

# HAWAI‘I COUNTY BOARD OF ETHICS

## MINUTES – REGULAR SESSION

Wednesday, September 9, 2020

10:00 a.m. to 12:06 p.m.

Hawai‘i County Building

25 Aupuni Street

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

Denise Nakanishi, Member

J Yoshimoto, Deputy Corporation Counsel

Maria Pagala, Secretary

Liza Osorio, Secretary

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

### 2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:12 a.m.)

Mr. Robinson: Are there any statements from the public, on agenda items?  
...Two? Statements from the public? Ok...Who is the first one?

Ms. Aiello: Chairman our first testifier is Michael Last.

Mr. Robinson: Michael Last. Go ahead Mr. Last if you would please.

Mr. Last: Yes can you hear me?

Mr. Robinson: Yes we can.

Mr. Last: Thank you very much. I - My name is Michael L. Last, and I always believe that every governmental entity must abide by the same rules and regulations, un- a, uniformly, without regard to race, religion, or lack thereof, color, motive, or any other factor. However, why does the Department of Land and Natural Resources, and others, disregard this fundamental idea when it comes to their actions and enforcement towards certain parties? My question is, why are DLNR, D-L-N-R officers allowed to abandon this fundamental premise when comes to confronting the Thirty-Meter Telescope protesters. I was financially harmed, by the DLNR, DOCARE - Department of Conservation and Resource Enforcement officers in the past. Thank you very much.

Mr. Robinson: Thank you Mr. Last.

Ms. Aiello: 1, 2. Our next speaker is Jerry Warren.

Mr. Robinson: Jerry Warren are you on the line...Mr. Warren?

Mr. Warren: Hello?

Mr. Robinson: Mr. Warren are you on the line?

Mr. Warren: Yes sir.

Mr. Robinson: You wanted to...have a testimony?

Mr. Warren: Yes sir.

Mr. Robinson: Please go ahead. We have, you have about three minutes.

Mr. Warren: Thank you, um. I am Jerome Warren. The Naalehu sewer spill was far more than 70 gallons. I noticed the seepage across the street, before the report went in. Several days later the wastewater was running across their driveway. By the time the report went in, it was flowing along the side of Milo Road, and going into a gutter that empties into the gulch. All of the houses uphill from this spill added all of the wastewater that was spilled. The total gallons would be the number of houses times their use per day times the number of days. All of this wastewater did not go into the neighborhood's gang cesspool, where it belongs. It was much more than 70 gallons. The County new this would happen because they did tests 20 years ago. The tests showed that the pipe on my side across the street was rotten. It finally plugged up and caused the spill. Before it plugged up, wastewater ran into my yard for years. Thank you for hearing this petition. The fact that this spill was falsely reported is a reflection on the entire boondoggle that Naalehu is suffering from. All County tax payers are also facing an unnecessary cost. The County still ignores the simple 2007 plan which would have prevented this spill and more leaks to come. This plan was voted for by the 160 homeowners. Instead we're paying consultants to draw up more and more elaborate plans. Meanwhile, the old pipes are rotting away and getting plugged up. If the elaborate plans ever go into construction, the County will face an enormous and unnecessary debt. Today's false report is only one blemish on the entire Naalehu boondoggle. The people suffering are the Naalehu homeowners, and all County tax payers. Those who benefit, are the consultants and the engineering firm.

Trust in government is what is at stake today. Anarchy prevails when that trust is broken. An example is the property on the corner across from the spill. Just go four blocks up from the gas station and look at the wrecked, abandoned house and the illegal junkyard full of old cars. People – the people coming and going drive up in cars with no license plates. These are the anarchists. This is the type of place they gravitate to, day and night. Anarchists have no integrity. They feel safe, for Government has none either. I hope that the Board of Ethics can install some integrity into the Department of Environmental Management. Mahalo.

Mr. Robinson: Thank you Mr. Warren. Um –

Ms. Sumner-Mack: May I ask a question?

Mr. Robinson: Please go ahead.

