I. CALL TO ORDER

Trustee Colette Machado Calls the Board of Trustees meeting to order at 10:05 am. Roll call is taken: Trustees Ahu Isa, Ahuna, Akaka, Akina, Lee, Carmen Hulu Lindsey, Robert Lindsey and Machado are present, constituting a quorum. Trustee Waihee is expected to arrive shortly.

Let me begin by saying there is 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for the following items:

II. Approval of Minutes
   A. September 26, 2019

V. New Business
   A. Committee on Beneficiary Advocacy and Empowerment
      1. Action Item BAE #19-02: Approval of OHA 2020 Legislative Package
   B. Committee on Resource Management

With that said we will move on to item II.
II. APPROVAL OF MINUTES

A. September 26, 2019

Chair Colette Machado – We have minutes from our September 26, 2019 meeting.

Trustee Dan Ahuna moves to approve the Board of Trustees meeting minutes of September 26, 2019.

Trustee Brendon Kalei‘aina Lee seconds the motion.

10:06 am Trustee John Waihe’e IV arrives to the meeting.

Chair Colette Machado – Is there any discussion? Hearing none, roll call vote please.

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Motion passes with eight (8) yes votes and one (1) excused vote.

III. PUBLIC TESTIMONY

Chair Colette Machado – We are on public testimony. I’d like to call on Germaine Meyers to please come forward. Thank you taking the time to come back again and join us.

Germaine Meyers – I just had a question regarding housekeeping. I understand that my camera may be in the way. If it is just let me know where I have to move it. I can unplug it, it has battery, if it is in the way.

Chair Colette Machado – It really isn’t because we are still doing the livestream.

Dayna Pa – It’s the area between the Chair and your camera.

Germaine Meyers – I’ve been doing that for the last 2 years nobody, except that one time when I didn’t have it on the stand.

Dayna Pa – A couple time it fell and someone tripped.

Germaine Meyers – If I have to move just tell me where it needs to go. I can make sure I can take care of it at the next meeting. Is that ok?

Chair Colette Machado – Ok.
Germaine Meyers – I just want to make sure I can video tape it for my library.

Chair Colette Machado – I think it’s the tripod that they are concerned with. Sylvia maybe you need to move closer to the table.

Germaine Meyers – No she is fine, here’s the thing we been asking for the thing to be archived so that we have access to it. But OHA is still yet, Ka Pouhana told us, the last one, told us that he was checking with legal, but it’s a public media. This is supposed to be a public meeting and we asked for it to be on ʻōlelo but is not. Unfortunately for me to have an archival what the Trustees spoke about at the table other than what’s on the minutes I have to video tape that.

Chair Colette Machado – I don’t think it’s an issue with the video, It’s the safety of when we have people coming and going to sit down to give public testimony.

Germaine Meyers – If I have to end up standing up and holding it in my hand or a different type of tripod, a more expensive one, I’ll buy it. Because I just got to continue to have.

Chair Colette Machado – For today you are fine, we just noting that for those that come to speak be very careful.

Germaine Meyers – If you want me to move back at the next meeting I can. Where ever you guys would have KITV when they come with all their camera, just tell me where to go and I’ll just do it.

Chair Colette Machado – Thank you for that. Maybe next time we try over here. When the media show up they come here.

Germaine Meyers – I just have to bring a taller tripod.

Chair Colette Machado – Ok.

Germaine Meyers – Good morning. If I forget to tell all of you Happy Holidays. Aloha my name is Germaine Meyers and I am an OHA beneficiary for beneficiary advocacy and empowerment, emphasis on empowerment. I am also a Nanakuli Homestead lessee and I share my data, views and arguments regarding agenda item V. B. 1. CLA Final Report.

Trustees on a Federal level they uniform prudent investor act, UPIA was adopted in 1992. On a State level we have Hawaii Revised Statues Chapter 554, Trust and Trustees. I want to highlight to you under Chapter 554 is Hawaii Revised Statues 554 A-1, definitions, as used in this chapter, prudent person means a Trustees who exercise a trust powers is reasonable and equitable in view of the interest of income or principal beneficiaries or both and in view of the manner in which persons of ordinary prudence, diligence, discretion and judgement would act in the management of their own affairs. Would act in the management of their own affairs. Would act in the management of their own affairs. Would act in the management of their own affairs. Would act in the management of their own affairs. Yesterday, I saw how board Vice Chair and Trustee Lee would act in the management of his own affairs. And yesterday I saw how Trustee Akina would act in the management of his own affairs. When it applies to the results of the CLA report. Further under HRS § 554-A.3.C. 16. States that Trustees are responsible to ensure the assets of the Trust against damage or lost and the Trustee against liability with respect to third persons, 24 states, to prosecute or defend actions, claims or proceedings for the protection of Trust Assets and of the Trustees in the performance of Trustee Duties. HRS Chapter 554 C-5, loyalty, a Trustee shall invest and manage, and manage the trust assets solely in the interest of the beneficiaries. Solely, solely in the interest of the beneficiaries, not in the Trustees, not in the interest of the CEO, but solely in the interest of the beneficiaries. And State Auditor Les Kondo repeated this in the audit report 18-03. Hawaii Revised Statues 55-8, reviewing compliance. Compliance with the prudent investment rule is determined in light of the facts and circumstances existing at the time of the Trustees decision or action and not by hindsight. You are to determine in light of the facts and circumstances existing when you make the decisions you made in your delegation and today after you received this report and not by hind sight. Hawaii Revised Statues 55-4C-9, delegation of investment and management functions. Management functions is what you did and
is brought to your attention by the CLA Report. This is what the law states regarding delegation of management functions. A Trustee may delegate investment and management functions that a prudent Trustee of comparable skills could properly delegate under the circumstances.

