

HAWAI‘I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

Friday, February 28, 2020

10:00 a.m. to 3:01 p.m.

Hawai‘i County Building

25 Aupuni Street

Puna Conference Room and

County Council Chambers

Hilo, Hawai‘i 96720

Members and Staff Present:

Rick Robinson, Chair

David Wiseman, Vice Chair

Nan Sumner-Mack, Member

Lawrence L. Heintz, Member

J Yoshimoto, Deputy Corporation Counsel

Maria Pagala, Secretary

1. CALL TO ORDER (10:00 a.m.)

Mr. Robinson: This is for the February 28th meeting of the Board of Ethics for County of Hawai‘i. We’ve been offered the conference room or the room that the County Council uses that we usually use. We had not been able to use it. It just became available yesterday. So if I can have a motion to adjourn and then reconvene.

Ms. Sumner-Mack: I so move.

Mr. Robinson: Is there a second?

Mr. Heintz: Second. I’ll second.

Mr. Robinson: Moved and seconded. Okay all those in favor say aye.

Mr. Yoshimoto: Okay so Chairman. So to make clear for the record that we’re moving the meeting across the hall, approximately 20 feet. Notice will be posted on this door, staff will be present for half an hour to notify the public that anyone that comes here will be directed across the hall. So that safeguards are in place to make sure the public is aware.

Mr. Robinson: Okay, we’ll be moving 20 feet across the hall. There will be notices posted here so that anyone who will be available... I think there’s gonna be a person here to redirect anyone that may be confused. So all those in favor say aye.

Mr. Wiseman And this is called beyond transparency.

10:08 a.m. The Board moved the meeting from the Puna Conference Room into Council Chambers.

Mr. Robinson: Reconvene the meeting of the Board of Ethics. I want to thank everyone for cooperating. I don't think that would have been a good conducive conference room for us to be in. So we're just fortunate that this opened up at the last moment. The next item on our agenda. We've had our call and order there and reconvene here.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:08 a.m.)

Mr. Robinson: The next item on our agenda is statements from the public on agenda items. I have quite a few here and Maria has a phone with a three minute timer. We'd like to limit testimonies to three minutes and we ask you to acknowledge and try to cooperate as far as when her phone rings on the limitation of the time. Also I want be clear that the item on our agenda is not about Mauna Kea and the Thirty Meter Telescope. It's about the application...the fair application of the rule of law for all citizens of the State of Hawai'i. So we're not having this in regards to Thirty Meter Telescope or anything else. It's just about the fair application of the rule of law. So in your testimonies, I'd like to ask that you stick to that and address that issue. So if I could, I'll start with the first person who... So with this I'll start with Hanalei Fergerstrom. I understand he has another appointment so I have a Hanalei Fergerstrom. And Hanalei, if you could and all other people who'd like to testify come forward and have a seat at this table. And if you could, mash that button so that the red light pops on like that on microphone so that we can have it recorded...our minutes. Thank you. Alright.

Mr. Fergerstrom: Good morning gentleman...ma'am. I am Hanalei Fergerstrom, I am the spokesperson for Na Kupuna Moku O Keawe which is the kupuna organizations that has organizations at all six districts of Island of Hawai'i. I'm here to discuss agenda item 7 which is discussion regarding the drafting of a resolution to conduct an investigatory hearing as to why the rule of law is not being enforced on the Mauna Kea Access Road and review of related emails received from members of the public regarding Mauna Kea. A considerations for this discussion, I provided some definitions of Black's Law Dictionary, Sixth Edition. The rule of law as a legal principal of general application sanctioned by the recognition of

authorities. Authority is of course is a permission, a right to exercise power and to implement and enforce law, control over or jurisdiction. Jurisdiction. It is the authority by which courts and judicial officers must take cognizance of. It is the rule of law that before any manner of enforcement can be implemented, that jurisdiction must be established. The Mauna Kea Access Road is not under the jurisdiction of the County of Hawai'i nor the State of Hawai'i's Department of Transportation. Mauna Kea Access Road sits on lands that set aside by the Hawaiian Homes Commission Act of 1921. Answer to the question why is the rule of law not being enforced on Mauna Kea Access Road and the answer is...it's the County of Hawai'i, the State of Hawai'i lacks an authority to assert a jurisdiction on these lands that are in an inventory of Hawaiian Homes Commission Act of 1921. A question of ethics, the real question of ethics is how ethical... How is it ethical if the County of Hawai'i uses County tax dollars to enforce laws on lands that the State or the County has no jurisdiction on? Thank you very much.

Mr. Robinson: Thank you, Mr. Fergerstrom.

Mr. Fergerstrom: I'm gonna submit this.

Mr. Robinson: Yes please. Thank you. You know before we start the next person for testimony. I forgot to introduce my fellow Board Members. So if I could start on my left.

Mr. Heintz: Larry Heintz.

Mr. Wiseman David Wiseman.

Ms. Sumner-Mack: Nan Sumner-Mack.

Mr. Robinson: And myself Rick Robinson as the Chair. The next person is Piikea Stafford? Piikea Stafford? Did somebody sign you up Piikea? No need? Okay. The next is Jody Payao. Okay. No need. The next person is Noe Kaawaloa. No need. Okay. Thank you. The next person is Julien Lozi. Good morning.

Mr. Lozi: Good morning. So I'm Julian Lozi. I work at the Subaru Telescope on the mountain but I'm only representing my self today. I'm not from Hawai'i. I'm from France. I'm not even a U.S. citizen. I'm here on a Visa but I still pay my taxes and I have to follow some rules. Being here I have to follow the State laws and U.S. Laws and I hope it applies to everyone else. And I'm going to the mountain every week. I've been here for five years

now. I've been on the mountain more than 500 times. I follow the law when I go on the mountain. I was so respect the mountain very much...so very sacred place for everyone. I just wish that the State would help in this matter so we are not regarded as bad people when we work on the mountain. Protestors say they're not against the science but when we hear kids that want to go in astronomy and they are not gonna do that anymore because their families don't want them to do astronomy. This sounds terrible for me. Anyway, this is not about the law but... Yeah...the situation has been really hurtful to pass. How many months, I don't even count anymore. And I wish the law was followed so that the project that's been ten years applying for permits and going through a lot of steps to get approval from the public and from the State could actually build here and not anywhere else where it wouldn't benefit anyone in Hawai'i. Anyway, that's my testimony.

Mr. Robinson: Thank you.

Mr. Wiseman: Mr. Chair. Sir.

Mr. Robinson: Just a second. Mr. Lozi.

Mr. Lozi: Yes.

Mr. Wiseman: What is your position up there?

Mr. Lozi I'm an astronomer and engineer. So I have a dual status where I actually building an instrument for the telescope at Subaru. And so I am fortunate to actually look at the stars but also do a lot of engineering things on the telescope.

Mr. Wiseman: One question in your expertise. Last night was what they called kissing the moon, Venus, the brightest time of the year close. Does it happen again?

Mr. Lozi Yeah, usually...astronomical events happen regularly. I'm not sure about...I didn't hear about this but. Venus, you know he's on a...around the sun and just comes back the same place once in a while so it gets bright and dimmer and brighter.

Ms. Sumner-Mack: I have a quick question. Subaru is operating mostly by....

Mr. Lozi: By Japan.

Ms. Sumner-Mack: Japan.

Mr. Lozi: So Subaru is only operated by Japan right now. And yeah, most of the...a lot of the employees are from Japan but there's also a lot of American, Hawaiians working at the telescope and also people like me. French people. From India. From all over the place. It's really...

Ms. Sumner-Mack: Merci beaucoup.

Mr. Lozi: A lot of international...

Mr. Wiseman: Do you drive a Subaru?

Mr. Lozi: I'm sorry?

Mr. Wiseman: Do you drive a Subaru?

Mr. Lozi: I don't.

Mr. Robinson: Okay, well mahalo and merci. Carolyn Pellett.

Ms. Pellett: My name is Carolyn Pellett. I'm representing myself. I live in Waikoloa. I've been in Hawai'i Island for over 20 years. And although I want to speak to number 7 later, right now I am speaking to unfinished business part b. Continued hearing regarding request for an informal advisory opinion from a former County officer or employee to determine blah, blah, blah.

Mr. Robinson: Right.

Ms. Pellett: And I don't know if that's because they sign do not disclose things or what that's about.

Mr. Robinson: That's a closed hearing. They had the...

Ms. Pellett: I know it's a closed hearing, but what is it in regards to? Is that someone who has gone against the State and the Board of Ethics and revealed some information? Or what is it about?

Mr. Yoshimoto: Just for information purposes. The court allows for closed hearings when privacy interests are involved. So that's why it's a closed hearing.

Ms. Pellett: No. I understand that but I think that the public should be entitled to know exactly what the hearing is about. You know. Who you're making come up. If it's someone that has spoken injustice.

Then fine, but I don't know who it is. So anyway. I was concerned about if it's because they have do not disclose things on their contract. So it's a post employee in section b...okay section a...we don't even know what this is. Continued review of a petition alleging that that a County officer...who is that? And the Hawai'i County Board of Ethics is in violation of sections 2-83 (a)(b)(c) fair treatment. Okay. We don't know what that's about but I have been to my dictionary and I am here in general to discuss ethics, justice...things that you people are representing. So, ethical is moral, noble, principle, righteous, rightminded, virtuous upstanding. Code of Ethics is called the science of ethics. It has to do with moral character and it's been called the ideal of human nature. A group of principles or moral values. It's also a complex of ideas, beliefs, or standards that characterizes or pervades a group community or people.

Mr. Robinson: Is that...?

Ms. Pellett: The people I am concerned about are the people that even though this is not a TMT hearing, I am concerned about the native Hawaiians. And they have a lot of supporters that are not native Hawaiians. I'm not a native Hawaiian. But my thing has always been justice and equality and anti-racism. And I don't see how this panel with no representation from the other side of any of these issues. I mean we don't know what the first two issues are. But there's no representation for the...I don't know...they'd be the defense probably cause you are more prosecuting in sections under 5. Unfinished business? Are you...you're questioning these people right?

Mr. Robinson: I'm not following...following you.

Ms. Sumner-Mack: Could I say just one thing? I believe that these...the confidentiality is basically personnel issues mainly. And it's to protect the employees or managers involved. They had the right to have it open if they wish. But it's to protect their privacy if it's issues about compensation or anything. That's my impression.

Ms. Pellett: We're supposed to know what the issues are though because I have a page of...

Ms. Sumner-Mack: We have unfinished business...unfinished business. That's the closed hearing. That's the executive session and so they are matters of pay and so on that we have to be involved. But it's not...

Ms. Pellett: Are they matters of ethics in terms of the access road or in terms of...

Ms. Sumner-Mack: No, that's not involved at all. These are separate, mostly personnel issues as far as I know.

Mr. Robinson: Correct.

Ms. Pellett: And I just. I do want to read a thing because the access road, that's number 7, right? Whether...and I don't agree that anyone ethically determine that issue that is not...

Ms. Sumner-Mack: Issue 7 pertains to the access road, yes.

Mr. Robinson: Actually, item 7...

Ms. Pellett: Can I discuss that later?

Mr. Robinson: Item... I think your time is up. But item 7...item 7 is not...it's about the application of the rule of law.

Ms. Pellett: I know and I don't believe the rule of law is justice, ethical or unbiased.

Mr. Robinson: Okay.

Mr. Wiseman: Mr. Chair.

Mr. Robinson: Sure.

Mr. Wiseman: Ma'am. With respect to your...on the agenda...the items of 5. a., b., and c. These are of public record. Those are petitions. We can't provide the whole petition on the agenda notice, so you're welcome to go and do your own research and find the petitions. These are not confidential. These are not secret. These are public hearings and those petitions represent that. Furthermore, we do not prosecute. We are not prosecutor. We are Board of Ethics, we're all pro bono, public servants here.

Ms. Pellett: There's a question about persecute. Okay so let me just speak about c. then.

Mr. Robinson: Okay.

Ms. Pellett: Which I assume is Judge Roth, who is running for a Mayor now.

Mr. Robinson: Your time is up.

Ms. Pellett: Okay. Well. I don't think it's ethical to have him make any kind of a decision. I don't think it's ethical.

Mr. Robinson: Okay.

Mr. Wiseman: If I may Mr. Chairman.

Mr. Robinson: Yes.

Mr. Wiseman: The time for that is passed. We've had full public hearing and two different sessions. And the public notices were out there. If you had something to say about Mr. Roth, that was the time.

Ms. Pellett: Why is it on the agenda?

Mr. Wiseman: Because we're discussing perhaps a draft decision on it. But the evidence, the input is all finished.

Ms. Sumner-Mack: And open to the public.

Mr. Robinson: Yeah.

Ms. Sumner-Mack: On the record.

Ms. Pellett: Okay well on the record. I don't think...

Mr. Robinson: Thank you for your input. We appreciate it very much. Okay.

Mr. Yoshimoto: Now Mr. Chairman, so just to clarify for the record, members of the public can testify in each agenda item. And normally the protocol is three minutes per item. So, if as you go along if you specify which item you're talking about then we can keep track of things.

Mr. Robinson: Now we know.

Mr. Yoshimoto: Thank you.

Mr. Robinson: Okay, thank you. Jarrett Silva-Hanohano. Okay. Maxine. Is it Kahaulelio?

Ms. Kahaulelio: Don't pronounce it, I'll do it.

Mr. Robinson: Okay.

Ms. Kahalelio: Since you guys introduced yourselves to us. May I approach you and introduce myself?

Mr. Robinson: Absolutely.

Ms. Kahalelio: My name is Maxine Kahalelio. I wanna shake your guys' hand because I want you guys to know why I shaked your hand.

Mr. Robinson: Okay.

Ms. Sumner-Mack: I don't shake hands anymore.

Ms. Kahalelio: Oh come on. That's alright. Corona beer, it's not coronavirus.

Mr. Robinson: Oh that's a U, not an N. Okay.

Ms. Kahalelio: Hey, shake my hand. Okay. Now remember whose hand you guys wen shake.

Mr. Robinson: Okay.

Ms. Kahalelio: My last name is Kahalelio. The man who fell off the horse. Don't forget that.

Mr. Robinson: Kahau.

Ms. Kahalelio: Kaha'u. K.

Mr. Robinson: Lelio.

Ms. Kahalelio: I get three minute?

Mr. Robinson: Yes, ma'am.

Ms. Kahalelio: That's all?

Mr. Robinson: Alright.

