stewardship special fund to be used for protecting our marine bio cultural resources that are critical for our beneficiaries' Subsistence needs and traditional customary practices. So we're really excited about this. You know there's potential for millions of dollars per year to be raised to protect our aquatic resources, which is not something that gets a lot of funding normally and the other interesting thing of note is that given that all state submerged lands are actually technically considered part of the Public Land Trust Corpus. This bill acknowledges that and it requires that 20% of the fees collected to be set aside and transferred to OHA as part of the Public Land Trust revenues. So that it'll be interesting to see how that plays out.

## Notable Non-OHA Measures: Historic Preservation

### **HB497 HD1 SD1 (OPPOSE): RELATING TO ZONING ORDINANCES**

- Prohibits counties from requiring extra-statutory consultation with state agencies (i.e. SHPD and OHA) for residential developments
- Removes important mechanism that has protected iwi kupuna, irreplaceable cultural sites from destruction due to poor project planning and incomplete county or developer data
- Does not address major cause of residential project delays

**Died in Senate**



As I mentioned historic preservation kind of got a lot of action this year. We did see a number of streamlining proposals that we had to kill. Kamakana actually did a really great job in communicating, conveying, testifying to our concerns on this measure to Legislators. I think that really helped in making sure it didn't pass into law. But this measure, if you can recall would prohibited the counties from requiring residential developers to consult with the state. So basically Historic Preservation Division and OHA unless that requirement was also reflected in statute, and so our concern was that the counties actually do rely on us to review these kinds of projects. Often their datasets aren't complete. We do have a lot of institutional knowledge about you know where iwi kūpuna are, where historic cultural sites are and also where they are likely to be, the kinds of places where historic events happen or there's certain characteristics of the land that indicate that this might be a high likelihood of hosting burials and so forth. And through this consultation we are often able to improve project planning and prevent irreparable impacts to irreplaceable iwi kūpuna and historic cultural sites and so we were able to communicate that concern to the Legislators. They couched these streamlining type measures in by framing it as like we need affordable housing and you know this extra review takes too much time, but you know, in our experience, as we've conveyed to Legislature as well, it's not really this review that jams up these kinds of developments. It's often more a matter of like poor planning or other processes. So unfortunately, while this bill did pass out of the House, it did die in the Senate eventually.

## Notable Non-OHA Measures: Historic Preservation

**SR171 SD1 and HR113 HD1 (SUPPORT):**  
REQUESTING THE OFFICE OF HAWAIIAN AFFAIRS  
TO ESTABLISH THE BURIAL SITES WORKING  
GROUP TO EXAMINE THE BURIAL SITES PROGRAM  
UNDER THE DEPARTMENT OF LAND AND  
NATURAL RESOURCES' STATE HISTORIC  
PRESERVATION DIVISION

- Urge OHA to convene a burial sites working group to address longstanding, systemic failures in the administration of Hawai'i
- Slightly differing asks, working group composition between the two resolutions
- Current working group combines elements of both, seeks to uphold primary intent

**Both single body resolutions adopted by their respective chambers**



So Kamakana just talked about these dual resolutions that are a little different, and so we hybridized them. And that's the nomination that you just voted on. But again, this all came from press conference I think the day this opening day or the day before where the Island Burial Council leadership came together and just raised numerous concerns about the systemic and ongoing failures of the historic preservation division to properly and appropriately administer the laws and a program that's designed to protect iwi kūpuna and associated sites, and we did follow up with a statement from our CEO in support of the Island Burial Council leadership statements that reflected also our own experience and observations regarding these same systemic and longstanding failures, so hopefully this burial sites working group which was proposed to address those failures, will be able to reconvene and hopefully take steps forward to finally address these systemic issues.

## Notable Non-OHA Measures: Criminal Justice

**SB386 SD1 HD2 CD1 (Act 61) (SUPPORT):** RELATING TO THE  
DETENTION OF A MINOR IN AN ADULT JAIL OR LOCKUP

- Requires explicit judicial findings before a minor can be placed in adult correctional facilities
- Addresses documented short-term physical harm/assault and long-term lasting trauma from exposing youth to adult offenders
- Native Hawaiians overrepresented in youth correctional facilities and may be disproportionately impacted by unnecessary detention in adult facilities

**Passed and signed into law (Act 61)**



In the criminal justice realm there was one bill that we supported that passed into law is Act 61 and so this measure sought to mitigate, prevent the you know, substantial trauma, substantial harm that can occur when you hold a juvenile in an adult correctional facility. It just requires judicial findings before that can even happen and you know Native Hawaiians as you likely know, are overrepresented in, you know, throughout the criminal justice system, including in our youth correctional facilities, and so they may be disproportionately at risk for being housed with in adult correctional facilities, and so this bill by helping to prevent that will hopefully help to prevent a lot of trauma for our juvenile beneficiaries.



## Notable Non-OHA Measures: Criminal Justice

### **SB1260 SD1 HD1 (SUPPORT): RELATING TO CRIMINAL PRETRIAL REFORM**

- Implements recommendations of the HCR137 Pretrial Reform Task Force and the Hawai'i State Correctional Facilities Oversight Commission
- Eliminates cash bail for low level nonviolent offenses subject to exceptions
- Seeks to address the harsh, punitive, and unnecessary impact of cash bail on nonconvicted, indigent defendants (who may be disproportionately Native Hawaiian)
- Also seeks to address dangerous, expensive, and inhumane overcrowding of our pretrial detention facilities (i.e. OCCC, MCC, etc.)

**Died in conference committee**

The other criminal justice measure. This is our court advocacy bill that didn't pass, but it would have implemented the recommendations of the HR137 Pre Trial Reform Task Force which were also adopted by Oversight Commission, which our representative is the chair and it would have tried to prevent the unnecessary and punitive hugely primitive impact that pretrial incarceration can have when you have a cash bail system that keeps poor people locked up and lets not poor people pay bail and then get out of jail and so it would eliminate cash bail for low level nonviolent offenses subject to some exceptions. I think there's a lot of media sensationalizing of the release emergency release of a number of pretrial inmates present the Supreme Court order at the beginning of the pandemic due to the terrible overcrowding and the dangerous conditions that created with respect to COVID. Even though you know people were decrying, like the potential increase in crime and whatnot, you know a subsequent study really verified that this didn't have a significant impact on public safety, and so with that in mind, this measure was introduced and pushed by the Oversight Commission and others and unfortunately it did not, even with that data it did not pass, although it did get very far in the process it went all the way to the conference committee and then the Senate and House just couldn't come to an agreement on their differing versions of the bill. And so it died at the end of session.





## Notable Non-OHA Measures: Education/Health

### **SB811 HD1 CD1 (Act 4) (SUPPORT): RELATING TO THE DEPARTMENT OF EDUCATION**

- Requires the DOE to report weekly on schools that have a staff member, student, or other affiliated individual test positive for COVID-19 (name of school, date, and when COVID-19 individual was last on campus)
- Real-time data necessary to evaluate safety of school reopenings and to inform responses that can better protect staff, students, and their 'ohana
- 25% of the DOE student body is Native Hawaiian
- Native Hawaiians more likely to live in crowded and multigenerational households making isolation from vulnerable individuals difficult

**Passed, vetoed by Governor, veto overridden by House and Senate (Act 4)**

We're able to get a, there is one education bill, there's a few actually, but this is one of the bills that we supported that did pass this Act 4. This requires the Department of Education to release a weekly list of schools that have had a positive COVID case and then also say when the last time that person was on campus. This is consistent with advocacy we've taken on the administrative level about the need for real time data in order to inform responses, inform planning and responses to the COVID-19 pandemic, which can have a disproportionate impact on beneficiaries, especially in the school setting where 25% of the student body is Native Hawaiian. So you know in order to better inform efforts that can protect our keiki or they're ohana and basically everyone that needs public health or not public, everyone that needs health care that maybe like very much reduced if the pandemic gets out of control as we kind of are seeing now. We were supporting this bill. The governor actually vetoed this bill which is interesting. But what's even more interesting is the Legislature reconvened and overrode his veto so it is now law.



