

**HAWAI‘I COUNTY BOARD OF ETHICS
MINUTES – REGULAR SESSION**

Wednesday, December 14, 2022

10:05 a.m. to 12:53 p.m.

Hawai‘i County Building

25 Aupuni Street

County Council Chambers

Hilo, Hawai‘i 96720

Members and Staff Present:

Larry Heintz, Chair

Denise Nakanishi, Member

Rabbi Rachel Short, Member

Sylvia Wan, Deputy Corporation Counsel

Kelsie Chang, Secretary

1. CALL TO ORDER (10:05 a.m.)

Mr. Heintz called the meeting to order at 10:05 a.m. Present was Sylvia Wan and Kelsie Chang. Larry Heintz, Denise Nakanishi and Rabbi Rachel Short was in attendance via Zoom.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:07 a.m. – 10:09 a.m.)

Ms. Nakasato: Aloha, my name is Debbie Nakasato, I’m here in support of the petition, the complaint filed by Claudia and Jaerick, it’s on the Makahana Loa shoreline and I came here with my twins too who are 10 years old they’re in school they can’t leave they have testing but, they wanted to know what was the outcome of this? Like why we came here, and we are the people of Makahana Loa. Like I was born and raised there and so was my kids. That’s where we fish, that’s where we gather, that’s everything to us. It’s not only where we do that but it’s also spiritual and to see that when we were there to see those people laughing and like it wasn’t, there was no meaning behind our words, or our feelings, or our connection to the land and the place and the space that it holds for us, it was disheartening to see. So, I’m here in support of Jaerick and Claudia’s petition complaint.

3. COMMUNICATIONS (10:10 a.m.)

- a. Comm 2022-02: Communication from anonymous, self-identified as Hawaii Fire Department Employee re: Personnel Grievances within Hawaii Fire Department

Mr. Heintz: The first communication is an anonymous communication regarding a fire department employee and a personnel grievance

with the Hawaii Fire Department. The members, I believe have that item. That item is about 10 pages long. The first thing I want to say is, this is listed as a communication, not a petition, because it does not meet the basic requirements of a petition and petitions must not be anonymous. However, the concerns expressed in this communication strikes me are very serious ones. Corporation Counsel, Ms. Wan has attached to.

Ms. Wan: I'm sorry chair Heintz

Mr. Heintz: Yes

Ms. Wan: I'm sorry, I did make a communication to the board, and my role as the attorney for the board, if you would like to discuss that, I believe that would have to be discussed within an executive session. However, if you wanted to open up discussion for this particular communication, I believe there would need to be a motion.

Mr. Heintz: I'm simply making a comment describing that the members and asking have the members seen that policy that you sent out and is that the case.

Ms. Wan: Again, chair Heintz, you would be commenting on an attorney client communication as far as the policy goes, I believe what you're referring to is something that is publicly available which is the County's harassment and anti-discrimination policy, which is available on the County's website under human resources. That is public knowledge if that is what you are trying to address.

Mr. Heintz: Thank you counselor. The concerns raised in this communication; my view seemed to be very serious ones. These concerns I am speaking in case the anonymous communicator is hearing this, it seems to me that, they need to address this issue with the Department of Human Resources. If they've done that already, then they should look at the ethics committee's instructions on petitions. There is a way in which they can make a petition and remain anonymous. Those instructions they can receive from the Corporation Counsel's office or from our information on the site on the ethics committee. Counsel Wan, do you have any further comments to make about this communication, this anonymous communication?

Ms. Wan: The Corporation Counsel has no other legal council regarding this particular communication. It does appear that there needs to be a

motion by the board, and otherwise to determine what they want to do with this communication.

Mr. Heintz: Do the other members of the board want to comment on this matter? If so, would one of them make a motion? If not, we will simply move on to the next item.

Ms. Short I would, Rabbi Rachel Short, speaking for the record, I would echo chair's comments, that these allegations are extremely serious and extremely concerning, and I'm not sure what the motion would be to address this issue, so maybe I could get some guidance as to what would be an appropriate motion to deal with this communication.

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, as to this particular body, right now the form of the communication, it does not rise to the level of a petition, so at this point in time, this particular communication can be filed with the Board of Ethics on the Board of Ethics website.

Ms. Short: So, I would motion that we file this communication on to the Board of Ethics website.

Mr. Heintz: Is there a second to that motion?

Ms. Nakanishi: I can second.

Mr. Heintz: Okay. Is there any discussion?

Ms. Short: I was just going to say, I would echo chair's statement that if that person is here these allegations are concerning and a petition would seem appropriate.

Mr. Heintz: Denise if you have a comment?

Ms. Nakanishi: My comment is I can't see what the graphics are and try to correlate it with what was stated so, file it but I'm not sure how to address it from there because I can't even make sense of it. Although it does seem pretty serious but hard to know what the complaint really is.

Mr. Heintz: Counsel Wan, what Denise is referring to is the email that were attached, some of them had photographs and they were so dark that one couldn't really make out. We had to study it to realize the gender and or ethnicity of the parties that were reflected in those

photographs. Is it possible that a lighter copy could be made? Or is the original not good enough to do that?

Ms. Short: Or even a color copy?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, the copy that was provided to the Board is of the same nature as the copy that was provided to the Corporation Counsel to be provided to the Board.

Mr. Heintz: So, Denise, if this comes as a petition, maybe the petitioner will be able to send a better copy. So, we have a motion, any further discussion on the motion to file this?

Motion and Vote: Ms. Short moved to file to communication on to the Board of Ethics website; Ms. Nakanishi seconded. All members voted aye. (10:18 a.m.)

Mr. Heintz: This motion to file this anonymous communication is past unanimously, and we will move to the next communication.

b. Comm 2022-03: Communication from Hopie Louise Dietz Cermelj re: Election Fraud

Mr. Heintz: The second communication is from Hopie Louise Dietz Cermelj regarding election fraud.

Ms. Short: Chair

Mr. Heintz: Yes

Ms. Short: I will need to recuse myself from this discussion so I'm going to turn off my video and my microphone at this time and I'll rejoin when this portion is complete.

Mr. Heintz: Counsel Wan, then we do not have a quorum, is that right?

Ms. Wan: Yes, and just for the record that was Ms. Rabbi Rachel Short, a board member who is recusing herself and this is Deputy Corporation Counsel Sylvia Wan. Yes, with her recusal you will no longer have quorum for this item.

Mr. Heintz: So, all I want to do with this item is file it. Can we do that?

Ms. Wan: I understand. Mr. Heintz, however, I believe the best practice would be to table this particular item to next meeting.

Mr. Heintz: Thank you. Can we get member Short back so that we can make a motion to table. She can participate in a motion.

Ms. Wan: I believe that is just a procedural motion, so I believe Ms. Short can participate just for the procedural motion.

Ms. Short: Okay.

Mr. Heintz: So, do we have a motion to table?

Ms. Nakanishi: So, moved.

Mr. Heintz: Do we have a second?

Ms. Short: I second.

Mr. Heintz: Is there any discussion on the tabling of this communication? Hearing no discussion, all those in favor of tabling communication 2022-03.

Motion and Vote: Ms. Nakanishi moved to table communication to next meeting; Ms. Short seconded. All members voted aye. (10:21 a.m.)

Mr. Heintz: The motion to table communication 2022-03 has passed.

4. APPROVAL OF THE REGULAR SESSION MINUTES OF NOVEMBER 9, 2022 (10:21 a.m.)

Mr. Heintz: Have the members seen the minutes? Members are indicating that they have seen the minutes.

Ms. Short: I will motion to approve the minutes.

Mr. Heintz: Okay. Is there. That's member Short.

Ms. Short: Rabbi Rachel Short, sorry. Rabbi Rachel Short, I motion to approve the minutes.

Mr. Heintz: Do we have a second?

Ms. Nakanishi: I have a question? Am I able to second? This is Nakanishi board member. Am I able to second if I wasn't there?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, yes you can, member Nakanishi.

Ms. Nakanishi: Okay, I second.

Mr. Heintz: Any discussion? Hearing none. All those in favor of accepting the minutes of November 9, 2022.

Motion and Vote: Ms. Short moved to approve the minutes; Ms. Nakanishi seconded. All members voted aye. (10:22 a.m.)

Mr. Heintz: The minutes are approved.

5. NEW BUSINESS (10:23 a.m.)

a. Annual nomination of the Chair and Vice Chair of the Board of Ethics.

Mr. Heintz: Let's take them in order first regarding nomination of chair. Do we have any nominations?

Ms. Short: I would motion that we table this till we have more board members present. Rabbi Rachel Short, I would motion that we table this until we have more board members present.

Mr. Heintz: Is there a second to that motion?

Ms. Nakanishi: I would second that motion.

Mr. Heintz: Okay. Any discussion?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, just for clarity of record, that was board member Nakanishi who seconded that motion.

Mr. Heintz: Is there any discussion? Okay I just have a question for Corporation Counsel. Do we know if there are more members being nominated?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, I do believe that there was a charter amendment that was recently passed that would open up an additional 2 positions on the Board of Ethics. My understanding is that applications are currently being accepted. I cannot otherwise comment on the conclusion of those applications at this time. But there should be in the near future.

