

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



FAX (808) 594-1868

**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
MEETING OF THE BOARD OF TRUSTEES**

DATE: Thursday, January 23, 2020
TIME: 10:00 am
PLACE: OHA Board Room, Nā Lama Kukui
560 N. Nimitz Hwy., Suite 200
Honolulu, HI 96817

AGENDA

- I. Call to Order
- II. Approval of Minutes
 - A. November 21, 2019
 - B. December 5, 2019
 - C. December 19, 2019†
- III. Public Testimony*
- IV. Unfinished Business
 - A. OHA CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities
- V. New Business
 - A. Beneficiary Advocacy and Empowerment Committee
 - 1. Kaka'ako Makai – Discussion on Land Use Entitlements and Possible Legislation
 - B. Resource Management Committee
 - 1. Request to hold a Resource Management Committee Limited Meeting on February 5, 2020 regarding Kaka'ako Makai properties.
 - 2. Presentation by Administration of its DRAFT Recommendations Implementation Plan on the recommendations contained in the final report prepared by CliftonLarsenAllen LLP (CLA).
 - C. Report of the Permitted Interaction Group re: the investigation of the alignment and update of the existing Board of Trustees By-Laws for OHA's Board Governance Framework, without discussion. *Pursuant to HRS § 92-2.5(b)(1)(B)*
- VI. Executive Session‡
 - A. Consultation with OHA Corporate Counsel attorney Everett Ohta, Esq. regarding questions and issues pertaining to the Board's powers, duties, privileges, and liabilities related to Kaka'ako Makai Land Use Entitlements and Possible Legislation. *Pursuant to HRS § 92-5(a)(4).*
 - B. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities relating to the State Auditor's request for confidential and Attorney-Client privileged materials and information in connection with the legislatively mandated audit per Act 37. *Pursuant to HRS § 92-5(a)(4).*



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS**

- C. Approval of Minutes
1. October 17, 2019
 2. November 7, 2019
 3. November 21, 2019
 4. December 5, 2019

VII. Community Concerns*

VIII. Announcements

IX. Adjournment

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

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

**Notice: Trustees may establish or revise an OHA position on ANY proposed bill / resolution / executive message currently moving through the state legislature or other relative elected body. The Matrices, which are available for public review in the meeting room at this stated meeting, provide a brief description of each bill, the bill's number, the bill's title, the bill's intent, and the proposed and specific OHA position on each measure, current through 1/22/2020. However, the Trustees both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrix, as well as those that time does not permit to be placed on the Matrix, in order to discharge their fiduciary obligations as Trustees of the Office of Hawaiian Affairs

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

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

Colette Y. Machado
Trustee Colette Y. Machado
Chairperson, Board of Trustees

1/16/2020
Date

Meeting of the Board of Trustee, January 23, 2020 Agenda Continued

Office of Hawaiian Affairs
Board of Trustee Meeting
January 23, 2020
10:00 am

II. Approval of Minutes

- A. November 21, 2019
- B. December 5, 2019
- C. December 19, 2019*

*Item was not ready at time of folder distribution.
Will be distributed when completed.

**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Highway, Suite 200
Honolulu, HI 96817**

**Minutes of the Office of Hawaiian Affairs Board of Trustees
Thursday, November 21, 2019
9:30 am**

ATTENDANCE:

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

ROBERT KLEIN, BOARD COUNSEL

ADMINISTRATION STAFF:

SYLVIA HUSSEY, ICEO
LISA WATKINS-VICTORINO, ICOO
STERLING WONG, PRO
RAINA GUSHIKEN, CC
MEHANA HIND, CE
ALICE SILBANUZ, DPM
GLORIA LI, CTRLR
JASON PALOMA, TAPS
JIM MCMAHON, ADV
JIM PATTERSON, PROG
KAHEALNI PELERAS, CE
KYLE-LEE LADAO, OTR
JHEWEL-GEORLYN FELIPE, DPM

BOT STAFF:

CAROL HO'OMANAWANUI
LŌPAKA BAPTISTE
LAURENE KALUAU-KEALOHA
PRISCILLA NAKAMA
LEIANN DURANT
DAYNA PA
MARIA CALDERON
LEHUA ITOKAZU
ALYSSA-MARIE KAU
NATHAN TAKEUCHI
KAUIKEAOLANI WAILEHUA
KAMA HOPKINS
BRANDON MITSUDA
PAUL HARLEMAN

GUESTS:

RANDALL ROTH
KEALII MAKEKAU
THOMAS MILLER

I. CALL TO ORDER

Trustee Colette Machado Calls the Board of Trustees meeting to order at 9:34 am. Roll call is taken; Trustees Ahu Isa, Ahuna, Akaka, Akina, Lee, Carmen Hulu Lindsey, Robert Lindsey and Machado are present, constituting a quorum. Trustee Waihee is expected to arrive shortly.

**II. DISTRIBUTION OF THE RECORDED OF THE SITE VISIT OF THE BOARD OF TRUSTEES
ON SEPTEMBER 19, 2019 TO MAUNAKEA ACCESS ROAD, PU'U HULUHULU
(PU'UHONUA O PU'UHULUHULU)**

Chair Colette Machado – We did the distribution of the record of our site visit to Pu'uhuluhulu at Maunakea and that has been circulated. There is no action needed. We also have minutes to approve.

III. APPROVAL OF MINUTES**A. September 19, 2019**

Chair Colette Machado – We have minutes from our September 19, 2019 meeting which was held on the Big Island.

Trustee Dan Ahuna moves to approve the Board of Trustees meeting minutes of September 19, 2019.

Trustee Robert Lindsey seconds the motion.

Chair Colette Machado – Is there any discussion? Hearing none, roll call vote please.

Trustee Carmen Hulu Lindsey moves to approve the Board of Trustees meeting minutes of September 18, 2019. Trustee Dan Ahuna seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY		x	X			
TRUSTEE JOHN WAIHE'E						Excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8			1
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passes with eight (8) yes votes and one (1) excused vote.						

IV. PUBLIC TESTIMONY

Chair Colette Machado – We are on public testimony. I'd like to call to the table Mr. Randall Roth. Mr. Roth, I am not sure if you have appeared before OHA before but we do have a 5 minute allowance for you testimony. We are not circulating your testimony.

(Please see attached testimony of Mr. Randall W. Roth)

Mr. Randall Roth – Aloha members of the Board. I happen to be a Professor emeritus at the local law school but I am not here on behalf of it, I'm not here on behalf of any organization. This testimony is mine alone and its prompted by what I know of the permitted inter relations group the PIG. I have some written testimony that provides a bit of additional information but respectful of your time I just want to talk specifically about my opinions on this matter.

First, I believe that it is blatantly unfair for members of the PIG, essential to declare Trustee Keli'i Akina a liar without giving him an opportunity to respond to the allegations. Also, without bothering to explain or defend their own finding. Furthermore, I believe that OHA's rule prohibiting public criticism by assenting board member to be fatally flawed for each and all of the following reasons. First, it premised on the assumption that OHA as Trust governed by a Board of Trustees as I have written in the Star Advertiser in the past, I believe there is a lot of confusion on these legal issues. I personally, my own opinion is that OHA is pretty clearly a non-autonomous State Agency overseen by elected public officials and I believe that dictates a lot of specific issues including the

way the board has approached the issue of a dissenting board member wanting to continue to speak out after the majority has reached its decision. Secondly, I believe the rule in question violates a dissenting Board member's constitutionally protected freedom of speech. Third, the rule interferes with a dissenting Board member's responsibility as an elected public official to keep his or her constituents reasonably informed. Finally, the rule in question is based policy in my opinion because it reduces the level of transparency and accountability and in what as I have explained I believe to be a non-autonomous State Agency.

I've listed in my written testimony a summary of my credentials for talking about what Trust Law is. I won't bother you now or take your time by reading them. I do invite you to ask any questions that you might have of me now if any of you would like to meet sometime in the future, I would be happy to share my thoughts on what I consider the foundational legal question. I might add that I am making this offer and I've made it in the past because I think this is a particularly important organization. I think your mission as I understand it is particularly important. Especially in times like these right now, its critically important I believe among other things that this organization have reasonable transparency, reasonable accountability and as I have indicated I believe strongly that the rule in question goes the opposite direction of that. Thank you. And if you have any questions of me I'd be happy to try to respond.

Trustee Brendon Kalei'āina Lee – Madame Chair.

Chair Colette Machado – Trustee Brendon Kalei'āina Lee.

Trustee Brendon Kalei'āina Lee – Thank you for appearing today Mr. Roth. As a professor emeritus at the William Richardson Law School is it fair to say that you are familiar with the sunshine law and how that governs permitted interaction groups.

Mr. Roth – I am generally familiar with that, yes.

Trustee Brendon Kalei'āina Lee – So are you aware that by law, the permitted interaction groups do not allow more than 4 Trustees to interact together at any given time.

Mr. Roth – I understand that it is four in this context, the number would vary depending upon the context, yes.

Trustee Brendon Kalei'āina Lee – Actually no, it doesn't number, the law specifically says no more than, I am sorry you are correct. In our instance it would be no more than four because I cannot be the majority.

Mr. Roth – In this context you are right.

Trustee Brendon Kalei'āina Lee – I just wanted to make sure you were aware of that because that's the reason why we were not permitted to interview any other Trustee because there were four Trustees that this board voted on that board, interviewing another Trustee would violate that law.

Mr. Roth – I understand completely your point. I think it's a very good point. I would simply say that there is no requirement that there be four members of the PIG and that it would be quite possible to have three and then a fourth person there to defend himself to explain what he had done.

Trustee Brendon Kalei'āina Lee – That is true we originally had three, but the Board as a whole decided to add a fourth Trustee.

Mr. Roth – I respect that, it certainly has the power to that, my testimony today is that I think it was unfortunate, I think it has damaged the way that the public looks at this organization and this board and because your mission is so important, I think it's very unfortunate.

Trustee Brendon Kalei‘āina Lee – You also said that the permitted interaction group gave no explanation for its findings when they presented their report. So, you also are aware that by law we are not allowed to discuss the report in any way, shape or form on the day that is presented. That has to come at a subsequent meeting which is why we are here today.

Mr. Roth – My understanding is that the PIG has not even itself reached those findings, in other words my understanding is that you have that report which I believe to be quite short and does not include any kind of details as to how they reached their finding.

Trustee Brendon Kalei‘āina Lee – Which again would not be provided until today.

Mr. Roth – As we commented before there are a number of ways of structuring this and I really don’t intend to criticize the specific decisions you made because frankly, I think you are all extremely well intentioned. I think a lot of things that you do, including this duty of care and loyalty as you’ve described it is premised on an assumption that at the very least is a very shaky foundation in my own opinion. It’s not a foundation, my own opinion you’ve attempted to build a delicate structure on sand and you are going to have a variety of problems going forward until you revisit that foundational question of exactly what is the legal nature of OHA and what is exactly the legal duties, responsibilities, rights of the members of the Board. I just feel very strongly that from a Trust Law standpoint, OHA is not a Trust as that term is used in Trust Law. Members of this board, as important as your positions are, are not Trustees as that term is used in Trust Las.

9:43 am Trustee Waihee arrives.

Trustee Brendon Kalei‘āina Lee – I believe this board agrees with you hence the last permitted interaction group which has not been extended, revisiting our by-laws.

Mr. Roth – I am delighted to hear that you are visiting those by laws, again I would reiterate my offer to be of any help I can be and if for some reason you would like me simply to connect with some of the Trust Law experts on the mainland that I think would be happy to help this particular organization I would be happy to.

Trustee Brendon Kalei‘āina Lee – Thank you Mr. Roth.

Trustee Leina‘ala Ahu Isa – I had a question, can one who filed the complaint be Chair of the PIG committee?

Mr. Roth – The question if you didn’t hear is whether somebody who filed the complaint could be chair.

Trustee Brendon Kalei‘āina Lee – Point of order Madame Chair.

Chair Colette Machado – Trustee Brendon Kalei‘āina Trustee Lee.

Trustee Brendon Kalei‘āina Lee – I am not aware that the structure of how PIGs work is on the agenda today.

Chair Colette Machado – You are correct.

Trustee Leina‘ala Ahu Isa – Point of personal privilege, Chair.

Chair Colette Machado – Trustee Leina‘ala Ahu Isa.

Trustee Leina‘ala Ahu Isa – Point of personal privilege overrides that.

Chair Colette Machado – Proceed.

Mr. Roth – As I sit here I can't say with certainty one way or the other as to whether that would be prohibited but I think that anybody would say that would not be a good idea, if the whole idea of the PIG was to give an independent review of those complaints.

Chair Colette Machado – Mr. Roth I am sure we will be seeing you again. Because I don't think we agree with you on all of your point. But thank you again for coming. Our next speaker is Kealii Makekahu.

Mr. Roth – Thank you, I've testified before and I always feel so much aloha in this seat and I really, really appreciate it.

Chair Colette Machado – Our next speaker is Kealii Makekahu.

Kealii Makekahu – I hope it's not premature to talk because I was looking at the agenda. My point I would like to summarize is about the removal of VI. Because new business is slated two times. However, my comments is in regards to the CEO election process. I hope this time around the round of transparency will be made clear if and when the selection process is here. I hate to summarize what I went through the last time we were here about a particular topic. Because the former CEO which I asked this Board, and it was announced that he had a renewal on his contract. I was attending every board meeting at that time, I had asked this board how they voted for this and to which time your counsel interrupted and then suggested that I did not have to right to bully the board and advised you not to answer that question. So, as they say in the legal terms, you had to lawyer up on the matter just to get a simple question answered. Where was vote? It led me to a FOIA request which this office I believe denied and then I went to OIP and they in turn agreed with me and that was reversed.

Chair Colette Machado – Mr. Makekahu state your point, you going on and on.

Kealii Makekahu – Point is, in that FOIA request I was not given any substance, I was given the contract, but I was never given the vote. The substance of my comments today is that I hope with your new selection process you will be able to show in open session to the beneficiaries in particular how you exercise your vote. Because that was not apparent in the last one. But we are here now, so all I can hope is that, that is fulfilled by law.

Chair Colette Machado – Your points are duly noted, thank you so much for coming. Please stick around for more discussion because we will be publicly announcing certain terms of the contract.

Kealii Makekahu – I believe I stated that in public session.

Chair Colette Machado – Ok, aloha. We are now moving on to V.

V. UNFINISHED BUSINESS

A. Interim CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities

Chair Colette Machado – I would like to call on our Interim CEO for any updates.

Sylvia Hussey – Good morning Trustees. E kala mai first for not being here on time. Two items, first of all we would like to thank all the participating Trustees for the fried rice Friday, the Aloha United Way event tomorrow and thank you for this worthy event. Second, reminder that on Friday, December 13, 2019 the all OHA 1,000 tree planting is scheduled. So please notify and let us know because it will be a great opportunity to support this effort as well as kāko'o our lands and engage with your community. Just those two announcements Chair.

Chair Colette Machado – Ok Members, Thank you. We are not on VI. A.

VI. NEW BUSINESS

A. Presentation of an OHA Resolution honoring the life and contribution of Larry Kamakawiwo‘ole to the Native Hawaiian community and other marginalized communities in Hawai‘i.

Chair Colette Machado – It’s a presentation of an OHA Resolution honoring the life and contribution of Larry Kamakawiwo‘ole to the Native Hawaiian community and other marginalized communities in Hawai‘i. Before we begin with the presentation, we have leis to present. I will call on Lōpaka to call on those siblings that are here and family members that have taken the time to show up.

(Lōpaka Baptiste invites the members of the Kamakawiwo‘ole family forward and they are presented with lei.)

Chair Colette Machado – Thank you Lōpaka, I’ll call Sterling to do the presentation of the resolution.

Sterling Wong and Sylvia Hussey read the following resolution:

**“A RESOLUTION OF THE OFFICE OF HAWAIIAN AFFAIRS
HONORING THE LIFE AND CONTRIBUTIONS OF LARRY KAMAKAWIWO‘OLE TO THE NATIVE
HAWAIIAN COMMUNITY AND OTHER MARGINALIZED COMMUNITIES IN HAWAI‘I”**

WHEREAS, Lawrence “Larry” Kamakawiwo‘ole was born in May 1943 in Honolulu, O‘ahu, to William Kamakawiwo‘ole, a bus instructor and dispatcher for the Honolulu Rapid Transit Company, and Wenonah Kamakawiwo‘ole, substitute elementary teacher; and

WHEREAS, Larry Kamakawiwo‘ole was raised in Pālama and ‘Ālewa, attending area public elementary schools before enrolling at Kamehameha Schools, where he graduated from high school in 1961; and

WHEREAS, Mr. Kamakawiwo‘ole earned an undergraduate degree from the University of Hawai‘i; master’s degrees from the Pacific School of Religion in Berkeley, and the University of Hawai‘i; and law degree from the Georgetown University Law Center; and

WHEREAS, Mr. Kamakawiwo‘ole had a long and distinguished professional career, serving as the first full-time director of the Ethnic Studies Program at the University of Hawai‘i at Mānoa, a deputy prosecutor for the City and County of Honolulu, and a special deputy attorney general to the Department of Commerce and Consumer Affairs; and

WHEREAS, Mr. Kamakawiwo‘ole played an indispensable role in the Hawaiian Renaissance, an unprecedented political movement of environmental consciousness and appreciation for native culture and language; and

WHEREAS, upon returning from Berkeley in the 1970s, he employed the community organizing skills he learned in graduate school to protest Kamehameha Schools Bishop Estate’s evictions of residents and farmers in Kalama Valley, a seminal land struggle that would help to launch the Hawaiian Renaissance and spark two decades of Hawaiian political activism and cultural renewal; and

WHEREAS, he was a founding organizer and spokesperson for Kōkua Kalama Valley and later Kōkua Hawai‘i, which sought to keep special Hawaiian communities intact and uphold basic human rights in housing for the poor and disenfranchised; and

WHEREAS, he and the other leaders and organizers of Kōkua Hawai‘i broadened the conversation on human rights and housing to include the planned evictions of several other communities in Hawai‘i, such as Ota Camp, Waiāhole-Waikāne, He‘eia Kea, Waimānalo, Chinatown, Hālawā Housing and “Census Tract 57” in Kalihi; and **WHEREAS**, these leaders established a legacy of peaceful protest and civil disobedience that reshaped Hawai‘i’s laws to recognize the rights of the disenfranchised, including Native Hawaiians, immigrants, and the poor; and

WHEREAS, Mr. Kamakawiwo‘ole’s tireless work also helped to lay the foundation for the 1978 Constitutional Convention, the state Office of Hawaiian Affairs, and the Native Hawaiian Legal Corporation, among other institutions, that continue to uphold his vision of social justice for Native Hawaiians; and

WHEREAS, with the recent passing on October 9, 2019, of Mr. Lawrence “Larry” Kamakawiwo‘ole, Hawai‘i has lost a leader and community advocate who helped to shape the future of Hawai‘i and the social fabric of our islands; now, therefore,

BE IT RESOLVED, that the OHA Board of Trustees expresses its appreciation for the lifelong leadership and advocacy of Lawrence “Larry” Kamakawiwo‘ole, the first full-time chair of Ethnic Studies at the University of Hawai‘i, and a native son of Hawai‘i who led the formation of Kōkua Hawai‘i and who embraced and dedicated himself to protecting the poor and disenfranchised; and

BE IT FURTHER RESOLVED, that the OHA Board of Trustees expresses its gratitude and sends its aloha to the late Mr. Kamakawiwo‘ole’s ‘ohana and other leaders and community organizers of Kōkua Hawai‘i and their associates for their pivotal work in nurturing mutual respect and collaboration between disenfranchised cultures and communities in Hawai‘i and the Pacific; and

BE IT FURTHER RESOLVED, that certified copies of this Resolution be transmitted to the ‘ohana of Larry Kamakawiwo‘ole; the Department of Ethnic Studies, College of Social Sciences, University of Hawai‘i at Mānoa; Hawai‘inuiākea School of Hawaiian Knowledge and the Pelekikena of the Association of Hawaiian Civic Clubs.

ADOPTED, this 7th day of November 2019, island of O‘ahu, State of Hawai‘i, by the Board of Trustees of the Office of Hawaiian Affairs in its regular meeting assembled.

Chair Colette Machado – Thank you Sylvia and Sterling. I have one more presentation to make. We have a flag box and it’s for Larry Kamakawiwo‘ole, where is Gary. Give him lei. Because of Gary, he contacted me when Larry was placed in hospice and through his effort, we’ve been able to craft a resolution, in house staff did some research from the book, and they came up with the resolution. I am proud to give you Julietta, I am proud to give you a flag in honor of Larry, but it’s a statement that Gary told me that he was a remarkable man. Davianna who is the professor in ethnic studies said that you should coin it to Kahu Mālama ‘āina. Because he was a Kahu and in the early years he mālama the ‘āina. Larry Kamakawiwo‘ole a remarkable Hawaiian, that is Gary’s words not mine and Davianna said call it Kahu Mālama ‘āina. I present our Hawaiian flag to you. The endurance of this man taught us really valuable lessons. Never give up. Gary, I thank you for bringing this to my attention and communicating with me. To the family for showing your strong support for your brother, and for the nieces and nephews you have a tremendous legacy. Thank you all for dedicating him to the work of the people. Sometime people who do frontline work are forgotten, and sometimes they never get the big awards. But today he is honored as a true patriot for all the people. Thank you so much for coming.

I am going to call a recess to take photos with the family so please stick around.

10:03 am Chair Colette Machado calls a recess.

10:18 am Chair Colette Machado reconvenes the meeting.

Chair Colette Machado - Aloha members of Board of Trustees and the community and members of the staff that are present. I would like to reconvene the Board of Trustees meeting. Thank you all for your patience.

VII. EXECUTIVE SESSION

Chair Colette Machado – With that said I'd to move on to Executive Session. Members the Chair would like to entertain a motion for recuse ourselves into Executive Session pursuant to HRS 92-5 (a)(4).

Trustee Dan Ahuna moves to recuse into executive session pursuant to HRS §92-5(a)(4).

Trustee Carmen Hulu Lindsey seconds the motion.

Chair Colette Machado – It has been moved and seconded. Roll call vote please.

Trustee Dan Ahuna moves to recuse into executive session pursuant to HRS §92-5(a)(2) and (4). Trustee Carmen Hulu Lindsey seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY		x	X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [x] UNANIMOUS [] PASSED [] DEFERRED [] FAILED Motion unanimously passes with nine (9) yes.						

Chair Colette Machado – Everyone will be excused from the room, not you Sylvia.

The Board resolved into Executive Session at 10:19 am

- A. Consultation with Board Counsel Robert G. Klein, Esq. and Corporation Counsel Raina Gushiken, Esq. regarding questions and issues pertaining to the Board's duties, powers and privileges regarding the consideration of the terms of the contract to be offered to the OHA CEO. *HRS §92-5(a)(4)*.

The Board reconvenes in open session at 10:59 am.

VI. NEW BUSINESS

Chair Colette Machado – Aloha, we are back, before we proceed to new business, I'd like to read into record that the 72 Hour rule, pursuant to OHA BOT Operations Manual, section 49, shall be waived for the following items:

- VI. New Business
 - C. Committee on Resource Management

1. Action Item RM #19-18: Approval of Reimbursement Proposal from State Street Bank for Inaccurate Accounting and Performance Reporting.
2. Action Item RM #19-19: Approval of investment consultant, Segal Marco Advisors, to initiate an active core fixed Income Manager search.
3. Action Item RM #19-20: Approval of the Non-OHA Executive Managers' Selection and Seating Process for Hi'ilei Aloha, LLC.
- D. Joint Meeting of the Committee on Beneficiary Advocacy and Empowerment and the Committee on Resource Management
 1. Action Item BAE/RM # 19-09: FB 20-21 Emergency Financial Assistance Grant Recommendation.

Let's move on to VI. C. item 1 Trustee Ahuna.

