

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*



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

MEETING OF THE BOARD OF TRUSTEES

DATE: Thursday, March 28, 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. New Business
 - A. Committee on Beneficiary Advocacy and Empowerment
 1. 2019 OHA Legislative Positioning – Matrix 2***, March 27, 2019
 - B. Joint Committee on Beneficiary Advocacy and Empowerment and Resource Management
 1. Administration's recommendation to the BAE/RM Committee to review and approve Action Item BAE/RM #19-02 relating to the Kūlia Grant recommendations.†
 - C. Report by the Permitted Interaction Group on Organizational Guidance of its findings and recommendations, without discussion. *Pursuant to HRS §92-2.5(b)(1)(B)†*
- V. Executive Session‡
 - A. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the State Auditor's request for the status of implementation of the audit recommendations in Report No. 18-03. *Pursuant to HRS §92-5(a)(4).*
- VI. Community Concerns*
- VII. Announcements
- VIII. Adjournment

If you require an auxiliary aid or accommodation due to a disability, please contact Albert Tiberi at telephone number 594-1754 or by email at: albert@oha.org no later than three (3) business days prior to the date of the meeting.

*Notice: Persons wishing to provide testimony are requested to submit 13 copies of their testimony to the Chief Executive Officer at 560 N. Nimitz, Suite 200, Honolulu, HI. 96817 or fax to 594-1868, or email BOTmeetings@oha.org 48 hours prior to the scheduled meeting.

Persons wishing to testify orally may do so at the meeting, provided that oral testimony shall be limited to five minutes.

**Notice: Trustees may establish or revise an OHA position on ANY proposed bill / resolution / executive message currently moving through the state legislature or other relative elected body. The Matrices, which are available for public review in the meeting room at this stated meeting, provide a brief description of each bill, the bill's number, the bill's title, the bill's intent, and the proposed and specific OHA position on each measure, current through 3/27/19. However, the Trustees both in committee and as the Board of Trustees (BOT) reserve the right to discuss any and all bills on the Matrix, as well as those that time does not permit to be placed on the Matrix, in order to discharge their fiduciary obligations as Trustees of the Office of Hawaiian Affairs

† Notice: The 72 Hour rule, pursuant to OHA BOT Operations Manual, Section 49, shall be waived for distribution of new committee materials.

‡ 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

3/21/19

Date

Office of Hawaiian Affairs
Board of Trustee Meeting
March 28, 2019
10:00 am

IV. New Business

A. Committee on Beneficiary Advocacy and
Empowerment

1. 2019 OHA Legislative Positioning –
Matrix 2, March 27, 2019*

** The committee report for Action Item IV.A.1. will be forwarded to the Board of Trustees following its approval at the BAE Committee Meeting scheduled for March 27, 2019.*

OFFICE OF HAWAIIAN AFFAIRS
Committee on Beneficiary Advocacy and Empowerment (BAE)

COMMITTEE REPORT

March 27, 2019

The Honorable Colette Y. Machado, Chair
Board of Trustees
Office of Hawaiian Affairs

Chair Machado,

Your Committee on Beneficiary Advocacy and Empowerment, having met on March 27, 2019 and after full and free discussion, recommends approval of the following two actions to the Board of Trustees:

MOTION #1:

To approve Administration's recommendations on *NEW BILLS* (Items 1 - 60) and *BILL POSITIONS FOR RECONSIDERATION* (Items 61, 63 - 65, excluding Item 62, HB419); as well as

ADD:

- HR17 as **MONITOR**; and

CHANGE:

- Item 21, HCR155;
- Item 36, SCR204;
- Item 50, HR142;
- Item 59, SR164, all from ~~Monitor~~ to **COMMENT**;

on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended.

Bills that were discussed					
ITEM#	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			New Bills		
ADD	HR17		DESIGNATING MARCH 2019 AS BLEEDING DISORDERS AWARENESS MONTH.	-	MONITOR
1	HB820	RELATING TO HOUSING	Part I: Prohibits any law, ordinance, or rule from imposing an inclusionary zoning requirement on housing offered exclusively for sale in perpetuity to buyers who are residents of the State, are owner-occupants, and do not own any other real property. Part II: Establishes the ALOHA homes program to develop low-cost homes on state-owned and county-owned land in urban redevelopment sites to be sold in leasehold by HHFDC to qualified residents. Exempts certain land from the definition of public lands. Effective 7/1/2050. (SD1)	COMMENT	
2	SB1167	RELATING TO AGRICULTURAL ENTERPRISES.	Establishes a new Agricultural Enterprise Program within the Department of Agriculture to plan, design, construct, operate, manage, maintain, repair, demolish, and remove infrastructure on any lands under the jurisdiction of the Department, to support and promote agriculture. Establishes the Agricultural Enterprise Special Fund. Makes an appropriation. (SB1167 HD1)	MONITOR	
3	SB1540	RELATING TO CORRECTIONS.	Requires intake service centers to conduct pretrial risk assessments and prepare bail reports within two, instead of three, working days. Requires bail reports to include a complete copy of the pretrial risk assessment, including, among other requirements, a written explanation of administrative scoring overrides.	SUPPORT	
4	HCR27		REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE DEPARTMENT OF EDUCATION'S STATEWIDE BACKLOG OF CAPITAL IMPROVEMENT REPAIR AND MAINTENANCE PROJECTS.	MONITOR	

5	HCR28		ENCOURAGING THE DEPARTMENT OF EDUCATION AND OTHER STAKEHOLDERS TO CONTINUE TO MEET AS A WORKING GROUP AND TO IMPLEMENT A NEW PROGRAM FOR SEXUAL-VIOLENCE PREVENTION IN PUBLIC SCHOOLS.	MONITOR	
6	HCR37		URGING THE BOARD OF EDUCATION AND DEPARTMENT OF EDUCATION TO REDUCE THE USE OF STANDARDIZED TESTING IN HAWAII'S PUBLIC EDUCATION SYSTEM.	MONITOR	
7	HCR38		URGING THE BOARD OF EDUCATION AND DEPARTMENT OF EDUCATION TO SUPPORT AND IMPLEMENT COMMUNITY SCHOOLS AS A STRATEGY FOR INCREASING ACCESS TO A HIGH-QUALITY EDUCATION.	MONITOR	
8	HCR61		REQUESTING THE DEPARTMENT OF EDUCATION TO REPORT TO THE LEGISLATURE ON ITS PROGRESS TOWARD PROVIDING A WELL-ROUNDED EDUCATION FOR ALL PUBLIC SCHOOL STUDENTS.	MONITOR	
9	HCR71		REQUESTING EVERY COMMERCIAL OR PUBLIC BUILDING LOCATED ON DEPARTMENT OF HAWAIIAN HOME LANDS TRUST LAND TO DISPLAY A PHOTOGRAPH OF PRINCE JONAH KUHIO KALANIANA'OLE AND A DESCRIPTION OF HIS ACHIEVEMENTS.	MONITOR	
10	HCR98		URGING THE CITY AND COUNTY OF HONOLULU TO ADD HANS L'ORANGE NEIGHBORHOOD PARK TO THE LIST OF SECURED PARKS ON OAHU.	MONITOR	
11	HCR122		REQUESTING THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM AND COUNTY PLANNING DEPARTMENTS TO COLLECT INFORMATION FROM ASSOCIATIONS OF APARTMENT OWNERS AND ASSOCIATIONS OF CONDOMINIUM OWNERS THAT HAVE OWNERS WHO RENT THEIR UNITS AS TRANSIENT ACCOMMODATIONS AND MAKE THE INFORMATION AVAILABLE TO ASSOCIATION MEMBERS AND UNIT OWNERS.	MONITOR	

12	HCR124		REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ESTABLISH THE HAUULA BEACH PARK MARINE LIFE CONSERVATION DISTRICT.	MONITOR	
13	HCR125		REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ESTABLISH THE LANIAKEA BEACH MARINE LIFE CONSERVATION DISTRICT.	MONITOR	
14	HCR133		REQUESTING THE PROBATE COURT TO INCREASE TRANSPARENCY REGARDING THE KAMEHAMEHA SCHOOLS TRUSTEE SELECTION PROCESS.	MONITOR	
15	HCR138		URGING THE COUNTY OF HAWAII TO CREATE ALTERNATE ROUTES TO PROPERTIES IN THE PUNA DISTRICT THAT WERE AFFECTED, BUT NOT DESTROYED, BY THE 2018 KILAUEA ERUPTION.	MONITOR	
16	HCR142		URGING THE COUNTY OF HAWAII TO ESTABLISH A HOUSING ASSISTANCE PROGRAM FOR RESIDENTS AFFECTED BY THE 2018 VOLCANIC DISASTER.	MONITOR	
17	HCR151		URGING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO BUILD ALTERNATIVE HOUSING OPTIONS FOR LESSEES.	MONITOR	
18	HCR152		URGING THE CHAIRPERSON OF THE BOARD OF LAND AND NATURAL RESOURCES TO RENAME THE RUSSIAN FORT ELIZABETH STATE HISTORICAL PARK IN WAIMEA, KAUA'I, TO PA'ULA'ULA.	MONITOR	
19	HCR153		REQUESTING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO PERFORM AN ACTUARIAL STUDY ON THE SIZE OF THE CURRENT AND PROJECTED FUTURE POPULATIONS OF HAWAIIANS ELIGIBLE TO LEASE HAWAIIAN HOME LANDS.	MONITOR	
20	HCR154		SUPPORTING THE DEVELOPMENT OF A HAWAIIAN LANGUAGE PLAN AND REQUESTING THE CONVENING OF A COALITION TO DEVELOP THE PLAN.	SUPPORT	

21	HCR155		URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY TASK FORCE TO DEVELOP A SUI GENERIS LEGAL SYSTEM TO RECOGNIZE AND PROTECT NATIVE HAWAIIAN CULTURAL INTELLECTUAL PROPERTY, TRADITIONAL CULTURAL EXPRESSIONS, AND GENETIC RESOURCES.	MONITOR	Monitor > COMMENT
22	HCR159		URGING THE UNITED STATES ARMY CORPS OF ENGINEERS TO SEEK INPUT FROM COMMUNITIES THAT WILL BE IMPACTED BY THE ALA WAI FLOOD RISK MANAGEMENT PROJECT.	MONITOR	
23	HCR163		REQUESTING THE GOVERNOR TO ESTABLISH A WORKING GROUP TO EXPLORE MATTERS RELATED TO THE ALA WAI CANAL FLOOD RISK MANAGEMENT PROJECT.	MONITOR	
24	HCR173		REQUESTING APPROVAL FROM THE FEDERAL HIGHWAY ADMINISTRATION FOR A PROPOSED LOW-INCOME AND WORKFORCE HOUSING PROJECT LOCATED WITHIN THE FOOTPRINT OF FEDERALLY-FUNDED INTERSTATE HIGHWAY, F.A.P. NO. I-H1-1(13), EWA OF HUGH STREET IN PEARL CITY AND URGING THE GOVERNOR TO USE OHANA ZONE PILOT PROGRAM FUNDS FOR THE PROJECT.	MONITOR	
25	HCR183		URGING EACH COUNTY TO CURB THE PROLIFERATION OF ILLEGAL VACATION RENTALS.	MONITOR	
26	HCR196		REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO PRIORITIZE STREAM RESTORATION AND PROTECTION WHEN DISCUSSING AND MAKING WATER AND LAND USE DECISIONS AFFECTING THE ENVIRONMENT AND DRINKING WATER.	SUPPORT	
27	HCR228		ENCOURAGING KAMEHAMEHA SCHOOLS TO CONSIDER THE PRACTICE OF LAND EXCHANGES TO FACILITATE THE DEVELOPMENT OF HAWAIIAN HOMESTEADS IN LOCATIONS THAT BETTER SERVE THE HAWAIIAN PEOPLE.	MONITOR	
28	HCR230		REQUESTING THE GOVERNOR TO CONVENE A HAWAIIAN HOME LANDS IMPROVEMENT WORKING GROUP.	COMMENT	

29	SCR56		REQUESTING THE DEPARTMENT OF EDUCATION TO CONVENE A SCHOOL IMPACT FEE REVIEW TASK FORCE TO REVIEW THE SCHOOL IMPACT FEES LAW, INCLUDING ENFORCEMENT OF EXISTING LAW, AND MAKE ANY RECOMMENDATIONS TO ADDRESS CURRENT AND FUTURE NEEDS FOR THE DEVELOPMENT OF NEW SCHOOLS TO ACCOMMODATE PROJECTED POPULATION GROWTH.	MONITOR	
30	SCR69		REQUESTING EVERY COMMERCIAL OR PUBLIC BUILDING LOCATED ON DEPARTMENT OF HAWAIIAN HOME LANDS TRUST LAND TO DISPLAY A PHOTOGRAPH OF PRINCE JONAH KUHIO KALANIANA'OLE AND A DESCRIPTION OF HIS ACHIEVEMENTS.	MONITOR	
31	SCR81		REQUESTING ALL PUBLIC ELEMENTARY, INTERMEDIATE, AND MIDDLE SCHOOLS IN THE STATE TO PARTICIPATE IN THE SAFE ROUTES TO SCHOOL PROGRAM ESTABLISHED PURSUANT TO SECTION 291C-3, HAWAII REVISED STATUTES, FOR KEIKI HEALTH BENEFITS.	MONITOR	
32	SCR139		REQUESTING THE AUDITOR TO CONDUCT A SUNRISE REVIEW OF THE REGISTRATION AND REGULATION OF TRANSIENT VACATION UNIT OWNERS.	MONITOR	
33	SCR152		REQUESTING THE STATE AND COUNTIES TO EXPAND EFFORTS FOR COMMUNITY INPUT REGARDING ADOPTION OF ADMINISTRATIVE RULES, STATEWIDE PLANS, AND PLANS THAT AFFECT RURAL COMMUNITIES.	MONITOR	
34	SCR177		REQUESTING THE PROBATE COURT TO INCREASE TRANSPARENCY REGARDING THE KAMEHAMEHA SCHOOLS TRUSTEE SELECTION PROCESS.	MONITOR	
35	SCR184		REQUESTING THE GOVERNOR TO ESTABLISH A WORKING GROUP TO EXPLORE MATTERS RELATED TO THE ALA WAI CANAL FLOOD RISK MANAGEMENT PROJECT.	MONITOR	

36	SCR204		URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY TASK FORCE TO DEVELOP A SUI GENERIS LEGAL SYSTEM TO RECOGNIZE AND PROTECT NATIVE HAWAIIAN CULTURAL INTELLECTUAL PROPERTY, TRADITIONAL CULTURAL EXPRESSIONS, AND GENETIC RESOURCES.	MONITOR	Monitor > COMMENT
37	HR40		URGING THE BOARD OF EDUCATION AND DEPARTMENT OF EDUCATION TO SUPPORT AND IMPLEMENT COMMUNITY SCHOOLS AS A STRATEGY FOR INCREASING ACCESS TO A HIGH-QUALITY EDUCATION.	MONITOR	
38	HR71		REQUESTING EVERY COMMERCIAL OR PUBLIC BUILDING LOCATED ON DEPARTMENT OF HAWAIIAN HOME LANDS TRUST LAND TO DISPLAY A PHOTOGRAPH OF PRINCE JONAH KUHIO KALANIANA'OLE AND A DESCRIPTION OF HIS ACHIEVEMENTS.	MONITOR	
39	HR91		URGING THE CITY AND COUNTY OF HONOLULU TO ADD HANS L'ORANGE NEIGHBORHOOD PARK TO THE LIST OF SECURED PARKS ON OAHU.	MONITOR	
40	HR97		URGING THE DEPARTMENT OF HEALTH TO COMPLETE THE REQUIRED ASSESSMENT AND TOTAL MAXIMUM DAILY LOAD PROCESS FOR KAELEPULU WATERSHED TO RESTORE AND PROTECT THE KAILUA WATERWAYS.	MONITOR	
41	HR112		REQUESTING THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM AND COUNTY PLANNING DEPARTMENTS TO COLLECT INFORMATION FROM ASSOCIATIONS OF APARTMENT OWNERS AND ASSOCIATIONS OF CONDOMINIUM OWNERS THAT HAVE OWNERS WHO RENT THEIR UNITS AS TRANSIENT ACCOMMODATIONS AND MAKE THE INFORMATION AVAILABLE TO ASSOCIATION MEMBERS AND UNIT OWNERS.	MONITOR	
42	HR114		REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ESTABLISH THE HAUULA BEACH PARK MARINE LIFE CONSERVATION DISTRICT.	MONITOR	

43	HR115		REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ESTABLISH THE LANIAKEA BEACH MARINE LIFE CONSERVATION DISTRICT.	MONITOR	
44	HR123		REQUESTING THE PROBATE COURT TO INCREASE TRANSPARENCY REGARDING THE KAMEHAMEHA SCHOOLS TRUSTEE SELECTION PROCESS.	MONITOR	
45	HR127		URGING THE COUNTY OF HAWAII TO CREATE ALTERNATE ROUTES TO PROPERTIES IN THE PUNA DISTRICT THAT WERE AFFECTED, BUT NOT DESTROYED, BY THE 2018 KILAUEA ERUPTION.	MONITOR	
46	HR131		URGING THE COUNTY OF HAWAII TO ESTABLISH A HOUSING ASSISTANCE PROGRAM FOR RESIDENTS AFFECTED BY THE 2018 VOLCANIC DISASTER.	MONITOR	
47	HR138		URGING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO BUILD ALTERNATIVE HOUSING OPTIONS FOR LESSEES.	MONITOR	
48	HR140		REQUESTING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO PERFORM AN ACTUARIAL STUDY ON THE SIZE OF THE CURRENT AND PROJECTED FUTURE POPULATIONS OF HAWAIIANS ELIGIBLE TO LEASE HAWAIIAN HOME LANDS.	MONITOR	
49	HR141		SUPPORTING THE DEVELOPMENT OF A HAWAIIAN LANGUAGE PLAN AND REQUESTING THE CONVENING OF A COALITION TO DEVELOP THE PLAN.	SUPPORT	
50	HR142		URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY TASK FORCE TO DEVELOP A SUI GENERIS LEGAL SYSTEM TO RECOGNIZE AND PROTECT NATIVE HAWAIIAN CULTURAL INTELLECTUAL PROPERTY, TRADITIONAL CULTURAL EXPRESSIONS, AND GENETIC RESOURCES.	MONITOR	Monitor > COMMENT
51	HR146		REQUESTING THE GOVERNOR TO ESTABLISH A WORKING GROUP TO EXPLORE MATTERS RELATED TO THE ALA WAI CANAL FLOOD RISK MANAGEMENT PROJECT.	MONITOR	

52	HR170		REQUESTING THE OFFICE OF HAWAIIAN AFFAIRS TO COMPLETE THE 2017 INDEPENDENT FINANCIAL AUDIT AND MANAGEMENT REVIEW OF THE OFFICE OF HAWAIIAN AFFAIRS AND ITS SUBSIDIARIES.	COMMENT	
53	HR177		REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO PRIORITIZE STREAM RESTORATION AND PROTECTION WHEN DISCUSSING AND MAKING WATER AND LAND USE DECISIONS AFFECTING THE ENVIRONMENT AND DRINKING WATER.	SUPPORT	
54	HR203		ENCOURAGING KAMEHAMEHA SCHOOLS TO CONSIDER THE PRACTICE OF LAND EXCHANGES TO FACILITATE THE DEVELOPMENT OF HAWAIIAN HOMESTEADS IN LOCATIONS THAT BETTER SERVE THE HAWAIIAN PEOPLE.	MONITOR	
55	HR205		REQUESTING THE GOVERNOR TO CONVENE A HAWAIIAN HOME LANDS IMPROVEMENT WORKING GROUP.	COMMENT	
56	SR7		REQUESTING THE DEPARTMENT OF HUMAN SERVICES, IN CONSULTATION WITH THE DEPARTMENT OF PUBLIC SAFETY, TO WORK WITH THE FAMILY REUNIFICATION WORKING GROUP AND OTHER COMMUNITY STAKEHOLDERS TO DEVELOP A PLAN TO ESTABLISH VISITATION CENTERS AT ALL STATE CORRECTIONAL FACILITIES AND JAILS.	SUPPORT	
57	SR47		REQUESTING EVERY COMMERCIAL OR PUBLIC BUILDING LOCATED ON DEPARTMENT OF HAWAIIAN HOME LANDS TRUST LAND TO DISPLAY A PHOTOGRAPH OF PRINCE JONAH KUHIO KALANIANA'OLE AND A DESCRIPTION OF HIS ACHIEVEMENTS.	MONITOR	
58	SR144		REQUESTING THE PROBATE COURT TO INCREASE TRANSPARENCY REGARDING THE KAMEHAMEHA SCHOOLS TRUSTEE SELECTION PROCESS.	MONITOR	
59	SR164		URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY TASK FORCE TO DEVELOP A SUI GENERIS LEGAL SYSTEM TO RECOGNIZE AND PROTECT NATIVE HAWAIIAN CULTURAL INTELLECTUAL PROPERTY, TRADITIONAL CULTURAL EXPRESSIONS, AND GENETIC RESOURCES.	MONITOR	Monitor > COMMENT

60	GM669		Submitting for consideration and confirmation to the Island Burial Council, Islands of Maui and Lana'i, Gubernatorial Nominee, DANE MAXWELL, for a term to expire 06-30-2021.	SUPPORT	
			Bill Positions for Reconsideration		
61	HB402	RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS.	Establishes the office of Hawaiian affairs' pro rata share of the public land trust. Transfers funds to the office of Hawaiian affairs for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019. Requires the department of budget and finance to provide an annual accounting of receipts from public land trust lands. Requires annual audits of any funds transferred pursuant to this Act. Establishes the public land trust revenues committee. Prohibits new funding to be appropriated to the office of Hawaiian affairs until the office of Hawaiian affairs' 2017 fiscal and performance audit is completed and provided to the legislature. Appropriates funds. Takes effect 7/1/2050. (SD1)	SUPPORT > SUPPORT WITH AMENDMENTS	
63	HB439	RELATING TO LAND USE.	Exempts lands set aside by the governor to the Hawaii housing finance and development corporation for the primary purpose of developing affordable housing from classification as public land subject to DLNR management. Requires lands set aside by the governor to the Hawaii housing finance development corporation for the primary purpose of developing affordable housing to be subject to legislative approval prior to the sale or gift of those lands. Takes effect 7/1/2050. (SD1)	OPPOSE > MONITOR	

64	HB622	RELATING TO PUBLIC CHARTER SCHOOLS.	<p>Transfers control of public funds disbursed to a charter school to the State Public Charter School Commission upon filing of criminal charges against an employee of the charter school for actions taken in the course of employment at the charter school. Requires establishment of a banking account system to pay charter school expenses. Requires authorizers to select the independent auditors. Prohibits individuals from serving as Board of Education or Charter School Commission members if the individual was affiliated with a charter school within four years preceding appointment. Effective 7/1/2050. (SD1)</p>	OPPOSE > COMMENT	
65	HB821	RELATING TO TELECOMMUNICATIONS.	<p>Requires the Hawaii technology development corporation to seek to establish a public-private partnership to plan, build, and manage key strategic broadband infrastructure and attract cloud based companies to Hawaii. Makes an appropriation for the Hawaii broadband initiative and to establish an open access, carrier neutral cable landing station. Takes effect 7/1/2112. (SD1)</p>	OPPOSE > MONITOR	

MOTION #2:

To approve Administration’s recommendation on **BILL POSITIONS FOR RECONSIDERATION**: Item 62, HB419 from ~~Monitor~~ to **SUPPORT** on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended.

