

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

June 24, 2021 10:00 a.m.

ATTENDANCE:

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

COUNSEL:

Anna Elento-Sneed, Esq.
Robert G. Klein, Esq.

BOT STAFF:

Crayn Akina
Melissa Wennihan

ADMINISTRATION STAFF:

Sylvia Hussey, CEO / Ka Pouhana / Administrator
Casey Brown, COO / Ka Pou Nui
Erin Nakama, IT
Everett Ohta, Corporation Counsel
Kai Mana Peres-David, HR
Raina Gushiken, Corporation Counsel
Ramona Hinck, CFO
Tiger Li, IT

GUESTS:

Daniel Kanahale
Germaine Meyers

I. CALL TO ORDER

Chair Waihe'e calls the Committee on Resource Management meeting for Thursday, June 24, 2021, 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	
VICE CHAIR	LUANA	ALAPA	PRESENT	
TRUSTEE	LEINA'ALA	AHU ISA	PRESENT	
TRUSTEE	DAN	AHUNA	PRESENT	
TRUSTEE	KALEIHIKINA	AKAKA	PRESENT	
TRUSTEE	KELI'I	AKINA	PRESENT	
TRUSTEE	BRENDON KALEI'AINA	LEE	PRESENT	
TRUSTEE	CARMEN HULU	LINDSEY	PRESENT	
TRUSTEE	KEOLA	LINDSEY	PRESENT	

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

II. PUBLIC TESTIMONY on Items Listed on the Agenda*

RM Staff Crayn Akina: We do have two oral testifiers today. I wanted to also state for the record two written testifiers who submitted testimony for yesterday's meeting – both testimonies also stand for submission for today's meeting as well - Wai'oli Valley Taro Hui and D. Kapua'ala Sproat.

Germaine Meyers: Aloha. Thank you. My name is Germaine Meyers. I'm a beneficiary, for beneficiary advocacy and empowerment. I'm also a Nānākuli Hawaiian homestead lessee.

Thank you Chair Waihe'e, Vice-Chair Alapa, Administration and Lāhui. Today, I come before you to speak about the biennium budget that is before today's agenda. I had listened to yesterday's workshop on the biennium budget, and I had expressed to you yesterday regarding my concerns about the Grants Department specifically; and I echo that concern today.

After listening to the Joint BAE-RM Committee meeting and the responses by the Grant Manager, which I feel did not answer the questions honestly, directly, and clearly - I again assert my concerns about the biennium budget grants portion of it being inflated, when we have a situation where the Grants department process is, in my perspective, questionable.

When I look at Hawai'i Revised Statutes §10-14.5(b) it says that *the board shall provide opportunities for beneficiaries in every county to participate in the preparation of each biennial and supplemental budget of the office of Hawaiian affairs;* that I wholeheartedly know has been fulfilled.

I participated in my county when the Administrator, as well as the Chair, and the Chair of the BAE Committee had come to my neighborhood board meeting. I felt that it was feral in telling us the budget, and we'd supported it wholeheartedly as a neighborhood board.

Right now, I express to you my personal views and I feel that after getting feedback from some of the Trustees, I feel that there's a misunderstanding about the roles of the Trustees and the Board, as compared to the Administrator or the CEO, as it's been retitled. The separation in our understanding, and especially I hear some of the Trustees say on the Board; "*oh, we're only policymakers.*" That's not true.

I think there needs to be a revisit of the Hawai'i Revised Statutes regarding Chapter 10 and there's a difference between *shall* and *may*. *Shall* is mandatory *thou shall* and for example, it says *shall* appoint an Administrator who *shall* serve, but *may* is optional, it's discretionary.

You *may* or you *may not*. You *may* choose to do this or you *may not*. So, whenever I hear *shall* in Chapter 10, especially regarding the Board's responsibilities - that is mandatory.

I had gone and check with legal counsel in my community, Senator Maile Shimabukuro. She's the Chairman of the Hawaiian Affairs Committee, and she's also a lawyer. I checked with her regarding the difference between *shall* and *may* and I'm correct - *shall* is mandatory - *may* is optional, discretionary.

So, there's another part two on the Hawai'i Revised Statutes regarding the biannual budget and it says this; *these opportunities shall include (shall include) an accounting by trustees of the funds expended, and of the effectiveness of programs undertaken.*

Germaine Meyers: Now the effectiveness of programs undertaken by the Grants department, or grants given in the past is not what is being shown in the annual report. In the annual report put out by OHA, it's an accounting of who got monies and what they plan to do, what they *may* do - what they hope to do, what they define that they will do.

At no point for each of those dollars of trust funds have the Trustees given an accountability as it states here; *an accounting by trustees of the funds expended*. That's part one, which you've done in the annual report, but it also says Part Two and of the effectiveness of the programs undertaken. Now we see that CNHA hasn't provided reports. The Grants department owes us quarterly reports if they're not going to provide an annual report - an update. I see that my time is coming-to-a-close. I feel that the Board of Trustees should require; make it mandatory; that the Grants department provide updates to you on-a-monthly-basis, if not quarterly. Thank you for your time. A hui hou, have a nice day.

Chair Waihe'e: Thank you Germaine.

Daniel Kanahale: Good morning Chair Waihe'e, Trustees, members, and staff. My name is Daniel Kanahale, I'm testifying as an individual on the biennium budget. I'm a resident of South Maui. I live in the moku of Honua'ula.

I come to take a second bite at the apple. I'm here once again to defend the Compliance Enforcement program. I do not want the Compliance Enforcement team to be streamlined out of existence under the new budget. I hope Compliance Enforcement remains 'as is'; because there is so much work to do in our moku, Honua'ula. We are at a crucial stage in Honua'ula and we cannot afford to have advocacy stopped or interrupted.

