JOHN WAIHEE



BRIAN J. J. CHÓY Director

STATE OF HAWAII

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
220 SOUTH KING STREET
FOURTH FLOOR
LAND DEVELOPMENT

HONOLULU, HAWAII 96813

TELEPHONE (808) 586-4186

June 29, 1992

The Honorable William Paty, Director Department of Land and Natural Resources Kalanimoku Building 1151 Punchbowl Street Honolulu, Hi 96813

Dear Honorable William Paty:

RE:

Environmental Impact Statement (EIS) Review Process Changes to Implement Act 241, Session Laws of Hawaii (SLH) 1992 (House Bill 3946)

Act 241 SLH 1992, was signed by the Governor on June 17, 1992, and became effective on that date. All environmental assessments received with letters of determination dated <u>after</u> June 17, 1992, will be subject to this Act.

The Act changes the EIS review process in the following ways:

Environmental assessments (EA), for which a negative declaration is anticipated, will
now undergo a formal 30-day review period before a determination is made by an
agency and published in the OEQC Bulletin. The OEQC Bulletin will have a new section
titled, "Draft Environmental Assessments," which will appear before the current
negative declarations section.

Note: This new comment period <u>does not</u> replace the "early assessment" consultation mentioned in §11-200-9 Hawaii Administrative Rules.

- 2. The public and other agencies will have the opportunity to comment on a draft EA before a final determination is made. The applicant or agency must respond in writing to comments postmarked within the 30-day review period. The agency must then prepare a final EA which includes comments and responses. If appropriate, the text of the EA should be revised. The agency must then determine whether the final EA will result in either a negative declaration or an EIS preparation notice.
- 3. The former 60-day period to initiate judicial proceedings concerning a negative declaration determination has been reduced to 30 days from the date of the OEQC Bulletin in which the final determination is published.

June 29, 1992 Page 2

If appropriate, you should consider changing your agency's administrative rules to accommodate Act 241, SLH 1992.

Please review the enclosed Act 241, SLH 1992 and Guidelines for implementing Act 241 (please circulate this information among your staff). OEQC staff will be happy to assist agencies and applicants in understanding these changes to the EIS process. If you have any questions, please call us at 586-4185. Thank you for your cooperation.

Sincerely,

Brian My Chry

Brian J. J. Choy

Director

Enclosure: Act 241, SLH 1992

Guidelines for Implementing Act 241, SLH 1992

c: Aquaculture Development Program
Aquatic Resources
Conservation and Environmental Affairs
Conservation and Resources Enforcement
Conveyances
Forestry and Wildlife
Historic Preservation Program
Land Management
State Parks

-Water and Land Development

ACT 24 1 H.B. NO.

3946 H.D. 2 S.D. 1 C.D. 1

A BILL FOR AN ACT

192 JUN 25 ATO 123

RELATING TO ENVIRONMENTAL IMPACT STATEMENTS. $\mathbb{F}_{\mathbb{Q}}^{\mathbb{Z}}$

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Section 343-3, Hawaii Revised Statutes, is 2 amended to read as follows:
- "\$343-3 Public records and notice. All statements,

 4 environmental assessments, and other documents prepared under

 5 this chapter shall be made available for inspection by the public

 6 during established office hours.
- The office shall inform the public of notices filed by

 8 agencies of the availability of environmental assessments for

 9 review and comments, of determinations that statements are

 10 required or not required, of the availability of statements for

 11 review and comments, and of the acceptance or nonacceptance of

 12 statements. The office shall inform the public by the

 13 publication of a periodic bulletin to be available to persons

 14 requesting this information. The bulletin shall be available

 15 through the office and public libraries."
- 16 SECTION 2. Section 343-5, Hawaii Revised Statutes, is 17 amended by amending subsections (b) and (c) to read as follows:
- 18 "(b) Whenever an agency proposes an action in subsection 19 (a), other than feasibility or planning studies for possible

