

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

**COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT  
MINUTES**

**October 21, 2020 1:00 p.m.**

**ATTENDANCE:**

Chairperson John Waihe'e, IV  
Vice-Chairperson Kaleihikina Akaka  
Trustee Dan Ahuna  
Trustee Keli'i Akina  
Trustee Brendon Kalei'aina Lee  
Trustee C. Hulu Lindsey  
Trustee Robert Lindsey

**EXCUSED:**

Trustee Leina'ala Ahu Isa  
Trustee Colette Machado

**BOT STAFF:**

Crayn Akina  
Dayna Pa  
Melissa Wennihan

**ADMINISTRATION STAFF:**

Sylvia Hussey, Ka Pouhana / CEO  
Sterling Wong, Ka Pou Nui Kūikawā / Interim COO  
Daniel Santos, IT  
Everett Ohta, Corporation Counsel  
Kai Markell, COMP  
Kevin Chak, IT  
Marc Bantolina, IT  
Raina Gushiken, Corporation Counsel  
Sharde Freitas, Public Policy  
Wayne Tanaka, Public Policy

**I. CALL TO ORDER**

**Chair Waihe'e** calls the Committee on Beneficiary Advocacy and Empowerment meeting for Wednesday, October 21, 2020 to order at **1:04 p.m.**

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

| MEMBERS    |                    |             | AT CALL TO ORDER<br>(1:04 p.m.) | TIME ARRIVED |
|------------|--------------------|-------------|---------------------------------|--------------|
| CHAIR      | JOHN               | WAIHE'E, IV | PRESENT                         |              |
| VICE-CHAIR | KALEIHIKINA        | AKAKA       | PRESENT                         |              |
| TRUSTEE    | DAN                | AHUNA       | PRESENT                         |              |
| TRUSTEE    | KELI'I             | AKINA       | PRESENT                         |              |
| TRUSTEE    | BRENDON KALEI'ĀINA | LEE         | PRESENT                         |              |
| TRUSTEE    | CARMEN HULU        | LINDSEY     | PRESENT                         |              |
| TRUSTEE    | ROBERT             | LINDSEY     | PRESENT                         |              |

At the Call to Order, **SEVEN (7) Trustees are PRESENT**, thereby constituting a quorum.

**EXCUSED** from the BAE Meeting are:

| MEMBERS |           |         | COMMENT                         |
|---------|-----------|---------|---------------------------------|
| TRUSTEE | LEINA'ALA | AHU ISA | MEMO – REQUESTING TO BE EXCUSED |
| TRUSTEE | COLETTE   | MACHADO | MEMO – REQUESTING TO BE EXCUSED |

## II. PUBLIC TESTIMONY on Items Listed on the Agenda\*

None

## III. APPROVAL OF MINUTES

### A. September 23, 2020

Trustee Hulu Lindsey moves to approve the minutes of September 23, 2020.

Vice-Chair Akaka seconds the motion.

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

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

|                         |         |   |   |              |               |                      |           |
|-------------------------|---------|---|---|--------------|---------------|----------------------|-----------|
|                         |         |   |   |              |               |                      | 1:08 p.m. |
| TRUSTEE                 |         | 1 | 2 | 'AE<br>(YES) | A'OLE<br>(NO) | KANALUA<br>(ABSTAIN) | EXCUSED   |
| LEINA'ALA               | AHU ISA |   |   |              |               |                      | EXCUSED   |
| DAN                     | AHUNA   |   |   | X            |               |                      |           |
| VICE-CHAIR KALEIHIKINA  | AKAKA   |   | 2 | X            |               |                      |           |
| KELI'I                  | AKINA   |   |   | X            |               |                      |           |
| BRENDON KALEI'ĀINA      | LEE     |   |   | X            |               |                      |           |
| CARMEN HULU             | LINDSEY | 1 |   | X            |               |                      |           |
| ROBERT                  | LINDSEY |   |   | X            |               |                      |           |
| COLETTE                 | MACHADO |   |   |              |               |                      | EXCUSED   |
| CHAIR JOHN              | WAIHE'E |   |   | X            |               |                      |           |
| <b>TOTAL VOTE COUNT</b> |         |   |   | <b>7</b>     | <b>0</b>      | <b>0</b>             | <b>2</b>  |

**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

None

## V. NEW BUSINESS

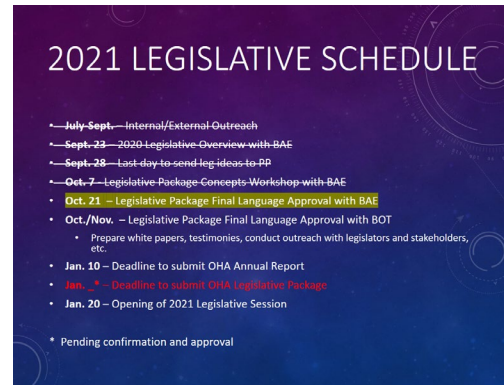
### A. ACTION ITEM: BAE #20-03: Approval of 2021 OHA Legislative Package\*\*†

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

**Pouhana Hussey** calls on Interim Chief Advocate Sterling Wong.

**Interim Chief Advocate Wong:** Aloha Trustees, when we presented our Conceptual Package a couple of weeks ago, we took into consideration mana'o from the Board and we are bringing back actual bill language for your approval. Once the Board approves it, this will become our package. We will submit it to the Legislature in the beginning of January and will start doing outreach on our package to start getting community support. So, without further ado, I'll turn it over to Wayne for the presentation of our package. Mahalo Nui.

**Public Policy Manager Tanaka:** Thanks Sterling. Good Afternoon Trustees. As Sterling just described, this presentation is going to be on our Final Legislative Package proposals. Just a recap of the timeline for package development. So, we did our Concepts Workshop two weeks ago on the 7<sup>th</sup> and today is the 21<sup>st</sup> and we're seeking your Final Language approval. With that we'll be able to get a final approval from the full Board of Trustees prior to the General Election in November and that will give us ample time before the start of session to prepare for our Advocacy on these measures. So, preparing our white papers, drafting testimonies, conducting outreach with legislators and other stakeholders, and so forth. Just as a reminder, the opening of the 2021 Legislative session is on January 20th, which is the third Wednesday of the new year.



