

PHONE (808) 594-1888

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Committee on Beneficiary Advocacy and Empowerment
Trustee John Waihe'e IV, *Chair*
Trustee Kaleihikina Akaka, *Vice Chair*
Members



**STATE OF HAWAII'
OFFICE OF HAWAIIAN AFFAIRS**

Trustee Leina'ala Ahu Isa, At-Large
Trustee Dan Ahuna, Kaua'i / Ni'ihau
Trustee Keli'i Akina, At-Large
Trustee Brendon Kalei'aina Lee, At-Large
Trustee Carmen Hulu Lindsey, Maui
Trustee Robert K. Lindsey, Jr., Hawai'i Island
Trustee Colette Y. Machado, Moloka'i / Lāna'i

**MEETING OF THE
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT**

DATE: Wednesday, October 16, 2019
TIME: 1:00 p.m.
PLACE: Maui Ola Boardroom
Nā Lama Kukui
560 N. Nimitz Highway
Honolulu, HI 96817

AGENDA

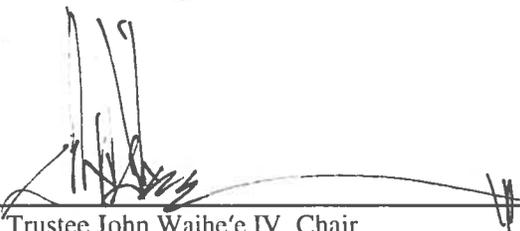
- I. Call to Order
- II. Public Testimony*
- III. Approval of Minutes
 - A. August 21, 2019
- IV. Unfinished Business
- V. New Business
 - A. 2020 Legislative Package Concepts Workshop**†
- VI. Community Concerns*
- VII. Announcements
- VIII. Adjournment

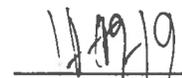
If you require an auxiliary aid or accommodation due to a disability, please contact Raina Gushiken at telephone number 594-1772 or by email at: rainag@oha.org no later than three (3) business days prior to the date of the meeting.

*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 10/15/19. However, the Trustees both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrices, as well as those that time does not permit to be placed on the Matrices, 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.


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


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Trustee John Waihe'e IV, *Chair*
Trustee Kaleihikina Akaka, *Vice Chair*
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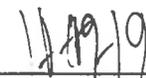
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Trustee John Waihe'e IV, Chair
Committee on Beneficiary Advocacy and Empowerment



Date

**STATE OF HAWAI'I
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HIGHWAY, SUITE 200
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT
MINUTES**

August 21, 2019 1:30 p.m.

ATTENDANCE:

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

EXCUSED:

Trustee Leina'ala Ahu Isa
Trustee Robert Lindsey

BOT STAFF:

Brandon Mitsuda
Carol Ho'omanawanui
Claudine Calpito
Crayn Akina
Lehua Itokazu
Lei-Ann Durant
Lōpaka Baptiste
Maria Calderon
Melissa Wennihan
Nathan Takeuchi
Paul Harleman
Priscilla Nakama
Ron Porter
Zuri Aki

ADMINISTRATION STAFF:

Sylvia Hussey, Ed. D., Ka Pouhana Kūikawā (Interim CEO)
Anuheia Patoc, PP
Jenifer Jenkins, PP
Jerome Yasuhara, COMP
Jim Patterson, PROG
Jocelyn Doane, PP
Kamakana Ferreira, COMP
Keola Lindsey, ADV
Lisa Watkins-Victorino, Ka Pou Nui (Interim COO)
Luci Meyer, LCIH
Wayne Tanaka, PP

GUEST:

Halealoha Ayau

I. CALL TO ORDER

Chair Waihe'e calls the Committee on Beneficiary Advocacy and Empowerment meeting for Wednesday, August 21, 2019 to order at **2:02 p.m.**

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

MEMBERS			AT CALL TO ORDER (2:02 p.m.)	TIME ARRIVED
CHAIR	JOHN	WAIHE'E, IV	PRESENT	
VICE-CHAIR	KALEIHIKINA	AKAKA	PRESENT	
TRUSTEE	DAN	AHUNA	PRESENT	
TRUSTEE	KELI'I	AKINA	PRESENT	
TRUSTEE	BRENDON KALEI'AINA	LEE	PRESENT	
TRUSTEE	COLETTE	MACHADO	PRESENT	

At the Call to Order, **SIX (6) Trustees are PRESENT**, thereby constituting a quorum.

EXCUSED from the BAE Meeting are:

MEMBERS			COMMENT
TRUSTEE	LEINA'ALA	AHU ISA	MEMO – REQUESTING TO BE EXCUSED
TRUSTEE	CARMEN HULU	LINDSEY	MEMO – REQUESTING TO BE EXCUSED
TRUSTEE	ROBERT	LINDSEY	MEMO – REQUESTING TO BE EXCUSED

Chair Waihe'e would like the record to show that some materials (V. B, C & D) were received more recently than 72 hours ago, and that deadline, per practice, has been duly waived.

II. PUBLIC TESTIMONY*

None

III. APPROVAL OF MINUTES

Trustee Machado moves to approve the minutes of April 10, April 17 and May 1, 2019.

Trustee Dan Ahuna seconds the motion.

Chair Waihe'e asks if there is any discussion or corrections.

