

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

FAX (808) 594-1868



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

DATE: Thursday, June 20, 2019
TIME: 10:00 am
PLACE: OHA Board Room, Nā Lama Kukui
560 N. Nimitz Hwy., Suite 200
Honolulu, HI 96817

AGENDA

- I. Call to Order
- II. Public Testimony*
- III. Unfinished Business
 - A. CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities
- IV. Executive Session†
 - A. Consultation with attorney Kurt W. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the Board's obligations and responsibilities under Contract Number 3147. *Pursuant to HRS §92-5(a)(4)*
 - B. Consultation with attorney Kurt W. Klein, Esq. re: questions and issues affecting OHA's duties, liabilities, privileges, and immunities in transitioning to Sylvia Hussey, Ed.D., as interim CEO after the expiration of Contract Number 3147. *Pursuant to HRS §92-5(a)(2),(4)*.
 - C. Consultation with attorney Kurt W. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, and liabilities concerning complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions. *Pursuant to HRS §92-5(a)(4)*.
- V. New Business
 - A. Committee on Resource Management
 1. Action Item RM #19-09: OHA Biennium Budget for the Fiscal Biennium Periods 2019-2020 (FY20) and 2020-2021 (FY21) †
 - B. Action Item BOT #19-10: Approval of the appointment of Sylvia Hussey, Ed.D., to serve as interim Chief Executive Officer (CEO). †
 - C. Action Item BOT #19-09: Approval of the formation of a Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions. *Pursuant to HRS § 92-2.5(b)(1)(A)*.
- 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: The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for distribution of new committee materials.

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

Colette Y. Machado

Trustee Colette Y. Machado
Chairperson, Board of Trustees

6/14/19

Date

Office of Hawaiian Affairs
Board of Trustee Meeting
June 20, 2019
10:00 am

IV. Executive Session[‡]

- A. Consultation with attorney Kurt W. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the Board's obligations and responsibilities under Contract Number 3147. *Pursuant to HRS §92-5(a)(4)***
- B. Consultation with attorney Kurt W. Klein, Esq. re: questions and issues affecting OHA's duties, liabilities, privileges, and immunities in transitioning to Sylvia Hussey, Ed.D., as interim CEO after the expiration of Contract Number 3147. *Pursuant to HRS §92-5(a)(2),(4)*.**
- C. Consultation with attorney Kurt W. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, and liabilities concerning complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions. *Pursuant to HRS §92-5(a)(4)*.**

[‡]- *Any material that is relevant to this section will be distributed at the table during Executive Session.*

Office of Hawaiian Affairs
Board of Trustee Meeting
June 20, 2019
10:00 am

V. New Business

A. Committee on Resource Management

- 1. Action Item RM #19-09: OHA Biennium Budget for the Fiscal Biennium Periods 2019-2020 (FY20) and 2020-2021 (FY21) †**

** - The committee report for V.A.1. will be forwarded to the Board of Trustees following its approval at the RM Committee Meeting scheduled for June 18, 2019.*

Office of Hawaiian Affairs
Board of Trustee Meeting
June 20, 2019
10:00 am

V. New Business

B. Action Item BOT #19-10: Approval of the appointment of Sylvia Hussey, Ed.D., to serve as interim Chief Executive Officer (CEO). †

† - Item was not received at time of folder distribution. It will be distributed when it is received.

Office of Hawaiian Affairs
Board of Trustee Meeting
June 20, 2019
10:00 am

V. New Business


- C. Action Item BOT #19-09: Approval of the formation of a Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions. Pursuant to HRS § 92-2.5(b)(1)(A).**


OFFICE OF HAWAIIAN AFFAIRS
Action Item

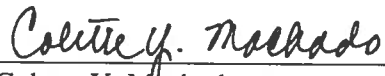
BOARD OF TRUSTEES
June 6, 2019

BOT #19-09

Action Item Title: Approval of the formation of a Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions.

Prepared By:  06/05/2019
Carol Ho'omanawanui
Ke 'Aho Kele, Chief of Staff Date

Reviewed By:  06/05/2019
FOR Robert G. Klein
Pōhaku Kihī Nui, Board Counsel Date

Reviewed By:  06/05/2019
Colette Y. Machado
Ke Kauhuhu, Board of Trustees Chair Date

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I. ACTION ITEM

Approve the formation of a Permitted Interaction Group (PIG) to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions.

