



The Environmental Notice

November 8, 2010

KAUAI (HRS 343)

- 1. [Kaiakea Fire Station Photovoltaic Power System](#) (FEA) 2
- 2. [Land Parcel Acquisition, Kalaheo](#) (FEA) 2

OAHU (HRS 343)

- 3. [Revisions to the Kakaako Community Development District Mauka Area Plan](#) (FSEIS)
Acceptance Letter 3
- 4. [Campbell High School Eight-Classroom Building](#) (DEA) 3

MAUI (HRS 343)

- 5. [Lower Paia Tank Replacement](#) (DEA) 4
- 6. [Haleakala High Altitude Observatory Management Plan](#) (FEA) 4

HAWAII (HRS 343)

- 7. [Connections Public Charter School Master Plan](#) (FEA) 5
- 8. [The Villages of Aina Lea](#) (FEIS) 5
- 9. [Kukuihaele Production Well and Supporting Facilities](#) (FEA) 6
- 10. [Kona Judiciary Complex Site Selection](#) (EISPN) 7

Federal Consistency Reviews

- Remediation of Debris Piles at Former U.S. Coast Guard Loran Station Ilio Point, Molokai 7
- Kalaupapa Dock Repairs, Kalaupapa, Molokai 8

Special Management Area Minor Permits 8

Shoreline - Certification Applications 9

Shoreline - Certifications and Rejections 9

Pollution Control Permits 10

Federal Notices

- Supplementary Requirements for Implementing NEPA within the US Department of the Interior's
Office of Native Hawaiian Relations 11

Glossary 15

The Environmental Notice informs the public of environmental assessments and other documents that are available for review and comment per HRS §343-3 and is updated on the 8th and 23rd of each month on the Office of Environmental Quality Control's website. If you would like to be notified when it is updated, send us your email address and we'll put you on our mailing list.

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KAUAI (HRS 343)

1. Kaiakea Fire Station Photovoltaic Power System (FEA)

Island: Kauai
District: Kawaihau
TMK: 4-6-14: Por. 26
Permits: Class IV Zoning; Use; Building
Proposing Agency: County of Kauai, Office of Economic Development, 4444 Rice Street, Suite 200, Lihue, HI 96766. Glenn Sato, 241-4951
Approving Agency: Same
Consultant: N/A
Comments: FEA accepted by the Approving Agency. There is no comment period

The proposed PV system is expected to generate some short-term construction-related impacts due to the PV anchoring system and minor ground preparation. The ground work and construction equipment will generate short-term dust and noise. All construction debris will be recycled (per County ordinance) or taken to the Kekaha landfill. Water will be provided by the nearby fire station and power will be provided by the fire station or via portable generators. Traffic impacts are expected to be minimal, with materials delivery scheduled for off-peak hours to avoid congestion. Permits from DOT will be secured if there are any oversized or overweight loads.

The most audible noises would occur during the construction of the anchor points with the use of portable saws and hammers for form construction and the sound of the concrete truck during concrete delivery. Once the concrete footings are poured and cured, most of the construction work will involve system assembly using small hand tools such as drills, saws and ratchets. Contractor shall adhere to HAR ,Chapter 11-46, Community Noise Control.

The PV project will provide long-term benefits from the on-site generation of renewable energy from the sun. The power will be clean and displace oil-fired generation from the local utility. PV systems have an expected life of greater than 20 years so the fire station's clean, renewable energy system will displace over 1 million kilowatt hours of oil-fired power over its useful life.

2. Land Parcel Acquisition, Kalaheo (FEA)

Island: Kauai
District: Koloa
TMK: 4-2-4-03:7
Permits: None
Proposing Agency: Dept of Water, County of Kauai, 4398 Pualoke Street, Lihue, HI 96766. David Craddick, 245-5408
Approving Agency: Same
Consultant: Belt Collins Hawaii Ltd., 2153 North King Street, Suite 200, Honolulu, HI 96819. Glen Koyama, 521-5361
Comments: FEA accepted by the Approving Agency. There is no comment period

The Department of Water (DOW), County of Kauai, is proposing to acquire a 0.71-acre parcel in upland Kalaheo and hold it in reserve for future use to upgrade or improve DOW's existing water system in the South Kauai community. The proposed action is not expected to have any significant adverse impact to

the physical, biological, and cultural environment. The private owner of the property has been contacted and is currently in negotiations with the DOW. Current County records (2010) at the Real Property Tax Office show an assessed land value of \$139,100 for the subject property.

When development is ready to proceed on the parcel, the DOW will prepare another Environmental Assessment (EA) to describe the proposed use, assess its probable impacts, and determine possible mitigation measures to reduce or minimize any anticipated major impacts. The present EA addresses the current proposed action to purchase the existing property using DOW funds.

OAHU (HRS 343)

3. Revisions to the Kakaako Community Development District Mauka Area Plan (FSEIS) Acceptance Letter

The Governor has accepted the Final Supplemental Environmental Impact Statement for the Revisions to the Kakaako Community Development District Mauka Area Plan (FSEIS). The notice of availability was previously listed in the May 8, 2009 *Environmental Notice* and was incorrectly identified as being Accepted. Our apologies for this oversight.

