

PHONE (808) 594-1888  
BOARD OF TRUSTEES  
Colette Y. Machado, *Chairperson*  
Brendon Kalei'āina Lee, *Vice Chairperson*  
Leina'ala Ahu Isa, *At-Large*  
Dan Ahuna, *Kaua'i & Ni'ihau*  
Kalei Akaka, *O'ahu*  
Keli'i Akina, *At-Large*  
Carmen Hulu Lindsey, *Maui*  
Robert K. Lindsey, Jr., *Hawai'i Island*  
John Waihe'e IV, *At-Large*



FAX (808) 594-1868

**STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS  
MEETING OF THE BOARD OF TRUSTEES**

**DATE:** Thursday, May 2, 2019  
**TIME:** 10:00 am  
**PLACE:** OHA Board Room, Nā Lama Kukui  
560 N. Nimitz Hwy., Suite 200  
Honolulu, HI 96817

**AGENDA**

- I. Call to Order
- II. Approval of Minutes
  - A. March 7, 2019<sup>†</sup>
  - B. March 21, 2019<sup>†</sup>
  - C. March 28, 2019<sup>†</sup>
- III. Public Testimony\*
- IV. Unfinished Business
  - A. CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities
- V. New Business
  - A. Committee on Beneficiary Advocacy and Empowerment
    - 1. 2019 OHA Legislative Positioning – Matrix 2\*\*<sup>†</sup>, May 1, 2019
  - B. Committee on Resource Management
    - 1. Action Item RM #19-03: Approval of BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee's duties and responsibilities, 2<sup>nd</sup> Reading.
    - 2. Action Item RM #19-05: Approval of FY19 Commercial Property Budget Realignment #1<sup>†</sup>
    - 3. Action Item RM #19-06: Approval of \$35,000 for Emergency Disaster Relief for Kaua'ula Maui<sup>†</sup>
  - C. Joint Committees on Beneficiary Advocacy and Empowerment and Resource Management
    - 1. Action Item BAE/RM #19-03: Consideration of a Process for the Selection of a Successor Chief Executive Officer
  - D. Consultation with Kumabe HR LLC to assist the Board in conducting its performance appraisal of OHA's CEO pursuant to Section III of Contract 3147 (if necessary, the Board will recuse into Executive Session to consult with Board Counsel Robert G. Klein, Esq., *Pursuant to HRS §92-5(a)(2) and (4)*).
- VI. Executive Session<sup>†</sup>
  - A. Consultation with attorneys William Yuen, Esq., Judy Tanaka, Esq., and Robert G. Klein, Esq., re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding OHA's role as a member of Hi'ilei Aloha LLC and Ho'okele Pono LLC. *Pursuant to HRS §92-5(a)(4)*.



**STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS**

- B. Consultation with Board Counsel, Robert G. Klein, Esq. regarding questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding Action Item RM #19-04 for reimbursement of limited liability corporation legal fees. *Pursuant to HRS §92-5(a)(4).* <sup>†</sup>
- C. Consultation with Board Counsel Robert G. Klein, Esq. re.: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities with respect OHA Contract #3147. *Pursuant to HRS §92-5(a)(4).*
- D. Consultation with Board Counsel Robert G. Klein, Esq. and Kumabe HR LLC re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the Board's obligations and responsibilities to conduct its performance appraisal of OHA's CEO in accordance with Section III of Contract 3147. *Pursuant to HRS §92-5(a)(2) and (4).*
- E. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, and liabilities concerning processing a complaint alleging violations of the Trustee Code of Conduct policy. *Pursuant to HRS §92-5(a)(2) and (4).*
- F. Approval of Minutes
  - 1. March 28, 2019

VII. Community Concerns\*

VIII. Announcements

IX. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at telephone number 594-1772 or by email at: [rainag@oha.org](mailto:rainag@oha.org) no later than three (3) business days prior to the date of the meeting.

\*Notice: Persons wishing to provide testimony are requested to submit 13 copies of their testimony to the Chief Executive Officer at 560 N. Nimitz, Suite 200, Honolulu, HI, 96817 or fax to 594-1868, or email [BOTmeetings@oha.org](mailto:BOTmeetings@oha.org) 48 hours prior to the scheduled meeting. Persons wishing to testify orally may do so at the meeting, provided that oral testimony shall be limited to five minutes.

\*\*Notice: Trustees may establish or revise an OHA position on ANY proposed bill / resolution / executive message currently moving through the state legislature or other relative elected body. The Matrices, which are available for public review in the meeting room at this stated meeting, provide a brief description of each bill, the bill's number, the bill's title, the bill's intent, and the proposed and specific OHA position on each measure, current through 5/1/19. However, the Trustees both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrix, as well as those that time does not permit to be placed on the Matrix, in order to discharge their fiduciary obligations as Trustees of the Office of Hawaiian Affairs

<sup>†</sup> Notice: The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for distribution of new committee materials.

\*Notice: This portion of the meeting will be closed pursuant to HRS §92-5.

Colette Y. Machado  
Trustee Colette Y. Machado  
Chairperson, Board of Trustees

4/26/2019  
Date

Office of Hawaiian Affairs  
Board of Trustee Meeting  
May 2, 2019  
10:00 am

II. Approval of Minutes

- A. March 7, 2019
- B. March 21, 2019
- C. March 28, 2019

**STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS  
560 N. Nimitz Highway, Suite 200  
Honolulu, HI 96817**

**Minutes of the Office of Hawaiian Affairs Board of Trustees  
Thursday, March 7, 2019  
10:00 am**

**ATTENDANCE:**

TRUSTEE COLETTE MACHADO  
TRUSTEE BRENDON KALEI'ĀINA LEE  
TRUSTEE LEINA'ALA AHU ISA  
TRUSTEE DAN AHUNA  
TRUSTEE KALEI AKAKA  
TRUSTEE W. KELI'I AKINA  
TRUSTEE CARMEN HULU LINDSEY  
TRUSTEE ROBERT LINDSEY  
TRUSTEE JOHN WAIHE'E IV

ROBERT G. KLEIN, ESQ., BOARD COUNSEL

**ADMINISTRATION STAFF:**

KAMANA'OPONO CRABBE, CEO  
SYLVIA HUSSEY, COO  
ALBERT TIBERI, CC  
MILES NISHIJIMA, LPD  
LISA WATKINS-VICTORINO, RES  
JOCELYN DOANE, PP  
RAINA GUSHIKEN, CC

**BOT STAFF:**

CAROL HO'OMANAWANUI  
LŌPAKA BAPTISTE  
DAYNA PA  
LEIANN DURANT  
ZURI AKI  
KAUIKEAOLANI WAILEHUA  
LEHUA ITOKAZU  
KAMA HOPKINS  
MARIA CALDERON  
MELISSA WENNIHAN  
ALYSSA-MARIE KAU

**GUESTS:**

NONE

**I. CALL TO ORDER**

**Trustee Colette Machado** Calls the Board of Trustees meeting to order at 10:03 am. Roll call is taken; Trustees Ahu Isa, Ahuna, Akaka, Akina, Lee, Carmen Hulu Lindsey, Robert Lindsey and Machado are present, constituting a quorum. Trustee John Waihe'e IV is expected to arrive shortly.

We will now move on to item II. Approval of Minutes

**II. APPROVAL OF MINUTES**

**A. February 7, 2019**

**Chair Colette Machado** – We are now on item II. A. Approval of Minutes for February 7, 2019. I would like to entertain a motion.

**Trustee Carmen Hulu Lindsey** moves to adopt the Minutes from the February 7, 2019 Board of Trustees meeting as submitted.

**Trustee Dan Ahuna** seconds the motion.

**Chair Colette Machado** – It has been moved and seconded, roll call vote please.



Trustee Carmen Hulu Lindsey moves to adopt the minutes from the February 7, 2019 Board of Trustees meeting as submitted.						
Trustee Dan Ahuna seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA		x	X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY	x		X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E						excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8			1
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passed with eight (8) yes votes, and one (1) excused.						

### **III. PUBLIC TESTIMONY**

**Chair Colette Machado** – Do we have anyone signed up for public testimony? Hearing none, we will move on to IV.

### **IV. UNFINISHED BUSINESS**

#### **A. CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities**

**Chair Colette Machado** –I would like to call on our Chief Executive Officer Kamana'opono to provide updates to us.

**Kamana'opono Crabbe** – Good Morning Trustees. Just a few brief announcements. The Pou Nui with our grants program is working with Trustee Ahuna to agendize the Kūlia Grant workshop as well as the update on all of the measures that we have taken in the past year to address the State Auditor's concerns and recommendations moving forward. We are expecting it sometime in April.

**Trustee Dan Ahuna** – Yes, it is already agendized.

**Kamana'opono Crabbe** – Given public policies' update yesterday and a lot of moving parts at the legislature for this session. Administration will be convening to have a long strategic discussion with moving forward with the PLT Bill. At this time, I'd like to ask the Pou Nui Sylvia Hussey to come up. We have two major items to discussion. One is the response to the State Auditor. We wanted to update you on where we are at and the preparation for the final response back to the State Auditor.

**Sylvia Hussey** – Morning Trustees. As it relates to the Financial Audit, we are in the final pieces, all the documents have been provided and we are asking them to deliver that final draft to us. The good news is that the draft opinion is a clean opinion for the financial audits. What we are asking, the Federal deadlines to upload it to the Federal Data Clearinghouse is March 31<sup>st</sup> so we want that report to be issued before that. As it relates to the Legislatures Audit report. There are two reports, 18-03 and 18-08 that have various grants recommendations in there as well as some others. We already drafted a point-by-point response to the Legislative auditor. Essentially, when grants come before you for the workshop you will also get an update on all the process improvements that have been implemented relating to the specific audit point. We are in the process of finalizing so Pou Hana can

provide that to the legislative auditor.

**Trustee Carmen Hulu Lindsey** – I wonder if it would be possible for the Trustees to have input into that answer to the legislative auditor, or Mr. Kondo. Because the first letter that was signed by you none of us saw it. We would have maybe had some input and I would really appreciate it since it affects all 9 of us, for us to review it. I saw how detailed answers he was asking for. Of course, I want to see it because it affects me.

**Chair Colette Machado** – Sure.

**Kamana‘opono Crabbe** – Just as a follow up Trustees, given the NAK Audit as well as the work that we have done improving grants and our database. We are in discussion given where we are now the second half of legislative session our biennium budget, the PLT Bill, to be proactive in terms of our messaging to the Legislature and to clarify many of the controversies regarding our situation. One this is good news but it also demonstrates to the legislative leadership that we have acted, we will continue to act based on a number of initiatives before the RM and the full board regarding fiscal policies, the Trustee Allowance will be coming forward. I think it's very healthy and positive that we are proactive and then coming up with some kind of package to actually and deliver it to specific leadership and committee chairs so that they are properly informed. How we are making significant strides over this past year. We will be discussing that with Chair.

**Trustee Keli‘i Akina** – Chair thank you for letting us provide input to the response we are providing to the State Auditor. I also want to commend the Administration and the rest of the board for taking a proactive response to show how we are responding, will respond to the audit that is important information. Given that support for the overall process. I want to express that I have some concerns. I myself and possibly other Trustees may have differences with the talk points on how to talk about the audit and our positions on the audit. For that reason, I'd like to ask for at least 1 week to be able to review the response by Administration so that we can bring a more studied response to the board.

**Chair Colette Machado** – Is there a timetable, a due date that Mr. Kondo has asked for.

**Trustee Carmen Hulu Lindsey** – Yes, end of March, March 29<sup>th</sup>.

**Sylvia Hussey** – For the response.

**Trustee Keli‘i Akina** – I would appreciate that we will be able to see a copy of Administrations response at least a week before it is presented to the board.

**Chair Colette Machado** – The normal process is that you can give input we will integrate that into the letter that I will send out with my signature. You cannot send it separately individually to the Auditor.

**Trustee Keli‘i Akina** – Certainly, I am not asking for that. I am just asking that we be able to see the response that Administration is proposing to the Board with enough time to research and make our comments back to the board.

**Chair Colette Machado** – Sylvia can you get back to all of us on a timetable and the due date you could receive responses.

**Sylvia Hussey** – I think it's reasonable to expect something by the end of next week, which would give a week before the final response. We already drafted a significant part of the response. Because there are so many points, like one report has 23 recommendations, you need to respond recommendation by recommendation. So each of the responses we envision a table of highlights and appendices of all of the pieces. It will take some time to process but we have already framed that out. I am comfortable to provide that no later than Friday the 15<sup>th</sup>, which is about a week from now. Then the board will have ample time to process before we officially send out.

**Chair Colette Machado** – What we will do is you will give it Carol and then get it out to everybody. Whatever kinds of in-betweens we have to discuss by each office we can work with staff to get that done timely. Will that be helpful Trustee Akina?

**Trustee Keli'i Akina** – Yes, that will be helpful. What I want to make sure is that we Trustees can read it, study it, and give feedback to the board, here, to each other. I am anticipating that I will agree with majority of responses by Administration because I believe your process is a good one and proactive. However, in looking at the press releases and talk points on the State Audit there are significant interpretations that I have strong disagreements based on my research. I believe other Trustees may as well. And in a productive way we'd like to bring that to the Board so that we can discuss.

**Sylvia Hussey** – Also for clarification the Auditor's report 18-08 focuses on grants, there are also some prior land recommendations in there from the 2013 audit. The audit report 18-83A also has some recommendation to the Board as well. We will draft that but obviously, those are specific recommendations that you as a board will need to respond to.

*10:14 am Trustee John Waihe'e IV arrives.*

**Trustee Keli'i Akina** – I appreciate the need to respond to those specific reports and will do so. But my comments pertain to the overall State Audit reports that have been submitted to us and I would like us to be able to give feedback and discuss them.

**Trustee Leina'ala Ahu Isa** – Just a point of clarification, I am looking at the calendar, I know you said individually submit to you.

**Chair Colette Machado** – When the questions come out we will just be the in-between to get it out to folks. The staff can work with Carol.

**Trustee Leina'ala Ahu Isa** – I am just looking where the next RM meeting is, I would like to agendaize it and we can hear what this points are.

**Chair Colette Machado** – Trustee that would come directly to the BOT so we have a scheduled meeting for the 21<sup>st</sup>. If we don't have significant items, we were going to move it to the 28<sup>th</sup>. I would try to organize so that we could have that discussion at the meeting.

**Trustee Carmen Hulu Lindsey** – Is it within the sunshine law for us to receive this in writing and make our own personal comments and funnel it to you so that we can save time instead of agendaize the meetings.

**Robert Klein, Board Counsel** - If what you are going to do is contribute to a memo that she is going to send to Les Kondo, each one of you have different ideas, that means all of you have an opportunity to make input, that input should be public unless there is an exception to the meeting requirement of the sunshine law.

**Sylvia Hussey** – Timing wise because on the 21<sup>st</sup> there is a Joint meeting scheduled for the grants workshop.

**Chair Colette Machado** – We have a joint, Thursday is the BOT.

**Sylvia Hussey** – The joint meeting when it is scheduled gives you an opportunity for you to hear the specifics of the changes, which might help, contextualize what we are saying.

**Chair Colette Machado** – Any more discussion? We will now move on to V.

**V. NEW BUSINESS**

**Chair Colette Machado** – Under the referral from the Committee on Beneficiary Advocacy and Empowerment Legislative Positioning for February 27, 2019 and March 6, 2019, I would like to call on Trustee John Waihe'e IV.

**A. Committee on Beneficiary Advocacy and Empowerment****1. 2019 OHA Legislative Positioning – Matrix 2<sup>++</sup>, February 27, 2019**

**Trustee John Waihe'e IV** moves to approve Administration's recommendations on *NEW BILLS (Items 1 - 11)* and *CHANGE Item 76, HB622 from Monitor to COMMENT*, on the OHA Legislative Positioning Matrix dated February 27, 2019, as amended.

**Trustee Kalei Akaka** seconds the motion.

Chair Colette Machado – Any discussions? Hearing none, roll call vote please.

Trustee John Waihe'e IV moves to approve Administration's recommendations on *NEW BILLS (Items 1 - 11)* and *CHANGE Item 76, HB622 from Monitor to COMMENT*, on the OHA Legislative Positioning Matrix dated February 27, 2019, as amended.

Trustee Kalei Akaka seconds the motion.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA		x	X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E	x		X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [ x ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passed unanimously with nine (9) yes votes.						

**2. 2019 OHA Legislative Positioning – Matrix 2<sup>++</sup>, March 6, 2019**

**Chair Colette Machado** – Trustee John Waihe'e IV.

**Trustee John Waihe'e IV** moves to approve Administration's recommendations on *NEW BILLS (Items 1 – 7)* and *BILL POSITIONS FOR RECONSIDERATION (Items 8 -11)*, as well as *CHANGE:*

- Item 42, HB622 from ~~Comment~~ to OPPOSE; and
  - Item 216, SB1495 from ~~Support~~ to COMMENT
- on the OHA Legislative Positioning Matrix dated March 6, 2019, as amended.

**Trustee Kalei Akaka** seconds the motion.



Trustee John Waihe'e IV moves to approve Administration's recommendations on *NEW BILLS* (Items 1 – 7) and *BILL POSITIONS FOR RECONSIDERATION* (Items 8 -11), as well as CHANGE:

- Item 42, HB622 from ~~Comment~~ to OPPOSE; and
- Item 216, SB1495 from ~~Support~~ to COMMENT

on the OHA Legislative Positioning Matrix dated March 6, 2019, as amended.

Trustee Kalei Akaka seconds the motion.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA		x	X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E	x		X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			

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

Motion passed unanimously with nine (9) yes votes.

**B. Joint Committee on Beneficiary Advocacy and Empowerment and Resource Management**

- 1. Action Item RM/BAE #19-0 1: 1) Authorize and approve OHA CEO/Administration to resume negotiations with the City & County of Honolulu regarding the disposition of Kaka'ako Lot I, TMK (1) 2-1-015:061, and 2) approval of legislative resolution related to potential sale of Kaka'ako Lot I, TMK (I) 2-1-015:061, to the City and County of Honolulu.**

**Chair Colette Machado** – Thank you members we are now on V.B. The Chair would like to acknowledge Joint Committee Chairperson Trustee Dan Ahuna regarding Action Item RM/BAE #19-01.

**Trustee Dan Ahuna** moves to authorize and approve OHA CEO/Administration to resume negotiations with the City & County of Honolulu regarding the disposition of Kaka'ako Lot I, TMK (1) 2-1-015:061.

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

**Chair Colette Machado** – It has been moved the seconded. We are very clear this does not provide for a resolution related to potential sale to the City and County at the Legislature. Let's be very clear. With that said roll call vote.

Trustee Dan Ahuna moves to authorize and approve OHA CEO/Administration to resume negotiations with the City & County of Honolulu regarding the disposition of Kaka'ako Lot I, TMK (1) 2-1-015:061. Trustee John Waihe'e IV seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA				X		
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'AINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E		x	X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8	1		
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED Motion passed with eight (8) yes votes and one (1) vote.						

**Chair Colette Machado** – We will not move on to Executive Session.

## **VI. EXECUTIVE SESSION**

**Chair Colette Machado** – The Chair would like to entertain a motion to go into executive session pursuant to HRS §92-5 (a) (4), HRS §03D-202, -303, and HAR 3-122-45.01 (2) (C) (iii).

**Trustee Carmen Hulu Lindsey moves to recuse into executive session pursuant to HRS §92-5 (a) (4), HRS §103D-202, -303, and HAR 3-122-45.01 (2) (C) (iii).**

**Trustee Dan Ahuna seconds the motion.**

**Chair Colette Machado** – Roll call please.

Trustee Carmen Hulu Lindsey moves to recuse into executive session pursuant to HRS §92-5 (a) (4), HRS §103D-202, -303, and HAR 3-122-45.01 (2) (C) (iii). Trustee Dan Ahuna seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA		x	X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'AINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY	x		X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [ x ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED Motion passed unanimously with nine (9) yes votes.						

**Chair Colette Machado** – Members we will not be doing Items VI. A. I believe there is no update on Mauna Kea so we will take that off. VI.A. and VI.C. will not be addressed during executive session. What we do have is approval of minutes and also an item relating to procurement. With that said can we clear the room.

**The Board resolved into Executive Session at 10:23 am.**

- A. Consultation with Attorney Randall Sakumoto, Esq. and Board Attorney Robert G. Klein, Esq. pertaining to the OHA Board of Trustees' powers, privileges, immunities, and liabilities regarding the potential sale of Kaka'ako Makai Parcel Lot I, TMK(1) 2-1-015:061, to City & County of Honolulu. Pursuant to HRS §92-5(a) (4).**
- B. OHA's Procurement Unit together with Board Counsel Robert G. Klein's discussion of the evaluation process for qualifying offers submitted in connection with Request for Proposals (RFP) No. BOT 2019-17 for Performance Appraisal Consulting Services, and instruction regarding the appropriate statutory requirements governing the evaluation process. Pursuant to HRS §92-5 (a) (4), HRS §103D-202, -303, and HAR 3-122-45.01 (2) (C) (iii).**
- C. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding Civil No. 17-1-1823-11 JPC, OHA v. State, et. al. Pursuant to HRS §92-5(a)(4).**
- D. Approval of Minutes**
  - 1. January 24, 2019**
  - 2. February 7, 2019**

**The Board reconvenes in open session at 11:07 am.**

**Chair Colette Machado** – We have community concerns and one announcement by Trustee Brendon Kalei'āina Lee. I will move that up because we will go right into the workshop.

## **VII. COMMUNITY CONCERNS**

**Chair Colette Machado** – We have no community concerns, I will call on Trustee Brendon Kalei'āina Lee.

## **IX. ANNOUNCEMENTS**

**Trustee Brendon Kalei'āina Lee** – My announcement is just for information to the Board. This coming Saturday at Kawaiaha'o Church there is a concert honoring Hōkūlea and its in conjunction with the month long celebration of Prince Jonah Kuhio Kalaniana'ole. It's a festival comprising of 11 different choirs and the Hawaii Youth Symphony. They are also debuting a new piece called Hawaii's Pride. Which was in conjunction with Raise Hawaii Iki. It's a piece written specifically for Mālama Honua and Hōkūlea.

**Trustee Keli'i Akina** – Could we please have the time.

**Trustee Brendon Kalei'āina Lee** – The concert starts at 5:30, it says from 5:30 to 7 is the concert. I believe the sponsors are the Hawaii Youth Opera Chorus and the Association of Hawaiian Civic Clubs. It's free.

**Chair Colette Machado** - Let's take a quick recess.

**11:08 am Meeting is recessed.**

**11:16 am Meeting is reconvened.**

## **VIII. BOT WORKSHOP**

### **A. BOT Workshop Three for OHA Strategic Planning 2020+, Phase II, Discussion of priority areas for new OHA Strategic Plan**

**Chair Colette Machado** – We are now on the workshop. I will turn this time over to Kamana‘opono and Lisa Watkins-Victorino.

**Kamana‘opono Crabbe** – Mahalo Chair and Trustees. This is our final, 3<sup>rd</sup> series of phase II workshops. I will have Lisa Watkins-Victorino come up for the continuation.

**Lisa Watkins-Victorino** – Aloha mai. Thank you for continuing to engage in our Strategic Priority planning process. The purpose of today’s meeting is to help us to take us to a place to agree on the strategic directions we will be taking for the next strategic plan. I am going to go through the PowerPoint. We will review what we done so far and then we will end up at a space where I have taken all of the comments that were provided during our discussion at workshop 2 and then I will go ahead with an outline and you can decide how you want to change that. Hopefully that will be the final piece then I can get it ready for you for the next meeting, an action item.

*(Lisa begins her PowerPoint presentation. She goes through loops and past exercises. Please see attached PowerPoint presentation)*

So now we have all of that, so what is it that we are going to be saying are those strategic directions that we will be taking and how are we going to talk about them.

*(conversation indiscernible)*

**Trustee Keli‘i Akina** – This is good work, and I wanted to comment on one of the pages. Fellow board members I think we did a great job of listening to our beneficiaries. This chart lines up almost identical to the feedback that we got in 2015 at the SMS research survey as to the question what do our beneficiaries want us as OHA to be working on. If you take a look at the top four, the top four priorities then were education, jobs, housing and health care. That lines up with what you put up there, educational pathways, economic stability, quality housing and health outcomes. It very gratifying to see that we are reflecting the will of our beneficiaries. I know Trustee Lindsey has written about these and you’ve called them the bread and butter items. I think we are on the right track. I did just want to make one comment on economic stability. Kind of struggling what word to use there. I know we don’t want to say economic development because that is mainly financial side as OHA. Maybe we could play with the idea of economic opportunity might be one, I am not making a strong suggestion, I’m just saying maybe we want to play around that word stability.

**Trustee Brendon Kalei‘āina Lee** – I like stability because it’s a much broader term. Opportunity would fall under that, development would fall under that, sustainability would fall under that.

**Trustee Dan Ahuna** – I’ve been very critical about this. This one thing that is inputted in here that is amazing and that is, I am looking at the three things on the bottom the lens that we look through all of that. It can be whatever you want it to be, but it’s the lens that we look through is what aligns us and it’s the structure that is very important to all of this.

**Lisa Watkins-Victorino** – So I’ll go back to the last slide. Trustee Keli‘i Akina you will see a little bit of the economic development and empowerment in the text here. What I did was really just look at how we pulled out the ‘āina, mo‘omeheu and then we talked at the table, ‘ohana, community, beneficiaries using those terms so I put them under ‘ohana. None of these were set in stone this was just my take on how we might want to talk about them as our foundation and how we might want to talk about them as strategic directions then you can totally revise them.



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**Mo‘omeheu.** Strengthen Native Hawaiian’s connection to culture by supporting opportunities to engage in ‘ōlelo and ‘ike activities and initiatives.

**‘Ohana.** Promote healthy ‘ohana relationships by providing opportunities in communities to engage in ‘āina and mo‘omeheu based activities and initiatives as well as opportunities to engage in the well-being of their communities via civic participation and leadership.

‘Āina, mo‘omeheu, and ‘ohana are foundational to the work of OHA. This foundation is the lens through which decisions, planning, and activities, initiatives, policies, procedures, and practices are made. Pilina with ‘āina, mo‘omeheu, ‘ohana, kaiaulu, and community partners is how we engage in the implementation of our strategies. Building pilina with communities and organizational partners is critical to successfully achieving our vision and mission.

**Strategic Directions:**

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**Educational Pathways.** Supporting initiatives, leveraging partnerships, engaging in strategies to develop educational pathways that strengthen culture-based education, early education, K-12 and post-secondary education will ensure that Native Hawaiians are grounded in their past while participating in a technologically oriented future.

**Health Outcomes.** Supporting initiatives, leveraging partnerships, engaging in strategies to promote healthy and strong families.

There are some ideas for you to consider. We can take the opportunity to go through and make changes and then when you are satisfied with the changes I can put those together for you as an action item for the next Board meeting.

**Kamana‘opono Crabbe** – We can open it up for discussion or feedback, Q & A on what has been presented. This final stage is really that you are confident, you are sure, you are comfortable through all of the workshops that we’ve had and if are on point in moving forward.

**Trustee Brendon Kalei‘āina Lee** – I concur with Trustee Akina. This is awesome. It’s nothing but pictures which so much easier for us to relate to. All the other ones that breakdown to all the other issues are good for a guide but I don’t think we as a board should be deciding what all those little things are. I think the strategic plan needs to be at his level, because this is a 35,000-foot level. If we lock ourselves into these individual issues that doesn’t give this organization room to pivot going down the road. Where if we stick to this is the lens we are going to look at everything through, or the analogy I used this is the car we are going to drive and these are the lanes that we are going to drive in. Then in the future whatever issues, some that we have clearly identified, which we can give as examples but that is not going to lock us into a strategic plan of only those issues in those lanes. So when other issues come to us, which we know they will over how long a period of time that we set this strategic plan for, it gives this organization and administration room to say, well this fits into one of these four lanes that have been identified and approved by the board so we can go ahead. Without every single time having to come back to the board, well you guys didn’t approve hydroponic farming you guys only said this so we need your approval for that. I like this and I would hope that this or something like this is going to be our final outcome and I am ok having examples but not having those as the strategic plan.

**Lisa Watkins-Victorino** – Absolutely. I think we were, in putting all the conditions just trying to show the connections that we did take into account on what you have provided and what you had discussed at the table. But absolutely, we should have one that is broad enough to capture whatever does come forward to the Trustees. Those are things, just to know that those are things that came up through your discussion. Then or course explaining it from this lens.

**Chair Colette Machado** – Just for practical reason, how would you apply this to our grants looking at strategic results when they apply for our TAPS? Right now, we have specific measurable objectives. How would you convert this into that compliance?

**Lisa Watkins-Victorino** – Once we get into the programming piece of it, it's more the lens that you are using to determine when grants come in what is it that we are expecting in terms of the outcome. Are we going to saying that as we have grantees, I am just going to use the current strategic plan, maybe the middle school grantees who are coming in to do the raised test scores. Are they all utilizing cultural based methods? We set those perimeters, are they using 'āina based methods to work with kids, what are some of the things are they doing? Are they including an 'ohana component? The actual metrics would flow whatever the decisions are made in terms of the expectations that we would have in that area then you would develop the metrics.

**Chair Colette Machado** – I attended the CNHA Oleleo at Ka Makani Ali'i, they showed a short vignette from Aotearoa it was an introduction by their government leaders about their native language. Part of the policy that they created is that by 2040 1 million native speakers of their country. These are the leaders that are actually implementing. I am looking at something like that, I am not saying that is something we would want to do, but that is so far out what they are doing. These are elected officials that serve in their government and this is their policy that they engage in.

**Trustee Brendon Kalei'āina Lee** – I see that fitting into this strategic plan. If I wanted to apply for a grant for a program to have a million native Hawaiian speakers that would fit into educational pathways and health outcomes because we've identified that someone culturally based is more likely to be healthy. And the lens that goes into 'āina because of our 'ōlelo, clearly that is culture and 'ohana, because we know that families that are more culturally based tend to be more healthy families. So they would apply for that grant and the grant department would go, first of all does it fit into one of our lanes, yes it fits in to two lanes. And can we look at through that lens, all three across. Yes, we can.

**Trustee Carmen Hulu Lindsey** – Mo'omeheu includes culture.

**Lisa Watkins-Victorino** – Yes.

**Trustee Carmen Hulu Lindsey** – A huge part of our culture is Hula and I don't see a circle with hula in it. It is a part of our way of life. We have tons of Hālau; I would like to see that. My question, let's say there is a health outcome are we going to have priorities?

**Lisa Watkins-Victorino** – This is really about setting just about setting those directions for moving forward and then establishing that this is the lens we are going to use. Again, all of those individual circles are really just what came out from the loops, but it doesn't mean something wouldn't be addressed, that came before the board. For hula example it would fall into culture we are passionate about culture and we are going to support this. But once that is set and once we start to work towards what are those specific strategies that would be used then we would work with the departments to ensure that we are able to 1. Set the parameters around which we are going to provide grants for funding. The next step is the strategies phase, the overall way we will accomplish achieving these strategic directions.

**Chair Colette Machado** – We should have a circle with hula.

**Trustee Brendon Kalei'āina Lee** – We can put hula these are just examples.

**Trustee Dan Ahuna** – So far, all the information that we said on this table is amazing. You guys did an amazing job and I going tell you why. The lens that we are looking at, there are so many issues in the past that has gotten us here. One of the issue was that the grants that are people were supposed to get service to it was given to other companies, like big companies. A lot of people came to our table and they had this social issue about us not giving it to more Hawaiian entities, and all these guys who can write grant are getting these grants. When we look through this lens, for me it's not about what's under there, everything is important to me. When we speak about what is important, this is more important than this, those are the social issues that we go through every single day that people don't think it's important and everything we are saying here is very important. What we are really talking about is how we maximize our resources and assets. The reason why I am saying this is because today we finally get identity when we look through a lens. How in the direction, how we want to go, it can go all kinds of ways. Hula is important but it about everything under the culture is important. That is very, very important for me. For me I thought if we want to take it step further and be really aligned, the United Nations has these goals, sustainable development goals they are called SDGs. I we really want to stay in alignment there are 17 of those goals we should take a look of these goals. These are what people came up for living, for everyone. I just thought these would be in alignment of who we are as a culture if we looking at direction. But again, I am happy that we are looking through a lens because the lens is the structure that aligns everything, hula, farming, everything. I think we got mixed up with the 4. Maybe someone can look at the UN goals.

