

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'āina 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: Wednesday, December 29, 2021

TIME: 10:00 am

PLACE: Virtual Meeting

Viewable at www.oha.org/livestream OR

Listen by phone: (213) 338-8477, Webinar ID: 815 6247 3637

Due to the threat of COVID-19, Governor Ige issued the most recent Emergency Proclamation Related to the COVID-19 Delta 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 or listen by phone: (213) 338-8477, Webinar ID: 815 6247 3637

AGENDA

I. Call to Order

II. Approval of Minutes

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

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. Presentation: Red Hill Storage Tanks, Update by Wayne Tanaka, Sierra Club of Hawai'i Chapter Director
- B. Action Item BOT #21-18: Approve and Implement the OHA Policy Framework – (2nd reading)
- C. Committee on Beneficiary Advocacy and Empowerment
 - 1. Action Item BAE #21-07: Public Land Trust Bill, 2022 Legislature

VI. Executive Session

- A. Consultation with Board Counsel Robert G. Klein, Sherry P. Broder, Esq., and Interim General Counsel Everett Ohta re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities with respect to the Public Land Trust and associated legislation, 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 on Sunday, December 26, 2021 and posted to OHA's website at:

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

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

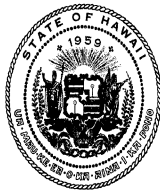
Keli'i Akina, Trustee At-Large

Luana Alapa, Trustee Moloka'i & Lāna'i

Brendon Kalei'āina Lee, Trustee At-Large

Keola Lindsey, Trustee Hawai'i Island

John Waihe'e IV, Trustee At-Large



STATE OF HAWAII

OFFICE OF HAWAIIAN AFFAIRS

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

- * **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, or (2) live, *oral testimony online* during the virtual meeting.

- (1) Persons wishing to provide *written testimony* on items listed on the agenda should submit testimony via *email* to BOTmeetings@oha.org at least **24 hours prior** to the scheduled meeting. Any testimony received after this deadline will be late testimony and will be distributed to the Board members after the scheduled meeting. **Due to COVID- 19, please do not fax, mail, or hand-deliver written testimony**
- (2) Persons wishing to provide *oral testimony online* during the virtual meeting must first register at: https://us06web.zoom.us/webinar/register/WN_ENn8V-GfR-yDtvmNnYo3g

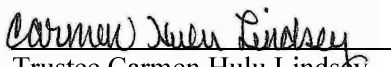
You need to register if you would like to orally testify. Once you have completed your registration, a confirmation email will be sent to you with a link to join the virtual meeting, along with further instructions on how to provide oral testimony during the virtual meeting. The registration page will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

To provide oral testimony online, you will need:

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

Oral testimony online will be limited to five (5) minutes. Once your oral testimony is completed, you will be asked to disconnect from the meeting, unless you are also signed up for oral testimony during Community Concerns and Celebrations. 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

12/22/2021
 Date

**Office of Hawaiian Affairs
Meeting of the Board of Trustees
December 29, 2021
10:00 A.M.**

II. Approval of Minutes

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

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.

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
October 7, 2021

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 Keola Lindsey
Trustee John Waihe'e, IV

BOT STAFF:

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

ADMINISTRATION STAFF:

Sylvia Hussey, Ka Pouhana / CEO
Casey Brown, Ka Pou Nui / COO
Raina Gushiken, CC
Everett Ohta, CC
Ramona Hinck, CFO
Kevin Chak, IT
Erin Nakama, IT
Wayne Tanaka, Public Policy Manager
Olan Leimomi Fisher, Interim Senior Public Policy Advocate
Robert Klein, Board Counsel

Call to Order

Chair Hulu Lindsey Calls the Board of Trustees Meeting to order for Thursday, October 7, 2021, at 10:02 a.m. Board Secretary, please do a roll call.

MEMBERS			Present	TIME ARRIVED
TRUSTEE	LEINA‘ALA	AHU ISA	X	
TRUSTEE	DAN	AHUNA	X	Left MTG at 11:48 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	X	
CHAIRPERSON	CARMEN HULU	LINDSEY	X	
			9	

At the Call to Order, **nine (9)** Trustees are PRESENT, thereby constituting a quorum.

Chair Hulu Lindsey Thank you Trustees. Due to the threat of COVID-19, Governor Ige issued the most recent Emergency Proclamation related to COVID-19 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. 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 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. Robert Klein, our Board Counsel, is not online yet but I will call on our Pouhana, Sylvia to announce who is joining us from administration.

Sylvia Hussey, CEO Thank you Chair and good morning Trustees, Chair, we have COO-Casey Brown, CFO-Ramona Hinck, Senior Legal Counsel-Raina Gushiken, Assistant Senior Legal Counsel-Everett Ohta, as well as Wayne Tanaka-Public Policy Manager, Leimomi Fisher-Interim Senior Public Policy Advocate as well as our IT staff-Kevin and Erin, thank you.

Approval of Minutes

- A. July 29, 2021
- B. August 11, 2021
- C. August 19, 2021

Chair Hulu Lindsey Can I get a motion to approve the minutes.

Trustee Lee Moves to accept the minutes.

Trustee Akaka Seconds the motion.

Approval of Minutes: July 29, 2021 August 11, 2021 August 19, 2021						
	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		X			
TRUSTEE KEOLA LINDSEY			X			
TRUSTEE JOHN WAIHE‘E			X			
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			9			
MOTION: [X] PASSED [] DEFERRED [] FAILED						
Motion passes with nine (9) YES votes and zero (0) EXCUSED vote.						

Chair Hulu Lindsey Thank you. Do we have any one signed up for public testimony or community concerns?

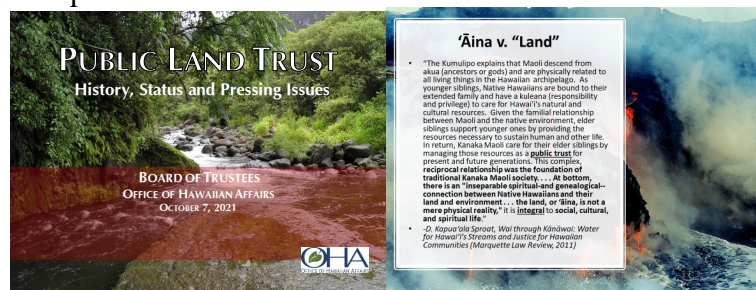
Board Secretary There is no one signed up for testimony.

New Business

Chair Hulu Lindsey Okay, I will now call on Sylvia for our next item under new business.

Sylvia Hussey, CEO Thank you Chair, we have Wayne, our Public Policy Manager. The presentation that he will give was also presented at the Nānākuli Board. It is always informative to be reminded about the roots of the public land trust, the responsibilities, and the obligations. The deck itself is a valuable resource in terms of just referring to that, so I hope you find that as well.

Wayne Tanaka, Public Policy Manager Good morning, everyone. Thank you Ka Pouhana, thank you Chair for this opportunity to talk about the ceded lands and the public land trust. In my time here over the nine years now, this has been a consistent theme and one that I've come to appreciate. I really appreciate this opportunity to talk about these issues and contextualize them particularly with respect to the Office of Hawaiian Affairs (OHA) and our reason for existing. Before I began really quick caveats, I want to be very mindful that there are multiple perspectives in all areas of life, but particularly to the extent of Hawaiian cultural concepts and the history of the islands. I do want to acknowledge that. Also, we don't have all day and I've been told on multiple occasions to keep things simple in the various presentations. I'm just going to highlight what I think are major or general points that are relevant to this discussion, try to apply some of what I think are completely reasonable interpretations towards the end. I also will note that I am not trying to speak for the lāhui but to an extent, I do provide a personal perspective. I am speaking as an attorney whose job has had to deal with the consequences of injustice over the last decade; also, as someone who believes that anyone living in Hawaii and loves these islands should care about the pressing need for justice here. With that I will start the slide presentation.




I want to say mahalo to Leimomi Fisher and Everett Ohta for their contributions to this slide deck and the research that went into it. Quick outline of the presentation, I'll talk about the Native Hawaiian perspective on ʻāina versus the Western view of land and a little bit about the history of land tenure in Hawaiʻi which leads us to what the ceded lands are. I do want to talk a little bit about the consequences of the loss of ceded lands and the loss of governance and how those events have and will continue to impact our beneficiaries today. I will then touch on the Public Land Trust (PLT), OHA's kuleana, and at the end, a summary overview on some of the legislative issues impacting Hawaiians' claims to the ceded lands and other PLT issues that we've seen.

I think it's really important to understand that the traditional Hawaiian perspective of ʻāina is very different from the Western perspective. Land is something that can be owned, bought, sold, commodified, and there's lots of sources you can look to, the Kumulipo is one that really explains how Native Hawaiians are related, not just physically, but genealogically to all of the living things on the islands. Kapua Sproat, she provides her interpretation of how this familiar relationship results in an understanding of reciprocity. You take care of the things that take care of you, your parents, your grandparents, and so on. It is a very different concept than the view of land that can be commodified. It is a public trust where you take care of the land, you don't own it. This is reflected in the early kingdom land tenure system. The konohiki oversaw the resources of the land and makaʻāinana worked the land, but nobody really owned the land to the point where you could alienate it; this was reflected in the 1840 constitution. During this time, it was a difficult and challenging time in the islands, you're seeing the decimation of Native Hawaiian population. There's introduced diseases,


Early Kingdom Land Tenure System

- Land viewed as a public trust, part of *maui oia* NOT a commodity
- Aliʻi* system: *Makaʻāinana* worked the land, chiefs administered land and resources
- Under Kamehameha I, land tenure system remained substantially the same

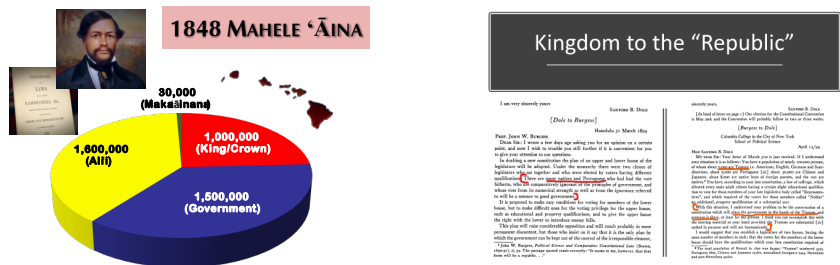


The Mahele

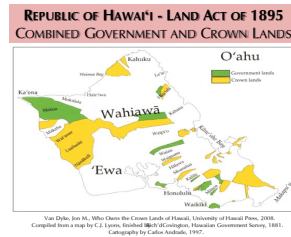
- 1840 constitution under Kamehameha III – KAMEHAMEHA III was the founder of the kingdom, and to him belonged all the land from one end of the islands to the other, though it was not his own private property, it belonged to the chief and the people in common, of whom Kamehameha I was the head, and had the management of the landed property.
- Increasing conflicts between Hawaiians and foreigners over land rights
- Kauilaueaʻs goal – secure land base, protect Native Hawaiian lands from foreigners through Western-recognized land tenure system (1/3 land to King, 1/3 to Aliʻi, and 1/3 to tenants)



massive changes to religion, the food people are eating, to land uses, and the ecosystems. Unfortunately, during this period of change, we see a growing influence of Westerners. This leads to conflicts between the Westerner and their view of land; to own, capitalize, and commodify it versus the traditional perspective that was engrained in the kingdom’s constitution. So, King Kamehameha III saw what was going on and tried to think about how he could better protect his land base for Native Hawaiians from foreigners. The vision he had was to try and move Hawaiʻi land tenure to a more Western-recognized system and that led to the Māhele. The vision was to divide out the interest in the land; 1/3 of the land would go to the King, some to the Aliʻi, and some to the tenants and people in common. The King was able to claim 2.5 million acres. Almost immediately, he took 1 ½ million acres and gave it to the government, he kept a little under a million acres for himself. The red and the blue on the slide are the government crown lands and that becomes the basis of the ceded lands. The ceded lands also include submerged lands. 1893, as you know, there’s growing recent influence beyond the constitution. The Queen tries to regain some authority that was taken away, through that community safety decided they didn’t want to see that happen. They were not alone and they had the



support of the US Navy and Marines that landed in Hawaiʻi. To avoid mass inflection on both sides, the Queen told her people to stand down and she eventually surrendered in a sense but not to the insurrectionist, but to the US government. This is something that should be said and emphasized, the people who led the insurrection was Sanford Dole; he becomes Hawaiʻi’s first territorial Governor; he was the leader for the insurrection. They wanted annexation right away but they could not get it so Dole had to figure out how he could set up a government to place hold until he could become a territory of the United States. He wrote to a professor, John Burgess, in Columbia college in New York and this is his problem as he speaks to Professor Bridges. This is part of his quote “ there are many Natives and Portuguese who had the vote hitherto, who are comparatively ignorant of the principles of the government and whose vote from its numerical strength as well as from the ignorance referred to, will be a menace to good government.” Burgess was than happy to oblige him and he actually re-stated the problem where he is basically saying, okay, so I understand the problem is you have 5,000 teutons which are like Americans, Germans, Scandinavians, and the rest are not teutons and half of the population of a 100,000 were Native people. His understanding of the problem was that Dole wanted to have these 5,000 of a population of 100,000 be the ones to control government. He advised Dole and came up with a Republic Hawaiʻi Constitution that affected leaders and disenfranchised everyone but teutons. During the republic period, there was also an act passed to basically combine the crown and government lands. Even though the crown lands were held seperate by the reigning monarch, the crown and government lands were combined by the republic; they combined these into one corpus.



