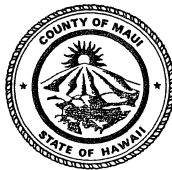


ALAN M. ARAKAWA
Mayor



BRIAN T. MOTO
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November 19, 2004

MEMO TO: Joseph Pontanilla, Chair
Housing and Human Services Committee

F R O M: Edward S. Kushi, Jr., Deputy Corporation Counsel

SUBJECT: **COUNCIL APPROVAL OF AFFORDABLE-HOUSING PROJECTS PROPOSED
PURSUANT TO CHAPTER 201G, HAWAII REVISED STATUTES
(Pu'unoa, Lahaina); (HHS-4(1))**

The purpose of this memorandum is to respond to your request of November 8, 2004 that asked whether this office, upon being provided more time and after reviewing further documents, would wish to supplement and/or revise our conclusions stated in the November 4, 2004 memorandum to your office. We respond in the negative.

Additional relevant documents/correspondence reviewed.

Attached to your November 8, 2004 request were the following:

- a) October 29, 2004 letter to you from Michele McLean of Smith Development;
- b) August 9, 2004 letter to McLean from Gilbert Coloma-Agaran, Director, Department of Public Works and Environmental Management; and
- c) August 31, 2004 letter to Smith Development from Attorney Tom Welch.

Nothing contained in the above correspondence/documents would affect our previous conclusions, and to the contrary, reinforces

Joseph Pontanilla, Chair
Housing and Human Services Committee
November 19, 2004
Page 2

our position and advice that the "subject project be disapproved for lack of an EA which should have been reviewed and accepted by HCDCH"¹.

The October 29, 2004 letter from McLean merely reiterates statements/positions asserted previously by applicant Smith Development.

The August 9, 2004 letter from Director Coloma-Agaran speaks for itself, but in no way addresses, and we believe was not intended to address, the central issue of whether an EA is required or not.

Finally, the August 31, 2004 letter from Attorney Welch recites the issues and applicable case law, but we believe, fails in its analysis. The writer's use of, and dependency on, the term "common sense"² to resolve highly complex and much litigated environmental issues is an inadequate basis for an exemption from the requirement of preparing, at a minimum, an environmental assessment ("EA"). Indeed, McLean's November 2, 2004 letter confirming that the project will entail construction of a new pressurized sewer line in the State right-of-way from the entrance to Pu'unoa Village to the sewer manhole at Dickenson Street lends support to the conclusion that an EA is required.

Based on the above, we confirm our responses to your inquiries as set forth in the November 4, 2004 memorandum. Call if further discussion/clarification is needed.

ESK:ln

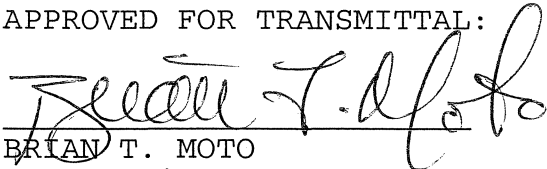
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¹November 4, 2004 memorandum to Pontanilla; Section 4,B, at page 10.

²August 31, 2004 letter from Attorney Tom Welch; "...and common sense says that installation of a sewer line is a minor and routine structure...", at page 2; "...common sense would seem to dictate...", at page 2; "...the application of common sense would indicate that ...", at page 4.

Joseph Pontanilla, Chair
Housing and Human Services Committee
November 19, 2004
Page 3

APPROVED FOR TRANSMITTAL:


BRIAN T. MOTO
Corporation Counsel

cc: Jane Lovell, Deputy Corporation Counsel
Alice Lee, Director, Department of Housing and Human Concerns