

**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, February 6, 2020
10:00 am**

ATTENDANCE:

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

ROBERT KLEIN, BOARD COUNSEL

ADMINISTRATION STAFF:

SYLVIA HUSSEY, CEO
RAINA GUSHIKEN, CC
JIM MCMAHON, ADV
EVERETT OHTA, CC
JOCELYN DOANE, PP
KEOLA LINDSEY, CA
LISA WATKINS-VICTORINO, ICOO
STERLING WONG, PRO

BOT STAFF:

CAROL HO'OMANAWANUI
DAYNA PA
LAURENE KALUAU-KEALOHA
LEHUA ITOKAZU
LEIANN DURANT
ALYSSA-MARIE KAU
BETHANN AHSING
MARIA CALDERON
KAMA HOPKINS
BRANDON MITSUDA
NATHAN TAKEUCHI
PAUL HARLEMAN
ANUHEA PATOC

I. CALL TO ORDER

Trustee Colette Machado Calls the Board of Trustees meeting to order at 10:03 am. Roll call is taken; Trustees Ahu Isa, Ahuna, Akina, Lee, Carmen Hulu Lindsey, Robert Lindsey, and Machado are present, constituting a quorum. Trustees Waihee and Akaka are expected to arrive shortly.

Let us move on to item II. Approval of Minutes.

II. APPROVAL OF MINUTES

A. January 23, 2020

Trustee Brendon Kalei'āina Lee moves to approve the Board of Trustees meeting minutes of January 23, 2020.

Trustee Dan Ahuna seconds the motion.

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

| Trustee Brendon Kalei'āina Lee moves to approve the Board of Trustees meeting minutes January 23, 2020. Trustee Dan Ahuna seconds the motion. | | | | | | |
|--|---|---|--------------|---------------|----------------------|--------------------------------|
| TRUSTEE | 1 | 2 | 'AE (YES) | A'OLE (NO) | KANALUA (ABSTAIN) | EXCUSED |
| TRUSTEE LEINA'ALA AHU ISA | | | X | | | |
| TRUSTEE DAN AHUNA | | x | X | | | |
| TRUSTEE KALEI AKAKA | | | | | | Not present at time of vote |
| TRUSTEE KELI'I AKINA | | | X | | | |
| TRUSTEE BRENDON KALEI'ĀINA LEE | x | | X | | | |
| TRUSTEE CARMEN HULU LINDSEY | | | X | | | |
| TRUSTEE ROBERT LINDSEY | | | X | | | |
| TRUSTEE JOHN WAIHE'E | | | | | | Not present at time of vote |
| TRUSTEE COLETTE MACHADO | | | X | | | |
| TOTAL VOTE COUNT | | | 7 | | | |
| MOTION: [] UNANIMOUS [x] PASSED [] DEFERRED [] FAILED Motion passes with seven (7) yes votes and two (2) excused. | | | | | | |

III. PUBLIC TESTIMONY

Chair Colette Machado – We are on public testimony. Is there anyone that is testifying? The Chairs office did not receive any written testimony also. We will proceed to IV. which is unfinished business.

IV. UNFINISHED BUSINESS

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

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

10:05 am Trustee John Waihe'e IV arrives to the meeting.

Sylvia Hussey – Thank you Chair, I will ask Mehana to come up. What is being distributed is the latest beneficiary resolution costs as of January 21st. In support of our beneficiaries. You can take a look at that.

(Please see attached Board of Trustees Action Item #19-11 – Beneficiary Resolution as of January 21, 2020)

There is not much change from the last report primarily because our accounting systems were closed down for the conversation so the next report should have the costs associated. I thought Mehana could give you an update as to physically what is happening on the mountain, there have been come concerns as to 'ōpala that has been up there or pictures or reports or things like that. But Mehana can give an update on that as well as the opening day legislature activities and the community engagement with our community.

Mehana Hind – Mahalo Ka Pouhana, aloha Chair, aloha Trustees. Yes, like Ka Pouhana has stated the activity on the mountain is continuing in a different form. The kupuna have moved off to the side of the road so the road is cleared and they are still having their 8 am, 12 noon, 5:30 vigils. There are still visitors that go up there and are both sharing ike with the University, Pu'u Huluhulu University and kupuna are still sleeping there overnight. Same or similar activities just moved off to the side of the road. The pu'uhonua site across the street is still active. Although everything has kind of shrunk down in size, one for weather, there were very prepared for the weather that was happening over the holiday period. Second, knowing that things were about to move in a different direction physically by moving off to the side. But they still receive visitors. People are still going up, the mauna

medics are still there. Like the core functioning, the kupuna, the medics support people, other protocol people are still active on the mauna.

10:08 am Trustee Kalei Akaka arrives to the meeting.

(conversation indiscernible)

Mehana Hind – The kind of decentralized from the very beginning. I say the category of leadership is the kupuna are the active leaders. Then of course the young people who we see more around. The kupuna as a group, I don't think they have identified one singular or anyone in particular.

Chair Colette Machado – Is there anything else that you would like to add.

Mehana Hind – Ka Pouhana has asked me to address the pictures of 'ōpala and so forth. We saw those toward the ending of last year. We've seen pictures floating around, when we've gone up, we have not witnessed that. What we have witnessed is actually the opposite. A very active movement to constantly clean. There was a meme that I copy of online and it was the porta pottys on the mauna are cleaner than any public bathroom through out the State. Because there is an active functioning of people up there who are dedicated and that is all their kuleana is, is to clean. They clean the toilets every morning, every evening. We did see pictures and there is a particular time period where they had told everyone in the camps, because of weather and the wind to break down the camps. If you had a test set up, like break it down, weigh it down or remove it because of the weather and then come set it back up. We saw a lot of pictures of what looked like that, so there were tarps over stuff underneath and they weighed down. Maybe it didn't look perfect or pretty it looked messy and that might have been misconstrued as rubbish. Then there are those times when people have left rubbish and then the crews have gone in and cleaned it up. There is still a dumpster up there that we pay for so there and there is active rubbish runs every day. If there is rubbish it doesn't stay up there. Its not something that sits up there over a long period of time. It is something that is taken cared of. If you guys do hear of those inquiries feel free to send them to me and we can have the people on the mauna and the staff to just confirm whether it's becoming a real problem up there.

Trustee Leina'ala Ahu Isa – Kala mai if I missed something. I just wanted to know if there was any update on the Attorney General asking for our expenditures for the mauna and came from T fund or G fund.

Trustee Brendon Kalei'aina Lee – Its not on the agenda.

Robert G. Klein, Board Counsel – I don't think we should be talking about anything involving the Attorney General, any legal actions or any advice we may put on public record, thoughts or facts having to do with whatever the Attorney General is doing.

Trustee Leina'ala Ahu Isa – Can I share something else?

Robert G. Klein, Board Counsel – If its related to the agenda and it's not something that would be privileged or legal advice.

Trustee Leina'ala Ahu Isa – It's just testimony at the legislature that I heard on our \$3 million. You want to go into executive session for that?

Robert G. Klein, Board Counsel – Its not if I want to go into executive session, but its not on the agenda specifically.

Trustee Leina'ala Ahu Isa – I just asking a question. It's an update time for Ka Pouhana, I just thought it's a question.

Robert G. Klein, Board Counsel – I can't possibly advise you because I don't know what your question is.

Trustee Leina‘ala Ahu Isa – Its about the \$3 million we are supposed to get.

Chair Colette Machado – Are you talking about Act 37, year two funding?

Trustee Leina‘ala Ahu Isa – Yeah you know the auditor’s thing.

Trustee Carmen Hulu Lindsey – Its going to be in Executive Session.

Chair Colette Machado – We having some discussion relating to that.

Robert G. Klein, Board Counsel – With respect if you could defer it to executive session it would.

Trustee Leina‘ala Ahu Isa - It’s kind of common knowledge because its testimony that I heard. That’s ok.

Robert G. Klein, Board Counsel – We can do it in executive session that would be my advice to you.

Trustee Leina‘ala Ahu Isa – Ok.

Chair Colette Machado – Are there any questions relating to the Maunakea updates?

Trustee Keli‘i Akina – Sometime ago a beneficiary came and alerted us that there were impolite social media taking place and that was a concern for some beneficiaries. We even proposed a resolution that we stand against it. I have not personally been monitoring social media, what is your assessment on how it is being conducted.

Mehana Hind – Since the legislature has opened, a lot of the energy has shifted towards being proactive, especially with the bills that are being introduced regarding Maunakea and the different actions that have been taken. So, I’ve seen it towards that. A lot of it is pointed towards getting people out, getting people into the hearings to actively testify. I don’t see the bickering anymore to much between the different, polarized discussions that were happening toward the middle of last year. That’s not a common thing anymore that much any more right now. There has been a lot of effort more focused on rallying people to take different proactive measures. There are a lot of voting talk. As candidates start to avail themselves of running you see a lot of that kind of discussion happening in the community on social media.

Trustee Keli‘i Akina – Mehana, I was very pleased when I heard from some beneficiaries who actually support the TMT and actually visited the site and camped up there and were treated very well and made use of our provision on porta potty. I was just wondering if you confirm that’s the case that our resources are being used by beneficiaries regardless of their positioning.

Mehana Hind – Yes, definitely. The lesson on the mauna about that kapu aloha has been tested over the past 6 months or so. When I have been there and there have been people who were present who have shared opposing views or differing views. Because there are a range of views it not just one view up there that is being shared by people. They’ve always been met with, the basics has always been consistent, everyone is asked if they are hungry, thirsty, need anything. The medics they don’t see their political ideology on their head, they help out whomever. That has been the foundational up there.

Trustee Keli‘i Akina – I am pleased to hear that because I voted in favor of the resolution because it didn’t favor any one particular side but it was all beneficiaries. Just one last question. I see that we provided 171.5 hours of staff labor, that’s not included in the dollar total here. So, what do you estimate Sylvia is the value of 171 hours of staff labor.

Mehana Hind – It would be different because different range of staff, say if I went and I was present or one of my staff members or and if it was something more coordinated with the Ka Wai Ola article as opposed to a site visit like those kinds of things. It can fluctuate. I don’t know if there is an exact.

Sylvia Hussey – I would say on average if you take an average staff salary, you put on the labor \$35 an hour, so if you take 35 times the 171 that is about \$6,000 of labor associated with these activities.

Trustee Keli'i Akina – About \$6,000?

Sylvia Hussey – Yes, based on \$35 an hour.

Trustee Carmen Hulu Lindsey – Average.

Sylvia Hussey – Much of this is what they do anyway in terms of social media and video.

Trustee Keli'i Akina - Mahalo.

Chair Colette Machado – The last item that KP wanted to update was legislative opening day.

Mehana Hind – Opening day there were things happening on every level of the capital building. From the rotunda level in the Chambers and up on the different floors. For Community Outreach and Community Engagement and our DPM staff we were engaged in what was going on in the rotunda with an event called Hawaii Rising which was a collaboration which was facilitated amongst numerous groups. Some that have established activities at the Capital. Ku'i at the capital for one, for the last 10 years they have been doing ku'i ai there. Layered on top of that was a ceremony that was aligned with the ceremony that goes on with Maunakea. We had a bunch of kupuna who came down and shared along with some other community leaders there. There was an amazing amount of school haumana there. We estimate within the rotunda that at the height of it around the noon hour, because the schools come in around 9 and they start to leave at 1 o'clock. So right between that time at the noon hour one we estimate there were about 5,000 people because it was so full. People started to premeate the levels and go up on the other floors and do hula and chant and all of that.

But OHA was very integral in helping to organize some of the informational tables. There were a lot of community groups including our own table. Which we launched our Aloha Rising Campaign. Which is our campaign for this upcoming session, this election year. We were very successful, we got 500 people, we know because we gave out 500 lanyards and only if they completed a survey did they get a lanyard. We gave out 500 lanyards, we got 500 surveys asking people basically what were their top issues currently. Then what would basically motivate them to vote. Why, if they do vote and if they don't vote, what would make them to get to the finish line of voting. We are going to compile that data. Next week we are going to close the survey. We ran it for 4 weeks, we opened it on opening day and we will close it next week and analyze that data and start to go forward with our civic engagement for this upcoming year.

Trustee Leina'ala Ahu Isa – What about the census?

Mehana Hind – Census is happening all around. It's going to be the lead discussion all around Hawai'i because the goal date for that is April 1st. Let me just wrap up Hawai'i Rising. So, for our rotunda view of everything it was very successful, peaceful, well organized, well maintained. We had our own security made up of alaka'i of Charter and Immersion School graduates along with some kupuna who were there and just maintained the peace. People were fed. People who never got involved in cultural things were up in the middle encouraged to take part in either ku'i ai, hula, chanting and so forth. From our views it was a well oiled machine. Even from the back end usually that is what it looks like in the front end but the back end there is a lot, we did have to negotiate something early in the morning with the personnel at the Capital. But overall comparatively successful on the ground floor.

Trustee Dan Ahuna – It was great to see the private schools there.

Trustee Keli'i Akina – I think a wonderful part of it was the day before opening ceremony and the opening day. Daniel Anthony brought together a group of young people and I was able to be part of their preparing mea ai and

giving that away free. Were we coordinating with that or did that just happen?

Mehana Hind – Yes. So Ku‘i at the Capital, we’ve been very helpful and worked with Daniel on that because there is a real close nexus with that event and the schools. All the ku‘i clubs, from Punahou, Kamehameha, at the various schools they will come down and usually help prepare so that is where we saw our involvement gets multiplied when we start adding the kids in.

Trustee Keli‘i Akina – I like the imu and the construction bit.

Chair Colette Machado – Thank you Mehana, anything else Sylvia. Ok members we will now move to item V. But before we proceed, I would like to go on to record, the 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for the following items:

V. New Business

- A. Committee on Beneficiary Advocacy and Empowerment
 2. 2020 OHA Legislative Positioning – Matrix 2, February 5, 2020

Which is a referral from BAE from yesterday.

V. NEW BUSINESS

Chair Colette Machado – We are on item V.A.1. and I’d like to call on Trustee Waihee.

A. Beneficiary Advocacy and Empowerment Committee

1. 2020 OHA Legislative Positioning – Matrix 2, January 29, 2020

Trustee John Waihe‘e IV moves to approve Administration’s recommendations on:
NEW BILLS (Items 1 - 195);

ADD bills:

- HB2011 as COMMENT;
- SB2076 as COMMENT;
- SB2387 as SUPPORT; and

CHANGE items:

- 113, SB2249 from ~~Support with Amendments~~ to SUPPORT; and
- 124, SB2417 from ~~Monitor~~ to OPPOSE;

on the OHA Legislative Positioning Matrix dated January 29, 2020, as amended.

Trustee Kalei Akaka seconds the motion.

Chair Colette Machado – With that said any discussion members? Hearing none roll call vote.

| Trustee John Waihe'e IV moves to approve Administration's recommendations on: NEW BILLS (Items 1 - 195); ADD bills: <ul style="list-style-type: none"> • HB2011 as COMMENT; • SB2076 as COMMENT; • SB2387 as SUPPORT; and CHANGE items: <ul style="list-style-type: none"> • 113, SB2249 from Support with Amendments to SUPPORT; and • 124, SB2417 from Monitor to OPPOSE; on the OHA Legislative Positioning Matrix dated January 29, 2020, as amended. 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'AINA LEE | | | X | | | |
| TRUSTEE CARMEN HULU LINDSEY | | | X | | | |
| TRUSTEE ROBERT LINDSEY | | | X | | | |
| TRUSTEE JOHN WAIHE'E | x | | X | | | |
| TRUSTEE COLETTE MACHADO | | | X | | | |
| TOTAL VOTE COUNT | | | 9 | | | |
| MOTION: [x] UNANIMOUS [] PASSED [] DEFERRED [] FAILED Motion unanimously passes with nine (9) yes votes. | | | | | | |

2. 2020 OHA Legislative Positioning – Matrix 2, February 5, 2020

Chair Colette Machado – Trustee Waihee V.A.2.

Trustee John Waihe'e IV – I am going to make the motion that passed out of the committee yesterday. Afterwards I am going to make an amendment because we need to make another one. But I will make the motion first and offer the amendment.

Trustee John Waihe'e IV moves to approve Administration's recommendations on:
NEW BILLS (Items 1 – 126),
BILL POSITIONS FOR RECONSIDERATION (Item 127), and now list Item 205, HB2520, as OPPOSE,
along with the following revisions:

ADD bills:

- HB2203 as SUPPORT
- HB2511 as SUPPORT
- HB2587 as COMMENT;

CHANGE items:

- 6 and 61, HB1751 and SB2137 respectively, from ~~Monitor~~ to SUPPORT
- 45, HB2673, from ~~Support~~ to COMMENT
- 65, SB2218, from ~~Oppose~~ to COMMENT; and

CORRECT items:

- 93, SB2717, to read as SUPPORT; and
- 215, HB2468 to read as COMMENT

on the OHA Legislative Positioning Matrix dated February 5, 2020, as amended.

Trustee Kalei Akaka seconds the motion.

Chair Colette Machado - Trustee Waihee.

Trustee John Waihe'e IV moves to amend the motion to also add HB2577 and SB2812 as oppose.

Trustee Kalei Akaka seconds the motion.

Chair Colette Machado – Would you like to call on staff.

Trustee John Waihe'e IV – Jocelyn will explain why we are doing this.

Jocelyn Doane – Aloha Trustees. You approved three bills relating to the transfer of massive acreage from DLNR to the Department of Agriculture. But apparently there were two other bills that, there were two other bills that were very similar that actually named the TMKs so we hadn't had a change to research the TMKs. The Chair of DLNR reached out to us last night because she wanted to see if our Board had taken a position on them. So, after reviewing the TMKs, they are basically the same as the other ideas so we are actually recommending that we oppose these as well. So apparently the TMKs are estimated to encompass 93,000 acres of land. She is concerned about transferring to the Department of Agriculture so it compromises the States ability to protect and promote native forests, watersheds, conservation lands, public access and natural cultural resources on lands that these are adjacent to. So, she actually does have a measure that would provide DLNR with a little bit more flexibility for how they come up with the rents and negotiate with these kinds of leases to better achieve public trust purposes. Our position on that is currently oppose. Because it's a 99-year lease, it would allow them to lease out the land for 99 years. We've been chatting with her about it. We are going to ask them to remove the lease length but we actually kind of like the idea of them holding these lands and being able to potentially provide a discount in the rent if they are actually going to provide other public trust benefits. Like watershed maintenance or stuff like that. One of these bills has a hearing tomorrow so we wanted to be able to provide testimony from the Board and that is why we are here now. Mahalo.

Chair Colette Machado – Any discussion members? Sounds reasonable for the change.

Trustee Carmen Hulu Lindsey – Call for the vote on the amendment.

Chair Colette Machado – Roll call vote.

Trustee John Waihe'e IV moves to amend the motion to also add HB2577 and SB2812 as oppose.
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 | X | | | |
| TRUSTEE KALEI AKAKA | | | X | | | |
| TRUSTEE KELI'I AKINA | | | X | | | |
| TRUSTEE BRENDON KALEI'AINA LEE | x | | X | | | |
| TRUSTEE CARMEN HULU LINDSEY | | | X | | | |
| TRUSTEE ROBERT LINDSEY | | | X | | | |
| TRUSTEE JOHN WAIHE'E | | | X | | | |
| TRUSTEE COLETTE MACHADO | | | X | | | |
| TOTAL VOTE COUNT | | | 9 | | | |

MOTION: [x] UNANIMOUS [] PASSED [] DEFERRED [] FAILED
Motion unanimously passes with nine (9) yes votes.

Chair Colette Machado – We will go back to the original motion as amended.

Trustee John Waihe'e IV moves to approve Administration's recommendations on:
 NEW BILLS (Items 1 – 126),
 BILL POSITIONS FOR RECONSIDERATION (Item 127), and
 now list Item 205, HB2520, as OPPOSE,
 along with the following revisions:

ADD bills:

- HB2203 as SUPPORT
- HB2511 as SUPPORT
- HB2587 as COMMENT;
- HB2577 as OPPOSE

CHANGE items:

- 6 and 61, HB1751 and SB2137 respectively, from ~~Monitor~~ to SUPPORT
- 45, HB2673, from ~~Support~~ to COMMENT
- 65, SB2218, from ~~Oppose~~ to COMMENT
- 100, SB2812, from ~~Monitor~~ to OPPOSE; and

CORRECT items:

- 93, SB2717, to read as SUPPORT; and
- 215, HB2468 to read as COMMENT

on the OHA Legislative Positioning Matrix dated February 5, 2020, as amended.

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 | | | X | | | |
| TRUSTEE JOHN WAIHE'E | x | | X | | | |
| TRUSTEE COLETTE MACHADO | | | X | | | |
| TOTAL VOTE COUNT | | | 9 | | | |

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

Motion unanimously passes with nine (9) yes votes.

Chair Colette Machado – Congratulations BAE Chair and Staff. Let us now move on to V.B. which is the permitted interaction group. The report was distributed at this table right now we will have discussion if there are any kinds of considerations or input people would like to make. I will turn it over to Trustee Brendon Kalei'āina Lee as the Chair.

B. Deliberation and decision making on the Report by the Permitted Interaction Group re: the investigation of the alignment and update of the existing Board of Trustees By-Laws for OHA's Board Governance Framework. Pursuant to HRS § 92-2.5(b)(1)(C)

Trustee Brendon Kalei'āina Lee – Mahalo Chair. Trustee you've had the report of the permitted interaction group for two weeks now. So is there any discussion before a motion of brought before the body.

Trustee Keli'i Akina – Yes, I do have a couple of points I'd like to make and tweaks I'd like to suggest. But first allow me to congratulate you and the committee on good work. It represents many of the things that many of us have urged for us to follow. Thank you, I genuinely (conversation indiscernible). The first area I'd like to suggest

a tweak is article VIII referring to the committee on the Board. These are committees that are primarily PIGS, Ad Hoc and Advisory Committees.

Trustee Carmen Hulu Lindsey – What page?

Trustee Keli'i Akina – I only have the label article VIII. Committees of the Board, section A and it's kind of lengthy so I'll be concise in terms of what I am referring to.

Trustee Brendon Kalei'āina Lee – Hang on Trustee let us all get to that page.

Sylvia Hussey – If you take the redline By Laws it's about halfway through.

Trustee Brendon Kalei'āina Lee – Just so the Trustees know, so the redline version, the reason there are no numbers on them, page numbers, is because it is redlined so it doesn't actually match up.

Trustee Carmen Hulu Lindsey – Actually it was very helpful to see the new and the old together.

Trustee Brendon Kalei'āina Lee – Ok Trustee Akina proceed.

Trustee Keli'i Akina – Thank you and there is nothing to actually point to. I don't have any problem with what has been written which is very good. I just want to urge us to add one feature and that is for us to require meeting minutes of these committees. Now these meeting minutes should be maintained and should be filed but they don't, but we can decide whether they are confidential depending upon the subject matter. I think each of us as Trustees would benefit, it would be to our benefit to be able to look at meeting minutes as necessary for these committees.

Trustee Brendon Kalei'āina Lee – So Trustee, pursuant to sunshine law we are required by law to maintain minutes of the committees. So, I'm guessing that is why it's not in the By Laws and none of us thought about that because pursuant to sunshine law we are required to take minutes, which is what we vote on at every meeting.

Trustee Keli'i Akina – Trustee Lee, that is my understanding as well. So actually, what I am referring to is not so much the legal understanding but the practice we've had as an organization. As a practice we haven't necessarily had committees doing minutes.

Trustee Brendon Kalei'āina Lee – I am going to disagree; I've been here for a year.

Robert G. Klein, Board Counsel – Trustee Akina, clarification, are you talking about minutes of the PIG meetings?

Trustee Keli'i Akina – It would include all of these PIG meetings, as well as Ad Hoc and Advisory Committees.

Robert G. Klein, Board Counsel – PIG meetings are not required to keep minutes. The law does not require them to keep minutes.

Trustee Keli'i Akina – Then it is my suggestion that we adopt that.

Robert G. Klein, Board Counsel – That is different, I just want you all to know that minutes are not required for PIG meetings.

Trustee Keli'i Akina – Thank you I recognize that. But I think.

Chair Colette Machado – Let me call on Sylvia to add on to the discussion.

Trustee Keli'i Akina – Thank you.

Sylvia Hussey – So having been PIG project manager. While it's not required by practice the PIG work is documented by meeting minutes meeting to meeting. So, the PIG in practice does that. So, it's more than what is required.

Trustee Keli'i Akina- My recommendation is to make that a policy for all of these committees so that it's not dependent up on whether the Chair of the Ad Hoc Committee or PIG maintains the practice.

Trustee Brendon Kalei'aina Lee – Just to respond to that Trustee. As the Chair of these PIGs I did not request that we have minutes. The minutes were kept because the PIG met over an extended amount of time and not only meeting over an extended amount of time, there was extended time in between each meeting so without minutes being taken there is no way to establish continuity from meeting to meeting. That's the reason why the project manager started from the very beginning kept minutes so that when the PIG reconvened it wasn't, ok what did we do the last time, we had minute to refer to so we knew. Your suggestion is noted. Do you want to make such a motion because this document is before the body?

Trustee Keli'i Akina – Yes, I would like to. I would appreciate some help in terms of language of such a motion but I think we agree it's a good practice the maintenance of minutes. I propose that, that be part of the By Laws.

Trustee Brendon Kalei'aina Lee – So your motion would be?

Trustee Keli'i Akina – Again I would request some help with the language, but the essence of my motion is that these committees be required to maintain and file minutes.

Trustee Brendon Kalei'aina Lee -So your motion is that all committees are required to keep minutes. Is that your motion?

Trustee Keli'i Akina – Yes, it is and again I'd appreciate any help with the language.

Trustee Brendon Kalei'aina Lee – Who are you requesting help from Trustee.

Chair Colette Machado – People around the table here.

Trustee Keli'i Akina – I just want to make sure it is worded correctly, thank you.

Chair Colette Machado – Just for a point of personal comments and privilege, I cannot agree to this motion. It's such a cumbersome approach.

Trustee Brendon Kalei'aina Lee – Hold on Madame Chair, the motion is not before the body yet. So, there is a motion to require minutes of all the committees, is there a second? I'll call for a second one more time. Ok, moving on. Your next point Trustee.

Robert G. Klein, Board Counsel – I just want to advise you that our process is that, this will come back before the board for final approval at another meeting. The next meeting, this is discussion and deliberation. So, this is not final approval just so you folks know that.

Trustee Brendon Kalei'aina Lee – And it will also take two approvals.

Robert G. Klein, Board Counsel – That is correct.

Trustee Brendon Kalei'aina Lee – So when it comes back for a vote the next time it will have to come back twice.

Trustee Carmen Hulu Lindsey – And it will also take 6 votes, not 5.

Robert G. Klein, Board Counsel – By Laws, two-thirds vote. And the final thing, PIGs are not required to provide notice of meetings to the public. So, no public agenda and I think you also ought to think in terms of what you would do with minutes taken in an investigative PIG and whether your idea is to make such minutes public.

Trustee Brendon Kalei‘āina Lee – Actually Judge today would be the first decision making because it specifically says deliberation and decision making.

Robert G. Klein, Board Counsel - But it's not the first meeting where the board would adopt the By Laws. That would be the next meeting and then you will have one after that. So today will not be a two-thirds vote.

Trustee Carmen Hulu Lindsey – Discussion.

Trustee Brendon Kalei‘āina Lee – That is not my understanding. Can you explain to the Chair why that would be?

Robert G. Klein, Board Counsel – Because today is discussion and deliberation. It's the third meetings, it's an opportunity for your folks to finalize.

Trustee Brendon Kalei‘āina Lee – Then our agenda is incorrect, because it actually does not say discussion, it specifically says deliberation and decision making.

Robert G. Klein, Board Counsel – Well you can make decisions, but the Board will make the final decision over the course of two meetings. This is only the first one.

Trustee Brendon Kalei‘āina Lee – Go ahead Carol I will recognize you.

Carol Hoomanawanui – Madame Chair, so you folks can discuss if you wanted to take an action, you could do it. But the idea and my understanding is when the PIG met in terms of process this was going to be a discussion then the action item would bring forth the amendments to the By Laws which Trustees will have, then you would actually have a motion to formally adopt the By Laws and the amendments. Then you would have two readings and 6 votes. That is the process that is contemplated in other words you don't have to take a motion now. Part of it was, in the past some of the Trustees have expressed that they wanted to discuss, kind of mull over the amendments that are being contemplated and have some time to take that in.

Robert G. Klein, Board Counsel – Said it way better than me.

Sylvia Hussey – Can I follow up also that the agenda also talks about deliberation and decision making on the report of the PIG, so it's the PIG that is bringing back all of the changes contemplated by the PIG report. So, it's not the action item on the By Laws itself, but the actually proposed changes that the report is doing.

Trustee Brendon Kalei‘āina Lee – Mahalo for the clarification. Continue Trustee Akina.

Trustee Keli‘i Akina - Thank you very much. I respect the fact that today no other Trustees should interest in seconding my motion to require that minutes be kept. I hope we will continue to think that through. I am very pleased however to hear that we have a practice even though it may not be required by our By Laws that we do have the practice of maintaining minutes. I do know that there have been Ad Hoc Committees in the past that did not. I am hoping that we all work together to maintain that practice. Thank you for the opportunity to let me express this. Thank you. The secondary item I would suggest a tweak is in Article XVI. Confidentiality. We don't have page numbers here so I'll give you a moment to find Article XVI. It is near the back.

Trustee Brendon Kalei‘āina Lee – Trustees it looks like this about half a page.

Trustee Keli'i Akina – If I may proceed. Take a look at the first phrase. “All information, data and documents that are not public records, and I emphasize not public records, received or reviewed by the member...shall be deemed confidential and shall not be released or utilized by any member for any purpose other than OHA or committee business.” I don't dispute that but I want us to take some time to clarify what public records are because there is no clear definition and we should come up with one. For example, does public records include information reports that OHA submits to other State Agencies and Departments like Department of Budget and Finance or the State Office of the Auditor. Now, UIPA has a minimal definition for us in Chapter 92F of the HRS. The Uniform Information Practices Act states this, defines Government records as information maintained by a Government Agency in written, auditory, visual, electronic or other physical form. So really all I am saying is this, if we as Trustees are to protect things that are not public records that are confidential, we need a very good clear definition as to what constitutes a public record. I am going to recommend a little more work be done on that so that we won't be in question about that.

I also have a second point if you the item in red section “B”, the unanimous vote of all members of the Board after full consultation with Board, and I emphasize unanimous, shall be required before any confidential communication, proprietary or otherwise privileged material received in executive meeting convened may be publicly released, etc. I want to draw your attention to the requirement for a unanimous vote of all members. I am thinking it doesn't help us to be an open organization, confidentiality is not a privilege like Attorney Client Privilege where it makes sense to require a unanimous vote. Confidentiality has to do with judgement calls. I feel that we should not hold such judgement calls hostage to one member or two or three choosing not to comply with a majority. I feel the wisdom of the majority would be enough to determine whether something is confidential and that would benefit our beneficiaries and the public most.

Those are the two points I'd like to recommend. Not a motion now, but this section be bifurcated, if that is the correct term. And that further work be done on number 1, defining what constitutes public records and number two some reconsideration that we not require unanimous vote to release information.

Trustee Brendon Kalei'aina Lee – I will refer to Robert G. Klein, Board Counsel as to your point on the original section which will not become the new section A.

Robert G. Klein, Board Counsel – Thank you Trustee. I think because this section has not been amended in forever, the term public record is a specific term that is noted in the public records law, UIPA. So, the beauty of that it covers all Government Agencies. You have one definition, it fits all Government Agencies, it defines what public records are and that term was adopted from UIPA and put into the By Laws so we have uniformity among agencies as to what a Government record is. Believe me it's a broad term because it means pretty much everything that this organization receives would be a public record, because we obtain by the agency for agency purposed. It's not meant to be limiting because UIPA is not a limiting statute, it is a broad statute. So when the legislature passed UIPA and made the definition of public record they meant broadly so public record is a very broad term, I don't know how you would redefine it or why because then you would be out of step with other Government Agencies who receive public records. And the law starts with public records, how the public obtains them and they are very, very few exceptions. Very hard to stop the public from receiving these kinds of records. My recommendation would be to keep it because it is in conformity with the existing law.

Trustee Brendon Kalei'aina Lee – Sylvia did you want to say something.

Sylvia Hussey – I was just suggesting on that point if its related to 92F that we have a definition section right, so we can say public records as defined by section 92F that way it stays consistent if 92F changes then our automatically changes. So, there is a definition section we can add it to.

Trustee Keli'i Akina – Trustee Lee I am very pleased to hear what both Counselor and Ka Pouhana has said. I am in complete agreement with that and leave that. My first concern would be resolved if we do precisely what Sylvia

has recommended and that is make reference to HRS § 92F as the definition of public records. I would be very pleased with that with regard to my first point.

Trustee Brendon Kalei‘āina Lee – So for your second point on the new added section point B, your concerns are noted and you can bring it up when we take action on the By Laws, unless any Trustees have comments or questions about it at this time.

Trustee Keli‘i Akina – Thank you I will leave it to the Trustees to think it through. Thank you very much that is all I have.

Trustee Brendon Kalei‘āina Lee – Does any other Trustee have any discussion on the report of the permitted interaction group on the By Laws. Ok that being said, before I turn the Chair back over to Trustee Machado, I will just remind the Trustees of what we were just informed by Counsel and Ka Pouhana and Carol clarified for us. So, the next agendized meeting of the Board we will be taking action on the amendments to our By Laws. Mahalo.

Chair Colette Machado – No decision on receiving the report.

Trustee Brendon Kalei‘āina Lee – We received it last week.

VI. EXECUTIVE SESSION

Chair Colette Machado – Thank you Trustee Brendon Kalei‘āina Lee. Trustee Carmen Hulu Lindsey.

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

Trustee Brendon Kalei‘āina Lee 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 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 | | | |
| TRUSTEE KALEI AKAKA | | | X | | | |
| TRUSTEE KELI‘I AKINA | | | X | | | |
| TRUSTEE BRENDON KALEI‘ĀINA LEE | | x | X | | | |
| TRUSTEE CARMEN HULU LINDSEY | x | | X | | | |
| TRUSTEE ROBERT LINDSEY | | | X | | | |
| TRUSTEE JOHN WAIHE‘E | | | X | | | |
| TRUSTEE COLETTE MACHADO | | | X | | | |
| TOTAL VOTE COUNT | | | 9 | | | |
| MOTION: [x] UNANIMOUS [] PASSED [] DEFERRED [] FAILED Motion unanimously passes with nine (9) yes votes. | | | | | | |

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

The Board resolved into Executive Session at 10:51 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 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 relating to the State Auditor's request for confidential and Attorney-Client privileged materials and information in connection with the legislatively mandated audit per Act 37. Pursuant to HRS § 92-5(a)(4).
- C. Approval of Minutes
 - 1. January 23, 2020

The Board reconvenes in open session at 11:41am.

VII. COMMUNITY CONCERNS

Chair Colette Machado – We have no community concerns at this time. Anyone out there would like to address the board. Hearing none, Trustee Lee has an announcement.

VII. ANNOUNCEMENTS

Chair Colette Machado - Trustee Lee.

Trustee Brendon Kalei'āina Lee – I have an announcement. Pursuant to HRS § 92-2.5e, I have to announce that on January 31st in the joint committee meeting of Housing and Water and Hawaiian Affairs and Water. Myself, Trustee Akaka and Trustee Waihe'e were in attendance.

(conversation indiscernible)

Trustee Brendon Kalei'āina Lee – We can we just have to announce it. So announced. Thank you madame Chair.

IX. ADJOURNMENT

Trustee Carmen Hulu Lindsey moves to adjourn the meeting.

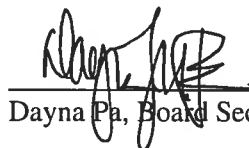
Trustee Robert K. Lindsey seconds the motion.