- Loss of lands and governance and distribution of power after annexation:
- Continued alienation of "ceded" lands
- Affirmed taking of crown lands
- Disrupted konohiki fishing system
- Expanded stream diversions, displacement
- Suppression of language, national and cultural identity, promotion of Americanization and "patriotism" in public schools
- Governor Dole and plantation oligarchy
- Vetted progressive legislation (healthcare, tax relief for the poor) passed by Native Hawaiian dominated legislature
- Undermined vision and implementation of the HHC
- Etc.
- Generational trauma and impacts continue to be seen today

You can see the different land holdings in O‘ahu as one example. Native Hawaiians almost immediately started to fight to get their land back. The Hui Aloha ‘Āina combined the patriotic leagues to support the Queen right after the overthrow. President Cleveland sent James Blount to come and figure out what was going on. Based on his report, President Cleveland withdrew the initial treaty of annexation. They also helped to gather the Kū‘ē Petitions which were very instrumental in stopping the second treaty of annexation that was proposed in 1897. There is continuous and immediate mobilization to restore the monarchy up and through annexation. Again, that is an indication that Hawaiians never relinquished their claim to the ceded land corpus. In 1898, there was a joint resolution passed in the US Congress that would annex Hawai‘i to become a part of the United States. Through this annexation process, the 1.8 million acres of those crown and government lands were ceded by the Republic to the US government and so that becomes the ceded lands. I just want to reflect on some of the consequences of this theft of lands and loss of governance. To understand where we are today, it’s good to reflect what justice means. In some sense and context, it may mean understanding and healing the harms that are inflicted by a wrongful act. That is a reasonable interpretation of what justice means. If this is something we want to seek then the first thing is to understand what the harm and consequences were of the takeover and annexation of Hawai‘i. In our context, we need to understand how Native Hawaiians uniquely were affected and impacted then. For now, I want to say even after the annexation, it didn’t stop Native Hawaiians from organizing. They were denied the vote under the Republic for the most part but under the annexation, the US Constitution applied and restored suffrage. Not for everyone obviously, but they were able to get the vote and there was massive organizing to elect individuals into office to regain some level of governance. There are lots of quotes in newspapers that people were very aware of what happened and the desire of people trying to fix what went wrong. They were successful, they took over the territorial legislature, they got delegates to Congress. Despite all of this because they were a territory, the Executive Branch of Governors were appointed so they were able to control a lot of what was going on including many ways the distribution of land, governance, and power went. The plantations continued to expand their power. They affirmed that the crown lands were not a thing and it was a part of the one corpus that was ceded to the US. This is just examples of what was going on while many other things were going on too. They took down the konohiki fishing system, stream diversions were expanded, suppression of language and cultural identity. These are just some examples on how there will be tremendous traumas to impacts that will persist through generations. I really like Dr. Kaholokula’s reflection in terms of understanding how the decisions made over resources, for how systems are set up can impact things like safety, availability of resources, food, education, healthcare, and how all these things can contribute to the impacts of historical determinants that we see today.

To summarize, these ceded lands that were taken during the overthrow and ceded to the US government. Native Hawaiians have never relinquished their claims and have continued to fight for their claims. If justice means addressing and fixing harms that have been inflicted, the just requires impacts to be understood and to the extent possible, to be healed. Our official policy is to oppose any ill nation of ceded lands except for very narrow situations. We’ve engage in a 15 year lawsuit to protect the ceded lands from being eliminated. The Public Land Trust (PLT) was created as a condition of Hawaii’s admission to the United States as a State. So, certain ceded lands that were transferred upon Statehood, these are subject to the PLT. The

Admission Act required that these lands be used for five purposes. 1) the betterment of the native Hawaiians but as you know after Statehood, the revenues from the PLT corpus was almost exclusively used for education instead of any of the other purposes. There was a development boom that had a huge impact on Native Hawaiian communities. Governors are now elected and there is now a democrat uprising where John Burns became Governor and he appoints William Richardson to the Supreme court and you start seeing some conscious raising, reflecting on the stigmas, the culture suppression that has been ongoing from the last several decades. Then in the 1970s, you have the second Hawaiian renaissance, the revival of cultural traditions, the desire to reconnect to things, and you see more and more political activism. These are groups that fought for DHHL, HDEA's implementation, Kalama valley evictions, Waiāhole, occupation of Kaho'olawe; this led up to the 1970 Constitution Convention. Article 12, you can really see the desire to address the ongoing impacts that stem from colonization and the overthrow. Some of the Constitution provisions included the establishment of OHA. One of OHA's task was to manage increment proceeds of the PLT basically saying that you can not spend all of the PLT money on education, some actually has to go to Native Hawaiians via an agency that elected by Native Hawaiians to cover a whole prerogative on how those funds should be spent. The legislature did specify in 1980 that the pro rata share should be 20% of all funds that derive from the PLT corpus and the OHA would be the one that expended these funds. When you say 20%, what revenues are you talking about? OHA was receiving \$1.5 million dollars a year in revenues through the 1980s which OHA felt it was very deficient. After many lawsuits, eventually we were able to come to an agreement after Governor Waihe'e became elected to see where OHA and the State could agree as to what revenues will be subject to this 20%. ACT 304 was enacted in 1990 and as you know it was repealed, but the formulas and principles in this act continue to be relevant today. They do reflect an agreement between the State and OHA on what revenue streams should be subject to the PLT to Native Hawaiians. So, they came up with this proprietary sovereign distinction, anything that the government generates from the PLT land as it can only do as a government entity, these are sovereign revenues with taxes, fees, and fines. These are sovereign so they are not subject to the PLT pro rata share but anything the government generates that any landowner can generate like lease rent, concession contracts and those kind of things. Another important thing of Act 304 was the agreement because we do not determine how the State manages the PLT lands, how they spend or maintain, or invest in these lands. The Native Hawaiians share should be off the gross and not the net revenues. The State can't deduct or say *we have to fix this structure so we don't have to give you that part of the revenues*. Again, these are the agreements that we understand today. Act 304 also included interest for back payments. We did receive a back due amount of \$103 million for the underpayment from 1980 and 1981; and under Act 304, we are getting about \$50 million a year. Act 304 represents what we agreed with the State were subject to Native Hawaiians' pro rata share. There are some things that we are in dispute such as duty free receipts in Waikīkī, the airport, hospital revenues, affordable housing revenues, and interest. We sued and actually won that lawsuit. Almost immediately, the Governor and the airlines started to say that we will bankrupt our economy. Then in the forgiveness act in 1977, was to prohibit any transfer of federally funded airport revenue outside of the airports. So, we were receiving airport revenue as part of the PLT pro rata share and in 1997, they passed the forgiveness act that says OHA can keep the money they got already but no more money goes to OHA from the airports. Again, as we know repeatedly, this was not intended to decrease the State's obligations to Native Hawaiians under the PLT but really needs to find other ways to make up for not being able to access these revenues directly. Then, the Supreme court reversed the decision and that we won and basically said that Act 304 did allow for airport receipts to be transferred to OHA; it conflicts with federal law and its own terms, its invalidated. Governor Cayetano stopped transferring any revenues to OHA. Next, Linda Lingle runs for Governor, during her campaign one of the debates there was a question about what will she do about the PLT issues and she made commitments that we were able to hold her to. We were able to get Act 178 passed in 2006 where there is an interim amount, \$15.1 million, to be transferred to OHA each year as reflective of Native Hawaiians' 20% share. There was a transfer of revenues for under payments when we weren't getting any PLT revenues.

Act 70 also requires DLNR to account for all receipts from the PLT and XEO-06. The executive order that implements Act 178, under the co, each agency accounts for 20% of the PLT revenues and transfers it to OHA. Because all of these agencies are sending us money and the amount may add up to more than the \$15.1 million a year, anything above that we must return to a carry for trust holding account. The vision was to have this as a safety measure in case there was a shortfall to the \$15.1 million. As you know, there has not been a shortfall for a very long time. The next big PLT action was Act 15, this was a recognition. After many years, we were able to come to an understanding with the State. The State owed Native Hawaiians approximately \$200 million in past due PLT revenues and based on this \$200 million evaluation, we got ten parcels of land in Kaka‘ako Makai (KM). In exchange, we said we wouldn’t sue for anymore for the money from 2012 going back. So, what do we do with these PLT revenues? How is tied into the ceded lands? This last year, we were able to indicate that 92% of our budget is derived from PLT sources. So, what we do with these monies? Part of it is invested into things like our grants. 2010-2018, \$11.8 million for our Maui Ola strategic objective, \$32.3 million for education, \$47 million economic self-sufficiency. A big part of these monies can go towards investing in these areas that actually seek to address some of these long-lasting consequences of the overthrow and the injustices. We also invest in research, advocacy, litigation, and partnerships. Every year since 2013, there has been an overage. Currently there is about \$27 million in the Carry Fortress Holding Account (CFHA). Looking at what the State has historically agreed to as being subject to Native Hawaiians pro rata share of the PLT, looking over the past ten years, the average of 20% has been more like \$40 million rather than \$15.1 million. Even if we did get all of this money, I think we should sit back and look at it as a partial remedy in terms of healing the harms that we are continuing to deal with. Recently, a big thing that has come up is proposals to lease ceded lands for 99 years at a time. If your truck is stolen and leased out for 99 years, you’ll never get it back; and even if they promise you 20%, they’re really just giving you 7% maybe. Until Native Hawaiian claims are addressed and resolved, ceded lands need to be properly maintained and definitely not sold and not leased for a century at a time; and justice means not just addressing the theft of ceded lands but also addressing results in harms that occurred when these lands were stolen. To emphasize where OHA fits in for the ceded lands part of our task, is to hold title to land entrust for Native Hawaiians, exercise control over these lands, our statutory responsibility includes the bettering the conditions of Native Hawaiians, looking at other agencies advocating for Native Hawaiians, and serve as a reciprocal for reparations. Really, what you see is the kuleana of OHA to seek justice and to seek reconciliation. So, adjusting impacts of the loss of ceded lands by receiving lands and reparations and holding agencies accountable to justice and reconciliation. It is not just money that is needed to remedy these historical losses but land itself including respective sovereignty. If we lose the ceded land corpus, we lose the basis of reconciliation, just one of our reasons for existing. In this arc of history, OHA has fought to uphold our governance claims. Again the PLT is held by the State as oppose to Native Hawaiians. The Constitution confirms there has to be some benefit that *inaudible* to Native Hawaiians from the PLT, and the Board of Trustees are tasked to manage and have prerogative over those revenues. In regard to PLT, our kuleana is to receive and exercise prerogative over the Native Hawaiians’ full PLT share subject to fiduciary obligations; not just to take what we get but to seek to make sure we’re getting what we are supposed to be getting. Beyond just the justice, issues and concerns on the broader level, I think there is a growing recognition that the traditional consequences to the pae ‘āina is interconnected as holistic as a public trust to something that more and more people are recogzining as maybe key to our future wellbeing in terms of environmental, health, climate change, social economic, and food security. The reason to extent that, we can restore Hawaiian governance to these lands and that may be a way to restore this traditional understanding of ‘āina vs. Land. This past session there was a measure to increase the \$15.1 million pro rata share amount that was suppose to be an interim amount from 15 years ago. It would have lifted that \$15.1 million cap and trasnfer the CFHA funds to \$27 million and establish a negotiating committee. We supported this bu tit died in the House. There was a similar bill that would do that but it would divert the PLT revenue to the Department of Hawaiian Home Lands (DHHL). We did not like this and fortunately it did not pass. The takeaway is Native

Hawaiians have never relinquished their claims to the ceded lands. These lands must be properly protected or these claims could be lost, and justice requires looking at the harms that have arose from the theft of ceded land and healing those harms as well. This one step towards justice and upholding it's part of this bigger picture of trying to seek justice. When you look at how it was created and by who it was created and what our roles and obligations are, our existence is really a part of a continuous 100 year old fight for justice of theft of 'āina and governance. Things reflect on what we've done and what we can do. We have met with legislators, advocates, we've created action alerts on major bills, we research and education, and potential legal interventions that we explore. In the meantime, looking at the opponent, we can support our beneficiaries, empowering them, making sure they have the knowledge and tools they need to advocate. That is the presentation. I know it's a lot of information but it's important to have a big comprehensive picture of these major issues and our role in seeking justice. I'm happy to answer any questions.

Trustee Ahu Isa I wanted to wish you well. I was in the House when Cayetano did that, he stopped all the payments. I was so mad, I switched parties. It was horrible. Anyway, going back to this, the airport revenues, they were mean to take that out so that made our share even smaller. I know since I've been elected, we have been trying to work on this together. We have that negotiating committee and we've met only once. I've made copies for the trustees about when will we meet again. What happen to that committee? I think Jocelyn was mentioned in that Civil Beat article I sent you. So, its still alive or it's dead? Now, with a new election year different people get elected into office. Representative Holt knows about it. What happened to that?

Wayne Tanaka, Public Policy Manager The committees deadline expired. We took a break in 2017. In terms of including stuff from the package was to include your work with the negotiating committee to convert the proposal, they could then go forth in 2018. They never met and the timeline expired. That is when we put our PLT bill. We wanted to lift the cap, get back to transfer the CFHA, and establish the negotiating committee via the bill so that it would be more forceable. The negotiating committee would meet periodically so that we would not have to wait 15 years just to get an update on the PLT amount.

Trustee Akaka I just want to say mahalo for your thorough presentation and for all of your good work through the years. Mahalo nui Wayne.

Wayne Tanaka, Public Policy Manager Thank you Trustee.

Trustee K. Lindsey Question about the airport revenue, could a future Federal Act mandate the State to pay those revenues again since the existing one stopped it? I know it's a process to get there but just hypothetically speaking.

