

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HIGHWAY, SUITE 200
(VIRTUAL MEETING - VIA ZOOM WEBINAR)

Due to COVID-19, the OHA Board of Trustees and its standing committees will hold virtual meetings until further notice. Pursuant to Governor Ige's December 29, 2021 Emergency Proclamation related to Sunshine Law In-Person Meetings, there will be no in-person location for this meeting that is open to the general public. The virtual meeting can be viewed and observed via livestream on OHA's website at www.oha.org/livestream or can be listened to by phone via the phone number and Webinar ID listed at the beginning of this agenda.

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**Minutes of the Office of Hawaiian Affairs
Board of Trustees
MINUTES
January 13, 2022**

ATTENDANCE:

Chairperson Carmen Hulu Lindsey
Trustee Leina'ala Ahu Isa
Trustee Dan Ahuna
Trustee Kaleihikina Akaka
Trustee Keli'i Akina
Trustee Luana Alapa
Trustee Brendon Kalei'āina Lee
Trustee John Waihe'e, IV

ADMINISTRATION:

Sylvia Hussey, CEO
Casey Brown, COO
Ramona Hinck, CFO
Everett Ohta, Interim General Counsel
Nietzsche Ozawa, Interim Sr. Legal Counsel
Kalani Fronda, Land Director
Na'u Kamali'i, Chief Advocate
Robert Klein, Board Counsel
Erin Nakamura, IT Support
Arlene Aginaldo, IT Support

BOT STAFF:

Colin Kippen, COS
Amber Kalua, Trustee Aide
Kanani Iaea, Trustee Aide
Lehua Itokazu, Board Secretary

GUEST:

Kawika Patterson, President NHLC BOD
Makalika Naholowa'a, Executive Director
D. Kauila Kopper, Litigation Director
Ashley Obrey, Esq. & Legal Admin. Director
Sheldon Abril, Operations Director
Kirsha Durante, NHLC
Li'ula Kotaki, NHLC
Henderson Huihui, NHLC
Daylin Rose Heather, NHLC
Keali'i Reichel, NHLC BOD

Call to Order

Chair Hulu Lindsey Calls the Board of Trustees Meeting to order for Thursday, January 13, 2022, at 10:00 a.m. Board Secretary, please do a roll call.

MEMBERS			Present	TIME ARRIVED
TRUSTEE	LEINA'ALA	AHU ISA	X	
TRUSTEE	DAN	AHUNA	X	
TRUSTEE	KALEI	AKAKA	X	
TRUSTEE	KELI'I	AKINA		Joins mtg at 10:10 am
TRUSTEE	LUANA	ALAPA	X	
TRUSTEE	BRENDON KALEI'ĀINA	LEE	X	
TRUSTEE	KEOLA	LINDSEY		Excused
TRUSTEE	JOHN	WAIHE'E		Joins mtg at 10: 04 am
CHAIRPERSON	CARMEN HULU	LINDSEY	X	
			6	

At the Call to Order, **six (6)** Trustees are PRESENT, thereby constituting a quorum.

Chair Hulu Lindsey Thank you. Kala mai for not opening our meeting with a pule. I will call on Trustee Akaka, please pule for us.

Trustee Akaka Offers pule.

Chair Hulu Lindsey Due to the threat of COVID-19, the Board of trustees and standing committees will hold virtual meetings until further notice pursuant to Governor Ige's December 29, 2021 Emergency Proclamation related to Sunshine Law In-Person Meetings, there will be no in-person location for this meeting that is open to the general public. The virtual meeting can be viewed and observed via livestream on OHA's website at www.oha.org/livestream

I will go over some quick announcements. Please mute your mics when you are not speaking. We are recording today's meeting for the sole purpose of producing written minutes, which will become the official record of this meeting.

Joining the Trustees today is my staff Colin Kippen-COS, my Aides-Kanani Iaea and Amber Kalua, and our Board Secretary-Lehua Itokazu. With us today is Robert Klein, our Board Counsel, and Sylvia Hussey, our CEO. I will now call on Sylvia, our Pouhana, to announce our administration who is joining us today.

Sylvia Hussey, CEO Thank you Chair and good morning, Trustees, Chair, happy new year to our first Board meeting. We have from administration our COO-Casey Brown, CFO-Ramona Hinck, Interim General Counsel-Everett Ohta, Land Irector-Kalani Fronda, joining us shortly will be Na'unanikinau Kamali'i-Chief Advocate as well our IT staff-Dan and Arlene who are supporting us this morning. Thank you.

Approval of Minutes

- A. November 4, 2021**
- B. November 18, 2021**
- C. December 9, 2021**

Chair Hulu Lindsey Moving on to item II approval of minutes. The minutes to be approved are November 4th, the 18th, and December 9th. Do I have a motion?

Trustee Ahu Isa Moves to approve all four minutes.

Trustee Akaka Seconds the motion.

MINUTES: A. November 4, 2021 B. November 18, 2021 C. December 9, 2021						
	1	2	'AE (YES)	'A'OL E (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA	X		X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA		X	X			
TRUSTEE KELI'I AKINA						
TRUSTEE LUANA ALAPA					X	
TRUSTEE BRENDON LEE			X			
TRUSTEE KEOLA LINDSEY						X
TRUSTEE JOHN WAIHE'E			X			
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			6		1	1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED Motion passes with six (6) YES votes, one (1) ABSTENSION and one (1) EXCUSED vote.						

Public Testimony

Chair Hulu Lindsey Thank you. Moving on to item III. Public Testimony, I believe we have some people that are signed up. As a reminder, you will be given five minutes to share your mana'o. Your name will be called and your microphone will be unmuted when it is your turn to testify. If you are not audible, you will be muted and the next testifier will be called. Your name will called again before the conclusion of the public testimony and the community concern section.

Wilmont Kahaiali'i Aloha Kakahiaka. 'O wau 'o Kamaunu Kahaiali'i. I appreciate this privilege to share this mana'o with you. Lately, we've been engaging in the community in terms of assessing where we are as a people and it's really interesting that the data doesn't lie. We've been looking at some numbers and we find

it interesting that we have 1.4 million people, residents that call Hawai‘i home and of that \$1.4 million, the data seems to imply, suggests that only 2% or less than 2% can hiki heluhelu, kākau ‘ōlelo Hawai‘i. That’s a concern. If the 98% think we can preserve the culture and put it on the shoulders of the 2% who can speak, then we are terribly mistaken in that assumption. When compared to the rest of the population of Hawai‘i, we only have a handful of us that are trying to do something about preventing a cultural extinction event. We all share that kuleana especially all of you that sit on this board. I can tell you that I’ve learned by experience when it come to asking for help of various organizations out there in the community, kākou has been hard. The ones that have been willing to help me are not kānaka. They’ve never placed any conditions on me and they have put their money where their mouths is and it has enabled me to press forward with my program. A good example is we just published our first children’s book. We got 500 copies out to different schools and it’s based on a simple mele ‘Ōpae Ē. We didn’t do it so we could publish a book, we did it because we needed to preserve ‘ōlelo Hawai‘i. We needed to make sure that the language got out to the people, not just kānaka maoli but everybody. I think we find ourselves sometimes in this community here in Hawai‘i where the 98% are more interested in capitalizing on ‘ōlelo, capitalizing on the commercial interest, and on everything else but ‘ike Hawai‘i. I’ve experienced this even in the court rooms. The judges have had difficulties trying to assess or judicially serve the needs of the kānaka maoli community. It’s hard for them to adjudicate the ‘ike pono of the kānaka maoli. So, the language is very important to us and we need your kāko‘o. We need your support. You can help us and help the population by making sure that you go beyond just aloha, mahalo, and ‘ohana; that you started to eat he Hawai‘i, heluhelu Hawai‘i, ‘ōlelo Hawai‘i, kākau Hawai‘i. Help us get the ‘ōlelo out there because it is our cornerstone. It is our foundation and I think we all share that kuleana. Shame on us for thinking that the State would help us with it or the Hawai‘i Tourism Authority but obviously not, it’s the people. It’s our kuleana. We need to speak it, we need to share it. I saw earlier Kumu Keali‘i, I love Keali‘i. I really aloha him because he is out there in his mele, his hula, his shows. We all should be doing that. I’m not saying that we should all pick up a guitar and start ho‘okani but what I am saying, the kuleana is ours. The ‘ike is in our DNA and we really should be the ambassadors for our kūpuna, i ka wā ma mua and the ‘ōiwi, i ka wā ma hope. Last thing, I really would appreciate it if someone could get a hold of me to kūkākūkū, to go over some of the plans we have to avoid this cultural extinction and help avoid this cultural extinction event is very real on the horizon. Mahalo.

Trustee Akina Chair Hulu, I would like to apologize for being tardy. I had internet connection problems. I am here.

Chair Hulu Lindsey Okay, welcome.

Trustee Ahu Isa I want to mahalo you Kamaunu. I got your book, the Honu’s, I sent it to my mo‘opuna. I wanted to explain to you that when I grew up my grandparents forbid me from speaking Hawaiian. They both spoke fluently but they forbid me. I also wanted you to know there was a movie done all in Hawaiian, I think it went to the Sundance Festival. I’ll let Trustee Alapa speak more to that. Mahalo.

Wilmont Kahaiali‘i We need to do more than a simple movie or a simple book. We all need to be anxiously engaged in ho‘omaopopo i ka ‘ōlelo Hawai‘i. This is this the ‘ōlelo of our kūpuna, ka wā ma mua. This is over 2, 000 years old. The reality is that we are here, we are witnessing by numbers that are revealing themselves that we are in trouble. In the next 20-30 years, there won’t be a single Hawaiian who can really ha‘i their mo‘okūauhau way back. There won’t be a single Hawaiian who can ha‘i the kumulipo in its purity. Frankly, theres a lot of non-Hawaiians who really don’t care, it is not their kuleana. I am working on a series of books and a series of mo‘olelo to kāko‘o all of us as a collective consciousness of our kūpuna.

One more quick thing on the issue of iwi kupuna, I think it is really important and OHA can support us on. We do have several projects going on, on the island of Maui where we are still hitting roadblocks. We would like to move forward including with the iwi in Wai‘ale and Mākena, OHA could definitely help us in that area. We also have several kānaka that are trying to defend their kuleana lands and claims. At one time I presented this 10-15 years ago to OHA, I was referred to NHLC. It was a one acre parcel and we were going up against Pioneer Mill. It was poor thing. The person I got may have been brand new but the counsel they gave me was don't try it. In other words, it wasn't worth the energy to pursue this case. On our own dime, we went ahead and pursued it and then OHA did come and help us by covering the cost of an attorney that was willing to pick up the case. I think there will be more cases like that as more kānaka come forward. The thing is we do not have the finances or resources to articulate our leo of our kūpuna in the courts, even the judges have a hard time with ‘ōlelo Hawai‘i to fully appreciate and understand the hohonu issues. We really need somebody. I am sure in the NHLC today there is a broader group of young counselors and attorneys that are very much ho‘omaopopo and would be willing to sit down to kūkākūkā with us so that we can tell them what are some of the challenges. Water rights is a big one. We have corporations building water companies right on the water so that they can claim the water and start charging the people. We have kānaka that live on their families kuleana land for over one hundred years and they have to pay for water for the first time.