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

| Trustee Carmen Hulu Lindsey moves to adjourn the meeting Trustee Robert K. Lindsey seconds the motion. | | | | | | |
|--|---|---|--------------|---------------|----------------------|---------|
| TRUSTEE | 1 | 2 | 'AE (YES) | A'OLE (NO) | KANALUA (ABSTAIN) | EXCUSED |
| TRUSTEE LEINA'ALA AHU ISA | | | X | | | |
| TRUSTEE DAN AHUNA | | | X | | | |
| TRUSTEE KALEI AKAKA | | | X | | | |
| TRUSTEE KELI'I AKINA | | | X | | | |
| TRUSTEE BRENDON KALEI'ĀINA LEE | | | X | | | |
| TRUSTEE CARMEN HULU LINDSEY | x | | X | | | |
| TRUSTEE ROBERT LINDSEY | | x | X | | | |
| TRUSTEE JOHN WAIHE'E | | | X | | | |
| TRUSTEE COLETTE MACHADO | | | X | | | |
| TOTAL VOTE COUNT | | | 9 | | | |
| MOTION: [x] UNANIMOUS [] PASSED [] DEFERRED [] FAILED Motion unanimously passes with nine (9) yes votes. | | | | | | |

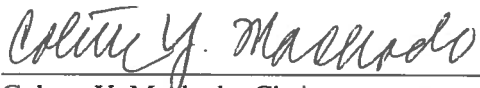
The meeting was adjourned at 11:43 am.

Respectfully submitted,



Dayna Pa, Board Secretary

As approved by the Board of Trustees on February 20, 2020.



Colette Y. Machado, Chairperson
Board of Trustees

Attachments:

1. Board of Trustees Action Item #19-11 – Beneficiary Resolution as of January 21, 2020
2. Report of the Permitted Interaction Group re: the investigation of the alignment and update of the existing Board of Trustees By-Laws for OHA's Board Governance Framework.

Board of Trustees
Action Item #19-11 - Beneficiary Resolution
As of January 21, 2020

| <u>Description</u> | | <u>\$ Amount</u> | <u>Resolution Alignment</u> |
|--|---------------------|----------------------------|--|
| A Puuhonua o Puuhuluhulu - Beneficiary Support | | \$ 76,148.57 | [b], [c], [d], [f], [g], [h], [i] |
| Restroom Facilities, Servicing | \$ 53,912.76 | | |
| Dumpster Removal & Landfill Disposal Fees | \$ 5,905.21 | | |
| Tent Rental & Lighting | \$ 16,330.60 | | |
| Sub-total | <u>\$ 76,148.57</u> | | |
| B Legal Observers | | \$ 2,246.36 | Resolution Alignment |
| Training Travel (Air, Ground) | \$ 2,054.72 | | [c], [d] |
| Workshop supplies | \$ 191.64 | | |
| Sub-total | <u>\$ 2,246.36</u> | | |
| C Travel re: Site Visit/Beneficiary Needs Assessment/Ad-Hoc Committee Meeting | | \$ 9,241.84 | Resolution Alignment |
| Staff - Air | \$ 2,275.60 | | [c], [d], [f], [g], [h], [i] |
| Staff - Ground | \$ 1,374.86 | | |
| Staff - Subsistence | \$ 990.00 | | |
| Staff - Parking | \$ 45.00 | | |
| Staff - Hotel | \$ 326.60 | | |
| Sub-total | <u>\$ 5,012.06</u> | | |
| Trustees - Air | \$ 1,516.33 | | |
| Trustees - Ground | \$ 591.19 | | |
| Trustees - Subsistence | \$ 1,130.42 | | |
| Sub-total | <u>\$ 3,237.94</u> | | |
| Volunteers - Air | <u>\$ 991.84</u> | | |
| Total | <u>\$ 9,241.84</u> | | |
| D Digital Print Media | | | Staff Hours |
| Output: Digital/Social Media (e.g., posts, livestreams, videos, photos) | | | 72 |
| Monitoring: Social Media | | | 40 |
| Media Support: Jam4Maunakea, Mana Maunakea | | | 19.5 |
| Workshop | | | |
| Video Editing: Jam4Maunakea | | | 40 |
| | | | <u>171.5</u> |
| Out-of-pocket as of 01/21/2020 - Grand Total | | <u>\$ 87,636.77</u> | <u>171.5 HRS</u> |

Source: Community Engagement, Advocacy and Financial Services

Beneficiary Resolution Mapping Key

authorizes the OHA Administration to:

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

including but not limited to:

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



OFFICE OF HAWAIIAN AFFAIRS
Interoffice Memorandum

Date: January 23, 2020

To: Ke Kauhuhu Colette Y. Machado
Ke Kua Leina‘ala Ahu Isa
Ke Kua Dan Ahuna
Ke Kua Kaleihikina Akaka
Ke Kua W. Keli‘i Akina
Ke Kua Carmen Hulu Lindsey
Ke Kua Robert K. Lindsey, Jr.
Ke Kua John Waihe‘e IV

From: Ke Kua Brendon Kalei‘āina Lee

Cc: Sylvia M. Hussey, Ed.D., Ka Pouhana, Chief Executive Officer

Subject: Transmittal of BOT By-Laws Permitted Interaction Group Report and Proposed Edits

Attachments: (1)-Report on Proposed By-Laws Changes; (2)-8.30.18 FINAL By-Laws [AS IS]; (3) BOT By-Laws Proposed Edits-Redlined; (4)-BOT By-Laws Proposed Edits-Clean; (5) BOT By-Laws Appendices Proposed Edits-Redlined; and (6) BOT By-Laws Appendices Proposed Edits-Clean

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

The membership of the PIG was as follows, supplemented by Trustee Aides and Administration staff: Trustees Colette Machado, Brendon Kalei‘āina Lee, Robert K. Lindsey, Jr., and Carmen Hulu Lindsey; and Sylvia M. Hussey, Ka Pouhana and Project Manager. I served as the Chair of PIG and Trustee Machado served as its Vice Chair.


An Action Item regarding the PIG’s work, report, and proposed edits is anticipated to be on the February 20, 2020 Board agenda and entitled “Approve the Office of Hawaiian Affairs, Board of Trustees’ Updated By-Laws”; and all attachments will be a part of the Action Item attachments.



OFFICE OF HAWAIIAN AFFAIRS
Interoffice Memorandum

DATE: January 16, 2020

TO: Board of Trustees

FROM: Trustee Brendon Kalei'aina Lee, Vice-Chairperson 

CC: Sylvia Hussey, Ka Pouhana Kuikawa

SUBJECT: By-Laws Permitted Interaction Group (PIG)

With the adoption of the new Governance Framework and the new Lahui Level Policies the next phase of the BOT Governance project was approved by the BOT to reexamine the By-Laws. Using the University of Hawaii Board of Regents By-Laws, for formatting only, the four (4) Trustee member PIG began their work.

The team consisted of four (4) Trustees, their respective staff, BOT staff, administration and staff. This was long process and all team components brought their own respective edits to the table. The team went through the document page by page and addressed every issue brought forward by both BOT and administration.

I would like to especially mahalo Jim McMahon for his contribution in providing the analysis of the UH By-Laws and all the high-level discussions on the intent of the language in the By-Laws. His insight helped the committee to focus on the importance of language and its impact on intent versus practice. Mahalo nui also to our project manager Ka Pouhana Kuikawa, Sylvia Hussey, for the tracking of ideas and amendments as this was a very fluid process. Also, mahalo Keala Nichols for stepping in when Sylvia was not able to be at meetings.



Office of Hawaiian Affairs
Board of Trustees Bylaws
Executive Summary and Changes

January 2020

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I. EXECUTIVE SUMMARY

The Office of Hawaiian Affairs (OHA) was born of a collective and compassionate effort on the part of the delegates to the state Constitutional Convention of 1978. In accordance with Hawai'i Revised Statutes (HRS) § 10-3 Purpose of the office, the purposes of the OHA include: (1) The betterment of conditions of native Hawaiians. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians; (2) The betterment of conditions of Hawaiians; (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission; (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians; (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and (6) Serving as a receptacle for reparations. In the establishment of OHA, HRS § 10-4(1) states that the Board of Trustees (Board or BOT) shall have the power "to adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law."

In January 2019, the Board of Trustees (BOT) adopted the formation of a Permitted Interaction Group (PIG)¹ to: Investigate various elements of governance frameworks and models, including but not limited to cultural, indigenous, native, national, and international contexts (aka the Board Governance Framework PIG). Subsequent to the completion of the Board Governance Framework PIG, on May 30, 2019, the Board formed a new PIG to continue the implementation of the Board Governance Framework elements. The purview of this PIG was for the Board, Board staff, and OHA Administration staff to work together in: (1) investigating the alignment and updating existing BOT Bylaws and related documents; (2) establishing consistent format and review and updating parameters, mechanisms, and processes; and (3) integrating the developed BOT Bylaws and related documents into the Board Governance Framework.

The BOT's Bylaws act as the Board's internal rules. The PIG's goals in reviewing the bylaws included: (1) ensuring legal compliance with applicable state and federal laws; (2) ensuring legal compliance of internal governance practices; (3) ensuring the presence of sound governance procedures; (4) removing the presence of the potential grounds for unsound governance practices; (5) moving certain provisions to the Executive Policy Manual or the Operations Manual; (6) educating the board about its responsibilities in detailing the Board's description of legal duties; and (7) guiding the Board in meeting its responsibilities.

The BOT Bylaws were last reviewed altogether in 2007. A draft in 2018 sought to collate edits that were made from 2008-2018 into one collective document. The collective changes provided in this updated version of the Bylaws seeks to update the existing Bylaws to come into conformance by incorporating appropriate statutes, case law, and references to higher authorities relevant to OHA; adding specificity and clarity and expressions of the Board within the purpose, powers, and duties of the Board and provisions of OHA; aligning the Bylaws to updated versions of the Board's approved Lāhui policies and Strategic Plan 2020-2035; and providing consistency in citations and technical changes throughout the document.

¹ Organized in accordance with HRS. CHAPTER 92, PUBLIC AGENCY MEETINGS AND RECORDS §92-2.5

II. SUMMARY OF CHANGES

A. Substantive Changes

Some substantive changes are being recommended after extensive deliberations, including:

- Adding in definition of a PIG to reflect OHA's use of PIGs in areas of the document noting types of meetings;
- Providing an additional provision in Article VII ("Administration") to offer clarification on the roles of the Administrator and the Chief Executive Officer;
- Amending Article VII(C) to reflect the Administrator's legal right to a due process hearing if the Board votes to remove the Administrator;
- Updating Article IX ("Meetings") to reflect information related to Act 244 (2019), which made minor changes to the state Sunshine Law relevant to OHA meeting notices;
- Reorganizing and clarifying sections of Article XV ("Conflict of Interest") to further define what relationship would constitute a conflict of interest;
- Adding in Article XVI ("Confidentiality");
- Revising Article XVII ("Trustee Code of Conduct and Sanctions for Violation of the Code of Conduct") considering Board Counsel's concerns that the current wording of the Article is inconsistent with Sunshine Law requirements; and
- Eliminating Article XIX ("Unbudgeted Funding Request").

Further explanations of these recommendations for changes are provided in Part III of this document titled "Substantive Changes."

B. Technical Changes

Most of the changes made to the Bylaws were largely stylistic and technical in nature. These technical changes included:

- Updating and consistency of legal citations;
- Moving all definitions to the definition section;
- Updating page numbering to follow the Arabic numeral numbering system;
- Consistent use of 'Ōlelo Hawai'i as required by HAW. CONST. art. XII, Section 4 and Article XIX of OHA BOT Bylaws; and
- Consistency in punctuation and formatting (e.g., eliminating extra spaces and line breaks and accidental punctuation).

C. Ramseyer Format

Changes made to the OHA BOT Bylaws as reflected in this report seeks to comply with the Ramseyer format². All matter to be deleted is enclosed in brackets and stricken and any new matter added to the section or subsection is underscored. The full text of an amended section or subsection is set out at length. No matter how small the proposed amendment and no matter how lengthy the amended part of the section or subsection in which the amendment is to appear, the whole section or subsection is set forth in its entirety.

² The Ramseyer format is the means by which the bill drafter shows the reader the changes being made to the existing law. www.lrbhawaii.org/reports/draftwrk/begingdedraft.pdf, retrieved, December 29, 2019.

III. SUBSTANTIVE CHANGES

The PIG's goals in reviewing the bylaws included: (1) Ensuring legal compliance with applicable state and federal laws; (2) Ensuring legal compliance of internal governance practices; (3) Ensuring the presence of sound governance procedures; (4) Removing the presence of the potential grounds for unsound governance practices; (5) Moving certain provisions to the Executive Policy Manual or the Operations Manual; (6) Educating the board about its responsibilities in detailing the Board's description of legal duties; and (7) Guiding the Board in meeting its responsibilities. In achieving these goals, substantive changes were made to the following sections to ensure proper compliance.

A. CONFIDENTIALITY

1. NEW PROVISION

A new article was added to the Bylaws addressing the need for confidentiality. The new Article XVI states:

ARTICLE XVI. CONFIDENTIALITY

- A. All information, data, and documents that are not public records, received or reviewed by a Member acting in the capacity as Member, shall be deemed confidential and shall not be released or utilized by any Member for any purpose other than OHA or Committee business.
- B. The unanimous vote of all Members of the Board after full consultation with Board Counsel shall be required before any confidential communication, proprietary, or otherwise privileged material received in an Executive Meeting convened may be publicly released, except for communications and materials deemed no longer confidential or redacted by Board Counsel and released under Board of Trustees Operations Manual, Rule 21 (July 2007).

2. RATIONALE

Matters of a confidential nature frequently arise in BOT meetings and in the BOT's relations with Administration. Although a provision for confidentiality is present in the Operations Manual under Section 1.3.c-e, it is critical for the Bylaws to reflect the Members' collective duty of confidentiality, especially since the section alludes that a violation of the provision results in a Trustee being subject to censure imposed by Article XVII of the Bylaws.³ Therefore, it is imperative that Board members agree to keep in confidence and to retain in the strictest confidence all information and records about the business and financial matters of OHA. It is imperative Trustees maintain a level of confidentiality regarding discussions surrounding documents received by which otherwise may compromise a situation.

Additionally, each Trustee owes a fiduciary duty of confidentiality to the BOT and shall avoid the disclosure and/or dissemination of confidential, propriety, or privileged information acquired by virtue of his or her position for his or her personal gain or for the benefit of anyone pursuant to Chapter 84 of the Hawai'i Revised Statutes. Materials that are considered privileged include internal information (information acquired by virtue of their BOT position); executive session confidential materials; privileged materials (matters discussed with the BOT's attorneys); and those required under federal and state law. Only the affirmative vote of the full BOT may waive the privilege.

³ This article refers to the 2008 version of the OHA Board of Trustees Bylaws.

B. CODE OF CONDUCT

1. NEW PROVISION

A new article was added to the Bylaws addressing the need for confidentiality. The new Article XVIII states:

ARTICLE XVIII. TRUSTEE CODE OF CONDUCT AND SANCTIONS FOR THE VIOLATIONS OF THE CODE OF CONDUCT

The professional conduct of a member of the OHA Board of Trustees shall be guided by the Code of Conduct and Sanctions for Violations of the Code of Conduct, hereinafter referred to as the "Code of Conduct," which shall be created as a stand-alone executive policy of the Board of Trustees and made part of the OHA Board of Trustees' Executive Policy Manual as a stand-alone policy. The Sanctions for Violations of Code of Conduct shall contain procedures [~~which~~] that are fitting to the position of an elected Trustee and while ensuring that due process is afforded to a Trustee whose matter is being considered by the Board of Trustees.

~~[The Code of Conduct shall contain a discussion of fiduciary responsibilities of an OHA Trustee and laws application to a trustee's conduct. The Code of Conduct consists of three parts: (1) Fiduciary Responsibilities; (2) Board of Trustees' Executive Policies; and (3) Applicable Laws.]~~

~~[The Code of Conduct and Sanctions for Violations of the Code of Conduct shall be reviewed at least annually to be kept current with changes to the Board of Trustees' Executive Policies and laws applicable to Trustee conduct.]~~

The purpose of this Article is to establish guidelines relating to the Trustee Code of Conduct, including standards for the ways in which members interact with one another, staff, and beneficiaries in the pursuit of setting OHA policy and managing its trust.

2. RATIONALE

In 2016, the Board of Trustees voted to (1) amend, approve, and ratify the OHA Board of Trustees Bylaw Article XVII, "Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct," and (2) to approve, adopt, and ratify a stand-alone policy which shall be titled "Code of Conduct and Sanctions for Violation of the Code of Conduct." Action Item No. BR 16-1 states "the Code of Conduct and Sanctions for Violation of the Code of Conduct would be presented to the BOT as a stand-alone policy to be incorporated by reference into BOT Bylaws Article XVII." These policies sought to establish procedures that would impose disciplinary sanctions when Board rules are violated to ensure that Board members meet "the high standards of ethics, transparency, and accountability that are expected from oversight responsibilities."

The previous draft of this Article left open questions of due process and compliance with Sunshine Law. The addition of the purpose of the policy hopes to ensure that Trustees that are subject to this Conduct are afforded due process in the hearing of their claim and conforms the new Article to be compliant with the Sunshine Law. This Article also resolves the long-standing question, asserting that the Board has the ability to engage in self-policing its own members for violations of the Trustee Code of Conduct.

C. CONFLICT OF INTEREST

1. NEW PROVISION

Article XV is amended to incorporate language in accordance to HRS § 84-14, the statute that governs over conflicts of interests. This measure also seeks to take further precautions in further defining a member's affiliation, provides criteria and procedures for disclosing a potential conflict, and reminds trustees of their fiduciary duties that also govern this section.

ARTICLE XV. CONFLICT OF INTEREST

Members of the Board shall comply with the provisions of this Bylaw and are subject to the standards of conduct and financial interest disclosure requirements of HRS Chapter 84, as amended, (including HRS § 84-14) to include attending ethics training within a reasonable time upon taking office. For the purpose of this Bylaw Article:

A. An 'affiliation' exists if a Board Member or a Member of the Board member's family is an owner, officer, director, trustee, partner, employee (which shall include legal counsel, consultant, contractor, advisor, or representative), or agent of such organization.

B. [All information data, and documents that are not public records, received or reviewed by a Trustee acting in the capacity as Trustee shall be deemed confidential and shall not be released or utilized by any Trustee for any purpose other than OHA or committee business.]

All [~~trustees~~] Members must disclose to the Chairperson and the Board their membership(s) or affiliation(s) with any organizations or person(s) who are eligible to receive grants from, may be in competition with for resources or eligible to procure from or contract with the Office of Hawaiian Affairs. Members shall disqualify themselves any time an action is being considered by the Board which would affect the funding, procurement or contracts of that organization or person. Disclosure by declaration shall be made before Board action on the matter.

Board Members have a clear obligation to conduct all affairs of OHA in the best interest of beneficiaries. Members [~~of the Board~~] are expected to place the welfare of OHA above personal interests or the interests of family members or others who may be personally involved in affairs affecting OHA. All decisions of the Board are to be made solely [~~on the basis of~~] based on a desire to promote the best interest of OHA and its beneficiaries in alignment with a Board Member's fiduciary duties.

C. [~~Disclosure. In the event the Board must consider any matter for OHA which also directly involves:~~
a. ~~a Board or member of the Board's family (which shall be a spouse, parents, siblings and any household member);~~
b. ~~a public or private organization with which a Board member is a member or affiliated; or~~
c. ~~a Board member's personal financial interest as defined under Chapter 84, as amended~~

~~The affected Board member(s), at the first knowledge of the matter, shall disclose fully the precise nature of the interest or involvement to the Chairperson, or in the case of the Chairperson to the Vice Chairperson.~~

~~For the purpose of this Bylaw, affiliation exists if a Board member or a member of the Board member's family is an owner, officer, director, trustee, partner employee (which shall also include legal counsel,~~

~~consultant contractor, advisor or representative) or agent of such organization.~~

~~Matters covered under this Bylaw shall be reported initially to the Chairperson of the Board for appropriate action. Should the Chairperson be the Board member with a potential conflict, the matter shall be reported to the Vice Chairperson.~~

- D. Members violating this Article shall be subject to disciplinary action, as set forth in Article XVIII herein.

2. RATIONALE

OHA's stand-alone BOT executive policy on the "Code of Conduct and Sanctions for Violation of the Code of Conduct" references a statutory standard of conduct for state employees including conflicts of interest governed under HRS § 84-14. This statute is not referenced under the Bylaws. This Article seeks to reflect the applicability of HRS § 84-14 to this section.

This Article seeks to define what constitutes an 'affiliation' at the start of the Bylaw to firmly enumerate what the Board considers an affiliation. The previous definition listed in subsection C appears to limit the disclosure to the three definitions posed by that definition. The new definition seeks to more broadly define what a potential 'affiliation' may constitute.

In the State Auditor's Report No. 18-03, the Auditor's office states that in their review of Trustee Allowances, there were "numerous instances where trustees made donations or purchases which directly or indirectly benefited them, a spouse, or an organization they were affiliated with." To correct further potential "conflicts of interest" violation, this policy seeks to define when a Board member has an "affiliation." New language ensures that a member follows their fiduciary duties and discloses that a Member must disclose to the Chairperson if they are faced with a potential conflict of interest.

D. DEFINITION OF A PERMITTED INTERACTION GROUP

1. NEW PROVISION

Article II adds in a new definition of Permitted Interaction Group in accordance with HRS § 92-2.5.

ARTICLE II. DEFINITIONS

"Permitted Interaction Group" or "PIG" means a group organized in accordance where no more than a simple majority of a Board may discuss between themselves matter relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought, and the two members do not constitute a quorum of their board, as provided by HRS § 92-2.5, as amended.

2. RATIONALE

Permitted Interaction Groups provide another method to investigate matters relating to the official business of the board if two or more members of a board, but less than the number of members which would constitute a quorum for the board. Therefore, OHA's increasing reliance on the tool should be reflected in the Board's bylaws should an investigative nature come up for Board inquiry.

Although OHA has previously relied on tools like the Ad Hoc Committees to investigate specific subjects for a limited time as designated by the Board, the PIG allows for a greater number of Board members to take

part in the activities of the PIG. Members may communicate by interactive technology, solicit input from the public as part of an investigation, and consult others in furtherance of its investigation without being in violation of the Sunshine Law.

E. CLARIFICATION BETWEEN ROLES OF CEO AND ADMINISTRATOR

1. NEW PROVISION

Section C provides a provision for due process for the removal of the Administrator. Section D in Article VII clarifies the function of the Administrator in their dual role as the Administrator and Chief Executive Officer of OHA.

ARTICLE VII. ADMINISTRATOR

- A. **Appointment.** ~~[As required by Chapter 10, Section 10, Hawai'i Revised Statutes, as amended, the]~~ The Board, by a simple majority (5) of all members to which the Board is entitled, shall appoint an Administrator who shall serve a term to be determined by the Board as required by HRS § 10-10, as amended.
- B. **[Duties.] Staff.** ~~[As required by Chapter 10, Section 12, Hawai'i Revised Statutes, as amended, the]~~ The Administrator may employ and retain such employees as deemed necessary as required by HRS § 10-12, as amended.
- C. **Removal.** The Board, by a two-thirds vote (6) of all Trustees to which it is entitled, may remove the Administrator for cause at any time with a due process hearing, as required by HRS § 10-10, as amended.
- D. **Function.** The Administrator shall function as the chief executive officer.

2. RATIONALE

Section C. Per Board Counsel's characterization, the Administrator can only be removed for cause and with due process. HRS S 10-10 holds that an Administrator may be removed for cause at any time. Therefore, the due process amendment was added to reflect this characterization.

Section D. On December 17, 2009, the Board of Trustees voted to re-designate the title from "Administrator" to "Chief Executive Officer" and to approve and authorize the Chief Executive Officer to make technical changes to Chapter 10, HRS, OHA's governing documents, to include its Bylaws, Executive Policies and operational procedures, and to any other policies, procedures, documents and/or instruments as appropriate to reflect the re-designation of position title. The Trustees found that the Administrator is presently acting and performing as OHA's Chief Executive Officer, and a re-designation of the title corresponds to the Administrator's actual role in the organization. Article XII, Section 6 of the Hawai'i Constitution provides that the board shall have the power through its executive officer, the administrator of OHA. HRS § 10-5(6) states that the Board has the power to delegate to the Adminisitrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board. The Trustees found that OHA's Chief Executive Officer implements Board directives and continues to provide administrative direction and leadership to administrative staff to achieve strategic results. Therefore, the designation of Chief Executive Officer is more appropriate than that of Administrator by showing that the Chief Executive Officer maintains ultimate

responsibility for the success of Administration and carrying out the objectives of the Board. This new amendment clarifies that the Administrator as noted in HRS § 10-5(6) operates/functions as the Chief Executive Officer for OHA.

F. ARTICLE VIII. COMMITTEES OF THE BOARD

1. NEW PROVISION

Article VIII (1) adds in a section to establish the relationship of the Standing Committees to the Board, (2) updates the descriptions of the RM Committee description to be in alignment with HRS § 10-4, (3) updates the BAE Committee to reflect the latest Strategic Plan, and (4) adds in a description of the use of Permitted Interaction Groups, creating a new subsection F.

ARTICLE VIII. COMMITTEES OF THE BOARD

- A. Establishment of Standing Committees. To facilitate consideration of policy matters that must be approved by the Board, Standing Committees are established. Authority to act on all matters is reserved to the Board, and the functions of each Standing Committee shall be to consider and make recommendations to the Board.
- B. There shall be a minimum of two (2) Standing Committees of the Board. Each Committee shall be led by a Chairperson and a Vice-Chairperson. The Board may increase the number of Standing Committees, but the membership of the Standing Committees shall be all nine (9) Trustees. The two (2) Standing Committees, subject to increase, shall consist of the Committee on Resource Management (RM) and Committee on Beneficiary Advocacy and Empowerment (BAE).
1. **Committee on Resource Management.** The Committee shall:
- handle all fiscal and budgetary matters and ensure proper management, planning, evaluation, investment and use of OHA's trust funds;
 - review, approve, or disapprove all acquisition expenditures that have a multi-year implication;
 - review and approve all acquisition expenditures that impact the OHA Debt Management, Economic Development, Investment and Spending policies;
 - ~~[establish]~~ develop policies that strengthen OHA's fiscal controls and financial management;
 - oversee the use and condition of OHA's real estate and execute policy for the proper use of such lands including land in which OHA shall have an interest;
 - develop policies on land use, native rights, and natural and cultural resources, including: the inventory, identification, analysis and treatment of land, native rights, and natural and cultural resources;
 - develop policies and criteria for OHA's land acquisitions, dispositions, development, management, and the use of real property in which OHA has an interest;
 - develop policies relating to OHA's real estate asset allocation, desired returns, and balancing OHA's real estate portfolio including legacy lands, corporate real property, programmatic lands and investment properties;
 - oversee the use and condition of OHA's real estate and develop policy for the proper use and stewardship of such real property;
 - develop policies and programs for OHA's ownership, financing and development of real property, including capital improvements, debt management, economic

development, investment and spending policies and forms of ownership for OHA's real property.

- k. ~~[with respect to real estate now owned by OHA in its own name but owned in one or more limited liability companies or other entities in which OHA, directly or indirectly maintains an ownership interest, oversee OHA's performance of its rights and obligations with respect to real estate under the terms and conditions of the applicable limited liability company agreement or other operating agreement]~~ oversee the performance of OHA's rights and obligations with respect to real estate not owned by OHA in its own name;
- l. review, approve, or disapprove appropriate grants that support OHA's overall mission;
- m. evaluate OHA programs to determine their effectiveness to decide whether to continue, modify, or terminate a program's;
- n. in consultation with the Chairperson of the Committee on Beneficiary Advocacy and Empowerment and other resources (e.g., Corporation Counsel, Ethics Commission), develop training and orientation programs for Trustees and staff, including materials relating to Trustees roles, fiduciary responsibilities, and ethical obligations, as provided by HRS Chapter 84, as amended;
- o. in consultation with the Chairperson of the Committee on Beneficiary Advocacy and Empowerment carry out the recruitment and selection of the OHA Administrator; and
- p. provide oversight of Permanent Special Councils or Commissions as assigned by the Board.

2. **Committee on Beneficiary Advocacy and Empowerment.** The committee shall:

- a. plan, coordinate, and implement programs and activities that encourage Hawaiians to participate in governance;
- b. facilitate OHA's legislative agenda and advocacy efforts with federal, state, and county officials, private and community organizations, and groups involved in Hawaiian issues;
- c. ~~[draft, introduce,]~~ review and support the passage of legislation that benefits Hawaiians and supports Hawaiian issues, and work to defeat legislation which is contrary to the interest of OHA and its beneficiaries;
- d. review, and approve, or disapprove program grants that support OHA's legislative and advocacy efforts;
- e. develop programs ~~[which]~~ that focus on beneficiary health, human services, economic stability, education, and native rights;
- f. develop policies and programs relating to housing, land use, the environment, and natural resources;
- g. evaluate all OHA programs to ensure that the programs have a positive impact on beneficiaries, and;
- h. provide oversight of Permanent Special Councils or Commissions as assigned by the Board.

C. Each Standing Committee shall consider all matters referred to it in accordance with Section [F] L, Article VIII, of these Bylaws and make appropriate recommendations to the Board in a timely manner, but no later than twelve (12) calendar days before a Board meeting, and shall make progress reports to the Board periodically or when requested by the Chairperson of the Board.

- D. Standing Committees may meet in joint session when subject matter falls under the purview of more than one of the Standing Committees. In the case of an unbudgeted funding decision, a joint ~~[committee]~~ meeting of the Beneficiary Advocacy and Empowerment Committee and the Resource Management Committee, led by the Chairperson of the Resource Management Committee, shall be mandatory. ~~[An "un-budgeted funding decision is one in which the Board considers the reallocation of funds in the existing budget to meet an expenditure not appropriated in the existing budget."]~~
- E. **Advisory Committees.**
1. Standing Committees may create Advisory Committees as necessary ~~[which shall]~~ to serve in an advisory capacity to the Standing Committees. Advisory Committees shall assist in the resolution or study of issues arising in the specific areas of concern assigned to their respective Standing Committee. To avoid duplication in the consideration of issues, the Standing Committees shall create only one Advisory Committee to study or undertake the resolution of a single subject or issue. Each Standing Committee shall have no more than three _ Advisory Committees at any one time. All communications and advice from an Advisory Committee shall be made to the Chairperson of the Standing Committee, no later than twelve (12) calendar days before a Standing Committee Meeting. All communication and advice to an Advisory Committee shall be made by the Chairperson of the Standing Committee or designee.
 2. The Advisory Committee Chairperson and membership shall be appointed by the Standing Committee Chairperson, upon advice and counsel of Standing Committee members. The term of the Advisory Committees shall expire with the completion of the assigned task or at the discretion of the Standing Committee Chairperson. There shall be no less than three (3) members to each Advisory Committee, at least one (1) of whom shall be a member of the Board of Trustees of the Office of Hawaiian Affairs, who shall be appointed by the Standing Committee Chairperson. All
- F. **Ad Hoc Committees.**
1. From time to time, there shall be such Ad hoc Committees, as designated by the Chairperson, the members of which shall be appointed by the Chairperson, and subject to approval of the Board by a simple majority (5) vote. There shall be a minimum of three (3) members on each Ad hoc Committee, at least one of whom shall be a member of the Board and who shall be the Chairperson of the Ad hoc Committee.
 2. The term of the Ad hoc Committees shall expire at the completion of the assigned task or at a specific time that is determined for each Ad hoc Committee at the time of the appointment of said Committee or at the discretion of the Chairperson.
 - a. All communications and advice from an Ad hoc Committee shall be made to the Chairperson of the Board no later than ten days before a Board meeting.
 - b. All communications and advice to an Ad hoc Committee shall be made by the Chairperson of the Board.
 - c. In the event that three (3) or more Board members are appointed to an Ad Hoc Committee, HRS Chapter 92, as amended, will apply.
- G. **Permitted Interaction Groups**
1. The Chairperson may place on the agenda for Board consideration a request for the formation of a PIG in accordance with HRS § 92-2.5, as amended. The request shall set forth the title of the PIG, its scope, it suggested membership, and duration.

2. The purpose of the PIG shall be either to: (a) investigate a matter relating to the official business of the Board ("Investigative PIG") or (b) to present, discuss, or negotiate any position that the Board has adopted ("Negotiating PIG").
3. The membership, purpose, scope, and duration of the PIG shall be approved by the Board prior to the commencement of an investigation or presentation, discussion, or negotiation of any position adopted by the Board at a meeting of the Board.
4. Upon creation of an Investigative PIG, the members shall proceed to investigate the matter within their purview and prepare a report together with the PIG's findings and recommendations that shall be presented to the Board for consideration by the Trustees. No discussion, deliberation, or decision making shall occur at the time that the report is presented.
5. A Negotiating PIG shall present the results of its negotiations to the Board for deliberation and decision making by the Trustees at the same time or subsequent meeting.
6. Deliberation and decision making on the matter investigated, if any, must occur only at a duly noticed meeting of the Board held subsequent to the meeting at which the finding and recommendations of the Investigative PIG were presented at the Board.
7. The report of any PIG may be accepted, rejected, recommitted subjected to the PIG for further consideration or dissolved at the deliberation and decision making meeting, upon majority vote of the Trustees.

H. Permanent Special Councils or Commissions.

1. There shall be such Special Councils or Commissions as the Board deems appropriate to create, including Permanent Special Councils. The Board shall designate a Standing Committee that shall exercise oversight of said Council or Commission. The Special Council shall determine the duration of said Council or Commission.
2. Council Members or Commissioners shall be appointed by the Standing Committee to which oversight authority is granted pending confirmation of the Board through a simple majority (5) vote of all members to which the Board is entitled.
3. Membership of each Council or Commission shall be composed of at least one (1) member of the Board of Trustees.
4. The subject matter and purview of said Councils or Commissions shall be clearly defined and limited to only those areas so recommended by the Standing Committee having oversight thereof and subject to the approval of the full Board by a simple majority (5) vote of all members to which the Board is entitled. Oversight by the appropriate Standing Committee shall include, but not be limited to, review of budgetary concerns for the operation of said Council or Commission, and affirmation of requests for actions by such Council or Commission for the continued operations of such Council or Commission.
5. Such Council ~~[m]~~Members of Commissioners with the exception of any Members of the Board of Trustees, shall serve terms as established by the Board and shall serve terms as established by the Board and shall serve on a voluntary basis without compensation, other than reasonable expenses, such as travel, parking, and meals.

I. **Quorum and Voting for Committees, Councils and Commissions.**

1. For Advisory, Ad hoc, and Standing Committees, Councils and Commissions, a majority of the members of the Committee, Council or Commission shall constitute a quorum. Except for Ad Hoc Committees, three (3) members shall constitute a quorum to do business.
2. The concurrence of a quorum shall be required for any Committee (other than a Standing Committee), Council or Commission to make any recommendation to the Board or Standing Committee where appropriate, for Board or Standing Committee approval.
3. A majority of the Members present at a Standing Committee meeting shall be required for it to make any recommendation to the Board, provided that a quorum is present at the time of the vote.
4. When Standing Committees meet jointly, each Committee shall vote separately as individual Committees.

J. Authority to act on all matters is reserved to the Board and the functions of the Advisory and Ad hoc Committees, Councils, Commissions, and Permitted Interaction Groups shall be to investigate, consider, and make recommendations to the Standing Committee and the Board, respectively.

K. **Staff Assignments.** The Administrator shall assign to each Standing, Advisory, and Ad hoc Committee, and to each Council, Commission and Permitted Interaction Group, appropriate Administration staff to conduct research, analyze data, draft findings, and report and provide project management and support for and to advise the respective Committee, Council, Commission or Permitted Interaction Group and to maintain records of the proceedings of same.

L. **Committee Recommendations.** The Chairperson of the Board of Trustees ~~[is required to]~~ shall place a Committee recommendation on a Board of Trustees agenda no later than thirty (30) calendar days after receipt of the recommendation. All Standing Committees shall do the same with respect to any matter referred to the committee by a Member.

M. Waiver of any matter by committee to the Board of Trustees shall require two-thirds (2/3) vote of all Members to which the Board is entitled.

2. **RATIONALE**

The new provision explicitly establishes that actions taken at the standing committee level need to be approved by the Board of Trustees. This provision ensures that the Board reserves the final approval for all items while Standing Committees submit action items that make recommendations to the Board.