## Notable Non-OHA Measures: Health

### **HCR112 SD1 and HR90 (SUPPORT): DECLARING RACISM AS A PUBLIC HEALTH CRISIS**

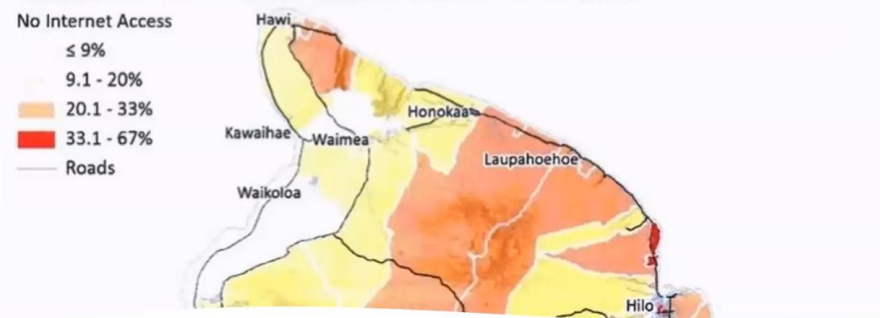
- Resolution acknowledges the lasting impacts of racism and its various manifestations (i.e. systemic legacies of historic racism, institutional and interpersonal) on the health of Native Hawaiian, Pacific Islander, and other marginalized communities
- Legislature recognizes racism as a public health crisis and urges the Governor to do the same
- Also notes connection between racism and the social determinants of health, a comprehensive understanding of health consistent with the concept of maui ola
- Also recognizes need for education, training, collective effort to dismantle racism at all levels

**HCR112 adopted by both chambers; single body HR90 adopted by House**



Another health related measure HCR112 and HR90. These resolutions declare racism as a public health crisis, and essentially they recognize what the CDC has since also recognized that racism, whether it's interpersonal, systemic, institutional, actually has a huge impact on health outcomes especially for, you know, marginalized communities. So with this resolution, which we support, the Legislature recognizes the public health impacts of racism, including the impacts on all the social determinants of health which are, you know, those things beyond just going to the doctor that influence whether you know how healthy an individual is or how healthy the community is. The House single body version also too focuses more specifically on the historic and ongoing impacts of racism on Native Hawaiians and Pacific Islanders. It's very exciting that the Legislature was able to take a stand and make a statement in this regard. Now it's a matter of seeing you know how we can move, continue to move forward and you know follow through with some of the recommendations and urgings in these resos.

### Estimated Percent of Households Without Internet



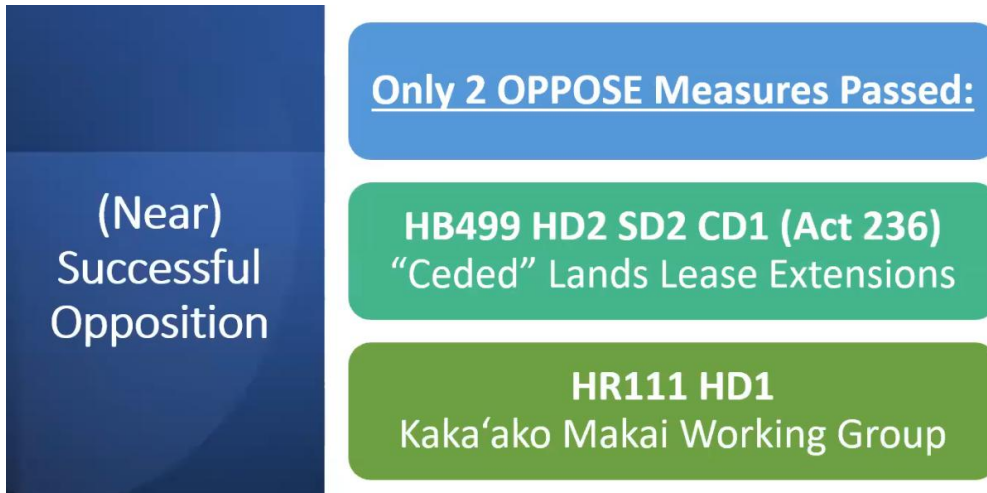
### Notable Non-OHA Measures: Socioeconomic Equity & Justice

**HCR161 HD2 and HR137 HD2 (SUPPORT):** SUPPORTING AND ADOPTING THE GOALS SET FORTH IN THE DIGITAL EQUITY DECLARATION FOR HAWAII ADOPTED BY THE BROADBAND HUI

- Resolution adopts Digital Equity Declaration and the goal of equitable access to broadband, digital devices necessary to participate fully in society
- Native Hawaiians disproportionately represented in rural communities with limited broadband access; Native Hawaiians may also have less access to digital devices and affordable broadband
- Digital inequity may disproportionately impact Native Hawaiians across all sectors: education, civic engagement, social services, socioeconomic development, etc.

**HCR161 adopted by both chambers; single body HR137 adopted by House**

And then finally for the last non OHA measure is HCR161 and it's single body counterpart. So these resolutions would support and adopt the goals of the digital equity declaration, which was a declaration made by the Broadband Hui which we are apart of. We supported and essentially you know, number of Native Hawaiians may be disproportionately impacted by digital inequities that prevent them from fully participating in society. So you know rural areas. Rural communities often have substantial of that majority number of its residents who are Native Hawaiian and these are communities that don't have, you know, great access to broadband. You know DOE surveys have shown how Native Hawaiian students and other Pacific Islanders, have you know, also have a greater need for access to affordable broadband as well as the digital devices that you also need to participate in the digital world. And so because of the principles of equity that are embodied in this resolution we supported them and fortunately they were adopted.



And so again reflecting on you know the outcomes of this session. We did have an almost successful opposition rate especially considering the numerous opposed measures that we saw. Only two of them passed. You know the Kaka'ako Makai Working Group it's disappointing that passed but we're not really participating as we made clear so hopefully, I mean, I don't think that will have much more impact. HB499 does starting to have a more concrete significant impact on our beneficiaries' interests. But again, I think the amount of engagement and awareness raising that this bill created does provide the kind of silver lining given with its passage.

## Mahalo nui!

- PP Staff and Student Helper: Wayne Tanaka, Nina Ki, Olan Leimomi Fisher, Letani Peltier, Annie Ka'uhane, Michele McCoy, Sharde Freitas, Kamaile Maldonado, Jenifer Jenkins, and Emilia Kini;
- OHA Staff: Everett Ohta, Kai Markell, Kamakana Ferreira, Lauren Morawski, Brad Wong, Kalani Fronda, Lori Walker, Brutus LaBenz, Taylor Asao, Christopher Stanley, Lisa Watkins-Victorino, Pūlama Lima, Carla Hostetter, Gloria Li, Kainoa Kaumeheiwā-Rego, Lee Miller; Holly Yamachika, Laura Kamalani-Paikai, Anita Manzano, Alice Silbanuz, Ed Kalama, Davis Price, Aliantha Lim, Kyle-Lee Ladao, Pua Fernandez-Akamine, Jason Lees, Kaleena Patcho, Jhewel-Georlyn Felipe, Joshua Koh, and the entire Community Outreach team;
- OHA leadership: OHA Chief Executive Officer Sylvia Hussey, Chief Operating Officer Casey Brown, Chief Counsel Raina Gushiken, Chief Financial Officer Ramona Hink, Chief Advocate Sterling Wong;
- OHA Board of Trustees: Board Chair Carmen "Hulu" Lindsey, Board Vice Chair Leina'ala Ahu Isa, Beneficiary Advocacy and Empowerment ("BAE") Committee Chair Kalei Akaka, BAE Committee Vice Chair Keola Lindsey, Asset and Resource Management ("RM") Committee Chair John D. Waihe'e IV, RM Vice Chair Luana Alapa, Dan Ahuna, Brendon Kalei'aina Lee, and Keli'i Akina.
- Beneficiaries and partners outside of the agency

Just real quick, you know this is, you know, not just, you see me but you don't see like all of the hands that are working throughout session to kind of get us through it to uphold our mission in the Capitol. And so I just wanted to, I won't read everyone's name, but just you know, acknowledge that this was almost agency wide effort for the last you know 7-8 months. Yeah including you know our leadership, other staff so mahalo nui for that.

