

BOARD OF TRUSTEES

Carmen. Hulu Lindsey, *Chairperson*Leina'ala Ahu Isa, *Vice Chairperson*

Dan Ahuna, Trustee Kaua'i & Ni'ihau

Kalei Akaka, Trustee O'ahu

Keli'i Akina, Trustee At-Large

Luana Alapa, Trustee Moloka'i & Lāna'i

Brendon Kalei'aina Lee, Trustee At-Large

Keola Lindsey, Trustee Hawai'i Island

John Waihe'e IV, Trustee At-Large



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS**

MEETING OF THE BOARD OF TRUSTEES**DATE:** Thursday, February 3, 2022**TIME:** 10:00 am**PLACE:** Virtual MeetingViewable at www.oha.org/livestream OR

Listen by phone: (213) 338-8477,

Webinar ID: 835 5818 7299

Due to COVID-19, the OHA Board of Trustees and its standing committees will hold virtual meetings until further notice. Pursuant to Governor Ige's January 26, 2022 Emergency Proclamation Related to COVID-19 (Omicron Variant), there will be no in-person location for this meeting that is open to the general public. The virtual meeting can be viewed and observed via livestream on OHA's website at www.oha.org/livestream or can be listened to by phone via the phone number and Webinar ID listed at the beginning of this agenda.

AGENDA

- I. Call to Order**
- II. Approval of Minutes**
 - A. December 29, 2021
 - B. January 13, 2022
- III. Public Testimony*** on Items Listed on the Agenda* (Please see page 2 on how to submit written testimony or provide oral testimony online. Oral testimony by phone will **not** be accepted)
- IV. Community Concerns and Celebrations****(Please see page 2 on how to submit written testimony or provide oral testimony online. Oral testimony by phone will **not** be accepted)
- V. New Business**
 - A. Report of the Permitted Interaction Group re: to investigate the activation of OHA Kaka'ako Makai Site A, 1011 Ala Moana Blvd., no discussion. HRS§92-2.5(b)(1)(B).
 - B. Committee on Beneficiary Advocacy and Empowerment†
 - 1. Action Item BAE #22-01: A Resolution Supporting Community Based Subsistence Fishing Area Designations and Rules at Miloli'i, Hawai'i
 - C. Committee on Resource Management
 - 1. Nā Lama Kukui, 560 N. Nimitz Highway, Refinancing
- VI. Executive Session ‡**
 - A. Consultation with Board Counsel Robert G. Klein, Esq. and Interim General Counsel Everett Ohta, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and Liabilities with respect to the refinancing of Nā Lama Kukui, 560 N. Nimitz Highway, pursuant to HRS§92-5(a)(4)
- VII. Announcements**
- VIII. Adjournment**

If you require an auxiliary aid or accommodation due to a disability, please contact Everett Ohta at telephone number 594-1988 or by email everetto@oha.org no later than three (3) business days prior to the date of the meeting. Meeting Materials will be available to the public 72 hours prior to the meeting and posted to OHA's website at: www.oha.org/bot

In the event that the livestream or the audiovisual connection is interrupted and cannot be restored, the meeting may continue

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STATE OF HAWAII

OFFICE OF HAWAIIAN AFFAIRS

as an audio-only meeting through the phone and Webinar ID listed at the beginning of this agenda. Meeting recordings are available upon request to BOTmeetings@oha.org until the written meeting minutes are posted to OHA's website.

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

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

** **Community Concerns and Celebrations is not limited to matters listed on the meeting agenda.**

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

Testimony can be provided to the OHA Board of Trustees either as: (1) **written testimony emailed** at least 24 hours prior to the scheduled meeting, (2) **written testimony mailed** and received at least two business days prior to the scheduled meeting, or (3) live, **oral testimony online** during the virtual meeting.

- (1) Persons wishing to provide **written testimony** on items listed on the agenda should submit testimony via **email** to BOTmeetings@oha.org at least **24 hours prior** to the scheduled meeting or via **postal mail** to Office of Hawaiian Affairs, Attn: Meeting Testimony, 560 N. Nimitz Hwy., Suite 200, Honolulu, HI 96817 **to be received at least two business days prior** to the scheduled meeting. Any testimony received after these deadlines will be late testimony and will be distributed to the Board members after the scheduled meeting. **Due to COVID-19 office closure and limited in-office staffing, please do not fax or hand-deliver written testimony.**

- (2) Persons wishing to provide **oral testimony online** during the virtual meeting must first register at:
https://us06web.zoom.us/webinar/register/WN_gY02QKRYT0igcMIIUqfF3g

You need to register if you would like to orally testify. Once you have completed your registration, a confirmation email will be sent to you with a link to join the virtual meeting, along with further instructions on how to provide oral testimony during the virtual meeting. The registration page will closed once the Public Testimony or Community Concerns agenda items have concluded.

To provide oral testimony online, you will need:

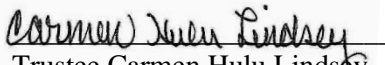
- (1) a computer or mobile device to connect to the virtual meeting;
- (2) internet access; and
- (3) a microphone to provide oral testimony.

Oral testimony online will be limited to five (5) minutes.

Oral testimony by telephone/landline **will not** be accepted at this time.

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

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


 Trustee Carmen Hulu Lindsey
 Chairperson, Board of Trustees

1/28/2022
 Date

**Office of Hawaiian Affairs
Meeting of the Board of Trustees
February 3, 2022
10:00 A.M.**

II. Approval of Minutes

A. December 29, 2021

B. January 13, 2021

****all attachments will be added to final minutes once approved.**

Draft

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

Due to the threat of COVID-19, Governor Ige issued the most recent Emergency Proclamation related to the COVID-19 Delta Response, dated October 1, 2021 that suspends parts of Hawai'i Revised Statutes Chapter 92, Public Agency Meetings and Records to, among other things, enable boards to conduct business without any board members or members of the public physically present at the same location.

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Minutes of the Office of Hawaiian Affairs
Board of Trustees
MINUTES
December 29, 2021

ATTENDANCE:

Chairperson Carmen Hulu Lindsey
Trustee Dan Ahuna
Trustee Kaleihikina Akaka
Trustee Keli'i Akina
Trustee Luana Alapa
Trustee Brendon Kalei'āina Lee
Trustee Keola Lindsey
Trustee John Waihe'e, IV

ADMINISTRATION:

Sylvia Hussey, CEO
Casey Brown, COO
Ramona Hinck, CFO
Everett Ohta, Interim General Counsel
Na'u Kamali'i, Chief Advocate
Kurt Klein, Board Counsel
Daniel Santos, IT Support
Arlene Aginaldo, IT Support

BOT STAFF:

Colin Kippen, COS
Amber Kalua, Trustee Aide
Kanani Iaea, Trustee Aide
Lehua Itokazu, Board Secretary

GUEST:

Sherry Broder, Esq./Counsel
Wayne Tanaka, Sierra Club Chapter Director

Call to Order

Chair Hulu Lindsey Calls the Board of Trustees Meeting to order for Thursday, December 29, 2021, at 10:01 a.m. Board Secretary, please do a roll call.

MEMBERS			Present	TIME ARRIVED
TRUSTEE	LEINA'ALA	AHU ISA		Excused
TRUSTEE	DAN	AHUNA		Joins mtg at 11:39 am
TRUSTEE	KALEI	AKAKA	X	
TRUSTEE	KELI'I	AKINA	X	
TRUSTEE	LUANA	ALAPA	X	
TRUSTEE	BRENDON KALEI'ĀINA	LEE	X	
TRUSTEE	KEOLA	LINDSEY	X	
TRUSTEE	JOHN	WAIHE'E		Joins mtg at 10:05 am
CHAIRPERSON	CARMEN HULU	LINDSEY	X	
			6	

At the Call to Order, **six (6)** Trustees are PRESENT, thereby constituting a quorum.

Chair Hulu Lindsey Thank you. Due to the threat of COVID-19, Governor Ige issued the most recent Emergency Proclamation related to COVID-19 Response dated November 29, 2021, that suspends parts of Hawai'i Revised Statutes Chapter 92, Public Agency Meetings and Records to, among other things, enable boards to conduct business without any board members or members of the public physically present at the same location. The OHA Board of Trustees will hold virtual meetings until further notice. The virtual meetings can be viewed and observed via livestream on OHA's website at www.oha.org/livestream

I will go over some quick announcements. Please mute your mics when you are not speaking. We are recording today's meeting for the sole purpose of producing written minutes, which will become the official record of this meeting.

Joining the Trustees today is my staff Colin Kippen-COS, my Aides-Kanani Iaea and Amber Kalua, and our Board Secretary-Lehua Itokazu. With us today is Kurt Klein, our Board Counsel and Sylvia Hussey, our CEO. I will now call on Sylvia, our Pouhana, to announce who is joining us from administration.

Sylvia Hussey, CEO Thank you Chair and good morning Trustees, Chair, we have our COO-Casey Brown, Interim Senior Legal Counsel-Everett Ohta, Na'unanikina'u Kamali'i-Chief Advocate, as well our IT staff-Dan and Arlene who are supporting us this morning. Thank you.

Approval of Minutes

- A. October 7, 2021**
- B. October 21, 2021**
- C. October 26, 2021**
- D. October 28, 2021**

Chair Hulu Lindsey Moving on to item II approval of minutes. Before you, you'll see October 7th, 21st, 26th, and the 28th.

Trustee Akina Moves to approve all four minutes.

Trustee Akaka Seconds the motion.

MINUTES: A. October 7, 2021 B. October 21, 2021 C. October 26, 2021 D. October 28, 2021						
	1	2	'AE (YES)	'A'OL E (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA						X
TRUSTEE DAN AHUNA						
TRUSTEE KALEI AKAKA		X	X			
TRUSTEE KELI'I AKINA	X		X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE			X			
TRUSTEE KEOLA LINDSEY			X			
TRUSTEE JOHN WAIHE'E						
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			6			
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED Motion passes with six (6) YES votes and one (1) EXCUSED vote.						

Chair Hulu Lindsey Thank you. I just want to announce that Trustee Dan Ahuna will be joining us later in the meeting. I also want to mention that I will be taking the public testimony and community concerns together, back to back. As a reminder, you will be given five minutes to share your mana'o. Your name will be called and your microphone will be unmuted when it is your turn to testify. If you are not audible, you will be muted and the next testifier will be called. Your name will be called again before the conclusion of the public testimony and the community concern section. Board Secretary, do we have any testimony?

Board Secretary Yes, Gina Hara.

Gina Hara Hi, my name is Gina Hara and I am from Hālawā Valley and I have been following the Red Hill issue for the past eight years. I just wanted to let you know that I've been to almost every single meeting up until last year. This year I could not make some of the meetings including the City Council. I wanted to let

you know that every time I went to these meetings, I asked about alternative sites and what the Navy would say is they'll do this and that. But after this 13-hour injunction hearing, it was the first time I saw question and answer where attorneys could ask detailed questions. It took an injunction hearing to find out. It wasn't on May 6 like 38 gallons spilled, it was almost 19,000 gallons. It was related to the November 20 spill which was 14,000 gallons. These two related spills are a total of 33,000 gallons which was predicted by everything we've been talking about since 2014. The fact that it had to take for it to come out in people's houses for people to get shaken up and say the words shut it down. I just wanted to give you a quick background so you don't waste your time, that the Navy is always not going to want to move it because of three reasons: 1) it will be gravity fed; 2) its underground – they will never address that it is 100 ft. above the aquifer; 3) and they will never leak, they still have not figured out what is the root cause of the leak. This continues to happen and will continue to happen according to their experts too. I just wanted to prep you regarding this issue. Secondly, I wanted to let you know that there is a way to remediate with indigenous microbes. I think it's a little overwhelming for the Board of Water if I talk to them about Korean natural farming and how it's used around the world to clean water. It is also used in EM which is in Okinawa used to clean oil. There is a lot of natural methods to clean oil but also the Korean natural farming method, which is indigenous microbes, can also clean the pesticides under the GMO lands which also pollutes the water. What I want to suggest is that it may be in your best interest to invest in this. This could turn around \$18 million dollar farm lands to organic, and clean the water at the same time. With this technology, this could be a new industry for young Hawaiian children. They can become experts on how to remove and remediate. I just wanted to bring it to you in a positive way because I know the Navy is not going to come up with it. Monsanto is not going to come up with it. The technology is there, the person who is an expert on this in Korea, who learned it from Japan, is still alive and willing to teach anything and everything we need. It will take a while to shut down Red Hill but it needs to be as soon as possible. OHA might be the best entity to support the overall remediation of all of these toxins that are happening through the US military. Thank you for your time.

Clare Apana Good morning, Board members, thank you for hearing this issue. I am a member of the Sierra Club, State board. I think you're going to hear from Wayne later today. I just want to say that I hope that we will take a leadership role in the preservation of the water. I hope that you will also advocate for kanaka maoli as the special relationship we have to the United States government and their fiduciary duty to us. We really should be taking a forefront in protecting the 'āina and the water. Thank you so much for hearing this and I really like the last speakers idea of doing the intervention so that the land and water might be able to becoming clean again. So, thank you. That's all I have to say.

Routh Bolomet My name is Routh Bolomet and I will be talking about some information that was given to me in December 2010 when I applied for kuleana land tax. I was denied on the basis that the land that we are on was part of Kamehameha III's private lands that were made inalienable under Act 34. That made the lands inalienable as of January 3, 1865, and for that reason we could not lawfully own the land and therefore qualify for the kuleana land tax. We have been trying to resolve this issue through our title insurance and the courts since then. We literally put in the information and notified the loan company in August 2013 to have our title insurance invoked. Now, part of the requirements of us doing this was we had to stop making payments, otherwise they would not do any research, and then they wouldn't start the research until we were 90 days delinquent. Up till that point, we were not delinquent. The loan company then started the research, the research continued on and alot of stuff came out of it which was alot of fraud. We were denied having our title insurance invoked and because we were delinquent, we were then thrown into foreclosure court but if we paid any part of the loans, they would stop all research; so, we were between a rock and a hard space on this because according to Hawaiian Kingdom Act 34, its true the lands were made inalienable, could not be sold and therefore, it was a defective title and the only remedy available to us was actually getting the title insurance to pay off the loan. Now, this is relevant to OHA because OHA opened up this pandora's box.

