

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

**Due to the threat of COVID-19, Governor Ige issued the most recent Emergency Seventeenth Supplementary Proclamation dated December 16, 2020 that suspend parts of Hawai'i Revised Statutes Chapter 92, Public Agency Meetings and Records to, among other things, enable boards to conduct business without any board members or members of the public physically present at the same location.**

**The OHA Board of Trustees will hold virtual meetings until further notice. The virtual meetings can be viewed and observed via livestream on OHA's website at [www.oha.org/livestream](http://www.oha.org/livestream) or listen by phone: (213) 338-8477, [Webinar ID](#)**

**Minutes of the Office of Hawaiian Affairs**  
**Board of Trustees**  
**MINUTES**  
**January 28, 2021**

**ATTENDANCE:**

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

**BOT STAFF:**

Colin Kippen  
Amber Kalua  
Kanani Iaea  
Lehua Itokazu

**ADMINISTRATION STAFF:**

Sylvia Hussey, Ka Pouhana / CEO  
Casey Brown, Pou Nui / COO  
Ramona Hink, CFO  
Raina Gushiken, CC  
Everett Ohta, CC  
Robert Klein, Counsel  
Chris Stanley, Procurement Mgr.  
Nietzsche Ozawa, CC  
Kevin Chak, IT Support

## **Call to Order**

**Chair Hulu Lindsey** Calls the Board of Trustees Workshop for Wednesday, January 28, 2021 to order at 10:00 a.m. Chair Hulu calls for 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	x	
TRUSTEE	LUANA	ALAPA	x	
TRUSTEE	BRENDON KALEI‘ĀINA	LEE	x	
TRUSTEE	KEOLA	LINDSEY	x	
TRUSTEE	JOHN	WAIHE‘E	x	
CHAIRPERSON	CARMEN HULU	LINDSEY	x	
			9	

At the Call to Order, **NINE (9)** Trustees are **PRESENT**, thereby constituting a quorum.

**Chairperson Hulu Lindsey** Before we begin, let me go over some quick announcements. Please mute your mics when you are not speaking. Trustees and our CEO please enable your cameras if you are able to do so. All other OHA staff please enable your camera and mic when addressing the board. If you get disconnected, we will pause the meeting for one minute and wait for you to log back on. After one minute we will proceed with the meeting. If you need to leave the meeting, please inform the Chair by announcing that you are leaving the meeting.

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 Judge Robert Klein our Board Counsel and Sylvia Hussey our CEO.

I would like to call upon our Ka Pouhana Sylvia to announce the administrative staff that is present.

**Sylvia Hussey, CEO** Thank you Chair and good morning Trustees. Today we have Casey Brown, Chief Operating Officer, Raina Gushiken, Senior Legal Counsel, Everett Ohta, Assistant Legal Counsel, Chris Stanley, Procurement Manager, Nietzsche Ozawa, Legal Counsel, and our IT team for support.

**Chairperson Hulu Lindsey** I would also like to introduce my staff, Colin Kippen, Lehua Itokazu, Kanani Iaea, and Amber Kalua.

## **Public Testimony**

I would like to move on to Public testimony on items listed on the agenda, do we have anyone signed up?

**Board Secretary** Yes, we have one person signed up – Germaine Meyers.

**Chairperson Hulu Lindsey** before Germaine speaks, I will read the testimony requirements. I will review our Public Testimony Guidelines. Public Testimony should be limited to matters listed on the meeting

agenda and will occur during the Public Testimony portion of the agenda. Once the public testimony section on the agenda has concluded, oral testimony online will no longer be accepted. 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 be called again before the conclusion of the public testimony section. State your name, organization if applicable, agenda items you are testifying on, and your position on each of the agenda items. If you begin to address other issues not on the meeting agenda, I will call you Out of Order and direct you to limit your testimony to items listed on the agenda.

Oral testimony online will be limited to 5 minutes. A timer will be on the screen to count down the time and a chime will sound when you have 30 seconds left and the second chime when your testimony time expires. Your mic will automatically be muted once you have completed your oral testimony, or if your allotted time for testimony expires.

**Germaine Meyers** Aloha Chair Hulu, Vice Chair Ahu Isa, Board members, and Lāhui. My name is Germaine Meyers and I am an OHA beneficiary for beneficiary advocacy and empowerment. Also, a Nanakuli homesteader lessee. I would like to express my support to action item BOT #21-01: Approve the formation of a Permitted Interaction Group (PIG) 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. I specifically support the PIG members; Trustee Hulu Lindsey, Trustee Ahu Isa, Trustee Waihee, and Trustee Akaka. I feel that all these Trustees have leadership roles on the Board as well as expertise that will be an asset to the PIG. I say this with conviction especially after I researched all PIGs and Ad Hoc committees for the past two boards with leaderships from 2017 – 2018, under BOT Chair Machado and Vice Chair Ahuna and from 2019 – 2020, under BOT Chair Machado and Vice Chair Lee. What I discovered was that every single Ad Hoc Committee and PIG included in this member composition either the BOT Chair, BOT Vice Chair, or both. In 2017 the Ad Hoc Committee on Maunakea was led by Trustee Ahuna on June 8<sup>th</sup>. On August 1<sup>st</sup> approval of Ad Hoc Committee on Grants and Sponsorships member was Machado and Waihe'e. In 2018, on May 10<sup>th</sup>, presentation on PIG findings for contract 21 on 3147, also May 17<sup>th</sup> and May 31<sup>st</sup>, September 6<sup>th</sup> and October 2nd, no members were given the minutes. On July 26, Ad Hoc committee for OHA strategic planning 2020 members were Ahuna and Robert Lindsey and staff. In 2019 on January 24<sup>th</sup>, the PIG on Organization Guidance, members were Machado, Lee, Robert Lindsey, and Waihe'e, reports were provided on March 18<sup>th</sup> and April 4<sup>th</sup>. On April 4<sup>th</sup> it was - *inaudible*

**Trustee Lee** Point of clarification Madam Chair.

**Germaine Meyers** Can we stop the clock because I am being interrupted by a Trustee.

**Trustee Lee** You are giving wrong information.

**Germaine Meyers** I'm giving information about PIG's. *Inaudible*

**Trustee Lee** Point of clarification. I believe I have the floor.

*Inaudible*

**Chairperson Hulu Lindsey** Trustee Lee

**Trustee Lee** Germaine Meyers just stated that Trustee Machado, myself, Trustee Robert Lindsay and Trustee Waihe'e were members of that permitted interaction group for governance; that is incorrect. Trustee Lindsey, you were on that PIG, not Trustee Waihe'e.