## Post Session Follow Up

### Approved legislation often requires off session work and follow up, i.e.:

- Legislation creates working groups/task forces (e.g. SCR5 Data Governance Resolution; SR171 SD1 and HR113 HD1 Burial Sites Working Groups; HCR11 HD1 SD1 Missing and Murdered Native Hawaiian Women and Girls Task Force)
- Legislation requires creation of administrative rules or some other agency action (HB204 SD2 CD1 (Act 29) OHA Budget Bill; HB1019 HD2 SD2 CD1 (Act 46) Ocean Stewardship User Fees))
- Legislation requires continued outreach, monitoring of agency actions to mitigate negative impacts (HB499 HD2 SD2 CD1 (Act 236) "Ceded" Lands Lease Extensions)
- Implementation requires training/guidance for implementation

Quick reminder, even though session is pau, that's not the end of the work, it's often the start of the work, so you know bills or resos that will create working groups and task forces which require follow up work. Sometimes a bill will require you know further actions, so our budget bill required us to submit our CLA report in order to access our 2021 funds. You know that ocean stewardship user fee bill may require rule making to be fully implemented. If bad bills passed, that means we have to, you know there's a lot more work that we have to do in terms of monitoring what agencies do with those bills. So HB499 as an example, and then sometimes we also require you know further investments so you know when our Native plants bill passed, we had to contract out for native plant experts to give trainings for landscapers who would be implementing those requirements. And so that's it for this last session.

## 2022 Legislative Schedule (Proposed)

- **July-Sept.** – Internal/External Outreach
- **Aug. 18** – 2021 Legislative Overview with BAE
- **Sept. 21** – Last day to send leg ideas to PP
- **Oct. 13** - Legislative Package Concepts Workshop with BAE
- **Nov. 17** – Legislative Package Final Language Approval with BAE
- **Nov. 18** – Legislative Package Final Language Approval with BOT
- **Jan. 9** – Deadline to submit OHA Annual Report
- **Jan. \_\*** – Deadline to submit OHA Legislative Package
- **Jan. 19** – Opening of 2022 Legislative Session

So just want to give a quick preview of what we're looking at going forward. So this is a timeline leading up to the 2022 session with respect to how our package for this upcoming year will be developed. We're doing outreach now, both internally within OHA and externally with our partners, stakeholders, experts outside of the agency. We do want to have our ideas you know, proposals in by the 21st of September, and this will give us time to kind of vet them, do more research, prioritize, figure out priorities and so forth. And by the October 13 day, and these are proposed, it would depend on the meeting schedules and other things that come up for the Board and the Committee but we're thinking about October 13 and us having a concept workshop just to kind of get a feel for, temperature check on and some feedback on the concepts that we think should be part of our package and we're shooting for final approval of our package language itself in November 17-18 and opening day of the 2022 session is going to be the third Wednesday of the year, which is January 19 next year.

## Internal Outreach

- Now through September 21
- Please use Google forms
- Public Policy staff meeting with LOBs and programs starting this week

So again we are doing internal outreach now. This is kind of what we we ask staff to do is to provide us with their ideas or issues. We actually have Google Forms this year, so it's a little easier I think to submit their ideas to us. And we'll be meeting with our various programs and paia within OHA starting this week and I just had one actually this morning with the Land Division and you know what we say is, you know all ideas are welcome. Like we record everything, we really want to know because here in public policy, we're not necessarily, we don't know everything right and a lot of times other staff will be the experts on the ground or they will be the one seeing these issues and so we just want to see, we just want to know what kind of issues they're seeing. That's the main thing, and then to the extent they might have legislative solutions, and that's also very helpful, but they you know people, it's just issues themselves that people are encountering are what we're really looking for. And that being said, you know we are mindful that not every issue has a legislative solution, so sometimes there are great laws on the books, but there's no, you know, they just need funding or they're not you know the water codes great, but no one complying or enforcing it you know so that it needs administrative action or executive action rather than a legislative solution. Sometimes bills will also need administrative rules as I mentioned to be fully implemented, and so sometimes that's an issue. That's what's causing issue is the lack of rules or lack of policies or procedures.



## Criteria

- Aim for small package
- Funding implications (OHA, state)
- How big of an issue?
  - Does it impact the broader Hawaiian community (broader public)
  - Is it statewide or county specific?
- Will there be community support at the leg to advance proposal?
  - Will organizations commit to submitting written and verbal testimony at leg hearings?
- Is it aligned with our Strat Plan 2020+ strategic foundation and directions?

Some other criteria we look at, we try to again look for a more manageable sized package because it gets too crazy if we're trying to chase 17 bills through various committees. We try to be mindful of funding implications both for OHA and for other state agencies and entities. We don't like it when they try to force us to spend our trust monies in certain ways, so we want to be mindful for suggesting proposing something that's gonna require a financial investment by the state. We do because it's something we want to keep it relatively small and manageable. We want the biggest bang for our buck so we look at how big of an issue it is that we're trying to address. So like if it's impacting you know Hawaiian communities across islands or, you know, is this going to be something that's just you know, like for one colony or one community we try to get, you know, the biggest bang for our buck when we include stuff in our package. We consider whether there's community support that might, that could be a game changer in terms of advocacy at the Legislature next year. So will people be testifying? Will there be helping spread the word and you know, is that already there because that could you know, help with our favorable consideration of an idea and we also want to be thinking about our strategic plan.

## Criteria

- Feasibility
  - Likelihood of passing
  - Some measures can have impact without being enacted
    - Make statement (unsecured bail)
    - Start discussion (water appraisals, expungement of houseless offenses)
    - For public awareness ("fair rate of return" for Maunakea subleases, remnant sales)

Feasibility and likelihood of passing is a consideration, but it's not a deal breaker, and often times measures do have an impact even if they aren't enacted into law. So we had an unsecured bail bill which we introduced as a few years ago, and really that was about pointing out that there's like huge, like punitive, we're punishing people before they're even convicted just because they can't afford bail. You know there's bills that we've introduced that have really started important conversations and discussions about critical policy issues, so our expungement bill this year I think really generated a lot of thoughtful discussion about our response to houselessness and how the criminalization policies that the counties and state in some cases have enacted really just exacerbate the problem. Make it much more harder for houseless people to get off the streets when they are ready to do so, and so unable to do so and so you know, even though that bill didn't pass, I think there's really great conversation that can be continued on to future sessions and sometimes you know a bill would raise public awareness about an issue, like for example the Mauna Kea subleases don't really account and even with the TMT there's no real consistent accounting for the cost of more property managing on all of Mauna Kea lands and that's something that you know people weren't I think quite aware of, but you know the movement and also with this bill we're I think there's awareness that was raised in the Capitol building.

## Criteria

- Solvability
  - Can it be solved through legislation?
  - Does the best legislation actually solve problem?
  - Does everyone agree on solution?
- Is OHA the appropriate lead
  - Does it address our Strategic Plan?
  - State lead – better chances, especially if impacts broader public
  - Community lead – Too controversial, too radical

Yeah, other criteria and again, is it legislation that's going to solve the problem? Are people who are going to be fighting about the solution, like are there different ideas about what the solution should be? We also think about more strategically is whether or not OHA is the proper, like is it would be best for OHA to have its label attached to a bill or would it be better to have another entity kind of sponsor, move forward with it. So you know the Governor has a whole tons of departments and legislative lobbying staff essentially that can advocate for bills so if they want to take the lead and have that as part of their package that would be great because then they can do a lot of work and we'll support from our end. Also there might be ideas that are really great, but then it could be kind of maybe too controversial or too radical and so in those cases sometimes community is the best place to have these measures advocated from and then we can support in other ways from you know from behind.

## Criteria

- SP2020+: <https://www.oha.org/priorities>



**Strategic Foundations**



**Strategic Directions**

Just a quick reminder of our new strategic foundations and directions that we also think about when we vet these ideas and that's it. So again, thank you so much. I just want to say thank you so much for you know all the staff that helped us out this year for the leadership that we have for your leadership as a Board, as a BAE committee and as a Board. It's a heavy lift every year and we can't do it without all of these hands. So just want to say thank you. Happy to answer any questions you may have.

