PHONE (808) 594-1888
BOARD OF TRUSTEES
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Brendon Kalei'āina Lee, Vice Chairperson
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Dan Ahuna, Kaua'i & Ni'ihau
Kalei Akaka, O'ahu
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Carmen Hulu Lindsey, Maui
Robert K. Lindsey, Jr., Hawai'i Island
John Waihe'e IV, At-Large



STATE OF HAWAI'I OFFICE OF HAWAIIAN AFFAIRS

MEETING OF THE BOARD OF TRUSTEES

DATE:

Thursday, April 4, 2019

TIME:

10:00 am

PLACE: OHA Board Room, Nā Lama Kukui

560 N. Nimitz Hwy., Suite 200

Honolulu, HI 96817

AGENDA

- I. Call to Order
- II. Approval of Minutes
 - A. February 28, 2019[†] (Workshop)
- III. Public Testimony*
- IV. Unfinished Business
 - A. CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities
- V. New Business
 - A. Committee on Beneficiary Advocacy and Empowerment
 - 1. 2019 OHA Legislative Positioning Matrix 2**†, April 3, 2019
 - B. Deliberation and decision making on the Report by the Permitted Interaction Group on Organizational Guidance of its findings and recommendations. Pursuant to HRS §92-2.5(b)(1)(C).
 - C. Action Item BOT #19-04: Approve the Five (5) Board Governance Framework Elements
 - D. Action Item BOT #19-05: Approve the formation of a Permitted Interaction Group to investigate the development of L-Lahui policies for OHA's Board Governance Framework.
 - E. Consultation with Kumabe HR LLC to assist the Board in conducting its performance appraisal of OHA's CEO pursuant to Section III of Contract 3147 (if necessary, the Board will recuse into Executive Session to consult with Board Counsel Robert G. Klein, Esq., *Pursuant to HRS §92-5(a)(4)*).
- VI. Executive Session[‡]
 - A. Consultation with Board Counsel Robert G. Klein, Esq. and Kumabe HR LLC re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the Board's obligations and responsibilities to conduct its performance appraisal of OHA's CEO in accordance with Section III of Contract 3147. Pursuant to HRS §92-5(a)(4).
- VII. Community Concerns*
- VIII. Announcements
- IX. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at telephone number 594-1772 or by email at: rainag@oha.org no later than three (3) business days prior to the date of the meeting.

*Notice: Persons wishing to provide testimony are requested to submit 13 copies of their testimony to the Chief Executive Officer at 560 N. Nimitz. Suite 200, Honolulu, HI, 96817 or fax to 594-1868, or email BOTmeetings@oha.org 48 hours prior to the scheduled meeting. Persons wishing to testify orally may do so at the meeting, provided that oral testimony shall be limited to five minutes.

**Notice: Trustees may establish or revise an OHA position on ANY proposed bill / resolution / executive message currently moving through the state legislature or other relative elected body. The Matrices, which are available for public review in the meeting room at this stated meeting, provide a brief description of each bill, the bill's number, the bill's title, the bill's intent, and the proposed and specific OHA position on each measure, current through 4/3/19. However, the Trustees both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrix, as well as those that time does not permit to be placed on the Matrix, in order to discharge their fiduciary obligations as Trustees of the Office of Hawaiian Affairs

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

[‡] Notice: This portion of the meeting will be closed pursuant to HRS § 92-5.

Trustee Colette Y Machado
Chairperson, Board of Trustees

3/29/19

Date

Office of Hawaiian Affairs Board of Trustee Meeting April 4, 2019 10:00 am

II. Approval of MinutesA. February 28, 2019 (Workshop)

STATE OF HAWAI'I OFFICE OF HAWAIIAN AFFAIRS 560 N. Nimitz Highway, Suite 200 Honolulu, HI 96817

Minutes of the Office of Hawaiian Affairs Board of Trustees Workshop Thursday, February 28, 2019 10:00 am

ATTENDANCE:

TRUSTEE BRENDON KALEI'ĀINA LEE
TRUSTEE LEINA'ALA AHU ISA
TRUSTEE DAN AHUNA
TRUSTEE KALEI AKAKA
TRUSTEE W. KELI'I AKINA
TRUSTEE CARMEN HULU LINDSEY
TRUSTEE ROBERT LINDSEY
TRUSTEE JOHN WAIHE'E IV

EXCUSED:

TRUSTEE COLETTE MACHADO

ADMINISTRATION STAFF:

KAMANA'OPONO CRABBE, CEO
SYLVIA HUSSEY, COO
MOMILANI LAZO, CEO
MILES NISHIJIMA, LPD
LISA WATKINS-VICTORINO, RES
MEHANA HIND, CE
KAHEALANI PELERAS, CE
CARLA HOSTETTLER, SP
JIM MCMAHON, ADV
JIM PATTERSON, PROG
KE'ALA NICHOLS, ADV
KEITH GUTIERREZ, RES
KYLE-LEE LADAO, OUTR

BOT STAFF:

LŌPAKA BAPTISTE
DAYNA PA
LAURENE KALUAU-KEALOHA
LEIANN DURANT
ZURI AKI
LEHUA ITOKAZU
PAUL HARLEMAN
MAQRIA CALDERON
CLAUDINE CALPITO
RON PORTER
KAUIKEAOLANI WAILEHUA
KAMA HOPKINS

GUESTS:

KAMUELA KALA'I CLARE APANA

I. CALL TO ORDER

Vice Chair Brendon Kalei'āina Lee Calls the Board of Trustees meeting to order at 10:00 am. Roll call is taken; Trustees Ahu Isa, Ahuna, Akina, Carmen Hulu Lindsey, Robert Lindsey, and Lee are present, constituting a quorum. An excused absence has been received by Chair Colette Machado. Trustee Kalei Akaka and Trustee John Waihe'e IV are expected to are expected to arrive shortly.

Consistent with the Sunshine law, our discussions and decisions must be limited to items identified on a properly noticed agenda, which allows the public to know what will be discussed and gives an opportunity to provide testimony. While this requirement aids public involvement, it also limits our ability to respond to matters not on our meeting agenda.

With that in mind, here are some reminders regarding public testimony:

1. We request that individuals interested in providing testimony or comments before the Board complete the "Public Testimony, and Community Concerns Form" located on the credenza.



- 2. Testimony is limited to five minutes. We have time cards.
- 3. If you have a handout that covers your testimony, we ask that you refrain from reading it aloud in its entirety. We will accept your written testimony but ask that you summarize your thoughts.
- 4. The opportunity to testify should not be misinterpreted as an opportunity to question BOT members; questions/requests for information will be referred to administration for follow-up.
- 5. Individuals who will provide testimony on matters on the agenda will have an opportunity under Public Testimony.
- 6. As we have done in the past, we will allow individuals to comment on matters not on the agenda. However, Trustees cannot discuss or make decisions on matters NOT on the agenda. Individuals who wish to address matters NOT listed on the agenda will have an opportunity to do so under Community Concerns.

Mahalo nui for everyone's kōkua.

With that we will move to II. Public Testimony.

II. PUBLIC TESTIMONY

Vice Chair Brendon Kalei'āina Lee – Claire Apana. Aloha, so you are going to give public testimony to our workshop on Strategic Planning today.

10:03 am Trustee Kalei Akaka arrives.

Ms. Claire Apana – Yes I am. Thank you for this opportunity. I would like to give you two different areas that I think are really priorities that you must consider and implement so that this board and this organization can go forward. One is of course the iwi kupuna. In the iwi kupuna issue is not only our genealogical and historical ties to our lāhui and our people. But I don't see a real connection to honoring them respecting them and demanding that they be respected as well as our people in this system that we have been put in to. I believe that is very, very important what is happened is, instead of putting money into defending the 6e laws and the 343 environmental laws, which give us rights as kanaka people and in this system of Hawaii State no money has really been put there. For myself I have experience having to go out and get our own lawyer to defend these things, which we come, I have come for years asking for help but no money or priority is put upon the most important thing to our culture, which is our ancestors and our ancestral heritage. I believe that you asked for an update on that lawsuit and I will be happy to give it to you in Community Concerns. But we have had to fight tooth and nail for years to get to the point of being able to defend these laws, which gives us rights. I believe that should be a very big priority for this board.

The second is that I witnessed the way a member of the public who has come time and time again to give you information and mana'o was treated last week. I think that was deplorable. I think the second priority should be the way you interact with the beneficiaries who are the whole and sole reason for having OHA. I myself have experienced since the very first time I came here a great amount of resentment and just outright rudeness. I come as a member of the public and a beneficiary; I don't come here for nothing. I don't come here to be abused verbally by the Chair. I noticed that nobody spoke up for this person. Nobody defended her and her right to speak. It would be easy for her to come into your agenda items but nobody helped her. Even in a court of law, the Judge has to help a pro se plaintiff. Nobody helped her, where is our aloha, where is your aloha for the beneficiaries. My God, why should we come here to give you information, to tell you what's happening in the pulse of our State and our Country so that we can be abused. The very least could have been respectful, respectful treatment. I do not see that and I myself have been the subject to that time and time again by the Chair. I don't hear anybody standing up to say, listen, let's have a little more respect. I have to say the very first time I couldn't get my name up because the Chair interrupted me three times. Haunani Apoliona finally said why don't you let her talk. That's when I got to say my name.



This has been the history of coming to this board of Trustees and it's not always been that way and the times that it hasn't it has been a fabulous, wonderful experience of sharing and of brining information to this board. I believe that it can be done and it should be done, it should be required that the board treat the beneficiaries with respect. If you need to explain better to people then you should prepare people better as they come in the door. You have a lot of staff milling around, you could prepare people better so they know how to put themselves into the agenda and be on task. Thank you very much.

Vice Chair Brendon Kalei'āina Lee – Mahalo. We have anyone else listed for public testimony. Mahalo moving to our only piece of agendized business today. The Board of Trustees Workshop for our Strategic Plan 2020, I will turn the time over to Kamana'opono Crabbe.

III. BOT WORKSHOP

A. BOT Workshop Two for OHA Strategic Planning 2020+, Phase II, Discussion of priority areas for new OHA Strategic Plan

Kamana'opono Crabbe – Mahalo Vice Chair Lee. I would ask Dr. Lisa Watkins-Victorino to come forward to present. This is the second workshop, the second phase. We have one more workshop remaining next week. As you recall last week we went through the loop process of identifying priorities. We will continue with the workshop for this morning for our second workshop.

Lisa Watkins-Victorino – Aloha, thank you for engaging in workshop number 2 for phase 2 of our strategic planning process. The goal for today is to try to move us to get to those priority areas, trying to identify the priority areas. If we are able to do that by the end of the workshop then, what was scheduled to be a workshop can basically be the vote we can prepare the action item for that. But if we need to continue discussions, we have next week as well to continue our discussions.

(Begins PowerPoint presentation, please see attached presentation.)

10:10 am Trustee John Waihe'e IV arrives.

The beginning of each time we come forward to talk about the Strategic planning process we are just going to be showing the phases, these slides are not new to you if you've been here at the table when we presented. This is just to remind us that right now we are on agreement of priority areas, we are in phase 2. This is our planning process timeline. We are trying stay on that timeline. Then I thought since we are trying to get to the priorities area today I just included this slide from the initial strategic planning process presentation back in January. We had talked about some of the differences in terms of our process prior and what we are currently trying to do. I just really wanted to highlight that first row. Which is the 6 priority areas that we had and then now we, from the different feedback, not only at the table but from mere discussions in terms of staff interactions with our community, different committees we sit on. One of the things we've been talking about and has come to the table, maybe having more focused, or less priority areas and then really utilizing the strategies and pushing out the strategies to achieve those areas. I just wanted to remind us of some previous discussions.

In our last workshop we talked about the conditions and you all had your binders, we talked about what different conditions were and how were they related and we went through an exercise where we created all of the different loops where you connected all of the different conditions for thinking about the well-being of native Hawaiians. We had everyone do their loops.

(Lisa goes through each Trustees' loop, please see attached PowerPoint)

When we ended, we talked about the system network or map that arises from this kind of activity. I wanted to remind you of that last look but we all had our individual loops, after that point myself and Ka Pou Nui spent several hours taking your sheets, talking through them, talking about patterns, looking at them and trying to figure



out what are some of those themes that are coming out. I spent more time with our special projects manager Carla and we talked through it a little bit more and we utilized some analysis to do some of the structure of your particular loops. What came out you can see it all looks connected (slide 15). We tried to incorporate everyone's loops what is on the side here are what may have been not connected directly to the loops but were on the sheets and papers. Above we have kind of an organizing concept we have Trustee Ahuna's Financial, Social/Network, Expertise, Advocacy/Community and seeing how that overlays and permeates going through all of the loops and conditions. Of course OHA as leader down on the bottom throughout all of this. This is sort of the first pass of taking all of your loops and putting them together.

From there you have to look for what are the underlying structure of what all of the loops are saying and all of those connections. This is the underlying structure from those connections. (Slide 16) The circles around each of the conditions, they are in no particular order, but they are color coded to the different Trustees' loops. The more circles there are the more frequency, means more Trustees had and condition identified as part of their loops or loops.

Vice Chair Brendon Kalei'āina Lee – The four bars at the top that represent what Trustee Dan Ahuna shared, they don't correlate if you go down that all the circle's underneath line up under Finance, Social.

Lisa Watkins-Victorino – You are correct. It more of a framing of how we might perceive some of the methods that might be used. The methodology of OHA not necessarily the specific conditions. Because these method would run through all of the conditions, all strategies, all of the work that would be done.

Trustee Dan Ahuna – The circles are about the Trustees' choosing them as their initiatives. So the more circles you see the more people choose them.

Lisa Watkins-Victorino – Absolutely, it's more of the frequency. If it was, four or more we basically included that as part of the underlying structure. This is what arose from that. You can see some of these have bidirectional flow. They are influencer and influenced by, and some are more uni-directional or one way of influence. You can see all of the connections and how they are influencing each other and how they are connecting the different loops or conditions that surfaced. This is the stage that we will working on today. Trying to identify what are those priorities from your structure and how would you identify those priorities in your structures. (Different examples are shared)

Trustee Leina'ala Ahu Isa – When we talk about strategic plan we are looking at 2020 to when 2028?

Lisa Watkins-Victorino – I don't think we have. When we first did this strategic plan, proposed process and we talked about the thing we wanted. Some of the things that you had been voicing, they wanted to have more responsibility and more agile strategic plan that we could change as we are moving through. The thought for this new direction, if we have that long term vision, 10-12 year plan but we would actually be revisiting that plan at specific points like 3-4 year points. To assess and maybe change directions.

Trustee Leina'ala Ahu Isa - So it's a fluid thing.

Kamana'opono Crabbe – Just a follow up comment. When we talk about systemic change, systemic change needs time to implement, trickle down and allow for programs, activities, services to go throughout the community to impact families and then individuals. In our previous strategic plan, it was originally 6 years then we extended to 8 years. We will be evaluating in our community close out report the data from these past 8 years. Moving forward we want to think about how much time is sufficient to at least impact some systemic change but also at the time to be flexible, to be responsive so that you can continually evaluate and assess what is working and what is not and whether or not we have that kind of opportunity to shift directions quicker than latter. Most times, at least in health we look at a 20-year mark to influence chronic disease, 5 years you can look at behavioral health change, substance abuse is along the spectrum of 5-10 years.



Trustee Leina'ala Ahu Isa – Now with technology being so fast, you talk about health they have instruments that uses robotics.

Lisa Watkins-Victorino – The other thing we wanted to do from lessons learned is to make sure that we have an implementation plan that really allows us to look at all the strategies we develop and how are we implementing that connected in a more purposeful way. Also, make sure we have a transition plan as well.

We are actually going to do the activity now. We are going to give you some time you will have a sheet and markers. This is our opportunity to cluster and figure out what you would call that cluster.

Trustee Keli'i Akina - What are we marking on these charts?

Lisa Watkins-Victorino - You will be looking through and circling what conditions you think go together.

Trustee Keli'i Akina – When you say circle what conditions go together, we make a circle including two or three things.

Lisa Watkins-Victorino – If you would like, you can do two or three things together that is fine. Or you can have a particular condition is a priority area.

Vice Chair Brendon Kalei aina Lee – Before we begin this exercise, in the spirit of free flowing thought and information on working on this strategic plan because we are in a workshop. Without objection, the Vice Chair will waive the rule of order of having to see permission to speak. If we start getting out of hand, I will bring it back to order.

(Trustees begin clustering activity)

Lisa Watkins-Victorino – In the next phase of the activity I am going to have you share out what you circled, what you see is that priority. We will list everyone's identification of their priority areas then we will have a discussion. If we end up with 20, we may want to collapse them.

Vice Chair Brendon Kalei'āina Lee — I broke it down in to 4 major priorities which I thought would be a good basis for things that over the life of this agency would never change. I broke it down to 'āina, education, economic and culture. Those would be four pillars that no matter what we did strategically in the near or very far future those things would never change. The first one I started with was 'āina, under 'āina the things that I thought were relevant for what we were provided, I have farming, health of kai, fishing, post-secondary education attainment, cultural based education, early education, high school education attainment and stem skills...

Lisa Watkins-Victorino- So this set right here.

Vice Chair Brendon Kalei'āina Lee - The next one for education. I'll start with the ones that are mirrored in 'āina. Early education, cultural based education, high school education attainment, post-secondary education attainment, leadership, stem skills, financial literacy, employment, business opportunity, intimate partner violence, safe schools and neighborhoods, access to capital, income and earnings, financial net worth, substance abuse, behavioral health and as a breakout form the cluster geographical distribution of population.

The next is economic would include early education, cultural based education, State Economic context, high school education attainment, post-secondary education attainment, leadership, stem skills, financial literacy, employment, business ownership, safe schools and neighborhoods, housing costs, access to capital, occupation, home ownership, housing supply, financial net worth, income and earnings, geographical distribution of population, Hawaiian Home Lands and childcare costs, so pretty much the whole center.

The last one was culture. I have farming, health of kai, fishing, early education, cultural based education, high



school education attainment, post-secondary education attainment, leadership, and stem skills.

Lisa Watkins-Victorino – Do you have overlap?

Vice Chair Brendon Kalei'āina Lee – Lots of overlap.

Trustee Robert Lindsey - For me I always want to keep it as simple as possible. I have only one big priority and that is education. I think there is a historical basis for me to coming to that conclusion. In 1978 when a survey was done soon after OHA was established, the big priority in 1978 was education. That priority surfaced again in 2008 when we worked on the strategic plan that we are closing out. Education was at the top of list of priorities for our people. On the charts that you circulated this morning, for me everything is clustered under educational pathways. When it comes to education, it doesn't matter if one wants to be a kalo farmer, one wants to be a fisherman, a lawyer, doctor, a nurse, mason, plumber, electrician. When I focus on education, it's just helping our people to have those skills and those tools that they will need to survive in the world we are living in today. When I look at our past, I think of someone like Princess Pauahi, who saw the need in helping her people to be good and industrious men and women. How she went ahead and created Kamehameha Schools. When you look at our society today, a lot of the Hawaiian leaders in our communities are graduates of Kamehameha. I think of Queen Emma, in her time she believe in mind body and spirit. So for the mind she created Saint Andrew Priory, for the Spirit Saint Andrews Cathedral, for the body and the spirit Queens Hospital. My stool has four legs, it has one big leg and that is education. The other three legs are health, housing and economic self-sufficiency. But I believe it all comes under that big leg, education. If our people have education and they are strong in their skills for whatever they would want to pursue in life they will be successful.

Trustee Dan Ahuna – Its funny, I just got off the phone with my wife. My wife told me don't sound too smart and don't use intellectual words. Just be yourself. The reason I am saying that is because I want to come from a point of view of who I am. Kanaka. I think it's very, very important to understand kanaka. The reason why I say this is because I circle everything again. When we talk about priorities, we talk about what you like, we talk about what you like, you like, I like, you like. What if our beneficiaries like something else? What if we cannot serve that priority? What if we cannot meet the priority objectives? Everything is of value; there is not one thing that is more than the other. We are here for four years and every two years there is change. I cannot plan for 6-8 years. I am hoping that the strategy department does that for us and we meet together at the table. So we can help beneficiaries.

For me I come from a kanaka standpoint that everything we talk about is every important. How we work in our role, our role is to mobilize our OHA resources so we can help these beneficiaries. We have beneficiaries that come to our table and say how come you cannot help us. Do you know why? Because we don't know the process and how to help. For us is knowing your role and knowing who you are, being connected, being grounded to who we are. It's in the expertise of our finance, advocacy and community that is where it's important to us. That is where we need to unlocking, articulating to our administrative staff what to do. That is all we do. They come with the information and it's us that needs to mobilize the resources so that we can help. That is how we can stay strategic. I believe in mermaids. But that doesn't mean what I feel is important, is important to someone else, that doesn't mean what we feel is important is important to our beneficiaries. The thing is we cannot be pointing to each other saying, that is what you guys wanted. It isn't about what I like, I like it all, we should all like it all that is why we are here. You have to know who you are helping. For me how do we unlock this potential at this table? That is where I am. How do I unlock this potential? I want to provide the best information for us to be strategic in how we make this decision. I want to make sure that we delegate authority to administration so they can provide information so that we can make these great decisions.

For me to just place, this one is important, this one is important, sorry, and that is subjective. That is just important to you, you, you, I think it's all important. So why can't I use all of these. That is all I am saying. But how we do it is in the areas at the top. What I am trying to say is we have to know who we are helping. We do things; we delegate grants to do certain things. Sometime we grumble, how did this organization get it, they are a huge organization. Well we don't know who we setting the money for. We don't know how to maximize them.



Because you got to know your role that is all I feel. I don't want to throw curve balls; it's not a baseball game or anything like that. All I am saying is this, you guys for me and to maximize our role you have to understand there is a financial value and a social value those things interconnect. You cannot look at one without the other. There is no such things as spending too much. It's how we spend that is important.

Vice Chair Brendon Kalei aina Lee – Trustee Ahuna can I ask you a question. So the four expertise you pointed out at the top, the financial, social network, enterprise and advocacy and community, could you label any of those under the cluster underneath or do you fell that all four relate to everything underneath?

Trustee Dan Ahuna – We don't know how it relates. Every time we get information, it's important. The more information we get the more we can make better decision. We want to be efficient on how we delegate resources. We want to be how we use and implement. What I believe is that all of this is important. It's the strategy that is overlapping that is when we have to be more strategic.

Vice Chair Brendon Kalei aina Lee – Trustee Ahu Isa you want to go next.

Trustee Leina'ala Ahu Isa - No, we can go around the table.

Trustee Carmen Hulu Lindsey – I wasn't here at the last meeting I am trying to figure out what the concept is. I believe that as we studied from last year in trying to line up the priorities that we have for a new sustainability plan this is the outcome of the workshop from last week. I am hearing that from the people that talk with me, the beneficiaries that one of the highest priorities is housing. I have clustered homeownership, housing costs, access to captial, housing supply, financial worth, income earning, Hawaiian Home Lands and childcare cost in the housing circle. Mainly because everyone is talking about affordable housing but affordable to who? I think this is a very critical area that OHA has to really zero in on because \$350,000 house is not good enough for some of our people. They cannot afford a \$350,000 mortgage. I think high concentration needs to be given in our strategic plan on how we going move our people into a home. If we need to partner with Hawaiian Homes. If they can build commercial projects we can build a commercial project that is not going to separate us from having to have the quantum but the part of the revenue for Hawaiian Homes plus lower the cost of housing for our people. That was just my thought on housing.

In order for us to be able to move families into homes, the family needs to strong. I have circled the intimate partner violence, substance abuse, behavioral health, and the physical health. Because without taking care of that problem we don't have a family and we don't have anyone to move in to homes. There is no one to go to school. I think the family strength is very important. I also think education is a very important thing because our people cannot just be satisfied with graduating from high school because that is not where it is anymore. We need to work on our people. I see it happening in our Colleges. I sit on the Board at UH Maui. I see them pushing and pushing for our Hawaiian people to finish college. It is so important to finish college so they can get jobs at a higher rate and be able to take care of their families.

I also have circle financial, State Economic Context, business ownership, occupation, employment, financial literacy, post-secondary education attainment. If it takes more school to get where you want to get then lets help those people. I think that is what we are here for. To be able to help our people along financially. I think we are the most strongest in culture. Because we have given it a lot of emphasis and I think, we should continue that. I feel strongly about that especially when it comes to our water problems. In order for you to have farming and even fishing, we need to be sure that we have adequate water on all islands. Our constant fight for our equal share of the water has been very helpful.

Trustee Keli'i Akina – This has been an interesting experience and a very valuable one. I was very pleased by the examples that have been presented here. I think each of them have done well. We have 35 different conditions and the fact is, to reflect what Trustee Ahuna said, I think we have to touch all of them in some way or another. But how do we group them, how do we prioritize. I choose example number 2 if you can turn to that page. Example number 2 has all of the 35 conditions that we want to affect. So we will be able to touch everything. I



liked the way they were grouped together. Physical well-being, homes, education and we also talked about the social environment and the 'āina based. That clearly reflects our values around the table because all Lisa did was group all areas together that we had discussed so we are in consensus that these are important. But they also reflect something that we have data one.

In 2015, the board commissioned a study by SMS Research and it showed that Hawaiians wanted four things above all: housing, jobs, education and health care. They wanted OHA to give leadership in providing those things. They are reflected here. There are two more circle that I want to bring your attention to that are very primary. The circle is called economic development and financial empowerment. Economic development circle intersects virtually every other circle. I took the liberty of extended that circle so it also intersects social environment. In other words, we all have the insight that economic development that will empower us to get results in all the other areas. I want you to take a look at the second cluster financial empowerment. That is also intersecting almost everything. I extended it to make sure it also included social environment. We are talking about the financial empowerment of beneficiaries. If you take a look at these two clusters, which pretty much, touches every other outcome. Economic development and financial empowerment these are two big engines for driving the trust fund. What makes them unique is that they flow right out of the financial capacity of the trust fund.

The trust fund can be used for economic development of the lāhui and of the entire State of Hawaii, which is going to affect all of the conditions affecting Hawaiians. The trust fund can be used for financial empowerment of individual beneficiaries. I think they are very important in terms of giving us engines with which to drive the other outcomes. In summary our views align very closely, our priorities and they also match what the beneficiaries are telling us through our research. That it's all about housing, jobs, education and health care. What I would like to contribute to the conversation is that two circle in particular are powerful engines for us to work as a trust fund. Number one economic development, which will have an impact on the lāhui and the State. Number two financial empowerment of beneficiaries, which will have an impact on all of those who OHA serves.

Trustee Leina'ala Ahu Isa – I took example one. I did my own by looking over the book you gave us with all the statistics. Just Aunty Claire's I would place it under land and culture. Develop strategies to actively manage and mālama iwi kupuna, artifacts and increase opportunities for Native Hawaiians to rebuild, to visualize these relationships with the kupuna. Being a kupuna I can relate, how we have reached our peak, all the years of experience and seeing hardships from growing up in Kalihi to where I am now. And seeing where our Hawaiians have grown. When I was at Kamehameha strict, white dress no makeup, even boy haircuts. (Conversation indiscernible) Land and culture are important and I look at it as culture education and the land tied in to never forget that part. Of course, the financial empower. Education pathways, which takes in the STEM what, I talked about going forward and our children and how we have prepare them for the future. And housing just to have homeownership it's just so farfetched. Affordable housing for our people.

Trustee Kalei Akaka – I grouped these similar to last time. Starting with 'āina grouping that together of that being importance for us to take care of what I refer to as the four core. With the housing as one of our top priorities for our people. But in order to have housing we need to have health and wellness of the mind, body and soul. Then we need education or good trade for us to have, the right jobs to afford housing to take care of our families.

Trustee John Waihe'e IV – Lisa, earlier you were talking about how you guys spent several hours with these examples and it shows. I choose example 2 that Trustee Akina also admired. Physical well-being, social environment, educational pathways, 'āina based, home, economic development and financial empowerment. I like the way you guys did that. In terms of the one that I want to highlight, earlier that slide you showed that said Trustee Waihee I think homeownership, housing cost, income earning, employment, financial literacy, early high school, post-secondary education were the ones I had chosen.

Vice Chair Brendon Kalei'āina Lee – It's important for us as Trustees as we are moving forward in this workshop to understand that these are just exercises, this isn't the strat plan. These are exercises so that we understand how we are grouping the things that we as a board collectively come to a consensus to. The eight of us



here individually have different ideas but as we each individually share those ideas, we will see where we collectively agree on. It's not that I agree on this, I want this. Trustee Ahuna agrees on this so he wants this. It's a way for us to come to a consensus of where we all feel. These are just the examples that were provided to us for the workshop number 1. Clearly, there are lots of things on here that are not included that we are going to include in the strat plan. A good example is from our speaker earlier this morning about iwi kupuna. That is not on here but clearly that has always been since 1980 when OHA was first formed that is a priority for the Office of Hawaiian Affairs. We should all keep that in mind as we move forward.

Trustee Dan Ahuna – On the economic development, say we give money to a church to build something and they find iwi kupuna, how do we move forward?

Kamana'opono Crabbe – OHA's role typically Trustee is to comply. There are laws; both State and Federal laws in which everyone has to comply with even home residential. So those laws are enforced by Department of Land and Natural Resources, they have a sub section within the State Historic Preservation Unit. Our role in terms of advocating for Native Hawaiian rights and protections of traditional and customary practices is typically holding that SHPD process and the DLNR accountable that they oversee all of the plans. What we know today is that there is not good enforcement and compliance at City, County, State and to some extent Federal. We typically have helped different beneficiaries throughout the lifetime of OHA in providing those services and research. We have given research and data to the Maui beneficiaries to help form their legal case and litigation. Although the board has not entertained to move forward on litigation. We have also mobilized our public policy group to provide, I believe Trustee Carmen Hulu Lindsey provided testimony at the City Council level.

Vice Chair Brendon Kalei'āina Lee – These are program initiatives, not strategic initiative. So we are not going to talk about this anymore. Because this is the workshop for strategic planning and so, a strategic area around this would be a high-level policy of advocating for iwi kupuna. What Trustee Dan Ahuna is talking about is a much lower level that branches off and comes down from the strategic plan into programs. We are not here for a workshop on programs. That is not actually the kuleana of the board.

Trustee Dan Ahuna – Can I be clear? What I am talking about is the strategies came from the financial, social expertise advocacy side. That is what you collect your information on that iwi kupuna. I just want to make sure that we understand how we work to solve the issue is very important to me. It's how we get there. For me those issues are real to me.

Vice Chair Brendon Kalei'āina Lee – They are real to all of us Trustee.

Trustee Dan Ahuna – I want to get there. For me I really want to learn how, maybe next time how we can do a better job. I don't know if we lost money in that deal, if we still talk with those people. I don't know where we are at. I am just using this as an example that everything over laps through these four areas.

Trustee Carmen Hulu Lindsey – I am just thinking that while we are planning this strategic plan to accommodate what Trustee Ahuna just mentioned, that we get more detailed in our planning processes. Because as it turned out the subject that he is discussing is not related to SHPD. It is related to a Church category. When a graveyard is in a Church, it gets exempted from SHPD. I think our strategic plan should include the processing of all places to do with our iwi kupuna. Even development that we haven't even discovered and yet once they start tilling up the ground the iwi kupuna come up what do we do. We are struggling with that on Maui. We need to get in deeper processes at OHA; OHA needs to get a process little bit deeper. We are getting help, but we have been flapping around in the wind for the last couple of years and not finding solution. Not having enough people working at DLNR that kind of thing. In our strategic planning maybe, we can have processes that is more articulate so that we can solve the problems that we are facing today.

Vice Chair Brendon Kalei'āina Lee – Mahalo Trustee. I think all of us here at the Board as well as Ka Pou Nui would agree with that. But we can't develop processes until we have a strategic plan. Based on a lot of the discussion here at the table today a consensus will come out at the end of this process that iwi kupuna is important



to us and will be a part of our strategic plan. Once we have adopted that strategic plan then the process will begin of developing those procedures and processes to address those individual types of issues in the future.

Lisa Watkins-Victorino – That is part of that the planning that we will be doing. But first, we have to get to our levels and what would you include in that and iwi kupuna might be included in there. From there when we are identifying strategies and you get more feedback from the beneficiaries as well, then we move into the strategy phase where we get into more of the processes that are utilized to implement those strategies.

Now, we are going to take a look at our list and start having some discussions about some of the areas that you have in common and what that means to you. What we are going to do is that we had six focal areas in our last strategic plan so know we want to have an open discussion. So in our 'āina what are things that we are going to include in there beside those conditions are we going to say education and 'āina is there some link here that we want to call out as a specific. A specific priority or are we going to leave them separate then try to flesh out what that means.

Looking at this list we see overlap. Is there anything here that anyone has mentioned? We are not going to lose conditions it's the way we are going to, strategic direction, how do we plan for it and how do we utilize all of the method to really touch all of these things. We do need some sort of organizer on how we move forward.

Trustee Carmen Hulu Lindsey – I think we have to separate the legacy from the commercial when it comes to 'āina.

Vice Chair Brendon Kalei'āina Lee - Trustee you mean as far as investment wise.

Trustee Carmen Hulu Lindsey – Everything how we advocate, investment, how we utilize it, how we develop it. We can develop some of our legacy lands within its permitted uses.

Lisa Watkins-Victorino –So if were to develop a priority area around 'āina, you would want to make sure that we have a differentiation between legacy and commercial.

Kamana opono Crabbe – Maybe we want to clarify again. We have internal priorities within OHA, but the strategic plan is how do we prioritize different areas based on our mandate that will help the broader Hawaiian communities Statewide.

Trustee Dan Ahuna – We could write a policy on the legacy and commercial and still can act in different ways.

Vice Chair Brendon Kalei'āina Lee – We are not there yet. We are not at policies yet. But you are correct but we are not there yet.

Trustee Carmen Hulu Lindsey – The legacy we need to protect it and the commercial we have to make money off it for our people.

Vice Chair Brendon Kalei'āina Lee - Which would be policies.

Trustee Dan Ahuna – Maximize the resource.

Lisa Watkins-Victorino – At least we know this is a thought around 'āina overall. Are there any other thoughts about the list? (Conversation indiscernible)

Trustee Dan Ahuna - When you talk about 'āina, are you talking about conditions?

Lisa Watkins-Victorino – If we were going to have a strategic area, strategic direction moving forward and we want to talk about 'āina as our strategic priority are there things in there that you want to make sure that we flesh



that out to make sure what 'āina is. We can say 'āina, are we going to have a specific direction for 'āina, are we going to have a more general. Is that going to include more than what we have here.

Trustee Carmen Hulu Lindsey – Iwi has to come under culture because no matter where the iwi is we need to protect it. Even if it's not on our land, and most times it isn't.

Kamana'opono Crabbe – Yesterday's discussion with respect to one of our commercial properties. But Trustee Kalei Akaka made good point in terms of her position is that we as OHA should not sell ceded lands. The importance of land is once we give it away we cannot get it back. The value of land in traditional terms was one way of governance and self-determination. If you have land, you have resources, if you have resources you can populate. If you populate you can provide housing. If you have land that you possess you can determine the decisions on what goes on the land or what doesn't. Whether or not we want to preserve iwi kupuna that is on that land. That is important. One of the challenges of OHA is we have some legacy lands and some commercial lands. But do we have enough land that would benefit the lāhui in providing housing, economic opportunity to help our culture thrive and so forth.

Trustee John Waihe'e IV – Lisa, if we separate the 'āina issue in that way you can actually put all those things under another category. Like legacy and iwi falls under culture. The commercial can fall under economic development.

Trustee Dan Ahuna – I like maximize and help in this area. The best way to help is how we mobilize social network, expertise our advocacy again. Bringing that to the table so we can both join in to solve the issue. We need information.

Lisa Watkins-Victorino – (conversation indiscernible) When we are talking about the actually strategic direction and maximizing our financial resources in all of these areas. We are going to utilize financial resources as a method.

Trustee Carmen Hulu Lindsey – I don't think 'āina would be a strategic goal because everything under 'āina would fall under another category. Either economic development or culture or housing.

Trustee Keli'i Akina – 'Āina shows us that some of these terms operate in different ways. For example, economic development is an engine that brings us resources. But 'āina is a value that we want to purvey every single category, whether its culture or education. They are not really competing against each other but when we say our strategic plan, we have to make a difference between them.

Lisa Watkins-Victorino – What I did here at the table was housing. Should I circle that as a critical area?

Kamana'opono Crabbe – Before Lisa moves on to housing. The relationship just how you clustered it and you point to financial, actually traditionally wai or water was the source of wealth. When you look at the basic fundamental relationship between 'āina, wai and water you need to combination of both to provide economic stimulus for our population growth and the management of the resources within that section. Our current strategic plan ho'okahua waiwai economic self-sufficiency is wealth, all I am saying is conceptually, and culturally 'āina and wai together is a strong combination when you have the two. When you look at the current legal, we helped to defend Na Wai 'Eha East Maui litigation. We are looking at advocacy on all islands on water. Water in a way is the gold in Hawaii. In constitutional law, we have good law that advocates for traditional customary practices, as water is a public trust.

Vice Chair Brendon Kalei'āina Lee – I think we would all agree with that, it just wasn't one of the options in the exercise just like iwi.

Kamana'opono Crabbe – I just thought I was interesting on how we connected it right there to financial.



Trustee Kalei Akaka - I would agree.

Lisa Watkins-Victorino — We are looking at five areas and they are all influence and they will all be connected to our financial expertise all of those things. We have five starting points, as Trustee Lee was saying this is not the final plan this is to help us figure out where is our direction going to be and where we are going to prioritizing that direction and it will flesh out as we continue to discuss it and as you get feedback from the beneficiary survey as well. We do want to have some areas of guidance for the beneficiary survey when it goes out that these are important areas. We do need some categorizing. I want you to think about the four methods that Trustee Ahuna talked about and now we have the five categories that we talked about. Trustee Carmen Hulu Lindsey has talked about clustering the 'āina and culture as foundational pieces is that correct?

Trustee Carmen Hulu Lindsey - 'Āina and economic development.

Trustee John Waihe'e IV - Depending on what we are using it for.

Trustee Keli'i Akina – I noticed that we wrote economics and we have a sub point financial. I liked how you did this in example two. You have economic development as a separate cluster from financial empowerment. Economic development would refer to the activity that we have to build the asset base and the capital. Financial empowerment is something that is more focused to the beneficiary. I don't want financial empowerment to get lost under economic development. Financial empowerment makes wealth transportable. Our beneficiaries can go and get the 'āina, wai, get the education, health everything that they need in order to be wealthy.

Trustee Dan Ahuna – You think we can ask that for every condition.

Vice Chair Brendon Kalei'āina Lee – Yes, it's another way of saying economic sustainability.

Lisa Watkins-Victorino – These are so far what we've talked about in the higher areas. What everyone is fleshing out what that is meaning to them and how is that going to be clustered together. What I want you to do know is tell me, the very first collapse is going to be 'āina and culture, which Trustee Waihee is collapsing together. Trustee Hulu wants that running through everything. I will put 'āina and culture together and I am going to have 'āina. I am trying to make sure that we are all seeing what we are all talking about so that we can make a decision about how we are going to talk about 'āina. If 'āina is running through all of this or if it's connected another way.

Trustee Carmen Hulu Lindsey - I don't see it related to education.

