


COUNTY OF MAUI DEPARTMENT OF THE CORPORATION COUNSEL
200 SOUTH HIGH STREET WAILUKU, HI 96793

INTEROFFICE CORRESPONDENCE

D A T E: January 29, 2003

M E M O T O: George Tengan
Director, Water Dept.

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

S U B J E C T: Acceptance of Easements and/or other interests in
real property from subdividers or building permit
applicants.

As previously discussed with you and your staff, this memo is intended to document our discussions and identify/clarify the issues and concerns regarding the existing situation as a result of the adoption of Charter Amendment 9A.

Prior to Charter Amendment:

Generally, as a condition to final subdivision or building permit approval, the department requires an applicant to construct certain water system improvements, including but not limited to water main and/or distribution lines, storage tanks, reservoirs, and fire hydrants. More often than not, these improvements are located on private, non-County property, and therefore, as a further, and in most cases, final condition prior to the issuance of water meters, the department requires the applicant to convey fee simple title to, or easements over the subject property to the Board of Water Supply. See Section 2-11 of the Rules. Before the effective date of the Charter amendment (*i.e.*, prior to December 5, 2002), the Board had the authority to accept, acquire and hold interests in real property. See Old Charter, Section 8-11.4(6). The usual procedure was to have the applicant execute the appropriate conveyance document (*i.e.*, either an easement or a warranty deed) in favor of the Board, and the Board delegated the acceptance of said document, in the case of easements, to the Director. Upon acceptance and recordation of the conveyance document, the department would approve issuance of water meters for the water system improvements.

Charter Amendment:

Charter Amendment 9a approved by the voters in the last General election, and effective as of December 5, 2002, specifically deleted the above-referenced Section 8-11.4(6) power from the Board. Accordingly, as in the case with all other County departments requiring dedication and acceptance of real property interests, only the Maui County Council has the authority to accept such dedications on behalf of the County. See Section 3.44.015(C), Maui County Code. Pursuant to said code section, acceptance is by resolution adopted by the Council, which requires only one reading. Using past practice as an estimate, from start to resolution passage (assuming no prolonged debate) will take a minimum of two months, to-wit: transmittal of executed conveyance document with proposed resolution from department to Mayor's office; transmittal from Mayor's office to Council Chair; placement on full Council's agenda for referral to committee; committee hearing, and creation of committee report recommending passage of resolution; placement on full Council's agenda for adoption of committee report and passage of resolution.

Issues/Concerns:

Due to the above changes and resulting requirements, many subdivision and permit applicants who have constructed or were in the process of completing construction of the necessary and/or required water system improvements prior to December 5, 2002, are now subject to a minimum two-month delay in obtaining water service.

Alternatives:

- 1) Let the process work itself out, and advise these applicants of our condolences.
- 2) As preliminarily discussed, propose the following:
 - A) Process the Council resolution as described above.
 - B) **Conditionally**, process final subdivision or permit approval, which would allow the applicants to obtain water service/meters.
 - C) Have the applicant execute an agreement to be recorded in the Bureau or Land Court, which would bind any and all successors and assigns, including mortgagees, in which the applicant would agree and acknowledge that:

George Tengan
January 29, 2003
Page 3

- Final subdivision or permit approval is being granted **on condition** that the Council passes the appropriate resolution accepting the easement or fee simple title in due time (*i.e.*, within six months from the date the Council receives the proposed resolution).

- Pending Council acceptance, the applicant shall pay any and all existing fees and/or charges for water service, including but not limited to the relevant Water System Development fees.

- In the event the Council does not pass the subject resolution in due time, the department, at its sole option and discretion, may terminate/disconnect water service to the applicant's premises, or impose alternative requirements on the applicant, at the applicant's cost and expense, to eliminate the need for the dedication of the easement or fee simple title.

We concluded that the decision as to which alternative to pursue is a policy decision, and that you would consult with the Mayor's office concerning same. Pending your decision, I have begun drafting an appropriate agreement to incorporate the above conditions, and will forward same for your and staff review upon completion.

Lastly, I have reviewed your department's existing rules, and have concluded that pursuant to Section 2-12 of the Rules, entitled "Modification of Requirements", there is authority for such modifications, and for the agreement contemplated herein.

Call if further clarification/discussion is needed.

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Acting Corporation Counsel

cc: Gregory Garneau, First Deputy Corporation Counsel
S:\ALL\ESK\Water\easement memo to tengan.wpd