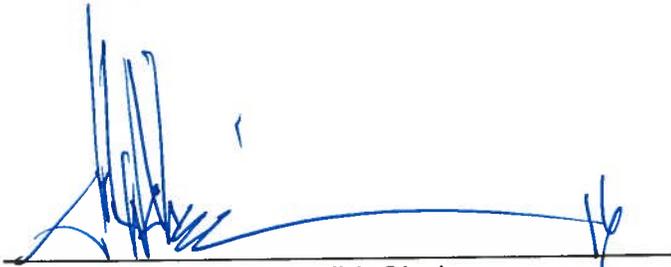
Bills that were discussed					
ITEM#	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			Bill Positions for Reconsideration		
62	HB419	RELATING TO TRANSIENT ACCOMMODATIONS.	Part I: Makes a county eligible to receive TAT revenue allocations for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations, under specified conditions. Requires reports from counties receiving funds for enforcement of transient accommodations and short-term vacation rentals ordinances. Part II: Amends the definition of "transient accommodations" to include additional forms of transient accommodations. Requires each transient accommodations broker, hosting platform, and booking service to submit to DBEDT quarterly reports of statistical data relating to transient accommodations listings. Makes it unlawful for a hosting platform to provide, and collect a fee for, booking services regarding transient accommodations if the operator or plan manager is not registered with the Director of Taxation. Amends requirements relating to transient accommodations tax certificates of registration to ensure greater transparency. Allows a transient accommodations broker to register as a GET and TAT tax collection agent for its operators and plan managers. Takes effect on 1/1/2020. (SD1)	MONITOR > SUPPORT	

Relevant attachments are included for your information and reference.

Attachment(s):

- A. BAE Roll Call Vote Sheet – 2019 OHA LEGISLATIVE POSITIONING – Matrix 2**+
MOTION #1
- B. BAE Roll Call Vote Sheet – 2019 OHA LEGISLATIVE POSITIONING – Matrix 2**+
MOTION #2

Respectfully submitted:



Trustee John Waihe'e, IV, Chair



Trustee Kaleihikina Akaka, Vice-Chair



Trustee Leina'ala Ahu Isa, Member



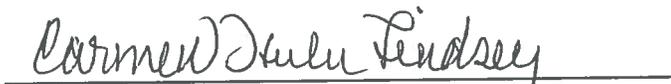
Trustee Dan Ahuna, Member



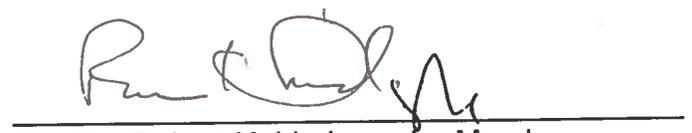
Trustee Keli'i Akina, Member



Trustee Brendon Kalei'aina Lee, Member



Trustee Carmen Hulu Lindsey, Member



Trustee Robert K. Lindsey, Jr., Member

EXCUSED



Trustee Colette Y. Machado, Member

Roll Call Vote Sheet

COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT (BAE)	DATE: March 27, 2019 MOTION: 1:54 p.m. VOTE: 1:55 p.m.
AGENDA ITEM: V. New Business A. 2019 OHA Legislative Positioning – Matrix 2**†	
MOTION #1: To approve Administration’s recommendations on <i>NEW BILLS</i> (Items 1 - 60) and <i>BILL POSITIONS FOR RECONSIDERATION</i> (Items 61, 63 - 65, excluding Item 62, HB419); as well as ADD: <ul style="list-style-type: none">• HR17 as MONITOR; and CHANGE: <ul style="list-style-type: none">• Item 21, HCR155;• Item 36, SCR204;• Item 50, HR142;• Item 59, SR164, all from Monitor to COMMENT; on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended.	

Bills that were discussed					
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2	SB1167	RELATING TO AGRICULTURAL ENTERPRISES.	Establishes a new Agricultural Enterprise Program within the Department of Agriculture to plan, design, construct, operate, manage, maintain, repair, demolish, and remove infrastructure on any lands under the jurisdiction of the Department, to support and promote agriculture. Establishes the Agricultural Enterprise Special Fund. Makes an appropriation. (SB1167 HD1)	MONITOR	
3	SB1540	RELATING TO CORRECTIONS.	Requires intake service centers to conduct pretrial risk assessments and prepare bail reports within two, instead of three, working days. Requires bail reports to include a complete copy of the pretrial risk assessment, including, among other requirements, a written explanation of administrative scoring overrides.	SUPPORT	
4	HCR27		REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE DEPARTMENT OF EDUCATION'S STATEWIDE BACKLOG OF CAPITAL IMPROVEMENT REPAIR AND MAINTENANCE PROJECTS.	MONITOR	
5	HCR28		ENCOURAGING THE DEPARTMENT OF EDUCATION AND OTHER STAKEHOLDERS TO CONTINUE TO MEET AS A WORKING GROUP AND TO IMPLEMENT A NEW PROGRAM FOR SEXUAL-VIOLENCE PREVENTION IN PUBLIC SCHOOLS.	MONITOR	

6	HCR37		URGING THE BOARD OF EDUCATION AND DEPARTMENT OF EDUCATION TO REDUCE THE USE OF STANDARDIZED TESTING IN HAWAII'S PUBLIC EDUCATION SYSTEM.	MONITOR	
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9	HCR71		REQUESTING EVERY COMMERCIAL OR PUBLIC BUILDING LOCATED ON DEPARTMENT OF HAWAIIAN HOME LANDS TRUST LAND TO DISPLAY A PHOTOGRAPH OF PRINCE JONAH KUHIO KALANIANA'OLE AND A DESCRIPTION OF HIS ACHIEVEMENTS.	MONITOR	
10	HCR98		URGING THE CITY AND COUNTY OF HONOLULU TO ADD HANS L'ORANGE NEIGHBORHOOD PARK TO THE LIST OF SECURED PARKS ON OAHU.	MONITOR	
11	HCR122		REQUESTING THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM AND COUNTY PLANNING DEPARTMENTS TO COLLECT INFORMATION FROM ASSOCIATIONS OF APARTMENT OWNERS AND ASSOCIATIONS OF CONDOMINIUM OWNERS THAT HAVE OWNERS WHO RENT THEIR UNITS AS TRANSIENT ACCOMMODATIONS AND MAKE THE INFORMATION AVAILABLE TO ASSOCIATION MEMBERS AND UNIT OWNERS.	MONITOR	
12	HCR124		REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ESTABLISH THE HAUULA BEACH PARK MARINE LIFE CONSERVATION DISTRICT.	MONITOR	
13	HCR125		REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ESTABLISH THE LANIAKEA BEACH MARINE LIFE CONSERVATION DISTRICT.	MONITOR	
14	HCR133		REQUESTING THE PROBATE COURT TO INCREASE TRANSPARENCY REGARDING THE KAMEHAMEHA SCHOOLS TRUSTEE SELECTION PROCESS.	MONITOR	

15	HCR138		URGING THE COUNTY OF HAWAII TO CREATE ALTERNATE ROUTES TO PROPERTIES IN THE PUNA DISTRICT THAT WERE AFFECTED, BUT NOT DESTROYED, BY THE 2018 KILAUEA ERUPTION.	MONITOR	
16	HCR142		URGING THE COUNTY OF HAWAII TO ESTABLISH A HOUSING ASSISTANCE PROGRAM FOR RESIDENTS AFFECTED BY THE 2018 VOLCANIC DISASTER.	MONITOR	
17	HCR151		URGING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO BUILD ALTERNATIVE HOUSING OPTIONS FOR LESSEES.	MONITOR	
18	HCR152		URGING THE CHAIRPERSON OF THE BOARD OF LAND AND NATURAL RESOURCES TO RENAME THE RUSSIAN FORT ELIZABETH STATE HISTORICAL PARK IN WAIMEA, KAUA'I, TO PA'ULA'ULA.	MONITOR	
19	HCR153		REQUESTING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO PERFORM AN ACTUARIAL STUDY ON THE SIZE OF THE CURRENT AND PROJECTED FUTURE POPULATIONS OF HAWAIIANS ELIGIBLE TO LEASE HAWAIIAN HOME LANDS.	MONITOR	
20	HCR154		SUPPORTING THE DEVELOPMENT OF A HAWAIIAN LANGUAGE PLAN AND REQUESTING THE CONVENING OF A COALITION TO DEVELOP THE PLAN.	SUPPORT	
21	HCR155		URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY TASK FORCE TO DEVELOP A SUI GENERIS LEGAL SYSTEM TO RECOGNIZE AND PROTECT NATIVE HAWAIIAN CULTURAL INTELLECTUAL PROPERTY, TRADITIONAL CULTURAL EXPRESSIONS, AND GENETIC RESOURCES.	MONITOR	Monitor > COMMENT
22	HCR159		URGING THE UNITED STATES ARMY CORPS OF ENGINEERS TO SEEK INPUT FROM COMMUNITIES THAT WILL BE IMPACTED BY THE ALA WAI FLOOD RISK MANAGEMENT PROJECT.	MONITOR	
23	HCR163		REQUESTING THE GOVERNOR TO ESTABLISH A WORKING GROUP TO EXPLORE MATTERS RELATED TO THE ALA WAI CANAL FLOOD RISK MANAGEMENT PROJECT.	MONITOR	

24	HCR173		REQUESTING APPROVAL FROM THE FEDERAL HIGHWAY ADMINISTRATION FOR A PROPOSED LOW-INCOME AND WORKFORCE HOUSING PROJECT LOCATED WITHIN THE FOOTPRINT OF FEDERALLY-FUNDED INTERSTATE HIGHWAY, F.A.P. NO. I-H1-1(13), EWA OF HUGH STREET IN PEARL CITY AND URGING THE GOVERNOR TO USE OHANA ZONE PILOT PROGRAM FUNDS FOR THE PROJECT.	MONITOR	
25	HCR183		URGING EACH COUNTY TO CURB THE PROLIFERATION OF ILLEGAL VACATION RENTALS.	MONITOR	
26	HCR196		REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO PRIORITIZE STREAM RESTORATION AND PROTECTION WHEN DISCUSSING AND MAKING WATER AND LAND USE DECISIONS AFFECTING THE ENVIRONMENT AND DRINKING WATER.	SUPPORT	
27	HCR228		ENCOURAGING KAMEHAMEHA SCHOOLS TO CONSIDER THE PRACTICE OF LAND EXCHANGES TO FACILITATE THE DEVELOPMENT OF HAWAIIAN HOMESTEADS IN LOCATIONS THAT BETTER SERVE THE HAWAIIAN PEOPLE.	MONITOR	
28	HCR230		REQUESTING THE GOVERNOR TO CONVENE A HAWAIIAN HOME LANDS IMPROVEMENT WORKING GROUP.	COMMENT	
29	SCR56		REQUESTING THE DEPARTMENT OF EDUCATION TO CONVENE A SCHOOL IMPACT FEE REVIEW TASK FORCE TO REVIEW THE SCHOOL IMPACT FEES LAW, INCLUDING ENFORCEMENT OF EXISTING LAW, AND MAKE ANY RECOMMENDATIONS TO ADDRESS CURRENT AND FUTURE NEEDS FOR THE DEVELOPMENT OF NEW SCHOOLS TO ACCOMMODATE PROJECTED POPULATION GROWTH.	MONITOR	
30	SCR69		REQUESTING EVERY COMMERCIAL OR PUBLIC BUILDING LOCATED ON DEPARTMENT OF HAWAIIAN HOME LANDS TRUST LAND TO DISPLAY A PHOTOGRAPH OF PRINCE JONAH KUHIO KALANIANA'OLE AND A DESCRIPTION OF HIS ACHIEVEMENTS.	MONITOR	
31	SCR81		REQUESTING ALL PUBLIC ELEMENTARY, INTERMEDIATE, AND MIDDLE SCHOOLS IN THE STATE TO PARTICIPATE IN THE SAFE ROUTES TO SCHOOL PROGRAM ESTABLISHED PURSUANT TO SECTION 291C-3, HAWAII REVISED STATUTES, FOR KEIKI HEALTH BENEFITS.	MONITOR	

32	SCR139		REQUESTING THE AUDITOR TO CONDUCT A SUNRISE REVIEW OF THE REGISTRATION AND REGULATION OF TRANSIENT VACATION UNIT OWNERS.	MONITOR	
33	SCR152		REQUESTING THE STATE AND COUNTIES TO EXPAND EFFORTS FOR COMMUNITY INPUT REGARDING ADOPTION OF ADMINISTRATIVE RULES, STATEWIDE PLANS, AND PLANS THAT AFFECT RURAL COMMUNITIES.	MONITOR	
34	SCR177		REQUESTING THE PROBATE COURT TO INCREASE TRANSPARENCY REGARDING THE KAMEHAMEHA SCHOOLS TRUSTEE SELECTION PROCESS.	MONITOR	
35	SCR184		REQUESTING THE GOVERNOR TO ESTABLISH A WORKING GROUP TO EXPLORE MATTERS RELATED TO THE ALA WAI CANAL FLOOD RISK MANAGEMENT PROJECT.	MONITOR	
36	SCR204		URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY TASK FORCE TO DEVELOP A SUI GENERIS LEGAL SYSTEM TO RECOGNIZE AND PROTECT NATIVE HAWAIIAN CULTURAL INTELLECTUAL PROPERTY, TRADITIONAL CULTURAL EXPRESSIONS, AND GENETIC RESOURCES.	MONITOR	Monitor > COMMENT
37	HR40		URGING THE BOARD OF EDUCATION AND DEPARTMENT OF EDUCATION TO SUPPORT AND IMPLEMENT COMMUNITY SCHOOLS AS A STRATEGY FOR INCREASING ACCESS TO A HIGH-QUALITY EDUCATION.	MONITOR	
38	HR71		REQUESTING EVERY COMMERCIAL OR PUBLIC BUILDING LOCATED ON DEPARTMENT OF HAWAIIAN HOME LANDS TRUST LAND TO DISPLAY A PHOTOGRAPH OF PRINCE JONAH KUHIO KALANIANA'OLE AND A DESCRIPTION OF HIS ACHIEVEMENTS.	MONITOR	
39	HR91		URGING THE CITY AND COUNTY OF HONOLULU TO ADD HANS L'ORANGE NEIGHBORHOOD PARK TO THE LIST OF SECURED PARKS ON OAHU.	MONITOR	
40	HR97		URGING THE DEPARTMENT OF HEALTH TO COMPLETE THE REQUIRED ASSESSMENT AND TOTAL MAXIMUM DAILY LOAD PROCESS FOR KAELEPULU WATERSHED TO RESTORE AND PROTECT THE KAILUA WATERWAYS.	MONITOR	

41	HR112		REQUESTING THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM AND COUNTY PLANNING DEPARTMENTS TO COLLECT INFORMATION FROM ASSOCIATIONS OF APARTMENT OWNERS AND ASSOCIATIONS OF CONDOMINIUM OWNERS THAT HAVE OWNERS WHO RENT THEIR UNITS AS TRANSIENT ACCOMMODATIONS AND MAKE THE INFORMATION AVAILABLE TO ASSOCIATION MEMBERS AND UNIT OWNERS.	MONITOR	
42	HR114		REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ESTABLISH THE HAUULA BEACH PARK MARINE LIFE CONSERVATION DISTRICT.	MONITOR	
43	HR115		REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ESTABLISH THE LANIAKEA BEACH MARINE LIFE CONSERVATION DISTRICT.	MONITOR	
44	HR123		REQUESTING THE PROBATE COURT TO INCREASE TRANSPARENCY REGARDING THE KAMEHAMEHA SCHOOLS TRUSTEE SELECTION PROCESS.	MONITOR	
45	HR127		URGING THE COUNTY OF HAWAII TO CREATE ALTERNATE ROUTES TO PROPERTIES IN THE PUNA DISTRICT THAT WERE AFFECTED, BUT NOT DESTROYED, BY THE 2018 KILAUEA ERUPTION.	MONITOR	
46	HR131		URGING THE COUNTY OF HAWAII TO ESTABLISH A HOUSING ASSISTANCE PROGRAM FOR RESIDENTS AFFECTED BY THE 2018 VOLCANIC DISASTER.	MONITOR	
47	HR138		URGING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO BUILD ALTERNATIVE HOUSING OPTIONS FOR LESSEES.	MONITOR	
48	HR140		REQUESTING THE DEPARTMENT OF HAWAIIAN HOME LANDS TO PERFORM AN ACTUARIAL STUDY ON THE SIZE OF THE CURRENT AND PROJECTED FUTURE POPULATIONS OF HAWAIIANS ELIGIBLE TO LEASE HAWAIIAN HOME LANDS.	MONITOR	
49	HR141		SUPPORTING THE DEVELOPMENT OF A HAWAIIAN LANGUAGE PLAN AND REQUESTING THE CONVENING OF A COALITION TO DEVELOP THE PLAN.	SUPPORT	

50	HR142		URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY TASK FORCE TO DEVELOP A SUI GENERIS LEGAL SYSTEM TO RECOGNIZE AND PROTECT NATIVE HAWAIIAN CULTURAL INTELLECTUAL PROPERTY, TRADITIONAL CULTURAL EXPRESSIONS, AND GENETIC RESOURCES.	MONITOR	Monitor > COMMENT
51	HR146		REQUESTING THE GOVERNOR TO ESTABLISH A WORKING GROUP TO EXPLORE MATTERS RELATED TO THE ALA WAI CANAL FLOOD RISK MANAGEMENT PROJECT.	MONITOR	
52	HR170		REQUESTING THE OFFICE OF HAWAIIAN AFFAIRS TO COMPLETE THE 2017 INDEPENDENT FINANCIAL AUDIT AND MANAGEMENT REVIEW OF THE OFFICE OF HAWAIIAN AFFAIRS AND ITS SUBSIDIARIES.	COMMENT	
53	HR177		REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO PRIORITIZE STREAM RESTORATION AND PROTECTION WHEN DISCUSSING AND MAKING WATER AND LAND USE DECISIONS AFFECTING THE ENVIRONMENT AND DRINKING WATER.	SUPPORT	
54	HR203		ENCOURAGING KAMEHAMEHA SCHOOLS TO CONSIDER THE PRACTICE OF LAND EXCHANGES TO FACILITATE THE DEVELOPMENT OF HAWAIIAN HOMESTEADS IN LOCATIONS THAT BETTER SERVE THE HAWAIIAN PEOPLE.	MONITOR	
55	HR205		REQUESTING THE GOVERNOR TO CONVENE A HAWAIIAN HOME LANDS IMPROVEMENT WORKING GROUP.	COMMENT	
56	SR7		REQUESTING THE DEPARTMENT OF HUMAN SERVICES, IN CONSULTATION WITH THE DEPARTMENT OF PUBLIC SAFETY, TO WORK WITH THE FAMILY REUNIFICATION WORKING GROUP AND OTHER COMMUNITY STAKEHOLDERS TO DEVELOP A PLAN TO ESTABLISH VISITATION CENTERS AT ALL STATE CORRECTIONAL FACILITIES AND JAILS.	SUPPORT	
57	SR47		REQUESTING EVERY COMMERCIAL OR PUBLIC BUILDING LOCATED ON DEPARTMENT OF HAWAIIAN HOME LANDS TRUST LAND TO DISPLAY A PHOTOGRAPH OF PRINCE JONAH KUHIO KALANIANA'OLE AND A DESCRIPTION OF HIS ACHIEVEMENTS.	MONITOR	
58	SR144		REQUESTING THE PROBATE COURT TO INCREASE TRANSPARENCY REGARDING THE KAMEHAMEHA SCHOOLS TRUSTEE SELECTION PROCESS.	MONITOR	

59	SR164		URGING THE ESTABLISHMENT OF A NATIVE HAWAIIAN INTELLECTUAL PROPERTY TASK FORCE TO DEVELOP A SUI GENERIS LEGAL SYSTEM TO RECOGNIZE AND PROTECT NATIVE HAWAIIAN CULTURAL INTELLECTUAL PROPERTY, TRADITIONAL CULTURAL EXPRESSIONS, AND GENETIC RESOURCES.	MONITOR	Monitor > COMMENT
60	GM669		Submitting for consideration and confirmation to the Island Burial Council, Islands of Maui and Lana'i, Gubernatorial Nominee, DANE MAXWELL, for a term to expire 06-30-2021.	SUPPORT	
			Bill Positions for Reconsideration		
61	HB402	RELATING TO INCREASING THE OFFICE OF HAWAIIAN AFFAIRS' PRO RATA SHARE OF PUBLIC LAND TRUST FUNDS.	Establishes the office of Hawaiian affairs' pro rata share of the public land trust. Transfers funds to the office of Hawaiian affairs for underpayment of the public land trust funds for 7/1/2012 to 6/30/2019. Requires the department of budget and finance to provide an annual accounting of receipts from public land trust lands. Requires annual audits of any funds transferred pursuant to this Act. Establishes the public land trust revenues committee. Prohibits new funding to be appropriated to the office of Hawaiian affairs until the office of Hawaiian affairs' 2017 fiscal and performance audit is completed and provided to the legislature. Appropriates funds. Takes effect 7/1/2050. (SD1)	SUPPORT > SUPPORT WITH AMENDMENTS	
63	HB439	RELATING TO LAND USE.	Exempts lands set aside by the governor to the Hawaii housing finance and development corporation for the primary purpose of developing affordable housing from classification as public land subject to DLNR management. Requires lands set aside by the governor to the Hawaii housing finance development corporation for the primary purpose of developing affordable housing to be subject to legislative approval prior to the sale or gift of those lands. Takes effect 7/1/2050. (SD1)	OPPOSE > MONITOR	

64	HB622	RELATING TO PUBLIC CHARTER SCHOOLS.	Transfers control of public funds disbursed to a charter school to the State Public Charter School Commission upon filing of criminal charges against an employee of the charter school for actions taken in the course of employment at the charter school. Requires establishment of a banking account system to pay charter school expenses. Requires authorizers to select the independent auditors. Prohibits individuals from serving as Board of Education or Charter School Commission members if the individual was affiliated with a charter school within four years preceding appointment. Effective 7/1/2050. (SD1)	OPPOSE > COMMENT	
65	HB821	RELATING TO TELECOMMUNICATIONS.	Requires the Hawaii technology development corporation to seek to establish a public-private partnership to plan, build, and manage key strategic broadband infrastructure and attract cloud based companies to Hawaii. Makes an appropriation for the Hawaii broadband initiative and to establish an open access, carrier neutral cable landing station. Takes effect 7/1/2112. (SD1)	OPPOSE > MONITOR	

AMENDMENT:

MEANS OF FINANCING:

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA		2	X			
VICE-CHAIR KALEIHIKINA	AKAKA	1		X			
KELI'I	AKINA			X			
BRENDON KALEI'AINA	LEE			X			
HULU	LINDSEY			X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO						EXCUSED
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				8	0	0	1

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

DISCUSSION:

Roll Call Vote Sheet

COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT (BAE)	DATE: March 27, 2019 MOTION: 1:55 p.m. VOTE: 1:56 p.m.
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AGENDA ITEM:

V. New Business

A. 2019 OHA Legislative Positioning – Matrix 2†**

MOTION #2:

To approve Administration’s recommendation on ***BILL POSITIONS FOR RECONSIDERATION: Item 62, HB419*** from ~~Monitor~~ to **SUPPORT** on the OHA Legislative Positioning Matrix dated March 27, 2019, as amended.

