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April 16, 2003

Ms. Davelynn Tengan
Prosecuting Attorney
County of Maui
150 South High Street
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**SUBJECT: RULES OF PROCEDURES AND PRACTICE RELATING TO
INTOXICATION CONTROL ROADBLOCKS**

Dear Ms. Tengan:

I am in receipt of a letter dated April 14, 2003, from Mr. Mark Simonds advising the Maui Police Department that their rules of procedures and practice relating to intoxication control roadblocks are possibly null and void. Mr. Simonds failed to point out exactly what part of the rules of procedures and practice relating to intoxication control roadblocks gravely affect the legality of the roadblocks. May I ask, is it the change in the statutory section numbers? Is it a recent ruling by the District Court of the Second Circuit that the rules of practice and procedures fail to comply scrupulously with the new statutes?

I have reviewed HRS §291E-19 and §291E-20. Both sections follow the same language of the repealed HRS §§286-162.5 and 286-162.6, but the legislature added the sentence:

In the case of internal police standards that do not fall within the definition of "rule" under section 91-1(4), failure to comply scrupulously with such internal police procedures shall not invalidate a roadblock that otherwise meets the minimum statutory criteria provided in section 291E-20.

It seems to me that in light of this additional provision to the statutes, the existing Maui Police Department's practice of intoxication control roadblocks are valid and not null and void. If you have had an adverse ruling the existing practice and procedure by the District Court I would urge you to appeal such ruling.

Ms. Davelynn Tengan
April 16, 2003
Page 2

Our office will be assisting the Maui Police Department in amending their current roadblock rules to reflect the changes in the statutory designation, from HRS §§286-162.5 and 286-162.6 to HRS §§291E-19 and 291E-20. We also acknowledge that the word intoxication has been changed to intoxicant which now means alcohol or any drug. Unless your office can point to specific provisions of the change in statute that renders the current intoxication control roadblocks null and void we advise the Maui Police Department to continue on with their roadblock practice.

Very truly yours,



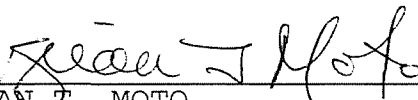
JOHN D. KIM
Deputy Corporation Counsel

JDK:pk

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cc: Thomas M. Phillips, Chief of Police
Lt. Jeffrey Tanoue, Traffic Division
Mr. Mark Simonds, Deputy Prosecuting Attorney

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Corporation Counsel