S.D. 1

1 future programs or projects which the agency has not approved, 2 adopted, or funded, or other than the use of state or county 3 funds for the acquisition of unimproved real property, which is 4 not a specific type of action declared exempt under section 5343-6, that agency shall prepare an environmental assessment for 6 such action at the earliest practicable time to determine whether 7 an environmental impact statement shall be required. For 8 environmental assessments for which a negative declaration is 9 anticipated, a draft_environmental assessment shall be made 10 available for public review and comment for a period of thirty 11 days. The office shall inform the public of the availability of 12 the draft environmental assessment for public review and comments 13 pursuant to section 343-3. The agency shall respond in writing 14 to comments received during the review and prepare a final 15 environmental assessment to determine whether an environmental 16 impact statement shall be required. A statement shall be 17 required if the agency finds that the proposed action may have a 18 significant effect on the environment. The agency shall file 19 notice of such determination with the office which, in turn, 20 shall publish the agency determination for the public's 21 information pursuant to section 343-3. The draft and final 22 statements, if required, shall be prepared by the agency and · 23 submitted to the office. The draft statement shall be made

H.D. 2 S.D. 1 C.D. 1

1 available for public review and comment through the office for a 2 period of forty-five days. The office shall inform the public of 3 the availability of the draft statement for public review and 4 comments pursuant to section 343-3. The agency shall respond in 5 writing to comments received during the review and prepare a 6 final statement. The office, when requested by the agency, may 7 make a recommendation as to the acceptability of the final 8 statement. The final authority to accept a final statement shall 9 rest with:

- 10 (1) The governor, or the governor's authorized

 11 representative, whenever an action proposes the use of

 12 state lands or the use of state funds or, whenever a

 13 state agency proposes an action within the categories in

 14 subsection (a); or
- 15 (2) The mayor, or the mayor's authorized representative, of 16 the respective county whenever an action proposes only 17 the use of county lands or county funds.
- Acceptance of a required final statement shall be a

 19 condition precedent to implementation of the proposed action.

 20 Upon acceptance or nonacceptance of the final statement, the

 21 governor or mayor, or the governor's or mayor's authorized

 22 representative, shall file notice of such determination with the

 23 office. The office, in turn, shall publish the determination of

1 acceptance or nonacceptance pursuant to section 343-3.

(c) Whenever an applicant proposes an action specified by 3 subsection (a) which requires approval of an agency, and which is 4 not a specific type of action declared exempt under section 5 343-6, the agency receiving the request for approval shall 6 prepare an environmental assessment of such proposed action at 7 the earliest practicable time to determine whether an 8 environmental impact statement shall be required. For 9 environmental assessments for which a negative declaration is 10 anticipated, a draft environmental assessment shall be made 11 available for public review and comment for a period of thirty 12 days. The office shall inform the public of the availability of 13 the draft environmental assessment for public review and comments 14 pursuant to section 343-3. The applicant shall respond in 15 writing to comments received during the review and the agency 16 shall prepare a final environmental assessment to determine 17 whether an environmental impact statement shall be required. A 18 statement shall be required if the agency finds that the proposed 19 action may have a significant effect on the environment. The 20 agency shall file notice of such determination with the office 21 which, in turn, shall publish the agency's determination for the 22 public's information pursuant to section 343-3. The draft and 23 final statements, if required, shall be prepared by the

