STATE OF HAWAI‘I
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HIGHWAY, SUITE 200
(VIRTUAL MEETING - VIA ZOOM WEBINAR)
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT
MINUTES
October 25, 2022 10:00 a.m.

ATTENDANCE:
Chairperson Kaleihikina Akaka
Trustee Dan Ahuna
Trustee Keli‘i Akina
Trustee Luana Alapa
Trustee Brendon Kalei‘aina Lee
Trustee C. Hulu Lindsey
Trustee Mililani Trask
Trustee John Waihe’e, IV

EXCUSED:
Trustee Leina‘ala Ahu Isa

I. CALL TO ORDER

Chair Akaka calls the Committee on Beneficiary Advocacy and Empowerment meeting for Tuesday, October 25, 2022 to order at 10:45 a.m.

Chair Akaka notes for the record that PRESENT are:

<table>
<thead>
<tr>
<th>MEMBERS</th>
<th>AT CALL TO ORDER (10:45 a.m.)</th>
<th>TIME ARRIVED</th>
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<tr>
<td>CHAIR KALEIHIKINA</td>
<td>AKAKA</td>
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<tr>
<td>TRUSTEE LEINA‘ALA</td>
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<td>TRUSTEE JOHN</td>
<td>WAIHE‘E, IV</td>
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At the Call to Order, EIGHT(8) Trustees are PRESENT, thereby constituting a quorum.
II. Approval of Minutes

A. February 8, 2022
B. February 15, 2022
C. February 22, 2022
D. March 1, 2022
E. March 8, 2022
F. March 22, 2022
G. March 29, 2022
H. April 12, 2022
I. April 26, 2022
J. May 3, 2022
K. July 12, 2022

Chair Akaka: Let us proceed now to roman numeral #2 the approval of minutes, unless there are any objections, may I get a motion to approve the following BAE Minutes: February 8, 2022, February 15, 2022, February 22, 2022, March 1, 2022, March 8, 2022, March 22, 2022, March 29, 2022, April 12, 2022, April 26, 2022, May 3, 2022 and July 12, 2022.

Board Chair Hulu Lindsey: So moved, Chair.

Chair Akaka: It's been moved by Board Chair Hulu Lindsey. Is there a second?

Trustee Alapa: Second

Chair Akaka: I believe I heard a second from Trustee Alapa first. It's been moved and seconded. Is there any discussion members? Seeing none, may I please have a roll call vote to approve the Minutes.

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<tr>
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III. New Business

A. Presentation: Native Hawaiian Legal Corporation, Kawika Patterson, Board Chair and Makalika Naholowa’a, Executive Director

Chair Akaka yields the floor to Ka Pouhana Hussey

Ka Pouhana Hussey: Thank you, Chair. Trustees we’re pleased that the Native Hawaiian Legal Corporation’s Leadership could be here. We’ll turn that time over to Board Chair and then Makalika as the Executive Director to share the good work that they are doing, Chair Patterson.

Kawika Patterson, NHLC Board Chair: Aloha everyone. It’s an honor to be here with myself, Keali’i Lopez and Keali’i Reichel. As we looked at the beginning of the Makahiki season, I’ve asked Keali’i put us all in the same mindset and thought as we move forward and present ourselves today, Keali’i.

Keali’i Reichel: Aloha kākou. From the ‘Āina Ho’opulapula o Kahikinui ma ke Ahupua’a o ‘Alena. Anyway, so since it is Lono season, Lonoikamakahiki iā kākou āpau. I’d like to open up with a chant that was first uttered by Hi’iaka, it’s one of my favorite, and in this chant she revives Lohi’au and we utilize this chant now to revive ourselves and so hopefully this little zing zing puts us on a good path during this meeting.

Keali’i Reichel performs chant

Chair Akaka: Mahalo nui for setting the vibe beautifully.

Kawika Patterson, NHLC Board Chair: Mahalo and aloha to all the Trustees and the Executive Staff of the Office of Hawaiian Affairs. If I look kind of worn down and tired, I arrived in DC this morning and I had a lot of meetings. It’s about 4:00 o’clock in the afternoon and you know I’ve been lucky, I was asked by the the Senate Committee on Indian Affairs to represent them on the Juvenile Justice and Delinquency Prevention Council. Yeah, and so it was an honor that I accepted to represent not just the Native Hawaiians but the Native Alaskans and the Native Americans in juvenile policy recommendations for the President, and I'm only sharing this with you because it's an important role when you have so much responsibility in representing of people, understanding all the relational issues. That in the Department of Interior and with the Indian Affairs Bureau that you know some things that can happen for Native Americans may not happen for Native Hawaiians. Some things for Native Hawaiians cannot happen for Native Alaskans, so it's really how do you balance relationships between such a broad spectrum of indigenous people throughout the nation. I don't know but I'm going to learn. So I'm excited about that and it is as exciting as being able to represent our Native Hawaiians in our legal battles and being OHA’s spear in that fight against all the issues and obstacles our people face in the communities with land, water, language, as well as DHHL, and so I say those things with pride that we've done a good job and we have a long history of doing that, and I ask Makalika to come forward at this time and just give a presentation of all the things that we are doing and just to share with you our work at this time.
Makalika Naholowaʻa, NHLC Executive Director: Mahalo Board and Kawika and Kealiʻi for being here with us. As staff, we're very excited to share some information about what we've been doing since we last presented to the Board in January. I've got a presentation, so I'll try to share my screen now so you can see it. But while I'm doing that I also wanted to first check in and see if the Board wanted to start with our presentation or if you have questions that you'd actually just like to get into at the outset?

Chair Akaka: If you can continue with your presentation, mahalo.

Makalika Naholowaʻa, NHLC Executive Director: What I wanted to do is co-present on our work with two leads of our two practice groups. So one of the things that we have done since we presented in January, which was for me the first month in this role, is look hard at the scope of our work. Which I think this group knows is really broad and it ranges from helping our beneficiaries with their individual 'ohana's with housing matters, whether it be title defense for privately held lands, or whether it be leases with DHHL, all the way to complex civil litigation having to do with Aloha 'Āina for the protection of traditional and customary practices.

So one of the things that we have done while trying to constantly figure out how we cover that scope efficiently and effectively is we've created two practice groups to look at those two bodies of work. Not separately, in the sense that we don't talk to each other because our rights, you know they lean on each other. These legal doctrines inform each other and so we are not splitting them in the sense that we don't talk to each other, but the flow of the work for 'ohana with their individual property and housing issues and the flow of the work for the more complex multi year civil litigation that we see on Aloha 'Āina and traditional customary practices. Those two bodies it can be helpful to give those two teams some runway to think about how to best serve them because some aspects of those bodies of work are different. So with that I've got Kauila Kopper joining us. He is leading the practice group on the community service work and Kirsha Durante, who is our new Litigation Director, leading the team on the 'Ohana services work which is the Hawaiian housing work.
1Q FY22-23 Legal Service Needs

Inquiries

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Cases

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<tr>
<th>At Start</th>
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<th>Total Managed</th>
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<tr>
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<td>-5</td>
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So I'm just going to start with a little bit of an overview on data and where we are present and then want to give them an opportunity to talk about what each of their practice groups has been doing and share some stories of beneficiaries that they have been serving this year. So you know the numbers, I just want to give a brief overview. It continues to be a busy practice in our quarterly reports to OHA. We have been trying to provide granular data to give you a sense for the range of communities that we're serving across the pae 'āina and the different types of legal needs that they have. So this is just one cut of the data and I understand that as pre reads our most recent reports were sent around. So if there's any questions about any of that data I'm happy to answer it. But then that is, you know, this team of six litigators is carrying a heavy load of cases and inquiries come in at a rate of approximately one a day. So we're usually getting one to two calls a day from families or community members who have a new issue. A lot of those are resolved through brief services. But every quarter some of them transfer into cases. Which means that we're committing to provide formal advocacy opposite or involving other parties. Sometimes that is administrative proceedings. Sometimes that's straight into litigation, and it really varies and right now you know that could also include consultation processes and I know there's a lot of excitement around a new consultation process that the DOI has committed to for Native Hawaiians, and so you know, that's another area where it kind of remains to be seen if there's more needs for NHLC to help, but that's also within our scope too and could be counted as a case.
Any questions about the data 'cause if not the next slide I have is just to give a sense for those community cases. So one of the things that we're working on because there's good technology available to us, we just need to harness it is creating maps that would allow people on our website to track where we are. Where are we working on a case and of course we have to be thoughtful about confidentiality and things, and a case has to be in a stage where our representation is public before we can share it on such a map, but we are interested in having that out there to help give people a sense for where our Native Hawaiian issues occurring and what NHLC's role is in those. So this is just a cut of the cases out of that 100 plus on my previous slide that are in the more community Aloha ʻĀina, traditional and customary practice and iwi ʻūpuna space. A different layer would have a lot more dots and a lot more bullet points if we added in the housing because that is quantitatively the bigger part of our practice, so you know depending on the quarter, the calls that we get for help with homesteads in particular can often be between 1/2 to 2/3s of the calls that we get. So if we were to have a map with that there would be a lot more dots. But this gives you a sense for where we are on those cases that tend to be more complex, tend to be multiyear and rather than advocating for a single 'ohana and their housing and land rights is more about protecting an area or a traditional customary practice or iwi ʻūpuna. Okay, so with that this is the body of work that the Community Services team led by Kaulia does and so I'd like to give him the floor if that's okay to talk a little bit more about some specific examples of cases to illustrate what this work really looks like.
Community Services