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

						2:03 p.m.	
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA						EXCUSED
DAN	AHUNA		2	X			
VICE-CHAIR KALEIHIKINA	AKAKA			X			
KELI'I	AKINA			X			
BRENDON KALEI'AINA	LEE			X			
CARMEN HULU	LINDSEY						EXCUSED
ROBERT	LINDSEY						EXCUSED
COLETTE	MACHADO	1		X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				6	0	0	3

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

IV. UNFINISHED BUSINESS

None

V. NEW BUSINESS

A. ACTION ITEM: BAE #19-01: Approval of Liane Khim and Alvin Tanaka for the Native Hawaiian Revolving Loan Fund, Board of Directors, Oahu Seats

Trustee Machado moves to approve Ms. Liane Khim and Mr. Alvin Tanaka, both as Island of O’ahu representatives, on the Native Hawaiian Revolving Loan Fund (NHRLF) Board of Directors.

Trustee Dan Ahuna seconds the motion.

Chair Waihe’e asks if there is any discussion or corrections.

There is no discussion nor any corrections.

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

						2:04 p.m.	
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA						EXCUSED
DAN	AHUNA		2	X			
VICE-CHAIR KALEIHIKINA	AKAKA			X			
	KELI'I AKINA			X			
BRENDON KALEI'ĀINA	LEE			X			
CARMEN HULU	LINDSEY						EXCUSED
ROBERT	LINDSEY						EXCUSED
COLETTE	MACHADO	1		X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				6	0	0	3

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

V. NEW BUSINESS

B. PRESENTATION: Administration update on Iwi Kūpuna matters - Advocacy (Compliance) including guest: E. Halealoha Ayau

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

Ka Pouhana Kūikawā Hussey: Mahalo Chair and Trustees; we have our guest, Halealoha Ayau as well as our new Chief Advocate Keola Lindsey and our Compliance lead Kamakana Ferreira here to speak to you today. Materials are being distributed to help contextualize the iwi kupuna work, and I'll turn the time over to them.

Chief Advocate Keola Lindsey: Aloha. Thank you for the opportunity. As you know our beneficiaries come to OHA quite a bit seeking help and support for the very sensitive and emotional issue of dealing with our iwi kupuna; our ancestral remains. That call for help to OHA is based on what they believe is right and what needs to be done. OHA balances that with State and Federal Laws, along with our internal policies which also support our responsibility we have to beneficiaries and iwi kupuna.

For the Board, we have at least three policies related to iwi kupuna; we have a Repatriation policy, an International Engagement policy and an iwi kupuna component to it. The reality of it is that one aspect of iwi kupuna is repatriation which is the act of bringing iwi kupuna home, or if they're already home putting them back to rest after we've resolved the issues. That's what we've done for nearly three decades now; there is much more work to be done. We hope one day that work will be done and resolved; but for now, it is an ongoing matter that we react to when our beneficiaries come to us for help. With that brief introduction and background of how OHA is involved, I'd like to turn it over to one of our community leaders and advocates on this subject, Halealoha Ayau.

Halealoha Ayau: Aloha, the documents that you have before you outline the work that has been done over the last thirty years. Back in 1980 was the modern awakening of this responsibility to mālama iwi kupuna for our people, but what we did not know at that time was the extent to which they had been removed to countries and institutions all around the world. This represents our response to that problem and the ongoing need because they're still out there; in museums and other countries. OHA is the lead applicant in those cases now because the other organizations no longer exist, so I've been your volunteer whether you knew it or not for about the last twenty years.

Trustee Robert Lindsey: Mahalo!

Halealoha Ayau: I've been working closely with OHA staff and that started under Administrator Clyde Namu'o and continued with Kamana'opono and I am continuing to serve now. We want to make you aware of what's been done, but also aware that it's still an ongoing problem. Our kupuna are still out there as well as many sacred objects in museums, museums that are now willing to consult with us and to return them.

Kamakana Ferreira: Aloha Chair and Trustees. OHA is currently overseeing about 22 Out-of-State and In-State Repatriation cases; 12 of which are International. Actively maintaining these claims have required correspondence with museum staff, recruitment of third-party researchers, in-house research and often face-to-face consultations which necessitate travel. Of these active cases, 13 are at about 60% completion. 9 of these close to completion cases have been successful in returning iwi to Hawai'i, but now require reburial. Four of those close to completion cases require further travel and shipping arrangements to bring iwi kupuna home in a timely-manner. Three of these cases are in Europe; we're looking at Cambridge and Berlin. Although it is OHA's intent to rebury and repatriate iwi as soon as possible upon their return to Hawai'i, sometimes it's difficult to determine the repatriation location. The most cost-effective solution has been to look towards partnerships with entities that have existing burial vaults.

Chief Advocate Lindsey: Trustees, we know it is our job to detail the resources that are required to provide support for this important issue. We present that to Administration and then at the appropriate time we will come before the Board for consideration. We look forward to providing additional details to you at that time. We're happy to answer questions you might have now.

Trustee Akina: Thank you gentlemen for the work that you do, it's important work. I just have a clarification question. Kamakana mentioned that there were 22 active cases that OHA is overseeing. The chart you guys handed out have 119 cases listed, *are some of those closed or historic or just not being dealt with?*

Kamakana Ferreira: The handout you have notes primarily cases that were handled by Hui Malama and OHA. There is a key on there that shows which cases OHA assisted with; you can see OHA's participation increased over the recent years. These cases are all closed. The 22 I referred to are not listed here.