**Germaine Meyers** If you will hear me, I am going to speak about the next one which was the L-Lāhui PIG.

**Trustee Lee** Thank you Madam Chair for allowing to point.

**Germaine Meyers** Trustees the formation of the PIG's transferred from one type of design to a next and if I had been given the opportunity, I could explain all the different PIG's transformations and reportings. But due to being interrupted, let me go ahead and just try to see if I can summarize since a trustee had interrupted my public testimony. Again, on April 4<sup>th</sup>, a formation of PIG to investigate development of L-Lahui members Machado, Lee, Robert Lindsey, and Hulu Lindsey with findings on May 16<sup>th</sup>, May 20<sup>th</sup>, January 23<sup>rd</sup>, 2020. I am really flustered and would like to ask that Trustee Lee not interrupt the beneficiaries, especially when we are giving our testimony; most of all, go and do your research before you tell me that I am not giving factual information. Proceeding on May 30<sup>th</sup> formation of a PIG to investigate in corporation of have completed and approved work products of the board governance framework. PIG L-Lāhui, policies PIG, BOT Bylaws - and the only reason I'm explaining all of this is because I was interrupted, where I wanted to give a condensed version. Now I'm going to give you the whole thing. T-level policies PIG and CEO level policies and alignment and update of existing Board Governance documents - members, Machado, Lee, Robert Lindsay, Hulu Lindsey. Reports were given on September 26, October 17 and November 7. Continuing on June 6, there was the formation of a PIG to investigate complaints against a trustee for alleged violations of the trustee Code of Conduct, involving allegations that the trustee breached the duty of care of loyalty to OHA and the duty of both to obey and support the board's decisions. It was Trustee Lee, Trustee Hulu Lindsey, and Trustee Waihee. Reports were on November 7 and November 2011. The last committee that was in 2020, there was only one. September 10th, to approve the formation of the PIG to investigate the development of T-Level trustee policies for OHAs Board Governance Framework – Machado, Lee, Robert Lindsey, and Waihee. Reports on October 22nd and October 29, 2020. E hana kākou.

**Chairperson Hulu Lindsey** Thank you. Okay, I'm going to move on to our minutes, approval of minutes. Can I get a motion to accept the minutes for January 13, 2021?

### Approval of Minutes

**Trustee Akaka** I so move.

**Trustee Ahu Isa** Seconds the motion.

**Chairperson Hulu Lindsey** Roll call

Minutes: January 13, 2021						
	1	2	'AE (YES )	'A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI <b>AHU ISA</b>		X	X			
TRUSTEE DAN <b>AHUNA</b>			X			
TRUSTEE KALEI <b>AKAKA</b>	X		X			

TRUSTEE KELI'I	AKINA			X			
TRUSTEE LUANA	ALAPA			X			
TRUSTEE BRENDON	LEE			X			
TRUSTEE KEOLA	LINDSEY			X			
TRUSTEE JOHN	WAIHE'E			X			
CHAIRPERSON HULU	LINDSEY			X			
<b>TOTAL VOTE COUNT</b>				<b>9</b>			
<b>MOTION:</b> <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED							
<b>Motion passes with seven (9) YES votes and one (0) EXCUSED vote.</b>							

**Chairperson Hulu Lindsey** I would like to move on to new business and I will be calling on Sylvia.

### **New Business**

**A. 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.**

**Sylvia Hussey, CEO** Thank you Chair. Aloha Trustees, the action item is before you and is consistent with our previous practice PIG construct is a board construct. It is based in chapter 92; regarding formation of permitted interaction groups. The action item summarizes the purview, the members of the PIG, the time period, and this first discussion of the formation of the PIG. The PIG's reports come to the trustees without discussion; and then a third meeting for action. And that's the consistent process that you have used to form permitted interaction groups in accordance with HRS Chapter 92. The content and the background is there; the overview and then the scope of the permitted interaction group is there, presented for your discussion and action.

**Chairperson Hulu Lindsey** Okay, Trustees are there any questions or discussions?

**Trustee Ahuna** Chair, a quick question. This question is for our CEO, do we have policies that exist already that will allow us to go on even though we don't have a PIG?

**Sylvia Hussey, CEO** Yes. So, on page five, at the top of page five, it talks about the related policies around the commercial properties. Yes, there are other policies, financial policies that also need to be addressed, and is a matter of discussion for the Resource Management Committee.

**Trustee Ahuna** Okay, Thank you.

**Sylvia Hussey, CEO** So on the top of page five, just articulate those policies that relate to the commercial properties that are within the scope of this permitted interaction group, but to your point, there are other policies that the board needs to work on.

**Trustee Ahuna** I was just reading the policy, and it just sounds really broad. I just wanted to ask the question - I inherited the CLA audit committee. For me, it didn't feel good to be between me and the trustees. It didn't feel transparent. I had comments that came back. So I was just saying, why can't we just do all the policies? Why can't administration do what they do and we just continue doing what we have to do and create that? But I just don't understand, like, why would we have put something between us?

**Sylvia Hussey, CEO Chair**, can I respond to that? So, the permitted action group is meant to be very focused on a very narrow issue and so that's why it's written that narrowly and that's all the permitted interaction group can talk about, right? They can't talk about anything else. They can't talk about other policies; they can only talk about this specific purview. They can only talk to themselves about that they can't talk to any other trustees about that. Right? That's a violation of the pig rules, and no serial communication, the work that you're describing that administration can continue as a parallel to policy work. So that work that you just described, is a discussion with the resource management committee leadership about a policy work related to all of the important other policies that were worked on, or proposed to work on from a previous PIG as well.

