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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUN 21 2005

at 9 o'clock and 10 min 2 M
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RODELLE SMITH, SHEILA
TOBIAS, BARBRA BARAWIS,
and LEWIS GLASER
individually, and on
behalf of all persons
similarly situated,

Plaintiffs,

vs.

STEPHANIE AVEIRO, in her
official capacity as the
Executive Director of
the Housing and

) CIVIL NO. CV04 00309
) DAE KSC
) (Class Action)
)
) NOTICE OF HEARING ON
) MOTION; DEFENDANTS
) COUNTER-MOTION FOR
) SUMMARY JUDGMENT;
) DEFENDANT'S MEMORANDUM IN
) OPPOSITION TO PLAINTIFF'S
) MOTION FOR PARTIAL
) SUMMARY JUDGMENT FILED ON
) MARCH 21, 2005 AND IN
) SUPPORT OF COUNTER-MOTION
) FOR SUMMARY JUDGMENT;

| | | |
|--------------------------|---|-------------------------|
| Community Development |) | APPENDIX; AFFIDAVIT OF |
| Corporation of Hawaii; |) | STEPHANIE AVIERO; |
| HOUSING AND COMMUNITY |) | EXHIBITS "A", "B", ; |
| DEVELOPMENT CORPORATION |) | DECLARATION OF JOHN C. |
| OF HAWAII, a duly |) | WONG; EXHIBITS "AA", |
| organized and recognized |) | "BB", "CC"; CERTIFICATE |
| agency of the State of |) | OF SERVICE |
| Hawaii, |) | |
| |) | |
| Defendants. |) | Hearing: July 11, 2005 |
| |) | Time: 10:30 a.m. |
| |) | Judge: David Alan Ezra |
| |) | |
| |) | |
| |) | Trial Date: Week of |
| |) | November 14, 2005 |

NOTICE OF HEARING ON MOTION

TO: GAVIN K. THORNTON
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Attorney for Plaintiffs

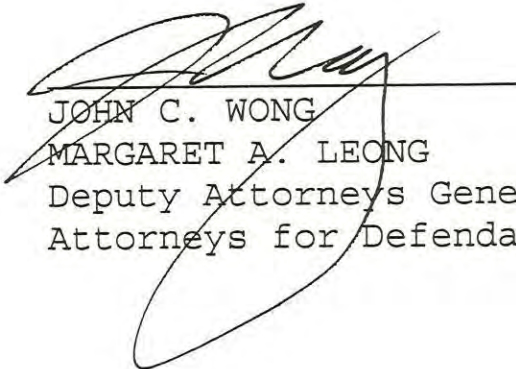
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PLEASE TAKE NOTICE that the following Counter-Motion for Summary Judgment will be heard before the Honorable David A. Ezra in his courtroom in the United States Courthouse, 300 Ala Moana Boulevard, Honolulu, Hawaii on July 11, 2005, at 10:30 a.m., or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, June 21, 2005.

MARK J. BENNETT
Attorney General



JOHN C. WONG
MARGARET A. LEONG
Deputy Attorneys General
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RODELLE SMITH, SHEILA) CIVIL NO. CV04 00309
TOBIAS, BARBARA BARAWIS,) DAE/KSC
and LEWIS GLASER) (Class Action)
individually and on)
behalf of all persons)
similarly situated,) **DEFENDANT'S COUNTER-**
) **MOTION FOR SUMMARY**
) **JUDGMENT**

Plaintiffs,)

vs.)

STEPHANIE AVEIRO, in her)
official capacity as the)
Executive Director of)
the Housing and)
Community Development)
Corporation of Hawaii;)
HOUSING AND COMMUNITY)
DEVELOPMENT CORPORATION)
OF HAWAII, a duly)
organized and recognized)
agency of the State of)
Hawaii,)

Defendants.)

DEFENDANTS COUNTER-MOTION FOR
SUMMARY JUDGMENT

Defendants file this Counter-Motion for Summary Judgment pursuant to Rules 7 and 56(b), Federal Rules of Civil Procedure, and LR. 7.9.

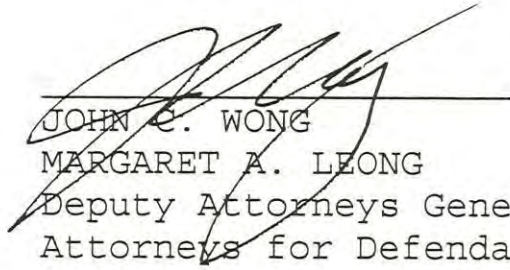
The undisputed facts demonstrate that there is no extant case or controversy to allow this action to continue. Since the filing of the Complaint, Defendants have undertaken corrective measures which render the Plaintiffs claims for relief, i.e. declaratory and injunctive relief, moot.

Based on these corrective measures, including the implementation of amended utility allowances and the promulgation of amended administrative rules, Defendants past non-compliance with the law is not reasonably likely to recur. There is no further relief which this Court can render and accordingly, Plaintiff's Motion should be denied and Defendants Counter-Motion should be granted.

This Counter-Motion is supported by the undisputed facts of record, the pleadings and records on file, the Memorandum in opposition to Plaintiff's Motion and in support of this Counter-Motion and the accompanying exhibits, Affidavits and Declaration.

DATED: HONOLULU, HAWAI`I, June 21, 2005.

MARK J. BENNETT
Attorney General



JOHN C. WONG
MARGARET A. LEONG
Deputy Attorneys General
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RODELLE SMITH, et al.,) CIVIL NO. CV04 00309
) DAE KSC
 Plaintiffs,) (Class Action)
)
 vs.) DEFENDANT'S MEMORANDUM IN
) OPPOSITION TO PLAINTIFF'S
STEPHANIE AVEIRO, et) MOTION FOR PARTIAL
al.,) SUMMARY JUDGMENT FILED ON
) MARCH 21, 2005 AND IN
 Defendants.) SUPPORT OF COUNTER-MOTION
) FOR SUMMARY JUDGMENT
)
)
)
)
)
)

DEFENDANTS MEMORANDUM IN OPPOSITION TO PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT FILED ON
MARCH 21, 2005 AND IN SUPPORT OF COUNTER-MOTION FOR
SUMMARY JUDGMENT

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Fed.R.Civ.P. 56 2
LR. 7.9 2

FEDERAL REGULATIONS

24 C.F.R. §965.508 passim

I. INTRODUCTION

Defendants submit this memorandum of law pursuant to Rules 7 and 56(b), Fed.R.Civ.P. and LR.7.9.

Plaintiffs Motion should be denied and Defendants Counter-Motion must be granted, because there are no longer any genuine issues of material fact and Defendants are entitled to judgment as a matter of law.

The undisputed facts clearly show that this lawsuit is now moot. Defendants corrective measures as of October 1, 2004, including updating the utility allowances for federal public housing residents and the promulgation of administrative rules, obviates the need for any order of injunctive relief from this Court.

Further, as evidenced in the supporting documents to this Memorandum, amendments to HCDCH's administrative rules which comply with 24 C.F.R. §965.501-507¹ have been duly promulgated. Upon the Governor's final approval of the rules which is imminent and the other corrective measures already in

¹ See, Appendix, hereto.

place, there is no reasonable likelihood that Defendants will fail to comply with the federal regulations in the future.

II. COUNTER-STATEMENT OF UNDISPUTED FACTS

1. Following the filing of this Complaint² on May 13, 2004, Defendants undertook corrective measures to update the utility allowances for federal public housing residents³ in accordance with 24 C.F.R. §965.501-507. *Affidavit of Stephanie Aveiro ("Aveiro")*, at par.3.

2. In August, 2004 HCDCH retained a nationally recognized consultant to assist the agency in updating the utility allowance schedules and the procedures for

² There are three related class-action lawsuits filed by Plaintiffs counsel and which relate to the provision of utility allowances for federal public housing residents:

1) *Smith, et al. v. HCDCH*, Civ. No. 04-1-0069 (3rd Circ. Ct.) filed May 17, 2004, Amended Complaint filed August 10, 2004, which basically alleges the same violations as the case at bar, except Plaintiffs are requesting monetary damages in addition to declaratory and injunctive relief;

2) *Amone, et al. v. Aveiro, HCDCH*, Civ. No. 04-00508 ACK/BMK (U.S. Dist. Ct., Hawaii), filed on August 18, 2004, basically alleging a separate violation of 24 C.F.R. §965.508 which requires a supplemental utility allowance for eligible disabled residents; and

3) *Waters, et al. v. HCDCH*, Civ. No. 05-0815 EEH (1st Circ. Ct.), filed on May 6, 2005, basically alleging failure to update the utility allowances at Wilikina Apartments, a Section 8 Project Based development, pursuant to 24 C.F.R. §880.610.

³ Only federal public housing residents who pay for utilities as part of their rent are involved in this litigation.

the agency's continued compliance with the HUD regulations. *Aveiro*, at par. 3.

3. Plaintiffs, through their counsel, were provided a preliminary schedule of the updated utility allowance rates for their review and comment.

Declaration of John C. Wong ("Wong"), at par. 4.

4. On October 1, 2004, HCDCH implemented amended utility allowances, retroactive to September 1, 2004, for eligible residents. *Aveiro*, at par. 4.

5. In most cases, residents received a credit on their October, 2004 rent because of the application of the amended utility allowances⁴. *Aveiro*, *Id.*

6. HCDCH has also promulgated amendments to its administrative rules in accordance with chapter 91, Hawaii Revised Statutes, incorporating the requirements of 24 C.F.R. § 965.501-507 and which are presently being

⁴ As a separate matter, on December 4, 2004 Defendants implemented updated supplemental utility allowances and an amended Notice under 24 C.F.R. §965.508 for eligible disabled residents on December 4, 2004, in the *Amone v. Aveiro*, HCDCH case, *supra*.

prepared in final form for Governor Lingle's final approval⁵. *Aveiro*, par. 5.

7. Defendants have already complied with the provisions of 24 C.F.R. §965.507 by implementing the updated utility allowances on October 1, 2004. *Aveiro*, par.4.

8. The annual review of the utility rates and allowances is now a mandatory operating procedure, the records of which will be subject to periodic review by HUD. *Aveiro*, par. 6.