Bills that were discussed					
ITEM #	BILL#	REPORT	DESCRIPTION	POSITION	IN BAE MEETING CHANGE
			Bill Positions for Reconsideration		
62	HB419	RELATING TO TRANSIENT ACCOMMODATIONS.	Part I: Makes a county eligible to receive TAT revenue allocations for the purpose of enforcing all applicable laws and ordinances relating to transient accommodations, under specified conditions. Requires reports from counties receiving funds for enforcement of transient accommodations and short-term vacation rentals ordinances. Part II: Amends the definition of "transient accommodations" to include additional forms of transient accommodations. Requires each transient accommodations broker, hosting platform, and booking service to submit to DBEDT quarterly reports of statistical data relating to transient accommodations listings. Makes it unlawful for a hosting platform to provide, and collect a fee for, booking services regarding transient accommodations if the operator or plan manager is not registered with the Director of Taxation. Amends requirements relating to transient accommodations tax certificates of registration to ensure greater transparency. Allows a transient accommodations broker to register as a GET and TAT tax collection agent for its operators and plan managers. Takes effect on 1/1/2020. (SD1)	MONITOR > SUPPORT	

AMENDMENT:

MEANS OF FINANCING:

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
DAN	AHUNA		2	X			
VICE-CHAIR KALEIHIKINA	AKAKA	1		X			
KELI'I	AKINA					X	
BRENDON KALEI'AINA	LEE			X			
HULU	LINDSEY			X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO						EXCUSED
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				7	0	1	1

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

DISCUSSION:

Office of Hawaiian Affairs
Board of Trustee Meeting
March 28, 2019
10:00 am

IV. New Business

B. Joint Committee on Beneficiary Advocacy
and Empowerment and Resource
Management

1. Administration's recommendation to the
BAE/RM Committee to review and
approve Action Item BAE/RM #19-02
relating to the Kūlia Grant
recommendations.*

** The committee report for Action Item IV.B.1. will be forwarded to the Board of Trustees following its approval at the Joint Committee Meeting scheduled for March 27, 2019.*

OFFICE OF HAWAIIAN AFFAIRS
Joint Meeting of the Committee on Beneficiary Advocacy and Empowerment
(BAE) and the Resource Management (RM)

COMMITTEE REPORT

March 27, 2019

The Honorable Colette Y. Machado, Chair
Board of Trustees
Office of Hawaiian Affairs

Chair Machado,

Your Joint Committees on Beneficiary Advocacy and Empowerment and Resource Management having met on March 27, 2019 and after full and free discussion, recommends approval of the following three actions to the Board of Trustees:

Motion #1:

To review and approve Action Item BAE/ RM #19-02 authorizing disbursement of \$374,000 from the FY 2018 Core Operating Budget (Object Code 56530) to fund eight (8) Fiscal Year 2018 Kulia Grant recommendations listed on Attachment – OHA FY 2018- Kulia Grant Recommendations Matrix except Five Mountains Hawaii dba Kipuka O Ke Ola at \$51,000 and Malama Loko Ea Foundation at \$75,000.

Motion #2:

To review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$51,000 from Fiscal Year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Kulia Grant recommendation listed on Attachment – OHA FY 2018 – Kulia Grant Recommendations Matrix for Five Mountains Hawaii dba Kipuka O Ke Ola at \$51,000.

Motion #3:

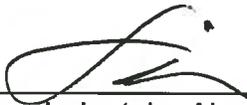
To review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$75,000 from Fiscal Year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Recommendation listed on Attachment – OHA FY 2018 Recommendations Matrix for Malama Loko Ea at \$75,000.

Relevant attachments are included for your information and reference.

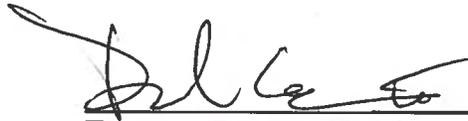
Attachments:

- A) Motion #1 and Roll Call Vote Sheet
- B) Motion #2 and Roll Call Vote Sheet
- C) Motion #3 and Roll Call Vote Sheet
- D) Action Item BAE/RM #19-02 Fiscal Year 2018 Kulia Grant Recommendations

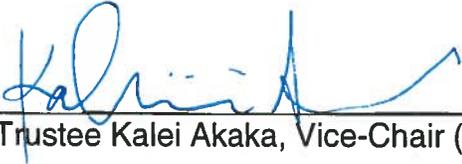
Respectfully submitted:



Trustee, Leina'ala Ahu Isa, Member



Trustee, Dan Ahuna, Chair (RM)



Trustee Kalei Akaka, Vice-Chair (BAE)



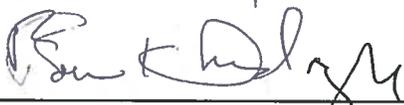
Trustee Keli'i Akina, Member

EXCUSED

Trustee Brendon Kalei'aina Lee, Member



Trustee Carmen Hulu Lindsey, Member



Trustee Robert K. Lindsey, Jr.,
Vice-Chair (RM)



Trustee John Waihe'e, IV, Chair (BAE)

SIGNATURE NOT AVAILABLE

Trustee Colette Y. Machado, Member

OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Highway, Suite 200
Honolulu, HI 96817

ROLL CALL VOTE SHEET

COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT (BAE) And COMMITTEE ON RESOURCE MANAGEMENT (RM)	DATE: March 27, 2019 VOTE: 10:34 am
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AGENDA ITEM:

III. New Business :

- A. Administration's recommendation to the BAE / RM Committee to review and approve Action Item BAE/RM #19-02 relating to the Kulia Grant recommendations.**

MOTION 1:

To review and approve Action Item BAE-RM #19-02 authorizing disbursement of \$374,000 from Fiscal Year 2018 Core Operating Budget (Object Code 56530) to fund eight (8) Fiscal Year 2018 Kulia Grant recommendations listed on Attachment – OHA FY 2018 – Kulia Grant Recommendations Matrix except for Five Mountains Hawaii DBA Kipuka O Ke Ola at \$51,000 and Malama Loko Ea at \$75,000.

AMENDMENT:

MEANS OF FINANCING:

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
KALEI	AKAKA			X			
KELI'I	AKINA			X			
BRENDON KALEI'ĀINA	LEE						EXCUSED
CARMEN HULU	LINDSEY		X	X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO			X			
JOHN	WAIHE'E	X		X			
CHAIR DAN	AHUNA			X			
TOTAL VOTE COUNT				8			1

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

OFFICE OF HAWAIIAN AFFAIRS
 560 N. Nimitz Highway, Suite 200
 Honolulu, HI 96817

ROLL CALL VOTE SHEET

COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT (BAE) And COMMITTEE ON RESOURCE MANAGEMENT (RM)	DATE: March 27, 2019 VOTE: 10:36 am
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AGENDA ITEM:

III. New Business :

- A. Administration's recommendation to the BAE / RM Committee to review and approve Action Item BAE/RM #19-02 relating to the Kulia Grant recommendations.**

MOTION 2:

To review and approve Action Item BAE-RM #19-02 authorizing disbursement of \$51,000 from Fiscal Year 2018 Core Operating Budget (Object Code 56530) to fund one (1) Fiscal Year 2018 Kulia Grant recommendation listed on Attachment – OHA FY 2018 – Kulia Grant Recommendations Matrix for Five Mountains Hawaii DBA Kipuka O Ke Ola at \$51,000.

AMENDMENT:

MEANS OF FINANCING:

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
KALEI	AKAKA		X	X			
KELI'I	AKINA			X			
BRENDON KALEI'AINA	LEE						EXCUSED
CARMEN HULU	LINDSEY			X			
ROBERT	LINDSEY						RECUSED
COLETTE	MACHADO			X			
JOHN	WAIHE'E	X		X			
CHAIR DAN	AHUNA			X			
TOTAL VOTE COUNT				7			2

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

OFFICE OF HAWAIIAN AFFAIRS
560 N. Nimitz Highway, Suite 200
Honolulu, HI 96817

ROLL CALL VOTE SHEET

**JOINT COMMITTEE ON
COMMITTEE ON BENEFICIARY, ADVOCACY AND
EMPOWERMENT (BAE)
and
RESOURCE MANAGEMENT (RM)**

DATE: March 27, 2019

VOTE: 10:38 am

AGENDA ITEM:

III. New Business :

A. Administration's recommendation to the BAE/RM Committee to review and approve Action Item BAE/RM #19-02 relating to the Kulia Grant recommendations.

MOTION 3:

To review and approve Action Item BAE/RM #19-02 authorizing disbursement of \$75,000 from the Fiscal Year 2018 Core Operating Budget (Object Code 56530) to fund the one (1) Fiscal Year 2018 Kulia Grant recommendation listed on Attachment – OHA FY 2018- Community Grant Recommendations Matrix for Malama Loko Ea at \$75,000.

AMENDMENT:

MEANS OF FINANCING:

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEINA'ALA	AHU ISA			X			
KALEI	AKAKA			X			
KELI'I	AKINA			X			
BRENDON KALEI'AINA	LEE						EXCUSED
CARMEN HULU	LINDSEY			X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO		X	X			
CHAIR JOHN	WAIHE'E	X		X			
CHAIR DAN	AHUNA			X			
TOTAL VOTE COUNT				8			1

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

BAE/RM #19-02 Fiscal Year 2018 Kūlia Grant Recommendations

I. Action Item:

To approve and authorize the disbursement of \$500,000 from the Fiscal Year 2018 Core Operating Budget (Object Code 56530) to fund the ten (10) Fiscal Year 2018 Kūlia Grant recommendations listed on **Attachment–OHA FY 2018-Community Grant Recommendations Matrix**.

II. Issue:

Whether or not the Joint Committee on Resource Management and Beneficiary Advocacy and Empowerment (Joint Committee) should approve and authorize the disbursement of \$500,000 from the Fiscal Year 2018 Core Operating Budget (Object Code 56530) to fund the ten (10) Fiscal Year 2018- Kūlia Grant recommendations as listed on **Attachment – OHA FY 2018- Community Grant Recommendations Matrix**.

III. Discussion:

On June 8, 2017, the BOT approved RM #17-07 - OHA’s Biennium Budget for the Fiscal Periods 2017-2018 (FY18) and 2018-2019 (FY19), which authorized funding of \$500,000 for FY 2018 for OHA’s Kūlia Grants. On August 1, 2017, the OHA Board of Trustees (BOT) approved the formation of the Ad Hoc Committee on Grants and Sponsorships led by Trustees Machado as Chair and Waihe`e as Vice Chair. In May of 2018, the BOT approved the Ad Hoc Committee’s recommendation in the form of the document entitled *Kulia Grants 2018 Guidelines and Process*.

OHA’s Kūlia Grants were intended to engage the Hawaiian community and fund community programs that improve the lives of Native Hawaiian individuals, families, and/or communities by increasing access to resources, programs and information. Kūlia Grants are a pilot program and was designed to support programs that could not apply to the Community Grants Program (CGP) for funding consideration. Eligible Kūlia Grants requests included requests that: fall outside of the CGP biennium funding period; align with broader OHA strategic priorities; and are ineligible for CGP funding, such as capital improvement projects and capacity building.

The FY 2018 Kūlia Grants Timeline is provided below:

Activity	Timeline
Public notice of availability of solicitation	September 24, 2018
Availability of online application	September 24, 2018
Solicitation orientations - conducted 18 statewide sessions which included 1 teleconferencing session	October 2 – October 29, 2018
Online application submittal deadline	November 16, 2018
Application eligibility, evaluation, selection and recommendation	December 2018 – February 2019
Approval by the BOT and notice of award	April 2019
Grant contract & procurement process	April – May 2019
Contract effective date	On or Prior to June 30, 2019

BAE/RM #19-02 Fiscal Year 2018 Kūlia Grant Recommendations

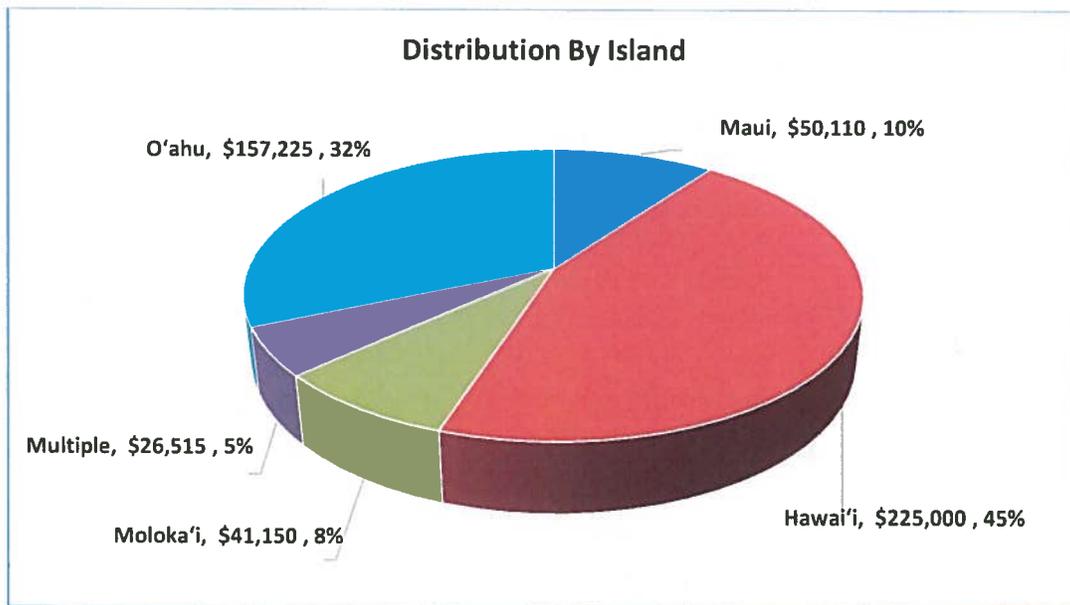
A total of eighty one (81) applications were received and fifty one (51) applications were eligible for review.

The eligible applications were scored by external Native Hawaiian grant reviewers¹. Each application was scored in accordance with the Kūlia Grants Solicitation which included organizational capacity, scope of services, experience, project plan, service delivery, and budget.

A Kūlia Grants Matrix with the top five highest scored applications for each strategic priority was distributed to the Joint Committee for its March 20, 2019 Kūlia Grants Workshop. A Kūlia Grants Recommendations Matrix was also distributed to the Joint Committee. The Kūlia Grants Recommendations Matrix included the top highest scored applications for each strategic priority with budget modifications based on a statewide distribution of \$500,000 as well as applicant scores, requested funding, Native Hawaiians to be served, and the reported percentage of Native Hawaiians the applicants serve. The strategic priority areas, organizations, project names/descriptions and recommended budgets are provided on **Attachment – OHA FY 2018 Kūlia Grant Recommendations Matrix**.

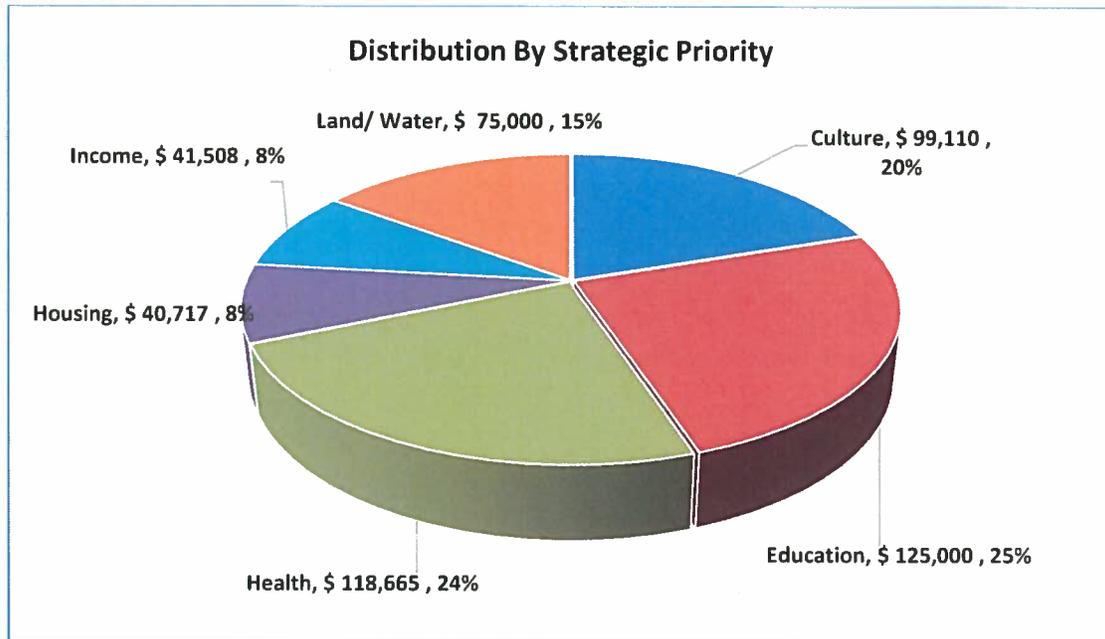
This action seeks Joint Committee consideration and approval to fund the ten (10) Community Grant Recommendations as listed on **Attachment – OHA FY 2018 Kūlia Grant Recommendations Matrix**.

The following Grant Recommendations Matrix pie charts provide the distribution of projects by island and by strategic priority.



¹ Conflict of Interest and Confidentiality agreements were executed by all external reviewers.

BAE/RM #19-02 Fiscal Year 2018 Kūlia Grant Recommendations



IV. Funding Source:

Funding for these recommendations was authorized on June 7, 2017 via BOT approval of RM #17-07 - OHA's Biennium Budget for the Fiscal Periods 2017-2018 (FY18) and 2018-2019 (FY19), which authorized funding of \$500,000 for FY 2018 for OHA's Kūlia Grants.

V. Recommended Action:

To approve and authorize the disbursement of \$500,000 from the Fiscal Year 2018 Core Operating Budget (Object Code 56530) to fund ten (10) Fiscal Year 2018 Kūlia Grant recommendations listed on **Attachment – OHA FY 2018 Kūlia Grant Recommendations Matrix**. All funds are awarded subject to availability.

VI. Timeframe:

Immediate action is recommended. Due to the FY 2018 funding timeframe, Kūlia Grant contracts must be executed and initial procurement must be initiated by May 2019 with contract start dates at or prior to June 30, 2019.

VII. Attachment: OHA FY 2018 Kūlia Grant Recommendations Matrix

BAE/RM #19-02 Fiscal Year 2018 Kūlia Grant Recommendations

Attachment

OHA FY 2018 Kūlia Grant Recommendations Matrix

Strategic Priority	Org. Name	Project Name	Project Description	Island	Amount Recommended
Culture	Hawaiian Kamali'i, Inc.	Hawaiian Kamali'i Summer Program	To provide a seven week cultural education exploration program centered on Huaka'i including a voyage to Kanaloa Kaho'olawe. Goal is for 60 Native Hawaiian children to develop a strong identity through Hawaiian culture.	Maui	\$ 25,110
Culture	Pa'a Pono Miloli'i	Certified Kitchen for the Miloli'i Community Enrichment and Historical Center (Community Center)	To provide a DHS certified kitchen at the Miloli'i Community Center so that Miloli'i can have its own Charter School and to allow the community to prepare food for the community and to cater food.	Hawai'i	\$ 74,000
Education	Partners in Development Foundation	Ka Pa'alana Family Education and Homeless Outreach	To provide family education programming and outreach to homeless/at-risk Native Hawaiian families with young children (age 0-5) to improve health and school readiness. Equip caregivers to be their child's first and most important teacher, empower adults toward better health and self-sufficiency.	Hawai'i	\$ 100,000
Education	Hana Arts	Inspiring East Maui Youth through Arts and Culture Education	To inspire youth of East Maui through arts & culture by hosting classroom teachings, workshops & events that stimulate & broaden each youth's potential.	Maui	\$ 25,000
Health	Moloka'i General Hospital	Expansion of Services at Moloka'i General Hospital's Wound Care Clinic	To expand and improve the services that are provided at Moloka'i General Hospital's Wound Care Clinic by providing non-invasive upper and lower extremity vascular assessments. This will allow people on island to receive a service that is currently not available and important in assessing and determining the best treatment plan for a wound.	Moloka'i	\$ 41,150
Health	Project Vision Hawai'i	Better Vision for Keiki – Vision Care for Children in Native Hawaiian Charter Schools	To provide vision screenings, exams, and glasses to Native Hawaiian children throughout the state. This grant will be used to provide school-wide vision care services to children in Native Hawaiian charter schools.	Hawai'i ; Moloka'i ; O'ahu	\$ 26,515

BAE/RM #19-02 Fiscal Year 2018 Kūlia Grant Recommendations

Strategic Priority	Org. Name	Project Name	Project Description	Island	Amount Recommended
Health	Five Mountains Hawai'i Dba Kīpuka o ke Ola	Ho'ulu ke Ola	To enhance Kīpuka o ke Ola's ability to serve the lāhui of North Hawaii by helping sustain clinical facility; add essential clinical staff; and increase Native Hawaiians on the patient panel. This program will also provide substantially more high-quality primary care and behavioral health services to the lāhui.	Hawai'i	\$ 51,000
Housing	Honolulu Habitat for Humanity	Home Ownership Outreach to Native Hawaiians	To provide education about home ownership and home restoration programs to low-income Native Hawaiian families to improve housing stability and conditions, and increase home ownership among this population.	O'ahu	\$ 40,717
Income	Marimed Foundation	Maritime Careers Exploration and Placement Program	To provide maritime training, education and job placement services for unemployed and underemployed Native Hawaiian men and women.	O'ahu	\$ 41,508
Land/Water	Malama Loko Ea Foundation	'Amapō Ea	To return the Loko ea to original intention as a sustainable food source for the Waialua Moku.	O'ahu	\$ 75,000
Total Recommended					\$ 500,000



OFFICE OF HAWAIIAN AFFAIRS
Interoffice Memorandum

Date: March 26, 2019
To: Kamana'opono Crabbe, Ka Pouhana
Via: Sylvia M. Hussey, Ed.D., Ka Pou Nui 
From: Maile Lu'uwai, Ka Pou Kāko'o Kaiāulu 
Subject: FY 2018 Recommended Kūlia Grant Applicant Executive Board Members

The attached list of recommended FY 2018 Kūlia Grant Applicant Organizations with Executive and Board Member names are provided for your information and dissemination to the BOT. The list has been requested so that Trustees can conduct conflict of interest determinations.