Ms. Kahalelio: Here we go. Taking our rights. Why I shaked your hand is because on July 17th, I was one of the kupunas that got arrested on the access road of the Department of Hawaiian Home Lands. So now you know and you felt my hand as being an arrestee. So your rule of law, does not apply to me nor any Hawaiian on our homestead land. So whatever resolutions that you folks did not make, that you assume to make...feel my hand yeah. 38 of us got

arrested for desecration of our Mauna A Wakea. That's who I am. I'm a kupuna. That's who I am. So whether you folks make this so called rule or resolution, it does not apply to us. Like Hank said, it's an access road that belongs to us. I'm a lessee. I have Hawaiian Homes. I am on Hawaiian Homes and that road belongs to me, not any of you. It doesn't. We are not against science. We are not. I don't know why this whole war entangles that us Hawaiians are against science. We are not. We're against the desecration of our water that contains in Mauna A Wakea. That water feeds me who lives in Kamuela, Hawaii. That's what I am here for. So if you guys come up with some kind of resolution or whatever you may call it. Remember who shook your hand. One of the kupunas who got arrested on July 17th at 8:35 in the morning. And the sad part is we're still in court being treated like criminals which is unconstitutional. We always only had a citations. That's all we had. But we're treated like criminals. So remember whose hand you shook. Mahalo, anui loa kakou. My name again is Maxine Kahaulelio. Mahalo nui loa.

Mr. Robinson: Thank you. Jim Albertini.

Mr. Albertini: Aloha Board Members. I'm Jim Albertini of the group Malu Aina. For the record, I was one of the 38 elders arrested on July 17th on Mauna Kea Access Road. On charges of obstruction. I also was one of many arrested on the Mauna in 2015 on charges of obstruction. My case and many others were dismissed in 2016 for that 2015 arrest. I have filed a pro se motion for dismissal based on the defense of necessity. Which is to say that I obstructed the roadway of TMT construction equipment heading up the Mauna that was going to cause a greater harm than obstructing the roadway. The construction equipment would be desecrating Hawai'i's most sacred temple. Let me provide another analogy of the defense of necessity on the rule of law that is perhaps easier to understand. A house is on fire and a child is screaming for help within the burning building. A person breaks in the front door of the house and saves the life of the child but is arrested under the rule of law for breaking and entering and trespassing. Case dismissed for the defense of necessity. Breaking a door to prevent a greater harm, the death of a child. Let me say a few things more about the rule of law. In 2016, following our arrest, the Hawai'i Supreme Court ruled that the permit issued for TMT construction was granted improperly. It was issued before the contested hearing on the permit for construction was held. The court ruled that this was improper. Illegal. It was putting the cart before the horse. If we had not acted to obstruct that roadway, the greater permanent harm of continued desecration of the mountain would have been

done. History teaches us the horrible crimes that have been committed under...committed legally under the rule of law. To name a few. In Germany, the holocaust was legal. Hiding Jews was criminalized. In the U.S., slavery was legal. Freeing slaves was criminalized. In the U.S., segregation was legal. Protesting racism was criminalized. In Hawai'i, let me ask you this question. Was the 1893, U.S. overthrow of the Kingdom of Hawai'i legal? By what rule of law. The arrest of July 17th have not yet come to trial. In Hawai'i, it remains to be seen how the court will rule. We'll continue desecrating the sacred be declared legal. While acting to protect the sacred be criminalized. Meanwhile, there was a Hawaiian legal challenge over the State's illegal taking of a Hawaiian Home Lands for the building of Mauna Kea Access Road. Back in the 1960's. There was still a request pending for a contested case hearing on TMT wastewater.

Mr. Robinson: Is that time.

Ms. Pagala: Yes.

Mr. Robinson: Yeah, your times up.

Mr. Albertini: My question...I'll end with this.

Mr. Robinson: Please.

Mr. Albertini: Where has the Hawai'i County Board of Ethics been on these violations of the rule of law? It's time to stand for justice with the Hawaiian people to protect Mauna Kea. Mahalo.

Mr. Robinson: Thank you.

Mr. Wiseman: Mr. Chairman. So just one question. Is a date set on your motion hearing?

Mr. Albertini: Which are you referring to?

Mr. Wiseman: You said you filed a pro se motion.

Mr. Albertini: Well that was concerning the 2015 arrest...

Mr. Wiseman: Oh I see.

Mr. Albertini: Which dismissed the case. Based on the defense of necessity.

Mr. Wiseman: Not for this case?

Mr. Albertini: No. These cases are... We're still being put through the meat grinder. My trial is set for April 24th on the July 17th arrest.

Mr. Robinson: Next is Nawahine Kaho'opi'i. I hope I have this right. I have a hard time reading handwritings sometimes. And I'm usually corrected. Good morning.

Ms. Kaho'opi'i: Aloha. I'm also one of the kupuna that were arrested on July 17th. It seems like you have a few of us here today. Commenting on Item 7 on the agenda. Ethics are defined but a moral principles that govern a person's behavior or the conducting of activity. So in your review of Governor Ige and his administration's actions relating to Mauna Kea kia'i, I pose these questions to you and I urge you to search your conscience and render an honest and authentic response. First of all when repeating the narrative following the rule of law, I would like to understand what specific statute or ordinance you're basing your resolution on. When Governor Ige presented his budget proposals in December, he declined to say how much money he had set aside to defend TMT but acknowledged he tucked away money in the budget of various departments. And those amounts were huge. So is it ethical for the Governor to hide 80 million tax payer dollars in funding for TMT, a private corporation in the State operating budget. Is it ethical for the legislature to play sleight of hand games with the public by being complicit in hiding and then rejecting the \$80 million requested for TMT? And then appropriating \$15 million which was still five million more than Ige's original request. Is it ethical for Governor Ige to use his executive privilege to be the spokesperson for TMT exclusively? And his taxpayer funded trips to Japan? Is it ethical for the Governor to use his taxpayer funded social media accounts to promote TMT exclusively? Is it ethical for Governor Ige to deceive foreign dignitaries by leading them to believe the State is engaged in Ho'oponopono, reconciliation and private discussion with kia'i? When no such processes exist. Is it ethical for the Governor and his administration to be so disingenuous and so duplicitous? They legislated HCR 37, the reconciliation commission on February 10th. Lied about the disposition of the access road on February 14th. Traveled to Japan on February 15th to promote the development of TMT and to lie to the Japanese government about reconciliation with kia'i when no such things are included. We aren't included in any discussions, any ho'oponopono, or any reconciliation. All the while hiding the 80 million in TMT...for TMT and the State budget. Is it ethical for the Governor to take sides? Is it ethical for the Governor to employ the violence of systemic racism by launching a sustained

black propaganda campaign against kanaka maoli funded with taxpayer dollars that were strategically meant to demean, dismiss, criminalize and demonize us...who are also his citizens? Destroying our credibility as practitioners, by delegitimizing our cultural practices on the mauna. The PR spin is directly responsible for desensitizing law enforcement and the public to justify State sponsored destruction of not only our way of life but is also gone as far as to promote State sponsored violence against us personally and collectively. And in closing, I again, urge the commission to search your conscience and render an honest and authentic response to these things. Thank you.

Mr. Wiseman: Mr. Chair.

Mr. Robinson: Thank you. Yes, just a moment.

Mr. Wiseman: Just one point of information. The State of Hawai'i has a State Ethics Commission and they govern all State employees such as the Governor. If he's called an employee or an appointee, nominee. Yeah, we just deal with County employees.

Ms. Kaho'opi'i: Well, but you're questioning the Governor's law...enforcement of law. You're not talking about the Mayor or the County's enforcement of the...rule of law. You're specifying the Governor's application of the law in your resolution.

Ms. Sumner-Mack: The resolution is still in draft form.

Mr. Heintz: And it's not about the Governor.

Ms. Sumner-Mack: It's not been passed.

Mr. Heintz: We have no jurisdiction...

Ms. Kaho'opi'i: Well if you have no jurisdiction, then why would you...

Ms. Sumner-Mack: Our request is to investigate.

Ms. Kaho'opi'i: Investigate.

Ms. Sumner-Mack: Our suggestion is to try to clarify and investigate and get the facts together and get opinions. So you've in effect become a kind of hearing...initial hearing that could be part of that process. Okay, we are not here to advocate any side at all.

Mr. Wiseman: And no decision at this time.

Ms. Kaho‘opi‘i: Well and if you’re... My point with my testimony and that has been my point is that, if you’re investigating lawlessness then you would need to investigate all of it and not only one aspect of it. And that’s what my testimony is brought forward the way it is.

Mr. Robinson: Okay.

Ms. Sumner-Mack: Thank you.

Mr. Robinson: We understand. Noe Wong-Wilson. Oh, here we go. Good morning.

Ms. Wong-Wilson: Good morning. Aloha. I’ve been here before and I can’t believe I’m still here. I’m Dr. Noe Wong-Wilson and I’m here to once again to address number 7 on the agenda item. I want to just make a couple statements. One is I find it very challenging that this phishing expedition is still going on when we have no draft to speak to. And I really don’t understand your process in just ask putting an agenda item on your agenda that calls for a resolution or a possible resolution regarding perhaps ethics violations, what you call the rule of law and you expect citizens to come in and just sort of shoot at a wall. Provide you with what? I have absolutely no idea how this process works. I’ve never seen this process work...

Mr. Yoshimoto: Mr. Chairman, if I can help.

Mr. Robinson: Yeah.

Ms. Wong-Wilson: You gonna explain to me?

Mr. Yoshimoto: Yeah. To clarify. My.... No

Ms. Wong-Wilson: Is it part of my time?

Mr. Yoshimoto: No. Stop her time.

Mr. Robinson: No, we’ll give you the extra time.

Ms. Wong-Wilson: All right.

Mr. Yoshimoto: So to clarify for everyone’s information. So right now is a discussion phase as far as the drafting of a resolution. So if or when the Board decides to pass a resolution, that draft will be available for the public for comment at a future hearing. So today, it’s still in the discussion phase and the Board welcomes input

from the public and that's why it's gathering information as far as hearing from the public, as far as what it wants to put in the resolution. So you're right, there is no resolution to comment on yet. That's still being...as Ms. Sumner-Mack said...it's still being drafted. So there will be another opportunity if the Board decides to move forward.

Ms. Wong-Wilson: We'll be back again. Okay, you can resume my time.

Mr. Heintz: Mr. Chairman. May I add one more thing?

Mr. Robinson: Yeah.

Mr. Heintz: At the last meeting, I specifically asked Mr. Robinson to read the first draft and it was read to the public at the last meeting. And we have been working on trying to correct the draft. So the draft that we're talking about does not talk about the Governor. It specifies County employees and so it's all part of the public record.

Ms. Wong-Wilson: So the draft that you read is available to the public?

Mr. Heintz: So we're working on it and was read verbatim last meeting and it's being modified. Okay, thank you.

Ms. Wong-Wilson: Thank you. Okay, thank you. Well the process that you made out is quite difficult for all of us and that's why you're listening to all kinds of testimony. I don't think people really understand how to testify specifically for what may or may not be in your draft. And I will tell you, I wasn't here when that draft was read, so I apologize if I'm unaware at this moment. But I do want to make a few points okay. One is to please make sure as Ana Nawahine just mentioned that you indicate exactly what statute or ordinance or law is being violated by this ethics inquiry. And secondly, if you're looking at just County employees, which is probably more in your jurisdiction than the State. I would ask you to also look at the way your own officers were treated on the day that we were arrested on July 17th. And this is probably along the personnel issues of being provided adequate food, adequate restroom facilities. They were urinating in bottles because there were no facilities for your own employees who were stationed there for a number of hours. While we...I was one of the kupuna...was being arrested. The subsequently...officers who were perhaps on the mauna for months doing nothing but spending...getting paid overtime...for harassing the general public. And the kind of facilities that they were provided...cause as you know...there are very few, if any public facilities up there. So I think your own

employees were treated rather harshly and I find it kind of interesting that we, Mauna Kea protectors, would be sitting here speaking on the same side perhaps as Hawai'i County law enforcement, over this issue. Which I think is kind of a waste of time, to tell you the truth.

Mr. Robinson: Okay.

Ms. Wong-Wilson: And spending of County funds and County resources for this phishing expedition is really a waste of time and you should consider just letting it go. And going onto your other more important business. But thank you.

Mr. Robinson: Thank you.

Ms. Wong-Wilson: I heard that.

Mr. Robinson: Thank you. Alright. Okay next is Keala Leong. Keala Leong? Here we are. Maybe we can move that microphone over for you, Ms. Leong. Thank you

Ms. Leong: Can you hear me?

Mr. Robinson: Yes ma'am.

Ms. Leong: Aloha kakou.

Mr. Robinson: Aloha.

Ms. Leong: My name is Donna Keala Leong and thank you for letting me speak today. And I was just concerned about this particular issue of your resolution. But I'm really totally confused. And I'm confused because jurisdiction of this particular of this particular commission is County and not State. And we seem to have drifted together and the vision of what is very succinct is not clear. And so when we talk about the rule of law, to me the rule of law is based on standards and codes and ethics and so forth which we live by. Whether it's physical law or whether it's moral law. So when we take a look at what you're trying to put in your resolution, about if your County people are doing their right things in what they say and do in their duties as a County employee, then it had me to think about then, why is this resolution so necessary...what you're trying to put down on paper. And yes, I was one of the kupuna that were...was arrested. And so when we were arrested, was it underneath the State that we were arrested? Or the County? Or do they both kind of merge together? So what I'm looking at

then is that when you talk about the rule of one, what you want to do. What you wanna do? Please make sure that the sides of whoever is concerned with the rule of law that you're looking at. Then we all had equal time to display what we believe in. Thank you.

Mr. Robinson: Thank you very much. Anyone have any questions? Thanks Ms. Leong.

Public member: [Inaudible]

Mr. Robinson: I'm sorry. No, no, no. Okay, next is Katherine Roseguo. Katherine Roseguo? Good morning. You can move that a little bit.

Ms. Roseguo: Aloha. And I'm speaking to item number 7. So I'm going to present part of my testimony in Hawaiian. Is it going? Okay. I'm Katherine Roseguo. I grew up in Manoa. My mother was a poet, my father was a geophysicist.

_____ no ka mea, ua 'ike wau i ke akamai o ka Hawai'i.
'Ike mai nā _____ o ka po'e haole. 'Ike ka Hawai'i
_____ maopopo ia ia'u he mea kēia e _____ i ka lāhui
i hāpai i luna e like ho'i me ka mīkini pa'i a ka mikioneli i
ho'ohana i ka po'e Hawai'i i mea e hāpai 'ia i ka 'ōlelo Hawai'i i
luna ma nā nūpepa 'ōlelo Hawai'i e like ho'i me ka 'onaehana e
pono ana kēia lā e hāpai 'ia i ka lāhui Hawai'i i luna.