The Trustees shall exercise reasonable care, skills and caution in, 1. Selecting an agent, Ka Pouhana, 2. Establishing the scope and terms of the delegation consistent with the purposes and terms of the Trust. I would like to highlight to you that the scope and terms of the delegation consistent with the purpose and terms of the Trust were highlighted in CLA’s scope of work beginning on page 24, which you should read again in detail. I want to highlight for you the scope of work 3.A.1. states, approval and execution in accordance with HRS Chapter 103D Hawaii procurement code and HRS Chapter 84 Standards of Conduct and the OHA’s applicable and internal policies and procedures. Additional State laws needed to be followed by the agents you selected and delegated management going back to HRS 55-4C-9, it states in three that Trustees periodically review the agents actions in accordance in order to monitor the agent’s performance and compliance with the terms of the delegation.

Chair my time is up and I would be happy to come back on community concerns to finish up my testimony. My testimony is talking about delegation. Yesterday you made a motion to delegate to Administration. I would really like Ka Pouhana to understand the responsibilities that she is taking upon herself in accepting this delegation. I also would like you as Trustees to understand what you are taking on responsibility when you delegate it to someone else. It states here in Hawaii Revised Statutes, 554C-A regarding compliance and 9 regarding delegation of management functions. I want to just wrap it up right now and let you know that I will come back and talk about delegation because it is really, really critical to what we are reviewing in the CLS.

Chair Colette Machado – Absolutely Germaine. Thank you for being understanding with the time limitations. Mahalo. We are now moving on to IV.

IV. UNFINISHED BUSINESS

A. Interim CEO's 15-Minute Update on Ho'oulu Lāhui Aloha and OHA Activities

Chair Colette Machado – I would like to call on our CEO for any updates.

Sylvia Hussey – Thank you Chair. Most of our updates are operational. It’s a busy time of the year for the organization. I will send those, given the agenda items importance, I will send all of those operational updates to you. There is a lot going on in our organization

Chair Colette Machado – Ok Members, Thank you. We are not on V.

V. NEW BUSINESS

A. Committee on Beneficiary Advocacy and Empowerment
   1. Action Item BAE #19-02: Approval of OHA 2020 Legislative Package

Chair Colette Machado – I will call on Trustee John Waihe’e IV.

Trustee John Waihe’e IV moves to support the following new legislative proposals and approve their inclusion in the 2020 OHA Legislative Package (See referenced attachments for text of the proposals):

- OHA-1 Restoring Hawaiian Expertise in Land Use and Resource Management: (Attachment A)
- OHA-2 Addressing Employment Discrimination Against Former Pa‘ahao: (Attachment B)
- OHA-3 Preventing of Historic Preservation Review Evasion and Other Violations (Attachment C)
• OHA-4 Protecting Our Ancestors via SHPD Admin Rules (Resolution): (Attachment D)

• OHA-5 Facilitating Practitioner Access Onto Private Lands: (Attachment E)

• OHA-6 Capital Improvement Project Budget Request for OHA's Wahiawa Lands: (Attachment F)

Trustee Kalei Akaka seconds the motion.

Chair Colette Machado – Any discussion? Trustee Akina.

Trustee Keli‘i Akina – As I did in the Committee, I will also vote yes on this. However I do want to point out that I would have hoped to bifurcate OHA 1 in restoring Hawaiian expertise in Land Use and resource management. Because there were portions with of it of which I could not agree. But I will vote yes on the measure today.

Chair Colette Machado – So noted.

Sylvia Hussey – Chair do you want to have Jocelyn our public policy manger and Keola our Chief Advocate to come and if there are any discussion items?

Chair Colette Machado – I don’t think it’s necessary. We can take it up again for further discussion at the BAE. Roll call vote please.

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Motion passes with eight (8) yes votes and one (1) excused.

B. Committee on Resource Management

Chair Colette Machado – Members we are now on V.B.1. and I will call on Trustee Dan Ahuna.
Trustee Dan Ahuna moves to recommend that:
1) The Board of Trustees receive the final report on OHA & OHA’s LI.Cs Contract & Disbursement Review prepared by Clifton Larson Allen LLP and commissioned by the Board under 3284, as amended; and
2) Direct Administration to review and analyze the recommendations contained in the final report and report back to the RM Committee with its analysis and plan to implement the recommendations at the first Resource Management Committee meeting in January 2020.

Trustee Carmen Hulu Lindsey seconds the motion.

Chair Colette Machado – Members if there is no further discussion or comments, roll call vote please.
Trustee Akina.