Because you're a State agency, we were put on notice. We could not lawfully sell this property; we could not lawfully get a loan for it; and we couldn't lawfully keep using this land as collateral for a line of credit that we had. This land was not purchased with a loan. Initially, it was purchased in cash, actually gold backed Swiss currency, so it wasn't Fiat currency, it was actually gold. They bought this land and we are the only entities that have any kind of value that was put into this land. We are about to lose this and November 29th is a summary judgment, the Court ruled against us and they're about to take our house and put it up for auction. Well, my question is if we can't sell it, how can they take advantage of this? The remedy that I'm looking for with OHA is, I want to have OHA to help me get a settlement conference between the State and the City and County of Honolulu to resolve my relationship with this land and to the State. So, the State is claiming that this land was ceded to them according to the written testimony that I have submitted to all of you. It will show your Dr. Desias has brought up actual US Supreme court laws that will show you in fact, it was not lawfully transferred, and which case laws will support that. So, I am asking for your assistance in helping me to resolve this and a meeting so that we can get into more details that I can't get into in five minutes. Would it be possible for me to set up a meeting to get into details and ask you all for additional help and the remedies that I see are available to me and that OHA can help me with? Thank you very much.

Chair Hulu Lindsey Routh, I will refer your inquiry to our CEO, who will see what kind of meeting you can have or if there is another State agency that you should see.

Routh Bolomet Okay, because they are about to make the order to foreclose on our house. We have all of our pension and everything tied up into this, and we are about to lose so big and I just cannot find a way out of this.

Chair Hulu Lindsey So, Sylvia if you could find out what kind of assistance we can give this lady.

Routh Bolomet Thank you.

Community Concerns

Clare Apana I would like to bring up a concern that I brought up earlier this year. That is about the compliance department and the reorganization, they lost staff members and lost their department functioning as an independent department. For myself, I think the Compliance department as it was structured was so important to advocating for Kanaka maoli and our rights, especially for myself with the burial issues. The way that I see the changes is that these poor people are so overworked. They were overworked already but now they are really overworked. I have seen this huge mistake happen which I don't think would've happened had they not been so pressed to take care of all the work they have to do with less staff. What has happened was a project that we've been advocating for nine years and OHA was the last body to give an approval of the preservation plan. The maps are still missing thirty sites. In 2012, the compliance department pointed this out to the developer and SHPD but I don't think they honestly have enough time to go through a project like this and vetted if it actually happened or not. I am really concerned that the department has been taken apart and wondering what happened to the objections that were made by the public by the staff at the time of the proposed reorganization? What happen to that? I do not foresee a good result happening, you may kill Kai Markell because he is so overworked. That is truthfully not a good thing to do to such a valuable employee who has so much knowledge to share and to bring forth as we move into this next part of advocacy for our burials, sacred sites, our cultural practitioners to continue their practices because if we don't have water, we don't have limu or fish. We cannot continue these things. Who is going to advocate? Please give this a real thought. What has happen here? Why would we want to stress his department or stress the people that are left in community rather than they are having their own department. Why would we want to give up

a place where we could really advocate for Kanaka maoli and our rights. Thank you. I hope you can answer my question. I do not know what happen or how the reorganization is ultimately going to affect compliance and the beneficiaries that depend upon OHA to give the voice to the County government, the State government, to SHPD to advocate for the iwi kūpuna and sacred sites. Mahalo, thank you very much for letting me speak today.

Routh Bolomet Regarding the Bill that you have been discussing that you want to pass and submit to the legislature, there were several things that jumped out at me. One of the things was when they talked about the lands being ceded to the public trust. I think there needs to be definitions that are very clear. So, one, the public trust I hear sometimes that they say it's set up for the Native Hawaiians and for the general public, you know the funds that were to go in there. First of all, in international law, the general public could include the Americans. Now, the spirit of setting up the public trust was for the Kanaka maoli. Now, if you look at the definition, the US definition, of Native Hawaiian, that does not necessarily be related to just Kanaka maoli. They put a blood quantum on there and they do a lot of things that are not in compliance with Hawaiian Kingdom law which were the laws I believe were under International law that the US has their obligation to fulfill their international obligation with international law and not with domestic law because of that, they will have to rely on Hawaiian Kingdom definitions. The definition of Native Hawaiian in Hawaiian kingdom law is the first born naturalize children to become a Hawaiian National so that does not mean Kanaka maoli so that is outside of the spirit of what I believe what the public trust was originally set up for. It was set up to take care of our people, he Kanaka. The other thing if you could clarify the definition of what a Native Hawaiian is and actually change it to Kanaka maoli. The second thing was they're saying and there is a lot of assumptions that are being carried over based on untruth. The untruth is the lands that were ceded so, there were no lands ceded and under the October 4th, 1988 department of justice memorandum to Congress, they said there was no treaty and so in the historical review that happened a couple of days, it was said that in history, there was a treaty. Well, there wasn't a treaty and you cannot transfer or cede lands under domestic law, which is what has happened and part of that land that was transferred was the Crown lands. In my own case, I was told that those were inalienable so if they're inalienable for me, why isn't it inalienable for the state? And how is that other people, other than the heirs and successors of Kamehameha III as written out in his last will and testament, can have access to funds now? I do have a letter, a certified letter, that and copy of documents from FS Pratt who address the US Congress and the President of the United States in 1893 that explains specifically what is the Crown land and how it is private and he was testifying that at no time were those lands ever mixed into the government lands or any of the funding transferred. If that's the case, then we cannot take any of the monies from the crown lands. Those are separate from the government lands and there's several case laws that I have submitted if you look in my written testimony, you'll be able to see and the memorandum from Alfred Desires; the third memorandum that was written on my behalf to the courts, it shows specific laws that you can apply to this so that you can double check and confirm what I'm saying. But, it's those things that I was hoping that you can modify this bill with so that we can have absolute clarity and it cannot be challenged in the future. If you have any questions, I'll be happy to answer them. Thank you.

Chair Hulu Lindsey Thank you.

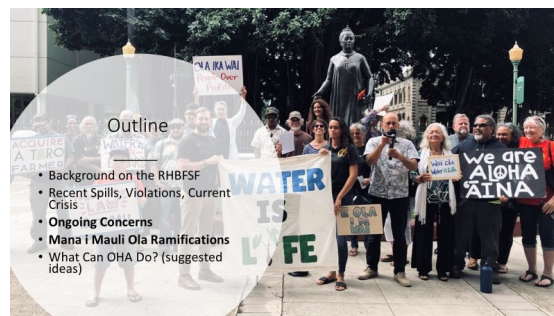
New Business

A. Presentation: Red Hill Storage Tanks, Update by Wayne Tanaka, Sierra Club of Hawai'i Chapter Director

Wayne Tanaka, Sierra Club Ch. Director Good morning everyone, it's been awhile. Thank you so much for this opportunity to talk story with all of you about the O'ahu water crisis that is currently unfolding. I have a PowerPoint that I will be presenting and before we start, I want to share my perspective. The Native Hawaiian community had no part in placing this fuel facility above the principal water source for this island and they should be given the burden of the responsibility of trying to clean up this mess that they had no hand in making. As we've discussed, the Hawaiian community has a heightened, if not unmatched, interest in the environmental and cultural integrity of Hawai'i and from the research that OHA has done through advocacy, the community outreach and now through your new strategic plan, we have a fairly good understanding of, if something catastrophic happens, it will impact everyone, but the burden will fall particularly heavy on the lāhui. This is why I appreciate the opportunity to come and share with you folks what I've learned, especially as someone who's been nurtured by the agency and by the lāhui. I want to give you a sense of what's going on and the confidence you need to understand, to be able to decide which actions may be appropriate for the agency.

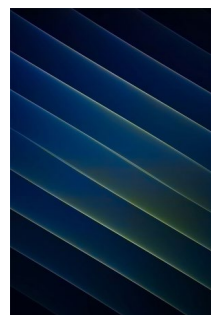
O'ahu Water Crisis: Red Hill and Mana i Maui Ola

Office of Hawaiian Affairs
Board of Trustees
December 29, 2021

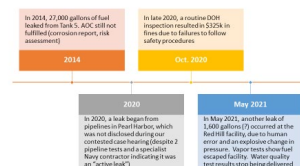


Background

- >100 million gallons of petroleum fuel stored in 14-15, 12.5 million gallon-capacity tanks (note: 4 tanks currently empty for inspection, repair).
- Tanks were built in the early 1940s in Kapūkākī, 100' over the Southern O'ahu Sole Source Aquifer
- Tank walls when new were 1/4" thick; encased in concrete*
- Aquifer now serves **450,000 residents** (plus tourists, businesses, etc. from Hālawā to Maunaloa)
- 1995 – Facility was declassified
- 180,000 gallons (likely conservative) spilled** since the 1940s; petroleum components have been found in the groundwater
- Navy leaders repeatedly assured us that there will not be any more leaks.



Red Hill Recap: Recent Spills, Violations



The two main things I hope you take away from this presentation are: 1) why it is a real and present danger; and 2) how this impacts your strategic plan which does a good job of illustrating some of the priorities in the Native Hawaiian community.

Quick background, as you know there is well over 100 million gallons of petroleum that is stored in 14 tanks; currently, each with 12.5 million gallon capacity. Each tank could fit the Aloha tower inside. This facility was built in the early 1940s in Kapūkākī or Red Hill and is located 100 ft. above what's called an EPA region 9 Southern O'ahu Sole Source Aquifer. It is essentially the principle drinking supply for the island and it serves everywhere from Hālawā to Maunaloa. When these tanks were built, their steel liner/steel walls were a 1/4 inch thick. If you shrunk one of these tanks to the size of a 32oz. hydroflask, their walls would be the thickness of tin foil. The service area from this aquifer feeds 123,000 residents, that is not including tourist. This also includes areas like Kalihi, Chinatown, Downtown Honolulu, Waikīkī, Mānoa, Pauoa, Pālolo, and all the way to Kuli'ou'ou and Hawai'i Kai. It was declassified in 1995 and at that point, we began learning about the history of spills from this facility. We know that 180,000 gallons have spilled since the 1940s; we know that petroleum constituents components have been found in the ground water; these

leaks have hit the ground water already and every time there is a leak we are told by Navy leaders that we'll figure it out, we'll make sure it doesn't happen again but we see what's happened in the last few years.

Recap of some of the recent spills and leaks: In 2014, that was the big 27,000 gallon spill from tank five. There was an initiative order of consent that was agreed to between the Navy and the EPA and the Department of Health that has still not been fulfilled seven-eight years later. Last year while our contested case was pending, a leak began in pipelines in Pu'u'loa which are attached to the facility; this was not disclosed in our contested case hearing that took place this year. Also, last year there was a routine DOH inspection of the facility, \$325,000 in fines were issued because of the Navy's failure to follow their own safety procedures for the facility. In May of this year, there was another fuel leak from the facility, about 1,600 gallons supposedly; that illustrated for me, the potential of explosive changes in pressure. In that instance, they threw the wrong valves and the wrong sequence and pipes blew up. Pipes blew up their couplings and another pipe bent 16 inches, bashed into metal ducting and deformed that. That is really scary, metal hitting concrete is how you create sparks and if you do not have a sense of leaking tanks, then that could be a really bad situation. The navy said it contained all the fuel that spilled at that time but shortly thereafter, we had vapor readings, vapor test that showed fuel did escape the facility and now more recently, it may have been a much larger leak.

In September of this year, there was mysterious changes and pressure in the pipelines. Navy officials sent emails saying they thought multiple valves may be leaking, they shut the facility down for nine days and we're still not sure what happened there. In October, that's when the whistleblower came forward so that's basically when I started my job and told the Department of Health about how the Navy wrongfully withheld information during our contested case hearing including the extent of their pipelines, their pumps, historical corrosion records including records of through wall holes in the steel liner that weren't reported to regulators. Then in November, there was 14,000 gallons of water fuel mixture that was released from a drain line connected to the fire suppression system in the facility. The fumes are so strong there were multiple 911 calls made to the fire department. The fire department had to show up trying to figure out what was going on. A few days later, we have families reporting odor, a strong smell of fuel in their sinks. When the sprinklers went on, everyone is getting sick like pets, children are getting rashes, throwing up, and getting headaches. All these symptoms consistent with on betrayal and exposure. At that time, the Navy was saying that there was no indication that the water is unsafe to drink but yet they shut down the hill shaft which is their drinking water shaft and didn't tell the Board of Water Supply (BWS). Eventually, they confirmed that the Red Hill shaft was contaminated. One of the Navy reports that came out of the ALC, essentially they said if there was a big spill what they would need to do is not to shut the shaft down but to turn it on and continue pumping so that it can suck the petroleum into all of the aquifer. What happened instead was they shut down the shaft so that the petroleum was being moved and they didn't tell the BWS for a few days; and so the BWS was sucking from their well which is less than a mile away and that can pull the plume over to the municipal system. That was very concerning and as soon as Ernie Lau heard about that, he shut down all of BWS pumps.

Note on Navy's Red Hill Shaft Shut-Down

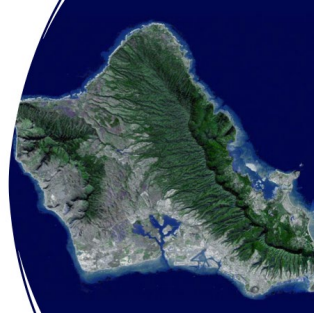
"Maintain continuous pumping" ... "water treatment plant"

In the unlikely scenario of a Significant Release from the Facility, there is a high probability of the Red Hill Shaft being directly impacted within a short period of time. The environmental modeling predicts that for any Significant Release to be captured and prevented from entering the public drinking water source, the Red Hill Shaft would need to maintain continuous pumping, and thus would require a water treatment plant to ensure the quality of the drinking water being supplied to Joint Base Pearl Harbor-Hickam (JBPHH).