FY 2018 Recommended Kūlia Applicant Board Members

Organization Name	Executive & Board Director Names
Hawaiian Kamali'i, Inc.	David Ward, President Kelsey Naeole, Vice President Tobi Fisher, Secretary Mary Akiona, Treasurer Directors: Diane Ho, Barbara Querry, Stephen Smith, Bruce U'u, Kevin Ledesma, John B. Guard (Honorary) Ka'ili Moikeha, Club Manager Paul Lu'uwai, Program Director Kellen Bean, Assistant Program Director
Pa'a Pono Miloli'i	Imaikalani Yeaman, President/Programs Administrator Kaimi Kaupiko, Vice-President/Programs Director Gail Garoutte, Treasurer/Accounting Specialist Maria Kahale, Secretary Alan Brown, Director Leivallyn Grace Kaupu, Lead Program Instructor
Mālama Loko Ea Foundation	James Estores, President Benson Lee, Vice President Rowena Estores, Secretary Kalani Fronda, Director Doreen Rabago, Director Rae DeCoito, Executive Director Ikaika Lum, Kulaiwi Program Director Sayo Constantino, Kupuohi Education Program Director
Partners in Development Foundation	Kaulana Park, Chair Reverend William Kaina, Vice Chair Diane Poloma, Secretary James Gomez, Treasurer Kyle Chock, Director Michael Chun, Director Jan Hanohano Dill, Director Trish Morikawa, Director Kyle Chock, Director Officers: Jan Hanohano Dill, President Laura Dang, Vice President/Secretary Alison Masutani, Vice President of Operations Stephanie Nishimura, Chief Financial Officer/Treasurer

<p>Hana Arts</p>	<p>Cynthia Santiago, President Chuck Gray, Treasurer Clare Zhou Wadsworth, Secretary Robin R. Rayner, At-Large Carolyn Diliberto, At-Large Lipoa Kahaleuahi, At-Large Kari Hagedorn, At-Large Daniele Leila Comeaux, At-Large Julia Walker, At-Large Becky Elizabeth Lind, Executive Director</p>
<p>Moloka'i General Hospital</p>	<p>Lance Dunbar, Vice-Chair Janice Kalanihuia, President Donna Paoa, Board Member Arthur Ushijima, Chairperson/QHS President & CEO Jenai Wall, Board Member Ex-Officio w/voting rights Punahelu Alcon, Vice President Christina Schonely, Secretary Clinton Yee, Treasurer</p>
<p>Project Vision Hawaii</p>	<p>Anne Chipchase, President Kelly Nakasone, Vice President Jeff Rutgard Joe Humphry Joyce Ching, Secretary John Kojima, Treasurer Radji Tolentino Sven Erik-Bursell Kristine Lesperance Maile Thompson Tyrie Jenkins Elizabeth "Annie" Valentin, Executive Director Rena Mathson, Director of Community Health Charlemagne Adams, Director of Operations</p>
<p>Five Mountains Hawaii dba Kīpuka o ke Ola</p>	<p>Oliver "Sonny" Shimaoka, President Kwiatkowski Philibert "Ski", Vice President Kathy Manuel, Secretary Russell Paio, Treasurer David Kaapu, Legal Advisor/Lawyer Robert K. Lindsey Jr., At-Large Joseph Kealoha, At-Large Wally Lau, At-Large Jenifer Bryan, Emeritus Dr. Claren Kealoha-Beaudet, Executive Director Dr. Ian Chun, Psychiatrist and Medical Director Dr. Franco Acquaro, Clinical Psychologist/Assistant Director</p>

<p>Honolulu Habitat for Humanity</p>	<p>Regina Ostergaard-Klem, President Kamuela Cobb-Adams, VP Bernie Reeves, Secretary Board of Directors: Judy Mohr Peterson, President Paige Heckathorn Choy, Vice President Dianne Ho Bosworth, Director Lilia K. Kapuniai, Director Paige Heckathorn Choy, Director Rufino Dan Magliba, Director Alexa Tim, Director Ku'uwehi Hiraishi, Director Scott Nojiri, Director Teal Takayama, Director Jim Murphy, Executive Director</p>
<p>Marimed Foundation</p>	<p>Board of Trustees: William Tam, Chair Ryan Nobriga, Treasurer Charles Giuli, Secretary David Higgins Ilona Laszlo Lonny Higgins Laura Iaea-Behic Tim Guard Ron Cox Carol Nelson Captain Paul Kaipo Pomaikai William Anonsen Matthew Claybaugh, President & CEO Frank Shivers, Financial Melissa Hebert, Program Manager Voting Members: Robert Grossman Richard Gushman Ruth Ono Ron Hochuli Thomas & Margaret Hayward</p>

Office of Hawaiian Affairs
Board of Trustee Meeting
March 28, 2019
10:00 am

IV. New Business

- C. Report by the Permitted Interaction Group on Organizational Guidance of its findings and recommendations, without discussion.
Pursuant to HRS §92-2.5(b)(1)(B)



OFFICE OF
HAWAIIAN AFFAIRS
STATE OF HAWAII
RECEIVED-BOT

2019 MAR 27 A 9 10

OFFICE OF HAWAIIAN AFFAIRS
Interoffice Memorandum

DATE: March 25, 2019
TO: Board of Trustees
FROM: Trustee Brendon Kalei'aina Lee *BKL*
RE: Governance Framework Permitted Interactive Group (PIG)

When the Office of Hawaiian Affairs (OHA) was established over 40 years ago, no one foresaw the growth OHA would experience as it evolved into the Native Hawaiian Trust it is today.

Based on recent best practice analyses, the current Board of Trustees governance framework does not address the many different needs of its Native Hawaiian Trust as well as the overall management of the Office of Hawaiian Affairs.

In order to assist in the forward movement of our organization, on January 24, 2019, the Board of Trustees voted to approve a Permitted Interactive Group (PIG) to develop an updated Governance Framework for the Office of Hawaiian Affairs. This group, over the past two months, has worked diligently to complete a comprehensive analysis of OHA's by-laws, policies, and action items spanning the last five years. In order to provide context and history, our administrative staff has put together a mo'oku'auhau for our current policies. In addition to reviewing these materials, we met with our kupuna ali'i trusts (Queen Lili'uokalani Trust, Lunalilo Home, and Kamehameha Schools) to analyze their governance framework. In order to gain even more insight, we also studied national and international governance models (Maori and Native American Tribal governments) for their respective governance contexts.

This project was a joint effort; our team was comprised of selected trustees, trustee staff, administration leaders, and administrative staff. I would like to take this opportunity to thank our team for the long hours of aggregating data, reporting back to the team weekly, and participating in insightful and open discussion. I want to especially mahalo our project manager, Ka Pou Nui Sylvia Hussey, for keeping the team on track and on time.

The attached report of our Governance Framework PIG shows that once the governance model is adopted, subsequent PIGs will need to be approved to develop transition steps over the next six to nine months.

Mahalo.



Permitted Interaction Group
Board Governance Framework Project Report
March 2019

I. OVERVIEW

Two thousand eighteen (2018) marks the end of the Office of Hawaiian Affairs' (OHA or Organization) strategic plan period, and several years of challenges within the organization, hampering the organization's abilities to more intently apply and deploy resources to "better the conditions of native Hawaiians". In the past 24 months, the following have undermined effective governance at OHA:

- **People.** Board of Trustees (BOT) interactions among themselves, with regulatory agencies (e.g., Ethics Commission, Attorney General's office), with Administration (including staff), and beneficiaries and stakeholders have diverted strategic energy, focus, time and dollars from mission critical and aligned responsibilities.
- **Policies and Plans.** Un-implemented strategic policies and plans (e.g., Post 2018 Strategic Plan, including implementation, Financial Sustainability Plan, Debt Policy, Hawaii Direct Assets Policy, LLCs) have hampered the organization's ability to advance mission critical and aligned strategies.
- **Procedures and Practices.** Audits--initiated or triggered by BOT interactions and behaviors, and completed in the normal course of regulatory and statutory requirements (e.g., Chapter 10)---have diverted trust resources (e.g., time and dollars) and highlighted procedure and practice improvements, respectively.

Given the changes and experiences in the last 24 months within the organization, the need for strengthening governance can be synthesized to a need:

- To improve the image, brand, credibility and standing in the community of the Office of Hawaiian Affairs;
- To demonstrate understanding of and accountability to the statutory, fiduciary and trust organizational responsibilities of the Office of Hawaiian Affairs via codified policies, procedures and practices;
- For explicit clarity in the roles, responsibilities and accountabilities of the Board of Trustees and Administration (including staff);
- For explicit and intentional clarity in the purposes, direction and strategic planning and implementation efforts post 2018; and
- To strengthen the organization's ability to advance mission critical and aligned strategies.

The Board of Trustees (BOT) is committed to strengthening OHA's governance framework, structure, policies, procedures and practices to more intently apply and deploy resources to "better the conditions of native Hawaiians".



II. PERMITTED INTERACTION GROUP

A. Statutory Basis

In accordance with HRS, CHAPTER 92, PUBLIC AGENCY MEETINGS AND RECORDS §92-2.5 (b) Permitted interactions of members, (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 decision making 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; or (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.

B. Formation

In January 2019, the Board approved the formation of a Permitted Interaction Group (PIG) to: Investigate various elements of governance frameworks and models, including but not limited to cultural, indigenous, native, national and international contexts. The PIG was established with Chair, Colette Machado as Business Process Owner, Vice Chair, Trustee Brendon Kalei'āina Lee as Project Sponsor and Trustees Robert Lindsey¹ and John Waihee² as members. The PIG was supported by Trustee Machado, Lee, Lindsey and Waihee's Aides; and Administration, Ka Pouhana, Kamana'opono Crabbe, Ka Pou Nui, Sylvia Hussey and Executive Office staff. The PIG, also known as the Board Governance Framework Project, implemented a project plan in five phases: Phase I – Planning; Phase II – Where are we now? (AS IS); Phase III – Proposing Elements of a Governance Framework; Phase IV – Proposing Implementation Actions; and Phase V – Closing Project and Lessons Learned. This PIG report covers the results (and close) of the PIG of Phases I to III. Phases IV and V is proposed to be accomplished through a subsequent, sequenced series of PIGs, subject to Board approval.

For purposes of the PIG, the following working definition of “governance” was used to frame the project, activities and deliverables: Establishment of policies, and continuous monitoring of their proper implementation, by the members of the governing body of an organization. It includes mechanisms required to balance the powers of the members (with the associated accountability) and their primary duty of enhancing the prosperity and viability of the organization.³

¹ Interim Chair of the Resource Management Committee at the time of the formation of the Permitted Interaction Group

² Chair of the Beneficiary, Advocacy and Empowerment Committee

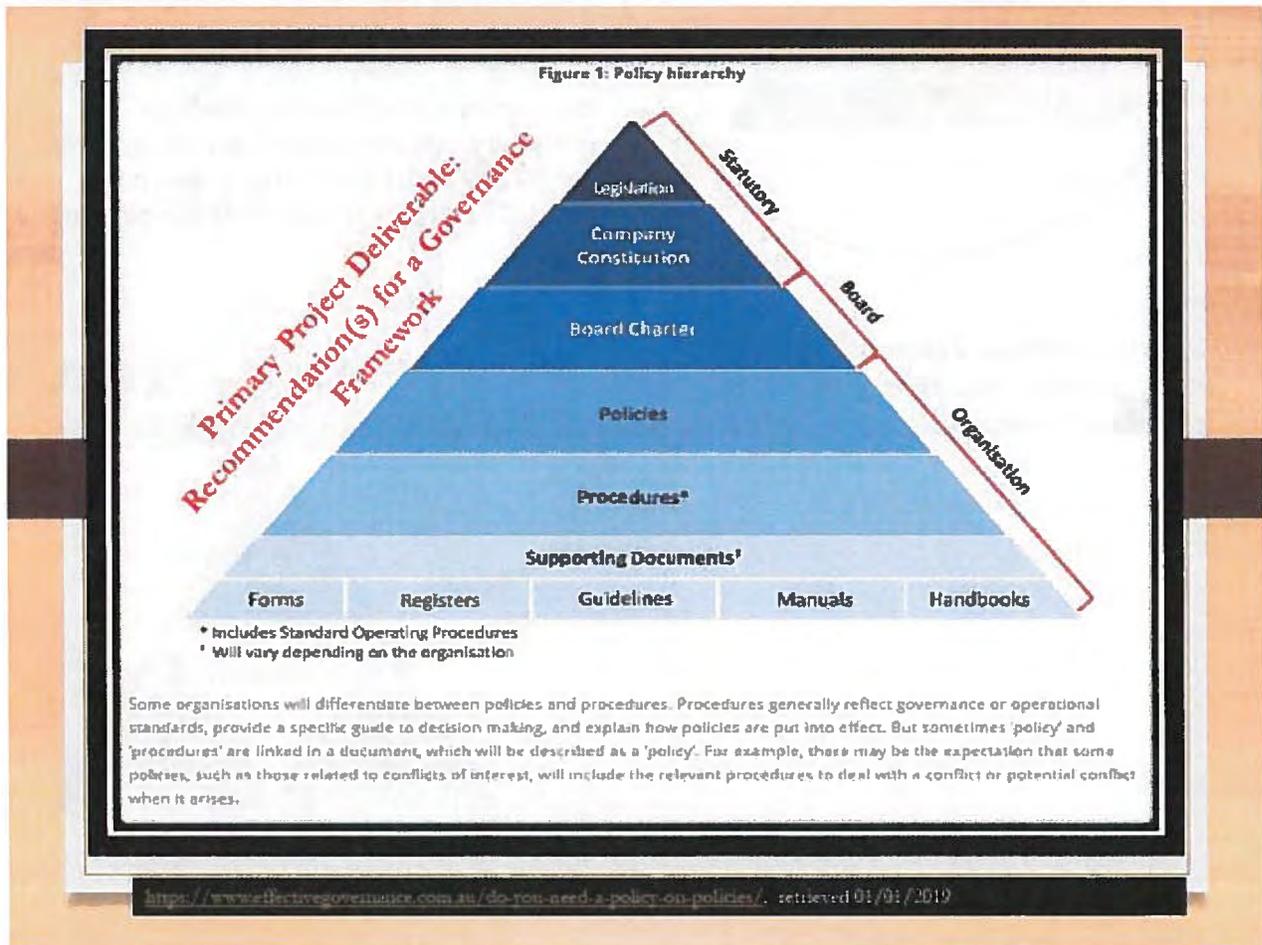
³ <http://www.businessdictionary.com/definition/governance.html>, retrieved 1/1/2019

C. Analyses Context

For purposes of the PIG Board Governance Framework Project, the working “look back” period was determined to be five (5) years----2018, 2017, 2016, 2015, 2014----which includes five of the eight years of the Strategic Plan, 2010 to 2018 period.

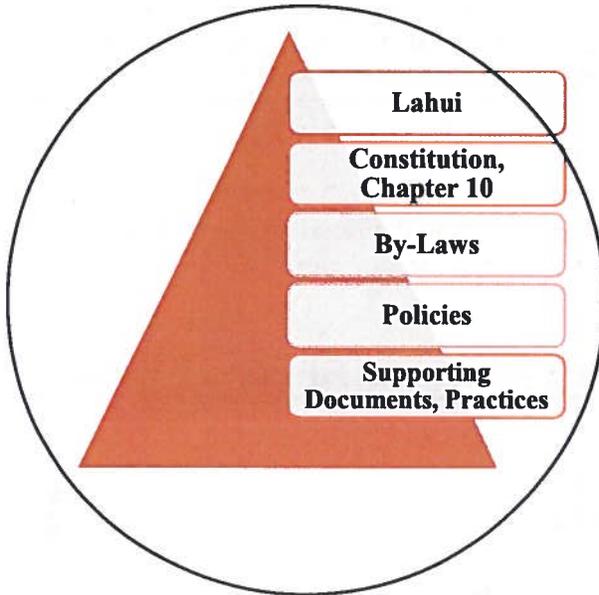
D. Major Deliverable of the PIG

The major project deliverable of the PIG are recommendations to the Board of Trustees for OHA’s governance framework utilizing an exemplar policy hierarchy below:⁴



⁴ <https://www.effectivegovernance.com.au/do-you-need-a-policy-on-policies/>, retrieved 01/01/2019

III. EXECUTIVE SUMMARY



The PIG recommends five elements of OHA’s Board Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

Element 1: Identity. Ho’oulu Lahui Aloha – To Raise a Beloved Lahui. A State Agency with the responsibility to manage a Trust, that identifies and operates more similarly to Ali’i Trusts⁵ with a lahui⁶ mindset in improving the well-being of our lahui. Such an identity is rooted in the ‘ōlelo no‘eau, *E ‘ōpū ali’i*, have the heart of a chief, have the kindness, generosity, and even temper of a chief, ‘ōlelo no‘eau 369⁷. OHA’s identity is also place based, that OHA’s *kuleana* is to this place of Hawaii.

OHA’s identity manifests itself in four roles: advocate, researcher, community engager and asset manager.

THE OFFICE OF HAWAIIAN AFFAIRS
Empowering Hawaiians, Strengthening Hawaii



OHA ORGANIZATIONAL STRUCTURE

Four Roles:

- I. Advocate
- II. Researcher
- III. Community Engager
- IV. Asset Manager



⁵ Kamehameha Schools, Liliuokalani Trust, Lunalilo Home, Queens Medical Center

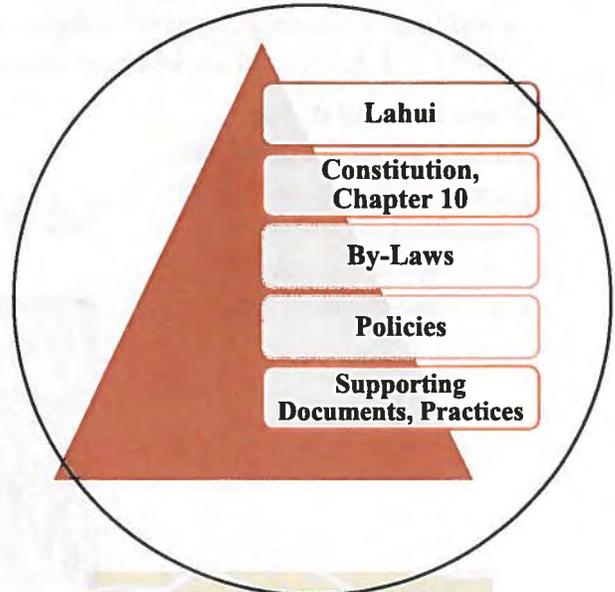
⁶ Nation, race, tribe, people, nationality, Na Puke Wehewehe, retrieved 3/17/2019

⁷ Pukui, ‘Olelo No‘eau, Hawaiian Proverbs & Poetical Sayings, p. 45

Element 2: Values and Mana

The PIG recommends that the Board Governance Framework acknowledge the surrounding intangible, yet invaluable role of values and mana in governance.

Effecting the operating values of kūlia, kākou, pono, ho'omau and aloha, begins with Trustees and Board work as exemplars for Administration and the Organization as a whole. *O ke kahua mamua, mahope ke kūkulu*, the site first, and then the building, learn all you can, then practice, 'ōlelo no'eau 2459⁸.



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Empowering Hawaiians, Strengthening Hawaii



OHA CORE VALUES				
<p>KŪLIA</p> <p><i>Innovation Excellence</i></p>	<p>KĀKOU</p> <p><i>Collaboration Cooperation Unity</i></p>	<p>PONO</p> <p><i>Integrity Truth</i></p>	<p>HO'OMAU</p> <p><i>Legacy</i></p>	<p>ALOHA</p> <p><i>Respect Value</i></p>

'O ke kahua ma mua, ma hope ke Kūkulu.

E ho'oikaika ana i nā Kānaka i mana ka lāhui.

⁸ Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 268

**Permitted Interaction Group
Board Governance Framework Project Report
March 2019**

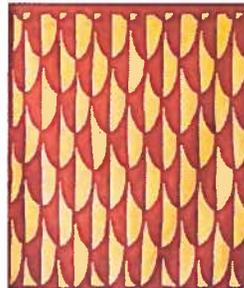
In addition, the concept of mana⁹, often oversimplified as “power”, belies the complexity of the concept and its acquisition, development and maintenance toward OHA enabling capital.

Mana as Capital. The acquisition, development and maintenance of mana toward strengthening OHA’s influence capital, cultural capital and financial capital.

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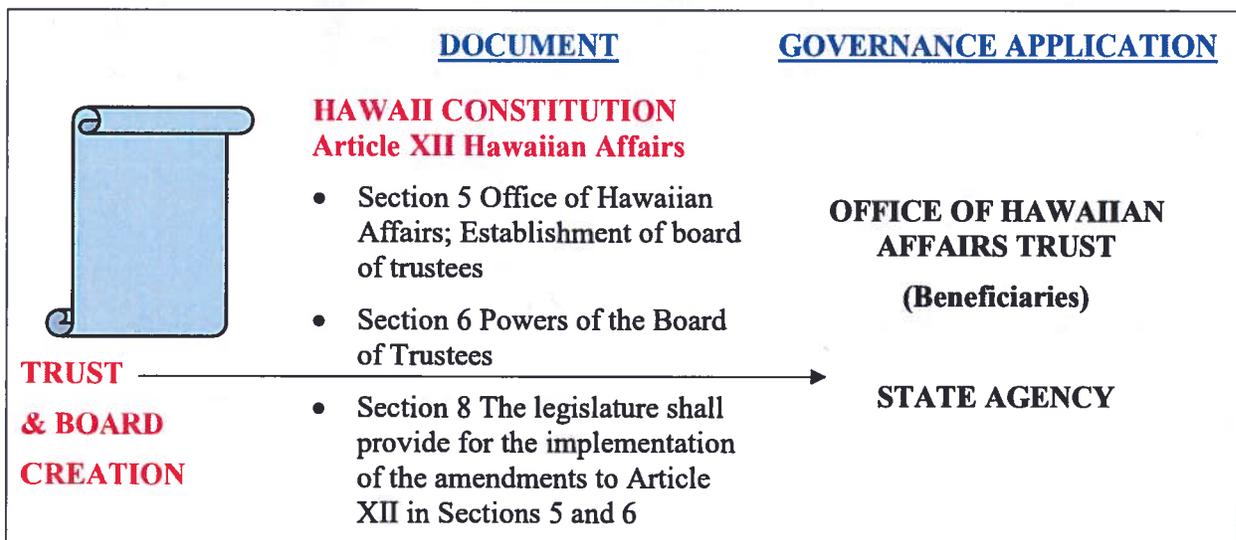
Mana – OHA will:



- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

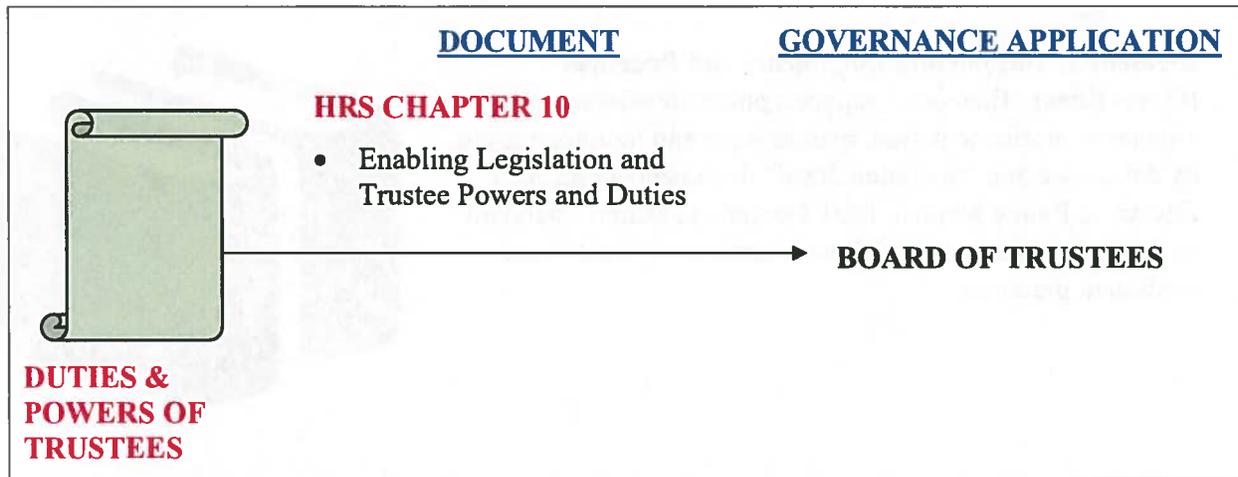
Element 3: Statutory Basis

OHA was established under the Hawai‘i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai‘i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people.

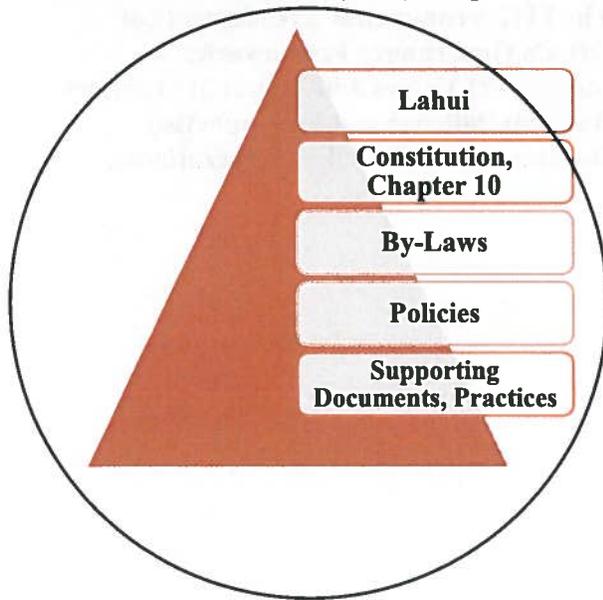


⁹ Na Puke Wehehe, Supernatural or divine power, mana, miraculous power; a powerful nation, authority; to give mana to, to make powerful; to have mana, power, authority; authorization, privilege; miraculous, divinely powerful, spiritual; possessed of mana, power, <http://weheweh.org>, retrieved 3/26/2019

The State of Hawaii’s Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



Hawaii Revised Statutes (HRS) Chapter 10 enables legislation and trustee powers and duties.