C. Committee on Resource Management

1. **Action Item RM #19-18: Approval of Reimbursement Proposal from State Street Bank for Inaccurate Accounting and Performance Reporting.**

Trustee Dan Ahuna moves to approve Administration's recommendation that the BOT approve the reimbursement agreement between State Street Bank and OHA and authorize the Interim Chief Executive Officer to execute the Confidential Settlement and Release Agreement attached here to as Attachment F.

Trustee Robert K. Lindsey seconds the motion.

Chair Colette Machado – Roll call vote please to ratify.

Trustee Dan Ahuna moves to approve Administration's recommendation that the BOT approve the reimbursement agreement between State Street Bank and OHA and authorize the Interim Chief Executive Officer to execute the Confidential Settlement and Release Agreement attached here to as Attachment F. Trustee Robert K. Lindsey seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY		x	X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [x] UNANIMOUS [] PASSED [] DEFERRED [] FAILED						
Motion unanimously passes with nine (9) yes.						

2. **Action Item RM #19-19: Approval of investment consultant, Segal Marco Advisors, to initiate an active core fixed Income Manager search.**

Chair Colette Machado – Trustee Ahuna.

Trustee Dan Ahuna moves to approve Administration's recommendation that the BOT approve and authorize for investment consultant, Segal Marco Advisors, to begin a search for an active core fixed income manger.

Trustee Robert K. Lindsey seconds the motion.

Chair Colette Machado – Any discussion? Hearing none, roll call vote.

Trustee Dan Ahuna moves to approve Administration's recommendation that the BOT approve and authorize for investment consultant, Segal Marco Advisors, to begin a search for an active core fixed income manger. Trustee Robert K. Lindsey seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY		x	X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [x] UNANIMOUS [] PASSED [] DEFERRED [] FAILED Motion unanimously passes with nine (9) yes.						

3. Action Item RM #19-20: Approval of the Non-OHA Executive Managers' Selection and Seating Process for Hi'ilei Aloha, LLC.

Chair Colette Machado – Trustee Ahuna.

Trustee Dan Ahuna moves to approve Administration's recommendation that the BOT approve the Non-OHA Executive Manager's Selection and Seating Process for Hi'ilei Aloha, LLC and revised LLC Manager Position Description.

Trustee John Waihe'e IV seconds the motion.

Chair Colette Machado – Any discussion? Hearing none, roll call vote.

Trustee Dan Ahuna moves to approve Administration's recommendation that the BOT approve the Non-OHA Executive Manager's Selection and Seating Process for Hi'ilei Aloha, LLC and revised LLC Manager Position Description.

Trustee John Waihe'e IV seconds the motion.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E		x	X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [x] UNANIMOUS [] PASSED [] DEFERRED [] FAILED						
Motion unanimously passes with nine (9) yes.						

Chair Colette Machado – Members we will now go to VI. D. 1.

D. Joint Meeting of the Committee on Beneficiary Advocacy and Empowerment and the Committee on Resource Management

1. Action Item BAE/RM # 19-09: FB 20-21 Emergency Financial Assistance Grant Recommendation.

Chair Colette Machado – Trustee Ahuna.

Trustee Dan Ahuna moves to approve and authorize the disbursement \$830,000 from the Fiscal Year 2020 Core Operating Budget (Object Code 56530) and \$830,000 from the Fiscal Year 2021 Core Operating Budget (Object Code 56530) to fund the Emergency Financial Assistance grant to CNHA.

Trustee Robert K. Lindsey seconds the motion.

Chair Colette Machado – Roll call vote.

Trustee Dan Ahuna moves to approve and authorize the disbursement \$830,000 from the Fiscal Year 2020 Core Operating Budget (Object Code 56530) and \$830,000 from the Fiscal Year 2021 Core Operating Budget (Object Code 56530) to fund the Emergency Financial Assistance grant to CNHA. Trustee Robert K. Lindsey seconds the motion.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY		x	X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [x] UNANIMOUS [] PASSED [] DEFERRED [] FAILED						
Motion unanimously passes with nine (9) yes.						

Chair Colette Machado – Members we need to go back to VI. B. which is the selection of the OHA Chief Executive Officer.

B. Selection of OHA Chief Executive Officer

Chair Colette Machado – I would like to read this statement:

“The OHA Board of Trustees is proud to announce that Sylvia M. Hussey, Ed.D. was selected for the position of OHA Chief Executive Officer (CEO). Dr. Hussey will earn an initial annual salary of \$170,000 for a term of five (5) years commencing on December 1, 2019.

Dr. Hussey brings more than 30 years of experience in education administration, policy development and implementation, finance, operations, and information technology. She served in leadership positions at various institutions throughout the state, most recently as the executive director of the Native Hawaiian Education Council (NHEC), and previously was with Kamehameha Schools for more than a decade where she was the vice president of administration.

On behalf of the Board of Trustees, we congratulate you, Sylvia, and mahalo you for embarking on this journey to strengthen and empower our lāhui. Feel free to say a few words and provide your comments.”

Trustee Leina'ala Ahu Isa – I am so happy we selected her. She is so qualified. She comes from a very distinguished career, has a Doctorate and a CPA. We are very fortunate to have her.

Trustee Dan Ahuna – I just wanted to say congratulation and I look forward to working with you as the RM Chair. Thank you so much.

Trustee Robert K. Lindsey – Aloha Sylvia, you make Kohala proud.

Trustee Kalei Akaka – Mahalo our new CEO. I genuinely look forward to moving together in this journey and I truly appreciate your ha'aha'a and 'olu'olu style in doing things. Mahalo. And congratulations.

Trustee Keli'i Akina – Sylvia, Dr. Hussey, congratulations, and welcome to your seat of leadership. We are looking forward to great things for the future of OHA through your leadership. Much aloha and mahalo.

Trustee John Waihe'e IV – Congratulations Sylvia. And I want to let you know that I really, really enjoyed working with you as interim CEO so I really look forward to more of this kind of good relationship. Thank you.

Trustee Brendon Kalei'aina Lee – Congratulations Sylvia. I know I whispered things to you, but it is appropriate so I'll say I out loud, good luck.

Chair Colette Machado – We thank you for your promise that you will work with all 9 Trustees, also your promise to build up our lāhui and to service them at the best of your abilities. You have committed yourself in the short term that you have served as the interim CEO, it was a unanimous decision on supporting you as our new permanent Chief Executive Officer and thank you again for your aloha. Mahalo Sylvia.

Trustee Carmen Hulu Lindsey – I just want to congratulate you Sylvia. I feel in my na'au that you are highly qualified and I believe that you've been sent to us from akua. I look forward to working with you and moving OHA forward especially for our beneficiaries. Mahalo.

Sylvia Hussey – Trustees thank you very much. Just thank you. There's so much in my heart and I think the echoing of it you said to move forward our lāhui because our beneficiaries and our lāhui deserve that. In the last 6 months I have been very appreciative of the working relationship and for as many things as people have said about OHA and OHA Trustees and the organization, what I have learned is that our people have such great hearts. So, I am honored and blessed to be able to be working with not only the leadership but also our people in our organization and on behalf of our lāhui. Thank you very much it's a great responsibility but I feel very supported all around the table as well as our 'ohana. Thank you again for entrusting me with this kuleana.

E. Deliberation and decision making on the Report of the Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decision. Pursuant to HRS § 92-2.5(b)(1)(C)

Chair Colette Machado – We have one more business to conduct and its VI. E. which is the deliberation and decision making on the Report.

Trustee Brendon Kalei'aina Lee – Madame Chair, I don't know if there is anyone else in the room that brought any makana or anything to congratulate our CEO so could we do into a short recess.

Chair Colette Machado – At the request of the Vice Chair we will go into a brief recess to honor our permanent CEO.

11:14 am Chair Colette Machado calls a recess.

11:20 am Chair Colette Machado reconvenes the meeting.

Chair Colette Machado – Aloha members of the Board of Trustees we are now reconvened. I'd like to move to VI.E. and I'll call on Trustee Brendon Kalei'aina Lee. There is further discussion on the report of the PIG regarding the investigate complaints against a Trustee for alleged violations of the Trustee Code of conduct.

Trustee Brendon Kalei'aina Lee – Thank you madame Chair. All the Trustees have had the report form the Permitted Interaction Group for several weeks now. As was requested at the presenting of the report, I will yield to Trustee Akina because I believe he had things he wanted to say regarding the report.

Trustee Keli'i Akina – Thank you. Fellow Trustees I want to thank you for the opportunity to address the Permitted Interaction Group Report concerning complaints made against me for alleged violation to the Trustee Code of Conduct. At the outset I want to thank the members of the PIG Committee for their time and for their

work. I hold you all, Trustee of the Board in the highest esteem. I am grateful that we are colleagues who want to do the very best for our Hawaiian beneficiaries and for the Office of Hawaiian Affairs. It's in that spirit that I want to address the concern that I have with the report. I believe that many of you might also share the same concern as I explain it. The report that you have issued states your official findings that there is no recourse to discipline me. However, the language of the report has a sentence that goes beyond its official finding. It says, "after reviewing the complaint against Trustee Akina, the PIG finds that Trustee Akina made misleading and untrue statements with regard to the CLA Audit". Now this is a very serious allegation. It does not merely say that I had a different opinion of the CLA audit, or a different belief or that I criticized the Board. It declares that I have committed wrongdoing. Moreover, it's in the form of an official pronouncement of OHA Trustees, not just the opinion of individuals. Please note the following two facts about this declaration.

First, it has been made public. Last week the committee announced its finding at the Board in open session. Secondly, this finding has been declared final. The committee announced considered the matter to be closed. Now, the problem with making a public declaration about my character and then closing the matter is this, I was never asked or allowed to appear before the committee to be questioned or give my point of view. Whatever conclusions the committee came to they did so without ever having heard my explanation or defense. In addition, I have never been told what specific statement of mine the committee considers to be misleading or untrue. So even if I wanted to explain or defend my comments before the Board or public, I cannot do so because I have never been told what the specifics are. The bottom line is this, that a committee of Trustees met behind closed doors, made a judgement about me, announced that judgement publicly and declared the matter closed. My fellow Trustees, this is not how we should treat each other. While what has taken place certainly harms me and my reputation as a public official. It also harms the Office of Hawaiian Affairs and our beneficiaries, if we as Board received this report from the PIG in its present form, we will seriously damage the credibility and reputation of OHA. Therefore, I urge the Board to do what is pono. Listen to your na'au and your moral compass. No beneficiary or Trustee should be judged without the opportunity to respond. Then be subjected to a final announcement that he has committed wrongdoing. The right thing to do is to strike the second sentence of the PIG report, which reads, "after reviewing the complaint against Trustee Akina the PIG finds that Trustee Akina made misleading and untrue statements with regard to the CLA Audit." Instead simply leave the other sentences so that the report would read as follows, "The Permitted Interaction Group met on September 27, 2019. Given that the BOT has no recourse for disciplinary action against a Trustee at this time the PIG considers this matter closed." I respectfully urge you to make the amendment to the PIG report. It is the right thing to do. Thank you.

Chair Colette Machado – Thank you Trustee. I am going to go back because Trustee Lee as the PIG Chair was doing this presentation.

Trustee Brendon Kalei'āina Lee – Thank you Madame Chair. Trustee Akina was that a motion?

Trustee Keli'i Akina – Am I allowed to make that motion? If so, I will make it and ask for a second.

Trustee Brendon Kalei'āina Lee – So Trustee Akina has moved to so amend the committee report of the PIG. **Trustee Keli'i Akina** – Chair I can repeat that for you. **I am suggesting that we strike the second sentence of the PIG report from that reads, "After reviewing the complaint against Trustee Akina the PIG finds that Trustee Akina made misleading and untrue statement with regard to the CLA Audit." Strike that out and instead simply leave the other sentences so that the report will read as follows, "The Permitted Interaction Group met on September 27, 2019. Given that the BOT has no recourse for disciplinary action against a Trustee at this time the PIG considers this matter closed." I make this motion and seek a second from another member.**

Trustee Waihee seconds the motion.

Trustee Brendon Kalei'āina Lee – Members, Trustee Akina has moved to amend the report of the Permitted Interaction Group and it was seconded by Trustee Waihee. Is there discussion on this?

Trustee Leina‘ala Ahu Isa – I wrote it down, I am disputing what you said, because I felt that you did, I don’t want to use the word lie, but you were not the only one that voted, we were given the option, we were not given the option for another choice, it was either vote to extend the CLA contract after they did not receive all the LLC documents or the other option was to not extend it. Extend or not extend, I voted to extend only because what other choice, I didn’t want to vote no, because if we didn’t extend it, they couldn’t have finished it. They were right in the middle they couldn’t have finished. We extended it to December. That was the vote. Then it came out on Facebook that I remember texted me take that thing off Facebook when I said you lied because I also didn’t want to extend it. But that was the only option I had. I didn’t want to extend it. I am being accused of dealing this thing, and you the only one wanted to keep it going, that is not true, I wanted to keep it going but they didn’t have the documents. It was either to extend it or forget this whole audit. I wrote a letter to the Star Advertiser, and they wouldn’t publish my letter to the editor. I wrote to Hawaii Free Press they wouldn’t publish my letter. I said that I was also against extending the thing but what other option because they didn’t have the documents. But nobody listens to me. They print all your stuff, they put you on the front page because it makes news. I am sorry Star Advertiser, but thank you Chair.

Trustee Brendon Kalei‘āina Lee – Thank you Trustee Leina‘ala Ahu Isa.

Trustee Keli‘i Akina – Trustee Lei, thank you for sharing your feelings, and I will be more than glad to discuss this with you further. I am not addressing the issue that you raised. All I am talking about is the way the PIG operated. I wasn’t even given the opportunity to know what specific was being made. I still don’t know even the things that you said were looked at the PIG for its report was made and I wasn’t interviewed and its closed. I look forward to discussing this matter with you further. But that is not what I am addressing today. My concerns are that the PIG failed to follow a good process in this whole affair.

Trustee Brendon Kalei‘āina Lee – I do not believe you are speaking to what Trustee Leina‘ala Ahu Isa was speaking to. Trustee Ahu Isa was speaking to specifically statements that you made in a post that was given to you in the formal complaint. That does speak directly to this amendment.

Trustee Keli‘i Akina – I was given a packet that contained many materials. A news release I had put out, media presentation, Facebook and so forth. I was never told specifically was being referred to or examined by the committee what was wrong, what was found to be misleading or false and so forth. I am not prepared to day to address those specifically. I also believe it would not be appropriate to bring it before the board at this time.

Trustee Brendon Kalei‘āina Lee – I am going to respectfully disagree Trustee Akina. Because those were the specific reasons why the permitted interaction group was formed. If there anybody else that has discussion on the amendment?

Trustee Dan Ahuna – I just have a question regarding misleading and statements that you have said. Is it true that you said that OHA is holding up the CLA audit?

Trustee Keli‘i Akina – I will be very glad to take a look at any document or statement that I made that the committee looked at.

Trustee Dan Ahuna – Trustee Akina is it true that you said OHA is delaying the CLA Audit.

Trustee Keli‘i Akina – Off the top of my head I don’t remember. But I am very glad to take a look at any of the information that was looked at by the committee.

Trustee Brendon Kalei‘āina Lee – Trustee Ahuna are you speaking in favor or against the amendment.

Trustee Dan Ahuna – Right now feel I cannot support the amendment, for me I am the RM Chair now and I have taken some hits with statements have been said. The latest one was OHA is holding up the CLA Audit and that really hurts me. There are other concerns that the RM Chair has all the control over the CLA Audit, he is getting

all the information. I want you to know this, you were the advisor to the audit committee, you guys set the terms of the contract, you've never, ever thought that I would become the Chair today and now it's me. Last week you said misleading statements and this is what I am talking about. This is what this whole thing is about. These are inaccurate statements and these statements are things that really hurt not just us at the table but our entire community. I'm glad we are here to address these issues because it is important.

Trustee Keli'i Akina – Trustee Ahuna I have not made any inaccurate, false or misleading statements with any intention to deceive whatsoever. I've spoken truthfully about the audit process. I did not specifically make the claims that you said I've made. I have however been very honest that from the beginning of this process, long before CLA was involved, too much time has been spent going forward. I've been very honest with that. I raised questions as to why that is the case. The point I am making today is not about specific statements that I made. I am not defending myself because I would need more resources, I need to be told specifically what statement it was and where it was made. What I am pointing out is the committee met behind closed doors, came to the conclusion that I had made false and misleading statements and never interviewed me, never told me what those statements are. That I believe is an injustice. That is something we need to correct that is why I made the amendment. Although we may have differences of opinion, I urge you to vote for the amendment.

Trustee Dan Ahuna – Thank you for saying that, and with all due respect I just want to give you some background. As the RM Chair, you mentioned that you wanted more transparency and accountability. I just want to say thank you to my staff for working so hard. My staff is the one behind all of this. But I wanted to just mention some key facts, in 2015 there were 6 RM Committee Meetings, in 2016 there were 15, in 2017 there were 26, in 2018 there was 19 and in 2019 there were 32. Now, you talk about transparency and accountability, that was my whole goal to be transparent and accountable to all of you. To make sure that all of you have a voice. But the voices coming out wasn't coming out right. This is what we are talking about, we talking about misleading, saying things outside of what we are trying to do here. You know what we are trying to do here. You know because you were involved in these 32 meetings. But I just wanted to speak on facts. I am not here just to go off on one person. But that's the facts, thank you.

Trustee Brendon Kalei'aina Lee – Is there anyone else that would like to make comments about the amendment? In that case the Chair of the PIG would like to speak against the amendment that is proposed to the board and I have my reasons. First of all, striking that language for the reasons that Trustee Akina stated, Trustee Akina you stated that you were never given the specifics of the complaint. Is that true?

Trustee Keli'i Akina – I was never given the specific, I was never told what statements I made were considered to be false and misleading. I've never been told what statements I have made.

Trustee Brendon Kalei'aina Lee – So in a packet given to the entire the Board of Trustees including Trustee Akina. That we all actually had to sign off on, so we all signed that we received that packet. Not only does it have the statements made by Trustee Akina on April 19, 2019 on Facebook, there are also subsequently used on a Hawaii Free Press article. In the complaint it specifically highlighted and said the statements that Trustee Akina made, which were that...

Trustee Keli'i Akina – Trustee Lee may I make a point of order.

Trustee Brendon Kalei'aina Lee – No you may not. I will give you a chance to rebut, but I have the floor right now.

Trustee Keli'i Akina – I am not rebutting I am making a point of order. I call upon the Chair of the committee.

Trustee Brendon Kalei'aina Lee – I recognize your point of order.

Trustee Keli'i Akina – I want to caution you Trustee Lee not to introduce information today that has not been included in the official report. Here's why, sunshine law requires and focuses on the public's ability to provide

meaningful testimony. So that there should be not a significant additional information presented in this discussion that is not included in the report. That would deprive the public from the opportunity to provide testimony. I relay this as counsel we received from an Attorney at the OIP Jennifer Brooks.

Trustee Brendon Kalei‘āina Lee – Trustee Akina I appreciate you pointing that fact out to the Chair of the Permitted Interaction Group, however you brought this matter up, not the permitted interaction group. By you stating on the record that you were not given any information as to what the complaint was for you or that you were not given the specifics of the things that you said that were misleading and untrue. You brought this forward to the Board of Trustees. Not the permitted interaction group.

Trustee Keli‘i Akina – All I was saying Trustee Lee.

Trustee Brendon Kalei‘āina Lee – Did you not say that Trustee Akina?

Trustee Keli‘i Akina – I did not say that as you pointed out.

Trustee Brendon Kalei‘āina Lee – You did not say that Trustee Akina, you did not say?

Trustee Keli‘i Akina – What I did say and I’ll find it right here.

Trustee Brendon Kalei‘āina Lee – I will be happy to have the Board Secretary read it back Trustee Akina. But you brought it to this table and you brought it to the permitted interaction group that you were not given the specifics of what you said that were misleading and untrue.

Trustee Keli‘i Akina – Let me read my statement again, “in addition I have never been told what specific statements of mine the committee considers to be misleading or untrue.” So even if I wanted to explain or defend my comments before the Board or public, I cannot do so because I have never been told what the specifics are. That’s the truth, I have never been told that and I am not asking for the now, because that should have become...

Trustee Brendon Kalei‘āina Lee – But you were given that Trustee Akina.

Trustee Keli‘i Akina – No I wasn’t.

Trustee Brendon Kalei‘āina Lee – Yes you were Trustee Akina.

Trustee Keli‘i Akina – You are inaccurate sir. I was given texts of documents that had many statements, they had dates, they had...

Trustee Brendon Kalei‘āina Lee – So are those not the items?

Trustee Keli‘i Akina – I don’t know what that is what you are referring to.

Trustee Brendon Kalei‘āina Lee – How would you not know that? That was the official complaint Trustee Akina.

Trustee Keli‘i Akina - The fact that I may be aware that you looked at my news release, you looked at a news article or that you looked at some other source, or that you heard from witnesses, whatever it may be. Never spells out exactly what statement I made that was false or misleading or why it was false or misleading. I don’t even know what they are. That should have been included in the report if it was something that you wanted to have discussed so that the public could actually know, so that I can know. Instead your committee made a judgment that I made false and misleading statements and issued that report publicly.

Trustee Brendon Kalei‘āina Lee – Thank you for that clarification Trustee Akina. So, are you asking the permitted interaction group, to add into the report your specific statements?

Trustee Keli‘i Akina – I am definitely not asking the committee to do that. I am just pointing out the failure of the committee to follow procedure that was fair.

Trustee Brendon Kalei‘āina Lee – Correct, so if the committee failed by not introducing those statements are you then asking us to.

Trustee Keli‘i Akina – Trustee Lee you had your opportunity to do that and that matter you have now declared closed. I am pointing out that the harm has...

Trustee Brendon Kalei‘āina Lee – Actually Trustee Akina I have not declared anything closed. I have not declared anything closed.

Trustee Keli‘i Akina – I was using the plural you. I was referring to the committee members.

Trustee Brendon Kalei‘āina Lee – Second of all just because the permitted interaction group report says that they consider the matter closed until this is accepted by and voted by the Board, permitted interaction groups are able to be extended as with the case of several of the permitted interaction groups that this body currently has extended. Are you asking this permitted interaction group to be extended to add those pieces to the report?

Trustee Keli‘i Akina - I am not making any such request. What I am asking is that...

Trustee Brendon Kalei‘āina Lee - But you just said Trustee Akina that we failed so we can correct that.

Trustee Keli‘i Akina – What I am asking is that the committee will strike that statement that I made misleading and untrue statements. That is all that I am asking. That is very clear.

Trustee Brendon Kalei‘āina Lee – What is also very clear Trustee Akina is your reason because you stated it. You stated your reason for this amendment is that you were not given the complaint which we now know you were given the complaint. So now you are claiming that the complaint is not a part of the report, so the Chairperson of the permitted interaction group is asking you, would you like us to extend the life of the PIG to include those statements into the report.

Trustee Keli‘i Akina – Trustee I have already answered that question that I am not making that request.

Trustee Brendon Kalei‘āina Lee – Thank you.

Trustee Keli‘i Akina - And besides that is not the reason that I stated, the most significant reason the first, I was never asked or allowed to appear before the committee to be questioned or give my point of view. Whatever conclusions the committee came to they did so without ever having heard.

Trustee Brendon Kalei‘āina Lee – So Trustee Akina...

Trustee Keli‘i Akina – May I continue?

Trustee Brendon Kalei‘āina Lee – No you may not. If that is a part of our point of order then I will not rule in favor of our point of order. It's been already made clear during public testimony. We were able by law to interview you. There were four members of the permitted interaction group, and by law we are not allowed to interact with anyone else. As you recall we originally only had three members on the permitted interaction group. So that maybe we could interview others. It was decided by this body to add another member to the permitted interaction group thus making it four. So, without violating that sunshine law we were not permitted to interview

you. On that same note, the statements that were provided to you in the complaint were written, they were not verbal.