The mitigation of any releases from the Facility would be via the extraction of contaminated water via Red Hill Shaft. As the aquifer is a dynamic system, the rate at which the water is extracted is

Current Consequences

- People have been poisoned and hundreds of families evacuated from their homes
- BWS wells shut down, no idea how much fuel in aquifer, where it is, and where it has gone/is going
- Water conservation measures = moratoria on construction, possible rate increases for residents, tourism
- No clear timeline when 93,000 homes will become habitable again
- This is (hopefully) temporary – the next spill may be much, much worse



So, what are we looking at with the recent events? People have been poisoned and hundreds of families have been evacuated from their homes. Now that the BWS wells are shut down, we can't turn them on again until we know how much fuel is in the aquifer, where it is, and where it has gone or where it may be going. If it's migrating over to the BWS wells, we may have to keep them shut down indefinitely. Because of that, we are looking at likely water conservation measures during the summer, moratorium on construction, potential increase in cost for businesses, homes, and tourism. Again, there is no clear timeline for the facilities and homes served by the Navy's water system will become habitable again. If you don't have running water, it's considered uninhabitable. Hopefully, this is temporary, this is a relatively small spill compared to what could happen. Another spill could be much, much worse.

Shares a short video from Youtube.

What is concerning is that after these townhalls, the Assistant Secretary of the Navy came to Hawaii for two weeks, his sole responsibility was to focus on the Red Hill contamination issue and despite being here for fourteen days in December and we asked him if he known that people had gotten sick, his response was "I'm not". Essentially, this is the person who is advising the Secretary of the Navy as to what is going on and what should be done which is terrifying. The current situation is a disaster and it's still unfolding, and we still don't know when we will recover from it. I think it's important to keep in mind, is what we are seeing could become unimaginably worse. There is no way they can keep us safe. The main foundation of preventing spills in the Navy's system is tank inspections. They actually have no idea on how bad the corrosion is in the steel liner walls. Concrete is porous and it cracks but because of the concrete, there is more moisture trapped against the steel liner and that is corroding the liner a lot faster then the Navy anticipated. Because of the concrete, they can actually see the liner and how bad it is.



Ongoing Concerns: Navy's Cannot be Trusted

- The Navy's "system of systems" is a system of band-aids that is full of holes
 - Navy has no idea how bad the corrosion may be
 - Concrete "casing" around steel tanks actually traps moisture around the steel
 - Water + steel = rust, corrosion!
 - Cannot directly observe tank conditions where corrosion is occurring due to concrete
 - Inspection method is inherently unreliable
 - Destructive testing on 10 steel "coupons" showed 40% miss rate in inspections
 - Eight tanks uninspected for 20+ years despite Navy standard of 10-year inspection cycle



"System of Systems" is Flawed

- Tank tightness testing (biannual):
 - Cannot detect slow leaks and may allow for 3,600 gallons to leak without any indication of vulnerability
 - Slow leaks could prelude larger or multiple leaks, especially when combined with other events
 - Cannot detect future leaks or near-through holes
- Tank fuel level monitoring
 - Alarm does not sound unless there is a 1/2" of fuel level change under normal conditions – i.e. 2,400 gallons will be lost before an alarm even sounds
 - Alarm won't sound until a much greater loss if fuel is being "moved"
- Do these even work? (Hotel Pier leaked for >6 months, could not be confirmed until July 2021; fuel in Red Hill shaft – where did it come from?)

What takes place is someone is hanging from the ceiling with a hand help scanner and they try to go over every inch of the tank to see if the sensor indicates that the tanks needs to be repaired in any particular spot. What they did after the big spill in 2014, they inspected a tank and broke off concrete and steel to see if this inspection method was working. It turns out that they missed a mark 40% of the time. Two of the coupons that the Navy said were fine, there was no need to repair but it turned out it wasn't fine and they were way below speck. Two of the other coupons, the Navy said they needed to fix them but later found out they didn't meet the threshold for repairs. This is inherently an unreliable way to determine if tanks need to be repaired

and that's if they inspect them because 8 of the tanks that currently have millions of gallons of fuel in them have not been inspected in more than 20 years. Three of them have not been inspected in over 38 years and one for over 40 years. Industry standard is 10 years. Apart from this inspection and repair process, there are two other things flawed:

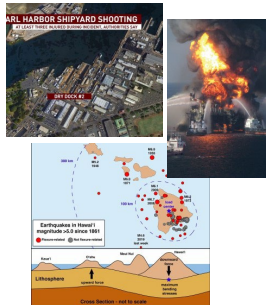
1. Tank tightness testing – done twice a year, they take like a snapshot of how tight these tanks are. Are they leaking fuel? It turns out they cannot detect slow leaks so between these tests, up to 1,600 gallons of fuel may leak without any indication that there is a leak. That's concerning because it still leaks; in addition, you're releasing fumes in the environment could indicate the potential for larger or multiple leaks; and then if you have fuel and outside of these tanks that you don't know about combined with other events like an electrical fire, could result in a disaster.
2. The other main system is Tank fuel level monitoring. They say if it drops a half inch when we're not moving fuel then an alarm will sound off. A ½ inch sounds small and a ½ inch of fuel is equal to over 2,400 gallons. They could lose over 2,400 gallons and have no indication that there is anything going on.

So, we really don't know if these monitoring systems work. We had the spill in Pu'uloa over six months, we still do not know where it came from that's poisoning people right now. The Navy has a working theory but again, there is nothing concrete that they can point to. Even if all of these systems worked perfectly, there are major things that they don't address. They don't address earthquakes. When these tanks were brand new in 1948 there was an earthquake that happened which resulted in over 1,100 barrels (about 46,000 gallons) were lost. The tanks are now eighty years old, corroded, and entering their end-of-life phase. An earthquake could be disastrous. The Navy also cannot prevent human error, which that last two major spills were due to human error. They did inspections and they were not running the facility properly combined with other weaknesses in their system could lead to catastrophic consequences. We have seen human error be factors in some of the biggest environmental disasters of our time.

"System of Systems": Blind Spots

The Navy cannot prevent:

- **Earthquakes**
 - 27% change of leaking between 1,000,000 gallons of fuel next year; 80% over the next five, without an earthquake
 - Earthquake in 1948 resulted in 1,100 barrels (about 46,000 gallons) of fuel lost; tanks were not 40 years old and not (as) corroded
- **Human error**
 - 2014 spill, May 2021 spill were due to "human error"
 - 2020 inspection and resulting notice of violations for just one person's error
 - May 2021 spill highlights explosive consequences for just one person's error
 - Combined with other weaknesses (undetected leaks, possible spark/fire sources) could lead to catastrophe
 - See also: Exxon Valdez, Deepwater Horizon, etc.
- **Human malice**
- **Murphy's law** undetected leak + electrical spark/fire, ?



What happens if there is a catastrophe? We know that 1,600 gallons was not contained. The 27,000 gallon spill reached the ground water. Just one spill of one million gallons is equal to 37 times the 2014 spill. Each

tank holds up to 12.5 million gallons. So even a fraction of fuel loss from anyone of these tanks could irreversibly contaminate this aquifer to the point where we could not utilize it anymore on top of all the other environmental impacts.

To help make this relevant for the agency, I went through the Mana I Maui Ola. There are three foundations: ‘Ohana, Mo‘omeheu, and ‘Āina; and there are four strategic directions: Educational Pathways, Health Outcomes, Quality Housing, and Economic Stability.

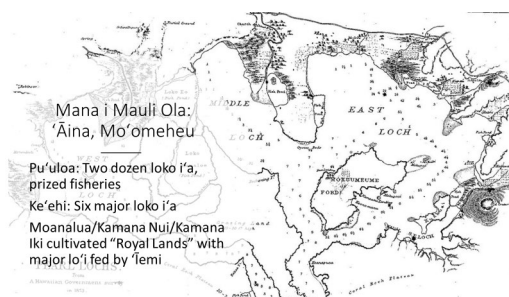
These are some thoughts and examples of ramifications of this fuel facility to OHA’s priorities and strategic plan. First, ‘āina and mo‘omeheu and how they intertwine. The perception of ‘āina compared to the western perception of land is something that can be commodified, divided up, bought, and sold. The maoli perception is that ‘āina contains and consist of all living things including humans; all these things are connected, literally on a genealogical level; so, because of this familial relationship, you have these obligations of responsibility to care for each other, reciprocity and the same kind of things that you would expect with regards to your family. That perspective is particularly salient, I think, to the water source as being directly threaten. The waters of Moanalua are incredibly historically and culturaly significant; they continue to serve a number of roles and functions including the valley and how it acts as a kīpuka, how it acts as a keeper for Native plants and animals, especially cultural practices.

Mana i Maui Ola: ‘Āina, Mo‘omeheu

"The creation myth of Moanalua describes how the goddess Kahikūlani came across the ocean in a canoe, bearing gifts for her new husband Kamawaeluani, in search of fresh water, the waiola that her homeland Kahiki-ku did not have in abundance. The waiola of this ancient myth is nothing less than a miraculous blessing."

"One of the last truly open spaces located just outside of Honolulu, the valley features 3,716-acres with five distinct forest types, which are also a habitat for native plants and animals, including the endangered elepaio bird."

"In sharing my mana'o, I hope to deepen our shared understanding of the sacred waiola of Moanalua. . . . Healing the waiola is going to take people with 'ike working together toward this common vision, and in doing so they will have the 'ku aina behind them. This is the perfect example of mālama 'āina — if we take care of the land, it will take care of us and future generations." — Kahu Roddy Akau, Konohiki



This is an op-ed that Kahu Roddy from Moanalua Konohiki wrote to Star newspaper in 2015 after the big spill. He highlighted how the waters of Moanalua provides opportunity to practice mālama ‘āina. When you look historically, this water source has always provided for life on this island. Looking at Pu‘uloa, there was a famous fishery known for its abundance, it had two dozen loko i‘a. Ke‘ehi had six major loko i‘a and all these things required fresh water input, including coastal discharge, springs. Moanalua, Kamana Nui, and Kamana Iki up mauka were all royal lands, and they were cultivated, and there were major lo‘i fed by a spring called ‘Iemi. And now up to our present day, this water source is for homes, schools, most of the major hospitals, and basically all of the communities from Hālawā up to Moanalua. A quick note of what we are seeing now of the water system being compromised: 93,000 people are being affected, some of them can go to hotels or other people's residences for water but the majority are living off of bottled water which creates a huge amount of trash which also translates to how we deal with the trash and where it goes. There is tons of water waste now, we do not know the impacts it will have while trying to clean out the Navy’s water system thats contaminated including cleaning by flushing. How this filters down to the strategic directions:

First one is educational pathways – providing educational resources for all life long learners including traditional learning systems with cultural foundations and identity. It also includes support for Hawaiian immersion and Hawaiian-focused charter schools.

Ramifications:

Access to clean water in schools for child development, learning, and health. Principals are spending school money on bottled water when the money could be used towards other school resources. Schools will be forced to spend more on water, sanitation, and food. Also, if it is contaminated, it will compromise both the current and the future cultural revitalization efforts in regards to loko i'a, lo'i kalo, and the all the community centers served by this source.

As to Health outcomes, we look to strengthen Native Hawaiian well-being; this is physical, mental and spritual.

Ramifications:

The strengthening of 'āina and mo'omeheu including culturally grounded, 'āina-based intervention approaches are under a direct threat. Many major hospitals are served by this aquifer, houses, local agriculture, and community development.

Next Housing, you look at strengthening Native Hawaiian resources so that you can achieve stable housing and support and implement the Native Hawaiian Homes Commission Act (HHCA).

Ramifications:

Service and construction industries will be heavily impacted, and jobs will be lost. You can't do financial planning if you do not have financial resources. Families who struggle to pay rent will have to use more of their income on water cost and buying bottled water. The housing supply will become a burden if this petroleum gets sucked into the BWS system; you could compromise the housing supply for hundreds of thousands of people. Our housing situation now is dire. Low-income households will be disproportionately burdened by lack of access to water and/or greatly increased water bills. We will have conservation mandates, it will be harder to build ADUs, other housing projects, and possibly even Kaka'ako Makai. Also, there is DHHL. One the great things they face is the ability to access wet water and to get the water credits that they need for developments. It will further impair th department's ability to implement the Hawaiian Homes Commission Act

Finally, economic stability. This is strengthening the ability of famillies to pursue pathways to economic stability, cultivate economic development in and for Native Hawaiian communities.

Ramifications:

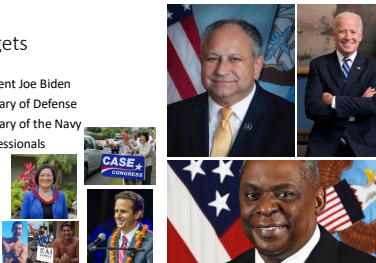
If you want to start a business, you need credit and financial institutions are looking at major losses; property values will go down the tank because there is no water; and other investments and construction. Local businesses will be less stable to weather increase costs of water and utilities and unemployment opportunities. A prolong economic strain with a larger and indefinite spill that will exacerbate Native Hawaiians being forced to leave the Hawaiian islands.

