MEETING OF THE BOARD OF TRUSTEES
DATE: Thursday, April 11, 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, 2018†
   B. March 21, 2018†

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††, April 10, 2019
      2. 2019 Federal Legislative Updates – Matrix 3†††, April 10, 2019
   B. Committee on Resource Management
      1. Action Item RM #19-02: Amendment to Extend the Time of Performance for OHA
         Contract #3284†
      2. 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, 1st Reading.†
   C. 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)(4)).

VI. Executive Session‡
   A. Consultation with attorneys William Yuen, Esq., Judy Tanaka, Esq., and Board Counsel
      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 and management options for those LLCs in light of the Minute
      Order issued in Andrew Walden v. Hi‘ilei Aloha LLC, Ho‘okele Pono LLC, and Hi‘ipaka
      LLC. Pursuant to HRS §92-5(a)(4).
B. Consultation with Board Counsel Robert G. Klein, Esq. on questions and issues pertaining to the Resource Management Committee of the OHA-BOT’s powers, duties, privileges, immunities and liabilities regarding OHA Contract #3284. Pursuant to HRS §92-5(a)(4).

C. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities relating to the Trustee Protocol Allowance policy. 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)(4).

E. Approval of Minutes
   1. March 7, 2019
   2. March 21, 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 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 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 4/10/19. 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

† 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

Meeting of the Board of Trustee, April 11, 2019 Agenda Continued
II. Approval of Minutes
   A. March 7, 2018
   B. March 21, 2018

The minutes were listed incorrectly on the Agenda. The correct minutes will be put on the next BOT meeting agenda for approval.
Office of Hawaiian Affairs
Board of Trustee Meeting
April 11, 2019
10:00 am

V. New Business*
A. Committee on Beneficiary Advocacy and Empowerment
   1. 2019 OHA Legislative Positioning – Matrix 2, April 10, 2019
   2. 2019 Federal Legislative Updates – Matrix 3, April 10, 2019

* - The committee report for V.A.1. and 2. will be forwarded to the Board of Trustees following its approval at the BAE Committee Meeting scheduled for April 10, 2019.
April 10, 2019

The Honorable Colette Y. Machado, Chair
Board of Trustees
Office of Hawaiian Affairs

Chair Machado,

Your Committee on Beneficiary Advocacy and Empowerment, having met on April 10, 2019 and after full and free discussion, recommends approval of the following two actions to the Board of Trustees:

**MOTION #1:**

To approve Administration's recommendations on *NEW BILLS* (Items 1 - 2) and *BILL POSITIONS FOR RECONSIDERATION* (Item 3); as well as

**ADD:**
- HCR 132 / SCR 174 as COMMENT

on the OHA Legislative Positioning Matrix dated April 10, 2019, as amended.

<table>
<thead>
<tr>
<th>Bills that were discussed</th>
<th>ITEM #</th>
<th>BILL#</th>
<th>REPORT</th>
<th>DESCRIPTION</th>
<th>POSITION</th>
<th>IN BAE MEETING CHANGE</th>
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<td>New Bills</td>
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<td>New Bills</td>
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<tr>
<td>ADD</td>
<td>HCR 132</td>
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<td></td>
<td>REQUESTING A STUDY ON THE SIGNIFICANCE OF TRADITIONAL HAWAIIAN PRACTICES, INCLUDING THE MAKAHIKI, AND THEIR EFFECT ON THE PERPETUATION OF NATIVE HAWAIIAN CULTURE.</td>
<td>COMMENT</td>
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<tr>
<td>ADD</td>
<td>SCR 174</td>
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</tr>
<tr>
<td>1</td>
<td>SB1223</td>
<td>RELATING TO AFFORDABLE HOUSING ON HAWAIIAN HOME LANDS.</td>
<td>Extends the sunset date of Act 141, Session Laws of Hawaii 2009, as amended, which requires each county to issue affordable housing credits to the Department of Hawaiian Home Lands, until July 1, 2024. Extends the sunset date of Act 98, Session Laws of Hawaii 2012, as amended, which requires the counties to issue affordable housing credits for each residential unit, or if allowed under the county's affordable housing program, vacant lot, developed by the Department of Hawaiian Home Lands, until July 1, 2024. (SB1223 HD1)</td>
<td>MONITOR</td>
<td></td>
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</tr>
<tr>
<td>2</td>
<td>GM740</td>
<td>Submitting for consideration and confirmation to the Board of Education, Gubernatorial Nominee, DAMIEN BARCARSE, for a term to expire 06-30-2022.</td>
<td>SUPPORT</td>
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<tr>
<td>ITEM #</td>
<td>BILL#</td>
<td>REPORT</td>
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<td>POSITION</td>
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<td>Bill Positions for Reconsideration</td>
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<td></td>
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<tr>
<td>3</td>
<td>SB1530</td>
<td>RELATING TO THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY.</td>
<td>Makes the conversion of the means of financing for the Hawaii Community Development Authority staff from the Hawaii community development revolving fund to the general fund contingent upon the Hawaii Community Development Authority developing and submitting a plan to transfer its control of the Kakaako Community Development District to the City and County of Honolulu. (SB1530 HD2)</td>
<td>COMMENT MONITOR</td>
<td></td>
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</tbody>
</table>
**MOTION #2:**

To approve Administration’s recommendations on:

- OHA FED 1: S. 256 / H.R. 912; and
- OHA FED 2: S. 467 / H.R. 1191, both as SUPPORT


<table>
<thead>
<tr>
<th>OHA NO.</th>
<th>BILL NO.</th>
<th>MEASURE TITLE</th>
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<th>RECOMMENDED ACTION</th>
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<tbody>
<tr>
<td>OHA FED 1</td>
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<td></td>
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<td>Amends the Native American Programs Act of 1974 to reauthorize the program for up to $13 Million in federal appropriations through Fiscal Year (FY) 2024, and also increases the length of grants from three to five years. Decreases the number of required Native students in Native American language nests and Native American language survival schools.</td>
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<td>Native American Suicide Prevention Act of 2019</td>
<td>For any state receiving grants or under a cooperative agreement under the Public Health Service Act to implement an early intervention and prevention strategy, a state or eligible entity must collaborate with tribes, tribal organizations, urban Indian organizations, and Native Hawaiian health care systems in developing and implementing the strategy.</td>
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</table>

**Relevant attachments are included for your information and reference.**

Attachment(s):

A. BAE Roll Call Vote Sheet – 2019 OHA LEGISLATIVE POSITIONING – Matrix 2**
B. BAE Roll Call Vote Sheet – 2019 FEDERAL LEGISLATIVE UPDATES – Matrix 3**
Committee on Beneficiary Advocacy and Empowerment (BAE)

Date: April 10, 2019

Motion: 2:36 p.m.

Vote: 2:37 p.m.

Agenda Item:

V. New Business
A. 2019 OHA Legislative Positioning – Matrix 2**

Motion #1:

To approve Administration’s recommendations on NEW BILLS (Items 1 - 2) and BILL POSITIONS FOR RECONSIDERATION (Item 3); as well as

ADD:
- HCR 132 / SCR 174 as COMMENT

on the OHA Legislative Positioning Matrix dated April 10, 2019, as amended.

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**MOTION:** [X] UNANIMOUS [ ] PASSED [ ] DEFERRED [ ] FAILED
Roll Call Vote Sheet

**COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT (BAE)**

**DATE:** April 10, 2019  
**MOTION:** 2:50 p.m.  
**VOTE:** 2:51 p.m.

**AGENDA ITEM:**

V. New Business  
B. 2019 Federal Legislative Updates – Matrix 3**

**MOTION #2:**
To approve Administration's recommendations on:
- OHA FED 1: S. 256 / H.R. 912; and
- OHA FED 2: S. 467 / H.R. 1191, both as SUPPORT

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

DISCUSSION:


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 #19-02: Amendment to Extend the Time of Performance for OHA Contract #3284
    2. 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, 1st Reading.

* - The committee report for V.B.1. and 2. will be forwarded to the Board of Trustees following its approval at the RM Committee Meeting scheduled for April 10, 2019.
April 10, 2019

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

Madame Chair Machado,

The Committee on Resource Management, having met on April 10, 2019 and after full and free discussion, recommends approval of the following action to the Board of Trustees:

To approve RM #19-02 to authorize and approve an amendment to extend the Time of Performance for OHA Contract #3284 from April 30, 2019 to December 16, 2019. Moreover, any document requests to OHA, either outstanding or new requests, if any, shall be responded to as soon as possible, but in no case after April 29, 2019 such that the timeline for performance by CLA is not extended further.

Relevant attachments are included for your information and reference.

Attachment(s):

1) Action Item RM #19-02
2) RM #19-02 Roll Call Vote Sheet
Action Item
Committee on Resource Management
April 10, 2019

RM #19-02

Action Item Issue: Amendment to Extend the Time of Performance for OHA Contract #3284

Prepared by: [Signature] 4/4/19
Jeremy K. Hopkins
Trustee Aide, Trustee R. Lindsey - Hawaii

Reviewed by: [Signature] 4/4/19
Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

Reviewed by: [Signature] 4/4/19
Dan Ahuna
Chair, Committee on Resource Management

I. Action:
To authorize and approve an amendment to extend the Time of Performance for OHA Contract #3284 from April 30, 2019 to December 16, 2019.

II. Issue:
Whether or not the Resource Management Committee should authorize and approve an amendment to extend the Time of Performance for OHA Contract #3284 from April 30, 2019 to December 16, 2019.

III. Background and Discussion:
The Board of Trustees executed OHA Contract #3284 on September 5, 2018. The Time of Performance of the contract was through April 30, 2019. In OHA Contract #3284 under Attachment S-2 titled "Time of Performance," subsection C. states the following.

C. This Contract may be modified, amended, or extended due to such factors as a delay in obtaining records requested, circumstances outside of either parties control, or other unforeseeable factors upon mutual
agreement of the parties hereto. Any modification, amendment or extension shall be contingent upon satisfactorily performance by CONTRACTOR and subject to the availability of funds for compensation payable for services performed and costs and expenses incurred, if any, beyond the initial term of this Contract. The CONTRACTOR agrees to notify the Contractor Coordinator of any delays in obtaining requested records or gaining access to the OHA and or LLC staff for interviews and or questions.

Due to a delay in the contractor obtaining records requested and circumstances outside of either parties control, a no cost extension of time is requested by the contractor and the contract monitor in order to complete the work detailed in OHA Contract #3284. This should allow adequate time to complete the work.

IV. **Recommended Action:**
To authorize and approve an amendment to extend the Time of Performance for OHA Contract #3284 from April 30, 2019 to December 16, 2019.

V. **Timeframe:**
The no cost extension of the Time of Performance for OHA Contract #3284 will be effective upon approval of RM #19-02 and the signing of contract amendment between parties outlined in OHA Contract #3284.

VI. **Attachments:**
<table>
<thead>
<tr>
<th>No.</th>
<th>Date</th>
<th>Event</th>
<th>Method</th>
<th>Details</th>
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<tbody>
<tr>
<td>1</td>
<td>7/28/2017</td>
<td>QHA Request for Statement of Qualifications</td>
<td>Uploaded</td>
<td>CLA submitted to Auditing Service; finds the Request for Statement of Qualifications.</td>
</tr>
<tr>
<td>2</td>
<td>8/16/2017</td>
<td>OHA Proposal Submission Mailed</td>
<td>Email</td>
<td>OHA distributed to Auditing Service with a Statement of Qualifications, SDO No. RM 2017-2, Request for Statement of Qualifications.</td>
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<tr>
<td>3</td>
<td>8/2/2017</td>
<td>OHA distributed addendum No. 1 to Regent for Statement of Qualifications SDO No. RM 2017-2</td>
<td>Email</td>
<td>CLA requested the name of the CPA licensed in the State of Hawaii.</td>
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<td>5</td>
<td>5/6/2017</td>
<td>OHA distributed addendum No. 3 to Regent for Statement of Qualifications SDO No. RM 2017-2</td>
<td>Email</td>
<td>CLA requested the name of the CPA licensed in the State of Hawaii.</td>
</tr>
<tr>
<td>6</td>
<td>4/19/2018</td>
<td>OHA Confidentiality and Non-Disclosure Agreement (NDA) from CLA</td>
<td>Email</td>
<td>Phyllis emailed Ernie a copy of a Confidential and Non-Disclosure Agreement (NDA). Ernie forwarded the email and attachment to Jenny Dominguez for review and discussion.</td>
</tr>
<tr>
<td>7</td>
<td>4/20/2018</td>
<td>OHA delivery of signed NDA to OHA</td>
<td>Email</td>
<td>CLA provided OHA with a Statement of Qualifications and Expression of Interest - SOQ No.</td>
</tr>
<tr>
<td>8</td>
<td>4/23/2018</td>
<td>OHA confirmation of receipt of signed NDA</td>
<td>Email</td>
<td>CLA confirmed receipt of the signed NDA and indicated that he would get it signed by OHA.</td>
</tr>
<tr>
<td>9</td>
<td>5/11/2018</td>
<td>OHA email from Albertemailed to Ernie a copy of Confidential and Non-Disclosure Agreement (NDA). Ernie forwarded the email and attachment to Jenny Dominguez for review and discussion.</td>
<td>Email</td>
<td>CLA provided OHA with a Statement of Qualifications and Expression of Interest - SOQ No.</td>
</tr>
<tr>
<td>10</td>
<td>5/23/2018</td>
<td>OHA Schedule Meeting with Negotiating Committee</td>
<td>Email</td>
<td>Phyllis emailed the email to Clause P.A. (CPA) to inquire about CPA availability for a meeting with the Negotiating Committee.</td>
</tr>
<tr>
<td>11</td>
<td>5/23/2018</td>
<td>OHA Request for Statement of Qualifications</td>
<td>Email</td>
<td>Phyllis requested that the email provide the name of the CPA licensed in the State of Hawaii.</td>
</tr>
<tr>
<td>12</td>
<td>7/27/2017</td>
<td>OHA Request for Statement of Qualifications</td>
<td>Email</td>
<td>Phyllis emailed Ernie to inform him that she was able to continue with the State of Hawaii.</td>
</tr>
<tr>
<td>13</td>
<td>7/27/2017</td>
<td>OHA Confidentiality and Non-Disclosure Agreement (NDA) from CLA</td>
<td>Email</td>
<td>Phyllis emailed Ernie a copy of a Confidential and Non-Disclosure Agreement (NDA). Ernie forwarded the email and attachment to Jenny Dominguez for review and discussion.</td>
</tr>
<tr>
<td>14</td>
<td>8/16/2017</td>
<td>OHA Proposal Submission Mailed</td>
<td>Email</td>
<td>CLA requested the name of the CPA licensed in the State of Hawaii.</td>
</tr>
<tr>
<td>15</td>
<td>8/2/2017</td>
<td>OHA distributed addendum No. 1 to Regent for Statement of Qualifications SDO No. RM 2017-2</td>
<td>Email</td>
<td>CLA requested the name of the CPA licensed in the State of Hawaii.</td>
</tr>
<tr>
<td>16</td>
<td>8/2/2017</td>
<td>OHA distributed addendum No. 2 to Regent for Statement of Qualifications SDO No. RM 2017-2</td>
<td>Email</td>
<td>CLA requested the name of the CPA licensed in the State of Hawaii.</td>
</tr>
<tr>
<td>17</td>
<td>8/2/2017</td>
<td>OHA distributed addendum No. 3 to Regent for Statement of Qualifications SDO No. RM 2017-2</td>
<td>Email</td>
<td>CLA requested the name of the CPA licensed in the State of Hawaii.</td>
</tr>
<tr>
<td>18</td>
<td>7/28/2017</td>
<td>OHA Request for Statement of Qualifications</td>
<td>Email</td>
<td>Cla distributed to Auditing Service; finds the Request for Statement of Qualifications.</td>
</tr>
<tr>
<td>19</td>
<td>7/28/2017</td>
<td>OHA Request for Statement of Qualifications</td>
<td>Email</td>
<td>Cla distributed to Auditing Service; finds the Request for Statement of Qualifications.</td>
</tr>
<tr>
<td>20</td>
<td>7/28/2017</td>
<td>OHA Request for Statement of Qualifications</td>
<td>Email</td>
<td>Cla distributed to Auditing Service; finds the Request for Statement of Qualifications.</td>
</tr>
<tr>
<td>21</td>
<td>7/28/2017</td>
<td>OHA Request for Statement of Qualifications</td>
<td>Email</td>
<td>Cla distributed to Auditing Service; finds the Request for Statement of Qualifications.</td>
</tr>
</tbody>
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As of March 8, 2019