4. Campbell High School Eight-Classroom Building (DEA)

Island: Oahu
District: Ewa
TMK: 1-9-1-01:02
Permits: Construction and grading
Proposing Agency: State Dept of Education, Facilities Development Branch, P.O. Box 2360, Honolulu, HI 96804. Duane Kashiwai, 586-0430
Approving Agency: Same
Consultant: Kimura International, Inc., 1600 Kapiolani Boulevard, Suite 1610, Honolulu, HI 96814. Leslie Kurisaki, 944-8848
Comments: DEA 30-day comment period starts from the date of this Notice. Address comments to the Proposing Agency and Consultant

The State Department of Education (DOE) proposes to construct a new 21,548 SF, two-story classroom building on the Campbell High School campus in Ewa Beach, Oahu. During the design phase, the project was increased from an eight-classroom to a 10-classroom facility to better meet the needs of the school. The building will include a language lab, two science classrooms and seven general purpose classrooms, plus teacher planning/collaboration areas and conference rooms. The project site is at the north end of a grassy quadrangle near the middle of the campus, and surrounded by existing one, two and three-story buildings. The site is currently used for school assemblies. An outdoor stage is incorporated into the classroom building's design. The project will also construct a new 70-stall parking lot on the west side of the campus and will restripe existing parking lots to create more on-campus parking.

The classroom building is urgently needed to relieve overcrowding at the school due to rapid increases in student enrollment over the last ten years. Enrollment is projected to continue to increase another 12.8% over the next six years. During construction, there will be noise and dust in the vicinity. Construction will be initiated during the summer, so that the noisiest, potentially disruptive grading and foundation work will occur when school is not in session.

The project site is within a developed school campus and there are no threatened or endangered species in the area. There will be no impact on archaeological or cultural resources. Construction-

related noise and dust will be temporary and can be adequately mitigated. Overall, the proposed classroom building will have an extremely positive impact on student and staff morale and on the quality of education at the school.

MAUI (HRS 343)

5. Lower Paia Tank Replacement (DEA)

Island: Maui
District: Makawao
TMK: 2-2-5-05:58
Permits: Building, Grading
Proposing Agency: Maui Dept of Water Supply, 200 South High Street, Wailuku, HI 96793. Curtis Eaton, PE, 270-7835
Approving Agency: Same
Consultant: None
Comments: DEA 30-day comment period starts from the date of this Notice. Address comments to the Proposing Agency and Consultant

The Maui Department of Water Supply is proposing to replace the existing 100,000 gallon water storage tank with a 300,000 gallon water storage tank. The new tank will provide additional water capacity for domestic and fire flow purposes. A temporary tank will be constructed while the old tank is removed and new tank constructed. The new tank will sit where the existing tank currently sits. It will be the same height and 73% larger in diameter. Site work will be minimal. A portion of the existing paved driveway will be removed and repaved after the tank is completed. Aesthetically, the site will be nearly the same. The larger diameter tank will not affect the quality of any existing views.

6. Haleakala High Altitude Observatory Management Plan (FEA)

Island: Maui
District: Makawao
TMK: (2) 2-2-07:08
Permits: None
Proposing Agency: University of Hawaii, Institute for Astronomy, 2680 Woodlawn Drive, Honolulu, HI 96822-1839. Rolf-Peter Kudritzki, Ph.D., Director, tel: 956-8312; fax: 988-2790
Approving Agency: University of Hawaii at Manoa, 2500 Campus Road, Honolulu, HI 96822. Virginia S. Hinshaw, Ph.D., Chancellor, tel: 956-7651; fax: 956-4153
Consultant: KC Environmental, Inc., P. O. Box 1208, Makawao, HI 96768. Charlie Fein, Ph.D., Vice President, 573-1903
Comments: FEA accepted by the Approving Agency. There is no comment period

This Final Environmental Assessment (FEA) evaluates the Management Plan (MP) for appropriate and reasonable activities that would be undertaken by the University of Hawaii, Institute for Astronomy at the Haleakala High Altitude Observatory Site (HO). The Proposed Action is defined as the implementation of the MP. The purpose of the FEA is to provide information of likely environmental consequences of ongoing and future actions at HO in support of astronomical research. See also the [Appendix](#).

HAWAII (HRS 343)

7. Connections Public Charter School Master Plan (FEA)

Island: Hawaii
District: South Hilo
TMK: (3) 2-5-06:141
Permits: Special Permit, NPDES, Wastewater system, Water reuse, Building, Grading
Applicant: Connections Public Charter School, 174 Kamehameha Avenue, Hilo, HI 96720. John L. Thatcher II, CEO; (866) 961-3664

Approving Agency: Dept of Land and Natural Resources, Land Division, 1151 Punchbowl Street, Room 220 Honolulu, HI 96813. Charlene Unoki, 587-0426

Consultant: Wil Chee – Planning & Environmental, 1018 Palm Drive, Honolulu, HI 96814. Celia Shen, 596 4688; cshen@wcpohawaii.com

Comments: FEA accepted by the Approving Agency. There is no comment period

A conceptual master plan to guide the development of a new campus in Kaumana, South Hilo, Hawaii, has been developed for Connections Public Charter School. The new campus would consolidate all of Connections' existing academic programs (elementary, intermediate, and high schools) at a single location, plus provide land area to expand their academic offerings to include an agricultural program and a forestry/conservation program. The campus would accommodate approximately 400 students.