In fact, all hands are needed on deck at this time. There are thousands of cultural property sites and features at risk of being destroyed because of ongoing and proposed development in Wailea and Makena. The Compliance Enforcement team has been in the trenches with us beneficiaries for years.

When I say us, I mean Justin Kekiwi, Jacob Adolpho, Ashford DeLima, Tanya Lee-Greig, Ka'onohi Lee, Maile Lu'uwai, Ka'ena Elaban, Ke'eaumoku Kapu, Cody Nemet - just to name a few.

The compliance enforcement team has helped we beneficiaries, to save hundreds of sites and features in our moku. They have been in the trenches with us at Makena H-2 residential project at the Wailea Resort phase two expansion, at Honua'ula or Wailea 670 at the Makena Resort expansion, at the Grand Wailea expansion. They have helped to save many, many sites.

With regards to Wailea 670 or Honua'ula; when this project received its zoning approval in 2008 by the County Council, there was a condition imposed on the project that the Historic Resources Preservation Plan (HRPP) would have to be approved by not only SHPD, but by the Office of Hawaiian Affairs.

Now, we beneficiaries, feel that the HRPP is inadequate because it's based on an inadequate archaeological inventory survey. We have been arguing this for decades and our work has proved this right many, many, many times. Thanks to this condition, OHA has been able to advocate our concerns with the developers for the last two years holding their feet to the fire and making things happen in a way that could not otherwise happen without the compliance enforcement team's help.

Particularly Kamakana Ferreira and Lauren Morawski; the compliance archaeologists. They have been instrumental, and we're so grateful to them, we're grateful to Kai Markell and his team.

So, the question I would like to ask Chair Lindsey, and the Board of Trustees –

Is that your intention to get rid of Kai Markell, and the compliance team?

If the answer is no. Please assure us that this is not the case and do so outside of Executive Session.

I would also like to ask Administration, if –

Is it your intention to get rid of Kai Markell and the compliance section?

and if so - *Why?*

The beneficiaries in Honua'ula would like to know. They have been extremely helpful to us in our historic preservation efforts in the Honua'ula Moku and we would like them to continue advocating for us as beneficiaries here. They are important to historic preservation. They have been important to historic preservation in the past. They are important to historic preservation of our cultural sites now, and I believe they will be important to that effort in the future.

Mahalo for the opportunity to testify this morning.

Chair Waihe'e: Thank you, Daniel. *Members, were there any questions or comments for Daniel?*

There are none.

Chair Waihe'e: Ok, I think some of Daniel's questions will be addressed during the Action Item portion of the agenda.

III. APPROVAL OF MINUTES

None

IV. UNFINISHED BUSINESS

None

Trustee Lee moves to take agenda Item VI. Executive Session out of order.

Trustee Lee: Given that the Executive Session, if scheduled to talk about reorganization activities and their related costs, and that's currently scheduled - after we vote on the budget. I believe it's proper for us to discuss those things before we vote on the budget.

Trustee Keola Lindsey seconds the motion.

Chair Waihe'e: I have no problem with that. *Is there is any discussion?*

There is none.

Chair Waihe'e calls for a ROLL CALL VOTE.

							10:16 a.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA			X			
KALEIHIKINA	AKAKA			X			
KELI'I	AKINA			X			
VICE-CHAIR LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE	1		X			
CARMEN HULU	LINDSEY			X			
KEOLA	LINDSEY		2	X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				9	0	0	0

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

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

VI. EXECUTIVE SESSION‡

- A. Consultation with Board Counsel Robert G. Klein, OHA Sr. Legal Counsel Raina Gushiken, and Anna Elento-Sneed, Esq. re: questions and issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities with respect to reorganization activities and related costs, pursuant to HRS§92-5(4)**

Trustee Ahu Isa moves to resolve into Executive Session pursuant to *HRS§92-5(a)(4)*.

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**.

							10:17 a.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA	1		X			
DAN	AHUNA			X			
KALEIHIKINA	AKAKA			X			
KELI'I	AKINA			X			
VICE-CHAIR LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY		2	X			
KEOLA	LINDSEY			X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				9	0	0	0

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

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

The committee resolved into Executive Session at 10:17 a.m. to discuss:

VI. EXECUTIVE SESSION‡

- A. Consultation with Board Counsel Robert G. Klein, OHA Sr. Legal Counsel Raina Gushiken, and Anna Elento-Sneed, Esq. re: questions and issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities with respect to reorganization activities and related costs, pursuant to HRS§92-5(4)**

The committee returned to Open Session at 12:14 p.m.

V. NEW BUSINESS

A. ACTION ITEM RM #21-07A: OHA Biennium Budget for the Fiscal Biennium Periods 2021-2022 (FY22) and 2022-2023 (FY23)

MAIN MOTION

Trustee Hulu Lindsey moves to approve the Fiscal Biennium Period 2021-2022 (FY22) and 2022-2023 (FY23) as outlined in our Attachment.

Trustee Akina seconds the motion.

Chair Waihe'e asks if there is any discussion.

AMENDMENT (ONE)

Trustee Lee moves to amend the motion to stipulate that it is Attachment #2.

I would like to make an amendment to the motion. Since the main motion does not stipulate, then my amendment will so stipulate, I would like to amend the main motion to stipulate that it's Attachment #2. I don't want to muddy the amendment, so I will offer a further amendment should this prevail.

Trustee Keola Lindsey seconds the amendment to the motion.

Chair Waihe'e: *Sorry, what is Attachment #2?* I wouldn't be against supporting it, I'm just looking for it.

Trustee Lee: There are two attachments that were provided for two separate budgets. Ka Pouhana talked about it during Executive Session.