What I'm concerned about is that the County is not looking at the encampment at the...the top of Mauna Kea and treating everyone the same. There was a time when the employees to the telescopes had to go through and kind of get permission from the protestors to go up. The County brought up gravel to spread for the kupuna. And there are still structures up there that I don't know what we're...what's going to happen with that. But I do support some kind of investigation into looking... How are we treating everyone equal...equally up there? That's mainly what I want to say. Mahalo.

Mr. Robinson: Okay.

Ms. Roseguo: Any questions?

Mr. Robinson: Okay.

Mr. Wiseman: Are you working up there by any chance?

Ms. Roseguo: No.

Mr. Wiseman: Thank you.

Ms. Roseguo: I'm just a citizen. Mahalo.

Mr. Robinson: Thank you. What is that microphone for?

Public member: It's for the news.

Mr. Robinson: Oh, for the news. Okay. The fourth branch of government, right? Okay. Next is Mary Haaheo. Good morning.

Ms. Kok: Aloha. You know, when I read this and we first came in here you said this has nothing to do with the road and TMT. But it seems like this is exactly what that's about. You're targeting the Mauna Access Road. We're talking about TMT. I mean, we're back into talking about all these things. I don't really understand your authority over this matter. You know you say it's because you got some emails okay. How many emails did you get over this?

Ms. Sumner-Mack: 24.

Ms. Kok: 24.

Mr. Robinson: It's fine, yeah.

Ms. Kok: How many?

Ms. Sumner-Mack: What?

Ms. Kok: How many?

Ms. Sumner-Mack: About 24 emails plus the testimony session afterwards.

Ms. Kok: Well, you must get emails from all kinds of people and different issues. I mean there's issues all over this island about things that are not done correctly and the rule of law and about favoritism. But I don't see you guys, you know, coming up with this...you need to make a resolution because they're not following the rule of law. You know. There's all kinds of injustice going on here. But you're picking...you're targeting this issue about the Mauna Kea Access Road and TMT. You're not fooling anybody. This is what it's about. And I don't think you guys have the authority, don't have the jurisdiction. And here we are again wasting our time. So

I think you guys need to go back and do some homework after this hearing and you know relook at this issue. It's ridiculous that we're here.

Mr. Robinson: Thank you. Juergen Canda. Good morning.

Mr. Canda: Good morning. Aloha.

Mr. Robinson: Aloha.

Mr. Canda: I'm still kind of mystified about how you're using this section because I have actually disciplined County employees for that section...for fair and impartial treatment.

So it's kind of strange that you're looking at the Mayor, applying the rule of law in a jurisdiction that's not his. So I'm not really understand that but... I want to talk about this rule of law topic that everybody seems to be discussing because that's exactly what I was...been enforcing for the past 25 years before I retired. And the problem with the rule of law on Mauna Kea is that there hasn't been a rule of law on Mauna Kea for 50 years. Alright. Since 1968, the State itself has been undermining and making a mockery of the rule of law by not following the laws to give it advantages to a special interest group. Their primary method of operations is simply to ignore the laws until they are caught. Beginning with the stealing of the lands to build an unauthorized access roads. Lands that are held in a federally created trust. So even the State itself has now acknowledged that they only own the asphalt and not the ground underneath it. And the Chair of DHHL describes it as an illegal structure in his Senate testimony. So in preparation for... Yet they arrested 38 people on it without establishing that knowingly. Knowing that they didn't own the road. They did...they arrested people anyways. So in preparation for a second attempt, they began a massive, targeted enforcement campaign to wear down support of the kia'i to deliberately suppress a first amendment activity. And in the process, violated fourth and fourteenth amendment protections to generate statistics to criminalize the movement. They did so against the native population that the States own study has shown that native Hawaiians have historically received disparate and unfair treatment by the criminal justice system. Exacerbating and perpetuating that systemic racism. I made my complaint about this and this was published in the press. It was also reviewed by the ACLU and they concurred. A video and it was in the press of alleged police misconduct. They also deliberately withheld the details of the police reimbursement cost...frustrating the County Council up

until when they brought in the pre-signed agreement...in violation of the law...to hold them hostage. To take... In a scandalous attempt to hold them hostage for the reimbursement costs predicated on that they accept more money for unspecified law enforcement uses over a five year period. So what I find kind of outrageous is, despite the ethics and legal issues, what is all occurred. You specifically see on this article by a member of the public who writes an opinion letter ignoring all these other issues and try to create one. It was most likely an unprecedented proactive action that you even questioned that there was past precedence. An uniformed opinion gets preference in committee action. An opinion articulated by a person who describes herself as recently just moving here from the mainland to retire gets more weight than what the native population has suffered. And as it happens, this rule of law is a pro TMT and State militant theme that has been projected for months. And they collapsed it when they found out that they didn't even own the road. As a receiving desk lieutenant, I would have thrown those arrest reports out. I would've said you guys are nuts. What did you do? But how is it that everything that the government does in regards to Mauna Kea is to a special interest advantage and disadvantages the native Hawaiians. I believe given the totality of these circumstances, that this action is not consistent with Section 14-4(c) of the ethics code. That all persons need to be treated and impartial. So that's hearing both sides. Instead of flipping the spirit of this County Code on its head to further compel...further prosecution of native Hawaiians which creates an advantage for TMT. Furthermore it's not consistent with 14-2(b) of standards. As this action can give special consideration to another entity. So in the previous... I'm gonna wrap this up right here.

Mr. Robinson: Okay, thank you.

Mr. Canda: The previous... The December hearing, Mr. Wiseman stated that all laws...that law should not be discriminately applied. But that is exactly what the 50 year history of Mauna Kea is literally all about. And that's why you have a protest. Cause as a law enforcement officer, I know when you have this big protest, there's an underlying injustice and that is the injustice. It's a one way street. And that's a nightmare for law enforcement. The officers are sick of it. So the kia'i ironically were on the road demanding the fair rule of law and justice. That's what's going on.

Public member: Maika'i.

Mr. Robinson: All right thank you. Rocky Thurston.

Ms. Thurston: I'm sorry?

Mr. Robinson: Rocky Thurston.

Ms. Thurston: That would be me but it's Becky. But my handwriting isn't so good, so.

Mr. Robinson: I'm sorry, some days I just really...

Ms. Thurston: I'm sorry. Okay.

Mr. Robinson: Like the lady who's fell from the horse. I couldn't read it. So e kala mai.

Ms. Thurston: It's okay. My handwriting isn't the best. Aloha.

Mr. Robinson: Aloha.

Ms. Thurston: I'm here for number 7. My name is Becky Thurston and I live in Pu'ukapu Homesteads in Waimea. Here on the Big Island. I've been here 55 years and I love this island. I love the people. I love the culture. And I'm here on behalf of my children and my grandchildren. I was here at your last meeting and at that time I questioned your knowledge base to properly form a resolution regarding the disposition of the access road. And I'm pretty sure...I'm hopeful...that you now have a better understanding of the issues behind this. It is very complicated, as I am sure you know. The question that you seem to be asking is why is the rule of law not being enforced on Mauna Kea? Why? It's because the State itself has undermined the rule of law by not adhering to it for 50 years. And it's not just the State...the State okay. I'm not gonna go over the past 50 years in this testimony but just let me say this. The rule of law has been ignored. It's been manipulated. It's been rewritten. And it's been wrongly enforced by the State, the Department of Hawaiian Homes Land, the Department of Land and Natural Resources, the County, and our University of Hawai'i over and over again. And the bottom line is, people are sick of it. Okay. That's what's basically behind this. Honestly, if you want to be fair and impartial, you have to look at the history. I know you wanna just focus down on the County but there's no way you can understand it and really... I can't even imagine drafting a resolution without looking at the total history. Finally I want to remind you that I'm here out of a sense of moral obligation. I have a moral obligation to peacefully protest TMT and to protect our aina. Acting out of moral obligation can be ethical. Look at the

history. Alright. It's not just...we're just out a bunch of rattle rousers, but we think what we're doing is an ethical response. A moral responsibility. Let me finish with this. When the rule of law has been repeatedly manipulated, rewritten, and wrongly enforced. When it does not protect cultural values. When it does not respect the aina. We have a moral obligation to peacefully protest. In return, I believe you have an ethical responsibility to look at the whole issue. You can't just focus on one little bit. Thank you.

Mr. Robinson: Thank you very much. Drena Rodrigues.

Ms. Rodrigues: Aloha mai kakou. My name is Drena Rodrigues. I don't normally do these things, but...

Mr. Robinson: Neither do I.

Ms. Rodrigues: They speak way better than me about this. My thing is, throughout this whole process, if you're talking about ethics...the State has abused it throughout the whole process. The kia'i and lahui have been honest through all of this. We haven't tried to do...pull the wool over anybody's eyes. And I know recently TMT, the board they been pushing for the State to come in strong handed against us. And they talk about fair and equitable justice under the law. Yet when you look at it, how fair was it for the State to pave...illegally pave a road and claim a land that did not belong to them? And they arrested our kupuna on their own lands. So when you look at everything, it hasn't been fair for us. When they falsified and took out the cultural impact...what was it...the cultural impact...not statement...assessment out of the environment...environmental impact statement. That wasn't ethical. You know they talk about ten years of trying to get permits and all of that. There was a lot things that was done that was not ethical. When you go and look at the... If you guys really do the research, you can find so much of the things here that wasn't ethical. It's the money used to... They used our tax payer money for law enforcement to harass us and ticket us on Mauna Kea. That wasn't ethical. The money that they talked about...the Governor hid. That's for future abuses against us. Our own money. That's not ethical. He's using our own money to abuse us. And also, it's like, where do you have a State like going against his people to protect a foreign entity. It's like for people who are speaking out...nobody thought it was gonna turn out as big as it has and that's a surprise to the State. So instead of listening to the people, they're find more unethical tactics to use against us. They're making up more laws. The meeting I went to at the

University with the regency is there because they couldn't find a way to get us out of there. They started putting, implementing more rules which the Governor signed. And I mean none of us was blind to it. We see those rules are basically so we can't protest up there. So we can't have peaceful assembly. It's attacking our first amendment rights. And so if you talk about laws and fairness, equitable under the law, it's like what is the State doing. We haven't done anything to them but every step of the way when they can't find a way to get us out of there. They're using unethical tactics to find a way. But go look at your... Do the research, it's all there.

Mr. Robinson: Thank you. Larry Sinkin. Lanny Sinkin. Good morning.

Mr. Sinkin: Aloha Mr. Chairman and Members of the Board. You've been receiving a lot of mail from me. I hope you've had a chance to read some of it. I'm really puzzled why we're here, frankly. And what exactly is going on. So we have a statement in the beginning of the hearing that there is no resolution. Nothing's been finished. Nothing's really been drafted. It's all still in the works. And then we have a statement that there was a resolution read in full at the last meeting.

Ms. Sumner-Mack: A draft.

Mr. Sinkin: A draft resolution, read in full with the last meeting. The people would have an opportunity to comment on. Only now there is no resolution that people have an opportunity to comment on. I don't know how you put those two together. Secondly, I think it's clear that the prosecutions that are happening right now are being done by the Attorney General of the State of Hawai'i. You have no authority over any State officials. It was pointed out this morning, there's a State Board of Ethics. They handle the complaints against State officials. You cannot tell the Attorney General of the State of Hawai'i who to prosecute and who not to prosecute. It's just not your authority and not your jurisdiction. By the way, I would just point out, the road is open. In case anybody noticed. The road is not currently obstructed by anybody. So I don't know what the purpose of a resolution is at this point because other people have handled this matter in a way that was appropriate for their authority and their jurisdiction. It was not appropriate for yours. You didn't have to be involved in those decisions that reopened the road. Cause it's within your purview. So I'm not sure why you're still struggling with the idea of creating this resolution. The question is actually not whether the rule of law is being enforced or not. The question is whether your Board has

jurisdiction to punish public officials for exercising the jurisdiction that they legally have. So the Attorney General has the legal jurisdiction to decide who to prosecute and who not to prosecute. You're gonna try and put yourself in the place of the public officials responsible for law enforcement by saying who should be prosecuted and who shouldn't. I don't think that's your function. I don't really don't know how you got there. So anyway, I think you're best approach to this whole question is just to back off. And decide that this is not really your authority or your jurisdiction. It has no place on your agenda. You have plenty of other important things to deal with. Thank you.

Mr. Robinson: Thank you.

Mr. Wiseman: Mr. Chairman.

Mr. Robinson: Yes.

Mr. Wiseman: I just like to clarify one thing. We only meet once a month. And anything we do, can only be done at a meeting when we're all present.

Mr. Sinkin: Right.

Mr. Wiseman: So. The fact that the resolution comes up again in a draft form, that's because of that rule that we can't...we can't meet after meetings and...

Mr. Sinkin: You're talking about Sunshine Law kind of...

Mr. Wiseman: Correct.

Mr. Sinkin: I understand, but how do we have a resolution that was read in full at the last meeting...but by the time we get to this meeting there is no resolution?

Mr. Robinson: It's a draft.

Mr. Heintz: That's a misunderstanding.

Mr. Sinkin: It's a misunderstanding?

Mr. Wiseman: Yeah.

Mr. Sinkin: You were the one that said there was one read in full at the meeting.

Mr. Heintz: Yes. But, the misunderstanding is, what there is before us is that draft and it's being revised and so what the second bit refers to is there is no final resolution that we're ready to vote on. You see that will possibly come out of after this meeting. We'll revise the earlier draft that was read. There were amendments made. There are amendments still being processed. And then there will be a final resolution. That will be read and then they'll be voted on.

Mr. Sinkin: Maybe I do misunderstand. Can you clarify for me when this Board took testimony on the draft resolution?

Mr. Heintz: The last two meetings.

Mr. Robinson: Yeah.

Ms. Sumner-Mack: Last meeting.

Mr. Sinkin: Testimony on the resolution? There was a resolution available to the public to read?

Mr. Robinson: No there's not a resolution available.

Ms. Sumner-Mack: It was that many people assumed that it had already passed and they came to testify to express their views on it and that was very valuable but we had not worked out the final working of that resolution. So passing it out would give people the wrong idea entirely. But it was wonderful...it was wonderful...I think personally. It was wonderful for people to come out to the session because usually we have about three people in here okay. So we got lots of input and we're getting more input now. We still have an opportunity to work further on that resolution.

Mr. Robinson: Yeah. So we thank you for your time Mr. Sinkin.

Mr. Sinkin: And thank you for your service. I understand it's purely voluntary and I appreciate the fact you do this.

Mr. Robinson: Yeah. We welcome more people to apply and serve on the Boards and Commissions of the County of Hawai'i. They're always looking for good folks. We have an opening. Next would be a David Prager.