III. ARGUMENTS

A. Plaintiffs Are Not Entitled To Judgment As A Matter Of Law

Summary judgment is appropriate when the moving party shows that there are no genuine issues of material fact, and that they are entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(c)*; *Celotex v. Catrett*, 477 U. S. 317, 322 (1986); *Linville v. State*,

⁵ In *Amone v. Aveiro, HCDCH*, supra, because the administrative rules were not signed-off by the Governor was arguably a basis for the Court's denial of Defendants' Counter-Motion for Summary Judgment based on mootness on May 31, 2005. See, "Order Denying Defendants' Counter-Motion for Summary Judgment; Granting Plaintiff's Motion for Partial Summary Judgment As To Counts II, IV, V, VI; Not Addressing Count I; and Granting Injunctive Relief", filed May 31, 2005 in Civ. No. 04-00508 ACK/BMK.

874 F.Supp. 1095 (D. Haw. 1994). All evidence and inferences must be construed in the light most favorable to the nonmoving party, T.W. Elec. Serv., In. v. Pacific Elec. Contractor's Ass'n, 809 F.2d 626, 630 (9th Cir. 1987); Mukaida v. Hawaii, 159 F.Supp.2d 1211, 1219 (D. Haw. 2001), and disputed facts must be resolved in favor of the nonmoving party. Id.

The standard for determining a motion for summary judgment is the same standard used to determine a motion for directed verdict: whether the evidence presents a sufficient disagreement to require submission to a jury, or whether it is so one-sided that one party must prevail as a matter of law. Musick v. Burke, 913 F.2d 1390, 1394 (9th Cir. 1990); Soone v. Kyo-Ya Company, Ltd., ---F.Supp.2d---, 2005 WL 195358 (D.Haw. Jan. 26, 2005).

Based on the pleadings and records on file and the evidence presented here, Defendants must prevail as a matter of law. The relief requested by Plaintiffs already has been, or is being, effectuated so that

there is nothing further for this Court to compel Defendants to do. Accordingly, as a matter of law, Plaintiffs Motion must be denied.

B. There Is No Present Case Or Controversy Because The Relief Requested Has Been Rendered Moot

The federal judicial power extends only to "cases or controversies". U.S.Const. Art.III, §2; Lujan v. Defenders of Wildlife, 504 U.S. 555,560-561 (1992); PUC v. FERC, 100 F.3d 1451, 1458 (9th Cir. 1996); NAACP v. Volusia County Branch, 340 F.Supp.2d 1329 (M.D.Fla. 2004). An actual controversy must exist at all stages of the litigation and, if it no longer exists, the case is moot. Arizonans for Official English, 520 U.S. 905 (2001); Biodiversity Legal Foundation v. Badgley, 284 F.3d 1046, 1053 (9th Cir.2002).

As an aspect of justiciability, the doctrine of mootness has been described as "the doctrine of standing set in a time frame". United States Parole Comm'n v. Geraghty, 445 U.S. 388, 397 (1980); Skysign International, Inc. v. City and County of Honolulu, 276

F.d 1109, 114 (9th Cir.2002). Accordingly, a claim is moot if it has lost its character as a present, live controversy. Santillian v. Ashcroft, ---F.Supp.2d---, 2004 WL 2297990, at 2 (N.D.Ca. October 12, 2004), citing American Rivers v. National Marine Fisheries Service, 126 F.3d 1118, 1123 (9th Cir. 1997). For declaratory and injunctive relief, plaintiffs must demonstrate that they have suffered or are threatened with a concrete and particularized legal harm, coupled with a sufficient likelihood that they will again be wronged in a similar way. Id.

In County of Los Angeles v. Davis, 440 U.S. 625 (1979), the United States Supreme Court held that a civil rights action brought by minority firefighter applicants had been rendered moot during the pendency of the litigation due to the county's remedial actions to correct the alleged discriminatory behavior. See also, Bernhardt v. County of Los Angeles, 279 F.3d 862 (9th Cir. 2002).

Similarly, in Troiano v. Supervisor of Elections in Palm Beach County, Florida, 382 F.3d 1276 (11th Cir. 2004), the court of appeals affirmed the dismissal, based on mootness, of a class action lawsuit brought under the Americans with Disabilities Act (ADA) by visually-impaired voters demanding auxiliary auditory devices, because the devices were voluntarily installed by the defendants during the litigation and the county supervisor's statements to utilize the devices in all future elections.

In this case, the relief requested by Plaintiffs has already occurred, thus rendering summary judgment in their favor meaningless. Updated utility allowances for residents were implemented as of October 1, 2004 and made retroactive to September 1, 2004. HCDCH staff will be required to review annually and amend, if required, the utility rates and allowances in compliance with 24 C.F.R. §965.501-507. The annual review and any adjustments are a mandatory requirement

of the agency's procedures and the records henceforth will be available for periodic HUD review.

In their Motion for Partial Summary Judgment, Plaintiffs ask this Court for summary judgment on Counts I and III and ask for 1) a declaration that Defendants have violated their rights and 2) a "permanent injunction" requiring Defendants to make appropriate adjustments to the HCDCH utility allowances in accordance with the U.S. Housing Act and 24 C.F.R. §965.507.

As stated, the utility allowances have already been adjusted in accordance with 24 C.F.R. §965.507. Thus, there is nothing further for this Court to order the Defendants to do, other than to order them to continue to comply with the law in the future which would, at best, be superfluous.

Agencies should be accorded a presumption that they will enforce the laws in a manner that produces a lawful result. Bremner v. City and County of Honolulu 96 Haw. 134, 144 (2001).

C. Future Non-Compliance Will Not Recur

Anticipating that Plaintiffs will argue that summary judgment is still necessary under the "capable of repetition but evading review"-exception to the mootness doctrine, this is not reasonably likely to recur. There will be no future violations of 24 C.F.R. §965.501, et seq. because of the corrective measures now in place. The promulgation of the administrative rules requires HCDCH to conduct an annual review and any necessary adjustments to the utility allowances. Further, the annual review will be monitored through periodic review of HCDCH operations by HUD itself. *Aveiro, at par.6.*

Plaintiffs request for a permanent injunction for what is already taking place is therefore moot. The purpose of an injunction is to prevent future violations of the onerous conduct and therefore, the Plaintiffs must clearly show that there is a "great likelihood that the defendant will continue its illegal practices or will violate the same provisions again."

Greene v. Joy Cone Company, 278 F.Supp. 2d 526, 543 (W.D.Pa. 2003); United States v. W.T. Grant Co., 345 u.S. 629 (1953). There is no likelihood that Defendants will again ignore the federal regulations and therefore Plaintiffs are not entitled to summary judgment as a matter of law.

This status of this case now does not fall under the ruling of the United States Supreme Court in Friends of the Earth, Incorporated v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167 (2000). There, the Court reversed the court of appeal's dismissal and held that the class action suit brought by environmental plaintiffs was not moot because the defendants failed to demonstrate that future violations "could not reasonably be expected to recur." Id. at 193, citing Concentrated Phosphate Export Assn., 393 U.S., at 203.

However, the Court nonetheless stated that "(F)ederal courts should aim to insure 'the framing of relief no broader than required by the precise facts'.

Schlesinger v. Reservists Comm. To Stop the War, 418

U.S. 208, 214." The precise facts of this case now show clearly that there is no need for further relief from the Court. There is nothing further to be gained by this Court "enjoining" Defendants to undertake actions which have already been implemented or to generally order Defendants' compliance with the law in the future.

D. Defendants Motion Should Be Granted

Based on the same standard of review as stated above, there are no genuine issues of material fact and Defendants are entitled to summary judgment as a matter of law. Even if the facts are viewed in a light more favorable to Plaintiffs, the clear evidence of Defendants' corrective measures moots any Court-ordered relief and makes it absolutely clear that there can be no reasonable inferences which could be drawn in Plaintiffs favor by the Court. Accordingly, under any standard for reviewing motions for summary judgment,

Defendants Counter-Motion for Summary Judgment should be granted and the Plaintiffs Motion should be denied.

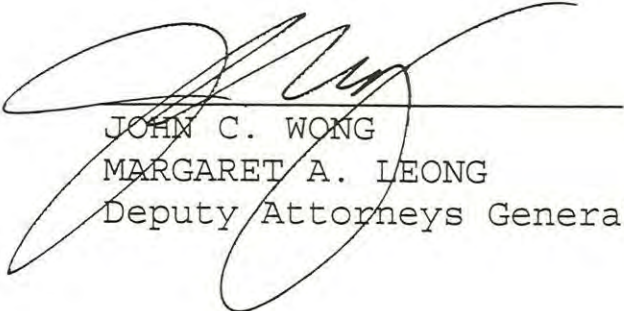
IV. CONCLUSION

Based on all the foregoing, Defendants submit that granting the Plaintiffs Motion for Partial Summary Judgment would not be justified under the present facts of the case. The clear facts now render this entire action moot and Defendants request that the Court deny the Plaintiffs Motion for Partial Summary Judgment.

Conversely, Defendants move that the Court grant this Counter-Motion, enter an Order for summary judgment in their favor and an Order that this case may be dismissed as no longer viable.

DATED: HONOLULU, HAWAI`I, June 21, 2005.

MARK J. BENNETT
Attorney General



JOHN C. WONG
MARGARET A. LEONG
Deputy Attorneys General

IN THE UNITED STATES DISTRICT COURT

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Hawaii,)

Defendants.)

APPENDIX

24 C.F.R. § 965.501

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING,
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 965--PHA-OWNED OR LEASED PROJECTS--GENERAL PROVISIONS
SUBPART E--RESIDENT ALLOWANCES FOR UTILITIES
Current through June 13, 2005; 70 FR 34301

§ 965.501 Applicability.

(a) This subpart E applies to public housing, including the Turnkey III Homeownership Opportunities program. This subpart E also applies to units assisted under sections 10(c) and 23 of the U. S. Housing Act of 1937 (42 U.S.C. 1437 et seq.) as in effect before amendment by the Housing and Community Development Act of 1974 (12 U.S.C. 1706e) and to which 24 CFR part 900 is not applicable. This subpart E does not apply to Indian housing projects (see 24 CFR part 950).

(b) In rental units for which utilities are furnished by the PHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption by resident-owned major appliances, or for optional functions of PHA-furnished equipment, in accordance with § 965.502(e) and 965.506(b), but no utility allowance will be established.

<General Materials (GM) - References, Annotations, or Tables>

24 C. F. R. § 965.501
24 CFR § 965.501
END OF DOCUMENT

(C) 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

24 C.F.R. § 965.502

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING,
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 965--PHA-OWNED OR LEASED PROJECTS--GENERAL PROVISIONS
SUBPART E--RESIDENT ALLOWANCES FOR UTILITIES
Current through June 13, 2005; 70 FR 34301

§ 965.502 Establishment of utility allowances by PHAs.

