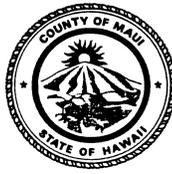


ALAN M. ARAKAWA
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740

February 24, 2004

TO: Dain P. Kane
Council Chair

FROM: Brian T. Moto
Corporation Counsel

A handwritten signature in black ink, appearing to read "Brian T. Moto", is written over the printed name of the Corporation Counsel.

SUBJECT: Napuunoa Family Property, Kahakuloa, Maui (PAF 04-056)

The purpose of this memorandum is to respond to your memorandum, dated February 18, 2004, relating to a written inquiry, dated February 6, 2004 and addressed to the Council Chair and Mayor Alan Arakawa, from Bert T. Kobayashi, Jr., of Kobayashi, Sugita & Goda. In his letter, Mr. Kobayashi informed the Council Chair and the Mayor that his clients, members of the Napuunoa Family, own an interest in certain properties in Kahakuloa, which interest they seek to convey to the County of Maui by quitclaim deed without compensation.

Your memorandum requested that we review and comment upon a draft of a letter prepared by your office. Your draft letter is addressed to Mr. Kobayashi and discusses various issues associated with the proposed conveyance to the County of Maui.

In responding to your request, we first note that, with the exception of the materials and information provided in, or attached to, your February 18, 2004 memorandum, our Department has no information regarding the Napuunoa Family, its property in Kahakuloa, Maui, or of the respective interests that may be held by individual Napuunoa Family members. We have not been involved in the negotiation of the proposed conveyance, nor have we been directly contacted by Mr. Kobayashi or the Napuunoa Family. Further, we have not conducted any due diligence investigation or work in connection with the proposed conveyance. Therefore, any comments made herein are based solely on the information submitted by your office and are intended primarily to assist you in the drafting of your initial written response to Mr. Kobayashi's letter.

The draft letter serves the useful purpose of informing Mr. Kobayashi and his clients of the basic procedures followed by the County of Maui in accepting donations of real property. The letter also helps to identify those items of information, such as a title report, map, and metes and bounds description, that are helpful and

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Council Chair
February 23, 2004
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necessary for Council to decide whether to accept the dedication of the subject parcels.¹

However, the draft letter appears to assume that a warranty deed is required for purposes of Section 3.44.015(C), Maui County Code, pertaining to the acceptance of a gift or donation of real property. Although a warranty deed may be desirable and advantageous from County's perspective, current Maui County Code provisions relating to the acceptance of gifts of real property neither require the conveyance of a warranty deed nor preclude the acceptance of a quitclaim deed. At present, the only Maui County Code provision requiring the conveyance of a warranty deed is Section 18.16.320(B)(2)(a), pertaining to park dedication requirements for proposed subdivisions.² Based on the facts presented in your memorandum, it does not appear that Section 18.16.320(B)(2)(a) would apply to the proposed conveyance.

The determination as to whether, and to what extent, the County should accept conveyances of real property by quitclaim deed rather than warranty deed, or accept real property with clouded and not "clear" title, is largely a matter of policy for Council to consider. Our Department may be able to provide further advice on the proposed conveyance as more facts come to light and if the Napuunoa Family decides to pursue this matter further.

BTM:lak

cc: Mayor Alan Arakawa
Edward S. Kushi, Jr., Deputy Corporation Counsel
Traci Fujita Villarosa, First Deputy Corporation Counsel

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¹We note that we have no information as to the ability or willingness of the Napuunoa Family to comply with the requests made in the draft letter.

²"2. The land provided or dedicated shall meet the following standards:

a. Each subdivider shall convey the land to the County by warranty deed free and clear of any liens or encumbrances; pay for recordation of title to the County; and insure the County's title by providing a standard owner's title insurance policy for the County with coverage in the amount of the fair market value of the property dedicated herein;..." §18.16.320(B)(2)(a), Maui County Code.

Section 18.12.040, Maui County Code, requires a "complete title report issued by a licensed title company" in connection with the submission of a final subdivision plat.