Mr. Prager: I didn't put down. It was a mistake. I just filled out the form, I didn't have to say anything.

Mr. Robinson: Yeah, alright. Thank you. The next would be Gardner DeAguiar. Good morning.

Mr. DeAguiar: Good morning. My name is Gardner DeAguiar. I'm 55 years old. Native Hawaiian. I've lived on this island all my life. Regarding the history as far as the rule of law and ethics, people forget that we had a huge tsunami back in the day, 1960 I believe it was, and the astronomy program helped Hilo get back on it's feet. And that's why we have an access road and that's why we have telescopes on the mountain. Regarding ethics in the rule of law up there, when the protesters protested, they did at first legally. Cause protesting is legal. It's a freedom of speech and all of that. Once they escalated it into civil disobedience, that's when they broke the law. And that's when the rule of law should have been exercised. And he did at first, but then somewhere along the line, it stopped. And somehow it's resulted in a tent city up there. Which in my opinion is not the greatest thing to have up there. And yeah, for a while they were just disregarding...people work up there. They couldn't go up there for months and the rule of law wasn't supporting that.

Mr. Robinson: Please. Please.

Mr. DeAguiar: The rule of law was supporting their right to work. As well, the rule of law is not supporting the projects right. They went through all the protocols of getting their permits acquired. Where is the rule of law supporting that? So I think that needs to be addressed. I know it's not the most popular for you here. I know. But you know I'm 55 years...I grew up with those telescopes on the mountain. It's never hindered anybody's right to go up there and worship for any reason. It's never hindered any of that. Culture and science can coexist on the mountain. Just gotta share it. Thank you.

Mr. Robinson: Okay. Sandra Kirkpatrick. Okay. Here we go. No worries. Good morning.

Ms. Kirkpatrick: Good morning and aloha. And thank you for coming. Thank you for being here. I appreciate your efforts. I know this is a voluntary thing that you do. So thank you for doing it. It sounds to me like mostly a thankless job. So glad you're doing this and thank you. I'm not a legal person, so all I can do is kind of talk about what I see and hear and feel. And to me it seems that the rule of law has been ignored for a long time. And it's been ignored by the very people who took an oath of office to uphold it. The Governor and the Mayor. That to me doesn't seem right and I'm wondering how

that happened. I understand at the time it started to be enforced and then they decided it was a too overwhelming job. All I can do is look at Oahu, where they were protesting wind turbines. And surprise, surprise. When they got out there and took care of it. It went away. There was no more problem. I would like to see, this be no more problem, because it seems to me and I think a lot of people that we have been fighting with this for a long time. And it's not getting any better with time. There doesn't seem to be progress being made. It also doesn't seem that, that people are being treated fairly. But I would say I don't feel like I'm being treated fairly because up until a month and a half or a month almost two months ago, I couldn't use the public access road to get up to the mountain. I have been up to the mountain many times in the past and it's something I really look forward to. I use the saddle road all the time. I look forward to seeing the big horned sheep and the mountain goats. And I'm looking forward to seeing what the telescope will discover about nature. And I'm looking forward to see the Hawaiian tradition of navigating by the stars continued by the telescopes that will be looking at the stars. And looking for guidance and looking for help and expressing their view of the universe in their way. And I think that that it's all positive and good. And I think it is carrying forward Hawaiian tradition of the navigators. So I'm very happy about the telescope. And as soon as it gets built, I'll be very much more happy, I just saw something on the news today about the Chandra telescope making tremendous discoveries. Hawai'i could be at the forefront of astronomy with the telescope. It will give people jobs. It will give another aspect to the Hawaiian Islands. It's not just a nice place for beaches where people go and hang out. It's more than that. And if people have the ability to go up and look at the telescopes, they'll see that.

Mr. Robinson: Time please.

Ms. Kirkpatrick: Thank you so much.

Mr. Robinson: Thank you. Appreciate it.

Mr. Kirkpatrick: Thanks for being here.

Mr. Robinson: Aloha. Lisa Malakaua.

Ms. Malakaua: Yes. I just wanted to address before I start.

Mr. Robinson: Please. Please.

Ms. Malakaua: There has been question as to whether or not Ige...if you guys are responsible for the State employees. I actually called the State Board of Ethics to file a complaint against Ige. And I was told that they actually are the ones that support the State employees. So it looks like this is gonna be dropped back on you guys because they said unless there's a conflict of interest...okay...they support the employees. So that's where we need to probably... That's what I was trying to raise and kind of get your attention a little earlier so we could have had nipped this earlier but...

Mr. Wiseman: Mr. Chair.

Ms. Malakaua: Just so you know.

Mr. Robinson: Yes.

Mr. Wiseman: Yeah I don't believe that's correct position of the... It's not the Board of Ethics. It's the ethics commission.

Ms. Malakaua: Right.

Mr. Wiseman: Hawai'i State Ethics Commission. I'm very familiar with the Board, has 15 members, former judges, other people. And they handle all State employees for ethical violations for advisory opinions. It parallels a lot of the County Board of Ethics. But they don't support any side.

Ms. Malakaua: Yeah. They said that they were for the employees specifically, unless there was a conflict of interest.

Mr. Wiseman: I think you got some misinformation.

Ms. Malakaua: Wrong. Yeah. Somebody was giving me wrong information. I'm a legal secretary so I'm pretty aware of that. Anyway, I am gonna be calling on the agenda number 7 for no conservation, district permit, trash debris. And once again, just wanna thank you for extending me the courtesy. I also would like to approach the...

Mr. Robinson: Can you...

Mr. Wiseman: Yeah.

Ms. Malakaua: With a handout. If I could just before I get started. If you wanna just pass on and then...

Mr. Robinson: Please sit so we can record this. Oh, Hawai'i Free Press.

Ms. Malakaua: And as you can see on the first page of my handout. A poll was taken that basically asks voters if a two month extension should be granted on the access road. And as you can see there is overwhelming support from the voters who were in favor to proceed...with no more extensions. They don't want to proceed with anymore extensions. We have an overwhelming turnout at every... We don't have an overwhelming turnout at every event or the need to impress others by dramatic performances. But I can assure you that the support is definitely there as you can see. The last two pages are photos of the encampment site taken on February 12. Almost a week after the wind storm. In fact the kia'i did not even send out a call to clean up the opala until after we had sent out our photos and videos to everyone who would listen and/or pay attention. I also submitted video coverage of the illegal dumping to your office, earlier this week. And just for the record, there is a huge difference between legal desecration of the aina that naturally occurs anytime a structure or an infrastructure is build versus desecration created by illegal dumping and/or squatting. Basically Ige and Kim have enforced the law on the same land for different reasons. By allowing illegal protesting versus legal permitting to occur. Even unpermitted structures and camping on Kauai was removed from the lands but not in Hawai'i. Basically all their decisions have been inconsistent and an ethical violation. In January, we explained how the County and State Government were violating our rights by failing to enforce the law at the TMT protest site to everyone in the community, both equally and fairly. One month later, nothing had changed. And once again the kia'i blamed their illegal dumping on the weather, even though the weather didn't stop volunteers from OMKM from cleaning up debris and pulling weeds nearby. DLNR has documented environmental damage on parcels that have been designated on conservation lands. DHHL has also removed structures on their lands regardless whether or not they have a conservation district designation. Why is this all so important? Because the kia'i keeps saying they are protecting their religious rights. However, the first amendment in the U.S. Constitution says that everyone has the right to practice his or her own religion or no religion at all.

Mr. Robinson: Time.

Ms. Malakaua: It guarantees a separation of church and state.

Public members: Time.

Ms. Malakaua: Excuse me. I would just like to give a little more time here since that we did submit the writ of a 16 page I'm trying to get in three minutes. Therefore...

Public members: Time.

Ms. Malakaua: Therefore, yet failing to enforce the rule of law is exactly what the government is allowing to have. And the question is...do we really want to leave the next generation with more debt. No we don't. So we're asking that you guys come forward and ask that the DHHL immediately issues notices to vacate...

Public member: Time. Time.

Mr. Robinson: Please. Please.

Ms. Malakaua: DLNR to place a moratorium, a new additions to the TMT protest site.

Public member: Time.

Mr. Robinson: Please.

Ms. Malakaua: And I will give you this for you to continue. Thank you.

Mr. Robinson: Go. Go. Lisa.

Ms. Malakaua: Oh please, everybody went over three minutes. Here I'll just submit it.

Mr. Robinson: Thank you. Let's be civil. Alright, Michael Nathaniel. Michael Nathaniel. Please this namunamu is not really helping anybody.

Mr. Nathaniel: Thank you for allowing me to speak today. My name is Michael Nathaniel. I was born and raised here and proud to be a descendant of Kekuhaupio. I was raised in a generation where great respect of the aina and our culture was mandatory. My parents were loving but very strict. I was raised to know the difference between the difference right and wrong. So I had limited freedom when growing up. I was also taught to always to treat others with love and respect, no matter who you were. Military took me from my home of aloha. But when I returned the actions and term aloha no longer existed and I wanted to see it return. One key rule I learned as a child was to always leave a place better than how you found it. And that trashing the aina is form disrespecting the land, discourtesy towards others and simply

disgraceful. So if you decided to leave your opala for somebody else to clean up after you, then was considered shame. It's not the way I was brought up nor many others. Mauna Kea has always been a place for our ohana to go spend the day, have fun and play. I was never told at any time that the mauna was actually considered sacred. This is now a claim that the protestors are making. That is lacking in both facts and legal support. The protestors are also claiming that we are all trespassing over DHHL lands to get to the mauna. However, they failed to recognize that they must travel over DOT highways to get to the access road. And well is their need to travel State Route 200 in order to ascend all the way up to the mauna. Without these highways, the DHHL portion of the access road would be useless. Yes, I understand you had a vision to restore land and dignity to our people and that the process has been slow in fulfilling this vision as well as promises broken. I understand that. But to block a public road and trashing over our mountain is not gonna speed up the process to undo the wrongs. It's also not making the protestors very popular with individuals who have been held little to pay for their unlawful actions. I'm requesting that our State...or elected representatives act with a sense of urgency to correct the wrongs that our State leaders have refused to do. Our elected officials have allowed for our rights to be violated and clouded by a gray area.

Mr. Robinson: Time please.

Mr. Nathaniel: They have not been acting in the best interest of everyone in the community equally and fairly. And that should be closely examined. So I'm requesting the Board of Ethics to do an investigation into our complaints and act upon it. We're not only trouble...we're not the troublemakers here...the troublemakers are the people that create the behavior that causes the reaction. Mahalo.

Mr. Robinson: Thank you. Thank you. Jo-Ann Lei Kalamau.

Ms. Kalamau: Finally. That was a long wait, man.

Mr. Robinson: Believe me. We sympathize with you.

Ms. Kalamau: Oh me too with you.

Mr. Robinson: Yeah.

Ms. Kalamau: Okay, wait eh. Okay.

Mr. Robinson: Good morning.

Ms. Kalamau: Good morning. I consider myself a kupuna as well. And so I'm retired and I stay in my house for 24 hours if I want to. But today, this meeting brought me out of that house. And it takes an effort for me to get ready as you can see how I wen walk over here. But this investigation has to take place. I'm so confused and tired of this telescope being delayed. I wanna know what's up there. The alternative is lie down and look up and I going learn just from doing that. What God has created for all of his children on this Earth? So I've been spending my time reading the scriptures okay. I want you to put on record what I found in one of the verses. And I going read it rather than memorize it cause it was kind of confusing to memorize. This is from our scriptures we use as church. "Let no man break the laws of the land. For he that keep it the laws of God had no need to break the laws of the land." And that's what Jesus Christ is saying and not once have I ever heard his name throughout this July protesting as to invite him to help solve the problem. Cause he can do anything. He's given me miracles that I would love to share with other people. But the key is...we all get iniquity. We must take this iniquity out of our lives and invite him to help us individually and collectively. But we've never did that. And I swear that if we fast and pray for all of our problems individually, he's gonna answer collectively too. If we all come together and ask him to help us. Cause he own that mountain. He created that mountain, Mauna Kea. And he can make that lava come out of Mauna Kea, okay. So let him come and help us because this I memorized. In the scriptures. "I the Lord am bound when ye do what I say. If ye do not what I say, ye have no promise." So what does that say?

Mr. Robinson: It's your time.

Ms. Kalamau: Keep the commandments. Thank you.

Mr. Robinson: Thank you, thank you.

Ms. Sumner-Mack: I have a question, please. What book were you reading from? The Bible, but which book of the Bible?

Ms. Kalamau: I'm a member of the Church of Jesus Christ of Latter Day Saints and our scriptures include the Holy Bible, which is the Old Testament and the New Testament. The Book of Mormon, the Doctrine and Covenants where I read this from and the Pearl of Great Price. All of that is our scripture.

Ms. Sumner-Mack: Thank you.

Mr. Robinson: Thank you. Tom Cumming. Oh you're right there. Okay.

Mr. Cumming: Yeah. Didn't have to go far. So I'm here today to testify in regards to agenda item number 7. My concern is that there will be a determination of this Board that this is not a County issue and therefore not the kuleana of this Board. It is clear that the law is...is not being enforced. This is such a dangerous precedence that the rule of law is meaningless. This cannot stand. According to news reports, it was a Hawai'i Police Department that made the call to stop enforcing the law, due to the possibilities that the protestors may become violent. Not enforcing the law due to the threat of violence is really, really bad precedence. If I was to go out and protest and block the road, I would expect to get arrested. Bernie Sanders in 1963 famously was arrested during a civil rights protest. Jane Fonda recently was arrested five times for protesting climate change because she was doing so illegally. It is expected to get arrested if you are doing something illegal, even during a peaceful protest. Yet the saddle road at Mauna Kea Access Road and adjacent lands fall under multiple jurisdictions, including State, DLNR, and others. Because our Hawai'i Police Department is subcontracted by the State for law enforcement, it could be argued that as a subcontractor, it's not the HPD's kuleana to enforce the law in this instance. Because of the confusion, who is responsible for the potential...and the potential for finger pointing and misdirection? I argue that it's not the responsibility of this Board to determine who is responsible for lack of enforcement. It is however the responsibility of the Board to make a determination that the law was not equally...equitably enforced and we need this determination. Attempting to find who's responsible for what will bog this Board down and we need a determination now, not later. I also remind this Board that agenda 7 only addresses the issue regarding why the rule of law is not being enforced on Mauna Kea Access Road. That is not to say there are other potential issues outside the lack of the law enforcement. Those issues require their own separate investigation. I beg this Board to make a determination regardless who is responsible. A determination that is solid based on indisputable facts. Then based on this determination, we can make choices on how to proceed and assuredly ethics violations will not be repeated.