The project is not expected to cause any significant adverse long-term impacts to the environment. However, potential short-term, temporary impacts could occur during the construction period. These include impacts on the acoustical environment, air quality, soils, fauna, and lava tube collapse. Adherence to all applicable regulations and permit conditions, and implementation of construction site BMPs and other protective/mitigation measures would minimize the effects of any construction-related impacts. Though the project site is in the State Land Use Agriculture district and is zoned Agriculture by the County of Hawaii, no loss of agricultural lands will occur as the site is undeveloped. The project would not adversely affect traffic and circulation in the project area.

The project would result in beneficial impacts by improving educational services and opportunities for Hilo's children. A new campus would allow Connections to continue teaching at its high educational standards and the proposed agricultural program would provide local children with marketable skills for working in and developing small sustainable agricultural operations.

8. The Villages of Aina Lea (FEIS)

Island: Hawaii
District: South Kohala
TMK: (3) 6-8-01:25, 36, 37 (por.), 38, 39 and 40 (por.) and (3) 6-8-02:19 (por.)
Permits: Special Permit to permit construction of the project's Wastewater Treatment Plant, subdivision approval, and various construction related permits, County approval to a change from the existing multiple zoning designations to a single "Project District" zoning

Applicant: DW Aina Lea Development, LLC, 68-4747 Queen Kaahumanu Highway, Kamuela, HI 96743. Email: management@ainalea.com, 845-9945

Accepting Authority: Hawaii County Planning Department, 101 Pauahi Street, Suite 3, Hilo, HI 96720. B J Leithead Todd, Planning Director, Phone: (808) 961-8288 FAX: (808) 961-8742

Consultant: J M Leonard Planning, LLC, James M. Leonard, AICP, 1100 Ainalako Road, Hilo, HI 96720. Email: jmleonard@mac.com, 896-3459

Comments: FEIS accepted by the Accepting Authority. There is no comment period

DW Aina Lea Development LLC proposes to build 1,047 multiple-family units, 790 single-family house sites and up to 500 affordable/workforce housing units on approximately 1,128 acres in Waikoloa, South Kona, Hawaii. The Villages of Aina Lea also includes a commercial village, a golf course and golf lodge. The EISPN for the Project was prepared for a residential-golf community on 3,000 acres that had previously received approvals for six golf courses and 3,220 residential units. The scope of the Project has been reduced with the purchase of 1,092 acres of the Urban lands by the Applicant, DW Aina Lea Development, LLC. Initially, 385 affordable/workforce housing units are being constructed onsite in compliance with a State Land Use Commission condition.

The project will provide both active and passive parks, a botanical preserve and a 32-acre school site. Traffic mitigation measures include improvements to two intersections providing access to the project, including one at Mauna Lani Drive. A wastewater treatment plant to be constructed will provide treated water for irrigation purposes. A variety of environmental, cultural, and technical studies have been performed to address the potential impacts of the Project to the natural, social and built environment and to identify potential mitigation measures that have been incorporated into the planning for the Project that are detailed in the Final EIS. See also the [Appendix](#).

9. [Kukuihaele Production Well and Supporting Facilities](#) (FEA)

Island: Hawaii
District: Hamakua
TMK: (3rd) 4-8-08:26
Permits: Plan Approval/Variance, Well Construction, Pump Installation
Proposing Agency: Hawaii County Dept of Water Supply, 345 Kekuaanoa Street, Suite 20, Hilo HI 96720. Kawika Uyehara, P.E., 961-8070 x 251
Approving Agency: Same
Consultant: Geometrician Associates, PO Box 396, Hilo, HI 96721. Ron Terry, 969-7090
Comments: FEA accepted by the Approving Agency. There is no comment period

The County of Hawaii, Department of Water Supply (DWS), plans to convert the Kukuihaele Exploratory Well to a production well. The exploratory well is located on the site of an existing DWS reservoir on a 0.275-acre parcel of County-owned land on Mud Lane, mauka of State Highway 270 in Kukuihaele. Site improvements include a control building, chlorination facilities, well discharge piping, and drainage improvements. The Project will also include an on-site diesel generator with a double-walled fuel storage unit, along with a reverse-osmosis water treatment unit and associated seepage pits for brine. The improvements will promote public health and safety by improving a water source for this rural community.

The contractor will develop and implement a Storm Water Pollution Prevention Plan to contain sediment and storm water runoff and effluent from dewatering during construction. Construction of the Project would have only a negligible effect on local traffic with no lane closures, and long-term traffic will benefit from a reduction of at least 10 water hauling trucks daily. No noise-sensitive uses are present on the large agricultural properties adjacent to the site and sound from the generator, which is designed to minimize noise levels, will not produce adverse effects. As the project site was previously disturbed for construction of the Kukuihaele Reservoir and drilling of the exploratory well, no significant biological, archaeological or cultural resources are present. If archaeological resources or human remains are encountered during land-altering activities, work in the immediate area of the discovery will be halted and the State Historic Preservation Division will be contacted.

