

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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In reply, please refer to:  
File:

July 22, 2011

Mr. Jon Miller, President  
Kihei Community Association  
1280 S. Kihei Road, #303  
Kihei, Hawaii 96753

Dear Mr. Miller:

Thank you for your June 15, 2011, letter to Messrs. Okimoto, Sniffen, and myself concerning development of two large shopping malls proposed by Eclipse Development Group known as Piilani Promenade along Piilani Highway in Kihei, Maui.

I understand that the proposed Kihei-Upcountry Highway bisects the Piilani Promenade. I further understand that your organization believes that the Piilani Promenade and proposed neighboring projects may have immediate significant and cumulative impacts would thus require DOT to prepare an environmental assessment so that the public can properly assess the impact of this development.

We understand that the following events have occurred or have been disclosed:

1. A final environmental impact statement (FEIS) for the proposed Kihei-Upcountry Highway was prepared under the auspices of Chapter 343, Hawaii Revised Statutes, and the National Environmental Policy Act by the State of Hawaii, Department of Transportation, and the Federal Highway Administration of the U. S. Department of Transportation. (Please check link below.)

[http://oeqc.doh.hawaii.gov/Shared%20Documents/EA\\_and\\_EIS\\_Online\\_Library/Maui/1990s/1995-03-MA-FEIS-KIHEI-UPCOUNTRY-HWY-PIILANI-HWY-HALEAKALA-HWY-KULA-HWY-1.pdf](http://oeqc.doh.hawaii.gov/Shared%20Documents/EA_and_EIS_Online_Library/Maui/1990s/1995-03-MA-FEIS-KIHEI-UPCOUNTRY-HWY-PIILANI-HWY-HALEAKALA-HWY-KULA-HWY-1.pdf)

2. Page S-7 of the FEIS identifies the logical termini for preferred alternative as the intersection of Kaonoulu Street and Piilani Highway (in Kihei) and the intersection of Haliimaile Road and Haleakala Highway up mauka.
3. Pages 3-10 through 3-13 of the FEIS (Section 3.1.4.2d) cites the Kihei Makena Community Plan and notes that the Kihei Makena plan seeks the following land use patterns:
  - a. Vacant land between Piilani Highway and South Kihei Road/Kilohana Road to be developed as an urban mix, such as single-family and multi-family residences and commercial land uses (shopping centers, hotels, etc.).
  - b. Limited commercial/light industrial development mauka of Piilani Highway such as the Kaonoulu Parcel and the build-out of the Maui R & T Park.
  - c. Resorts and resort-related activities (some residences, retail, commercial, etc.) to be continued to be developed in the resort area of Wailea and Makena.

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Your letter notes that the proposed shopping centers' use of the Piilani Highway right-of-way and indicates that the Kihei Community Association requests that the State of Hawaii, DOT require an environmental assessment for these two proposed shopping malls and related State Highway improvements required for ingress and egress.

Section 1 of Act 87, Session Laws of Hawaii, Regular Session of 2009, states that its purpose is "*... to delineate a clear exemption to the applicability of Chapter 343, Hawaii Revised Statutes, the state's environmental impact statement law, when the primary action is not subject to a discretionary consent or a public hearing, and the secondary action is ancillary and limited to the installation, improvement, renovation, construction, or development of infrastructure within an existing public right of way.*"

Under the Act, the "*primary action*" is any action outside of the highway or public right-of-way that is on private property; likewise, the "*secondary*" action is any infrastructure within the highway or public right-of-way.

Section 2 of Act 87, Session Laws of Hawaii, Regular Session of 2009, states that "*... any primary action that requires a permit or approval that is not subject to a discretionary consent and that involves a secondary action that is ancillary and limited to the installation, improvement, renovation, construction or development of infrastructure within an existing public right of way or highway shall be exempt from this chapter.*"

The grant of approval to use the highway right-of-way by the DOT appears to be a discretionary consent and as such would not be exempt via Act 87. Therefore, the DOT needs to determine whether or not the proposed secondary action related to the development of the proposed shopping centers (the primary action), is of sufficient scope and magnitude including the evaluation of secondary and cumulative impacts, to trigger Chapter 343.

I believe your concerns are valid; however, the determination to require an environmental assessment rests with the DOT whom we would advise if so requested by the Department. Please contact the DOT directly to request their determination on the need for an environmental assessment for the "secondary action" for the proposed shopping centers ("primary action").

Sincerely,



GARY HOOSER  
Director, Office of Environmental Quality Control

Cc: (Via E-mail)  
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