

STATE OF HAWAI'I  
OFFICE OF HAWAIIAN AFFAIRS  
560 N. Nimitz Highway, Suite 200  
Honolulu, HI 96817

Minutes of the Office of Hawaiian Affairs Board of Trustees  
Thursday, July 18, 2019  
10:00 am

**ATTENDANCE:**

TRUSTEE COLETTE MACHADO  
TRUSTEE BRENDON KALEI'ĀINA LEE  
TRUSTEE LEINAALA AHU ISA  
TRUSTEE KALEI AKAKA  
TRUSTEE CARMEN HULU LINDSEY  
TRUSTEE ROBERT LINDSEY  
TRUSTEE JOHN WAIHE'E IV

ROBERT G. KLEIN, ESQ., BOARD COUNSEL

**EXCUSED:**

TRUSTEE DAN AHUNA  
TRUSTEE W. KELI'I AKINA

**ADMINISTRATION STAFF:**

SYLVIA HUSSEY, ICEO  
RAINA GUSHIKEN, CC  
MOMILANI LAZO, ADM CEO  
MILES NISHIJIMA, LPD  
EVERETT OHTA, CC  
MEHANA HIND, CE  
STERLING WONG, PRO  
GLORIA LI, CTRLLR  
JIM MCMAHON, ADV  
JIM PATTERSON, PROG  
JOCELYN DOANE, PP  
KEVIN CHAK, IT  
TIGER LI, IT

**BOT STAFF:**

CAROL HO'OMANAWANUI  
LŌPAKA BAPTISTE  
DAYNA PA  
MELISSA WENNIHAN  
NATHAN TAKEUCHI  
LEHUA ITOKAZU  
PRICILLA NAKAMA  
ALYSSA-MARIE KAU  
LEIANN DURANT  
PAUL HARLEMAN  
BRANDON MITSUDA  
ZURI AKI  
KAUIKEAOLANI WAILEHUA

**GUESTS:**

LESLIE H. KONDO, STATE AUDITOR  
GERMAINE MEYERS  
JOSEPH MAHOE

**I. CALL TO ORDER**

Trustee Colette Machado Calls the Board of Trustees meeting to order at 10:02 am. Roll call is taken; Trustees Ahu Isa, Akaka, Lee, Carmen Hulu Lindsey, Robert Lindsey and Machado are present, constituting a quorum. Trustee John Waihe'e IV is expected to arrive shortly and excused absences were received from Trustee Dan Ahuna and Trustee Keli'i Akina.

We will move on to public testimony. We have two members who have signed up.

## II. PUBLIC TESTIMONY

**Chair Colette Machado** – We have one individual that has asked to address the Board of Trustees under public testimony. I will call on Germaine Meyers OHA beneficiary. Germaine, just for the record, I called you under public testimony provision. Will you be addressing, what you circulated will that be addressed?

**Germaine Meyers** – Its verbal going with this. I am going to be talking about my verbal, which is not on here referencing this.

*(LOYALTY TO ~~BOARD~~ BENEFICIARY handout from Germaine Meyers is attached to the minutes.)*

**Chair Colette Machado** – Will that be related to item IV.A. which is the State Auditor.

**Ms. Meyers** – It will be all of these agenda items. It will be interspersed within my testimony. Is that ok?

**Chair Colette Machado** – If we will engage with questions under public testimony, we can engage with questions not in community concerns. So in certain areas of your testimony I may have to cease any kind of dialogue.

**Ms. Meyers** – It is going to be 100% agenda items nothing to do with community concerns.

**Chair Colette Machado** – Please proceed when you are ready.

**Ms. Meyers** – Aloha, my name is Germaine Meyers, I am an OHA beneficiary for beneficiary advocacy and empowerment. I am also a Nānākuli Hawaiian Homestead Lessee. I provided to you a four-page handout if you look at page one I will start with my testimony, which are my data, views, and arguments regarding the agenda item.

On handout number one, loyalty to Board, a'ole loyalty to beneficiaries. The handout number two I start out with in State Audit report 18-03 February 2018, paragraph 1 on page 4, it states that the OHA Trustees have a fiduciary responsibilities, including a duty of prudence, duty of loyalty, duty of impartiality and duty with respect to co-Trustees. It further goes into detail the meaning of each of these duties. The duty of prudence is to exercise reasonable care, skill and caution. The duty of loyalty is to act solely not dually for the board and beneficiaries but in the best interests of beneficiaries. The duty of impartiality states that it is to be impartial with respect to the various beneficiaries, in consideration of the diverse interests of present and future beneficiaries. The duty with respect to co-Trustees states using reasonable care to prevent co-trustees from committing a breach of trust and to obtain redress if a breach occurs. I will come back to this page because it really fundamentally talks about what I would like the new audit, I hope the new audit will address.

If you go to handout number three at the top of it is from State Audit report 18-03. It shows the OHA organizational chart. But my data and view is that it is incomplete which I hope will be addressed in the new audit report. It is missing OHA's LLCs. However, on report 18-03 it states on page 29 there is an insert, OHA's Limited Liability Companies. I highlighted for you, it is unsettled whether OHA's LLCs are State organizations subject to laws applicable to the State agencies, like the State Procurement Code, the State Ethics Code, the Sunshine Law, and the Uniform Information Practices Act. I would like the State Auditor to know that it has been settled, it is recently been settled by the Court that OHA's LLCs are State organizations subject to these laws. I would like the new audit report to include these things.

Finally, on the handout number four, I took it from page number 1 paragraph number 1 on audit report 18-03. I highlighted for you, it states, OHA has created alternate funding processes that allow the agency to regularly direct money to a multitude of programs, project, and individuals. At first glance, these funding opportunities appear to be guided by policies, procedures and guidelines designed to ensure that funds are distributed fairly and equitably. In reality, however, these expenditures and other forms of discretionary spending do not undergo the rigorous vetting, monitoring and reporting requirements of OHA's formal grant process. Some are approved by the OHA

Administration without Board of Trustee vote or even knowledge. I underlined below, administer the trust fairly, equitable, and without self-interest. In other words, this form of behind-the-scenes giving is inherently inequitable. What I would like the State Auditor to know, is that in this lawsuit that clarified that OHA's LLCs are subject to State Laws of a Government Agency such as OHA. That David Laeha, the ex CFO, Chief Financial Officer, he stated that it was their practice to not let the Trustees know about the expenditures in these LLCs. There was no knowledge; there was no vote by the OHA Trustees, except for funding what was channeled to these LLCs. I would like to make the point that I would hope that this Audit report does look into the LLCs, and that it gives us knowledge about these things that were not knowledgeable to the Trustees as well as to OHA beneficiaries.

Going back to handout number two. I would like to point out and I would hope that the Auditor would clarify for us in the new Audit Report that using reasonable care to prevent co-Trustees from committing a breach of trust and obtain redress if breach occurs, that I had let the Trustees know that prior to 18-03 I had let you know about a OHA Trustee's Aide, receiving funds from the LLC without OHA knowledge and yet this aide is still working here. If you look at the organizational chart it under Community Engagement. That person has a very high role under community outreach. So talking about redress, nothing has been redressed. It has never come before the board about these concerns that I had that came out before 18-03. After 18-03, I did bring up to the Board and I provided numerous, for the old for the first one I stated and for this afterwards. I stated and I showed you that the Administration had opened up an LLC without board approval. It came out of an Ad Hoc Committee by a Trustee, yet there was no redress for that. I am concerned that all these things that the State Auditor has brought to my knowledge and mine own awareness of what is a fiduciary role of a Trustee. Unfortunately, over and over I keep bringing up, and most especially, Chair, that the Board Chair I would think would be the one that would direct the agenda and would bring these to the concerns of the Board. But in actuality the Auditor has stated that you are Co-Trustees and that you can force her to bring them to the concerns of the Board. So e hana kakou.