Ms. Sumner-Mack: Excuse me. Mr. Warren...you say...about 70 gallons is too low – that 70 gallons is only for one house. Could you estimate please how many gallons total might have been spilled from all the other houses put together?

Mr. Warren: Well we would – every house, nobody waters their lawn, so uh, whatever a house uses every day, spilled out, because it had no place to go. So think of how many houses are up there. I think four, at least...and how many days...three at least, and, so that's, its far more than 70. And then...I can add, when they finally unplugged it then the water just gushed...through the channel, the open ditch in my backyard, along – I borderline. So I, I think...the lady here, Sandra, has done more...concise...she has a better picture I would say. But the 70 gallons...I did see it running down the side of the street...into a swell that goes to the gulch. So it would take more than 70 gallons to do all of that.

Ms. Sumner-Mack: Okay, thank you very much.

Mr. Robinson: Anyone else? Mr. Warren, if I could ask you, you referred to a specific property, in your testimony. Can you define that again for me? Cause I drive back that way...I'll go just, you know, give that drive by and look at that today whenever I drive back.

Mr. Warren: Yes sir. It's 95-1206 Milo Road. That's the abandoned house next door to me on the Hilo side. It's...if you're...it's on Kukui and Milo, there's a corner there. So, as soon as you turn up Kukui from the gas station, you will see that house. It has a rotten roof, you'll

see all the junk cars, so...again...the lady here, Sandra, is, she's more detailed than I am –

Mr. Robinson: No I understand -

Mr. Warren: She can also provide, you know, the map, and pictures even –

Mr. Robinson: Ok, I understand, I understand, I'll just drive by there today and take a look at that when I start back.

Mr. Warren: Thank you.

Mr. Robinson: Thank you. Are there any other public testimonies? Statements from the public?

**3. APPROVAL OF THE REGULAR SESSION MINUTES OF AUGUST 12, 2020. (10:20 a.m.)**

Mr. Robinson: Alright, next item on the agenda, approval of the regular session minutes from August 12. Is everyone...on the Board had a chance to review those minutes? Is there a motion to approve?

Mr. Heintz: I move we approve the, the regular minutes.

Mr. Robinson: Ok it's been moved.

Mr. Wiseman: I second.

Mr. Robinson: Oh and seconded. Um, do you have that? Moved and seconded that we approve, all's in favor say aye. Contrary ok, thank you those are approved.

**Motion and vote: Mr. Heintz moved to approve the minutes. Mr. Wiseman seconded the motion. All members voted Aye.**

**4. CORRESPONDENCE (10:21 a.m.)**

Mr. Robinson: Correspondence...anonymous letter from members of the public dated July 29, 2020 requesting an intervention, investigation, into the alleged unfair special treatment of an employee in the Parks and Recreation Department. Has everyone had a chance to read that letter? It's kind of interesting actually.

Mr. Heintz: Mr. Chairman, do we know if this letter was also sent to the Parks and Recreation? County of Hawai'i?...it doesn't say it's cc'd but do we have any knowledge of that?

J. Yoshimoto: We don't have any information, indicating that...No.

Mr. Heintz: Thank you.

Mr. Robinson: I think that...we should place this on our agenda, for the next meeting, and ask Parks and Recreation to come and respond to this letter.

Mr. Wiseman: Can you let them see...that letter again please?

Mr. Robinson: It's a letter dated July 29, 2020, requesting an investigation into the alleged unfair special treatment of an employee in the Parks and Recreation. It was in our packet, that went out, this past time.

Mr. Wiseman: Was that the anonymous letter?

Mr. Robinson: The anonymous letter, correct. So if we place it on our agenda, and ask Parks and Recreation to come respond to it.

Mr. Wiseman: Yeah, ok.

Mr. Robinson: Is everybody ok with that? Ok. Do we need a motion?

Mr. Heintz: I'll move.

Mr. Wiseman: It's being placed on the agenda for discussion right?

Mr. Robinson: Right it's gonna be placed on the agenda with a response from, we'll request a response from Parks and Recreation to this anonymous letter.

Mr. Wiseman: Well is that...are we responding to anonymous letters now?