Chair Hulu Lindsey Thank you Kamaunu. We are very familiar with all the issues that you brought up because we do have our staff working with the people in the community trying to find commonality with SHPD, our people and solve some of these problems. Thank you for taking your time this morning. We will move on to New Business. We have a presentation by the Native Hawaiian Legal Corp. (NHLC). I will call on Sylvia now.

Sylvia Hussey, CEO Thank you Chair, we are pleased to be able to have the NHLC present today. We are especially please to welcome their new Executive Director. I will turn it over to Makalika, they have their team and staff here today so that we can put a face and voice to the really important, important work that NHLC has been doing for our people.

Makalika Naholowa‘a, NHLC-Executive Dir. Mahalo Sylvia and aloha Board, thank you so much for giving us this time. We actually thought we would start with our board member Keali‘i Reichel, he's prepared a pule specifically for this part of the program.

Keali‘i Reichel, NHLC Board Member Offers pule before NHLC's presentation. Aloha nui kākou, good morning everybody, aloha kakahiaka. Mahalo for all of your time and all of this space here today virtually to be able to wala‘au about NHLC and the important work they do. Mahalo to our Trustees and their staff who support them and have the ability to make sure all is running well. That particular chant was first uttered by Hi‘iaka. Often times we like to open things like this with chant to set the tone, to impart good energy that utilizes ancient harmonics of our voice and intention and to call upon the elementals around us to effect change and positive outcomes. This is a healing chant from Hi‘iaka and I couldn't think of no other chant better for right now in this moment in time because as recipients of that chant through your pepeiao, the words of Hi‘iaka will impart good juju, health, and wellbeing to each and everyone of us and then collectively into our community. Hi‘iaka calls upon four major elementals in this particular pule. Two of Lono's water forms as well as Kāne and Kanaloa and their water energies. Again, to affect positive outcomes for all of us. For many of us that know ancient pule, many chants call upon different elementals and their energy to the task at hand. Hi‘iaka in this case becomes the conduit of Kāne, Lono, and Kanaloa, their energy and power to affect outcome. As powerful as Hi‘iaka is, she cannot go the path alone, she is that conduit to affect the universe around us. So, this might be a little bit of a stretch but for me, NHLC is like a conduit. NHLC has been instrumental over the decades ensuring the health of our lāhui and our environment. We

know we as k  naka, we are intrinsically linked to every aspect of our environment whether it be wai, whether it be kai, whether it be access into our forests, whether it is access up to the mauna and even beyond the shores of our pae      . NHLC has been quite instrumental in navigating those particular waters that me, as a regular kanaka, get hard time navigate through these difficult times that we've had in the last few years. We know that we cannot go the path alone just like Hi      . We need to call upon those entities to move us forward through uncharted waters sometimes. As a kanaka and practitioner of hula and chant, as a weaver, a forest restorationer, I appreciate all that NHLC has done over the decades; they continue to do on my behalf, your behalf, on our collective community  s behalf. That is why I am here today and why I serve on this board. I want to give back in whatever way I can. Yes, sometimes there are win wins and sometimes there are no wins but I can tell you that NHLC  s wins are all of our collective wins. I can think of no other legal organization that do what they can do for me, for you, for our   ohana, and for our collective communities. It is my hope, esteem members of this Board, that you continue to support NHLC in the coming year and the years to come. They  ve stayed the course and I hope we get to clear the path for them and we, as a collective l  hui, thrive because of their work. So as Hi       says at the end of her chant, e holo   . Lets move this forward collectively as a l  hui. I would like to turn it over to NHLC, Makalika.

Makalika Naholowa  a, NHLC-Executive Dir. Thank you Keali  i. Thank you so much for that beautiful pule and opening remarks on behalf of the whole board. I know Kawika regrets not being able to get through. He's been trying to work out, you know this conflict with the earlier meeting, but I think with that I will try to share my screen and get to our substantive presentation in these slides. We provided to the board in advance so I don't plan to read every word to you, but I am really proud of the new ED of NHLC to come to the only public interest law firm in the world that's dedicated exclusively to Native Hawaiian rights. An organization that has been almost at fifty years of service to the Native Hawaiian community, we've tried to highlight some of the moments throughout these fifty years where NHLC has taken on cases and done work that were really inflection points for Native Hawaiian rights and where the law is for Native Hawaiians and we're just very humbled and honored to be able to provide these services to the l  hui and to be a contractor of OHA for this work.



Founded in 1974, the Native Hawaiian Legal Corporation's mission is to protect and advance Native Hawaiian identity and culture. We are the only public interest law firm in the world dedicated exclusively to Native Hawaiian rights. Since 1986, NHLC has represented clients in more than 50 cases before the 9th Circuit Federal Court of Appeals, Hawai  i Supreme Court, and Hawai  i Intermediary Court of Appeals. These cases have shaped contemporary Native Hawaiian law.

Our Principles					
Kuleana	Maoli Ola	��ohana	Laulima	N�� Koa	M��lama
Our History					
1974: NHLC incorporated as a non-profit as an outgrowth of the Hawaiian Coalition of Native Claims and the Council of Hawaiian Organizations.	1986: ICA issues its decision in <i>Huatac v. Kapaun</i> , which changed the legal landscape for quiet title lawsuits.	1999: NHLC acts to preserve over 2,500 Hawaiian <i>Hemahemehenuia</i> (ICRP) claims.	1990s-2000s: NHLC co-counsel for community groups in "Waialeale" water case.	2013 "Baik" case decided by Hawai��i Supreme Court, advancing the protection of <i>wai kupuna</i> .	2018: CWRM orders full restoration of 10 streams in a decades-long battle by east Maui K��lo Farmers.
1978: NHLC assists the Hawaiian Affairs Committee with work that led to constitutional amendments recognizing traditional and customary rights.	1991: First "Native Hawaiian Rights Handbook" edited and authored by Melody Kapilaloha MacKenzie and NHLC attorneys, is published.	1992: Pete Defense Fund v. P��ty decision, expanding Native Hawaiian traditional and customary rights.			
1980s-NHLC focuses on defending quiet title lawsuits and preserving rights to trust lands.					



Board of Directors

 Mark Kawika Patterson President	 Malia Ka'ahu Vice President	 Kevin Cockett Secretary	 Kawena Suganuma Beaupre Treasurer	 Robert N.E. Piper Director	 Jon Matsuoaka Director
 Keali'i Reschel Director	 Angela Correa-Pel Director	 Robert Mierce Director	 Roy Catalani Director	 Keali'i Lopez Director	 Sunshine Topping Director

This is our Board and Kealii wonderfully spoke on behalf of the Board on how they generally feel of their services from the NHLC. We're very grateful to have all of them steering us, directing us and governing us. I wanted to share a little bit about our staff so I probably should start a little bit with about me. I'm the newest face on this and I think it  s a huge honor to be able to come and address the Board, to get to meet you all. I'm a lawyer, I've spent eight years before coming to NHLC working for Microsoft. In recent years, I've done legal administrative work, but my legal expertise is an intellectual property and unfair competition. It is not easy to collect data on this but, to my knowledge, there were years where I was the only indigenous person in the country practicing full time in these areas and I  ve never known there to be more of us than you can count on your hands. That  s an area I would love to see some growth. This is my first time getting to work in an organization dedicated to indigenous rights. It's the only one specifically dedicated to Native Hawaiian rights, so it really is just a huge honor and I'm here with a very grateful heart. I started with NHLC in

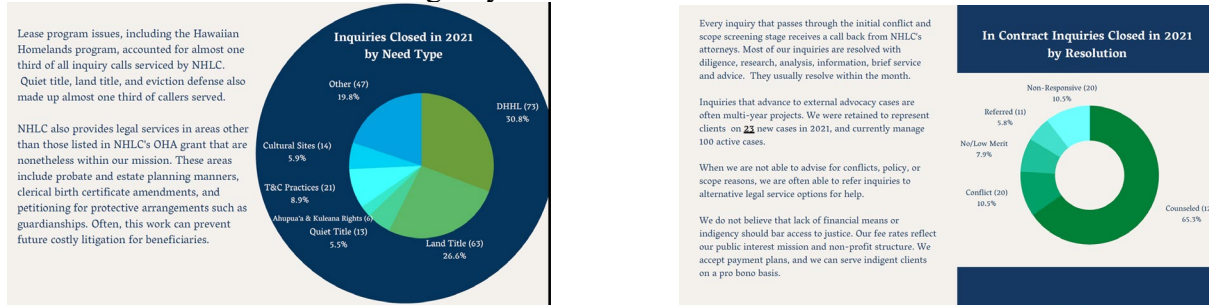
December and I am very happy to be here but with my newness, most of what we're going to talk about today is the work of others so I wanted to say a little bit about the team.



We're a small but mighty team of 12 including six litigators and our legal, administrative support team with Grace and Denise. They are led by our litigation director, Kaui Kopper, who's going to present with me today. All of our lawyers are proud UH Richardson's Law school grads and five are graduates of Kamehameha schools. Together we have over sixty years of legal experience and a deep commitment to putting this experience to work for the community and NHLC's mission, so I feel very lucky to represent this team today. All of our lawyers are on the call and they will help during the Q and A.

We are very proud to be an OHA contractor providing legal services for the lāhui in six areas of legal service. I will start walking us through the data. Our contract duties are to service the lāhui's needs in the first six areas on the slide and our contract duties are to provide: service to anyone who contacts us in the lāhui with needs in these areas, unless we can't under illegal or unethical rule for attorneys so tracking our data is an important part of our contract accountability and so I'm going to start us there. Kaui, our Litigation Director, will share some of the real stories about the families' lands and waters we work to protect because of course, behind every number we're counting is a real person, 'ohana or hui that needs help. Kaui will also share some insights we've gathered from our somewhat unique vantage point doing this work and these are things that we think the Board needs to know about the lāhui legal and advocacy needs. Then finally, two of our attorneys, Kirsha and Ashley, are going to give some insights into the ways that NHLC works beyond cases to strengthen Native Hawaiian leadership and the legal community and raise awareness of our justice gaps. So, I'll start with the data. First looking broadly in 2021, the needs of the lāhui were high and NHLC received 289 new inquiries in 2021 and to compare that to pre COVID time, that's a 68% increase and even a 37% increase over 2020. When you think about how many people are served across all those inquiries, cases that we were able to resolve in 2021 and cases that continue to 2022, we helped 790 people last year. Usually NHLC does help hundreds of people, but that is an uptick and it reflects the uptick in inquiries. It is our duty and our honor to serve people across the entire pae'āina and we did receive requests for assistance and advise people on all the islands in 2021; and we have continuing and active cases on five of the islands, but not Lāna'i. When you look at our lease inquiries, we also track how many by type of work in our contract and so this graph just gives you some insight into how many people called us with needs in each of those areas; lease issues, including the Hawaiian homelands program is about one third of the practice and then almost another third is other land issues: Quiet title, land title, eviction defense so that is the bulk of NHLC's practice. You will see another chunk of the pie, about 20%, labeled other. There are a number of other legal issues people call us about in the lāhui we view as preventative medicine for issues that fall squarely in those six areas, and so if we can help with those issues we can, and we see that as often getting ahead of costly litigation that might fall into other land issue areas later. This is my last data slide, we also track the inquiries we receive are resolved.