Current Services
1. Historic property preservation including iwi kūpuna, Section 106
2. ʻOlelo rights and education advocacy
3. Advancement of traditional and customary rights and practices
4. Protection of trust lands including the Hawaiian home lands and ceded lands trusts
5. Water Rights related to kuleana lands and traditional and customary practices
6. Natural resource protection including HEPA/NEPA
7. Government transparency, accountability, and procedural due process
8. Policy advocacy on related issues and matters including legislative and administrative testimony

Possible Expansions
- Traditional knowledge and intellectual property protection
- Criminal justice reform advocacy

Kauila Kopper, NHLC Litigation Director, Community Services: Thank you Makalika and good morning Trustees. So this is our team of three attorneys that I have the pleasure of working with on these types of cases. Like Makalika said, these are our native rights, natural and cultural resource protection matters, trust lands management, Aloha ʻĀina. Usually higher in profile, often contentious, often involving appeal. When successful, these are the cases that can benefit many places, beneficiaries, communities, also something we could receive backlash on because a lot of this work is against the state. But you know, there are cases that we take regardless because of their importance and of course on virtually all of these matters we have historically aligned with the Office of Hawaiian Affairs and beneficiaries when it comes to stances on these issues. We generally take all of these matters when they come to us. Subject to our screening process, of course, something that we can talk about if you have any questions and of course meeting a prospective client, but these are the areas that we practice in. Often these cases are types where there are very few if any law firms other than NHLC who are available to community to take these matters on whether it's because a lot of these areas can be specialized and firms may not be familiar with legal claims or that the ones that are charge market rates which can reach nowadays close to $400 or $500 an hour. So it is an expensive service trying to find out there, especially on the market, but it's one that's definitely needed because these are all important issues for the people and communities we serve.

At the bottom there's possible expansion areas, so the current services are all services that fall under our procured OHA contract. Of course we want to be able to pivot as the needs of the community and your beneficiaries pivot, and that's something that we are always thinking about and looking for, so those are just some ideas. But of course others come up and they all deserve consideration for our expansion. If we could go to the next slide and I'll be brief, and this is just to give a taste of some ongoing community impact services matters and beneficiary experience. Again, I'll be brief, but we can definitely stop to discuss specific issues or answer any questions.
This is a case where we represent Makani Hou in protecting cultural sites that were threatened and in some case damaged by the widening of the Ka'ahumanu highway. We currently have four iwi kūpuna protection lawsuits or cases involving iwi kūpuna, where we're in the courts. But this is an example of working to protect sites through consultation. We assisted this hui in obtaining a memorandum of agreement. You see, here's some words from the clients that we definitely have the pleasure of working with. Uncle Fred is still going strong. You know, so this is just, I think an example of a case we do that doesn't, you may not hear about because it doesn't make it in the paper because it's not in the courts, but nonetheless is important to protecting historic sites.
If we could go to the next slide, and this is actually in the same area. We represent Hui Ola Ka Wai who's a group of cultural practitioners who restore and protect the fish pond at Kaloko-Honokōhau on Hawai'i Island. They engage in cultural practices in the area and we are helping them contest approval that is pending with the Commission of Water Resource Management for a groundwater well in the area. If you're familiar, the county is not providing water for commercial development in many parts of Kona, and we've seen this in other cases and so that necessarily requires in a lot of instances creating groundwater wells or increasing pumping in existing private wells in order to service those needs and we've seen that as well. So we've seen the issue of increasing pumping in existing wells or creating new ones. But we all know that extracting groundwater can have real serious substantial impacts to near shore environments. You know, not unlike the diversion of surface water it can have the same damage. So we see our work in this area as being important, especially going forward, especially given the concerns in that area when it comes to water and groundwater withdrawal. You know, again and we're lucky enough to work with loke alua in protecting the Loko I'a there, and if we can go to the next slide.

Mauna Kea Representations
Multiple matters brought to protect constitutionally protected rights and practices

NHLC has represented community in multiple past and ongoing cases related to protecting natural and cultural resources on Mauna Kea, as well as the public's right to due process in government decision making. Those matters include:

- BLNR emergency rules (resolved)
- Emergency proclamation (resolved)
- Administrative challenge to master lease renewal
- Appeal regarding Mauna Kea Access Road
- University of Hawaii Administrative Rules challenge
- NSF Section 106 consultation

All these cases seek to vindicate constitutional rights of Native Hawaiians and the public.

“We are very grateful to Native Hawaiian Legal Corporation for their time and legal assistance in those court cases that they represented us in. We wouldn't have been able to proceed with these cases without their legal expertise and efforts to protect our Native Hawaiian practices and rights as well as our cultural resources and precious lands. Without NHLC who else would assist us as Kanaka in these matters?" - Omai Kanakaole, representative of the Fono-Cas O'lahana

We do get a lot of questions about our involvement in Mauna Kea and so we wanted to be open about that and provide you with information. We over the years recently, so in the past seven years have had six cases about Mauna Kea, four of which in court. All of them sought to advance or vindicate some broad right that would be of interest or benefit to all of your beneficiaries, so meaning that trying to advance some kind of interest or goal that yes helps Mauna Kea but goes well beyond. For example, our first case challenged BLNR’s emergency rules. We were able to invalidate those rules, and it essentially shut down the Mauna to anyone except telescope staff but also concerning it was done without public input. They didn't go through the proper public notice, and so we prevailed on that case.

We challenged an emergency proclamation that was going to bring in our military to remove kupuna and cultural practitioners. We're currently involved in four matters, one of which is our Kanakaole Kanahele versus State case, and that's about the taking of DHHL trust lands for the Mauna Kea Access Rd. That's currently on appeal. We have an appeal on the University of Hawai'i's administrative rules and one of our staff attorneys, Ashley Obrey has a Supreme Court argument on that case next week and we are involved in the 106 process for the funding of TMT by NSF and attended all of those meetings along with of course community and Office of Hawaiian Affairs. So these are again just examples. Wanted to show the kind of cases we're involved in and the beneficiary experience.
Makalika Naholowāʻa, NHLC Executive Director: Mahalo Kauila, for the next section I’m going to hand it off to Kirsha, would anyone like to ask questions of Kauila before we transition into talking about the ‘Ohana Services as part of our practice? Okay, I don't see any hands, so I will now turn it over to Kirsha. So Kirsha is the Litigation Director that’s leading that practice group and I'll let her talk more about what they do.

‘Ohana Services

Current Services
1. Homestead lease cancellation defense
2. Succession designation assistance
3. Birth certificate amendments
4. Limited creation of family land trusts and conservatorships
5. Limited probate for transfer of title
6. Kuleana tax exemption claims assistance
7. Quiet title defense
8. Title research needed to determine legal rights in active cases
9. Genealogy research needed to determine legal rights
10. Hawaiian language document review/translation in active cases
11. Testimony about these and related topics before state and federal agencies and the HI State Legislature

Possible Expansions
- Other real property tax exemption claims
- Limited family law for adoption and guardianship
- Basic Estate Planning Services

Kirsha Durante, NHLC Litigation Director, ‘Ohana Services: Aloha and good morning Members of the Committee and to the Board of Trustees. I’m happy to be settling into this new role at NHLC. I think this reorganization will allow us to provide more efficient services to our beneficiaries, and as Makalika indicated, the ‘Ohana Services Team which I lead is really handling a large amount of the inquiries and referrals that our office receives. The focus, as you can see from the list of services, is really about trying to keep Hawaiians in their homes or on their land, even with respect to birth certificate amendments. You see that listed a lot that has to do with being able to position someone in order to get onto the wait list for homestead housing. So we do like to say that this group is about trying to keep our people in their homes, which is such an important part and necessity for anyone.