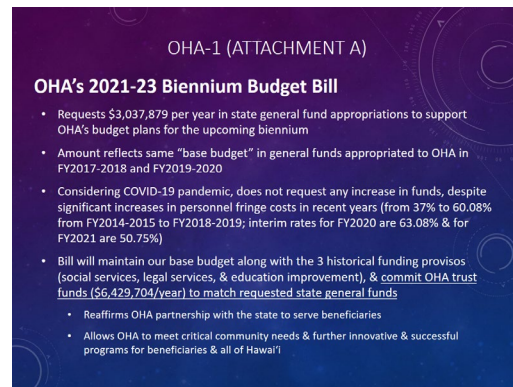
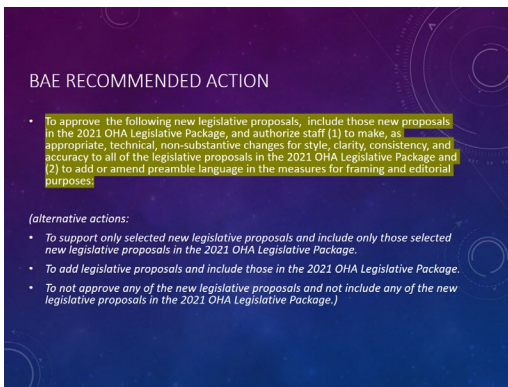
**Public Policy Manager Tanaka:** The Action Item in your packet includes the full language of all the proposals that we will be talking about today. The recommended action would be to adopt these proposals as part of our 2021 Legislative Package and to also let us make technical amendments. Meaning spelling and capitalization issues; if we find them and to also add or amend preamble language. We haven't included any preambles this year and I think there are pros and cons on including them. Whether-or-not we do, would depend on our consultation with legislators.

I'll just touch on the main points of each measure in the following slides. Stop me at any time if you want to talk about any of these in more detail.

Our first measure is our Biennium Budget Request; it's a budget year next year. So, we'll be going in along with the Executive Branch of the Judiciary to request State general funds. Our request is going to be for a base budget, the same amount that we got in the last two fiscal biennium terms, which is about \$3,000,000 in general funds per fiscal year.

We're not asking for an increase in this amount, despite the ongoing increase in our personal costs due to the State fringe benefit rates. This is an issue we clearly should emphasize. We are not asking for an increase in this amount due to the recognition of the pandemic and the loss of revenue, lack of revenue, and other uncertain economic impacts we will request; just the base budget.

We are offering to commit the same level of Trust Funds that we did in the last two Budget Biennium terms which is about 6.5 million dollars per year to match the requested State General Funds. This reaffirms the partnership between OHA and the State to serve our beneficiaries and to meet critical Community needs. There are innovative, effective and successful ways, when you look at our history of being able to leverage funds and support programs that have made a big difference and impact in the community.



**Public Policy Manager Tanaka:** Our next bill is the CIP request. This is the same bill that we introduced last year for water infrastructure for our Wahiawā Lands. Last year we introduced this bill upon recommendation of the Ways and Means Committee Chair. It got quite far.

Unfortunately, the pandemic and the shutdown happened and thus the bill died. It was not really the shovel-ready type of safety project, that the legislators were prioritizing when they reconvened. That being said, we did hear from WAM staff and they are recommending that we try again this year and I do think that the COVID-19 pandemic has kind of illustrated for folks that need to invest more in our islands' food security and food self-sufficiency. Our plans for Wahiawā that this CIP would support reflects that kind of investment; taking these lands that were formerly used for industrial agriculture to export to the continent and then transforming them into a more diversified agricultural model that can meet our local food security and self-sufficiency needs and goals.

For the details, just like last year, we will be requesting the issuance of general obligation bonds of \$3,000,000 for this CIP request. The lapse date is pushed back to June 2023, which is about six months or half-a-year after our plan to procure construction - so to give us some time.

**Public Policy Manager Tanaka:** The third measure in our Legislative Package is a bill to address and break the cycle of houselessness and the criminalization of houselessness that we've been seeing. It would provide hope for folks that are seeking to try and better their situation, but who are facing some significant barriers in terms of criminal records related to their houseless status.

This bill would allow an individual to apply for an expungement of all their criminal records that relate to what we call 'quality of life' crimes. So, these are the crimes or laws that are almost exclusively enforced against people experiencing houselessness; obstructing sidewalks, trespassing, sleeping in parks, etc. Basically, any nonviolent offense that can be shown to arise from a person's status of being houseless at the time. In order to qualify for this - for this expungement or relief - a person must be able to show that they've complied with all their requirements of probation and any kinds of judgment or conviction except for criminal fines and fees which can be waived.

The person would also have to commit to seek financial or mental health counseling opportunities if they become available to the extent that they recognize that financial or mental health challenges may have contributed to their becoming houseless or remaining houseless. If you look at the bill it has a statutory form, basically a form that's built in statute that can be used as a model for folks to fill the form to apply for this kind of relief.

It is unusual, but it is not unheard of so there are other statutory forms in statute of which this is based. The intent is to minimize the burden on them. We really do not want them to have to go get a lawyer to qualify for this kind of relief. There are a lot of challenges in trying to get out of houselessness, so we want to minimize the burden and assist their ability to apply for this relief.

I want to emphasize that this does not prevent citations or arrests for these quality of life crimes and it does not take away what some folks view as important law enforcement tools to address immediate issues or situations. What it really does is it helps to remove the barriers that folks may face if-and-when they start taking steps towards navigating their way out of houselessness.