**Trustee Ahuna** Thank you Sylvia, I don't disagree on the group or anything like that. But why do we want to take on all that work? When we have administration? That's why we have administration to do that work. I just don't, don't understand it, and I just was looking for, you know, more feedback from other trustees. Thank you.

**Trustee Lee** Madam Chair, can I get a point of clarification from Ka Pouhana?

**Chairperson Hulu Lindsey** Go ahead Trustee Lee.

**Trustee Lee** Mahalo, Ka Pouhana, you just stated about the policies and the related work to the pig, and that it would be in relation to the RM committee, and the work that they need to do on those on those specific policies and how they would relate to this pig. Can you talk a little bit more and clarify? Because RM leadership is on the pig, that sounds a lot like lateral work, which is not permitted within the permitted interaction pig, because we all nine of us are members of that committee, so if the RM committee is going to be doing this work in conjunction with the work and how it relates to the PIG. Seems like all nine of us are doing lateral work and are a part of this permitted interaction group, and I don't see OIP being okay with that.

**Sylvia Hussey, CEO** No, and it wasn't the intent. At the top of the page five it was intended to call out those policies that are within the parameters of the PIG and just focus on that. The other policy work that came as a result of the recommendation of the previous formulated PIG, those recommendations still need to be discussed among the RM leadership, as to taking those recommendations and then what to do about those recommendations; and what is the appropriate context for that work, is appropriate for that? I don't want to speak for Trustee Waihee of course.

**Trustee Lee** To that point on page seven, under the purview on number two. It says part of the purview is the implications of fiscal policies impacts on land and commercial properties. It specifically calls out investing and spending, it's going to be more than that it's going to involve the debt policy as well. So, isn't that just what you said? If the purview of the pig is the implications of these policies, which haven't yet been identified or worked on by the RM committee, and the RM committee has to take this consideration of whether or what to do with it? One, isn't that the lateral work that I was just talking about, and two, how can we study and and look into investigate development of commercial properties, and the strategies related to that development, if we don't know how we're going to spend money or borrow money, or invest money, and

the implications of the properties into the portfolio? How all of that's going to be done if those other components aren't addressed yet? And to that point on page four, part of setting the context on C it says that the settlement of Kaka'ako Makai created a substantial commercial real estate portfolio for OHA elevating the Native Hawaiian Trust Fund to new heights. I'm not aware, in fact, I'm positive that Kaka'ako Makai is not in the trust. That was identified by the previous PIG. The Native Hawaiian Trust does not look at, see or even know of, our commercial properties. So, it's not a part of the trust yet.

**Sylvia Hussey, CEO** Trustee Lee, correct. The Action item was not when the action item was drafted in the scope. Definitely, the Kaka'ako Makai policy, the current policy that exists that was amended in 2019; and pushed out to 2021 is the policy that's being referenced there. It is the net, the change in policy from 10% to 20%, gross revenues that go to grants. And then from 30 to 50% of the net Kakaako Makai proceeds that go to fund the legacy land programs. That particular policy has to be addressed. Otherwise, we're in that sunset period. So that was the intent for that specific policy, as it relates to what happens in Kakaako Makai and the current policy that your trustees have set to put over in funding the legacy land programs. It wasn't meant to formulate broader kinds of policy, other than for the Kakaako Makai. What you're describing, and what's described as the new heights of portfolio is really the conceptual that now instead of only 300 or 400 million in financial assets, that there's now a 200 million land commercial asset, conceptually, of resourcing for the trust to be accountable for. So, it wasn't meant to imply that it was in an endowment, because as you know, and as the trustees know, we don't have an endowment policy. We have a land policy, we have Kakaako Makai, we have an investment, but we do not have an umbrella endowment policy.

**Trustee Lee** Okay, so that being said, this is the issue that I have, even though that wasn't the intent, should this pass, that is what it says. So, I'm not concerned about the intent. I'm concerned about what it says. Whether it's a conceptual elevation for later for an endowment policy, that is not what it says. It says that it was that it elevated that portfolio. The policy about the Kakaako Makai (KM) in the changes we made to increase the spend of the revenue from KM. It doesn't even mention that, that specific policy. It specifically mentions investment and spending. There is no investment policy for Kaka'ako Makai. So, even though you're saying that's not the intent, should this pass the way it is, because it specifically says investment and spending, that gives this permitted interaction group the purview to go forward and work on in the investment and spending policy, as well as other policies. So, that's a major concern that I have of this. I understand what you're saying about the intent and what you're saying you want it to accomplish but that's not what this says. When it comes to OIP, they don't care what the intent is, they care what it says. So that's where that's one of the issues that I have.

**Chairperson Hulu Lindsey** Thank you Trustee Lee. I am going to lean to Judge Klein, looking at the action item to investigate the development of land and commercial property policies and strategies not to make any decisions but to investigate, relating to the development of OHA's Nā Lama Kukui and Kaka'ako, Makai properties. Judge, can you weigh in on a Trustee Lee's concern?

**Robert Klein, Counsel** Thank you, Chair. I'll give it a try it from what I understand this first time I'm hearing about this. Yeah, I would say that the PIG's grasp is large and reaches far when it comes to this. If you're investigating existing policies and their application to the development of OHA properties, I think the PIG would have to identify what policies they were investigating how they relate to the development of these properties. I think it's a quite a broad mandate for the PIG but I don't see it being inconsistent with other pigs we formed. I would expect, the three step process resulting in a report that would pin all these things down. And that the board would be, you know, well served with a with a report from the PIG covering these items. I anticipate the next step is let's really talk about the nitty gritty of development of these properties. Now that we know they're consistent, or if not inconsistent with policies that we have. So, you know, I would trust the

PIG to come up with a report that helps the entire board through this, through these processes, and lays the groundwork for the development. As we know, these properties of land have been laying pretty much fallow for too long. So anything that advances the board's information and knowledge about the development and possibly new policies. Seems to be well within the purview of a pig.