Office of Hawaiian Affairs
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<tbody>
<tr>
<td>11</td>
<td>5/30/2018</td>
<td>OHA</td>
<td>Introductory Video Conference</td>
<td>To meet OHA representatives and begin the communication process. During this meeting, OHA's introductory video conference was held, providing an overview of OHA and its roles.</td>
</tr>
<tr>
<td>12</td>
<td>6/1/2018</td>
<td>OHA</td>
<td>Contact by ES&amp;A</td>
<td>To coordinate CLA's visit as part of the contract negotiation process.</td>
</tr>
<tr>
<td>13</td>
<td>6/1/2018</td>
<td>LLCs</td>
<td>Coordination of initial visit ES&amp;A</td>
<td>Ernie Cooper and Jenny Dominguez held a phone conference with Anna Elento-Sneed (ES&amp;A) to coordinate the visit.</td>
</tr>
<tr>
<td>14</td>
<td>6/4/2018</td>
<td>OHA</td>
<td>Coordination of initial visit with</td>
<td>The visit to OHA was scheduled for 6/6/2018 and 6/7/2018. An email was sent to Ms. Elento-Sneed to confirm the visit. The email informed that the LLCs required CLA and representatives to sign NDAs before any records could be provided.</td>
</tr>
<tr>
<td>15</td>
<td>6/4/2018</td>
<td>LLCs</td>
<td>Coordination of initial visit ES&amp;A</td>
<td>Gained high-level understanding of the LLCs and coordinated for an in-person meeting for 6/7/2018.</td>
</tr>
<tr>
<td>16</td>
<td>6/6/2018</td>
<td>OHA</td>
<td>Meeting with OHA representatives</td>
<td>CLA met with OHA representatives to gain understanding of the LLCs and how they function and how they were established. Discussed each of the LLCs. Understood the general line of business, primary sources of revenue, program funding, and how the LLCs are covered by private law.</td>
</tr>
<tr>
<td>17</td>
<td>6/7/2018</td>
<td>LLCs</td>
<td>Coordination of initial visit ES&amp;A</td>
<td>CLA met with LLC representatives to gain understanding of the LLCs and how they function and how the LLCs were established. Discussed each of the LLCs. Understood the general line of business, primary sources of revenue, program funding, and how the LLCs are covered by private law.</td>
</tr>
<tr>
<td>18</td>
<td>6/8/2018</td>
<td>OHA</td>
<td>Receipt of Documents Email</td>
<td>CLA began receiving documents from OHA that include organizational charts and the list of contracts for 1/1/2012 to 6/30/2016.</td>
</tr>
</tbody>
</table>

CLA fielded OHA representatives to understand the LLCs in sufficient detail to be able to draft a scope of work as requested by OHA. The meeting for 6/7/2018 was confirmed by an email from Ms. Elento-Sneed. The visit to OHA was scheduled for 6/6/2018 and 6/7/2018. An email was sent to Ms. Elento-Sneed informing that the LLCs required CLA and representatives to sign NDAs before any records could be provided.
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</thead>
<tbody>
<tr>
<td>33</td>
<td>9/6/2018</td>
<td>OHA Request for call to LLCS</td>
<td>Email</td>
<td>OHA provided ES&amp; A with an updated document request list.</td>
</tr>
<tr>
<td>32</td>
<td>9/17/2018</td>
<td>OHA Request for call to LLCS</td>
<td>Email</td>
<td>CLA provided ES&amp; A with a Sharefile that contained certain financial information for the LLCs.</td>
</tr>
<tr>
<td>31</td>
<td>9/14/2018</td>
<td>ES&amp; A delivered copies of signed NDA to Hiilei Aloha LLC, Hānaea LC, Hōokele Pono LLC, and Wāilea ES&amp; A.</td>
<td>In Person</td>
<td>ES&amp; A delivered copies of signed NDA to Hiilei Aloha LLC, Hānaea LC, Hōokele Pono LLC, and Wāilea ES&amp; A.</td>
</tr>
<tr>
<td>30</td>
<td>9/14/2018</td>
<td>OHA's delivery of document to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>29</td>
<td>9/10/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>28</td>
<td>9/9/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>27</td>
<td>9/15/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>26</td>
<td>9/5/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>25</td>
<td>9/4/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>24</td>
<td>9/2/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>23</td>
<td>9/2/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>22</td>
<td>9/1/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>21</td>
<td>8/27/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>20</td>
<td>8/8/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
</tr>
<tr>
<td>19</td>
<td>6/8/2018</td>
<td>OHA's delivery of executed contract to LLCS</td>
<td>Email</td>
<td>OHA requested that the contract be reviewed by ES&amp; A before it is executed and the CLA may be responsible for it.</td>
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As of March 8, 2019
Timeline of Engagement Events
Office of Hawaiian Affairs
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<tbody>
<tr>
<td>34</td>
<td>9/18/2018</td>
<td>OHA informed CLA that it received the document request list and was preparing to obtain the documents requested.</td>
<td>OHA</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>9/27/2018</td>
<td>LLCs communicated to CLA its intention to provide documents requested.</td>
<td>LLCs</td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>9/27/2018</td>
<td>Trustee Hulu Lindsey communicated that she would not receive documents for the LLC, but would allow physical viewing.</td>
<td>Trustee Hulu Lindsey</td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>10/1/2018</td>
<td>CLA held a phone call between CLA and Trustee Hulu Lindsey in preparation for the interviews set for the next week.</td>
<td>CLA</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>10/2/2018</td>
<td>OHA provided some of the requested documents via LeapFile and communicated receipt of some of the requested documents.</td>
<td>OHA</td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>10/3/2018</td>
<td>CLA was on site to conduct interviews of certain OHA/LLC employees. The only interview not conducted was that of Mr. Kamana Opono Crabbe.</td>
<td>CLA</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>10/8/2018</td>
<td>CLA received letter from ES&amp;A explaining the LLC's legal status and relationship to OHA. The letter expressed concern over the negative impact of CLA's work on the LLC's legal position in ongoing litigation and other legal proceedings.</td>
<td>ES&amp;A</td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>10/11/2018</td>
<td>CLA provided an updated document request list to OHA.</td>
<td>OHA</td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>10/12/2018</td>
<td>OHA/LLCs communicated their concerns that for one of the items on the document request list, OHA may not be able to provide information to reconcile general ledger to audited financial statements. Also communicated that the quarterly statements from LLCs to OHA should be the ones received by OHA, not the LLCs.</td>
<td>OHA/LLCs</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>10/14/2018</td>
<td>Trustee Hulu Lindsey provided a news article titled &quot;Lawsuit OHA-Owned Corporations Must Comply With Open Records Laws,&quot; prepared by Clifton Larson Allen LLP, to be discussed by Chair Dan Ahuna's and Vice-Chair Robert Lindsey's Discussion with Resource Management Committee.</td>
<td>Trustee Hulu Lindsey</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>10/14/2018</td>
<td>CLA forwarded a news article titled &quot;Lawsuit OHA-Owned Corporations Must Comply With Open Records Laws,&quot; prepared by Clifton Larson Allen LLP, to be discussed by Chair Dan Ahuna's and Vice-Chair Robert Lindsey's Discussion with Resource Management Committee.</td>
<td>CLA</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
<td>Method</td>
<td>Entity</td>
<td>Relevancy</td>
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<td>---------------------------------</td>
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<td>-----------</td>
</tr>
<tr>
<td>10/30/2018</td>
<td>Trustee Hulun Lindsey requests OHA by email</td>
<td>Email</td>
<td>OHA</td>
<td>25</td>
</tr>
<tr>
<td>10/31/2018</td>
<td>Receipt of news article forwarded to Phyllis, who communicated that she is working on obtaining the documents requested and that GL is being contacted by phone to discuss the reconciliation between CLA and OHA.</td>
<td>Email</td>
<td>OHA</td>
<td>26</td>
</tr>
<tr>
<td>10/31/2018</td>
<td>Trustee Hulun Lindsey requests a few documents and some financial information from both OHA and the LLC. CLA is providing the additional records requested.</td>
<td>Email</td>
<td>OHA</td>
<td>27</td>
</tr>
<tr>
<td>10/31/2018</td>
<td>Trustee Hulun Lindsey requests OHA by email</td>
<td>Email</td>
<td>OHA</td>
<td>28</td>
</tr>
<tr>
<td>10/30/2018</td>
<td>Trustee Hulun Lindsey requests OHA by email</td>
<td>Email</td>
<td>OHA</td>
<td>29</td>
</tr>
</tbody>
</table>

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</thead>
<tbody>
<tr>
<td>60</td>
<td>11/26/2018</td>
<td>OHA's Request for assistance with reconciliation</td>
<td>Email</td>
<td>CLA, reviewed and confirmed that the requested document was provided. This document was included in the request list that was provided to OHA on 11/26/2018.</td>
</tr>
<tr>
<td>59</td>
<td>11/20/2018</td>
<td>OHA's follow up on status of documents</td>
<td>Email</td>
<td>CIA, requested that OHA send the status of the documents that OHA requested on 11/9/2018, which was due by Wednesday or Thursday of the following week (11/14/2018 or 11/15/2018).</td>
</tr>
<tr>
<td>58</td>
<td>11/16/2018</td>
<td>OHA's request for additional documents</td>
<td>Email</td>
<td>CLA, requested OHA to provide an updated document request list including five additional items.</td>
</tr>
<tr>
<td>57</td>
<td>11/14/2018</td>
<td>OHA's interview of OHA employee</td>
<td>In Person</td>
<td>CLA, interviewed Kamana Opono Crabbe concerning OHA only (not able to discuss LLCs without ES&amp;A being present). Mr. Tiberi provided one of the documents included in the document request list provided to OHA on 10/8/2018.</td>
</tr>
<tr>
<td>56</td>
<td>11/14/2018</td>
<td>OHA's interview of OHA employee</td>
<td>In Person</td>
<td>CLA, informed OHA that the interview conducted on 11/14/2018 would be available for only one hour.</td>
</tr>
<tr>
<td>55</td>
<td>11/13/2018</td>
<td>NBA's interview of OHA employee</td>
<td>In Person</td>
<td>CLA, interviewed Mona Bernardino concerning the LLCs. Present in this interview was Anna Eleni-Sneed of ES&amp;A, legal counsel for the LLCs.</td>
</tr>
<tr>
<td>54</td>
<td>11/9/2018</td>
<td>OHA's receipt of two of the documents requested by Wednesday or Thursday of the following week (11/14/2018 or 11/15/2018).</td>
<td>Email</td>
<td>CLA, provided OHA with two of the requested documents.</td>
</tr>
<tr>
<td>53</td>
<td>11/5/2018</td>
<td>OHA's interview of OHA employee</td>
<td>Email</td>
<td>CLA, emailed OHA to confirm interview with Mr. Crabbe on 11/14/2018 from 10:30 am to 12:30 pm.</td>
</tr>
</tbody>
</table>

**Timeline of Engagement Events** (As of March 8, 2019)
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<tbody>
<tr>
<td>11/29/2018</td>
<td>OHA</td>
<td>Notification that Trustee Lindsey will no longer be the Resource Management Committee Chair</td>
<td>Noted that Lindsey was re-elected as a trustee and believed that she would no longer be the Resource Management Committee Chair. She apologized for CLA not receiving that notice of her election.</td>
</tr>
<tr>
<td>11/27/2018</td>
<td>OHA</td>
<td>Email</td>
<td>CLA, Lindsey, and OHA exchanged an email to discuss the impact of this project on the LLC's financial statements.</td>
</tr>
<tr>
<td>12/13/2018</td>
<td>OHA</td>
<td>Email</td>
<td>OHA provided a letter that communicated an interviewing request for Trustee Lei. An interview with Lei was scheduled for the next day.</td>
</tr>
<tr>
<td>12/6/2018</td>
<td>OHA</td>
<td>Email</td>
<td>OHA provided documents via secure email transfer. CLA received four documents.</td>
</tr>
<tr>
<td>12/27/2018</td>
<td>OHA</td>
<td>Email</td>
<td>OHA provided CLA with a revised draft of the 2018-2019 budget report.</td>
</tr>
</tbody>
</table>

**Timeline of Engagement Events**

**As of March 8, 2019**

Event | Entity | Date       | Details |
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<td>OHA</td>
<td>11/27/2018</td>
<td>Email</td>
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<tr>
<td></td>
<td>OHA</td>
<td>11/29/2018</td>
<td>Notification</td>
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<td></td>
<td>OHA</td>
<td>12/13/2018</td>
<td>Email</td>
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<td>12/6/2018</td>
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<td></td>
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<td>Email</td>
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<td>12/6/2018</td>
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<td>12/27/2018</td>
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<td>11/27/2018</td>
<td>Email</td>
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<tr>
<td></td>
<td>OHA</td>
<td>11/29/2018</td>
<td>Notification</td>
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<td>OHA</td>
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<td>OHA</td>
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**As of March 8, 2019**

Event | Entity | Date       | Details |
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<td>33</td>
<td>2/8/2019</td>
<td>Email</td>
<td>OHA's communication to Chair, Trustee Dan Ahuna was noted by the OHA Board of Trustees as the new RM Committee Chair and Trustee Robert Lindsey retained as Vice-Chair.</td>
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<td>32</td>
<td>2/1/2019</td>
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<td>18</td>
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As of March 8, 2019

Timeframe of Engagement Events

Office of Hawaiian Affairs
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<thead>
<tr>
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<tr>
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<td>OHA</td>
<td>Email CLA followed up with Phyllis Ono-Evangelista regarding the status of documents requested.</td>
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<td>74</td>
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<td>In-Person CLA meeting with RM Committee Leadership at OHA office.</td>
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### UPDATED TIMETABLE

#### Milestone 1: Submit Draft Report to RM Committee Leadership
- **Due Date**: September 14, 2019
- **Description**: Review documents provided by OHA/LLCs and additional support for contracts and disbursements (week 1 and 2).
- **Supporting Documents**: Additional sample of contracts and supporting documentation for contracts and disbursements.

#### Milestone 2: Submit Final Report to OHA/LLCs
- **Due Date**: October 1, 2019
- **Description**: Prepare additional sample and supporting documentation for contracts and disbursements.

### WORK ACCOMPLISHED TO DATE

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<thead>
<tr>
<th>Milestone</th>
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<th>Description</th>
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<td>1.</td>
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<td>Execute contract between OHA and CLA</td>
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<td>Finalize CFA meetings with the CFA members</td>
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<td>3.</td>
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<td>Finalize contract with OHA and CLA</td>
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<td>Finalize CFA meetings with the CFA members</td>
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<td>Finalize contract with OHA and CLA</td>
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### Office of Hawaiian Affairs

MEETING OF THE COMMITTEE ON RESOURCE MANAGEMENT

DATE: Wednesday, April 10, 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. Public Testimony*

III. Executive Session‡
   A. Consultation with Board Counsel Robert G. Klein, Esq. on questions and issues pertaining to the Resource Management Committee of the OHA-BOT’s powers, duties, privileges, immunities and liabilities regarding OHA Contract #3284. 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 relating to the Trustee Protocol Allowance policy. Pursuant to HRS §92-5(a)(4).
   C. Consultation with attorneys William Yuen, Esq., Judy Tanaka, Esq., and Board Counsel 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 and management options for those LLCs in light of the Minute Order issued in Andrew Walden v. Hi’ilei Aloha LLC, Ho’okele Pono LLC, and Hi’ipaka LLC. Pursuant to HRS §92-5(a)(4)

IV. New Business†
   A. Action Item RM #19-02: Amendment to Extend the Time of Performance for OHA Contract #3284
   B. 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.
   C. Presentation of the audited financial statements and independent auditor’s report; and report of independent certified public accountants in accordance with government auditing standards and uniform guidance, of the Office of Hawaiian Affairs for the fiscal year ended June 30, 2018.

V. 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 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 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: 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.
**COMMITTEE ON RESOURCE MANAGEMENT (RM)**

**DATE:** April 10, 2019  
Motion:  
Vote:

**AGENDA ITEM:** IV. New Business†  
A. Action Item RM #19-02: Amendment to Extend the Time of Performance for OHA Contract #3284

**MOTION:** To approve RM #19-02 to authorize and approve an amendment to extend the Time of Performance for OHA Contract #3284 from April 30, 2019 to December 16, 2019. Moreover, any document requests to OHA, either outstanding or new requests, if any, shall be responded to as soon as possible, but in no case after April 29, 2019 such that the timeline for performance by CLA is not extended further.

**AMENDMENT:**

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<th>A'OLE (NO)</th>
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<td>CHAIR DAN AHUNA</td>
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**TOTAL VOTE COUNT**

| 8 | 1 |

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

**DISCUSSION:**
April 10, 2019

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

Madame Chair Machado,

The Committee on Resource Management, having met on April 10, 2019 and after full and free discussion, recommends approval of the following action to the Board of Trustees:

Approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a Trustee’s duties and responsibilities as shown in Attachment “A” and Corresponding and Conforming Changes to BOT Operations Manual as shown in Attachment “B.”

Relevant attachments are included for your information and reference.

Attachment(s):

1) Action Item RM#19-03
2) RM#19-03 Roll Call Vote Sheet
Committee on Resource Management
April 10, 2019 Page 1 of 2

Trustee Dan Ahuna, Chair

Trustee Leina'ala Ahuisa, Member

Trustee Keli'i Akina, Member

Trustee Kaiei Akaka, Member

Trustee Robert Lindsey, Member

SIGNATURE NOT AVAILABLE
Trustee Colette Machado, Member

Trustee Hulu Lindsey, Member

Trustee John Waihe'e, IV, Member

Trustee Brendon Lee, Member
Action Item Title: 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.

Prepared By: Lōpaka Baptiste
Ke Kua Kāko'o, Trustee Aide

Reviewed By: Carol Ho'omanawanui
Ke 'Aho Kele, Chief of Staff

Reviewed By: Everett Ohta
Pōhaku Kihi, Kānāwai Pili Nohona a me Nā Pono 'Ōiwi,
Counsel for Environmental Law and Native Rights

Reviewed By: Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

Reviewed By: Robert G. Klein
Pōhaku Kihi Nui, Board Counsel

Reviewed By: John Waihe’e IV
Ke Kua, Trustee At-Large
Ad Hoc Committee on Grants and Sponsorships, Vice-Chair

Reviewed By: Colette Y. Machado
Ke Kauhuhu, Board of Trustees Chair
Ad Hoc Committee on Grants and Sponsorships, Chair

Reviewed By: Dan Ahuna
Luna Ho'omalu o ke Kōmike RM, RM Committee Chairperson
I. **ACTION ITEM**

Approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee’s duties and responsibilities as shown in Attachment “A” and Corresponding and Confirming Changes to the BOT Operations Manual as shown in Attachment “B.”