Chair Waihe'e: Okay.

Trustee Hulu Lindsey: Ka Pouhana can you explain.

Pouhana Hussey: Trustees on page two of the Action Item; the recommended action from Administration is as outlined in Attachment #1. Attachment #2 as referenced by Trustee Lee is an alternate action for the Board's consideration. Administration's recommendation is Attachment #1.

Trustee Lee: That's correct, but the main motion just stated 'attachment'; it did not specify so my amendment is specifying.

Trustee Akina: *May we ask Ka Pouhana to concisely explain what the impact of Attachment #2 will be?*

Pouhana Hussey: So, Attachment #1, as the Administration's recommendation, reflects the Biennium Budget with reorganized positions of 153 positions versus Attachment #2 as the alternate action reflects an 'as-is' budget of 179 positions and just the related personnel differences in there not reflecting any reorganization.

The difference also is that in Attachment #1, it reflects a Beneficiary and Community Investment of \$15.1 million, whereas Attachment #2 reflects a lower amount of \$13 million - which is the difference in the two attachments from the labor line. So, the two attachments are the same - except with those two differences.

Trustee Lee: And as I stated, Mr. Chair, I have a further amendment to this, but I didn't want to muddy it. So, I was going to take each amendment up separately.

Chair Waihe'e: Okay. *Is there any discussion on the amendment members?*

Trustee Akina: Yes, Mr. Chair, thank you very much. As I understand it, if we vote for the amendment that has been proposed, we will be voting down at least for the time being - the plan of reorganization, in which case I speak to that and I say that we should not adopt that amendment, because we have good reasons to move forward with the reorganization.

Trustee Lee: I do not see how approving Attachment #2 prevents the reorganization. I see the approval of Attachment #2 as providing administration more time to do the reorganization; and that's not the same as voting down the reorganization - as was stated by the last trustee. Thank you, Mr. Chair.

Trustee Akina: I will concede to my colleague Trustee Lee that my language was more absolute than it should be. To be more precise; the reason I do not want us to support this amendment is so that Administration may proceed at this time with the putting-into-effect, the plans for the reorganization. Thank you and thank you, Trustee Lee.

Trustee Lee: Point of Information, Mr. Chair.

Chair Waihe'e: Please state your point of information Trustee Lee.

Trustee Lee: *Can Trustee Akina, please share with me that plan; and then maybe I'll withdraw my amendment?*

Trustee Akina: Trustee Lee - we've had many months and we've had extensive discussion in Executive Session to supplement our open discussions. I believe that sufficient information has been presented. I appreciate your interest in further information, but I believe it has been provided and I'm satisfied with the level of information that the Administration has given to us.

Trustee Lee: Mr. Chair, and I appreciate that he's satisfied with that. So, I'm asking him to please share it with me; I didn't bring it up, Mr. Chair, he did. So, I'm asking him to please share it with me and if it's satisfactory to me - like it is to Trustee Akina, I will be happy to withdraw my amendment.

Trustee Akina: Mr. Chair, I'm not asking Trustee Lee to take any action or to withdraw his amendment. Therefore, I don't feel it's necessary to satisfy his question. I believe with all my heart that the information is there, and Trustee Lee has had ample opportunity in Executive Session and elsewhere to explore it to the extent that he would care to do so.

Chair Waihe'e: Okay. *Is there any other discussion members?*

Trustee Hulu Lindsey: **Call for the question.**

Chair Waihe'e: Okay, if there are no further comments...

Trustee Lee: Mr. Chair, Trustee Hulu Lindsey called for the question, which means she's asking for debate to be ended, which means you now need to take a vote of the members present on whether to end debate or not.

Chair Waihe'e: If she made a motion to call for the question that requires six votes to do so.

Trustee Lee: That's correct; and that would end debate. That's not the question, that's just to end debate.

Chair Waihe'e: Okay.

Trustee Lee: So, the question has been called Mr. Chair, no second is necessary. A vote needs to take place.

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

CALL FOR THE QUESTION - END DEBATE							12:24 p.m.
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED	
LEINA'ALA				2 - X	1 - KANALUA;		
DAN				2 - X	1 - KANALUA;		
KALEIHIKINA			X				
KELI'I			X				
VICE-CHAIR LUANA			X				
BRENDON KALEI'ĀINA				X			
CARMEN HULU	LINDSEY	1	X				
KEOLA	LINDSEY			X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT			4	5	0	0	

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

Chair Waihe'e notes for the record that 4 members present vote 'AE (YES) and 5 members present vote A'OLE (NO) and the **MOTION TO END DEBATE FAILS.**

Chair Waihe'e: *Is there any more discussion on the amendment?*

Trustee Keola Lindsey: Mr. Chair, I agree with the earlier comment, which was that we've had months to consider the reorg. portion of our budget. I wholeheartedly agree with that; there have been many questions asked. I support the amendment to the motion that Trustee Lee made, because I feel that there still remains 'unknowns' about the proposed reorg. and more time is needed.

I think a reorg. of OHA is necessary to provide more services to our beneficiaries, but we're not there yet, and more time is needed to get there. Thank you, Mr. Chair.

Chair Waihe'e: Thank you, Trustee Lindsey. *Any further discussion members?*

Trustee Ahu Isa: *We are talking about Action Item RM #21-07B?*

Chair Waihe'e: No, RM #21-07A, Attachment #2.

Trustee Ahu Isa: Okay.

Chair Waihe'e asks if there is any further discussion.

There is no further discussion.