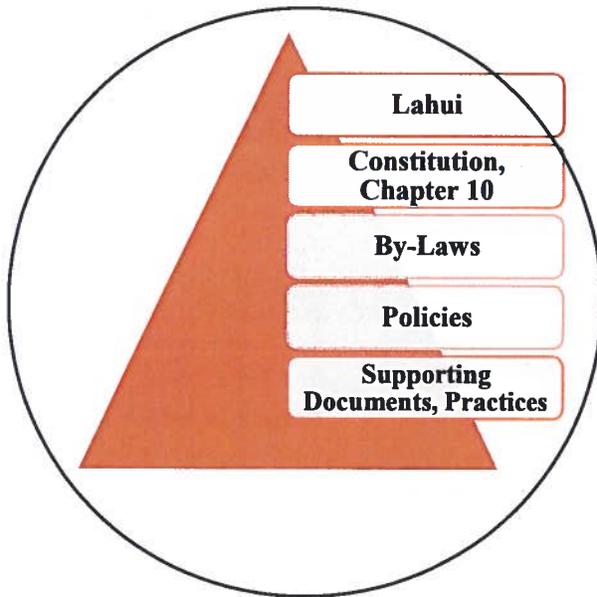
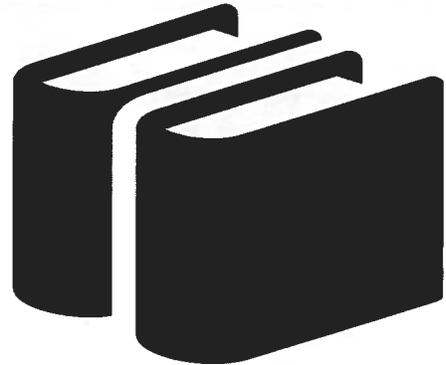
Element 4: Policies¹⁰. The PIG recommends that OHA policies be organized into three tiers: L-Lahui¹¹, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the *kaumaha* (heavy weight, sadness) or significant *kuleana* (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding ‘āina, water, wahi pana and iwi kupuna, strengthen ‘ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA’s Trustee role as a result of the

¹⁰ Merriam-Webster, Definition of *policy* 1a : prudence or wisdom in the management of affairs; b : management or procedure based primarily on material interest; 2a : a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b : a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, <https://www.merriam-webster.com/dictionary/policy>, retrieved 3/17/2019

¹¹ Pukui, nvs. Nation, race, tribe, people, nationality, <http://wehewehe.org>, retrieved 3/17/2019

Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

Element 5: Supporting Documents and Practices (Operations). Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and “operationalized” documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.



The PIG recommends five elements of OHA’s Governance Framework: 1) Identity; 2) Values and Mana; 3) Statutory Basis; 4) Policies; and 5) Supporting Documents and Practices (Operations).

Permitted Interaction Group
Board Governance Framework Project Report
March 2019

IV. WHERE ARE WE NOW? (AS IS)

A. AS IS Analyses. The PIG examined OHA’s current governance framework elements; reviewed the current policies, procedures and practices; analyzed BOT action items for the past five (5) years; analyzed a handful of current advocacy platform items, including its mo’okuauhau (genealogy); identified emerging governance framework design elements; and studied models of cultural, indigenous, native, national and international governance contexts.

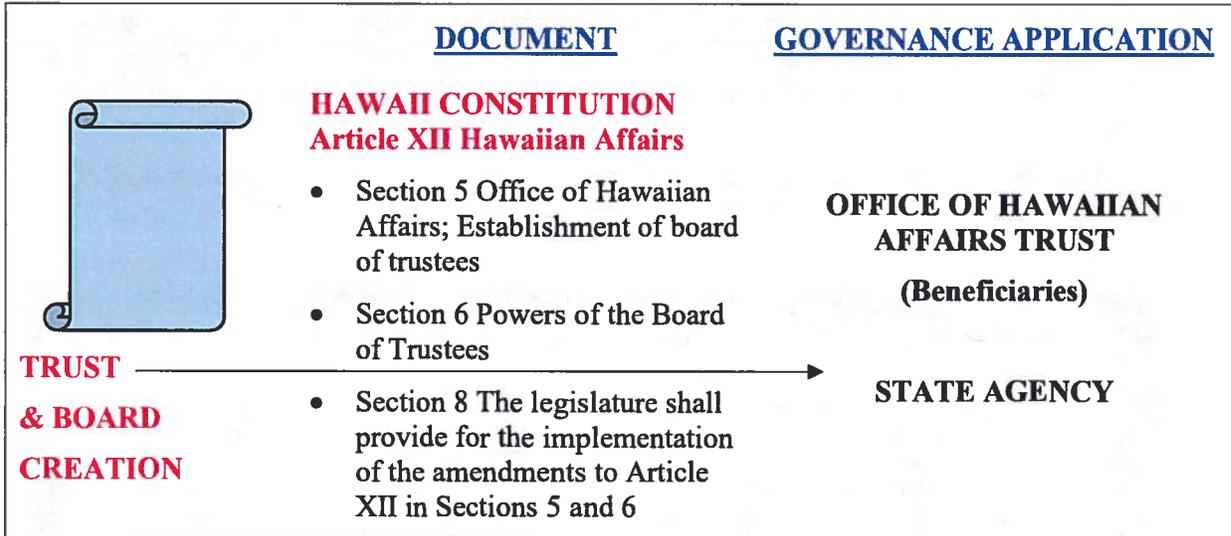
1. Purpose of the Office. The current governance framework and the Organization’s operations are all framed by HRS Chapter 10 and related Federal, State and County laws.

• **§10-3 Purpose of the office.** The purposes of the office of Hawaiian affairs include:

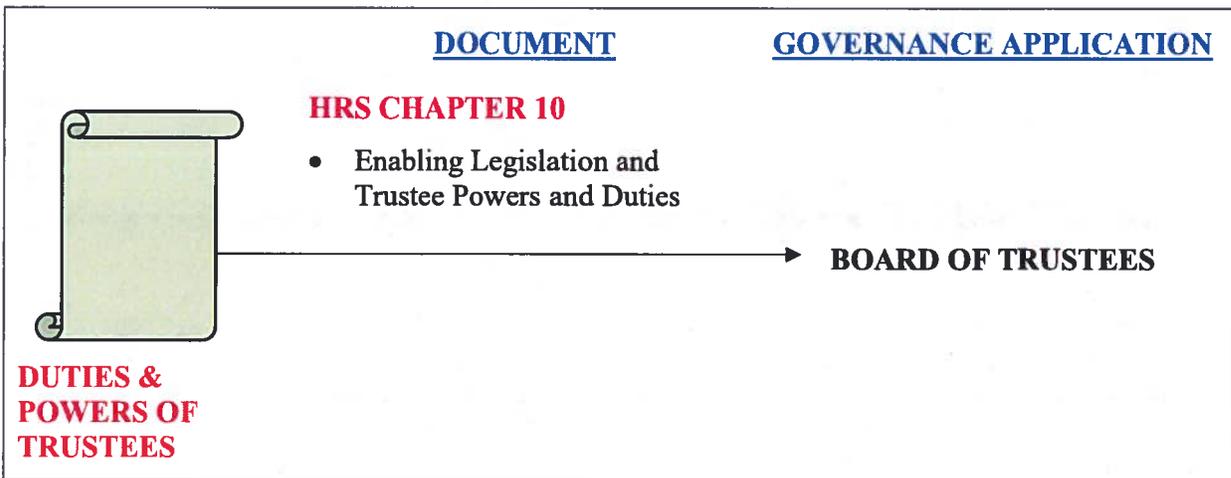
- (1) The betterment of conditions of native Hawaiians. A pro rata portion of all funds derived from the public land trust shall be funded in an amount to be determined by the legislature for this purpose, and shall be held and used solely as a public trust for the betterment of the conditions of native Hawaiians. For the purpose of this chapter, the public land trust shall be all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and conveyed to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 4, the Admissions Act), (excluding therefrom lands and all proceeds and income from the sale, lease, or disposition of lands defined as “available lands” by section 203 of the Hawaiian Homes Commission Act, 1920, as amended), and all proceeds and income from the sale, lease, or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act of March 18, 1959, later conveyed to the State under section 5(e);
- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations.

In Section 10-3, the use of the descriptor of “native Hawaiians” and “Hawaiians” in “betterment of conditions”, refers to individuals (beneficiaries) who are greater than or equal to 50% Hawaiian ancestry (aka ‘little n Hawaiians’) and less than 50% of Hawaiian ancestry (aka ‘big N’), respectively. Regardless of the terminology and definition used and understood in Section 10-3, “native Hawaiian” or “Hawaiian”, OHA’s actions as it relates to carrying out the purpose(s) of the office has been and continues to be lāhui focused.

2. Current Governance Framework. The current operating governance structure of the Office of Hawaiian Affairs (OHA) Trust¹² is described below with the foundational governing documents and related application.

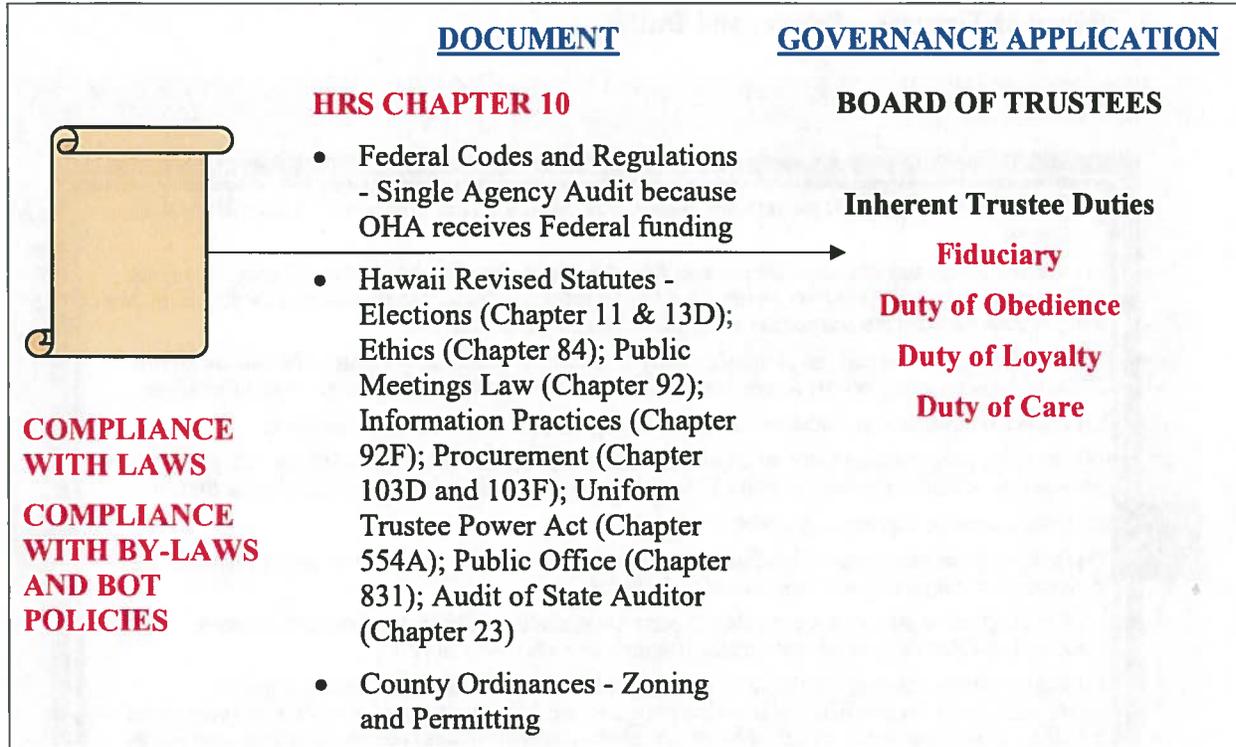


The State of Hawaii’s Constitution, Article XII Hawaiian Affairs creates the Office of Hawaiian Affairs, establishes a board of trustees, articulates the powers of the board of trustees and empowers the legislature to implement amendments to sections 5 and 6.



Hawaii Revised Statutes (HRS) Chapter 10 enables legislation and trustee powers and duties.

¹² Governance Structure, prepared by Office of Corporate Counsel, Office of Hawaiian Affairs, October 2016

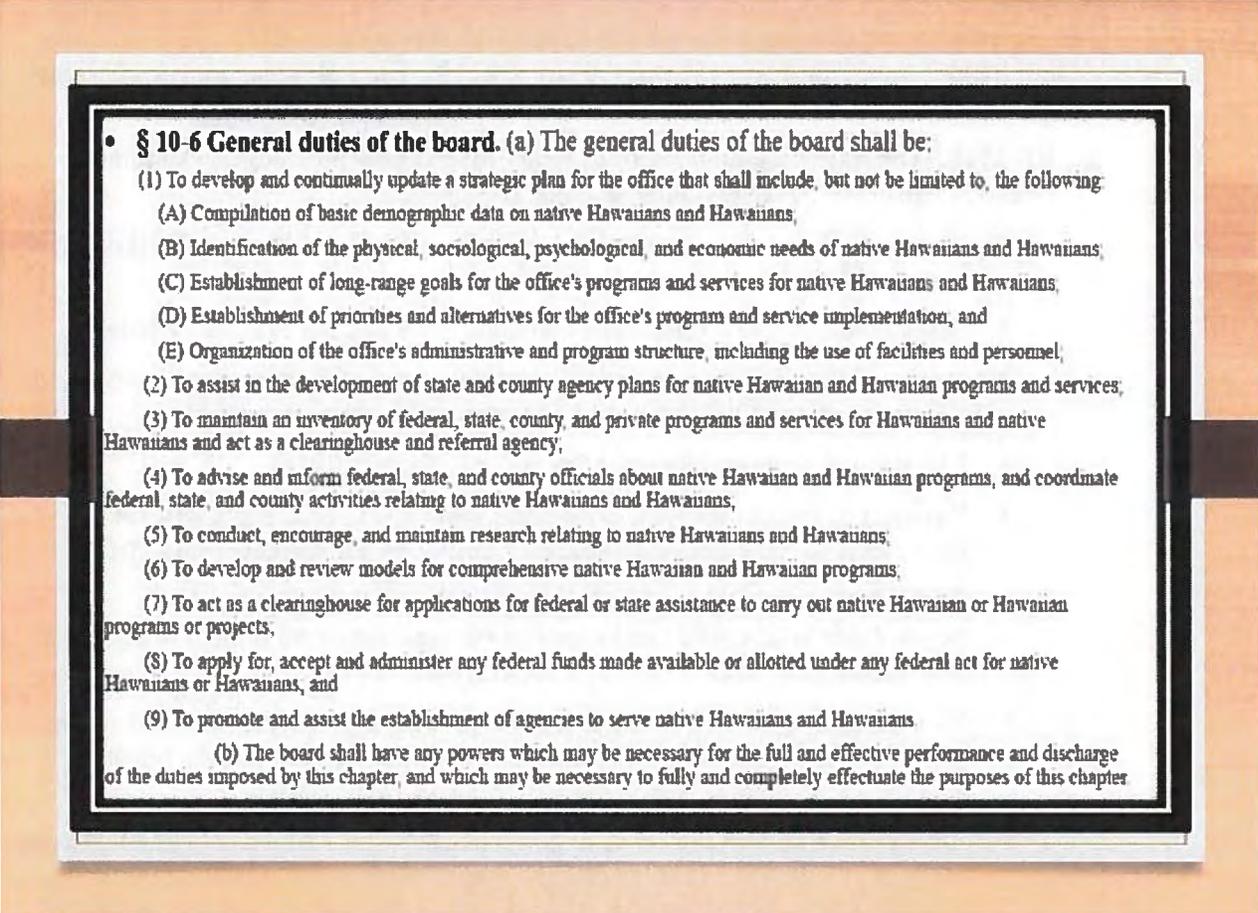


3. Board of Trustees – Powers and Duties

- **§10-5 Board of trustees; powers and duties.** The board shall have the power in accordance with law to:
 - (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in section 10-3;
 - (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians;
 - (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
 - (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under article XII, section 4, of the state Constitution;
 - (5) Otherwise act as a trustee as provided by law;
 - (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;
 - (7) Provide grants to individuals, and public or private organizations to better the conditions of native Hawaiians and Hawaiians consistent with the standards set forth in section 10-17;
 - (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
 - (9) Adopt and use a common seal by which all official acts shall be authenticated. [L 1979, c 196, pt of §2; am L 1990, c 304, §§5, 16; am L 1996, c 240, §1; am L 2002, c 182, §3]

The BOT currently operates under the understanding of the powers and duties as outlined in HRS Chapter 10, specifically Section 10-5. The following is an analysis of the alignment of major BOT actions and activities in the past five years: Management of the proceeds of the Public Land Trust (PLT) revenue (1), (2); Management and development of Kaka`ako Makai and legacy lands (1), (2); Management of Native Hawaiian Trust Fund (NHTF) financial assets (3); Formulation of policies (e.g., ceded lands, spending, investment, water, iwi kupuna, international engagement) (4); Action re Mauna Kea (5); Delegation of authority to Administrator (6); Leveraged State General (via provisos) and Trust funds for multiplier effect (7); Collaborations with Native Hawaiian Legal Corporation and University of Hawaii – Manoa, Richardson Law School, Ka Huli Ao (8).

4. Board of Trustees – General Duties

- 
- **§ 10-6 General duties of the board.** (a) The general duties of the board shall be:
 - (1) To develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians,
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians,
 - (C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians,
 - (D) Establishment of priorities and alternatives for the office's program and service implementation, and
 - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel,
 - (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services,
 - (3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and native Hawaiians and act as a clearinghouse and referral agency,
 - (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians,
 - (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians,
 - (6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs,
 - (7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawaiian or Hawaiian programs or projects,
 - (8) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawaiians or Hawaiians, and
 - (9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians.
 - (b) The board shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed by this chapter, and which may be necessary to fully and completely effectuate the purposes of this chapter

As of February 2019, the Office of Hawaiian Affairs Board of Trustees (“BOT”) operate with a constitutionally and statutorily-founded governance framework that has been further reinforced by years of Board action in the formation of its bylaws, policies, procedures, and practices.

In an attempt to strengthen the BOT governance framework moving into 2020 and beyond, PIG analysis focused on key areas where restructuring may be proposed in order to improve upon the effectiveness of BOT policymaking and organizational advancement of those policies in the pursuit of OHA’s purpose for the betterment of conditions of Native Hawaiians.



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5. Board of Trustees Action Items for the Past 5 Years. The PIG assigned team members, utilizing OHA's internal website---Ka Ipu o ka 'Ike, the gourd of knowledge (aka Ki'i for short), navigated via various links to identify a list of BOT and Committee Action Items over the past five (5) years, 2014 to 2018. The following analyses insights are noted below:

- a. FY 2018.** The following major actions, other than Biennium Budget, Community Grants, Legislative package related actions, were noted:
- Approval of an OHA Resolution Designating 2018 as "Year of the Hawaiian" (January 2018)
 - Amendment to BOT Exec Policy Manual 3.5.e and 3.5.f (January 2018)
 - Approval for OHA to impose moratorium on use of Trustee Sponsorship and Allowance Fund (TSAAF) and CEO-initiated Sponsorships (February 2018)
 - Moratorium on Fiscal Reserve Spending (February 2018)
 - Pursuant to request for LLC documents from BOT, LLC mgrs will submit documents to BOT Financial Audit Comm or its auditor (February 2018)
 - Authorization for OHA CEO/Admin to continue Kaka'ako Lot I sale negotiations with C&CH and approval of legislative reso related to potential sale of Kaka'ako Makai Lot I to C&CH (March 2018)
 - Move to authorize OHA Admin to assess feasibility, timing, and downsizing of current LLC operation structure and develop transition plan to replace existing LC managers, report back by 6/30/18 (May 2018)
 - Authorize OHA CEO to cease ongoing negotiations on a PSA to sell Kaka'ako Makai Lot I to C&CH due to disagreements over unresolved business points of a potential sale, and to take all other reasonable and appropriate actions to implement the foregoing (June 2018)
 - Authorize Administration to utilize \$500,000 for Emergency Disaster Relief on Kaua'i and Hawai'i islands (June 2018)
 - Approve all updates and amendments to BOT Bylaws with the exception of the Re-Designation of all references in Bylaws from "Administrator" to "Chief Executive Officer" which will be considered separately (July 2018)
 - Move to update budget preparation, format and reporting requirements by approving amendments to EPM and BOT Operations Manual, excluding aments on Fiscal Transparency 3.4.k through 3.4.l in Attach A and C (September 2018)
 - Approve long-term direction of Master Plan for OHA's 511 acre property in Wahiawa surrounding Kukaniloko Birthing Stones, authorize Admin to take further steps toward implementation (September 2018)



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- b. FY 2017.** The following major actions, other than Biennium Budget, Native Hawaiian Revolving Loan Fund Board of Directors, Community Grants, Audit Services and Legislative package related actions, were noted:
- Requesting the OHA BOT authorization of OHA Chief Procurement Officer to issue a Request for Qualifications for an independent CPA firm to conduct a financial audit and management review of OHA and its subsidiaries (March 2017)
 - Authorize OHA Administration to Proceed with the Programmatic Environmental Impact Statement (EIS) Process for OHA's Kakaako Makai Parcels (April 2017)
 - Approval of an OHA Board of Trustees Policy Amendment relating to an allocation of revenue from OHA's Kaka'ako Makai properties (June, August 2017)
 - Authorizing OHA Administration to negotiate and execute an easement agreement with Agribusiness Development Corporation for the installation of irrigation water infrastructure on OHA's Wahiawa property (August 2017)
 - Amendment to Section 5.1 of the Investment Policy Statement, changing the Native Hawaiian Trust Fund Asset Allocation and Benchmarks (August 2017)
 - Approve Wao Kele o Puna Comprehensive Management Plan (CMP) (September 2017)
 - 2018-2019 Charter School Funding Administration Grant Recommendation (October 2017)
- c. FY 2016.** The following major actions, other than Biennium Budget, Fiscal Reserve, Termination of Investment Advisors, Community Grants and Legislative package related actions, were noted:
- BOT Executive Policy on International Engagement (February 2016)
 - Approval of BOT Bylaws Amendment as shown in Attachment "A" and Corresponding and Conforming Changes to BOT Executive Policies as shown in Attachment "B. Code of Conduct and Sanctions for Violation of the Code of Conduct (February 2016, May 2016)
 - Adopt OHA's Fiscal Sustainability Planning Model and Approval of the Statement of Commitment Relating to OHA's Fiscal Sustainability Implementation Plan (May 2016)
 - Approval of a BOT Executive Policy Amendment relating to a Policy on Trespassing and Illegal Camping on OHA Property (May 2016)
 - Approval of Funds from OHA's FY 2016 fiscal Reserve Authorizations for OHA's Fiscal Sustainability Plan (October 2016)



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- Support for Standing Rock Sioux Tribe in its efforts to protect its sacred sites and natural and cultural resources (October 2016)
- d. FY 2015.** The following major actions, other than Biennium Budget, Budget Realignment, Community Grants and Legislative package related actions, were noted:
- Approval of the Native Hawaiian Trust Fund Approved Advisors & Non-Marketable Asset Providers List and the addition of SSARIS Advisors LLC as an approved Manager of the Enhanced Liquidity Account (February 2015)
 - Approval of Partial Funding for the Acquisition of 47 acres of the Kuamoo Battlefield and Burial Grounds by the Trust for Public Lands (May 2015)
 - Reorganization of Standing Committee Structure of the OHA Board of Trustees to Create the Committee on Resource Management (July 2015)
 - Approve and authorize funding request of \$400,000 from OHA FY 16 Fiscal Reserve Authorizations for Lunalilo Home and Trust (July 2015)
 - Adoption of OHA Protecting Iwi Kupuna Policy to be included in BOT Executive Policy Manual (November 2015)
 - Adoption of OHA Water Policy and a Water Backgrounder Appendix to be included in the Executive Board Policy Manual (November 2015)
 - Approval of OHA participation in the appurtenant rights and Water Use Permit Application portion of the contested case hearing regarding Na Wai Eha (November 2015)
 - OHA proposed response to the Dept of Interior's proposed rule for Reestablishing a Formal Government to Government relationship with the Native Hawaiian Community (December 2015)
- e. FY 2014.** The following major actions, other than Biennium Budget, Budget Realignment and Legislative package related actions, were noted:
- Approve amendment to the OHA BOT Bylaws to create a Committee on Land and Property as a third Standing Committee of the Board and to approve amendments to existing land policies in the OHA Executive Policy Manual (January 2014)
 - Amendments to the NH Trust Fund Spending Policy and its Related Fiscal Reserve Withdrawal Guidelines (February 2014)
 - Amendments to the Investment Policy Statement (June 2014)
 - Approval of the Policy Guidelines for the Committee on Land and Property (June 2014)
 - Due Diligence for new 65-year Lease DLNR lease and sublease to Hoomana (September 2014)



- Various Governance related actions (e.g., operating budget, financing) (March, August, October 2014)

6. Advocacy Platform, including Mo`okuauhau. Under the direction of the PIG, an analysis of advocacy platform matters was completed for the following five areas: native rights, iwi kupuna, ‘olelo Hawai’i, aina and wahi pana utilizing BOT Executive Policy Manual and other internal reference sources.

