

**STATE OF HAWAI‘I**  
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 Twenty First Supplementary Proclamation dated June 7, 2021 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**

**Minutes of the Office of Hawaiian Affairs  
Board of Trustees  
MINUTES  
July 29, 2021**

ATTENDANCE:

Chairperson Carmen Hulu Lindsey  
Trustee Lei 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, COS  
Amber Kalua, Trustee Aide  
Kanani Iaea, Trustee Aide  
Lehua Itokazu, Board Secretary

ADMINISTRATION STAFF:

Sylvia Hussey, Ka Pouhana / CEO  
Casey Brown, Pou Nui / COO  
Raina Gushiken, CC  
Everett Ohta, CC  
Ramona Hinck, CFO  
Kalani Fronda, Land Director  
Ryan H. Lee, Interim Investment Mgr.  
Sterling Wong, Chief Advocate  
Wayne Tanaka, Public Policy Mgr.  
Kevin Chak, IT Support  
Erin Nakama, IT Support  
Robert Klein, Board Counsel

GUEST:

Sam Chung, Financial Advisor to Board Chair  
Leslie H. Kondo  
Daria Loy-Goto  
Dar Ariola  
Gavin Chun  
Elizabeth Kimura  
Patrick Brown  
Jonathan Scheuer  
Andrew Choy  
Germaine Meyers

## Call to Order

**Chairperson Hulu Lindsey** Calls the Board of Trustees Meeting to order for Thursday, July 29,2021 at 10:01 a.m. Chair Hulu Lindsey calls for a roll call.

MEMBERS			Present	TIME ARRIVED
TRUSTEE	LEINA‘ALA	AHU ISA		<b>Joins meeting at 10:04 am</b>
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	
			8	

At the Call to Order, **eight (8)** Trustees are PRESENT, thereby constituting a quorum.

**Chairperson Hulu Lindsey** Thank you, I will be taking the agenda out of order. Item V.C. will be first under new business.

Due to the threat of COVID-19, Governor Ige issued the most recent Emergency Twenty-First Supplementary Proclamation, dated June 7, 2021, that suspends 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) 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 Colin Kippen-COS, Lehua Itokazu-Board Secretary, and my Aides-Kanani Iaea and Amber Kalua. We also have our Board Counsel – Judge Klein, Sam Chung – our Financial Advisor, and CEO-Sylvia Hussey. Sylvia, please announce who is joining us from your staff.

**Sylvia Hussey, CEO** Good morning Chair and good morning Trustees, we have COO-Casey Brown, CFO-Ramona Hinck, Land Director-Kalani Fronda, Senior Legal Counsel-Raina Gushiken, Legal Counsel-Everett Ohta, Chief Advocate-Sterling Wong, Ryan Lee-Interim Invest. Mgr., Wayne Tanaka-Public Policy Mgr., and our IT staff. Thank you.

## Approval of Minutes

**Chairperson Hulu Lindsey** Moving onto approval minutes, can I get a motion to approve the minutes?

**Trustee Ahu Isa** Moves to approve the minutes for June 17, 2021.

**Trustee Akina** Seconds the motion.

**Chairperson Hulu Lindsey** Roll call vote.

<b>Minutes: June 17, 2021</b>						
	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			
TRUSTEE KELI'I <b>AKINA</b>		X	X			
TRUSTEE LUANA <b>ALAPA</b>			X			
TRUSTEE BRENDON <b>LEE</b>			X			
TRUSTEE KEOLA <b>LINDSEY</b>			X			
TRUSTEE JOHN <b>WAIHE'E</b>			X			
CHAIRPERSON HULU <b>LINDSEY</b>			X			
<b>TOTAL VOTE COUNT</b>			<b>9</b>			
<b>MOTION:</b> [ ] UNANIMOUS [ X ] PASSED [ ] DEFERRED [ ] FAILED						
<b>Motion passes with nine ( 9 ) YES votes and zero ( ) EXCUSED vote.</b>						

**Trustee Ahu Isa** Moves to approve the minutes for June 23, 2021.

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

<b>Minutes: June 23, 2021</b>						
	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			
TRUSTEE KELI'I <b>AKINA</b>			X			
TRUSTEE LUANA <b>ALAPA</b>			X			
TRUSTEE BRENDON <b>LEE</b>			X			
TRUSTEE KEOLA <b>LINDSEY</b>			X			
TRUSTEE JOHN <b>WAIHE'E</b>		X	X			
CHAIRPERSON HULU <b>LINDSEY</b>			X			

<b>TOTAL VOTE COUNT</b>	<b>9</b>
<b>MOTION:</b> [ ] UNANIMOUS [ X ] PASSED [ ] DEFERRED [ ] FAILED	
<b>Motion passes with nine ( 9 ) YES votes and zero ( ) EXCUSED vote.</b>	

**Public Testimony and Community Concerns and Celebrations**

**Germaine Meyers** Aloha Chair Hulu, Ka Pouhana and Lahui, My name is Germaine Meyers. I’m an OHA beneficiary for beneficiary advocacy and empowerment. I’m also a Nanakuli Hawaiian Homestead Lessee. Today’s agenda includes Entrance Conference with State Auditor Leslie H Kondo for the Performance Audit of the Office of Hawaiian Affairs. The last performance audit of OHA was Report 18-03 dated February 13, 2018. Report 18-03 begins with (quote verbatim) “We found that the Office of Hawaiian Affairs (OHA) has created alternate funding processes. At first glance, these funding opportunities appear to be guided by policies, procedures, and guidelines designed to ensure that funds are distributed fairly and equitably. In reality, however, these expenditures and other forms of discretionary spending do not undergo the rigorous vetting, monitoring, and reporting requirements of OHA’s formal grant process. Some are approved by the OHA Administration without Board of Trustee vote or even knowledge.” (end of quote) Today, I would like to highlight for Mr. Les Kondo and the Board, my concerns of his statement, “undergo the rigorous vetting, monitoring, and reporting requirements of OHA’s formal grant process.” Based on my recent experience of analyzing the grant process and applications for the COVID19 grant awards that came to the board last month, I feel that OHA does NOT have a rigorous vetting, monitoring and reporting grant process to ensure funds are distributed fairly and equitably. I would like to direct the State Auditor to the following example of funds distributed unfairly and inequitably. The grant manager recommended the approval of awarding \$78,541 to Papakolea Community Development Corporation for a 12 month period to pay for .35 (less than one) full time employee by paying .10 FTE to the Executive Director Lilia Kapuniai and .25 FTE to a PPE Coordinator. Also to pay for covid supplies, masks, hand sanitizer, and disinfectant to serve 100 Hawaiiansthat use the Papakolea Community Park and Center. When I do the math, it comes to \$6,500 per month. As I shared with Trustees last month, this non-profit already pays their Executive Director Lilia Kapuniai a salary of \$72,000 for 20 hours of work per week. That comes to 1,042 hours a year. She’s already being paid by the non-profit \$69.23 per work hour. Or \$6,000 per month for parttime hours. How did OHA’s grant manager justify approving to pay an additional .10 of her hours with OHA funds? What the OHA grant manager did not disclose to Trustees last month were the following: Lilia Kapuniai noted in the grant application that she was CNHA’s (Council for Native Hawaiian Advancement) Vice President of Community Development Division. In addition, the grant manager failed to disclose to the Trustees that this non-profit, Papakolea Community Development Corporation (PCDC) already received 4 large grants during the COVID19 period. According to their grant application, PCDC received 3 grants from Kamehameha Schools for the period of FYs 2019 to 2021 for a total of \$424,688. In addition, PCDC were awarded 1 grant for FYs 2019 to 2022 from US Administration for Native Americans in the amount of \$858,140. All 4 grants combined together come to a total of \$1,282,828. But and yet the grant manager felt it was equitable to give PCDC an OHA grant in the amount of \$78,541 to serve 100 Hawaiians. While ignoring the grant applications of other non-profits that would serve thousands of native Hawaiians in Waianae Moku and Ewa Moku. This is just one example I would like to highlight to Mr. Kondo. Ke Akua Pu, God bless all of you.

