

OEOC BULLETIN

OFFICE OF ENVIRONMENTAL QUALITY CONTROL



JOHN WAIHEE
GOVERNOR

MARVIN T. MIURA, Ph.D.
DIRECTOR

Volume VI

May 8, 1989

No. 9

REGISTER OF CHAPTER 343, HRS DOCUMENTS

All Chapter 343, HRS documents submitted for publication in the OEOC Bulletin must be addressed to the Office of Environmental Quality Control, 465 South King Street, Room 104, Honolulu, Hawaii 96813. Documents addressed otherwise will not be considered for publication.

NEGATIVE DECLARATIONS

The following are Negative Declarations or determinations made by proposing or approving agencies that certain proposed actions will not have significant effects on the environment and therefore do not require EISs (EIS Rules 11-200-11). Publication in the Bulletin of a Negative Declaration initiates a 60-day period during which litigation measures may be instituted. Copies are available at 25 cents per page upon request to the Office. Parties wishing to comment may submit written comments to the agency responsible for the determination (indicated in project title). The Office would appreciate a copy of your comments.

four-inch polyethylene pipeline for the transportation of water from an existing auwai on State-owned property in the West Maui Forest Reserve at Wailuku, Maui.

NAHOLO CIRCLE AND MAALO STREET INJECTION WELLS, Kahului, Maui; Dept. of Public Works, County of Maui/Dept. of Health, Underground Injection Control (UIC)(TMK: 3-8-30,40)

This project is located on Naholo Circle between Holua Drive and Ika'i Street, and on Maalo Street between Ohaa Street and Papa Avenue, Kahului, Maui.

The Dept. of Public Works proposes to install two (2) injection wells to be used to drain storm water. The terrain around the project sites are very flat. The soils of these areas are primarily sand soils.

The estimated cost of the project is \$150,000.

MAUI

WATER PIPELINE IN THE WEST MAUI FOREST RESERVE, Wailuku, Maui; Ned K. Nakoa/Dept. of Land and Natural Resources (TMK: 3-1-6:01)

The applicant proposes to install a

AFTER THE FACT CONSTRUCTION OF A TWO FT. HIGH CONCRETE RUBBLE MASONRY WALL,

Lahaina, Maui; Mr. Uwe Schulz/ Dept. of Planning, County of Maui (TMK: 4-5-03:3)

The property, which is approximately 8,200 sq. ft. is currently developed with a single family residence and its accessory structures.

The applicant is requesting approval of an after-the-fact construction of approximately 85.5 linear feet of a two (2) ft. high concrete rubble masonry wall above an existing sea/retaining wall located within the shoreline setback area of the County of Maui.

The two ft. high extension is not a retaining wall and according to the applicant was constructed as a safety measure to prevent someone from falling off the existing wall which was level with the existing grade.

OAHU

EXTEND SIDE-YARD WALL, REFILL SAND, AND AFTER-THE-FACT APPROVAL OF A WOODEN FENCE WITHIN THE SHORELINE SETBACK,

Waialua, Oahu; James Richardson/Loreen Walker/ Dept. of Land Utilization, City & County of Honolulu (TMK: 6-7-14:30)

The proposed action consists of construction to extend an existing retaining wall along a drainage swale to reach near the end of the swale at the shoreline, refilling sand adjacent to the swale behind the shoreline to replace eroded land, and construction of a low wooden fence along the sideyards and parallel to the shoreline approximately 10 feet behind the shoreline.

The presently vacant lot is less than 100 feet deep so a 20 foot wide section along the shoreline lies within the Shoreline Setback. single family dwelling presently being constructed is not within the 20 foot Shoreline Setback.

WAILUPE STREAM MAINTENANCE RAMP AT HIND PLACE, Honolulu, Hawaii; Dept. of Public Works, City & County of Honolulu (TMK: 3-6-5: 106)

The proposed project is for the construction of a permanent concrete maintenance access ramp at the end of Hind Place to facilitate maintenance operations in Wailupe Stream.

At present, a temporary maintenance access ramp is constructed (soil and crushed rock) at the end of Hind Place to provide vehicular access into the stream. The ramp must be removed following completion of stream maintenance operations. This makes stream maintenance operations both time consuming and costly. Construction of the proposed project would eliminate this problem.

Estimated cost of the proposed project is \$225,000.