(a) PHAs shall establish allowances for PHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.

(b) The PHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.

(c) The PHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the PHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and shall provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the PHA and shall be available for inspection by residents.

(d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of PHA operations.

(e) The PHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

<General Materials (GM) - References, Annotations, or Tables>

24 C. F. R. § 965.502

24 CFR § 965.502

END OF DOCUMENT

24 C.F.R. § 965.503

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING,
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 965--PHA-OWNED OR LEASED PROJECTS--GENERAL PROVISIONS
SUBPART E--RESIDENT ALLOWANCES FOR UTILITIES
Current through June 13, 2005; 70 FR 34301

§ 965.503 Categories for establishment of allowances.

Separate allowances shall be established for each utility and for each category of dwelling units determined by the PHA to be reasonably comparable as to factors affecting utility usage.

<General Materials (GM) - References, Annotations, or Tables>

24 C. F. R. § 965.503
24 CFR § 965.503
END OF DOCUMENT

(C) 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

24 C.F.R. § 965.504

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING,
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 965--PHA-OWNED OR LEASED PROJECTS--GENERAL PROVISIONS
SUBPART E--RESIDENT ALLOWANCES FOR UTILITIES
Current through June 13, 2005; 70 FR 34301

§ 965.504 Period for which allowances are established.

(a) PHA-furnished utilities. Allowances will normally be established on a quarterly basis; however, residents may be surcharged on a monthly basis. The allowances established may provide for seasonal variations.

(b) Resident-purchased utilities. Monthly allowances shall be established. The allowances established may provide for seasonal variations.

<General Materials (GM) - References, Annotations, or Tables>

24 C. F. R. § 965.504

24 CFR § 965.504

END OF DOCUMENT

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24 C.F.R. § 965.505

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING,
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 965--PHA-OWNED OR LEASED PROJECTS--GENERAL PROVISIONS
SUBPART E--RESIDENT ALLOWANCES FOR UTILITIES
Current through June 13, 2005; 70 FR 34301

§ 965.505 Standards for allowances for utilities.

(a) The objective of a PHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

(b) Allowances for both PHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the PHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the PHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.

(c) The complexity and elaborateness of the methods chosen by the PHA, in its discretion, to achieve the foregoing objective will depend upon the nature of the housing stock, data available to the PHA and the extent of the administrative resources reasonably available to the PHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.

(d) In establishing allowances, the PHA shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three;

(2) The climatic location of the housing projects;

(3) The size of the dwelling units and the number of occupants per dwelling unit;

(4) Type of construction and design of the housing project;

(5) The energy efficiency of PHA-supplied appliances and equipment;

(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment;

(7) The physical condition, including insulation and weatherization, of the housing project;

(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather; and

(9) Temperature of domestic hot water.

(e) If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or checkmeters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning, the PHA shall not include air conditioning in the utility allowances. For systems that offer residents the option to choose air conditioning but cannot be checkmeters, residents are to be surcharged in accordance with § 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.

<General Materials (GM) - References, Annotations, or Tables>

24 C. F. R. § 965.505

24 CFR § 965.505

24 C.F.R. § 965.506

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING,
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 965--PHA-OWNED OR LEASED PROJECTS--GENERAL PROVISIONS
SUBPART E--RESIDENT ALLOWANCES FOR UTILITIES
Current through June 13, 2005; 70 FR 34301

§ 965.506 Surcharges for excess consumption of PHA-furnished utilities.

(a) For dwelling units subject to allowances for PHA-furnished utilities where checkmeters have been installed, the PHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the PHA's average utility rate. The basis for calculating such surcharges shall be described in the PHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the PHA's average utility rate shall not be subject to the advance notice requirements of this section.

(b) For dwelling units served by PHA-furnished utilities where checkmeters have not been installed, the PHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. Such surcharge schedules shall state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

<General Materials (GM) - References, Annotations, or Tables>

24 C. F. R. § 965.506

24 CFR § 965.506

END OF DOCUMENT

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24 C.F.R. § 965.507

CODE OF FEDERAL REGULATIONS
TITLE 24--HOUSING AND URBAN DEVELOPMENT
SUBTITLE B--REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT
CHAPTER IX--OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING,
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PART 965--PHA-OWNED OR LEASED PROJECTS--GENERAL PROVISIONS
SUBPART E--RESIDENT ALLOWANCES FOR UTILITIES
Current through June 13, 2005; 70 FR 34301

§ 965.507 Review and revision of allowances.

(a) Annual review. The PHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in § 965.505, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the PHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(b) Revision as a result of rate changes. The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were based. Adjustments to resident payments as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective. Such rate changes shall not be subject to the 60 day notice requirement of § 965.502(c).

<General Materials (GM) - References, Annotations, or Tables>

24 C. F. R. § 965.507
24 CFR § 965.507
END OF DOCUMENT

(C) 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RODELLE SMITH, et al.,) CIVIL NO. CV04 00309
) DAE/KSC
 Plaintiffs,) (Class Action)
)
 v.) **AFFIDAVIT OF STEPHANIE**
) **AVEIRO; EXHIBITS "A",**
STEPHANIE AVEIRO, et) **"B", "C"**
al.,)
)
 Defendants.)
)
)
)

AFFIDAVIT OF STEPHANIE AVEIRO

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

STEPHANIE AVEIRO, being first duly sworn on oath,
states the following:

1. I am the Executive Director for the Housing
and Community Development Corporation of Hawaii
("HCDCH") and I am familiar with and have personal
knowledge of the facts stated in this Affidavit.

2. As Executive Director of the agency I am responsible for the management and operation of all HCDCH programs.

3. As a result of this lawsuit, HCDCH undertook corrective actions, including retaining a nationally recognized consultant, NFC, Inc., to assist the agency in updating the utility allowances for federal public housing residents and the procedures as required by 24 C.F.R. §965.501-507.

4. HCDCH is in compliance with 24 C.F.R. §965.507. On October 1, 2004 HCDCH implemented amended utility allowance schedules, retroactive to September 1, 2004, in accordance with the federal regulations. In most cases, residents received a credit on their October, 2004 rent. A true and correct copy of the updated utility allowance schedules put into effect on October 1, 2004 is attached hereto as Exhibit "A".

5. HCDCH has also promulgated amendments to its administrative rules under chapter 91, Hawaii Revised Statutes, including amendments to H.A.R. 17-2028-7 ,

relating to the utility allowances for federal public housing residents pursuant to 24 C.F.R. §965.501-507. A true and correct copy of the final draft of the amended rule, H.A.R. 17-2028-7, which is being sent for Governor Lingle's final approval is attached hereto as Exhibit "B".

6. In accordance with the administrative rules, the annual review and any adjustments, if required, of the utility allowances under 24 C.F.R. §965.501-507 are mandatory and part of HCDCH's operating procedures. A true and correct copy of the Inter-Office Memorandum to HCDCH staff is attached hereto as Exhibit "C".

FURTHER AFFIANT SAYETH NAUGHT.

Stephanie Aveiro
STEPHANIE AVEIRO

Subscribed and sworn to me on
this _____ day of JUN 21 2005, 2005.

[Signature]

Notary Public, State of Hawai'i
My commission expires: 07-12-2007



October 2004 Utility Allowance

| Island | City | Project Number | Project | Type of Dwelling (House/ Apt) | No of bedrooms | New utility allowance (rounded) | Current utility allowance | Difference |
|--------|-----------|----------------|---------------------|-------------------------------|----------------|---------------------------------|---------------------------|------------|
| Oahu | Honolulu | HI001003 | Mayor Wright Homes | 2 story twnhse | 1 | 44.00 | 27.00 | 17.00 |
| Oahu | Honolulu | HI001003 | Mayor Wright Homes | 2 story twnhse | 2 | 50.00 | 30.00 | 20.00 |
| Oahu | Honolulu | HI001003 | Mayor Wright Homes | 2 story twnhse | 3 | 58.00 | 34.00 | 24.00 |
| Oahu | Honolulu | HI001003 | Mayor Wright Homes | 2 story twnhse | 4 | 67.00 | 38.00 | 29.00 |
| Oahu | Honolulu | HI001003 | Mayor Wright Homes | 2 story twnhse | 5 | 75.00 | 43.00 | 32.00 |
| Hawaii | Hilo | HI001004 | Lanakila Homes I | 1 stry 4-plex | 2 | 169.00 | 133.00 | 36.00 |
| Hawaii | Hilo | HI001004 | Lanakila Homes I | 1& 2 stry 4-plex | 3 | 200.00 | 157.00 | 43.00 |
| Hawaii | Hilo | HI001004 | Lanakila Homes I | 2 stry 4-plex | 4 | 229.00 | 179.00 | 50.00 |
| Oahu | Honolulu | HI001005 | Kalihi Valley Homes | 2 story twnhse | 1 | 58.00 | 48.00 | 10.00 |
| Oahu | Honolulu | HI001005 | Kalihi Valley Homes | 2 story twnhse | 2 | 74.00 | 64.00 | 10.00 |
| Oahu | Honolulu | HI001005 | Kalihi Valley Homes | 2 story twnhse | 3 | 90.00 | 81.00 | 9.00 |
| Oahu | Honolulu | HI001005 | Kalihi Valley Homes | 2 story twnhse | 4 | 111.00 | 102.00 | 9.00 |
| Oahu | Honolulu | HI001005 | Kalihi Valley Homes | 2 story twnhse | 5 | 132.00 | 124.00 | 8.00 |
| Oahu | Honolulu | HI001007 | Kuhio Homes | 2 story twnhse | 1 | 44.00 | 27.00 | 17.00 |
| Oahu | Honolulu | HI001007 | Kuhio Homes | 2 story twnhse | 2 | 50.00 | 30.00 | 20.00 |
| Oahu | Honolulu | HI001007 | Kuhio Homes | 2 story twnhse | 3 | 58.00 | 34.00 | 24.00 |
| Oahu | Honolulu | HI001007 | Kuhio Homes | 2 story twnhse | 4 | 67.00 | 38.00 | 29.00 |
| Oahu | Honolulu | HI001007 | Kuhio Homes | 2 story twnhse | 5 | 75.00 | 43.00 | 32.00 |
| Oahu | Honolulu | HI001008 | Palolo Homes | 2 story twnhse | 1 | 97.00 | 39.00 | 58.00 |
| Oahu | Honolulu | HI001008 | Palolo Homes | 2 story twnhse | 2 | 126.00 | 49.00 | 77.00 |
| Oahu | Honolulu | HI001008 | Palolo Homes | 2 story twnhse | 3 | 157.00 | 60.00 | 97.00 |
| Oahu | Honolulu | HI001008 | Palolo Homes | 2 story twnhse | 4 | 195.00 | 74.00 | 121.00 |
| Oahu | Honolulu | HI001008 | Palolo Homes | 2 story twnhse | 5 | 231.00 | 88.00 | 143.00 |
| Oahu | Honolulu | HI001009 | Kaahumanu Homes | 2 story twnhse | 2 | 85.00 | 30.00 | 55.00 |
| Oahu | Honolulu | HI001009 | Kaahumanu Homes | 2 story twnhse | 3 | 101.00 | 34.00 | 67.00 |
| Hawaii | Hilo | HI001013 | Lanakila Homes II | 1 stry 4-plex | 1 | 142.00 | 112.00 | 30.00 |
| Hawaii | Hilo | HI001013 | Lanakila Homes II | 1 stry 4-plex | 2 | 169.00 | 133.00 | 36.00 |
| Hawaii | Hilo | HI001013 | Lanakila Homes II | 1& 2 stry 4-plex | 3 | 200.00 | 157.00 | 43.00 |
| Hawaii | Hilo | HI001013 | Lanakila Homes II | 2 stry 4-plex | 4 | 229.00 | 179.00 | 50.00 |
| Oahu | Waimanalo | HI001025 | Waimanalo Homes | Single Fam | 2 | 121.00 | 90.00 | 31.00 |