## Community Concerns and Celebrations

**Germaine Meyers** Aloha Chair Hulu, Ka Pouhana and Lahui, my name is Germaine Meyers. I'm an OHA beneficiary for beneficiary advocacy and empowerment. I'm also a Nanakuli Hawaiian Homestead Lessee. At the July 1<sup>st</sup> board meeting, when the agenda included the "Approval of the Ad Hoc Committee on the CLA report entitled "OHA & LLCs contract and disbursement review", Trustee Brendon Lee made a big deal about not contracting anyone to further investigate the red flags, alluding that Administration's Implementation report was sufficient. Vice Chair Ahu Isa, you're correct. Some don't read reports. Although I have a public education, I love reading and allowing Ke Akua to guide my understanding. Administration's Draft Implementation Report (the report Trustee Lee was highlighting) was first brought to the Board through the RM Committee under Trustee Dan Ahuna's chairmanship last year on January 22, 2020. The packet contained a total of 367 pages, of which Administration's Implementation Report was a total of 183 pages. But Ka Pouhana made it easy for us by summarizing her findings on page 20 under the heading of **"Possible Fraud, Waste and Abuse – Appendices C & D."** On this page, Ka Pouhana made it clear in 2 paragraphs. She stated: *The following limitations regarding the identification of possible fraud, waste, and abuse were included in the scope of work approved by OHA.*

*1) CLA's procedures were designed to detect and identify possible fraud, waste, and abuse; however, CLA cannot provide absolute assurance that all instances of possible fraud, waste, and abuse were identified. **If indicators of potential fraud were identified, the scope of this engagement did not include investigative procedures into these matters.***

*Examples of investigative procedures, which were not performed as part of this engagement, may include, but are not limited to, undercover procedures, interviews of vendors or other third-parties/individuals external to the OHA/LLCs, review of vendor files solely in the possession of a vendor (such as payroll files), etc.*

*2) CLA's procedures were designed to detect red flags of fraud and transactions that appeared questionable. However, CLA cannot render an opinion as to the existence of fraud. Additionally, fraud and irregularities by their very nature are most often hidden, and no absolute assurance can be given that all such matters were detected. CLA's engagement cannot be relied upon to disclose any irregularities or illegal acts, including fraud, which may exist."*

I repeat, Ka Pouhana's report stated "CLA's engagement cannot be relied upon to disclose any irregularities or illegal acts, including fraud, which may exist." From my research, unfortunately the last RM Committee Chair NEVER agendized the report for the committee to approve, and the last Board Chair DID NOT agendize the report for ratification. However, at the aggressive questioning of Trustee Brandon Lee, the last Board Vice Chair, our Chair Hulu clarified for all of us that the Legislators did receive Administration's DRAFT Implementation Report for their review. If I was a legislator and read page 20 of the report, I would have also approved funding for OHA to further investigate the red flags for possible fraud, waste, and abuse, based on Ka Pouhana's statements on page 20, which again included "CLA's engagement cannot be relied upon to disclose any irregularities or illegal acts, including fraud, which may exist." On Page 21 of Administration's report, it included a summary of responses addressing 32 OHA flagged test items of possible fraud, waste and abuse by process area, which totaled \$10,157,206.82. Trustees, according to page 3 of Administration's report, CLA selected eighty (80) contracts and (50) other financial disbursements of funds for testing and review. That comes to a total of 130 records. Of the 130 records, 32 were flagged as possible fraud, waste and abuse. That's 25% of the records came to a total of \$10.1 million in red flagged items. We must ask ourselves if all of OHA's records over a 4 year period came to a total of \$200 million of trust funds spent, and 25% were flagged, that means beneficiaries should be concerned that \$50 million of trust funds could be possible fraud,

waste and abuse. For me, the last Board Vice Chair will have a lot to account for to the Lahui to explain why he's proud of being complicit and complacent with some things, while being aggressive and trivial with others. Ke Akua Pu, God Bless all of you

## **New Business**

### **V. C. Update Regarding the July 20, 2021 Commission on Water Resource Management Meeting Action Item re: Approval of Dept. of Hawaiian Home Lands Application for a Water Use Permit Modification and Reduction of Reservation for Kualapu'u**

**Chairperson Hulu Lindsey** Moving onto new business, I will be calling up Jonathan Scheuer and Andrew Choy to update the trustees regarding the July 20, 2021 on the Commission on Water Resource Management meeting action item regarding the Hawaiian Homelands application for a water use permit modification and reduction of reservation for Kualapu'u.

**Andrew Choy** Aloha Chair Lindsey and fellow Trustees, my name is Andrew Choy and the acting Planning Program Manager at the Department of Hawaiian Homelands. Mahalo for the opportunity to address the trustees today regarding this issue and before we give our report, we just want to give our sincere mahalo to Chair Lindsey and OHA staff for their swift action in helping to draft comments in support of the department's water use permit application on the island of Moloka'i. It was greatly appreciated and it made a difference in the successful adoption of our water use permit application. Dr. Jonathan Scheuer will give an update on the water use permit application. Jonathan has been working on this matter over a decade in various capacities, most recently a consultant to the Department of Hawaiian Homelands on water policy issues. He began his work on this matter as a staff at the Office of Hawaiian Affairs.

**Jonathan Scheuer** Mahalo Andrew. Aloha Chair Lindsey and Trustees, it is a pleasure to be with all of you. Thank you so much for agendaing this because last Tuesday was a really good day. It was the culmination of 28 years of effort that started when the Department of Hawaiian Homelands submitted an application for half a million gallons a day of mostly continued uses, plus some new uses for homesteaders in central Moloka'i. But over the years, Moloka'i Ranch objected to our permits. The Water Commission only granted some of our requests and it's been a long road that the Office of Hawaiian Affairs and our beneficiaries, both OHA and DHHL beneficiaries, have been on together. So they approved our full permit request for .595 million gallons a day. This is really big, it will allow us to provide water to some lots that were created in the 1980s but have not had water available to them, including lots of Nā'iwa and Kalama'ula and addition will have water available for subdivided lots in Ho'olehua. On Tuesday's hearing where all the testimony was in favor, which included testimony, extensive testimony from beneficiaries, from OHA trustees, and others really symbolized the years of effort investment in scientific studies, investment in beneficiary education that led to us to be able to have that success. It is in one sense, a couple senses of partial success; one is, you know, given the system, we shouldn't have had to wait 28 years for this to come. We're very happy for it, but it was an unjust outcome in the sense that it took so long and it also only gets us part of the way there. We have in the Kualapu'u aquifer, a reservation of almost 3,000,000 gallons a day, of which some of our new uses is being drawn from but we need that full 3,000,000 gallons to eventually settle all of DHHL's lands in central Moloka'i. To do so, we will need new wells, new pipelines, and new permits in order to do that over the long term. In the meantime, DHHL is actually investing heavily in our existing system. We're utilizing \$30 million in the USDA federal funding to make improvements to the system, which is hopefully going to result in better efficiency and reliability, and to the degree that we're able to, more efficiently use the .595 million gallons a day that's awarded, that will be used for additional homesteading purposes. I wanted to note that the permit that we turned in was described by some of the Commissioners and some testifiers as the most thorough permit for water use that's ever been

turned into the Water Commission. We tried to set a high bar for a couple of reasons. First of all, our beneficiaries wanted it. As Some have said, we need to stop talking about how we're taking water out of the cup and we have to talk about how we're putting water back into the cup. So in addition to describing our uses of water, we actually offered that the Water Commission should place three conditions on us to work on improvement of the nearshore environment where groundwater that would be flowing otherwise, except for this use to remove alien species and to introduce native species to create areas along the coast that will be more available for the exercise of traditional customary practices and also to work with our beneficiaries on reforestation and native forest station in the mauka areas of Kalama'ula to increase mauka to makai groundwater flow, and those conditions were approved along with our permit by the Water Commission.