Mr. Heintz: So, I guess the question that comes to my mind is do we want to table this to the January meeting or the maybe the February meeting?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, it would make sense that this gets tabled to the January meeting if the board present does not want to deal with the issue today because you are required to nominate and select a chair and vice chair annually which theoretically should start in January. Irrespective of the make of the board at that time.

Mr. Heintz: Thank you. So, we have a motion to table this item until the January 2023 meeting. Is there any further discussion?

Motion and Vote: Ms. Short moved to table to the next meeting; Ms. Nakanishi seconded. All members voted aye. (10:26 a.m.)

Mr. Heintz: We have passed that motion.

b. Petition 2022-16: Review of complaint regarding two Planning Department employees, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code.

Mr. Heintz: This is a review of a complaint regarding two Planning Department employees, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code. That petition you should have in your packet. The petitioner is Claudia Rohr and I think it's Jackie Medeiros-Garcia and I believe Ms. Rohr is present and would like to present or comment up to 5 minutes on her petition.

Ms. Wan: Deputy

Mr. Heintz: Is Ms. Rohr present?

Ms. Wan: Yes, I'm sorry. Deputy Corporation Counsel Sylvia Wan, I'm sorry to interject chair, however, I just wanted to make the board aware that petitioner Jaerick Lee Medeiros-Garcia is present in the physical board meeting room today and I think it would make sense to at least outline for the petitioners and respondents how this particular petition will be heard today as far as order of presentations.

Mr. Heintz: Would you like to go ahead and do that?

Ms. Wan: Yes, chair I can. Deputy Corporation Counsel Sylvia Wan, as far as the order for hearing of this petition, the petitioners each in turn will be given 5 minutes to speak to their petition. Ms. Rohr and then Mr. Medeiros-Garcia as they appear on the petition and then the two respondents Mr. Alex Roy and Ms. Maija Jackson will then be given each 5 minutes to provide a response. Afterwards the board members will have a chance to ask, can call up either of

the petitioners or the respondents and ask them questions as necessary.

Mr. Heintz: Thank you. So, we will begin then with Claudia Rohr. Are you present? I believe your on zoom.

Ms. Wan: Just a moment chair. Ms. Rohr, can you please turn on your camera, you have been enabled. And Ms. Rohr can you please turn on your microphone, you have been enabled. I'm sorry Ms. Rohr, we cannot hear you. Can you please turn on your microphone?

Ms. Rohr: Yes, somebody turned it off.

Ms. Wan: Thank you.

Ms. Rohr: Can you hear me?

Ms. Wan: We can hear you now. Ms. Rohr, please just state your name and your 5 minutes will begin.

Ms. Rohr: Could everybody turn on their camera, Maija Jackson and Alex Roy and Jaerick can he go sit in front?

Ms. Wan: Ms. Rohr they will be turned on when it is there time to speak. At this point they will not be on. I will see what I can do for Mr. Medeiros-Garcia when it comes to his time to speak.

Ms. Rohr: Okay. Good morning, my name is Claudia Rohr. I'm one of the petitioners in petition 2022-16. May 5th, 2022, petitioners Claudia Rohr and Jaerick Medeiros and other members of the public testified at the Windward Planning Commission about how the public vehicular easement down to iron post has been illegally gated for more than 3 years. The Planning Department has not addressed the issue. At the end of the meeting Ms. Jackson offered to speak to the issue brought up by public testifiers and asked Mr. Alex Roy to do the same. Ms. Jackson and Mr. Roy mischaracterized the deeds conveying public access to the County and gave erroneous legal opinion to the Commission in violation of HRS 1605-14 unauthorized practice of law prohibited. It was an abuse of discretion outside their official capacities and training to analyze and mischaracterize deeds conveying public access easements that were drafted by the County of Hawaii office of the Corporation Counsel approved by the County Council and recorded at the Bureau of Conveyances. Ms. Jackson stated that Planning Department records show that there is only a deeded

public pedestrian access easement down to a deeded public vehicular parking lot at the Shoreline, and she mischaracterized her and Mr. Alex Roy's resolution of the gated vehicular access as a work in progress, giving the error, landowner, and compliance with ordinance 550 condition D has zoning that was sorry that was a rezoning ordinance. Has made no progress in 3 and a half years now as 4 years. It's still not ungated. Ms. Jackson and Mr. Alex Roy and Deputy Director Jeff Darrow, failed to issue a notice of violation commanded to be issued by the Planning Department rules of practice and procedure rule 9. Mr. Roy mischaracterized deeded public access easement documents drafted by the County of Hawaii office of Corporation Counsel. Approved by the County Council recorded at the Bureau of Conveyances and the work of former Planning Director Billy Jean Todd as being, "suspicious" and "kind of a mess what was deeded". This sounded like a funny joke to chair out Commissioner Galimba, Jean K Campbell, attorney for the Planning Department. Ms. Jackson and Mr. Alex Roy and they all had a big laugh together over "a mess what was deeded". Petitioners contend that Ms. Jackson and Mr. Roy made unsworn false statements to the Windward Planning Commission to gain personal advantage. Save their reputation at petitioner's expense, making a subject matter into a joke, when it was no laughing matter to the petitioners and the many public testifiers was unfair and hurtful. This sort of conduct causes the public to lose faith in their government. We seek a ruling in our favor today. Thank you.

Mr. Heintz: Thank you Ms. Rohr. The second petitioner.

Ms. Wan: Yes, chair Heintz. Deputy Corporation Counsel Sylvia Wan. Just a moment I will call Mr. Medeiros-Garcia to the podium over here and I'm going to share my particular laptop so that Ms. Rohr maybe able to see him speak. So, just a moment while I facilitate this.

Mr. Heintz: Thank you.

Mr. Heintz: Hello, Okay. Everyone in their positions again.

Ms. Wan: Yes, Deputy Corporation Counsel Sylvia Wan. At this time Mr. Medeiros-Garcia, if you could please state your name and your 5 minutes will begin.

Mr. Medeiros-Garcia: My name is Jaerick Medeiros-Garcia, I am the president of Makahana Loa fishing association. I'm going to start with first of all thank the Board Members and Corp Counsel, thank you guys

for giving us the opportunity to speak upon this petition because I think it's so important that we look at this. The big picture is that it's now 4 years that the public of Pepeekeo the people who use the shoreline, we had this access closed for that long and were not being heard. It practically is a joke I mean to the planners that, like Ms. Rohr she said it as exactly that is every word that she said is true. Like you know it's hard for us if its in the documentation of the planning that everybody did the proper procedures, and it was passed and it was recorded in conveyance and it was hurtful to see that the good laugh that they had there the day we testified upon the issue. 4 years now and took me like 6 months to get Mr. Alex Roy to respond to a phone call, email. You know when we finally met, it was like he said he was going to do all these things and it was like a disconnect again like we never hear from him but, I totally support this part of it, here in this level of ethics, it needs to be I guess looked at because it's not fair. I mean the person that's doing this illegal moving of our access and easements, he's now just starting to do it on the opposite side of the sugar mill. You know it's almost like their buying time and in favor of the developer but, it's not fair for the people who use that and you know they usually use that everyday but now that that thing has been moved, and they put a gate and lock and everything goes against the law, we don't know what to do and Maija and Alex Roy, they contribute by being bias about it and so you know yeah it's frustrating but this is the process that we must take and we are taking and hopefully it comes in our favor today because yeah you know they just control stuff that shouldn't be of going against their own laws that they set in black and white. Anyway, thank you guys for the opportunity for giving us this 5 minutes. I was stoked you get 5 minutes, normally its 2 minutes. But yeah, thank you guys for your time. Aloha.

Mr. Heintz: Thank you Mr. Medeiros-Garcia. Now let's move to Mr. Roy, one of the respondents. I understand that Mr. Roy would like to respond, and I see is that Mr. Roy now on? Thank you very much. Mr. Roy will have 5 minutes and we'll give Ms. Wan a chance to get back to her seat. So, Mr. Roy you have 5 minutes to respond and then Ms. Jackson will have 5 minutes to respond to the petitioners.

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, Mr. Roy, once you state your name, your five minutes will begin.

Mr. Roy: Ugh, Alex Roy, County of Hawaii senior planner. Unfortunately, this case that's being brought before you is still being worked out. It now involves a County Council person who has taken upon

herself councilperson, Kimball, to try to fix the issues from the past which is a that we ever tried to do. It was never my intention to consider access as a joke. I take it very seriously. The issues that surround this area in particular are challenging and numerous. We spend a lot of time in this area trying to work with the community and landowners to maintain access but again, it's a challenging process in this County. Unfortunately, what Ms. Rohr and Mr. Medeiros-Garcia failed to understand is that I'm not a decision maker. Everything that I do has to be vetted by three people above me which would be my manager, the Deputy Director and of course the Director of Planning. I make recommendations or advise to the best of my ability into the information provided but, at the end of the day, that's all I can go on. The decisions, the final decisions rest with essentially what I would consider management. So other than that, I have tirelessly worked to address these issues that Claudia Rohr has brought up again, and again, and even going back to the last director when I, Director Michael Yee. That's when we started that prior to the Coronavirus Pandemic, which kind of took up a lot of years unfortunately, not a lot of work was getting done because of that. We are working steadily, I've been to Pepeekeo Point three times in the past few weeks dealing with other issues, so, it's a constant complaint system that these people bring up and we try to address every single one. We can't force landowners to do things. We work within the rule of law but at the end of the day, I am not the decision maker. The decision makers are the Deputy Director and the Director, and it's their job to you know that into account everything that is presented to them to make their correct decision. With that, I'll end my statement. Thank you.