Wayne Tanaka, Public Policy Manager It has been something that has come up in discussion before. Any airport that gets federal monies can't divert it's revenues outside of the airport. Without impacting what is in place, you would have to come up with something to carve out specifically for Hawai'i to find the exception for that. It's one option to look at to get revenues that should be acoounted for in terms of the 20%. We still need to address the cap issue, right now its \$15.1 million. If the State made more money from all over the place, we are still going to get only the \$15.1 million.

Chair Hulu Lindsey Was that Federal Act only related to Hawai'i's airports?

Wayne Tanaka, Public Policy Manager There is a general overarching requirement that applies to all airports and even though it was interpreted differently prior to '96-'97, they looked at this old law and said the airport revenues can't be diverted like Act 304 and how OHA is saying it should be accounted for. The

pro rata share should come from the airports too. The forgiveness Act specifically looked at saying OHA doesn't have to give the money back but it affirms the new interpretation at the time that Federal revenues of federally funded airport revenues can't go outside of the airport, effectively that cut us off from receiving all PLT revenues from the airport.

Trustee Ahu Isa I got a text from a beneficiary that is watching us today. He said while the presentation is good, at the end of the day what does it matter? What do we do now? That is where planning and strategy comes in. Does OHA have plans?

Chair Hulu Lindsey I think we can tell our beneficiaries that we are looking at this very seriously for the next legislative session and strategizing what are next moves will be. The reason I asked about that Act is because I was wondering if we could repeal the portion that affects Hawai'i? Our islands are different from any place else in the Forgiveness Act. Just food for thought. Any more questions?

If not, Wayne, thank you for bringing us up to date. We are going to miss you and we wish you well in your next journey. Mahalo nui.

Executive Session

Chair Hulu Lindsey Can I get a motion to recuse ourselves into Executive Session pursuant to HRS§92-5.

Trustee Akaka Moves to recuse into Executive Session.

Trustee Ahu Isa Seconds the motion.

The Board recuses into Executive Session at 11:07 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	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			X			
TRUSTEE JOHN WAIHE'E						

CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			8			
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with eight (8) YES votes and zero (0) EXCUSED vote.						

Board returns to open session at 12:08 p.m.

Announcements

Chair Hulu Lindsey Our next BAE meeting is on October 13, Wednesday. On the October 19th, we have an RM meeting.

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						
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 12:12 p.m.

Respectfully submitted,

Lehua Itokazu
Board Secretary

As approved by the Board of Trustees on XXXXX 2021.

Carmen Hulu Lindsey
Chairperson, Board of Trustees

Attachments:

1. PLT - PowerPoint

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.

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
October 21, 2021

ATTENDANCE:

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

BOT STAFF:

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

ADMINISTRATION STAFF:

Sylvia Hussey, Ka Pouhana / CEO
Casey Brown, Ka Pou Nui / COO
Raina Gushiken, CC
Everett Ohta, CC
Ramona Hinck, CFO
Kevin Chak, IT
Erin Nakama, IT
Kalani Fronda, Land Director
Kai Mana Peres-David, HR Director
Robert Klein, Board Counsel

GUEST:

Patricia Talbert
Sam Chung, Financial Advisor to the BOT
K. Veto Baker
Peter Gilpatric
Linda Schatz
Michael Yee
Tai Pa

Call to Order

Chair Hulu Lindsey Calls the Board of Trustees Meeting to order for Thursday, October 21, 2021, at 10:02 a.m. Board Secretary please do a roll call.

MEMBERS			Present	TIME ARRIVED
TRUSTEE	LEINA'ALA	AHU ISA	X	
TRUSTEE	DAN	AHUNA		Excused
TRUSTEE	KALEI	AKAKA		Joins mtg. at 10: 03 am
TRUSTEE	KELI'I	AKINA	X	
TRUSTEE	LUANA	ALAPA	X	
TRUSTEE	BRENDON KALEI'ĀINA	LEE	X	
TRUSTEE	KEOLA	LINDSEY	X	
TRUSTEE	JOHN	WAIHE'E	X	
CHAIRPERSON	CARMEN HULU	LINDSEY	X	
			7	

At the Call to Order, **seven (7)** Trustees are PRESENT, thereby constituting a quorum.

Chair Hulu Lindsey Thank you Trustees. Due to the threat of COVID-19, Governor Ige issued the most recent Emergency Proclamation related to COVID-19 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. 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. Robert Klein-our Board Counsel is also with us today. I will now call on our Pouhana, Sylvia to announce who is joining us from administration.

Sylvia Hussey, CEO Thank you Chair and good morning Trustees, Chair, we have COO-Casey Brown, CFO-Ramona Hinck, Senior Legal Counsel-Raina Gushiken, Assistant Senior Legal Counsel-Everett Ohta, Kalani Fronda-Land Director, Kai Mana Peres-David-HR Director, as well as our IT staff-Kevin and Erin. We also have a number of guest on with us that will be introduced a little later.

Public Testimony

None

Community Concerns

Patricia Talbert Aloha kākou, my name is Patricia Medina Talbert. I am here because several friends sent the RFP regarding legal services for OHA. I reviewed this and in my opinion, I do not qualify. My purpose of being here today is not to ask for special treatment. Today, I am going to speak to you about a few things in the time allotted. One, I will point out some of the challenges I see making it difficult for some of us to apply. Also, to offer some suggestions for improvement. I have been in practice for thirty years during that time I have been a partner, a law professor, special assistant-Attorney General, as well as a member of the Bench. When I got on the Bench, Mililani Trask said to me, you are the first part Hawaiian/Asian woman on the mainland to be appointed at the level. She and I also practiced together, we represented men who were victims of pedofiles while they were at Kamehameha Schools Institution, both she and I attended. In my practice, I represented plaintiffs in civil rights cases; I've also been corporate counsel; I have litigated everything from trade secrets, criminal-felony crimes, bankruptcy, labor and employment law, and just about anything you can imagine. I am pointing this out because again, I cannot qualify to apply. Let me give you some background of why that is. First of all, it's the pool that we have in Hawai'i. There are about 42,000 of us, about 77% are in one or two attorney law firms, the minority 23% are in larger firms between three and 77 attorneys. I believe that the majority of us, about 3,000 of us, could not apply for this RFP even though we might have the qualifications because we cannot meet your requirements that one lawyer provide all of the legal services you need on topics as well as we do not have the office facilities or the support staff. In bigger firms like a firm of 77 attorneys, they can assign lawyers, they can hire for it to learn about the practices you need. So, what does that mean in terms of the problems I see with this RFP as a civil rights attorney? This is almost like a dream come true because inherent in this RFP are what we call institutional discrimination or put in another way, patterns and practices of discrimination at about discriminatory consequences. What do I mean by that? First of all, let's look at the RFP itself. The RFP, as I said already, requires that your firm have certain expertise. I'm not saying you're not entitled to that expertise, but it's going to be very rare that you're going to find in a law firm, one or two lawyers again, 77% of the practice to have that expertise. Again, it falls to the larger law firms to have that expertise as well as the facilities. Next, the contract is 29 pages, I read it. I'm going to give you three examples of why that contract is in simple language, unlawful possibly for a lawyer to sign. One of the issues and again this is just an example, this contract is to be supervised and monitored by two individuals, the Chair of BOT and the contract Administrator. Both of those people, neither are listed as attorneys admitted to the practice of law. As lawyers, we are not permitted under the code of professional conduct, to be supervised by non-lawyers. When that happens, we're not allowed to have our legal judgement impacted by non-lawyers and with a non-lawyer trying to supervise this is arguably engaging in the unlawful practice of law, that's number one. Number two, you want women and minority business law firms or businesses to respond, there's no way that can be. There's no path to doing that in this RFP. If you choose a larger law firm, there is no procedure by which a larger law firm can engage women or minority owned business again, which is usually one or two attorney practices to participate in this. The last issue is indemnification, you can't have a lawyer worrying about indemnifying everybody and represent you. I have 15 seconds left. I was prepared to give some recommendation for improvement, but my time is done. The reason I'm here is that I believe I support the Office of Hawaiian Affairs and I do believe in all of you Trustees, thank you.

New Business

A. Committee of Beneficiary Advocacy and Empowerment

1. Action Item BAE # 21-05: Approval of OHA participation in the appeal and administrative proceedings related to the Nā Wai 'Ehā Surface Water Use Applications, Integration of Appurtenant Rights, and Amendments to the Interim Instream Flow Standards Findings of Fact,

Conclusions of Law, and Decision and Order, dated June 28, 2021, of the Commission on Water Resource Management (CCH-MA 15-01)

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

Trustee Akaka Your Committee on Beneficiary Advocacy and Empowerment, having met on October 13, 2021 and after full and free discussion, recommends approval of the following motion to the Board of Trustees:

Motion 1:

Action Item BAE # 21-05: Approval of OHA participation in the appeal and administrative proceedings related to the Nā Wai ‘Ehā Surface Water Use Applications, Integration of Appurtenant Rights, and Amendments to the Interim Instream Flow Standards Findings of Fact, Conclusions of Law, and Decision and Order, dated June 28, 2021, of the Commission on Water Resource Management (CCH-MA 15-01);

Trustee K. Lindsey Seconds the motion.

Trustee Akaka motions to						
Action Item BAE # 21-05: Approval of OHA participation in the appeal and administrative proceedings related to the Nā Wai ‘Ehā Surface Water Use Applications, Integration of Appurtenant Rights, and Amendments to the Interim Instream Flow Standards Findings of Fact, Conclusions of Law, and Decision and Order, dated June 28, 2021, of the Commission on Water Resource Management (CCH-MA 15-01);						
Trustee K. Lindsey Seconds the motion.						
	1	2	‘AE (YES)	‘A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE DAN AHUNA						Excused
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			8			1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with eight (8) YES votes and one (1) EXCUSED vote.						

Chair Hulu Lindsey Next on the agenda is item B. I will not turn the time over to our CEO, Sylvia Hussey.

B. Workshop: COVID-19 Vaccination and Testing Policy for the Office of Hawaiian Affairs and its Implementation by Administration

Sylvia Hussey, CEO Thank you Chair. Good morning again Trustees, we'll have Senior Legal Counsel, Raina Gushiken and HR Director, Kai Mana Peres-David to walk us through the overview and then the discussion is yours to have and ask questions.

Raina Gushiken, Sr. Legal Counsel Thank you and good morning, Madam Cahir and Trustees. I will be presenting on the proposed policy from administration regarding Covid-19 vaccination and testing, and so, if you give me a moment, I'll share my screen to start the presentation. Okay, I'll give an overview again of the proposed policy. Kai Mana, our HR director, and I will be available for any questions during the presentation and afterwards. I do want to give a caveat that there are some changes already that we've recognized, we need to make to the policy in light of the fact that OHA has recently completed the purchase of two commercial properties added to our portfolio and that's of course 501 Sumner Street and 500 North Nimitz Highway. We do plan, after this workshop, to bring to the board and action item seeking approval of the policy and I believe, subject to confirmation by Chair Hulu Lindsey and Ka Pou Hana on the scheduling, the anticipated date for that action item would be the November 4th Board meeting. With that I'll begin with respect to the policy, what is the why of the policy, the purpose? First and foremost, as has been the intent since the beginning of the global pandemic, we've instituted safety measures to ensure and maintain safe, healthy, and productive work environments for our employees, for our beneficiaries, and visitors alike. So, instituting a policy with regard to vaccination and testing would be an additional measure of mitigation to stop the spread of Covid-19.



Second, we know that vaccinations, the data has shown that vaccinations are safe, they work, and vaccinations play an important role in preventing severe illness and death in those who contract Covid-19. Finally, instituting a policy would align OHA with regulations regarding vaccination and testing requirements that are already in place at the Federal level, the State level, and at the County level. This Board is aware of Governor Ige's emergencies proclamations, executive branch and county employees to attest to their vaccination status and in lieu of not being vaccinated then they were required to do weekly testing. The counties instituted their own respective policies. I understand with Honolulu, the county, it was a vaccination requirement if they received a medical or religious exemption then testing was allowed but, again, OHA's policy, the recommendation is to require vaccination or testing. The policy would align with Federal and State vaccination requirements with respect to government contractors. Under Ka Pou Hana's operational directive following the Governor's emergency proclamation, any contractors who perform work on site at OHA are required to attest to the status and identify the employees that are going to be performing work at an OHA worksite. Then confirm that these employees are either fully vaccinated or have provided a negative Covid test result before coming onsite to perform work. For example, we already have attestations from contractors to perform janitorial cleaning services and repair maintenance work at our OHA worksites. Finally, the policy would also align OHA with the state's vaccination and testing requirements for visitors to state facilities. As you may be aware from watching

the news, for example, to visit the Hawai'i State library visitors are required to provide proof of being fully vaccinated or a negative Covid test result. That is the why of the policy.

What is the policy recommendation?

The policy recommendation is to enter an OHA work site, all employees and visitors are required to provide proof of being fully vaccinated or provide a negative Covid-19 test result that was issued within the last 72 hours.

Who would be required to follow the policy and who does the policy apply to?

It would apply to OHA employees. An employee would be any full time, part time, compensated or un-compensated individual that would include any of our executives, directors, our managers, our staff, temporary-emergency 89-day hires as well as casual hires that hired by the Office of Hawaiian Affairs. An employee would also include our trustee aides and our trustees are members of the board of trustees and volunteers who work with OHA. This definition of employee is consistent with obviously the State executive branch employees who are required to be fully vaccinated or submit to weekly testing at the respective State agencies. State judiciary is requiring all of its employees, judges to provide proof of vaccination or submit to weekly testing and both houses of our legislature. The State Senate and House have a similar policy in place for their members and employees. Additionally, the University of Hawai'i in its own policy for vaccination and testing, its definition of employee includes members of the board of regents.