**Trustee Keli'i Akina** – Going back to the chart, I think that this picture that we have of strategic direction and strategic foundation will last a long time. It is something that gives us a long-range framework and lens that lines us up and keeps us united. On one level it's general and one level is specific. On the specific level we are leaving it open so that we can put in particular circles and concerns. I think we have worked as a board to do in the middle so we can empower administration to understand what we trying to say. In the middle that work is to define priorities in each of these four. That will tell us what under educational pathways we are going to focus on. Will we have the opportunity to work those out in each of the four areas?

**Lisa Watkins-Victorino** – Remember we are going to have our beneficiary feedback, so that will provide you with more information from the beneficiaries in terms of those strategies, what they are thinking about the strategic direction. Or if these are the ones that we end with that is what will got out and with our lens. They will be able to weigh in on some of that so you'll have an opportunity at the next workshop in end of May or June to look at that piece then develop some of those more specifics.

**Trustee Keli'i Akina** – I understand we will get more feedback. Which is good. I just want to make sure that we bring together the consensus that I think is here already in each of these areas. In economic stability, my guess is that virtually every Trustee here says we've got to develop Kaka'ako Makai.

**Trustee Brendon Kalei'aina Lee** – Correct me if I am misunderstanding Lisa. But that is the next steps that is not what we are doing here now.

**Lisa Watkins-Victorino** – Yes.

**Trustee Keli'i Akina** – Right, I'm just trying to ascertain that we are going to be committed to do that.

**Trustee Brendon Kalei'aina Lee** – Well, I don't think we are making that decision now so I don't think anyone is committed to anything, that is the next steps.

**Trustee Keli'i Akina** – I meant the process, the next step does include that we will define a set of priorities in each of these areas.

**Lisa Watkins-Victorino** – Yes.

**Trustee Dan Ahuna** – Can I say something? I just want to speak about factual things. Chair was talking about speaking by 2040 all these million speakers. What she is referring to is the sustainable goals they are aligning to



the UN Goals; by 2040 those are the timelines. I knew we was going to get into what is more important to this that is why I said I believe in unicorns and mermaids. This might be important to me but it might not be true for everyone. How we look at all of this is very important. The lens will help us stay in alignment. If there is a direction or someplace we got to look through I just saying we should align with the UN Goals.

**Chair Colette Machado** – If we are going to do that we really have to review what those goals are which we really didn't have that opportunity. I got that, it came from New Zealand it is their Government leaders that did this video.

**Trustee Dan Ahuna** – Yes, and they are all in alignment with the UN goals.

**Trustee Brendon Kalei'āina Lee** – It's just an example.

**Trustee Dan Ahuna** – I don't know if people know that, that's all.

**Chair Colette Machado** – What's next?

**Lisa Watkins-Victorino** – It's just really trying to decide on the strategic directions and whether these are ok.

**Chair Colette Machado** – Now it's time for mana'o.

**Trustee Robert Lindsey** – Thank you Madam Chair, I just want to thank Lisa and her team for the good work that you've done. When you put together this manual with 56 conditions and then all the work that you have done to pull together the last two workshop conversations that we've had you've done a wonderful job. My hope is that as we move forward in to the final phase of this conversation, I know that you folks will find a way to blend the top piece on what is on this page with the bottom piece and be able to come up with strategic directions which pull together the new world that we live in today with the old world that we come from the best of what was in the loi to the best of artificial intelligence. Pulling all that together so that we can meet the mission that we have kuleana for our people. Thank you.

**Chair Colette Machado** – Lisa can you lay out the next steps.

**Kamana'opono Crabbe** – She will go back to the phases so you can see. It the second page on the handout.

**Lisa Watkins-Victorino** – Yes, it's on the second page, we are going to be working on the survey that we are going to send out to beneficiaries using our social media, our various lists will be sending this out and various networks. We are targeting that April 1<sup>st</sup> it will go out. We will open it for 2 to 2 ½ weeks then we will take that data and summarize what the beneficiaries are saying. That will be provided to you to consider as we prep for the next set of workshops, which is in June to hopefully determine strategies, high-level strategies that you may want to put forth under these different directions. Those would be some of the priorities that you will be speaking to. The specifics.

**Chair Colette Machado** – Very helpful.

**Trustee Keli'i Akina** – You got phase 2 priority areas ending sometime between February and March.

**Lisa Watkins-Victorino** – March 7<sup>th</sup>, which is today, would be the end date of that period then over the next week we will work on the survey and then from the survey we will be gathering that information to provide back to you in preparation for the next workshops.

**Trustee Keli'i Akina** – Where will we have the defining of our board priorities for the strategic plan?

**Lisa Watkins-Victorino** – That would be part of the workshop in June.

**Trustee Keli'i Akina** – Ok very good.

**Chair Colette Machado** – We have some breathing room, you will have a chance to synthesize everything.

**Lisa Watkins-Victorino** – We will try to get that to you before the workshop so you can view that in advance.

**Trustee Carmen Hulu Lindsey** – Please put hula in. Hula has the history.

**Lisa Watkins-Victorino** – We just need to know whether this is what we will move forward in the survey.

**Mehana Hind** – When Chair comes back to the table then we will get one final 'ae or a'ole on the strategic directions then we will move forward in formulating the survey for the beneficiaries.

**Lisa Watkins-Victorino** – The survey will be based on this; this is what our Trustees have decided. If I may, I just really want to thank my team because they did so much work to pull together the data for you. Then my special projects manager Carla Hostettler for all of these slides she does a fabulous job putting it all together. I want to thank our strategic planning team here, Mehana, myself, Carla and Kamana'o. Chair the next step for us in order to prepare the survey, because the survey will be based on what the Board decides are the strategic directions, so if the strategic foundation and lens is ok and if the strategic directions as they are presented here are ok then I can prep the action item for next week then after that we will move forward.

**Chair Colette Machado** – Are we ok with that to move forward?

**Trustee Robert Lindsey** – I hope that one of the questions to our community will be how do our beneficiaries feel we can be relevant to them. What button can we press that makes them feel that we have value to them?

**Trustee Dan Ahuna** – When you look through these lens, they talking about our culture they talking about everything that is within who we are socially too. Everything has to fall within the lens what you see through it. Whatever direction we do we are finally going to be in line. This will allow us to be aligned. For me when I first say this meeting the directions was going be hard. Because what is a value to me is different from everyone at the table, we all have different takes on a lot of things. I wanted to get back to Trustee Kalei'āina, it about knowing our role and what this is about and how we delegate authority to our CEO so he can do the job.

**Trustee Brendon Kalei'āina Lee** – I want to make sure when the surveys go out the information is provided to the beneficiaries that it's in a format and a style that the beneficiaries will go, ok I understand what they are asking me and not confuse them. That it's very simple, pictures are nice.

**Trustee Kalei Akaka** – Also if we can include the word values in there from a cultural standpoint, family standpoint, Hawaiian standpoint.

**Trustee Brendon Kalei'āina Lee** – Cautious about the examples that we give because when we start giving examples they are going to start saying so they want to know what is in those lanes, so they will talk to stuff like hula, 'ōlelo classes, a class on how to be an architect, class on how to be a carpenter, or how for write one business plan but that's not what we are asking them. We are not asking them to fill in the lanes, we are asking them help us determine what those lanes should be. What they feel those lanes should be. I would hate for them to give us that kind of feedback then we come out with the strategic plan and they are mad because, I don't see my class for carpenters in here. Cause they didn't understand what we were asking them.

**Mehana Hind** – We will try to frame it as much as possible in the what phase and take care of the how and when. Express that the how and when comes at a different time. It's just what should we looking at. We already know the answer to who, native Hawaiians, what is what we are trying to do.

**Trustee Brendon Kalei‘āina Lee** – A lot of our beneficiaries are not going to understand who, what, when, where, how is. So when we ask them we need you guys to help us determine the what. They are going to be like my carpenter class.

**Mehana Hind** – Right, as far as our direction in how we create the questions that we try to play in the what land as much as possible.

**Trustee Leina‘ala Ahu Isa** – I requested of Mehana when we go out to the beneficiaries, if we could have a physical face to face, because I do get request for example Papakōlea to have like a town meeting. You know how Kehau Abad went out and asked about Kaka‘ako Makai. I also sat through when we hired the SMS guys to tell the beneficiaries to give us what they thought was important, we sat behind the glass, and they talked among themselves. It was really interesting, the issues they thought that was relevant today.

**Chair Colette Machado** – Do you need anything else from us?

**Lisa Watkins-Victorino** – I will prepare the action item for next week utilizing these.

**Trustee Keli‘i Akina** – I’m glad that we are getting feedback from our beneficiaries. That should be priority feedback. I am wondering if we should get feedback or if you are planning to get from the broader community as well. Beneficiaries have husbands, and wives and children and others who may not have Hawaiian blood per se. We have constituents from the broader community who put us in office.

**Lisa Watkins-Victorino** – We will be providing through our website links, we will utilizing our network list, our network list is made up of both Hawaiian and non-Hawaiian stakeholders, participants, and so those lists we are going to utilize them.

**Trustee Robert Lindsey** – This could be a good performance appraisal to see if we are connected with our beneficiaries or if there is a variance. Hopefully there is a connect.

**Trustee Dan Ahuna** – When you look through the lens, you look through the beneficiary. If people can see the UN Goals, so people can see that there are goals out there.

## **X. ADJOURNMENT**

**Chair Colette Machado** – If there is no further business, I would like to adjourn the meeting.

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

**Trustee Brendon Kalei‘āina Lee** seconds the motion.

**Chair Colette Machado** – It has been moved and seconded. Roll call vote please.

Trustee Kalei Akaka moves to adjourn the meeting. Trustee Brendon Kalei‘āina Lee seconds the motion.						
TRUSTEE	1	2	‘AE (YES)	A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA‘ALA AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA	x		X			
TRUSTEE KELI‘I AKINA			X			
TRUSTEE BRENDON KALEI‘ĀINA LEE		x	X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE‘E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [ x ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED Motion passed unanimously with nine (9) yes votes.						

The meeting was adjourned at 12:08 pm.

Respectfully submitted,

\_\_\_\_\_  
Dayna Pa, Board Secretary

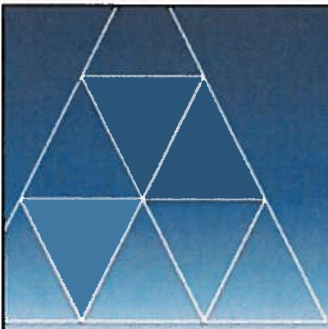
As approved by the Board of Trustees on \_\_\_\_\_.

\_\_\_\_\_  
Colette Y. Machado, Chairperson  
Board of Trustees

Attachment:

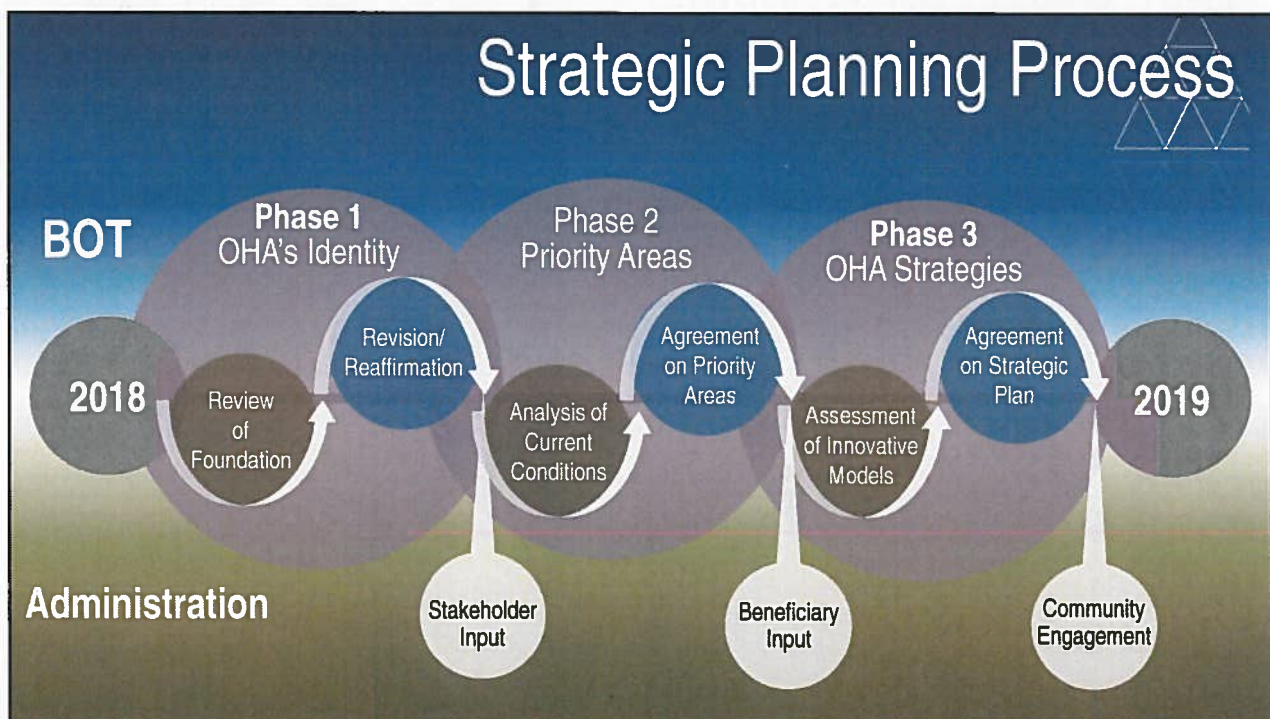
1. PowerPoint Presentation- Strategic Planning Phase 2: Priority Areas Workshop 3, March 7, 2019





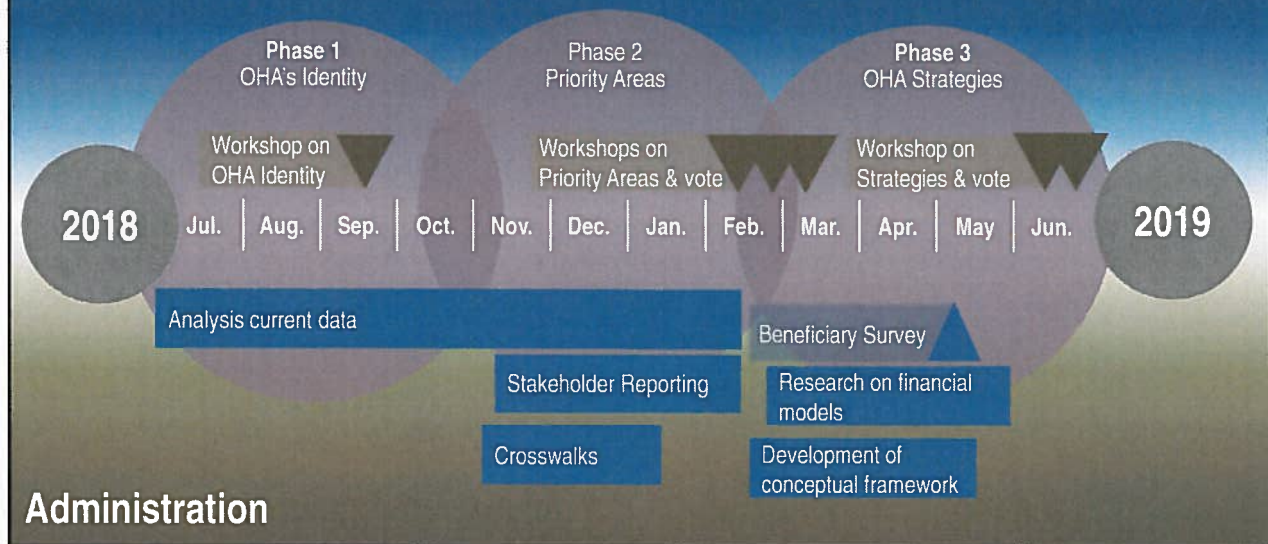
# Strategic Planning Phase 2: Priority Areas Workshop 3

March 7, 2019

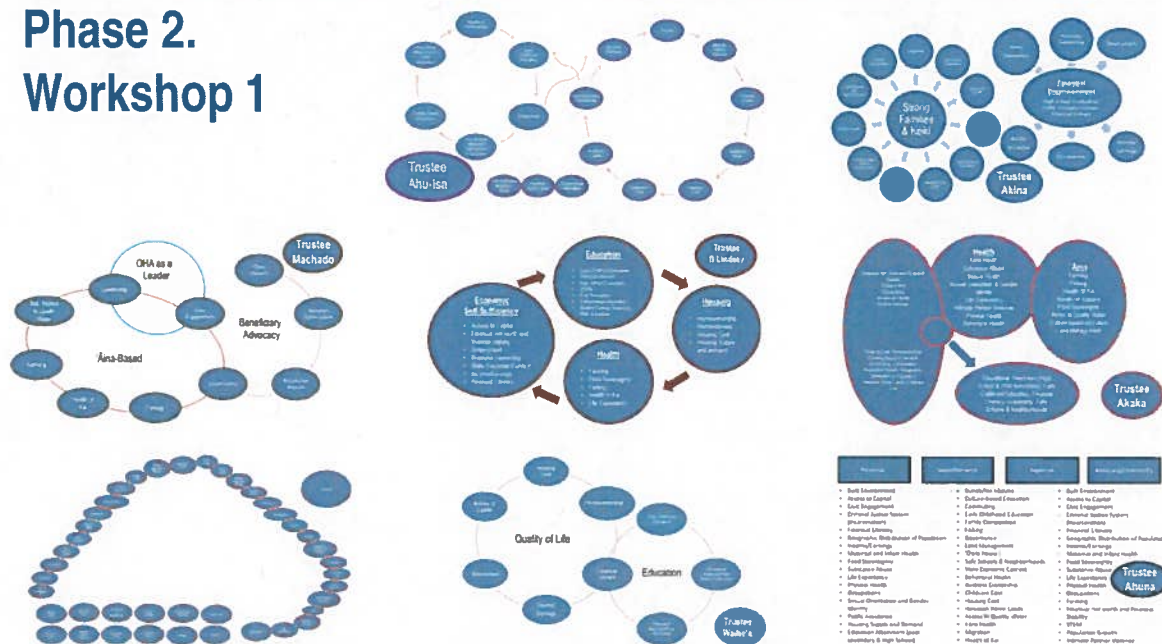




# Strategic Planning Process

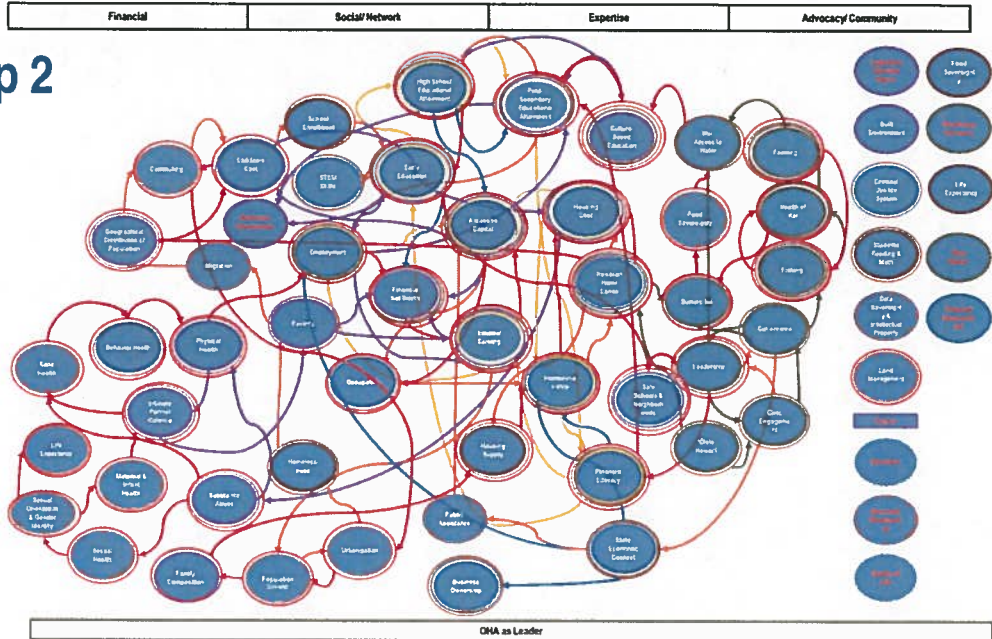


## Phase 2. Workshop 1

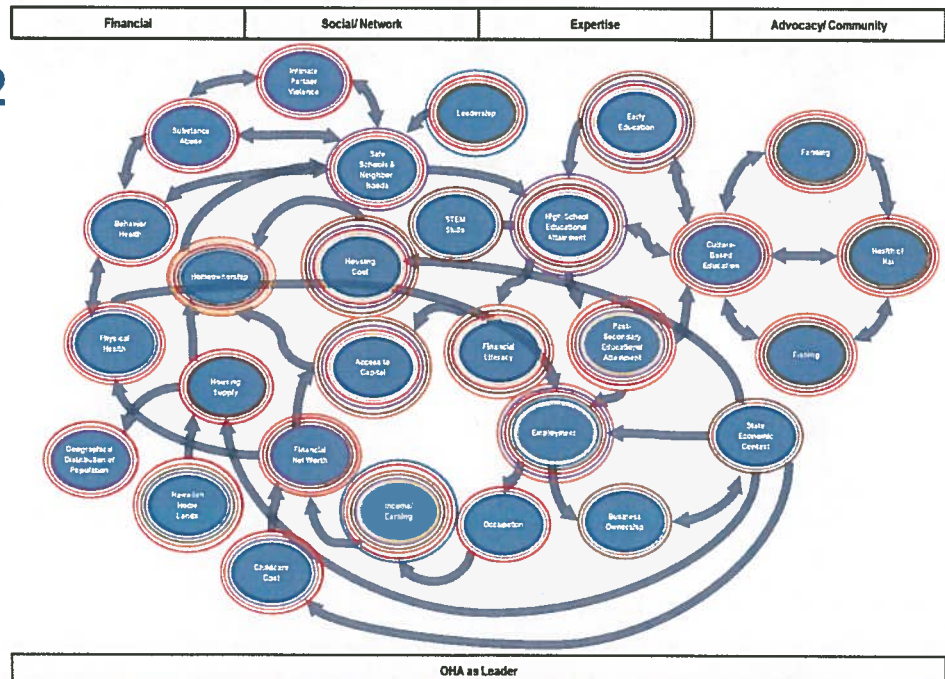


## Phase 2. ☐

### Workshop 2

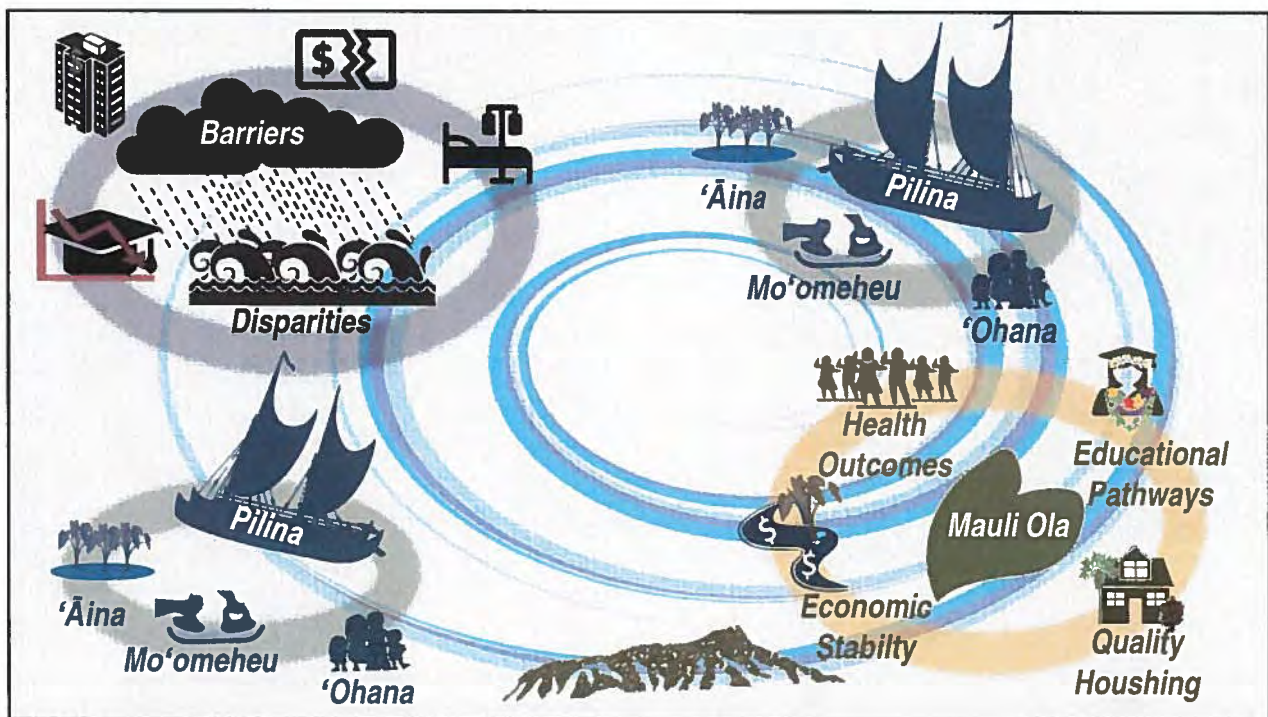
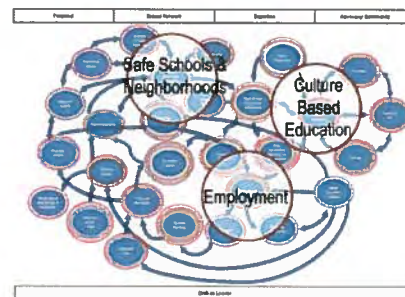
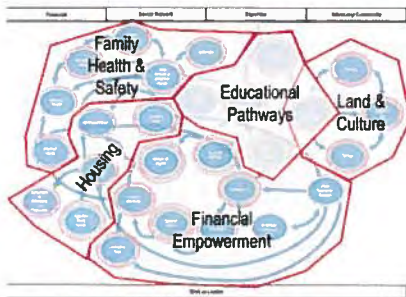
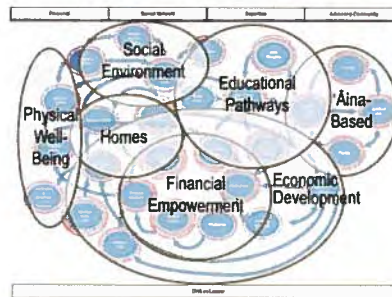


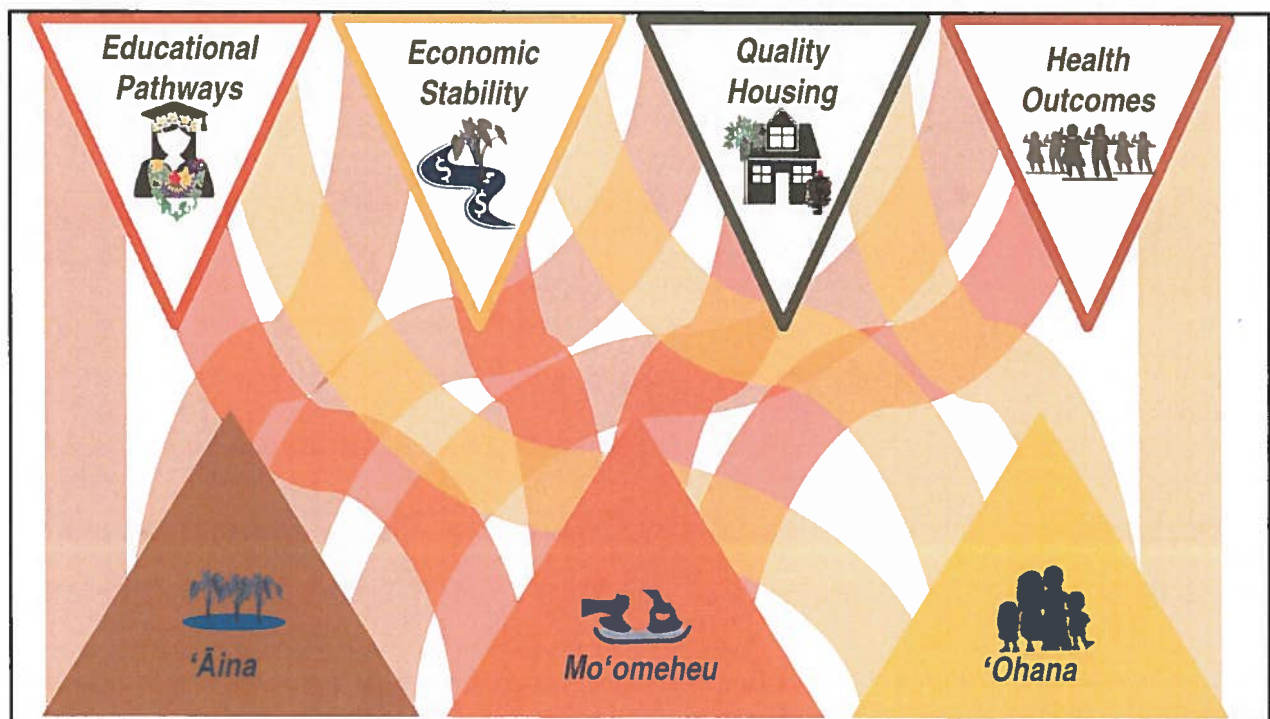
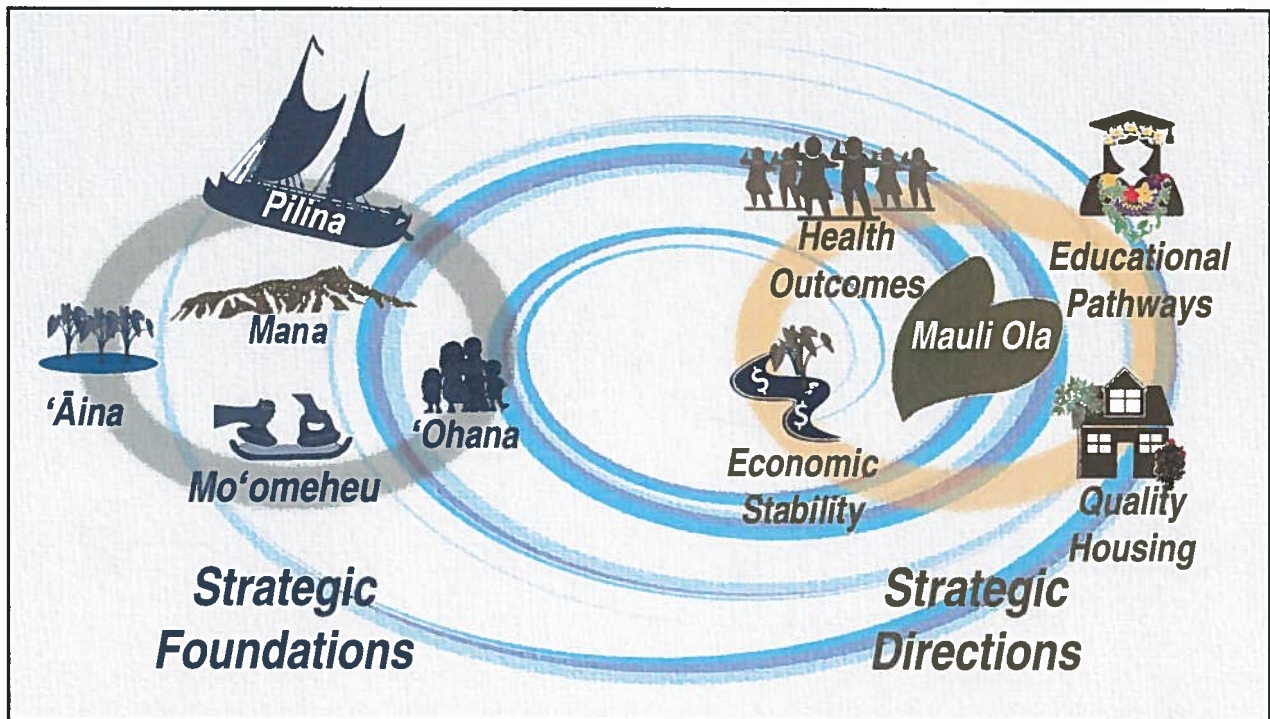
## Phase 2. Workshop 2