AFTER THE FACT DRAINAGE DITCH AND BENCH, MANOA HILLSIDE ESTATES, Honolulu, Hawaii; Manoa Hillside Corporation/ Dept. of Land and Natural Resources (TMK: 2-9-24:1)

This is an after-the-fact application for a drainage ditch and bench for the Manoa Hillside Estate Subdivision.

The applicant proposes to construct an excavated drainage bench which encroaches into the State Conservation District averaging fifteen feet over a length of approximately 2,510 linear feet.

The bench generally follows the 200-foot contour line which demarks the Conservation District boundary. The drainage ditch, which will be excavated in the bench will vary between 5.9 to 9 feet in width across the top, 1.2 to 3 feet across the bottom, and 4.1 to 5 feet in depth.

This project is not within the Special Management Area.

Estimated cost of this project is \$900,000.

COMMERCIAL FISHERIES FACILITIES DEVELOPMENT, Honolulu, Hawaii; Dept. of Transportation, Harbors Division (TMK: 1-5-39:30P)

The proposed project consists of demolishing the existing wooden pier at Pier 18 and constructing a new wooden deck pier including driving sheet piles, and paving the area back to the new bulkhead. The existing wooden pier has been a continuous maintenance problem over the years caused by dry rot and/or termite infestation.

Total reconstruction of the wooden Pier 18 structure is urgently needed to correct an intolerable and unacceptable situation and to preclude costly maintenance work in the future.

There will be no dredging in this project.

Estimated cost of the proposed project is \$430,000.

WAILANI STREAM CHANNEL DRAINAGE IMPROVEMENTS, Ewa, Oahu; State Housing Finance and Development Corporation (TMK: First Division, 9-4-17:30)

Located east of "downtown" Waipahu, the side is bordered on the north by detached residences, on the east by Waipahu Field and several three-story walk up apartment buildings.

The project is proposed for the lower reach of Wailani Stream between Paiwa St. and Farrington Highway. A combination earth trapezoid and concrete-lined, rectangular channel has been designed to accomodate a design flow of 3,600 cfs.

Improvements to the channel and the new service road will be confined to within the existing 70-foot channel right-of-way.

All headwalls, structures, and lining interfering with construction will be removed. Existing drainage outlets into the channel will connect to the channel and will be reconstructed if necessary.

The cost of the project is approximately \$1.5 million.

FINDINGS OF NO SIGNIFICANT IMPACT (FONSI) BEAUTIFICATION PLAN & REVETMENTS AT BARBERS POINT DEEP DRAFT HARBOR, Ewa, Oahu; U.S. Army Engineer District, Honolulu (TMK: 9-1-14:8,21)

The proposed project consists of implementing a beautification plan for a small area adjacent to the entrance channel of the Barbers Point Deep Draft Harbor harbor and constructing necessary erosion-correction revetments at two locations within the BPDDH development area.

The beautification plan would provide landscaped plantings for a mound of coral material on the south side of the entrance channel.

The two new revetments are needed to correct erosion problems which have become evident during BPDDH construction as a result of additional wave energy entering through the enlarged entrance channel.

Estimated cost of the project is \$549,000.

DRAFT ENVIRONMENTAL IMPACT STATEMENTS

EISs listed in this section are available for review at the following public depositories: Office of Environmental Quality Control; Legislative Reference Bureau; Municipal Reference and Records Center (Oahu EISs); Hamilton Library; State Main Library and the Kaimuki, Kaneohe, Pearl City, Hilo, Wailuku and Lihue Regional Libraries. Statements are also available at State Branch Libraries that are in proximity to the site of a proposed action (indicated by project description).

Comments on the following EISs should be sent to: 1) the accepting authority; and 2) the proposing agency. Please note the deadline date for submitting written comments on the EIS.

HAWAII

POHOIKI GEOTHERMAL TRANSMISSION LINE, Puna, Hawaii; Hawaii Electric Light Company, Inc./ State Dept. of Land & Natural Resources (TMK: 1-3-9:3,4;1-4-1:2,4,17,65,66,78,79;1-4-3:8,11;1-5-1:1,3;1-5-8:6,7;1-5-9:5-7,9,17,23-26;1-5-10:3;1-5-117:14,15;1-6--1:15,16;1-6-3:3,4,22,67,68,80)

The applicant is proposing to construct, own, and operate two overhead 69 kv transmission lines that will originate at the site of

the proposed geothermal power plant at Pohoiki and will terminate at the Puna substation in Keaau, Hawaii.