Under the “Committee on Resource Management” provision under A(1), language were edited to reflect the committee’s responsibility to develop policies on budgetary and fiscal matters. HRS § 10-4(2) states that OHA shall “acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein...” (emphasis added) Changes were made to all phrases that used ‘real estate’ were changed to reflect ‘real property’ to expand OHA’s capacity to make investments in real property and to reflect its obligations in HRS § 10-4. Subsection (j) was substantially revised and is now found under subsection (k) to reflect OHA’s move away from limited liability companies so that OHA solely “oversee[s] the performance of OHA;s rights and obligations with respect to real estate now owned by OHA in its own name.”⁴

⁴ See Walden v. Hi‘ilei Aloha LLC, et al., Civ. No. SP 18-1-0301 (Haw. 1st. Cir. June 25, 2019) (Findings of Fact and Conclusions of Law; Order).

Under the “Committee on Beneficiary Advocacy and Empowerment” provision under A(2), subsection (c) was changed to be in alignment with the priorities of the Strategic Plan for 2020+. Instead of focusing solely on “beneficiary health, human services, native rights and education,” the clause now read that the Committee will develop on programs that focus on “beneficiary health, human services, economic stability, education, and native rights” to reflect the order of priority that has been identified and approved by the Trustees.

Subsection F “Permitted Interaction Group” was inserted into Article VIII to reflect HRS § 92-2.5 and the statute’s language. A subsection is added because of OHA’s growing use of permitted interaction groups to address investigations posed before the board. Additional provisions require that Standing Committees must follow the same procedures as the Board and that when each committee meet jointly, each Committee shall vote separately as individual Committees.

G. ARTICLE IX. MEETINGS

1. NEW PROVISION

Article IX is updated to reflect information related to SB335 (2019), which made minor changes to the state Sunshine Law relevant to OHA meeting notices.

ARTICLE IX. MEETINGS

- A. ~~[As required in Section 10-8, Hawai‘i Revised Statutes, as amended,]~~ Board meetings shall be convened at the call of the Chairperson or by a quorum, as often as may be necessary for transaction of the Board’s business as required in HRS § 10-8, as amended. The Board shall meet at least once annually on each of the islands of Hawai‘i, Maui, Moloka‘i, Lāna‘i, Kaua‘i, and O‘ahu. At each meeting, the Board may ~~[at each meeting,]~~ fix the time and place for its next regular meeting.
- B. Board meetings may be convened by the Chairperson. In addition, upon written request of a majority of the members of the Board, the Administrator shall schedule a meeting of the Board to take place within twelve (12) calendar days after receipt of such request, provided that the notice requirement ~~[of Chapter 92, Hawai‘i Revised Statutes]~~ is met pursuant to HRS §§ 92-7, 41, as amended, is met.
- C. Emergency meetings may be called by the Chairperson in accordance with ~~[Chapter 92, Hawai‘i Revised Statutes]~~ HRS §92-8, as amended.
- D. Committee meetings shall be called by the Committee Chairperson.
- E. The Board shall give written public notice of any regular, special, emergency or rescheduled Board or Standing Committee, at least six (6) calendar days before the meeting and in the manner as required by ~~[Chapter 92, Hawai‘i Revised Statutes]~~ HRS §§ 92-7, 41, as amended. All meetings of the Board or its Committees, excluding PIGS, shall be open to the public, except for executive session meetings permitted pursuant to ~~[Chapter 92, Hawai‘i Revised Statutes]~~ HRS § 92-4, as amended, as required by HRS § 92-3, as amended.
- F. Appearances before the Board, and/or Standing Committees, Councils or Commissions shall be in accordance with HRS Chapter 92, as amended.
 1. Any person who wants to appear before the Board or any Standing Committee, Council, or Commission, except for executive session, to present testimony on a matter before the Board or any Standing Committee, Council, or Commission, shall make a request and submit a written copy of such testimony to the Administrator at least ~~[forty-eight]~~ seventy-two (72) hours prior to the Board, or Standing Committee, Council or Commission meeting unless such requirement is waived by a simple majority of

the Board or Standing Committee, Council, or Commission. Any verbal presentation permitted by the Board or Standing Committee, Council or Commission shall be limited to five (5) minutes.

2. The Chairperson or Standing Committee Council or Commission Chairperson shall have the authority to extend, limit, or terminate any testimony, which the Chairperson determines to be repetitious, made solely for purposes of delay, or ~~[to be]~~ without any substantive purpose.
3. Any person who wants to submit written testimony, data, views, or arguments on any agenda item shall submit ~~[ten]~~ thirteen (13) copies of such testimony to the Administrator at least ~~[forty-eight]~~ seventy-two (72) hours prior to the Board or Standing Committee, Council, or Commission meeting unless waived by a majority vote of all Board, Standing Committee, Council, or Commission members present.
4. The Board or Standing Committee, Council, or Commission by a simple majority (5) vote may restrict the total time allowed per agenda item.
5. Unless a testifier's testimony is related to a specific agenda item, the testifier may only give testimony under "Community Concerns" if ~~[agendized]~~ the item is placed on the agenda.

G. **Minutes of Meetings.** The Board and each Standing Committee, Council or Commission shall keep written or recorded minutes of all meetings as required under ~~[Chapter 92, Hawai'i Revised Statutes]~~ HRS § 92-9, as amended. The Board shall adopt standardized forms for use in the recordation of minutes of meetings. Minutes of all preceding meetings shall be available as provided by ~~[Section]~~ HRS § 92-9(b), as amended. The minutes shall include, but need not be limited to:

1. the date, time, and place of the meeting;
2. the members of the Board, Standing Committee, Council, or Commission recorded as either present, absent, or excused;
3. a summary of all matters proposed, discussed, or decided; and a record, by individual member, of motions made, motions seconded, and votes taken to include dissenting votes and abstentions;
4. staff assignments for investigation and the date staff reports are due;
5. departure and arrival of members from meetings to show matters discussed before arrival, while there, or after departure; and
6. any other information that any member of the Board, Standing Committee, Council, or Commission requests be included or reflected in the minutes.

H. **[Board] Packet.** ~~[Pursuant to Section 92-7.5, Hawai'i Revised Statutes, at]~~ At the time the ~~[Board]~~ [p]Packet is distributed to its members, the Board shall also make the Board Packet available for public inspection in the Board's office, as required by HRS § 92-7.5. Additionally, [F]the Board or Committee shall provide reasonably prompt access to the Board Packet to any person upon request. The Board shall provide notice to persons requesting notification of meetings, pursuant to ~~[Section]~~ HRS Section 92-7(e), [Hawai'i Revised Statutes] as amended. The Board is not required to mail board packets. As soon as practicable, the Board shall accommodate requests for electronic access to the Board Packet.

~~["Board packet" means documents that are compiled by the Board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F, Hawai'i Revised Statutes. Section 92-7.5, Hawai'i Revised Statutes, shall not require disclosure of executive session minutes, license applications]~~

- I. **Referrals.** The Board shall adopt procedures for research, due diligence and analysis, and referrals to staff via the Administrator.
- J. In an unlikely event, [T]he Board may hold additional community meetings, informational meetings and public hearings, as needed.

2. RATIONALE

Because OHA Bylaws are subject to statutory changes, changes to the Sunshine Law concerning meeting notices should be incorporated to update the OHA Bylaws. The new Article references the HRS § 92-7 and § 92-41 which specifically outline the procedures to give proper public notice under the Sunshine Law. Subsection F(5) also distinguishes between public testimony and community concerns by stating that items that public testimony must relate to concerns that are on the agenda for a particular meeting. Because these items are agendaized for future discussion, Trustees may ask questions or clarifications during this period. On the other hand, the community concerns portion of the meeting is solely for items that are not on the agenda. Trustees may not solicit clarifications or ask questions during this portion for the meeting.

H. RE-WRITING OF ARTICLE XII “AMENDMENTS TO BYLAWS”

1. NEW PROVISION

The new provision clarifies the use of “reading” and “vote.”

ARTICLE XIII. AMENDMENTS TO BYLAWS

~~[These Bylaws shall be amended only by two thirds vote of all members to which the Board is entitled. Any proposed amendment to the Bylaws shall be submitted in writing for consideration by the Board. Any Bylaw amendment shall require two readings by the Board. The board shall not vote on any bylaw amendment until a minimum of two readings by the Board.]~~

Proposed Bylaw amendments shall be submitted to the Board in writing. Before these Bylaws may be amended by a proposed Bylaw, it must be approved by a 2/3rd's vote of all the members to which the Board is entitled (6 affirmative votes) at least twice.

2. RATIONALE

Per Board counsel, the term “reading” as used in the Bylaws means a vote is taken so a Reading under the definitions section is actually a vote. To amend the Bylaws, a proposed Bylaw must be approved by at least six members twice.

I. BOARD OF TRUSTEE STAFF

1. NEW REVISION

Article XIV clarifies the options of job classifications for Trustees to select from.

ARTICLE XIV. BOARD OF TRUSTEE STAFF

The Board ~~[of Trustees will employ]~~ Chair shall appoint a Chief of Staff who will be responsible for coordinating Board staff functions and activities and shall act as a liaison between the Board staff and the Administrator.

Each Board Member shall be entitled to a maximum of two full time positions, ~~[with the flexibility in order]~~. To carry out the duties of their office, [in choosing their] each Trustee shall choose their staff positions from the following job classifications: Trustee Aide and Trustee Secretary. Each Board member shall have the sole discretion [in selecting] to select their staff positions from the job classifications listed above that best suit the needs of their office.

The Chairperson of the Board shall also be entitled to one additional staff position known as the BOT Private Secretary.

Changes to the type and number of staff positions shall require Board approval.

2. RATIONALE

Per Board Counsel's suggestion, the new language deletes the provision of flexibility in carrying out the duties of the office, which could lead to potential Human Resource difficulties.

J. ELIMINATE ARTICLE XIX "UNBUDGETED FUNDING REQUEST"

1. PROVISION REMOVED

The Article XIX in the 2018 version of the Bylaws provided for a definition of the "Unbudgeted funding requests. This article was eliminated.

2. RATIONALE

The article was eliminated as this definition would have been more appropriate in the definitions section; however, more appropriately, unbudgeted funding requests would be more appropriately listed in the Operations Manual.

IV. TECHNICAL CHANGES

A majority of changes made to the Bylaws were technical in nature, including fixing stylistic errors and ensuring consistent grammar and structure. The points below are a summary of the majority of substantive technical changes that were made.

A. TRUSTEE TO MEMBER

Changes were made from “Trustee” to “Member.” There are members that are part of Trustee initiated actions that include those that are not Trustees, including Administration, staff, and consultants or other members of the public. To ensure that all members stay in compliance, it was made explicit that these provisions apply to members, not just Trustees.

B. ELIMINATION OF “SLANDER” IN SUBSECTION G OF ARTICLE XVII. ORDER AND DECORUM

Subsection G was previously titled “Defamation and Slander.” Because slander is a subcategory of defamation, titling the section “Defamation and Slander” would be considered repetitious and unnecessary. The subsection is now titled “Defamation.”

C. ‘ŌLELO HAWAI‘I

The document was updated to ensure consistency across the document in the usage of diacritical marks for Hawaiian words and diacritical marks are used when appropriate. ‘Okina were used to resemble an open single quotation.

D. LEGAL CITATIONS

The legal citations contained within the document were updated to match the 2019 version of the Hawai‘i Revised Statutes and to ensure that references properly cited the information the clause claimed to contain.

E. CLEAN-UP OF SPACING AND OTHER STYLISTIC ERRORS

There were several places where there were formatting errors, such as extra spaces, line breaks, and accidental punctuation. These issues were remedied. This document also ensured consistency in punctuation across the document.

F. PAGE NUMBERING

The page numbers on the proposed Bylaws were updated to follow Arabic numeral numbering. This reflects the recommendations of the PIG.

V. CHANGES TO APPENDICES

The BOT By-Laws approved in August 2018 contained the following appendices:

A. APPENDIX A

Appendix A is entitled “HISTORY AND REFERENCE RELATED TO THE BYLAWS OF THE BOARD” and contains a table of detailed edits from 1981 to 2016. The PIG recommends that the entire Appendix A, as currently presented, be archived as a workpaper accessible each time the By-laws are reviewed; but not included in the actual BOT By-Laws document itself. **The PIG recommends that this appendix be eliminated from the By-Laws document and moved to the Operations Manual.**

B. APPENDIX B

Appendix B is entitled “TABLE SHOWING EFFECTS ON BYLAWS and contains the following verbiage: The list of adopted/amended dates of BOT Bylaws, also known as “History of Board Actions on OHA Bylaws” and “Table Showing Effects on Bylaws” from the Board approved BOT Bylaws on November 8, 2007 have been replaced by a more fuller updated version of the history and explanation of the BOT actions with cited reference (digital object identifier) to KII to look up the expressed language and specific details of the action of the Board. The information that previously was Appendix B of this document (prior to 2018) has been deleted and replaced by Appendix A. History and Reference Related to the Bylaws of the Board; therefore, Appendix B as written should be deleted as it is no longer needed; therefore **the PIG recommends its deletion.**

C. APPENDIX C

Appendix C is entitled ENUMERATION SYSTEM and contains the content and format of the Board of Trustees Bylaws is organized by a hierarchy from the most general concept that embodies all other concepts (i.e. title or chapter in this case the Board of Trustees Bylaws) to the most specific details. To maintain clarity especially with long and complicating documents, the following outline or enumeration system will be used through this document. **The PIG recommends that this appendix be eliminated from the By-Laws document and moved to the Operations Manual.**

D. APPENDIX D

Appendix D is entitled TABLE OF AUTHORITIES and contains statutory and constitutional references. **The PIG recommends that this appendix be retained and incorporated into the main body of the By-Laws document.**

E. APPENDIX E

Appendix E is entitled INDEX and contains key terms and concepts mapped throughout the document. **The PIG recommends that this appendix be retained, relabeled and remapped as Appendix A.**

VI. NEXT STEPS

In anticipation of BOT action in February 2020, the PIG also distributed five documents with the BOT By-Laws PIG report: 1) The existing BOT By-laws approved in August 2018; 2) Red-lined BOT By-Laws with the PIG recommended edits; 3) Clean BOT By-Laws with the PIG recommended edits; 4) Red-lined BOT By-Laws Appendices with the PIG recommended edits; and 5) Clean BOT By-Laws Appendices with the PIG recommended edits. This PIG report and related attachments will be distributed to the BOT at the January 23, 2020 meeting, however there will be no discussion. An Action Item will be brought forward in February 2020 at which time the Trustees will engage in discussion before acting on PIG recommended edits to the BOT By-Laws and related Appendices.



OFFICE OF HAWAIIAN AFFAIRS

BOARD OF TRUSTEES

BYLAWS

Approved by the Board of Trustees, August 30, 2018

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ARTICLE I. AUTHORIZATION

These Bylaws are adopted pursuant to Chapter 10, Hawai'i Revised Statutes¹, as amended.

¹ HRS §10-4(1) Office of Hawaiian Affairs; established; general powers. "To adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law." (In general, bylaws include laws and/or rules established by OHA or community to regulate itself as allowed or provided for by a higher authority such as the legislature or other governmental entity).

HRS §10-4(5) Office of Hawaiian Affairs; established; general powers. "To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers;"

ARTICLE II. DEFINITIONS

As used herein:

"Ad Hoc Committee" means a committee created, by the Board, for a one-time purpose or to focus on examining a specific subject. Created with a deadline by which they must complete their work, or expire.

"Administrator" means the administrator of the Office of Hawaiian Affairs.

"Advisory Committee" means a committee which shall serve in an advisory capacity to a Standing Committee. Advisory Committees are established to assist in the resolution or study of issues arising in the specific areas of concern.

"Agency" means the Office of Hawaiian Affairs.

"Board" means the Board of Trustees of the Office of Hawaiian Affairs.

"Chairperson"² means the Chairperson of the Board of Trustees of the Office of Hawaiian Affairs.

"Committee"³ means a body of one or more Trustees, elected or appointed, as provided for under Article VIII of these Bylaws.

"Committee Chairperson" means the Chairperson of a Standing, Advisory, Ad hoc, or Commission of the Office of Hawaiian Affairs.

"Joint Committee" means a body of two or more committees meeting in a joint session to discuss and decide an issue(s) that falls under the purview of more than one of the committees.

² HRS §10-8 Organization; quorum; meeting, refers to Chair as Chairperson and subsequent sections refer to Chairperson and Vice-Chairperson. For the purpose of clarity and uniformity "Chair" will mean Chairperson and "Vice-Chair" will mean Vice-Chairperson throughout the Board of Trustees Bylaws.

³ June 28, 1985 defined the term Committee and incorporated it in Article II.

"Meeting" means the convening of a Board or committee for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the Board or Committee has supervision, control, jurisdiction, or advisory power.

"Member" means a duly elected member of the OHA Board of Trustees.

"Vice-Chairperson" means the Vice-Chairperson of the Board of Trustees of the Office of Hawaiian Affairs.

"Office" means the Office of Hawaiian Affairs.

"Officer" means the Chairperson and Vice Chairperson of the Office of Hawaiian Affairs.

"Official Business" means an activity authorized by the Chairperson for members of the Board, or the Administrator for employees, and performed or conducted pursuant to the duties of the Board, committee, or Office. It includes, when authorized, the following: attending a meeting relevant to the work of the Board, board committee, or Office; participating in a seminar or conference sponsored in whole or in part by the Office; attending either as a representative of the Board, Office or as a participant, a meeting, seminar, or conference of a community, county, island, state, national, or international organization on a subject matter of direct concern to the Board, Committee, or Office; participating in any training program to maintain or improve the skills of Trustees or OHA employees in the performance of their duties; and/or conducting studies and investigations on matters before the Board, committee or Office.

"OHA" means the Office of Hawaiian Affairs.

"Permanent Special Councils or Commission" means a permanent council or commission established by the Board to address a specific subject matter.

"Quorum" means the minimal number of Trustees or members of a committee who must be present for valid transaction of business.

"Simple Majority" means more than half of the votes cast. It does not include abstentions or absent members.

"Special Board Meeting" means a special meeting of the Board called by the Chairperson or a majority (5) of all members to which the Board is entitled.

ARTICLE III. DUTIES OF THE BOARD

The Board of Trustees shall exercise power as provided by Article XII of the Constitution of the State of Hawai'i and Chapter 10, Hawai'i Revised Statutes, as amended.

ARTICLE IV. MEMBERS

- A. The membership of the Board shall be as provided by Article XII, Section 5 of the Constitution of the State of Hawai'i and Chapters 10 and 13D, Hawai'i Revised Statutes, as amended.
- B. Members of the Board shall be elected in accordance with Chapter 13D⁴, as amended, and vacancies shall be filled in accordance with Chapter 10, Hawai'i Revised Statutes, as amended.
- C. Members of the Board shall be allowed compensation, travel, and expenses as provided by law.

⁴ **HRS §10-7 Board of Trustees.** The office of Hawaiian affairs shall be governed by a board to be officially known as the board of trustees, office of Hawaiian affairs. Members of the board shall be elected in accordance with chapter 13D, with reference to sections 11-15, 11-25, 12-5, 12-6, and vacancies shall be filled in accordance with section 17-7. [L 1979, c 196, pt of §2]

ARTICLE V. OFFICERS

- A. **Election and Certification.** As required in Chapter 10, Hawai'i Revised Statutes, as amended, the Board, at its first meeting after an election, shall elect from its own membership a Chairperson and a Vice-Chairperson who shall serve at the pleasure of the Board.⁵ Their election shall be immediately certified by the Board to the Lieutenant Governor. The concurrence of a majority (5) of all members to which the Board is entitled shall be necessary to make any action of the Board valid, provided that due notice shall be given to all members.
- B. **Vote.** Vote for Chairperson and Vice-Chairperson of the Board shall be by a method determined by a majority (5) of all members to which the Board is entitled.
- C. **Vacancy.** Vacancy in the Office of Chairperson or Vice-Chairperson shall exist under the following circumstances:⁶
1. When the Chairperson or Vice-Chairperson is removed⁷ by the majority (5) of the members to which the Board is entitled; or
 2. when the Chairperson or Vice-Chairperson resigns from the position held;⁸ or
 3. in the case of illness or death of the Chairperson or Vice Chairperson.
- D. **Succession.** In the event of a vacancy in the Office of the Chairperson, the Vice-Chairperson shall succeed as Chairperson until the following Board meeting at which time a Chairperson is elected by a majority of the members of

⁵ June 28, 1985, adopted "at the pleasure of the Board" in relation to Sunshine Law.

⁶ June 28, 1985, amended "when such officer commits the following or is acted upon by the Board in the following ways" and added under the following circumstances;

⁷ February 21, 1985, language expressed "...the Board may consider valid, provided that a two-thirds vote of all members to which it is entitled, declares the office vacant." June 28, 1985, amended "...removed by the majority of the members of the Board."

⁸ June 28, 1985, amended "When the chairperson or Vice-Chairperson resigns from the position held and the resignation is accepted by the members of the Board."

the Board.⁹ If the Vice-Chairperson is elected to become the Chairperson, the Board shall elect a Vice-Chairperson at the same meeting. The election(s) shall be immediately certified by the Board to the Lieutenant Governor.

⁹ June 28, 1985, amended and added "until another Chairperson is elected by a majority of the members of the Board."

ARTICLE VI. DUTIES OF OFFICERS AND MEMBERS

- A. **Chairperson.** The Chairperson in addition to presiding at all regular and special Board meetings shall:
1. Appoint the Chairperson, Vice-Chairperson and members of all Standing committees, subject to the approval of the Board;
 2. Appoint members of Ad hoc Committees and designate the Chairperson and Vice-Chairperson of such Committees;
 3. Acknowledge communications, petitions, requests, and proposals on behalf of the Board and refer same to the Administrator or appropriate Committee of the Board for action or recommendation;
 4. Serve as the primary liaison with the Governor, Congressional delegation, the Legislature, and other agencies and organizations to ensure that there are effective working relationships between all of the above and the Board;
 5. Approve all press releases and public announcements which state the official position of the Board;
 6. Approve agenda items for all meetings of the Board; and
 7. Perform such other duties as may be required by law or such as may properly pertain to such office.
- B. **Vice-Chairperson.** The Vice-Chairperson will assume the duties and responsibilities of the Chairperson in the absence of the Chairperson and will undertake such other duties as may be assigned by the Chairperson.
- C. **Members.** The unanimous vote of all Members of the Board after full consultation with Board Counsel shall be required before any confidential communication, proprietary or otherwise privileged material received in an Executive Meeting convened under Hawai'i Revised Statutes §92-5 may be publicly released except for communications and materials deemed no longer

confidential or redacted and released under Board of Trustees Operations Manual, Rule 21 (July, 2007).¹⁰

¹⁰ November 8, 2007, approved amendments of OHA Bylaws Article VI, by adding new section "C" and to approve creation of conforming with OHA Executive Policies.

ARTICLE VII. ADMINISTRATOR

The Board shall have the power to exercise control over the Office through its executive officer, the Administrator.

- A. **Appointment.** As required by Chapter 10, Section 10, Hawai'i Revised Statutes¹¹, as amended, the Board, by a majority (5) of all members to which the Board is entitled, shall appoint an Administrator who shall serve a term to be determined by the Board.
- B. **Duties.** As required by Chapter 10, Section 12, Hawai'i Revised Statutes,¹² as amended, the Administrator may employ and retain such employees as deemed necessary to carry out the function of the Office.
- C. **Removal.** As required by Chapter 10, Section 10, Hawai'i Revised Statutes, as amended, the Board, by a two-thirds vote (6) of all members to which it is entitled, may remove the Administrator for cause at any time.

¹¹ HRS §10-10 Administrator; appointment, tenure, removal. The board by a majority vote, shall appoint an administrator who shall serve without regard to the provisions of chapter 76 for a term to be determined by the board. The board, by a two-thirds vote of all members to which it is entitled, may remove the administrator for cause at any time.

¹² HRS §10-12 Assistant; staff. The administrator may employ and retain such officers and employees as may be necessary to carry out the functions of the office. Such officers and employees may be hired without regard to chapter 76, and shall serve at the pleasure of the administrator. Officers and employees of the office of Hawaiian affairs shall be included in any benefit program generally applicable to officers and employees of the State. [L 1979, c 196, pt of §2; am L 1990, c 231, §1; am L 2000, c 253, §150]]

ARTICLE VIII. COMMITTEES OF THE BOARD

- A. There shall be a minimum of two Standing Committees of the Board. Each Committee will be led by a Chairperson and a Vice-Chairperson. The Board may increase the number of Standing Committees, but the membership of the Standing Committees shall be all nine (9) Trustees. The minimum two Standing Committees shall consist of the Committee on Resource Management (RM) and Committee on Beneficiary Advocacy and Empowerment (BAE).

1. **Committee on Resource Management.** The committee shall:
 - a. handle all fiscal and budgetary matters and ensure proper management, planning, evaluation, investment and use of OHA's trust funds;
 - b. review and approve any and all acquisition expenditures that have a multi-year implication, and which impact the OHA Investment or Spending policies;
 - c. establish policies which strengthen OHA's fiscal controls and financial management;
 - d. oversee the use and condition of OHA's real estate and execute policy for the proper use of such lands including land to which OHA shall have an interest;
 - e. develop policy on issues of land use, native rights, and natural and cultural resources, including the inventory, identification, analysis and treatment of land, native rights and natural and cultural resources;
 - f. develop policies and criteria for OHA's land acquisitions, dispositions, development, management, and the use of real estate in which OHA has an interest;
 - g. develop policies relating to OHA's real estate asset allocation, desired returns, and balancing OHA's real estate portfolio

including legacy lands, corporate real estate, programmatic lands and investment properties;

- h. oversee the use and condition of OHA's real estate and develop policy for the proper use and stewardship of such real estate;
- i. develop policies and programs for OHA's ownership, financing and development of real estate, including capital improvements, spending policy and forms of ownership for OHA's real estate;
- j. with respect to real estate not owned by OHA in its own name, but owned in one or more limited liability companies or other entities in which OHA, directly or indirectly, maintains an ownership interest, oversee OHA's performance of its rights and obligations with respect to real estate under the terms and conditions of the applicable limited liability company agreement or other operating agreement;
- k. review and approve appropriate grants to programs that support OHA's overall mission;
- l. evaluate OHA programs to determine effectiveness in order to decide whether to continue, modify, or terminate funding of any of OHA's programs;
- m. develop training and orientation programs for Trustees and staff including materials relating to Trustees roles, fiduciary responsibilities, and ethics;
- n. in consultation with the Chairperson of the Committee on Beneficiary Advocacy and Empowerment carry out the recruitment and selection of the OHA Administrator; and

- o. provide oversight over Permanent Special Councils or Commissions¹³ as assigned by the Board.

2. **Committee on Beneficiary Advocacy and Empowerment.** The committee shall:

- a. plan, coordinate, and implement programs and activities which encourage Hawaiians to participate in governance;
- b. facilitate OHA's legislative agenda and advocacy efforts with Federal, State, and County officials, private and community organizations, and groups involved in Hawaiian issues;
- c. develop programs which focus on beneficiary health, human services, native rights and education;
- d. develop policies and programs relating to land use and housing, the environment and natural resources;
- e. evaluate all OHA programs to ensure that the programs have a positive impact on beneficiaries;
- f. review and approve program grants that support OHA's legislative and advocacy efforts;
- g. draft, introduce, and support the passage of legislation which benefits Hawaiians and supports Hawaiian issues, and work to defeat legislation which is not in the best interest of OHA and its beneficiaries; and
- h. provide oversight over Permanent Special Councils or Commissions as assigned by the Board.

- B. Each Standing Committee shall consider all matters referred to it in accordance with Section J, Article VIII, of these Bylaws and make appropriate recommendations to the Board, in a timely manner, but no later than twelve

¹³ February 28, 1992, approved to allow for the creation of councils and commissions to specify their organizational position within the Board structure and to specify appointment procedures and operational procedures of such councils and commissions.

calendar days before a Board meeting, and shall make progress reports to the Board periodically or when requested by the Chairperson of the Board.

- C. Standing Committees may meet in joint session when subject matter falls under the purview of more than one of the Standing Committees. In the case of an “un-budgeted” funding decision, a joint committee meeting with the Resource Management Committee, led by the Chairperson of the Resource Management Committee, shall be mandatory. An “un-budgeted” funding decision is one in which the Board considers the reallocation of funds in the existing budget to meet an expenditure not appropriated in the existing budget.

D. **Advisory Committee.**

- 1. Standing Committees may create Advisory Committees as necessary which shall serve in an advisory capacity to the Standing Committees. Advisory Committees shall assist in the resolution or study of issues arising in the specific areas of concern assigned to their respective Standing Committee. To avoid duplication in the consideration of issues, the Standing Committees shall create only one Advisory Committee to study or undertake the resolution of a single subject or issue. Each Standing Committee shall have no more than three Advisory Committees at any one time. All communications and advice from an Advisory Committee shall be made to the Chairperson of the Standing Committee, no later than twelve calendar days before a Standing Committee Meeting. All communication and advice to an Advisory Committee shall be made by the Chairperson of the Standing Committee or designee.
- 2. The Advisory Committee Chairperson and membership shall be appointed by the Standing Committee Chairperson, upon advice and counsel of Standing Committee members. The term of the Advisory Committees shall expire with the completion of the assigned task or at the discretion of the Standing Committee Chairperson. There shall be

no less than three members to each Advisory Committee, at least one of whom shall be a member of the Board of Trustees of the Office of Hawaiian Affairs, who shall be appointed by the Standing Committee Chairperson. All Advisory Committee members, with the exception of the members of the Board of Trustees, shall serve on a voluntary basis without compensation, other than reasonable expenses such as travel, parking, and meals.

E. Ad Hoc Committees.

1. From time to time there shall be such Ad hoc Committees as designated by the Chairperson, the members of which shall be appointed by the Chairperson, and subject to approval of the Board by a simple majority vote. There shall be a minimum of three members on each Ad hoc Committee, at least one of whom shall be a member of the Board and who shall be the Chairperson of the Ad hoc Committee.
2. The term of the Ad hoc Committees shall expire at the completion of the assigned task or at a specific time that is determined for each Ad hoc Committee at the time of the appointment of said Committee or at the discretion of the Chairperson.
 - a. All communications and advice from an Ad hoc Committee shall be made to the Chairperson of the Board no later than ten days before a Board meeting.
 - b. All communications and advice to an Ad hoc Committee shall be made by the Chairperson of the Board.
 - c. All Ad hoc Committee members, with the exception of the members of the Board of Trustees shall serve on a voluntary basis without compensation, other than reasonable expenses such as travel, parking, and meals.

- d. In the event that three or more Board members are appointed to an Ad Hoc Committee, Chapter 92, Public Agency Meetings and Records, of the Hawai'i Revised Statutes, as amended, will apply.

F. Permanent Special Councils or Commissions.

1. There shall be such Permanent Special Councils or Commissions as the Board shall deem appropriate to create. The Board shall designate a Standing Committee that shall exercise oversight over said Council or Commission.
2. Council members or Commissioners shall be appointed by the Standing Committee to which oversight authority is granted pending confirmation of the full Board through a majority (5) vote of all members to which the Board is entitled.
3. Membership of each Council or Commission shall be composed of at least one member of the Board of Trustees.
4. The subject matter and purview of said Councils or Commissions shall be clearly defined and limited to only those areas so recommended by the Standing Committee having oversight thereof and subject to the approval of the full Board by a majority (5) vote of all members to which the Board is entitled. Oversight by the appropriate Standing Committee shall include, but not be limited to, review of budgetary concerns for the operation of said Council or Commission, and affirmation of requests for actions by such Council or Commission for the continued operations of such Council or Commission.
5. Such Council members or Commissioners with the exception of any members of the Board of Trustees, shall serve terms as established by the Board and shall serve on a voluntary basis without compensation, other than reasonable expenses such as travel, parking, and meals.

G. **Quorum and Voting for Committees, Councils and Commissions.**

1. For Advisory, Ad hoc, and Standing Committees, Councils and Commissions, a majority of the members of the Committee, Council or Commission shall constitute a quorum. Except for Ad Hoc Committees, three members shall constitute a quorum to do business.¹⁴
2. The concurrence of a quorum shall be required for any Committee (other than a Standing Committee), Council or Commission to make any recommendation to the Board or Standing Committee where appropriate, for Board or Standing Committee approval.
3. A majority of the Members present at a Standing Committee meeting shall be required for it to make any recommendation to the Board, provided that a quorum is present at the time of the vote.

H. Authority to act on all matters is reserved to the Board and the functions of the Advisory and Ad hoc Committees, and Councils and Commissions shall be to investigate, consider, and make recommendations to the Standing Committee and the Board, respectively.

I. **Staff Assignments.** The Administrator shall assign to each Standing, Advisory, and Ad hoc Committee, and to each Council and Commission staff to conduct research for and to advise the respective Committee, Council or Commission and to maintain records of the proceedings of same.

J. **Committee Recommendations.** The Chairperson of the Board of Trustees is required to place a Committee recommendation on a full Board of Trustees agenda no later than thirty (30) calendar days after receipt of the recommendation.

¹⁴ June 28, 1985, except for Ad Hoc Committee, amended to specify the minimum quorum size of three (3) members is required to vote and do business.

All Standing Committees are required to do the same with respect to action items referred to the committee by a Trustee.¹⁵

- K. Waiver of any matter by committee to the Board of Trustees shall require two-thirds vote of all members to which the Board is entitled.¹⁶

¹⁵ October 30, 2002, (second reading) added "All Standing Committees are required to do the same with respect to action items referred to the committee by a Trustee."

¹⁶ October 17, 2001, (second reading) requiring two-thirds vote to waive any matter by committee to the Board. (Source: OHA, Committee on Policy and Planning Action Item. doi: #PP-14. September 20, 2001). First reading was approved on 9/20/2001.

ARTICLE IX. MEETINGS

- A. As required in Section 10-8, Hawai'i Revised Statutes, as amended, Board meetings shall be convened at the call of the Chairperson or by a quorum, as often as may be necessary for transaction of the Board's business and shall meet at least once annually on each of the islands of Hawai'i, Maui, Moloka'i, Lāna'i, Kaua'i, and O'ahu. The Board may, at each meeting, fix the time and place for its next regular meeting.
- B. Board meetings may be convened by the Chairperson. In addition, upon written request of a majority of the members of the Board, the Administrator shall schedule a meeting of the Board to take place within twelve calendar days after receipt of such request, provided that the notice requirement of Chapter 92, Hawai'i Revised Statutes, as amended, is met.
- C. Emergency meetings may be called by the Chairperson in accordance with Chapter 92, Hawai'i Revised Statutes, as amended.
- D. Committee meetings shall be called by the Committee Chairperson.
- E. The Board shall give written public notice of any regular, special, emergency or rescheduled Board, Standing Committee, Advisory Committee, Ad hoc Committee, Council and Commission meetings at least six calendar days before the meeting and in the manner as required by Chapter 92, Hawai'i Revised Statutes, as amended.¹⁷
- F. All meetings of the Board or its Committees, Councils, or Commissions shall be open to the public, except for executive meetings permitted pursuant to Chapter 92, Hawai'i Revised Statutes, as amended.
- G. Appearances before the Board, Committees, Councils or Commissions shall be in accordance with Chapter 92, Hawai'i Revised Statutes, as amended.

¹⁷ The added language is recommended to be consistent with the changes in chapter 92, Hawai'i. Revised Statutes, ("Sunshine Law") that take effect July 1, 2018.

1. Any person who wants to appear before the Board or any Committee, Council, or Commission, except for executive meetings, to present testimony on a matter before the Board or any Committee, Council or Commission, shall make a request and submit a written copy of such testimony to the Administrator at least forty-eight hours prior to the Board, Committee, Council or Commission meeting unless such requirement is waived by a simple majority of the Board, Committee, Council or Commission provided further that any verbal presentation permitted by the Board, Committee, Council or Commission shall be limited to five minutes.
2. The Chairperson or Committee, Council or Commission Chairperson shall have the authority to extend, limit, or terminate any testimony, which the Chairperson determines to be repetitious, to be made solely for purposes of delay, or to be without any substantive purpose.
3. Any person who wants to submit written testimony, data, views, or arguments on any agenda item shall submit ten copies of such testimony to the Administrator at least forty-eight hours prior to the Board, Committee, Council, or Commission meeting unless waived by a majority vote of all Board, Committee, Council, or Commission members present.¹⁸
4. The Board, Committee, Council, or Commission by simple majority vote may restrict the total time allowed per agenda item.

H. **Minutes of Meetings.** The Board and each Committee, Council or Commission shall keep written or recorded minutes of all meetings as required under Chapter 92, Hawai'i Revised Statutes, as amended. The Board shall adopt standardized forms for use in the recordation of minutes of meetings. Minutes of all preceding meetings shall be available as provided by Section 92-

¹⁸ June 28, 1985, amended to add to the bylaws and allow any person to submit written testimony, data, views, or arguments on any agenda item and the Administrator inform the Board or Committee members at least 48 hours prior to the Board or Committee meeting.

