

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 24, 2019
TIME: 10:00 am
PLACE: OHA Board Room, Nā Lama Kukui
560 N. Nimitz Hwy., Suite 200
Honolulu, HI 96817

AGENDA

- I. Call to Order
- II. Public Testimony*
- III. Approval of Minutes
 - A. October 11, 2018
 - B. October 25, 2018†
- IV. Unfinished Business
 - A. CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities
 - B. Administration Update to the Board of Trustees on the Strategic Plan 2020+ process including Phase 1 follow-up
- V. New Business
 - A. Approval of the Permitted Interaction Group on Organizational Guidance†
 - B. Action Item BOT 19-01: Procurement of a professional consultant to assist the Board of Trustees in conducting its performance appraisal of OHA's CEO pursuant to Section III of Contract 3147†
- VI. Executive Session†
 - 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 Civil No. 17-1-1823-11 JPC, OHA v. State, et. al. *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 regarding its duties under HRS §84, HRS §92 and its fiduciary duties. *Pursuant to HRS §92-5(a)(4).*
 - C. Approval of Minutes
 1. October 25, 2018
- VII. Community Concerns*
- VIII. Announcements
- IX. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Albert Tiberi at telephone number 594-1754 or by email at: albertt@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: 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

01/18/19
Date

Office of Hawaiian Affairs
Board of Trustee Meeting
January 24, 2019
10:00 am

- III. Approval of Minutes
 - A. October 11, 2018
 - B. October 25, 2018 *

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

**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, October 11, 2018
10:00 am**

ATTENDANCE:

TRUSTEE COLETTE MACHADO
TRUSTEE LEINA'ALA AHU ISA
TRUSTEE ROWENA AKANA
TRUSTEE PETER APO
TRUSTEE CARMEN HULU LINDSEY
TRUSTEE ROBERT LINDSEY
TRUSTEE JOHN WAIHE'E IV

ROBERT G. KLEIN, ESQ., BOARD COUNSEL

EXCUSED:

TRUSTEE DAN AHUNA
TRUSTEE W. KELI'I AKINA

ADMINISTRATION STAFF:

KAMANA'OPONO CRABBE, CEO
MOMILANI LAZO, SR. EA to CEO
DAVID LAEHA, CFO
MEHANA HIND, CE
EVERETT OHTA, CC
MILES NISHIJIMA, LPD
MISTI PALI-ORIOLO, OUTH
MONICA MORRIS, PP
KYLE LADAO, CO

BOT STAFF:

CAROL HO'OMANAWANUI
LOPAKA BAPTISTE
DAYNA PA
LIANA PANG
LAURENE KALUAU-KEALOHA
ALVIN AKEE
DAVIS PRICE
PAUL HARLEMAN
KAUIKEAOLANI WAILEHUA
LADY GARRETT
MARIA CALDERON

GUESTS:

DEMONT CONNOR

I. CALL TO ORDER

Chair Colette Machado Calls the Board of Trustees meeting to order at 10:04 am. Roll call is taken; Trustees Ahu Isa, Akana, Apo, Robert Lindsey, Carmen Hulu Lindsey, Waihe'e and Machado are present; constituting a quorum. Excused absences have been received from Trustee Dan Ahuna and Trustee Keli'i Akina.

II. APPROVAL OF MINUTES

A. September 19, 2018 (Community Meeting)

Trustee John Waihe'e IV moves to approve the Board of Trustees Community Meeting minutes dated September 19, 2018.

Trustee Carmen Hulu Lindsey seconds the motion.

Chair Colette Machado – Any discussion, hearing none roll call vote please.

Trustee John Waihe'e IV moves to approve the Board of Trustees Community Meeting minutes dated September 19, 2018.						
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 ROWENA AKANA			X			
TRUSTEE KELI'I AKINA						Excused
TRUSTEE PETER APO			X			
TRUSTEE CARMEN HULU LINDSEY		x	X			
TRUSTEE ROBERT LINDSEY			X			
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.						

III. PUBLIC TESTIMONY

Chair Colette Machado – Members we have one member of the public here. He will be presenting in the Public Testimony portion as well as in the Community Concern. The Chair would like to recognize DeMont Connor, please come forward.

Mr. DeMont Connor – Aloha Everyone. It is good to be back here again. That was an awesome conference, CNHA. I'd like to thank Kuhio for doing that and OHA for participating. I come here with a good heart and feelings for you guys. I wanted to thank you guys on helping the families on Kauai when they really needed the help. Something was said in the presentation at the Convention when Hulu and Keaumoku Kapu was on stage and that caught my attention. I wanted to come here talk about your item B. when you discussing the budget request and special funding.

The discussions and deliberations on the findings and recommendations (Report) of the Ad Hoc Committee on Grants and Sponsorships. You know with that, when you guys making a decision on that, I'd just like to ask whether or not you guys did it or not, Keaumoku is talking about he is still waiting for help from OHA for the families that lost their homes in the fire on Maui. When you guys are discussing this I just ask that you guys consider how that, what you guys are going to discuss in item B. how that plays out for the families getting monies, and help to the people over there on Maui.

Like you guys did on Kauai. Dan Ahuna did a good job in lobbying for that, you guys came to their aid. The families on Maui need your help too. That is all I wanted to come and mention. Thank you.

Chair Colette Machado – Yes, Trustee Carmen Hulu Lindsey.

Trustee Carmen Hulu Lindsey – I didn't have the opportunity to rebut the evening. I think that you should know, two days after the fire I gave Hokuau Pellegrino from the Kamehameha Schools that was assisting the Kauaula Families a \$1,000 to bring the waterlines back down into Kauaula valley so that they could eat, they could bath and they could drink. I didn't understand why Keaumoku didn't share that with the people.

