

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

COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT
MINUTES

March 26, 2022 10:03 a.m.

ATTENDANCE:
Chairperson Kaleihikina Akaka
Trustee Leina'ala Ahu Isa
Trustee Dan Ahuna
Trustee Keli'i Akina
Trustee Luana Alapa
Trustee C. Hulu Lindsey
Trustee Mililani Trask
Trustee John Waihe'e, IV

BAE STAFF:
Brandon Mitsuda
Mark Watanabe

ADMINISTRATION STAFF:
Hussey, Sylvia, Ka Pouhana / CEO
Brown, Casey / COO
Hinck, Ramona / CFO
Kamali'i, Na'u / Chief Advocate
Ozawa, Nietzsche / Interim Senior Counsel
Ohta, Everett / Interim General Counsel
Ferreira, Kamakana / Lead Compliance Specialist
Chak, Kevin, IT
Santos, Dan, IT

EXCUSED:
Trustee Brendon Kalei'aina Lee

I. CALL TO ORDER

Chair **Akaka** calls the Committee on Beneficiary Advocacy and Empowerment meeting for Tuesday, March 26, 2022, to order at **10:03 a.m.**

Chair **Akaka** notes for the record that PRESENT are:

MEMBERS			AT CALL TO ORDER (10:03 a.m.)	TIME ARRIVED
CHAIR	KALEIHIKINA	AKAKA	PRESENT	
TRUSTEE	LEINA'ALA	AHU ISA	PRESENT	
TRUSTEE	DAN	AHUNA	PRESENT	
TRUSTEE	KELI'I	AKINA	PRESENT	
TRUSTEE	LUANA	ALAPA	PRESENT	
TRUSTEE	BRENDON KALEI'AINA	LEE	EXCUSED	
TRUSTEE	CARMEN HULU	LINDSEY	PRESENT	
TRUSTEE	MILILANI	TRASK	PRESENT	
TRUSTEE	JOHN	WAIHE'E, IV	PRESENT	

At the Call to Order, **EIGHT(8)** Trustees are PRESENT, thereby constituting a quorum.

II. PUBLIC TESTIMONY on Items Listed on the Agenda*

NONE

III. UNFINISHED BUSINESS

A. 2022 OHA State Legislative Bill Package Updates – SB2122/HB1474, SB2121/HB1473, coordinated advocacy - Matrix 1**

Chair Akaka yields the floor to Ka Pouhana Hussey.

Ka Pouhana Hussey: Thank you, Chair. We'll go ahead and have Chief Advocate Na'u, go ahead and run us through the calendar and matrices.

Chief Advocate Kamali'i: Alright, thank you very much. Good morning, Trustees, we are getting near the end of our session, as typical we'll go through the calendar. This being Tuesday, the 26th of April, we see that we are in almost our last week. Session ends next week, but this is an important week as we discussed last week that we have many bills that are in conference and we were at the leg. yesterday. We'll go today, we'll go tomorrow to make sure that OHA is there to answer questions as things are tweaked in this conference process.

But here we're at the 26th. There was hearing yesterday on the PLT bill, noting that the 29th is the final decking of fiscal bills. 28 the final decking of non-fiscal bills. So essentially what that means is that regarding the fiscal bills, excuse me, I will start with the 28th, with regard to non-fiscal bills. That is the deadline for submitting non-fiscal bills for final reading by both chambers. With regarding the final decking of fiscal bills, the 29th, that is the deadline for submitting fiscal bills for final reading by both chambers and fiscal bills include appropriation or spending bills, tax credits, etc. or any bill with a House Finance or Senate Ways and Means referral and then next week May 5th is adjournment.

So, lots of activity this week with regard to those measures as they indicated they're being fine tuned and tweaked, which includes our measures as well. So we'll move on to matrix. What is matrix one. As indicated last time and time before all of our OHA package bills have died and did not make it through. However, we know that our PLT bill is moving in a different form and I'll address that in Matrix #2. So, Madam Chair, I'd like to move on to Matrix 2.

Chair Akaka: Yes please, mahalo.