II. **ISSUE**

Whether or not Section 3.5.n. of the OHA Board of Trustees Executive Policy Manual should be amended along with corresponding and conforming changes to Section X.42 of the OHA Board of Trustees Operations Manual in order to establish new criteria and procedures for a Trustee Protocol Allowance that complies with OHA’s mission, OHA’s policies, trustees’ fiduciary duties, and applicable state law.

III. **DISCUSSION**

**History**

The OHA BOT first established a Trustee allowance on June 28, 1991. The action taken by the BOT established an allowance for each Trustee to cover incidental expenses connected to Trustee functions and duties and adopted governing guidelines. The annual allowance funding was set at $7,200 per Trustee, allotted on a semi-annual basis. The source of funds was from OHA special funds.

The purposes of the Trustee allowance were (a) To develop and maintain an ongoing communication network with beneficiaries and the general public; and (b) To promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues. Then-BOT Counsel Sherry P. Broder provided the then OHA Administrator with a legal opinion regarding the proper structure and use of the Trustee Annual Allowance on May 29, 1991.

In 1993, a Trustee protocol allowance was added to Section 10-9, Hawai‘i Revised Statutes by the Hawai‘i State Legislature. The applicable language reads:

> [Members of the OHA board:]

> (4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a member’s duties and responsibilities.

The language to put a Trustee protocol allowance into law was not in the first draft of the authorizing legislation, which originated in the Senate as legislation related to Trustee compensation (salary). Language relating to a Trustee protocol allowance first arose during a House hearing in the House Committee on Hawaiian Affairs. However, the inclusion of this allowance language raised concerns on the floor of the House of
Representatives. Representatives spoke both against and in favor of the allowance account, and ultimately, the language passed into law.

In response to the Hawai‘i State Auditor’s (“State Auditor”) 2001 audit of OHA and concerns regarding the Trustee Allowance Program, the now-inactive Committee on Policy and Planning, chaired by Trustee John Waihe‘e IV, pursued a measure which would have made the Trustee allowance a reimbursable fund. That action did not receive the votes to pass Committee, and did not advance to the BOT for consideration.

In 2013, the BOT expanded the use of the fund with the passage of Action Item ARM #13-11, in response to Trustees’ desires to provide funds to recipients who were otherwise ineligible for OHA grants. The combined fund of allowances and sponsorship funds became the Trustee Sponsorship and Annual Allowance Fund (TSAAF), with funding set at $22,200 per Trustee.

A moratorium was placed on the TSAAF on February 27, 2018, in response to concerns raised in State Auditor Report No. 18-03.

Ad Hoc Committee on Grants and Sponsorships discussions, findings, and recommendations

On August 1, 2017, the OHA BOT approved the formation of the Ad Hoc Committee on Grants and Sponsorships ("Ad Hoc Committee"), with Trustee Colette Y. Machado as Chair, Trustee John Waihe‘e IV as Vice Chair, and David Laeha, Lōpaka Baptist, Misti Pali-Oriol, and Monica Morris as members, passed with six yes votes and three excused absences. The Ad Hoc Committee was created consistent with Hawai‘i Revised Statutes §92-2.5(b)(1). The review of the TSAAF fell within the purview of this Ad Hoc Committee.

The issuance of the State Auditor’s Report No. 18-03 in February 2018, raised an immediate need to review of the TSAAF and CEO-initiated sponsorships. In a proactive response to concerns raised by the State Auditor in its report, the BOT took the cautious measure of placing a moratorium on the TSAAF on February 27, 2018 via Action Item BOT #18-01. That moratorium, effective February 27, 2018, on both the TSAAF and CEO-initiated sponsorships, also called for the immediate return of the unused balance of each Trustee’s TSAAF allotment to OHA. This moratorium remains in effect. The moratorium passed with six yes votes and three no votes.

The Ad Hoc Committee convened, with the assistance of support staff, to review existing policies, review external guidelines, and to discuss a proposed revised policy. The Ad Hoc Committee reviewed the policies of other elected bodies, along with current OHA policies and guidelines, Trustee fiduciary duties, the state ethics code, and audits conducted of other governing bodies.

In its September 20, 2018 memorandum to the OHA Board of Trustees, the Ad Hoc Committee made the following recommendations:
• Rename the allowance to the Trustee Protocol Allowance (TPA) to match the statutory language contained in Hawai'i Revised Statutes § 10-9;
• Revert to the original purposes of the Trustee allowance – establishing a communication network and promoting a broader understanding and participation in the resolution of Native Hawaiian issues;
• Set the current level for the TPA at $7,200.00 per Trustee seat, which was the funding level prior to enactment of policy amendments in Action Item ARM #13-11;
• Do not reallocate the leftover balance of the budgeted TSAAF funds totaling $135,000 ($15,000 per Trustee seat), which represented the remaining Trustee "sponsorship" portion of the funds, until the BOT takes a future vote on how those remaining funds are to be disbursed;
• Make the TPA a reimbursable fund;
• Specify allowable and disallowable expenses; and
• Establish an appeal process when determinations made by the Administration disallows an expenditure.

The detailed discussion and analysis in the Ad Hoc Committee's September 20, 2018 memorandum on its findings and recommendations related to the TPA, which was distributed to the BOT at its October 2, 2018 meeting, provides the basis for the proposed policy amendments in Attachment A.

Summary of the October 11, 2018 Board of Trustees Discussions on the Ad Hoc Committee’s findings and recommendations related to the proposed TPA policy amendments

Following the dissemination of the Ad Hoc Committee’s finding on October 2, 2018, the OHA BOT held discussions on the TPA on October 11, 2018. The Trustees offered the following specific suggestions to change or edit the draft TPA policy:

• Have the BOT Chair approve expenditures for each Trustee; and
• Increase the total TPA amount per Trustee from $7,200 to $12,000 annually. Another option is to increase the total TPA amount per Trustee to $13,804 annually, the same amount as the Hawai'i Senate.

Two suggestions were made to defer the approval of the proposed TPA policy amendments until either the BOT drafts policies for the Trustee sponsorship portion that can be reviewed concurrently or until the Trustees have had more time to discuss the proposed TPA policy. Neither recommendation was adopted by formal BOT action and the matter was referred to the Resource Management Committee for further review and action.

Approving this action item as it is currently written will implement the following:
• The February 27, 2018, moratorium on Trustee allowances will be lifted and the TPA policy will be effective upon the approval of the second reading of this action item by the Board of Trustees.
• Each Trustee Protocol Allowance account begins with a fund of $7,200, available on a reimbursable basis for eligible expenses, which are prescribed under the policy amended by this action item.
• The TPA is available per fiscal year cycle (July 1 through June 30). The TPA shall be retained by OHA. Unspent amounts in the TPA fund will lapse at the end of the fiscal year and will not carry over. Each TPA will start on July 1.
• Trustees will have access and be able to utilize TPA funds beginning July 1, 2019.
• The CEO shall be guided by the TPA policy to develop internal guidelines and procedures for the use and administration of the TPA, including reporting requirements, required documentation, and auditable record keeping.
• The budgeted TSAAF funds for FY2019, totaling $199,800 ($22,200 per Trustee seat), will remain under continued moratorium until the BOT decides how those remaining funds are to be reallocated in FY2019, or such TSAAF funds will lapse into fiscal reserve.
• The moratorium on the Trustee and CEO-initiated Sponsorships will remain in place.

IV. ALTERNATIVES

A. Approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee’s duties and responsibilities as shown in Attachment “A” and Corresponding and Conforming Changes to the BOT Operations Manual as shown in Attachment “B”

B. Do not approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee’s duties and responsibilities as shown in Attachment “A” and Corresponding and Conforming Changes to the BOT Operations Manual as shown in Attachment “B”

C. Take no action

V. RECOMMENDATION

Approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a trustee’s duties and responsibilities as shown in Attachment “A” and Corresponding and Conforming Changes to BOT Operations Manual as shown in Attachment “B.”

The approval of this Executive Policy Amendment effectively lifts the moratorium on Trustee allowance that was enacted by the Board of Trustees in BOT #18-01 on February 27, 2018; however, the moratorium on Trustee sponsorships and CEO-initiated sponsorships remain in place until further action is taken on these policies.

VI. TIMEFRAME
Immediate action is recommended.

The amended OHA BOT Executive Policy relating to Trustee Protocol Allowance will take effect immediately upon approval by the BOT at its second reading approved by a majority (5) vote of all the members to which the BOT is entitled, pursuant to the OHA Board of Trustees Executive Policy Manual (Revised, February 2012), Subseries 1020 Policy Formation, Subsection 1.2.a.

The TPA is available for use beginning July 1, 2019.

VII. FUNDING SOURCE

The TPA is set at $7,200 per Trustee seat and totals $64,800 for all nine (9) Trustees. Funding will be budgeted in the FY2020 & FY2021 Biennium Budget.

VIII. ATTACHMENT

A. Proposed amendments to OHA Board of Trustees’ Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.
B. Conforming Changes to the OHA Board of Trustees’ Operations Manual, Section X. Fiscal, Subsection 42. Trustee Sponsorship and Annual Allowance Procedures
C. The Ad Hoc Committee on Grants and Sponsorship’s memorandum to the OHA Board of Trustees dated September 20, 2018 regarding its findings and recommendations to the Trustee Sponsorship and Annual Allowance Fund
ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees’ Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

The current OHA BOT executive policy relating to Trustee Sponsorship and Annual Allowance Fund (TSAAF) is found in Action Item ARM #13-11 dated November 20, 2013, Attachment A (note: approved changes are not incorporated yet into the manual).

Changes and edits to the OHA BOT Executive Policy are displayed as follows:
- New text that is added or inserted is displayed in underline or underscore; and
- Text that is deleted is displayed in strike-through.

DELETE

(Current approved policy)

Trustee Sponsorship and Annual Allowance Fund (TSAAF)

3.5.n.—Increasingly complex and diverse OHA projects such as investments, land development and management, and partnership agreements require enhanced capacity to immediately communicate and maintain communications with beneficiaries through electronic media and traditional communications methods.

1.—Each Trustee is allowed such amounts of the TSAAF as provided by the Board of Trustees to be used for incidental expenses connected with Trustee duties to include:

a.—developing and maintaining an ongoing communication network with beneficiaries and the general public such expenditures may include:

   (1) Copying and postage costs incurred in communicating with constituents;

   (2) Renting of facilities to meet with beneficiaries if OHA facilities are not available within reasonable vicinity of the activity or event location;

   (3) Facsimile, telecommunications, and other means of communications with constituents;
b. promoting a broader understanding of Hawaiian issues within the Hawaiian community and among the general public and to encourage participation in the resolution of those issues;

e. covering the costs connected with social and charitable functions a Trustee is expected to support and may include sponsoring or assisting a faith-based organization's halau, youth group, extracurricular after-school activities and sports activities provided those activities do not involve religious practices or activities;

d. covering official travel, registration fees, and associated costs to attend conferences, seminars or meetings;

e. to provide support for beneficiaries in their personal quest for self improvement, capacity building, and for education;

f. providing funding to purchase school and educational supplies and materials, audio visual presentation equipment, capacity building aids for schools and organizations which may include:

(1) Repairing, replacing, and purchasing of computer hardware including peripherals such as printers, scanners, modems, routers, and external hard drives for beneficiary organizations.

(2) Upgrade or purchase software for beneficiary organization use.

g. providing compassionate assistance to beneficiaries and their families for emergencies, natural disasters, and in their times of need. Examples of compassionate assistance may include but may not be limited to financial assistance for funeral or burial services, eye glasses and vision aids, hearing aids, dentures, personal care items, and wheelchairs, unmet needs of the elderly and persons with disabilities.

2. Expenditures from the TSAAF may be disallowed for any of the following reasons: because they are contrary to OHA’s mission to better the conditions of Hawaiians or because it contravenes this OHA policy or the law. The following
expenditures are specifically disallowed by this policy:

   a. any services provided and goods received for the personal benefit of the Trustee and/or immediate family members.

   b. Trustee's computer hardware and software.

   c. Trustee's general office equipment and furniture.

   d. grants and donations to religious and faith-based organizations for religious activities.

3. The annual TSAAF for each Trustee shall be $2,000.00 plus any additional amount approved in its Total Operating Budget for this express purpose. Unspent amounts in the Fund shall be returned to the OHA treasury via the OHA CEO. Each Trustee's account will be replenished each year to a minimum of $7,200.00.

4. Each Trustee will submit to the OHA CEO quarterly reports of expenditures made from the TSAAF. As much documentation that can be provided for each expenditure should be attached to the quarterly reports. Documentation may include initial requests for assistance from a beneficiary or grantee, brochures or flyers or pictures depicting the events sponsored, and expressions of thanks and gratitude for the Trustee's grant or sponsorship.

5. It is not intended that the Trustee Sponsorship and Allowance Fund supersede, replace, diminish, or reduce the statutory compensation allowed to Trustees as provided for in Chapter 10, Hawai‘i Revised Statutes, as amended. It is also not intended to be used for personal gain by a Trustee, which could result in converting the personal use portion of the fund as additional taxable income that will be reported to the Internal Revenue Service.

6. The CEO shall be guided by this policy to develop internal guidelines and procedures for the use and administration of the fund including reporting requirements and auditable record-keeping.

7. The Fund created by this policy will be called the OHA Board of Trustees'
ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

Sponsorship and Annual Allowance Fund and the report of expenditures will be called the Trustee Quarterly Sponsorship and Annual Allowance Expenditure Report.

ADD/INSERT
(Trustee Allowance Protocol Policy Amendments)

**Trustee Protocol Allowance (TPA)**

3.5.n. Each Trustee is allowed a Trustee Protocol Allowance (TPA) to be used to cover expenses that are reasonably related to a Trustee’s official duties and responsibilities (i.e., the normal and ordinary types of expenditures that a Trustee is reasonably expected to incur in performing his or her representational and fiduciary duties), that are consistent with OHA’s mission to better the conditions of Native Hawaiians, and that comply with applicable laws and OHA policies. Use of the TPA for personal purposes or purposes that are not reasonably related to a Trustee’s official duties and responsibilities is prohibited, and such personal use may violate the Fair Treatment law under the state Ethics Code, Section 84-13, Hawai‘i Revised Statutes (HRS) and may result in the personal use portion of the allowance being converted to additional taxable income that must be reported to the Internal Revenue Service.

The purpose of the TPA is to develop and maintain an ongoing communication network with beneficiaries and the general public, to promote a broader understanding of Native Hawaiian issues within the Native Hawaiian community and among the general public, and to encourage participation in the resolution of those issues; provided that such communications comply with applicable laws and OHA policies, such as the Board of Trustees’ Code of Conduct and restrictions related to campaign activities.

1. Each Trustee is allowed an annual allowance, referred to as the “Trustee Protocol Allowance” or “TPA” and as provided by HRS 10-9(4), in an amount determined by the Board of Trustees, to be used to cover expenses incurred in the course of a Trustee’s official duties and responsibilities. Allowable uses of TPA funds are:

   a. Communication expenses dedicated solely to OHA business:
ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

(1) Service plans for home office internet, home office phone and fax, and cellular phone, and
(2) Web-based communication services;

b. Copying and postage costs;

c. Office supplies;

d. Books and reference materials;

e. Renting of meeting facilities, if OHA facilities are not available within a reasonable vicinity of the activity or event location, and related expenses, such as security services, cleaning or maintenance charges, and rental of equipment. Meetings must be organized and attended by a Trustee or Trustee’s staff to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees;

f. Reasonable expenses for food and beverages, provided that if the food or beverage expenses have been reimbursed by another source, such as per diem, then reimbursement for that portion from the TPA is prohibited:

(1) Purchased for a meeting or function, which includes one or more person(s) who are not a Trustee or an employee of OHA, the purpose of which is to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees; or
(2) Purchased for Trustees and staff who are required to be present at a Board or Committee meeting that extends through the lunch or evening hours. Expenses for food and beverages consumed by a Trustee or staff as part of their daily work during the scope of their normal work day shall not be reimbursed;

g. Reasonable expenses for lei and gifts, which are customarily exchanged with fellow officials, honorees, special guests, and dignitaries at an event; and
h. Reasonable expenses related to a Trustee’s official travel, registration fees, and associated costs to attend conferences, seminars, or meetings, which shall comply with existing OHA travel guidelines and approvals; provided that if the travel cost or associated expenses have been reimbursed by another source (example: per diem), then reimbursement for that portion from the TPA is prohibited.

2. Certain expenditures may be found to be inappropriate uses of the TPA because: the expenditure appears to be more personal in nature or otherwise does not appear to be reasonably related to a Trustee’s official duties and responsibilities; the expenditure is contrary to OHA’s mission to better the conditions of Native Hawaiians; or the expenditure contravenes OHA policies or the law. The following expenditures are specifically disallowed by this policy:

a. Food or beverages for Trustees and staff only, except when reasonably related to a Trustee’s or staff member’s official duties, e.g., purchase of meals for Trustees and staff who are required to be present at a Board or Committee meeting that extends through the lunch or evening hours. Food or beverages purchased to thank or appreciate staff or for social occasions or events, such as birthday celebrations, farewell parties, or retirement parties, are personal expenses and are not reasonably related to a Trustee’s official duties;

b. Alcoholic beverages;

c. Political or charitable contributions;

d. Expenses related to campaign activities;

e. Expenses which are personal in nature, such as dry cleaning expenses, transportation costs to and from work (including mileage), legal fees and costs, monthly parking costs for employee or Trustee parking, and airline club membership and lounge access;

f. Gifts: purchase of retirement gifts; thank you or appreciation gifts; bereavement, funeral, or sympathy gifts or flowers; welcome gifts; farewell gifts; anniversary gifts; birthday gifts; congratulation gifts; and any other gifts
ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees' Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

The current OHA BOT executive policy relating to Trustee Sponsorship and Annual Allowance Fund (TSAAF) is found in Action Item ARM #13-11 dated November 20, 2013, Attachment A (note: approved changes are not incorporated yet into the manual).