Trustee Machado: *Is there a line item in Public Policy to oversee the iwi kupuna process?*

Ka Pouhana Kūikawā Hussey: In the budget historically, there have been line items in the Operating Budget for iwi kupuna repatriation. Sometimes the amount was used and sometimes it wasn't. That's part of our overall strategy. When we came to you with a balanced budget as an example, it did not include repatriation dollars. When we come back with our realigned budget, it is to come back with a specific amount.

Trustee Akina: Thank you Sylvia this is helpful to understand how repatriation efforts are taking place. *Where in our organizational structure are the current controversies handled? Thinking particularly of the Maui Sand Dunes and Kawaiaha'o Church.*

Ka Pouhana Kūikawā Hussey: That's primarily in our Advocacy Unit and a joint-effort with Compliance.

Trustee Machado: The Mokapu issue and the reinternment of the iwi kupuna that's been held and stored in a storage locker; *what is our plan?*

Chief Advocate Lindsey: We recognize that the resolution of the Mokapu reburial is long overdue. In December, a step was made to actually return those kupuna from Bishop Museum back to Mokapu, that was step one. Then next and hopefully the final step that is happening right now are the discussions amongst all the groups and families involved, and of course the Marine Corps to confirm the final resting place for those kupuna and move-forward with that. We are actively working on it.

Halealoha Ayau: Mokapu represents the largest disturbance of the iwi kupuna in recorded history. Over 3,000 individuals were disturbed; not by the Marines, this happened before the peninsula became Federal. They were disturbed by the University of Hawai'i's Anthropology Department and Bishop Museum. You're right here. We are going to places all over the world to bring kupuna home, while nā iwi at home are still sitting and waiting to be reburied. Those kupuna were repatriated formerly under the Native American Graves Protection and Repatriation Act (NAGPRA) in 1995 and they still haven't been reburied, because of the lack of agreement amongst the claimants. My understanding is that OHA has taken the lead on bringing that together to the point that they're now removed from the museum and now residing on the base awaiting reburial. So, this is the closest we've ever been.

Trustee Machado: The reason I raise this specific issue is because when we're doing the overall line item budget and trying to secure the appropriate resources; Mokapu should be considered a serious issue. There's a need for kapa that needs to be prepared, baskets need to be purchased, and training needs to take place for the reinternment. That's why I wanted to raise the issue, to ensure that we have those types of resources available in that line item.

Ka Pouhana Kūikawā Hussey: What was there in the first round of budgeting was about \$100,000.

Trustee Machado: Thank you Sylvia. Thank you Halealoha for your continued commitment to mālama the iwi, you have done tremendous work.

Halealoha Ayau: Mahalo.

Ka Pouhana Kūikawā Hussey: I also wanted to point out that in addition to Halealoha, within OHA, Jerome and Kai have been longstanding guardians for our kupuna as well. I just wanted to acknowledge and thank them for being a part of this as well.

Halealoha Ayau: I just wanted to add that one reason we've been successful at the International level, is that we absolutely believe this is our kuleana, not necessarily our right, but our duty to bring them home. Also, a lot of the tribal parties that we work with, they have Federal and Sovereign recognition, yet they are hesitant to assert on an International arena. For us there is no jurisdictional limitation or any other legal obstacle to assert *Aloha, Ohana, Mālama and Kuleana*; that's the authority we rely on. Not legal authority – that's helpful but not necessary. Every time we assert our kuleana with a fellow human being sitting across the table, they recognize this is a humanitarian issue and they agree to return it, just as if we had their kupuna we would give it back.

Chair Waihe'e: Mahalo – *Members, are there any further questions or discussion?*

There are no further questions or discussion.

V. NEW BUSINESS

C. PRESENTATION: 2019 Legislative Session Report‡ and 2020 Legislative Session Preparation - Advocacy (Public Policy)**

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

Ka Pouhana Kūikawā Hussey: I will call on our Public Policy Manager Jocelyn Doane to come to the table.

Public Policy Manager Doane: Aloha Trustees. I realize you've been in here all day long, so my intention is to be quick. I'm going to skip over a bunch of slides unless Trustees want to talk about them further. We're going to talk about two things today even though it's going to be quite short.

First, we will be wrapping-up the 2019 Legislative Session which we've kind of done already, but now that the Governor's veto deadline has passed, it's firm that session is totally pau. Then of course we will get Trustees to start thinking about preparing for the 2020 Legislative Session.

Trustee Machado: *Do you have a draft of the 2020 Legislative Package?*

Public Policy Manager Doane: No, we do not yet have a draft. This is our opportunity to first get input from Trustees, as well as Community stakeholders, and other staff and programs - then we will be back with that.

As you know, at the legislature our focus is two-fold; one is to advocate for our package, the second is to track all the other bills that may impact our beneficiaries.

As you may recall, we had five bills in our 2019 package. The OHA Budget Bill passed and the Unsecured Bail Bill passed which we are excited about.

The other three bills are issues that we will continue to work on. Every year we compare the success of our package to years past; this is just one tool that we look at. About 40% of our bills passed which was much better than last year and quite decent in comparison to previous years. We also compare our package to the packages of the administration and other caucuses; so again about 40% of our bills passed which is better than even the Governor's package, which is uncommon.