The objective of the project is to transmit 25 MW of power from the natural energy source at Pohoiki and to interconnect this power with HELCO's island-wide power grid at the Puna Substation. The two transmission lines will each require a 50-foot wide right-of-way and each transmission line will consist of three conductors and a shield wire.

The estimated cost of the proposed project is \$10 million.

Contact: DHM Planners inc.
Duk Hee Murabayashi
1188 Bishop St. Suite 2405
Honolulu, Hawaii

Deadline: June 21, 1989

WAILUKU RIVER HYDROELECTRIC PROJECT, South Hilo, Hawaii; Kahala Energy Development/ State Dept. of Land & Natural Resources(TMK: 2-6-18;2-5-8; 2-5-9)

Previously published April 8, 1989

Contact: Mrs. Jacqueline Parnell
KRP Information Services
320 Ward Street. Ste 106
Honolulu, Hawaii 96814

Deadline: June 23, 1989

OAHU

WAAHILA 180 AND WAAHILA 405 RESERVOIRS, Honolulu, Oahu; Board of Water Supply, City & County of Honolulu/ Mayor, City & County of Honolulu (TMK: 3-3-56:Por 1 & 2)

Previously published April 23, 1989

Contact: Lawrence Whang
Board of Water Supply
City & County of Honolulu
630 So. Beretania St.
Honolulu, Hawaii

Deadline: June 7, 1989

FINAL ENVIRONMENTAL IMPACT STATEMENTS

The following EISs have been submitted for acceptance and contain comments and responses made during the review and response period.

OAHU

KO OLINA PHASE II, Ewa, Oahu; West Beach Estates/ Dept. of General Planning, City & County of Honolulu (TMK: 9-1-15: Por 4,18)

Previously published April 8, 1989

Status: Currently being processed by Dept. of General Planning, City & County of Honolulu

WAIALUA KAHUKU REGIONAL WATER SYSTEM IMPROVEMENTS, Waialua, Kahuku, Oahu; Board of Water Supply, City & County of Honolulu

Previously published November 8, 1988

Status: Currently being processed by Board of Water Supply, City & County of Honolulu

WINDWARD OAHU REGIONAL WATER SYSTEM IMPROVEMENTS, Malaekahana to Makapu'u, Oahu; Board of Water Supply, City & County of Honolulu/ Governor, State of Hawaii

Previously published October 8, 1988

Status: Currently being processed by the Office of Environmental Quality Control

AIEA BAY STATE RECREATION AREA CONCEPTUAL MASTER PLAN, Honolulu, Oahu; State Dept. of Land & Natural Resources

Previously published February 23, 1989

Status: Currently being processed by the Office of Environmental Quality Control

KIPAPA INDUSTRIAL PARK, Ewa, Oahu; Dairy Co., Inc./Dept. of General Planning, City & County of Honolulu (TMK: 9-4-05:52)

The proposed project site is located in Kipapa Gulch, Waipio, Ewa District, Oahu.

The applicant proposes to develop a light industrial park on approximately 39 acres and 10 acres will remain as a single family low rental housing site.

The project is estimated to cost in excess of \$5 million and will require 4 to 5 years to develop. A market study shows the need for additional industrial space in the future and suggests a competitive selling price for the proposed industrial park.

THE COUNTRY COURSES AT KAHUKU, Punamano & Malaekahana, Koolauloa District, Oahu; Kuilima Resort Company/ Dept. of General Planning, City & County of Honolulu (TMK: 5-6-05: Por. 1,2,5,6,7; 5-7-01: Por. 21; 5-6-07: Por 1; 5-6-06: Por. 6)

Kuilima Resort Company is planning the development of an integrated golf complex with four 18-hole courses located at two sites near Kahuku on the North Shore of Oahu.

Three 18-hole golf courses are planned for the Punamano site, which contains an area of approximately 605 acres, located mauka of Kamehameha Highway across from the Kuilima Resort. This site is approximately 1.5 miles west of Kahuku Village.

One 18-hole golf course is planned for the Malaekahana site, which contains an area of approximately 228 acres, located mauka of Kamehameha Highway across from Malaekahana State Recreation Area.

The Country Courses are intended to enhance the availability of golfing facilities for Kuilima Resort guests and Oahu residents.

The two sites are in the State Land Use Agricultural District & currently zoned AG-1 & AG-2 by the City & County. These sites were formerly in sugar cane cultivation. The Punamano site is currently vacant and the Malaekahana site is being partially utilized for cattle and horse grazing.