Trustee Keliʻi Akina – Madame Chair I am in favor of this. Correct me if I am out of order in my timing now. I feel it is timely however that even as we take this motion that we give attention to content that was presented by Clifton Larson, CLA specifically the red flags where potential fraud, waste and abuse. It is very difficult to find that in the 1,100 pages. My team and I have gone through it carefully and we have identified those and put them in a list. I could take 10 minutes and read that list out or I can just pass it out to the rest of the Board. I would like attention to be given to those items.

Chair Colette Machado – I think it will be difficult so submit what you prepared as part of the record. But if you chose to do a testimony you can sign up for public testimony and go forward and perhaps become part of the record. What I am trying to say is we already did the discussion, I believe we had this discussion in the RM Committee, the Resource Management Committee yesterday, in preparation for the referral. They action item that we are approving now which is being recommended for approval was discussed very thoroughly. Your comments and your opinions were not and that is what we talked the red flags very thoroughly with the consultants, Trustee Ahu Isa wanted to have further discussion on one of the items that was presented as part of a red flags called Aha Kāne, but she didn’t get her full disclosure at that time. But knowing that it’s contained in the actually report I think that is kind of important. I thought we made it clear to you that any additional information that I was not going to receive it. It’s a personal comment as a Trustee that you are making identified as red flags, I believe you already distributed to the media. So I am not sure why you would want to bring it to the table. It may appear that we are endorsing your personal statements as ours. That is a problem for me as the Board Chair. I am just trying to be clear.

Trustee Keliʻi Akina – Thank you, very good. If I may just respond briefly. I absolutely am not seeking the endorsement, nor will I infer there is any endorsement by the Board of my own views. I do believe that it’s just important for us to look at that information and would appreciate the opportunity to distribute it to my colleagues, I don’t need to make any reference beyond distributing it and they may read it as they like. With my encouragement and that is all I ask.

Chair Colette Machado – One suggestion would be is that you can distribute it to their office with a cover memo. That could be another way of distribution. But not at the table.

Trustee Keliʻi Akina – I would be glad to distribute it at their office if that would be appropriate given sunshine laws. Would that be. After we take the action you can pretty much do what you want. You are not influencing our decision making.

Robert G. Klein, Board Counsel – You can’t circulate outside of an agendized meeting.
Chair Colette Machado – Ok.

Robert G. Klein, Board Counsel – Anything would be a violation of the sunshine law.

Trustee Keliʻi Akina – All I ask is that I will be able to distribute my report to my colleagues and leave it.
Chair Colette Machado – My official position is that I won’t accept it as the Board Chair.

Trustee Keli‘i Akina – Earlier you said you might do it as testimony. Could I do it at that time as community concerns.

Chair Colette Machado – Let me stop this, and I will call on Trustee Ahu Isa.

Trustee Leina‘ala Ahu Isa – Trustee Akina did his and Trustee John and I. I have my own too. It was so voluminous and it was like 1,100 pages, so my staff and I we picked out certain contracts so that it’s easier to look at and read and we can relate to when she brings it to us in January. Instead of all the Trustees going through all of this, I understand what Keli‘i is doing but mine is really, elementary school kind and John I agreed that it was important that we look at the contracts in here.

Chair Colette Machado – I would recommend that you give that to Sylvia, we have to take action first. Let me move to take action then I would recommend that two of your reports to go to Sylvia directly.

Trustee Keli‘i Akina – May I take your first suggestion and during community concern submit is as my testimony and that will be that.

Chair Colette Machado – I cannot prevent you from doing public testimony. So can you sign up?

Trustee Keli‘i Akina – Ok I will be glad to, thank you. I won’t take the opportunity to speak on it I will simply distribute at that time.

Chair Colette Machado – The Chair acknowledges Trustee Keli‘i Akina under public testimony. Even though we are past that area we are way down to item V.B.1. But I will go back on the agenda to allow you that privilege to offer testimony under public testimony.

Trustee Brendon Kalei‘aina Lee – Can we give public testimony?

Chair Colette Machado – Trustees are able to give public testimony we can go out of order. Go ahead.

Trustee Keli‘i Akina – Trustees I will keep this brief.

Trustee Brendon Kalei‘aina Lee – Madame Chair.

Chair Colette Machado – Trustee Brendon Kalei‘aina Lee.

Trustee Brendon Kalei‘aina Lee – I would ask that if Trustee Akina is going to be giving public testimony as a beneficiary that he sits where a beneficiary would give public testimony and not in his Trustee seat.

Chair Colette Machado – Would you mind relocating?

Trustee Keli‘i Akina – At the request of the Chair, I would be glad to. Thank you very much. If you have your statement or your personal comments that you prepared that you want to circulate it now this is the time to do it.

III. PUBLIC TESTIMONY

Trustee Keli‘i Akina – I thank you very much for this opportunity, Madame Chair I appreciate very much of being able to address this. All I want to say is the important thing about the audit is we look at what is really found for us. It pointed out several red flags that I have compiled for you. I’ll
Chair Colette Machado – We have copies being distributed and it will be made part of the record as public testimony. Thank you for that.

(Trustee Keli‘i Akina’s handout: Red Flags: An Analysis of the independent Audit of OHA and its LLCs is attached to the minutes.)