**Trustee Lee** Point of information Madam Chair.

**Chairperson Hulu Lindsey** Yes, Trustee Lee.

**Trustee Lee** Thank you. Just for your information Judge, since you are saying this is the first time you're hearing it, you should be aware that the time stamp of this PIG is December 31, 2021. That's an entire year before the rest of the trustees get anything back from this permitted interaction group, which is part of the reason why I was concerned about the broad reach versus having very specific smaller pigs or the shorter time periods. So, you should be aware of that, that they're asking for an entire year, without any input from the public, or the rest of the trust.

**Chairperson Hulu Lindsey** Trustee Lee, we would like that shortened. I don't intend to go past three months, so if you'd like that time shortened. Our idea of a PIG is going to be short pigs at a time as we accomplish what we want to accomplish, another PIG will probably come about until we can turn the implementation over to our administration. So, it's, it's one thing at a time, and right now is strictly what it says investigate the development of land and commercial property policies and strategies relating to the development of these two properties. So, I expect it to be a very short PIG. If you would feel more comfortable in shortening the date, I would be happy to do that as an amendment.

**Trustee Lee** I cannot amend anything because we don't have anything on the floor yet. I was just pointing out that information for Judge because that was relevant to what he was saying. Thank you, Madam Chair.

**Chairperson Hulu Lindsey** Any other discussion?

**Trustee Akaka** Moves to approve to 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.

**Trustee Waihe'e** Seconds the motion.

**Chairperson Hulu Lindsey** Roll call.

**Trustee Lee** Madam Chair, I would like to have a discussion.

**Chairperson Hulu Lindsey** Yes.

**Trustee Lee** I will yield to the floor to someone speaking in favor of the motion, Madam Chair. I will yield the floor to Trustee Akaka since she made the motion.

**Chairperson Hulu Lindsey** Trustee Akaka, do you have anything to say?

**Trustee Akaka** Nothing to add, mahalo.



**Chairperson Hulu Lindsey** Trustee Lee.

**Trustee Lee** mahalo Madam Chair. I rise at this time to speak against this motion. This permitted interaction group sets out to remove the voices of the Board of Trustees for an entire year. I understand that Trustee Hulu Lindsey said she's willing to amend that but as it stands right now, they're asking for an entire year. That is saying four of us are going to be investigating several large components with absolutely no input from the rest of the Board of Trustees. This is in no way transparent. They're also adding in the development, alignment, and updating of the land and commercial property policies. It's what specifically it says in there. I understand Ka Pouhana says, that's not their intent, that's what it says. So while we are stating that it's related to the development Nā Lama Kukui and Kaka'ako Makai, we cannot set these types of policies or investigate these type of policies without impacting the rest of OHA's properties portfolio and the agency as a whole, which would be outside the purview of the permitted interaction PIG. You can't investigate those policies and narrow it just to two properties, when policies such as investment spending and debt impact the entire organization. How can this group of four trustees understand the implications and the impacts of fiscal policies when OHA currently doesn't have fiscal policies in place? That takes landholdings into consideration as it relates to the overall portfolio of the Native Hawaiian trust, which we just heard a Ka Pouhana say that it's the intent of that later down the line. That's not where it is, we don't currently have those policies in place. They can't investigate how they would impact this because those policies don't exist. The PIG needs to be more narrowly scoped. This development component should be the last of all the other permitted interaction groups, which by the way, was approved by the report of the permitted interaction group back in 2019, of the governance model of the Office of Hawaiian Affairs. What was approved, was the bylaws PIG, then the investment PIG, T-level policy PIGS then the C-level policy pigs, this is circumventing all of that which was already approved, and has not been reversed by the Board of Trustees. A policy pig report that Germaine Meyers spoke about that was reported back in October of 2020 laid out the importance of the changes that needed to be addressed regarding the investment, the debt, and the spending policies. Is all of that just been forgotten? How, how is OHA going to pay for these possible developments that they're investigating if we don't have all these pieces in place? Again, Madam Chair, I rise at this time for these reasons to speak against this. This broad of policy permitted or not policy, this broad of a permitted interaction group.

**Chairperson Hulu Lindsey** Thank you Trustee Lee. Trustee Ahuna.

**Trustee Ahuna** I would like to offer up some comments at this time. For me, the issues are the timeline. I think it's way too long. Another thing, the scope is way too broad. I'm okay with it but I struggle with the timeline. The timeline and the broad scope. I just wanted to be really specific. Thank you.

**Chairperson Hulu Lindsey** I would entertain an amendment to the motion to shorten the time if you so desire.

**Trustee Keola Lindsey** I had a question. On page two of the action item that lays out, I guess the sequences of a permitted interactive group, into HRS 92. The group will investigate B, then submit their report, and then C. will deliberate and discuss. During the deliberation and discussion if there are concerns about or questions about the results of the investigation, does the pig still exists to work on those? Or is the pig disbanded once step B happens? I'm just wondering at what opportunity do we have to engage?

**Chairperson Hulu Lindsey** At point C the entire board is engaged.

**Trustee Keola Lindsey** Does the PIG still exist for the direction to be given back to the PIG?

**Chairperson Hulu Lindsey** I believe that it can continue to exist. It can also close down depending on the decision of the whole board.

**Trustee Keola Lindsey** I see. Thank you, Madam Chair.

**Trustee Lee** Point of clarification, Madam Chair.

**Chairperson Hulu Lindsey** Yes, Trustee Lee.

**Trustee Lee** I was looking on the OIP website for guidance and found that once the Permitted Interaction Group presents its report, the group is done with its work. This opinion was the result of a PIG that was created by a Neighborhood Board. Each time the PIG reported to the Neighborhood Board, the Board would offer input and the PIG would resume its work. OIP contends that if the PIG resumes work after the report is given, it is no longer a PIG and instead becomes a Standing Committee that must comply with Sunshine Law. Last year, a PIG was assigned to investigate a trustee; and after the report was presented to the Board, the PIG was asked to further its investigation. Because the investigative PIG had already presented its report to the Board, its work had been completed so the investigative PIG did not resume any further investigation. The Board would have had to form another PIG to perform another investigation.

