

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

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

ATTENDANCE:

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

ROBERT KLEIN, BOARD COUNSEL

ADMINISTRATION STAFF:

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

BOT STAFF:

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

GUESTS:

RANDALL ROTH
KEALII MAKEKAU
THOMAS MILLER

I. CALL TO ORDER

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

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

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

III. APPROVAL OF MINUTES

A. September 19, 2019

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

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

Trustee Robert Lindsey seconds the motion.

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

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

IV. PUBLIC TESTIMONY

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

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

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

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

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

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

Trustee Brendon Kalei'āina Lee – Madame Chair.

Chair Colette Machado – Trustee Brendon Kalei'āina Lee.

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

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

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

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

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

Mr. Roth – In this context you are right.

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

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

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

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

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

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

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

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

9:43 am Trustee Waihee arrives.

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

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

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

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

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

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

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

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

Chair Colette Machado – You are correct.

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

Chair Colette Machado – Trustee Leina‘ala Ahu Isa.

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

Chair Colette Machado – Proceed.

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

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

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

Chair Colette Machado – Our next speaker is Kealii Makekahu.

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

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

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

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

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

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

V. UNFINISHED BUSINESS

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

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

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

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

VI. NEW BUSINESS

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

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

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

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

Sterling Wong and Sylvia Hussey read the following resolution:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10:03 am Chair Colette Machado calls a recess.

10:18 am Chair Colette Machado reconvenes the meeting.

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

VII. EXECUTIVE SESSION

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

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

Trustee Carmen Hulu Lindsey seconds the motion.

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

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

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

The Board resolved into Executive Session at 10:19 am

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

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

VI. NEW BUSINESS

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

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

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

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

C. Committee on Resource Management

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

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

Trustee Robert K. Lindsey seconds the motion.

Chair Colette Machado – Roll call vote please to ratify.

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

| TRUSTEE | 1 | 2 | 'AE (YES) | A'OLE (NO) | KANALUA (ABSTAIN) | EXCUSED |
|--------------------------------|---|---|--------------|---------------|----------------------|---------|
| TRUSTEE LEINA'ALA AHU ISA | | | X | | | |
| TRUSTEE DAN AHUNA | x | | X | | | |
| TRUSTEE KALEI AKAKA | | | X | | | |
| TRUSTEE KELI'I AKINA | | | X | | | |
| TRUSTEE BRENDON KALEI'AINA LEE | | | X | | | |
| TRUSTEE CARMEN HULU LINDSEY | | | X | | | |
| TRUSTEE ROBERT LINDSEY | | x | X | | | |
| TRUSTEE JOHN WAIHE'E | | | X | | | |
| TRUSTEE COLETTE MACHADO | | | X | | | |
| TOTAL VOTE COUNT | | | 9 | | | |

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

Motion unanimously passes with nine (9) yes.

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

Chair Colette Machado – Trustee Ahuna.

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

Trustee Robert K. Lindsey seconds the motion.

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

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

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

Chair Colette Machado – Trustee Ahuna.

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

Trustee John Waihe'e IV seconds the motion.

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

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

Trustee John Waihe'e IV seconds the motion.

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

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

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

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

Chair Colette Machado – Trustee Ahuna.

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

Trustee Robert K. Lindsey seconds the motion.

Chair Colette Machado – Roll call vote.

| Trustee Dan Ahuna moves to approve and authorize the disbursement \$830,000 from the Fiscal Year 2020 Core Operating Budget (Object Code 56530) and \$830,000 from the Fiscal Year 2021 Core Operating Budget (Object Code 56530) to fund the Emergency Financial Assistance grant to CNHA. Trustee Robert K. Lindsey seconds the motion. | | | | | | |
|---|---|---|--------------|---------------|----------------------|---------|
| TRUSTEE | 1 | 2 | 'AE (YES) | A'OLE (NO) | KANALUA (ABSTAIN) | EXCUSED |
| TRUSTEE LEINA'ALA AHU ISA | | | X | | | |
| TRUSTEE DAN AHUNA | x | | X | | | |
| TRUSTEE KALEI AKAKA | | | X | | | |
| TRUSTEE KELI'I AKINA | | | X | | | |
| TRUSTEE BRENDON KALEI'AINA LEE | | | X | | | |
| TRUSTEE CARMEN HULU LINDSEY | | | X | | | |
| TRUSTEE ROBERT LINDSEY | | x | X | | | |
| TRUSTEE JOHN WAIHE'E | | | X | | | |
| TRUSTEE COLETTE MACHADO | | | X | | | |
| TOTAL VOTE COUNT | | | 9 | | | |
| MOTION: [x] UNANIMOUS [] PASSED [] DEFERRED [] FAILED | | | | | | |
| Motion unanimously passes with nine (9) yes. | | | | | | |

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

B. Selection of OHA Chief Executive Officer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11:14 am Chair Colette Machado calls a recess.

11:20 am Chair Colette Machado reconvenes the meeting.

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

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

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

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

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

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

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

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

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

Trustee Waihee seconds the motion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Trustee Keli‘i Akina – No I wasn’t.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Trustee Brendon Kalei‘āina Lee – Thank you.

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

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

Trustee Keli‘i Akina – May I continue?

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

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

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

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

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

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

Trustee Keli'i Akina – I acknowledge that.

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

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

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

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

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

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

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

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

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

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

Trustee Carmen Hulu Lindsey seconds the motion.

