



In Reply Refer to: HCR-20
DOT# 2019-0333

NOV 12 2019

Subject: Dismissal of Complaint DOT# 2019-0333¹

Dear [REDACTED]

This letter is to inform you that the Federal Highway Administration (FHWA) Office of Civil Rights has determined that it will dismiss the above complaint, which alleges violations that may be related to Title VI of the Civil Rights Act of 1964, the U.S. Department of Transportation (USDOT) Title VI implementation regulations at 49 C.F.R. Part 21 and/or FHWA's Title VI regulations at 23 C.F.R. Part 200 (hereinafter Title VI). Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance.

To be accepted for investigation, a complaint must meet the jurisdictional requirements provided by 49 C.F.R. § 21.11, as well as the legal standards discussed in the U.S. Department of Justice Title VI Legal Manual. First, complaints must be filed within 180 calendar days of the alleged discriminatory act, unless the time for filing is extended by FHWA. Second, the matters must concern recipients of federal financial assistance for a program or programs authorized under a law administered by FHWA. Finally, the complaint must describe an alleged discriminatory act or acts that, if true, would fall under FHWA's jurisdiction and potentially violate FHWA's Title VI regulations.

You allege that the Hawaii Department of Transportation (HDOT) discriminated against the predominantly minority residents of Kealia Town Tract when it informed the property developer in a December 2017 letter that HDOT would not permit direct access to Kuhio Highway from the proposed development. The HDOT determination was incorporated into a Final Environmental Impact Statement (FEIS; as required by Hawaii Revised Statutes, Chapter 343) for the Kealia Mauka Homesites project (Project) that was approved by the State of Hawai'i Land Use Commission in August 2019. The Project was initiated by Kealia Properties, LLC, which proposes a residential subdivision on 53.4 acres with 235 lots at Kealia, Kaua'i, adjacent to the Kealia Town Tract area. You allege the Project will create a disparate impact on Kealia Town Tract residents because the new development will create additional traffic on Kealia Road, which connects the Kealia Town Tract and the future Kealia Mauka Homesites development to Kuhio Highway. In contrast, you allege the Kealia Kai area, east of Kuhio Highway, was granted three highway access points in the past by HDOT. In your complaint, you stated that 20% of the

¹ This letter is an corrected copy of FHWA's November 8, 2019 letter, which included carbon copies to FHWA Florida Division personnel.

Kealia Kai homes are owned by corporations and that they are valued 9 to 10 times higher than the homes in Kealia Town Tract. Finally, you allege that HDOT did not adequately engage the Kealia Town Tract residents regarding its decisions.

After careful consideration, FHWA has determined the allegations and facts in your complaint do not meet the minimum criteria under which FHWA could establish a case of disparate impact under Title VI. The available information is insufficient to show that populations in the Project vicinity, distinguishable by race, color, or national origin, will be—or have been—disparately impacted either by the Project or due to prior HDOT decisions regarding access to Kuhio Highway compared to any other distinguishable population. For this reason, the complaint will be dismissed by FHWA and closed with no further action.

If you have any questions, please contact Nichole McWhorter at (202) 366-1396.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nichole McWhorter", with a long horizontal flourish extending to the right.

Nichole McWhorter
Title VI Team Leader
Office of Civil Rights

cc: Ralph Rizzo, Division Administrator, FHWA HI Division Office
Richelle Takara, Assistant Division Administrator, FHWA HI Division Office
Adriana Windham, Civil Rights Program Manager, FHWA HI Division Office
Jim Esselman, Senior Attorney-Advisor, FHWA Office of Chief Counsel
Yvette Rivera, Associate Director, Equal Employment Opportunity Programs Division,
Departmental Office of Civil Rights
Kevin Resler, National Title VI Program Coordinator, FHWA Office of Civil Rights