Contact: Group 70, Ltd.
Ralph Portmore, AICP
924 Bethel Street
Honolulu, Hawaii 96813

FAUAI

KUKUIULA PLANNED COMMUNITY, Koloa, Kauai; A & B Properties, Inc./ Planning Dept., County of Kauai (TMK: 2-6-03: 1,4,23 Por 31, 32; 2-6-04: 10,11,16,18,38,39,40,44,45)

The Kukuiula Planned Community Project is located on the southern coast of the island of Kauai. This project will encompass approximately 1,000 acres in the Koloa District.

Approximately 4,000 single-family and multi-family units are planned to be developed.

Two commercial areas are planned for two different types of commercial uses. The site near the intersection of Lawai and Poipu Roads is planned for a neighborhood commercial area. The second commercial site located near the proposed marina and resort facilities at Kukuiula Bay will support marina/resort uses.

A 100 to 150 boat 10-acre marina is proposed at Kukuiula Bay. A channel extending inland to the marina facilities will require dredging to provide water access to this new facility. Adjacent to this marina will be a resort hotel with approximately 500 rooms.

Contact: R. M. Towill Corporation
Bruce Tsuchida
420 Waiakamilo Rd. Suite 411
Honolulu, Hawaii 96817

HAWAII

HAWAII COMMODITIES IRRADIATION FACILITY, Dept. of Business and Economic Development/ Governor, State of Hawaii

Previously published December 23, 1988

Status: Currently being processed by the Office of Environmental Quality Control

HILO WASTEWATER TREATMENT AND CONVEYANCE FACILITIES, South Hilo, Hawaii; Dept. of Public Works, County of Hawaii/ Governor, State of Hawaii

Previously published January 23, 1989

Status: Currently being processed by the Office of Environmental Quality Control

HONOLI'I HYDROELECTRIC POWER PROJECT.
South Hilo, Hawaii; Mauna Kea Power
Company, Inc./ State Board of Land and
Natural Resources (TMK:
2-6-09:11;2-6-12:29,30; 2-7-02:21)

Previously published April 8, 1989

Status: Currently being processed by
State Board of Land and Natural
Resources

NOTICE:

When submitting an Environmental Assessment or a Negative Declaration be certain that it provides all the information required by the Rules Section 11-200-10 or it will be returned without any publication in the OEQC Bulletin. Also, the attached summary Form #89-01 is required. The contents as stated in the Rules are as follows:

- (1) Identification of applicant or proposing agency;
- (2) Identification of approving agency, if applicable;
- (3) Identification of agencies consulted in making assessment;
- (4) General description of the action's technical, economic, social, and environmental characteristics;
- (5) Summary description of the affected environment, including suitable and adequate location and site maps;
- (6) Identification and summary of major impacts and alternatives considered, if any;
- (7) Proposed mitigation measures, if any;
- (8) Determination;
- (9) Findings and reasons supporting determination; and
- (10) Agencies to be consulted in the preparation of the EIS, if applicable.

TO EXPEDITE THE PUBLICATION OF THE OEQC BULLETIN, THIS OFFICE REQUESTS THAT ALL AGENCIES AND APPLICANTS COMPLETE THE ATTACHED 2-PAGE OEQC FORM #89-01 WHENEVER AN EIS, NEGATIVE DECLARATION, OR NEPA DOCUMENT IS SUBMITTED. IF THERE ARE ANY QUESTIONS IN COMPLETING THIS FORM, PLEASE CALL OEQC AT 548-6915.

DOCUMENT FOR PUBLICATION IN THE OEQC BULLETIN

DATE: _____ SUBMITTED BY: _____

THE DOCUMENT IS A (CHECK ALL THAT APPLY): BE SURE TO ATTACH 4 COPIES

CHAPTER 205A DOCUMENT	<input type="checkbox"/>	NEGATIVE DECLARATION	<input type="checkbox"/>
CHAPTER 343 DOCUMENT	<input type="checkbox"/>	EIS PREPARATION NOTICE	<input type="checkbox"/>
NEPA DOCUMENT	<input type="checkbox"/>	DRAFT EIS	<input type="checkbox"/>
		FINAL EIS	<input type="checkbox"/>
		ACCEPTANCE NOTICE	<input type="checkbox"/>
		FONSI	<input type="checkbox"/>