Mr. Connor – That was good, at least that shows your heart for the people. But that is just you giving of your money for that. We are talking OHA as a Board.

Trustee Carmen Hulu Lindsey – The board did discuss it. The Board discussed Kauaula and our staff has gone out there to assess what they need. We cannot build houses, we didn't build houses on Kauai, we didn't build houses in the Volcano. We have to be fair in all the islands, and our staff is assessing it and will come to the board to make recommendations to us.

Chair Colette Machado – I'd really like to call Kamana'opono Crabbe to give an update on where we are on that relief support.

Kamana'opono Crabbe – Thank you Madame Chair. A couple of days after the fire had occurred communications from our Community Outreach staff on Maui as well as Honolulu went out. They were quite busy trying to organize themselves. They were conducting their own community meetings and coordination. We offered when you folks want us to come out we will come out. I believe Misti Pali-Oriol from our Community Outreach neighbor islands responded to their request. It was with a number of families, not only from Kauaula but the adjacent valleys.

We had a good meeting with them. They had a lot of suggestions. Right now, we are just compiling the list of priorities that we need to assess how we exactly can support them and what we would propose to the board. That just happened this past Monday. I am sure we will bring it, by this week, we will at least have a draft and then we can present it to the board.

Mr. Connor – Alright sounds like have a good work in progress. So the thing not just with just a \$1,000. Look like you guys getting ready to do more.

Chair Colette Machado – We want to be, like Trustee Carmen Hulu Lindsey said, fair to all these communities that were impacted.

Mr. Connor – Yes. They were wiped out over there. I appreciate that and I not here to disparage anyone.

Trustee Carmen Hulu Lindsey – That is all they needed was the \$1,000 to put the pipelines back in place because Lowes had donated half the pipelines. So I asked them how much you folks need and they said \$1,000. We couldn't get approval immediately here on the Board. But as far as I am concerned, that is OHA money that is not my money. But OHA came forward and took care of that community right away.

Mr. Connor – Right, ok I just wanted to be able to share that and put that on the record. Thank you.

Chair Colette Machado – DeMont thank you. We will proceed to CEO's update.

IV. UNFINISHED BUSINESS

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

Kamana'opono Crabbe – Good morning Chair and Trustees. I wanted to share about our two grants that are going out this month as well as in November. The first is the Kūlia Grant timeline. The Kūlia grant is an initiative by the Board, substantial funding up to \$100,000. The orientations have already started for Oahu and Kauai. The staff asked me to put an announcement to share that our staff will be coming to the various islands on these dates. Tomorrow on Molokai at the Kūlana 'Ōiwi Complex there will be a meeting at 10 am and 1:30pm. Hawaii Island in Kona and Waimea Friday. Kona will be 9 am at the OHA Community Outreach and in Waimea at 1:30 pm at Tutu's House on Mamalahoa Highway. On Oahu, next week October 16th, here at Na Lama Kukui in Maui Ola room at 10 am and 1:30 pm. On Maui, next week Friday October 19th at the Maui Beach Hotel Lanai Room at 10 am and 1:30 pm. This is the first time we are going to Lanai in many, many years. Based on a request from a Kupuna and beneficiary on the island of Lanai. We will be going out Friday, October 19th, the meeting will be at 11:30 am at the OHA Office. In two weeks, there will be an Oahu meeting at Kapolei on Thursday, October 25th at 10 am and 1:30 pm. That location is to be determined. You can go to our website at www.oha.org grants and we

will have updated information there. On Hawaii Island Hilo on Friday, October 2, 2018 at the Moku Ka papa discovery Center on Kānehameha Ave. at 10 am and 1:30 pm. Then lastly, on Oahu, on Monday, October 29th, 2018 here at Na Lama Kukui Maui Ola Conference room at 10 am and 1:30 pm. These are the orientations; our grants share what the Kūlia grant is about, how to apply. Any assistance that you may need they will try to assist you. The grant timeline. For the Kūlia Grant timeline, the announcements have already gone out for September, October. The final application deadline is November 16th. There will be an evaluation period for November, December and then grant selection and approval in January, February of next year 2019.

Next month November 19th the solicitation will go out online. People will have an opportunity to review and complete applications in November, December the final application deadline is January 7th in 2019. There will be review through February and then selection and award of Community grants will be March thru April next year 2019. Again, if you have any questions regarding both of these grants you can go to www.oha.org. That is it for our announcements.

Trustee Rowena Akana – Did the administrator say these are Trustee initiatives?

Chair Colette Machado – The Kūlia Grant came out of the special appropriation that we created in our budget. It is a onetime only for half a million set aside for the purpose. What that means is that we will have the final vote, the TAPS program under the solicitation process will be reviewing, they will be ranking the numbers, they will present to us their findings, and we will determine the final outcome.

Trustee Rowena Akana - Just a clarification, Trustee initiatives were actually initiative that were initiated by Trustees. But in this case, these grants are not initiated by Trustees, they are open to anyone and everyone can apply.

Chair Colette Machado – The difference is that in the Community Grants they have comply with the Strategic plans with strategic results. This one is a little less, for those that don't have full capacity they would be eligible for \$25,000 up to \$100,000 that would be a maximum. It would only be for 12 months unlike the community grant, which is for 24 months.

Trustee Rowena Akana – Thank you for the clarification.

Chair Colette Machado - With that said lets move to New Business.

V. NEW BUSINESS

Chair Colette Machado – We are now on V. New Business. Item A. Committee on Resource Management. Referral of Action Item RM 18-12 this is the 2nd Reading. I'd like to call RM Chair Trustee Carmen Hulu Lindsey.