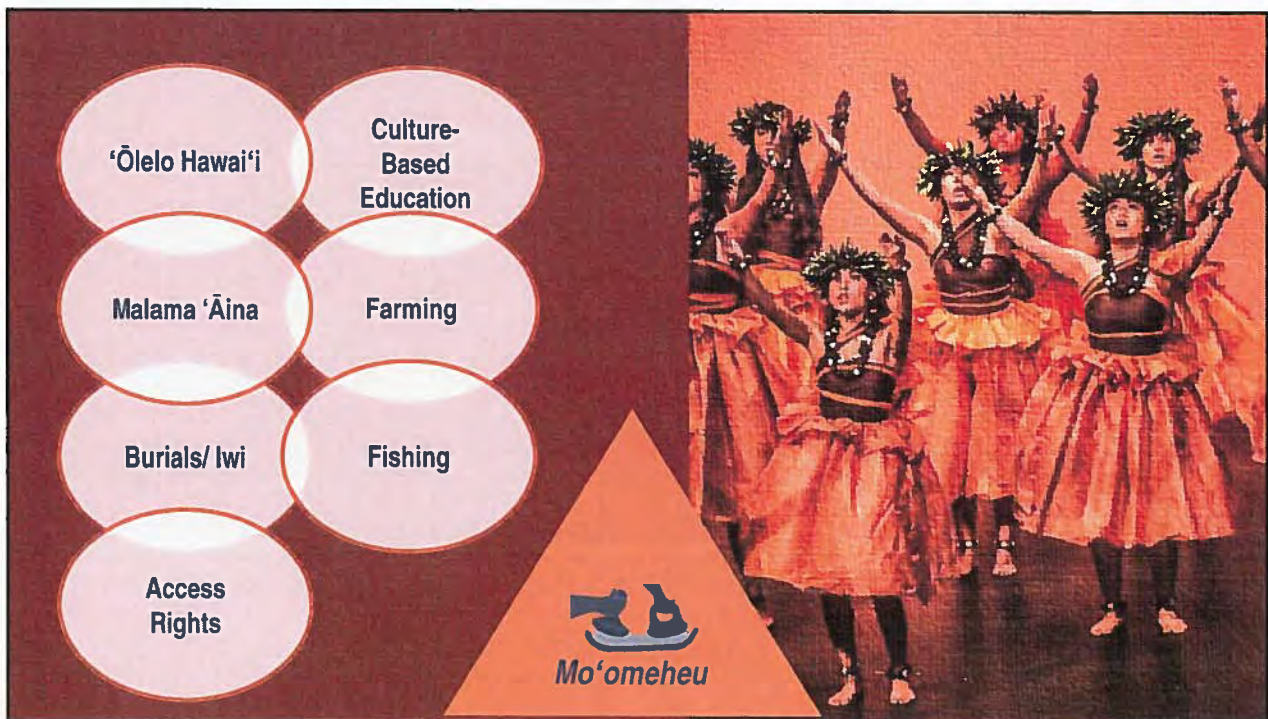
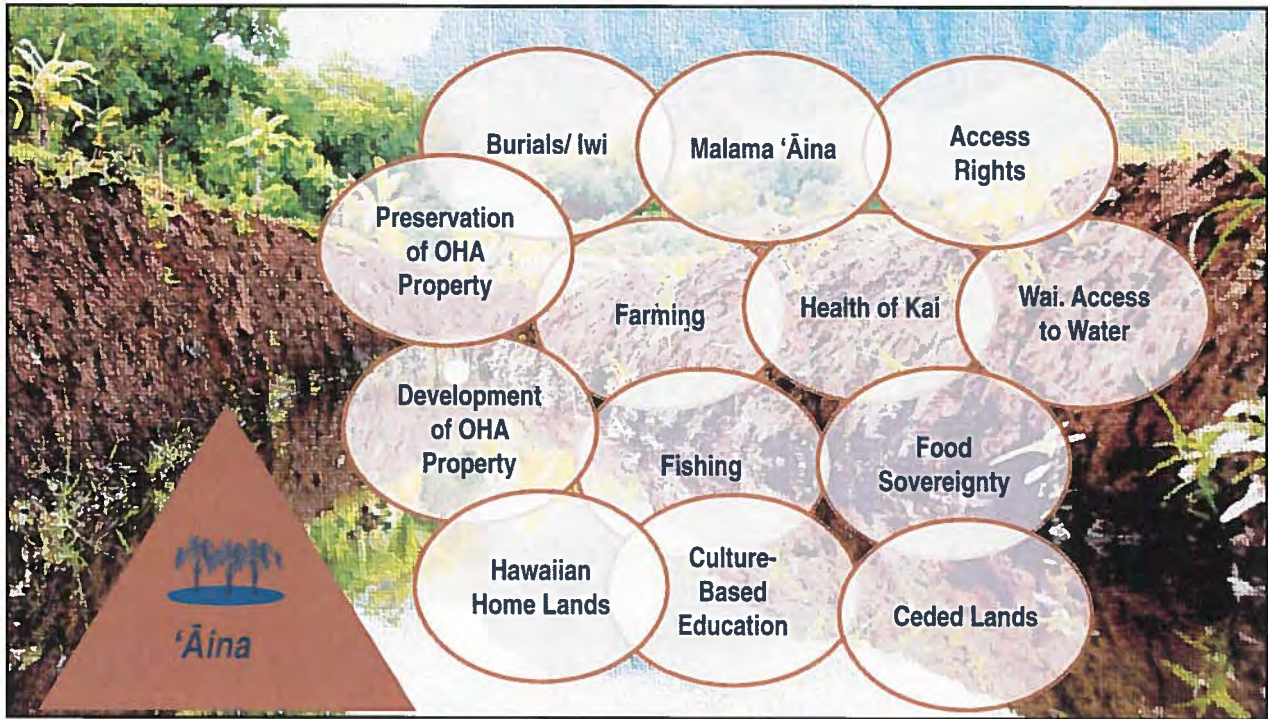


## Phase 2. Workshop 2

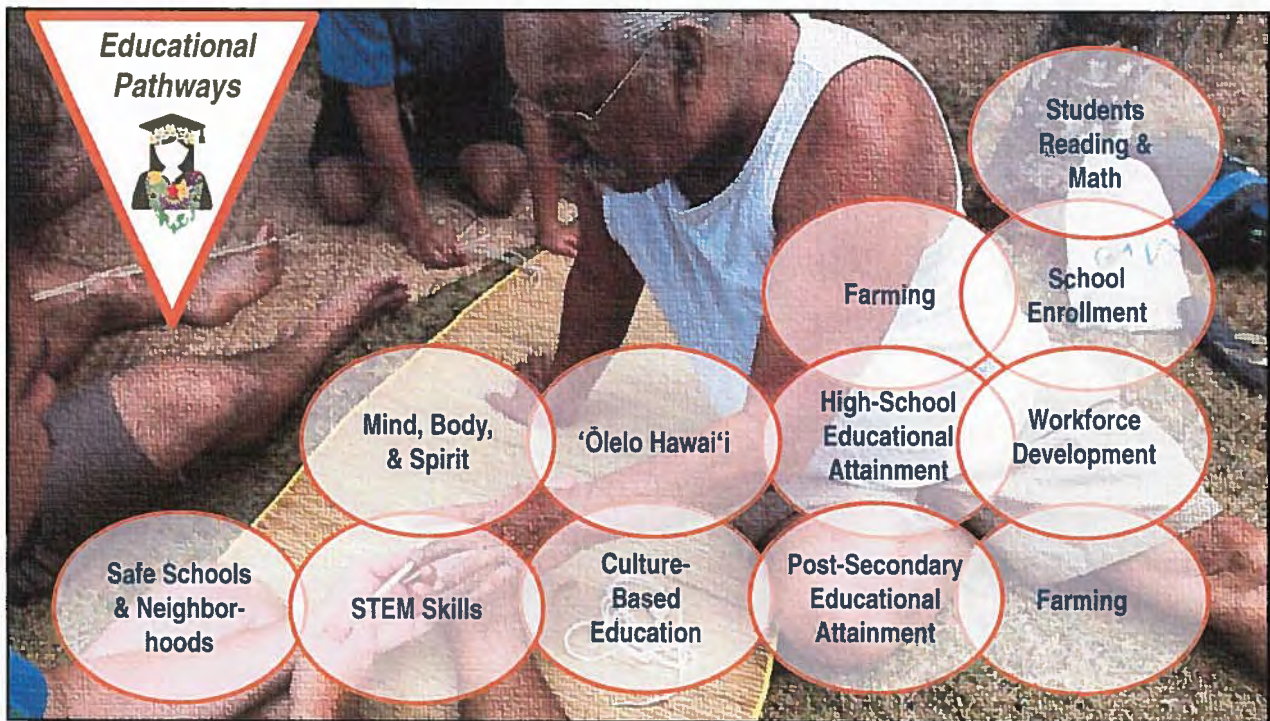
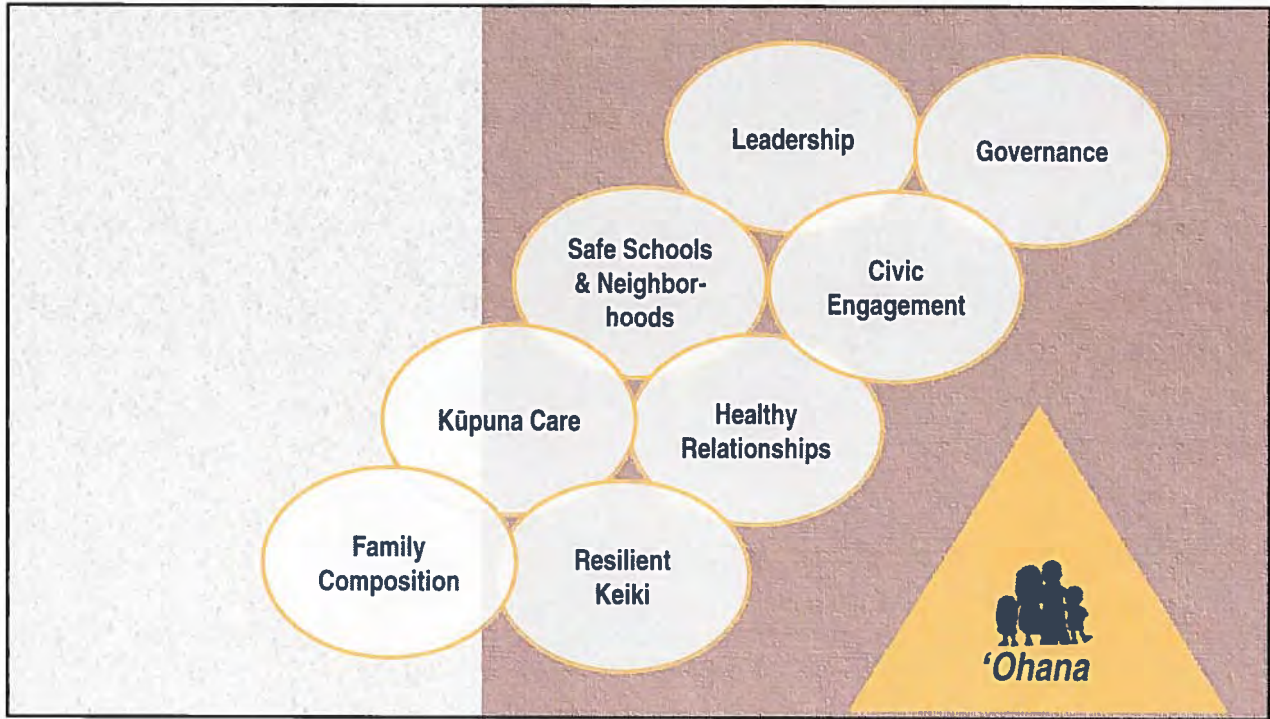




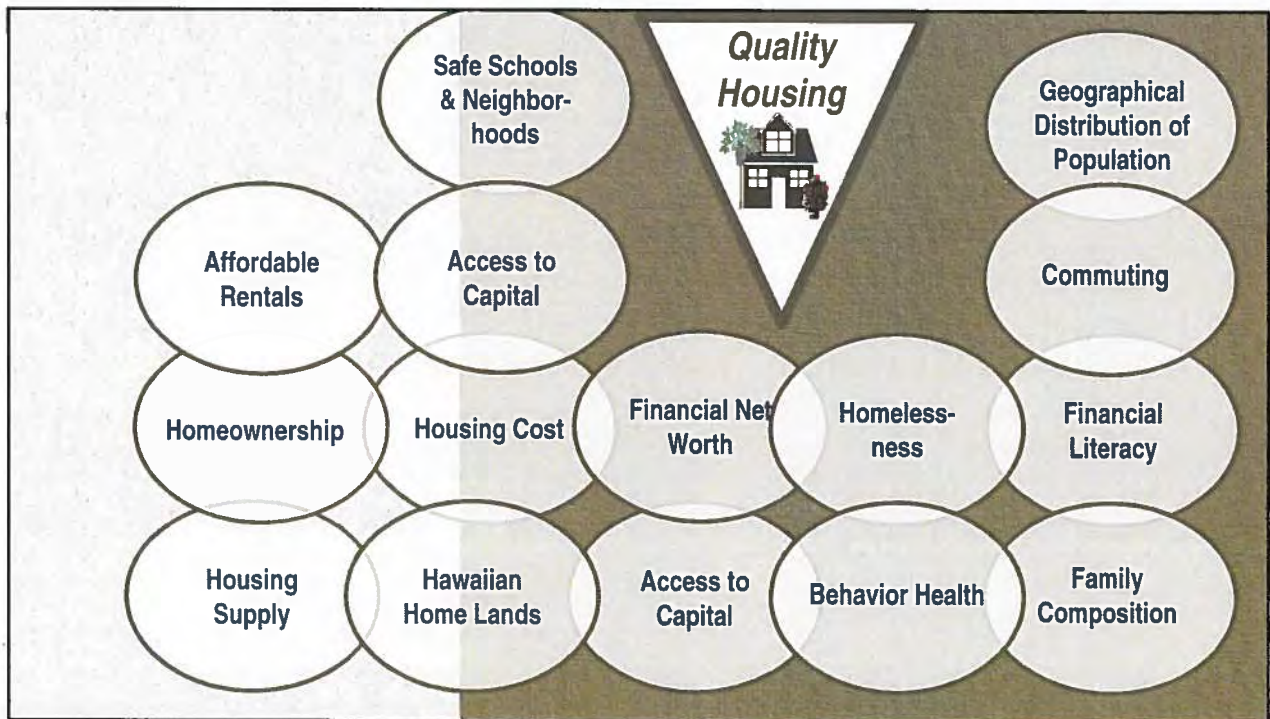




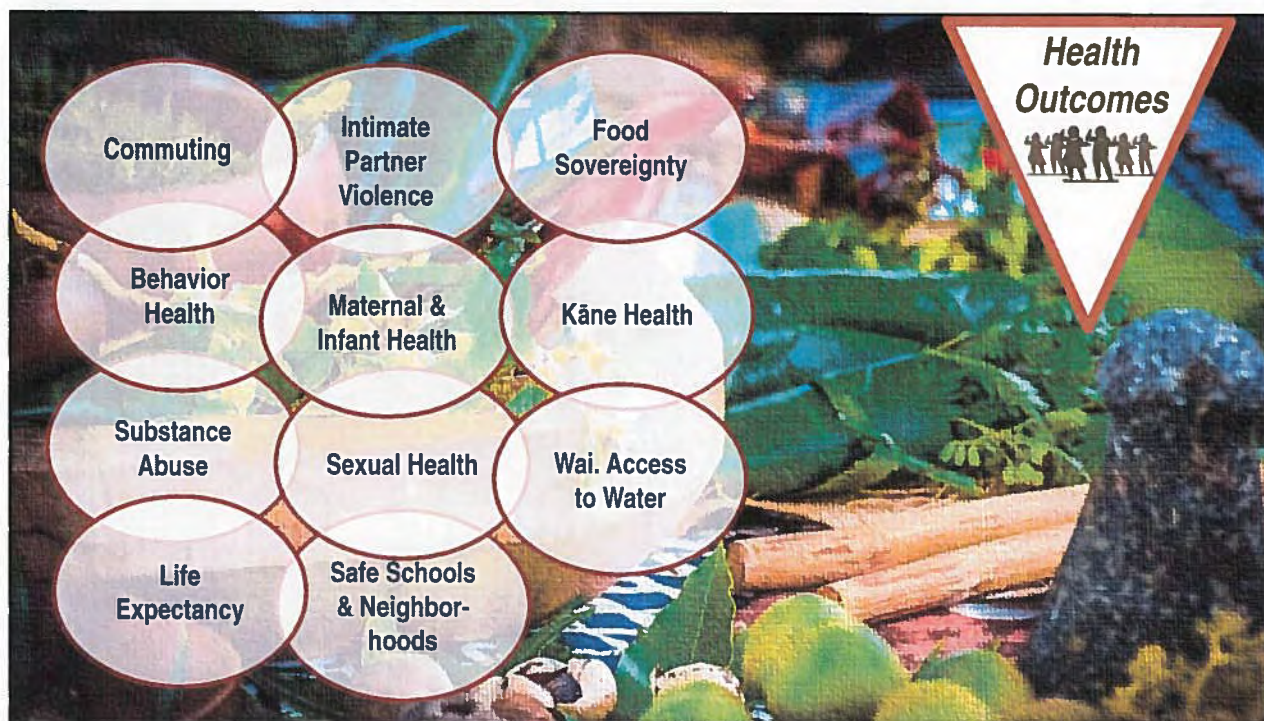












## Strategic Foundation

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**STATE OF HAWAI'I  
OFFICE OF HAWAIIAN AFFAIRS  
560 N. Nimitz Highway, Suite 200  
Honolulu, HI 96817**

**Minutes of the Office of Hawaiian Affairs Board of Trustees  
Thursday, March 21, 2019  
10:00 am**

**ATTENDANCE:**

TRUSTEE COLETTE MACHADO  
TRUSTEE BRENDON KALEI'ĀINA LEE  
TRUSTEE LEINA'ALA AHU ISA  
TRUSTEE KALEI AKAKA  
TRUSTEE W. KELI'I AKINA  
TRUSTEE CARMEN HULU LINDSEY  
TRUSTEE ROBERT LINDSEY

ROBERT G. KLEIN, ESQ., BOARD COUNSEL

**EXCUSED:**

TRUSTEE DAN AHUNA  
TRUSTEE JOHN WAIHE'E IV

**ADMINISTRATION STAFF:**

SYLVIA HUSSEY, COO  
MILES NISHIJIMA, LPD  
LISA WATKINS-VICTORINO, RES  
LISA VICTOR, CTO  
RAINA GUSHIKEN, CC  
MOMILANI LAZO, ADMIN CEO

**BOT STAFF:**

CAROL HO'OMANAWANUI  
DAYNA PA  
LEIANN DURANT  
KAMA HOPKINS  
KAUIKEAOLANI WAILEHUA  
LEHUA ITOKAZU  
MARIA CALDERON  
MELISSA WENNIHAN  
LAURENE KALUAU-KEALOHA  
PRICILLA NAKAMA  
ALYSSA-MARIE KAU

**GUESTS:**

NONE

**I. CALL TO ORDER**

**Trustee Colette Machado** Calls the Board of Trustees meeting to order at 10:02 am. Roll call is taken; Trustees Ahu Isa, Akaka, Akina, Lee, Carmen Hulu Lindsey, Robert Lindsey and Machado are present, constituting a quorum. Trustee Dan Ahuna and Trustee John Waihe'e IV sent and excused memo.

We will now move on to item II. Approval of Minutes

**II. APPROVAL OF MINUTES**

**A. February 21, 2019**

**Chair Colette Machado** – We are now on item II. A. Approval of Minutes for February 21, 2019. I would like to entertain a motion.

**Trustee Brendon Kalei'āina Lee** moves to approved the Minutes from the February 21, 2019 Board of Trustees meeting as submitted.

**Trustee Robert Lindsey** seconds the motion.

**Chair Colette Machado** – It has been moved and seconded, roll call vote please.

Trustee Brendon Kalei‘āina Lee moves to adopt the minutes from the February 21, 2019 Board of Trustees meeting as submitted. Trustee Robert Lindsey seconds the motion.						
TRUSTEE	1	2	‘AE (YES)	A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA‘ALA AHU ISA			X			
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI‘I AKINA			X			
TRUSTEE BRENDON KALEI‘ĀINA LEE	x		X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY		x	X			
TRUSTEE JOHN WAIHE‘E						Excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7			2
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED Motion passed with seven (7) yes votes, and two (2) excused.						

### **III. PUBLIC TESTIMONY**

**Chair Colette Machado** – Do we have anyone signed up for public testimony? Hearing none, we will move on to IV.

### **IV. UNFINISHED BUSINESS**

#### **A. CEO’s 15-Minute Update on Ho‘oulu Lāhui Aloha and OHA Activities**

**Chair Colette Machado** –I would like to call on our Chief Operating Office Sylvia Hussey.

**Sylvia Hussey** – Good morning Trustees. Just two quick updates for you. One on Wednesday, March 27, the community is gathering at the Capital to walk the halls in support of public land trust effort. So it’s not an OHA event but OHA is obviously supporting it with marketing collateral and materials. So the community as they come will have some talking points as they walk the halls and advocate for public land trust. That is Wednesday, March 27 from 8 to 11 at the Captial. The second item is just and update. Our financial audit, our final draft should be delivered by Friday so we should be able to review and get that completed and filed with our Federal Audit Data Clearinghouse. Just and update, that audit will be completed at the end of the month. That is it.

**Chair Colette Machado** – Questions? We will move to V.

### **V. NEW BUSINESS**

**Chair Colette Machado** – I would like to call on the Vice Chair of the Beneficiary Advocacy and Empowerment Committee. We have two measures that are being referred to us under Legislative Positioning followed by an action item on the recommendation for OHA’s mission and vision statements in to ‘ōlelo Hawaii. Chair would like to call upon Trustee Kalei Akaka.

**A. Committee on Beneficiary Advocacy and Empowerment****1. 2019 OHA Legislative Positioning – Matrix 2<sup>\*\*\*</sup>, March 13, 2019**

Trustee Kalei Akaka moves to approve Administration's recommendations on *NEW BILLS* (Items 1-11 and 13-20, excluding Item 12, SCR46) and *BILL POSITIONS FOR RECONSIDERATION* (Items 21 - 23);

**ADD:**

- HB272; and
- SB991, both as MONITOR; and

**CHANGE:**

- Item 32, HB295 from ~~Support~~ to MONITOR on the OHA Legislative Positioning Matrix dated March 13, 2019, as amended.

Trustee Brendon Kalei'aina Lee seconds the motion.

Chair Colette Machado – Roll call vote please.

Trustee Kalei Akaka moves to approve Administration's recommendations on <i>NEW BILLS</i> (Items 1-11 and 13-20, excluding Item 12, SCR46) and <i>BILL POSITIONS FOR RECONSIDERATION</i> (Items 21 - 23);						
ADD:						
• HB272; and						
• SB991, both as MONITOR; and						
CHANGE:						
• Item 32, HB295 from <del>Support</del> to MONITOR on the OHA Legislative Positioning Matrix dated March 13, 2019, as amended.						
Trustee Brendon Kalei'aina Lee seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA	x		X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'AINA LEE		x	X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E						Excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7			
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passed with seven (7) yes votes, and two (2) excused.						

Trustee Kalei Akaka moves to approve Administration's recommendations on *NEW BILLS*: Item 12, SCR46 as COMMENT on the OHA Legislative Positioning Matrix dated March 13, 2019, as amended.

Trustee Brendon Kalei'aina Lee seconds the motion.

Chair Colette Machado – Roll call vote.

Trustee Kalei Akaka moves to approve Administration's recommendations on *NEW BILLS*: Item 12, SCR46 as COMMENT on the OHA Legislative Positioning Matrix dated March 13, 2019, as amended.

Trustee Brendon Kalei'āina Lee seconds the motion.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA	x		X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE		x	X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E						Excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7			2
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passed with seven (7) yes votes, and two (2) excused.						

**Chair Colette Machado** – Members we have legislative positioning for March 20, 2019, I will call on Trustee Kalei Akaka.

## 2. 2019 OHA Legislative Positioning – Matrix 2\*\*\*, March 20, 2019

Trustee Kalei Akaka moves to approve Administration's recommendations on *NEW BILLS* (Items 1 - 40) and *BILL POSITIONS FOR RECONSIDERATION* (Items 41 - 43) on the OHA Legislative Positioning Matrix dated March 20, 2019, as amended.

Trustee Brendon Kalei'āina Lee seconds the motion.

**Chair Colette Machado** – Any discussion? Hearing none, roll call vote.

Trustee Kalei Akaka moves to approve Administration's recommendations on *NEW BILLS* (Items 1 - 40) and *BILL POSITIONS FOR RECONSIDERATION* (Items 41 - 43) on the OHA Legislative Positioning Matrix dated March 20, 2019, as amended.

Trustee Brendon Kalei'āina Lee seconds the motion.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA	x		X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE		x	X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E						Excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7			2
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passed with seven (7) yes votes, and two (2) excused.						

**B. Action Item BOT #19-02: Administration's recommendation to the Board of Trustee to review and approve the translation of OHA's Mission and Vision statements into 'Ōlelo Hawai'i.**

**Chair Colette Machado** – Members we are item V.B. Action item 19-02, I'd like to call on the Vice Chair for this action item for ratification.

**Trustee Brendon Kalei'āina Lee** moves to approve the 'ōlelo Hawai'i version of the OHA vision and mission statements as well as replacing the term "nation" to "lāhui" in the English version of the OHA mission and vision statements.

**Trustee Carmen Hulu Lindsey** seconds the motion.

**Chair Colette Machado** – It has been moved and seconded, discussion? Hearing non roll call vote.

Trustee Brendon Kalei'āina Lee moves to approve the 'ōlelo Hawai'i version of the OHA vision and mission statements as well as replacing the term "nation" to "lāhui" in the English version of the OHA mission and vision statements. Trustee Carmen Hulu Lindsey seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE	x		X			
TRUSTEE CARMEN HULU LINDSEY		x	X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E						Excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7			2
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED Motion passed with seven (7) yes votes and two (2) excused.						

**C. Action Item BOT #19-03: Approval of the Board's recommendations for the OHA Strategic Planning 2020+ Direction as discussed in the Phase II Strategic Planning Workshops.**

**Chair Colette Machado** – I would like to call on Vice Chair Lee again for item V.C. Action item 19-03.

**Trustee Brendon Kalei'āina Lee** moves to approve the strategic foundation and directions for the next OHA Strategic Plan 2020+ (SP2020+) as discussed in the Phase 2 Strategic Planning workshop.

**Trustee Robert Lindsey** seconds the motion.

**Chair Colette Machado** – It has been moved and seconded, any further discussion? Roll call vote please.

Trustee Brendon Kalei'āina Lee moves to approve the strategic foundation and directions for the next OHA Strategic Plan 2020+ (SP2020+) as discussed in the Phase 2 Strategic Planning workshop.  
Trustee Robert Lindsey seconds the motion.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE	x		X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY		x	X			
TRUSTEE JOHN WAIHE'E						Excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7			2
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED Motion passed with seven (7) yes votes and two (2) excused.						

## **VI. EXECUTIVE SESSION**

**Chair Colette Machado** – Members we are now on item VI. Executive Session. The Chair would like to entertain a motion to go into executive session pursuant to HRS §92-5 (a) (4). To discuss with our counsel questions and issues pertaining to the Board's powers, duties, privileges, immunities, etc.

**Trustee Carmen Hulu Lindsey moves to recuse into executive session pursuant to HRS §92-5 (a) (4).**

**Trustee Brendon Kalei'āina Lee seconds the motion.**

**Chair Colette Machado** – Roll call please.

Trustee Carmen Hulu Lindsey moves to recuse into executive session pursuant to HRS §92-5 (a) (4). Trustee Brendon Kalei'āina Lee seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE		x	X			
TRUSTEE CARMEN HULU LINDSEY	x		X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E						Excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			7			2
MOTION: [ x ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED Motion passed with seven (7) yes votes and two (2) excused votes.						

**Sylvia Hussey** – Chair may I ask that Raina and Sterling to stay.

**Chair Colette Machado** – Yes, could you folks take the table? With that said, can we clear the room?



The Board resolved into Executive Session at 10:12 am.

- A. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the State Auditor's request for the status of implementation of the audit recommendations in Report No. 18-03. *Pursuant to HRS §92-5(a)(4).*
- B. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding Civil No. 17-1-1823-11 JPC, OHA v. State, et. al. *Pursuant to HRS §92-5(a)(4).*

The Board reconvenes in open session at 11:02 am.

## **VII. COMMUNITY CONCERNS**

None

## **VIII. ANNOUNCEMENTS**

NONE

## **IX. ADJOURNMENT**

Chair Colette Machado – If there is no further business, I would like to adjourn the meeting.

Trustee Carmen Hulu Lindsey moves to adjourn the meeting.

Trustee Brendon Kalei'āina Lee seconds the motion.

Chair Colette Machado – It has been moved and seconded. Roll call vote please.

Trustee Carmen Hulu Lindsey moves to adjourn the meeting. Trustee Brendon Kalei'āina Lee seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA						Excused
TRUSTEE DAN AHUNA						Excused
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE		x	X			
TRUSTEE CARMEN HULU LINDSEY	x		X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E						Excused
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			6			3
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED Motion passed with six (6) yes votes and three (3) excused.						

The meeting was adjourned at 11:04 am.

Respectfully submitted,

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Dayna Pa, Board Secretary

As approved by the Board of Trustees on \_\_\_\_\_.

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Colette Y. Machado, Chairperson  
Board of Trustees

Attachment:

1. Excuse memo from Trustee Dan Ahuna
2. Excused memo from Trustee John Waihe'e IV





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Office of Trustee Dan Ahuna  
OFFICE OF HAWAIIAN AFFAIRS  
Interoffice Memorandum

Date: March 13, 2019

To: Trustee Colette Y. Machado, Chair ✓  
Board of Trustees

Trustee Brendon Kalei'aina Lee, Vice-Chair  
Board of Trustees

From: Trustee Dan Ahuna

Subject: **BOT Meeting Absence – March 21, 2019**

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OFFICE OF  
HAWAIIAN AFFAIRS  
STATE OF HAWAII  
RECEIVED-BOT  
2019 MAR 13 P 2:15

I am unable to attend the BOT meeting scheduled for March 21, 2019. Please extend my excused absence and my sincere apologies to the members of the board.

Mahalo.