OHA-2 (ATTACHMENT B)

**Capital Improvement Project Budget Request for OHA's Wahiawā Lands**

- **Goal:** OHA is preparing for the construction of a water storage and distribution system on OHA's 511-acre property in Wahiawā.
- **Issue:**
  - Water is integral to OHA's plans for Wahiawā; while OHA has secured water from ADC, need to build storage and delivery infrastructure (est. cost of \$3 million). **Note: COVID-19 pandemic has highlighted need for greater diversified agriculture and food self-sufficiency; OHA plan can contribute to this goal.**
  - To accommodate Conceptual Master Plan's commercial elements, OHA needs to demonstrate agricultural uses and amend Honolulu county held conservation easement
- **Legislation:** Capital Improvement Budget Request for \$3 million (raised via G.O. bonds); lapse date of June 2023
  - Note: In FY20 OHA committed (\$200k) in funding and in FY21 (\$300k) for the planning and permitting of the system.
  - Anticipated timeline: Design contract executed by 11/2020, conceptual design by 2/2021; permitting by 8/2022, procure construction by 12/2022

OHA-3 (ATTACHMENT C)

**Clearing the Pathway Home for Houseless People**

- **Goal:** Break (or mitigate) the cycle of houselessness and criminalization; provide hope by removing criminal record barriers to jobs, housing, etc. for those with "quality of life" crimes on their record
- **Issue:**
  - Houseless people given criminal records, fines for "obstructing" sidewalks, "trespassing," etc. that only contribute to their continued houselessness
  - LEAD, HONU programs recognize issue, but have limited capacity and citations will continue despite their efforts
- **Legislation:** Allow an individual to apply for the expungement of ALL criminal records for "quality of life crimes" (i.e. obstructing, trespass, any other **nonviolent** offenses shown to relate to/arise from their houseless status):
  - Petitioner must have complied with all probation and judgment requirements (other than fines and fees), must commit to seek financial or mental health counseling if applicable (nonenforceable)
  - Outstanding fines and fees will be waived
  - Includes statutory form to minimize burden on applicants; goal: no need lawyer to apply
  - Does not prevent citations or arrests, but removes the barriers that criminal records can create for houseless individuals seeking employment

**Public Policy Manager Tanaka:** The final measure in our proposed Legislative Package is a resolution that looks at the Data Governance needs and challenges of the State. During this pandemic, we really encountered a lot of challenges with specific departments in getting data in a timely, consistent, and disaggregated manner.

That data would help with developing policies and interventions to minimize the impact of the COVID-19 pandemic. We know that with what information we do have that COVID-19 has disproportionately impacted the Native Hawaiian community and other Pacific Islander communities in substantial and unique ways.

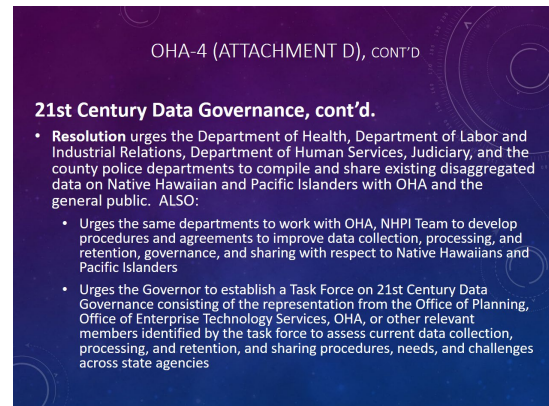
Unfortunately, it has been difficult to really validate and to also strategize around those impacts when the data we have been receiving hasn't been sufficiently granular or clear enough to work out a pathway towards addressing those impacts. I think what has been emphasized for a lot of folks who have been working on these data issues for a while is that these challenges have been longstanding and it has and will continue to frustrate fact-based policymaking. So, policies and interventions based on data and facts in several areas – not just related to COVID.

What this resolution would do is illustrate these issues. The first step would be to urge certain critical departments - Department of Health, Department of Labor and Industrial Relations, Department of Human Services, the Judiciary and the County Police Departments to compile and share what data they have with respect to Native Hawaiians and also Pacific Islanders (NHPI); but in a disaggregated manner.

It would also urge these same departments to work with OHA and to work with the NHPI Team to develop procedures and agreements to improve their data collection and the data governance processes going forward; also to report back to the Legislature in the 2022 session on what these agreements and procedures are.



Looking more long term, it would urge the Governor to establish a Task Force on 21st century Data Governance. This Task Force would include the Office of Planning, the Office of Enterprise Technology Services and OHA, as well as other members that the Task Force identifies to create a snapshot assessment of what the current Data Governance infrastructure is throughout State Agencies, and to report this back to the Legislature in 2023. That would be the first step towards coming up with a solution to more broadly deal with the governmental challenges that we have been facing.



**Public Policy Manager Tanaka:** That's it for our legislative package for 2021. I wanted to touch on a few contextual issues going in for the Board's consideration. Things that will stick out next year; we do have the Act 307 issue with the audit, which right now is incomplete. There has been some movement in the Legislature to try and get the Auditor to fulfill their legal obligation and complete the audit. If it is incomplete, then that is something that we must address during session.

We do have a new Strategic Plan that will be implemented and in place when session comes around. That will be something that we can talk about with legislators, especially as it relates to our Budget Bill. The big thing obviously next year is going to be COVID. So, I think that's going to be a top priority for legislators and they're going to be looking at prioritizing things along that line - economic relief, food security, public health, all the areas in which we may have to address the impacts of this pandemic.

I think that's something that all of our Legislative Package measures touch on. So, I think it's good to emphasize that, but also I do have the sense that there's also going to be renewed pushes to boost our economy through streamlining processes and mechanisms that protect the rights and interests of our beneficiaries. Same thing with exemptions for Historic Preservation, Environmental review and the 99-year lease issues. The use of Public Trust and Ceded Lands issues may also come up, so we will be vigilant about those issues that we may need to address next session.

**Public Policy Manager Tanaka:** I wanted to recap and touch base on the two Coordinated Advocacy measures that we will be working on this coming session. I get the feeling from talking with partners that we will be supporting and coordinating advocacy around numerous measures and priorities this coming year. However, two specific measures really rise-up to the level of where we will advocate to the same extent as we would for our own package measures.

The first of these as I talked about in the Conceptual Package Workshop is a bill to uplift the voice of the 'Aha Pūnana Leo on the Early Learning Board. The Early Learning Board creates recommendations and policies for our early childhood development and education from prenatal to pre-K. The 'Aha Pūnana Leo is THE entity that really started the Hawaiian language early learning programs with the preschool in the 1980s and then has continued to sustain a network of Hawaiian immersion preschool programs throughout the state. It's pretty singular in its role as supporting a pretty, critical part of perpetuating 'ōlelo as well as providing enriched development opportunities for Native Hawaiian children in the early formative parts of their lives.

Unfortunately, on the Early Learning Board, they have been limited as a two-year term up to two consecutive terms. This has limited their ability to develop the rapport, institutional memory and credibility that would help them maximize their effectiveness as a member and an advocate on the Board. This bill would change their representation to make them commensurate with how Kamehameha Schools and the Hawai'i Association of Independent Schools are treated on the Board. They will be made 'invited, voting members' but they wouldn't be subjected to term limits that they currently are subject to.