We set such a high bar also because in this area Moloka'i Ranch is still going to seek uses from well 17, their largest well, and we know from the USGS study that was co-funded by OHA, DHHL, and the County of Maui, that well 17 represents not just the biggest threat to DHHL's well getting higher chlorides and at higher salts, but also the interruption of groundwater flow to the coast to fishponds and limu beds and important cultural sites. We wanted that standard to be there for everybody who comes after us. Moloka'i Ranch will be seeking their permit at some point. The County is seeking an increased permit at some point and so we will have to be maka'ala on that as we move forward too, because the proposed uses could impact existing as well as future beneficiary uses on the island. And this is the basic overview, we'd be very happy to answer any questions. We should feel incredibly good with the investments OHA's made in the struggle.

**Chairperson Hulu Lindsey** Trustees, do you have any questions?

**Trustee Ahu Isa** Mahalo Jonathan for your report. Just for my information, who is now the owner of Moloka'i Ranch?

**Jonathan Scheuer** Moloka'i Ranch is still owned by the Chinese/Singapore-based company that's been doing essentially nothing with the land right now other than marketing it.

**Trustee Ahu Isa** I thought at one point, we went into negotiations with them to contribute so many acres of land.

**Jonathan Scheuer** Perhaps you're referring to the proposal to develop Lā'au Point, in an exchange, the vast majority of Moloka'i Ranch's holdings were going to go to the Moloka'i Ranch Trust. The Land Trust ended up with some holdings, but because Lā'au Point development was withdrawn by the ranch and very vigorously opposed by the community, that exchange did not occur.

**Trustee Ahu Isa** Okay, mahalo for that history.

**Trustee K. Lindsey** I would also like to extend my appreciation to everyone who worked so hard on this issue. The question I have is, does now the success with the application trigger specific steps to get the folks that testified before the board water? What happens now?

**Jonathan Scheuer** The lottery permit application specifically allocated water to awarded lots in Nā'iwa awarded lots, elsewhere on the island and on a as available basis, to homesteaders who've been seeking to subdivide lots in Ho'olehua. When the Water Commission, about twenty-six years ago, gave us only .367 MGD instead of the .5 MGD we requested, we were actually already at that time pumping more than they allowed us to pump so we've been technically in violation due to their decision making. Because of that, when homesteaders came to the department and said, hey, I want to subdivide my lot so my kids can have a lot,

we've denied issuing a water meter. So, there is a list of people who've been denied meters. They will be reached out to, as well as people who've already received lots - been awarded lots in Na'iwa but they've been not able to be settled because there were no water meters available.

**Sterling Wong, Chief Advocate** I just wanted to recognize Andrew Choy, who also used to be an OHA staffer that was in our research department and has gone on to do some amazing things at DHHL for our beneficiaries; so we have two former OHA staffers infiltrating the rest of the State, helping us to do good work on behalf of our lāhui so its very excited to do work with them. I just wanted to recognize both Andrew and John. Mahalo Chair.

**Chairperson Hulu Lindsey** Thank you Sterling and thank you again Andrew and Jonathan. It is very exciting to have at least one positive thing pass the Water Commission. Let's hope to see more. Thank you for taking the time to come to our meeting this morning.

We will now move on to item V.A., I will call on our Ka Pouhana.

#### **V.A. Entrance Conference with State Auditor Leslie H. Kondo for the Performance Audit of the Office of Hawaiian Affairs**

**Sylvia Hussey, CEO** Thank you Chair. Today our State Auditor, Les Kondo is on. I will ask him to introduce his staff members who are also on.

**Les Kondo, State Auditor** Thank you. Good Morning Trustees, it is good to see all of you. I know I haven't met all of the trustees before, but I hope we can do that in person in the very near future. Thank you for having us, let me introduce my staff that's on this call. This is my team that will be doing this audit: Daria Loy-Goto, Deputy Auditor - she will be the project supervisor for this project; Dar Ariola, our Senior Analyst-Project lead or AIC (Analyst In Charge) - she will be the day to day person responsible for the audit; Gavin Chun, Elizabeth Kimura, and Patrick Brown - our team doing the current audit, the analysis.

Like I mentioned, we are here to talk about the audit that we are starting with respect to OHA. When Sylvia called Dar, our staff lead on this project, she had made a comment that I think I want to address right up front, she had said she felt there may be an elephant in the room. I think what she was referring to is our challenges with the last audit that we terminated and I want to tell you guys there's no elephant in my room. You know, we are here to do our job and we are committed to making OHA better. The audit that we had started relating to the LLCs, that audit is terminated, so we are moving past that. We are focused on our next audit, which is the one that we're here to talk about. Our audits are performed in accordance with government auditing standards. Those standards are issued by the US Comptroller General and they require us to be independent and objective. I can pledge to you that we will be independent and objective. When we finally issue the report, it will be based on competent and appropriate audit evidence. If you folks have questions while I'm talking, you're welcome to stop me and we can talk about whatever concerns or questions that you may have about the audit process.

We're required by statutes to audit OHA once every four years and we most recently audited OHA in 2017. That report was issued in early February 2018 and its Report 18-03, in case anyone is interested in looking at that. Our audit is a performance audit and a performance audit is very different than the annual financial audits that OHA currently undergoes. It's also very different than the report that Clifton, Larson, Allen, CLA issued in 2019. That wasn't an audit, it was a consultation agreement. So, our audit is to assess OHA's performance and we are going to look at specific activities of OHA. OHA is too big of an animal for us to look

at every aspect, so we are going to look at a specific function or activity of OHA and our process will take us to look at the criteria, which is the statute. These are the rules that you have in place, this will be our starting point. We will look at the condition, how its operating right now, and then we will look at other things like what's not operating very well and what's the big deal, what is the affect of the operation when its not operating as it should. We are going to try and identify the cause, why are things not going the way they should be going; out of that, we should offer some suggestions or recommendations as how to improve the process.

The analogy I like to use in terms of our process is, its like a house and how a house is built; the criteria, the statutory mandate, that is like the architect's plan, this is what the house is supposed to look like so that's going to be our starting point. We're going to look at the plans, we're going to look at the statute; this is what OHA is supposed to look like. Whatever the activity or function that we decide to audit, that's our starting point. Next, we gotta look at the condition. The plans say it's supposed to be a two-story house with four bedrooms. We go onto the project site and see how OHA's doing. We look at the project and we see a one-story house with two bedrooms, it's not the two-story house with four bedrooms that are in the plan; so we know the plan or the criteria doesn't match the condition or the actual fact; so then we need assess how come, how come the plans don't match what we see on site; that is where we start digging in and assess why, is it because the inspector didn't go out enough, was it because the architect or the builder went off on their own; we need to assess the cause. We need to try and find out how come the plans don't match, we need to find out the effect.

**Trustee Ahu Isa** Mr. Kondo, you talk about performance audit. Performance in terms of what? This is a big problem-question for me ever since I got elected. I want you to answer the question for me. What are we, a quasi-State agency, using performance audit on the Trust funds, using performance audit on the general funds, combination of both, and how does the performance audit...Hopefully we come out after the audit with a definition of what exactly is OHA? I get kind of confused, maybe you can help us find that definition.

**Les Kondo, State Auditor** I think our responsibility is very focused. We're here to see how OHA is operating a certain program and whether they are operating it well, effectively, efficiently, and ethically; that is kind of the entire scope of our mandate, it's not as broad as what you're asking.

**Trustee Ahu Isa** Okay, so randomly, you're going to select a program, however it's funded, and you're going look at that. Thank you.