Trustee Keli'i Akina – I don't dispute the fact that the law supports the structure of the PIG, that is not the concern that I have. I am raising the question that is more important to us as human beings, something to us as Hawaiians and that is what is pono and right. So yes, maybe the law allows the committee to meet without interviewing me, but the fact that is in law doesn't make it right. Doesn't make it pono, just or fair. That is what I am appealing to now on the board. I am appealing to your sense of fairness. I don't think any one of you would like to be subjected to a situation where you make statements that are at odds with the Board and you are brought through an unfair process.

Trustee Brendon Kalei'aina Lee – I am not going to rule you out of order. Because nowhere in this report does it say you made statement that were in contrary to the standing of the Board. That is an incorrect statement. Nowhere in this report does it say that.

Trustee Keli'i Akina – You don't have to rule me out of order, you can simply say we move on.

Trustee Brendon Kalei'aina Lee – I believe I just did Trustee Akina.

Trustee Keli'i Akina – I acknowledge that.

Trustee Brendon Kalei'aina Lee – So we still have an amendment before us to remove, “after reviewing the complaint against Trustee Akina the PIG finds that Trustee Akina made misleading and untrue statements with regard to the CLA audit.” Is there any other discussion on this amendment?

Trustee John Waihe'e IV – I guess, obviously I agree with the sentiment of the original motion, I am on the committee and I voted for it. I am thinking that the main point of this group was to find out whether or not Trustee Akina had violated his duty of care and or loyalty. Do you think short of us declaring that we need to state this part of it since we are not declaring either of those things. Maybe it's not necessary to state that he made misleading or untrue statement with regard to the CLA Audit.

Trustee Brendon Kalei'aina Lee – That is not my decision to make that is this body's decision to make. The body need to decide whether they consider misleading and untrue statements a violation of duty of care and or duty of loyalty.

Trustee Carmen Hulu Lindsey – I had one problem with this report, in previous PIGs we were asked and ordered not to make any statements at all. That we are just to transmit the report to the Chair and that nothing at all should be discussed, not even a statement like this. So, I was surprised to see a statement and here you make it in the last meeting. I think Judge can verify that; in other PIGs we never spoke a word on the first transaction. To have heard it in the last meeting I was surprised. Maybe it would have been better to transmit it and not make a statement.

Trustee Brendon Kalei'aina Lee – I don't know what that has to do with the amendment. Are you saying that we are not allowed to make a statement when we provide, but you are incorrect.

Trustee Carmen Hulu Lindsey – I am telling you our past practices.

Trustee Brendon Kalei'aina Lee – The law does permit, for when you present, that is why it's called presenting a report, when you present the report the presenters of the report are allowed to present, you are allowed to say whatever is in the report, present anything they wish. The law does not permit for discussion on the report. So, any questions or clarifying statements needing to be made are not allowed to be made until the subsequent meeting. The purpose of that is to allow a Board to hear the presentation and take all the information and go back and digest it and decided what they want to do with it and then come back.

Trustee Carmen Hulu Lindsey – I agree with the PIG standing with Trustee Waihee. Because we really didn't make any determinate statement. We decided to just close it down.

Chair Colette Machado – Trustee Lee, what I want to do is engage a conversation with our Attorney, Board Counsel, we need to do that in Executive Session. So will ask to a table this discussion and then recuse ourselves into Executive Session to consult with our Board Counsel regarding legal issues pertaining to the PIG and this report. If you agree.

Trustee Brendon Kalei'aina Lee moves to recuse into executive session to consult with our Board Counsel regarding legal issues pertaining to the PIG and this report.

Trustee Carmen Hulu Lindsey seconds the motion.

Chair Colette Machado – This is purposely to into Executive Session to consult with our Board Counsel on legal issues related to this discussion we have been having. Roll call vote please.

Trustee Brendon Kalei'aina Lee moves to recuse into executive session to consult with our Board Counsel regarding legal issues pertaining to the PIG and this report. Trustee Carmen Hulu Lindsey seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA					X - abstain	
TRUSTEE BRENDON KALEI'AINA LEE	x		X			
TRUSTEE CARMEN HULU LINDSEY		x	X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8		1 abstention	
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passes with eight (8) yes votes and one (1) abstention.						

Chair Colette Machado – Members we are going to go into Executive session, please clear the room.

The Board resolved into Executive Session at 11:49 am

The Board reconvenes in open session at 12:14 pm.

Chair Colette Machado – We are back in open session.

VI. NEW BUSINESS – (CONTINUED)

- E. Deliberation and decision making on the Report of the Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decision. Pursuant to HRS § 92-2.5(b)(1)(C)

12:15 pm Trustee Keli'i Akina returns to the meeting.

Chair Colette Machado – When we went into Executive session there was an item VI. E. I'll call on Trustee Brendon Kalei'āina Lee as the Chair.

12:16 pm Trustee Carmen Hulu Lindsey leaves the meeting.

Trustee Brendon Kalei'āina Lee – She is just giving the Chair back to me. Thank you, Madame Chair. We are still on the amendment after reviewing to strike from the report. Is there any other discussion?

Trustee Dan Ahuna moves to table the amendment.

Trustee Robert Lindsey seconds the motion.

Trustee Brendon Kalei'āina Lee- There is a motion to table the amendment and a second. Is there any discussion on the table?

Trustee Keli'i Akina – Chair thank you. May I inquire as to rationale for tabling?

Trustee Brendon Kalei'āina Lee – Yes, there will be another motion to refer this matter back to the permitted interaction group.

Chair Colette Machado – I think you will be very pleased with it.

Trustee Keli'i Akina – Thank you.

Trustee Brendon Kalei'āina Lee – Roll call vote for the table.

Trustee Dan Ahuna moves to table the amendment. Trustee Robert Lindsey seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	X		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA					X - abstain	
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY						Excused
TRUSTEE ROBERT LINDSEY		X	X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7		1 abstention	
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passes with seven (7) yes votes, one (1) abstention and one (1) excused.						

Trustee Brendon Kalei'āina Lee – Thank you, Trustee Ahuna.

Trustee Dan Ahuna moves to refer the investigation of the complaints back to the Permitted Interaction Group for review.

Trustee Robert Lindsey seconds the motion.

Trustee Brendon Kalei'aina Lee – Thank you members there is a motion to refer this matter to the permitted interaction group. The motion was made by Trustee Ahuna and seconded by Trustee Robert Lindsey. Can I get a roll call vote please.

Trustee Dan Ahuna moves to refer the investigation of the complaints back to the Permitted Interaction Group for review. Trustee Robert Lindsey seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	X		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA					X - abstain	
TRUSTEE BRENDON KALEI'AINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY						Excused
TRUSTEE ROBERT LINDSEY		X	X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7		1 abstention	1
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passes with seven (7) yes votes, one (1) abstention and one (1) excused.						

Trustee Brendon Kalei'aina Lee – Thank you members. Madame Chair I relinquish the Chair back to you.

VIII. COMMUNITY CONCERNS

Chair Colette Machado – Members we are now on community concerns. We have two individuals that signed up, Thomas Miller if you are still here. Thank you for being patient with us. Please come to the table. Followed by Kealii Makekau.

Thomas Miller – I came to talk today about Campbell Estate and Alexander and Baldwin. For the start Alexander and Baldwin because I'm trying to get the raceway going again. At the time when the track closed John Waihee went through extended lengths to shut down the feed lot down Campbell Industrial park. At that time those guys they abandoned that and went back to that parcel 9 where old man was trying to build this fabulous out of State racing facility. What wasn't in conjunction with the old raceway park. One of the things with losing the land, Jimmy Pflueger had a thing where, eh I am going to give Campbell Estate this property and when you guys want to sell it you need to have another facility available for the racers. So, John Waihee the Governor at the time went and had those guys, the feed lot kicked out so that they could put the track over there. Campbell Estate was to have a facility so the people that bought the land from the racetrack was Iron Gates Development. That's the guys that was building the Trump Tower. These guys when they bought the land Iron Gates Development built all these places all over the United States and this one particular place, they changed their name to Iron Gates Development Motorsports Center. These guys built all these industrial things. I asked Campbell Estate how come you guys did that? How come you guys sold the land to those guys when they didn't build a racetrack. So, Alexander and Baldwin steps in, these guys are losing they can't pay the loan. So, what they do Alexander and Baldwin steps in and buys the note and they say hey, Business things goes and says hey, Alexander and Baldwin buys raceway park. They say eh Thomas right on we going get the track. I called Alexander and Baldwin, they say oh no, we just bought the note, because these guys cannot get the money for it, if they defaulted the land would have gone back to the racers. They would have a place to race.

Alexander and Baldwin makes millions over this. I asked Alexander and Baldwin, I said hey what's going on? What did you guys do? They said no we just bought the note. I asked them eh, what is your guys business. Oh we are into shopping centers and malls, we are not into community development or anything. So I said, oh so you

guys deals with Caucasian and Asians and you neglect the kanaka maoli because the Hawaiians need houses they don't want. I don't think they would care for malls and shopping centers because it doesn't serve much interest to them. I wanted to bring it to you guys attention about this. One of the things was with John Trustee John Waihe'e IV and Tom Enomoto they couldn't destroy Waiāhole because Tom Enomoto was John Waihee's legal guys, the money guy or something, they couldn't destroy Waiāhole. They needed money so they did that deed with Campbell Estates. I just wanted to bring to you attention about what Campbell Estate is about and what especially Alexander and Baldwin is about. They have nothing to do with you guys. They only thing they like about you guys is your land. And they go and spend the money every where else but where its actually needed. And because of what they did the racers lost their track and now get this guy trying to build this, for 30 years he been trying to do this. They even brought Roland Leong to destroy racing in Hawaii. Roland Leong was a top fuel racer in the mainland and Dole guys sponsored him, Hawaiian Punch. When Hawaiian Punch sold out Proctor and Gamble and said we are done we not going to sponsor you no more. So the State came in and they got this guy Nagasato to bring in Roland Leong from the mainland to Hawaii to go and lobby for the tourism authority to give him money to go sponsor a top fuel funny car and that was all a scam to get money so they could get that fantastic racing facility.

My thing was just to come here and tell you guys what Campbell Estates did, what Alexander is about and the ramifications it caused the community because now there is no place for them to race. Now this guys wants to build, I called the mainland and said eh you guys going give this guy land for build, no we not, our land is for oil refineries and nothing else. Now, the guy goes around saying he got a lease agreement with but it's a license agreement not a lease agreement. He is going around making all these false misleading things and leaving the racers out. I am hoping some how I can talk to one of you people about getting the Department of Land and Natural Resources to renege on that feedlot and get the race track put back there because this guys from 93 has been trying to get his own facility for these fantastic race cars and nothing for dirt track or quarter mile. Because right not there is not going to have a quarter mile because this guy wants to build his own thing and it's a Caucasian guy taking from the locals to do his own self. The most important thing is Alexander and Bladwin who they deal with, they deal with Caucasians and Asian and they neglect the kanaka maoli because they are not into housing they are into malls and shopping centers.

Chair Colette Machado – Thank you Thomas.

Thomas Miller – I hope you guys really look into Alexander and Baldwin and the dastardly deeds they do because the ramifications are astronomical on the kanaka maoli.

Chair Colette Machado – Thank you again. Our next speaker is Kealii Makekahu.

12:35 pm Trustee Leina'ala Ahu Isa leaves the meeting.

Kealii Makekahu – Aloha again. I want to say officially congratulation to my friend Sylvia. We had met before, if my comments earlier were perceived ill will to any individual I want to doubt on the case. She is a pretty cool cat. My comments however are not predicated on the discussion that took place earlier. I had the intention to come here and speak directly about the audit. Personally I myself consider, I have, I assume I have somewhat of a vested interest on this OHA audit, when it first started I was here, I've ran for candidacy for the Trustee seat and what not and in attempt to educate myself I used to come to a lot of meetings that you know of. I was here when the audit was officially passed, moved, accepted and there were some changes. I was here when the committees took upon the place to plan, direct and present the audit to the beneficiaries for its acceptance and subsequent board passing. Throughout that time I have been given testimony as to how, why, what type of audit and the situations surrounding it. Was given back circumstances and reasons, I even am on record as appearing before the Board and the RM Committee on a date, some year and a half maybe two years ago, with an auditor presenting written testimony about what potentially could be road blocks that would affect the audit in particular. We were given assurances form the RM Committee and so forth that those things were not going to be anything to worry about. This has been meticulously planned and thought out and the contract is with a first class tiered investigator.

Since that time, a considerable amount of time has gone by, a lot of RM committees that I've been told that I don't necessarily have the first hand, I've been looking at the website as far as the minutes and so forth and extensions have been asked and finally the formal push to get it done I believe to next month or something. The troubling point that I have here is that, this firm that you folks hired, they fully come with the intention of what they needed and what they desired. From what we've been seeing in the public and in most through hearsay is that now the documents are not going to be able to be delivered because of a legal technicality. My point is, why was that not foreseen earlier or at the beginning of this stage and this matter when it was talked about and discussed. The documents they requested, I think there were 30 or so, they were examined either by the former administration but it seemed from the period of time, which has grown extensively and then plus and extension that's the part where I find disturbing. I am sure the members of the community are just astounded because that's where they heresy and dissent is going to brew upon that possibly and I use a former Chair's point on this. That this audit will be so destructive because it implements certain things that the general public doesn't know. That's the point where the here say gets labeled in and turned around.

So we come to the due process portion of coming to the meetings, asking for assurances, making sure everything is up and running, and now at the very end we seem to be hampered with a State Auditor versus OHA, what is this and what is not. It seems my early arguments were down played many, many years ago is actually going to happen. This is probably going to be extended into a more period of time which will probably cost this office more money and time and resources which you folks obviously could be using for other programs and stuff. I just wanted to know how it came to this. My personal capacity I have been a part of two audits in two associations that I was a part of. They know where no portfolio of the Office of Hawaiian Affairs, I admit that, but the process itself went through something very similar to what you folks have undertaken. So to keep having these unexplained road blocks put out in front of us and given the timing of political year coming up, it really seems somewhat I don't want to say it, but scandalous, but unfortunately all of this is a political town. We were given the assurances that we were going to have a clean reformed audit, its matters presented to the public and we were going to fix things and get this wa'a back on the water. But it doesn't seem that way. It seems we purposely put it back in dry dock and its going to stay there for quite some time now. There is no accusations here to one individual or anyone for making that happen, I just want to know as an organization as a Board how did it come to this. The talent here, when I see the talent and the backgrounds this shouldn't have happened. This should have been foreseen or picked up many, many, many moons ago if not years ago. Instead its only being divulged now that this seriousness has come up and thus, we have to stall and hold on this. That is my concern.

Chair Colette Machado – Thank you.

Robert Klein, Board Counsel - You are in community concerns, they can't engage with you.

Kealii Makekahu – Ok I accept that, thank you.

Chair Colette Machado – Just another point, perhaps you can talk with Sylvia about which audits you been referring to that we have not been.

Kealii Makekahu – It's the CLA Audit.

Chair Colette Machado – That is coming up in December.

Kealii Makekahu – I'm just saying how we got to this point that is what I am talking about.

Chair Colette Machado – Thank you for that clarification.

IX. ANNOUNCEMENTS

None

X. ADJOURNMENT

Chair Colette Machado – Is there anyone else that would like to address the Board in community concerns? Hearing none, the Chair would like to entertain a motion to adjourn.

Trustee Kalei Akaka moves to adjourn the meeting.

Trustee Dan Ahuna seconds the motion.

Chair Colette Machado – It has been moved and seconded. Roll call vote please.

Trustee Kalei Akaka moves to adjourn the meeting Trustee Dan Ahuna seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA						Excused
TRUSTEE DAN AHUNA		x	X			
TRUSTEE KALEI AKAKA	x		X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY						Excused
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7			2
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passed with seven (7) yes votes and two (2) excused.						

Chair Colette Machado – Thank you all for remaining as long as you did. Mahalo we are adjourned.

The meeting was adjourned at 12:34 pm.

Respectfully submitted,

Dayna Pa, Board Secretary

As approved by the Board of Trustees on _____.

Colette Y. Machado, Chairperson
Board of Trustees

Attachments:

1. Testimony of Randall Roth
2. Report of the Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decision.

November 21, 2019

To: OHA Board of Trustees

From: Randall Roth

Re: PIG Report and Alleged Breach of Trust by Keli'i Akina

Aloha Members of the OHA Board,

I am a professor emeritus at the William S. Richardson School of Law, but I am not representing it or speaking on its behalf. My testimony today is mine alone.

My interest in OHA is longstanding and has included public commentary. For example, former OHA trustee Walter Heen and I co-authored op-eds about OHA's legal status and several of the implications in "What is OHA?" (Dec. 20, 2015 at <http://www.staradvertiser.com/2015/12/20/editorial/insight/what-is-oha/>) and "OHA Should Allow Trustee to Speak Out" (June 30, 2019 at <https://www.staradvertiser.com/2019/06/30/editorial/island-voices/column-oha-should-allow-trustee-to-speak-out/>).

A majority of OHA's governing board voted on June 20, 2019 to form a Permitted Interaction Group (PIG) to investigate allegations that fellow board member Keli'i Akina violated a trustee's duty of care and loyalty when he criticized the board's decision to delay a pending forensic audit.

Members of the PIG met on September 27, 2019 and concluded that "Akina made misleading and untrue statements" regarding the audit. The PIG added that the OHA board "has no further recourse for disciplinary action ... at this time," and that "the PIG considers this matter closed." The PIG report does not explain the basis for the finding that Akina was untruthful, nor does it explain why members of the PIG would disparage Akina without first giving him an opportunity to address the allegations.

I believe it is patently unfair for members of this PIG essentially to declare Akina a liar without giving him an opportunity to respond to the allegation, and without bothering to explain or defend their findings.

Furthermore, I believe OHA's rule prohibiting public criticism by a dissenting board member to be fatally flawed for all the following reasons:

First, it is premised on assumptions that OHA is a trust governed by a board of trustees—neither of which is true. OHA is a non-autonomous state agency overseen by elected public officials.

Second, the rule in question violates a dissenting board member's constitutionally protected freedom of speech.

Third, the rule interferes with a dissenting board member's responsibility as an elected public official to keep constituents reasonably informed.

Finally, the rule in question is bad policy because it reduces the level of transparency and accountability in a non-autonomous state agency.

Because this testimony relies on my understanding of trust law, I will end with a brief summary of my trust-law credentials:

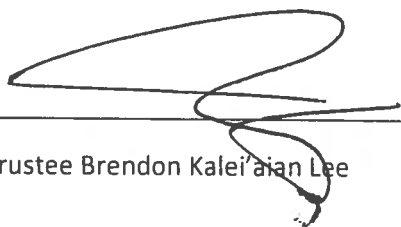
1. I taught trust law (among other subjects) at the University of Hawaii William S. Richardson School of Law for many years and at several other law schools.
2. Dozens of other law schools have invited me to make presentations on trust law, including Harvard, Berkeley, Columbia, UCLA, Duke, and NYU; and the University of Chicago Law School hired me to teach its trust law course as a visiting professor. At that time, I was the only visiting professor on an exceptionally distinguished faculty, several of whom eventually left academia for higher callings, including Supreme Court Justice Elena Kagan and President Barrack Obama.
3. I have been an Academic Fellow in the American College of Trust & Estate Counsel for many years and have made hundreds of presentations at conferences and continuing legal education programs sponsored by numerous state bar associations and groups such as the National College of Probate Judges.
4. Between 2003 and 2012, I served as one of two Associate Reporters for the American Law Institute's Restatement of the Law of Trusts, a decade-long effort by the nation's preeminent trust-law experts to determine, explain, and publish the common law of trusts in this country.

I would welcome any questions you might have regarding this testimony.

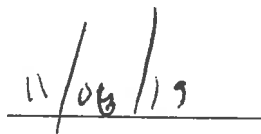
Mahalo,

Randall W. Roth

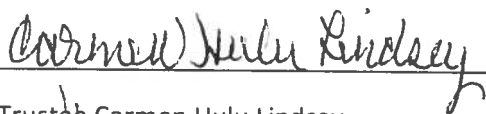
The Permitted Interaction Group met on September 27, 2019. After reviewing the complaint against Trustee Akina the PIG finds that Trustee Akina made misleading and untrue statements with regard to the CLA audit. Given that the BOT has no recourse for disciplinary action against a Trustee at this time the PIG considers this matter closed.



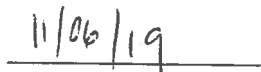
Trustee Brendon Kalei'ain Lee



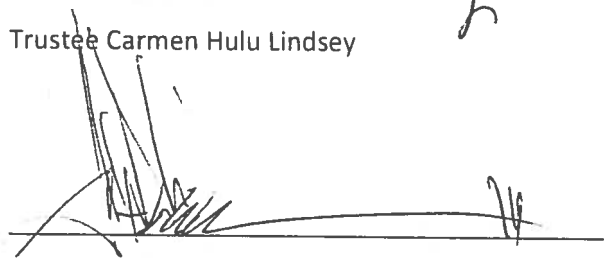
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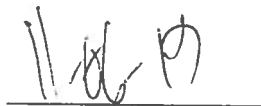
Trustee Carmen Hulu Lindsey



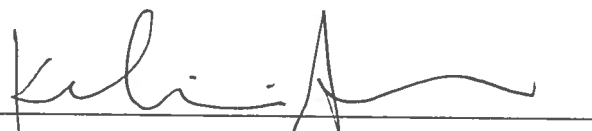
Date



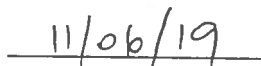
Trustee John Waihe'e IV



Date



Trustee Kalei Akaka



Date

Office of Hawaiian Affairs
560 N. Nimitz Hwy, Suite 200
Honolulu, HI 96817
Roll Call Vote Sheet

BOARD OF TRUSTEES MEETING

DATE: June 20, 2019

AGENDA ITEM:

V. New Business

- C. Action Item BOT #19-09: Approval of the formation of a Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions. Pursuant to HRS § 92-2.5(b)(1)(A).

Move to approve the formation of a Permitted Interaction Group (PIG) to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions.

Permitted Interaction Group Scope /Purview:

The scope/purview of the PIG is to:

1. Investigate complaints against an OHA Trustee for alleged violations of the Trustee Code of Conduct contained in the complaints, such as allegations involving that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions;
2. Interview individuals involved in the complaints, consult with others (i.e. Board Counsel, etc.), and perform tasks as necessary to further and complete its investigation; and
3. Present to the Board a report with its findings and recommendations.

Permitted Interaction Group Membership:

The membership of the PIG is as follows:

1. Trustee Brendon Kalei'aina Lee;
2. Trustee Carmen Hulu Lindsey;
3. Trustee John Waihe'e IV; and
4. Trustee Kalei Akaka

Trustee Lee will serve as the Chair of the PIG and Trustee Hulu Lindsey will serve as its Vice Chair.

Permitted Interaction Group Term/Duration:

The term of the PIG expires at the completion of the scope/assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment.

As amended.

AMENDMENT:

MEANS OF FINANCING:

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

TRUSTEE KALEI	AKAKA			X			
TRUSTEE KELI'I	AKINA					X	(1 st voted no then advised by Counsel to abstain)
TRUSTEE BRENDON KALEI-AINA	LEE	x		X			
TRUSTEE CARMEN HULU	LINDSEY			X			
TRUSTEE ROBERT	LINDSEY					X	
TRUSTEE JOHN	WAIHEE			X			
TRUSTEE COLETTE	MACHADO			X			
TOTAL VOTE COUNT				7		2 abstention	

MOTION: ☐ UNANIMOUS ☒ PASSED ☐ DEFERRED ☐ FAILED

DISCUSSION:

OFFICE OF HAWAIIAN AFFAIRS

Action Item

BOARD OF TRUSTEES

June 6, 2019

BOT #19-09

Action Item Title: Approval of the formation of a Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions.

Prepared By: Carol A. Ho'omanawanui 06/05/2019
Carol Ho'omanawanui Date
Ke 'Aho Kele, Chief of Staff

Reviewed By: Robert G. Klein 06/05/2019
FOR Robert G. Klein Date
Pōhaku Kihi Nui, Board Counsel

Reviewed By: Colette Y. Machado 06/05/2019
Colette Y. Machado Date
Ke Kauhuhu, Board of Trustees Chair

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I. ACTION ITEM

Approve the formation of a Permitted Interaction Group (PIG) to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions.