So, every inquiry that passes through an initial conflicts and scope screening stage, receives a call back from NHLC sooner or later from the agency.



If you call NHLC and we don't have a conflict advising you and you've called about an area where we practice, then you will get a chance to talk to a lawyer. Out of the inquiries we received last year enclosed, we had almost two thirds got past that stage and we're counseled. Most of our inquiries are resolved with brief service. This means there is a counseling service that we can provide that will get resolved within the month; so we might do some diligence, research, analyze, information provided, documents provided by the client, advise them, and be able to close out their matter within a week. Of course, there are matters that require external advocacy cases with, whether it be with before boards, courts; and last year, we took on 23 new cases in 2021 and we currently go into 2022 managing 100 active cases and those are often multi-year matters when we're not able to advise because we've either got a conflict of interest; and so we can't under our professional rules or a policy or a scope someone's asking us for help in an area where we don't practice at least today. We are often able to refer increase alternative Legal Service options for help. One thing I'll point out, you don't see a bucket here of people that we didn't help because of lack of ability to pay. We don't believe a lack of financial means or indigently should bar access. We've got fee rates that reflect our public interest mission and our non-profit structure, we accept our payment plans. We can serve clients on a pro bono basis, we've got a couple of brands that, in part help us too. I want to pass the baton to Kauila to speak about the real people behind all these numbers.

D. Kauila Kopper, NHLC Thank you Makalika and thank you again trustees for hosting us today to present to you our work under NHLC's procured contract with the Office of Hawaiian Affairs. Each number Makalika shared does represent a person, 'ohana, or beneficiaries in our communities and I think worth repeating is with NHLC, every single one of those individuals who passes our initial screen gets to talk directly with an attorney. That's something that we pride ourselves on as an organization, not every community legal service provider can say that and that's no slight to them; there are different models but for us, we can and I think that's in part because of the dedication of our legal team and the importance we place on interfacing with our communities. We aim to provide them with information or service or representation that best suits their needs and that is across all of our contract areas. Some examples from this year was Hawaiian Homelands, Natural Resource Protection, Eviction Defense, and Education.


Help for Families & Communities

Representative Cases from 2021




Hawaiian Homelands

Among numerous other notable victories, NHLC successfully defended a DHHL lease cancellation in a Circuit Court lawsuit. This case protected the unique status of Hawaiian home lands trust lands and resulted in the recognition that beneficiaries' interests in their homesteads are constitutionally protected.




Natural Resource Protection

On behalf of Hui Kaloko-Honokohau, NHLC overturned a decision to permit increased pumping of ground water for landscape irrigation that would have adversely affected a nearby historic fishpond complex and the surrounding near-shore environment.



Eviction Defense

Representation in complicated eviction matters has become critical during the COVID-19 pandemic. In one case, NHLC obtained a six-figure settlement for a family who was facing eviction from their family home based on a fraudulent land transfer. In another, NHLC successfully dismissed an eviction action for a Hau'ula family residing on a 999-year homestead lease.



Education

NHLC attorneys represented multiple 'ohana in advocating for increased access to kula kulauni education, including expanding distance learning options during the pandemic to ensure the continuity of education.

One last snapshot, evictions were not the only insidious effect of this pandemic, we know our children across the state were forced out of schools. There was a Kāneʻohe ʻohana with four children ages 6-11 who were in immersion programming, they were faced with a lose-lose proposition like many other families were; stay home safe from the pandemic but be forced to continue their distant learning education in English or go to school during the height of the pandemic and risk their family's health. This is a family really dedicated to immersion education. NHLC recognizes that this type of education is a form of a traditional right. We represented this ʻohana and as a result of our attorney's hard work, there is now a statewide distant learning program for immersion students and for all students. Over the 47 years, we have picked up some 12 e insights on the legal needs that our communities have and some insights that inform NHLC's vision for its services for the future. For example, over the years we've seen too many lost legal claims because they missed deadlines or did not come to an attorney early enough. We believe this can be combatted through community education on preserving legal rights, but this is a roadblock that we've seen time and time again. You are probably aware of the work NHLC has done to protect sacred sites. Recently, we have had five lawsuits for the protection of Mauna Kea, two are on-going; the same type of work but in a different form on the front lines and they often need criminal defense attorneys to help them if they are wrongfully arrested. There is a service gap that is not met by other legal service providers. Another thing to note is that we've learned, our victories or our lāhui victories have led to quick fixes. In our East Maui water case, our rail case, a significant birth certificate amendment case, the legislature immediately mooted out some of our biggest legal victories by just changing the law. We've learned that that means political advocacy needs to happen in coordination with our legal cases in court. I think you'll see us identifying the need to be proactive in the work. We've learned that our clients and our families cannot wait for legal issues to arise. We spoke on services as a preventive measure, how probate as part of our land title program to prevent Quiet title actions; protective arrangements and estate planning to help prevent to help prevent the loss of homestead leases; registering historic sites; prevent future desecration; again, these are services we aim to provide but that's based on the insight we've learned. I think all of these insights are the common themes where you cannot be purely defensive in our work. As NHLC continues to adapt to the changing times, we're committed to continue to adjust the ways that we advance our unchanging mission and the terms of our procured contract with the Office of Hawaiian Affairs to best serve. I thank you for your time and I would like turn the it over to Kirsha.

Kirsha Durante, NHLC Aloha, as senior staff attorney one of my kuleana is to manage our volunteer intern and law clerck programs. NHLC continues to serve as a fertile training ground for youth, young minds through our programs. Past participants have gone on to become City council members, State lawmakers, policy advisors, professors, and prominent attorneys in our local community including staff attorneys at NHLC. Example of past projects undertaken by this program include: legal research on UH administrative rules regarding Mauna Kea, iwi kūpuna protection, and the legislative history on revocable permits for the use of state land and water resources. In 2021, a total of ten individuals participated in this program among other things, these students researched the DHHL undivided lease program, the leasing of ceded lands, the fraudulent transfer of a lease, and assertion of title potential defenses to eviction and environmental protection issues pertaining to salt ponds. The students also drafted a memorandum of law addressing the issue of whether a contested case hearing is an administrative remedy that must be exhausted before filing a breach of trust lawsuit. They reserched and synthesized prior versions of intestate succession laws and even developed content for the NHLC social media accounts. Students from mainland schools also participated in the program allowing NHLC to extend advocacy and awareness to communities outside of Hawai'i. In just a few weeks of 2022, NHLC has received an overwhelming number of applications for this years program. We expect the number of participants in 2022 to exceed the number we had last year. This increasing and further perpetuating our legacy of training and guiding the legal minds of our future. I will now turn it over to Ashley to speak on other ways NHLC contributes to our community. Mahalo.

Ashley Obrey, NHLC Mahalo and aloha mai kākou Trustees and OHA staff, we are really happy to be here. To continue Kirsha's mana'o, in addition to training law students and others, our staff regularly participates in panels, presentations, trainings, and other events to promote our services and to also raise awareness both within and outside of the lāhui on the biggest issues affecting Native Hawaiians and the ways we advocate on their behalf. In 2020 alone, we gave over twenty presentations in the community via Zoom. Some of the highlights include three panel presentations discussing the last hundred years of the Hawaiian Homes Commission Act for the access to justice conference, the Judiciary history center as well as the Honolulu board of agents forum; eight presentations and discussions with Hawaiian Homestead Assoc.; two law school sponsored panels; one on the PASH Case and the Public Land Trusts, as well as to Kuleana academy's Rising leaders. Our current and former staff members are highly visible within the Hawaii bar and within their own communities, from leadership roles to judgeships, service on professional, and non-profit boards, and perpetuating their own. All that to say NHLC's impact really is not limited to our advocacy. NHLC employs a multi-faceted approach to engaging with and ultimately influencing this legal system within we operate. Mahalo.

Makalika Naholowa'a, NHLC-Executive Dir. This concludes our presentation, and we are here to answer any questions.

Trustee Lee I saw that you cover a lot of evictions and land titles. We had a beneficiary come before the board at our last board meeting. I do not know if they recognize it but they're a victim of the title insurance scam and they're about to lose their family land because of this. Is this something NHLC has helped with in the past and can help with?

Kauila Kopper, NHLC Thank you for your question. Over my time at NHLC since 2010, we have seen this situation before. I'm glad you identified that as a possible issue. Often times victims of those scams come to us much too late in the process; that can be the case for many types of eviction. I've seen for the same type of scam for Hawaiian Homelands, leases, or family-owned property. We encourage anyone with legal issues, especially within the contract areas we serve, this includes title, to come to us. What I can say is our process is really robust, a caller can speak to an attorney and all of our attorneys will have a hand in discussing the legal claims of the callers that come to us. I would highly encourage this family to contact us.

Trustee Akina Thank you Makalika and all of you for a terrific presentation. I have been impressed with the growth of the Native Hawaiian Legal Corporation and the quality of your staff. Thank you so much for being committed to being in a public interest law firm for the sake of our kānaka maoli. I just wanted to tip my hat to you. I know it takes a lot of sacrifice to choose to not go into the corporate world in terms of law. So, your services are making a difference and are much appreciated. We enjoy partnering with you mahalo.

Trustee Ahuna Aloha, I would like to share the same comment. I would like to thank all of you from NHLC for presenting today. My question comes from a beneficiary and family on Kaua'i. Right now, they are on ceded lands by the river and because their contract or lease is up, they do not have options to renew the lease. I know HB499 has come into play with questions like *if they can extend, why can't we extend, we're native Hawaiians?* Do you know anything on how we can help this family?

Kauila Kopper, NHLC Thank you Trustee Ahuna, I will say that my understanding is there are efforts by some at the legislature this year to try and address some of those issues. We have seen some of those leasing issues change by the healthy commercial interest and not the interest of the communities we serve. There could be other loopholes that you know in the Chapter 171 that governs leasings when it comes to extensions and negotiations for that.

Trustee Ahuna Thank you for that, I just know that they will be coming to our board for help. Thank you everyone.

Chair Hulu Lindsey I want to thank everyone, Makalika, you and your entire staff at NHLC and everyone volunteering on your board. Mahalo for your time and for always being there for our beneficiaries. NHLC is a necessity for our beneficiaries. Legal matters are very costly, and many may not have that money, so we need this agency. We are so happy that we can be a part of supporting it.

Trustee Ahu Isa When I got elected in 2014, I remember NHLC was so small. I remember Moses Haia was there and they were trying so hard to build the NHLC and now look at all these young, top-notch people there. Thank you for the work that you do. It costs money and I want to know where do you folks get your money?

Chair Hulu Lindsey They get their money from the State and from OHA

Trustee Ahu Isa Is this from general funds? I do not want to drag this on, Mahalo.