**Les Kondo, State Auditor** It's not random because we come and audit OHA every four years. We know a little about OHA. Last time we audited like Ms. Meyers talked about, we audited OHA's discretionary spending. We looked at both the Board, the administration, and individual trustees use of monies that were outside of the very structured, formal grants process. At that time, more than double of the spending was through these discretionary vehicles, so we reported about how the board and the administration were awarding grants, were spending OHA money in ways that were not consistent with the criteria for the different spending vehicles. We reported that the administration was awarding money, notwithstanding the fact that staff had said do not fund, that was staff recommendation. We reported about individual trustees using money for personal expenses, that are other expenses like rent for some beneficiaries, funeral expenses, airplane upgrades, things like that. We looked at the criteria, what are the rules for certain spending programs; we looked at the condition, what's actually happened; and we decided we tried to assess why that's happening. I wanted to talk about how audits are a valuable resource. Its valuable to you, the trustees, for OHA, for the legislature, for the public. It provides a lot of transparency into programs that people may not know about. It holds trustees and the administration accountable for use of the Trust Fund money, as well as general fund money. After we reported in 2017, report issued in 2018, it is my understanding that our report caused OHA to reexamine its discretionary spending vehicles. There have been changes, amendments to those policies and those procedures, so to me, our report had

value. It helped OHA hopefully get better. One thing we don't do is, we do not have the authority or power to come into OHA and force change. We offer suggestions and recommendations based on what we report, what we see, and what we find. It falls to OHA, whether it's the trustees or the administration, to actually address those findings and fix the things we are identifying because that is also outside of our responsibilities.

**Trustee Ahu Isa** Thank you for the clarification. When you folks did that audit, it also ended up correcting. I was able to correct some of the errors that was in that report. We were blamed for things that we were not even responsible for and it came out in the report. It was an opportunity for us, from our side, to explain, to define, and to say hey, it wasn't me. Your reporting brought out things that helped clarify our guilt. People thought we were guilty, and it wasn't true. Thank you for that.

**Les Kondo, State Auditor** Thank you, let me talk about the process. You had you made a comment that we were going to randomly select something. It's not random, it's a very structured process; so the first phase of our process which we have already started, this is part of that phase is our planning process. We are coming and talking about our process. So, this is the first phase, so during planning, we're going to gather information about different aspects of OHA's operations. We have pulled things off the internet and we will come to talk to administration, staff, and Trustees. During the course of the audit, I expect we will talk to every one of the Trustees, whether it's during the planning or subsequently. During planning, we're trying to gather information so that we understand OHA's operations. Four years ago, maybe things have changes, it is very unlikely we will review the same thing we did last time, which is discretionary spending. It's very likely that we're going to look at a different aspect of OHA's operations so that we can provide some assistance in improving some other aspect of OHA. We're going to try to get a high-level understanding of the different functions and activities that OHA performs. We've already made a document request to OHA asking for some preliminary documents. Once we've gathered the documents, we will determine what our audit objectives are. At that point, that will be the focus of our audit. We will send OHA a letter and all of you Trustees will get a copy. It will tell you exactly what our focus is and our audit objectives, that will be what the audit will report. Once that's done, we're going to come back and we're going to do a little deeper dive, a little deeper digging to very specific audit objectives. We call that the fieldwork phase. We will look for very specific information relating to the specific objectives that we've identified; and then once our field work is done, we come back to our office and we start talking about what the audit findings are going to be; and then we start our drafting phase. Once the report is drafted, and I will explain, I want every auditee to understand that our report is supported. When we send the draft of that report to you for your review, we're very confident in the information that is in the report. What happens internally in my office once the draft is ready, we have somebody else that is not part of the project team, will independently review the draft to make sure every sentence in that report is supported by something. In our draft, you won't see it but the person who is asked to independently review our report will see a link. There is an electronic link that will link to a document, it is some other support for that sentence. Every sentence in our report has this electronic link so by the time we have finished going through our independent review process, we are very confident that the information contained in the report is accurate, that it supports whatever findings we have. However, we still send the report to OHA once the draft is done and we're very comfortable with it. We will send OHA a copy of that draft and only to OHA. We do not share that draft with anyone outside of my office and your office. The purpose of that is, if you see something in the draft that is not accurate and you want to refute, then we want to know that. We will schedule another meeting like this. It could be just with administration. Last go around, it was just with the administration to talk about the report, the draft report. Again, we ask that you don't share it with anyone outside of your office. The primary reason for that is the draft could change. I want to mention that last go around in 2018 when we shared the draft with OHA, that draft was shared outside of OHA. I don't know if it was leaked; I promise you, it was not from my office. I mention this because when we share the draft, maybe there should be some discussion if you feel it's appropriate as to how you feel you want to manage the draft. Anyway, we will have a draft, an exit conference, a chance to talk with

OHA administration or trustees about the report, things that you don't agree with, things that you want to comment on, things that you don't think we got right, maybe out of context, we want to have that discussion, and once we have that discussion, we may go back and adjust the draft, change the draft, revise the draft, or we may not. Soon after that, we will issue the draft and we will let you know when we intend to use the draft. We hope to issue this draft by the end of the calendar year, by the end of December. So, that's kind of our audit process. It will take us the next five or so months to go through this process, have a draft, shoot it over to you folks, and have a discussion. It is not a secret process. As we progress, if you have questions you are welcome to ask my staff. It is not suppose to be a secret process or a gotcha process. It is suppose to be a very transparent process from our end as well.

I wanted to talk about some miscellaneous kind of things that is important for you to know as we go through this process. First, all interviews, we have a practice to record them so we will audio record all interviews with you folks and your staff. So if you think it's appropriate, Sylvia, could you please let your staff know that, that will be our process. Also, this is really important as well and we mentioned this during our disagreement with respect to the audit that we were looking to do about the LLC's, our work papers are confidential by statute, it is confidential by law. In fact, I kind of want to read to you the first sentence. It says the auditor shall not be required to disclose any work papers. The statute defines work papers as any notes, internal memoranda and records of work performed by the auditor on audits, including any and all project evidence collected and developed by the auditor. So that's includes all of the records that we receive from OHA; it includes any of the interviews that we record, the summaries of those interviews that we create, anything related to the audit we consider to be work papers. Like I said earlier, the statute is very clear that we do not have to disclose those work papers. There was a suggestion that we would have the discretion and therefore, it's not a complete guarantee that we will not disclose those work papers. I will tell you and promise you that is not our practice. We will not disclose those work papers absent a court order. We will not allow anyone else into our work papers absent a court order. If we allowed things like this, we would not have credibility with any other oddities. We are not just auditing OHA, we audit many different state agencies and we need them to have assurance when they talk to us that the information they give us is protected. It doesn't mean it may not show up in the report, but in terms of the work papers and its tapes from interviews and things like that, they are protected.

Another thing I want to mention is on site vs. remote auditing. At this point, given the numbers that we're seeing, you know we've been working mostly remotely for the last year and a half. My staff is coming back to the office starting Monday. We will start working a few days of the week in the office. We will work with Sylvia and administration whether if we will be on site. There may be times where we need to be on site. I think our preference is to be able to work remotely. This will also depend if documents are available electronically. I also want you to know that my staff is vaccinated and if we do come on site, we will mask up, maintain distancing with your staff, and if there are other COVID protocols that OHA has, we will ask and abide by those protocols.

We look forward to working with OHA and doing this audit work. I hope and expect that we have all this cooperation. I want you guys to feel comfortable in asking questions, calling us if you have questions, talking to Dar, Darius or any of the staff. We are here to help you folks.

**Trustee Akina** As you pointed out at your discretion, there is a scope and focus of the audit. How do you go about selecting that scope and focus and whether the LLC's might be included, possibly in that?