**Chairperson Hulu Lindsey** Thank you, thank you for that input. So, I would say that if at the end of this period, and the board doesn't agree with its recommendation, it could go back to RM. We could send it back to our RM.

**Trustee Lee** Madam Chair, then why not just have the RM do the work to begin with?

**Chairperson Hulu Lindsey** Because I thought that we could move it faster with a PIG. Our RM meets every two weeks, and I thought we could meet every day, we want to get through this. We want Kakaako to move. We want it to move with everybody. But because of sunshine law, it would be difficult. This PIG is put together so that we can move faster. And in the end, it's going to engage the entire board, of course. How can four people make a decision for nine people? You know, that's not proper. So that's not our intention at all. Our intention is to climb the mountain faster than we have in the last eight years.

**Trustee Ahuna** Then why do we need a PIG?

**Chairperson Hulu Lindsey** Call for the vote.

**Trustee Lee** We are still in discussion, Madam Chair. You don't have the authority. Madam Chair, you don't have the authority to end debate. It's up to the body to debate; you can entertain a motion, but you can't do that.

**Chairperson Hulu Lindsey** Instead of debating will you please continue.

**Trustee Lee** I would be happy to. I have more questions. On page three of the action item, it talks about the height limit of 150 and under the upcoming possible transit-oriented development, which Na Lama Kukui would fall within, it says that the current height restriction is 150 feet. Our current footprint and how that footprint could be increased once the TLD comes through, but it doesn't speak at all to the height, because the height will change as well, once the TLD comes through, it will no longer be limited to just 150 feet. But

it doesn't speak to that. Under the long-term liabilities, it gives our current financing and where we will be with the balloon payment. The substantial collateral that was engaged when we refinanced at the 3.6%. but it doesn't say what that collateral is. I happen to know what it is, but that's a very important component for the rest of the board to know. I would appreciate it if a Ka Pouhana would share with the rest of the board what that substantial collateral is. Before Ka Pouhana speaks, the four trustees, this says that Ka Pouhana is going to be the project manager. I am aware of her qualifications and the outstanding job she does as a project manager, because she project manages a lot of the permitted interaction groups in the past. She's no longer to the Chief Operating Officer. She's now a CEO. Quite frankly, with the salary that we approved for Ka Pouhana and the duties of a Chief Executive Officer, this is a way overqualified person for project management. A large portion of board staff were requested, and they went to be project management trained. Majority of administration is project management trained. This is the most expensive project manager I've ever heard of. I would hope that our CEO has more important things to do than project manager permitted interaction group. We have a new COO in place and a new CFO in place. I don't understand why the CEO is being tasked for project management. Thank you, Madam Chair.

**Chairperson Hulu Lindsey** Okay, any other discussion?

**Trustee Akina** I call for the question.

**Chairperson Hulu Lindsey** Thank you, roll call.

A. 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.						
	1	2	‘AE (YES )	‘A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA		X	X			
TRUSTEE DAN AHUNA				X		
TRUSTEE KALEI AKAKA			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			
<b>TOTAL VOTE COUNT</b>			<b>7</b>	<b>2</b>		
<b>MOTION:</b> <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED						
<b>Motion passes with seven ( 7 ) YES votes and one (0) EXCUSED vote.</b>						

**Chairperson Hulu Lindsey** Thank you Trustees. We will now move on to Community concerns and celebrations. Do we have anyone?

**Board Secretary** Yes, we have one person signed up. Germaine Meyers.

**Germaine Meyers** Aloha Chair Hulu, Vice Chair Ahu Isa, Board members, and Lāhui. My name is Germaine Meyers, I am an OHA beneficiary, for beneficiary advocacy and empowerment, I am also a Nanakuli Hawaiian homestead lessee. I would like to share my community concerns related to attacks on beneficiaries and others. Trustees, Chair, myself and other members of the lāhui read Ka Wai Ola (KWO). In KWO it allows two ways for the lāhui to share our mana‘o. We can write a letter to the editor or op-ed/opinion piece. I sent Sylvia, Ka Pouhana my interest in sharing my mana‘o with a monthly op-ed like others have been doing to represent a voice from Nanakuli Hawaiian Homestead and West Oahu. I am still waiting for Sylvia to respond to my email. I truly appreciate the opportunity. I will keep in mind the guidelines as they are outlined in KWO. In specific, it states that KWO will not print letters or op-eds that attack, slander, defame or demean an individual or organization. My concern is that this guideline should also apply to Trustees. We all know the difference between pono communication and pilau communication. Pono Communication expresses vision, light, and truth – the facts. Pilau communication – attacks, slander, defames, and demeans an individual or organization. Pono communication reflects Chair Hulu Lindsey sharing a vision for OHA. Pono communication reflects Trustee Alapa sharing a vision of OHA to be a billion dollar trust. First time I hear a Trustee share a vision for OHA to be a billion dollar trust. Trustee Ahu Isa, sharing a New Years resolution. My concern is that Trustee Lee has been given a platform to express communication via KWO Trustee messages, that violate the KWO guidelines that the lāhui must adhere to. Most recently, this months KWO, January 2021, Trustee Lee’s message is titled *I don’t have time*. Specifically, Trustee Lee tells us of a young member of the Civic Club in their early 30’s resign as a committee chair, saying they don’t have time. He further clarified that the person volunteers at their church, like I do. Has a demanding job, like I do. And use to sit on the Board of Directors for a non-profit and recently got married, I am not a Civic Club member but I’m sure Civic Club members can identify from these details who the person may be. Or maybe a small hand of people fit this parameter. Trustee Lee goes on to explain how he and his family made time for many things. He concludes, pointing out millennials and generation Z’s but also admonishes Kamehameha schools and the association of Hawaiian Civic Clubs and how they speak about leadership engaging opi’o. He says *we need to teach them to be more committed, I don’t have time should not be in their vocabulary. If things are important, we always have time*. He says the question really is *What’s important? Not having time or making time?* My concern is that Trustee Lee’s message; attacks, slanders, defames, and demeans an individual and these important organizations. We all want to do many things and I think its unrealistic for Trustee Lee to say that we have unlimited time to do everything. I have many titles, I am a daughter; I am a sister; I am a church member; I am a volunteer; I am a worker; I am a Auntie; I am a niece; I am a granddaughter. All these rolls are important to me but my time does not allow me to do all these things in grandeur ways. I hope to hear back from Ka Pouhana regarding my request to share my mana‘o in KWO about Nānākuli Hawaiian Homestead and West O’ahu, my hometown. E hana kākou.