| | | | | | | | | |
|--------|-------------|----------|--------------------------|---------------------|---|--------|--------|--------|
| Oahu | Waimanalo | HI001025 | Waimanalo Homes | Single Fam | 3 | 143.00 | 105.00 | 38.00 |
| Oahu | Waimanalo | HI001025 | Waimanalo Homes | Single Fam | 4 | 163.00 | 119.00 | 44.00 |
| Oahu | Pearl City | HI001027 | Hale Laulima | 2 story twnhse | 2 | 100.00 | 56.00 | 44.00 |
| Oahu | Pearl City | HI001027 | Hale Laulima | 2 story twnhse | 3 | 125.00 | 70.00 | 55.00 |
| Hawaii | Hilo | HI001028 | Punahele Homes | 1 story dupl | 2 | 169.00 | 133.00 | 36.00 |
| Oahu | Kaneohe | HI001030 | Koolau Village | 2 story twnhse | 1 | 102.00 | 76.00 | 26.00 |
| Oahu | Kaneohe | HI001030 | Koolau Village | 2 story twnhse | 2 | 121.00 | 90.00 | 31.00 |
| Oahu | Kaneohe | HI001030 | Koolau Village | 2 story twnhse | 3 | 143.00 | 105.00 | 38.00 |
| Oahu | Kaneohe | HI001030 | Koolau Village | 2 story twnhse | 4 | 163.00 | 119.00 | 44.00 |
| Hawaii | Kailua-Kona | HI001032 | Kaimalino | duplex | 1 | - | - | - |
| Hawaii | Kailua-Kona | HI001032 | Kaimalino | 2 story twnhse | 2 | - | - | - |
| Hawaii | Kailua-Kona | HI001032 | Kaimalino | 2 story twnhse | 3 | - | - | - |
| Hawaii | Kailua-Kona | HI001032 | Kaimalino | Single Family Homes | 4 | - | - | - |
| Oahu | Maui | HI001033 | Maui I | Single Fam | 2 | 74.00 | 67.00 | 7.00 |
| Oahu | Maui | HI001033 | Maui I | Single Fam | 3 | 90.00 | 82.00 | 8.00 |
| Oahu | Nanakuli | HI001035 | Nanakuli Homes | Single Fam | 3 | 90.00 | 82.00 | 8.00 |
| Oahu | Maui | HI001042 | Maui II | duplex | 2 | 74.00 | 67.00 | 7.00 |
| Oahu | Maui | HI001042 | Maui II | Single Fam | 4 | 111.00 | 100.00 | 11.00 |
| Oahu | Wahiawa | HI001056 | Kauhale Nani | 2 story twnhse | 1 | 111.00 | 34.00 | 77.00 |
| Oahu | Wahiawa | HI001056 | Kauhale Nani | 2 story twnhse | 2 | 133.00 | 42.00 | 91.00 |
| Oahu | Wahiawa | HI001056 | Kauhale Nani | 2 story twnhse | 3 | 157.00 | 51.00 | 106.00 |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph I | 3 story twnhse | 1 | 85.00 | 48.00 | 37.00 |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph I | 3 story twnhse | 2 | 115.00 | 64.00 | 51.00 |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph I | 3 story twnhse | 3 | 146.00 | 81.00 | 65.00 |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph II | 3 story twnhse | 1 | 52.00 | - | 52.00 |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph II | 3 story twnhse | 2 | 63.00 | - | 63.00 |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph III | 3 story twnhse | 1 | 58.00 | 48.00 | 10.00 |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph III | 3 story twnhse | 2 | 74.00 | 64.00 | 10.00 |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph III | 3 story twnhse | 3 | 90.00 | 81.00 | 9.00 |
| Hawaii | Kailua-Kona | HI001061 | Ka Hale Kahaluu | 2 story twnhse | 1 | 79.00 | 41.00 | 38.00 |
| Hawaii | Kailua-Kona | HI001061 | Ka Hale Kahaluu | 2 story twnhse | 2 | 97.00 | 50.00 | 47.00 |
| Hawaii | Kailua-Kona | HI001061 | Ka Hale Kahaluu | 2 story twnhse | 3 | 118.00 | 59.00 | 59.00 |
| Hawaii | Kailua-Kona | HI001061 | Ka Hale Kahaluu | 2 story twnhse | 4 | 142.00 | 71.00 | 71.00 |
| Oahu | Honolulu | HI001062 | Kalakaua Homes high rise | high rise | 1 | 52.00 | 30.00 | 22.00 |
| Oahu | Honolulu | HI001062 | Kalakaua Homes low rise | 3 story twnhse | 1 | 85.00 | 30.00 | 55.00 |

| | | | | | | | | |
|---------|-------------|----------|-------------------------|-----------------|---|--------|--------|--------|
| Oahu | Honolulu | HI001062 | Kalakaia Homes low rise | 3 story twnhse | 2 | 115.00 | 37.00 | 78.00 |
| Oahu | Honolulu | HI001062 | Kalakaia Homes low rise | 3 story twnhse | 3 | 146.00 | 43.00 | 103.00 |
| Hawaii | Kealakekua | HI001063 | Nani Olu (E) | 2 story 8 plx | 1 | 131.00 | 66.00 | 65.00 |
| Kauai | Kekaha | HI001064 | Kekaha Ha'aheo | 1 story twn hse | 1 | 143.00 | 77.00 | 66.00 |
| Kauai | Kekaha | HI001064 | Kekaha Ha'aheo | 1 story twn hse | 2 | 170.00 | 93.00 | 77.00 |
| Kauai | Kekaha | HI001064 | Kekaha Ha'aheo | 1 story twn hse | 3 | 200.00 | 110.00 | 90.00 |
| Oahu | Honolulu | HI001066 | Salt Lake | high rise | 1 | 75.00 | 43.00 | 32.00 |
| Oahu | Kaneohe | HI001069 | Kaneohe Apartments | 3 story wlkup | 1 | 85.00 | 48.00 | 37.00 |
| Oahu | Kaneohe | HI001069 | Kaneohe Apartments | 3 story wlkup | 2 | 115.00 | 64.00 | 51.00 |
| Hawaii | Kailua-Kona | HI001070 | Kealakehe | 2 story twnhse | 1 | 79.00 | 41.00 | 38.00 |
| Hawaii | Kailua-Kona | HI001070 | Kealakehe | 2 story twnhse | 2 | 97.00 | 50.00 | 47.00 |
| Hawaii | Kailua-Kona | HI001070 | Kealakehe | 2 story twnhse | 3 | 118.00 | 59.00 | 59.00 |
| Hawaii | Kamuela | HI001071 | Noelani I | twn hse | 1 | 131.00 | 59.00 | 72.00 |
| Hawaii | Kamuela | HI001071 | Noelani I | twn hse | 2 | 178.00 | 77.00 | 101.00 |
| Oahu | Kaneohe | HI001072 | Hookipa Kahaluu | 2 story twnhse | 1 | 85.00 | 43.00 | 42.00 |
| Oahu | Kaneohe | HI001072 | Hookipa Kahaluu | 2 story twnhse | 2 | 115.00 | 56.00 | 59.00 |
| Oahu | Kaneohe | HI001072 | Hookipa Kahaluu | 2 story twnhse | 3 | 146.00 | 70.00 | 76.00 |
| Oahu | Honolulu | HI001073 | Spencer House | 3 story wlkup | 2 | 50.00 | 30.00 | 20.00 |
| Oahu | Honolulu | HI001073 | Spencer House | 3 story wlkup | 3 | 58.00 | 34.00 | 24.00 |
| Hawaii | Kamuela | HI001078 | Noelani II | 3 story wlk up | 3 | 226.00 | 70.00 | 156.00 |
| Kauai | Koloa | HI001086 | Kawailehua - Federal | 2 story twnhse | 3 | 200.00 | 110.00 | 90.00 |
| Molokai | Maunaloa | HI001088 | Kahale Maa - Federal | dup/twnhse | 3 | 183.00 | 129.00 | 54.00 |
| Oahu | Waimanalo | HI001090 | Kauhale O'Hana | 2 story twnhse | 3 | 58.00 | 34.00 | 24.00 |
| Oahu | Waianae | HI001091 | Kau'iokalani | 2 story twnhse | 3 | 58.00 | 34.00 | 24.00 |
| Maui | Waiehu | HI001092 | Makani Kai Hale | 2 story twnhse | 3 | 75.00 | 46.00 | 29.00 |
| Hawaii | Hilo | HI001097 | Kauhale O'Hanakahi | 2 story twnhse | 3 | 200.00 | 74.00 | 126.00 |
| Hawaii | Waikoloa | HI001097 | Ke Kumu 'Ekolu | 2 story twnhse | 3 | 90.00 | 74.00 | 16.00 |
| Maui | Waiehu | HI001097 | Makani Kai Hale II | 2 story twnhse | 3 | 75.00 | 46.00 | 29.00 |
| Oahu | Honolulu | HI001099 | Kamehameha Homes | 2 story twnhse | 1 | 111.00 | 56.00 | 55.00 |
| Oahu | Honolulu | HI001099 | Kamehameha Homes | 2 story twnhse | 2 | 132.00 | 73.00 | 59.00 |
| Oahu | Honolulu | HI001099 | Kamehameha Homes | 2 story twnhse | 3 | 155.00 | 97.00 | 58.00 |

§17-2028-7 Utility allowances. (a) The monthly rent for a tenant residing in a federally assisted housing project shall include utility allowances established in accordance with HUD's standards for utility allowances.