Lisa Watkins-Victorino – So how about our Hawaiian focused Charter schools that have 'āina based programs.

Trustee Carmen Hulu Lindsey - None of it on our land.

Lisa Watkins-Victorino – This is good, so when you are talking about 'āina you are really talking about our land. So this is different than how some others are talking 'āina. So let's try and parse that out a little bit. Trustee is talking about OHA land.

Trustee Carmen Hulu Lindsey – But advocating will be on everyone else's land.

Lisa Watkins-Victorino- So this is the internal piece that Kamana'o is talking about which then leads to the policy pieces and to the actual processes we would use to help people to figure out what they need to do in order to access or utilize or have economic development on OHA lands. This is separate than what most people have been talking about in terms of 'āina or is it the same. Does everyone agree to 'āina as this or are we talking about 'āina differently.

Trustee John Waihe'e IV – When we start doing the actual priority and results, I think the 'āina issues are going to fall under some category on their own. We don't have to define it now. If over the course of the strat plan



someone thinks we should be educating people on the land use issues, that is a 'āina issue but it would fall under education automatically.

Lisa Watkins-Victorino – You will be making that decision as you are moving through getting the information and then you will decide for the plan itself how do you cluster 'āina.

Trustee John Waihe'e IV – I think, what we are trying to say is that you don't need 'āina as a priority itself because it is going to fall under something else depending what the result it.

Trustee Carmen Hulu Lindsey – In different ways, it is going to fall in each category in different ways. Sometimes it will be us advocating for other peoples 'āina or sometimes it will be using our 'āina for economic development. Even when you move down to culture, it is going to be protecting our legacy. So it can affect us in various ways but it all comes down to 'āina.

Trustee Kalei Akaka – I think it's basically our foundation and it's interwoven and interconnected in each category, there is none of this without it. Is health and wellness falling under?

Lisa Watkins-Victorino – Do you want that on here? Ok. So this 'āina I am going to take this off the list, this is a foundation. So for when we are talking about 'āina in our strat plan we are talking about strategies and how we can maximize our finances, how we utilize expertise. We are going to think 'āina is the place where we start in our foundation so it may show up in different ways across the areas. For health, we might want to support in the strategy piece maybe we want to talk about health using 'āina based strategies or 'āina philosophy but it won't be a call out area. It will be a foundation that has to exist through everything.

Trustee Dan Ahuna – So could we write it in a sense, native Hawaiian organization? When we talk about 'āina, I want to fix things. I don't want to see an organization getting our money and they make sure they take care of themselves first before they start issuing help to our beneficiaries.

Lisa Watkins-Victorino — When you are talking about the funding, the financial piece that is sort of the strategy and decision-making. Now at that point you can say these are the types of organizations we are going to give money to. In our strategic plan moving forward we just want to say what is that area that we are going to focus on. I think that is a good point we want to make decisions about, and through and 'āina philosophy or a native Hawaiian perspective how do we make those decisions for education, health, economics and housing. I am not sure what to do with culture over here.

Vice Chair Brendon Kalei'āina Lee – I think culture would be the same as 'āina as a driver. To Kamana'o's point about our past, our history and our mo'okū'auhau 'āina and culture are one and the same as is wai. We as native Hawaiians can't talk about education, health, economic drivers, economic sustainability, and housing without talking about culture.

Lisa Watkins-Victorino – In our current strat plan we have culture as a call out piece as part of our strategic plan. What we are talking about is culture and 'āina as the foundation through which we achieve everything. That is different I just want to reiterate it. Ain and culture now is the foundation through which we make decisions about and connected to right now education, health, economics how we define economics, and then housing.

Vice Chair Brendon Kalei aina Lee – That would be articulated in a mission statement.

Trustee Dan Ahuna – That is our role, everything is going to go through 'āina and culture.

Lisa Watkins-Victorino – We would articulate this as our foundation through which we are going to make decisions about our strategic areas. As opposed to calling out right now, we separated culture out as a strategic area. We are now going to embed it in as our foundation. Culture and 'āina together.



Trustee Keli'i Akina – So 'āina and culture represent values that are in every area of our strategy. We may need to work on a value statement, which includes 'āina, culture (conversation indiscernible).

Lisa Watkins-Victorino – So that leaves us with the directional piece education, health, economics.

Vice Chair Brendon Kalei'āina Lee – Lisa if I may, it think what would be helpful to all of us at the table would be, as for myself I am a picture type of person not a word type of person. So if I were to put this in a real life three-dimensional thing that I could see. Would it be fair to say that the car I am driving in is 'āina and culture car?

Lisa Watkins-Victorino – Yes.

Vice Chair Brendon Kalei'āina Lee – Where we sit right now, I am driving in a 'āina and culture car and I am trying to decide what highway I am going to drive on and each lane on that highway represents, I have a lane of education, a lane of health, a lane of economic and a lane of housing. Is that a fair three-dimensional thing that I can picture in my head?

Lisa Watkins-Victorino – The way you just explained it, for me yes.

Trustee Kalei Akaka - Or the destination.

Vice Chair Brendon Kalei'āina Lee – We know the destination. The destination is mandated by the constitution. The destination is the benefit of Native Hawaiians. Right, the car that we are talking about taking is 'āina and culture and the lanes to take us there are education, health, economics and housing. Where we sit right now.

Lisa Watkins-Victorino - Yes.

Vice Chair Brendon Kalei'āina Lee – Thank you that is very helpful to me.

Trustee Keli'i Akina – Let me throw in another metaphor. The 'āina and culture piece of this is the water and air we breathe. The other items education, health care, financial empowerment, and housing those are measureable outcomes that will actually build the conditions of the Native Hawaiians.

Lisa Watkins-Victorino – We will get to the measurement piece after we do the strategies piece. You might have some ideas of what those general areas would be but once we start talking about how we will move forward and how we connect that to the communities' needs are. Those are going to be pieces that we talk about in May or June, the specifics of that.

Vice Chair Brendon Kalei'āina Lee – That is after we get feedback from beneficiaries on what they think about the car and the lanes.

Trustee Dan Ahuna – Looking at it as a lens. Chair, in this process how do we make decisions.

Vice Chair Brendon Kalei'āina Lee – By consensus, that is what we are doing right now. We are helping the team who is helping to develop the strategic plan for our approval by coming to consensus as a board through these exercises they are seeing what, for example, today it seems we are all agreeing that we like the car of 'āina and culture. Based on our feedback they are writing down and taking in everything that we collectively are saying and trying to group them together where we all seem to agree to put together that plan to bring to us in, for us to say yes, we like this and we are going to agree on the strategic plan or no we think we need to change this. You just asking me.

Trustee Dan Ahuna – When we at the board table, do we come up with strategies, the Trustees.

Lisa Watkins-Victorino - The strategy piece who we implement all this is going to come after we get more



feedback from our beneficiaries. We are going to refine these areas and see how we then move forward with the kinds of strategies that are form. Some of the strategies that you are talking about is really those process pieces that are going to be articulated by policies and through processes and procedures once we have the strategies defined. Those four areas you have, those are all those methods that all of these are going to be impacted.

Vice Chair Brendon Kalei'āina Lee – The reason we are doing this now is because you don't want to go out to the beneficiaries and start at zero and ask them what do you guys think. You want to take to them a starting point where, this is what your Trustees are thinking, now what do you think. They are not starting at zero they are starting at 10 if we are going to a 100. So the beneficiaries now see what their Trustees are thinking and they can say we like that, we don't like that, they forgot this. Is that correct?

Lisa Watkins-Victorino – Yes, and they will have more opportunity to weigh in as the strategies are developed.

Trustee Dan Ahuna – I'm just like everyone else at the Board table. I am not as good as the experts with 'āina, culture, so those strategies should come from those people. I think the administration can provide great strategy, great information for us that we need. For me at the table it's about unlocking this resource so that we can delegate the authority. Gathering the strategy so we can delegate authority so we can maximize.

Lisa Watkins-Victorino – I think we are doing that we are just going to take some of this now and to take that out to the beneficiaries. They will have that opportunity to feedback. When we talk about maximizing it not just maximizing, we talked about financial and utilizing us to do the work of finding out what is the potential and what are those possibilities.

Trustee Dan Ahuna – For me it's about prior knowledge. In those areas, I would like to know how we helped in participating in the markets of education. I want to know how we participating in health in the markets. How we are affecting, our participation as OHA is affecting the markets. That is important information for me to know. With that information, I cannot come up with a good strategy because that is not what I do. What I do is I try to unlock the potential so that we can take it into our communities. That is how the interaction should be with us.

Vice Chair Brendon Kalei'āina Lee – Well we are not being asked to come up with strategies are we Lisa? We are being asked to help identify areas that we want you to bring strategies back to us.

Lisa Watkins-Victorino – And the beneficiaries as well. That is their opportunity to talk about our strategies and what we do in terms of achieving.

Trustee Dan Ahuna – I just want to be clear about the strategy. I am not certified for a lot of the stuff I need help in that area.

Lisa Watkins-Victorino – We will be making recommendation on what we hear back from the beneficiaries, we have the recommendations that are in your folders in all the reports. When we get to that strategy phase, we can say the beneficiaries are saying, we can pull out more recommendations across our stakeholder groups and that would come to the table for you to decide collectively what are those strategies. You won't be developing those strategies, but you will be looking at them and saying these are great then we want to maximize all of these ways, these methods of moving the strategies forward.

Trustee Dan Ahuna – Yes, and in doing at the board table we may need financial support. I don't want to be at the one at the table saying where the money, how do we get the money. I know my role to get the information; I don't know how it connects. That is all it is.

Lisa Watkins-Victorino – It will connect as we go through each phase. Right now, we are talking about the areas we want to focus. We haven't gotten to strategies we want our beneficiaries to weigh in on strategies for these areas as well. So that's the survey we will be developing and we will bring that all back to you and you will make some decisions. Is there anything we want to discuss more on this list?



Trustee Keli'i Akina – Under economic sustainability I just want to make sure we are talking about two different things and they are both very important. One is economic development and that is what we do to build the assets of the organization. Number two we are very concerned about financial empowerment of the beneficiary. We just don't want to see OHA get rich and wealthy, we want to make sure that Native Hawaiian beneficiaries are financially empowered.

Lisa Watkins-Victorino – Your lens of that is about the decisions OHA makes in terms of how it utilizes its finances through like Kaka'ako Makai and those kinds of things, as opposed, it about how we are going to finance strategies in the end as opposed to the core piece for the beneficiary piece and the strategic plan which is a financial empowerment piece.

Trustee Keli'i Akina – I want to make sure we address both because they are separate items.

Lisa Watkins-Victorino – So one is connected back to the method and connects back to the internal piece. This financial empowerment piece is really about our plan and our direction and helping to move forward, how we are going to address beneficiary empowerment.

Trustee Robert Lindsey – I like to talk about economic sovereignty rather than economic development. I see it happening on my island already. It's good if we can help our people become economically sovereign. It will help them survive in the world that we currently live in. I look at people like Diane Kanealii in Kawaihae and the work she is doing with her people. I like at Mike Hudson and his Waimea Nui project. I look at Bo Kahui at Laiopua. All of the working to help their communities and their families and the folks within their homestead areas to become financially literate, financially empowered, economically sovereign. We have spent at OHA so much time and so much resource on political sovereignty. But I think the world we live in, the capitalist democracy driven by money markets and profits we need to help our people become economically strong so they can survive in the world we live in.

Vice Chair Brendon Kalei'āina Lee - To help move us along where do we go from here?

Lisa Watkins-Victorino – What we will do is create a nice pretty picture for you at the next meeting so you can think through it. What we will try to do in the next phase, if these are the areas and we are going to come back and we can say from the discussion this is what we are seeing as economics and maybe this is what we want to call our priority area economic sovereignty which includes financial empowerment, we will put the education notes together, and housing notes. We can present that to you at the March 7th meeting then you can either finalize at that point. We did have 7th as a workshop. We can do a prep piece for you and we can discuss. Then after that, I will prepare the action item.

Vice Chair Brendon Kalei aina Lee – Yes, mahalo. That concludes our workshop we do have two beneficiaries that have signed up for community concerns.

IV. COMMUNITY CONCERNS

Vice Chair Brendon Kalei'āina Lee – I would like to call Claire Apana back up. She left. I will ask if Kala'i to come to the table.

Ms. Kamuela Kala'i – It took me one week to come back. I am going to keep this brief. My name is Kala'i and the reason I am here is because the first time I came to this Board January 2011, Colette Machado became the Chair of the Office of Hawaiian Affairs. I just started my journey in trying to find out what is going on at Kawaiaha'o and the removal of iwi kupuna there. I was concerned that one of my kupuna might be in that area and here I am today continuing to come to this board and ask for help. Not for me, for the kupuna. So since that first meeting that I attended in 2011 till today despite many tremendously painful efforts to stop the digging up,



disturbing and the discretion of over a thousand kupuna at Kawaiaha'o Church efforts of many other courageous people who came forward to say this is not right. To ask, to plead, to beg, to demand that the Church stop what they are doing. With the assistance of the Office of Hawaiian Affairs and Kamana'opono even at an attempt to sit down with the Church for 6 months and try ho'oponopono with them. Nothing worked. So whatever reason we find this predicament today. I am here once again to let you know that this I not over. Where we are at right now in the process is the Church and the recognized decedents who have come forward to be recognized as lineal and cultural decedents of the iwi kupuna at Kawaiaha'o are now in consultation with one another. We really thought for a moment that we were going to be having some actual positive results when Kahu Makuakane came to the Oahu Island Burial Council meeting to read a statement from the Church. Saying that they decided not to build and they decided to work with the families to take care of the kupuna. I was happy. I was thinking it was a miracle they are going to do the right thing finally.

As it turns out, they have no intention of doing the right thing. Which is why I am here again today. Because if they were going to do the right thing. They would put the kupuna back and would leave them alone and we are done. However the following Burial Council Meeting, I was told by Bill Haole that we are misinterpreting the statement. The statement was misinterpreted. I wondered how come they cultural decedents and the lineal decedents, we didn't get the statement form the Church we should have been first ones to be told. You folks are misinterpreting the statement. What are we misinterpreting? You said you not going build and you will work with the families to put the kupuna back. Well the building is not totally off the table. That shocked the heck out of me when I heard that. I asked the Kahu at the last meeting to please clarify that statement, what exactly did you mean. They want an option to build.

I will say right now this is not about the building. The only decision when we go back in front of that burial council, the families goes in front of them and the Church goes in front of them. The only decision before the burial council is do we preserve the kupuna in place or do we relocate. Because they are doing this backwards, if we are doing this in a regular order. We would have come to them before they dug anyone up. We could say preserve in place which means you don't touch them leave them alone. Too late because they dug them up already. Too late because they are all in the basement. That is the only decision they have to make, preserve in place or relocate. At the last consultation meeting unanimously every 'ohana member who spoke up, there were about 40 families represented, everybody said we want the kupuna put back in place where they were. Church had eight options of what to do, we go stick them in this corner, we do put them up there, over there. They wanted options. We not talking about option, either preserve the kupuna in place, put them back exactly where you found them or you relocate. I am asking this board, as a board, as individual Trustees and as a Board the only think you need to have is the will and the courage and the aloha for these kupuna to say preserve in place put these kupuna back where they belong. In support of the 'ohana who are decedent from these kupuna who are saying this is what we want. It is not only a kuleana of a much higher calling, the Office of Hawaiian Affairs has a vested interest in this because the Office of Hawaiian Affairs give \$1 million to this project. Never got that money back and never got a truthful audit about what happened to that money. They have a vested interest in making sure this happens right and happens in the right way and families are honored and the kupuna are honored. We lay them to rest and we leave them along. I pray that I never have to come back here again to talk about this. Because it kills me every time I have to say these things out loud.

Vice Chair Brendon Kalei'āina Lee - Mahalo Kala'i.

Ms. Kala'i – I have to say one more thing please. Your strategic plan is very interesting, I heard iwi kupuna mentioned. I heard 'āina mentioned. I am just going to put this mana'o out there. Our 'āina is our foundation that should be right here solid. You know who is the foundation of our 'āina our kupuna. You guys think about that. Everything sprouts from there. We are nothing without our kupuna, they are us we are them. They are in the 'āina they belong in the 'āina, they become part of the 'āina. So strategic plan, please remember that, that is your kahua. That is where you start and you build from that. Thank you for at least getting that into your strategic plan I appreciate that. I apologize for the tone of my voice, but I've been doing this for years now and I don't want to do it anymore. I just want the kupuna to go home.



Vice Chair Brendon Kalei'āina Lee – Did Claire Apana come back? A'ole. Ok if there is not one else signed up, the Chair would entertain a motion to adjourn.

V. ANNOUNCEMENTS

NONE

VI. ADJOURNMENT

Trustee Kalei Akaka moves to adjourn the meeting.

Trustee John Waihe'e IV seconds the motion.

Vice Chair Brendon Kalei'āina Lee – Motion presented by Trustee Kalei Akaka and seconded by Trustee John Waihe'e IV. Roll call vote please.

TRUSTEE	1	2	'AE	A'OLE	KANALUA	EXCUSED
			(YES)	(NO)	(ABSTAIN)	
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA	X	- 5	X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY						
TRUSTEE JOHN WAIHE'E		X	X			
TRUSTEE COLETTE MACHADO			X			Excused
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TOTAL VOTE COUNT			8			1

The meeting was adjourned at 12:15 pm.	
Respectfully submitted,	
Dayna Pa, Board Secretary	
As approved by the Board of Trustees on	
Brendon Kalei'āina Lee, Vice Chairperson Board of Trustees	

Attachment:

- 1. Excuse memo from Trustee Colette Machado.
- 2. Strategic Planning Phase 2: Priority Areas Workshop 2, February 28, 2019



Memorandum

DATE:

February 28, 2019

TO:

Trustee Brendon Kalei'āina Lee

Vice -Chairperson, Board of Trustees

FROM:

Trustee Colette Y. Machado

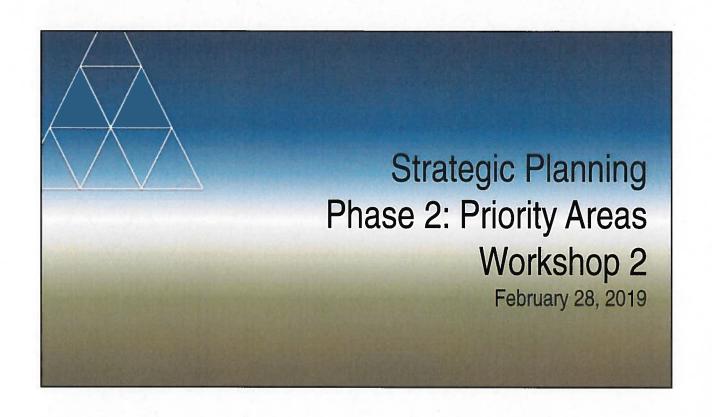
RE:

Board of Trustees Meeting February 28, 2019

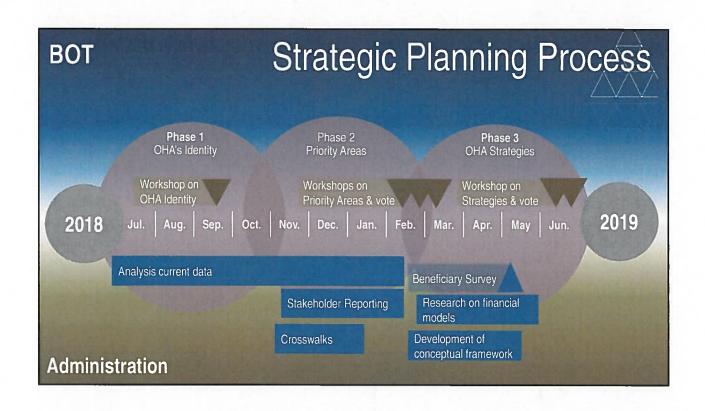
Please extend my absence to the members of the Board of Trustees.

I will not be able to attend the scheduled Board of Trustees Workshop on February 28, 2019.

Mahalo

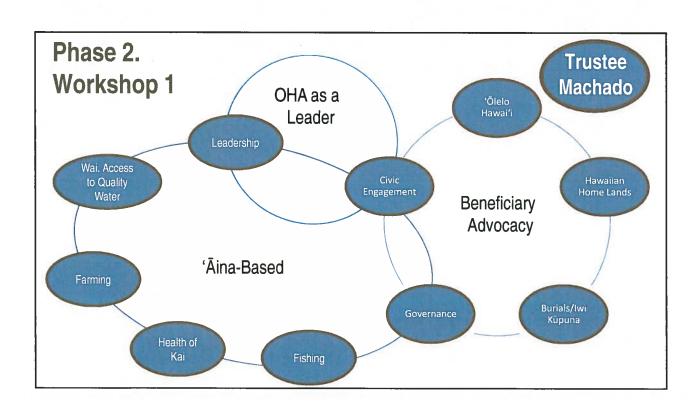


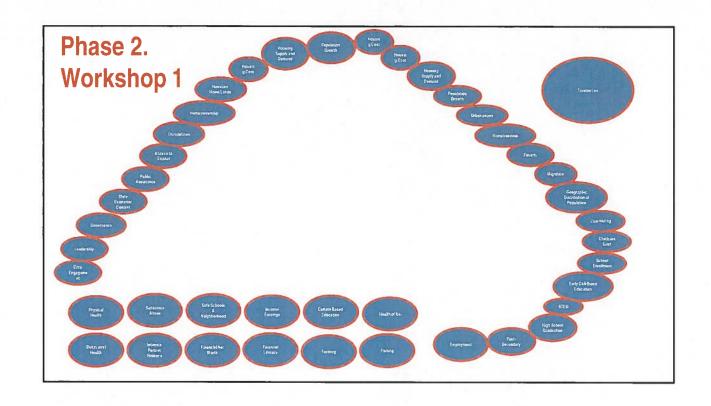


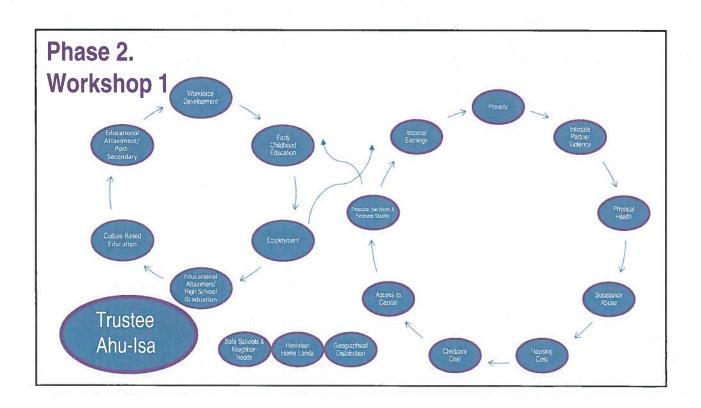


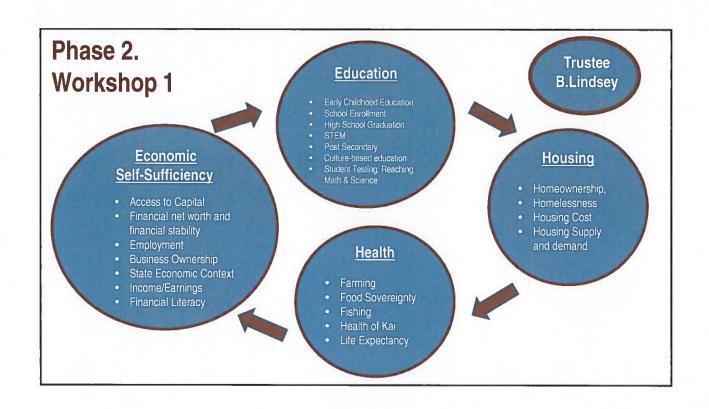
		Lessons Learned
/	OHA 2008	Proposed OHA 2018
K	6 Priority Areas	Focused priority areas
	Contractor lead	Internally lead (BOT and Administration)/ community informed
	Cost?	Limited financial resources
	6 – 8 year fixed results	Responsivity, ability to revisit results
	Strategic Plan only	Implementation Plan
	Strategic Plan only	Transition Plan

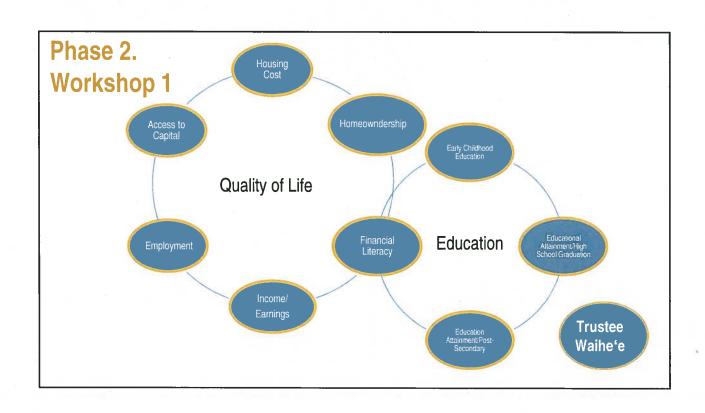


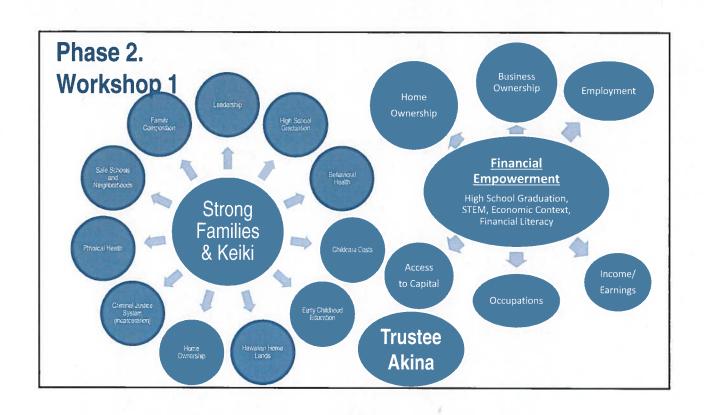


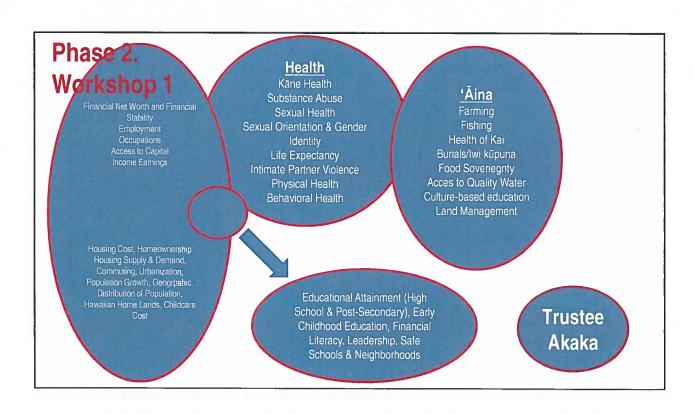












Expertise

Advocacy/Community

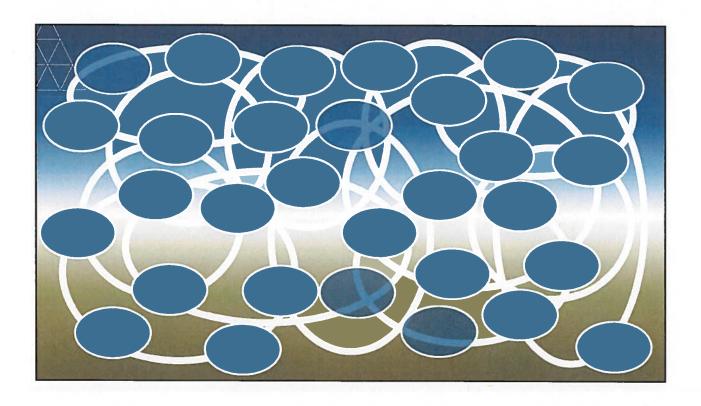
Trustee

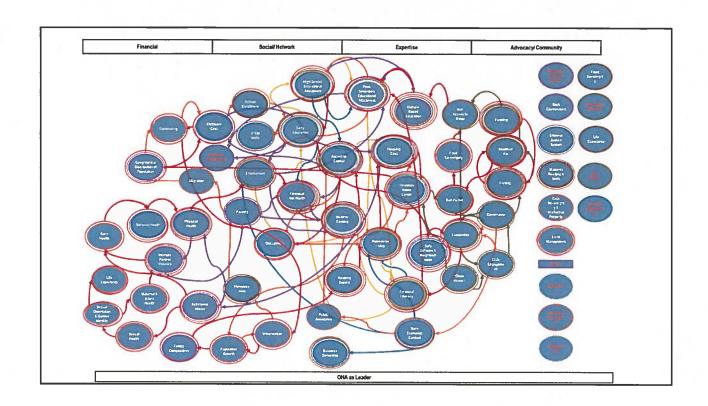
Ahuna

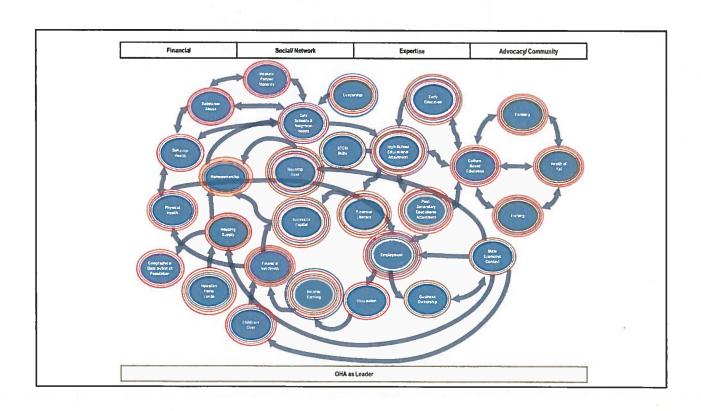
- **Built Environment**
- Access to Capital
- Civic Engagement
- Criminal Justice System (Incarceration)
- Financial Literacy
- Geographic Distribution of Population
- Income/Earnings
- Maternal and Infant Health
- **Food Sovereignty**
- Substance Abuse
- Life Expectancy
- Physical Health
- Occupations
- Sexual Orientation and Gender Identity
- **Public Assistance**
- Housing Supply and Demand
- Education Attainment (postsecondary & High School)

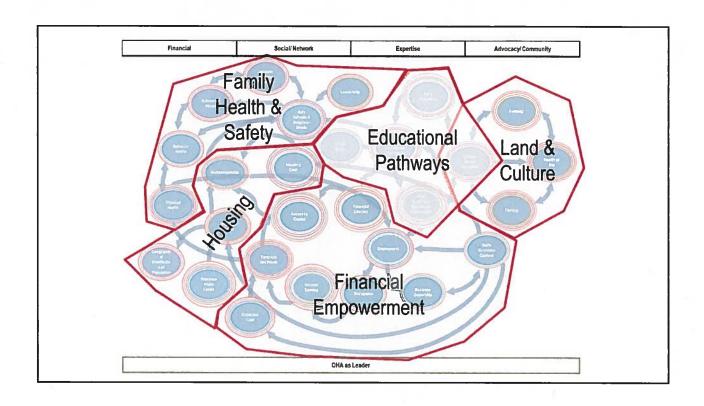
- Burials/Iwi küpuna
- **Culture-based Education**
- Commuting
- Early Childhood Education
- **Family Composition**
- **Fishing**
- Governance
- Land Management
- 'Ōlelo Hawai'i
- Safe Schools & Neighborhoods
- State Economic Context
- Behavioral Health
- **Business Ownership**
- Childcare Cost
- **Housing Cost**
- Hawaiian Home Lands
- Access to Quality Water
- Kāne Health
- Migration
- Health of Kai

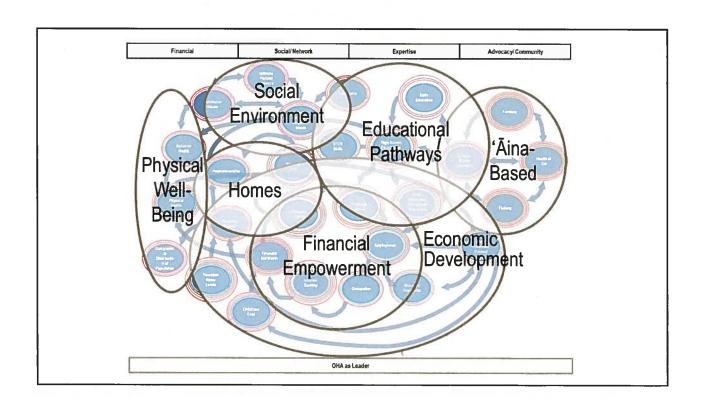
- **Built Environment**
- Access to Capital
- Civic Engagement
- Criminal Justice System (Incarceration)
- Financial Literacy
- Geographic Distribution of Population
- Income/Earnings
- Maternal and Infant Health
- Food Sovereignty
- Substance Abuse
- Life Expectancy
- Physical Health
- Occupations
- Farming
- Financial net worth and Financial Stability
- STEM
- Population Growth
- Intimate Partner Violence

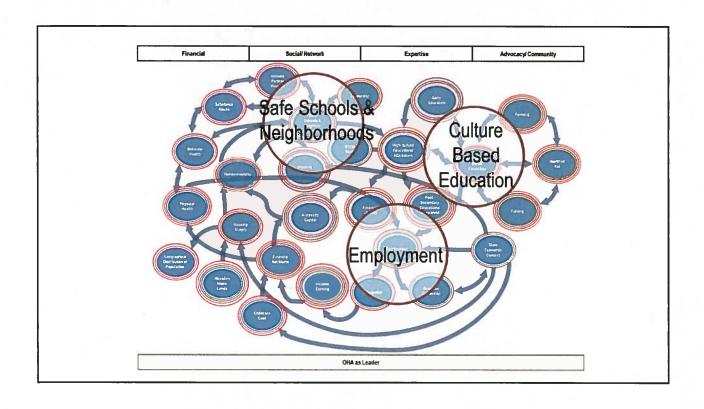


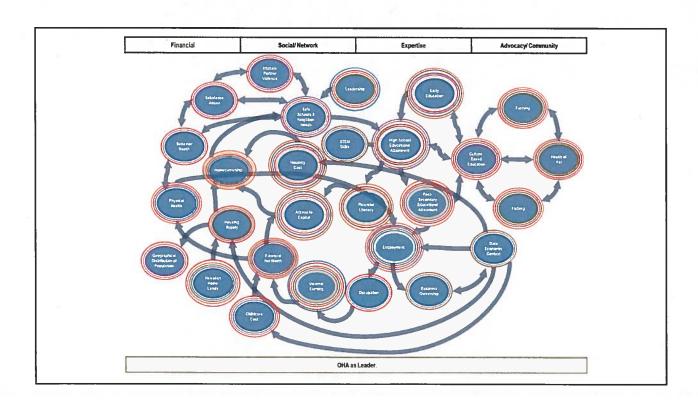












Office of Hawaiian Affairs Board of Trustee Meeting April 4, 2019 10:00 am

V. New Business

- A. Committee on Beneficiary Advocacy and Empowerment
 - 2019 OHA Legislative Positioning Matrix 2, April 3, 2019*

^{*} The committee report for V.A.1. will be forwarded to the Board of Trustees following its approval at the BAE Committee Meeting scheduled for April 3, 2019.

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

April 3, 2019

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

Chair Machado,

Your Committee on Beneficiary Advocacy and Empowerment, having met on April 3, 2019 and after full and free discussion, recommends approval of the following action to the Board of Trustees:

To approve Administration's recommendations on *NEW BILLS* (Items 1 - 43) and *BILL POSITIONS FOR RECONSIDERATION* (Item 44); as well as

ADD:

SB78 as SUPPORT

on the OHA Legislative Positioning Matrix dated April 3, 2019, as amended.