2021 LEGISLATIVE  
SESSION CONTEXT

- 2019 Budget Bill (Act 37) Audit – incomplete?
- New Strategic Plan
- COVID COVID COVID – economic relief, food security, public health, impacts
  - Possible push for “streamlining,” exemptions, use of public trust lands and resources

COORDINATED ADVOCACY

**Uplifting 'Aha Pūnana Leo's Voice on Early Learning Board**

- **GOAL:** As a key player in 'Ōlelo Hawai'i and early learning education in Hawai'i, 'Aha Pūnana Leo ('APL) seeks to be included as an invited voting member on the state's Early Learning Board (ELB) under Hawai'i Revised Statutes (HRS) § 302L-1.6
- **ISSUE:** 'APL has had trouble sustaining its voice and impact on the ELB, since the 2017 passage of Act 202 that limits the term lengths of voting representative members including the “representative of Hawaiian medium early learning providers” role in which 'APL has historically filled
- **LEGISLATION:**
  - Currently, the ELB must invite the CEO of Kamehameha Schools and the Executive Director of the Hawai'i Association of Independent Schools (or their designees) to serve as invited voting members of the board; these voting members are not subject to term limits
  - 'APL seeks this same status on the ELB given its singular and predominant role in early learning education in Hawai'i, by amending HRS § 302L-1.6 to include the 'APL CEO, or designated representative, as an invited voting member

**Public Policy Manager Tanaka:** The second and last Coordinated Advocacy measure is a priority of the Hawai'i Correctional Systems Oversight Commission. It was a priority recommendation of the HCR134 Pretrial Reform Task Force and the HCR85 Prison Reform Task Force that led to the creation of the Commission. That was left out of the omnibus measure that implemented most of the other recommendations. This would seek to relieve overcrowding that we have been seeing in our pretrial facilities like OCCC that led to the massive COVID outbreak there; and that continues to threaten other facilities in terms of COVID-19.

It would also provide relief to the impacts of pretrial detention for folks who cannot afford bail and are detained prior to trial. For these folks, there are a lot of consequences that come with it; like losing: their jobs, their housing or custody of their kids. So, to minimize impacts, this bill would shift the presumption of detention to where folks who are accused, but not convicted of a crime would be presumed to be eligible for release. Except for where it can be shown that they pose a serious flight risk or a danger to the community.

It is still in development, but my understanding is that there would be factors relating to rebutting this presumption; options for pretrial release intentions, and supervised release that would vary based upon the level of the alleged offense. Our staff is currently working with the Oversight Commission to further flesh out this proposal and draft it. Then eventually, help them with the various Advocacy needs that they may have. That's it, I'm happy to answer any questions or talk in more detail about any of these proposals.

COORDINATED ADVOCACY

**Reviving HCR134 Pretrial Reform Recommendations**

- **Goal:** Address unnecessary pretrial detention and costly overcrowding in our jails by implementing the HCR134 Pretrial Reform Recommendations
- **Issue:** Despite recent efforts to reform the pretrial system, overcrowding continues to plague our jails and is particularly and acutely threatening in light of recent and potential COVID-19 outbreaks. Pretrial detention may also result in significant punitive impacts to those who have not been convicted of a crime, particularly for indigent defendants.
- **Legislation:** The recently established Oversight Commission has identified pretrial reform as a priority issue to address in its first package of legislative proposals. These proposals would change the way pretrial release is handled by providing for a presumption of pretrial release except for where there is a serious risk of flight or danger can be shown. **Rebuttals and options for pretrial release and detention will vary based on the level of alleged offense.**

Pau  
*mahalo nui for listening*

**Chair Waihe'e:** OK members, *are there any questions about the OHA package?*

*There are none.*

**Vice-Chair Akaka** moves to approve the following new legislative proposals, include those new proposals in the 2021 OHA Legislative Package, and authorize staff (1) to make, as appropriate, technical, non- substantive changes for style, clarity, consistency, and accuracy to all of the legislative proposals in the 2021 OHA Legislative Package and (2) to add or amend preamble language in the measures for framing and editorial purposes:

- A. OHA-1 OHA Biennium Budget Bill Fiscal Year 2021-22/2022-23 (Attachment A)
- B. OHA-2 OHA CIP Funds to Support Diversified Agriculture, Cultural Protection in Wahiawā (Attachment B)
- C. OHA-3 Clearing the Path Home for People Experiencing Houselessness (Attachment C)
- D. OHA-4 21<sup>st</sup> Century Data Governance for Fact-Based Policymaking (Attachment D)

**Trustee Hulu Lindsey** seconds the motion.

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

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

|                        |         |   |   |              |               |                      |           |
|------------------------|---------|---|---|--------------|---------------|----------------------|-----------|
|                        |         |   |   |              |               |                      | 1:33 p.m. |
| TRUSTEE                |         | 1 | 2 | 'AE<br>(YES) | A'OLE<br>(NO) | KANALUA<br>(ABSTAIN) | EXCUSED   |
| LEINA'ALA              | AHU ISA |   |   |              |               |                      | EXCUSED   |
| DAN                    | AHUNA   |   |   | X            |               |                      |           |
| VICE-CHAIR KALEIHIKINA | AKAKA   | 1 |   | X            |               |                      |           |
| KELI'I                 | AKINA   |   |   | X            |               |                      |           |
| BRENDON KALEI'ĀINA     | LEE     |   |   | X            |               |                      |           |
| CARMEN HULU            | LINDSEY |   | 2 | X            |               |                      |           |
| ROBERT                 | LINDSEY |   |   | X            |               |                      |           |
| COLETTE                | MACHADO |   |   |              |               |                      | EXCUSED   |
| CHAIR JOHN             | WAIHE'E |   |   | X            |               |                      |           |
| TOTAL VOTE COUNT       |         |   |   | 7            | 0             | 0                    | 2         |

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



**V. NEW BUSINESS**

**B. ACTION ITEM: BAE #20-04: To Approve the Office of Hawaiian Affairs' 2020 Moloka'i Island Burial Council and Kaua'i / Ni'ihau Islands Burial Council Nominations†**

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

**Pouhana Hussey** calls on Interim Chief Advocate Sterling Wong as well as Compliance and Enforcement Manager Kai Markell to walk the Trustees through the presentation prior to voting on the Action Item.