Before session we do outreach into the Community. Specifically, Public Policy worked with other subject matter experts and other more sophisticated advocacy organizations to identify issues that are going to come up during the year. All involved then assess how positively or negatively our beneficiaries will be impacted. As a result, we reviewed all the measures that were introduced this past session; over 3,000 bills, over 800 resolutions and over 500 GMs (Gubernatorial Nominations). Every week we came to the BAE Committee and every other week to the Board for approval on the positions. At those meetings, we provided updates on key measures and provided trustees opportunities to ask questions. Then of course, we also do the work of writing testimony, assessing measures, and meeting with lawmakers, communities, and agencies.

Of the 4,500 measures that were introduced this year, our staff tracked 919 of them and 117 of them were passed. 28 of the bills that we supported or supported with amendments were passed and only 2 of the 21 bills that we opposed passed.

As we all know, HB402 was a bill that we coordinated with our community on and with the Native Hawaiian Caucus, in particular. This bill would've increased our Public Land Trust annual revenue amount from 15 to 35 million dollars. By the time it got to the Senate, it no longer would've increased OHA's pro-rata share. Instead there were discussions about a negotiating committee. There were concerns about language in the bill that would erode the responsibilities of different State agencies, specifically UH, for transferring their amounts. This is something that we will continue to pursue and discuss with the trustees for the 2020 session. We will think strategically what makes sense for us to introduce.

I wanted to remind the trustees about the Aloha Homes bill, because I do think it's a concept that will come back. If you recall, the basic idea is to use State lands, most of which is Public Land Trust or Ceded Lands to develop low cost homes for Hawai'i residents. As you also recall, we have been engaged in conversation with lawmakers of that time to identify ways that Native Hawaiians specifically can benefit. So, we will continue to have those conversations during the off-session. The bill itself that would've started the program did not pass, but HB820 passed. HB820 requires HHFDC to come up with a plan to implement the vision of the ALOHA Homes program, so we're anticipating this conversation to come up again.

I am not going to belabor the audit bill any more, unless Trustees have questions.

We were disappointed this year again when the Charter Schools Facilities funding did not pass. We will continue to advocate with the legislature and before the Department of Education and the Commission, as appropriate to address the disparity of facilities funding for our schools.

Two bills passed that we had opposed, they are pilot projects for the Public Libraries and the Department of Education. They allow for three Public Library sites and three Public School sites to be leased out for 99 years. We objected to the long-term nature of those leases and we objected to the ability of the department to not go through the proper procedures. Because they are pilot projects and with just three sites each, we are concerned, but know it could've been much worse.

I don't think we need to talk much more about the Water Revocable Permit bill, but we are expecting this issue to come up again. The landscape has changed. The Intermediate Court of Appeals (ICA) did overrule the Circuit Court's decision, which created the need for the statutory change in the first place. We are expecting our beneficiaries to ask for the ICA to reconsider their position and/or appeal to the Hawai'i Supreme Court.

I wanted to remind Trustees about HB1552 passing. This bill created the Hawai'i Corrections Oversight Commission to facilitate Hawai'i's system from a punitive one to a rehabilitative model. The idea is to reduce the incarceration population, correction spending and recidivism, which is all consistent with positions this Board has taken and parallels our recommendations and participation with the HCR85 and HCR134 Task Forces, regarding prison reform and pre-trial reform. In the bill, the OHA Board Chair appoints one of the five members of the Commission; and the Chair has done that. She selected Kawika Patterson who used to be the Women's Correctional Facilities Warden and now runs the Youth

Correctional Facility. We're very excited about that and have had a few meetings with him already. We're excited about how he may be able to influence changes that will address the disproportionate impact of the system, particularly on our beneficiaries.

As trustees probably know, after session is done there's a lot of follow-up work that needs to be done. I mentioned some of the bills that will require us to continue to do research on or follow-up with legislators on.

Moving on to our schedule for next year, we have started to do outreach. We are asking staff to get us their ideas. Trustees and their staff can also fill out the form and we will have a few minutes after I'm done wrapping this up to speak at the table, if you already have an idea. We are intending to come back to the BAE on October 16th for a workshop to talk about some of the ideas that we've identified.

Three weeks after that we intend to come back to the BAE with actual bills drafted. So, we have about two months to come up with ideas and then about one month after that to put the package together.

We tell everyone to give us ideas, and some of them are fun, but when we decide and prioritize, we ask these questions;

1. *Is there an actual problem?*
2. *Is the problem meant to address an issue that is directly affecting Native Hawaiians or disproportionately affecting Native Hawaiians?*
3. *Is legislation the appropriate way to address that problem?*

Changing the law every year is not necessarily the way to fix problems, sometimes there needs to be an analysis on whether-or-not existing laws are being enforced, or if there are administrative rules that can provide clarity for what the law was intended to do.

We usually aim for a smaller package, because that's just one way that we advocate for our beneficiaries at the legislature. We need to think about whether-or-not the funding implications of the ideas both to OHA and to the State will make it less likely to pass. Then of course if there will be community folks interested enough to come out and support these ideas, because if not, it might not make sense to pursue it. We talked about feasibility, and the likelihood of passing, but sometimes we introduce bills even though we don't think it will pass because sometimes we want to make a statement about something.

Chair Waihe'e: *Are there any ideas or thoughts at this time members?*

There are no responses.