- a. Native Rights.** We preserve, protect, and advocate for Native Hawaiian rights and entitlements, including self-determination and a fair and just share of Public Land Trust lands and revenues. OHA’s BOT Executive Policy Manual articulates three elements related to Native Rights policy: (1) Preservation and Protection; (2) Advocacy; and (3) Share of Public Land Trust.

The importance of the Native Rights matter is codified in:

Federal Statute. The Apology Resolution, Public Law 103-149, states: Congress apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination. (underlining added)

State Constitution. Article XII, section 7 of the State Constitution says: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purpose and possessed by ahupua`a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Native Rights

Until the early 1970s, writes Melody Kapilialoha MacKenzie, Esq., American law did little to acknowledge Native Hawaiians as an indigenous people with unique and distinct rights. Even today, Native Hawaiians, like many indigenous peoples, must constantly assert and defend their rights in a foreign, and often hostile, legal system if they are to remain a separate and distinct native people. Indeed, international law has only recently recognized and begun to protect the rights of the world’s indigenous peoples. Generally, [Native Hawaiian] rights are based on more than a millennium of living, developing, and thriving as a people and a culture in Hawai’i. Some rights emanate from the status of Native Hawaiians as an indigenous people and from the political independence of the Hawaiian Kingdom prior to [its] illegal overthrow in 1893. Other laws . . . are laws that apply more generally. For example, any individual may bring a quiet title action, claim lands under the adverse possession doctrine, or be entitled to sufficient water to grow kalo (taro). And in Hawai’i, everyone has access to the beaches and along the shorelines These areas of law . . . have a greater impact on Native Hawaiians as the original inhabitants of Hawai’i’s `aina (land) because they are necessary to sustain a traditional lifestyle. Moreover, many of these rights exercised by the general public are based on or find their roots in Hawaiian custom and practice. [Native Hawaiian] laws and rights . . . are in constant flux, expanding and contracting with the passage of new laws and current decisions by the courts.



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Article XII, section 6 of the State Constitution says: The [BOT] shall exercise power as provided by law: to manage and administer . . . all income and proceeds from [the] pro rata portion of the [Public Land Trust]

State Statutes. Section 10-13.5, Hawai'i Revised Statutes, says: Twenty per cent of all funds derived from the public land trust . . . shall be expended by the Office of Hawaiian Affairs

(Note: OHA's annual pro rata share of the revenues from the Public Land Trust was temporarily set at \$15.1 million by Act 178 of 2006)

Section 10H-1, Hawai'i Revised Statutes, says: The native Hawaiian people are hereby recognized as the only indigenous, aboriginal, maoli people of Hawaii.

Section 10H-2, Hawai'i Revised Statutes, says: The purpose of this chapter [the Native Hawaiian Recognition chapter] is to provide for and to implement the recognition of the Native Hawaiian people by means and methods that will facilitate their self-governance, including the establishment of, or the amendment to, programs, entities, and other matters pursuant to law that relate, or affect ownership, possession, or use of lands by the Native Hawaiian people, and by further promoting their culture, heritage, entitlements, health, education, and welfare.

Act 195, Session Laws of Hawai'i 2011 (the Native Hawaiian Recognition act that created Chapter 10H, Hawai'i Revised Statutes), states in Section 1 (the preamble): The legislature urges the office of Hawaiian affairs to continue to support the self-determination process by Native Hawaiians in the formation of their chosen governmental entity.

OHA Strategic Plan. OHA's 2010-2018 Strategic Plan contains the following mission: To malama Hawai'i's people and environmental resources, and OHA's assets, toward ensuring the perpetuation of the culture, the enhancement of lifestyle and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally. (underlining added)

In addition, the Strategic Plan contains the following strategic priority: To restore pono and ea, Native Hawaiians will achieve self-governance, after which the assets of OHA will be transferred to the new governing entity

The Strategic Plan also contains the following Strategic Result: Adoption by the Board of Trustees of a Transition Plan that includes the legal transfer of [OHA] assets and other resources to the new Native Hawaiian governing entity,



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b. Iwi Kupuna. We protect and promote the reverence and cultural importance of proper care, management, and protection of ancestral Native Hawaiian remains (iwi kupuna) and we encourage Native Hawaiian participation in repatriation. Iwi kupuna have been found buried all around the islands, often at sites slated for, or already undergoing, development. These discoveries have generated public attention, scrutiny, protest, and litigation. Developers and Native Hawaiians often disagree on the most appropriate way to resolve these issues; and prominent sites have not been spared from controversy surrounding iwi found on its property during construction. Aware of these iwi discoveries, many OHA beneficiaries have passionately advocated for the proper care, management, and protection of iwi kupuna. These beneficiaries have approached OHA for assistance, and OHA has responded with policies and with our mana'o and kokua.

OHA's BOT Executive Policy Manual articulates two elements related to iwi kupuna policy: (1) Proper Care, Management, and Protection; (2) Hawaiian Participation in Repatriation. The importance of the iwi kupuna matter is codified in:

State Constitution. Article XII, section 7 of the State Constitution says:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Article XII, section 6 of the State Constitution authorizes the BOT to formulate policy relating to the affairs of native Hawaiians and Hawaiians.

Federal Statute. The federal Native American Graves and Repatriation Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to native cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony.

State Statute. The state Historic Preservation law, Chapter 6E, Hawai'i Revised Statutes, requires the appropriate island burial council to determine whether preservation in place or relocation of or previously identified native Hawaiian burial sites is warranted.

OHA Strategic Plan. OHA's 2010-2018 Strategic Plan contains the following strategic priority for Mo'omeheu (Culture): To strengthen identity, Native Hawaiians will preserve, practice and perpetuate their culture.



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- c. **‘Ōlelo Hawai‘i.** We support revitalizing the Hawaiian language and using it correctly. While once spoken throughout Hawai‘i by Native Hawaiians and foreigners alike, ‘Ōlelo Hawai‘i was considered nearly extinct by the 1980s, when fewer than 50 fluent speakers under age 18 remained. The deterioration of the Hawaiian language resulted largely from an 1896 law that required English instruction in Hawai‘i schools, which essentially banned Hawaiian students from speaking their native tongue.

However, great strides have been made to bring about a renaissance of the Hawaiian language through programs such as ‘Aha Punana Leo’s Hawaiian language immersion schools, the state Department of Education’s language immersion program, and the Hawaiian language programs of the University of Hawai‘i system. Also, in 1978 the state constitution was amended to recognize the Hawaiian language as one of the two official languages of the State.

OHA’s BOT Executive Policy Manual and By-laws articulate two elements related to ‘Ōlelo Hawai‘i: (1) Revitalizing the Hawaiian language; and (2) Proper usage within OHA. The importance of ‘Ōlelo Hawai‘i is codified in:

State Constitution. Article XV, section 4 of the State Constitution says:

English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.

Article X, section 4 of the State Constitution says:

The State shall promote the study of Hawaiian culture, history and language.

The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program.

Federal Statute. The federal Native American Languages Act of 1990 “established federal policy to allow the use of Native American languages as the medium of instruction, and affirms the right of Native American children to express themselves, be educated, and assessed in their languages.”¹³ The law includes Native Hawaiians.

¹³ National Coalition of Native American Language Schools & Programs



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State Statutes. Section 5-7.5, Hawai'i Revised Statutes, says:

The Hawaiian language is the native language of Hawaii and may be used on all emblems and symbols representative of the State, its departments, agencies and political subdivisions.

Section 1-13.5, Hawai'i Revised Statutes, says:

Macrons and glottal stops may be used in the spelling of words or terms in the Hawaiian language in documents prepared by or for state or county agencies or officials. Any rule, order, policy, or other act, official or otherwise, that prohibits or discourages the use of these symbols shall be void.

Strategic Plan. OHA's 2010-2018 Strategic Plan contains the following strategic priority for Mo'omeheu (Culture):

To strengthen identity, Native Hawaiians will preserve, practice and perpetuate their culture.

The Strategic Plan also contains the following strategic result:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the 'aina for cultural, spiritual, religious and subsistence.

- d. **'Aina.** We protect and preserve Hawai'i lands and their cultural significance. We protect the ceded lands corpus until the un-relinquished claims of Native Hawaiians are resolved. We create financially viable property involvements for OHA. The late law professor Jon Van Dyke wrote:

Before continuous contact with westerners began in 1778, the dominant system of land tenure [in the Hawaiian islands] was an intricate and interdependent arrangement based on agriculture needs and hierarchical structure. Individuals lived in reciprocity with the 'Aina (land), which they believed would sustain them if properly respected and cared for. 'Aina was not a commodity and could not be owned or traded. Instead, it belonged to the Akua (gods and goddesses), and the Ali'i (the chiefs and chiefesses who were the human embodiment of the Akua) were responsible for assisting ka po'e Hawai'i (the people of Hawai'i) in the proper management of the 'Aina).¹⁴

Land tenure in Hawai'i has changed dramatically since Western contact, evolving into a Western model in which land can be bought, sold, traded, and some would say, exploited. Still, the spirit of malama 'aina and the central place of the 'aina

¹⁴ Jon M. Van Dyke, *Who Owns the Crown Lands of Hawai'i?*



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in Hawaiian culture, while sorely tested in modern times, remain vital and deserve zealous protection.

Furthermore, Native Hawaiian claims to the former crown and government lands ceded to the United States at Annexation and returned to Hawai'i upon statehood, are still unresolved. Native Hawaiians have a continuing interest and claim to the ceded lands, and their struggle to regain their culture, recover their lands, and restore their sovereign nation will be futile if the ceded lands are dissipated.

OHA's BOT Executive Policy Manual articulates two elements related to 'Aina: (1) Care in OHA Land Acquisition and Management; and (2) Protecting the Ceded-Lands Corpus. The importance of 'Aina is codified in:

State Constitution. Article XI, section 1 of the State Constitution says:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the state for the benefit of the people.

Article XI, section 3 of the State Constitution says:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands

Article XI, section 10 of the State Constitution says:

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Article XII, section 4 of the State Constitution says:

The lands granted to the State of Hawaii by Section 5(b) of the Admission act and pursuant to Article XVI, Section 7, of the State Constitution, excluding therefrom lands defined as "available lands" by Section 203 of the Hawaiian Homes Commission Act, 1929, as amended, shall be held by the State as a public trust for native Hawaiians and the general public.



Article XII, section 5 of the State Constitution says:

The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside to or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.

Article XV, section 5, of the State Constitution says:

The motto of the State shall be, “Ua mau ke ea o ka aina i ka pono.”
 (“The life of the land is perpetuated in righteousness”)

State Statutes. Section 10-4, Hawai`i Revised Statutes, says:

[OHA] shall have the following general powers:

....

- (2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; and to sell, lease, or otherwise dispose of the same at such time, in such manner and to the extent necessary or appropriate to carry out its purpose

Strategic Plan. One of the Core Values stated in OHA’s 2010-2018 Strategic Plan is Ho`omau:

E ho`omau kakou i ke ea o ka `aina na mea e ho`opuni ana, ka mo`omeheu a me kapo`e Hawai`i

(“Together, steadfast we preserve and perpetuate our culture, people, land and environment.”)

The Strategic Plan contains the following as one Strategic Priority:

To maintain the connection to the past and a viable land base, Native Hawaiians will participate in and benefit from responsible stewardship of Ka Pae `Aina O Hawai`i.

The Strategic Plan contains the following among the Strategic Results:

51% of Native Hawaiians living in the State of Hawai`i participating in cultural activities, including language, and who interact with the `aina for cultural, spiritual, religious and subsistence.

70% of all Hawai`i residents understand and agree that a viable land base is necessary for the new Native Hawaiian governing entity.

Increasing the percent of Ka Pae `Aina O Hawai`i managed to create economic value, preserve cultural and natural resources and historic properties, and/or provide cultural and social opportunities for Native



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Hawaiians in a sustainable and balanced manner.....By 2018, increasing from 12% to 15% the percent of ahupua`a that are managed sustainably

- e. **Wahi Pana.** We protect and preserve the integrity of and access to Hawaiian cultural sites.

From the Partners in Development Foundation website: “In traditional indigenous cultures, we find a more focused commitment to preparing the next generations by making sure they understand the history, traditions, and values from which they have blossomed. In addition to genealogy and family traditions, many indigenous cultures like the Hawaiian culture, pay close attention to the specific geographical places their families inhabit. They understand the power of an active and vibrant sense of place in the life of its people.

In Hawaiian culture, “wahi pana” is defined as celebrated, noted, and legendary places, or landmarks of special interest and historical significance. Each of these special places have distinguishing landmarks (mountain peaks, streams, wind, rain, etc.) that are given specific names and are connected to the rich history, chants, stories, and songs that are traditionally passed down from one generation to the next. Hawaiian music, for example, is replete with songs that praise places in our islands with the actual place only being revealed by the specific name of the wind or rain that is referred to in the melody. In public gatherings fifty or sixty years ago, it was common for the various songs of the islands or communities to be sung as an invitation for people from those places to stand and be identified with that wahi pana. It kept our kupuna aware of the traditions they represented as they faced the challenges of day to day living. Although we possess many of these names and songs today, we may not know the physical characteristics that led our ancestors to call a wind or rain differently from others. Our understanding of our sense of place is eroding.

The unique and special cradle of people, traditions, and physical realities of a place shape who we are. It is a strong framework from which we can make decisions consistent with their historical and cultural anchors, to meet the challenges of contemporary life. Often we allow the larger world to teach our young ones the values and perspective which are inconsistent with our cultures and our family traditions. We step back from intentionally teaching our children who they represent and where they find their roots. Let us return to a commitment to teach our children and adults the power of wahi pana.”¹⁵

OHA’s BOT Executive Policy Manual highlights one element related to wahi pana: Protect and Preserve the Integrity of and Access to Hawaiian Cultural Sites.

¹⁵ Partners in Development Foundation, <https://pidf.org/about/wahi-pana>, retrieved 3/26/2019



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The importance of wahi pana is codified in:

Strategic Plan. One of the Core Values stated in OHA's 2010-2018 Strategic Plan is Ho'omau:

E ho'omau kakou i ke ea o ka `aina na mea e ho'opuni ana, ka mo'omeheu a me kapo'e Hawai'i

("Together, steadfast we preserve and perpetuate our culture, people, land and environment.")

The Strategic Plan contains the following as one Strategic Priority:

To maintain the connection to the past and a viable land base, Native Hawaiians will participate in and benefit from responsible stewardship of Ka Pae `Aina O Hawai'i.

The Strategic Plan contains the following among the Strategic Results:

51% of Native Hawaiians living in the State of Hawai'i participating in cultural activities, including language, and who interact with the `aina for cultural, spiritual, religious and subsistence.

7. Policies. The PIG analyzed a number of policies, policy documents and other organizational documents.

a. Policy Formulation. Internal documents depict the current policy formulation process, including:

- **BOT** > Create and amend BOT governing documents; prepare action item; two readings with six (6) affirmative votes¹⁶; and codification (implementation). Substantial amendments to Bylaws would usually require repeal/rescission of the old Bylaws and approval of new set of Bylaws.
- **BOT** > Action item to create or amend executive policies; five (5) affirmative votes¹⁷; and codification (implementation).

¹⁶ Bylaw Article XIII Amendments to Bylaws. These Bylaws shall be amended only by to-thirds vote of all members to which the Board is entitled. Any proposed amendment to the Bylaws shall be submitted in writing for consideration by the Board. The Board shall not vote on any bylaw amendment until a minimum of two readings by the Board.

¹⁷ Executive Policy Manual Series 1000 Board of Trustees, 1020 Policy Formulation, Adoption and Amendment of Policies 1.2.a. OHA policy may be adopted by an affirmative majority (5) vote of all the members to which the BOT is entitled at any regular duly convened meeting of the BOT, provided the proposed policy shall have been presented in writing using the OHA Action Item format for a first reading at a previous regular meeting of the BOT. Such policy shall become effective on the date stated therein (or the date determined by the BOT) upon approval by the BOT at its second reading and approval by a majority (5) vote of all the members to which the BOT is entitled.

- **Administration** > Annual maintenance review; review changes in the laws for impact on Bylaws and Policies.

The PIG noted that on the internal website---Ka Ipu o ka 'Ike, the gourd of knowledge (aka Ki'i for short), there are a number of action items that track the primary governing documents of the BOT—Bylaws, Executive Policy Manual and BOT Operations Manual (collectively, “Governing Operating Documents”).

The Policy Formulation section of the BOT Executive Policy Manual provides a meager framework for developing and establishing OHA policy. The information contained herein is straightforward, however, when comparing the written guidelines to the actual practice, there is essentially a blurring of the lines in policy formulation. Sections 2.1.a-2.1.e., p. 13, of the BOT Executive Policy Manual explicitly provides OHA’s policies on advocacy that include: *Preservation and Protection of Legal Entitlements, Native Hawaiian Rights and Entitlements, Hawaiian Culture*, and OHA’s position policy of oppose *Position on Certain Proposed Legislative Measures*. The above sections leave much to interpretation considering the vast array of issues that OHA Advocacy advocates upon. It is without a doubt that the totality of issues that OHA has advocated – which have crystalized in policy formation - far-exceeded the limited number of policies appearing on a single page, suggesting that the BOT Executive Policy Manual –described as “a living document that will be kept current as and when the Board adopts new policy, amends, or abolishes existing policy” is completely outdated and currently inadequate to serve as an effective source of OHA policy positions.

- b. **Analysis.** For the purposes of the analysis, “policy” was defined as a “definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions”. In determining the scope of policies both utilized and created by the OHA BOT (within at least the past five years), it became necessary to determine what exactly constituted a policy differentiated from procedure and practice. With the understanding that policies may range in significance from monumental to subtle, clarifying guidelines were utilized. While the BOT Policy Manual suggested that policies may originate at any level of OHA, policies identified in this analysis were strictly determined in one of three ways: 1) pre-identified existing policies found in official OHA documents including the BOT governing documents; 2) policies overlying legislative positions with BOT approval; and 3) policies overlying legislative positions with Administration approval.

Finally, in differentiating policies from procedures and practices, it was necessary to identify policies as those guiding principles, which set forth a direction, whereas procedures were those series of steps to be followed in order to maintain a consistence and repetitive approach in achieving a practice. For example, OHA maintains a top priority policy to reduce Native Hawaiian obesity; OHA has established programmatic grants and sponsorships as a procedure to advance OHA’s



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purpose; and OHA has engaged in the practice of awarding millions of dollars in grants to community and health organizations dedicated to curtailing Native Hawaiian obesity rates.

- c. OHA Role Interaction & Policy Formation.** The Hawai'i State Constitution specifically tasks OHA trustees with the capacity "to formulate policy relating to affairs of Native Hawaiians." While the OHA Executive Policy Manual suggests that policy may spring up from anywhere within OHA's structure, it is ultimately up to the OHA Trustees to establish OHA policy through Board approval. With that said, the role of OHA Administration and its current scope of work, has enabled policy formation that is not always within the purview of OHA Trustees. Likely unintended, the flexibility often afforded to OHA Administration to advance and serve as a strong advocate for the betterment of conditions of Native Hawaiians has a way of expanding and morphing the boundaries of a Board-approved policy – continued manipulation of the boundaries of any given policy has the potential to eventually become unrecognizable from its original form, resulting in a deviation never intended by the OHA Board of Trustees.

For example, the OHA Executive Policy Manual is silent on any Board-approved policy on "affordable housing". Be that as it may, it is currently assumed that OHA has a policy on supporting affordable housing as: (1) the OHA strategic priority of economic self-sufficiency within OHA's 2010-2018 Strategic Plan specifically lists "increasing homeownership" as one of its two critical goals; (2) OHA's website explaining its economic self-sufficiency priority states that "[o]ne of our greatest obligations to Native Hawaiians is to help them address challenges to affordable housing;" and (3) OHA public policy, with the approval of the Board of Trustees, has drafted testimony and testified before State and county legislative authorities in support of "affordable housing" If there is indeed no official Board position explicitly stating a position on "affordable housing" then this is certainly an example of how the role of OHA Administration contributes to the formation of OHA policy; in a way, manipulating Board approval for something it may not have consented to. While responsible and well-informed flexibility can be highly beneficial, certain sensitive issues are better served with fully defined boundaries. The "affordable housing" discussion is one such issue where housing advocates are greatly divided. While some advocates may consider the current model of *140% AMI and below* to sit appropriately within the definition of "affordable housing" a Native Hawaiian housing advocate knowing that the majority of Native Hawaiians fall within the *60% AMI and below* bracket, may suggest affordability being appropriately defined as *80% AMI and below* instead of *140% AMI and below*. OHA currently advocates at the current definition (*140% AMI and below*), which in itself begins to crystalize OHA's policy on "affordable housing"- a Board choosing to be more specific, might not agree with this policy position. These indirect, perhaps unintended, and nebulous policy formations are not strictly limited to advocacy, as they can begin to



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take shape through OHA Research's publication of a strategic plan, or even OHA Community Outreach's repetitive description of an inexplicit policy area.

- 8. BOT Governing Documents.** Members of the BOT are issued a binder titled, *Board of Trustees Governing Documents volume 1*, containing BOT Bylaws, the BOT Executive Policy Manual, BOT Operations Manual, Committee on Land and Property Policy Guidelines, and a number of policy positions in the following categories: Kaka'ako Makai Settlement Properties; Native Hawaiian Trust Fund Investment; OHA Spending; OHA Real Estate Vision, Mission, and Strategy Policy; and OHA Risk Management. The status of the compendium is said to be incomplete and outdated. After preliminary review of the current governing documents, it has become apparent that the full breadth and scope of OHA policies are not nearly contained within these governing documents. The most obvious absence is that of OHA's 2010-2018 Strategic Plan. While it may not be feasible to include, within the governing documents, every policy, procedure, and practice developed by OHA, OHA's 2010-2018 Strategic Plan, at the very least, provides a policy structure that should be reflected in a series of identifiable and standalone categories.

For example, OHA's policy on the inter-relationship between Native Hawaiian lifestyle and 'āina stewardship is in itself such a vast source of other policies, procedures, and practices that filing it beneath any of the above listed policy areas currently contained within the governing documents would be a severe detriment. OHA's 2010-2018 Strategic Plan is essentially a platform for a specific direction. For the past eight years, OHA has used this strategic plan to guide its policymaking, procedures, and practices. However, none of the six strategic priorities and the many countless established policies subjected to each are reflected in the governing documents as they are prioritized in the 2010-2018 strategic plan.