V. NEW BUSINESS

B. Committee on Resource Management


Chair Colette Machado – Members we have a motion that had been made and seconded by Trustee Carmen Hulu Lindsey. Can we do a roll call vote.

Trustee Dan Ahuna moves to recommend that:
1) The Board of Trustees receive the final report on OHA & OHA’s LLCs Contract & Disbursement Review prepared by CliftonLarsonAllen LLP and commissioned by the Board under 3284, as amended; and
2) Direct Administration to review and analyze the recommendations contained in the final report and report back to the RM Committee with its analysis and plan to implement the recommendations at the first Resource Management Committee meeting in January 2020.

Trustee Carmen Hulu Lindsey seconds the motion.

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Motion passes with eight (8) yes votes and one (1) excused.

Chair Colette Machado – Members thank you so much let us move on to item VII. Executive session.

VII. EXECUTIVE SESSION

Chair Colette Machado – Members the Chair would like to entertain a motion for recuse ourselves into Executive Session pursuant to HRS 92-5 (a)(4).

Trustee Carmen Hulu Lindsey moves to recuse into executive session pursuant to HRS §92-5(a)(4).

Trustee John Waihe‘e IV seconds the motion.
**Chair Colette Machado** – It has been moved and seconded. Roll call vote please.

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<tr>
<td>TRUSTEE ROBERT</td>
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<tr>
<td>TRUSTEE JOHN WAIHEʻE</td>
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<tr>
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</table>

**TRUSTEE LEINAʻALA AHU ISA**

**TRUSTEE DAN AHUNA**

**TRUSTEE KALEI AKAKA**

**TRUSTEE KELIʻI AKINA**

**TRUSTEE BRENDON KALEIʻAINA LEE**

**TRUSTEE CARMEN HULU LINDSEY**

**TRUSTEE ROBERT LINDSEY**

Motion passes with eight (8) yes votes and one (1) excused.

**Chair Colette Machado** – We are in executive session, prepare the room.

The Board resolved into Executive Session at 10:28 am


B. Approval of Minutes
   1. September 26, 2019

The Board reconvenes in open session at 10:53 am.

**10:53 am Trustee Dan Ahuna leaves the meeting.**

VII. COMMUNITY CONCERNS

Chair Colette Machado – Members we are now on community concerns. We have two individuals that signed up. I'll call on Germaine as a continuation from public testimony.

Germaine Meyers – Thank you. Aloha Trustees. HRS 55C-9 delegation of investment and management functions. A Trustee may delegate investment and management functions that a prudent Trustee of comparable skills could properly delegate under the circumstances. The Trustee shall exercise reasonable care, skill and caution in 1. Selecting an agent, 2. Establishing the scope and terms of the delegation consistent with the purposes and terms of the trust, 3. Periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation. In performing a delegated function, an agent or Ka Pouhana owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation. A Trustee who complies with the requirements of sub section A is not liable to the beneficiaries or the Trust for the decisions or actions of the agent to whom the function was delegated.

You must read A. however in D. it states, by accepting the delegation of a Trust function from the Trustee of a Trust that is subject to the law of this State an agent submits to the jurisdiction of the courts of this State. Delegation to a State employee includes compliance with State procurement code and State Ethics Code. For the
past 2 years I have been videotaping and I’ve been videotaping all of the things that I brought to your attention. Including the Aha Kane and various things that have been noted on this report. I would like to say in regards to lets heed to legal counsel, you know when your Doctor gives you advice or a lawyer gives you advice, let me just say with the Doctor, you are still responsible for your health whether or not you are going to live or you are going to die. So, this organization is still responsible for your decisions. We are going to live or we are going to die by your decisions. If a Doctor tells you, oh you need a surgery and you don’t even do a second opinion or your due diligence, and you just follow ok I go take the surgery, and that wasn’t the right course of action. You are going to suffer the consequences we are going to suffer the consequences for all 9 of your decisions. I just want to make that to your awareness.

Besides the law you need to do your own due diligence in making understanding, your understanding of the recommendations provided either by the agent or by your legal counsel, which is another form of an agent. That is the huge responsibility that you ask the beneficiaries and the citizens of this State to take part in. So when I am watching all of this going on, I am like wait a minute, there were red flags, you need to see purple, do you need to see yellow, do you need to see green. You read the scope and the scope talked about fraud, waste and abuse. That was part of the scope. This agent or CLA was not willing to take responsibility for identifying to you if it is fraud, waste or abuse. It’s your responsibility to look at it with how you would manage your own monies, your own health and decide if you are going to do this or if you are going to do that. Now you say, oh I created policies Germaine in 2017 and 2018, 2019 regarding what CLA has brought up. A’ole, not all of it, you guys have not brought policies for all of it. You still need to do more policies. Here’s the things, I already saw in the State Audit Report, Les Kondo, that you were willing to spend uku paila monies, hundreds of thousands of dollars for years of litigation for Trustee Akana. Years, I would reference that, you went years after her over one incident. Now you need to go and look at this report and take criminal or civil action against anyone that violated procurement code, or State ethics code. No different than you went after Trustee Akana. It is recorded in the State Audit, I am going to hold you accountable to it and however it’s going to happen akua is going to help me to make sure that you are accountable. This is the $400 million trust you spent $50 million a year if 80% of it is being misspent you need to take accountability for it. So this CLA report I will review it. And I will look at it and I will highlight to you those things that you should go after like Akana go after and make sure there is criminal or civil action as a prudent Chapter 554 told you that you must do. E hana Kākou.