*10:14 am Trustee John Waihe'e IV leave the meeting.*

**Chair Colette Machado** – Thank you Germaine. Any questions? If not we will move on. There is no other individual that has signed up for public testimony. We will now go to III. Unfinished Business.

### **III. UNFINISHED BUSINESS**

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

**Chair Colette Machado** –I would like to Sylvia.

**Sylvia Hussey** – Good morning Trustees. Given the current activities, Administration thought it would be important for you to understand what some of the activities are going on in a communication to our staff through the leadership teams. We just want to make you aware, you are aware of some of these things. But in complete transparency, we have in the last few days had three press releases on our positions on the activities on Maunakea. We made sure that our staff knew that the position of the Board and the clarity around that. Administration's responses and activities, we have a number of community and advocacy staff who are engaged in observation of legal observers which is a technical description of a role through the national lawyers guild and Richardson Law School. We have both Jocelyn and Mehana here who can help to answer any questions if you do.

We have advocacy staff who are coordinating some voluntary lawyers to assess beneficiary needs as it relates to criminal activities. We also have our digital print media who are deployed to various gatherings to record and broadcast various press conferences, statements and then rebroadcasting that on social media for awareness. Then we have collectively, both Trustee offices as well as the general administration have been fielding a number of concerns, inquiries, information provided to the office. We are coordinating those inquiries, providing, and addressing.

The last thing is that our staff and through our leadership was reminded of the communication protocols. That when there are concerns that come in from a number of places that as it relates to communication, they are very specific communication protocols that should they be contacted by whoever that there is a specific protocol. Especially as it relates to Maunakea, and that is through the Board and the Ad Hoc Committee. We just wanted to make you aware that at the administration operational level there are a number of activates that are being coordinated so that there is consistent responses to all of the concerns and the observations being made.

**Chair Colette Machado** – Thank you Sylvia. If it's ok, we will move on to New Business.

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

##### **A. Entrance conference and discussions with Leslie H. Kondo, State Auditor, Office of the Auditor, regarding and audit of OHA pursuant to Act 37 of the 2019 Legislative Session.**

**Chair Colette Machado** – Would you introduce our State Auditor at this time?

**Sylvia Hussey** – Sure, under Act 37 we have the State Auditor, Les Kondo, Trisha Oftana who is the supervisor and Darin Kawamoto who is the analyst in charge. All three of them are here.

**Chair Colette Machado** – Please join us at the table.

**Leslie Kondo** – Good morning. My name is Les Kondo I am the State Auditor. Next to me is Trisha Oftana is one our managers in our office, she is the supervisor for the Audit relating to OHA, the current audit. Darin Kawamoto is the analyst in charge of the audit. That means he is the day to day in charge of the team who is part of the audit. We also have with us Daria Lloyd-Goto is the Deputy Auditor and on the team is Roy Kawamoto and Sean Wong; they are both in the back. They will also be working on the audit as the analyst that is part of our audit project team. Thank you very much for the invitation to be here to talk to you folks.

We are starting our audit of OHA. That audit is mandated by Act 37, which was OHA's appropriation bill. By law, we audit OHA every 4 years. Like Ms. Meyers mentioned we issued a report last January that was in the normal 4-year cycle of our audits. This is not a part of that 4-year cycle. This is a legislatively mandated audit. Not sure how we are going to deal with the cycle part, but we will figure that out as we go forward. We are here to really just to talk with the Board so that the Board will understand our audit process. I know many of you were part of the Board the last time we were here. So we had a very similar entrance conference with the Board then. This is a very similar discussion and I think your financial auditors probably had this discussion with your financial people every year. So it's part of our normal process to come and talk to the auditee, the agency that we are auditing so that they will understand the audit process, if there are questions that you folks have, this is, I know it's a formal Board of Trustee meeting, but from my perspective its intended to be an informal discussion with you folks. If you have questions about our process, what we are doing, how we do things, please interrupt me if you want or you can ask the questions at the end. But it really is an opportunity so you folks will know what we are doing so you are comfortable, at least understanding our process.

We've already had an entrance conference with the Administration. We sat down and we talked with the Administration about the process. A very similar process that we employed last time. I had a handout that I think was distributed to all you folks that is a brochure that my office put together. Trying to get some information to the auditees about our process. It is not a financial audit. A lot of people misunderstand when they hear that we are coming to audit them, that it's a financial audit. It is not. I understood last time there was some concerns that I am not a CPA and that is absolutely correct I am not. It's not, at least from my perspective, it's not a big deal, because we are not here doing a financial audit. We are doing a performance audit of OHA. The Act or the bill that became this Act, it says, financial and management audit, we consider management audit to be a subset of performance audit. What we are here to do is we are here to assess, just like last time, assess OHA's performance, certain activities that OHA is engaged in, how they are performing those activities. Whether they are consistent

with the statutory requirements, if there's procedures, policies, processes that OHA has implanted, whether those activates are consistent with those processes, those procedures that OHA has implemented. That's the framework of what we do and what we asses.

The last time we were here, we assessed OHA's grant process, the discretionary spending, which also includes discretionary grants as well as the use of Trustee Allowances. That's the report that Ms. Meyers was referring to. Because we come back and we audit OHA so regularly, we have, I call it an advantage. In the sense that we know OHA, or at least we know a little of OHA. For most organizations that we are auditing for the very first time where we don't have that advantage we have to go in and we have learn about the agency. Right now, we are auditing the Agri-Business Development Corporation, first time. So what we are doing, it's a very similar process that we will employ here but like I said we have an advantage with OHA.

We go in and try to learn about the agency, what did they do, what are their activities, what are their key roles so that we can understand about the agency. Then from there we go back and we decide which activities we are going to audit. We cannot audit OHA, OHA is too large of an animal, within the time frame for us to audit. ABC same thing, Agri-Business Development Corporation too large of an animal. So what we do in the initial phase is explained in that brochure. Which we are doing right now, we are do some planning work. So the audit to me is divided into three phases. The first is planning, which is what we are doing now. We are trying to understand; in this case, because we are familiar with OHA, we are not going to audit the same things that we audited last time, so we've excluded those things. So in our planning process we are trying to gain information so that we have an understanding of the specific activities for different phases of OHA's lines of business or different activities that OHA is engaged in.

This time we have taken even a different approach, we've pretty much committed at this point in time as I talk to you right now, to looking at OHA's LLCs. It's not just the LLCs, I think we are going to look at the Board and OHA generally, their administration of the LLCs. So the reason why it took us a bit to get to this point it because I understand that the Board has contracted with a private CPA firm, Clifton, Larson and Allen, CLA, to do an audit of the LLCs as well as audit of OHA. We didn't want to duplicate what Clifton is doing. So we actually sat down and talked to Clifton and we've talked to a number of Trustees and the Administration to make sure that we thought that we would be able to add value in areas that Clifton is not auditing. We are very confident that we will do work that Clifton is not engaged to do. Even though both of us will be auditing the LLCs, or different aspects of the LLCs, I am confident that our work will not overlap too much. There may be certain contracts and certain activities that we both look at, but I think our focus will be very different.

The first phase is planning. We've been talking to a number of people to understand about the LLCs and initially we were trying to understand different aspects of OHA's business that we had not audited before. But like I mentioned I think we are at this point decided that we are going to focus on the LLCs. We've gone and we've talked to many of you. We've asked for interviews to understand your understanding of the LLCs, where they came from and what they've done and your oversight of them. We've talked to other people about their involvement with the LLCs. So we are gathering information at this phase of the audit at a very high level. I call it planning because we are gathering information about, just general high-level information. At a certain point in time, like I mentioned, about two months, I break it into three two-month segments or phases. Once we finish the planning phase, we will identify the specific audit objectives. Meaning exactly what we intend to audit. We will provide those objectives to you. They will come to you in a letter that will specifically identify the objectives. To the Board as well as to the Administration. So that everyone is aware, as to exactly what we are intending to audit.

