

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

**Minutes of the Office of Hawaiian Affairs Board of Trustees Meeting
Thursday, October 22, 2015, 10:00 am**

I. CALL TO ORDER

Chair Robert K. Lindsey, Jr. called the Office of Hawaiian Affairs Board of Trustees Meeting to order at 10:04 am. Those present were as follows:

Attendance

Trustee Robert K. Lindsey, Jr., Chair	Trustee S. Haunani Apoliona
Trustee Dan Ahuna, Vice Chair	Trustee Carmen Hulu Lindsey (arrived 11:07 am)
Trustee Lei Ahu Isa (arrived 10:05 am)	Trustee Colette Machado
Trustee Rowena Akana (departed 11:26 am)	Trustee John Waihe'e IV
Trustee Peter Apo	

Excused

-None-

Staff Present

Dr. Kamana'opono Crabbe, CEO	Melissa Wennihan
Robert G. Klein, Board Counsel	Kanani Souza
Harold Nedd, Chief of Staff	Bethann Ahsing
Capsun M. Poe, Board Secretary	Lady Garrett
Jeremy Kama Hopkins	Alvin Akee
Kauikeaolani Wailehua	Liana Pang
Lehua Itokazu	Lisa Victor
U'i Tanigawa	John Rosa
Claudine Calpito	Kehau Abad
Davis Price	Ryan Gonzalez
Reynold Freitas	

Others Present

II. APPROVAL OF MINUTES

Chair Lindsey announced the draft minutes of August 27, 2015; September 9, 2015 (Site Visit); September 9, 2015 (Community Meeting); and September 10, 2015 have been distributed and asked if there were any changes.

At 10:05 am, Trustee Ahuna moved, seconded by Trustee Machado, to approve the minutes of August 27, 2015; September 9, 2015 (Site Visit); September 9, 2015 (Community Meeting); and September 10, 2015.

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

III. COMMUNITY CONCERNS

Trustee Akana asked to speak under Community Concerns. She asked for more information on a Kamehameha cape that is being brought to Hawai'i. Dr. Crabbe responded that this is Kalaniopu'u's cape that was given to Captain Cook, but that the agreement is not finalized and OHA is one of three parties in the proposed agreement.

IV. UNFINISHED BUSINESS

A. Chair's Updates on Board Activities

Chair Lindsey had no updates.

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

Dr. Crabbe announced the Employee and Manager of the 1st Quarter (January-March 2015):

- Lauren Morawski of Compliance, Employee of the 1st Quarter
Ms. Morawski was not present and Kai Markell accepted on her behalf and shared some of her personal and professional history, which has included expertise in cultural resource management.
- Keith Yabusaki, Manager of the 1st Quarter
Dr. Yabusaki was not present and Hawley Iona accepted on his behalf. She shared that he was gracious and humbled by the recognition, but wanted to acknowledge the Grants staff who help him and OHA every day.

Dr. Crabbe announced the Employee and Manager of the 2nd Quarter (April-June 2015):

- Farah Straub, Facilities Coordinator, Employee of the 2nd Quarter
Ms. Straub expressed her thanks for the recognition and credited the entire team for her success.
- Jim Patterson, Program Improvement Manager, Manager of the 2nd Quarter
Mr. Patterson shared that he has been at OHA since 2008 and has seen many personal changes in his life and could not do it without the support of his coworkers.

V. NEW BUSINESS

A. Approval of the Ad Hoc Committee on Trustees' Responsibilities II

In accordance with Article VI, Section A.2, and Article VIII, Section H, of the Office of Hawaiian Affairs Board of Trustees Bylaws, Chair Lindsey appointed the Ad Hoc Committee on Trustees' Responsibilities II and submitted the following appointments for approval, to take effect immediately upon approval by the Board of Trustees:

- Trustee Peter Apo, Chair, Ad Hoc Committee on Trustees' Responsibilities
- Mr. Albert Tiberi, Vice Chair, Ad Hoc Committee on Trustees' Responsibilities
- Mr. Randall Roth, Member, Ad Hoc Committee on Trustees' Responsibilities

The Ad Hoc Committee will have purview over consideration of options available to the Board when an individual Trustee breaches fiduciary responsibilities or commits other acts that may be prohibited in the OHA Bylaws and/or Executive Policy Manual. It will deliberate and report its recommendation(s) on which option(s) to pursue and terminate when it issues its final report to the Board or April 15, 2016, whichever occurs first.

Motion

At 10:30 am, Trustee Ahuna moved, seconded by Trustee Apoliona, to approve the Chair's appointment of the Ad Hoc Committee on Trustees' Responsibilities II, with Trustee Peter Apo as Chair, Mr. Albert Tiberi as Vice Chair, and Mr. Randall Roth as Member.

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

Chair Lindsey read the following statement:

- This agenda item is a direct response to beneficiary concerns over the years.
- It helps ensure that we are all appropriately held accountable for our actions.
- We cannot ignore inappropriate or unproductive board behavior.

- The work of the Ad Hoc Committee on Trustees' Responsibilities II would address lapses in our responsibility to always act for the good of the organization, rather than for the benefit of ourselves.
- These lapses could include making reckless statements in the media, taking irresponsible actions, and being too lax with our oversight of the administration.
- This committee would be the tool to think through and recommend publicly censuring for infractions related to failing to own up to our responsibilities as OHA trustees.

Trustee Akana noted she would abstain because she does not think this goes far enough. She believes the Ad Hoc Committee will only be looking at policies relating to Trustees, but it should include Administration. Chair Lindsey responded that Administration does not hold the same fiduciary duty as Trustees.