Ms. Wan: Thank you Mr. Roy

Mr. Heintz: Thank you Mr. Roy. Ms. Jackson, would you like to speak? I see your on zoom as well. Okay. Ms. Maija Jackson, you have 5 minutes.

Ms. Jackson: Thank you chair Heintz and Board Members, I appreciate the opportunity to be able to respond to the petition. I sent in a written statement about a month ago and I won't re-read it word for word, but I'll just summarize what the statement says. So, I've worked for the Planning Department for 15 years, and I done SMA work for a good part of that 15 years and worked on supporting the Planning Commissions for the entire 15 years. My goal has always been to provide decision makers with the most accurate information available. This particular matter, I didn't really come prepared to speak about the details of the matter today because, it

is still an ongoing issue as Alex described. There are various parties, landowner, the fishing association, the Council Member, and the Planning Department that are trying to work on resolving the public access concerns in the Pepeekeo area and specifically, iron post. I didn't come to really speak about those details today, the Planning Department actually has a process where if a member of the public disagrees with a decision that a director made, then they can go to the Board of Appeals and file an Appeal to overturn that Directors decision. That is an avenue that the Petitioners could have pursued when the Director issued the closure of the notice of violation statement, they could have appealed that and that time. So, I came to speak today more about the petitioner's claims that the statements that Alex and I made were incorrect, and that we had the intention of giving the Commission false information. I won't speak for Alex, although, I know he didn't either. We never go into our work trying to give the Planning Commission false information, we always want to give them the best and most accurate information available that we have at that time. When we spoke at that hearing, this was an ongoing issue, so we provided the information to he commission that we had at that time. Some of the information regarding the grant of easements may not have been completely accurate although we didn't know it at that time because we just did a quick preliminary review of the grants of easement prior to the hearing. We didn't deeply research the issues at hand. I just wanna kind of close my statement by saying that I'm sorry if what I said or how I said it offended or hurt any of the petitioners and even wanna extend that to others that were at the hearing that are really concerned about the public access at Pepeekeo and are affected by that. If they took the statements that I said as being unfair or discourteous, I want to extend that apology as well. That was not my intent.

Mr. Heintz: Well, thank you Ms. Jackson. I would like to now give the opportunity to the members of the Board if they have questions at this point for either of the respondents, Mr. Roy, or Ms. Jackson. Does any member of the Board have a question for them at this point?

Ms. Nakanishi: I haven't been down there for a couple months but I just, Board Member Denise Nakanishi. I just wanna clarify that you're talking about the gate that's been there, and it has a pedestrian gate on the side, been there since before 2005. Is that what we're talking about?

Ms. Jackson: I have not been to the site, but Alex has so, Alex can you confirm that that's the site?

Mr. Roy: Yeah, the access that's in question would be on the South side of Hokunua property and has kind of a cattle gate pedestrian gate. Then there's a gate that is across the access. I've been told that the fisherman's association now has a key to that gate, and they can drive all the way down to where, to the iron post area, that parking lot area. I believe some rocks have been put up to kind of stop as it's kind of unsafe at a certain point at the end but, as I was told yes, that's the access.

Ms. Short: Rabbi Rachel Short, I have one quick question, is the gate the County's gate?

Ms. Wan: I'm sorry, Deputy Corporation Counsel Sylvia Wan. Ms. Rabbi Short can you please clarify who your question is directed to since we do have 4 parties. Thank you.

Ms. Short: Sorry. My question is for it would seem it would be Alex or Maija. Is the gate that's there that's in question, is that the County's gate?

Mr. Roy: No, that would be the private landowner who put that gate up.

Ms. Short: Thank you for the clarification.

Mr. Heintz: Do you have another question?

Ms. Short: It appears Ms. Rohr has her hand.

Mr. Heintz: Just before we go to Ms. Rohr, I have a question. I have a question for Ms. Jackson, and also Mr. Roy. Ms. Jackson, in your comments, if I understand you correctly, you are acknowledging that the information that you gave at the meeting was inaccurate. And that you are also saying that you did not mean to intentionally mislead but, the information in fact was inaccurate and that you were just not fully up on the matter that you were speaking about, and I take it that Mr. Roy is that also true of your position today?

Mr. Roy: I'm not sure if I would use the term inaccurate just that there is a convoluted history that goes along with the access in this area and the information that Maija and I were privy to at the time essentially was not the full story or the complete history that spans a couple of decades. So, in essence it wasn't that the information we gave inaccurate, it's just that there was information missing that may have not been cleaned at that time.

Mr. Heintz: I guess my concern here is that just as a member of the general public and reading the newspaper of public record, I understand the concern of the petitioners that it's been widely reported that that access was to go, parking access was to go pass the point that's locked up. I'm concerned that that's reported in general public. That information is being related in meetings it's different than that? I am puzzled about how long this is going on. I guess that's just a statement if you don't want to respond to it. Then, if there is no respond then we will, I see that represent member Short has another question.

Ms. Short: Yeah, one more question, just to clarify Maija, you did acknowledge that what you said that day wasn't up to date. Mr. Roy are you acknowledging the same, that you guys did share information with the public that day at the meeting that was inaccurate or mislead them in some way?

Mr. Roy: Yeah, I'm not going to make that statement. I don't believe inaccurate or mislead. I'm not going to admit to that because no, I don't think that's the case.

Ms. Short: Could you speak on the subject. My question would be did you make statements about the subject without fully informed knowledge or consent to the public? Let me re phrase my question, did you make statements to the public that day without fully history, knowledge, or consent in regards to the topic that you were addressing?

Mr. Roy: As I cannot recall, I don't have the minutes of everything that I said in front of me now.

Ms. Short: Ms. Jackson is it the same?

Ms. Jackson: Yeah, if I can provide a little context that might help. So, the Planning Commission agenda had other items on the agenda and this item that the petitioners came to testify on was actually a report to the Commission about decisions that the Planning Director had made. So, this wasn't something that Alex and I came prepared to discuss. We provide this report at every Planning Commission meeting and it's a spreadsheet that lists you know maybe 15-20 projects that we've been actively working on during the month prior. So, typically we come to the Commission meeting and were prepared to answer really general questions that the Commission may have about decisions that the Director had made. In this particular situation, we had received some written testimonies from the petitioners or others that are in the Pepekeo area prior to the hearing, I think it was a few days prior to the

hearing. So, Alex and I were aware that the Commission may ask us questions about this specific case and so we tried to review the file as quickly as we could to be able to answer general questions that the Commission had. But we were not prepared to provide a full report of the details of the case because it was 1 of 15 cases related to SMA that we had made decisions on that month. So, in hindsight, what we could have done is just said to the Commission that we were not prepared to respond, and that we could've given them an update the next month so that we would've had more time to review the full details of the case. But we were trying to give the Commission the best information we had at the time and be responsive to them with the understanding that the Commission was not a decision-making body related to this matter, this was just simply a report of information to them. I hope that helps provide some context.

- Mr. Heintz: Thank you. Any other questions or comments for these two respondents at this point from the Board? Hearing none, we will now move to the petitioners. Are there any questions for the petitioners, either Rohr or Mr. Garcia?
- Ms. Wan: Deputy Corporation Counsel Sylvia Wan. I'm sorry chair Heintz, just a point of clarification, who is this question directed towards? Is this question directed towards the Board members or the petitioners themselves?
- Mr. Heintz: It's my question was asking whether any Board members had questions for either of the petitioners, and I'm going to give them a chance to think about this a bit. I also want to at this point if the other members of the Board do not object, to allow the petitioners Ms. Rohr and Mr. Garcia to comment or say anything further given now that they've heard the respondent's response. If there is no objection to that, I will have them speak to that.
- Ms. Short: Rabbi Rachel Short, no objection.
- Mr. Heintz: No objection, Denise do you, is that alright with you? Okay then, we will have Ms. Rohr first make further comments if she wants to about the response that the respondents have given.
- Ms. Wan: Deputy Corporation Counsel Sylvia Wan. I'm sorry I would just note that as far as rebuttals go, the traditional time is 1 minute. Is that what the Board wants to have?
- Ms. Rohr: That's not enough.

Mr. Heintz: No, let's give them a couple more minutes.

Ms. Wan: So, do you want another 3 minutes? I just need to know for my timing.

