

"KIMO" APANA
Mayor



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September 16, 2002

Honorable Michael J. Molina, Chair
Public Works and Transportation Committee
County Council
County of Maui
200 S. High Street
Wailuku, Maui, Hawaii 96793

Subject: Traffic Calming Elements (PWT-3)

Dear Chair Molina:

This letter is sent to address the Committee's concerns regarding the potential for increased liability due to the County's proposed use of additional traffic calming elements. We interpret this question as one asking us for the standard of care that the County must employ in designing and constructing roadways under its jurisdiction.

In the Taylor-Rice v. State of Hawaii decision, 91 Hawaii 60, 979 P.2d 1086 (1999), the Supreme Court explained the standard of care applicable to public roadways:

This court has, on numerous occasions, explained the State's duty to maintain its highways:

"The duty of the State is to design and construct its highways in such a manner as to make them reasonably safe for their intended uses, and thereafter to maintain them in a reasonably safe condition." [Citation omitted]. The *State's duty to maintain includes a duty to correct* or inform the public of the existence of *highway defects*. Breed v. Shaner, 57 Haw. 656, 665, 562 P.2d 436, 441 (1977). In addition, in Anders v. State, 60 Haw. 381, 382, 590 P.2d 564, 567 (1979), this court determined under Hawaii Revised Statutes (HRS) [§] 264-43 [[FN8]] *the State has a duty "not only to exercise ordinary care in maintaining the roadway or highway in a reasonably safe condition but also to keep the shoulders of thereof in a reasonably safe condition."* See also Terranella v. City & County, 52 Haw. 490, 479 P.2d 210 (1971).... *The State of Hawaii does have a general duty to design, construct, and maintain its highways and shoulders thereof in a reasonably safe manner.* [Italics in original. Bold added.]

Further, even where the government has constructed a road pursuant to then-existing design standards, additional circumstances may create a duty to improve the road. In Taylor-Rice, the court stated:

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Moreover, even assuming the State's initial design complied with engineering standards when the guardrail was erected, the additional circumstances – the State's knowledge of the defective condition of the guardrail, the fact that it had the opportunity to repair it when it upgraded the roads in the vicinity, and the fact that, had the guardrail complied with even twenty-year-old engineering standards, it would have lessened the severity of injuries and damages – warrant this court's holding that the State owed a duty to improve the guardrail.

In order to evaluate the potential for increased liability when considering the replacement of one traffic calming element with another, one should consider whether the new element proposed is designed and constructed in accordance with any applicable standards and good engineering practice. Allowing the use of more modern traffic calming elements, in addition to the current methods, is in keeping with the Taylor-Rice Court's expectation that government will improve its engineering standards over time.

If you have any questions, do not hesitate to call us.

Very truly yours,



Gregory J. Garneau
Deputy Corporation Counsel

Approved for transmittal:



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