

**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'ALA 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 Aha Kāne 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 Makekau, 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 breeching 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 Captial 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 breeched 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 19<sup>th</sup>.

**Chair Colette Machado** – It is the 19<sup>th</sup>. 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'AINA 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 19<sup>th</sup>. Mahalo.

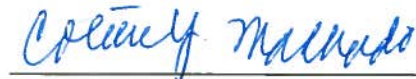
The meeting was adjourned at 11:07 am.

Respectfully submitted,



Dayna Ra, Board Secretary

As approved by the Board of Trustees on January 23, 2020.



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

Kelii 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,

Kelii 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.

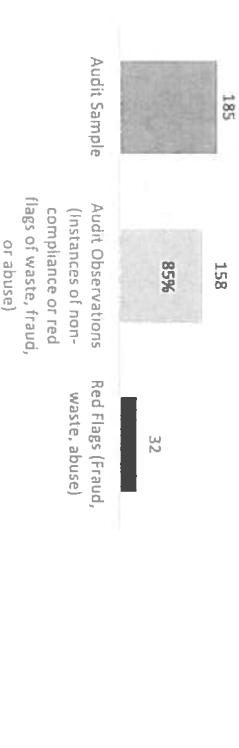
Given the limited budget of \$500,000 appropriated for the CLA audit, it was not feasible to review every single contract and disbursement. Instead, out of 9,309 total contracts and disbursements OHA and its subsidiary LLCs entered into during Fiscal Years 2012 to 2016, CLA selected a sample of 185 contracts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



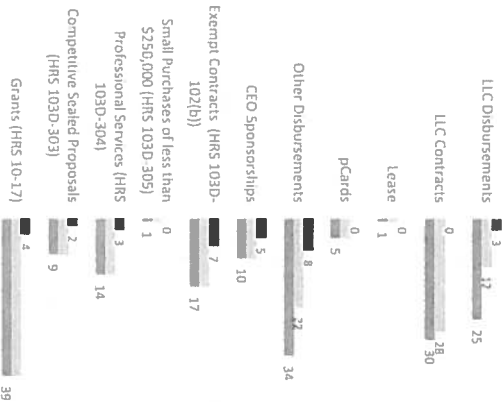
**85% of transactions contained audit observations and 17% were flagged for fraud, waste and abuse**

The audit results indicate that out of 185 contracts and disbursements reviewed, 85% contained audit observations and 17% were flagged for potential fraud, waste and abuse.

The relatively high percentage of transactions with audit observations reveal significant concerns with respect to at OHA’s ability to comply with statutory requirements and internal policies.

If the audit results are broken down by category, it becomes evident that the areas with the highest concentration of risk with respect to noncompliance as well as fraud, waste and abuse are:

- Professional services contracts,
- exempt contracts, CEO sponsorships, grants, and competitive sealed proposals.
- Red Flags (fraud, waste, abuse)
- Audit Observations (instances of non-compliance or red flags of waste, fraud, or abuse)
- Audit Sample



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!" 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.

#### 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.

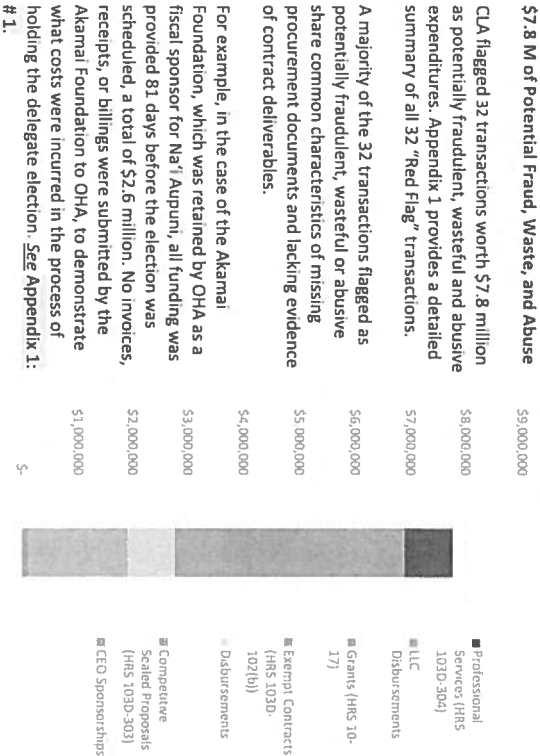
In the first case, a vendor was retained for \$185,000 to provide quarterly assessments of each Trust Fund Advisor and the entire Trust Fund during regularly scheduled meetings of the Asset and Resource Management Committee and/or the Board of Trustees. The contract deliverables in this case are unambiguous, 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.



Other examples indicate that OHA potentially misappropriated trust funds to for-profit businesses. In one case, OHA provided a \$150,000 lease guarantee to Kauhale, LLC when it defaulted on its commercial lease of property located in the Waikiki Beachwalk. Similarly, through a series of four disbursements, OHA diverted \$118,367 to the for-profit entity that is currently operating the Makaweli Poi Mill on Kauai. In both cases, there was a lack of documentation. Additionally, it remains unclear as to what the legal or programmatic basis is for OHA to divert public trust funds to for-profit entities. See Appendix 1: # 13.

## 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)	WCT	\$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)
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	<p>The contractor was retained to provide consulting and advisement services related to the Kūhū Hou assessment framework project.</p> <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	<p>The contractor was hired for a project named "integrated marketing communications plan."</p> <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>	122
6	Exempt Contracts (HRS § 103D-102(b))	Kuauili Alina Based Insights LLC (Kamana Beamer)	\$250,000	<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>	154

#	Type	Name	Amount	Audit Observations	Report Citation (Page)
7	Grants (HRS § 10-17)	Ola Lāhū, 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 Kaunale, 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 Kaunale, 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.	73
				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.	
				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.	153
				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.	
				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 Lethua 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 Hi'iilei 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))	Raedeen M. Keahioalo LLC	\$45,000	<p>Raedeen 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.	173
				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."	
				It appears that the transaction was constructed to circumvent the \$24,999 threshold for CEO Sponsorships.	
21	Disbursements	The Kalaïmoku Group LLC	\$28,115	The purpose of this contract was to produce the Native Hawaiian Roll Commission's Kana'iolo'ahu Concert Series on August 31 at Maili Beach Park.	190
				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.	

#	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
				Evidence indicates that the procurement process was not followed and that the check was issued before the required procurement documents were formally approved.	
23	CEO Sponsorships	Supporting the Language of Kaua'i (SLK)	\$25,000	Hi'i'ipo'i, 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.	174
				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.	

#	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 Keonu 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 H'i'lei 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 Aukahi 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 Kukulu 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'ie'i 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
				could be an indication of possible waste or abuse.	
				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 <sup>1</sup>	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%

<sup>1</sup>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.