Who is a visitor?

A visitor would be any person entering an OHA work site, who is not a State employee and the distinction here is obviously because all branches of State government; judiciary, executive, and legislative branches have already instituted some form of a vaccination or testing policy. So, if a State employee from another agency, for example Department of Land Natural Resources (DLNR), is going to do a site inspection at one of our OHA properties then the policy would not apply to them. We would not request them to show proof of vaccination or negative Covid test result because they've already done that to their respective agency and department. A visitor would include any of our vendors, contractors, employees of vendors and contractors. The policy would not apply to persons under the age of 12, that is children 11 and under because they are not eligible to be vaccinated at this time. The policy would not apply to individuals who are making deliveries at an OHA work site. For example: FedEx or UPS or a process server serving a legal document on OHA where they are only going to be temporarily at our OHA worksite, to be on site for no more than 10 minutes at a time.

What is an OHA worksite?

An OHA work site is any physical location or destination, where our employees will be interacting and conducting, interacting with the public and conducting official OHA business. We've identified the 15 locations that you are familiar with from the daily wellness check that all of us are doing through the lumi site wellness application. I want to note that we would add to this definition of OHA worksite the two new recent properties that were purchase by OHA.

Chair Hulu Lindsey How are we going to implement those public sites that we just purchased?

Raina Gushiken, Sr. Legal Counsel Good question. I am getting to that section now on the how it would be implemented. Employees and visitors in order to show proof of full vaccination for employees, they would send

to OHA HR via email a copy of their vaccination card. It would get checked and verified by HR, our employees could also send an email to HR, a digital copy of their vaccination status using the publicly available health status application such as the state of Hawaii smart health card. For those who have traveled out of state, they may be familiar with that application already. For OHA employees, they will also be able to upload an image of their vaccination card through the Lumi site application and that feature is being worked on as we speak, and will be made available to both employees and visitors alike; and so for visitors to OHA again, can show proof of their full vaccination status by showing the hard copy of their vaccination card or a digital copy to the OHA employee that they are meeting onsite and/or upload an image of their vaccination card through the Lumi site or application since all visitors and employees would be still subject to the daily wellness check in. For those employees and guest that would like to provide a negative test result then similarly employees would email to OHA HR documentation evidencing their negative test result. For our visitors, again they would show to the OHA point of contact a hard copy or digital copy of their documentation showing their negative Covid test result. For both employees and visitors, they would have the ability to upload documentation of their negative test results through the Lumi site OHA application.

Implementation	Any documentation related to vaccination status or test results obtained for purposes of this policy shall not be disclosed to individuals other than as necessary to ensure compliance with this policy or as required by law or court order.
	Policy will be effective upon Board approval
	Administration will communicate implementation date and requirements of the policy to employees
	When OHA re-opens to the public, Administration will communicate the requirements of the policy through available modes of external communication
	The policy will be updated by Administration on a regular basis as medical guidance and regulatory requirements change

In terms of when and how this policy would be implemented, any documentation or information regarding an employee or visitors vaccination status or test result will be kept private and remain confidential for purposes of this policy. They will not be disclosed unless necessary to ensure compliance with the policy or required by law or court order. The policy would be required by law or court

order. The policy would be effective upon approval by the Board. In terms of an implementation date, administration would make that determination so that we can provide a detail of the policies to our employees and form them accordingly. There are frequently asked questions that have been prepared to accompany this policy once approved. Any training that is necessary for employees to be able to use the Lumi site application to upload their vaccination or test results for verification, that kind of training would be provided before hand before implementation of the policy. Similarly, when OHA reopens its doors to the public, administration will communicate the requirements of the policy through the available means of external communication and, for example, there is a page on OHA's website with respect to Covid-19, so information regarding the policy could be linked to that section OHA's webpage. Finally, the policy would be amended by administration on a regular basis to comply or be consistent with medical guidance from the CDC and the Department of Health as well as any regulatory requirements effectuated through the Governor, through emergency proclamations or as needed at the County level as well. With that, we open ourselves up to any questions that you may have.

Trustee Ahu Isa Question, an employee who is required or directed to report to an OHA worksite but who is less than fully vaccinated and has not been tested must notify the supervisor that they are not able to report, the employee may be subject to the appropriate corrective progressive disciplinary action. What does this mean? Does this mean unpaid leave, laid off, or like HPD, where they get fired if they do not comply?

Raina Gushiken, Sr. Legal Counsel Thank you Trustee Ahu Isa. I will ask Kai Mana to answer that question from HR.

Kai Mana Peres-David, HR Director Yes, mahalo Raina. Basically, any response to employee non-compliance would be guided by the employee handbook which outlines the agencies protocols on progressive disciplinary action. Typically, that would mean some type of verbal warning first, as opposed to outright suspension or termination. I do want to emphasize, all people related cases do matter, every situation is unique

and so the circumstances surrounding a particular non-compliance incident would need to be reviewed before determining what type of corrective action is appropriate.

Trustee Ahu Isa That was my question. You said the steps that we have to go through. Have we come across anybody that refused to take it?

Kai Mana Peres-David, HR Director At this time because there is not an official policy in place, we haven't had to address incidents like that but I would say that approach of progressive disciplinary action is what we would typically use with regards to any incident of non-compliance regardless of what policy we are talking about. That would be the precedence that's been set and the practice that we would follow.

Trustee Ahu Isa I'm interested. The DOE has their own, HPD, City and County have their own so we follow the State, the Governor. Some are put on unpaid leave and many retire, this is what I gather from what I'm reading. So that's what I wanted to know, if its not in our policy, do you have it in our HR written down somewhere? If they don't comply first, put them unpaid leave, if we don't have that then how do we approve a policy? Anyway, that is my question. Mahalo.

Trustee Lee Raina, with the amendments you folks are suggesting to add our new properties into this policy, how exactly does that work for visitors? Based on the definition in front of us, the shoppers at our commercial properties would be visitors and the current emergency mandate does not require people shopping to provide any of this type of documentation. Also, I am curious about our industrial property that was purchased, I don't know if those companies have any policies in place for their own employees that are working there. Also, the Lumi site, if you are going to have a meeting in Honolulu, how do we communicate to all these people that you have to download this Lumi site app?

Raina Gushiken, Sr. Legal Counsel Thank you Trustee Lee, that's a good question. We did discuss that in Corp counsel. We do recognize that with the addition of these two properties to our portfolio, the policy essentially would be because we have Nā Lama Kukui (NLK) and we lease a space and we are a tenant in NLK. The policy applies to OHA's office space in NLK but the policy will not apply to lets say the restaurant downstairs in NLK. The policy will not apply to the ballet studio in NLK because those tenants are responsible for those spaces that they lease and ensuring whatever safety protocols are necessary for their customers and their visitors. Same for the Ross, Longs, and PetSmart property, the policy would not apply to visitors and customers of those lease spaces because it would be the responsibility of the tenant. Whatever safety protocols they want to institute to protect and ensure the safety of their visitors and customers then that is their kuleana. For any of our properties that are vacant, for ex: 919 Ala Moana Blvd, AAFES building or the 501 Sumner Street property, they are vacant. If an OHA employee is going to go to that work site, then our OHA employee is subject to the policy. If a vendor is meeting our OHA employee at the vacant property, then the vendor would be subject to the same policy.

Trustee Lee So, those exemptions will be noted in the policy, right?

Raina Gushiken, Sr. Legal Counsel Yes, thank you for that. It is a change that we will be incorporating, we recognized after we submitted the information for the Board to consider, that was something we knew we needed to make changes to and clarify.

Trustee Lee Thank you Raina.

Trustee K. Lindsey Raina, did I hear correctly that at a certain point when our employees meet with non-State folks at NLK, they're going to be the ones verifying vaccination or negative Covid test results?

Raina Gushiken, Sr. Legal Counsel Yes, and we will be providing information on how our employees can verify that information. We have a frequently asked questions that would accompany the policy for our employees as well as visitors alike so that they can know the steps to go through in terms of verifying a vaccination card for vaccination status. Similar for any of us that have gone to a restaurant and dined in locally, upon arrival who ever is at the door would be asking for the visitor's ID and vaccination card. Our staff will be asked to that.

Trustee K. Lindsey That was going to be my question, how we're going to help our folks in those situations and make sure things are going smoothly.

Raina Gushiken, Sr. Legal Counsel Yes, we would ensure that whatever training is necessary to inform our employees that would be meeting on site with visitors or beneficiaries on the steps to go through to verify vaccination status or negative Covid test results. Thank you, Trustee.

Colin Kippen, COS I have a question. Did I hear you correctly, that if it is a State employee that they will automatically be granted a waiver simply because they're a State employee visiting our facility?

Raina Gushiken, Sr. Legal Counsel Essentially yes, because they've already tested. If they have to come to their own work site say at the Department of Land and Natural Resources, they've already had to attest to their respective department, you know HR or department head, that they are either fully vaccinated or negative Covid test result. So, if they are checking in at DLNR and then coming to OHA to do a site inspection then they've already gone through that process. Nevertheless, obviously, if you know our OHA employee who is meeting them wants to ask then they're not prohibited from asking, and we would expect that another State employee would be able to provide that information upon request. Similarly, when an employee goes to another State agency and our own employees are asked can you verify?

Colin Kippen, COS Is it assumed that so, for example if an individual chose not to be vaccinated, it sounds like the assumption is on a normal five-day work week they probably would have to be tested twice right because, the test would expire after 72 hours right? Is that the thinking?

Raina Gushiken, Sr. Legal Counsel So, the testing would be weekly. The test sample has to be done 72 hours prior to the first day of entry during the work week for our employees.

Chair Hulu Lindsey Raina, I see one loophole in the exemptions under visitors in your definition, the 10 minutes allowed for anybody delivering stuff is a dangerous thing because if they're Covid positive, it doesn't take 10 minutes for them to pass it on to someone. To have someone exempted to come into OHA's offices and expose themselves to anyone of our employees, how do we prevent that?

Raina Gushiken, Sr. Legal Counsel Thank you for that question, Chair Hulu. The definition does not apply to the people making deliveries as consistent with the States definition and requirement for visitors to a State facility, it is also consistent with the County. So, it is working within that parameter and also the duration of 10 minutes is tracking CDC guidance in terms of what is a close contact and the duration for a close contact.

Chair Hulu Lindsey One of my colleagues just reminded me that all delivery people should be masked anyway while on the premises.

Trustee Lee Yes, sorry Chair. That's what I was going to say. All of our properties have a mask mandate. Even if they're going to be here for just two minutes, they're suppose to be masked when they come on the property.

Chair Hulu Lindsey Right, thank you.

Trustee Akina Thank you Raina. I'm looking at your PowerPoint page on employees, visitors proof of full vaccination. You list three options, one of the options is to email or show the evidence of the full vaccination, another option is to upload to the Lumi site OHA application. Will both of these options be required of the employee or either of those options?

Raina Gushiken, Sr. Legal Counsel It is meant to be an either trustee, that any one of the three options available would be available to our employees.

Trustee Akina Thank you.

Chair Hulu Lindsey I do want the Trustees to know that I purposely did not agendize an action item today on this policy because I do think you should have the opportunity to think it over, but it will be on our next agenda so, thank you. If there are no more question, we will move on to item V.

Executive Session

A. Consultation with Board Counsel Robert G. Klein re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities with respect to executive session minutes, pursuant to HRS§92-5 (a)(4)

B. Approval of Executive Session Minutes

April 22, 2021

June 2, 2021

May 20, 2021

June 17, 2021

C. Action Item BAE # 21-05: Approval of OHA participation in the appeal and administrative proceedings related to the Nā Wai 'Ehā Surface Water Use Applications, Integration of Appurtenant Rights, and Amendments to the Interim Instream Flow Standards Findings of Fact, Conclusions of Law, and Decision and Order, dated June 28, 2021, of the Commission on Water Resource Management (CCH-MA 15-01). Consultation with Pamela Bunn, Esq. and Everett Ohta, Esq., re: questions and issues pertaining to the boards powers, duties, privileges, immunities, and liabilities, pursuant to HRS § 92-5(a)(4).

D. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities with respect to the legal aspects of the potential future use and development of the Office of Hawaiian Affairs' commercial properties pursuant to HRS§92-5(a)(4).

Chair Hulu Lindsey Can I get a motion to recuse ourselves into Executive Session pursuant to HRS§92-5.

Trustee Akina Moves to recuse into Executive Session.

Trustee Ahu Isa Seconds the motion.

The Board recuses into Executive Session at 10:47 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	X			
TRUSTEE DAN AHUNA						Excused
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			
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			8			1
MOTION: <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED						
Motion passes with eight (8) YES votes and zero (1) EXCUSED vote.						

Board returns to open session at 12:28 p.m.

Announcements

Chair Hulu Lindsey We have two Board meetings added that will take place next week Tuesday, October 26th at 11 am and Thursday, October 28th at 9:30 am.

Trustee Lee Point of inquiry Madam Chair. Why the two board meetings? How come the one item on Tuesday can not be taken up on Thursday?

Chair Hulu Lindsey Because I am going to appoint a Permitted Interaction Group (PIG) on Tuesday.

Trustee Lee Okay and we can’t do that on Thursday in one Board meeting?

Chair Hulu Lindsey Actually the report will be dropped on Thursday.

Trustee Lee Oh, got it. Thank you, Madam Chair.

Chair Hulu Lindsey I want to announce that three trustees are going to a Women’s conference in Tennessee. Trustee Alapa, Trustee Akaka, and myself. I did invite Trustee Ahu Isa but she said she wasn’t interest in going.