A. Committee on Resource Management

- 1. Action Item RM #18-12: Amendments to OHA's Board of Trustees Executive Policy Manual related to budget preparation, budget format and budget reporting requirements, 2nd Reading**

Trustee Carmen Hulu Lindsey moves to update the budget preparation, format and reporting requirements by approving amendments to the Executive Policy Manual ("Policy Manual") and Board of Trustees Operations Manual ("Operations Manual") as described in Attachments "A" and "B" excluding the amendments on Fiscal Transparency 3.4.k. through 3.4.l. in Attachment "A" and "C".

Trustee John Waihe'e IV seconds the motion.

Chair Colette Machado – Discussions members, hearing none. Roll call vote please.

Trustee Carmen Hulu Lindsey moves to update the budget preparation, format and reporting requirements by approving amendments to the Executive Policy Manual (“Policy Manual”) and Board of Trustees Operations Manual (“Operations Manual”) as described in Attachments “A” and “B” <u>excluding the amendments on Fiscal Transparency 3.4.k. through 3.4.l. in Attachment “A” and “C”.</u>						
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						Excused
TRUSTEE ROWENA AKANA			X			
TRUSTEE KELI'I AKINA						Excused
TRUSTEE PETER APO			X			
TRUSTEE CARMEN HULU LINDSEY	X		X			
TRUSTEE ROBERT LINDSEY			X			
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.						

B. Discussion and deliberations on the findings and recommendations (Report) of the Ad Hoc Committee on Grants and Sponsorships re: Trustee Sponsorship and Annual Allowance Fund pursuant to HRS § 92-2.5(b)(1)(C)

Chair Colette Machado – Members we are now on V.B. You have received the report of the Permitted interaction group relating to the Ad Hoc Committee on Grants and Sponsorships. Today this is our discussion to review what we call the Trustee Protocol Allowance. It is for discussion and deliberation. Trustee Carmen Hulu Lindsey is the Chair of the RM Committee, we will then refer whatever we garner from the discussion into an action item and Trustee Carmen Hulu Lindsey was very obliging to allow us to have the action item for next week Tuesday because this policy will need to readings at the BOT level. I want the start the discussion. I want to bring to the table Committee Members Misti Pali-Oriol and Monica Morris and Everett Ohta. Please come to the table.

I want to add that before we begin our discussions and deliberations we will be asking Trustee Keli'i Akina's staff to circulate a memorandum or his mana'o on the item. We also have an update, because his request is to look at increasing the amount to be equivalent to the Legislators portions. We will have some discussion on what we found in our research yesterday. In addition, I did talk indirectly to Trustee Carmen Hulu Lindsey not intentionally. She was concerned that we did not provide for a bereavement portion for funerals and for compassionate giving in this current policy. We wanted to put that on the table as open discussion by Trustees and anything else you folks would like to add.

Trustee Rowena Akana – I did speak with Trustee Carmen Hulu Lindsey when I saw this and was concerned that there was nothing in here that could be given to beneficiaries. After all, that is our mission. So I am glad you are reconsidering putting back the allocation that we can give to funerals and the other thing that I would like to see is that when our beneficiaries are ill or whatever that we are allowed to send flowers. These are courtesies that we

should be afforded for our beneficiaries. We are not spending it on ourselves so I think these things are just too limited in scope and we must remember that all the monies that we spend is from the Trust Fund because that is where this fund comes from. It should be geared towards advocacy for our beneficiaries. I want to see this expanded so that it covers the portion where we can use this for beneficiaries.

Chair Colette Machado – Let me go back by giving a historical perspective. As part of the work of the committee, we were able to research the origin of the Trustee Protocol. There is an attachment to attachment 3, this was developed under the leadership of Trustee John Waihe'e IV under the policy and planning. In here if you read the attachment as circulated you will see that this has been an ongoing issue with the Trustees to kind of curtail or improve or make it as compliant to State Rules and Regulations. You see that in June 28, 1991 there was a Stan Lum that approved the action item to proceed and there is a report that fell short for the recognition and changes to the policy. Now we fast-forward to 2018 we are looking at the Auditors report that challenged the Board of Trustees to come up with certain policies that would be fair as they say and the disbursement would be consistent with other legislatures and County Officials utilize.

Trustee Rowena Akana – I was here in 1991 when this fund was created. The guidelines then was done by a retired Attorney General from the Attorney General's Office and her guidelines was Pumehana. Those guidelines were based on Federal Rules, she said as long as the IRS allowed these things that it took precedence over State Law. So the guidelines were much broader and it also included this Trustee Allowance to allow Trustees if they were going to, for instance do a presentation before the legislature or any political body or whatever that even laundry costs were allowed for clothing and even hair. Hair was latter discarded. The guidelines were stricter I thought but in many ways less limiting then what the State does.

I just want to say this to the Board, if we are looking at nationhood at some point in time the Board must also recognize that we as an entity should start sending a signal and laying ground rules that Trust Funds are Trust Funds. They should not be dictated by the State if we have our own policies that at least follow Federal Law there is nothing the State can say about that because we are following the law. But remember that whatever we do, whenever we allow the State to tell us what we should be doing we are taking away less power from ourselves as individuals and as a Hawaiian Entity that will, you know when you read Chapter 10 we are an agency that is temporary, that everything that we have should be turned over to the Nation when that occurs. When you think about it that way, we should be helping to lay the ground rules for that. So every time we step backwards and we allow the State to tell us what to do we are going backwards.

So I just remind everyone here that, that is something you must keep in mind. If this is our goal that this entity should turn itself into a Hawaiian Nation we must begin the ground rules here so our keiki and others may follow. We should not be turning ourselves over to the State in every little thing that we do. This is my caution to the Board. Thank you.