Makalika Naholowa‘a, NHLC-Executive Dir. Our contract with OHA is the majority of our funds. We also try to recruit funds from our clients. As Chair Hulu says, most of clients are not in a condition to pay and it is not our view that that should be a barge of service. To give you a bit of data, if you were to take the amount of legal work we provide, we offer a very low rate of \$100 per hour, which is at least three times more when you go to the market. Even at that rate if we were to charge it out, we would make our annual budget but instead we are probably able to recoup in a good year about 1/10. Usually, it is because we were successful in litigation where it's possible to recoup fees from the losing party. Getting it from the clients is not where NHLC's financial stability or changes are going to happen in the future. We are looking constantly whether or not there's other opportunities for other philanthropist to invest in NHLC. Also, if there are ways for us to expand our practice in the future where that practice area may be servicing clients with more financial means to help subsidize what we do for our clients that don't have the financial means. If we are able to stand up more work on behalf of Native Hawaiian businesses, for example, that might be an opportunity to help balance out the foundation where clients are not going to be able to pay. It is a difficult challenge, its not easy but these are some of the ways we are thinking about it.

Chair Hulu Lindsey Thank you Makalika.

Sylvia Hussey, CEO Chair, I wanted to thank Makalika. Our Chief Advocate and Makalika have already engaged in conversation. Na‘u, would you like to comment?

Na‘u Kamali‘i Yes, thank you very much to NHLC and Keali‘i for being present. We will hold hands in representation and the uplifting of our people and I will also acknowledge our great healer as you have.
Oli is offered.

Trustee Akaka I wanted to mahalo NHLC for all of your wonderful work within the community and for all of our community. I wanted to mahalo ‘Anakala Keali‘i for your wonderful oli; mahalo Makalika, Kauila for everything that you are doing. One question, I think I heard that a loko i‘a in Kona was affected with the water source, could we get a little more information on that?

Ashley Obrey Yes, we represented a hui of cultural practioners. They've been working for the Kaloko fish pond in Kona for the last six to seven years. It is on National Park property and the property is adjacent to

Kohanaiki, which is you know a multimillion-dollar subdivision, second homes, golf course, fancy landscaping, and essentially what happened was there were letters being sent between Kohanaiki and the planning director about allowing additional well development under an existing SMA permit, a special management area permit, that did not account for the amount of new water that they were asking for now. We had to go to the board of appeals and say that this decision that the planning director made, we could let this go through under the existing permit was improper for multiple reasons. We needed another SMA permit because there was no consideration of traditional and customary practices and no consideration of impacts to the public trust resource. Basically, the planning director ended up withdrawing his decision because there was an appeal from us and I think even the National Park ended up getting involved. We ended up not having to litigate further but it was a good place to start. If they try to do anything going forward that could impact this point, I think they know there are people watching. This community has been doing monthly work days and the community is trying to bring this fishpond back to life.

Chair Hulu Lindsey Thank you Makalika for the presentation. We really appreciate all the you do and we hope to have more collaboration between our office and yours so we can help our beneficiaires. We will move on to our next item on the agenda, Action Item BOT#22-01.

A. Action Item BOT#22-01: Approve the formation of a Permitted Interaction Group (PIG) to investigate the activation of OHA Kaka‘ako Makai Site A, 1011 Ala Moana Blvd. Pursuant to HRS§92-2.5(b)(1)(A).

Sylvia Hussey, CEO Thank you Chair, We will have our COO and our Land Director do a brief presentation on the key points.

Casey Brown, COO Aloha Trustees, I am going to resituate you folks real quickly, just refresh your minds from where landed in the discussion around Kaka‘ako Makai (KM) and our development. The slides you’ll be seeing were used previously. The slides were looking at what we wanted to do in the sites. The three things that we wanted to do was:

- 1) we wanted to activate the site;
- 2) identify which area of our land should be activated;
- 3) and we wanted to look at what projects and ideas made sense there.

You approved the activation of these lands as an initial step. The sites that were approved by you were parcels E and A. On parcel E is the 919 building and parcel A is Fisherman’s Wharf. We also spoke about proof-of-concept project that we could be testing on these sites. Our consultants have produced a business plan and in that business plan is a budget and they’ve done that for site A. What we want to do for this formation of the PIG is to pick up where the last PIG left off and look at those business plans and assess them and the budget and ensure everything makes sense. We then want to bring forth the recommendation via the PIG report. I will pause here and see if there are any questions.

Trustee Lee Thank you, if I understand this correctly, the Board has already approved the proof of concept and the activation. So now this PIG is supposed to look at if the budget is okay and if it's an appropriate project that is proposed, is that correct?

Casey Brown, COO Yes, thanks for asking that question. The two main reasons for bringing this to the board and have the PIG formed is first, KM in general is a large project and it’s intimate to OHA. It’s OHA’s first foray into development so we definitely want to keep Trustees informed with activities happening during these planning stages. The second and more overriding factor is the money. The budget that has been

drafted is in the millions of dollars. We really want the trustees to understand what is going into these activation plans.

Trustee Lee Okay, I get that but what I don't get is how this is any different then any other budgetary manner that comes before the board. Administration uses their expertise, which you have, you have Kalani and accountants. You then come up with recommendations that you bring to either a committee or the Board, that these are administration's recommendations to move forward, and we say either yes or no. Now, you are asking us to weigh in and have input in these budgets. Now, that's fine but then what do we need all of you for? Why are we paying salaries to people whose job descriptions is to do this work but now you want the board to do this work and again that's fine, then we can save hundreds of thousands of dollars and streamline the agency even more which is highlighted yesterday in the WAM committee meeting at the Senate. Then, we do not have anyone in the administration at all and just have the Board do all of this work. I don't understand why the people with the subject matter expertise who we have hired, they come up with these budgets, come up with the recommendation, come before the RM committee and say this is the recommendation of the subject matter experts on what we should do. Does the board have questions? Does the board like it? Yes, or no? Not, okay board, go and do all this work and then tell us you like it so we can bring it back to the board for you folks to vote. I don't understand that methodology. Can someone explain that to me?

Casey Brown, COO I can share from my point of view, I think there's a general sentiment to err on the side of over sharing and under sharing just because this is a new endeavor for OHA so part of this process is to feel our way and to find that sweet spot. What makes sense to you folks? We always start off by bringing more than less.

Trustee Lee New endeavor does not mean new process. Why do we have processes in place? We have a process in place. Yes, this is a new endeavor but the process is not different. We didn't form a PIG to do renovations at Nā Lama Kukui (NLK). Based on that methodology, should we not have formed a PIG and go over that budget and go over all of that for NLK? The reason I'm making such a big thing about this is because of the acquisitions we've made. We have a lot of work coming ahead of us and is this what we can expect in the future? If that is, then let's streamline, save money, and have the board do all the work, the people with no subject matter expertise.

Casey Brown, COO That's a fair point. I can see others with their hands up. My last response would be administration is here to support whatever the board's desires are. If this process wants to be altered, then administration will support.

Trustee Ahu Isa I think Trustee Lee is referring to HRS92-2.5 Permitted Interaction of Members. It says under a 92-2.5A.1 two or more members of the board but less than a number of members would constitute a quorum from this PIG.

1. Investigate the matter
2. The scope of the investigation and the scope of each members authority are defined at the board meeting.

Maybe he wants to know the scope of each member's authority as defined and what are we as a member of the PIG going to do and why are we are member of the PIG? It must be defined. Maybe he's referring to that. Thank you.

Trustee Ahuna It doesn't sound right for me. I would personally like to get involved with some of the talks. I don't understand why we must take it into a PIG. For me, this should've come straight to the RM

committee and we would all have insight and we could comment. At this point I don't understand how we will make good decisions on these lots. I would like to hear more about this. Thank you.

Sylvia Hussey, CEO I wanted to go back to Trustee Lee's point about the PIG and the construct. This is administration bringing forward the boards construct of a PIG; and Trustee, you know this very well, in the action item, in the reference section, Trustees will see the evolution of the use of PIG to form the different decision points that administration is helping Trustees to bring forward. You can see the formation of the first PIG, it was the plan. The second PIG, we look at the first steps, that third PIG was the overall which lots? And this PIG is going a little deeper into the A activation and bring forth that information via the PIG and then to the board. At all times, it is the board's decision with administration support of bringing that 'ike forward for you. It is very clear to administration that that is our role especially in the construct of a PIG. Again, this is a board initiative; it started with a formation of that first PIG in January 2021 and this is just a continuation of very strategic work that's been done. Thank you.

Chair Hulu Lindsey Any other questions? So, I will entertain a motion for the approval of the formation of a Permitted Interaction Group to investigate the activation of Kaka'ako Makai site A, 1101 Ala Moana Blvd, including the following purview, members and terms/duration.

Purview: The purview of the PIG is for the Board of Trustees (BOT or Board), BOT staff and OHA Administration staff to work together to investigate the business plan for activation of site A in Kaka'ako Makai.

Members: The membership of the Permitted Interaction Group is proposed as follows:

(a) Trustee Carmen Hulu Lindsey; (b) Trustee Leina'ala Ahu Isa; (c) Trustee John Waihee, IV; and (d) Trustee Kalei Akaka. Trustee Carmen Hulu Lindsey will serve as the Chair of the Permitted Interaction Group and Trustee Leina'ala Ahu Isa will serve as its Vice Chair. Casey K. Brown, Ka Pou Nui, will function as the Project Manager.

Term/Duration: The term of the Permitted Interaction Group expires at the completion of the assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment, but in no event later than February 15, 2022.

Trustee Akaka moves the motion

Trustee Akina Seconds the motion.

Trustee Lee Point of order Madame Chair.

Chair Hulu Lindsey Go ahead Trustee Lee.

Trustee Lee According to the Office of Hawaiian Affairs Board of Trustees By-Laws, Article VIII., Section A., Subsection 1A,B,C,E,G,H,I, and J, this motion is out of order. Section A1, a committee on resource management the committee shall:

- A. Handle all fiscal and budgetary matters and ensure proper management planning, evaluation, investment, and use of OHA trust funds.
- B. Review approve or disapprove all acquisitions expenditures that have a multi-year implication
- C. Review and approve all acquisitions expenditures that impact the OHA debt management economic development, investment and spending policies.

E. Oversee the use and conditions of OHA's real estate *inaudible* execute policy for the proper use of such lands, including land in which OHA an interest.

G. Develop policies and criteria for OHA's land acquisitions, disposition, development, management, and the use of real property in which OHA has an interest.

H. Developed policies relating to OHA's real estate asset allocation, desired returns and balancing OHA's real estate portfolio including legacy lands, corporate real property, problematic lands, and investment properties

I. Oversee the use and conditions of OHA's real estate and development policy for the proper use and stewardship of such real property; and

J. develop policies and programs for OHA's ownership, financing and development of real property, including capital improvement, debt management, property development, investment and spending policies and forms of ownership for OHA's real property.

Chair Hulu Lindsey I would like to explain that at the beginning when we started this PIG, it was intentional in that it would move things faster. We hired an in-house development consultant and they come to the administration, administration comes to the PIG, and then we bring it to the board. The members of the board are the same members of the Resource Management Committee and on the PIG is the resource management chair so in essence, we are trying to expedite so that this thing does not lag on as it has for the last ten years. We've been trying to move it forward and eventually it's not going to be the board making these decisions, hopefully we get into partnerships on the majority of the lots. This is a temporary use of Fisherman's Wharf lot and the AAFES building lot. We'll be able to check if this type of cultural activity works. It gives opportunities to our people to start their little businesses and move on to bigger projects. So, the expeditious way to doing it would be like we started with PIGs. Each PIG is brought to the whole board for total discussion, it makes things moves faster. That's why we've been creating these PIGs.