II. ISSUE

Whether or not the OHA Board of Trustees should approve the formation of a Permitted Interaction Group, consistent with Hawai'i Revised Statutes §92-2.5(b)(1)(A), to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions.

III. DISCUSSION

A. Timeline of Complaints

A complaint against an OHA Trustee was transmitted to the Board of Trustees (BOT) Chair on April 17, 2019 alleging violations of policies covered under the Trustee Code of Conduct when public statements and comments were made by the OHA Trustee:

1. Duty of Care and Loyalty to OHA, Section 1030 of the OHA BOT Executive Policy Manual (February 2012); and
2. Duty of Loyalty and Duty of Obedience and Support for Board Decisions, Subpart 1A, Section A, Subsection 5 of the OHA BOT Code of Conduct and Sanctions for Violations of the Code of Conduct.

This complaint was distributed to the Trustees via a confidential memo from the Board Counsel dated April 30, 2019.

Another complaint against the same OHA Trustee identified in the first complaint was transmitted to the BOT Chair on May 8, 2019. This complaint alleged violations of policies covered under the Trustee Code of Conduct, similar to the first complaint, when public statements were made by the OHA Trustee:

1. Duties of Care, Obedience, and Loyalty as defined in the OHA BOT Executive Policy Manual (February 2012) and Subpart 1A, Section A of the OHA BOT Code of Conduct and Sanctions for Violations of the Code of Conduct.

The second complaint was distributed to the Trustees via a confidential memo from the Board Counsel dated May 14, 2019.

B. Applicable Law in Hawai'i Revised Statutes, Permitted Interaction Group

In accordance with HRS §92-2.5(b)(1)(A), this action item seeks the approval of the Board to create a Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions.

Hawai'i Revised Statutes (HRS), Chapter 92, Public Agency Meetings and Records, §92-2.5(b)(1) allows for two or more board members (Permitted Interaction Group), but less than the number of members which would constitute a quorum of the board, to investigate a matter relating to official business of the board:

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board.

C. Proposed Permitted Interaction Group (PIG)

The scope/purview, memberships, and term/duration of the Permitted Interaction Group are defined below.

Permitted Interaction Group Scope /Purview:

The scope/purview of the PIG is to:

1. Investigate complaints against an OHA Trustee for alleged violations of the Trustee Code of Conduct contained in the complaints, such as allegations involving that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions;
2. Interview individuals involved in the complaints, consult with others (i.e. Board Counsel, etc.), and perform tasks as necessary to further and complete its investigation; and
3. Present to the Board a report with its findings and recommendations.

Permitted Interaction Group Membership:

The membership of the PIG is as follows:

1. Trustee Brendon Kalei‘āina Lee;
2. Trustee Carmen Hulu Lindsey; and
3. Trustee John Waihe‘e IV

Trustee Lee will serve as the Chair of the PIG and Trustee Hulu Lindsey will serve as its Vice Chair.

Permitted Interaction Group Term/Duration:

The term of the PIG expires at the completion of the scope/assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment.

IV. TIMEFRAME

Immediate action is recommended.

V. FUNDING SOURCE

No additional funding is needed to form a new Permitted Interaction Group to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board’s decisions.

VI. ALTERNATIVES

- A. Approve the formation of a Permitted Interaction Group (PIG) to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board’s decisions.
- B. Do not approve the formation of a Permitted Interaction Group (PIG) to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board’s decisions.
- C. Take no action

VII. RECOMMENDATION

Approve the formation of a Permitted Interaction Group (PIG) to investigate complaints against a Trustee for alleged violations of the Trustee Code of Conduct involving allegations that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board’s decisions.

The scope/purview of the PIG is to:

1. Investigate complaints against an OHA Trustee for alleged violations of the Trustee Code of Conduct contained in the complaints, such as allegations involving that the Trustee breached the duty of care and loyalty to OHA and the duty to obey and support the Board's decisions;
2. Interview individuals involved in the complaints, consult with others (i.e. Board Counsel, etc.), and perform tasks as necessary to further and complete its investigation; and
3. Present to the Board a report with its findings and recommendations.

The membership of the PIG is as follows:

1. Trustee Brendon Kalei'āina Lee;
2. Trustee Carmen Hulu Lindsey; and
3. Trustee John Waihe'e IV

Trustee Lee will serve as the Chair of the PIG and Trustee Hulu Lindsey will serve as its Vice Chair.

The term of the PIG expires at the completion of the scope/assigned tasks or at the discretion of the Chair of the Board of Trustees, subject to later adjustment.

VIII. ATTACHMENT

None