Bil	lls that we	re discussed			
ITEM#	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			New Bills		
ADD	SB78	RELATING TO EDUCATION.	Requires the Department of Education to contract with a third-party consultant that specializes in school finance to study the adequacy of education funding in Hawaii. Appropriates moneys for the study. (SB78 HD1)		SUPPORT
1	HB1402	RELATING TO THE COMMUNITY- BASED ECONOMIC DEVELOPMENT PROGRAM.	Establishes the micro enterprise assistance program on Hawaiian home lands revolving fund to provide grants and loans through the implementation of the micro enterprise assistance program to qualified native Hawaiians, native Hawaiian-controlled homestead associations, and homestead association community development corporations. Appropriates funds. Takes effect on 7/1/2050. (SD1)	MONITOR	
2	HCR7		APPROVING THE TRANSFER OF THE LEASED FEE INTEREST IN A PORTION OF 610 COOKE STREET, HONOLULU, HAWAII, TO THE CITY AND COUNTY OF HONOLULU.	MONITOR	
3	HCR8		APPROVING THE SALE OF THE LEASED FEE INTEREST IN 94-940 MEHEULA PARKWAY, NO. 252, MILILANI, HAWAII.	MONITOR	
4	HCR44		SUPPORTING THE IMILOA ASTRONOMY CENTER TO FURTHER ITS ROLE IN DEVELOPING AND LEADING EDUCATIONAL EFFORTS CONCERNING THE CULTURAL, NATURAL, AND HISTORIC RESOURCES ON MAUNA KEA AT HALE POHAKU AND ENCOURAGING THE TRANSFER OF EDUCATION OUTREACH AT THE HALE POHAKU TO THE IMILOA ASTRONOMY CENTER.	MONITOR	
5	HCR65		REQUESTING THE DEPARTMENT OF AGRICULTURE TO STUDY AND MAKE RECOMMENDATIONS ON HOW TO INCREASE COMPLIANCE WITH THE VARIOUS REQUIREMENTS FOR AGRICULTURAL LANDS AND TO PREVENT ABUSE OF AGRICULTURAL LAND LEASES.	MONITOR	
6	HCR76		REQUESTING THE DIRECTOR OF THE OFFICE OF PLANNING TO ESTABLISH WITHIN THE OFFICE OF PLANNING AN AGRICULTURAL HOUSING TASK FORCE.	MONITOR	

7	HCR84	REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO ESTABLISH A MAKUA VALLEY TASK FORCE TO PREPARE FOR THE TRANSFER OF MANAGEMENT OF THE MAKUA MILITARY RESERVATION TO THE STATE FROM THE UNITED STATES ARMY UPON EXPIRATION OF LEASE NUMBER S-3848.	MONITOR
8	HCR105	REQUESTING THAT THE DEPARTMENT OF LAND AND NATURAL RESOURCES PROVIDE ADDITIONAL PROTECTIONS TO THE MAUNA KEA SUMMIT DUE TO ITS ENVIRONMENTAL SIGNIFICANCE AND CULTURAL IMPORTANCE TO THE NATIVE HAWAIIAN PEOPLE.	MONITOR
9	HCR109	REQUESTING THE ESTABLISHMENT OF A TASK FORCE TO STUDY THE FEASIBILITY OF LEGALIZING SPORTS GAMBLING.	MONITOR
10	HCR126	URGING THE GOVERNOR, THE DEPARTMENT OF AGRICULTURE, THE UNIVERSITY OF HAWAII COLLEGE OF TROPICAL AGRICULTURE AND HUMAN RESOURCES, AND OTHER RELATED ENTITIES TO TAKE ACTION TO HELP EXPAND THE AQUACULTURE INDUSTRY IN THE STATE.	MONITOR
11	HCR161	REQUESTING THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY TO STUDY PROPERTIES IN OR AROUND KAKAAKO TO RECOMMEND APPROPRIATE SITES FOR A NEW FIRE STATION OR, ALTERNATIVELY, TO IDENTIFY EXISTING FIRE STATIONS THAT MAY BE RELOCATED OR EXPANDED TO MORE EFFECTIVELY SERVE THE KAKAAKO COMMUNITY.	MONITOR
12	HCR166	REQUESTING THE WILLIAM S. RICHARDSON SCHOOL OF LAW TO CONVENE A TASK FORCE TO STUDY AND REPORT ON A LOAN FORGIVENESS PROGRAM FOR LAW STUDENTS TO PROVIDE INCENTIVES FOR LEGAL ASSISTANCE IN RURAL COMMUNITIES IN HAWAII.	MONITOR
13	SCR13	APPROVING THE TRANSFER OF THE LEASED FEE INTEREST IN A PORTION OF 610 COOKE STREET, HONOLULU, HAWAII, TO THE CITY AND COUNTY OF HONOLULU.	MONITOR
14	SCR14	APPROVING THE SALE OF THE LEASED FEE INTEREST IN 94-940 MEHEULA PARKWAY, NO. 252, MILILANI, HAWAII.	MONITOR

		REQUESTING THE DEPARTMENT OF EDUCATION TO CONVENE AN ADVISORY		
		COMMITTEE TO MAKE RECOMMENDATIONS		
15	SCR33	TO DEVELOP AND IMPLEMENT A PLAN TO	MONITOR	
		TEACH DIGITAL CITIZENSHIP AND MEDIA		
		LITERACY IN GRADES K-12 IN PUBLIC SCHOOLS,		
		INCLUDING CHARTER SCHOOLS AND HAWAIIAN		
		LANGUAGE IMMERSION SCHOOLS.		
		URGING THE BOARD OF LAND AND NATURAL		
		RESOURCES TO TRANSFER MANAGEMENT OF		
		ALL SUBMERGED LANDS, THE BOAT LAUNCH		
1.5		RAMP, AND ANY RELATED BOAT LAUNCH		
16	SCR49	RAMP FACILITIES LOCATED AT THE WAHIAWA	MONITOR	
		FRESHWATER STATE RECREATION AREA FROM		
		THE DIVISION OF AQUATIC RESOURCES TO THE		
		DIVISION OF BOATING AND OCEAN		
		RECREATION.		
		REQUESTING THE HAWAII COMMUNITY		
		DEVELOPMENT AUTHORITY TO STUDY		
17	SCR61	PROPERTIES IN OR AROUND KAKAAKO AND	MONITOR	
		RECOMMEND APPROPRIATE SITES FOR A FIRE		
		STATION.		
		ENCOURAGING THE HAWAII COMMUNITY		
		DEVELOPMENT AUTHORITY TO PRIORITIZE		
		INVESTMENT IN PUBLIC FACILITIES WITHIN		
18	SCR92	TRANSIT-ORIENTED DEVELOPMENT ZONES	MONITOR	
		AND THE KALAELOA COMMUNITY		
		DEVELOPMENT DISTRICT IN ANY OF ITS		
		STATEWIDE PLANNING FUNCTIONS OR		
		INVOLVEMENT THEREIN.		
	URGING THE DEPARTMENT OF HUMAN			
		RESOURCES DEVELOPMENT, IN CONJUNCTION		
	SCR121	WITH THE OTHER PRINCIPAL DEPARTMENTS,		
19 S		OFFICE OF THE GOVERNOR, OFFICE OF THE	MONITOR	
		LIEUTENANT GOVERNOR, LEGISLATURE, AND		
		JUDICIARY TO IMPLEMENT A PILOT		
		FELLOWSHIP PROGRAM TO TRAIN NEW		
		EMPLOYEES FOR GOVERNMENT JOBS.		
		URGING THE GOVERNOR TO NOMINATE		
20	SCR122	OPPORTUNITY ZONES TO ASSIST WITH	MONITOR	
		ECONOMIC DEVELOPMENT IN CENSUS TRACTS		
		IN WAHIAWA AND WHITMORE VILLAGE.		
		REQUESTING THE ESTABLISHMENT OF A TASK		
21	SCR167	FORCE TO STUDY THE FEASIBILITY OF	MONITOR	
		LEGALIZING SPORTS GAMBLING.		

		REQUESTING THE WILLIAM S. RICHARDSON			
		SCHOOL OF LAW TO CONVENE A TASK FORCE			
		TO STUDY AND REPORT ON A LOAN			
22	SCR168	FORGIVENESS PROGRAM FOR LAW STUDENTS	MONITOR		
	JCN100	TO PROVIDE INCENTIVES FOR LEGAL	WICHTION		
		ASSISTANCE IN RURAL COMMUNITIES IN			
		HAWAII.			
		REQUESTING ADDITIONAL PROTECTIONS FOR			
23	SCR178	THE MAUNA KEA SUMMIT DUE TO ITS	MONITOR		
25	JCN170	RELIGIOUS SIGNIFICANCE AND IMPORTANT	WICHTION		
		CULTURAL AND NATURAL RESOURCES.			
		SUPPORTING THE'IMILOA ASTRONOMY			
		CENTER IN ITS EDUCATIONAL EFFORTS			
		CONCERNING RESOURCES ON MAUNA KEA AT			
		HALE POHAKU, ENCOURAGING THE TRANSFER			
		OF EDUCATION OUTREACH AT HALE POHAKU,			
24	SCR214	REQUESTING A REPORT REGARDING	MONITOR		
24	JCNZIT	RESTRUCTURING OF THE INSTITUTE FOR	WICHTION		
		ASTROOFORING OF THE INSTITUTE FOR ASTRONOMY AND MAUNA KEA SUPPORT			
		SERVICES, AND REQUESTING THE			
		CONTRIBUTION OF FINANCIAL CAPITAL TO			
		CONSTRUCT THE IMILOA UKA FACILITY.			
		SUPPORTING THE'IMILOA ASTRONOMY			
		CENTER TO FURTHER ITS ROLE IN DEVELOPING			
			AND LEADING EDUCATIONAL EFFORTS		
25	HR41	CONCERNING THE CULTURAL, NATURAL, AND	MONITOR		
23	111141	HISTORIC RESOURCES ON MAUNA KEA AT HALE	WICHTON		
		POHAKU AND ENCOURAGING THE TRANSFER			
		OF EDUCATION OUTREACH AT THE HALE			
		POHAKU TO THE'IMILOA ASTRONOMY CENTER.			
		REQUESTING THE BOARD OF LAND AND			
		NATURAL RESOURCES TO ESTABLISH A MAKUA			
		VALLEY TASK FORCE TO PREPARE FOR THE			
26	HR49	TRANSFER OF MANAGEMENT OF THE MAKUA	MONITOR		
20	111143	MILITARY RESERVATION TO THE STATE FROM	WIGHTION		
		THE UNITED STATES ARMY UPON EXPIRATION			
		OF LEASE NUMBER S-3848.			
		REQUESTING THE DEPARTMENT OF			
		AGRICULTURE TO STUDY AND MAKE			
		RECOMMENDATIONS ON HOW TO INCREASE			
27	HR65	COMPLIANCE WITH THE VARIOUS	MONITOR		
		REQUIREMENTS FOR AGRICULTURAL LANDS			
		AND TO PREVENT ABUSE OF AGRICULTURAL			
		LAND LEASES.			
		REQUESTING THE DIRECTOR OF THE OFFICE OF			
20	11074	PLANNING TO ESTABLISH WITHIN THE OFFICE	NACNUTOR		
28	HR74	OF PLANNING AN AGRICULTURAL HOUSING	MONITOR		
		TASK FORCE.			
L	i				

		REQUESTING THAT THE DEPARTMENT OF LAND		
		AND NATURAL RESOURCES PROVIDE		
29	LIDOO	ADDITIONAL PROTECTIONS TO THE MAUNA	MONITOR	
29	HR99	KEA SUMMIT DUE TO ITS ENVIRONMENTAL	MONITOR	
		SIGNIFICANCE AND CULTURAL IMPORTANCE		
		TO THE NATIVE HAWAIIAN PEOPLE.		
		URGING THE BOARD OF LAND AND NATURAL		
		RESOURCES TO TRANSFER MANAGEMENT OF		
		ALL SUBMERGED LANDS, THE BOAT LAUNCH		
		RAMP, AND ANY RELATED BOAT LAUNCH		
30	SR35	RAMP FACILITIES LOCATED AT THE WAHIAWA	MONITOR	
		FRESHWATER STATE RECREATION AREA FROM		
		THE DIVISION OF AQUATIC RESOURCES TO THE		
		DIVISION OF BOATING AND OCEAN		
		RECREATION.		
		ENCOURAGING THE DEPARTMENT OF EDUCATION		
		AND OTHER AGENCY AND COMMUNITY		
31	SR52	STAKEHOLDERS TO CONTINUE MEETING AS A	MONITOR	
		WORKING GROUP FOR SEXUAL VIOLENCE		
		PREVENTION EDUCATION IN PUBLIC SCHOOLS.		
		ENCOURAGING THE HAWAII COMMUNITY		
		DEVELOPMENT AUTHORITY TO PRIORITIZE		
	SR69	INVESTMENT IN PUBLIC FACILITIES WITHIN		
32		TRANSIT-ORIENTED DEVELOPMENT ZONES	MONITOR	
			AND THE KALAELOA COMMUNITY	om
		DEVELOPMENT DISTRICT IN ANY OF ITS		
		STATEWIDE PLANNING FUNCTIONS OR		
		INVOLVEMENT THEREIN.		
		URGING THE GOVERNOR TO NOMINATE		
33	SR92	OPPORTUNITY ZONES TO ASSIST WITH	MONITOR	
	31(32	ECONOMIC DEVELOPMENT IN CENSUS TRACTS	om	
		IN WAHIAWA AND WHITMORE VILLAGE.		
		URGING THE UNIVERSITY OF HAWAII, IN		
		CONJUNCTION WITH THE DEPARTMENT OF		
		PUBLIC SAFETY AND DEPARTMENT OF LAND		
34	SR94	AND NATURAL RESOURCES DIVISION OF	MONITOR	
34	31(34	CONSERVATION AND RESOURCES	WONTOK	
]	ENFORCEMENT, TO STRENGTHEN AND	
		ENHANCE THE SCHOOL-TO-CAREER PIPELINE		
		FOR POSITIONS IN PUBLIC SAFETY.		
		REQUESTING THE ESTABLISHMENT OF A TASK		
35	SR133	FORCE TO STUDY THE FEASIBILITY OF	MONITOR	
		LEGALIZING SPORTS GAMBLING.		
		REQUESTING THE WILLIAM S. RICHARDSON		
		SCHOOL OF LAW TO CONVENE A TASK FORCE		
	SR134	TO STUDY AND REPORT ON A LOAN		
36		FORGIVENESS PROGRAM FOR LAW STUDENTS	MONITOR	
		TO PROVIDE INCENTIVES FOR LEGAL		
		ASSISTANCE IN RURAL COMMUNITIES IN		
		HAWAII.		
	•	· · · · · · · · · · · · · · · · · · ·	l .	

			Submitting for consideration and confirmation		
37	GM667		as the Deputy to the Chairperson of the Department of Hawaiian Home Lands, Gubernatorial Nominee, WILLIAM J. AILA, for a term to expire at noon on 12-05-2022.	SUPPORT	
38	GM696		Submitting for consideration and confirmation to the Environmental Council, Gubernatorial Nominee, BARBARA KAAUMOANA, for a term to expire 06-30-2023.	SUPPORT	
39	GM706		Submitting for consideration and confirmation to the Island Burial Council, Island of Hawai'i, Gubernatorial Nominee, DESMON HAUMEA, for a term to expire 06-30-2022.	MONITOR	
40	GM711		Submitting for consideration and confirmation to the Commission on the Status of Women, Gubernatorial Nominee, DEJA OSTROWSKI, for a term to expire 06-30-2022.	SUPPORT	
41	GM712		Submitting for consideration and confirmation to the Hawaiian Homes Commission, Gubernatorial Nominee, PAULINE NAMUO, for a term to expire 06-30-2022.	MONITOR	
42	GM713		Submitting for consideration and confirmation to the Hawaiian Homes Commission, Gubernatorial Nominee, DENNIS NEVES, for a term to expire 06-30-2021.	MONITOR	
43	GM722		Submitting for consideration and confirmation to the Board of Education, Gubernatorial Nominee, BRUCE VOSS, for a term to expire 06-30-2022.	MONITOR	
ITEM#	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			Bill Positions for Reconsideration		
44	НВ439	RELATING TO LAND USE.	Exempts lands set aside by the governor to the Hawaii housing finance and development corporation for the primary purpose of developing affordable housing from classification as public land subject to DLNR management. Requires lands set aside by the governor to the Hawaii housing finance development corporation for the primary purpose of developing affordable housing to be subject to legislative approval prior to the sale or gift of those lands. Takes effect 7/1/2050. (SD1)	MONITOR > COMMENT	

Relevant attachments are included for your information and reference.

Attachment(s):

A. BAE Roll Call Vote Sheet - 2019 OHA LEGISLATIVE POSITIONING - Matrix 2**

Trustee John Waihe'e, IV, Chair	Trustee Kaleihikina Akaka, Vice-Chair
EXCUSED	EXCUSED
Trustee Leina'ala Ahu Isa, Member	Trustee Dan Ahuna, Member
Trustee Keli'i Akina, Member	Trustee Brendon Kalei'āina Lee, Member
Trustee Carmen Hulu Lindsey, Member	EXCUSED Trustee Robert K. Lindsey, Jr., Member
EXCUSED Trustee Colette Y. Machado, Member	

Respectfully submitted:

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

Attachment A

Roll Call Vote Sheet

COMMITTEE ON
BENEFICIARY ADVOCACY AND EMPOWERMENT
(BAE)

DATE: April 3, 2019
START: 10:20 a.m.
MOTION: 11:03 a.m.
VOTE: 11:04 a.m.

AGENDA ITEM:

V. New Business

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

MOTION:

To approve Administration's recommendations on *NEW BILLS* (Items 1 - 43) and *BILL POSITIONS FOR RECONSIDERATION* (Item 44); as well as

ADD:

SB78 as SUPPORT

on the OHA Legislative Positioning Matrix dated April 3, 2019, as amended.

Bills that were discussed		re discussed			-
ITEM#	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			New Bills		
ADD	SB78	RELATING TO EDUCATION.	Requires the Department of Education to contract with a third-party consultant that specializes in school finance to study the adequacy of education funding in Hawaii. Appropriates moneys for the study. (SB78 HD1)		SUPPORT
1	HB1402	RELATING TO THE COMMUNITY- BASED ECONOMIC DEVELOPMENT PROGRAM.	Establishes the micro enterprise assistance program on Hawaiian home lands revolving fund to provide grants and loans through the implementation of the micro enterprise assistance program to qualified native Hawaiians, native Hawaiian-controlled homestead associations, and homestead association community development corporations. Appropriates funds. Takes effect on 7/1/2050. (SD1)	MONITOR	
2	HCR7		APPROVING THE TRANSFER OF THE LEASED FEE INTEREST IN A PORTION OF 610 COOKE STREET, HONOLULU, HAWAII, TO THE CITY AND COUNTY OF HONOLULU.	MONITOR	
3	HCR8		APPROVING THE SALE OF THE LEASED FEE INTEREST IN 94-940 MEHEULA PARKWAY, NO. 252, MILILANI, HAWAII.	MONITOR	

4	HCR44	SUPPORTING THE'IMILOA ASTRONOMY CENTER TO FURTHER ITS ROLE IN DEVELOPING AND LEADING EDUCATIONAL EFFORTS CONCERNING THE CULTURAL, NATURAL, AND HISTORIC RESOURCES ON MAUNA KEA AT HALE POHAKU AND ENCOURAGING THE TRANSFER OF EDUCATION OUTREACH AT THE HALE POHAKU TO THE'IMILOA ASTRONOMY CENTER.	MONITOR	
5	HCR65	REQUESTING THE DEPARTMENT OF AGRICULTURE TO STUDY AND MAKE RECOMMENDATIONS ON HOW TO INCREASE COMPLIANCE WITH THE VARIOUS REQUIREMENTS FOR AGRICULTURAL LANDS AND TO PREVENT ABUSE OF AGRICULTURAL LAND LEASES.	MONITOR	
6	HCR76	REQUESTING THE DIRECTOR OF THE OFFICE OF PLANNING TO ESTABLISH WITHIN THE OFFICE OF PLANNING AN AGRICULTURAL HOUSING TASK FORCE.	MONITOR	
7	HCR84	REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO ESTABLISH A MAKUA VALLEY TASK FORCE TO PREPARE FOR THE TRANSFER OF MANAGEMENT OF THE MAKUA MILITARY RESERVATION TO THE STATE FROM THE UNITED STATES ARMY UPON EXPIRATION OF LEASE NUMBER S-3848.	MONITOR	
8	HCR105	REQUESTING THAT THE DEPARTMENT OF LAND AND NATURAL RESOURCES PROVIDE ADDITIONAL PROTECTIONS TO THE MAUNA KEA SUMMIT DUE TO ITS ENVIRONMENTAL SIGNIFICANCE AND CULTURAL IMPORTANCE TO THE NATIVE HAWAIIAN PEOPLE.	MONITOR	
9	HCR109	REQUESTING THE ESTABLISHMENT OF A TASK FORCE TO STUDY THE FEASIBILITY OF LEGALIZING SPORTS GAMBLING.	MONITOR	
10	HCR126	URGING THE GOVERNOR, THE DEPARTMENT OF AGRICULTURE, THE UNIVERSITY OF HAWAII COLLEGE OF TROPICAL AGRICULTURE AND HUMAN RESOURCES, AND OTHER RELATED ENTITIES TO TAKE ACTION TO HELP EXPAND THE AQUACULTURE INDUSTRY IN THE STATE.	MONITOR	
11	HCR161	REQUESTING THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY TO STUDY PROPERTIES IN OR AROUND KAKAAKO TO RECOMMEND APPROPRIATE SITES FOR A NEW FIRE STATION OR, ALTERNATIVELY, TO IDENTIFY EXISTING FIRE STATIONS THAT MAY BE RELOCATED OR EXPANDED TO MORE EFFECTIVELY SERVE THE KAKAAKO COMMUNITY.	MONITOR	

12	HCR166	REQUESTING THE WILLIAM S. RICHARDSON SCHOOL OF LAW TO CONVENE A TASK FORCE TO STUDY AND REPORT ON A LOAN FORGIVENESS PROGRAM FOR LAW STUDENTS TO PROVIDE INCENTIVES FOR LEGAL ASSISTANCE IN RURAL COMMUNITIES IN HAWAII.	MONITOR
13	SCR13	APPROVING THE TRANSFER OF THE LEASED FEE INTEREST IN A PORTION OF 610 COOKE STREET, HONOLULU, HAWAII, TO THE CITY AND COUNTY OF HONOLULU.	MONITOR
14	SCR14	APPROVING THE SALE OF THE LEASED FEE INTEREST IN 94-940 MEHEULA PARKWAY, NO. 252, MILILANI, HAWAII.	MONITOR
15	SCR33	REQUESTING THE DEPARTMENT OF EDUCATION TO CONVENE AN ADVISORY COMMITTEE TO MAKE RECOMMENDATIONS TO DEVELOP AND IMPLEMENT A PLAN TO TEACH DIGITAL CITIZENSHIP AND MEDIA LITERACY IN GRADES K-12 IN PUBLIC SCHOOLS, INCLUDING CHARTER SCHOOLS AND HAWAIIAN LANGUAGE IMMERSION SCHOOLS.	MONITOR
16	SCR49	URGING THE BOARD OF LAND AND NATURAL RESOURCES TO TRANSFER MANAGEMENT OF ALL SUBMERGED LANDS, THE BOAT LAUNCH RAMP, AND ANY RELATED BOAT LAUNCH RAMP FACILITIES LOCATED AT THE WAHIAWA FRESHWATER STATE RECREATION AREA FROM THE DIVISION OF AQUATIC RESOURCES TO THE DIVISION OF BOATING AND OCEAN RECREATION.	MONITOR
17	SCR61	REQUESTING THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY TO STUDY PROPERTIES IN OR AROUND KAKAAKO AND RECOMMEND APPROPRIATE SITES FOR A FIRE STATION.	MONITOR
18	SCR92	ENCOURAGING THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY TO PRIORITIZE INVESTMENT IN PUBLIC FACILITIES WITHIN TRANSIT-ORIENTED DEVELOPMENT ZONES AND THE KALAELOA COMMUNITY DEVELOPMENT DISTRICT IN ANY OF ITS STATEWIDE PLANNING FUNCTIONS OR INVOLVEMENT THEREIN.	MONITOR
19	SCR121	URGING THE DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, IN CONJUNCTION WITH THE OTHER PRINCIPAL DEPARTMENTS, OFFICE OF THE GOVERNOR, OFFICE OF THE LIEUTENANT GOVERNOR, LEGISLATURE, AND JUDICIARY TO IMPLEMENT A PILOT FELLOWSHIP PROGRAM TO TRAIN NEW EMPLOYEES FOR GOVERNMENT JOBS.	MONITOR

URGING THE GOVERNOR TO NOMINATE	
OPPORTUNITY ZONES TO ASSIST WITH	MONITOR
ECONOMIC DEVELOPMENT IN CENSUS TRACTS	S
IN WAHIAWA AND WHITMORE VILLAGE.	
REQUESTING THE ESTABLISHMENT OF A TASK	
21 SCR167 FORCE TO STUDY THE FEASIBILITY OF	MONITOR
LEGALIZING SPORTS GAMBLING.	
REQUESTING THE WILLIAM S. RICHARDSON	
SCHOOL OF LAW TO CONVENE A TASK FORCE	
TO STUDY AND REPORT ON A LOAN	
22 SCR168 FORGIVENESS PROGRAM FOR LAW STUDENTS	S MONITOR
TO PROVIDE INCENTIVES FOR LEGAL	
ASSISTANCE IN RURAL COMMUNITIES IN	
HAWAII.	
REQUESTING ADDITIONAL PROTECTIONS FOR	R
THE MAUNA KEA SUMMIT DUE TO ITS	MONITOR
RELIGIOUS SIGNIFICANCE AND IMPORTANT	monnon
CULTURAL AND NATURAL RESOURCES.	
SUPPORTING THE'IMILOA ASTRONOMY	
CENTER IN ITS EDUCATIONAL EFFORTS	
CONCERNING RESOURCES ON MAUNA KEA AT	
HALE POHAKU, ENCOURAGING THE TRANSFER	R
OF EDUCATION OUTREACH AT HALE POHAKU	,
24 SCR214 REQUESTING A REPORT REGARDING	MONITOR
RESTRUCTURING OF THE INSTITUTE FOR	
ASTRONOMY AND MAUNA KEA SUPPORT	
SERVICES, AND REQUESTING THE	
CONTRIBUTION OF FINANCIAL CAPITAL TO	
CONSTRUCT THE'IMILOA UKA FACILITY.	
SUPPORTING THE'IMILOA ASTRONOMY	
CENTER TO FURTHER ITS ROLE IN DEVELOPING	G
AND LEADING EDUCATIONAL EFFORTS	
25 HR41 CONCERNING THE CULTURAL, NATURAL, AND	MONITOR
HISTORIC RESOURCES ON MAUNA KEA AT HAL	E Morting
POHAKU AND ENCOURAGING THE TRANSFER	
OF EDUCATION OUTREACH AT THE HALE	
POHAKU TO THE'IMILOA ASTRONOMY CENTER	₹.
REQUESTING THE BOARD OF LAND AND	
NATURAL RESOURCES TO ESTABLISH A MAKUA	A
VALLEY TASK FORCE TO PREPARE FOR THE	
26 HR49 TRANSFER OF MANAGEMENT OF THE MAKUA	
MILITARY RESERVATION TO THE STATE FROM	
THE UNITED STATES ARMY UPON EXPIRATION	1
OF LEASE NUMBER S-3848.	
REQUESTING THE DEPARTMENT OF	
AGRICULTURE TO STUDY AND MAKE	
RECOMMENDATIONS ON HOW TO INCREASE	
27 HR65 COMPLIANCE WITH THE VARIOUS	MONITOR
REQUIREMENTS FOR AGRICULTURAL LANDS	
AND TO PREVENT ABUSE OF AGRICULTURAL	
LAND LEASES.	

		DECLIFICATION THE DIDECTOR OF THE OFFICE OF				
		REQUESTING THE DIRECTOR OF THE OFFICE OF				
28	HR74	PLANNING TO ESTABLISH WITHIN THE OFFICE	MONITOR			
		OF PLANNING AN AGRICULTURAL HOUSING				
		TASK FORCE.				
		REQUESTING THAT THE DEPARTMENT OF LAND				
		AND NATURAL RESOURCES PROVIDE				
29	HR99	ADDITIONAL PROTECTIONS TO THE MAUNA	MONITOR			
23	111133	KEA SUMMIT DUE TO ITS ENVIRONMENTAL	WIGHTION			
		SIGNIFICANCE AND CULTURAL IMPORTANCE				
		TO THE NATIVE HAWAIIAN PEOPLE.				
		URGING THE BOARD OF LAND AND NATURAL				
		RESOURCES TO TRANSFER MANAGEMENT OF ALL				
		SUBMERGED LANDS, THE BOAT LAUNCH RAMP,				
30	SR35	AND ANY RELATED BOAT LAUNCH RAMP	MONITOR			
30	SCOS	FACILITIES LOCATED AT THE WAHIAWA	MONITOR			
		FRESHWATER STATE RECREATION AREA FROM				
		THE DIVISION OF AQUATIC RESOURCES TO THE				
		DIVISION OF BOATING AND OCEAN RECREATION.				
		ENCOURAGING THE DEPARTMENT OF EDUCATION				
		AND OTHER AGENCY AND COMMUNITY				
31	SR52	STAKEHOLDERS TO CONTINUE MEETING AS A	MONITOR			
		WORKING GROUP FOR SEXUAL VIOLENCE				
		PREVENTION EDUCATION IN PUBLIC SCHOOLS.				
		ENCOURAGING THE HAWAII COMMUNITY				
		DEVELOPMENT AUTHORITY TO PRIORITIZE				
	SR69	INVESTMENT IN PUBLIC FACILITIES WITHIN				
32		SR69	TRANSIT-ORIENTED DEVELOPMENT ZONES	MONITOR		
32			SK69	3809	SK69	AND THE KALAELOA COMMUNITY
		DEVELOPMENT DISTRICT IN ANY OF ITS				
		STATEWIDE PLANNING FUNCTIONS OR				
		INVOLVEMENT THEREIN.				
		URGING THE GOVERNOR TO NOMINATE				
22	CDOO	OPPORTUNITY ZONES TO ASSIST WITH	MONITOR			
33	SR92	ECONOMIC DEVELOPMENT IN CENSUS TRACTS	MONITOR			
		IN WAHIAWA AND WHITMORE VILLAGE.				
		URGING THE UNIVERSITY OF HAWAII, IN				
		CONJUNCTION WITH THE DEPARTMENT OF				
		PUBLIC SAFETY AND DEPARTMENT OF LAND				
	AND NATURAL RESOURCES DI	AND NATURAL RESOURCES DIVISION OF				
34	SR94	CONSERVATION AND RESOURCES	MONITOR			
		ENFORCEMENT, TO STRENGTHEN AND				
		ENHANCE THE SCHOOL-TO-CAREER PIPELINE				
		FOR POSITIONS IN PUBLIC SAFETY.				
		REQUESTING THE ESTABLISHMENT OF A TASK				
35	SR133	FORCE TO STUDY THE FEASIBILITY OF	MONITOR			
33	21/122	LEGALIZING SPORTS GAMBLING.	IVIOIVIIOIV			
		REQUESTING THE WILLIAM S. RICHARDSON				
		SCHOOL OF LAW TO CONVENE A TASK FORCE				
2.0	6046	TO STUDY AND REPORT ON A LOAN	MONUTOS			
36	SR134	FORGIVENESS PROGRAM FOR LAW STUDENTS	MONITOR			
		TO PROVIDE INCENTIVES FOR LEGAL				
		ASSISTANCE IN RURAL COMMUNITIES IN				
		HAWAII.				

_					
37	GM667		Submitting for consideration and confirmation as the Deputy to the Chairperson of the Department of Hawaiian Home Lands, Gubernatorial Nominee, WILLIAM J. AILA, for a term to expire at noon on 12-05-2022.	SUPPORT	
38	GM696		Submitting for consideration and confirmation to the Environmental Council, Gubernatorial Nominee, BARBARA KAAUMOANA, for a term to expire 06-30-2023.	SUPPORT	
39	GM706		Submitting for consideration and confirmation to the Island Burial Council, Island of Hawai'i, Gubernatorial Nominee, DESMON HAUMEA, for a term to expire 06-30-2022.	MONITOR	
40	GM711		Submitting for consideration and confirmation to the Commission on the Status of Women, Gubernatorial Nominee, DEJA OSTROWSKI, for a term to expire 06-30-2022.	SUPPORT	
41	GM712		Submitting for consideration and confirmation to the Hawaiian Homes Commission, Gubernatorial Nominee, PAULINE NAMUO, for a term to expire 06-30-2022.	MONITOR	
42	GM713		Submitting for consideration and confirmation to the Hawaiian Homes Commission, Gubernatorial Nominee, DENNIS NEVES, for a term to expire 06-30-2021.	MONITOR	
43	GM722		Submitting for consideration and confirmation to the Board of Education, Gubernatorial Nominee, BRUCE VOSS, for a term to expire 06-30-2022.	MONITOR	
ITEM#	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			Bill Positions for Reconsideration		
44	HB439	RELATING TO LAND USE.	Exempts lands set aside by the governor to the Hawaii housing finance and development corporation for the primary purpose of developing affordable housing from classification as public land subject to DLNR management. Requires lands set aside by the governor to the Hawaii housing finance development corporation for the primary purpose of developing affordable housing to be subject to legislative approval prior to the sale or gift of those lands. Takes effect 7/1/2050. (SD1)	MONITOR > COMMENT	

AMENDMENT:	AMENDMENT:						
MEANS OF FINANCIN	lG:						
				'AE	A'OLE	KANALUA	
TRUSTEE		1	2	(YES)	(NO)	(ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA						EXCUSED
DAN	AHUNA						EXCUSED
VICE-CHAIR KALEIHIKINA	AKAKA	1		X			
KELI`I	AKINA			X			
BRENDON KALEI`ĀINA	LEE		2	X			
HULU	LINDSEY			X			
ROBERT	LINDSEY						EXCUSED
COLETTE	MACHADO						EXCUSED
CHAIR JOHN	WAIHE'E			X			
TOTAL V	OTE COUNT			5	0	0	4

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

DISCUSSION:	

Office of Hawaiian Affairs Board of Trustee Meeting April 4, 2019 10:00 am

V. New Business

B. Deliberation and decision making on the Report by the Permitted Interaction Group on Organizational Guidance of its findings and recommendations. *Pursuant to HRS* §92-2.5(b)(1)(C).*

*Please insert the Report by the Permitted Interaction Group on Organizational Guidance distributed on March 28, 2019.



OFFICE OF HAWAIIAN AFFAIRS STATE OF HAWAI'I RECEIVED-BOT

2019 MAR 27 A 9 10

OFFICE OF HAWAIIAN AFFAIRS

Interoffice Memorandum

DATE:

March 25, 2019

TO:

Board of Trustees

FROM:

Trustee Brendon Kalei'aina Lee

BIB

RE:

Governance Framework Permitted Interactive Group (PIG)

When the Office of Hawaiian Affairs (OHA) was established over 40 years ago, no one foresaw the growth OHA would experience as it evolved into the Native Hawaiian Trust it is today.

Based on recent best practice analyses, the current Board of Trustees governance framework does not address the many different needs of its Native Hawaiian Trust as well as the overall management of the Office of Hawaiian Affairs.

In order to assist in the forward movement of our organization, on January 24, 2019, the Board of Trustees voted to approve a Permitted Interactive Group (PIG) to develop an updated Governance Framework for the Office of Hawaiian Affairs. This group, over the past two months, has worked diligently to complete a comprehensive analysis of OHA's by-laws, policies, and action items spanning the last five years. In order to provide context and history, our administrative staff has put together a mo'oku'auhau for our current policies. In addition to reviewing these materials, we met with our kupuna ali'i trusts (Queen Lili'uokalani Trust, Lunalilo Home, and Kamehameha Schools) to analyze their governance framework. In order to gain even more insight, we also studied national and international governance models (Maori and Native American Tribal governments) for their respective governance contexts.

This project was a joint effort; our team was comprised of selected trustees, trustee staff, administration leaders, and administrative staff. I would like to take this opportunity to thank our team for the long hours of aggregating data, reporting back to the team weekly, and participating in insightful and open discussion. I want to especially mahalo our project manager, Ka Pou Nui Sylvia Hussey, for keeping the team on track and on time.

The attached report of our Governance Framework PIG shows that once the governance model is adopted, subsequent PIGs will need to be approved to develop transition steps over the next six to nine months.

Mahalo.



I. OVERVIEW

Two thousand eighteen (2018) marks the end of the Office of Hawaiian Affairs' (OHA or Organization) strategic plan period, and several years of challenges within the organization, hampering the organization's abilities to more intently apply and deploy resources to "better the conditions of native Hawaiians". In the past 24 months, the following have undermined effective governance at OHA:

- People. Board of Trustees (BOT) interactions among themselves, with regulatory agencies (e.g., Ethics Commission, Attorney General's office), with Administration (including staff), and beneficiaries and stakeholders have diverted strategic energy, focus, time and dollars from mission critical and aligned responsibilities.
- Policies and Plans. Un-implemented strategic policies and plans (e.g., Post 2018
 Strategic Plan, including implementation, Financial Sustainability Plan, Debt Policy,
 Hawaii Direct Assets Policy, LLCs) have hampered the organization's ability to advance mission critical and aligned strategies.
- Procedures and Practices. Audits--initiated or triggered by BOT interactions and behaviors, and completed in the normal course of regulatory and statutory requirements (e.g., Chapter 10)---have diverted trust resources (e.g., time and dollars) and highlighted procedure and practice improvements, respectively.

Given the changes and experiences in the last 24 months within the organization, the need for strengthening governance can be synthesized to a need:

- To improve the image, brand, credibility and standing in the community of the Office of Hawaiian Affairs;
- To demonstrate understanding of and accountability to the statutory, fiduciary and trust organizational responsibilities of the Office of Hawaiian Affairs via codified policies, procedures and practices;
- For explicit clarity in the roles, responsibilities and accountabilities of the Board of Trustees and Administration (including staff);
- For explicit and intentional clarity in the purposes, direction and strategic planning and implementation efforts post 2018; and
- To strengthen the organization's ability to advance mission critical and aligned strategies.

The Board of Trustees (BOT) is committed to strengthening OHA's governance framework, structure, policies, procedures and practices to more intently apply and deploy resources to "better the conditions of native Hawaiians".



II. PERMITTED INTERACTION GROUP

A. Statutory Basis

In accordance with HRS, CHAPTER 92, PUBLIC AGENCY MEETINGS AND RECORDS §92-2.5 (b) Permitted interactions of members, (b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to: (1) Investigate a matter relating to the official business of their board; provided that: (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board; (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and (C) Deliberation and decision making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

B. Formation

In January 2019, the Board approved the formation of a Permitted Interaction Group (PIG) to: Investigate various elements of governance frameworks and models, including but not limited to cultural, indigenous, native, national and international contexts. The PIG was established with Chair, Colette Machado as Business Process Owner, Vice Chair, Trustee Brendon Kalei'āina Lee as Project Sponsor and Trustees Robert Lindsey¹ and John Waihee² as members. The PIG was supported by Trustee Machado, Lee, Lindsey and Waihee's Aides; and Administration, Ka Pouhana, Kamana'opono Crabbe, Ka Pou Nui, Sylvia Hussey and Executive Office staff. The PIG, also known as the Board Governance Framework Project, implemented a project plan in five phases: Phase I – Planning; Phase II – Where are we now? (AS IS); Phase III – Proposing Elements of a Governance Framework; Phase IV – Proposing Implementation Actions; and Phase V – Closing Project and Lessons Learned. This PIG report covers the results (and close) of the PIG of Phases I to III. Phases IV and V is proposed to be accomplished through a subsequent, sequenced series of PIGs, subject to Board approval.

For purposes of the PIG, the following working definition of "governance" was used to frame the project, activities and deliverables: Establishment of policies, and continuous monitoring of their proper implementation, by the members of the governing body of an organization. It includes mechanisms required to balance the powers of the members (with the associated accountability) and their primary duty of enhancing the prosperity and viability of the organization.³

¹ Interim Chair of the Resource Management Committee at the time of the formation of the Permitted Interaction Group

² Chair of the Beneficiary, Advocacy and Empowerment Committee

³ http://www.businessdictionary.com/definition/governance.html, retrieved 1/1/2019

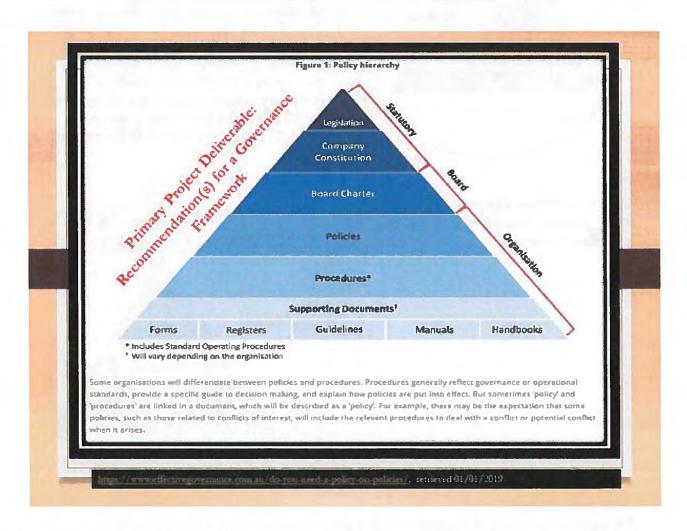


C. Analyses Context

For purposes of the PIG Board Governance Framework Project, the working "look back" period was determined to be five (5) years----2018, 2017, 2016, 2015, 2014----which includes five of the eight years of the Strategic Plan, 2010 to 2018 period.

D. Major Deliverable of the PIG

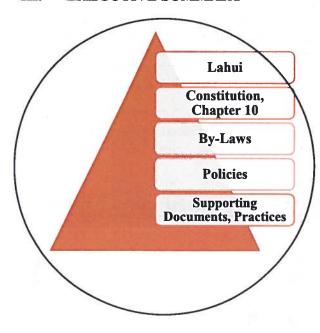
The major project deliverable of the PIG are recommendations to the Board of Trustees for OHA's governance framework utilizing an exemplar policy hierarchy below:⁴



⁴ https://www.effectivegovernance.com.au/do-you-need-a-policy-on-policies/, retrieved 01/01/2019



III. EXECUTIVE SUMMARY



OHA's identity manifests itself in four roles: advocate, researcher, community engager and asset manager.

