

**State of Hawai'i
Office of Hawaiian Affairs
560 N. Nimitz Hwy., Suite 200
Honolulu, HI 96817**

**Minutes of the Office of Hawaiian Affairs Board of Trustees Meeting
Thursday, July 9, 2015, 12:30 pm**

I. CALL TO ORDER

Chair Robert K. Lindsey, Jr. called the meeting of the Office of Hawaiian Affairs Board of Trustees to order at 12:32 pm. Those present were as follows:

Attendance

Trustee Robert K. Lindsey, Jr., Chair	Trustee S. Haunani Apoliona (departed 1:45 pm)
Trustee Dan Ahuna, Vice Chair	Trustee Carmen Hulu Lindsey
Trustee Lei Ahu Isa	Trustee Colette Machado
Trustee Rowena Akana (arrived 12:37 pm)	Trustee John Waihe'e IV (arrived 12:36 pm)

Excused

Trustee Peter Apo

Staff Present

Dr. Kamana'opono Crabbe, Ka Pouhana/CEO	Liana Pang
Robert G. Klein, Board Counsel	Davis Price
Harold Nedd, Chief of Staff	Ernest Kimoto
Capsun M. Poe, Board Secretary	Momilani Lazo
Jeremy Kama Hopkins	Sterling Wong
Kauikeaolani Wailehua	Jocelyn Doane
Lehua Itokazu	Wayne Tanaka
U'i Tanigawa	Derek Kauano
Claudine Calpito	Joseph Lewis
Louise Yee Hoy	Jeannin Jeremiah
Reynold Freitas	Kamaile Maldonado
Lady Garrett	

Others Present

Kealii Makekau
Kevin Chang

Walter Ritte

II. APPROVAL OF MINUTES

Motion

At 12:34 pm, Trustee Hulu Lindsey moved, seconded by Trustee Ahuna, to approve the minutes of June 17, 2015; June 18, 2015; and June 25, 2015. The motion passed via voice vote.

III. COMMUNITY CONCERNS

Mr. Kealii Makekau addressed the Board to share that he was the only beneficiary who attended the ARM meeting yesterday. He thinks there should be an ad hoc committee to look into medical marijuana dispensaries as a way to generate funds for OHA.

Mr. Kevin Chang addressed the Board to share that the Hā'ena Community-Based Subsistence Fishing Area rules are sitting on the Governor's desk and have been there for at least seven months. After all the rule-making process of ten years has been completed, the community is being asked to go through more meetings. He believes if you ask the Hawaiian community to meet a certain objective and have them go through the process, only to add more to the process when they are finished, it does not give much assurance. He thanked the Board for its resolution in support of the rules.

Trustee Machado noted that if the Governor does not sign off on something like this, she thinks it is a political approach that may be getting in the way. She wondered if this is an issue of subsistence versus commercial fishing interests.

Ms. Jocelyn Doane added that OHA staff have been communicating with the Governor's staff and DLNR staff. She also reported that the DLNR Deputy communicated that they expect the rules to be signed. She also stated that a follow-up from the Chair's office could be helpful and that the Senate President is aware of the issue.

Mr. Walter Ritte addressed the Board to share that he attended the hearings on Hā'ena's CBSFA proposed rules. One thing he noticed was that testifiers did not testify individually, but rather as families, which he believes is more in line with tradition. Regarding nation-building, he has been through several OHA meetings recently, and would hate to see all of that effort thrown out the window. He encouraged the Trustees to not go so fast that it would leave some people behind. He was concerned with Trustee Apo's recent Civil Beat article that implied the train has left the station. He believes that one option left is to derail the train if it does not allow for everyone to get on the train together, like was intended with Kamau A Ea. The independents have been pushing for equal treatment. He believes the independents would like to be able to get their viewpoint across and would need funding assistance to do that.

Trustee Ahu Isa stated that she hears a lot of questioning is being going on in the community about Na'i Aupuni. She stated that it is hard to field questions, many of which are left unanswered, if we are supposed to defer to Na'i Aupuni.

Dr. Crabbe responded that with the approval of the Board, it was agreed that OHA would leave it to Na'i Aupuni to organize and implement the nation-building. Mr. Derek Kauanoe responded that if Trustees receive questions, they can refer inquiries to Governance staff.

Trustee Apoliona noted that the discussion can be confusing. She thinks what Mr. Ritte is talking about is Hawaiian deciding how we are going to shape this government and governance. As she understands it, Na'i Aupuni is supposed to get the building blocks in place to move the process forward. The key is to get the people's participation. The discussion also needs to include what happens to non-Hawaiians. Native Hawaiians, as a lāhui, have the opportunity to take steps forward. This struggle is about the legal and political standing of the lāhui Hawai'i, which is a very complicated process. Control needs to be political, economic, cultural, and more.