The expense is being paid by the conference and I ran it by the ethics commission and they did say that its okay. So, I'm just informing the Board that we will be absent the second week of November. Otherwise, I'm asking for an adjournment.

Adjournment

Trustee Akaka Moves to adjoun the meeting.

Trustee Alapa Seconds the motion.

Adjournment							
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA						Left mtg at 12:15pm
DAN	AHUNA						Excused
KALEIHIKINA	AKAKA	X		X			
KELI'I	AKINA			X			
LUANA	ALAPA		X	X			
BRENDON KALEI'AINA	LEE			X			
KEOLA	LINDSEY			X			
JOHN	WAIHE'E			X			
CHAIR CARMEN HULU	LINDSEY			X			
TOTAL VOTE COUNT				7			

Chairperson Carmen Hulu Lindsey Adjourns the Board of Trustees meeting at 12:32 p.m.

Respectfully submitted,

Lehua Itokazu
Board Secretary

As approved by the Board of Trustees on XXXXX 2021.

Carmen Hulu Lindsey
Chairperson, Board of Trustees

Attachments:

1. PLT - PowerPoint

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 Response, dated August 5, 2021 that suspend 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 or listen by phone: (213) 338-8477

Minutes of the Office of Hawaiian Affairs
Board of Trustees
MINUTES
October 26, 2021

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

BOT STAFF:

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

ADMINISTRATION STAFF:

Sylvia Hussey, Ka Pouhana / CEO
Casey Brown, Ka Pou Nui / COO
Raina Gushiken, CC
Ramona Hinck, CFO
Kalani Fronda, Land Director
Robert Klein, Board Counsel
Kevin Chak, IT
Erin Nakama, IT

GUEST:

Sam Chung, Financial Advisor to the Board

Call to Order

Chair Hulu Lindsey Calls the Board of Trustees Meeting to order for Tuesday, October 26, 2021, at 11:00 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	X	
TRUSTEE	LUANA	ALAPA	X	
TRUSTEE	BRENDON KALEI'ĀINA	LEE		Joins meeting at 11:02 am
TRUSTEE	KEOLA	LINDSEY		EXCUSED
TRUSTEE	JOHN	WAIHE'E	X	
CHAIRPERSON	CARMEN HULU	LINDSEY	X	
			7	

At the Call to Order, **seven (7)** 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 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. 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 Let me 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, Lehua Itokazu-Board Secretary, and my Aides-Kanani Iaea and Amber Kalua. We also have our Board Counsel, Robert Klein. I will now call on our Pouhana to announce who is joining us from administration.

Sylvia Hussey, CEO Thank you Chair and good morning Trustees, Chair, we have COO-Casey Brown, CFO-Ramona Hinck, Land Director-Kalani Fronda, Senior Legal Counsel-Raina Gushiken, as well as our IT staff, Kevin and Erin, who will be supporting us this morning. Thank you.

Public Testimony

Chair Hulu Lindsey Do we have anyone signed up for public testimony or community concerns?

Board Secretary No, not at this time.

New Business

Action Item BOT #21-14: Approve the Formation of a Permitted Interaction Group to Investigate the Initial Steps in the First Phase of Work for the Development of Kaka'ako Makai.

Chair Hulu Lindsey I will now move on to new business, item IV.A. I am appointing a Permitted Interaction Group (PIG). The membership of the PIG will be Trustee Hulu Lindsey, Trustee Ahu Isa, Trustee John Waihe'e, and Trustee Akaka. Trustee Hulu Lindsey will serve as the Chair of the PIG and Trustee Ahu Isa will serve as the Vice Chair. Casey Brown will function as the Project Manager. Trustee Waihe'e, will you read the action item.

Trustee Waihe'e Madam Chair, I'd like to move to
Approve the Formation of a Permitted Interaction Group to Investigate the Initial Steps in the First Phase of Work for the Development of Kaka'ako Makai

Trustee Akaka Seconds the motion.

Chair Hulu Lindsey Any discussion?

Trustee Lee I have a couple of questions. Why is the BOT taking this up and not the RM? According to article eight of our Bylaws, this type of work that has to do with our land holdings, development, policy for land, and anything that basically has to do with land falls under the RM Committee. Why is the Board taking this up and why is the RM Committee not taking this up?

Chair Hulu Lindsey I have taken it under the chairs office as a result of moving it faster that way we don't have to have so many meetings. Therefore, the authority of appointing a PIG, moving the officers of the Board into the PIG, and reporting back to the Board is what I decided to do.

Trustee Lee Madam Chair, while I appreciate you trying to expedite this process, and while I recognize that, according to our bylaws, it is the purview of the Chair to appoint permitted interaction groups, I don't know how comfortable I am with us by passing our bylaws just for the sake of expedition. There was no discussion among the Board or the RM Committee for that matter of waving this matter to the BOT, so that is my first concern. My second concern is we have another BOT meeting two days from now. This PIG is going to report to us the work that it is being assigned to today, is that correct?

Chair Hulu Lindsey That's correct.

Trustee Lee Under the purview of this PIG, it says that it's going to investigate initial steps which includes activities about due diligence, objectives, vision, understanding current zoning and marketing conditions, coming up with a plan, examples of a mission, understanding constraints, entitlements, functionality, utility, and after all of that, recommend a vision and outcome, values and a long-range impact and performance of Kaka'ako Makai. My concern about this, Madam Chair, is twofold. One, that's an awful lot of work, which I'm confident that the PIG could get done, I'm not confident that it can get it done in two days. That's a monumental amount of work to get done in two days. My second concern is a lot of the purview of this permitted interaction group in the past was taken up by the entire RM Committee. In other words, the consultants that are talking in the PIG would come to the RM Committee and have an open and free discussion because it was agenized by all nine members of the Committee. Those are my two concerns of the monumental work that is being asked to be done in twenty four hours. This kind of work, in the past, was done by the entire RM Committee, not just an Ad Hoc Committee or Advisory Committee as permitted by our Bylaws formed by the RM Chair. Again, it was a free flowing discussion among all nine trustees.

Casey Brown, COO Madam Chair, I may be able to add something to help address Trustee Lee's first concern. For the first concern, the details you describe are definitely part of the first phase of work. There

will be several phases, the projection is about six phases. The stats and details you mention will be applied to that first phase of work. The PIG's purview is only on the very initial steps of that first phase. It shouldn't require a lot of time to get through the very initial steps. Those initial steps are informed by the recommendations that we got from Kuilei and we do not believe that it will require much longer than a day.

Trustee Lee I appreciate that Casey. It's not as detailed as the purview on the action item specifies as its going to be. That would've been helpful if that was laid out. Second, the work that this PIG is going to be doing is based on the input given to us from Kuilei at last weeks Board meeting in Executive Session. How is the PIG taking that up? The Board took no action, we did not approve anything and there was no vote taken to approve anything. How is this PIG going to move forward with information provided to us or an idea provided to us by the consultant hired, but the Board didn't say that is the direction we want to go in?

Casey Brown, COO My sense is that the PIG will be digesting what was provided by Kuilei and will be presenting those recommendation for the Board to officially approve. So, the PIG is the mechanism to gain the Board's approval. The PIG will be able to move very quickly and the report will ask for your approval.

Trustee Lee Okay, so now I understand. The PIG is just a redundancy. I do not mean that word in a bad way because they signed an RFP with us. They do not have to go through anybody. They can present their findings and recommendations directly to the BOT and we can act on it without another group of the BOT saying lets act on this because we have hired them. We do not have to use a PIG as a mechanism to allow them to come in and interact with Trustees. This PIG is just a redundancy step to solidify that process, is that fair to say?

Casey Brown, COO Yes, that is fair.

Trustee Lee Thank you, Madam Chair.

Chair Hulu Lindsey Board Secretary, please call for the vote.

Trustee Waihe'e motions to Approve the Formation of a Permitted Interaction Group to Investigate the Initial Steps in the First Phase of Work for the Development of Kaka'ako Makai Trustee Akaka Seconds the motion.						
	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						X
TRUSTEE JOHN WAIHE'E	X		X			

CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			8			
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with eight (8) YES votes and one (1) EXCUSED vote.						

Announcements

Chair Hulu Lindsey Thank you Trustees, our next Board meeting will be on Thursday, October 28 at 9:30 am, but we do have an RM meeting today at 1:30 pm. I will now ask for a motion to adjourn.

Adjournment

Trustee Ahu Isa Moves to adjourn the meeting.

Trustee Akaka 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 11:13 a.m.

Respectfully submitted,

Lehua Itokazu
Board Secretary

As approved by the Board of Trustees on XXXXX 2021.

Carmen Hulu Lindsey
Chairperson, Board of Trustees

Attachments:

1. Excuse Memo – Trustee K. Lindsey
2. Action Item BOT #21-14

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 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.

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
October 28, 2021

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 Keola Lindsey
Trustee John Waihe'e, IV

BOT STAFF:

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

ADMINISTRATION STAFF:

Sylvia Hussey, Ka Pouhana / CEO
Casey Brown, Ka Pou Nui / COO
Raina Gushiken, CC
Everett Ohata, CC
Ramona Hinck, CFO
Kalani Fronda, Land Director
Kurt Klein, Board Counsel
Daniel Santos, IT
Erin Nakama, IT

GUEST:

Sam Chung, Financial Advisor to the Board

Call to Order

Chair Hulu Lindsey Calls the Board of Trustees Meeting to order for Thursday, October 28, 2021, at 9:30 a.m. Board Secretary please do a roll call.

MEMBERS			Present	TIME ARRIVED
TRUSTEE	LEINA‘ALA	AHU ISA	X	
TRUSTEE	DAN	AHUNA		Joins meeting at 9:33 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 meeting at 9:42 am
CHAIRPERSON	CARMEN HULU	LINDSEY	X	
			7	

At the Call to Order, **seven (7)** 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 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. 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

Before we begin, I would like to note item IV.A. was received under the 72 hours deadline. Let me 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. Amber Kalua is serving as the Board Secretary while Lehua is on vacation. We also have Kurt Klein, representing Robert Klein, our Board Counsel. I will now call on our Pouhana to announce who is joining us from administration.

Sylvia Hussey, CEO Thank you Chair and good morning Trustees, Chair, we have COO-Casey Brown, CFO-Ramona Hinck, Senior Legal Counsel-Raina Gushiken, Assistant Legal Counsel-Everett Ohta, Land Director-Kalani Fronda, as well as our IT staff, Dan and Erin, who will be supporting us this morning. Thank you.

Public Testimony

Chair Hulu Lindsey Do we have anyone signed up for public testimony or community concerns?

Amber Kalua No, not at this time.

New Business

Report of the Permitted Interaction Group re: to Investigate the Initial Steps in the First Phase of Work for the Development of Kaka‘ako Makai, no discussion. HRS§92-2.5(b)(1)(B).

Chair Hulu Lindsey I will now move on to new business, we have before us this morning the report of the Permitted Interaction Group (PIG) regarding to Investigate the Initial Steps in the First Phase of Work for the Development of Kaka‘ako Makai, that we are dropping and no discussion. The report itself contains proprietary and confidential information and should only be released in Executive Session with proper steps taken to address the confidentiality safeguards that must be put in place. So, at this time, I would like to get a motion to recuse ourselves into Executive Session.

Executive Session

Consultation with Board Counsel Robert G. Klein re: questions and issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities with respect to the Report of the Permitted Interaction Group re: to Investigate the Initial Steps in the First Phase of Work for the Development of Kaka‘ako Makai, no discussion. Pursuant to HRS§92-2.5(b)(1)(B) and pursuant HRS§92-5(a)(4)

Trustee Ahu Isa Moves to recuse into Executive Session.

Trustee Akina Seconds the motion.

The Board recuses into Executive Session at 9:35 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		X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA			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			8			
MOTION: <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED						
Motion passes with eight (8) YES votes and zero (0) EXCUSED vote.						

The Board returns to open session at 9:40 a.m.

Announcements

Chair Hulu Lindsey Thank you trustees for allowing us to have this meeting to drop this report, I really appreciate it. The next Board meeting will be on Thursday, November 4th at 10am. I will ask for a motion to adjourn.

Adjournment

Trustee Ahuna Moves to adjourn the meeting.

Trustee Akaka Seconds the motion.

Adjournment							
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA	X		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				9			

Chairperson Carmen Hulu Lindsey Adjourns the Board of Trustees meeting at 9:41 a.m.

Respectfully submitted,

Lehua Itokazu
Board Secretary

As approved by the Board of Trustees on XXXXX 2021.

Carmen Hulu Lindsey
Chairperson, Board of Trustees

Attachments: None

Office of Hawaiian Affairs
Meeting of the Board of Trustees
December 29, 2021
10:00 A.M.

V. New Business

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

*No handouts at this time.

Office of Hawaiian Affairs
Meeting of the Board of Trustees
December 29, 2021
10:00 A.M.

V. New Business

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




ACTION ITEM


BOARD OF TRUSTEES

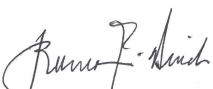
December 9, 2021


BOT #21-18


Action Item Issue: Approve and Implement the OHA Policy Framework

Prepared by:  Dec 2, 2021
Sylvia M. Hussey, Ed.D. Date
Ka Pouhana, Chief Executive Officer

Reviewed by:  Dec 2, 2021
Casey K. Brown Date
Ka Pou Nui, Chief Operating Officer

Reviewed by:  Dec 2, 2021
Ramona G. Hinck Date
Pou Kāko‘o Ho‘opono Kūikawā, Interim Controller &
Ka Pou Kihi Kanaloa Wai, Chief Financial Officer

Reviewed by:  Dec 2, 2021
Raina Gushiken Date
Ka Paepae Puka, Senior Legal Counsel

Reviewed by:  Dec 3, 2021
Trustee Carmen Hulu Lindsey Date
Ke Kauhuhu o ke Kaupoku
Chairperson of the Board of Trustees

I. Proposed Actions

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 guidelines as contained in the newly drafted Policy of Policies at Attachment B.