The second phase of our audit work will be fieldwork. That is when we go back and we gather more information that is specific to those audit objectives. So I will give you a heads up, because it's often that we will talk to you and talk to others during planning because we are getting a high level of information and we will come back and impose on your time a second time after we've identified the audit objectives, because now we want to know very specifically information relating to those objectives. I apologize in advance if we are going to impose on you multiple times, but that is part of the process. The fieldwork phase is about two months. We may actually ask for space here, we are looking at documents; we are talking to a number of people.

The third phase of our audit is really the report phase. During that report phase, we will draft a report, obviously. The report will circulate to OHA, and I know last time people that were a part of the Board last time, I am sure you can recall, that experience. But we will provide the draft report to OHA, but the Board as well as the Administration. We don't provide that report draft form to anyone else. In other words, we are not providing a draft of that report to legislative leadership, to the Governor or anybody else it just comes to the auditee. We ask that the auditee keep that report confidential, not confidential, we ask that you keep it to yourself. The big reason for that is because at that point in time we are confident that that report is in the form that we intend to publish it. That report goes through a very rigorous review in my office. Every sentence, if you look at an electronic version of that draft of that report, every sentence has a link to a work paper. It's a document that either summarizes in interview; it may be a document that you folks or someone else has given us. But its support for that sentence. It goes through a rigorous review by someone that has not related to this audit team, someone in my office, another staff member. They confirm that the support, that that sentence is supported by the documents that we have in our work paper. So when we bring it to you, we are very confident that it is ready to be published. We bring it to you because maybe we missed something. It maybe that we didn't ask for a box of documents, or maybe you misunderstood our request and that box of documents is in your corner. We want you to tell us that. We want you to show us information that maybe inconsistent to what we are reporting. The reason why we ask you to keep the draft to yourself is because; it's possible that the draft may change. If you give us information, we will have an exit conference where you will have the draft and we will ask to meet with you.

Last time because you folks are sunshine law board, the board decided that they didn't want an exit conference with me and my office. We met with the Administration; we had an exit conference with the Administration. That is your decision as to whether or not the Board wants to exit with us. But we will definitely invite the Board to exit with us and we definitely invite Administration to exit with us. The draft will be, hopefully you'd have a chance to digest the draft, we will come and talk about the draft at the exit conference. If you have issues with the draft that is the opportunity for us to discuss those issues. My hope is that the factual foundation of that report, we all agree. In other words, we didn't miss a fact. If we missed a fact, I'd hope that you would tell us this is not correct, here are some documents that will refute or disagree with whatever you are reporting. We can always disagree with what those facts mean. I can respect the fact that you will interpret it perhaps then we interpret it. But the foundation of the report, the facts, we should all be on the same page. For me that is the primary purpose of the exit conference, is to have the opportunity, the auditee have the opportunity to talk about the report, the draft. If there are any issues that they have, that to me is the time for us to discuss it. The agency will also have the opportunity to provide written response to the audit. A written document that we will include as part of the final report. It is at the back of the report. We will also add our own comments on top of the agency's comments. That all becomes part of the final report. That report is pushed out to you folks of course, but also we put it on our website, so it is a public document.

Let me take a couple steps back. Act 37 it asks us to do a financial and management audit, like I mentioned before. My understanding is that OHA receives annual financial audits, has an independent annual financial audit by a CPA firm and some of the LLCs are included in OHA's audit and the LLCs that are not are independently audited by a CPA firm as well. Based upon that understanding we will not be doing a financial audit of OHA. We do not want to waste our time, we don't do any financial audit in house, we contract them out. So it's really not wasting our time, its wasting your money. We don't want to engage a firm to duplicate work that another independent CPA firm is already doing. The standards are relatively the same, or are the same. Their test samples may be different, they may have different opinions but at this point, we are going to rely upon the professional judgement and those professional firms doing what they are contracted to do. So we are not going to engage in anybody to do a financial audit of OHA. Our focus like I said is a management or performance audit and it's likely the focus of that is going to be the LLCs and OHA's oversight of those LLCs as well as the LLCs themselves.

I know the Act it is unusual in the sense that it ties the release of the General Funds Appropriation to OHA to our completion of the audit. We are very aware of that provision. I want to assure you that we see it and your interim CEO has come very soon after that bill was signed to let us know that it was there. But we knew it was there. We

are very aware of it and I commit here that we will do our best to issue that report as expeditiously as we can and 20 days before session, which is our deadline, is roughly in my mind is the end of the calendar year. So my expectation is that we will issue that report by the end of the calendar years. That all said that is going to be partly dependent upon the cooperation we get from OHA. We certainly expect full cooperation from OHA that means documents as well as access to people when we come and ask for interviews. We expect and we understand that you have, you and your staff, have other responsibilities. But we also believe that this is also part of your responsibility. We certainly will be aware and to the extent that we can accommodate other work, we will do that. But we also need to finish our work so that we can issue the audit timely. We will do our best, but we expect full cooperation, full access to you folks, to staff, to records. I know there is an agenda item that I think the Board may consider in Executive Session about our access to confidential OHA material.

I communicated with Mr. Klein a couple times by email. The last time we were here 2 years ago, we had no issue. In other words, we had access to whatever OHA information OHA had. Confidential information, including Executive Meeting minutes. We expect that. I understand that Mr. Klein is here to advise the Board and it's a new Board about our ability to access that. When I read our statute, the Auditor statute, it tells me we have access to all records, with no exception. We also have the ability to if necessary to subpoena records, or subpoena people. I don't believe we ever need to pull that trigger for a State Agency. I believe a State Agency must cooperate. We would use that extremely sparingly.

We didn't get access to Executive session minutes when we audited HART. That was in the paper, you may have seen that. We, internally we had some issues with HART and HART's counsel about that but we did not push further than just reporting the fact that we didn't get access. Partly it was because HART is a City agency; partly it is because we had deadlines we needed to meet for the legislature. That was another legislative mandated audit. I am not sure we will take that same position with OHA. I don't want this to be viewed as a threat. I just want you to know because I want to lay all my cards on the table so you folks know our position. I am not sure we will walk so quietly away should you folks tell me that we don't get access to your materials. I am thinking we will take a little tougher stand because I think this is an important issue not just for us and OHA, but us and other State agencies. So I'm just telling you right up front, I am not sure if you tell me you are not going to get access that we will walk away quietly and softly on that one. We expect access to everything and anything and we expect access to you folks and we will push hard to get that.

I also want to make another comment on this one. And I guess a couple things, just so you have some assurance as to our ability, what we do with this information. The information that we receive from an auditee, the work papers, which would include your documents, the interviews that we have with you folks, the summaries of those interview, we tape most of the interviews as well. So that tape recording as well is all considered work papers to us. By statute, the work papers are confidential. So what that means to me is nobody gets access to those work papers, to those tapes, to those documents, to those executive session minutes, unless there is a court order. I can't tell you never ever, but only by court order. So we have been subpoenaed by the Attorney General's office, for instance, for other agency's documents that we have received through an audit we fight that. Not a court order. Subpoena is not a court order. To me there is some protection, not absolute, but pretty solid protection for OHA and any other agency with respect to confidential material as well as other types of material that is not available to the public.