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

AMENDMENT (ONE)							AMENDMENT: 12:17 p.m. VOTE: 12:27 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA			2 - X		1 - KANALUA;	
KALEIHIKINA	AKAKA				X		
KELI'I	AKINA				X		
VICE-CHAIR LUANA	ALAPA				X		
BRENDON KALEI'ĀINA	LEE	1		X			
CARMEN HULU	LINDSEY						NOT PRESENT AT TIME OF VOTE
KEOLA	LINDSEY		2	X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				5	3	0	1

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

Chair Waihe'e notes for the record that 5 members present vote 'AE (YES) and 3 members present vote A'OLE (NO) and the **AMENDMENT (ONE) PASSES.**

AMENDMENT (TWO)

Trustee Lee moves to amend the new motion to add in that Administration add to the budget, the line for the compensation packages from Attachment A to fulfill the suggestion of raising our investment in beneficiaries to the \$15 million.

Trustee Ahu Isa seconds the amendment to the new motion.

Trustee Lee: The purpose of this amendment is obviously, as we have all stated, we believe in being able to and that we should be investing in our beneficiaries more. So given that the funds are there, at least for the first fiscal year - and again, as stated for the *original* amendment; this gives administration more time for the reorganization.

At least in this way, we are fulfilling that part of investing more into our beneficiaries and raising it from what Attachment #2 has as the 13 million - up to what Attachment #1 originally had of the 15 million. So, that we are in fact, giving out more grants and investing more in our beneficiaries. Thank you, Mr. Chair.

Trustee Akina: I'd like to ask Ka Pouhana if she could explain what the impact of this motion - if passed - would be upon reorganization.

Pouhana Hussey: Thank you, Trustee Akina. I want to be sure I understand the motion and the intent of the motion, Trustee Lee.

So, it's to direct Administration to basically take from Attachment #2 on the line 13.7 - restore that to 15.1 - and somehow balance the budget in some other line?

Trustee Lee: It was my understanding from other discussions that I won't go into right now - because they were all in executive session - that those funds are available in the line that was designated for the benefit packages. *Should we go through with the reorg.?*

Pouhana Hussey: As a result of Budget Realignment #3 - that the Board took action-on earlier this month - from FY21, there is about a million dollars of unspent, uncommitted unencumbered from FY21. Funds that could be utilized to pay for reorganization related costs, but that's about a million dollars that can certainly be repurposed for other items...

Trustee Lee: I'm sorry Ka Pouhana, you're cutting in and out.

Can I respectfully request for everyone else to mute their mics because they're cutting into Ka Pouhana?

Pouhana Hussey: Oh, okay. I just want to clarify my understanding in Budget Realignment #3 that the Board approved a couple of weeks ago, in unspent, unencumbered, uncommitted dollars from FY21 - there is a sum of one million dollars to be able to reallocate for reorganization costs or for other things as well.

It was proposed that million dollars be utilized for any reorganization costs impacts; but the Trustees can certainly redirect that amount to any other purpose. So, if I'm hearing correctly, *are you redirecting it to the grants line?*

Trustee Lee: I believe that's what I was doing. I was trying to do it in this form, so that we didn't have to take up another issue at all at a later date of redirecting it that way. *Does that makes sense?*

Pouhana Hussey: Okay. It does. I just want to be sure to gain clarity of what the action is, because that's a very specific action. *Taking FY21 funds and carrying it over is basically what the Board is asking Administration to do?*

Trustee Lee: Correct; and if Legal comes back after this and says that we cannot legally do that, that we must take up another Action - then so be it. The attempt right now, by this amendment, is to effectively do that today for the budget.

Pouhana Hussey: Okay. So, from FY21, to apply to FY22 to increase the beneficiary; retaining that, which means reorganization activities aren't authorized. *Is that correct?*

Trustee Lee: Well, that's what the Attachment #2 is. *Correct?*

Pouhana Hussey: Correct.

Trustee Lee: Right; and as stated, in the debate for the *original* amendment, it's not to stop reorganization, it's to give Administration more time for the reorganization.

Pouhana Hussey: *So that would imply coming back to the Board for reorganization related activities? Implementation, that we have an implementation plan, is that my understanding?* I want to make sure so that Administration comes back with what we are supposed to come back with.

Trustee Lee: I will yield to Trustee Keola Lindsey, as I contemplate my response to that.

Trustee Keola Lindsey: Thank you. Like I touched on earlier over the months of discussion that we've had on the proposed reorg., a very specific part of this budget, speaking for myself in reviewing it – it is understanding how the reorg. is going to specifically address identified problems in providing services to our beneficiaries and resolve those problems to increase services to our people.

Those are some of the details I still want to see regarding the proposed reorg. I don't know if that was the exact question Ka Pouhana asked Trustee Lee. That's my response to what information I would like to see. Thank you, Mr. Chair.

Trustee Lee: For myself Ka Pouahana, I will suffice it to say this, the numerous times that I've been offered by Administration to meet with them about the reorg. and the budget; on the record, my response has been - I don't know what to ask because I don't understand it.

So, with that being said - should this prevail Ka Pouhana, I will commit that within the next two weeks I will schedule a meeting at the convenience of Administration to meet with them. Even if that meeting is me sitting across from them saying, I don't understand, then that's what that meeting starts with, but I will not put off and say "I don't know what to ask. I'm not going to meet with you."

Trustee Akina: Thank you. I want to go back and continue my question to CEO Sylvia.

If we do go ahead and have the reallocation of funds that is proposed by the amendment that is on the floor:

How could that potentially delay or impact your plans for moving forward with reorganization?

In part, my question is asking, aren't these funds necessary for that to be done in an expeditious way?

Pouhana Hussey: Yes, Administration doesn't have the authority to offer any separation in the reorganization, because implicit in that action is the proposed separation costs and that refers to the next action item, which Trustee Ahu Isa flagged.