PHONE (808) 594-1888



OFFICE OF  
HAWAIIAN AFFAIRS  
STATE OF HAWAII  
RECEIVED-BOT

FAX (808) 594-1868

2019 MAR 20 P 4: 27

STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS  
560 N. NIMITZ HIGHWAY, SUITE 200  
HONOLULU, HAWAII 96817

## MEMORANDUM

TO: Trustee Colette Y. Machado, Chair  
Board of Trustees (BOT)

FROM: Trustee John Waihe'e, IV, Member / At-Large

 for 

DATE: March 20, 2019

SUBJECT: ATTENDANCE FOR TOMORROW'S 03/21 BOT MEETING

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I will be meeting with the Governor of Okinawa tomorrow and will be unable to attend tomorrow's 03/21/19 Board of Trustees meeting at 10 a.m.

Please EXCUSE my absence and extend my apologies to the rest of the Board of Trustees.

Mahalo.

**STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS  
560 N. Nimitz Highway, Suite 200  
Honolulu, HI 96817**

**Minutes of the Office of Hawaiian Affairs Board of Trustees  
Thursday, March 28, 2019  
10:00 am**

**ATTENDANCE:**

TRUSTEE COLETTE MACHADO  
TRUSTEE BRENDON KALEI'ĀINA LEE  
TRUSTEE LEINA'ALA AHU ISA  
TRUSTEE DAN AHUNA  
TRUSTEE KALEI AKAKA  
TRUSTEE W. KELI'Ī AKINA  
TRUSTEE CARMEN HULU LINDSEY  
TRUSTEE ROBERT LINDSEY  
TRUSTEE JOHN WAIHE'E IV

ROBERT G. KLEIN, ESQ.; BOARD COUNSEL

**ADMINISTRATION STAFF:**

KAMANAOPONO CRABBE, CEO  
MILES NISHIJIMA, LPD  
LISA VICTOR, CTO  
RAINA GUSHIKEN, CC  
STERLING WONG, PRO

**BOT STAFF:**

CAROL HO'OMANAWANUI  
DAYNA PA  
LAURENE KALUAU-KEALOHA  
LEIANN DURANT  
KAMA HOPKINS  
PRICILLA NAKAMA  
LEHUA ITOKAZU  
MARIA CALDERON  
ALYSSA-MARIE KAU  
MELISSA WENNIHAN

**GUESTS:**

NONE

**I. CALL TO ORDER**

**Trustee Colette Machado** Calls the Board of Trustees meeting to order at 10:03 am. Roll call is taken; Trustees Ahu Isa, Ahuna, Akaka, Akina, Lee, Carmen Hulu Lindsey, Robert Lindsey and Machado are present, constituting a quorum. Trustee John Waihe'e IV is expected to arrive shortly.

Before we move on to public testimony, I would like to add these comments to the record.

The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for the following items:

**IV. New Business**

- A. Committee on Beneficiary Advocacy and Empowerment
  - 1. 2019 OHA Legislative Positioning – Matrix 2<sup>\*\*†</sup>, March 27, 2019
- B. Joint Committee on Beneficiary Advocacy and Empowerment and Resource Management
  - 1. Administration's recommendation to the BAE/RM Committee to review and approve Action Item BAE/RM #19-02 relating to the Kūlia Grant recommendations.<sup>†</sup>
- C. Report by the Permitted Interaction Group on Organizational Guidance of its findings and recommendations, without discussion. *Pursuant to HRS §92-2.5(b)(1)(B)*<sup>†</sup>

**II. PUBLIC TESTIMONY**

**Chair Colette Machado** – Do we have anyone signed up for public testimony? Hearing none, we will move on to III.

### **III. UNFINISHED BUSINESS**

#### **D. CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities**

**Chair Colette Machado** –I would like to call on our Ka Pouhana, CEO for any unfinished business and updates.

**Kamana'opono Crabbe** – Good morning Trustees. This morning public policy and the Pou Nui Sylvia Hussey are before the legislature to testify on support. It looks like it will move out for our budget bill. That's positive. Second OHA is just one of many other agencies who are making the transition for our payroll. This huge effort to have all of our payroll consistent on one IT platform. We have been working very diligently with the State IT offices in looks like within the next several months it will take place. What we are asking to do is all staff is to make sure that their time cards are up to date. That will be helpful when we transition over by June/July for the next fiscal year. You may be getting HR reminders to encourage your staff to update their time cards. It will be that much easier, because once we convert there is no going back, we have to move forward and the reason why it's important is because it keeps track of all of your vacation, all of your hours and even related to retirement and so forth. As I shared you may be hearing more announcements from HR but it's part of the whole State IT upgrade system.

Lastly, we've been trying to really work through our oracle fusion. The Oracle fusion is to upgrade our current accounting system and related to our charter accounts. It require much more specialty skill in designing, constructing the actual program. It's much more from what we originally contracted program developer. It's delayed; it may be delayed another 6 months. But we are trying to stay on course. We look like we will be hiring a very creditable data warehouse group that will be helping us to specially design our oracle fusion for us within the next 6 months or so. I share that because we were hoping that by July that we can start moving it toward a better accounting system in terms of being able to provide data and reports. Right now that is being worked on as one of the priorities. That's the highlights from Administration.

**Trustee Leina'ala Ahu Isa** – We are still going through the same thing at the Hilton and it takes a lot of training. It's really confusing, so many parts to it, so you have the staff training or someone in to train.

**Kamana'opono Crabbe** – Right, we had an original contractor but he is not as skilled into the actual design and structure so we are having someone else come in who works directly with Gloria and her staff to break it down and design it. The intent is to design the Charter accounts to align with Fiscal policies but then also that data will go to a report, either monthly or quarterly, but that tedious detail you have work directly with the staff and not just the manager but you have work with the line staff.

**Trustee Leina'ala Ahu Isa** – Yes because the time involved. (*conversation indiscernible*)

**Kamana'opono Crabbe** – OHA we are the first State agency to be moving to Oracle Fusion. They are all supposed to do it. Lisa Victor as the CTO was able to develop a relationship with the prior State Chief Technology Officer, who helped to upgrade our hardware so that we have more speed. This is the second phase of upgrading now our software.

**Chair Colette Machado** – We are now on New Business.

*10:07 am Trustee John Waihe'e IV arrives to meeting.*

**IV. NEW BUSINESS**

**Chair Colette Machado** – The Committee on Beneficiary Advocacy and Empowerment’s referral to the BOT relating to Matrix 2, March 27, 2019. I will call on Trustee John Waihe’e IV. We have two motions the first motion is on the Board.

**A. Committee on Beneficiary Advocacy and Empowerment**

**1. 2019 OHA Legislative Positioning – Matrix 2<sup>\*\*†</sup>, March 27, 2019**

**Trustee John Waihe’e IV** moves to approve Administration’s recommendations on *NEW BILLS* (Items 1 - 60) and *BILL POSITIONS FOR RECONSIDERATION* (Items 61, 63 - 65, excluding Item 62, HB419); as well as

**ADD:**

• **HR17 as MONITOR; and**

**CHANGE:**

• **Item 21, HCR155;**

• **Item 36, SCR204;**

• **Item 50, HR142;**

• **Item 59, SR164, all from Monitor to COMMENT;**

**on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended**

**Trustee Kalei Akaka** seconds the motion.

**Chair Colette Machado** – Any discussion, hearing none. Roll call vote please.



Trustee John Waihe'e IV moves to approve Administration's recommendations on *NEW BILLS* (Items 1 - 60) and *BILL POSITIONS FOR RECONSIDERATION* (Items 61, 63 - 65, excluding Item 62, HB419); as well as

ADD:

- HR17 as MONITOR; and

CHANGE:

- Item 21, HCR155;
  - Item 36, SCR204;
  - Item 50, HR142;
  - Item 59, SR164, all from ~~Monitor~~ to COMMENT;
- on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended  
Trustee Kalei Akaka seconds the motion.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			x			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA		x	x			
TRUSTEE KELI'I AKINA			x			
TRUSTEE BRENDON KALEI'ĀINA LEE			x			
TRUSTEE CARMEN HULU LINDSEY			x			
TRUSTEE ROBERT LINDSEY			x			
TRUSTEE JOHN WAIHE'E	x		X			
TRUSTEE COLETTE MACHADO			x			
TOTAL VOTE COUNT			9			

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

Motion passed unanimously with nine (9) yes votes

**Chair Colette Machado** –Trustee John Waihe'e IV.

**Trustee John Waihe'e IV** moves to approve Administration's recommendation on *BILL POSITIONS FOR RECONSIDERATION*: Item 62, HB419 from ~~Monitor~~ to SUPPORT on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended.

**Trustee Kalei Akaka** seconds the motion.

**Chair Colette Machado** – It has been moved and seconded, any discussion? Hearing none, roll call vote.

<b>Trustee John Waihe'e IV moves to approve Administration's recommendation on <i>BILL POSITIONS FOR RECONSIDERATION</i>: Item 62, HB419 from <del>Monitor</del> to SUPPORT on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended.</b> <b>Trustee Kalei Akaka seconds the motion.</b>						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA		x	X			
TRUSTEE KELI'I AKINA					X abstain	
TRUSTEE BRENDON KALEI'ĀINA LEE			X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E	x		X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8		1 abstention	
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED Motion passed with eight (8) yes votes, and one (1) abstention.						

**B. Joint Committee on Beneficiary Advocacy and Empowerment and Resource Management**  
**1. Administration's recommendation to the BAE/RM Committee to review and approve Action Item BAE/RM #19-02 relating to the Kūlia Grant recommendations.**

**Chair Colette Machado** – Thank you Members we are item IV.B. the Joint Committee referral to the BOT regarding Action Item BAE/RM #19-02 relating to the Kūlia Grant recommendations. Trustee Dan Ahuna the motion is on the Board.

**Trustee Dan Ahuna moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$374,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund eight (8) Fiscal Year 2018 Kūlia Grant recommendations listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix except for Five Mountains Hawaii DBA Kīpuka O Ke Ola at \$51,000 and Malama Loko Ea at \$75,000.**

**Trustee Carmen Hulu Lindsey seconds the motion.**

**Chair Colette Machado** – Thank you Trustee Carmen Hulu Lindsey for the second. Any discussion on this item? There will be two recusals.

**Trustee Dan Ahuna** – They will vote on this one.

**Chair Colette Machado** – I stand corrected. Roll call vote.

Trustee Dan Ahuna moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$374,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund eight (8) Fiscal Year 2018 Kūlia Grant recommendations listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix except for Five Mountains Hawaii DBA Kīpuka O Ke Ola at \$51,000 and Malama Loko Ea at \$75,000. Trustee Carmen Hulu Lindsey seconds the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			

TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE					X abstain	
TRUSTEE CARMEN HULU LINDSEY	x		X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8		1 abstention	
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passed with eight (8) yes votes and one (1) abstention.						

**Chair Colette Machado** – Thank you members, motion number 2 Trustee Dan Ahuna.

**Trustee Dan Ahuna** moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$51,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Kūlia Grant recommendation listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix for Five Mountains Hawaii DBA Kīpuka O Ke Ola at \$51,000.

**Trustee John Waihe'e IV** second the motion.

**Chair Colette Machado** – It's been moved and seconded, roll call vote please.

Trustee Dan Ahuna moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$51,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Kūlia Grant recommendation listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix for Five Mountains Hawaii DBA Kīpuka O Ke Ola at \$51,000.						
Trustee John Waihe'e IV second the motion.						
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE					X abstain	
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY					X recuse	
TRUSTEE JOHN WAIHE'E		x	X			
TRUSTEE COLETTE MACHADO						
TOTAL VOTE COUNT			7		1 abstention 1 recusal	
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passed with seven (7) yes votes, one (1) abstention and one (1) recusal.						

**Chair Colette Machado** – Thank you for your patience, we have one more motion. Trustee Dan Ahuna.

**Trustee Dan Ahuna** moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$75,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Kūlia Grant recommendation listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix for Malama Loko Ea at \$75,000.

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

**Chair Colette Machado** – Thank you Trustee John Waihe'e IV for the second. If no discussion roll call vote please.

Trustee Dan Ahuna moves to review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$75,000 from Fiscal year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Kūlia Grant recommendation listed on Attachment – OHA FY 2018 – Kūlia Grant Recommendations Matrix for Malama Loko Ea at \$75,000.

Trustee John Waihe'e IV seconds the motion.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA'ALA AHU ISA			X			
TRUSTEE DAN AHUNA	x		X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI'I AKINA			X			
TRUSTEE BRENDON KALEI'ĀINA LEE					X recuse	
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE'E		x	X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			8			
MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED						
Motion passed with eight (8) yes votes and one (1) recusal.						

**Chair Colette Machado** – Congratulations everyone. Thank you staff and moving forward.

**Kamana'opono Crabbe** – Given the approval by the board, our public relations officer Sterling Wong has prepared a press release statement that will immediately go out to the media today.

**Chair Colette Machado** – Thank you for that update.

**C. Report by the Permitted Interaction Group on Organizational Guidance of its findings and recommendations, without discussion. Pursuant to HRS §92-2.5(b)(1)(B)**

**Chair Colette Machado** – We are on New Business item C. I will call on Vice Chair Brendon Kalei'āina Lee to lead this. It's only a distribution there is no discussion on the item related to the Permitted Interaction Group on Organization Guidance of its findings and recommendation.

**Trustee Brendon Kalei'āina Lee** – Mahalo Chair and Trustees. You have before you the comprehensive work of the Permitted Interaction Group of Governance Framework that was approved in January for Office of Hawaiian Affairs. What you have before you is that report of that permitted interaction group. What I have before me for you folks all to see is the reported comprehensive work of that group so that the Board of Trustees can see; this is just the work that was reported back to the interaction group. This does not consist of the actual work that was done. I don't believe it would fit on this table. With your indulgence, I would like to take a moment to read our introduction letter.

When the Office of Hawaiian Affairs was established over 4 years ago, no one foresaw the growth OHA would experience as it evolved into the Native Hawaiian Trust it is today.

Based on recent best practice analyses, the Board of Trustees governance framework does not address the many different needs of its Native Hawaiian Trust as well as the overall management of the Office of Hawaiian Affairs.



In order to assist in the forward movement of our organization, on January 24, 2019, the Board of Trustees voted to approve a Permitted Interaction Group to develop and updated Governance Framework for the Office of Hawaiian Affairs. This group over the past two months, has worked diligently to complete a comprehensive analysis of OHA's by-laws, policies, and action items spanning the last 5 years. In order to provide context and history our administrative staff has put together a mo'oku'auhau for our current policies. In addition to reviewing these material, we met with our kupuna ali'i trust (Queen Lili'uokalani Trust, Lunalilo Home, and Kamehameha Schools) to analyze their governance framework. In order to gain even more insight, we also studied national and international governance models (Maori and Native American Tribal Governments) for their respective governance contexts.

This project was a joint effort. Our team was comprised of selected Trustees, Trustee staff, administration leaders, and administrative staff. I would like to take this opportunity to thank our team for the long hours of aggregating data, reporting back to the team weekly, and participating in insightful and open discussion. I want to especially mahalo our project manager, Ka Pou Nui Sylvia Hussey, who unfortunately is not here for this historic presentation today; she is at the Legislature representing us, for keeping the team on track and on time.

The attached report of our Governance Framework PIG shows that once the governance model is adopted, subsequent PIGs will need to be approved to develop transition steps over the next six to nine months.

Mahalo Board of Trustees.

If you can turn to page 3 or your report I will quickly take you through some of the highlights of your report.

**Trustee Carmen Hulu Lindsey** – I don't believe you can.

**Trustee Brendon Kalei'aina Lee** – I believe I can because I am presenting.

**Trustee Carmen Hulu Lindsey** – No.

**Robert G. Klein, Board Counsel** – You can't present the information in the report, you can present the report, what you just did with a nice introduction.

**Trustee Brendon Kalei'aina Lee** – And that's it, ok.

**Robert G. Klein, Board Counsel** – Yes.

**Trustee Brendon Kalei'aina Lee** – Thank you Chair.

**Trustee Carmen Hulu Lindsey** – Yes, I been through it, I got scolded the last time.

**Trustee Brendon Kalei'aina Lee** – I read it, as there is a difference between presenting it and discussion. Presenting isn't discussion. I will yield.

**Robert G. Klein, Board Counsel** – The presentation part, since some of the Trustees weren't on the Committee this is the first that they have heard about it or seen it. Now they have time to take it under advisement, study it before they discuss it and deliberate.

**Trustee Brendon Kalei'aina Lee** - So part of that presentation I am not allowed to point out to highlight certain things.

**Robert G. Klein, Board Counsel** – We are taking it just exactly as OIP requires.

**Trustee Brendon Kalei'aina Lee** - Ok.



**Trustee Dan Ahuna** – Will be able to ask him a question?

**Robert G. Klein, Board Counsel** – During the discussion and deliberation next week. You can ask all the questions you want. Now is the time to accept it, review it, write down all your questions and then go for it the next time.

**Chair Colette Machado** – Just for your information at the request of the Vice Chair and the Chair of the PIG on April 4<sup>th</sup> we will be adding this to the BOT which we will have discussion and hopefully approval for this mechanism for the framework. Save all your questions for next week for full and free discussion at the table. With that said, we will move on to V. Executive Session.

## **VI. EXECUTIVE SESSION**

**Chair Colette Machado** – The Chair would like to entertain a motion to go into executive session pursuant to HRS §92-5(a)(4).

**Trustee Brendon Kalei‘āina Lee** moves to recuse into executive session pursuant to HRS §92-5(a)(4).

**Trustee Carmen Hulu Lindsey** seconds the motion.

**Chair Colette Machado** – Roll call please.

Trustee Brendon Kalei‘āina Lee moves to recuse into executive session pursuant to HRS §92-5(a)(4). Trustee Carmen Hulu Lindsey seconds the motion.						
TRUSTEE	1	2	‘AE (YES)	A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA‘ALA AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI‘I AKINA			X			
TRUSTEE BRENDON KALEI‘ĀINA LEE	x		X			
TRUSTEE CARMEN HULU LINDSEY		x	X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE‘E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [ x ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED Motion passed unanimously with nine (9) yes.						

**Chair Colette Machado** – At the request of the Chair everyone is excused, staff and aides. With that said, can we clear the room?

**Kamana‘opono Crabbe** – Madame Chair we request Corp Counsel to stay.

**The Board resolved into Executive Session at 10:24 am.**

- A. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities regarding the State Auditor’s request for the status of implementation of the audit recommendations in Report No. 18-03. Pursuant to HRS §92-5(a)(4).**

The Board reconvenes in open session at 10:34 am.

**VII. COMMUNITY CONCERNS**

NONE

**VIII. ANNOUNCEMENTS**

NONE

**IX. ADJOURNMENT**

**Chair Colette Machado** – If there is no further business, I would like to adjourn the meeting.

**Trustee Brendon Kalei‘āina Lee** moves to adjourn the meeting.

**Trustee Dan Ahuna** seconds the motion.

**Chair Colette Machado** – It has been moved and seconded. Roll call vote please.

Trustee Brendon Kalei‘āina Lee moves to adjourn the meeting. Trustee Dan Ahuna seconds the motion.						
TRUSTEE	1	2	‘AE (YES)	A‘OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEINA‘ALA AHU ISA			X			
TRUSTEE DAN AHUNA		x	X			
TRUSTEE KALEI AKAKA			X			
TRUSTEE KELI‘I AKINA			X			
TRUSTEE BRENDON KALEI‘ĀINA LEE	x		X			
TRUSTEE CARMEN HULU LINDSEY			X			
TRUSTEE ROBERT LINDSEY			X			
TRUSTEE JOHN WAIHE‘E			X			
TRUSTEE COLETTE MACHADO			X			
TOTAL VOTE COUNT			9			
MOTION: [ x ] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED Motion passed unanimously with nine (9) yes.						

The meeting was adjourned at 10:36 am.

Respectfully submitted,

\_\_\_\_\_  
Dayna Pa, Board Secretary

As approved by the Board of Trustees on \_\_\_\_\_.

\_\_\_\_\_  
Colette Y. Machado, Chairperson  
Board of Trustees

Attachment:


1. Report from the Governance Framework Permitted Interactive Group (PIG) dated March 25, 2019



OFFICE OF  
HAWAIIAN AFFAIRS  
STATE OF HAWAII  
RECEIVED-BOT

2019 MAR 27 A 9 10

**OFFICE OF HAWAIIAN AFFAIRS**  
Interoffice Memorandum

**DATE:** March 25, 2019  
**TO:** Board of Trustees  
**FROM:** Trustee Brendon Kalei'aina Lee   
**RE:** Governance Framework Permitted Interactive Group (PIG)

When the Office of Hawaiian Affairs (OHA) was established over 40 years ago, no one foresaw the growth OHA would experience as it evolved into the Native Hawaiian Trust it is today.

Based on recent best practice analyses, the current Board of Trustees governance framework does not address the many different needs of its Native Hawaiian Trust as well as the overall management of the Office of Hawaiian Affairs.

In order to assist in the forward movement of our organization, on January 24, 2019, the Board of Trustees voted to approve a Permitted Interactive Group (PIG) to develop an updated Governance Framework for the Office of Hawaiian Affairs. This group, over the past two months, has worked diligently to complete a comprehensive analysis of OHA's by-laws, policies, and action items spanning the last five years. In order to provide context and history, our administrative staff has put together a mo'oku'auhau for our current policies. In addition to reviewing these materials, we met with our kupuna ali'i trusts (Queen Lili'uokalani Trust, Lunalilo Home, and Kamehameha Schools) to analyze their governance framework. In order to gain even more insight, we also studied national and international governance models (Maori and Native American Tribal governments) for their respective governance contexts.

This project was a joint effort; our team was comprised of selected trustees, trustee staff, administration leaders, and administrative staff. I would like to take this opportunity to thank our team for the long hours of aggregating data, reporting back to the team weekly, and participating in insightful and open discussion. I want to especially mahalo our project manager, Ka Pou Nui Sylvia Hussey, for keeping the team on track and on time.

The attached report of our Governance Framework PIG shows that once the governance model is adopted, subsequent PIGs will need to be approved to develop transition steps over the next six to nine months.

Mahalo.



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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## I. OVERVIEW

Two thousand eighteen (2018) marks the end of the Office of Hawaiian Affairs' (OHA or Organization) strategic plan period, and several years of challenges within the organization, hampering the organization's abilities to more intently apply and deploy resources to "better the conditions of native Hawaiians". In the past 24 months, the following have undermined effective governance at OHA:

- **People.** Board of Trustees (BOT) interactions among themselves, with regulatory agencies (e.g., Ethics Commission, Attorney General's office), with Administration (including staff), and beneficiaries and stakeholders have diverted strategic energy, focus, time and dollars from mission critical and aligned responsibilities.
- **Policies and Plans.** Un-implemented strategic policies and plans (e.g., Post 2018 Strategic Plan, including implementation, Financial Sustainability Plan, Debt Policy, Hawaii Direct Assets Policy, LLCs) have hampered the organization's ability to advance mission critical and aligned strategies.
- **Procedures and Practices.** Audits--initiated or triggered by BOT interactions and behaviors, and completed in the normal course of regulatory and statutory requirements (e.g., Chapter 10)---have diverted trust resources (e.g., time and dollars) and highlighted procedure and practice improvements, respectively.

Given the changes and experiences in the last 24 months within the organization, the need for strengthening governance can be synthesized to a need:

- To improve the image, brand, credibility and standing in the community of the Office of Hawaiian Affairs;
- To demonstrate understanding of and accountability to the statutory, fiduciary and trust organizational responsibilities of the Office of Hawaiian Affairs via codified policies, procedures and practices;
- For explicit clarity in the roles, responsibilities and accountabilities of the Board of Trustees and Administration (including staff);
- For explicit and intentional clarity in the purposes, direction and strategic planning and implementation efforts post 2018; and
- To strengthen the organization's ability to advance mission critical and aligned strategies.

The Board of Trustees (BOT) is committed to strengthening OHA's governance framework, structure, policies, procedures and practices to more intently apply and deploy resources to "better the conditions of native Hawaiians".

## **II. PERMITTED INTERACTION GROUP**

### **A. Statutory Basis**

In accordance with HRS, CHAPTER 92, PUBLIC AGENCY MEETINGS AND RECORDS §92-2.5 (b) Permitted interactions of members, (b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to: (1) Investigate a matter relating to the official business of their board; provided that: (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board; (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and (C) Deliberation and decision making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

### **B. Formation**

In January 2019, the Board approved the formation of a Permitted Interaction Group (PIG) to: Investigate various elements of governance frameworks and models, including but not limited to cultural, indigenous, native, national and international contexts. The PIG was established with Chair, Colette Machado as Business Process Owner, Vice Chair, Trustee Brendon Kalei'āina Lee as Project Sponsor and Trustees Robert Lindsey<sup>1</sup> and John Waihee<sup>2</sup> as members. The PIG was supported by Trustee Machado, Lee, Lindsey and Waihee's Aides; and Administration, Ka Pouhana, Kamana'opono Crabbe, Ka Pou Nui, Sylvia Hussey and Executive Office staff. The PIG, also known as the Board Governance Framework Project, implemented a project plan in five phases: Phase I – Planning; Phase II – Where are we now? (AS IS); Phase III – Proposing Elements of a Governance Framework; Phase IV – Proposing Implementation Actions; and Phase V – Closing Project and Lessons Learned. This PIG report covers the results (and close) of the PIG of Phases I to III. Phases IV and V is proposed to be accomplished through a subsequent, sequenced series of PIGs, subject to Board approval.

For purposes of the PIG, the following working definition of “governance” was used to frame the project, activities and deliverables: Establishment of policies, and continuous monitoring of their proper implementation, by the members of the governing body of an organization. It includes mechanisms required to balance the powers of the members (with the associated accountability) and their primary duty of enhancing the prosperity and viability of the organization.<sup>3</sup>

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<sup>1</sup> Interim Chair of the Resource Management Committee at the time of the formation of the Permitted Interaction Group

<sup>2</sup> Chair of the Beneficiary, Advocacy and Empowerment Committee

<sup>3</sup> <http://www.businessdictionary.com/definition/governance.html>, retrieved 1/1/2019

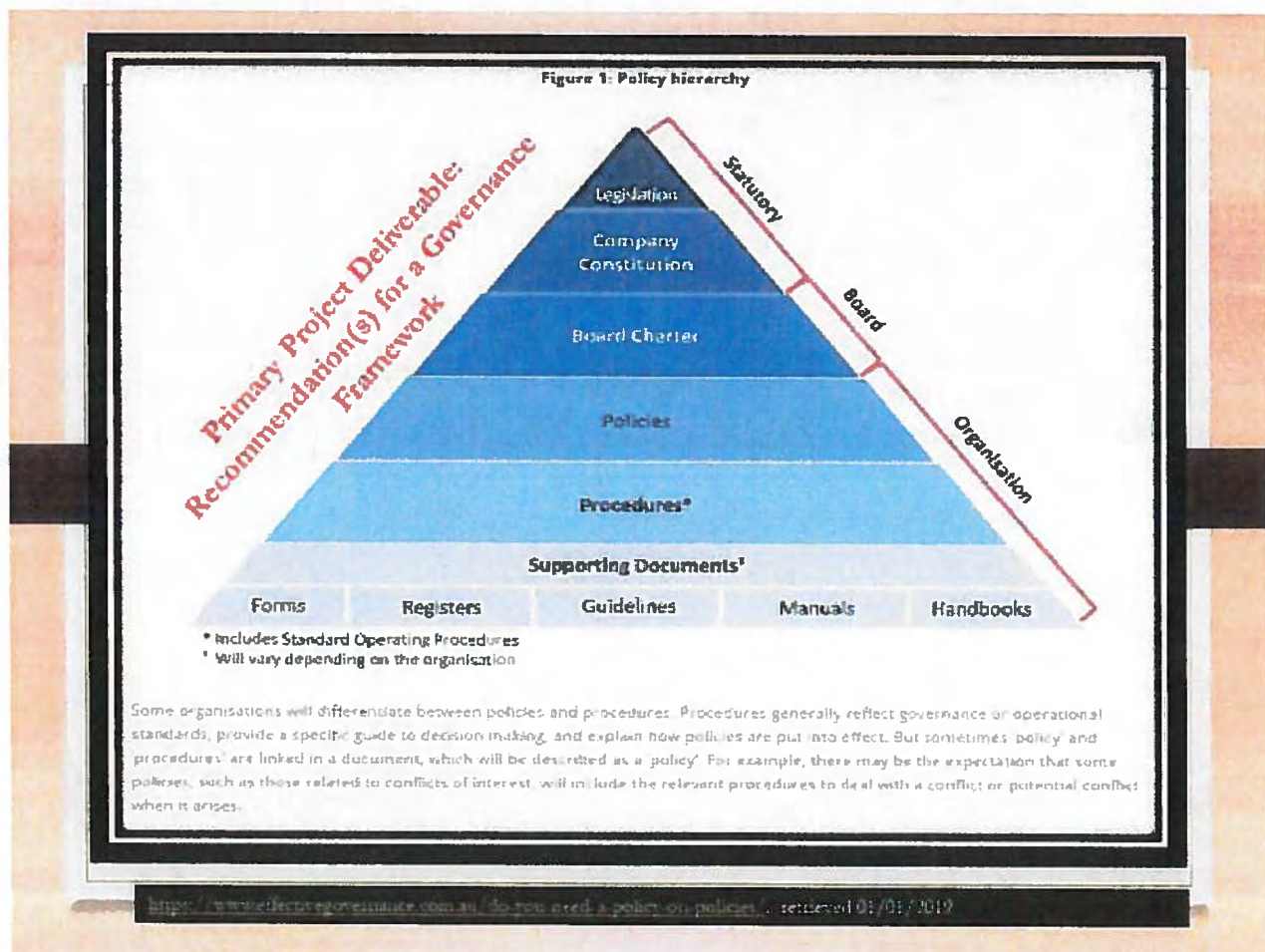


### C. Analyses Context

For purposes of the PIG Board Governance Framework Project, the working “look back” period was determined to be five (5) years----2018, 2017, 2016, 2015, 2014----which includes five of the eight years of the Strategic Plan, 2010 to 2018 period.

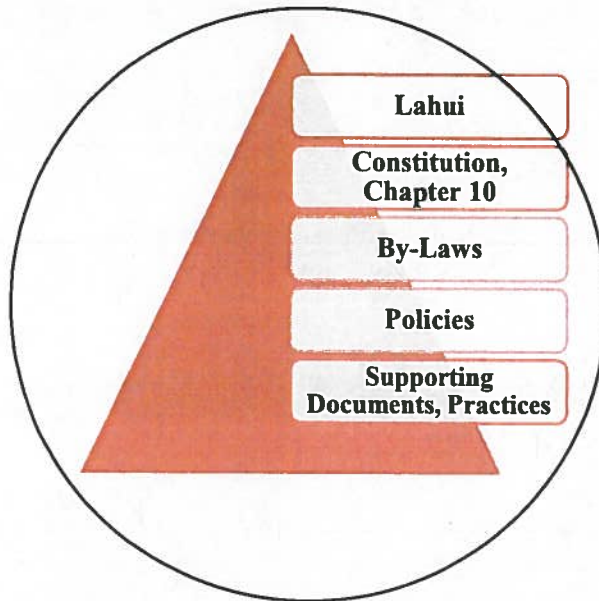
### D. Major Deliverable of the PIG

The major project deliverable of the PIG are recommendations to the Board of Trustees for OHA’s governance framework utilizing an exemplar policy hierarchy below:<sup>4</sup>



<sup>4</sup> <https://www.effectivegovernance.com.au/do-you-need-a-policy-on-policies/>, retrieved 01/01/2019

### III. EXECUTIVE SUMMARY



The PIG recommends five elements of OHA's Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

**Element 1: Identity.** Ho'oulu Lahui Aloha – To Raise a Beloved Lahui. A State Agency with the responsibility to manage a Trust, that identifies and operates more similarly to Ali'i Trusts<sup>5</sup> with a lahui<sup>6</sup> mindset in improving the well-being of our lahui. Such an identity is rooted in the 'ōlelo no'eau, *E 'ōpū ali'i*, have the heart of a chief, have the kindness, generosity, and even temper of a chief, 'ōlelo no'eau 369<sup>7</sup>. OHA's identity is also place based, that OHA's *kuleana* is to this place of Hawaii.

