

**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, March 28, 2019  
10:00 am**

**ATTENDANCE:**

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

ROBERT G. KLEIN, ESQ., BOARD COUNSEL

**BOT STAFF:**

CAROL HO'OMANAWANUI  
DAYNA PA  
LAURENE KALUAU-KEALOHA  
LEIANN DURANT  
KAMA HOPKINS  
PRICILLA NAKAMA  
LEHUA ITOKAZU  
MARIA CALDERON  
ALYSSA-MARIE KAU  
MELISSA WENNIHAN

**ADMINISTRATION STAFF:**

KAMANAOPONO CRABBE, CEO  
MILES NISHIJIMA, LPD  
LISA VICTOR, CTO  
RAINA GUSHIKEN, CC  
STERLING WONG, PRO

**GUESTS:**

NONE

**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, Akaka, Akina, Lee, Carmen Hulu Lindsey, Robert Lindsey and Machado are present, constituting a quorum. Trustee John Waihe'e IV is expected to arrive shortly.

Before we move on to public testimony, I would like to add these comments to the record.

The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for the following items:

**IV. New Business**

- A. Committee on Beneficiary Advocacy and Empowerment
  - 1. 2019 OHA Legislative Positioning – Matrix 2<sup>\*\*\*</sup>, March 27, 2019
- B. Joint Committee on Beneficiary Advocacy and Empowerment and Resource Management
  - 1. Administration's recommendation to the BAE/RM Committee to review and approve Action Item BAE/RM #19-02 relating to the Kūlia Grant recommendations.<sup>†</sup>
- C. Report by the Permitted Interaction Group on Organizational Guidance of its findings and recommendations, without discussion. *Pursuant to HRS §92-2.5(b)(1)(B)*<sup>†</sup>

**II. PUBLIC TESTIMONY**

**Chair Colette Machado** – Do we have anyone signed up for public testimony? Hearing none, we will move on to III.

### **III. UNFINISHED BUSINESS**

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

**Chair Colette Machado** –I would like to call on our Ka Pouhana, CEO for any unfinished business and updates.

**Kamana'opono Crabbe** – Good morning Trustees. This morning public policy and the Pou Nui Sylvia Hussey are before the legislature to testify on support. It looks like it will move out for our budget bill. That's positive. Second OHA is just one of many other agencies who are making the transition for our payroll. This huge effort to have all of our payroll consistent on one IT platform. We have been working very diligently with the State IT offices in looks like within the next several months it will take place. What we are asking to do is all staff is to make sure that their time cards are up to date. That will be helpful when we transition over by June/July for the next fiscal year. You may be getting HR reminders to encourage your staff to update their time cards. It will be that much easier, because once we convert there is no going back, we have to move forward and the reason why it's important is because it keeps track of all of your vacation, all of your hours and even related to retirement and so forth. As I shared you may be hearing more announcements from HR but it's part of the whole State IT upgrade system.

Lastly, we've been trying to really work through our oracle fusion. The Oracle fusion is to upgrade our current accounting system and related to our charter accounts. It require much more specialty skill in designing, constructing the actual program. It's much more from what we originally contracted program developer. It's delayed; it may be delayed another 6 months. But we are trying to stay on course. We look like we will be hiring a very creditable data warehouse group that will be helping us to specially design our oracle fusion for us within the next 6 months or so. I share that because we were hoping that by July that we can start moving it toward a better accounting system in terms of being able to provide data and reports. Right now that is being worked on as one of the priorities. That's the highlights from Administration.

**Trustee Leina'ala Ahu Isa** – We are still going through the same thing at the Hilton and it takes a lot of training. It's really confusing, so many parts to it, so you have the staff training or someone in to train.

**Kamana'opono Crabbe** – Right, we had an original contractor but he is not as skilled into the actual design and structure so we are having someone else come in who works directly with Gloria and her staff to break it down and design it. The intent is to design the Charter accounts to align with Fiscal policies but then also that data will go to a report, either monthly or quarterly, but that tedious detail you have work directly with the staff and not just the manager but you have work with the line staff.

**Trustee Leina'ala Ahu Isa** – Yes because the time involved. (*conversation indiscernible*)

**Kamana'opono Crabbe** – OHA we are the first State agency to be moving to Oracle Fusion. They are all supposed to do it. Lisa Victor as the CTO was able to develop a relationship with the prior State Chief Technology Officer, who helped to upgrade our hardware so that we have more speed. This is the second phase of upgrading now our software.

**Chair Colette Machado** – We are now on New Business.

*10:07 am Trustee John Waihe'e IV arrives to meeting.*

#### **IV. NEW BUSINESS**

**Chair Colette Machado** – The Committee on Beneficiary Advocacy and Empowerment’s referral to the BOT relating to Matrix 2, March 27, 2019. I will call on Trustee John Waihe’e IV. We have two motions the first motion is on the Board.

##### **A. Committee on Beneficiary Advocacy and Empowerment**

##### **1. 2019 OHA Legislative Positioning – Matrix 2\*\*†, March 27, 2019**

**Trustee John Waihe’e IV** moves to approve Administration’s recommendations on *NEW BILLS* (Items 1 - 60) and *BILL POSITIONS FOR RECONSIDERATION* (Items 61, 63 - 65, excluding Item 62, HB419); as well as

**ADD:**

- **HR17 as MONITOR; and**

**CHANGE:**

- **Item 21, HCR155;**

- **Item 36, SCR204;**

- **Item 50, HR142;**

- **Item 59, SR164, all from ~~Monitor~~ to COMMENT;**

**on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended**

**Trustee Kalei Akaka** seconds the motion.

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

Trustee John Waihe'e IV moves to approve Administration's recommendations on *NEW BILLS* (Items 1 - 60) and *BILL POSITIONS FOR RECONSIDERATION* (Items 61, 63 - 65, excluding Item 62, HB419); as well as

ADD:

- HR17 as MONITOR; and

CHANGE:

- Item 21, HCR155;
- Item 36, SCR204;
- Item 50, HR142;
- Item 59, SR164, all from ~~Monitor~~ to COMMENT;

on the OHA Legislative Positioning Matrix dated March 27, 2019, 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 passed unanimously with nine (9) yes votes

**Chair Colette Machado** –Trustee John Waihe'e IV.

**Trustee John Waihe'e IV** moves to approve Administration's recommendation on *BILL POSITIONS FOR RECONSIDERATION*: Item 62, HB419 from ~~Monitor~~ to SUPPORT on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended.

**Trustee Kalei Akaka** seconds the motion.

**Chair Colette Machado** – It has been moved and seconded, any discussion? Hearing none, roll call vote.

<b>Trustee John Waihe'e IV moves to approve Administration's recommendation on <i>BILL POSITIONS FOR RECONSIDERATION</i>: Item 62, HB419 from <del>Monitor</del> to SUPPORT on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended.</b> <b>Trustee Kalei Akaka seconds the motion.</b>						
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 abstain	
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			8		1 abstention	
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED Motion passed with eight (8) yes votes, and one (1) abstention.						

**B. Joint Committee on Beneficiary Advocacy and Empowerment and Resource Management**  
**1. Administration's recommendation to the BAE/RM Committee to review and approve Action Item BAE/RM #19-02 relating to the Kūlia Grant recommendations.**

**Chair Colette Machado** – Thank you Members we are item IV.B. the Joint Committee referral to the BOT regarding Action Item BAE/RM #19-02 relating to the Kūlia Grant recommendations. Trustee Dan Ahuna the motion is on the Board.

**Trustee Dan Ahuna moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$374,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund eight (8) Fiscal Year 2018 Kūlia Grant recommendations listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix except for Five Mountains Hawaii DBA Kīpuka O Ke Ola at \$51,000 and Malama Loko Ea at \$75,000.**

**Trustee Carmen Hulu Lindsey seconds the motion.**

**Chair Colette Machado** – Thank you Trustee Carmen Hulu Lindsey for the second. Any discussion on this item? There will be two recusals.

**Trustee Dan Ahuna** – They will vote on this one.

**Chair Colette Machado** – I stand corrected. Roll call vote.

Trustee Dan Ahuna moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$374,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund eight (8) Fiscal Year 2018 Kūlia Grant recommendations listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix except for Five Mountains Hawaii DBA Kīpuka O Ke Ola at \$51,000 and Malama Loko Ea at \$75,000. Trustee Carmen Hulu Lindsey seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			

TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE					X abstain	
TRUSTEE CARMEN HULU LINDSEY		x	X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8		1 abstention	
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passed with eight (8) yes votes and one (1) abstention.						

**Chair Colette Machado** – Thank you members, motion number 2 Trustee Dan Ahuna.

**Trustee Dan Ahuna moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$51,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Kūlia Grant recommendation listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix for Five Mountains Hawaii DBA Kīpuka O Ke Ola at \$51,000.**

**Trustee John Waihe'e IV second the motion.**

**Chair Colette Machado** – It's been moved and seconded, roll call vote please.

Trustee Dan Ahuna moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$51,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Kūlia Grant recommendation listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix for Five Mountains Hawaii DBA Kīpuka O Ke Ola at \$51,000.						
Trustee John Waihe'e IV second the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE					X abstain	
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY					X recuse	
TRUSTEE JOHN WAIHE'E		x	X			
TRUSTEE COLETTE MACHADO						
TOTAL VOTE COUNT			7		1 abstention 1 recusal	
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passed with seven (7) yes votes, one (1) abstention and one (1) recusal.						

**Chair Colette Machado** – Thank you for your patience, we have one more motion. Trustee Dan Ahuna.

**Trustee Dan Ahuna moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$75,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Kūlia Grant recommendation listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix for Malama Loko Ea at \$75,000.**

**Trustee John Waihe'e IV seconds the motion.**

**Chair Colette Machado** – Thank you Trustee John Waihe'e IV for the second. If no discussion roll call vote please.

Trustee Dan Ahuna moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$75,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Kūlia Grant recommendation listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix for Malama Loko Ea at \$75,000. Trustee John Waihe'e IV seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE					X recuse	
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E		x	X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8			
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED Motion passed with eight (8) yes votes and one (1) recusal.						

**Chair Colette Machado** – Congratulations everyone. Thank you staff and moving forward.

**Kamana'opono Crabbe** – Given the approval by the board, our public relations officer Sterling Wong has prepared a press release statement that will immediately go out to the media today.

**Chair Colette Machado** – Thank you for that update.

**C. Report by the Permitted Interaction Group on Organizational Guidance of its findings and recommendations, without discussion. Pursuant to HRS §92-2.5(b)(1)(B)**

**Chair Colette Machado** – We are on New Business item C. I will call on Vice Chair Brendon Kalei'āina Lee to lead this. It's only a distribution there is no discussion on the item related to the Permitted Interaction Group on Organization Guidance of its findings and recommendation.

**Trustee Brendon Kalei'āina Lee** – Mahalo Chair and Trustees. You have before you the comprehensive work of the Permitted Interaction Group of Governance Framework that was approved in January for Office of Hawaiian Affairs. What you have before you is that report of that permitted interaction group. What I have before me for you folks all to see is the reported comprehensive work of that group so that the Board of Trustees can see; this is just the work that was reported back to the interaction group. This does not consist of the actual work that was done. I don't believe it would fit on this table. With your indulgence, I would like to take a moment to read our introduction letter.

When the Office of Hawaiian Affairs was established over 4 years ago, no one foresaw the growth OHA would experience as it evolved into the Native Hawaiian Trust it is today.

Based on recent best practice analyses, the Board of Trustees governance framework does not address the many different needs of its Native Hawaiian Trust as well as the overall management of the Office of Hawaiian Affairs.

In order to assist in the forward movement of our organization, on January 24, 2019, the Board of Trustees voted to approve a Permitted Interaction Group to develop and updated Governance Framework for the Office of Hawaiian Affairs. This group over the past two months, has worked diligently to complete a comprehensive analysis of OHA's by-laws, policies, and action items spanning the last 5 years. In order to provide context and history our administrative staff has put together a mo'oku'auhau for our current policies. In addition to reviewing these material, we met with our kupuna ali'i trust (Queen Lili'uokalani Trust, Lunalilo Home, and Kamehameha Schools) to analyze their governance framework. In order to gain even more insight, we also studied national and international governance models (Maori and Native American Tribal Governments) for their respective governance contexts.

This project was a joint effort. Our team was comprised of selected Trustees, Trustee staff, administration leaders, and administrative staff. I would like to take this opportunity to thank our team for the long hours of aggregating data, reporting back to the team weekly, and participating in insightful and open discussion. I want to especially mahalo our project manager, Ka Pou Nui Sylvia Hussey, who unfortunately is not here for this historic presentation today; she is at the Legislature representing us, for keeping the team on track and on time.

The attached report of our Governance Framework PIG shows that once the governance model is adopted, subsequent PIGs will need to be approved to develop transition steps over the next six to nine months.

Mahalo Board of Trustees.

If you can turn to page 3 or your report I will quickly take you through some of the highlights of your report.

**Trustee Carmen Hulu Lindsey** – I don't believe you can.

**Trustee Brendon Kalei'āina Lee** – I believe I can because I am presenting.

**Trustee Carmen Hulu Lindsey** – No.

**Robert G. Klein, Board Counsel** – You can't present the information in the report, you can present the report, what you just did with a nice introduction.

**Trustee Brendon Kalei'āina Lee** – And that's it, ok.

**Robert G. Klein, Board Counsel** – Yes.

**Trustee Brendon Kalei'āina Lee** – Thank you Chair.

**Trustee Carmen Hulu Lindsey** – Yes, I been through it, I got scolded the last time.

**Trustee Brendon Kalei'āina Lee** – I read it, as there is a difference between presenting it and discussion. Presenting isn't discussion. I will yield.

**Robert G. Klein, Board Counsel** – The presentation part, since some of the Trustees weren't on the Committee this is the first that they have heard about it or seen it. Now they have time to take it under advisement, study it before they discuss it and deliberate.

**Trustee Brendon Kalei'āina Lee** - So part of that presentation I am not allowed to point out to highlight certain things.

**Robert G. Klein, Board Counsel** – We are taking it just exactly as OIP requires.

**Trustee Brendon Kalei'āina Lee** - Ok.



**Trustee Dan Ahuna** – Will be able to ask him a question?

**Robert G. Klein, Board Counsel** – During the discussion and deliberation next week. You can ask all the questions you want. Now is the time to accept it, review it, write down all your questions and then go for it the next time.

**Chair Colette Machado** – Just for your information at the request of the Vice Chair and the Chair of the PIG on April 4<sup>th</sup> we will be adding this to the BOT which we will have discussion and hopefully approval for this mechanism for the framework. Save all your questions for next week for full and free discussion at the table. With that said, we will move on to V. Executive Session.

## **VI. EXECUTIVE SESSION**

**Chair Colette Machado** – The Chair would like to entertain a motion to go into executive session pursuant to HRS §92-5(a)(4).

**Trustee Brendon Kalei‘āina Lee** moves to recuse into executive session pursuant to HRS §92-5(a)(4).

**Trustee Carmen Hulu Lindsey** seconds the motion.

**Chair Colette Machado** – Roll call please.

Trustee Brendon Kalei‘āina Lee moves to recuse into executive session pursuant to HRS §92-5(a)(4). Trustee Carmen Hulu Lindsey seconds the motion.						
TRUSTEE	1	2	‘AE (YES)	A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA‘ALA AHU ISA			X			
TRUSTEE DAN AHUNA			X			
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 passed unanimously with nine (9) yes.						

**Chair Colette Machado** – At the request of the Chair everyone is excused, staff and aides. With that said, can we clear the room?

**Kamana‘opono Crabbe** – Madame Chair we request Corp Counsel to stay.

**The Board resolved into Executive Session at 10:24 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 the State Auditor’s request for the status of implementation of the audit recommendations in Report No. 18-03. Pursuant to HRS §92-5(a)(4).**

The Board reconvenes in open session at 10:34 am.

**VII. COMMUNITY CONCERNS**

NONE

**VIII. ANNOUNCEMENTS**

NONE

**IX. ADJOURNMENT**

**Chair Colette Machado** – If there is no further business, I would like to adjourn the meeting.

**Trustee Brendon Kalei‘āina Lee** moves to adjourn the meeting.

**Trustee Dan Ahuna** seconds the motion.

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

Trustee Brendon Kalei‘āina Lee moves to adjourn the meeting. Trustee Dan Ahuna seconds the motion.						
TRUSTEE	1	2	‘AE (YES)	A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA‘ALA AHU ISA			X			
TRUSTEE DAN AHUNA		x	X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI‘I AKINA			X			
TRUSTEE BRENDON KALEI‘ĀINA LEE	x		X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE‘E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [ x ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED Motion passed unanimously with nine (9) yes.						