Mr. Robinson: Thank you. Thank you Mr. Cumming. I appreciate it.

Ms. Sumner-Mack: May we have a copy of what you just read.

Mr. Robinson: If he already read it, it's in the record.

Ms. Sumner-Mack: Well yeah, but we won't get it... If you have an extra.

Mr. Robinson: We're getting there. We got maybe five more. Okay, Deron Akiona. I remember you from last time Mr. Akiona.

Mr. Akiona: Mr. Chairman. I would say it's always a pleasure, but sometimes it's not.

Mr. Robinson: Oh well.

Mr. Akiona: Members, Deron Akiona. Here to testify on item 7. I think honestly, the Members of the commission answered the question today. Who has jurisdiction? If you go back to the July 15th meeting of the County Council, about two rows back sat the Mayor and the Police Chief. And both of them stated you can check the record, they...both of them stated...the County does not have jurisdiction. Both of them stated that at that meeting. When asked, both the Police Chief and the Mayor said we have no jurisdiction. Okay, that's two days before the arrest took place. Okay. To believe that the law wasn't enforced, you got 38 right now, 38 plaintiffs before the court. I've gone to the hearing on the first six. And those who believe that the County was involved in what happened, the testimony of the DLNR officer there said, the order to stop the rest came from Honolulu. That's in it. That's in the record of the testimony. So essentially this idea that the Police Chief or the Mayor had jurisdiction or you the County ethics commission has jurisdiction, has in my opinion has been cleared. They both said they don't have jurisdiction over that road. The DHHL director has said, it is DHHL property. The attorney general has said, oh no, it belongs to the Department of Transportation. Make this more fun. Call the Department of Interior, which I did. Who has jurisdiction over that road? Department of Interior said DHHL. Who the trustee of DHHL? Since we all in here, we going follow the law. It's the law. Who has jurisdiction over DHHL? Department of Interior. If you want an opinion on who has jurisdiction of that road...in your search...in your idea of drafting a resolution, a law enforcement and why is it happening or not. I suggest the commission takes your staff and go do a research on chain of title of that road. I think you not going like what you find. Honestly. You not going like what you find because if you take that chain of title all the way back to 1893, you going see a mess. An utter mess. In fact, I will guarantee you that if you do the title search and you go back to 1893, you going find out that no title company would ever insure

that title. I'll guarantee it. I've talked to title companies. They don't want to touch it. So my suggestion to the Board and hopefully we don't have a third meeting on this cause I no like coming to Hilo on a rainy day. But... You know, if you gonna proceed...proceed...because you know what's going on with this issue is...nobody wants to say what they really believe. Attorney General sidetracks it. The Mayor sidetracks it. The Governor sidetracks it. The Department of Transportation sidetracks it. DHHL right now it's saying...

Public member: Time, time, time.

Mr. Robinson: Would you stop? Would you stop please?

Mr. Akiona: Aunty.

Public member: No that's what you get...

Mr. Akiona: Aunty, aunty, take it easy.

Mr. Robinson: Deron.

Mr. Akiona: I'm done. I think I proved my point. Mahalo.

Mr. Robinson: Yeah you did. Excellent.

Can we stop? Can we stop that? It doesn't help anyone, please.

Okay. Donna Grabow. Morning.

Ms. Grabow: Good morning. Aloha Board and Chairman. My name is Donna Grabow. I'm very nervous. It's a very emotional meeting. And of course to sum it up in one word, it's lack of trust for more than a hundred years of land being swindled from kanaka maoli. And the media is part of the blame. We see a lot of biased. Any influenced by the foreign entity...you know...Thirty Meter Telescope has a... It's a private entity. But I do want to thank David Coy again over here from Big Island Video News. Responsible journalism. And so I wrote a few things. A lot of it's just repeat. But... Please take this with you. You've heard the community. You've heard also a few. I don't know if they were some of the testimonies were written for them. It's just kind of... It's heartbreaking to hear some of those. Just... But please take this with your consciousness for the next meeting because there shouldn't be a resolution to remove...have to remove protesters. It's their right to freedom of speech. Just throw it out. Throw this direct out please.

Why are only Board Members can review the draft? I think you get one into detail but why aren't there any kanaka maoli serving on the ethics board? Also how can a resolution draft, that's not presented to us have any rule of law over Mauna Kea Road when it's Hawaiian Home Lands? And this hasn't been brought up yet but this ethics committee...who pressured you to make a...to do the draft. It's kind of a mystery. Is it coming from the executive branch? Is it coming and then the...then you were talking, explaining about the State Ethics Board. It's just confusing to me, where...where the pressure is for this resolution...this item 7 to remove protesters. Not just on Mauna Kea but it goes on all the islands...that's what this draft is about. And so if this draft...is it then written by Sam King? Ken Conklin? Lisa Malakaua?

- Mr. Robinson: Time.
- Ms. Grabow: Okay. Thank you.
- Mr. Wiseman: Excuse me. I have one...
- Mr. Robinson: One question.
- Mr. Wiseman: Just a statement. With respect to our former Chairman, Chairperson, Chairwoman who just...whose term expired...a prominent kupuna so.
- Ms. Grabow: Yes.
- Mr. Wiseman: Yeah.
- Ms. Sumner-Mack: I would like to comment to that...there was no pressure. It emerged out of a meeting of the Board. There is no pressure being placed on. Because if there were, I would be not here anymore.
- Ms. Grabow: It was from the 24 emails.
- Ms. Sumner-Mack: From the what?
- Ms. Grabow: The 24 emails. That helped bring this committee together and it was...
- Mr. Robinson: There was no pressure. It was just an expression of concern and so consequently we took action on expression of concern.
- Ms. Grabow: Okay.

Mr. Robinson: And you brought up no kanaka maoli on this Board. We have an empty seat. We're more than happy to have somebody serve. Anybody can call up the Mayor's Office and express interest in serving. We're more than happy to have people on the Board to serve.

Ms. Grabow: Who? Kalakalau was the Chairman last...

Mr. Robinson: Ku Kahakalau.

Ms. Grabow: Yeah. She's not here or...

Mr. Robinson: Her term was up. We only serve five years. This is the fourth board I'm serving on.

Ms. Grabow: And well, thank you, mahalo for your...

Mr. Robinson: And each one is five years a term. And we're more than happy to have people. The County needs people to serve on boards.

Ms. Grabow: Right. And it's by volunteer.

Mr. Robinson: And if you feel that there's not...that there's not a cultural diversity on our Board...please have more people serve. We're more than happy to welcome everyone.

Ms. Grabow: Yeah. There's that element of distrust then to...I mean for people...for Hawaiians. I cannot speak but...

Mr. Robinson: I've been married to kanaka maoli for 45 years and I guess she'd happen to trust...

Ms. Grabow: Yeah but... I'm getting beaten down.

Mr. Robinson: Come on. Okay. Nehoa Crutcher. I'm sorry Nohea. Sorry. E kala mai.

Ms. Crutcher: I'm talking about rule 7 too.

Mr. Robinson: Okay.

Ms. Crutcher: Okay. When you talk about rules of law, I think you know, considering it's about spiritual rights. The rules of law fall on our side. I mean. When is the United States Government going to acknowledge that that's the constitutional? And it's the supreme law of the land and takes priority of...over any other conflicting

State law. So and I sent you folks the letter, in that there's a timeline of what Mauna Kea and all the other actions they took. All the manipulation and control. They broke a lot of laws to do this. They manipulated, they did everything. Okay. What am I protecting? The whole top of Mauna Kea is a temple and it goes 3,000 feet down. It's the holiest places, as far as I'm concerned on this planet. And if you want to desecrate it with what they have up there. I'm sorry, that's just like....to me that's the worst ethical thing that can happen. Hawaiian from the beginning said, a'ole, they will not listen too. The reason why it looks like we're breaking the laws, is cause nobody listens. There are protectors up there. They're not breaking the law. They're trying to protect the law and I hope you guys start doing that too. You know its... They not only have the Constitution...we have Federal laws...the AIRFA. And you have copies of this and that letter I sent you. The NAGPRA, the Hawai'i State Law are Article 12 (7). Affirms and shall protect all rights customarily and traditional exercise by subsistence, cultural and religious purposes. The religious purposes, that's probably the most sacred place to protect and it's been abused. And I hope at some point that gets corrected. I mean, Jim brought up a point about how the things that are not ethical are made laws. And the things that are ethical are ignored and that's really true. And I just need to say one other thing. I've been up there. Okay. The kia'i up there, they're not the ones that are keeping people from going to the mauna. The Governor made a law. Made an edict and we couldn't even go up there. The only people that could go up there were the people that worked up there. So they had nothing to do with us. Our purpose of being there is to protect it from being further desecrated. And I'd like to support you folks in checking that one out. I also would like to suggest... You know I'm 80 years old now. And I don't know anybody in my family that spoke Hawaiian...my age. Only the old folks spoke it. Alright. It's impossible for us to know what Mauna Kea is, unless you understand the olelo. Cause it's all...

Mr. Wiseman: I have one question Mr. Chair.

Mr. Robinson: Yes please.

Mr. Wiseman: Do you know during the ten years of...approximately 10 years or so of court hearings and administrative hearings, do you know of all these concerns of religious and spiritual...

Ms. Crutcher: I'm real deaf so you gotta talk real loud.

Mr. Wiseman: Okay do you know if these concerns that that's raised of spiritual interest and religious interest and the sacred concept of the mountain were ever presented to the courts or...

Ms. Crutcher: Oh my gosh. Okay. Every letter I write to the Mayor, the Governor, to DLNR mentions the lanunu umauma. Every single one. If you read the EIS, it's in every single EIS report is done for University of Hawai'i. It is in the Mauna Kea Management thing.

Mr. Wiseman: Alright. Thank you.

Ms. Crutcher: It's right in there. They're ignoring it.

Mr. Wiseman: Thank you.

Ms. Crutcher: It's totally been ignored.

Mr. Wiseman: And in closing. You look good for your age. I'm almost there.

Mr. Robinson: Very good. Okay Mala Landt. Mala. We're still in good morning so I'll say good morning.

Ms. Landt: E ho mai. E ho mai. E ho mai. E ho mai. [Doing meditative breathing] Aloha. I'm here as a mother. I'm a home birth mid wife in the State of Hawai'i and in the Earth. And I am here to remind everyone that we come from the same place and we are going to return. We are temporary and it's very important to think of our continuation. It is what is happening. Our continuation. Our keikis. So I feel that you're very well confused. You've created a great confusion because you're part of it anyway. And everyone is part of it. But our and...there's a direct connection between mother, baby and aina. And when mother and baby are not separated at birth and the aina is what they identify with, that's their first mother. That's their first security. That is their roots. When there is disturbance in the land, it creates war. Creates unrest. Peleke. It creates illusion. So just like everyone else right now, you are digitally moving through tons of stuff. But you know what? Sometimes you're gonna have to stop and that's usually at night in the dark. And then you realize, wait a minute, you know I'm just like one breath after the other. Well that's not what this land is. This land, this aina, is the people. And it's been continuing and it's gonna continue much stronger and you're just distracting yourself. And I don't know, I've lived here 20 years. I've never heard anything about you all. I've never been... You know, I'm just deeply...you know I just wished that you would just ground out yourselves. You know you're up here but actually

you walk on the ground. Some of you can't touch the ground. Some of you haven't walked up that mountain. It's okay, we're not... I don't want to defend. When you defend something, you know, you're just always up against something else. We're not. The truth is...

Mr. Robinson:

Time.

Ms. Landt:

We are one with this land.

Mr. Robinson:

Time.

Ms. Landt:

With this elements. Give thanks and praise it.

Mr. Robinson:

Thank you very much. Okay. The last, Ronald Fujiyoshi. Kahu. I remember you from last time.

Mr. Fujiyoshi:

Aloha, Hawai'i County Board of Ethics Members. Again, my name is Ronald Fujiyoshi. I hope you remember that I testified on January 29th, 2020. My main conclusion was that you take no action until the judicial process is completed. Only then will what you have called the rule of law become clear. In other words, I and the majority of those who testified were questioning your assumption that the rule of law was not being enforced on the Mauna Kea Road. Thus, I am surprised that this Board is proceeding to draft a petition that you will send to the State Board of Ethics. I really want to see the content of your revised draft. Without the advantage of seeing the wording of your petition, I want to submit further testimony. I tried to be very polite when I testified last month. I shared my long history of residing in Hawai'i and on this island. I shared that I attended the University of Hawai'i, here in Hilo and graduated from University of Hawai'i. Then attended the Chicago Theological Seminary and graduated after five years with a degree in theology, specializing in Christian ethics. I shared that I served as a missionary in Asia for 20 years working with people of various faiths and returned to Hawai'i in 1988 where I have lived since. I raised two points. First, learning that the Board...members of this Board of Ethics have taken an oath to uphold the Constitution of the United States of America and the Constitution of the State of Hawai'i. I read you Article 12, Section 7 of the State of Hawai'i Constitution that Kupuna Nohea Crutcher again gave to you. I will not return it on because I might run out of time right. The basis of the law in the State of Hawai'i is the State Constitution. The kia'i and the kupuna that are blocking the Mauna Kea Access Road only to the construction of the TMT are exercising their constitutional rights. The second

point I made was to remind you that our democratic form of government has three branches that hold each other in check. The Administrative Branch, the Legislative Branch and the Judicial Branch. The Judicial branch for us is the court system. The 38 kupuna who were arrested on July 17, 2019 are still in the process of being tried in the courts of law. Until their cases are completed in the judicial system, there is not a definite rendering of what the rule of law means for this issue related to Mauna Kea.

- Mr. Robinson: Kahu, time.
- Mr. Fujiyoshi: Is it time over?
- Mr. Robinson: Yeah. You just had your three minutes.
- Mr. Fujiyoshi: So I expect this Board of Ethics of the County of Hawai'i to represent the majority of us who are testimony. And I see that there's not...
- Public member: Time, time, time.
- Mr. Robinson: Please stop.
- Public member: Time.
- Mr. Robinson: I don't mean you. I mean, whatever her name is. Anyway Kahu.
- Mr. Fujiyoshi: Can I just finish. I have two more sentences.
- Mr. Robinson: If you can make um fast.
- Mr. Fujiyoshi: There is not one of you who is a member of the host people here in Hawai'i. Have you all majored in the customary and traditional rights and religion of the native Hawaiians? Stop what you're doing. It smells of an action by settlers with a racist attitude towards the host people of Hawai'i. Like I suggested last time. I suggest you go up to the mountain and talk to the kupunas on the saddle road and discuss more about their beliefs.
- Public member: Maika'i.
- Mr. Robinson: Okay that was item 2 of our statements from the public. No I didn't see one for you either. I guess you didn't testify. Anyway. It is 12 o'clock now.
- Mr. Yoshimoto: You want to testify?