**Les Kondo, State Auditor** It is very unlikely that we will try to pick up the audit relating to the LLCs. We were auditing the Board and OHA's oversight and use of the LLCs, that's the audit we terminated. I think it's highly

unlikely that we will pick that audit up again, unless OHA decides that we will have access to the records we thought we needed to finish that audit. If it's status quo, then it's very unlikely that we will try to continue that audit. To answer your question about how do we go about selecting and scoping our work? It's a very detailed, rigorous process. I mentioned our audits are all performed in accordance with government auditing standards, so that process is very detailed. We follow a process that is laid out in those government auditing standards. In a high-level, what we do is we try to identify the areas that are important and if they are not being done well, make a big deal, so we are going in during planning to try to identify what OHA does, what are the different functions of OHA. Grants was one, land management or land development is another, advocacy is a third, I'm sure there's other divisions. We will go and gather information, at a high level, about each of these different aspects of OHA's responsibilities, the divisions, and come back. Then as a group, we will look at the key's activities for each of these. If things are not going well, it's a big deal. Some of that analysis will be, are there records, are we able to gather enough information so that we have findings based on efficient and appropriate audit evidence. If the answer is no, then we will not audit that function just because we will not be confident that whatever we find is supportable. We will go through this process and weed out things that are not a big deal. We narrow that focus and we can do it within the timeframe that we are budgeting for ourselves. I am not sure if I answered the question well enough, but that's kind of our process at a relatively high level to get to the objectives.

**Trustee K. Lindsey** I have two questions: my first question is the upcoming audit and looking at elements of the CLA report, is it premature to talk about that?

**Les Kondo, State Auditor** No, I can talk about that. I think the answer in a one word is no. The reason for that is because what we look at is we look at a process. You know I described my analogy, which may not may not be a good analogy, was about the house building, right. We're looking at this process that you have. It's not an investigation of one transaction. You hired CLA, unless you were going to look at your procurement process and CLA would be part of that, I guess we could do that. I think procurement might be something that still is on the table for us to kind of review OHA procurement activities and CLA might be apart of that but we're looking at a cross section of a very broad look at different activities, so we're not going to go and double check CLA's work. I mentioned earlier, I think right at the front of their report they say in black and white, it's not an audit. It's really work that I guess, whatever the committee was and OHA more broadly that they said this is what we want you to do CLA, and that's what CLA did. So, we thought our report about the LLCs would work with CLA's report and add to the information that CLA provided OHA. Like I said earlier, that audit is terminated, we're done with that.

**Trustee K. Lindsey** Thank you for that. The reason I ask is this board has formed an Ad Hoc committee to follow up on certain directives the legislatives given us related to the CLA report. I just didn't want you folks doing your thing and the Ad Hoc trying to form something here or duplicating. Thank you for answering the question. The second question is, in your letter dated July 21 to OHA, it mentions a report of your findings being submitted to the legislature no more than 20 days prior to the convening of the next session. But earlier you said a draft report was going to be done by the end of December, so is it the draft that will be submitted to the legislature or is it the final report?

**Leslie Kondo, State Auditor** Thanks for the question. I was probably not as clear as I should be. We hope to issue the report to the legislature, meaning the final report by the end of the year. That means our draft will be to OHA obviously before the end of the year; hopefully, by the middle of the year. The challenge with OHA or any organization with a board, if the board wants to participate in the exit conference, you folks have to have a meeting in our timeframe. I think that's what drove the last audit in 2018, the exit conference being with administration, the Chair may have participated. I think it will require some planning and we can work with Sylvia on that.

**Trustee Lee** I will address my reaction to Les Kondos comments about the LLCs now. They have been sent twice, the letter from auditor Leslie Kondo. He has already indicated what he plans to audit and the LLC was not on that. I do have a comment for Mr. Kondo.

First, thank you for reclarifying for the board that all your work product is confidential except for a court order. That makes it very clear that although it is your policy to keep them confidential, if someone subpoenas them and the court rules in that order, you are compelled to turn them over. Thank you again for clarifying that for the board. My question is specific to the documents you requested. Item number seven, you're requesting OHA to provide the State Auditor's office with an inventory of ceded lands and public trust lands (PLT). Correct me if I am wrong, but my understanding is that's DLNR's responsibility. If the State Auditor is saying that its OHA's responsibility to keep that inventory, does that mean the State is going to acknowledge our list, so whatever OHA says is the ceded land and PLT inventory? There have been disputes, DLNR has disputed what OHA's inventory list. They say it is less than what OHA stating. If the State Auditor is asking us for the inventory list, then are they saying OHA has that list and not DLNR?

**Leslie Kondo, State Auditor** Trustee, I suggest you read to much into the document request. If you don't have documents, then OHA should just say "we don't have documents." Like I mentioned earlier, we're in the planning phase. We're trying to understand different aspects of OHA's operations. My understanding is OHA receives 20% of ceded land revenues. Part of that question is, what is the ceded lands? We want to understand what OHA's inventory of those lands are. If you don't have it or if its different than what DLNR has, then so be it. We want to understand facts at this point.

**Trustee Lee** I think that's a fair response. I don't think I was reading into anything and I think that was a fair question to ask. Your answer was great, thank you.

**Leslie Kondo, State Auditor** I'd like to also say that on the confidentiality, if we get a court order, we will comply with the court order. We may appeal it, but we will apply with the court order at some point if we're directed to provide documents. I got to read the section to you folks again specifically to you, Trustee Lee. The Auditor shall not be required to disclose any working papers, period. That's a strong statement. For the court to say disclose, but we would probably challenge that ruling as we go up the appellate ladder. Its pretty black and white to me. I appreciate your interpretation and your comment. That's why lawyers get big bucks, we can all interpret things differently. That's why we represent people because we can advocate for different positions.

**Chairperson Hulu Lindsey** Any other questions? Otherwise, Mr. Kondo, thank you so much to you and your staff.

**Leslie Kondo, State Auditor** Thank you for having us.

**Chairperson Hulu Lindsey** Moving on to the next item I will call Trustee Waihe'e.

#### **Committee on Resource Management**

- 1. Action Item RM #21-09: Approve OHA's Intent to Apply to the Administration for Children and Families, Administration for Native Americans, American Rescue Plan Act Emergency Native Language Funding Opportunity for Native Hawaiians and Pacific Islanders for \$250,000**

**Trustee Waihe'e Your Committee on Resource Management, having met on July 22, 2021, and after full and free discussion, recommends approval of the following action to the Board of Trustees:**

**To approve OHA's intent to apply to the Administration for Children and Families, Administration for Native Americans, American Rescue Plan Act, Emergency Native Language Funding Opportunity for Native Hawaiians and Pacific Islanders for \$250,000.**

**Trustee Akaka Seconds the motion.**

**Chairperson Hulu Lindsey** Any discussion?

**Trustee Lee** In committee when I questioned the need for the Board to approve this because it wasn't trust funds, Ka Pouhana indicated that the grant itself says that it needs to be approved by the governing body of who is going to receive the funds. When I dug deeper into this, HRS 10.6 subsection 8 mandates that the Office on Affairs is to apply for, accept, and administer any federal funds made available or allotted under Federal Act for Native Hawaiians, or Hawaiians. Does this not suffice that requirement by the grant? Also, knowing that type of funds and the action that its taking to preserve 'ōlelo Hawai'i is in line with our strategic plan, which was approved by the Board of Trustees, does that also not suffice? Does it say that this specific action, not through a lateral action, has to be approved by the Board of Trustees?

**Sylvia Hussey, CEO** The grantor, the ANA, part of their federal application process requires documentation that administration, the applicant, has the authority from their governing body, and so in the case of many of their grantees who are 501c3 entities, that would mean it's an issue with their governing board of directors. In our case, since we are a state entity, our governing entity wouldn't have been there. I'm also going to ask Everett to speak. Regardless, of the funding source, the act of granting and the act of expenditures is within the authority of the Board of Trustees. Everett could you reiterate what was shared in RM committee.

**Everett Ohta, Assist. Sr. Legal Counsel** Good morning Board. At the last meeting, we did discuss the authority of the CEO that has since been revoked to issue grants below a certain amount.