(b) Utility allowances shall be calculated by determining the utility rate then multiplying it by the applicable quantity allowance. A schedule of applicable quantity allowances for lighting, electric domestic hot water heaters, miscellaneous electrical, gas domestic hot water heaters is incorporated by reference and attached as exhibit H.

(c) The corporation shall conduct a review of utility rates in January of each year. Electric and gas rate schedules for all providers shall be collected and reviewed for each month from the preceding January through December of the calendar year prior to the fiscal year beginning July 1. These monthly rates shall be averaged over the year period.

(d) The new utility allowances shall be posted and noticed to residents at least sixty (60) days prior to the implementation date, during which time residents shall have the opportunity to present written or oral comments. The applicable schedules shall be publicly posted in a conspicuous manner at the corporation's project offices and shall be furnished upon request. The implementation date for new allowances shall be July 1.

(e) Implementation of all new allowances or components of allowances, by utility, shall be required when there is more than a ten per cent change in rates. In cases when a utility is granted a substantial rate increase in between the annual review, a mid-year allowance adjustment may be required.

(f) The corporation may update the quantity allowances. To update the quantity allowance, units of various sizes in a sampling of different types of developments shall be surveyed to determine the types of existing equipment as well as to identify any factors affecting energy efficiency. If there is a variance in energy consumption factors among housing projects, the worst case scenario shall be identified and utilized for calculating the quantity allowances.

- (1) Allowances for lighting shall be developed by conducting a field survey of various units to determine the number and type of fixtures. The following factors shall be used to determine the kilowatt hour per month allowance for each unit size:

- (A) The number of fixtures;
 - (B) Watts per fixture; and
 - (C) Hours of use per day.
- (2) Allowances for miscellaneous electric equipment shall be based upon usage of a television, radio, miscellaneous small appliances, and a fan.
 - (3) The allowance for refrigerators is based on a new, but non-energy efficient model. For 0, 1, and 2 bedroom units a 14 cubic foot model utilizing 155 kilowatt hours per month is assumed. For a 3, 4 and 5 bedroom unit, a 16 cubic foot model utilizing 165 kilowatt hours per month is assumed.
 - (4) Allowances for cooking shall be 930 kilowatt hours per year for 0, 1, and 2 bedroom units, and 1140 kilowatt hours per year for 3, 4, and 5 bedroom units, respectively.
 - (5) Allowances for electric domestic hot water heating shall be based on engineering calculations for each bedroom size assuming a certain number of occupants. The data used in the calculations include estimated consumption per occupant per day, temperature of incoming water, temperature of hot water supply, efficiency of heater, and energy required to heat water to supply temperature.
 - (6) Allowance for solar domestic hot water shall be based on a cost analysis of a domestic hot water heating system.
 - (7) Gas consumption allowances shall be developed using the same methodology as the electric consumption allowance.
 - (g) The corporation shall provide medical disability allowances for residents who have provided proof of medical necessity to the corporation. The quantity allowances for medical equipment shall be as follows:
 - (1) For window air conditioners, 229 kilowatt hours per month;
 - (2) For oxygen concentrators, 219 kilowatt hours per month;
 - (3) For nebulizers, 5 kilowatt hours per month;
 - (4) For electric hospital beds, 1 kilowatt hour per month;
 - (5) For alternating pressure pads, 51 kilowatt hours per month;
 - (6) For low air-loss mattresses, 88 kilowatt hours per month;

- (7) For power wheelchairs or scooters, 33 kilowatt hours per month;
- (8) For CPAP machines, 9 kilowatt hours per month; and
- (9) For any other medical equipment, the quantity allowance shall be determined by taking the equipment's average energy consumption multiplied by the normal frequency of usage.

(h) A tenant shall pay for utility usage in excess of the applicable utility allowance.

(i) A tenant shall receive a utility reimbursement when the utility allowance exceeds the total tenant payment with the exception of tenants paying a flat rent. [Eff] (Auth: HRS §201G-15) (Imp: HRS §201G-32; 24 C.F.R. §§5.603, 5.632, 960.253, Part 965 Subpart E, §966.4)

INTEROFFICE MEMORANDUM
HOUSING & COMMUNITY DEVELOPMENT
CORPORATION OF HAWAII

REF. NO.:05:OED-180

DATE: 6/20/05

SUSPENSE:

Subject: Annual Review of Federal Public Housing and Section 8 Project-Based
Utility Allowances Pursuant to 24 CFR §965.501-508 and 24 CFR
§880.610

Originator:

TO: PMMB, All Public Housing Management Unit
Supervisors, Contracts and Procurement Office,
THRU: Compliance Office

FROM: Stephanie Aveiro 
Executive Director

1. As you may know, HCDCH has been involved in several litigation cases for the year based on the agency's failure to annually review and update the utility allowances for eligible federal public housing residents, disabled and non-disabled, under the applicable HUD regulations. We undertook immediate corrective actions, including the hiring of an expert consultant to assist us in updating the allowances and our procedures for reviewing the allowances.
2. On October 1 and December 4, 2004, respectively, we implemented updated utility allowances for all eligible residents and supplemental utility allowances for all eligible disabled residents.
3. To insure that these circumstances never recur, we have promulgated amendments to HCDCH's administrative rules, specifically 17-2028-7, H.A.R., to comply with the HUD regulations. Based on the rules, henceforth HCDCH will conduct a mandatory review of the utility allowances for the previous year, beginning every January 1. Any necessary adjustments to the allowances will be implemented, subject to all notice and public hearing requirements, on July 1, to coincide with our fiscal year and our budget submittals to HUD. However, under the HUD regulations and the administrative rule, interim adjustments to the utility allowances may have to be put in place before July 1 if there is a 10% or more change in the utility rates and costs in any given month.

We have been advised by our consultant that this procedure is consistent with the HUD regulations and with procedures adopted by other PHA's nationwide.

4. The purpose of this IOM is to make clear that the full cooperation of all staff is required in the review, updating and provision of the required notice of the utility allowances to the residents in order that the agency continue to be in compliance with the applicable law and regulations.
5. Accordingly, I am directing that a copy of this IOM be placed in the agency's Procedural Manual and that the applicable branches and sections calendar the annual review as part of their standard operating procedure.

EX. "C"

INTEROFFICE MEMORANDUM
HOUSING & COMMUNITY DEVELOPMENT
CORPORATION OF HAWAII

REF. NO.:

DATE:

SUSPENSE:

Subject:

Originator:

TO:

FROM:

THRU:

05:OED-180
Page 2

6. A copy of the current utility allowance schedule shall be provided to those public housing residents who pay for utilities as part of their rent upon their initial acceptance into housing and on all subsequent annual re-examinations.
7. A copy of the current supplemental utility allowances for eligible residents suffering from a disability shall also be provided to all public housing residents, disabled or not, upon their initial acceptance into housing and on all subsequent annual re-examinations.
8. Managers are instructed to document receipt of the utility allowance schedules by the resident in the tenant file.
9. Effective immediately, if not done so already, the utility allowance schedule and the supplemental utility allowance schedule shall be posted in all management offices.

I sincerely appreciate your efforts and cooperation in this matter.

Distribution:

Pamela Y. Dodson, Executive Assistant
PMMB Branch Chief
PMMB – CAS, RSU, APPS, MS
Management Units 1, 2, 3, 4, 5, 7, 8, 9
Management Units 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 80
Compliance Office
Contracts and Procurement Office
John Wong, Esq., Deputy Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RODELLE SMITH, et al.,) CIVIL NO. CV04 00309
) DAE KSC
 Plaintiffs,) (Class Action)
)
 v.) DECLARATION OF JOHN C.
) WONG; EXHIBITS "AA",
STEPHANIE AVEIRO, et) "BB", "CC"
al.,)
)
 Defendants.)
)
)
)

DECLARATION OF JOHN C. WONG

JOHN C. WONG, under penalty of perjury, declares and states the following to be true and correct:

1. I am a duly licensed attorney in the State of Hawaii and I am a deputy attorney general with the Department of the Attorney General, attorney for Defendants.

2. This Declaration is based on my personal knowledge of the facts and records of the proceedings in this case.

3. I provided Plaintiffs counsel with a copy of the proposed amended utility allowances which were developed by HCDCH's consultant in August, 2004 for their review and comment before HCDCH's implementation target date of October 1, 2004. A true and correct copy of the proposed amended utility allowances which was sent to Plaintiffs counsel is attached hereto as Exhibit "AA".

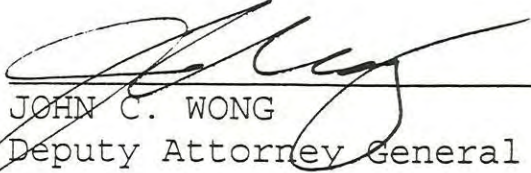
4. By letter dated August 13, 2004, to me, Plaintiffs counsel, Gavin Thornton, Esq., provided comments to the schedules sent to him. A true and correct copy of the August 13, 2004 letter is attached hereto as Exhibit "BB".

5. A true and correct copy of the November 4, 2004 status letter acknowledging HCDCH's update of the utility allowances from Gavin Thornton, Esq., to the Honorable Magistrate Judge Barry M. Kurren is attached hereto as Exhibit "CC".

I declare under penalty of perjury the foregoing is true and correct.