Mr. Heintz: Let's allow 3 minutes and then we'll see.

Ms. Wan: Thank you.

Ms. Rohr: I would like to go into the history. In 2005 there was a zoning ordinance 5 50 that included condition D providing an additional vehicular access down to iron posts. I participated for a year and a half, and all of the matters involving the Shoreline in Pepekeo, and that was sort of the conclusion, and the developer would not have gotten their zoning ordinance passed by the County Council unless they had provided this condition. Now, in 2018 there was a flood and a lot of debris got caught in the fence that had been put up and the fence had been moved up a gate had been placed over the road and moved Mauka of the parking lot, but it wasn't locked, you could open it and go through it and drive down. But, after 2018 the landowner moved the gate up to right where Hu Honua's gate is for log truck traffic and put in that pedestrian gate and gated fence down the property line and only allowed 10ft for the pedestrian gate and locked the gate for the vehicular access. Now, in 2005 our Planning Director then was Chris Yuen, and he made sure that the document providing that additional vehicular access to a parking area was property deeded to the County of Hawaii and reported at the Bureau of Conveyances. The fact that the respondents volunteered to comment on testifiers issues, they did not have to comment at all, and their comments were incorrect and this whole idea that there's still something going on is a private agreement between Jeff Darrow and a County Councilwoman that's totally against the rule 9 of the Planning Department rule 9. How to deal with a violation? It's a zoning violation. This is County a county easement.

Mr. Heintz: Thank you Ms. Rohr. Just one moment. Board Members do you want to allow Ms. Rohr 2 more minutes?

Ms. Short: Absolutely. Rabbi Rachel, I move to allow Ms. Rohr 2 more minutes to speak.

Ms. Nakanishi: Denise Nakanishi Board Member, I agree.

Mr. Heintz: I agree as well. Ms. Rohr you have 2 more minutes.

Ms. Rohr: Thank you! I believe today Alex Roy and Maija Jackson are misleading the Ethics Board. They are trying to make this sound all complicated and there doing the same thing to you that they did to the Planning Commission. Why is it that the interest of the Planning Commission that ordinance 5 50 was a bill that had to go through the Planning Commission before it was passed at County Council in 2005. They should know what the Planning Department is doing. I find it very alarming that Alex Roy will not admit that it was totally wrong that in 2005 at the Bureau of Conveyances, that vehicular access easement in favor of the County was recorded. And I have written to him many times and other people many times pointing out the legal documents and as they said, I submitted written testimony about all the legal issues prior to the Planning Commission hearing on May 5th. Thank you for not being fooled. This would be a complete affront to all of the testifiers who were hurt before. We ask that you have respect for the fact that we came out and made an effort. Thank you for your time for you logical thinking and your humanity. Thank you bye.

Mr. Heintz: Mr. Garcia did you want to comment?

Ms. Wan: Just a moment chair so that I can flip my camera around so that Mr. Garcia can be viewed by the Board.

Mr. Heintz: Thank you Council Member, I mean representative.

Mr. Medeiros-Garcia: Aloha

Ms. Wan: Deputy Corporation Counsel Sylvia Wan. I just want to inquire with the Board. Are we also going to allow Mr. Medeiros-Garcia 5 minutes as well?

Mr. Heintz: If he would like 5 minutes, I think that's appropriate. Does the members of the Board agree?

Mr. Medeiros-Garcia: I appreciate that, I don't think I'm taking 5 minutes thought but thank you for that time.

Ms. Wan: Please just state your name.

Mr. Medeiros-Garcia: My name is Jaerick Medeiros-Garcia, president of Makahana Loa fishing association. I would like to accept the apology made by Ms. Jackson but at this point of how far away we at, four years is a long time that we've been ignored and I cannot accept that apology, the fact that she's said that she's been there 15 years, she should know better than that to show up to a meeting not prepared.

Now, that's where I come in and think this is how it's been, like they're not taking it that serious. Now, it's the reason why it's four years you know. Mr. Correa, Hank Correa, has probably got some of them under his pockets but then you know this is the frustrating part about it. It's all recorded in the conveyance you know and its not up to this 2 people Roy, or 4 people, Roy, Jackson, Kimball and Correa and Daryl. To decide whether or not it's dangerous or not, the fact that it's our vehicular access it's the only reason why this developer could develop because that was granted to us and we did all the legal things that we had to do and, today it's still the same, nothing changed, no we there's not a key to any lock on a gate. Alex Roy is just putting things out there for false, falsely. There's no key to no gate. You know we need that gate removed. We need it to be put back exactly the way it was because that's what it calls for. Now, for 4 years we haven't been going down there and it's not their position to say whether it's safe or not safe. Why? Because there is no record of anybody getting hurt down there. Alright, the people that use that place has been using it for years. All their lives. Now, to hear what they say just now, it's mind boggling, because the fact that they're trying to twist things around again and again and again, you know. Mr. Roy he just admitted that he's been down there a couple of times and 1 time was with me. Just 1 time with me. You know, and at that point, he made us truly believe that he was working on it. We not asking him for to come up with the final decision, we know that's not his position but, do what you say you're going to do. You didn't but, you doing what Mr. Correa wants you to do and now he's doing it on another access. You know, he's doing everything that he's not supposed to be doing and you guys are turning it the other way. So, it's so frustrating and I'm here asking the Board, I speaking on behalf of just about 200 members of our community that use that Shoreline. This is important that that thing is reopened asap because it's not up to that landowner to do what he's done. We struggled, we fought, we're here again and again and were not being heard and it's by this 2 that is there still. So yeah, I'm sorry I cannot accept that apology because, we are going nowhere. You're just spinning us in circles, they're waiting for certain people to get on the Planning Commission so that they can have people on their side you know, it's just a rat race for us and I apologize for being here and expressing my feelings but man, this is the frustration that is kicking in and time and time again it's happening to us and we got 7 access down there, and we suppose to have 9 but were happy with what we have and we can't afford to lose anymore. This is what where it's going. I appreciate you folks to take the time and I am so stoked that you guys gave us more time to speak on it, I appreciate you guys, thank you and you

guys have a blessed and nice day. Thank you very much everybody.

Mr. Heintz: Thank you Mr. Garcia. I'd like to take a minute to pause to see if the member of the Board is ready to make a motion or.

Ms. Nakanishi: I have a question.

Mr. Heintz: Yes, member Nakanishi.

Ms. Nakanishi: Board Member Denise Nakanishi, so the gate that's there, this is for Mr. Garcia, it kind of feels like you believe it's not there for safety reasons, if it's not there for safety reasons then why is it there? And beyond that, the ethics question here is whether the 2 Planning Department employees misrepresented facts of the hearing and I don't think we can rule on it unless we watch the whole video. Anyway, I would like to know why the gates there.

Mr. Medeiros-Garcia: Absolutely, thank you for your question, Board Member Nakanishi. Yes, we didn't have a gate there in the past. Before I guess Mr. Correa jumped on board as being a partner with the Continental Pacific, who is a developer. It was a vehicle access; we didn't have to get out of the car and open a gate. We would just drive, it was a wide, almost 30 ft wide access that we could drive down to our parking lot and just unload our gear stuff like that and go fishing but, since Mr. Correa got involved, a fence went up, a gate went up, a lock went on and they made it for only a pedestrian access. Without doing a new SMA or anything, or even just talking about it. Now I don't know who is the people that Mr. Alex Roy is meeting with, but the ones that have legal rights to what we had is not the ones he's listening to. You know, and you watch the video from the commission, the Planning Commission, it'll speak volumes, it'll speak volumes you know, it'll show you guys exactly what were talking about. I mean who works in a department for 15 years and show up without answers you know that thing was planned for how long. We were waiting for that for how long. We get there and now they say they weren't prepared, that's not, I don't think that's accurate, but you guys can watch it for yourself and see that were not here to make up any stories, were not here to lash out at people. I'm the president and my job is to make sure that that access is there and remains and I have close to 200 people that expecting me to do my part as their leader.

Mr. Heintz: Thank you Mr. Garcia, thank you very much. Denise, if I understand correctly, you're saying that you do not feel prepared to make decision or a motion at this time because you haven't seen the video is that right?

Ms. Wan: I'm sorry, Deputy Corporation Counsel Sylvia Wan. Chair, before we get into that particular discussion, I just want to clarify if your done taking testimony and evidence for today? I would just like to focus the Board on the question before the Board today. On the petition which is whether or not there was a violation of the Code of Ethics specifically section 2-83 for fair treatment, which states that's officers and employees of the County while discharging their duties and dealing with the public shall adhere to the following precepts. Specifically cited, all persons shall be treated in a courteous fair and impartial manner.

Mr. Heintz: Thank you Council. What I was asking is my impression was that Board Member Nakanishi was not ready at this point to consider a motion because she needed to look at the entire video and if that's the case then we have only 3 members present and 1 of them is saying that she's not willing or ready to deal with a motion at this time. If that's the case, then I will not be asking for a motion. Or I will ask for a motion to table this till the next meeting.

Ms. Wan: Chair, I believe we need to have a motion.