IS THE DOCUMENT A SUPPLEMENTAL EIS? YES NO

TITLE OF PROPOSED ACTION OR PROJECT: _____

LOCATION: ISLAND _____ DISTRICT _____
ATTACH PROJECT LOCATION MAP(S)

TYPE OF ACTION (CHECK ONE): APPLICANT AGENCY

NAME OF PROPOSING APPLICANT OR AGENCY: _____

NAME OF CONTACT: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE: (_____) _____ or (_____) _____

NAME OF PREPARER OR CONSULTANT: _____

NAME OF CONTACT: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE: (_____) _____ or (_____) _____

ACCEPTING AUTHORITY _____

ESTIMATED PROJECT COST:
FEDERAL FUNDS \$ _____
STATE FUNDS \$ _____
COUNTY FUNDS \$ _____
PRIVATE FUNDS \$ _____
TOTAL \$ _____

DOCUMENT PREPARATION COST:
NEG DEC/EA \$ _____
DRAFT EIS \$ _____
FINAL EIS \$ _____
SUP DRAFT EIS \$ _____
SUP FINAL EIS \$ _____
TOTAL \$ _____

EA TRIGGER (CHECK ALL THAT APPLY):

- USE OF STATE OR COUNTY LANDS OR FUNDS
- USE OF CONSERVATION DISTRICT LANDS
- USE OF SHORELINE SETBACK AREA
- USE OF HISTORIC SITE OR DISTRICT
- USE OF LANDS IN THE WAIKIKI SPECIAL DISTRICT



- USE REQUIRING AN AMENDMENT TO A COUNTY GENERAL PLAN
- USE REQUIRING THE RECLASSIFICATION OF CONSERVATION LANDS
- CONSTRUCTION OR MODIFICATION OF HELICOPTER FACILITIES
- OTHER _____

BRIEF DESCRIPTION OF THE PROPOSED ACTION OR PROJECT WHICH WILL BE PUBLISHED IN THE OECC BULLETIN (LIMIT OF 500 WORDS OR LESS): _____

(CONTINUE ON ANOTHER SHEET IF NECESSARY)

TAX MAP KEY(S):

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

TOTAL ACREAGE: _____

FOR OECC USE ONLY

DATE OF SUBMISSION:
 DATE OF PUBLICATION:
 LAST DAY FOR CONSULTED
 PARTY REQUEST:
 COMMENT PERIOD ENDS:
 ACCEPTANCE DATE:
 PUBLICATION DATE OF
 ACCEPTANCE:

OECC # _____
 PLANNER: _____

PUBLIC NOTICE

Pursuant to Section 13-222-12, Hawaii Administrative Rules
entitled "Shoreline Certification"

Date: May 8, 1989 Number: 89-9

NOTICE OF APPLICATION: Application available for inspection at District Land Offices on the islands of Kauai, Hawaii and Maui and at Room 220, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Oahu

LOCATION	APPLICANT	TAX MAP KEY	DATE RECEIVED
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Page 4 (continued)

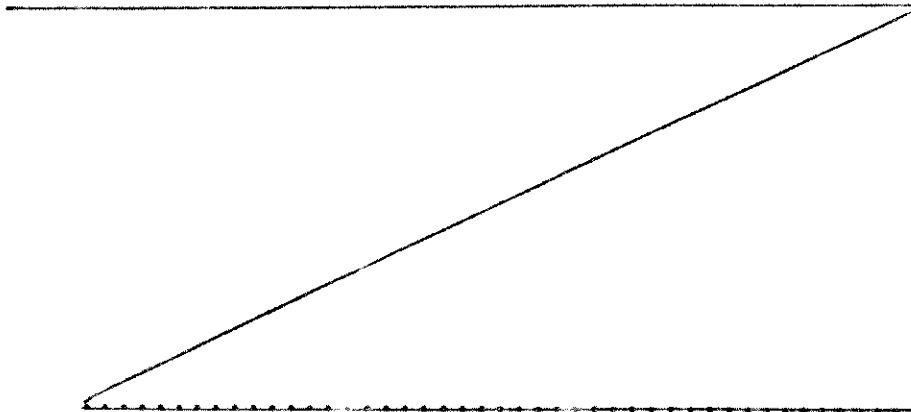
- | | | | |
|--|--|------------------|--------|
| 7) <u>Ld. Ct. Applcn.</u>
<u>616, Mokulua Dr.</u>
(Kailua, Koo-
laupoko, Oahu | C&C of Honolulu for
Lanikai Association | 4-3-05:87 | 4/6/89 |
| 8) <u>Ld. Ct. Applcn.</u>
<u>616, Mokulua Dr.</u>
(Kailua, Koo-
laupoko, Oahu | C&C of Honolulu for
Mr. & Mrs. Ethan D.B.
Abbott | 4-3-03:63 (por.) | 4/6/89 |

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Comments on application may be made in writing to the State Land Surveyor at Room 210, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Oahu within fourteen (14) days of this notice.