S.D. 1 C.D. 1

1 applicant, who shall file these statements with the office. 2 draft statement shall be made available for public review and 3 comments through the office for a period of forty-five days. 4 office shall inform the public of the availability of the draft 5 statement for public review and comments pursuant to section 6343-3. The applicant shall respond in writing to comments 7 received during the review and prepare a final statement. 8 office, when requested by the applicant or agency, may make a 9 recommendation as to the acceptability of the final statement. 10 The authority to accept a final statement shall rest with the 11 agency receiving the request for approval. Acceptance of a 12 required final statement shall be a condition precedent to 13 approval of the request and commencement of proposed action. 14 Upon acceptance or nonacceptance of the final statement, the 15 agency shall file notice of such determination with the office. 16 The office, in turn, shall publish the determination of 17 acceptance or nonacceptance of the final statement as pursuant to 18 section 343-3. The agency receiving the request, within thirty-19 days of receipt of the final statement, shall notify the 20 applicant and the office of the acceptance or nonacceptance of 21 the final statement. The final statement shall be deemed to be 22 accepted if the agency fails to accept or not accept the final 23 statement within thirty days after receipt of the final

1 statement; provided that the thirty-day period may be extended at 2 the request of the applicant for a period not to exceed fifteen 3 days.

In any acceptance or nonacceptance, the agency shall provide 5 the applicant with the specific findings and reasons for its 6 determination. An applicant, within sixty days after 7 nonacceptance of a final statement by an agency, may appeal the 8 nonacceptance to the environmental council, which, within thirty 9 days of receipt of the appeal, shall notify the applicant of the 10 council's determination. In any affirmation or reversal of an 11 appealed nonacceptance, the council shall provide the applicant 12 and agency with specific findings and reasons for its 13 determination. The agency shall abide by the council's 14 decision."

15 SECTION 3. Section 343-7, Hawaii Revised Statutes, is 16 amended by amending subsection (b) to read as follows:

18 determination that a statement is [or is not] required for a
19 proposed action, shall be initiated within sixty days after the
20 public has been informed of such determination pursuant to
21 section 343-3. Any judicial proceeding, the subject of which is
22 the determination that a statement is not required for a proposed
23 action, shall be initiated within thirty days after the public

H.B. NO. 3946 H.D. 2 S.D. 1 C.D. 1

- 1 has been informed of such determination pursuant to section
- 2343-3. The council or the applicant shall be adjudged an
- 3 aggrieved party for the purposes of bringing judicial action
- 4 under this subsection. Others, by court action, may be adjudged 5 aggrieved.
- 6 SECTION 4. Statutory material to be repealed is bracketed.
 7 New statutory material is underscored.
- 8 SECTION 5. This Act shall take effect upon its approval.

GOVERNOR ON
UJN 1 7 1992

GUIDELINES FOR IMPLEMENTING ACT 241, SLH 1992 RELATING TO ENVIRONMENTAL ASSESSMENTS

The following guidelines apply to all Environmental Assessments (EA) for which a negative declaration determination is anticipated.

- 1) Submit draft EA to OEQC with the following:
 - Letter stating that a negative declaration is anticipated and that you want notice of the draft EA published in the Bulletin.
 - 4 copies of the draft EA (same number as before)
 - Document for Publication Form (will be revised use same form for now)
- The 30 day comment period begins when notice of availability of the draft EA is published in the OEQC Bulletin. The agency must respond to all comment letters received. Once the 30 days have passed, the agency must include all comment letters and their responses in the final EA. If appropriate, the text of the EA should be revised.
- 3) Submit final EA and determination to OEQC with the following:
 - Letter of determination (negative declaration or EIS preparation notice)
 - 4 copies of the final EA
 - Document for Publication Form
- 4) A 30-day period to initiate litigation will begin once the final EA determination of a negative declaration is published in the OEQC Bulletin.

OEQC will be revising the "Guidebook for the Hawaii State Environmental Review Process," to reflect the changes brought about by Act 241. If you have any questions, please call the OEQC staff at 586-4185. We appreciate your cooperation.