The meeting was adjourned at 10:36 am.

Respectfully submitted,

Dayna Pa, Board Secretary

As approved by the Board of Trustees on May 2, 2019.

Colette Y. Machado, Chairperson  
Board of Trustees

Attachment:

1. Report from the Governance Framework Permitted Interactive Group (PIG) dated March 25, 2019




OFFICE OF  
HAWAIIAN AFFAIRS  
STATE OF HAWAII  
RECEIVED-BOT

2019 MAR 27 A 9 10

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**OFFICE OF HAWAIIAN AFFAIRS**  
Interoffice Memorandum

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**DATE:** March 25, 2019  
**TO:** Board of Trustees  
**FROM:** Trustee Brendon Kalei'aina Lee   
**RE:** Governance Framework Permitted Interactive Group (PIG)

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When the Office of Hawaiian Affairs (OHA) was established over 40 years ago, no one foresaw the growth OHA would experience as it evolved into the Native Hawaiian Trust it is today.

Based on recent best practice analyses, the current Board of Trustees governance framework does not address the many different needs of its Native Hawaiian Trust as well as the overall management of the Office of Hawaiian Affairs.

In order to assist in the forward movement of our organization, on January 24, 2019, the Board of Trustees voted to approve a Permitted Interactive Group (PIG) to develop an updated Governance Framework for the Office of Hawaiian Affairs. This group, over the past two months, has worked diligently to complete a comprehensive analysis of OHA's by-laws, policies, and action items spanning the last five years. In order to provide context and history, our administrative staff has put together a mo'oku'auhau for our current policies. In addition to reviewing these materials, we met with our kupuna ali'i trusts (Queen Lili'uokalani Trust, Lunalilo Home, and Kamehameha Schools) to analyze their governance framework. In order to gain even more insight, we also studied national and international governance models (Maori and Native American Tribal governments) for their respective governance contexts.

This project was a joint effort; our team was comprised of selected trustees, trustee staff, administration leaders, and administrative staff. I would like to take this opportunity to thank our team for the long hours of aggregating data, reporting back to the team weekly, and participating in insightful and open discussion. I want to especially mahalo our project manager, Ka Pou Nui Sylvia Hussey, for keeping the team on track and on time.

The attached report of our Governance Framework PIG shows that once the governance model is adopted, subsequent PIGs will need to be approved to develop transition steps over the next six to nine months.

Mahalo.





Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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## I. OVERVIEW

Two thousand eighteen (2018) marks the end of the Office of Hawaiian Affairs' (OHA or Organization) strategic plan period, and several years of challenges within the organization, hampering the organization's abilities to more intently apply and deploy resources to "better the conditions of native Hawaiians". In the past 24 months, the following have undermined effective governance at OHA:

- **People.** Board of Trustees (BOT) interactions among themselves, with regulatory agencies (e.g., Ethics Commission, Attorney General's office), with Administration (including staff), and beneficiaries and stakeholders have diverted strategic energy, focus, time and dollars from mission critical and aligned responsibilities.
- **Policies and Plans.** Un-implemented strategic policies and plans (e.g., Post 2018 Strategic Plan, including implementation, Financial Sustainability Plan, Debt Policy, Hawaii Direct Assets Policy, LLCs) have hampered the organization's ability to advance mission critical and aligned strategies.
- **Procedures and Practices.** Audits--initiated or triggered by BOT interactions and behaviors, and completed in the normal course of regulatory and statutory requirements (e.g., Chapter 10)---have diverted trust resources (e.g., time and dollars) and highlighted procedure and practice improvements, respectively.

Given the changes and experiences in the last 24 months within the organization, the need for strengthening governance can be synthesized to a need:

- To improve the image, brand, credibility and standing in the community of the Office of Hawaiian Affairs;
- To demonstrate understanding of and accountability to the statutory, fiduciary and trust organizational responsibilities of the Office of Hawaiian Affairs via codified policies, procedures and practices;
- For explicit clarity in the roles, responsibilities and accountabilities of the Board of Trustees and Administration (including staff);
- For explicit and intentional clarity in the purposes, direction and strategic planning and implementation efforts post 2018; and
- To strengthen the organization's ability to advance mission critical and aligned strategies.

The Board of Trustees (BOT) is committed to strengthening OHA's governance framework, structure, policies, procedures and practices to more intently apply and deploy resources to "better the conditions of native Hawaiians".



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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## **II. PERMITTED INTERACTION GROUP**

### **A. Statutory Basis**

In accordance with HRS, CHAPTER 92, PUBLIC AGENCY MEETINGS AND RECORDS §92-2.5 (b) Permitted interactions of members, (b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to: (1) Investigate a matter relating to the official business of their board; provided that: (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board; (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and (C) Deliberation and decision making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

### **B. Formation**

In January 2019, the Board approved the formation of a Permitted Interaction Group (PIG) to: Investigate various elements of governance frameworks and models, including but not limited to cultural, indigenous, native, national and international contexts. The PIG was established with Chair, Colette Machado as Business Process Owner, Vice Chair, Trustee Brendon Kalei'āina Lee as Project Sponsor and Trustees Robert Lindsey<sup>1</sup> and John Waihee<sup>2</sup> as members. The PIG was supported by Trustee Machado, Lee, Lindsey and Waihee's Aides; and Administration, Ka Pouhana, Kamana'opono Crabbe, Ka Pou Nui, Sylvia Hussey and Executive Office staff. The PIG, also known as the Board Governance Framework Project, implemented a project plan in five phases: Phase I – Planning; Phase II – Where are we now? (AS IS); Phase III – Proposing Elements of a Governance Framework; Phase IV – Proposing Implementation Actions; and Phase V – Closing Project and Lessons Learned. This PIG report covers the results (and close) of the PIG of Phases I to III. Phases IV and V is proposed to be accomplished through a subsequent, sequenced series of PIGs, subject to Board approval.

For purposes of the PIG, the following working definition of “governance” was used to frame the project, activities and deliverables: Establishment of policies, and continuous monitoring of their proper implementation, by the members of the governing body of an organization. It includes mechanisms required to balance the powers of the members (with the associated accountability) and their primary duty of enhancing the prosperity and viability of the organization.<sup>3</sup>

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<sup>1</sup> Interim Chair of the Resource Management Committee at the time of the formation of the Permitted Interaction Group

<sup>2</sup> Chair of the Beneficiary, Advocacy and Empowerment Committee

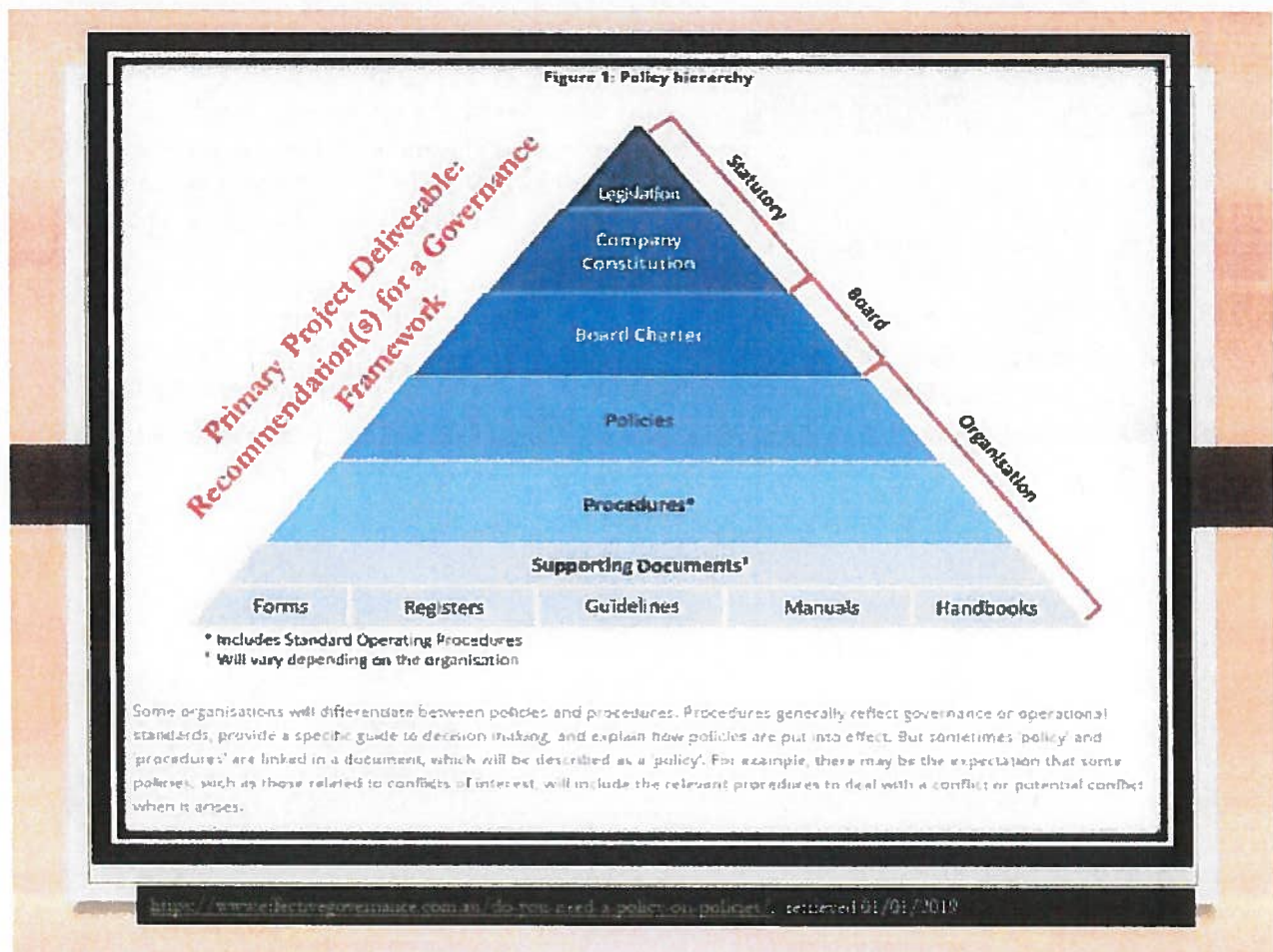
<sup>3</sup> <http://www.businessdictionary.com/definition/governance.html>, retrieved 1/1/2019

### C. Analyses Context

For purposes of the PIG Board Governance Framework Project, the working “look back” period was determined to be five (5) years----2018, 2017, 2016, 2015, 2014----which includes five of the eight years of the Strategic Plan, 2010 to 2018 period.

### D. Major Deliverable of the PIG

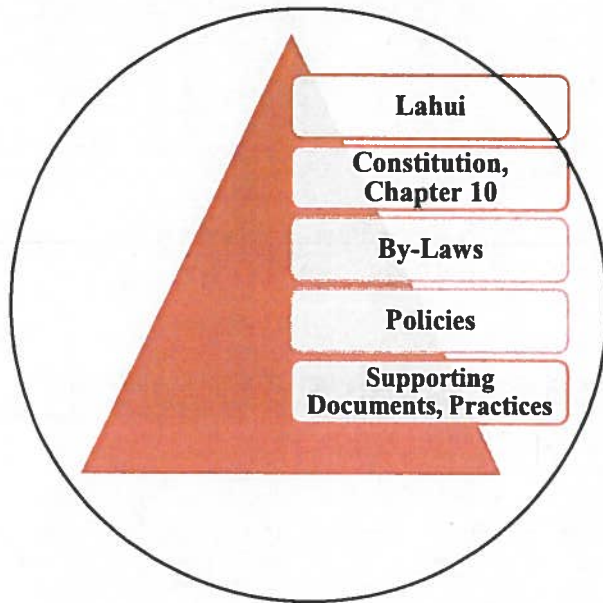
The major project deliverable of the PIG are recommendations to the Board of Trustees for OHA’s governance framework utilizing an exemplar policy hierarchy below.<sup>4</sup>



<sup>4</sup> <https://www.effectivegovernance.com.au/do-you-need-a-policy-on-policies/>, retrieved 01/01/2019



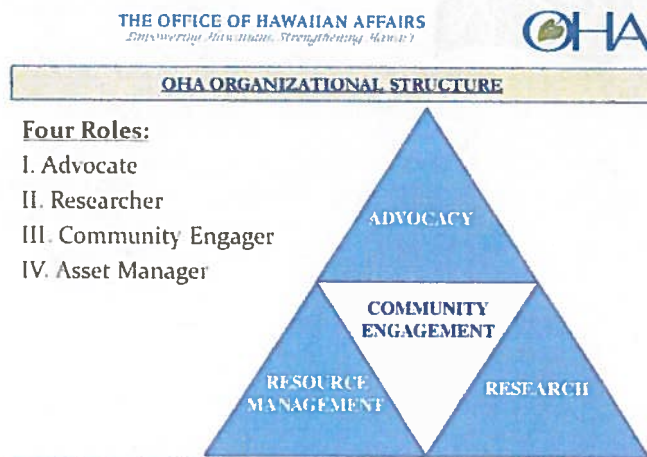
### III. EXECUTIVE SUMMARY



The PIG recommends five elements of OHA's Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

**Element 1: Identity.** Ho'oulu Lahui Aloha – To Raise a Beloved Lahui. A State Agency with the responsibility to manage a Trust, that identifies and operates more similarly to Ali'i Trusts<sup>5</sup> with a lahui<sup>6</sup> mindset in improving the well-being of our lahui. Such an identity is rooted in the 'ōlelo no'eau, *E 'ōpū ali'i*, have the heart of a chief, have the kindness, generosity, and even temper of a chief, 'ōlelo no'eau 369<sup>7</sup>. OHA's identity is also place based, that OHA's *kuleana* is to this place of Hawaii.

OHA's identity manifests itself in four roles: advocate, researcher, community engager and asset manager.



<sup>5</sup> Kamehameha Schools, Liliuokalani Trust, Lunalilo Home, Queens Medical Center

<sup>6</sup> Nation, race, tribe, people, nationality, Na Puke Wehewehe, retrieved 3/17/2019

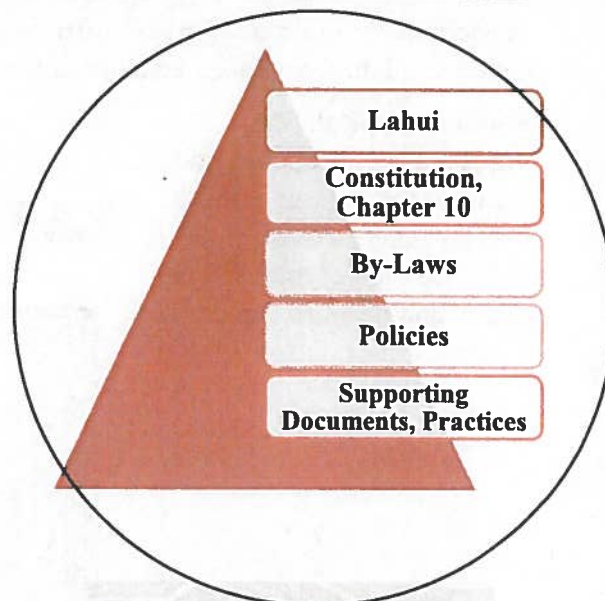
<sup>7</sup> Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 45



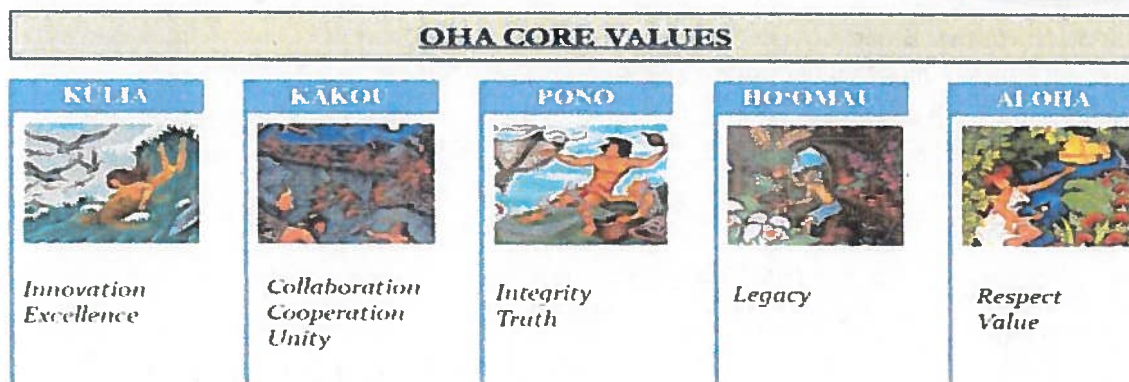
## Element 2: Values and Mana

The PIG recommends that the Board Governance Framework acknowledge the surrounding intangible, yet invaluable role of values and mana in governance.