II. ISSUE

Whether or not the OHA Board of Trustees should approve the formation of a Permitted Interaction Group, consistent with Hawai'i Revised Statutes §92-2.5(b)(1)(A), to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions.

III. DISCUSSION

A. Timeline of Complaints

A complaint against an OHA Trustee was transmitted to the Board of Trustees (BOT) Chair on April 17, 2019 alleging violations of policies covered under the Trustee Code of Conduct when public statements and comments were made by the OHA Trustee:

1. Duty of Care and Loyalty to OHA, Section 1030 of the OHA BOT Executive Policy Manual (February 2012); and
2. Duty of Loyalty and Duty of Obedience and Support for Board Decisions, Subpart 1A, Section A, Subsection 5 of the OHA BOT Code of Conduct and Sanctions for Violations of the Code of Conduct.

This complaint was distributed to the Trustees via a confidential memo from the Board Counsel dated April 30, 2019.

Another complaint against the same OHA Trustee identified in the first complaint was transmitted to the BOT Chair on May 8, 2019. This complaint alleged violations of policies covered under the Trustee Code of Conduct, similar to the first complaint, when public statements were made by the OHA Trustee:

1. Duties of Care, Obedience, and Loyalty as defined in the OHA BOT Executive Policy Manual (February 2012) and Subpart 1A, Section A of the OHA BOT Code of Conduct and Sanctions for Violations of the Code of Conduct.

The second complaint was distributed to the Trustees via a confidential memo from the Board Counsel dated May 14, 2019.

B. Applicable Law in Hawai'i Revised Statutes, Permitted Interaction Group

In accordance with HRS §92-2.5(b)(1)(A), this action item seeks the approval of the Board to create a Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions.

Hawai'i Revised Statutes (HRS), Chapter 92, Public Agency Meetings and Records, §92-2.5(b)(1) allows for two or more board members (Permitted Interaction Group), but less than the number of members which would constitute a quorum of the board, to investigate a matter relating to official business of the board:

- (b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:
 - (1) Investigate a matter relating to the official business of their board; provided that:
 - (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;
 - (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
 - (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board.

C. Proposed Permitted Interaction Group (PIG)

The scope/purview, memberships, and term/duration of the Permitted Interaction Group are defined below.

Permitted Interaction Group Scope /Purview:

The scope/purview of the PIG is to:

1. Investigate complaints against an OHA Trustee for alleged violations of the Trustee Code of Conduct contained in the complaints, such as allegations involving that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions;
2. Interview individuals involved in the complaints, consult with others (i.e. Board Counsel, etc.), and perform tasks as necessary to further and complete its investigation; and
3. Present to the Board a report with its findings and recommendations.

Permitted Interaction Group Membership:

The membership of the PIG is as follows:

1. Trustee Brendon Kalei‘āina Lee;
2. Trustee Carmen Hulu Lindsey; and
3. Trustee John Waihe‘e IV

Trustee Lee will serve as the Chair of the PIG and Trustee Hulu Lindsey will serve as its Vice Chair.

Permitted Interaction Group Term/Duration:

The term of the PIG expires at the completion of the scope/assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment.

IV. TIMEFRAME

Immediate action is recommended.

V. FUNDING SOURCE

No additional funding is needed to form a new Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board’s decisions.

VI. ALTERNATIVES

- A. Approve the formation of a Permitted Interaction Group (PIG) to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board’s decisions.
- B. Do not approve the formation of a Permitted Interaction Group (PIG) to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board’s decisions.
- C. Take no action

VII. RECOMMENDATION

Approve the formation of a Permitted Interaction Group (PIG) to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board’s decisions.

The scope/purview of the PIG is to:

1. Investigate complaints against an OHA Trustee for alleged violations of the Trustee Code of Conduct contained in the complaints, such as allegations involving that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions;
2. Interview individuals involved in the complaints, consult with others (i.e. Board Counsel, etc.), and perform tasks as necessary to further and complete its investigation; and
3. Present to the Board a report with its findings and recommendations.

The membership of the PIG is as follows:

1. Trustee Brendon Kalei'āina Lee;
2. Trustee Carmen Hulu Lindsey; and
3. Trustee John Waihe'e IV

Trustee Lee will serve as the Chair of the PIG and Trustee Hulu Lindsey will serve as its Vice Chair.

The term of the PIG expires at the completion of the scope/assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment.

VIII. ATTACHMENT

None

**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Highway, Suite 200
Honolulu, HI 96817**

**Minutes of the Office of Hawaiian Affairs Board of Trustees
Thursday, December 5, 2019
10:00 am**

ATTENDANCE:

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

ROBERT KLEIN, BOARD COUNSEL

EXCUSED:

TRUSTEE ROBERT K. LINDSEY

ADMINISTRATION STAFF:

SYLVIA HUSSEY, CEO
LISA WATKINS-VICTORINO, ICOO
STERLING WONG, PRO
EVERETT OHTA, CC
KEOLA LINDSEY, CA
JOCELYN DOANE, PP
MILES NISHIJIMA, LPD

BOT STAFF:

CAROL HO'OMANAWANUI
KAUIKEAOLANI WAILEHUA
LAURENE KALUAU-KEALOHA
PRISCILLA NAKAMA
LEIANN DURANT
DAYNA PA
MARIA CALDERON
LEHUA ITOKAZU
ALYSSA-MARIE KAU
NATHAN TAKEUCHI
PAUL HARLEMAN
CLAUDINE CALPITO
MELISSA WENNIHAN
ANUHEA PATOC

GUESTS:

GERMAINE MEYERS
THOMAS MILLER

I. CALL TO ORDER

Trustee Colette Machado Calls the Board of Trustees meeting to order at 10:05 am. Roll call is taken; Trustees Ahu Isa, Ahuna, Akaka, Akina, Lee, Carmen Hulu Lindsey, Robert Lindsey and Machado are present, constituting a quorum. Trustee Waihee is expected to arrive shortly.

Let me begin by saying there is 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for the following items:

- II.** Approval of Minutes
 - A. September 26, 2019
- V.** New Business
 - A. Committee on Beneficiary Advocacy and Empowerment
 - 1. Action Item BAE #19-02: Approval of OHA 2020 Legislative Package
 - B. Committee on Resource Management
 - 1. Presentation: CLA - OHA & LLCs Contract & Disbursement Review Final Report

With that said we will move on to item II.

II. APPROVAL OF MINUTES

A. September 26, 2019

Chair Colette Machado – We have minutes from our September 26, 2019 meeting.

Trustee Dan Ahuna moves to approve the Board of Trustees meeting minutes of September 26, 2019.

Trustee Brendon Kalei‘āina Lee seconds the motion.

10:06 am Trustee John Waihe‘e IV arrives to the meeting.

Chair Colette Machado – Is there any discussion? Hearing none, roll call vote please.

Trustee Dan Ahuna moves to approve the Board of Trustees meeting minutes of September 26 , 2019. Trustee Brendon Kalei‘āina Lee seconds the motion.						
TRUSTEE	1	2	‘AE (YES)	A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA‘ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI‘I AKINA			X			
TRUSTEE BRENDON KALEI‘ĀINA LEE		x	X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY						Excused
TRUSTEE JOHN WAIHE‘E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8			1
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passes with eight (8) yes votes and one (1) excused vote.						

III. PUBLIC TESTIMONY

Chair Colette Machado – We are on public testimony. I’d like to call on Germaine Meyers to please come forward. Thank you taking the time to come back again and join us.

Germaine Meyers – I just had a question regarding housekeeping. I understand that my camera may be in the way. If it is just let me know where I have to move it. I can unplug it, it has battery, if it is in the way.

Chair Colette Machado – It really isn’t because we are still doing the livestream.

Dayna Pa – It’s the area between the Chair and your camera.

Germaine Meyers – I’ve been doing that for the last 2 years nobody, except that one time when I didn’t have it on the stand.

Dayna Pa – A couple time it fell and someone tripped.

Germaine Meyers – If I have to move just tell me where it needs to go. I can make sure I can take care of it at the next meeting. Is that ok?

Chair Colette Machado – Ok.

Germaine Meyers – I just want to make sure I can video tape it for my library.

Chair Colette Machado – I think it's the tripod that they are concerned with. Sylvia maybe you need to move closer to the table.

Germaine Meyers – No she is fine, here's the thing we been asking for the thing to be archived so that we have access to it. But OHA is still yet, Ka Pouhana told us, the last one, told us that he was checking with legal, but it's a public media. This is supposed to be a public meeting and we asked for it to be on ōlelo but is not. Unfortunately for me to have an archival what the Trustees spoke about at the table other than what's on the minutes I have to video tape that.

Chair Colette Machado – I don't think it's an issue with the video, It's the safety of when we have people coming and going to sit down to give public testimony.

Germaine Meyers – If I have to end up standing up and holding it in my hand or a different type of tripod, a more expensive one, I'll buy it. Because I just got to continue to have.

Chair Colette Machado – For today you are fine, we just noting that for those that come to speak be very careful.

Germaine Meyers – If you want me to move back at the next meeting I can. Where ever you guys would have KITV when they come with all their camera, just tell me where to go and I'll just do it.

Chair Colette Machado – Thank you for that. Maybe next time we try over here. When the media show up they come here.

Germaine Meyers – I just have to bring a taller tripod.

Chair Colette Machado – Ok.

Germaine Meyers – Good morning. If I forget to tell all of you Happy Holidays. Aloha my name is Germaine Meyers and I am an OHA beneficiary for beneficiary advocacy and empowerment, emphasis on empowerment. I am also a Nanakuli Homestead lessee and I share my data, views and arguments regarding agenda item V. B. 1. CLA Final Report.

Trustees on a Federal level they uniform prudent investor act, UPIA was adopted in 1992. On a State level we have Hawaii Revised Statutes Chapter 554, Trust and Trustees. I want to highlight to you under Chapter 554 is Hawaii Revised Statutes 554 A-1, definitions, as used in this chapter, prudent person means a Trustees who exercise a trust powers is reasonable and equitable in view of the interest of income or principal beneficiaries or both and in view of the manner in which persons of ordinary prudence, diligence, discretion and judgement would act in the management of their own affairs. Would act in the management of their own affairs. Yesterday, I saw how board Vice Chair and Trustee Lee would act in the management of his own affairs. And yesterday I saw how Trustee Akina would act in the management of his own affairs. When it applies to the results of the CLA report. Further under HRS § 554-A.3.C. 16. States that Trustees are responsible to ensure the assets of the Trust against damage or lost and the Trustee against liability with respect to third persons, 24 states, to prosecute or defend actions, claims or proceedings for the protection of Trust Assets and of the Trustees in the performance of Trustee Duties. HRS Chapter 554 C-5, loyalty, a Trustee shall invest and manage, and manage the trust assets solely in the interest of the beneficiaries. Solely, solely in the interest of the beneficiaries, not in the Trustees, not in the interest of the CEO, but solely in the interest of the beneficiaries. And State Auditor Les Kondo repeated this in the audit report 18-03. Hawaii Revised Statutes 55-8, reviewing compliance. Compliance with the prudent investment rule is determined in light of the facts and circumstances existing at the time of the Trustees decision or action and not by hindsight. You are to determine in light of the facts and circumstances existing when you make the decisions you made in your delegation and today after you received this report and not by hind sight. Hawaii Revised Statutes 55-4C-9, delegation of investment and management functions. Management functions is what you did and

is brought to your attention by the CLA Report. This is what the law states regarding delegation of management functions. A Trustee may delegate investment and management functions that a prudent Trustee of comparable skills could properly delegate under the circumstances.

The Trustees shall exercise reasonable care, skills and caution in, 1. Selecting an agent, Ka Pouhana, 2. Establishing the scope and terms of the delegation consistent with the purposes and terms of the Trust. I would like to highlight to you that the scope and terms of the delegation consistent with the purpose and terms of the Trust were highlighted in CLA's scope of work beginning on page 24, which you should read again in detail. I want to highlight for you the scope of work 3.A.1. states, approval and execution in accordance with HRS Chapter 103D Hawaii procurement code and HRS Chapter 84 Standards of Conduct and the OHA's applicable and internal policies and procedures. Additional State laws needed to be followed by the agents you selected and delegated management going back to HRS 55-4C-9, it states in three that Trustees periodically review the agents actions in accordance in order to monitor the agent's performance and compliance with the terms of the delegation.

Chair my time is up and I would be happy to come back on community concerns to finish up my testimony. My testimony is talking about delegation. Yesterday you made a motion to delegate to Administration. I would really like Ka Pouhana to understand the responsibilities that she is taking upon herself in accepting this delegation. I also would like you as Trustees to understand what you are taking on responsibility when you delegate it to someone else. It states here in Hawaii Revised Statutes, 554C-A regarding compliance and 9 regarding delegation of management functions. I want to just wrap it up right now and let you know that I will come back and talk about delegation because it is really, really critical to what we are reviewing in the CLS.

Chair Colette Machado – Absolutely Germaine. Thank you for being understanding with the time limitations. Mahalo. We are now moving on to IV.

IV. UNFINISHED BUSINESS

A. Interim CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities

Chair Colette Machado – I would like to call on our CEO for any updates.

Sylvia Hussey – Thank you Chair. Most of our updates are operational. It's a busy time of the year for the organization. I will send those, given the agenda items importance, I will send all of those operational updates to you. There is a lot going on in our organization

Chair Colette Machado – Ok Members, Thank you. We are not on V.

V. NEW BUSINESS

A. Committee on Beneficiary Advocacy and Empowerment

1. Action Item BAE #19-02: Approval of OHA 2020 Legislative Package

Chair Colette Machado – I will call on Trustee John Waihe'e IV.

Trustee John Waihe'e IV moves to support the following new legislative proposals and approve their inclusion in the 2020 OHA Legislative Package (See referenced attachments for text of the proposals):

- **OHA-1 Restoring Hawaiian Expertise in Land Use and Resource Management: (Attachment A)**
- **OHA-2 Addressing Employment Discrimination Against Former Pa'ahao: (Attachment B)**
- **OHA-3 Preventing of Historic Preservation Review Evasion and Other Violations (Attachment C)**

- **OHA-4 Protecting Our Ancestors via SHPD Admin Rules (Resolution): (Attachment D)**
- **OHA-5 Facilitating Practitioner Access Onto Private Lands: (Attachment E)**
- **OHA-6 Capital Improvement Project Budget Request for OHA's Wahiawā Lands: (Attachment F)**

Trustee Kalei Akaka seconds the motion.

Chair Colette Machado – Any discussion? Trustee Akina.

Trustee Keli'i Akina – As I did in the Committee, I will also vote yes on this. However I do want to point out that I would have hoped to bifurcated OHA 1 in restoring Hawaiian expertise in Land Use and resource management. Because there were portions with of it of which I could not agree. But I will vote yes on the measure today.

Chair Colette Machado – So noted.

Sylvia Hussey – Chair do you want to have Jocelyn our public policy manger and Keola our Chief Advocate to come and if there are any discussion items?

Chair Colette Machado – I don't think it's necessary. We can take it up again for further discussion at the BAE. Roll call vote please.

Trustee John Waihe'e IV moves to support the following new legislative proposals and approve their inclusion in the 2020 OHA Legislative Package (See referenced attachments for text of the proposals):

- OHA-1 Restoring Hawaiian Expertise in Land Use and Resource Management: (Attachment A)
- OHA-2 Addressing Employment Discrimination Against Former Pa'ahao: (Attachment B)
- OHA-3 Preventing of Historic Preservation Review Evasion and Other Violations (Attachment C)
- OHA-4 Protecting Our Ancestors via SHPD Admin Rules (Resolution): (Attachment D)
- OHA-5 Facilitating Practitioner Access Onto Private Lands: (Attachment E)
- OHA-6 Capital Improvement Project Budget Request for OHA's Wahiawā Lands: (Attachment F)

Trustee Kalei Akaka seconds the motion.

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

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

Motion passes with eight (8) yes votes and one (1) excused.

B. Committee on Resource Management

1. Presentation: CLA - OHA & LLCs Contract & Disbursement Review Final Report

Chair Colette Machado – Members we are now on V.B.1. and I will call on Trustee Dan Ahuna.

Trustee Dan Ahuna moves to recommend that:

- 1) The Board of Trustees receive the final report on OHA & OHA's LLCs Contract & Disbursement Review prepared by CliftonLarsonAllen LLP and commissioned by the Board under 3284, as amended; and**
- 2) Direct Administration to review and analyze the recommendations contained in the final report and report back to the RM Committee with its analysis and plan to implement the recommendations at the first Resource Management Committee meeting in January 2020.**

Trustee Carmen Hulu Lindsey seconds the motion.

Chair Colette Machado – Members if there is no further discussion or comments, roll call vote please.
Trustee Akina.

Trustee Keli'i Akina – Madame Chair I am in favor of this. Correct me if I am out of order in my timing now. I feel it is timely however that even as we take this motion that we give attention to content that was presented by Clifton Larson, CLA specifically the red flags where potential fraud, waste and abuse. It is very difficult to find that in the 1,100 pages. My team and I have gone through it carefully and we have identified those and put them in a list. I could take 10 minutes and read that list out or I can just pass it out to the rest of the Board. I would like attention to be given to those items.

Chair Colette Machado – I think it will be difficult so submit what you prepared as part of the record. But if you chose to do a testimony you can sign up for public testimony and go forward and perhaps become part of the record. What I am trying to say is we already did the discussion, I believe we had this discussion in the RM Committee, the Resource Management Committee yesterday, in preparation for the referral. They action item that we are approving now which is being recommended for approval was discussed very thoroughly. Your comments and your opinions were not and that is what we talked the red flags very thoroughly with the consultants, Trustee Ahu Isa wanted to have further discussion on one of the items that was presented as part of a red flags called Aha Kāne, but she didn't get her full disclosure at that time. But knowing that it's contained in the actually report I think that is kind of important. I thought we made it clear to you that any additional information that I was not going to receive it. It's a personal comment as a Trustee that you are making identified as red flags, I believe you already distributed to the media. So I am not sure why you would want to bring it to the table. It may appear that we are endorsing your personal statements as ours. That is a problem for me as the Board Chair. I am just trying to be clear.

Trustee Keli'i Akina – Thank you, very good. If I may just respond briefly. I absolutely am not seeking the endorsement, nor will I infer there is any endorsement by the Board of my own views. I do believe that it's just important for us to look at that information and would appreciate the opportunity to distribute it to my colleagues, I don't need to make any reference beyond distributing it and they may read it as they like. With my encouragement and that is all I ask.

Chair Colette Machado – One suggestion would be is that you can distribute it to their office with a cover memo. That could be another way of distribution. But not at the table.

Trustee Keli'i Akina – I would be glad to distribute it at their office if that would be appropriate given sunshine laws. Would that be. After we take the action you can pretty much do what you want. You are not influencing our decision making.

Robert G. Klein, Board Counsel – You can't circulate outside of an agenda meeting.
Chair Colette Machado – Ok.

Robert G. Klein, Board Counsel – Anything would be a violation of the sunshine law.

Trustee Keli'i Akina – All I ask is that I will be able to distribute my report to my colleagues and leave it.

Chair Colette Machado – My official position is that I won't accept it as the Board Chair.

Trustee Keli'i Akina – Earlier you said you might do it as testimony. Could I do it at that time as community concerns.

Chair Colette Machado – Let me stop this, and I will call on Trustee Ahu Isa.

Trustee Leina'ala Ahu Isa – Trustee Akina did his and Trustee John and I. I have my own too. It was so voluminous and it was like 1,100 pages, so my staff and I we picked out certain contracts so that it's easier to look at and read and we can relate to when she brings it to us in January. Instead of all the Trustees going through all of this, I understand what Keli'i is doing but mine is really, elementary school kind and John I agreed that it was important that we look at the contracts in here.

Chair Colette Machado – I would recommend that you give that to Sylvia, we have to take action first. Let me move to take action then I would recommend that two of your reports to go to Sylvia directly.

Trustee Keli'i Akina – May I take your first suggestion and during community concern submit is as my testimony and that will be that.

Chair Colette Machado – I cannot prevent you from doing public testimony. So can you sign up?

Trustee Keli'i Akina – Ok I will be glad to, thank you. I won't take the opportunity to speak on it I will simply distribute at that time.

Chair Colette Machado – The Chair acknowledges Trustee Keli'i Akina under public testimony. Even though we are past that area we are way down to item V.B.1. But I will go back on the agenda to allow you that privilege to offer testimony under public testimony.

Trustee Brendon Kalei'aina Lee – Can we give public testimony?

Chair Colette Machado – Trustees are able to give public testimony we can go out of order. Go ahead.

Trustee Keli'i Akina – Trustees I will keep this brief.

Trustee Brendon Kalei'aina Lee – Madame Chair.

Chair Colette Machado – Trustee Brendon Kalei'aina Lee.

Trustee Brendon Kalei'aina Lee – I would ask that if Trustee Akina is going to be giving public testimony as a beneficiary that he sits where a beneficiary would give public testimony and not in his Trustee seat.

Chair Colette Machado – Would you mind relocating?

Trustee Keli'i Akina – At the request of the Chair, I would be glad to. Thank you very much. If you have your statement or your personal comments that you prepared that you want to circulate it now this is the time to do it.

III. PUBLIC TESTIMONY

Trustee Keli'i Akina – I thank you very much for this opportunity, Madame Chair I appreciate very much of being able to address this. All I want to say is the important thing about the audit is we look at what is really found for us. It pointed out several red flags that I have compiled for you. I'll

appreciate if you take a look at the appendix of this document I'm going to distribute now. It's for your reference. Thank you very much I hope it helps us to do our fiduciary duty. Much Aloha. Madame Chair thank you for letting me testify before the Board of Trustees.

Chair Colette Machado – We have copies being distributed and it will be made part of the record as public testimony. Thank you for that.

(Trustee Keli'i Akina's handout: Red Flags: An Analysis of the independent Audit of OHA and its LLCs is attached to the minutes.)

V. NEW BUSINESS

B. Committee on Resource Management

1. Presentation: CLA - OHA & LLCs Contract & Disbursement Review Final Report

Chair Colette Machado – Members we have a motion that had been made and seconded by Trustee Carmen Hulu Lindsey. Can we do a roll call vote.

Trustee Dan Ahuna moves to recommend that:

- 1) The Board of Trustees receive the final report on OHA & OHA's LLCs Contract & Disbursement Review prepared by CliftonLarsonAllen LLP and commissioned by the Board under 3284, as amended; and
- 2) Direct Administration to review and analyze the recommendations contained in the final report and report back to the RM Committee with its analysis and plan to implement the recommendations at the first Resource Management Committee meeting in January 2020.

Trustee Carmen Hulu Lindsey seconds the motion.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY		x	X			
TRUSTEE ROBERT LINDSEY						Excused
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8			1
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED						
Motion passes with eight (8) yes votes and one (1) excused.						

Chair Colette Machado –Members thank you so much let us move on to item VII. Executive session.

VII. EXECUTIVE SESSION

Chair Colette Machado – Members the Chair would like to entertain a motion for recuse ourselves into Executive Session pursuant to HRS 92-5 (a)(4).

Trustee Carmen Hulu Lindsey moves to recuse into executive session pursuant to HRS §92-5(a)(4).

Trustee John Waihe'e IV seconds the motion.

Chair Colette Machado – It has been moved and seconded. Roll call vote please.

Trustee Carmen Hulu Lindsey moves to recuse into executive session pursuant to HRS §92-5(a)(4). Trustee John Waihe'e IV seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY	x		X			
TRUSTEE ROBERT LINDSEY						Excused
TRUSTEE JOHN WAIHE'E		x	X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8			1
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passes with eight (8) yes votes and one (1) excused.						

Chair Colette Machado – We are in executive session, prepare the room.

The Board resolved into Executive Session at 10:28 am

- A. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding Makekai, et al. v. State of Hawaii, et al. Pursuant to HRS §92-5(a)(4).
- B. Approval of Minutes
 - 1. September 26, 2019

The Board reconvenes in open session at 10:53 am.