The PIG recommends five elements of OHA's Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

Element 1: Identity. Ho'oulu Lahui Aloha – To Raise a Beloved Lahui. A State Agency with the responsibility to manage a Trust, that identifies and operates more similarly to Ali'i Trusts⁵ with a lahui⁶ mindset in improving the well-being of our lahui. Such an identity is rooted in the 'ōlelo no'eau, E 'ōpū ali'i, have the heart of a chief, have the kindness, generosity, and even temper of a chief, 'ōlelo no'eau 369⁷. OHA's identity is also place based, that OHA's kuleana is to this place of Hawaii.



⁵ Kamehameha Schools, Liliuokalani Trust, Lunalilo Home, Queens Medical Center

⁶ Nation, race, tribe, people, nationality, Na Puke Wehewehe, retrieved 3/17/2019

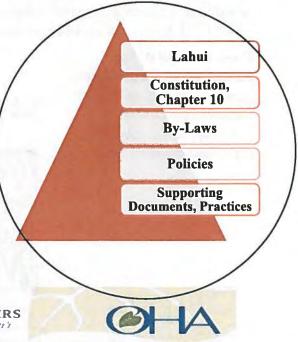
⁷ Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 45



Element 2: Values and Mana

The PIG recommends that the Board Governance Framework acknowledge the surrounding intangible, yet invaluable role of values and mana in governance.

Effecting the operating values of kūlia, kākou, pono, ho'omau and aloha, begins with Trustees and Board work as exemplars for Administration and the Organization as a whole. O ke kahua mamua, mahope ke kūkulu, the site first, and then the building, learn all you can, then practice, 'olelo no'eau 24598.



THE OFFICE OF HAWAIIAN AFFAIRS Empowering Hawanans, Strengthening Hawai'r

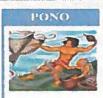




Excellence



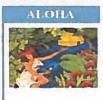
Collaboration Cooperation Unity



Integrity Truth



Legacy



Respect Value

'O ke kahua ma mua, ma hope ke Kūkulu.

E hoʻoikaika ana i nā Kānaka i mana ka lāhui.

⁸ Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 268



In addition, the concept of mana⁹, often oversimplified as "power", belies the complexity of the concept and its acquisition, development and maintenance toward OHA enabling capital.

Mana as Capital. The acquisition, development and maintenance of mana toward strengthening OHA's influence capital, cultural capital and financial capital.

THE OFFICE OF HAWAIIAN AFFAIRS

2mpowering Hawaiians, Strengthening Hawaii



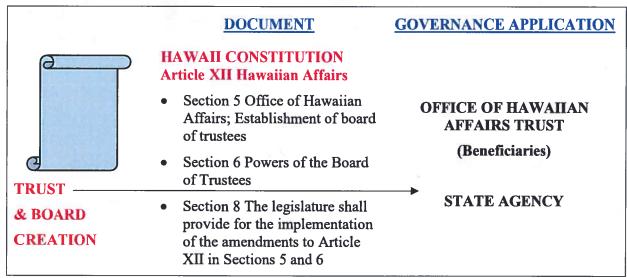
Mana - OHA will:



- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

Element 3: Statutory Basis

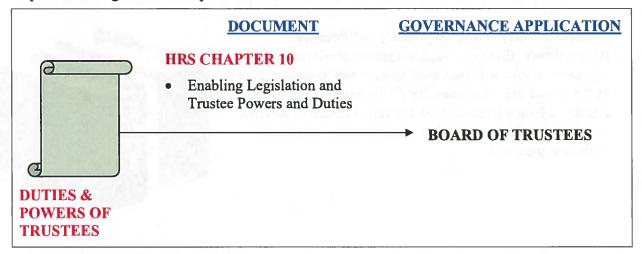
OHA was established under the Hawai'i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai'i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people.



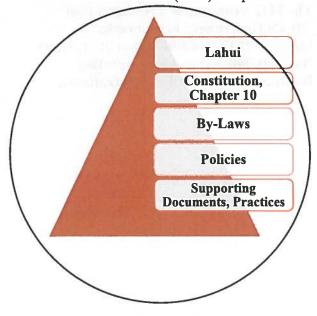
⁹ Na Puke Wehehe, Supernatural or divine power, mana, miraculous power; a powerful nation, authority; to give mana to, to make powerful; to have mana, power, authority; authorization, privilege; miraculous, divinely powerful, spiritual; possessed of mana, power, http://weheweh.org, retrieved 3/26/2019



The State of Hawaii's Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



Hawaii Revised Statutes (HRS) Chapter 10 enables legislation and trustee powers and duties.



Element 4: Policies¹⁰. The PIG recommends that OHA policies be organized into three tiers: L-Lahui¹¹, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the kaumaha (heavy weight, sadness) or significant kuleana (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding 'āina, water, wahi pana and iwi kupuna, strengthen 'ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA's Trustee role as a result of the

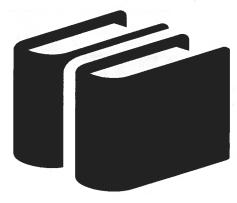
¹⁰ Merriam-Webster, Definition of *policy* 1a: prudence or wisdom in the management of affairs; b: management or procedure based primarily on material interest; 2a: a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b: a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, https://www.merriam-webster.com/dictionary/policy, retrieved 3/17/2019

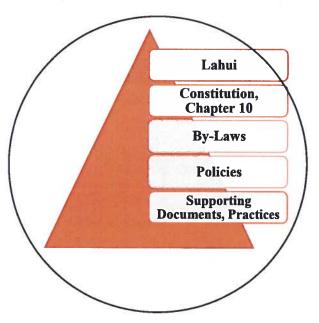
¹¹ Pukui, nvs. Nation, race, tribe, people, nationality, http://wehewehe.org, retrieved 3/17/2019



Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

Element 5: Supporting Documents and Practices (Operations). Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and "operationalized" documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.





The PIG recommends five elements of OHA's Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).



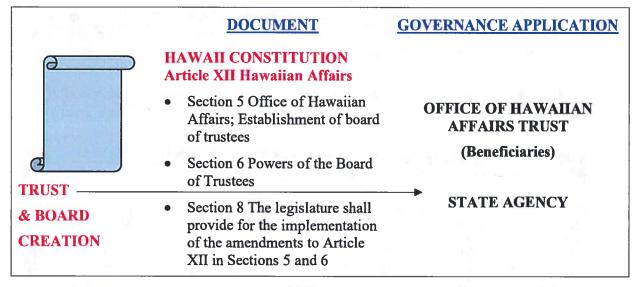
IV. WHERE ARE WE NOW? (AS IS)

- A. AS IS Analyses. The PIG examined OHA's current governance framework elements; reviewed the current policies, procedures and practices; analyzed BOT action items for the past five (5) years; analyzed a handful of current advocacy platform items, including its mo'okuauhau (genealogy); identified emerging governance framework design elements; and studied models of cultural, indigenous, native, national and international governance contexts.
 - 1. Purpose of the Office. The current governance framework and the Organization's operations are all framed by HRS Chapter 10 and related Federal, State and County laws.
 - §10-3 Purpose of the office. The purposes of the office of Hawaiian affairs include:
 - (1) The betterment of conditions of native Hawaiians, A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e);
 - (2) The betterment of conditions of Hawaiians:
 - (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
 - (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
 - (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
 - (6) Serving as a receptacle for reparations.

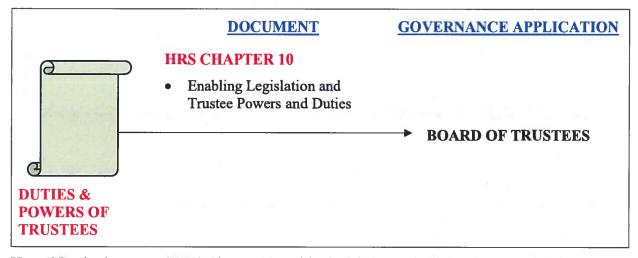
In Section 10-3, the use of the descriptor of "native Hawaiians" and "Hawaiians" in "betterment of conditions", refers to individuals (beneficiaries) who are greater than or equal to 50% Hawaiian ancestry (aka 'little n Hawaiians') and less than 50% of Hawaiian ancestry (aka 'big N'), respectively. Regardless of the terminology and definition used and understood in Section 10-3, "native Hawaiian" or "Hawaiian", OHA's actions as it relates to carrying out the purpose(s) of the office has been and continues to be lāhui focused.



2. Current Governance Framework. The current operating governance structure of the Office of Hawaiian Affairs (OHA) Trust¹² is described below with the foundational governing documents and related application.



The State of Hawaii's Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



Hawaii Revised Statutes (HRS) Chapter 10 enables legislation and trustee powers and duties.

¹² Governance Structure, prepared by Office of Corporate Counsel, Office of Hawaiian Affairs, October 2016



GOVERNANCE APPLICATION DOCUMENT HRS CHAPTER 10 BOARD OF TRUSTEES Federal Codes and Regulations - Single Agency Audit because **Inherent Trustee Duties** OHA receives Federal funding **Fiduciary** Hawaii Revised Statutes -**Duty of Obedience** Elections (Chapter 11 & 13D); Ethics (Chapter 84); Public **Duty of Loyalty** Meetings Law (Chapter 92); **Duty of Care** Information Practices (Chapter COMPLIANCE 92F); Procurement (Chapter WITH LAWS 103D and 103F); Uniform COMPLIANCE Trustee Power Act (Chapter WITH BY-LAWS 554A); Public Office (Chapter AND BOT 831); Audit of State Auditor **POLICIES** (Chapter 23) County Ordinances - Zoning and Permitting



3. Board of Trustees - Powers and Duties

- §10-5 Board of trustees; powers and duties. The board shall have the power in accordance with law to:
- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3;
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution:
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
- (7) Provide grants to individuals, and public or private organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10-17;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authenticated. [L 1979, c 196, pt of §2; am L 1990, c 304, §§5, 16; am L 1996, c 240, §1; am L 2002, c 182, §3]

The BOT currently operates under the understanding of the powers and duties as outlined in HRS Chapter 10, specifically Section 10-5. The following is an analysis of the alignment of major BOT actions and activities in the past five years: Management of the proceeds of the Public Land Trust (PLT) revenue (1), (2); Management and development of Kaka'ako Makai and legacy lands (1), (2); Management of Native Hawaiian Trust Fund (NHTF) financial assets (3); Formulation of policies (e.g., ceded lands, spending, investment, water, iwi kupuna, international engagement) (4); Action re Mauna Kea (5); Delegation of authority to Administrator (6); Leveraged State General (via provisos) and Trust funds for multiplier effect (7); Collaborations with Native Hawaiian Legal Corporation and University of Hawaii – Manoa, Richardson Law School, Ka Huli Ao (8).



4. Board of Trustees - General Duties

- § 10-6 General duties of the board. (a) The general duties of the board shall be:
 - (1) To develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawanans and Hawanans,
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians
 - (C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians
 - (D) Establishment of priorities and alternatives for the office's program and service implementation, and
 - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel,
 - (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;
- (3) To maintain an inventory of federal, state, county, and private programs and services for Hawmians and native Hawaiians and act as a clearinghouse and referral agency;
- (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians,
 - (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians;
 - (6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs;
- (7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawanian programs or projects.
- (8) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawanians or Hawanians, and
 - (9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians.
- (b) The board shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by this chapter, and which may be necessary to fully and completely effectuate the purposes of this chapter.

As of February 2019, the Office of Hawaiian Affairs Board of Trustees ("BOT") operate with a constitutionally and statutorily-founded governance framework that has been further reinforced by years of Board action in the formation of its bylaws, policies, procedures, and practices.

In an attempt to strengthen the BOT governance framework moving into 2020 and beyond, PIG analysis focused on key areas where restructuring may be proposed in order to improve upon the effectiveness of BOT policymaking and organizational advancement of those policies in the pursuit of OHA's purpose for the betterment of conditions of Native Hawaiians.



- 5. Board of Trustees Action Items for the Past 5 Years. The PIG assigned team members, utilizing OHA's internal website---Ka Ipu o ka 'Ike, the gourd of knowledge (aka Ki'i for short), navigated via various links to identify a list of BOT and Committee Action Items over the past five (5) years, 2014 to 2018. The following analyses insights are noted below:
 - a. FY 2018. The following major actions, other than Biennium Budget, Community Grants, Legislative package related actions, were noted:
 - Approval of an OHA Resolution Designating 2018 as "Year of the Hawaiian" (January 2018)
 - Amendment to BOT Exec Policy Manual 3.5.e and 3.5.f (January 2018)
 - Approval for OHA to impose moratorium on use of Trustee Sponsorship and Allowance Fund (TSAAF) and CEO-initiated Sponsorships (February 2018)
 - Moratorium on Fiscal Reserve Spending (February 2018)
 - Pursuant to request for LLC documents from BOT, LLC mgrs will submit documents to BOT Financial Audit Comm or its auditor (February 2018)
 - Authorization for OHA CEO/Admin to continue Kaka'ako Lot I sale negotiations with C&CH and approval of legislative reso related to potential sale of Kaka'ako Makai Lot I to C&CH (March 2018)
 - Move to authorize OHA Admin to assess feasibility, timing, and downsizing
 of current LLC operation structure and develop transition plan to replace
 existing LC managers, report back by 6/30/18 (May 2018)
 - Authorize OHA CEO to cease ongoing negotiations on a PSA to sell Kaka'ako Makai Lot I to C&CH due to disagreements over unresolved business points of a potential sale, and to take all other reasonable and appropriate actions to implement the foregoing (June 2018)
 - Authorize Administration to utilize \$500,000 for Emergency Disaster Relief on Kaua'i and Hawai'i islands (June 2018)
 - Approve all updates and amendments to BOT Bylaws with the exception of the Re-Designation of all references in Bylaws from "Administrator" to "Chief Executive Officer" which will be considered separately (July 2018)
 - Move to update budget preparation, format and reporting requirements by approving amendments to EPM and BOT Operations Manual, excluding aments on Fiscal Transparency 3.4.k through 3.4.l in Attach A and C (September 2018)
 - Approve long-term direction of Master Plan for OHA's 511 acre property in Wahiawa surrounding Kukaniloko Birthing Stones, authorize Admin to take further steps toward implementation (September 2018)



- b. FY 2017. The following major actions, other than Biennium Budget, Native Hawaiian Revolving Loan Fund Board of Directors, Community Grants, Audit Services and Legislative package related actions, were noted:
 - Requesting the OHA BOT authorization of OHA Chief Procurement Officer to issue a Request for Qualifications for an independent CPA firm to conduct a financial audit and management review of OHA and its subsidiaries (March 2017)
 - Authorize OHA Administration to Proceed with the Programmatic Environmental Impact Statement (EIS) Process for OHA"s Kakaako Makai Parcels (April 2017)
 - Approval of an OHA Board of Trustees Policy Amendment relating to an allocation of revenue from OHA's Kaka'ako Makai properties (June, August 2017)
 - Authorizing OHA Administration to negotiate and execute an easement agreement with Agribusiness Development Corporation for the installation of irrigation water infrastructure on OHA's Wahiawa property (August 2017)
 - Amendment to Section 5.1 of the Investment Policy Statement, changing the Native Hawaiian Trust Fund Asset Allocation and Benchmarks (August 2017)
 - Approve Wao Kele o Puna Comprehensive Management Plan (CMP) (September 2017)
 - 2018-2019 Charter School Funding Administration Grant Recommendation (October 2017)
- c. FY 2016. The following major actions, other than Biennium Budget, Fiscal Reserve, Termination of Investment Advisors, Community Grants and Legislative package related actions, were noted:
 - BOT Executive Policy on International Engagement (February 2016)
 - Approval of BOT Bylaws Amendment as shown in Attachment "A" and Corresponding and Conforming Changes to BOT Executive Policies as shown in Attachment "B. Code of Conduct and Sanctions for Violation of the Code of Conduct (February 2016, May 2016)
 - Adopt OHA's Fiscal Sustainability Planning Model and Approval of the Statement of Commitment Relating to OHA's Fiscal Sustainability Implementation Plan (May 2016)
 - Approval of a BOT Executive Policy Amendment relating to a Policy on Trespassing and Illegal Camping on OHA Property (May 2016)
 - Approval of Funds from OHA's FY 2016 fiscal Reserve Authorizations for OHA's Fiscal Sustainability Plan (October 2016)



- Support for Standing Rock Sioux Tribe in its efforts to protect its sacred sites and natural and cultural resources (October 2016)
- d. FY 2015. The following major actions, other than Biennium Budget, Budget Realignment, Community Grants and Legislative package related actions, were noted:
 - Approval of the Native Hawaiian Trust Fund Approved Advisors & Non-Marketable Asset Providers List and the addition of SSARIS Advisors LLC as an approve Manager of the Enhanced Liquidity Account (February 2015)
 - Approval of Partial Funding for the Acquisition of 47 acres of the Kuamoo Battlefield and Burial Grounds by the Trust for Public Lands (May 2015)
 - Reorganization of Standing Committee Structure of the OHA Board of Trustees to Create the Committee on Resource Management (July 2015)
 - Approve and authorize funding request of \$400,000 from OHA FY 16 Fiscal Reserve Authorizations for Lunalilo Home and Trust (July 2015)
 - Adoption of OHA Protecting Iwi Kupuna Policy to be included in BOT Executive Policy Manual (November 2015)
 - Adoption of OHA Water Policy and a Water Backgrounder Appendix to be included in the Executive Board Policy Manual (November 2015)
 - Approval of OHA participation in the appurtenant rights and Water Use Permit Application portion of the contested case hearing regarding Na Wai Eha (November 2015)
 - OHA proposed response to the Dept of Interior's proposed rule for Reestablishing a Formal Government to Government relationship with the Native Hawaiian Community (December 2015)
- e. FY 2014. The following major actions, other than Biennium Budget, Budget Realignment and Legislative package related actions, were noted:
 - Approve amendment to the OHA BOT Bylaws to create a Committee on Land and Property as a third Standing Committee of the Board and to approve amendments to existing land policies in the OHA Executive Policy Manual (January 2014)
 - Amendments to the NH Trust Fund Spending Policy and its Related Fiscal Reserve Withdrawal Guidelines (February 2014)
 - Amendments to the Investment Policy Statement (June 2014)
 - Approval of the Policy Guidelines for the Committee on Land and Property (June 2014)
 - Due Diligence for new 65-year Lease DLNR lease and sublease to Hoomana (September 2014)



- Various Governance related actions (e.g., operating budget, financing) (March, August, October 2014)
- 6. Advocacy Platform, including Mo'okuauhau. Under the direction of the PIG, an analysis of advocacy platform matters was completed for the following five areas: native rights, iwi kupuna, 'olelo Hawai'i, aina and wahi pana utilizing BOT Executive Policy Manual and other internal reference sources.
 - a. Native Rights. We preserve, protect, and advocate for Native Hawaiian rights and entitlements, including self-determination and a fair and just share of Public Land Trust lands and revenues. OHA's BOT Executive Policy Manual articulates three elements related to Native Rights policy: (1) Preservation and Protection; (2) Advocacy; and (3) Share of Public Land Trust.

The importance of the Native Rights matter is codified in:

Federal Statute. The Apology Resolution, Public Law 103-149, states: Congress apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination. (underlining added)

State Constitution. Article XII, section 7 of the State Constitution says: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purpose and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Native Rights

Until the early 1970s, writes Melody Kapilialoha MacKenzie, Esq., American law did little to acknowledge Native Hawaiians as an indigenous people with unique and distinct rights. Even today, Native Hawaiians, like many indigenous peoples, must constantly assert and defend their rights in a foreign, and often hostile, legal system if they are to remain a separate and distinct native people. Indeed, international law has only recently recognized and begun to protect the rights of the world's indigenous peoples. Generally, [Native Hawaiian] rights are based on more than a millennium of living, developing, and thriving as a people and a culture in Hawai'i. Some rights emanate from the status of Native Hawaiians as an indigenous people and from the political independence of the Hawaiian Kingdom prior to [its] illegal overthrow in 1893. Other laws . . . are laws that apply more generally. For example, any individual may bring a quiet title action, claim lands under the adverse possession doctrine, or be entitled to sufficient water to grow kalo (taro). And in Hawai'i, everyone has access to the beaches and along the shorelines These areas of law . . . have a greater impact on Native Hawaiians as the original inhabitants of Hawai'i's 'aina (land) because they are necessary to sustain a traditional lifestyle. Moreover, many of these rights exercised by the general public are based on or find their roots in Hawaiian custom and practice. [Native Hawaiian] laws and rights . . . are in constant flux, expanding and contracting with the passage of new laws and current decisions by the courts.



Article XII, section 6 of the State Constitution says: The [BOT] shall exercise power as provided by law: to manage and administer... all income and proceeds from [the] pro rata portion of the [Public Land Trust]....

<u>State Statutes</u>. Section 10-13.5, Hawai'i Revised Statutes, says: Twenty per cent of all funds derived from the public land trust... shall be expended by the Office of Hawaiian Affairs....

(Note: OHA's annual pro rata share of the revenues from the Public Land Trust was temporarily set at \$15.1 million by Act 178 of 2006)

Section 10H-1, Hawai'i Revised Statutes, says: The native Hawaiian people are hereby recognized as the only indigenous, aboriginal, maoli people of Hawaii.

Section 10H-2, Hawai'i Revised Statutes, says: The purpose of this chapter [the Native Hawaiian Recognition chapter] is to provide for and to implement the recognition of the Native Hawaiian people by means and methods that will facilitate their self-governance, including the establishment of, or the amendment to, programs, entities, and other matters pursuant to law that relate, or affect ownership, possession, or use of lands by the Native Hawaiian people, and by further promoting their culture, heritage, entitlements, health, education, and welfare.

Act 195, Session Laws of Hawai'i 2011 (the Native Hawaiian Recognition act that created Chapter 10H, Hawai'i Revised Statutes), states in Section 1 (the preamble): The legislature urges the office of Hawaiian affairs to continue to support the self-determination process by Native Hawaiians in the formation of their chosen governmental entity.

<u>OHA Strategic Plan</u>. OHA's 2010-2018 Strategic Plan contains the following mission: To malama Hawai'i's people and environmental resources, and OHA's assets, toward ensuring the perpetuation of the culture, the enhancement of lifestyle and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally. (underlining added)

In addition, the Strategic Plan contains the following strategic priority: To restore pono and ea, Native Hawaiians will achieve self-governance, after which the assets of OHA will be transferred to the new governing entity

The Strategic Plan also contains the following Strategic Result: Adoption by the Board of Trustees of a Transition Plan that includes the legal transfer of [OHA] assets and other resources to the new Native Hawaiian governing entity,



b. Iwi Kupuna. We protect and promote the reverence and cultural importance of proper care, management, and protection of ancestral Native Hawaiian remains (iwi kupuna) and we encourage Native Hawaiian participation in repatriation. Iwi kupuna have been found buried all around the islands, often at sites slated for, or already undergoing, development. These discoveries have generated public attention, scrutiny, protest, and litigation. Developers and Native Hawaiians often disagree on the most appropriate way to resolve these issues; and prominent sites have not been spared from controversy surrounding iwi found on its property during construction. Aware of these iwi discoveries, many OHA beneficiaries have passionately advocated for the proper care, management, and protection of iwi kupuna. These beneficiaries have approached OHA for assistance, and OHA has responded with policies and with our mana'o and kokua.

OHA's BOT Executive Policy Manual articulates two elements related to iwi kupuna policy: (1) Proper Care, Management, and Protection; (2) Hawaiian Participation in Repatriation. The importance of the iwi kupuna matter is codified in:

State Constitution. Article XII, section 7 of the State Constitution says:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Article XII, section 6 of the State Constitution authorizes the BOT to formulate policy relating to the affairs of native Hawaiians and Hawaiians.

<u>Federal Statute</u>. The federal Native American Graves and Repatriation Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to native cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony.

<u>State Statute</u>. The state Historic Preservation law, Chapter 6E, Hawai'i Revised Statutes, requires the appropriate island burial council to determine whether preservation in place or relocation of or previously identified native Hawaiian burial sites is warranted.

<u>OHA Strategic Plan</u>. OHA's 2010-2018 Strategic Plan contains the following strategic priority for Mo'omeheu (Culture): To strengthen identity, Native Hawaiians will preserve, practice and perpetuate their culture.



c. 'Ōlelo Hawai'i. We support revitalizing the Hawaiian language and using it correctly. While once spoken throughout Hawai'i by Native Hawaiians and foreigners alike, 'Olelo Hawai'i was considered nearly extinct by the 1980s, when fewer than 50 fluent speakers under age 18 remained. The deterioration of the Hawaiian language resulted largely from an 1896 law that required English instruction in Hawai'i schools, which essentially banned Hawaiian students from speaking their native tongue.

However, great strides have been made to bring about a renaissance of the Hawaiian language through programs such as 'Aha Punana Leo's Hawaiian language immersion schools, the state Department of Education's language immersion program, and the Hawaiian language programs of the University of Hawai'i system. Also, in 1978 the state constitution was amended to recognize the Hawaiian language as one of the two official languages of the State.

OHA's BOT Executive Policy Manual and By-laws articulate two elements related to 'Ōlelo Hawai'ii: (1) Revitalizing the Hawaiian language; and (2) Proper usage within OHA. The importance of 'Ōlelo Hawai'i is codified in:

State Constitution. Article XV, section 4 of the State Constitution says:

English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.

Article X, section 4 of the State Constitution says:

The State shall promote the study of Hawaiian culture, history and language.

The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program.

<u>Federal Statute</u>. The federal Native American Languages Act of 1990 "established federal policy to allow the use of Native American languages as the medium of instruction, and affirms the right of Native American children to express themselves, be educated, and assessed in their languages." The law includes Native Hawaiians.

¹³ National Coalition of Native American Language Schools & Programs



State Statutes. Section 5-7.5, Hawai'i Revised Statutes, says:

The Hawaiian language is the native language of Hawaii and may be used on all emblems and symbols representative of the State, its departments, agencies and political subdivisions.

Section 1-13.5, Hawai'i Revised Statutes, says:

Macrons and glottal stops may be used in the spelling of words or terms in the Hawaiian language in documents prepared by or for state or county agencies or officials. Any rule, order, policy, or other act, official or otherwise, that prohibits or discourages the se of these symbols shall be void.

<u>Strategic Plan</u>. OHA's 2010-2018 Strategic Plan contains the following strategic priority for Mo'omeheu (Culture):

To strengthen identity, Native Hawaiians will preserve, practice and perpetuate their culture.

The Strategic Plan also contains the following strategic result:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the 'aina for cultural, spiritual, religious and subsistence.

d. 'Aina. We protect and preserve Hawai'i lands and their cultural significance. We protect the ceded lands corpus until the un-relinquished claims of Native Hawaiians are resolved. We create financially viable property involvements for OHA. The late law professor Jon Van Dyke wrote:

Before continuous contact with westerners began in 1778, the dominant system of land tenure [in the Hawaiian islands] was an intricate and interdependent arrangement based on agriculture needs and hierarchical structure. Individuals lived in reciprocity with the 'Aina (land), which they believed would sustain them if properly respected and cared for. 'Aina was not a commodity and could not be owned or traded. Instead, it belonged to the Akua (gods and goddesses), and the Ali'i (the chiefs and chiefesses who were the human embodiment of the Akua) were responsible for assisting ka po'e Hawai'i (the people of Hawai'i) in the proper management of the 'Aina). 14

Land tenure in Hawai'i has changed dramatically since Western contact, evolving into a Western model in which land can be bought, sold, traded, and some would say, exploited. Still, the spirit of malama 'aina and the central place of the 'aina

¹⁴ Jon M. Van Dyke, Who Owns the Crown Lands of Hawai'i?



in Hawaiian culture, while sorely tested in modern times, remain vital and deserve zealous protection.

Furthermore, Native Hawaiian claims to the former crown and government lands ceded to the United States at Annexation and returned to Hawai'i upon statehood, are still unresolved. Native Hawaiians have a continuing interest and claim to the ceded lands, and their struggle to regain their culture, recover their lands, and restore their sovereign nation will be futile if the ceded lands are dissipated.

OHA's BOT Executive Policy Manual articulates two elements related to 'Aina: (1) Care in OHA Land Acquisition and Management; and (2) Protecting the Ceded-Lands Corpus. The importance of 'Aina is codified in:

<u>State Constitution</u>. Article XI, section 1 of the State Constitution says:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the state for the benefit of the people.

Article XI, section 3 of the State Constitution says:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands....

Article XI, section 10 of the State Constitution says:

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Article XII, section 4 of the State Constitution says:

The lands granted to the State of Hawaii by Section 5(b) of the Admission act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1929, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.



Article XII, section 5 of the State Constitution says:

The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside to or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.

Article XV, section 5, of the State Constitution says:

The motto of the State shall be, "Ua mau ke ea o ka aina i ka pono."

("The life of the land is perpetuated in righteousness")

State Statutes. Section 10-4, Hawai'i Revised Statutes, says:

[OHA] shall have the following general powers:

(2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same at such time, in such manner and to the extent necessary or appropriate to carry out its purpose

<u>Strategic Plan</u>. One of the Core Values stated in OHA's 2010-2018 Strategic Plan is Ho'omau:

E ho'omau kakou i ke ea o ka 'aina na mea e ho'opuni ana, ka mo'omeheu a me kapo'e Hawai'i

("Together, steadfast we preserve and perpetuate our culture, people, land and environment."

The Strategic Plan contains the following as one Strategic Priority:

To maintain the connection to the past and a viable land base, Native Hawaiians will participate in and benefit from responsible stewardship of Ka Pae 'Aina O Hawai'i.

The Strategic Plan contains the following among the Strategic Results:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the 'aina for cultural, spiritual, religious and subsistence.

70% of all Hawai'i residents understand and agree that a viable land base is necessary for the new Native Hawaiian governing entity.

Increasing the percent of Ka Pae 'Aina O Hawai'i managed to create economic value, preserve cultural and natural resources and historic properties, and/or provide cultural and social opportunities for Native



Hawaiians in a sustainable and balanced manner.....By 2018, increasing from 12% to 15% the percent of ahupua'a that are managed sustainably

e. Wahi Pana. We protect and preserve the integrity of and access to Hawaiian cultural sites.

From the Partners in Development Foundation website: "In traditional indigenous cultures, we find a more focused commitment to preparing the next generations by making sure they understand the history, traditions, and values from which they have blossomed. In addition to genealogy and family traditions, many indigenous cultures like the Hawaiian culture, pay close attention to the specific geographical places their families inhabit. The understand the power of an active and vibrant sense of place in the life of its people.

In Hawaiian culture, "wahi pana" is defined as celebrated, noted, and legendary places, or landmarks of special interest and historical significance. Each of these special places have distinguishing landmarks (mountain peaks, streams, wind, rain, etc.) that are given specific names and are connected to the rich history, chants, stories, and songs that are traditionally passed down from one generation to the next. Hawaiian music, for example, is replete with songs that praise places in our islands with the actual place only being revealed by the specific name of the wind or rain that is referred to in the melody. In public gatherings fifty or sixty years ago, it was common for the various songs of the islands or communities to be sung as an invitation for people from those places to stand and be identified with that wahi pana. It kept our kupuna aware of the traditions they represented as they faced the challenges of day to day living. Although we possess many of these names and songs today, we may not know the physical characteristics that led our ancestors to call a wind or rain differently from others. Our understanding of our sense of place is eroding.

The unique and special cradle of people, traditions, and physical realities of a place shape who we are. It is a strong framework from which we can make decisions consistent with their historical and cultural anchors, to meet the challenges of contemporary life. Often we allow the larger world to teach our young ones the values and perspective which are inconsistent with our cultures and our family traditions. We step back from intentionally teaching our children who they represent and where they find their roots. Let us return to a commitment to teach our children and adults the power of wahi pana."15

OHA's BOT Executive Policy Manual highlights one element related to wahi pana: Protect and Preserve the Integrity of and Access to Hawaiian Cultural Sites.

¹⁵ Partners in Development Foundation, https://pidf.org/about/wahi-pana, retrieved 3/26/2019



The importance of wahi pana is codified in:

<u>Strategic Plan</u>. One of the Core Values stated in OHA's 2010-2018 Strategic Plan is Ho'omau:

E ho'omau kakou i ke ea o ka 'aina na mea e ho'opuni ana, ka mo'omeheu a me kapo'e Hawai'i

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- 7. Policies. The PIG analyzed a number of policies, policy documents and other organizational documents.
 - **a. Policy Formulation.** Internal documents depict the current policy formulation process, including:
 - BOT > Create and amend BOT governing documents; prepare action item; two readings with six (6) affirmative votes¹⁶; and codification (implementation).
 Substantial amendments to Bylaws would usually require repeal/rescission of the old Bylaws and approval of new set of Bylaws.
 - **BOT** > Action item to create or amend executive policies; five (5) affirmative votes¹⁷; and codification (implementation).

¹⁶ Bylaw Article XIII Amendments to Bylaws. These Bylaws shall be amended only by to-thirds vote of all members to which the Board is entitled. Any proposed amendment to the Bylaws shall be submitted in writing for consideration by the Board. The Board shall not vote on any bylaw amendment until a minimum of two readings by the Board.

¹⁷ Executive Policy Manual Series 1000 Board of Trustees, 1020 Policy Formulation, Adoption and Amendment of Policies 1.2.a. OHA policy may be adopted by an affirmative majority (5) vote of all the members to which the BOT is entitled at any regular duly convened meeting of the BOT, provided the proposed policy shall have been presented in writing using the OHA Action Item format for a first reading at a previous regular meeting of the BOT. Such policy shall become effective on the date stated therein (or the date determined by the BOT) upon approval by the BOT at its second reading and approval by a majority (5) vote of all the members to which the BOT is entitled.



 Administration > Annual maintenance review; review changes in the laws for impact on Bylaws and Policies.

The PIG noted that on the internal website---Ka Ipu o ka 'Ike, the gourd of knowledge (aka Ki'i for short), there are a number of action items that track the primary governing documents of the BOT—Bylaws, Executive Policy Manual and BOT Operations Manual (collectively, "Governing Operating Documents").

The Policy Formulation section of the BOT Executive Policy Manual provides a meager framework for developing and establishing OHA policy. The information contained herein is straightforward, however, when comparing the written guidelines to the actual practice, there is essentially a blurring of the lines in policy formulation. Sections 2.1.a-2.1.e., p. 13, of the BOT Executive Policy Manual explicitly provides OHA's policies on advocacy that include: Preservation and Protection of Legal Entitlements, Native Hawaiian Rights and Entitlements, Hawaiian Culture, and OHA's position policy of oppose Position on Certain Proposed Legislative Measures. The above sections leave much to interpretation considering the vast array of issues that OHA Advocacy advocates upon. It is without a doubt that the totality of issues that OHA has advocated - which have crystalized in policy formation - farexceeded the limited number of policies appearing on a single page, suggesting that the BOT Executive Policy Manual -described as "a living document that will be kept current as and when the Board adopts new policy, amends, or abolishes existing policy" is completely outdated and currently inadequate to serve as an effective source of OHA policy positions.

b. Analysis. For the purposes of the analysis, "policy" was defined as a "definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions". In determining the scope of policies both utilized and created by the OHA BOT (within at least the past five years), it became necessary to determine what exactly constituted a policy differentiated from procedure and practice. With the understanding that policies may range in significance from monumental to subtle, clarifying guidelines were utilized. While the BOT Policy Manual suggested that policies may originate at any level of OHA, policies identified in this analysis were strictly determined in one of three ways: 1) pre-identified existing policies found in official OHA documents including the BOT governing documents; 2) policies overlying legislative positions with BOT approval; and 3) policies overlying legislative positions with Administration approval.

Finally, in differentiating policies from procedures and practices, it was necessary to identify policies as those guiding principles, which set forth a direction, whereas procedures were those series of steps to be followed in order to maintain a consistence and repetitive approach in achieving a practice. For example, OHA maintains a top priority policy to reduce Native Hawaiian obesity; OHA has established programmatic grants and sponsorships as a procedure to advance OHA's



purpose; and OHA has engaged in the practice of awarding millions of dollars in grants to community and health organizations dedicated to curtailing Native Hawaiian obesity rates.

c. OHA Role Interaction & Policy Formation. The Hawai'i State Constitution specifically tasks OHA trustees with the capacity "to formulate policy relating to affairs of Native Hawaiians." While the OHA Executive Policy Manual suggests that policy may spring up from anywhere within OHA's structure, it is ultimately up to the OHA Trustees to establish OHA policy through Board approval. With that said, the role of OHA Administration and its current scope of work, has enabled policy formation that is not always within the purview of OHA Trustees. Likely unintended, the flexibility often afforded to OHA Administration to advance and serve as a strong advocate for the betterment of conditions of Native Hawaiians has a way of expanding and morphing the boundaries of a Board-approved policy — continued manipulation of the boundaries of any given policy has the potential to eventually become unrecognizable from its original form, resulting in a deviation never intended by the OHA Board of Trustees.

For example, the OHA Executive Policy Manual is silent on any Board-approved policy on "affordable housing". Be that as it may, it is currently assumed that OHA has a policy on supporting affordable housing as: (1) the OHA strategic priority of economic self-sufficiency within OHA's 2010-2018 Strategic Plan specifically lists "increasing homeownership" as one of its two critical goals; (2) OHA's website explaining its economic self-sufficiency priority states that "[o]ne of our greatest obligations to Native Hawaiians is to help them address challenges to affordable housing;" and (3) OHA public policy, with the approval of the Board of Trustees, has drafted testimony and testified before State and county legislative authorities in support of "affordable housing" If there is indeed no official Board position explicitly stating a position on "affordable housing" then this is certainly an example of how the role of OHA Administration contributes to the formation of OHA policy; in a way, manipulating Board approval for something it may not have consented to. While responsible and well-informed flexibility can be highly beneficial, certain sensitive issues are better served with fully defined boundaries. The "affordable housing" discussion is one such issue where housing advocates are greatly divided. While some advocates may consider the current model of 140% AMI and below to sit appropriately within the definition of "affordable housing" a Native Hawaiian housing advocate knowing that the majority of Native Hawaiians fall within the 60% AMI and below bracket, may suggest affordability being appropriately defined as 80% AMI and below instead of 140% AMI and below. OHA currently advocates at the current definition (140% AMI and below), which in itself begins to crystalize OHA's policy on "affordable housing" - a Board choosing to be more specific, might not agree with this policy position. These indirect, perhaps unintended, and nebulous policy formations are not strictly limited to advocacy, as they can begin to



take shape through OHA Research's publication of a strategic plan, or even OHA Community Outreach's repetitive description of an inexplicit policy area.

8. BOT Governing Documents. Members of the BOT are issued a binder titled, Board of Trustees Governing Documents volume 1, containing BOT Bylaws, the BOT Executive Policy Manual, BOT Operations Manual, Committee on Land and Property Policy Guidelines, and a number of policy positions in the following categories: Kaka'ako Makai Settlement Properties; Native Hawaiian Trust Fund Investment; OHA Spending; OHA Real Estate Vision, Mission, and Strategy Policy; and OHA Risk Management. The status of the compendium is said to be incomplete and outdated. After preliminary review of the current governing documents, it has become apparent that the full breadth and scope of OHA policies are not nearly contained within these governing documents. The most obvious absence is that of OHA's 2010-2018 Strategic Plan. While it may not be feasible to include, within the governing documents, every policy, procedure, and practice developed by OHA, OHA's 2010-2018 Strategic Plan, at the very least, provides a policy structure that should be reflected in a series of identifiable and standalone categories.