**Chair Akaka:** Mahalo nui, Wayne and mahalo for all those that have put in all the good work in this past legislative session, it's truly appreciated. Are there any questions for Wayne? Any discussion members?

**Chair Akaka** recognizes Board Chair Hulu Lindsey

**Board Chair Hulu Lindsey:** I just want to thank Wayne too for all his hard work and Wayne you got to share the work because you cannot be staying late at night as you had been during the session. It would be good for you to have help from your department. I know it's really, really hard to deal with everybody and some of our bills are controversial and I really thank you for facing up to them and you folks' testimony so mahalo nui.

**Chair Akaka:** Yes, the work that you've done Wayne and with Sterling, Ka Pouhana, our Board Chair and last year with our RM Chair Trustee Waihe'e, all that groundbreaking work. It truly is felt and it's appreciated at the Legislature, so mahalo to your team and everyone that has contributed, including our community to include our voices on this, mahalo.

## VI. ANNOUNCEMENTS

NONE

## VII. ADJOURNMENT

**Chair Akaka** recognizes Board Chair Hulu Lindsey

**Board Chair Hulu Lindsey:** I move that we adjourn.

**Chair Akaka:** Alright, mahalo

**Trustee Waihe'e:** Second

**Chair Akaka:** Alright, it's been seconded by Trustee Waihe'e. May I please have a **roll call**.

							2:35 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA						EXCUSED at 2:30 p.m.
DAN	AHUNA			X			
KELI'I	AKINA			X			
LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY	1		X			
VICE CHAIR KEOLA	LINDSEY						EXCUSED
JOHN	WAIHE'E, IV		2	X			
CHAIR KALEIHIKINA	AKAKA			X			
TOTAL VOTE COUNT				7	0	0	2

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

**Chair Akaka:** The meeting is now adjourned, mahalo members, all in attendance, and to all live streaming. A hui hou kākou, mālama pono.

**Chair Akaka** adjourns the BAE meeting at **2:35 p.m.**



Respectfully submitted,

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Brandon Mitsuda Trustee Aide  
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment (BAE) on 09/15/21.

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Trustee Kaleihikina Akaka  
Chair  
Committee on Beneficiary Advocacy and Empowerment

Committee on Beneficiary Advocacy and Empowerment

Trustee Kaleihikina Akaka, *Chair*Trustee Keola Lindsey, *Vice Chair**Members*

Trustee Leina'ala Ahu Isa, At-Large

Trustee Dan Ahuna, Kaua'i / Ni'ihau

Trustee Keli'i Akina, At-Large

Trustee Luana Alapa, Moloka'i / Lāna'i

Trustee Carmen Hulu Lindsey, Maui

Trustee Brendon Kalei'aina Lee, At-Large

Trustee John Waihe'e IV, At-Large



**STATE OF HAWAII'  
OFFICE OF HAWAIIAN AFFAIRS**

**MEETING OF THE  
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT**

**DATE:** Wednesday, September 15, 2021**TIME:** 1:30 p.m.**PLACE:** Virtual MeetingViewable at [www.oha.org/livestream](http://www.oha.org/livestream) OR

Listen by phone: (213) 338-8477,

Webinar ID: 864 0827 3707

**Due to the threat of COVID-19, Governor Ige issued the Emergency Proclamation Related to the COVID-19 Response, dated August 5, 2021 that suspends parts of Hawai'i Revised Statutes Chapter 92, Public Agency Meetings and Records to, among other things, enable boards to conduct business without any board members or members of the public physically present at the same location.**

**The OHA Board of Trustees and its Standing Committees will hold virtual meetings until further notice. The virtual meetings can be viewed and observed via livestream on OHA's website at [www.oha.org/livestream](http://www.oha.org/livestream) or listen by phone: (213) 338-8477, Webinar ID: 864 0827 3707**

**AGENDA**

- I. Call to Order
- II. Public Testimony on Items Listed on the Agenda\* (Please see page 2 on how to submit written testimony or provide oral testimony online. Oral testimony by phone will **not** be accepted)
- III. Approval of Minutes
  - A. August 4, 2021
  - B. August 18, 2021
- IV. Unfinished Business
- V. New Business**
  - A. Action Item BAE #21-04: To Approve the First Term Native Hawaiian Revolving Loan Fund Board of Directors, Maui Island (Wayne Wong) and Hawai'i Island (Kristin Kahaloa) Nominations**
  - B. OHA Federal Legislative Positioning – Matrix† - Advocacy (Washington, D.C. Bureau)
- VI. Announcements
- VII. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at


# OFFICE OF HAWAIIAN AFFAIRS

## Action Item

### Committee on Beneficiary Advocacy and Empowerment September 15, 2021

BAE #21-04


**Action Item:** To Approve the First Term Native Hawaiian Revolving Loan Fund Board of Directors, Maui Island (Wayne Wong) and Hawai'i Island (Kristin Kahaloa), Nominations

Prepared By:  Aug 27, 2021  
Aikū'e Kalima, Date  
Pou Kāko'o Ho'olako 'Ai'e Nui, NHRLF Manager

Reviewed By:  Aug 27, 2021  
Ramona G. Hinck, Date  
Ka Pou Kihī Kanaloa Wai, Chief Financial Officer

Reviewed By:  Aug 29, 2021  
Casey K. Brown, Date  
Ka Pou Nui, Chief Operating Officer

Reviewed By:  Aug 29, 2021  
Sylvia M. Hussey, Ed.D., Date  
Ka Pouhana, Chief Executive Officer

Reviewed by:  Aug 29, 2021  
Kaleihikina Akaka Date  
Luna Ho'omalū o ke Kōmike BAE  
Chair, Committee on Beneficiary Advocacy and Empowerment

**Action Item BAE #21-04: To Approve the First Term Native Hawaiian Revolving Loan Fund Board of Directors, Maui Island (Wayne Wong) and Hawai'i Island (Kristin Kahaloa), Nominations**

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**I. Proposed Action**

The Committee on Beneficiary Advocacy and Empowerment approves and recommends to the Board of Trustees the approval of Mr. Wayne Wong to serve as the Maui Island representative, and Ms. Kristin Kahaloa to serve as the Hawai'i Island representative on the Native Hawaiian Revolving Loan Fund (NHRLF) Board of Directors (BOD).

**II. Issue**

Whether the Board of Trustees will approve (or not), the recommendation of Mr. Wayne Wong to serve as the Maui Island representative and Ms. Kahaloa as the Hawai'i Island representative to serve their first term on the Native Hawaiian Revolving Loan Fund (NHRLF) Board of Directors.

**III. Background & Discussion**

A. **Background.** The NHRLF Operational Guidelines approved by the Administration for Native Americans (ANA) in February 2017 states that the NHRLF BOD shall be responsible for the final approval or denial of loans. The BOD consists of the following seven (7) volunteers who support the program:

	Name	BOD Title	Island	Current Expiration Date
1	Mike Tresler	President	Kaua'i	2 <sup>nd</sup> term ends 09/30/2023
2	Liane Khim	Vice President	O'ahu	1 <sup>st</sup> term ends 03/31/2023
3	Alvin Tanaka	Secretary	O'ahu	1 <sup>st</sup> term ends 10/31/2022
4	Wilmina English	Member	Molokai	1 <sup>st</sup> term ends 06/30/2024
5	Vacant	Vacant	Maui	TBD
6	Vacant	Vacant	Hawai'i Island	TBD
7	Misti Pali-Oriol Patterson	OHA Representative	O'ahu	2 <sup>nd</sup> Term ends 06/20/23

B. **Discussion.** The NHRLF Operational Guidelines further states the following:

- “The Board shall be comprised of seven (7) Directors, including one (1) OHA representative and one (1) Director from each county in the State of Hawaii.”
- Each Director has a term of three (3) consecutive years and may serve for no more than two (2) consecutive terms for a total of six (6) years.