Chair Colette Machado – Since Trustee Akana raised the issue of its legality, on the board you have an opinion that was done by Sherry Broder back in 1991, could we go to page 2. The first paragraph on page 2 it says, "In my professional judgement, this motion – if approved by the full Board – would be legitimate and should not raise any major legal problems. Two questions need to be addressed in order to understand the legal framework within which the OHA trustees must act: (1) What limits does the nature of the trust that generates OHA's resources impose on the ability of the Trustees to spend or allocate the resources? (2) What limits do the constitutional and statutory provisions impose on the ability of the Trustees to spend or allocate OHA's resources?" On the second paragraph it says, "The funds OHA can draw upon have certain built-in restrictions on their use. Legislatively-authorized general funds must be used for the purpose identified by the legislature at the time of authorization..."

It goes on, so we utilized this as the development of the actual use of the Trustee Allowance back in 1991 under Stan Lum. Then under Trustee Waihee back in 2001, the committee has vigorously reviewed some of the provisions that were making certain recommendations. But it failed at the Committee level to move forward. Then now we are back at it again in 2018 because it was identified as an issue in the State Audit.

That is why we are at this point based on the moratorium that was placed after the auditor's findings. We are trying to make compliance and make do with that.

Trustee Rowena Akana – I think that section 10.13.5 makes my point that the public land trust proceeds must, according to that section, be used for the betterment of the conditions of Native Hawaiians and for this purpose defined...in this section it says we can use this for the betterment of Native Hawaiians, that was my point. That this maybe a little too limited.

Chair Colette Machado – We are just trying to give the historical background.

Trustee Rowena Akana – If we are using this, we need to look at this section because it does say that we can use these trust funds for the beneficiaries.

Chair Colette Machado – If you can look at your cover sheet of the report, you will see on the background, the third paragraph, "The issuance of the State Auditors report 18-03 in February 2018, raised an immediate need to review the TSAAF and CEO-Initiated sponsorships. In a proactive response to concerns raised by the Hawai'i State Auditor in his report, the BOT took the cautions measures of placing a moratorium on the TSAAF on February 27, 2018. That moratorium, effective February 27, 2018..." What caused this came out of the State Auditor's review of OHA's spending, specifically the TSAAF. No matter what we have been discussing some of the History, we are now in retrospect 2018 and the Auditor is saying we had not complied to what the purpose was.

What we are going to do now is if we are all up to speed on this. I am not trying to feed you folks on anything. But just attempt to look at our fiduciary duty in making remedies to what the Auditor found. That is why we are here today.

Trustee Carmen Hulu Lindsey - After you and I talked yesterday, I look at this whole thing and read Trustee Keli'i Akina's memo, I thought we've gone 8 months without this money, I can go longer and I hope my colleagues feel the same. We talked about the other half of this fund, which is the sponsorship. I think I would be very prudent if we moved both policies side by side so that all of us can see what is missing that we've been having and its been taken care of number 1, is it appropriate number 2. Then at least we don't have to say, maybe the next policy will say this. If we move the two together, that might be clearer for all of us. I don't mind deferring this; I mentioned that to you yesterday.

Chair Colette Machado – We did talk about that, we could table the discussion.

Trustee Carmen Hulu Lindsey – We could table it and move both together so that we have a clear mind of what you can do here and what you can do there. Yes, I was concerned about the compassion because as you well know I had an experience about three years ago. The beneficiary was very much in need and was very grateful that OHA gave through my discretionary. The other thing I thought about was, what about all of our nonprofit Civic Club functions and fundraisers. In here, it says no fundraisers. I think we should be supportive of them. If we choose to use our discretionary that way then it's the choice of the individual Trustees. The way that this is written is that it is so restrictive that I am just wondering if we are completing our mission with our people by keeping the communication open between them and us.

Chair Colette Machado – We may all not agree that the report that was prepared, we consulted after the committee report and looked real carefully at what was allowable and disallowable. If you look at your attachment number 2, we asked the ethics commission to review what we prepared. We have to be a little bit more cautious of how we proceed; we need guidance in what we do and how we do it. They looked at it; they looked at the issues, if you reviewed your attachment. The good thing they acknowledge is that, "I wish to thank you for your commitment to promoting the highest ethical standards within OHA, and for the opportunity to comment on the Draft Policy. As always, please let me know how my colleagues and I can e of further assistance." This suggestion to have ethics review came out of this young man to look at.

Trustee Rowena Akana – We shouldn't be asking them for their permission.

Chair Colette Machado – It really helped us to get back on track. There are certain standards that we have to uphold and I wanted Everett to review those HRS where it is necessary to comply with before we get off track. The direction we are taking, of course, it looks stringent and it looks really tight, but that's the purpose why we were cited so much in the auditor's report.

Trustee Rowena Akana – But we are not the legislature Madame Chair.

Chair Colette Machado – We are still elected officials. You want to comment now or should I go to Trustee Robert Lindsey.

Trustee Robert Lindsey – Thank you Madame Chair. I'd just like to commend the work of the Ad Hoc Committee. I think they have done an excellent job in bringing this draft before us. Clearly, the State Auditor in their report indicated that we needed to batten down the hatches. I think what the committee has before us does exactly that. We are dealing with our people's money, it's their money, it's not our money.

Trustee Rowena Akana – Then we should spend it on them.

Trustee Robert Lindsey – Exactly, we should always spend it on our beneficiaries. Again, I'd like to thank the Ad Hoc Committee for your good work and I am glad that you consulted the Ethics Commission to get their mana'o about how they perceive our draft policy. I think it would help us in the future greatly.