Both policies and strategic plans serve to provide direction for OHA and past strategic plans have encapsulated priority policies in the fulfilment of OHA's purpose, vision, mission, and values. Moving into 2020+, it is recommended that the BOT governing documents also reflect those BOT approved policies present within any future strategic plan platform. Consequently, there is room to expand the governing documents to include a more adequate representation of OHA's grand scope of policies. At present, the governing documents greatly lack collation of most OHA policies. With that said, OHA trustees should have access to every OHA policy in effect, which would require a vast improvement upon the collation of OHA policies, procedures, and practices. The BOT governing documents (or more specifically, the BOT Executive Policy Manual –pursuant to Section 1.2.c.) should serve as a valuable resource for directing existing and future trustees, while also being instrumental in directing OHA Administration and staff – as in OHA Advocacy – who are reliant on the ease-of-access to a wide array of OHA policies in their day-to-day activities.



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9. Key Observations and Recommendations (in no particular order of priority):

- a. Better coherence between BOT governing documents and the OHA strategic plan.
- b. Improve effectiveness of BOT governing documents by improving collation of OHA policies, procedures and practices.
- c. Improve navigation to changes of Governing Operating Documents via Ki'i.
- d. Continue authorization actions as it relates to policy changes (e.g., new, edits, updates) via BOT Action Items.
- e. Integrate approved BOT Action Items into the Governing Operating Documents in a timely manner (e.g., Committee on Land and Property. International Engagement, Water Policy).
- f. Establish a better system for recording policy status and updating the BOT Executive Policy Manual.
- g. Assemble an updated, e-accessible, and organized compendium of OHA policies.
- h. Require public policy advocates (or anyone providing an OHA position based on OHA policy) to cite their policy source and provide a description and rationale.

B. Foundations Analyses

PIG team members completed an initial analysis on references to OHA in state and county law, as applied to OHA na Paia (Divisions)—Advocacy, Resource Management (RM) – Financial Assets, RM-Land, Research, and Community Engagement. The first section of the analysis reviewed the purposes for which OHA was established, as provided by the state constitution and Chapter 10 of the Hawai'i Revised Statutes (HRS) and detailed earlier in this report. These references provide a broad mandate under which OHA operates. The third section provided the powers granted to the OHA Board of Trustees (BOT) that can be exercised to fulfill OHA's purpose and statutory requirements and also detailed earlier in this report.

The second section of the analysis provided the requirements placed on OHA under the state constitution, state law, and county ordinances. The analysis below does not include obligations placed on OHA that are not based in statute, such as assumed responsibilities under formal agreements with other entities (e.g., Halawa-Luluku Interpretive Development, Papahānaumokuākea), or those obligations that arise from the government agency status (e.g., procurement code, Sunshine law, ethics code). The analysis below is organized by the Paia (Division) that has been assigned current, primary responsibility over a given statutory requirement.¹⁸

¹⁸ The powers and duties of the OHA Board of Trustees may be delegated to the OHA Administrator and employees. HRS § 10-5(6).



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1. **Advocacy (Public Policy, Compliance Enforcement, Washington D.C. Bureau, Papahānaumokuākea programs)**
 - a. **Assist with planning for programs and services.** OHA is to assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services.¹⁹
 - b. **Special reports.** The board shall prepare and submit special reports as may be required by the legislature.”²⁰
 - c. **Native Hawaiian law training course.** “OHA, at its own expense, shall establish, design, and administer a training course relating to [Native Hawaiian] traditional and customary rights, [Native Hawaiian] natural resource protection and access rights, and the public trust, including the State’s trust responsibility. ...[OHA], at its own expense, shall develop the methods and prepare any materials necessary to implement the training course, administer the training course, and notify each council, board, and commission identified in section 10-A(a) that attendance in a training course is mandatory. The office of Hawaiian affairs shall offer the training course at least twice per year.”²¹
 - d. **Vetting for island burial councils.** OHA shall submit to the governor a list of nominees for filling vacancies on the five island burial councils.²²
 - e. **Vetting for Maui and Hawai‘i county Cultural Resources Commissions.** The mayors of Maui and Hawai‘i counties must solicit lists of two or more persons to their respective county Cultural Resources Commission from members of the public, including OHA.²³
 - f. **Consulting agency on Native Hawaiian issues.** Although not explicitly required under HRS Chapter 10, OHA serves in a consultative role in a number of state and county processes. Furthermore, a primary purpose for OHA is to “[assess] the policies and practices of other agencies impacting on [Native Hawaiians], and conducting advocacy efforts for [Native Hawaiians].”²⁴ Note, this category does not include OHA representation on state boards and commissions, which is discussed separately in this memo under the general duties of OHA, under section II.F., nor does it include instances where consultation with, or representation by, Native Hawaiian organizations (not specifically OHA) is required.²⁵

¹⁹ HRS §10-6(a)(2).

²⁰ HRS §10-15.

²¹ HRS §10-42.

²² HRS §6E-43.5.

²³ Maui County Charter (MCC), sec. 2.88.030; Hawai‘i County Code (HCC), sec. 2-226(b).

²⁴ HRS §10-3(4).

²⁵ For example, under the federal Native American Graves Protection and Repatriation Act, OHA is listed as an example of a Native Hawaiian Organization that must be consulted upon discovery of a Native Hawaiian cultural item on federal lands. See 25 United States Code (USC) §3001-3002. See also 20 USC §80q-11.



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- **Maunakea rulemaking.** In adopting rules to regulate public and commercial activities on Maunakea lands, the UH Board of Regents must consult with OHA to ensure that the rules will not affect any traditional and customary rights of Native Hawaiians, except as a reasonable regulation of such rights.²⁶ The UH Board of Regents shall consult with OHA on the assessment and collection of administrative fines for violations of the Maunakea rules.²⁷
- **Public land sales or exchanges.** Three months prior to the convening of the legislative session, OHA must be provided with a draft of the legislative resolution seeking approval of any sale or exchange of former Crown or government lands of the Kingdom of Hawai'i (or lands exchanged for such lands) to allow OHA to analyze the proposed sale or exchange.²⁸
- **Historic preservation and Native Hawaiian burials.** Consultation with OHA is required for: (1) determining when the location of archeological sites should be withheld from public posting when there is a threat of destruction or loss;²⁹ (2) rulemaking to establish criteria for when burial sites should be relocated or preserved in place;³⁰ (3) rulemaking to establish a process for appointing members to the island burial councils;³¹ and (4) inadvertent discoveries of burial sites (with notification coming via DLNR).³²

Consultation with the Native Hawaiian Historic Preservation Council, which serves in an advisory capacity to the OHA CEO, is required for rulemaking related to permits for access by Native Hawaiians to historic sites.³³ All applications to the Maui Planning Department must include preliminary archaeological and historical data and comments from DLNR and OHA, and if applicable, a preservation/mitigation plan that has been reviewed and approved by OHA.³⁴

2. Community Engagement (Community Outreach, Digital and Print Media, Hawaiian Registry programs)

- a. **Clearinghouse and referral agency.** OHA is to maintain an inventory of federal, state, county, and private programs and services for Native Hawaiians and act as a clearinghouse and referral agency.³⁵

²⁶ HRS §304A-1903.

²⁷ HRS §304A-1904.

²⁸ HRS §§171-50; 171-64.7.

²⁹ HRS §6E-17.

³⁰ HRS §6E-43.

³¹ HRS §6E-43.5.

³² HRS §6E-43.6.

³³ HRS §6E-3.

³⁴ MCC, sec. 19.510.010(D)(9).

³⁵ HRS §10-6(a)(3).



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state treasury and shall be reported on to the state comptroller under section 40-81, and rules prescribed thereunder.”⁴³

- c. **Revolving loan fund.** Using federal funds received from the Department of Health and Human Services, OHA is to establish a revolving loan fund to make loans or loan guarantees to Native Hawaiian organizations and individuals “for the purpose of promoting economic development in the State of Hawaii.” Prior to making a loan, OHA must determine that the borrower is unable to obtain financing from other services on reasonable terms and conditions and there is a reasonable prospect that the borrower will repay the loan. Loans must be made on terms established by statute and under payment and collection terms reviewed and approved by the Commissioner of the Administration for Native Americans. OHA must report to the Commissioner loans in default and prospects for collection of such loans, and shall carry out the instructions of the Commissioner with respect to loans in default.⁴⁴
- d. **Budget preparation and submission.** OHA is to submit to the state legislature its budget, six-year program and financial plan, and variance report, in accordance with the budget submission schedule specified for the governor in HRS Chapter 37. At least twenty days prior to the convening of each regular session of the legislature, OHA is to submit to the legislature an accounting of the expenditures made in the prior fiscal year, by account code and budget program. By November 1 of each year preceding a legislative session in which a budget is to be submitted, the OHA BOT shall provide written notification to the governor of the proposed total expenditures, by cost categories and sources of funding, and estimated revenues of OHA for each fiscal year of the next fiscal biennium.”⁴⁵

The OHA BOT is to provide opportunities for beneficiaries in every county to participate in the preparation of each biennial and supplemental budget of OHA.⁴⁶ These opportunities shall include an accounting by trustees of the funds expended and of the effectiveness of programs undertaken.”⁴⁷ “The legislature shall consider the board’s proposed program and financial plan; evaluate alternatives to the board’s recommendations; and appropriate any general fund portion of the budget and any matching special fund appropriations.”⁴⁸

- e. **Grants.** One of the purposes for which OHA was established is “[a]pplying for, receiving, and disbursing, grants and donations from all sources for [Native

⁴³ HRS §10-13.

⁴⁴ 42 USC 2991b-1.

⁴⁵ HRS §10-14.5(a).

⁴⁶ HRS §10-14.5(b).

⁴⁷ Id.

⁴⁸ HRS §10-14.6.



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Hawaiian] programs and services.”⁴⁹ In awarding grants, OHA is responsible for ensuring:

- (1) The applicant has applied for or received all applicable licenses and permits, when such is required to conduct the activities or provide the services for which a grant is awarded;
- (2) The applicant agrees to comply with applicable federal, state, and county laws;
- (3) The grant shall not be used for purposes of entertainment or perquisites;
- (4) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules; and
- (5) The applicant will indemnify and hold harmless the office, the State of Hawaii, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the office.

Further, OHA is responsible for monitoring to ensure compliance with HRS Chapter 10 and the purposes and intent of the grant; and annual evaluation to determine whether the grant attained the intended results in the manner contemplated.⁵⁰

- f. **Support for audit.** “The office shall be subject to governmental audit.”⁵¹ “The auditor shall conduct an audit of the office at least once every four years and shall submit a report on findings and recommendations to the governor and the legislature on or before the convening of the next immediate legislative session.”⁵² Every five years, the office of the auditor shall submit a review of the special, revolving, and trust funds of OHA.⁵³

5. Resource Management-Land Assets (Commercial Property Management, Land and Property Management, Hālawā-Luluku Interpretive Development programs)

- a. **Hold title.** “The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians.”⁵⁴
- b. **Escheat of kuleana land.** “Any provision of law to the contrary notwithstanding, if the owner of an inheritable interest in kuleana land dies intestate, or dies partially intestate and that partial intestacy includes the decedent’s interest in the

⁴⁹ HRS §10-3(5).

⁵⁰ HRS §10-17.

⁵¹ HRS §10-14.5(c).

⁵² HRS §10-14.55.

⁵³ HRS §23-12.

⁵⁴ Hawai’i Constitution art. XII, section 5.



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kuleana land, and if there is no taker . . . such inheritable interest shall pass to [DLNR] to be held in trust until [OHA] develops a land management plan for the use and management of such kuleana properties, and such plan is approved by [DLNR]. Upon approval, [DLNR] shall transfer such kuleana properties to [OHA].”⁵⁵ OHA shall be joined as a defendant in any quiet title or adverse possession claim for kuleana land and where plaintiff has reason to believe that an owner of an inheritable interest in kuleana land died intestate or partially intestate.⁵⁶

6. General

- a. **Strategic Plan.** The OHA BOT is to develop and continually update a strategic plan for the office that shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;
 - (C) Establishment of long-range goals for the office's programs and services for native Hawaiians and Hawaiians;
 - (D) Establishment of priorities and alternatives for the office's program and service implementation; and
 - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel.⁵⁷
- b. **Public Land Trust spending.** “Twenty per cent of all funds derived from the public land trust, described in section 10-3, shall be expended by the office, as defined in section 10-2, for the purposes of [HRS Chapter 10].”⁵⁸ Beginning in fiscal year 2005-2006, the annual amount of the income and proceeds from the pro rata share of the PLT shall be \$15,000,000.⁵⁹
- c. **Annual reports.** “The [OHA BOT] shall prepare and make public their annual report which shall include an enumeration of their activities, income, and expenditures during the year. The annual report for the previous fiscal year shall be submitted to the governor and the legislature ten days prior to the convening of each regular session of the legislature.”⁶⁰ The annual report shall also include a list of

⁵⁵ HRS §560:2-105.5.

⁵⁶ HRS §669-2.

⁵⁷ HRS §10-6(a)(1).

⁵⁸ HRS §10-13.5.

⁵⁹ Act 178 (Session Laws of Hawai'i (SLH) 2006).

⁶⁰ HRS §10-15.



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volunteer job titles and estimates of the total number of volunteers and the total number of hours of volunteer service.⁶¹

d. **Positions on boards and commissions.** OHA is to advise and inform federal, state, and county officials about Native Hawaiian programs, and coordinate federal, state, and county activities relating to Native Hawaiians.⁶² To these ends, a representative of OHA is made a member of the following state boards and commissions:

- Native Hawaiian Education Council (OHA Chairperson or designee)⁶³
- State Board on Geographic Names (OHA Chairperson or representative)⁶⁴
- Kaho‘olawe Island Reserve Commission (OHA trustee or representative)⁶⁵
- Kāne‘ohe Bay Regional Council (OHA representative)⁶⁶
- Community-Based Economic Development Advisory Council (OHA Chairperson or designee)⁶⁷
- Hawai‘i Climate Change Mitigation and Adaptation Commission (OHA CEO or CEO’s designee)⁶⁸
- Hawai‘i Interagency Council on Homelessness (OHA Chairperson or Chair’s designee)⁶⁹
- Corrections Population Management Commission (OHA Administrator or Administrator’s designee)⁷⁰
- Dark Night Skies Protection Advisory Committee (OHA Administrator or Administrator’s designee)⁷¹
- Temporary Commission on the Thirteenth Festival of Pacific Arts (OHA CEO or CEO’s designee)⁷²

7. Unassigned

After reviewing the statutory responsibilities of OHA and comparing them to the responsibilities assigned to the various Paia, the following responsibilities are believed to be unassigned or unaccounted for under OHA’s current operational structure.

a. **Reparations.** A primary purpose of OHA is to serve as a receptacle for reparations.⁷³

⁶¹ [HRS §90-5](#).

⁶² [HRS §10-6\(a\)\(4\)](#).

⁶³ 20 USC § 7514(b).

⁶⁴ [HRS §4E-1](#).

⁶⁵ [HRS §6K-5](#).

⁶⁶ [HRS §200D-2](#).

⁶⁷ [HRS §210D-5](#).

⁶⁸ [HRS §225P-3](#).

⁶⁹ [HRS §346-382](#).

⁷⁰ [HRS §353F-4](#).

⁷¹ Act 185 (SLH 2017).

⁷² Act 104 (SLH 2017).

⁷³ [HRS §10-3\(6\)](#).



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- b. **Develop and review program models.** OHA is to “develop and review models for comprehensive [Native Hawaiian] programs.”⁷⁴
- c. **Clearinghouse for Native Hawaiian assistance.** OHA is to act as a clearinghouse for applications for federal or state assistance to carry out Native Hawaiian programs or projects.⁷⁵
- d. **Develop Native Hawaiian agencies.** OHA is to promote and assist the establishment of agencies to serve native Hawaiians.⁷⁶

Limitations of the Analysis. While the analysis includes all requirements placed on OHA that are contained in federal, state, and county laws and ordinances, it excludes OHA requirements contained only in administrative rules of federal, state, or county agencies. The analysis does not contain those requirements imposed on the OHA trustees as fiduciaries of Native Hawaiian trust funds (e.g., duty of care). In addition, there may be some instances where an unintentional

assignment of responsibility for fulfilling a particular statutory requirement to a Paia or program within OHA was made. Regardless of the comprehensive analysis, reading and understanding of the underlying statute should still be completed.

The special relationship between Indians and the federal government is the result of solemn obligations that have been entered into by the United States government. Down through the years, through written treaties and formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety—services that would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans. This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the federal government that arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American.

President Richard Nixon, Special Message to the Congress on Indian Affairs, July 8, 1970

C. Governance Framework Design

1. Various Native, Indigenous Governance Models

a. American Indian and Alaska Native. This summary is informed by the report *Tribal Nations in the United States*, published by the National Congress of the American Indians (NCAI). NCAI, founded in November 1944 serves the broad interests of tribal governments and communities. This report was published in 2017, and a revised version will be published in March 2019.

NCAI is organized as a representative congress of American Indians and Alaska Natives to develop consensus on national priorities that impact tribal sovereignty. NCAI is one of many national and regional organizations dedicated to indigenous advocacy. Some of these organizations have more specialized advocacy agendas, such as regional issues,

⁷⁴ HRS §10-6(a)(6).
⁷⁵ HRS §10-6(a)(7).
⁷⁶ HRS §10-6(a)(9).



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or specific advocacy areas including, but not limited to, education, health care, housing, and economic development. Similarly, several umbrella advocacy organizations exist in Alaska. The largest of those organizations is the Alaska Federation of Natives (AFN). Its membership includes 191 federally recognized tribes, 171 village corporations, 12 regional corporations, and 12 regional nonprofit and tribal consortiums that contract and compact to run federal and state programs.

A Broad Summary of Indian Country.

There are 573 sovereign tribal nations located across 35 states within the geographic borders of the United States. Of these tribes, 229 are located in Alaska. Additionally, there are state recognized tribes located throughout the United States recognized by their respective state governments but who do not have a political relationship with the federal government. Self-governing tribes have the inherent power to govern all matters

involving their members, as well as serve as an advocate with their local, state, and federal governments for issues important across Indian Country.

Governing Authority. Excerpted from Tribal Nations in the United States report:

Tribes “Most tribes give legislative authority to a tribal council. In some cases, the tribal council members are elected by district; in others, they are elected at large. The council generally has authority to write tribal laws, and council members have administrative duties in some tribes. Most tribal constitutions also provide for an executive officer, called a “tribal chairman,” “president,” “governor,” or “chief.” In some tribes, the tribal council elects the chief executive, while the

voting citizens directly elect the leader in others. In most cases, the chief executive’s duties and powers are not specified in the constitution but are set in the bylaws. Consequently, the role of the chief executive varies greatly among tribes. Many tribes also have created their own court systems that administer codes passed by the tribal council. In many tribes, judges are elected by popular vote; in others, the tribal council appoints judges.”

Alaska Native Governance. “Of the federally recognized tribes, 229 are located in Alaska. Each of the Alaska Native tribes is distinctly unique from tribes located in the

We know that ultimately this is not just a matter of legislation, not just a matter of policy. It’s a matter of whether we’re going to live up to our basic values. It’s a matter of upholding an ideal that has always defined who we are as Americans: E pluribus unum—out of many, one. That’s why we’re here. That’s what we’re called to do. And I’m confident that if we keep up our efforts, that if we continue to work together, that we will live up to this simple motto and we will achieve a brighter future for the First Americans and for all Americans.

President Barack Obama, Remarks at the White House Tribal Nations Conference, December 16, 2010

I am committed to furthering the self-determination of Indian communities, but without terminating the special relationship between the federal government and the Indian people. I am strongly opposed to termination. Self-determination means that you can decide the nature of your tribe’s relationship with the federal government within the framework of the Self-Determination Act, which I signed in January of 1975.

President Gerald Ford

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lower 48 United States. Alaska Native tribes have no treaties with the US government, as treaty-making ended in 1871, just years after the 1867 Alaska Purchase Treaty with Russia. The governing bodies of Alaska Native communities

vary by tribe or village “traditional councils,” “native councils,” “village councils,” “tribal councils,” or “IRA councils.” In some instances, the term “village” is used instead of “tribe,” as tribes in Alaska were often recognized by the term “village” under the Alaska Native Claims Settlement Act (ANCSA) of 1971.”

Tens of millions of Indigenous peoples inhabited North America, and governed their complex societies, long before European governments sent explorers to seize lands and resources from the continent and its inhabitants. These foreign European governments interacted with tribes in diplomacy, commerce, culture, and war—acknowledging Indigenous systems of social, cultural, economic, and political governance.

Tribal nations have remained as political powers from the colonial period until today—engaging in commerce, trade, cultural exchange, and inspiring the principles of freedom and democracy enshrined in the US Constitution. As the United States formed a union, the founders acknowledged the sovereignty of tribal nations, alongside states, foreign nations, and the federal government in the US Constitution.

Tribal nations are part of the unique American family of governments, nations within a nation, as well as sovereign nations in the global community of nations.

Rooted in deep traditions and distinct ways of life, tribal nations are defined by Indigenous peoples, places, cultures, and governance.



Tribal Citizenship. “Like any government, tribal governments determine their own criteria for citizenship. Usually there is some blood quantum requirement, such as one-quarter, or a requirement of lineal descendency from a tribal citizen. The Supreme Court has recognized that each tribe determines its own criteria. Some federal agencies also have criteria for determining eligibility for programs and services. Not all American Indian

and Alaska Native people are citizens of tribal nations.” Tribal members are citizens of three entities: their tribe, the United States, and the state in which they reside.

Tribal Government Services and Functions. “Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. The governments exercise these inherent rights through the development of their distinct forms of government, determining citizenship; establishing civil and criminal laws for their nations; taxing, licensing,

regulating, and maintaining and exercising the power to exclude wrongdoers from tribal lands. Tribal governments are responsible for a broad range of governmental activities on tribal lands, including education, law enforcement, judicial systems, health care, environmental protection, natural resource management, and the development and maintenance of basic infrastructure such as housing, roads, bridges, sewers, public buildings, telecommunications, broadband and electrical services, and solid waste treatment and disposal.



- b. **Ngāi Tahu, New Zealand South Island.** In analyzing Māori governance frameworks, the analysis focused on one tribe as a case study. The Ngāi Tahu are a Māori iwi, or tribe, from New Zealand’s South Island. The Ngāi Tahu were one of the parties to the 1840 Treaty of Waitangi to whom redress was owed by the British Crown due to treaty violations. In 1998, a settlement was determined and the Ngāi Tahu were compensated \$170 million cash (among other things). As a result of this economic redress, Ngāi Tahu became an economic powerhouse worth over \$1.65 billion as of 2018.