**Interim Chief Advocate Wong:** Aloha Trustees; ensuring that the Island Burial Councils (IBC) are fully operational has been a longstanding priority for the agency. Some of you may recall in 2013; because of quorum issues, OHA sought legislation to overhaul IBC composition and appointment process requirements. What Kai will be presenting today is a follow-up on that and meeting those statutory requirements.

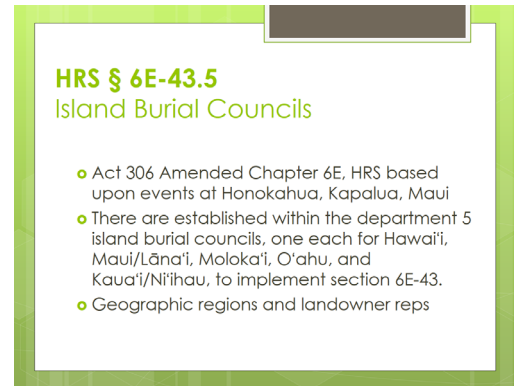
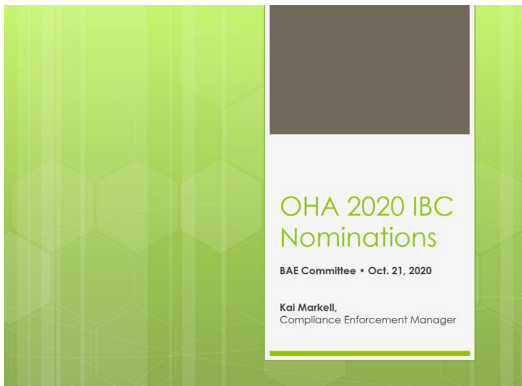
In addition, given that seven years later, there are still the same quorum issues. Therefore, we will be looking at additional Administrative Solutions to this issue, including following-up with the Governor's Office and the Office of Board and Commissions, and we can discuss that further. I will turn it over to Kai for this action. Mahalo Nui.

**Compliance Manager Markell:** Thank you, Sterling. Aloha Chair, Vice-Chair and Trustees. It is good to see everybody; it has been a while. I am just going to give some context on why we are asking for the Trustees to help us nominate names to go to the Governor's Office to serve on the Island Burial Councils.

The Island Burial Councils were created in 1990 after Honokahua on Maui at the Ritz-Carlton Kapalua. 1100 kupuna were being excavated systemically to site the hotel on the bluff. Our beneficiaries found out about it over time; and protested and gathered. Governor Waihe'e signed Act 306 which the Legislature put forward to amend Chapter 6E, which were the Historic Preservation Laws; the current laws. In that Act they established within SHPD, five Island Burial Councils. One for each Island - Hawai'i, Maui, Lāna'i, Moloka'i, O'ahu and Kaua'i/Ni'ihau.

They consisted of geographic regions - so dividing up the islands and there were also landowner representatives. This was mandatory and would represent landowner interests. What we noticed over time is that their authority, even though it comes from Act 306 and amendments from Chapter 6E, their authority really is going back to common law.

**Compliance Manager Markell:** *In common law, who has dispositioned rights of a dead body?* It is next of kin. To claim a dead body from a morgue, from a mortuary, you must be the Father, Mother, Brother, Sister or have some familial relationship. So, the burial councils really are representing the families of the deceased. The landowners on the councils are a little, odd because they are technically supposed to be representing landowner interest and developer interest, but the department really can represent landowner and developer interests. The department is the one that mediates a lot of the councils' recommendations. Also, developers have a right to appeal a council's decision that they are not happy with and take it all the way up to the Supreme Court. So, we were always a little uncomfortable having landowners as part of these burial councils, which are representing the next of kin for the dead, for the iwi kupuna. I just want to point it out.



**Compliance Manager Markell:** The main purpose of these Burial Councils - their primary decision is to determine preservation or relocation of a previously known burial. A previously known burial is a burial that is found during an archaeological survey when somebody's going to develop property. If they find a burial during the survey; for example, they find seven burials and want to keep three in place and the others they need to move because they want to put a road there or whatever; that goes to the Burial Council and they have the sole authority on whether they can move those previously known burials or not.

Of course, that is subject to appeal in a Contested Case and Court, but that is their primary jurisdiction as to whether you can move those burials or not - if you know about them ahead of time. *How else do you know if you have previously known burials?* Families come in and they talk about their burial sites and it becomes record; that is another way that the council can have previously known sites.

The opposite of that is what is called inadvertent discoveries, and by far that is 90% or more of the burials that we hear about in the news or become controversial. Those are burials that are discovered unexpectedly when you are doing road work or when somebody's bulldozing their property; somebody is digging a pool, in sand or washing out on the shorelines during high surf. Those are the jurisdictions of SHPD and not the Burial Council, but the Burial Council can advise them on treatment.

The other primary function of these Councils, which is really, important is to assist SHPD in inventory and identifying Native Hawaiian burial sites. We basically have this issue right now with the O'ahu Burial Council and Hakipu'u with Kualoa Ranch and families that are trying to identify burial sites. Same thing with Maui, the controversy in Kahoma has to do with burial sites being recognized and identified and there is some dispute as to whether it is or is not a burial site.

So, the Burial Council is heavily involved right now as we speak on that role and function. Their other big responsibility is to make recommendations regarding appropriate management, treatment, protection of Native Hawaiian burial sites, and any other matters relating to burial sites. That is very broad, and it is an important recommendation.

We have sea-level rise and traditionally, when the high waves come up on the north shores you have a lot of burials washing out to the beach. On Maui during a two-week period of high surf, 70 individuals washed out. This was 20 years ago, and today we still have iwi coming out of the cliffside on the beaches; locals and tourists find skulls and mandibles. They call the police or they take them home. It's going to become a bigger issue, so the Burial Councils are the perfect forum to discuss this - how to proactively do something about it, but they're not really being utilized unfortunately, for that type of work.

**Compliance Manager Markell:** OHA was instrumental; Sterling, Kamaile, Wayne and Public Policy - helping to amend Chapter 6E. What it did was it amended the Council composition requirements, because we were starting to have issues with quorum and some of the Councils couldn't meet. On Hawai'i Island, if you had people drive 100 miles to come to a Burial Council meeting and they show up and the Council can't meet because they're short a person, it creates a lot of anger and frustration on everybody's part. So, whereas you had a minimum of up to 15 members in the past, now we have nine total members and Moloka'i has five.