10. Kona Judiciary Complex Site Selection (EISPN)

Island: Hawaii
District: North Kona
TMK: Various
Permits: EIS acceptance, Special Management Area Use, Major, Various Site, Grading, Building, and Infrastructure Approvals for Construction

Proposing Agency: Dept of Accounting and General Services, Planning Branch, 1151 Punchbowl Street, Room 430, P.O. Box 119, Honolulu, HI 96810. Ralph Morita, Public Works Manager, 586-0500

Accepting Authority: Governor
Consultant: Group 70 International, Inc., 925 Bethel Street, 5th Floor, Honolulu, HI 96813. Jeffrey H. Overton, AICP, LEED AP, 523-5866

Comments: EISPN 30-day comment period starts from the date of this Notice. Address comments to the Proposing Agency, with copies to the Accepting Authority and Consultant

The Kona Judiciary Complex Site Selection is being jointly undertaken by DAGS and the Hawaii State Judiciary to address a long-standing need for a new Judiciary complex in the West Hawaii service area. The West Hawaii service area is a region with a growing population and inadequate facilities to perform Judiciary functions. The project purpose is to take a broad look at the Kona region, and identify the most viable potential sites for the future Kona Judiciary Complex.

Potential short-term (construction phase) impacts to be evaluated in the EIS include: soil disturbance, erosion, drainage, noise, and traffic due to construction. Short-term beneficial impacts include construction expenditures and employment. Potential long-term impacts (operations phase) include effects on soil, water quality, drainage, natural hazard areas, vegetation and wildlife, archaeology, cultural resources, traffic, noise, air quality, visual resources, socio-economic considerations, infrastructure and public services. Materials and economic resources will be irretrievably committed to developing and constructing the new Kona Judiciary Complex. The significance of impacts will vary depending upon the selected site. The EIS will present a complete analysis of the anticipated impacts and recommended mitigation to either eliminate or minimize impacts to within acceptable regulatory standards.

FEDERAL CONSISTENCY REVIEWS

The Hawaii Coastal Zone Management (CZM) Program has received the above federal actions to review for consistency with the CZM objectives and policies (HRS 205A). Public notice is pursuant to Section 306(d)(14) of the National Coastal Zone Management Act of 1972, as amended. For more information, call John Nakagawa at 587-2878. Neighbor islands call toll-free: Kauai: 274-3141 x72878, Lanai and Molokai: 468-4644 x72878, Maui: 984-2400 x72878, or Hawaii: 974-4000 x72878. Federal deadlines require that comments be received by the date specified. Send comments to: Office of Planning, Department of Business, Economic Development and Tourism, P.O. Box 2359, Honolulu, HI 96804. Email: jnakagaw@dbedt.hawaii.gov or Fax: (808) 587-2899.

Remediation of Debris Piles at Former U.S. Coast Guard Loran Station Ilio Point, Molokai

Federal Action: Federal Agency Activity
Federal Agency: U.S. Coast Guard
Contact: Jay Silberman, 535-3463
Location: Ilio Point, Molokai
TMK: (2) 5-1-2

CZM Contact: John Nakagawa, 587-2878, jnakagaw@dbedt.hawaii.gov
 Proposed Action: Remediate three debris piles located at the former U.S. Coast Guard Loran Station Ilio Point. The debris piles are approximately 160 feet long by 20 feet wide, and contain deteriorated materials with a total volume of 68 cubic yards. The debris piles will be excavated and disposed of at a permitted facility on the continental U.S. The cleanup is being performed by the Coast Guard, under the oversight of the State Department of Health and the U.S. Environmental Protection Agency.
 Comments Due: November 22, 2010

Kalaupapa Dock Repairs, Kalaupapa, Molokai

Federal Action: Federal Agency Activity
 Federal Agency: National Park Service
 Contact: Steve Prokop, Superintendent, (808) 567-6802
 Location: Kalaupapa, Molokai
 MK: (2) 5-1-2
 CZM Contact: John Nakagawa, 587-2878, jnakagaw@dbedt.hawaii.gov
 Proposed Action: Construct repairs to the dock at Kalaupapa harbor, which is needed for barge delivery of the vast majority of materials needed to sustain the Kalaupapa Settlement. Repairs include filling voids in the bulkhead wall toe, the low dock toe and the breakwater to ensure structural integrity, and also repairing the pier dock. This maintenance is expected to lengthen the effective life of the pier for an additional 10 to 15 years. The environmental assessment for the project is available at: <http://parkplanning.nps.gov> (search for Kalaupapa National Historic Park).
 Comments Due: November 22, 2010

SPECIAL MANAGEMENT AREA (SMA) MINOR PERMITS		
Location (TMK)	Description (File No.)	Applicant/Agent
Oahu: Kaunala (5-8-03: 116)	Sunset Beach Cable Hub (2010/SMA-40)	Oceanic Time Warner Cable
Hawaii: North Hilo (3-6-04: 07)	Install Mobile Telecommunications Antenna on a New 80-foot Monopole (SMM 10-161)	Coral Wireless, LLC dba Mobi PCS
Hawaii: North Hilo (3-6-10: 07)	Construction of a Fence along the Top of the Pali and within the 40-foot Shoreline Setback Area (SMM 10-162)	Angela Reed
Maui: Lahaina (4-3-10: 04)	Trash Chute Repairs (SM2 20100071)	Valley Isle Resort AOA
Maui: (3-9-05: 08)	Remove Facia & Replace Concrete on Lanai (SM2 20100072)	Michelle Cockett
Maui: Kihei (3-9-08: 03 & 04)	Alteration & Repair Entry Doors (SM2 20100073)	HKOK AOA
Maui: Hana (1-4-05: 26)	Gazebo & Entry Gate (SM2 20100074)	John Romain

The SMA Minor permits above have been approved or are pending approval (HRS §205A-30). For more information, contact the appropriate county/state Planning Department. Honolulu (523-4131); Hawaii (961-8288); Kauai (241-6677); Maui (270-7735); Kakaako (Honolulu) or Kalaeloa Community Development District (587-2840).