10:53 am Trustee Dan Ahuna leaves the meeting.

VII. COMMUNITY CONCERNS

Chair Colette Machado – Members we are now on community concerns. We have two individuals that signed up. I'll call on Germaine as a continuation from public testimony.

Germaine Meyers – Thank you. Aloha Trustees. HRS 55C-9 delegation of investment and management functions. A Trustee may delegate investment and management functions that a prudent Trustee of comparable skills could properly delegate under the circumstances. The Trustee shall exercise reasonable care, skill and caution in 1. Selecting an agent, 2. Establishing the scope and terms of the delegation consistent with the purposes and terms of the trust, 3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation. In performing a delegated function, an agent or Ka Pouhana owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation. A Trustee who complies with the requirements of sub section A is not liable to the beneficiaries or the Trust for the decisions or actions of the agent to whom the function was delegated.

You must read A. However in D. it states, by accepting the delegation of a Trust function from the Trustee of a Trust that is subject to the law of this State an agent submits to the jurisdiction of the courts of this State. Delegation to a State employee includes compliance with State procurement code and State Ethics Code. For the

past 2 years I have been videotaping and I've been videotaping all of the things that I brought to your attention. Including the Aha Kane and various things that have been noted on this report. I would like to say in regards to let's heed to legal counsel, you know when your Doctor gives you advice or a lawyer gives you advice, let me just say with the Doctor, you are still responsible for your health whether or not you are going to live or you are going to die. So this organization is still responsible for your decisions. We are going to live or we are going to die by your decisions. If a Doctor tells you, oh you need a surgery and you don't even do a second opinion or your due diligence, and you just follow ok I go take the surgery, and that wasn't the right course of action. You are going to suffer the consequences, we are going to suffer the consequences for all 9 of your decisions. I just want to make that to your awareness.

Besides the law you need to do your own due diligence in making understanding, your understanding of the recommendations provided either by the agent or by your legal counsel, which is another form of an agent. That is the huge responsibility that you ask the beneficiaries and the citizens of this State to take part in. So when I am watching all of this going on, I am like wait a minute, there were red flags, you need to see purple, do you need to see yellow, do you need to see green. You read the scope and the scope talked about fraud, waste and abuse. That was part of the scope. This agent or CLA was not willing to take responsibility for identifying to you if it is fraud, waste or abuse. It's your responsibility to look at it with how you would manage your own monies, your own health and decide if you are going to do this or if you are going to do that. Now you say, oh I created policies Germaine in 2017 and 2018, 2019 regarding what CLA has brought up. A'ole, not all of it, you guys have not brought policies for all of it. You still need to do more policies. Here's the things, I already saw in the State Audit Report, Les Kondo, that you were willing to spend uku paila monies, hundreds of thousands of dollars for years of litigation for Trustee Akana. Years, I would reference that, you went years after her over one incident. Now you need to go and look at this report and take criminal or civil action against anyone that violated procurement code, or State ethics code. No different than you went after Trustee Akana. It is recorded in the State Audit, I am going to hold you accountable to it and however it's going to happen akua is going to help me to make sure that you are accountable. This is the \$400 million trust you spent \$50 million a year if 80% of it is being misspent you need to take accountability for it. So this CLA report I will review it. And I will look at it and I will highlight to you those things that you should go after like Akana go after and make sure there is criminal or civil action as a prudent Chapter 554 told you that you must do. E hana Kākou.

Chair Colette Machado – Thank you. Our next speaker is Thomas Miller. Come forward please.

Thomas Miller - I came back again to talk about Alexander and Baldwin and the racetrack. Alexander and Baldwin and most particularly Campbell Estates. If you guys have any interactions with them could you guys answer that?

Chair Colette Machado – No.

Thomas Miller – You can't answer that. I am really concerned about what Campbell Estates did and them breaching their contract. I was wondering what steps I need to take to bring this on your agenda to get our racers back our racetrack that was stolen with Campbell Estates the initiator and Alexander and Baldwin going through protecting Campbell Estates. The initial one was the legislation, was the State Capital and that Governor at the time I mentioned, John Waihee where he gave up that deed where the racers were safe to have a track but evidently Campbell Estates breached it so I was wondering where do I go to because that is your guys land and these guys are bound to protect it. Alexander and Baldwin, they are into malls and shopping centers and they are not into no community things. So, I ask them, so does that mean you guys converse with Caucasians and Asians and you neglect the kanaka maoli because I think the Hawaiians would rather have housing and farm lands then some mall they are not going to profit off of. Not profit off of but have anything, have that to be a part of their like because I don't think back in the days they had malls that's why I am coming to you guys again to see what I can do about this matter for you guys to take interest in it because I had a conversation with a Trustee, he just left when he talked to me outside he said some names that really, really scared me. I am really concerned, I was wondering what steps I got to do to address this issue so you guys can actually look into it. In the meeting nobody asking me

questions but when I went outside it was all blah, blah, blah and then I never got any wah, wah, wah back. So that's why I've come to see. Can you guys help me address this issue for our racers?

Chair Colette Machado – All I can share with you Thomas is that OHA doesn't have any properties or lands out in Kapolei. The entity that has a majority of that, including Kalaeloa is the Department of Hawaiian Homes which we are not. They are the ones that developed Ka Makana Alii, that is on Hawaiian Homes not OHA.

Thomas Miller – But the land that actually was condemned to make the racetrack is Department of Land and Natural Resources.

Chair Colette Machado – That is DLNR.

Thomas Miller – That is DLNR, right.

Robert Klein, Board Counsel – We cannot have this back and forth. Thomas, we cannot have the back and forth in community concerns. Because your topic is not on the agenda. So if anybody wanted to speak and talk to you, Trustees wanted to engage you should come in the Public Testimony part of the meeting.

Thomas Miller – Right, but it has to be on the agenda from my understanding. So, my thing is how do I get my cause on the agenda, that's the one question I wanted to ask you.

Robert Klein, Board Counsel – Not this way, they cannot engage you, they can listen but they cannot be asking you questions and advice.

Thomas Miller – How do I get on the agenda.

Robert Klein, Board Counsel – Then you have to contact the Chair's office.

Chair Colette Machado – No, I will refer back to administration if we can get someone from Public Policy or some other area.

Robert Klein, Board Counsel – It is a process.

Sylvia Hussey – What we can do is have our Chief Advocate and our Public Policy follow up with Mr. Miller and help to better understand all the issues and help to guide our beneficiary in the direct place. We can definitely have someone in our advocacy come talk story and help to identify what are the moving parts. Trustees we can do that.

Chair Colette Machado – Yes, that would be most helpful if you could talk to somebody in public policy. We are going to see if they are available now since you are actually here.

Thomas Miller – Ok thank you.

Chair Colette Machado – Then you can give us an update at the next meeting.

Thomas Miller – Right, that is on the 19th.

Chair Colette Machado – It is the 19th. Thank you Thomas.

VII. ANNOUNCEMENTS

None

IX. ADJOURNMENT

Chair Colette Machado – Is there anyone else that would like to address the Board in community concerns? Hearing none, the Chair would like to entertain a motion to adjourn.

Trustee John Waihe'e IV moves to adjourn the meeting.

Trustee Carmen Hulu Lindsey seconds the motion.

Chair Colette Machado – It has been moved and seconded. Roll call vote please.

Trustee John Waihe'e IV moves to adjourn the meeting Trustee Carmen Hulu Lindsey seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY		x	X			
TRUSTEE ROBERT LINDSEY						Excused
TRUSTEE JOHN WAIHE'E	x		X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7			2
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passed with seven (7) yes votes and two (2) excused.						

Chair Colette Machado – Thank you all for help in the CLA review in the RM to the Board Table. I feel we have accomplished quite a lot there is a lot more work we will have to put together. We must all look forward to that in 2020 and try to support administration in any way. We stand adjourned till the 19th. Mahalo.

The meeting was adjourned at 11:07 am.

Respectfully submitted,

Dayna Pa, Board Secretary

As approved by the Board of Trustees on _____.

Colette Y. Machado, Chairperson
Board of Trustees

Attachments:

1. Public Testimony - Trustee Keli'i Akina's handout Red Flags: An Analysis of the independent Audit of OHA and its LLC

Red Flags: An Analysis of the Independent Audit of OHA and its LLCs

Keli'i Akina, Ph.D., Trustee At-Large
Office of Hawaiian Affairs

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This report includes a concise analysis of the "Contract and Disbursement Review" of OHA for the Fiscal Years 2012-2016 conducted by Clifton Larson Allen (CLA).

Disclaimer: This report represents the views of Trustee Akina and does not necessarily represent the views of the Office of Hawaiian Affairs or its Board of Trustees.

Published on December 4, 2019

Introduction



In 2017, the Office of Hawaiian Affairs Board of Trustees committed to a historic independent audit. In December 2019, Clifton Larson Allen (CLA) delivered its final report, completing the audit. Many staff and Trustees are to be thanked for their tireless work and cooperation throughout the audit process.

The purpose of this present analysis is to present OHA beneficiaries and the public with an accessible introduction to the CLA audit report, a document of more than 1,000 pages. The heart of our analysis is found in Appendix 1, which lists 32 transactions tagged by CLA with "red flags" for waste, fraud and abuse. See page 8.

As the Chair of the Audit Advisory Committee that was responsible for drafting the scope of the audit, I endeavored to achieve the Board's goal of developing an audit to go beyond OHA's routinely conducted audits. The Board requested an audit to identify and quantify potential areas of waste, fraud, and abuse in the procurement of professional services, as well as other disbursements of funds.

This report provides a summary and analysis of the Independent Audit ("Contracts and Disbursements Review Report") recently completed by CLA. CLA reviewed an audit sample of 185 transactions, or 2% of all contracts and disbursements that OHA and its subsidiary LLCs entered into during the FY 2012-2016 time period. From this sample, 85% of the transactions included audit observations, defined as situations where "the results of testing revealed occurrences of noncompliance with statutory requirements and/or internal policies" or "that revealed indicators or red flags of waste, fraud, or abuse." In addition, 32 "Red Flag" transactions or 17% of the total audit sample, representing \$7.8 million, were identified as potentially fraudulent, wasteful or abusive expenditures.

The audit results show significant problems with respect to missing procurement documents, lack of evidence of deliverables from contractors, and incorrect processing of contracts through the exempt procurement process. The audit findings reflect concerns that were voiced by beneficiaries and demonstrate the need for OHA to improve its fiscal governance practices.

This report primarily focuses on the 32 transactions CLA flagged for potential fraud, waste and abuse, as they are indicative of the deficiencies identified in the audit. Appendix 1 provides a detailed summary of each transaction, including the vendor name, amount, audit observation, and report citation.

Sincerely,



Keli'i Akina, Ph.D., Trustee At-Large
Office of Hawaiian Affairs

Disclaimer: This report represents the views of Trustee Akina and does not necessarily represent the views of the Office of Hawaiian Affairs or its Board of Trustees.

Analysis

Audit Methodology

The Board of Trustees retained Clifton Larson Allen (CLA) in 2018 to conduct an independent audit of OHA and its subsidiary LLCs for the Fiscal Years 2012 to 2016. The primary objective of this audit was to "identify and quantify potential areas of waste, abuse, and fraud in the procurement of professional services, as well as other disbursements of funds."

Unlike a fraud investigation, which is specifically designed to obtain evidence of fraud in the context of civil or criminal litigation, CLA's role was limited to identifying areas in OHA's procurement process that are at higher risk for potential fraud, waste and abuse. Although CLA was not specifically tasked to determine whether a specific disbursement was in fact fraudulent, CLA provided a list of transactions containing "Red Flag" indicators of potential fraud, waste and abuse.

Given the limited budget of \$500,000 appropriated for the CLA audit, it was not feasible to review every single contract and disbursement. Instead, out of 9,309 total contracts and disbursements OHA and its subsidiary LLCs entered into during Fiscal Years 2012 to 2016, CLA selected a sample of 185 contracts and disbursements based on judgmental sampling.

In reviewing these 185 contracts and disbursements, CLA applied specific audit procedures to determine the following:

- Compliance with the Procurement Code,
- Compliance with the Ethics Code,
- Compliance with OHA's own internal policies,
- Whether sufficient contract oversight was provided,
- Whether contract deliverables were met, and
- Whether any indicators of fraud, waste, and abuse were present.

Audit Results

The CLA audit defines an **audit observation** as a situation where "the results of testing revealed occurrences of noncompliance with statutory requirements and/or internal policies" or "that revealed indicators or red flags of waste, fraud, or abuse."



OHA's grants program and CEO sponsorships were also described as risk areas in the most recent State Auditor's Report, which concluded that "OHA's vague rules guiding its discretionary spending are broadly interpreted, arbitrarily enforced, and at times disregarded."¹ Since the 2018 State Audit, OHA has taken significant steps to improve the policies governing the grants and CEO sponsorships programs.

Missing Procurement Documents

In contrast to the grants program and CEO sponsorships, however, the extent of OHA's noncompliance with the Procurement Code was not known to Trustees, beneficiaries and the public at large.

The CLA audit results reveal that every single contract reviewed by CLA contained various instances of noncompliance with the Procurement Code. To understand the significance of these findings of noncompliance, it is first important to understand the role of the Procurement Code. OHA is a semi-autonomous public trust, and the Procurement Code is designed to protect OHA beneficiaries by ensuring that OHA procures goods and services in a competitive and ethical manner. The Procurement Code relies on the principles of impartiality and independence, and is designed to promote competitive pricing for goods and services and serve as a deterrent to vendor favoritism.

The audit test results indicate that many of the required procurement documents, such as signed affidavits of selection committee members, were simply missing. These documents are required to be retained in order to establish that there were no conflicts of interest, and that contracts were in fact awarded to the first ranked vendor. See Appendix 1: # 4, 5, 11, 13 and 14.

In addition to the missing procurement documents, one specific contract contained evidence of a deliberate effort to award a \$200,000 contract to a former OHA employee. In this specific instance, the evidence suggests that the contract was awarded to this vendor prior to the completion of the procurement process, which raises the concern of vendor favoritism. See Appendix 1: # 10.

¹ State of Hawaii, State Office of the Auditor, Report No. 18-03/February 2018, Page 1

Contracts Incorrectly Processed through the Exempt Procurement Method

The concern over vendor favoritism is also demonstrated by various instances of contracts incorrectly classified by OHA as exempt from the Procurement Code. "Exempt contract" status is generally reserved to a narrow set of situations where procurement of a good or service by competitive means is either not practical or advantageous. When a contract is improperly awarded through the exempt procurement method, all forms of competition are removed, which substantially increases the risk of vendor favoritism and conflict of interest.

In one case, for example, a contractor was retained for \$38,932 to provide public relations and messaging services related to the Kaka'ako Makai settlement. Because the contractor was formed in the same year that its contract was executed with OHA, and because the contractor's invoices were sequenced equally, it appeared that OHA was this contractor's only client. Examples of vendor favoritism such as this lead to potentially noncompetitive pricing and ultimately damages the credibility and reputation of OHA. See Appendix 1: # 6, 8, 15, 18, 19, 21, 28 and 32.

Missing Contract Deliverables

The audit results also reveal a concerning pattern of inability on the part of OHA to demonstrate that contract deliverables were met by contractors. Two specific cases stand out in this regard.

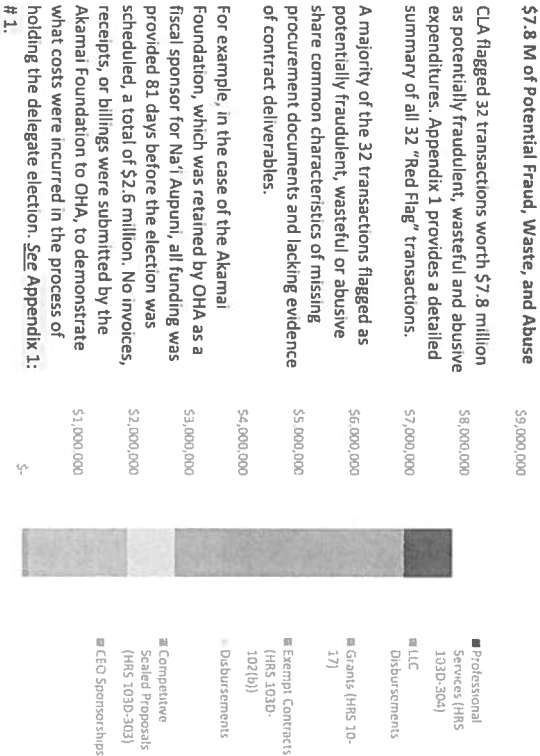
In the first case, a vendor was retained for \$185,000 to provide quarterly assessments of each Trust Fund Advisor and the entire Trust Fund during regularly scheduled meetings of the Asset and Resource Management Committee and/or the Board of Trustees. The contract deliverables in this case are unambiguous, however, OHA was unable to provide any of the required post-engagement assessments. This raises a question as to whether the work was in fact performed by the contractor.

The second case involves an example of a nonprofit organization that was awarded \$99,600 to provide 18 scholarships for Native Hawaiian students. Despite the contractual requirements, OHA was unable to show any evidence to CLA that the scholarships were in fact provided to the Native Hawaiian students. In addition, the nonprofit awardee's IRS Form 990 (tax return) failed to disclose any expenditures for scholarships, which again raises the question as to whether any scholarships were in fact provided. See Appendix 1: # 4, 6, 11, 12, 15, 18, 28 and 32.

These cases of missing contract deliverables show an alarming pattern of inability to manage contracts and contractors, and indicates potential fraud, waste and abuse.

Fraud, Waste, and Abuse

In addition to identifying areas within OHA's procurement process that are at higher risk for noncompliance, CIA was also tasked to quantify potential areas of waste, abuse and fraud. By applying specific audit procedures, CIA identified 32 specific contracts and disbursements as "Red Flags," or transactions with indicators of potential fraud, waste and abuse.



Conclusion

The CIA audit has revealed significant red flags with respect to financial accountability. With limited trust resources and a mandate to advocate for the betterment of conditions for Native Hawaiians, the Board of Trustees has a duty to take immediate action to address the concerns raised by the audit. The 32 "Red Flag" transactions worth \$7.8 million that were flagged as potentially fraudulent, wasteful and abusive validate the concerns that an increasing number of OHA beneficiaries have voiced over the years.

To be clear, CIA was not explicitly tasked with determining whether any transactions were in fact fraudulent. Only a court of law can make that final determination. But what the CIA audit has given OHA is a valuable list of specific transactions that may warrant further investigation, in order to promote accountability within the organization. Therefore, the Board of Trustees must heed the CIA report not as a final determination, but as a roadmap of issues to resolve.

One way for OHA to promote accountability and resolve issues brought forth by CIA is to look further into the 32 "Red Flag" transactions and make referral to appropriate government agencies if warranted.

Additionally, the Board of Trustees must enact an immediate action plan to restore the credibility and reputation of OHA. To do so, OHA should take proactive steps to implement the following, most of which are included as recommendations made by CIA:

- 1) **Whistleblower Intake Process:** OHA's internal whistleblower policy does not provide enough protections for OHA employees and does not provide a formal intake process for beneficiary complaints. OHA should implement a whistleblower hotline for OHA employees and beneficiaries that will be managed by an independent third-party consultant.
- 2) **Internal Audit Function:** The CIA audit findings indicate a clear need for a permanent internal audit function within OHA. The Board of Trustees should establish a standing audit committee to develop an ongoing internal audit plan for OHA. The standing audit committee would be assisted by an outsourced internal auditor and could conduct periodic reviews of transactions to be reported directly to the Board of Trustees.
- 3) **Implement Audit Recommendations:** OHA must consider and implement all the audit recommendations made by CIA.
- 4) **Transparency Portal:** OHA must take more proactive steps to promote transparency with respect to how OHA and LLC funds are expended. Disclosing these expenditures on an online transparency portal would promote transparency and accountability.

Appendix

Appendix 1: Transactions with Red Flags for Fraud, Waste, Abuse

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
1	Grants (HRS § 10-17)	Akamai Foundation (on behalf of Na'i Aupuni)	\$2,600,000	This grant contained several observations that indicate a possibility of fraud, waste, or abuse during the awarding and disbursement process.	73
<p>Akamai Foundation requested the entire grant award 81 days before it was scheduled to hold the delegate election.</p> <p>The disbursement requests were not supported by any invoices, receipts, or billings to demonstrate what costs were incurred in the process of holding the delegate election. The Request for Disbursement letter implies that Akamai Foundation did not incur costs for some of the services for which it was requesting funds.</p>					
2	Competitive Sealed Proposals (HRS § 103D-303)	WCIT	\$1,605,532	The purpose of the Conceptual Master Plan Contract was to take OHA from the Framework Plan to the point of being ready to issue an RFP to select a site(s) developer for Kaka'ako Makai. The purpose of this contract was not, and has not, been accomplished. This raises a serious concern of potential waste relating to the total paid to the contractor.	93

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
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3	Disbursements	Hu'ena Power, Inc.	\$600,000	This disbursement was an investment purchase of 500 limited partnership units (5%) in Hu'ena Power, LLP, a consortium that submitted a proposal to Hawaiian Electric Light Company to develop two geothermal power stations on the island of Hawai'i.	194
<p>The structure of this investment agreement required OHA to provide \$600,000 of funding with no guarantee that Hu'ena Power would be selected for the contract with Hawaiian Electric Light Company.</p> <p>There is no evidence within the documentation that indicates what the \$600,000 was used for and why such a significant investment was needed when the contract had not yet been secured.</p> <p>These factors indicate a waste of funds.</p>					

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
4	Professional Services (HRS § 103D-304)	Mid-Continent Research for Education and Learning	\$349,527	The contractor was retained to provide consulting and advisement services related to the Kūikulu Hou assessment framework project.	121
<p>The procurement documents, such as the signed affidavits of the selection committee members and the purchase requisition appear to be missing. There is no evidence that the contract was in fact awarded to the first ranked contractor.</p> <p>OHA was unable to provide any deliverables for the work of this vendor.</p> <p>The contract file contained a June 24, 2013 email communication from the Procurement Manager to the CEO's Special Assistant, regarding the first amendment of this contract. This was forwarded to OHA Corporate Counsel one day before the contract amendment was executed; however, the content of the email was redacted.</p> <p>The lack of documentation with respect to this procurement, and lack of evidence of a contract deliverable, combined with the fact that the email correspondence was redacted is sufficient to indicate the possibility of fraud, waste and/or abuse.</p>					121

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
5	Professional Services (HRS § 103D-304)	Stryker Weiner & Yokota Public Relations, Inc.	\$293,969	The contractor was hired for a project named "integrated marketing communications plan."	122
<p>The Procurement Document Checklist and Selection Committee documentation appear to be missing. No documentation was provided that would have enabled CIA to verify that the contract was awarded to the first ranked vendor.</p> <p>OHA ultimately never used the product produced by this vendor, which is an indication of possible waste.</p> <p>The scope of services for this contract was to "examine the original source deeds of former Hawaiian Kingdom Government and Crown Lands sold" for the period 1845 through 1859 and "document each sale on an Excel spread sheet."</p> <p>This contract should not have been procured as an exempt contract. Only partial evidence was provided to show that the vendor completed the work required under the scope of the contract and amendments.</p>					122
6	Exempt Contracts (HRS § 103D-102(b))	Kuauili Alina Based Insights LLC (Kamama Beamer)	\$250,000		154

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
7	Grants (HRS § 10-17)	Ola Lāhul, Inc.	\$250,000	These two grants were made to an organization whose executive director appears to have been an acquaintance of Dr. Crabbe. Although there does not appear to be a personal financial benefit, there is a possibility of preferential treatment of this grantee.	72
8	Exempt Contracts (HRS § 103D-102(b))	McCorriston Miller Mukai Mackinnon LLP	\$220,154	These legal contracts were processed as exempt contracts when they do not appear to qualify as exempt procurements. When a contract is improperly awarded through the exempt procurement method, all forms of competition are removed from the procurement process, which increases the risk of vendor favoritism or conflict of interest.	157
9	Grants (HRS § 10-17)	'Aha Kane Foundation	\$200,000	'Aha Kane was founded by Dr. Crabbe before he was employed by OHA. At the time of the grant disbursement, Dr. Crabbe was serving as an Advisory Chair to the grantee. This information was not documented in the grant or disclosed in the grant application. The association between Dr. Crabbe and this organization indicates a possible conflict of interest, which poses a greater risk of fraud, waste, or abuse.	75

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
10	Professional Services (HRS § 103D-304)	Reed Smith LLC	\$200,000	Reed Smith LLP was retained to provide legal advice regarding "Native Hawaiian Self Governance and Hawaiian Language immersion education." The main provider of these services was Breann Nu'uhiva, whose employment with OHA ended shortly before the contract was awarded to Reed Smith LLP. Evidence indicates that the Selection Committee for this contract may not have been impartial and that the Selection Committee Appointment form was deliberately back-dated. The contract effective date was prior to the Selection Committee Recommendation, which may be an indication of unethical behavior. Evidence indicates that this contract was awarded prior to the completion of the procurement process, which is an indicator of possible fraud, waste, or abuse as it pertains to the procurement of this contract.	124

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
11	Competitive Sealed Proposals (HRS § 103D-303)	Absolute Plus Advisors	\$185,000	This contractor was retained by OHA in 2012 to provide verbal and written quarterly assessments of each Trust Fund Advisor and the entire Trust Fund during regularly scheduled meetings of the Asset and Resource Management Committee and/or the Board of Trustees as well as other financial advisory-related services. None of the documents related to the RFP procurement process or any evidence of a deliverable were provided to CLA.	94
12	Exempt Contracts (HRS § 103D-102(b))	Rider Levett Bucknall, Ltd.	\$160,000	The lack of documentation relating to the procurement and the lack of evidence pertaining to contract deliverables and contract management suggest a greater risk of possible, fraud, waste and abuse. The contract amendment was executed five months after the contract effective date. The vendor was retained to "present the management and development framework on the Kaka'ako Makai land parcels to OHA leadership, project managers and other designated groups."	155

CLA requested the dates of the presentations and the presentation materials, however OHA did not provide this information.

