

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

**COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT  
MINUTES**

**February 3, 2016 10:00 a.m.**

**ATTENDANCE:**

Chairperson John Waihe'e, IV  
Trustee Lei Ahu Isa  
Trustee Dan Ahuna  
Trustee Rowena Akana  
Trustee Haunani Apoliona  
Trustee Hulu Lindsey  
Trustee Robert Lindsey  
Trustee Colette Machado

**EXCUSED:**

Vice-Chairperson Peter Apo

**BOT STAFF:**

A. U'ilani Tanigawa  
Crayn Akina  
Claudine Calpito  
Lady Elizabeth Garrett  
Laurene Kaluau-Kealoha  
Lehua Itokazu  
Liana Pang  
Melissa Wennihan  
Reynold Freitas

**ADMINISTRATION STAFF:**

Kamana'opono Crabbe, Ph.D., Pouhana / CEO  
Anuheia Patoc, PUBL  
Coti Haia, DC Bureau  
Deja Ostrowski, PUBL  
Jacob Aki, ADV  
Jessica Freedman, PUBL  
Jocelyn Doane, PUBL  
Jon Ching, PUBL  
Kamaile Maldonado, PUBL  
Keala Nichols, PUBL  
Mehanaokalā Hind, COO  
Momilani Lazo, CEO  
Monica Morris, ADV  
'Olu Campbell, RM  
Teresa Kaneakua, COMP  
Wayne Tanaka, ADV

**GUESTS:**

Keali'i Makekau

**I. CALL TO ORDER**

**Chair Waihe'e** calls the Committee on Beneficiary Advocacy and Empowerment for Wednesday, February 3, 2015 to order at **10:01 a.m.**

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

MEMBERS			AT CALL TO ORDER (10:01 a.m.)	TIME ARRIVED
CHAIR	JOHN	WAIHE'E, IV	PRESENT	
TRUSTEE	DAN	AHUNA	PRESENT	
TRUSTEE	HAUNANI	APOLIONA	PRESENT	
TRUSTEE	CARMEN "HULU"	LINDSEY	PRESENT	
TRUSTEE	COLETTE	MACHADO	PRESENT	
TRUSTEE	ROWENA	AKANA	PRESENT	Arrived at 10:05 a.m.
TRUSTEE	ROBERT	LINDSEY	PRESENT	Arrived at 10:07 a.m.
TRUSTEE	LEI	AHU ISA	PRESENT	Arrived at 10:14 a.m.

At the Call to Order, **FIVE (5) Trustees** are **PRESENT**, thereby constituting a quorum.

EXCUSED from the BAE Meeting are:

MEMBERS			COMMENT
VICE-CHAIR	PETER	APO	MEMO – REQUESTING TO BE EXCUSED

**Waiver of the OHA 72-hours prior to a meeting materials distribution policy**

Chair Waihe'e seeks a MOTION:

To waive the OHA Board of Trustees Operations Manual practice at which materials will be reviewed, discussed, or acted upon at least 72-hours prior to the meeting regarding items:

**IV. New Business**

**A. 2016 OHA Legislative Positioning – Matrix1\*\* ; and**

**V. Unfinished Business**

**A. 2016 OHA Legislative Package Updates – Matrix 2\*\***

Trustee Ahuna moves.

Trustee Hulu Lindsey seconds the motion.

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

Chair Waihe'e asks if anyone votes NO or ABSTAINS. There are no replies.