SHORELINE - Certification Applications

File No.	Date	Location	Applicant/Owner	TMK
OA-1396	10/20/10	Lot 1-A, Section C Kawaihoa Beach Lots situate at Kawaihoa, Waialua, Oahu Address: 61-507 Kamehameha Highway Purpose: Building permit	Walter P. Thompson, Inc./ Lorna Jensen	6-1-08:22
MA-463	10/22/10	Kahului Beach Road (F.A.S.P. S-0340 (1)) situate at Kahului, Wailuku, Maui Address: Kahului Beach Road Purpose: Coastal erosion study	Park Engineering/ State of Hawaii, Department of Transportation	3-4-27; 3-7-01, 02 & 03
KA-342	10/25/10	Portion of Moanakai Road situate at Kapaa, Kawaihau, Kauai Address: N/A Purpose: Permitting	R.M. Towill Corporation/ County of Kauai	4-5-01

The shoreline certification applications above are available for review at the DLNR Offices on Kauai, Hawaii, Maui, and Honolulu, 1151 Punchbowl Street, Room 220 (HRS §205A-42 and HAR §13-222-12). All comments shall be submitted in writing to the State Land Surveyor, 1151 Punchbowl Street, Room 210, Honolulu, HI 96813 and postmarked no later than 15 calendar days from the date of the public notice of the application. If you have any questions, call Ian Hirokawa at 587-0420.

SHORELINE - Certifications and Rejections

File No.	Proposed/Rejected	Location	Applicant/Owner	TMK
OA-1367	Proposed Shoreline Certification	Lot 8 Land Court Application 1827 as shown on Map 1 situate at Lualualei, Waianae, Oahu Address: 87-623 Farrington Highway Purpose: Obtain building permit	Wesley T. Tengan/ Harold R. Keen III	8-7-28:08
OA-1382	Proposed Shoreline Certification	Lot A portion Grant 4699 to Julia Hunt Macy, situate at Wailupe, Honolulu, Oahu Address: 918 Wailupe Place Purpose: Building permit	Walter P. Thompson, Inc./ Taiji Terasaki	3-6-02:10
OA-1384	Proposed Shoreline Certification	Hilton Hawaiian Village being Lots 10 and 11 of Land Court Consolidation 78, and Lot B-1 and Parcel 3 of a portion of Royal Patent 3441, Land Commission Award 2511 to Alapai Address: 2005 Kalia Road Purpose: Setback purposes	Austin, Tsutsumi & Associates, Inc./ Hilton Hawaiian Village, LLC	2-6-08:05, 27 & 34, 2-3-37:21

OA-1391	Proposed Shoreline Certification	Lot H-1, being a portion of Lot H of Koko Kai 2, Maunalua Bay View Lots Subdivision Unit 2-C (File Plan 1468) situate at Maunalua, Honolulu, Hawaii Address: 6 Lumahai Street Purpose: Determine building setback	Engineers Surveyors Hawaii, Inc./ Michael J. Miske	3-9-13:33
MA-458	Proposed Shoreline Certification	Royal Patent 6140, Land Commission Award 6510-U, Apana 2 to Wahiloa being a portion of Parcel 18 of Tax Map Key: (2) 2-9-011 situate at Hanawana West, Hamakualoa, Makawao, Maui Address: Hana Highway Purpose: Setback, building & SMA permitting	Newcomer-Lee Land Surveyors, Inc./ Keith & Bonnie Douglas	2-9-11:18
MO-151	Proposed Shoreline Certification	Royal Patent 4366, Land Commission Award 11029 to J. Stevenson situate at Honouliwai, Molokai Address: N/A Purpose: Boundary for proposed county park	County of Maui/ Puu O Hoku Ranch, Limited	5-8-01:01 (por.)
OA-1349	Rejection	Land Court Application 1069 consolidation of Lots 17679 and 17680 as shown on Map 1354 the resubdivision of said consolidation into Lots A and B situate at Honouliuli, Ewa, Oahu Address: 92-100 Waipahe Place Purpose: Consolidation and resubdivision	Walter P. Thompson, Inc./ Ko Olina Ocean Marina LLC	9-1-57:19

The shoreline notices above have been proposed for certification or rejection by DLNR (HRS §205A-42 and HAR §13-222-26). Any person or agency who wants to appeal shall file a notice of appeal in writing with DLNR no later than 20 calendar days from the date of this public notice. The appeal shall be sent to the Board of Land and Natural Resource, 1151 Punchbowl Street, Room 220, Honolulu, HI 96813.