DATED: HONOLULU, HAWAII

June 21, 2005



JOHN C. WONG
Deputy Attorney General

October 2004 Utility Allowance

| Island | City | Project Number | Project | Type of Dwelling (House/ Apt) | No of bedrooms | Square Footage | Electricity | | | SNG | | | LPG | | | Total est utility cost | New utility allowance (rounded) | Current utility allowance | Difference | No. of units | Total difference |
|--------|-------------|----------------|----------------------|-------------------------------|----------------|----------------|-------------|----------|--------|----------|----------|-------|----------|----------|-------|------------------------|---------------------------------|---------------------------|------------|--------------|------------------|
| | | | | | | | Fuel Chg | Cust Chg | Total | Fuel Chg | Cust Chg | Total | Fuel Chg | Cust Chg | Total | | | | | | |
| Oahu | Honolulu | HI001003 | Mayor Wright Homes | 2 story twnhse | 1 | 530 | 37.47 | 7.00 | 44.47 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001003 | Mayor Wright Homes | 2 story twnhse | 2 | 732 | 43.24 | 7.00 | 50.24 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001003 | Mayor Wright Homes | 2 story twnhse | 3 | 908 | 51.17 | 7.00 | 58.17 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001003 | Mayor Wright Homes | 2 story twnhse | 4 | 1203 | 59.81 | 7.00 | 66.81 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001003 | Mayor Wright Homes | 2 story twnhse | 5 | 1399 | 68.46 | 7.00 | 75.46 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Hono | HI001004 | Lanakia Homes | 1 stry 4-plex | 2 | 705 | 67.25 | 10.00 | 77.25 | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Hilo | HI001004 | Lanakia Homes I | 1 & 2 stry 4-plex | 3 | 1056 | 79.58 | 10.00 | 89.58 | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Hilo | HI001004 | Lanakia Homes I | 2 stry 4-plex | 4 | 1347 | 93.03 | 10.00 | 103.03 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001005 | Kaalihi Valley Homes | 2 story twnhse | 1 | 494 | 51.31 | 7.00 | 58.31 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001005 | Kaalihi Valley Homes | 2 story twnhse | 2 | 674 | 66.59 | 7.00 | 73.59 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001005 | Kaalihi Valley Homes | 2 story twnhse | 3 | 834 | 83.16 | 7.00 | 90.16 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001005 | Kaalihi Valley Homes | 2 story twnhse | 4 | 1115 | 103.92 | 7.00 | 110.92 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001005 | Kaalihi Valley Homes | 2 story twnhse | 5 | 1276 | 124.67 | 7.00 | 131.67 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001007 | Kuhio Homes | 2 story twnhse | 1 | 490 | 37.47 | 7.00 | 44.47 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001007 | Kuhio Homes | 2 story twnhse | 2 | 688 | 43.24 | 7.00 | 50.24 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001007 | Kuhio Homes | 2 story twnhse | 3 | 877 | 51.17 | 7.00 | 58.17 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001007 | Kuhio Homes | 2 story twnhse | 4 | 1042 | 59.81 | 7.00 | 66.81 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001007 | Kuhio Homes | 2 story twnhse | 5 | 1183 | 68.46 | 7.00 | 75.46 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001008 | Palolo Homes | 2 story twnhse | 1 | 513 | 70.62 | 7.00 | 77.62 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001008 | Palolo Homes | 2 story twnhse | 2 | 676 | 95.13 | 7.00 | 102.13 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001008 | Palolo Homes | 2 story twnhse | 3 | 1045 | 121.07 | 7.00 | 128.07 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001008 | Palolo Homes | 2 story twnhse | 4 | 1147 | 154.22 | 7.00 | 161.22 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001008 | Palolo Homes | 2 story twnhse | 5 | 1303 | 187.37 | 7.00 | 194.37 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001009 | Kaahumanu Homes | 2 story twnhse | 2 | 714 | 53.62 | 7.00 | 60.62 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Honolulu | HI001009 | Kaahumanu Homes | 2 story twnhse | 3 | 888 | 65.15 | 7.00 | 72.15 | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Hilo | HI001013 | Lanakia Homes II | 1 stry 4-plex | 1 | 568 | 58.28 | 10.00 | 68.28 | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Hilo | HI001013 | Lanakia Homes II | 1 stry 4-plex | 2 | 705 | 67.25 | 10.00 | 77.25 | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Hilo | HI001013 | Lanakia Homes II | 1 & 2 stry 4-plex | 4 | 1056 | 79.58 | 10.00 | 89.58 | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Hilo | HI001013 | Lanakia Homes II | 2 stry 4-plex | 2 | 1347 | 93.03 | 10.00 | 103.03 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Waimanalo | HI001025 | Waimanalo Homes | Single Fam | 2 | 877 | 43.24 | 7.00 | 50.24 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Waimanalo | HI001025 | Waimanalo Homes | Single Fam | 3 | 1017 | 51.17 | 7.00 | 58.17 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Waimanalo | HI001025 | Waimanalo Homes | Single Fam | 4 | 1171 | 59.81 | 7.00 | 66.81 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Waimanalo | HI001025 | Waimanalo Homes | Single Fam | 2 | 771 | 92.53 | 7.00 | 99.53 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Pearl City | HI001027 | Hale Laulima | 2 story twnhse | 3 | 893 | 118.11 | 7.00 | 125.11 | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Hilo | HI001028 | Punahale Homes | 1 story dupl | 2 | 649 | 67.25 | 10.00 | 77.25 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Kaneohe | HI001030 | Koolau Village | 2 story twnhse | 1 | 526 | 37.47 | 7.00 | 44.47 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Kaneohe | HI001030 | Koolau Village | 2 story twnhse | 2 | 662 | 43.24 | 7.00 | 50.24 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Kaneohe | HI001030 | Koolau Village | 2 story twnhse | 3 | 915 | 51.17 | 7.00 | 58.17 | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Kaneohe | HI001030 | Koolau Village | 2 story twnhse | 4 | 996 | 59.81 | 7.00 | 66.81 | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Kailua-Kona | HI001032 | Kaimaliho | duplex | 1 | 504 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Kailua-Kona | HI001032 | Kaimaliho | 2 story twnhse | 2 | 794 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Kailua-Kona | HI001032 | Kaimaliho | 2 story twnhse | 3 | 1030 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Hawaii | Kailua-Kona | HI001032 | Kaimaliho | Single Family H | 4 | 1114 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Maui | HI001033 | Maui I | Single Fam | 2 | 768 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Oahu | Maui | HI001033 | Maui I | Single Fam | 3 | 912 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |

EX. "AA"