With respect to possible expansions. You know, we’ve already done some work in Kuleana tax exemption and assistance. But we’re planning to expand into other areas of tax exemption claims, which will enable again individuals to remain on their land because it will help them to afford some of the taxes that have been increasing throughout the more recent years. Expansion into family law for limited purposes and then the basic estate planning services. I just wanted to briefly highlight here because I think through our years of practice in these areas and handling these types of cases, we’ve evaluated that preventative. A preventative approach is one way to assist the beneficiaries, and that would mean helping for better future planning and succession planning which starts with basic estate planning services. So that is an area that we are hoping to venture into as well, and even though some of the areas of practice on the ‘Ohana Services Team side are things that are traditionally handled by other civil attorneys, the overlap with some of the DHHL requirements, their administrative rules coupled with Native Hawaiian rights, those issues actually make this a very niche area as well, so similar to the Community Services side, this is a type of service that NHLC is uniquely positioned to provide to beneficiaries.
If we could go to the next slide, I'm going to touch on just three of the many cases that we've handled in the past year, and I think what you'll notice a theme with these particular three that we chose is that they all have to do with DHHL in some way, and that is a large majority of the kinds of cases that the 'Ohana Services Team provides, but I want to note it's not the only type.

So looking first at Pua Carpenter, this was an agricultural lease where she and her nephew had applied for the lease. They had received it, but then when they attempted to subdivide the lease with the interests of really looking forward what was going to happen after they pass, how could they pass it on to the next generation? They submitted that request to DHHL who rejected that subdivision request, but in doing so they had cited to certain conditions that were not outlined in the lease that Ms. Carpenter signed, it also wasn't a part of any type of addendum that she had received, so essentially it was a condition she had no knowledge of about, and they said because she had not complied with it they wouldn't approve the subdivision. Through the efforts of our team, we were able to convince DHHL or bring it to their attention really that she was not made aware that she couldn't be held to that under contracts law, and therefore they should revisit her subdivision application, which they agreed to do and they have now conditionally approved her subdivision requests and this is important because her ultimate goal was to have the ability and the flexibility really to be able to pass down her interests to her children while also reserving her nephew's desires to do what he wanted with his portion of the agricultural lease.
The estate of Margaret Decambra was actually an assistance we provided to an ‘ohana and this was a somewhat complicated matter, but I think it reflects some of the nuances and intricacies of navigating litigation with DHHL and again, why the services we provide are so important. Debra-Lee De Cambra and her daughter, Brianna, came to NHLC seeking help to prevent the cancellation of their ‘ohana’s DHHL lease in Nānākuli. NHLC helped the ‘ohana navigate a complicated situation to stop a lease cancellation contested case hearing and ensure Debra-Lee could succeed to her father’s homestead lease.

The original lessee, Debra-Lee’s father, designated Debra-Lee’s mother to receive the net proceeds from the lease after his death. Debra-Lee was later appointed as lease successor by DHHL, but DHHL would not allow Debra-Lee to succeed to the lease until she paid them the net proceeds her mother was entitled to. Meanwhile, Debra-Lee’s mother passed away, and DHHL started lease cancellation proceedings when the net proceeds payment was not made.

Ultimately, Debra-Lee had to probate her mother’s estate in order to receive the net proceeds, which the heirs then paid back to DHHL to prevent the lease cancellation. NHLC successfully petitioned to open probate and guided the ‘ohana through the myriad of issues they faced.

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The original lessee, Debra-Lee’s father, designated Debra-Lee’s mother to receive the net proceeds from the lease after his death. Debra-Lee was later appointed as lease successor by DHHL, but DHHL would not allow Debra-Lee to succeed to the lease until she paid them the net proceeds her mother was entitled to. Meanwhile, Debra-Lee’s mother passed away, and DHHL started lease cancellation proceedings when the net proceeds payment was not made.

Ultimately, Debra-Lee had to probate her mother’s estate in order to receive the net proceeds, which the heirs then paid back to DHHL to prevent the lease cancellation. NHLC successfully petitioned to open probate and guided the ‘ohana through the myriad of issues they faced.
So Castro versus DHHL. This matter, I think probably highlights one of a common theme that we see in DHHL matters where family members have a desire for a lease to be passed on to a certain individual and for various reasons that can't be accomplished. And this was an example of where just a myriad of circumstances prevented the individual, this was Ms. Castro's mother from being able to succeed to her husband's lease so DHHL had conditioned her succeeding to the lease on certain things which could not be accomplished and then in the meantime Mrs. U'u passed away and why this was significant is because Mrs. U'u's husband was actually the stepfather of Ms. Castro and under the rules Ms. Castro would not be able to succeed to the lease directly from her stepfather because the rules don't allow for that, so it was important to have DHHL and the Commission confirm that Mrs. U'u was the actual designee or successor of that lease so that Mrs. U'u, her children could be potentially eligible to receive the lease. In order to do this we had to navigate a contested case hearing, where ultimately it was acknowledged that the lease vested in Mrs. U'u even though she had passed away and wasn't able to formalize that process, that it did vest in her by her being listed as the designated successor by her husband and what that allowed for is that allowed for the lease then to go to public notice which Ms. Castro is applying to be the recipient of that lease. It could not be a direct transfer because Mrs. U'u passed away before she could designate who that successor was. But again, navigating that complicated process to try and ensure that this ‘ohana retains this lease. This is another example of the type of work that the ‘Ohana Services Team does.
Education and Training

NHLC regularly presents to legal, student, and community audiences across Hawai‘i and on the continent to educate, raise awareness about, and advocate for Native Hawaiian rights, justice, and legal needs.

NHLC is one of few organization where lawyers can build an indigenous rights practice, and the only firm that regularly practices in many areas of Hawaiian rights.

NHLC is a host organization for students every year, training and inspiring the rising generation of indigenous rights attorneys, building the pipeline for the lāhui’s legal service needs, and creating allies for the community. This summer NHLC hosted a class of 12 legal interns and college students volunteers.

Makalika Naholowa‘a, NHLC Executive Director: Mahalo Kirsha, so these are just examples, we could have picked others. Our volumes are such that we just wanted to pick a few, didn't cover all the different kinds of work that we do, and we're happy to zero in on different topics that we cover. If the Board has any questions, but hoping that that gives you really concrete insight into what the impact of the work is and what the needs of the community are. I'd like to just round out by saying that at NHLC, one of the things that we also take on as our kuleana is that as the only legal services organization that is dedicated to Native Hawaiian rights, we think it is important that we are raising awareness and creating ally-ship for Native Hawaiian community legal needs and justice needs. And so what that looks like is we are regularly presenting to legal audiences, to student audiences, to community audiences, we're regularly invited across the pae ʻāina and by organizations on the continent, and that work is a part of how we ensure that Native Hawaiian rights and justice issues are included in the conversations about policy and what is important in indigenous rights law. So I think you know what Kawika was saying about coordinating with other indigenous people on the continent that resonates with us too. And so that is something that we dedicate time to and we are probably speaking once or twice a month. So when I say regular, that's pretty much the volume.

NHLC is one of the few organizations whose lawyers can build an indigenous rights practice, so we're always trying to keep our eyes open for the other organizations like ours that are focused on indigenous rights, there's not another focused on Native Hawaiian rights we know that. It's not easy to find a source of truth list for other Native American groups, but what we're aware of is for and the Native American Rights Fund is like the largest, but there's one in California, there's one in Oklahoma, but there's not very many, and so this is one of the few places where you can really build that practice, and we host organizations of students every year. We think that is good for the community because it expands our capacity, but it's also good for the community in the sense that it creates a thriving, it contributes to what needs to be a thriving pipeline of future indigenous and Native Hawaiian rights advocates. And so this summer we were happy to host 12 legal interns actually, Kirsha, in addition to leading the Ohana Services Team, she also manages our intern program and so that I hope creates future attorneys that come back to work for us, but wherever they go, the feedback is pretty clear that they will never forget what they learned here. What the needs of our beneficiaries and our people are, and they take that with them in the spaces where they walk.
Mahalo for the Native Hawaiian Legal Program

Public funds are critically important for our work.
Last year, half of NHLC’s clients meet income qualifications for indigency. None can afford multi-year complex litigation even at “low bono” attorney rates.

NHLC does not receive LSC funds.
The largest funder of civil legal aid in the country is the Legal Services Corporation, an institution largely funded by Congressional appropriations and subject to strict legal practice limitations. NHLC used to be an LSC grantee, however, LSC grantees cannot, among other things, participate in class actions, represent imprisoned people in civil litigation, nor participate in legislative advocacy with narrow exceptions.

NHLC often can not recover attorney’s fees even when our clients prevail in a case.
Attorney’s fees are not awarded in many types of lawsuits against the state, nor in contested case hearings and related appeals. When attorney’s fees are available, the amounts claimed are commonly contested and not always awarded in full.

NHLC’s contract with OHA enables the firm’s work for beneficiaries.
Funds from the OHA contract are roughly 55% of NHLC’s operating income this year. This year, our largest source of income after OHA is the Christensen Fund, a foundation based on the continent that is dedicated to supporting indigenous sovereignty.
Christensen awarded NHLC a 2-year grant for $300,000 for the first time this year. After that, NHLC’s next largest source of support is much less than that amount. When COVID relief funds are no longer available starting next year, NHLC will need to raise $400,000/year in additional income to maintain our current service capacity. The firm is focused on development and legal business practices to support the financial health and sustainability of NHLC, including review of the services we provide and fee policies.