POLLUTION CONTROL PERMITS				
Branch Permit Type	Applicant and Permit Number	Project Location	Date	Proposed Use
Clean Air Branch, 586-4200, Covered Source Permit	Road and Highway Builders, LLC Initial Covered Source Application No. 0691-03 CSP No. 0691-02-CT	Various Temporary Sites, State of Hawaii	Issued: 10/20/10	340 TPH Mobile Jaw Crusher with 350 HP Diesel Engine

Clean Air Branch, 586-4200, Covered Source Permit	West Hawaii Concrete Application for Modification No. 0355-06 CSP No. 0355-02-CT	Various Temporary Sites, State of Hawaii	Comments Due: 11/22/10	Crushing and Screening Plants
Clean Air Branch, 586-4200, Covered Source Permit	Royal Contracting Co. Renewal Application with Minor Modification No. 0586-02 CSP No. 0586-01-CT	Various Temporary Sites, State of Hawaii	Comments Due: 11/29/10	Crushing and Screening Plants

Above are some pollution control permits before the State Department of Health (HRS 342B and HAR §11-60.1). For more information, contact the number given.

FEDERAL NOTICES

Supplementary Requirements for Implementing the National Environmental Policy Act within the US Department of the Interior’s Office of Native Hawaiian Relations

The U.S. Department of the Interior (DOI) has amended its Departmental Manual (DM) by adding a new chapter to provide supplementary requirements for implementing the National Environmental Policy Act (NEPA) within the Department's Office of Native Hawaiian Relations. The change to the DM was published in the Federal Register on December 3, 2009. No comments were received on the DM change. By publishing these changes in the Federal Register, DOI intends to promote greater transparency and accountability to the public and enhance cooperative conservation. The Departmental Manual change will take effect on November 29, 2010. For further information contact: Ka’iini Kaloi, Director; Office of Native Hawaiian Relations; 1849 C Street, NW.; Washington, DC 20240. Tel: 202-513-0712. kaiini.kaloi@ios.doi.gov.

Congress passed the Hawaiian Homes Commission Act (HHCA) in 1921, creating the Commission and designating approximately 200,000 acres available to rehabilitate the indigenous Hawaiian population by providing them with access to farm and homestead land. Under section 204(3) of the HHCA, Ch. 42, 42 Stat. 110 (1921), all available lands were to become Hawaiian home lands under control of the Commission, provided that “such lands should assume the status of the Hawaiian home lands until the Commission, with the approval of the Secretary of the Interior makes the selection and gives notice thereof to the Commissioner of Public Lands.” 42 Stat. 110 (1921).

Thirty-three years later, Congress passed the Act of June 18, 1954, Ch. 319, 68 Stat. 262, which amended the HHCA, adding a new subsection 204(4) “to permit the [Commission] to exchange available lands as designated by the Act, for public land of equal value.” H.R. Rep. No. 1517, 83d Cong., 2d Sess. (1954); S. Rep. No. 1486, 83d Cong., 2d Sess. 2 (1954). The new section 204(4), provided that “the Commission may with the approval of the Governor (Governor approval no longer required) and the Secretary of the Interior, in purposes of this Act, exchange title to available lands for land publicly owned, of equal value.” 68 Stat. 262 (1954). Hence, it was clear Congress intended the Commission would not have the authority to consummate any land exchange without secretarial approval.

After Hawaii was admitted to the Union in 1959, the responsibility for the administration of the Hawaiian home lands was transferred to the State of Hawaii. Section 4 of the Hawaiian Admission Act, Public Law 86-3, 73 Stat. 5 (1959), 48 U.S.C. nt. Prec. Sec. 491 (1982) provides: “[a]s a compact with the United States relating to the management and disposition of the Hawaiian Home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of such State.” Thus, secretarial approval remained necessary before the Commission was empowered to conduct land exchanges.

In 1995, Congress again iterated its intent to have the Secretary provide oversight of land exchanges occurring under the auspices of the HHCA. The Hawaiian Home Lands Recovery Act of 1995 (HHLRA),

Public Law 104-42, 109 Stat. 357, gave oversight responsibilities to the Secretary of the Department of Interior to ensure that real property under the HHCA is, among other things, administered in a manner which best serves the interests of the beneficiaries.

The words of section 204(3) of the HHCA make clear that a land exchange is not valid until it has been approved by the Secretary (or his designee), but does not suggest that the Secretary is required to approve every land exchange placed before him. Indeed, the Secretary must at a minimum, satisfy himself that either of the purposes set forth in section 204(3) is met (i.e., that the exchange would consolidate Homes Commission holdings, or that it would help to “better effectuate” the purposes of the Homes Commission Act), and that the lands proposed for exchange are “of an equal value”. Each of these elements requires the exercise of judgment, most particularly the element of equal value for land valuations can be highly subjective and land appraisals are understood to represent an art, not a science. Because the discharge of the responsibility placed on the Secretary is discretionary and not ministerial, approval of a land exchange is subject to NEPA. In general, section 102(2)(C) of NEPA, 42 U.S. C. 4332(2)(C) provides that a “detailed statement” must be prepared whenever a major Federal action will have a significant impact on the quality of the human environment. Accordingly, the new chapter to provide supplementary requirements for implementing NEPA within the Department's Office of Native Hawaiian Relations includes: A definition of the Office of Native Hawaiian Relations' NEPA responsibilities; guidance to the Department of Hawaiian Home Lands as to when NEPA is triggered and who maintains responsibility for compliance; guidance as to when an action would normally require the development of an Environmental Impact Statement (EIS) or Environmental Assessment (EA); and guidance as to when an action can be categorically excluded under NEPA.