Trustee Lee I know I've brought this up in the past, Madame Chair, but since you reiterated your point on this, I will bring it up again. Am I to understand that in order to expedite matters, that we violate our Bylaws?

Chair Hulu Lindsey No, I don't think it's a violation and I'll call on Judge Klein.

Trustee Lee I just read you our Bylaws and that's out of order Madame Chair. I made a point of order and you have to rule on it, not Judge Klein. I respect Judge Klein immensely but he is not the Chair of this Board, you are. If you want to consult with our attorney that's fine but he doesn't make this decision, you do. You wanted to sit as Chair, make a decision.

Chair Hulu Lindsey I am going to call a recess and speak to Judge Klein. The recess is five minutes.

Recess started at 11:24 am

Reconvene at 11:29 am

Chair Hulu Lindsey I would like to call on Judge Klein to share with all of you what he shared with me.

Robert Klein, Board Counsel Thank you Chair. We have a question whether the PIGs should be handled by the RM Committee, pursuant to the Bylaws. PIGs are created under State law which take precedent over bylaws, as we know, our bylaws cannot be different from what state law allows. The board is interested in creating a PIG to do an investigation as it's noted on the agenda, the board is perfectly within its rights to conduct an investigation by the PIG. As we know, the PIGs final report which is a three-step process, the

board will have ample time to consider the PIGs report and determine whether or not it wants to go forward or whether it's a referral to the committee or acceptance of the PIG report can be done at that time. But I do not see anything illegal or undermining of the board bylaws to go ahead with a creation of a PIG to conduct an investigation which purportedly is going to do. There will be ample time to hand over the PIG report through the bylaw process and committee process when that report becomes available.

Chair Hulu Lindsey Thank you Judge.

Trustee Lee So I am assuming you are ruling against my point of order.

Chair Hulu Lindsey Yes.

Trustee Lee Can I ask a follow up question of Judge Klein?

Chair Hulu Lindsey Go ahead.

Trustee Lee Judge Klein, I never questioned whether the PIG itself was illegal in any way, but our bylaws stipulate that this subject matter should be handled within the RM committee. While I understand our bylaws stipulate that the Chair is to name who will be apart any PIG, that doesn't take away the fact that our bylaws state that this subject matter is supposed to be handled by the RM Committee. We do have a process if the Board wants to remove it away from Committee and move it directly to the board level, which is article VIII subsection L, a waiver of matter from RM. If the board wants to take up this investigative matter, I don't have a problem with that but there's been no move to elevate this from the committee to the board level. They're just saying they're going to do this at the Board level. While it's not illegal and I never claimed that it was, it is violating, in my opinion, our bylaws. Our bylaws do stipulate in this particular matter should be handled within the RM committee, that is why the RM committee was formed to handle these types of matters.

Robert Klein, Board Counsel I have no doubt that the purview of the RM committee includes matters like this, but the bylaws are really subservient to state law and state law provides an alternative through the PIG process, 92-2.5B 1A to conduct investigations. So, state law is superior to bylaws and it can be used to do what the bylaws seem not allow. So, if a PIG is established properly under the law, it can entertain the same or similar matters that would be within the purview of a board committee and once the PIG report is completed, the board can do what it normally does either accept the PIG report, refer it to the RM committee, remand it to the PIG for further information, but its nearly an alternative legal process that's setup by the law which is superior to your bylaws.

Trustee Lee I didn't question the legality of the PIG. I won't delay the matter Chair. I don't think we're arguing the same point. Of course, PIGs are legal, that's not what I questioned. So, we don't need to vote to waive this matter from the committee. Moving forward based on today's meeting, we have it on the record that the Chair of the Board at the Office of Hawaiian Affairs at any time can take a matter away from a committee, which by the way requires a 2/3 vote, by just a simple majority form a PIG and take matters away from a committee.

Robert Klein, Board Counsel What your basically arguing is that the bylaws are superior to the law. What you're saying is that the Board has to follow its bylaws when you have a superior state statute that handles the same matter. Actually, you're bound to follow state statute if you are going to create a PIG. It is specific to PIGs and the specific purpose of the PIG is to conduct an investigation, then actually your bylaws are

inferior to the state law that the Chair can say I want to follow the PIG law in this particular case. Because its state law, it is superior to your bylaws; where you're saying, the bylaws control not only the matters that the particular committee has within its scope but also mandates its process that cannot be changed by state law and I don't think that's correct.

Trustee Lee Judge Klein, the law doesn't say in what venue a PIG needs to be taken up by the body on which its being taken up by. Maybe it's my misunderstanding because I'm not an attorney but I understand that the law stipulates that we can form a PIG but I don't believe the law says the PIG has to be taken up by the Board in general. I'm aware of neighborhood boards that have PIGs formed within committees and they're not taken up by the entire board.

Robert Klein, Board Counsel Number one you're not a neighborhood board.

Trustee Lee I understand but they follow the same law that we do; they follow the same sunshine law that we are talking about right now, that is the only reason I am using them as an example.

Robert Klein, Board Counsel What you're using as an example is what you're saying that has to be the process and I'm saying that is not my interpretation of what the process can be, has to be, or is an alternative to your bylaws.

Trustee Ahuna My question is, all these guys on the PIG are on the RM committee, why not just have it in the RM committee so that we can all be involved? If we need to speed it up maybe we can have more meetings or something? I'm trying to make sure that we can be involved in this. Thank you.

Trustee Ahu Isa Justice Klein, I want to explain how we did the first PIG. At that moment, time was of the essence, we had an offer and we were bidding on this property. It was imperative that we did have that PIG go straight to the Board. I think Trustee Lee is saying we're not in that type of situation. Not all members of the RM committee is on the PIG, Trustee Alapa is not on. I am reading from HRS the State law, the scope of the PIG and each members authority should be defined at the meeting of the board of the PIG. So, my authority is vice chair, Chair Hulu's authority is Chair, maybe that's what he is questioning. It says to define each members authority, why are we appointed to the PIG. Okay, mahalo.

Trustee Lee Point of clarification. Just because Trustee Ahu Isa just brought it up about the acquisition PIGs that matter was duly waived from the committee. The board took a vote to waive it from the committee to raise it to the board level and the PIG was formed.

Chair Hulu Lindsey Can you call for the vote please?

Trustee Akaka Moves

Approve the Formation of a Permitted Interaction Group (PIG) to investigate the activation of Kaka’ako Makai Site A, 1101 Ala Moana Blvd, including the following purview, members and term/duration:

Purview. The purview of the PIG is for the Board of Trustees (BOT or Board), BOT staff and OHA Administration staff to work together to investigate the business plan for activation of site A in Kaka’ako Makai.

Members. The membership of the Permitted Interaction Group is proposed as follows:

(a) Trustee Carmen Hulu Lindsey; (b) Trustee Leina’ala Ahu Isa; (c) Trustee John Waihee, IV; and (d) Trustee Kalei Akaka. Trustee Carmen Hulu Lindsey will serve as the Chair of the Permitted Interaction Group and Trustee Leina’ala Ahu Isa will serve as its Vice Chair. Casey K. Brown, Ka Pou Nui, will function as the Project Manager.

Term/Duration. The term of the Permitted Interaction Group expires at the completion of the assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment, but in no event later than February 15, 2022.

Trustee Akina Seconds the motion.

	1	2	‘AE (YES)	‘A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE DAN AHUNA				X		
TRUSTEE KALEI AKAKA	X		X			
TRUSTEE KELI‘I AKINA		X	X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE				X		
TRUSTEE KEOLA LINDSEY						X
TRUSTEE JOHN WAIHE‘E			X			
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			6	2		1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with a six (6) YES votes, two (2) no votes and one (1) EXCUSED vote.						

Chair Hulu Lindsey Thank you Trustees. Do we still have beneficiaries wanting to testify? We will give them an opportunity to speak and share their concerns since we had technical issues earlier.

Board Secretary We had Routh Bolomet on the line but she is not on now.

Chair Hulu Lindsey Unfortunately, we will have to move on. I will announce that our counsel has reached out to Routh and NHLC has also said they will speak to her. I would like Sylvia to continue working with Ruth and if she wants to speak to us again then she can come back to the next meeting.

I will entertain a motion to recuse into Executive session.

Trustee Akaka moves to recuse into Executive session.

Trustee Waihee Seconds the motion.

The Board recuses into Executive Session at 11:45 a.m.

Motion to recuse into executive session pursuant to HRS Section §92-5						
	1	2	‘AE (YES)	‘A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA	X		X			
TRUSTEE KELI‘I AKINA			X			
TRUSTEE LUANA ALAPA			X			
TRUSTEE BRENDON LEE			X			
TRUSTEE KEOLA LINDSEY						X
TRUSTEE JOHN WAIHE‘E		X	X			
CHAIRPERSON HULU LINDSEY			X			
TOTAL VOTE COUNT			8			1
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passes with a eight (8) YES votes and one (1) EXCUSED vote.						

Board returns to open session at 11:57 a.m.

Announcements

Chair Hulu Lindsey Our first RM and BAE meetings are set for January 25th and our next BOT meeting will be on January 27. Are there any other announcements to be made?

Adjournment

Trustee Akaka Moves to adjourn the meeting.

Trustee Ahu Isa Seconds the motion.

Adjournment							
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA		X	X			
DAN	AHUNA			X			
KALEIHIKINA	AKAKA	X		X			
KELI'I	AKINA			X			
LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE			X			
KEOLA	LINDSEY						X
JOHN	WAIHE'E			X			
CHAIR CARMEN HULU	LINDSEY			X			
TOTAL VOTE COUNT				8			1

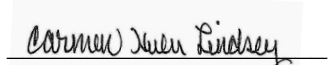
Chairperson Carmen Hulu Lindsey Adjourns the Board of Trustees meeting at 12:00 p.m.

Respectfully submitted,



Lehua Itokazu
Board Secretary

As approved by the Board of Trustees on February 3, 2021.



Carmen Hulu Lindsey
Chairperson, Board of Trustees

Attachments:

1. Excused Memo – Trustee K. Lindsey
2. PowerPoint – Justice for the Lāhui
3. Action Item BOT#22-01



OFFICE OF HAWAIIAN AFFAIRS
Trustee Keola Lindsey
Interoffice Memorandum

Date: January 12, 2022

To: Trustee H. Lindsey, Chair – Board of Trustees
Trustee Ahu Isa, Vice Chair – Board of Trustees

From: Trustee Keola Lindsey

Re: Board of Trustees Meeting – 01/13/22

Aloha Chair Lindsey,

Please excuse me from the Board of Trustees Meeting on Thursday, January 13, 2022.
Please extend my excused absence and sincere apologies to the other members of the
Board of Trustees.