So the last thing we wanted to do in terms of prepared content is just really mahalo OHA and this Board for having the Native Hawaiian Legal Program. Public funds are critically important for our work. I think this group knows better than even I, our community does not have the funds at the ‘ohana or hui level for even low bono attorney rates when it comes to complex civil litigation and based on our intake intake process, about 50% of our inquiries last year were by beneficiaries that meet the income qualifications for indigency.

The biggest funder of civil legal aid in the country is an organization called Legal Services Corporation. They’re independent from the government, but they’re largely funded by congressional appropriations and with those funds come really strict legal practice limitations. So they have a two page small print list of the things you can’t do if you get those funds, but just to give you some examples. We’re no longer an LSC grantee, in part because you can’t participate in class actions, you can’t represent imprisoned people in civil litigation. So the work that we’ve done protecting religious and spiritual practice rights for incarcerated Hawaiians would not be allowed even if we used OHA funds. So they have three different buckets and limitations. But the most strict list says you can’t do the work at all, even if you don’t use their funds. So long story short, unless we really limited our practice to carve out some of the important areas that we’ve historically felt Hawaiians needed our help with, we cannot get LSC funds.

We also struggle to recover attorneys fees even when our clients prevail in a case. So there are instances where we can, if our clients win, we can recover fees and we try to do that because we want to be a sustainable organization for our community. But many of the matters that we handle that is actually not an option, it is not an option in contested case hearings, so what you heard Kirsha talking about in ‘Ohana Services, and also a lot of the work that Kauila does those go through contested case administrative processes, and if you win you are not entitled to fees in those cases. So the net of it is that OHA’s program really enables our work for beneficiaries. Our OHA contract this year is about 55% of our operating income. We’re very grateful to be an OHA vendor and then after OHA’s support, we are delighted to now be a recipient of funding from a foundation called the Christensen Fund. They are a rare philanthropic foundation that is focused on indigenous sovereignty and indigenous rights. So for the first time they are funding NHLC and that is our second largest source of income and support after OHA, so that we are constantly looking for where can we garner more support for our work for our beneficiaries, but you know it is not easy for these reasons and so it really means a lot to be a vendor for OHA and we are very grateful. That is my prepared content, but all of us, including our board members are here to answer any questions you have and we’re really grateful to be here.
Chair Akaka: Mahalo. Members are there any questions, comments?

Chair Akaka recognizes Board Chair Hulu Lindsey

Board Chair Hulu Lindsey: I want to thank our staff at Native Hawaiian Legal Corp. for the very, very hard work they've been doing for our people, and I know there's not enough money to fund all the people that come to them, but those people that have come experienced the help from NHLC are very, very grateful and I'd like to thank the Board for supporting this staff. The Board that's looking after the Native Hawaiian Legal Corp. All of you on the different islands mahalo nui and we appreciate your service. We'll certainly continue supporting you and see how we can help more in this area because our people need the help. They don't have money for legal service and we count on you to assist them. So mahalo nui for that work.

Chair Akaka recognizes Trustee Akina

Trustee Akina: Aloha Makalika and team. Congratulations on all that you're doing. You're serving the Hawaiian people in a great way, and I want to thank you for helping us at OHA to accomplish our mission. I have a question for you. I think that you're very inspiring to young Hawaiians. What do you see as the direction now for recruiting and encouraging young Hawaiians to go into law in terms of the number of students and the the quality of students that are attracted to devote their lives to that?

Makalika Naholowa’a, NHLC Executive Director: I'm happy to start, but I hope that others with our group also feel free to raise their hand and answer. Well for us, part of the reason that we want to grow is because the need is there and also because I do worry about what happens, you know, you create this great pipeline of young people going to Richardson School of Law and other educational institutions to get their legal degree and then a big question for them is where do I go put this degree to work? And so you know, I would like NHLC to be in place where I know we're never going to be able to hire everybody, but I'd like us to have more capacity to create a home so that we can connect the needs of the community and the people who want to do the work. When I think about how we get there, we don't anticipate that it's all you know all of our growth is going to come through OHA, but the trick is figuring out what model is going to work because the reality is civil legal aid is dramatically underfunded, so LSC as the largest funder of civil legal aid in the country, they provide reports every year as to how much need there is compared to being met for all Americans and it's drastically underfunded and so much so that I don't even think that they attempt to meet all those needs, right? Whereas here at NHLC, we're doing the best that we can to service every request that comes in from beneficiaries. I can talk more about our screening process because we're not able to do 100%, but about 90% of the inquiries that come in we're able to provide some kind of service.

But that is one of the big challenges and I don't think that the answer to our funding issues is going to be turning in you know beneficiaries are going to produce those hundreds of thousands of dollars that actually we need to bring in to create the practice that we envision. So part of it is figuring out where the other foundations, I mean another issue that I'm sure OHA is well aware of but it's been studied is that indigenous people get about 1% of philanthropic dollars. So the work that I think OHA does, and all Native Hawaiian organizations do to raise awareness about that and figure out how do we change that and how does Hawai'i and Hawaiians get the appropriate share of philanthropy to meet our needs is part of it. But part of it is also looking to see how is our own community thriving and where are their legal needs where maybe we can continue to support community as it evolves. Not just with its needs evolving in the sense of people who don't have resources, and what does it look like to help them in a better way? So Kirsha talked a little bit about preventative medicine, so it's much more efficient and we're probably able to help ten families with basic estate planning for the same amount of time and energy that it takes to help one family when estate planning didn't occur and now we have really messy facts and we're trying to navigate, you know, a contested case or something like that. So trying to figure that out is also part of the strategy. But it's not easy, we're here for it. We've got some ideas, but we also welcome the ideas from others and truly want to be a place where you know feedback is provided and and we can do this as a community.
Trustee Akina: Mahalo, Makalika

Chair Akaka recognizes Trustee Trask

Trustee Trask: Thank you for that presentation NHLC. I have first some questions for you with regards to your funding. The assessment you give us is that OHA money provides only about 55% of what NHLC needs. So what is the amount that you're getting from OHA?

Makalika Naholowa'a, NHLC Executive Director: Our current contract and it's been at the same amount for some time. I can't tell you the exact date, but it's been for some time an annual allocation of 1,000,000 and approximately 50,000. I think the exact number is 1048 something, but it's about 1,050,000.

Trustee Trask: Okay. You're saying also that Christensen is funding you for the first time. But that you're anticipating a future need of 400,000? I've worked for years with Christensen. Primarily because I've sit on the Board of American Indian Women Organizations and projects. So I know a little bit of background. How do you feel about the Christensen fund being recurring? You're in a position now with them where they will assist that based on your first award. So I'm asking you this now, you're getting a 300 grant from Christensen for a 2 year period.

Makalika Naholowa'a, NHLC Executive Director: Yes

Trustee Trask: Do you anticipate that that will be refunded? Are you planning to apply again at the end of this biennium?

Makalika Naholowa'a, NHLC Executive Director: We are, it is our hope that we can start a long term partnership with them. This is actually my first quarter doing a report to them on this grant because it's a new grant. They have indicated that they are very interested in being inclusive of Hawai’i and Native Hawaiian needs in their mission. And I mean to be candid and frank, I think because of their CEO Carla Fredericks, and my contact that manages the program that's allocating the funds is, they're both lawyers, so I think for them we have an audience that appreciates how important legal services are to sovereignty efforts for native people, so I'm hopeful that we will earn their continued support.

Trustee Trask: The $400,000 future need that you're giving us here. Does that drop to 100,000 if you get the Christensen confirmation?

Makalika Naholowa'a, NHLC Executive Director: It doesn't. So this year that amount is budgeted as hopefully being a combination of fees. Which you know, I've shared that fees can be uncertain, but based on historical ability to recover from some of our lawsuits, quiet titles an area where if you prevail you often can get fees from from the other party not from the beneficiaries and also this year I mean frankly, we're also benefiting from what I think a lot of companies are with COVID relief funds, so we've applied for and believe that we will be eligible for some of these ERC tax credits, and so that's how we're filling that gap and we've, you know, benefited from some other programs over the last couple of years that provide COVID relief funding, and so that's really helped us to absorb the increased cost of providing the service over the years. And you know, retaining staff. But as we look at COVID funds winding down, we are going to have to be really focused on how we raise those funds from alternative places.

Trustee Trask: I have another question. When I look at your data, you describe your services to the community as limited probate, limited family law, but I just wanted to know what that means limited probate, I mean does it generally mean families that need the help to get through it, but we don't have ten other family members contesting it. You know what I'm saying when you get to guardianship, and some of those areas with our children, they're really kind of pro forma to get the guardianship set up. Your periodic appearances to the
court as opposed to some real, you know, contested guardianship. I wasn't sure how to understand your
definition of limited.