V. NEW BUSINESS

D. PRESENTATION: Federal Legislative Matrix† - Advocacy (Washington, D.C. Bureau)**

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

Ka Pouhana Kūikawā Hussey: We are calling Keone Nakoā, our D.C. Bureau Chief and have Chief Advocate Keola Lindsey here to assist as well for a quick update.

Chief Advocate Lindsey: Aloha Chair, Vice Chair and Members of the Committee. We submitted the Federal Matrix to you folks ahead of the meeting. Just a quick note, the Federal Legislative process is different from the State Legislative process; so are the strategies that we take before submitting our positions and testimony. However, we bring the matrix to you for the same reason. We want you to establish the positions of OHA on different bills. One note is that we would like to remove one of the bills, because we received some information yesterday from one of our partners that has triggered us to not recommend that we take a position on it; that would be OHA FED 3: S. 804 / H.R. 1806 Relating to the Marine Mammal Protection Act. This specific bill is centered more on Native Alaskans. We were taking a position of SUPPORT to support their ability to access resources under that Act and partners reported to us some of the concerns they had with the bill. So, we will be withdrawing that measure from the matrix today, the rest of the recommendations in the matrix stand and we're here to answer any questions or concerns you may have.

Ka Pouhana Kūikawā Hussey: Just a reminder, in April the Trustees approved the positions on FED 1 and 2, so this is recommending approval on FED 4, 5, 6, 7 and 8.

Chair Waihe'e: *Ok members, is there any discussion or questions about the Positioning Matrix?*

There are no responses.

Trustee Lee moves to approve Administration's recommendations on:

- OHA FED 4: S. 126 / H.R. 558;
- OHA FED 5: S. 1413 / H.R. 3588;
- OHA FED 6: S. 2165 / H.R. 3846;
- OHA FED 7: S. 2191; and
- OHA FED 8: S. 2037; all as SUPPORT,

while excluding OHA FED 3: S. 804 / H.R. 1806 from the vote, on the Federal Legislative Matrix dated 08/21/19.

Trustee Dan Ahuna seconds the motion.

Chair Waihe'e asks if there is any discussion or corrections.

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

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	2:45 p.m. EXCUSED
LEINA'ALA	AHU ISA						EXCUSED
DAN	AHUNA		2	X			
VICE-CHAIR KALEIHIKINA	AKAKA			X			
	AKINA			X			
BRENDON KALEI'ĀINA	LEE	1		X			
CARMEN HULU	LINDSEY						EXCUSED
ROBERT	LINDSEY						EXCUSED
COLETTE	MACHADO						Departed at 2:26 p.m.
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				5	0	0	4

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

V. NEW BUSINESS

E. PRESENTATION: OHA D.C. Bureau Updates — Advocacy (Washington, D.C. Bureau)

Chair Waihe'e turns it back over to Chief Advocate Lindsey.

Chief Advocate Lindsey: For this agenda item we provided a memorandum that has the updates. However, we're here to answer any questions or provide additional information that trustees may have inquiries on. We talked a little bit about the Native Hawaiian Revolving Loan Fund (NHRLF) in your previous committee meeting and as noted, during that discussion we're actively working with the Administration of Native Americans to make regulatory changes to the NHRLF process that will be beneficial to getting capital to our beneficiaries. We stand on the memo and are happy to provide any clarity.

Chair Waihe'e: *Are there any questions at this time members?*

There are no responses.

Chair Waihe'e: *Great job. Mahalo!*

VI. COMMUNITY CONCERNS*

None

VII. ANNOUNCEMENTS

None

VIII. ADJOURNMENT

Trustee Ahuna moves to adjourn the BAE meeting.

Trustee Lee seconds the motion.

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

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

						2:48 p.m.	
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA						EXCUSED
DAN	AHUNA	1		X			
VICE-CHAIR KALEIHIKINA	AKAKA			X			
KELI'I	AKINA			X			
BRENDON KALEI'ĀINA	LEE		2	X			
CARMEN HULU	LINDSEY						EXCUSED
ROBERT	LINDSEY						EXCUSED
COLETTE	MACHADO						Departed at 2:26 p.m.
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				5	0	0	4

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

Chair Waihe'e adjourns the BAE meeting at 2:48 p.m.

Respectfully submitted,

Melissa Wennihan
Trustee Aide
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment on October 16, 2019.

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

ATTACHMENT(s):

None

Committee on Beneficiary Advocacy and Empowerment
Trustee John Waihe'e IV, *Chair*
Trustee Kaleihikina Akaka, *Vice Chair*
Members



**STATE OF HAWAII'
OFFICE OF HAWAIIAN AFFAIRS**

Trustee Leina'ala Ahu Isa, At-Large
Trustee Dan Ahuna, Kaua'i / Ni'ihau
Trustee Keli'i Akina, At-Large
Trustee Brendon Kalei'aina Lee, At-Large
Trustee Carmen Hulu Lindsey, Maui
Trustee Robert K. Lindsey, Jr., Hawai'i Island
Trustee Colette Y. Machado, Moloka'i / Lāna'i

**MEETING OF THE
COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT**

DATE: Wednesday, October 16, 2019
TIME: 1:00 p.m.
PLACE: Maui Ola Boardroom
Nā Lama Kukui
560 N. Nimitz Highway
Honolulu, HI 96817

AGENDA

- I. Call to Order
- II. Public Testimony*
- III. Approval of Minutes
 - A. August 21, 2019
- IV. Unfinished Business
- V. **New Business**
 - A. **2020 Legislative Package Concepts Workshop**†**
- VI. Community Concerns*
- VII. Announcements
- VIII. 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.