OHA's identity manifests itself in four roles: advocate, researcher, community engager and asset manager.



<sup>5</sup> Kamehameha Schools, Liliuokalani Trust, Lunalilo Home, Queens Medical Center

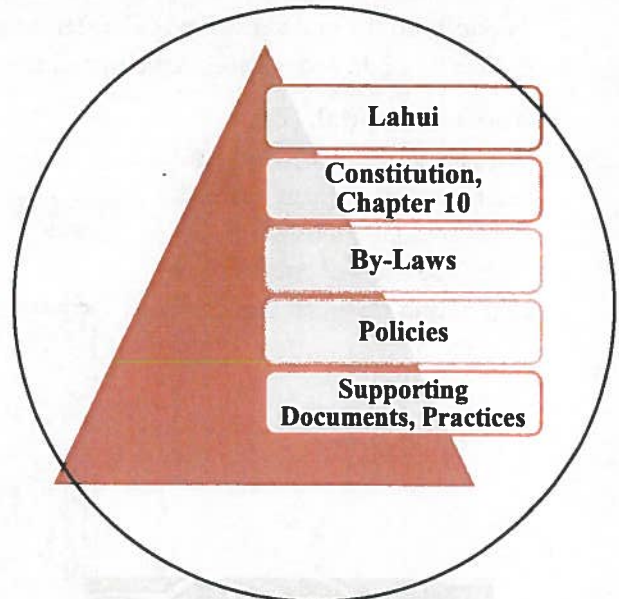
<sup>6</sup> Nation, race, tribe, people, nationality, Na Puke Wehewehe, retrieved 3/17/2019

<sup>7</sup> Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 45

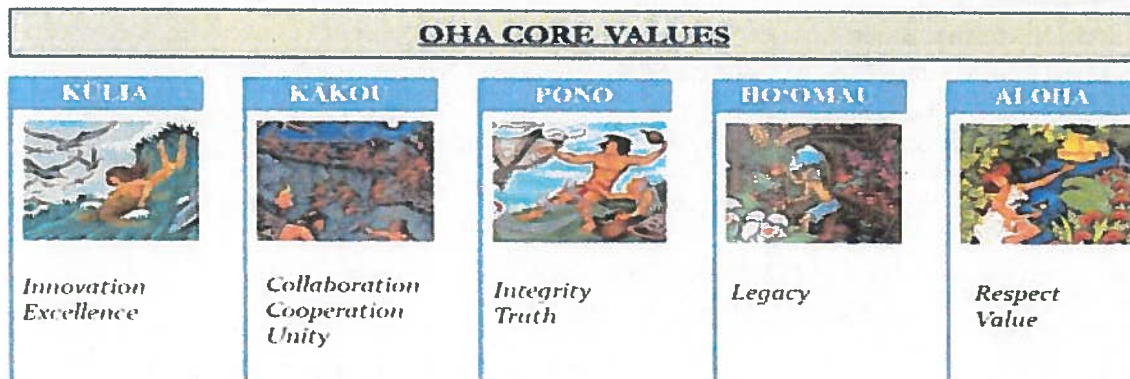
## Element 2: Values and Mana

The PIG recommends that the Board Governance Framework acknowledge the surrounding intangible, yet invaluable role of values and mana in governance.

Effecting the operating values of kūlia, kākou, pono, ho'omau and aloha, begins with Trustees and Board work as exemplars for Administration and the Organization as a whole. *O ke kahua mamua, mahope ke kūkulu*, the site first, and then the building, learn all you can, then practice, 'ōlelo no'eau 2459<sup>8</sup>.



THE OFFICE OF HAWAIIAN AFFAIRS  
*Empowering Hawaiians, Strengthening Hawaii's*



*'O ke kahua ma mua, ma hope ke Kūkulu.*

**E ho'oikaika ana i nā Kānaka i mana ka lāhui.**

<sup>8</sup> Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 268



Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

In addition, the concept of mana<sup>9</sup>, often oversimplified as “power”, belies the complexity of the concept and its acquisition, development and maintenance toward OHA enabling capital.

**Mana as Capital.** The acquisition, development and maintenance of mana toward strengthening OHA’s influence capital, cultural capital and financial capital.

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*Empowering Hawaiians, Strengthening Hawaii*

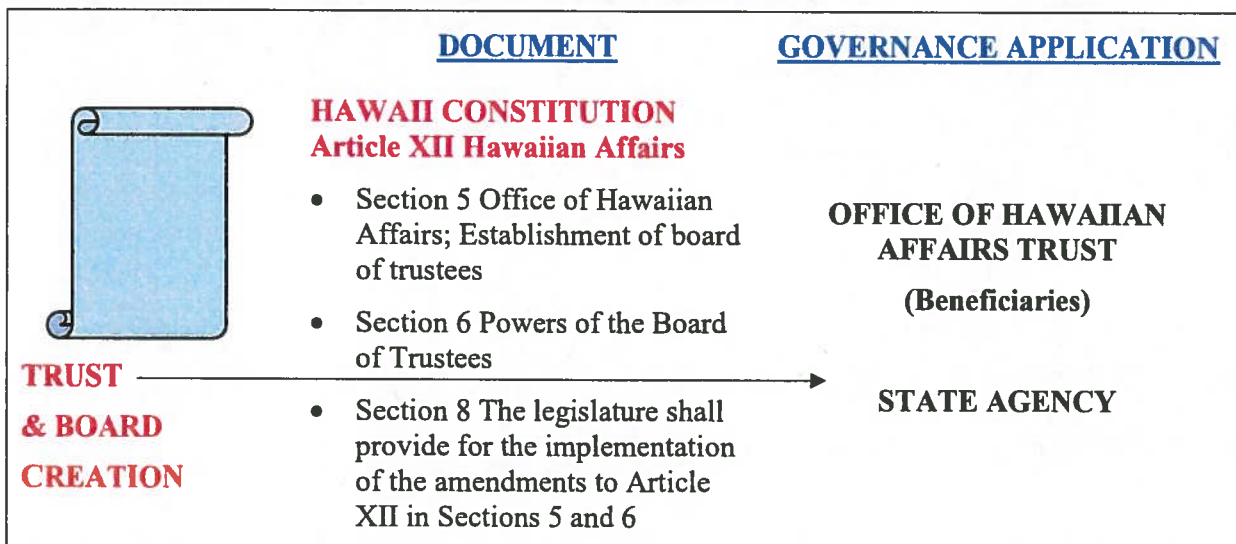


Mana – OHA will:

- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

**Element 3: Statutory Basis**

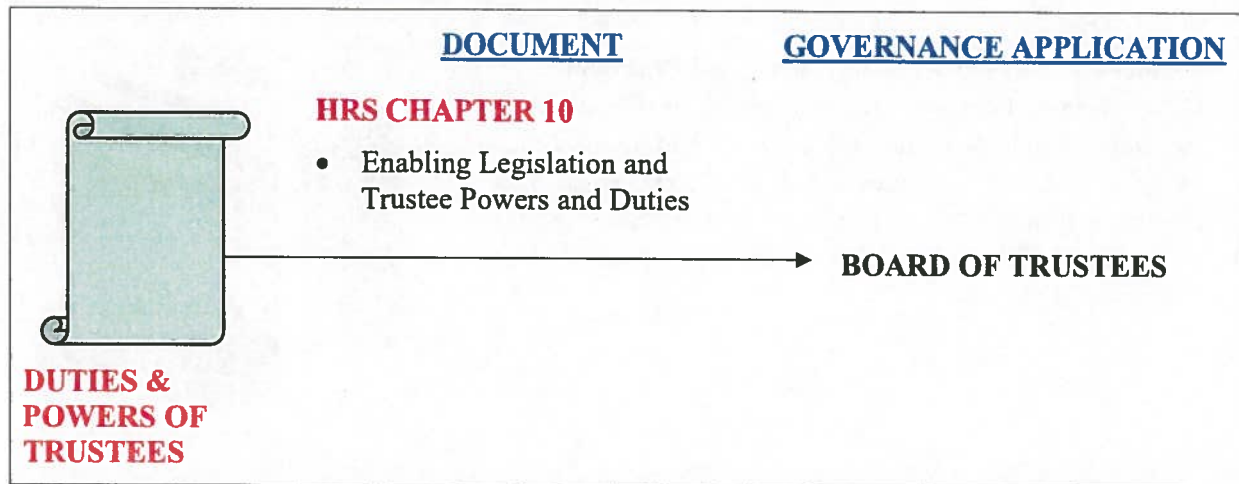
OHA was established under the Hawai‘i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai‘i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people.



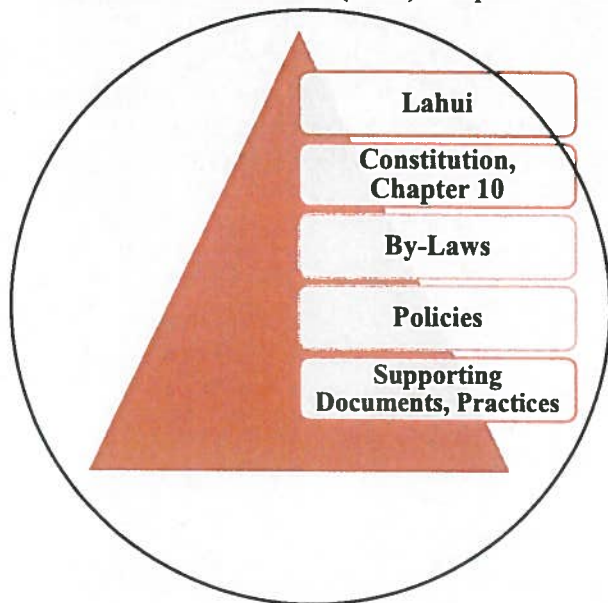
<sup>9</sup> Na Puke Wehehe, Supernatural or divine power, mana, miraculous power; a powerful nation, authority; to give mana to, to make powerful; to have mana, power, authority; authorization, privilege; miraculous, divinely powerful, spiritual; possessed of mana, power, <http://weheweh.org>, retrieved 3/26/2019

Permitted Interaction Group  
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The State of Hawaii's Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



Hawaii Revised Statutes (HRS) Chapter 10 enables legislation and trustee powers and duties.



**Element 4: Policies<sup>10</sup>.** The PIG recommends that OHA policies be organized into three tiers: L-Lahui<sup>11</sup>, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the *kaumaha* (heavy weight, sadness) or significant *kuleana* (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding 'āina, water, wahi pana and iwi kupuna, strengthen 'ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA's Trustee role as a result of the

<sup>10</sup> Merriam-Webster, Definition of *policy* 1a : prudence or wisdom in the management of affairs; b : management or procedure based primarily on material interest; 2a : a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b : a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, <https://www.merriam-webster.com/dictionary/policy>, retrieved 3/17/2019

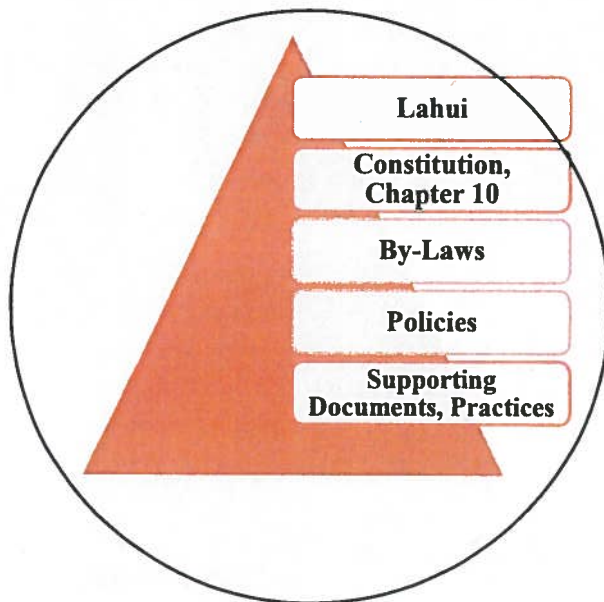
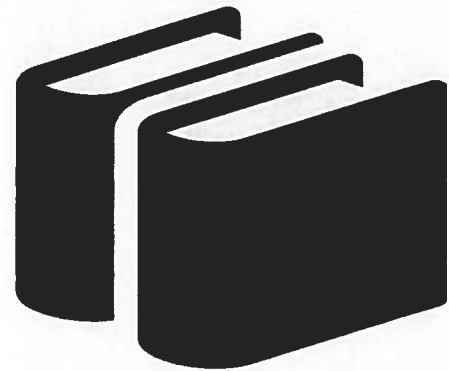
<sup>11</sup> Pukui, nvs. Nation, race, tribe, people, nationality, <http://wehewehe.org>, retrieved 3/17/2019

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Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

**Element 5: Supporting Documents and Practices (Operations).** Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and “operationalized” documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.



The PIG recommends five elements of OHA’s Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).



#### IV. WHERE ARE WE NOW? (AS IS)

**A. AS IS Analyses.** The PIG examined OHA's current governance framework elements; reviewed the current policies, procedures and practices; analyzed BOT action items for the past five (5) years; analyzed a handful of current advocacy platform items, including its mo'okuauhau (genealogy); identified emerging governance framework design elements; and studied models of cultural, indigenous, native, national and international governance contexts.

- 1. Purpose of the Office.** The current governance framework and the Organization's operations are all framed by HRS Chapter 10 and related Federal, State and County laws.

• **§10-3 Purpose of the office.** The purposes of the office of Hawaiian affairs include:

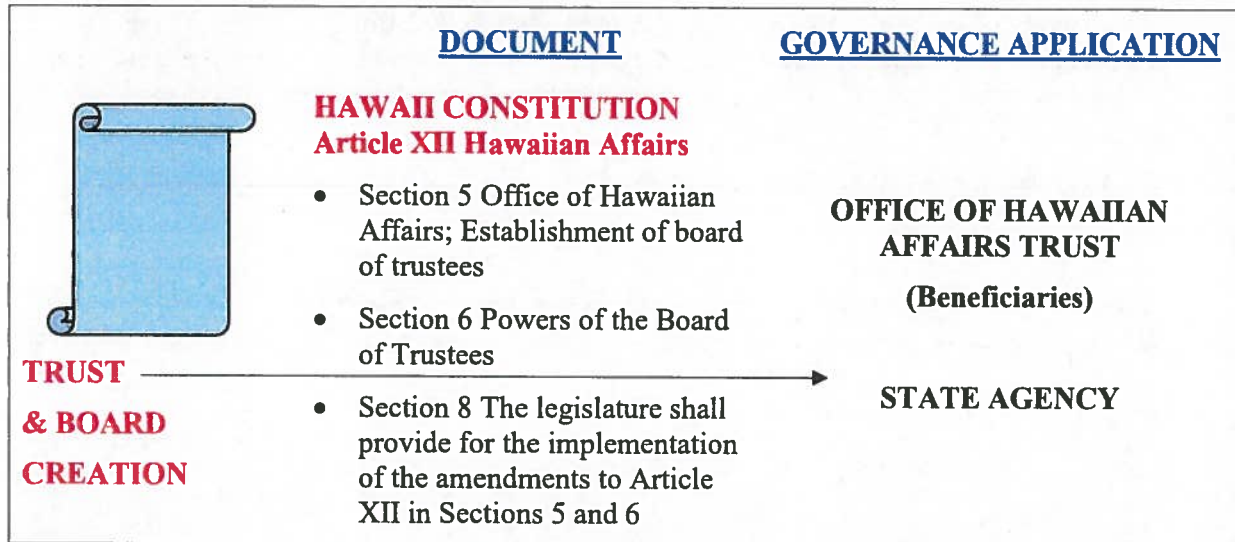
- (1) The betterment of conditions of native Hawaiians. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e);
- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations.

In Section 10-3, the use of the descriptor of "native Hawaiians" and "Hawaiians" in "betterment of conditions", refers to individuals (beneficiaries) who are greater than or equal to 50% Hawaiian ancestry (aka 'little n Hawaiians') and less than 50% of Hawaiian ancestry (aka 'big N'), respectively. Regardless of the terminology and definition used and understood in Section 10-3, "native Hawaiian" or "Hawaiian", OHA's actions as it relates to carrying out the purpose(s) of the office has been and continues to be lāhui focused.

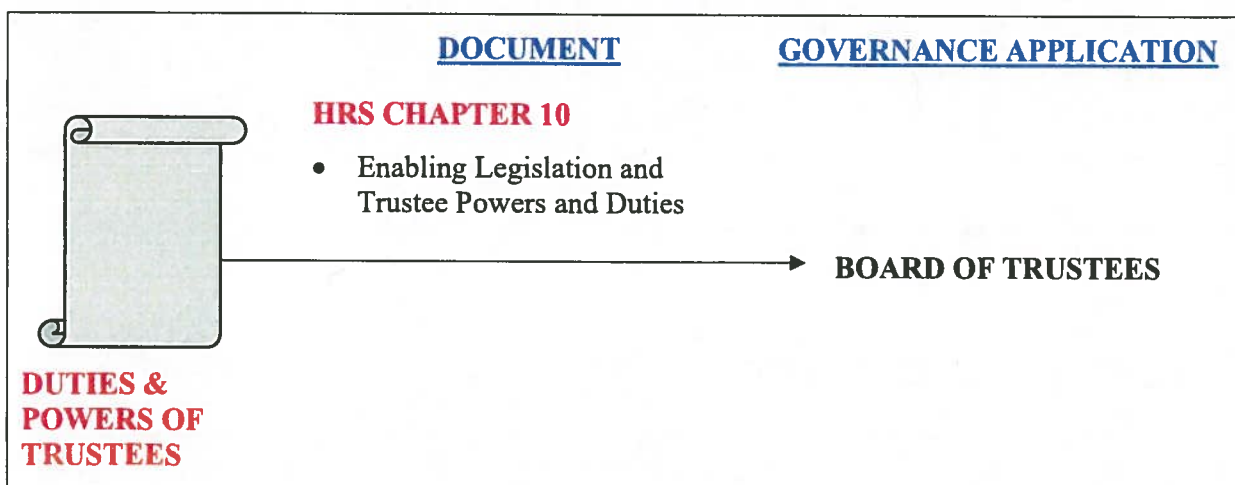


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2. **Current Governance Framework.** The current operating governance structure of the Office of Hawaiian Affairs (OHA) Trust<sup>12</sup> is described below with the foundational governing documents and related application.

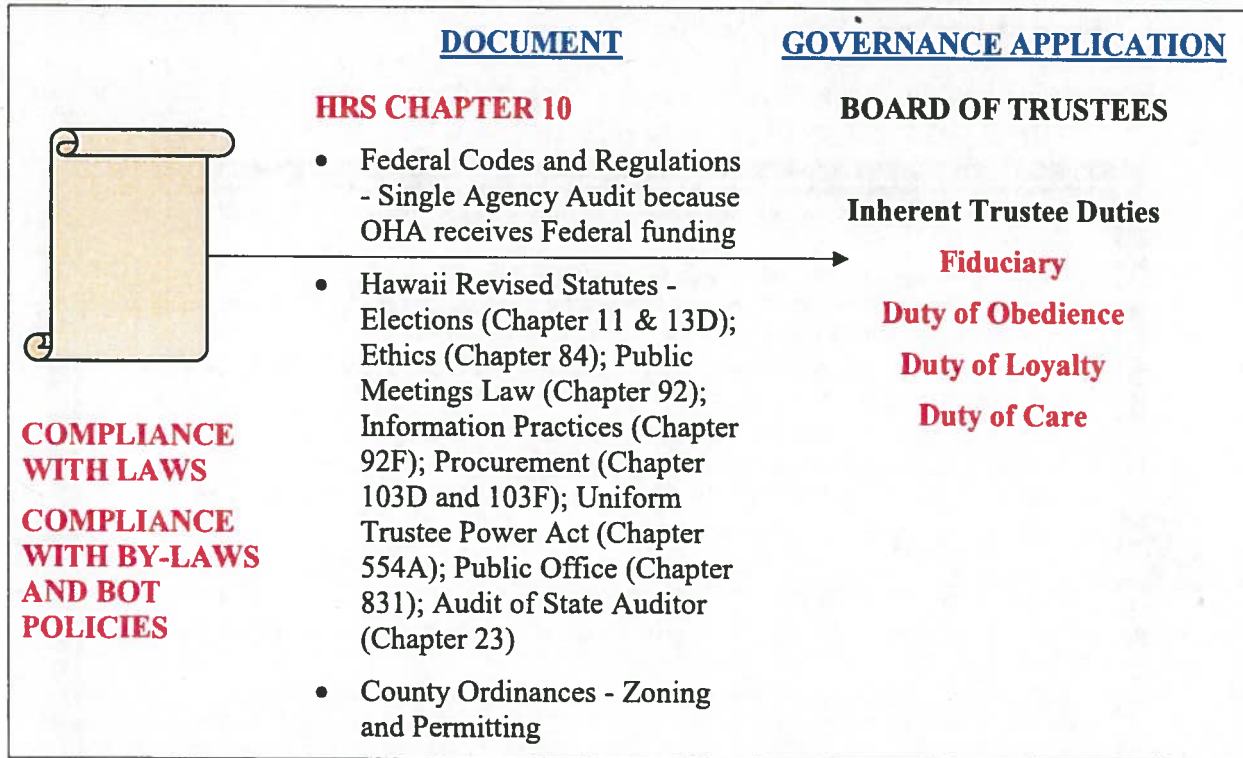


The State of Hawaii's Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



Hawaii Revised Statutes (HRS) Chapter 10 enables legislation and trustee powers and duties.

<sup>12</sup> Governance Structure, prepared by Office of Corporate Counsel, Office of Hawaiian Affairs, October 2016



### 3. Board of Trustees – Powers and Duties

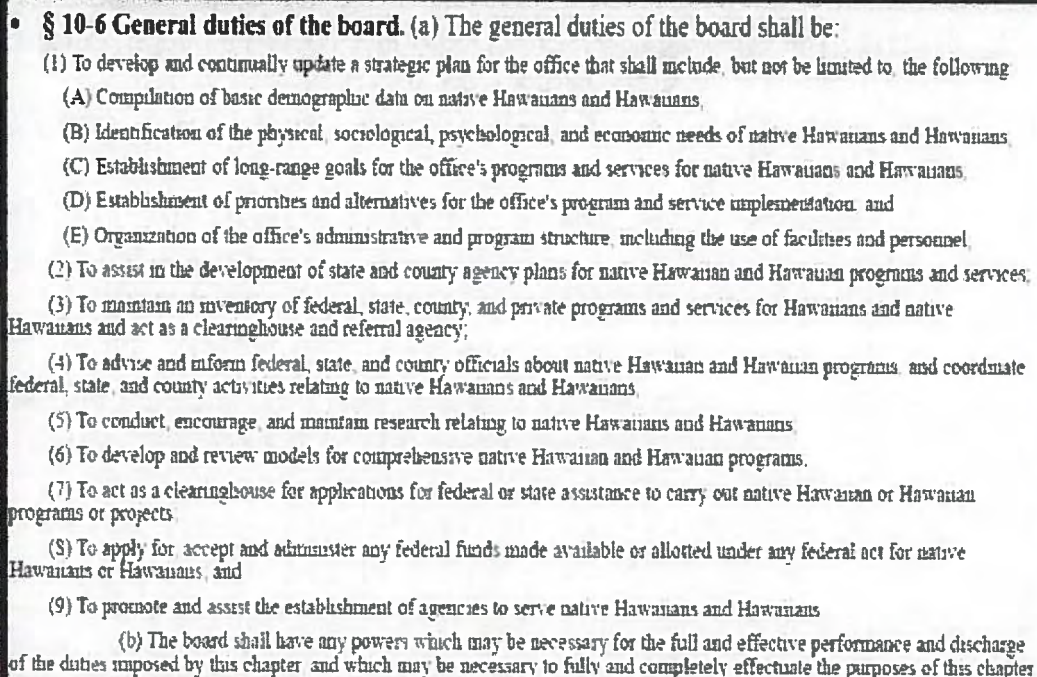
- **§10-5 Board of trustees; powers and duties.** The board shall have the power in accordance with law to:
  - (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3;
  - (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
  - (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
  - (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;
  - (5) Otherwise act as a trustee as provided by law;
  - (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
  - (7) Provide grants to individuals, and public or private organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10-17;
  - (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
  - (9) Adopt and use a common seal by which all official acts shall be authenticated. [L 1979, c 196, pt of §2; am L 1990, c 304, §§5, 16; am L 1996, c 240, §1; am L 2002, c 182, §3]

The BOT currently operates under the understanding of the powers and duties as outlined in HRS Chapter 10, specifically Section 10-5. The following is an analysis of the alignment of major BOT actions and activities in the past five years: Management of the proceeds of the Public Land Trust (PLT) revenue (1), (2); Management and development of Kaka'ako Makai and legacy lands (1), (2); Management of Native Hawaiian Trust Fund (NHTF) financial assets (3); Formulation of policies (e.g., ceded lands, spending, investment, water, iwi kupuna, international engagement) (4); Action re Mauna Kea (5); Delegation of authority to Administrator (6); Leveraged State General (via provisos) and Trust funds for multiplier effect (7); Collaborations with Native Hawaiian Legal Corporation and University of Hawaii – Manoa, Richardson Law School, Ka Huli Ao (8).



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#### 4. Board of Trustees – General Duties

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- **§ 10-6 General duties of the board.** (a) The general duties of the board shall be:
    - (1) To develop and continually update a strategic plan for the office that shall include, but not be limited to, the following
      - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians,
      - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians,
      - (C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians,
      - (D) Establishment of priorities and alternatives for the office's program and service implementation, and
      - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel,
    - (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services,
    - (3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and native Hawaiians and act as a clearinghouse and referral agency;
    - (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians,
    - (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians,
    - (6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs,
    - (7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawaiian or Hawaiian programs or projects,
    - (8) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawaiians or Hawaiians, and
    - (9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians.
  - (b) The board shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by this chapter and which may be necessary to fully and completely effectuate the purposes of this chapter.

As of February 2019, the Office of Hawaiian Affairs Board of Trustees ("BOT") operate with a constitutionally and statutorily-founded governance framework that has been further reinforced by years of Board action in the formation of its bylaws, policies, procedures, and practices.

In an attempt to strengthen the BOT governance framework moving into 2020 and beyond, PIG analysis focused on key areas where restructuring may be proposed in order to improve upon the effectiveness of BOT policymaking and organizational advancement of those policies in the pursuit of OHA's purpose for the betterment of conditions of Native Hawaiians.





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**5. Board of Trustees Action Items for the Past 5 Years.** The PIG assigned team members, utilizing OHA's internal website---Ka Ipu o ka 'Ike, the gourd of knowledge (aka Ki'i for short), navigated via various links to identify a list of BOT and Committee Action Items over the past five (5) years, 2014 to 2018. The following analyses insights are noted below:

- a. FY 2018.** The following major actions, other than Biennium Budget, Community Grants, Legislative package related actions, were noted:
- Approval of an OHA Resolution Designating 2018 as "Year of the Hawaiian" (January 2018)
  - Amendment to BOT Exec Policy Manual 3.5.e and 3.5.f (January 2018)
  - Approval for OHA to impose moratorium on use of Trustee Sponsorship and Allowance Fund (TSAAF) and CEO-initiated Sponsorships (February 2018)
  - Moratorium on Fiscal Reserve Spending (February 2018)
  - Pursuant to request for LLC documents from BOT, LLC mgrs will submit documents to BOT Financial Audit Comm or its auditor (February 2018)
  - Authorization for OHA CEO/Admin to continue Kaka'ako Lot I sale negotiations with C&CH and approval of legislative reso related to potential sale of Kaka'ako Makai Lot I to C&CH (March 2018)
  - Move to authorize OHA Admin to assess feasibility, timing, and downsizing of current LLC operation structure and develop transition plan to replace existing LC managers, report back by 6/30/18 (May 2018)
  - Authorize OHA CEO to cease ongoing negotiations on a PSA to sell Kaka'ako Makai Lot I to C&CH due to disagreements over unresolved business points of a potential sale, and to take all other reasonable and appropriate actions to implement the foregoing (June 2018)
  - Authorize Administration to utilize \$500,000 for Emergency Disaster Relief on Kaua'i and Hawai'i islands (June 2018)
  - Approve all updates and amendments to BOT Bylaws with the exception of the Re-Designation of all references in Bylaws from "Administrator" to "Chief Executive Officer" which will be considered separately (July 2018)
  - Move to update budget preparation, format and reporting requirements by approving amendments to EPM and BOT Operations Manual, excluding aments on Fiscal Transparency 3.4.k through 3.4.l in Attach A and C (September 2018)
  - Approve long-term direction of Master Plan for OHA's 511 acre property in Wahiawa surrounding Kukaniloko Birthing Stones, authorize Admin to take further steps toward implementation (September 2018)



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- b. **FY 2017.** The following major actions, other than Biennium Budget, Native Hawaiian Revolving Loan Fund Board of Directors, Community Grants, Audit Services and Legislative package related actions, were noted:
- Requesting the OHA BOT authorization of OHA Chief Procurement Officer to issue a Request for Qualifications for an independent CPA firm to conduct a financial audit and management review of OHA and its subsidiaries (March 2017)
  - Authorize OHA Administration to Proceed with the Programmatic Environmental Impact Statement (EIS) Process for OHA's Kakaako Makai Parcels (April 2017)
  - Approval of an OHA Board of Trustees Policy Amendment relating to an allocation of revenue from OHA's Kaka'ako Makai properties (June, August 2017)
  - Authorizing OHA Administration to negotiate and execute an easement agreement with Agribusiness Development Corporation for the installation of irrigation water infrastructure on OHA's Wahiawa property (August 2017)
  - Amendment to Section 5.1 of the Investment Policy Statement, changing the Native Hawaiian Trust Fund Asset Allocation and Benchmarks (August 2017)
  - Approve Wao Kele o Puna Comprehensive Management Plan (CMP) (September 2017)
  - 2018-2019 Charter School Funding Administration Grant Recommendation (October 2017)
- c. **FY 2016.** The following major actions, other than Biennium Budget, Fiscal Reserve, Termination of Investment Advisors, Community Grants and Legislative package related actions, were noted:
- BOT Executive Policy on International Engagement (February 2016)
  - Approval of BOT Bylaws Amendment as shown in Attachment "A" and Corresponding and Conforming Changes to BOT Executive Policies as shown in Attachment "B. Code of Conduct and Sanctions for Violation of the Code of Conduct (February 2016, May 2016)
  - Adopt OHA's Fiscal Sustainability Planning Model and Approval of the Statement of Commitment Relating to OHA's Fiscal Sustainability Implementation Plan (May 2016)
  - Approval of a BOT Executive Policy Amendment relating to a Policy on Trespassing and Illegal Camping on OHA Property (May 2016)
  - Approval of Funds from OHA's FY 2016 fiscal Reserve Authorizations for OHA's Fiscal Sustainability Plan (October 2016)



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- Support for Standing Rock Sioux Tribe in its efforts to protect its sacred sites and natural and cultural resources (October 2016)
- d. **FY 2015.** The following major actions, other than Biennium Budget, Budget Realignment, Community Grants and Legislative package related actions, were noted:
- Approval of the Native Hawaiian Trust Fund Approved Advisors & Non-Marketable Asset Providers List and the addition of SSARIS Advisors LLC as an approved Manager of the Enhanced Liquidity Account (February 2015)
  - Approval of Partial Funding for the Acquisition of 47 acres of the Kuamoo Battlefield and Burial Grounds by the Trust for Public Lands (May 2015)
  - Reorganization of Standing Committee Structure of the OHA Board of Trustees to Create the Committee on Resource Management (July 2015)
  - Approve and authorize funding request of \$400,000 from OHA FY 16 Fiscal Reserve Authorizations for Lunalilo Home and Trust (July 2015)
  - Adoption of OHA Protecting Iwi Kupuna Policy to be included in BOT Executive Policy Manual (November 2015)
  - Adoption of OHA Water Policy and a Water Backgrounder Appendix to be included in the Executive Board Policy Manual (November 2015)
  - Approval of OHA participation in the appurtenant rights and Water Use Permit Application portion of the contested case hearing regarding Na Wai Eha (November 2015)
  - OHA proposed response to the Dept of Interior's proposed rule for Reestablishing a Formal Government to Government relationship with the Native Hawaiian Community (December 2015)
- e. **FY 2014.** The following major actions, other than Biennium Budget, Budget Realignment and Legislative package related actions, were noted:
- Approve amendment to the OHA BOT Bylaws to create a Committee on Land and Property as a third Standing Committee of the Board and to approve amendments to existing land policies in the OHA Executive Policy Manual (January 2014)
  - Amendments to the NH Trust Fund Spending Policy and its Related Fiscal Reserve Withdrawal Guidelines (February 2014)
  - Amendments to the Investment Policy Statement (June 2014)
  - Approval of the Policy Guidelines for the Committee on Land and Property (June 2014)
  - Due Diligence for new 65-year Lease DLNR lease and sublease to Hoomana (September 2014)



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- Various Governance related actions (e.g., operating budget, financing) (March, August, October 2014)

**6. Advocacy Platform, including Mo'okuauhau.** Under the direction of the PIG, an analysis of advocacy platform matters was completed for the following five areas: native rights, iwi kupuna, 'olelo Hawai'i, aina and wahi pana utilizing BOT Executive Policy Manual and other internal reference sources.