II. Issue

Whether or not the Board of Trustees (BOT) will approve the: A) 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 at Attachment A; and B) Policy Guidelines as contained in the newly drafted Policy of Policies at Attachment B.

III. Background and Discussion

This action item is a result of the following memos to the Board and/or Board workshops regarding an OHA policy framework: 1) - February 7, 2021 Memo - Introduction of a Proposed Policy Framework for OHA and Facilitated Discussion re: Development of a T-Level Grant Policy; 2) – May 3, 2021 Memo; 3) May 6, 2021 Presentation Workshop; 4) November 4, 2021 Presentation Workshop; and 5) November 18, 2021 Presentation Workshop.

A. Policy Framework: The Why? - Board Governance Framework. In January 2019, the Board approved the formation of a Permitted Interaction Group (PIG) to: Investigate various elements of governance frameworks and models, including but not limited to cultural, indigenous, native, national and international contexts.

The PIG was established with: 1) Trustee Brendon Kalei‘āina Lee as Project Sponsor and Chair; 2) Trustee Colette Machado as Business Process Owner and Vice Chair of the PIG; and 3)



Lahui

**Constitution,
Chapter 10**

By-Laws

Policies

**Supporting
Documents, Practices**

Figure 1: Board Governance Framework

Action Item BOT #21-18: Approve and Implement the OHA Policy Framework

Trustees Robert Lindsey¹ and John Waihee² as members. The PIG was supported by Trustee Machado, Lee, Lindsey and Waihee's Aides; and Administration, then Ka Pouhana, Kamana`opono Crabbe, then Ka Pou Nui, Sylvia Hussey and staff.

The PIG presented its final report and recommendations to the Board of Trustees (BOT) at its March 28, 2019 meeting; and on April 4, 2019, via Action Item BOT# 19-04, the BOT approved the five elements of OHA's Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

Implementation of a policy framework is a mechanism to operationalize the approved Board Governance Framework.

B. Executive Policy Manual

The Executive Policy Manual (EPM), as depicted at right, was revised by the Board of Trustees in February 2012. Subsequent policy changes (via action item) were tracked by Corporate Counsel; who also reviewed new policies developed since 2012; and the application of policy to various organization actions. CC has since incorporated all EPM impacted policy changes into one new EPM document and will issue an updated document to the BOT.

Once the new policy framework is approved, Administration will: map, crosswalk, and migrate policies and/or policy language from the EPM to the new Policy Framework, eventually sunseting the EPM document itself; and create and populate a new electronic policy framework location, accessible to internal and external stakeholders.

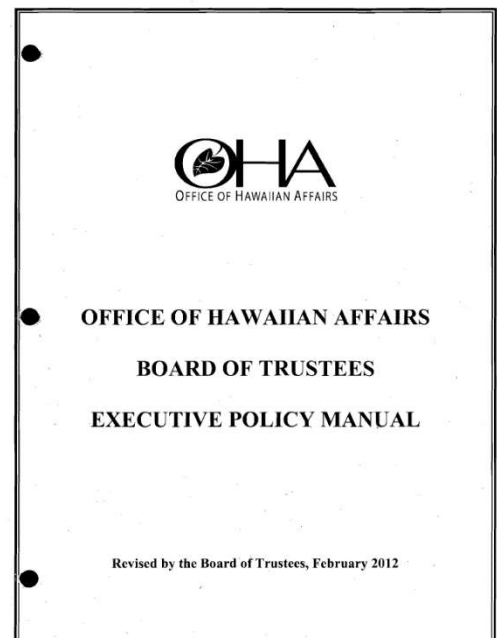


Figure 2: Executive Policy Manual

C. Policy Framework Element Development via Permitted Interaction Groups

After the approved Board Governance Framework was approved, the Board's Permitted Interaction Group (PIG) work continued.

INTENTIONALLY LEFT BLANK

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

² Chair of the Beneficiary, Advocacy and Empowerment Committee

- 1. L-Lāhui Level Policies PIG.** On April 4, 2019, via Action Item #19-05, the BOT approved the formation of a Permitted Interaction Group to investigate the development of L-Lāhui level policies for OHA's Board Governance Framework.

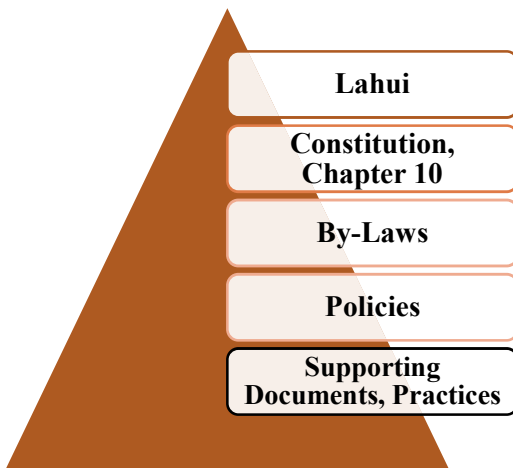


Figure 3: Board Governance Framework

The purview of the PIG was for the Board of Trustees (BOT), BOT staff and OHA Administration staff to work together to: (1) Investigate the development of L-Lāhui policies for OHA's Board Governance Framework, (2) Establish consistent policy formulation, format, review and update parameters, mechanisms and processes; and (3) Integrate the developed policies into the Board Governance Framework.

Via Action Item #19-06, at the May 30, 2019 BOT meeting, the Board approved the L-Lāhui Level Policies: (1) E Mālama (to protect); (2) E Ho'omau (to perpetuate); (3) E Pūpūkahi i Holomua (to unite in order to progress); (4) E 'Imi'ike (to seek knowledge); (5) E Ho'oulu Lāhui (to grow the Lāhui), developed in accordance with the approved PIG purview.

- 2. Board By-Laws PIG.** Via Action Item #19-07, at the May 30, 2019 BOT meeting, the Board approved the formation of a new PIG to continue the implementation of the Board Governance Framework elements. The purview of the new PIG was for the Board of Trustees (BOT), BOT staff and OHA Administration staff to work together to: (1) Investigate the alignment and update of existing BOT By-Laws and related documents; (2) Establish consistent format, review and update parameters, mechanisms and processes; and (3) Integrate the developed BOT By-Laws and related documents into the Board Governance Framework.

On October 17, 2019, the Board, extended the Board of Trustees By-Laws PIG to no later than January 31, 2020. The PIG distributed its report to the BOT at its January 23, 2020 meeting; and held discussion about the report, including the related red-line and clean attachments (e.g., by-laws, appendices), at the February 6, 2020 Board meeting. The report was discussed and one additional edit (e.g., definition of public records in Article XVI Confidentiality) made. Via Action Item BOT #20-01, at the February 20, 2020 Board meeting, the BOT By-Laws were approved after a first reading; and subsequently approved after a second reading at the March 5, 2020 Board meeting.

- 3. Incorporating PIG.** Incorporation of completed and approved work products of the Board Governance Framework and alignment and update of existing Board governance documents PIG was approved via Action Item BOT #19-08 at the May 30, 2019 meeting. The extension via Action Item #19-18 at the November 7, 2019 BOT meeting extended the work to June 30, 2020. No further action was taken to extend the end date and therefore, the time for the authorized work expired (June 30, 2020) and this PIG is closed.

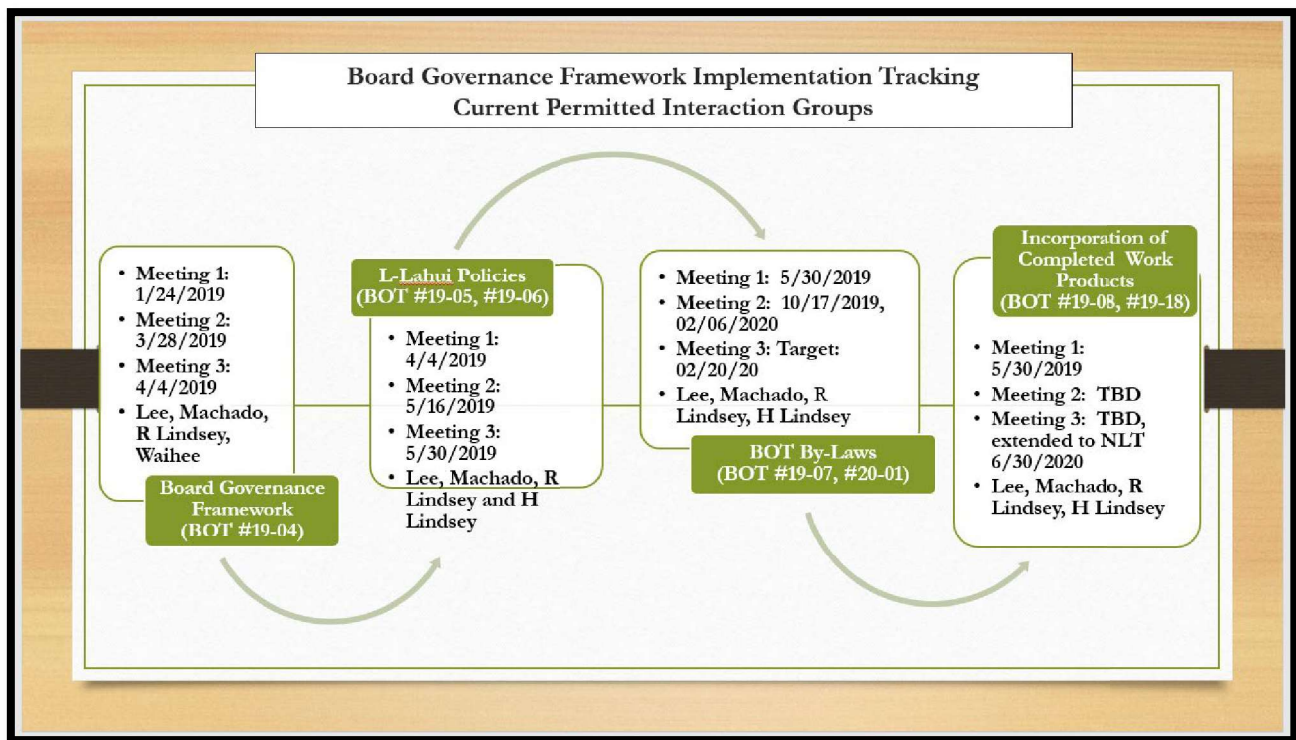


Figure 4: Board Governance Framework Development Tracking

- 4. Trustee Level Policies PIG.** Via Action Item BOT #20-05: Approve the formation of a Permitted Interaction Group to investigate the development of T-Level Trustee policies for OHA's Board Governance Framework, September 10, 2020, T-Level Trustee policy work began. The purview of the PIG was for the Board of Trustees (BOT), BOT staff and OHA Administration staff to work together to: (1) Investigate the alignment and update of existing T-Trustee level Investment, Debt, Spending, Kaka'ko Makai and development of Endowment specific policies and related documents; (2) Establish consistent format, review and update parameters, mechanisms and processes; (3) Review the implementation of the specified T-Trustee level policies; (4) Determine the scope of specified T-Trustee level policies, including delegation of policies to the C-CEO level; and (5) Integrate the specified T-Trustee level policies and related documents into the Board Governance Framework.

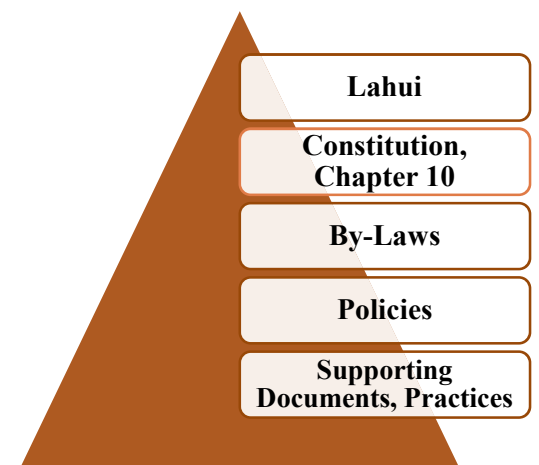


Figure 5: Board Governance Framework

Action Item BOT #21-18: Approve and Implement the OHA Policy Framework

Permitted Interaction Group – Members. The membership of the Permitted Interaction Group was: (a) Trustee Brendon Kalei‘āina Lee; (b) Trustee Colette Machado; (c) Trustee Robert K. Lindsey, Resource Management Committee, Vice Chairperson; and (d) Trustee John D. Waihe‘e, IV. Trustee Lee served as the Chair of the Permitted Interaction Group and Trustee Machado served as its Vice Chair.

Permitted Interaction Group - Term/Duration. The term of the Permitted Interaction Group expired 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 November 4, 2020.

At the October 22, 2020 Board meeting, the report was distributed and no further discussion was held at the October 29, 2020 Board meeting, as there were no recommendations from the PIG.