Mahalo,
Keola Lindsey
Trustee, Hawai‘i Island

Justice for the Lāhui

2021 Legal Services Review

OHA Board of Trustees Meeting
January 13, 2022



Native
Hawaiian
LEGAL CORPORATION





Founded in 1974, the Native Hawaiian Legal Corporation’s mission is to protect and advance Native Hawaiian identity and culture. We are the only public interest law firm in the world dedicated exclusivley to Native Hawaiian rights. Since 1986, NHLC has represented clients in more than 50 cases before the 9th Circuit Federal Court of Appeals, Hawai’i Supreme Court, and Hawai’i Intermediary Court of Appeals. These cases have shaped contemporary Native Hawaiian law.

Our Principles

Kuleana	Maoli Ola	‘Ohana	Laulima	Nā Koa	Mālama	‘Onipa’a
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Our History

<p>1974: NHLC incorporated as a non-profit as an outgrowth of the Hawaiian Coalition of Native Claims and the Council of Hawaiian Organizations.</p> <p>1978: NHLC assists the Hawaiian Affairs Committee with work that led to constitutional amendments recognizing traditional and customary rights.</p> <p>1980s-NHLC focuses on defending quiet title lawsuits and preserving rights to trust lands.</p>	<p>1986: ICA issues its decision in <i>Hustace v. Kapuni</i>, which changed the legal landscape for quiet title lawsuits</p> <p>1991: First "Native Hawaiian Rights Handbook," edited and authored by Melody Kapilialoha MacKenzie and NHLC attorneys, is published.</p> <p>1992: <i>Pele Defense Fund v. Paty</i> decision, expanding Native Hawaiian traditional and customary rights.</p>	<p>1999: NHLC acts to preserve over 2,500 Hawaiian Homelabeneficiaries' ICRP claims.</p> <p>1990s-2000s: NHLC co-counsel for community groups in "Waihole" water case.</p> <p>2013:"Rail" case decided by Hawaii Supreme Court, advancing the protection of iwi kupuna</p> <p>2018: CWRM orders full restoration of 10 streams in a decades-long battle by east Maui Kalo Farmers.</p>
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Board of Directors



Mark Kawika Patterson
President



Malia Ka'aihue
Vice President



Kevin Cockett
Secretary



Kawena Suganuma Beaupre
Treasurer



Robert N.E. Piper
Director



Jon Matsuoka
Director



Keali'i Reichel
Director



Angela Correa-Pei
Director



Robert Merce
Director



Roy Catalani
Director



Keali'i Lopez
Director



Sunshine Topping
Director



Makalika Naholowa'a
Executive Director



Kauila Kopper
Litigation Director



Kirsha Durante
Senior Attorney



Li'ulā Kotaki
Attorney



Ashley Obrey
Attorney & Legal Administrative
Director



Daylin-Rose H. Heather
Attorney



Henderson Huihui
Attorney & Equal Justice Works Fellow



Sheldon Abril
Operations Director



Jeannie Siu, CPA
Finance Director



'Ihilani Chu
Executive Assistant



Denise Bagasol
Legal Secretary



Grace Lee
Intake Specialist

2021 Review



DHHL/Land Trust Entitlements



Land Title Assistance



Quiet Title Defense



Protecting Cultural Sites



Ahupua'a/Kuleana Rights



Protecting Traditional and Customary Practice



Other Emerging Needs



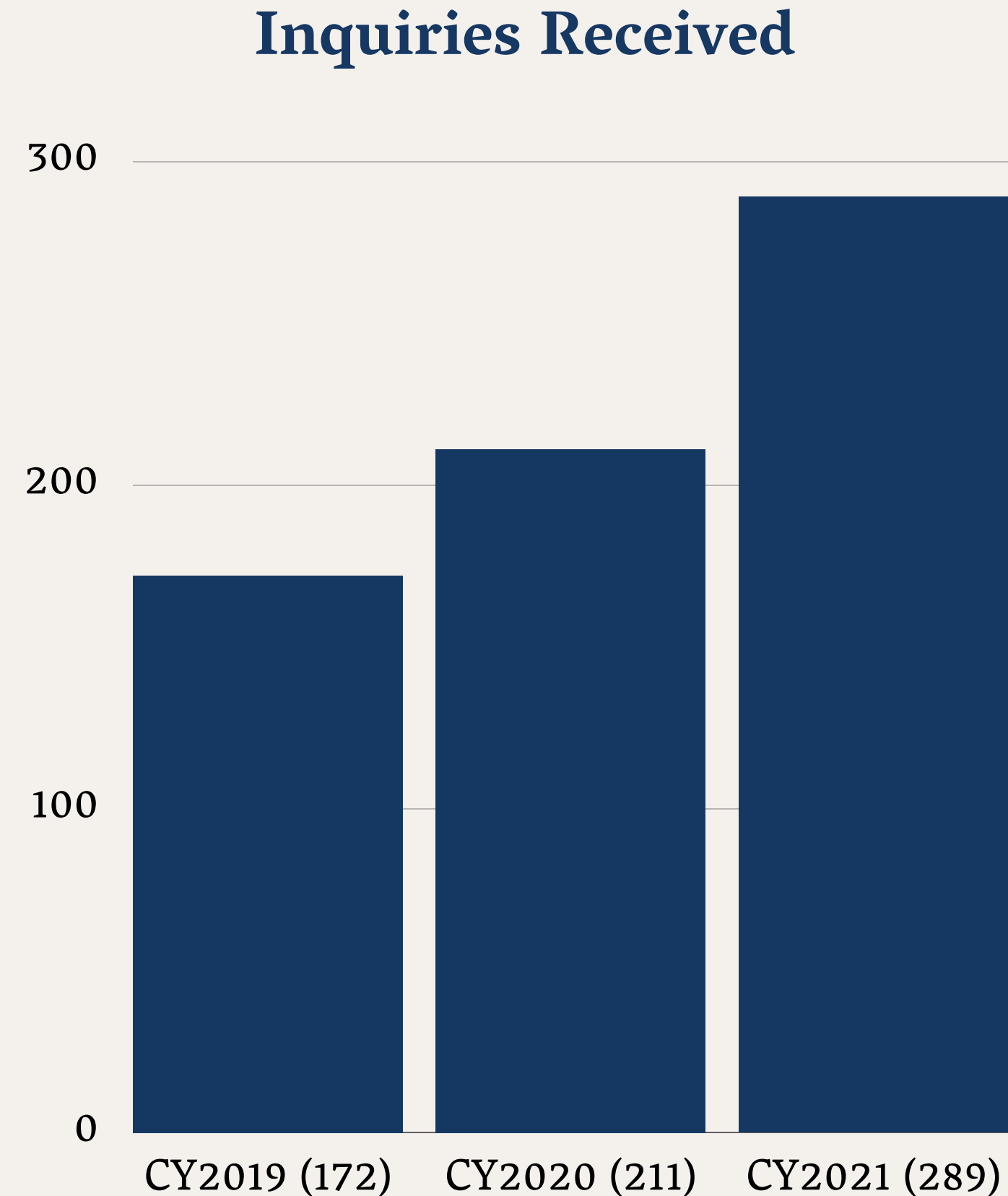
Strengthening Native Hawaiian Legal Leadership

2021 Needs Were High

NHLC received **289** new inquiries in 2021.

This is a 68% increase from 2019 and a 37% increase from 2020.

We believe that COVID has been a factor and we expect it will impact demand in 2022 as well.

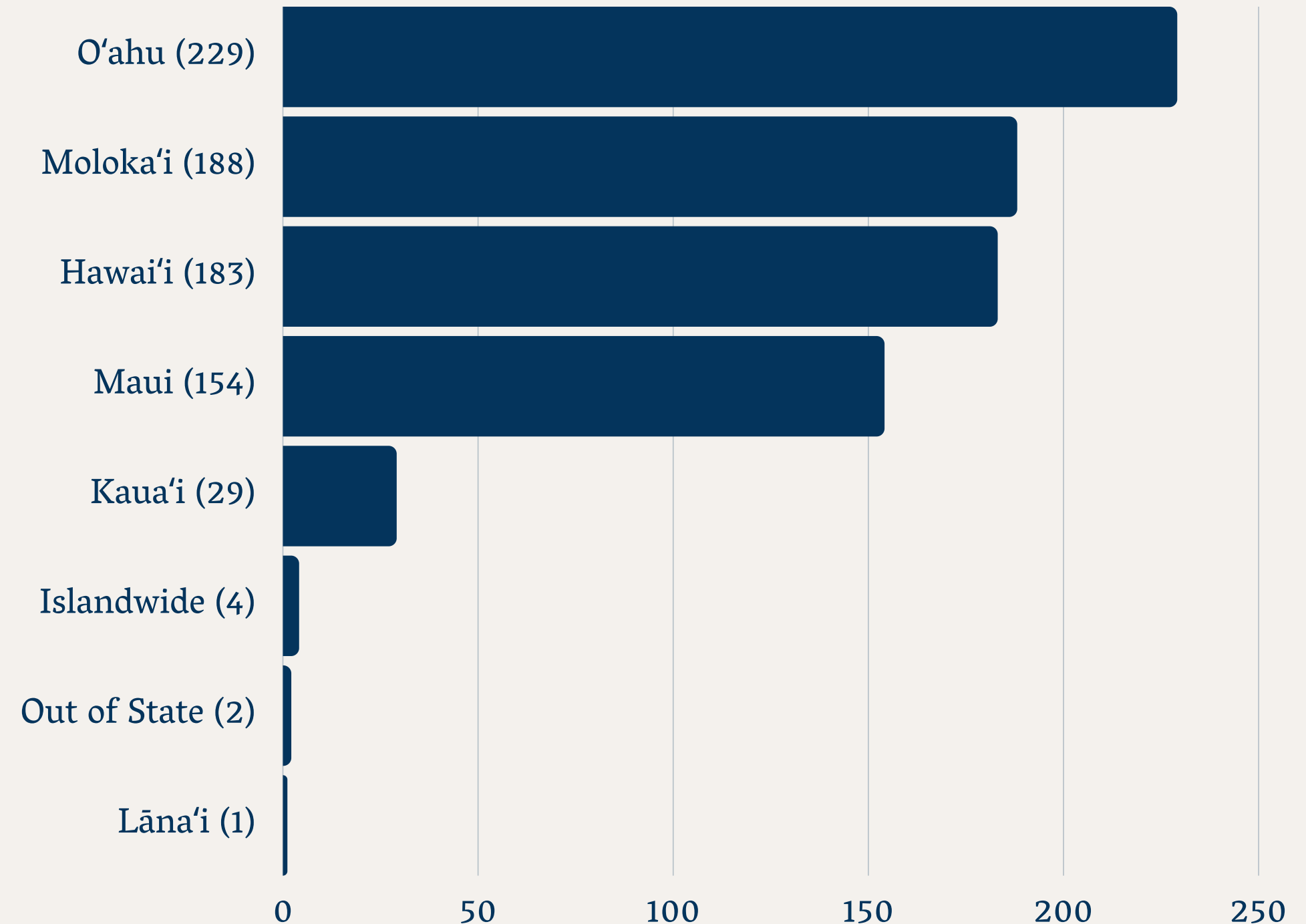


Across closed and continuing cases, NHLC served **790** people in 2021.