October 2004 Utility Allowance

| Island | City | Project Number | Project | Type of Dwelling (House/ Apt) | No of bedrooms | Square Footage | Electricity | | | SMG | | | LPG | | | Total est utility cost | New utility allowance (rounded) | Current utility allowance | Difference | No. of units | Total difference |
|---------|-------------|----------------|---------------------------|-------------------------------|----------------|----------------|-------------|----------|--------|----------|----------|-------|----------|----------|--------|------------------------|---------------------------------|---------------------------|------------|--------------|------------------|
| | | | | | | | Fuel Chg | Cust Chg | Total | Fuel Chg | Cust Chg | Total | Fuel Chg | Cust Chg | Total | | | | | | |
| Oahu | Nanakuli | HI001035 | Nanakuli Homes | Single Fam | 3 | 1024 | 83.16 | 7.00 | 90.16 | - | - | - | - | - | 90.16 | 90.00 | 82.00 | 8.00 | 36 | 288 | |
| Oahu | Mali | HI001042 | Mali II | duplex | 2 | 912 | 66.59 | 7.00 | 73.59 | - | - | - | - | - | 73.59 | 74.00 | 67.00 | 7.00 | 12 | 84 | |
| Oahu | Mali | HI001042 | Mali II | Single Fam | 4 | 1394 | 103.92 | 7.00 | 110.92 | - | - | - | - | - | 110.92 | 111.00 | 100.00 | 11.00 | 12 | 132 | |
| Oahu | Wahiawa | HI001056 | Kaunale Nani | 2 story twnhse | 1 | 550 | 37.47 | 7.00 | 44.47 | - | - | - | - | - | 50.63 | 57.38 | 50.00 | 7.38 | 14 | 952 | |
| Oahu | Wahiawa | HI001056 | Kaunale Nani | 2 story twnhse | 2 | 616 | 43.24 | 7.00 | 50.24 | - | - | - | - | - | 64.44 | 71.19 | 64.00 | 7.19 | 16 | 1,264 | |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph I | 3 story twnhse | 3 | 821 | 51.17 | 7.00 | 58.17 | - | - | - | - | - | 78.28 | 85.03 | 51.00 | 34.03 | 20 | 1,840 | |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph I | 3 story twnhse | 2 | 590 | 77.83 | 7.00 | 84.83 | - | - | - | - | - | 84.83 | 85.00 | 48.00 | 37.00 | 8 | 296 | |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph I | 3 story twnhse | 1 | 513 | 108.10 | 7.00 | 115.10 | - | - | - | - | - | 115.10 | 115.00 | 64.00 | 51.00 | 6 | 306 | |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph I | 3 story twnhse | 1 | 590 | 139.08 | 7.00 | 146.08 | - | - | - | - | - | 146.08 | 146.00 | 81.00 | 65.00 | 8 | 520 | |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph II | 3 story twnhse | 1 | 815 | 44.68 | 7.00 | 51.68 | - | - | - | - | - | 51.68 | 52.00 | 52.00 | 0.00 | 12 | - | |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph II | 3 story twnhse | 2 | 650 | 56.21 | 7.00 | 63.21 | - | - | - | - | - | 63.21 | 63.00 | 48.00 | 15.00 | 12 | 120 | |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph III | 3 story twnhse | 1 | 815 | 51.31 | 7.00 | 58.31 | - | - | - | - | - | 58.31 | 58.00 | 64.00 | 10.00 | 24 | 240 | |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph III | 3 story twnhse | 3 | 991 | 66.59 | 7.00 | 73.59 | - | - | - | - | - | 73.59 | 74.00 | 64.00 | 10.00 | 24 | 240 | |
| Oahu | Waianae | HI001057 | Waimaha-Sunflower Ph III | 3 story twnhse | 3 | 991 | 83.16 | 7.00 | 90.16 | - | - | - | - | - | 90.16 | 90.00 | 81.00 | 9.00 | 24 | 216 | |
| Hawaii | Kailua-Kona | HI001061 | Ka Hale Kaha | 2 story twnhse | 1 | 610 | 69.49 | 10.00 | 79.49 | - | - | - | - | - | 79.49 | 79.00 | 41.00 | 38.00 | 8 | 304 | |
| Hawaii | Kailua-Kona | HI001061 | Ka Hale Kaha | 2 story twnhse | 2 | 767 | 87.42 | 10.00 | 97.42 | - | - | - | - | - | 97.42 | 97.00 | 50.00 | 47.00 | 12 | 564 | |
| Hawaii | Kailua-Kona | HI001061 | Ka Hale Kaha | 2 story twnhse | 3 | 1039 | 107.60 | 10.00 | 117.60 | - | - | - | - | - | 117.60 | 118.00 | 59.00 | 59.00 | 22 | 1,298 | |
| Hawaii | Kailua-Kona | HI001061 | Ka Hale Kaha | 2 story twnhse | 4 | 1191 | 132.25 | 10.00 | 142.25 | - | - | - | - | - | 142.25 | 142.00 | 71.00 | 71.00 | 8 | 568 | |
| Oahu | Honolulu | HI001062 | Kalakaaua Homes high rise | high rise | 1 | 564 | 44.68 | 7.00 | 51.68 | - | - | - | - | - | 51.68 | 52.00 | 30.00 | 22.00 | 123 | 2,706 | |
| Oahu | Honolulu | HI001062 | Kalakaaua Homes low rise | 3 story twnhse | 1 | 559 | 77.83 | 7.00 | 84.83 | - | - | - | - | - | 84.83 | 85.00 | 48.00 | 37.00 | 4 | 220 | |
| Oahu | Honolulu | HI001062 | Kalakaaua Homes low rise | 3 story twnhse | 2 | 711 | 108.10 | 7.00 | 115.10 | - | - | - | - | - | 115.10 | 115.00 | 37.00 | 78.00 | 58 | 4,524 | |
| Oahu | Honolulu | HI001062 | Kalakaaua Homes low rise | 3 story twnhse | 3 | 901 | 139.08 | 7.00 | 146.08 | - | - | - | - | - | 146.08 | 146.00 | 43.00 | 103.00 | 36 | 3,708 | |
| Hawaii | Kealahou | HI001063 | Nani Olu (E) | 2 story 8 plk | 1 | 535 | 121.05 | 10.00 | 131.05 | - | - | - | - | - | 131.05 | 131.00 | 66.00 | 65.00 | 32 | 2,080 | |
| Kauai | Kekaha | HI001064 | Kekaha Ha'aha'ao | 1 story lwn hse | 1 | 666 | 66.89 | 9.72 | 76.61 | - | - | - | - | - | 66.70 | 66.70 | 77.00 | 10.00 | 42 | 2,724 | |
| Kauai | Kekaha | HI001064 | Kekaha Ha'aha'ao | 1 story lwn hse | 2 | 819 | 77.18 | 9.72 | 86.90 | - | - | - | - | - | 76.31 | 76.31 | 93.00 | 17.00 | 12 | 924 | |
| Oahu | Honolulu | HI001066 | Salt Lake | high rise | 1 | 975 | 91.32 | 9.72 | 101.04 | - | - | - | - | - | 92.70 | 92.70 | 110.00 | 90.00 | 24 | 2,160 | |
| Oahu | Kaneohe | HI001069 | Kaneohe Apartments | 3 story wlkup | 1 | 429 | 77.83 | 7.00 | 84.83 | - | - | - | - | - | 74.88 | 75.00 | 43.00 | 32.00 | 28 | 896 | |
| Hawaii | Kailua-Kona | HI001070 | Kaneohe Apartments | 3 story twnhse | 2 | 648 | 108.10 | 7.00 | 115.10 | - | - | - | - | - | 115.10 | 115.00 | 64.00 | 51.00 | 19 | 969 | |
| Hawaii | Kailua-Kona | HI001070 | Kealahou | 2 story twnhse | 1 | 576 | 69.49 | 10.00 | 79.49 | - | - | - | - | - | 79.49 | 79.00 | 41.00 | 38.00 | 16 | 608 | |
| Hawaii | Kailua-Kona | HI001070 | Kealahou | 2 story twnhse | 2 | 689 | 87.42 | 10.00 | 97.42 | - | - | - | - | - | 97.42 | 97.00 | 50.00 | 47.00 | 16 | 752 | |
| Hawaii | Kailua-Kona | HI001070 | Kealahou | 2 story twnhse | 3 | 924 | 107.60 | 10.00 | 117.60 | - | - | - | - | - | 117.60 | 118.00 | 59.00 | 59.00 | 16 | 944 | |
| Hawaii | Kailua-Kona | HI001071 | Noelani I | lwn hse | 1 | 673 | 121.05 | 10.00 | 131.05 | - | - | - | - | - | 131.05 | 131.00 | 59.00 | 72.00 | 7 | 504 | |
| Hawaii | Kailua-Kona | HI001071 | Noelani I | lwn hse | 2 | 786 | 168.12 | 10.00 | 178.12 | - | - | - | - | - | 178.12 | 178.00 | 77.00 | 101.00 | 12 | 1,212 | |
| Oahu | Kaneohe | HI001072 | Hookipa Kahalu | 2 story twnhse | 1 | 549 | 77.83 | 7.00 | 84.83 | - | - | - | - | - | 84.83 | 85.00 | 43.00 | 42.00 | 8 | 336 | |
| Oahu | Kaneohe | HI001072 | Hookipa Kahalu | 2 story twnhse | 2 | 697 | 108.10 | 7.00 | 115.10 | - | - | - | - | - | 115.10 | 115.00 | 56.00 | 59.00 | 32 | 1,888 | |
| Oahu | Kaneohe | HI001072 | Hookipa Kahalu | 2 story twnhse | 3 | 891 | 139.08 | 7.00 | 146.08 | - | - | - | - | - | 146.08 | 146.00 | 70.00 | 76.00 | 16 | 1,216 | |
| Oahu | Honolulu | HI001073 | Spencer House | 3 story wlkup | 2 | 798 | 43.24 | 7.00 | 50.24 | - | - | - | - | - | 50.24 | 50.00 | 34.00 | 20.00 | 1 | 20 | |
| Oahu | Honolulu | HI001073 | Spencer House | 3 story wlkup | 3 | 987 | 51.17 | 7.00 | 58.17 | - | - | - | - | - | 58.17 | 58.00 | 34.00 | 24.00 | 50 | 1,200 | |
| Hawaii | Kamuela | HI001078 | Noelani II | 3 story wlk up | 3 | 880 | 216.31 | 10.00 | 226.31 | - | - | - | - | - | 226.31 | 226.00 | 70.00 | 156.00 | 16 | 384 | |
| Kauai | Koloa | HI001086 | Kawaiihua - Federal | 2 story twnhse | 3 | 939 | 91.32 | 9.72 | 101.04 | - | - | - | - | - | 92.70 | 99.45 | 110.00 | 90.00 | 25 | 2,250 | |
| Molokai | Maunaloa | HI001088 | Kahala Mta - Federal | dup/twnhse | 3 | 983 | 83.32 | 7.50 | 90.82 | - | - | - | - | - | 85.19 | 83.00 | 129.00 | 54.00 | 25 | 1,350 | |
| Oahu | Waianae | HI001091 | Kaunale O'Hana | 2 story twnhse | 3 | 1003 | 51.17 | 7.00 | 58.17 | - | - | - | - | - | 58.17 | 58.00 | 34.00 | 24.00 | 25 | 600 | |
| Oahu | Waianae | HI001092 | Kauilokalani | 2 story twnhse | 3 | 987 | 51.17 | 7.00 | 58.17 | - | - | - | - | - | 58.17 | 58.00 | 34.00 | 24.00 | 50 | 1,200 | |
| Oahu | Waialehu | HI001092 | Makani Kai Hale | 2 story twnhse | 3 | 947 | 67.77 | 7.50 | 75.27 | - | - | - | - | - | 75.27 | 75.00 | 46.00 | 29.00 | 25 | 725 | |

October 2004 Utility Allowance

| Island | City | Project Number | Project | Type of Dwelling (House/ Apt) | No of bedrooms | Square Footage | Electricity | | | SNG | | | LPG | | | Total est utility cost | New utility allowance (rounded) | Current utility allowance | Difference | No. of units | Total difference |
|--------|----------|----------------|----------------------|-------------------------------|----------------|----------------|-------------|----------|-------|----------|----------|-------|----------|----------|--------|------------------------|---------------------------------|---------------------------|------------|--------------|------------------|
| | | | | | | | Fuel Chg | Cust Chg | Total | Fuel Chg | Cust Chg | Total | Fuel Chg | Cust Chg | Total | | | | | | |
| Hawaii | Hilo | HI001097 | Kaunale O'Hanakahahi | 2 story twmshse | 3 | 0 | 79.58 | 10.00 | 89.58 | - | - | - | 103.64 | 6.75 | 110.39 | 199.97 | 200.00 | 74.00 | 126.00 | 20 | 2,520 |
| Hawaii | Waikoloa | HI001097 | Ke Kumu 'Eko'u | 2 story twmshse | 3 | 0 | 79.58 | 10.00 | 89.58 | - | - | - | - | - | 89.58 | 90.00 | 74.00 | 16.00 | 20 | 320 | |
| Maui | Waiehu | HI001097 | Makani Kai Hale II | 2 story twmshse | 3 | 947 | 67.77 | 7.50 | 75.27 | - | - | - | - | - | 75.27 | 75.00 | 46.00 | 29.00 | 4 | 116 | |
| Oahu | Honolulu | HI001099 | Kamehameha Homes | 2 story twmshse | 1 | 572 | 37.47 | 7.00 | 44.47 | 60.06 | 6.75 | 66.81 | - | - | 111.29 | 111.00 | 56.00 | 55.00 | 62 | 3,410 | |
| Oahu | Honolulu | HI001099 | Kamehameha Homes | 2 story twmshse | 2 | 818 | 43.24 | 7.00 | 50.24 | 75.08 | 6.75 | 81.83 | - | - | 132.07 | 132.00 | 73.00 | 59.00 | 123 | 7,257 | |
| Oahu | Honolulu | HI001099 | Kamehameha Homes | 2 story twmshse | 3 | 991 | 51.17 | 7.00 | 58.17 | 90.10 | 6.75 | 96.85 | - | - | 155.01 | 155.00 | 97.00 | 58.00 | 36 | 2,088 | |

2,672 \$ 109,241

LAWYERS FOR EQUAL JUSTICE

P.O. Box 4984
Kailua-Kona, HI 96745
(808) 322-3045

David Reber, Esq.
President, Board of Directors

Susan Dorsey, Esq.
Executive Director

FACSIMILE COVER SHEET

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TO: John Wong
OF: Office of the Attorney General

DATE: August 13, 2004
FAX: (808) 587-2938

FROM: Gavin Thornton
OF: Lawyers for Equal Justice

FAX: (808) 263-2591

RE: *Smith v. Aviero*; Request for Additional Information

DESCRIPTION OF DOCUMENT(S) TRANSMITTED: (# of Pgs. including cover):

7 Pages: Cover; August 13th Letter, Guide for Estimating Utility Allowances.

REMARKS:

Please see the letter that follows.