Trustee John Waihe'e IV – I want to make a few clarifications about things. This was done to address the concerns brought up by the Auditor, for me it was more important that whatever I recommended to my colleagues that it would be a policy where, I didn't want to promote a policy where if a Trustee followed it they would get cited and fined by the Ethics Commission because that is not prudent. That's my main focus. There were some parts that address the Auditors and all of them would comply with the Ethics Commissions rules. To me the Auditors, if you guys don't want to follow their recommendations, to me that is less important because all they can do is complain about it. But I think for the things that comply with the Ethics Commission we have to follow that, it's not fair, you don't want to get cited, and go through the trauma of that. You think I followed the OHA policy and now I am getting cited, that's not fair. Now you are getting bad media attention and it wasn't really your fault really. I guess it was.

Trustee Rowena Akana – No.

Trustee John Waihe'e IV – So that part is something to keep in mind. It's not just the Auditor. By the way, that high praise and this may, I impress Trustee Akana, the high praise from the Ethics Commission came from none other than the Executive Director Daniel Gluck himself. So that is something.

Trustee Peter Apo – I think the concept is well founded, I think the concept is supported, I think the rub is when a Trustee exercises bad judgement. Whenever that occurs. To me it's a matter of having some sort of line of authority where the buck stops someplace. Not at the Trustee level. So I would say Madame Chair, and I just throw this out there, perhaps the Chairman's office as the Chief Procurement Officer ought to approve expenditures, whatever amount Trustees are allowed in a protocol fund that they funnel it through the Chair and if the Chair approves it then it's an official act of the Trustees that approve the spending. That would at least reign in, create the boundaries, that they are not exceed assuming the Chair exercises good judgement in what he or she does not approve. I don't know if that makes things worst or what, that is my suggestion.

Chair Colette Machado – The lesson that we learned the most in deliberation in our committee was the fair treatment proviso. They can be all Hawaiians but what we choose, we cannot make the arbitrary decision that this one is over that one. There has to be a fair treatment approach and this is a requirement in the review for this kind of funding that we are providing for this protocol fund. The current recommendation is that the process, rather than getting issued a check from OHA it is a reimbursable arrangement. You put your money out, you provide the

receipts, it's approved and you get it reimbursed. It is very different from the first round. I just want to give an over view of what the new proposal would look like.

Trustee John Waihe'e IV – I could also be preapproved or reimbursed.

Trustee Rowena Akana – I am in agreement with Trustee Carmen Hulu Lindsey that we should defer this and it requires a lot more conversation among the Trustees because I don't see we are all on the same page and there should be a provision in there that allows us to be generous to our beneficiaries as Sherry's explanation according to HRS. So I want to see some of that included in this policy and again I caution the Trustees, do not give up your right, remember this is a Trust, it is not the State Funds, and there is another opinion by the former Auditor that said in at least two audits that I can remember. Marian Higa saying, once the ceded land revenues that is owed to OHA is transferred to OHA it becomes Trust Funds. The State nor the Legislature, nor the Governor has the right to tell us what to do with those funds. We follow our mandate. If that is the case then if the Governor, even in an article in the newspaper recently the Governor said, OHA has its own policies we don't get involved with that. This is a quote from the Governor. The Legislature knows they shouldn't tell us what to do with our Trust funds. So my question is why would be let a State Agency tell us what is permissible and what isn't. I am not saying break the law that is not what I am saying. Ethically we know that we can't vote on something that we have ownership in, or these kinds of things that are common sense ethical rules. But when it comes down to the expenditure of our Trust funds, they are Trust Funds that belongs to our beneficiaries. I don't see that the Ethics Commission.

Chair Colette Machado – So when you write a check to an individual that had not been treated fairly with others that have similar needs you made that decision. Let's not get blindsided. You raising all of those issues legally in another forum. We cannot wait for that, we have to rely on what we know now. How to confine ourselves and get that kind of guidance.

Trustee Rowena Akana – Let's defer on this and work on it.

Chair Colette Machado – That is your opinion that doesn't represent my opinion.

Trustee Rowena Akana – But it might represent others.

Chair Colette Machado – The word is guidance, we are looking for guidance and direction so that in future needs we will be in compliance with the State. We are a State Agency that is all I am trying to say.

Trustee Rowena Akana – We are a semi quasi.

Chair Colette Machado – Yes, we are semi-autonomous but the resources, our general funds monies that we utilized are co-mingled with our Trust funds. Whatever Rowena.

Trustee Leina'ala Ahu Isa – Trustee Apo was also a State Representative like I was. It is handled differently. Ethics is going to judge us by same criteria as the Legislatures. We do not give and then get reimbursed. We don't have a check cut, everything goes through Speaker, goes through the clerk and she is willing to come here and show us how it's done. Where we do not get the check, how its cleared through a requisition and then get it. I don't like the reimbursement thing; I am not going to use my money. This thing about us using the money only to communicate, yeah in the Legislature you do because you have 15,000 constituents. But here our beneficiaries are Hawaiians. It's a different kind of position.

Trustee John Waihe'e IV – Lei beside the general idea that you are saying it's only for communication. If you read what is allowed in the policy. I know Trustee Carmen Hulu Lindsey said the Compassionate part she wanted in. I think we realize that would be more appropriate in the sponsorship part of it anyway.

Trustee Carmen Hulu Lindsey – That is why I thought we should move the two together so we could see that everything is taken care of.

Trustee John Waihe'e IV – What did you want in that you think it not in right now?

(conversation indiscernible)

Trustee Carmen Hulu Lindsey – Chair did say that they are going to consider policies for the Sponsorships side so they have renamed this actually, Trustees Protocol Fund.