What Can OHA Do? Advocacy Landscape

- OVERALL GOAL: Remove 150,000,000 gallons of petroleum and other hazardous materials from Red Hill facility (12.5M gallon tanks, defuel lines, fire suppression system) before catastrophic release
- Intermediate goals:
 - Obtain White House support, intervention to defuel
 - Secure Congressional funding (Feb. 2022) and Pentagon directive for defueling
 - Obtain Congressional delegation, Pentagon support
 - Secure commitments from Hawai'i delegation
 - Secure commitments from Pentagon and Biden Administration

Key Targets

- President Joe Biden
- Secretary of Defense
- Secretary of the Navy
- Congressionals



That's my perspective to what OHA and the larger community may be concerned about. So, what can we do about it? Our target is to get this fuel away from the aquifer. This has to happen ASAP. To do so, we need White House support, potential intervention because, as I mentioned earlier that the Secretary of the Navy is being advised by people that don't necessarily seem to know what's going on. There is a first half of the Congressional budget appropriations bill for defense coming out in February so, that is the timeline we are looking at to get the first investment we need to get the fuel. To make sure that there's money in there, we need Congressional and litigation support from the Pentagon, hopefully. Key decision makers are the President Joe Biden, Secretary of Defense, Secretary of the Navy, and our Congressional. The Sierra Club is working on the ground to get the word out for folks to contact those targets and to talk to other people in their circles that could reach them potentially. OHA might have some unique things that they could do as an agency. It's great to have support with the Ka Wai Ola team, the CE team to maintain media coverage and promotion of events and informational briefings. There are some grassroots groups by beneficiaries; Kahoʻi Wai, Oʻahu Water Protectors. I also think it would be very powerful if OHA could send a letter to the White House and the Pentagon as a Government agency whose responsibility and mission is to advocate for Native Hawaiians. Of course, the advocacy division has always been very effective in helping shape policy to the extent our public policy and compliance folks can lend some support. OHA also has connections with other Native American groups can also be very valuable. On a more individual level for those watching and wondering what can you do, I think of the question what would you do to protect the ones you love from harm? If that disaster happens, anyone on Oʻahu will be harmed. Sierraclubhawaii.org/redhill you can sign up for action alerts and stay plugged in.

In summary, this Red Hill facility is being a menace to our water source for the last eight decades. It is contaminating our water source as we speak. We are at a time where we might actually watch this source go down and get killed and we cannot let that happen. We have this opportunity now to be the generation to take this menace down. That is my take on the situation, and I would be happy to answer any questions.

Trustee Akaka Wayne, what an insightful presentation. I want to commend you on your amazing work; putting to good use so much that you have learned at the Office of Hawaiian Affairs and applying it to your work to help our people, not of just today but of tomorrow. We are so proud of you. We thank you for spreading your wings and going out into the community and being a leader for us. You truly are doing amazing work. Mahalo nui Wayne Tanaka Maoli. Please continue to go hard on this.

Wayne Tanaka, Sierra Club Ch. Director Thank you Trustee.

Trustee K. Lindsey Aloha Wayne, nice to see you. Thank you for the presentation and thank you to you and everyone on the front lines regarding this situation. I am trying to wrap my head around 150 million gallons of fuel. Even if the President or the Secretary of Defense decided tomorrow that we are going to shut down Red Hill, it sounds like it is quite a process to do that. To me, that is the right decision, but it sounds like it's quite a process to do that and we're looking at in the face of an environmental disaster, which I hope doesn't come but like you highlighted in your presentation, the potential is there. We're looking at Congress has to authorize funds, we have to build new tanks or something to take them away. I guess what is the most important sequence of immediate steps that need to be taken?

Wayne Tanaka, Sierra Club Ch. Director Great question, thank you. Right now, there's a Governor's emergency order that essentially calls for the defueling of the facility. The first thing that it does is in that process is it requires the Navy to assess its defuel pipes and its system to take fuel out of these tanks. We don't even know if it is safe to do so. We don't know where this current fuel is coming from. There is all these weird pressure changes, potential leaky valves so we need to see if it's safe to get the fuel out of the

facility. If its not, they need to make all the repairs necessary to defuel. As they assess what's happening, they should be identifying where they can store this fuel. So, Par Pacific Hawai'i in Kapolei can take a third, another military facility on the island, there needs to be tankers coming from the Continent, this needs to happen now. Then they can figure out if they want to replace this supply somehow. That is a long-term thing and more expensive but what we need now is investments to safely defuel and get the fuel stored somewhere.

Trustee k. Lindsey Mahalo Wayne.

Chair Hulu Lindsey Thank you Wayne for a very thorough presentation. I encourage you to work with Na'u Kamali'i, our Chief Advocate, if there is anything we can collaborate. She has been working on statements from OHA and communications with the Federal government. I want to assure you that OHA is as concern as you are. We are happy to collaborate in more active activities that can help the situation. Thank you Wayne.

Wayne Tanaka, Sierra Club Ch. Director Great That's fantastic, thank you so much.

Chair Hulu Lindsey I would like to move on to item B.

A. Action Item BOT #21-18: Approve and Implement the OHA Policy Framework – (2nd reading)

Sylvia Hussey, CEO Trustees, as Chair has indicated, this is the second reading for the policies. It establishes the overall policy framework for the organization, as well as the first pin of the policies which provides that overarching context. Over the next year, then each of the policies at the trustee level will come to the trustees to be able to put into the framework as well as the discussion of the existing Executive Policy Manual that exist, migrating that into the framework. I'll entertain any questions.

Trustee Waihe'e I would like to move to

Motion #1

Approve the OHA Policy Framework, based on the approved Board Governance Framework, with the following components: 1) L-Lāhui Level policies; 2) T-Trustee Level policies; 3) C-CEO Level policies; 4) Inventory of Policies; 5) Business Processes (listed within each policy); 6) Standard Operating Procedures for each business process; and 7) Systems, documentation, desktop procedures, manuals as depicted at Attachment A.

Motion #2

Approve the Policy of Policies as newly drafted at Attachment B.

Trustee Akaka Seconds the motion.

Trustee Waihee moves to

Motion #1

Approve the OHA Policy Framework, based on the approved Board Governance Framework, with the following components: 1) L-Lāhui Level policies; 2) T-Trustee Level policies; 3) C-CEO Level policies; 4) Inventory of

Policies; 5) Business Processes (listed within each policy); 6) Standard Operating Procedures for each business process; and 7) Systems, documentation, desktop procedures, manuals as depicted at Attachment A. <u>Motion #2</u> Approve the Policy of Policies as newly drafted at Attachment B. Trustee Akaka Seconds motion.						
	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA						X
TRUSTEE DAN AHUNA						
TRUSTEE KALEI AKAKA		X	X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE					X	
TRUSTEE KEOLA LINDSEY			X			
TRUSTEE JOHN WAIHE'E	X		X			Joins mtg at
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			6		1	1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED Motion passes with six (6) YES votes and one (1) EXCUSED vote.						

Chair Hulu Lindsey Moving on to item C. I will call on Trustee Akaka.

- A. Committee on Beneficiary Advocacy and Empowerment**
1. Action Item BAE #21-07: Public Land Trust Bill, 2022 Legislature

Trustee Akaka Your Committee on Beneficiary Advocacy and Empowerment, having met on December 27, 2021 and after full and free discussion, recommends approval of the following motion to the Board of Trustees:

Motion 1:

Approve the submission of the Public Land Trust Bill (PLT) to the 2022 Legislature as OHA-1, that addresses the: 1) Federal Trust responsibilities to Indigenous People; 2) 1959 Admissions Act and the conditions of the new State of Hawai'i to hold lands in public

trust; 3) Purposes of such public land trust, including the betterment of the conditions of Native Hawaiians; 4) Roles and responsibilities of the Office of Hawaiian Affairs (OHA); 5) Current interim amount of \$15.1MM; 6) Existing amount of approximately \$29MM in the carry-forward trust holding account; 7) Projected accumulation (since 2012) of the difference between the interim PLT amount of \$15.1MM and the OHA's 20% pro-rata share of ceded land revenues; and 8) Accountability and reporting processes, at Attachment A.

Trustee K. Lindsey Seconds the motion.

Sylvia Hussey, CEO I just wanted to let the Trustees know that since the BAE meeting, administration has some updates that we recommend consulting with counsel.

Chair Hulu Lindsey Trustee Akaka, will you move us into executive session.

Trustee Akaka Madame Chair, I would like to move that we recuse ourselves into executive session.

Trustee Lee I move that we defer this item until after executive session. We have a motion in front of us and we cannot ignore it.

Chair Hulu Lindsey We can amend it after executive session.

Trustee Lee But it's in front of us now and you want to dispense with it then go into executive session. We have a motion in front of us and we cannot go into executive session with a motion in front of us. I move that we defer this matter until after.

Chair Hulu Lindsey Board Counsel can we get counsel on this matter.

Kurt Klein, Board Counsel Yes, this is just a matter of procedure here. Trustee is correct that we have a pending motion. We should resolve a motion before we go into executive session whether that resolution is to revisit it after executive session, as I am hearing there are concerns and discussions necessary with the CEO and there may be some legal questions.

Trustee Waihee Seconds the motion to defer.

Trustee Lee Moves						
To defer item after executive session.						
Trustee Waihee Seconds the motion.						
	1	2	'AE (YES)	'A'OL E (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA						EXCUSED
TRUSTEE DAN AHUNA						
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE LUANA ALAPA			X			

TRUSTEE BRENDON LEE	X		X			
TRUSTEE KEOLA LINDSEY			X			
TRUSTEE JOHN WAIHE'E		X	X			1
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			7			1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with a seven (7) YES votes and one (1) EXCUSED vote.						

Chair Hulu Lindsey Roll call vote to recuse into Executive session.

Trustee Waihee Seconds the motion.

The Board recuses into Executive Session at 11:25 a.m.

Motion to recuse into executive session pursuant to HRS Section §92-5						
	1	2	'AE (YES)	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA						EXCUSED
TRUSTEE DAN AHUNA						
TRUSTEE KALEI AKAKA	X		X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE			X			
TRUSTEE KEOLA LINDSEY			X			
TRUSTEE JOHN WAIHE'E		X	X			1
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			7			1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with a seven (7) YES votes and one (1) EXCUSED vote.						

Board returns to open session at 11:33 a.m.

Trustee Akaka Move to amend the OHA Public Land Trust Bill, Action Item BAE #21-07, at Attachment A, as follows:

1. Delete “, or present real value” from page 7, line 7;
2. Insert a new section to read “Nothing in this Act shall resolve or settle, or be deemed to acknowledge the existence of, the claims of native Hawaiians to the income and proceeds of a pro rata portion of the public land trust under article XII, section 6 of the state constitution.”

Trustee K. Lindsey Seconds the motion.

Trustee Akaka Move to amend the OHA Public Land Trust Bill, Action Item BAE #21-07, at Attachment A, as follows: <ol style="list-style-type: none"> 1. Delete “, or present real value” from page 7, line 7; 2. Insert a new section to read “Nothing in this Act shall resolve or settle, or be deemed to acknowledge the existence of, the claims of native Hawaiians to the income and proceeds of a pro rata portion of the public land trust under article XII, section 6 of the state constitution.” 						
Trustee K. Lindsey Seconds the motion.						
	1	2	‘AE (YES)	‘A‘OL E (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA						EXCUSED
TRUSTEE DAN AHUNA						
TRUSTEE KALEI AKAKA	X		X			
TRUSTEE KELI‘I AKINA			X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE			X			
TRUSTEE KEOLA LINDSEY		X	X			
TRUSTEE JOHN WAIHE‘E			X			1
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			7			1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with a seven (7) YES votes and one (1) EXCUSED vote.						

Trustee Lee Before we take the vote on the main motion as amended, I would like to reiterate to administration that who goes to give testimony to the legislature stands ready to answer questions about how we came up with the lump sum over the ten years that I brought up in BAE. Thank you.

Chair Hulu Lindsey Thank you. We will now take a vote on the main motion as amended.

Main motion as amended.						
	1	2	‘AE (YES)	‘A‘O LE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI						X

AHU ISA						
TRUSTEE DAN AHUNA						
TRUSTEE KALEI AKAKA	X		X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE			X			
TRUSTEE KEOLA LINDSEY		X	X			
TRUSTEE JOHN WAIHE'E			X			
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			7			1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with seven (7) YES votes and one (1) EXCUSED vote.						

Announcements

Chair Hulu Lindsey Thank you Trustees, this is the last Board meeting for 2021. Our next meeting will be on January 13, 2022. I just want to give you an update of the investiture, so far there has been no action by the Mayor or the Governor to close down indoor activities. We do have a chapel that can hold a thousand and we do not plan on having more than 200. The church has set a limit, so we are health protocol safe. The program is only an hour so. When we are done, we will leave the premises and each person will receive a grab-and-go lunch. There will be a 2:00pm rehearsal the day before on January 6th at the church.

Adjournment

Trustee Akaka Moves to adjourn the meeting.

Trustee Waihe'e Seconds the motion.

Adjournment							
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA						X
DAN	AHUNA			X			
KALEIHIKINA	AKAKA	X		X			
KELI'I	AKINA			X			
LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE			X			

KEOLA	LINDSEY			X			
JOHN	WAIHE'E		X	X			
CHAIR CARMEN HULU	LINDSEY			X			
TOTAL VOTE COUNT				8			

Chairperson Carmen Hulu Lindsey Adjourns the Board of Trustees meeting at 11:41 a.m.

Respectfully submitted,

Lehua Itokazu
Board Secretary

As approved by the Board of Trustees on February 3, 2021.

Carmen Hulu Lindsey
Chairperson, Board of Trustees

Attachments:

- 1. Excused Memo – Trustee Ahu Isa**
- 2. PowerPoint – Sierra Club**

Draft

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

Due to COVID-19, the OHA Board of Trustees and its standing committees will hold virtual meetings until further notice. Pursuant to Governor Ige's December 29, 2021 Emergency Proclamation related to Sunshine Law In-Person Meetings, there will be no in-person location for this meeting that is open to the general public. The virtual meeting can be viewed and observed via livestream on OHA's website at www.oha.org/livestream or can be listened to by phone via the phone number and Webinar ID listed at the beginning of this agenda.