							10:02 a.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI	AHU ISA						Arrived at 10:14 a.m.
DAN	AHUNA	1		X			
ROWENA	AKANA						Arrived at 10:05 a.m.
VICE-CHAIR PETER	APO						EXCUSED
HAUNANI	APOLIONA			X			
CARMEN HULU	LINDSEY		2	X			
ROBERT	LINDSEY						Arrived at 10:07 a.m.
COLETTE	MACHADO			X			
CHAIR JOHN	WAIHE'E			X			
<b>TOTAL VOTE COUNT</b>				<b>5</b>	<b>0</b>	<b>0</b>	<b>4</b>

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

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

## II. APPROVAL OF MINUTES

None

## III. COMMUNITY CONCERNS\*

None

## IV. NEW BUSINESS

### **A. 2016 OHA Legislative Positioning – Matrix 1\*\***

**Chair Waihe‘e** recognizes Senior Public Policy Advocate Jocelyn Doane.

**Senior Public Policy Advocate Doane:** Aloha Chair and Trustees. So we return to the legislative session. Thank you so much for this opportunity to share with you and make recommendations about the different measures that were introduced. We will be starting with the large matrix (Positioning Matrix 1), so you should have in front of you 131 pages of measures that we'll go over. We'll review all of the OPPOSE recommendations and each measure that names OHA specifically. We'll start with a couple of additions and changes that will need to be made to the matrix.

HB1535 is not on the matrix - it seems to be a measure targeted at helping the State deal with the homeless situation. Unfortunately, I think it's really broad and could adversely affect our beneficiaries as practitioners; so it is recommended that we add HB1535 to the matrix with a position of OPPOSE. There is a hearing on Friday. Essentially it would create a criminal offense for unlawful occupation of State property and as we know State property includes beaches and mountains. So if you're sitting there lying on a tarp, towel, blanket, etc., then you would be at risk of being arrested.

HB2617 is the second bill we would like to add to the matrix; we just found out about this bill yesterday. This is related to the Land Use Commission. It would create regional district boundary amendments and allow Counties to come in and petition for massive possibly non-contiguous district boundary amendments as opposed to individual parcels that they would want to change from Conservation- to-Urban etc. It would also mandate the Land Use Commission to actually proactively reclassify. Right now they generally respond to petitions on all conservation lands and other lands that are over 15 acres. This would require them to classify lands upon demonstrated economic and social changes automatically. So for example, you could say the social changes in Hawai'i have led to a need for housing and we should reclassify a thousand acres of land in one fell swoop. We are still learning and trying to understand the measure, but those are things that stood out to us the most. So our current recommendation is to OPPOSE this measure.

**Trustee Ahuna:** *Whose bill is that?*

**Senior Public Policy Advocate Doane:** Yamashita, Luke and Yamane.

There are three measures where we wanted to update our positions. The first one is HB1931, Item 157. This bill would reduce the blood quantum for successors and transferees from 1/4 to 1/32. The reason why we're only recommending COMMENT instead of Support on this measure is because we think that we should support the blood quantum reduction for the successors which happens when the beneficiary passes away, but possibly not for the transferees. In both instances they would be able to leave their property to a spouse, child or grandchild; if it's any other relationship the person needs to be 50% Hawaiian.

**Trustee Ahuna:** In America, we have an inheritance law where you can inherit your grandma's lot of whatever. The concern here is *why are the Hawaiian people the only ones that have the blood quantum requirement?*

**Senior Public Policy Advocate Doane:** I think your point is well-taken, in that we don't define ourselves by blood quantum, other than for this purpose. Unfortunately, there are many thousands and thousands of beneficiaries who have already signed up to get a property and who have been waiting for 10, 20, 30, 40, 50 years to get a parcel. So the really good thing about this is that it would make it easier for lessees, who have had the pleasure of getting a lease, to give the lease to their children or grandchildren, who may not be half-Hawaiian or 1/4 Hawaiian, which is the existing law.

I'd like to share a little of the reason why we are concerned with the transferees. There's no question that we support the reduction of the blood quantum for the successors; the concerns that we have are the balance between the needs of the existing homesteaders and those on the waiting list. If this bill were to pass - for the transferees, if you're 50% Hawaiian you could transfer your parcel to your 1/8th Hawaiian or your 1/32th Hawaiian grandchild. Then you could purchase another unit from another beneficiary who's using the existing transfer positions because you're 50%. Then when you passed away you could leave that to your other 1/32 Hawaiian grandchild. In this scenario, this specific beneficiary would have jumped in front of all the thousands of people waiting on the waitlist and I wasn't comfortable with that. It's a really difficult balance - to balance the need of existing lessees who would like to leave their property to their children versus then of course giving opportunities to the tens of thousands of Hawaiians on the waiting list.