B. 2022 OHA State Legislature Bill Position Related to Measures Naming OHA – Matrix 2**

Chief Advocate Kamali'i: Matrix 2, that includes those measures that name OHA in the measure. Just very quickly we're looking at Mauna Kea, historic preservation bills or PLT bills and Native Hawaiian rehabilitation programs. So, I'll just defer to Sylvia as how she wishes to address Mauna Kea, which is for hearing today.

Ka Pouhana Hussey: Sure, Trustees it's scheduled for conference at 2:30 this afternoon and there's nothing that we've seen that would change the recommendation to continue to oppose the current SD2 version of the bill and that's it. We'll update the Trustees as soon as we find out from conference. But we have seen a number of deferrals in conference, so we will let you know if that's deferred or there's action taken.

Chief Advocate Kamali'i: Moving on to SB1411. 425 conference room. Kamakana indicated that he would not be here to present on that, but I'll just take a look at it. They will reconvene on that measure on 4/26. That's today this afternoon at 4. So, as I indicated to Sylvia, we may just sort of hang around, you know, the Capitol in case there any questions on any of these bills or other measures where they want input from the Office of Hawaiian Affairs.

Moving on to SB2021, that was heard yesterday, but also will be heard again today this afternoon, and I will note that we were able to receive what is a conference draft that is under consideration. We don't know, you know, typically it could result in another conference draft. I can at least tell you what the changes are that came across the table. I'll note that the Senate received the conference draft in committee from the House. So, this was the House offering to take into consideration what were the concerns of Budget and Finance. The short of it is they retained what is 21.5 million for the annual share and changed language from what we understood to be 20% or 21.5, whichever is greater. So that is no longer there but referred back to language that we had considered as well before. Which is, notwithstanding the provisions of Chapter 10, Hawai'i revised statutes, including section 10-13.5 and until further action is taken by the Legislature, incoming proceeds from the pro rata portion etc. etc. shall be 21.5 million. So in short, they're preserving the 20% as it is in 10-13.5 yet beginning fiscal year 2022-2023, there's the increase from the 15.1 million to 21.5 million. So, we'll continue to take a look at that and see if that changes again. By this afternoon, which is possible, so we'll be there to see if there are any additional changes with regard to that style.

So, with that being said, notwithstanding the provisions of Chapter 10, again looking back at language which is familiar and referring to the Executive Order 66 which we have talked about throughout the session and beginning in fiscal year 2022-2023, as opposed to what used to be 2005-2006 and that was the year where they marked the 15.1 million. So beginning fiscal year 2022-2023 the quarterly amounts will be increased from 3,775,000, which was flowed from the 15.1 million to 5,375,000, so that would reflect the quarterly amount to be paid to OHA, that's tied to the 21.5 million and familiar language that we have seen before that the Governor to expressly authorize and fix those amounts to be paid by the agencies. Now this language would be similar to or consistent with what Budget and Finance has seen before. So Administration hasn't had a chance to talk about this, so I'm reading it to you first hand and then we will digest it before our conference this afternoon.

Establishing a working group as we had requested to account for all ceded lands in the Public Land Trust inventory, account for all incoming proceeds from the Public Land Trust subsequently determine the 20% pro rata share. I'm moving very quickly and determine any past due sum owed to the Office of Hawaiian Affairs for the period of July 1, 2012 to 2022.

So in sum, the working group tasks appear to be what we had requested. No changes there. There was concern that the working group start date had not been indicated in the House version of the bill. The start date in the CD1 is no later than February 28, 2023. So that means we can get to work sooner, but no later than that a meeting shall be called. Also, to submit a report, etc., etc. There is a change adding a Section 5 for appropriation of 250,000 or so for two FTE administrative positions to Budget and Finance so that they can expand those monies to essentially carry out the provisions of the working group. There was discussion about that on OHA's side, and we offered to assume the responsibility for that, you know, and a request for appropriation at this late in the game could be reason to kill the bill. We don't want that to happen, so you know OHA did make clear that we would be willing to assume the responsibility for the administrative aspect of the working group and this has been done before by OHA with other measures, so it felt comfortable and also we know we're going to get the job done.