9(b), Hawai'i Revised Statutes.¹⁹ The minutes shall include, but need not be limited to:

1. The date, time, and place of the meeting;
2. The members of the Board, Committee, Council, or Commission recorded as either present, absent, or excused;
3. A summary of all matters proposed, discussed, or decided; and a record, by individual member, of motions made, motions seconded, and votes taken to include dissenting votes and abstentions;
4. Staff assignments for investigation and the date staff reports are due;
5. Departure and arrival of members from meetings so as to show matters discussed before arrival, while there, or after departure; and
6. Any other information that any member of the Board, Committee, Council, or Commission requests be included or reflected in the minutes.

- I. **Board Packet.** Pursuant to Section 92-7.5, Hawai'i Revised Statutes, at the time the board packet is distributed to the trustees, the Board shall also make the board packet available for public inspection in the Board's office. The Board shall provide notice to persons requesting notification of meetings pursuant to Section 92-7(e), Hawai'i Revised Statutes, that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The Board is not required to mail board packets. As soon as practicable, the Board shall accommodate requests for electronic access to the board packet.²⁰

"Board packet" means documents that are compiled by the Board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F, Hawai'i Revised Statutes.

¹⁹ The following deletion and added language is recommended to be consistent with the changes in the Sunshine Law that take effect July 1, 2018. Section 92-9(b) of the Hawai'i Revised Statutes states, "The minutes shall be made available to the public by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer."

²⁰ The added language is recommended to be consistent with the changes in the Sunshine Law that take effect July 1, 2018.

Section 92-7.5, Hawai'i Revised Statutes, shall not require disclosure of executive session minutes, license applications, or other records for which the Board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by Section 92-7.5, Hawai'i Revised Statutes.²¹

- J. **Referrals.** The Board shall adopt procedures for research referrals to staff via the Administrator.
- K. The Board may hold community meetings, informational meetings, and public hearings.

²¹ The added language is recommended to be consistent with the changes in the Sunshine Law that take effect July 1, 2018.

ARTICLE X. QUORUM AND VOTING

As required by Section 10-8, Hawai'i Revised Statutes, as amended, a majority (5) of all the members to which the Board is entitled shall constitute a quorum to conduct business. The concurrence of a majority (5) of all the members to which the Board is entitled shall be necessary to make any action of the Board valid provided that due notice shall be given to all members.

An abstention shall not be considered a positive or negative vote. A procedural motion may be passed by a majority vote of the members present. Upon the request of any member of the Board, the Board Secretary shall call the roll.

- A. Unless a member is excused from voting, such member's silence shall be recorded as an abstention.
- B. A member may use a "Kanalua" response when called upon to vote and if repeated when polled again, that vote shall be recorded as an "abstention", or when polled to vote again, the second time may either vote "yes" or "no".²²

The Board Secretary shall record each vote in the minutes and report to the Chairperson, who shall announce the result to the Board.

²² June 3, 1997, defined the meaning, use and limit of Kanalua (abstain). "Unless a member is excused from voting, such member's silence shall be recorded as an abstention;" and sentence 6 to read "a member may use a 'Kanalua' response but once, and if repeated when polled again, that vote shall be recorded as an abstention, or a member may first respond with one 'Kanalua' vote, when polled to vote again the second time may either vote Yes or No." Second reading and the motion was carried unanimously June 24, 1997.

ARTICLE XI. LEGAL COUNSEL

- A. Legal Counsel for the Board should be present at all regular meetings and certain committee meetings of the Board when requested by the Chairperson or Chairperson of the relevant Committee.
- B. The Chairperson or designee, subject to prior approval of the Board, may request any written or verbal legal opinion from the Department of the Attorney General or from any other legal counsel. Where a request is made in writing and a legal opinion is rendered by the Department of the Attorney General, or from any other legal counsel, such opinion along with a copy of the written request for such opinion shall be immediately distributed to all Board members in written form.²³
- C. The Administrator of the Office Hawaiian Affairs or designee, subject to prior approval of the Board, may request any written or verbal legal opinion from the Department of the Attorney General, or from any other legal counsel. Where a request is made in writing and a legal opinion is rendered by the Department of the Attorney General or from any other legal counsel, such opinion along with a copy of the written request for such opinion shall be immediately distributed to all Board members in written form.²⁴

²³ September 30, 1988, amended the Bylaws add clarity and require the Chair or designee to receive prior approval of the Board to request for legal opinion.

²⁴ August 30, 1988, the expressed language was approved by the Board and included in the 2016 update.

ARTICLE XII. PARLIAMENTARY AUTHORITY

Robert's Rules of Order shall apply in situations not covered by these Bylaws or applicable statutes.

ARTICLE XIII. AMENDMENTS TO BYLAWS

These Bylaws shall be amended only by two-thirds vote of all members to which the Board is entitled. Any proposed amendment to the Bylaws shall be submitted in writing for consideration by the Board. Any Bylaw amendment shall require two readings by the Board. The Board shall not vote on any bylaw amendment until a minimum of two readings by the Board.

ARTICLE XIV. BOARD OF TRUSTEE STAFF

The Board of Trustees will employ a Chief of Staff who will be responsible for coordinating Board staff functions and activities and will act as a liaison between the Board staff and the Administrator.

Each Board member will be entitled up to two full time positions and will have the flexibility, in order to help carry out the duties of their office, in choosing their staff positions from the following job classifications: Trustee Aide and Trustee Secretary. Each Board member will have sole discretion in selecting from the job classifications listed above that best suit the needs of their office.²⁵

The Chairperson of the Board will also be entitled to one additional position known as the BOT Private Secretary. Changes to the type and number of staff will require Board approval.

²⁵ March 7, 2013 (first reading) and March 21, 2013 (second reading) amending Bylaws to correspond and conform to changes to OHA's Board of Trustees' Executive Policy Manual relating to options for staffing of each Board of Trustee office to "deal with increasingly complex and diverse OHA projects such as investments, land development and management, and partnership agreements."

ARTICLE XV. CONFLICT OF INTEREST

Members of the Board shall comply with the provisions of this Bylaw and are subject to the standards of conduct and financial interest disclosure requirements of Chapter 84, Hawai'i Revised Statutes, as amended, to include attending ethics training within a reasonable time upon taking office.

- A. All trustees must disclose to the Chairperson and the Board their memberships or affiliations with any organizations or person(s) who are eligible to receive grants from the Office of Hawaiian Affairs or who may be in competition with the Office of Hawaiian Affairs for resources, and shall disqualify themselves any time an action is being considered by the Board which would affect the funding of that organization or person. Disclosure by declaration shall be made before Board action on the matter.

Board members have a clear obligation to conduct all affairs of OHA in the best interest of beneficiaries. Members of the Board are expected to place the welfare of OHA above personal interests or the interests of family members or others who may be personally involved in affairs affecting OHA. All decisions of the Board are to be made solely on the basis of a desire to promote the best interest of OHA and its beneficiaries.

- B. All information, data, and documents that are not public records, received or reviewed by a Trustee acting in the capacity as Trustee, shall be deemed confidential and shall not be released or utilized by any Trustee for any purpose other than OHA or Committee business.
- C. Disclosure. In the event the Board must consider any matter for OHA which also directly involves:
 - a. a Board or member of the Board's family (which shall be a spouse, parents, siblings, and any household member);
 - b. a public or private organization with which a Board member is a member of or affiliated; or

- c. a Board member's personal financial interest as defined under Chapter 84, as amended.

The affected Board member(s), at the first knowledge of the matter, shall disclose fully the precise nature of the interest or involvement to the Chairperson, or in the case of the Chairperson, to the Vice Chairperson.

For the purpose of this Bylaw, affiliation exists if a Board member or a member of the Board member's family is an owner, officer, director, trustee, partner, employee (which shall also include legal counsel, consultant, contractor, advisor, or representative) or agent of such organization.

Matters covered under this Bylaw shall be reported initially to the Chairperson of the Board for appropriate action. Should the Chairperson be the Board member with a potential conflict, the matter shall be reported to the Vice Chairperson.

- D. Trustees violating provisions A or B above shall be subject to disciplinary action, as set forth in Article XVII herein.

ARTICLE XVI. ORDER AND DECORUM

- A. While the Chairperson is putting any question to, or addressing the Board, or when a person is speaking, all persons present are expected to conduct themselves with decorum and provide respect to the speaker. While a person is speaking, no one shall pass between such speaker and the Chairperson.
- B. When a Trustee or other person properly before the Board wishes to speak, the speaker shall address the Chairperson, be recognized before proceeding, and shall confine remarks to the question under discussion.
- C. If a Trustee or other person, in speaking or otherwise, transgresses these rules, any Trustee may raise a question of order. The Chairperson shall then decide the question of order without debate, subject to an appeal to the Board. In addition, the Chairperson may call for the sense of the Board on any question of order.
- D. Whenever any person is called to order while speaking, such person shall be in possession of the floor after the question of order is decided and may proceed with the matter under discussion within the ruling made on the question of order.
- E. All persons attending Board meetings, including staff, witnesses, members of the media, and the general public, are expected to respect the dignity of the Board.
- F. Trustees who repeatedly violate any provision of any of the above sections of this Article shall be subject to disciplinary action, as set forth in Article XVII herein.
- G. Defamation and Slander. OHA is concerned that no defamatory material or statements are presented at OHA Board of Trustee and committee meetings. In the unlikely event that this situation should develop, it will be necessary to call this to the attention of the persons making those statements, and request that

they desist in their action. Such information will be stricken from the record, if necessary.²⁶

²⁶ October 25, 2000, (second reading) approved the motion to incorporate language on defamatory and slander in the Bylaws and adopt policy on defamatory and slander.

ARTICLE XVII. TRUSTEE CODE OF CONDUCT AND SANCTIONS FOR VIOLATION OF THE CODE OF CONDUCT

The professional conduct of a member of OHA Board of Trustees shall be guided by the Code of Conduct and Sanctions for Violations of the Code of Conduct, hereinafter referred to as “Code of Conduct”, which shall be created as a stand-alone executive policy of the Board of Trustees and made part of the OHA Board of Trustees’ Executive Policy Manual as a stand-alone policy.

The Code of Conduct shall contain a discussion of fiduciary responsibilities of an OHA Trustee and laws applicable to a trustee’s conduct. The Code of Conduct consists of three parts: (1) Fiduciary Responsibilities; (2) Board of Trustees’ Executive Policies; and (3) Applicable Laws. The Sanctions for Violations of the Code of Conduct shall contain procedures which are fitting to the position of an elected trustee and while ensuring that appropriate due process is afforded to a Trustee whose matter is being considered by the Board of Trustees.

The Code of Conduct and Sanctions for Violations of the Code of Conduct shall be reviewed at least annually to be kept current with changes to the Board of Trustees’ Executive Policies and laws applicable to Trustee conduct.²⁷

²⁷ March 15, 2016, (second reading), approved motion to amend, approve, adopt and ratify Bylaws Article XVII to create a stand-alone policy entitled “Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct”.

ARTICLE XVIII. HAWAIIAN LANGUAGE USAGE

All Board members and staff are expected to use proper spelling of Hawaiian words and Hawaiian language²⁸ grammar when preparing official correspondence and documents for OHA.

²⁸ HRS § 5-6.5, State language. "The Hawaiian language is the native language of Hawaii".

ARTICLE XIX. UNBUDGETED FUNDING REQUEST

An unbudgeted funding request is an item expenditure that is not included in the approved budget. All unbudgeted funding requests presented to the Board of Trustees, must include a source of funding and CFO certification and require an affirmative vote of two-thirds (6) of all members to which the BOT is entitled.

| Board Action | Meeting Date | Note |
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| XI | | <p>entitled "Amending the Bylaws – Article VIII. Committees of the Board". Eight (8) of the Board members present, 5 approved the amendment and 3 members voted against efforts to consolidate committees. Motion was carried to consolidate committees to Budget and Finance, Culture/Education, Human Services, Resource Development and Planning and Development.</p> <p>Relating to Legal Counsel. Amended Article XI. Legal Counsel to include "The Attorney General or his representative, in his capacity as Counsel of the Board, should be present at all regular and special meetings and certain committee meetings of the Board <u>when requested by the Chairman of the Board or Chairman of the relevant committee.</u> The Attorney General or his representative shall be designated as Counsel for the Board.</p> |
| Amended Article V | February 21, 1985 | <p>Source: (OHA. Board minutes. Page 9-10. doi: BOT 85-05).</p> <p>Relating to Officers. Board minutes and page 9 "Amendment to Bylaws of OHA, Article V. Officers". Seven (7) of the Board present and 6 approved and 1 opposed the amended language "A vacancy in the office of Chairperson or Vice-Chairperson shall exist when such officer commits the following or is acted upon by the Board in the following ways: 1) When the officer resigns from his position; and 2) For such other and further reasons as the Board may consider valid, provided that a two-thirds vote of all members to which it is entitled, declares the office vacant."</p> |
| Amended Article II, Article V and Article VIII | June 28, 1985 | <p>Source: (OHA. Board minutes. Page 3. doi: BOT 85-14).</p> <p>"Amending OHA's Bylaws".</p> <p>Relating to Article II Definitions. <u>Committee means a body of one or more trustees, elected or appointed as provided for under Article VIII of these By-Laws.</u></p> <p>Relating to Article V. Officers. <u>Delete a term of two years and add at the pleasure of the Board.</u></p> <p>Relating to Article V. Vacancy. <u>Delete when such officer commits the following or is acted upon by the Board in the following ways and added under the following circumstances:</u></p> <p><u>Delete when the officer resigns from his position and add When the Chairperson and Vice-Chairperson is removed by the majority of the members of the Board.</u></p> <p><u>Delete For such other and further reasons as the Board may consider valid, provided that a two-thirds vote of all members to which it is entitled, declares that office vacant and add When</u></p> |

| Board Action | Meeting Date | Note |
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| | | <p><u>the chairperson or Vice-Chairperson resigns from the position held and the resignation is accepted by the members of the Board.</u></p> <p>Related to Succession delete <u>for the unexpired term</u> and add <u>until another Chairperson is elected by a majority of the members of the Board.</u></p> <p>Relating to Article VIII. Committees of the Board. Relating to Quorum and Voting for Committees add <u>Except for Ad Hoc Committees, three members shall constitute a quorum to do business.</u></p> <p>Relating to Article XI. Meetings. Add <u>Any person who wants to submit written testimony, data, views, or arguments on any agenda item shall submit ten (10) copies of such testimony to the Administrator at least 48 hours prior to the Board or Committee members present meeting unless waived by a majority vote of all Board or Committee Members.</u></p> <p>Seven (7) of the Board members present and unanimously adopted the amendment.</p> |
| Amended Article VIII and Article IX | July 25, 1987 | <p>Source: (OHA. Board minutes. Page 7-8. doi: BOT 87-05.)</p> <p>Attorney General suggested changes to Article VIII, Section C, Paragraph 2, Article VIII, Section D and Article IX, Section B.</p> |
| Amended Article XI | September 30, 1988 | <p>Source: (OHA. Board minutes. Page 5. doi: BOT 88-10.) (OHA., Board minutes. BOT 88-07. 1988)</p> <p>Relating to Article XI Legal Counsel</p> <p><u>The Chair or designee, subject to prior approval of the Board, may request any written or verbal legal opinion from the Department of the Attorney General, or from any other legal counsel. Where a request is made in writing and a legal opinion is rendered by the Department of the Attorney General, or from any other legal counsel, such opinion along with a copy of the written request for such opinion shall be immediately distributed to all Board members in written form."</u></p> <p><u>The Administrator of the Office of Hawaiian Affairs or designee, subject to prior approval of the Board, may request any written or verbal legal opinion from the Department of Attorney General, or from any other legal counsel. Where a request is made in writing and a legal opinion is rendered by the Department of Attorney General or from any other legal counsel, such opinion along with a copy of the written request for such opinion shall be immediately distributed to all Board members in written form.</u></p> |

| Board Action | Meeting Date | Note |
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| | | The Board unanimously approved of the motion. |
| Amended Article VIII | April 29, 1989 | Source: (OHA. Board minutes. Page 3. doi: BOT 89-05.) Relating to Committee. Committee on Operations and Development proposed bylaws amendment to reduce the number of members on Committee on Operations and development from nine to seven. Amend to create a fourth standing Committee on Native Hawaiian Status and Entitlement. The Board unanimously approved of the motion. |
| Amended | October 23, 1991 | Source: (OHA. Board minutes. Page 5. doi: BOT 91-18.) Second reading of the revisions to OHA Bylaws Articles II, VII and X. 9 Trustees present with 7 yes and 2 no. Motion was carried. |
| Amended Article VIII and IX | February 28, 1992 | Source: (OHA. Board minutes. Page 8. doi: BOT 92-03.) Approved amendment to Articles VIII and IX to allow for the creation of Councils and Commissions, to specify their organizational position within the Board structure, and to specify appointment procedures and operational procedures of such Councils and Commissions. Motion was carried. |
| Amended Article VIII | December 16, 1992 | Source: (OHA. Board minutes. Page 2. doi: BOT 92-32.) 1 st reading to Article VIII to reduce the number of committees from 9 to 6 and redefine the purviews of those committees. |
| Amended Article VIII | December 18, 1992 | Source: (OHA. Board minutes. Page 2. doi: BOT 92-33.) 2 nd reading to reduce the number of committees from 9 to 6 was approved with concerns. Motion was carried. |
| Amended Article VIII | April 24, 1997 | Source: (OHA. Board minutes. Page 4. doi: BOT 97-13.) 1 st reading to reorganize committees to better understand and manage issues. Committees include 1) Budget and Finance; 2) Policy and Planning; 3) Program Management; 4) Land and Sovereignty; 5) Legislative Review; and 6) Ad Hoc Committee on Entitlement and Negotiations. Motion carried unanimously. |
| Amended Article X | May 21, 1997 | Source: (OHA. Board minutes. Page 2. doi: BOT 97-17.) Motion to incorporate 554A 1-6 HRS into Article II as stipulated by the Committee purview adopted by the Board to read; the BOT shall exercise Power as provided by Article XII Constitution of the State of Hawai'i and deleting Chapter X, and adding Chapter 554A, 1-6 Uniform Trustees Powers Act HRS. |

| Board Action | Meeting Date | Note |
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| Amended Article X | June 3, 1997 | Source: (OHA. Board minutes. Page 3. doi: BOT 97-19.) Amended Article X, sentence to read "Unless a member is excused from voting, such member's silence shall be recorded as an abstention;" and sentence 6 to read "a member may use a 'Kanalua' response but once, and if repeated when polled again, that vote shall be recorded as an abstention, or a member may first respond with one 'Kanalua' vote, when polled to vote again the second time may either vote Yes or No. " Motion carried unanimously. |
| Amended Article X | June 24, 1997 | Source: (OHA. Board minutes. Page 6. doi: BOT 97-20.) 2 nd reading clarifies the use of "Kanalua" in abstaining and voting. Motion carried unanimously. |
| Withdrawal | August 28, 1997 | Source: (OHA. Board minutes. Page 6. doi: BOT 97-29.) Relating to May 21, 1997 motion to incorporate 554 HRS into Article II was withdrawn because discussion regarding liability insurance for Trustees, which Trustees don't have any insurance. Motion to add 5549(a) Trustees fiduciary Responsibility Second reading. Motion was defeated. Motion to amend Article XVIII Out of State Travel was defeated |
| Amended Article VIII | December 8, 1998 | Source: (OHA. Board minutes. Page 2. doi: BOT 98-53.) 2 nd reading to amend the organization of the committee structure 1) Government Affairs and Sovereignty; 2) Government Affairs and Sovereignty; and 3) land. Motion carried. |
| Amended Article VIII | January 13, 2000 | Source: (OHA. Board minutes. Page 7-10. doi: BOT 00-03.) 1 st reading, motion to amend committee purviews and individual assignment. Motion carried. |
| Amended | October 17, 2000 | Source: (OHA. Board minutes. Page 2-3 and 5-6. doi: BOT 00-41.) <u>Motion to amend any unbudgeted request for funding shall require the two-third vote of all members to which the Board is entitled.</u> Motion carried. 1 st reading to add <u>OHA is concerned that no defamatory material or statements are presented at OHA Board of Trustee and OHA committee meetings. In the unlikely event that this situation should develop it will be necessary to call this to the attention of persons making those statements and request that they desist in their action. Such information will be stricken</u> |

| Board Action | Meeting Date | Note |
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| | | <u>from the record if necessary.</u> Defamation is communication when it tends to "harm the reputation of another as to lower him or her in the estimation of the community or deter a third from associating or dealing with him or her." Motion carried unanimously. |
| Adopted | October 25, 2000 | Source: (OHA. Board minutes. Page 2-3 and 5-6. doi: BOT 00-41.) 2 nd reading to adopt policy on defamation and slander. Motion carried. |
| Amended Article VIII | April 19, 2001 | Source: (OHA. Board minutes. Page 33. doi: BOT 01-21.) 2 nd reading to amend time limit <u>to adopt an amendment to the Office of Hawaiian Affairs wherein the Chairperson of the Board of Trustees is required to place a committee recommendation on a full Board of Trustees agenda no later than thirty (30) calendar days after the receipt of the recommendation.</u> |
| Amended Article VIII | October 17, 2001 | Source: (OHA. Board minutes. Page 2. doi: BOT 01-45.) (OHA. Committee on Policy and Planning Action Item. doi: #PP-14. September 20, 2001.) 2 nd reading to amend <u>To adopt an amendment to the OHA Bylaws wherein the waiver of any matter by committee to the Board of Trustees shall require two-thirds vote of all members to which the Board is entitled.</u> Motion carried unanimously. |
| Bylaws Systematic Review | May 29, 2002 | Source: (OHA. Action Item. doi : PP 02-04) Amend policy and procedure manual to 1) integrate planning process such as setting program priorities with strategic planning, community input, program evaluation activities and performance and program budget and to 2) systematically review, update and publish the bylaws, OHA Policies and Procedures Manual and OHA Financial Manual of Guides. |
| Amended Article VIII | October 10, 2002 | Source: (OHA. Board minutes. Page 22-32. doi: BOT 02-29.) 1 st reading to amend Article VIII, "The Chairperson of the Board of Trustees is required to place a committee recommendation of a full Board of Trustees agenda no later than 30 days after the receipt of the recommendation. All standing committees are required to do the same with respect to action items referred to the committee by a Trustee." Motion carried. Committee on Policy and Planning recommend acceptance of the content of the OHA bylaws and policies and procedures manual that have systematically updated. Motion carried. |

| Board Action | Meeting Date | Note |
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| Amended Article VIII | October 30, 2002 | <p>Source: (OHA. Board minutes. Page 8-9. doi: BOT 02-31.)</p> <p>2nd reading to amend Article VIII “the Chairman of the Board of Trustees is required to place a committee recommendation on a full Board of Trustees agenda no later than 30 days after the receipt of such a recommendation to add the following: All standing committees are required to do the same with respect to the action items referred to the committee by a Trustee.” Motion carried.</p> <p>Source: (OHA. Action Item. doi: PP 02-21)</p> <p>Mentioned that this amendment is related to OHA Strategic Plan, Goal 7 – Policy, Strategy 7.2 “Assure an effective and efficient process of decision-making by the Board of Trustees and create the infrastructure to support their work.”</p> <p>Trustees’ action items are the major catalysts for organizational change. Mentioned that in practice, such “initiative are sporadic and at-the-will of the proponent(s) and not routine or set-in-schedule. Furthermore, the initiator(s) of an action may deem their initiative time-sensitive by belief or by information that only the initiator is privileged, with, unbeknownst to the rest of their peers on the Committee or the Board.”</p> <p>Such inefficiencies were also described in the 2001 Audit of the Office of Hawaiian Affairs, Office of the Auditor, State of Hawai’i, page 29.</p> <p>Recommended Action: All Chairpersons, Vice-Chairperson, and/or vested authorities of each standing committee and the Board of Trustees are required to place on their respective agendas any and all action items that are: submitted, referred, or recommended to their respective Committee or to the Board, no later than thirty (30) calendar days after receipt of such an action item.</p> |
| Amended Article VIII | December 10, 2002 | <p>Source: (OHA. Board minutes. Page 4-6. doi: BOT 02-33.)</p> <p>Motion to amend Article VIII “Committees of the Board”, to simplify the structure of the Standing Committees of the Board of Trustees, to ensure each Trustee has the opportunity for full participation in Standing Committee deliberations, and to clarify the procedures required when matters are referred to a Standing Committee. This would be accomplished by adopting the language proposed in Appendices “II”, “III” and “IV”, attached hereto, which would: A. Delete and replace Article VIII.A with a new language, B. amend Article VIII.F to conform to the amendment of Article VIII.A and C. amend Article VIII.B to conform to the amendment of Article VIII.A.</p> |

| Board Action | Meeting Date | Note |
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| | | Delete "by the Chairperson of the Board" in Appendix III (in lines with 1 and 2). |
| Amended Article VI | October 24, 2007 | <p>Source: (OHA. ARM/BAE Action Item. doi: ARM-BAE 07-22)</p> <p>ARM/BAE joint committees amended Article VI to add a new section on members rename the Article title from "DUTIES OF OFFICERS" to "<u>DUTIES OF OFFICERS AND MEMBERS</u>".</p> <p>Issue: To add a new paragraph on Member to Duties of Officers. An amendment to the OHA Bylaws Article VI was recommended by the Board of Trustees Attorney. An amendment to conform the OHA BOT Executive Policy Subseries 1030 (Trustee Duties, Responsibilities, and Conduct) Manual to the Bylaw amendment is proposed to ensure consistency of meaning and substance between Bylaw and Executive Policy.</p> <p>C. Members. The unanimous vote of all Members of the Board after full consultation with Board Counsel shall be required before any confidential communication, proprietary or otherwise privileged material received in an Executive Meeting convened under Hawai'i Revised Statutes §92-5 may be publicly released except for communications and materials deemed no longer confidential or redacted and released under Board of Trustees Operations Manual, Rule 21 (July, 2007).²⁹</p> <p>Motion carried or passed.</p> |
| Amended Article VI | November 1, 2007 | <p>Source: (OHA. Board minutes. Page 6-10. doi: BOT 07-23o.)</p> <p>1st reading. ARM/BAE met on October 24, 2007 recommend the following actions: <u>To simultaneously approve, adopt and ratify amendments to the OHA Board of Trustees' Bylaws as shown in Attachment "B" and to approve and adopt changes to the OHA Board of Trustees' Executive Policy Manual as shown in Attachment "C".</u></p> |
| Amended Article VI | November 8, 2007 | <p>Source: (OHA. Board minutes. Page 3-4. doi: BOT 07-25o.)</p> <p>Source: (OHA. ARM/BAE minutes. Page 2-8. doi: ARM-BAE 07-10o)</p> <p>Source: (OHA. Action Item. Entire document. doi: ARM-BAE 07-22)</p> <p>Relating to Fiduciary Duty of Confidentiality.</p> |

²⁹ Source: OHA. Board minutes. Page 6-10. doi: BOT 07-23o. Board of Trustees Operational Manual was last revised 11/15/2007.

| Board Action | Meeting Date | Note |
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| | | <p>2nd reading <u>To simultaneously approve, adopt and ratify amendments to the OHA Board of Trustees' Bylaws as shown in Attachment "B" and to approve and adopt changes to the OHA Board of Trustees' Executive Policy Manual as shown in Attachment "C". Motion carried.</u></p> <p>A. <u>Chairperson.</u> The Chairperson in addition to presiding at all regular and special Board meetings shall:</p> <ol style="list-style-type: none"> 1. Appoint the <u>Chairperson, Vice-Chairperson</u> and members of all Standing committees, subject to the approval of the Board; 2. Appoint members of Ad hoc Committees and designate the <u>Chairperson and Vice-Chairperson</u> of such Committees; 3. Acknowledge communications, petitions, requests, and proposals on behalf of the Board and refer same to the <u>Administrator Chief Executive Officer</u> or appropriate Committee of the Board for action or recommendation; 4. Serve as the primary liaison with the Governor, Congressional delegation, the Legislature, and other agencies and organizations to ensure that there are effective working relationships between all of the above and the Board; 5. Approve all press releases and public announcements which state the official position of the Board; 6. Approve agenda items for all meetings of the Board; 7. [Reserved]; 8. [Reserved]; and 9. Perform such other duties as may be required by law or such as may properly pertain to such office. <p>B. <u>Vice-Chair.</u> The <u>Vice-Chairperson</u> will assume the duties and responsibilities of the <u>Chairperson</u> in the absence of the <u>Chairperson</u> and will undertake such other duties as may be assigned by the <u>Chairperson</u>.</p> <p>C. <u>Members.</u> The <u>unanimous vote of all Members of the Board after full consultation with Board Counsel shall be required before any confidential communication, proprietary or otherwise privileged</u></p> |

| Board Action | Meeting Date | Note |
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| | | <p><u>material received in an Executive Meeting convened under Hawai'i Revised Statutes §92-5 may be publicly released except for communications and materials deemed no longer confidential or redacted and released under Board of Trustees Operations Manual, Rule 21 (July, 2007).</u></p> <p>D. Motion carried.</p> |
| Amendment Article II | December 17, 2009 | <p>Source: (OHA. Board minutes. Page 11-13. doi: BOT 09-40.)</p> <p>The Board approved making technical change from Administrator to Chief Executive Officer and that the title change does not change the responsibilities to carry out the Board directives, governance functions and/or the requirements of the laws.</p> <p>Source: (OHA. BOT Action Item. Page 3-4. doi: BOT 09-05.)</p> <p>Issue: Whether or not to approve and authorize the re-designation of position title from OHA "Administrator" to OHA "Chief Executive Officer" and to approve and authorize the Chief Executive Officer to make technical changes to Chapter 10, HRS, OHA's governing documents, to include Bylaws, Executive Policies and operational procedures, and to any other policies, procedures, documents and/or instruments as appropriate to reflect the re-designation of position title.</p> <p>To approve and authorize the re-designation of position title from OHA "Administrator" to OHA "Chief Executive Officer" and to approve and authorize the Chief Executive Officer to make technical changes to Chapter 10, HRS, OHA's governing documents, to include its Bylaws, Executive Policies and operational procedures, and to any other policies, procedures, documents and/or instruments as appropriate to reflect the re-designation of position title.</p> <p>Motion carried.</p> |
| Amendment Article XIV | March 7, 2013 | <p>Source: (OHA. Action Item. doi: ARM-BAE 13-01)</p> <p>Issue: Whether or not the Board of Trustees' Bylaws and the OHA Board of Trustees' Executive Policy Manual should be amended to allow each Trustee to have options in the manner in which their officers are staffed while at the same time ensuring that the staff selected considering adequate and qualified staff to help them fulfill their fiduciary duties. An amendment to Article XIV of the OHA Bylaw is necessary to provide a uniform approach to exercising these options in the configuration of their respective offices. An amendment to</p> |

| Board Action | Meeting Date | Note |
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| | | <p>conform the OHA BOT Executive Policy Manual Subseries 3100 Personnel (BOT Staffing) to the Bylaw amendment is proposed to ensure consistency of meaning and substance between Bylaw and Executive Policy Manual.</p> <p>Amend the language of Article XIV to read, "The Board of Trustees will employ a Chief of Staff who will be responsible for coordinating Board staff functions and activities and will act as a liaison between the Board staff and the Administrator Chief Executive Officer. Each Board member is entitled to one aide and one secretary to help carry out the duties of their office.</p> <p><u>Each Board member will be entitled up to two full time positions and will have the flexibility, in order to help carry out the duties of their office, in choosing their staff positions from the following job classifications: Trustee Aide and Trustee Secretary. Each Board member will have sole discretion in selecting from the job classifications listed above that best suit the needs of their office."</u></p> <p>1st reading, motion passed.</p> <p>Source: (OHA. Executive Session minutes. doi: BOT ES Minutes 030713)</p> <p>ARM/BAE joint committees unanimously approved the motion to simultaneously approve, adopt and ratify amendments to the OHA Board of Trustees' By-Laws as shown in Attachment "A" and to approve and adopt changes to the OHA Board of Trustees' Executive Policy Manual as shown in Attachment "B" relating to options for staffing of each Board of Trustee Office.</p> <p>"This action item is part of an effort to enhance the capacity of Trustees to deal with increasingly complex and diverse OHA projects such as investments, land development and management, and partnership agreements."</p> |
| Amendment Article XIV | March 21, 2013 | <p>Source: (OHA. Board minutes. Page 1-2. doi: BOT 13-06.)</p> <p>Agenda VI.A. Executive Session ARM/BAE 13-01 (actually this is found in ARM/BAE 13-02, March 7, 2013) Approval of an OHA Board of Trustees Bylaws amendment and corresponding and conforming changes to OHA's Board of Trustees' Executive Policy Manual relating to options for staffing of each Board of Trustee office.</p> <p>Source: (OHA. Board minutes. doi: BOT ES 032113.)</p> |

| Board Action | Meeting Date | Note |
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| | | <p>To approve, adopt and ratify amendments the following language. "The Board of Trustees will employ a Chief of Staff who will be responsible for coordinating Board staff functions and activities and will act as a liaison between the Board staff and the Administrator <u>Chief Executive Officer</u>. Each Board member is entitled to one aide and one secretary to help carry out the duties of their office.</p> <p><u>Each Board member will be entitled up to two full time positions and will have the flexibility, in order to help carry out the duties of their office, in choosing their staff positions from the following job classifications: Trustee Aide and Trustee Secretary. Each Board member will have sole discretion in selecting from the job classifications listed above that best suit the needs of their office."</u></p> <p>2nd reading, motion passed unanimously.</p> |
| Amended Article VIII | January 23, 2014 | <p>Source: (OHA. Board minutes. Page 15-24. doi: BOT 14-02.)</p> <p>1st reading to amend Article VIII to add a standing committee to be called the "Committee on Land and Property" (LP) as proposed. Motion carried unanimously.</p> <p>Concerns and clarification about the purview were discussed about land (purchasing and selling), water and natural resources and purview relationships with other standing committees. Specific revisions would be introduced and discussed during the second reading.</p> <p>"Committees of the Board</p> <p>A. There shall be a minimum of two <u>three</u> standing Committees of the Board. Each Committee will be led by a Chair and a Vice-Chair. The Board may increase the number of Standing Committees, but the membership of the Standing Committees shall be all nine (9) Trustees. The minimum two <u>three</u> Standing Committees shall consist of the Committee on Asset and Resource Management (ARM), and <u>Committee on Beneficiary Advocacy and Empowerment (BAE), and the Committee on Land and Property (LP).</u></p> <p>1. Committee on Asset and Resource Management. The committee shall:</p> <p><u>a. handle all fiscal and budgetary matters and ensure proper management, planning, evaluation, investment and use of OHA's trust funds;</u></p> <p><u>b. review and approve any and all acquisition expenditures that have a multi-year implication, and which impact the OHA</u></p> |

| Board Action | Meeting Date | Note |
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| | | <p>Investment or Spending policies, <u>including all decisions concerning the allocation and utilization of resources for the acquisition, development and/or disposition of real property</u>; which requires unbudgeted funding.</p> <p>c. establish policies which strengthen OHA's fiscal controls and financial management;</p> <p>d. oversee the use and condition of OHA's real estate and execute policy for the proper use of such lands including land to which OHA shall have an interest;</p> <p>e. develop policy on issues of land use, native rights, and natural and cultural resources, including the inventory, identification, analysis and treatment of land, native rights and natural and cultural resources;</p> <p>f. d. review and approve appropriate grants to programs that support OHA's overall mission;</p> <p>g. e. evaluate OHA programs to determine effectiveness in order to decide whether to continue, modify, or terminate funding of any of OHA's programs;</p> <p>h. f. develop training and orientation programs for Trustees and staff including materials relating to Trustees roles, fiduciary responsibilities, and ethics;</p> <p>i. g. in consultation with the Chair of the Committee on Beneficiary Advocacy and Empowerment carry out the recruitment and selection of the <u>Administrator</u> Chief Executive Officer; and</p> <p>j. h. provider oversight over Permanent Special Councils or Commissions as assigned by the Board."</p> <p>Committee on Land and Property. The committee shall:</p> <ol style="list-style-type: none"> develop policies and criteria for OHA's land acquisitions, dispositions, development, management, and the use of real estate in which OHA has an interest; develop policies relating to OHA's real estate asset allocation, desired returns, and balancing OHA's real estate portfolio including legacy lands, corporate real estate, programmatic lands and investment properties; oversee the use and condition of OHA's real estate and develop policy for the proper use and stewardship of such real estate; develop policies and programs for OHA's ownership, financing and development of real estate, including capital improvements, spending policy and forms of ownership for OHA's real estate; with respect to real estate not owned by OHA in its |