Mr. Heintz: Legal counsel, could you just respect I'm speaking, I am not recognizing you at this point, what I'm doing is I'm speaking to member Board Member Nakanishi who is my understanding is she is not ready to deal with this matter. So, is she ready to make a motion to table this till next meeting?

Ms. Nakanishi: If I made a motion, that would be the motion.

Mr. Heintz: Is there any other motion? Is there a second to that motion to table this till next meeting?

Ms. Short: I will second that motion, Rabbi Rachel Short to table to the next meeting. Rabbi Rachel Short, I second the motion by member Nakanishi to table until the next meeting.

Mr. Heintz: Thank you, is there any discussion to table at this point? Hearing none, all those in favor of tabling this petition 2022-16 to our January meeting of the Board of Ethics.

Motion and Vote: Ms. Nakanishi moved to next meeting; Ms. Short seconded. All members voted aye. (11:17 a.m.)

Mr. Heintz: There's 3 votes in favor for tabling this motion, this petition to the next meeting and thank you very much petitioners and respondents

and Board members. I just want to ask the members and the legal council Wan, is it alright if we take a 10-minute recess at this point before we move into the next petition which is petition 2022-13? I know I need a brief recess.

Ms. Short: I'm okay with that.

Ms. Wan: Deputy Corporation Counsel Sylvia Wan that should be fine.

Mr. Heintz: Okay so we take a 10-minute recess and then we will move to petition 2022-13. Thank you very much.

Ms. Short: Chair, just to confirm we will be back at 11:30 a.m. or 11:28?

Mr. Heintz: 11:28!

Ms. Short: 11:28 it is! Thank you.

RECESS (11:18 a.m. to 11:28 a.m.)

Mr. Heintz: Okay it appears that all members are returned from recess. We will now move to unfinished business and unfinished business we have 1 petition, petition 2022-13, continued review of a complaint regarding the Planning Department employee alleging violation of Section 2-83 (Fair Treatment) of the Ethics code.

6. UNFINISHED BUSINESS (11:31 a.m.)

a. Petition 2022- 13: Continued review of complaint regarding a Planning Department employee, alleging violation of Section 2- 83 (Fair Treatment) of the Ethics Code.

Mr. Heintz: This is the petition by Claudia Rohr, is Ms. Rohr present?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, yes, she's present.

Ms. Rohr: I can't start my video until somebody let's me start it. Okay, start my video. Say's you cannot start your video because the host has stopped it.

Mr. Heintz: Okay, so now let's, we are now going to consider petition 2022-13 and you at this point petitioner has 5 minutes to summarize or talk about the key elements of the petition.

Ms. Rohr: Thank you. This issue came up in processing SMA use permit assessment for Hui Ho'oleimaluō my next-door neighbor. Mr.

Roy contradicted a report I made that outdoor classes were occurring on the property next to me without first obtaining a use permit in violation of the zoning code and misinformed Deputy, Jeff Darrow and the enforcement officers in written communications with my next-door neighbor, Hui Ho‘oleimaluō agent, Kamala Anthony during Mr. Roy’s processing of her SMA use permit assessment application number SAA-2022000057 and maybe for an earlier assessment application, Mr. Roy made inappropriate personal comments about me. I discovered this after the fact. The written communications speak for themselves. I have submitted those as exhibits. Mr. Roy blamed me for the permit taking a long time. Mr. Roy is the cause of the delay and his not following the law that cause of litigation. The applicant submitted an application for a SMA use permit assessment for the larger plan project in 2021 and Mr. Roy simply did not tell her to submit a full application for an SMA major permit and a use permit required by chapter 25-5-3b. Mr. Roy portrayed portrayal of me as opposing Hui Ho‘oleimaluō proposed use of the property to grow fish and limu in existing brackish fishponds using real student fishpond practitioners and to hold intersession outdoor educational classes, and Ka ‘Umeke Kā‘eo public charter schools proposed use of the property to hold their oleo Hawaii and aina-based educational program was inaccurate, unfair and disrespectful. It made Hui Ho‘oleimaluō and Ka ‘Umeke Kā‘eo public charter school not trust me. They refused to answer my emails or texts about common shared problems or interest or engage with me other than to speak disrespectfully to me in public but earlier, I spoke to the Kumu and Louisa Lee at Ka ‘Umeke school. They asked me what I wanted in order to support them, and I answered that they needed to get the necessary, they needed to perform environmental review and get the necessary SMA major, and use permits for under chapter 25-5-3b and they seemed okay with that. I felt that we were getting an understanding and we could have worked together to protect 2 species of endangered listed sea birds that are nesting on both of our properties. An investigation is warranted based on Mr. Roy’s glaring favoritism towards landowners Hui Ho‘oleimaluō failure to follow the zoning code or require a SMA major permit and is unfairness to the surrounding property owners who had no notice or meaningful opportunity to be heard about the permitting of an outdoor learning lab for up to 200 people in a residential neighborhood and on property in the SMA and where nesting endangered seabirds are present.

Mr. Heintz:

Okay, thank you Ms. Rohr, can you, is that..

Ms. Rohr: That's it. Thank you.

Mr. Heintz: Now we will hear from Mr. Roy. Is he present and would he like to respond?

Mr. Roy: I am. I can't turn on my camera.

Mr. Heintz: We're working on it. There we go, we have you.

Mr. Roy: I'm going to assume that, oh Alex Roy, Planner at the Planning Department. I'm going to assume that you have my statement. The verbal statement made by the Director at the last meeting or not the last meeting, this was maybe October, November and then the statement by Kamala Anthony.

Mr. Heintz: Just one moment. Do members have Mr. Roy's October 11th statement, 2-page statement on County stationary? Yes, that's the one.

Mr. Roy: And then you should have a statement by Kamala Anthony, the agent of Hui Ho'oleimaluō. That was submitted.

Mr. Heintz: Yes, I have that. 2 others have that as well.

Mr. Roy: And then the statement that was made by the Director, verbally at that meeting.

Mr. Heintz: Yes, Mr. Zendo Kern.

Mr. Roy: Yup, Director Kern.

Mr. Heintz: Director Kern made a statement at the last meeting.

Mr. Roy: Yeah.

Mr. Heintz: When was the last meeting?

Mr. Roy: Yeah, it was October or November. October, I believe, yeah.

Mr. Heintz: October 11th

Mr. Roy: So as long as we have that, I have nothing else, nothing further to add.

Mr. Heintz: Let's see then. So, we've had. Do any members of the Board have questions for Mr. Roy? Counsel Wan?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, I believe Ms. Short is having a hard time or at least it appears that she's having a hard time finding these exhibits. If the board.

Ms. Short: Thank you for picking up on that Counsel. I appear to have the statement from Mr. Roy, I don't appear to have the statements from Mr. Kern.

Mr. Heintz: Mr. Kern's statement was a statement to the, it would be in the minutes if it was recorded. It was a public statement at the previous meeting.

Ms. Short: I don't have that, nor do I appear to have a statement from Ms. Paris I believe, unless it's included in the electronic communication that has been provided.

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, yes, all of the exhibits were provided a new to the entire Board since Ms. Short had come up kind of board. The exhibit that Mr. Roy, one of the exhibits that Mr. Roy was referring to it looks like an email, the top portion says from Alex Roy, the date is Wednesday, July 7, 2021, the second exhibit appears to be an email from an Ashley Mori as noted at the top.

Ms. Short: That I do have.

Ms. Wan: Okay, so those are the 2 exhibits.

Ms. Short: Yes, thank you. Thank you for confirming I'm looking at the right thing. I was making sure it wasn't another statement on County letter head because that I do not have.

Mr. Heintz: So, and Denise did you have the documents, you're alright?

Ms. Nakanishi: I have them, yeah.

Mr. Heintz: Okay. Do any members of the Board have questions for Mr. Roy?

Ms. Nakanishi: I would like for him to reconfirm that he never disclosed to the neighbor who was making the complaint?

Mr. Roy: That's correct, yes.

Ms. Nakanishi: Is there in your mind any way she, anybody else could have told her?

Mr. Roy: I don't really wish to speculate but, I believe in my statement I alluded to Ms. Rohr actually kind of confirming in her first interaction as I was told and as she wrote on her complaint form, that she had a negative interaction with them initially. So, it was told to me early on that Kamala and the Hui Ho'oleimaluō who was complaining or who was putting forth complaints on the project.

Ms. Nakanishi: And there are other neighbors?

Mr. Roy: Oh yes, yes.

Mr. Heintz: Are there other questions or comments from Board members in asking, directed to Mr. Roy?

Ms. Short: I guess my only question would be, how many other neighbors are there around that area? Approximately?

Mr. Roy: You'd have to be specific on distance from the property. You know within say 500 feet, there's about 11 or 12 neighbors. There's one directly on the other side of this project site. But yeah, you know it's kind of it is a neighborhood that's built up somewhat.

Ms. Short: So, you said there's probably about would you repeat that number within 500 feet? How many?