Effecting the operating values of kūlia, kākou, pono, ho'omau and aloha, begins with Trustees and Board work as exemplars for Administration and the Organization as a whole. *O ke kahua mamua, mahope ke kūkulu*, the site first, and then the building, learn all you can, then practice, 'ōlelo no'eau 2459<sup>8</sup>.



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*'O ke kahua ma mua, ma hope ke Kūkulu.*

**E ho'oikaika ana i nā Kānaka i mana ka lāhui.**

<sup>8</sup> Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 268

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

In addition, the concept of mana<sup>9</sup>, often oversimplified as “power”, belies the complexity of the concept and its acquisition, development and maintenance toward OHA enabling capital.

**Mana as Capital.** The acquisition, development and maintenance of mana toward strengthening OHA’s influence capital, cultural capital and financial capital.

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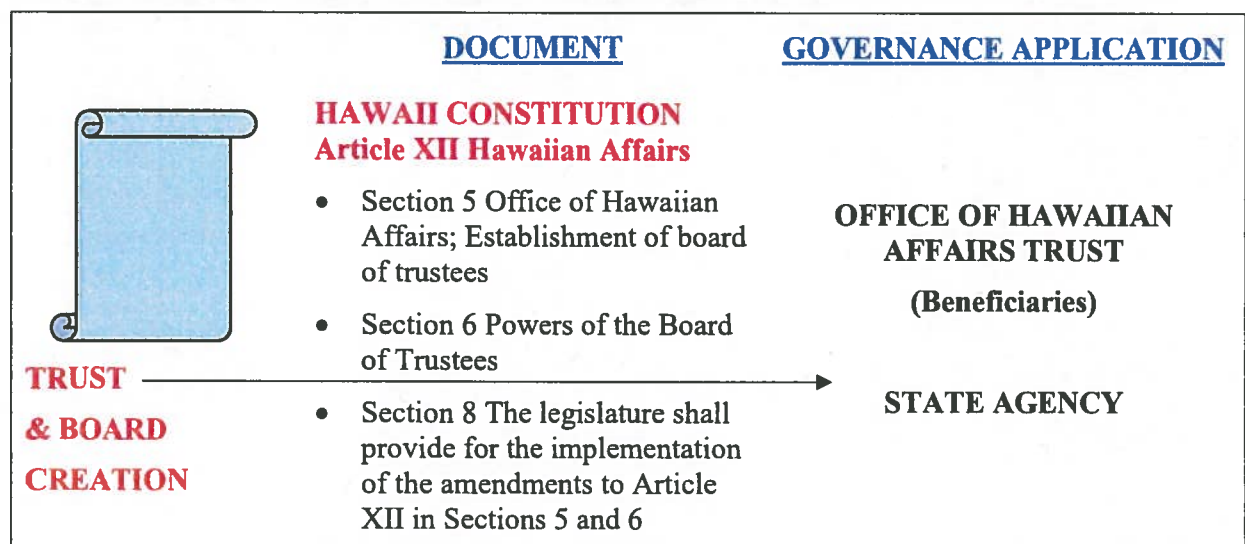


Mana – OHA will:

- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

**Element 3: Statutory Basis**

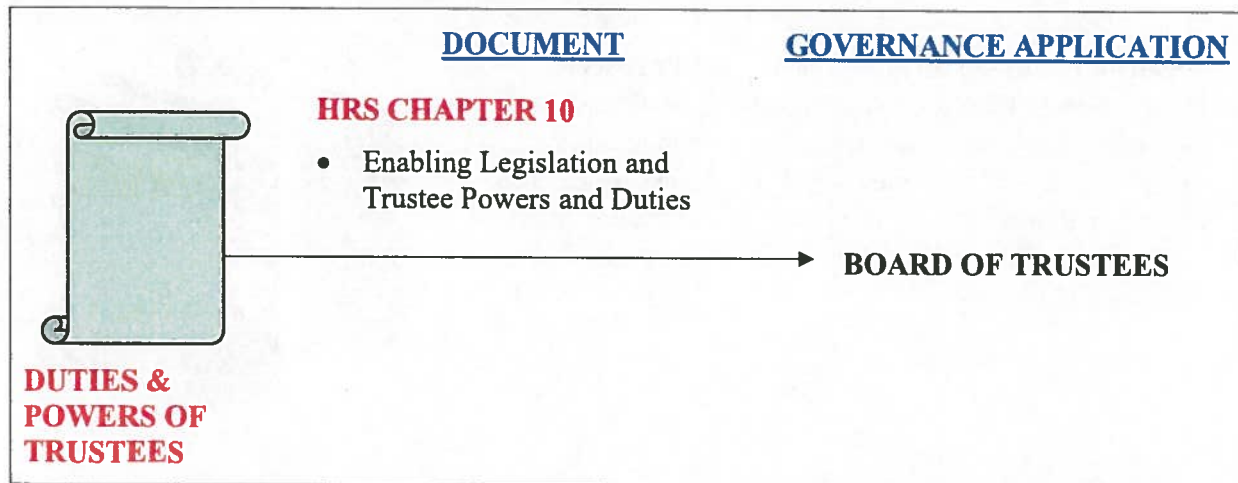
OHA was established under the Hawai‘i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai‘i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people.



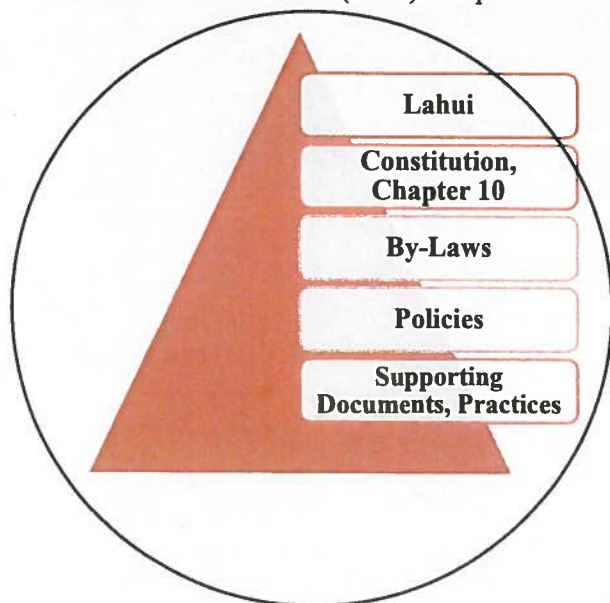
<sup>9</sup> Na Puke Wehehe, Supernatural or divine power, mana, miraculous power; a powerful nation, authority; to give mana to, to make powerful; to have mana, power, authority; authorization, privilege; miraculous, divinely powerful, spiritual; possessed of mana, power, <http://weheweh.org>, retrieved 3/26/2019

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

The State of Hawaii's Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



Hawaii Revised Statutes (HRS) Chapter 10 enables legislation and trustee powers and duties.



**Element 4: Policies<sup>10</sup>.** The PIG recommends that OHA policies be organized into three tiers: L-Lahui<sup>11</sup>, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the *kaumaha* (heavy weight, sadness) or significant *kuleana* (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding 'āina, water, wahi pana and iwi kupuna, strengthen 'ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA's Trustee role as a result of the

<sup>10</sup> Merriam-Webster, Definition of *policy* 1a : prudence or wisdom in the management of affairs; b : management or procedure based primarily on material interest; 2a : a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b : a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, <https://www.merriam-webster.com/dictionary/policy>, retrieved 3/17/2019

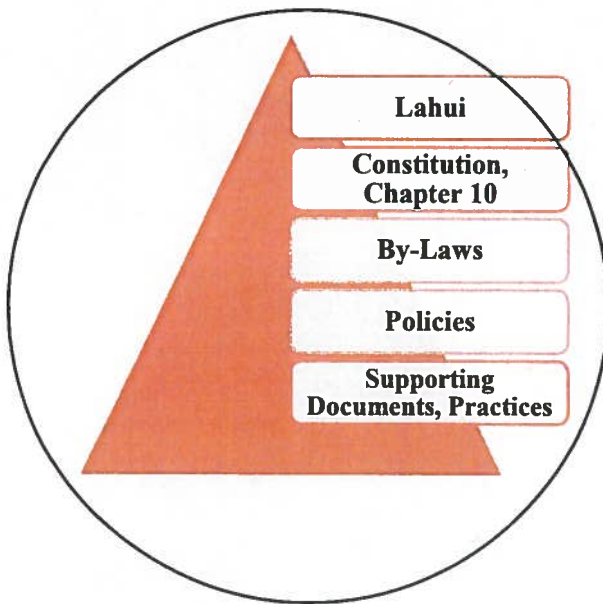
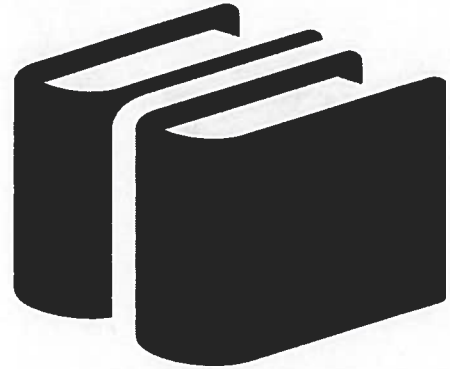
<sup>11</sup> Pukui, nvs. Nation, race, tribe, people, nationality, <http://wehewehe.org>, retrieved 3/17/2019

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

**Element 5: Supporting Documents and Practices (Operations).** Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and “operationalized” documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.



**The PIG recommends five elements of OHA’s Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).**



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

#### IV. WHERE ARE WE NOW? (AS IS)

**A. AS IS Analyses.** The PIG examined OHA's current governance framework elements; reviewed the current policies, procedures and practices; analyzed BOT action items for the past five (5) years; analyzed a handful of current advocacy platform items, including its mo'okuauhau (genealogy); identified emerging governance framework design elements; and studied models of cultural, indigenous, native, national and international governance contexts.

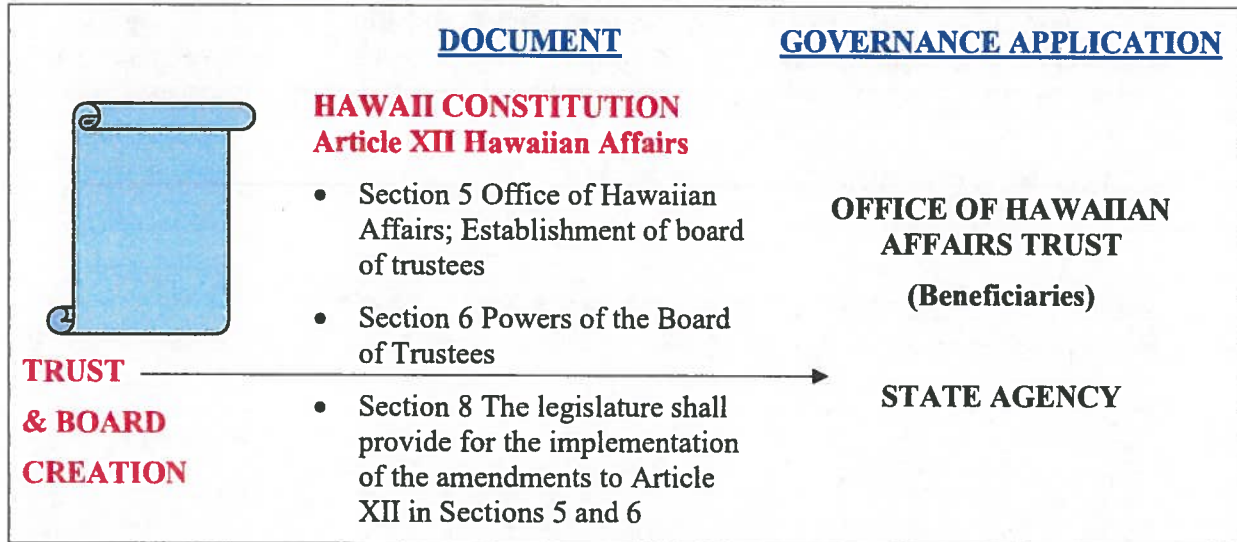
1. **Purpose of the Office.** The current governance framework and the Organization's operations are all framed by HRS Chapter 10 and related Federal, State and County laws.

• **§10-3 Purpose of the office.** The purposes of the office of Hawaiian affairs include

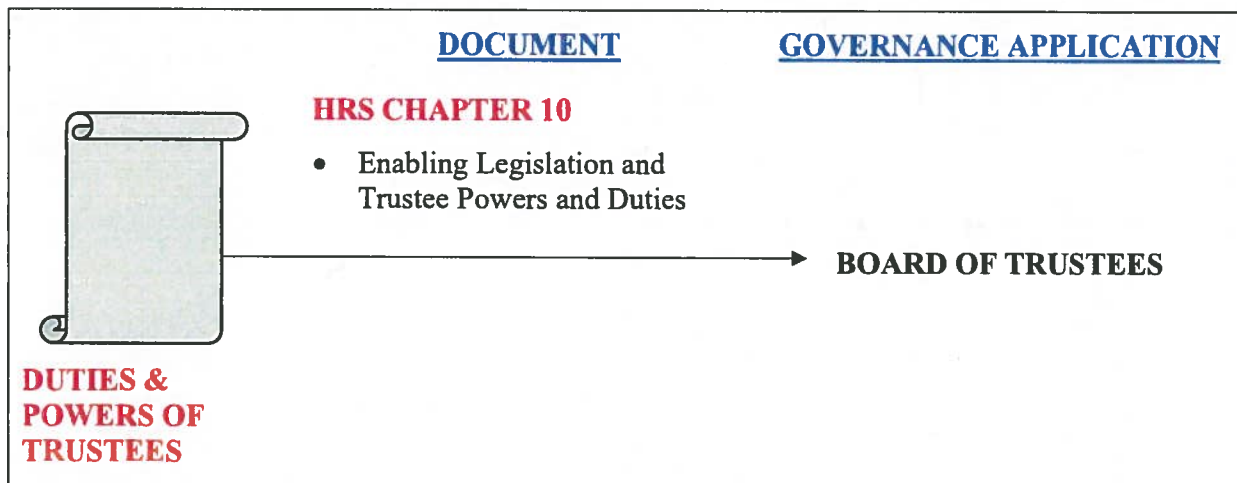
- (1) The betterment of conditions of native Hawaiians. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 ("3 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e);
- (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 Section 10-3, the use of the descriptor of "native Hawaiians" and "Hawaiians" in "betterment of conditions", refers to individuals (beneficiaries) who are greater than or equal to 50% Hawaiian ancestry (aka 'little n Hawaiians') and less than 50% of Hawaiian ancestry (aka 'big N'), respectively. Regardless of the terminology and definition used and understood in Section 10-3, "native Hawaiian" or "Hawaiian", OHA's actions as it relates to carrying out the purpose(s) of the office has been and continues to be lāhui focused.

2. **Current Governance Framework.** The current operating governance structure of the Office of Hawaiian Affairs (OHA) Trust<sup>12</sup> is described below with the foundational governing documents and related application.

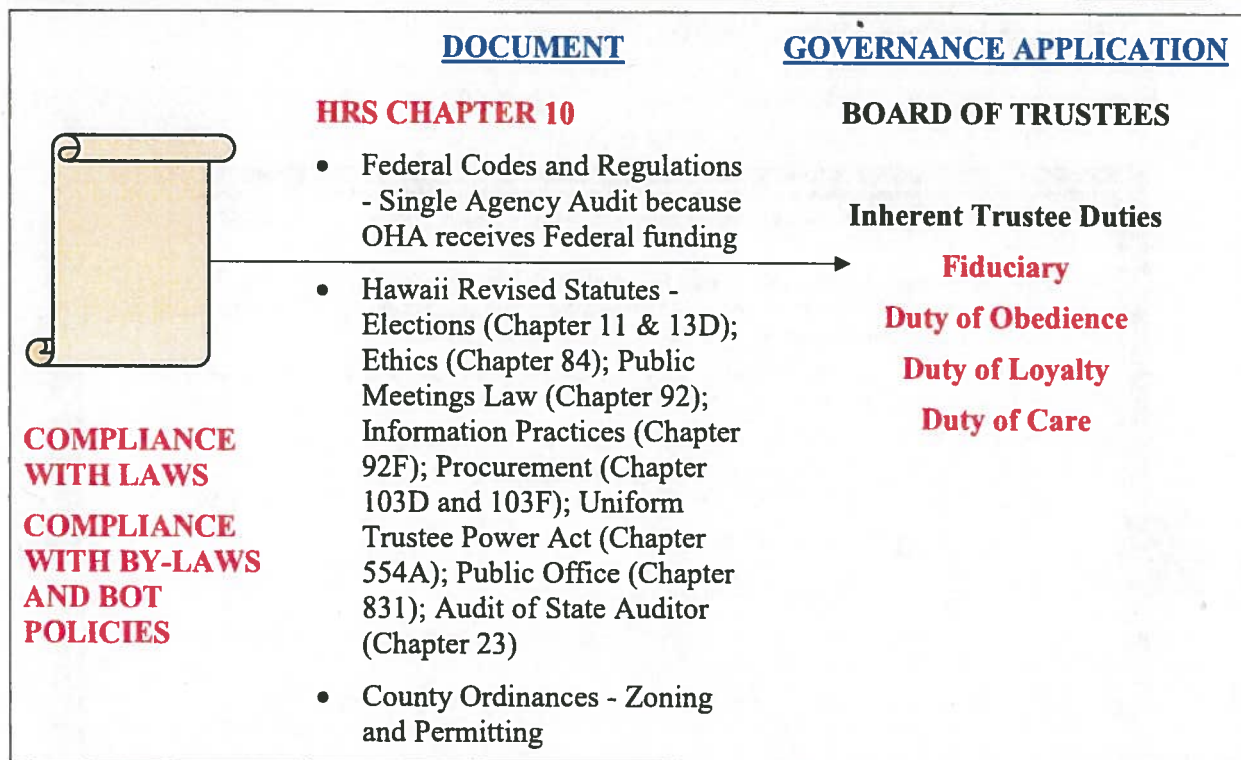


The State of Hawaii's Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



Hawaii Revised Statutes (HRS) Chapter 10 enables legislation and trustee powers and duties.