VI. EXECUTIVE SESSION

Motion

At 10:32 am, Trustee Apoliona moved, seconded by Trustee Apo, to go into Executive Session to consider the following:

- A. Approval of Executive Session Minutes
 - 1) February 26, 2015
 - 2) March 12, 2015
 - 3) May 7, 2015
 - 4) May 21, 2015
 - 5) July 9, 2015
 - 6) July 23, 2015
 - 7) July 30, 2015
 - 8) August 27, 2015
- B. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding Mauna Kea. *Pursuant to HRS 92-5(a)(4).*
- C. Consultation with Paul Alston, Esq. re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding *Akana v. Machado et al., Civil No. ICC13-1-002485. Pursuant to HRS 92-5(a)(4).*

The motion passed via voice vote. The Board went into Executive Session at 10:32 am and exited Executive Session at 11:12 am.

Recess

Chair Lindsey called a recess at 11:12 am and reconvened the meeting at 11:18 am.

VII. BENEFICIARY COMMENTS

Trustee Akana made the following Beneficiary Comment:

Mr. Chairman, the reason I wanted to address the Board is that when I filed the lawsuit against the Board, it was over Sunshine Law. And Lei Ahu Isa was not on the Board, Dan Ahuna was not on the Board, Hulu was a new member. And that was because of frustration because of many years of agendas being filed and actions being taken in Executive Session that was not posted.

And when I went to an attorney to talk about this, we tried for one year with the previous Chair to come to the table to talk about bringing this matter before the Board. And that was not possible. Every time we tried to have mediation we were told that that was not possible. So after one year, we filed this lawsuit, but it was over Sunshine Law, not anything else.

Then, the Board filed a countersuit on me saying that I disclosed confidential information. That confidential information was the letter from Sheryl Nicholson that was part of a complaint that I filed with the Ethics Commission and I did not realize that it was part of that Ethics Commission complaint that I filed against Trustee Apoliona for voting when I felt that she was in conflict. Anyway, after that countersuit was filed, my emails were all reviewed and hundreds of them, and this one letter amongst this Ethics complaint was found. And this one letter from Sheryl Nicholson, who simply said that she had reviewed the contracts or whatever it was about this building, was in there. And I have to take the responsibility because it was released by my Aide.

When someone who was doing a television show wanted to talk about the Ethics complaint, I said to my Aide, go ahead and send the Ethics complaint, and he did. And this letter was part of it, so I have to take the responsibility, because I told him it was okay to do it. So based on that one letter, I was sued and that excuse was used to say that I compromised confidential information. In my mind, I did not know that that was confidential information because as a public office, I felt that we were always told that once an action is taken, and it becomes public, it's now public. That's how I always view things. Once an action is taken and it is public, we're a public agency, and it's public record, so everything we do is public record. So, I could not understand how this one letter could be held as a confidential document still. I still don't understand it.

So, I wanted to explain to the Board how trivial this has all become. Not only is it costing us an awful lot of money, I want to also point out that when my lawsuit was filed, it was up to this office to file with our insurance company, so that the insurance could have covered the claim, but no claim was filed with our insurance company. Consequently, hundreds of thousands of dollars I understand, of trust monies have been spent to continue this lawsuit. And then after the countersuit, another motion is filed in the court to say I had dirty hands or whatever. And that was, thank God, thrown out. So as long as this continues without insurance involved, this is going to cost beneficiaries lots of money. I just want to bring this to the Board's attention: that this has gone on long enough over something very silly. Very silly. And when beneficiaries learn that we're so irresponsible that we can keep going with something so stupid, I don't know what else to say.

So I'm just saying this all to you because some of you didn't understand from the very beginning how this all happened.

Thank you for the time.

Chair Lindsey thanked Trustee Akana for her comments.

(Note: The Hawai'i State Ethics Commission ultimately concluded in the complaint referenced above that Trustee Apoliona had no conflict of interest in her voting.)

VI. EXECUTIVE SESSION

Motion

At 11:25 am, Trustee Apoliona moved, seconded by Trustee Apo, to go into Executive Session to consider the following:

- A. Approval of Executive Session Minutes
 - 1) February 26, 2015
 - 2) March 12, 2015
 - 3) May 7, 2015
 - 4) May 21, 2015
 - 5) July 9, 2015
 - 6) July 23, 2015
 - 7) July 30, 2015
 - 8) August 27, 2015
- B. Consultation with Board Counsel Robert G. Klein, Esq. re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding Mauna Kea. *Pursuant to HRS 92-5(a)(4).*
- C. Consultation with Paul Alston, Esq. re: questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities regarding *Akana v. Machado et al., Civil No. ICC13-1-002485. Pursuant to HRS 92-5(a)(4).*

The motion passed via voice vote. The Board went into Executive Session at 11:26 am and exited Executive Session at 12:05 pm.

VII. BENEFICIARY COMMENTS

Mr. Klein shared updates about the Akina lawsuit: that three live witnesses showed up at the Akina lawsuit, including Dr. Crabbe and Clyde Namuo. He stated Dr. Crabbe was well prepared and that mainland counsel showed up for the plaintiffs. The key in the case is what he has maintained all along, that is that state action is different. He reported that the plaintiffs also had some First Amendment claims. Two plaintiffs claimed they were forced to participate; two others claimed they were transferred from OHA to NHRC. On Friday, they expect a determination, which concerns an injunction being considered about the Na'i Aupuni election.

VII. ANNOUNCEMENTS

Chair Lindsey announced the next BOT meeting will be on Thursday, November 5, 2015 at 10:00 am.

VIII. ADJOURNMENT

Having no further business, Chair Lindsey adjourned the meeting at 12:10 pm.

Respectfully Submitted,



Capsun M. Poe
Board Secretary

Approved by the Board of Trustees on December 3, 2015:



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