Trustee Machado emphasized that as part of Kamau A Ea, there were several strong voices who felt they could not be heard because they do not want to sign up with Kana'iolowalu.

Mr. Kauanoe clarified that Governance sees this as a compartmentalized process. They distinguish between nation-building, which is an internal process, from recognition, which is an external process.

After they deal with nation-building, then they can determine what external processes to pursue. These are just basic building blocks on how to organize.

Mr. Ritte responded that the statement does not make sense and that it flies in the face of Trustee Apo's article. OHA staff is saying everything will come later, but Trustee Apo is saying that people need to get on the train now. Mr. Kauanoë clarified that the discussions do need to take place, not necessarily later. Mr. Ritte stated this is why the independents feel they are being left out of the process.

Trustee Apoliona believes that every Hawaiian is entitled to have their own opinion on nation-building. She believes Trustee Apo's article represents one view. She believes the key is for all groups who care about the result get into the process. Right now, we are not determining the outcome, just the process, and it is the aha that will address the process. Mr. Ritte responded that if things continue like this, it will lead to a war if there is no equal treatment for the independents.

Trustee Hulu Lindsey believes the next step for Na'i Aupuni is to figure out a way to be inclusive of all of our people. If it does not happen, she believes Mr. Ritte is correct in that there will be a war.

Trustee Ahuna asked if in the process of Kana'iowalu, if people do not get involved, will they be left behind. Mr. Kauanoë noted that the convention can take steps to include those that did not sign up. Trustee Ahuna also distributed a printed copy of an email he wrote regarding Mauna Kea and asked that it be included in the record.

IV. UNFINISHED BUSINESS

Chair's Updates on Board Activities

Chair Lindsey reported that next week's BOT meeting will be on Lāna'i.

CEO's Update on Ho'oulu Lāhui Aloha and OHA Activities

Dr. Crabbe reported that the BLNR will have a hearing tomorrow about Mauna Kea. He called on Mr. Sterling Wong and Mr. Wayne Tanaka to present on the emergency rules. Mr. Wong reported the following information about OHA staff review and comments regarding BLNR Actions for Mauna Kea:

- Recent Events
 - June 24: 700 protectors stop TMT construction
 - 12 people arrested
 - Build ahu, rocks placed on road
 - June 29: UH closes Mauna Kea summit road beginning at Hale Pōhaku; Hale Pōhaku closed
 - July 7: DLNR notifies commercial operator of potential fines for porta-potties on Mauna
 - July 7: DLNR/AG announce emergency rules
- Proposed Emergency Rules
 - Establishes a "restricted area" encompassing all lands within 1 mile of the summit access road
 - No backpacks, blankets, tarps, tents at all times
 - Closed between 8 pm and 5 am to the public
 - Except vehicles transiting access road

- Existing penalties:
 - \$2,500 - \$10,000 civil fines
 - Petty misdemeanor criminal liability
 - \$500 - \$2,000 criminal fines
- OHA Testimony in Opposition
 - Issues re: proper use of emergency rulemaking
 - Lack of express/written justification why rule is required less 30 days' notice of hearing
 - Lack of specific/credible evidence of imminent peril to public health, public safety or natural resources
 - Lack of connection between the prohibited conduct and the claimed threats of imminent peril
 - Lack of statutory authority for rules
 - Using game management/hunting laws for public safety and natural resources unrelated to hunting or wildlife management
 - Lack of consideration for cultural impacts
 - Lack of Ka Pa'akai analysis
 - First Amendment concerns
 - Courts highly scrutinize regulations specifically targeting political speech
 - Technical errors impacting public review
- Separate BLNR Submittal
 - Separate item (C-1) to delegate BLNR authority to chair to close hunting areas for public safety and natural resources for six months
 - No sunshine law; no input from public
 - Traditional and customary rights issues
 - Subsistence hunting issues

Mr. Wong observed that the group has been on the mountain for the past 100 days and that star gazing was previously permitted at night, but now with the special area, they will be forced further away. He believes this action targets protectors, but affects many.

Trustee Ahuna thought it was interesting that emergency rules are now under consideration. He asked if there were rules previously. Mr. Wong responded that it is a jurisdictional mess on the mountain. UH has explicit rulemaking authority, but has not created any rules. Mr. Wong also noted it was curious that the rules are only being applied at night when most of the traffic to Mauna Kea occurs during the day.

Mr. Tanaka reported that the emergency rules are so replete with issues that it is likely that legal challenges will result, which will take additional DLNR resources to defend.

Trustee Machado asked what kind of legal strategies we can pursue. Ms. Doane responded that NHLC has identified several potential clients who will attend the hearing. If the rules are approved, the response would be to file in Circuit Court, not a contested case hearing. Her hope is that it will be apparent that the draft has so many issues, that the BLNR will not approve the rules.

