

BEFORE THE BOARD OF ETHICS

COUNTY OF HAWAI'I

In the Matter of the Petition by

Douglas Le,
Kīlauea Disaster Recovery Officer,

Petitioner.

PETITION NO. 2021-17

INFORMAL ADVISORY OPINION

Hearing: November 10, 2021

INFORMAL ADVISORY OPINION

By Petition filed on November 3, 2021 (hereinafter referred to as “Petition”) with the Hawai‘i County Board of Ethics (hereinafter referred to as “Board”), Douglas Le, the Kīlauea Disaster Recovery Officer, (hereinafter referred to as “Petitioner”) requested guidance from the Board that the policies and procedures adopted by the Kīlauea Disaster Recovery Program (hereinafter referred to as “Program”) are sufficient to satisfy the Hawai‘i County Code of Ethics as applied to the Planning Director and Program Manager, both of whom are applying to the Program or that an opinion from the Board is not required pursuant to Hawai‘i County Code Section 2-83(c). Petitioner requested an open hearing.

At its duly noticed meeting on November 10, 2021, the Board reviewed and considered the above-captioned Petition pursuant to Rule 4 of the *Rules and Practice and Procedure of the Board of Ethics*. Petitioner and Deputy Corporation Counsel Jean Campbell attended the meeting and provided testimony. The Board, having deliberated and considered and giving appropriate weight to the testimony and evidence submitted by the Petitioner, and having considered the arguments presented, hereby renders the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. To the extent that any of these Findings of Fact are Conclusions of Law, they are to be so construed.

A. The Petition

2. Petitioner is a County of Hawai'i employee and is the Kīlauea Disaster Recovery Program Officer.
3. As the Program Officer, Petitioner oversees the Program, which includes voluntary applications made by eligible property owners who had properties inundated, isolated, or damaged by lava and/or fires caused by lava or other secondary effects of the 2018 eruption.
4. Eligibility for the Program is based solely on ownership of qualified properties and tie-back to impacts from the 2018 Kīlauea eruption.
5. The Program has received and expects to receive buy out applications from to the Planning Director Zendo Kern (hereinafter "Director Kern") and Program Manager Julie Leialoha (hereinafter "Program Manager Leialoha") both of which work within the Program and who are eligible for the Program based on their ownership of qualified properties.
6. The Program considers the potential purchase of these eligible properties by the County of Hawai'i by utilizing the U.S. Department of Housing and Urban (hereinafter "HUD") criteria.
7. HUD regulations require that the Program submit for HUD approval the Program's policies and procedures for addressing potential conflicts of interest with covered persons (as defined in 24 CFR 570.611), which includes both Director Kern and Program Manager Leialoha who applied to the Program based on their ownership of qualified

properties. HUD regulations also require confirmation that the Program's policies and procedures comply with applicable County of Hawai'i laws.

8. The Program has prepared and implemented certain policies and procedures to ensure compliance with Hawai'i County laws as well as compliance with HUD regulations.

B. The Program's Policies and Procedures for Director Kern's Application

9. The Program has adopted policies and procedures for use by its application intake staff and applicants to identify County of Hawai'i employees and their immediate family members who are applying with the Program.
10. A Conflict of Interest Disclosure form must be completed by Program applicants. This form will assist in identifying any applicants who may be employees of the County.
11. The Program also utilizes a Conflict of Interest Disclosure Form for Program Employees, to assist in identifying any relationships between Program employees and applicants which may create a potential conflict of interest.
12. The review of Director Kern's Program application will be assigned to a County of Hawai'i employee that is outside of the direct line of supervision of Director Kern, in this case it will be reviewed by a Real Property Tax Division of the Finance Department employee. This employee will be trained on the Program's policies and procedures for reviewing and issuing determinations to ensure it receives a fair and independent review that complies with the requirements of the Program. This employee will review Director Kern's application and make the determination for eligibility or award of financial assistance.
13. Should Director Kern be determined eligible or receive an award of financial assistance, the acquisition of Director Kern's property will be administered by a title and escrow provider selected by the County to service the Program.

C. The Program's Policies and Procedures for Program Manager Leialoha's Application

14. The Program has adopted policies and procedures for use by its application intake staff and applicants to identify County of Hawai'i employees and their immediate family members who are applying with the Program.
15. A Conflict of Interest Disclosure form must be completed by Program applicants. This form will assist in identifying any applicants who may be employees of the County.
16. The Program also utilizes a Conflict of Interest Disclosure Form for Program Employees, to assist in identifying any relationships between Program employees and applicants which may create a potential conflict of interest.
17. The review of Program Manager Leialoha's Program application will be assigned to a County of Hawai'i employee that is outside of the direct line of supervision of Program Manager Leialoha, in this case it will be reviewed by a Real Property Tax Division of the Finance Department employee. This employee will be trained on the Program's policies and procedures for reviewing and issuing determinations to ensure it receives a fair and independent review that complies with the requirements of the Program. This employee will review Program Manager Leialoha's application and make the determination for eligibility or award of financial assistance.
18. Should Program Manager Leialoha be determined eligible or receive an award of financial assistance, the acquisition of Program Manager Leialoha's property will be administered by a title and escrow provider selected by the County to service the Program.

D. Board's Ruling

19. Based on the evidence and testimony presented, the Board finds that the Program's policies and procedures listed in sections B and C of this Informal Advisory Opinion are sufficient to comply with the County of Hawai'i Code of Ethics.
20. Board Chair David Wiseman moved that the Board find that the Program's policies and procedures listed in sections B and C of this Informal Advisory Opinion are sufficient to comply with the County of Hawai'i Code of Ethics.
21. Board Member Larry Heintz seconded the motion. The motion passed 4-0.

CONCLUSION OF LAW


Based upon the evidence presented and the Board's review of the Hawai'i County Code of Ethics and the Board's Rules of Practice and Procedure, the Board finds and concludes that the Program has the necessary policies and procedures established to comply with the County of Hawai'i Code of Ethics.

ORDER

Pursuant to Board Rule 4.9, this Informal Advisory Opinion shall be filed and a copy shall be sent to the Petitioner.

Dated: Hilo, Hawai'i, February 16, 2022.

BOARD OF ETHICS, COUNTY OF HAWAI'I

By 
LARRY HEINTZ
Chair

APPROVED AS TO FORM
AND LEGALITY:



Dakota K. Frenz
Deputy Corporation Counsel