| Board Action | Meeting Date | Note |
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| | | <p>own name, but owned in one or more limited liability companies or other entities in which OHA, directly or indirectly, maintains an ownership interest, oversee OHA's performance of its rights and obligations with respect to real estate under the terms and conditions of the applicable limited liability company agreement or other operating agreement; and</p> <p>f. provide oversight over Permanent Special Councils or Commissions as assigned by the Board.</p> |
| Amended Article VIII | February 6, 2014 | <p>Source: (OHA. Board minutes. Page 3-4. doi: BOT 14-04.)</p> <p>2nd reading related to BOT 14-01 amendment of the Board's Bylaws and executive manual to create a Committee on Land and Property as a third standing committee of the Board. The motion to amend Article VIII of the OHA BOT Bylaws entitled, "Committee of the Board" to add a standing committee to be called "Committee on Land and Property" (LP) in accordance with the revised language changes to Exhibit "C" on January 23, 2014 BOT meeting.</p> <p>The first LP meeting commenced on February 26, 2014.</p> |
| Information | May 28, 2015 | <p>Source: (OHA. Board minutes. Page 7-8. doi: BOT 15-16.)</p> <p>In accordance with Article VI, Section A.2 and Article VII, Section H Chair Lindsey appointed an Ad Hoc Committee on Trustees' responsibilities to consider options available to the Board when an individual Trustee breaches fiduciary responsibilities or commits other acts that may be prohibited in the OHA Bylaws and Executive Policy Manual. Report is expected and report to the Board August 15, 2015.</p> |
| Amended Article VIII | July 23, 2015 | <p>Source: (OHA. Board minutes. Page 2. doi: BOT 15-24.)</p> <p>Announcement to amend Article VIII to reorganize Standing Committee Structure of BOT to create the Committee on Resource Management mentioned on the agenda. Refer to BOT 15-03. Chair Lindsey announced (Action Item) BOT #15-03 be deferred to July 30 to give Trustees time to review and consider the action item.</p> <p>Source: (OHA. Board Action Item. doi: BOT 15-03)</p> <p>Issue: As part of a larger effort to help ensure that the Board of Trustees can perform and function in the best possible manner with the least waste of time and effort, this action item is designed to enhance the ability of the Board of Trustees to oversee, as effectively and efficiently as possible, OHA's land assets to assure that those assets are well managed and that its</p> |

| Board Action | Meeting Date | Note |
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| | | financial situation remains sound. At present, there are three Standing Committees of the Board of Trustees. This action item if approved will organizationally combine and consolidate the purviews of the Committee on Asset and Resource Management and the Committee on Land and Property into what will be entitled the "Committee on Resource Management." |
| Amended Article VIII | July 30, 2015 | Source: (OHA. Board minutes. Page 4-5. doi: BOT 15-25.) 1 st reading to amend Article VIII to reorganize Standing Committee Structure of BOT to create the Committee on Resource Management. The action aims to help the Board to be more efficient and effective and save time and costs. Motion carried. |
| Amended Article VIII | August 27, 2015 | Source: (OHA. Board minutes. Page 4-6. doi: BOT 15-29.) 2 nd reading to amend Article VIII to reorganize Standing Committee Structure of BOT to create the Committee on Resource Management. The intent is to improve the effectiveness and efficiency of the Board in terms of timeliness and responsiveness around pressing issues and concerns related to Hawaiians and native Hawaiians; oversight around policies, planning and evaluation activities; fiscal and budgetary matter; investment and financial management; economic opportunities; land and property management; environmental and natural resources; grant review and approval and etc. <u>1. Committee on Resource Management. The committee shall:</u> <ul style="list-style-type: none"> a. <u>handle all fiscal and budgetary matters and ensure proper management, planning, evaluation, investment and use of OHA's trust funds;</u> b. <u>review and approve any and all acquisition expenditures that have a multi-year implication, and which impact the OHA Investment or Spending policies;</u> c. <u>establish policies which strengthen OHA's fiscal controls and financial management;</u> d. <u>oversee the use and condition of OHA's real estate and execute policy for the proper use of such lands including land to which OHA shall have an interest;</u> e. <u>develop policy on issues of land use, native rights, and natural and cultural resources, including the inventory, identification, analysis and treatment of land, native rights and natural and cultural resources;</u> |

| Board Action | Meeting Date | Note |
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| | | <p>f. <u>develop policies and criteria for OHA's land acquisitions, dispositions, development, management, and the use of real estate in which OHA has an interest;</u></p> <p>g. <u>develop policies relating to OHA's real estate asset allocation, desired returns, and balancing OHA's real estate portfolio including legacy lands, corporate real estate, programmatic lands and investment properties;</u></p> <p>h. <u>oversee the use and condition of OHA's real estate and develop policy for the proper use and stewardship of such real estate;</u></p> <p>i. <u>develop policies and programs for OHA's ownership, financing and development of real estate, including capital improvements, spending policy and forms of ownership for OHA's real estate;</u></p> <p>j. <u>with respect to real estate not owned by OHA in its own name, but owned in one or more limited liability companies or other entities in which OHA, directly or indirectly, maintains an ownership interest, oversee OHA's performance of its rights and obligations with respect to real estate under the terms and conditions of the applicable limited liability company agreement or other operating agreement;</u></p> <p>k. <u>review and approve appropriate grants to programs that support OHA's overall mission;</u></p> <p>l. <u>evaluate OHA programs to determine effectiveness in order to decide whether to continue, modify, or terminate funding of any of OHA's programs;</u></p> <p>m. <u>develop training and orientation programs for Trustees and staff including materials relating to Trustees roles, fiduciary responsibilities, and ethics;</u></p> <p>n. <u>in consultation with the Chair of the Committee on Beneficiary Advocacy and Empowerment carry out the recruitment and selection of the Administrator Chief Executive Officer; and</u></p> <p>o. <u>provide oversight over Permanent Special Councils or Commissions³⁰ as assigned by the Board.</u></p> <p>Motion carried.</p> |
| Information | September 10, 2015 | <p>Source: (OHA. Board minutes. Page 4-6. doi: BOT 15-32.)</p> <p>Approve Chair (John Waihe'e), Vice Chair (Lei Ahu Isa) and</p> |

³⁰ February 28, 1992, approve to allow for the creation of councils and commissions to specify their organizational position within the Board structure and to specify appointment procedures and operational procedures of such councils and commissions.

| Board Action | Meeting Date | Note |
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| | | member of Ad Hoc Committee on Bylaws review. On December 3, 2015, the Ad Hoc Committee review was extended to June 30, 2016. |
| Amendment Article XVII | February 25, 2016 | <p>Source: (OHA. Board Action Item. doi: BR 16-1)</p> <p>Issue: This Action Item contemplates the amendment of OHA Bylaws Article XVII, the creation of a code of conduct for OHA trustees and sanctions for trustees for the violation of the code of conduct, and the concurrent approval, adoption and ratification of the code of conduct as a stand-alone policy to comport with the recommendation of the Board of Trustees.</p> <p>The modification to conform the OHA BOT Executive Policy Manual, Subseries 1030 (Trustee Duties, Responsibilities, and Conduct), to Bylaw amendment is proposed to ensure consistency of meaning and substance between Bylaw and Executive Policy.</p> <p>Source: (OHA. Board minutes. Page 6-7. doi: BOT 16-04)</p> <p>1st reading to amend Article XVII.</p> <p>Chair Lindsey stated “this is second attempt to set standards for ensuring that we are all appropriately held accountable for our actions... We put our mission at risk when we act for the benefit of ourselves, rather than the good of our organization. Our lack of ability to policy ourselves is an irregularity in our operations that must be corrected. For the effective functioning of our Board, we must establish a procedure for imposing disciplinary sanctions when Board rules are violated and we need to approach this objective with urgency and unity...to meeting the high standards of ethics, transparency, and accountability that are expected from oversight responsibilities. I also must now ask for your vote to approve the First Reading of an amendment to our Bylaws that would help us better demonstrate that we are responsible stewards capable of exercising our authority in OHA’s best interest.”</p> <p>Motion to amend, approve, adopt and ratify OHA Board of Trustees’ Bylaws Article XVII, “Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct” and to approve, adopt and ratify a stand-alone policy which shall be titled “Code of Conduct and Sanctions for Violation of the Code of Conduct”.</p> <p>Motion carried. 7 yes, 0 no and 2 excused.</p> |
| Amendment Article XVII | March 15, 2016 | <p>Source: (OHA. Board minutes. Page 4-6. doi: BR 16-05)</p> <p>2nd reading to amend, approve, adopt and ratify OHA Board of</p> |

| Board Action | Meeting Date | Note |
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| | | <p>Trustees' Bylaws Article XVII, "Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct" and to approve, adopt and ratify a stand-alone policy which shall be titled "Code of Conduct and Sanctions for Violation of the Code of Conduct", as amended. The stand-alone policy includes a number of actions that the Board can take.</p> <p>Motion carried. (8 yes, 0 no, 0 abstention and 1 excused.)</p> |

APPENDIX B. TABLE SHOWING EFFECTS ON BYLAWS

The list of adopted/amended dates of BOT Bylaws, also known as “**History of Board Actions on OHA Bylaws**” and “**Table Showing Effects on Bylaws**” from the Board approved BOT Bylaws on November 8, 2007 have been replaced by a more fuller updated version of the history and explanation of the BOT actions with cited reference (digital object identifier) to KI’I to look up the expressed language and specific details of the action of the Board. Appendix B of this document has been deleted and replaced by Appendix A. History and Reference Related to the Bylaws of the Board.

APPENDIX C. ENUMERATION SYSTEM

The content and format of the Board of Trustees Bylaws is organized by a hierarchy from the most general concept that embodies all other concepts (i.e. title or chapter in this case the Board of Trustees Bylaws) to the most specific details. To maintain clarity especially with long and complicating documents, the following outline or enumeration system will be used through this document.

Starting from the title or section description and capitalized followed by a unique number or alpha (i.e. SECTION 1. MASTER PLAN AND SCOPE OF SERVICES or CHAPTER 10, Hawai'i Revised Statutes or BOARD OF TRUSTEES BYLAWS) .

- I. **Subsection** is indicated by a roman numeral followed by a period. (i.e. ARTICLE I., ARTICLE II., ARTICLE III., ARTICLE IV. and etc.). Subsections are the principal divisions of a section and deal with discrete elements of a section.
 - A. **Paragraph** is indicated by a capital alphabet and period with or without a brief description. (i.e. A. or A. Chair., B., C. and etc.). Paragraphs are used to break down a subsection that covers a number of contingencies, alternatives, requirements, or conditions.
 - 1. **Subparagraph** indicated by a whole number and period. (i.e. 1., 2.)
 - b. **Clause** indicated by lower case alphabet and period.
 - (1) **Sub-Clause** indicated by an open and close parentheses.

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OFFICE OF HAWAIIAN AFFAIRS

BOARD OF TRUSTEES

BYLAWS

Approved by the Board of Trustees, February 2020

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ARTICLE I. AUTHORIZATION

These Bylaws are adopted pursuant to ~~Chapter 10,~~ Hawai‘i Revised Statutes ("HRS") § 10-4(1),
~~HRS §10-4(5)~~,¹ as amended.

¹ **HRS §10-4(1) Office of Hawaiian Affairs; established; general powers.** “To adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law.” (In general, bylaws include laws and/or rules established by OHA or community to regulate itself as allowed or provided for by a higher authority such as the legislature or other governmental entity).

HRS §10-4(5) Office of Hawaiian Affairs; established; general powers. “To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers.”

ARTICLE II. DEFINITIONS

As used herein:

"Ad Hoc Committee" means a Committee created by the Board for a one-time purpose or to focus on examining a specific subject. Created with subject and subject to a deadline by which the work must be completed or otherwise expires else the Ad Hoc Committee is dissolved.

"Administrator" means the Administrator of the Office of Hawaiian Affairs.

"Advisory Committee" means a Committee established to assist Standing Committees in an advisory capacity for the resolution or study of issues arising in the specific areas of concern on matters within the purview of a Standing Committee.

"Agency" means any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the non-administrative functions of the courts of this State, as provided by HRS § 92F-3, as amended. For the purposes of these Bylaws, "agency" as described and used in Hawaii Revised Statutes, Chapter 92 means the Office of Hawaiian Affairs for purposes of these Bylaws.

Agency: means any department, authority, commission, council, board, committee, institution, legislative body, agency, or other establishment or office of the executive, legislative, or judicial branch of the State, and includes the office of Hawaiian affairs. See Hawaii Revised Statutes 304A-2170

"Board" means the Board of Trustees of the Office of Hawaiian Affairs.

"Board Packet" ~~"Board Packet"~~ means documents that are compiled by the Board and distributed to board ~~M~~members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F, Hawai'i Revised Statutes. ~~Section 92-7.5, Hawai'i Revised Statutes, shall not require disclosure of executive session minutes, license applications, or other records for which the Board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by Section 92-7.5, Hawai'i Revised Statutes as provided by HRS § 92-7.5, as amended.³ A Board Packet may exclude certain non public information per HRS § 92-7.5, as amended.~~

"Chair" ~~"Chair"~~ or **"Chairperson"** means the Chairperson of the Board of Trustees of the Office of Hawaiian Affairs as stated in HRS § 10-8.^{3,4}

"CEO" ~~"CEO"~~ means the Chief Executive Officer ~~function~~ of the Office of Hawaiian Affairs.

"Committee" means a body ~~of that includes~~ one or more Trustees ~~, elected or appointed,~~ as provided for under established under Article VIII of these Bylaws.

³ The added language is recommended to be consistent with the changes in the Sunshine Law that took effect July 1, 2018.

³ **HRS §10-8 Organization; quorum; meeting.** The Board, at its first meeting after an election, shall elect from its own membership a chairperson and a vice-chairperson who shall serve at the pleasure of the board. Their election shall be immediately certified by the board to the lieutenant governor. A majority of all members to which the board is entitled shall constitute a quorum to do business. The concurrence of a majority of all members to which the board is entitled shall be necessary to make any action of the board valid; provided that due notice shall be given to all members. Meetings shall be called and held at the call of the chair or by a quorum, as often as may be necessary for transaction of the board's business. The Board shall meet at least once annually on each of the islands of Hawai'i, Maui, Molokai, Lāna'i, Kaua'i, and O'ahu.

⁴ **HRS §10-8 Organization; quorum; meeting.** refers to Chair as Chairperson and subsequent sections refer to Chairperson and Vice Chairperson. For clarity and uniformity "Chair" will mean Chairperson and "Vice Chair" will mean Vice Chairperson throughout the Board of Trustees Bylaws.

"Committee Chairperson" means the Chairperson of a Standing Committee, Advisory Committee, Ad hoc Committee, Permitted Interaction Group, Council, or Commission of the Office of Hawaiian Affairs.

"Majority" means more than half of the members to which the Board is entitled, in good standing, who ~~that~~ are both present and voting.

"Meeting" means the convening of a Board or Committee for which a quorum is required to consider, an agenda ~~is posted and matters listed~~ and to decide or to deliberate toward a decision on matters over which the Board or Committee has supervision, control, jurisdiction, or advisory power.

"Chance Meeting" ~~"Chance meeting"~~ means a social or informal assemblage of two or more ~~Members~~ Trustees at which matters relating to official business are not discussed.

"Executive Meeting Session" means a ~~meeting session~~ closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a simple majority of the members to which the board or committee is entitled, as provided by HRS § 92-4, as amended.⁵ A ~~meeting session~~ closed to the public shall be limited to matters exempted by HRS § 92-5, as amended.⁶ The reason for holding such a ~~meeting session~~ shall be publicly

⁵ HRS §92-4 Executive meetings. A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting.

⁶ HRS §92-5 Exceptions.

(a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

~~announced and the vote of each member on the question of holding a meeting session closed to the public shall be recorded, and entered into the minutes of the meeting. means a meeting closed to the public upon an affirmative vote, taken at an open meeting, of two thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting~~

~~“Open Meeting” means a Meeting of the Office of Hawaiian Affairs that is open to the public and all persons are permitted to attend any meeting unless otherwise provided in the constitution or as closed, as provided by— HRS § 92-3, as amended.⁷ pursuant to HRS sections 92-4 and 92-5.~~

~~(1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;~~

~~(2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;~~

~~(3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;~~

~~(4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;~~

~~(5) To investigate proceedings regarding criminal misconduct;~~

~~(6) To consider sensitive matters related to public safety or security;~~

~~(7) To consider matters relating to the solicitation and acceptance of private donations; and~~

~~(8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.~~

~~(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.~~

~~⁷ HRS § 92-3 Open Meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4~~

"Limited Meeting Session" means a Meeting Session of the Office of Hawaiian Affairs that is held at a location that is dangerous to health or safety, or if the Board determines that it is necessary to conduct an on-site inspection of a location that is related to the Board's business at which public attendance is not practicable, and the Director of the Office of Information Practices concurs, as provided by HRS § 92-3.1, as amended.⁸

"Meeting by interactive conference technology" means a meeting that utilizes any form of ~~audio or audio and visual~~ interactive conference technology, as provided by HRS § 92-3.5(a).⁹ ~~including teleconference, videoconference, and voice over~~

and 92-5; provided that the removal of any person or persons who willfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule.

⁸ HRS § 92-3.1 Limited Meetings.

(a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:

- (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;
- (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and
- (3) Notice of the limited meeting is provided in accordance with section 92-7.

(c) At all limited meetings, the board shall:

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

⁹ HRS § 92-3.5 Meeting by interactive conference technology; notice; quorum.

(a) A board may hold a meeting by interactive conference technology; provided that the interactive conference technology used by the board allows interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations.

internet protocol, that facilitates interaction between the public and Members utilizes technology access, tools, application etc. that allows interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 The interactive conference technology used by the Bboard should allow for interaction among all members of the public attending the meeting, and the should meet the conditions for written public notice as required by HRS § 92-7, as amended.¹⁰ The notice should identify all

- (b) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.
- (c) A meeting held by interactive conference technology shall be terminated when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location. If copies of visual aids required by, or brought to the meeting by board members or members of the public, are not available to all meeting participants, at all locations where audio-only interactive conference technology is being used, within fifteen minutes after audio-only communication is used, those agenda items for which visual aids are not available for all participants at all meeting locations cannot be acted upon at the meeting.
- (a)-(d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member.

¹⁰ HRS § 92-7 Notice.

- (a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting, the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.
- (b) No less than six calendar days prior to the meeting, the board shall post the notice on an electronic calendar on a website maintained by the State or the appropriate county and in the board's office for public inspection. The notice shall also be posted at the site of the meeting whenever feasible. The board shall provide a copy of the notice to the office of the lieutenant governor or the appropriate county clerk's office at the time the notice is posted, and the office of the lieutenant governor or the appropriate clerk's office shall post paper or electronic copies of all meeting notices in a central location in a public building; provided that a failure to do so by the board, the office of the lieutenant governor, or the appropriate county clerk's office shall not require cancellation of the meeting. The copy of the notice to be provided to the office of the lieutenant governor or the appropriate county clerk's office may be provided via electronic

locations where participating board members of the public may join board members at any of the identified locations.

"Special Board Meeting" means a special meeting of the Board called by the Chairperson or a **simple** majority (5) of all members to which the Board is entitled.

"Office" or "OHA" means the Office of Hawaiian Affairs.

"Officer" means the Chairperson and Vice Chairperson of the Office of Hawaiian Affairs.

"Official Business" means an activity or activities authorized by the Chairperson for members of the Board, ~~and includes these enumerated performed or conducted pursuant to the duties of the Board, committee, or Office.~~ It These activities includes, when authorized, the following:

1. ~~a~~Attending a meeting relevant to the work of the Board, ~~board~~ Committee, or Office;

mail to an electronic mail address designated by the office of the lieutenant governor or the appropriate county clerk's office, as applicable.

- (c) If the written public notice is electronically posted on an electronic calendar less than six calendar days before the meeting, the meeting shall be canceled as a matter of law and shall not be held. The chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time-stamped record upon request.
- (d) No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.
- (e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b).

2. ~~pP~~participating in a seminar or conference sponsored in whole or in part by the Office;

3. ~~aA~~attending either as a representative of the Board, Office or as a participant, a meeting, seminar, or conference of a community, county, island, state, national, or international organization on a subject matter of direct concern to the Board, Committee, or Office;

4. ~~pP~~participating in any training program to maintain or improve the skills of Trustees or OHA employees in the performance of their duties and/or;

~~+5. and/or cC~~conducting studies and investigations on matters before the Board, Committee, or Office.

"Packet" means documents that are compiled by the Board or a Committee and distributed to Members before a meeting for use at that meeting, as provided by HRS § 92-7.5, as amended.¹¹ A Packet may exclude certain non-public information per HRS § 92-7.5, as amended.

~~" Special Councils or Commission" means a council or commission established by the Board to address a specific subject matter.~~

¹¹ HRS §92-7.5 Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, the board shall also make the board packet available for public inspection in the board's office. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet. For purposes of this section, "board packet" means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F; provided that this section shall not require disclosure of executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by this section.

"Permitted Interaction Group" or "PIG" means a group ~~organized in accordance~~
~~with HRS, CHAPTER 92, PUBLIC AGENCY MEETINGS AND RECORDS §92-~~
~~2.5~~where two members no more than a simple majority of a Board ~~may discuss~~
between themselves matter relating to official board business to enable them to perform
their duties faithfully, as long as no commitment to vote is made or sought, and the two
members do not constitute a quorum of their board, as provided by HRS -§ 92-2.5, as
amended.¹²

¹² HRS §92-2.5 Permitted interactions of members.

- a. If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:
 - (1) The board states in writing the reasons for its findings;
 - (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
 - (3) An emergency agenda and the findings are electronically posted pursuant to section 92-7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply; and
 - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.
- b. If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:
 - (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
 - (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
 - (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply;
 - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and
 - (5) The board limits its action to only that action that must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.
- c. For purposes of this part, an "unanticipated event" means:
 - (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
 - (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
 - (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action.

"**Quorum**" means the minimum number of Trustees or ~~M~~members of a ~~C~~committee who must be present for valid transaction of business.

~~"**Reading**"~~ means a presentation of an action item or motion before the Board by the
~~reading~~presentation of the billaction item, its title, or its number where the action is
affirmatively voted ~~upon~~. A formal procedure as outline by the Board's Operations
Manual indicates a reading as a stage in the enactment process. ~~Meeting at which a~~
~~particular interpretation of something (e.g., policy, Board By Laws, Board Operations~~
~~Manual) is affirmatively voted upon.~~

"**Simple Majority**" means ~~more than half of the~~five (5) of the nine (9) votes ~~entitled~~
~~entitled~~ to be cast by the Board. ~~It does not include abstentions or absent members.~~

"**Special Councils or Commission**" means a Council or Commission established by the
Board to address a specific subject matter.

"**Super Majority**" means six (6) of the nine (9) votes entitled to be cast by the Board.
~~means two more than half of the entitled votes cast. It does not include abstentions or~~
~~absent members~~a vote that must exceed the number of votes comprising a simple
majority.

~~"**Special Board Meeting**" means a special meeting of the Board called by the~~
~~Chairperson or a majority (5) of all members to which the Board is entitled.~~

"Standing Committees" means a constituted Committee of the Board as detailed in Article VIII of the Bylaws. ~~Committees of the Board.~~

"Vice Chair" or **"Vice-Chairperson"** means the Vice-Chairperson of the Board of Trustees of the Office of Hawaiian Affairs.

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ARTICLE III. DUTIES OF THE BOARD

The Board shall exercise power as provided by Article XII, §§ 5, 6 -of the Constitution of the State of Hawai'i¹³ and ~~Chapter 10, Hawai'i Revised Statutes~~HRS, §§ 10-5, 10-6 as amended.¹⁴

¹³ Haw. Const. art. XII, § 5, Office of Hawaiian Affairs; Establishment of Board of Trustees. "There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are Hawaiians, as provided by law. The board members shall be Hawaiians. There shall be not less than nine members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The board shall select a chairperson from its members."

Haw. Const. art. XII, § 6, Powers of Board of Trustees. "The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board."

¹⁴ HRS § 10-5. Board of Trustees: Powers and Duties. The board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3;
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
- (7) Provide grants to individuals, and public or private organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10-17;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authentic

The Board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3;
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;

- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
- (7) Provide grants to individuals, and public or private organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10-17;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authenticated.

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HRS § 10-6. General Duties of the Board.:

(a) The general duties of the board shall be:

(1) To develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:

(A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
(B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;

(C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians;

(D) Establishment of priorities and alternatives for the office's program and service implementation; and

(E) Organization of the office's administrative and program structure, including the use of facilities and personnel;

(2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;

(3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and native Hawaiians and act as a clearinghouse and referral agency;

(4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians;

(5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians;

(6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs;

(7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawaiian or Hawaiian programs or projects;

(8) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawaiians or Hawaiians; and

(9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians.

(a) (b) The board shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by this chapter, and which may be necessary to fully and completely effectuate the purposes of this cha
The general duties of the board shall be:

(1) To develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:

(A) Compilation of basic demographic data on native Hawaiians and Hawaiians;

(B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;

(C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians;

(D) Establishment of priorities and alternatives for the office's program and service implementation; and

(E) Organization of the office's administrative and program structure, including the use of facilities and personnel;

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- (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;
 - (3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and native Hawaiians and act as a clearinghouse and referral agency;
 - (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians;
 - (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians;
 - (6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs;
 - (7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawaiian or Hawaiian programs or projects;
 - (8) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawaiians or Hawaiians; and
 - (9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians.
- (b) The Board shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by this chapter, and which may be necessary to fully and completely effectuate the purposes of this chapter.

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ARTICLE IV. MEMBERS

- A. The membership of the Board shall be as provided by Article XII, ~~§ Section 5~~ of the Constitution of the State of Hawai'i¹⁵ and ~~Hawaii Revised Statutes HRS § 10-7, as amended, Chapters 10 and 13D, as amended.~~¹⁶
- B. Members of the Board shall be elected in accordance with ~~HRS Chapter 13D,~~¹⁷ as amended, and vacancies shall be filled in accordance with ~~HRS § 17-7 Chapter 10, Hawai'i Revised Statutes,~~ as amended.¹⁸

¹⁵ Supra, note 13.

¹⁶ HRS §10-7 Board of Trustees. The office of Hawaiian affairs shall be governed by a board to be officially known as the board of trustees, office of Hawaiian affairs. Members of the board shall be elected in accordance with chapter 13D, with reference to sections 11-15, 11-25, 12-5, 12-6, and vacancies shall be filled in accordance with section 17-7.

¹⁷ HRS §10-7 Board of Trustees. The office of Hawaiian affairs shall be governed by a board to be officially known as the board of trustees, office of Hawaiian affairs. Members of the board shall be elected in accordance with chapter 13D, with reference to sections 11-15, 11-25, 12-5, 12-6, and vacancies shall be filled in accordance with section 17-7. [L 1979, c 196, pt of §2]

¹⁸ HRS §17-7 Board of Trustees, Office of Hawaiian Affairs.

- (a) Whenever any vacancy in the membership of the board of trustees occurs, the term of which ends at the next succeeding general election, the vacancy shall be filled by a two-thirds vote of the remaining members of the board. If the board fails to fill the vacancy within sixty days after it occurs, the governor shall fill the vacancy within ninety days after the vacancy occurs. When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.
- (b) In the case of a vacancy, the term of which does not end at the next succeeding general election:
- (1) If it occurs not later than on the ninetieth day prior to the next succeeding primary election, the vacancy shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall file nomination papers not later than the date and time specified in section 12-6 and shall be nominated and elected in accordance with this title. Pending the election, the board or the governor shall make a temporary appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term and shall serve until the election of the person duly elected to fill such vacancy.
- (2) If it occurs after the ninetieth day prior to the next succeeding primary election, the board or the governor shall make an appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.
- (c) All appointments made by the board or the governor under this section shall be made without consideration of the appointee's party preference or nonpartisanship.

ARTICLE V. OFFICERS

A. Election and Certification. ~~The Office of Hawaiian Affairs shall be governed by a Board to be officially known as the Board of Trustees, Office of Hawaiian Affairs. As required in Chapter 10, Hawai'i Revised Statutes, as amended,~~ The Board, at its first meeting after an election, shall elect from its own membership a Chairperson and a Vice-Chairperson who shall serve at the pleasure of the Board as required HRS § 10-8, as amended.¹⁹ —Their election shall be immediately certified by the Board to the Lieutenant Governor. —The concurrence of a simple majority (5) of all Trustees shall be necessary to make any action of the Board effective, provided that due notice shall be given to all members.

A.B. Vote. ~~Voting for Chairperson and Vice-Chairperson of the Board shall be determined by a method determined by a simple majority (5) of all Trustees to which a Board is entitled.~~

~~[10-7] Board of trustees. The office of Hawaiian affairs shall be governed by a board to be officially known as the board of trustees, office of Hawaiian affairs. Members of the board shall be elected in accordance with chapter 13D, with reference to sections 11-15, 11-25, 12-5, 12-6, and vacancies shall be filled in accordance with section 17-7.~~

~~C. Vote. Vote for Chairperson and Vice Chairperson of the Board shall be by a method determined by a majority (5) of all Trustees to which the Board is entitled.~~

¹⁹ Supra, note 3.

D.C. **Vacancy.** ~~A v~~ Vacancy in the Office of Chairperson or Vice-Chairperson shall exist under the following circumstances:

1. When the Chairperson or Vice-Chairperson is removed by the simple majority (5) of the members to which the Board is entitled; or
2. ~~W~~when the Chairperson or Vice-Chairperson resigns from the position held; or²⁰
3. ~~I~~n the case of illness or death of the Chairperson or Vice-Chairperson.

D. **Succession.** In the event of a vacancy in the Office of the Chairperson, the Vice-Chairperson shall succeed as Chairperson until the following Board meeting at which time a Chairperson is elected by a simple majority (5) of the members of the Board. If the Vice-Chairperson is elected to become the Chairperson, the Board shall elect a Vice-Chairperson at the same meeting. The election(s) shall be immediately certified by the Board to the Lieutenant Governor as provided by HRS § 10-8, as amended.²¹

²⁰ June 28, 1985, amended "When the chairperson or Vice-Chairperson resigns from the position held and the resignation is accepted by the members of the Board."

²¹ Id.

ARTICLE VI. DUTIES OF OFFICERS AND MEMBERS

A. **Chairperson.** The Chairperson, in addition to presiding at all regular and special Board meetings, shall:

1. aAppoint the Chairperson, Vice-Chairperson and members of all Standing Committees, subject to the approval of the Board;
2. aAppoint members of Ad hoc Committees, Permitted Interaction Groups and designate the Chairperson and Vice-Chairperson of such Committees or Permitted Interaction Groups;
3. aAcknowledge communications, petitions, requests, and proposals on behalf of the Board and refer same to the Administrator, appropriate Committee of the Board and/or Permitted Interaction Group for action and/or recommendation;
4. sServe as the primary liaison with the Governor, Congressional delegation, the Legislature, and other agencies and organizations to ensure that there are effective working relationships between all of the above and the Board;
5. aApprove all press releases and public announcements which state the official position of the Board;
6. aApprove agenda items for all meetings of the Board; and
7. pPerform such other duties as may be required by law or such as may properly pertain to such office.

B. **Vice-Chairperson.** — The Vice-Chairperson shall assume the duties and responsibilities of the Chairperson in the absence of the Chairperson and shall undertake such other duties as may be assigned by the Chairperson.

~~C. **Members.** The unanimous vote of all members of the Board after full consultation with Board Counsel shall be required before any confidential communication, proprietary or otherwise privileged material received in an Executive Meeting convened under Hawai'i Revised Statutes §92-5 may be publicly released except for communications and materials deemed no longer confidential or redacted and released under Board of Trustees Operations Manual, Rule 21 (July, 2007).~~

ARTICLE VII. ADMINISTRATOR

The Board shall have the power to exercise control over the Office through its chief executive officer, the Administrator.

- A. **Appointment.** ~~As required by Hawai'i Revised Statutes § 10-10,²² as amended,~~
The Board, by a simple majority (5) of all members to which the Board is entitled, shall appoint an Administrator who shall serve a term to be determined by the Board as required by HRS § 10-10,²³ as amended.
- B. **DutiesStaff.** ~~As required by Hawai'i Revised Statutes § 10-12,²⁴ as amended,~~
The Administrator serves at the pleasure of the Board. The Administrator may employ and retain such employees as deemed necessary to carry out the function of the Office as required by HRS § 10-12,²⁵ as amended.
- C. **Removal.** ~~As required by Hawai'i Revised Statutes § 10-10, as amended, The~~
Board, by a two-thirds vote (6) of all Trustees to which it is entitled, may remove the Administrator for cause at any time -with a due process hearing, as required by HRS § 10-10, as amended.²⁶

²² **HRS §10-10 Administrator; appointment, tenure, removal.** ~~The board by a majority vote, shall appoint an administrator who shall serve without regard to the provisions of chapter 76 for a term to be determined by the board. The board, by a two-thirds vote of all members to which it is entitled, may remove the administrator for cause at any time.~~

²³ **HRS §10-10 Administrator; appointment, tenure, removal.** The board by a majority vote, shall appoint an administrator who shall serve without regard to the provisions of chapter 76 for a term to be determined by the board. The board, by a two-thirds vote of all members to which it is entitled, may remove the administrator for cause at any time.

²⁴ **HRS §10-12 Assistant; staff.** ~~The administrator may employ and retain such officers and employees as may be necessary to carry out the functions of the office. Such officers and employees may be hired without regard to chapter 76, and shall serve at the pleasure of the administrator. Officers and employees of the office of Hawaiian affairs shall be included in any benefit program generally applicable to officers and employees of the State. [L 1979, c 196, pt of §2; am L 1990, c 231, §1; am L 2000, c 253, §150]~~

²⁵ **HRS §10-12 Assistant; staff.** The administrator may employ and retain such officers and employees as may be necessary to carry out the functions of the office. Such officers and employees may be hired without regard to chapter 76, and shall serve at the pleasure of the administrator. Officers and employees of the office of Hawaiian affairs shall be included in any benefit program generally applicable to officers and employees of the State. [L 1979, c 196, pt of §2; am L 1990, c 231, §1; am L 2000, c 253, §150]

²⁶ Supra, note 23.

D. **Function.**—The Administrator shall function as the chief executive officer.

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ARTICLE VIII. COMMITTEES OF THE BOARD

- A. **Establishment of Standing Committees.** To facilitate consideration of policy matters that must be approved by the Board, ~~S~~standing ~~C~~committees are established. Authority to act on all matters is reserved ~~for to~~ the Board, and the functions of each ~~S~~standing ~~C~~committee shall be to consider and make recommendations to the Board.

There shall be a minimum of two (2) Standing Committees of the Board. Each Committee shall be led by a Chairperson and a Vice-Chairperson. ~~The Board~~ may increase the number of Standing Committees, but the membership of the Standing Committees shall be all nine (9) Trustees. ~~The minimum~~ two (2) Standing Committees, subject to increase, shall consist of the Committee on Resource Management ~~(RM)~~ and Committee on Beneficiary Advocacy and Empowerment (BAE).

1. **Committee on Resource Management.** The ~~C~~committee shall:
 - a. handle all fiscal and budgetary matters and ensure proper management, planning, evaluation, investment and use of OHA's trust funds;
 - b. review, ~~and~~ approve, or ~~not~~ disapprove ~~all~~ acquisition expenditures that have a multi-year implication;
 - c. review and approve all acquisition expenditures that impact the OHA Debt Management, Economic Development, Investment and Spending policies;

- d. develop policies ~~which that~~ strengthen OHA's fiscal controls and financial management;
- e. oversee the use and condition of OHA's real estate and execute policy for the proper use of such lands including land ~~to in~~ which OHA shall have an interest;
- f. develop policies on ~~issues of~~ land use, native rights, and natural and cultural resources, including: the inventory, identification, analysis and treatment of land, native rights, and natural and cultural resources;
- g. develop policies and criteria for OHA's land acquisitions, dispositions, development, management, and the use of real ~~estate property~~ in which OHA has an interest;
- h. develop policies relating to OHA's real estate asset allocation, desired returns, and balancing OHA's real estate portfolio including legacy lands, corporate real ~~estate property~~, programmatic lands and investment properties;
- i. oversee the use and condition of OHA's real estate and develop policy for the proper use and stewardship of such real ~~estate property~~;
- j. develop policies and programs for OHA's ownership, financing and development of real ~~estate property~~, including capital improvements, debt management, economic development,

investment and spending policies and forms of ownership for OHA's real ~~estate~~property.