**Chairperson Hulu Lindsey** Mahalo, Ms. Meyers. At this time can I get a motion to recuse ourselves into executive session pursuant to HRS Section 92-5. We will come back into open session once we are done with executive session.

**Trustee Waihe’e** Moves to recuse

**Trustee Akaka** Seconds the motion.

**The Board recuses into executive session at 10:50 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	X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA			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			
<b>TOTAL VOTE COUNT</b>			<b>9</b>			
<b>MOTION:</b> <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED						
<b>Motion passes with seven (9) YES votes and one (0) EXCUSED vote.</b>						

**The Board Comes back to open session at 11: 06 a.m.**

### **Announcements**

**Chairperson Hulu Lindsey** Our next Board meeting is scheduled for February 11 at 10 a.m. and the first BAE committee meeting will be on February 3<sup>rd</sup> next Wednesday at 1:30 p.m.

### **Adjournment**

**Trustee Akaka** moves to adjourn the meeting.

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

**Chairperson Lindsey** calls for a **ROLL CALL VOTE**.

Adjournment							
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA			X			
KALEIHIKINA	AKAKA	X		X			
KELI'I	AKINA			X			
LUANA	ALAPA			X			
BRENDON KALEI'AINA	LEE			X			

KEOLA	LINDSEY			X			
JOHN	WAIHE'E		X	X			
CHAIR CARMEN HULU	LINDSEY			X			
<b>TOTAL VOTE COUNT</b>				7		0	0

**MOTION: [ ] UNANIMOUS [ X ] PASSED [ ] DEFERRED [ ] FAILED**

**Chairperson Carmen Hulu Lindsey** adjourns the Board of Trustees meeting at 11:07 a.m.

Respectfully submitted,

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Lehua Itokazu  
Board Secretary

As approved by the Board of Trustees on February 25, 2021.

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Carmen Hulu Lindsey  
Chairperson, Board of Trustees

Attachments:

1. 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.

**OFFICE OF HAWAIIAN AFFAIRS**  
Action Item


**BOARD OF TRUSTEES**

**January 28, 2021**

**BOT #21-01**

**Action Item Issue:** 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.

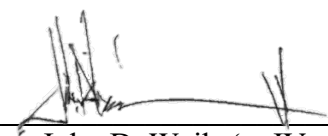
**Prepared by:**

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

1/23/2021

Date

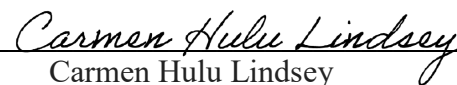
**Reviewed by:**

  
\_\_\_\_\_  
John D. Waihe'e, IV  
Luna Ho'omalua o ke Kōmike Resources Management  
Chair, Committee on Resource Management

**1/23/21**

Date

**Reviewed by:**

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

1/23/21

Date

## 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.

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### I. Action Item:

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.

### II. Issue:

Whether or not the Board of Trustees (BOT) will approve the formation of a Permitted Interaction Group (PIG), consistent with Hawai'i Revised Statutes §92-2.5(b)(1), 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.

### III. 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.

### B. Setting Context for the Development of Commercial Property Policies and Strategies – Nā Lama Kukui



Figure 1. – Nā Lama Kukui, Nimitz Highway View



**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.

Nā Lama Kukui (NLK), consists of 217,012 square feet (4.98 acres) and is zoned IMX-1 (mixed-use industrial). The maximum height limit for the property is 150 feet. The floor area ratio (FAR) is 2.5, but under the Transit Oriented Development (TOD) neighborhood plan, that would increase to 7.5 on the Iwilei side and 3.9 on the Nimitz side. The property was built in either 1927 or 1934. Due to its age and the unique architecture of its Iwilei Road frontage, this building is eligible for listing on the State Register of Historic Places.

Any building permit application involving a significant change to this frontage would require approval from the State Historic Preservation Division. The building on the NLK property is leased as well as used by OHA as administrative offices. Currently, OHA occupies 34.4 percent (46,802 square feet) of the total leasable area of the NLK building (136,062 square feet). The remainder of the building offers a unique choice of office, retail, warehouse and storage spaces. The NLK building has flexible floor plans with high ceilings and skylights on many spaces on the second floor, which create an open and inviting atmosphere. OHA believes that the property has potential beyond its current utilization and wishes to use the review to develop a real estate master plan for the property.

**NOTE L - LONG-TERM LIABILITIES**

On August 14, 2012, OHA entered into a \$21,370,000 long term note payable with a bank, to finance the purchase of Na Lama Kukui. The interest rate is fixed at 3.35%. The note is due in full on September 1, 2022 and is collateralized by a mortgage lien on the property, assignment of OHA's right, title and interest as landlord in and to any rents under tenant leases and rental agreements on Na Lama Kukui and security interest in all furniture, fixtures, and equipment. On July 26, 2013 the agreement was modified to increase the interest rate to 3.6% and include certain financial covenants. At June 30, 2019, OHA was in compliance with those covenants. In the event of default, OHA is liable for the immediate repayment of 53.2% of the outstanding principal balance of the loan, together with accrued interest and reimbursement of the fees and costs incurred by the bank in connection with the loan. The remaining 46.8% of the principal balance of the loan and all other obligations under the loan shall be enforced solely against the collateral.