Trustee Robert Lindsey – The only outcome, the only result I am looking for at the end of the day when we get to adopt this draft policy is the Trust by our people and their confidence in the Office of Hawaiian Affairs is renewed and restored.

Chair Colette Machado – I'd like to call on Everett to discuss some of the legal issues we tackled within the committee. He was just a staff that helped us; he was not a member of the committee.

Everett Ohta – Thank you Chair and good morning Trustees. I know there has been a lot of great conversation at the table and I am glad to see that occurring. This is meant to be that discussion piece that follows the review of the Ad Hoc Committee's report. I want to emphasize that a lot of that work did occur at the committee level and a lot of different information sources were consulted in drafting this. Trustee John Waihe'e IV I think covered a few of them, but we did do a comprehensive review of the various other policies that were in place as well as the State Auditor's report commenting on the protocol allowance and other aspects of OHA operations that we are can look at improving. Early on, what the committee sought to do was really to address some of the concerns that have been raised in the State Audit. Particularly by Trustees in terms of the guidance that was available at the time and some of the lack of clarity of what that covered. I think that was part of what was guiding the initial work of the Ad Hoc Committee in reviewing this.

It really went back to the basics and started looking at what are the origins of this fund, where is it provided for in the law and how then has that been interpreted over the years. So going back originally, and of course this is all covered in the Ad Hoc Committee's report, in 1991 this was established by the Trustees as an allowance for the use by Trustees for expanding their communication network and engaging with beneficiaries and members of the general public on issues of Native Hawaiians concern and for the resolution of those issues. That was really the inception and that was in 2003 when that was expanded to encompass the many requests that were coming into Trustees and to make sure that those needs of the community were also accounted for. That is when that sponsorship piece was really expanded and the amount of the Trustee Sponsorship and annual allowance fund was increased.

Over the years, there have also been other reports from the Auditors and otherwise identifying areas for improvement. I think over the years the allowance guidelines, the Trustee sponsorship and Annual Allowance Guidelines have been adjusted to account for certain things that have been raised. I am not going to recount them but they have been changed and accommodated over the years. In this case, we did want to take this more comprehensive look, review all of those things and see where to go. One of the initial things that the Committee adopted was going back to the original purpose, which has been to set up this allowance fund for the purposes of communication and building an understanding of issues of concern to native Hawaiians.

Some of the criticism that has been repeated through various State Auditor reports was this ideal of providing direct benefits to beneficiaries and I know that is definitely an area to Trustees on being able to provide that assistance to real concerns and needs coming from the community. What the issue has repeatedly come out as is that it is providing that direct support or funding from an individual Trustee to an individual or small group of the community and that is what has been repeatedly flagged for attention as possibly violating fair treatment laws under the State Ethics Code or for potential concerns about fairness under things like Trustees duties and impartiality. Part of that is the reason why some of those allowed expenses under the existing policy were chosen

to move away from. That's not something specific to OHA it is also found in other Legislative Allowances that don't provide for that specific benefit to go out into the community.

Trustee Rowena Akana – I think that part of the problem is that when you have the Trustee Allowance you should always have the purpose, like a preamble to anything. So you have the preamble, the preamble should say that or actually quote something from the HRS, like the second or third paragraph that Sherry had which stated that the Trust Funds must be used for our beneficiaries. This is something, when the Auditor talked with each Trustee I tried to explain to the auditor that, he kept saying that we were like the Legislature and I kept saying now we are not. That our Trust Funds specifically are supposed to go to our beneficiaries. Therefore, you cannot use that kind of language we go against the fair treatment act. We are not competing with all of Hawaii. We have a limited amount of beneficiaries so that fair treatment act should not apply to us. We are talking about what is fair to our beneficiaries. This is where State people like the Ethics Commission and now this Auditor, the previous auditor we never had a problem with her. She understood the Trust Funds and our ability to expend that. This guy does not.

It is really an interpretation by these people. What I am saying is that if we have a preamble and we quote what's in the statute that allows us to do this it would bypass that Fair Treatment Act. Because again it goes to even our trying to get Federal Recognition where they say we are race based. That's like that, maybe not a good analogy. We are not race based we are Hawaiians that are native to this land. We are not a minority that came here and trying to claim we are sovereign. It's the same thing. We need to clarify wherever we can to say we are different. WE are different we are following out mandate by the State Statute. Now does the State Statute mean something? Is it the law? It is. So why can't we use the law for our purposes. That is all I am saying.

Everett Ohta – I'm sorry Trustee Akana I didn't mean to suggest, I wanted to be clear about what the ethics commission is saying. I don't take their position to be that they are saying that the Fair Treatment Law specifically prohibits OHA from directing funds towards Native Hawaiians. I think they are actually differential in that regard. From the Ethics Commission response letter to Chair Machado, they are saying policy decisions regarding how to further OHA's mission is within the purview of OHA Trustees and will not be seconded guessed by the Commission. I think in that regard they are not saying that what the Trustees across this board determines to be an appropriate use of Trust Funds they are not going to get involved with that. I think what the issue is about the application of that specific Fair Treatment Law and how that individual acting in their official capacity might provide specific benefits to an individual or small group of people.

The second point I'd like to make is that the protocol allowance was revised to mirror the statutory language provided for in 10.9 and that is the language about providing a protocol allowance to cover expenses that are reasonably related to a Trustee's official duties and responsibilities. So that is the setting for the overall spending under the Trustees Protocol Allowance. Of course, that is not to say that the Board can't initiate its own initiatives, other sponsorship type programs that would provide for the wider range of services that have historically been covered under the Trustee Sponsorship Annual Allowance Fund. I think that is provided for, the feedback that has been provided in these reports is that, that should be a Board decision rather than an individual Trustees decision. That providing for agendaized decision making in and public setting that is the procedure that is recommended in that type of spending decision.

