LINDA LINGLE
GOVERNOR

MARK J. BENNETT
ATTORNEY GENERAL

LISA M. GINOZA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

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Lincoln S.T. Ashida, Esq.
Corporation Counsel
County of Hawaii
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

Dear Mr. Ashida:

Re: Applicability of Chapter 104, HRS, to County Housing Projects Developed Pursuant to Section 46-15, HRS

By letter dated March 9, 2006, Deputy Corporation Counsel Patricia K. O'Toole of your office asked whether chapter 104, Hawaii Revised Statutes (HRS), which requires that the laborers and mechanics working on a public work project be paid the prevailing wage established by the State Director of Labor and Industrial Relations, applies to your County's Waikoloa Employee Housing Project. We believe that chapter 104 does apply to the project pursuant to section 46-15.01, HRS, and the plain language of section 104-2, HRS.

We understand that the housing project, estimated to cost $350 million to $400 million, will be developed on county land that has already been designated pursuant to section 46-15, HRS, for experimental and demonstration housing projects. Ms. O'Toole further explained in her letter that the County of Hawaii intends to transfer the land to a nonprofit agency, which will hold title to the land and then lease it to another entity to actually develop the project.

Projects undertaken pursuant to section 46-15, HRS, are for the purpose of researching and developing ideas that would reduce the cost of housing in the State of Hawaii. These experimental and demonstration housing projects are exempt from all statutes, ordinances, charter provisions, and rules or regulations relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and construction and sale of homes of the project. Section 46-15.01, HRS, however, explicitly

provides for the application of chapter 104 to projects developed pursuant to section 46-15. This section states: "This chapter [46] shall not be construed to exempt counties from the application of chapter 104 to experimental and demonstration housing projects pursuant to section 46-15."

Furthermore, section 104-2(a) states in part, "This chapter shall apply to every contract in excess of $2,000 for construction of a public work project to which a governmental contracting agency is a party; provided that this chapter shall not apply to experimental and demonstration housing developed pursuant to section 46-15 . . . if the cost of the project is less than $500,000 and the eligible bidder or eligible developer is a nonprofit corporation." This section further defines "public work" to mean "any project, including development of any housing pursuant to section 46-15 or chapter 201G, and development, construction, renovation, and maintenance related to refurbishment of any real or personal property, where the funds or resources required to undertake the project are to any extent derived either directly or indirectly from public revenues of the State or any county, or from the sale of securities or bonds whose interest or dividends are exempt from state or federal taxes."

The Supreme Court of Hawaii has repeatedly recognized that its "foremost obligation 'is to ascertain and give effect to the intention of the legislature[,]' which 'is to be obtained primarily from the language contained in the statute itself.'" Richardson v. City & County of Honolulu, 76 Haw. 46, 63, 868 P.2d 1193, 1210, recon. denied, 76 Haw. 247, 871 P.2d 795 (1994) (quoting Franks v. City & County of Honolulu, 74 Haw. 328, 334, 843 P.2d 668, 671 (1993) (quoting In re Hawaiian Tel. Co., 61 Haw. 572, 577, 608 P.2d 383, 387 (1980))); Shimabuku v. Montgomery Elevator Co., 79 Haw. 352, 356-57, 903 P.2d 48, 52 (1995). Accordingly, our appellate courts have consistently held that "'[t]he fundamental starting point for statutory interpretation is the language of the statute itself. . . and where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning.'" AIG Hawaii Ins. Co. v. Caraang, 74 Haw. 620, 633-34, 851 P.2d 321, 328 (1993) (quoting Nat'l Union Fire Ins. Co. v. Ferreira, 71 Haw. 341, 344, 790 P.2d 910, 913 (1990)).

Furthermore, "'[D]eparture from the plain and unambiguous language of the statute cannot be justified without a clear showing that the legislature intended some other meaning would be given the language[,]'" Schmidt v. AOAO of the Marco Polo Apartments, 73 Haw. 526, 532, 836 P.2d 479, 483 (1992) (quoting In re Tax Appeal of Lower Mapunapuna Tenants Ass'n, 73 Haw. at 68, 828 P.2d at 266 (quoting Espaniola v. Cawdrey Mars Joint

Venture, 68 Haw. 171, 179, 707 P.2d 365, 370 (1985))), or that a "'literal construction would produce absurd or unjust results that are clearly inconsistent with the purposes and policies of the statute.'" Schmidt, 73 Haw. at 532, 836 P.2d at 483 (quoting Kang v. State Farm Mutual Auto. Ins. Co., 72 Haw. 251, 254, 815 P.2d 1020, 1021-22 (1991)).

The County of Hawaii's Waikoloa Employee Housing Project is specifically being undertaken pursuant to section 46-15, HRS, and is estimated to cost in excess of $350 million. The cost of this project exceeds the threshold amount for exclusion of experimental and demonstration housing projects from chapter 104, HRS. Thus, under a plain reading of section 104-2, HRS, this project is subject to chapter 104, HRS, and the payment of the prevailing wage to the qualified mechanics and laborers performing construction work on this housing project, regardless of who actually develops it, is required.

Very truly yours,

Nelson T. Higa
Deputy Attorney General

APPROVED:

Mark J. Bennett
Attorney General