- a. Native Rights.** We preserve, protect, and advocate for Native Hawaiian rights and entitlements, including self-determination and a fair and just share of Public Land Trust lands and revenues. OHA's BOT Executive Policy Manual articulates three elements related to Native Rights policy: (1) Preservation and Protection; (2) Advocacy; and (3) Share of Public Land Trust.

The importance of the Native Rights matter is codified in:

*Federal Statute.* The Apology Resolution, Public Law 103-149, states: Congress apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination. (underlining added)

*State Constitution.* Article XII, section 7 of the State Constitution says: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purpose and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

## Native Rights

Until the early 1970s, writes Melody Kapilialoha MacKenzie, Esq., American law did little to acknowledge Native Hawaiians as an indigenous people with unique and distinct rights. Even today, Native Hawaiians, like many indigenous peoples, must constantly assert and defend their rights in a foreign, and often hostile, legal system if they are to remain a separate and distinct native people. Indeed, international law has only recently recognized and begun to protect the rights of the world's indigenous peoples. Generally, [Native Hawaiian] rights are based on more than a millennium of living, developing, and thriving as a people and a culture in Hawai'i. Some rights emanate from the status of Native Hawaiians as an indigenous people and from the political independence of the Hawaiian Kingdom prior to [its] illegal overthrow in 1893. Other laws . . . are laws that apply more generally. For example, any individual may bring a quiet title action, claim lands under the adverse possession doctrine, or be entitled to sufficient water to grow kalo (taro). And in Hawai'i, everyone has access to the beaches and along the shorelines . . . . These areas of law . . . have a greater impact on Native Hawaiians as the original inhabitants of Hawai'i's 'aina (land) because they are necessary to sustain a traditional lifestyle. Moreover, many of these rights exercised by the general public are based on or find their roots in Hawaiian custom and practice. [Native Hawaiian] laws and rights . . . are in constant flux, expanding and contracting with the passage of new laws and current decisions by the courts.





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Article XII, section 6 of the State Constitution says: The [BOT] shall exercise power as provided by law: to manage and administer . . . all income and proceeds from [the] pro rata portion of the [Public Land Trust] . . . .

State Statutes. Section 10-13.5, Hawai'i Revised Statutes, says: Twenty per cent of all funds derived from the public land trust . . . shall be expended by the Office of Hawaiian Affairs . . . .

(Note: OHA's annual pro rata share of the revenues from the Public Land Trust was temporarily set at \$15.1 million by Act 178 of 2006)

Section 10H-1, Hawai'i Revised Statutes, says: The native Hawaiian people are hereby recognized as the only indigenous, aboriginal, maoli people of Hawaii.

Section 10H-2, Hawai'i Revised Statutes, says: The purpose of this chapter [the Native Hawaiian Recognition chapter] is to provide for and to implement the recognition of the Native Hawaiian people by means and methods that will facilitate their self-governance, including the establishment of, or the amendment to, programs, entities, and other matters pursuant to law that relate, or affect ownership, possession, or use of lands by the Native Hawaiian people, and by further promoting their culture, heritage, entitlements, health, education, and welfare.

Act 195, Session Laws of Hawai'i 2011 (the Native Hawaiian Recognition act that created Chapter 10H, Hawai'i Revised Statutes), states in Section 1 (the preamble): The legislature urges the office of Hawaiian affairs to continue to support the self-determination process by Native Hawaiians in the formation of their chosen governmental entity.

OHA Strategic Plan. OHA's 2010-2018 Strategic Plan contains the following mission: To malama Hawai'i's people and environmental resources, and OHA's assets, toward ensuring the perpetuation of the culture, the enhancement of lifestyle and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally. (underlining added)

In addition, the Strategic Plan contains the following strategic priority: To restore pono and ea, Native Hawaiians will achieve self-governance, after which the assets of OHA will be transferred to the new governing entity

The Strategic Plan also contains the following Strategic Result: Adoption by the Board of Trustees of a Transition Plan that includes the legal transfer of [OHA] assets and other resources to the new Native Hawaiian governing entity,

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- b. Iwi Kupuna.** We protect and promote the reverence and cultural importance of proper care, management, and protection of ancestral Native Hawaiian remains (iwi kupuna) and we encourage Native Hawaiian participation in repatriation. Iwi kupuna have been found buried all around the islands, often at sites slated for, or already undergoing, development. These discoveries have generated public attention, scrutiny, protest, and litigation. Developers and Native Hawaiians often disagree on the most appropriate way to resolve these issues; and prominent sites have not been spared from controversy surrounding iwi found on its property during construction. Aware of these iwi discoveries, many OHA beneficiaries have passionately advocated for the proper care, management, and protection of iwi kupuna. These beneficiaries have approached OHA for assistance, and OHA has responded with policies and with our mana'o and kokua.

OHA's BOT Executive Policy Manual articulates two elements related to iwi kupuna policy: (1) Proper Care, Management, and Protection; (2) Hawaiian Participation in Repatriation. The importance of the iwi kupuna matter is codified in:

*State Constitution.* Article XII, section 7 of the State Constitution says:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Article XII, section 6 of the State Constitution authorizes the BOT to formulate policy relating to the affairs of native Hawaiians and Hawaiians.

*Federal Statute.* The federal Native American Graves and Repatriation Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to native cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony.

*State Statute.* The state Historic Preservation law, Chapter 6E, Hawai'i Revised Statutes, requires the appropriate island burial council to determine whether preservation in place or relocation of or previously identified native Hawaiian burial sites is warranted.

*OHA Strategic Plan.* OHA's 2010-2018 Strategic Plan contains the following strategic priority for Mo'omeheu (Culture): To strengthen identity, Native Hawaiians will preserve, practice and perpetuate their culture.

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- c. **‘Ōlelo Hawai‘i.** We support revitalizing the Hawaiian language and using it correctly. While once spoken throughout Hawai‘i by Native Hawaiians and foreigners alike, ‘Ōlelo Hawai‘i was considered nearly extinct by the 1980s, when fewer than 50 fluent speakers under age 18 remained. The deterioration of the Hawaiian language resulted largely from an 1896 law that required English instruction in Hawai‘i schools, which essentially banned Hawaiian students from speaking their native tongue.

However, great strides have been made to bring about a renaissance of the Hawaiian language through programs such as ‘Aha Punana Leo’s Hawaiian language immersion schools, the state Department of Education’s language immersion program, and the Hawaiian language programs of the University of Hawai‘i system. Also, in 1978 the state constitution was amended to recognize the Hawaiian language as one of the two official languages of the State.

OHA’s BOT Executive Policy Manual and By-laws articulate two elements related to ‘Ōlelo Hawai‘i: (1) Revitalizing the Hawaiian language; and (2) Proper usage within OHA. The importance of ‘Ōlelo Hawai‘i is codified in:

*State Constitution.* Article XV, section 4 of the State Constitution says:

English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.

Article X, section 4 of the State Constitution says:

The State shall promote the study of Hawaiian culture, history and language.

The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program.

*Federal Statute.* The federal Native American Languages Act of 1990 “established federal policy to allow the use of Native American languages as the medium of instruction, and affirms the right of Native American children to express themselves, be educated, and assessed in their languages.”<sup>13</sup> The law includes Native Hawaiians.

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<sup>13</sup> National Coalition of Native American Language Schools & Programs



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State Statutes. Section 5-7.5, Hawai'i Revised Statutes, says:

The Hawaiian language is the native language of Hawaii and may be used on all emblems and symbols representative of the State, its departments, agencies and political subdivisions.

Section 1-13.5, Hawai'i Revised Statutes, says:

Macrons and glottal stops may be used in the spelling of words or terms in the Hawaiian language in documents prepared by or for state or county agencies or officials. Any rule, order, policy, or other act, official or otherwise, that prohibits or discourages the use of these symbols shall be void.

Strategic Plan. OHA's 2010-2018 Strategic Plan contains the following strategic priority for Mo'omeheu (Culture):

To strengthen identity, Native Hawaiians will preserve, practice and perpetuate their culture.

The Strategic Plan also contains the following strategic result:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the 'aina for cultural, spiritual, religious and subsistence.

- d. **'Aina.** We protect and preserve Hawai'i lands and their cultural significance. We protect the ceded lands corpus until the un-relinquished claims of Native Hawaiians are resolved. We create financially viable property involvements for OHA. The late law professor Jon Van Dyke wrote:

Before continuous contact with westerners began in 1778, the dominant system of land tenure [in the Hawaiian islands] was an intricate and interdependent arrangement based on agriculture needs and hierarchical structure. Individuals lived in reciprocity with the 'Aina (land), which they believed would sustain them if properly respected and cared for. 'Aina was not a commodity and could not be owned or traded. Instead, it belonged to the Akua (gods and goddesses), and the Ali'i (the chiefs and chiefesses who were the human embodiment of the Akua) were responsible for assisting ka po'e Hawai'i (the people of Hawai'i) in the proper management of the 'Aina).<sup>14</sup>

Land tenure in Hawai'i has changed dramatically since Western contact, evolving into a Western model in which land can be bought, sold, traded, and some would say, exploited. Still, the spirit of malama 'aina and the central place of the 'aina

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<sup>14</sup> Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai'i?*





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in Hawaiian culture, while sorely tested in modern times, remain vital and deserve zealous protection.

Furthermore, Native Hawaiian claims to the former crown and government lands ceded to the United States at Annexation and returned to Hawai'i upon statehood, are still unresolved. Native Hawaiians have a continuing interest and claim to the ceded lands, and their struggle to regain their culture, recover their lands, and restore their sovereign nation will be futile if the ceded lands are dissipated.

OHA's BOT Executive Policy Manual articulates two elements related to 'Aina: (1) Care in OHA Land Acquisition and Management; and (2) Protecting the Ceded-Lands Corpus. The importance of 'Aina is codified in:

State Constitution. Article XI, section 1 of the State Constitution says:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the state for the benefit of the people.

Article XI, section 3 of the State Constitution says:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands . . . .

Article XI, section 10 of the State Constitution says:

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Article XII, section 4 of the State Constitution says:

The lands granted to the State of Hawaii by Section 5(b) of the Admission act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1929, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.



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Article XII, section 5 of the State Constitution says:

The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside to or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.

Article XV, section 5, of the State Constitution says:

The motto of the State shall be, “Ua mau ke ea o ka aina i ka pono.”  
 (“The life of the land is perpetuated in righteousness”)

State Statutes. Section 10-4, Hawai‘i Revised Statutes, says:

[OHA] shall have the following general powers:

....

- (2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same at such time, in such manner and to the extent necessary or appropriate to carry out its purpose . . . .

Strategic Plan. One of the Core Values stated in OHA’s 2010-2018 Strategic Plan is Ho’omau:

E ho’omau kakou i ke ea o ka `aina na mea e ho’opuni ana, ka mo’omeheu a me kapo’e Hawai‘i

(“Together, steadfast we preserve and perpetuate our culture, people, land and environment.”)

The Strategic Plan contains the following as one Strategic Priority:

To maintain the connection to the past and a viable land base, Native Hawaiians will participate in and benefit from responsible stewardship of Ka Pae `Aina O Hawai‘i.

The Strategic Plan contains the following among the Strategic Results:

51% of Native Hawaiians living in the State of Hawai‘i participating in cultural activities, including language, and who interact with the `aina for cultural, spiritual, religious and subsistence.

70% of all Hawai‘i residents understand and agree that a viable land base is necessary for the new Native Hawaiian governing entity.

Increasing the percent of Ka Pae `Aina O Hawai‘i managed to create economic value, preserve cultural and natural resources and historic properties, and/or provide cultural and social opportunities for Native

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Hawaiians in a sustainable and balanced manner....By 2018, increasing from 12% to 15% the percent of ahupua'a that are managed sustainably

- e. **Wahi Pana.** We protect and preserve the integrity of and access to Hawaiian cultural sites.

From the Partners in Development Foundation website: "In traditional indigenous cultures, we find a more focused commitment to preparing the next generations by making sure they understand the history, traditions, and values from which they have blossomed. In addition to genealogy and family traditions, many indigenous cultures like the Hawaiian culture, pay close attention to the specific geographical places their families inhabit. The understand the power of an active and vibrant sense of place in the life of its people.

In Hawaiian culture, "wahi pana" is defined as celebrated, noted, and legendary places, or landmarks of special interest and historical significance. Each of these special places have distinguishing landmarks (mountain peaks, streams, wind, rain, etc.) that are given specific names and are connected to the rich history, chants, stories, and songs that are traditionally passed down from one generation to the next. Hawaiian music, for example, is replete with songs that praise places in our islands with the actual place only being revealed by the specific name of the wind or rain that is referred to in the melody. In public gatherings fifty or sixty years ago, it was common for the various songs of the islands or communities to be sung as an invitation for people from those places to stand and be identified with that wahi pana. It kept our kupuna aware of the traditions they represented as they faced the challenges of day to day living. Although we possess many of these names and songs today, we may not know the physical characteristics that led our ancestors to call a wind or rain differently from others. Our understanding of our sense of place is eroding.

The unique and special cradle of people, traditions, and physical realities of a place shape who we are. It is a strong framework from which we can make decisions consistent with their historical and cultural anchors, to meet the challenges of contemporary life. Often we allow the larger world to teach our young ones the values and perspective which are inconsistent with our cultures and our family traditions. We step back from intentionally teaching our children who they represent and where they find their roots. Let us return to a commitment to teach our children and adults the power of wahi pana."<sup>15</sup>

OHA's BOT Executive Policy Manual highlights one element related to wahi pana: Protect and Preserve the Integrity of and Access to Hawaiian Cultural Sites.

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<sup>15</sup> Partners in Development Foundation, <https://pdf.org/about/wahi-pana>, retrieved 3/26/2019



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The importance of wahi pana is codified in:

*Strategic Plan.* One of the Core Values stated in OHA's 2010-2018 Strategic Plan is Ho'omau:

E ho'omau kakou i ke ea o ka 'aina na mea e ho'opuni ana, ka mo'omeheu a me kapo'e Hawai'i

("Together, steadfast we preserve and perpetuate our culture, people, land and environment.")

The Strategic Plan contains the following as one Strategic Priority:

To maintain the connection to the past and a viable land base, Native Hawaiians will participate in and benefit from responsible stewardship of Ka Pae 'Aina O Hawai'i.

The Strategic Plan contains the following among the Strategic Results:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the 'aina for cultural, spiritual, religious and subsistence.

7. **Policies.** The PIG analyzed a number of policies, policy documents and other organizational documents.

a. **Policy Formulation.** Internal documents depict the current policy formulation process, including:

- **BOT** > Create and amend BOT governing documents; prepare action item; two readings with six (6) affirmative votes<sup>16</sup>; and codification (implementation). Substantial amendments to Bylaws would usually require repeal/rescission of the old Bylaws and approval of new set of Bylaws.
- **BOT** > Action item to create or amend executive policies; five (5) affirmative votes<sup>17</sup>; and codification (implementation).

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<sup>16</sup> Bylaw Article XIII Amendments to Bylaws. These Bylaws shall be amended only by to-thirds vote of all members to which the Board is entitled. Any proposed amendment to the Bylaws shall be submitted in writing for consideration by the Board. The Board shall not vote on any bylaw amendment until a minimum of two readings by the Board.

<sup>17</sup> Executive Policy Manual Series 1000 Board of Trustees, 1020 Policy Formulation, Adoption and Amendment of Policies 1.2.a. OHA policy may be adopted by an affirmative majority (5) vote of all the members to which the BOT is entitled at any regular duly convened meeting of the BOT, provided the proposed policy shall have been presented in writing using the OHA Action Item format for a first reading at a previous regular meeting of the BOT. Such policy shall become effective on the date stated therein (or the date determined by the BOT) upon approval by the BOT at its second reading and approval by a majority (5) vote of all the members to which the BOT is entitled.



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- **Administration** > Annual maintenance review; review changes in the laws for impact on Bylaws and Policies.

The PIG noted that on the internal website---Ka Ipu o ka 'Ike, the gourd of knowledge (aka Ki'i for short), there are a number of action items that track the primary governing documents of the BOT—Bylaws, Executive Policy Manual and BOT Operations Manual (collectively, “Governing Operating Documents”).

The Policy Formulation section of the BOT Executive Policy Manual provides a meager framework for developing and establishing OHA policy. The information contained herein is straightforward, however, when comparing the written guidelines to the actual practice, there is essentially a blurring of the lines in policy formulation. Sections 2.1.a-2.1.e., p. 13, of the BOT Executive Policy Manual explicitly provides OHA's policies on advocacy that include: *Preservation and Protection of Legal Entitlements, Native Hawaiian Rights and Entitlements, Hawaiian Culture*, and OHA's position policy of oppose *Position on Certain Proposed Legislative Measures*. The above sections leave much to interpretation considering the vast array of issues that OHA Advocacy advocates upon. It is without a doubt that the totality of issues that OHA has advocated – which have crystalized in policy formation - far-exceeded the limited number of policies appearing on a single page, suggesting that the BOT Executive Policy Manual –described as “a living document that will be kept current as and when the Board adopts new policy, amends, or abolishes existing policy” is completely outdated and currently inadequate to serve as an effective source of OHA policy positions.

- b. **Analysis.** For the purposes of the analysis, “policy” was defined as a “definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions”. In determining the scope of policies both utilized and created by the OHA BOT (within at least the past five years), it became necessary to determine what exactly constituted a policy differentiated from procedure and practice. With the understanding that policies may range in significance from monumental to subtle, clarifying guidelines were utilized. While the BOT Policy Manual suggested that policies may originate at any level of OHA, policies identified in this analysis were strictly determined in one of three ways: 1) pre-identified existing policies found in official OHA documents including the BOT governing documents; 2) policies overlying legislative positions with BOT approval; and 3) policies overlying legislative positions with Administration approval.

Finally, in differentiating policies from procedures and practices, it was necessary to identify policies as those guiding principles, which set forth a direction, whereas procedures were those series of steps to be followed in order to maintain a consistence and repetitive approach in achieving a practice. For example, OHA maintains a top priority policy to reduce Native Hawaiian obesity; OHA has established programmatic grants and sponsorships as a procedure to advance OHA's



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purpose; and OHA has engaged in the practice of awarding millions of dollars in grants to community and health organizations dedicated to curtailing Native Hawaiian obesity rates.

- c. **OHA Role Interaction & Policy Formation.** The Hawai'i State Constitution specifically tasks OHA trustees with the capacity "to formulate policy relating to affairs of Native Hawaiians." While the OHA Executive Policy Manual suggests that policy may spring up from anywhere within OHA's structure, it is ultimately up to the OHA Trustees to establish OHA policy through Board approval. With that said, the role of OHA Administration and its current scope of work, has enabled policy formation that is not always within the purview of OHA Trustees. Likely unintended, the flexibility often afforded to OHA Administration to advance and serve as a strong advocate for the betterment of conditions of Native Hawaiians has a way of expanding and morphing the boundaries of a Board-approved policy – continued manipulation of the boundaries of any given policy has the potential to eventually become unrecognizable from its original form, resulting in a deviation never intended by the OHA Board of Trustees.

For example, the OHA Executive Policy Manual is silent on any Board-approved policy on "affordable housing". Be that as it may, it is currently assumed that OHA has a policy on supporting affordable housing as: (1) the OHA strategic priority of economic self-sufficiency within OHA's 2010-2018 Strategic Plan specifically lists "increasing homeownership" as one of its two critical goals; (2) OHA's website explaining its economic self-sufficiency priority states that "[o]ne of our greatest obligations to Native Hawaiians is to help them address challenges to affordable housing;" and (3) OHA public policy, with the approval of the Board of Trustees, has drafted testimony and testified before State and county legislative authorities in support of "affordable housing" If there is indeed no official Board position explicitly stating a position on "affordable housing" then this is certainly an example of how the role of OHA Administration contributes to the formation of OHA policy; in a way, manipulating Board approval for something it may not have consented to. While responsible and well-informed flexibility can be highly beneficial, certain sensitive issues are better served with fully defined boundaries. The "affordable housing" discussion is one such issue where housing advocates are greatly divided. While some advocates may consider the current model of *140% AMI and below* to sit appropriately within the definition of "affordable housing" a Native Hawaiian housing advocate knowing that the majority of Native Hawaiians fall within the *60% AMI and below* bracket, may suggest affordability being appropriately defined as *80% AMI and below* instead of *140% AMI and below*. OHA currently advocates at the current definition (*140% AMI and below*), which in itself begins to crystalize OHA's policy on "affordable housing"- a Board choosing to be more specific, might not agree with this policy position. These indirect, perhaps unintended, and nebulous policy formations are not strictly limited to advocacy, as they can begin to

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take shape through OHA Research's publication of a strategic plan, or even OHA Community Outreach's repetitive description of an inexplicit policy area.

- 8. BOT Governing Documents.** Members of the BOT are issued a binder titled, *Board of Trustees Governing Documents volume 1*, containing BOT Bylaws, the BOT Executive Policy Manual, BOT Operations Manual, Committee on Land and Property Policy Guidelines, and a number of policy positions in the following categories: Kaka'ako Makai Settlement Properties; Native Hawaiian Trust Fund Investment; OHA Spending; OHA Real Estate Vision, Mission, and Strategy Policy; and OHA Risk Management. The status of the compendium is said to be incomplete and outdated. After preliminary review of the current governing documents, it has become apparent that the full breadth and scope of OHA policies are not nearly contained within these governing documents. The most obvious absence is that of OHA's 2010-2018 Strategic Plan. While it may not be feasible to include, within the governing documents, every policy, procedure, and practice developed by OHA, OHA's 2010-2018 Strategic Plan, at the very least, provides a policy structure that should be reflected in a series of identifiable and standalone categories.

For example, OHA's policy on the inter-relationship between Native Hawaiian lifestyle and 'āina stewardship is in itself such a vast source of other policies, procedures, and practices that filing it beneath any of the above listed policy areas currently contained within the governing documents would be a severe detriment. OHA's 2010-2018 Strategic Plan is essentially a platform for a specific direction. For the past eight years, OHA has used this strategic plan to guide its policymaking, procedures, and practices. However, none of the six strategic priorities and the many countless established policies subjected to each are reflected in the governing documents as they are prioritized in the 2010-2018 strategic plan.

Both policies and strategic plans serve to provide direction for OHA and past strategic plans have encapsulated priority policies in the fulfilment of OHA's purpose, vision, mission, and values. Moving into 2020+, it is recommended that the BOT governing documents also reflect those BOT approved policies present within any future strategic plan platform. Consequently, there is room to expand the governing documents to include a more adequate representation of OHA's grand scope of policies. At present, the governing documents greatly lack collation of most OHA policies. With that said, OHA trustees should have access to every OHA policy in effect, which would require a vast improvement upon the collation of OHA policies, procedures, and practices. The BOT governing documents (or more specifically, the BOT Executive Policy Manual –pursuant to Section 1.2.c.) should serve as a valuable resource for directing existing and future trustees, while also being instrumental in directing OHA Administration and staff – as in OHA Advocacy – who are reliant on the ease-of-access to a wide array of OHA policies in their day-to-day activities.

**9. Key Observations and Recommendations (in no particular order of priority):**

- a. Better coherence between BOT governing documents and the OHA strategic plan.
- b. Improve effectiveness of BOT governing documents by improving collation of OHA policies, procedures and practices.
- c. Improve navigation to changes of Governing Operating Documents via Ki'i.
- d. Continue authorization actions as it relates to policy changes (e.g., new, edits, updates) via BOT Action Items.
- e. Integrate approved BOT Action Items into the Governing Operating Documents in a timely manner (e.g., Committee on Land and Property. International Engagement, Water Policy).
- f. Establish a better system for recording policy status and updating the BOT Executive Policy Manual.
- g. Assemble an updated, e-accessible, and organized compendium of OHA policies.
- h. Require public policy advocates (or anyone providing an OHA position based on OHA policy) to cite their policy source and provide a description and rationale.

**B. Foundations Analyses**

PIG team members completed an initial analysis on references to OHA in state and county law, as applied to OHA na Paia (Divisions)—Advocacy, Resource Management (RM) – Financial Assets, RM-Land, Research, and Community Engagement. The first section of the analysis reviewed the purposes for which OHA was established, as provided by the state constitution and Chapter 10 of the Hawai'i Revised Statutes (HRS) and detailed earlier in this report. These references provide a broad mandate under which OHA operates. The third section provided the powers granted to the OHA Board of Trustees (BOT) that can be exercised to fulfill OHA's purpose and statutory requirements and also detailed earlier in this report.

The second section of the analysis provided the requirements placed on OHA under the state constitution, state law, and county ordinances. The analysis below does not include obligations placed on OHA that are not based in statute, such as assumed responsibilities under formal agreements with other entities (e.g., Halawa-Luluku Interpretive Development, Papahānaumokuākea), or those obligations that arise from the government agency status (e.g., procurement code, Sunshine law, ethics code). The analysis below is organized by the Paia (Division) that has been assigned current, primary responsibility over a given statutory requirement.<sup>18</sup>

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<sup>18</sup> The powers and duties of the OHA Board of Trustees may be delegated to the OHA Administrator and employees. HRS § 10-5(6).





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1. **Advocacy (Public Policy, Compliance Enforcement, Washington D.C. Bureau, Papahānaumokuākea programs)**
  - a. **Assist with planning for programs and services.** OHA is to assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services.<sup>19</sup>
  - b. **Special reports.** The board shall prepare and submit special reports as may be required by the legislature.”<sup>20</sup>
  - c. **Native Hawaiian law training course.** “OHA, at its own expense, shall establish, design, and administer a training course relating to [Native Hawaiian] traditional and customary rights, [Native Hawaiian] natural resource protection and access rights, and the public trust, including the State’s trust responsibility. ...[OHA], at its own expense, shall develop the methods and prepare any materials necessary to implement the training course, administer the training course, and notify each council, board, and commission identified in section 10-A(a) that attendance in a training course is mandatory. The office of Hawaiian affairs shall offer the training course at least twice per year.”<sup>21</sup>
  - d. **Vetting for island burial councils.** OHA shall submit to the governor a list of nominees for filling vacancies on the five island burial councils.<sup>22</sup>
  - e. **Vetting for Maui and Hawai‘i county Cultural Resources Commissions.** The mayors of Maui and Hawai‘i counties must solicit lists of two or more persons to their respective county Cultural Resources Commission from members of the public, including OHA.<sup>23</sup>
  - f. **Consulting agency on Native Hawaiian issues.** Although not explicitly required under HRS Chapter 10, OHA serves in a consultative role in a number of state and county processes. Furthermore, a primary purpose for OHA is to “[assess] the policies and practices of other agencies impacting on [Native Hawaiians], and conducting advocacy efforts for [Native Hawaiians].”<sup>24</sup> Note, this category does not include OHA representation on state boards and commissions, which is discussed separately in this memo under the general duties of OHA, under section II.F., nor does it include instances where consultation with, or representation by, Native Hawaiian organizations (not specifically OHA) is required.<sup>25</sup>

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<sup>19</sup> HRS §10-6(a)(2).

<sup>20</sup> HRS §10-15.

<sup>21</sup> HRS §10-42.

<sup>22</sup> HRS §6E-43.5.

<sup>23</sup> Maui County Charter (MCC), sec. 2.88.030; Hawai‘i County Code (HCC), sec. 2-226(b).

<sup>24</sup> HRS §10-3(4).

<sup>25</sup> For example, under the federal Native American Graves Protection and Repatriation Act, OHA is listed as an example of a Native Hawaiian Organization that must be consulted upon discovery of a Native Hawaiian cultural item on federal lands. See 25 United States Code (USC) §3001-3002. See also 20 USC §80q-11.



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- **Maunakea rulemaking.** In adopting rules to regulate public and commercial activities on Maunakea lands, the UH Board of Regents must consult with OHA to ensure that the rules will not affect any traditional and customary rights of Native Hawaiians, except as a reasonable regulation of such rights.<sup>26</sup> The UH Board of Regents shall consult with OHA on the assessment and collection of administrative fines for violations of the Maunakea rules.<sup>27</sup>
- **Public land sales or exchanges.** Three months prior to the convening of the legislative session, OHA must be provided with a draft of the legislative resolution seeking approval of any sale or exchange of former Crown or government lands of the Kingdom of Hawai‘i (or lands exchanged for such lands) to allow OHA to analyze the proposed sale or exchange.<sup>28</sup>
- **Historic preservation and Native Hawaiian burials.** Consultation with OHA is required for: (1) determining when the location of archeological sites should be withheld from public posting when there is a threat of destruction or loss;<sup>29</sup> (2) rulemaking to establish criteria for when burial sites should be relocated or preserved in place;<sup>30</sup> (3) rulemaking to establish a process for appointing members to the island burial councils;<sup>31</sup> and (4) inadvertent discoveries of burial sites (with notification coming via DLNR).<sup>32</sup>

Consultation with the Native Hawaiian Historic Preservation Council, which serves in an advisory capacity to the OHA CEO, is required for rulemaking related to permits for access by Native Hawaiians to historic sites.<sup>33</sup> All applications to the Maui Planning Department must include preliminary archaeological and historical data and comments from DLNR and OHA, and if applicable, a preservation/mitigation plan that has been reviewed and approved by OHA.<sup>34</sup>

**2. Community Engagement (Community Outreach, Digital and Print Media, Hawaiian Registry programs)**

- a. **Clearinghouse and referral agency.** OHA is to maintain an inventory of federal, state, county, and private programs and services for Native Hawaiians and act as a clearinghouse and referral agency.<sup>35</sup>

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<sup>26</sup> HRS §304A-1903.

<sup>27</sup> HRS §304A-1904.

<sup>28</sup> HRS §§171-50; 171-64.7.

<sup>29</sup> HRS §6E-17.

<sup>30</sup> HRS §6E-43.

<sup>31</sup> HRS §6E-43.5.

<sup>32</sup> HRS §6E-43.6.

<sup>33</sup> HRS §6E-3.

<sup>34</sup> MCC, sec. 19.510.010(D)(9).

<sup>35</sup> HRS §10-6(a)(3).