<sup>12</sup> Governance Structure, prepared by Office of Corporate Counsel, Office of Hawaiian Affairs, October 2016





### 3. Board of Trustees – Powers and Duties

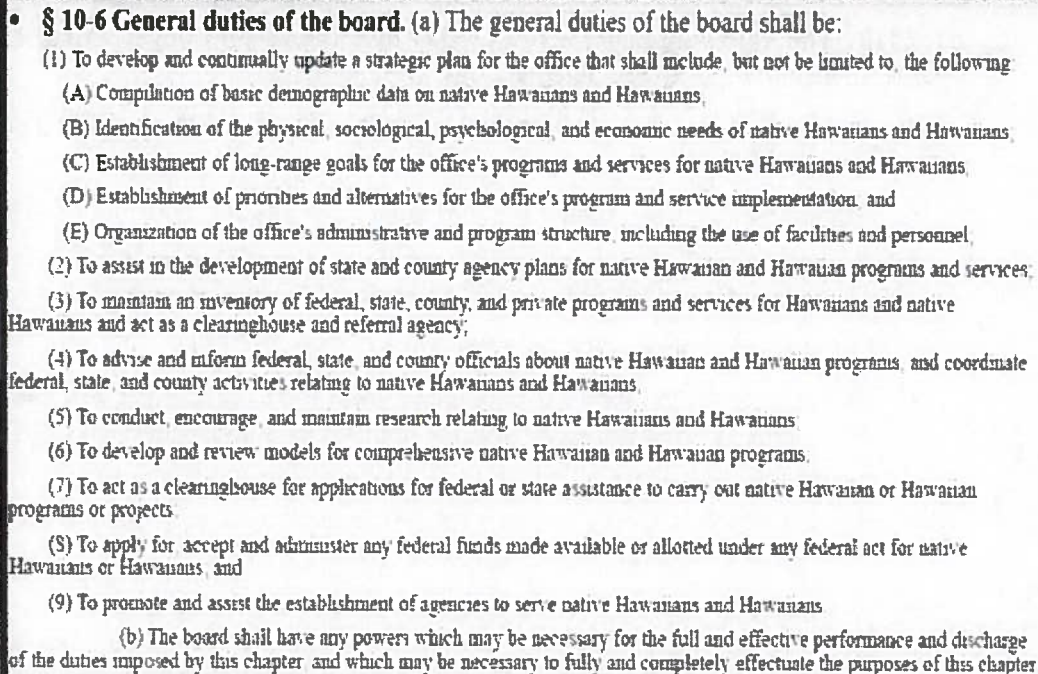
- **§10-5 Board of trustees; powers and duties.** The board shall have the power in accordance with law to:
  - (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, 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. [L 1979, c 196, pt of §2; am L 1990, c 304, §§5, 16; am L 1996, c 240, §1; am L 2002, c 182, §3]

The BOT currently operates under the understanding of the powers and duties as outlined in HRS Chapter 10, specifically Section 10-5. The following is an analysis of the alignment of major BOT actions and activities in the past five years: Management of the proceeds of the Public Land Trust (PLT) revenue (1), (2); Management and development of Kaka’ako Makai and legacy lands (1), (2); Management of Native Hawaiian Trust Fund (NHTF) financial assets (3); Formulation of policies (e.g., ceded lands, spending, investment, water, iwi kupuna, international engagement) (4); Action re Mauna Kea (5); Delegation of authority to Administrator (6); Leveraged State General (via provisos) and Trust funds for multiplier effect (7); Collaborations with Native Hawaiian Legal Corporation and University of Hawaii – Manoa, Richardson Law School, Ka Huli Ao (8).



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

#### 4. Board of Trustees – General Duties

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- **§ 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.
  - (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.

As of February 2019, the Office of Hawaiian Affairs Board of Trustees (“BOT”) operate with a constitutionally and statutorily-founded governance framework that has been further reinforced by years of Board action in the formation of its bylaws, policies, procedures, and practices.

In an attempt to strengthen the BOT governance framework moving into 2020 and beyond, PIG analysis focused on key areas where restructuring may be proposed in order to improve upon the effectiveness of BOT policymaking and organizational advancement of those policies in the pursuit of OHA’s purpose for the betterment of conditions of Native Hawaiians.



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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**5. Board of Trustees Action Items for the Past 5 Years.** The PIG assigned team members, utilizing OHA's internal website---Ka Ipu o ka 'Ike, the gourd of knowledge (aka Ki'i for short), navigated via various links to identify a list of BOT and Committee Action Items over the past five (5) years, 2014 to 2018. The following analyses insights are noted below:

- a. FY 2018.** The following major actions, other than Biennium Budget, Community Grants, Legislative package related actions, were noted:
- Approval of an OHA Resolution Designating 2018 as "Year of the Hawaiian" (January 2018)
  - Amendment to BOT Exec Policy Manual 3.5.e and 3.5.f (January 2018)
  - Approval for OHA to impose moratorium on use of Trustee Sponsorship and Allowance Fund (TSAAF) and CEO-initiated Sponsorships (February 2018)
  - Moratorium on Fiscal Reserve Spending (February 2018)
  - Pursuant to request for LLC documents from BOT, LLC mgrs will submit documents to BOT Financial Audit Comm or its auditor (February 2018)
  - Authorization for OHA CEO/Admin to continue Kaka'ako Lot I sale negotiations with C&CH and approval of legislative reso related to potential sale of Kaka'ako Makai Lot I to C&CH (March 2018)
  - Move to authorize OHA Admin to assess feasibility, timing, and downsizing of current LLC operation structure and develop transition plan to replace existing LC managers, report back by 6/30/18 (May 2018)
  - Authorize OHA CEO to cease ongoing negotiations on a PSA to sell Kaka'ako Makai Lot I to C&CH due to disagreements over unresolved business points of a potential sale, and to take all other reasonable and appropriate actions to implement the foregoing (June 2018)
  - Authorize Administration to utilize \$500,000 for Emergency Disaster Relief on Kaua'i and Hawai'i islands (June 2018)
  - Approve all updates and amendments to BOT Bylaws with the exception of the Re-Designation of all references in Bylaws from "Administrator" to "Chief Executive Officer" which will be considered separately (July 2018)
  - Move to update budget preparation, format and reporting requirements by approving amendments to EPM and BOT Operations Manual, excluding aments on Fiscal Transparency 3.4.k through 3.4.l in Attach A and C (September 2018)
  - Approve long-term direction of Master Plan for OHA's 511 acre property in Wahiawa surrounding Kukaniloko Birthing Stones, authorize Admin to take further steps toward implementation (September 2018)



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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- b. FY 2017.** The following major actions, other than Biennium Budget, Native Hawaiian Revolving Loan Fund Board of Directors, Community Grants, Audit Services and Legislative package related actions, were noted:
- Requesting the OHA BOT authorization of OHA Chief Procurement Officer to issue a Request for Qualifications for an independent CPA firm to conduct a financial audit and management review of OHA and its subsidiaries (March 2017)
  - Authorize OHA Administration to Proceed with the Programmatic Environmental Impact Statement (EIS) Process for OHA's Kakaako Makai Parcels (April 2017)
  - Approval of an OHA Board of Trustees Policy Amendment relating to an allocation of revenue from OHA's Kaka'ako Makai properties (June, August 2017)
  - Authorizing OHA Administration to negotiate and execute an easement agreement with Agribusiness Development Corporation for the installation of irrigation water infrastructure on OHA's Wahiawa property (August 2017)
  - Amendment to Section 5.1 of the Investment Policy Statement, changing the Native Hawaiian Trust Fund Asset Allocation and Benchmarks (August 2017)
  - Approve Wao Kele o Puna Comprehensive Management Plan (CMP) (September 2017)
  - 2018-2019 Charter School Funding Administration Grant Recommendation (October 2017)
- c. FY 2016.** The following major actions, other than Biennium Budget, Fiscal Reserve, Termination of Investment Advisors, Community Grants and Legislative package related actions, were noted:
- BOT Executive Policy on International Engagement (February 2016)
  - Approval of BOT Bylaws Amendment as shown in Attachment "A" and Corresponding and Conforming Changes to BOT Executive Policies as shown in Attachment "B. Code of Conduct and Sanctions for Violation of the Code of Conduct (February 2016, May 2016)
  - Adopt OHA's Fiscal Sustainability Planning Model and Approval of the Statement of Commitment Relating to OHA's Fiscal Sustainability Implementation Plan (May 2016)
  - Approval of a BOT Executive Policy Amendment relating to a Policy on Trespassing and Illegal Camping on OHA Property (May 2016)
  - Approval of Funds from OHA's FY 2016 fiscal Reserve Authorizations for OHA's Fiscal Sustainability Plan (October 2016)



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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- Support for Standing Rock Sioux Tribe in its efforts to protect its sacred sites and natural and cultural resources (October 2016)
- d. **FY 2015.** The following major actions, other than Biennium Budget, Budget Realignment, Community Grants and Legislative package related actions, were noted:
- Approval of the Native Hawaiian Trust Fund Approved Advisors & Non-Marketable Asset Providers List and the addition of SSARIS Advisors LLC as an approved Manager of the Enhanced Liquidity Account (February 2015)
  - Approval of Partial Funding for the Acquisition of 47 acres of the Kuamoo Battlefield and Burial Grounds by the Trust for Public Lands (May 2015)
  - Reorganization of Standing Committee Structure of the OHA Board of Trustees to Create the Committee on Resource Management (July 2015)
  - Approve and authorize funding request of \$400,000 from OHA FY 16 Fiscal Reserve Authorizations for Lunalilo Home and Trust (July 2015)
  - Adoption of OHA Protecting Iwi Kupuna Policy to be included in BOT Executive Policy Manual (November 2015)
  - Adoption of OHA Water Policy and a Water Backgrounder Appendix to be included in the Executive Board Policy Manual (November 2015)
  - Approval of OHA participation in the appurtenant rights and Water Use Permit Application portion of the contested case hearing regarding Na Wai Eha (November 2015)
  - OHA proposed response to the Dept of Interior's proposed rule for Reestablishing a Formal Government to Government relationship with the Native Hawaiian Community (December 2015)
- e. **FY 2014.** The following major actions, other than Biennium Budget, Budget Realignment and Legislative package related actions, were noted:
- Approve amendment to the OHA BOT Bylaws to create a Committee on Land and Property as a third Standing Committee of the Board and to approve amendments to existing land policies in the OHA Executive Policy Manual (January 2014)
  - Amendments to the NH Trust Fund Spending Policy and its Related Fiscal Reserve Withdrawal Guidelines (February 2014)
  - Amendments to the Investment Policy Statement (June 2014)
  - Approval of the Policy Guidelines for the Committee on Land and Property (June 2014)
  - Due Diligence for new 65-year Lease DLNR lease and sublease to Hoomana (September 2014)



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

- Various Governance related actions (e.g., operating budget, financing) (March, August, October 2014)

**6. Advocacy Platform, including Mo'okuauhau.** Under the direction of the PIG, an analysis of advocacy platform matters was completed for the following five areas: native rights, iwi kupuna, 'olelo Hawai'i, aina and wahi pana utilizing BOT Executive Policy Manual and other internal reference sources.

- a. Native Rights.** We preserve, protect, and advocate for Native Hawaiian rights and entitlements, including self-determination and a fair and just share of Public Land Trust lands and revenues. OHA's BOT Executive Policy Manual articulates three elements related to Native Rights policy: (1) Preservation and Protection; (2) Advocacy; and (3) Share of Public Land Trust.

The importance of the Native Rights matter is codified in:

*Federal Statute.* The Apology Resolution, Public Law 103-149, states: Congress apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination. (underlining added)

*State Constitution.* Article XII, section 7 of the State Constitution says: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purpose and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

## Native Rights

Until the early 1970s, writes Melody Kapilialoha MacKenzie, Esq., American law did little to acknowledge Native Hawaiians as an indigenous people with unique and distinct rights. Even today, Native Hawaiians, like many indigenous peoples, must constantly assert and defend their rights in a foreign, and often hostile, legal system if they are to remain a separate and distinct native people. Indeed, international law has only recently recognized and begun to protect the rights of the world's indigenous peoples. Generally, [Native Hawaiian] rights are based on more than a millennium of living, developing, and thriving as a people and a culture in Hawai'i. Some rights emanate from the status of Native Hawaiians as an indigenous people and from the political independence of the Hawaiian Kingdom prior to [its] illegal overthrow in 1893. Other laws . . . are laws that apply more generally. For example, any individual may bring a quiet title action, claim lands under the adverse possession doctrine, or be entitled to sufficient water to grow kalo (taro). And in Hawai'i, everyone has access to the beaches and along the shorelines . . . . These areas of law . . . have a greater impact on Native Hawaiians as the original inhabitants of Hawai'i's 'aina (land) because they are necessary to sustain a traditional lifestyle. Moreover, many of these rights exercised by the general public are based on or find their roots in Hawaiian custom and practice. [Native Hawaiian] laws and rights . . . are in constant flux, expanding and contracting with the passage of new laws and current decisions by the courts.





Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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Article XII, section 6 of the State Constitution says: The [BOT] shall exercise power as provided by law: to manage and administer . . . all income and proceeds from [the] pro rata portion of the [Public Land Trust] . . . .

State Statutes. Section 10-13.5, Hawai'i Revised Statutes, says: Twenty per cent of all funds derived from the public land trust . . . shall be expended by the Office of Hawaiian Affairs . . . .

(Note: OHA's annual pro rata share of the revenues from the Public Land Trust was temporarily set at \$15.1 million by Act 178 of 2006)

Section 10H-1, Hawai'i Revised Statutes, says: The native Hawaiian people are hereby recognized as the only indigenous, aboriginal, maoli people of Hawaii.

Section 10H-2, Hawai'i Revised Statutes, says: The purpose of this chapter [the Native Hawaiian Recognition chapter] is to provide for and to implement the recognition of the Native Hawaiian people by means and methods that will facilitate their self-governance, including the establishment of, or the amendment to, programs, entities, and other matters pursuant to law that relate, or affect ownership, possession, or use of lands by the Native Hawaiian people, and by further promoting their culture, heritage, entitlements, health, education, and welfare.

Act 195, Session Laws of Hawai'i 2011 (the Native Hawaiian Recognition act that created Chapter 10H, Hawai'i Revised Statutes), states in Section 1 (the preamble): The legislature urges the office of Hawaiian affairs to continue to support the self-determination process by Native Hawaiians in the formation of their chosen governmental entity.

OHA Strategic Plan. OHA's 2010-2018 Strategic Plan contains the following mission: To malama Hawai'i's people and environmental resources, and OHA's assets, toward ensuring the perpetuation of the culture, the enhancement of lifestyle and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally. (underlining added)

In addition, the Strategic Plan contains the following strategic priority: To restore pono and ea, Native Hawaiians will achieve self-governance, after which the assets of OHA will be transferred to the new governing entity

The Strategic Plan also contains the following Strategic Result: Adoption by the Board of Trustees of a Transition Plan that includes the legal transfer of [OHA] assets and other resources to the new Native Hawaiian governing entity,

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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- b. Iwi Kupuna.** We protect and promote the reverence and cultural importance of proper care, management, and protection of ancestral Native Hawaiian remains (iwi kupuna) and we encourage Native Hawaiian participation in repatriation. Iwi kupuna have been found buried all around the islands, often at sites slated for, or already undergoing, development. These discoveries have generated public attention, scrutiny, protest, and litigation. Developers and Native Hawaiians often disagree on the most appropriate way to resolve these issues; and prominent sites have not been spared from controversy surrounding iwi found on its property during construction. Aware of these iwi discoveries, many OHA beneficiaries have passionately advocated for the proper care, management, and protection of iwi kupuna. These beneficiaries have approached OHA for assistance, and OHA has responded with policies and with our mana'o and kokua.