Chair Colette Machado Thank you. Our next speaker is Thomas Miller. Come forward please.

Thomas Miller - I came back again to talk about Alexander and Baldwin and the racetrack. Alexander and Baldwin and most particularly Campbell Estates. If you guys have any interactions with them could you guys answer that?

Chair Colette Machado – No.

Thomas Miller – You can’t answer that. I am really concerned about what Campbell Estates did and them breaching their contract. I was wondering what steps I need to take to bring this on your agenda to get our racers back our racetrack that was stolen with Campbell Estates the initiator and Alexander and Baldwin going through protecting Campbell Estates. The initial one was the legislation, was the State Capital and that Governor at the time I mentioned, John Waiheee where he gave up that deed where the racers were safe to have a track but evidently Campbell Estates breached it so I was wondering where do I go to because that is your guys land and these guys are bound to protect it. Alexander and Baldwin, they are into malls and shopping centers and they are not into no community things. So, I ask them, so does that mean you guys converse with Caucasians and Asians and you neglect the kanaka maoli because I think the Hawaiians would rather have housing and farm lands then some mall they are not going to profit off of. Not profit off of but have anything, have that to be a part of their like because I don’t think back in the days they had malls that’s why I am coming to you guys again to see what I can do about this matter for you guys to take interest in it because I had a conversation with a Trustee, he just left when he talked to me outside he said some names that really, really scared me. I am really concerned, I was wondering what steps I got to do to address this issue so you guys can actually look into it. In the meeting nobody asking me
questions but when I went outside it was all blah, blah, blah and then I never got any wah, wah, wah back. So that’s why I’ve come to see. Can you guys help me address this issue for our racers?

Chair Colette Machado – All I can share with you Thomas is that OHA doesn’t have any properties or lands out in Kapolei. The entity that has a majority of that, including Kalaeloa is the Department of Hawaiian Homes which we are not. They are the ones that developed Ka Makana Alii, that is on Hawaiian Homes not OHA.

Thomas Miller – But the land that actually was condemned to make the racetrack is Department of Land and Natural Resources.

Chair Colette Machado – That is DLNR.

Thomas Miller – That is DLNR, right.

Robert Klein, Board Counsel – We cannot have this back and forth. Thomas, we cannot have the back and forth in community concerns. Because your topic is not on the agenda. So if anybody wanted to speak and talk to you, Trustees wanted to engage you should come in the Public Testimony part of the meeting.

Thomas Miller – Right, but it has to be on the agenda from my understanding. So, my thing is how do I get my cause on the agenda, that’s the one question I wanted to ask you.

Robert Klein, Board Counsel – Not this way, they cannot engage you, they can listen but they cannot be asking you questions and advice.

Thomas Miller – How do I get on the agenda.

Robert Klein, Board Counsel – Then you have to contact the Chair’s office.

Chair Colette Machado – No, I will refer back to administration if we can get someone from Public Policy or some other area.

Robert Klein, Board Counsel – It is a process.

Sylvia Hussey – What we can do is have our Chief Advocate and our Public Policy follow up with Mr. Miller and help to better understand all the issues and help to guide our beneficiary in the direct place. We can definitely have someone in our advocacy come talk story and help to identify what are the moving parts. Trustees we can do that.

Chair Colette Machado – Yes, that would be most helpful if you could talk to somebody in public policy. We are going to see if they are available now since you are actually here.

Thomas Miller – Ok thank you.

Chair Colette Machado – Then you can give us an update at the next meeting.

Thomas Miller – Right, that is on the 19th.

Chair Colette Machado – It is the 19th. Thank you Thomas.

VII. ANNOUNCEMENTS

None
IX. ADJOURNMENT

Chair Colette Machado – Is there anyone else that would like to address the Board in community concerns? Hearing none, the Chair would like to entertain a motion to adjourn.

Trustee John Waihe'e IV moves to adjourn the meeting.

Trustee Carmen Hulu Lindsey seconds the motion.

Chair Colette Machado – It has been moved and seconded. Roll call vote please.

<table>
<thead>
<tr>
<th>TRUSTEE</th>
<th>1</th>
<th>2</th>
<th>'AE (YES)</th>
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MOTION: [ ] UNANIMOUS [ x ] PASSED [ ] DEFERRED [ ] FAILED
Motion passed with seven (7) yes votes and two (2) excused.

Chair Colette Machado – Thank you all for help in the CLA review in the RM to the Board Table. I feel we have accomplished quite a lot there is a lot more work we will have to put together. We must all look forward to that in 2020 and try to support administration in any way. We stand adjourned till the 19th. Mahalo.

The meeting was adjourned at 11:07 am.

Respectfully submitted,

Dayna Pa, Board Secretary

As approved by the Board of Trustees on January 23,2020.