**Action Item BAE #21-04: To Approve the First Term Native Hawaiian Revolving Loan Fund Board of Directors, Maui Island (Wayne Wong) and Hawai'i Island (Kristin Kahaloa), Nominations**

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- “The OHA Board of Trustees must approve appointments to the NHRLF Board. The Commissioner of the Administration for Native Americans (ANA) is responsible for final approval of Directors.”

Based upon these requirements, approval of this recommended action will ensure compliance with the NHRLF Operational Guidelines.

**V. Recommended Action**

Administration recommends the approval of Mr. Wayne Wong to serve as the Maui Island representative, and Ms. Kristin Kahaloa to serve as the Hawai'i Island representative on the Native Hawaiian Revolving Loan Fund (NHRLF) Board of Directors.

**VI. Funding**

No funding is required for this recommended action.

**VII. Timing**

The approval of the nomination is effective upon the approval of the Commissioner of the ANA.

**VIII. Attachments**

- A. Resume – Wayne Wong
- B. Resume – Kristin Kahaloa

Resume: **Wayne D.S. Wong**


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2015–present    Hawai‘i Small Business Development Center (HiSBDC)      Kihei, HI

**Maui Center Director & Senior Business Advisor**

HiSBDC is a cooperative of the Small Business Administration (SBA) and the State of Hawai‘i via University of Hawai‘i Hilo responsible for small business economic development in Hawai‘i. Wong leads/manages the Maui Center to provide 1-on-1 technical assistance and training to small businesses in the County of Maui. Conducts industry and market research as the Hawai‘i Business Research Library producing an annual compilation: Maui County Data Book (almanac). Recipient of the SBA 2020 Award for Maui County Small Business Advocate for Minorities.

2013–2015      Research Corporation of the University of Hawai‘i      Kahului, HI

**Project Director, Small Business Solutions project**

under the Rural Hawai‘i Workforce Development grant funded by the US Department of Labor and administered by the University of Hawai‘i Maui College. Introduced innovative and effective continuing education curriculum development and delivery methods to address business needs and increase attainment of certifications, degrees and industry-recognized credentials leading to family-sustaining wage employment. Duties included project management, federal funding fiscal oversight, public facing marketing and outreach, student/employer recruitment and public speaking events.

2008–2012      Kroll Ontrack      Eden Prairie, MN

**ESI (electronically stored information) Managing Consultant**

Serve as thought leader in litigation support and the management and security of electronically stored information (ESI). Guide clients to proactive computer security best practices and provide tactical legal strategies during litigation/investigation.

2006–2008      LexisNexis Applied Discovery Bellevue, WA

**Litigation Readiness/IT Consultant**

A founding member of the Strategic Records & Information Management (Litigation Readiness) Consulting Practice within LexisNexis. Same job description/role as above Kroll listing.

2003–2012      Hawaiian Slack Key Guitar Productions      Lahaina, HI

**Producer and Co-Founder**

Hawaiian music producer dedicated to perpetuating and preserving traditional Hawaiian music, especially the unique Hawaiian acoustic guitar art form known as “Ki-ho‘alu” (Hawaiian Slack Key Guitar). Awards include 2005 Hawai‘i Music Award and as co-producer, Wong was awarded the 48th Annual GRAMMY Award for Best Hawaiian Music Album; subsequent second and third CDs were respectively awarded the 49th Grammy Award for 2007 and the 50th Grammy Award for 2008, and a fourth win in 2010 at the 52nd Grammy Awards.

2001–2003      Morse Best Innovation Seattle, WA

**Chief Information Officer/Chief Technology Officer**

Technology-lead for consulting practice that provides custom software development and systems integration for the enterprise market.

1998–2001 Gear.com, Inc Seattle, WA

**Chief Technology Officer**

Comprehensive responsibility for technology/e-commerce strategy and implementation for this pioneer “dot com” startup. Managed all technical infrastructure architecture and implementations.

1996–1998 Getty Images, Inc (PhotoDisc, Inc) Seattle, WA

**Director, Online Systems**

Electronic commerce line management responsible for evolving the legacy analog stock photography agency into one of the first global multi-media ecommerce enterprises. Part of the original founding team that created Getty Images and buyout of stock photography startup, PhotoDisc, Inc.

1993–1996 ACME Media Moving & Storage Seattle, WA

**Online Presence Consultant/Internet Service Provider (ISP)**

Founder and Technology lead of this pioneer online presence consultancy and internet service provider (ISP) to corporate clients. An original content developer for Microsoft's proprietary network (MSN) on www.microsoft.com. Other clients included Apple Computer and HP.

1981–1993 TEKNA Design Group Seattle, WA

**Microcomputer Systems & Database Consultant (principal)**

Independent consultancy designed/implemented microcomputer-based solutions integrating desktop LAN database projects with mainframe legacy systems such as IBM's DB2 and Oracle.

1979–1989 Port Blakely Tree Farms Seattle, WA

**Information Systems Manager**

Founded MIS function/department for this 1864 timber/real estate company. Responsible for every aspect of IS. Developed GIS-based Timber Inventory System managing 100,000 acres of timberland.

1977–1979 Kings Table International Eugene, OR

**Regional Manager**

Launched and operated the inaugural corporate-owned unit in Washington state for this Oregon-based restaurant chain. The unit became the leading sales producer of the nation-wide chain.

1973–1977 United States Navy San Diego, CA

**Supply Corps Officer, LT USN**

Vietnam-era Veteran. Supply Corps Division Officer, Department Head responsible for shipboard logistic functions including food service, store sales, repair parts, disbursing and payroll.

**Education**

1969 Kamehameha Schools, Kapālama Honolulu, HI

1973 University of Washington Seattle, WA  
 ▪ B.S., Natural Science/Fisheries Management

1981 University of Puget Sound Tacoma, WA  
 ▪ M.B.A., Marketing

**Associations**

2014–present **Maui Native Hawaiian Chamber of Commerce** ..... Board, Executive Committee

- 2014-present **Academy of Hawaiian Music, Culture & the Arts** ..... Board President
- Improving, promoting, and preserving Hawaiian Music, the Hawaiian Culture and the Hawaiian Arts.
  - Re-establishing, reactivating, perpetuating, and protecting the native Hawaiian culture through the education and embodiment of the true values of the Hawaiian people and their ancestors.
  - Perpetuating native Hawaiian music, culture, and the arts for Hawaiians and non-Hawaiians through education, public awareness campaigns, and other related activities.
- 2015-present **Maui Chamber of Commerce** ..... Corporate Member -Advisory panel
- 2015-present **Maui Food Innovation Center** (UH Maui College) ..... Advisory Board Member  
 unique first in-state incubator fostering Agribusiness and Foodpreneurs x-celeration and education. Part of the University of Hawai'i Maui College, MFIC is helping build a stronger, economically diverse, and sustainable Maui by supporting the value-added food industry. MFIC assists its community by providing technological expertise, innovative training, consultation, a manufacturing facility, and a Resource Hub for new and established food entrepreneur's endeavoring to bring their products to market locally, regionally and nationally.
- 2020-present **Hanona, Maui** ..... Board Member, '21 Vice Chair  
 Mission: elevate Native Hawaiian wisdom and intellect by providing cultural learning opportunities for our communities within the four pillars of Hawaiian learning: *Kahuna Nui* , *Ho'omanamana Ka Pule* , *Ka Maui Ola*, and *Huna No'eau*.  
 Supports Halau: Nā Hanona Kūlike 'O Pi'ilani under the direction of Kumu Hula Kapono'ai Molitau.