D. Development of Policy Framework Elements

Based on PIG work in approving the Board Governance Framework elements and the subsequent L-Lāhui level policies, BOT By-laws and the initial T-Trustee level policies work, approval of the OHA Policy Framework is comprised of the following elements: 1) L-Lāhui Level policies; 2) T-Trustee Level policies; 3) C-CEO Level policies; 4) Inventory of Policies; 5) Business

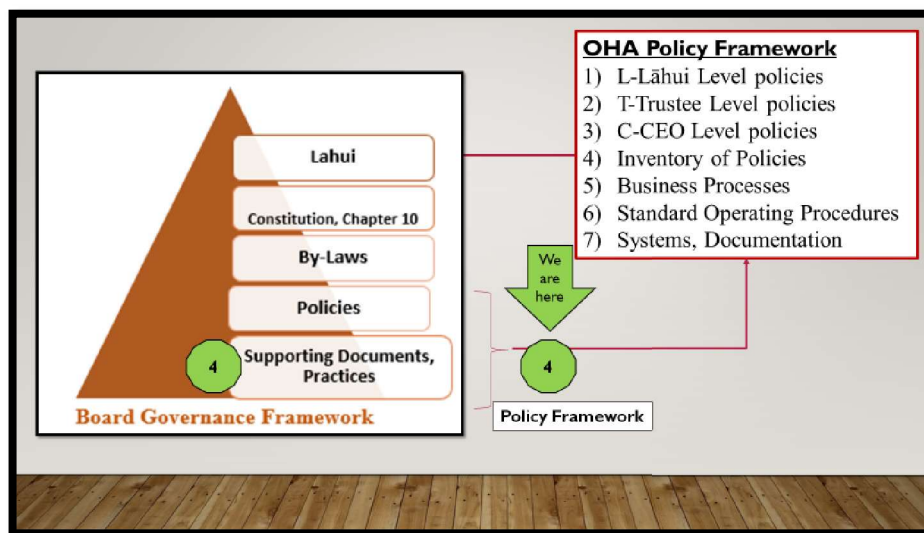
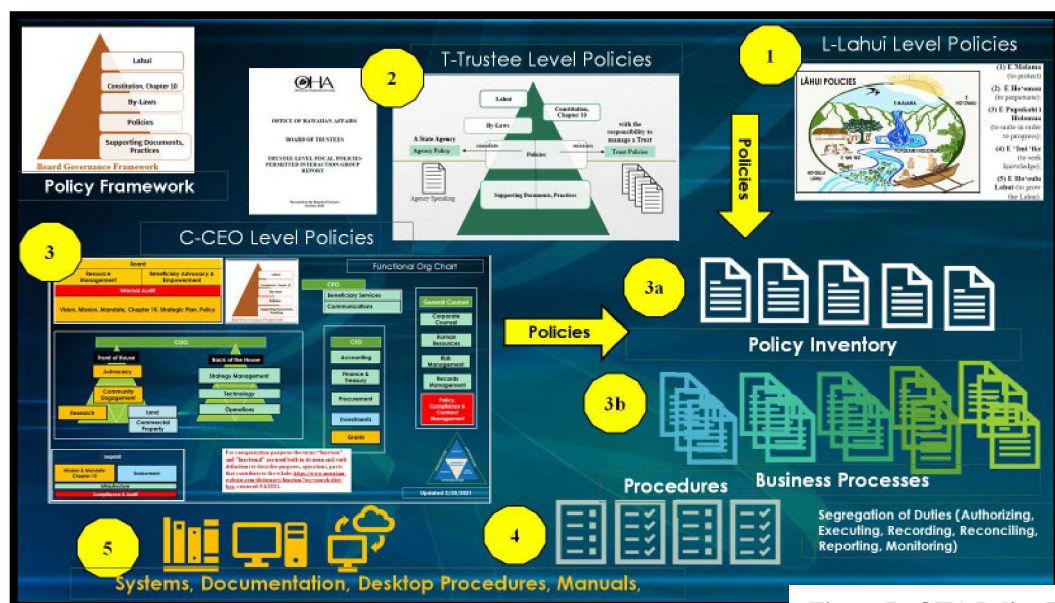


Figure 6: OHA Policy Framework Elements (Depiction 1)



Processes (listed within each policy); 6) Standard Operating Procedures for each business process; and 7) Systems, documentation, desktop procedures, manuals as depicted below.

Figure 7: OHA Policy Framework Elements (Depiction 2)

E. Policy Guidelines, in a Policy of Policies

To operationalize the policy framework, Administration is also recommending seven (7) policy guidelines for approval, contained

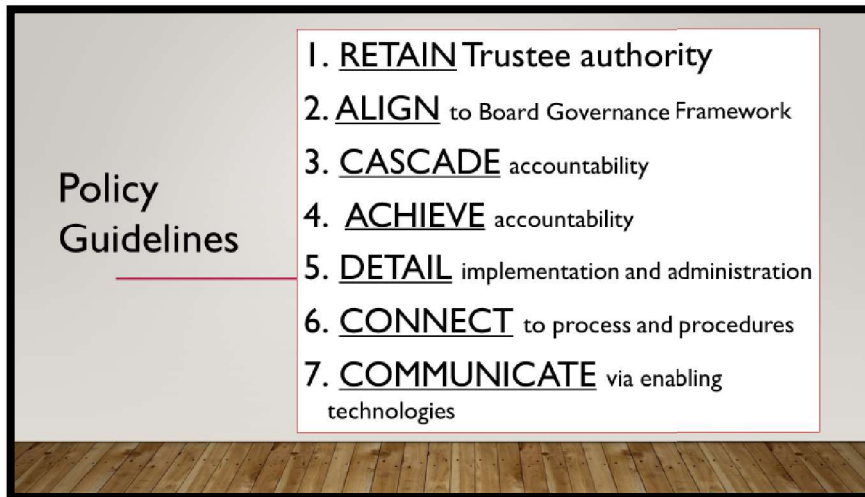


Figure 8: Policy Guidelines, Included in the Policy of Policies

The purpose of this policy is to provide overarching policy guidelines, definitions and accountabilities to aid in policy development and implementation such that policies: 1) Retain Trustee authority unless specifically delegated; 2) Align to the Board Governance Framework in support of the OHA's mission; 3) Cascade to consistent accountability levels (e.g., Board, Administration); 4) Achieve accountability by identifying the responsible parties; 5) Detail implementation and administration;

6) Connect to related business processes and procedures; and 7) Communicate clear and

concise information by leveraging technology.

F. Continuing Discussion re: Retention and Delegation of Authority – Trustees

Administration recommends that Trustees continue workshop discussion(s) re: explicit (vs. implicit) retention or delegation of authority, as determined by HRS Chapter 10; therefore, no action is recommended in this action item.

Administration will bring forward additional details and examples in a subsequent workshop for further Trustee consideration and discussion.

IV. Funding Source

Not applicable, no dedicated funding needed to approve the OHA's Policy Framework (Attachment A) and policy guidelines contained in the Policy of Policies (Attachment B).

IV. Recommended Actions

Based on the approved Board Governance Framework and subsequent policy work and related workshops, Administration recommends the Board:

A) 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; and

B) Approve the policy guidelines as contained in the newly drafted Policy of Policies at Attachment B.

Action Item BOT #21-18: Approve and Implement the OHA Policy Framework

V. Time Frame

Implementation of the OHA Policy Framework can be done as soon as Board approval is given at the 2nd reading. As also noted earlier: Once the new policy framework is approved, Administration will map, crosswalk, and migrate policies and/or policy language from the EPM to the new Policy Framework, eventually sunsetting the EPM document itself and creating and populating a new electronic policy framework location, accessible to internal and external stakeholders.

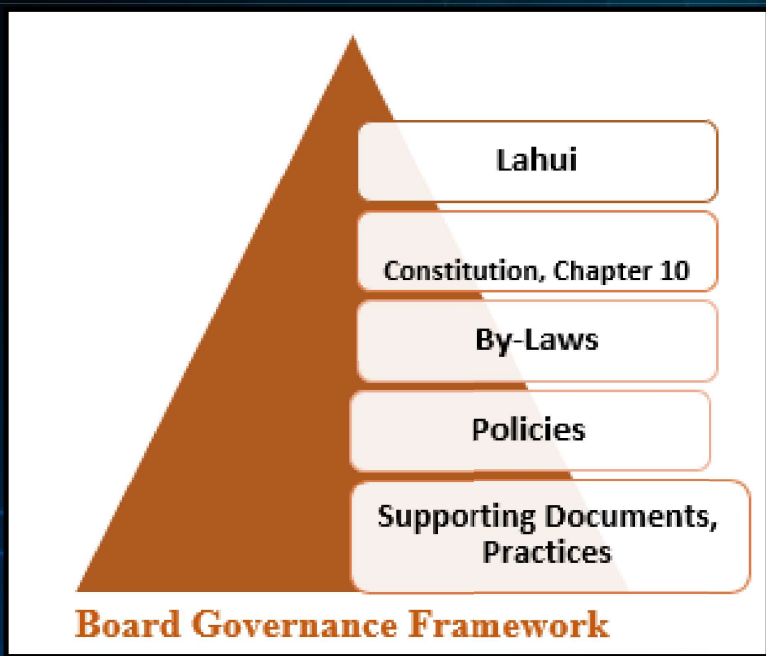
VI. References

- A. **Memos & Workshops (5):** February 6, 2021, May 6, 2021, May 25, 2021, November 4, 2021 and November 18, 2021.
- B. **Action Item BOT #20-01:** Approve the Office of Hawaiian Affairs Board of Trustees' Updated By-Laws, March 5, 2020
- C. **Action Item BOT #19-06:** Approve L-Lāhui Level Policies: (1) E Mālama (to protect); (2) E Ho'omau (to perpetuate); (3) E Pūpūkahi Holomua (to unite in order to progress); (4) E 'Imi 'Ike (to seek knowledge); (5) E Ho'oulu Lāhui (to grow the Lāhui) as Detailed in Attachments 2 to 6, Respectively, May 30, 2019
- D. **Action Item BOT #19-04:** Approve the Five (5) Board Governance Framework Elements, April 4, 2019

VII. Attachments

- A. OHA Policy Framework
- B. Policy guidelines as contained in the newly drafted Policy of Policies

Attachment A – Policy Framework

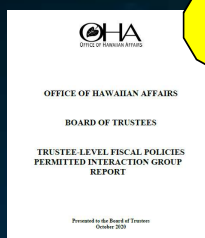
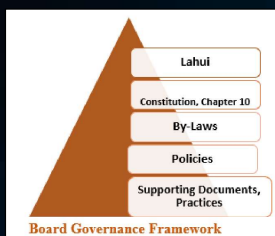


OHA Policy Framework

- 1) L-Lāhui Level policies
- 2) T-Trustee Level policies
- 3) C-CEO Level policies
- 4) Inventory of Policies
- 5) Business Processes
- 6) Standard Operating Procedures
- 7) Systems, Documentation

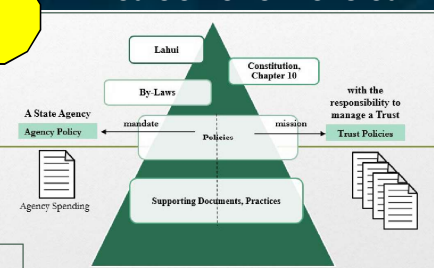
Depiction #1

Attachment A – Policy Framework



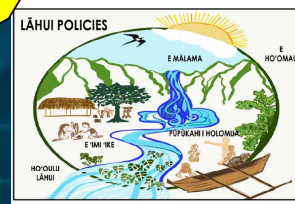
2

T-Trustee Level Policies



L-Lahui Level Policies

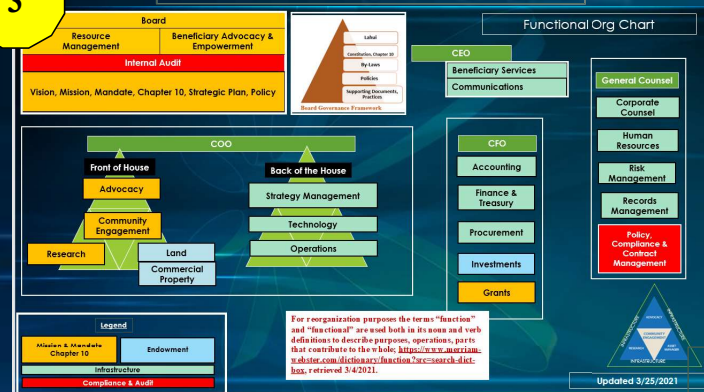
1



- (1) E MALAMA (to protect)
- (2) E HO'OMAU (to perpetuate)
- (3) E PUPUKAHI I HOLOMANA (to unite in order to progress)
- (4) E 'IMI 'IKE (to seek knowledge)
- (5) E HO'OUU LAHUI (to grow the Lahui)

Policies

C-CEO Level Policies



3a

Policies

3b



Standard Operating Procedures

Business Processes

Segregation of Duties (Authorizing, Executing, Recording, Reconciling, Reporting, Monitoring)

Depiction #2

5



4





Policy Guidelines, Policy of Policies

Subject: Provides overarching policy guidelines, definitions and accountabilities to aid in the implementation of the policy framework as a mechanism to operationalize the approved Board Governance Framework.

Effective Date: Upon 2nd reading of the Policy by the Board of Trustees

Scope: Organization

Date Reviewed/Revised: 2nd reading date of the Policy by the Board of Trustees

Responsible Organizational Unit: Board of Trustees

Next Scheduled Review Date: No later than two (2) years from the effective date, unless circumstances warranted otherwise (e.g., Chapter 10 change).

Policy Administrator or Owner: Board Chair

I. POLICY AND GENERAL STATEMENT

It is the policy of the Office of Hawaiian Affairs (OHA) to operationalize the Board Governance Framework consisting of the following five elements: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations) in a policy-based manner.

Elements of the OHA Policy Framework, based on the approved Board Governance Framework, including 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 and manuals.