As of June 30, 2019, future principal and interest payments from direct borrowings for the note payable are as follows:

<u>Fiscal Year ending June 30,</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2020	\$ 618,274	\$ 679,319	\$ 1,297,593
2021	640,903	656,691	1,297,594
2022	664,360	633,234	1,297,594
2023	<u>17,212,948</u>	<u>154,543</u>	<u>17,367,491</u>
	<u>\$ 19,136,485</u>	<u>\$ 2,123,787</u>	<u>\$ 21,260,272</u>

**Figure 2. – Note L - Long Term Liabilities, Excerpt Financial Statements and Independent Auditor's Report, June 30, 2019**

## 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.

Additional property information is as follows:

- Location: The property is located on a city block bound by N. Nimitz Highway to the south, Iwilei Road to the north, Sumner Street to the east, and Pacific Street to the west. The immediate surrounding properties feature a mixture of light industrial, retail and office buildings. Address: 560 North Nimitz Highway, Honolulu, Hawaii 96817.
- County Zoning: IMX-1, Industrial-Commercial Mixed-use District (150 –feet height limit)
- Tax Map Key Designation: Division 1, Zone 1, Section 5, Plat 10, Parcel 15
- Tenant Mix: Retail, warehouse, office, restaurant

### C. Setting Context for the Development of Land Policies and Strategies – Kaka'ako Makai

Act 15, Session Laws of Hawai'i 2012 transferred 10 land parcels in Kaka'ako Makai (KM) to the Office of Hawaiian Affairs (OHA) to settle the past due portion of ceded land revenue claims. The 10 parcels conveyed, amounted to approximately 30 acres of underutilized commercial property with an estimated value of \$200 million. These parcels were substantively conveyed to OHA on July 1, 2012. Prior to this acquisition, OHA trust fund assets were primarily comprised of cash and investments. The settlement, by itself, created a substantial commercial real estate portfolio for

OHA, elevating the Native Hawaiian Trust Fund to new heights. To rise to the new challenges, the Board of Trustees participated in two rounds of workshops from May 22 to 25 and August 20 to 21 (2012) to establish guiding principles and policies for property management and development of Kaka'ako Makai (KM).

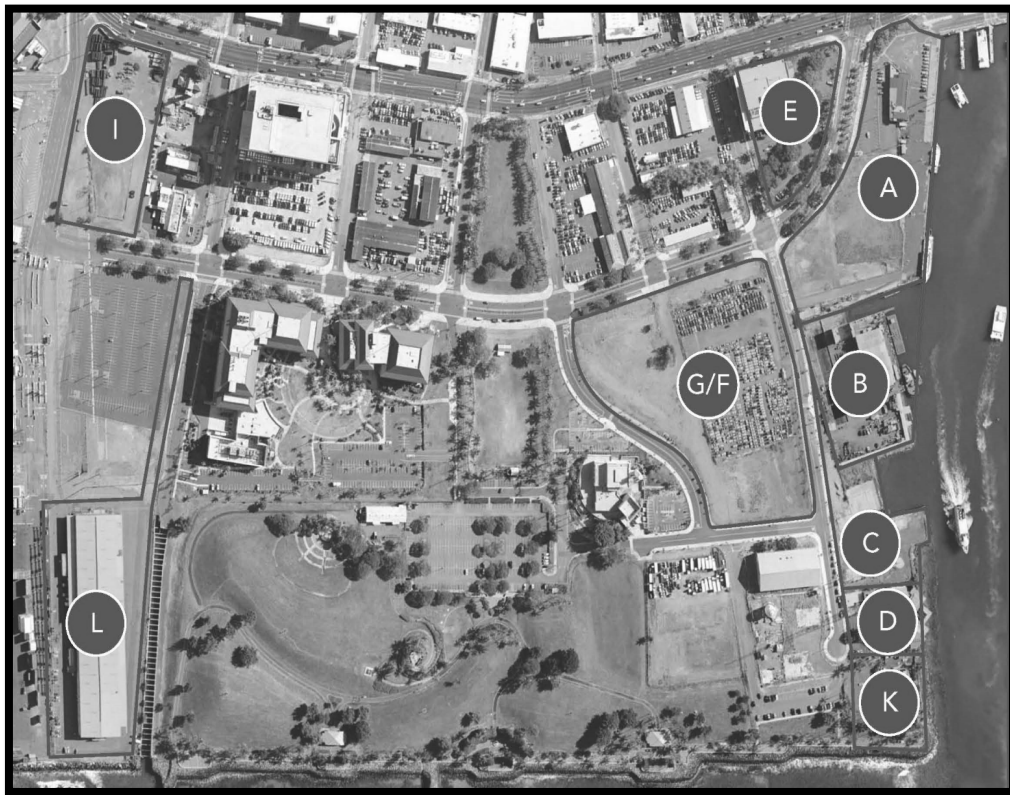
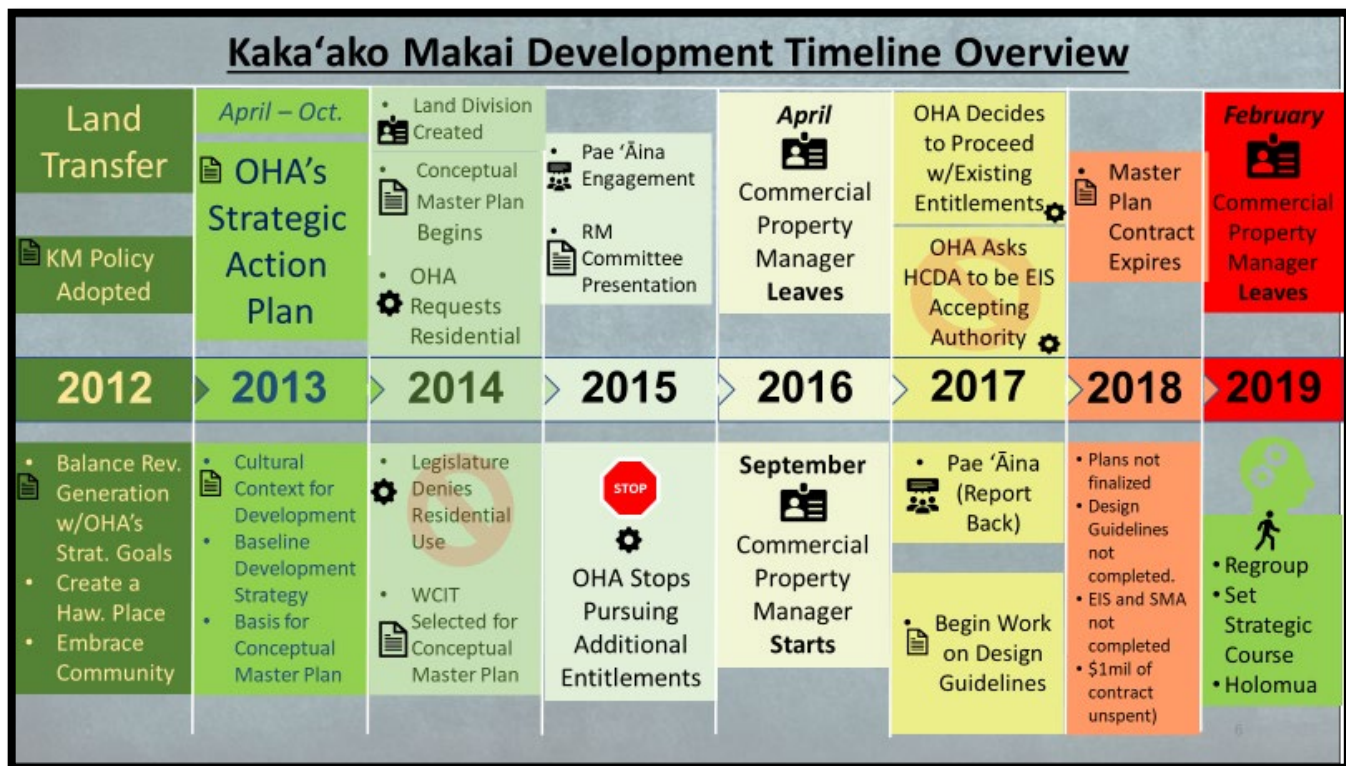