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state treasury and shall be reported on to the state comptroller under section 40-81, and rules prescribed thereunder.”<sup>43</sup>

- c. **Revolving loan fund.** Using federal funds received from the Department of Health and Human Services, OHA is to establish a revolving loan fund to make loans or loan guarantees to Native Hawaiian organizations and individuals “for the purpose of promoting economic development in the State of Hawaii.” Prior to making a loan, OHA must determine that the borrower is unable to obtain financing from other services on reasonable terms and conditions and there is a reasonable prospect that the borrower will repay the loan. Loans must be made on terms established by statute and under payment and collection terms reviewed and approved by the Commissioner of the Administration for Native Americans. OHA must report to the Commissioner loans in default and prospects for collection of such loans, and shall carry out the instructions of the Commissioner with respect to loans in default.<sup>44</sup>

- d. **Budget preparation and submission.** OHA is to submit to the state legislature its budget, six-year program and financial plan, and variance report, in accordance with the budget submission schedule specified for the governor in HRS Chapter 37. At least twenty days prior to the convening of each regular session of the legislature, OHA is to submit to the legislature an accounting of the expenditures made in the prior fiscal year, by account code and budget program. By November 1 of each year preceding a legislative session in which a budget is to be submitted, the OHA BOT shall provide written notification to the governor of the proposed total expenditures, by cost categories and sources of funding, and estimated revenues of OHA for each fiscal year of the next fiscal biennium.”<sup>45</sup>

The OHA BOT is to provide opportunities for beneficiaries in every county to participate in the preparation of each biennial and supplemental budget of OHA.<sup>46</sup> These opportunities shall include an accounting by trustees of the funds expended and of the effectiveness of programs undertaken.”<sup>47</sup> “The legislature shall consider the board’s proposed program and financial plan; evaluate alternatives to the board’s recommendations; and appropriate any general fund portion of the budget and any matching special fund appropriations.”<sup>48</sup>

- e. **Grants.** One of the purposes for which OHA was established is “[a]pplying for, receiving, and disbursing, grants and donations from all sources for [Native

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<sup>43</sup> HRS §10-13.

<sup>44</sup> 42 USC 2991b-1.

<sup>45</sup> HRS §10-14.5(a).

<sup>46</sup> HRS §10-14.5(b).

<sup>47</sup> Id.

<sup>48</sup> HRS §10-14.6.





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Hawaiian] programs and services.”<sup>49</sup> In awarding grants, OHA is responsible for ensuring:

- (1) The applicant has applied for or received all applicable licenses and permits, when such is required to conduct the activities or provide the services for which a grant is awarded;
- (2) The applicant agrees to comply with applicable federal, state, and county laws;
- (3) The grant shall not be used for purposes of entertainment or perquisites;
- (4) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules; and
- (5) The applicant will indemnify and hold harmless the office, the State of Hawaii, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the office.

Further, OHA is responsible for monitoring to ensure compliance with HRS Chapter 10 and the purposes and intent of the grant; and annual evaluation to determine whether the grant attained the intended results in the manner contemplated.<sup>50</sup>

- f. **Support for audit.** “The office shall be subject to governmental audit.”<sup>51</sup> “The auditor shall conduct an audit of the office at least once every four years and shall submit a report on findings and recommendations to the governor and the legislature on or before the convening of the next immediate legislative session.”<sup>52</sup> Every five years, the office of the auditor shall submit a review of the special, revolving, and trust funds of OHA.<sup>53</sup>

**5. Resource Management-Land Assets (Commercial Property Management, Land and Property Management, Hālawā-Luluku Interpretive Development programs)**

- a. **Hold title.** “The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.”<sup>54</sup>
- b. **Escheat of kuleana land.** “Any provision of law to the contrary notwithstanding, if the owner of an inheritable interest in kuleana land dies intestate, or dies partially intestate and that partial intestacy includes the decedent’s interest in the

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<sup>49</sup> HRS §10-3(5).

<sup>50</sup> HRS §10-17.

<sup>51</sup> HRS §10-14.5(c).

<sup>52</sup> HRS §10-14.55.

<sup>53</sup> HRS §23-12.

<sup>54</sup> Hawai‘i Constitution art. XII, section 5.

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kuleana land, and if there is no taker . . . such inheritable interest shall pass to [DLNR] to be held in trust until [OHA] develops a land management plan for the use and management of such kuleana properties, and such plan is approved by [DLNR]. Upon approval, [DLNR] shall transfer such kuleana properties to [OHA].”<sup>55</sup> OHA shall be joined as a defendant in any quiet title or adverse possession claim for kuleana land and where plaintiff has reason to believe that an owner of an inheritable interest in kuleana land died intestate or partially intestate.<sup>56</sup>

## 6. General

- a. **Strategic Plan.** The OHA BOT is to develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:
  - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
  - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;
  - (C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians;
  - (D) Establishment of priorities and alternatives for the office's program and service implementation; and
  - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel.<sup>57</sup>
- b. **Public Land Trust spending.** “Twenty per cent of all funds derived from the public land trust, described in section 10-3, shall be expended by the office, as defined in section 10-2, for the purposes of [HRS Chapter 10].”<sup>58</sup> Beginning in fiscal year 2005-2006, the annual amount of the income and proceeds from the pro rata share of the PLT shall be \$15,000,000.<sup>59</sup>
- c. **Annual reports.** “The [OHA BOT] shall prepare and make public their annual report which shall include an enumeration of their activities, income, and expenditures during the year. The annual report for the previous fiscal year shall be submitted to the governor and the legislature ten days prior to the convening of each regular session of the legislature.”<sup>60</sup> The annual report shall also include a list of

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<sup>55</sup> HRS §560:2-105.5.

<sup>56</sup> HRS §669-2.

<sup>57</sup> HRS §10-6(a)(1).

<sup>58</sup> HRS §10-13.5.

<sup>59</sup> Act 178 (Session Laws of Hawai‘i (SLH) 2006).

<sup>60</sup> HRS §10-15.



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volunteer job titles and estimates of the total number of volunteers and the total number of hours of volunteer service.<sup>61</sup>

d. **Positions on boards and commissions.** OHA is to advise and inform federal, state, and county officials about Native Hawaiian programs, and coordinate federal, state, and county activities relating to Native Hawaiians.<sup>62</sup> To these ends, a representative of OHA is made a member of the following state boards and commissions:

- Native Hawaiian Education Council (OHA Chairperson or designee)<sup>63</sup>
- State Board on Geographic Names (OHA Chairperson or representative)<sup>64</sup>
- Kaho‘olawe Island Reserve Commission (OHA trustee or representative)<sup>65</sup>
- Kāne‘ohe Bay Regional Council (OHA representative)<sup>66</sup>
- Community-Based Economic Development Advisory Council (OHA Chairperson or designee)<sup>67</sup>
- Hawai‘i Climate Change Mitigation and Adaptation Commission (OHA CEO or CEO’s designee)<sup>68</sup>
- Hawai‘i Interagency Council on Homelessness (OHA Chairperson or Chair’s designee)<sup>69</sup>
- Corrections Population Management Commission (OHA Administrator or Administrator’s designee)<sup>70</sup>
- Dark Night Skies Protection Advisory Committee (OHA Administrator or Administrator’s designee)<sup>71</sup>
- Temporary Commission on the Thirteenth Festival of Pacific Arts (OHA CEO or CEO’s designee)<sup>72</sup>

## 7. Unassigned

After reviewing the statutory responsibilities of OHA and comparing them to the responsibilities assigned to the various Paia, the following responsibilities are believed to be unassigned or unaccounted for under OHA’s current operational structure.

a. **Reparations.** A primary purpose of OHA is to serve as a receptacle for reparations.<sup>73</sup>

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<sup>61</sup> HRS §90-5.

<sup>62</sup> HRS §10-6(a)(4).

<sup>63</sup> 20 USC § 7514(b).

<sup>64</sup> HRS §4E-1.

<sup>65</sup> HRS §6K-5.

<sup>66</sup> HRS §200D-2.

<sup>67</sup> HRS §210D-5.

<sup>68</sup> HRS §225P-3.

<sup>69</sup> HRS §346-382.

<sup>70</sup> HRS §353F-4.

<sup>71</sup> Act 185 (SLH 2017).

<sup>72</sup> Act 104 (SLH 2017).

<sup>73</sup> HRS §10-3(6).

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- b. **Develop and review program models.** OHA is to “develop and review models for comprehensive [Native Hawaiian] programs.”<sup>74</sup>
- c. **Clearinghouse for Native Hawaiian assistance.** OHA is to act as a clearinghouse for applications for federal or state assistance to carry out Native Hawaiian programs or projects.<sup>75</sup>
- d. **Develop Native Hawaiian agencies.** OHA is to promote and assist the establishment of agencies to serve native Hawaiians.<sup>76</sup>

**Limitations of the Analysis.** While the analysis includes all requirements placed on OHA that are contained in federal, state, and county laws and ordinances, it excludes OHA requirements contained only in administrative rules of federal, state, or county agencies. The analysis does not contain those requirements imposed on the OHA trustees as fiduciaries of Native Hawaiian trust funds (e.g., duty of care). In addition, there may be some instances where an unintentional

assignment of responsibility for fulfilling a particular statutory requirement to a Paia or program within OHA was made. Regardless of the comprehensive analysis, reading and understanding of the underlying statute should still be completed.

The special relationship between Indians and the federal government is the result of solemn obligations that have been entered into by the United States government. Down through the years, through written treaties and formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety—services that would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans. This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the federal government that arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American.

*President Richard Nixon, Special Message to the Congress on Indian Affairs,  
July 8, 1970*

## C. Governance Framework Design

### 1. Various Native, Indigenous Governance Models

**a. American Indian and Alaska Native.** This summary is informed by the report *Tribal Nations in the United States*, published by the National Congress of the American Indians (NCAI). NCAI, founded in November 1944 serves the broad interests of tribal governments and communities. This report was published in 2017, and a revised version will be published in March 2019.

NCAI is organized as a representative congress of American Indians and Alaska Natives to develop consensus on national priorities that impact tribal sovereignty. NCAI is one of many national and regional organizations dedicated to indigenous advocacy. Some of these organizations have more specialized advocacy agendas, such as regional issues,

<sup>74</sup> HRS §10-6(a)(6).

<sup>75</sup> HRS §10-6(a)(7).

<sup>76</sup> HRS §10-6(a)(9).



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or specific advocacy areas including, but not limited to, education, health care, housing, and economic development. Similarly, several umbrella advocacy organizations exist in Alaska. The largest of those organizations is the Alaska Federation of Natives (AFN). Its membership includes 191 federally recognized tribes, 171 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and compact to run federal and state programs.

**A Broad Summary of Indian Country.**

There are 573 sovereign tribal nations located across 35 states within the geographic borders of the United States. Of these tribes, 229 are located in Alaska. Additionally, there are state recognized tribes located throughout the United States recognized by their respective state governments but who do not have a political relationship with the federal government. Self-governing tribes have the inherent power to govern all matters

involving their members, as well as serve as an advocate with their local, state, and federal governments for issues important across Indian Country.

**Governing Authority.** Excerpted from Tribal Nations in the United States report:

Tribes “Most tribes give legislative authority to a tribal council. In some cases, the tribal council members are elected by district; in others, they are elected at large. The council generally has authority to write tribal laws, and council members have administrative duties in some tribes. Most tribal constitutions also provide for an executive officer, called a “tribal chairman,” “president,” “governor,” or “chief.” In some tribes, the tribal council elects the chief executive, while the

voting citizens directly elect the leader in others. In most cases, the chief executive’s duties and powers are not specified in the constitution but are set in the bylaws. Consequently, the role of the chief executive varies greatly among tribes. Many tribes also have created their own court systems that administer codes passed by the tribal council. In many tribes, judges are elected by popular vote; in others, the tribal council appoints judges.”

**Alaska Native Governance.** “Of the federally recognized tribes, 229 are located in Alaska. Each of the Alaska Native tribes is distinctly unique from tribes located in the

We know that ultimately this is not just a matter of legislation, not just a matter of policy. It's a matter of whether we're going to live up to our basic values. It's a matter of upholding an ideal that has always defined who we are as Americans: E pluribus unum—out of many, one. That's why we're here. That's what we're called to do. And I'm confident that if we keep up our efforts, that if we continue to work together, that we will live up to this simple motto and we will achieve a brighter future for the First Americans and for all Americans.

*President Barack Obama, Remarks at the White House Tribal Nations Conference, December 16, 2010*

I am committed to furthering the self-determination of Indian communities, but without terminating the special relationship between the federal government and the Indian people. I am strongly opposed to termination. Self-determination means that you can decide the nature of your tribe's relationship with the federal government within the framework of the Self-Determination Act, which I signed in January of 1975.

*President Gerald Ford*

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lower 48 United States. Alaska Native tribes have no treaties with the US government, as treaty-making ended in 1871, just years after the 1867 Alaska Purchase Treaty with Russia. The governing bodies of Alaska Native communities

vary by tribe or village “traditional councils,” “native councils,” “village councils,” “tribal councils,” or “IRA councils.” In some instances, the term “village” is used instead of “tribe,” as tribes in Alaska were often recognized by the term “village” under the Alaska Native Claims Settlement Act (ANCSA) of 1971.”

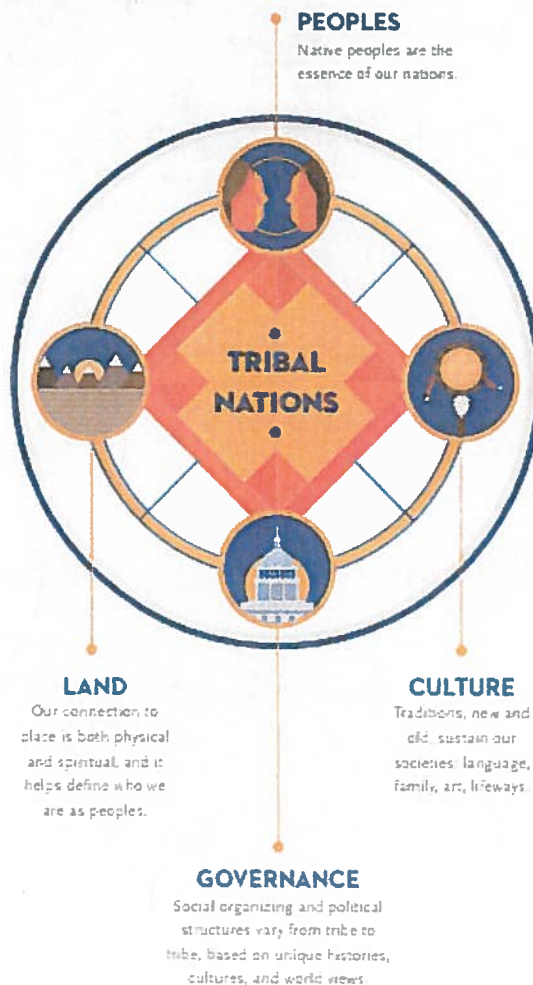
**Tribal Citizenship.** “Like any government, tribal governments determine their own criteria for citizenship. Usually there is some blood quantum requirement, such as one-quarter, or a requirement of lineal descendency from a tribal citizen. The Supreme Court has recognized that each tribe determines its own criteria. Some federal agencies also have criteria for determining eligibility for programs and services. Not all American Indian

Tens of millions of Indigenous peoples inhabited North America, and governed their complex societies, long before European governments sent explorers to seize lands and resources from the continent and its inhabitants. These foreign European governments interacted with tribes in diplomacy, commerce, culture, and war—acknowledging Indigenous systems of social, cultural, economic, and political governance.

Tribal nations have remained as political powers from the colonial period until today—engaging in commerce, trade, cultural exchange, and inspiring the principles of freedom and democracy enshrined in the US Constitution. As the United States formed a union, the founders acknowledged the sovereignty of tribal nations, alongside states, foreign nations, and the federal government in the US Constitution.

Tribal nations are part of the unique American family of governments, nations within a nation, as well as sovereign nations in the global community of nations.

*Rooted in deep traditions and distinct ways of life, tribal nations are defined by Indigenous peoples, places, cultures, and governance.*



and Alaska Native people are citizens of tribal nations.” Tribal members are citizens of three entities: their tribe, the United States, and the state in which they reside.

**Tribal Government Services and Functions.** “Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. The governments exercise these inherent rights through the development of their distinct forms of government, determining citizenship; establishing civil and criminal laws for their nations; taxing, licensing,

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regulating, and maintaining and exercising the power to exclude wrongdoers from tribal lands. Tribal governments are responsible for a broad range of governmental activities on tribal lands, including education, law enforcement, judicial systems, health care, environmental protection, natural resource management, and the development and maintenance of basic infrastructure such as housing, roads, bridges, sewers, public buildings, telecommunications, broadband and electrical services, and solid waste treatment and disposal.



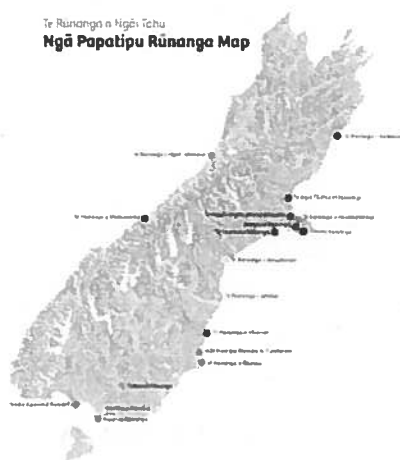
- b. **Ngāi Tahu, New Zealand South Island.** In analyzing Māori governance frameworks, the analysis focused on one tribe as a case study. The Ngāi Tahu are a Māori iwi, or tribe, from New Zealand's South Island. The Ngāi Tahu were one of the parties to the 1840 Treaty of Waitangi to whom redress was owed by the British Crown due to treaty violations. In 1998, a settlement was determined and the Ngāi Tahu were compensated \$170 million cash (among other things). As a result of this economic redress, Ngāi Tahu became an economic powerhouse worth over \$1.65 billion as of 2018.

Ngāi Tahu is an iwi, a tribe, of Aotearoa that has, interestingly, incorporated its governing body. In an attempt to establish a tribal structure in order to best manage its assets and its business, while also maintaining the capacity to distribute benefits, the tribe's governing documents were placed into law via the passage of legislation: Te Rūnanga o Ngāi Tahu Act 1996. In accordance with law, te Rūnanga o Ngāi Tahu (the Council/Board of Directors of the Ngāi Tahu) is established as the body corporate and representative of the Ngāi Tahu Whānui. Membership and requirements are also provided for in statute as well as powers. Of note, amendments to this law requires a special resolution provided by te Rūnanga.



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- The Te Rūnanga o Ngāi Tahu is the 18-member governing board or council of the Ngāi Tahu tribe. A Kaiwhakahaere (chair) leads the board. According to the tribe's website: Te Rūnanga o Ngāi Tahu is responsible for the overall governance of the group and for representing Papatipu Rūnanga and Ngāi Tahu Whānui and delivering benefits to them. Te Rūnanga o Ngāi Tahu deal with global tribal policy and issues, while Papatipu Rūnanga manage issues requiring wider or local consultation.
- Kā Pakitua Leadership Team is the executive team below in authoritative succession to the 18-member te Rūnanga o Ngāi Tahu. "Kā Pakitua" is the name of the legendary toki (adze), which sat upon the prow of the great migration waka (canoe) Uruao, which carried the ancestors of the Ngāi Tahu. Kā Pakitua is symbolic in the role it played in both navigation and clearing out the passages of the ocean on the Ngāi Tahu's way to Aotearoa.
  - The leadership team is comprised of a Chief Executive Officer, Chief Operating Officer, the general managers of each pou (pillar) of the iwi.
  - These pou are as follows:
    - *Te Taumatua*: Responsible for ensuring the integration of the tribe into all aspects of council activities and ensuring the efficient and effective delivery of the core services through which tribal members can determine their membership, incorporating the whakapapa function, tribal archive and traonga collections, Kotahi Mano Kāika and the Ngāi Tahu Fund;
    - *Oranga*: Responsible for work streams designed to help whānau (family) to realize rangatiratanga (self-determination) in the areas of education, employment, financial literacy, and business creation. Oranga provides strategic program delivery to ensure success for whānau through whānau rangatiratanga;
    - *Te Ao Turoa*: Responsible for taonga (cultural treasures) resources, mahinga kai (traditional food and natural resource gathering) and natural environment. Ensures the integration of programs and environmental work streams within the wider tribal development strategy to support whānau outcomes;
    - *Strategy & Influence*: Dedicated to realizing Ngāi Tahu visions for tribal development through the development and implementation of political and organizational strategy, strategic relationship management, and strategic public relations



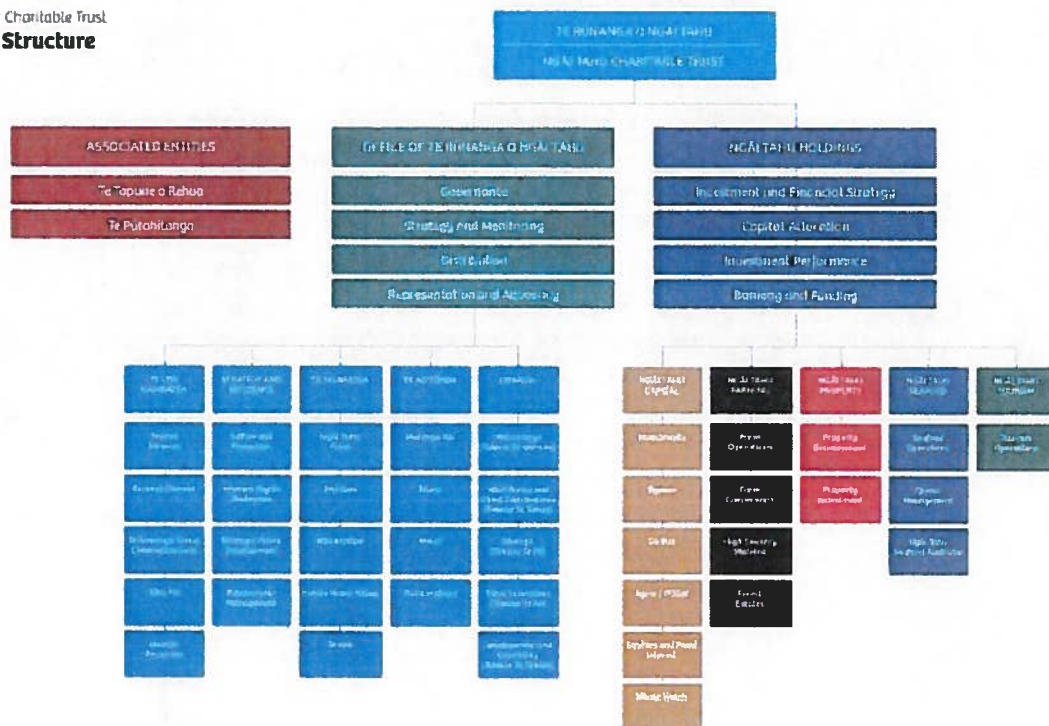


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- The Papatipu Rūnanga are 18 regional boards comprised of various hapū (family groups) with their own governance structures. Each Papatipu Rūnanga selects one member to represent them on te Rūnanga o Ngāi Tahu.

Ngāi Tahu Charitable Trust Organizational Structure. Ngāi Tahu Holdings is an investment company formed subsequent to the Ngāi Tahu Claims Settlement of 1998 with investments in property, farming, seafood, tourism, as well as direct investments in a number of businesses as well as indirect investments through private equity funds and international equities.

Te Rūnanga o Ngāi Tahu Charitable Trust  
**Organisational Structure**



According to the 2018 Ngāi Tahu Holdings Report and the 2018 Te Rūnanga o Ngāi Tahu Annual Report, \$61.05 million in revenue was distributed Te Rūnanga o Ngāi Tahu. This is up from the previous year where \$49.6m in revenue was distributed to the tribe, with \$32.6m for tribal initiatives (excluding operational and administrative costs), \$7.1m for educational and wellbeing grants, and \$10.6m direct distribution and development for Papatipu Rūnanga.

The organizational structure of the Ngāi Tahu is a masterwork model for trust organizations serving as the receptacle for fairly sizeable redress in terms of direct

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cash compensation and land and resource assets, having a net worth that has grown to over \$1.65 billion. The Ngāi Tahu organizational structure, as it relates to the Office of Hawaiian Affairs, should be highly informative, if not highly influential for these reasons: (1) Both organizations are Trusts responsible for the survival of their people; and (2) Both organizations have access to large capital and land and resource assets.

- c. **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**<sup>77</sup>. Indigenous peoples globally continue to face dispossession of their lands and resources, discrimination, forced assimilation and other grave human rights abuses. The United Nations Declaration on the Rights of Indigenous Peoples is the most comprehensive international human rights instrument to specifically address their economic, social, cultural, political, civil, spiritual and environmental rights. In its own words, the Declaration sets out minimum standards necessary for the “dignity, survival and well-being” of Indigenous peoples.

The UN General Assembly overwhelmingly adopted the Declaration on 13 September 2007. This historic adoption followed more than twenty years of deliberation and debate in which Indigenous peoples worked directly with states to elaborate upon and advance their human rights. This marked the first time within the UN that rights holders had such a central role in the creation of a new human rights instrument.

The Declaration affirms Indigenous peoples’ right of self-determination and underlines the prohibition of discrimination and genocide in international law. The Declaration calls on states to honour and respect the Treaties and other agreements they have entered into with Indigenous peoples, to protect Indigenous languages and cultures, and to uphold Indigenous peoples’ rights to lands, territories and resources.

The Declaration affirms the inherent or preexisting collective human rights of Indigenous peoples, as well as the human rights of Indigenous individuals. It provides a framework for justice and reconciliation, applying existing human rights standards to the specific historical, cultural and social circumstances of Indigenous peoples.

The Declaration reflects a range of human rights standards that have emerged over the last three decades through the work of international and regional human rights bodies as they have dealt with violations against Indigenous peoples. Many of these standards, such as the provisions of international human rights conventions or customary international law, establish clear legal obligations for states.

As we actively engage with the full and effective implementation of the UN Declaration on the Rights of Indigenous Peoples, we urge that:

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<sup>77</sup> United Nations Declaration on the Rights of Indigenous Peoples, March 2011

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Governments, in conjunction with Indigenous peoples, use the Declaration as the basis for reviewing and reforming laws and policies to ensure that Indigenous peoples' rights are upheld without discrimination.

Courts and human rights tribunals use the Declaration as a relevant and persuasive source in interpreting Indigenous human rights and related state obligations. Indigenous peoples and their institutions use the Declaration as a principled framework for advancing their rights, in their own policy- and decision-making and in their negotiations with governments and other third parties.

Civil society organizations work cooperatively with Indigenous peoples, in promoting and implementing their human rights and maintaining the Declaration as a living instrument.

Educational institutions include the Declaration in their curriculum, including teacher training.

Corporations and investors ensure their human rights policies and business practices incorporate the standards in the Declaration.

The global consensus that now exists in support of the Declaration reinforces its weight as a universal human rights instrument. The ongoing and widespread human rights violations against Indigenous peoples worldwide underline the urgency of moving ahead with the full and effective implementation of the Declaration.

2. **Engagement with Ali'i Trusts.** PIG team members reached out to other kupuna ali'i trusts (Queen Lili'uokalani Trust, Lunalilo Home and Kamehameha Schools) for their mana'o and experiences regarding governance.

## V. PROPOSED GOVERNANCE FRAMEWORK ELEMENTS

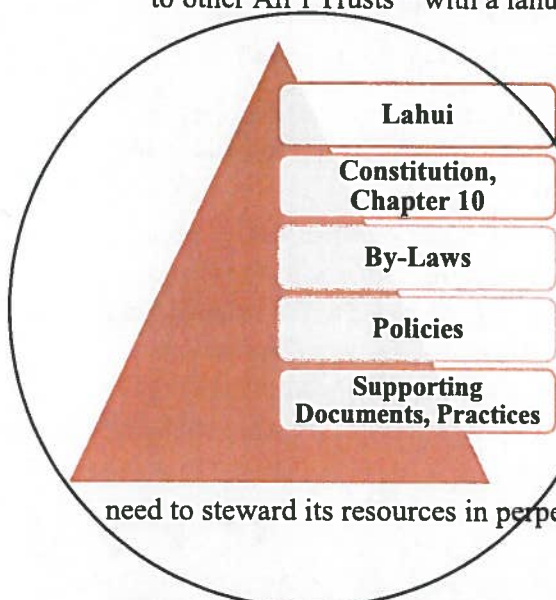
**A. Element 1: Identity.** While statutorily OHA is a State Agency with the responsibility to manage a Trust, the PIG proposes that OHA identifies with and operates more similarly to other Ali'i Trusts<sup>78</sup> with a lahui<sup>79</sup> mindset in improving the well-being of our lahui.

Such an identity is rooted in the 'ōlelo no'eau, *E 'ōpū ali'i*, have the heart of a chief, have the kindness, generosity, and even temper of a chief, 'ōlelo no'eau 369<sup>80</sup>. OHA's identity is also place based, that OHA's *kuleana* is to this place of Hawaii.

While a "dual" identity (e.g., maka'āinana<sup>81</sup> trust vs. state agency) may seem potentially confusing, the PIG recommends that such an identity can be supported by policies, procedures and practices that are contextualized (i.e., state agency spends dollars appropriated as detailed in the biennium budget compared to a trust that is mindful of its resources

need to steward its resources in perpetuity for its beneficiaries).

OHA's identity manifests itself in four roles: advocate, researcher, community engager and asset manager and related policies, procedures and practices can be aligned to support and guide OHA's proposed dual identity.



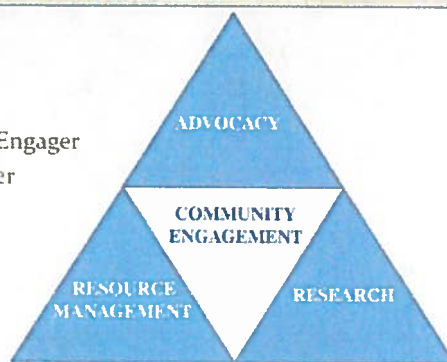
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*Disseminating Hawaiian, Strengthening Kuleana*



### OHA ORGANIZATIONAL STRUCTURE

#### Four Roles:

- I. Advocate
- II. Researcher
- III. Community Engager
- IV. Asset Manager



<sup>78</sup> Kamehameha Schools, Liliuokalani Trust, Lunalilo Home, Queens Medical Center

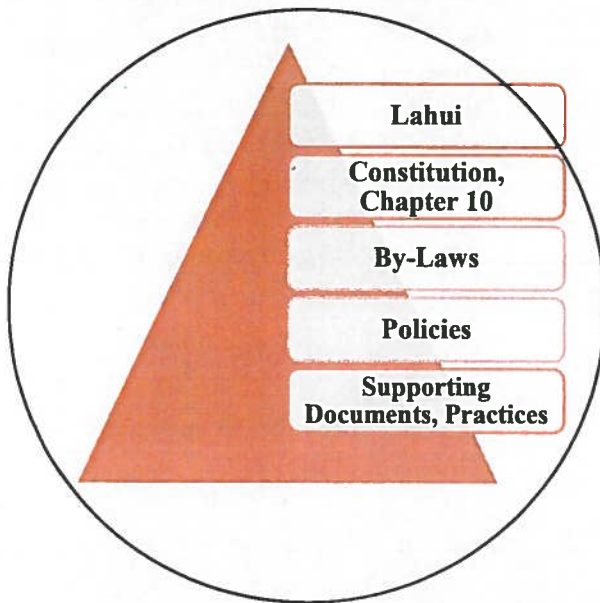
<sup>79</sup> Nation, race, tribe, people, nationality, Na Puke Wehewehe, retrieved 3/17/2019

<sup>80</sup> Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 45

<sup>81</sup> n. Commoner, populace, people in general; citizen, subject. Cf. lunamaka 'āinana. *Lit.*, people that attend the land, Na Puke Wehewehe, retrieved 3/17/2019



## B. Element 2: Values and Mana



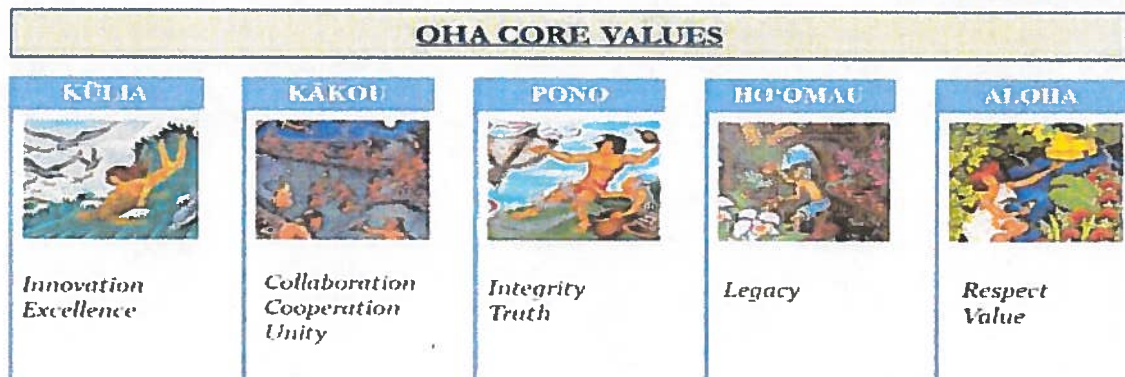
A key element of the proposed governance framework is the intangible but invaluable values and mana concepts.