Mr. Robinson: I think in this case, because of this one...we need to offer Parks and Recreation an opportunity to respond. Even though its anonymous and not signed, it's so detailed that I think we owe them that...we have an obligation to allow them a chance to respond.

Mr. Heintz: I guess another way to put this is...the letter is asking the Ethics Board to initiate an investigation. So there are really two ways in which we can get involved. One is responding to petitions where the person making the complaint themselves, or we initiate an investigation and...this looks like its substantial enough to initiate an investigation, give the Department of Parks & Recreation a

chance to do that. So if you need a motion, I'll make the motion or second the motion..

Mr. Robinson: Okay well I think you've made the motion, is there a second to the motion to place it on our agenda with a response?

Ms. Sumner-Mack: Second.

Mr. Robinson: This case has been moved and seconded, any further discussion? If not all those in favor say Aye...Contrary minded. Okay we'll place this on our agenda for the next meeting. And Maria you'll send a note to Parks and Rec to please respond...

**Motion and Vote: Mr. Heintz moved to place the motion onto the agenda. Ms. Sumner-Mack seconded the motion. All members voted aye.**

**5. NEW BUSINESS (10:24 a.m.)**

Mr. Robinson: Okay, new business. There's no new business...

**6. UNFINISHED BUSINESS (10:25 a.m.)**

**a. Petition 2019-02: Review draft order to dismiss petition alleging that a County officer or employee in the Hawai'i County of Board of Ethics is in violation of Section 2-83(a)(b)(c) Fair Treatment of the Hawai'i County Code.**

Mr. Robinson: That's the one that...yeah, David that would be you and Mr. Murai.

Mr. Wiseman: Yeah, ok...We have the order dismissing the petition...And this is on...in the matter of Robert Tucker...I'll take any discussion.

Mr. Heintz: I just have a question...The petition number 2019-02 or are we talking about 2020-02?

Mr. Wiseman: No, 2019-02.

Mr. Heintz: Ok, is 2020-02 also Mr. Tucker? No...2019 is the Tucker, ok. Thank you.

Mr. Wiseman: Yeah.

Mr. Wiseman: Alright, I have a comment to make...Mr. Murai are you there?

Mr. Murai: I am.

Mr. Wiseman: On the second page, second paragraph, second...line. Violations of the U.S. Constitution and violation of Hawai'i Law, which the board has no authority/jurisdiction over. Hawai'i Law does include the Code of Ethics, doesn't it?

Mr. Murai: Yes. Yes it does, however, well if I may...

Mr. Wiseman: Go ahead.

Mr. Murai: The Hawai'i...the State Code of Ethics is found in Chapter 84, that applies only to State Employees or Officers. However..the..each County is required by the status to promulgate their own code of ethics. So...this board, I guess strictly speaking, does not have the authority to enforce the State Code of Ethics...because we are required by State Law to promulgate our own Code of Ethics, which..which each County has...

Mr. Wiseman: I understand, but..but it's a little..the way it's written..I'd suggest perhaps a footnote...

Mr. Murai: Well...Mr., acting chair Wiseman, it's just a draft...It's for board approval, you are free to...refrain that if you wish, just...I just a scrivener here.

Mr. Wiseman: Ok.

Mr. Murai: So feel free to edit, however the board, you know...this is a decision of the board, so whatever the board, whatever the language the board feels comfortable with that's fine. I have no pride of ownership here.

Mr. Wiseman: I see, cause it appears, and for my colleagues, it just appears that the reading of that, it's too general, it says that though we have no authority/jurisdiction over Hawai'i law.

Mr. Murai: Yeah.

Mr. Wiseman: And someone could be well, isn't the Board of Ethics on the Hawai'i law? I'm just at point where I think we need to get some little clarification like our counsel has stated and there should be comment there, I think in..maybe one or two sentence footnote.

Mr. Murai: I can do that...improvise.

Mr. Wiseman: Yeah, I would make a motion that the Counsel add a footnote just clarifying that exception of Hawai‘i law.