There is one representative per region; Moloka'i has four regional reps and you have up to three landowner representatives. This is important because 'up to three' now means if you don't have a landowner rep, no landowners have put anyone forward. The Governor has not picked anybody. SHPD has not chosen anybody. We are now allowed to get another regional representative into that seat. Some areas, we require two regional reps. I know the Kona region on O'ahu has the most development coming up right now and there's so many burial calls. I think right now Hina as Chair is the only Kona Regional Representative. So, if there is a landowner opening and we could put another Kona Rep in - of which we are allowed - that helps the Council function and helps everybody.

They also amended the quorum requirement. So now; five members can conduct business (Moloka'i – three). That helps with minimal people able to show up and being able to function and get the business complete.

### HRS § 6E-43.5 Island Burial Councils

- Determine the preservation or relocation of previously identified native Hawaiian burial sites vs. inadvertent discoveries;
- Assist the department in the inventory and identification of Native Hawaiian burial sites;
- Make recommendations regarding appropriate management, treatment, and protection of native Hawaiian burial sites, and on any other matters relating to native Hawaiian burial sites;

### HRS § 6E-43.5 as amended by Act 276 (SB407/OHA-5)

- Amended council composition requirements
  - 9 total members (Moloka'i: 5 total members)
  - 1 rep per region; 6 regional reps (Moloka'i: 4 regional reps)
  - Up to 3 landowner/developer representatives (Moloka'i: up to 1 landowner/developer representative)
- Amended quorum requirements
  - 5 members required to conduct business (Moloka'i: 3 members)

**Compliance Manager Markell:** Right now, in OHA, we are trying to look at the current situation. It has been a constant struggle like Sterling mentioned, to get people to serve on the Burial Councils. Mind you, I've been doing this for 26 years now; 10 years on the side of SHPD working with OHA to help get names and then 16 years on the OHA-side now asking our people to come forward so we can work with SHPD and the Governor and put names up. It has been very difficult for a multitude of reasons.

We just came up with some new Standard Operating Procedures and we're making it more of a collaborative effort within OHA. We have Community Engagement who helps with outreach in Ka Wai Ola and on our Facebook and other Social Media accounts to reach out to people.

Compliance Enforcement - right now we review the applicants and that is solely because right now within Advocacy, we have Historic Preservation experience. Myself and Keola Lindsey worked for the Burial Sites Program at SHPD, as well as Lauren and Kamakana; who also worked for SHPD. So, we have that institutional knowledge to be able to help, review, and ultimately train Council members and the Councils themselves, which we are starting to do.

Public Policy will definitely help with the testimonies, the Governor's Messages, and the Senate Confirmation process. So, we're trying to work together and share the 'ike and knowledge with each other so this can continue even if a certain staff member leaves OHA - it will continue within OHA.

Our nomination process - we look at the candidates; we look at their experience and understanding of culture, history, burial beliefs, and customs.

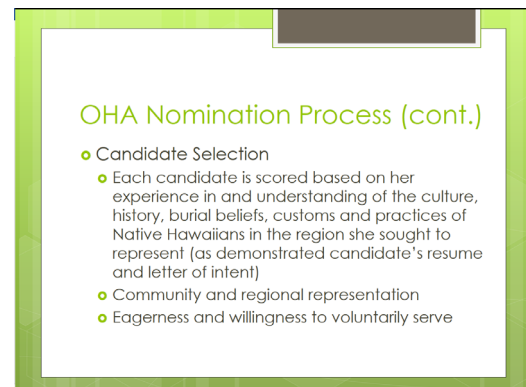
We look at the requirement - if you want to represent Wai'anae;

- *Do you live there, or have you ever lived there?*
- *What are your connections to the Wai'anae people?*
- *Can you represent that area and stand-up and face the Community there and the families?*

So, we kind of gauge them on those abilities and then probably the most important one for me personally, is their eagerness and willingness to serve.

**Compliance Manager Markell:** I'm not going to kid you; the turnover rate on the Burial Councils is high and some of the issues we have is that people can serve a four-year term and then another four-year term and then sit out of one year and come back because their knowledge is so valued.

However, people will serve one-year term and then drop off for two years and then we have interim appointments to fill. We have uneven balance on the Councils and that's created a lot of dysfunctional Councils that have had to shut down. I remember Moloka'i was shut down for about five years because it was hard to find large landowners over there that want to serve on the Council. So, with the law changed, it really made it a lot better; but they are volunteers. It is a very difficult job and can take a lot of time. The OIBC had a seven-hour meeting. The last thing we want to do is to get our people to go serve this important kuleana, to take care of our most cherished possession, and then throw them to the wolves.



**Compliance Manager Markell:** So, we have a very collaborative assessment and scoring and then we are here today; we are submitting names. We feel these people have what it takes to serve on the Burial Councils; to serve our Lāhui and our Kupuna.

Should you approve of our nominees today, their names will be transmitted to the Office of the Governor. People can apply for the Burial Councils either through OHA or DLNR and SHPD. SHPD submits their own list, like what we are doing today; and OHA submits its list. Sometimes the same person can be on both lists. The Governor has to appoint two representatives on each Council from OHA's list. So, the quicker we get names into the process, the more names we give, the higher the chance we are going to end up with the Governor choosing from OHA's list to put on the Burial Councils. The Senate will then confirm.

For regular appointees, the normal process - we try to get OHA's list up by the end of the year. DLNR will get their list in as well and then the Governor's office will review it and whoever he chooses from our list and SHPD's list will go forward to the Senate confirmation process. The reason we're focusing on the Kaua'i/Ni'ihau Islands Council and the Moloka'i Island Council today is because those two councils are down for the count right now. Even with making the changes with the quorum requirements, they have had some people leave and have not found replacements; so now the councils are not functioning.



What we're trying to do now is get these names up to the Governor as soon as we can and ask him if he can appoint these people now. We would like to get them into the councils as soon as possible so that they can start functioning and not have to wait another four-to-six months for Senate confirmation.

