

**STATE OF HAWAI'I  
OFFICE OF HAWAIIAN AFFAIRS**

**560 N. NIMITZ HIGHWAY, SUITE 200**

**COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT  
MINUTES**

**February 26, 2020 10:00 a.m.**

**ATTENDANCE:**

Chairperson John Waihe'e, IV  
Vice-Chairperson Kaleihikina Akaka  
Trustee Leina'ala Ahu Isa  
Trustee Dan Ahuna  
Trustee Keli'i Akina  
Trustee Brendon Kalei'aina Lee  
Trustee C. Hulu Lindsey  
Trustee Colette Machado

**BOT STAFF:**

Alyssa-Marie Kau  
Anuheia Patoc  
Bethann Hihina Ahsing  
Crayn Akina  
Melissa Wennihan  
Nathan Takeuchi  
Paul Harleman

**ADMINISTRATION STAFF:**

Sylvia Hussey, Ka Pouhana  
Lisa Watkins-Victorino, Ka Pou Nui Kūikawā  
Annie Kauhane, PP  
Jenifer Jenkins, PP  
Jocelyn Doane, PP  
Olan Fisher, PP  
Wayne Tanaka, ADV

**EXCUSED:**

Trustee Robert Lindsey

**I. CALL TO ORDER**

**Chair Waihe'e** calls the Committee on Beneficiary Advocacy and Empowerment meeting for Wednesday, February 26, 2020 to order at **10:00 a.m.**

**Chair Waihe'e** notes for the record that **PRESENT** are:

MEMBERS			AT CALL TO ORDER (10:00 a.m.)	TIME ARRIVED
CHAIR	JOHN	WAIHE'E, IV	PRESENT	
TRUSTEE	LEINA'ALA	AHU ISA	PRESENT	
TRUSTEE	KELI'I	AKINA	PRESENT	
TRUSTEE	BRENDON KALEI'ĀINA	LEE	PRESENT	
TRUSTEE	CARMEN HULU	LINDSEY	PRESENT	
TRUSTEE	DAN	AHUNA	PRESENT	Arrived at 10:04 a.m.
TRUSTEE	COLETTE	MACHADO	PRESENT	Arrived at 10:04 a.m.
VICE-CHAIR	KALEIHIKINA	AKAKA	PRESENT	Arrived at 10:10 a.m.

At the Call to Order, **FIVE (5) Trustees are PRESENT**, thereby constituting a quorum.

**EXCUSED from the BAE Meeting** are:

MEMBERS			COMMENT
TRUSTEE	ROBERT	LINDSEY	MEMO – REQUESTING TO BE EXCUSED

*Chair Waihe'e would like the record to show that some materials were received more recently than 72 hours ago, and that deadline per practice has been duly waived.*

## II. PUBLIC TESTIMONY

None

## III. APPROVAL OF MINUTES

### A. January 29, 2020

Trustee Hulu Lindsey moves to approve the minutes of January 29, 2020.

Trustee Ahu Isa seconds the motion.

Chair Waihe'e asks if there is any discussion. There is none.

Chair Waihe'e calls for a **ROLL CALL VOTE**.

							10:03 a.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA		2	X			
DAN	AHUNA						Arrived at 10:04 a.m.
VICE-CHAIR KALEIHIKINA	AKAKA						Arrived at 10:10 a.m.
KELI'I	AKINA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY	1		X			
ROBERT	LINDSEY						EXCUSED
COLETTE	MACHADO						Arrived at 10:04 a.m.
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				5	0	0	4

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

Chair Waihe'e notes for the record that all members present vote 'AE (YES) and the **MOTION CARRIES**.

#### **IV. UNFINISHED BUSINESS**

##### **A. 2020 OHA Legislative Package Updates – Matrix 1\*\*†**

**Chair Waihe'e** turns it over to Ka Pouhana Sylvia Hussey.

**Ka Pouhana Hussey** calls on Public Policy Manager Jocelyn Doane to present.

**Public Policy Manager Doane:** Aloha Trustees. We are rapidly approaching a deadline on Friday. So, all bills need to get through its last committee in its originating house by Friday, in order to successfully move forward. Then there is going to be a third reading deadline the week after.

With regards to our bills; OHA-1 had a hearing on Monday - they're going to hold decision-making in a couple of days. Basically, what's happening is the Judiciary Chair doesn't know if he wants to move the bill with the requirement that four members of the BLNR and four members of the LUC get appointed from a list of names from OHA. So, they're having conversations regarding it now; we'll see if they can reach a compromise.