That action item and that discussion is the totality of the costs of the separation pieces. So, if that is not funded, then that activity doesn't go forward. We don't have any information to provide forward to impacted employees. So, it's a little 'chicken/eggy', but that's how integrated the two action items are.

Trustee Akina: So, if we vote 'yes' on this amendment - *we are in essence delaying to some extent, your ability to move forward on reorganization?*

Trustee Ahu Isa: I don't think it delays. It doesn't say she doesn't do the reorganization. It's just telling people that they're not going to have the job, but she can go ahead and lead the organization because we have to September 1.

I wish you would read my article in July, I wrote a Ka Wai Ola article in July with the CEO. Stating how CEOs in our present situation - after COVID – it is affecting all organizations. CEO jobs are becoming more and more tenuous. In 1992, CEOs had a 36% chance of holding on to their job for five years in 2009. After COVID only 15% of CEOs positions; they have turned over yearly.

Now that things have grown more-and-more slippery, where the buck stops with her (I'm going to use "her"); that it's imperative that the CEOs be given consideration after COVID. Mahalo.

Trustee Hulu Lindsey: Mr. Chair, I apologize. I had to go to the restroom, and everything happened while I was gone.

Could you explain to me what action was taken in my absence, what was the amendment?

Chair Waihe'e: It was to approve Attachment #2.

Trustee Hulu Lindsey: So, I want to re-amend it to approve...

Chair Waihe'e: There's currently another amendment on the table right now.

Trustee Hulu Lindsey: I'll wait then.

Trustee Lee: Just for clarification for Trustee Hulu Lindsey, the current amendment that is on the table is to add-in to the Attachment #2 budget, the funds from the benefits package to increase the beneficiary investment.

In other words, the grants back up to the \$15 million, so that it's not the \$13 million as stipulated in Attachment #2; so, they would raise it up to the 15 that was in Attachment #1.

After that clarification, Mr. Chair, to Trustee Akina's question - the intent of these amendments is not to stop the reorganization. I fully acknowledge and agree that a reorganization is necessary. This is simply just to give everybody, not just Administration, but the Trustees as well - to give everybody more time.

That's it, Mr. Chair. It gives us all more time to ask more questions, to understand this better. I'm happy to hear that some of the Trustees understand it and I'm hoping that this time will either allow the rest of us to get more clarity from either Administration or those Trustees. We can meet as trustees in pairs of two without violating sunshine, or even scheduling agendas with more workshops.

We have a year. So, that's the intent of this, Mr. Chair - is just to give us time. Thank you, Mr. Chair.

Chair Waihe'e: Thank you.

Trustee Akina: Going back a bit to Trustee Ahu Isa's comment, I appreciate what my colleague has said in that the amendment before us doesn't prevent the Administration from exercising leadership toward reorganization. I do want to go back to the CEO's point - that if the money that has been set aside for benefits and separation is reallocated, that will have a delaying effect on being able to go forward because we cannot complete the reorganization without that piece of it. That's what would happen if we do vote 'yes' on this amendment.

Chair Waihe'e asks if there is any further discussion.

There is no further discussion.

Chair Waihe'e calls for a ROLL CALL VOTE.

AMENDMENT (TWO)							Amendment: 12:28 p.m. Vote: 12:44 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA		2	X			
DAN	AHUNA			X			
KALEIHIKINA	AKAKA				X		
KELI'I	AKINA				X		
VICE-CHAIR LUANA	ALAPA				X		
BRENDON KALEI'ĀINA	LEE	1		X			
CARMEN HULU	LINDSEY				X		
KEOLA	LINDSEY			X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				5	4	0	0

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

Chair Waihe'e notes for the record that 5 members present vote 'AE (YES) and 4 members present vote A'OLE (NO) and the **AMENDMENT (TWO) PASSES.**

Chair Waihe'e: *Members, we have a motion on the table still, is there any further discussion?*

Trustee Keola Lindsey: Mr. Chair, just for my own understanding - *what is the remaining motion on the table?*

Chair Waihe'e: The budget as outlined in Attachment #2 and also with \$15 million for grants.

Trustee Keola Lindsey: Okay. Thank you, Mr. Chair.

Trustee Lee: *Would it please the Chair if I restated the main motion as amended?*

Chair Waihe'e: Yes.

Trustee Lee: The main motion is now as amended, which is RM #21-07A:

To approve OHA Biennium Budget for the Fiscal Biennium Period 2021-2022 (FY22) and 2022-2023 (FY23) as outlined in Attachment #2. With the addition of the line from Attachment #1 for the funds for the benefit separation packages from the reorganization to increase the grants line in Attachment #2 to \$15,173,500.

Trustee Hulu Lindsey moves to amend the motion to read 'Attachment #1'.

Trustee Lee: I just want to understand the amendment, Mr. Chair. Oh, actually - I'll wait Mr. Chair.

Trustee Akina seconds the amendment to the motion *for the sake of discussion.*

Chair Waihe'e asks if there is any discussion.

Trustee Lee: Point of clarification, Mr. Chair. So, the amendment now would be to approve the... I won't read the exact verbiage but to approve the budget as outlined in attachment to adding in the...

Trustee Hulu Lindsey: No.

Trustee Lee: Well, that's why I'm asking for clarification.

Trustee Hulu Lindsey: I made the first motion to approve the budget, but I said 'attachment'. So, you added the first amendment to Attachment #2.

Trustee Lee: Which has already passed Trustee. So, any amendment that you're going to add-on now is added on to what has already been passed, which is why I'm trying to...

Trustee Hulu Lindsey: So that's what was passed when I went to the restroom. *Is that what you're saying?* Because it was not while I was here...

Trustee Lee: Okay, I don't recall anybody asking for a recess.