**Trustee Lee** My question wasn't about awarding, but since it's been brought up and I guess we're talking about it, I think that's a little latitude saying the granting authority above a certain level has been removed from Ka Pouhana. It doesn't specifically say all granting and any granting that these funds are being stipulated by the federal government, that it has to be used for a specific thing. I am not convinced that the board needs to approve who the fund that granting goes to because it is not trust funds. By statute, I believe we were elected to manage trust funds and this is not trust funds. And I am still waiting for an answer about my original question. If the answer is no then the answer is no, but I'm asking a question. We have Hawaii statutes saying that OHA will apply for Federal funds that are made available to Native Hawaiians and Hawaiians and we also have approved a Strategic plan that this grant is completely aligned with, I am asking if that's not sufficient saying that the board has so approved. We have State and Federal law saying that we have to and we have a strat plan that we approved saying that we want to protect and further on 'ōlelo Hawai'i.

**Sylvia Hussey, CEO** On the OHA side, the broad governance and the implementation may be adequate but the technical provider with ANA, as part of the grant application, told us we need specific documentation of the Board's approval of the intent to apply. Also, the way we want to implement this grant is to turn around and take the \$250K and sub grant five \$50K grants for the same purpose, that is a different way of implementing grantees. Of the four entities that were awarded the \$250K from ANA, we're the only ones that are say we are going to sub grant that money to our beneficiaries. The guidance given by ANA as well as the Federal

application process, that's the reason we needed to document that the board approved our intent to apply as part of the process.

**Trustee Lee** Thank you for that clarification, I really do appreciate it. As far as ANA's response to our intent to sub grant out since it is the intent of administration to have the trustees approve the grant awards, can the trustees be provided that documentation from ANA that they're going to be okay with OHA sub granting 100% of these funds out. I have concerns about the application that says we can not be used as a pass through. While I understand Ka Pouhana said in the Resource Management Committee (RM) the funds will be going out to others, the information and data will be aggregated and collected and disseminated by the Office of Hawaiian Affairs, that is OHA doing the substantial amount of work. Can trustees be provided for our peace of mind that ANA says we agree with you and its ok? Because if we're going to be the ones to approve the money going out to others, that means we're the one that will be on the hook if ANA comes back and says you couldn't give away all the money, it says you cannot give away all the money. Can we see the documentation from ANA saying that's okay?

**Sylvia Hussey, CEO** You bring up a good point in terms of the process. The deadline for this non competitive award.... We met the deadline and the process is to go back and forth with them and ask questions. We submitted a budget that indicates \$250K will go to grantees, OHA will not take any administrative cut, and the final award notifications will be the official document that they recognize our application, which this means they have reviewed our work plan, the objectives, the timing of activities, we are looking at intergenerational and research questions are all in the application; that part of affirmation will come with the grant award notification, we can share that as well. That would be the affirmation that ANA accepts the way we will sub grant as well as track over the three year period.

**Trustee Lee** I am sorry Ka Pouhana, I must have misunderstood in the RM meeting, I thought you said ANA has already approved us sub granting the money out.

**Sylvia Hussey, CEO** ANA has awarded us money in a noncompetitive.

**Trustee Lee** Correct, but in the RM Committee meeting I asked about us acting as a pass through because all of the \$250K was being sub granted out. The response I got was ANA was okay because the information was coming back and aggregated and disseminated by OHA, that constituted us doing majority of the work which is what the grant says. So, we don't have that approval yet? We won't have the approval until the grant itself is approved and they've reviewed our intent to sub grant 100% of the money?

**Sylvia Hussey, CEO** So 1) we have the award. 2) We've already spoke to them about our intent of our application to sub award. If it weren't acceptable to them, they would've stopped us then. They haven't and they approved and supported our application including the sub granting. We submitted our application. They need to do all of their paperwork there and then actually issue the grant award notification. Upon that notification, will then trigger our sub granting process. In the meantime, we are preparing the grant solicitation to make sure it aligns with our intention there.

**Trustee Lee** Got it Ka Pouhana. Thank you so much for that clarification. So, it's not so much that they explicitly say its okay with what your doing, they didn't say its not okay. We will get the official nod when they award the money. If they're not okay with us sub granting 100% of the money, they'll see that in the approval process.

**Sylvia Hussey, CEO** There is a process once you submit the application, the back and forth for that final agreement. The sub granting process and the demonstration of the substantial contribution by OHA is supported by ANA, that is why are application is framed that way.

**Trustee Lee** Right, so once we get the final nod then that’s the official paper work saying its okay for us to sub grant out. Thank you so much.

**Sylvia Hussey, CEO** Trustees what we will do is share the final packet in its entirety and have that available to you so that you can see what we actually submitted.

**Chairperson Hulu Lindsey** I just want to share with all of you that in our section of the HRS10-6.8 is general duties of the Board and it includes to apply for, accept, and administer any Federal funds made available or allotted under any Federal act for Native Hawaiians or Hawaiians. So not only is the Federal requiring Pouhana to get the Board approval, but it is part of our duties as a Board to oversee her application.

**Trustee Lee** You are correct madame Chair. That is HRS10-6.8 which is what I read previously. That was my question because State law says that we must do this, was that not enough to say that the Board approves it. Because State law says we must do it.

**Trustee K. Lindsey** One reason I support this action is the element of it, I understand it doesn’t put us in a position to be competing with other Native Hawaiian organizations. As we move ahead and with the Statutory mandate in mind, do we anticipate pro-actively pursuing similar opportunities to become this conduit to award out Federal funds? Are there more opportunities that we are going to explore as we move forward?

**Sylvia Hussey, CEO** Absolutely, part of our responsibility is to do that. I want to make sure the systems we have in place manages that. I think that could be OHA’s way to help our communities go after larger grants quickly and bringing it back to the State and distributing out. This award already raised eyebrows because our Native Hawaiian programs compete very well with ANA grants. This award does not negate anything they’re getting. It is also a very small and modest award. We’ve had programs receive over a million dollars from programming, from ANA. We don’t want to be competitive, we do want to be complimentary and if our processes can enable monies to come quickly into the State and out to our beneficiaries and our contribution is the paperwork and accounting, then that is a win-win for everyone. To your answer, it is a very intentional strategy, but I want to be sure that this very modest \$250K, we can do well and we can do as we intend before we go out and intentionally seek more opportunities.

**Chairperson Hulu Lindsey** If there are no more questions, please call for the vote.

Trustee Waihe’e moves						
<b>To approve OHA's intent to apply to the Administration for Children and Families, Administration for Native Americans, American Rescue Plan Act, Emergency Native Language Funding Opportunity for Native Hawaiians and Pacific Islanders for \$250,000.</b>						
Trustee Akaka Seconds the motion.						
	1	2	‘AE (YES)	‘A‘OL E (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI			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			
<b>TOTAL VOTE COUNT</b>				<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>MOTION:</b> [ ] UNANIMOUS [ <b>X</b> ] PASSED [ ] DEFERRED [ ] FAILED							
<b>Motion passes with nine ( 9 ) YES votes and one ( 0 ) EXCUSED vote.</b>							

**Executive Session**

**VI. Consultation with Board Counsel Robert G. Klein and Everett Ohta, OHA Assistant Senior Legal Counsel, re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities with respect to updates by Administration regarding potential acquisition of commercial properties, pursuant to HRS§92-5(a)(4)**

**Chairperson Hulu Lindsey** Can I get a motion to recuse ourselves into executive session pursuant to HRS§92-5

**Trustee Ahu Isa Moves to recuse into Executive Session.**

**Trustee Akaka Seconds the motion.**

**The Board recuses into Executive Session at 11:25 a.m.**

<b>Motion to recuse into executive session pursuant to HRS Section 92-5</b>						
	<b>1</b>	<b>2</b>	<b>'AE (YES)</b>	<b>'A'OLE (NO)</b>	<b>KANALUA (ABSTAIN)</b>	<b>EXCUSED</b>
<b>TRUSTEE LEI AHU ISA</b>	X		X			
<b>TRUSTEE DAN AHUNA</b>			X			
<b>TRUSTEE KALEI AKAKA</b>		X	X			
<b>TRUSTEE KELI'I AKINA</b>			X			
<b>TRUSTEE LUANA ALAPA</b>			X			
<b>TRUSTEE BRENDON LEE</b>			X			

TRUSTEE KEOLA LINDSEY			X			
TRUSTEE JOHN WAIHE'E			X			
CHAIRPERSON HULU LINDSEY			X			
<b>TOTAL VOTE COUNT</b>			<b>9</b>			
<b>MOTION: <input type="checkbox"/> UNANIMOUS <input checked="" type="checkbox"/> PASSED <input type="checkbox"/> DEFERRED <input type="checkbox"/> FAILED</b>						
<b>Motion passes with nine (9) YES votes and zero (0) EXCUSED vote.</b>						

**Board returns to open session at 12:06 p.m.**

**Announcements**

**Chair Hulu Lindsey** Okay, I just want to announce our next Board of Trustee meeting will be next week on August 5<sup>th</sup> at 10 a.m.