Mr. Roy: I think there's about 11 within 500 feet, you know I have to, that's what I recall kind of looking at the project parcel, and then corporate 3 separate parcels. You know measuring distance from the center of those 3 parcels or you know, adjacent from the property line or something like that. So, there could be less there could be more, so we'll say probably around 10 at least if not more.

Ms. Short: Thank you for that clarification.

Ms. Nakanishi: But no Mauka, no Makai, right?

Mr. Roy: Makai would be the park. The County Park. And then Makai of the property there's a street and then across the street I do not believe there's any development although I can't confirm that, but I don't think its developed, no.

Mr. Heintz: Mr. Roy, I have a question for you. In your statement, you referred to this matter as before the Appeals Board.

Mr. Roy: Yes, currently Ms. Rohr has brought 2 Board of Appeals on this matter, so we are currently working through that Appeals process that she's appeals to Director's decision on the application and then a notice of violation related to the plan approval process that the applicant is required under SMA, under the SMA permit that they're required to get plan approval. So, yes Ms. Rohr has brought up 2 separate Board of Appeals cases on this, on this project.

Mr. Heintz: And they're still ongoing, is that right?

Mr. Roy: Yes sir.

Mr. Heintz: I have a question now for County Counsel, Ms. Wan, what is the relevance of the fact that these are open matters before the Appeals Board for the Ethics Committee considering this issue at this point? Is there any relevance to that?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, the allegations set within the petition as well as the scope and authority of the Board of Ethics is limited to what's set forth in the petition of the allegations so, any hearings, submissions, testimony that is being held in front of the Board of Ethics has no bearing, I'm sorry, in front of the Board of Appeals has no bearing on this petition before the Board today.

Mr. Heintz: And would or action have bearing on the actions of the Board of Appeals?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, I cannot comment on that. My understanding is that this is a rather limited scope as far as the petition goes. So that would be speculative.

Mr. Heintz: Thank you. Are there other questions from the members of the Board for Mr. Roy? Rabbi Short, not at this point? Okay, I have a further question, you have opportunities if you like. Mr. Roy there, Ms. Rohr is alleging that the treatment has been unfair because you are exercising favoritism, and that favoritism or lack of impartiality by virtue of the language of a whole series of emails. I just want to pull out one and because you specifically refer to and respond to part of a statement. What I am referring to is the statements where you refer to Ms. Rohr as a let me put it this way, I'm quoting an email from you. "I just never thought anyone

would be as difficult and disturbed as your neighbor”. That, do you understand that’s where I’m what I’m referring to. It is in an email of April 5th. One that begins, just know that I feel very uncomfortable making you go through this process, and I apologize for not being more comprehensive early on and now I just never thought anyone would be as difficult and disturbed as your neighbor. Know that your project is on the top of my to do list and I will not rest until we get your approval. This seems to me to be at the heart of her complaint. That you are being, that you are not impartial, that this is, that you are bias or unfair. And my question is, in your response, you specifically talk about disturbed, that what you meant and that she’s taking this out of context unless what? Cause what you meant is, you didn’t think anyone would be this disturbed or i.e., upset by the use of the property in this way. You’re not alleging that Ms. Rohr has a person who’s disturbed and that’s my understanding of your response. Is that correct?

Mr. Roy: Yes sir.

Mr. Heintz: And, well it seems to me that your remark then was utterly innocent.

Mr. Roy: Poor choice of words, I think, would be probably better. But yeah, I that wasn’t my intent to you know, yeah. If I may the Board needs to understand that every single project, you know I’m the primary SMA planner for the entire County. That reproject I have is at or near the shoreline, and every project I have receives some kind of negative concern from the community.

Mr. Heintz: I see.

Mr. Roy: So, it’s a part of my job to try to work with applicants who also have rights as landowners. And work with them to deal with these concerns, you know. So, part of our process is to inform an applicant, hey look you’ve got issues that you need to deal with that the community has raised. You know, it was never my intent to you know, to say anything poorly other than that they needed to deal with that. And I, you know, again and again I reminded them that they had to go through the process. And then number 2 is that we can only go on what the applicant tells us. I go in with the assumption that the applicants are not lying to me or they’re providing me with all relevant information and that’s not always the case I have to delve in, and sometimes I discover things. Sometimes later that that they were being truthful or that they just didn’t understand the process and so they didn’t inform me

correctly. I've spent my entire career working to protect the coastal zone. The last 12 years being here instead of flying prior to that working in the Wetlands and Waterways in the State of Maryland. I worked for DLNR for the Office of Conservation Coastal lands. It's been my primary goal in my careers to help preserve and protect the coastal zone. And on top of that, the rights that Native Hawaiians have to practice. They're you know Native uses and I have felt very strongly about that coming from DLNR, you know that's always been a priority. So, I apology if I came across as looking to support Native Hawaiians but, it wasn't over one person or another.

Mr. Heintz: Okay, I understand that. But I just want to note that your response certainly deals with the term disturbed as your neighbor. But it silent on the question of as difficult and disturbed. And so my question is about the use of difficult here in this context. And it's vital it goes right to the issue that she's raising. I mean it could mean here that what you mean is combative or aggressive or hard to deal with. Or it could mean unwanted behavior on her part. It could mean that she has a history of being contentious and difficult. Again, this is poor choice of words and when you throw all this together, it raises very serious questions about, if not actual bias. Certainly, the appearance of it. And I guess that's I don't know if you want to comment anymore but, this I find troubling.

Mr. Roy: No, I don't have a comment on that. That's definitely the chair's prerogative to try to decipher that.

Mr. Heintz: Okay, thank you. Other members.

Ms. Nakanishi: Chair Heintz, I'm sorry, I'm not sure if this is an appropriate time. Maybe Corp Counsel can tell me. The complaint as I read it, simply was that he told the neighbor, who was complaining, not that body of the correspondence.

Mr. Heintz: I think it's more then that. She's alleging, and we can let Mr. Rohr speak to if she wants to. But she's alleging that he is treating her unfairly, and that is to say, that he is not neutral. I don't think I'm mistaken about that.

Ms. Short: Can we allow Rabbi Rachel Short speaking. Can we allow Ms. Rohr to respond to that because that's my understanding of this petition as well, is it's not just that one correspondence, its that there has been you know, no officers or employees shall use or attempt to use the officers or employees to secure or grant all wanted privileges, exemptions, advantage, contract, etc. As well

as all persons shall be treated in a courteous fair, and impartial manner. So, it's my understanding that those are the complaints in addition to the wording of the email that it is a much larger issue is my understanding.

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, so the petition it's self has the 2 under number 2 has Mr. Rohr's response, as far as what sections she's citing as far as violations, which is subsection A3 and subsection B, as far as the substance of her complaint, that is under paragraph 3, which is her statement of the facts as well as paragraph 4, which is what she would like to see happen. So, if you're looking to see what are her allegations that would go to unfair treatment, it would be contained within number 3 as well as the exhibits that she has provided to the Board, including I believe there's 2 sets of exhibits that she had provided to the Board.

Ms. Short: Rabbi Rachel, Chair, would it be acceptable to allow Ms. Rohr to speak in response to her statements?

Mr. Heintz: If the Board so desires, and if that happens then we also let Mr. Roy speak in addition. Is that my correct understanding? Is that correct? Thank you, Sylvia. So, Mr. Rohr do you want to respond or I'm sorry let me change that. Rabbi Short you want to ask questions? You have you can ask a question.

Ms. Short: Yeah Mr. Rohr I would just like for you to clarify the main source of your complaint that you want us to be examining. I can see here obviously it's 28-3 fair treatment, A3 and B as well. Are you indeed referring to just the communication that you've submitted or is it the larger issue that you feel that you have been treated not in a care courteous fair and impartial manner, I believe, is what were asking chair, correct me if I am wrong.

Ms. Rohr: Let me start by responding to the way he answered Chair's questions. There are only 2 of us in residing on each side, or 1 on each side of their project or property. After that, there's the neighborhood in this 2-block section is pretty undeveloped. I have an empty lot next to me for instances but, in front there's a property that's a vacation rental, then on the left is John the lifeguard and his family lives a jointing this property so, really there's only a couple possibilities of who neighbors would be. If you read the overall feel of the communications, he did get a response from Kamala where she started to say that the complaints were ridiculous. I'm sorry I'm not particularly aggressive, I made an initial complaint that now that they were bringing students on the property, they should have to get a use permit under the zoning

code 25-5-3b, because it's a place of learning and instruction and group instruction, that kind of thing, group demonstration. Under the definition of school and the zoning code. Anyway, that was my complaint, then I sent in a few supportive things as I found them. Proof that they were involved with a program with the University of Hawaii to have Highschool kids come in as interns and become fishpond practitioners. But the point I'm trying to make is that Kamala's response to the things that he was saying obviously she took it as that I was causing some kind of difficulty. They certainly guessed it was me but, I don't think it helped that he referred to a neighbor. By doing that, it made them say ok let's narrow it down but, the point is, that they were just doing an SMA assessment. I wasn't doing anything, they were just following the law and I didn't make their permit take longer other than I took note that they hadn't gotten the letter from Shepherd, and then Alex had to send a letter asking for comments but, that's a prerequisite for an application or a SMA permit. If you read the whole thing, one of the things I objected to was I called and wrote and email stating that okay, today they're holding classes on the property, this would be a good day for inspectors to come down and see it. They have a rule at the Planning Department, if the inspectors don't see it, they don't in force, and it's an unwritten policy. Anyway, Alex replied to that email and said "Oh, I'm in touch with Kamala and she says that there's no educational program, that that's just family and friends, it might look like their holding classes but, it's just family and friends". So, the inspectors did not go down on that day because of his interference in the investigation.