The other protection to me that OHA has is I mentioned that we have the draft document, the draft report that will be provided to all of you as well as the administration. If OHA believes that we are reporting information in that draft that is confidential or protected, that is your opportunity to tell us. To tell us, you know all this stuff that you are reporting here, this is stuff that you got out of confidential information from Executive Session minutes, or wherever else. We will definitely take that into consideration and very, very, likely remove that information from our report. We are not here to argue with you about whether or not it truly is confidential or not, because that really is not our role. I hear Ms. Meyers talking about somethings that we reported before and her hope about what we are going to report in the future. We are not here as the State's lawyers, we are here as the State's Auditor. So there are issues that are legal in nature, we have many lawyers in our staff, including me, so we have like Mr. Klein, that's how lawyers make our money; we all have different opinions as to how we view things, and how we

interpret the law. But we all will have our own opinion but we are not lawyers, we may report things in a legal nature but that ultimate decision as to whether or not you're right, or I'm right or whatever the issues is that is a decision for the court. So we will be very careful is you tell us this information is confidential in the draft report. So I feel that there are multiple layers of protection, just for your information, as you go in, if you do go into and Executive Session to talk about this stuff. I just want you to have some understanding that I feel like there are safe guards that are in place that should give you some assurance that whatever confidential information you do provide to us for purposes of the audit it remains confidential and is not available to people outside of OHA and outside of my office.

**Chair Colette Machado** – Are you done Les in your opening comments before we field for questions? Would you like to complete your presentation?

**Mr. Kondo** – I am happy to take the question, Chair if that is good for you.

**Chair Colette Machado** – I will call on Trustee Leina'ala Ahu Isa.

**Trustee Leina'ala Ahu Isa** – Thank you, I appreciate the part that we get to see the exit, because the last time that we did this audit there were things that were out there, I don't know who put them out there about Trustees and the expenditures and the things that were wrong. I been through many audits, the Board of Education as well as the University of Hawaii, and I think you worked more with administration not so much with the Board. So you come in here and telling us all this, Marion Higa was previous to you. You really work for the legislature they are your boss, so my question is, Act 37, what kind of prompted, is this the first time, I think it's like setting a precedence a first time and using beneficiary money, because so many hours have been put in to other audits on our staff, that they are billing which is beneficiary money so that's what the complication comes in. Are we a State Agency or not, if we are a State Agency we should have an attorney general sitting here like the Board of Education. All of a sudden we don't get any money but yet they asking for the audit. You know why since you work for them and they are mandating it before next session starts, is that when it's due.

**Mr. Kondo** – It is due 20 days before session, and I want to clarify, I don't work for the legislature. We are one of the four legislative service agencies, so we are part of the legislative branch of government. I don't work for the legislature, they don't tell us, they tell us what they would like us to audit. In this case, they told us they would like us to audit OHA. And we are a tool of the legislature because there are many State programs that the Legislature is probably unaware how they operate. So that's our role and our function is to provide that insight and transparency to that program.

**Trustee Leina'ala Ahu Isa** – Les, I understand that I was a State Rep. so we kind of set that up before, Marion was out there and they put it under the legislature. I understand that part, I was just wondering if this set a precedence for people...

**Mr. Kondo** – I don't know that question is above my pay grade.

**Trustee Leina'ala Ahu Isa** – I just thought you might know, but that's ok.

**Mr. Kondo** – It was a surprise to us as well.

**Chair Colette Machado** – I wanted to ask a question about the period, this is only within one-year period that you folks are reviewing, am I correct?

**Mr. Kondo** – That is not correct. What an audit is, an audit is a backwards snap shot in time. So it's not today, this moment, it's a backwards snap shot of a period of time. So the operations within a period of time of whatever the activity is that the audit is focused on. It's not a one-year period. It's very unlikely that it's going to be a one year snap shot, it's going to be a multiple year snap shot so that we can understand what the activity is and how the activity has been performed.

**Chair Colette Machado** – So can you be a little bit more definitive in what year you are going to look at? Going back to 2015, 2016, 2017, and 2018?

**Mr. Kondo** – Not right now, I think that would definitely be part of...

**Chair Colette Machado** – You still digging into everything, from A to Z with OHA? Are you over lapping from your report that you filed on OHA?

**Mr. Kondo** – Excuse me what was that question?

**Chair Colette Machado** – I am trying to figure out from you, from the audit report that you did on us, what was it called that Germaine reflected, Audit 18-03, is it a continuation from 18-03. That is what I am trying to get at?

**Mr. Kondo** – If you are asking if we are going to audit the same areas, the answer is no.

**Chair Colette Machado** – No it's the timetable I am looking at. I know you specifically looking at the LLCs and other measures, but are you going to reflect from that time period over to current?

**Mr. Kondo** – I am not really understanding if you are asking are we starting now and we are looking from that period going forward, the answer is no.

**Chair Colette Machado** – Why can't you be clear when you are going, when does the audit period you are reviewing now, when does it start, what year, you should be able to tell us that.

**Mr. Kondo** – We can't because...

**Chair Colette Machado** – Why can't you tell us that?

**Mr. Kondo** – Because we are in our planning phase. So as we get the objectives to you, which is the end of the planning phase, when we actually decide specifically what we are going to audit, that information will be in those objectives. The period of time that we are examining. That is something that is being considered right now because we really don't know at this period in time as we sit here right now, what was happening like for instance in the LLCs last year, 2007, so we will fashion a period that gives us enough information for us to assess and look at. So that information will come to you as part of the objective letter.

**Chair Colette Machado** – My expression to you is in our deliberation with the Legislative intent, they were clear that it was not going to be a moving forward from your report 18-03, they were pretty definitive on what we were looking as far the periods that would be covered in your audit to meet the deadline by December. That is the question that I have, if you are going to cover multiple years, which you are not declaring what year you are going to start to end. Multiple years may take you beyond the targeted report date that you are anticipated it will be ready. I am trying to throw it out again to be fair to us and not wait for your draft report what period you may be considering to do the review. That is my whole point.

**Sylvia Hussey** – It might be helpful to outline what was initially requested in the document production to give some context of what you are using in your planning.

**Mr. Kondo** – We are getting general information from Administration about for instance the LLCs, which will help us define the objectives of the audit, which will also include the scope or the period of time that we are intended to audit. I don't read the Act 37 to tell us that we are only supposed to audit one year. So the period of time that we have to perform the audit, issue 20 days before session, we see that, we are aware of that. Like I mentioned earlier we are very conscience about the fact that OHA's general funds appropriate is tied to the issuance of the audit. We are very aware of that Chair. So if you are asking me what period and why can't I tell

you that now, it's because our process doesn't allow us to define that yet. We are still understanding, learning about what the LLCs and OHA's administration of those LLCs have been and we will define the period once we get to the objective. That will be provided to you, that will be transparent to you, administration and others if they are interested, what that period is.

**Trustee Carmen Hulu Lindsey** – Mr. Kondo, to have more clarity, in the last audit you did for us for four years, were you able to audit the LLCs?

**Mr. Kondo** – That was not, we might have been able to, but we didn't look to audit the LLCs. So if your question is did we have access, we didn't even try. Our audit objectives were about the discretionary spending by OHA. It was not about the LLCs, but because the LLCs were interesting as we did our planning work, we included that side bar that Ms. Meyers referenced in our old report about the LLCs.

**Trustee Carmen Hulu Lindsey** – So that tells me that you will have to go back 4-6 years in the LLCs to get the whole picture now that you are going to be focusing on the LLCs. That is my thoughts.

**Mr. Kondo** – I would agree, it's not going to be a one-year snapshot in time. Whether its four years, 6 years, I don't know. But it certainly will be a multiyear snapshot back in time. Probably not 6 years, we likely will try to understand the history of the LLCs, and provide some background so whether you folks know it or whether the beneficiaries know it, whether the world knows it, to provide some information as to how the LLCs evolved, I expect that we will probably provide that background information. My understanding is the first one was created in 2007, but that is not an audit, that is only providing background information as to the history of the LLCs. In terms of what we are really looking at, it's likely to be multiyear, it's very, very likely, it's not likely to be 6-year period. But at this point, I am not able to tell you what that period is.

**Chair Colette Machado** – Will you utilize all of the monies that we allocated of Trust funds to cover this audit, which is half a million dollars.