The report will be submitted and it will be timely submitted to the Legislature, so we'll see what comes out of conference today to see if they accepted that. Additionally, with regards to the CFTHA, we know that the projected amount is about 30 million in the proposed CD1, they indicate that the sum of 21.5 million would be appropriated to OHA so that would leave a little bit of a balance, a little bit of a buffer, so to speak. The difference between 21.5 and about 30 million, but it looks like they'd be willing to release the 21.5 for fiscal year 2022-2023. That's a good thing. Other than that, there does not appear to be any other significant changes to the House version. Also noting that the Act shall take effect upon its approval and that is consistent with the House measure. So that's what we know so far. We also know that this can change between 8:00 o'clock this morning and 1:30 this afternoon, so we'll wait and see what the committees decide to do in the next version of the Conference Draft. Is there any questions or any comments?

Chair Akaka recognizes Ka Pouhana Hussey.

Ka Pouhana Hussey: I just wanted to add to Chief Advocate Kamali'i that to set expectation, the CD draft also gives the Governor till February 28, 2023 to appoint the members of the working group which you know makes sense as there's going to be new leadership in the state so. But that also sets expectation that there won't be recommendations until the 2024 Legislature, just to set context and expectation of the work and the 2023 Legislature is when the biennium budgets for 2024 and four you know get set. So just again to set expectation of the timing of the working groups work.

Chief Advocate Kamali'i: And I also note that Sherry Broder was there with me. I don't know if that's appropriate to ask if she has anything to add. But we will go together as well. We were consulted, you know, informally, so they may during recess ask questions of us and then go back into session. So, it is helpful that we're present at the conference committees, although there is no testimony, there's no questions. It's really between the conferees, but in the recess they may have questions.

Chair Akaka recognizes Trustee Ahu Isa.

Trustee Ahu Isa: Kala mai, Na'u, I can't remember if we took the gross out and put the net in. Is it net or gross?

Chief Advocate Kamali'i: There's no reference in the bill to either net or gross, so it refers back to 10-13.5, which is, you know, the statute which refers to 20% but no changes to that. That's all still in place. And then yet as the language you know reflects. This is the way that they can increase the so-called interim amount from 15.1 to 21.5. So it's more or less tracks where OHA had started and are thinking of how to do this, but so that issue of gross or net, that was dealt with in the cross reference language.

Trustee Ahu Isa: Okay, so now this is the House CD, so the Senate has to agree, right? That's when they go back. Mahalo, Chair.

Chief Advocate Kamali'i: And I also note that the Senate did not receive it until yesterday in conference. So, they were discussing it in the afternoon as well as yesterday evening. So we received it this morning on the clarification of that and so we'll see what they decide to do. Anything else, Trustees? I know there were, there were a lot of numbers floating around, so we'll see what happens. I'll just say in terms of a conference and what they continue to discuss outside of you know, out of the public view, which is what they can do and are doing.

Chair Akaka recognizes External Counsel Broder

External Counsel Broder: Casey, could you put section two of the redraft up on the screen? So I just want to draw your attention to a couple of points.

COO Brown: The CD1?

External Counsel Broder: I do think it would, yes, the CD1.

Chief Advocate Kamali'i: Well, I don't think, I don't know that we can make reference to that draft because we just, you know, wasn't noticed, but maybe, Everett can speak to that. Can we do this at this point because we have an update?

External Counsel Broder: It's a proposal. It says proposed CD1 at the top so I don't know why we couldn't share it.

Chief Advocate Kamali'i: Okay, I'm fine.

Interim General Counsel Ohta: I agree.

External Counsel Broder: So, okay, so the change that they made in Section 2, it used to say the amount shall be 21.5 million or the 20% of the incoming proceeds, whichever is greater. Okay, so though, whichever is greater has been taken out, and so I think it could be interpreted to. I thought that we might have a good argument we could make that because of that it might be more than 21.5 so there would be a continuing past due claim. I think that argument can still be made, but I think that it's going to be more difficult to make because they've said specifically that the amount shall be 21.5 million and taken out whichever is greater. So I think that is unfortunate, but given that the committee that's to be established is supposed to be looking at this overall, I still think the argument can be made, but I don't think it's as strong as it was before.