For example, OHA's policy on the inter-relationship between Native Hawaiian lifestyle and 'āina stewardship is in itself such a vast source of other policies, procedures, and practices that filing it beneath any of the above listed policy areas currently contained within the governing documents would be a severe detriment. OHA's 2010-2018 Strategic Plan is essentially a platform for a specific direction. For the past eight years, OHA has used this strategic plan to guide its policymaking, procedures, and practices. However, none of the six strategic priorities and the many countless established policies subjected to each are reflected in the governing documents as they are prioritized in the 2010-2018 strategic plan.

Both policies and strategic plans serve to provide direction for OHA and past strategic plans have encapsulated priority policies in the fulfilment of OHA's purpose, vision, mission, and values. Moving into 2020+, it is recommended that the BOT governing documents also reflect those BOT approved policies present within any future strategic plan platform. Consequently, there is room to expand the governing documents to include a more adequate representation of OHA's grand scope of policies. At present, the governing documents greatly lack collation of most OHA policies. With that said, OHA trustees should have access to every OHA policy in effect, which would require a vast improvement upon the collation of OHA policies, procedures, and practices. The BOT governing documents (or more specifically, the BOT Executive Policy Manual –pursuant to Section 1.2.c.) should serve as a valuable resource for directing existing and future trustees, while also being instrumental in directing OHA Administration and staff – as in OHA Advocacy – who are reliant on the ease-of-access to a wide array of OHA policies in their day-to-day activities.



9. Key Observations and Recommendations (in no particular order of priority):

- a. Better coherence between BOT governing documents and the OHA strategic plan.
- b. Improve effectiveness of BOT governing documents by improving collation of OHA policies, procedures and practices.
- c. Improve navigation to changes of Governing Operating Documents via Ki'i.
- d. Continue authorization actions as it relates to policy changes (e.g., new, edits, updates) via BOT Action Items.
- e. Integrate approved BOT Action Items into the Governing Operating Documents in a timely manner (e.g., Committee on Land and Property. International Engagement, Water Policy).
- f. Establish a better system for recording policy status and updating the BOT Executive Policy Manual.
- g. Assemble an updated, e-accessible, and organized compendium of OHA policies.
- h. Require public policy advocates (or anyone providing an OHA position based on OHA policy) to cite their policy source and provide a description and rationale.

B. Foundations Analyses

PIG team members completed an initial analysis on references to OHA in state and county law, as applied to OHA na Paia (Divisions)—Advocacy, Resource Management (RM) – Financial Assets, RM-Land, Research, and Community Engagement. The first section of the analysis reviewed the purposes for which OHA was established, as provided by the state constitution and Chapter 10 of the Hawai'i Revised Statutes (HRS) and detailed earlier in this report. These references provide a broad mandate under which OHA operates. The third section provided the powers granted to the OHA Board of Trustees (BOT) that can be exercised to fulfill OHA's purpose and statutory requirements and also detailed earlier in this report.

The second section of the analysis provided the requirements placed on OHA under the state constitution, state law, and county ordinances. The analysis below does not include obligations placed on OHA that are not based in statute, such as assumed responsibilities under formal agreements with other entities (e.g., Halawa-Luluku Interpretive Development, Papahānaumokuākea), or those obligations that arise from the government agency status (e.g., procurement code, Sunshine law, ethics code). The analysis below is organized by the Paia (Division) that has been assigned current, primary responsibility over a given statutory requirement.¹⁸

¹⁸ The powers and duties of the OHA Board of Trustees may be delegated to the OHA Administrator and employees. HRS § 10-5(6).



- 1. Advocacy (Public Policy, Compliance Enforcement, Washington D.C. Bureau, Papahānaumokuākea programs)
 - a. Assist with planning for programs and services. OHA is to assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services.¹⁹
 - b. Special reports. The board shall prepare and submit special reports as may be required by the legislature."²⁰
 - c. Native Hawaiian law training course. "OHA, at its own expense, shall establish, design, and administer a training course relating to [Native Hawaiian] traditional and customary rights, [Native Hawaiian] natural resource protection and access rights, and the public trust, including the State's trust responsibility. ...[OHA], at its own expense, shall develop the methods and prepare any materials necessary to implement the training course, administer the training course, and notify each council, board, and commission identified in section 10-A(a) that attendance in a training course is mandatory. The office of Hawaiian affairs shall offer the training course at least twice per year."²¹
 - d. Vetting for island burial councils. OHA shall submit to the governor a list of nominees for filling vacancies on the five island burial councils.²²
 - e. Vetting for Maui and Hawai'i county Cultural Resources Commissions. The mayors of Maui and Hawai'i counties must solicit lists of two or more persons to their respective county Cultural Resources Commission from members of the public, including OHA.²³
 - f. Consulting agency on Native Hawaiian issues. Although not explicitly required under HRS Chapter 10, OHA serves in a consultative role in a number of state and county processes. Furthermore, a primary purpose for OHA is to "[assess] the policies and practices of other agencies impacting on [Native Hawaiians], and conducting advocacy efforts for [Native Hawaiians]." Note, this category does not include OHA representation on state boards and commissions, which is discussed separately in this memo under the general duties of OHA, under section II.F., nor does it include instances where consultation with, or representation by, Native Hawaiian organizations (not specifically OHA) is required.²⁵

¹⁹ HRS §10-6(a)(2).

²⁰ HRS §10-15.

²¹ HRS 810-42

²² HRS §6E-43.5.

²³ Maui County Charter (MCC), sec. 2.88.030; Hawai'i County Code (HCC), sec. 2-226(b).

²⁴ HRS §10-3(4).

²⁵ For example, under the federal Native American Graves Protection and Repatriation Act, OHA is listed as an example of a Native Hawaiian Organization that must be consulted upon discovery of a Native Hawaiian cultural item on federal lands. See 25 United States Code (USC) §3001-3002. See also 20 USC §80q-11.



- Maunakea rulemaking. In adopting rules to regulate public and commercial activities on Maunakea lands, the UH Board of Regents must consult with OHA to ensure that the rules will not affect any traditional and customary rights of Native Hawaiians, except as a reasonable regulation of such rights.²⁶ The UH Board of Regents shall consult with OHA on the assessment and collection of administrative fines for violations of the Maunakea rules.²⁷
- Public land sales or exchanges. Three months prior to the convening of the legislative session, OHA must be provided with a draft of the legislative resolution seeking approval of any sale or exchange of former Crown or government lands of the Kingdom of Hawai'i (or lands exchanged for such lands) to allow OHA to analyze the proposed sale or exchange.²⁸
- Historic preservation and Native Hawaiian burials. Consultation with OHA is required for: (1) determining when the location of archeological sites should be withheld from public posting when there is a threat of destruction or loss;²⁹ (2) rulemaking to establish criteria for when burial sites should be relocated or preserved in place;³⁰ (3) rulemaking to establish a process for appointing members to the island burial councils;³¹ and (4) inadvertent discoveries of burial sites (with notification coming via DLNR).³²

Consultation with the Native Hawaiian Historic Preservation Council, which serves in an advisory capacity to the OHA CEO, is required for rulemaking related to permits for access by Native Hawaiians to historic sites.³³ All applications to the Maui Planning Department must include preliminary archaeological and historical data and comments from DLNR and OHA, and if applicable, a preservation/mitigation plan that has been reviewed and approved by OHA.³⁴

- 2. Community Engagement (Community Outreach, Digital and Print Media, Hawaiian Registry programs)
 - a. Clearinghouse and referral agency. OHA is to maintain an inventory of federal, state, county, and private programs and services for Native Hawaiians and act as a clearinghouse and referral agency.³⁵

²⁶ HRS §304A-1903.

²⁷ HRS §304A-1904.

²⁸ HRS §§171-50; 171-64.7.

²⁹ HRS 86E-17

³⁰ HRS §6E-43.

³¹ HRS §6E-43.5.

³² HRS §6E-43.6.

³³ HRS §6E-3.

³⁴ MCC, sec. 19.510.010(D)(9).

³⁵ HRS §10-6(a)(3).



- b. Hawaiian Registry. OHA is to "establish and maintain a registry of all Hawaiians wherever such persons may reside. Inclusion of persons in the Hawaiian registry shall be based upon genealogical records sufficient to establish the person's descent from the aboriginal peoples inhabiting the Hawaiian islands in 1778." 36
- 3. Research (Program Improvement; Land, Culture and History; Special Projects programs)
 - a. Research and development. OHA is to conduct, encourage, and maintain research relating to Native Hawaiians and to develop and review models for comprehensive Native Hawaiian programs.³⁷
 - b. **Data gathering.** As provided in the Strategic Plan, OHA has the duty to compile basic demographic data on Native Hawaiians and identify the physical, sociological, psychological, and economic needs of Native Hawaiians.³⁸
 - c. Kuleana land tax verification. The counties of Hawai'i, Kaua'i, and Maui, as well as the City and County of Honolulu, recognizes that OHA (or a court of law) may verify the genealogy of a kuleana land property tax exemption applicant as a lineal descendant of the original titleholder of kuleana land.³⁹
- 4. Resource Management-Financial Assets (Administrative Services, Procurement, Information Systems, Investments Transactions, Transitional Assistance⁴⁰ programs)
 - a. Disbursement and depositing of money. "[OHA] shall have and exercise the power to make all necessary and appropriate disbursements of its moneys by issuing checks in its own name and by any other means. . . . [OHA] shall have and exercise the power to deposit any of its moneys in any banking institution within or outside the State."
 - b. Administration of federal funds. OHA is to apply for, accept and administer any federal funds made available or allotted under any federal act for Native Hawaiians. 42 "Moneys received from the federal government for research, training, and other related purposes of a transitory nature, and moneys in trust or revolving funds administered by the office, shall be deposited in depositories other than the

37 HRS §10-6(a)(5).

³⁸ See HRS §10-6(a)(1)(A), (B) (requirements under the OHA Strategic Plan).

⁴⁰ Now known as the Grants Department

41 HRS §10-4.5.

³⁶ HRS §10-19.

³⁹ See Revised Ordinances of Honolulu, sec. 8-10.32; HCC, sec. 19-89.5; Kaua'i County Code, sec. 5A-11.29; MCC, sec. 3.48.554. See also HRS § 10-5(8) (providing that OHA may "[m]ake available technical and financial assistance and advisory services to any agency . . . for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs.").

⁴² HRS §10-6(a)(8).



state treasury and shall be reported on to the state comptroller under section 40-81, and rules prescribed thereunder."⁴³

- c. Revolving loan fund. Using federal funds received from the Department of Health and Human Services, OHA is to establish a revolving loan fund to make loans or loan guarantees to Native Hawaiian organizations and individuals "for the purpose of promoting economic development in the State of Hawaii." Prior to making a loan, OHA must determine that the borrower is unable to obtain financing from other services on reasonable terms and conditions and there is a reasonable prospect that the borrower will repay the loan. Loans must be made on terms established by statute and under payment and collection terms reviewed and approved by the Commissioner of the Administration for Native Americans. OHA must report to the Commissioner loans in default and prospects for collection of such loans, and shall carry out the instructions of the Commissioner with respect to loans in default.⁴⁴
- d. **Budget preparation and submission.** OHA is to submit to the state legislature its budget, six-year program and financial plan, and variance report, in accordance with the budget submission schedule specified for the governor in HRS Chapter 37. At least twenty days prior to the convening of each regular session of the legislature, OHA is to submit to the legislature an accounting of the expenditures made in the prior fiscal year, by account code and budget program. By November 1 of each year preceding a legislative session in which a budget is to be submitted, the OHA BOT shall provide written notification to the governor of the proposed total expenditures, by cost categories and sources of funding, and estimated revenues of OHA for each fiscal year of the next fiscal biennium."

The OHA BOT is to provide opportunities for beneficiaries in every county to participate in the preparation of each biennial and supplemental budget of OHA. These opportunities shall include an accounting by trustees of the funds expended and of the effectiveness of programs undertaken." The legislature shall consider the board's proposed program and financial plan; evaluate alternatives to the board's recommendations; and appropriate any general fund portion of the budget and any matching special fund appropriations."

e. Grants. One of the purposes for which OHA was established is "[a]pplying for, receiving, and disbursing, grants and donations from all sources for [Native

⁴³ HRS §10-13.

^{44 42} USC 2991b-1.

⁴⁵ HRS §10-14.5(a).

⁴⁶ HRS §10-14.5(b).

⁴⁷ Id.

⁴⁸ HRS §10-14.6.



Hawaiian] programs and services."⁴⁹ In awarding grants, OHA is responsible for ensuring:

- (1) The applicant has applied for or received all applicable licenses and permits, when such is required to conduct the activities or provide the services for which a grant is awarded;
- (2) The applicant agrees to comply with applicable federal, state, and county laws;
- (3) The grant shall not be used for purposes of entertainment or perquisites;
- (4) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules; and
- (5) The applicant will indemnify and hold harmless the office, the State of Hawaii, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the office.

Further, OHA is responsible for monitoring to ensure compliance with HRS Chapter 10 and the purposes and intent of the grant; and annual evaluation to determine whether the grant attained the intended results in the manner contemplated.⁵⁰

- f. Support for audit. "The office shall be subject to governmental audit." ⁵¹ "The auditor shall conduct an audit of the office at least once every four years and shall submit a report on findings and recommendations to the governor and the legislature on or before the convening of the next immediate legislative session." ⁵² Every five years, the office of the auditor shall submit a review of the special, revolving, and trust funds of OHA. ⁵³
- 5. Resource Management-Land Assets (Commercial Property Management, Land and Property Management, Hālawa-Luluku Interpretive Development programs)
 - a. **Hold title.** "The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians." ⁵⁴
 - b. **Escheat of kuleana land.** "Any provision of law to the contrary notwithstanding, if the owner of an inheritable interest in kuleana land dies intestate, or dies partially intestate and that partial intestacy includes the decedent's interest in the

⁴⁹ HRS §10-3(5).

⁵⁰ HRS §10-17.

⁵¹ HRS §10-14.5(c).

⁵² HRS §10-14.55.

⁵³ HRS 823-12.

⁵⁴ Hawai'i Constitution art. XII, section 5.



kuleana land, and if there is no taker . . . such inheritable interest shall pass to [DLNR] to be held in trust until [OHA] develops a land management plan for the use and management of such kuleana properties, and such plan is approved by [DLNR]. Upon approval, [DLNR] shall transfer such kuleana properties to [OHA]."

OHA shall be joined as a defendant in any quiet title or adverse possession claim for kuleana land and where plaintiff has reason to believe that an owner of an inheritable interest in kuleana land died intestate or partially intestate. 56

6. General

- a. **Strategic Plan.** The OHA BOT is to develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;
 - (C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians;
 - (D) Establishment of priorities and alternatives for the office's program and service implementation; and
 - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel.⁵⁷
 - b. **Public Land Trust spending.** "Twenty per cent of all funds derived from the public land trust, described in section 10-3, shall be expended by the office, as defined in section 10-2, for the purposes of [HRS Chapter 10]." Beginning in fiscal year 2005-2006, the annual amount of the income and proceeds from the pro rata share of the PLT shall be \$15,000,000.⁵⁹
 - c. Annual reports. "The [OHA BOT] shall prepare and make public their annual report which shall include an enumeration of their activities, income, and expenditures during the year. The annual report for the previous fiscal year shall be submitted to the governor and the legislature ten days prior to the convening of each regular session of the legislature." The annual report shall also include a list of

⁵⁵ HRS §560:2-105.5.

⁵⁶ HRS §669-2.

⁵⁷ HRS §10-6(a)(1).

⁵⁸ HRS §10-13.5.

⁵⁹ Act 178 (Session Laws of Hawai'i (SLH) 2006).

⁶⁰ HRS §10-15



volunteer job titles and estimates of the total number of volunteers and the total number of hours of volunteer service.⁶¹

- d. **Positions on boards and commissions.** OHA is to advise and inform federal, state, and county officials about Native Hawaiian programs, and coordinate federal, state, and county activities relating to Native Hawaiians.⁶² To these ends, a representative of OHA is made a member of the following state boards and commissions:
 - Native Hawaiian Education Council (OHA Chairperson or designee)⁶³
 - State Board on Geographic Names (OHA Chairperson or representative)⁶⁴
 - Kaho'olawe Island Reserve Commission (OHA trustee or representative)⁶⁵
 - Kāne'ohe Bay Regional Council (OHA representative)⁶⁶
 - Community-Based Economic Development Advisory Council (OHA Chairperson or designee)⁶⁷
 - Hawai'i Climate Change Mitigation and Adaptation Commission (OHA CEO or CEO's designee)⁶⁸
 - Hawai'i Interagency Council on Homelessness (OHA Chairperson or Chair's designee)⁶⁹
 - Corrections Population Management Commission (OHA Administrator or Administrator's designee)⁷⁰
 - Dark Night Skies Protection Advisory Committee (OHA Administrator or Administrator's designee)⁷¹
 - Temporary Commission on the Thirteenth Festival of Pacific Arts (OHA CEO or CEO's designee)⁷²

7. Unassigned

After reviewing the statutory responsibilities of OHA and comparing them to the responsibilities assigned to the various Paia, the following responsibilities are believed to be unassigned or unaccounted for under OHA's current operational structure.

a. Reparations. A primary purpose of OHA is to serve as a receptacle for reparations.⁷³

⁶¹ HRS §90-5.

⁶² HRS §10-6(a)(4).

^{63 20} USC § 7514(b).

⁶⁴ HRS §4E-1.

⁶⁵ HRS §6K-5.

⁶⁶ HRS §200D-2.

⁶⁷ HRS §210D-5.

⁶⁸ HRS §225P-3.

⁶⁹ HRS §346-382

⁷⁰ HRS §353F-4.

⁷¹ Act 185 (SLH 2017).

⁷² Act 104 (SLH 2017).

⁷³ HRS §10-3(6).



- b. Develop and review program models. OHA is to "develop and review models for comprehensive [Native Hawaiian] programs."⁷⁴
- c. Clearinghouse for Native Hawaiian assistance. OHA is to act as a clearinghouse for applications for federal or state assistance to carry out Native Hawaiian programs or projects.⁷⁵
- d. **Develop Native Hawaiian agencies.** OHA is to promote and assist the establishment of agencies to serve native Hawaiians.⁷⁶

Limitations of the Analysis. While the analysis includes all requirements placed on OHA that are contained in federal, state, and county laws and ordinances, it excludes OHA requirements contained <u>only</u> in administrative rules of federal, state, or county agencies. The analysis does not contain those requirements imposed on the OHA trustees as fiduciaries of Native Hawaiian trust funds (e.g., duty of care). In addition, there may be some instances where an unintentional

The special relationship between Indians and the federal government is the result of solemn obligations that have been entered into by the United States government. Down through the years, through written treaties and formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety—services that would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans. This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the federal government that arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American.

President Richard Nixon, Special Message to the Congress on Indian Affairs, July 8, 1970 assignment of responsibility for fulfilling a particular statutory requirement to a Paia or program within OHA was made. Regardless of the comprehensive analysis, reading and understanding of the underlying statute should still be completed.

C. Governance Framework Design

1. Various Native, Indigenous Governance Models

a. American Indian and Alaska Native. This summary is informed by the report *Tribal Nations in the United States*, published by the National Congress of the American Indians (NCAI). NCAI, founded in November 1944 serves the broad interests of tribal governments and communities. This report was published in 2017, and a revised version will be published in March 2019.

NCAI is organized as a representative congress of American Indians and Alaska Natives to develop consensus on national priorities that impact tribal sovereignty. NCAI is one of many national and regional organizations dedicated to indigenous advocacy. Some of these organizations have more specialized advocacy agendas, such as regional issues,

⁷⁴ HRS §10-6(a)(6).

⁷⁵ HRS §10-6(a)(7).

⁷⁶ HRS §10-6(a)(9).



or specific advocacy areas including, but not limited to, education, health care, housing, and economic development. Similarly, several umbrella advocacy organizations exist in Alaska. The largest of those organizations is the Alaska Federation of Natives (AFN). Its membership includes 191 federally recognized tribes, 171 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and compact to run federal and state programs.

A Broad Summary of Indian Country.

There are 573 sovereign tribal nations located across 35 states within the geographic borders of the United States. Of these tribes, 229 are located in Alaska. Additionally, there are state

recognized tribes located throughout the United States recognized by their respective state governments but who do not have a political relationship with the federal government. Self-governing tribes have the inherent power to govern all matters

our basic values. It's a matter of upholding an

to do. And I'm confident that if we keep up our

ideal that has always defined who we are as

verning tribes have the inherent power to govern all matters involving their members, as well as serve as an advocate with their local, state, and federal governments for issues important

across Indian Country.

Governing Authority. Excerpted from Tribal Nations in the

Governing Authority. Excerpted from Tribal Nations in the United States report:

Tribes "Most tribes give legislative authority to a tribal council. In some cases, the tribal council members are elected by district; in others, they are elected at large. The council generally has authority to write tribal laws, and council members have administrative duties in some tribes. Most tribal constitutions also provide for an executive officer, called a "tribal chairman," "president," "governor," or "chief." In some tribes, the tribal council elects the chief executive, while the

voting citizens directly elect the leader in others. In most cases, the chief executive's duties and powers are not specified in the constitution but are set in the bylaws. Consequently, the role of the chief executive varies greatly among tribes. Many tribes also have created their own court systems that administer codes passed by the tribal council. In many tribes, judges are elected by popular vote; in others, the tribal council appoints judges."

Alaska Native Governance. "Of the federally recognized tribes, 229 are located in Alaska. Each of the Alaska Native tribes is distinctly unique from tribes located in the

I am committed to furthering the selfdetermination of Indian communities, but without terminating the special relationship between the federal government and the Indian people. I am strongly opposed to termination. Self-determination means that you can decide the nature of your tribe's relationship with the federal government within the framework of the Self-Determination Act, which I signed in

resident Gerald Ford



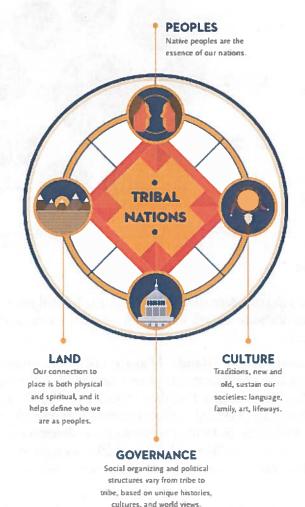
lower 48 United States. Alaska Native tribes have no treaties with the US government, as treaty-making ended in 1871, just years after the 1867 Alaska Purchase Treaty with Russia. The governing bodies of Alaska Native communities

Tens of millions of Indigenous peoples inhabited North America, and governed their complex societies, long before European governments sent explorers to seize lands and resources from the continent and its inhabitants. These foreign European governments interacted with tribes in diplomacy, commerce, culture, and war—acknowledging Indigenous systems of social, cultural, economic, and political governance.

Tribal nations have remained as political powers from the colonial period until today—engaging in commerce, trade, cultural exchange, and inspiring the principles of freedom and democracy enshrined in the US Constitution. As the United States formed a union, the founders acknowledged the sovereignty of tribal nations, alongside states, foreign nations, and the federal government in the US Constitution.

Tribal nations are part of the unique American family of governments, nations within a nation, as well as sovereign nations in the global community of nations.

Rooted in deep traditions and distinct ways of life, tribal nations are defined by Indigenous peoples, places, cultures, and governance.



vary by tribe or village
"traditional councils,"
"native councils," "village
councils," "tribal councils,"
or "IRA councils." In some
instances, the term
"village" is used instead of
"tribe," as tribes in Alaska
were often recognized by
the term "village" under the
Alaska Native Claims
Settlement Act (ANCSA)
of 1971."

Tribal Citizenship. "Like any government, tribal governments determine their own criteria for citizenship. Usually there is some blood quantum requirement, such as onequarter, or a requirement of lineal descendency from a tribal citizen. The Supreme Court has recognized that each tribe determines its own criteria. Some federal agencies also have criteria for determining eligibility for programs and services. Not all American Indian

and Alaska Native people are citizens of tribal nations." Tribal members are citizens of three entities: their tribe, the United States, and the state in which they reside.

Tribal Government Services and Functions. "Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. The governments exercise these inherent rights through the development of their distinct forms of government, determining citizenship; establishing civil and criminal laws for their nations; taxing, licensing,



regulating, and maintaining and exercising the power to exclude wrongdoers from tribal lands. Tribal governments are responsible for a broad range of governmental activities on tribal lands, including education, law enforcement, judicial systems, health care, environmental protection, natural resource management, and the development and



maintenance of basic infrastructure such as housing, roads, bridges, sewers, public buildings, telecommunications, broadband and electrical services, and solid waste treatment and disposal.

b. Ngāi Tahu, New Zealand South Island. In analyzing Māori governance frameworks, the analysis focused on one tribe as a case study. The Ngāi Tahu are a Māori iwi, or tribe, from New Zealand's South Island. The Ngāi Tahu were one of the parties to the 1840 Treaty of Waitangi to whom redress was owed by the British Crown due to treaty violations. In 1998, a settlement was determined and the Ngāi Tahu were compensated \$170 million cash (among other things). As a result of this economic redress, Ngāi Tahu became an economic powerhouse worth over \$1.65 billion as of 2018.

Ngāi Tahu is an iwi, a tribe, of Aotearoa that has, interestingly, incorporated its governing body. In an attempt to establish a tribal structure in order to best manage its assets and its business, while also maintaining the capacity to distribute benefits, the tribe's governing documents were placed into law via the passage of legislation: Te Rūnanga o Ngāi Tahu Act 1996. In accordance with law, te Rūnanga o Ngāi Tahu (the Council/Board of Directors of the Ngāi Tahu) is established as the body corporate and representative of the Ngāi Tahu Whānui. Membership and requirements are also provided for in statute as well as powers. Of note, amendments to this law requires a special resolution provided by te Rūnanga.



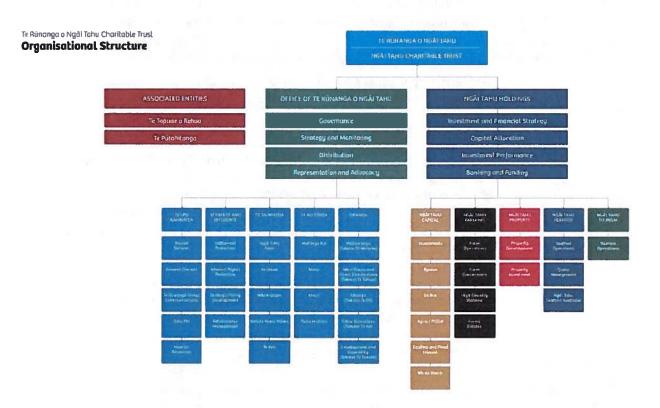
- The Te Rūnanga o Ngāi Tahu is the 18-member governing board or council of the Ngāi Tahu tribe. A Kaiwhakahaere (chair) leads the board. According to the tribe's website: Te Rūnanga o Ngāi Tahu is responsible for the overall governance of the group and for representing Papatipu Rūnanga and Ngāi Tahu Whānui and delivering benefits to them. Te Rūnanga o Ngāi Tahu deal with global tribal policy and issues, while Papatipu Rūnanga manage issues requiring wider or local consultation.
- Kā Pakitua Leadership Team is the executive team below in authoritative succession to the 18-member te Rūnanga o Ngāi Tahu. "Kā Pakitua" is the name of the legendary toki (adze), which sat upon the prow of the great migration waka (canoe) Uruao, which carried the ancestors of the Ngāi Tahu. Kā Pakitua is symbolic in the role it played in both navigation and clearing out the passages of the ocean on the Ngāi Tahu's way to Aotearoa.
 - o The leadership team is comprised of a Chief Executive Officer, Chief Operating Officer, the general managers of each pou (pillar) of the iwi.
 - o These pou are as follows:
 - Te Taumatua: Responsible for ensuring the integration of the tribe into all aspects of council activities and ensuring the efficient and effective delivery of the core services through which tribal members can determine their membership, incorporating the whakapapa function, tribal archive and traonga collections, Kotahi Mano Kāika and the Ngāi Tahu Fund;
 - Oranga: Responsible for work streams designed to help whānau (family) to realize rangatiratanga (self-determination) in the areas of education, employment, financial literacy, and business creation. Oranga provides strategic program delivery to ensure success for whānau through whānau rangatiratanga;
 - o Te Ao Turoa: Responsible for taonga (cultural treasures) resources, mahinga kai (traditional food and natural resource gathering) and natural environment. Ensures the integration of programs and environmental work streams within the wider tribal development strategy to support whānau outcomes;
 - o Strategy & Influence: Dedicated to realizing Ngāi Tahu visions for tribal development through the development and implementation of political and organizational strategy, strategic relationship management, and strategic public relations





The Papatipu Rūnanga are 18 regional boards comprised of various hapū (family groups) with their own governance structures. Each Papatipu Rūnanga selects one member to represent them on te Rūnanga o Ngāi Tahu.

Ngāi Tahu Charitable Trust Organizational Structure. Ngāi Tahu Holdings is an investment company formed subsequent to the Ngāi Tahu Claims Settlement of 1998 with investments in property, farming, seafood, tourism, as well as direct investments in a number of businesses as well as indirect investments through private equity funds and international equities.



According to the 2018 Ngāi Tahu Holdings Report and the 2018 Te Rūnanga o Ngāi Tahu Annual Report, \$61.05 million in revenue was distributed Te Rūnanga o Ngāi Tahu. This is up from the previous year where \$49.6m in revenue was distributed to the tribe, with \$32.6m for tribal initiatives (excluding operational and administrative costs), \$7.1m for educational and wellbeing grants, and \$10.6m direct distribution and development for Papatipu Rūnanga.

The organizational structure of the Ngāi Tahu is a masterwork model for trust organizations serving as the receptacle for fairly sizeable redress in terms of direct



cash compensation and land and resource assets, having a net worth that has grown to over \$1.65 billion. The Ngāi Tahu organizational structure, as it relates to the Office of Hawaiian Affairs, should be highly informative, if not highly influential for these reasons: (1) Both organizations are Trusts responsible for the survival of their people; and (2) Both organizations have access to large capital and land and resource assets.

c. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁷⁷. Indigenous peoples globally continue to face dispossession of their lands and resources, discrimination, forced assimilation and other grave human rights abuses. The United Nations Declaration on the Rights of Indigenous Peoples is the most comprehensive international human rights instrument to specifically address their economic, social, cultural, political, civil, spiritual and environmental rights. In its own words, the Declaration sets out minimum standards necessary for the "dignity, survival and well-being" of Indigenous peoples.

The UN General Assembly overwhelmingly adopted the Declaration on 13 September 2007. This historic adoption followed more than twenty years of deliberation and debate in which Indigenous peoples worked directly with states to elaborate upon and advance their human rights. This marked the first time within the UN that rights holders had such a central role in the creation of a new human rights instrument.

The Declaration affirms Indigenous peoples' right of self-determination and underlines the prohibition of discrimination and genocide in international law. The Declaration calls on states to honour and respect the Treaties and other agreements they have entered into with Indigenous peoples, to protect Indigenous languages and cultures, and to uphold Indigenous peoples' rights to lands, territories and resources.

The Declaration affirms the inherent or preexisting collective human rights of Indigenous peoples, as well as the human rights of Indigenous individuals. It provides a framework for justice and reconciliation, applying existing human rights standards to the specific historical, cultural and social circumstances of Indigenous peoples.

The Declaration reflects a range of human rights standards that have emerged over the last three decades through the work of international and regional human rights bodies as they have dealt with violations against Indigenous peoples. Many of these standards, such as the provisions of international human rights conventions or customary international law, establish clear legal obligations for states.

As we actively engage with the full and effective implementation of the UN Declaration on the Rights of Indigenous Peoples, we urge that:

⁷⁷ United Nations Declaration on the Rights of Indigenous Peoples, March 2011



Governments, in conjunction with Indigenous peoples, use the Declaration as the basis for reviewing and reforming laws and policies to ensure that Indigenous peoples' rights are upheld without discrimination.

Courts and human rights tribunals use the Declaration as a relevant and persuasive source in interpreting Indigenous human rights and related state obligations. Indigenous peoples and their institutions use the Declaration as a principled framework for advancing their rights, in their own policy- and decision-making and in their negotiations with governments and other third parties.

Civil society organizations work cooperatively with Indigenous peoples, in promoting and implementing their human rights and maintaining the Declaration as a living instrument.

Educational institutions include the Declaration in their curriculum, including teacher training.

Corporations and investors ensure their human rights policies and business practices incorporate the standards in the Declaration.

The global consensus that now exists in support of the Declaration reinforces its weight as a universal human rights instrument. The ongoing and widespread human rights violations against Indigenous peoples worldwide underline the urgency of moving ahead with the full and effective implementation of the Declaration.

2. Engagement with Ali'i Trusts. PIG team members reached out to other kupuna ali'i trusts (Queen Lili'uokalani Trust, Lunalilo Home and Kamehameha Schools) for their mana'o and experiences regarding governance.



V. PROPOSED GOVERNANCE FRAMEWORK ELEMENTS

Lahui

Constitution.

Chapter 10

By-Laws

Policies

Supporting

Documents, Practices

A. Element 1: Identity. While statutorily OHA is a State Agency with the responsibility to manage a Trust, the PIG proposes that OHA identifies with and operates more similarly to other Ali'i Trusts⁷⁸ with a lahui⁷⁹ mindset in improving the well-being of our lahui.

Such an identity is rooted in the 'olelo no'eau, E 'opū ali'i, have the heart of a chief, have the kindness, generosity, and even temper of a chief, 'olelo no'eau 369^{80} . OHA's identity is also place based, that OHA's kuleana is to this place of Hawaii.

While a "dual" identity (e.g., maka'āinana⁸¹ trust vs. state agency) may seem potentially confusing, the PIG recommends that such an identity can be supported by policies, procedures and practices that are contextualized (i.e., state agency spends dollars appropriated as detailed in the biennium budget compared to a trust that is mindful of its resources

need to steward its resources in perpetuity for its beneficiaries).

OHA's identity manifests itself in four roles: advocate, researcher, community engager and asset manager and related policies, procedures and practices can be aligned to support and guide OHA's proposed dual identity.



⁷⁸ Kamehameha Schools, Liliuokalani Trust, Lunalilo Home, Queens Medical Center

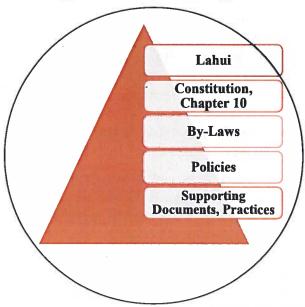
⁷⁹ Nation, race, tribe, people, nationality, Na Puke Wehewehe, retrieved 3/17/2019

⁸⁰ Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 45

⁸¹ n. Commoner, populace, people in general; citizen, subject. Cf. lunamaka 'āinana. *Lit.*, people that attend the land, Na Puke Wehewehe, retrieved 3/17/2019



B. Element 2: Values and Mana



A key element of the proposed governance framework is the intangible but invaluable values and mana concepts.

"Envision Pu'uhonua"

The Office of Hawaiian Affairs, a place of refuge, in which we shall live our values and principles.

The operating values of kūlia, kākou, pono, ho'omau and aloha begins with Trustees and Board work and cascades to the Administration and staff. *O ke kahua mamua, mahope ke kūkulu,* the site first, and then the building, learn all you can, then practice, 'ōlelo no'eau 2459⁸².

THE OFFICE OF HAWAIIAN AFFAIRS

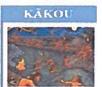
Empowering Hawaiians, Strengthening Hawai'i



OHA CORE VALUES



Innovation Excellence



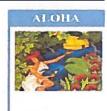
Collaboration Cooperation Unity



Integrity Truth



Legacy



Respect Value

'O ke kahua ma mua, ma hope ke Kūkulu.

E hoʻoikaika ana i nā Kānaka i mana ka lāhui.

⁸² Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 268



Kākou

E alu like mai kākou i ka ho'okō 'ana i ko kākou mikiona. We work together, unified to accomplish our mission.

Aloha Kekahi I Kekahi

'Olu'olu a maika'i kākou i nā kānaka a pau. We are kind and compassionate to all whose lives we touch.

Pono Pau'ole

E hana kūpono kākou me ka 'oia'i'o. We act with integrity and truthfulness.

Mālama Kekahi I Kekahi

E hō'ihi a mālama kākou i nā po'e a pau a me nā mea 'ē a'e a pua. We respect and care for others and all that surround us.

Kuleana

E ho'okō kākou i ko kākou kuleana hana. We carry out our individual and collective responsibilities.

Kūlia

E ho'okumu kākou i ka hana e pili ana i nā kuleana Hawai'i me ka ho'oholu. We take initiative and are resilient in advocating for Hawaiian rights.

Po'okela

E hana kākou me ka 'oi a e ho'omaika'i iā kākou iho. We do our absolute best and continuously seek improvement.





Ho'omau

E ho'omau kākou i ke ea o ka āina,
nā mea e ho'opuni ana,
ka mo'omeheu a me ka po'e
Hawai'i.
Together, steadfast we preserve and
perpetuate our culture, people,
land and environment.

Mana as Capital. The acquisition, development and maintenance of mana toward strengthening OHA's influence capital, cultural capital and financial capital.⁸³

Mana - OHA will:



- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

⁸³ Social enterprises apply business solutions to social problems. The ultimate goal is to achieve sustainability by enabling non-profits to support themselves financially in innovative ways instead of relying solely on grants and donations. Since there are no shareholders in a non-profit organization, the profits from the related social



- C. Element 3: Statutory Basis. OHA was established under the Hawai'i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai'i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people, including:
 - (1) The betterment of conditions of native Hawaiians.
 - (2) The betterment of conditions of Hawaiians;
 - (3) Serving as the principal public agency responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
 - (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians:
 - (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
 - (6) Serving as a receptacle for reparations.⁸⁴

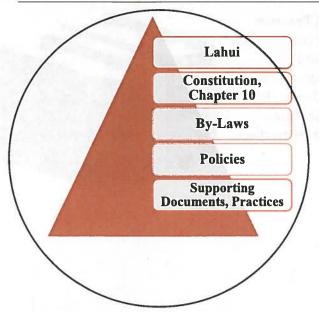
• §10-3 Purpose of the office. The purposes of the office of Hawaiian affairs include:

- (1) The betterment of conditions of native Hawaiians. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(c):
- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act. 1920, as amended, shall be administered by the Hawaiian homes commission:
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations.

enterprise are completely re-invested in the work of the organization. https://www.marsdd.com/mars-library/social-enterprise-business-models/, retrieved 3/26/2019

⁸⁴ HRS §10-3; see also HRS §10-1.





D. Element 4: Policies⁸⁵. The PIG recommends that OHA policies be organized into three tiers: L-Lahui⁸⁶, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the kaumaha (heavy weight, sadness) or significant kuleana (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding 'āina, water, wahi pana and iwi kupuna, strengthen 'ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA's Trustee role as a result of the

Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

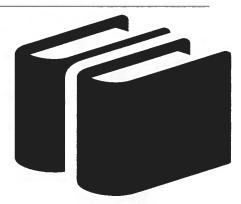
An effective governance framework, considers that policies are modified from time to time for clarification of facts, circumstances, policy content, processes or organizational changes. While a change and update mechanism should exist to effect better policy clarity, the PIG recommends a five (5) year review cycle for L-Lahui and T-Trustee level policies and a two (2) year review cycle for C-CEO level policies to reflect the intentional long-term nature of L and T level policies and the operating cycles of the Organization.