(If you do not receive all pages or if they are illegible, please call (808) 322-3045)

EX. "BB"

August 13, 2004

Mr. John C. Wong Esq.
Office of the Attorney General
Facsimile: (808) 587-2938
Sent via Facsimile

SETTLEMENT COMMUNICATION
SUBJECT TO RULE 408, F.R.E.

Re: *Smith v. Aviero*

Dear Mr. Wong:

While reviewing the information that you recently provided us, we found a few more discrepancies between our information and the information HCDCH has provided. In preparation for our settlement conference this coming Tuesday, we would appreciate it if you would inquire about the following issues to resolve those discrepancies.

Consumption Allowances for Individual Hot Water with Heat Pump and with Solar

There was no consumption information for "Ind HP" or "Ind Solar" in the materials initially provided by HCDCH, though allowances in terms of dollars were provided. Our consumption figures in terms of kilowatt hours were derived by using the information for other types of utility consumption (e.g. basic electric and cooking) to figure out what the effective utility rate and customer charge were at the time that the dollar allowance schedules were promulgated. By figuring out how many additional dollars a tenant with Ind Solar or Ind HP received for a utility allowance, we were able to derive the consumption allowances for Ind Solar and Ind HP.

Our consumption allowances for Ind Solar and Ind HP in terms of kWh are as follows:

Ind Solar

| One-bedroom | Two-bedroom | Three-bedroom | Four-bedroom | Five-bedroom |
|-------------|-------------|---------------|--------------|--------------|
| 50 | 65 | 105 | 130 | 170 |

SETTLEMENT COMMUNICATION
SUBJECT TO RULE 408, F.R.E.

Ind HP

| One-bedroom | Two-bedroom | Three-bedroom | Four-bedroom | Five-bedroom |
|-------------|-------------|---------------|--------------|--------------|
| 170 | 250 | 350 | N/A | N/A |

In the information you recently sent, it appears that HCDCH has two different sets of consumption allowances for Ind Solar and Ind HP. The document titled "Electric \$ Allowance" lists the consumption allowances that appear to have been used to calculate HCDCH's updated dollar allowances in the document titled "2004 \$ Allowance LIPH." The document title "Utility Service from 9/11/2003" provides a different set of consumption allowances that are generally higher than the allowances we derived. It is not clear why there is a discrepancy between the two consumption allowances that HCDCH provided. Nor is it clear why the figures from the "Electric \$ Allowance" document were used instead of the figures from the "Utility Service from 9/11/2003" document when calculating the updated dollar allowances. The tables below list both sets of consumption allowances ("Electric \$ Allowance" allowances on top, "Utility Service from 9/11/2003" allowances on bottom)

Ind Solar

| One-bedroom | Two-bedroom | Three-bedroom | Four-bedroom | Five-bedroom |
|-------------|-------------|---------------|--------------|--------------|
| 46 | 72 | 97 | 131 | 165 |
| 53 | 78 | 104 | 137 | 170 |

Ind HP

| One-bedroom | Two-bedroom | Three-bedroom | Four-bedroom | Five-bedroom |
|-------------|-------------|---------------|--------------|--------------|
| 161 | 252 | 339.5 | N/A | N/A |
| 170 | 259 | 351 | N/A | N/A |

SETTLEMENT COMMUNICATION
SUBJECT TO RULE 408, F.R.E.

The consumption allowances that we used in calculating the information that we have provided to you are similar (though slightly less) than the consumption allowances from the "Utility Service from 9/11/2003" document you provided. If you would like to discuss using different consumption allowances than those that we have derived for Ind Solar and Ind HP, please gather the necessary information on how the allowances for Ind Solar and Ind HP were derived.

Customer Charges Missing from HCDCH Calculations

The information that you recently provided us in the document titled "2004 \$ Allowance LIPH" excludes the monthly customer charge when calculating the updated allowances for all projects except Kekaha Ha'aheo. It is our understanding that tenants in all projects are required to pay the monthly customer charge and thus it should be included in the utility allowance calculation. Unless HCDCH has a reason why the customer charges for electric utilities were excluded, the customer charges must be included to determine the appropriate allowances.

Electricity Utility Rates

The document titled "Electric \$ Allowance" contains the calculations used to figure out the updated utility allowances for each project in the document titled "2004 \$ Allowance LIPH." It is not clear from any of the information that we were given how the electric utility rates used were derived. The rates used do not correspond with recent utility rate information. The Oahu rate used appears to be significantly higher than the Oahu effective rate has *ever* been. The rates for the remainder of the islands are generally lower the recent rate information that we have. We would appreciate it if you would inquire as to where the rates used on the "Electric \$ Allowance" spreadsheet came from.

SNG rates

The document "SNG \$ Allowance" (in the same packet with "Electric \$ Allowance") lists a rate for Synthetic Natural Gas of \$2.937183 per Therm, but there is

SETTLEMENT COMMUNICATION
SUBJECT TO RULE 408, F.R.E.

no indication in the other materials of how this number was derived. We would appreciate it if you would inquire as to where the SNG rate used came from.

SNG and LPG Conversions from Cubic Feet to Therms

The information that you provided uses different conversion rates than the conversion rates that we used to convert cubic feet of SNG and LPG to Therms. The conversion rates that we used were taken from a document titled "Guide for Estimating Utility Allowances" which was found in the HCDCH files with what appeared to be course materials for a utility allowance course taken by the HCDCH employee that established the original utility allowances. A copy of that document is enclosed for your reference. The document suggests that 100 cubic feet of SNG is equivalent to 1 Therm (versus 95.24 cubic feet per Therm from the materials you provided) and that 33.7 cubic feet of LPG is equivalent to 1 Therm (versus 40 cubic feet per Therm from the materials you provided). While we realize that the conversion rates in the "Guide for Estimating Utility Allowances" could be inaccurate, we would appreciate it if HCDCH could provide the authority upon which the conversion rates used in the documents you recently provided were based.

Waimaha-Sunflower

Information originally provided by HCDCH indicated that Waimaha-Sunflower tenants paid for basic electric, electric cooking, and electric hot water. The information you recently provided (in the document titled "2004 \$ Allowance LIPH") indicates that tenants pay for different utilities depending on the phase of Waimaha-Sunflower that they reside in. Is that truly the case? If so, would you please provide information regarding the number of units in each phase?

Kalakaua Homes

Information provided earlier by HCDCH indicated that all Kalakaua Homes low-rise tenants did not pay for Individual Hot Water, but the information you recently provided indicates that they do. Would you please find out which information is correct?

SETTLEMENT COMMUNICATION
SUBJECT TO RULE 408, F.R.E.

We appreciate your continuing assistance. Please let Shelby Floyd or me know whether we can clarify regarding the above issues. Thank you.

Sincerely,



Gavin Thornton
Staff Attorney

cc: Shelby Floyd, Esq.



LAWYERS FOR EQUAL JUSTICE

COPY

P.O. Box 4984
Kailua-Kona, HI 96745
(808) 322-3045

David Reber, Esq.
President, Board of Directors

Susan Dorsey, Esq.
Executive Director

November 4, 2004

The Honorable Barry M. Kurren
U.S. Magistrate Judge
United States District Court
300 Ala Moana Blvd., Rm. C-229
Honolulu, Hawai'i 96850

Re: **Smith, et al. v. Averio, et al.**
Civ. No. CV 04 00309 DAE KSC

Dear Magistrate Kurren:

We are providing this statement to update you regarding the status of the settlement talks in the above case. The case was filed to obtain declaratory and injunctive relief requiring the Housing and Community Development Corporation of Hawaii (HCDCH) to update utility allowances in public housing to comply with federal law and account for the significant increase in utility rates over the past decade.

Since the settlement conference with you on August 17, 2004, HCDCH has adjusted the utility allowances in public housing to correspond with current utility rates. This change was applied on October 1, 2004 and was made effective retroactively to September 1, 2004. The utility allowance adjustments HCDCH proposed applied current utility rates to HCDCH's consumption allowances (i.e. the allowances in terms of kilowatt hours of electricity and Therms of gas), a method that was acceptable to Plaintiffs. We have not yet had the opportunity to review the final adjustments that were put in place and we understand that HCDCH is still reviewing the accuracy of the adjustments for a few of the affected housing projects, but we do not foresee any disputes regarding the newly revised allowances.

To resolve the final issues in the case, we have recently requested that HCDCH enter into a stipulated judgment containing the following terms:

- (1) That HCDCH complete a review of the public housing consumption allowances as required by federal law;

COPY

EX. "CC"

The Honorable Barry M. Kurren
November 4, 2004
Page 2

- (2) That HCDCH adopt a standard that will trigger the revision of the allowances where utility rates change by 10 percent or more from the rates on which the October 2004 revisions, and any subsequent revisions of the allowance, were based; and
- (3) That HCDCH post the newly revised allowances in each applicable project office as required by the HCDCH rental agreement.

We are awaiting a response from HCDCH regarding these terms, but we anticipate that we will be able to come to a resolution of this matter shortly. We will continue to keep you apprised of the progress of the case.

Sincerely,



Gavin Thornton

cc: Shelby Anne Floyd, Esq.
John Wong, Esq. ✓

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

RODELLE SMITH, et al.,) CIVIL NO. CV04 00309
) DAE KSC
 Plaintiffs,) (Class Action)
)
 vs.) **CERTIFICATE OF SERVICE**
)
STEPHANIE AVEIRO, et)
al.,)
)
 Defendants.)
)
)
)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was duly served upon the following by depositing the same in the United States mail, postage prepaid, as addressed below:

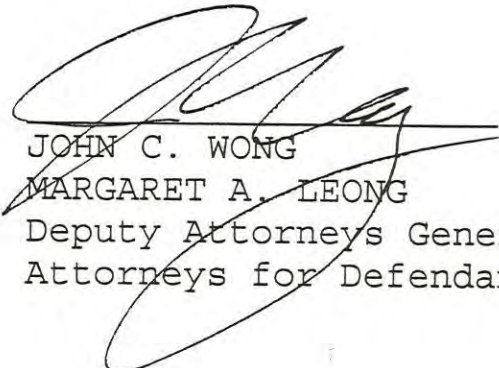
GAVIN K. THORNTON
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HONOLULU HI 96837-0952

Attorney for Plaintiffs

SHELBY ANNE FLOYD
PAUL ALSTON
65-1230 MAMALAHOA HWY SUITE C21
KAMUELA HI 96743

Attorneys for Plaintiffs

DATED: Honolulu, Hawaii, June 21, 2005.



JOHN C. WONG
MARGARET A. LEONG
Deputy Attorneys General
Attorneys for Defendants