Changes and edits to the OHA BOT Executive Policy are displayed as follows:
- New text that is added or inserted is displayed in underline or underscore; and
- Text that is deleted is displayed in strike-through.

DELETE
(Current approved policy)

Trustee Sponsorship and Annual Allowance Fund (TSAAF)

3.5.n.— Increasingly complex and diverse OHA projects such as investments, land development and management, and partnership agreements require enhanced capacity to immediately communicate and maintain communications with beneficiaries through electronic media and traditional communications methods.

1. Each Trustee is allowed such amounts of the TSAAF as provided by the Board of Trustees to be used for incidental expenses connected with Trustee duties to include:

   a. developing and maintaining an ongoing communication network with beneficiaries and the general public such expenditures may include:

      (1) Copying and postage costs incurred in communicating with constituents.

      (2) Renting of facilities to meet with beneficiaries if OHA facilities are not available within reasonable vicinity of the activity or event location.

      (3) Facsimile, telecommunications, and other means of communications with constituents.
b.—promoting a broader understanding of Hawaiian issues within the Hawaiian community and among the general public and to encourage participation in the resolution of those issues;

e.—covering the costs connected with social and charitable functions a Trustee is expected to support and may include sponsoring or assisting a faith-based organization’s halau, youth group, extracurricular after school activities and sports activities provided those activities do not involve religious practices or activities.

d.—covering official travel, registration fees, and associated costs to attend conferences, seminars or meetings;

e.—to provide support for beneficiaries in their personal quest for self-improvement, capacity building, and for education;

f.—providing funding to purchase school and educational supplies and materials, audio-visual presentation equipment, capacity building aids for schools and organizations which may include:

(1) Repairing, replacing, and purchasing of computer hardware including peripherals such as printers, scanners, modems, routers, and external hard drives for beneficiary organizations

(2) Upgrade or purchase software for beneficiary organization use.

g.—providing compassionate assistance to beneficiaries and their families for emergencies, natural disasters, and in their times of need. Examples of compassionate assistance may include but may not be limited to financial assistance for funeral or burial services, eye glasses and vision aids, hearing aids, dentures, personal care items, and wheel chairs, unmet needs of the elderly and persons with disabilities.

2.—Expenditures from the TSAAF may be disallowed for any of the following reasons: because they are contrary to OHA’s mission to better the conditions of Hawaiians or because it contravenes this OHA policy or the law. The following
expenditures are specifically disallowed by this policy:

a. any services provided and goods received for the personal benefit of the Trustee and/or immediate family members.

b. Trustee’s computer hardware and software.

c. Trustee’s general office equipment and furniture.

d. grants and donations to religious and faith based organizations for religious activities.

3. The annual TSAAF for each Trustee shall be $7,200.00 plus any additional amount approved in its Total Operating Budget for this express purpose. Unspent amounts in the Fund shall be returned to the OHA treasury via the OHA CEO. Each Trustee’s account will be replenished each year to a minimum of $7,200.00.

4. Each Trustee will submit to the OHA CEO quarterly reports of expenditures made from the TSAAF. As much documentation that can be provided for each expenditure should be attached to the quarterly reports. Documentation may include initial requests for assistance from a beneficiary or grantee, brochures or flyers or pictures depicting the events sponsored, and expressions of thanks and gratitude for the Trustee’s grant or sponsorship.

5. It is not intended that the Trustee Sponsorship and Allowance Fund supersede, replace, diminish, or reduce the statutory compensation allowed to Trustees as provided for in Chapter 10, Hawai’i Revised Statutes, as amended. It is also not intended to be used for personal gain by a Trustee, which could result in converting the personal use portion of the fund as additional taxable income that will be reported to the Internal Revenue Service.

6. The CEO shall be guided by this policy to develop internal guidelines and procedures for the use and administration of the fund including reporting requirements and auditable record keeping.

7. The Fund created by this policy will be called the OHA Board of Trustees'
ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000 ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual Allowance Fund (TSAAF), 3.5.n.

Sponsorship and Annual Allowance Fund and the report of expenditures will be called the Trustee Quarterly Sponsorship and Annual Allowance Expenditure Report.

ADD/INSERT
(Trustee Allowance Protocol Policy Amendments)

Trustee Protocol Allowance (TPA)

3.5.n. Each Trustee is allowed a Trustee Protocol Allowance (TPA) to be used to cover expenses that are reasonably related to a Trustee's official duties and responsibilities (i.e., the normal and ordinary types of expenditures that a Trustee is reasonably expected to incur in performing his or her representational and fiduciary duties), that are consistent with OHA's mission to better the conditions of Native Hawaiians, and that comply with applicable laws and OHA policies. Use of the TPA for personal purposes or purposes that are not reasonably related to a Trustee's official duties and responsibilities is prohibited, and such personal use may violate the Fair Treatment law under the state Ethics Code, Section 84-13, Hawai‘i Revised Statutes (HRS) and may result in the personal use portion of the allowance being converted to additional taxable income that must be reported to the Internal Revenue Service.

The purpose of the TPA is to develop and maintain an ongoing communication network with beneficiaries and the general public, to promote a broader understanding of Native Hawaiian issues within the Native Hawaiian community and among the general public, and to encourage participation in the resolution of those issues; provided that such communications comply with applicable laws and OHA policies, such as the Board of Trustees' Code of Conduct and restrictions related to campaign activities.

1. Each Trustee is allowed an annual allowance, referred to as the “Trustee Protocol Allowance” or “TPA” and as provided by HRS 10-9(4), in an amount determined by the Board of Trustees, to be used to cover expenses incurred in the course of a Trustee's official duties and responsibilities. Allowable uses of TPA funds are:

   a. Communication expenses dedicated solely to OHA business:
(1) Service plans for home office internet, home office phone and fax, and cellular phone, and
(2) Web-based communication services;

b. Copying and postage costs;

c. Office supplies;

d. Books and reference materials;

e. Renting of meeting facilities, if OHA facilities are not available within a reasonable vicinity of the activity or event location, and related expenses, such as security services, cleaning or maintenance charges, and rental of equipment. Meetings must be organized and attended by a Trustee or Trustee’s staff to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees;

f. Reasonable expenses for food and beverages, provided that if the food or beverage expenses have been reimbursed by another source, such as per diem, then reimbursement for that portion from the TPA is prohibited:

(1) Purchased for a meeting or function, which includes one or more person(s) who are not a Trustee or an employee of OHA, the purpose of which is to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees; or

(2) Purchased for Trustees and staff who are required to be present at a Board or Committee meeting that extends through the lunch or evening hours. Expenses for food and beverages consumed by a Trustee or staff as part of their daily work during the scope of their normal work day shall not be reimbursed;

g. Reasonable expenses for lei and gifts, which are customarily exchanged with fellow officials, honorees, special guests, and dignitaries at an event; and
h. Reasonable expenses related to a Trustee’s official travel, registration fees, and associated costs to attend conferences, seminars, or meetings, which shall comply with existing OHA travel guidelines and approvals; provided that if the travel cost or associated expenses have been reimbursed by another source (example: per diem), then reimbursement for that portion from the TPA is prohibited.

2. Certain expenditures may be found to be inappropriate uses of the TPA because: the expenditure appears to be more personal in nature or otherwise does not appear to be reasonably related to a Trustee’s official duties and responsibilities; the expenditure is contrary to OHA’s mission to better the conditions of Native Hawaiians; or the expenditure contravenes OHA policies or the law. The following expenditures are specifically disallowed by this policy:

a. Food or beverages for Trustees and staff only, except when reasonably related to a Trustee’s or staff member’s official duties, e.g., purchase of meals for Trustees and staff who are required to be present at a Board or Committee meeting that extends through the lunch or evening hours. Food or beverages purchased to thank or appreciate staff or for social occasions or events, such as birthday celebrations, farewell parties, or retirement parties, are personal expenses and are not reasonably related to a Trustee’s official duties:

b. Alcoholic beverages;

c. Political or charitable contributions;

d. Expenses related to campaign activities;

e. Expenses which are personal in nature, such as dry cleaning expenses, transportation costs to and from work (including mileage), legal fees and costs, monthly parking costs for employee or Trustee parking, and airline club membership and lounge access;

f. Gifts: purchase of retirement gifts; thank you or appreciation gifts; bereavement, funeral, or sympathy gifts or flowers; welcome gifts; farewell gifts; anniversary gifts; birthday gifts; congratulation gifts; and any other gifts
for Trustees, staff, and others, except for gifts purchased in compliance with subsection 1.g., above;

g. Tickets for recreational or entertainment events and fundraisers;

h. Membership fees and dues for business, community or social organizations;

i. Financial support, grants, loans, or sponsorships, whether direct or indirect, to individuals, groups, or organizations;

j. Any expenses reimbursed from another source that would otherwise duplicate payment or reimbursement;

k. Any services provided and goods received for the personal benefit of the Trustee or his or her immediate family members, other Trustees or their immediate family members, and OHA employees;

l. Computer hardware and software;

m. General office and communication equipment; and

n. General office furniture.

3. The annual TPA for each Trustee shall be $7,200.00, or other amount approved by the Board, per fiscal year cycle (July 1 through June 30). The TPA shall be retained by OHA. Unspent amounts in the TPA fund will lapse at the end of the fiscal year and will not carry over. Each TPA will start on July 1.

4. To utilize the TPA retained by OHA, Trustees must submit a request for reimbursement or a request for an advance; provided that such an advance will be payable directly to a merchant or vendor only. Trustees must show that the primary purpose of the expenditure is in support of or a result of an official Trustee duty consistent with the allowable expenses listed above. The Trustee shall be required to fill out a certification form in which the Trustee certifies that the claimed reimbursement or advance is true and correct and that it complies with applicable laws and OHA policies.
5. In processing a request for reimbursement or advance, OHA Administration may request additional information necessary to determine compliance of a claimed expenditure with applicable laws and OHA policies. The approval by OHA Administration of a request for reimbursement or advance shall not be construed to mean that an expenditure complies with the state ethics code; the final authority on the ethics code is the Hawai‘i State Ethics Commission. It is the responsibility of the individual Trustee to ensure compliance with the state ethics code and Trustees are encouraged to consult with the state Ethics Commission on questions related to compliance with the state ethics code.

6. Items purchased with TPA funds are the property of OHA. Non-perishable and non-consumable items purchased with the TPA, except for gifts purchased in compliance with subsection 1.g., above, shall be surrendered to the OHA Administration upon the Trustee’s separation from OHA.

7. A TPA expense must be deducted from the same fiscal year’s allocation in which the expense was incurred. A prior year’s expense cannot be paid from the current or a future fiscal year’s TPA allocation. Each Trustee is responsible for paying any TPA expenses incurred that are in excess of a given fiscal year’s TPA allocated amount.

8. The use of the TPA to purchase goods or services in the amount of $2,500 or more shall be from businesses that provide proof of compliance with state and federal taxes and the Department of Labor and Industrial Relations (DLIR), and are also in good standing with the Department of Commerce and Consumer Affairs (DCCA). Further, the purchase of goods or services in the amount of $5,000 or more shall be in accordance with all applicable laws and administrative rules governing procurement.

9. In cases where an expenditure is determined to be impermissible by OHA Administration, the Trustee or the CEO may consult with the Hawai‘i State Ethics Commission, as necessary. The Trustee may appeal the determination made by OHA Administration, in writing, to the Chairperson of the BOT. The Chairperson shall render a written decision on the appeal within seven (7) business days, which shall be final.
ATTACHMENT A

Proposed Amendments to the OHA Board of Trustees Executive Policy Manual, SERIES 3000
ADMINISTRATION, Subseries 3050 Fiscal, Subsection Trustee Sponsorship and Annual
Allowance Fund (TSAAF), 3.5.n.

10. This policy is subject to the Board of Trustees' Code of Conduct and sanctions contained therein.

11. OHA Administration shall compile and transmit to the OHA BOT a quarterly report of expenditures made by each Trustee from his or her TPA. The quarterly report of expenditures shall also be posted to OHA’s public website in a timely manner thereafter.

12. It is not intended that the TPA supersede, replace, diminish, or reduce the statutory compensation allowed to Trustees as provided for in Chapter 10, Hawai‘i Revised Statutes, as amended.

13. The CEO shall be guided by this policy to develop internal guidelines and procedures for the use and administration of the TPA, including reporting requirements, required documentation, and auditable record keeping.

14. The Fund created by this policy will be called the OHA Board of Trustees’ Protocol Allowance Fund and the quarterly report of expenditures will be called the Trustee Quarterly Protocol Allowance Expenditure Report.
ATTACHMENT B

Corresponding and Confirming Changes to the BOT Operations Manual, Section X. Fiscal, Subsection 42. Trustee Sponsorships and Annual Allowance Procedures

The current Trustee Sponsorship and Annual Allowance Procedures adopted to the OHA BOT Operations Manual is found in Action Item ARM #13-11 dated November 20, 2013, Attachment B (note: approved changes are not incorporated yet into the manual).

Changes and edits to the OHA BOT Executive Policy are displayed as follows:
- New text that is added or inserted is displayed in underline or underscore; and
- Text that is deleted is displayed in strike-through.

DELETE
(Current approved procedures)

42. Trustee-sponsorship and annual allowance procedures

42.a.—Each Trustee is allowed an annual amount as provided by the Board to be used for developing and maintaining an ongoing communication network with beneficiaries (and the general public), to promote a broader understanding of Hawaiian issues within the Hawaiian community and among the general public, and to encourage participation in the resolution of those issues.

42.b.—Any part of the allowance that is used for personal gain by a Trustee or Trustee’s immediate family may be subject to IRS rules and State of Hawaii taxation.

42.c.—Procedures

42.c.1. On the first working day of the fiscal year (OHA’s fiscal year is July 1 through June 30) the CEO shall arrange to have deposited in each Trustee’s checking account the amount of the BOT approved allowance for that year, provided that the Trustee Quarterly Sponsorship and Annual Allowance Expenditure Report (TQSAER) received from the Trustees are up-to-date for all previous quarters and any unexpended funds are returned with the TQSAER for the quarter ending June 30.

42.c.2. Trustees prepare and submit TQSAER to the OHA Chief Financial Officer within fifteen (15) calendar days of the end of a quarter.
ATTACHMENT B

Corresponding and Confirming Changes to the BOT Operations Manual, Section X. Fiscal, Subsection 42. Trustee Sponsorships and Annual Allowance Procedures

42.c.3. The OHA CEO or his/her designee reviews each TQSAAER for compliance with OHA Executive Policy Manual and Chapter 10, HRS. Trustees are notified of any expenditure(s) that does/do not comply with the OHA Board of Trustees Executive Policy Manual and Hawaii Revised Statutes Chapter 10 and must reimburse OHA and must amend the quarterly expenditure report. Reports in compliance are forwarded to the OHA Comptroller for filing. All TQSAAER are maintained by OHA for six (6) years after audit.

42.c.4. Trustees must return any unexpended funds with the TQSAAER for the quarter ending June 30 of each year. Non-compliance will be reported to the BOT Chair and other appropriate authorities.

ADD/INSERT

(Trustee Protocol Allowance Procedures Amendments)

42. Trustee Protocol Allowance Procedures

42.a. Each Trustee is allowed a Trustee Protocol Allowance (TPA) to be used to cover expenses that are reasonably related to a Trustee's official duties and responsibilities (i.e., the normal and ordinary types of expenditures that a Trustee is reasonably expected to incur in performing his or her representational and fiduciary duties), that are consistent with OHA's mission to better the conditions of Native Hawaiians, and that comply with applicable laws and OHA policies. Use of the TPA for personal purposes or purposes that are not reasonably related to a Trustee's official duties and responsibilities is prohibited, and such personal use may also violate the Fair Treatment law under the state Ethics Code, Section 84-13, Hawai'i Revised Statutes (HRS) and may result in the personal use portion of the allowance being converted to additional taxable income that must be reported to the Internal Revenue Service.

42.b. The purpose of the TPA is to develop and maintain an ongoing communication network with beneficiaries and the general public, to promote a broader understanding of Native Hawaiian issues within the Native Hawaiian community and among the general public, and to encourage
ATTACHMENT B

Corresponding and Confirming Changes to the BOT Operations Manual, Section X.
Fiscal, Subsection 42. Trustee Sponsorships and Annual Allowance Procedures

participation in the resolution of those issues; provided that such communications comply with applicable laws and OHA policies, such as the Board of Trustees’ Code of Conduct and restrictions related to campaign activities.

42.c. The annual TPA for each Trustee shall be $7,200.00, or other amount approved by the Board, per fiscal year cycle (July 1 through June 30). The TPA shall be retained by OHA. Unspent amounts in the TPA fund will lapse at the end of the fiscal year and will not carry over. Each TPA will start on July 1.

42.d. To utilize TPA funds, Trustees must submit a request for reimbursement or a request for an advance; provided that such an advance will be payable directly to a merchant or vendor only.