II. POLICY GUIDELINES

The purpose of this policy is to provide overarching policy guidelines, definitions and accountabilities to aid in policy development and implementation such that policies: 1) Retain Trustee authority unless specifically delegated; 2) Align to the Board Governance Framework in support of the OHA's mission; 3) Cascade to consistent accountability levels (e.g., Board, Administration); 4) Achieve accountability by identifying the responsible parties; 5) Detail implementation and administration; 6) Connect to related business processes and procedures; and 7) Communicate clear and concise information by leveraging technology.



II. DEFINITIONS

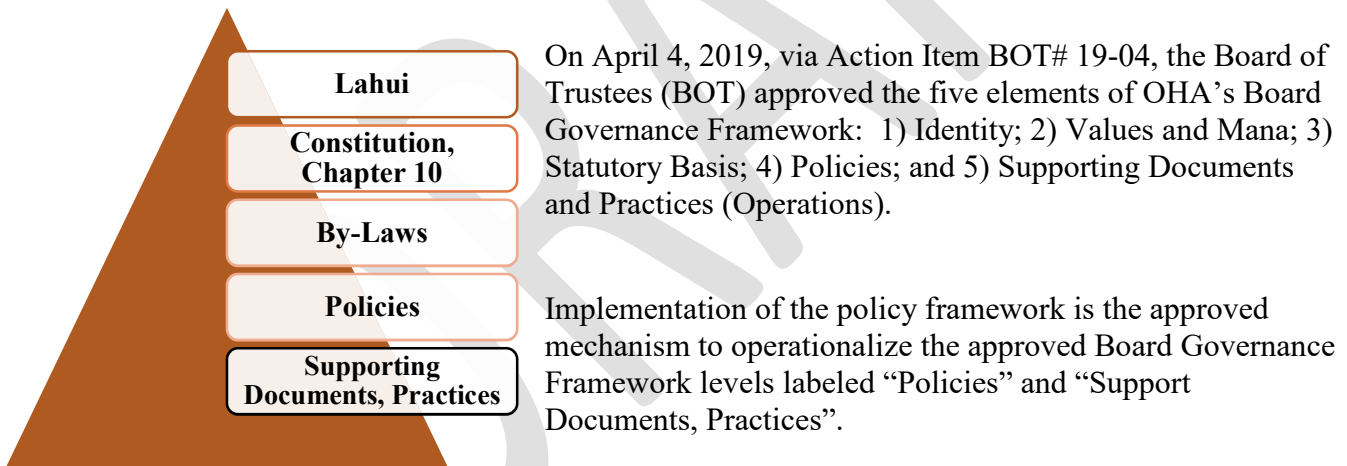
- A. Lāhui:** A term or descriptor that should not be conceived of as having multiple meanings, but rather as having a meaning that encompasses and includes concepts that require multiple words in English; and have different meanings such as “nation” and “race.” In using the word “lāhui,” we did not mean “the nation” or “the race” or “the people.” Rather, when used, the word “lāhui,” means the inclusive broad concept of “lāhui,” which includes the English expressed concepts of “nation,” “race,” and “people.”
- B. Governance:** Establishment of policies, and continuous monitoring of their proper implementation, by the members of the governing body of an organization. It includes the mechanisms required to balance the powers of the members (with the associated accountability), and their primary duty of enhancing the prosperity and viability of the organization.
- C. Policy:** Prudence or wisdom in the management of affairs; management or procedure based primarily on material interest; a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body.¹
- D. L-Lāhui Level Policy:** L-Lāhui level policies articulate the Hawaiian cultural foundation of the organization as a basis for the *kaumaha* (heavy weight, sadness) or significant *kuleana* (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding ‘āina, water, wahi pana and iwi kupuna, strengthen ‘ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts.
- E. T-Trustees Level Policy:** T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA’s Trustee role as a result of the Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics); and focus on statutory and strategic perspectives.
- F. C-Level Policy:** C-CEO level policies guide and direct operations such as facilities, health, safety, compensation, recruitment, procurement, contracting, technology, data retention, asset protection, risk management.
- G. Policy Initiator:** The Board Chair or if delegated, the Administrator, who identifies an organization level issue and assigns the development of a policy proposal.
- H. Policy Administrator or Owner:** The Policy Administrator (or Owner) is the Board Chair or if delegated, the Administrator, whose jurisdiction covers the subject matter of the policy.
- I. Process:** A series of actions that produce something or that lead to a particular result.

¹ <https://www.merriam-webster.com/dictionary/policy>, retrieved October 31, 2021



- J. Procedure:** A guideline or series of interrelated steps in a process: taken to help implement the policy; should identify and link to the specific policy(ies) and process(es); is written in a consistent format that is easy to follow and accessible by those who need to follow the procedures; and should be reviewed and updated as necessary to ensure agreement with the most revision of the policy. Procedures related to technical systems (e.g., Oracle Fusion, business travel) should be developed and implemented at the time of the system implementation.
- K. Practice:** The action(s) of actors in the policy system that: complete or carry out implementation activities or performance of the procedure (i.e., practice); should be compliant with the written procedure(s); and understands that non-compliance (i.e. misalignment of procedure and practice) introduces risk (e.g., reputation, internal control, legal) to the organization and undermines the integrity of policy(ies), process(es), and procedure(s).
- L. Stakeholder:** Internal (e.g., employees, administration, board staff, Board of Trustees) and/or external (e.g., beneficiaries, contractors) community members, who are affected by the policy developed and implemented.

III. MO‘OKŪ‘AUHAU – Board Governance Framework



IV. SCOPE AND DELEGATION OF AUTHORITY

- A. Hawaii Revised Statutes, Chapter 10 [§10-1]** Declaration of purpose. (a) The people of the State of Hawai‘i and the United States of America as set forth and approved in the Admission Act, established a public trust which includes among other responsibilities, betterment of conditions for Native Hawaiians. The people of the State of Hawai‘i reaffirmed their solemn trust obligation and responsibility to native Hawaiians and furthermore declared in the state constitution that there be an office of Hawaiian affairs to address the needs of the aboriginal class of people of Hawaii. (b) It shall be the duty and responsibility of all state departments and instrumentalities of



state government providing services and programs which affect native Hawaiians and Hawaiians to actively work toward the goals of this chapter and to cooperate with and assist wherever possible the office of Hawaiian affairs.

- B. Hawaii Revised Statutes, [§10-3]** Hawai‘i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people, including: (1) The betterment of conditions of native Hawaiians; (2) The betterment of conditions of Hawaiians; (3) Serving as the principal public agency responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian Homes Commission; (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians; (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and (6) Serving as a receptacle for reparations.²
- C. Retention of Authority:** The Board of Trustees retains all powers, duties and responsibilities as outlined in Chapter 10, subject to specific delegation(s) of authority, documented in policy.
- D. Delegation of Authority:** The Board of Trustees may delegate policy development, implementation, monitoring and evaluation activities to Administrator, who may then further delegate to operational functions, units and systems. Both policy/authority delegations—BOT to Administrator and subsequently to Operations---shall be documented in policy and communicated and updated in accordance with the specific policy.

IV. RELATED POLICIES

- A. TBD - Policy B-2021-002: Retention and Delegation of Authority – Trustees*
- B. TBD - Policy C-2021-001: Retention and Delegation of Authority – Administration*

V. CONTACTS

The Policy Administrator or Owner is:

Organizational Unit	Position
Board of Trustees	Board Chair

² HRS §10-3; see also HRS §10-1.

VI. POLICY FRAMEWORK

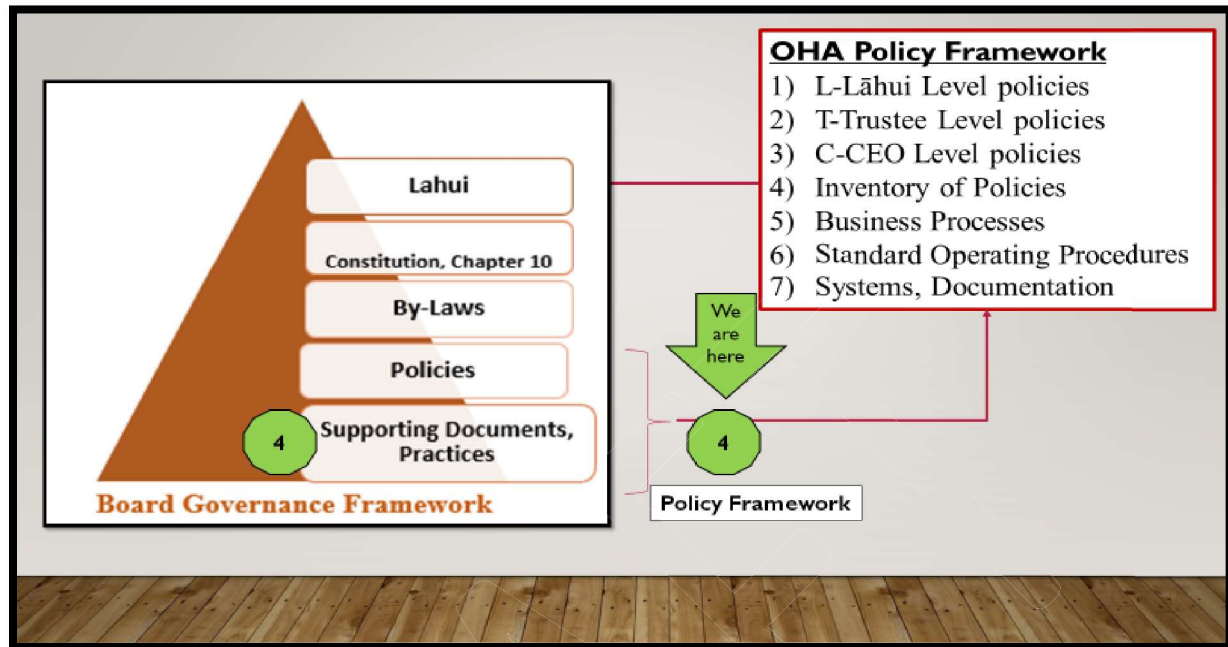


Figure 1: OHA Policy Framework Elements (Depiction 1)

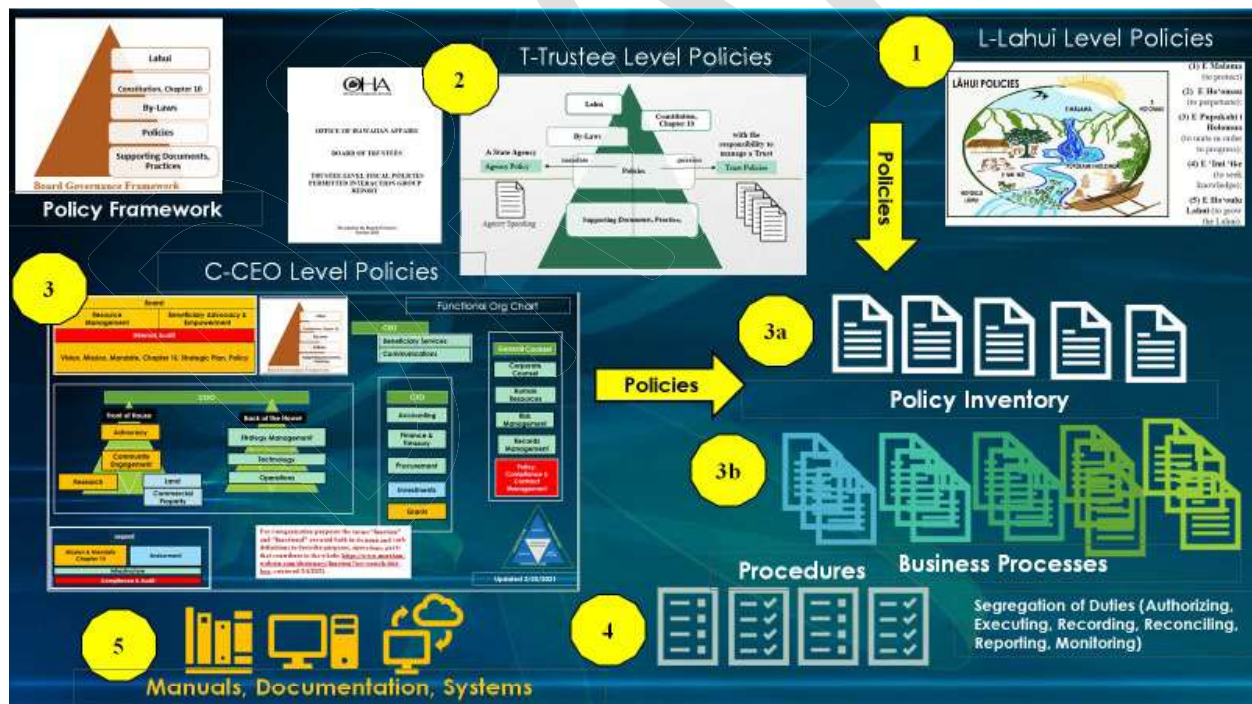


Figure 2: OHA Policy Framework Elements (Depiction 2)

Office of Hawaiian Affairs
Meeting of the Board of Trustees
December 29, 2021
10:00 A.M.

V. New Business

C. Committee on Beneficiary Advocacy and Empowerment

1. Action Item BAE #21-07: Public Land Trust Bill, 2022 Legislature

**Committee Report will be distributed once received from the BAE Committee.

Office of Hawaiian Affairs
Meeting of the Board of Trustees
December 29, 2021
10:00 A.M.

VI. Executive Session

- A. Consultation with Board Counsel Robert G. Klein, Sherry P. Broder, Esq and Interim General Counsel Everett Ohta re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities with respect to the Public Land Trust and associated legislation, pursuant to HRS§92-5(a)(4)**