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

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

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

The Board resolved into Executive Session at 11:49 am

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

Chair Colette Machado – We are back in open session.

VI. NEW BUSINESS – (CONTINUED)

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

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

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

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

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

Trustee Dan Ahuna moves to table the amendment.

Trustee Robert Lindsey seconds the motion.

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

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

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

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

Trustee Keli'i Akina – Thank you.

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

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

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

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

Trustee Robert Lindsey seconds the motion.

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

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

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

VIII. COMMUNITY CONCERNS

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

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

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

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

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

Chair Colette Machado – Thank you Thomas.

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

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

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

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

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

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

Chair Colette Machado – Thank you.

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

Kealii Makekahu – Ok I accept that, thank you.

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

Kealii Makekahu – It's the CLA Audit.

Chair Colette Machado – That is coming up in December.

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

Chair Colette Machado – Thank you for that clarification.

IX. ANNOUNCEMENTS

None

X. ADJOURNMENT

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

Trustee Kalei Akaka moves to adjourn the meeting.

Trustee Dan Ahuna seconds the motion.

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

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

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

The meeting was adjourned at 12:34 pm.

Respectfully submitted,


Dayna Pa, Board Secretary

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


Colette Y. Machado, Chairperson
Board of Trustees

Attachments:

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

November 21, 2019

To: OHA Board of Trustees

From: Randall Roth

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

Aloha Members of the OHA Board,

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

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

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

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

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

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

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

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

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

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

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

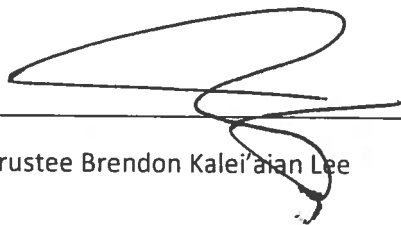
1. I taught trust law (among other subjects) at the University of Hawaii William S. Richardson School of Law for many years and at several other law schools.
2. Dozens of other law schools have invited me to make presentations on trust law, including Harvard, Berkeley, Columbia, UCLA, Duke, and NYU;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

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

Mahalo,

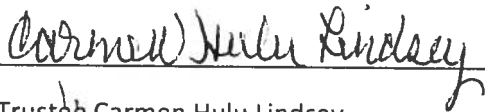
Randall W. Roth

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



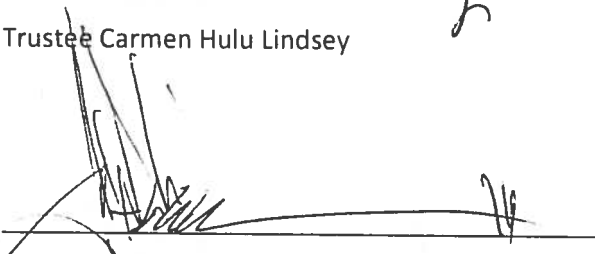
Trustee Brendon Kalei'ian Lee

11/06/19
Date



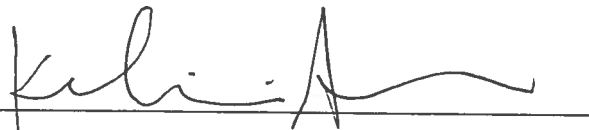
Trustee Carmen Hulu Lindsey

11/06/19
Date



Trustee John Waihe'e IV

11/06/19
Date



Trustee Kalei Akaka

11/06/19
Date

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

BOARD OF TRUSTEES MEETING

DATE: June 20, 2019

AGENDA ITEM:

V. New Business

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

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

Permitted Interaction Group Scope /Purview:

The scope/purview of the PIG is to:

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

Permitted Interaction Group Membership:

The membership of the PIG is as follows:

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

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

Permitted Interaction Group Term/Duration:

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

AMENDMENT:

MEANS OF FINANCING:

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

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

MOTION: ☐ UNANIMOUS ☒ PASSED ☐ DEFERRED ☐ FAILED

DISCUSSION:

OFFICE OF HAWAIIAN AFFAIRS

Action Item

BOARD OF TRUSTEES

June 6, 2019

BOT #19-09

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

Prepared By:



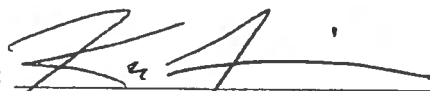
Carol Ho'omanawanui
Ke 'Aho Kele, Chief of Staff

06/05/2019

Date

Reviewed By:

FOR

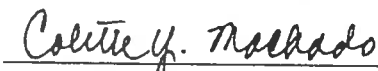


Robert G. Klein
Pōhaku Kihi Nui, Board Counsel

06/05/2019

Date

Reviewed By:



Colette Y. Machado
Ke Kauhuhu, Board of Trustees Chair

06/05/2019

Date

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I. ACTION ITEM

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

II. ISSUE

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

III. DISCUSSION

A. Timeline of Complaints

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

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

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

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

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

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

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

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

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

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board.

C. Proposed Permitted Interaction Group (PIG)

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

Permitted Interaction Group Scope /Purview:

The scope/purview of the PIG is to:

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

Permitted Interaction Group Membership:

The membership of the PIG is as follows:

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

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

Permitted Interaction Group Term/Duration:

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

IV. TIMEFRAME

Immediate action is recommended.

V. FUNDING SOURCE

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

VI. ALTERNATIVES

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

VII. RECOMMENDATION

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

The scope/purview of the PIG is to:

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

The membership of the PIG is as follows:

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

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

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

VIII. ATTACHMENT

None