•		DIVISION OF WATER AND L	AND DEVELOPMENT (1		
FROM:	50-	DATE: 6/19/92	FILE IN:	NEPA	€15	<u>'</u>
, to:	<u>INIT</u> :	PLEASE:	REMARKS:			
	M. TAGOMORI L. Nanbu G. Akita L. Chang E. Lau	See Me Call Review & Comment Take Action Investigate & Report		la ga Nev	rta rew-	agy
	A. Monden H. Young T. Kam G. Miyashiro D. Hee	Draft Reply Acknowledge Receipt Type Draft Type Final Xerox copies	Carried VI File 14 Vasol		see i	haw
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NOTICE

HAWAII GEOTHERMAL PROJECT ENVIRONMENTAL IMPACT STATEMENT (HGP EIS)

The U.S. Department of Energy held 10 scoping meetings in five locations in Hawaii during March 1992 to obtain comments from the public to assist in preparing the HGP EIS. With this notice, the Department of Energy is advising you that transcripts of the scoping meetings are available at each of the 22 HGP EIS reading rooms located in Hawaii and two reading rooms in the continental United States. The address(es) of the reading room(s) closest to your locale is (are) listed below. If you have any questions, please contact:

Dr. Lloyd F. Lewis, CE-121
HGP EIS Program Director
U.S. Department of Energy
Office of Conservation and Renewable Energy
1000 Independence Avenue, S.W.
Washington, DC 20585
Telephone: 202/586-6263
Facsimile: 202/586-8134

JUN 19 A 7: 20
DIV. OF WATER &
AND DEVELOPMENT

<u>Hawaii</u>

Hawaii Energy Extension Service Hawaii Business Center 99 Aupuni Street, Room 214 Hilo, HI 96720 Telephone: (808) 933-4558

Hilo Public Library 300 Waianuenue Avenue Hilo, HI 96721-0647 Telephone: (808) 935-5407

Kailua-Kona Public Library 75-138 Hualalai Road Kailua-Kona, HI 96740 Telephone: (808) 329-2196

Mountain View Public and School Library Highway 11 Mountain View, HI 96771 Telephone: (808) 968-6300

Pahala Public and School Library Pakalana Street Pahala, HI 96777 Telephone: (808) 928-8032

Pahoa Public and School Library 15-3038 Puna Road Pahoa, HI 96778 Telephone: (808) 965-8574

State of Hawaii
Dept. of Business, Economic
Development & Tourism
Hilo Office
99 Aupuni Street, Room 212
Hilo, HI 96720
Telephone: (808) 933-4600

Kauai

Kauai Office of Economic Development 4444 Rice Street, Suite 230 Lihue, HI 96766 Telephone: (808) 245-7305

Lihue Public Library 4391-A Rice Street Lihue, HI 96766 Telephone: (808) 245-3617

Maui

Hana Public and School Library Hana Highway Hana, HI 96713 Telephone: (808) 248-7714

Kahului Public Library 90 School Street Kahului, HI 96732 Telephone: (808) 877-5048

Maui Energy Extension Service 200 South High Street Wailuku, HI 96793 Telephone: (808) 243-7832

Molokai

Molokai Public Library Ala Maloma Street Kaunakakai, HI 96748 Telephone: (808) 553-5483 <u>Oahu</u>

Kahuku Public and School Library 56490 Kam Highway Kahuku, HI 96731 Telephone: (808) 293-9275

Pearl City Public Library 1138 Waimano Home Road Pearl City, HI 96782 Telephone: (808) 455-4134

State of Hawaii
Dept. of Business, Economic
Development & Tourism
Energy Division, Publications Section
335 Merchant Street, Room 110
Honolulu, HI 96813
Telephone: (808) 547-3800

State of Hawaii
Dept. of Business, Economic
Development & Tourism
Geothermal Office
Financial Plaza of the Pacific
130 Merchant Street, Suite 1060
Honolulu, HI 96813
Telephone: (808) 587-3812

Hawaii State Library Hawaii Document Center Unit 634 Pensacola Street Honolulu, HI 96814 Telephone: (808) 586-3535 Oahu

State of Hawaii
Dept. of Business, Economic
Development & Tourism Library
220 South King Street, 4th Floor
Honolulu, HI 96804
Telephone: (808) 586-2425