OHA-2, Our Employment Discrimination bills are both moving, which we are excited about. It might be the only bill of ours that will pass.

OHA-3, is officially Dead.

OHA-4, is a resolution we still have a lot of time for.

OHA-5, it looks like we have not been able to convince the Judiciary Chair to hear it. Today will probably be the last day that hearings get posted for Friday. So, we are still, keeping our fingers crossed.

OHA-6, we've never done a CIP before, so we're trying to still understand the process. We've been chatting with the WAM staff. It is still alive and hopefully we'll have an update on it for you next week.

*That's the update for our package.*

**Chair Waihe'e** asks if there are any questions on the **OHA Legislative Package**.

*There are none.*

#### **V. NEW BUSINESS**

##### **A. 2020 OHA Legislative Positioning – Matrix 2\*\*†**

**Chair Waihe'e** turns it back over to Ka Pouhana Sylvia Hussey.

**Ka Pouhana Hussey** calls on Public Policy Manager Jocelyn Doane and Senior Public Policy Advocate Wayne Tanaka to present.

**Public Policy Manager Doane:** So, we have one change that we would like to make to the matrix after having a chance to talk to Justice Klein. Page 5, Item 24 – HB1821; we are recommending a change from ~~Monitor~~ to OPPOSE. This bill actually or hopefully died yesterday, but in case it comes back we wanted to be on record opposing it. Wayne will explain why.

**Senior Public Policy Advocate Tanaka:** Our concerns with this bill is that it may restrict access to the courts and justice for our beneficiaries. It limits the use of declaratory actions which basically is a legal intervention where parties try to ascertain their rights in an issue - even if there hasn't been an actual injury and even if there are other forms of relief. This bill would require that there clearly be an injury for a plaintiff and that the plaintiff's injuries are greater than that of the general public. It would also prohibit declaratory actions seeking with prospective relief in terms of constitutional rights. Since it would limit these legal mechanisms that are used by public interest programs like: NHLC and Earth Justice; 'they' have been opposing this measure.

**Public Policy Manager Doane:** I'm going to skip the three **New Significant Bills**. Item 2 we already approved a couple of weeks ago, so I'm not going to go over them unless the trustees have a question.

I am going to go over **BILL POSITION CHANGE RECOMMENDATIONS**. Page 1, Item 4 – HB2062; we are recommending a position change from ~~Monitor~~ to COMMENT. The bill would create a Statewide Coordinator and a Program within the Department of Human Services to address needs of sexually exploited children. It would also create a steering committee. Our comments would request that OHA be a part of that steering committee to ensure that there are solutions specifically addressed for our beneficiaries' needs.

Page 1, Item 5 – HB2297; this is identical to five other bills in your matrix already. What this bill would do, like the other bills, is open-up flexible policies to be available on lands that they (HHFDC) don't own. So, the Governor could set aside any State lands to them and/or State agencies could lease their lands to them. These are, for the most part, all Public Land Trust Lands / Ceded Lands. Therefore, we are asking for consideration of Native Hawaiian-specific interest; the way we've been asking for having an allocation of units to OHA or DHHL. So, we're asking that we get approval to COMMENT on this actual bill, consistent with the other bills. Therefore, our recommendation is changing from ~~Monitor~~ to COMMENT.

Page 2, Item 6 – HB2544; we're recommending a position change from ~~Monitor~~ to OPPOSE.

**Senior Public Policy Advocate Tanaka:** This measure would establish a School Facilities Agency to hold title to land and oversee development projects for those lands. It doesn't have any Chapter 171 Exemptions although we're going to be monitoring closely for those. What is concerning is that this agency, in its development of lands, would be exempt from Chapter 343 and Chapter 6E. There's some language in the bill that requires the agency to adopt rules that offer substantially similar protections as provided under Chapter 343. There's nothing that regards Chapter 6E, so essentially this agency could develop lands that could impact iwi kupuna. There would be no requirement for historic preservation review or anything like that. Therefore, for those reasons we are recommending changing from ~~Monitor~~ to OPPOSE.