- k. oversee ~~OHA's the~~ performance of ~~its~~ OHA's rights and obligations with respect to real estate not owned by OHA in its own name;
- l. review, ~~and approve~~, or ~~disnot~~ approve appropriate grants that support OHA's overall mission;
- m. evaluate OHA programs to determine their effectiveness to decide whether to continue, modify, or terminate a program's funding of any of OHA's programs
- n. in consultation with the Chairperson of the Committee on Beneficiary Advocacy and Empowerment and other resources (e.g., Corporation Counsel, Ethics Commission), develop training and orientation programs for Trustees and staff, including materials relating to Trustees roles, fiduciary responsibilities, and ethical obligationss, as provided by HRS Chapter 84, as amended²⁷;
- o. in consultation with the Chairperson of the Committee on Beneficiary Advocacy and Empowerment carry out the recruitment and selection of the OHA Administrator; and
— provide oversight ~~over of~~ Special Councils or Commissions as assigned by the Board.

²⁷ Consistent with Hawaii Revised Statutes, Chapter 84

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2. Committee on Beneficiary Advocacy and Empowerment. The committee shall:

- a. plan, coordinate, and implement programs and activities ~~which~~ that encourage Hawaiians to participate in governance;
- b. facilitate OHA's legislative agenda and advocacy efforts with ~~Federal, sState, and cCounty~~ officials, private and community organizations, and groups involved in Hawaiian issues;
- c. review and support the passage of legislation that benefits Hawaiians and supports Hawaiian issues, and work to defeat legislation which is which is not in the best ~~contrary to the~~ interest of OHA and its beneficiaries;
- ~~b.d.~~ review, approve, or disapprove program grants that support OHA's legislative and advocacy efforts
- e.e. develop programs ~~which that~~ focus on beneficiary health, human services, native rightseconomic stability, and education, and native rights;
- ~~d.f.~~ develop policies and programs relating to housing, land use ~~and~~ housing, the environment, and natural resources;
- e.g. evaluate all OHA programs to ensure that the programs have a positive impact on beneficiaries, and;

~~f. review and approve or not approve program grants that support OHA's legislative and advocacy efforts;~~

~~g. review and support the passage of legislation which benefits Hawaiians and supports Hawaiian issues, and work to defeat legislation which is not in the best interest of OHA and its beneficiaries; and~~

~~h. provide oversight over of Permanent Special Councils or Commissions as assigned by the Board.~~

~~i. h.~~

B. Each Standing Committee shall consider all matters referred to it in accordance with Section ~~LJ~~, Article VIII, of these Bylaws and make appropriate recommendations to the Board, in a timely manner, but no later than twelve (12) calendar days before a Board meeting, and shall make progress reports to the Board periodically or when requested by the Chairperson of the Board.

C. Standing Committees may meet in joint session when subject matter falls under the purview of more than one of the Standing Committees. In the case of an ~~"un-budgeted"~~unbudgeted funding decision, a joint meeting of the Beneficiary Advocacy and Empowerment Committee and the Resource Management Committee, led by the Chairperson of the Resource Management Committee, shall be mandatory.

D. Advisory Committees.

1. Standing Committees may create Advisory Committees as necessary to serve in an advisory capacity to the Standing Committees. Advisory

Committees shall assist in the resolution or study of issues arising in the specific areas of concern assigned to their respective Standing Committee. -To avoid duplication in the consideration of issues, the Standing Committees shall create only one Advisory Committee to study or undertake the resolution of a single subject or issue. -Each Standing Committee shall have no more than three (3) Advisory Committees at any one time. -All communications and advice from an Advisory Committee shall be made to the Chairperson of the Standing Committee, no later than twelve (12) calendar days before a Standing Committee Meeting. -All communication and advice to an Advisory Committee shall be made by the Chairperson of the Standing Committee or designee.

2. The Advisory Committee Chairperson and membership shall be appointed by the Standing Committee Chairperson, upon advice and counsel of Standing Committee members. -The term of the Advisory Committees shall expire with the completion of the assigned task or at the discretion of the Standing Committee Chairperson. -There shall be no less than three (3) members to each Advisory Committee, at least one (1) of whom shall be a member of the Board of Trustees of the Office of Hawaiian Affairs, who shall be appointed by the Standing Committee Chairperson. All Advisory Committee members, with the exception of members of the Board of Trustees, shall serve on a

voluntary basis without compensation, other than reasonable expenses, such as travel, parking, and meals.

E. Ad Hoc Committees.

1. From time to time, there shall be such Ad hoc Committees, as designated by the Chairperson, the members of which shall be appointed by the Chairperson, and subject to approval of the Board by a simple majority (5) vote. There shall be a minimum of three (3) members on each Ad hoc Committee, at least one of whom shall be a member of the Board and who shall be the Chairperson of the Ad hoc Committee.
2. The term of the Ad hoc Committees shall expire at the completion of the assigned task or at a specific time that is determined for each Ad hoc Committee at the time of the appointment of said Committee or at the discretion of the Chairperson.
 - a. All communications and advice from an Ad hoc Committee shall be made to the Chairperson of the Board no later than ten days before a Board meeting.
 - b. All communications and advice to an Ad hoc Committee shall be made by the Chairperson of the Board.
 - c. All Ad hoc Committee members, with the exception of members of the Board of Trustees, shall serve on a voluntary basis without compensation, other than reasonable expenses, such as travel, parking, and meals.

e.d. In the event that three (3) or more Board members are appointed to an Ad Hoc Committee, HRS Chapter 92, ~~Public Agency Meetings and Records, of the Hawai'i Revised Statutes,~~ as amended, will apply.

F. Permitted Interaction Groups ("PIG")

1. The Chairperson may place on the agenda for Board consideration a request for the formation of a PIG in accordance with HRS § 92-2.5, as amended.²⁸ The request shall set forth the title of the PIG, its scope, its suggested membership, and duration.
2. The purpose of the PIG shall be either to: (a) investigate a matter relating to the official business of the Board ("Investigative PIG") or (b) to present, discuss, or negotiate any position that the Board has adopted ("Negotiating PIG").
3. The membership, purpose, scope, and duration of the PIG shall be approved by the Board prior to the commencement of an investigation or presentation, discussion, or negotiation of any position adopted by the Board at a meeting of the Board.
4. Upon creation of an Investigative PIG, the members shall proceed to investigate the matter within their purview and prepare a report together with the PIG's findings and recommendations that shall be presented to the Board for consideration by the Trustees. No discussion,

²⁸ Supra, note 12.

deliberation, or decision making shall occur at the time that the report is presented.

5. A Negotiating PIG shall present the results of its negotiations to the Board for deliberation and decision making by the Trustees at the same time or subsequent meeting.

6. Deliberation and decision making on the matter investigated, if any, must occur only at a duly noticed meeting of the Board held subsequent to the meeting at which the finding and recommendations of the Investigative PIG were presented at the Board.

7. The report of any PIG may be accepted, rejected, recommitted subjected to the PIG for further consideration or dissolved at the deliberation and decision making meeting, upon majority vote of the Trustees.

F.G. Permanent Special Councils or Commissions.

1. There shall be such Permanent Special Councils or Commissions as the Board deems appropriate to create. ~~including Permanent Special Councils or Commission~~ The Board shall designate a Standing Committee that shall exercise oversight ~~over of~~ said Council or Commission. The Special Council shall determine the duration of said Council or Commission.
2. Council ~~M~~members or Commissioners shall be appointed by the Standing Committee to which oversight authority is granted pending

confirmation of the Board through a simple majority (5) vote of all members to which the Board is entitled.

3. Membership of each Council or Commission shall be composed of at least one (1) member of the Board of Trustees.

4. The subject matter and purview of said Councils or Commissions shall be clearly defined and limited to only those areas so recommended by the Standing Committee having oversight thereof and subject to the approval of the full Board by a simple majority (5) vote of all members to which the Board is entitled. Oversight by the appropriate Standing Committee shall include, but not be limited to, review of budgetary concerns for the operation of said Council or Commission, and affirmation of requests for actions by such Council or Commission for the continued operations of such Council or Commission.

- 4.5. Such Council Members of Commissioners with the exception of any Members of the Board of Trustees, shall serve terms as established by the Board and shall serve terms as established by the Board and shall serve on a voluntary basis without compensation, other than reasonable expenses, such as travel, parking, and meals.

~~G.~~

H. Quorum and Voting for Committees, Councils and Commissions .

1. For Advisory, Ad hoc, and Standing Committees, Councils and Commissions, a majority of the members of the Committee, Council or Commission shall constitute a quorum. Except for Ad Hoc

Committees, three (3) members shall constitute a quorum to do business.²⁹

2. The concurrence of a quorum shall be required for any Committee (other than a Standing Committee), Council or Commission to make any recommendation to the Board or Standing Committee where appropriate, for Board or Standing Committee approval.
 3. A simple majority (5) of the Members present at a Standing Committee meeting shall be required for it to make any recommendation to the Board, provided that a quorum is present at the time of the vote.
 4. When Standing Committees meet jointly, each Committee shall ~~d~~ vote separately as ~~as~~ individual Committees.
- I. Authority to act on all matters is reserved to the Board and the functions of the Advisory and Ad hoc Committees, Councils, ~~and~~ Commissions, and Permitted Interaction Groups shall be to investigate, consider, and make recommendations to the Standing Committee and the Board, respectively.
- J. **Staff Assignments.** —The Administrator shall assign to each Standing, Advisory, and Ad hoc Committee, and to each Council, Commission and Permitted Interaction Group, appropriate Administration staff to conduct research, analyze data, draft findings, and report and provide project management and support for and to advise the respective Committee, Council, Commission or Permitted Interaction Group and to maintain records of the proceedings of same.
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~~**Committee Recommendations.** The Chairperson of the Board of Trustees shall place a Committee recommendation on a full Board of Trustees agenda no later than thirty (30) calendar days after receipt of the recommendation.~~

~~All Standing Committees shall do the same with respect to any matter referred to the committee by a Mmember.~~

K. Committee Recommendations. The Chairperson of the Board of Trustees shall place a Committee recommendation on a Board of Trustees agenda no later than thirty (30) calendar days after receipt of the recommendation. All Standing Committees shall do the same with respect to any matter referred to the committee by a Member.

M.L. Waiver of any matter by committee to the Board of Trustees shall require two-thirds (2/3) vote of all ~~-M~~members to which the Board is entitled.

ARTICLE IX. MEETINGS

- A. ~~As required in Hawai'i Revised Statutes § 10-8, as amended,~~ Board meetings shall be convened at the call of the Chairperson or by a quorum, as often as may be necessary for transaction of the Board's business as required in HRS § 10-8, as amended.³⁰ ~~and The Board~~ shall meet at least once annually on each of the islands of Hawai'i, Maui, Moloka'i, Lāna'i, Kaua'i, and O'ahu. At each meeting, ~~The Board may, at each meeting,~~ fix the time and place for its next regular meeting.
- B. Board meetings may be convened by the Chairperson. ~~In addition,~~ upon written request of a majority of the members of the Board, the Administrator shall schedule a meeting of the Board to take place within twelve (12) calendar days after receipt of such request, provided that the notice requirement is met pursuant to of HRS §§ 92-7, 41, as amended Chapter 92, 92-7 and 92-41 Hawai'i Revised Statutes, as amended, is met.³¹
- C. Emergency meetings may be called by the Chairperson in accordance HRS § 92-8, with Chapter 92, Hawai'i Revised Statutes, Chapter 92-8 as amended.³²

³⁰ Supra, note 3.

³¹ Supra, note 10: HRS § 92-41 Giving public notices. Notwithstanding any law to the contrary, all governmental agencies scheduling a public hearing shall give public notice in the county affected by the proposed action, to inform the public of the time, place, and subject matter of the public hearing. This requirement shall prevail whether or not the governmental agency giving notice of public hearing is specifically required by law, and shall be in addition to other procedures required by law.

³² HRS § 92-8 Emergency meetings.

(a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:

(1) The board states in writing the reasons for its findings;

(2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;

D. Committee meetings shall be called by the Committee Chairperson.

~~E.~~ The Board shall give written public notice of any regular, special, emergency or rescheduled Board ~~or~~, Standing Committee, at least six (6) calendar days before the meeting and in the manner as required by ~~Hawai'i Revised Statutes, Chapter 92= 7 and 92-41HRS §§ 92-7, 41, as amended.~~³³ ~~as amended.~~

~~F.E.~~ All meetings of the Board or its Committees, ~~excluding PIGS,~~ shall be open to the public, except for executive session meetings ~~permitted pursuant to Chapter HRS~~

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- (3) ~~An emergency agenda and the findings are electronically posted pursuant to section 92-7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply; and~~
- (4) ~~Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.~~
- (b) ~~If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:~~
- (1) ~~The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;~~
- (2) ~~Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;~~
- (3) ~~The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply;~~
- (4) ~~Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and~~
- (5) ~~The board limits its action to only that action that must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.~~
- (c) ~~For purposes of this part, an "unanticipated event" means:~~
- (1) ~~An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;~~
- (2) ~~A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or~~
- (3) ~~A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action.~~

³³ Supra, note 31.

~~§ 92-4, Hawai'i Revised Statutes, as amended,~~ as required by HRS § 92-3, as amended.³⁴

G-F. Appearances before the Board, and/or Standing Committees, Councils or Commissions shall be in accordance with HRS Chapter 92, ~~Hawai'i Revised Statutes,~~ as amended.

1. Any person who wants to appear before the Board or any Standing Committee, Council, or Commission, except for executive meetings, to present testimony on a matter before the Board or any Standing Committee, Council, or Commission, shall make a request and submit a written copy of such testimony to the Administrator at least seventy-two (72) hours prior to the Board, or Standing Committee, Council or Commission meeting unless such requirement is waived by a simple majority of the Board or Standing Committee, Council, or ~~Commission~~ provided further that any Commission. Any verbal presentation permitted by the Board or Standing Committee, Council or Commission shall be limited to five (5) minutes.
2. The Chairperson or Standing Committee Council or Commission Chairperson shall have the authority to extend, limit, or terminate any testimony, which the Chairperson determines to be repetitious, ~~to be~~ made solely for purposes of delay, or ~~to be~~ without any substantive purpose.

³⁴ Supra, note 7.

3. Any person who wants to submit written testimony, data, views, or arguments on any agenda item shall submit thirteen (13) –copies of such testimony to the Administrator at least seventy-two (72) hours prior to the Board or Standing Committee, Council, or Commission meeting unless waived by a majority vote of all Board, Standing Committee, Council, or Commission members present.

4. The Board or Standing Committee, Council, or Commission by –a simple majority (5) vote may restrict the total time allowed per agenda item.

4.5. Unless a testifier's testimony is related to a specific agenda item, the testifier may only give testimony under "Community Concerns" if agendizedthe item is placed on the agenda.

H.G. **Minutes of Meetings.** –The Board and each Standing Committee, Council or Commission shall keep written or recorded minutes of all meetings as required under ~~Chapter 92, Hawai'i Revised Statutes~~HRS § 92-9, as amended.³⁵ –The

³⁵ HRS § 92-9 Minutes.

- (a) The board shall keep written or recorded minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. Written minutes shall include, but need not be limited to:
- (1) The date, time and place of the meeting;
 - (2) The members of the board recorded as either present or absent;
 - (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
 - (4) Any other information that any member of the board requests be included or reflected in the minutes.
- (b) The minutes shall be made available to the public by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. A written summary shall accompany any minutes that are posted in a digital or analog recording format and shall include:
- (1) The date, time, and place of the meeting;

Board shall adopt standardized forms for use in the recordation of minutes of meetings. –Minutes of all preceding meetings shall be available as provided by ~~Hawai'i Revised Statutes~~HRS § 92-9(b), as amended.³⁶ The minutes shall include, but need not be limited to:

1. ~~t~~The date, time, and place of the meeting;
2. ~~t~~The members of the Board, Standing Committee, Council, or Commission recorded as either present, absent, or excused;
3. ~~a~~A summary of all matters proposed, discussed, or decided; and a record, by individual member, of motions made, motions seconded, and votes taken to include dissenting votes and abstentions;
4. ~~s~~Staff assignments for investigation and the date staff reports are due;
5. ~~d~~Departure and arrival of members from meetings to show matters discussed before arrival, while there, or after departure; and
6. ~~a~~Any other information that any member of the Board, Standing Committee, Council, or Commission requests be included or reflected in the minutes.

~~7-6.~~

~~I. Board Packet.~~ Pursuant to, ~~Hawai'i Revised Statutes Section 92-7.5,~~ At the time the ~~Bboard P~~packet is distributed to its members, the Board or

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- (2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
 - (3) A record, by individual member, of motions and votes made by the board; and
 - (4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.
- (c) All or any part of a meeting of a board may be recorded by any person in attendance by any means of reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting.

³⁶ Id.

Committee shall also make the ~~B~~oard ~~P~~acket available for public inspection in the Board's office, as required by HRS § 92-7.5.³⁷ Additionally, the Board or Committee shall provide reasonably prompt access to the Board Packet to any person upon request. —The Board shall provide notice to persons requesting notification of meetings, pursuant to, ~~Hawai'i Revised Statutes~~HRS Section 92-7(e)€, as amended.³⁸ ~~that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request.~~ —The Board is not required to mail board packets. —As soon as practicable, the Board shall accommodate requests for electronic access to the Board Packet.

J. —

K-H.

L. — **Referrals.** The Board shall adopt procedures for research, due diligence and analysis, and referrals to staff via the Administrator.

M-I.

N-J. In the unlikely event, tThe Board may hold additional community meetings, informational meetings and public hearings—, as needed.

³⁷ Supra, note 11.

³⁸ Supra, note 10.

ARTICLE X. QUORUM AND VOTING

~~As required by Hawai'i Revised Statutes § 10-8, as amended, Aa simple~~ majority (5) of all the members to which the Board is entitled shall constitute a quorum to conduct business as required by HRS § 10-8, as amended.³⁹ The concurrence of a simple majority (5) of all the members to which the Board is entitled shall be necessary to make any action of the Board valid provided that due notice shall be given to all members.

An abstention shall not be considered a positive or negative vote. A procedural motion may be passed by a majority (5) vote of the members present. Upon the request of any member of the Board, the Board Secretary shall call the roll.

- A. Unless a member is excused from voting, such member's silence shall be recorded as an abstention.
- B. A ~~M~~member may use a ~~kanalua~~ response when called upon to vote and if repeated when polled again, that vote shall be recorded as an "abstention", or when polled to vote again, the second time may either vote "yes" or "no".

~~A Member may vote "Yes with Reservations" when called upon to vote.~~

The Board Secretary shall record each vote in the minutes and report to the Chairperson, who shall announce the result to the Board.

³⁹ Supra, note 3.

ARTICLE XI. LEGAL COUNSEL

- A. Legal Counsel ~~for the Board~~ shall be present at all regular meetings and certain committee meetings of the Board when requested by the Chairperson, or Chairperson of the relevant Committee.
- B. The Chairperson or designee, subject to prior approval of the Board, may request any written or verbal legal opinion from ~~the~~ OHA's Corporate Counsel, ~~the~~ Department of the Attorney General or from any other external legal counsel. Where a request is made in writing and a legal opinion is rendered by the Department of the Attorney General, or ~~from~~ any other external legal counsel, such opinion along with a copy of the written request for such opinion shall be immediately distributed to all Board members in written form.
- C. The Administrator of the Office Hawaiian Affairs or designee, subject to prior approval of the Board, may request any written or verbal legal opinion from the Department of the Attorney General, or ~~from~~ any other external legal counsel. Where a request is made in writing and a legal opinion is rendered by the Department of the Attorney General or ~~from~~ any other external legal counsel, such opinion along with a copy of the written request for such opinion shall be immediately distributed to all Board members in written form.

ARTICLE XII. PARLIAMENTARY AUTHORITY

The most recent edition of Robert's Rules of Order shall apply in situations not covered by these Bylaws, ~~or applicable statutes,~~ or opinions of Board Legal Counsel, Corporation Counsel, or external counsel.-

ARTICLE XIII. AMENDMENTS TO BYLAWS

~~These Bylaws shall be amended only by two thirds (2/3) vote of all members to which the Board is entitled. Any proposed amendment to the Bylaws shall be submitted in writing for consideration by the Board. Any Bylaw amendment shall require two readings by the Board. The Board shall not vote on any bylaw amendment until a minimum of two readings by the Board.~~

Proposed Bylaw amendments shall be submitted to the Board in writing. Before these Bylaws may be amended by a proposed Bylaw, it must be approved by a 2/3rd's vote of all the members to which the Board is entitled (6 affirmative votes) at least twice.

ARTICLE XIV. BOARD OF TRUSTEE STAFF

The Board Chair shall appoint a Chief of Staff who will be responsible for coordinating Board staff functions and activities and shall act as a liaison between the Board staff and the Administrator.

Each Board ~~M~~member shall be entitled ~~up to~~ a maximum of two full time positions. ~~-To carry out the duties of their office, each Trustee shall choose their staff positions from the following job classifications and shall have the flexibility, to help carry out the duties of their office, in choosing their staff positions from the following job classifications:~~ Trustee Aide and Trustee Secretary. -Each Board member shall have the sole discretion to select their staff positions ~~in selecting~~ from the job classifications listed above that best suit the needs of their office.

The Chairperson of the Board shall also be entitled to one additional staff position known as the BOT Private Secretary.

Changes to the type and number of staff positions shall require Board approval.

ARTICLE XV. CONFLICT OF INTEREST

Members of the Board shall comply with the provisions of this Bylaw and are subject to the standards of conduct and financial interest disclosure requirements of ~~Hawai'i Revised Statutes, HRS~~ Chapter 84, as amended,⁴⁰ to include attending ethics training within a reasonable time upon taking office.⁴¹ For the purpose of this ~~By Law~~Bylaw Article:

- A. An 'affiliation' exists if a Board ~~M~~member or a ~~M~~member of the Board member's family is an owner (an ownership interest valued at more than \$5,000 or 10% or more ownership of the business), officer, director, trustee,

⁴⁰ See HRS § 84-14 (2012).

⁴¹ HRS § 84-14 Conflicts of Interest.

- (a) No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which the employee has a substantial financial interest; or
- (2) A private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

A department head who is unable to disqualify the department head's self on any matter described in paragraphs (1) and (2) will not be in violation of this subsection if the department head has complied with the disclosure requirements of section 84-17.

A person whose position on a board, commission, or committee is mandated by statute, resolution, or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which the person has a substantial financial interest; provided that the substantial financial interest is related to the member's particular qualifications.

- (b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.
- (c) No legislator or employee shall assist any person or business or act in a representative capacity before any state or county agency for a contingent compensation in any transaction involving the State.
- (d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the legislator or employee has participated or will participate as a legislator or employee, nor shall the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which the legislator or employee is an employee or legislator.
- (e) No employee shall assist any person or business or act in a representative capacity before a state or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that state or county agency unless the employee has complied with the disclosure requirements of section 84-17.
- (f) Subsections (a), (b), and (d) shall not apply to a task force member or the designee or representative of that task force member whose service as a task force member would not otherwise cause that member, designee, or representative to be considered an employee, if the task force member or the designee or representative of that task force member complies with the disclosure requirements under section 84-17.

partner, employee (which shall also include legal counsel, consultant, contractor, advisor, or representative), or agent of such organization.

- B. All Members must disclose to the Chairperson and the Board their membership(s) or affiliation(s) with any organizations or person(s) who are eligible to receive grants from, may be in competition with for resources or eligible to procure from or contract with the Office of Hawaiian Affairs. ~~—~~ Members shall disqualify themselves any time an action is being considered by the Board which would affect the funding, procurement or contract~~sing~~ of that organization or person. Disclosure by declaration shall be made before Board action on the matter.

Board members have a clear obligation to conduct all affairs of OHA in the best interest of beneficiaries. ~~Members of the Board~~ are expected to place the welfare of OHA above personal interests or the interests of family members or others who may be personally involved in affairs affecting OHA. ~~All decisions of the Board are to be made solely on the basis of~~ based on a desire to promote the best interest of OHA and its beneficiaries and in alignment with a Board Member's fiduciary duties.

- C. ~~C.~~ Members violating this Article shall be subject to disciplinary action, as set forth in Article XVIII herein.

ARTICLE XVI. CONFIDENTIALITY

~~A.~~ All information, data, and documents that are not public records, received or reviewed by a Member acting in the capacity as Member, shall be deemed confidential and shall not be released or utilized by any Member for any purpose other than OHA or Committee business.

A.

B. The unanimous vote of all Members of the Board after full consultation with Board Counsel shall be required before any confidential communication, proprietary, or otherwise privileged material received in an Executive Meeting convened may be publicly released, except for communications and materials deemed no longer confidential or redacted by Board Counsel and released under Board of Trustees Operations Manual, Rule 21 (July 2007).

ARTICLE XVII. ORDER AND DECORUM

- A. While the Chairperson is putting any question to, or addressing the Board, or when a person is speaking, all persons present are expected to conduct themselves with decorum and provide respect to the speaker. –While a person is speaking, no one shall pass between such speaker and the Chairperson.
- B. When a Member –or other person properly before the Board wishes to speak, the speaker shall address the Chairperson, be recognized before proceeding, and shall confine remarks to the question under discussion.
- C. If a Member or other person, in speaking or otherwise, transgresses these rules, any Member may raise a question of order. –The Chairperson shall then decide the question of order without debate, subject to an appeal to the Board. –In addition, the Chairperson may call for the sense of the Board on any question of order.
- D. Whenever any person is called to order while speaking, such person shall be in possession of the floor after the question of order is decided and may proceed with the matter under discussion within the ruling made on the question of order.
- E. All persons attending Board meetings, including staff, witnesses, members of the media, and the general public, are expected to respect the dignity of the Board.
- F. Members who repeatedly violate any provision of any of the above sections of this Article shall be subject to disciplinary action, as set forth in Article XVIII herein.

- G. **Defamation and Slander.** ~~The~~ OHA is concerned that no defamatory material or statements are presented at ~~the OHA Board of Trustees~~Board and Committee meetings. -In the ~~unlikely~~ event that this situation should develop, it will be necessary to call this to the attention of the persons making those statements, and request that they desist in their action. -Such information may be stricken from the record.

ARTICLE XVIII. TRUSTEE CODE OF CONDUCT AND SANCTIONS FOR VIOLATION OF THE CODE OF CONDUCT

The professional conduct of a member of the OHA Board of Trustees shall be guided by the Code of Conduct and Sanctions for Violations of the Code of Conduct, hereinafter referred to as the "Code of Conduct," ~~hereinafter referred to as "Code of Conduct,"~~ which shall be created as a stand-alone executive policy of the Board of Trustees and made part of the OHA Board of Trustees' Executive Policy Manual as a stand-alone policy.

The Sanctions for Violations of the Code of Conduct shall contain procedures that are fitting to the position of an elected Trustee and while ensuring that due process is afforded to a Trustee whose matter is being considered by the Board of Trustees.

The purpose of this Article is to establish guidelines relating to the Trustee Code of Conduct, including standards for the ways in which Members interact with one another staff, and beneficiaries in the pursuit of setting OHA policy and managing its trust.

~~The Code of Conduct shall contain a discussion of fiduciary responsibilities of an OHA Trustee and laws applicable to a Trustee's conduct. The Code of Conduct consists of three parts: (1) Fiduciary Responsibilities; (2) Board of Trustees' Executive Policies; and (3) Applicable Laws. The Sanctions for Violations of the Code of Conduct shall contain procedures which that are fitting to the position of an elected Trustee, and while ensuring that due process is afforded to a Trustee whose matter is being considered by the Board of Trustees.~~

~~The Code of Conduct and Sanctions for Violations of the Code of Conduct shall be reviewed at least annually to be kept current with changes to the Board of Trustees' Executive Policies and laws applicable to Trustee conduct.~~

~~ARTICLE XXII~~ARTICLE XIX. HAWAIIAN LANGUAGE USAGE

All Members and staff are expected to use Hawaiian language and the proper spelling and grammar of Hawaiian words ~~and Hawaiian language and grammar~~ when preparing official correspondence and documents for OHA, as required by Article XV, § 4 of the Constitution of the State of Hawai‘i, as amended.⁴²;

⁴² Haw. Const. art. XII, § 4 English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.(1978).

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OFFICE OF HAWAIIAN AFFAIRS

BOARD OF TRUSTEES

BYLAWS

Approved by the Board of Trustees, February 2020

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ARTICLE I. AUTHORIZATION

These Bylaws are adopted pursuant to Hawai‘i Revised Statutes ("HRS") § 10-4(1),¹ as amended.

¹ **HRS §10-4(1) Office of Hawaiian Affairs; established; general powers.** “To adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law.” (In general, bylaws include laws and/or rules established by OHA or community to regulate itself as allowed or provided for by a higher authority such as the legislature or other governmental entity).

HRS §10-4(5) Office of Hawaiian Affairs; established; general powers. “To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers.”

ARTICLE II. DEFINITIONS

As used herein:

"Ad Hoc Committee" means a Committee created by the Board for a one-time purpose or to focus on examining a specific subject and subject to a deadline by which the work must be completed or else the Ad Hoc Committee is dissolved.

"Administrator" means the Administrator of the Office of Hawaiian Affairs.

"Advisory Committee" means a Committee established to assist Standing Committees in an advisory capacity on matters within the purview of a Standing Committee.

"Agency" means the Office of Hawaiian Affairs.

"Board" means the Board of Trustees of the Office of Hawaiian Affairs.

"Chair" or "Chairperson" means the Chairperson of the Board of Trustees of the Office of Hawaiian Affairs as stated in HRS § 10-8.²

"CEO" means the Chief Executive Officer of the Office of Hawaiian Affairs.

"Committee" means a body that includes one or more Trustees established under Article VIII of these Bylaws.

"Committee Chairperson" means the Chairperson of a Standing Committee, Advisory Committee, Ad hoc Committee, Permitted Interaction Group, Council, or Commission of the Office of Hawaiian Affairs.

² **HRS §10-8 Organization; quorum; meeting.** The Board, at its first meeting after an election, shall elect from its own membership a chairperson and a vice-chairperson who shall serve at the pleasure of the board. Their election shall be immediately certified by the board to the lieutenant governor. A majority of all members to which the board is entitled shall constitute a quorum to do business. The concurrence of a majority of all members to which the board is entitled shall be necessary to make any action of the board valid; provided that due notice shall be given to all members. Meetings shall be called and held at the call of the chair or by a quorum, as often as may be necessary for transaction of the board's business. The Board shall meet at least once annually on each of the islands of Hawai'i, Maui, Molokai, Lāna'i, Kaua'i, and O'ahu.

"Majority" means more than half of the members to which the Board is entitled, in good standing, who are both present and voting.

"Meeting" means the convening of a Board or Committee for which a quorum is required to consider, an agenda and to decide or to deliberate toward a decision on matters over which the Board or Committee has supervision, control, jurisdiction, or advisory power.

"Chance Meeting" means a social or informal assemblage of two or more Trustees at which matters relating to official business are not discussed.

"Executive Session" means a session closed to the public upon an affirmative vote taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a simple majority of the members to which the board or committee is entitled, as provided by HRS § 92-4, as amended.³ A session closed to the public shall be limited to matters exempted by HRS § 92-5, as amended.⁴ The

³ **HRS §92-4 Executive meetings.** A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting.

⁴ **HRS §92-5 Exceptions.**

(a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
- (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
- (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
- (5) To investigate proceedings regarding criminal misconduct;
- (6) To consider sensitive matters related to public safety or security;
- (7) To consider matters relating to the solicitation and acceptance of private donations; and

reason for holding such a session shall be publicly announced and the vote of each member on the question of holding a session closed to the public shall be recorded, and entered into the minutes of the meeting.

"Open Meeting" means a Meeting of the Office of Hawaiian Affairs that is open to the public and all persons are permitted to attend any meeting unless otherwise provided in the constitution or as closed, as provided by HRS § 92-3, as amended.⁵

"Limited Session" means a Session of the Office of Hawaiian Affairs that is held at a location that is dangerous to health or safety, or if the Board determines that it is necessary to conduct an on-site inspection of a location that is related to the Board's business at which public attendance is not practicable, and the Director of the Office of Information Practices concurs, as provided by HRS § 92-3.1, as amended.⁶

(8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

⁵ **HRS § 92-3 Open Meetings.** Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who willfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule.

⁶ **HRS § 92-3.1 Limited Meetings.**

(a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:

- (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;
- (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and

"Meeting by interactive conference technology" means a meeting that utilizes any form of interactive conference technology, as provided by HRS § 92-3.5(a).⁷ The interactive conference technology used by the Board should allow for interaction among all members of the public attending the meeting, and the should meet the conditions for written public notice as required by HRS § 92-7, as amended.⁸ The

(3) Notice of the limited meeting is provided in accordance with section 92-7.

...

(c) At all limited meetings, the board shall:

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

⁷ HRS § 92-3.5 Meeting by interactive conference technology; notice; quorum.

- (a) A board may hold a meeting by interactive conference technology; provided that the interactive conference technology used by the board allows interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations.
- (b) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.
- (c) A meeting held by interactive conference technology shall be terminated when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location. If copies of visual aids required by, or brought to the meeting by board members or members of the public, are not available to all meeting participants, at all locations where audio-only interactive conference technology is being used, within fifteen minutes after audio-only communication is used, those agenda items for which visual aids are not available for all participants at all meeting locations cannot be acted upon at the meeting.
- (d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member.

⁸ HRS § 92-7 Notice.

- (a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting, the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.

notice should identify all locations where participating board members of the public may join board members at any of the identified locations.

"Special Board Meeting" means a special meeting of the Board called by the Chairperson or a simple majority (5) of all members to which the Board is entitled.

"Office" or "OHA" means the Office of Hawaiian Affairs.

"Officer" means the Chairperson and Vice Chairperson of the Office of Hawaiian Affairs.

"Official Business" means an activity or activities authorized by the Chairperson for members of the Board. These activities include, when authorized, the following:

1. attending a meeting relevant to the work of the Board, Committee, or Office;

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- (b) No less than six calendar days prior to the meeting, the board shall post the notice on an electronic calendar on a website maintained by the State or the appropriate county and in the board's office for public inspection. The notice shall also be posted at the site of the meeting whenever feasible. The board shall provide a copy of the notice to the office of the lieutenant governor or the appropriate county clerk's office at the time the notice is posted, and the office of the lieutenant governor or the appropriate clerk's office shall post paper or electronic copies of all meeting notices in a central location in a public building; provided that a failure to do so by the board, the office of the lieutenant governor, or the appropriate county clerk's office shall not require cancellation of the meeting. The copy of the notice to be provided to the office of the lieutenant governor or the appropriate county clerk's office may be provided via electronic mail to an electronic mail address designated by the office of the lieutenant governor or the appropriate county clerk's office, as applicable.
 - (c) If the written public notice is electronically posted on an electronic calendar less than six calendar days before the meeting, the meeting shall be canceled as a matter of law and shall not be held. The chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time-stamped record upon request.
 - (d) No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.
 - (e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b).

2. participating in a seminar or conference sponsored in whole or in part by the Office;
3. attending either as a representative of the Board, Office or as a participant, a meeting, seminar, or conference of a community, county, island, state, national, or international organization on a subject matter of direct concern to the Board, Committee, or Office;
4. participating in any training program to maintain or improve the skills of Trustees or OHA employees in the performance of their duties and/or;
5. conducting studies and investigations on matters before the Board, Committee, or Office.

"Packet" means documents that are compiled by the Board or a Committee and distributed to Members before a meeting for use at that meeting, as provided by HRS § 92-7.5, as amended.⁹ A Packet may exclude certain non-public information per HRS § 92-7.5, as amended.

⁹ **HRS §92-7.5 Board packet; filing; public inspection; notice.** At the time the board packet is distributed to the board members, the board shall also make the board packet available for public inspection in the board's office. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet. For purposes of this section, "board packet" means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F; provided that this section shall not require disclosure of executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by this section.