Mr. Murai: I’ll be glad to do that. So, acting chair Wiseman, with that instruction I believe the board...if the board...unless the board has other edits or clarifications, if the board will approve the proposed order as amended, I will make those amendments and send them over to you for your signature.

Mr. Wiseman: If the members are fine with that, abstinently or [inaudible] objection that’ll be the procedural thing.

Mr. Heintz: No objection.

Mr. Wiseman: Okay, Mr. Murai.

Mr. Murai: Thank you.

Mr. Heintz: We have to vote?

Mr. Murai: Yes...if there could be a motion to approve the proposed order as amended...and an affirmative vote.

Mr. Heintz: I so move.

Ms. Sumner-Mack: Also move.

Mr. Wiseman: Okay it’s been moved, and...to amend the...to approve the...draft order as amended. Do I have a second?

Ms. Sumner-Mack: Second.

Mr. Wiseman: Ms. Sumner-Mack has seconded the motion. All in favor say Aye...Motion passes, thank you Mr. Murai.

Mr. Murai: Thank you.

**Motion and Vote: Mr. Heintz moved to approve the proposed order as amended. Ms. Sumner-Mack seconded the motion. All members voted aye.**

Mr. Wiseman: And with that I will pass the chairmanship of this committee over to Mr. Robinson.

**b. Petition 2020-01: Continued review of a petition alleging that a County officer or employee is in violation of Sections 2-83 (Fair Treatment) and 2-84(a) (Conflict of Interest) of the Hawai‘i County Code. (10:30 a.m.)**

Mr. Robinson: Alright the next item on our agenda, do we still have people listening in?...Ok. The next item on our agenda is Petition 2020-01...and that's at a close hearing requested. Let's see...

Ms. Aiello: Mr. Chairman, this is Jeanette..for the closed sessions, what we will be doing is for those members that are a part of this closed session they will remain in the WebEx event. For those that are not a part of the closed session, we will ask them to leave the meeting. If they do not leave the meeting I will expel them from the meeting. We will lock the room, and after the close session is finished, we will unlock the room, and those members that wanna continue in with our session, with our meeting today, will have to login with the same credentials that we had for the very beginning. You will be contacted by somebody here, probably Maria, I'm not sure who, to let you know when we're out of closed session, for those of you who have to leave the meeting.

Mr. Robinson: Okay, so I'll leave it in your capable hands.

Ms. Aiello: So everyone that's not a part of this closed hearing, please leave the meeting now...Gary are you part of this closed session?

Mr. Murai: Yes I am.

Mr. Robinson: Yes, yes.

Ms. Aiello: Okay thank you.

Mr. Wiseman: Can you monitor people that have not left the meeting?

Ms. Aiello: Yes Mr. Wiseman everyone has left the meeting except for Sandra Demoruelle and Jerry Warren, You, Ms. Nakanishi, Gary Murai and those that are in this room.

Mr. Wiseman: I see, thank you.

Ms. Aiello: And the room is locked.

Mr. Murai: This is Gary, is Mr. Kucharski, or his representative present in the chambers?

Mr. Robinson: Yes they are.

Mr. Murai: Ok great.

**10:33 a.m. The Board moved into a closed session.**

**11:14 a.m. The Board went back into regular session**

**d. Petition 2020-04:** Continued review of a complaint regarding the lack of enforcement and/or unequal enforcement of state laws at Thirty Meter Telescope protest encampment at Mauna Kea Access Road.

Mr. Robinson: We'll go back into regular session... We received copies of your complaint that was previously filed and I think at the last meeting we asked you to... if we could hold that in abeyance pending receipt of opinion from the Corp Counsel and we received and opinion as to what our possibility of conducting an investigation is, and that response we received from Corp Counsel was given to us under attorney-client privilege, we have in our executive session a little bit later today, the review of that and what our disposition will be with that response received from Corp Counsel. So, having you here with your petition is kind of like cart before the horse right now before we take that and discuss it today in executive session which is the next item on our agenda which was a closed hearing. So, before we take any action on your petition, I'd just like to ask you, and I hate to do this, if you could give us another month, and then depending on what we...