OHA's BOT Executive Policy Manual articulates two elements related to iwi kupuna policy: (1) Proper Care, Management, and Protection; (2) Hawaiian Participation in Repatriation. The importance of the iwi kupuna matter is codified in:

*State Constitution.* Article XII, section 7 of the State Constitution says:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Article XII, section 6 of the State Constitution authorizes the BOT to formulate policy relating to the affairs of native Hawaiians and Hawaiians.

*Federal Statute.* The federal Native American Graves and Repatriation Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to native cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony.

*State Statute.* The state Historic Preservation law, Chapter 6E, Hawai'i Revised Statutes, requires the appropriate island burial council to determine whether preservation in place or relocation of or previously identified native Hawaiian burial sites is warranted.

*OHA Strategic Plan.* OHA's 2010-2018 Strategic Plan contains the following strategic priority for Mo'omeheu (Culture): To strengthen identity, Native Hawaiians will preserve, practice and perpetuate their culture.

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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- c. **‘Ōlelo Hawai‘i.** We support revitalizing the Hawaiian language and using it correctly. While once spoken throughout Hawai‘i by Native Hawaiians and foreigners alike, ‘Ōlelo Hawai‘i was considered nearly extinct by the 1980s, when fewer than 50 fluent speakers under age 18 remained. The deterioration of the Hawaiian language resulted largely from an 1896 law that required English instruction in Hawai‘i schools, which essentially banned Hawaiian students from speaking their native tongue.

However, great strides have been made to bring about a renaissance of the Hawaiian language through programs such as ‘Aha Punana Leo’s Hawaiian language immersion schools, the state Department of Education’s language immersion program, and the Hawaiian language programs of the University of Hawai‘i system. Also, in 1978 the state constitution was amended to recognize the Hawaiian language as one of the two official languages of the State.

OHA’s BOT Executive Policy Manual and By-laws articulate two elements related to ‘Ōlelo Hawai‘i: (1) Revitalizing the Hawaiian language; and (2) Proper usage within OHA. The importance of ‘Ōlelo Hawai‘i is codified in:

*State Constitution.* Article XV, section 4 of the State Constitution says:

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.

Article X, section 4 of the State Constitution says:

The State shall promote the study of Hawaiian culture, history and language.

The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program.

*Federal Statute.* The federal Native American Languages Act of 1990 “established federal policy to allow the use of Native American languages as the medium of instruction, and affirms the right of Native American children to express themselves, be educated, and assessed in their languages.”<sup>13</sup> The law includes Native Hawaiians.

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<sup>13</sup> National Coalition of Native American Language Schools & Programs





Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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State Statutes. Section 5-7.5, Hawai'i Revised Statutes, says:

The Hawaiian language is the native language of Hawaii and may be used on all emblems and symbols representative of the State, its departments, agencies and political subdivisions.

Section 1-13.5, Hawai'i Revised Statutes, says:

Macrons and glottal stops may be used in the spelling of words or terms in the Hawaiian language in documents prepared by or for state or county agencies or officials. Any rule, order, policy, or other act, official or otherwise, that prohibits or discourages the use of these symbols shall be void.

Strategic Plan. OHA's 2010-2018 Strategic Plan contains the following strategic priority for Mo'omeheu (Culture):

To strengthen identity, Native Hawaiians will preserve, practice and perpetuate their culture.

The Strategic Plan also contains the following strategic result:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the 'aina for cultural, spiritual, religious and subsistence.

- d. **'Aina.** We protect and preserve Hawai'i lands and their cultural significance. We protect the ceded lands corpus until the un-relinquished claims of Native Hawaiians are resolved. We create financially viable property involvements for OHA. The late law professor Jon Van Dyke wrote:

Before continuous contact with westerners began in 1778, the dominant system of land tenure [in the Hawaiian islands] was an intricate and interdependent arrangement based on agriculture needs and hierarchical structure. Individuals lived in reciprocity with the 'Aina (land), which they believed would sustain them if properly respected and cared for. 'Aina was not a commodity and could not be owned or traded. Instead, it belonged to the Akua (gods and goddesses), and the Ali'i (the chiefs and chiefesses who were the human embodiment of the Akua) were responsible for assisting ka po'e Hawai'i (the people of Hawai'i) in the proper management of the 'Aina).<sup>14</sup>

Land tenure in Hawai'i has changed dramatically since Western contact, evolving into a Western model in which land can be bought, sold, traded, and some would say, exploited. Still, the spirit of malama 'aina and the central place of the 'aina

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<sup>14</sup> Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai'i?*

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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in Hawaiian culture, while sorely tested in modern times, remain vital and deserve zealous protection.

Furthermore, Native Hawaiian claims to the former crown and government lands ceded to the United States at Annexation and returned to Hawai'i upon statehood, are still unresolved. Native Hawaiians have a continuing interest and claim to the ceded lands, and their struggle to regain their culture, recover their lands, and restore their sovereign nation will be futile if the ceded lands are dissipated.

OHA's BOT Executive Policy Manual articulates two elements related to 'Aina: (1) Care in OHA Land Acquisition and Management; and (2) Protecting the Ceded-Lands Corpus. The importance of 'Aina is codified in:

State Constitution. Article XI, section 1 of the State Constitution says:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the state for the benefit of the people.

Article XI, section 3 of the State Constitution says:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands . . . .

Article XI, section 10 of the State Constitution says:

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Article XII, section 4 of the State Constitution says:

The lands granted to the State of Hawaii by Section 5(b) of the Admission act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1929, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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Article XII, section 5 of the State Constitution says:

The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside to or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.

Article XV, section 5, of the State Constitution says:

The motto of the State shall be, “Ua mau ke ea o ka aina i ka pono.”  
 (“The life of the land is perpetuated in righteousness”)

State Statutes. Section 10-4, Hawai‘i Revised Statutes, says:

[OHA] shall have the following general powers:

....

- (2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same at such time, in such manner and to the extent necessary or appropriate to carry out its purpose . . . .

Strategic Plan. One of the Core Values stated in OHA’s 2010-2018 Strategic Plan is Ho’omau:

E ho’omau kakou i ke ea o ka `aina na mea e ho’opuni ana, ka mo’omeheu a me kapo’e Hawai’i

(“Together, steadfast we preserve and perpetuate our culture, people, land and environment.”)

The Strategic Plan contains the following as one Strategic Priority:

To maintain the connection to the past and a viable land base, Native Hawaiians will participate in and benefit from responsible stewardship of Ka Pae `Aina O Hawai’i.

The Strategic Plan contains the following among the Strategic Results:

51% of Native Hawaiians living in the State of Hawai’i participating in cultural activities, including language, and who interact with the `aina for cultural, spiritual, religious and subsistence.

70% of all Hawai’i residents understand and agree that a viable land base is necessary for the new Native Hawaiian governing entity.

Increasing the percent of Ka Pae `Aina O Hawai’i managed to create economic value, preserve cultural and natural resources and historic properties, and/or provide cultural and social opportunities for Native

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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Hawaiians in a sustainable and balanced manner.....By 2018, increasing from 12% to 15% the percent of ahupua`a that are managed sustainably

- e. **Wahi Pana.** We protect and preserve the integrity of and access to Hawaiian cultural sites.

From the Partners in Development Foundation website: “In traditional indigenous cultures, we find a more focused commitment to preparing the next generations by making sure they understand the history, traditions, and values from which they have blossomed. In addition to genealogy and family traditions, many indigenous cultures like the Hawaiian culture, pay close attention to the specific geographical places their families inhabit. The understand the power of an active and vibrant sense of place in the life of its people.

In Hawaiian culture, “wahi pana” is defined as celebrated, noted, and legendary places, or landmarks of special interest and historical significance. Each of these special places have distinguishing landmarks (mountain peaks, streams, wind, rain, etc.) that are given specific names and are connected to the rich history, chants, stories, and songs that are traditionally passed down from one generation to the next. Hawaiian music, for example, is replete with songs that praise places in our islands with the actual place only being revealed by the specific name of the wind or rain that is referred to in the melody. In public gatherings fifty or sixty years ago, it was common for the various songs of the islands or communities to be sung as an invitation for people from those places to stand and be identified with that wahi pana. It kept our kupuna aware of the traditions they represented as they faced the challenges of day to day living. Although we possess many of these names and songs today, we may not know the physical characteristics that led our ancestors to call a wind or rain differently from others. Our understanding of our sense of place is eroding.

The unique and special cradle of people, traditions, and physical realities of a place shape who we are. It is a strong framework from which we can make decisions consistent with their historical and cultural anchors, to meet the challenges of contemporary life. Often we allow the larger world to teach our young ones the values and perspective which are inconsistent with our cultures and our family traditions. We step back from intentionally teaching our children who they represent and where they find their roots. Let us return to a commitment to teach our children and adults the power of wahi pana.”<sup>15</sup>

OHA’s BOT Executive Policy Manual highlights one element related to wahi pana: Protect and Preserve the Integrity of and Access to Hawaiian Cultural Sites.

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<sup>15</sup> Partners in Development Foundation, <https://pidf.org/about/wahi-pana>, retrieved 3/26/2019



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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The importance of wahi pana is codified in:

*Strategic Plan.* One of the Core Values stated in OHA's 2010-2018 Strategic Plan is Ho'omau:

E ho'omau kakou i ke ea o ka 'aina na mea e ho'opuni ana, ka mo'omeheu a me kapo'e Hawai'i

("Together, steadfast we preserve and perpetuate our culture, people, land and environment.")

The Strategic Plan contains the following as one Strategic Priority:

To maintain the connection to the past and a viable land base, Native Hawaiians will participate in and benefit from responsible stewardship of Ka Pae 'Aina O Hawai'i.

The Strategic Plan contains the following among the Strategic Results:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the 'aina for cultural, spiritual, religious and subsistence.

**7. Policies.** The PIG analyzed a number of policies, policy documents and other organizational documents.

**a. Policy Formulation.** Internal documents depict the current policy formulation process, including:

- **BOT >** Create and amend BOT governing documents; prepare action item; two readings with six (6) affirmative votes<sup>16</sup>; and codification (implementation). Substantial amendments to Bylaws would usually require repeal/rescission of the old Bylaws and approval of new set of Bylaws.
- **BOT >** Action item to create or amend executive policies; five (5) affirmative votes<sup>17</sup>; and codification (implementation).

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<sup>16</sup> Bylaw Article XIII Amendments to Bylaws. These Bylaws shall be amended only by to-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. The Board shall not vote on any bylaw amendment until a minimum of two readings by the Board.

<sup>17</sup> Executive Policy Manual Series 1000 Board of Trustees, 1020 Policy Formulation, Adoption and Amendment of Policies 1.2.a. OHA policy may be adopted by an affirmative majority (5) vote of all the members to which the BOT is entitled at any regular duly convened meeting of the BOT, provided the proposed policy shall have been presented in writing using the OHA Action Item format for a first reading at a previous regular meeting of the BOT. Such policy shall become effective on the date stated therein (or the date determined by the BOT) upon approval by the BOT at its second reading and approval by a majority (5) vote of all the members to which the BOT is entitled.

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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- **Administration** > Annual maintenance review; review changes in the laws for impact on Bylaws and Policies.

The PIG noted that on the internal website---Ka Ipu o ka 'Ike, the gourd of knowledge (aka Ki'i for short), there are a number of action items that track the primary governing documents of the BOT—Bylaws, Executive Policy Manual and BOT Operations Manual (collectively, “Governing Operating Documents”).

The Policy Formulation section of the BOT Executive Policy Manual provides a meager framework for developing and establishing OHA policy. The information contained herein is straightforward, however, when comparing the written guidelines to the actual practice, there is essentially a blurring of the lines in policy formulation. Sections 2.1.a-2.1.e., p. 13, of the BOT Executive Policy Manual explicitly provides OHA's policies on advocacy that include: *Preservation and Protection of Legal Entitlements, Native Hawaiian Rights and Entitlements, Hawaiian Culture*, and OHA's position policy of oppose *Position on Certain Proposed Legislative Measures*. The above sections leave much to interpretation considering the vast array of issues that OHA Advocacy advocates upon. It is without a doubt that the totality of issues that OHA has advocated – which have crystalized in policy formation - far-exceeded the limited number of policies appearing on a single page, suggesting that the BOT Executive Policy Manual –described as “a living document that will be kept current as and when the Board adopts new policy, amends, or abolishes existing policy” is completely outdated and currently inadequate to serve as an effective source of OHA policy positions.

- b. **Analysis.** For the purposes of the analysis, “policy” was defined as a “definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions”. In determining the scope of policies both utilized and created by the OHA BOT (within at least the past five years), it became necessary to determine what exactly constituted a policy differentiated from procedure and practice. With the understanding that policies may range in significance from monumental to subtle, clarifying guidelines were utilized. While the BOT Policy Manual suggested that policies may originate at any level of OHA, policies identified in this analysis were strictly determined in one of three ways: 1) pre-identified existing policies found in official OHA documents including the BOT governing documents; 2) policies overlying legislative positions with BOT approval; and 3) policies overlying legislative positions with Administration approval.

Finally, in differentiating policies from procedures and practices, it was necessary to identify policies as those guiding principles, which set forth a direction, whereas procedures were those series of steps to be followed in order to maintain a consistence and repetitive approach in achieving a practice. For example, OHA maintains a top priority policy to reduce Native Hawaiian obesity; OHA has established programmatic grants and sponsorships as a procedure to advance OHA's



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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purpose; and OHA has engaged in the practice of awarding millions of dollars in grants to community and health organizations dedicated to curtailing Native Hawaiian obesity rates.

- c. OHA Role Interaction & Policy Formation.** The Hawai'i State Constitution specifically tasks OHA trustees with the capacity "to formulate policy relating to affairs of Native Hawaiians." While the OHA Executive Policy Manual suggests that policy may spring up from anywhere within OHA's structure, it is ultimately up to the OHA Trustees to establish OHA policy through Board approval. With that said, the role of OHA Administration and its current scope of work, has enabled policy formation that is not always within the purview of OHA Trustees. Likely unintended, the flexibility often afforded to OHA Administration to advance and serve as a strong advocate for the betterment of conditions of Native Hawaiians has a way of expanding and morphing the boundaries of a Board-approved policy – continued manipulation of the boundaries of any given policy has the potential to eventually become unrecognizable from its original form, resulting in a deviation never intended by the OHA Board of Trustees.

For example, the OHA Executive Policy Manual is silent on any Board-approved policy on "affordable housing". Be that as it may, it is currently assumed that OHA has a policy on supporting affordable housing as: (1) the OHA strategic priority of economic self-sufficiency within OHA's 2010-2018 Strategic Plan specifically lists "increasing homeownership" as one of its two critical goals; (2) OHA's website explaining its economic self-sufficiency priority states that "[o]ne of our greatest obligations to Native Hawaiians is to help them address challenges to affordable housing;" and (3) OHA public policy, with the approval of the Board of Trustees, has drafted testimony and testified before State and county legislative authorities in support of "affordable housing" If there is indeed no official Board position explicitly stating a position on "affordable housing" then this is certainly an example of how the role of OHA Administration contributes to the formation of OHA policy; in a way, manipulating Board approval for something it may not have consented to. While responsible and well-informed flexibility can be highly beneficial, certain sensitive issues are better served with fully defined boundaries. The "affordable housing" discussion is one such issue where housing advocates are greatly divided. While some advocates may consider the current model of *140% AMI and below* to sit appropriately within the definition of "affordable housing" a Native Hawaiian housing advocate knowing that the majority of Native Hawaiians fall within the *60% AMI and below* bracket, may suggest affordability being appropriately defined as *80% AMI and below* instead of *140% AMI and below*. OHA currently advocates at the current definition (*140% AMI and below*), which in itself begins to crystalize OHA's policy on "affordable housing"- a Board choosing to be more specific, might not agree with this policy position. These indirect, perhaps unintended, and nebulous policy formations are not strictly limited to advocacy, as they can begin to

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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take shape through OHA Research's publication of a strategic plan, or even OHA Community Outreach's repetitive description of an inexplicit policy area.

