

AH Committee

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Sent: Monday, October 05, 2020 7:54 AM
To: Jocelyn Moniz; Mimi Desjardins; Evan P. Dust; Tasha A. Kama
Cc: AH Committee; Ana L. Lillis
Subject: Corp Counsel memorandum re: Lihau'ula
Attachments: Memo to Chair Kama.pdf

Good morning:

Please find attached a memorandum from Corporation Counsel regarding the use of IWS's at the Lihau'ula Development.

Mimi

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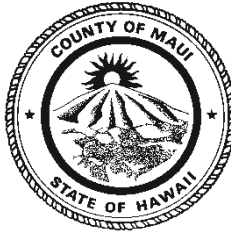
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MEMORANDUM

October 5, 2020

MEMO TO: Tasha Kama, Chair
Affordable Housing Committee

FROM: Mimi Desjardins, Deputy Corporation Counsel

SUBJECT: Environmental Assessment Triggers and Lihau'ula Housing Development

At the September 29, 2020 Affordable Housing Committee Meeting, a question was raised regarding whether a development that consists of 49 10,000 square foot lots, plus 10 one-acre lots, all consisting of single family units, each having its own individual wastewater system ("IWS"), would trigger the requirement of an environmental assessment ("EA") pursuant to Hawaii Revised Statute ("HRS") §343-5(a)(9)(A).

HRS §343-5(a)(9)(A) provides in relevant part:

- (a) Except as otherwise provided, an environmental assessment shall be required for actions that:
 - (9) Propose any:
 - (A) Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent.

A plain reading of the language excepts IWS, such as septic systems, from the requirements of Chapter 343, and also excepts a wastewater treatment unit (defined as "any plant or facility used in the treatment of wastewater") that serves less than fifty single family dwellings. In other words, neither of these will trigger the necessity of an EA.

The State of Hawaii Department of Health's ("DOH") administrative rules governing IWS's inform the threshold for developments that require a wastewater treatment facility.

According to Hawaii Administrative Rule ("HAR") §11-62-31.1(a)(1)(A):

(a) Individual wastewater systems as a temporary on-site means of wastewater disposal in lieu of wastewater treatment works under the following conditions:

(1) development involving dwellings:

(A) there shall be 10,000 square feet of land area for each individual wastewater system;

(B) Total development of an area shall not exceed fifty single family residential lots or exceed fifty dwelling units except for developments consisting of one dwelling unit per acre or greater.

In other words, an IWS is not allowed on any lot less than 10,000 square feet, and in the event there are fifty or more such lots in one development, a wastewater treatment unit is required. In that event, according to HRS §343-5(a)(9), an EA is required.

HAR §11-62-31.1(a)(1)(B) provides that if a lot is one acre or more in size, IWSs are allowed and the requirement that a wastewater treatment unit is required for fifty or more lots does not apply.

In the case of the Lihau'ula development, in June, 2019, the DOH commented that a private wastewater treatment plant or connection to the County sewer system would be required because the proposed 59 lots exceed the allowable 50 lots for the use of IWS's. However, in an email dated June 12, 2020, Sina Pruder, wastewater engineer with the Hawaii Department of Health, stated that Lihau'ula complies with DOH's administrative rules and that IWS's would be allowed in the project.