42.e. The CEO shall be guided by Trustee Protocol Allowance policy to develop internal guidelines and procedures for the use and administration of the TPA, including reporting requirements, required documentation, and auditable record keeping.
DATE: September 20, 2018

TO: OHA Board of Trustees

FROM: Trustee Colette Y. Machado
Chair, Ad Hoc Committee on Grants and Sponsorships

SUBJECT: Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund

Background

Since 1991, the Office of Hawaiian Affairs ("OHA") has made individual annual allowance funds available to each Trustee on the Board of Trustees ("BOT"). In 1993, these funds were codified through the passage of legislation at the Hawai‘i State Legislature, with language allowing for Trustee use of a protocol allowance being placed into Section 10-9, Hawai‘i Revised Statutes. This purpose of this fund was expanded by BOT action in 2013 to include a sponsorship allowance, creating the Trustee Sponsorship and Annual Allowance Fund ("TSAAF").

On August 1, 2017, the OHA BOT approved the formation of the Ad Hoc Committee on Grants and Sponsorships ("Ad Hoc Committee"), with Trustee Colette Y. Machado as Chair, Trustee John Waihe‘e IV as Vice Chair, and David Lahea, Lōpaka Baptiste, Misti Pali-Oriol, and Monica Morris as members, passed with six yes votes and three excused absences. The Ad Hoc Committee was created consistent with Hawai‘i Revised Statutes§92-2.5(b)(1). The TSAAF is under the purview of this Ad Hoc Committee.

The issuance of the State Auditor’s Report No. 18-03 in February 2018, raised an immediate need to review of the TSAAF and CEO-initiated sponsorships. In a proactive response to concerns raised by the Hawai‘i State Auditor ("State Auditor") in his report, the BOT took the cautious measure of placing a moratorium on the TSAAF on February 27, 2018. That moratorium, effective February 27, 2018, on both the TSAAF and CEO-initiated sponsorships, also called for the immediate return of the unused balance of each Trustee’s TSAAF allotment to OHA. This moratorium remains in effect. The moratorium passed with six yes votes and three no votes.
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April 10, 2019

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The Ad Hoc Committee convened, with the assistance of support staff, to review existing policies, review external guidelines, and to discuss a proposed revised policy. This report serves as the Ad Hoc Committee’s findings and recommendations for the Trustee allowance.

Dates of Convened Meetings

| Thursday, January 25, 2018 | Friday, April 27, 2018 |
| Thursday, February 15, 2018 | Friday, May 25, 2018 |
| Thursday, March 1, 2018 | Wednesday, July 18, 2018 |
| Thursday, March 15, 2018 | Tuesday, August 14, 2018 |
| Thursday, April 5, 2018 | Tuesday, August 28, 2018 |
| Tuesday, April 10, 2018 | Thursday, September 14, 2018 |

Support Staff and Research Materials

In addition to the Ad Hoc Committee members, several members from the Administration staff were present at meetings to provide support in subject matter expertise and in program operations knowledge. These staff members were Everett Ohta from Corporation Counsel, Controller Gloria Li, and Public Relations Officer Sterling Wong. BOT staff Melissa Wennihan, Crayn Kauahi Akina, Carol Ho'omanawanui, Laurene Kaluau-Kealoha, and Dayna Pa provided logistical and technical support.

The Ad Hoc Committee studied, examined, and consulted with a variety of existing materials and publications. These included existing internal OHA policies, as well as those related to allowance expenditures for elected officials of other legislative bodies. These materials are:

- Section 10-9, Hawai'i Revised Statutes
  https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/HRS0010/HRS_0010-0009.htm
- Action Item ARM #13-11, “Approval of BOT Executive Policy Amendment relating to Trustee Sponsorship and Annual Allowance Fund as shown in Attachment “A” and Corresponding and Conforming Changes to BOT Executive Policies as shown in Attachment “B”
- Action Item PP-09.01, Committee on Policy & Planning (March 30, 2001) (not adopted).
- OHA Trustee Sponsorship and Annual Allowance Fund, Internal Guidelines and Procedures, May 2016
- Report No. 18-03, Audit of the Office of Hawaiian Affairs, A Report to the Governor and the Legislature of the State of Hawai‘i, February 2018
- Hawai‘i State Ethics Commission, Application of the State Ethics Code to Use of Legislative Allowance Fund, June 5, 2014
Guidelines on the Use of Legislators' Annual Allowance, posted July 24, 2014

2015-2016 Administrative and Financial Manual of the Senate, State of Hawai‘i,
Adopted January 21, 2015

Report No. 12-07, Audit of the Policies and Procedures Relating to the Honolulu
City Council’s Annual Contingency Allowance, Office of the City Auditor, City
and County of Honolulu
https://www.honolulu.gov/rep/site/oca/oca_docs/council_annual_contingency_all
owance_final_report.pdf

Historical Information

The OHA BOT first established a Trustee allowance on June 28, 1991. The action taken by the
BOT established an allowance for each Trustee to cover incidental expenses connected to
Trustee functions and duties and adopted governing guidelines. The annual allowance funding
was set at $7,200 per Trustee, allotted on a semi-annual basis. The source of funds was from
OHA special funds.

The purposes of the Trustee allowance were (a) To develop and maintain an ongoing
communication network with beneficiaries and the general public; and (b) To promote a broader
understanding of Hawaiian issues; and encourage participation in the resolution of those issues.
Then-BOT Counsel Sherry P. Broder provided the then OHA Administrator with a legal opinion
regarding the proper structure and use of the Trustee Annual Allowance on May 29, 1991.

In 1993, a Trustee protocol allowance was added to Section 10-9, Hawai‘i Revised Statutes by
the Hawai‘i State Legislature. The applicable language reads:

[Members of the OHA board:]

(4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a
member's duties and responsibilities.

The language to put a Trustee protocol allowance into law was not in the first draft of the
authorizing legislation, which originated in the Senate as legislation related to Trustee
compensation (salary). Language relating to a Trustee protocol allowance first arose during a
House hearing in the House Committee on Hawaiian Affairs. However, the inclusion of this
allowance language raised concerns on the floor of the House of Representatives.
Representatives spoke both against and in favor of the allowance account, and ultimately, the
language passed into law.

In response to the Hawai‘i State Auditor’s 2001 audit of OHA and concerns regarding the
Trustee Allowance Program, the now-inactive Committee on Policy and Planning, chaired by
Trustee John Waihe‘e IV, pursued a measure which would have made the Trustee allowance a
reimbursable fund. That action did not receive the votes to pass Committee, and did not advance
to the BOT for consideration.

In 2013, the BOT expanded the use of the fund with the passage of ARM #13-11, in response to
Trustees’ desires to provide funds to recipients who were otherwise ineligible for OHA grants.
The combined fund of allowances and sponsorship funds is the present-day TSAAF of $22,200
per Trustee seat.

As previously stated earlier in this report, a moratorium was placed on the TSAAF on February
27, 2018, in response to concerns raised in State Auditor Report No. 18-03.

State Auditor Reviews of OHA Trustee Allowances

In its 2001 audit of OHA, the Hawai‘i State Auditor raised concerns regarding OHA’s Trustee
Allowance Program. The State Auditor found that certain Trustees co-mingled the annual
allowance with personal funds; made interest-free personal loans for themselves and family
members; spent allowances on questionable expenses; and did not always return unspent annual
allowances. The State Auditor noted that “[t]hese trustees appear to have failed to uphold their
responsibility of loyalty, and may have instead spent funds of personal needs and interests.”

The State Auditor indicated that advancing allowances created issues, and therefore
recommended that Trustee allowances be disbursed on a reimbursable basis.

In its 2005 audit of OHA, the State Auditor found that that the same issues identified in the 2001
audit continued. The auditor again recommended disbursing Trustee allowances on a
reimbursable basis.

In its February 2018 audit of OHA, the State Auditor found that the rules governing Trustee
allowances are “broad and arbitrarily enforced, resulting in many instances of questionable
spending.” The State Auditor further noted that policies and procedures for the program are
“incomplete” and “inconsistent, contradictory, and include undefined terminology, which is
subject to varying interpretations by trustees and the Administration.” The State Auditor also
found that the Administration allowed noncompliant spending.

In both the 2005 and 2018 reports, the State Auditor stated that while trustee allowance
expenditures are small and just a fraction of OHA’s overall spending, they are reflective of
broader issues of how OHA manages trust funds.
In 2018, the State Auditor offered the following recommendations for the Trustee allowance program:

OHA Board of Trustees

1. **In general:** *(page 44)*
   
   d. Provide greater transparency into OHA's administration of trust assets, including OHA's fiscal year budgets and actual expenditures, specific information regarding the Grants, Sponsorships, and other funding awarded by OHA, OHA's investment portfolio holdings and returns, and expenditures by trustees using Trustee Allowances. Consider posting such information on OHA's website or some other similarly accessible public portal.

5. **With respect to Trustee Allowances:** *(pages 46-47)*
   
   a. Amend the Trustee Allowances policy to restrict the use of Trustee Allowances to expenses incurred by trustees relating to their communication with beneficiaries and the public, as was the original purpose of the Trustee Allowances, and reduce the Trustee Allowances to an amount determined by the board to be reasonably necessary for that purpose.

   b. Prohibit the use of Trustee Allowances to provide financial support, direct or otherwise, to individuals, groups, or organizations. Require requests for financial support by individuals, groups, or organizations to be approved by the board and funded through a program other than Trustee Allowances.

   c. Work with the Administration to more clearly define procedures related to the use and administration of Trustee Allowances.

   d. Require trustees to seek reimbursement of expenses; do not disburse the total amount of Trustee Allowances to trustees at the beginning of the fiscal year or otherwise advance any funds to trustees.

   e. Review and amend, as needed, the sanctions established in the Code of Conduct for violations of Trustee Allowance policies and procedures and establish a process to ensure enforcement of sanctions to appropriately address such violations.

   f. Ensure that the purpose and use of Trustee Allowances aligns and is consistent with: (a) OHA's mission; (b) OHA's policies and procedures; (c) trustees' fiduciary duties; and (d) State laws.
OHA Administration

5. With respect to Trustee Allowances: (page 48)

a. Monitor and review trustees’ use of Trustee Allowances and ensure expenditures using Trustee Allowances comply with the Trustee Allowances policy.

b. Establish procedures to more clearly define the Administration’s role and procedures for administering and monitoring the use of Trustee Allowances.

c. Report to the board the specific expenditures approved and reimbursed to each trustee using Trustee Allowances.

d. Create a formal appeal process for trustees to request a second determination of whether they are entitled to reimbursement of expenses using Trustee Allowances, for instance, through staff whose regular duties do not involve review and approval of Trustee Allowances.

Discussion and Findings

The work of this Ad Hoc Committee to review the TSAAF was considerable. The Ad Hoc Committee acknowledged the importance of considering all the recommendations of the 2018 State Auditor’s report, while taking consideration of Trustee expectations, as well as OHA’s unique role and how it differs from other elected legislative bodies. In order to have a strong base of comparisons, the Ad Hoc Committee reviewed the policies of other elected bodies, along with current OHA guidelines, Trustee fiduciary duties, the state ethics code, and audits conducted of other governing bodies.

In order to expedite meetings, the Ad Hoc Committee adopted a process in which they agreed to policy concepts, but a smaller team would draft the precise language to match those objectives. The drafted language was brought back to the full Ad Hoc Committee for review and consent. This agreement, and agreement to specific policies in the Ad Hoc Committee’s draft policy recommendation, were all unanimous decisions of the Ad Hoc Committee.

The Ad Hoc Committee agreed that the name of the allowance should be the Trustee Protocol Allowance (TPA) to match the purpose of the statutory language contained in Section 10-9 of Hawai’i Revised Statutes. The Ad Hoc Committee agreed that it would recommend reverting to the original purposes of the Trustee allowance – establishing a communication network and promoting a broader understanding and participation in the resolution of Native Hawaiian issues, as recommended by the State Auditor.

The Ad Hoc Committee also decided to recommend that the current level for the TPA be set at $7,200.00 per Trustee seat, which was the funding level prior to enactment of ARM #13-11.
Importantly, the Ad Hoc recommends that the leftover balance of the budgeted TSAAF funds, which represented the remaining Trustee “sponsorship” portion of the funds, not be reallocated until the BOT takes a future vote on how those remaining funds are to be disbursed. Those funds total $135,000 ($15,000 per Trustee seat). Until action is taken, the remaining “sponsorship” funds should remain under continued moratorium.

The Ad Hoc agreed that the Trustee Protocol Allowance should be a reimbursable fund, which also satisfies long-standing recommendations of the State Auditor and aligns with the administration of similar allowance funds. The audits of the State Legislature’s Legislative Allowance, and the Honolulu City Council’s Annual Contingency Allowance provided much direction in suggestable models and summaries of other allowance accounts from other jurisdictions. Across the board, these allowance accounts were not up-front disbursements, but instead reimbursements for allowable expenditures.

Specific allowable and disallowable expenses were drawn from existing internal OHA guidelines as well as from the Legislative Allowance of the Hawai‘i State Senate. Conversations with Administration staff also provided areas in which clarity and additional direction was needed for fiscal staff.

The Ad Hoc Committee agreed to create an appeals process was created, which the Ad Hoc Committee believed should also include a review by the Hawai‘i State Ethics Commission.

At the suggestion of Trustee John Waihe‘e IV, Vice Chair of the Committee, the report was sent to the Hawai‘i State Ethics Commission for their review. Additionally, the Ad Hoc Committee unanimously agreed that review should include OHA Corporation Counsel, and Justice Robert G. Klein, the BOT Counsel. Recommendations made by Judge Klein and by the staff of the Hawai‘i State Ethics Commission were considered, and many of the recommendations were incorporated into the final draft as it was considered and approved by the Ad Hoc Committee.

Recommendation

The Ad Hoc Committee, by a unanimous affirmative vote on September 13, 2018, approved its recommendation in the form of draft policy for a revised protocol allowance, the Trustee Protocol Allowance (“TPA”). This policy has been reviewed by BOT Counsel Robert G. Klein, the OHA Corporation Counsel Albert Tiberi and Everett Ohta, as well as the staff of the Hawai‘i State Ethics Commission, led by Executive Director Dan Gluck.

The draft TPA policy, which would amend section 3.5.n of the OHA Executive Policy Manual, is attached to this report.
Under the draft TPA policy, allowable expenses include:

- Communication expenses dedicated solely to OHA business:
  - Service plans for home office internet, home office phone and fax, and cellular phone, and
  - Web-based communication services;
- Copying and postage costs;
- Office supplies;
- Books and reference materials;
- Renting of meeting facilities, if OHA facilities are not available within a reasonable vicinity of the activity or event location, and related expenses such as security services, cleaning/maintenance charges, and rental of equipment. Meetings must be organized and attended by a Trustee or Trustee’s staff, to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees;
- Reasonable expenses for food and beverages, provided that if the food or beverage expenses have been reimbursed by another source, then reimbursement for that portion from the TPA is prohibited:
  - Purchased for a meeting or function, which includes one or more person(s) who are not a Trustee or an employee of OHA, the purpose of which is to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees; or
  - Purchased for Trustees and staff who are required to be present at Board or Committee meetings that extend through the lunch or evening hours. Expenses for food and beverages consumed by a Trustee or staff as part of their daily work during the scope of their normal work day shall not be reimbursed;
- Reasonable expenses for lei and gifts, which are customarily exchanged with fellow officials, honorees, special guests, and dignitaries at an event; and
- Reasonable expenses related to a Trustee’s official travel, registration fees, and associated costs to attend conferences, seminars, or meetings, which shall comply with existing OHA travel guidelines and approvals; provided that if the travel cost or associated expenses have been reimbursed by another source (example: per diem), then reimbursement for that portion from the TPA is prohibited.

Disallowed uses of the TPA include:

- Food or beverages for Trustees and staff only, except when reasonably related to a Trustee’s or staff member’s official duties, e.g., purchase of meals for Trustees and staff who are required to be present at Board or Committee meetings that extend through the lunch or evening hours. Food or beverages purchased to thank or appreciate staff or for social occasions or events such as birthday celebrations, farewell or retirement parties, are personal expenses and are not reasonably related to a Trustee’s official duties.
- Alcoholic beverages;
- Political or charitable contributions;
- Expenses related to campaign activities;
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- Expenses which are personal in nature such as dry cleaning expenses, transportation costs to and from work (including mileage), legal fees and costs, monthly parking costs for employee or Trustee parking, and airline club membership and lounge access;
- Gifts: purchase of retirement gifts, thank you/appreciation gifts, bereavement/funeral/sympathy gifts or flowers, welcome gifts, farewell gifts, anniversary gifts, birthday gifts, congratulation gifts, and any other gifts for Trustees, staff, and others, except for gifts purchased in compliance with subsection 1.g. above;
- Tickets for recreational or entertainment events and fundraisers;
- Membership fees and dues for business, community or social organizations;
- Financial support, grants, loans, or sponsorships, whether direct or indirect, to individuals, groups or organizations;
- Any expenses reimbursed from another source to avoid duplicate payment/reimbursement;
- Any services provided and goods received for the personal benefit of the Trustee and/or immediate family members, other Trustees and/or their immediate family members, and OHA employees;
- Computer hardware and software;
- General office and communication equipment; and
- General office furniture.

The annual TPA for each Trustee shall be $7,200.00, or other amount approved by the Board, per fiscal year cycle (July 1 through June 30). The TPA shall be retained by OHA. Unspent amounts in the TPA fund will lapse at the end of the fiscal year and will not carry over. Each TPA will start on July 1.