Mr. Shot: Yeah. There wasn't any yellow paper.

Mr. Yoshimoto: You let him testify.

Mr. Thompson: I would also like to testify.

Mr. Robinson: Ah, okay. Just come up and three minutes okay. Because we have a lot of business. Other business to do today.

Mr. Shot: Aloha, my name is Richard Shot. So I understand this meeting is about the rule of law. But my question is...confusion is...who is law? Because if you look at it, there's an international, the United Nations has a law like United States, the Federal Government doesn't like their laws, they make their own laws. The State of Hawai'i might not like their laws and make their own laws down in the County. And then there's [inaudible] on the land. And there's indigenous people. There's also secular or religious law. But I understand you guys are bound to the County of Hawai'i, correct? So I'm here on the Hawai'i Police Department law enforcement code of ethics. Since as a law enforcement officer, my fundamental duty is to serve mankind, to safeguard lives and property, to protect the innocent against deception, and weak against oppression and [inaudible] and the peace against violence and disorder. And respect the constitutional of all men. To liberty, equality, and justice. I was on Mauna Kea Access Road, July 14th at 6 A.M. and I was there for nine straight days. And I watched as the Attorney General of the State, the DLNR...

Mr. Robinson: You don't have to hold that. There you go.

Mr. Shot: State's Sheriff's officers, DOCARE, the Honolulu sent a riot squad with pepper spray, battalions I watch as the County of Maui sent the ninja turtle ride squad. And during this entire time arrested our kupuna. I never saw the County of Hawai'i, offer the State officers [inaudible] our citizens of the County of the island of Hawai'i from [inaudible] from the state. Because hundreds of officers [inaudible]. They brought an LRAD on to Mauna Kea Access Road with women, children, families on the road, peacefully protesting. Not one kia'i had a weapon. Not one kia'i made one offensive move and yet the State and other [inaudible] of the State, sent hundreds of officers, millions of dollars and not once did I see the officers of the County of Hawai'i [inaudible] us. If you want to look into ethics but on the website it says their protected from deception [inaudible]...

Mr. Robinson: Not so close.

Mr. Shot: I'm sorry. I'm a little bit nervous.

Mr. Robinson: Well that's okay.

Mr. Shot: So if as a County Board of Ethics look into you know if not taking any action...Mayor Kim and the office of Hawai'i...they're here to protect the people of Hawai'i. And there was hundreds of armed men coming from off different islands. For what? Who is law? Thank you.

Mr. Robinson: Thank you. Thank you. I think one more person and then... Oh my gosh. We have so much work.

Mr. Thompson: I'm sorry, I'll be quick. I just wanted to say that I believe in the equal protection...

Mr. Robinson: First your name.

Mr. Thompson: Oh my name is Ryan Thompson and I live in Puna. So I just encourage the equal protection of everybody's rights and my rights...specifically were violated by the protesters when I tried to access the road that wasn't closed. Part of the road that wasn't closed. They denied me access. So when I went and talked to the police down the road, the police said talk to Mayor Kim, talk to Governor Ige, but we can't help you. But their job is to protect everybody's rights. They did not protect my rights that day on December 14th. So I believe in that and I also wanted to say as a business owner of 25 years that I have just recently started a business on the mainland. I don't believe that the State of Hawai'i will protect my rights as a business owner, seeing what they have done to not protect the rights of Thirty Meter Telescope. So I feel insecure in that I don't believe my rights will be protected if ever I have a conflict. They [inaudible] license. They went through the due process. It went through the courts. But they have not had the rights protected. I have not had my rights protected. I know a few other people over here who have also not had their rights protected. And so I feel like the equal protection of the law is it a constitutional right that we should all enjoy? But it seems like not everybody's enjoying that right. And it makes me nervous. I still live here. I still pay taxes here. But I will not be paying business taxes here. And I will not be generating GDP for the State of Hawai'i. My job, my company is in biometrics and automated pharmacies. And without the Mauna Kea...without the Thirty Meter Telescope funding for education and scholarships, I won't

be able to source proper qualified candidates for jobs. And so there will be no way that my business could be successful here. The more that we push away opportunity, the less we're gonna have. So I mean, that just for me, as a person, I can't be here like that. In that capacity as a business owner. So thank you.

Mr. Robinson: Okay. Let's have one last person and then please.

Ms. Lee Loy: Good morning. First of all, thank you so much. I know that this job is thankless. You're volunteers and I truly appreciate you being here. My name is Bridgette Lee Loy Bales. I've heard everything that's been said. You've heard it. What I do want to say is that, my parents, specifically my father for over fifty years ago, was here trying to protect the mauna. Okay. My father, fifty years ago. Over fifty years ago. So here I am today, his daughter, siblings, sitting in the kupuna tent, still trying to protect the mauna. I have children. An attorney. A professor. Standing with us. Still trying to protect the mauna. I have grandchildren. A National Honor Society senior at Sacred Hearts Academy. A junior at Punahou. A seventh grader at Stevenson Honor. An elementary student at Noelani. All standing with us. I [inaudible] that they are not gonna be in the kupuna tent some years down the road. So I think eventually, I'm gonna get this down within three minutes. Eventually, you will determine, that this does not fall within your purview. I'm certain of it. I'm certain of it. And we are not going away. We are not going away. We will be here for future generations to ensure that our resources...Mauna Kea...including...Mauna Kea are protected. Thank you.

Mr. Robinson: Thank you very much. Okay, we've completed item 2 of our agenda and at this point we have to eat lunch. So we're gonna... Yeah so please.

Mr. Wiseman: Yeah but probably yours will probably be warm. Ours is cold.

Mr. Robinson: Anyway. No sorry. So we're gonna take a recess, we'll start back again at one o'clock.

12:09 p.m. The Board took a recess for lunch.

* * * * *

12:45 p.m. The Board went into executive session

* * * * *

1:00 p.m. The Board returned from recess and executive session.

**3. APPROVAL OF THE REGULAR SESSION MINUTES OF JANUARY 29, 2020.
(1:01 p.m.)**

Mr. Robinson: Okay.

Mr. Wiseman: I make a motion to approve those minutes.

Mr. Robinson: Is there a second?

Mr. Heintz: Second.

Mr. Robinson: Okay, it's been moved by Mr. Wiseman, seconded by Mr. Heintz, that we approve the minutes of January 29th, 2020. Any further discussion? If not, all those in favor say aye. Contrary minded. Okay.

Motion and Vote: Mr. Wiseman moved to approve the January 29, 2020 minutes. Mr. Heintz seconded the motion. All members voted aye.

4. NEW BUSINESS (1:01 p.m.)

Mr. Robinson: There is no new business. We received nothing but a lot of... We received no filings.

5. UNFINISHED BUSINESS (1:02 p.m.)

a. Petition 2019-02: Continued review of petition alleging that a County officer or employee and the Hawai'i County Board of Ethics is in violation of Sections 2-83 (a)(b)(c) (Fair treatment) of the Hawai'i County Code. (1:02 p.m.)

Mr. Murai: And Mr. Chair, this is Deputy Corporation Counsel, Gary Murai. I'd just like to note my appearance and that Mr. Yoshimoto has stepped down. And I do note that same parties, same Board Members are present from...as when we recessed.

Mr. Robinson: Okay.

Mr. Robinson: Yeah. That's right. I had to recuse myself so Mr. Wiseman will do this.

Mr. Wiseman: As you recall this is continuation of the informal hearing from January 29th, which we continued for the main purpose of allowing you to review the respondent, Mr. Yoshimoto's response to your petition.

Mr. Tucker: I understand. My I ask a question?

Mr. Wiseman: Yes.

Mr. Tucker: As my understanding at what we involved in at the last meeting was an initial hearing. Did we transition from an initial hearing to an informal hearing at some point, I wasn't aware of?

Mr. Wiseman: Counsel, it's my understanding it was an informal hearing.

Mr. Murai: Mr. Vice-Chair, that's correct. It's my recollection that this matter was always set for informal hearing. And which was had at the last meeting. And my recollection, and I stand to be corrected if misstated. But because... In other words, the Board had heard from you and from Mr. Yoshimoto. But because the Board could not provide you with a copy of Mr. Yoshimoto's written response until the hearing itself, the matter was continued so that you may have an opportunity to digest and respond to Mr. Yoshimoto's written response. So that's my... So we are here solely for the purpose of wrapping up that informal hearing, by giving you an opportunity to respond. If you have any response to Mr. Yoshimoto's memo. And then my understanding is that after that's concluded, the Board will go into... Well the Board has already made certain findings on the record previously but you know the Board's gonna take your...whatever you have...you might have to say it today, into consideration before it makes it's... Before it issues it's decision.

Mr. Wiseman: That's the Board's decision at this time. So, you have any comment that you want to comment on.

Mr. Tucker: Well, as I recall, I was agendized as an initial meeting.

Mr. Wiseman: Well we just explained to you, it wasn't. It was an informal hearing and this is a continuation of that. And we continued it due to the confidentiality laws that you could not see the respondent's document. So we continued it, so you could review it and we're here today to hear any comments you may have on that document.

Mr. Tucker: Okay. And as I recall from the notes that we took at the last meeting, with the minutes not being available on line yet. There were some investigations that you were gonna make or check in through some facts that I wouldn't mind hearing about at some point. But let me proceed. So I have had an opportunity to review the 60 pages contained in Mr. Yoshimoto's response. Approximately 60 pages with documentary things. And it was my understanding in his response was... Trying to make this as succinct as possible. That the primary defense that is presented is the fact that there are different levels of hearings. And in those levels of hearings which was discussed in January 9th of 2018 at a

lengthy hearing with the Board of Ethics. There are multiple levels of hearings involving a formal hearing. An informal hearing, an initial hearings and as I read in the code, it's been unmentioned so far through section 5 is something called investigatory hearings so... I mean I'm exposed to like four potential terminologies for hearings. And that the defense is, that in my original complaint of 2016-16, 2016-17, that I was not entitled to cross examination or discovery due to the fact that it was an informal hearing. And that the rules of formal hearings did not apply in informal hearings. Now as a simple kind of response to that and being unaware of let's say...multiple ways of one can look upon hearings and what they may or may not be at any given time. I would say that I was operating under the impression in 2016-16 and 2016-17 that I was participating in a formal hearing. That the Board of Ethics failed to notify me of anything different to that effect. And that in fact, the only notice I had received from Corporation Counsel of the Board of Ethics, prior to the hearing of 2016-16 and 2016-17 was that the respondents of my complaint had responded in writing within the time allowed. And that was not available to me due to confidentiality. But to enhance my confusion and to create or let's say enhance my confusion by the Board of Ethics, apparently respondents are not required to respond in writing within 20 days, unless it's a formal hearing. That's my understanding from Mr. Yoshimoto.

- Mr. Wiseman: But you now have the response.
- Mr. Tucker: I do but it was not even required.
- Mr. Wiseman: Well but it's on the record. It's part of the record at this time.
- Mr. Tucker: Okay. I'm referring at the moment to 2016...
- Mr. Wiseman: I'm not concurring with you that it's not required. I'd have to defer. I have to do my own check on that and check with counsel on that. So I'm not agreeing with you.
- Mr. Tucker: No, no, no. Well these are issues that we need to explore.
- Mr. Wiseman: Okay, continue...
- Mr. Murai: I'm sorry Mr. Vice-Chair. I'm a little bit confused and I wanna make sure that no one else is similarly confused.
- Mr. Wiseman: Okay.

Mr. Murai: Mr. Tucker, I just heard you mention that you... When you say when you had mentioned something about lack of appropriate notice of what kind of hearing it is. You're talking about today, for this matter, your complaint or back in 2016?

Mr. Tucker: I'm talking about 2016-16 and 2016-17.

Mr. Murai: Okay, good. So you're not talking, you're not saying you were not given proper notice of today's hearing or the last hearing we held earlier in the month.

Mr. Tucker: Well, that's a separate issue. But the Board did fail to give me proper notice regarding these proceedings.

Mr. Murai: Okay. Because all of this is being recorded and has to be reduced to minutes. Please do our Board secretary a favor and make clear which one you're talking about so that we'll...

Mr. Tucker: I've been trying to do so. 2016-16 and 2016-17 are the basis upon which I have claimed I was denied discovery and cross examination and in such, my civil rights I have claimed that were being violated.

Mr. Murai: Alright. Thank you.

Mr. Yoshimoto: Mr. Chairman.

Mr. Wiseman: Yes Mr. Yoshimoto.

Mr. Yoshimoto: If I may. My understanding of the Board rules is that respondents are provided 20 days...I think it's Rule 4.7...to respond in writing. And so I believe that applies to when someone is the subject of a petition. So just to clarify for the record.

Mr. Wiseman: Thank you. Alright. Mr. Tucker, as you recall, we don't deal with civil rights so. It's not before us. Continue.

Mr. Tucker: Okay. And it seems to my recollection and I'd ask the Board or Members to correct me. That at the last meeting we had last month, the reason that I received no written response from the Members of the Board of Ethics against whom I've filed a complaint, was... Can someone fill in the blank?

Mr. Wiseman: Yeah. Because they were former commissioners. They were former members of this Board of Ethics. And the only one that

still exist...that was at issue at the time was Mr. Yoshimoto, who did file a response.

- Mr. Tucker: So they were exempt from responding to the complaint...
- Mr. Wiseman: They're former members. I'm telling you the reason the former members are not subject to the jurisdiction of this Board.
- Mr. Tucker: And Mr. Richards is recusing himself because?
- Mr. Wiseman: Mr. Robinson.
- Mr. Tucker: Robinson. I'm sorry.
- Mr. Yoshimoto: Yeah. My understanding is Mr. Robinson was serving on the Board at the time in 2016, so he's subject of the...he's the respondent.
- Mr. Wiseman: Okay, he's the respondent also.
- Mr. Tucker: So the only surviving respondent from that hearing is exempt from responding to my complaint because...?
- Mr. Wiseman: Well, I'm not saying he's exempt. He didn't respond.
- Mr. Tucker: So under the code, that would be taken as a default?
- Mr. Wiseman: No.
- Mr. Murai: If I may, Mr. Chair? You know Mr. Yoshimoto just cited Rule 4.7. Which is a rule that allows the respondents to a third party complaint an opportunity to respond. It gives the respondent the opportunity but it does not require them. It doesn't say you shall file a response. It says you shall have the opportunity to file a response. So I don't think you can equate a failure to file a response with a default, when there is not requirement that a response be filed.
- Mr. Wiseman: If you were in a court of law, it might be different. You may be correct in that. Mr. Yoshimoto.
- Mr. Yoshimoto: One more thing to point out. When I wrote the response dated August 28, 2019, my arguments pertain, not only to myself, but to the Board as well. If you look at the memo.
- Mr. Wiseman: Okay. Anything else Mr. Tucker?