NHLC closed 237 inquiries and cases in 2021 and served 438 people across those matters.

NHLC is continuing work in 2022 on 100 active cases that did not resolve in 2021. Those cases serve 352 people.

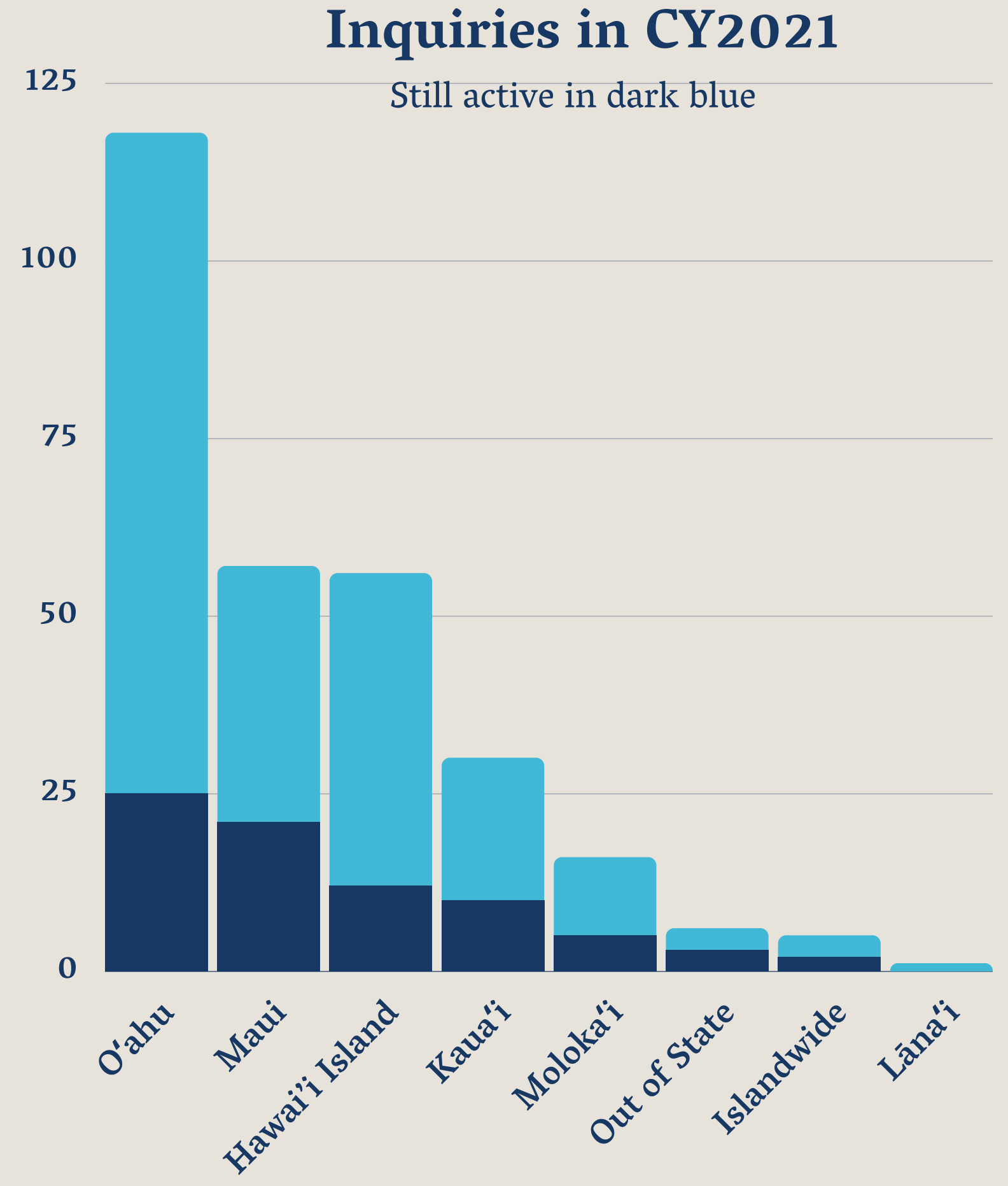
People Served in CY21



We received requests for assistance from all the islands in 2021.

We advised people on all of the islands in 2021.

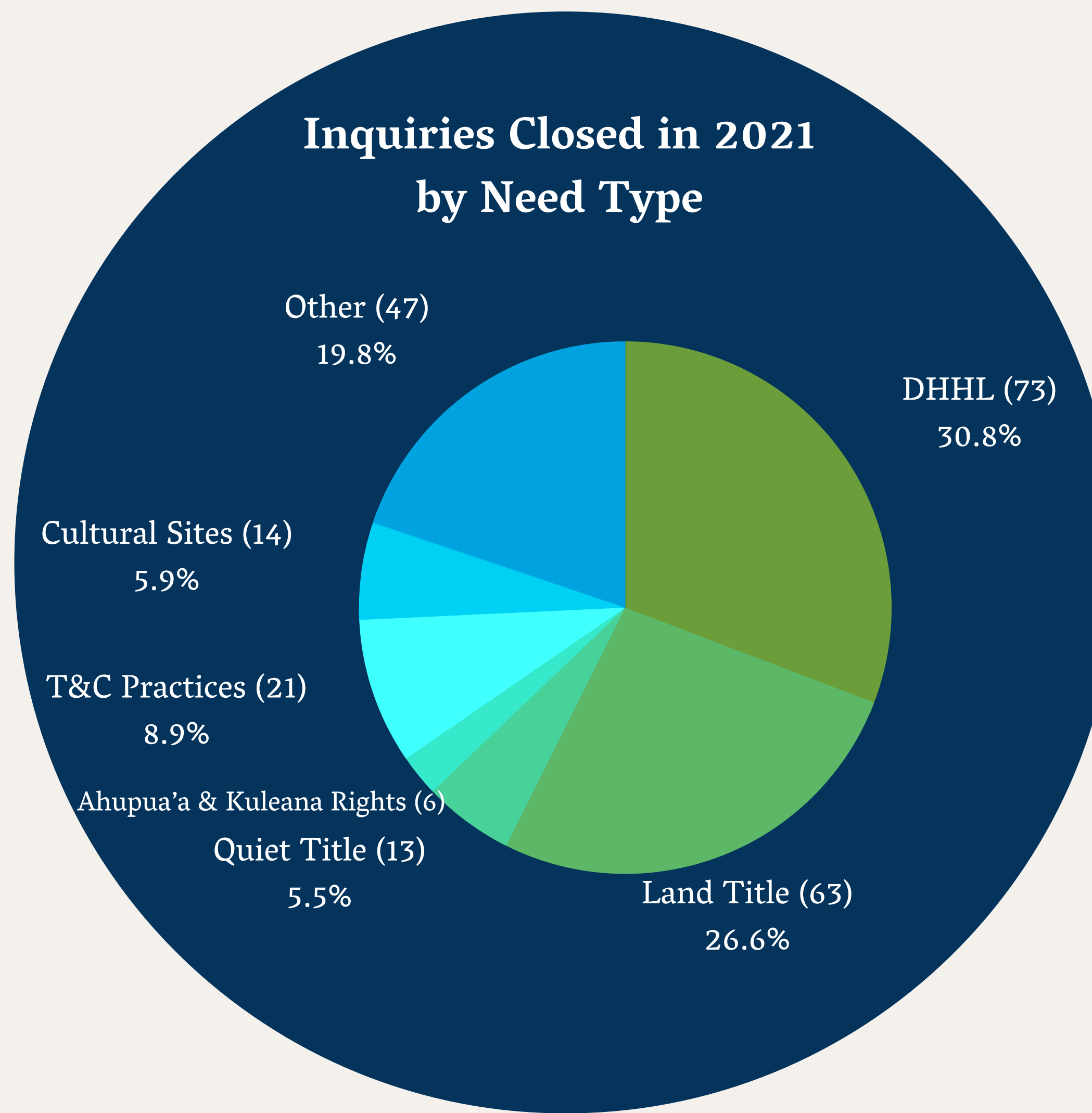
We have continuing and active cases on 5 of the islands as we start 2022.



Lease program issues, including the Hawaiian Homelands program, accounted for almost one third of all inquiry calls serviced by NHLC.

Quiet title, land title, and eviction defense also made up almost one third of callers served.

NHLC also provides legal services in areas other than those listed in NHLC's OHA grant that are nonetheless within our mission. These areas include probate and estate planning matters, clerical birth certificate amendments, and petitioning for protective arrangements such as guardianships. Often, this work can prevent future costly litigation for beneficiaries.



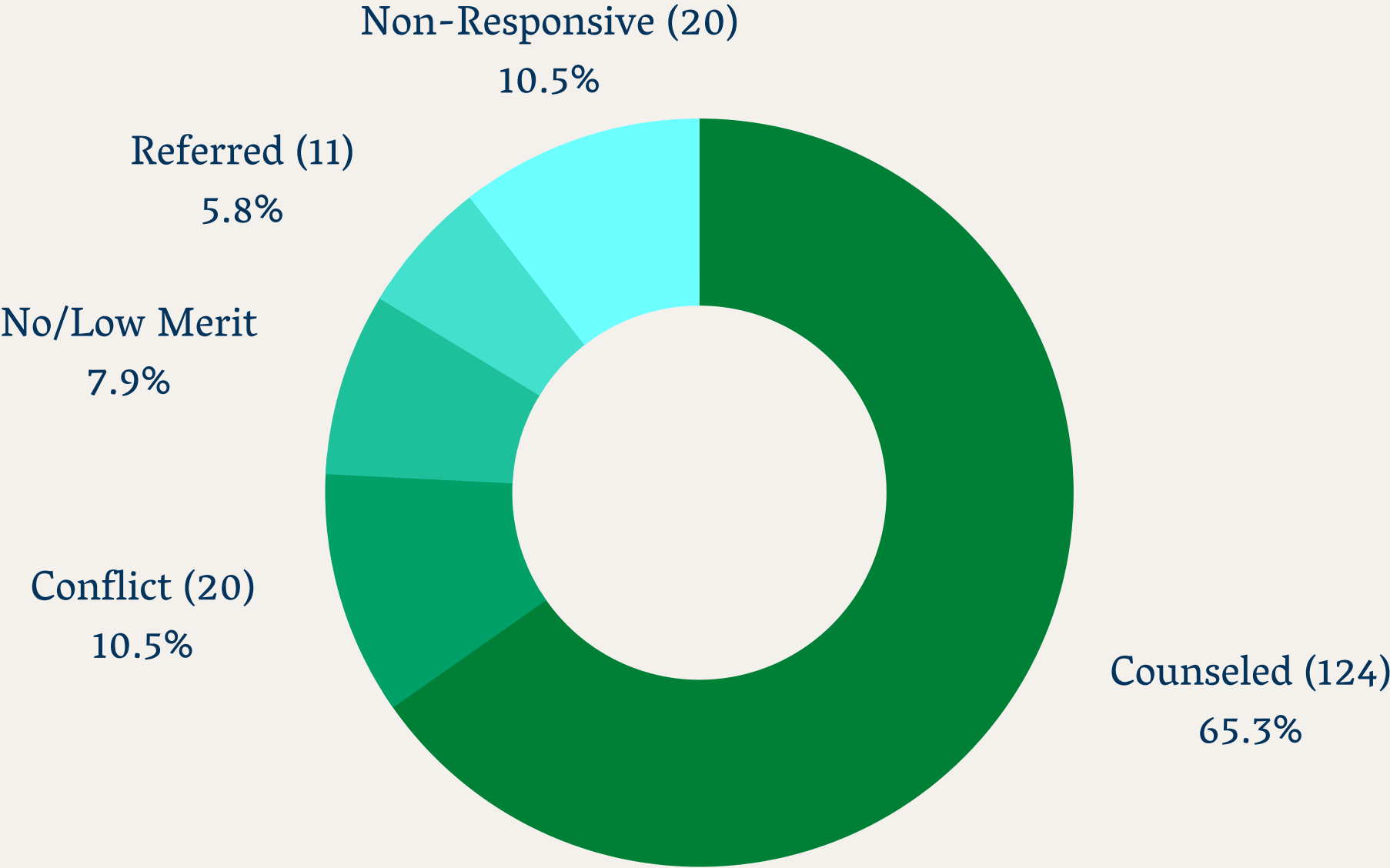
Every inquiry that passes through the initial conflict and scope screening stage receives a call back from NHLC's attorneys. Most of our inquiries are resolved with diligence, research, analysis, information, brief service and advice. They usually resolve within the month.