⁸⁵ Merriam-Webster, Definition of *policy* 1a: prudence or wisdom in the management of affairs; b: management or procedure based primarily on material interest; 2a: a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b: a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, https://www.merriam-webster.com/dictionary/policy, retrieved 3/17/2019

⁸⁶ Pukui, nvs. Nation, race, tribe, people, nationality, http://wehewehe.org, retrieved 3/17/2019



E. Element 5: Supporting Documents and Practices (Operations). Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and "operationalized" documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.





VI. BOARD GOVERNANCE FRAMEWORK PROJECT - PHASE IV – IMPLEMENTATION and PHASE V

Based on the approved project charter, the initial project plan and effective BOT implementation mechanisms, the PIG recommends the BOT implement the Board Governance Framework elements via the following newly formed and executed PIGs:

- A. Development of L-Lahui level policies;
- B. Alignment and update of existing BOT By-Laws;
- C. Development of T-Trustee level policies;
- D. Development of C-CEO level policies; and
- E. Alignment and update of existing Board governance documents (e.g., Executive Policy Manual, BOT Operating Manual).

VII. MAHALO

Since its approval in January 2019, Trustee PIG members and staff, Administration and staff have worked diligently to collectively bring this report and recommendations to the BOT.

Permitted Interaction Group (PIG) Trustees: Trustees Machado (Chair), Lee (Vice Chair), R Lindsey (Resource Management Committee Vice Chair) and Waihee (Beneficiary, Advocacy and Empowerment Committee Chair)

PIG Trustees' Staff: Carol Hoomanawanui, Lopaka Baptiste, Dayna Pa, Laurene Kaluau-Kealoha, Zuri Aki, Lei-Ann Durant, Kama Hopkins, Kaui Wailehua, Crayn Akina, and Melissa Wennihan.

Administration: Kamana'opono Crabbe, Ka Pouhana (KP), Sylvia Hussey, Ka Pou Nui (KPN) and Project Manager; Albert Tiberi, Senior Legal Counsel; Rayna Gushiken, Interim Senior Legal Counsel; Everett Ohta, Counsel for Environmental Law, Native Rights and Legal Services; Momilani Lazo, Senior Executive Assistant to KP; Laura Kamalani-Paikai, Executive Assistant to KPN; Leona Castillo, Executive Assistant to KP; Jim McMahon, Advocacy Counsel; and Keala Nichols, Executive Assistant to Chief Advocate.



APPENDIX A - PERMITTED INTERACTION GROUP REFERENCE LIST

- A. Governance Framework
- B. Statutory References to OHA in federal and state law and county ordinances
- C. Governance Structure
- D. Statutory References Handout
- E. Core Values
- F. Principles for Good Governance and Ethical Practice
- G. Analysis of Advocacy Platform Matters
- H. Analysis of Board Actions 2014-2018
- I. Analysis of Governance Framework
- J. Analysis of Governance Framework: Maori
- K. The "Sunshine Law" HRS Chapter 92
- L. Fiduciary and Statutory Duties
- M. Quick Review: Who Board Members Can Talk To and When (Part 1) revised July 2018
- N. Quick Review: Who Board Members Can Talk To and When (Part 2) revised May 8, 2014
- O. Quick Review: Who Board Members Can Talk To and When (Part 3) revised August 8, 2013
- P. Agenda Guidance for Sunshine Law Boards
- Q. Open Meetings Guide to "The Sunshine Law" for State and County Boards
- R. SPIRE OHA BOT Policy Workshop Update
- S. Board of Trustees By-Laws
- T. Board of Trustees Executive Policy Manual
- U. Board of Trustees Operations Manual
- V. United Nations Declaration on the Rights of Indigenous Peoples
- W. Tribal and Alaska Native Governance Models
- X. Tribal Nations and the United States, An Introduction 2017
- Y. Policies
 - 1. NHTF Investment Policy
 - 2. NHTF Spending Policy
 - 3. KM Policy
 - 4. Real Estate Vision Mission and Strategy Policy
 - 5. Risk Management Policy

Office of Hawaiian Affairs Board of Trustee Meeting April 4, 2019 10:00 am

V. New Business

C. Action Item BOT #19-04: Approve the Five(5) Board Governance Framework Elements

Item was not received at time of folder distribution. It will be distributed once it is received.

OFFICE OF HAWAIIAN AFFAIRS Action Item

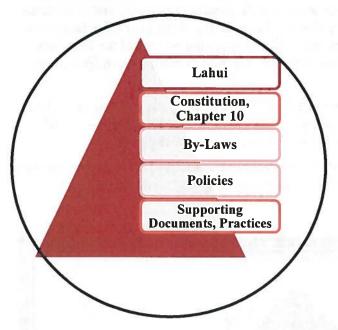
BOARD OF TRUSTEES

April 3, 2019

BOT #19-04

Action Item Issue:	Approve the Five (5) Board Governance Framew	ork Elements
Prepared by:	My	4/3/19
	Sylvia Hussey, Ed.D. Ka Pou Nui, Chief Operating Officer	Date
Reviewed by:	Kamagono Cable	4/3/19
	Kamana on Orabbe Ka Pouhana, Chief Executive Officer	Date
Reviewed by:		163-19
	John Waihee IV Permitted Interaction Group Member	Date
Reviewed by:	Rom Raly M.	4/3/19
	Robert K. Lindsey Jr. Permitted Interaction Group Member	Date
Reviewed by:	Colitey. Machado	4/3/19
	Colette Y. Machado Vice Chair, Permitted Interaction Group	Date
Reviewed by:		4/3/19
	Brendon Kalei aina Lee Chair, Permitted Interaction Group Member	Date
	Chan, I emilied interaction Group Member	

I. Action Item:



To approve the five elements of OHA's Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

II. Issue:

Whether or not the Board of Trustees will approve the Permitted Interaction Group (PIG) recommended five elements of OHA's Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

III. Discussion:

In January 2019, the Board approved the formation of a PIG to: Investigate various elements of governance frameworks and models, including but not limited to cultural, indigenous, native, national and international contexts. The PIG was established with Chair, Colette Machado as Business Process Owner, Vice Chair, Trustee Brendon Kalei'āina Lee as Project Sponsor and Trustees Robert Lindsey¹ and John Waihee² as members. The PIG was supported by Trustee Machado, Lee, Lindsey and Waihee's Aides; and Administration, Ka Pouhana, Kamana`opono Crabbe, Ka Pou Nui, Sylvia Hussey and Executive Office staff. The PIG, also known as the Board Governance Framework Project, implemented a project plan in five phases: Phase I – Planning; Phase II – Where are we now? (AS IS); Phase III – Proposing Elements of a Governance Framework; Phase IV – Proposing Implementation Actions; and Phase V – Closing Project and Lessons Learned. The PIG reported its findings at the March 28, 2019 BOT meeting; the report covered the results (and close) of the PIG of Phases I to III. Phases IV and V was proposed to be accomplished through a subsequent, sequenced series of PIGs, subject to Board approval.

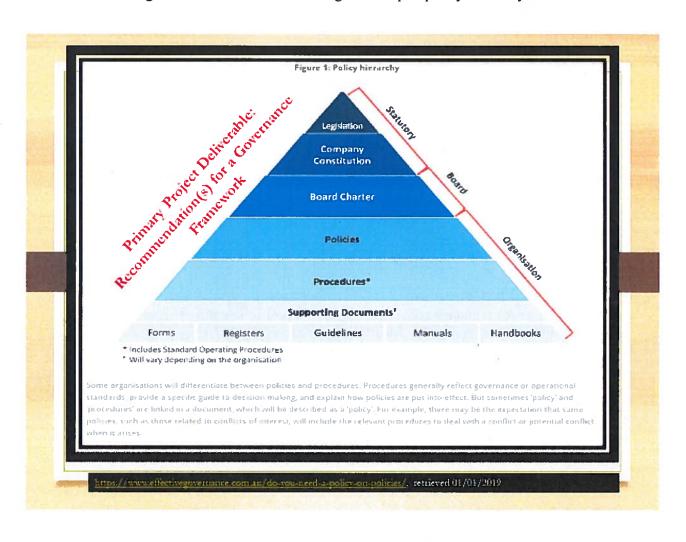
¹ Interim Chair of the Resource Management Committee at the time of the formation of the Permitted Interaction Group

² Chair of the Beneficiary, Advocacy and Empowerment Committee

For purposes of the PIG, the following working definition of "governance" was used to frame the project, activities and deliverables: Establishment of policies, and continuous monitoring of their proper implementation, by the members of the governing body of an organization. It includes mechanisms required to balance the powers of the members (with the associated accountability) and their primary duty of enhancing the prosperity and viability of the organization.³

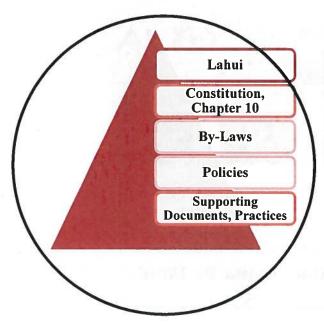
For purposes of the PIG Board Governance Framework Project, the working "look back" period was determined to be five (5) years---2018, 2017, 2016, 2015, 2014----which includes five of the eight years of the Strategic Plan, 2010 to 2018 period.

The major project deliverable of the PIG were recommendations to the Board of Trustees for OHA's governance framework utilizing an exemplar policy hierarchy below:⁴



³ http://www.businessdictionary.com/definition/governance.html, retrieved 1/1/2019

⁴ https://www.effectivegovernance.com.au/do-you-need-a-policy-on-policies/, retrieved 01/01/2019



The PIG recommended five elements of OHA's Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

Element 1: Identity. Ho'oulu Lahui Aloha – To Raise a Beloved Lahui. A State Agency with the responsibility to manage a Trust, that identifies and operates more similarly to Ali'i Trusts⁵ with a lahui⁶ mindset in improving the well-being of our lahui. Such an identity is rooted in the 'ōlelo no'eau, E 'ōpū ali'i, have the heart of a chief, have the kindness, generosity, and even temper of a chief, 'ōlelo no'eau 369⁷. OHA's identity is also place based, that OHA's kuleana is to this place of Hawaii.

OHA's identity manifests itself in four roles: advocate, researcher, community engager and asset manager.

Element 2: Values and Mana

The PIG recommends that the Board Governance Framework acknowledge the surrounding intangible, yet invaluable role of values and mana in governance.

Effecting the operating values of kūlia, kākou, pono, ho'omau and aloha, begins with Trustees and Board work



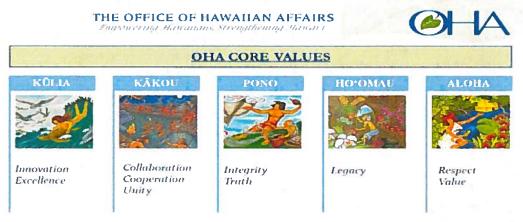
as exemplars for Administration and the Organization as a whole. O ke kahua mamua, mahope $ke \ k\bar{u}kulu$, the site first, and then the building, learn all you can, then practice, ' \bar{o} lelo no'eau 2459^8 .

⁵ Kamehameha Schools, Liliuokalani Trust, Lunalilo Home, Queens Medical Center

⁶ Nation, race, tribe, people, nationality, Na Puke Wehewehe, retrieved 3/17/2019

⁷ Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 45

⁸ Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 268



'O ke kahua ma mua, ma hope ke Kūkulu.

E ho'oikaika ana i nā Kānaka i mana ka lāhui.

In addition, the concept of mana⁹, often oversimplified as "power", belies the complexity of the concept and its acquisition, development and maintenance toward OHA enabling capital.

Mana as Capital. The acquisition, development and maintenance of mana toward strengthening OHA's influence capital, cultural capital and financial capital.





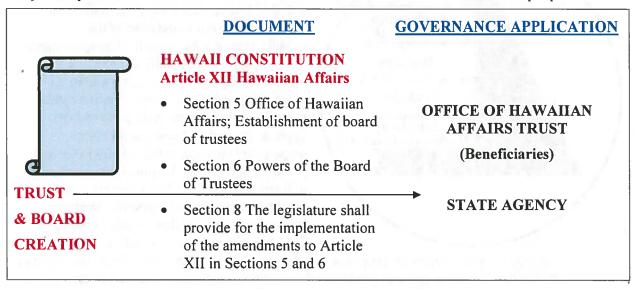
Mana – OHA will:



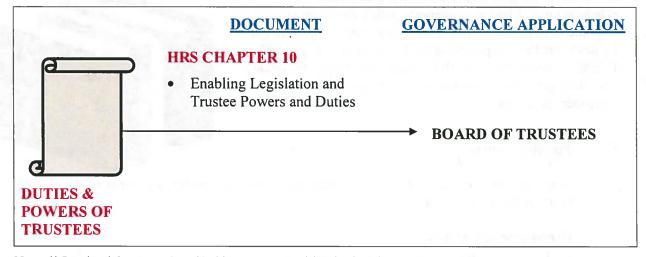
- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

⁹ Na Puke Wehehe, Supernatural or divine power, mana, miraculous power; a powerful nation, authority; to give mana to, to make powerful; to have mana, power, authority; authorization, privilege; miraculous, divinely powerful, spiritual; possessed of mana, power, http://weheweh.org, retrieved 3/26/2019

Element 3: Statutory Basis OHA was established under the Hawai'i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai'i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people.

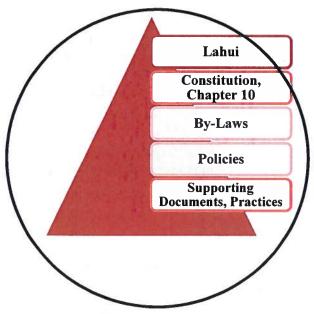


The State of Hawaii's Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



Hawaii Revised Statutes (HRS) Chapter 10 enables legislation and trustee powers and duties.

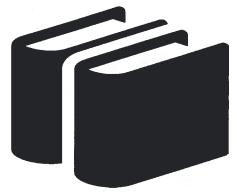
Action Item BOT #19-04 Board Governance Framework Elements



Element 4: Policies 10. The PIG recommends that OHA policies be organized into three tiers: L-Lahui¹¹, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the kaumaha (heavy weight, sadness) or significant kuleana (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding 'āina, water, wahi pana and iwi kupuna, strengthen 'ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA's Trustee role as a result of the

Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

Element 5: Supporting Documents and Practices (Operations). Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and "operationalized" documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.



IV. Funding Source:

Not applicable, no dedicated funding needed to approve the five elements of the Board Governance Framework.

V. Recommended Action:

To approve the five elements of OHA's Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

¹⁰ Merriam-Webster, Definition of *policy* 1a: prudence or wisdom in the management of affairs; b: management or procedure based primarily on material interest; 2a: a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b: a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, https://www.merriam-webster.com/dictionary/policy, retrieved 3/17/2019

¹¹ Pukui, nvs. Nation, race, tribe, people, nationality, http://wehewehe.org, retrieved 3/17/2019

Action Item BOT #19-04 Board Governance Framework Elements

VI. Timeframe:

Immediate action is recommended to ensure the following newly formed and executed PIGs (subject to BOT approval) can be launched to "operationalize" the framework elements no later than December 31, 2019:

- 1. Development of L-Lahui level policies;
- 2. Alignment and update of existing BOT By-Laws;
- 3. Development of T-Trustee level policies;
- 4. Development of C-CEO level policies; and
- 5. Alignment and update of existing Board governance documents (e.g., Executive Policy Manual, BOT Operating Manual).

VII. Attachment:



I. OVERVIEW

Two thousand eighteen (2018) marks the end of the Office of Hawaiian Affairs' (OHA or Organization) strategic plan period, and several years of challenges within the organization, hampering the organization's abilities to more intently apply and deploy resources to "better the conditions of native Hawaiians". In the past 24 months, the following have undermined effective governance at OHA:

- **People.** Board of Trustees (BOT) interactions among themselves, with regulatory agencies (e.g., Ethics Commission, Attorney General's office), with Administration (including staff), and beneficiaries and stakeholders have diverted strategic energy, focus, time and dollars from mission critical and aligned responsibilities.
- Policies and Plans. Un-implemented strategic policies and plans (e.g., Post 2018
 Strategic Plan, including implementation, Financial Sustainability Plan, Debt Policy,
 Hawaii Direct Assets Policy, LLCs) have hampered the organization's ability to advance
 mission critical and aligned strategies.
- **Procedures and Practices.** Audits--initiated or triggered by BOT interactions and behaviors, and completed in the normal course of regulatory and statutory requirements (e.g., Chapter 10)---have diverted trust resources (e.g., time and dollars) and highlighted procedure and practice improvements, respectively.

Given the changes and experiences in the last 24 months within the organization, the need for strengthening governance can be synthesized to a need:

- To improve the image, brand, credibility and standing in the community of the Office of Hawaiian Affairs;
- To demonstrate understanding of and accountability to the statutory, fiduciary and trust organizational responsibilities of the Office of Hawaiian Affairs via codified policies, procedures and practices;
- For explicit clarity in the roles, responsibilities and accountabilities of the Board of Trustees and Administration (including staff);
- For explicit and intentional clarity in the purposes, direction and strategic planning and implementation efforts post 2018; and
- To strengthen the organization's ability to advance mission critical and aligned strategies.

The Board of Trustees (BOT) is committed to strengthening OHA's governance framework, structure, policies, procedures and practices to more intently apply and deploy resources to "better the conditions of native Hawaiians".



II. PERMITTED INTERACTION GROUP

A. Statutory Basis

In accordance with HRS, CHAPTER 92, PUBLIC AGENCY MEETINGS AND RECORDS §92-2.5 (b) Permitted interactions of members, (b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to: (1) Investigate a matter relating to the official business of their board; provided that: (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board; (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and (C) Deliberation and decision making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

B. Formation

In January 2019, the Board approved the formation of a Permitted Interaction Group (PIG) to: Investigate various elements of governance frameworks and models, including but not limited to cultural, indigenous, native, national and international contexts. The PIG was established with Chair, Colette Machado as Business Process Owner, Vice Chair, Trustee Brendon Kaleiʿāina Lee as Project Sponsor and Trustees Robert Lindsey¹ and John Waihee² as members. The PIG was supported by Trustee Machado, Lee, Lindsey and Waihee's Aides; and Administration, Ka Pouhana, Kamana'opono Crabbe, Ka Pou Nui, Sylvia Hussey and Executive Office staff. The PIG, also known as the Board Governance Framework Project, implemented a project plan in five phases: Phase I – Planning; Phase II – Where are we now? (AS IS); Phase III – Proposing Elements of a Governance Framework; Phase IV – Proposing Implementation Actions; and Phase V – Closing Project and Lessons Learned. This PIG report covers the results (and close) of the PIG of Phases I to III. Phases IV and V is proposed to be accomplished through a subsequent, sequenced series of PIGs, subject to Board approval.

For purposes of the PIG, the following working definition of "governance" was used to frame the project, activities and deliverables: Establishment of policies, and continuous monitoring of their proper implementation, by the members of the governing body of an organization. It includes mechanisms required to balance the powers of the members (with the associated accountability) and their primary duty of enhancing the prosperity and viability of the organization.³

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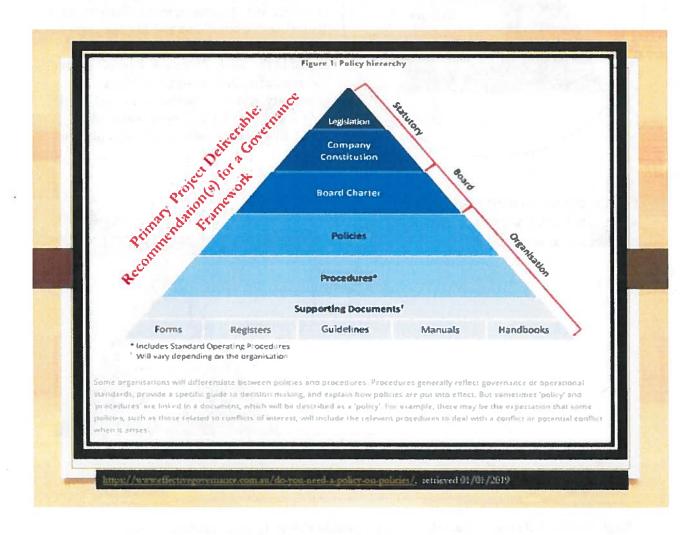


C. Analyses Context

For purposes of the PIG Board Governance Framework Project, the working "look back" period was determined to be five (5) years----2018, 2017, 2016, 2015, 2014----which includes five of the eight years of the Strategic Plan, 2010 to 2018 period.

D. Major Deliverable of the PIG

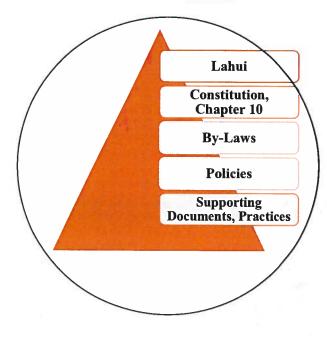
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⁴ https://www.effectivegovernance.com.au/do-you-need-a-policy-on-policies/, retrieved 01/01/2019



III. EXECUTIVE SUMMARY



OHA's identity manifests itself in four roles: advocate, researcher, community engager and asset manager.

The PIG recommends five elements of OHA's Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

Element 1: Identity. Ho'oulu Lahui Aloha — To Raise a Beloved Lahui. A State Agency with the responsibility to manage a Trust, that identifies and operates more similarly to Ali'i Trusts⁵ with a lahui⁶ mindset in improving the well-being of our lahui. Such an identity is rooted in the 'ōlelo no'eau, E 'ōpū ali'i, have the heart of a chief, have the kindness, generosity, and even temper of a chief, 'ōlelo no'eau 369⁷. OHA's identity is also place based, that OHA's kuleana is to this place of Hawaii.



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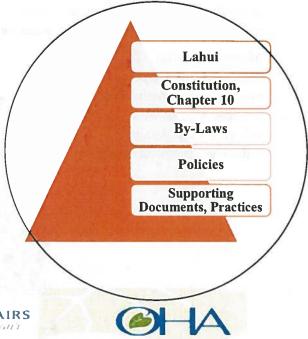
⁷ Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 45



Element 2: Values and Mana

The PIG recommends that the Board Governance Framework acknowledge the surrounding intangible, yet invaluable role of values and mana in governance.

Effecting the operating values of kūlia, kākou, pono, ho'omau and aloha, begins with Trustees and Board work as exemplars for Administration and the Organization as a whole. *O ke kahua mamua, mahope ke kūkulu,* the site first, and then the building, learn all you can, then practice, 'ōlelo no'eau 24598.



THE OFFICE OF HAWAIIAN AFFAIRS

Impowering Mananans, Strengthening Hawaii

anuns, savenganemig macai;

OHA CORE VALUES



Innovation Excellence



Collaboration Cooperation Unity



Integrity Truth



Legacy



Respect Value

'O ke kahua ma mua, ma hope ke Kūkulu.

E hoʻoikaika ana i nā Kānaka i mana ka lāhui.

⁸ Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 268

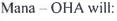


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Mana as Capital. The acquisition, development and maintenance of mana toward strengthening OHA's influence capital, cultural capital and financial capital.

THE OFFICE OF HAWAHAN AFFAIRS



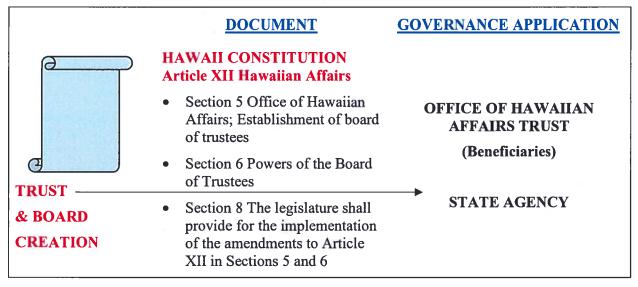




- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

Element 3: Statutory Basis

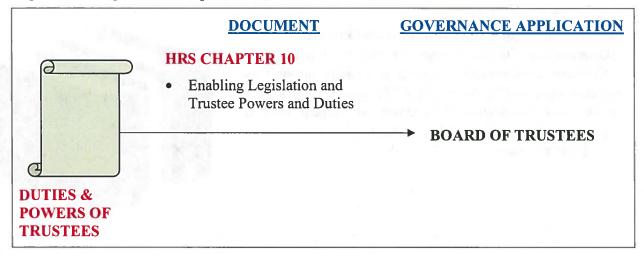
OHA was established under the Hawai'i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai'i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people.



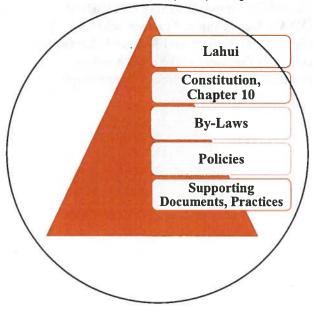
⁹ Na Puke Wehehe, Supernatural or divine power, mana, miraculous power; a powerful nation, authority; to give mana to, to make powerful; to have mana, power, authority; authorization, privilege; miraculous, divinely powerful, spiritual; possessed of mana, power, http://weheweh.org, retrieved 3/26/2019



The State of Hawaii's Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



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Element 4: Policies¹⁰. The PIG recommends that OHA policies be organized into three tiers: L-Lahui¹¹, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the kaumaha (heavy weight, sadness) or significant kuleana (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding 'āina, water, wahi pana and iwi kupuna, strengthen 'ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA's Trustee role as a result of the

¹⁰ Merriam-Webster, Definition of *policy* 1a: prudence or wisdom in the management of affairs; b: management or procedure based primarily on material interest; 2a: a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b: a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, https://www.merriam-webster.com/dictionary/policy, retrieved 3/17/2019

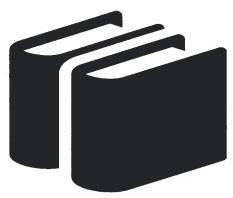
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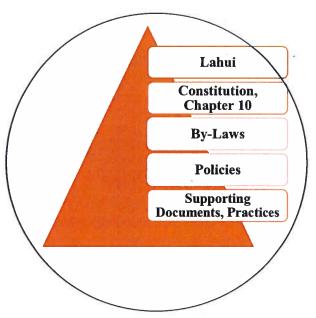


Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

Element 5: Supporting Documents and Practices (Operations). Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and "operationalized" documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard

Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.





The PIG recommends five elements of OHA's Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).



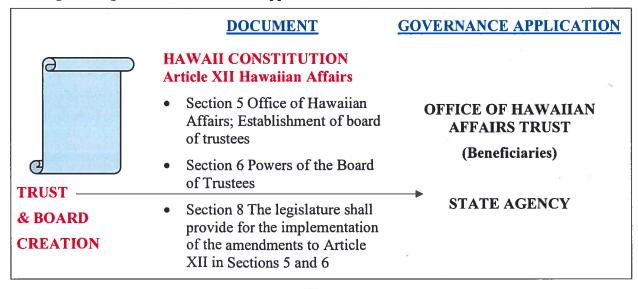
IV. WHERE ARE WE NOW? (AS IS)

- A. AS IS Analyses. The PIG examined OHA's current governance framework elements; reviewed the current policies, procedures and practices; analyzed BOT action items for the past five (5) years; analyzed a handful of current advocacy platform items, including its mo'okuauhau (genealogy); identified emerging governance framework design elements; and studied models of cultural, indigenous, native, national and international governance contexts.
 - 1. Purpose of the Office. The current governance framework and the Organization's operations are all framed by HRS Chapter 10 and related Federal, State and County laws.
 - §10-3 Purpose of the office. The purposes of the office of Hawaiian affairs include:
 - (1) The betterment of conditions of native Hawaiians. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act.), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act. 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(c):
 - (2) The betterment of conditions of Hawaiians.
 - (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians, except that the Hawaiian Homes Commission Act. 1920, as amended, shall be administered by the Hawaiian homes commission.
 - (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians.
 - (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
 - (6) Serving as a receptacle for reparations

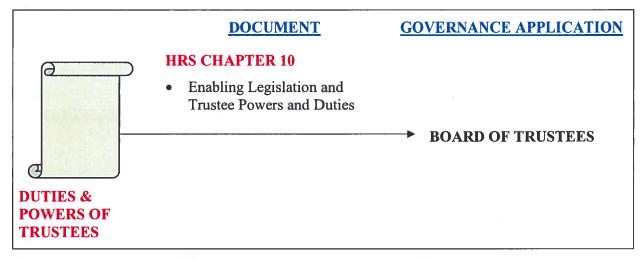
In Section 10-3, the use of the descriptor of "native Hawaiians" and "Hawaiians" in "betterment of conditions", refers to individuals (beneficiaries) who are greater than or equal to 50% Hawaiian ancestry (aka 'little n Hawaiians') and less than 50% of Hawaiian ancestry (aka 'big N'), respectively. Regardless of the terminology and definition used and understood in Section 10-3, "native Hawaiian" or "Hawaiian", OHA's actions as it relates to carrying out the purpose(s) of the office has been and continues to be lāhui focused.



2. Current Governance Framework. The current operating governance structure of the Office of Hawaiian Affairs (OHA) Trust¹² is described below with the foundational governing documents and related application.



The State of Hawaii's Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



Hawaii Revised Statutes (HRS) Chapter 10 enables legislation and trustee powers and duties.

¹² Governance Structure, prepared by Office of Corporate Counsel, Office of Hawaiian Affairs, October 2016



DOCUMENT GOVERNANCE APPLICATION HRS CHAPTER 10 **BOARD OF TRUSTEES** Federal Codes and Regulations - Single Agency Audit because **Inherent Trustee Duties** OHA receives Federal funding **Fiduciary** Hawaii Revised Statutes -**Duty of Obedience** Elections (Chapter 11 & 13D); Ethics (Chapter 84); Public **Duty of Loyalty** Meetings Law (Chapter 92); **Duty of Care** Information Practices (Chapter **COMPLIANCE** 92F); Procurement (Chapter WITH LAWS 103D and 103F); Uniform COMPLIANCE Trustee Power Act (Chapter WITH BY-LAWS 554A); Public Office (Chapter AND BOT 831); Audit of State Auditor **POLICIES** (Chapter 23) County Ordinances - Zoning and Permitting



3. Board of Trustees – Powers and Duties

- §10-5 Board of trustees; powers and duties. The board shall have the power in accordance with law to:
- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3;
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board.
- (7) Provide grants to individuals, and public or private organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10-17;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authenticated. [L 1979, c 196, pt of §2; am L 1990, c 304, §5, 16; am L 1996, c 240, §1; am L 2002, c 182, §3]

The BOT currently operates under the understanding of the powers and duties as outlined in HRS Chapter 10, specifically Section 10-5. The following is an analysis of the alignment of major BOT actions and activities in the past five years: Management of the proceeds of the Public Land Trust (PLT) revenue (1), (2); Management and development of Kaka'ako Makai and legacy lands (1), (2); Management of Native Hawaiian Trust Fund (NHTF) financial assets (3); Formulation of policies (e.g., ceded lands, spending, investment, water, iwi kupuna, international engagement) (4); Action re Mauna Kea (5); Delegation of authority to Administrator (6); Leveraged State General (via provisos) and Trust funds for multiplier effect (7); Collaborations with Native Hawaiian Legal Corporation and University of Hawaii – Manoa, Richardson Law School, Ka Huli Ao (8).



4. Board of Trustees – General Duties

§ 10-6 General duties of the board. (a) The general duties of the board shall be:

- (1) To develop and continually update a strategic plan for the office that shall include, but not be limited to, the following
 - (A) Compilation of basic demographic data on native Hawanans and Hawanans.
 - (B) Identification of the physical sociological psychological and economic needs of native Hawanans and Hawanans
 - (C) Establishment of long-range goals for the office's programs and services for native Hawamans and Hawamans.
 - (D) Establishment of priorities and alternatives for the office's program and service implementation, and
 - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel,
- (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services,
- (3) To maintain an inventory of federal, state, county, and private programs and services for Hawmians and native Hawamans and act as a clearinghouse and referral agency.
- (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians.
 - (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians
 - (6) To develop and review models for comprehensive native Hawanian and Hawanian programs:
- (7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawaiian or Hawaiian programs or projects.
- (S) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawanans or Hawanans, and
 - (9) To promote and assist the establishment of agencies to serve native Hawanians and Hawanians.
- (b) The board shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by this chapter, and which may be necessary to fully and completely effectuate the purposes of this chapter

As of February 2019, the Office of Hawaiian Affairs Board of Trustees ("BOT") operate with a constitutionally and statutorily-founded governance framework that has been further reinforced by years of Board action in the formation of its bylaws, policies, procedures, and practices.

In an attempt to strengthen the BOT governance framework moving into 2020 and beyond, PIG analysis focused on key areas where restructuring may be proposed in order to improve upon the effectiveness of BOT policymaking and organizational advancement of those policies in the pursuit of OHA's purpose for the betterment of conditions of Native Hawaiians.



- 5. Board of Trustees Action Items for the Past 5 Years. The PIG assigned team members, utilizing OHA's internal website---Ka Ipu o ka 'Ike, the gourd of knowledge (aka Ki'i for short), navigated via various links to identify a list of BOT and Committee Action Items over the past five (5) years, 2014 to 2018. The following analyses insights are noted below:
 - a. FY 2018. The following major actions, other than Biennium Budget, Community Grants, Legislative package related actions, were noted:
 - Approval of an OHA Resolution Designating 2018 as "Year of the Hawaiian" (January 2018)
 - Amendment to BOT Exec Policy Manual 3.5.e and 3.5.f (January 2018)
 - Approval for OHA to impose moratorium on use of Trustee Sponsorship and Allowance Fund (TSAAF) and CEO-initiated Sponsorships (February 2018)
 - Moratorium on Fiscal Reserve Spending (February 2018)
 - Pursuant to request for LLC documents from BOT, LLC mgrs will submit documents to BOT Financial Audit Comm or its auditor (February 2018)
 - Authorization for OHA CEO/Admin to continue Kaka'ako Lot I sale negotiations with C&CH and approval of legislative reso related to potential sale of Kaka'ako Makai Lot I to C&CH (March 2018)
 - Move to authorize OHA Admin to assess feasibility, timing, and downsizing of current LLC operation structure and develop transition plan to replace existing LC managers, report back by 6/30/18 (May 2018)
 - Authorize OHA CEO to cease ongoing negotiations on a PSA to sell Kaka'ako Makai Lot I to C&CH due to disagreements over unresolved business points of a potential sale, and to take all other reasonable and appropriate actions to implement the foregoing (June 2018)
 - Authorize Administration to utilize \$500,000 for Emergency Disaster Relief on Kaua'i and Hawai'i islands (June 2018)
 - Approve all updates and amendments to BOT Bylaws with the exception of the Re-Designation of all references in Bylaws from "Administrator" to "Chief Executive Officer" which will be considered separately (July 2018)
 - Move to update budget preparation, format and reporting requirements by approving amendments to EPM and BOT Operations Manual, excluding aments on Fiscal Transparency 3.4.k through 3.4.l in Attach A and C (September 2018)
 - Approve long-term direction of Master Plan for OHA's 511 acre property in Wahiawa surrounding Kukaniloko Birthing Stones, authorize Admin to take further steps toward implementation (September 2018)



- **b. FY 2017.** The following major actions, other than Biennium Budget, Native Hawaiian Revolving Loan Fund Board of Directors, Community Grants, Audit Services and Legislative package related actions, were noted:
 - Requesting the OHA BOT authorization of OHA Chief Procurement Officer to issue a Request for Qualifications for an independent CPA firm to conduct a financial audit and management review of OHA and its subsidiaries (March 2017)
 - Authorize OHA Administration to Proceed with the Programmatic Environmental Impact Statement (EIS) Process for OHA "s Kakaako Makai Parcels (April 2017)
 - Approval of an OHA Board of Trustees Policy Amendment relating to an allocation of revenue from OHA's Kaka'ako Makai properties (June, August 2017)
 - Authorizing OHA Administration to negotiate and execute an easement agreement with Agribusiness Development Corporation for the installation of irrigation water infrastructure on OHA's Wahiawa property (August 2017)
 - Amendment to Section 5.1 of the Investment Policy Statement, changing the Native Hawaiian Trust Fund Asset Allocation and Benchmarks (August 2017)
 - Approve Wao Kele o Puna Comprehensive Management Plan (CMP) (September 2017)
 - 2018-2019 Charter School Funding Administration Grant Recommendation (October 2017)
- c. FY 2016. The following major actions, other than Biennium Budget, Fiscal Reserve, Termination of Investment Advisors, Community Grants and Legislative package related actions, were noted:
 - BOT Executive Policy on International Engagement (February 2016)
 - Approval of BOT Bylaws Amendment as shown in Attachment "A" and Corresponding and Conforming Changes to BOT Executive Policies as shown in Attachment "B. Code of Conduct and Sanctions for Violation of the Code of Conduct (February 2016, May 2016)
 - Adopt OHA's Fiscal Sustainability Planning Model and Approval of the Statement of Commitment Relating to OHA's Fiscal Sustainability Implementation Plan (May 2016)
 - Approval of a BOT Executive Policy Amendment relating to a Policy on Trespassing and Illegal Camping on OHA Property (May 2016)
 - Approval of Funds from OHA's FY 2016 fiscal Reserve Authorizations for OHA's Fiscal Sustainability Plan (October 2016)



- Support for Standing Rock Sioux Tribe in its efforts to protect its sacred sites and natural and cultural resources (October 2016)
- **d. FY 2015.** The following major actions, other than Biennium Budget, Budget Realignment, Community Grants and Legislative package related actions, were noted:
 - Approval of the Native Hawaiian Trust Fund Approved Advisors & Non-Marketable Asset Providers List and the addition of SSARIS Advisors LLC as an approve Manager of the Enhanced Liquidity Account (February 2015)
 - Approval of Partial Funding for the Acquisition of 47 acres of the Kuamoo Battlefield and Burial Grounds by the Trust for Public Lands (May 2015)
 - Reorganization of Standing Committee Structure of the OHA Board of Trustees to Create the Committee on Resource Management (July 2015)
 - Approve and authorize funding request of \$400,000 from OHA FY 16 Fiscal Reserve Authorizations for Lunalilo Home and Trust (July 2015)
 - Adoption of OHA Protecting Iwi Kupuna Policy to be included in BOT Executive Policy Manual (November 2015)
 - Adoption of OHA Water Policy and a Water Backgrounder Appendix to be included in the Executive Board Policy Manual (November 2015)
 - Approval of OHA participation in the appurtenant rights and Water Use Permit Application portion of the contested case hearing regarding Na Wai Eha (November 2015)
 - OHA proposed response to the Dept of Interior's proposed rule for Reestablishing a Formal Government to Government relationship with the Native Hawaiian Community (December 2015)
- e. FY 2014. The following major actions, other than Biennium Budget, Budget Realignment and Legislative package related actions, were noted:
 - Approve amendment to the OHA BOT Bylaws to create a Committee on Land and Property as a third Standing Committee of the Board and to approve amendments to existing land policies in the OHA Executive Policy Manual (January 2014)
 - Amendments to the NH Trust Fund Spending Policy and its Related Fiscal Reserve Withdrawal Guidelines (February 2014)
 - Amendments to the Investment Policy Statement (June 2014)
 - Approval of the Policy Guidelines for the Committee on Land and Property (June 2014)
 - Due Diligence for new 65-year Lease DLNR lease and sublease to Hoomana (September 2014)



- Various Governance related actions (e.g., operating budget, financing) (March, August, October 2014)
- 6. Advocacy Platform, including Mo'okuauhau. Under the direction of the PIG, an analysis of advocacy platform matters was completed for the following five areas: native rights, iwi kupuna, 'olelo Hawai'i, aina and wahi pana utilizing BOT Executive Policy Manual and other internal reference sources.
 - a. Native Rights. We preserve, protect, and advocate for Native Hawaiian rights and entitlements, including self-determination and a fair and just share of Public Land Trust lands and revenues. OHA's BOT Executive Policy Manual articulates three elements related to Native Rights policy: (1) Preservation and Protection; (2) Advocacy; and (3) Share of Public Land Trust.