Mr. Heintz: Okay Mr. Rohr, the question is, what areas of the code? Are we, are you? The question, I think, is unfair and impartial treatment. Is that right?

Ms. Rohr: Yes, I'll get my petition up, I have it right here. It says, sorry it's in my petition and I want to say something, please. I did not receive any of Alex Roy's submissions, nor in the last case did I receive any of the submissions of the respondents. The Board of Ethics is not forwarding those submissions to the petitioners. That seems kind of unfair. I don't know what he wrote. But anyways, it says in my petition, that I number 2 is section 2-83 fair treatment, A and B that he's discharging his duties unfairly and not in the impartial manner, and that is using his official position to secure or grant unwarranted privileges, exemptions, etc.

Mr. Heintz: Okay, I think. Thank you very much. I think that response is adequate. Mr. Roy did you want to say anything further?

Mr. Roy: No.

Mr. Heintz: Okay.

Ms. Rohr: I'm sorry but you cut me off. I do have one thing I want to say. His statement that he cares about Native Hawaiian rights. Both he and the Director read the Constitution Article 12, section 7, without the last phrase that we protect the tradition. Native Hawaiian traditional rights, subject to government regulation and they're anyway, they ignore that, and that's a special, that's under B. Unwarned privileges, exemptions, advantages for others. They're my neighbors, I support what they do but they have to get a use permit just like the rest of us, and to represent that I don't support them is upsetting to me.

Mr. Heintz: Okay. Thank you very much Ms. Rohr. Legal Counsel Wong. Have we procedurally covered?

Ms. Wan: I believe that should be fine. You have provided an opportunity for statement from both parties, and as of this point, which you've allowed was questions and answers by the Board members to the parties. So, I think you have concluded everything that is required.

Mr. Heintz: Okay, thank you very much. One just a courtesy to the members of the Board. Do either member of the Board have any further questions or comments before we have a motion? So, at this point is either member of the Board ready to make a motion?

Ms. Nakanishi: I would differ to you, Board member Denise Nakanishi.

Ms. Short: Rabbi Rachel Short, I would differ to you on this chair Heintz to receive your feedback and guidance towards a motion here.

Mr. Heintz: Let me make a stab at a motion and I'm quite willing to withdraw the motion or hope for it to be amended. I want to say that this petition makes me want to make the following kind of motion, that Mr. Rohr's. Yeah, I'm sorry that the evidence that the committee reviewed today, and the materials that have been provided, and the exchange of comments, make us make the Board believe that Mr. Rohr's performance in dealing with the SMA were, includes instances of poor choice of words, words that certainly imply or provide reason for the Board to believe that his actions are not impartial, and therefore the Board concludes that he has violated the impartiality, fair treatment. Pause of the ethics code. That's a very long motion but that's what I.

Ms. Short: Can I take you back on that chair Heintz. I would say that the motion could be something along the lines of the Board of Ethics finds that Mr. Roy did not treat Ms. Rohr in a courteous, fair and impartial manner.

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, so what I'm hearing is 2 different motions being contemplated at this time. As far as the second motion, Ms. Short, the conclusion is fine, but it does need to have some support to the conclusion. So, I believe between the 2 motions, you may be able to find one that would be sufficient.

Ms. Short: Right. Let me give another shot at this Chair and maybe you could help.

Mr. Heintz: Yes.

Ms. Short: I motion that given the petition and evidence that is presented to the Board of Ethics by Ms. Rohr, the Board of Ethics finds that Mr. Roy while discharging his duties and dealing with the public, did not treat her in a courteous, fair and impartial manner.

Ms. Wan: And if we could also add what were the specific actions that lead to the finding of not being, Ms. Rohr not being treated in an impartial fair manner.

Ms. Short: Again, help me with this one chair but, my instinct would be based on the comments made by electronic mail.

Mr. Heintz: I agree with that, and I identified one passage in particular but, there are others. It's specifically the difficult and disturbed phrase that I cited.

Ms. Nakanishi: So, my prob, sorry.

Mr. Heintz: Yes, Denise.

Ms. Nakanishi: My problem is that that even that email was not directed towards any specific individual. It was just a correspondence with the Kamala. I mean it, wasn't it didn't call out Claudia Rohr, or even though it did sound like he was basically supporting the petition, and I would say that or supporting the application. Okay, it didn't call her out specifically so.

Ms. Short: I would, Rabbi Rachel Short responding, Board Member. I would point to the email from Alex Roy to Kamala Anthony on

Wednesday, July 7, where he says at the top, “I was told you know who complained but I am not allowed to say”. To me that implies or infers that there were other discussions about Ms. Rohr and this topic and also, I would go back to the statement that Ms. Rohr made regarding the number of neighbors that are surrounding them when referencing a quote “disturbed neighbor”.

- Ms. Nakanishi: Because I’m a relator, I know what’s down there. And the complaint is ministry. Very narrow street, and the complaint initiated the problem was the parking on that road. So, it could have been any of the neighbors complaining that they were blocking the road or parking on the road, I mean it’s public roads and they can park there but, that’s why I ask how many neighbors there are.
- Ms. Short: But I think that we were discussing whether or not she was treated in a courteous, fair and impartial manner.
- Ms. Nakanishi: But I don’t know that we have any thing that points directly to her. Even with what she gave us. But I mean I think, I don’t have the printed stuff, I don’t have the written stuff, the packet wasn’t ready and I couldn’t go get it when it was ready and my printer, you know my house is being tented so you know I’m trying to go back and fourth on my computer but its very difficult.
- Mr. Heintz: Yeah, if you don’t have this all printed out, I have read it through and I happen to agree with Ms. Rohr, it’s pretty much impossible not to see that from this serious of exchanges that go over a couple of months. That, that it’s about her and its not impartial. Not fair or impartial.
- Ms. Wan: Deputy Corporation Counsel Sylvia Wan, I’m sorry, I just want to clarify the record because right now it appears that we have a formation of 2 different motions, neither have officially seconded and there is discussion apparently about both of the motions simultaneously so, there needs to be a little bit of clarity of record as far as which motion is being heard currently and is there a second.
- Mr. Heintz: Can I clarify, as I understand that Rabbi Short was modifying my motion, and so we have a hybrid motion before us. Her language then, and then you raise the issue about what support do we have for that? And the support we had was what I referred to. That the emails and the evidence that we’ve heard and the verbal evidence that we’ve heard today support that the view that this was not fair,

and impartial, and that's what were, I guess discussing so that's the motion.

Ms. Wan: Okay and, will somebody second that then?

Ms. Short: I think were still discussing is my understanding.

Ms. Wan: Yes, I I understand it's just that procedurally there needs to be a second before it can be a discussion. And I know we kind of jumped ahead, and it appeared that I would believe that either Heintz would second Ms. Short's motion or Ms. Short would second Mr. Heintz motion. I just want to make sure that it's clear so that what we're doing is transparent.

Mr. Heintz: I am seconding Ms. Short's hybrid motion, the concise statement that there's been a violation of the I forget that section number but it's the fair and impartial section.

Ms. Short: 2-83, A3

Mr. Heintz: That's right. That and the reason the evidence which Ms. Wan was asking for was the kind of stuff that I was siding in my exchange with Mr. Roy, so that's the hybrid motion that I am second, and, as I understand it, Denise is a little unclear yet because she didn't have the full paper record of all those emails which make it evident that it's her that's being talked about. And that the language choice is unfortunate and not fair and appears to us to be impartial. That's where we are and so well go back to discussion. We've got a motion, we've got a second and all of this is part of the discussion, and we are either ready to vote or not, or more discussion. I sense hesitance from Denise because apparently, she doesn't have the written record.

Ms. Nakanishi: But I have, I did read it several times. In October, and again this month. It's just I can't go back and forth to look at it. It's you know and stay on the camera. I just don't agree that it points to her directly. I do agree that some of the language is unfortunate but that's just, you know, kind of what happens sometimes when you go back and forth.

Mr. Heintz: Well, we have a quorum, and we could vote and dispose of this matter, or we can continue to deal with this matter. I would like to call the question if there's no objection.

Ms. Short: No objection. Rabbi Rachel Short, No objection.

Mr. Heintz: Okay. So, I'm calling. Yes

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, I'm sorry, just for my clarification, when you call the question, can you actually try to restate it. I am taking notes.

Mr. Heintz: Okay. Rachel, you want to give it. I'm way to prolix.

Ms. Short: Wait, hang on my video turned off. Remind me what I'm doing, am I making the same motion that I previously made?