**Adjournment**

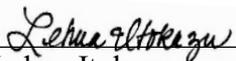
**Trustee Akaka** Moves to adjourn the meeting.

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

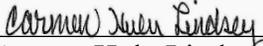
Adjournment							
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA			X			
KALEIHIKINA	AKAKA	X		X			
KELI'I	AKINA			X			
LUANA	ALAPA			X			
BRENDON KALEI'AINA	LEE			X			
KEOLA	LINDSEY			X			
JOHN	WAIHE'E		X	X			
CHAIR CARMEN HULU	LINDSEY			X			
<b>TOTAL VOTE COUNT</b>				<b>9</b>			

**Chairperson Carmen Hulu Lindsey** adjourns the Board of Trustees meeting at 12:07 p.m.

Respectfully submitted,

  
 \_\_\_\_\_  
 Lehua Itokazu  
 Board Secretary

As approved by the Board of Trustees on October 7, 2021.

  
\_\_\_\_\_  
Carmen Hulu Lindsey  
Chairperson, Board of Trustees

**Attachments:**

1. Testimony – Germaine Meyers

**Public Testimony of Germaine Meyers, BOT meeting Thursday, July 29, 2021 at 10 am**

Aloha Chair Hulu, Ka Pouhana and Lahui,

My name is Germaine Meyers. I'm an OHA beneficiary for beneficiary advocacy and empowerment. I'm also a Nanakuli Hawaiian Homestead Lessee.

Today's agenda includes Entrance Conference with State Auditor Leslie H Kondo for the Performance Audit of the Office of Hawaiian Affairs.

The last performance audit of OHA was Report 18-03 dated February 13, 2018.

Report 18-03 begins with (quote verbatim)

"We found that the Office of Hawaiian Affairs (OHA) has created alternate funding processes. At first glance, these funding opportunities appear to be guided by policies, procedures, and guidelines designed to ensure that funds are distributed **fairly and equitably**.

In reality, however, these expenditures and other forms of discretionary spending do not undergo the rigorous vetting, monitoring, and reporting **requirements** of OHA's formal grant process. Some are approved by the OHA Administration without Board of Trustee vote or even knowledge." (end of quote)

Today, I would like to highlight for Mr. Les Kondo and the Board, my concerns of his statement, "undergo the rigorous vetting, monitoring, and reporting requirements of OHA's formal grant process."

Based on my recent experience of analyzing the grant process and applications for the COVID 19 grant awards that came to the board last month, I feel that OHA **does NOT** have a rigorous vetting, monitoring and reporting grant process to ensure funds are distributed fairly and equitably.

I would like to direct the State Auditor to the following example of funds distributed unfairly and inequitably.

The grant manager recommended the approval of awarding \$78,541 to Papakolea Community Development Corporation for a 12 month period to pay for .35 (**less than one**) full time employee by paying .10 FTE to the Executive Director Lilia Kapuniai and .25 FTE to a PPE Coordinator.

Also to pay for covid supplies, masks, hand sanitizer, and disinfectant to serve **100 Hawaiians** that use the Papakolea Community Park and Center.

When I do the math, it comes to \$6,500 per month.

As I shared with Trustees last month, this non-profit already pays their Executive Director Lilia Kapuniaia a salary of \$72,000 for 20 hours of work per week. That comes to 1,042 hours a year. She's already being paid by the non-profit \$69.23 **per work hour**. Or \$6,000 per month for part time hours.

How did OHA's grant manager justify approving to pay an additional .10 of her hours with OHA funds?

What the OHA grant manager did not disclose to Trustees last month were the following:

Lilia Kapuniaia noted in the grant application that she was CNHA's (Council for Native Hawaiian Advancement) Vice President of Community Development Division.

In addition, the grant manager failed to disclose to the Trustees that this non-profit, Papakolea Community Development Corporation (PCDC) already received 4 **large grants** during the COVID 19 period.

According to their grant application, PCDC received 3 grants from Kamehameha Schools for the period of FYs 2019 to 2021 for a total of \$424,688.

In addition, PCDC were awarded 1 grant for FYs 2019 to 2022 from US Administration for Native Americans in the amount of \$858,140.

All 4 grants combined together come to a total of \$1,282,828.

But and yet the grant manager felt it was equitable to give PCDC an OHA grant in the amount of \$78,541 to serve 100 Hawaiians. While ignoring the grant applications of other non-profits that would serve thousands of native Hawaiians in Waianae Moku and Ewa Moku.

This is just one example I would like to highlight to Mr. Kondo.

Ke Akua Pu,

God bless all of you.

Bcc: Beneficiaries on my bcc list

Bcc: State Auditor Les Kondo

## Community Concerns of Germaine Meyers, BOT meeting Thursday, July 29, 2021 at 10 am

Aloha Chair Hulu, Ka Pouhana and Lahui,

My name is Germaine Meyers. I'm an OHA beneficiary for beneficiary advocacy and empowerment. I'm also a Nanakuli Hawaiian Homestead Lessee.

At the July 1<sup>st</sup> board meeting, when the agenda included the "Approval of the Ad Hoc Committee on the CLA report entitled "OHA & LLCs contract and disbursement review", Trustee Brendon Lee made a big deal about not contracting anyone to further investigate the red flags, alluding that Administrations Implementation report was sufficient.

Vice Chair Ahu Isa, you're correct. Some don't read reports.

Although I have a public education, I love reading and allowing Ke Akua to guide my understanding.

Administration's Draft Implementation Report (the report Trustee Lee was highlighting) was first brought to the Board through the RM Committee under Trustee Dan Ahuna's chairmanship last year on January 22, 2020. The packet contained a total of 367 pages, of which Administration's Implementation Report was a total of 183 pages.

But Ka Pouhana made it easy for us by summarizing her findings on page 20 under the heading of **"Possible Fraud, Waste and Abuse – Appendices C & D."**

On this page, Ka Pouhana made it clear in 2 paragraphs. She stated:

*The following **limitations** regarding the identification of possible fraud, waste, and abuse were included in the scope of work approved by OHA.*

*1) CLA's procedures were designed to **detect and identify** possible fraud, waste, and abuse; **however**, CLA cannot provide absolute assurance that all instances of possible fraud, waste, and abuse were identified. **If indicators of potential fraud were identified, the scope of this engagement did not include investigative procedures into these matters.***

*Examples of investigative procedures, which were not performed as part of this engagement, **may include, but are not limited to**, undercover procedures, interviews of vendors or other third-parties/individuals external to the OHA/LLCs, review of vendor files solely in the possession of a vendor (such as payroll files), etc.*

*2) CLA's procedures were designed to detect red flags of fraud and transactions that appeared questionable. However, CLA cannot render an opinion as to the existence of fraud. Additionally, fraud and irregularities by their very nature are most often hidden, and no absolute assurance can be given that all such matters*

*were detected. CLA's engagement cannot be relied upon to disclose any irregularities or illegal acts, including fraud, which may exist.*"

I repeat, **Ka Pouhana's report stated** "CLA's engagement cannot be relied upon to disclose any irregularities or illegal acts, including **fraud, which may exist.**"

From my research, unfortunately the last RM Committee Chair NEVER agendized the report for the committee to approve, and the last Board Chair DID NOT agendize the report for ratification.