The OHA Board of Trustees will hold virtual meetings until further notice. The virtual meetings can be viewed and observed via livestream on OHA's website at www.oha.org/livestream or listen by phone: (213) 338-8477

Minutes of the Office of Hawaiian Affairs
Board of Trustees
MINUTES
January 13, 2022

ATTENDANCE:

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

ADMINISTRATION:

Sylvia Hussey, CEO
Casey Brown, COO
Ramona Hinck, CFO
Everett Ohta, Interim General Counsel
Nietzsche Ozawa, Interim Sr. Legal Counsel
Kalani Fronda, Land Director
Na'u Kamali'i, Chief Advocate
Robert Klein, Board Counsel
Erin Nakamura, IT Support
Arlene Aginaldo, IT Support

BOT STAFF:

Colin Kippen, COS
Amber Kalua, Trustee Aide
Kanani Iaea, Trustee Aide
Lehua Itokazu, Board Secretary

GUEST:

Kawika Patterson, President NHLC BOD
Makalika Naholowa'a, Executive Director
D. Kauila Kopper, Litigation Director
Ashley Obrey, Esq. & Legal Admin. Director
Sheldon Abril, Operations Director
Kirsha Durante, NHLC
Li'ula Kotaki, NHLC
Henderson Huihui, NHLC
Daylin Rose Heather, NHLC
Keali'i Reichel, NHLC BOD

Call to Order

Chair Hulu Lindsey Calls the Board of Trustees Meeting to order for Thursday, January 13, 2022, at 10:00 a.m. Board Secretary, please do a roll call.

MEMBERS			Present	TIME ARRIVED
TRUSTEE	LEINA'ALA	AHU ISA	X	
TRUSTEE	DAN	AHUNA	X	
TRUSTEE	KALEI	AKAKA	X	
TRUSTEE	KELI'I	AKINA		Joins mtg at 10:10 am
TRUSTEE	LUANA	ALAPA	X	
TRUSTEE	BRENDON KALEI'ĀINA	LEE	X	
TRUSTEE	KEOLA	LINDSEY		Excused
TRUSTEE	JOHN	WAIHE'E		Joins mtg at 10: 04 am
CHAIRPERSON	CARMEN HULU	LINDSEY	X	
			6	

At the Call to Order, **six (6)** Trustees are PRESENT, thereby constituting a quorum.

Chair Hulu Lindsey Thank you. Kala mai for not opening our meeting with a pule. I will call on Trustee Akaka, please pule for us.

Trustee Akaka Offers pule.

Chair Hulu Lindsey Due to the threat of COVID-19, the Board of trustees and standing committees will hold virtual meetings until further notice pursuant to Governor Ige's December 29, 2021 Emergency Proclamation related to Sunshine Law In-Person Meetings, there will be no in-person location for this meeting that is open to the general public. The virtual meeting can be viewed and observed via livestream on OHA's website at www.oha.org/livestream

I will go over some quick announcements. Please mute your mics when you are not speaking. We are recording today's meeting for the sole purpose of producing written minutes, which will become the official record of this meeting.

Joining the Trustees today is my staff Colin Kippen-COS, my Aides-Kanani Iaea and Amber Kalua, and our Board Secretary-Lehua Itokazu. With us today is Robert Klein, our Board Counsel, and Sylvia Hussey, our CEO. I will now call on Sylvia, our Pouhana, to announce our administration who is joining us today.

Sylvia Hussey, CEO Thank you Chair and good morning, Trustees, Chair, happy new year to our first Board meeting. We have from administration our COO-Casey Brown, CFO-Ramona Hinck, Interim General Counsel-Everett Ohta, Land Irector-Kalani Fronda, joining us shortly will be Na'unanikinau Kamali'i-Chief Advocate as well our IT staff-Dan and Arlene who are supporting us this morning. Thank you.

Approval of Minutes

- A. November 4, 2021**
- B. November 18, 2021**
- C. December 9, 2021**

Chair Hulu Lindsey Moving on to item II approval of minutes. The minutes to be approved are November 4th, the 18th, and December 9th. Do I have a motion?

Trustee Ahu Isa Moves to approve all four minutes.

Trustee Akaka Seconds the motion.

MINUTES: A. November 4, 2021 B. November 18, 2021 C. December 9, 2021						
	1	2	‘AE (YES)	‘A‘OL E (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA	X		X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA		X	X			
TRUSTEE KELI‘I AKINA						
TRUSTEE LUANA ALAPA					X	
TRUSTEE BRENDON LEE			X			
TRUSTEE KEOLA LINDSEY						X
TRUSTEE JOHN WAIHE‘E			X			
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			6		1	1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED Motion passes with six (6) YES votes and one (1) EXCUSED vote.						

Public Testimony

Chair Hulu Lindsey Thank you. Moving on to item III. Public Testimony, I believe we have some people that are signed up. As a reminder, you will be given five minutes to share your mana‘o. Your name will be called and your microphone will be unmuted when it is your turn to testify. If you are not audible, you will be muted and the next testifier will be called. Your name will called again before the conclusion of the public testimony and the community concern section.

Wilmont Kahaiali‘i Aloha Kakahiaka. ‘O wau ‘o Kamaunu Kahaiali‘i. I appreciate this privilege to share this mana‘o with you. Lately, we’ve been engaging in the community in terms of assessing where we are as a people and it’s really interesting that the data doesn’t lie. We’ve been looking at some numbers and we find

it interesting that we have 1.4 million people, residents that call Hawai‘i home and of that \$1.4 million, the data seems to imply, suggests that only 2% or less than 2% can hiki heluhelu, kākau ‘ōlelo Hawai‘i. That’s a concern. If the 98% think we can preserve the culture and put it on the shoulders of the 2% who can speak, then we are terribly mistaken in that assumption. When compared to the rest of the population of Hawai‘i, we only have a handful of us that are trying to do something about preventing a cultural extinction event. We all share that kuleana especially all of you that sit on this board. I can tell you that I’ve learned by experience when it come to asking for help of various organizations out there in the community, kākou has been hard. The ones that have been willing to help me are not kānaka. They’ve never placed any conditions on me and they have put their money where their mouths is and it has enabled me to press forward with my program. A good example is we just published our first children’s book. We got 500 copies out to different schools and it’s based on a simple mele ‘Ōpae Ē. We didn’t do it so we could publish a book, we did it because we needed to preserve ‘ōlelo Hawai‘i. We needed to make sure that the language got out to the people, not just kānaka maoli but everybody. I think we find ourselves sometimes in this community here in Hawai‘i where the 98% are more interested in capitalizing on ‘ōlelo, capitalizing on the commercial interest, and on everything else but ‘ike Hawai‘i. I’ve experienced this even in the court rooms. The judges have had difficulties trying to assess or judicially serve the needs of the kānaka maoli community. It’s hard for them to adjudicate the ‘ike pono of the kānaka maoli. So, the language is very important to us and we need your kāko‘o. We need your support. You can help us and help the population by making sure that you go beyond just aloha, mahalo, and ‘ohana; that you started to eat he Hawai‘i, heluhelu Hawai‘i, ‘ōlelo Hawai‘i, kākau Hawai‘i. Help us get the ‘ōlelo out there because it is our cornerstone. It is our foundation and I think we all share that kuleana. Shame on us for thinking that the State would help us with it or the Hawai‘i Tourism Authority but obviously not, it’s the people. It’s our kuleana. We need to speak it, we need to share it. I saw earlier Kumu Keali‘i, I love Keali‘i. I really aloha him because he is out there in his mele, his hula, his shows. We all should be doing that. I’m not saying that we should all pick up a guitar and start ho‘okani but what I am saying, the kuleana is ours. The ‘ike is in our DNA and we really should be the ambassadors for our kūpuna, i ka wā ma mua and the ‘ōiwi, i ka wā ma hope. Last thing, I really would appreciate it if someone could get a hold of me to kūkākūkū, to go over some of the plans we have to avoid this cultural extinction and help avoid this cultural extinction event is very real on the horizon. Mahalo.

Trustee Akina Chair Hulu, I would like to apologize for being tardy. I had internet connection problems. I am here.

Chair Hulu Lindsey Okay, welcome.

Trustee Ahu Isa I want to mahalo you Kamaunu. I got your book, the Honu’s, I sent it to my mo‘opuna. I wanted to explain to you that when I grew up my grandparents forbid me from speaking Hawaiian. They both spoke fluently but they forbid me. I also wanted you to know there was a movie done all in Hawaiian, I think it went to the Sundance Festival. I’ll let Trustee Alapa speak more to that. Mahalo.

Wilmont Kahaiali‘i We need to do more than a simple movie or a simple book. We all need to be anxiously engaged in ho‘omaopopo i ka ‘ōlelo Hawai‘i. This is this the ‘ōlelo of our kūpuna, ka wā ma mua. This is over 2, 000 years old. The reality is that we are here, we are witnessing by numbers that are revealing themselves that we are in trouble. In the next 20-30 years, there won’t be a single Hawaiian who can really ha‘i their mo‘okūauhau way back. There won’t be a single Hawaiian who can ha‘i the kumulipo in its purity. Frankly, theres a lot of non-Hawaiians who really don’t care, it is not their kuleana. I am working on a series of books and a series of mo‘olelo to kāko‘o all of us as a collective consciousness of our kūpuna.

One more quick thing on the issue of iwi kupuna, I think it is really important and OHA can support us on. We do have several projects going on, on the island of Maui where we are still hitting roadblocks. We would like to move forward including with the iwi in Wai‘ale and Mākena, OHA could definitely help us in that area. We also have several kānaka that are trying to defend their kuleana lands and claims. At one time I presented this 10-15 years ago to OHA, I was referred to NHLC. It was a one acre parcel and we were going up against Pioneer Mill. It was poor thing. The person I got may have been brand new but the counsel they gave me was don’t try it. In other words, it wasn’t worth the energy to pursue this case. On our own dime, we went ahead and pursued it and then OHA did come and help us by covering the cost of an attorney that was willing to pick up the case. I think there will be more cases like that as more kānaka come forward. The thing is we do not have the finances or resources to articulate our leo of our kūpuna in the courts, even the judges have a hard time with ‘ōlelo Hawai‘i to fully appreciate and understand the hohonu issues. We really need somebody. I am sure in the NHLC today there is a broader group of young counselors and attorneys that are very much ho‘omaopopo and would be willing to sit down to kūkākūkā with us so that we can tell them what are some of the challenges. Water rights is a big one. We have corporations building water companies right on the water so that they can claim the water and start charging the people. We have kānaka that live on their families kuleana land for over one hundred years and they have to pay for water for the first time.

Chair Hulu Lindsey Thank you Kamaunu. We are very familiar with all the issues that you brought up because we do have our staff working with the people in the community trying to find commonality with SHPD, our people and solve some of these problems. Thank you for taking your time this morning. We will move on to New Business. We have a presentation by the Native Hawaiian Legal Corp. (NHLC). I will call on Sylvia now.

Sylvia Hussey, CEO Thank you Chair, we are pleased to be able to have the NHLC present today. We are especially please to welcome their new Executive Director. I will turn it over to Makalika, they have their team and staff here today so that we can put a face and voice to the really important, important work that NHLC has been doing for our people.

Makalika Naholowa‘a, NHLC-Executive Dir. Mahalo Sylvia and aloha Board, thank you so much for giving us this time. We actually thought we would start with our board member Keali‘i Reichel, he's prepared a pule specifically for this part of the program.

Keali‘i Reichel, NHLC Board Member Offers pule before NHLC’s presentation. Aloha nui kākou, good morning everybody, aloha kakahiaka. Mahalo for all of your time and all of this space here today virtually to be able to wala‘au about NHLC and the important work they do. Mahalo to our Trustees and their staff who support them and have the ability to make sure all is running well. That particular chant was first uttered by Hi‘iaka. Often times we like to open things like this with chant to set the tone, to impart good energy that utilizes ancient harmonics of our voice and intention and to call upon the elementals around us to effect change and positive outcomes. This is a healing chant from Hi‘iaka and I couldn’t think of no other chant better for right now in this moment in time because as recipients of that chant through your pepeiao, the words of Hi‘iaka will impart good juju, health, and wellbeing to each and everyone of us and then collectively into our community. Hi‘iaka calls upon four major elementals in this particular pule. Two of Lono’s water forms as well as Kāne and Kanaloa and their water energies. Again, to affect positive outcomes for all of us. For many of us that know ancient pule, many chants call upon different elementals and their energy to the task at hand. Hi‘iaka in this case becomes the conduit of Kāne, Lono, and Kanaloa, their energy and power to affect outcome. As powerful as Hi‘iaka is, she cannot go the path alone, she is that conduit to affect the universe around us. So, this might be a little bit of a stretch but for me, NHLC is like a conduit. NHLC has been instrumental over the decades ensuring the health of our lāhui and our environment. We

know we as k  naka, we are intrinsically linked to every aspect of our environment whether it be wai, whether it be kai, whether it be access into our forests, whether it is access up to the mauna and even beyond the shores of our pae      . NHLC has been quite instrumental in navigating those particular waters that me, as a regular kanaka, get hard time navigate through these difficult times that we've had in the last few years. We know that we cannot go the path alone just like Hi      . We need to call upon those entities to move us forward through uncharted waters sometimes. As a kanaka and practitioner of hula and chant, as a weaver, a forest restorationer, I appreciate all that NHLC has done over the decades; they continue to do on my behalf, your behalf, on our collective community  s behalf. That is why I am here today and why I serve on this board. I want to give back in whatever way I can. Yes, sometimes there are win wins and sometimes there are no wins but I can tell you that NHLC  s wins are all of our collective wins. I can think of no other legal organization that do what they can do for me, for you, for our   ohana, and for our collective communities. It is my hope, esteem members of this Board, that you continue to support NHLC in the coming year and the years to come. They  ve stayed the course and I hope we get to clear the path for them and we, as a collective l  h  i, thrive because of their work. So as Hi       says at the end of her chant, e holo   . Lets move this forward collectively as a l  h  i. I would like to turn it over to NHLC, Makalika.