Mr. Tucker: Well. So if you could clarify for me, the members of a Board of Ethics or any board are not subject to the rules and regulations of rules and procedures or the code, while they're on the Board or the minute they leave the Board, they're no longer...

Mr. Wiseman: Mr. Tucker, at this point, the only two people at...issuing at petition is Mr. Yoshimoto, who filed a response for himself and for the Board and Mr. Robinson.

Mr. Tucker: Okay.

Mr. Wiseman: Anything else?

Mr. Tucker: So I was limited in my ability to file a complaint accurately by the information I was provided in a meeting with Mr. Yoshimoto.

Mr. Wiseman: Well that would call for some legal advice which we're not going to give you.

Mr. Tucker: I'm not asking you for advice. I'm just making statement.

Mr. Wiseman: You're making an assumption and you're asking for confirmation.

Mr. Tucker: No. I'm not asking a question...

Mr. Wiseman: Well I'm not confirming your position...

Mr. Tucker: I'm not asking you to.

Mr. Wiseman: You're stating.

Mr. Tucker: I'm not asking you to. Now we had a meeting on October 31, 2018 with Mr. Yoshimoto prior to...to predicate to having a discussion with the Board of Ethics regarding structural changes that can be made in the code in the future and it was well received at the time we had that discussion. But in meeting that I had with Mr. Yoshimoto, which we recorded, he recorded, I recorded. I reviewed the recording and in that meeting I was told by Mr. Yoshimoto and I quote, "There is nothing to prevent you from filing a complaint against the Board." So that was untrue?

Mr. Wiseman: I'm not commenting on that. We don't have...

Mr. Tucker: Then I'm asking rhetorically.

Mr. Wiseman: We do not have jurisdiction over former Board Members. Let's continue. It's been a long day. We have many other things on the agenda.

Mr. Tucker: I understand that. Well then, perhaps we could go to item 2 of this petition that's on the agenda.

Mr. Wiseman: You're asking for some code section?

Mr. Tucker: No I refer...it was agendized as correspondence dated September 23, 2019 received from the petitioner that was me.

Mr. Wiseman: Item 2 in the petition is... You're asking to have the specific section of the code provided.

Mr. Tucker: No. I'm not asking anything. It's just agendized as correspondence dated September 23, 2019 received from the petitioner. That was me.

Mr. Wiseman: And what are you asking about that? What do you want to say about that one?

Mr. Tucker: Well on August 1st of last year. Six months ago. I submitted what became Petition No. 2019-02. Now subsequent to that, I was informed that if I had any questions to please contact Ms. Pagala, the secretary for Board. I did have some questions, I contacted Ms. Pagala as the letter indicated. And I received a response saying you can't talk to Ms. Pagala, she can't answer any questions. Now at that moment I was left with nobody to correspond with. Now subsequently another attorney from the Corporation Counsel office let me know that the County was in the process under a Bill No. 258 at the Council to acquire funding to hire Mr. Murai from Maui. And that I would have address my questions to Mr. Murai, which upon finding out that 258 had been approved. The funding had been aliquoted. Mr. Murai had been contacted and informed. I got in touch with him on the September 10th which was a day before my scheduled hearing of September 11th. And that was the first moment which I found out that my hearing which was scheduled for the next day was actually had been postponed, cause nobody had bothered to notify me of that. Now also in our email correspondence, I mentioned the fact that I believed the 20 days had expired and there had been no response from the...that I was aware of...from the respondents.

Mr. Wiseman: We've been over this Mr. Tucker.

Mr. Tucker: I'm just telling you about our communications.

Mr. Wiseman: How is that at issue to your complaint against being denied the right to cross examination and discovery?

Mr. Tucker: Well it has to do with the fact that testimony given and on record from a previous counsel or previous Board Members and J Yoshimoto has...or especially Ken Goodenow has been that when Gary informed me that the respondents did not have a need to respond because it was an informal hearing. He said if I had a complaint about that, I should submit an objection to the Board of Ethics. And I submitted a written objection on September 23 through the Board of Ethics stating my reasons for the objection and requesting a formal hearing. Now in January of 2019, in our discussions with the Board, it was Mr. Goodenow who went at some length in our transcripts, we had 37 pages of transcripts explaining that a petitioner had a right to ask for a formal hearing. That was what he had said on record. That the petitioner had a right to request a formal hearing. So I made that request on September 23 and I'd had no response in four months, five months.

Mr. Murai: Excuse me, Mr. Vice-Chair if I may. Mr. Tucker, with all due respect.

Mr. Tucker: Yeah.

Mr. Murai: What we have to remember now is the only reason... This is ground we've gone over before. You can trust that the Board has heard your prior testimony from the last hearing. I just want to remind you that the sole purpose of today's proceeding is so that you may have an opportunity to respond to Mr. Yoshimoto's, that 60 page memo that you refer to earlier. That's the only thing. If you don't have anything else to respond, in response to Mr. Yoshimoto's memo, then I would suggest that we're done here.

Mr. Tucker: Well I was just bringing up the second agenda item that's on your agenda.

Mr. Murai: What second agenda item?

Mr. Tucker: It was a correspondence dated September 23, 2019 received from...

Mr. Murai: That's the January 29th agenda?

Mr. Tucker: Yeah.

Mr. Murai: That's pau. Today is February 28th.

Mr. Tucker: It never came up on January 29th.

Mr. Murai: But it's not on todays...

Mr. Tucker: It hasn't continued into this meeting.

Mr. Murai: I don't know. I don't know. Here's what I do know. I do know that the sole purpose of today's proceeding is so that you may respond to Mr. Yoshimoto's memo. If you want to spend your time speaking of things that are not responsive, then the Chair may...preclude you from...

Mr. Tucker: Okay, well then let me...let me try to wrap this up for you...

Mr. Wiseman: Yes, please.

Mr. Tucker: As well as we can. I'm happy to do that. I'm in here to suck up all your day. Or mine. Now, at the last meeting, Mr. Yoshimoto offered to review the record and to find out what recommendations were being made and to adjust the code based on our lengthy meeting with the Board of Ethics back in January of 2018. And you had mentioned that you would look into it as well because there were subjects so that we could have avoided all this by. If the Board of Ethics was proceeding in a manner to improve the code, to reduce the number of opportunities for these conflicts we're discussing. And to make some improvements along the line of adding truthfulness or discovery here, enhancing discovery or to cross examination or other lack of opacity. But J has given me an email yesterday, which I received, pointing out that three things. Was that it? You gave me the three things. Three things were being amended...offered from this...from the Board of Ethics to be amended. One of which was to add one word to a title in the section. Another recommendation was to make that word that was added to be in bold. And then the third thing was to reduce the statute of limitations on ethics violations from a period of six years to two years. So I would like to close and say in that I left the hearing in January 9th, 2018 saying I reserve the right to file a complaint in a later date. But... Dependent upon seeing how the Board performs on trying to make improvements in the code. From what J informed me of yesterday, the Board not only failed to make any improvements with the code no matter how much happy talk they gave me in the hearing. That they actually made an effort to reduce and reverse progress in the code by reducing this statute of limitations to two years. Now I have spent six months just getting to a hearing for this petition. And for the Board to be looking at a situation where they want to reduce the period for complaints to two years is just really moving backwards.

Mr. Wiseman: Let me just interject here. The period is a statute that runs from the time... It's not like you have...you have two years to file a complaint...not to petition. Not to have your whole hearing within those two years.

Mr. Tucker: I understand that. But six to two is a substantial reduction of the window in which a citizen can operate.

Mr. Wiseman: But six years Mr. Tucker. You have to realize, see, the only statute in a civil world that has a six year statute of limitations is contracts. You're talking about six years. Employees fade out, retire, die, everything and you're saying to take an issue you had, six years later and to be able to file a petition against a government employee. There are hardly any statutes in U.S. jurisdiction that goes six years for something like that.

Mr. Tucker: But there is one here.

Mr. Wiseman: There is one here, yeah. But we're trying to change that.

Mr. Tucker: I understand. That's the only thing you're trying to change.

Mr. Wiseman: In the efforts to change a code, depend on the Charter Commission which has to approve a certain item and we've been waiting on that one.

Mr. Tucker: Okay.

Mr. Wiseman: So okay, continue.

Mr. Tucker: So anyway, as near as I can determine that the Board of Ethics is abandoning any consideration or interest in improving the communications with petitioners such as myself. Improving the opportunities for discovery by having a mutually redacted documents going back and forth. By allowing for waivers of confidentiality. There's been no consideration for examining an investigatory process or a clarifying the level of formal, informal investigatory and initial hearings to the point that can be comprehensible to a layman in the field. But if that's lack of interest is pervasive across the board, that's gonna be...maybe the nearly the end of it all.

Mr. Wiseman: Well...

Mr. Tucker: And I will close...

Mr. Wiseman: I will close by saying your statement is totally without merit, untrue and it's not applicable to this Board. Thank you.

Mr. Tucker: You're welcome.

Mr. Yoshimoto: Mr. Chairman. Briefly in response. What I did provide to Mr. Tucker was, what was agendized on a previous meeting by the Board. So that part is accurate. What is not accurate is that the Board did not do anything in terms of improving it's procedures. As I mentioned the last time, the Board is waiting for the Charter amendment to be voted upon by the voters. And it is at that time, the Board will act upon improving or amending it's rules. The Board has already gone through a rule amendment process as the Board Members know. It's been a long process. That's not being done. I cannot disclose that to the public because it's still in the deliberative process, we're still working on that. But as the Board Members know as a matter of record and just so it's clear for the record. The Board has spent considerable time working on those rules that addresses the concerns to make sure this clarity. In addition, the Board will probably, and I'm not the Board so I can't say for sure, the Board will also look at making sure that the code is consistent with the Charter, as well as the [inaudible].

Mr. Wiseman: Indeed we have spent considerable time on it. Okay. Thank you...

Mr. Tucker: I'm sorry, I'm not aware of that. So I apologize if I...

Mr. Wiseman: No apology necessary. Thank you. We'll take this matter under advisement.

Mr. Tucker: I know you will. Thank you.

b. Petition 2019-05: Continued hearing regarding request for an informal advisory opinion from a former County officer or employee to determine compliance with Section 2-91.2 (Post-employment) of the Hawai'i County Code. (*Closed hearing requested*) (1:27 p.m.)

Mr. Robinson: Okay. Next item on the agenda. I think Mr. Murai you're here for that one as well.

Mr. Murai: Yes, I am.

Mr. Robinson: Okay. So we would need to have a closed hearing to discuss this matter. I don't see the person who filed this is present so. In order to do this, we would need to continue as a closed hearing, correct?

Mr. Wiseman: I'm sorry, I missed that.

Mr. Murai: For the Board's benefit. Mr. Jung, the person who requested the advisory opinion had requested a closed hearing and the matter was continued to today because we were presented...the Board

was presented with some voluminous information. And Board Member Sumner-Mack had suggested...

Mr. Wiseman: Right the whole package.

Mr. Murai: That we should take some time digest all that material. So the only thing we're back here for today is to continue the Board's deliberation and render a final decision. Now because we started the matter in a closed session... Although Mr. Jung is not present today, I would recommend to the Board that we continue this matter in a close session because there were items that Mr. Jung had presented to the Board that he wished to keep private.

Mr. Wiseman: Right.

Mr. Murai: And I don't want us to run the risk of disclosing something he may have wanted to keep private in an open session.

Mr. Wiseman: I make a motion we continue the matter in a closed session.

Mr. Heintz: I second.

Mr. Robinson: Okay. It's been moved and seconded and all those in favor say aye. Okay we will have a closed session. So we have to ask you folks to leave. Again, sorry. But we're getting there.

Motion and Vote: Mr. Wiseman moved to continue matter in a closed hearing. Mr. Heintz seconded the motion. All members voted aye.

1:28 p.m. The Board moved into closed hearing.

* * * *

1:50 p.m. The Board returned into regular session.

c. **Petition 2019-07:** Continued review of draft informal advisory opinion regarding a petition from a County officer or employee to determine whether there is a conflict of interest under Section 2-84 of the Hawai'i County Code for his office to prosecute cases involving a protest site on Hawai'i Island. (1:50 p.m.)

Mr. Robinson: J, I think you emailed that to us.

Mr. Yoshimoto: I did and I do have hard copies if the Board Members want to look at it again.

Mr. Robinson: And we had Larry's separate item right.

Mr. Wiseman: Are we open to discussion in this matter?

Mr. Robinson: Okay, go ahead. David.

Mr. Wiseman: Now after, with respect to the draft opinion...advisory opinion. After my review of several items such as...in particular...our colleague Mr. Heintz's concurring opinion...concurrence and dissent, as well as the transcript in my notes in the matter. I have a change I would like to make in this opinion. And my concern is that, with respect to the issue of appearance of impropriety, I do believe that notwithstanding the code absence of that item. I do believe that Mr. Heintz's position is with tremendous merit and I would either concur with him in part or offer an amendment to this draft decision which I can read in for you. If you can go into the conclusion of the draft decision. It's not that long. Conclusion of Law. Based upon the evidence presented and the Board's review of the County... I'm just gonna get to the point here. The issue of whether petition has a substantial financial interest in RCUH is moot and was not addressed." "Petitioner also asked about the appearance of impropriety, however, the appearance of impropriety is not a standard with the Hawai'i Ethics Code. Thus, the Board does not opine about the appearance of impropriety directly but did find in the interest of prudence in maintaining the public's confidence in government." He should establish a barrier within his office and stay away from those cases. And I would, if I could find my notes and at that point, I would offer to include... So going back to the draft opinion...in the conclusion where it states, "Further, Petitioner also asked about the appearance of impropriety, however the appearance of impropriety is not a standard within the Hawai'i Ethics Code." I would suggest the following language be added after that sentence...notwithstanding, such fact, the Board believes it has an inherent right to consider and opine on the appearance of impropriety. In furtherance of this concept, we must acknowledge the fact that the Petitioner queried on this specific issue in his petition. It was debated and discussed for some time during the hearing. It is in the Board's position that it's scope...that it's scope transcends the Code of Ethics when dealing with issues of ethics and morality. And we affirm our right to consider...our right and obligation to consider the issue of an appearance of impropriety when appropriate. And I would...

Mr. Robinson: And so would that be the new last sentence or would that be in addition to?