However, at the aggressive questioning of Trustee Brandon Lee, the last Board Vice Chair, our Chair Hulu clarified for all of us that the Legislators did received Administration's DRAFT Implementation Report for their review.

If I was a legislator and read **page 20** of the report, I would have also approved funding for OHA to further investigate the red flags for possible fraud, waste, and abuse, based on Ka Pouhana's statements on page 20, which again included "CLA's engagement cannot be relied upon to disclose any irregularities or illegal acts, including fraud, which may exist."

On **Page 21** of Administration's report, it included a summary of responses addressing **32 OHA flagged test items** of possible fraud, waste and abuse by process area, which totaled **\$10,157,206.82**.

Trustees, according to page 3 of Administration's report, CLA selected eighty (80) contracts and (50) other financial disbursements of funds for testing and review.

That comes to **a total of 130 records.**

Of the 130 records, 32 were flagged as possible fraud, waste and abuse.

**That's 25% of the records came to a total of \$10.1 million in red flagged items.**

We must ask ourselves if all of OHA's records over a 4 year period came to a total of \$200 million of trust funds spent, and 25% were flagged, that means beneficiaries should be concerned that \$50 million of trust funds could be possible fraud, waste and abuse.

For me, the last Board Vice Chair will have a lot to account for to the Lahui to explain why he's proud of being complicit and complacent with some things, while being aggressive and trivial with others.

Ke Akua Pu,

God Bless all of you

Bcc: Beneficiaries on my bcc list

Bcc: State Auditor Les Kondo



# OHA & LLCs Contract and Disbursement Review

## Recommendations Implementation Report

January 2020

DRAFT

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## APPENDICES

<b>A</b>	<b>Implementation Plan for 73 OHA Recommendations</b>
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## I. EXECUTIVE SUMMARY

### A. Scope, Background and Context

In 2018, the Office of Hawaiian Affairs (OHA) contracted CliftonLarsonAllen (CLA) to review for a period of five (5) years, specifically fiscal years (FY) 2012, FY 2013, FY 2014, FY 2015, and FY 2016 and to include both OHA and the Limited Liability Company(ies) (LLCs). For OHA, the scope of work called for CLA to select eighty (80) contracts and fifty (50) other financial disbursements of funds for testing and review. For the LLCs, the scope of work called for CLA to select thirty (30) contracts and twenty-five (25) other financial disbursements of funds for testing and review. The scope of services specified all contracts and financial disbursements tested would be selected by CLA based on CLA's understanding of OHA's and LLC's policies and procedures and data analytics performed on the financial activity of the organizations.

The overall scope of work and approach was conducted utilizing standards in accordance with the Statement on Standards for Consulting Services, Consulting Services: Definitions and Standards (codified as CS Section 100 in AICPA Professional Standards) of the American Institute of Certified Public Accountants (AICPA). The report did not constitute an audit, compilation, or review, in accordance with standards of the AICPA, the objective of which would be the expression of an opinion on any specified elements, accounts, or items. Accordingly, CLA did not express such an opinion.

The results of the review was reported to the Board of Trustees (BOT) Committee on Resource Management (CRM) on December 4, 2019 and after full and free discussion, recommended approval of the following action to the BOT:<sup>1</sup> *Move to recommend that: 1) the Board of Trustees receive the final report on OHA & OHA's LLCs Contract & Disbursement Review prepared by CliftonLarsonAllen LLP and commissioned by the Board under [Contract] 3284, as amended; and 2) direct Administration to review and analyze the recommendations contained in the final report and report back to the RM Committee with its analysis and plan to implement the recommendations at the first Resource Management Committee meeting in January 2020.* The BOT approved the action at its meeting on December 5, 2019 and this report by Administration is in response to that action and directive.

### B. Activities Completed by CLA – Review, Analyses, Observations and Recommendations<sup>2</sup>

In executing the engagement, CLA completed reviews and analyses of data gathered from: preliminary information gathering and document review; process interviews of OHA and LLCs staff; documents requested; test items; selected sample of contracts and disbursements; interviews with OHA Trustees; inquiries with OHA and LLCs staff; assessments of Board of Trustees oversight; and status updates and communications with the Resources Management Committee (RMC).

In the final report, CLA provided both observations and recommendations for OHA and the LLCs separately. For OHA: Seventy-three (73) recommendations based on the results of contracts and financial disbursements testing as well as measures concerning the internal controls in place to ensure

<sup>1</sup> Committee on Resource Management Committee Report dated December 4, 2019

<sup>2</sup> CLA report, p 18

#### IV. POSSIBLE FRAUD, WASTE AND ABUSE – APPENDICES C & D

In addition to addressing the Recommendations, Administration also focused on test items that were flagged by CLA as “possible” fraud, waste and abuse in the context of the following limitations on the identification of possible fraud, waste, and abuse stated in the CLA Report<sup>25</sup>, bolded emphasis added:

*“C. Limitations on the Identification of Possible Fraud, Waste, and Abuse*

*The following limitations regarding the identification of possible fraud, waste, and abuse were included in the scope of work approved by OHA.*

- 1) *CLA’s procedures were designed to detect and identify possible fraud, waste, and abuse; however, CLA cannot provide absolute assurance that all instances of possible fraud, waste, and abuse were identified. If indicators of potential fraud were identified, the scope of this engagement did not include investigative procedures into these matters. Rather, CLA will communicate such matters to you. Examples of investigative procedures, which were not performed as part of this engagement, may include, but are not limited to, undercover procedures, interviews of vendors or other third-parties/individuals external to the OHA/LLCs, review of vendor files solely in the possession of a vendor (such as payroll files), etc. To the extent that information was identified during the scope of this engagement that indicates a possibility of fraud, waste or abuse, CLA has included in this report the information identified.*
- 2) *CLA’s procedures were designed to detect red flags of fraud and transactions that appeared questionable. However, CLA cannot render an opinion as to the existence of fraud. Additionally, fraud and irregularities by their very nature are most often hidden, and no absolute assurance can be given that all such matters were detected. CLA’s engagement cannot be relied upon to disclose any irregularities or illegal acts, including fraud, which may exist.”*

Appendix C - Detailed Responses Addressing 32 Flagged Test Items of Possible Fraud Waste Abuse summarizes test items flagged by CLA related to OHA, including notes from Administration.

<sup>25</sup> CliftonLarsonAllen LLP OHA & LLCs Contract and Disbursement Review report, dated December 4, 2019, page 28

**Table 4 - Summary of Responses Addressing 32 OHA Flagged Test Items of Possible Fraud Waste Abuse by Process Area**

Type	Items	Amount	Flagged Test Items No.
Grants	5	\$3,948,000	1-5
Competitive Sealed Bid (RFP)	2	\$3,110,752	6,7
Professional Services	3	\$843,496.24	8,9,10
Exempt Purchase	10	\$1,274,162.50	11-20
CEO Sponsorship	5	\$129,999	21-25
Exempt Non-Grants, Small Purchase	7	\$850,797.08	26-32
<b>Total</b>	<b>32</b>	<b>\$10,157,206.82</b>	

Appendix D – Detailed Responses Addressing 6 Flagged Test Items of Possible Fraud Waste Abuse summarizes test items flagged by

**Table 5 - Summary of Responses Addressing 6 LLC Flagged Test Items of Possible Fraud Waste Abuse by Process Area**

Type	Total Items	Total \$	Response No.
<b>Contracts</b>	<b>2</b>	<b>\$11,960</b>	<b>1, 2</b>
<b>Disbursements</b>	<b>4</b>	<b>\$103,367</b>	<b>3,4,5,6</b>
<b>Total</b>	<b>6</b>	<b>\$115,327</b>	