**Mr. Kondo** – Thank you for that question.

**Chair Colette Machado** – I think Trustee Leina'ala Ahu Isa's was hitting to that but we never got to the meat of it.

**Mr. Kondo** – I didn't understand that, I am sorry I didn't answer it. I think that's a really important question, I am sorry I didn't include it in my discussion. At this point, especially since we are not doing a financial audit, we don't expect to spend any of the money. However, and it's a big however, at this point we haven't identified our objectives, and we certainly don't know about our access to your information. So if we are now challenged in being able to access information or for whatever other reason that we need to complete this audit, it's possible that we may tap the money. But at this point in time, we have no intent of using a cent.

**Chair Colette Machado** – Are there other questions? Trustee Lee.

**Trustee Brendon Kalei'āina Lee** – You made that clear to us before coming here through other communications. I appreciate that.

**Mr. Kondo** – I think that is the same information that we provided to Administration multiple times. So OHA will have some assurance.

**Chair Colette Machado** – At the OHA level if it's going to expedite the completion in a timely manner so we can go year 2 of the funding from the Legislature, its ok for you to utilize those resources because want to be able to meet that timetable, 20 days before the legislature opens the report needs to be filed with them if we are going to be considered for the year 2 funding our general fund monies.

**Mr. Kondo** – I appreciate where you are coming from Chair. We are aware like I said about the deadlines. We feel like we have a job to do and we will do the job as best that we can, and if we need to tap the funds in our judgement we will tap the money. But right now, as I sit here, like I said, we don't have an intent to tap that money. We are very aware of the timeline in the bill, or in the Act.

**Chair Colette Machado** – You must appreciate our concern, because we are caught in this rigid timetable for our year 2 funding and its contingent on the report and what the findings you have. So you can anticipate that we are on the edge because if that doesn't occur favorably for us and we don't get the year 2 it's going to be another effect on our organization that we would have to engage in how we allocate the additional funds that we could not receive in the general fund area.

**Mr. Kondo** – I appreciate that, but that is why we are talking about some of this stuff on the table laid it out.

**Chair Colette Machado** – Yes, trying to be open with you too.

**Mr. Kondo** – Us too. I wanted to make sure that you understood that we had some concerns about our access to your information. I want to add to that.

**Chair Colette Machado** – You having trouble now? Or prior?

**Mr. Kondo** – Well this issue is going to be teed up in Executive Session I believe because I got a letter from Mr. Klein about another letter that we have received from a Trustee's Aide. About whether or not that letter was appropriate for us, it's a letter from one of your Attorneys. So that teed up that issue about, oh are we now going to get issues getting access to other confidential material, executive session minutes, for sure, we are going to come and ask for. I just don't want to have trouble getting access, so that is why Mr. Klein, was gracious enough to ensure that it was on the agenda so this issue could be resolved early on. And if the decision by the Board is, no access then we are going to, in my office; try to figure out what our next step is. So I am laying it on the table like I said earlier, not so much, just for your information so you know where we are coming from. I certainly understand your point there about trying to get this thing done timely.

**Trustee Carmen Hulu Lindsey** – You referred to the second year, we are going to get the first year aren't we?

**Chair Colette Machado**- Yes, we are.

**Trustee Carmen Hulu Lindsey** – So the second year only is contingent upon.

**Chair Colette Machado** – Yes.

**Trustee Carmen Hulu Lindsey** – I just wanted that clarity.

**Mr. Kondo** – In addition to access to records, I would want the Board to consider asking your Attorneys, directing your Attorneys to answer our questions. My issue here is that, some of you we have asked, we have interviewed and the staff as well the administration as well, they question has been what is the legal authority for OHA to create LLCs. People that we asked that question to, they don't know. I am not saying there is none, but when I asked your attorney, could you please direct us to that legal authority, his response back to me was he is going to talk to you folks about that in the Executive Session. He is going to tell you. I don't want to be playing phone tag, playing the telephone game where he needs to tell you and you need to tell me, I want for legal authority, I feel that is something that me and Mr. Klein or me and your attorneys we can have that discussion. I would suggest that is an issue you folks talk about and perhaps direct your attorney to have that discussion with us instead of having it with you and then you conveying this information.

**Robert G. Klein, Board Counsel** – Mr. Kondo.

**Mr. Kondo** – Yes.

**Robert G. Klein, Board Counsel** – I will advise my client in Executive Session.

**Chair Colette Machado** – Appropriately, yes.

**Robert G. Klein, Board Counsel** – When I get their input then I will contact you. Is that okay. You cannot expect the Trustees to make legal conclusions themselves and report them to you.

**Mr. Kondo** – That is why I asked you the question. Because they didn't have an answer.

**Robert G. Klein, Board Counsel** - I don't think you have the full understanding of the process.

**Mr. Kondo** – Maybe not. But I wanted the Trustees to at least be aware of the issue and perhaps instead of us playing that game, that perhaps they would be able...

**Robert G. Klein, Board Counsel** – There will be no games played, Mr. Kondo, at all.

**Mr. Kondo** – Sorry for that use of word. You telling them what the answer is when they didn't know and them coming back to tell us what that answer is that doesn't seem like it's the most efficient process.

**Robert G. Klein, Board Counsel** – That is why you should just deal with me.

**Mr. Kondo** – I did and that was the answer. That is what the issue is.

**Robert G. Klein, Board Counsel** – There is a process that you don't understand.

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

**Chair Colette Machado** – Ok Aloha everybody, Trustee Lee.

**Trustee Brendon Kalei'āina Lee** – Our legal counsel and our presenter should not be engaging in a debate.

**Chair Colette Machado** – I agree so I am going to cease this dialogue between the two of you. You have anything else to add, any other questions.

**Mr. Kondo** – I am happy to answer any other questions. I just wanted the board to understand why we are here, what our process is. I know that with any agency, we are here to kind of give you an independent, objective assessment of different parts of your program. Whether you think we are doing a good job or not that is our, frankly the commitment of my office is to provide that independent assessment on how you folks are performing.

**Chair Colette Machado** – I just want to make a point before we redirect to the next item on the agenda. We have been subjected to tremendous leak of information that has been identified as Attorney Client Privilege, not just by Trustees, but individual staff members that work for Trustees. That is a major concern, because if that is released without proper review and vetting, legally I feel that jeopardizing our position as an organization and it's a breach of fiduciary and duty of care. I understand the sensitivity of a staff member releasing confidential, whether it was mistakenly done or not, that is not the role of a Trustee staff to do that. I wanted to make that clear to you till you understand that. That it's not the duty of care, and the responsibility, that is not fiduciary, it's directed to the Trustees themselves and we have a Board Counsel that is where I am coming in as the Chair. You need to know how I feel about that. We have suffered so much from unnecessary leaks that goes out, it's unfair to the organization to defend itself when it's not done in a right manner.

**Mr. Kondo** – Like I mentioned before, and I appreciate your position, but like I mentioned before the last time we were auditing OHA, two years ago, that information flowed to us without any issue. So whether or not that was the reason why we got access to that letter, I don't know. But it didn't raise an issue when we got it because we expect it. But I understand your position and certainly that is your prerogative to discuss it here with your attorney and decide how you want to deal with that issue.

**Chair Colette Machado** – I just wanted to acknowledge, have we assumed that all the Trustees have already now made appointments with your team?

**Mr. Kondo** – No.

**Chair Colette Machado** – I know you asked Carol follow up. Who is missing?

**Mr. Kondo** – Our contact is through Carol, when we would like to talk to Trustees we will make arrangements through Carol.

**Chair Colette Machado** – So Carol we have made arrangements for all of the current serving Trustees, right?

**Carol Ho'omanawanui** – The Trustees that they have requested to meet with they have appointments with. They haven't met with everyone, but they have requested to meet with some.

**Mr. Kondo** – I want to tell you OHA has been, I guess it has been Carol as well as the Administration, extremely cooperative as we start this audit. I don't want you or anyone else that maybe listening to think that we are having issues getting access, this letter issue and access to confidential information, its important but we have been getting access to Trustees and Administration and getting records timely so thank you very much.