The full draft proposed TPA policy is included as an attachment to this memo. Enactment of this policy lifts the moratorium on the Trustee allowance, but moratoriums on Trustee sponsorships would remain in effect until policies are addressed for those areas. The moratorium on CEO-initiated sponsorships also remains in effect.

The Ad Hoc Committee recommends that this draft TPA policy be considered by the Resource Management ("RM") Committee as an Action Item. If passed at the RM level, the policy will be referred to the BOT for consideration and final passage.

Attachments

1. Draft Trustee Protocol Allowance ("TPA") Policy, passed by the Ad Hoc Committee on Grants and Sponsorships on September 13, 2018
2. Letter from Hawai‘i State Ethics Commission Executive Director Dan Gluck to OHA Chair Colette Y. Machado, Dated September 5, 2018
3. OHA Committee on Policy and Planning Action Item #PP-09.01 (with Attachments A and B only)
Trustee Protocol Allowance (TPA)

3.5.n Each Trustee is allowed a Trustee Protocol Allowance (TPA) to be used to cover expenses that are reasonably related to a Trustee’s official duties and responsibilities (i.e., the normal and ordinary types of expenditures that a Trustee is reasonably expected to incur in performing his or her representational and fiduciary duties), that are consistent with OHA’s mission to better the conditions of Native Hawaiians, and that comply with applicable laws and OHA policies. Use of the TPA for personal purposes or purposes that are not reasonably related to a Trustee’s official duties and responsibilities are prohibited and may also violate the Fair Treatment law under the state Ethics Code, Section 84-13, Hawai’i Revised Statutes (HRS).

The purpose of the TPA is to develop and maintain an ongoing communication network with beneficiaries and the general public, to promote a broader understanding of Native Hawaiian issues within the Native Hawaiian community and among the general public, and to encourage participation in the resolution of those issues; provided that such communications comply with applicable laws and OHA policies, such as the Board of Trustees’ Code of Conduct and restrictions related to campaign activities.

1. Each Trustee is allowed an annual allowance, referred to as the TPA and as provided by HRS 10-9(4), in an amount determined by the Board of Trustees, to be used to cover expenses incurred in the course of a Trustee’s official duties and responsibilities. Allowable uses of TPA funds are:

   a. Communication expenses dedicated solely to OHA business:
      (1) Service plans for home office internet, home office phone and fax, and cellular phone, and
      (2) Web-based communication services;
   b. Copying and postage costs;
   c. Office supplies;
   d. Books and reference materials;
   e. Renting of meeting facilities, if OHA facilities are not available within a reasonable vicinity of the activity or event location, and related expenses such as security services, cleaning/maintenance charges, and rental of equipment. Meetings must be organized and attended by a Trustee or Trustee’s staff, to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees;

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Chair Machado’s September 20, 2018 Memo to BOT regarding Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund
f. Reasonable expenses for food and beverages, provided that if the food or beverage expenses have been reimbursed by another source, then reimbursement for that portion from the TPA is prohibited:

(1) Purchased for a meeting or function, which includes one or more person(s) who are not a Trustee or an employee of OHA, the purpose of which is to communicate with or educate beneficiaries or the general public on matters relating to Native Hawaiians or the OHA Board of Trustees; or
(2) Purchased for Trustees and staff who are required to be present at Board or Committee meetings that extend through the lunch or evening hours. Expenses for food and beverages consumed by a Trustee or staff as part of their daily work during the scope of their normal work day shall not be reimbursed;

g. Reasonable expenses for lei and gifts, which are customarily exchanged with fellow officials, honorees, special guests, and dignitaries at an event; and

h. Reasonable expenses related to a Trustee’s official travel, registration fees, and associated costs to attend conferences, seminars, or meetings, which shall comply with existing OHA travel guidelines and approvals; provided that if the travel cost or associated expenses have been reimbursed by another source (example: per diem), then reimbursement for that portion from the TPA is prohibited.

2. Certain expenditures may be found to be inappropriate uses of the TPA because: the expenditure appears to be more personal in nature or otherwise does not appear to be reasonably related to a Trustee’s official duties and responsibilities; the expenditure is contrary to OHA’s mission to better the conditions of Native Hawaiians; or the expenditure contravenes OHA policies or the law. The following expenditures are specifically disallowed by this policy:

a. Food or beverages for Trustees and staff only, except when reasonably related to a Trustee’s or staff member’s official duties, e.g., purchase of meals for Trustees and staff who are required to be present at Board or Committee meetings that extend through the lunch or evening hours. Food or beverages purchased to thank or appreciate staff or for social occasions or events such as birthday celebrations, farewell or retirement parties, are personal expenses and are not reasonably related to a Trustee’s official duties.

b. Alcoholic beverages;

c. Political or charitable contributions;

d. Expenses related to campaign activities;

e. Expenses which are personal in nature such as dry cleaning expenses, transportation costs to and from work (including mileage), legal fees and costs, monthly parking

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costs for employee or Trustee parking, and airline club membership and lounge access;

f. Gifts: purchase of retirement gifts, thank you/appreciation gifts, bereavement/funeral/sympathy gifts or flowers, welcome gifts, farewell gifts, anniversary gifts, birthday gifts, congratulation gifts, and any other gifts for Trustees, staff, and others, except for gifts purchased in compliance with subsection 1.g, above;

g. Tickets for recreational or entertainment events and fundraisers;

h. Membership fees and dues for business, community or social organizations;

i. Financial support, grants, loans, or sponsorships, whether direct or indirect, to individuals, groups or organizations;

j. Any expenses reimbursed from another source to avoid duplicate payment/reimbursement;

k. Any services provided and goods received for the personal benefit of the Trustee and/or immediate family members, other Trustees and/or their immediate family members, and OHA employees;

l. Computer hardware and software;

m. General office and communication equipment; and

n. General office furniture.

3. The annual TPA for each Trustee shall be $7,200.00, or other amount approved by the Board, per fiscal year cycle (July 1 through June 30). The TPA shall be retained by OHA. Unspent amounts in the TPA fund will lapse at the end of the fiscal year and will not carry over. Each TPA will start on July 1.

4. To utilize the TPA retained by OHA, Trustees must submit a request for reimbursement or a request for an advance; provided that such an advance will be payable directly to a merchant/vendor only. Trustees must show that the primary purpose of the expenditure is in support of or a result of an official Trustee duty consistent with the allowable expenses listed above. The Trustee shall be required to fill out a certification form in which the Trustee certifies that the claimed reimbursement or advance is true and correct and that it complies with applicable laws and OHA policies.

5. In processing a request for reimbursement or advance, OHA Administration may request additional information necessary to determine compliance of a claimed expenditure with applicable laws and OHA policies. The approval by OHA Administration of a request for reimbursement or advance shall not be construed to mean that an expenditure complies with...
the state ethics code; the final authority on the ethics code is the Hawai‘i State Ethics Commission. It is the responsibility of the individual Trustee to insure compliance with the state ethics code and Trustees are encouraged to consult with the state Ethics Commission on questions related to compliance with the state ethics code.

6. Items purchased with TPA funds are the property of OHA. Non-perishable and non-consumable items purchased with the TPA, except for gifts purchased in compliance with subsection 1.g, above, shall be surrendered to the OHA Administration upon the Trustee’s separation from OHA.

7. A TPA expense must be deducted from the same fiscal year’s allocation in which the expense was incurred. A prior year’s expense cannot be paid from the current or a future fiscal year’s TPA allocation. Each Trustee is responsible for paying any TPA expenses incurred that are in excess of a given fiscal year’s TPA allocated amount.

8. The use of the TPA to purchase goods and/or services in the amounts of $2,500 or more shall be from businesses that provide proof of compliance with State and Federal taxes and the Department of Labor and Industrial Relations (DLIR), and are also in good standing with the Department of Commerce and Consumer Affairs (DCCA). Further, the purchase of goods and/or services in amounts of $5,000 or more shall be in accordance with all applicable laws and administrative rules governing procurement.

9. In cases where an expenditure is determined to be impermissible by the OHA Administration, the Trustee or the CEO may consult with the Hawai‘i State Ethics Commission, as necessary. The Trustee may appeal the determination made by the OHA Administration, in writing, to the Chair of the BOT. The Chair shall render a written decision on the appeal within seven (7) business days, which shall be final.

10. This policy is subject to the Board of Trustees’ Code of Conduct and sanctions contained therein.

11. The OHA Administration shall compile and transmit to the OHA BOT a quarterly report of expenditures made by each Trustee from his or her TPA. The quarterly report of expenditures shall also be posted to OHA’s public website in a timely manner thereafter.

12. It is not intended that the TPA supersede, replace, diminish, or reduce the statutory compensation allowed to Trustees as provided for in Chapter 10, Hawai‘i Revised Statutes, as amended.

13. The CEO shall be guided by this policy to develop internal guidelines and procedures for the use and administration of the TPA including reporting requirements, required documentation, and auditable record keeping.

Draft 9/13/18 – subject to adoption by the OHA Board of Trustees

ATTACHMENT I
Chair Machado's September 20, 2018 Memo to BOT regarding
Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund
14. The Fund created by this policy will be called the OHA Board of Trustees’ Protocol Allowance Fund and the report of expenditures will be called the Trustee Quarterly Protocol Allowance Expenditure Report.
ATTACHMENT 2
September 5, 2018

Colette Y. Machado
Chairperson, Office of Hawaiian Affairs
560 N. Nimitz Hwy., Suite 200
Honolulu, Hawai‘i 96817
Via Email: everetto@oha.org

Re: Response to request for guidance regarding draft policy for the use of the Office of Hawaiian Affairs Board of Trustees’ protocol allowance

Dear Chair Machado,

Thank you for providing us with the opportunity to provide feedback on the draft policy (‘Draft Policy’) regarding the use of the Office of Hawaiian Affairs (‘OHA’) Board of Trustees’ protocol allowance (‘TPA’). My colleagues and I sincerely appreciate your efforts to promote the highest ethical standards within OHA, and we are grateful for the opportunity to work with you on this important project.

You ask “whether any part of the policy is inconsistent with the Hawai‘i Code of Ethics.” On behalf of the staff of the Hawai‘i State Ethics Commission (‘Commission’), I see no part of the Draft Policy that is inconsistent with Hawai‘i Revised Statutes (‘HRS’) chapter 84, the State Ethics Code. However, I respectfully offer a few suggestions for your consideration.

1. **Legislature’s Rules re: Legislative Allowances**


2. **Membership Dues**

   You have represented that memberships in organizations such as Hawaiian Civic Clubs and the National Congress of American Indians help to further OHA’s mission, and I do not believe that the Commission would disagree: policy decisions regarding how to further OHA’s mission are within the purview of OHA Trustees and will not be second-guessed by the Commission. The Commission’s only concern would be that individual Trustees are somehow
gaining a personal benefit from membership or are seeking membership in organizations that only tangentially benefit OHA; indeed, this is the reason why the Commission discourages individual legislators from using their legislative allowances to join membership organizations (except for “legislative and governance organizations,” including the Council on State Governments and the National Conference on State Legislatures).

Rather than having individual Trustees decide whether to use OHA funds to join membership organizations, the Board of Trustees may wish to consider making those decisions as a Board – that is, using generalized OHA funds, rather than individual TPA funds, to join organizations – and deciding as a Board which Trustees/employees should represent OHA at any membership organizations’ functions. This would avoid any appearance that individual Trustees are deriving a personal benefit from the membership and ensures that Trustees do not duplicate each other’s efforts in supporting worthy causes.

3. **Food purchases**

Paragraph 1(i) contains very good language regarding reimbursement from another source (“provided that if the travel cost or associated expenses have been reimbursed by another source (example: per diem), then reimbursement for that portion from the TPA is prohibited”). We respectfully recommend that similar language be included in paragraph 1(g). This may be redundant, but it may be helpful to include this language in multiple locations to ensure that both Trustees and employees avoid seeking per diem or other reimbursement for meals that are provided by another source.

Additionally, paragraph 1(g) appears to cover a rather broad range of topics; as such, you may wish to consider including more language and/or examples in paragraph 1(g) to further clarify the situations in which these expenditures are allowable. For example, the Senate’s rules on legislative allowances state: “Expenses for usual and customary food and beverage items consumed by staff and other persons as part of their daily work during the scope of their normal work day shall not be reimbursed.” See Hawaii State Senate, “Guideline Memorandum on Annual Allowances,” available at [https://www.capitol.hawaii.gov/session2016/docs/2015-2016SenateAdminManual.pdf](https://www.capitol.hawaii.gov/session2016/docs/2015-2016SenateAdminManual.pdf) (pp. 78-79 of 123 of the overall PDF document). If there are special circumstances under which Trustees and staff must work through mealtimes, then OHA funds may be used to pay for Trustees'/staff’s meals. However, Trustees and employees should not arrange meetings at mealtime to justify an expenditure of OHA funds for their personal benefit.

4. **Caveat re: Ethics Code**

You may wish to consider adding a disclaimer that the Ethics Commission has jurisdiction over the Ethics Code, such that an OHA fiscal officer’s approval of an expense does not necessarily mean that the expenditure complies with the Ethics Code. While we fully anticipate that expenditures made in compliance with the Draft Policy will also satisfy the current Ethics Code, the Ethics Commission has the specialized expertise to determine whether an expenditure complies with HRS chapter 84. OHA Trustees and employees are more than welcome to contact the Commission for guidance on expenditures should they have any
lingering concerns: my colleagues and I are more than happy to provide fast, confidential guidance on any such questions.

5. Publication of expenditures

You may wish to consider publishing Trustees’ expenditures on OHA’s website contemporaneously (or as quickly as is practicable) to provide additional transparency. The Honolulu City Council publishes Councilmembers’ contemporaneous travel and expense reports on its website. See [http://www.honolulu.gov/component/content/article/172-site-ccl-cat/1740-ccl-view-council-members.html?Itemid=597](http://www.honolulu.gov/component/content/article/172-site-ccl-cat/1740-ccl-view-council-members.html?Itemid=597). We respectfully suggest that OHA do the same for its Trustees: these expenditures are public records, and the knowledge that expenditures will be published contemporaneously (or as quickly as feasible) will help to discourage improper expenditures.

I wish to thank you for your commitment to promoting the highest ethical standards within OHA, and for this opportunity to comment on the Draft Policy. As always, please let me know how my colleagues and I can be of further assistance.

Very truly yours,

Daniel M. Gluck
Executive Director and General Counsel
I. Action

To approve and adopt an Office of Hawaiian Affairs Trustee Allowance policy wherein funds are disbursed on an actual expenditure reimbursable basis in lieu of the existing system of prepayment and quarterly reporting.

This policy shall be inserted in the Office of Hawaiian Affairs Administrative and Financial Manual of Guides.

II. Issue

Should the Office of Hawaiian Affairs replace the existing policy of prepayment and quarterly reporting of Trustee Allowance expenditures with a system in which funds are disbursed on an actual expenditure reimbursable basis?

III. Discussion

The Office of Hawaiian Affairs Trustee Allowance system was initially established on June 28, 1991. (Attachment A) The allowance was implemented to cover incidental expenses incurred by Trustees for the following purposes:

To develop and maintain an ongoing communication network with beneficiaries on the general public; to promote a broader
understanding of Hawaiian issues; and to encourage participation in the resolution of those issues.

Funds were to be prepaid in the amount of $3,600.00 on a semi-annual basis, with quarterly reporting requirements.

On February 1, 1996, the Board of Trustees clarified guidelines for the use, accounting and disposition of non-perishable purchases. (Attachment B)

It is these amended or clarified guidelines that currently govern the use and disposition of the trustee annual allowance. (Attachment C)

In March 2001 however, the Auditor of the State of Hawaii questioned the misuse of the allowance by various trustees. (Attachment D) Specifically she found:

We reviewed trustee expense reports for calendar years 1996 through 1999, and found numerous questionable transactions that did not appear to meet the purpose of the trustee expense account. For example, two trustees used their allowances to make interest-free personal loans exceeding a combined total of $8,000 to themselves and family members. Another trustee spent over $1,000 on beauty salon services over a three-year period. These trustees appear to have failed to uphold their responsibility of loyalty, and may have instead spent funds for personal needs and interests.

We also found that certain trustees did not always return unspent annual allowances to OHA, although policy requires that they do so. These trustees returned only half of the $24,250 in unspent allowances between calendar years 1996 and 1999. This is after spending $231,171 in annual allowances over those four years.

The Auditor also suggested the following remedial action:

OHA should consider disbursing trustee expenses funds on an actual expenditure reimbursement basis. This would help to ensure that these funds are used only for allowable purposes, and reduce the opportunity to use such funds for personal expenses.
Subsequently, the OHA Response to State Auditor Report stated:

OHA staff will be recommending a reimbursable allowance plan as opposed to the existing policy of a prepayment at the beginning of the year. Thus, a reimbursement plan would allow for greater scrutiny of expenditure. (Attachment E)

It is within the context of these events that this action item was prepared.

Basically what is suggested is reimbursement for actual expenditures incurred by the trustees for legitimate and allowable purposes set forth. By eliminating prepayment of the allowance at least three major problems would be addressed:

1. No co-mingled funds
2. No requirement to repay unspent funds
3. No income tax or W-2 on unspent funds not returned

Instead of quarterly reports, reimbursement forms would be required within ten days of the expenditure. The forms would require the approval of the Chairperson of the Board, and in the case of the Chairperson, the approval of the Administrator and Chief Financial Officer prior to disbursement of a reimbursement. This heightened scrutiny and the fact that expenditures are “out of pocket” should tend to mitigate the misuse and personal use of allowance funds.