### OHA Nomination Process (cont.)

- Collaborative Assessment and Scoring
- Candidates Submitted for BAE & BOT Approval

### Appointment Process

- OHA nominees transmitted to Governor's Office of Boards and Commissions and DLNR
- Governor must appoint 2 regional representatives on each council from OHA nominee list
- Senate confirms
  - During current session for regular appointees
  - During following session for interim appointees

**Compliance Manager Markell:** So again, we're trying to get interim nominees in and we're also trying to build up a standing list of people who are willing to serve in every geographic region of every Council. With multiple names - we can help train people, get them ready, they can attend Burial Council meetings and see how it's going. They can learn things and then as soon as we have vacancies, we will have people willing to serve who are qualified and ready-to-go. That is the only way we are going to be able to address the longstanding, 26-year issue of the Burial Councils not being able to function from time-to-time.

OK, so for our OHA 2020 nominees - our first one is Ka'ohulani McGuire; she's applying for Kalawao Regional Representative. She is a cultural anthropologist, ethnographer, and historian for Kalaupapa National Historical Park. She's been researching there for 20 years and has resided there for 11 years now; part of her job is helping 'ohana find graves. Of the 8,000 graves that are in Kalaupapa, so many are unmarked. She's an early member of Hui Mālama I Nā Kūpuna O Hawai'i Nei, so she learned a lot of their protocols and is very well qualified.

Our next nominee is Terna Leimomi Hooper, who also would like to serve Kalawao. She was born and raised on Moloka'i; her 'ohana is from Pelekunu which is right there. She started with the Department of Health at Kalaupapa and learned a lot about the deceased and the records. She is currently a laborer in their Cultural Resource Division; she takes care of these sites.

Lastly, for Moloka'i we have Keomailani Hanapi Hirata. She's a nominee for East Moloka'i. She and her 'ohana have two decades or more of dealing with iwi and her parents served on the Moloka'i Burial council in the '90s. Her mother makes kapa for the reburials and Keomailani has learned that, so she is another excellent candidate.

### Current List: OHA 2020 Nominees

- Some candidates will be "interim nominees" who have been selected for nomination for immediate appointment where vacancies exist to allow for functioning of council.
- These interim nominees once appointed will be immediately seated to address quorum issues and be subject to confirmation during the 2021 Legislative Session
- Some candidates will be recommended for an internal OHA repository nomination list for future vacancies where regions are currently filled to keep lists active and councils functioning

### OHA 2020 Nominees: Moloka'i

- 2020 Interim Nominees
  - Ka'ohulani McGuire, Kalawao
  - Terna Leimomi Hooper, Kalawao
  - Keomailani Hanapi Hirata, East Moloka'i



**Compliance Manager Markell:** For Kaua'i/Ni'ihau we have Sherri-Lee Uilani Cummings; she is a nominee to represent the Hanalei District. She is born-and-raised in Anahola Homestead. She served as Vice President for the Hanalei Hawaiian Civic Club; worked on legislative proposals, has great connections with 'ohana and advocates on that side. She has some land development experience, which is important as well because she understands the limits and has that 'ike which is important to help the Council. She has a strong commitment to serve the ancestors; it's a calling for her now.

Next is Wayne Harada, also known as Palala. He has already served on the Burial Council on Kaua'i and he wants to come back again. That constant service would bring great institutional knowledge to the Council. This is important because unfortunately when there's turnover in the Council, you end up with new council members who don't really know what happened in the last 20 to 30 years. They'll end up looking at projects or developments, and they don't realize that the project they're looking at to take care of five burials is next to a parcel that had 40 burials. That kind of institutional 'ike is so important, so we're glad Palala wants to serve again. He's a Hawaiian Cultural Specialist in Anahola.

**Compliance Manager Markell:** Waipū'ilani Flores is a Hawaiian Educator at the Public Charter School. She was born in Wai'anae, but moved to Anahola and lived with her grandparents and learned from them. She has a strong calling to serve the ancestors. She has a strong affiliation and connection to Kawaihau.

Lastly we have Noelani Kau'i Naumu. She was highly recommended by a current Kōloa representative, Ted Blake. She is a hula practitioner and mother of four beautiful children. She lost one of her children, so she understands the Hawaiian grieving process. She understands the deep sense of kaumaha and 'eha and what iwi means to people when they come in and testify and they cry. She has that connection.

The next wave that's coming. We are looking at all the councils; trying to get the terms of each councilmember straightened out with SHPD. There are some issues of several members of not realizing that their term expired. They are holdover members now. If they served eight years already, they might not be valid on the Council, and it might jeopardize current Council decisions and that's a huge concern. So, we are trying to get all that information for every council; of who is expiring in 2021 and 2022. Then we expect to be back here before you probably in January 2021 when the Board reforms itself after the general election and we will have more names for O'ahu, Maui, and for Hawai'i Island.



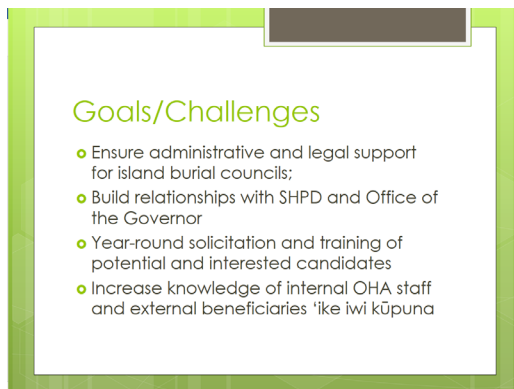
**Compliance Manager Markell:** I wanted to go over our goals and challenges to close this up. We need to ensure Administrative and Legal Support for the Island Burial Councils. Like I mentioned before, people serve on the Council(s) and sometimes they're not trained or prepared properly, and then they're set up against lawyers, developers, consultants, professionals, engineers, archaeologists, and it can be very intimidating.

The councils do not have their own lawyer. For the first decade, Halealoha and I because we were lawyers, would be their counsel. Now they have an AG who you can call on the phone and ask questions, but in a 7 hour meeting you're missing all that coverage and it creates a situation where the Burial Council member sometimes feels that they can get sued if they overextend their boundaries. So, we need to get them more training and more support before we ask our people to serve on these important councils.

We need to build relationships with SHPD and the Office of the Governor. OHA had submitted names from earlier in the year and not one of our names made it onto any of the Burial Councils. The only one that did was Kyle Nakanelua, but he was on SHPD's list. We are going to do a year-round solicitation, so we are not going to wait until there is an opening and then start looking for people. We are going to keep this process going collaboratively within OHA - trying to work with SHPD and the Office of the Governor to make sure we have people trained, ready to go, and wanting to serve.