U.S. Department of Energy Pacific Site Office Prince Kuhio Building 300 Ala Moana Blvd., Room 4322 Honolulu, HI 96813 Telephone: (808) 541-2563

Waimanalo Public and School Library 41-1320 Kalanianaole Highway Waimanalo, HI 96795 Telephone: (808) 259-9925

Mainland

U.S. Department of Energy Freedom of Information Public Reading Room Room 1E 190 1000 Independence Ave., SW Washington, DC 20585 Telephone: (202) 586-6020

U.S. Department of Energy San Francisco Field Office Public Reading Room 1333 Broadway Oakland, CA 94612 Telephone: (510) 273-4428

OAK RIDGE NATIONAL LABORATORY Operated by Martin Marietta Energy Systems, Inc. Post Office Box 2008 Oak Ridge, Tennessee 37831

Sender: A.K. Wolfe

4500N, MS6206, H-7



Dept. of Land and Natural Resources (DLNR) 1151 Punchbowl Street Honolulu, HI 96813

OAMAGED IN HANDENG Manabu Tagomori, Deputy Director
IN THE POSTAL SERVICE

FROM: TO: INIT:	DIVISION OF WATER AND LAM DATE:	DEVELOPMENT FILE IN: REMARKS:	NEPA EIS
M. TAGOMORI L. Nanbu G. Akita L. Chang E. Lau A. Monden H. Young T. Kam G. Miyashiro D. Lee	See Me Call Review & Comment Take Action Investigate & Report Draft Reply Acknowledge Receipt Type Draft Type Final Xerox copies File		
R. LOUI S. Kokubun	FOR YOUR: Approval Signature Information		



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

JOHN WAIHEE
GOVERNOT
MURRAY E. TOWILL
Director
BARBARA KIM STANTON
Deputy Director
RICK EGGED
Deputy Director
TAKESHI YOSHIHARA
Deputy Director

Central Pacific Plaza, 220 South King Street, 11th Floor, Honolulu, Hawaii
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804 Telephone: (808) 586-2406 Fax: (808) 586-2377

March 13, 1992

MEMORANDUM

T0:

The Honorable John Waihee

Governor, State of Hawaii

FROM:

Murray E. Towill

SUBJECT:

NEPA Environmental Impact Statement (EIS) for the Geothermal/Cable

Development Project

As a follow-up to the subject of the NEPA EIS and DBED's recommendation related to the State's participation in the EIS preparation, I have prepared the following memorandum confirming our recent discussion and your approval to proceed.

In January 1992 the Secretary of Energy denied the State's request made to the U.S. Department of Energy (DOE) seeking: (1) designation of the State of Hawaii as a Co-Lead Agency in the EIS preparation; and (2) a judicial redefinition of the large-scale (500 MW) geothermal/cable project defined by the U.S. District Court, to reflect the State's current policy regarding development of a smaller geothermal project to first satisfy the energy needs of the Big Island.

Subsequently, the U.S. DOE in its letter of February 5, 1992, invited the State of Hawaii to participate as a Cooperating Agency in the preparation of a NEPA EIS for a prospective large-scale geothermal/cable project in Hawaii. The letter also indicated that the U.S. DOE was agreeable to preparing an EIS that would fulfill both Federal and State (Chapter 343, HRS) EIS requirements.

The Federal NEPA Regulations (40 CFR 1500-1508) indicate that a Co-Lead Agency or a Cooperating Agency are the only two roles that could be offerred to a State agency relating to the preparation of a NEPA EIS. These regulations also give some definition as to the role of "Cooperating Agency" which, depending upon the direction of the Lead Agency, could be an active or passive role.