Finally, pre-approval of expenditures is encouraged to avoid the embarrassment, cost and possible audit of improper spending. Note however, that pre-approval does not guarantee reimbursement as the Request for Reimbursement form accompanied with the pre-approval if available is still required to be filed and approved. (Attachment F)

At the present time, $7,200 per trustee is budgeted for the trustee allowance.

IV. Alternatives

a. Approve and adopt an Office of Hawaiian Affairs Trustee Allowance policy wherein funds are disbursed on an actual expenditure reimbursable basis in lieu of the existing system of prepayment and quarterly reporting.

b. Decline to change the existing Trustee Allowance policy of prepayment and quarterly reports.

V. Recommendation
Approve and adopt an Office of Hawaiian Affairs Trustee Allowance policy wherein funds are disbursed on an actual expenditure reimbursable basis in lieu of the existing system of prepayment and quarterly reporting. (Attachment G)

VI.  Time Frame

As soon as possible

VII.  Funding

No new funding required

Attachments

A. - Action Item and BOT minutes dated June 28, 1991
B. - Action Item dated January 30, 1996 and BOT minutes dated February 1, 1996
C. - Trustee Allowance Disbursement letter dated January 5, 2001
D. - Audit of the Office of Hawaiian Affairs, March 2001, pages 14 and 15
E. - OHA Response to State Auditor Report, February 12, 2001, pages 9 and 10
F. - Request for Pre-Approval of Trustee Allowance
G. - Proposed Amendments to Chapter 3
T**ATTACHMENT C to ACTION ITEM RM #19-03  
April 10, 2019**

**OFFICE OF HAWAIIAN AFFAIRS**

**Action Sheet**

Meeting: Board of Trustees  
Date: June 28, 1991  
Prepared by: Stanley H.L. Lum, Acting Administrator  
Reviewed by: Abraham Aiona, Chairman  
Committee on Budget, Finance, Policy and Planning

I. Action Item:

Allowance for incidental expenses. Establishing an allowance for each member of the Board of Trustees to cover incidental expenses connected with Trustee function and duties and adopting governing guidelines.

II. Background Information

The Budget, Finance, Policy and Planning Committee took up the subject of an allowance for Trustees to cover activities incident to their office on May 10, 1991, and decided to recommend the adoption of an allowance, provided guidelines to govern the use of the allowance are developed and legal advice as to the propriety of using special funds for this purpose. The guidelines have been developed. Sherry Broder, counsel to the Board has issued a legal supporting opinion. The recommendation of the Committee is now ready for presentation to the Board.

III. Issue:

1. In the performance of the functions and duties of Trustee, business expenses, excluding per diem, air and ground transportation, are incurred. Expenses such as business meals, social and cultural functions.

2. An allowance for incidental expenses is a standard practice by much of the private sectors and is provided to each member of the State legislature.

3. An allowance will enhance the ability of each Trustee to perform his or her duties by reducing or eliminating out of pocket cost.
IV. Means of Financing:

Special funds.

Annual Allowance
July 1 to December 30, 1991

<table>
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<td>Clayton Hee</td>
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<td>Kamaki Kanahele</td>
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<td>Thomas Kaulukuklui, Sr.</td>
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<td>Moses Keale, Sr.</td>
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Sub-Total $32,400

V. Discussion:

The allowance will be subject to year end federal and state taxes. As such individual record keeping is very important.

VI. Time Frame:

Once appropriated and approved as to legality by the Board’s Counsel, the allowance would be made available within 10 calendar days.

VII. Attachments:

Exhibit A: Memorandum from Sherry P. Broder, Esq., Subject: "Legal Review of the 'Annual Allowance' Established by the Committee on Budget, Finance, Policy and Planning, May 10, 1991."

Exhibit B: Chapter 3, Annual Allowance (new) for the Administrative and Financial Manual of Guides.
MEMORANDUM

TO: Richard K. Paglinawan  
Administrator  
Office of Hawaiian Affairs

From: Sherry P. Broder

Date: May 29, 1991

Subject: Legal Review of the "Annual Allowance" Established by the Committee on Budget, Finance, Policy and Planning, May 10, 1991

This memorandum is written in response to your request of May 17, 1991, for a review of the action taken by OHA's Committee on an Annual Allowance for each Trustee. According to Section 3.2 of the Committee's proposal, this fund could be spent for the following purposes: "to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues." Examples of permitted expenditures might, therefore, include funds to allow each Trustee to send mailings to OHA beneficiaries directly, funds to hire meeting halls within which individual Trustees could meet with beneficiaries, funds to hire staff to coordinate contacts between individual Trustees and the beneficiaries, and to allow each Trustee to respond to their inquiries directly, as well as other means of communication.
In my professional judgment, this action—if approved by the full Board—would be legitimate and should not be added to the legal framework. Two questions need to be addressed in order to understand the legal framework within which the OHA trustees must act: (1) What limits does the nature of the trust that generates OHA's resources impose on the ability of the Trustees to spend or allocate those resources? (2) What limits do the constitutional and statutory provisions impose on the ability of the Trustees to spend or allocate OHA's resources?

(1) The funds OHA can draw upon have certain built-in restrictions on their use. Legislatively-authorized general funds must be used for the purposes identified by the legislature at the time of authorization. Revenues derived from the public land trust proceeds must, according to H.R.S. Section 10-13.5, be used "for the betterment of the conditions of native Hawaiians," who are for this purpose defined as half-blood Hawaiians (H.R.S. Section 10-2). Although it can be argued that the limitation in Section 10-13.5 is too narrow and constitutes a violation of the trust established in the 1898 Joint Resolution of Annexation of an infringement on the basic right of self-governance of the Hawaiian people, such an argument raises complex political and legal issues and is certain to be divisive in the Hawaiian Community. Accordingly, the Trustees should ensure that the 5(f) funds they receive benefit the native Hawaiians.

At the present time, it is clear that OHA may expend 5(f)
funds for the benefit of native Hawaiians only. Native Hawaiian Trusts Judicial Relief Act, H.R.S. Chapter 673, commonly referred to as the "right to sue bill by native Hawaiians and Hawaiian Individuals and Organizations" states that OHA must administer this trust "in the sole interest of its beneficiaries." Nevertheless, OHA is not required to maximize revenues to the native Hawaiian public trust, so long as the trust is administered "in the sole interests of its beneficiaries." Furthermore, the State may provide collateral benefits to non-beneficiaries, "but only so long as the primary benefits are enjoyed by beneficiaries, and the collateral benefits are enjoyed by beneficiaries, and the collateral benefits do not detract from nor reduce the benefits enjoyed by the beneficiaries." Section 673-1(b)(1).

This requirement of administration for the "sole interest of its beneficiaries" has also been established in case law by Hawaii Supreme Court with regard to the Hawaiian Home Lands Trust. In Ahuna v. Department of Hawaiian Home Lands, 64 Haw. 327, 338, 640 P.2d 1161 (1982), the Hawaii Supreme Court stated that" "[O]ne specific trust duty is the obligation to administer the trust solely in the interest of the beneficiary."

To limit judicial challenges, the Trustees should seek to tie their expenditures of the public land trust proceeds to identifiable benefits that will be received by the native Hawaiians whenever possible.

(2) OHA was designed by the 1978 Constitutional
Convention to be a semi-autonomous entity with substantial independent control of its resources. This decision was reinforced by the legislature which stated in 1979, in what is now Section 10-4 of the Hawaii Revised Statutes, that OHA "shall be a separate entity independent of the executive branch." OHA's Trustees may allocate OHA's resources for the benefit of its beneficiaries so long as the Trustees determine that it is in the interests of its beneficiaries, unless their action is explicitly in conflict with a constitutional or statutory provision designed to limit OHA's activities. I am enclosing with this memorandum an opinion letter written by Jon M. Van Dyke on November 5, 1990 on a related subject which discusses in detail the reasons that support this conclusion.

Unless, therefore, an explicit statutory or constitutional provision limits OHA's Trustees, they may allocate resources and spend resources for communication and participation as described in the Committee's proposal. Are there any explicit limitations that would restrict their ability to establish an "Annual Allowance"?

H.R.S. Section 10-9 establishes the compensation rate per meeting for the Trustees and in addition authorizes them to receive "transportation fares" and "personal expenses" (or per diem) for their travel. It is not, however, written in language that indicates that this list is meant to be exhaustive. It does not, in other words, indicate that the Trustees cannot also receive other appropriate expenses for other legitimate purposes.
H.R.S. Section 10-12 authorizes the Administrator to hire staff to carry out the functions of OHA. Is this provision meant to be exclusive, or does it permit the Trustees to hire their own staff as well to assist them in their legislative functions, to carry out the purposes identified in Section 3.2 of Chapter 3 on the "Annual Allowance"? The language of H.R.S. Section 10-12 does not indicate that this provision is meant to be exclusive, and analogies to other legislative bodies—such as the county councils in Hawaii—illustrate that it is usual and usual for legislators to have their own staff assistants.

It would appear, therefore, that nothing in the Hawaii Revised Statutes or the Hawaii State Constitution prohibits the establishment of the "Annual Allowance."

To summarize, the creation of an "Annual Allowance" for individual Trustees appears to be a legitimate expenditure of OHA's resources. The actual uses of these funds may need to be monitored, however, to ensure that the expenditures are in fact in the
Chapter 3. Annual Allowance

Sec. 3.1. **Scope of Chapter.** The Board may, from time to time, appropriate sufficient funds for an annual allowance to each trustee. This chapter establishes and implements the annual allowance.

Sec. 3.2. **Purposes.** The purposes of the annual allowance are as follows: to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues.

Sec. 3.3. **Annual Allowance.** Each trustee is allowed such amount as provided by the Board to be used for any purpose set forth under Sec. 3.2. The use of the allowance is subject to reporting or accounting, and the amount of the allowance is not subject to reduction or adjustment by per diem, air or ground transportation payments, or compensation. The allowance is available no later than ten calendar days after the effective date of trustees appropriating funds for the annual allowances. In the case of a trustee who fills a vacancy after the specified ten-day period, the allowance is payable no later than ten calendar days after the trustee is appointed by the Board or Governor.

Sec. 3.4. **Accounting.** Each trustee will prepare a quarterly report within ten calendar days of the quarter's end on annual allowance expenditures. All reports shall be filed with the chairperson, and such reports shall be subject to annual audits and be included as a part of the financial report of the expenditures of OHA as a whole. Whenever possible,
quarterly reports shall be supported by invoices, receipts or other similar documents. OHA Form No. _____, 'Quarterly Allowance Report', shall constitute the report form. Any unexpended annual allowance shall be returned to OHA no later than 10 working days following the expiration of the term of office or a vacancy that may occur through any other cause.
### Quarterly Allowance Report

**Trustee** ______________________________  **Filing Date** __________________

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**Form No.** __________

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**Office of Hawaiian Affairs**  
**Quarterly Allowance Report**  
Quarter Ending __________

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**Chair Machado's September 20, 2018 Memo to BOT regarding**  
**Findings and Recommendations from the Ad Hoc Committee on Grants and Sponsorships related to the Trustee Sponsorship and Annual Allowance Fund**
MINUTES OF THE REGULAR MEETING OF
THE BOARD OF TRUSTEES OF
THE OFFICE OF HAWAIIAN AFFAIRS
HELD AT THE CAMERON CENTER
95 MAHALANI STREET
WAILUKU, HAWAII

June 28, 1991

The Trustees of the Office of Hawaiian Affairs met on the Island of Maui, in the County of Maui, State of Hawaii, on Friday, June 28, 1991, at 9:15 A.M.

The meeting was called to order by Chairman Clayton H. W. Hee. The pule was offered by Trustee Thomas Kaulukukui. On roll call, those present and excused were as follows:

Present: Trustee Abraham Aiona
Trustee Moanikeala Akaka
Trustee Rowena N. Akana
Trustee A. Frenchy DeSoto
Trustee Louis Hao
Trustee Clayton H. W. Hee
Trustee Kamaki A. Kanahele, III
Trustee Thomas K. Kaulukukui, Sr.

Excused: Trustee Moses K. Keale, Sr.

Others Present: Stanley H. L. Lum, Dep Adm

Trustee Aiona requested that the agenda be amended to add under New Business, "Resolution for Keanae School". Trustee DeSoto MOVED, SECONDED by Trustee Aiona to approve the agenda as amended. Motion CARRIED unanimously.

Trustee Kaulukukui MOVED, SECONDED by Trustee Akana to approve the minutes of May 31, 1991, as circulated. Motion CARRIED unanimously.

The Chairman reported that he has just one item for action which will be taken up under New business, Item B.

Deputy Administrator Stanley Lum reported on the following items:
1. Personnel Appointments. Mr. Lum introduced Ms. Christina Zarobe to the members. Christina is OHA's new Assistant Editor. Mr. Lum also advised the Board that Mr. Scott Exo has been hired on an emergency hire basis as a Grants Application and Management Specialist in the Planning and Research Division. Also for the summer, the Native Hawaiian Revolving Loan Fund has hired Ms. Heidi Ho as an intern.

2. Past Due Entitlement - Audit. OHA's independent audit of the results by the State's audit. We have reached agreement with the Office of State Planning that the funds ($100,000) appropriated in Act 304 will be used to cover other independent audits.

3. Kalapana Displacements - HB 865; SB 1434. HB 865 deals with making available to those persons displaced from Kalapana low interest loans for areas of lessor volcanic risks. SB 1434 allows long term leases of state lands in the Kikela-keokea area made available to Hawaiians from Kalapana. No monies were appropriated with this bill.

4. Hawaii County Economic Opportunity Council. Received a letter from Mr. George Yokoyama with regards to the Keaukaha self-help housing. Some lots are in the tsunami inundation zone and as a result, there needs to be some construction changes. Mr. Yokoyama is asking if OHA could assist with an additional $7,000.

5. Sovereignty - Grant Proposal to ANA. A coalition of groups, including OHA, have forwarded a sovereignty grant to ANA. OHA has $70,000 to attract new grants, and we have indicated that these funds are available for matching funds if ANA so requires.

6. Senate Committee on Energy and Natural Resources Hearing. 
A. July 1, 1991 - State Capitol - National Shoreline
Board of Trustees
June 28, 1991
Page 3

The Chairman reported that he and Mr. Lum have met with Senator Akaka's staff, and that administration is redrafting OHA's testimony for July 1, 1991, amplifying some of the concerns raised.

7. Kepoo v. Burgess, et al. Decision. Decision was successfully concluded, and this exhausts Mr. Kepoo's remedy within the State.

8. Price IV - Petition to U.S. Supreme Court. A petition has been submitted to the supreme court on behalf of the trustees named.

9. Trustee Presentation Skills Workshop. A new schedule has been arranged with Pam Chambers with the first workshop scheduled for Tuesday, July 9, 1991, at 2:30 p.m.

10. Others. Ms. Sherry Broder had suggested that a press release be issued on the Kepoo case.

Trustee Aiona reported on the following action items from the Budget, Finance, Policy and Planning Committee.

Trustee Aiona MOVED, SECONDED by Trustee DeSoto that the Board favorably act on and recommend the appropriation of $45,000 in special funds for the contracting of Mr. Lawrence S. Okinaga, attorney at law, of Carsmith, Ball, Wichman, Casa, Mukai & Ichiki, in order to begin addressing the many tasks, the Committee will be needing with professional, legal and technical advice, research, recommendations and work products of the highest quality. Motion CARRIED unanimously.

A short recess was called by the Chairman - 9:40 - 9:45.
Trustee Aiona MOVED, SECONDED by Trustee DeSoto to approve a one year allocation of $33,444 from special funds to Child and Family Services for the Waianae Coast Teen Network/Hawaii Island Teen Service Project. The Child and Family Services is requesting said amount to continue its program of health education and counseling for pregnant and parenting teens, their partners and families in the Waianae, Hilo and Kona areas. Motion CARRIED unanimously.

Trustee Aiona MOVED, SECONDED by Trustee DeSoto to issue a proposal to lease 1,700 square feet for general office purposes in the Pacific Brewing building located at the corner of Imi Kala and Eha Streets with the following conditions:
1. The landlord also negotiates direct leases with Alu Like, Inc., Department of Hawaiian Home Lands and Hui No Ke Ola Pono.
2. Office space to be built out to needs of tenant.
3. First right to lease additional space.
4. An option to purchase the property at appraised value no sooner than two years from the date a lease agreement is executed.
Also to appropriate $103,499 from special funds for the fiscal year ending June 30, 1992, and $39,021 for the fiscal year ending June 30, 1993. Motion CARRIED unanimously.

Trustee Aiona MOVED, SECONDED by Trustee Kanahele for the hiring of Administrative Aides for Trustees of the Office of Hawaiian Affairs and to provide funding from special funds so that the Trustees may best serve the beneficiaries of OHA. The Administrative Aides will be acquired by contract with compensable time not to exceed on the average 20 hours per week. Motion CARRIED unanimously.

Trustee Aiona MOVED, SECONDED by Trustee Akana to approve establishing an allowance for each member of the Board of Trustees to cover incidental expenses connected with trustee functions and duties and adopting governing guidelines. The annual allowance of $7,200 per trustee will be allotted on a semi-annual basis with special funds designated as the source of funds. Motion CARRIED.
Trustee DeSoto voted 'no'.

Trustee Hao reported that there were no action items from the Economic Development and Land Committee, however, there was one announcement. That the Committee will be holding a workshop on July 6, 1991, at 9:00 in the OHA Conference Room on the Memorandum of Agreements relative to land issues.

Trustee Kaulukukui reported that there were no action items from the Education and Culture Committee, however, he wanted to report that staff should be completing the criteria for scholarships by the end of June.