"Permitted Interaction Group" or "PIG" means a group where no more than a simple majority of a Board may discuss between themselves matter relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought, and members do not constitute a quorum of their board, as provided by HRS § 92-2.5, as amended.¹⁰

"Quorum" means the minimum number of Trustees or Members of a Committee who must be present for valid transaction of business.

¹⁰ HRS §92-2.5 Permitted interactions of members.

- a. If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:
 - (1) The board states in writing the reasons for its findings;
 - (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
 - (3) An emergency agenda and the findings are electronically posted pursuant to section 92-7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply; and
 - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.
- b. If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:
 - (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
 - (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
 - (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply;
 - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and
 - (5) The board limits its action to only that action that must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.
- c. For purposes of this part, an "unanticipated event" means:
 - (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
 - (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
 - (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action.

"Reading" means a presentation of an action item or motion before the Board by the presentation of the action item, its title, or its number where the action is affirmatively voted on. A formal procedure as outline by the Board's Operations Manual indicates a reading as a stage in the enactment process.

"Simple Majority" means five (5) of the nine (9) votes entitled to be cast by the Board.

"Special Councils or Commission" means a Council or Commission established by the Board to address a specific subject matter.

"Super Majority" means six (6) of the nine (9) votes entitled to be cast by the Board.

"Standing Committee" means a constituted Committee of the Board as detailed in Article VIII of the Bylaws.

"Vice Chair" or "Vice-Chairperson" means the Vice-Chairperson of the Board of Trustees of the Office of Hawaiian Affairs.

ARTICLE III. DUTIES OF THE BOARD

The Board shall exercise power as provided by Article XII, §§ 5, 6 of the Constitution of the State of Hawai'i¹¹ and HRS §§ 10-5, 10-6 as amended.¹²

¹¹ **Haw. Const. art. XII, § 5, Office of Hawaiian Affairs; Establishment of Board of Trustees.** "There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are Hawaiians, as provided by law. The board members shall be Hawaiians. There shall be not less than nine members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The board shall select a chairperson from its members."

Haw. Const. art. XII, § 6, Powers of Board of Trustees. "The board of trustees of the Office of Hawaiian Affairs shall exercise power as provided by law: to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 4 of this article for native Hawaiians; to formulate policy relating to affairs of native Hawaiians and Hawaiians; and to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board."

¹² **HRS § 10-5. Board of Trustees; Powers and Duties.** The Board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3;
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
- (7) Provide grants to individuals, and public or private organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10-17;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authenticated.

HRS § 10-6. General Duties of the Board.

- (a) The general duties of the board shall be:
 - (1) To develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;

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- (C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians;
 - (D) Establishment of priorities and alternatives for the office's program and service implementation; and
 - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel;
- (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;
 - (3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and native Hawaiians and act as a clearinghouse and referral agency;
 - (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians;
 - (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians;
 - (6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs;
 - (7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawaiian or Hawaiian programs or projects;
 - (8) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawaiians or Hawaiians; and
 - (9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians.
- (b) The Board shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by this chapter, and which may be necessary to fully and completely effectuate the purposes of this chapter.

ARTICLE IV. MEMBERS

- A. The membership of the Board shall be as provided by Article XII, § 5 of the Constitution of the State of Hawai‘i¹³ and HRS § 10-7, as amended.¹⁴
- B. Members of the Board shall be elected in accordance with HRS Chapter 13D, as amended, and vacancies shall be filled in accordance with HRS § 17-7, as amended.¹⁵

¹³ *Supra*, note 13.

¹⁴ **HRS §10-7 Board of Trustees.** The office of Hawaiian affairs shall be governed by a board to be officially known as the board of trustees, office of Hawaiian affairs. Members of the board shall be elected in accordance with chapter 13D, with reference to sections 11-15, 11-25, 12-5, 12-6, and vacancies shall be filled in accordance with section 17-7.

¹⁵ HRS §17-7 Board of Trustees, Office of Hawaiian Affairs.

- (a) Whenever any vacancy in the membership of the board of trustees occurs, the term of which ends at the next succeeding general election, the vacancy shall be filled by a two-thirds vote of the remaining members of the board. If the board fails to fill the vacancy within sixty days after it occurs, the governor shall fill the vacancy within ninety days after the vacancy occurs. When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.
- (b) In the case of a vacancy, the term of which does not end at the next succeeding general election:
 - (1) If it occurs not later than on the ninetieth day prior to the next succeeding primary election, the vacancy shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall file nomination papers not later than the date and time specified in section 12-6 and shall be nominated and elected in accordance with this title. Pending the election, the board or the governor shall make a temporary appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term and shall serve until the election of the person duly elected to fill such vacancy.
 - (2) If it occurs after the ninetieth day prior to the next succeeding primary election, the board or the governor shall make an appointment to fill the vacancy in the manner prescribed under subsection (a). When island residency is required under section 13D-1, the person so appointed shall reside on the island from which the vacancy occurred, and shall serve for the duration of the unexpired term.
- (c) All appointments made by the board or the governor under this section shall be made without consideration of the appointee's party preference or nonpartisanship.

ARTICLE V. OFFICERS

- A. **Election and Certification.** The Office of Hawaiian Affairs shall be governed by the Board of Trustees, Office of Hawaiian Affairs. The Board, at its first meeting after an election, shall elect from its own membership a Chairperson and a Vice-Chairperson who shall serve at the pleasure of the Board as required HRS § 10-8, as amended.¹⁶ Their election shall be immediately certified by the Board to the Lieutenant Governor. The concurrence of a simple majority (5) of all Trustees shall be necessary to make any action of the Board effective, provided that due notice shall be given to all members.
- B. **Vote.** Voting for Chairperson and Vice-Chairperson of the Board shall be determined by a method determined by a simple majority (5) of all Trustees to which a Board is entitled.
- C. **Vacancy.** A vacancy in the Office of Chairperson or Vice-Chairperson shall exist under the following circumstances:
1. When the Chairperson or Vice-Chairperson is removed by the simple majority (5) of the members to which the Board is entitled; or
 2. When the Chairperson or Vice-Chairperson resigns from the position held; or
 3. In the case of illness or death of the Chairperson or Vice-Chairperson.
- D. **Succession.** In the event of a vacancy in the Office of the Chairperson, the Vice-Chairperson shall succeed as Chairperson until the following Board meeting at which time a Chairperson is elected by a simple majority (5) of the

¹⁶ *Supra*, note 3.

members of the Board. If the Vice-Chairperson is elected to become the Chairperson, the Board shall elect a Vice-Chairperson at the same meeting. The election(s) shall be immediately certified by the Board to the Lieutenant Governor as provided by HRS § 10-8, as amended.¹⁷

¹⁷ *Id.*

ARTICLE VI. DUTIES OF OFFICERS AND MEMBERS

A. **Chairperson.** The Chairperson, in addition to presiding at all regular and special Board meetings, shall:

1. appoint the Chairperson, Vice-Chairperson and members of all Standing Committees, subject to the approval of the Board;
2. appoint members of Ad hoc Committees, Permitted Interaction Groups and designate the Chairperson and Vice-Chairperson of such Committees or Permitted Interaction Groups;
3. acknowledge communications, petitions, requests, and proposals on behalf of the Board and refer same to the Administrator, appropriate Committee of the Board and/or Permitted Interaction Group for action and/or recommendation;
4. serve as the primary liaison with the Governor, Congressional delegation, the Legislature, and other agencies and organizations to ensure that there are effective working relationships between all of the above and the Board;
5. approve all press releases and public announcements which state the official position of the Board;
6. approve agenda items for all meetings of the Board; and
7. perform such other duties as may be required by law or such as may properly pertain to such office.

B. Vice-Chairperson. The Vice-Chairperson shall assume the duties and responsibilities of the Chairperson in the absence of the Chairperson and shall undertake such other duties as may be assigned by the Chairperson.

ARTICLE VII. ADMINISTRATOR

The Board shall have the power to exercise control over the Office through its chief executive officer, the Administrator.

- A. **Appointment.** The Board, by a simple majority (5) of all members to which the Board is entitled, shall appoint an Administrator who shall serve a term to be determined by the Board as required by HRS § 10-10,¹⁸ as amended,
- B. **Staff.** The Administrator may employ and retain such employees as deemed necessary to carry out the function of the Office as required by HRS § 10-12,¹⁹ as amended.
- C. **Removal.** The Board, by a two-thirds vote (6) of all Trustees to which it is entitled, may remove the Administrator for cause at any time with a due process hearing, as required by HRS § 10-10, as amended.²⁰
- D. **Function.** The Administrator shall function as the chief executive officer.

¹⁸ **HRS §10-10 Administrator; appointment, tenure, removal.** The board by a majority vote, shall appoint an administrator who shall serve without regard to the provisions of chapter 76 for a term to be determined by the board. The board, by a two-thirds vote of all members to which it is entitled, may remove the administrator for cause at any time.

¹⁹ **HRS §10-12 Assistant; staff.** The administrator may employ and retain such officers and employees as may be necessary to carry out the functions of the office. Such officers and employees may be hired without regard to chapter 76, and shall serve at the pleasure of the administrator. Officers and employees of the office of Hawaiian affairs shall be included in any benefit program generally applicable to officers and employees of the State.

²⁰ *Supra*, note 23.

ARTICLE VIII. COMMITTEES OF THE BOARD

- A. **Establishment of Standing Committees.** To facilitate consideration of policy matters that must be approved by the Board, Standing Committees are established. Authority to act on all matters is reserved to the Board, and the functions of each Standing Committee shall be to consider and make recommendations to the Board.

There shall be a minimum of two (2) Standing Committees of the Board. Each Committee shall be led by a Chairperson and a Vice-Chairperson. The Board may increase the number of Standing Committees, but the membership of the Standing Committees shall be all nine (9) Trustees. The two (2) Standing Committees, subject to increase, shall consist of the Committee on Resource Management (RM) and Committee on Beneficiary Advocacy and Empowerment (BAE).

1. **Committee on Resource Management.** The Committee shall:
 - a. handle all fiscal and budgetary matters and ensure proper management, planning, evaluation, investment and use of OHA's trust funds;
 - b. review, approve, or disapprove all acquisition expenditures that have a multi-year implication;
 - c. review and approve all acquisition expenditures that impact the OHA Debt Management, Economic Development, Investment and Spending policies;

- d. develop policies that strengthen OHA's fiscal controls and financial management;
- e. oversee the use and condition of OHA's real estate and execute policy for the proper use of such lands including land in which OHA shall have an interest;
- f. develop policies on land use, native rights, and natural and cultural resources, including: the inventory, identification, analysis and treatment of land, native rights, and natural and cultural resources;
- g. develop policies and criteria for OHA's land acquisitions, dispositions, development, management, and the use of real property in which OHA has an interest;
- h. develop policies relating to OHA's real estate asset allocation, desired returns, and balancing OHA's real estate portfolio including legacy lands, corporate real property, programmatic lands and investment properties;
- i. oversee the use and condition of OHA's real estate and develop policy for the proper use and stewardship of such real property;
- j. develop policies and programs for OHA's ownership, financing and development of real property, including capital improvements, debt management, economic development, investment and spending policies and forms of ownership for OHA's real property.

- k. oversee the performance of OHA's rights and obligations with respect to real estate not owned by OHA in its own name;
- l. review, approve, or disapprove appropriate grants that support OHA's overall mission;
- m. evaluate OHA programs to determine their effectiveness to decide whether to continue, modify, or terminate a program's;
- n. in consultation with the Chairperson of the Committee on Beneficiary Advocacy and Empowerment and other resources (e.g., Corporation Counsel, Ethics Commission), develop training and orientation programs for Trustees and staff, including materials relating to Trustees roles, fiduciary responsibilities, and ethical obligations, as provided by HRS Chapter 84, as amended;
- o. in consultation with the Chairperson of the Committee on Beneficiary Advocacy and Empowerment carry out the recruitment and selection of the OHA Administrator; and
- p. provide oversight of Special Councils or Commissions as assigned by the Board.

2. Committee on Beneficiary Advocacy and Empowerment. The committee shall:

- a. plan, coordinate, and implement programs and activities that encourage Hawaiians to participate in governance;

- b. facilitate OHA's legislative agenda and advocacy efforts with federal, state, and county officials, private and community organizations, and groups involved in Hawaiian issues;
 - c. review and support the passage of legislation that benefits Hawaiians and supports Hawaiian issues, and work to defeat legislation which is contrary to the interest of OHA and its beneficiaries;
 - d. review, approve, or disapprove program grants that support OHA's legislative and advocacy efforts
 - e. develop programs that focus on beneficiary health, human services, economic stability, education, and native rights;
 - f. develop policies and programs relating to housing, land use, the environment, and natural resources;
 - g. evaluate all OHA programs to ensure that the programs have a positive impact on beneficiaries, and;
 - h. provide oversight of Permanent Special Councils or Commissions as assigned by the Board.
- B. Each Standing Committee shall consider all matters referred to it in accordance with Section L, Article VIII, of these Bylaws and make appropriate recommendations to the Board in a timely manner, but no later than twelve (12) calendar days before a Board meeting, and shall make progress reports to the Board periodically or when requested by the Chairperson of the Board.

C. Standing Committees may meet in joint session when subject matter falls under the purview of more than one of the Standing Committees. In the case of an unbudgeted funding decision, a joint meeting of the Beneficiary Advocacy and Empowerment Committee and the Resource Management Committee, led by the Chairperson of the Resource Management Committee, shall be mandatory.

D. Advisory Committees.

1. Standing Committees may create Advisory Committees as necessary to serve in an advisory capacity to the Standing Committees. Advisory Committees shall assist in the resolution or study of issues arising in the specific areas of concern assigned to their respective Standing Committee. To avoid duplication in the consideration of issues, the Standing Committees shall create only one Advisory Committee to study or undertake the resolution of a single subject or issue. Each Standing Committee shall have no more than three (3) Advisory Committees at any one time. All communications and advice from an Advisory Committee shall be made to the Chairperson of the Standing Committee, no later than twelve (12) calendar days before a Standing Committee Meeting. All communication and advice to an Advisory Committee shall be made by the Chairperson of the Standing Committee or designee.

2. The Advisory Committee Chairperson and membership shall be appointed by the Standing Committee Chairperson, upon advice and counsel of Standing Committee members. The term of the Advisory

Committees shall expire with the completion of the assigned task or at the discretion of the Standing Committee Chairperson. There shall be no less than three (3) members to each Advisory Committee, at least one (1) of whom shall be a member of the Board of Trustees of the Office of Hawaiian Affairs, who shall be appointed by the Standing Committee Chairperson. All Advisory Committee members, with the exception of members of the Board of Trustees, shall serve on a voluntary basis without compensation, other than reasonable expenses, such as travel, parking, and meals.

E. Ad Hoc Committees.

1. From time to time, there shall be such Ad hoc Committees, as designated by the Chairperson, the members of which shall be appointed by the Chairperson, and subject to approval of the Board by a simple majority (5) vote. There shall be a minimum of three (3) members on each Ad hoc Committee, at least one of whom shall be a member of the Board and who shall be the Chairperson of the Ad hoc Committee.
2. The term of the Ad hoc Committees shall expire at the completion of the assigned task or at a specific time that is determined for each Ad hoc Committee at the time of the appointment of said Committee or at the discretion of the Chairperson.

- a. All communications and advice from an Ad hoc Committee shall be made to the Chairperson of the Board no later than ten days before a Board meeting.
- b. All communications and advice to an Ad hoc Committee shall be made by the Chairperson of the Board.
- c. All Ad hoc Committee members, with the exception of members of the Board of Trustees, shall serve on a voluntary basis without compensation, other than reasonable expenses, such as travel, parking, and meals.
- d. In the event that three (3) or more Board members are appointed to an Ad Hoc Committee, HRS Chapter 92, as amended, will apply.

F. Permitted Interaction Groups ("PIG")

- 1. The Chairperson may place on the agenda for Board consideration a request for the formation of a PIG in accordance with HRS § 92-2.5, as amended.²¹ The request shall set forth the title of the PIG, its scope, its suggested membership, and duration.
- 2. The purpose of the PIG shall be either to: (a) investigate a matter relating to the official business of the Board ("Investigative PIG") or (b) to present, discuss, or negotiate any position that the Board has adopted ("Negotiating PIG").

²¹ *Supra*, note 12.

3. The membership, purpose, scope, and duration of the PIG shall be approved by the Board prior to the commencement of an investigation or presentation, discussion, or negotiation of any position adopted by the Board at a meeting of the Board.
4. Upon creation of an Investigative PIG, the members shall proceed to investigate the matter within their purview and prepare a report together with the PIG's findings and recommendations that shall be presented to the Board for consideration by the Trustees. No discussion, deliberation, or decision making shall occur at the time that the report is presented.
5. A Negotiating PIG shall present the results of its negotiations to the Board for deliberation and decision making by the Trustees at the same time or subsequent meeting.
6. Deliberation and decision making on the matter investigated, if any, must occur only at a duly noticed meeting of the Board held subsequent to the meeting at which the finding and recommendations of the Investigative PIG were presented at the Board.
7. The report of any PIG may be accepted, rejected, recommitted, or subjected to the PIG for further consideration or dissolved at the deliberation and decision making meeting, upon majority vote of the Trustees.

G. Permanent Special Councils or Commissions.

1. There shall be such Permanent Special Councils or Commissions as the Board deems appropriate to create. The Board shall designate a Standing Committee that shall exercise oversight of said Council or Commission. The Special Council shall determine the duration of said Council or Commission.
2. Council Members or Commissioners shall be appointed by the Standing Committee to which oversight authority is granted pending confirmation of the Board through a simple majority (5) vote of all members to which the Board is entitled.
3. Membership of each Council or Commission shall be composed of at least one (1) member of the Board of Trustees.
4. The subject matter and purview of said Councils or Commissions shall be clearly defined and limited to only those areas so recommended by the Standing Committee having oversight thereof and subject to the approval of the full Board by a simple majority (5) vote of all members to which the Board is entitled. Oversight by the appropriate Standing Committee shall include, but not be limited to, review of budgetary concerns for the operation of said Council or Commission, and affirmation of requests for actions by such Council or Commission for the continued operations of such Council or Commission.
5. Such Council Members or Commissioners with the exception of any Members of the Board of Trustees, shall serve terms as established by the Board and shall serve terms as established by the Board and shall

serve on a voluntary basis without compensation, other than reasonable expenses, such as travel, parking, and meals.

H. Quorum and Voting for Committees, Councils and Commissions .

1. For Advisory, Ad hoc, and Standing Committees, Councils and Commissions, a majority of the members of the Committee, Council or Commission shall constitute a quorum. Except for Ad Hoc Committees, three (3) members shall constitute a quorum to do business.
 2. The concurrence of a quorum shall be required for any Committee (other than a Standing Committee), Council or Commission to make any recommendation to the Board or Standing Committee where appropriate, for Board or Standing Committee approval.
 3. A simple majority (5) of the Members present at a Standing Committee meeting shall be required for it to make any recommendation to the Board, provided that a quorum is present at the time of the vote.
 4. When Standing Committees meet jointly, each Committee shall vote separately as individual Committees.
- I. Authority to act on all matters is reserved to the Board and the functions of the Advisory and Ad hoc Committees, Councils, Commissions, and Permitted Interaction Groups shall be to investigate, consider, and make recommendations to the Standing Committee and the Board, respectively.
- J. **Staff Assignments.** The Administrator shall assign to each Standing, Advisory, and Ad hoc Committee, and to each Council, Commission and Permitted

Interaction Group, appropriate Administration staff to conduct research, analyze data, draft findings, and report and provide project management and support for and to advise the respective Committee, Council, Commission or Permitted Interaction Group and to maintain records of the proceedings of same.

K. Committee Recommendations. The Chairperson of the Board of Trustees shall place a Committee recommendation on a Board of Trustees agenda no later than thirty (30) calendar days after receipt of the recommendation. All Standing Committees shall do the same with respect to any matter referred to the committee by a Member.

L. Waiver of any matter by committee to the Board of Trustees shall require two-thirds (2/3) vote of all Members to which the Board is entitled.

ARTICLE IX. MEETINGS

- A. Board meetings shall be convened at the call of the Chairperson or by a quorum, as often as may be necessary for transaction of the Board's business as required in HRS § 10-8, as amended.²² The Board shall meet at least once annually on each of the islands of Hawai'i, Maui, Moloka'i, Lāna'i, Kaua'i, and O'ahu. At each meeting, the Board may fix the time and place for its next regular meeting.
- B. Board meetings may be convened by the Chairperson. In addition, upon written request of a majority of the members of the Board, the Administrator shall schedule a meeting of the Board to take place within twelve (12) calendar days after receipt of such request, provided that the notice requirement is met pursuant to HRS §§ 92-7, 41, as amended.²³
- C. Emergency meetings may be called by the Chairperson in accordance HRS § 92-8, as amended.²⁴

²² *Supra*, note 3.

²³ *Supra*, note 10; **HRS § 92-41 Giving public notices.** Notwithstanding any law to the contrary, all governmental agencies scheduling a public hearing shall give public notice in the county affected by the proposed action, to inform the public of the time, place, and subject matter of the public hearing. This requirement shall prevail whether or not the governmental agency giving notice of public hearing is specifically required by law, and shall be in addition to other procedures required by law.

²⁴ HRS § 92-8 Emergency meetings.

- (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:
- (1) The board states in writing the reasons for its findings;
 - (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
 - (3) An emergency agenda and the findings are electronically posted pursuant to section 92-7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply; and
 - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.

- D. Committee meetings shall be called by the Committee Chairperson.
- E. The Board shall give written public notice of any regular, special, emergency or rescheduled Board or Standing Committee, at least six (6) calendar days before the meeting and in the manner as required by HRS §§ 92-7, 41, as amended.²⁵ All meetings of the Board or its Committees, excluding PIGS, shall be open to the public, except for executive session meetings as required by HRS § 92-3, as amended.²⁶
- F. Appearances before the Board, and/or Standing Committees, Councils or Commissions shall be in accordance with HRS Chapter 92, as amended.

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

- (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
- (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
- (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply;
- (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and
- (5) The board limits its action to only that action that must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.

(c) For purposes of this part, an "unanticipated event" means:

- (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
- (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
- (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action.

²⁵ *Supra*, note 31.

²⁶ *Supra*, note 7.

1. Any person who wants to appear before the Board or any Standing Committee, Council, or Commission, except for executive meetings, to present testimony on a matter before the Board or any Standing Committee, Council, or Commission, shall make a request and submit a written copy of such testimony to the Administrator at least seventy-two (72) hours prior to the Board, or Standing Committee, Council or Commission meeting unless such requirement is waived by a simple majority of the Board or Standing Committee, Council, or Commission. Any verbal presentation permitted by the Board or Standing Committee, Council or Commission shall be limited to five (5) minutes.
2. The Chairperson or Standing Committee Council or Commission Chairperson shall have the authority to extend, limit, or terminate any testimony, which the Chairperson determines to be repetitious, made solely for purposes of delay, or without any substantive purpose.
3. Any person who wants to submit written testimony, data, views, or arguments on any agenda item shall submit thirteen (13) copies of such testimony to the Administrator at least seventy-two (72) hours prior to the Board or Standing Committee, Council, or Commission meeting unless waived by a majority vote of all Board, Standing Committee, Council, or Commission members present.
4. The Board or Standing Committee, Council, or Commission by a simple majority (5) vote may restrict the total time allowed per agenda item.

5. Unless a testifier's testimony is related to a specific agenda item, the testifier may only give testimony under "Community Concerns" if the item is placed on the agenda.

G. **Minutes of Meetings.** The Board and each Standing Committee, Council or Commission shall keep written or recorded minutes of all meetings as required under HRS § 92-9, as amended.²⁷ The Board shall adopt standardized forms for use in the recordation of minutes of meetings. Minutes of all preceding meetings shall be available as provided by HRS § 92-9(b), as amended.²⁸ The minutes shall include, but need not be limited to:

1. the date, time, and place of the meeting;

²⁷ HRS § 92-9 Minutes.

- (a) The board shall keep written or recorded minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. Written minutes shall include, but need not be limited to:
- (1) The date, time and place of the meeting;
 - (2) The members of the board recorded as either present or absent;
 - (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
 - (4) Any other information that any member of the board requests be included or reflected in the minutes.
- (b) The minutes shall be made available to the public by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. A written summary shall accompany any minutes that are posted in a digital or analog recording format and shall include:
- (1) The date, time, and place of the meeting;
 - (2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
 - (3) A record, by individual member, of motions and votes made by the board; and
 - (4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.
- (c) All or any part of a meeting of a board may be recorded by any person in attendance by any means of reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting.

²⁸ *Id.*

2. the members of the Board, Standing Committee, Council, or Commission recorded as either present, absent, or excused;
3. a summary of all matters proposed, discussed, or decided; and a record, by individual member, of motions made, motions seconded, and votes taken to include dissenting votes and abstentions;
4. staff assignments for investigation and the date staff reports are due;
5. departure and arrival of members from meetings to show matters discussed before arrival, while there, or after departure; and
6. any other information that any member of the Board, Standing Committee, Council, or Commission requests be included or reflected in the minutes.

H. **Packet.** At the time the Packet is distributed to its members, the Board or Committee shall also make the Packet available for public inspection in the Board's office, as required by HRS § 92-7.5.²⁹ Additionally, the Board or Committee shall provide reasonably prompt access to the Packet to any person upon request. The Board shall provide notice to persons requesting notification of meetings, pursuant to HRS Section 92-7(e), as amended.³⁰ The Board is not required to mail board packets. As soon as practicable, the Board shall accommodate requests for electronic access to the Board Packet.

I. **Referrals.** The Board shall adopt procedures for research, due diligence and analysis, and referrals to staff via the Administrator.

²⁹ *Supra*, note 11.

³⁰ *Supra*, note 10.

- J. In the unlikely event, the Board may hold additional community meetings, informational meetings and public hearings, as needed.

ARTICLE X. QUORUM AND VOTING

A simple majority (5) of all the members to which the Board is entitled shall constitute a quorum to conduct business as required by HRS § 10-8, as amended.³¹ The concurrence of a simple majority (5) of all the members to which the Board is entitled shall be necessary to make any action of the Board valid provided that due notice shall be given to all members.

An abstention shall not be considered a positive or negative vote. A procedural motion may be passed by a majority (5) vote of the members present. Upon the request of any member of the Board, the Board Secretary shall call the roll.

- A. Unless a member is excused from voting, such member's silence shall be recorded as an abstention.
- B. A Member may use a "kanalua" response when called upon to vote and if repeated when polled again, that vote shall be recorded as an "abstention", or when polled to vote again, the second time may either vote "yes" or "no".

The Board Secretary shall record each vote in the minutes and report to the Chairperson, who shall announce the result to the Board.

³¹ *Supra*, note 3.

ARTICLE XI. LEGAL COUNSEL

- A. Legal Counsel shall be present at all regular meetings and certain committee meetings of the Board when requested by the Chairperson or Chairperson of the relevant Committee.
- B. The Chairperson or designee, subject to prior approval of the Board, may request any written or verbal legal opinion from OHA's Corporate Counsel, Department of the Attorney General or from any other external legal counsel. Where a request is made in writing and a legal opinion is rendered by the Department of the Attorney General, or any other external legal counsel, such opinion along with a copy of the written request for such opinion shall be immediately distributed to all Board members in written form.
- C. The Administrator of the Office Hawaiian Affairs or designee, subject to prior approval of the Board, may request any written or verbal legal opinion from the Department of the Attorney General, or any other external legal counsel. Where a request is made in writing and a legal opinion is rendered by the Department of the Attorney General or any other external legal counsel, such opinion along with a copy of the written request for such opinion shall be immediately distributed to all Board members in written form

ARTICLE XII. PARLIAMENTARY AUTHORITY

The most recent edition of Robert's Rules of Order shall apply in situations not covered by these Bylaws, applicable statutes, or opinions of Board Legal Counsel, Corporation Counsel, or external counsel.

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ARTICLE XIII. AMENDMENTS TO BYLAWS

Proposed Bylaw amendments shall be submitted to the Board in writing. Before these Bylaws may be amended by a proposed Bylaw, it must be approved by a 2/3rd's vote of all the members to which the Board is entitled (6 affirmative votes) at least twice.

ARTICLE XIV. BOARD OF TRUSTEE STAFF

The Board Chair shall appoint a Chief of Staff who will be responsible for coordinating Board staff functions and activities and shall act as a liaison between the Board staff and the Administrator.

Each Board Member shall be entitled to a maximum of two full time positions. To carry out the duties of their office, each Trustee shall choose their staff positions from the following job classifications: Trustee Aide and Trustee Secretary. Each Board member shall have the sole discretion to select their staff positions from the job classifications listed above that best suit the needs of their office.

The Chairperson of the Board shall also be entitled to one additional staff position known as the BOT Private Secretary.

Changes to the type and number of staff positions shall require Board approval.

ARTICLE XV. CONFLICT OF INTEREST

Members of the Board shall comply with the provisions of this Bylaw and are subject to the standards of conduct and financial interest disclosure requirements of HRS Chapter 84, as amended, to include attending ethics training within a reasonable time upon taking office.³² For the purpose of this Bylaw Article:

- A. An 'affiliation' exists if a Board Member or a Member of the Board member's family is an owner (an ownership interest valued at more than \$5,000 or 10% or more ownership of the business), officer, director, trustee, partner,

³² HRS § 84-14 Conflicts of Interest.

- (a) No employee shall take any official action directly affecting:
- (1) A business or other undertaking in which the employee has a substantial financial interest; or
 - (2) A private undertaking in which the employee is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

A department head who is unable to disqualify the department head's self on any matter described in paragraphs (1) and (2) will not be in violation of this subsection if the department head has complied with the disclosure requirements of section 84-17.

A person whose position on a board, commission, or committee is mandated by statute, resolution, or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which the person has a substantial financial interest; provided that the substantial financial interest is related to the member's particular qualifications.

- (b) No employee shall acquire financial interests in any business or other undertaking which the employee has reason to believe may be directly involved in official action to be taken by the employee.
- (c) No legislator or employee shall assist any person or business or act in a representative capacity before any state or county agency for a contingent compensation in any transaction involving the State.
- (d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which the legislator or employee has participated or will participate as a legislator or employee, nor shall the legislator or employee assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which the legislator or employee is an employee or legislator.
- (e) No employee shall assist any person or business or act in a representative capacity before a state or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if the employee has official authority over that state or county agency unless the employee has complied with the disclosure requirements of section 84-17.
- (f) Subsections (a), (b), and (d) shall not apply to a task force member or the designee or representative of that task force member whose service as a task force member would not otherwise cause that member, designee, or representative to be considered an employee, if the task force member or the designee or representative of that task force member complies with the disclosure requirements under section 84-17.

employee (which shall also include legal counsel, consultant, contractor, advisor, or representative), or agent of such organization.

- B. All Members must disclose to the Chairperson and the Board their membership(s) or affiliation(s) with any organizations or person(s) who are eligible to receive grants from, may be in competition with for resources or eligible to procure from or contract with the Office of Hawaiian Affairs. Members shall disqualify themselves any time an action is being considered by the Board which would affect the funding, procurement or contracts of that organization or person. Disclosure by declaration shall be made before Board action on the matter.

Board members have a clear obligation to conduct all affairs of OHA in the best interest of beneficiaries. Members are expected to place the welfare of OHA above personal interests or the interests of family members or others who may be personally involved in affairs affecting OHA. All decisions of the Board are to be made solely based on a desire to promote the best interest of OHA and its beneficiaries and in alignment with a Board Member's fiduciary duties.

- C. Members violating this Article shall be subject to disciplinary action, as set forth in Article XVIII herein.

ARTICLE XVI. CONFIDENTIALITY

- A. All information, data, and documents that are not public records, received or reviewed by a Member acting in the capacity as Member, shall be deemed confidential and shall not be released or utilized by any Member for any purpose other than OHA or Committee business.
- B. The unanimous vote of all Members of the Board after full consultation with Board Counsel shall be required before any confidential communication, proprietary, or otherwise privileged material received in an Executive Meeting convened may be publicly released, except for communications and materials deemed no longer confidential or redacted by Board Counsel and released under Board of Trustees Operations Manual, Rule 21 (July 2007).

ARTICLE XVII. ORDER AND DECORUM

- A. While the Chairperson is putting any question to, or addressing the Board, or when a person is speaking, all persons present are expected to conduct themselves with decorum and provide respect to the speaker. While a person is speaking, no one shall pass between such speaker and the Chairperson.
- B. When a Member or other person properly before the Board wishes to speak, the speaker shall address the Chairperson, be recognized before proceeding, and shall confine remarks to the question under discussion.
- C. If a Member or other person, in speaking or otherwise, transgresses these rules, any Member may raise a question of order. The Chairperson shall then decide the question of order without debate, subject to an appeal to the Board. In addition, the Chairperson may call for the sense of the Board on any question of order.
- D. Whenever any person is called to order while speaking, such person shall be in possession of the floor after the question of order is decided and may proceed with the matter under discussion within the ruling made on the question of order.
- E. All persons attending Board meetings, including staff, witnesses, members of the media, and the general public, are expected to respect the dignity of the Board.
- F. Members who repeatedly violate any provision of any of the above sections of this Article shall be subject to disciplinary action, as set forth in Article XVIII herein.

- G. **Defamation.** OHA is concerned that no defamatory material or statements are presented at Board and Committee meetings. In the event that this situation should develop, it will be necessary to call this to the attention of the persons making those statements, and request that they desist in their action. Such information may be stricken from the record.

**ARTICLE XVIII. TRUSTEE CODE OF CONDUCT AND SANCTIONS FOR
VIOLATION OF THE CODE OF CONDUCT**

The professional conduct of a member of the OHA Board of Trustees shall be guided by the Code of Conduct and Sanctions for Violations of the Code of Conduct, hereinafter referred to as the “Code of Conduct,” which shall be created as a stand-alone executive policy of the Board of Trustees and made part of the OHA Board of Trustees’ Executive Policy Manual as a stand-alone policy.

The Sanctions for Violations of the Code of Conduct shall contain procedures that are fitting to the position of an elected Trustee and while ensuring that due process is afforded to a Trustee whose matter is being considered by the Board of Trustees.

The purpose of this Article is to establish guidelines relating to the Trustee Code of Conduct, including standards for the ways in which Members interact with one another staff, and beneficiaries in the pursuit of setting OHA policy and managing its trust.

ARTICLE XIX. HAWAIIAN LANGUAGE USAGE

All Members and staff are expected to use Hawaiian language and the proper spelling and grammar of Hawaiian words when preparing official correspondence and documents for OHA, as required by Article XV, § 4 of the Constitution of the State of Hawai‘i, as amended.³³

³³ Haw. Const. art. XII, § 4 English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.(1978).

ARTICLE XX. TABLE OF AUTHORITIES

Statutes

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| Chapter 92..... | VIII-6, IX-1, IX-2 |
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| Article XII, Section 5, Constitution of State of Hawai`i | IV-1 |

APPENDIX A. HISTORY AND REFERENCE RELATED TO THE BYLAWS OF THE BOARD

Board Action

HRS §10-4(1) mentioned three specific actions in relation to bylaws, they are 1) adopt, 2) amend and 3) repeal provides the Office of Hawaiian Affairs with the general power to adopt, amend, and repeal bylaws governing the conduct of its business and the performance and duties granted to or imposed upon it by law. Examples of adoption include but are not limited to: incorporating a statute, case law or referencing a higher authority relevant to OHA that incorporates effective statutes or relevant case law (i.e. adopting Chapter 92 which requires governmental agencies to be transparent and to protect the public interest and encourage the public to participate in discussions, deliberations, decision and actions of OHA). An amendment adds specificity, clarity, flexibility, compliance or expressions of the Board within the purpose, powers and duties of the Board and provisions of OHA. Repeal may include chapters and/or sections that had been removed (i.e. HRS §10-14, HRS) or recodified in the statute or administrative rule or languages repealed by the Board of Trustees.