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
13	Disbursements	ABW Holdings, LLC (on behalf of Kaunahale, LLC)	\$150,000	There is a close similarity in the services that were covered under the initial contract and the contract amendment. The purpose of this disbursement was to pay ABW Holdings, LLC for a lease guaranty OHA had signed on behalf of Kaunahale, LLC when it defaulted on its commercial lease at Waikiki Beachwalk. The transaction appears to have been split into two increments of \$75,000. This allowed the transaction to only require the LOB Director to approve the Purchase Requisition, rather than CFO approval and subsequent review by legal counsel. These factors could be an indication of possible waste or abuse. The disbursement lacked a singular Purchase Requisition for the total amount disbursed and the file is missing a Procurement Document Checklist.	193

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
14	Grants (HRS § 10-17)	Native Hawaiian Education Association	\$150,000	OHA did not retain a copy of the vendor invoice or an explanation as to why it was in the business of providing a lease guaranty for a for-profit entity. This grant was paid to an organization that engaged Dr. Crabbe to be a keynote speaker. CIA could not determine if Dr. Crabbe received compensation for the speech and if there was any financial interest at stake.	73
The potential for a personal financial benefit, combined with the missing procurement documents, are indicators of possible fraud, waste, or abuse.					

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
15	Exempt Contracts (HRS § 103D-102(b))	Native Hawaiian Education Association (NHEA)	\$99,600	NHAE was retained for the production and facilitation of 36 scholarship 'aha for Native Hawaiian students. This contract should not have been processed as an exempt contract. OHA was unable to provide any documentation to support that NHAE provided the documentation or reports required by the contract.	153
The Form 990 tax returns filed by NHAE confirm that there were no expenses listed for scholarships.					
The funding for this activity was possibly not awarded properly, and OHA could not provide the deliverables required by this contract. NHEA also did not report any scholarship costs in their Form 990, could be an indication of possible waste and abuse.					
16	LLC Disbursements	Supporting the Language of Kauai Inc.	\$60,000	This disbursement was categorized as a grant to offset the financial losses of Lehua Poi Company for operating the Makaweli Poi Mill.	270
The purpose of this disbursement raises the question of whether it adhered to the mission and goals of H'i'ilei Aloha.					

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
17	Disbursements	Hillel Aloha LLC	\$50,000	<p>Additionally, the lack of documentation surrounding this transaction and the method in which it was handled are possible indicators of fraud, waste, or abuse.</p> <p>The purpose of this disbursement was to fulfill a funding request to hire a Grant Writer.</p> <p>There was no documentation that the grant writer position was advertised or filled. The fact that there is no evidence of deliverables being provided as required by the funding request, constitutes a red flag or indicator of possible fraud, waste, or abuse.</p>	196

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
18	Exempt Contracts (HRS § 103D-102(b))	Raadeen M. Keahiolalo LLC	\$45,000	<p>Raadeen was retained to "finish writing and editing of the documents created during this portion of the Kukuhi Hou Assessment Project".</p> <p>The contract should not have been processed as an exempt contract.</p> <p>OHA did not provide CLA with any evidence of deliverables required by the contract.</p>	159
19	Exempt Contracts (HRS § 103D-102(b))	The Kalaaimoku Group LLC	\$38,932	<p>Because the contract was processed as an exempt contract, combined with the fact that there is no evidence of deliverables being provided as required by the contract, there are red flags or indicators of possible fraud, waste, or abuse.</p> <p>The Kalaaimoku Group LLC was retained to provide public relations and messaging services related to the proposed Kaka'ako Makai settlement. This contract should not have been processed as an exempt contract. The fact that the contractor was formed in the same year that the contract was executed with OHA and the invoices are sequentially numbered, indicates that OHA may be (or was) its only client. Any mishandling of contracts or vendor favoritism could pose a risk to OHA of possible fraud, waste, or abuse.</p>	152

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
20	CEO Sponsorships	UH, Office of Research Services	\$30,000	Indication of possible abuse of the grant award process to benefit the grantee. The sponsorship for the "GEAR-UP Hawaii Program" was deliberately split in two components: \$24,950 for "Grants in Aid" and \$5,050 for "Services on a Fee Basis."	173
21	Disbursements	The Kalamoku Group LLC	\$28,115	It appears that the transaction was constructed to circumvent the \$24,999 threshold for CEO Sponsorships. The purpose of this contract was to produce the Native Hawaiian Roll Commission's Kana'Iowalu Concert Series on August 31 at Ma'ili Beach Park. Because the contract was processed as an exempt contract when it possibly should not have been, OHA did not go through a process to obtain competitive quotes or bids to obtain these services. This could be an indication of waste.	190

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
22	CEO Sponsorships	Smithsonian Museum of the American Indian	\$25,000	The combination of duplicate documents and anachronisms in the preparation of the procurement documents are indicators of possible abuse of the procurement process.	174
23	CEO Sponsorships	Supporting the Language of Kaua'i (SLK)	\$25,000	Evidence indicates that the procurement process was not followed and that the check was issued before the required procurement documents were formally approved. Hi'ipoi, LLC transferred the Poi Mill and its assets to SLK in 2012. The intention of this sponsorship was to provide SLK with funds to operate the mill. Indicators of possible waste include lack of documentation to support the confidential business plan for which the grant was intended was properly reviewed and approved. CLA requested the confidential business plan; however, OHA did not provide a copy of the business plan or the LLC Managers' approval of that plan.	174

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
24	CEO Sponsorships	The Edith Kanaka'ole Foundation	\$25,000	Evidence indicates that the CEO directed staff to rush the award. This may have resulted in circumventing the Grants Standard Operating Procedures.	176
Combined with the Budget Adjustment Request Form that used eleven accounts to fund the award, this sponsorship raises the question of whether it was handled properly, which could be an indication of possible favoritism to this grantee.					
25	Exempt Contracts (HRS § 103D-102(b))	David Keanu Sai	\$25,000	Dr. Sai was retained to "conduct research to address strategies to support acknowledgement of the Kingdom of Hawaii's sovereignty under international law."	156
Dr. Sai performed the services covered by this contract prior to being retained by OHA. According to an email from OHA's Procurement Manager, the scope of work included "lectures" as a means to get this contract processed and approved, but it may not have been the intent to have Dr. Sai perform lectures. There is no evidence that he ever did provide lectures at the request of OHA.					
This is a possible indication of vendor favoritism and could pose a risk to OHA of possible fraud, waste and abuse.					

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
26	CEO Sponsorships	The Nature Conservancy	\$24,999	The documentation that preceded the Purchase Requisition indicates that OHA knew the purpose of the sponsorship was programmatic, which is does not meet the intended use of CEO Sponsorships.	175
CEO Sponsorships are intended for one-day events only.					
This sponsorship raises the question of whether it was handled properly, which could be an indication of possible abuse of the grant award process to benefit the grantee.					
27	LLC Disbursements	Lehua Poi Company	\$20,000	The purpose of the disbursement is questionable since Hi'ihei Aloha LLC was not involved with the Poi Mill operations. Additionally, the lack of documentation surrounding this transaction and the method in which it was handled are possible indicators of fraud, waste, or abuse.	270

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
28	Exempt Contracts (HRS 103D-102(b))	Ayda Aulcahi Austin Seabury	\$15,188	Mr. Seabury was retained to "provide transcription and facilitation services for use in focus group and interview settings with Native Hawaiian practitioners as part of the research project for Kukulū Ola Project". The contract should not have been processed as an exempt contract.	158
				Two of the payments made required specific deliverables, which OHA did not provide to CLA.	
				Because the contract was processed as an exempt contract, combined with the fact that there is no evidence of deliverables being provided as required by the contract, there are red flags or indicators of possible fraud, waste, or abuse.	
29	LLC Disbursements	Commercial Dehydrator Systems, Inc.	\$13,367	The purpose of the disbursement is questionable since Hi'iehi Aloha LLC was not involved with the Poi Mill operations. Additionally, the lack of documentation surrounding this transaction and the method in which it was handled are possible indicators of fraud, waste, or abuse.	270
30	Disbursements	Kualoa Ranch Hawaii, Inc.	\$9,199	This disbursement was used for the entertainment of OHA staff.	191
				The combination of the using the exempt procurement method for an unqualified expenditure and the use of Trust funds to provide entertainment to OHA employees,	

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
31	Disbursements	Wet N Wild Hawaii	\$8,483	This disbursement was used for the entertainment of OHA staff and their families.	191
				The combination of using the exempt procurement method for an unqualified expenditure and the use of Trust funds to provide entertainment to OHA employees, could be an indication of possible waste or abuse.	
32	Disbursements	David Sanborn	\$5,000	The scope of work was to develop a Native Hawaiian Organization consultation policy development handbook.	186
				This disbursement was procured using the exempt procurement method.	
				The disbursement documentation provided to CLA was missing the Native Hawaiian Organization consultation policy handbook or the date it was received. This could be an indication of possible waste.	
Total			\$7,762,064		

Appendix 2: Audit Sample & Test Results

Transactions	Sample Size	Audit Sample ¹	Audit Sample %
OHA Contracts	256	80	31%
OHA Disbursements	3,934	50	1%
LLC Contracts	114	30	26%
LLC Disbursements	5,005	25	0%
Total OHA & LLC Transactions	9,309	185	2%

Transaction Type	Audit Sample	Audit Observations	Audit Observation as % of Audit Sample	Red Flags (Fraud, waste, abuse)	Red Flags (Fraud, waste, abuse) % of Audit Sample
Grants (HRS 10-17)	39	39	100%	4	10%
Competitive Sealed Proposals (HRS 103D-303)	9	9	100%	2	22%
Professional Services (HRS 103D-304)	14	14	100%	3	21%
Small Purchases of less than \$250,000 (HRS 103D-305)	1	1	100%	0	0%
Exempt Contracts (HRS 103D-102[b])	17	17	100%	7	41%
OHA - Review of Contracts	80	80	100%	16	20%
CEO Sponsorships	10	10	100%	5	50%
Other Disbursements	34	22	65%	8	36%
pCards	5	5	100%	0	0%
Lease	1	1	100%	0	0%
OHA - Review of Disbursements	50	38	76%	13	34%
Contracts	30	28	93%	0	0%
Disbursements	25	12	48%	3	25%
LLC's Contracts & Disbursements	55	40	73%	3	8%

Note: The audit sample does not reflect a statistically or randomly selected sample. Instead, CIA used data analytics and professional judgment to select a sample of transactions.

**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Highway, Suite 200
Honolulu, HI 96817**

**Minutes of the Office of Hawaiian Affairs Board of Trustees
Thursday, December 19, 2019
10:00 am**

ATTENDANCE:

TRUSTEE COLETTE MACHADO
TRUSTEE BRENDON KALEI'ĀINA LEE
TRUSTEE LEINA'ALA AHU ISA
TRUSTEE DAN AHUNA
TRUSTEE KALEI AKAKA
TRUSTEE W. KELI'Ā AKINA
TRUSTEE CARMEN HULU LINDSEY
TRUSTEE JOHN WAIHE'E IV
ROBERT KLEIN, BOARD COUNSEL

EXCUSED:

TRUSTEE ROBERT K. LINDSEY

ADMINISTRATION STAFF:

SYLVIA HUSSEY, CEO
LISA WATKINS-VICTORINO, ICOO
MEHANA HIND, CE
KEOLA LINDSEY, CA
JOCELYN DOANE, PP

BOT STAFF:

CAROL HO'OMANAWANUI
DAYNA PA
LAURENE KALUAU-KEALOHA
PRISCILLA NAKAMA
LEHUA ITOKAZU
ALYSSA-MARIE KAU
NATHAN TAKEUCHI
CLAUDINE CALPITO
PAUL HARLEMAN
ANUHEA PATOC
BRANDON MITSUDA
ZURI AKI
KAMA HOPKINS

GUESTS:

THOMAS MILLER
CLARE APANA
RITA KANUI

I. CALL TO ORDER

Trustee Colette Machado Calls the Board of Trustees meeting to order at 10:01 am. Roll call is taken; Trustees Ahu Isa, Ahuna, Akina, Lee, Carmen Hulu Lindsey and Machado are present, constituting a quorum. An excuse absence was received from Trustee Robert Lindsey. Trustee Kalei Akaka and Trustee John Waihe'e IV are expected to arrive shortly.

Let me begin by saying there is 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for the following items:

- II. Approval of Minutes
 - B. November 21, 2019
- V. New Business
 - A. Joint Meeting of the Committee on Beneficiary Advocacy and Empowerment and Resource Management
 - 1. Action Item BAE-RM #19-10: FB 20-21 Higher Education Grant Recommendation

Trustee Brendon Kalei'āina Lee – Madame Chair.

Chair Colette Machado – Trustee Lee.

Trustee Brendon Kalei'āina Lee – With your approval I would like to approve the minutes.

II. APPROVAL OF MINUTES**A. October 17, 2019****B. November 7, 2019**

Trustee Brendon Kalei‘āina Lee moves to approve the Board of Trustees meeting minutes for October 17, 2019 and November 7, 2019.

Trustee Dan Ahuna seconds the motion.

Chair Colette Machado – Thank you Trustee Ahuna and Trustee Lee for the motion to approve the minutes of October 17 and November 7. Is there any discussion? Hearing none, roll call vote please.

Trustee Brendon Kalei‘āina Lee moves to approve the Board of Trustees meeting minutes of October 17, 2019 and November 7, 2019. Trustee Ahuna seconds the motion.						
TRUSTEE	1	2	‘AE (YES)	A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA‘ALA AHU ISA			X			
TRUSTEE DAN AHUNA		x	X			
TRUSTEE KALEI AKAKA						Not present at vote
TRUSTEE KELI‘I AKINA			X			
TRUSTEE BRENDON KALEI‘ĀINA LEE	x		X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY						Excused
TRUSTEE JOHN WAIHE‘E						Not present at vote
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			6			3
MOTION: <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED Motion passes with six (6) yes votes and three (3) excused vote.						

III. PUBLIC TESTIMONY

Chair Colette Machado – We are on public testimony. Do we have any public testimony at this time? Hearing none we will move on to IV. Unfinished business.

IV. UNFINISHED BUSINESS**A. CEO’s 15-Minute Update on Ho‘oulu Lāhui Aloha and OHA Activities**

Chair Colette Machado – I would like to call on our CEO for any updates.

Sylvia Hussey – Good morning Trustees I am going to call on Mehana who will give us a couple of announcements.

Mehana Hind – I’d like to Thank Chair this morning for giving me my crown for being Homecoming Queen last week at our first annual Aloha United Way fundraiser which by the way I would like to comment on a little bit. I think the staff was commenting from last week all the way to this week also, how much of a great time they had. That event and the community service the next day. Your guys commitment to the cause last week was so awesome to see, it was not only good fun but very uplifting events that we had last week. Thank you guys very

much and thank you Chair for this.

10:04 am Trustee John Waihe'e IV arrives.

This weekend we have our holiday makeke that is coming up on the 21st. You all received an email from Ka Pouhana regarding your parking stalls and those of you guys who have indicated that you will be here we'll make sure to have them coned off and identified. Because every stall represents more revenue for the businesses that we have coming here on that day, we appreciate it if you guys won't be here, but we would love to see you guys here too. The vendors love to see the Trustees, our staff loves to see you guys too. Just to know how much, not only excitement but business happening that day. It's a great event for that. It will be from 9 to 2 o'clock in the afternoon. Staff will be on site, moving in vendors. We will be here from 5, they will staff coming in from 6 to 8 so if you guys want to come in after 8 o'clock that would be amazing, because we are trying to use as much of the spaces on the side of the building to load everybody in. They all should be loaded in by 8 o'clock and by 9 o'clock they are ready to go. So those two sides should be empty for traffic.

One key thing and one difference that might affect you guys who are coming. We are going to stop the traffic from coming in through the back on the Iwilei side. We are going to try and make it so that it comes in from the Nimitz side and flows out that way. We will be utilizing that parking lot across the street on the corner. So, we are going to funnel people, when these lots get filled to go back and exit out there and go into that lot. We expect a lot of traffic flowing that way between the hours of 9 and 12. That is going to be critical for us because that is going to be critical for us because that has been the largest and singularly only complaint that we've had is parking. So, we are really trying to remedy that and flow is going to be key for us that day. We have over 75 vendors who are either Native Hawaiian or locally owned. From mom and pops kind of cottage industry organizations to ones that have store fronts also. So, we have many of our Native Hawaiian fashion designers and all the way to other women who sell out every year. Is the one that sells the Chex mix, its \$5 and it goes and she brings 75, she sells out and she is ok I'm done for the day. There is a lot of that kind of activities, all price ranges, and it's a great service. We see a lot of our beneficiaries that they too come through and for many of them this is their first time coming to an OHA site. Like they don't attend meetings regularly and that was our goal too. Not only to stimulate Native Hawaiian owned businesses but to bring beneficiaries into a space that is OHA and fill them with joy. They all leave happy, everyone leaves happy. That's makeke.

10:08 am Trustee Kalei Akaka arrives.

Sylvia Hussey – So we'll continue and I'll ask Mehana to stay here. What was distributed to you is an update on the beneficiary resolution. (Please see attached Board of Trustees Action Item #19-11 – Beneficiary Resolution as of December 9, 2019.) So, it's in the same format. Our support, line items from beneficiary support to logistical, restroom, dumpsters, tent rentals, to legal observers. Some of these numbers have changed. The number that does change is the first line item under beneficiary support. But our support as of December 9th, is about \$87,000 thus far. If you have any questions regarding this morning's Star Advertiser reported that the Governor was pulling some law enforcement from the mountain. Our on the ground folks are there to understand what the beneficiaries' response will be and therefore what our support responses would need to be. If you have any questions about the numbers and activities.

Trustee Leina'ala Ahu Isa – He is pulling State but the County still have their policemen there from what I read. He was pulling the State and the Council rejected Mayor Kim's proposal. Could you explain about that? Yeah, they voted 9 zero.

Mehana Hind – The County Council was presented with a grant proposal that there were asked to approve. The criticism for that, was for \$10 million from the State to the County. The critics that came from beneficiaries to that was that it was supposed to be approved sight unseen, not having been seen by the council they were asked to approve something that they did not have the projection of or have seen it or anything. Some of the Council members used the words that they were not going to be used as a rubber stamp for something that they couldn't see.

Trustee Leina‘ala Ahu Isa – Does that mean no money from the State?

Mehana Hind – I don’t know what that means for the future if that goes back and there is more negotiation that happens. They didn’t talk about a next step; they were just voting on that measure that was put before them. I am anticipating more talks between the County; the Mayor and Council and the State Government will happen. You are right there is a deficit that the County is putting up monies for. That happened yesterday. Right now, at 10 o’clock there is a press conference what the article was about. It is happening right now and we should hear more about what the reaction will be from our beneficiaries after this press conference.

(conversation indiscernible)

Trustee Keli‘i Akina – Thank you for managing these beneficiary resolution expenses. I just had a couple of questions to help me understand it a little better. In terms of the beneficiary support, how do we determine our disbursement? Is there a procurement process, is there someone involved in asking for specific needs and so forth? If you could just flush that out for me.

Sylvia Hussey – The primary guard rails in all of the beneficiary pieces are all procurement. So, any of the procurements have gone out for RFP, they have contracts, they have invoicing and they follow our normal fiscal procedures. To the extent that they are estimates that need to be made and we need to find the resourcing internally, we’ve been able to do that within the parameters that the CEO has. The procurement process is the foundation of the process there. The most active one is in that first category, the restroom facility servicing, the disposal fees and the tent rental. Some of that will disappear because of the changes of the beneficiaries there. Our staff on the ground continues to monitor those needs and to align those needs with the beneficiary resolution.

Trustee Keli‘i Akina – So it’s our staff who are up there that ultimately make the recommendation to you for which RFPs to go forward with.

Sylvia Hussey – So they gather the intel and they come back and say the needs are this and we look at what POs we have open and what contracts are there and what is covered by what process, then we do the procurement that is necessary that needs to be done.

Trustee Keli‘i Akina – So it’s our staff that is kind of observing the situation.

Sylvia Hussey – Right so they gather the intel then they come back and say here are the needs and internally we say, ok, is it, the staff already knows it’s a line, as you can imagine the staff gets a lot of requests or they observe a lot of other things. But they are very clear as to what is covered by the beneficiary resolution.

Trustee Keli‘i Akina – As to legal observers, can you explain what their function is and what the qualification is in the individual that is a legal observer and how many do we have?

Mehana Hind – Sure, and we have not sent legal observers up there since the early on period. But they were lawyers, law students also. The legal observer, that kind of category that is put into play doesn’t require a legal background because they are not practicing and they don’t take it into a court of law. They are there in spaces to be able to share information about the legal rights of citizens in those places and this happens all over. They are able to also at the same time be witness to any other activity going on that may or may not be legal on the behalf of law enforcement and such. They serve a dual role. The ones that we tapped into were either lawyers or law students that volunteered to go up. We just paid the travel cost.

Sylvia Hussey – They do receive training. That is what you will see some of the workshop supplies. But as Mehana pointed out this was done early, like in July during that initial pieces. These costs haven’t increased. It’s mostly the line items that are the ongoing beneficiary support.

Trustee Keli‘i Akina – Finally on the digital print media, on the output, digital social media, what is the purpose

of this? What are our goals that we are trying to accomplish with those expenditures?

Mehana Hind – A lot of our digital media and print work has been around where our large group of native Hawaiians are being pulled to either learn, mostly cultural workshops. So, we have live streamed a lot of our cultural workshops having to do with the mauna, that included the teaching and learning of chants and hula that are being done up there, that are being shared with the masses. We had tremendous response. We've also been a part of a couple of larger events. One Jam for Maunakea, which was an event that incorporated our national songs that were being simulcasted both from Maunakea, a large event at the Palace that gathered a few thousand people and we shared that out. It was actually simulcasted along with other places around the World. Our goal for that was to be able to share the kind of cultural richness that is happening, that is emanating from the mauna and sharing those kinds, we don't go to everything. We've chosen to go to ones we see a lot of our beneficiaries commenting that they are going to attend and that they are going to be at. Then amplify that out across the World. We've had a lot of response from all over the place.