**Public Policy Manager Doane:** Page 2, Item 7 –SB1363; this is the Public Land Trust bill that has a hearing today. We're recommending a position change from ~~Support~~ to SUPPORT WITH AMENDMENTS (SWA). Basically, this bill is identical to a bill in our 2018 package, except the first committee that moved this out last year blanked out all the amounts. So, the 'SWA' would be to recommend for the amounts to be put back in; which would be at this point \$35 million and \$159 million a year. The way we came up with the \$159 million - we took the \$35 million and subtracted the \$15.1 million and multiplied it by the eight years since the Kaka'ako "Settlement".

There are two other **RESURRECTED BILLS** that we already have positions on from 2019, that have carried over.

Page 22, Item 99 – SB568; you may recall last year, the State of Hawai'i passed a bill that would allow an "X" Gender Marker on regular drivers licenses. This bill would allow removal of all gender markers on limited purpose drivers licenses. Our position was SUPPORT and we are still recommending that.

Page 23, Item 102 – SB749; this is one of the Quiet Title Bills. Our position has been SUPPORT. This bill just got a hearing. So, we wanted to bring it back to your attention because we haven't talked about it yet this session. If an Action to Quiet Title kuleana lands is brought, the defendant may ask the court to require mandatory mediation and require the plaintiffs to bear the cost of the mediation. The idea is trying to get the families to work it out before different legal interests are brought in.

Those were all the New or Resurrected Bills. I do want to go over the **BILLS THAT NAME OHA OR DHHL** to give you a status update. None of the Water bills moved. Page 25, Item 113 – SB2043; this is one of those HHFDC forever, long 99-year lease bills, it has a hearing today. Units to OHA and/or DHHL, to specifically account for our Public Land Trust interest, is in this bill.

Page 34, Item 154 – SB2387; you might recall there was a bill that moved that was introduced by Senator Keohokalole and the Hawaiian Affairs Caucus to appropriate funds to DHHL and OHA. This bill must get a hearing by Friday in order to move.

Page 34, Item 155 – SB2388; this is the increase in Public Funds availability for OHA Elections, it did not get a hearing yet.

Page 35, Item 159 – SB2414; this is the OHA Election Randomization Bill – it has a hearing tomorrow.

Page 49, Item 227 – SB3099; the WAM Committee didn't move this bill, it doesn't look like they've taken our suggested amendments. We're hoping to get that conversation continued in the House.

Page 49, Item 228 – SB3104; this is the Leadership Housing Bill. It had a hearing yesterday and decision making will be on Friday. Last week we were invited to attend a meeting that was convened by PRP – they've been a part of discussions with some of the Legislative Leadership on this bill before session started.

Page 51, Item 236 – SB3178; this is the bill that would change how to remove the OHA Administrator. Judiciary has not scheduled it, which we had specifically asked for and I don't anticipate that happening today.

The last ones are the Blue Ribbon Commission Resolutions, there hasn't been any movement on them yet.

Those are all the updates I wanted to bring to your attention today.  
Thank you.