Compliance Statements

1. Regulatory Planning and Review (E.O. 12866). This document is not a significant policy change and the Office of Management and Budget has not reviewed this Departmental Manual change under Executive Order 12866. We have made the assessments required by E.O. 12866 and have determined that this departmental policy: (1) Will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. (2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. (3) Does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. (4) Does not raise novel legal or policy issues.

2. Regulatory Flexibility Act. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

3. Small Business Regulatory Enforcement Fairness Act (SBREFA). This departmental manual change is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. OMB made the determination that this departmental manual change:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act. This departmental manual change does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

5. Takings (E.O. 12630). Under the criteria in Executive Order 12630, this departmental manual change does not have significant takings implications. A takings implication assessment is not required.

6. Federalism (E.O. 13132). Under the criteria in Executive Order 13132, this departmental manual change does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. A Federalism summary impact statement is not required.

7. Consultation with Indian Tribes (E.O. 13175). Under the criteria in Executive Order 13175, we have evaluated this departmental manual change and determined that it has no potential effects on Federally recognized Indian Tribes since Native Hawaiians are not a Federally recognized Indian Tribe.

8. National Environmental Policy Act. The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 73 F. Supp. 2d 962, 972-73 (S.D. Ill. 1999), *aff'd* 230 F.3d 947, 954-55 (7th Cir. 2000).

For the reasons stated in the preamble, the Department of the Interior has amended its Departmental Manual by adding a new chapter to provide supplementary requirements for implementing provisions of 516 DM 1 through 4 within the Department's Office of Native Hawaiian Relations, as set forth below:

Part 516: National Environmental Policy Act of 1969.

Chapter 7: Managing the NEPA Process-Office of Native Hawaiian Relations

7.1. Purpose. This Chapter provides supplementary requirements for implementing provisions of the Department's NEPA regulations at 43 CFR part 46 and the provisions of 516 DM 1 through 3 [previously 516 DM 1 through 6] within the Department's Office of Native Hawaiian Relations.

7.2. NEPA Responsibility.

A. The Director of the Office of Native Hawaiian Relations (OHR) is responsible for NEPA compliance for OHR activities.

B. The Director of the Office of Native Hawaiian Relations, in conjunction with the Office of Environmental Policy Compliance, provides direction and oversight for environmental activities, including the implementation of NEPA.

C. The OHR may request the Department of Hawaiian Home Lands (DHHL) to assist in preparing NEPA documentation for a proposed action submitted by the Secretary.

7.3. Guidance to DHHL.

A. Actions Proposed by the Department of Hawaiian Home Lands requiring OHR or other Federal approval. (1) OHR retains sole responsibility and discretion in all NEPA compliance matters related to the proposed action, although the Director of OHR may request the DHHL to assist in preparing all NEPA documentation.

B. Actions proposed by the Department of Hawaiian Home Lands not requiring Federal approval, funding, or official actions, are not subject to NEPA requirements.

7.4. Actions Normally Requiring an Environmental Assessment (EA) or Environmental Impact Statement (EIS) if these activities are connected to a land exchange requiring the Secretary's approval.

A. The following actions require preparation of an EA or EIS: (1) Actions not categorically excluded; or (2) Actions involving extraordinary circumstances as provided in 43 CFR Part 46.215.

B. Actions not categorically excluded or involving extraordinary circumstances as provided in 43 CFR Part 46.210, will require an EA when: (1) An EA will be used in deciding whether a finding of no significant impact is appropriate, or whether an EIS is required prior to implementing any action. (2) The action is not being addressed by an EIS.

C. If an EA is prepared, it will comply with the requirements of 43 CFR part 46 subpart D.

D. The following actions normally require the preparation of an EIS: (1) Proposed water development projects which would inundate more than 1,000 acres of land, or store more than 30,000 acre-feet of water, or irrigate more than 5,000 acres of undeveloped land. (2) Construction of a

treatment, storage or disposal facility for hazardous waste or toxic substances. (3) Construction of a solid waste facility.

E. If an EIS is prepared, it will comply with the requirements of 43 CFR part 46 subpart E.

7.5. Categorical Exclusion. In addition to the actions listed in the Departmental categorical exclusions specified in section 43 CFR 46.210, the following action is categorically excluded unless any of the extraordinary circumstances in section 43 CFR 46.215 apply, thus requiring an EA or an EIS. This activity is a single, independent action not associated with larger, existing or proposed complexes or facilities.

A. Approval of conveyances, exchanges and other transfers of land or interests in land between DHHL and an agency of the State of Hawaii or a Federal agency, where no change in the land use is planned.

GLOSSARY

Agency Actions

Any department, office, board, or commission of the state or county government which is part of the executive branch of that government per [HRS §343-2](#).

Applicant Actions

Any person who, pursuant to statute, ordinance, or rule, requests approval for a proposed action per [HRS §343-2](#).