Inquiries that advance to external advocacy cases are often multi-year projects. We were retained to represent clients on 23 new cases in 2021, and currently manage 100 active cases.

When we are not able to advise for conflicts, policy, or scope reasons, we are often able to refer inquiries to alternative legal service options for help.

We do not believe that lack of financial means or indigency should bar access to justice. Our fee rates reflect our public interest mission and non-profit structure. We accept payment plans, and we can serve indigent clients on a pro bono basis.

In Contract Inquiries Closed in 2021 by Resolution



Help for Families & Communities

Representative Cases from 2021



Hawaiian Homelands

Among numerous other notable victories, NHLC successfully defended a DHHL lease cancellation in a Circuit Court lawsuit. This case protected the unique status of Hawaiian home lands trust lands and resulted in the recognition that beneficiaries' interests in their homesteads are constitutionally protected.



Natural Resource Protection

On behalf of Hui Kaloko-Honokōhau, NHLC overturned a decision to permit increased pumping of ground water for landscape irrigation that would have adversely affected a nearby historic fishpond complex and the surrounding near-shore environment.



Eviction Defense

Representation in complicated eviction matters has become critical during the COVID-19 pandemic. In one case, NHLC obtained a six-figure settlement for a family who was facing eviction from their family home based on a fraudulent land transfer. In another, NHLC successfully dismissed an eviction action for a Hau'ula family residing on a 999-year homestead lease.



Education

NHLC attorneys represented multiple 'ohana in advocating for increased access to kula kaiapuni education, including expanding distance learning options during the pandemic to ensure the continuity of education

Litigation Insights

01

**Education on Legal Rights
and Procedures-
Preserving Legal Claims**

02

**Criminal Justice Needs,
including Kia'i Legal Defense**

03

**Legislative Advocacy -
Making Gains & Getting
Ahead of Adverse “Fixes”**

04

**Preventative Services-
Minimizing the Need for
Future Costly Litigation**

05

**Impact Litigation-Avoiding
a Piecemeal Approach**

06

**Contracting, Governance,
and Intellectual Property
Needs for Practitioners,
Nonprofits, and
Entrepreneurs**

Strengthening Hawaiian Legal Leadership

Training Rising Talent



2021: 10 interns & volunteers

- Cultural access to Mauna Kea during the Governor's emergency proclamation
- DHHL's undivided interest lease program
- Legislative history of revocable permits
- Breach of trust lawsuits and contested case hearings
- UH Administrative Rules regarding Mauna Kea
- Prior versions of intestate succession laws

Providing Thought Leadership



- Access to Justice Conference
- Discussions with Hawaiian Homestead Associations
- UH Law Review Symposium on PASH
- Presentation to the U.S. Department of State's International Visitor Leadership Program
- UH Law School's Virtual Public Interest Fair.

Serving the Bar & Community



- Holding leadership positions within the Hawai'i State Bar Association, Native Hawaiian Bar Association, Council for Native Hawaiian Advancement, and other community and Hawaiian non-profits.
- Perpetuating Native Hawaiian practices, including, but not limited to hula, kapa making, lomilomi, mālama iwi kūpuna, and 'ōlelo Hawai'i.



Native Hawaiian

LEGAL CORPORATION

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Phone (808) 521-2302

www.nativehawaiianlegalcorp.org

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OFFICE OF HAWAIIAN AFFAIRS
Action Item

BOARD OF TRUSTEES

January 13, 2022

BOT #22-01

Action Item Issue: Approve the Formation of a Permitted Interaction Group (PIG) to Investigate the Activation of Kaka'ako Makai Site A, 1101 Ala Moana Blvd

Co-Prepared by:



Jan 9, 2022

R. Kalani Fronda
Ka Pou Kihī Kanaloa 'Āina, Land Director

Date

Co-Prepared by:



Jan 9, 2022

Casey K. Brown
Ka Pou Nui, Chief Operating Officer

Date

Reviewed by:

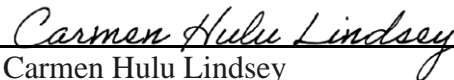


Jan 9, 2022

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

Date

Reviewed by:



Jan 10, 2022

Carmen Hulu Lindsey
Ke Kauhuhu o ke Kaupoku
Chair, Board of Trustees

Date

Action Item BOT #22-01: Approve the Formation of a Permitted Interaction Group (PIG) to Investigate the Activation of Kaka’ako Makai Site A, 1101 Ala Moana Blvd

I. Proposed Action

Approve the Formation of a Permitted Interaction Group (PIG) to investigate the activation of Kaka’ako Makai Site A, 1101 Ala Moana Blvd, including the following purview, members and term/duration:

Purview. The purview of the PIG is for the Board of Trustees (BOT or Board), BOT staff and OHA Administration staff to work together to investigate the business plan for activation of site A in Kaka’ako Makai.

Members. The membership of the Permitted Interaction Group is proposed as follows: (a) Trustee Carmen Hulu Lindsey; (b) Trustee Leina`ala Ahu Isa; (c) Trustee John Waihee, IV; and (d) Trustee Kalei Akaka. Trustee Carmen Hulu Lindsey will serve as the Chair of the Permitted Interaction Group and Trustee Leina`ala Ahu Isa will serve as its Vice Chair. Casey K. Brown, Ka Pou Nui, will function as the Project Manager.

Term/Duration. The term of the Permitted Interaction Group expires at the completion of the assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment, but in no event later than February 15, 2022.

II. Issue

Whether or not the Board of Trustees (BOT) will approve the formation of a Permitted Interaction Group, consistent with Hawai‘i Revised Statutes §92-2.5(b)(1), to investigate the activation of site A in Kaka’ako Makai, 1101 Ala Moana Blvd.

III. Background and Discussion

A. Applicable Law in Hawaii Revised Statutes, Permitted Interaction Groups

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

INTENTIONALLY LEFT BLANK

Action Item BOT #22-01: Approve the Formation of a Permitted Interaction Group (PIG) to Investigate the Activation of Kaka’ako Makai Site A, 1101 Ala Moana Blvd

B. Setting Context for the Formation of a Fourth Permitted Interaction Group

This action proposes the fourth Land and Commercial Property (LCP) PIG following the formation of the third PIG in October of 2021 to investigate the initial steps in the first phase of work for the development of Kaka’ako Makai. The first phase of work included activities to learn (e.g., due diligence, objectives, vision, understanding current zoning and market conditions), plan (e.g., mission, understanding constraints, entitlements, functionality, utility), and recommend (e.g., vision, outcome, values immediate, long-range impact, performance). The resulting report of the PIG made recommendations to activate the lands at Kaka’ako Makai, specifically sites A and E. The rationale for the proposed activities such as food vending, pop-up events and the launch of a proof of concept Hawaiian Cultural Center and Marketplace was shared. The proposed fourth PIG will pick up where the third PIG left off. A business plan and budget has been produced by OHA’s In-House Development Consultant for the activation of site A. The scope of work for this PIG will be to assess the business plan and associated budget.

IV. Funding Source

No dedicated funding is needed to authorize and form a PIG. Any resources needed to carry out PIG related activities will conform with existing budgetary (e.g., realignment), spending and procurement authorities, policies and procedures.

V. Recommended Action

Administration recommends approve the Formation of a Permitted Interaction Group (PIG) to investigate the activation of Kaka’ako Makai Site A, 1101 Ala Moana Blvd, including the following purview, members and term/duration:

Purview. The purview of the PIG is for the Board of Trustees (BOT or Board), BOT staff and OHA Administration staff to work together to investigate the business plan for activation of site A in Kaka’ako Makai.

Members. The membership of the Permitted Interaction Group is proposed as follows: (a) Trustee Carmen Hulu Lindsey; (b) Trustee Leina`ala Ahu Isa; (c) Trustee John Waihee, IV; and (d) Trustee Kalei Akaka. Trustee Carmen Hulu Lindsey will serve as the Chair of the Permitted Interaction Group and Trustee Leina`ala Ahu Isa will serve as its Vice Chair. Casey K. Brown, Ka Pou Nui, will function as the Project Manager.

Term/Duration. The term of the Permitted Interaction Group expires at the completion of the assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment, but in no event later than February 15, 2022.

Action Item BOT #22-01: Approve the Formation of a Permitted Interaction Group (PIG) to Investigate the Activation of Kaka’ako Makai Site A, 1101 Ala Moana Blvd

VI. References

The following action item references are provided for context:

- A. **LCP #3 – Report Action Item BOT #21-15:** Accept the Report of the Permitted Interaction Group re: to Investigate the Initial Steps in the First Phase of Work for the Development of Kaka’ako Makai, November 4, 2021
- B. **LCP #3 – Formation Action Item BOT #21-14:** Approve the Formation of a Permitted Interaction Group to Investigate the Initial Steps in the First Phase of Work for the Development of Kaka’ako Makai, October 26, 2021
- C. **LCP #2 – Report Action Item BOT #21-07:** Accept the Report of the Permitted Interaction Group re: to Investigate and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner, June 24, 2021
- D. **LCP #2 – Formation - Action Item BOT #21-05:** Approve the Formation of a Permitted Interaction Group to Investigate: and Recommend a Short List of Eligible Entities for Selection of a Development Consultant; Land and Commercial Property Policies; and the Development and Implementation of a Request for Proposal for a Community Planner, April 15, 2021
- E. **LCP #1 – Report - Action Item BOT #21-03:** Accept the Report of the Land and Commercial Property Permitted Interaction Group, April 15, 2021
- F. **LCP #1 – Formation - Action Item BOT #21-01:** Approve the Formation of a Permitted Interaction Group to Investigate the Development of Land and Commercial Property Policies and Strategies relating to the Development of OHA’s Nā Lama Kukui and Kaka’ako Makai Properties, January 28, 2021

VII. Attachment - None