So then the next thing is Section 3. They list different departments, they don't limit the departments that are going to contribute. They say in any other department or agency that collects receipts from lands within the Public Land Trust. So I think that, you know, I just draw your attention to the fact that you know the big one not mentioned is UH, but I think that OHA has gained something in the sense that it says transportation for its harbor divisions because this was a big argument before whether or not harbors had to pay. So I think that's a positive development and then I think that the fact that the appointments shall be made no later than February 20th, 2023 is good. In the past, the past working group which was appointed was supposed to be appointed by Governor Ige and called by Governor Ige. Nothing happened, so hopefully this allows the new Governor to appoint and I assume that means that we will have better success.

And section 9 says this Act shall take effect upon its approval, so that's good. That was already always there, but nonetheless, Na'u was asked about that yesterday by Senator Shimabukuro. And I will say that Senator Shimabukuro, you know, turned to look to Na'u, for her, was she shaking her head yes or no. So even though she didn't talk to her, she did look to see if Na'u was agreeing or not. Yeah, those are my comments.

Chair Akaka recognizes Trustee Trask.

Trustee Trask: Yes, I just wanted to make a couple of comments. One is that I think that the first point that Sherry addressed is kind of dispositive because when you see legislation and it says that OHA's share shall be and it gives a figure and other languages deleted that could be interpreted as more. I think the change is dispositive of it. That OHA, you know, I'm looking at the 21.1. I think that that's been pretty much resolved.

I had also wanted to ask what was Maile Shimabukuro's questions or points that she had made? There was a comment here that Maile had said something, and I would like to know what it was.

Chief Advocate Kamali'i: Trustee, she wanted to know if we had received the draft and I said no and I think we confirmed that it's our understanding that it would take effect on approval. But everything that we see here was not discussed.

Trustee Trask: Okay, a question I had for yourself Na'u and Sherry. When I look at the provision that identifies the various divisions of the state, DLNR, transportation, education. I would like to know from you every division

of the state that is not included, is not and I'm making that request in writing. I mean I'm making that request. If you could send me the response in writing. The other thing I wanted to point out is that we need to take a real good look at lines 4, 5 and 6. What we're talking about here are all departments and agencies that collect receipts from land within the public trust for transfer to OHA. So, we are not looking at all at the state agencies determination of what is actually in the public trust, colleagues. Here we're talking about only state agencies and departments that collect receipts. So, whatever is the baseline they're beginning from is not going to be the full view of the public trust. We're only looking here at those that provide receipts, and I say this because we move now with a PIG Committee and although there's language in this measure that talks about the trust itself, when it comes to this measure right here in this language, we are only going to be dealing with state agencies and departments that are providing revenues. So, this is not and could not be a measure of the value of the trust. Yeah, that's my only comment. Yeah, as a member of the PIG and let's just be aware of what they're doing here.

Chair Akaka recognizes Ka Pouhana Hussey.

Ka Pouhana Hussey: Thank you, Chair. Administration also wanted to point out, Casey, if you go to Page 8 and line 2021, yeah, right there. So, if you see the Governor is expressly authorized to fix the amounts each agency shall transfer to the Office of Hawaiian Affairs and as an example, the Department of Transportation Harbors the arithmetic calculation of 20% based on the last report is 18 million, but they have expressly transferred only 10 million rounded to the Office of Hawaiian Affairs. So, I just flagged that for the Trustees information that that line is explicitly codifying that practice if you will and just bring that to your attention, thank you, Chair.

Chair Akaka: Mahalo, Ka Pouhana. If you folks would like to continue on?

Chief Advocate Kamali'i: Okay, thank you very much for those comments Trustee Trask and certainly as the the PIG moves forward beginning as meetings, we'll be able to look at the shortfalls of the measure, first if it passes. The goal is to have it passed, but any shortfalls, any administrative action going forward, any trustee action going forward, as is the charge of the PIG, and that certainly doesn't prohibit the trustees from engaging in activities to fulfill its Constitutional and fiduciary duties under what you're referring to as the Public Land Trust. Which could also mean introducing Legislation next year and every year thereafter to ensure that we receive the highest and Constitutional revenue from not only that the lands generate, but also as mineral rights etc. from the Public Land Trust and make those things clear for the betterment of the condition of Native Hawaiians. So, thank you for raising that, and certainly we can provide you with the report from the department that was issued December 21 of last year, which would give you a real clear idea of what agencies were submitting revenue and what agencies, how they were paying the office as Ka Pouhana has indicated, harbors for example, you look at the report says 18 million, but they only you know, provided us with 10 million. So that's easy to get to you and that'll begin our work. So thank you for all of those comments and issues regarding the Public Land Trust. So we'll see what happens this afternoon.