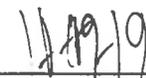
*Notice: Persons wishing to provide testimony are requested to submit 13 copies of their testimony to the Chief Executive Officer at 560 N. Nimitz, Suite 200, Honolulu, HI, 96817 or fax to 594-1868, or email BOTmeetings@oha.org 48 hours prior to the scheduled meeting. Persons wishing to testify orally 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 10/15/19. However, the Trustees both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrices, as well as those that time does not permit to be placed on the Matrices, 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.



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



Date

**OHA 2020 CONCEPTUAL
LEGISLATIVE PACKAGE WORKSHOP**
BAE
October 16, 2019

1. Restoring Hawaiian Expertise in Land Use and Resource Management:

Since 2016, a number of state boards and commissions with land use and resource management responsibilities have been required to attend a Native Hawaiian law and public trust training course; in addition, several of these boards are required to have at least one member possess experience or expertise in relevant Native Hawaiian traditional and customary practices or resource management approaches. Combined, these requirements seek to ensure that decisions impacting our lands and resources are more informed as to the rights, values, and practices of Native Hawaiians, and have the potential to enhance our islands' sustainability and resilience for present and future generations.

Unfortunately, despite the regular provision of notice to board and commission administrators, the vast majority of boards and commissions subject to the training course requirement have failed to fully comply with their training responsibilities. As a result, land use and resource management decisionmaking may continue to be less than fully informed on Native Hawaiian concepts, practices, and rights associated with the 'āina. Moreover, requiring only a single member of critical decisionmaking bodies, such as the land use commission and board of land and natural resources, to have experience or expertise in Hawaiian practices or resource management approaches, has not resulted decisions that consistently recognize or incorporate Native Hawaiian knowledge, values, and rights. These issues in turn have led and continue to lead to substantial conflict, distrust in government decisions and processes, and even legal action against the state, and may further foreclose critical opportunities to ensure our islands' resiliency and self-sufficiency through culturally-informed land use and resource management.

This measure would seek to address the above challenges and ensure greater recognition and incorporation of Hawaiian perspectives, expertise, and rights in land use and resource management decisionmaking. First, it would provide clear statutory remedies for noncompliance with the Native Hawaiian law and training course requirement, including by

- Requiring an annual report by the state Boards and Commissions office of all individuals who have failed to meet the one-year training deadline under the law;
- Prohibiting individuals who have failed to meet their requirement from serving on a permitted interaction group or voting on any matter before their respective boards or commissions, until they have attended a training course;

- Requiring untrained individuals to take the training course or be reconfirmed by the Senate by the end of the regular legislative session following their deadline to attend a training; and
- Allowing board or commission members who remain untrained beyond their statutory deadline to be sued in their personal capacity for alleged breaches of trust relating to actions taken as members of their respective boards or commissions.

Second, this measure would require that no less than one-half of the members of the land use commission and board of land and natural resources be appointed from a list of nominees submitted by the Office of Hawaiian Affairs, similar to the way in which OHA nominees are appointed to the various island burial councils. Such meaningful representation of Native Hawaiian perspectives will particularly ensure that land use and resource management decisions incorporate and benefit from Native Hawaiian practices, values, and knowledge relating to the 'āina.

- 2. Addressing Employment Discrimination Against Former Pa'ahao:** As noted in OHA's 2010 report on *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, the inability of former pa'ahao to find stable employment and support their families after their release is one of the major "collateral consequences" of incarceration, which particularly burden the Native Hawaiian community. Criminal background checks as part of the employment process may exacerbate this burden, by allowing prospective employers to effectively discriminate against pa'ahao even after they have paid their debt to society, and despite existing state laws that generally prohibit employment discrimination based on arrest or court records. With national studies showing that employers may be far less inclined to hire individuals with even a misdemeanor criminal record – particularly for individuals of color, and irregardless of the age of their past criminal activity – the ten-year background checks currently allowed under state law may substantially inhibit pa'ahao efforts to earn a legitimate income and support their families, potentially leading to recidivist behavior and otherwise frustrating state investments in their rehabilitation and reentry into society.

This measure would mitigate the impacts of the currently allowed ten-year criminal background checks on new employees, by limiting such background checks to a maximum time period of one year prior to employment, subject to exceptions for law enforcement-related government positions, or as may be otherwise required by federal law. Combined with the current tax incentive provided to businesses who employ pa'ahao within one year of their release from prison, this one-year limit will ensure that those who have paid their debt to society are given a more meaningful opportunity to support themselves and their families and become contributing members of the community. Data shows that of those that recidivate overwhelmingly do so within the first two years of release. Accordingly, this measure will arguably help reduce recidivism, facilitate successful pa'ahao reentry, and enhance public safety in the long-term.

This measure will not apply to employers who are expressly permitted to inquire into individual's criminal history pursuant to federal or state laws (e.g. DOE to determine suitability to work with children, public safety to insure against risks to the department or the public, etc.) or existing reporting requirements (e.g. for sex offender registries).