- 8. BOT Governing Documents.** Members of the BOT are issued a binder titled, *Board of Trustees Governing Documents volume 1*, containing BOT Bylaws, the BOT Executive Policy Manual, BOT Operations Manual, Committee on Land and Property Policy Guidelines, and a number of policy positions in the following categories: Kaka'ako Makai Settlement Properties; Native Hawaiian Trust Fund Investment; OHA Spending; OHA Real Estate Vision, Mission, and Strategy Policy; and OHA Risk Management. The status of the compendium is said to be incomplete and outdated. After preliminary review of the current governing documents, it has become apparent that the full breadth and scope of OHA policies are not nearly contained within these governing documents. The most obvious absence is that of OHA's 2010-2018 Strategic Plan. While it may not be feasible to include, within the governing documents, every policy, procedure, and practice developed by OHA, OHA's 2010-2018 Strategic Plan, at the very least, provides a policy structure that should be reflected in a series of identifiable and standalone categories.

For example, OHA's policy on the inter-relationship between Native Hawaiian lifestyle and 'āina stewardship is in itself such a vast source of other policies, procedures, and practices that filing it beneath any of the above listed policy areas currently contained within the governing documents would be a severe detriment. OHA's 2010-2018 Strategic Plan is essentially a platform for a specific direction. For the past eight years, OHA has used this strategic plan to guide its policymaking, procedures, and practices. However, none of the six strategic priorities and the many countless established policies subjected to each are reflected in the governing documents as they are prioritized in the 2010-2018 strategic plan.

Both policies and strategic plans serve to provide direction for OHA and past strategic plans have encapsulated priority policies in the fulfilment of OHA's purpose, vision, mission, and values. Moving into 2020+, it is recommended that the BOT governing documents also reflect those BOT approved policies present within any future strategic plan platform. Consequently, there is room to expand the governing documents to include a more adequate representation of OHA's grand scope of policies. At present, the governing documents greatly lack collation of most OHA policies. With that said, OHA trustees should have access to every OHA policy in effect, which would require a vast improvement upon the collation of OHA policies, procedures, and practices. The BOT governing documents (or more specifically, the BOT Executive Policy Manual –pursuant to Section 1.2.c.) should serve as a valuable resource for directing existing and future trustees, while also being instrumental in directing OHA Administration and staff – as in OHA Advocacy – who are reliant on the ease-of-access to a wide array of OHA policies in their day-to-day activities.





Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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**9. Key Observations and Recommendations (in no particular order of priority):**

- a. Better coherence between BOT governing documents and the OHA strategic plan.
- b. Improve effectiveness of BOT governing documents by improving collation of OHA policies, procedures and practices.
- c. Improve navigation to changes of Governing Operating Documents via Ki'i.
- d. Continue authorization actions as it relates to policy changes (e.g., new, edits, updates) via BOT Action Items.
- e. Integrate approved BOT Action Items into the Governing Operating Documents in a timely manner (e.g., Committee on Land and Property. International Engagement, Water Policy).
- f. Establish a better system for recording policy status and updating the BOT Executive Policy Manual.
- g. Assemble an updated, e-accessible, and organized compendium of OHA policies.
- h. Require public policy advocates (or anyone providing an OHA position based on OHA policy) to cite their policy source and provide a description and rationale.

**B. Foundations Analyses**

PIG team members completed an initial analysis on references to OHA in state and county law, as applied to OHA na Paia (Divisions)—Advocacy, Resource Management (RM) – Financial Assets, RM-Land, Research, and Community Engagement. The first section of the analysis reviewed the purposes for which OHA was established, as provided by the state constitution and Chapter 10 of the Hawai'i Revised Statutes (HRS) and detailed earlier in this report. These references provide a broad mandate under which OHA operates. The third section provided the powers granted to the OHA Board of Trustees (BOT) that can be exercised to fulfill OHA's purpose and statutory requirements and also detailed earlier in this report.

The second section of the analysis provided the requirements placed on OHA under the state constitution, state law, and county ordinances. The analysis below does not include obligations placed on OHA that are not based in statute, such as assumed responsibilities under formal agreements with other entities (e.g., Halawa-Luluku Interpretive Development, Papahānaumokuākea), or those obligations that arise from the government agency status (e.g., procurement code, Sunshine law, ethics code). The analysis below is organized by the Paia (Division) that has been assigned current, primary responsibility over a given statutory requirement.<sup>18</sup>

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<sup>18</sup> The powers and duties of the OHA Board of Trustees may be delegated to the OHA Administrator and employees. HRS § 10-5(6).

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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1. **Advocacy (Public Policy, Compliance Enforcement, Washington D.C. Bureau, Papahānaumokuākea programs)**
  - a. **Assist with planning for programs and services.** OHA is to assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services.<sup>19</sup>
  - b. **Special reports.** The board shall prepare and submit special reports as may be required by the legislature.”<sup>20</sup>
  - c. **Native Hawaiian law training course.** “OHA, at its own expense, shall establish, design, and administer a training course relating to [Native Hawaiian] traditional and customary rights, [Native Hawaiian] natural resource protection and access rights, and the public trust, including the State’s trust responsibility. ...[OHA], at its own expense, shall develop the methods and prepare any materials necessary to implement the training course, administer the training course, and notify each council, board, and commission identified in section 10-A(a) that attendance in a training course is mandatory. The office of Hawaiian affairs shall offer the training course at least twice per year.”<sup>21</sup>
  - d. **Vetting for island burial councils.** OHA shall submit to the governor a list of nominees for filling vacancies on the five island burial councils.<sup>22</sup>
  - e. **Vetting for Maui and Hawai‘i county Cultural Resources Commissions.** The mayors of Maui and Hawai‘i counties must solicit lists of two or more persons to their respective county Cultural Resources Commission from members of the public, including OHA.<sup>23</sup>
  - f. **Consulting agency on Native Hawaiian issues.** Although not explicitly required under HRS Chapter 10, OHA serves in a consultative role in a number of state and county processes. Furthermore, a primary purpose for OHA is to “[assess] the policies and practices of other agencies impacting on [Native Hawaiians], and conducting advocacy efforts for [Native Hawaiians].”<sup>24</sup> Note, this category does not include OHA representation on state boards and commissions, which is discussed separately in this memo under the general duties of OHA, under section II.F., nor does it include instances where consultation with, or representation by, Native Hawaiian organizations (not specifically OHA) is required.<sup>25</sup>

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<sup>19</sup> HRS §10-6(a)(2).

<sup>20</sup> HRS §10-15.

<sup>21</sup> HRS §10-42.

<sup>22</sup> HRS §6E-43.5.

<sup>23</sup> Maui County Charter (MCC), sec. 2.88.030; Hawai‘i County Code (HCC), sec. 2-226(b).

<sup>24</sup> HRS §10-3(4).

<sup>25</sup> For example, under the federal Native American Graves Protection and Repatriation Act, OHA is listed as an example of a Native Hawaiian Organization that must be consulted upon discovery of a Native Hawaiian cultural item on federal lands. *See* 25 United States Code (USC) §3001-3002. *See also* 20 USC §80q-11.



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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- **Maunakea rulemaking.** In adopting rules to regulate public and commercial activities on Maunakea lands, the UH Board of Regents must consult with OHA to ensure that the rules will not affect any traditional and customary rights of Native Hawaiians, except as a reasonable regulation of such rights.<sup>26</sup> The UH Board of Regents shall consult with OHA on the assessment and collection of administrative fines for violations of the Maunakea rules.<sup>27</sup>
- **Public land sales or exchanges.** Three months prior to the convening of the legislative session, OHA must be provided with a draft of the legislative resolution seeking approval of any sale or exchange of former Crown or government lands of the Kingdom of Hawai'i (or lands exchanged for such lands) to allow OHA to analyze the proposed sale or exchange.<sup>28</sup>
- **Historic preservation and Native Hawaiian burials.** Consultation with OHA is required for: (1) determining when the location of archeological sites should be withheld from public posting when there is a threat of destruction or loss;<sup>29</sup> (2) rulemaking to establish criteria for when burial sites should be relocated or preserved in place;<sup>30</sup> (3) rulemaking to establish a process for appointing members to the island burial councils;<sup>31</sup> and (4) inadvertent discoveries of burial sites (with notification coming via DLNR).<sup>32</sup>

Consultation with the Native Hawaiian Historic Preservation Council, which serves in an advisory capacity to the OHA CEO, is required for rulemaking related to permits for access by Native Hawaiians to historic sites.<sup>33</sup> All applications to the Maui Planning Department must include preliminary archaeological and historical data and comments from DLNR and OHA, and if applicable, a preservation/mitigation plan that has been reviewed and approved by OHA.<sup>34</sup>

## 2. Community Engagement (Community Outreach, Digital and Print Media, Hawaiian Registry programs)

- a. **Clearinghouse and referral agency.** OHA is to maintain an inventory of federal, state, county, and private programs and services for Native Hawaiians and act as a clearinghouse and referral agency.<sup>35</sup>

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<sup>26</sup> HRS §304A-1903.

<sup>27</sup> HRS §304A-1904.

<sup>28</sup> HRS §§171-50; 171-64.7.

<sup>29</sup> HRS §6E-17.

<sup>30</sup> HRS §6E-43.

<sup>31</sup> HRS §6E-43.5.

<sup>32</sup> HRS §6E-43.6.

<sup>33</sup> HRS §6E-3.

<sup>34</sup> MCC, sec. 19.510.010(D)(9).

<sup>35</sup> HRS §10-6(a)(3).



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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state treasury and shall be reported on to the state comptroller under section 40-81, and rules prescribed thereunder.”<sup>43</sup>

- c. **Revolving loan fund.** Using federal funds received from the Department of Health and Human Services, OHA is to establish a revolving loan fund to make loans or loan guarantees to Native Hawaiian organizations and individuals “for the purpose of promoting economic development in the State of Hawaii.” Prior to making a loan, OHA must determine that the borrower is unable to obtain financing from other services on reasonable terms and conditions and there is a reasonable prospect that the borrower will repay the loan. Loans must be made on terms established by statute and under payment and collection terms reviewed and approved by the Commissioner of the Administration for Native Americans. OHA must report to the Commissioner loans in default and prospects for collection of such loans, and shall carry out the instructions of the Commissioner with respect to loans in default.<sup>44</sup>

- d. **Budget preparation and submission.** OHA is to submit to the state legislature its budget, six-year program and financial plan, and variance report, in accordance with the budget submission schedule specified for the governor in HRS Chapter 37. At least twenty days prior to the convening of each regular session of the legislature, OHA is to submit to the legislature an accounting of the expenditures made in the prior fiscal year, by account code and budget program. By November 1 of each year preceding a legislative session in which a budget is to be submitted, the OHA BOT shall provide written notification to the governor of the proposed total expenditures, by cost categories and sources of funding, and estimated revenues of OHA for each fiscal year of the next fiscal biennium.”<sup>45</sup>

The OHA BOT is to provide opportunities for beneficiaries in every county to participate in the preparation of each biennial and supplemental budget of OHA.<sup>46</sup> These opportunities shall include an accounting by trustees of the funds expended and of the effectiveness of programs undertaken.”<sup>47</sup> “The legislature shall consider the board’s proposed program and financial plan; evaluate alternatives to the board’s recommendations; and appropriate any general fund portion of the budget and any matching special fund appropriations.”<sup>48</sup>

- e. **Grants.** One of the purposes for which OHA was established is “[a]pplying for, receiving, and disbursing, grants and donations from all sources for [Native

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<sup>43</sup> HRS §10-13.

<sup>44</sup> 42 USC 2991b-1.

<sup>45</sup> HRS §10-14.5(a).

<sup>46</sup> HRS §10-14.5(b).

<sup>47</sup> Id.

<sup>48</sup> HRS §10-14.6.



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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Hawaiian] programs and services.”<sup>49</sup> In awarding grants, OHA is responsible for ensuring:

- (1) The applicant has applied for or received all applicable licenses and permits, when such is required to conduct the activities or provide the services for which a grant is awarded;
- (2) The applicant agrees to comply with applicable federal, state, and county laws;
- (3) The grant shall not be used for purposes of entertainment or perquisites;
- (4) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules; and
- (5) The applicant will indemnify and hold harmless the office, the State of Hawaii, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the office.

Further, OHA is responsible for monitoring to ensure compliance with HRS Chapter 10 and the purposes and intent of the grant; and annual evaluation to determine whether the grant attained the intended results in the manner contemplated.<sup>50</sup>

- f. **Support for audit.** “The office shall be subject to governmental audit.”<sup>51</sup> “The auditor shall conduct an audit of the office at least once every four years and shall submit a report on findings and recommendations to the governor and the legislature on or before the convening of the next immediate legislative session.”<sup>52</sup> Every five years, the office of the auditor shall submit a review of the special, revolving, and trust funds of OHA.<sup>53</sup>

**5. Resource Management-Land Assets (Commercial Property Management, Land and Property Management, Hālawā-Luluku Interpretive Development programs)**

- a. **Hold title.** “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.”<sup>54</sup>
- b. **Escheat of kuleana land.** “Any provision of law to the contrary notwithstanding, if the owner of an inheritable interest in kuleana land dies intestate, or dies partially intestate and that partial intestacy includes the decedent’s interest in the

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<sup>49</sup> HRS §10-3(5).

<sup>50</sup> HRS §10-17.

<sup>51</sup> HRS §10-14.5(c).

<sup>52</sup> HRS §10-14.55.

<sup>53</sup> HRS §23-12.

<sup>54</sup> Hawai‘i Constitution art. XII, section 5.



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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kuleana land, and if there is no taker . . . such inheritable interest shall pass to [DLNR] to be held in trust until [OHA] develops a land management plan for the use and management of such kuleana properties, and such plan is approved by [DLNR]. Upon approval, [DLNR] shall transfer such kuleana properties to [OHA].”<sup>55</sup> OHA shall be joined as a defendant in any quiet title or adverse possession claim for kuleana land and where plaintiff has reason to believe that an owner of an inheritable interest in kuleana land died intestate or partially intestate.<sup>56</sup>

## 6. General

- a. **Strategic Plan.** The OHA BOT is 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.<sup>57</sup>
- b. **Public Land Trust spending.** “Twenty per cent of all funds derived from the public land trust, described in section 10-3, shall be expended by the office, as defined in section 10-2, for the purposes of [HRS Chapter 10].”<sup>58</sup> Beginning in fiscal year 2005-2006, the annual amount of the income and proceeds from the pro rata share of the PLT shall be \$15,000,000.<sup>59</sup>
- c. **Annual reports.** “The [OHA BOT] shall prepare and make public their annual report which shall include an enumeration of their activities, income, and expenditures during the year. The annual report for the previous fiscal year shall be submitted to the governor and the legislature ten days prior to the convening of each regular session of the legislature.”<sup>60</sup> The annual report shall also include a list of

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<sup>55</sup> HRS §560:2-105.5.

<sup>56</sup> HRS §669-2.

<sup>57</sup> HRS §10-6(a)(1).

<sup>58</sup> HRS §10-13.5.

<sup>59</sup> Act 178 (Session Laws of Hawai‘i (SLH) 2006).

<sup>60</sup> HRS §10-15.



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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volunteer job titles and estimates of the total number of volunteers and the total number of hours of volunteer service.<sup>61</sup>

d. **Positions on boards and commissions.** OHA is to advise and inform federal, state, and county officials about Native Hawaiian programs, and coordinate federal, state, and county activities relating to Native Hawaiians.<sup>62</sup> To these ends, a representative of OHA is made a member of the following state boards and commissions:

- Native Hawaiian Education Council (OHA Chairperson or designee)<sup>63</sup>
- State Board on Geographic Names (OHA Chairperson or representative)<sup>64</sup>
- Kaho‘olawe Island Reserve Commission (OHA trustee or representative)<sup>65</sup>
- Kāne‘ohe Bay Regional Council (OHA representative)<sup>66</sup>
- Community-Based Economic Development Advisory Council (OHA Chairperson or designee)<sup>67</sup>
- Hawai‘i Climate Change Mitigation and Adaptation Commission (OHA CEO or CEO’s designee)<sup>68</sup>
- Hawai‘i Interagency Council on Homelessness (OHA Chairperson or Chair’s designee)<sup>69</sup>
- Corrections Population Management Commission (OHA Administrator or Administrator’s designee)<sup>70</sup>
- Dark Night Skies Protection Advisory Committee (OHA Administrator or Administrator’s designee)<sup>71</sup>
- Temporary Commission on the Thirteenth Festival of Pacific Arts (OHA CEO or CEO’s designee)<sup>72</sup>

## 7. Unassigned

After reviewing the statutory responsibilities of OHA and comparing them to the responsibilities assigned to the various Paia, the following responsibilities are believed to be unassigned or unaccounted for under OHA’s current operational structure.

a. **Reparations.** A primary purpose of OHA is to serve as a receptacle for reparations.<sup>73</sup>

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<sup>61</sup> HRS §90-5.