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## WORK EXPERIENCE

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- Portfolio Manager, Kamehameha Schools, Keauhou, HI** May 2020 – Present
- Build and manage a portfolio of projects, strategies, and initiatives for work led across the state relating to improving Hawai'i's food system
  - Serve as project lead on Mahi'ai a Ola to support the strengthening farmers and agriculture through various programs
  - Coach and support farms and food systems businesses to scale their operations and be more profitable
- Legislative Aide to Senator Dru Mamo Kanuha, Hawaii State Senate, Kailua-Kona, HI** January 2020 – May 2020
- Designed and developed social media and email campaigns to communicate government information and COVID-19 resources with residents and supporters of District 3 in Kona and Ka'u
  - Drafted certificates to celebrate community achievements in Kona and Ka'u
  - Served as local resource and point of contact for Senator on Hawai'i Island
- Community Engagement Lead, Blue Zones Project, Sharecare, Inc., Kailua-Kona, HI** April 2017 – April 2020
- Led community outreach to over 10,500 individuals at over 280 engagements to promote health and well-being by delivering presentations, workshops, events and activities
  - Built and leveraged partnerships to transform community health and well-being with businesses, schools, nonprofit organizations, faith groups and others
  - Created and collaborated on capacity building projects at volunteer sites across West Hawai'i where over 1,100 residents volunteered for beach and highway cleanups, stewardship at a national park during the federal government shutdown, dryland forest restoration, and growing the culinary program at the local community college
- Executive Director, Kona-Kohala Chamber of Commerce, Kailua-Kona, HI** 2015 – 2017
- Engaged businesses, government and community to build a stronger economy to support working families
  - Advocated for business by preparing written and public testimony in areas including education, workforce development, county and state tax policy, public health and safety, transportation infrastructure and facilities, astronomy, environmental resource management, housing and homelessness, military relations and ocean recreation tourism
  - Coordinated and executed the implementation of 30+ events, 50+ committee meetings and 4+ orientations that raised \$400,000 annually; Home Show raised \$40,000 each year with over 2,200 attendees and over 40+ vendors
  - Led statewide collaborative efforts for business advocacy amongst the state's chambers of commerce
  - Developed a stronger relationship with sister chamber of commerce in Hiroshima, Japan; led delegation to Japan and hosted a 10-year anniversary celebration in Kona
  - Improved brand strength by updating logo and marketing materials; increased social media imprint and reach
- Director, International Admissions, Maryville University, St. Louis, MO** 2012 – 2015
- Managed approximately 300 client files in a year; Generated \$1.2 million in revenue in 2014, with the ability to produce additional earnings for up to four years
  - Increased sales goals by 132% in the first year through strategic international recruitment and communications plan
- Associate Director, International Recruitment, Webster University, St. Louis, MO** 2011 – 2012
- Communicated with clients and vendors daily to promote higher education via phone, email, web, and social media
- Assistant Director, Multicultural & International Student Affairs, Webster University, St. Louis, MO** 2009 – 2011
- Strengthened intercultural competency and communication skills through work with global clients that fostered a broader understanding of other cultures; Transferred obtained intercultural skills to others through training & leadership workshops
- Coordinator, International Student Engagement, University of Evansville, Evansville, IN** 2005 – 2009
- Designed, coordinated and executed events - social functions, lectures, workshops, speaker series, summits, and conferences

## Résumé

### EDUCATION

High School Diploma – *Kamehameha Schools Kapālama*, Honolulu, Hawaii, 2001

Master of Science in Public Service Administration  
Bachelor of Arts in International Studies and Political Science  
Minor in Japanese Studies  
*University of Evansville* – Evansville, Indiana, 2009, 2005

Master of Arts in Management and Leadership  
Emphasis in Human Resource Development  
*Webster University* – St. Louis, Missouri, 2012

### LEADERSHIP & COMMUNITY INVOLVEMENT

Hawaii Island United Way (Board Member & Finance Chair, 2017–Present)  
West Hawaii Fund Advisory Board, Hawaii Community Foundation (Member, 2017–Present)  
Lions Club of Kona (Member, 2019–Present)  
Hawaii Island Native Hawaiian Chamber of Commerce (Founding Board Member & President, 2019–Present)  
Native Hawaiian Hospitality Association (Contract Consultant & Volunteer, 2017–Present)  
Kamehameha Schools Class of 2001 Scholarship Board (Member, 2019–Present)  
Chancellor's Community Advisory Council, Hawaii Community College (Member, 2016–2017)  
Chamber of Commerce Hawaii (Board Member Ex-Officio, 2015-2017)  
Island of Hawaii Visitors Bureau (Board Liaison, 2016–2017)  
Pohakuloa Training Area Advisory Council (Member, 2016–2017)  
Hilo High School Girls Water Polo (Volunteer Coach, 2016)  
Alumni Board of Directors, University of Evansville (Member, 2014–2016)

### PRESENTATIONS

“Ho‘oulu Kaua‘i: Entrepreneurship Development Workshop,” K. Kahaloa, T. Ilihia Gionson. Native Hawaiian Hospitality Association, 2020.  
“Importance of Training and Community Engagement,” K. Kahaloa, N. Kalipi, COL T. Barrett, LTC JR Borce, Rep. R. Yamane, and J. Pickard. Military Affairs Council Partnership Conference, 2020.  
“How Women Can Succeed in Business in Hawaii,” K. Kahaloa, K. Kimura, F. Gomes. HIWLF, 2016.  
“Hot Topics in International Enrollment Management,” K. Kahaloa & J. Wilkerson. Missouri IE Meeting, 2014.  
“I-Engage Talks,” K. Kahaloa & J. Wilkerson. NAFSA Annual Conference, 2013.  
“International Recruiting as Part of a Small Group,” K. Kahaloa, R. Davis, J. Howenstine, M. Tung, J. Wilkerson, & D. Wood. NAFSA Region IV Conference, 2012.  
“F-1 Visa: The Limitless Possibilities,” K. Kahaloa, C. Ige, & E. Okeze. NSBE National Conference, 2009.

### AWARDS & RECOGNITION

Pacific Business News 40 Under 40 Nominee – 2020

### KIRSTIN'S STRENGTHS

Belief ● Significance ● Competition ● Relator ● Self-Assurance

Committee on Beneficiary Advocacy and Empowerment

Trustee Kaleihikina Akaka, *Chair*Trustee Keola Lindsey, *Vice Chair**Members*

Trustee Leina'ala Ahu Isa, At-Large

Trustee Dan Ahuna, Kaua'i / Ni'ihau

Trustee Keli'i Akina, At-Large

Trustee Luana Alapa, Moloka'i / Lāna'i

Trustee Carmen Hulu Lindsey, Maui

Trustee Brendon Kalei'aina Lee, At-Large

Trustee John Waihe'e IV, At-Large



**STATE OF HAWAII'  
OFFICE OF HAWAIIAN AFFAIRS**

**MEETING OF THE  
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT**

**DATE:** Wednesday, September 15, 2021**TIME:** 1:30 p.m.**PLACE:** Virtual MeetingViewable at [www.oaha.org/livestream](http://www.oaha.org/livestream) OR

Listen by phone: (213) 338-8477,

Webinar ID: 864 0827 3707

**Due to the threat of COVID-19, Governor Ige issued the Emergency Proclamation Related to the COVID-19 Response, dated August 5, 2021 that suspends parts of Hawai'i Revised Statutes Chapter 92, Public Agency Meetings and Records to, among other things, enable boards to conduct business without any board members or members of the public physically present at the same location.**

**The OHA Board of Trustees and its Standing Committees will hold virtual meetings until further notice. The virtual meetings can be viewed and observed via livestream on OHA's website at [www.oaha.org/livestream](http://www.oaha.org/livestream) or listen by phone: (213) 338-8477, Webinar ID: 864 0827 3707**

**AGENDA**

- I. Call to Order
- II. Public Testimony on Items Listed on the Agenda\* (Please see page 2 on how to submit written testimony or provide oral testimony online. Oral testimony by phone will **not** be accepted)
- III. Approval of Minutes
  - A. August 4, 2021
  - B. August 18, 2021
- IV. Unfinished Business
- V. New Business**
  - A. Action Item BAE #21-04: To Approve the First Term Native Hawaiian Revolving Loan Fund Board of Directors, Maui Island (Wayne Wong) and Hawai'i Island (Kristin Kahaloa) Nominations
  - B. OHA Federal Legislative Positioning – Matrix† - Advocacy (Washington, D.C. Bureau)**
- VI. Announcements
- VII. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at



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OFFICE OF HAWAIIAN AFFAIRS  
Interoffice Memorandum

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Date: September 9, 2021

To: Trustee Kaleihikina Akaka, Chair, Beneficiary Advocacy and Engagement Committee (BAE), Board of Trustees

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

From: Christiane Cardoza, Ka Pou Kāko‘o Kūkulu Hikina Kūikawā, Interim Washington D.C. Bureau Chief

Subject: Washington D.C. Bureau Update to the Beneficiary Advocacy and Engagement Committee of the Board of Trustees – September 15, 2021, Meeting

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**INTRODUCTION**

This memo from the Office of Hawaiian Affairs (OHA) Washington, D.C. Bureau (WDCB) provides background on its September 15, 2021, report to the Beneficiary Advocacy and Engagement Committee (BAE) of the Board of Trustees (BOT). It outlines updates to the BAE Federal Matrix and provides a general update on federal advocacy efforts.