Trustee Peter Apo - First of all, my disclaimer, I have not read the report and I apologize for that. The stuff that I say may already be covered or I am not on the right track. I am leaning to deferral. I think the discussion is trying to head in a positive direction and everyone is concerned about the optics of the fund. Definitely, we all agree that there has to be criteria that individual Trustees if they are permitted that discretion.

Chair Colette Machado – I just want to clarify that we are not making any decision this item today. This is only for free and full discussion and deliberation.

Trustee Peter Apo – Ok, I did not understand that.

Chair Colette Machado – It is just a discussion and a response to the report.

Trustee Peter Apo – I would raise a caution about using communications as one of the criteria. I recall when I was in the Legislature, Legislators on the State dollar used to publish newsletters to the community.

Trustee Carmen Hulu Lindsey – They still do.

Trustee Peter Apo – And that was heavily challenged as campaigning. Our columns in my opinion is campaigning. So I mean I don't object to doing the communication but to official name that category of spending, as communications might be a little bit dangerous.

Chair Colette Machado – Any further discussion on this item. This is only for deliberation and discussion. Anything more anyone would like to say.

Trustee John Waihe'e IV – Madame Chair, so what is going to happen? It goes to the RM Committee.

Chair Colette Machado – At the courtesy of Trustee Carmen Hulu Lindsey who has allowed this single item, she really didn't want to have a meeting on Wednesday next week. I asked her to just list it to see where we go with this. She has posted it and it has legally filed. That would turn this discussion and the report into an action item and then at that time we can have a full discussion and deliberation. Trustee Leina'ala Ahu Isa will not be there.

Trustee John Waihe'e IV – So it is referred to the RM Committee?

Chair Colette Machado – You want to opine on why we are going through the RM Committee?

Trustee John Waihe'e IV – No is it yes or no?

Chair Colette Machado – It is definitely yes, it's already been agendized I have the agenda right here that was filed by Lehua.

Trustee John Waihe'e IV – Thank you.

Trustee Carmen Hulu Lindsey – I could cancel the meeting.

Trustee John Waihe'e IV – They keep saying they want to defer it, I want to know is if it's going back to the PIG Committee.

Chair Colette Machado – No its not.

Trustee John Waihe'e IV – Ok good. That is all I wanted to know.

Chair Colette Machado – The intent is to go to the RM Committee.

Trustee Carmen Hulu Lindsey – It is still going to come to you Vice Chair.

Trustee John Waihe'e IV – My thing is, so I know, Trustee Akina is very specific in what he wants, Trustee Carmen Hulu Lindsey is, but there is a lot of criticism that is just philosophical rhetoric. I want specific what do you guys want in it, I don't want to have to try to imagine what people want. So be specific with it.

Trustee Carmen Hulu Lindsey – We will discuss it.

Trustee John Waihe'e IV – Ok.

Trustee Carmen Hulu Lindsey – I move that we move it.

Chair Colette Machado – I want to thank you for agendizing it because we really should figure out what we are going to do about it. The more we don't deal with it and we listen to some potential, I don't want to be in trouble in the future, I got two more years here and possibly more. Some of you may come back and you will have four more years here. You should all be crying for some guidance so we don't have to revisit or put the blame on administration. This is what I think we should do, we did some follow up yesterday and I wanted Lōpaka to announce that at the Legislature, first of all the \$7,200 is antiquated, it's old. We found out that in the Senate.

Lōpaka Baptiste – The Senate is \$13,804.

Chair Colette Machado – What about the House?

Lōpaka Baptiste – We haven't heard back yet.

Chair Colette Machado – We trying to track that down. It would fit right in to what Trustee Keli'i Akina was actually saying to increase it to \$12,000. Cause in the Senate it is \$12,804 that is what they currently have in place for their protocol funds.

Trustee Carmen Hulu Lindsey – I read their policies, the Senate Policies, it is extremely general and more general then our existing policy. That the purpose of course is to give them the leeway to be able to use their common sense and use the money appropriately. But the process is different. It doesn't only allow the Senator to make the decision it has to go to the Senate President. The Senate President looks at it and they say what you thinking about this isn't acceptable. So it kills it right there.

Chair Colette Machado – We found out also their protocol fund in the Senate provides for 6 round trip travels a month. If you exceed that you have to request but the car expenditure comes out of your protocol. Your full travel is not covered by the Senate; your car rental comes out of your protocol fund.

Trustee Carmen Hulu Lindsey – That is not going to apply to us.

Chair Colette Machado – It doesn't.

Trustee Carmen Hulu Lindsey – We travel like 10 times more than them.

Chair Colette Machado – Yes, it doesn't apply to us but those are some of the limitations they have in utilizing their funds.

Trustee Leina'ala Ahu Isa – Why doesn't the State Auditor audit the State Legislators?

Chair Colette Machado – Lets not go there Trustee Leina'ala Ahu Isa.

Trustee Leina'ala Ahu Isa – That is why they put the State Auditor under them, he answers to them.

Chair Colette Machado – The Vice Chair of his Ad Hoc Committee asked for some real specific, I would prefer, we've got some stuff on the record, but if you had something specific like Trustee Keli'i Akina please get it to us in writing so we can turn that around. No other discussions we can dismiss our committee members and legal support staff. I would like to move on to Community Concerns.

VI. COMMUNITY CONCERNS

Chair Colette Machado – I'd like to call on DeMont Connor you had another issue you wanted to raise to us.