Makalika Naholowa'a, NHLC Executive Director: Yeah, that's a really good question. The two are are pretty
different scenarios, so I'm gonna first address the family law part. If that's okay and then ask if Kirsha could
add some on the probate part. So the family law part is the most I would use the word par baked of the
possible expansions that we are considering, but what that's getting at is a loud and consistent call that we're
hearing from the community at NHLC about the extreme over representation of Native Hawaiian kids amongst
kids removed from homes. Some of the that is, it is a very complex area because you got to balance families
interest in keeping their kids with of course kids safety and so not every case is going to make sense for NHLC
and so we still need to figure out what the parameters are. But we know that there is a percentage of those
removed children where there's relatives who would like to step up and who have the capacity and means to
do so and need help figuring out how to do it. We also know that there are some removals that are occurring
for what's being cast as neglect, which is another way of saying because your families are poor and how do we
fairly help those families navigate that so that their kids aren't taken away, and along with being taken away
and all the harm that causes, but also the disconnect for their native identity because often they're being put
into homes that are not indigenous, not Native Hawaiian. So I mean that way I think our community suffers in a
way that's really similar to other American Indian groups on the continent, and we're trying to figure out what
can we do. We have not historically ever done that, so I think there's a lot of nuance to figure out. Because it's
a tidal wave first of all if you open your doors to it, but also like there's probably a specific subset of types of
cases in that area where it would make the most sense, and we need to define that. But it's just something that
the call for help had been so consistent and loud over the last year that we're trying to think that through.
Kirsha, could I then punt to you on the limited probate?

Kirsha Durante, NHLC Litigation Director, ‘Ohana Services: Sure, you know I think as we indicated during
the presentation, the Cambra case was one of the first times that we ventured into that area, so the limited
probate that we, this type of assistance we offer is generally in circumstances where there's no dispute over
who is going to be the personal representative, ‘ohana is an agreement, and it's largely for the purposes of
transferring a specific item as opposed to the entire estate of the individual. So things like transferring the net
proceeds to an individual who is the recipient identified by someone who has since passed away and
previously had a lease. Also limited probate like in the other cases we have done, where we've done it to assist
‘ohana with the transfer of title from one generation to the next generation, again with there not being any type
of contesting within the ‘ohana, the ‘ohana is all in agreement that one individual can serve as the personal
representative and then we represent that one individual and assist them with the transfer of those types of
assets through that process.

Trustee Trask: Thank you.

Chair Akaka: Members are there any more questions or comments? Mahalo nui for your presentation.

Board Chair Hulu Lindsey: Thank you again. All of you at NHLC, mahalo for being there for our people.

B. Action Item BAE #22-03: Approval of Due Diligence Activities in Pursuit of an
Executive Order re: Kamokila Hawaiian Village, 5523-5519 Kuamo'o Road,
Kapa'a, Kaua'i, Hawai'i

Chair Akaka: Do we have any testimony on this?

BAE Staff - Mark: No testifiers, Chair.
Chair Akaka: No testifiers, but we've received written testimony?

BAE Staff - Mark: No written testimony.

Chair Akaka: I believe we did. It was sent to the BOT Meetings e-mail and then forwarded to us.

Trustee Ahuna: I believe Sean Chun.

BAE Staff - Mark: Sorry, Chair, Brandon, just stepped back in.

BAE Staff Brandon: Sorry about that. Yes, we did receive one written testimony and this is from Sean Chun and it was emailed out to the Board and its Members.

Chair Akaka yields the floor to Ka Pouhana Hussey

Ka Pouhana Hussey: Thank you, Chair Akaka. If I recall the one e-mail had a number of attachments of multiple attachments to the one e-mail on the topic.

Chair Akaka: Thank you

Ka Pouhana Hussey: I just want to make sure I got the right e-mail. Trustees, before Administration continues I just wanted to point out a typo on the action item that doesn't affect the action, just the actual action item itself. Starting on Page 3 to 18 in the header, instead of action item 2204, it is actually action item 2203, so just the header doesn't affect the motion or the recommendations being made by Administration. Trustees, as you may recall from our September meeting, Administration brought forward to you information that had started with a beneficiary back in March, as well as additional information from the community including kupuna, as well as beneficiaries came to the Kauai meeting to be able to share their mana'o about this and so for clarification Trustees, this action item is not selecting anyone or not pitting any beneficiary over another, but just asking for for approval so that Administration can pursue an executive order with the Board of Land and Natural Resources and the Department of Land and Natural Resources, specifically, the State Parks Division. So if there are any questions, please let Administration know, but what we are asking for is just approval to continue more due diligence activities, which would include a community engagement as well. So I will leave that Chair Akaka, if any Trustees have questions.

Chair Akaka recognizes Trustee Trask

Trustee Trask: Yes, I received the letter package from Sean. There's many, many letters of support that came in with it. I also had several pages that I'm not sure came with this report or somehow got stuck in it with our office, along with all of the single page letters I have, all of which are very supportive. I have several pages that are stamped for no reproduction without written permission of the Bernice Pauahi Bishop Museum. Is that part of these materials, or was that a mistake? Because none of these when I look at all of these things, I don't know if this is the ethnographical collection that came from Kamokila Hawaiian Village. Is that what it is, or was it just a mistake? I just wanted to check with that to see if anyone had the same materials because I couldn't understand where it fit in. It looks like this.

Ka Pouhana Hussey: Trustee, I know the the packet of letters I received included those attachments. I treated them as attachments to the letters. So I'm looking through the several, you know, letters and attachments look like they have information that you're describing.

Trustee Trask: Yeah they do, but when I looked at the attachments I mean for instance the lomi stick is recovered at Honaunau on my island so that's why I was asking is this part of the attachment? But the letters
are certainly very good and very supportive of this work going on in Kaau‘i, you know, I just wanted some clarification on the other materials that were handed out.

**Ka Pouhana Hussey:** I'm not sure, perhaps Trustee Akaka's Aide maybe can give some context?

**BAE Staff Brandon:** Yeah, so CEO, these it all came in the same e-mail, so we just sent out whatever Sean had attached to his e-mail. Yeah, that was it.

**Trustee Trask:** Okay

**BAE Staff Brandon:** So Sean had his original e-mail and then after that he just put all these attachments onto his e-mail. Thank you.

**Trustee Trask:** Thank you.

**Chair Akaka** recognizes Trustee Akina

**Trustee Akina:** Thank you, Madam Chair. Question for Ka Pouhana, I'm wondering if you could tell us a little bit about the nature of an executive order and in particular will approval of this executive order enable the Administration to make the final decision with regard to Kamokila Hawaiian Village. We're talking about the final decision with respect to land conveyance, which I understand to be a fiduciary kuleana for the Board of Trustees.

**Ka Pouhana Hussey:** So thank you, Trustee Akina for that prompt. My understanding of the executive order process. So the most familiar for the Office of Hawaiian Affairs is the executive order of the Kūkaniloko lands. The .5 acres or that small parcel in which our 511 acres surround that is an example of an executive order recently. We have other executive orders that come from the Department of Land and Natural Resources to OHA, and now they retain ownership, but we have stewardship kuleana. So the process that would involve is the Governor actually does the executive order from DLNR and it's based on the Board of Land and Natural Resources recommendation as put forward by the Department of Land and Natural Resources. In this case, state parks, so the process is ultimately the Governor's to transfer through executive order that parcel to the Office of Hawaiian Affairs. We have examples that sometimes that transfer comes with, you know no lease or a dollar lease, a year lease or a gratis type lease. So we have examples of that, but essentially that is a Governor's action to be able to transfer that and then once it is in OHA's land inventory and kuleana, then it will be the Trustees' kuleana to determine based on, and we plan for the land division to make recommendations as to how best to steward that property, and that probably is an RFP process so that it is fair, open and available, and in that RFP process OHA would describe what is it that we expect of the stewards. Knowing that this area floods a lot, knowing that there are artifacts there, knowing that there are potential for programming there. So we would put in the RFP. But we can't do that until it is our kuleana, right now, it's not. It's sitting in DLNR and in State Parks kuleana.

**Trustee Akina:** At what point do we, as the Board of Trustees, decide that we will receive the transfer of this ‘āina?

**Ka Pouhana Hussey:** So I would say that the request Administration is asking now is to do the due diligence and to do more due diligence. Right now we feel the executive order is the mechanism for getting this culturally based property to OHA to steward. However, in our further due diligence which includes community engagement, we may find that perhaps it is not advisable to continue to pursue, but that is the request that Administration is making of the Board to allow us to continue due diligence activities before you know, a final recommendation is made to the Board and then more importantly to the Board of Land and Natural Resources for the Governor's action.
Trustee Akina: Thank you.