<sup>62</sup> HRS §10-6(a)(4).

<sup>63</sup> 20 USC § 7514(b).

<sup>64</sup> HRS §4E-1.

<sup>65</sup> HRS §6K-5.

<sup>66</sup> HRS §200D-2.

<sup>67</sup> HRS §210D-5.

<sup>68</sup> HRS §225P-3.

<sup>69</sup> HRS §346-382.

<sup>70</sup> HRS §353F-4.

<sup>71</sup> Act 185 (SLH 2017).

<sup>72</sup> Act 104 (SLH 2017).

<sup>73</sup> HRS §10-3(6).

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

- b. **Develop and review program models.** OHA is to “develop and review models for comprehensive [Native Hawaiian] programs.”<sup>74</sup>
- c. **Clearinghouse for Native Hawaiian assistance.** OHA is to act as a clearinghouse for applications for federal or state assistance to carry out Native Hawaiian programs or projects.<sup>75</sup>
- d. **Develop Native Hawaiian agencies.** OHA is to promote and assist the establishment of agencies to serve native Hawaiians.<sup>76</sup>

**Limitations of the Analysis.** While the analysis includes all requirements placed on OHA that are contained in federal, state, and county laws and ordinances, it excludes OHA requirements contained only in administrative rules of federal, state, or county agencies. The analysis does not contain those requirements imposed on the OHA trustees as fiduciaries of Native Hawaiian trust funds (e.g., duty of care). In addition, there may be some instances where an unintentional

assignment of responsibility for fulfilling a particular statutory requirement to a Paia or program within OHA was made. Regardless of the comprehensive analysis, reading and understanding of the underlying statute should still be completed.

The special relationship between Indians and the federal government is the result of solemn obligations that have been entered into by the United States government. Down through the years, through written treaties and formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety—services that would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans. This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the federal government that arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American.

*President Richard Nixon, Special Message to the Congress on Indian Affairs,  
July 8, 1970*

## C. Governance Framework Design

### 1. Various Native, Indigenous Governance Models

**a. American Indian and Alaska Native.** This summary is informed by the report *Tribal Nations in the United States*, published by the National Congress of the American Indians (NCAI). NCAI, founded in November 1944 serves the broad interests of tribal governments and communities. This report was published in 2017, and a revised version will be published in March 2019.

NCAI is organized as a representative congress of American Indians and Alaska Natives to develop consensus on national priorities that impact tribal sovereignty. NCAI is one of many national and regional organizations dedicated to indigenous advocacy. Some of these organizations have more specialized advocacy agendas, such as regional issues,

<sup>74</sup> HRS §10-6(a)(6).

<sup>75</sup> HRS §10-6(a)(7).

<sup>76</sup> HRS §10-6(a)(9).

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

or specific advocacy areas including, but not limited to, education, health care, housing, and economic development. Similarly, several umbrella advocacy organizations exist in Alaska. The largest of those organizations is the Alaska Federation of Natives (AFN). Its membership includes 191 federally recognized tribes, 171 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and compact to run federal and state programs.

**A Broad Summary of Indian Country.**

There are 573 sovereign tribal nations located across 35 states within the geographic borders of the United States. Of these tribes, 229 are located in Alaska. Additionally, there are state recognized tribes located throughout the United States recognized by their respective state governments but who do not have a political relationship with the federal government. Self-governing tribes have the inherent power to govern all matters

involving their members, as well as serve as an advocate with their local, state, and federal governments for issues important across Indian Country.

**Governing Authority.** Excerpted from Tribal Nations in the United States report:

Tribes “Most tribes give legislative authority to a tribal council. In some cases, the tribal council members are elected by district; in others, they are elected at large. The council generally has authority to write tribal laws, and council members have administrative duties in some tribes. Most tribal constitutions also provide for an executive officer, called a “tribal chairman,” “president,” “governor,” or “chief.” In some tribes, the tribal council elects the chief executive, while the

voting citizens directly elect the leader in others. In most cases, the chief executive’s duties and powers are not specified in the constitution but are set in the bylaws. Consequently, the role of the chief executive varies greatly among tribes. Many tribes also have created their own court systems that administer codes passed by the tribal council. In many tribes, judges are elected by popular vote; in others, the tribal council appoints judges.”

**Alaska Native Governance.** “Of the federally recognized tribes, 229 are located in Alaska. Each of the Alaska Native tribes is distinctly unique from tribes located in the

We know that ultimately this is not just a matter of legislation, not just a matter of policy. It's a matter of whether we're going to live up to our basic values. It's a matter of upholding an ideal that has always defined who we are as Americans: E pluribus unum—out of many, one. That's why we're here. That's what we're called to do. And I'm confident that if we keep up our efforts, that if we continue to work together, that we will live up to this simple motto and we will achieve a brighter future for the First Americans and for all Americans.

*President Barack Obama, Remarks at the White House Tribal Nations Conference, December 16, 2010*

I am committed to furthering the self-determination of Indian communities, but without terminating the special relationship between the federal government and the Indian people. I am strongly opposed to termination. Self-determination means that you can decide the nature of your tribe's relationship with the federal government within the framework of the Self-Determination Act, which I signed in January of 1975.

*President Gerald Ford*



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

lower 48 United States. Alaska Native tribes have no treaties with the US government, as treaty-making ended in 1871, just years after the 1867 Alaska Purchase Treaty with Russia. The governing bodies of Alaska Native communities

vary by tribe or village “traditional councils,” “native councils,” “village councils,” “tribal councils,” or “IRA councils.” In some instances, the term “village” is used instead of “tribe,” as tribes in Alaska were often recognized by the term “village” under the Alaska Native Claims Settlement Act (ANCSA) of 1971.”

**Tribal Citizenship.** “Like any government, tribal governments determine their own criteria for citizenship. Usually there is some blood quantum requirement, such as one-quarter, or a requirement of lineal descendancy from a tribal citizen. The Supreme Court has recognized that each tribe determines its own criteria. Some federal agencies also have criteria for determining eligibility for programs and services. Not all American Indian

Tens of millions of Indigenous peoples inhabited North America, and governed their complex societies, long before European governments sent explorers to seize lands and resources from the continent and its inhabitants. These foreign European governments interacted with tribes in diplomacy, commerce, culture, and war—acknowledging Indigenous systems of social, cultural, economic, and political governance.

Tribal nations have remained as political powers from the colonial period until today—engaging in commerce, trade, cultural exchange, and inspiring the principles of freedom and democracy enshrined in the US Constitution. As the United States formed a union, the founders acknowledged the sovereignty of tribal nations, alongside states, foreign nations, and the federal government in the US Constitution.

Tribal nations are part of the unique American family of governments, nations within a nation, as well as sovereign nations in the global community of nations.

*Rooted in deep traditions and distinct ways of life, tribal nations are defined by Indigenous peoples, places, cultures, and governance.*



and Alaska Native people are citizens of tribal nations.” Tribal members are citizens of three entities: their tribe, the United States, and the state in which they reside.

**Tribal Government Services and Functions.** “Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. The governments exercise these inherent rights through the development of their distinct forms of government, determining citizenship; establishing civil and criminal laws for their nations; taxing, licensing,

regulating, and maintaining and exercising the power to exclude wrongdoers from tribal lands. Tribal governments are responsible for a broad range of governmental activities on tribal lands, including education, law enforcement, judicial systems, health care, environmental protection, natural resource management, and the development and maintenance of basic infrastructure such as housing, roads, bridges, sewers, public buildings, telecommunications, broadband and electrical services, and solid waste treatment and disposal.



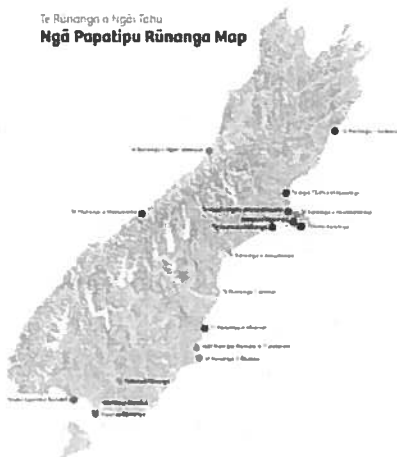
- b. **Ngāi Tahu, New Zealand South Island.** In analyzing Māori governance frameworks, the analysis focused on one tribe as a case study. The Ngāi Tahu are a Māori iwi, or tribe, from New Zealand's South Island. The Ngāi Tahu were one of the parties to the 1840 Treaty of Waitangi to whom redress was owed by the British Crown due to treaty violations. In 1998, a settlement was determined and the Ngāi Tahu were compensated \$170 million cash (among other things). As a result of this economic redress, Ngāi Tahu became an economic powerhouse worth over \$1.65 billion as of 2018.

Ngāi Tahu is an iwi, a tribe, of Aotearoa that has, interestingly, incorporated its governing body. In an attempt to establish a tribal structure in order to best manage its assets and its business, while also maintaining the capacity to distribute benefits, the tribe's governing documents were placed into law via the passage of legislation: Te Rūnanga o Ngāi Tahu Act 1996. In accordance with law, te Rūnanga o Ngāi Tahu (the Council/Board of Directors of the Ngāi Tahu) is established as the body corporate and representative of the Ngāi Tahu Whānui. Membership and requirements are also provided for in statute as well as powers. Of note, amendments to this law requires a special resolution provided by te Rūnanga.



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

- The Te Rūnanga o Ngāi Tahu is the 18-member governing board or council of the Ngāi Tahu tribe. A Kaiwhakahaere (chair) leads the board. According to the tribe's website: Te Rūnanga o Ngāi Tahu is responsible for the overall governance of the group and for representing Papatipu Rūnanga and Ngāi Tahu Whānui and delivering benefits to them. Te Rūnanga o Ngāi Tahu deal with global tribal policy and issues, while Papatipu Rūnanga manage issues requiring wider or local consultation.
- Kā Pakitua Leadership Team is the executive team below in authoritative succession to the 18-member te Rūnanga o Ngāi Tahu. "Kā Pakitua" is the name of the legendary toki (adze), which sat upon the prow of the great migration waka (canoe) Uruao, which carried the ancestors of the Ngāi Tahu. Kā Pakitua is symbolic in the role it played in both navigation and clearing out the passages of the ocean on the Ngāi Tahu's way to Aotearoa.
  - The leadership team is comprised of a Chief Executive Officer, Chief Operating Officer, the general managers of each pou (pillar) of the iwi.
  - These pou are as follows:
    - *Te Taumatua*: Responsible for ensuring the integration of the tribe into all aspects of council activities and ensuring the efficient and effective delivery of the core services through which tribal members can determine their membership, incorporating the whakapapa function, tribal archive and traonga collections, Kotahi Mano Kāika and the Ngāi Tahu Fund;
    - *Oranga*: Responsible for work streams designed to help whānau (family) to realize rangatiratanga (self-determination) in the areas of education, employment, financial literacy, and business creation. Oranga provides strategic program delivery to ensure success for whānau through whānau rangatiratanga;
    - *Te Ao Turoa*: Responsible for taonga (cultural treasures) resources, mahinga kai (traditional food and natural resource gathering) and natural environment. Ensures the integration of programs and environmental work streams within the wider tribal development strategy to support whānau outcomes;
    - *Strategy & Influence*: Dedicated to realizing Ngāi Tahu visions for tribal development through the development and implementation of political and organizational strategy, strategic relationship management, and strategic public relations

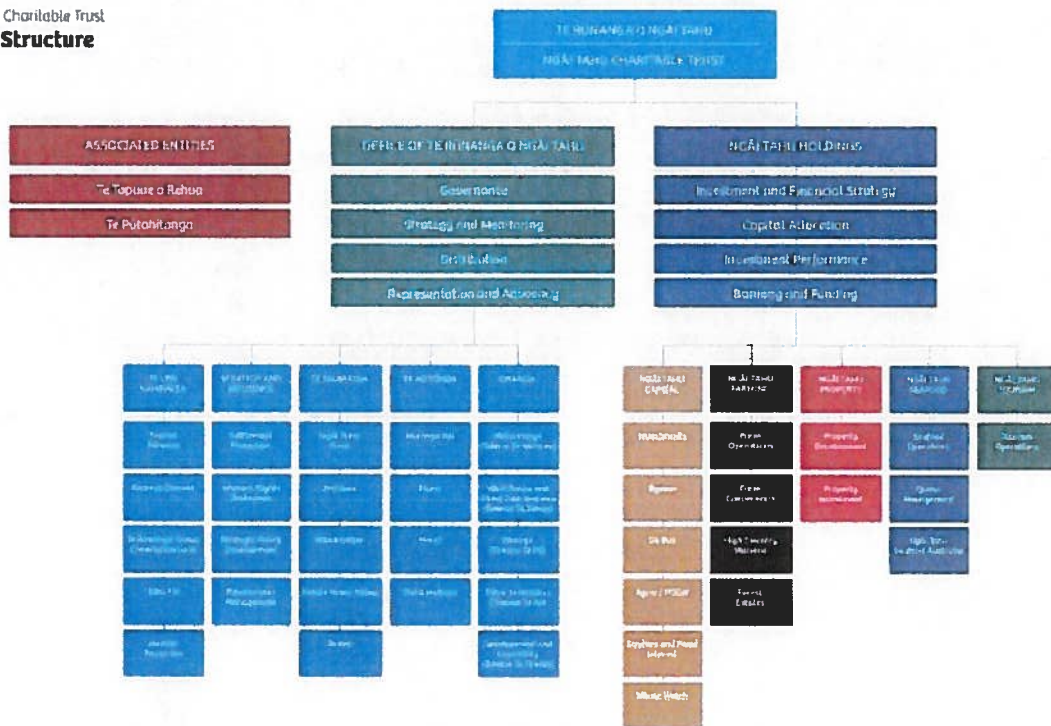


**Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019**

- The Papatipu Rūnanga are 18 regional boards comprised of various hapū (family groups) with their own governance structures. Each Papatipu Rūnanga selects one member to represent them on te Rūnanga o Ngāi Tahu.

**Ngāi Tahu Charitable Trust Organizational Structure.** Ngāi Tahu Holdings is an investment company formed subsequent to the Ngāi Tahu Claims Settlement of 1998 with investments in property, farming, seafood, tourism, as well as direct investments in a number of businesses as well as indirect investments through private equity funds and international equities.

## Te Rūnanga o Ngāi Tahu Charitable Trust



According to the 2018 Ngāi Tahu Holdings Report and the 2018 Te Rūnanga o Ngāi Tahu Annual Report, \$61.05 million in revenue was distributed Te Rūnanga o Ngāi Tahu. This is up from the previous year where \$49.6m in revenue was distributed to the tribe, with \$32.6m for tribal initiatives (excluding operational and administrative costs), \$7.1m for educational and wellbeing grants, and \$10.6m direct distribution and development for Papatipu Rūnanga.

The organizational structure of the Ngāi Tahu is a masterwork model for trust organizations serving as the receptacle for fairly sizeable redress in terms of direct

cash compensation and land and resource assets, having a net worth that has grown to over \$1.65 billion. The Ngāi Tahu organizational structure, as it relates to the Office of Hawaiian Affairs, should be highly informative, if not highly influential for these reasons: (1) Both organizations are Trusts responsible for the survival of their people; and (2) Both organizations have access to large capital and land and resource assets.

- c. **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**<sup>77</sup>. Indigenous peoples globally continue to face dispossession of their lands and resources, discrimination, forced assimilation and other grave human rights abuses. The United Nations Declaration on the Rights of Indigenous Peoples is the most comprehensive international human rights instrument to specifically address their economic, social, cultural, political, civil, spiritual and environmental rights. In its own words, the Declaration sets out minimum standards necessary for the “dignity, survival and well-being” of Indigenous peoples.

The UN General Assembly overwhelmingly adopted the Declaration on 13 September 2007. This historic adoption followed more than twenty years of deliberation and debate in which Indigenous peoples worked directly with states to elaborate upon and advance their human rights. This marked the first time within the UN that rights holders had such a central role in the creation of a new human rights instrument.

The Declaration affirms Indigenous peoples’ right of self-determination and underlines the prohibition of discrimination and genocide in international law. The Declaration calls on states to honour and respect the Treaties and other agreements they have entered into with Indigenous peoples, to protect Indigenous languages and cultures, and to uphold Indigenous peoples’ rights to lands, territories and resources.

The Declaration affirms the inherent or preexisting collective human rights of Indigenous peoples, as well as the human rights of Indigenous individuals. It provides a framework for justice and reconciliation, applying existing human rights standards to the specific historical, cultural and social circumstances of Indigenous peoples.