**Trustee Apoliona:** I hear what you're saying; I would like to get some read from the commissioners to see what their feelings are towards it.

**Senior Public Policy Advocate Doane:** Yes, we'll follow up with them. We would like to change our position from ~~Monitor~~ to COMMENT because we would like to support the successor provision.

The next measure we'd like to make a change on is Item 211, HB2074. This measure would provide for automatic 75 year extensions for residential leases of Public Lands to meet requirements of the Federal Housing Administration. We have concerns regarding extensive years of leases of public lands. For instance, if there was a 55-year lease; mandating a 75 year lease extension would bring the total lease duration to 130 years. While on one hand we have concerns that we may eventually want to Oppose this measure, I feel like because it's for affordable housing projects we want to see if these will actually be affordable housing projects. We can then come back to Trustees if we feel

there needs to be a bill position change. So at this time we would like to also change this bill position from ~~Monitor~~ to COMMENT.

Moving back up to the top of this page, Item 207 HB2067 - this measure might look familiar because we had considered putting it into our legislative package this year. This would allow the Board of Education to create additional authorizers through a process different from the current process which is through administrative rules. I'm actually recommending we change this from ~~Support~~ to SUPPORT WITH AMENDMENTS because just this week, the Board of Education committee had reviewed *DRAFT* administrative rules. They are moving along administratively which is a positive thing and we're supporting those efforts. What we would like to do, is give them the option of either going through the easier process or by still being able to go through the process that they currently have.

**Senior Public Policy Advocate Doane:** Continuing on to BILLS THAT SPECIFICALLY NAME OHA; Item 78 HB 1635 - we are recommending a position of OPPOSE on these bills. These are the leasehold conversion bills you may have been hearing about. This bill, if passed, would be a potential forced sale of ceded lands, OHA's lands, Kamehameha School's lands, Queen Liliuokalani's Trust, etc. HB2173, Item 230 is also related to this bill.

Item 237, HB2200 - this bill is having a hearing as we speak; this is where Sterling is. This would allow the BLNR Chair to transfer to the Kaho'olawe Trust Fund up to 3 million dollars from DLNR's Public Land Trust holding accounts that are now set aside for the benefit of Native Hawaiians. Clearly we are recommending OPPOSE on this measure.

Item 265, HB2449 - because this bill is an OPPOSE bill, I wanted to bring it to your attention as it's a bit complicated. I was hoping to go through the Hunting Bills first because there are some hunting bills that might limit hunting in a way that would burden our practitioners; those we OPPOSE. This bill proposes to amend the Constitution to protect game animals in perpetuity. We found this to be concerning, not because we don't believe our beneficiaries have the right to hunt, but because by putting it in the Constitution it may make the conservation efforts on our lands more difficult. Therefore, we're OPPOSING this because there needs to be a balance between insuring that our people can continue to subsist by hunting, while also making sure that we're not completely eradicating our Native forests, estuaries, and our stream and ground water.

Item 274, HB2556 is related to Mauna Kea. This is kind of a complicated bill and we are only recommending COMMENT. This would attempt to transfer the Mauna Kea lands that are currently being leased by UH to DLNR. I'm not sure if legally the legislature could do that, given the significant management issues that have occurred over time; which is why that is an idea to consider. It would also transfer the entire Office of Mauna Kea Management and all of their authorities to DLNR. This measure names OHA, so it would create a Mauna Kea Management Commission which I think is a really commendable attempt to get Hawaiian voices into some type of decision-making. The composition of the commission in the bill would be: a member of Kahu Kū Mauna, two members appointed by the Governor from a list from Kahu Kū Mauna, an OHA Representative, a member appointed by the Governor from a list provided by the Mayor of Hawai'i County, the BLNR Chair, and a member appointed by the Governor from a list of Native Hawaiian organizations. So our Comments

would be to reiterate our concerns with management and commend the attempt of having Native Hawaiians being a part of it.