**Chair Waihe'e:** Thank you Jocelyn. Members; *are any questions on the OHA Legislative Package?*

*There are none.*

**Vice Chair Akaka moves to approve Administration's recommendations on:**

**NEW BILLS (Items 1 - 3) and BILL POSITIONS FOR RECONSIDERATION (Items 4 - 8), along with the following revision:**

**CHANGE item:**

- **24, HB1821, from ~~Monitor~~ to OPPOSE;**

**on the OHA Legislative Positioning Matrix dated February 26, 2020, as amended.**

Bills that were discussed					
ITEM	BILL #	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
New Bills					
1	SB35	RELATING TO EDUCATION.	Establishes a safe space program within alternative learning centers in the department of education to support students by providing twenty-four hours per day seven days per week emergency crisis services. Makes an appropriation. (SD1)	MONITOR	
2	SB2239	RELATING TO PROSECUTORIAL TRANSPARENCY.	Requires the offices of the prosecuting attorney of the respective counties to collect and publish certain data relating to criminal defendants and prosecutorial decision-making. Requires governor to establish a prosecutorial transparency advisory board.	COMMENT	
3	SB3062	RELATING TO THE CONVEYANCE TAX.	Removes the cap to be paid into the rental housing revolving fund from Conveyance Tax revenues. (SD1)	MONITOR	
Bills that were discussed					
ITEM	BILL #	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
Bill Positions for Reconsideration					
4	HB2062	RELATING TO THE SEXUAL EXPLOITATION OF CHILDREN.	Establishes a statewide coordinator and program within DHS to address the needs of sexually exploited children. Establishes the commercial sexual exploitation of children steering committee. Requires the steering committees to submit reports to the legislature by July 1, 2021, and July 1, 2022. Appropriates funds. Takes effect 12/31/2059. (HD2)	MONITOR >> COMMENT	
5	HB2297	RELATING TO PUBLIC LANDS.	Exempts lands set aside by the Governor to HHFDC for the primary purpose of developing affordable housing from classification as public land subject to DLNR management. Provides that lands set aside to HHFDC and no longer needed for housing, finance, and development purposes be returned to the public trust administered by DLNR. Takes effect on 7/1/2025. (HD1)	MONITOR >> COMMENT	
6	HB2544	RELATING TO A SCHOOL FACILITIES AGENCY.	Establishes the School Facilities Agency to be responsible for all public school development, planning, and construction, related to capital improvement projects assigned by the Legislature, Governor, or Board of Education. Transfers statutes pertaining to the Hawai'i 3R's and 3T's programs to a new School Facilities Agency statutory subpart. Places management of school impact fees with the agency. Appropriates funds.	MONITOR >> OPPOSE	

7	SB1363	RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS	Establishes \$ as the Office of Hawaiian Affairs' pro rata share of the public land trust. Transfers \$ less certain funds to the Office of Hawaiian Affairs for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019. Requires the Director of Finance to make up the difference between a specified minimum amount and an amount of public land trust receipts from an agency to the Office of Hawaiian Affairs by transferring the difference into the carry-forward trust holding account. Requires the Department of Land and Natural Resources to provide an annual accounting of receipts from lands described in section 5(f) of the Admission Act. Establishes a committee to recommend the annual amount of the income and proceeds from the public land trust that the Office of Hawaiian Affairs shall receive annually. Appropriates funds. (SD1)	SUPPORT >> SUPPORT WITH AMENDMENTS	
8	SB3103	RELATING TO A SCHOOL FACILITIES AGENCY.	Establishes the School Facilities Agency to be responsible for all public school development, planning, and construction, related to capital improvement projects assigned by the Legislature, Governor, or Board of Education. Places management of school impact fees with the agency. Appropriates funds. (SD1)	MONITOR >> OPPOSE	
Bills that were discussed					
ITEM	BILL #	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
2020 LEGISLATIVE SESSION (Bill Positions Previously Approved)					
24	HB1821	RELATING TO DECLARATORY JUDGMENTS.	Prohibits declaratory judgments when there is a cause of action and in other certain instances. Requires a plaintiff to show a personal stake in the actual controversy beyond a general disagreement or complaint by requiring a showing of an injury-in-fact.	MONITOR	Monitor >>> OPPOSE

**Trustee Ahu Isa seconds the motion.**

**Chair Waihe'e** asks if there is any discussion. There is none.

**Chair Waihe'e** calls for a **ROLL CALL VOTE**.

							10:34 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA		2	X			
DAN	AHUNA			X			
VICE-CHAIR KALEIHIKINA	AKAKA	1		X			
KELI'I	AKINA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY			X			
ROBERT	LINDSEY						EXCUSED
COLETTE	MACHADO			X			
CHAIR JOHN	WAIHE'E			X			
<b>TOTAL VOTE COUNT</b>				8	0	0	1

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

## VI. COMMUNITY CONCERNS\*

None

## VII. ANNOUNCEMENTS

None

## VIII. ADJOURNMENT

Trustee Hulu Lindsey moves to adjourn the BAE meeting.

Trustee Machado seconds the motion.

Chair Waihe'e asks if there is any discussion. There is none.

Chair Waihe'e asks if any members vote NO or ABSTAIN. There are no dissenting votes.

							10:35 a.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA			X			
VICE-CHAIR KALEIHIKINA	AKAKA			X			
KELI'I	AKINA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY	1		X			
ROBERT	LINDSEY						EXCUSED
COLETTE	MACHADO		2	X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				8	0	0	1

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

Chair Waihe'e adjourns the BAE meeting at 10:35 a.m.



Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Melissa Wennihan", is written over a horizontal line.

Melissa Wennihan

Trustee Aide

Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment on September 23, 2020.

A handwritten signature in dark ink, appearing to read "John Waihe'e, IV", is written over a horizontal line.

Trustee John Waihe'e, IV

Chair

Committee on Beneficiary Advocacy and Empowerment