- 3. Addressing Systemic Housing Discrimination Against Indigent Hawaiians.** Native Hawaiians are particularly reliant on the rental housing market, with research showing that Native Hawaiians are less likely to own a home, and that Native Hawaiian homeownership rates are generally lower than the state average even when including Hawaiian Homestead homeowners. Consistent with individual and household income data, research also suggests that Section 8 housing programs may also provide potential housing relief particularly for Native Hawaiians, who comprise over half of those who receive or are on the waitlist to receive Section 8 rental housing voucher support. However, even for those who qualify for and receive Section 8 housing vouchers, affordable rental housing opportunities may be difficult to find, as many landlords explicitly discriminate or refuse to rent to those hoping to use their Section 8 housing vouchers to assist with their housing rent costs. This legislation would seek to create more affordable rental housing opportunities for OHA's beneficiaries, by preventing landlords or their agents from refusing to rent to Section 8 voucher holders in their advertising, or upon learning that their potential renter is a Section 8 voucher recipient. Notably, in other jurisdictions where similar Section 8 housing discrimination practices have been banned, families receiving Section 8 housing vouchers have been shown to be 12 percent more likely to succeed in securing housing.
- 4. Protecting our Ancestors:** State historic preservation laws provide a process by which county grading- and construction-related permit applications can be vetted for potential impacts to iwi kupuna and archaeological/historical sites; this process includes the opportunity to attach permit conditions as well as develop and apply other protective measures to mitigate any potential impacts. Historic preservation laws further impose criminal and civil penalties for the knowing desecration of iwi kupuna, burials, and archaeological/historical sites, and for failing to stop work upon the discovery of a burial.

Despite these laws, concerns have been raised regarding landowners and contractors who ignore county permitting requirements before beginning construction work, thereby avoiding the procedural protections established under our historic preservation laws, and likely impacting countless iwi kupuna and archaeological/historical sites as a result. These concerns have been compounded by written statements from the State Historic Preservation Division that impacts to iwi kupuna from unpermitted grading or construction activities cannot be investigated or enforced after-the-fact, due to the likelihood that any evidence of such impacts have already been destroyed. For unscrupulous landowners and

contractors, this admitted lack of after-the-fact enforcement may even represent a significant financial incentive to engage in unpermitted work especially where iwi kupuna may be found, as the otherwise minimal penalties for unpermitted work may be far less than the costs of complying with permitting processes and conditions protecting iwi kupuna and historic sites.

Accordingly, this measure would seek to better protect Native Hawaiians' ancestors by

- Providing for mandatory minimum fines for unpermitted grading or construction activities that would have otherwise involved historic preservation review, and/or that occur in the types of areas where iwi are more likely to occur (such as sand dunes/jaucus sand areas, along stream banks and fishpond berms, around rock shelters and low rock mounds, etc.);
- Prohibiting, subject to significant fines, any further work or permit issuance for the subject property where unpermitted activities occurred, unless and until a site inspection has been conducted by trained SHPD staff or a licensed archaeologist paid for by the landowner, to identify any evidence of potential impacts to iwi kupuna or historic sites;
- Holding landowners and contractors jointly liable for all assessment and mitigation costs associated with unpermitted activities;
- Requiring the establishment of a citizen complaint process and/or informational resources for citizens to document/report (anonymously, if necessary) impacts to iwi kupuna or historic sites;
- Requiring the posting of notice at worksites regarding iwi kupuna and historic preservation laws, and informing workers and the public of the citizen complaint process; and
- Amending the historic preservation special fund, which collects historic preservation fines and fees, to explicitly allow fund monies to be dedicated towards enforcement related activities.

5. Protecting our Ancestors Part 2 (Rulemaking Resolution): For 23 years, there have not been any updates to the administrative rules relating to the protection of iwi kupuna, burial sites, and archaeological/historical resources and sites. This lack of any regulatory updates has persisted notwithstanding a scathing 2002 state audit of the State Historic Preservation Division, which found the application of diverse and inconsistent standards in archaeological survey reviews; a piecemeal and inconsistent iwi kupuna inventory system; a failure to ensure timely re-interment of iwi kupuna; and a failure to adequately safekeep historical artifacts in the division's inventory. A more recent 2010 audit by the National Park Service also found significant operational problems with the division, and numerous news articles have continually chronicled the persistent procedural inconsistencies relating to the identification and protection of iwi kupuna and burial sites; again, despite the apparent need for greater regulatory guidance to address these issues, no rule

amendments have been made to the administrative rules for burial sites, iwi kupuna, or archaeological/historical sites and resources since 1996.

It appears that the State Historic Preservation Division may be contemplating rulemaking action in the near future. This resolution would send a clear legislative message to the division that any such rulemaking must address specific, long-standing issues that have inhibited the consistent and appropriate protection of iwi kupuna, burial sites, and archaeological/historical resources and sites that embody the physical and spiritual legacies and final resting places of our ancestors. The resolution will point to general and specific rule provisions that SHPD should consider, and will likely include:

- Improving accountability for archaeologists responsible for surveying development sites;
- Broadening the authority and responsibilities of the Island Burial Councils;
- Amending assessment requirements to reduce the likelihood of “inadvertently discovered” burial sites during construction activities;
- Expanding protections of “inadvertently discovered” burial sites and iwi kupuna;
- Improving requirements for consistent consultation with descendants and knowledgeable individuals throughout the historic preservation review process;
- Requiring the metes and bounds recordation of preservation sites at the Bureau of Conveyances; and
- Creating a process to document and address rule violations by cultural resource contractors.