Item 292, HB2750 - if passed, this measure would establish a Native Hawaiian Housing Task Force that would be attached to OHA. The idea is to identify duplicative housing-related services. The reason why we OPPOSE is because we have a Board policy where we immediately OPPOSE measures that place a new entity within OHA. I think the intentions are good on this as we did speak to the introducer of the bill. So we've been communicating on how OHA can assist.

Item 623, SB2497 - this has had a hearing already and seems to be targeting Board and Commission members that do not show up to meetings. This has been a problem on certain Boards and Commissions. Given the way that it was drafted, it looked like it might have applied to OHA, which I don't think was the intent. So we did provide COMMENT with a suggested amendment - saying that it wouldn't apply to Elected Members. The bill was deferred and it doesn't look like it will go anywhere, but we will let you know if it comes up again.

**Senior Public Policy Advocate Doane:** *Other bills that may concern OHA;* Item 61, HB1573 - there are about four of these bills. This is the bill that's in the Association of Counties' package and we're recommending SUPPORT. The counties have had a difficult time enforcing the counties' existing vacation rental laws, and this is one of the measures they hope will help them. It would basically authorize the counties to phase out uses that are not consistent with their zoning. Specifically, it would distinguish that transient vacation rentals in single family units are different from non-vacation rental residential units in single family units. So this wouldn't change the laws, it would just allow the counties to potentially have better enforcement of the laws that are already in place.

Item 117, HB1743 - currently in order to be cited for trespassing on agricultural lands there has to be a sign or fence stating that it is private property and this would remove those requirements. We are recommending OPPOSE. Even though authentic Native Hawaiian traditional and customary practices are protected by the Constitution, they are still being arrested because the enforcement agencies do not know about the law, or they don't know how to distinguish between an authentic practicing-practitioner versus just somebody messing around. So we OPPOSE because it may impose an additional burden on our beneficiaries, by having to prove they're a practitioner in court after being arrested.

Item 158, HB1932 - this would appropriate to the Department of Hawaiian Homelands 28 million dollars, consistent with the Nelson decision that recently came out. The reason we are suggesting MONITOR rather than Support on this measure is because given that we are asking them to return money to us that is sitting in an account and to lift the cap on our 15.1 million, they may suggest that if we Support it that we also fund it.

Item 162, HB1960 - this is very similar to the leasing measure. This would allow for ninety-nine year leases for affordable housing within a half-mile of the transit corridor. We are recommending COMMENT and our concerns are of course with the ninety-nine year lease. Also, there are no percentage or unit number requirements for the units to be affordable. There is also no definition of affordable, so our comments will be related to that. If the bill doesn't change where it becomes more-narrow, then we might ask the trustees to change our position to Oppose.

Item 181, HB2023 - this would require the Department of Land and Natural Resources to designate and adopt rules for five new Community-Based Subsistence Fishery Areas. The only reason we are recommending SUPPORT WITH AMENDMENTS is that we want to make sure that the rules can take into consideration non-fishing activities for appropriate management. For example, not allowing boating in a particularly sensitive area or where fish procreate, etc.

Item 198, HB2046 - this is another measure that we're proposing to OPPOSE. It would basically transfer all the State lands currently being leased by the U.S. Army to the State Department of Defense. It wouldn't eliminate or cancel the leases, but it would transfer title from DLNR to the Hawai'i Department of Defense. The lease would still remain, but the agency that would oversee the lease would change. We are opposing this bill because the State Department of Defense doesn't have a Board or Commission so there wouldn't be notice and accountability.

Item 272, HB2501 and Item 708, SB3001 are the EMI (East Maui Irrigation) bills that were introduced to counter the recent decision to nullify, cancel or suggest that they holdover revocable permits for East Maui; we are recommending OPPOSE.

Item 259, HB2408 - this would allow the Department of Transportation to decide on revocable permits without BLNR approval. The reason we are suggesting OPPOSE is because the Department of Transportation doesn't have a Board and are not subject to Sunshine law, so we wouldn't have notification of when they do leases and revocable permits.