Trustee Hulu Lindsey: I didn't.

Trustee Lee: Mr. Chair, so it's been moved and seconded. I would like to understand the amendment. So, it's to pass the budget.

Chair Waihe'e: She wants to replace Attachment #2 with Attachment #1.

Trustee Lee: Well, then the motion is out of order, because Attachment #2 has already been approved by a majority of the Committee.

Chair Waihe'e: Okay.

Trustee Hulu Lindsey: *Did we vote on that proposed action?*

Trustee Lee: Yes, we did, and it passed with five votes.

Chair Waihe'e: It did.

Trustee Lee: So, if that is the intention of Trustee Hulu Lindsey, then this motion is out of order. That is not how that is accomplished. That is out of order, Attachment #2 has already been approved. Mr. Chair.

Trustee Hulu Lindsey: Okay.

Chair Waihe'e: All right.

Trustee Akina: As Trustee Lee points out, what Trustee Hulu intends is not going to be accomplished by her motion. Perhaps we could ask for consultation of counsel as to how we could accomplish what Trustee Hulu wants to do.

Trustee Lee: Point of order, Mr. Chair. I am not aware of either Corporation Counsel or Board Counsel's credentials to answer what I'm assuming is a point of parliamentary inquiry.

If the Chair would like to rule me out of order and allow them to answer if they so wish; I will consider my options beyond that, but I am not aware of their credentials to answer a point of parliamentary inquiry.

Chair Waihe'e asks if there is any further discussion.

Trustee Hulu Lindsey: Board Counsel, it's your call. The trustee is calling on you.

Board Counsel Klein: Mahalo, Chair. Well, what you have is a parliamentary debate here over how you can accomplish something through voting. It's clear to me that when the motion was made, the amendments were passed; one to cancel debate which ended on its own.

The other one was the move to \$15 million; that passed. So that's what we have now in front of us and that was, I would call it 'alternative one', that passed with a 5-to-4 vote.

So here we are, basically undoing an amendment that was passed by a majority of the Committee by raising the issue of passing an alternative. That is not a legal issue, that is a parliamentary issue. I don't have the experience to tell you how to accomplish it. So, I'll defer. If Raina wants to step in, that's fine, but I can't give you any authority on that.

Trustee Hulu Lindsey: I will recognize Trustee Lee's authority as a Parliamentarian and...

Trustee Lee: Point of order, Mr. Chair. I am not a Parliamentarian, nor do I claim to be a Parliamentarian. I was questioning the expertise of those that were called upon to make a point of parliamentary inquiry.

Trustee Akina: I don't have the parliamentary knowledge with which to frame what Trustee Hulu Lindsey is proposing, but I believe that you as Chair over this committee has some discretion. While we don't have the technical expertise immediately, what we really want to do is allow the vote to be retaken or in some way....

Trustee Ahu Isa: Call for the question.

Chair Waihe'e calls for a ROLL CALL VOTE.

CALL FOR THE QUESTION - END DEBATE							12:53 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA	1		X			
DAN	AHUNA			2 - X		1 - KANALUA;	
KALEIHIKINA	AKAKA			X			
KELI'I	AKINA				X		
VICE-CHAIR LUANA	ALAPA				2 - X	1 - KANALUA;	
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY				X		
KEOLA	LINDSEY			X			
CHAIR JOHN	WAIHE'E				X		
TOTAL VOTE COUNT				5	4	0	0

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

Chair Waihe'e notes for the record that 5 members present vote 'AE (YES) and 4 members present vote A'OLE (NO) and the **MOTION TO END DEBATE PASSES.**

Chair Waihe'e calls for a ROLL CALL VOTE ON THE MAIN MOTION, AS AMENDED.

MAIN MOTION, AS AMENDED

To approve the OHA Biennium Budget for the Fiscal Biennium Period 2021-2022 (FY22) and 2022-2023 (FY23) as outlined in Attachment #2. With the addition of the line from Attachment #1 for the funds for the benefit separation packages from the reorganization to increase the grants line in Attachment #2 to \$15,173,500.

V. A. – RM #21-07A MAIN MOTION, AS AMENDED						MAIN MOTION: 12:16 p.m. VOTE: 12:55 p.m.	
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA			2 - X		1 – KANALUA;	
KALEIHIKINA	AKAKA				X		
KELI'I	AKINA		2		X		
VICE-CHAIR LUANA	ALAPA				2 - X	1 – KANALUA;	
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY	1			X		
KEOLA	LINDSEY			X			
CHAIR JOHN	WAIHE'E				X		
TOTAL VOTE COUNT				4	5	0	0

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

Chair Waihe'e notes for the record that 4 members present vote 'AE (YES) and 5 members present vote A'OLE (NO) and the MAIN MOTION, AS AMENDED FAILS.

V. NEW BUSINESS

B. ACTION ITEM RM #21-07B: OHA Biennium Budget for the Fiscal Biennium Periods 2021-2022 (FY22) and 2022-2023 (FY23), Fiscal Stabilization Policy

Trustee Hulu Lindsey moves to

- A. Reserve and designate an amount of \$1,000,000 in unspent, uncommitted, unencumbered funds from FY 2021 for the purpose of addressing projected reorganization related costs; this action authorizes Administration to carryover (e.g., accrue, encumber), \$1,000,000 FY 2021 authorization to fund reorganization related costs (e.g., accrued vacation, health insurance premiums, separation pay, other) post FY2021;
- B. Expect, if necessary, an action item recommendation, to fund reorganization related costs in excess of \$1,000,000, in accordance with the Budget Management Policy or the Fiscal Stabilization Policy, as appropriate; and
- C. Authorize the projected balance of \$321,000, as of June 30, 2021, of the unspent, previously designated amount of \$500,000, continue to be available (i.e., carryover) to address operational changes needed to address impacts of COVID-19 as intended.