We also want to increase knowledge internally. We have staff who have experience and knowledge in Burial Councils and Historic Preservation, and we have many who want to learn. We're committed to build that 'ike within OHA. I am not going to be here forever, and other people may move on and we want to make sure OHA is set up. If there's new staff, we do not reinvent the wheel. These are things that OHA will eventually show a long duration of engagement.

OHA has had various people serve on the Burial Council. Kaliko Santos, LaFrance Kapaka-Arboleda, Ruby McDonald, Pikake Pelekai, Hinaleimoana, and Kalani Fronda have all served or currently serve on Burial Councils. We need to utilize that and work together as an OHA 'ohana to fix this issue. As we see with the issues with iwi and our people - right now this continues to be a major issue for our lāhui and for OHA. That's all, if there's any questions I'd be happy to answer.



**Chair Waihe'e:** *Members are there any questions on the Nominations?*

**Trustee Akina:** I just wanted to say Kai - Mahalo for the excellent explanation of the Burial Council and its purpose, rationale, and history. That was the most insightful presentation I've had in the last four years, and it has really helped me to appreciate the work that is done on the Council. Thank you for the work that you've done.

**Compliance Manager Markell:** Thank you for those kind words. I appreciate that and it means a lot to me. I'm humbled.

**Trustee Hulu Lindsey:** I just want to thank Kai for all the work he has done for our iwi kupuna. I cannot thank him enough on behalf of the people of Maui; because I am sure that you folks know how passionate our people are, and we've had many, many problems in different parts of our island.

Our people that are strong advocates of our iwi are very dependent on Kai and very protective of him as well. So, I want to really mahalo him and let him know how valuable he is; how valuable his service is to the people, as well as to the Office of Hawaiian Affairs. Thank you.

**Compliance Manager Markell:** Thank you, Trustee Hulu. You are going to make me cry. Love you. Thank you. Humbled. Love our people. Love our kupuna.

**Chair Waihe'e:** *Members are there any other questions or comments?*

*There are no further questions or comments.*

**Trustee Ahuna moves to approve the following individuals as the Office of Hawaiian Affairs' 2020 nominations to the Moloka'i Island Burial Council and the Kaua'i/Ni'ihau Islands Burial Council and to authorize the Administration to timely transmit these nominations to the Governor:**

**Moloka'i Island Burial Council**

1. **Ka'ohulani McGuire,**  
*Nominee for Kalawao regional representative*
2. **Terna Leimomi Hooper,**  
*Nominee for Kalawao regional representative*
3. **Keomailani Hanapi Hirata,**  
*Nominee for East Moloka'i regional representative*

**Kaua'i/Ni'ihau Islands Burial Council**

1. **Sherri-Lee Uilani Cummings,**  
*Nominee for Hanalei regional representative*
2. **Wayne T. Harada, Jr.,**  
*Nominee for Waimea/Nā Pali regional representative*
3. **Waipū'ilani Flores,**  
*Nominee for Kawaihau regional representative*
4. **Noelani Kau'i Naumu,**  
*Nominee for Waimea/Nā Pali regional representative*

**Vice-Chair Akaka seconds the motion.**



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

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

|                        |         |   |   |              |               |                      |           |
|------------------------|---------|---|---|--------------|---------------|----------------------|-----------|
|                        |         |   |   |              |               |                      | 2:07 p.m. |
| TRUSTEE                |         | 1 | 2 | 'AE<br>(YES) | A'OLE<br>(NO) | KANALUA<br>(ABSTAIN) | EXCUSED   |
| LEINA'ALA              | AHU ISA |   |   |              |               |                      | EXCUSED   |
| DAN                    | AHUNA   | 1 |   | X            |               |                      |           |
| VICE-CHAIR KALEIHIKINA | AKAKA   |   | 2 | X            |               |                      |           |
| KELI'I                 | AKINA   |   |   | X            |               |                      |           |
| BRENDON KALEI'ĀINA     | LEE     |   |   | X            |               |                      |           |
| CARMEN HULU            | LINDSEY |   |   | X            |               |                      |           |
| ROBERT                 | LINDSEY |   |   | X            |               |                      |           |
| COLETTE                | MACHADO |   |   |              |               |                      | EXCUSED   |
| CHAIR JOHN             | WAIHE'E |   |   | X            |               |                      |           |
| TOTAL VOTE COUNT       |         |   |   | 7            | 0             | 0                    | 2         |

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

#### VI. ANNOUNCEMENTS

None

## VII. ADJOURNMENT

Trustee Hulu Lindsey moves to adjourn the BAE meeting.

Vice-Chair Akaka 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.

|                        |         |   |   |              |               |                      |           |
|------------------------|---------|---|---|--------------|---------------|----------------------|-----------|
|                        |         |   |   |              |               |                      | 2:08 p.m. |
| TRUSTEE                |         | 1 | 2 | 'AE<br>(YES) | A'OLE<br>(NO) | KANALUA<br>(ABSTAIN) | EXCUSED   |
| LEINA'ALA              | AHU ISA |   |   |              |               |                      | EXCUSED   |
| DAN                    | AHUNA   |   |   | X            |               |                      |           |
| VICE-CHAIR KALEIHIKINA | AKAKA   |   | 2 | X            |               |                      |           |
| KELI'I                 | AKINA   |   |   | X            |               |                      |           |
| BRENDON KALEI'AINA     | LEE     |   |   | X            |               |                      |           |
| CARMEN HULU            | LINDSEY | 1 |   | X            |               |                      |           |
| ROBERT                 | LINDSEY |   |   | X            |               |                      |           |
| COLETTE                | MACHADO |   |   |              |               |                      | EXCUSED   |
| CHAIR JOHN             | WAIHE'E |   |   | X            |               |                      |           |
| TOTAL VOTE COUNT       |         |   |   | 7            | 0             | 0                    | 2         |

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

Chair Waihe'e adjourns the BAE meeting at 2:08 p.m.

Respectfully submitted,

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Melissa Wennihan  
Trustee Aide  
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment (BAE) on January XX, 2021.

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Trustee John Waihe'e, IV  
Chair  
Committee on Beneficiary Advocacy and Empowerment