Trustee Akaka reported that there were no action items from the Health and Human Services Committee. Trustee Akaka stated that the members did go over the budget for this committee and that $3,800 was approved to print brochures relating to Hawaiian health problems.

Trustee DeSoto reported on the following action items from the Legislative Review Committee.

Trustee DeSoto MOVED, SECONDED by Trustee Hao that the Office of Hawaiian Affairs oppose the proposed reapportionment formula for the following reasons:

1. That the use of registered voters as the population base is a likely violation of U.S. Supreme Court rulings related to 'one person, one vote'.
2. That the use of an adult population of individuals ‘18 years of older’ will significantly penalize and under-represent Native Hawaiians during the ten years that the new districts are in force because Native Hawaiians have a proportionally-higher number of ‘under 18’ individuals.
3. By using the adult voter population, Native Hawaiian communities are penalized and more likely to become part of a ‘canoe district’.
4. All 'canoe districts' act to deprive Native Hawaiians of
appropriate representation by attempting to submerge our population with a non-associated population.

Trustee Kanahele spoke in favor of the motion because he has great concerns of Molokai being attached to Oahu. It would be a detriment to the Island of Molokai. Trustee Hao also spoke in favor of the motion because being from Molokai which is a rural community, it is very different from Oahu. Having one island connected to another is a problem. Motion CARRIED unanimously.

Trustee Kanahele reported that there were no action items from the OHA Relations Committee.

Trustee Hee reported on the following items on the Status and Entitlements and Housing Committee.

1. A letter was sent to Ms. Norma Wong asking for a price for Pohukaina and the AAFES Building. Also the lands on the western edge of Kewalo Basin and lands on the eastern shore of Keahi Lagoon.
2. There is a large map in the Chairman’s office showing the state controlled lands along the airport complex.
3. A Mr. Jim Funaki is representing the Housing Finance and Development Corporation in the negotiations of OHA’s revenue entitlements from certain ceded lands at Kealakehe, Kona, Hawaii and at Lahaina, Maui.

Trustee DeSoto MOVED, SECONDED by Trustee Aiona to oppose the proposed Ka‘iwi National Shoreline Park. The Chairman reported that staff is preparing testimony to be delivered on July 1, 1991. The testimony speaks in opposition of the proposal and it seeks to clarify OHA’s position to give back federal surplus lands. Motion CARRIED unanimously.

Chairman Hee reported on the reorganization of the committee structure and MOVED for first reading approval. Trustee Aiona SECONDED the motion. Motion CARRIED unanimously.
Trustee Aiona MOVED, SECONDED by Trustee DeSoto to issue a Resolution in support of the Keanae Community's concern in the closing of Keanae School on September 19, 1991. Trustee Aiona's main concern was the cultural values. Trustee Kanahele also spoke in favor of the motion because of the cultural sensitivity of the Hawaiian children. Motion CARRIED unanimously.

Chairman Hee referred to the Education and Culture Committee the Proposal from the Native Hawaiian Historic Preservation (Task Force) Council for consideration back to the full Board. If the Committee has any concerns, they are to work with Trustee Kanahele, who is a member of the Council.

Mrs. Mei Ling Akuna asked to speak before the Board against the action the Board just took on Keanae School. Mrs. Akuna, who is a former valedictorian and class president of Keanae School, is for the closing of the school because of the following reasons:
1. The children's academic grades are very low.
2. The parents are very uncooperative.
3. Most children are not from Keanae.

Executive Session - 10:35 a.m.
Regular Session Reconvened - 11:40 a.m.

There were no action items taken in Executive Session which required ratification.

There being no further business, the meeting adjourned at 11:44 a.m.

Respectfully submitted,

Barbara Yuen
I. ACTION ITEM

To discuss and appropriately amend Title I, Chapter 3 of the Administrative & Financial Manual of Guides ("Manual of Guides") relating to Annual Allowance (see Exhibit "A") to provide clearer, more specific guidelines and to ensure such guidelines fully comport with requirements of the federal and state taxing authorities and opinions issued by the Hawai'i State Ethics Commission.

II. ISSUE

The trustees have raised a number of questions relating to the use of the annual allowance, reporting requirements to OHA and taxing authorities, and the disposition of non-pensilhable items purchased with allowance funds. These questions are timely posed and demonstrate the need to review, revise and clarify the policies and procedures set forth in Chapter 3 of the Manual of Guides.

III. DISCUSSION

The provisions which currently control the use and disposition by trustees of their annual allowance were approved by the Board on June 28, 1991, approximately four and one-half years ago. Although attempts have been made periodically to update Title I, Chapter 3, no amendments have been enacted since June, 1991.

1. Use of Annual Allowance. Questions have been raised as to what types of items and/or services may be purchased with annual allowance funds. Section 3.2 is
not specific in this regard. Rather, it broadly states that:

"The purposes of the annual allowance are ... to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues."

In her letter dated May 29, 1991 (see Exhibit "B"), Sherry P. Broder, Esq. advised that:

"... examples of permitted expenditures might, therefore, include funds to allow each Trustee to send mailings to OHA beneficiaries directly, funds to hire meeting halls within which individual Trustees could meet with beneficiaries ...".

The trustees' annual allowance is somewhat analogous to the annual allowance issued to State legislators. With respect to the disposition of the allowance, Chapter 24-1, Hawai‘i Revised Statutes states, in part:

"§24-1. Allowance for incidental expenses. Each member of the legislature shall receive an annual allowance of $5,000, which amount is to cover incidental expenses connected with legislative duties ..."

The Citizen's Committee on the Allowance for Personal Expenses of Members of the Legislature described the legislative expenses requiring an allowance as:

"expenses such as meals required by meetings held early or late in the day, ... expenditures connected with social, political, and charitable functions which a legislator is expected to attend, postage for newsletters, and other mailings to constituents, ..."

The foregoing are some examples of annual allowance expenditures deemed permissible. Ms. Broder cautions in her May 29, 1991 letter that trustees must remain mindful that the expenditures comport with the purpose for which trust funds may be used.

2. Accounting and Return of Unused Allowance. The annual allowance was appropriated to provide trustees with readily accessible funds from which to pay incidental expenses incurred in connection with the performance of their duties as trustees. As in the case of legislative allowances, these funds were not intended as additional compensation or salary on which the trustees are required to pay taxes. In order to clearly differentiate the annual allowance as an "allowance" versus compensation, the funds must be accounted for on no less than an annual basis and
any unused or excess portion must be returned. Attached for your perusal as Exhibit "C" is a letter from Teresa Beedle dated January 28, 1992.

3. Disposition of Non-Perishable Purchases. On December 10, 1993, the Hawaii State Ethics Commission issued its Advisory Opinion No. 93-6 (see Exhibit "D") in response to an inquiry from Russell Blair. Among other things, the Opinion addresses the disposition of non-perishable items purchase with allowance moneys. The Opinion states, in pertinent part:

"... non-perishable items purchased with the legislative allowance should be considered state property. They should be treated no differently than other pieces of state property at the legislature. ... Accordingly, non-perishable items purchased with the legislative allowance should be placed on inventory and remain with the Senate when a senator leaves office. ... It is for the State to decide how to allocate or dispose of these items."

In light of the similarities between the trustees' allowance and the legislative allowance, it seems advisable to establish a policy that states all non-perishable items purchased with OHA funds should be reported, upon acquisition, to the Administrative Services Offices for inclusion in OHA's inventory and, upon a trustee's departure, remain with the Office for disposition.

4. Other Considerations. It has come to the attention of Administration and members of the Board that a particular trustee appears to have been utilizing a disproportionately large quantity of stationery, copying paper and postage, has monopolized the photocopying equipment on the 5th floor, and, by the sheer volume of mailouts requested, has taken up a disproportionately large amount of the ASO staffs' time and energy. Attached as Exhibit "E" and incorporated by reference are charts itemizing the quantity of postage, supplies and photocopies by trustee.

Due to the actions of this trustee, the funds appropriated to line items such as postage and office supplies are being expended at an unprecedented rate. If such expenditures continue at the present level, the funds appropriated will be depleted prior to the end of the fiscal year; Administration will be forced to request additional trust funds in order to maintain the Agency's operations.

IV. ALTERNATIVES

1. Do not amend Title I, Chapter 3 of the Manual of Guides.

2. Amend Title I, Chapter 3 to clarify the use, accounting procedures, and
disposition of non-perishable items purchase with allowance moneys. Attached as Exhibit “F” and incorporated by reference, is a proposed amendment to Chapter 3. New language is underscored; language to be deleted is bracketed.

[Accountable Plan]

3. Amend only portions of Title I, Chapter 3 in the manner to be determined in the course of the Committee’s discussions.

V. RECOMMENDATION

Administration recommends that Alternative 2 be approved by the Committee and forwarded to the Board for its consideration.

This Alternative 2 offers language clarification, addresses questions which trustees have raised regarding use and reporting requirements, ensures a greater degree of conformity to federal and state tax regulations, and provides a reasonable avenue for the funding of trustees' expenses which are not directly related to his or her duties as a member of OHA’s Standing Committees or, in the case of the Chairperson, the Board.

VI. SOURCE OF FUNDING

Administration does not anticipate a need for additional funding to implement Alternatives 1 or 2.

VII. TIMEFRAME

Within thirty days following review and approval by the Board’s counsel and other persons deemed appropriate by the Board.
Chapter 3. Annual Allowance

Sec. 3.1. Scope of Chapter. The Board may, from time to time, appropriate sufficient funds for an annual allowance to each trustee. This chapter establishes and implements the annual allowance.

Sec. 3.2. Purposes. The purposes of the annual allowance are as follows: to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues.

Sec. 3.3. Annual Allowance. Each trustee is allowed such amount as provided by the Board to be used for any purpose set forth under Sec. 3.2. The use of the allowance is subject to reporting or accounting, and the amount of the allowance is not subject to reduction or adjustment by per diem, air or ground transportation payments, or compensation. The allowance is available no later than ten calendar days after the effective date of trustees appropriating funds for the annual allowances. In the case of a trustee who fills a vacancy after the specified ten-day period, the allowance is payable no later than ten calendar days after the trustee is appointed by the Board or Governor.

Sec. 3.4. Accounting. Each trustee will prepare a quarterly report within ten calendar days of the quarter's end on annual allowance expenditures. All reports shall be filed with the chairperson, and such reports shall be subject to annual audits and be included as a part of the financial report of the expenditures of OHA as a whole. Whenever possible.
Chapter 3. Annual Allowance
Page 2

Quarterly reports shall be supported by invoices, receipts or other similar documents. OHA Form No. _____, 'Quarterly Allowance Report', shall constitute the report form. Any unexpended annual allowance shall be returned to OHA no later than 10 working days following the expiration of the term of office or a vacancy that may occur through any other cause.
MEMORANDUM

TO: Richard K. Paglinawan
   Administrator
   Office of Hawaiian Affairs

From: Sherry P. Broder

Date: May 29, 1991

Subject: Legal Review of the "Annual Allowance" Established by the Committee on Budget, Finance, Policy and Planning, May 10, 1991

This memorandum is written in response to your request of May 17, 1991, for a review of the action taken by OHA's Committee on an Annual Allowance for each Trustee. According to Section 3.2 of the Committee's proposal, this fund could be spent for the following purposes: "to develop and maintain an ongoing communication network with beneficiaries and the general public; to promote a broader understanding of Hawaiian issues; and encourage participation in the resolution of those issues." Examples of permitted expenditures might, therefore, include funds to allow each Trustee to send mailings to OHA beneficiaries directly, funds to hire meeting halls within which individual Trustees could meet with beneficiaries, funds to hire staff to coordinate contacts between individual Trustees and the beneficiaries and to allow each Trustee to respond to their inquiries directly, as well as other...
In my professional judgment, this action—if approved by the full Board—would be legitimate and should not raise any major legal problems. Two questions need to be addressed in order to understand the legal framework within which the OHA trustees must act: (1) What limits does the nature of the trust that generates OHA's resources impose on the ability of the Trustees to spend or allocate those resources? (2) What limits do the constitutional and statutory provisions impose on the ability of the Trustees to spend or allocate OHA's resources?

(1) The funds OHA can draw upon have certain built-in restrictions on their use. Legislatively-authorized general funds must be used for the purposes identified by the legislature at the time of authorization. Revenues derived from the public land trust proceeds must, according to H.R.S. Section 10-13.5, be used "for the betterment of the conditions of native Hawaiians," who are for this purpose defined as half-blood Hawaiians (H.R.S. Section 10-2). Although it can be argued that the limitation in Section 10-13.5 is too narrow and constitutes a violation of the trust established in the 1898 Joint Resolution of Annexation of an infringement on the basic right of self-governance of the Hawaiian people, such an argument raises complex political and legal issues and is certain to be divisive in the Hawaiian Community. Accordingly, the Trustees should ensure that the 5(f) funds they receive benefit the native Hawaiians.

At the present time, it is clear that OHA may expend 5(f)
funds for the benefit of native Hawaiians only. Native Hawaiian Trusts Judicial Relief Act, H.R.S. Chapter 673, commonly referred to as the “right to sue bill by native Hawaiians and Hawaiian Individuals and Organizations” states that OHA must administer this trust "in the sole interest of its beneficiaries." Nevertheless, OHA is not required to maximize revenues to the native Hawaiian public trust, so long as the trust is administered "in the sole interests of its beneficiaries." Furthermore, the State may provide collateral benefits to non-beneficiaries, "but only so long as the primary benefits are enjoyed by beneficiaries, and the collateral benefits are enjoyed by beneficiaries, and the collateral benefits do not detract from nor reduce the benefits enjoyed by the beneficiaries." Section 673-1(b)(1).

This requirement of administration for the "sole interest of its beneficiaries" has also been established in case law by Hawaii Supreme Court with regard to the Hawaiian Home Lands Trust. In Anuhea v. Department of Hawaiian Home Lands, 64 Haw. 327, 338, 640 P.2d 1161 (1982), the Hawaii Supreme Court stated that "[o]ne specific trust duty is the obligation to administer the trust solely in the interest of the beneficiary."

To limit judicial challenges, the Trustees should seek to tie their expenditures of the public land trust proceeds to identifiable benefits that will be received by the native Hawaiians whenever possible.

(2) OHA was designed by the 1978 Constitutional
Convention to be a semi-autonomous entity with substantial independent control of its resources. This decision was reinforced by the legislature which stated in 1979, in what is now Section 10-4 of the Hawaii Revised Statutes, that OHA "shall be a separate entity independent of the executive branch." OHA's Trustees may allocate OHA's resources for the benefit of its beneficiaries as long as the Trustees determine that it is in the sole interests of its beneficiaries, unless their action is explicitly in conflict with a constitutional or statutory provision designed to limit OHA's activities. I am enclosing with this memorandum an opinion letter written by Jon M. H. Wolfe on November 5, 1990 on a related subject which discusses in detail the reasons that support this conclusion.

Unless, therefore, an explicit statutory or constitutional provision limits OHA's Trustees, they may allocate resources and spend resources for communication and participation as described in the Committee's proposal. Are there any explicit limitations that would restrict their ability to establish an "Annual Allowance"?

H.R.S. Section 10-9 establishes the compensation rate per meeting for the Trustees and in addition authorizes them to receive "transportation fares" and "personal expenses" (or per diem) for their travel. It is not, however, written in language that indicates that this list is meant to be exhaustive. It does not, in other words, indicate that the Trustees cannot also receive other appropriate expenses for other legitimate purposes.
H.R.S. Section 10-12 authorizes the Administrator to hire staff to carry out the functions of OHA. Is this provision meant to be exclusive, or does it permit the Trustees to hire their own staff as well to assist them in their legislative functions, to carry out the purposes identified in Section 3.2 of Chapter 3 on the "Annual Allowance"? The language of H.R.S. Section 10-12 does not indicate that this provision is meant to be exclusive, and analogies to other legislative bodies—such as the county councils in Hawaii—illustrate that it is natural and usual for legislators to have their own staff assistants.

It would appear, therefore, that nothing in the Hawaii Revised Statutes or the Hawaii State Constitution prohibits the establishment of the "Annual Allowance."

To summarize, the creation of an "Annual Allowance" for individual Trustees appears to be a legitimate expenditure of OHA's resources. The actual uses of these funds may need to be monitored, however, to ensure that the expenditures are in fact in the sole interests of the beneficiaries.
AGENDA ITEM: IV. New Business†
   B. 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.

MOTION: Approve BOT executive policy amendments relating to a Trustee Protocol Allowance to cover expenses incurred in the course of a Trustee’s duties and responsibilities as shown in Attachment “A” and Corresponding and Conforming Changes to BOT Operations Manual as shown in Attachment “B.”

AMENDMENT:

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

V. New Business

C. 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)(4)).

Note: Material was not received at time of folder distribution. Once it is received it will be distributed.
VI. Executive Session†

A. Consultation with attorneys William Yuen, Esq., Judy Tanaka, Esq., and Board Counsel 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 and management options for those LLCs in light of the Minute Order issued in Andrew Walden v. Hi‘ilei Aloha LLC, Ho‘okele Pono LLC, and Hi‘ipaka LLC. Pursuant to HRS §92-5(a)(4).

B. Consultation with Board Counsel Robert G. Klein, Esq. on questions and issues pertaining to the Resource Management Committee of the OHA-BOT’s powers, duties, privileges, immunities and liabilities regarding OHA Contract #3284. Pursuant to HRS §92-5(a)(4).

C. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities relating to the Trustee Protocol Allowance policy. 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)(4).

E. Approval of Minutes
   1. March 7, 2019
   2. March 21, 2019

† Any material that is relevant to this section will be distributed at the table during Executive Session.