**Trustee Brendon Kalei'āina Lee** – I wasn't going to say anything Mr. Kondo but because you just made that statement, your statements earlier about access to our Executive Session and that you must get it. You mentioned before that it was never an issue. The way that it was brought to this table, it infers that you are expecting an issue. You may not have meant it that way, but that is the way that it came off. But because you said what you just said now, I felt that it was important to say that. I understand that is not your intent, but the public is watching this as well and it give the impression that you're expecting OHA to not give you the same access that you got before.

**Mr. Kondo** – I don't know. But we had an issue about a letter, so before it got up to something that was bigger than just the letter, I thought it was very important to be aware of our concern.

**Chair Colette Machado** – Does that resolve your question? Is there any other questions for Mr. Kondo? I did have a really pleasant interview with your team that visited with me earlier this week. There was some information that we were able to exchange that was public information from the RM Committee on some of the CLA responses when we did the extended contract. I made it very clear that we want to cooperate with you, I feel that once we can get this behind us, as you talked about a snapshot, there will be much more belief in us as an organization at the legislature. So it's a two-way approach if we are successful in providing and getting a clean bill of health, it's good for the organization, even if it's contingent on the year two funding. It's a little bit more than that; I am looking at as the Chair, for us at OHA. I made that closing comments when your team met with me. I really feel deeply inside that this is an opportunity for us at OHA.

**Mr. Kondo** – We are here to be helpful, we are here to be part of, maybe not within OHA, but we are here to be part of the team, the bigger team, meaning the State of Hawaii team. We are here to provide this independent assessment. We are not here to give you a clean bill of health, we are here to give you an honest assessment as to what we see. That is our role. So whether or not it's clean or not, however you describe what clean is, that is what we are going to do. We are going to do our best to give you an honest assessment of what we see with respect to those objectives that we define.

**Chair Colette Machado-** Before we close out entrance conference I wanted to acknowledge, the additional item, under item VII. if you would like to remain and observe we will be reviewing the Trustee Protocol Allowance that we worked on with the audit review that you gave us. We seriously took into consideration the findings; we are going to have a discussion on what the content is on the Trustee Protocol Allowance and the internal guidelines and procedures. Just to give you an idea if you want to stick around we will have that discussion. To look at considerations that we took to heart and tried to implement that with the use of our Trustee funds.

**Mr. Kondo-** Thank you for the comment and the invite. I hope that our audit, last time, whether you believe it's positive, not you personally, whether people believe it's positive or not I believe, or I hope it made a difference, and I hope it was a meaningful difference for the organization. For your information, and I think we explained this last time. It's something I should tell the Board. Two years after we issue that report, so at the beginning of 2020 we will come back to OHA to assess OHA's implementation of those recommendations. So at that point in time is probably more appropriate for us to understand and see the changes to the Trustee Allowance Protocol of procedures, rather than us sitting now and being part of that discussion. But thank you very much for that information and the invitation. But I think in two years we will be back.

**Chair Colette Machado** – Thank you. That is fine. Any other questions for Mr. Kondo or his staff. Mahalo nui for the entrance conference today, thank you for your time.

## VI. COMMUNITY CONCERNS

**Chair Colette Machado** – We have two individuals that have actually signed up for Community Concerns. I would seek the Board's understanding, that we move now to VI. to engage in Community Concerns, followed by our executive session, go into executive session and reconvene again for the community if they need to go elsewhere they will go. If that is ok with you I will proceed with VI. which is Community Concerns. Our first speaker is Germaine followed by Joseph Mahoe.

**Germaine Meyers** – Aloha Trustees, Aloha Chair. For the record my name is Germaine Meyers, I am an OHA beneficiary for beneficiary advocacy and empowerment and I am also a Nānākuli Hawaiian Homestead Lessee. Earlier I shared with you these four handouts and in it, I said that I wanted to speak more about it. But of course certain aspects of what I wanted to share with you or discuss with you had to come under community concerns because not on the agenda.

One of them is that in the audit report it talked about opportunities or potentially missed opportunities and what I want the Trustees to know is that in the OHA Ka Wai Ola, never once did I ever see every year, maybe once a year, maybe once every quarter, once every six months, including under the Trustees columns, there's all the Trustees columns, under none of this, never in the Ka Wai Ola have we been told as beneficiaries that the beneficiaries, that the OHA Trustees have discretionary allowance. Only in this audit report 18-03 did we find out that, oh, someone went to Las Vegas based upon three Trustees giving monies from an allowance. I am glad there is going to be discuss today's agenda about this allowance. But I was really happy to see that Trustee Keli'i Akina had a check and he was giving it back to OHA. Because unless the beneficiaries know, unless the beneficiaries know that it is an opportunity, equal to all beneficiaries, no matter of their interest, current, past or future, that it should not be discretionary to individual Trustees without going through a proper vetting, monitoring and reporting. So that is my concern. Is that opportunities were missed by us, by discretionary allowance. In addition, the LLCs, I find out that one of the LLCs gave monies pass through a language school to a OHA aide, that is a missed opportunity for me as well, or my 'ohana or other beneficiaries.

So I am hoping that the OHA Trustees will address these missed opportunities and ask the question to the Board, to each other to legal counsel, why wasn't the beneficiaries notified of these discretionary funds. If I knew that, my 'ohana who was struggling to have clothes for a funeral, if I knew I could to Oahu Trustee and ask for these discretionary funds I would have right. If I am behind in rent, but I didn't know. It wasn't an opportunity for me because none of you say in your column, oh by the way this is how much money more I have in my discretionary

allowance that I am going to give to somebody, or I can give to somebody. Of this is what monies I have given to others. Those are my concerns.

The only other concern that I have at this time is that in the newspaper we are seeing that Trustee Akina is concerned about his right to address the beneficiaries that before the board there is a breach or a violation of loyalty to the board. That there is a policy. My concern is that OHA is already been told by the ethics commission, even you Chair, you provided information to us and said, Oh, all of us have been audited by ethics and because we've been audited by ethics, ethics said we've given monies back to OHA because we failed to follow the policy. So it's telling me that there is policies that are vague and it's not being enforced by administration. So my concern is that if the policies are vague and administration is not following them then the policy of loyalty to board is questionable. If it is violating a Trustee's right, constitutional right of freedom of speech it is bad policy. I've already shown you in previous testimonies that OHA has bad policies. That OHA's Trustees or Administration or employees have not followed policies including ethics code policies. So I just wanted to bring that to the Board. E hana kakou.

*11:03 am Trustee Carmen Hulu Lindsey leaves the meeting.*

**Chair Colette Machado** – Thank you Germaine, our next speaker is Joseph Mahoe.

**Joseph Mahoe** – Good morning Chair and Board. This is not my thing and I am very nervous. However, I felt I had to, I guess people would say, vent. Because I have been totally stressed out about what happened on the Mauna yesterday. Talking about the rounding up of kupuna and taking them off the mountain. One kupuna, her name is Maxine Kahaulilio and what she said when the reporter went up to her. She got in the van and the reporter went up to her and what she said is, I am very disheartened that I am being removed from what is my land, this, this road that I am on is DHHL property. She said, I am very saddened that I am being removed from my land. That is what she said. I was horrified, I could not believe that. So that's all I wanted to say. I also have to thank all of the people on the mauna, still and especially Trustee Carmen Hulu Lindsey and Trustee Dan Ahuna for being up there and part of that whole thing. The second thing is that I am just wondering, because the kupuna will have to go to court is OHA considering, I don't know, hiring counsel to represent them and covering what they call court fees. That's all, that's all I wanted to say. Thank you very much.

**Chair Colette Machado** – Thank you we will take that under advisement.

## **V. EXECUTIVE SESSION**

**Chair Colette Machado** - With that said members I'd like to go into executive session. I would like to entertain a motion to go into executive session.