Chair Akaka recognizes Trustee Ahuna

Trustee Ahuna: Thank you, Chair. Yes, I've received several calls about this and one of the biggest concerns the beneficiaries were talking about was transparency and process and what is really going on. A lot of them didn't feel like things were made clear. Today they thought the meeting was on Thursday. They had no idea it was today. So there's changes, there's things going on, but I wanted to thank you guys because this is not something new. We've acquired land before. Ho'omana is another place right on Kaua'i. Ke Kula Ni'i'hau is another place. So this is not something that is foreign to us. I think this is a good choice for OHA to acquire the land. However, the concerns they had was the transparency and how we're going to get the proper stewards on those lands. So thank you so much for saying that.

Chair Akaka recognizes Trustee Trask

Trustee Trask: Yeah, if we could just get some clarification here. We're in the process, things look good. Are we moving towards a legacy land acquisition? Is that what we're doing? I'm not sure I understand what we're, we're on the path in the right direction, but when we say that we would like OHA to take it are we talking about legacy lands with our partner on the nonprofit, and if it is the nonprofit you know to be honest with you, I just would like some clarification. When we were back on Kaua'i there were at least three groups that seemed to me were talking about this and my notes actually showed there might be a fourth group, so you had several speakers. You had Fernandez family. You know, I'm not sure which group we're working with. Has that disappeared and now we only have one group when we talk about it coming to OHA, are we looking at the legacy land program that we have a nonprofit backed up to partner with us? You know, like I'm looking at for Kupukahi, I'm just not sure. I'm just not sure where this thing goes. It's going in a good direction, but where are we going?

Chair Akaka recognizes Ka Pouhana Hussey

Ka Pouhana Hussey: Great question, Trustee Trask. One of the things and speaking to Trustee Ahuna's transparency. One of the things we wanted to be sure is that while as many advocates were there on Kaua'i, like you said various groups and the letters of support have come from predominantly one group, this process is not about OHA choosing beneficiaries one over the other. This is about OHA pursuing an executive order to bring a relatively small parcel of, you know, four acres or so into as you said, Trustee Trask, our Legacy Land Program. And once in the Legacy Land Program, thinking about how best it fits into that and what is required and what opportunities are there to maintain culture economics. One of the due diligence items is what is a permissible use on the river and what kinds of economic, you know could be, certainly education is their, certain preservation. So there are many facets of this but until it's in our inventory to be able to do that, we really don't have any right to do it because it's not in our inventory to be able to do that legacy land planning and programming. So right now it's not about choosing a beneficiary one over the other. It is about pursuing a path to do more due diligence, which includes talking with our communities, our kupuna, those there on the lands.

Trustee Trask: Thank you.

Chair Akaka recognizes Trustee Ahuna

Trustee Ahuna: I did want to offer one more comment. I believe this came to the forefront because I believe the state was taking away the land from the previous people who were stewarding the land and OHA intervened and we're trying to just make a proper decision and right now the decision that we're making is to have it. To have us be the steward, right. I mean the overall stewards, so I just wanted to just make sure, it just didn't come out of nowhere. It came out through because they were losing the land. Thank you.
Chair Akaka recognizes Ka Pouhana Hussey

Ka Pouhana Hussey: Could I add on to Trustee Ahuna’s insights there, in the action item one of the alternatives considered is that Trustee Ahuna is correct. The lease has expired for the current family, so we're not looking at we're trying to get their lease back right. The lease has expired. The DLNR has let us know that there are a number of next steps, one of them is they can go out and you know, go ahead and do an open RFP themselves. Another is they can actually direct contract with a nonprofit. The third is OHA can respond to those right. We can go put in our RFP response to that or we can you know work with a nonprofit with them and then the fourth is what we are saying is to pursue an executive order. Again, so that we can manage that on behalf of our beneficiaries and in our community. So again, it's not about choosing a one over the other, although there have been several ideas that have been brought forward for programming and maintenance. And of course there's the long history of the maintenance of the family there on the lease. It is a 60 year lease but this particular action, we are not asking for decision, but more time to explore all of the tendrils before going to pursue an executive order with the BLNR.

Chair Akaka: Mahalo Members, any other questions or comments? Can I have the motion put up? Trustee Ahuna would you like to make the motion.

Trustee Ahuna: Just one last concern, I'm so sorry and another thing they didn't want is like change in the meetings that they were ready to present and we changed the meeting. So I just wanted to say that.

Action item BAE 22-03, approval of the due diligence and other activities in pursuit of an Executive Order re: Kamokila Hawaiian Village, 5523-5519 Kuamo'o Road, Kapa'a, Kaua'i, Hawai'i. OHA Administration recommended action, authorize Administration to execute due diligence and other activities in pursuit of an Executive Order for Kamokila Hawaiian Village, 5523-5519 Kuamo'o Road, Kapa'a, Kaua'i, Hawai'i, in accordance with existing policies, processes and procedures.

Chair Akaka: Mahalo, Trustee Ahuna. Is there a second?

Board Chair Hulu Lindsey: Second

Chair Akaka: It’s been moved and seconded by our Board Chair Hulu Lindsey. Members, any other questions or comments.

Chair Akaka recognizes Trustee Lee

Trustee Lee: Thank you, Madam Chair. I’d like to make an amendment to the motion.

Chair Akaka: Okay

Trustee Lee: I would like to strike out the word “in” after activities and instead add in “for possible”. So it would now read, approval of due diligence activities for possible pursuit of an executive order. Just so that it’s not misunderstood that we are in fact pursuing an executive order.

Chair Akaka: Okay, I believe we would need to vote on this then.

Trustee Lee: Well it needs a second first.

Trustee Waihe‘e: Second
Chair Akaka: It’s been moved and seconded. Any other discussion members? Seeing none, can I have a roll call vote.

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Chair Akaka: That motion has passed. Would we like to read that again. Alright, do we need to make a motion to vote on this with it amended. Can I please have a motion.

Trustee Lee: No motion is necessary, Chair. The motion is already on the table, we just need a vote.

Chair Akaka: Alright, can we have a roll call vote.

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C. **Action Item BAE #22-04:** Approval of the 2023 Legislative Package

**Chair Akaka:** Do we have any testimony on this?

**BAE Staff - Brandon:** Chair, we do not have any testifiers that sent in written testimony, we have no testifiers here and we have no testifiers online.

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

**Ka Pouhana Hussey:** Thank you, Chair Akaka and Trustees, before I hand it over to our Ka Pounui and Capsun, I wanted to call to your attention on page 8 of the action item. The certification signature was missed by the CFO and so the CFO is online to verbally certify that the action here is aligned to all budget related policies. So Trustee Akaka, I just wanted to point that out for the Committee so that it can be recorded in the minutes that the CFO can verbally certify to that section.

**Chair Akaka:** And also, can you make note of administration's entry on page 4.

**Ka Pouhana Hussey:** Correct, so the table on page 4 is table 2, in the orange headed, instead of the 24-25 515,000 that is 615,000. This does not affect the motion because the bill in attachment A is correct at 615,000, so these are the two action item edits that needed to be made, and if you want to have CFO Hinke actually verbally certify she can do so at this time.

**Chair Akaka:** Yes please.

**CFO Hinck:** Good afternoon Trustees. I Ramona Hinck as Chief Financial Officer certifies that no funding is required to approve the 2023 Legislative Package or their coordinated advocacy efforts and that the financial implications of the proposed 2023 Legislative Package items are aligned to fiscal and budget related policies.

**Ka Pouhana Hussey:** Chair Akaka, that's it. If it's okay, we'll go ahead and hand it over to Ka Pounui Casey and Capsun.

**COO Brown:** Mahalo, Chair Akaka and Ka Pouhana. So I'm here with Capsun and we're gonna go through the legislative package again. We came to you folks in September on the 20th to give you folks a preview of the package. It hasn't changed much or you know very much at all. But we have a little more detail there. A little bit more direction to offer as well and so Capsun, if you have the presentation ready to present.

**Interim Chief Advocate Poe:** Aloha and good afternoon Chair Akaka, Trustees. Thank you Ka Pouhana and Ka Pounui for your efforts to bring us here today. As you know, Capsun Poe employed here as in my role as Interim Chief Advocate. As Casey mentioned, I'm here to give the Committee an overview and an update on our leg. package and activities. I do think all of this is pretty straightforward, and as Casey indicated, you know we did sort of cover this with the Committee and the Board previously and I know the attachments are pretty long, but just to help you sort through it, just a quick reminder that attachment A is a draft of OHA-1, attachment B is Act 29 from last year's 2021 session and that was about our budget bill and then Act 226 is in attachment C, which is related to the Public Land Trust payments inventory and the workgroup and I know we
call it Public Land Trust because that's what it says in the bill. But it's also of course the ceded lands that we are talking about. So let me just go through and get started.