Mr. DeMont Connor – Thank you for letting me come back. DeMont Connor Hoomana Pono Political Action Committee 501(c)(4). I just wanted to give some words of encouragement from the Community. You know me I always listen to our people out there on the street. The one thing that we noticed is that a lot of the rhetoric and the heat and the fire, flames, whatever you want to call it, has kind of like gone down. People are feeling a lot more comfortable with OHA. The way you guys are moving forward, maybe it was good that Trustee Keli'i Akina. For me personally I get issue with the guy. I think it's a conflict of interest to be here but the fact that the audit is going through and we've been as civil as possible to get through this together is encouraging. I just ask that we continue to go down this path where we can reconcile with each other. We just came out of three days of conventions. What a job Kuhio has done. I want to thank you guys for nurturing that guy while he was here. Obviously, what he learned here allowed him to be successful at CNHA and pulling off and awesome convention.

I was sitting at the table with people I don't talk to, they don't like me, I don't like them. Germaine Meyers, Healani Sanoda-Pale, by name. But we never was disagreeable with each other. We just ate our food and conducted ourselves appropriately. I commend them for not trying to take pot shots at me or talking stupid or whatever. Then there was also some flack that Kuhio went get when people saw that I was on the agenda to do a breakout session. They were like why you letting the guys get one platform, they like boycott him. Turns out it was a very good breakout session, standing room only, people sitting in the aisle. People came away with that as a good thing. No look at someone's past to judge them on how they going be today and going forward in the future. Whatever mistakes we all have made, we all going learn from that, the bottom line is that we are all Hawaiians and it's a time for us to stand united. At the convention it appeared to me that we were all really united even though we had people that we disagreed with that was there. Had people at the convention, agencies DHHL they stopped coming to the convention but now they came back. We at a good time right now and I just ask that we continue as we go forward the public sentiment has subsided with the anger towards OHA and I like that. Now look like we can move forward together. Thank you so much for this opportunity to speak and to share with you guys our Lāhui from what I hear we are appreciating you guys a lot more today. Thank you.

Chair Colette Machado – Thank you DeMont for your kind words. I remember when I first say you at the legislature. Thank you Momi for keeping him straight and grounded.

VII. ANNOUNCEMENTS

None

VIII. ADJOURNMENT

Chair Colette Machado – If there is no further business, I'd like to entertain a motion to adjourn.

Trustee Carmen Hulu Lindsey moves to adjourn.

Trustee John Waihe'e IV seconds the motion.

Chair Colette Machado – Roll call vote please.

Trustee Carmen Hulu Lindsey moves to adjourn. 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						Excused
TRUSTEE ROWENA AKANA			X			
TRUSTEE KELI'I AKINA						Excused
TRUSTEE PETER APO			X			
TRUSTEE CARMEN HULU LINDSEY	x		X			
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.						

The meeting was adjourned at 11:10 am.

Respectfully submitted,

Dayna Pa, Board Secretary

As approved by the Board of Trustees on _____.

Colette Y. Machado, Chairperson
Board of Trustees

Attachment:

1. Excuse memo – Trustee Dan Ahuna
2. Excuse memo – Trustee Keli'i Akina



OFFICE OF
HAWAIIAN AFFAIRS
STATE OF HAWAII
RECEIVED-BOT

2018 OCT -2 P 3 15

Office of Trustee Dan Ahuna
OFFICE OF HAWAIIAN AFFAIRS
Interoffice Memorandum

Date: October 2, 2018

To: Trustee Colette Y. Machado, Chair
Board of Trustees

From: Trustee Dan Ahuna

A handwritten signature in black ink, appearing to read "Dan Ahuna", is written over the "From:" line.

Subject: **BOT Meeting Absence**

I am unable to attend the BOT meeting scheduled for October 11, 2018. Please extend my excused absence and my sincere apologies to the members of the board.

Mahalo.




Office of Trustee Keli'i Akina, Ph.D.
OFFICE OF HAWAIIAN AFFAIRS
Interoffice Memorandum

Date: September 6, 2018

To: Trustee Colette Machado, BOT Chair
Trustee Dan Ahuna, BOT Vice-Chair

Cc: Trustee Lei Ahu Isa
Trustee Rowena Akana
Trustee Peter Apo
Trustee Carmen Hulu Lindsey
Trustee Robert Lindsey, Jr.
Trustee John Waihe'e IV

From: Trustee Keli'i Akina 

Subject: BOT Meeting Absence on October 11, 2018

2018 SEP -6 P 12:09
OFFICE OF
HAWAIIAN AFFAIRS
STATE OF HAWAII
RECEIVED-BOT

I am unable to attend the Board of Trustees meeting scheduled for October 11, 2018. Please excuse my absence and extend my apologies to the members of the Board.

If you have any questions, please call my office at (808) 594-1976.

Mahalo.

Office of Hawaiian Affairs
Board of Trustee Meeting
January 24, 2019
10:00 am

V. New Business

A. Approval of the Permitted Interaction Group
on Organizational Guidance*

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

Office of Hawaiian Affairs
Board of Trustee Meeting
January 24, 2019
10:00 am

V. New Business

B. Action Item BOT 19-01: Procurement of a professional consultant to assist the Board of Trustees in conducting its performance appraisal of OHA's CEO pursuant to Section III of Contract 3147*

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

Office of Hawaiian Affairs
Board of Trustee Meeting
January 24, 2019
10:00 am

VI. Executive Session[‡]

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 Civil No. 17-1-1823-11 JPC, OHA v. State, et. al.

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 regarding its duties under HRS §84, HRS §92 and its fiduciary duties. *Pursuant to HRS §92-5(a)(4).*

C. Approval of Minutes

1. October 25, 2018

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