Trustee Akaka seconds the Motion.

Chair Waihe'e asks if there is any discussion.

Trustee Keola Lindsey: I'm going to ask for clarification on how the vote on this action item relates to the failed vote on OHA's Budget because we don't have a... the effort to approve a budget just failed.

Right?

So, what happens?

How does this action relate to what I think is a mandate for this Board to approve a budget?

Thank you, Mr. Chair. Sorry if I'm the only one.

Trustee Lee: Point of clarification, Mr. Chair. The approval of carrying over these funds is unrelated to the budget. Although it is related to it; one has nothing to do with the other. We can approve this without having the budget. Which we currently don't have - an approved budget because that failed - and we moved on in the calendar. So, we can approve this Mr. Chair, or not approve it - however the will of the committee is.

Chair Waihe'e asks if there is any further discussion.

There is no further discussion.

Chair Waihe'e calls for a ROLL CALL VOTE.

V.B. – RM #21-07B							MOTION: 1:00 p.m. VOTE: 1:03 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			2 - X		1 - KANALUA;	
DAN	AHUNA					1 - KANALUA; 2 - KANALUA = ABSTAIN	
KALEIHIKINA	AKAKA		2	X			
KELI'I	AKINA			X			
VICE-CHAIR LUANA	ALAPA			X			
BRENDON KALEI'AINA	LEE				X		
CARMEN HULU	LINDSEY	1		X			
KEOLA	LINDSEY				X		
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				6	2	1	0

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

Chair Waihe'e notes for the record that 6 members present vote 'AE (YES), 2 members present vote A'OLE (NO), and 1 member present ABSTAINED the **MOTION PASSES**.

VII. ANNOUNCEMENTS

None

VIII. ADJOURNMENT

Trustee Lee moves to adjourn the RM meeting.

Trustee Ahuna seconds the motion.

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

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

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	1:04 p.m. EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA		2	X			
KALEIHIKINA	AKAKA			X			
KELI'I	AKINA			X			
VICE-CHAIR LUANA	ALAPA			X			
BRENDON KALEI'ĀINA	LEE	1		X			
CARMEN HULU	LINDSEY			X			
KEOLA	LINDSEY			X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				9	0	0	0

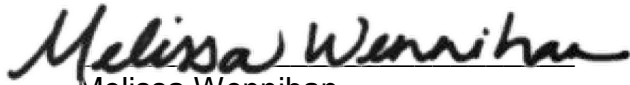
VOTE: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

Chair Waihe'e adjourns the RM meeting at 1:04 p.m.

Attachments:

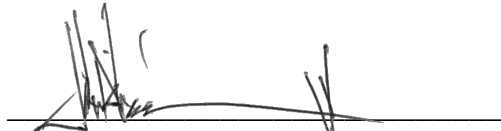
- 1) Written Testimony - Wai'oli Valley Taro Hui
- 2) Written Testimony - D. Kapua'ala Sproat

Respectfully submitted,



Melissa Wennihan
Trustee Aide
Committee on Resource Management

As approved by the Committee on Resource Management (RM) on July 22, 2021.



Trustee John Waihe'e, IV
Chair
Committee on Resource Management

June 22, 2021

Re: June 24, 2021 RM Committee Meeting – Agenda Item V. OHA Biennium Budget

Aloha mai e nā Trustees,

Mahalo for this opportunity to testify in support of the proposed biennium budget and the A‘o Aku A‘o Mai Initiative in particular. As you may know, we are the Wai‘oli Valley Taro Hui, a hui of small family farmers in Wai‘oli, Kaua‘i that have been stewarding our natural and cultural resources for generations. With OHA’s support and significant help from Ka Huli Ao Center for Excellence in Native Hawaiian Law’s legal clinics, we are comforted that the future of kalo cultivation in Wai‘oli will be protected for future generations.

Our farms and lifeways were devastated by the 2018 floods that ravaged Kaua‘i’s North Shore. Disaster recovery efforts revealed that our Native Hawaiian irrigation system that has taken water from Wai‘oli Stream for centuries was on conservation land and would now be subject to a slew of permitting and other requirements, including HRS 171-58 regarding water leases. Since 2019, the Environmental and Native Hawaiian Law Clinics at the William S. Richardson School of Law have been working diligently to comply with all of the requirements of HRS 171-58. In fact, over the course of those 2 years, we have been told that 33 students and 4 attorneys have spent thousands of hours supporting our humble Hui. They have helped us create a state non-profit with 501(c)(3) tax exempt status, apply for and secure a right of entry and easement, as well as a revocable permit for our water use. In addition, the clinics have helped us to complete beneficiary consultation with the Department of Hawaiian Home Lands, submit a draft watershed plan, pass a concurrent resolution at the Hawai‘i State Legislature authorizing direct negotiation on a long-term water lease, finalize and publish a Chapter 343 draft environmental assessment, and secure an amended interim instream flow standard for Wai‘oli Stream with the Commission on Water Resource Management.

We are so grateful for all of the students’ hard work and aloha. Their work will have a lasting impact on Wai‘oli. It not only helps secure our practice in the present, but more importantly, for the future. Their collective mana is connected to Wai‘oli forever.

Finally, we are deeply grateful for OHA’s support of incredible initiatives and want you to know that so many of us benefit in Wai‘oli and throughout Kaua‘i. Programs like the A‘o Aku A‘o Mai Initiative have lasting impacts on communities and beneficiaries across Hawai‘i nei. These programs train our future attorneys, protect traditional and customary Native Hawaiian practices, build capacity in our community, and ensure: aia i Wai‘oli ke aloha ‘āina – that aloha ‘āina lives here at Wai‘oli and beyond.