The importance of the Native Rights matter is codified in:

Federal Statute. The Apology Resolution, Public Law 103-149, states: Congress apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination. (underlining added)

State Constitution. Article XII, section 7 of the State Constitution says: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purpose and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Native Rights

Until the early 1970s, writes Melody Kapilialoha MacKenzie, Esq., American law did little to acknowledge Native Hawaiians as an indigenous people with unique and distinct rights. Even today, Native Hawaiians, like many indigenous peoples, must constantly assert and defend their rights in a foreign, and often hostile, legal system if they are to remain a separate and distinct native people. Indeed, international law has only recently recognized and begun to protect the rights of the world's indigenous peoples. Generally, [Native Hawaiian] rights are based on more than a millennium of living, developing, and thriving as a people and a culture in Hawai'i. Some rights emanate from the status of Native Hawaiians as an indigenous people and from the political independence of the Hawaiian Kingdom prior to [its] illegal overthrow in 1893. Other laws . . . are laws that apply more generally. For example, any individual may bring a quiet title action, claim lands under the adverse possession doctrine, or be entitled to sufficient water to grow kalo (taro). And in Hawai'i, everyone has access to the beaches and along the shorelines These areas of law . . . have a greater impact on Native Hawaiians as the original inhabitants of Hawai'i's 'aina (land) because they are necessary to sustain a traditional lifestyle. Moreover, many of these rights exercised by the general public are based on or find their roots in Hawaiian custom and practice. [Native Hawaiian] laws and rights . . . are in constant flux, expanding and contracting with the passage of new laws and current decisions by the courts.



Article XII, section 6 of the State Constitution says: The [BOT] shall exercise power as provided by law: to manage and administer... all income and proceeds from [the] pro rata portion of the [Public Land Trust]....

<u>State Statutes</u>. Section 10-13.5, Hawai'i Revised Statutes, says: Twenty per cent of all funds derived from the public land trust . . . shall be expended by the Office of Hawaiian Affairs

(Note: OHA's annual pro rata share of the revenues from the Public Land Trust was temporarily set at \$15.1 million by Act 178 of 2006)

Section 10H-1, Hawai'i Revised Statutes, says: The native Hawaiian people are hereby recognized as the only indigenous, aboriginal, maoli people of Hawaii.

Section 10H-2, Hawai'i Revised Statutes, says: The purpose of this chapter [the Native Hawaiian Recognition chapter] is to provide for and to implement the recognition of the Native Hawaiian people by means and methods that will facilitate their self-governance, including the establishment of, or the amendment to, programs, entities, and other matters pursuant to law that relate, or affect ownership, possession, or use of lands by the Native Hawaiian people, and by further promoting their culture, heritage, entitlements, health, education, and welfare.

Act 195, Session Laws of Hawai'i 2011 (the Native Hawaiian Recognition act that created Chapter 10H, Hawai'i Revised Statutes), states in Section 1 (the preamble): The legislature urges the office of Hawaiian affairs to continue to support the self-determination process by Native Hawaiians in the formation of their chosen governmental entity.

<u>OHA Strategic Plan</u>. OHA's 2010-2018 Strategic Plan contains the following mission: To malama Hawai'i's people and environmental resources, and OHA's assets, toward ensuring the perpetuation of the culture, the enhancement of lifestyle and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally. (underlining added)

In addition, the Strategic Plan contains the following strategic priority: To restore pono and ea, Native Hawaiians will achieve self-governance, after which the assets of OHA will be transferred to the new governing entity

The Strategic Plan also contains the following Strategic Result: Adoption by the Board of Trustees of a Transition Plan that includes the legal transfer of [OHA] assets and other resources to the new Native Hawaiian governing entity,



b. Iwi Kupuna. We protect and promote the reverence and cultural importance of proper care, management, and protection of ancestral Native Hawaiian remains (iwi kupuna) and we encourage Native Hawaiian participation in repatriation. Iwi kupuna have been found buried all around the islands, often at sites slated for, or already undergoing, development. These discoveries have generated public attention, scrutiny, protest, and litigation. Developers and Native Hawaiians often disagree on the most appropriate way to resolve these issues; and prominent sites have not been spared from controversy surrounding iwi found on its property during construction. Aware of these iwi discoveries, many OHA beneficiaries have passionately advocated for the proper care, management, and protection of iwi kupuna. These beneficiaries have approached OHA for assistance, and OHA has responded with policies and with our mana'o and kokua.

OHA's BOT Executive Policy Manual articulates two elements related to iwi kupuna policy: (1) Proper Care, Management, and Protection; (2) Hawaiian Participation in Repatriation. The importance of the iwi kupuna matter is codified in:

State Constitution. Article XII, section 7 of the State Constitution says:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Article XII, section 6 of the State Constitution authorizes the BOT to formulate policy relating to the affairs of native Hawaiians and Hawaiians.

<u>Federal Statute</u>. The federal Native American Graves and Repatriation Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to native cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony.

<u>State Statute</u>. The state Historic Preservation law, Chapter 6E, Hawai'i Revised Statutes, requires the appropriate island burial council to determine whether preservation in place or relocation of or previously identified native Hawaiian burial sites is warranted.

<u>OHA Strategic Plan</u>. OHA's 2010-2018 Strategic Plan contains the following strategic priority for Mo'omeheu (Culture): To strengthen identity, Native Hawaiians will preserve, practice and perpetuate their culture.



c. 'Ōlelo Hawai'i. We support revitalizing the Hawaiian language and using it correctly. While once spoken throughout Hawai'i by Native Hawaiians and foreigners alike, 'Olelo Hawai'i was considered nearly extinct by the 1980s, when fewer than 50 fluent speakers under age 18 remained. The deterioration of the Hawaiian language resulted largely from an 1896 law that required English instruction in Hawai'i schools, which essentially banned Hawaiian students from speaking their native tongue.

However, great strides have been made to bring about a renaissance of the Hawaiian language through programs such as 'Aha Punana Leo's Hawaiian language immersion schools, the state Department of Education's language immersion program, and the Hawaiian language programs of the University of Hawai'i system. Also, in 1978 the state constitution was amended to recognize the Hawaiian language as one of the two official languages of the State.

OHA's BOT Executive Policy Manual and By-laws articulate two elements related to 'Ōlelo Hawai'ii: (1) Revitalizing the Hawaiian language; and (2) Proper usage within OHA. The importance of 'Ōlelo Hawai'i is codified in:

<u>State Constitution</u>. Article XV, section 4 of the State Constitution says:

English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.

Article X, section 4 of the State Constitution says:

The State shall promote the study of Hawaiian culture, history and language.

The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program.

<u>Federal Statute</u>. The federal Native American Languages Act of 1990 "established federal policy to allow the use of Native American languages as the medium of instruction, and affirms the right of Native American children to express themselves, be educated, and assessed in their languages." The law includes Native Hawaiians.

¹³ National Coalition of Native American Language Schools & Programs



State Statutes. Section 5-7.5, Hawai'i Revised Statutes, says:

The Hawaiian language is the native language of Hawaii and may be used on all emblems and symbols representative of the State, its departments, agencies and political subdivisions.

Section 1-13.5, Hawai'i Revised Statutes, says:

Macrons and glottal stops may be used in the spelling of words or terms in the Hawaiian language in documents prepared by or for state or county agencies or officials. Any rule, order, policy, or other act, official or otherwise, that prohibits or discourages the se of these symbols shall be void.

<u>Strategic Plan</u>. OHA's 2010-2018 Strategic Plan contains the following strategic priority for Mo'omeheu (Culture):

To strengthen identity, Native Hawaiians will preserve, practice and perpetuate their culture.

The Strategic Plan also contains the following strategic result:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the 'aina for cultural, spiritual, religious and subsistence.

d. 'Aina. We protect and preserve Hawai'i lands and their cultural significance. We protect the ceded lands corpus until the un-relinquished claims of Native Hawaiians are resolved. We create financially viable property involvements for OHA. The late law professor Jon Van Dyke wrote:

Before continuous contact with westerners began in 1778, the dominant system of land tenure [in the Hawaiian islands] was an intricate and interdependent arrangement based on agriculture needs and hierarchical structure. Individuals lived in reciprocity with the 'Aina (land), which they believed would sustain them if properly respected and cared for. 'Aina was not a commodity and could not be owned or traded. Instead, it belonged to the Akua (gods and goddesses), and the Ali'i (the chiefs and chiefesses who were the human embodiment of the Akua) were responsible for assisting ka po'e Hawai'i (the people of Hawai'i) in the proper management of the 'Aina). '4

Land tenure in Hawai'i has changed dramatically since Western contact, evolving into a Western model in which land can be bought, sold, traded, and some would say, exploited. Still, the spirit of malama 'aina and the central place of the 'aina

¹⁴ Jon M. Van Dyke, Who Owns the Crown Lands of Hawai'i?



in Hawaiian culture, while sorely tested in modern times, remain vital and deserve zealous protection.

Furthermore, Native Hawaiian claims to the former crown and government lands ceded to the United States at Annexation and returned to Hawai'i upon statehood, are still unresolved. Native Hawaiians have a continuing interest and claim to the ceded lands, and their struggle to regain their culture, recover their lands, and restore their sovereign nation will be futile if the ceded lands are dissipated.

OHA's BOT Executive Policy Manual articulates two elements related to 'Aina: (1) Care in OHA Land Acquisition and Management; and (2) Protecting the Ceded-Lands Corpus. The importance of 'Aina is codified in:

<u>State Constitution</u>. Article XI, section 1 of the State Constitution says:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the state for the benefit of the people.

Article XI, section 3 of the State Constitution says:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands....

Article XI, section 10 of the State Constitution says:

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Article XII, section 4 of the State Constitution says:

The lands granted to the State of Hawaii by Section 5(b) of the Admission act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1929, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.



Article XII, section 5 of the State Constitution says:

The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside to or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.

Article XV, section 5, of the State Constitution says:

The motto of the State shall be, "Ua mau ke ea o ka aina i ka pono."

("The life of the land is perpetuated in righteousness")

State Statutes. Section 10-4, Hawai'i Revised Statutes, says:

[OHA] shall have the following general powers:

(2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same at such time, in such manner and to the extent necessary or appropriate to carry out its purpose

<u>Strategic Plan</u>. One of the Core Values stated in OHA's 2010-2018 Strategic Plan is Ho'omau:

E ho'omau kakou i ke ea o ka 'aina na mea e ho'opuni ana, ka mo'omeheu a me kapo'e Hawai'i

("Together, steadfast we preserve and perpetuate our culture, people, land and environment."

The Strategic Plan contains the following as one Strategic Priority:

To maintain the connection to the past and a viable land base, Native Hawaiians will participate in and benefit from responsible stewardship of Ka Pae 'Aina O Hawai'i.

The Strategic Plan contains the following among the Strategic Results:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the 'aina for cultural, spiritual, religious and subsistence.

70% of all Hawai'i residents understand and agree that a viable land base is necessary for the new Native Hawaiian governing entity.

Increasing the percent of Ka Pae 'Aina O Hawai'i managed to create economic value, preserve cultural and natural resources and historic properties, and/or provide cultural and social opportunities for Native



Hawaiians in a sustainable and balanced manner.....By 2018, increasing from 12% to 15% the percent of ahupua'a that are managed sustainably

e. Wahi Pana. We protect and preserve the integrity of and access to Hawaiian cultural sites.

From the Partners in Development Foundation website: "In traditional indigenous cultures, we find a more focused commitment to preparing the next generations by making sure they understand the history, traditions, and values from which they have blossomed. In addition to genealogy and family traditions, many indigenous cultures like the Hawaiian culture, pay close attention to the specific geographical places their families inhabit. The understand the power of an active and vibrant sense of place in the life of its people.

In Hawaiian culture, "wahi pana" is defined as celebrated, noted, and legendary places, or landmarks of special interest and historical significance. Each of these special places have distinguishing landmarks (mountain peaks, streams, wind, rain, etc.) that are given specific names and are connected to the rich history, chants, stories, and songs that are traditionally passed down from one generation to the next. Hawaiian music, for example, is replete with songs that praise places in our islands with the actual place only being revealed by the specific name of the wind or rain that is referred to in the melody. In public gatherings fifty or sixty years ago, it was common for the various songs of the islands or communities to be sung as an invitation for people from those places to stand and be identified with that wahi pana. It kept our kupuna aware of the traditions they represented as they faced the challenges of day to day living. Although we possess many of these names and songs today, we may not know the physical characteristics that led our ancestors to call a wind or rain differently from others. Our understanding of our sense of place is eroding.

The unique and special cradle of people, traditions, and physical realities of a place shape who we are. It is a strong framework from which we can make decisions consistent with their historical and cultural anchors, to meet the challenges of contemporary life. Often we allow the larger world to teach our young ones the values and perspective which are inconsistent with our cultures and our family traditions. We step back from intentionally teaching our children who they represent and where they find their roots. Let us return to a commitment to teach our children and adults the power of wahi pana." ¹⁵

OHA's BOT Executive Policy Manual highlights one element related to wahi pana: Protect and Preserve the Integrity of and Access to Hawaiian Cultural Sites.

¹⁵ Partners in Development Foundation, https://pidf.org/about/wahi-pana, retrieved 3/26/2019



The importance of wahi pana is codified in:

<u>Strategic Plan</u>. One of the Core Values stated in OHA's 2010-2018 Strategic Plan is Ho'omau:

E ho'omau kakou i ke ea o ka 'aina na mea e ho'opuni ana, ka mo'omeheu a me kapo'e Hawai'i

("Together, steadfast we preserve and perpetuate our culture, people, land and environment."

The Strategic Plan contains the following as one Strategic Priority:

To maintain the connection to the past and a viable land base, Native Hawaiians will participate in and benefit from responsible stewardship of Ka Pae 'Aina O Hawai'i.

The Strategic Plan contains the following among the Strategic Results:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the 'aina for cultural, spiritual, religious and subsistence.

- 7. **Policies.** The PIG analyzed a number of policies, policy documents and other organizational documents.
 - **a. Policy Formulation.** Internal documents depict the current policy formulation process, including:
 - BOT > Create and amend BOT governing documents; prepare action item; two readings with six (6) affirmative votes ¹⁶; and codification (implementation). Substantial amendments to Bylaws would usually require repeal/rescission of the old Bylaws and approval of new set of Bylaws.
 - **BOT** > Action item to create or amend executive policies; five (5) affirmative votes¹⁷; and codification (implementation).

¹⁶ Bylaw Article XIII Amendments to Bylaws. These Bylaws shall be amended only by to-thirds vote of all members to which the Board is entitled. Any proposed amendment to the Bylaws shall be submitted in writing for consideration by the Board. The Board shall not vote on any bylaw amendment until a minimum of two readings by the Board.

¹⁷ Executive Policy Manual Series 1000 Board of Trustees, 1020 Policy Formulation, Adoption and Amendment of Policies 1.2.a. OHA policy may be adopted by an affirmative majority (5) vote of all the members to which the BOT is entitled at any regular duly convened meeting of the BOT, provided the proposed policy shall have been presented in writing using the OHA Action Item format for a first reading at a previous regular meeting of the BOT. Such policy shall become effective on the date stated therein (or the date determined by the BOT) upon approval by the BOT at its second reading and approval by a majority (5) vote of all the members to which the BOT is entitled.



> Administration > Annual maintenance review; review changes in the laws for impact on Bylaws and Policies.

The PIG noted that on the internal website---Ka Ipu o ka 'Ike, the gourd of knowledge (aka Ki'i for short), there are a number of action items that track the primary governing documents of the BOT—Bylaws, Executive Policy Manual and BOT Operations Manual (collectively, "Governing Operating Documents").

The Policy Formulation section of the BOT Executive Policy Manual provides a meager framework for developing and establishing OHA policy. The information contained herein is straightforward, however, when comparing the written guidelines to the actual practice, there is essentially a blurring of the lines in policy formulation. Sections 2.1.a-2.1.e., p. 13, of the BOT Executive Policy Manual explicitly provides OHA's policies on advocacy that include: Preservation and Protection of Legal Entitlements, Native Hawaiian Rights and Entitlements, Hawaiian Culture, and OHA's position policy of oppose Position on Certain Proposed Legislative Measures. The above sections leave much to interpretation considering the vast array of issues that OHA Advocacy advocates upon. It is without a doubt that the totality of issues that OHA has advocated - which have crystalized in policy formation - farexceeded the limited number of policies appearing on a single page, suggesting that the BOT Executive Policy Manual -described as "a living document that will be kept current as and when the Board adopts new policy, amends, or abolishes existing policy" is completely outdated and currently inadequate to serve as an effective source of OHA policy positions.

b. Analysis. For the purposes of the analysis, "policy" was defined as a "definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions". In determining the scope of policies both utilized and created by the OHA BOT (within at least the past five years), it became necessary to determine what exactly constituted a policy differentiated from procedure and practice. With the understanding that policies may range in significance from monumental to subtle, clarifying guidelines were utilized. While the BOT Policy Manual suggested that policies may originate at any level of OHA, policies identified in this analysis were strictly determined in one of three ways: 1) pre-identified existing policies found in official OHA documents including the BOT governing documents; 2) policies overlying legislative positions with BOT approval; and 3) policies overlying legislative positions with Administration approval.

Finally, in differentiating policies from procedures and practices, it was necessary to identify policies as those guiding principles, which set forth a direction, whereas procedures were those series of steps to be followed in order to maintain a consistence and repetitive approach in achieving a practice. For example, OHA maintains a top priority policy to reduce Native Hawaiian obesity; OHA has established programmatic grants and sponsorships as a procedure to advance OHA's



purpose; and OHA has engaged in the practice of awarding millions of dollars in grants to community and health organizations dedicated to curtailing Native Hawaiian obesity rates.

c. OHA Role Interaction & Policy Formation. The Hawai'i State Constitution specifically tasks OHA trustees with the capacity "to formulate policy relating to affairs of Native Hawaiians." While the OHA Executive Policy Manual suggests that policy may spring up from anywhere within OHA's structure, it is ultimately up to the OHA Trustees to establish OHA policy through Board approval. With that said, the role of OHA Administration and its current scope of work, has enabled policy formation that is not always within the purview of OHA Trustees. Likely unintended, the flexibility often afforded to OHA Administration to advance and serve as a strong advocate for the betterment of conditions of Native Hawaiians has a way of expanding and morphing the boundaries of a Board-approved policy — continued manipulation of the boundaries of any given policy has the potential to eventually become unrecognizable from its original form, resulting in a deviation never intended by the OHA Board of Trustees.

For example, the OHA Executive Policy Manual is silent on any Board-approved policy on "affordable housing". Be that as it may, it is currently assumed that OHA has a policy on supporting affordable housing as: (1) the QHA strategic priority of economic self-sufficiency within OHA's 2010-2018 Strategic Plan specifically lists "increasing homeownership" as one of its two critical goals; (2) OHA's website explaining its economic self-sufficiency priority states that "[o]ne of our greatest obligations to Native Hawaiians is to help them address challenges to affordable housing;" and (3) OHA public policy, with the approval of the Board of Trustees, has drafted testimony and testified before State and county legislative authorities in support of "affordable housing" If there is indeed no official Board position explicitly stating a position on "affordable housing" then this is certainly an example of how the role of OHA Administration contributes to the formation of OHA policy; in a way, manipulating Board approval for something it may not have consented to. While responsible and well-informed flexibility can be highly beneficial, certain sensitive issues are better served with fully defined boundaries. The "affordable housing" discussion is one such issue where housing advocates are greatly divided. While some advocates may consider the current model of 140% AMI and below to sit appropriately within the definition of "affordable housing" a Native Hawaiian housing advocate knowing that the majority of Native Hawaiians fall within the 60% AMI and below bracket, may suggest affordability being appropriately defined as 80% AMI and below instead of 140% AMI and below. OHA currently advocates at the current definition (140% AMI and below), which in itself begins to crystalize OHA's policy on "affordable housing"- a Board choosing to be more specific, might not agree with this policy position. These indirect, perhaps unintended, and nebulous policy formations are not strictly limited to advocacy, as they can begin to



take shape through OHA Research's publication of a strategic plan, or even OHA Community Outreach's repetitive description of an inexplicit policy area.

8. BOT Governing Documents. Members of the BOT are issued a binder titled, *Board of Trustees Governing Documents volume 1*, containing BOT Bylaws, the BOT Executive Policy Manual, BOT Operations Manual, Committee on Land and Property Policy Guidelines, and a number of policy positions in the following categories: Kaka'ako Makai Settlement Properties; Native Hawaiian Trust Fund Investment; OHA Spending; OHA Real Estate Vision, Mission, and Strategy Policy; and OHA Risk Management. The status of the compendium is said to be incomplete and outdated. After preliminary review of the current governing documents, it has become apparent that the full breadth and scope of OHA policies are not nearly contained within these governing documents. The most obvious absence is that of OHA's 2010-2018 Strategic Plan. While it may not be feasible to include, within the governing documents, every policy, procedure, and practice developed by OHA, OHA's 2010-2018 Strategic Plan, at the very least, provides a policy structure that should be reflected in a series of identifiable and standalone categories.

For example, OHA's policy on the inter-relationship between Native Hawaiian lifestyle and 'āina stewardship is in itself such a vast source of other policies, procedures, and practices that filing it beneath any of the above listed policy areas currently contained within the governing documents would be a severe detriment. OHA's 2010-2018 Strategic Plan is essentially a platform for a specific direction. For the past eight years, OHA has used this strategic plan to guide its policymaking, procedures, and practices. However, none of the six strategic priorities and the many countless established policies subjected to each are reflected in the governing documents as they are prioritized in the 2010-2018 strategic plan.

Both policies and strategic plans serve to provide direction for OHA and past strategic plans have encapsulated priority policies in the fulfilment of OHA's purpose, vision, mission, and values. Moving into 2020+, it is recommended that the BOT governing documents also reflect those BOT approved policies present within any future strategic plan platform. Consequently, there is room to expand the governing documents to include a more adequate representation of OHA's grand scope of policies. At present, the governing documents greatly lack collation of most OHA policies. With that said, OHA trustees should have access to every OHA policy in effect, which would require a vast improvement upon the collation of OHA policies, procedures, and practices. The BOT governing documents (or more specifically, the BOT Executive Policy Manual –pursuant to Section 1.2.c.) should serve as a valuable resource for directing existing and future trustees, while also being instrumental in directing OHA Administration and staff – as in OHA Advocacy – who are reliant on the ease-of-access to a wide array of OHA policies in their day-to-day activities.



9. Key Observations and Recommendations (in no particular order of priority):

- a. Better coherence between BOT governing documents and the OHA strategic plan.
- b. Improve effectiveness of BOT governing documents by improving collation of OHA policies, procedures and practices.
- c. Improve navigation to changes of Governing Operating Documents via Ki'i.
- d. Continue authorization actions as it relates to policy changes (e.g., new, edits, updates) via BOT Action Items.
- e. Integrate approved BOT Action Items into the Governing Operating Documents in a timely manner (e.g., Committee on Land and Property. International Engagement, Water Policy).
- f. Establish a better system for recording policy status and updating the BOT Executive Policy Manual.
- g. Assemble an updated, e-accessible, and organized compendium of OHA policies.
- h. Require public policy advocates (or anyone providing an OHA position based on OHA policy) to cite their policy source and provide a description and rationale.

B. Foundations Analyses

PIG team members completed an initial analysis on references to OHA in state and county law, as applied to OHA na Paia (Divisions)—Advocacy, Resource Management (RM) – Financial Assets, RM-Land, Research, and Community Engagement. The first section of the analysis reviewed the purposes for which OHA was established, as provided by the state constitution and Chapter 10 of the Hawai'i Revised Statutes (HRS) and detailed earlier in this report. These references provide a broad mandate under which OHA operates. The third section provided the powers granted to the OHA Board of Trustees (BOT) that can be exercised to fulfill OHA's purpose and statutory requirements and also detailed earlier in this report.

The second section of the analysis provided the requirements placed on OHA under the state constitution, state law, and county ordinances. The analysis below does not include obligations placed on OHA that are not based in statute, such as assumed responsibilities under formal agreements with other entities (e.g., Halawa-Luluku Interpretive Development, Papahānaumokuākea), or those obligations that arise from the government agency status (e.g., procurement code, Sunshine law, ethics code). The analysis below is organized by the Paia (Division) that has been assigned current, primary responsibility over a given statutory requirement.¹⁸

¹⁸ The powers and duties of the OHA Board of Trustees may be delegated to the OHA Administrator and employees. <u>HRS § 10-5(6)</u>.



- 1. Advocacy (Public Policy, Compliance Enforcement, Washington D.C. Bureau, Papahānaumokuākea programs)
 - a. Assist with planning for programs and services. OHA is to assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services. 19
 - b. **Special reports.** The board shall prepare and submit special reports as may be required by the legislature."²⁰
 - c. Native Hawaiian law training course. "OHA, at its own expense, shall establish, design, and administer a training course relating to [Native Hawaiian] traditional and customary rights, [Native Hawaiian] natural resource protection and access rights, and the public trust, including the State's trust responsibility. ...[OHA], at its own expense, shall develop the methods and prepare any materials necessary to implement the training course, administer the training course, and notify each council, board, and commission identified in section 10-A(a) that attendance in a training course is mandatory. The office of Hawaiian affairs shall offer the training course at least twice per year."²¹
 - d. Vetting for island burial councils. OHA shall submit to the governor a list of nominees for filling vacancies on the five island burial councils.²²
 - e. Vetting for Maui and Hawai'i county Cultural Resources Commissions. The mayors of Maui and Hawai'i counties must solicit lists of two or more persons to their respective county Cultural Resources Commission from members of the public, including OHA.²³
 - f. Consulting agency on Native Hawaiian issues. Although not explicitly required under HRS Chapter 10, OHA serves in a consultative role in a number of state and county processes. Furthermore, a primary purpose for OHA is to "[assess] the policies and practices of other agencies impacting on [Native Hawaiians], and conducting advocacy efforts for [Native Hawaiians]." Note, this category does not include OHA representation on state boards and commissions, which is discussed separately in this memo under the general duties of OHA, under section II.F., nor does it include instances where consultation with, or representation by, Native Hawaiian organizations (not specifically OHA) is required. 25

¹⁹ HRS §10-6(a)(2).

²⁰ HRS §10-15.

²¹ HRS §10-42.

²² HRS §6E-43.5.

²³ Maui County Charter (MCC), sec. 2.88.030; Hawai County Code (HCC), sec. 2-226(b).

²⁴ HRS §10-3(4).

²⁵ For example, under the federal Native American Graves Protection and Repatriation Act, OHA is listed as an example of a Native Hawaiian Organization that must be consulted upon discovery of a Native Hawaiian cultural item on federal lands. See 25 United States Code (USC) §3001-3002. See also 20 USC §80q-11.



- Maunakea rulemaking. In adopting rules to regulate public and commercial activities on Maunakea lands, the UH Board of Regents must consult with OHA to ensure that the rules will not affect any traditional and customary rights of Native Hawaiians, except as a reasonable regulation of such rights.²⁶ The UH Board of Regents shall consult with OHA on the assessment and collection of administrative fines for violations of the Maunakea rules.²⁷
- Public land sales or exchanges. Three months prior to the convening of the legislative session, OHA must be provided with a draft of the legislative resolution seeking approval of any sale or exchange of former Crown or government lands of the Kingdom of Hawai'i (or lands exchanged for such lands) to allow OHA to analyze the proposed sale or exchange.²⁸
- Historic preservation and Native Hawaiian burials. Consultation with OHA is required for: (1) determining when the location of archeological sites should be withheld from public posting when there is a threat of destruction or loss;²⁹ (2) rulemaking to establish criteria for when burial sites should be relocated or preserved in place;³⁰ (3) rulemaking to establish a process for appointing members to the island burial councils;³¹ and (4) inadvertent discoveries of burial sites (with notification coming via DLNR).³²

Consultation with the Native Hawaiian Historic Preservation Council, which serves in an advisory capacity to the OHA CEO, is required for rulemaking related to permits for access by Native Hawaiians to historic sites.³³ All applications to the Maui Planning Department must include preliminary archaeological and historical data and comments from DLNR and OHA, and if applicable, a preservation/mitigation plan that has been reviewed and approved by OHA.³⁴

- 2. Community Engagement (Community Outreach, Digital and Print Media, Hawaiian Registry programs)
 - a. Clearinghouse and referral agency. OHA is to maintain an inventory of federal, state, county, and private programs and services for Native Hawaiians and act as a clearinghouse and referral agency.³⁵

²⁶ HRS §304A-1903.

²⁷ HRS §304A-1904.

²⁸ HRS §§171-50; 171-64.7.

²⁹ HRS §6E-17.

³⁰ HRS 86E-43

³¹ HRS §6E-43.5.

³² HRS 86F-43 6

³³ HRS §6E-3.

³⁴ MCC, sec. 19.510.010(D)(9).

³⁵ HRS §10-6(a)(3).



- b. Hawaiian Registry. OHA is to "establish and maintain a registry of all Hawaiians wherever such persons may reside. Inclusion of persons in the Hawaiian registry shall be based upon genealogical records sufficient to establish the person's descent from the aboriginal peoples inhabiting the Hawaiian islands in 1778." 36
- 3. Research (Program Improvement; Land, Culture and History; Special Projects programs)
 - a. **Research and development.** OHA is to conduct, encourage, and maintain research relating to Native Hawaiians and to develop and review models for comprehensive Native Hawaiian programs.³⁷
 - b. **Data gathering.** As provided in the Strategic Plan, OHA has the duty to compile basic demographic data on Native Hawaiians and identify the physical, sociological, psychological, and economic needs of Native Hawaiians.³⁸
 - c. **Kuleana land tax verification.** The counties of Hawai'i, Kaua'i, and Maui, as well as the City and County of Honolulu, recognizes that OHA (or a court of law) may verify the genealogy of a kuleana land property tax exemption applicant as a lineal descendant of the original titleholder of kuleana land.³⁹
- 4. Resource Management-Financial Assets (Administrative Services, Procurement, Information Systems, Investments Transactions, Transitional Assistance⁴⁰ programs)
 - a. **Disbursement and depositing of money.** "[OHA] shall have and exercise the power to make all necessary and appropriate disbursements of its moneys by issuing checks in its own name and by any other means. . . . [OHA] shall have and exercise the power to deposit any of its moneys in any banking institution within or outside the State."41
 - b. Administration of federal funds. OHA is to apply for, accept and administer any federal funds made available or allotted under any federal act for Native Hawaiians. 42 "Moneys received from the federal government for research, training, and other related purposes of a transitory nature, and moneys in trust or revolving funds administered by the office, shall be deposited in depositories other than the

37 HRS §10-6(a)(5).

³⁸ See HRS §10-6(a)(1)(A), (B) (requirements under the OHA Strategic Plan).

⁴⁰ Now known as the Grants Department

41 HRS §10-4.5.

³⁶ HRS §10-19.

³⁹ See Revised Ordinances of Honolulu, sec. 8-10.32; HCC, sec. 19-89.5; Kaua'i County Code, sec. 5A-11.29; MCC, sec. 3.48.554. See also HRS § 10-5(8) (providing that OHA may "[m]ake available technical and financial assistance and advisory services to any agency . . . for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs.").

⁴² HRS §10-6(a)(8).



state treasury and shall be reported on to the state comptroller under section 40-81, and rules prescribed thereunder."⁴³

- c. Revolving loan fund. Using federal funds received from the Department of Health and Human Services, OHA is to establish a revolving loan fund to make loans or loan guarantees to Native Hawaiian organizations and individuals "for the purpose of promoting economic development in the State of Hawaii." Prior to making a loan, OHA must determine that the borrower is unable to obtain financing from other services on reasonable terms and conditions and there is a reasonable prospect that the borrower will repay the loan. Loans must be made on terms established by statute and under payment and collection terms reviewed and approved by the Commissioner of the Administration for Native Americans. OHA must report to the Commissioner loans in default and prospects for collection of such loans, and shall carry out the instructions of the Commissioner with respect to loans in default.⁴⁴
- d. **Budget preparation and submission.** OHA is to submit to the state legislature its budget, six-year program and financial plan, and variance report, in accordance with the budget submission schedule specified for the governor in HRS Chapter 37. At least twenty days prior to the convening of each regular session of the legislature, OHA is to submit to the legislature an accounting of the expenditures made in the prior fiscal year, by account code and budget program. By November 1 of each year preceding a legislative session in which a budget is to be submitted, the OHA BOT shall provide written notification to the governor of the proposed total expenditures, by cost categories and sources of funding, and estimated revenues of OHA for each fiscal year of the next fiscal biennium."⁴⁵

The OHA BOT is to provide opportunities for beneficiaries in every county to participate in the preparation of each biennial and supplemental budget of OHA.⁴⁶ These opportunities shall include an accounting by trustees of the funds expended and of the effectiveness of programs undertaken."⁴⁷ "The legislature shall consider the board's proposed program and financial plan; evaluate alternatives to the board's recommendations; and appropriate any general fund portion of the budget and any matching special fund appropriations."⁴⁸

e. Grants. One of the purposes for which OHA was established is "[a]pplying for, receiving, and disbursing, grants and donations from all sources for [Native

⁴³ HRS §10-13.

^{44 42} USC 2991b-1.

⁴⁵ HRS §10-14.5(a).

⁴⁶ HRS §10-14.5(b).

^{47 &}lt;u>Id.</u>

⁴⁸ HRS §10-14.6.



Hawaiian] programs and services."⁴⁹ In awarding grants, OHA is responsible for ensuring:

- (1) The applicant has applied for or received all applicable licenses and permits, when such is required to conduct the activities or provide the services for which a grant is awarded;
- (2) The applicant agrees to comply with applicable federal, state, and county laws;
- (3) The grant shall not be used for purposes of entertainment or perquisites;
- (4) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules; and
- (5) The applicant will indemnify and hold harmless the office, the State of Hawaii, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the office.

Further, OHA is responsible for monitoring to ensure compliance with HRS Chapter 10 and the purposes and intent of the grant; and annual evaluation to determine whether the grant attained the intended results in the manner contemplated.⁵⁰

- f. **Support for audit.** "The office shall be subject to governmental audit." ⁵¹ "The auditor shall conduct an audit of the office at least once every four years and shall submit a report on findings and recommendations to the governor and the legislature on or before the convening of the next immediate legislative session." ⁵² Every five years, the office of the auditor shall submit a review of the special, revolving, and trust funds of OHA. ⁵³
- 5. Resource Management-Land Assets (Commercial Property Management, Land and Property Management, Hālawa-Luluku Interpretive Development programs)
 - a. **Hold title.** "The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians." ⁵⁴
 - b. **Escheat of kuleana land.** "Any provision of law to the contrary notwithstanding, if the owner of an inheritable interest in kuleana land dies intestate, or dies partially intestate and that partial intestacy includes the decedent's interest in the

50 HRS §10-17.

53 HRS §23-12.

⁴⁹ HRS §10-3(5).

⁵¹ HRS §10-14.5(c).

⁵² HRS §10-14.55.

⁵⁴ Hawai'i Constitution art. XII, section 5.



kuleana land, and if there is no taker . . . such inheritable interest shall pass to [DLNR] to be held in trust until [OHA] develops a land management plan for the use and management of such kuleana properties, and such plan is approved by [DLNR]. Upon approval, [DLNR] shall transfer such kuleana properties to [OHA]."55 OHA shall be joined as a defendant in any quiet title or adverse possession claim for kuleana land and where plaintiff has reason to believe that an owner of an inheritable interest in kuleana land died intestate or partially intestate. 56

6. General

- a. **Strategic Plan.** The OHA BOT is to develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;
 - (C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians;
 - (D) Establishment of priorities and alternatives for the office's program and service implementation; and
 - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel.⁵⁷
 - b. **Public Land Trust spending**. "Twenty per cent of all funds derived from the public land trust, described in section 10-3, shall be expended by the office, as defined in section 10-2, for the purposes of [HRS Chapter 10]." Beginning in fiscal year 2005-2006, the annual amount of the income and proceeds from the pro rata share of the PLT shall be \$15,000,000.
 - c. Annual reports. "The [OHA BOT] shall prepare and make public their annual report which shall include an enumeration of their activities, income, and expenditures during the year. The annual report for the previous fiscal year shall be submitted to the governor and the legislature ten days prior to the convening of each regular session of the legislature." The annual report shall also include a list of

⁵⁵ HRS §560:2-105.5.

⁵⁶ HRS §669-2

⁵⁷ HRS §10-6(a)(1).

⁵⁸ HRS \$10-13.5.

⁵⁹ Act 178 (Session Laws of Hawai'i (SLH) 2006).

⁶⁰ HRS §10-15.



volunteer job titles and estimates of the total number of volunteers and the total number of hours of volunteer service.⁶¹

- d. **Positions on boards and commissions.** OHA is to advise and inform federal, state, and county officials about Native Hawaiian programs, and coordinate federal, state, and county activities relating to Native Hawaiians.⁶² To these ends, a representative of OHA is made a member of the following state boards and commissions:
 - Native Hawaiian Education Council (OHA Chairperson or designee)⁶³
 - State Board on Geographic Names (OHA Chairperson or representative)⁶⁴
 - Kaho'olawe Island Reserve Commission (OHA trustee or representative)⁶⁵
 - Kāne'ohe Bay Regional Council (OHA representative)⁶⁶
 - Community-Based Economic Development Advisory Council (OHA Chairperson or designee)⁶⁷
 - Hawai'i Climate Change Mitigation and Adaptation Commission (OHA CEO or CEO's designee)⁶⁸
 - Hawai'i Interagency Council on Homelessness (OHA Chairperson or Chair's designee)⁶⁹
 - Corrections Population Management Commission (OHA Administrator or Administrator's designee)⁷⁰
 - Dark Night Skies Protection Advisory Committee (OHA Administrator or Administrator's designee)⁷¹
 - Temporary Commission on the Thirteenth Festival of Pacific Arts (OHA CEO or CEO's designee)⁷²

7. Unassigned

After reviewing the statutory responsibilities of OHA and comparing them to the responsibilities assigned to the various Paia, the following responsibilities are believed to be unassigned or unaccounted for under OHA's current operational structure.

a. Reparations. A primary purpose of OHA is to serve as a receptacle for reparations. ⁷³

⁶¹ HRS §90-5.

⁶² HRS §10-6(a)(4).

^{63 20} USC § 7514(b).

