May 25, 2017

To: OHA Board of Trustees
From: Randall Roth
Re: Pending Audit

I served on the faculty of the University of Hawaii's Richardson School of Law for the past 35 years, but this testimony is mine alone. I am not here on behalf of any other person or organization.

My interest in OHA is longstanding and has occasionally including public comment. For example, along with former OHA trustee Walter Heen, I've raised questions relating to OHA's legal status: "What is OHA?", Honolulu Star-Advertiser, Dec. 20, 2015, at
http://www.staradvertiser.com/2015/12/20/editorial/insight/what-is-oha/.

My testimony today focuses on what I perceive to be OHA's misuse of wholly owned LLC subsidiaries to avoid laws applicable to OHA and OHA trustees. Such use would be indefensible whether one assumes OHA is a charitable/public trust or a state agency. Either way, OHA and OHA trustees cannot properly use wholly owned LLC subsidiaries to avoid otherwise applicable legal duties such as a trustee's duty to provide full accountings when legally required to do so, or a government official's duty to comply with procurement and sunshine laws.

I express these opinions now because of an upcoming audit that I believe would be woefully incomplete if it does not include OHA's wholly owned subsidiaries.

If OHA trustees have at any time relied on legal counsel for advice on OHA's above-mentioned use of subsidiaries, it would not be reasonably prudent for OHA trustees to seek legal advice now on the correctness of that prior legal advice. In other words, any legal advice related to the subject matter of my testimony should be sought from non-conflicted counsel.

Mahalo for this opportunity to express my views on this critically important matter.