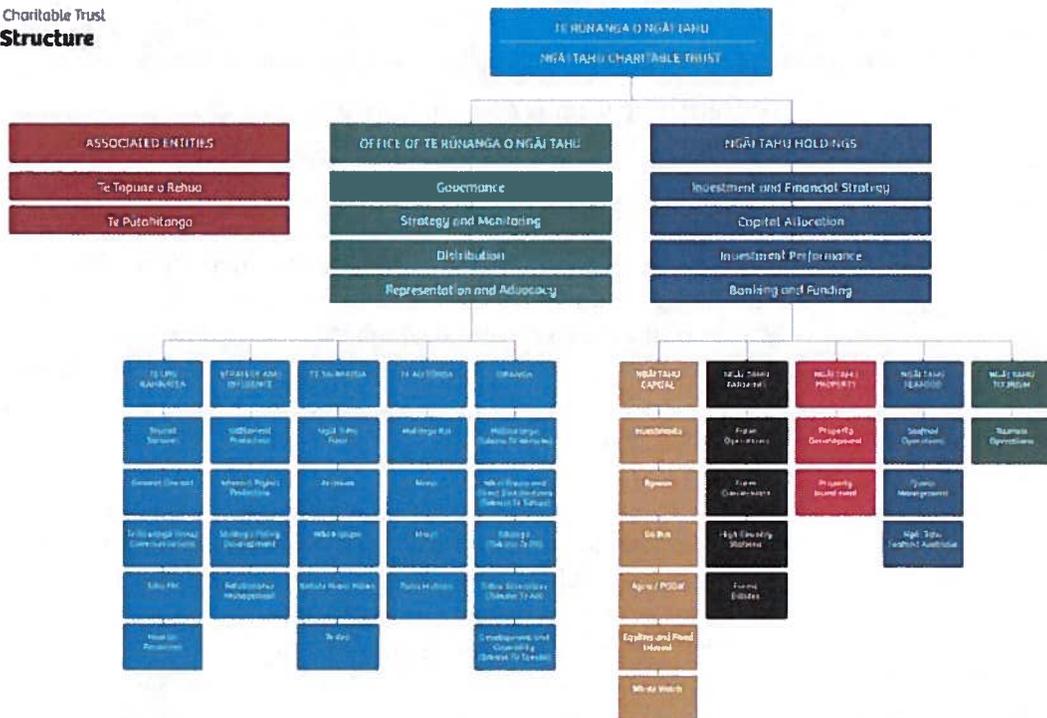
Ngāi Tahu is an iwi, a tribe, of Aotearoa that has, interestingly, incorporated its governing body. In an attempt to establish a tribal structure in order to best manage its assets and its business, while also maintaining the capacity to distribute benefits, the tribe’s governing documents were placed into law via the passage of legislation: Te Rūnanga o Ngāi Tahu Act 1996. In accordance with law, te Rūnanga o Ngāi Tahu (the Council/Board of Directors of the Ngāi Tahu) is established as the body corporate and representative of the Ngāi Tahu Whānui. Membership and requirements are also provided for in statute as well as powers. Of note, amendments to this law requires a special resolution provided by te Rūnanga.

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- The Papatipu Rūnanga are 18 regional boards comprised of various hapū (family groups) with their own governance structures. Each Papatipu Rūnanga selects one member to represent them on te Rūnanga o Ngāi Tahu.

Ngāi Tahu Charitable Trust Organizational Structure. Ngāi Tahu Holdings is an investment company formed subsequent to the Ngāi Tahu Claims Settlement of 1998 with investments in property, farming, seafood, tourism, as well as direct investments in a number of businesses as well as indirect investments through private equity funds and international equities.

Te Rūnanga o Ngāi Tahu Charitable Trust
Organisational Structure



According to the 2018 Ngāi Tahu Holdings Report and the 2018 Te Rūnanga o Ngāi Tahu Annual Report, \$61.05 million in revenue was distributed Te Rūnanga o Ngāi Tahu. This is up from the previous year where \$49.6m in revenue was distributed to the tribe, with \$32.6m for tribal initiatives (excluding operational and administrative costs), \$7.1m for educational and wellbeing grants, and \$10.6m direct distribution and development for Papatipu Rūnanga.

The organizational structure of the Ngāi Tahu is a masterwork model for trust organizations serving as the receptacle for fairly sizeable redress in terms of direct

cash compensation and land and resource assets, having a net worth that has grown to over \$1.65 billion. The Ngāi Tahu organizational structure, as it relates to the Office of Hawaiian Affairs, should be highly informative, if not highly influential for these reasons: (1) Both organizations are Trusts responsible for the survival of their people; and (2) Both organizations have access to large capital and land and resource assets.

- c. **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁷⁷.** Indigenous peoples globally continue to face dispossession of their lands and resources, discrimination, forced assimilation and other grave human rights abuses. The United Nations Declaration on the Rights of Indigenous Peoples is the most comprehensive international human rights instrument to specifically address their economic, social, cultural, political, civil, spiritual and environmental rights. In its own words, the Declaration sets out minimum standards necessary for the “dignity, survival and well-being” of Indigenous peoples.

The UN General Assembly overwhelmingly adopted the Declaration on 13 September 2007. This historic adoption followed more than twenty years of deliberation and debate in which Indigenous peoples worked directly with states to elaborate upon and advance their human rights. This marked the first time within the UN that rights holders had such a central role in the creation of a new human rights instrument.

The Declaration affirms Indigenous peoples’ right of self-determination and underlines the prohibition of discrimination and genocide in international law. The Declaration calls on states to honour and respect the Treaties and other agreements they have entered into with Indigenous peoples, to protect Indigenous languages and cultures, and to uphold Indigenous peoples’ rights to lands, territories and resources.

The Declaration affirms the inherent or preexisting collective human rights of Indigenous peoples, as well as the human rights of Indigenous individuals. It provides a framework for justice and reconciliation, applying existing human rights standards to the specific historical, cultural and social circumstances of Indigenous peoples.

The Declaration reflects a range of human rights standards that have emerged over the last three decades through the work of international and regional human rights bodies as they have dealt with violations against Indigenous peoples. Many of these standards, such as the provisions of international human rights conventions or customary international law, establish clear legal obligations for states.

As we actively engage with the full and effective implementation of the UN Declaration on the Rights of Indigenous Peoples, we urge that:

⁷⁷ United Nations Declaration on the Rights of Indigenous Peoples, March 2011

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Governments, in conjunction with Indigenous peoples, use the Declaration as the basis for reviewing and reforming laws and policies to ensure that Indigenous peoples' rights are upheld without discrimination.

Courts and human rights tribunals use the Declaration as a relevant and persuasive source in interpreting Indigenous human rights and related state obligations. Indigenous peoples and their institutions use the Declaration as a principled framework for advancing their rights, in their own policy- and decision-making and in their negotiations with governments and other third parties.

Civil society organizations work cooperatively with Indigenous peoples, in promoting and implementing their human rights and maintaining the Declaration as a living instrument.

Educational institutions include the Declaration in their curriculum, including teacher training.

Corporations and investors ensure their human rights policies and business practices incorporate the standards in the Declaration.

The global consensus that now exists in support of the Declaration reinforces its weight as a universal human rights instrument. The ongoing and widespread human rights violations against Indigenous peoples worldwide underline the urgency of moving ahead with the full and effective implementation of the Declaration.

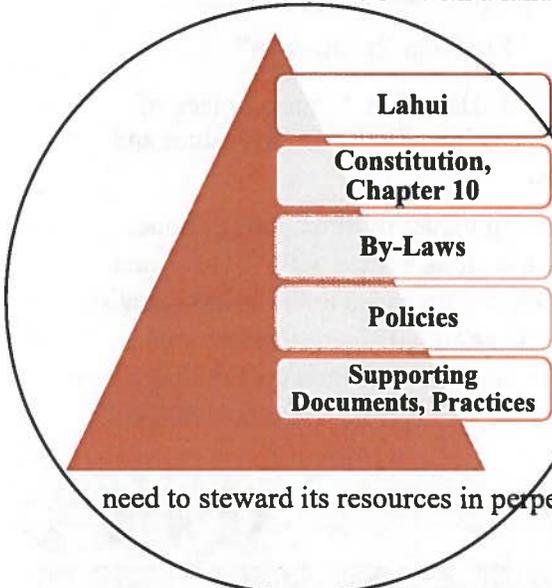
- 2. Engagement with Ali'i Trusts.** PIG team members reached out to other kupuna ali'i trusts (Queen Lili'uokalani Trust, Lunalilo Home and Kamehameha Schools) for their mana'o and experiences regarding governance.

V. PROPOSED GOVERNANCE FRAMEWORK ELEMENTS

A. Element 1: Identity. While statutorily OHA is a State Agency with the responsibility to manage a Trust, the PIG proposes that OHA identifies with and operates more similarly to other Ali'i Trusts⁷⁸ with a lahui⁷⁹ mindset in improving the well-being of our lahui.

Such an identity is rooted in the 'ōlelo no'eau, *E 'ōpū ali'i*, have the heart of a chief, have the kindness, generosity, and even temper of a chief, 'ōlelo no'eau 369⁸⁰. OHA's identity is also place based, that OHA's *kuleana* is to this place of Hawaii.

While a "dual" identity (e.g., *maka'āinana*⁸¹ trust vs. state agency) may seem potentially confusing, the PIG recommends that such an identity can be supported by policies, procedures and practices that are contextualized (i.e., state agency spends dollars appropriated as detailed in the biennium budget compared to a trust that is mindful of its resources need to steward its resources in perpetuity for its beneficiaries).



OHA's identity manifests itself in four roles: advocate, researcher, community engager and asset manager and related policies, procedures and practices can be aligned to support and guide OHA's proposed dual identity.



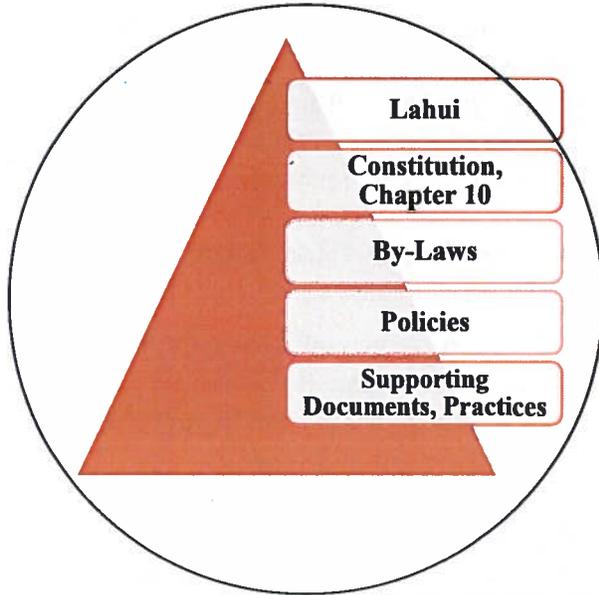
⁷⁸ Kamehameha Schools, Liliuokalani Trust, Lunalilo Home, Queens Medical Center

⁷⁹ Nation, race, tribe, people, nationality, Na Puke Wehewehe, retrieved 3/17/2019

⁸⁰ Pukui, 'Olelo No'eau, Hawaiian Proverbs & Poetical Sayings, p. 45

⁸¹ n. Commoner, populace, people in general; citizen, subject. Cf. *lunamaka 'āinana. Lit.*, people that attend the land, Na Puke Wehewehe, retrieved 3/17/2019

B. Element 2: Values and Mana



A key element of the proposed governance framework is the intangible but invaluable values and mana concepts.

“Envision Pu‘uhonua”

The Office of Hawaiian Affairs, a place of refuge, in which we shall live our values and principles.

The operating values of kūlia, kākou, pono, ho‘omau and aloha begins with Trustees and Board work and cascades to the Administration and staff. *O ke kahua mamua, mahope ke kūkulu*, the site first, and then the building, learn all you can, then practice, ‘ōlelo no‘eau 2459⁸².

THE OFFICE OF HAWAIIAN AFFAIRS
Empowering Hawaiians, Strengthening Hawaii



OHA CORE VALUES

KŪLIA	KĀKOU	PONO	HO‘OMAU	ALOHA
				
<i>Innovation Excellence</i>	<i>Collaboration Cooperation Unity</i>	<i>Integrity Truth</i>	<i>Legacy</i>	<i>Respect Value</i>

‘O ke kahua ma mua, ma hope ke Kūkulu.

E ho‘oikaika ana i nā Kānaka i mana ka lāhui.

⁸² Pukui, ‘Olelo No‘eau, Hawaiian Proverbs & Poetical Sayings, p. 268



Kākou

E alu like mai kākou i ka ho‘okō‘ana i ko kākou mikiona.
We work together, unified to accomplish our mission.

Aloha Kekahi I Kekahi

‘Olu‘olu a maika‘i kākou i nā kānaka a pau.
We are kind and compassionate to all whose lives we touch.

Pono Pau‘ole

E hana kūpono kākou me ka ‘oia‘i‘o.
We act with integrity and truthfulness.

Mālama Kekahi I Kekahi

E hō‘ihi a mālama kākou i nā po‘e a pau a me nā mea ‘ē a‘e a pua.
We respect and care for others and all that surround us.

Kuleana

E ho‘okō kākou i ko kākou kuleana hana.
We carry out our individual and collective responsibilities.

Kūlia

E ho‘okumu kākou i ka hana e pili ana i nā kuleana Hawai‘i me ka ho‘oholu.
We take initiative and are resilient in advocating for Hawaiian rights.

Po‘okela

E hana kākou me ka ‘oi a e ho‘omaika‘i iā kākou iho.
We do our absolute best and continuously seek improvement.

Ho‘omau

E ho‘omau kākou i ke ea o ka āina,
nā mea e ho‘opuni ana,
ka mo‘omeheu a me ka po‘e
Hawai‘i.
Together, steadfast we preserve and
perpetuate our culture, people,
land and environment.

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Empowering Hawaiians, Strengthening Hawaii



Mana – OHA will:



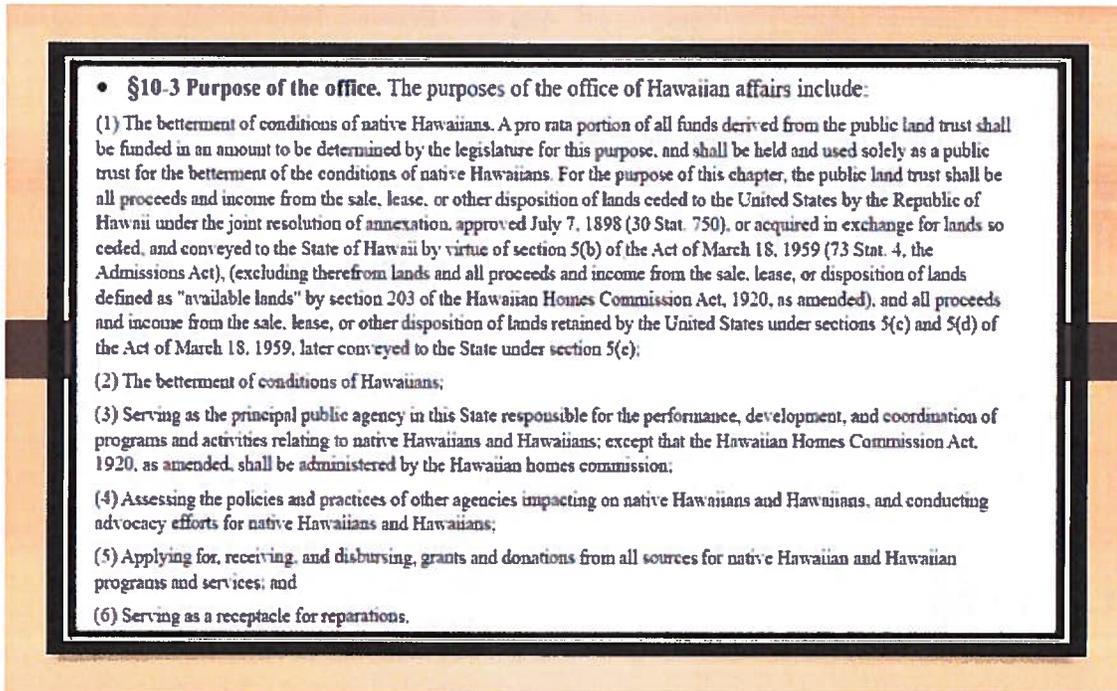
- Build upon the wisdom of our ancestors;
- Build upon the patriots who came before us; and
- Acquire and grow its mana as it strives to serve for the betterment of Hawaiians.

Mana as Capital. The acquisition, development and maintenance of mana toward strengthening OHA’s influence capital, cultural capital and financial capital.⁸³

⁸³ Social enterprises apply business solutions to social problems. The ultimate goal is to achieve sustainability by enabling non-profits to support themselves financially in innovative ways instead of relying solely on grants and donations. Since there are no shareholders in a non-profit organization, the profits from the related social

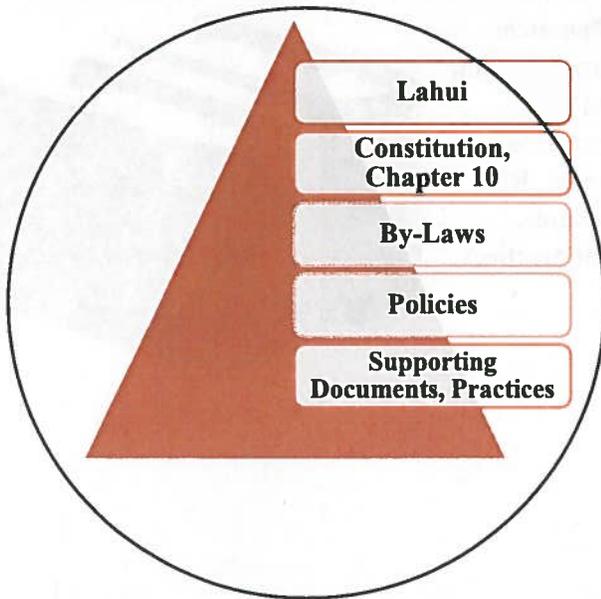
C. Element 3: Statutory Basis. OHA was established under the Hawai‘i Constitution, article XII, section 5, with powers described in article XII, section 6. Hawai‘i Revised Statutes (HRS) Chapter 10 provides that OHA is meant to address the needs of the Native Hawaiian people, including:

- (1) The betterment of conditions of native Hawaiians.
.....
- (2) The betterment of conditions of Hawaiians;
- (3) Serving as the principal public agency responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; except that the Hawaiian Homes Commission Act, 1920, as amended, shall be administered by the Hawaiian homes commission;
- (4) Assessing the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conducting advocacy efforts for native Hawaiians and Hawaiians;
- (5) Applying for, receiving, and disbursing, grants and donations from all sources for native Hawaiian and Hawaiian programs and services; and
- (6) Serving as a receptacle for reparations.⁸⁴



enterprise are completely re-invested in the work of the organization. <https://www.marsdd.com/mars-library/social-enterprise-business-models/>, retrieved 3/26/2019

⁸⁴ HRS §10-3; see also HRS §10-1.



D. Element 4: Policies⁸⁵. The PIG recommends that OHA policies be organized into three tiers: L-Lahui⁸⁶, T-Trustee and C-CEO level policies. L-Lahui level policies would articulate the Hawaiian cultural foundation of the organization as a basis for the *kaumaha* (heavy weight, sadness) or significant *kuleana* (responsibility) to normalize Hawaiian language, protect and exercise native rights regarding ‘āina, water, wahi pana and iwi kupuna, strengthen ‘ohana and kaiāulu, perpetuate Hawaiian culture, knowledge and practices and engage in global, international indigenous contexts. T-Trustee level policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA’s Trustee role as a result of the

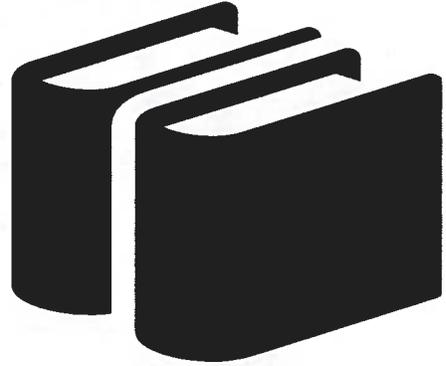
Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). C-CEO level policies guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.

An effective governance framework, considers that policies are modified from time to time for clarification of facts, circumstances, policy content, processes or organizational changes. While a change and update mechanism should exist to effect better policy clarity, the PIG recommends a five (5) year review cycle for L-Lahui and T-Trustee level policies and a two (2) year review cycle for C-CEO level policies to reflect the intentional long-term nature of L and T level policies and the operating cycles of the Organization.

⁸⁵ Merriam-Webster, Definition of *policy* 1a : prudence or wisdom in the management of affairs; b : management or procedure based primarily on material interest; 2a : a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions; b : a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body, <https://www.merriam-webster.com/dictionary/policy>, retrieved 3/17/2019

⁸⁶ Pukui, nvs. Nation, race, tribe, people, nationality, <http://wehewehe.org>, retrieved 3/17/2019

E. Element 5: Supporting Documents and Practices (Operations). Element 5 supports policy development, alignment, implementation, maintenance and monitoring, etc. by developed and “operationalized” documents (e.g., BOT Executive Policy Manual, BOT Operations Manual standard operating procedures, guidelines, operating manuals) and consistent practices.





VI. BOARD GOVERNANCE FRAMEWORK PROJECT - PHASE IV – IMPLEMENTATION and PHASE V

Based on the approved project charter, the initial project plan and effective BOT implementation mechanisms, the PIG recommends the BOT implement the Board Governance Framework elements via the following newly formed and executed PIGs:

- A. Development of L-Lahui level policies;
- B. Alignment and update of existing BOT By-Laws;
- C. Development of T-Trustee level policies;
- D. Development of C-CEO level policies; and
- E. Alignment and update of existing Board governance documents (e.g., Executive Policy Manual, BOT Operating Manual).

VII. MAHALO

Since its approval in January 2019, Trustee PIG members and staff, Administration and staff have worked diligently to collectively bring this report and recommendations to the BOT.

Permitted Interaction Group (PIG) Trustees: Trustees Machado (Chair), Lee (Vice Chair), R Lindsey (Resource Management Committee Vice Chair) and Waihee (Beneficiary, Advocacy and Empowerment Committee Chair)

PIG Trustees' Staff: Carol Hoomanawanui, Lopaka Baptiste, Dayna Pa, Laurene Kaluau-Kealoha, Zuri Aki, Lei-Ann Durant, Kama Hopkins, Kauai Wailehua, Crayn Akina, and Melissa Wennihan.

Administration: Kamana'opono Crabbe, Ka Pouhana (KP), Sylvia Hussey, Ka Pou Nui (KPN) and Project Manager; Albert Tiberi, Senior Legal Counsel; Rayna Gushiken, Interim Senior Legal Counsel; Everett Ohta, Counsel for Environmental Law, Native Rights and Legal Services; Momilani Lazo, Senior Executive Assistant to KP; Laura Kamalani-Paikai, Executive Assistant to KPN; Leona Castillo, Executive Assistant to KP; Jim McMahon, Advocacy Counsel; and Keala Nichols, Executive Assistant to Chief Advocate.



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APPENDIX A – PERMITTED INTERACTION GROUP REFERENCE LIST

- A. Governance Framework
- B. Statutory References to OHA in federal and state law and county ordinances
- C. Governance Structure
- D. Statutory References Handout
- E. Core Values
- F. Principles for Good Governance and Ethical Practice
- G. Analysis of Advocacy Platform Matters
- H. Analysis of Board Actions 2014-2018
- I. Analysis of Governance Framework
- J. Analysis of Governance Framework: Maori
- K. The “Sunshine Law” HRS Chapter 92
- L. Fiduciary and Statutory Duties
- M. Quick Review: Who Board Members Can Talk To and When (Part 1) – revised July 2018
- N. Quick Review: Who Board Members Can Talk To and When (Part 2) – revised May 8, 2014
- O. Quick Review: Who Board Members Can Talk To and When (Part 3) – revised August 8, 2013
- P. Agenda Guidance for Sunshine Law Boards
- Q. Open Meetings Guide to “The Sunshine Law” for State and County Boards
- R. SPIRE OHA BOT Policy Workshop Update
- S. Board of Trustees By-Laws
- T. Board of Trustees Executive Policy Manual
- U. Board of Trustees Operations Manual
- V. United Nations Declaration on the Rights of Indigenous Peoples
- W. Tribal and Alaska Native Governance Models
- X. Tribal Nations and the United States, An Introduction 2017
- Y. Policies
 - 1. NHTF Investment Policy
 - 2. NHTF Spending Policy
 - 3. KM Policy
 - 4. Real Estate Vision Mission and Strategy Policy
 - 5. Risk Management Policy

Office of Hawaiian Affairs
Board of Trustee Meeting
March 28, 2019
10:00 am

V. Executive Session[‡]

A. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding the State Auditor's request for the status of implementation of the audit recommendations in Report No. 18-03. Pursuant to HRS §92-5(a)(4).

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