Mr. Wiseman: No, that would be inserted after...

Mr. Heintz: Four lines up from the bottom.

Mr. Robinson: Ethics Code...and then it would continue after that. Thus, the Board does not opine about the appearance of...

Mr. Wiseman: Yeah. So that would be stricken.

Mr. Robinson: Oh, that would be stricken?

Mr. Wiseman: Yeah. And to revise...a Petitioner shall establish at wall or barrier...that will remain. And I don't know about Mr. Heintz but I would find an appearance of impropriety.

Mr. Robinson: Okay. Let me try this again. Okay, four lines up from the bottom. "Further, Petitioner also asked about the appearance of impropriety, however the appearance of impropriety is not a standard within the Hawai'i County Ethics Code. And then...

Mr. Wiseman: Right there would be my insert.

Mr. Robinson: That would be your insert and then after your insert would start...thus, the County Board does not opine about the appearance of?

Mr. Wiseman: No. No cause what I'm saying is in contrast to that.

Ms. Sumner-Mack: What do we take out then?

Mr. Wiseman: We would take out...thus the Board does not opine...

Mr. Robinson: The appearance of impropriety directly but did find...

Mr. Wiseman: Yeah. We would take out...

Mr. Robinson: That next...

Mr. Wiseman: Thus, the Board does not opine about the appearance of impropriety. Period. And then I would add on that. In addition, the Board does find in the interest of prudence...and that can stay the same.

Ms. Sumner-Mack: But directly...comes in later?

Mr. Wiseman: No, we don't need directly.

Ms. Sumner-Mack: What do we not mark out?

Mr. Wiseman: We're taking out...thus, the Board does not opine about the appearance of impropriety directly but...

Mr. Robinson: Period. You take that section out.

Ms. Sumner-Mack: Take "but" out too?

Mr. Robinson: Yeah, take "but" out too and then it would start...did find that in the...

Mr. Wiseman: In addition or however...

Mr. Robinson: But you would say the Board did find?

Mr. Wiseman: Yeah.

Ms. Sumner-Mack: Did find that in addition...

Mr. Robinson: Did find...okay.

Mr. Heintz: Wait a minute...did find what?

Mr. Robinson: Did find that in the interest of prudence in maintaining the public's confidence in the government, that Petitioner shall establish a wall or barrier. So we take out, that one and add that...the Board did find that in the interest of prudence in maintaining the public's confidence... We'd leave that in there right?

Mr. Wiseman: Yeah. We're missing one thing if we back out. I mean what my statement says is that, we're transcending the code with respect when it comes to ethics and morality. To offer this...to be able to consider the appearance of impropriety. But we didn't make a ruling on it and I would add to that and the Board does find that there was an appearance of impropriety.

Ms. Sumner-Mack: So where would you put that in exactly?

Mr. Wiseman: At the end of my statement.

Mr. Robinson: Did you get? Yeah. But I'd like to get this voted on today. So I would like to have us...

Ms. Sumner-Mack: I wanna be certain what...

Mr. Robinson: Yeah. We're voting on.

Mr. Wiseman: Okay so you're right there.

Ms. Sumner-Mack: Furthermore...

Mr. Wiseman: So all my stuff would go in here, right.

Ms. Sumner-Mack: Okay and then it comes down to...

Mr. Wiseman: And then I would add. Perhaps, J, I would defer to you furthermore... The Board did find or finds an appearance of impropriety.

Mr. Heintz: Yeah. That's totally contrary to what I'm...my concurrence and dissent is about. Cause I didn't think we ever did... I mean my position is just the opposite. There was not only was there no conflict of interest, there was not even an appearance of a conflict of interest. Because the way in which one determines whether or not there's an appearance of a conflict of interest is one must utilize a standard. And that standard is an objective standard...the reasonable person standard...and that standard we talked about quite a bit. And that's one of the reasons I corrected the minutes. It's an objective standard, not going to the streets of Hilo over to find some group of people...and...what they think. That's not the standard of the reasonable person standard that's used either in [inaudible] law or in the court of law.

Mr. Wiseman: We decided there was conflict.

Mr. Heintz: We decided there was no conflict and we dodged whether or not there was an appearance. And I held the view that there was not an appearance. Nan held a view that there is an appearance of a conflict of interest. What David is doing, I actually agree with, but I would still say I would still need my dissent. Because what David is doing, is opening the door part of the way which I totally agree with. We must, as the Board of Ethics, be more than concerned, simply about the letter of the code. Ethics and the importance of this Board is greater than any codified code. Because as I indicated in my dissent and opinion, that is an anemic view of ethics. And I object to an anemic view of ethics.

Ms. Sumner-Mack: So you like what he...what he's adding?

Mr. Heintz: Because, because what he is adding, indicates that we need the first part of what he's adding. Indicates that we need to sometimes, rarely, but sometimes. And this is one of those times. Because he was being criticized in the press...including some legal

people...that he had an appearance of impropriety. And that's actually what he was more concerned about. And we punted on that. And I don't think we should punt. David's still punts on that in his version. But at least he goes far enough to say that we should be looking at more than the letter of the code. And that's all. I would support David's first part. But his last part actually says that we find an appearance of conflict of interest or impropriety and we didn't find that. Certainly not in our discussion.

Mr. Wiseman: No. Okay, well I'm okay with leaving that out.

Ms. Sumner-Mack: Do you cut it?

Mr. Wiseman: Yeah.

Mr. Heintz: So we can leave that out...

Mr. Wiseman: Yeah, the problem I have with us making decisions and perhaps is that I'm very concerned with the time. The only time, based on the Sunshine Law, we can discuss this and look over another draft is during this meeting which is once a month.

Mr. Robinson: Yeah.

Mr. Wiseman: I mean we gotta do something about that. Because, ideally, this would be like J could send us a new draft sometime next week. We could all put in our input and have a final version. I mean this is going on and on. And this guy Roth, he's going to be out of office before we make a decision. You know...

Mr. Heintz: So, if I can expedite just a little bit.

Mr. Robinson: Please do.

Mr. Heintz: I take and I concur with David's addition up to the...that first part. And then if he's willing to stop right there. That's fine. And go to the prudence business.

Mr. Yoshimoto: So could you read that in again so we're clear what you're okay with?

Mr. Wiseman: Okay so. Going back to the conclusion section.

Mr. Heintz: Four lines from the bottom of the page.

Mr. Wiseman: “Further, petitioner asked about the appearance of impropriety, however the appearance of impropriety is not a standard within the Hawai‘i County Code.” And then I add right there...I add the following language notwithstanding such fact, the Board believes it has an inherent right to consider and opine on the appearance of impropriety...and appearance of impropriety. In Furtherance of this concept, we must acknowledge the fact that petitioner queried this particular issue in his petition and it was fully debated and discussed for some time during the hearing. It is the Board’s position that the scope of... I would add here...the scope of our duties and obligation transcends the Code of Ethics when dealing with issues of ethics and morality. And we affirm our right to...and obligation and consider the issue of appearance of impropriety when appropriate.

Mr. Heintz: And then he switches to the topic of a prudence and that’s fine.

Mr. Wiseman: Okay.

Mr. Heintz: So if he stops there, I will agree with that.

Mr. Wiseman: I’m fine with that.

Mr. Heintz: But I still have my dissenting opinion.

Mr. Robinson: Still agree to dissenting opinion but...

Mr. Yoshimoto: Okay and then it’ll...and then it’ll read from there...furthermore, the Board did find that in the interest of prudence...

Mr. Heintz: Right.

Mr. Wiseman: Yeah.

Mr. Heintz: I think that’s an improvement. Thank you David.

Mr. Yoshimoto: So that’s an amendment, right? You’re going to make a motion to amend?

Mr. Wiseman: Right. I would move to amend the language just submitted...

Mr. Robinson: As noted.

Mr. Wiseman: As amended.

Ms. Sumner-Mack: I’ll second it.

Mr. Robinson: Okay so moved and seconded that we approve this informal advisory opinion with the noted amendments. Everyone's in agreement.

Mr. Yoshimoto: As well as including...

Mr. Robinson: As well as including David's... Not David's, but...

Mr. Heintz: Larry's.

Mr. Robinson: Larry's...concurrence in part...

Mr. Heintz: In part...

Mr. Robinson: And dissenting in part opinion.

Mr. Heintz: Yes.

Mr. Robinson: Okay. Is there any further discussion? If not, all those in favor say aye. Contrary minded. Okay.

Mr. Wiseman: So again, this is next month.

Mr. Yoshimoto: No.

Mr. Robinson: We're done.

Mr. Heintz: We're done.

Mr. Yoshimoto: Rick will sign off on it.

Mr. Wiseman: Oh great. Okay.

Mr. Yoshimoto: Once I make changes.

Mr. Robinson: Yeah. And then we'll be good to go.

Motion and Vote: Mr. Wiseman moved to accept the informal advisory opinion with noted amendments. Ms. Sumner-Mack seconded the motion. All members voted aye.

Mr. Robinson: Okay we're moving right along here. Executive session. Let's move that executive session to the very last part because we've done all this other stuff in here. So we'll go to item number 7. And then after we finish with item number 7, then we'll go back

and do the executive session which will be really quick cause all we have to do is discuss the minutes. And so item number 7.

6. VOTING ON EXECUTIVE SESSION MATTERS (2:57 p.m.)

a. Review of the executive session minutes of January 29, 2020.

Mr. Robinson: Okay, we'll go back to regular session. First order of business. Is there a motion to approve?

Ms. Sumner-Mack: I motion.

Mr. Robinson: Is there a second?

Mr. Wiseman: Second.

Mr. Robinson: It's been moved and seconded. All those in favor say aye. Okay, all is approved.

Motion and Vote: Ms. Sumner-Mack moved to approve the executive session minutes. Mr. Wiseman seconded the motion. All members voted aye.

b. Review of *Confidential Financial Disclosure Forms* filed pursuant to Section 2-91.1(d), Hawai'i County Code, by County board and commission members and designated County employees, where personal matters will be reviewed. (3:00 p.m.)

Mr. Yoshimoto: The financial disclosures. We're gonna do it today?

Mr. Robinson: We've done all those so.

Mr. Wiseman: I'm finished with some. I gotta go.

Mr. Robinson: Okay so, there was only one...

Ms. Pagala: Number 49.

Mr. Robinson: Okay. All of the financial disclosure forms with the exception of Item 49 which was referred back for further completion. Okay. Okay so all those in favor say aye.

Motion and Vote: Mr. Robinson moved to file all financial disclosure forms with the exception on Item 49. All members voted aye.

7. DISCUSSION REGARDING DRAFTING A RESOLUTION TO CONDUCT AN INVESTIGATORY HEARING AS TO WHY THE RULE OF LAW IS NOT BEING ENFORCED AT THE MAUNA KEA ACCESS ROAD. REVIEW OF RELATED EMAILS RECEIVED FROM MEMBERS OF THE PUBLIC REGARDING MAUNA KEA. (2:09 p.m.)

Mr. Robinson: So Item 7 on the agenda. I'm sure everybody got those too. Lots of those. And we heard a lot of presentation earlier this morning.

Mr. Wiseman: So are we open for discussion?

Mr. Robinson: We are open for discussion at this point. On Item 7. And there had been some wordage of a possible resolution that had been discussed.

Mr. Heintz: Let me just say... So we have three drafts before us. Mine, the original one and Nan's. If it will help, I concur with everything Nan did in hers. Except I had, if you noticed, the only significant difference is that I had three questions instead of one that the committee would deal with. I would wanna stick with the three questions. Or I'm open to having change somewhat. But I'm not sure if Nan was objecting the other two questions I added. Or if she would concur with the other two. Which are in the original version. Thank you.

Mr. Yoshimoto: So. Board members actually, before we get into the substance of the resolutions, it might be a good idea if we have an executive session so we can talk about the legalities of...the legal issues.

Mr. Wiseman: Yes, indeed.

Mr. Heintz: Okay.

Mr. Robinson: Is there a motion for executive session?

Mr. Wiseman: Yeah, I move for executive session.

Mr. Robinson: Is there a second?

Mr. Heintz: Second.

Ms. Sumner-Mack: I'm not going to second it...

Mr. Robinson: Okay so it was moved and seconded. Is there any discussion before we took a vote on going into executive session?

Ms. Sumner-Mack: Well I just wonder if the subject is so volatile, shall we say. Would it be better to be as transparent as possible?

Mr. Wiseman: I understand what McCully is coming from but I would say that our legal counsel wants to give us some legal concerns about it. And that has to be in executive session.

Ms. Sumner-Mack: Okay.

Mr. Robinson: Okay.

Ms. Sumner-Mack: But I wanted to bring that up cause I think we should be sensitive to that.

Mr. Wiseman: I agree with you.

Mr. Robinson: Okay. All those in favor of executive session say aye. You know we'll deal with our minutes...

Motion and Vote: Mr. Wiseman moved to go into executive session. Mr. Heintz seconded the motion. All members voted aye.

2:11 p.m. The Board moved into executive session.

* * * *

2:58 p.m. The Board returned into regular session.

Mr. Robinson: Then we're still back on discussion regarding drafting a resolution.

Mr. Wiseman: Mr. Chairman, I make a motion to defer any further action in this matter, pending inquiry.

Mr. Robinson: Pending inquiry?

Mr. Wiseman: Pending further inquiry.

Mr. Robinson: Further inquiry.

Mr. Heintz: From an independent source right?

Ms. Sumner-Mack: Requesting...

Mr. Yoshimoto: Special counsel.

Mr. Robinson: Special counsel.

Mr. Yoshimoto: To advise the Board.

Mr. Wiseman: Okay.

Mr. Robinson: That's correct. Okay, it's been moved that... Is there a second?

Ms. Sumner-Mack: I'll second it.

Mr. Robinson: Okay so moved and seconded that we defer any further discussion on this matter pending retention of special counsel to advise the Board going forward. Any further discussion? Further inquiry, correct. Any further discussion? If not, all those in favor say aye. Contrary minded. Okay motion approved.

Motion and Vote: Mr. Wiseman moved to defer further discussion on this matter pending retention of special counsel. Ms. Sumner-Mack seconded the motion. All members voted aye.

9. ANNOUNCEMENTS (3:00 p.m.)

Mr. Robinson: The next monthly meeting of the Board of Ethics is scheduled for March 18 at 10:00 a.m. at the Hawai'i County Building. We'll be meeting here, right Maria?

Ms. Pagala: Yes.

Mr. Robinson: We'll be meeting here in this Council Room and that will be 10:00 a.m.

10. ADJOURNMENT (3:01 p.m.)

Respectfully submitted:



Maria Pagala, Secretary