Item 286, HB2673 - as you know the Highways Act of 1892 basically made all trails and ways in the kingdom at the time to be public; which means they are Ceded Lands. There have been lots of issues over time with the State and County not wanting to take responsibility for the trails and the highways. This attempts to require the legislature to accept a trail as being the State's property in order for it to be the State's property. We are recommending OPPOSE.

Item 288, HB2712 - this is clearly targeted at trying to resolve some of the Mauna Kea issues that have arisen and the permit in particular being voided. This would establish a Scientific and Technology Research Subzone which is similar to the geothermal subzones that used to exist. It would explicitly allow those types of activities to occur in those areas, regardless of the land use classification. It would be a massive undertaking of the DLNR, because it would require them to designate subzones and update those subzones every five years. What we're most concerned about is that right now, in order to get a Conservation District Use Permit, there are certain criteria that you have to meet. Some of those criteria include: land uses that won't cause substantial adverse impact to existing natural resources in the surrounding area, proposed land uses must be consistent with the objectives of the area, and existing environmental access of the land must be preserved. This is a complicated bill and at this time we are recommending to OPPOSE. Once we learn more, we may come back to share more with the trustees.

Item 295, HB2760 - this would designate certain waters surrounding the north coast of Kalaupapa on Moloka'i as a community-based subsistence fishery area similar to Ha'ena on Kaua'i. We recommend SUPPORT WITH AMENDMENTS and would include the same comments as Item 181, HB2023.

Item 297, HB2773 - this bill might look familiar. We had considered putting it in our package, but instead we worked with the ACLU to have this bill introduced. This would allow for all incarcerated individuals to vote. It's following a trend that we're seeing across the United States to empower incarcerated individuals to vote. As we know, Hawaiians are disproportionately represented in jails, so it would positively affect our beneficiaries. The idea is that allowing prisoners to vote may have a rehabilitative affect and foster connection between the incarcerated in our communities. It also might help to improve reintegration and reduce recidivism. We are recommending SUPPORT.

**Trustee Apoliona:** *Was that a recommendation of the Criminal Justice Task Force?*

**Pouhana Crabbe:** No, it was not. Not in regards to voting.

**Senior Public Policy Advocate Doane:** Item 537, SB2161 would appropriate funds for Aha Moku. You'll notice that it says MONITOR rather than Comment like we did last year. Last year we felt pressure that we needed to say something, but currently at this time, we would just like to MONITOR.

Item 646, SB2583 - this would mandate the counties to install composting toilets in areas that don't have municipal wastewater systems. It sounds commendable, but we do have concerns, so we are recommending OPPOSE. Last year they authorized the counties to allow composting toilets where municipal sewer services were not available; this would require them to do that. Our concerns are with the way they're describing composting toilets. We're worried about new cesspools since we're trying to phase cesspools out and we also think we should defer to the counties to decide what's appropriate.

**Trustee Machado:** I have a bill I would like to bring up Item 231, HB2178 regarding Hawaiian Homes asking for the right to have counsel, and our recommended position is MONITOR.

**Senior Public Policy Advocate Doane:** Yes, we have spoken about this bill in the past. What we would like to do is find out what DHHL's position is on this. The last time this bill was introduced they did not support it; I think they were worried about costs. I spoke to a beneficiary who suggested that the legal counsel be for the Commission rather than for the Department.



**Trustee Ahuna moves to approve Administration's recommendations on  
NEW BILLS (Items 1 – 722)**

as well as:

- **ADD HB1535 as OPPOSE;**
- **ADD HB2617 as OPPOSE;**
- **CHANGE HB1931 from *Monitor* to COMMENT;**
- **CHANGE HB2067 from *Support* to SUPPORT WITH AMENDMENTS;**
- **CHANGE HB2074 from *Monitor* to COMMENT; and**
- **CHANGE HB2200 from *Comment* to OPPOSE**

on the OHA Legislative Positioning Matrix dated February 3, 2016, as amended.