### “Envision Pu‘uhonua”

The Office of Hawaiian Affairs, a place of refuge, in which we shall live our values and principles.

The operating values of kūlia, kākou, pono, ho‘omau and aloha begins with Trustees and Board work and cascades to the Administration and staff. *O ke kahua mamua, mahope ke kūkulu*, the site first, and then the building, learn all you can, then practice, ‘ōlelo no‘eau 2459<sup>82</sup>.

THE OFFICE OF HAWAIIAN AFFAIRS  
*Empowering Hawaiians, Strengthening Hawaii*



‘O ke kahua ma mua, ma hope ke Kūkulu.

**E ho‘oikaika ana i nā Kānaka i mana ka lāhui.**

<sup>82</sup> Pukui, ‘Olelo No‘eau, Hawaiian Proverbs & Poetical Sayings, p. 268



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### **Kākou**

E alu like mai kākou i ka ho'okō 'ana i ko kākou mikiona.  
We work together, unified to accomplish our mission.

### **Aloha Kekahi I Kekahi**

'Olu'olu a maika'i kākou i nā kānaka a pau.  
We are kind and compassionate to all whose lives we touch.

### **Pono Pau'ole**

E hana kūpono kākou me ka 'oia'i'o.  
We act with integrity and truthfulness.

### **Mālama Kekahi I Kekahi**

E hō'ihi a mālama kākou i nā po'e a pau a me nā mea 'ē a'e a pua.  
We respect and care for others and all that surround us.

### **Kuleana**

E ho'okō kākou i ko kākou kuleana hana.  
We carry out our individual and collective responsibilities.

### **Kūlia**

E ho'okumu kākou i ka hana e pili ana i nā kuleana Hawai'i me ka ho'oholu.  
We take initiative and are resilient in advocating for Hawaiian rights.

### **Po'okela**

E hana kākou me ka 'oi a e ho'omaika'i iā kākou iho.  
We do our absolute best and continuously seek improvement.

THE OFFICE OF HAWAIIAN AFFAIRS  
*Engaging. Empowering. Inspiring.*



Mana – OHA will:



- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

### **Ho'omau**

E ho'omau kākou i ke ea o ka āina,  
nā mea e ho'opuni ana,  
ka mo'omeheu a me ka po'e  
Hawai'i.

Together, steadfast we preserve and  
perpetuate our culture, people,  
land and environment.

**Mana as Capital.** The acquisition, development and maintenance of mana toward strengthening OHA's influence capital, cultural capital and financial capital.<sup>83</sup>

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<sup>83</sup> Social enterprises apply business solutions to social problems. The ultimate goal is to achieve sustainability by enabling non-profits to support themselves financially in innovative ways instead of relying solely on grants and donations. Since there are no shareholders in a non-profit organization, the profits from the related social

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**C. Element 3: Statutory Basis.** OHA was established under the Hawai'i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai'i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people, including:

- (1) The betterment of conditions of native Hawaiians.  
.....
- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations.<sup>84</sup>

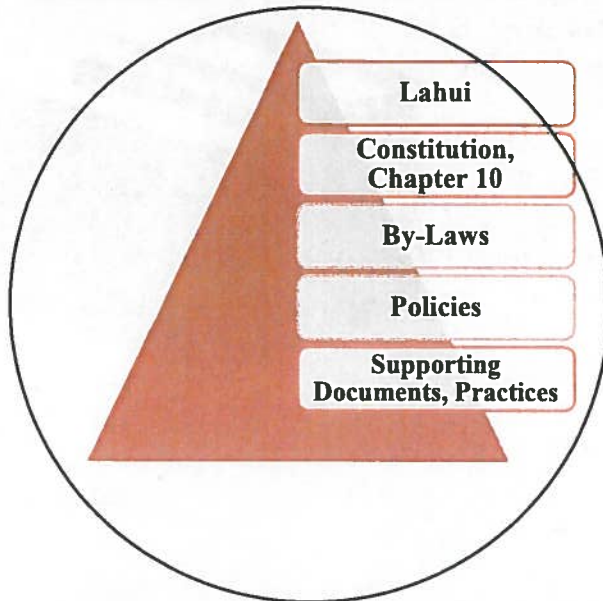
• **§10-3 Purpose of the office.** The purposes of the office of Hawaiian affairs include:

- (1) The betterment of conditions of native Hawaiians. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as "available lands" by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(c);
- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services, and
- (6) Serving as a receptacle for reparations.

enterprise are completely re-invested in the work of the organization. <https://www.marsdd.com/mars-library/social-enterprise-business-models/>, retrieved 3/26/2019

<sup>84</sup> HRS §10-3; see also HRS §10-1.





**D. Element 4: Policies<sup>85</sup>.** The PIG recommends that OHA policies be organized into three tiers: L-Lahui<sup>86</sup>, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the *kaumaha* (heavy weight, sadness) or significant *kuleana* (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding 'āina, water, wahi pana and iwi kupuna, strengthen 'ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA's Trustee role as a result of the

Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

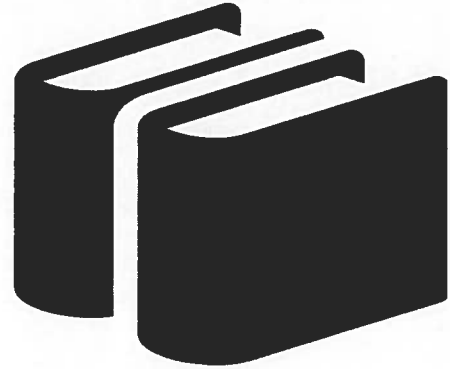
An effective governance framework, considers that policies are modified from time to time for clarification of facts, circumstances, policy content, processes or organizational changes. While a change and update mechanism should exist to effect better policy clarity, the PIG recommends a five (5) year review cycle for L-Lahui and T-Trustee level policies and a two (2) year review cycle for C-CEO level policies to reflect the intentional long-term nature of L and T level policies and the operating cycles of the Organization.

<sup>85</sup> Merriam-Webster, Definition of *policy* 1a : prudence or wisdom in the management of affairs; b : management or procedure based primarily on material interest; 2a : a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b : a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, <https://www.merriam-webster.com/dictionary/policy>, retrieved 3/17/2019

<sup>86</sup> Pukui, nvs. Nation, race, tribe, people, nationality, <http://wehewehe.org>, retrieved 3/17/2019



**E. Element 5: Supporting Documents and Practices (Operations).** Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and “operationalized” documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.



## **VI. BOARD GOVERNANCE FRAMEWORK PROJECT - PHASE IV -- IMPLEMENTATION and PHASE V**

Based on the approved project charter, the initial project plan and effective BOT implementation mechanisms, the PIG recommends the BOT implement the Board Governance Framework elements via the following newly formed and executed PIGs:

- A. Development of L-Lahui level policies;
- B. Alignment and update of existing BOT By-Laws;
- C. Development of T-Trustee level policies;
- D. Development of C-CEO level policies; and
- E. Alignment and update of existing Board governance documents (e.g., Executive Policy Manual, BOT Operating Manual).

## **VII. MAHALO**

Since its approval in January 2019, Trustee PIG members and staff, Administration and staff have worked diligently to collectively bring this report and recommendations to the BOT.

**Permitted Interaction Group (PIG) Trustees:** Trustees Machado (Chair), Lee (Vice Chair), R Lindsey (Resource Management Committee Vice Chair) and Waihee (Beneficiary, Advocacy and Empowerment Committee Chair)

**PIG Trustees' Staff:** Carol Hoomanawanui, Lopaka Baptiste, Dayna Pa, Laurene Kaluau-Kealoha, Zuri Aki, Lei-Ann Durant, Kama Hopkins, Kaui Wailehua, Crayn Akina, and Melissa Wennihan.

**Administration:** Kamana`opono Crabbe, Ka Pouhana (KP), Sylvia Hussey, Ka Pou Nui (KPN) and Project Manager; Albert Tiberi, Senior Legal Counsel; Rayna Gushiken, Interim Senior Legal Counsel; Everett Ohta, Counsel for Environmental Law, Native Rights and Legal Services; Momilani Lazo, Senior Executive Assistant to KP; Laura Kamalani-Paikai, Executive Assistant to KPN; Leona Castillo, Executive Assistant to KP; Jim McMahon, Advocacy Counsel; and Keala Nichols, Executive Assistant to Chief Advocate.

Permitted Interaction Group  
Board Governance Framework Project Report  
March 2019

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**APPENDIX A – PERMITTED INTERACTION GROUP REFERENCE LIST**

- A. Governance Framework
- B. Statutory References to OHA in federal and state law and county ordinances
- C. Governance Structure
- D. Statutory References Handout
- E. Core Values
- F. Principles for Good Governance and Ethical Practice
- G. Analysis of Advocacy Platform Matters
- H. Analysis of Board Actions 2014-2018
- I. Analysis of Governance Framework
- J. Analysis of Governance Framework: Maori
- K. The “Sunshine Law” HRS Chapter 92
- L. Fiduciary and Statutory Duties
- M. Quick Review: Who Board Members Can Talk To and When (Part 1) – revised July 2018
- N. Quick Review: Who Board Members Can Talk To and When (Part 2) – revised May 8, 2014
- O. Quick Review: Who Board Members Can Talk To and When (Part 3) – revised August 8, 2013
- P. Agenda Guidance for Sunshine Law Boards
- Q. Open Meetings Guide to “The Sunshine Law” for State and County Boards
- R. SPIRE OHA BOT Policy Workshop Update
- S. Board of Trustees By-Laws
- T. Board of Trustees Executive Policy Manual
- U. Board of Trustees Operations Manual
- V. United Nations Declaration on the Rights of Indigenous Peoples
- W. Tribal and Alaska Native Governance Models
- X. Tribal Nations and the United States, An Introduction 2017
- Y. Policies
  - 1. NHTF Investment Policy
  - 2. NHTF Spending Policy
  - 3. KM Policy
  - 4. Real Estate Vision Mission and Strategy Policy
  - 5. Risk Management Policy

Office of Hawaiian Affairs  
Board of Trustee Meeting  
May 2, 2019  
10:00 am

V. New Business\*

A. Committee on Beneficiary Advocacy and  
Empowerment

1. 2019 OHA Legislative Positioning –  
Matrix 2, May 1, 2019

*\* - The committee report for V.A.1. will be forwarded to the Board of Trustees following its approval at the BAE Committee Meeting scheduled for May 1, 2019.*



Office of Hawaiian Affairs  
Board of Trustee Meeting  
April 11, 2019  
10:00 am

V. New Business\*

B. Committee on Resource Management

1. Action Item RM #19-03: Approval of BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee's duties and responsibilities, 2<sup>nd</sup> Reading.

*\* - Please insert Action Item RM #19-03. This was distributed for the April 11, 2019 BOT meeting.*

Office of Hawaiian Affairs  
Board of Trustee Meeting  
April 11, 2019  
10:00 am

V. New Business\*

B. Committee on Resource Management

2. Action Item RM #19-05: Approval of  
FY19 Commercial Property Budget  
Realignment #1<sup>†</sup>

*\* - The committee report for V.B.2. will be forwarded to the Board of Trustees following its approval at the RM Committee Meeting scheduled for May 1, 2019.*

Office of Hawaiian Affairs  
Board of Trustee Meeting  
April 11, 2019  
10:00 am

V. New Business\*

B. Committee on Resource Management

3. Action Item RM #19-06: Approval of  
\$35,000 for Emergency Disaster Relief for  
Kaua'ula Maui

*\* - The committee report for V.B.3. will be forwarded to the Board of Trustees following its approval at the RM Committee Meeting scheduled for May 1, 2019.*

Office of Hawaiian Affairs  
Board of Trustee Meeting  
April 11, 2019  
10:00 am

V. New Business\*

C. Joint Committees on Beneficiary Advocacy  
and Empowerment and Resource  
Management

1. Action Item BAE/RM #19-03:

Consideration of a Process for the  
Selection of a Successor Chief Executive  
Officer



**JOINT MEETING OF THE  
COMMITTEE ON BENEFICIARY ADVOCACY  
AND EMPOWERMENT  
AND COMMITTEE ON RESOURCE  
MANAGEMENT**

**COMMITTEE REPORT**

April 24, 2019

The Honorable Colette Machado,  
Chairperson Board of Trustees  
Office of Hawaiian Affairs

Madame Chair Machado,

The Committee on Beneficiary Advocacy and Empowerment and Committee on Resource Management, having met on April 24, 2019 and after full and free discussion, recommends approval of the following action to the Board of Trustees:

**To authorize and approve the use of a professional executive search and consulting firm to assist the Committees on BAE and RM for the recruitment and selection of a Chief Executive Officer and to authorize and approve a budget reallocation to move \$50,000 from OHA's FY 19 Core Operating Budget, program code 1100-Board of Trustees, object code 57280-Trustee Allowance, to object code 57110—Services on a Fee Basis.**

Relevant attachments are included for your information and reference. Attachment(s):

- 1) Action Item BAE-RM #19-03
- 2) BAE-RM #19-03 Roll Call Vote Sheet

Respectfully submitted:



Trustee Dan Ahuna, Chair



Trustee Kalei Akaka, Member



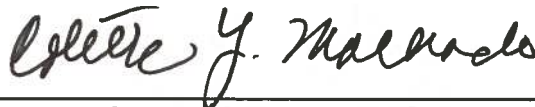
Trustee Leina'ala Ahu Isa, Member



Trustee Robert Lindsey, Member



Trustee Keli'i Akina, Member



Trustee Colette Machado, Member



Trustee Hulu Lindsey, Member



Trustee John Waihe'e, IV, Member

EXCUSED

Trustee Brendon Lee, Member



**Action Item**  
**Joint Committees on Beneficiary Advocacy and Empowerment**  
**and Resource Management**  
**April 24, 2019**

**BAE-RM #19-03**

**Action Item Issue: Consideration of a Process for the Selection of a Successor Chief Executive Officer**

**Prepared by:** Jeremy K. Hopkins 4/16/19  
Jeremy K. Hopkins  
Trustee Aide/ Trustee R. Lindsey - Hawaii  
Date

**Reviewed by:** John D. Waihe'e, IV 4/16/19  
John D. Waihe'e, IV  
Chair, Committee on Beneficiary Advocacy and Empowerment  
Date

**Reviewed by:** Dan Ahuna 4-15-19  
Dan Ahuna  
Chair, Committee on Resource Management  
Date

**I. Action:**

To authorize and approve the use of a professional executive search and consulting firm to assist the Committees on BAE and RM for the recruitment and selection of a Chief Executive Officer and to authorize and approve a budget reallocation to move \$50,000 from OHA's FY 19 Core Operating Budget, program code 1100-Board of Trustees, object code 57280-Trustee Allowance, to object code 57110 –Services on a Fee Basis.

**II. Issue:**

Whether or not the Committees on BAE and RM should authorize and approve the use of a professional executive search and consulting firm to assist the committees for the recruitment and selection of a Chief Executive Officer (CEO) and to authorize and approve a budget reallocation to move \$50,000 from OHA's FY 19 Core Operating Budget, program code 1100-Board of Trustees, object code 57280-Trustee Allowance, to object code 57110 –Services on a Fee Basis.

**III. Background:**

The current CEO contract will expire on June 30, 2019 requiring the recruitment of a CEO. The recruitment process should be initiated immediately to ensure an efficient transition with minimal disruption to the organization.

The Hawai'i Revised Statutes (HRS) § 10-10 is as follows:

The board by a majority vote, shall appoint an administrator who shall serve without regard to the provisions of chapter 76 for a term to be determined by the board. The board, by a two-thirds vote of all members to which it is entitled, may remove the administrator for cause at any time.

The OHA BOT Bylaws Article VIII on the Committees of the Board is as follows:

(A) (1) (n) The Committee on Resource Management shall, in consultation with the Chair of the Committee on Beneficiary Advocacy and Empowerment carry out the recruitment and selection of the Administrator.

The OHA BOT CEO Recruitment Policy is as follows:

**Chief Executive Officer Recruitment and Selection**

3.10.9. The BOT appoints the CEO following a search process for identifying and hiring a CEO. At its first regularly scheduled meeting or special meeting after it learns that the CEO position is vacant or will soon be vacant, the BOT will establish the time period, budget, and arrangements for the hiring process of a new CEO. While the hiring process may involve the use of non-board members or search firms, such arrangements will assure the participation of some Trustees in all aspects of the recruitment and interview process. The full BOT shall participate in the final selection of the CEO from a group of candidates determined to be qualified for the position through an open and fair hiring process. The BOT will immediately commence employment contract negotiation upon selection of the best-qualified candidate.

The BOT Operations Manual figures 45 and 46 offers two recruitment alternatives to include in house recruitment utilizing the OHA Human Resources Department or external recruitment using a professional search firm (see Attachment A – Figure 45. Administrator recruitment and selection and Attachment B – Figure 46. Recruitment Process using a Professional Search Firm). The main difference between these two approaches is whether the OHA HR Department or a professional executive search and consulting firm completes the part of the process that includes advertising for the CEO position, screening the applications, conducting reference checks, and making recommendations to the BOT on the top candidates. All other functions in the process would remain the responsibility of the Trustees to include interviewing and final selection of the CEO.

This action item attempts to harmonize the OHA BOT Bylaws and Executive Policies with HRS § 10-10 relating to the recruitment and selection of a CEO.

#### IV. Discussion:

OHA has very competent and capable Human Resources staff, but they may have limited experience in recruiting at the executive management level. Usually, there is limited need for executive recruitment and the current CEO was hired eight years ago. Executive level recruitment is a highly specialized area and using a professional executive search and consulting firm will provide the needed expertise, and will save time, money and staff resources. A professional executive search and consulting firm should be utilized for the recruitment of a CEO for the following reasons:

- Professional executive search and consulting firms have knowledge, experience and expertise in searching for executive management staff.
- The recruiting process is faster through a professional executive search and consulting firm that is continually tapped into the talent marketplace. For every day that a key opening remains unfilled, other employees must fill the gap taking away time from their own duties and responsibilities.
- Professional executive search and consulting firms usually have an extensive network of contacts, are able to work discretely and maintain a database or list of qualified candidates and can usually provide an immediate list of the best candidates available within 2 to 4 weeks of their retainment.
- Search and consulting firms act as an unbiased party providing a fair recruitment process.
- They can help to ensure the position description, salary, and responsibilities are relevant and current in terms of the market.
- Search and consulting firms have the ability to conduct extensive background searches and verify specific credentials for each potential candidate they find. Firms are able to approach these candidates to vet their interest in the position, interview them, evaluate them and form candidate profiles.
- They are able to narrow down the potential candidate list after undertaking candidate interviews and present a more defined list to OHA. This will allow the Trustees to choose their selected candidates and conduct their own interviews to choose the appropriately fitted individual for the position without wasting valuable time and expense.

The cost of using a professional executive search and consulting firm will be around 25%-30% of the CEO annual salary or approximately \$37,500-\$45,000 at the current salary level. To compare this to the cost of keeping the function in-house you would need to include advertisement costs along with a large amount of HR staff time needed to conduct

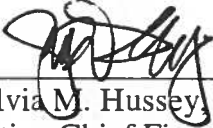


outreach, review and screen the applications, conduct reference checks, and make recommendations to the Trustees. This would shift a large amount of HR staff time away from normal daily operations and would not produce the same results that could be achieved through a professional executive search and consulting firm.

The use of a professional executive search and consulting firm will require OHA to undergo an appropriate procurement process to comply with state procurement laws found in HRS § 103D.

**V. Certification of Funding Availability:**

The funds required for this Action Item are currently available from OHA's FY 19 Core Operating Budget, program code 1100-Board of Trustees, object code 57280-Trustee Allowance and need to be reallocated to object code 57110 – Services on a Fee Basis.

  
\_\_\_\_\_  
Sylvia M. Hussey, Ed.D.  
Acting Chief Financial Officer/Chief Operating Officer

**VI. Recommended Action:**

To authorize and approve the use of a professional executive search and consulting firm to assist the Committees on BAE and RM for the recruitment and selection of a Chief Executive Officer and to authorize and approve a budget reallocation to move \$50,000 from OHA's FY 19 Core Operating Budget, program code 1100-Board of Trustees, object code 57280-Trustee Allowance, to object code 57110 –Services on a Fee Basis.

**VII. Alternative Action:**

- A. Do not approve the use of a professional executive search and consulting firm to assist the Committees on BAE and RM for the recruitment and selection of a Chief Executive Officer.
- B. Approve the use of the OHA Human Resources Department to assist the Committees on BAE and RM for the recruitment and selection of a chief Executive officer.

**VIII. Time Frame:**

Immediate action is recommended.

**IX. Attachments:**

Attachment A – BOT Operations Manual - Figure 45. Administrator recruitment and selection.

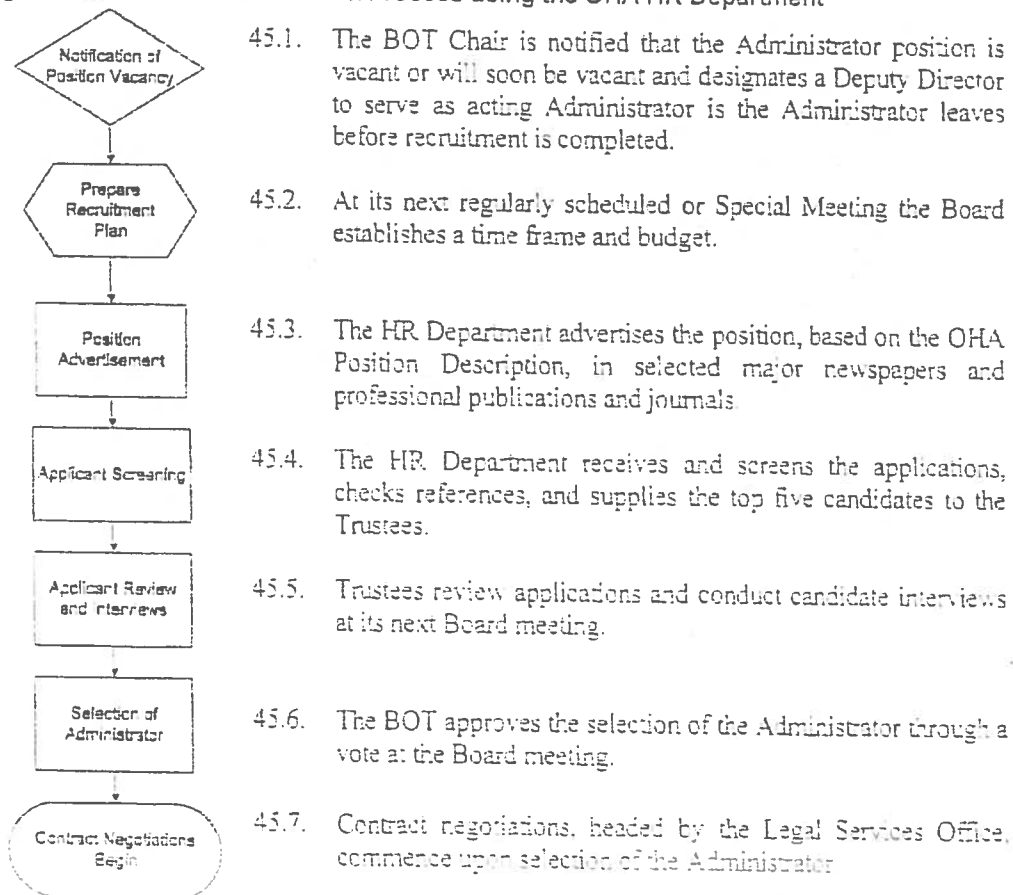
Attachment B – BOT Operations Manual - Figure 46. Recruitment Process using a Professional Search Firm.

## XI. Personnel

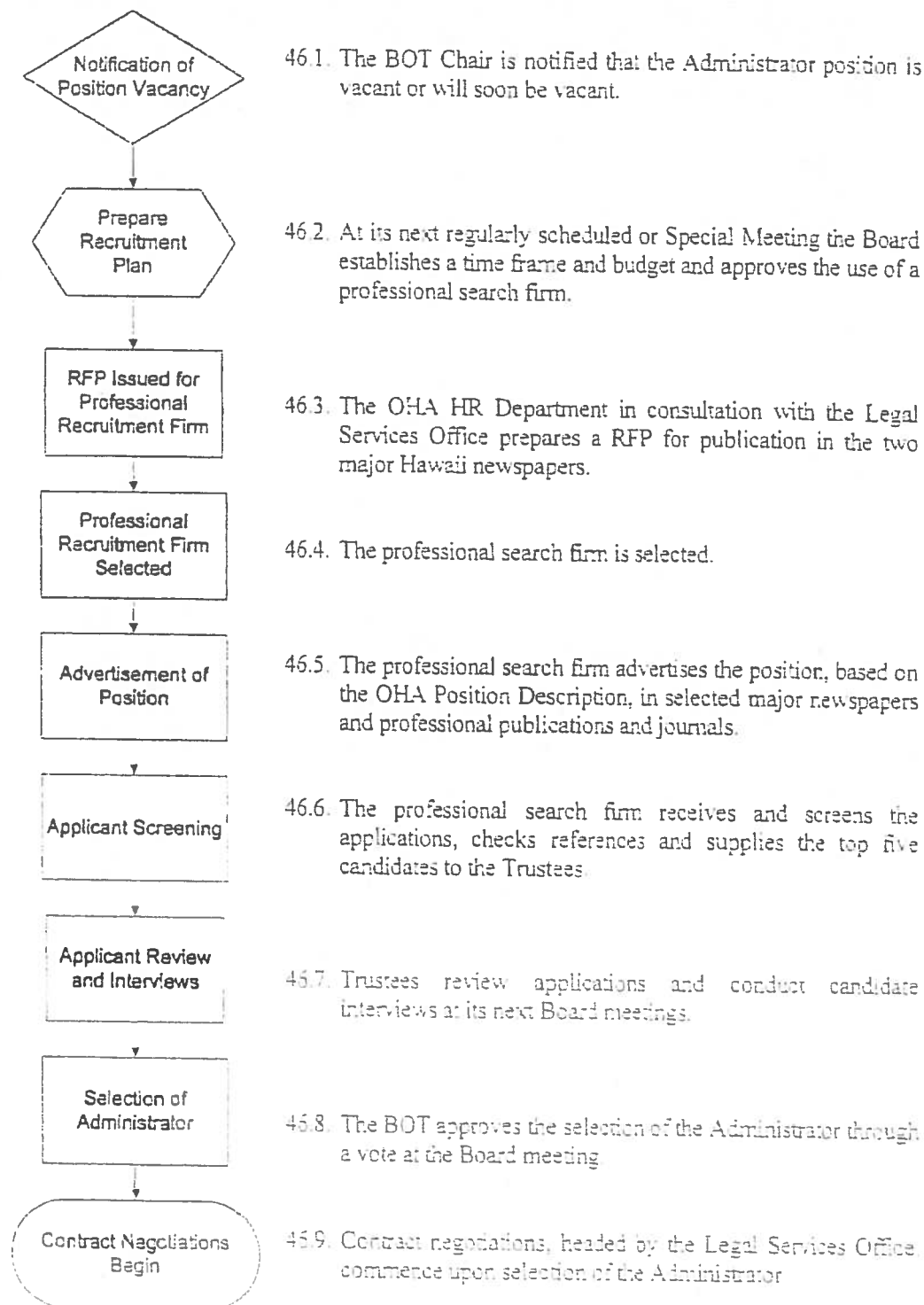
### 45. Administrator recruitment and selection

45.a. The Board of Trustees appoints the Administrator following a search process for identifying and hiring an Administrator. While the hiring process may involve the use of non-board members or search firms, such arrangements will assure the participation of some Board members in all aspects of the recruitment and interview process. The entire Board shall participate in the final selection of the Administrator from a group of candidates determined to be qualified for the position through an open and fair hiring process. The BOT will immediately commence employment contract negotiation upon selection of the best qualified candidate. The recruitment of the Administrator may be conducted with assistance from a professional recruitment firm or in-house with assistance from the OHA Human Resources Department. Both of these processes are outlined below.

Figure 45. In-House Recruitment Process using the OHA HR Department



**Figure 46. Recruitment Process Using a Professional Search Firm**



**BAE-RM- Action Item**

**COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT (BAE) AND COMMITTEE ON RESOURCE MANAGEMENT (RM)**

**DATE: APRIL 24, 2019**

**Motion:**

**Vote:**

**III. New Business**

**B. BAE-RM #19-03- Consideration of a Process for the Selection of a Successor Chief Executive Officer**

**MOTION:** To authorize and approve the use of a professional executive search and consulting firm to assist the Committees on BAE and RM for the recruitment and selection of a Chief Executive Officer and to authorize and approve a budget reallocation to move \$50,000 from OHA's FY 19 Core Operating Budget, program code 1100-Board of Trustees, object code 57280-Trustee Allowance, to object code 57110 –Services on a Fee Basis.

**AMENDMENT:**

**MEANS OF FINANCING:**

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI	AHU ISA			X			
KALEI	AKAKA						not present
KELI 'I	AKINA			X			
BRENDON	LEE						EXCUSED
HULU	LINDSEY			X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO	X		X			
JOHN	WAIHE'E		X	X			
CHAIR DAN	AHUNA			X			
TOTAL VOTE COUNT				7			

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

**DISCUSSION:**


**Office of Hawaiian Affairs**  
**Board of Trustee Meeting**  
**May 1, 2019**  
**10:00 am**

**VI. Executive Session<sup>‡</sup>**

- A. Consultation with attorneys William Yuen, Esq., Judy Tanaka, Esq., and Robert G. Klein, Esq., re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding OHA's role as a member of Hi'ilei Aloha LLC and Ho'okele Pono LLC. *Pursuant to HRS §92-5(a)(4).***
- B. Consultation with Board Counsel, Robert G. Klein, Esq. regarding questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding Action Item RM #19-04 for reimbursement of limited liability corporation legal fees. *Pursuant to HRS §92-5(a)(4).*<sup>†</sup>**
- C. Consultation with Board Counsel Robert G. Klein, Esq. re.: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities with respect OHA Contract #3147. *Pursuant to HRS §92-5(a)(4).***
- D. Consultation with Board Counsel Robert G. Klein, Esq. and Kumabe HR LLC re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the Board's obligations and responsibilities to conduct its performance appraisal of OHA's CEO in accordance with Section III of Contract 3147. *Pursuant to HRS §92-5(a)(2) and (4).***
- E. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, and liabilities concerning processing a complaint alleging violations of the Trustee Code of Conduct policy. *Pursuant to HRS §92-5(a)(2) and (4).***
- F. Approval of Minutes**
  - 1. March 28, 2019**

<sup>‡</sup>- *Any material that is relevant to this section will be distributed at the table during Executive Session.*