**BAE FEDERAL MATRIX**

The BAE last voted on bills included in the Federal Matrix on April 28, 2021. Since then, two bills have progressed in the legislative process. On August 23, 2021, the U.S. House of Representatives passed S. 325, a bill to amend the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act. Congress ordered this Commission to study federal, state, local, and tribal programs affecting American Indian, Alaska Native, and Native Hawaiian children. This bill extends the Commission’s work by two additional years. It now heads to the President’s desk for his signature and passage into law. This bill’s companion measure, H.R. 438, was also reported out of the House Committee on Natural Resources earlier this Congress.

On August 4, 2021, the U.S. Senate Committee on Indian Affairs voted S. 989, the Native American Language Resource Center Act of 2021, out of Committee with an amendment in the nature of a substitute. The amendment adjusts the language used to describe the purpose of a Native American Language Resource Center and provides a defined but broad list of authorized activities. The intent of the bill and the funding authorization level remain the same, and Native American language experts and leaders in the American Indian, Alaska Native, and Native Hawaiian communities continue to support the bill. WDCB recommends OHA continue to support this bill.



In addition to these updates, WDCB recommends the BAE support the following new bills introduced in the 117<sup>th</sup> Congress.

- **Biliteracy Education Seal and Teaching (BEST) Act (H.R. 1731):** The Board has already voted in support of this bill's companion measure (FED 10). This bill creates a grant program to support states in implementing Seal of Biliteracy programs, which encourage student proficiency in speaking, reading, and writing in English and a second language. Native American languages are qualifying languages in this bill. BOT supported this legislation last Congress.
- **Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2021 (S. 1512, H.R. 2903):** This bill promotes increased access to health care by improving access to telehealth services through the removal of restrictions for the Native Hawaiian Health Centers. Further, it orders a study on the use of telehealth during the pandemic. BOT supported this bill last Congress.

#### FEDERAL ADVOCACY UPDATE

##### General Updates

##### Federal Funding: Appropriations & Budget Reconciliation

Throughout September, Congress will continue to work on a major budget reconciliation bill. Budget reconciliation is a special procedure the Senate can use to pass a bill into law in a divided Congress. This process is time consuming, and the stakes are high—approximately \$3.5 trillion is currently associated with this legislation. Infrastructure programs are included in this bill. Among the requests submitted to various Congressional offices to support the Native Hawaiian community, the OHA's WDCB requested more than \$1 billion for Native Hawaiian education, \$370 million for Native Hawaiian housing, and \$275 million for Native Hawaiian health care. This level of funding ensures parity for the Native Hawaiian community and honors the trust responsibility owed to Native Hawaiians by the federal government.

In addition to budget reconciliation, Congress must also pass a federal appropriations package by September 30, 2021, to avoid a government shutdown. Due to the heavy workload associated with the budget reconciliation package, Congress will likely consider a continuing resolution to extend the same level of funding passed in Fiscal Year (FY) 2021. Thus, Native Hawaiian federal programs will continue to receive level funding.

##### Federal Coordination and Engagement with the Native Hawaiian Community

WDCB continues to work to formalize a process for the Native Hawaiian community to engage with the federal government similar to Tribal consultation. Several bills, including H.R. 3587, the RESPECT Act, have been introduced to update and codify the Tribal consultation process. However, the Native Hawaiian community has been excluded from these efforts. Thus, WDCB continues to provide technical assistance and partner with the Hawai'i congressional

September 9, 2021

WDCB Update to BAE of the BOT – September 15, 2021, Meeting

Page 3

delegation to work toward inclusion in various legislative measures. WDCB also continues to engage with federal partners to identify new opportunities for community engagement.

### **Culture Preservation**

#### **Truth and Healing Commission on Indian Boarding School Policies Act**

In the 116<sup>th</sup> Congress, Senator Elizabeth Warren (D-MA) introduced the Truth and Healing Commission on Indian Boarding School Policies Act to study the impacts and ongoing effects of the Indian Boarding School Policy on Native American children. In June 2021, Secretary of the Interior Deb Haaland announced a Federal Indian Boarding School Initiative, which will include a comprehensive review of boarding school and assimilation policies and its impacts on the American Indian, Alaska Native, and Native Hawaiian communities. WDCB and Native Hawaiian education advocates have engaged with various stakeholders to include the Native Hawaiian community in this work, particularly to explore the effects of assimilation policies on Native Hawaiian culture and identity, among other things.

#### **Native American Graves Protection and Repatriation Act (NAGPRA)**

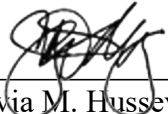
On July 8, 2021, the National Park Service (NPS) published a draft proposal of revised NAGPRA regulations. OHA plans to submit comments on these regulations. Comments are due September 30, 2021.

### **Health Outcomes**

#### **Violence Against Women Act (VAWA) Reauthorization Act of 2021**

On March 17, 2021, the U.S. House of Representatives passed H.R. 1620, the VAWA Reauthorization Act of 2021. Through the work of Representatives Ed Case and Kaiali'i Kahele, this bill included several provisions affecting Native Hawaiians, including ordering a study on the effects of incarceration on Native Hawaiians. The Senate has not yet introduced a VAWA Reauthorization Act, likely due to the budget reconciliation bill. As we wait, WDCB continues to advocate for Native Hawaiian representation and programs in any VAWA reauthorization packages.

**APPROVED**/DENIED:

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

9/8/2021

\_\_\_\_\_  
Date

SMH:csc

### OHA Federal Priorities for the 117th Congress

ITEM NO.	BILL NO.	MEASURE TITLE	DESCRIPTION	STATUS	REFERRALS	COMPANION	POSITION
<b>New Recommended Positions on Bills</b>							
FED 14	<a href="#">H.R. 1731</a>	Biliteracy Education Seal and Teaching (BEST) Act	This bill creates a grant program to support States in implementing Seal of Biliteracy programs to encourage and recognize student proficiency in speaking, reading, and writing in English and a second language. The grant program incorporates Native American languages as a qualifying language.	H: 4/21/2021 Referred to Committee	House Committee on Education & Labor	<a href="#">S. 680 (FED 10)</a>	<b>WDBC Recommends: SUPPORT</b>  BOT supported last Congress
FED 15	<a href="#">S. 1512</a>	Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2021	This bill promotes higher quality of medical care, increased access to care, and reduced spending in Medicare through the expansion of telehealth services. Specifically, this bill would remove geographic and originating site restrictions on Federally Qualified Health Centers, Rural Health Clinics, and Native Hawaiian Health Centers for telehealth services, and require a study on the use of telehealth during the pandemic.	S: 4/29/2021 Referred to Committee	Senate Committee on Finance	<a href="#">H.R. 2903 (FED 16)</a>	<b>WDBC Recommends: SUPPORT</b>  BOT supported last Congress
FED 16	<a href="#">H.R. 2903</a>	Creating Opportunities Now for Necessary and Effective Care Technologies (CONNECT) for Health Act of 2021	This bill promotes higher quality of medical care, increased access to care, and reduced spending in Medicare through the expansion of telehealth services. Specifically, this bill would remove geographic and originating site restrictions on Federally Qualified Health Centers, Rural Health Clinics, and Native Hawaiian Health Centers for telehealth services, and require a study on the use of telehealth during the pandemic.	H: 4/28/2021 Referred to Committee	House Committee on Energy & Commerce, Ways & Means	<a href="#">S. 1512 (FED 15)</a>	<b>WDBC Recommends: SUPPORT</b>  BOT supported last Congress
<b>Bill Positions for Reconsideration</b>							
<i>None at this time</i>							
<b>117th Congress (All positions previously taken)</b>							
FED 1	<a href="#">H.R. 186</a>	Explore America Act of 2021	Authorizes the provision of technical assistance under the Preserve America Program and directs the Secretary of the Interior to enter into partnerships with communities adjacent to units of the National Park System to leverage local cultural heritage tourism assets.	H: 1/4/2021 Referred to Committee	House Committee on Natural Resources		<b>SUPPORT</b>  BAE vote 3/10/2021 BOT vote 3/11/2021
FED 2	<a href="#">H.R. 439</a>	Native American Millennium Challenge Demonstration Act	This bill creates a domestic version of the Millennium Challenge Corporation to form 5-year compacts for Native Hawaiian and Alaska Native organizations to invest in infrastructure projects.	H: 1/21/2021 Referred to Committee	House Committee on Natural Resources		<b>SUPPORT</b>  BAE vote 3/10/2021 BOT vote 3/11/2021
FED 3	<a href="#">H.R. 438</a>	To amend the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act to extend the deadline for a report by the Alyce Spotted Bear and Walter Soboleff Commission on Native Children, and for other purposes.	This bill extends the Alyce Spotted Bear and Walter Soboleff Commission on Native Children by two additional years. This Commission includes representation for Native Hawaiian children.	H: 7/2/2021 Reported out by Committee	House Committee on Natural Resources	<a href="#">S.325 (FED 5)</a>	<b>SUPPORT</b>  BAE vote 3/10/2021 BOT vote 3/11/2021