Trustee Hulu Lindsey seconds the motion.

(MATRIX OMITTED – See BAE Folder dated February 3, 2016, Item IV.A.)

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

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

						11:46 a.m.
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI AHU ISA			X			
DAN AHUNA	1		X			
ROWENA AKANA			X			
VICE-CHAIR PETER APO						<b>EXCUSED</b>
HAUNANI APOLIONA						Departed at 11:38 a.m.
CARMEN HULU LINDSEY		2	X			
ROBERT LINDSEY			X			
COLETTE MACHADO			X			
CHAIR JOHN WAIHE'E			X			
<b>TOTAL VOTE COUNT</b>			<b>7</b>	<b>0</b>	<b>0</b>	<b>2</b>

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

## V. UNFINISHED BUSINESS

### A. 2016 OHA Legislative Package Updates – Matrix 2\*\*

**Senior Public Policy Advocate Doane:** There is a two-sided one page document that lists our **OHA Package bills**. For our Mauna Kea bill OHA-8, HB1658 - for the House version we will need to have a hearing by February 9, 2016 in order for it to move forward. We've met with both the Higher Education (HED) and Water & Land (WAL) Chairs. There seems to be a sentiment in the legislature that they don't want to deal with Mauna Kea bills so we'll have to see how that goes. On the Senate side we need a hearing by February 18, 2016.

OHA-9, relating to Notice to the Public in the Environmental Review Process – for the House version HB1657 we would again need to have a hearing by February 9, 2016. There are four Committees so it is a heavy lift. You'll see in the Senate version SB2126 although it's going to two committees, it's a single referral. So we have a month to get it moving in the Senate.

OHA-10, relating to the Right of First Refusal for the Disposition of Remnants – Again, for the House version HB1656, we'll need a hearing by February 9, 2016. Yesterday we had a good meeting with the Water & Land Chair, Representative Yamane, so we're hoping to get a hearing in time. On the Senate side SB 2125, we have until the 18<sup>th</sup>.

OHA-11, relating to Increasing the Payment Amount for the Office of Hawaiian Affairs Pro-rata Share of the Public Land Trust – as you know we had a hearing last week on the Senate version SB2124, so we have a month to get a hearing in Ways and Means. The House bill HB1655 got a triple-referral to four committees and the first hearing is a double-referral. So that means that the Chairs need to agree to have a meeting, so Sterling is working on that today.

**Chair Waihe'e:** Thank you Jocelyn.

## VI. BENEFICIARY COMMENTS\*

None

## VII. ANNOUNCEMENTS

None

**VIII. ADJOURNMENT**

**Trustee Hulu Lindsey moves to adjourn the BAE meeting.**

**Trustee Ahuna 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.**

							11:50 a.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI	AHU ISA						Departed at 11:46 a.m.
DAN	AHUNA		2	X			
ROWENA	AKANA			X			
VICE-CHAIR PETER	APO						<b>EXCUSED</b>
HAUNANI	APOLIONA			X			Departed at 11:38 a.m.
CARMEN HULU	LINDSEY	1		X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO						
CHAIR JOHN	WAIHE'E			X			
<b>TOTAL VOTE COUNT</b>				<b>6</b>	<b>0</b>	<b>0</b>	<b>3</b>

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

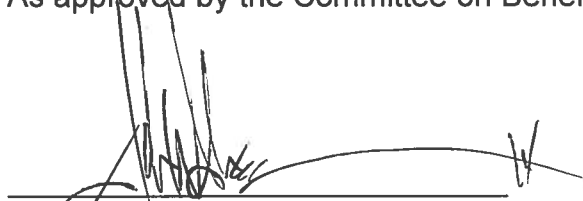
**Chair Waihe'e adjourns the BAE meeting at 11:50 a.m.**

Respectfully submitted,



\_\_\_\_\_  
Melissa Wennihan  
Trustee Aide  
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment on February 24, 2016.



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

ATTACHMENT(s):

- Notice of Excused Absence (1)