Trustee Keli'i Akina – Thank you for letting me ask the questions. Thank you for managing these expenses and keeping up informed.

Trustee Dan Ahuna – And they all go to Native Hawaiians.

Chair Colette Machado – Thank you for updating us Sylvia consistently.

Trustee Leina'ala Ahu Isa – I wanted to mahalo Ka Pouhana. I follow you guys on Instagram you guys are great. Thank you for that.

Chair Colette Machado – Members if there are no other questions for our CEO, we will move on to V.A.

V. NEW BUSINESS

A. Joint Meeting of the Committee on Beneficiary Advocacy and Empowerment and Resource Management

1. Action Item BAE-RM #19-10: FB 20-21 Higher Education Grant Recommendation

Chair Colette Machado – I will call on Trustee John Waihe'e IV to read the action item being referred to the BOT identified as BAE-RM #19-10: FB 20-21 Higher Education Grant Recommendation.

Trustee Waihee moves to approve and authorize awarding \$550,000 from the Fiscal Year 2020 (FY20) Core Operating Budget (Object Codes 56530 & 57110) and \$550,000 from the Fiscal Year 2021 (FY21) Core Operating Budget (Object Codes 56530 & 57110) to the University of Hawai'i at Manoa Native Hawaiian Science & Engineering Mentorship Program (UHM NHSEMP) to administer the FB 20-21 Higher Education Scholarship Program.

Trustee Dan Ahuna seconds the motion.

Chair Colette Machado – Any further discussions, this is ratification of the referral from the Joint Committee that was held yesterday. If no discussion I will call for the roll call vote please.

Trustee Leina'ala Ahu Isa – Point of clarification Chair.

Chair Colette Machado – Trustee Leina'ala Ahu Isa.

Trustee Leina'ala Ahu Isa – Trustee John Waihe'e IV did we say the money is going to go to the recipient and not to UH?

Trustee John Waihe'e IV – No.

Trustee Carmen Hulu Lindsey – It's going to UH to disburse.

Trustee Brendon Kalei'aina Lee – Point of clarification Madame Chair.

Chair Colette Machado – Trustee Lee.

Trustee Brendon Kalei'aina Lee – I think there is a miscommunication with this question. The monies are going to recipient but the recipient has to attend UH. So, UH STEM program is administering the grant which the grant money is for scholarships, so scholarships go to the applicant for the scholarship. But those applicants have to attending a UH campus.

Trustee Leina'ala Ahu Isa – Thank you.

Trustee Brendon Kalei'aina Lee – Yes, the money is going to UH because they are the ones administering the money.

Chair Colette Machado – Thank you for that clarification. Roll call vote please.

Trustee Waihee moves to approve and authorize awarding \$550,000 from the Fiscal Year 2020 (FY20) Core Operating Budget (Object Codes 56530 & 57110) and \$550,000 from the Fiscal Year 2021 (FY21) Core Operating Budget (Object Codes 56530 & 57110) to the University of Hawai'i at Manoa Native Hawaiian Science & Engineering Mentorship Program (UHM NHSEMP) to administer the FB 20-21 Higher Education Scholarship Program. Trustee Dan Ahuna seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA		x	X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'AINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY						Excused
TRUSTEE JOHN WAIHE'E	x		X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8			1
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passes with eight (8) yes votes and one (1) excused.						

VII. COMMUNITY CONCERNS

Chair Colette Machado – Members we are now on community concerns. I'd like to call on Rita Kawehi Kanui to come forward. She signed up, followed by Thomas Miller.

Rita Kanui – I came here yesterday and I heard from another Trustee that you folks had questions. That is why I am coming back here again. Then number one topic we talked about yesterday is the homelessness of the Hawaiian people. I met with my team last night to discuss homelessness on the Big Island. Apparently has land there, they want to build homeless housing there. We have a retired General from the US military who is helping with that. His family lived here in the islands in Waikiki. His brother and his father went to Vietnam, they went to

war and they died. So, he has a lot of compassion for the Hawaiian people so he is helping. Then there is a lot of people who are in prison that have a lot of skills and they will be helping soon. We are hoping that you guys support our project. We do have money backing up our project. The other topic was whatever questions you have for me in terms of my husband that was in Afghanistan and I wanted to make a correction that he was in Afghanistan but now he is in Western Africa. That is where he is deployed.

Chair Colette Machado – Trustees, Kawehi has come back to add to her testimony from yesterday's meeting. We want to thank you for taking the time to come. Is Thomas here? Aloha Thomas.

Thomas Miller – Hi, I am just coming back. The first time I came I had a brief conversation with Mr. Ahuna. He was very interested, but after the interest there was no feedback from his office. I've called his office and haven't heard anything back. Also, Trustee Lee, when I left the meeting the first time I came about Alexander and Baldwin, very interested, took a lot of time. Haven't heard nothing from the office about this racetrack thing and in particular Alexander and Baldwin. After the last meeting I came I had contact with Mr. Keola Lindsey. It always starts off good but after that it's just blank. Never heard from him. Then all of a sudden, I haven't heard nothing. I had a conversation with him on the phone and after that I haven't heard nothing. Because today was the day, I needed some feedback so I know what to look at. But the most disturbing thing was this morning I had a phone call. I called yesterday because I haven't heard from Keola Lindsey. I called before to find out what is OHA's relationship with Alexander and Baldwin, how do you guys present yourself. Blank, because the first time I came I said Alexander and Baldwin told me flat out that the land management that we are into malls and shopping centers and we are not into community development. So, I said that means you into Caucasians and Asians and you neglecting the kanaka maoli. Yesterday I called, I wanted to get an answer. This morning, this girl Taylor calls. She says, you called, and I'm like yeah. I am waiting for her to respond. So, I said you calling me so you must have some information on why I called. She said oh yeah, A&B, you know, for the Chairs and tables and parties. No, I called to speak to Alexander and Baldwin land management who overtook, who had complete control over the beneficiaries' land and that's why I called. She was getting cocky with me. Then I said, whose your boss, she said John, I said John who, there is a lot of Johns. She turns around and slaps me in the face literally with, yeah get a long of Chings here too. I said what the hell you talking about. She said OH, in the World. I said, eh you damn well know what's going on. So why did you bring up this thing about Ching. I am very disturbed because I really wanted to speak to Keola Lindsey before this meeting today and he never gave me no feedback. He took extranomical input but no feedback. I am just concerned about Alexander and Baldwin and Campbell Estates on what they did to the drag racers. Now the drag racers are completely homeless. They are completely out because the new developer wants to build a little itty-bitty track for the drag racers and concentrate on his own self-righteousness. Like I told Keola Lindsey, you should tell that developer to go to the Big Island in Kona because Kona across from the airport there are supposed to be building this state-of-the-art racing facility. I said he should take that over there and give back the racers their drag strip what they had, what they so much deserve. I was really concerned about who I can talk to about this lady Taylor. I said are you Hawaiian, no. I am like your part of the management thing and you are not Hawaiian. I really concern that all these Hawaiians needs, and you know what they said, they probably not qualified. I am like are you kidding me, are you really kidding me on these sarcastic comments.

Chair Colette Machado – Thomas you have 30 seconds.

Thomas Miller – I am wondering when I am going to get to speak to somebody that is going to respond to my answers on Alexander and Baldwin and their conduct and their lack of helping these kanaka maoli get their benefits because they got billions of dollars and none of it is coming back to the kanaka maoli. Not the kanaka maoli but the beneficiaries.

Chair Colette Machado - Thank you. The next speaker is Clare Apana. Clare why don't you start by introducing Carol.

Clare Apana – Good morning Trustees. Really nice to see all of you. I'd like to introduce Carol Lee Kamekona who is going to help me recap some of the iwi issues that we've been working on in Maui. I just want to thank the

Office of Hawaiian Affairs for places that you have helped us and I hope that I will remember all of those places so that I can tell you about them. Because I am sure that they are not things that people usually know or hear about but your staff has been really wonderful in helping us and of course our Trustee always supports us so with that I'd just start.

We started back in 2017, with a terrible sand mining permit that allowed grading and grubbing 213,000 cubic yards of material to be taken out and the news showed that \$30 million was made off of that sand in 1 year. We came to the Board that year and you made a motion to ask the developer to look into what was going on. It's been a very long 2-3 years and we ended up in court. The settlement was finished this year. What happened was we prevailed in that they were found guilty of not having followed their monitoring plan. I don't know if you know, an archeological monitoring plan is really the way that they say, development is able to go forward and say we are respectfully taking care of these kupuna, we are going to do this, we are going to do this, so we thought we would hold their feet to the fire and show that they didn't have a monitor so they would never know if they were really hitting kupuna because in our trial the operator of the machine said he can't really see anything in front of him. So that was done with the preliminary injunction and a preliminary finding.

All of the meat of our case was taken out the issues of sand mining, the issues of violations, so anyway, what we have now is an appeal to the supreme court about the issue of the incorrect zoning for resource extraction. We don't know what will happen it can take many years. Cases sometimes take 5 years to get an answer and that is sitting there and the other case we done this year moved into and place where we thought we could actually get something done. Thank you to our wonderful attorneys who tirelessly helped us to try to achieve, protection and really a change in attitude about our burials and our cultural treasures. We had a hearing at the Board of Land and Natural Resources because the archeologist who has been saying she is an archeologist is not an archeologist and has been moving our iwi kupuna for some, since the year 2000. Has been moving our iwi kupuna, reporting on them and yet she is not an archeologist and just has been signing contracts as if she is an archeologist. We were trying to get DLNR to clean that up and not allow this kind of thing to happen. In our case we did show them that this archeologist was signing off on the project and they quickly bought another archeologist on too, but that archeologist refused to sign under the name of her company. So, there it sat at the BLNR and they decided that, that was ok. We are still fighting that one.

We have one more where this same archeologist had been found in the (conversations indiscernible) which is still going on to move some 40-50 iwi kupuna. She called them scatters. They are actually disarticulated skeletal remains. The Judge found that she moved them illegally and improperly. This person who is not an archeologist but owns an archeology company was given a renewed permit. We questioned that and asked for a contested case. This is really in hopes of getting the State of archeology to be at a higher place. We have people who are really qualified and who have, I really think this person has nothing to lose. She doesn't even have a degree. She has nothing to lose. In doing these cases it's about trying to raise the bar to a place that it could be. Where archeology could be a place that could be more assistance then the reason why our iwi kupuna get dug up all the time and moved. No matter what and how many there are there is no stopping because there is no limit.

The next thing that we did was to challenge that bad permit that had been removed two times we were doing the sand mining moratorium. Was granted, with all the legalities and so it just came up in December. Your compliance department Kamakana Ferreira wrote a nice letter outlining the violations. To put it on the record because obviously the County of Maui knows about them but has not been able to act upon it to stop this permit. I heard through the Council Members office just this last week that the permit was denied. So, this is a first time it's been denied. I really thank compliance for their help in writing that letter. Because another agency was on the watch and I think that, I hope that even especially in our County of Maui that that will happen even more that OHA will have somebody listening. I think that we have worked very hard to make that relationship and I want to see that our voices and all the letters that Keola Lindsey has written over all these years about the sand mining in the sand dunes, that have been literally ignored that that day had ended. That this new day we will be respected as not only 'ohana but authorities on our iwi kupuna.

That is the last case that one of the findings was for the very first time that it was Malama Kakanilua the plaintiffs. The Judge found that we had property interest in the iwi kupuna. That is huge because the Judge found the developer doesn't have property interest in our iwi kupuna. I'm not sure where that goes but it was important thing to happen and do. I thank your compliance staff in being an extra ear and extra set of eyes to look at documents during this time. This leads us to the very last thing that we've been doing. It's our mission of Malama Kakanilua is to see that development stops in known burial grounds. That they don't get the ask, can I build someone in this burial ground. As you might know we became interveners, we petitioned to be interveners in the Grand Wailea Hotel expansion and renovation case. Although there were numerous short comings where they had not let the shoreline management access permit in terms of environment and various things, we concentrated on the iwi kupuna. Who are historical, cultural resources, they are registered with our State and eligible for the national register as historical properties, treasures? And they were given this, we will have monitoring and we will respectfully take care of them. You know according to whatever the laws are. The travesty is that so many iwi kupuna have unearthed in this 30 acres parcel. It started in 1987 and by the year 1990-91 when the hotel was allowed to open, two months before there were 300 iwi kupuna who had not been reinterred.

Chair Colette Machado – E kala mai. I have already extended you for 10 minutes. I want you to quickly summarize.

Clare Apana – I am actually finished I was going to have Carol tell you a little bit about the Grand Wailea and she is a descendant of that area.

Carol Lee Kamekona – Aloha my kakahiaka, my name is Carol Lee Kamekona. I live on the moopuni of Maui. I just wanted to highlight with you the intervention that three native Hawaiian organizations, Malama Kakanilua which I am a part of, we have Pele Defense and Hooponopono o Makena. We have filed an intervention with regards to the expansion of the Grand Wailea. Our biggest concern is the iwi kupuna. There is supposedly a burial preserve on the north end by the parking lot next to that wing, they want to add another 63 units. It is our contention that they will be hitting iwi kupuna and we don't want that to happen. There is another wing that they want to build that is also been the site of numerous burials that were found in the initial construction between 1987 and 1991. As Clare said there were over 300 burials that were not reinterred prior to the opening of the Grand Wailea. Mahalo.

Chair Colette Machado – Carol you mentioned Pele Defense Fund they co-plaintiffs with you folks in this case.

Carol Lee Kamekona – Yes.

Chair Colette Machado – Does Native Hawaiian Legal Corporation provide legal support for you folks, *(conversation indiscernible)*

Carol Lee Kamekona – Actually that is one of the reasons that we are here. We are asking if the Office of Hawaiian Affairs would kokua us in talking with NHLC if not then we will have to secure on our own.

Chair Colette Machado – We will refer this to you Sylvia. Thank you.

Sylvia Hussey - We are meeting with them this afternoon.

Chair Colette Machado – Thank you for coming.

(Handouts were passed out from Clare and Carol; these are attached to the minutes.)

Clare Apana – Just to explain what we gave you. We gave you the lease that we did and they have decreased their project. And then we also gave you this, I want you to think about this. The memorandum of agreement which was signed in 1987 by the Office of Hawaiian Affairs instead of a lineal descendent coming forward. The Office of Hawaiian Affairs took responsibility for the burials and if you read it, it gives the right to dis-inter and

reintern respectfully iwi kupuna. We interviewed people on the ground on the project they said iwi kupuna were put in buckets and taken to a place and dumped in a gulch. (conversation indiscernible) It's a terrible agreement and there is still an agreement and we would like to see that what we feel when we walk, we kaumaha we feel when we walk that property, we would like to see that lessen and place of balance and feel that our kupuna are resting again. If you can see how many people, I believe it's like 500 skeletal remains of our kupuna into an area that is a little (conversational indiscernible) I think the respect and what our kupuna deserve has not been given. I believe OHA has a legal contract for respectful reinternment. You didn't know that those hundreds of burials existed. You didn't know that you would have hundreds more disinterred. So, I ask you to think about this memorandum of agreement that was signed by the Office of Hawaiian Affairs. And there are many more that you haven't signed I think perhaps we can bring a new era in as I always say. We can bring an era where our iwi kupuna will be respected and protected for all time.

Chair Colette Machado – Thank you Clare, the fact that you have a meeting with staff and our administrator to me is a good direction. Whatever comes out that, we will probably be updated. Any request to NHLC will be part of the recommendations. It all comes from today's meetings you have. That is a good step for what you do on Maui. As we say holomua.

VII. ANNOUNCEMENTS

Chair Colette Machado – I just have one announcement, we distributed to you a copy of the 2020 schedule for the BOT meetings. I want to note that the BOT scheduled has been circulated and the first meeting of the BOT is set for January 23rd. Prior to that we will have two committee meetings with the Resource Management. We don't have any business to address that is why we went to the end of the month.

VIII. ADJOURNMENT

Chair Colette Machado – With that said the Chair would like to entertain a motion to adjourn.

Trustee John Waihe'e IV moves to adjourn the meeting.

Trustee Kalei Akaka seconds the motion.

Chair Colette Machado – It has been moved and seconded. Roll call vote please.

Trustee John Waihe'e IV moves to adjourn the meeting Trustee Kalei Akaka seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA		x	X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY						Excused
TRUSTEE JOHN WAIHE'E	x		X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8			1
MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passed with eight (8) yes votes and one (1) excused.						

The meeting was adjourned at 10:51 am.

Respectfully submitted,

Dayna Pa, Board Secretary

As approved by the Board of Trustees on _____.

Colette Y. Machado, Chairperson
Board of Trustees

Attachments:

1. Board of Trustees Action Item #19-11 – Beneficiary Resolution as of December 9, 2019
2. Clare Apana Handouts – Kanaka Groups File to Stop Desecration at Grand Wailea and Wailea Agreement

Board of Trustees
Action Item #19-11 - Beneficiary Resolution
As of December 9, 2019

<u>Description</u>		<u>\$ Amount</u>	<u>Resolution Alignment</u>
A Puuhonua o Puuhuluhulu - Beneficiary Support		<u>\$ 75,380.77</u>	[b], [c], [d], [f], [g], [h], [i]
Restroom Facilities, Servicing	\$ 53,912.76		
Dumpster Removal & Landfill Disposal Fees	\$ 5,137.41		
Tent Rental & Lighting	\$ 16,330.60		
Sub-total	<u>\$ 75,380.77</u>		
B Legal Observers		<u>\$ 2,246.36</u>	Resolution Alignment
Training Travel (Air, Ground)	\$ 2,054.72		[c], [d]
Workshop supplies	\$ 191.64		
Sub-total	<u>\$ 2,246.36</u>		
C Travel re: Site Visit/Beneficiary Needs Assessment/Ad-Hoc Committee Meeting		<u>\$ 9,241.84</u>	Resolution Alignment
Staff - Air	\$ 2,275.60		[c], [d], [f], [g], [h], [i]
Staff - Ground	\$ 1,374.86		
Staff - Subsistence	\$ 990.00		
Staff - Parking	\$ 45.00		
Staff - Hotel	\$ 326.60		
Sub-total	<u>\$ 5,012.06</u>		
Trustees - Air	\$ 1,516.33		
Trustees - Ground	\$ 591.19		
Trustees - Subsistence	\$ 1,130.42		
Sub-total	<u>\$ 3,237.94</u>		
Volunteers - Air	<u>\$ 991.84</u>		
Total	<u>\$ 9,241.84</u>		
D Digital Print Media			Staff Hours
Output: Digital/Social Media (e.g., posts, livestreams, videos, photos)			72
Monitoring: Social Media			40
Media Support: Jam4Maunakea, Mana Maunakea			19.5
Workshop			
Video Editing: Jam4Maunakea			40
			<u>171.5</u>
Out-of-pocket as of 12/09/2019 - Grand Total		<u>\$ 86,868.97</u>	<u>171.5 HRS</u>

Source: Community Engagement, Advocacy and Financial Services

Beneficiary Resolution Mapping Key

authorizes the OHA Administration to:

- [f]-advocate for the rights, safety, and well-being of OHA beneficiaries;
- [g]-engaging in peaceful protests of the state's decades-long pattern of mismanagement of Maunakea,
- [h]-perpetuating their constitutionally protected Native Hawaiian traditional and customary practices, and
- [i]-exercising their constitutionally protected rights of freedom of speech and assembly, ---DELEGATION OF ACTION

including but not limited to:

- [a]-the negotiation of rules of engagement;
- [b]-the establishment and maintenance of pu'u honua or safe spaces;
- [c]-the observation and documentation of actions by law enforcement, government, university or community personnel;
- [d]-an assessment and provision of health, safety, and legal needs; and
- [e]-any other actions as may be reasonably necessary or appropriate;

KĀNAKA GROUPS FILE TO STOP DESECRATION AT GRAND WALEA

Sacred Burials Displaced for Hotel Rooms

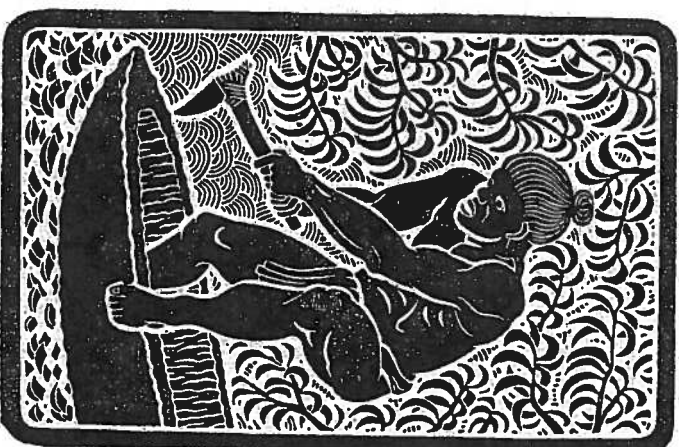
Kānaka Maoli and Native Hawaiian organizations have filed a Petition to Intervene on a Special Management Area Permit, which has been filed by the Grand Wailea Resort. Members of Mālama Kakanilua, the Pele Defense Fund and Ho'oponopono 'O Mākena claim that the resort was built on their sacred burial grounds, and their motivation for filing the petition is: No further Hawaiian burials shall be desecrated.

Before the Grand Wailea Resort opened in 1991, the Maui Burial Council recorded that there were 300 burials still needing to be reinterred. Construction workers reported at the time that, "buckets of bones were removed and trucked off the property" to an unknown location. Further documentation states approximately another 200 burials were disturbed within the hotel's first 20 years of existence. These exploits have caused psychological and emotional trauma to many lineal descendants. Their resolute demand is the return of 'Iwi Kūpuna (ancestral bones) to their original resting place.

Petitioners have repeatedly asked the Grand Wailea Resort for a comprehensive report on the disposition of ALL disinterred and disturbed 'Iwi Kūpuna. To date, no report has been provided. Any more development within the pu'uone (sand dunes) will undoubtedly disturb more sacred burials. "We want to prevent them from any further digging in this known burial area," Clare Apana of Mālama Kakanilua. "Stop the digging of our 'Iwi Kūpuna and stop the psychological trauma from becoming hereditary."