Makalika Naholowa  a, NHLC-Executive Dir. Thank you Keali  i. Thank you so much for that beautiful pule and opening remarks on behalf of the whole board. I know Kawika regrets not being able to get through. He's been trying to work out, you know this conflict with the earlier meeting, but I think with that I will try to share my screen and get to our substantive presentation in these slides. We provided to the board in advance so I don't plan to read every word to you, but I am really proud of the new ED of NHLC to come to the only public interest law firm in the world that's dedicated exclusively to Native Hawaiian rights. An organization that has been almost at fifty years of service to the Native Hawaiian community, we've tried to highlight some of the moments throughout these fifty years where NHLC has taken on cases and done work that were really inflection points for Native Hawaiian rights and where the law is for Native Hawaiians and we're just very humbled and honored to be able to provide these services to the l  h  i and to be a contractor of OHA for this work.



Founded in 1974, the Native Hawaiian Legal Corporation's mission is to protect and advance Native Hawaiian identity and culture. We are the only public interest law firm in the world dedicated exclusively to Native Hawaiian rights. Since 1986, NHLC has represented clients in more than 50 cases before the 9th Circuit Federal Court of Appeals, Hawai  i Supreme Court, and Hawai  i Intermediary Court of Appeals. These cases have shaped contemporary Native Hawaiian law.

Our Principles					
Kuleana	Maoli Ola	��ohana	Laulima	N�� Koa	M��lama
Our History					
1974: NHLC incorporated as a non-profit as an outgrowth of the Hawaiian Coalition of Native Claims and the Council of Hawaiian Organizations.	1986: ICA issues its decision in <i>Huatac v. Kapaun</i> , which changed the legal landscape for quiet title lawsuits.	1999: NHLC acts to preserve over 2,500 Hawaiian <i>Hemahemehenuia</i> ������ claims.	1990s-2000s: NHLC co-counsel for community groups in "Waialeale" water case.	2013 "Baill" case decided by Hawai��i Supreme Court, advancing the protection of <i>wai kupuna</i> .	2018: CWRM orders full restoration of 10 streams in a decades-long battle by east Maui K���� Farmers.
1978: NHLC assists the Hawaiian Affairs Committee with work that led to constitutional amendments recognizing traditional and customary rights.	1991: First "Native Hawaiian Rights Handbook" edited and authored by Melody Kapil������ MacKenzie and NHLC attorneys, is published.	2019: NHLC acts to preserve over 2,500 Hawaiian <i>Hemahemehenuia</i> ������ claims.	1990s-2000s: NHLC co-counsel for community groups in "Waialeale" water case.	2013 "Baill" case decided by Hawai��i Supreme Court, advancing the protection of <i>wai kupuna</i> .	2018: CWRM orders full restoration of 10 streams in a decades-long battle by east Maui K���� Farmers.
1980s-NHLC focuses on defending quiet title lawsuits and preserving rights to trust lands.	1992: <i>Pele Defense Fund v. P��ty</i> decision, expanding Native Hawaiian traditional and customary rights.				



Board of Directors

 Mark Kawika Patterson President	 Malia K������ Vice President	 Kevin Cockett Secretary	 Kawena Suganuma Beaupre Treasurer	 Robert N.E. Piper Director	 Jon Matsuo���� Director
 Keali��i Renschel Director	 Angela Correa-P��i Director	 Robert Mierce Director	 Roy Catalani Director	 Keali��i Ligez Director	 Sunshine Topping Director

This is our Board and Kealii wonderfully spoke on behalf of the Board on how they generally feel of their services from the NHLC. We're very grateful to have all of them steering us, directing us and governing us. I wanted to share a little bit about our staff so I probably should start a little bit with about me. I'm the newest face on this and I think it  s a huge honor to be able to come and address the Board, to get to meet you all. I'm a lawyer, I've spent eight years before coming to NHLC working for Microsoft. In recent years, I've done legal administrative work, but my legal expertise is an intellectual property and unfair competition. It is not easy to collect data on this but, to my knowledge, there were years where I was the only indigenous person in the country practicing full time in these areas and I  ve never known there to be more of us than you can count on your hands. That  s an area I would love to see some growth. This is my first time getting to work in an organization dedicated to indigenous rights. It's the only one specifically dedicated to Native Hawaiian rights, so it really is just a huge honor and I'm here with a very grateful heart. I started with NHLC in

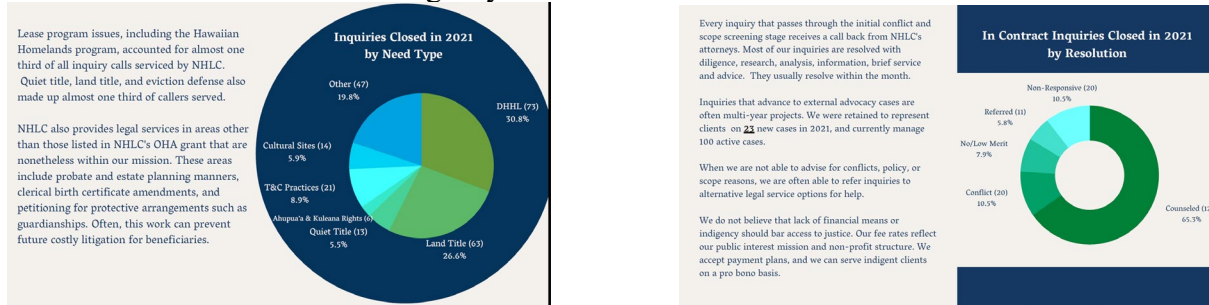
December and I am very happy to be here but with my newness, most of what we're going to talk about today is the work of others so I wanted to say a little bit about the team.



We're a small but mighty team of 12 including six litigators and our legal, administrative support team with Grace and Denise. They are led by our litigation director, Kaui Kopper, who's going to present with me today. All of our lawyers are proud UH Richardson's Law school grads and five are graduates of Kamehameha schools. Together we have over sixty years of legal experience and a deep commitment to putting this experience to work for the community and NHLC's mission, so I feel very lucky to represent this team today. All of our lawyers are on the call and they will help during the Q and A.

We are very proud to be an OHA contractor providing legal services for the lāhui in six areas of legal service. I will start walking us through the data. Our contract duties are to service the lāhui's needs in the first six areas on the slide and our contract duties are to provide: service to anyone who contacts us in the lāhui with needs in these areas, unless we can't under illegal or unethical rule for attorneys so tracking our data is an important part of our contract accountability and so I'm going to start us there. Kaui, our Litigation Director, will share some of the real stories about the families' lands and waters we work to protect because of course, behind every number we're counting is a real person, 'ohana or hui that needs help. Kaui will also share some insights we've gathered from our somewhat unique vantage point doing this work and these are things that we think the Board needs to know about the lāhui legal and advocacy needs. Then finally, two of our attorneys, Kirsha and Ashley, are going to give some insights into the ways that NHLC works beyond cases to strengthen Native Hawaiian leadership and the legal community and raise awareness of our justice gaps. So, I'll start with the data. First looking broadly in 2021, the needs of the lāhui were high and NHLC received 289 new inquiries in 2021 and to compare that to pre COVID time, that's a 68% increase and even a 37% increase over 2020. When you think about how many people are served across all those inquiries, cases that we were able to resolve in 2021 and cases that continue to 2022, we helped 790 people last year. Usually NHLC does help hundreds of people, but that is an uptick and it reflects the uptick in inquiries. It is our duty and our honor to serve people across the entire pae'āina and we did receive requests for assistance and advise people on all the islands in 2021; and we have continuing and active cases on five of the islands, but not Lāna'i. When you look at our lease inquiries, we also track how many by type of work in our contract and so this graph just gives you some insight into how many people called us with needs in each of those areas; lease issues, including the Hawaiian homelands program is about one third of the practice and then almost another third is other land issues: Quiet title, land title, eviction defense so that is the bulk of NHLC's practice. You will see another chunk of the pie, about 20%, labeled other. There are a number of other legal issues people call us about in the lāhui we view as preventative medicine for issues that fall squarely in those six areas, and so if we can help with those issues we can, and we see that as often getting ahead of costly litigation that might fall into other land issue areas later. This is my last data slide, we also track the inquiries we receive are resolved.

So, every inquiry that passes through an initial conflicts and scope screening stage, receives a call back from NHLC sooner or later from the agency.




If you call NHLC and we don't have a conflict advising you and you've called about an area where we practice, then you will get a chance to talk to a lawyer. Out of the inquiries we received last year enclosed, we had almost two thirds got past that stage and we're counseled. Most of our inquiries are resolved with brief service. This means there is a counseling service that we can provide that will get resolved within the month; so we might do some diligence, research, analyze, information provided, documents provided by the client, advise them, and be able to close out their matter within a week. Of course, there are matters that require external advocacy cases with, whether it be with before boards, courts; and last year, we took on 23 new cases in 2021 and we currently go into 2022 managing 100 active cases and those are often multi-year matters when we're not able to advise because we've either got a conflict of interest; and so we can't under our professional rules or a policy or a scope someone's asking us for help in an area where we don't practice at least today. We are often able to refer increase alternative Legal Service options for help. One thing I'll point out, you don't see a bucket here of people that we didn't help because of lack of ability to pay. We don't believe a lack of financial means or indigently should bar access. We've got fee rates that reflect our public interest mission and our non-profit structure, we accept our payment plans. We can serve clients on a pro bono basis, we've got a couple of brands that, in part help us too. I want to pass the baton to Kauila to speak about the real people behind all these numbers.

D. Kauila Kopper, NHLC Thank you Makalika and thank you again trustees for hosting us today to present to you our work under NHLC's procured contract with the Office of Hawaiian Affairs. Each number Makalika shared does represent a person, 'ohana, or beneficiaries in our communities and I think worth repeating is with NHLC, every single one of those individuals who passes our initial screen gets to talk directly with an attorney. That's something that we pride ourselves on as an organization, not every community legal service provider can say that and that's no slight to them; there are different models but for us, we can and I think that's in part because of the dedication of our legal team and the importance we place on interfacing with our communities. We aim to provide them with information or service or representation that best suits their needs and that is across all of our contract areas. Some examples from this year was Hawaiian Homelands, Natural Resource Protection, Eviction Defense, and Education.


Help for Families & Communities

Representative Cases from 2021




Hawaiian Homelands

Among numerous other notable victories, NHLC successfully defended a DHHL lease cancellation in a Circuit Court lawsuit. This case protected the unique status of Hawaiian home lands trust lands and resulted in the recognition that beneficiaries' interests in their homesteads are constitutionally protected.




Natural Resource Protection

On behalf of Hui Kaloko-Honokohau, NHLC overturned a decision to permit increased pumping of ground water for landscape irrigation that would have adversely affected a nearby historic fishpond complex and the surrounding near-shore environment.



Eviction Defense

Representation in complicated eviction matters has become critical during the COVID-19 pandemic. In one case, NHLC obtained a six-figure settlement for a family who was facing eviction from their family home based on a fraudulent land transfer. In another, NHLC successfully dismissed an eviction action for a Hau'ula family residing on a 999-year homestead lease.



Education

NHLC attorneys represented multiple 'ohana in advocating for increased access to kula kulauni education, including expanding distance learning options during the pandemic to ensure the continuity of education.

One last snapshot, evictions were not the only insidious effect of this pandemic, we know our children across the state were forced out of schools. There was a Kāneʻohe ʻohana with four children ages 6-11 who were in immersion programming, they were faced with a lose-lose proposition like many other families were; stay home safe from the pandemic but be forced to continue their distant learning education in English or go to school during the height of the pandemic and risk their family's health. This is a family really dedicated to immersion education. NHLC recognizes that this type of education is a form of a traditional right. We represented this ʻohana and as a result of our attorney's hard work, there is now a statewide distant learning program for immersion students and for all students. Over the 47 years, we have picked up some 12 e insights on the legal needs that our communities have and some insights that inform NHLC's vision for its services for the future. For example, over the years we've seen too many lost legal claims because they missed deadlines or did not come to an attorney early enough. We believe this can be combatted through community education on preserving legal rights, but this is a roadblock that we've seen time and time again. You are probably aware of the work NHLC has done to protect sacred sites. Recently, we have had five lawsuits for the protection of Mauna Kea, two are on-going; the same type of work but in a different form on the front lines and they often need criminal defense attorneys to help them if they are wrongfully arrested. There is a service gap that is not met by other legal service providers. Another thing to note is that we've learned, our victories or our lāhui victories have led to quick fixes. In our East Maui water case, our rail case, a significant birth certificate amendment case, the legislature immediately mooted out some of our biggest legal victories by just changing the law. We've learned that that means political advocacy needs to happen in coordination with our legal cases in court. I think you'll see us identifying the need to be proactive in the work. We've learned that our clients and our families cannot wait for legal issues to arise. We spoke on services as a preventive measure, how probate as part of our land title program to prevent Quiet title actions; protective arrangements and estate planning to help prevent the loss of homestead leases; registering historic sites; prevent future desecration; again, these are services we aim to provide but that's based on the insight we've learned. I think all of these insights are the common themes where you cannot be purely defensive in our work. As NHLC continues to adapt to the changing times, we're committed to continue to adjust the ways that we advance our unchanging mission and the terms of our procured contract with the Office of Hawaiian Affairs to best serve. I thank you for your time and I would like turn the it over to Kirsha.