Memo to Governor Waihee March 13, 1992 Page Two

After several meetings with our Deputy Attorney General discussing the State's potential role in the NEPA EIS preparation, and in consultation with the Department of Health and the Department of Land & Natural Resources, I recommended that the State accept Cooperating Agency status, with DBED designated as the lead agency responsible for coordination. The State's cooperative agency role would enhance our ability to provide significant input into the EIS preparation and would be further strengthened upon the acceptance of a detailed Memorandum of Agreement by both the State and U.S. DOE.

It was further recommended that an independent NEPA EIS document be prepared and not a joint EIS that satisfies both State and Federal EIS requirements. This recommendation was based on our concern that the preparation of a joint Federal and State EIS addressing a large-scale geothermal/cable project could possibly conflict with our present policy to assist the development of geothermal to serve the Island of Hawaii. I am particularly interested in ensuring that already permitted geothermal activities are not affected by any Federal actions.

The Counties of Hawaii and Maui have also been offerred Cooperating Agency status. Preliminary discussions have indicated that the Counties will be accepting a Cooperating Agency role.

Based on the results of our discussion and your approval to proceed, I will be initiating the appropriate steps necessary to implement the above recommendations related to the Federal EIS and the State's cooperative participation.

MET/DAN:js:324

cc: Dr. Joshua Agsalud
Hon. William W. Paty
Hon. John C. Lewin, M.D.
Hon. Warren Price III
Hon. Harold Masumoto
Hon. Rex Johnson
Brian Choy, OEQC

DIVISION OF WATER RESOURCE MANAGEMENT FILE IN: __ FROM: TO: **INITIAL:** PLEASE: **REMARKS:** G. AKITA _ See Me _ L. Nanbu _ Take Action By_ fle NEPA EIS Route to Your Branch Review & Comment E. Sakoda _ G. Matsumoto _ Draft Reply_ \frac{1}{2} _ E. Lau Acknowledge Receipt L. Chang Xerox copies Y. Shiroma File Mail FOR YOUR: Approval Signature

Information

M. TAGOMORI S. Kokubun

MARTINIMARIETTA

Mm

Internal Correspondence

MARTIN MARIETTA ENERGY SYSTEMS, INC.

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February 24, 1992

To Whom It May Concern:

Hawaii Geothermal Project EIS/Notice of Intent

The enclosed, page 19, was missing from the Notice of Intent mailed to you earlier. We regret this oversight and any inconvenience it may have caused.

Amy Wolfe Project Leader

AKW:CRB:law

Enclosure

Andrea W. Campbell, DOE-OR Dr. Lloyd F. Lewis, DOE File-RC U.S. Department of Energy San Francisco Field Office Public Reading Room 1333 Broadway Oakland, CA 94612 Contact: Ms. Estella Angel

Telephone: (510) 273-4428

FTS: 536-4428

Waimanalo Public and School Library 41-1320 Kalanianaole Highway Waimanalo, Hawaii 96795 Contact: Nina O'Donnell

Telephone: (808) 259-9925 Fax: (808) 259-8209

Signed in Washington. D.C. this // day of _____, 1992, for the U.S. Department of Energy.

Paul L. Ziemer Assistant Secretary

Environment, Safety and Health

LIVISION OF WATER AND LAND DEVELOP. NT

FROM	:	DATE:	_ FILE IN:	
<u>TO</u> :	INIT:	PLEASE:	REMARKS:	
	G. Akita L. Chang E. Lau A. Monden H. Young T. Kam G. Miyashiro D. Lee	See Me Call Review & Comment Take Action Investigate & Report Draft Reply Acknowledge Receipt Type Draft Type Final Xerox copies	file	"NEPA EIS" Cabinet 4 File #5
		FOR YOUR:		
_	M. TAGOMORI L. Nanbu	Expproval Signature Information		



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

JOHN WAIHER
GOVERNOR
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Director
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March 13, 1992

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Hon. John C. Lewin, M.D.

Hon. Warren Price III Hon. Harold Masumoto

Hon. Rex Johnson Brian Choy, OEQC