Draft Environmental Assessment

When an Agency or Applicant proposes an action that [triggers](#) HRS 343, an Environmental Assessment shall be prepared at the earliest practicable time to determine whether an environmental impact statement shall be required per [HRS §343-5\(b\)](#), for Agency actions and [HRS §343-5\(c\)](#), for Applicant actions. For environmental assessments for which a Finding of No Significant Impact is anticipated, a Draft EA (DEA) shall be made available for public review and comment for 30 days and public notice is published in this periodic bulletin per (HRS §343-3), also known as The Environmental Notice.

Final Environmental Assessment and Finding of No Significant Impact

The Agency shall respond in writing to comments received during the review and prepare a Final EA (FEA) to determine whether an environmental impact statement shall be required. The FEA must respond to all public comments. If there are no significant impacts, then the Agency will issue a Finding of No Significant Impact (FONSI). An Environmental Impact Statement will not be required and the project may then be implemented. The public has 30 days from the notice of a FONSI in this bulletin to ask a court to require the preparation of an EIS.

Final Environmental Assessment and Environmental Impact Statement Preparation Notice

An EIS shall be required if the Agency finds that the proposed action may have a significant effect on the environment. The Agency shall file notice of such determination with OEQC, called an EIS Preparation Notice (EISPN). After the notice of the EISPN is published in this bulletin, the public has 30 days to request to become a consulted party and make written comments. The public (including the Applicant) has 60 days from the notice of the EISPN in this bulletin to ask a court to not require the preparation of an EIS.

Draft Environmental Impact Statement

After receiving the comments on the EISPN, the Agency or Applicant must prepare a Draft Environmental Impact Statement (DEIS). The [content requirements](#) of the DEIS shall contain an explanation of the environmental consequences of the proposed action including the direct, indirect and cumulative impacts and their mitigative measures. The public has 45 days from the first publication date in this bulletin to comment on a DEIS. The DEIS must respond to comments received during the EISPN comment period in a point-by-point manner.

Final Environmental Impact Statement

After considering all public comments filed during the DEIS stage, the Agency or Applicant must prepare a [Final EIS](#) (FEIS). The FEIS must respond in a point-by-point manner to all comments from the draft and must be included in the FEIS. See here for [style](#) concerns. For Applicant projects, the Approving Agency is authorized to accept the FEIS. For an Agency project, the Governor or the Mayor (or their designated representative) is the Accepting Authority. Only after the FEIS is accepted may the project be implemented.

Acceptability

If the FEIS is [accepted](#), notice of this action is published in this bulletin. The public has 60 days from the date of notice of acceptance to ask a court to vacate the acceptance of a FEIS. For Applicant actions, the Approving Agency must make a determination on acceptance within 30 days of receipt of the FEIS or the FEIS is deemed accepted. For Applicant actions, the law provides for an administrative appeal of a non-acceptance to the Environmental Council.

National Environmental Policy Act

The [National Environmental Policy Act](#) (NEPA) requires federal projects to prepare an EA or EIS. In many ways it is similar to Hawaii's law. Some projects require both a State and Federal EIS and the public comment procedure should be [coordinated](#). OEQC publishes NEPA notices in this bulletin to help keep the public informed of important federal actions.

Conservation District

Any use of land in the State Conservation District requires a Conservation District Use Application (CDUA). These applications are reviewed and approved by the Board of Land and Natural Resources. Members of the public may intervene in the permit process. Notice of permit applications are published in this bulletin.

Special Management Area and Shoreline Setback Area

The Special Management Area (SMA) is along the coastline of all islands and development in this area is generally regulated by [HRS 205A](#), and [county ordinance](#). A special subset of the SMA that is regulated by HRS 343, is the [Shoreline Setback Area](#). Most development in this area requires a Special Management Permit. This bulletin posts notice of these SMA applications to encourage public input.

Shoreline Certifications

State law requires that Hawaii shorelines be surveyed and certified when necessary to clearly establish the shoreline setback from the certified shoreline. The public may participate in the process to help assure accurate regulatory boundaries. Private land owners often petition to have their shoreline certified by the State surveyor prior to construction. This bulletin publishes notice from the Department of Land and Natural Resources of shoreline certification applicants and final certifications or rejections.

Environmental Council

The [Environmental Council](#) is a 15-member citizen board appointed by the Governor. They serve as a liaison between the Director of OEQC and the general public concerning ecology and environmental quality. The Council makes the rules that govern the Environmental Impact Statement process (HRS 343). [Agendas](#) of their regular meetings are posted on the Internet and the public is invited to attend.

Exemption Lists

Government agencies must keep a list describing the minor activities they regularly perform that are [exempt](#) from the environmental review process. These lists and any amendments shall be submitted to the Council for review and concurrence ([HAR §11-200-8\(d\)](#)). This bulletin will publish an agency's draft exemption list for public comment prior to Council decision making, as well as notice of the Council's decision on the list.

Endangered Species

This bulletin is required by [HRS §343-3\(c\)](#), to publish notice of public comment periods or public hearings for Habitat Conservation Plans (HCP), Safe Harbor Agreements (SHA), or Incidental Take Licenses (ITL) under the federal Endangered Species Act, as well as availability for public inspection of a proposed HCP or SHA, or a proposed ITL (as a part of an HCP or SHA).