Kirsha Durante, NHLC Aloha, as senior staff attorney one of my kuleana is to manage our volunteer intern and law clerck programs. NHLC continues to serve as a fertile training ground for youth, young minds through our programs. Past participants have gone on to become City council members, State lawmakers, policy advisors, professors, and prominent attorneys in our local community including staff attorneys at NHLC. Example of past projects undertaken by this program include: legal research on UH administrative rules regarding Mauna Kea, iwi kūpuna protection, and the legislative history on revocable permits for the use of state land and water resources. In 2021, a total of ten individuals participated in this program among other things, these students researched the DHHL undivided lease program, the leasing of ceded lands, the fraudulent transfer of a lease, and assertion of title potential defenses to eviction and environmental protection issues pertaining to salt ponds. The students also drafted a memorandum of law addressing the issue of whether a contested case hearing is an administrative remedy that must be exhausted before filing a breach of trust lawsuit. They researched and synthesized prior versions of intestate succession laws and even developed content for the NHLC social media accounts. Students from mainland schools also participated in the program allowing NHLC to extend advocacy and awareness to communities outside of Hawai'i. In just a few weeks of 2022, NHLC has received an overwhelming number of applications for this years program. We expect the number of participants in 2022 to exceed the number we had last year. This increasing and further perpetuating our legacy of training and guiding the legal minds of our future. I will now turn it over to Ashley to speak on other ways NHLC contributes to our community. Mahalo.

Ashley Obrey, NHLC Mahalo and aloha mai kākou Trustees and OHA staff, we are really happy to be here. To continue Kirsha's mana'o, in addition to training law students and others, our staff regularly participates in panels, presentations, trainings, and other events to promote our services and to also raise awareness both within and outside of the lāhui on the biggest issues affecting Native Hawaiians and the ways we advocate on their behalf. In 2020 alone, we gave over twenty presentations in the community via Zoom. Some of the highlights include three panel presentations discussing the last hundred years of the Hawaiian Homes Commission Act for the access to justice conference, the Judiciary history center as well as the Honolulu board of agents forum; eight presentations and discussions with Hawaiian Homestead Assoc.; two law school sponsored panels; one on the PASH Case and the Public Land Trusts, as well as to Kuleana academy's Rising leaders. Our current and former staff members are highly visible within the Hawaii bar and within their own communities, from leadership roles to judgeships, service on professional, and non-profit boards, and perpetuating their own. All that to say NHLC's impact really is not limited to our advocacy. NHLC employs a multi-faceted approach to engaging with and ultimately influencing this legal system within we operate. Mahalo.

Makalika Naholowa'a, NHLC-Executive Dir. This concludes our presentation, and we are here to answer any questions.

Trustee Lee I saw that you cover a lot of evictions and land titles. We had a beneficiary come before the board at our last board meeting. I do not know if they recognize it but they're a victim of the title insurance scam and they're about to lose their family land because of this. Is this something NHLC has helped with in the past and can help with?

KaUILa Kopper, NHLC Thank you for your question. Over my time at NHLC since 2010, we have seen this situation before. I'm glad you identified that as a possible issue. Often times victims of those scams come to us much too late in the process; that can be the case for many types of eviction. I've seen for the same type of scam for Hawaiian Homelands, leases, or family-owned property. We encourage anyone with legal issues, especially within the contract areas we serve, this includes title, to come to us. What I can say is our process is really robust, a caller can speak to an attorney and all of our attorneys will have a hand in discussing the legal claims of the callers that come to us. I would highly encourage this family to contact us.

Trustee Akina Thank you Makalika and all of you for a terrific presentation. I have been impressed with the growth of the Native Hawaiian Legal Corporation and the quality of your staff. Thank you so much for being committed to being in a public interest law firm for the sake of our kānaka maoli. I just wanted to tip my hat to you. I know it takes a lot of sacrifice to choose to not go into the corporate world in terms of law. So, your services are making a difference and are much appreciated. We enjoy partnering with you mahalo.

Trustee Ahuna Aloha, I would like to share the same comment. I would like to thank all of you from NHLC for presenting today. My question comes from a beneficiary and family on Kaua'i. Right now, they are on ceded lands by the river and because their contract or lease is up, they do not have options to renew the lease. I know HB499 has come into play with questions like *if they can extend, why can't we extend, we're native Hawaiians?* Do you know anything on how we can help this family?

KaUILa Kopper, NHLC Thank you Trustee Ahuna, I will say that my understanding is there are efforts by some at the legislature this year to try and address some of those issues. We have seen some of those leasing issues change by the healthy commercial interest and not the interest of the communities we serve. There could be other loopholes that you know in the Chapter 171 that governs leasings when it comes to extensions and negotiations for that.

Trustee Ahuna Thank you for that, I just know that they will be coming to our board for help. Thank you everyone.

Chair Hulu Lindsey I want to thank everyone, Makalika, you and your entire staff at NHLC and everyone volunteering on your board. Mahalo for your time and for always being there for our beneficiaries. NHLC is a necessity for our beneficiaries. Legal matters are very costly, and many may not have that money, so we need this agency. We are so happy that we can be a part of supporting it.

Trustee Ahu Isa When I got elected in 2014, I remember NHLC was so small. I remember Moses Haia was there and they were trying so hard to build the NHLC and now look at all these young, top-notch people there. Thank you for the work that you do. It costs money and I want to know where do you folks get your money?

Chair Hulu Lindsey They get their money from the State and from OHA

Trustee Ahu Isa Is this from general funds? I do not want to drag this on, Mahalo.

Makalika Naholowa‘a, NHLC-Executive Dir. Our contract with OHA is the majority of our funds. We also try to recruit funds from our clients. As Chair Hulu says, most of clients are not in a condition to pay and it is not our view that that should be a barge of service. To give you a bit of data, if you were to take the amount of legal work we provide, we offer a very low rate of \$100 per hour, which is at least three times more when you go to the market. Even at that rate if we were to charge it out, we would make our annual budget but instead we are probably able to recoup in a good year about 1/10. Usually, it is because we were successful in litigation where it's possible to recoup fees from the losing party. Getting it from the clients is not where NHLC's financial stability or changes are going to happen in the future. We are looking constantly whether or not there's other opportunities for other philanthropist to invest in NHLC. Also, if there are ways for us to expand our practice in the future where that practice area may be servicing clients with more financial means to help subsidize what we do for our clients that don't have the financial means. If we are able to stand up more work on behalf of Native Hawaiian businesses, for example, that might be an opportunity to help balance out the foundation where clients are not going to be able to pay. It is a difficult challenge, its not easy but these are some of the ways we are thinking about it.

Chair Hulu Lindsey Thank you Makalika.

Sylvia Hussey, CEO Chair, I wanted to thank Makalika. Our Chief Advocate and Makalika have already engaged in conversation. Na‘u, would you like to comment?

Na‘u Kamali‘i Yes, thank you very much to NHLC and Keali‘i for being present. We will hold hands in representation and the uplifting of our people and I will also acknowledge our great healer as you have.
Oli is offered.

Trustee Akaka I wanted to mahalo NHLC for all of your wonderful work within the community and for all of our community. I wanted to mahalo ‘Anakala Keali‘i for your wonderful oli; mahalo Makalika, Kauila for everything that you are doing. One question, I think I heard that a loko i‘a in Kona was affected with the water source, could we get a little more information on that?

Ashley Obrey Yes, we represented a hui of cultural practioners. They’ve been working for the Kaloko fish pond in Kona for the last six to seven years. It is on National Park property and the property is adjacent to

Kohanaiki, which is you know a multimillion-dollar subdivision, second homes, golf course, fancy landscaping, and essentially what happened was there were letters being sent between Kohanaiki and the planning director about allowing additional well development under an existing SMA permit, a special management area permit, that did not account for the amount of new water that they were asking for now. We had to go to the board of appeals and say that this decision that the planning director made, we could let this go through under the existing permit was improper for multiple reasons. We needed another SMA permit because there was no consideration of traditional and customary practices and no consideration of impacts to the public trust resource. Basically, the planning director ended up withdrawing his decision because there was an appeal from us and I think even the National Park ended up getting involved. We ended up not having to litigate further but it was a good place to start. If they try to do anything going forward that could impact this point, I think they know there are people watching. This community has been doing monthly work days and the community is trying to bring this fishpond back to life.

Chair Hulu Lindsey Thank you Makalika for the presentation. We really appreciate all the you do and we hope to have more collaboration between our office and yours so we can help our beneficiaries. We will move on to our next item on the agenda, Action Item BOT#22-01.

A. Action Item BOT#22-01: Approve the formation of a Permitted Interaction Group (PIG) to investigate the activation of OHA Kaka‘ako Makai Site A, 1011 Ala Moana Blvd. Pursuant to HRS§92-2.5(b)(1)(A).

Sylvia Hussey, CEO Thank you Chair, We will have our COO and our Land Director do a brief presentation on the key points.

Casey Brown, COO Aloha Trustees, I am going to resituate you folks real quickly, just refresh your minds from where landed in the discussion around Kaka‘ako Makai (KM) and our development. The slides you’ll be seeing were used previously. The slides were looking at what we wanted to do in the sites. The three things that we wanted to do was:

- 1) we wanted to activate the site;
- 2) identify which area of our land should be activated;
- 3) and we wanted to look at what projects and ideas made sense there.

You approved the activation of these lands as an initial step. The sites that were approved by you were parcels E and A. On parcel E is the 919 building and parcel A is Fisherman’s Wharf. We also spoke about proof-of-concept project that we could be testing on these sites. Our consultants have produced a business plan and in that business plan is a budget and they’ve done that for site A. What we want to do for this formation of the PIG is to pick up where the last PIG left off and look at those business plans and assess them and the budget and ensure everything makes sense. We then want to bring forth the recommendation via the PIG report. I will pause here and see if there are any questions.

Trustee Lee Thank you, if I understand this correctly, the Board has already approved the proof of concept and the activation. So now this PIG is supposed to look at if the budget is okay and if it's an appropriate project that is proposed, is that correct?

Casey Brown, COO Yes, thanks for asking that question. The two main reasons for bringing this to the board and have the PIG formed is first, KM in general is a large project and it’s intimate to OHA. It’s OHA’s first foray into development so we definitely want to keep Trustees informed with activities happening during these planning stages. The second and more overriding factor is the money. The budget that has been

drafted is in the millions of dollars. We really want the trustees to understand what is going into these activation plans.

Trustee Lee Okay, I get that but what I don't get is how this is any different then any other budgetary manner that comes before the board. Administration uses their expertise, which you have, you have Kalani and accountants. You then come up with recommendations that you bring to either a committee or the Board, that these are administration's recommendations to move forward, and we say either yes or no. Now, you are asking us to weigh in and have input in these budgets. Now, that's fine but then what do we need all of you for? Why are we paying salaries to people whose job descriptions is to do this work but now you want the board to do this work and again that's fine, then we can save hundreds of thousands of dollars and streamline the agency even more which is highlighted yesterday in the WAM committee meeting at the Senate. Then, we do not have anyone in the administration at all and just have the Board do all of this work. I don't understand why the people with the subject matter expertise who we have hired, they come up with these budgets, come up with the recommendation, come before the RM committee and say this is the recommendation of the subject matter experts on what we should do. Does the board have questions? Does the board like it? Yes, or no? Not, okay board, go and do all this work and then tell us you like it so we can bring it back to the board for you folks to vote. I don't understand that methodology. Can someone explain that to me?

Casey Brown, COO I can share from my point of view, I think there's a general sentiment to err on the side of over sharing and under sharing just because this is a new endeavor for OHA so part of this process is to feel our way and to find that sweet spot. What makes sense to you folks? We always start off by bringing more than less.

Trustee Lee New endeavor does not mean new process. Why do we have processes in place? We have a process in place. Yes, this is a new endeavor but the process is not different. We didn't form a PIG to do renovations at Nā Lama Kukui (NLK). Based on that methodology, should we not have formed a PIG and go over that budget and go over all of that for NLK? The reason I'm making such a big thing about this is because of the acquisitions we've made. We have a lot of work coming ahead of us and is this what we can expect in the future? If that is, then let's streamline, save money, and have the board do all the work, the people with no subject matter expertise.

Casey Brown, COO That's a fair point. I can see others with their hands up. My last response would be administration is here to support whatever the board's desires are. If this process wants to be altered, then administration will support.

Trustee Ahu Isa I think Trustee Lee is referring to HRS92-2.5 Permitted Interaction of Members. It says under a 92-2.5A.1 two or more members of the board but less than a number of members would constitute a quorum from this PIG.

1. Investigate the matter
2. The scope of the investigation and the scope of each members authority are defined at the board meeting.

Maybe he wants to know the scope of each member's authority as defined and what are we as a member of the PIG going to do and why are we are member of the PIG? It must be defined. Maybe he's referring to that. Thank you.

Trustee Ahuna It doesn't sound right for me. I would personally like to get involved with some of the talks. I don't understand why we must take it into a PIG. For me, this should've come straight to the RM

committee and we would all have insight and we could comment. At this point I don't understand how we will make good decisions on these lots. I would like to hear more about this. Thank you.

Sylvia Hussey, CEO I wanted to go back to Trustee Lee's point about the PIG and the construct. This is administration bringing forward the boards construct of a PIG; and Trustee, you know this very well, in the action item, in the reference section, Trustees will see the evolution of the use of PIG to form the different decision points that administration is helping Trustees to bring forward. You can see the formation of the first PIG, it was the plan. The second PIG, we look at the first steps, that third PIG was the overall which lots? And this PIG is going a little deeper into the A activation and bring forth that information via the PIG and then to the board. At all times, it is the board's decision with administration support of bringing that 'ike forward for you. It is very clear to administration that that is our role especially in the construct of a PIG. Again, this is a board initiative; it started with a formation of that first PIG in January 2021 and this is just a continuation of very strategic work that's been done. Thank you.

Chair Hulu Lindsey Any other questions? So, I will entertain a motion for the approval of the formation of a Permitted Interaction Group to investigate the activation of Kaka'ako Makai site A, 1101 Ala Moana Blvd, including the following purview, members and terms/duration.