Dr. Crabbe stated that Administration does anticipate that this will not be the only set of rules proposed. He hopes to schedule a workshop in the future to go over the history of management and process that leads up to the master lease held by UH.

Trustee Ahuna asked if the Board will take a stand on this issue. Chair Lindsey stated that Administration is acting within its authority to submit testimony in opposition.

V. NEW BUSINESS

Approval of the Ad Hoc Committee on Travel

Motion

At 1:45 pm, Trustee Machado moved, seconded by Trustee Waihe'e, to approve the Chair's appointment of the Ad Hoc Committee on Travel, with Trustee Dan Ahuna as Chair and Trustee Rowena Akana, Dr. Kamana'opono Crabbe, Ms. Hawley Iona, and Mr. Rodney Lee as members.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE ROWENA AKANA			X			
TRUSTEE PETER APO						X
TRUSTEE HAUNANI APOLIONA			X			
TRUSTEE HULU LINDSEY			X			
TRUSTEE COLETTE MACHADO	1		X			
TRUSTEE JOHN WAIHE'E		2	X			
CHAIR ROBERT LINDSEY			X			
TOTAL VOTE COUNT			8	0	0	1

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

Motion passed with eight (8) YES votes, no (0) NO votes, no (0) abstentions, and one (1) excused.

Approval of Board of Trustees Limited Meeting (Site Visit) to Kaho'olawe

Motion

At 1:48 pm, Trustee Hulu Lindsey moved, seconded by Trustee Machado, to approve scheduling a Limited Meeting of the Board to Kaho'olawe on August 18-19, 2015.

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE ROWENA AKANA			X			
TRUSTEE PETER APO						X

TRUSTEE HAUNANI APOLIONA						X
TRUSTEE HULU LINDSEY	1		X			
TRUSTEE COLETTE MACHADO		2	X			
TRUSTEE JOHN WAIHE'E			X			
CHAIR ROBERT LINDSEY			X			
TOTAL VOTE COUNT			7	0	0	2
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passed with seven (7) YES votes, no (0) NO votes, no (0) abstentions, and two (2) excused.						

Trustee Hulu Lindsey noted that in order to comply with Office of Information Practices regulations, the Board needed this action.

VI. EXECUTIVE SESSION

At 1:50 pm, Trustee Waihe'e moved, seconded by Trustee Hulu Lindsey, that the Board go into Executive Session to consider the following:

- A. Approval of Executive Session Minutes
- B. Consultation with OHA Board Counsel Robert G. Klein, Esq. re questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding *Takai v. OHA, Civil No. 12-1-2074-07 (ECN)*. Pursuant to HRS 92-5(a)(4).
- C. Consultation with OHA Consultant Jeffrey Lau, Esq. re questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities regarding matters relating to geothermal investment. Pursuant to HRS 92-5(a)(4).

TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
TRUSTEE LEI AHU ISA			X			
TRUSTEE DAN AHUNA			X			
TRUSTEE ROWENA AKANA			X			
TRUSTEE PETER APO						X
TRUSTEE HAUNANI APOLIONA						X
TRUSTEE HULU LINDSEY		2	X			
TRUSTEE COLETTE MACHADO			X			
TRUSTEE JOHN WAIHE'E	1		X			
CHAIR ROBERT LINDSEY			X			
TOTAL VOTE COUNT			7	0	0	2
MOTION: [] UNANIMOUS [X] PASSED [] DEFERRED [] FAILED						
Motion passed with seven (7) YES votes, no (0) NO votes, no (0) abstentions, and two (2) excused.						

The Board went into Executive Session at 1:52 pm and exited Executive Session at 2:36 pm.

VII. BENEFICIARY COMMENTS

There were no Beneficiary Comments.

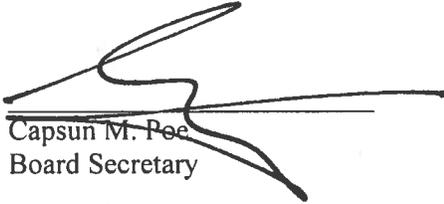
VIII. ANNOUNCEMENTS

Chair Lindsey announced the next Board meeting will be on Wednesday, July 15, 2015, on Lāna‘i.

IX. ADJOURNMENT

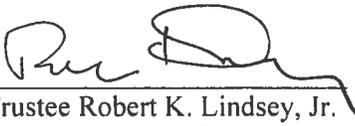
Having no further business, Chair Lindsey adjourned the meeting at 2:38 pm.

Respectfully Submitted,



Capsun M. Poe
Board Secretary

Approved by the Board of Trustees on July 15, 2015:



Trustee Robert K. Lindsey, Jr.
Chair, Board of Trustees