NOTICE OF SHORELINE CERTIFICATION OR REJECTION

LOCATION	APPLICANT	TAX MAP KEY	DATE CERTIFIED (C) OR REJECTED (R)
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APPEAL may be made to the Department of Land and Natural Resources in writing within twenty (20) days of the date of this notice:

Department of Land and Natural Resources
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Tel. 548-6460

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Page 3 (continued)

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|--|--|----------------|--------|
| 5) <u>Ld. Ct. Applcn.</u>
<u>616, Mokulua Dr.</u>
(Kailua, Koo-
laupoko, Oahu | C&C of Honolulu for
Lanikai Association | 4-3-04:96 & 97 | 4/6/89 |
| 6) <u>Ld. Ct. Applcn.</u>
<u>616, Mokulua Dr.</u>
(Kailua, Koo-
laupoko, Oahu | C&C of Honolulu for
Lanikai Association | 4-3-03:89 | 4/6/89 |

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LOCATION	APPLICANT	TAX MAP KEY	DATE RECEIVED
Page 2 (continued)			
3) <u>Lot B, Por. of Grant 1310, Apana 1 to Kaai-laau, (Haleaha, Koolauloa, Oahu</u>	R.M. Towill Corp. for Bishop Estate	5-3-06:17	4/13/89
4) <u>59-23A Holawa St. (Pupukea, Paumalu, Oahu</u>	Harry K. Matsuo for Paul Catanzaro	5-9-09:26 & 74	4/26/89

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Comments on application may be made in writing to the State Land Surveyor at Room 210, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Oahu within fourteen (14) days of this notice.

NOTICE OF SHORELINE CERTIFICATION OR REJECTION

LOCATION	APPLICANT	TAX MAP KEY	DATE CERTIFIED (C) OR REJECTED (R)
4) <u>Lot 1 being por. of L.P. 8183, LC Aw 11,215, Apana 3 to Keliiahonui (Kalihi-Kai, Hanalei, Kauai)</u>	Esaki Surveying and Mapping, Inc. for Gary Stice	5-3-05:4	4/27/89 (C)
5) <u>239 Front St. (Lahaina, Maui)</u>	R.T. Tanaka Engineers, Inc. for Luanna F. McKenney	4-6-03:02	4/28/89 (C)

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LOCATION	APPLICANT	TAX MAP KEY	DATE RECEIVED
1) <u>Lot 58 of Puako Beach Lots (Hts. Plat 4-14-B)</u> (Puako, Lalamilo, S. Kohala, Hawaii)	Wes Thomas and Associates for James Muffie	6-9-04:16	4/20/89
2) <u>Lot 14 of Land Court Applcn. 1714 (Map 2)</u> (Makakupaiaiki, Molokai, Hawaii)	Community Planning, Inc. for Kawela Plantation Dev. Assoc.	5-4-03:23	4/21/89

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NOTICE OF SHORELINE CERTIFICATION OR REJECTION

LOCATION	APPLICANT	TAX MAP KEY	DATE CERTIFIED (C) OR REJECTED (R)
1) <u>608 Kaimalino Pl. (Kaneohe, Koolaupoko, Oahu)</u>	A.F.M. Corp. for	4-4-039:23	4/18/89 (C)
2) <u>447 Portlock Rd. Maunalua Beach Subdiv. (Maunalua, Oahu)</u>	Wes Thomas and Associates, Inc. for Bernice Pauahi Bishop Estate	3-9-16:003	4/19/89 (C)
3) <u>44-443 Kaneohe Bay Dr. (Kaneohe, Koolaupoko, Oahu)</u>	PAREN, Inc. dba Park Engineering for Pacific Atlas (Hawaii) Inc.	4-5-30:1, 42, 44, 45 and 46	4/24/89 (C)

