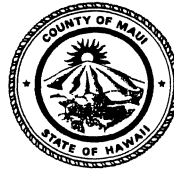


CHARMAINE TAVARES  
Mayor



BRIAN T. MOTO  
Corporation Counsel

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April 24, 2007

MEMO TO: Tamara Horcajo, Director  
Department of Parks and Recreation

F R O M: Michael J. Hopper, Deputy Corporation Counsel

SUBJECT: **KIHEI SKATE PARK**

This memorandum is in response to your request for an opinion relating to the possible re-opening of the skateboard park located in Kalama Park, Kihei. The skateboard park is currently closed and fenced because the entity formerly responsible for the monitoring of the Park is no longer able to provide supervision. The Department of Parks and Recreation is not able at this time to provide a supervisory employee to monitor skaters as they use the park. You have requested advice concerning the County's potential liability for injuries sustained by users of the park if it is opened to the public.

**Statutory Liability Protection**

Section 662-19, Hawaii Revised Statutes, relating to the State Tort Liability Act, provides as follows:

**Limited liability for skateboarding activities in public skateboard parks.** (a) No public entity or public employee shall be liable to any person for injury or damage sustained when using a public skateboard park, except when injury or damage is caused by a condition resulting from the public entity's failure to maintain or repair the skateboard park.

(b) Public entities that own or maintain public skateboard parks shall maintain a record of all known or reported injuries incurred by skateboard users in a public skateboard park and all claims paid for such injuries and shall submit a report to the legislature on or before twenty days before the convening of the 2008

legislative session, along with any recommendations regarding the need for further immunity from liability.

Section 46-72.5, Hawaii Revised Statutes, states:

**Counties' limited liability for skateboard activities at public skateboard parks.**

(a) No public entity or public employee shall be liable to any person for injury or damage sustained when using a public skateboard park, except when injury or damage is caused by a condition resulting from the public entity's failure to maintain or repair the skateboard park.

(b) Counties shall maintain a record of all known or reported injuries incurred by skateboard users in a public skateboard park and all claims paid for such injuries and shall submit a report to the legislature on or before twenty days before the convening of the 2008 legislative session, along with any recommendations regarding the need for further immunity from liability.

These statutes limit the liability of a county operating skateboard parks to "injury or damage ... caused by a condition resulting from the ... [county's] failure to maintain or repair the skateboard park." Thus, if injury or damage is caused by anything other than a failure to "maintain or repair" the park, the county is not liable for such injury or damage. The statutes do not grant designers or manufacturers of skateboard parks immunity from liability.

**Legislative History**

The legislative history of these statutes articulates a public policy in favor of the operation of skateboard parks by State and county government. In enacting these statutes, the State Legislature declared that "there is strong public demand for public facilities designed for skateboarding."<sup>1</sup> The State Legislature also found as follows:

Such activities pose a substantial risk of injury to the users of such facilities due to the inherently dangerous nature of these activities. The legislature further finds that there are no design standards for such facilities to mitigate against the inherently dangerous activities or uses that may occur in skateboard parks. The legislature also finds that such facilities may not be typically monitored or supervised by public employees, that signs warning of dangers of skateboarding activity make no sense because of the inherent danger of the

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<sup>1</sup> Act 144, §1, (2003).

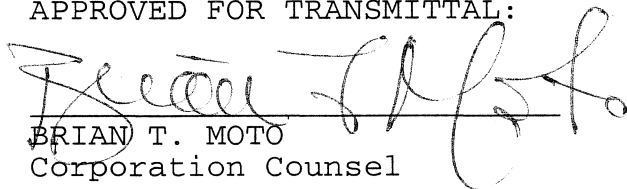
Tamara Horcajo, Director  
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activities, and that persons with recreational equipment other than skateboards may use the facilities in a manner for which the facilities were not designed and sustain injury as a result. The purpose of this Act is to balance the public demand for public facilities designed for skateboarding with concerns raised by counties, the State, and volunteers, regarding exposure to liability for injuries sustained by users of such facilities.<sup>2</sup>

The Committee on Conference reported that "limited liability for the State and counties is appropriate, in order to encourage the establishment of skateboard parks."<sup>3</sup>

MJH:ln

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO  
Corporation Counsel

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cc: Traci F. Villarosa, First Deputy Corporation Counsel  
Sheri Morrison, Managing Director  
Michele White, Legal Assistant

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<sup>2</sup> *Id.*

<sup>3</sup> Conf. Com. Rep. No. 72 (2003), at 2. The legislative history also records that the Mayor of Maui County, members of the Maui County Council, the Board of Land and Natural Resources, and representatives of the County of Hawaii, among others, submitted testimony in favor of the bill and its provisions for limited immunity from tort claims arising out of public skateboard parks. See also Stand. Com. Rep. No. 1119 (2003) (Committee on Judiciary, regarding S.B. 975), at 1-2. The Consumer Lawyers of Hawaii opposed S.B. 975.