

CONCURRING OPINION BY ACOBA, J.

I concur in the disposition of this case on the grounds following. With respect to "the Uniform Information Practices Act ('the UIPA'), . . . Hawaii Revised Statutes (HRS) [c]hapter 92F . . . [, and whether] 'documents provided by private developers to [a government agency] become public records,'" majority opinion at 2, "section 1-2(b) of the [Rules of the Department of Planning and Permitting of the City and County of Honolulu (DPP)] unambiguously states that 'all department files are public records and may be examined upon request[,]' " majority opinion at 17 (brackets omitted). Inasmuch as rules are intended to implement statutes, see Coon v. City and County of Honolulu, 98 Hawai'i 233, 251, 47 P.3d 348, 366 (2002) (stating that "it is axiomatic that an administrative rule cannot contradict or conflict with the statute it attempts to implement") (internal quotation marks and citation omitted), all DPP files are public records and must be disclosed to Plaintiff-Appellant Nuuanu Valley Association by Defendant-Appellee City and County of Honolulu.

A "government record" refers to "information maintained by an agency[.]" HRS § 92F-3. The majority states that records are "maintained" by the DPP if the "DPP chose to retain possession or control of the records." Majority opinion at 12 (internal quotation marks and citation omitted). However, in construing the term "maintain," I would not foreclose from

judicial review situations where documents are not retained in order to circumvent the public disclosure requirements of the UIPA.

As to whether the "development of the Laumaka subdivision will result in the 'use' of state or county lands thereby triggering the environmental assessment ('EA') requirement of the Hawaii Environmental Policy Act ('HEPA')," majority opinion at 2, in my view there was a lack of evidence as to whether the subdivision hookup to the sewer system would be constructed under state or county land. The proposed Puu Paka Drive roadway extension under which the hookup would apparently be constructed has not yet been dedicated to the state or county as a public street. See Sierra Club v. Office of Planning, State of Hawai'i, 109 Hawai'i 411, 413, 126 P.3d 1098, 1100 (2006) (holding that the proposed construction of sewage and water lines running beneath public highways was a "use" of state lands requiring an EA "inasmuch as the construction of the sewage and water transmission lines will require tunneling beneath state highways"); Citizens for the Protection of the N. Kohala Coastline v. County of Hawai'i, 91 Hawai'i 94, 103, 979 P.2d 1120, 1129 (1999) (holding that proposed construction of two underpasses beneath a public highway was a "use of state or county lands" under HRS § 343-5(a)(1)); Kahana Sunset Owners Ass'n v. County of Maui, 86 Hawai'i 66, 71, 947 P.2d 378, 383 (1997) (involving a proposed development in which a new drainage

line would be installed beneath a public street and the parties did not dispute that such construction constituted "use of state or county lands" within the meaning of HRS § 343-5(a)(1)).

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A circular seal of the Appellate Court of the State of Hawaii. The outer ring contains the text "APPELLATE COURT'S" at the top and "STATE OF HAWAII" at the bottom. In the center, the word "SEAL" is printed. A handwritten signature is written across the seal.