Mr. Heintz: You're making the hybrid motion which starts out.

Ms. Short: The hybrid motion. Okay so, Rabbi Rachel Short, I motion that, based on the statements via electronic communication that have been provided to the Board of Ethics. In addition to the statements made today by Mr. Roy and Ms. Rohr, that the Board of Ethics does find that Alex Roy treated Claudia Rohr in a way that it was not courteous, fair, and impartial.

Mr. Heintz: I'll second that motion.

Ms. Nakanishi: And if you can tell me where it says her name on any of this, I would totally support it. But I don't see her pointed out, it's just talks to a neighbor. You guys can call for vote about how you want.

Ms. Short: I would just go back to the statement regarding the number of neighbors that are there, that we heard today. That would be my reference, and the implication that she had already filed a complaint. They were aware that she had filed a complaint and then they continued to say things such as you know, the email from Alex Roy to Kamala Anthony, Wednesday, July 7th, 7:53 a.m. "I was told, you know, who complained, but I am not allowed to say", that to me is not a courteous fair or impartial statement, it implies very clearly and directly that they both know who they're communicating about.

Mr. Heintz: Okay, I'm ready to call the question.

Ms. Wan: The question has been called.

Mr. Heintz: All those in favor of the motion. Denise opposes. So, 2 votes in favor and 1 against. The motion carries.

Motion and Vote: Ms. Short motion to find Alex Roy violated Section 2-83 (Fair Treatment) of the Ethics Code; Mr. Heintz seconded the motion. Ms. Short and Mr. Heintz voted aye, Ms. Nakanishi voted nay (12:24 p.m.)

Ms. Wan: And just because we're on remote, just for clarity of record, Ms. Rabbi Short voted Aye, Chair Heintz voted Aye, and Denise Nakashimi voted Nay.

Mr. Heintz: And if I have

Ms. Nakanishi: Nakanishi. Thank you.

Mr. Heintz: Nakanishi. And if I had a gabble, I would pound it. Move on to the next item. Okay. Item number 7.

7. CONTINUED DISCUSSION REGARDING AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF ETHICS AND THE HAWAI'I COUNTY CHARTER AND COUNTY CODE (12:24 p.m.)

- a. Continued review of amendments to add Appearance of Impropriety to Hawai'i County Code Section 2-83.

Mr. Heintz: As the person who introduced the parents of impropriety motion that we've been dealing with, and I introduced 3 years ago. Going on 4 years, I introduced another one as well, and that was failure to act or failure to discharge and I have withdrawn the failure to discharge motion, and I am also withdrawing the appearance of impropriety, motion, or change of language. Not because I'm convinced that neither of these are appropriate or needed. I believe that they are both needed and are both appropriate and I'm unconvinced by the arguments that have been assembled against them. But I'm withdrawing them because the Corporation Counsel's office and the staff, have convinced me that such motions and efforts to change rule and regulations are not within my competence, so I'm withdrawing these and I will spare the Board any further discussion of these issues. So I would make a motion, to withdrawal item #7A from the agenda. Is there a second to that motion?

Ms. Short: I will second. Rabbi Rachel Short, I will second the motion to withdrawal 7A from the agenda.

Mr. Heintz: Very smart move. Any discussion? No discussion, all those in favor of withdrawing item #7A?

Motion and Vote: Mr. Heintz motion to withdrawal item #7A; Ms. Short seconded the motion. All members voted aye (12:28 p.m.)

Mr. Heintz: Motion passed. That brings us to item #7B.

b. Continued review of the recommended changes from the Legislative Review Board regarding the Hawai'i County Code February 2022 Amendments.

Mr. Heintz: My papers filed heavy deep, let's see, where are we? These, I believe, this is missed. Sylvia, can you help me? This is Mr. Hendrix. John Hendrix is.

Ms. Wan: Deputy Corporation Counsel Sylvia Wan. Yes, Corporation Counsel has, I have as your Board's attorney, provided you the information as a legal communication between Mr. Hendrix's office and the Corporation Counsel working in its efforts towards Board of Ethics amendments. If you would like to discuss the details and implications in Mr. Hendrix's communication within attorney client privilege, you can enter executive session if you want to talk about the nuances.

Mr. Heintz: I don't know let me just try something for a moment and see. I'd like to avoid that, if possible. If everybody has the Monday, April 18th sent from Mr. Hendrix to Cody, attached is the bill.

Ms. Wan: I'm sorry, I'm sorry. Deputy Corporation Counsel Sylvia Wan. Again, you're talking about a receipt of attorney client communication between the attorney and the client, which is the Board. I understand that there are some other communications contained there in but, if we're going to discuss it even as far as receipt, it would need to be done in executive session.

Mr. Heintz: Okay, we have to go to executive session.

Ms. Wan: Yes.

Mr. Heintz: Okay. Just one second. The next item is executive session anyway, so, let's, will take item #7B in executive session which we can move to right now if we have a motion to move to executive session.

Ms. Short: Rabbi Rachel Short, I motion to move to executive session.

Motion and Vote: Ms. Short moved to go into executive session; Ms. Nakanishi seconded the motion. All members voted aye. (12:30 p.m.)

Mr. Heintz: We're in executive session. What I simply wanted to point out.

Ms. Wan: I'm sorry. Just a moment. Just a second because I have to close the door.

Mr. Heintz: Pause.

Ms. Wan: I'm sorry we need a short recess in place because Chelsea needs to get the key from Relley to close the door so we can officially have an executive session.

Mr. Heintz: 5-minute recess.

RECESS (12:31 p.m. to 12:36 p.m.)

Ms. Wan: Sorry Chair, I know remote meetings are tedious. I have to make sure, because of sunshine laws regarding remote meetings specifically, there are like additional things that have to happen as far as you can do an unanimous approval but, if there's anyone who's voting they nay, then it has to be a role call vote, which is why I kept butting in, like this last time, when there was 1 person for nay, because it has to be noted on the record who voted which way, unless it's unanimous. So, I'm sorry about the tediousness.

Mr. Heintz: No problem. I thought I named the voters but, we'll do that.

Ms. Wan: You did, you did before, just not that one time.

Mr. Heintz: Oh yeah, it's all running together. Okay, I think we're all back. So, we're in executive session.

Motion and Vote: Ms. Short motion to end executive session for item 7B and move to go into regular session; Ms. Nakanishi seconded the motion. All members voted aye. (12:43 p.m.)

Mr. Heintz: We're in general session.

Ms. Wan: Just a second. Allow Ms. Kelsie to flip us back. Okay, we're back in general session.

Mr. Heintz: Ms. Short has a motion to table item 7B to the next meeting of the Board of Ethics. Do we have a second?

Ms. Nakanishi: I'll second.

Mr. Heintz: Denise is seconding, is there any discussion? Hearing none, all those in favor.

Motion and Vote: Ms. Short motion to table item 7B to next meeting; Ms. Nakanishi seconded the motion. All members voted aye. (12:44 p.m.)

Mr. Heintz: It's unanimous. The motion passes, 7B is tabled and will be on the agenda for next meeting. And the next item is executive session. Do I have a motion to move into executive session?

Motion and Vote: Ms. Short motion to move into executive session; Ms. Nakanishi seconded the motion. All members voted aye. (12:45 p.m.)

8. EXECUTIVE SESSION (12:45 p.m.)

a. Review of the Executive Session minutes of November 9, 2022.

Motion and Vote: Ms. Short moved to approve the executive session minutes of November 9, 2022. Ms. Nakanishi seconded the motion. All members voted aye (12:49 p.m.)

- 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.
- c. Continued review of Gift Disclosures filed pursuant to Section 2- 91. 5(a), by County board and commission members and designated County employees, where personal matters will be reviewed.

Motion and Vote: Ms. Short motion to table item 8B, 8C and 8CC to February 2023 meeting; Ms. Nakanishi seconded the motion. All members voted aye. (12:50 p.m.)

Motion and Vote: Ms. Short motion to end executive session and move to go into regular session; Ms. Nakanishi seconded the motion. All members voted aye. (12:51 p.m.)

9. ANNOUNCEMENTS (12:52 p.m.)

Mr. Heintz announced that the next meeting will be held on Wednesday, January 11, 2023, at 10:00 a.m. at the Hawai'i County Building, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i 96720.

Mr. Heintz: I have one other announcement in order to facilitate our next meeting agenda item regarding nominations for chair and vice chair. I want to announce that I will decline if nominated, either position, both positions. End of announcements. Anyone else have an announcement?

Ms. Nakanishi: I have to say, I can't do that either, either position so, because I'm continuing to do cancer treatments.

Mr. Heintz: Alright, thank you! Okay, so no other announcements, and so I need a motion to adjourn.

10. ADJOURNMENT (12:53 p.m.)

Motion and Vote: Ms. Short moved to approve adjourn the meeting. Ms. Nakanishi seconded the motion. All members voted aye (12:53 p.m.)

Mr. Heintz: Looks like it's unanimous.

Respectfully submitted:

Kelsie Chang, Secretary