6. Facilitating Practitioner Access Onto Private Lands: The Hawai‘i constitution provides cultural practitioners with the right to access less-than-fully-developed lands in the reasonable exercise of their Native Hawaiian traditional and customary practices; in recognition of Hawai‘i’s unique history of land ownership, land tenure, and native displacement, this right extends to both government and privately held lands. Unfortunately, both private and government landowners may be reluctant to provide explicit permission or otherwise accommodate practitioners seeking to access their lands, due to liability concerns. Such landowner reluctance may force practitioners to risk physical conflict or even the possibility of citation and/or arrest in order to access lands they do not have permission to be on. In the latter case, practitioners would also have the costly burden of proving in court that they were in fact engaged in the reasonable exercise of their traditional and customary practices, in order to avoid conviction and a criminal record. Faced with such risks and burdens, Native Hawaiian practitioners may choose to forego the continuation of their practices and the perpetuation of their culture, undermining the vision and intent of our unique constitutional protections.

This measure would address the liability concerns of private and government landowners who grant explicit permission to cultural practitioners to access their lands to engage in Native Hawaiian traditional and customary practices. By protecting landowners from legal claims arising from such access, this measure would encourage their accommodation of practitioners and facilitate the perpetuation of Native Hawaiian traditional and customary practices, as envisioned in our constitution and otherwise protected under the law.

This measure does not necessitate permission on the part of the practitioner, but increases the likelihood that a landowner would grant permission, and decreases the burden on practitioners who do not request permission.

- 7. Capital Improvement Project Budget Request for OHA's Wahiawā Lands:** OHA is working to plan, permit, and otherwise prepare for the construction of a water storage and distribution system on OHA's 511-acre property in Wahiawā. This action is in alignment with OHA's Conceptual Master Plan (Plan), approved by the BOT in 2018, which requires a consistent and reliable water source for its implementation. This action is also necessary to amend the conservation easement that accompanied the acquisition of the property in 2012; insofar as the City and County of Honolulu (the holder of the easement) has communicated that OHA will need to demonstrate agricultural uses before the easement can be amended to accommodate the Plan's commercial elements. Notably, OHA has secured an allocation of water from the Agribusiness Development Corporation (ADC), which would provide OHA with 1-million gallons of water per week from ADC's Bott Well; however, ADC is not able to provide the water to OHA without a water storage system.

OHA has committed funding in FY 20 (\$200,000.00) and 21 (\$300,000) for the planning and permitting of the system and is starting the procurement process. It is estimated that the construction of the water storage and distribution system will cost approximately \$3,000,000.00 to construct.

Accordingly, OHA has been encouraged to submit a CIP request to pay for the construction of the system, estimated by our research to be approximately \$3-million dollars.

OHA 2020 COORDINATED ADVOCACY

BAE

October 16, 2019

- 1. Criminal Sentencing Reform:** Starting in the 1970s, Hawai‘i enacted a series of “tough on crime” policies implementing lengthy mandatory minimum sentences for certain drug crimes and allowing greatly enhanced sentencing for repeat offenders. These changes increased the inflow of offenders into our jails and prisons and lengthened their stays, resulting in a dramatic increase in the incarcerated population and contributing to the inhumane overcrowding currently seen at almost all of our correctional facilities. This “tough-on-crime” approach and the resulting mass incarceration of Hawai‘i’s residents has proven to be particularly burdensome for the Native Hawaiian community: most notably, OHA’s 2010 study of *The Disparate Treatment of Native Hawaiians in the Criminal Justice System* revealed that Native Hawaiians receive longer probation and prison sentences than most other racial or ethnic groups in Hawai‘i, likely contributing to the gross overrepresentation of Native Hawaiian pa‘ahao among the overcrowded prison population.

To address the inhumane and costly conditions in our detention facilities and mitigate the disproportionate impacts caused by four decades of “tough-on-crime” policies, a number of concerned stakeholders—former criminal court judges, criminal law attorneys, professors in criminal law and clinical work, former prison and bail reform task force members, and community advocates—have formed an informal working group to develop a targeted sentencing reform legislative proposal. Heeding the recommendations of the HCR85 Task Force on Prison Reform, the working group is now considering the introduction of legislation:

- Making certain offenses eligible for community-based sentences;
- Reducing the length and severity of custodial sentences by redefining or reclassifying crimes, or repealing mandatory minimum sentences;
- Reducing or eliminating sentencing enhancements for repeat offenders in certain classes of offenses;
- Shortening lengths of incarceration by expanding opportunities to earn sentence credits (which shave off time in custody and advance parole eligibility timelines); and
- Reducing the number of people entering jails and prisons for violations of community supervision by implementing evidence-based practices such as graduated responses to violations as well as community-based sanctions.

These proposals have the potential to greatly reduce jail and prison populations as well as the impacts of mass incarceration on Hawai‘i’s communities, and especially the Native Hawaiian community. OHA staff has been providing support to this working group in obtaining data, drafting potential legislation, and

facilitating outreach as needed. OHA staff accordingly seeks to advocate and support the working group's legislative proposals as described above, as a critical opportunity to advance our collective criminal justice reform efforts.