Colette Y. Machado, Chairperson
Board of Trustees

Attachments:
1. Public Testimony - Trustee Keli‘i Akina’s handout Red Flags: An Analysis of the independent Audit of OHA and its LLC
Red Flags: An Analysis of the Independent Audit of OHA and Its LTCs

Introduction
Audit Methodology

Audits Results

The Board of Trustees retained CliftonLarsonAllen (CLA) in 2018 to conduct an independent audit of OHA and its subsidiary LLCs for the fiscal years 2012 to 2016. The primary objective of this audit was to "identify and quantify potential areas of waste, abuse, and fraud in the procurement of professional services, as well as other disbursements of funds." Unlike a fraud investigation, which is specifically designed to obtain evidence of fraud in the contest of civil or criminal litigation, CLA’s role was limited to identifying areas in OHA’s procurement processes that are at higher risk for potential fraud, waste, and abuse. Although CLA was not specifically tasked to determine whether a specific disbursement was in fact fraudulent, CLA provided a list of transactions containing "Red Flag" indicators of potential fraud, waste, and abuse.

Given the limited budget of $500,000 appropriated for the CIA audit, it was not feasible to review every single contract and disbursement. Instead, out of 9,309 total contracts and disbursements OHA and its subsidiary LLCs entered into during fiscal years 2012 to 2016, CLA selected a sample of 185 contracts and disbursements based on judgmental sampling. In reviewing these 185 contracts and disbursements, CLA applied specific audit procedures to determine the following:

- Compliance with the Procurement Code,
- Compliance with the Ethics Code,
- Compliance with OHA’s own internal policies,
- Whether sufficient contract oversight was provided,
- Whether contract deliverables were met, and
- Whether any indicators of fraud, waste, and abuse were present.

The CIA audit defines an audit observation as a situation where "the result of testing revealed occurrences of non-compliance with statutory requirements and/or internal policies," or "that revealed indicators or red flags of waste, fraud, or abuse.”

Audit Results

- 85% of contracts contained audit observations and 17% were flagged for fraud, waste, and abuse.
- 65% of transactions contained audit observations and 5% were flagged for fraud, waste, and abuse.

Audit Sample

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<td>654321</td>
<td>Competitive Sealed Proposal</td>
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The CIA audit results indicated that out of 185 contracts and disbursements reviewed, 85% contained audit observations and 17% were flagged for potential fraud, waste, and abuse. The relatively high percentage of transactions with audit observations reveals significant concerns with respect to OHA’s ability to comply with statutory requirements and internal policies. If the audit results were broken down by category, it becomes evident that the areas with the highest concentration of risk with respect to non-compliance as well as fraud, waste, and abuse are:

- Professional services contracts,
- Exempt contracts,
- CEO sponsorships,
- Grants, and
- Competitive sealed proposals.
OHA's grants program and CEO sponsorship were also described as risk areas in the most recent State Auditor's Report, which concluded that "OHA's vague rules guiding its discretionary spending are broadly interpreted, arbitrarily enforced, and at times disregarded.' Since the 2018 State Audit, OHA has taken significant steps to improve the policies governing the grants and CEO sponsorship programs.

Missing Procurement Documents

In contrast to the grants program and CEO sponsorships, however, the extent of OHA's noncompliance with the Procurement Code was not known to Trustees, beneficiaries and the public at large. The CIA audit results revealed that every single contract reviewed by CIA contained various instances of noncompliance with the Procurement Code. To understand the significance of these findings of noncompliance, it is first important to understand the role of the Procurement Code. OHA is a semi-autonomous public trust, and the Procurement Code is designed to protect OHA beneficiaries by ensuring that OHA procures goods and services in a competitive and ethical manner. The Procurement Code relies on the principles of impartiality and independence, and is designed to promote competitive pricing for goods and services and serve as a deterrent to vendor favoritism.

The audit results indicated that many of the required procurement documents, such as signed affidavits of selection committee members, were simply missing. These documents are required to be retained in order to establish that there were no conflicts of interest, and that contracts were in fact awarded to the first ranked vendor. See Appendix 1: ft. 4, 5, 11, 13 and 14.

In addition to the missing procurement documents, one specific contract contained evidence of a deliberate effort to award a $200,000 contract to a former OHA employee. In this specific instance, the evidence suggested that the contract was awarded to this vendor prior to the completion of the procurement process, which raises the concern of vendor favoritism. See Appendix 1: 810.

Contracts Incorrectly Processed through the Exempt Procurement Method

The concern over vendor favoritism is also demonstrated by various instances of contracts incorrectly classified by OHA as exempt from the Procurement Code. "Exempt contract" status is generally reserved for narrow sets of situations where procurement of goods or services by competitive means is either not practical or advantageous. When a contract is improperly awarded through the exempt procurement method, all forms of competition are removed, which substantially increases the risk of conflict of interest and conflict of interest.

In one case, for example, a contractor was retained for $38,932 to provide public relations and messaging services related to the Kaka'ako Makai settlement. Because the contractor was formed in the same year that its contract was executed with OHA, and because the contractor's invoices were sequenced equally, it appeared that OHA was this contractor's only client. Examples of vendor favoritism such as this lead to potentially non-competitive pricing and ultimately damage the credibility and reputation of OHA. See Appendix 1: 6, 8, 15, 18, 21, 28 and 32.