Mr. Wiseman: Mr. Chairman can you speak a little louder please.

Mr. Robinson: We'd just like to ask you if you could give us another month on that and what we decide what we're gonna do with that response from the Corp Counsel's office then, if we could wait until next month to deal with your petition, if that would be agreeable to you. Would that be ok? I hate to make you come down and come back, come down and come back. Hopefully, you folks live close by.

Ms. Malakaua: Well in Mountain View, we're close enough. So that's not a problem.

Mr. Robinson: So who drives.

Ms. Malakaua: Well we kinda trade off.

Mr. Robinson: I figure. That's my job always too.

Ms. Malakaua: So okay then. So we're just going to close this for today then, and just continue?

Mr. Robinson: What we'll do is we'll hold your petition in abeyance until our next meeting.

Ms. Malakaua: Sounds good. So no testimony needed today?

Mr. Robinson: Yes. Mr. Heintz?

Mr. Heintz: May I ask them a question?

Mr. Robinson: Sure.

Mr. Heintz: The last time we talked about this, there was also some clarification about whether you followed up with the State Board of Ethics and you were going to do that I think.

Ms. Malakaua: Yes.

Mr. Heintz: Okay, just wanted to remind you that. Because much of what you have in your petition...

Ms. Malakaua: Does relate with the State, absolutely I agree.

Mr. Heintz: Thank you, that's all.

Mr. Robinson: Yeah we had an opportunity when we went for a first ever meeting of all the ethics boards from all the counties and then the State Ethics Board in Honolulu to learn a little bit more about what they do and how they're organized. So I think for Mr. Heintz, what he's saying is that that's another venue for you, with the State Ethics Board. Since a lot of, it's both County and State, but that's also, address it at that level as well.

Ms. Malakaua: We're just, we're uncertain because, it was given to Ige initially, and he did pass it to Harry Kim, so that's why we were uncertain as to who's gonna be taking responsibility for this situation. And so, we definitely understand that the state has a lot to do with this absolutely. Absolutely.

Mr. Robinson: So I think that would help also.

Ms. Malakaua: We have that, we are in the midst of drafting that up now and getting it finalized, so...

Mr. Robinson: And I think for us when we found when we met together with them was that they do have staff and a budget and they do conduct investigations. We have limited resources here for us, but they

have a little bit more expanded. So that might be another venue for you. That would be helpful.

Ms. Malakaua: Right. So yeah, we spoke to Virginia, a lady, she emailed, actually I didn't speak with her this time around, I had asked her to email me the information this time around. So, yes we're definitely informed on what is needed to do the filing, you know, proper filing. So we plan to do that, definitely. Why we haven't impeached Ige yet is beyond me but...

Mr. Robinson: Well that's not our..yeah. Anyway, how 'bout those Braves huh?

Ms. Malakaua: Ok so then, you'll just notify everybody, or it'll be on your agenda on your website for the next meeting then.

J. Yoshimoto: We have the date if you wanna jot it down now.

Ms. Malakaua: Oh, okay.

J. Yoshimoto: 14<sup>th</sup> is that it?

Ms. Malakaua: The 14<sup>th</sup>, same time 10 a.m.?

Mr. Robinson: 10 a.m. Correct.

Ms. Malakaua: Ok great. Alright you guys, well stay dry out there, stay safe and thank you.

Mr. Robinson: Thank you very much.

J. Yoshimoto: Mr. Chairman, you wanna have a motion and vote to continue to the next...

Mr. Robinson: Ok if I could get a motion -

Mr. Heintz: OK I move that petition 2020-04 be continued until the next meeting on October 14<sup>th</sup>.

Mr. Robinson: Okay is there a second?

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

Mr. Robinson: Ok, moved and seconded all that's in favor say Aye. Contrary minded. Ok thank you very much, thank you for coming today. Appreciate it.