Figure 3. – Kaka'ako Makai, Aerial View

## 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.

The current policies related to KM include: (1) Real Estate Vision, Mission and Strategy Policy (2007); (2) Kaka`ako Makai Policy (2012, amended 2017 and 2019); and (3) Committee on Land and Property Policy Guidelines (2014). Activities from KM based on policy, impact the Grants and Legacy Land program budgets.



### Figure 4. – Kaka`ako Makai Development Timeline Overview

Figure 4 provides an overview of the activities between 2012 and 2019. Due to COVID-19, the organization transitioned to (and continues in) telework since March 2020. With new Trustees elected in November 2020 and the Board reorganized in December 2020, KM is a priority of new Board leadership.

Note: While OHA has a legacy land portfolio of properties to steward (e.g., Wahiawā lands, Wao Kele O Puna, Pahua Heiau), legacy land policies and strategies are out of scope for the proposed PIG other than to note KM's gross and net revenue amounts fund grants and legacy land programs, respectively.

## 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.

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### IV. **Permitted Interaction Group, Development of Land and Commercial Property Policies and Strategies relating to the Development of OHA's Nā Lama Kukui and Kakaako Makai Properties:**

- A. **Permitted Interaction Group - Purview.** Via this Action Item, approval is sought to form a PIG 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. The purview of the PIG is for the Board of Trustees (BOT), BOT staff and OHA Administration staff to work together to investigate the:
- (1) Development, alignment, and updates related to land and commercial property policies and strategies relating to the development of OHA's Nā Lama Kukui and Kaka'ako Makai;
  - (2) Implications of other fiscal policies' impact on land and commercial properties (e.g., investment, spending) relating to the development of OHA's Nā Lama Kukui and Kaka'ako Makai properties;
  - (3) Identification, articulation and formulation of strategies relating to the development of OHA's Nā Lama Kukui and Kakaako Makai properties; and
  - (4) Alignment of the formulated policies and strategies with the strategic plan 2020-2035 implementation.
- B. **Permitted Interaction Group – Members.** The membership of the Permitted Interaction Group is 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. Sylvia M. Hussey, Ka Pouhana, will function as the Project Manager.
- C. **Permitted Interaction Group - 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 December 31, 2021.

### V. **Funding Source:**

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

## **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.

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### **VI. Recommended Action:**

Approve the formation of a Permitted Interaction Group to Investigate the Development of Land and Commercial Property Policies and Strategie relating to the development of OHA's Nā Lama Kukui and Kaka'ako Makai properties with the following purview, members and term/duration:

**Permitted Interaction Group – Purview.** Via this Action Item, approval is sought to form a PIG to investigate the development of land and commercial property policies and strategies relating to the development of OHA's Nā Lama Kukui and Kakaako Makai properties. The purview of the PIG is for the Board of Trustees (BOT), BOT staff and OHA Administration staff to work together to investigate the: (1) Development, alignment, and update land and commercial property policies relating to the development of OHA's Nā Lama Kukui and Kakaako Makai properties; (2) Implications of other fiscal policies' impact on land and commercial properties (e.g., investment, spending) relating to the development of OHA's Nā Lama Kukui and Kakaako Makai properties; (3) Identification, articulation and formulation of strategies relating to the development of OHA's Nā Lama Kukui and Kaka'ako Makai properties; and (4) Alignment of the formulated policies and strategies with the strategic plan 2020-2035 implementation.

**Permitted Interaction Group – Members.** The membership of the Permitted Interaction Group is 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. Sylvia M. Hussey, Ka Pouhana, will function as the Project Manager.

**Permitted Interaction Group - 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 December 31, 2021.

### **VII. Attachment: None**