**Trustee Brendon Kalei'aina Lee moves to recuse into Executive Session pursuant to §92-5 (a)(2),(4).**

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

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

<b>Trustee Brendon Kalei'aina Lee moves to recuse into Executive Session pursuant to §92-5 (a)(2),(4). Trustee John Waihe'e IV seconds the motion.</b>						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA						Excused
TRUSTEE BRENDON KALEI'AINA LEE	x		X			
TRUSTEE CARMEN HULU LINDSEY						Not present at time of vote
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E		x	X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			6			3
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passes with six (6) yes votes and three (3) excused.						

**Chair Colette Machado** – We are now in Executive Session.

**The Board resolved into Executive Session at 11:12 am.**

- A. Consultation with OHA attorneys William Yuen, Esq. and Judy Tanaka, Esq. and Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities under the Findings of Fact and Conclusions of Law issued by Circuit Judge Jeffrey Crabtree in Andrew Walden v. Hi'ilei Aloha LLC, Ho'okele Pono LLC, and Hi'ipaka LLC (S.P. 18-1-0301), Pursuant to HRS §92-5(a)(4).
- B. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities relating to the State Auditor's request for confidential and Attorney-Client privileged materials and information, Pursuant to HRS §92-5(a)(4).

**The Board reconvenes in open session at 12:29 pm.**

*12:29 pm Chair Colette Machado calls a recess.*

*12:45 pm Chair Colette Machado reconvenes the meeting.*

## **VII. BOT WORKSHOP**

### **A. Training in the Guidelines and Procedures for Trustee Protocol Allowance**

**Chair Colette Machado** - We are on VII. which is identified as BOT Workshop, training in the Guideline and procedures for Trustee Protocol Allowance. I'd like to call on Sylvia who can direct Everett to go through the material that have been provided for our use.

**Sylvia Hussey** – Trustees everyone should have the guidelines and then Everett will walk us through and they have provided samples.

**Chair Colette Machado** – We also have Gloria present and if Trustees have questions related to the reimbursement procedures. The purpose of convening this workshop on the Trustee protocol allowance, because July 1<sup>st</sup> is the start of these resources to be available to Trustees for their use. We wanted to make sure that we had engaged with that understanding on how this all works, what is allowed and what is not and examples of what can be utilized.

**Everett Ohta** – Thank you Chair. Good afternoon Trustees. The Trustee Protocol Allowance operational guidelines and internal procedures that you have in front of you are really just a follow up from what was previously adopted by this board through a two reading action that changed our executive policy manual related to the Trustee Protocol Allowance. The document that was distributed today is really just operations piece of it. Really for the most part containing that same language that has previously reviewed and passed by this Board but just providing a little more detail regarding operations. I just walk you quickly through the document then have time for questions should there be any.

*12:47 pm Trustee John Waihe'e IV leaves the meeting.*

The document Trustee Protocol Allowance Internal Guidelines and Procedures just has a short purpose and background section. It's just reviewing that was done to get the Board policy changes amended and reviewed in the first place. Then it just recites the same allowed expenditures and disallowed expenditures that were previously adopted by this Board. Those again are found now our Executive Policy Manual. It just reflected here again for consistency. The fifth section provides for the request for reimbursement. This is really more of the details that are provided in these operational guidelines. Specifically, it's a revised form that can be found in appendix A of the policy. You have an appendix A which is the Trustee Protocol Disbursement Form. Then following that appendix B is the sample completed disbursement form along with some sample supporting documentation for that disbursement request. Again just a sample. So within section five you find a little bit more information about what is some of that requested documentation, a little bit of the detail and the description that's to be provided in a disbursement request. Through the form, where to drop off that form within the financial services section of the office.

Also further down you have some of the information relating to reporting, just that per the Board's policy changes there is going to be a public reporting that occurs of Trustees' disbursement quarterly and that is going to be posted on a public website for OHA. Other than that, the majority of this follows from things that have been previously reviewed either the Executive Policy manual changes or the operations manual changes that were looked at back in April and May. If there are any questions, I'd be happy to answer them now. Otherwise, this will be referred to going forward. The financial services team has also created a fillable pdf form that is going to be posted later on KII that is going to be available similar to a check request form, so you can fill it out online, print it and then sign off, provide your supporting documentation. You probably want to keep a copy for your records just as a standard accounting thing.

**Trustee Carmen Hulu Lindsey** – Attach the receipt.

**Everett Ohta** – Attach the receipts, make a copy of the full document and then turn it in as a hard copy to the financial services section in a specific tray noted in 5A.

**Trustee Brendon Kalei'aina Lee** – Everett I just want to make it clear. 3D on page 2 of 6. If I use my Trustee Allowance to purchase books or reference materials, when I leave OHA that remains with OHA.

**Everett Ohta** – That is correct. I think that is found later on the ownership under 5C items purchased with TPA funds, nonperishable items aside from gifts remain the property of OHA.

**Chair Colette Machado** – Do we have to inventory that with the in house; you know you folks come with the numbers.

**Everett Ohta** – I don't think we inventory every book, things that are published, I mean things that are kept right?

**Trustee Brendon Kalei'āina Lee** – For instance, I mean we didn't use our protocol, but we were all issued the latest version of Robert's Rules of Order. Should I leave office that would remain in my office, I am not going to take it with me.

**Everett Ohta** – Yes, but I don't think it had a bar code or specific inventory number.

**Chair Colette Machado** – I want to purchase ōlelo no'eau, its \$49.99 at the Bishop Museum and get a 10% because I have membership, so that is kind of an expensive resource I feel.

**Everett Ohta** – Use it a part of your Trustee duties, maybe referencing it, writing correspondence.

**Chair Colette Machado** – It's a hard cover, so when I leave I have to leave it in my office for the next, or turn it over to the library of OHA.

**Gloria Li** – Actually for reference material that we purchase, we do tag those reference materials.

**Trustee Brendon Kalei'āina Lee** – So our Robert's Rules are tagged.

**Gloria Li** – Bring it to our attention and then we tag it. That's all OHA's reference material.

**Chair Colette Machado** – Thanks Gloria that is good to know.

**Everett Ohta** – Anything further I can answer for the Trustees as we are looking to implement these new procedures effective immediately.

**Trustee Carmen Hulu Lindsey** – It's self-explanatory.

**Everett Ohta** – I am glad to hear that.

**Chair Colette Machado** – Thank you Gloria, Everett and Sylvia. If there is not further discussion, this was just information there is no decision we are making on this matter. With that said, we are moving down to announcements.

**Trustee Brendon Kalei'āina Lee** – I have a question. Sylvia, under number 8 page 5 of 6, unspent amounts in the TPA fund will lapse after the fiscal year and will not carry over.

**Sylvia Hussey** – Right.

**Trustee Brendon Kalei'āina Lee** – So will that money go into fiscal reserve?

**Sylvia Hussey** – Yes.

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

## **VIII. ANNOUNCEMENTS**

**None**

**IX. ADJOURNMENT**

**Trustee Carmen Hulu Lindsey moves to adjourn.**

**Trustee Robert Lindsey seconds the motion.**

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

Trustee Carmen Hulu Lindsey moves to adjourn. Trustee Brendon Kalei'āina Lee seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA						Excused
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA						Excused
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY	x		X			
TRUSTEE ROBERT LINDSEY		x	X			
TRUSTEE JOHN WAIHE'E						Excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			5			4
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED Motion passes with five (5) yes votes and four (4) excused.						

The meeting was adjourned at 12:54 pm.

Respectfully submitted,

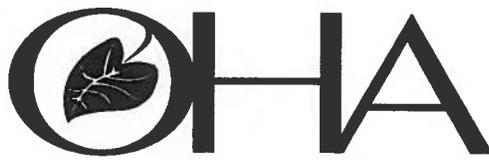
  
\_\_\_\_\_  
Dayna Pa., Board Secretary

As approved by the Board of Trustees on September 5, 2019.