**Motion and Vote: Mr. Heintz moved to continue until the next meeting. Ms. Sumner-Mack seconded the motion. All members voted aye.**

***11:20 a.m. The Board moved into executive session.***

***12:02 a.m. The Board returned from executive session.***

Mr. Robinson: Ok we'll go back to regular session. The only item we have left for regular session is approval of the executive session minutes from, August 12<sup>th</sup>, 2020 with the corrections that were discussed in the executive session. Chairman will entertain a motion to approve.

Mr. Heintz: I move that we approve the minutes in the executive session as amended.

Mr. Robinson: Is there a second?

Mr. Wiseman: Second.

Mr. Robinson: Second by Mr. Wiseman. Any further discussion? If not, all those in favor say Aye. Contrary minded.

**Motion and Vote: Mr. Heintz moved to approve the minutes. Mr. Wiseman seconded the motion. All members voted aye.**

## **8. ANNOUNCEMENTS (12:04 p.m.)**

Mr. Robinson: And that is the items that we have. Our next meeting is scheduled for October the 14<sup>th</sup>, same facility at 10 o'clock.

J. Yoshimoto: So we are postponing the confidential disclosures?

Mr. Robinson: Yes, the two confidential disclosures will be moved to next month.

J. Yoshimoto: Motion and a vote for that?

Mr. Robinson: Oh okay, we need a motion and a vote. Is there a motion to move the two confidential disclosures til next month?

Mr. Heintz: It's a move.

Mr. Robinson: Is there a second?

Mr. Wiseman: Second.

Mr. Robinson: Second, okay. Moved and seconded, all that's in favor say Aye. Aye. Contrary Minded.

**Motion and Vote: Mr. Heintz moved the confidential disclosures until next month. Mr. Wiseman seconded the motion. All members voted aye.**

J. Yoshimoto: And one last thing, so the discussion regarding legal proceedings, that's also continued to next month?

Mr. Robinson: The legal discussion, that was with Mr. Kamelamela? And he was not available today, so we'll continue that. That's in executive session. Although yeah I guess we have to do that in executive session. Ok so is there a motion to continue the discussion with Mr. Kamelamela regarding his legal opinion to us, his 10 page legal opinion.

Ms. Sumner-Mack: I so move.

Mr. Robinson: Is there a second?

Mr. Wiseman: I second.

Mr. Robinson: Okay moved and seconded, all that's in favor say aye. Contrary Minded. Ok so we'll move, well hopefully get Mr. Kamelamela to attend in October and we can have further discussion regarding this legal opinion regarding special counsel for the matter.

**Motion and Vote: Ms. Sumner-Mack moved to continue the discussion with Mr. Kamelamela. Mr. Wiseman seconded the motion. All members voted aye.**

Mr. Wiseman: Mr. Chairman I see that Denise has her mute button on.

Mr. Robinson: She voted though.

Denise Nakanishi: I raised my hand.

Mr. Robinson: Ok, we saw you.

Mr. Heintz: And the idea is that we'll have his 10 page letter before then, so we can –

Mr. Robinson: Right, as we decided we'll get copies of his 10 page letter so we can read it at our leisure, and understand it and be ready for him at the next October meeting.

J. Yoshimoto: Right, so to be clear, that's part of the motion to continue.

Mr. Robinson: Correct.

Mr. Heintz: Thank you.

9. **ADJOURNMENT (12:06 p.m.)**

Mr. Robinson: Okay, any further items for the board today? Now is there a motion to adjourn?

Mr. Heintz: I so move.

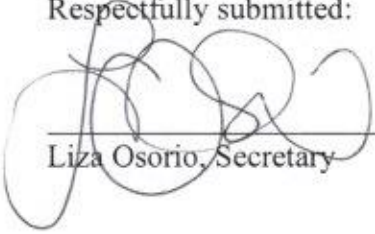
Mr. Robinson: Is there a second?

Ms. Sumner-Mack: Second.

Mr. Robinson: Moved and seconded. All's in favor say Aye. Aye. Alright, Aloha.

**Motion and Vote: Mr. Heintz moved to adjourn. Ms. Sumner-Mack seconded the motion. All members voted aye.**

Respectfully submitted:



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Liza Osorio, Secretary