Missing Contract Deliverables

The audit results also reveal a concerning pattern of inability on the part of OHA to demonstrate that contract deliverables were met by contractors. Two specific cases stand out.

In the first case, a vendor was retained for $165,000 to provide quarterly assessments of each Trust Fund Advisor and the entire Trust Fund during regularly scheduled meetings of the Asset and Resource Management Committee and/or the Board of Trustees. The contract deliverables in this case are unambiguous, however, OHA was unable to provide any of the required post- engagement assessments. This raises a question as to whether the work was in fact performed.

These cases of missing contract deliverables show an alarming pattern of inability to manage contracts and contractors, and indicate potential fraud, waste and abuse.
In addition to identifying areas within OHA's procurement process that are at higher risk for noncompliance, CLA was also tasked to quantify potential areas of waste, abuse, and fraud. By applying specific audit procedures, CIA identified 32 specific contracts and disbursements as "Red Flags," or transactions with indicators of potential fraud, waste, and abuse.

$7.8M of Potential Fraud, Waste, and Abuse

CIA flagged 32 transactions worth $7.8 million as potentially fraudulent, wasteful, and abusive expenditures. Appendix 1 provides a detailed summary of all 32 "Red Flag" transactions.

A majority of the 32 transactions flagged as potentially fraudulent, wasteful, or abusive share common characteristics of missing procurement documents and lack of evidence of contract deliverables. For example, in the case of the Akamai Foundation, which was retained by OHA as a fiscal sponsor for Na'iAupuni, all funding was provided 11 days before the election was scheduled, a total of $2.6 million. No invoices, receipts, or billings were submitted by the Akamai Foundation to OHA to demonstrate what costs were incurred in the process of holding the delegate election. See Appendix 1: #1.

Other examples indicate that OHA potentially misappropriated trust funds to for-profit businesses. In one case, OHA provided a $150,000 lease guarantee to Kauhale, LLC when it defaulted on its commercial lease of property located in the Waikiki Beachwalk. Similarly, through a series of four disbursements, OHA diverted $118,367 to the for-profit entity that is currently operating the Makaweli Poi Mill on Kaua'i. In both cases, there was a lack of documentation. Additionally, it remains unclear as to what the legal or programmatic basis is for OHA to divert public trust funds to for-profit entities. See Appendix 1: #13.

Conclusion

The CIA audit has revealed significant red flags with respect to financial accountability. With limited trust resources and a mandate to advocate for the betterment of conditions for Native Hawaiians, the Board of Trustees had a duty to take immediate action to address the concerns raised by the audit. The 32 "Red Flag" transactions worth $7.8 million that were flagged as potentially fraudulent, wasteful, and abusive validate the concerns that an increasing number of OHA beneficiaries have voiced over the years.

To be clear, CIA was not explicitly tasked with determining whether any transactions were in fact fraudulent. Only a court of law can make that final determination. But what the CIA audit has given OHA is a valuable list of specific transactions that may warrant further investigation, in order to promote accountability within the organization. Therefore, the Board of Trustees must heed the CIA report not as a final determination, but as a roadmap of issues to resolve.

One way for OHA to promote accountability and resolve issues brought forth by CIA is to look further into the 32 "Red Flag" transactions and make referral to appropriate government agencies if warranted.

Additionally, the Board of Trustees must enact an immediate action plan to restore the credibility and reputation of OHA. To do so, OHA should take proactive steps to implement the following, most of which are included as recommendations made by CIA:

1) Whistleblower Intake Process: OHA's internal whistleblower policy does not provide enough protection for OHA employees and does not provide a formal intake process for beneficiary complaints. OHA should implement a whistleblower hotline for OHA employees and beneficiaries that will be managed by an independent third-party consultant.

2) Internal Audit Function: The CIA audit findings indicate a clear need for a permanent internal audit function within OHA. The Board of Trustees should establish a standing audit committee to develop and conduct an ongoing audit plan. The standing audit committee will be assisted by an outsourced internal auditor and could conduct internal audits of transactions to ensure the board of trustees are aware of any issues and can take appropriate action to resolve them.

3) Implement Audit Recommendations: OHA must consider and implement all the audit recommendations made by CLA.

4) Transparency Portal: OHA must take proactive steps to promote transparency with respect to how OHA and LLC funds are expended. Disclosing these expenditures on a non-linear transparency portal will promote transparency and accountability.

For clarity, the CIA audit concerned itself only with transactions within the processes of OHA's financial management and did not delve into other potential areas of concern.

For example, an area of concern that was not addressed in the CIA audit is the potential misuse of community development funds in other parts of the organization. As noted in the CIA report, community development funds are distributed to various projects and initiatives within the organization. These funds are intended to support community development and could be misused in ways that undermine the organization's mission.

In conclusion, the CIA audit has revealed significant red flags with respect to financial accountability. The Board of Trustees has a duty to take immediate action to address the concerns raised by the audit. The 32 "Red Flag" transactions worth $7.8 million that were flagged as potentially fraudulent, wasteful, and abusive validate the concerns that an increasing number of OHA beneficiaries have voiced over the years.

