Both SB 2177 and SB 2184 would amend provisions regarding geothermal resource subzones and permits for geothermal projects in the recently adopted Section 205-5.1 of Hawaii Revised Statutes. This statement on the bills does not reflect an institutional position of the University of Hawaii.

SB 2184 and SB 2177 are very similar bills primarily concerned with the division of responsibilities between the State and counties with respect to the issuance of permits and development of geothermal resources.

SB 2184 would delete the term "distribution" (page 1, line 15) from the list of activities that can be carried out only in a geothermal resource subzone. The deletion is appropriate, because the distribution of the electrical energy produced from geothermal resources must extend beyond the geothermal resource zones.

SB 2184 contains a "grandfather clause" for geothermal mining leases in agricultural, rural, and urban districts approved prior to June 14, 1983. We are uncertain whether all of the leases so far granted cover both exploration and development, or whether some of them cover exploration alone. If leases do not yet cover development, we would urge that provision be made that developments not be permitted on them without prior assessment of their environmental impacts.

Each bill would include in a new subsection (e) a list of matters to be taken into account by the counties in granting permits for geothermal exploration and development. However, SB 2177 would merely require that the counties consider whether the geothermal activities "have unreasonable adverse effects on surrounding properties" or would "unreasonably burden" the infrastructure, and whether there are "reasonable measures available to mitigate the undesirable impacts. SB 2184 would mandate the
counties to grant the permits unless they find "by a clear preponderance of the evidence that the undesirable impacts will occur and that there are no reasonable measures available to mitigate them. Because in many cases it will be difficult to prove that the undesirable impacts will occur, no matter how probable they may be, and it will be impossible to prove that there are no measures that might mitigate the effects, the burden of the proof that would be required by SB 2184 for a county to deny a permit seems unreasonable.

In its provisions regarding county powers to permit geothermal development in agricultural, rural, and urban districts in subsection (c) of HRS 205-5.1, SB 2177 includes, underlined as if an addition, the sentence. "Chapters 183, 205A, 226, and 343 shall apply as appropriate." That sentence would not be an addition because it is in the present law, as indicated in SB 2184. We call to attention the fact that HRS 343, the Environmental Impact Statement Law, is applicable to actions in the agricultural, rural, and urban districts only under special circumstance, for example those proposed in historic sites. We consider the potential environmental impacts of geothermal developments in all land use districts so significant as to justify the applicability of HRS 343 to all proposed geothermal developments.

Both bills introduce new permit terminology, and it is not clear in either bill whether or not it is intended that more than one type of permit be required for certain potential projects.

For a geothermal project in the conservation district, SB 2177 would require a "conservation district use permit" (page 4, lines 13-14) such as is required under present law. However, SB 2184 would require for such a project a "geothermal resource permit" (page 4, line 15). Would this be in addition to the conservation district use permit?

For a geothermal project in an agricultural, rural, or urban district, both bills would provide that a "special use permit under Section 205-6" (applying to agricultural and rural districts) would not be required (SB 2177, page 3, lines 6-7; SB 2184, page 3, line 8). However, they would require issuance of what is called in one place a "special use permit" (SB 2177, page 5, lines 2-3); in other places a "geothermal resource permit" (SB 2177, page 3, line 21; SB 2177, page 6, line 1; SB 2184, page 3, line 23); and in still another place a "geothermal use permit" (SB 2184, lines 4-5). The permit terminology should be consistent.
March 7, 1984

Senator James Aki, Chairman
Senate Committee on
   Economic Development
State Capitol, Room 216
Honolulu, Hawaii 96813

Dear Senator Aki:

SB 2177 and SB 2184

We were, regrettably unable to complete a review of SB 2177 and SB 2184, both relating to geothermal energy, which were considered by your committee yesterday afternoon. We are, however, submitting a statement on the bills that, I hope, will be of use to the committee.

Yours very truly,

[Signature]

Doak C. Cox
Director

Enclosures