Mahalo nui,

The Wai‘oli Valley Taro Hui
waiolivalleytarohui@gmail.com



UNIVERSITY
of HAWAII®
MĀNOA

The William S. Richardson School of Law
Ka Huli Ao Center for Excellence in Native Hawaiian Law

D. Kapua'ala Sproat
Professor of Law
Director, Ka Huli Ao
Director, Native Hawaiian Rights Clinic

VIA ELECTRONIC TRANSMITTAL

June 23, 2021

Office of Hawaiian Affairs Board of Trustees
Committee on Resource Management
560 North Nimitz Highway
Honolulu, Hawai'i 96817
Email: BOTmeetings@oha.org

Re: Testimony in Support of Agenda Item V, FY 22/FY 23 Biennium Budget

Aloha mai kākou!

For the last decade, it has been an honor to partner with OHA on the A'ō Aku A'ō Mai Initiative. This contract enables Ka Huli Ao to provide direct legal services to OHA beneficiaries with the greatest needs. We kōkua rural neighbor island communities through our Native Hawaiian Rights and Environmental Law Clinics, which are classes that offer upper division law students and one Post JD Fellow "experience" practicing law. This partnership leverages resources by empowering clinicians with vital training in Native Hawaiian and Environmental Law and serving our lāhui, while simultaneously providing free assistance to OHA beneficiaries.

The A'ō Aku A'ō Mai Initiative was started in 2011 at OHA's request. In a lawsuit to clear title to ancestral land on Moloka'i (*Bartell v. Heirs or Assigns of Manuela*), more than twenty beneficiaries were named as defendants and contacted OHA for legal representation. Over the course of four semesters, our law students and Post JD Fellow assisted 156 pro se defendants (individuals representing themselves in a court case without the assistance of an attorney) and their 'ohana in two different cases, published *E 'Onipa'a I Ke Kūlaiwi: A Legal Primer for Quiet Title and Partition Law in Hawai'i*, and facilitated thirteen workshops on the Quiet Title and Partition Process and the primer in particular. The Initiative also trained roughly 40 law students and one Post JD Legal Fellow in these highly specialized legal areas.

Given our strong partnership and success, the Initiative's focus has expanded to assist OHA beneficiaries in rural communities through free trainings, the distribution of legal primers, and direct services on a range of issues including but not limited to completing water use permit applications in Nā Wai 'Ehā, Maui, securing a marine reserve in Ka'ūpūlehu, Hawai'i Island, and the current project navigating the long-term water lease application process on behalf of the Wai'oli Valley Taro Hui on Kaua'i. These clinics provide free legal services to OHA beneficiaries on the front lines of preserving Native Hawaiian culture and traditions, while training and inspiring law students and recent law graduates to continue this important work.

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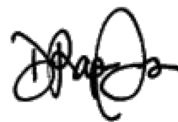
To provide insight into the Initiative's significant benefits, consider the work that our clinicians have been able to do for the Wai'oli Valley Taro Hui on Kaua'i. These third to fifth generation kalo farmers have been devastated by severe flooding since 2019. To add insult to injury, disaster recovery efforts determined that their mānowai, the intake for the lo'i kalo irrigation system that has borrowed water from Wai'oli Stream for centuries, was on conservation land and would now be subject to permitting and other requirements, including Hawai'i Revised Statutes chapter 171, the Department of Land and Natural Resources' complex water licensing provision. This semester, law students and fellows completed a 300+ page Draft Environmental Assessment, presented before the Water Commission and ultimately secured a numeric interim instream flow standard for Wai'oli Stream, advocated for the passage of a Concurrent Resolution authorizing direct negotiation of a long-term water lease (after 13 legislative hearings and more than 121 written testimonies), facilitated meetings with Governor Ige, Mayor Kawakami, and Congressman Kai Kahele to support the farmers, and more. During the Spring 2021 semester alone, eleven law students and two attorneys spent more than one thousand hours working on the Hui's behalf before administrative agencies, at the legislature, and beyond. And the work endures this summer as several of the clinicians were so inspired by the project that they are continuing to support the farmers through fellowships and pro bono efforts (volunteer legal work).

In addition to these direct benefits for OHA beneficiaries in Wai'oli, Kaua'i, clinicians have helped to build capacity and raise awareness about the impacts of permitting and other processes on Native Hawaiian practitioners and kalo farmers in particular, which has, for example, inspired representatives to commit to introducing bills to address these issues during the next legislative session. Perhaps most importantly, this partnership is helping to ensure that the vital practice of kalo cultivation can survive the transition into the modern legal era and that Wai'oli farmers can continue supplying kalo pa'a and poi (especially via the Waipā Foundation) to feed our lāhui physically and spiritually.

This work is also transformative for our law students and recent graduates; as one clinician explained: "[h]elping the community on Kaua'i was one of my most memorable experiences at Richardson. Knowing our work really made an impact for the kalo farmers and the community at large will be something I will draw motivation from for the rest of my career." The A'o Aku A'o Mai Initiative is also improving the lives of your beneficiaries. One Wai'oli farmer noted, "[t]here aren't enough words or ways to say MAHALO to ALL the students for spending endless hours and weekends working on our stuff! Your collective mana is connected to Wai'oli forever!" Another shared, "you all really impacted our lives in a positive way and it makes the future look so much brighter for taro farming in Wai'oli Valley."

It has been an honor and a privilege to partner with OHA on the A'o Aku A'o Mai Initiative and we hope to continue these efforts once the FY 22/23 Biennium Budget is approved.

Me ka ha'aha'a



D. Kapua'ala Sproat