Purview: The purview of the PIG is for the Board of Trustees (BOT or Board), BOT staff and OHA Administration staff to work together to investigate the business plan for activation of site A in Kaka'ako Makai.

Members: The membership of the Permitted Interaction Group is proposed as follows:

(a) Trustee Carmen Hulu Lindsey; (b) Trustee Leina'ala Ahu Isa; (c) Trustee John Waihee, IV; and (d) Trustee Kalei Akaka. Trustee Carmen Hulu Lindsey will serve as the Chair of the Permitted Interaction Group and Trustee Leina'ala Ahu Isa will serve as its Vice Chair. Casey K. Brown, Ka Pou Nui, will function as the Project Manager.

Term/Duration: The term of the Permitted Interaction Group expires at the completion of the assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment, but in no event later than February 15, 2022.

Trustee Akaka moves the motion

Trustee Akina Seconds the motion.

Trustee Lee Point of order Madame Chair.

Chair Hulu Lindsey Go ahead Trustee Lee.

Trustee Lee According to the Office of Hawaiian Affairs Board of Trustees By-Laws, Article VIII., Section A., Subsection 1A,B,C,E,G,H,I, and J, this motion is out of order. Section A1, a committee on resource management the committee shall:

- A. Handle all fiscal and budgetary matters and ensure proper management planning, evaluation, investment, and use of OHA trust funds.
- B. Review approve or disapprove all acquisitions expenditures that have a multi-year implication
- C. Review and approve all acquisitions expenditures that impact the OHA debt management economic development, investment and spending policies.

E. Oversee the use and conditions of OHA's real estate *inaudible* execute policy for the proper use of such lands, including land in which OHA an interest.

G. Develop policies and criteria for OHA's land acquisitions, disposition, development, management, and the use of real property in which OHA has an interest.

H. Developed policies relating to OHA's real estate asset allocation, desired returns and balancing OHA's real estate portfolio including legacy lands, corporate real property, problematic lands, and investment properties

I. Oversee the use and conditions of OHA's real estate and development policy for the proper use and stewardship of such real property; and

J. develop policies and programs for OHA's ownership, financing and development of real property, including capital improvement, debt management, property development, investment and spending policies and forms of ownership for OHA's real property.

Chair Hulu Lindsey I would like to explain that at the beginning when we started this PIG, it was intentional in that it would move things faster. We hired an in-house development consultant and they come to the administration, administration comes to the PIG, and then we bring it to the board. The members of the board are the same members of the Resource Management Committee and on the PIG is the resource management chair so in essence, we are trying to expedite so that this thing does not lag on as it has for the last ten years. We've been trying to move it forward and eventually it's not going to be the board making these decisions, hopefully we get into partnerships on the majority of the lots. This is a temporary use of Fisherman's Wharf lot and the AAFES building lot. We'll be able to check if this type of cultural activity works. It gives opportunities to our people to start their little businesses and move on to bigger projects. So, the expeditious way to doing it would be like we started with PIGs. Each PIG is brought to the whole board for total discussion, it makes things moves faster. That's why we've been creating these PIGs.

Trustee Lee I know I've brought this up in the past, Madame Chair, but since you reiterated your point on this, I will bring it up again. Am I to understand that in order to expedite matters, that we violate our Bylaws?

Chair Hulu Lindsey No, I don't think it's a violation and I'll call on Judge Klein.

Trustee Lee I just read you our Bylaws and that's out of order Madame Chair. I made a point of order and you have to rule on it, not Judge Klein. I respect Judge Klein immensely but he is not the Chair of this Board, you are. If you want to consult with our attorney that's fine but he doesn't make this decision, you do. You wanted to sit as Chair, make a decision.

Chair Hulu Lindsey I am going to call a recess and speak to Judge Klein. The recess is five minutes.

Recess started at 11:24 am

Reconvene at 11:29 am

Chair Hulu Lindsey I would like to call on Judge Klein to share with all of you what he shared with me.

Robert Klein, Board Counsel Thank you Chair. We have a question whether the PIGs should be handled by the RM Committee, pursuant to the Bylaws. PIGs are created under State law which take precedent over bylaws, as we know, our bylaws cannot be different from what state law allows. The board is interested in creating a PIG to do an investigation as it's noted on the agenda, the board is perfectly within its rights to conduct an investigation by the PIG. As we know, the PIGs final report which is a three-step process, the

board will have ample time to consider the PIGs report and determine whether or not it wants to go forward or whether it's a referral to the committee or acceptance of the PIG report can be done at that time. But I do not see anything illegal or undermining of the board bylaws to go ahead with a creation of a PIG to conduct an investigation which purportedly is going to do. There will be ample time to hand over the PIG report through the bylaw process and committee process when that report becomes available.

Chair Hulu Lindsey Thank you Judge.

Trustee Lee So I am assuming you are ruling against my point of order.

Chair Hulu Lindsey Yes.

Trustee Lee Can I ask a follow up question of Judge Klein?

Chair Hulu Lindsey Go ahead.

Trustee Lee Judge Klein, I never questioned whether the PIG itself was illegal in any way, but our bylaws stipulate that this subject matter should be handled within the RM committee. While I understand our bylaws stipulate that the Chair is to name who will be apart any PIG, that doesn't take away the fact that our bylaws state that this subject matter is supposed to be handled by the RM Committee. We do have a process if the Board wants to remove it away from Committee and move it directly to the board level, which is article VIII subsection L, a waiver of matter from RM. If the board wants to take up this investigative matter, I don't have a problem with that but there's been no move to elevate this from the committee to the board level. They're just saying they're going to do this at the Board level. While it's not illegal and I never claimed that it was, it is violating, in my opinion, our bylaws. Our bylaws do stipulate in this particular matter should be handled within the RM committee, that is why the RM committee was formed to handle these types of matters.

Robert Klein, Board Counsel I have no doubt that the purview of the RM committee includes matters like this, but the bylaws are really subservient to state law and state law provides an alternative through the PIG process, 92-2.5B 1A to conduct investigations. So, state law is superior to bylaws and it can be used to do what the bylaws seem not allow. So, if a PIG is established properly under the law, it can entertain the same or similar matters that would be within the purview of a board committee and once the PIG report is completed, the board can do what it normally does either accept the PIG report, refer it to the RM committee, remand it to the PIG for further information, but its nearly an alternative legal process that's setup by the law which is superior to your bylaws.

Trustee Lee I didn't question the legality of the PIG. I won't delay the matter Chair. I don't think we're arguing the same point. Of course, PIGs are legal, that's not what I questioned. So, we don't need to vote to waive this matter from the committee. Moving forward based on today's meeting, we have it on the record that the Chair of the Board at the Office of Hawaiian Affairs at any time can take a matter away from a committee, which by the way requires a 2/3 vote, by just a simple majority form a PIG and take matters away from a committee.

Robert Klein, Board Counsel What your basically arguing is that the bylaws are superior to the law. What you're saying is that the Board has to follow its bylaws when you have a superior state statute that handles the same matter. Actually, you're bound to follow state statute if you are going to create a PIG. It is specific to PIGs and the specific purpose of the PIG is to conduct an investigation, then actually your bylaws are

inferior to the state law that the Chair can say I want to follow the PIG law in this particular case. Because its state law, it is superior to your bylaws; where you're saying, the bylaws control not only the matters that the particular committee has within its scope but also mandates its process that cannot be changed by state law and I don't think that's correct.

Trustee Lee Judge Klein, the law doesn't say in what venue a PIG needs to be taken up by the body on which its being taken up by. Maybe it's my misunderstanding because I'm not an attorney but I understand that the law stipulates that we can form a PIG but I don't believe the law says the PIG has to be taken up by the Board in general. I'm aware of neighborhood boards that have PIGs formed within committees and they're not taken up by the entire board.

Robert Klein, Board Counsel Number one you're not a neighborhood board.

Trustee Lee I understand but they follow the same law that we do; they follow the same sunshine law that we are talking about right now, that is the only reason I am using them as an example.

Robert Klein, Board Counsel What you're using as an example is what you're saying that has to be the process and I'm saying that is not my interpretation of what the process can be, has to be, or is an alternative to your bylaws.

Trustee Ahuna My question is, all these guys on the PIG are on the RM committee, why not just have it in the RM committee so that we can all be involved? If we need to speed it up maybe we can have more meetings or something? I'm trying to make sure that we can be involved in this. Thank you.

Trustee Ahu Isa Justice Klein, I want to explain how we did the first PIG. At that moment, time was of the essence, we had an offer and we were bidding on this property. It was imperative that we did have that PIG go straight to the Board. I think Trustee Lee is saying we're not in that type of situation. Not all members of the RM committee is on the PIG, Trustee Alapa is not on. I am reading from HRS the State law, the scope of the PIG and each members authority should be defined at the meeting of the board of the PIG. So, my authority is vice chair, Chair Hulu's authority is Chair, maybe that's what he is questioning. It says to define each members authority, why are we appointed to the PIG. Okay, mahalo.

Trustee Lee Point of clarification. Just because Trustee Ahu Isa just brought it up about the acquisition PIGs that matter was duly waived from the committee. The board took a vote to waive it from the committee to raise it to the board level and the PIG was formed.

Chair Hulu Lindsey Can you call for the vote please?

Trustee Akaka Moves

Approve the Formation of a Permitted Interaction Group (PIG) to investigate the activation of Kaka’ako Makai Site A, 1101 Ala Moana Blvd, including the following purview, members and term/duration:

Purview. The purview of the PIG is for the Board of Trustees (BOT or Board), BOT staff and OHA Administration staff to work together to investigate the business plan for activation of site A in Kaka’ako Makai.

Members. The membership of the Permitted Interaction Group is proposed as follows:

(a) Trustee Carmen Hulu Lindsey; (b) Trustee Leina`ala Ahu Isa; (c) Trustee John Waihee, IV; and (d) Trustee Kalei Akaka. Trustee Carmen Hulu Lindsey will serve as the Chair of the Permitted Interaction Group and Trustee Leina`ala Ahu Isa will serve as its Vice Chair. Casey K. Brown, Ka Pou Nui, will function as the Project Manager.

Term/Duration. The term of the Permitted Interaction Group expires at the completion of the assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment, but in no event later than February 15, 2022.

Trustee Akina Seconds the motion.

	1	2	‘AE (YES)	‘A‘OL E (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE DAN AHUNA				X		
TRUSTEE KALEI AKAKA	X		X			
TRUSTEE KELI‘I AKINA		X	X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE				X		
TRUSTEE KEOLA LINDSEY						X
TRUSTEE JOHN WAIHE‘E			X			
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			6	2		1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with a six (6) YES votes, two (2) no votes and one (1) EXCUSED vote.						

Chair Hulu Lindsey Thank you Trustees. Do we still have beneficiaries wanting to testify? We will give them an opportunity to speak and share their concerns since we had technical issues earlier.

Board Secretary We had Routh Bolomet on the line but she is not on now.

Chair Hulu Lindsey Unfortunately, we will have to move on. I will announce that our counsel has reached out to Routh and NHLC has also said they will speak to her. I would like Sylvia to continue working with Ruth and if she wants to speak to us again then she can come back to the next meeting.

I will entertain a motion to recuse into Executive session.

Trustee Akaka moves to recuse into Executive session.

Trustee Waihee Seconds the motion.

The Board recuses into Executive Session at 11:45 a.m.

Motion to recuse into executive session pursuant to HRS Section §92-5						
	1	2	‘AE (YES)	‘A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA	X		X			
TRUSTEE KELI‘I AKINA			X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE			X			
TRUSTEE KEOLA LINDSEY						Excused
TRUSTEE JOHN WAIHE‘E		X	X			
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			8			1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with a eight (8) YES votes and one (1) EXCUSED vote.						

Board returns to open session at 11:57 a.m.

Announcements

Chair Hulu Lindsey Our first RM and BAE meetings are set for January 25th and our next BOT meeting will be on January 27. Are there any other announcements to be made?

Adjournment

Trustee Akaka Moves to adjourn the meeting.

Trustee Ahu Isa Seconds the motion.

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

Chairperson Carmen Hulu Lindsey Adjourns the Board of Trustees meeting at 12:00 p.m.

Respectfully submitted,

Lehua Itokazu
Board Secretary

As approved by the Board of Trustees on February 3, 2021.

Carmen Hulu Lindsey
Chairperson, Board of Trustees

Attachments:

1. Excused Memo – Trustee K. Lindsey

Office of Hawaiian Affairs
Meeting of the Board of Trustees
February 3, 2022
10:00 A.M.

V. New Business

- A. Report of the Permitted Interaction Group re: to investigate the activation of OHA Kaka‘ako Makai Site A, 1011 Ala Moana Blvd., no discussion. HRS§92-2.5(b)(1)(B).**

Office of Hawaiian Affairs
Meeting of the Board of Trustees
February 3, 2022
10:00 A.M.

V. New Business

B. Beneficiary Advocacy and Empowerment†

**1. Action Item BAE #22-01: A Resolution Supporting
Community Based Subsistence Fishing Area Designations
and Rules at Miloli‘i, Hawai‘i**

* Committee Report for the above Action Item will be forwarded to the Board following its approval at the BAE Committee Meeting.

Office of Hawaiian Affairs
Meeting of the Board of Trustees
February 3, 2022
10:00 A.M.

V. New Business

C. Committee on Resource Management

1. Nā Lama Kukui, 560 Nimitz Highway, Refinancing

- This item was discussed and voted on in executive session from the Committee on Resource Management

Office of Hawaiian Affairs
Meeting of the Board of Trustees
February 3, 2022
10:00 A.M.

VI. Executive Session‡

A. Consultation with Board Counsel Robert G. Klein, Esq. and Interim General Counsel Everett Ohta, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and Liabilities with respect to the refinancing of Nā Lama Kukui, 560 N. Nimitz Highway, pursuant to HRS§92-5(a)(4)