Okay, moving on to relating to the rehabilitation program, SB2770. That was also heard yesterday, continued to I believe tomorrow Wednesday and it moves on. The question there was what would the appropriation amount be? There was some offering or questions to the Office of Hawaiian Affairs. But what came out of that was a recommendation from the House that \$2,000,000 be appropriated for this effort. Which would require public safety and OHA to work together on Native Hawaiian rehabilitation programs. The other suggested amendment from Representative Ganaden was to also include prisons that are on the continent. We know many of our Native Hawaiians are shifted and transferred to continent prisons and so we saw that as a good thing, and it would also allow us to gain some valuable data that we do not have regarding some of those prisons and prison activities regarding, you know our Native Hawaiians who are there. Additionally, we know that families have also moved to be close to their loved ones who are incarcerated so you know, this would continue the effort of what we understood what some of the Hawaiian Civic Clubs were concerned about so we're hopeful that this bill continues to move along and become law so that we can develop these needed

programs. So OHA is named in that, and that's the level of appropriation that was put forth yesterday, \$2,000,000 to this effort. Okay, that being the end of Matrix 2, are there any questions? If not, we'll move on to Matrix 3.

C. 2022 OHA Legislature Bill Positions Related to Measures Affecting Native Hawaiians – Matrix 3**

Chief Advocate Kamali'i: Matrix 3 is our, you know, it's our general I guess the matrix that refers to all of those bills affecting Native Hawaiians, which include those bills for OHA named. This is the status, so I'll just if you know to move this along. Generally, things are in conference, we're tracking them as best we can. Then we'll be able, I think, to have a better idea next week as to what survives or not, so this is the week where we hang out and, you know, see what gets deferred. Where there are tweaks, etc. So I'm just going to sort of address it that way, and you can take a look at and click on the current status of the bills. We've highlighted the main ones, i.e., Mauna Kea etc., but I'm going to just sort of address it that way, Trustees so we can move along unless there's anything that you would like to highlight in Matrix 3. There are two measures that we do need to talk about. There is item 44 and item 45.

When we did review of our matrix for item 44, which refers to SB1128. When we did a review of our matrix for some reason, we may have lost track of whether this bill had been approved by the BAE or not. I know we had submitted testimony on it. So this is just to ensure, because we can't find the position in our in our matrices, just to ensure that this is correct. We'd like to add that this is a new position and the request for position of support, and this would permit vocational programs within the purview of Office of Youth Services to engage in commercial, enterprise, etc. and it requires the Office of Youth Services to submit annual reports etc. So, we felt that you know this was a good thing and supported it. But somehow in the matrices we lost track of it. Right now, the House and Senate disagrees, so we'll see what happens with that one. So that would be the request of Trustees and the 2nd is relating to the judiciary.

We had received, again this is just to ensure that the Board is aware of the action taken and gives the Board the opportunity to support. We were aware of from the Judiciary who had contacted OHA to support their need for increasing the number of Associate Judges in the Intermediate Court of Appeals. Yeah, we know and historically know that there has been a backlog of cases because there aren't enough judges to hear those appeals and you know, we know that there are Hawaiian cases within that track, and sometimes because it takes so long for the Appellate Court to render a decision. You know honestly, people just dismiss because they figure out another way to resolve it or they just never get that relief in the meantime. So, this is a request from the Judiciary to OHA and Administration had issued a letter of support. I believe the way on making the request is that Administration issued a letter of support, this is now to the Board for their support of this effort as well, to increase the number of associate judges on the ICA. So those are the two new positions that would require action by the Board. And that would be it for Matrix 3.