### OHA Federal Priorities for the 117th Congress

ITEM NO.	BILL NO.	MEASURE TITLE	DESCRIPTION	STATUS	REFERRALS	COMPANION	POSITION
FED 4	<a href="#">S. 220</a>	Emergency Family Stabilization Act	This bill provides grants for family stabilization agencies to pay for a variety of services and support, including security deposits, hotel stays, eviction prevention, and records expungement, among other things. Funds can be utilized to provide personal protective equipment and hygiene supplies to mitigate pandemic risks. Family stabilization agencies include Native Hawaiian organizations. At least 10% of funds must be awarded to Tribes, Tribal organizations, or Native Hawaiian organizations serving youth, children, and families experiencing homelessness.	S: 2/4/2021 Referred to Committee	Senate Committee on Health, Education, Labor, and Pensions		<b>SUPPORT</b> BAE vote 3/10/2021 BOT vote 3/11/2021
FED 5	<a href="#">S. 325</a>	To amend the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act to extend the deadline for a report by the Alyce Spotted Bear and Walter Soboleff Commission on Native Children, and for other purposes.	This bill extends the Alyce Spotted Bear and Walter Soboleff Commission on Native Children by two additional years. This Commission includes representation for Native Hawaiian children.	S: 8/23/2021 Passed House	Senate Committee on Indian Affairs	<a href="#">H.R. 438 (FED 3)</a>	<b>SUPPORT</b> BAE vote 4/28/2021 BOT vote 4/29/2021
FED 6	<a href="#">S. 989</a>	Native American Language Resource Center Act of 2021	This bill creates a national language resource center to preserve, protect, and promote the rights and freedom of Native American to use, practice, and develop Native American languages by supporting Native American language revitalization, including 'Ōlelo Hawai'i.	S: 8/4/2021 Reported out of Committee with an Amendment	Senate Committee on Indian Affairs	<a href="#">H.R. 2271 (FED 7)</a>	<b>SUPPORT</b> BAE vote 4/28/2021 BOT vote 4/29/2021
FED 7	<a href="#">H.R. 2271</a>	Native American Language Resource Center Act of 2021	This bill creates a national language resource center to preserve, protect, and promote the rights and freedom of Native American to use, practice, and develop Native American languages by supporting Native American language revitalization, including 'Ōlelo Hawai'i.	H: 3/26/2021 Referred to Committee	House Committee on Education & Labor	<a href="#">S. 989 (FED 6)</a>	<b>SUPPORT</b> BAE vote 4/28/2021 BOT vote 4/29/2021
FED 8	<a href="#">S. 512</a>	Equitable Data Collection and Disclosure on COVID-19 Act of 2021	This bill directs emergency funding for federal data collection on the racial, ethnic, and other demographic disparities caused by COVID-19 and directs the Secretary of Health and Human Services to perform a COVID-19 Data Collection and Disclosure. The bill also creates a Commission on Ensuring Data for Health Equity. The bill specifically recognizes the importance of data disaggregation among Asian American, Native Hawaiian, and Pacific Islanders.	S: 3/01/2021 Referred to Committee	Senate Committee on Health, Education, Labor, and Pensions	<a href="#">H.R.1370 (FED 9)</a>	<b>SUPPORT</b> BAE vote 4/28/2021 BOT vote 4/29/2021
FED 9	<a href="#">H.R. 1370</a>	Equitable Data Collection and Disclosure on COVID-19 Act of 2021	This bill directs emergency funding for federal data collection on the racial, ethnic, and other demographic disparities caused by COVID-19 and directs the Secretary of Health and Human Services to perform a COVID-19 Data Collection and Disclosure. The bill also creates a Commission on Ensuring Data for Health Equity. The bill specifically recognizes the importance of data disaggregation among Asian American, Native Hawaiian, and Pacific Islanders.	H: 2/25/2021 Referred to Committees	House Committees on Energy and Commerce & House Natural Resources	<a href="#">S.512 (FED 8)</a>	<b>SUPPORT</b> BAE vote 4/28/2021 BOT vote 4/29/2021

### OHA Federal Priorities for the 117th Congress

ITEM NO.	BILL NO.	MEASURE TITLE	DESCRIPTION	STATUS	REFERRALS	COMPANION	POSITION
FED 10	<a href="#">S. 680</a>	Biliteracy Education Seal and Teaching (BEST) Act	This bill creates a grant program to support States in implementing Seal of Biliteracy programs to encourage and recognize student proficiency in speaking, reading, and writing in English and a second language. The grant program incorporates Native American languages as a qualifying language.	S: 3/10/2021 Referred to Committee	Senate Committee on Health, Education, Labor, and Pensions	<a href="#">H.R. 1731</a> <a href="#">(FED 14)</a>	<b>SUPPORT</b>  BAE vote 4/28/2021 BOT vote 4/29/2021
FED 11	<a href="#">H.R.2699</a>	2020 Census Deadline Extensions Act	This bill modifies the timetable for the 2020 decennial census to extend the deadline for apportionment to not later than May 1, 2021 and to extend the deadline to share this data with the states to not later than October 1, 2021.	H: 4/20/2021 Referred to Committee	House Committee on Oversight and Reform	<a href="#">S. 1267</a> <a href="#">(FED 12)</a>	<b>SUPPORT</b>  BAE vote 4/28/2021 BOT vote 4/29/2021
FED 12	<a href="#">S. 1267</a>	2020 Census Deadline Extensions Act	This bill modifies the timetable for the 2020 decennial census to extend the deadline for apportionment to not later than May 1, 2021 and to extend the deadline to share this data with the states to not later than October 1, 2021.	S: 4/20/2021 Introduced in Senate	Senate Committee on Homeland Security and Governmental Affairs	<a href="#">H.R.2699</a> <a href="#">(FED 11)</a>	<b>SUPPORT</b>  BAE vote 4/28/2021 BOT vote 4/29/2021
FED 13	<a href="#">H.R. 994</a>	Justice is Not For Sale Act of 2021	This bill would prohibit federal, state, and local governments from contracting with private prison companies and end immigrant family detention within 2 years of enactment; prevent companies from overcharging inmates and their families for services like banking and phone calls; and increase oversight of immigrant detention facilities to ensure humane treatment.	H: 2/12/2021 Referred to Subcommittee on Communications and Technology	House Committees on Judiciary; Energy and Commerce; Financial Services; and Homeland Security		<b>SUPPORT</b>  BAE vote 4/28/2021 BOT vote 4/29/2021
<b>Bills Passed into Law</b>							