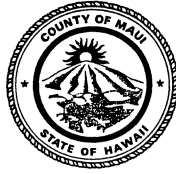


ALAN M. ARAKAWA  
Mayor




BRIAN T. MOTO  
Corporation Counsel

**DEPARTMENT OF THE CORPORATION COUNSEL**

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7740  
FAX: (808) 270-7152

January 20, 2005

MEMO TO: Honorable Joseph Pontanilla, Councilmember  
F R O M: Edward S. Kushi, Jr., Deputy Corporation Counsel   
SUBJECT: **PREVAILING WAGES FOR CONSTRUCTION OF EXPERIMENTAL,  
DEMONSTRATION, AND AFFORDABLE HOUSING PROJECTS (PAF 04-201)**

Responding to your request of November 24, 2004 to review the attached correspondence dated November 19, 2004 from James E. T. Koshiba, Koshiba Agena & Kubota, addressed to you, Mayor Alan M. Arakawa, Corporation Counsel Brian T. Moto, Housing and Human Concerns Director Alice L. Lee, and State Housing and Community Development Corporation of Hawaii Executive Director Stephanie Aveiro, we concur with Mr. Koshiba's interpretation of Section 104-2(a), Hawaii Revised Statutes ("HRS").<sup>1</sup>

In relevant part, Section 104-2, HRS, entitled Applicability; wages, hours, and other requirements, states:

(a) This chapter shall apply to every contract in excess of \$2,000 for construction of a public work project to which a government contracting agency is a party; provided that this chapter shall not apply to experimental and demonstration housing developed pursuant to section 46-15 or housing developed pursuant to chapter 201G if the cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

For the purposes of this subsection:

---

<sup>1</sup>We note that Mr. Koshiba's letter addresses the subject of Chapter 104, HRS, generally, without referencing any particular project or set of facts. Accordingly, this memorandum discusses the subject matter generally and is not intended to serve as a comprehensive statement addressing all possible facts and circumstances. You are advised to seek further legal advice if particular facts and circumstances are presented for review and analysis.

"Contract" includes but is not limited to any agreement, purchase order, or voucher in excess of \$2,000 for construction of a public work project.

"Governmental contracting agency" includes any person or entity that causes either directly or indirectly the building or development of a public work.

"Party" includes eligible bidders for and eligible developers of any public work and any housing under chapter 201G; provided that this subsection shall not apply to any housing developed under section 46-15 or chapter 201G if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

"Public work" means 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.

(b) Every laborer and mechanic performing work on the job site for the construction of any public work project shall be paid no less than prevailing wages;.... (Emphasis added).

The housing statutes referenced in Section 104-2, HRS, also incorporate the requirements and limitations of Chapter 104, HRS. Section 46-15.01, HRS, states:

This chapter shall not be construed to exempt counties from the application of chapter 104 to experimental and demonstration housing projects pursuant to section 46-15. (Emphasis added).

Similarly, Section 201G-133, HRS, states:

Rate of wages for laborers and mechanics. The corporation shall require an eligible bidder or eligible developer of a housing project developed under this subpart to comply with the requirements of section 104-2 for those laborers and mechanics hired to work on that housing project; provided that this section shall not apply to a housing project developed under this chapter if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit corporation.

Honorable Joseph Pontanilla  
January 20, 2005  
Page 3

Based on the plain language of the above-referenced statutory provisions, we believe that laborers and mechanics hired by eligible bidders or developers to work on a project meeting the definition of "public work", including a Section 46-15 or Chapter 201G, HRS, project, must be paid no less than prevailing wages, except with regard to a Section 46-15 or Chapter 201G, HRS, project where:

- (1) The entire cost of the project is less than \$500,000;  
and
- (2) The eligible bidder or eligible developer is a private nonprofit corporation.

Call if further clarification and/or discussion is needed.

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO  
Corporation Counsel

cc: Alan M. Arakawa, Mayor  
Alice L. Lee, Director, Department of Housing and Human Concerns  
S:\ALL\Advisory\ESK\memo to pontanilla re prevailing wages and 201G projects.wpd

RECEIVED  
CORPORATION  
2004 NOV 22  
Honolulu, Hawaii  
1001 Bishop Street  
Honolulu, Hawaii 96813  
Telephone (808) 523-3900  
Facsimile (808) 526-9829

November 19, 2004

The Honorable Alan M. Arakawa  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

The Honorable Joseph Pontanilla  
Council Member, County of Maui  
200 South High Street, 7<sup>th</sup> Floor  
Wailuku, Hawaii 96793

The Honorable Alice L. Lee  
Director of Housing and Human Concerns  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

The Honorable Stephanie Aveiro  
Executive Director  
Housing and Community Development  
Corporation of Hawaii  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

The Honorable Brian T. Moto  
Corporation Counsel  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

**Re: Development of Housing Projects Pursuant to Section 46-15 and Chapter 201G, Hawaii Revised Statutes / Prevailing Wages**

Dear Mayor Arakawa, Council Member Pontanilla, and Directors Lee and Aveiro:

We represent The Pacific Resource Partnership ("PRP"), a collaborative organization between the Hawaii Carpenters Union and its signatory contractors, whose purpose is to strive for a level playing field and fair play in the construction industry. It has come to our attention that certain developers have the mistaken belief that prevailing wage rates pursuant to Chapter 104, Hawaii Revised Statutes, need not be paid to laborers for any housing project developed under either Section 46-15 or Chapter 201G, Hawaii Revised Statutes. The express language of Chapter 104, however, specifically exempts from the prevailing wage rate requirement only housing projects (developed under Section 46-15 or Chapter 201G) developed by a nonprofit corporation that have a cost less than \$500,000. We interpret the applicable law to require all other developers (under Section 46-15 and Chapter 201G) to pay its laborers prevailing wage rates.

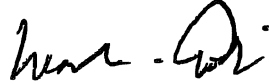
We would appreciate it if you would confirm whether or not the County of Maui and its respective agencies concur with our interpretation of these laws.

November 19, 2004

Page 2

Please send your response to our office at your earliest convenience. Thank you.

Very truly yours,



James E. T. Koshiba

Neal K. Aoki

for

KOSHIBA AGENA & KUBOTA

at Bishop Square

JETK:NKA:tm

rc: Hawaii Carpenters Union, Maui Office  
Mr. Bruce Coppa, The Pacific Resource Partnership