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DECLARATORY RULINGS BEFORE THE ENVIRONMENTAL COUNCIL

Occasionally, the Environmental Council is requested to provide a Declaratory Ruling concerning some aspect of or action taken pursuant to the EIS process. In these matters, there is often a question of the Council's jurisdiction vis-a-vis other governmental agencies. To guide the Council in these actions, the Department of the Attorney General was requested to research the issue of Council jurisdiction. A summary of the findings follows:

Section 91-8, Hawaii Revised Statutes, provides that, "Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency." Moreover, in Fasi v. Hawaii Public Employment Relations Board, 60 Haw. 436, 443 (1979), the Hawaii Supreme Court rules that an agency may issue a declaratory ruling upon questions which would be relevant to some action which that agency might take in the exercise of the powers granted to it.

This brings us to the powers of the Environmental Council, Section 341-6, HRS provides:

§341-6 Functions of the Environmental Council. The council shall serve as a liaison between the director and the general public by soliciting information, opinions, complaints, recommendations, and advice concerning ecology and environmental quality through public hearings or any other means and by publicizing such matters as requested by the director (of the Office of Environmental Quality Control) pursuant to section 341-4(b)(4). The council may make recommendations concerning ecology and environmental quality to the director and shall meet at the call of the council chairperson or the director upon notifying the council chairperson. The council shall monitor the progress of state, county, and federal agencies in achieving the State's environmental goals and policies and with the assistance of the director shall make an annual report with recommendations for improvement to the governor, the legislature, and the public no later than January 31, of each year. All state and county agencies shall cooperate with the council and assist in the preparation of such a report by responding to requests for information made by the council. The council may delegate to any person such power or authority vested in the council as it deems reasonable and proper for the effective administration of this section and chapter 343, except the power to make amend, or repeal rules.

In addition, section 343-5, HRS, authorizes to Council to hear and rule upon appeals of final non-accepted

environmental impact statements (EIS), section 343-6, HRS, grants the Council authority to make necessary rules for the purposes of chapter 343, and section 343-7, HRS, designates the Council to be an aggrieved party for the purposes of bringing judicial action regarding specific aspects of the EIS process.

Since December of 1987 six petitions for Declaratory Rulings have been submitted to the Council. These petitions, addressed specific elements of the EIS process.

Section 343-5, HRS, sets out the basic components of Hawaii's EIS process. Subsection 343-5(a) provides when an environmental assessment shall be required. Subsection 343-5(b) establishes the basis procedures which shall be followed regarding agency actions and 343-5(c) does the same for applicant actions. It is important to note that in section 343-5 the Hawaii State Legislature has not vested the Council with the power to determine whether an EIS should be prepared, whether a final EIS should be accepted, or to make a recommendation as to the acceptability of a final statement. Section 343-5 explicitly authorizes other agencies to take these actions.

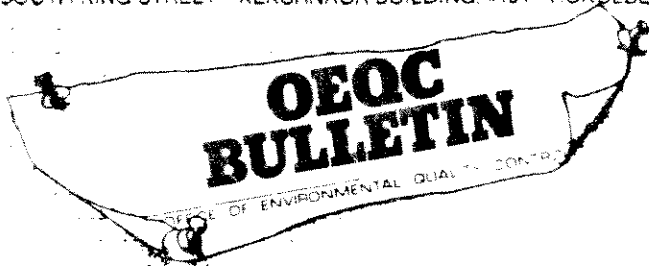
Thus, although the Legislature charged the Council with the responsibility for adopting rules by which the EIS process might be implemented, other agencies were vested, with the exception of appeals of non-accepted final EIS, with the power to implement these rules. In other words, although the Council is empowered to adopt rules, for the most part, 343-5 does not empower it to implement these rules except in very specific factual situations.

Strict application of this legal framework has resulted in the Council's declining to issue Declaratory Rulings where jurisdiction was at issue, irrespective of the Council's opinion of the factual contentions of the petition. The Council would like to remind potential petitioners that Council intervention in environmental disputes any take forms other than Declaratory Rulings, including:

- Letters of opinion;
- Publicizing the issue further within government channels and to the public;
- Publicizing the issue through the Annual Report; and
- Becoming a party to legal proceedings.

The Council would like to encourage Hawaii's citizens and environmental organizations to continue to bring matters of environmental concern to our attention, and hope that with the means we have available, the Council can play a role in preserving and protecting Hawaii's environment.

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