### 2023 Legislative Schedule

- **September 20, 2022** – 2023 Legislative Overview with BAE-RM
- **Late October 2022** – Legislative Package Approval with BAE and BOT for OHA-1 Final and OHA-2 Conceptual
- **December 2022** – Legislative Package Approval with BAE and BOT for OHA-2 Final
- **Late December 2022-January 2023** – Budget and/or Informational Briefings with WAM, FIN, Subject Matter Committees
- **Early January 2023** – Deadline to submit OHA Legislative Package
- **January 18, 2023** – Opening of the 32nd Legislature, 2023 Session

You know this schedule was provided to the Committee and the Board last time. There really is only one major update here, and it's talking about this sort of second phase or second step as far as the approval goals for the legislative package. Today we are asking for the Committee's consideration and we do recommend and request that you give final approval to OHA-1 the budget and OHA-2 at least as far as the strategies and concepts which is our Kaka’ako Makai bill.

**Chair Akaka** recognizes Trustee Lee

**Trustee Lee**: I'm sorry to interrupt you Capsun, so you're calling for another approval in December 2022. Our bylaws do not allow for a meeting of the Board after the General Election until the call in January to elect from ourselves new leadership. So that December 2022 call for a BAE meeting and a BOT meeting cannot happen.

**COO Brown**: Madam Chair, can I ask for some help in interpreting that? Is it after the reorganization of the Board, and is that reorganization include election of your leadership?

**Trustee Lee**: That's correct, that's what our bylaws stipulate.

**Chair Akaka**: After December 8.

**COO Brown**: So okay, yeah. So then my follow-up question would be it's currently Administration's understanding that reorganization would take place in December, early December. Is that still correct?

**Trustee Lee**: Okay, thanks for the clarification, Casey.

**COO Brown**: Mahalo

**Interim Chief Advocate Poe**: Mahalo for that as well Casey and mahalo, Trustee, I think you know you are helping us to dot our i’s and cross our t’s and, you know, at least we keep it in the ‘ohana before we get to the big square building. So we want to make sure everything is, as you’ve been trying to get us to be, you know,
up to snuff, and again, I know we mentioned it, but you know the underlying material and the bill itself was correct despite the little change we had here.

### Package Activities

- Propose a Highly-Focused Legislative Package with 2 Bills
  - OHA-1, OHA Budget
    - Request comparable general fund appropriations for Fiscal Biennium 2023-25
    - $3,000,000 annual appropriation for OHA175, Beneficiary Advocacy
    - No overhead or positions are being requested
    - Final approval of draft bill recommended requested today

You know the request is for $3 million in OHA-1. All of this would be appropriated to OHA-1 prog. ID, OHA 175, which is Beneficiary Advocacy. This request is comparable to previous years. You know, the $3 million is pretty consistent with recent history. Sometimes it goes down to two point something million. We've gone as high as 4.5 million. As far as general fund appropriations, but we are right in the range where we think we want to be, I would point out that there are no overhead or positions being requested in OHA-1 and also having just heard from NHLC, I did want to point out that our request this year, it does include a modest increase in the appropriation request for legal services.

- OHA-2, Kaka'ako Makai
  - Request repeal of residential restrictions in Chapter 206E, HRS
  - This would allow OHA to realize the promised value of Kaka'ako Makai
  - Conceptual approval of bill drafting recommended requested today
    - Informed by outreach activities
    - Informed by master plan activities
    - Address the value and conditions of the land with respect to $200M settlement amount in 2012
  - Final approval of draft bill will be recommended requested in December

Kaka’ako Makai, we will continue to refer to it there, and of course as for OHA’s portion of Kaka’ako Makai, Hakuone, but that is the focus of OHA-2. Again, all of these are efforts for us to unlock the true potential of our holdings in Kaka’ako Makai and and we would therefore, recommend and we are trying to work on requesting a repeal of the residential restrictions in Chapter 206E Hawai’i Revised Statutes, that's basically HCDA's portion of HRS, and we are pursuing removing those restrictions on residential development. The conceptual approval that we’re offering and recommending today would be to approve it, and as the drafting goes forward, it would include outreach activities or sorry it would be informed by our outreach activities, the master plan activities we mentioned, and ultimately to address the value of the $200 million settlement that was now 10
years ago and as we just covered, we would be bringing back the final for approval in the BAE as well as the BOT in December.

### Non-Package Activities

- Monitoring and Position Recommendations on Bills and Resolutions (Matrices 1-4)
- Coordinated advocacy on issues affecting Native Hawaiians
  - Direct impact on OHA
  - Broad lāhui issues – ‘ohana, culture, ‘āina and wai, educational pathways, health outcomes, quality housing, economic stability
- PLT Working Group to determine OHA’s pro rata share
  - Pursuant to Act 226, SLH 2022
- Partner with other advocates whose work intersects and aligns with OHA’s efforts

Other activities here. This slide has not changed since the last time. I did just want to highlight that coordinated advocacy with the start of the Legislative Session just about two months away. We are starting to organize and hear from other partners, both past and present, and so you know, we continue to work with Native Hawaiian organizations, but I would say I’ll specifically call out that the ACLU of Hawai‘i on the issue of juvenile justice reform, for example, something that does impact our Native Hawaiian families. So we are trying to partner with them. That’s a newer partnership that we did have as well this year, and we’re looking to try and continue with that. And then again, you know there are other partners that the Board is aware of and that we could and should work with. We’re always open to that, and I know this pau, but I did want to just say one quick reminder that you know for us I want you to know that a whole lot of work is being done on OHA-2 our Kaka‘ako Makai residential repeal bill. For I think some other obvious and maybe some other reasons. You know, just a reminder that it is a very complex and complicated issue from a legal standpoint, from a political lens as well as the strategy to achieve some of the goals we’ve laid out here and with that you know that was my quick overview of this. I know we have some others on, but we do want to of course open to questions and I’ll just give you a heads up that depending on the question, we may have either Mona or Ka Pouhana for OHA-1 and then Casey in his land director hat for OHA-2 to help answer questions, but with that Chair, very happy to try and get any clarity for members.

**Chair Akaka** recognizes **Trustee Ahuna**

**Trustee Ahuna**: Thank you, Chair. I just want to make sure it's January we're coming up for the Legislative session. You said you were the Interim Chief Advocate. Who is public policy? Who is filling in these roles? Or who is doing all the work, like who is going to be doing everything?

**Chair Akaka** recognizes **COO Brown**

**COO Brown**: Mahalo, Trustee Ahuna. So Capsun is serving as the Interim Chief Advocate and we've just hired on the public policy side with the state focus we've just hired our public policy manager. Outside of that
we are still in mad recruitment mode. We're looking for qualified candidates. So we're a little, we're sort of similarly staffed to last year in that respect. You know with that team, but it's not going to stop us from fulfilling our duties. We're finding a way to manage what Capsun just presented.

**Trustee Ahuna:** One of my biggest concerns last year, HB499 came up and we did absolutely nothing.

**COO Brown:** What was HB499 again?

**Ka Pouhana Hussey:** The land lease, the extension of the land lease.

**Trustee Ahuna:** We gotta make sure we have people in these places if we're going to do this. We cannot go on not knowing and or two guys doing all the work and then we're gonna, you know, the same thing happens, you know, like last year. So I just want to make sure we're doing this right. Thank you.

**Interim Chief Advocate Poe:** Mahalo for the concern, Trustee. You know the burden or sorry, the realization of the nui kahana here is not lost on me. And what I would say is you know, just like we would probably do with, you know, within our own 'ohana, you know we're calling other folks for us to help kōkua where they can so I do want you as well as the Trustees to know that we often have our Community Engagement staff available to help as well. I mean this is OHA wide kuleana and we are all trying to support that and Trustee, for the specific example that you brought up. You know, I do want you to know and all the Trustees to know that if you know, when we do think this is our best read of the situation and if we have missed something please you know, I would encourage you to let us know during the BAE meetings and we can definitely do a better job if we're all being maka'ala about things.

**Trustee Ahuna:** Thank you for saying that, 'cause the last time people were coming, beneficiaries were coming and saying it and we still did like there was nothing connected to it. You know what I mean and it just went on, like we just let it go. Thank you so much, I was just concerned, those are my concerns. Thank you.

**Chair Akaka** recognizes Trustee Trask

**Trustee Trask:** Thank you. Colleagues, when I look at what we're anticipating in the coming Leg. Session, a few things come to mind. The Legislative PLT Working Group is supposed to be looking at OHA's pro rata share. I don't think that there's any way this is going to be resolved in one Legislative Session. And if I should be one of the ones from OHA that sit there, I'll tell them. I see it happening, taking at least two to three years. And the reason why is we're already seeing it at OHA in our PLT PIG. Not only looking at current lands and revenues from it, but some areas where we consider that it's greatly, greatly undervalued. Example, our current Advocate Kealoha Pisciotta got one lease for one telescope less than two weeks, millions of dollars paid. Yeah, how much do we get from OHA? $0.20 a year, so I think that's just one real clear example the problems that we're going to have. But we have disbanded our Public Land Trust PIG group. So I really, you know, I really think before the session opens, better consider putting the PLT PIG group back, including with Sherry. Because things are going to come up in the Leg. and we need to be on it, and we can't be bringing it in every two or three weeks to the Board yeah, so we need to get ready for it.