  
\_\_\_\_\_  
Colette Y. Machado, Chairperson  
Board of Trustees

Attachment:

1. Excused Absence Memo – Trustee Dan Ahuna
2. Excused Absence Memo – Trustee Keli'i Akina
3. LOYALTY TO BOARD BENEFICIARY- handout from Germaine Meyers



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**OFFICE OF HAWAIIAN AFFAIRS**  
Interoffice Memorandum

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**DATE:** July 18, 2019  
**TO:** Chair Colette Machado  
**FROM:** Trustee Dan Ahuna  
**RE:** Excused Absence for BOT meeting on July 18, 2019

Aloha,

Please excuse my absence for the upcoming Board of Trustees meeting that is scheduled for Thursday, July 18, 2019. Should you have any questions or concerns, please feel free to contact my office staff.

Mahalo nui,

Trustee Dan Ahuna



2019 JUN 31 A 9:42

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OFFICE OF HAWAIIAN AFFAIRS  
Interoffice Memorandum

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Date: July 1, 2019  
To: Trustee Colette Machado, Chairperson  
Cc: Trustee Brendon Kalei'aina Lee, Vice Chairperson  
From: Trustee Keli'i Akina  
Subject: Request for Excused Absence

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Aloha e Chair Machado and Vice Chair Lee,

Regretfully, I am unable to attend the Board of Trustees meeting scheduled for Thursday, July 18, 2019. Please excuse my absence and share my apology with the Trustees.

Mahalo for your consideration.

Sincerely,

Trustee Akina

**LOYALTY**

**TO**

~~**BOARD**~~

**BENEFICIARY**

OHA Trustees have fiduciary responsibilities, including

**A Duty of Prudence**

(to exercise reasonable care, skill, and caution);

**Duty of Loyalty**

(to act solely in the best interests of beneficiaries)

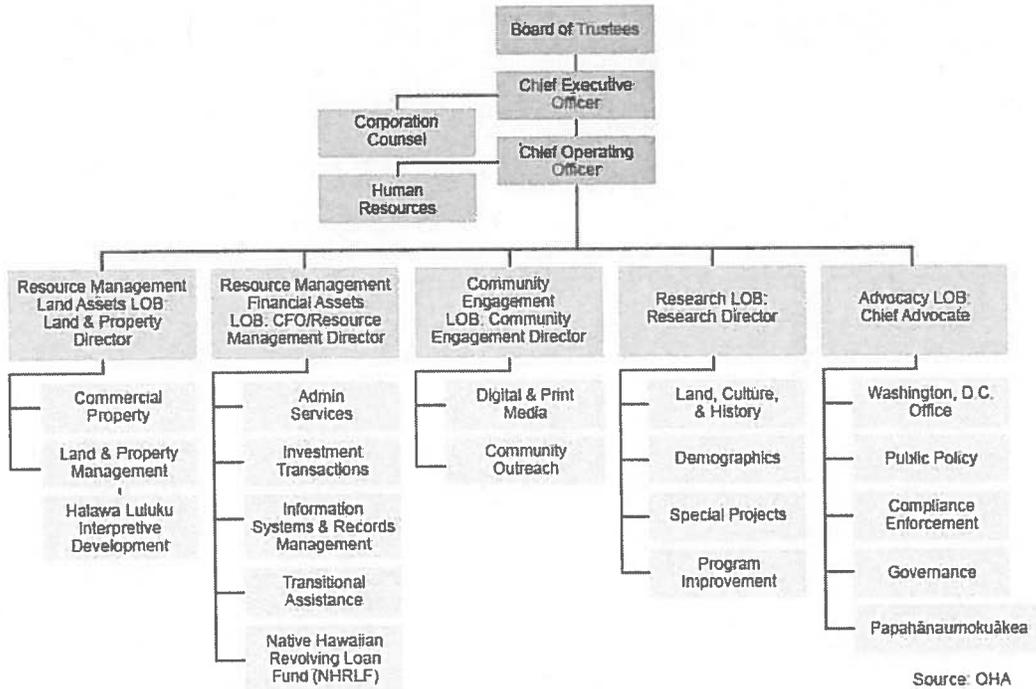
**Duty of Impartiality**

(to be impartial with respect to the various beneficiaries, in consideration of the diverse interests of present and future beneficiaries);

**And Duty with Respect to Co-Trustees**

(using reasonable care to prevent co-trustees from committing a breach of trust and to obtain redress if a breach occurs).

**Exhibit 1.1  
OHA Organization Chart**



## INCOMPLETE - Missing OHA LLCs

### OHA's Limited Liability Companies

OHA HAS A NUMBER of Limited Liability Companies (LLCs). An LLC is a separate and distinct entity that can open a bank account, do business, and get a tax ID number under its own name. One of the primary advantages of an LLC is that its owners (called members), under most circumstances, are not personally liable for the debts and liabilities of the LLC. As LLCs are a relatively new legal construct, it's unsettled whether OHA's LLCs are State organizations subject to laws applicable to State agencies, like the State Procurement Code, the State Ethics Code, the Sunshine Law, and the Uniform Information Practices Act.

OHA is the sole member of both Ho'okele Pono LLC and Hi'ilei Aloha LLC and its subsidiaries. Hi'ilei Aloha LLC focuses on promoting, developing, and supporting culturally-appropriate opportunities that benefit Native Hawaiians. It supports three sub-entity LLCs: Hi'ipaka LLC was created by Hi'ilei Aloha LLC in 2007 to manage Waimea Valley;

Hi'ipaka LLC holds title to Waimea Valley and manages its daily activities; and Hi'ipoi LLC was created by Hi'ilei Aloha LLC in 2008 to manage Makaweli Poi Mill on Kaua'i. After several years of struggle, it was decided in 2012 to turn over the poi mill to a Native Hawaiian group based on Kaua'i. Hi'ipoi LLC has been inactive since then. Hi'ikualono LLC was created in 2010 and has been inactive since formation.

Ho'okele Pono LLC was created in 2011, along with its sub-entity called Ho'okipaipai LLC. Both LLCs are economic development non-profit organizations. Currently, Ho'okipaipai LLC houses a federal economic development program called the Hawai'i Procurement Technical Assistance Center, which is designed to help local businesses obtain government contracts and is sponsored by the U.S. Department of Defense's Defense Logistics Agency.

**STATE AUDIT REPORT #18-03 / FEBRUARY 2018 / PAGE 1, PARAGRAPH 1**

**IN REPORT NO. 18-03, *Audit of the Office of Hawaiian Affairs*, we found that the Office of Hawaiian Affairs (OHA) has created alternate funding processes that allow the agency to regularly direct money towards a multitude of programs, projects, and individuals. At first glance, these funding opportunities appear to be guided by policies, procedures, and guidelines designed to ensure that funds are distributed fairly and equitably. In reality, however, these expenditures and other forms of discretionary spending do not undergo the rigorous vetting, monitoring, and reporting requirements of OHA's formal grant process. Some are approved by the OHA Administration without Board of Trustee vote or even knowledge.**

However, not only do OHA's spending irregularities pose risks — both great and small — to the Native Hawaiian Trust Fund, they appear to violate the OHA trustees' solemn fiduciary obligation to their beneficiaries that they will administer the trust fairly, equitably, and without self-interest. In other words, this form of behind-the-scenes giving is inherently inequitable to OHA's many other beneficiaries who may be in need of financial assistance but are unaware of who and how to ask for help.

We acknowledge that trustees have broad discretion in determining whether a particular expenditure betters the conditions of Native Hawaiians and Hawaiians, but their desire to provide assistance to a few should be tempered by their fiduciary duties to all of the beneficiaries, both present and future. Doing so would not only benefit Native Hawaiians and Hawaiians in the long term, it would help ensure that they are treated more equitably in the short term.