Chair Akaka: Seeing that we don't have any questions, we could continue on to the next matrix.

D. 2022 OHA Legislature Bill Positions and Monitored Bills Related to Measures Affecting Native Hawaiians – Matrix 4 **

Chief Advocate Kamali'i: Now do we take action now or do we take action at the end of the presentation? Okay, then I'll move on. Matrix 4 historically that has just been available to our Trustees so that they could see all of those bills that we are monitoring but did not take a position on at the Board level. And if the Board has any positions that they would like to take on a measure that is advancing, this would be the time to raise that by way of motion as to Matrix 4. Okay, there being no action we'll move to Matrix 5.

**E. 2022 OHA Legislature Resolution Positions and Monitored Resolutions
Related to Measures Affecting Native Hawaiians – Matrix 5****

Chief Advocate Kamali'i: Matrix 5, just again an iteration of all the resolutions and their current status. So, it reflects again those resos. that were approved and at 52, item 52 and beyond, those resolutions where there was no action taken by the Board. So if there's no action or no change position or no new positions on resolutions, then this just is reflecting the current status of the Board. Are there any questions or any positions to change?

Chair Akaka: Yes, if we can go back to OHA Administration's recommended motion for our new bills, items 44 to 45 as listed on Matrix 3. Can we please put the motion language up. Chair Hulu.

Board Chair Hulu Lindsey: Yes, I'd like to make a motion to **Move to approve Administration's recommendations on: NEW BILLS (Items 44 - 45) as listed on Matrix 3 -- Bill Positions Related to Measures Affecting Native Hawaiians-- dated April 26, 2022.**

Trustee Akina: I second

Chair Akaka: Mahalo, Trustee Akina. It has been moved by our Board Chair Hulu Lindsey, and seconded by Trustee Akina. Is there any comments members? Seeing none, can we please have a **roll call vote**.

TRUSTEE		1	2	‘AE (YES)	A’OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA’ALA	AHU ISA			X			
DAN	AHUNA			X			
KELI’I	AKINA		2	X			
LUANA	ALAPA			X			
BRENDON KALEI’ĀINA	LEE						EXCUSED
CARMEN HULU	LINDSEY	1		X			
MILILANI	TRASK			X			
JOHN	WAIHE`E, IV			X			
CHAIR KALEIHIKINA	AKAKA			X			
TOTAL VOTE COUNT				8	0	0	1

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

Chair Akaka recognizes Trustee Akina

Trustee Akina: I just wanted to say mahalo to Na’u and to Sylvia for keeping us informed. I appreciate all of the memoranda that we're receiving. It's good to be up to date with these issues. Thank you very much.

V. EXECUTIVE SESSION

A. Consultation with Interim General Counsel Everett Ohta re: questions and issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities with respect to the Public Land Trust and associated legislation, pursuant to HRS§92-5(a)(4).

NONE

V. ANNOUNCEMENTS

NONE

VI. ADJOURNMENT

Board Chair Hulu Lindsey: I move that we adjourn.

Trustee Alapa: Second

Chair Akaka: It’s been moved and seconded. Any discussion members? Seeing none, can we please have roll call vote.

TRUSTEE		1	2	‘AE (YES)	A’OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA’ALA	AHU ISA			X			
DAN	AHUNA			X			
KELI’I	AKINA			X			
LUANA	ALAPA		2	X			
BRENDON KALEI’ĀINA	LEE						EXCUSED
CARMEN HULU	LINDSEY	1		X			
MILILANI	TRASK			X			
JOHN	WAIHE`E, IV			X			
CHAIR KALEIHIKINA	AKAKA			X			
TOTAL VOTE COUNT				8	0	0	1

10:47 a.m.

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

Chair Akaka: The meeting is now adjourned, mahalo members, all in attendance, and to all live streaming. A hui hou kākou, mālama pono.

Chair Akaka adjourns the BAE meeting at **10:48 a.m.**

DRAFT

Respectfully submitted,

Brandon Mitsuda Trustee Aide
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment (BAE) on.

Trustee Kaleihikina Akaka
Chair
Committee on Beneficiary Advocacy and Empowerment

DRAFT