Editing Style

| Edit | Indication and Presented in this Document |
|---------------------|---|
| Delete | Strike through |
| Add/Edit/Correction | Underline or underscore |
| Comments | Within open and close parentheses |

Source Referencing Style

Modern Language Association (MLA) style is used to reference information source. All sources are within parentheses. The contents are in the following order. Starting from the organization (i.e. OHA) followed by a period, the document type (i.e. Board minutes), the page number or page range and finally the digital object identifier aka doi (i.e. BOT 81-11 file name from OHA's Ka Ipu O Ka'Ike (KFI) system).

| Board Action | Meeting Date | Note |
|----------------------|-------------------|--|
| Adopted Bylaws | February 13, 1981 | Source: (OHA. Board minutes. Page 6. doi: BOT 81-11). Under the header "Signing of Bylaws", eight (8) of the Board members present (one left due to illness) approved the first adopted Bylaws. Attorney General staff Charlotte Libman created this document. |
| Amended Article VIII | June 9, 1983 | Source: (OHA. Board minutes. Page 2. doi: BOT 83-11). Relating to Standing Committee. Under the header "Amendments to By Laws". Ten (10) of the Board members present and unanimously approved the amendment of the Bylaws to change the number of standing committees from 6 to 5. The 5 standing committees were 1) Budget and Finance, 2) Culture, 3) Education/Human Services, 4) Resource development and 5) Planning and Development. Motion carried unanimously. |

| Board Action | Meeting Date | Note |
|--|-------------------|---|
| Amended Article VIII and Article XI | December 18, 1984 | <p>Source: (OHA. Board minutes. Page 1 2. doi: BOT 84 22).</p> <p>Relating to Standing Committee. Board minutes and page 2 entitled "Amending the Bylaws—Article VIII. Committees of the Board". Eight (8) of the Board members present, 5 approved the amendment and 3 members voted against efforts to consolidate committees. Motion was carried to consolidate committees to Budget and Finance, Culture/Education, Human Services, Resource Development and Planning and Development.</p> <p>Relating to Legal Counsel. Amended Article XI. Legal Counsel to include "The Attorney General or his representative, in his capacity as Counsel of the Board, should be present at all regular and special meetings and certain committee meetings of the Board <u>when requested by the Chairman of the Board or Chairman of the relevant committee.</u> The Attorney General or his representative shall be designated as Counsel for the Board.</p> |
| Amended Article V | February 21, 1985 | <p>Source: (OHA. Board minutes. Page 9 10. doi: BOT 85 05).</p> <p>Relating to Officers. Board minutes and page 9 "Amendment to Bylaws of OHA, Article V. Officers". Seven (7) of the Board present and 6 approved and 1 opposed the amended language "A vacancy in the office of Chairperson or Vice-Chairperson shall exist when such officer commits the following or is acted upon by the Board in the following ways: 1) When the officer resigns from his position; and 2) For such other and further reasons as the Board may consider valid, provided that a two-thirds vote of all members to which it is entitled, declares the office vacant."</p> |
| Amended Article II, Article V and Article VIII | June 28, 1985 | <p>Source: (OHA. Board minutes. Page 3. doi: BOT 85 14).</p> <p>"Amending OHA's Bylaws".</p> <p>Relating to Article II Definitions. <u>Committee means a body of one or more trustees, elected or appointed as provided for under Article VIII of these By Laws.</u></p> <p>Relating to Article V. Officers. Delete a term of two years and add <u>at the pleasure of the Board.</u></p> <p>Relating to Article V. Vacancy. Delete when such officer commits the following or is acted upon by the Board in the following ways and added <u>under the following circumstances:</u></p> <p>Delete when the officer resigns from his position and add <u>When the Chairperson and Vice-Chairperson is removed by the majority of the members of the Board.</u></p> |

| Board Action | Meeting Date | Note |
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| | | <p>Delete For such other and further reasons as the Board may consider valid, provided that a two-thirds vote of all members to which it is entitled, declares that office vacant and add <u>When the chairperson or Vice Chairperson resigns from the position held and the resignation is accepted by the members of the Board.</u></p> <p>Related to Succession delete for the unexpired term and add <u>until another Chairperson is elected by a majority of the members of the Board.</u></p> <p>Relating to Article VIII. Committees of the Board. Relating to Quorum and Voting for Committees add <u>Except for Ad Hoc Committees, three members shall constitute a quorum to do business.</u></p> <p>Relating to Article XI. Meetings. Add <u>Any person who wants to submit written testimony, data, views, or arguments on any agenda item shall submit ten (10) copies of such testimony to the Administrator at least 48 hours prior to the Board or Committee members present meeting unless waived by a majority vote of all Board or Committee Members.</u></p> <p>Seven (7) of the Board members present and unanimously adopted the amendment.</p> |
| Amended Article VIII and Article IX | July 25, 1987 | <p>Source: (OHA. Board minutes. Page 7-8. doi: BOT 87-05.)</p> <p>Attorney General suggested changes to Article VIII, Section C, Paragraph 2, Article VIII, Section D and Article IX, Section B.</p> |
| Amended Article XI | September 30, 1988 | <p>Source: (OHA. Board minutes. Page 5. doi: BOT 88-10.) (OHA., Board minutes. BOT 88-07. 1988)</p> <p>Relating to Article XI Legal Counsel</p> <p><u>The Chair or designee, subject to prior approval of the Board, may request any written or verbal legal opinion from the Department of the Attorney General, or from any other legal counsel. Where a request is made in writing and a legal opinion is rendered by the Department of the Attorney General, or from any other legal counsel, such opinion along with a copy of the written request for such opinion shall be immediately distributed to all Board members in written form."</u></p> <p><u>The Administrator of the Office of Hawaiian Affairs or designee, subject to prior approval of the Board, may request any written or verbal legal opinion from the Department of Attorney General, or from any other legal counsel. Where a request is made in writing and a legal opinion is rendered by the Department of Attorney General or from any other legal</u></p> |

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| | | <u>counsel, such opinion along with a copy of the written request for such opinion shall be immediately distributed to all Board members in written form.</u> |
| | | The Board unanimously approved of the motion. |
| Amended Article VIII | April 29, 1989 | Source: (OHA. Board minutes. Page 3. doi: BOT 89-05.) Relating to Committee. Committee on Operations and Development proposed bylaws amendment to reduce the number of members on Committee on Operations and development from nine to seven. Amend to create a fourth standing Committee on Native Hawaiian Status and Entitlement. The Board unanimously approved of the motion. |
| Amended | October 23, 1991 | Source: (OHA. Board minutes. Page 5. doi: BOT 91-18.) Second reading of the revisions to OHA Bylaws Articles II, VII and X. 9 Trustees present with 7 yes and 2 no. Motion was carried. |
| Amended Article VIII and IX | February 28, 1992 | Source: (OHA. Board minutes. Page 8. doi: BOT 92-03.) Approved amendment to Articles VIII and IX to allow for the creation of Councils and Commissions, to specify their organizational position within the Board structure, and to specify appointment procedures and operational procedures of such Councils and Commissions. Motion was carried. |
| Amended Article VIII | December 16, 1992 | Source: (OHA. Board minutes. Page 2. doi: BOT 92-32.) 1 st reading to Article VIII to reduce the number of committees from 9 to 6 and redefine the purviews of those committees. |
| Amended Article VIII | December 18, 1992 | Source: (OHA. Board minutes. Page 2. doi: BOT 92-33.) 2 nd reading to reduce the number of committees from 9 to 6 was approved with concerns. Motion was carried. |
| Amended Article VIII | April 24, 1997 | Source: (OHA. Board minutes. Page 4. doi: BOT 97-13.) 1 st reading to reorganize committees to better understand and manage issues. Committees include 1) Budget and Finance; 2) Policy and Planning; 3) Program Management; 4) Land and Sovereignty; 5) Legislative Review; and 6) Ad Hoc Committee on Entitlement and Negotiations. Motion carried unanimously. |
| Amended Article X | May 21, 1997 | Source: (OHA. Board minutes. Page 2. doi: BOT 97-17.) Motion to incorporate 554A-1-6 HRS into Article II as stipulated by the Committee purview adopted by the Board to read; the BOT shall exercise Power as provided by Article XII Constitution of the State of Hawai'i and deleting Chapter X, |

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| | | and adding Chapter 554A 1-6 Uniform Trustees Powers Act HRS. |
| Amended Article X | June 3, 1997 | Source: (OHA. Board minutes. Page 3. doi: BOT 97-19.) Amended Article X, sentence to read "Unless a member is excused from voting, such member's silence shall be recorded as an abstention;" and sentence 6 to read "a member may use a 'Kanalua' response but once, and if repeated when polled again, that vote shall be recorded as an abstention, or a member may first respond with one 'Kanalua' vote, when polled to vote again the second time may either vote Yes or No." Motion carried unanimously. |
| Amended Article X | June 24, 1997 | Source: (OHA. Board minutes. Page 6. doi: BOT 97-20.) 2 nd reading clarifies the use of "Kanalua" in abstaining and voting. Motion carried unanimously. |
| Withdrawal | August 28, 1997 | Source: (OHA. Board minutes. Page 6. doi: BOT 97-29.) Relating to May 21, 1997 motion to incorporate 554 HRS into Article II was withdrawn because discussion regarding liability insurance for Trustees, which Trustees don't have any insurance. Motion to add 5549(a) Trustees fiduciary Responsibility Second reading. Motion was defeated. Motion to amend Article XVIII Out of State Travel was defeated |
| Amended Article VIII | December 8, 1998 | Source: (OHA. Board minutes. Page 2. doi: BOT 98-53.) 2 nd reading to amend the organization of the committee structure 1) Government Affairs and Sovereignty; 2) Government Affairs and Sovereignty; and 3) land. Motion carried. |
| Amended Article VIII | January 13, 2000 | Source: (OHA. Board minutes. Page 7-10. doi: BOT 00-03.) 1 st reading, motion to amend committee purviews and individual assignment. Motion carried. |
| Amended | October 17, 2000 | Source: (OHA. Board minutes. Page 2-3 and 5-6. doi: BOT 00-41.) <u>Motion to amend any unbudgeted request for funding shall require the two third vote of all members to which the Board Is entitled.</u> Motion carried. <u>1st reading to add OHA is concerned that no defamatory material or statements are presented at OHA Board of Trustee and OHA committee meetings. In the unlikely event that this situation should develop it will be necessary to call this to the</u> |

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| | | <u>attention of persons making those statements and request that they desist in their action. Such information will be stricken from the record if necessary. Defamation is communication when it tends to "harm the reputation of another as to lower him or her in the estimation of the community or deter a third from associating or dealing with him or her."</u> Motion carried unanimously. |
| Adopted | October 25, 2000 | Source: (OHA. Board minutes. Page 2-3 and 5-6. doi: BOT 00-41.) 2 nd reading to adopt policy on defamation and slander. Motion carried. |
| Amended Article VIII | April 19, 2001 | Source: (OHA. Board minutes. Page 33. doi: BOT 01-21.) 2 nd reading to amend time limit to adopt an amendment to the <u>Office of Hawaiian Affairs wherein the Chairperson of the Board of Trustees is required to place a committee recommendation on a full Board of Trustees agenda no later than thirty (30) calendar days after the receipt of the recommendation.</u> |
| Amended Article VIII | October 17, 2001 | Source: (OHA. Board minutes. Page 2. doi: BOT 01-45.) (OHA. Committee on Policy and Planning Action Item. doi: #PP-14. September 20, 2001.) 2 nd reading to amend To adopt an amendment to the OHA Bylaws wherein the waiver of any matter by committee to the Board of Trustees shall require two thirds vote of all members to which the Board is entitled. Motion carried unanimously. |
| Bylaws Systematic Review | May 29, 2002 | Source: (OHA. Action Item. doi : PP 02-04) Amend policy and procedure manual to 1) integrate planning process such as setting program priorities with strategic planning, community input, program evaluation activities and performance and program budget and to 2) systematically review, update and publish the bylaws, OHA Policies and Procedures Manual and OHA Financial Manual of Guides. |
| Amended Article VIII | October 10, 2002 | Source: (OHA. Board minutes. Page 22-32. doi: BOT 02-29.) 1 st reading to amend Article VIII, "The Chairperson of the Board of Trustees is required to place a committee recommendation of a full Board of Trustees agenda no later than 30 days after the receipt of the recommendation." All standing committees are required to do the same with respect to action items referred to the committee by a Trustee." Motion carried. Committee on Policy and Planning recommend acceptance of |

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| Amended Article VIII | October 30, 2002 | <p>the content of the OHA bylaws and policies and procedures manual that have systematically updated. Motion carried.</p> <p>Source: (OHA. Board minutes. Page 8-9. doi: BOT 02-31.)</p> <p>2nd reading to amend Article VIII “the Chairman of the Board of Trustees is required to place a committee recommendation on a full Board of Trustees agenda no later than 30 days after the receipt of such a recommendation to add the following: All standing committees are required to do the same with respect to the action items referred to the committee by a Trustee.” Motion carried.</p> <p>Source: (OHA. Action Item. doi: PP 02-21)</p> <p>Mentioned that this amendment is related to OHA Strategic Plan, Goal 7—Policy, Strategy 7.2 “Assure an effective and efficient process of decision-making by the Board of Trustees and create the infrastructure to support their work.”</p> <p>Trustees’ action items are the major catalysts for organizational change. Mentioned that in practice, such “initiative are sporadic and at the will of the proponent(s) and not routine or set in schedule. Furthermore, the initiator(s) of an action may deem their initiative time-sensitive by belief or by information that only the initiator is privileged, with, unbeknownst to the rest of their peers on the Committee or the Board.”</p> <p>Such inefficiencies were also described in the 2001 Audit of the Office of Hawaiian Affairs, Office of the Auditor, State of Hawai‘i, page 29.</p> <p>Recommended Action: All Chairpersons, Vice Chairperson, and/or vested authorities of each standing committee and the Board of Trustees are required to place on their respective agendas any and all action items that are: submitted, referred, or recommended to their respective Committee or to the Board, no later than thirty (30) calendar days after receipt of such an action item.</p> |
| Amended Article VIII | December 10, 2002 | <p>Source: (OHA. Board minutes. Page 4-6. doi: BOT 02-33.)</p> <p>Motion to amend Article VIII “Committees of the Board”, to simplify the structure of the Standing Committees of the Board of Trustees, to ensure each Trustee has the opportunity for full participation in Standing Committee deliberations, and to clarify the procedures required when matters are referred to a Standing Committee. This would be accomplished by adopting the language proposed in Appendices “II”, “III” and “IV”, attached hereto, which would: A. Delete and replace Article VIII.A with a new language, B. amend Article VIII.F to</p> |

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| | | conform to the amendment of Article VIII.A and C. amend Article VIII.B to conform to the amendment of Article VIII.A. Delete "by the Chairperson of the Board" in Appendix III (in lines with 1 and 2). |
| Amended Article VI | October 24, 2007 | <p>Source: (OHA. ARM/BAE Action Item. doi: ARM BAE 07-22)</p> <p>ARM/BAE joint committees amended Article VI to add a new section on members rename the Article title from "DUTIES OF OFFICERS" to "DUTIES OF OFFICERS <u>AND MEMBERS</u>".</p> <p>Issue: To add a new paragraph on Member to Duties of Officers. An amendment to the OHA Bylaws Article VI was recommended by the Board of Trustees Attorney. An amendment to conform the OHA BOT Executive Policy Subseries 1030 (Trustee Duties, Responsibilities, and Conduct) Manual to the Bylaw amendment is proposed to ensure consistency of meaning and substance between Bylaw and Executive Policy.</p> <p>C. Members. The unanimous vote of all Members of the Board after full consultation with Board Counsel shall be required before any confidential communication, proprietary or otherwise privileged material received in an Executive Meeting convened under Hawai'i Revised Statutes §92-5 may be publicly released except for communications and materials deemed no longer confidential or redacted and released under Board of Trustees Operations Manual, Rule 21 (July, 2007).[†]</p> <p>Motion carried or passed.</p> |
| Amended Article VI | November 1, 2007 | <p>Source: (OHA. Board minutes. Page 6-10. doi: BOT 07-23o.)</p> <p>1st reading. ARM/BAE met on October 24, 2007 recommend the following actions: <u>To simultaneously approve, adopt and ratify amendments to the OHA Board of Trustees' Bylaws as shown in Attachment "B" and to approve and adopt changes to the OHA Board of Trustees' Executive Policy Manual as shown in Attachment "C".</u></p> |
| Amended Article VI | November 8, 2007 | <p>Source: (OHA. Board minutes. Page 3-4. doi: BOT 07-25o.)</p> <p>Source: (OHA. ARM/BAE minutes. Page 2-8. doi: ARM BAE 07-10o)</p> <p>Source: (OHA. Action Item. Entire document. doi: ARM-</p> |

[†] **Source:** OHA. Board minutes. Page 6-10. doi: BOT 07-23o. Board of Trustees Operational Manual was last revised 11/15/2007.

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| | | <p>BAE 07-22)</p> <p>Relating to Fiduciary Duty of Confidentiality:</p> <p>2nd reading <u>To simultaneously approve, adopt and ratify amendments to the OHA Board of Trustees' Bylaws as shown in Attachment "B" and to approve and adopt changes to the OHA Board of Trustees' Executive Policy Manual as shown in Attachment "C". Motion carried.</u></p> <p><u>Chairperson.</u> The Chairperson in addition to presiding at all regular and special Board meetings shall:</p> <ul style="list-style-type: none"> 0. <u>Appoint the Chairperson, Vice Chairperson and members of all Standing committees, subject to the approval of the Board;</u> 0. <u>Appoint members of Ad hoc Committees and designate the Chairperson and Vice-Chairperson of such Committees;</u> 0. <u>Acknowledge communications, petitions, requests, and proposals on behalf of the Board and refer same to the Administrator Chief Executive Officer or appropriate Committee of the Board for action or recommendation;</u> 0. <u>Serve as the primary liaison with the Governor, Congressional delegation, the Legislature, and other agencies and organizations to ensure that there are effective working relationships between all of the above and the Board;</u> 0. <u>Approve all press releases and public announcements which state the official position of the Board;</u> 0. <u>Approve agenda items for all meetings of the Board;</u> 0. <u>[Reserved];</u> 0. <u>[Reserved]; and</u> 0. <u>Perform such other duties as may be required by law or such as may properly pertain to such office.</u> <p><u>Vice Chair.</u> The <u>Vice Chairperson</u> will assume the duties and responsibilities of the <u>Chairperson</u> in the absence of the <u>Chairperson</u> and will undertake such other duties as may be assigned by the <u>Chairperson</u>.</p> <p><u>Members.</u> The unanimous vote of all Members of</p> |

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| | | <p><u>the Board after full consultation with Board Counsel shall be required before any confidential communication, proprietary or otherwise privileged material received in an Executive Meeting convened under Hawai'i Revised Statutes §92-5 may be publicly released except for communications and materials deemed no longer confidential or redacted and released under Board of Trustees Operations Manual, Rule 21 (July, 2007).</u></p> <p><u>Motion carried.</u></p> |
| Amendment Article II | December 17, 2009 | <p>Source: (OHA, Board minutes, Page 11-13, doi: BOT 09-40.)</p> <p>The Board approved making technical change from Administrator to Chief Executive Officer and that the title change does not change the responsibilities to carry out the Board directives, governance functions and/or the requirements of the laws.</p> <p>Source: (OHA, BOT Action Item, Page 3-4, doi: BOT 09-05.)</p> <p>Issue: Whether or not to approve and authorize the re-designation of position title from OHA "Administrator" to OHA "Chief Executive Officer" and to approve and authorize the Chief Executive Officer to make technical changes to Chapter 10, HRS, OHA's governing documents, to include Bylaws, Executive Policies and operational procedures, and to any other policies, procedures, documents and/or instruments as appropriate to reflect the re-designation of position title.</p> <p>To approve and authorize the re-designation of position title from OHA "Administrator" to OHA "Chief Executive Officer" and to approve and authorize the Chief Executive Officer to make technical changes to Chapter 10, HRS, OHA's governing documents, to include its Bylaws, Executive Policies and operational procedures, and to any other policies, procedures, documents and/or instruments as appropriate to reflect the re-designation of position title.</p> <p>Motion carried.</p> |
| Amendment Article XIV | March 7, 2013 | <p>Source: (OHA, Action Item, doi: ARM BAE 13-01)</p> <p>Issue: Whether or not the Board of Trustees' Bylaws and the OHA Board of Trustees' Executive Policy Manual should be amended to allow each Trustee to have options in the manner in which their officers are staffed while at the same time ensuring that the staff selected considering adequate and qualified staff to help them fulfill their fiduciary duties. An amendment to</p> |

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| | | <p>Article XIV of the OHA Bylaw is necessary to provide a uniform approach to exercising these options in the configuration of their respective offices. An amendment to conform the OHA BOT Executive Policy Manual Subseries 3100 Personnel (BOT Staffing) to the Bylaw amendment is proposed to ensure consistency of meaning and substance between Bylaw and Executive Policy Manual.</p> <p>Amend the language of Article XIV to read, "The Board of Trustees will employ a Chief of Staff who will be responsible for coordinating Board staff functions and activities and will act as a liaison between the Board staff and the Administrator Chief Executive Officer. Each Board member is entitled to one aide and one secretary to help carry out the duties of their office.</p> <p>Each Board member will be entitled up to two full time positions and will have the flexibility, in order to help carry out the duties of their office, in choosing their staff positions from the following job classifications: Trustee Aide and Trustee Secretary. Each Board member will have sole discretion in selecting from the job classifications listed above that best suit the needs of their office."</p> <p>1st reading, motion passed.</p> <p>Source: (OHA. Executive Session minutes. doi: BOT ES Minutes 030713)</p> <p>ARM/BAE joint committees unanimously approved the motion to simultaneously approve, adopt and ratify amendments to the OHA Board of Trustees' By Laws as shown in Attachment "A" and to approve and adopt changes to the OHA Board of Trustees' Executive Policy Manual as shown in Attachment "B" relating to options for staffing of each Board of Trustee Office.</p> <p>"This action item is part of an effort to enhance the capacity of Trustees to deal with increasingly complex and diverse OHA projects such as investments, land development and management, and partnership agreements."</p> |
| Amendment Article XIV | March 21, 2013 | <p>Source: (OHA. Board minutes. Page 12. doi: BOT 13-06.)</p> <p>Agenda VI.A. Executive Session ARM/BAE 13-01 (actually this is found in ARM/BAE 13-02, March 7, 2013) Approval of an OHA Board of Trustees Bylaws amendment and corresponding and conforming changes to OHA's Board of Trustees' Executive Policy Manual relating to options for staffing of each Board of Trustee office.</p> |

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| | | <p>Source: (OHA. Board minutes. doi: BOT ES 032113.)</p> <p>To approve, adopt and ratify amendments the following language. "The Board of Trustees will employ a Chief of Staff who will be responsible for coordinating Board staff functions and activities and will act as a liaison between the Board staff and the Administrator Chief Executive Officer. Each Board member is entitled to one aide and one secretary to help carry out the duties of their office.</p> <p>Each Board member will be entitled up to two full time positions and will have the flexibility, in order to help carry out the duties of their office, in choosing their staff positions from the following job classifications: Trustee Aide and Trustee Secretary. Each Board member will have sole discretion in selecting from the job classifications listed above that best suit the needs of their office."</p> <p>2nd reading, motion passed unanimously.</p> |
| Amended Article VIII | January 23, 2014 | <p>Source: (OHA. Board minutes. Page 15-24. doi: BOT 14 02.)</p> <p>1st reading to amend Article VIII to add a standing committee to be called the "Committee on Land and Property" (LP) as proposed. Motion carried unanimously.</p> <p>Concerns and clarification about the purview were discussed about land (purchasing and selling), water and natural resources and purview relationships with other standing committees. Specific revisions would be introduced and discussed during the second reading.</p> <p>"Committees of the Board</p> <p>A. There shall be a minimum of two <u>three</u> standing Committees of the Board. Each Committee will be led by a Chair and a Vice Chair. The Board may increase the number of Standing Committees, but the membership of the Standing Committees shall be all nine (9) Trustees. The minimum two <u>three</u> Standing Committees shall consist of the Committee on Asset and Resource Management (ARM), and Committee on Beneficiary Advocacy and Empowerment (BAE), and the Committee on <u>Land and Property (LP).</u></p> <p>1. Committee on Asset and Resource Management. The committee shall:</p> <p>a. handle all fiscal and budgetary matters and ensure proper management, planning, evaluation, investment and use of</p> |

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| | | <p>OHA's trust funds;</p> <p>b. review and approve any and all acquisition expenditures that have a multi-year implication, and which impact the OHA Investment or Spending policies, including all decisions concerning the allocation and utilization of resources for the acquisition, development and/or disposition of real property; which requires unbudgeted funding.</p> <p>e. establish policies which strengthen OHA's fiscal controls and financial management;</p> <p>d. oversee the use and condition of OHA's real estate and execute policy for the proper use of such lands including land to which OHA shall have an interest;</p> <p>e. develop policy on issues of land use, native rights, and natural and cultural resources, including the inventory, identification, analysis and treatment of land, native rights and natural and cultural resources;</p> <p>f.d. review and approve appropriate grants to programs that support OHA's overall mission;</p> <p>g.e. evaluate OHA programs to determine effectiveness in order to decide whether to continue, modify, or terminate funding of any of OHA's programs;</p> <p>h.f. develop training and orientation programs for Trustees and staff including materials relating to Trustees roles, fiduciary responsibilities, and ethics;</p> <p>i.g. in consultation with the Chair of the Committee on Beneficiary Advocacy and Empowerment carry out the recruitment and selection of the Administrator Chief Executive Officer; and</p> <p>j.h. provider oversight over Permanent Special Councils or Commissions as assigned by the Board."</p> <p>Committee on Land and Property. The committee shall:</p> <ul style="list-style-type: none"> — develop policies and criteria for OHA's land acquisitions, dispositions, development, management, and the use of real estate in which OHA has an interest; — develop policies relating to OHA's real estate asset allocation, desired returns, and balancing OHA's real estate portfolio including legacy lands, corporate real estate, programmatic lands and investment properties; — oversee the use and condition of OHA's real estate and develop policy for the proper use and stewardship of such real estate; — develop policies and programs for OHA's ownership, financing and development of real estate, including capital improvements, spending |

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| | | <p>policy and forms of ownership for OHA's real estate;</p> <ul style="list-style-type: none"> with respect to real estate not owned by OHA in its own name, but owned in one or more limited liability companies or other entities in which OHA, directly or indirectly, maintains an ownership interest, oversee OHA's performance of its rights and obligations with respect to real estate under the terms and conditions of the applicable limited liability company agreement or other operating agreement; and provide oversight over Permanent Special Councils or Commissions as assigned by the Board. |
| Amended Article VIII | February 6, 2014 | <p>Source: (OHA Board minutes. Page 3-4. doi: BOT 14-04.)</p> <p>2nd reading related to BOT 14-01 amendment of the Board's Bylaws and executive manual to create a Committee on Land and Property as a third standing committee of the Board. The motion to amend Article VIII of the OHA BOT Bylaws entitled, "Committee of the Board" to add a standing committee to be called "Committee on Land and Property" (LP) in accordance with the revised language changes to Exhibit "C" on January 23, 2014 BOT meeting.</p> <p>The first LP meeting commenced on February 26, 2014.</p> |
| Information | May 28, 2015 | <p>Source: (OHA Board minutes. Page 7-8. doi: BOT 15-16.)</p> <p>In accordance with Article VI, Section A.2 and Article VII, Section H Chair Lindsey appointed an Ad Hoc Committee on Trustees' responsibilities to consider options available to the Board when an individual Trustee breaches fiduciary responsibilities or commits other acts that may be prohibited in the OHA Bylaws and Executive Policy Manual. Report is expected and report to the Board August 15, 2015.</p> |
| Amended Article VIII | July 23, 2015 | <p>Source: (OHA Board minutes. Page 2. doi: BOT 15-24.)</p> <p>Announcement to amend Article VIII to reorganize Standing Committee Structure of BOT to create the Committee on Resource Management mentioned on the agenda. Refer to BOT 15-03. Chair Lindsey announced (Action Item) BOT #15-03 be deferred to July 30 to give Trustees time to review and consider the action item.</p> <p>Source: (OHA Board Action Item. doi: BOT 15-03)</p> <p>Issue: As part of a larger effort to help ensure that the Board of Trustees can perform and function in the best possible manner with the least waste of time and effort, this action item is</p> |

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| | | <p>designed to enhance the ability of the Board of Trustees to oversee, as effectively and efficiently as possible, OHA's land assets to assure that those assets are well managed and that its financial situation remains sound.</p> <p>At present, there are three Standing Committees of the Board of Trustees. This action item if approved will organizationally combine and consolidate the purviews of the Committee on Asset and Resource Management and the Committee on Land and Property into what will be entitled the "Committee on Resource Management."</p> |
| Amended Article VIII | July 30, 2015 | <p>Source: (OHA. Board minutes. Page 4-5. doi: BOT 15-25.)</p> <p>1st reading to amend Article VIII to reorganize Standing Committee Structure of BOT to create the Committee on Resource Management. The action aims to help the Board to be more efficient and effective and save time and costs.</p> <p>Motion carried.</p> |
| Amended Article VIII | August 27, 2015 | <p>Source: (OHA. Board minutes. Page 4-6. doi: BOT 15-29.)</p> <p>2nd reading to amend Article VIII to reorganize Standing Committee Structure of BOT to create the Committee on Resource Management. The intent is to improve the effectiveness and efficiency of the Board in terms of timeliness and responsiveness around pressing issues and concerns related to Hawaiians and native Hawaiians; oversight around policies; planning and evaluation activities; fiscal and budgetary matter; investment and financial management; economic opportunities; land and property management; environmental and natural resources; grant review and approval and etc.</p> <p><u>1. Committee on Resource Management. The committee shall:</u></p> <ul style="list-style-type: none"> — handle all fiscal and budgetary matters and ensure proper management, planning, evaluation, investment and use of OHA's trust funds; — review and approve any and all acquisition expenditures that have a multi-year implication, and which impact the OHA Investment or Spending policies; — establish policies which strengthen OHA's fiscal controls and financial management; — oversee the use and condition of OHA's real estate and execute policy for the proper use of such lands including land to which OHA shall have an interest; — develop policy on issues of land use, native rights, and natural and cultural resources, including the |

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| | | <p>inventory, identification, analysis and treatment of land, native rights and natural and cultural resources;</p> <p>develop policies and criteria for OHA's land acquisitions, dispositions, development, management, and the use of real estate in which OHA has an interest;</p> <p>develop policies relating to OHA's real estate asset allocation, desired returns, and balancing OHA's real estate portfolio including legacy lands, corporate real estate, programmatic lands and investment properties;</p> <p>oversee the use and condition of OHA's real estate and develop policy for the proper use and stewardship of such real estate;</p> <p>develop policies and programs for OHA's ownership, financing and development of real estate, including capital improvements, spending policy and forms of ownership for OHA's real estate;</p> <p>with respect to real estate not owned by OHA in its own name, but owned in one or more limited liability companies or other entities in which OHA, directly or indirectly, maintains an ownership interest, oversee OHA's performance of its rights and obligations with respect to real estate under the terms and conditions of the applicable limited liability company agreement or other operating agreement;</p> <p>review and approve appropriate grants to programs that support OHA's overall mission;</p> <p>evaluate OHA programs to determine effectiveness in order to decide whether to continue, modify, or terminate funding of any of OHA's programs;</p> <p>develop training and orientation programs for Trustees and staff including materials relating to Trustees roles, fiduciary responsibilities, and ethics;</p> <p>in consultation with the Chair of the Committee on Beneficiary Advocacy and Empowerment carry out the recruitment and selection of the Administrator Chief Executive Officer; and</p> <p>provide oversight over Permanent Special Councils or Commissions³ as assigned by the Board.</p> |

³ February 28, 1992, approve to allow for the creation of councils and commissions to specify their organizational position within the Board structure and to specify appointment procedures and operational procedures of such councils and commissions.

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| | | Motion carried. |
| Information | September 10, 2015 | <p>Source: (OHA. Board minutes. Page 4-6. doi: BOT 15-32.)</p> <p>Approve Chair (John Waihe'e), Vice Chair (Lei Ahu Isa) and member of Ad Hoc Committee on Bylaws review. On December 3, 2015, the Ad Hoc Committee review was extended to June 30, 2016.</p> |
| Amendment Article XVII | February 25, 2016 | <p>Source: (OHA. Board Action Item. doi: BR 16-1)</p> <p>Issue: This Action Item contemplates the amendment of OHA Bylaws Article XVII, the creation of a code of conduct for OHA trustees and sanctions for trustees for the violation of the code of conduct, and the concurrent approval, adoption and ratification of the code of conduct as a stand-alone policy to comport with the recommendation of the Board of Trustees.</p> <p>The modification to conform the OHA BOT Executive Policy Manual, Subseries 1030 (Trustee Duties, Responsibilities, and Conduct), to Bylaw amendment is proposed to ensure consistency of meaning and substance between Bylaw and Executive Policy.</p> <p>Source: (OHA. Board minutes. Page 6-7. doi: BOT 16-04)</p> <p>1st reading to amend Article XVII.</p> <p>Chair Lindsey stated "this is second attempt to set standards for ensuring that we are all appropriately held accountable for our actions...We put our mission at risk when we act for the benefit of ourselves, rather than the good of our organization. Our lack of ability to policy ourselves is an irregularity in our operations that must be corrected. For the effective functioning of our Board, we must establish a procedure for imposing disciplinary sanctions when Board rules are violated and we need to approach this objective with urgency and unity...to meeting the high standards of ethics, transparency, and accountability that are expected from oversight responsibilities. I also must now ask for your vote to approve the First Reading of an amendment to our Bylaws that would help us better demonstrate that we are responsible stewards capable of exercising our authority in OHA's best interest."</p> <p>Motion to amend, approve, adopt and ratify OHA Board of Trustees' Bylaws Article XVII, "Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct" and to approve, adopt and ratify a stand-alone policy which shall be titled "Code of Conduct and Sanctions for Violation of the Code of Conduct".</p> |

| Board Action | Meeting Date | Note |
|---------------------------|----------------|--|
| | | Motion carried. 7 yes, 0 no and 2 excused. |
| Amendment Article XVII | March 15, 2016 | <p>Source: (OHA. Board minutes. Page 4 6. doi: BR 16 05)</p> <p>2nd reading to amend, approve, adopt and ratify OHA Board of Trustees' Bylaws Article XVII, "Trustee Code of Conduct and Sanctions for Violations of the Code of Conduct" and to approve, adopt and ratify a stand alone policy which shall be titled "Code of Conduct and Sanctions for Violation of the Code of Conduct", as amended. The stand alone policy includes a number of actions that the Board can take.</p> <p>Motion carried. (8 yes, 0 no, 0 abstention and 1 excused.)</p> |

~~APPENDIX KKKKKKKKKKKKKKKKKKKKKKK. TABLE SHOWING EFFECTS ON BYLAWS~~

The list of adopted/amended dates of BOT Bylaws, also known as “**History of Board Actions on OHA Bylaws**” and “**Table Showing Effects on Bylaws**” from the Board approved BOT Bylaws on November 8, 2007 have been replaced by a more fuller updated version of the history and explanation of the BOT actions with cited reference (digital object identifier) to KFI to look up the expressed language and specific details of the action of the Board. Appendix B of this document has been deleted and replaced by Appendix A. History and Reference Related to the Bylaws of the Board.

~~APPENDIX~~ APPENDIX A. ENUMERATION SYSTEM

The content and format of the Board of Trustees Bylaws is organized by a hierarchy from the most general concept that embodies all other concepts (i.e. title or chapter in this case the Board of Trustees Bylaws) to the most specific details. To maintain clarity especially with long and complicating documents, the following outline or enumeration system will be used through this document.

Starting from the title or section description and capitalized followed by a unique number or alpha (i.e. SECTION 1. MASTER PLAN AND SCOPE OF SERVICES or CHAPTER 10, Hawai'i Revised Statutes or BOARD OF TRUSTEES BYLAWS) .

- I. **Subsection** is indicated by a roman numeral followed by a period. (i.e. ARTICLE I., ARTICLE II., ARTICLE III., ARTICLE IV. and etc.). Subsections are the principal divisions of a section and deal with discrete elements of a section.
 - A. **Paragraph** is indicated by a capital alphabet and period with or without a brief description. (i.e. A. or A. Chair., B., C. and etc.). Paragraphs are used to break down a subsection that covers a number of contingencies, alternatives, requirements, or conditions.
 - 1. **Subparagraph** indicated by a whole number and period. (i.e. 1., 2.)
 - b. **Clause** indicated by lower case alphabet and period.
 - (1) **Sub-Clause** indicated by an open and close parentheses.

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