⁶⁴ HRS §4E-1.

⁶⁵ HRS §6K-5

⁶⁶ HRS §200D-2.

⁶⁷ HRS §210D-5.

⁶⁸ HRS §225P-3.

⁶⁹ HRS §346-382

⁷⁰ HRS §353F-4.

⁷¹ Act 185 (SLH 2017).

⁷² Act 104 (SLH 2017).

⁷³ HRS §10-3(6).



- b. **Develop and review program models.** OHA is to "develop and review models for comprehensive [Native Hawaiian] programs."⁷⁴
- c. Clearinghouse for Native Hawaiian assistance. OHA is to act as a clearinghouse for applications for federal or state assistance to carry out Native Hawaiian programs or projects.⁷⁵
- d. **Develop Native Hawaiian agencies.** OHA is to promote and assist the establishment of agencies to serve native Hawaiians.⁷⁶

Limitations of the Analysis. While the analysis includes all requirements placed on OHA that are contained in federal, state, and county laws and ordinances, it excludes OHA requirements contained <u>only</u> in administrative rules of federal, state, or county agencies. The analysis does not contain those requirements imposed on the OHA trustees as fiduciaries of Native Hawaiian trust funds (e.g., duty of care). In addition, there may be some instances where an unintentional

The special relationship between Indians and the federal government is the result of solemn obligations that have been entered into by the United States government. Down through the years, through written treaties and formal and informal agreements, our government has made specific commitments to the Indian people. For claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety-services that would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans. This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the federal government that arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American

President Richard Nixon, Special Message to the Congress on Indian Affairs, July 8, 1970 assignment of responsibility for fulfilling a particular statutory requirement to a Paia or program within OHA was made. Regardless of the comprehensive analysis, reading and understanding of the underlying statute should still be completed.

C. Governance Framework Design

1. Various Native, Indigenous Governance Models

a. American Indian and Alaska Native. This summary is informed by the report *Tribal Nations in the United States*, published by the National Congress of the American Indians (NCAI). NCAI, founded in November 1944 serves the broad interests of tribal governments and communities. This report was published in 2017, and a revised version will be published in March 2019.

NCAI is organized as a representative congress of American Indians and Alaska Natives to develop consensus on national priorities that impact tribal sovereignty. NCAI is one of many national and regional organizations dedicated to indigenous advocacy. Some of these organizations have more specialized advocacy agendas, such as regional issues,

⁷⁴ HRS §10-6(a)(6).

⁷⁵ HRS §10-6(a)(7).

⁷⁶ HRS §10-6(a)(9).



or specific advocacy areas including, but not limited to, education, health care, housing, and economic development. Similarly, several umbrella advocacy organizations exist in Alaska. The largest of those organizations is the Alaska Federation of Natives (AFN). Its membership includes 191 federally recognized tribes, 171 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and compact to run federal and state programs.

A Broad Summary of Indian Country.

There are 573 sovereign tribal nations located across 35 states within the geographic borders of the United States. Of these tribes, 229 are located in Alaska. Additionally, there are state

recognized tribes located throughout the United States recognized by their respective state governments but who do not have a political relationship with the federal government. Self-governing tribes have the inherent power to govern all matters

involving their members, as well as serve as an advocate with their local, state, and federal governments for issues important

and for all Americans

We know that ultimately this is not just a matter

of legislation, not just a matter of policy. It's

a matter of whether we're going to live up to

ideal that has always defined who we are as

our basic values. It's a matter of upholding an

That's why we're here. That's what we're called

to do. And I'm confident that if we keep up our

we will live up to this simple motto and we will

achieve a brighter future for the First Americans

efforts, that if we continue to work together, that

across Indian Country.

Governing Authority. Excerpted from Tribal Nations in the United States report:

Tribes "Most tribes give legislative authority to a tribal council. In some cases, the tribal council members are elected by district; in others, they are elected at large. The council generally has authority to write tribal laws, and council members have administrative duties in some tribes. Most tribal constitutions also provide for an executive officer, called a "tribal chairman," "president," "governor," or "chief." In some tribes, the tribal council elects the chief executive, while the

voting citizens directly elect the leader in others. In most cases, the chief executive's duties and powers are not specified in the constitution but are set in the bylaws. Consequently, the role of the chief executive varies greatly among tribes. Many tribes also have created their own court systems that administer codes passed by the tribal council. In many tribes, judges are elected by popular vote; in others, the tribal council appoints judges."

Alaska Native Governance. "Of the federally recognized tribes, 229 are located in Alaska. Each of the Alaska Native tribes is distinctly unique from tribes located in the

I am committed to furthering the selfdetermination of Indian communities, but without terminating the special relationship between the federal government and the Indian people. I am strongly opposed to termination. Self-determination means that you can decide federal government within the framework of the Self-Determination Act, which I signed in



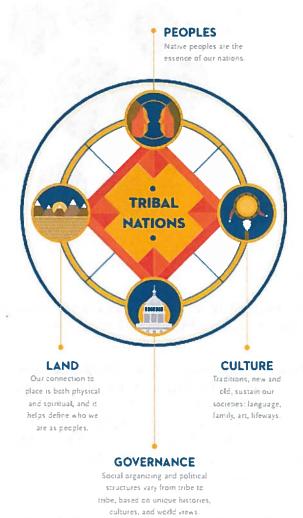
lower 48 United States. Alaska Native tribes have no treaties with the US government, as treaty-making ended in 1871, just years after the 1867 Alaska Purchase Treaty with Russia. The governing bodies of Alaska Native communities

Tens of millions of Indigenous peoples inhabited North America, and governed their complex societies, long before European governments sent explorers to seize lands and resources from the continent and its inhabitants. These foreign European governments interacted with tribes in diplomacy, commerce, culture, and war—acknowledging Indigenous systems of social, cultural, economic, and political governance.

Inbal nations have remained as political powers from the colonial period until today—engaging in commerce, trade, cultural exchange, and insptring the principles of freedom and democracy enshrined in the US Constitution. As the United States formed a union, the founders acknowledged the sovereignty of tribal nations, alongside states, foreign nations, and the federal government in the US Constitution.

Initial nations are part of the unique American family of governments, nations within a nation, as well as sovereign nations in the global community of nations.

Rooted in deep traditions und distinct ways of life, tribal nations are defined by Indigenous peoples, places, cultures, and governance



vary by tribe or village
"traditional councils,"
"native councils," "village
councils," "tribal councils,"
or "IRA councils." In some
instances, the term
"village" is used instead of
"tribe," as tribes in Alaska
were often recognized by
the term "village" under the
Alaska Native Claims
Settlement Act (ANCSA)
of 1971."

Tribal Citizenship. "Like any government, tribal governments determine their own criteria for citizenship. Usually there is some blood quantum requirement, such as onequarter, or a requirement of lineal descendency from a tribal citizen. The Supreme Court has recognized that each tribe determines its own criteria. Some federal agencies also have criteria for determining eligibility for programs and services. Not all American Indian

and Alaska Native people are citizens of tribal nations." Tribal members are citizens of three entities: their tribe, the United States, and the state in which they reside.

Tribal Government Services and Functions. "Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. The governments exercise these inherent rights through the development of their distinct forms of government, determining citizenship; establishing civil and criminal laws for their nations; taxing, licensing,



regulating, and maintaining and exercising the power to exclude wrongdoers from tribal lands. Tribal governments are responsible for a broad range of governmental activities on tribal lands, including education, law enforcement, judicial systems, health care, environmental protection, natural resource management, and the development and



maintenance of basic infrastructure such as housing, roads, bridges, sewers, public buildings, telecommunications, broadband and electrical services, and solid waste treatment and disposal.

b. Ngāi Tahu, New Zealand South Island. In analyzing Māori governance frameworks, the analysis focused on one tribe as a case study. The Ngāi Tahu are a Māori iwi, or tribe, from New Zealand's South Island. The Ngāi Tahu were one of the parties to the 1840 Treaty of Waitangi to whom redress was owed by the British Crown due to treaty violations. In 1998, a settlement was determined and the Ngāi Tahu were compensated \$170 million cash (among other things). As a result of this economic redress, Ngāi Tahu became an economic powerhouse worth over \$1.65 billion as of 2018.

Ngāi Tahu is an iwi, a tribe, of Aotearoa that has, interestingly, incorporated its governing body. In an attempt to establish a tribal structure in order to best manage its assets and its business, while also maintaining the capacity to distribute benefits, the tribe's governing documents were placed into law via the passage of legislation: Te Rūnanga o Ngāi Tahu Act 1996. In accordance with law, te Rūnanga o Ngāi Tahu (the Council/Board of Directors of the Ngāi Tahu) is established as the body corporate and representative of the Ngāi Tahu Whānui. Membership and requirements are also provided for in statute as well as powers. Of note, amendments to this law requires a special resolution provided by te Rūnanga.



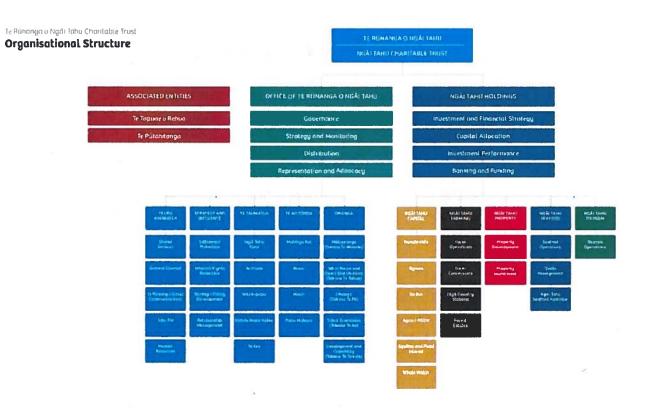
- The Te Rūnanga o Ngāi Tahu is the 18-member governing board or council of the Ngāi Tahu tribe. A Kaiwhakahaere (chair) leads the board. According to the tribe's website: Te Rūnanga o Ngāi Tahu is responsible for the overall governance of the group and for representing Papatipu Rūnanga and Ngāi Tahu Whānui and delivering benefits to them. Te Rūnanga o Ngāi Tahu deal with global tribal policy and issues, while Papatipu Rūnanga manage issues requiring wider or local consultation.
- Kā Pakitua Leadership Team is the executive team below in authoritative succession to the 18-member te Rūnanga o Ngāi Tahu. "Kā Pakitua" is the name of the legendary toki (adze), which sat upon the prow of the great migration waka (canoe) Uruao, which carried the ancestors of the Ngāi Tahu. Kā Pakitua is symbolic in the role it played in both navigation and clearing out the passages of the ocean on the Ngāi Tahu's way to Aotearoa.
 - o The leadership team is comprised of a Chief Executive Officer, Chief Operating Officer, the general managers of each pou (pillar) of the iwi.
 - o These pou are as follows:
 - Te Taumatua: Responsible for ensuring the integration of the tribe into all aspects of council activities and ensuring the efficient and effective delivery of the core services through which tribal members can determine their membership, incorporating the whakapapa function, tribal archive and traonga collections, Kotahi Mano Kāika and the Ngāi Tahu Fund;
 - Oranga: Responsible for work streams designed to help whānau (family) to realize rangatiratanga (self-determination) in the areas of education, employment, financial literacy, and business creation. Oranga provides strategic program delivery to ensure success for whānau through whānau rangatiratanga;
 - o Te Ao Turoa: Responsible for taonga (cultural treasures) resources, mahinga kai (traditional food and natural resource gathering) and natural environment. Ensures the integration of programs and environmental work streams within the wider tribal development strategy to support whānau outcomes;
 - O Strategy & Influence: Dedicated to realizing Ngāi Tahu visions for tribal development through the development and implementation of political and organizational strategy, strategic relationship management, and strategic public relations





The Papatipu Rūnanga are 18 regional boards comprised of various hapū (family groups) with their own governance structures. Each Papatipu Rūnanga selects one member to represent them on te Rūnanga o Ngāi Tahu.

Ngāi Tahu Charitable Trust Organizational Structure. Ngāi Tahu Holdings is an investment company formed subsequent to the Ngāi Tahu Claims Settlement of 1998 with investments in property, farming, seafood, tourism, as well as direct investments in a number of businesses as well as indirect investments through private equity funds and international equities.



According to the 2018 Ngāi Tahu Holdings Report and the 2018 Te Rūnanga o Ngāi Tahu Annual Report, \$61.05 million in revenue was distributed Te Rūnanga o Ngāi Tahu. This is up from the previous year where \$49.6m in revenue was distributed to the tribe, with \$32.6m for tribal initiatives (excluding operational and administrative costs), \$7.1m for educational and wellbeing grants, and \$10.6m direct distribution and development for Papatipu Rūnanga.

The organizational structure of the Ngāi Tahu is a masterwork model for trust organizations serving as the receptacle for fairly sizeable redress in terms of direct



cash compensation and land and resource assets, having a net worth that has grown to over \$1.65 billion. The Ngāi Tahu organizational structure, as it relates to the Office of Hawaiian Affairs, should be highly informative, if not highly influential for these reasons: (1) Both organizations are Trusts responsible for the survival of their people; and (2) Both organizations have access to large capital and land and resource assets.

c. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁷⁷. Indigenous peoples globally continue to face dispossession of their lands and resources, discrimination, forced assimilation and other grave human rights abuses. The United Nations Declaration on the Rights of Indigenous Peoples is the most comprehensive international human rights instrument to specifically address their economic, social, cultural, political, civil, spiritual and environmental rights. In its own words, the Declaration sets out minimum standards necessary for the "dignity, survival and well-being" of Indigenous peoples.

The UN General Assembly overwhelmingly adopted the Declaration on 13 September 2007. This historic adoption followed more than twenty years of deliberation and debate in which Indigenous peoples worked directly with states to elaborate upon and advance their human rights. This marked the first time within the UN that rights holders had such a central role in the creation of a new human rights instrument.

The Declaration affirms Indigenous peoples' right of self-determination and underlines the prohibition of discrimination and genocide in international law. The Declaration calls on states to honour and respect the Treaties and other agreements they have entered into with Indigenous peoples, to protect Indigenous languages and cultures, and to uphold Indigenous peoples' rights to lands, territories and resources.

The Declaration affirms the inherent or preexisting collective human rights of Indigenous peoples, as well as the human rights of Indigenous individuals. It provides a framework for justice and reconciliation, applying existing human rights standards to the specific historical, cultural and social circumstances of Indigenous peoples.

The Declaration reflects a range of human rights standards that have emerged over the last three decades through the work of international and regional human rights bodies as they have dealt with violations against Indigenous peoples. Many of these standards, such as the provisions of international human rights conventions or customary international law, establish clear legal obligations for states.

As we actively engage with the full and effective implementation of the UN Declaration on the Rights of Indigenous Peoples, we urge that:

⁷⁷ United Nations Declaration on the Rights of Indigenous Peoples, March 2011



Governments, in conjunction with Indigenous peoples, use the Declaration as the basis for reviewing and reforming laws and policies to ensure that Indigenous peoples' rights are upheld without discrimination.

Courts and human rights tribunals use the Declaration as a relevant and persuasive source in interpreting Indigenous human rights and related state obligations. Indigenous peoples and their institutions use the Declaration as a principled framework for advancing their rights, in their own policy- and decision-making and in their negotiations with governments and other third parties.

Civil society organizations work cooperatively with Indigenous peoples, in promoting and implementing their human rights and maintaining the Declaration as a living instrument.

Educational institutions include the Declaration in their curriculum, including teacher training.

Corporations and investors ensure their human rights policies and business practices incorporate the standards in the Declaration.

The global consensus that now exists in support of the Declaration reinforces its weight as a universal human rights instrument. The ongoing and widespread human rights violations against Indigenous peoples worldwide underline the urgency of moving ahead with the full and effective implementation of the Declaration.

2. Engagement with Ali'i Trusts. PIG team members reached out to other kupuna ali'i trusts (Queen Lili'uokalani Trust, Lunalilo Home and Kamehameha Schools) for their mana'o and experiences regarding governance.



V. PROPOSED GOVERNANCE FRAMEWORK ELEMENTS

Lahui

A. Element 1: Identity. While statutorily OHA is a State Agency with the responsibility to manage a Trust, the PIG proposes that OHA identifies with and operates more similarly to other Ali'i Trusts⁷⁸ with a lahui⁷⁹ mindset in improving the well-being of our lahui.

Constitution, Chapter 10 **By-Laws Policies** Supporting **Documents, Practices**

Such an identity is rooted in the 'olelo no'eau, E 'op \bar{u} ali'i, have the heart of a chief, have the kindness, generosity, and even temper of a chief, 'ōlelo no'eau 36980. OHA's identity is also place based, that OHA's kuleana is to this place of Hawaii.

While a "dual" identity (e.g., maka'āinana⁸¹ trust vs. state agency) may seem potentially confusing, the PIG recommends that such an identity can be supported by policies, procedures and practices that are contextualized (i.e., state agency spends dollars appropriated as detailed in the biennium budget compared to a trust that is mindful of its resources

need to steward its resources in perpetuity for its beneficiaries).

OHA's identity manifests itself in four roles: advocate, researcher, community engager and asset manager and related policies, procedures and practices can be aligned to support and guide OHA's proposed dual identity.



⁷⁸ Kamehameha Schools, Liliuokalani Trust, Lunalilo Home, Queens Medical Center

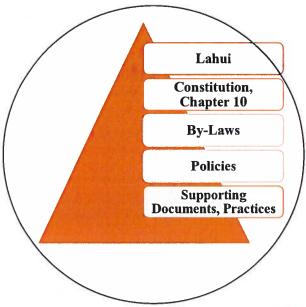
⁷⁹ Nation, race, tribe, people, nationality, Na Puke Wehewehe, retrieved 3/17/2019

⁸⁰ Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 45

⁸¹ n. Commoner, populace, people in general; citizen, subject. Cf. lunamaka 'āinana. Lit., people that attend the land, Na Puke Wehewehe, retrieved 3/17/2019



B. Element 2: Values and Mana



A key element of the proposed governance framework is the intangible but invaluable values and mana concepts.

"Envision Pu'uhonua"

The Office of Hawaiian Affairs, a place of refuge, in which we shall live our values and principles.

The operating values of kūlia, kākou, pono, ho'omau and aloha begins with Trustees and Board work and cascades to the Administration and staff. *O ke kahua mamua, mahope ke kūkulu,* the site first, and then the building, learn all you can, then practice, 'ōlelo no'eau 2459⁸².

THE OFFICE OF HAWAIIAN AFFAIRS

Franciscopy theorems, strengthening theorem



OHA CORE VALUES



Innovation Excellence



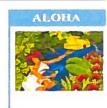
Collaboration Cooperation Unity



Integrity Truth



Legacy



Respect Value

O ke kahua ma mua, ma hope ke Kūkulu.

E hoʻoikaika ana i nā Kānaka i mana ka lāhui.

⁸² Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 268



Kākou

E alu like mai kākou i ka hoʻokō ʻana i ko kākou mikiona. We work together, unified to accomplish our mission.

Aloha Kekahi I Kekahi

'Olu'olu a maika'i kākou i nā kānaka a pau. We are kind and compassionate to all whose lives we touch.

Pono Pau'ole

E hana kūpono kākou me ka 'oia'i'o. We act with integrity and truthfulness.

Mālama Kekahi I Kekahi

E hō'ihi a mālama kākou i nā po'e a pau a me nā mea 'ē a'e a pua. We respect and care for others and all that surround us.

Kuleana

E ho'okō kākou i ko kākou kuleana hana. We carry out our individual and collective responsibilities.

Kūlia

E ho'okumu kākou i ka hana e pili ana i nā kuleana Hawai'i me ka ho'oholu. We take initiative and are resilient in advocating for Hawaiian rights.

Po'okela

E hana kākou me ka 'oi a e ho'omaika'i iā kākou iho. We do our absolute best and continuously seek improvement.

THE OFFICE OF HAWAIIAN AFFAIRS



Ho'omau

E ho'omau kākou i ke ea o ka āiṇa,
nā mea e ho'opuni ana,
ka mo'omeheu a me ka po'e
Hawai'i.
Together, steadfast we preserve and
perpetuate our culture, people,
land and environment.

Mana as Capital. The acquisition, development and maintenance of mana toward strengthening OHA's influence capital, cultural capital and financial capital.⁸³

Mana – OHA will:



- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

⁸³ Social enterprises apply business solutions to social problems. The ultimate goal is to achieve sustainability by enabling non-profits to support themselves financially in innovative ways instead of relying solely on grants and donations. Since there are no shareholders in a non-profit organization, the profits from the related social



- C. Element 3: Statutory Basis. OHA was established under the Hawai'i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai'i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people, including:
 - (1) The betterment of conditions of native Hawaiians.
 - (2) The betterment of conditions of Hawaiians;
 - (3) Serving as the principal public agency responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
 - (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
 - (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
 - (6) Serving as a receptacle for reparations.⁸⁴

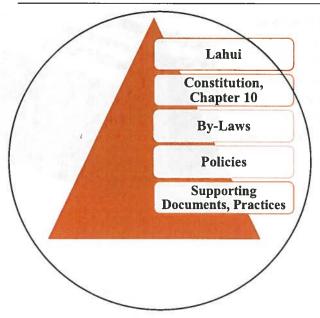
• §10-3 Purpose of the office. The purposes of the office of Hawaiian affairs include:

- (1) The betterment of conditions of native Hawaiians. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e).
- (2) The betterment of conditions of Hawanians.
- (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawanians and Hawanians, and conducting advocacy efforts for native Hawanians and Hawanians:
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations

enterprise are completely re-invested in the work of the organization. https://www.marsdd.com/mars-library/social-enterprise-business-models/, retrieved 3/26/2019

⁸⁴ HRS §10-3; see also HRS §10-1.





D. Element 4: Policies⁸⁵. The PIG recommends that OHA policies be organized into three tiers: L-Lahui⁸⁶, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the kaumaha (heavy weight, sadness) or significant kuleana (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding 'āina, water, wahi pana and iwi kupuna, strengthen 'ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA's Trustee role as a result of the

Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

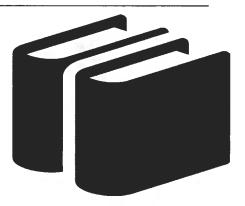
An effective governance framework, considers that policies are modified from time to time for clarification of facts, circumstances, policy content, processes or organizational changes. While a change and update mechanism should exist to effect better policy clarity, the PIG recommends a five (5) year review cycle for L-Lahui and T-Trustee level policies and a two (2) year review cycle for C-CEO level policies to reflect the intentional long-term nature of L and T level policies and the operating cycles of the Organization.

⁸⁵ Merriam-Webster, Definition of *policy* 1a: prudence or wisdom in the management of affairs; b: management or procedure based primarily on material interest; 2a: a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b: a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, https://www.merriam-webster.com/dictionary/policy, retrieved 3/17/2019

⁸⁶ Pukui, nvs. Nation, race, tribe, people, nationality, http://wehewehe.org, retrieved 3/17/2019



E. Element 5: Supporting Documents and Practices (Operations). Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and "operationalized" documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.





VI. BOARD GOVERNANCE FRAMEWORK PROJECT - PHASE IV – IMPLEMENTATION and PHASE V

Based on the approved project charter, the initial project plan and effective BOT implementation mechanisms, the PIG recommends the BOT implement the Board Governance Framework elements via the following newly formed and executed PIGs:

- A. Development of L-Lahui level policies;
- B. Alignment and update of existing BOT By-Laws;
- C. Development of T-Trustee level policies;
- D. Development of C-CEO level policies; and
- E. Alignment and update of existing Board governance documents (e.g., Executive Policy Manual, BOT Operating Manual).

VII. MAHALO

Since its approval in January 2019, Trustee PIG members and staff, Administration and staff have worked diligently to collectively bring this report and recommendations to the BOT.

Permitted Interaction Group (PIG) Trustees: Trustees Machado (Chair), Lee (Vice Chair), R Lindsey (Resource Management Committee Vice Chair) and Waihee (Beneficiary, Advocacy and Empowerment Committee Chair)

PIG Trustees' Staff: Carol Hoomanawanui, Lopaka Baptiste, Dayna Pa, Laurene Kaluau-Kealoha, Zuri Aki, Lei-Ann Durant, Kama Hopkins, Kaui Wailehua, Crayn Akina, and Melissa Wennihan.

Administration: Kamana'opono Crabbe, Ka Pouhana (KP), Sylvia Hussey, Ka Pou Nui (KPN) and Project Manager; Albert Tiberi, Senior Legal Counsel; Rayna Gushiken, Interim Senior Legal Counsel; Everett Ohta, Counsel for Environmental Law, Native Rights and Legal Services; Momilani Lazo, Senior Executive Assistant to KP; Laura Kamalani-Paikai, Executive Assistant to KPN; Leona Castillo, Executive Assistant to KP; Jim McMahon, Advocacy Counsel; and Keala Nichols, Executive Assistant to Chief Advocate.



APPENDIX A – PERMITTED INTERACTION GROUP REFERENCE LIST

- A. Governance Framework
- B. Statutory References to OHA in federal and state law and county ordinances
- C. Governance Structure
- D. Statutory References Handout
- E. Core Values
- F. Principles for Good Governance and Ethical Practice
- G. Analysis of Advocacy Platform Matters
- H. Analysis of Board Actions 2014-2018
- I. Analysis of Governance Framework
- J. Analysis of Governance Framework: Maori
- K. The "Sunshine Law" HRS Chapter 92
- L. Fiduciary and Statutory Duties
- M. Quick Review: Who Board Members Can Talk To and When (Part 1) revised July 2018
- N. Quick Review: Who Board Members Can Talk To and When (Part 2) revised May 8, 2014
- O. Quick Review: Who Board Members Can Talk To and When (Part 3) revised August 8, 2013
- P. Agenda Guidance for Sunshine Law Boards
- Q. Open Meetings Guide to "The Sunshine Law" for State and County Boards
- R. SPIRE OHA BOT Policy Workshop Update
- S. Board of Trustees By-Laws
- T. Board of Trustees Executive Policy Manual
- U. Board of Trustees Operations Manual
- V. United Nations Declaration on the Rights of Indigenous Peoples
- W. Tribal and Alaska Native Governance Models
- X. Tribal Nations and the United States, An Introduction 2017
- Y. Policies
 - 1. NHTF Investment Policy
 - 2. NHTF Spending Policy
 - 3. KM Policy
 - 4. Real Estate Vision Mission and Strategy Policy
 - 5. Risk Management Policy

Office of Hawaiian Affairs Board of Trustee Meeting April 4, 2019 10:00 am

V. New Business

D. Action Item BOT #19-05: Approve the formation of a Permitted Interaction Group to investigate the development of L-Lahui policies for OHA's Board Governance Framework.

Item was not received at time of folder distribution. It will be distributed once it is received.

OFFICE OF HAWAIIAN AFFAIRS

Action Item

BOARD OF TRUSTEES

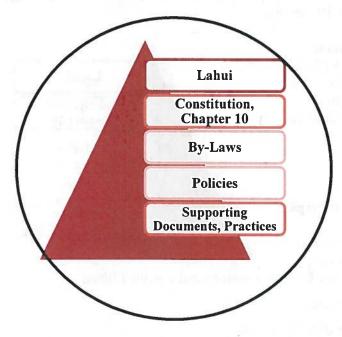
April 3, 2019

BOT #19-05

Action Item Issue:	Approve the formation of a Permitted Interaction Group to investigate the development of L-Lahui policies for OHA's Board Governance Framework.	
Prepared by:	Sylvia Hussey, Ed.D. Ka Pou Nui, Chief Operating Officer	4/3/19 Date
Reviewed by:	Kamana'opono Cabbe Ka Pouhana, Chief Executive Officer	4/3/19 Date
Reviewed by:	Carmen Hulu Lindsey Permitted Interaction Group Member	4/3/19 Date
Reviewed by:	Robert K. Lindsey Jr. Permitted Interaction Group Member	4/3/19 Date
Reviewed by:	Colette Y. Machado Vice Chair, Permitted Interaction Group	4/3/19 Date
Reviewed by:	Brendon Kalei'āina Lee Chair, Permitted Interaction Group	Date

Formation of a Permitted Interaction Group to investigate the development of L-Lahui policies for OHA's Board Governance Framework

I. Action Item:



Approve the formation of a Permitted Interaction Group to investigate the development of L-Lahui policies for OHA's Board Governance Framework.

II. Issue:

Whether or not the Board of Trustees will approve the formation of the Permitted Interaction Group, consistent with Hawai'i Revised Statutes§92-2.5(b), to investigate the development of L-Lahui policies for OHA's Board Governance Framework.

III. Discussion:

Board Governance Framework. In January 2019, the Board approved the formation of a Permitted Interaction Group (PIG) to: Investigate various elements of governance frameworks and models, including but not limited to cultural, indigenous, native, national and international contexts. The PIG was established with: 1) Trustee Brendon Kalei'āina Lee as Project Sponsor and Chair; 2) Trustee Colette Machado as Business Process Owner and Vice Chair of the PIG; and 3) Trustees Robert Lindsey¹ and John Waihee² as members. The PIG was supported by Trustee Machado, Lee, Lindsey and Waihee's Aides; and Administration, Ka Pouhana, Kamana'opono Crabbe, Ka Pou Nui, Sylvia Hussey and staff. The PIG, also known as the Board Governance Framework Project, implemented a project plan in five phases: Phase I – Planning; Phase II – Where are we now? (AS IS); Phase III – Proposing Elements of a Governance Framework; Phase IV – Proposing Implementation Actions; and Phase V – Closing Project and

¹ Interim Chair of the Resource Management Committee at the time of the formation of the Permitted Interaction Group

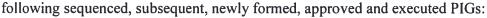
² Chair of the Beneficiary, Advocacy and Empowerment Committee

Formation of a Permitted Interaction Group to investigate the development of L-Lahui policies for OHA's Board Governance Framework

Lessons Learned. The PIG presented the final report and recommendations to the Board of Trustees (BOT) at its March 28, 2019 meeting.

Five Elements of the Board Governance Framework. Via Action Item BOT# 19-04, the Board was asked to approve the five elements of OHA's Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

Subsequent Permitted Interaction Groups. Included in the final report, the PIG recommended implementation of the Board Governance Framework elements via the



- 1. Development of L-Lahui level policies;
- 2. Alignment and update of existing BOT By-Laws;
- 3. Development of T-Trustee level policies;
- 4. Development of C-CEO level policies; and
- 5. Alignment and update of existing Board governance documents (e.g., Executive Policy Manual, BOT Operating Manual).

The PIG recommended the authorization and formation of a new PIG to investigate the development of L-Lahui policies for OHA's Board Governance Framework.

Applicable Law in Hawaii Revised Statutes. In accordance with HRS, CHAPTER 92, PUBLIC AGENCY MEETINGS AND RECORDS §92-2.5 (b) Permitted interactions of members: (b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to: (1) Investigate a matter relating to the official business of their board; provided that: (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board; (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and (C) Deliberation and decision making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.



Formation of a Permitted Interaction Group to investigate the development of L-Lahui policies for OHA's Board Governance Framework

Permitted Interaction Group - Purview. The purview of the PIG is for the Board of Trustees (BOT), BOT staff and OHA Administration staff to work together to: (1) Investigate the development of L-Lahui policies for OHA's Board Governance Framework, which would articulate the Hawaiian cultural foundation of the organization as a basis for the *kaumaha* (heavy weight, sadness) or significant *kuleana* (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding 'āina, water, wahi pana and iwi kupuna, strengthen 'ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts; (2) Establish consistent policy formulation, format, review and update parameters, mechanisms and processes; and (3) Integrate the developed policies into the Board Governance Framework.

Permitted Interaction Group – Members. The membership of the Permitted Interaction Group is as follows:

- 1. Trustee Colette Machado, BOT Chairperson
- 2. Trustee Brendon Kalei'āina Lee, BOT Vice Chairperson
- 3. Trustee Robert Lindsey, RM Vice Chairperson
- 4. Trustee Carmen Hulu Lindsey
- 5. Kamana'opono Crabbe, Ka Pouhana
- 6. Sylvia Hussey, Ka Pou Nui

Trustee Lee will serve as the Chair of the Permitted Interaction Group. Trustee Machado will serve as its Vice Chair.

Permitted Interaction Group - Term/Duration. The term of the Permitted Interaction Group expires at the completion of the assigned task, or at the discretion of the Chair of the Board of Trustees, subject to later adjustment.

IV. Funding Source:

Not applicable, no dedicated funding needed to authorize and form a new Permitted Interaction Group to investigate the development of L-Lahui policies for OHA's Board Governance Framework.

V. Recommended Action:

Approve the formation of a Permitted Interaction Group to investigate the development of L-Lahui policies for OHA's Board Governance Framework

Formation of a Permitted Interaction Group to investigate the development of L-Lahui policies for OHA's Board Governance Framework

VI. Timeframe:

Immediate action is recommended to ensure that the following newly formed and executed PIGs (subject to BOT approval) can be launched to "operationalize" the framework elements no later than December 31, 2019:

- 1. Development of L-Lahui level policies;
- 2. Alignment and update of existing BOT By-Laws;
- 3. Development of T-Trustee level policies;
- 4. Development of C-CEO level policies; and
- 5. Alignment and update of existing Board governance documents (e.g., Executive Policy Manual, BOT Operating Manual).

VII. Attachment: None

Office of Hawaiian Affairs Board of Trustee Meeting April 4, 2019 10:00 am

V. New Business

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





Aloha!

- KumabeHR provides executive level HR expertise to Hawaii organizations spanning the non-profit, government, and private sectors.
- KumabeHR seeks to partner with our client organizations to provide state of the art Human Resource solutions from a menu of human resource applications that suit the directives of the leadership.
- Marie Kumabe currently serves as the Faculty Director for the Executive Masters of Human Resource Management program at the UH-Manoa Shidler College of Business. (She has been affiliated with the University of Hawaii for over 20 years in the areas of business, nursing, and travel industry management.)
- Over 30 years of experience in Human Resources at the executive level in the state of Hawaii.



Clients Served

ACL Group, LLC
Air Central, Inc.
Air Inc.
Air Central, Inc.
Air Inc.
Ambassador Waikiki
American Savings Bank
Audibel Hearing Center
Bank of Hawaii
Best Sunshine International
Boys and Girls Club
Bowers and Kubota
Budget Appliances
Bruce Matson Company, Inc.
Care Hawaii
Catholic Charities of Hawaii
Catholic Charities of Hawaii
Central Pacific Bank
Chinese Petroleum
Creations In Catering
DataHouse
Dellew Corporation
Diamond Head Memorial Park
Doubletree by Hillton
Dupont Pioneer
E Noa Corporation
First Hawaiian Bank
Fukunaga & Associates
Girl Scouts of Hawaii
Goodwill Industries of Hawaii
Gourmet Events Hawaii
Halekulani Corporation
Hawaii Family Dental Centers
Hawaii Gas
HegA
Hawaii HIS Corporation

Hawaii Pacific Health
Hawaii Pacific University
HPMG
Hawaii USA FCU
Hawaiian Airlines
Hawaiian Telcom
Hawkire International
Heide & Cook
HMSHost
Hilton Grand Vacations Club
Hilton Grand Vacations Club
Hilton Hawaiian Village
Honolulu Psychiatric Service
Horizon Lines
Howard Hughes Corporation
HTH Corporation
ICAT Managers, LLC
Island Veterinary Care
Junior League of Honolulu
Kapiolani Community College
KECI Industries
KPRS Construction
Kaiser Permanente
Kamehameha Schools
Kristin Wood Lashes
Law Offices of Vladimir Devens
Liu Matsuura, CPA
Locations, LLC
Maui Divers
McDonalds of Hawaii
Mechanical Enterprises, Inc.
Noble Supply and Logistics
Nordic PCL
Ocean Investments
Oceanic Time Warner Cable
Office of Hawaiian Affairs
Opterra Energy Services
Pacific Inkis International
Pacific Transfer

Prince Resorts Hawaii
Referentia
Reskyu
State Farm, Nathan Tachino
RM Nakamura Contractor, Inc.
Rehabilitation Hospital of the
Pacific
Roeca, Luria, Hiraoka, LLP
SMA Billing Solutions, LLC
Saint Patrick Church and School
State of Hawaii ERS
Steadfast Housing
Taira Chiropractic
Team Praxis
ThInk, LLC
The Modern Honolulu
Top of Walkiki
Torkildson Katz Moore
Hetherington & Harris
Trumpet Behavioral Health
UCERA
UH Shidler College of Business
UH School of TiM
Vietnam Chamber of Commerce
Waikiki Business Plaza
Walkiki Health Center
Waikiki Parc Hotel
Worldmedia Interactive
Worldmedia Interactive
Worldmedia Interactive
Vorldwide Flight Services
Y.Hata

Kumabe

Trends

- A fair, comprehensive and transparent CEO evaluation process
- Clear guidelines describing the CEO's evaluation process are becoming the accepted measure of good governance.
- Quantitative & Qualitative Portions
- CEO Self Evaluation
- State of Hawaii Board of Education Superintendent



Objectives for Performance Review Process

"It is an indisputable law in organizations that words are words, explanations are explanations, promises are promises.. but only performance is reality."

- Harold S. Geneen

- Executive performance review process can be framed to be an extremely positive event for the organization
- Values, such as transparency, vision and executive leadership collaboration can be reaffirmed
- Participation in the process can further cement various constituency support for the direction of the institution
- The process can quantify goals for the year going forward and celebrate the successes of the past



Method and Process

- 1. How will the data be collected?
 - Will it be quantitative or qualitative data or both? Will surveys and/or interviews be used?
- 2. What topics will be explored?
 - Will topics such as leadership, communication and operating performance be assessed as well as performance on goals?
- 3. The importance of the Board and their "buy in"?
 - It is important to get agreement on the goals and criteria for assessment and the Board's role in the process
- 4. Who conducts the assessment?
 - Many organizations engage a third party to assist with the CEO performance assessment
 - An outside assessor can bring external expertise and can be perceived as objective
- 5. How will feedback be handled?
 - This is the single most important component of the entire assessment process
 - Who will share the feedback with whom? Under what conditions? In what settings? How will feedback be turned into action?
 - · Consensus versus Integrated Feedback
 - · Training for the evaluation process



Timeline and Deadlines

April 4 – April 11 April 11 May 2 May 30 Individual meetings Possible updates. Deliver review to Introduction to the Make Present evaluation Completion date BOT to determine with the BOT to recommendations draft review to per contract. options for method discuss and to the BOT for and process. evaluate options methods and processes and and updated timeline. *Timeline may shift based on OHA Board meetings or individual schedules Kumabe

Key Decisions

How to involve various stakeholders:

- Board of Trustees
- CEO
- Community
- OHA Leadership
- OHA Staff

Quantitative

• Objective or measurable goals

Qualitative

Leadership and more subjective measures

Vote or Voice

· Role, if any in the process



Next Steps

- Approval to schedule meetings with each member of the Board of Trustees
- Approval to appear before the Board of Trustees on 4/11 to make final recommendations on the method and process for the CEO evaluation, including a proposed final timeline



Mahalo!Any Questions?



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VI. Executive Session[‡]

A. Consultation with Board Counsel Robert G. Klein, Esq. and Kumabe HR LLC re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the Board's obligations and responsibilities to conduct its performance appraisal of OHA's CEO in accordance with Section III of Contract 3147. *Pursuant to HRS* §92-5(a)(4).

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