The Declaration reflects a range of human rights standards that have emerged over the last three decades through the work of international and regional human rights bodies as they have dealt with violations against Indigenous peoples. Many of these standards, such as the provisions of international human rights conventions or customary international law, establish clear legal obligations for states.

As we actively engage with the full and effective implementation of the UN Declaration on the Rights of Indigenous Peoples, we urge that:

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<sup>77</sup> United Nations Declaration on the Rights of Indigenous Peoples, March 2011

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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Governments, in conjunction with Indigenous peoples, use the Declaration as the basis for reviewing and reforming laws and policies to ensure that Indigenous peoples' rights are upheld without discrimination.

Courts and human rights tribunals use the Declaration as a relevant and persuasive source in interpreting Indigenous human rights and related state obligations. Indigenous peoples and their institutions use the Declaration as a principled framework for advancing their rights, in their own policy- and decision-making and in their negotiations with governments and other third parties.

Civil society organizations work cooperatively with Indigenous peoples, in promoting and implementing their human rights and maintaining the Declaration as a living instrument.

Educational institutions include the Declaration in their curriculum, including teacher training.

Corporations and investors ensure their human rights policies and business practices incorporate the standards in the Declaration.

The global consensus that now exists in support of the Declaration reinforces its weight as a universal human rights instrument. The ongoing and widespread human rights violations against Indigenous peoples worldwide underline the urgency of moving ahead with the full and effective implementation of the Declaration.

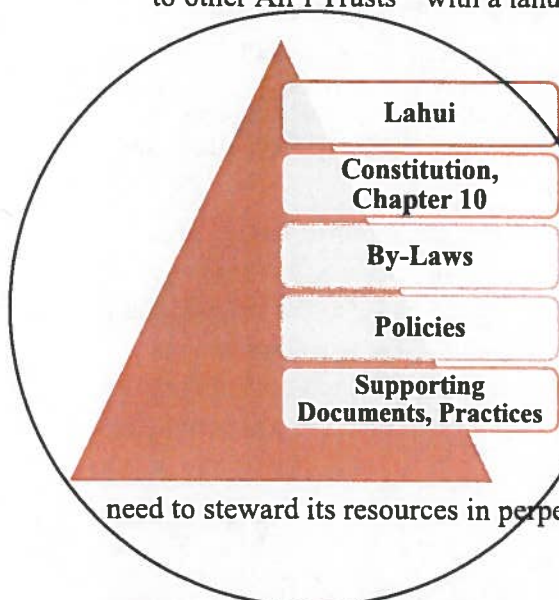
2. **Engagement with Ali'i Trusts.** PIG team members reached out to other kupuna ali'i trusts (Queen Lili'uokalani Trust, Lunalilo Home and Kamehameha Schools) for their mana'o and experiences regarding governance.

## V. PROPOSED GOVERNANCE FRAMEWORK ELEMENTS

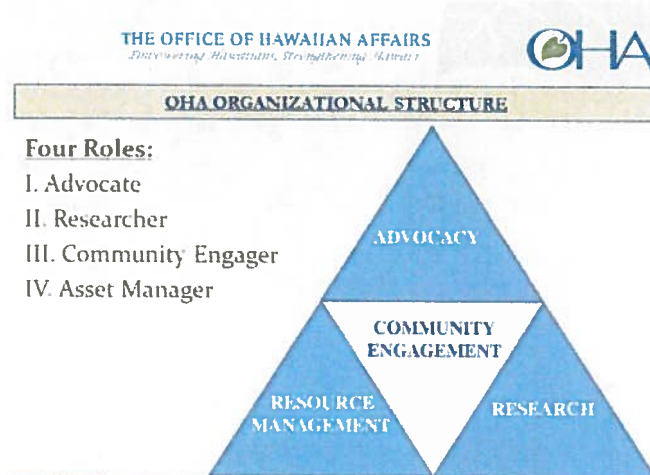
**A. Element 1: Identity.** While statutorily OHA is a State Agency with the responsibility to manage a Trust, the PIG proposes that OHA identifies with and operates more similarly to other Ali'i Trusts<sup>78</sup> with a lahui<sup>79</sup> mindset in improving the well-being of our lahui.

Such an identity is rooted in the ‘ōlelo no‘eau, *E ‘ōpū ali‘i*, have the heart of a chief, have the kindness, generosity, and even temper of a chief, ‘ōlelo no‘eau 369<sup>80</sup>. OHA’s identity is also place based, that OHA’s *kuleana* is to this place of Hawaii.

While a “dual” identity (e.g., maka‘āinana<sup>81</sup> trust vs. state agency) may seem potentially confusing, the PIG recommends that such an identity can be supported by policies, procedures and practices that are contextualized (i.e., state agency spends dollars appropriated as detailed in the biennium budget compared to a trust that is mindful of its resources and its responsibility for its beneficiaries).



OHA's identity manifests itself in four roles: advocate, researcher, community engager and asset manager and related policies, procedures and practices can be aligned to support and guide OHA's proposed dual identity.



<sup>78</sup> Kamehameha Schools, Liliuokalani Trust, Lunalilo Home, Queens Medical Center

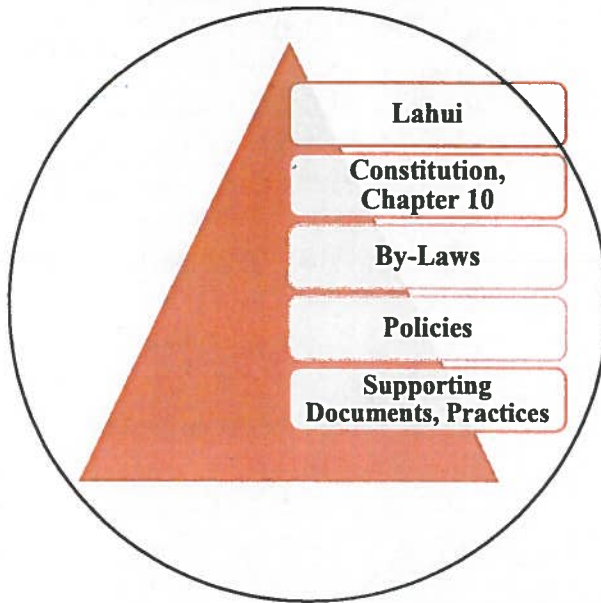
<sup>79</sup> Nation, race, tribe, people, nationality, Na Puke Wehewehe, retrieved 3/17/2019

<sup>80</sup> Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 45

<sup>81</sup> n. Commoner, populace, people in general; citizen, subject. Cf. lunamaka 'āinana. *Lit.*, people that attend the land, Na Puke Wehewehe, retrieved 3/17/2019



## B. Element 2: Values and Mana



A key element of the proposed governance framework is the intangible but invaluable values and mana concepts.

### “Envision Pu‘uhonua”

The Office of Hawaiian Affairs, a place of refuge, in which we shall live our values and principles.

The operating values of kūlia, kākou, pono, ho‘omau and aloha begins with Trustees and Board work and cascades to the Administration and staff. *O ke kahua mamua, mahope ke kūkulu*, the site first, and then the building, learn all you can, then practice, ‘ōlelo no‘eau 2459<sup>82</sup>.

THE OFFICE OF HAWAIIAN AFFAIRS  
*Empowering Hawaiians, Strengthening Hawaii*



### OHA CORE VALUES

KŪLIA	KAKOU	PONO	HO‘OMAU	ALOHA
<i>Innovation Excellence</i>	<i>Collaboration Cooperation Unity</i>	<i>Integrity Truth</i>	<i>Legacy</i>	<i>Respect Value</i>

‘O ke kahua ma mua, ma hope ke Kūkulu.

**E ho‘oikaika ana i nā Kānaka i mana ka lāhui.**

<sup>82</sup> Pukui, ‘Olelo No‘eau, Hawaiian Proverbs & Poetical Sayings, p. 268



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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**Kākou**

E alu like mai kākou i ka ho'okō 'ana i ko kākou mikiona.  
We work together, unified to accomplish our mission.

**Aloha Kekahi I Kekahi**

'Olu'olu a maika'i kākou i nā kānaka a pau.  
We are kind and compassionate to all whose lives we touch.

**Pono Pau'ole**

E hana kūpono kākou me ka 'oia'i'o.  
We act with integrity and truthfulness.

**Mālama Kekahi I Kekahi**

E hō'ihi a mālama kākou i nā po'e a pau a me nā mea 'ē a'e a pua.  
We respect and care for others and all that surround us.

**Kuleana**

E ho'okō kākou i ko kākou kuleana hana.  
We carry out our individual and collective responsibilities.

**Kūlia**

E ho'okumu kākou i ka hana e pili ana i nā kuleana Hawai'i me ka ho'oholu.  
We take initiative and are resilient in advocating for Hawaiian rights.

**Po'okela**

E hana kākou me ka 'oi a e ho'omaika'i iā kākou iho.  
We do our absolute best and continuously seek improvement.

THE OFFICE OF HAWAIIAN AFFAIRS  
*Empowering the Future, Strengthening the Past*



Mana – OHA will:



- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

**Ho'omau**

E ho'omau kākou i ke ea o ka āina,  
nā mea e ho'opuni ana,  
ka mo'omeheu a me ka po'e  
Hawai'i.

Together, steadfast we preserve and  
perpetuate our culture, people,  
land and environment.

**Mana as Capital.** The acquisition, development and maintenance of mana toward strengthening OHA's influence capital, cultural capital and financial capital.<sup>83</sup>

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<sup>83</sup> Social enterprises apply business solutions to social problems. The ultimate goal is to achieve sustainability by enabling non-profits to support themselves financially in innovative ways instead of relying solely on grants and donations. Since there are no shareholders in a non-profit organization, the profits from the related social

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

**C. Element 3: Statutory Basis.** OHA was established under the Hawai'i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai'i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people, including:

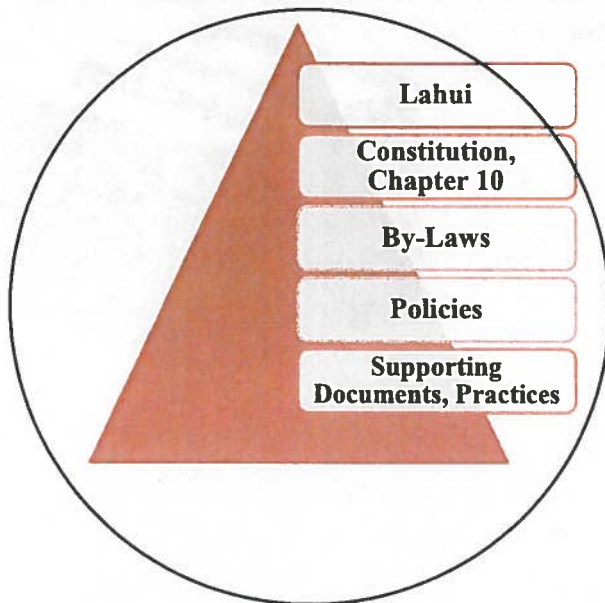
- (1) The betterment of conditions of native Hawaiians.
- .....
- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations.<sup>84</sup>

• **§10-3 Purpose of the office.** The purposes of the office of Hawaiian affairs 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. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(c);
- (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.

enterprise are completely re-invested in the work of the organization. <https://www.marsdd.com/mars-library/social-enterprise-business-models/>, retrieved 3/26/2019

<sup>84</sup> HRS §10-3; see also HRS §10-1.



**D. Element 4: Policies<sup>85</sup>.** The PIG recommends that OHA policies be organized into three tiers: L-Lahui<sup>86</sup>, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the *kaumaha* (heavy weight, sadness) or significant *kuleana* (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding ‘āina, water, wahi pana and iwi kupuna, strengthen ‘ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA’s Trustee role as a result of the

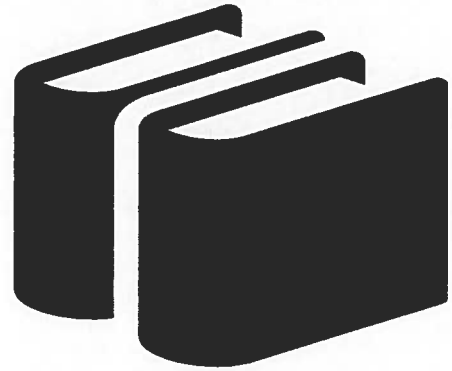
Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

An effective governance framework, considers that policies are modified from time to time for clarification of facts, circumstances, policy content, processes or organizational changes. While a change and update mechanism should exist to effect better policy clarity, the PIG recommends a five (5) year review cycle for L-Lahui and T-Trustee level policies and a two (2) year review cycle for C-CEO level policies to reflect the intentional long-term nature of L and T level policies and the operating cycles of the Organization.

<sup>85</sup> Merriam-Webster, Definition of *policy* 1a : prudence or wisdom in the management of affairs; b : management or procedure based primarily on material interest; 2a : a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b : a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, <https://www.merriam-webster.com/dictionary/policy>, retrieved 3/17/2019

<sup>86</sup> Pukui, nvs. Nation, race, tribe, people, nationality, <http://wehewehe.org>, retrieved 3/17/2019

**E. Element 5: Supporting Documents and Practices (Operations).** Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and “operationalized” documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.



## **VI. BOARD GOVERNANCE FRAMEWORK PROJECT - PHASE IV -- IMPLEMENTATION and PHASE V**

Based on the approved project charter, the initial project plan and effective BOT implementation mechanisms, the PIG recommends the BOT implement the Board Governance Framework elements via the following newly formed and executed PIGs:

- A. Development of L-Lahui level policies;
- B. Alignment and update of existing BOT By-Laws;
- C. Development of T-Trustee level policies;
- D. Development of C-CEO level policies; and
- E. Alignment and update of existing Board governance documents (e.g., Executive Policy Manual, BOT Operating Manual).

## **VII. MAHALO**

Since its approval in January 2019, Trustee PIG members and staff, Administration and staff have worked diligently to collectively bring this report and recommendations to the BOT.

**Permitted Interaction Group (PIG) Trustees:** Trustees Machado (Chair), Lee (Vice Chair), R Lindsey (Resource Management Committee Vice Chair) and Waihee (Beneficiary, Advocacy and Empowerment Committee Chair)

**PIG Trustees' Staff:** Carol Hoomanawanui, Lopaka Baptiste, Dayna Pa, Laurene Kaluau-Kealoha, Zuri Aki, Lei-Ann Durant, Kama Hopkins, Kauai Wailehua, Crayn Akina, and Melissa Wennihan.

**Administration:** Kamana`opono Crabbe, Ka Pouhana (KP), Sylvia Hussey, Ka Pou Nui (KPN) and Project Manager; Albert Tiberi, Senior Legal Counsel; Rayna Gushiken, Interim Senior Legal Counsel; Everett Ohta, Counsel for Environmental Law, Native Rights and Legal Services; Momilani Lazo, Senior Executive Assistant to KP; Laura Kamalani-Paikai, Executive Assistant to KPN; Leona Castillo, Executive Assistant to KP; Jim McMahon, Advocacy Counsel; and Keala Nichols, Executive Assistant to Chief Advocate.



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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**APPENDIX A – PERMITTED INTERACTION GROUP REFERENCE LIST**

- A. Governance Framework
- B. Statutory References to OHA in federal and state law and county ordinances
- C. Governance Structure
- D. Statutory References Handout
- E. Core Values
- F. Principles for Good Governance and Ethical Practice
- G. Analysis of Advocacy Platform Matters
- H. Analysis of Board Actions 2014-2018
- I. Analysis of Governance Framework
- J. Analysis of Governance Framework: Maori
- K. The “Sunshine Law” HRS Chapter 92
- L. Fiduciary and Statutory Duties
- M. Quick Review: Who Board Members Can Talk To and When (Part 1) – revised July 2018
- N. Quick Review: Who Board Members Can Talk To and When (Part 2) – revised May 8, 2014
- O. Quick Review: Who Board Members Can Talk To and When (Part 3) – revised August 8, 2013
- P. Agenda Guidance for Sunshine Law Boards
- Q. Open Meetings Guide to “The Sunshine Law” for State and County Boards
- R. SPIRE OHA BOT Policy Workshop Update
- S. Board of Trustees By-Laws
- T. Board of Trustees Executive Policy Manual
- U. Board of Trustees Operations Manual
- V. United Nations Declaration on the Rights of Indigenous Peoples
- W. Tribal and Alaska Native Governance Models
- X. Tribal Nations and the United States, An Introduction 2017
- Y. Policies
  - 1. NHTF Investment Policy
  - 2. NHTF Spending Policy
  - 3. KM Policy
  - 4. Real Estate Vision Mission and Strategy Policy
  - 5. Risk Management Policy