WALEA AGREEMENT

Relating to the Disinterment and Reburial of
Native Hawaiian Graves At the Site of the
Grand Hyatt Wailea, Maui



CONCURRING WITH THE MEMORANDUM OF AGREEMENT
RELATING TO THE NATIVE HAWAIIAN BURIALS AT MAILEA, MAUI AND
AUTHORIZING THE CHAIRPERSON OF THE OHA BOARD OF TRUSTEES
TO ACT AS SIGNATORY FOR THE OFFICE OF HAWAIIAN AFFAIRS

A Resolution

WHEREAS, the Shoreline Management Application (SMA) for the Grand Hyatt Mailea Project was amended by the County of Maui Planning Commission to include a condition requiring a formal agreement between the Office of Hawaiian Affairs and the developers of the Grand Hyatt Mailea Hotel, represented by Wilson Okamoto and Associates, to address the known presence of two historic-period platform burials; and

WHEREAS, by mutual consent this mandated Memorandum of Agreement (MOA) has been expanded to also include culturally-sensitive and appropriate disinterment and reburial of previously-unknown native pit burials unintentionally disturbed by construction activity at the project site; and

WHEREAS, OHA is empowered by HRS, Chapter 10, to "assess[ing] the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conduct[ing] advocacy efforts for native Hawaiians and Hawaiians;" and

WHEREAS, on 28 January 1988, the Board of Trustees adopted "Guidelines for the Consideration of Native Hawaiian Cultural Values in Historic Preservation Review" which included a commitment to and outline of appropriate actions to address pre-contact Native Hawaiian burials; and

WHEREAS, OHA is further statutorily-authorized "to enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, or with the State, or with any political subdivision thereof, or with any person, firm, association, or corporation, as may be necessary in the conduct of its business and on such terms as it may deem appropriate;" and

WHEREAS, prior private and governmental decisions and approvals regarding Mailea made the disturbance of Native Hawaiian graves inevitable, and participation by the Office of Hawaiian Affairs was only to assure respectful and dignified treatment of our ancestral bones as a representative of the Hawaiian cultural family; and

MAILEA AGREEMENT RESOLUTION
Page 2

WHEREAS, a Memorandum of Agreement (MOA) has been concluded in fulfillment of the Mailea SMA condition and consensus decision to address other Native Hawaiian burials found on the project property, the entirety of which is hereby incorporated into this resolution (ATTACHMENT 1), and provides that:

1. All costs associated with this MOA are to be borne by the Mailea Grand Company;
2. Legally-proper and culturally-sensitive disinterment standards and conditions relating to the Mailea burials will be adhered to by the Project Archaeologists;
3. An archaeological data recovery plan to "meet the needs of a reasonable scientific study and a recognition of traditional Native Hawaiian beliefs and respect for ancestral bones;" and
4. Reburial of disinterred bones at a nearby site on the project grounds in a manner consistent with cultural expectations, including:
 - a. that reinterment will approximate the original association and arrangement of individuals;
 - b. that the platform burials will be reconstructed from the original stones;
 - c. that the pit burials will be reinterred in the same area, marked by an earth mound;
 - d. that the surrounding landscaping will incorporate native plantings, particularly green ti; and
 - e. that OHA will provide the language for an appropriate sign to mark the reburial area; and;

WHEREAS, the Board of Trustees agrees to the stipulations and responsibilities explicitly assigned to the Office of Hawaiian Affairs as both legally and culturally appropriate; now therefore

BE IT RESOLVED by the Board of Trustees of the Office of Hawaiian Affairs at its regular meeting of 22 April 1988, in Honolulu, O'ahu, that it concurs with the "Memorandum of Agreement" relating to the Mailea burials; and

HAI'EA AGREEMENT RESOLUTION
Page 3

BE IT FURTHER RESOLVED by the Board of Trustees that it hereby authorizes the Chairperson of the Board to be the signatory to this Memorandum of Agreement for the Office of Hawaiian Affairs.

Manu K. Keale, Sr.
Manu K. Keale, Sr., Chairperson

Moanikeala Akaka
Moanikeala Akaka, Vice Chairperson

Rod K. Burgess
Rod K. Burgess, Vice Chairperson

Clarence F. T. Ching
Clarence F. T. Ching, Vice Chairperson

A. Frenchy Desoto
A. Frenchy Desoto, Vice Chairperson

Thomas K. Kauukukui, Sr.
Kevin H. K. Mahoe

MEMORANDUM OF AGREEMENT

Relating to the Disinterment and Reburial of the Two Native Hawaiian Platform Graves At the Site of the Grand Hyatt Wailea, Maui

This Memorandum of Agreement (MOA) is concluded to fulfill the Shoreline Management Area permit condition regarding the disinterment and reburial of two historic-period platform graves on the grounds of the Grand Hyatt Hotel, Wailea project by the Maui Planning Commission.

The great likelihood that these graves held Native Hawaiians compelled the Office of Hawaiian Affairs to seek explicit assurances regarding the respectful treatment of the remains. Consistent with Office practice, every effort was made to locate family members and to honor their wishes. However, no known genetic family could be found.

This Agreement, then, is concluded by the Office of Hawaiian Affairs as the representative of the cultural Hawaiian family.

• GENERAL CONDITIONS

1. Any and all costs associated with the terms of this Agreement shall be borne by the Grand Wailea Company.
2. Before formal disinterment begins, a blessing will be conducted at the Wailea graves. This ceremony will not be publicized. Additional blessings before reburial begins and a closing ceremony will be conducted at the reinterment grounds.

• DISINTERMENT

1. Archaeological teams will adhere to the highest standards of professional conduct, displaying respect and sensitivity to the removal and curation of human remains;
2. Removal will retain individual integrity, and any associated burial artifacts will be retained and reburied with the individual;

3. Any osteological study shall be conducted by Project Archaeologists Paul H. Rosendahl, Inc. in a dignified manner to meet the needs of a reasonable scientific study, and a recognition of traditional Native Hawaiian beliefs and respect for ancestral bones.
 4. Curation of the remains shall be on the Island of Maui, and only for the time necessary to allow for undisturbed reburial on the grounds of project.
 5. Prior to the commencement of any grading work, all rocks and stones from the existing burial platforms shall be completely recovered from the site by hand and safely stored near the reburial site. Conspicuous marking and construction workforce education shall protect the stones from disturbance.
- REINTERMENT
 1. The reburial site will be on the grounds of the project area identified on the accompanying map (ATTACHMENT 1).
 2. Reburial will be of individuals, wrapped in kapa with all associated burial artifacts.
 3. Individuals will then be reburied underground. The association and arrangement of the burials within the reinterment site will approximate their original associations.
 4. Reconstruction of the burial platforms (Attachment 2) over the graves will then be completed. This reburial site area will be landscaped and maintained.
 5. An appropriate marker will be installed on the site and the inscription will be provided by the Office of Hawaiian Affairs in consultation with the company.

Terms and Conditions Relating to
Previously Unknown Native Hawaiian Burials At Wailaea

By mutual consent, the Grand Wailaea Company and the Office of Hawaiian Affairs agree to expand this MOA to address culturally-sensitive and appropriate disinterment and reburial of previously unknown Native Hawaiian burials unintentionally disturbed by construction activities at the project site.

The "General Conditions" and "Disinterment" conditions numbered 1 through 4, and "Reinterment" conditions numbered 1 through 3 shall also apply to this section of the MOA. However, the following additional condition will further guide the respectful treatment of Native Hawaiian burials affected by the Grand Hyatt Wailaea project.

- REINTERMENT

1. Once reburial of individuals is complete, an earth mound shall be formed to designate the reburial area. Green ti plantings will be incorporated into the landscaping of this area to further mark the reburial area.

Na wai e ho'ala i na iwi? Na makou.
Who will care for the bones? We will.

Moses K. Keale, Sr.
Moses K. Keale, Sr.
Chairperson, Board of Trustees
Office of Hawaiian Affairs

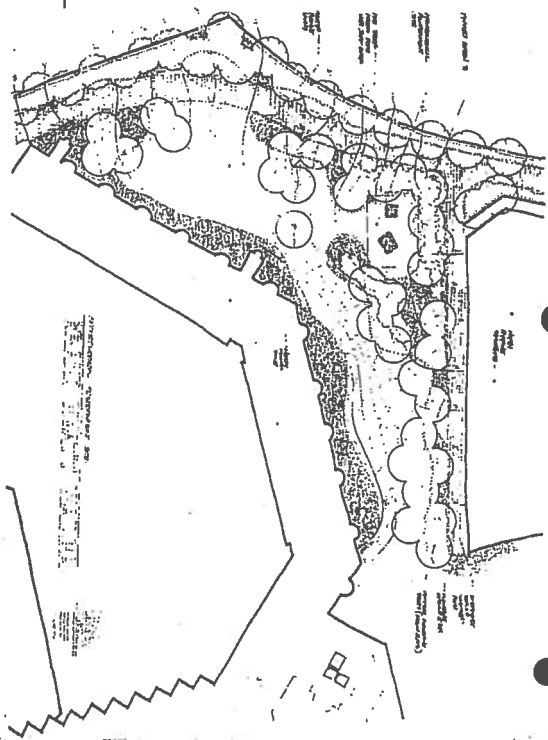
William M. Paly
William M. Paly
State Historic
Preservation Officer

W. H. Hays
W. H. Hays
Grand Wailaea Company

Grand Hyatt Valley



Grand Hyatt Valley



Office of Hawaiian Affairs
Board of Trustee Meeting
January 23, 2020
10:00 am

V. New Business

A. Beneficiary Advocacy and
Empowerment Committee

1. Kaka‘ako Makai – Discussion
on Land Use Entitlements and
Possible Legislation*

**- If there is any material for this item, it will be distributed
after the BAE Committee meeting on January 22, 2020.*

Office of Hawaiian Affairs
Board of Trustee Meeting
January 23, 2020
10:00 am

V. New Business

B. Resource Management Committee

1. Request to hold a Resource Management Committee Limited Meeting on February 5, 2020 regarding Kaka‘ako Makai properties.
2. Presentation by Administration of its DRAFT Recommendations Implementation Plan on the recommendations contained in the final report prepared by CliftonLarsenAllen LLP (CLA).*

**- If there is any material for this item, it will be distributed after the RM Committee meeting on January 22, 2019.*

**OFFICE OF HAWAIIAN AFFAIRS
MEETING OF THE
COMMITTEE ON RESOURCE MANAGEMENT
COMMITTEE REPORT**

January 10, 2020

The Honorable Colette Machado, Chairperson Board of Trustees
Office of Hawaiian Affairs Madame Chair Machado,

Your committee on Resource Management having met on January 10, 2020 and after full and free discussion, recommends approval of the following action to the Board of Trustees:

To approve the Committee on Resource Management holds a Limited Meeting, as defined in HRS § 92-3.1. on February 5, 2020 for the purpose of completing a site tour of OHA-owned Kaka'ako Makai parcels as listed below:

<u>Parcel</u>	<u>Street Address</u>	<u>TMK</u>
A	1100 Ala Moana Blvd	1-2-1-058:129
B	113/123 Ahui St	1-2-1-058:130
C	59 Ahui St	1-2-1-058:130
D	45/53 Ahui St	1-2-1-060:027 and; 1-2-1-058:048
E	919 Ala Moana Blvd	1-2-1-058-006
F/G	160 Ahui St/160Koula St/155 Ohe St	1-2-1-060:026
I	Ala Moana Blvd/Forrest Ave	1-2-1-015:061
K	40 Ahui St	1-2-1-060:028
L	200/220 Keawe	1-2-1-015:051

Relevant attachments are included for your information and reference.

Attachments(s):

- 1) Roll Call Sheet-Limited Meeting Consideration – February 5, 2020
- 2) Limited Meeting Considerations

Respectfully submitted:



Trustee Dan Ahuna, RM Chair

EXCLUDED

Trustee Robert Lindsey, RM Vice Chair



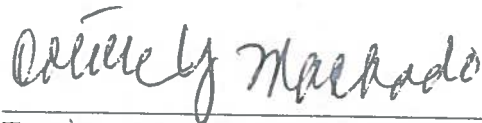
Trustee Leina'ala Ahu Isa, Member



Trustee Carmen Hulu Lindsey, Member



Trustee Kalei Akaka, Member



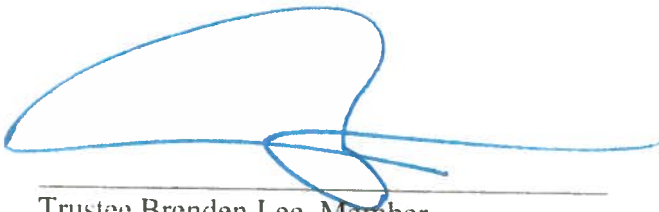
Trustee Colette Machado, Member



Trustee Keli'i Akina, Member



Trustee John Waihe'e, IV, Member



Trustee Brenden Lee, Member

Limited Meeting Consideration – February 5, 2020

COMMITTEE ON RESOURCE MANAGEMENT (RM)

DATE: January 10, 2020
Time of Motion:

AGENDA ITEM: III. New Business

C. Request to hold a Limited Meeting on February 5, 2020 regarding Kaka'ako Makai properties.

MOTION: To approve the Committee on Resource Management holds a Limited Meeting, as defined in HRS § 92-3.1, on February 5, 2020 for the purposes of completing a site tour of OHA-owned Kaka'ako Makai parcels as listed below:

<u>Parcel</u>	<u>Street Address</u>	<u>TMK</u>
A	1100 Ala Moana Blvd	1-2-1-058:129
B	113/123 Ahui St	1-2-1-058:130
C	59 Ahui St	1-2-1-058:130
D	45/53 Ahui St	1-2-1-060:027 and; 1-2-1-058:048
E	919 Ala Moana Blvd	1-2-1-058-006
F/G	160 Ahui St/160Koula St/155 Ohe St	1-2-1-060:026
I	Ala Moana Blvd/Forrest Ave	1-2-1-015:061
K	40 Ahui St	1-2-1-060:028
L	200/220 Keawe	1-2-1-015:051

AMENDMENT:

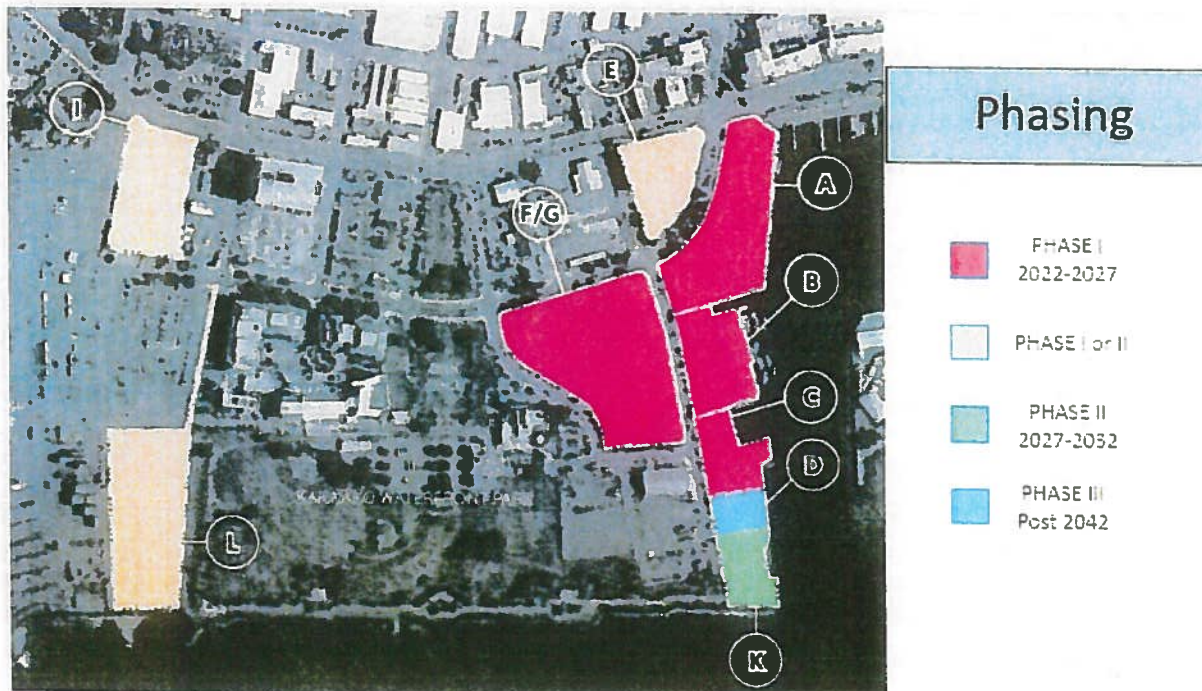
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (2 kanalua's =ABSTENTION)	EXCUSED
LEI	AHU ISA			X			
KALEI	AKAKA		2	X			
KELI 'I	AKINA			X			
BRENDON	LEE			X			
HULU	LINDSEY			X			
ROBERT	LINDSEY						X
COLETTE	MACHADO			X			
JOHN	WAIHE'E	1		X			
CHAIR DAN	AHUNA			X			
TOTAL VOTE COUNT				8			

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

I. Purpose of the Site Tour of Kaka'ako Makai Parcels – The Why?

The purpose of the site tour is to enhance the Kaka'ako Makai (KM) workshop information in preparation for the Action Item, projected to be presented to the Committee on Resource Management, at its Wednesday, February 19, 2020 meeting.

Parcel	Street Address	TMK
A	1100 Ala Moana Blvd	1-2-1-058:129
B	113/123 Ahui St	1-2-1-058:130
C	59 Ahui St	1-2-1-058:130
D	45/53 Ahui St	1-2-1-060:027 and; 1-2-1-058:048
E	919 Ala Moana Blvd	1-2-1-058-006
F/G	160 Ahui St/160Koula St/155 Ohe St	1-2-1-060:026
I	Ala Moana Blvd/Forrest Ave	1-2-1-015:061
K	40 Ahui St	1-2-1-060:028
L	200/220 Keawe	1-2-1-015:051

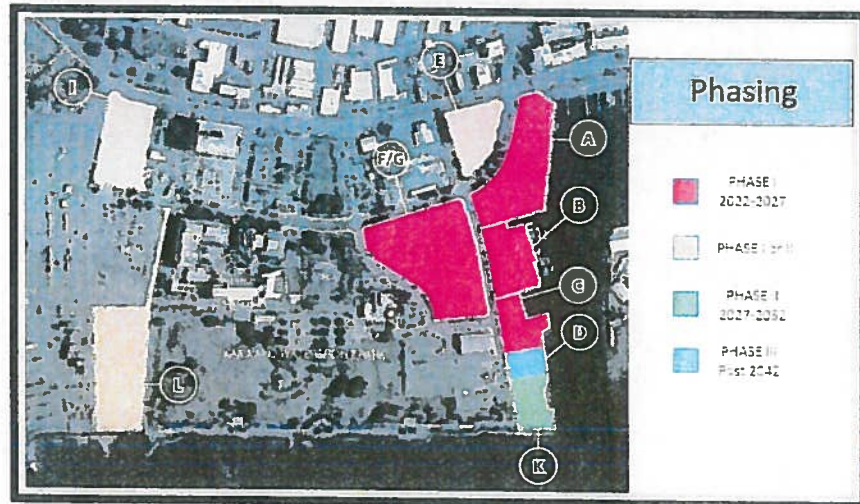


II. Draft Action Item Recommendations – The What?

As shared at the last Board Kaka`ako Makai workshop (via handout), the Action Item that will be brought to the Trustees by Administration at the RMC meeting on February 19, 2020 will be three decisions that will guide Administration to move forward with Kaka`ako Makai next steps:

Administration recommends to the Committee on Resource Management, the following actions:

- A. Approve the following 14 programmatic design elements: 1) New OHA Headquarters; 2) Native Hawaiian Center of Business/Incubator; 3) Gathering, Performance & Entertainment Spaces; 4) Range of Meeting Spaces; 5) Overnight Accommodations; 6) Museum that Honors Native Hawaiian Culture; 7) World-Class Saltwater Aquarium; 8) Places for Cultural Practice & Display; 9) Certified Kitchen & Imu; 10) Open/Naturally Vegetated Spaces; 11) Native Landscaping, including Community Garden; 12) Observation Deck; 13) Home for Hokulea, Hikianalia and other Waa; and 14) Automated Dry-Stack Boat Storage.
- B. Approve the phasing of the development of the lots as follows:
- C. Approve the business model application by Lot for Phase I as follows, noting any decision regarding Lots I, E and L will be brought to the Trustees for action: Phase I – Lots A, B, C, F/G – Business Model C



Business Model Option C – Case Study

C. Master Developer, OHA Ground Lease

Key Background Information

DHHL project for demolition of Stadium Bowl O'Brien property

Sought a multi-family residential rental facility

No provision for lease revenue to DHHL identified

DHHL envisioned a residential rental facility that included rental assistance programs and other services for tenants.

DHHL retained title to the property, but allowed the Developer to have control over:

- Demolition,
- Design,
- Construction,
- Financing,
- Management, and,
- Maintenance

DHHL conducted substantial work ahead of the RFP to ensure its success

Key Success Factors:

- Conducted draft engineering report and preliminary geotechnical engineering study
- Determined roadway use requirements
- Prepared Phase I and II environmental site assessments
- Conducted Archaeological Inventory Survey
- Prepared Reconnaissance Level and Intensive Level Architectural Studies
- Conducted Beneficiary Survey
- Defined green energy policy
- Specifying the building must comply with mixed use standards

III. Proposed Site Visit Agenda, Wednesday, February 5, 2020– The How?

- 8:30 a.m. Shuttles (2) pickup @ Na Lama Kukui
- 9:00 a.m. Shuttles drop off @ AAFES building, 5th Floor; view of KM parcels from the open rooftop with panoramic view
- 9:45 a.m. Re-board shuttles and drive by Lots I, L, K and D
- 10:30 a.m. Drive to optimal viewing area for Lots A, B, C, F/G; exit shuttles, view and return to shuttles
- 11:00 a.m. Arrive back at Na Lama Kukui for *Discussion re: Kaka`ako Makai design elements, parcels, sequence, phases and business models*

Note: BAE Committee meeting scheduled for Wednesday, February 5, 2020.

IV. Limited Meeting¹ - Site Visit Rationale and Considerations

Dangerous to Health or Safety. The 5th floor rooftop of the AAFES building (Lot E) provides a panoramic view of OHA's KM parcels, bringing a companion perspective to the planned shuttle ground tour. However, the rooftop is an open-air area; accessed by a few steps up and out the door from the conference room; does not have walls, windows, guardrails or other barriers between the visitor and the edge of the roof. In addition, the rooftop is uneven and footwear on the rooftop cannot have sharp points/heels due to the materials. As the site visit is Board business, OHA plans to address and mitigate risks of the rooftop site as it relates to the health and safety of OHA participants (e.g., Board of Trustees, Trustee Aides and Administration staff). However, the responsibility to ensure health and safety of the public in general onto the 5th floor rooftop is more than the OHA should assume; therefore, limiting the 5th floor rooftop site visit to OHA participants only is recommended by Administration.

¹ §92-3.1 Limited meetings. (a) If a board determines that it is necessary to meet at a location that is **dangerous to health or safety**, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which **public attendance is not practicable**, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting: (1) *The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;* (2) *Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and (3) Notice of the limited meeting is provided in accordance with section 92-7.*

(b) Relates to County Councils

(c) **At all limited meetings, the board shall:** (1) *Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;* (2) *Make the videotape available at the next regular meeting; and (3) Make no decisions at the meeting.*

Public Attendance Is Not Practicable. After viewing the KM parcels from the 5th floor rooftop of the AAFES building, the Board will be viewing the lots via two 25-passenger shuttles to transport the Board, Trustee Aides, Administration and staff and driving throughout KM and viewing parcels. Therefore, limiting the shuttle tour of the KM parcels to OHA participants only is recommended by Administration.

V. **Conclusion, Limited Meeting - Committee Recommendation to the Board**

RECOMMENDED MOTION:

Move to approve the Committee on Resource Management holds a Limited Meeting, as defined in HRS §92-3.1, on February 5, 2020 for the purposes of completing a site tour of OHA-owned Kaka`ako Makai parcels as listed below:

<u>Parcel</u>	<u>Street Address</u>	<u>TMK</u>
A	1100 Ala Moana Blvd	1-2-1-058:129
B	113/123 Ahui St	1-2-1-058:130
C	59 Ahui St	1-2-1-058:130
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L	200/220 Keawe	1-2-1-015:051

Office of Hawaiian Affairs
Board of Trustee Meeting
January 23, 2020
10:00 am

V. New Business

- C. Report of the Permitted Interaction
Group re: the investigation of the
alignment and update of the existing
Board of Trustees By-Laws for
OHA's Board Governance
Framework, without discussion.
*Pursuant to HRS § 92-2.5(b)(1)(B)**

**- Item will be distributed at the Board table on January 23, 2020.*

Office of Hawaiian Affairs
Board of Trustee Meeting
January 23, 2020
10:00 am

VI. Executive Session*

- A. Consultation with OHA Corporate Counsel attorney Everett Ohta, Esq. regarding questions and issues pertaining to the Board's powers, duties, privileges, and liabilities related to Kaka'ako Makai Land Use Entitlements and Possible Legislation. *Pursuant to HRS § 92-5(a)(4).*
- B. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities relating to the State Auditor's request for confidential and Attorney-Client privileged materials and information in connection with the legislatively mandated audit per Act 37. *Pursuant to HRS § 92-5(a)(4).*
- C. Approval of Minutes
 - 1. October 17, 2019
 - 2. November 7, 2019
 - 3. November 21, 2019
 - 4. December 5, 2019

****- Any material that is relevant to this section will be distributed at the table during Executive Session.***