One thing I had just wanted to ask is I didn't understand the previous statement about we're talking with the ACLU. We're looking at a partnership, that is not in these materials. I'm extremely concerned about it, colleagues. When 60 plus kupuna got arrested on Mauna Kea, two of which are on your current Board, I had gone to the ACLU for no right more critical than the right to worship the Akua, and the ACLU played games for weeks. And then in the last meeting I had with them, they told me, you know, we cannot. We cannot actually work with you folks Hawaiians on this kind right to worship God thing on Mauna Kea because the Attorney General who is now the Executive Director of the ACLU was part of the State AG team to prevent us from resolving Mauna Kea problems. So you make a mention here of working with ACLU in a partnership. I do not see it. In the Minutes for this meeting, I'm requesting a full disclosure in writing and I'm cautioning you right
now. We sought assistance from the American Civil Liberties Union. They couldn't protect our right to worship God. I'm very kānalu, very. They might have some new folks over there, but you better check it because a lot of the people that go to the ACLU are coming from the Attorney General's Office of the State. You know, I just want to object to that and I want some disclosure, who is talking to the ACLU? What is the nature of your discussions? Do you have documents? Do you have emails or documents please send them to me. Yeah and you might wanna discuss with them their previous refusal to assist 60 plus kupuna trying to worship there. They disclosed the conflict, but you know whoever is talking with ACLU now and looking at a partnership, I would like you to disclose it and disclose it fully. Who are you talking to? How long you've been talking to them? I would like to get some paperwork on it, all the emails, all of it.

Chair Akaka: Mahalo, Trustee Trask. Capsun.

Interim Chief Advocate Poe: Yes, to Chair and to Trustee. I definitely heard you and feel you loud and clear there. I did want to apologize then you know, I didn't mean to maybe push the conversation in that direction. I meant it as just a potential you know partner as far as our advocacy efforts go. I did not want anyone to think that this was in a legal sense. We of course, our primary partners are other Native Hawaiian organizations. The Department of Hawaiian Homelands and Kamehameha Schools come to mind and we do much of our coordinated advocacy there together and Trustee, you know, the ACLU, I know you brought up several issues there, and so that may be more on the legal side. Juvenile justice was an issue that I just specifically brought up because OHA was pushing for that in the past session and so we continue to do that. I don't want you to anyway, I'll just maybe perhaps leave it there and figure out how we can properly notify the Committee and the Trustees and also to maintain your buy in and trust of the efforts that the Administration is taking on behalf of the organization.

Trustee Trask: You know it's not a question of trust of my own staff. It is a question of experience with people calling themselves the American Civil Liberties Union and let me tell you, I was a member for years all the way through law school. They're the ones that got me to go work with the folks who were fighting for a fair wage in California. But the ACLU on the continent is not the ACLU here. I would be very cautious with them and I'm going to track it. I'm going to track it because the ACLU also participates in things like legislation and I would not trust them on the protection of any of our rights or advocacy of any of our rights. Thank you.

Interim Chief Advocate Poe: Mahalo, Trustee and just Chair and Trustees, I really do appreciate that feedback and that helps us be maka'alala, both with what we're advancing, who we might be opposing or questioning, and also who we work with so we will keep that all in mind, mahalo.

Chair Akaka: Mahalo, any other questions or comments? Ka Pouhana, COO, Capsun, is there anything else more you'd like to share?

Ka Pouhana Hussey: There isn't Chair Akaka, but what we wanted to point out to the Board is the motions that are there are similar to the motions that were there last year. So we asked for approval of OHA-1 because that's already drafted. You have a copy and the methodology and the amounts are there. OHA-2, we are asking for conceptual approval subject to coming back to the Board for final approval before submission. The submissions are generally at the end of December, and then motion three is again similar to allow Administration to make drafting and editing before final approval. You know making sure spelling, titling, all of that kind of thing. That's normally what we ask for and then motion four is about affirming our coordinated advocacy that even though we only have two bills which are pretty meaty bills, that we still participate in legislative hui, we participate in advocates the NHPI-3 Committee. Any of the other advocates that come to OHA to be able to also advocate, and what we use is the criteria of previous positions that have been taken in terms of that will also be still tracking OHA impacted bills, so these are the motions that are similar to a year ago when we asked for approval.
Board Chair Hulu Lindsey: I move that the Board approve the measure entitled OHA-1 – RELATING TO THE BUDGET OF THE OFFICE OF HAWAIIAN AFFAIRS Approve the measure entitled OHA-1- RELATING TO THE BUDGET OF THE OFFICE OF HAWAIIAN AFFAIRS, to be included in the 2023 OHA Legislative Package as drafted at Attachment A.

Trustee Trask: Second

Chair Akaka: It’s been moved and seconded. Any other discussion Members? Seeing none, Brandon can we please have a roll call vote.

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

Board Chair Hulu Lindsey: I move that we Approve the drafting and submission of a Kakaʻako Makai residential repeal focused bill for submission to the 2023 Legislature, that considers the: 1) Elements and conditions of the 2012, State of Hawai‘i, $200 million, 30 acres, 10 parcels of the public land trust revenues settlement, for 1980-2012; 2) Outcomes of SB1334 and HB1267 from the 2021 Legislative Session; 3) Additional information obtained during the drafting process; 4) Titling of the measure for strategic and clarifying reasons; and 5) Labeling of the measure as OHA-2 for tracking purposes.

Trustee Trask: Second

Chair Akaka: It’s been moved and seconded. Any discussion Members? Seeing none, Brandon can we please have a roll call vote.
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**TOTAL VOTE COUNT** | 6 | 1 | 0 | 2 |

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

**Chair Hulu Lindsey:** Madam Chair, I move that we Approve drafting and editing measures, to: 1) Make, appropriate, technical, ministerial, non-substantive edits for style, clarity, consistency, and accuracy of the final measures; 2) Add preamble language in the measure(s) for framing and editorial purposes, as needed; 3) Title the measures for strategic and clarifying reasons; 4) Label the measure(s) for ease of tracking; and 5) Return to the Committee on Beneficiary Advocacy and Empowerment (BAE) and the Board of Trustees for approval action prior to the bill submission deadline established by the State Legislature.

**Trustee Trask:** Second

**Chair Akaka:** It’s been moved and seconded. Any comments Members? Trustee Lee.

**Trustee Lee:** Thank you, Madam Chair. Just so the Members know, I’ll be voting no on the next two motions. This practice of codifying job descriptions is just crazy to me. This is the job description of our advocacy department. This is the work that they should be doing and as it states in the motion that they’ll be bringing all of this work back to the Board. I mean, back to the Committee for approval. Why we need a motion and to vote on approving them doing their jobs. I do not understand, so I will be voting no on the next two motions. Thank you, Madam Chair.

**Chair Akaka:** Members, any other comments? Seeing none, Brandon can we please have a roll call vote.
**MOTION:** [ ] UNANIMOUS [ X ] PASSED [ ] DEFERRED [ ] FAILED

Board Chair Hulu Lindsey: Madam Chair, I move that we Approve OHA’s participation in 2023 coordinated community advocacy efforts in alignment with: 1) OHA’s mission, vision and values; 2) Strategic Foundations (ʻOhana, Moʻomeheu, ʻĀina); 3) Strategic Directions (Educational Pathways, Health Outcomes, Quality Housing and Economic Stability); and 4) Previously approved Board positions and resolutions; with the understanding that Administration will bring forward to the Committee on Beneficiary Advocacy and Empowerment (“BAE”) 2023 State Legislative matters in the normal course of established processes (e.g., matrices, position changes), in addition to informing BAE members, and the Board of Trustees as a whole, regarding status of support(s) of community advocacy efforts.

Trustee Trask: Second

Chair Akaka: It’s been moved and seconded. Any other comments Members? Seeing none, Brandon can we please have a roll call vote.

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12:37 p.m.
**III. ANNOUNCEMENTS**

NONE

**IV. ADJOURNMENT**

Chair Akaka: I will entertain a motion to adjourn.

Board Chair Hulu Lindsey: So moved.

Trustee Waihe`e: Second

Chair Akaka: It’s been moved and seconded. Any discussion Members? Seeing none, can we please have roll call vote to adjourn.

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**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 12:39 p.m.
Respectfully submitted,

____________________________
Mark Watanabe Trustee Aide
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment (BAE) on.

____________________________
Trustee Kaleihikina Akaka
Chair
Committee on Beneficiary Advocacy and Empowerment