Therefore, OHA must take proactive steps to promote accountability, transparency, and integrity within the organization. To do so, OHA should implement the recommendations made by the CIA audit and enact an immediate action plan to address the concerns raised by the audit.
The lack of documentation with respect to this procurement and lack of evidence of a contract led the Audit Committee to conclude that the contract was not executed appropriately. The lack of documentation made it difficult to assess the extent of the potential for fraud. The Audit Committee recommended that a proper contract be established and that a memo be sent to the contractor to inform them of the issues raised in this audit.
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**An Analysis of the Independent Audit of OIA and LC LLC**

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<td>Description 1</td>
</tr>
<tr>
<td>Item 2</td>
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**Note:**

- The reported items are based on the latest available data.
- Further analysis is required for comprehensive understanding.

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</tr>
<tr>
<td>Category B</td>
<td>456</td>
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**Report:**

- The detailed findings are provided in the appendix.
- Recommendations are included for future improvements.
Disbursements

There was no documentation that the grant writer position was advertised or filled. The fact that there is no evidence of deliverables being provided as required by the funding request, constitutes a red flag or indicator of possible fraud, waste, or abuse.

(amount)

<table>
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<th>Amount</th>
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<td>(HRS §1030-102(b))</td>
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Raedeen was retained to "finish writing and editing of the documents created during this portion of the Kukulu Hou Assessment Project." The contract should not have been processed as an exempt contract. The Kalaimoku Group LLC was retained to provide public relations and messaging services related to the proposed Kaka'ako Makai settlement. This contract should not have been processed as an exempt contract. 

The lack of documentation surrounding this transaction and the manner in which it was handled are possible indicators of fraud, waste, or abuse. Additionally, the red flags of non-existent or possible fraud, waste, or abuse were raised due to the handling of the documents and the manner in which the funds were distributed.
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<td>20C</td>
<td>EOUH, Office of Sponsorships Research Services</td>
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<td>$30,000</td>
<td>Indication of possible abuse of the grant award process to benefit the grantee. The sponsorship for the &quot;GEAR-UP Hawaii Program&quot; was deliberately split into two components: $24,950 for &quot;Grants in Aid&quot; and $5,050 for &quot;Services on a Fee Basis.&quot; It appears that the transaction was constructed to circumvent the $24,999 threshold for CEO Sponsorships.</td>
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<td>22C</td>
<td>Smithsonian Sponsorships Museum of the American Indian</td>
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<td>$25,000</td>
<td>The combination of duplicate documents and anachronisms in the preparation of the procurement documents are indicators of possible abuse of the procurement process. Evidence indicates that the procurement process was not followed and that the check was issued before the required procurement documents were formally approved.</td>
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<td>$50,000</td>
<td>Disbursements to the Kumulipo Group LLC in 2012 for $25,000, transferred in 2012 from Hi'ipoi, LLC to SLK, indicates that the sponsorship was to provide SLK with funds to operate the mill. Indicators of possible waste include lack of documentation to support the confidential business plan for which the grant was intended was properly reviewed and approved. CLA requested the confidential business plan; however, OHA did not provide a copy of the business plan or the procurement documents to CLA.</td>
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<td>24C</td>
<td>OHA Support of the Sponsorships Committee of OAHU (SLK)</td>
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<td>$50,000</td>
<td>No changes were noted. The contract was processed as an exempt contract when it possibly should have been. OHA did not go through a process to obtain competitive quotes or bids for these services. This could be an indication of waste.</td>
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**Report**

Citation (Page) 173

**Amount**

Citation (Page) 174

**Audit Observations**

Citation (Page) 174
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</table>

**The content here is not legible due to the image quality.**

---

**Subject:**

- Other pertinent information or notes from the report.
- Additional points or areas of focus.

---

**Table:**

<table>
<thead>
<tr>
<th>Processor Company</th>
<th>5Z3000</th>
<th>ZT IC</th>
<th>27.000</th>
</tr>
</thead>
</table>

**Notes:**

- Additional comments or observations.
- Any relevant data or observations not fitting into the table format.

---

**Diagram:**

- Visual representation of the data or information discussed.
- Diagrammatic elements related to the processor or component specifications.

---

**Report:**

- Summary or conclusion based on the analysis or findings.
- Recommendations or next steps.

---

**Legend:**

- A reference to the diagram or chart, indicating what each part or section represents.
Appendix 2: Audit Sample & Test Results

<table>
<thead>
<tr>
<th>Transaction Type</th>
<th>Sample</th>
<th>Actual</th>
<th>Actual Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total OHA &amp; LLC Transactions</td>
<td>2%</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>OHA Contracts</td>
<td>52%</td>
<td>525</td>
<td>525</td>
</tr>
<tr>
<td>LLC Contracts</td>
<td>2%</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>OHA Disbursements</td>
<td>18%</td>
<td>180</td>
<td>180</td>
</tr>
<tr>
<td>LLC Disbursements</td>
<td>25%</td>
<td>250</td>
<td>250</td>
</tr>
</tbody>
</table>

Note: The audits sample does not reflect a statistically selected sample. Instead, CIAs used data analytics and professional judgment to select a sample of transactions.