Councilman Wanyne Nishiki  
County Council  
200 S. High Street  
Wailuku, Maui, Hawaii 96793  

Dear Councilman Nishiki,

Thank you for your letter of August 4, 1989 expressing concerns regarding the State's handling of various matters pertaining to development of our geothermal resources.

Regarding the proposed administrative rules for geothermal permitting, the Department of Land and Natural Resources reviewed all of the comments received at the public hearings held June 21, 1989, and 15 days afterwards in accordance with law. Changes were made in the proposed rules to address a number of these concerns. However, the changes which were reviewed by the Attorney General's office were deemed of such a nature as to not require conducting a second round of public hearings.

Regarding rules for air quality standards for geothermal wells and facilities, the Department of Health indicates that they are scheduled for adoption later this year. In the meantime, the Department of Health has existing Administrative Rules, Title 11, Chapter 59, "Ambient Air Quality Standards" and Chapter 60, "Air Pollution Control" with which to properly regulate currently proposed geothermal activities.

Under the existing rules, the Director of Health has decided that a public hearing on the air quality permit for True/Mid Pacific geothermal wells would not provide any additional information than that which is already in hand. The project is limited to the drilling and testing of exploratory wells which will only require temporary release of air emissions. It should be emphasized that this project has already gone through a 30-day public comment period. On the other hand, the Department of Health will be holding a public hearing on the Puna Geothermal Venture (Ormat) project proposal for the development of geothermal energy which includes the construction and operation of geothermal wells and a power plant.

I share your interest and concern regarding geothermal matters and thank you for taking the time to write.

Sincerely yours,

JOHN WAIHEE  
Governor
FACSIMILE TRANSMITTAL PAGE

Please deliver the following pages to:

Name: JANET SWIFT
Company: GEORGE ROBERT CLAY
From: DAL LUV
Date: 8/28/89   Time: 11:15 AM
Message:

Reminder to draft #4 of Miki's letter.
Please make a note...

Total number of pages (including Transmittal Page): 2

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TRANSMISSION REPORT

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Please deliver the following pages to:

Name: JANET SWIFT

Company: GEOTH. PERMIT CTR

From: JOHN LUM

Date: 8/28/89 Time: 11:15 am

Message: Revisions to Draft #4 of Nishiki's letter.
Ph's have mail, retype.

Total number of pages (including Transmittal Page): 2

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If you do not receive all of the pages legibly, please call back: (808) 548-7443

Sending Facsimile Number: (808) 548-6052
Receiving Facsimile Number: (808) 548-6233
Councilmember Wayne K. Nishiki
County Council
200 S. High Street
Wailuku, Maui, Hawaii 96793

Dear Councilman Nishiki,

Thank you for your letter of August 4, 1989 expressing concerns regarding the State's handling of various matters pertaining to development of our geothermal resources.

In the case of the proposed administrative rules for geothermal permitting, the department considered and analyzed all of the comments received at the public hearing held June 21, 1989, and has made substantial revisions. The revisions were made to address a number of concerns. The changes were written in such a manner as to require conducting a second public hearing.

The Department of Health estimates that rules for air quality standards for geothermal wells and facilities will be finalized and published later this year. In the meantime, the Department's rules are the existing Hawaii Administrative Rules, Title 11, Chapter 59, "Ambient Air Quality Standards" and Chapter 60, "Air Pollution Control" which have appropriate provisions to properly permit and regulate currently proposed geothermal activities.

Under the existing rules, the Director of Health has decided that a public hearing on the air quality permit for True/Mid Pacific geothermal wells would not provide any additional information that would result in further changes to the permit. The project is limited to the drilling of two exploratory development wells and will result in only a temporary release of air emissions. It should be emphasized that this project has already gone through a 30-day public comment period. The Department will be holding a public hearing on the Puna Geothermal Venture's Mauna Ulu proposed project which consists not only of the development of the geothermal wells but also of the power plant.

If you have any further questions or concerns on the geothermal and cable system development permitting rules, please contact Mr. Manabu Tawomori of the Division of Water and Land Development at 548-7533. On air quality standards, please call Dr. Bruce Anderson at the Environmental and Health Services Division at 548-4435.

Sincerely yours,

John Waihee
Governor
Facsimile Transmittal

GEOTHERMAL/CABLE PERMIT CENTER
GOLD BOND BUILDING
677 ALA MOANA BOULEVARD #509
HONOLULU, HAWAII 96813

TELEFAX: (808) 548-6233

MESSAGE #: 45
TIME: 2:30 pm
DATE: 8/25/99

TO: Hanabu/Dan/Dean

ATTN:

FROM: Janet Swift

MESSAGE: Draft #4 Gov's referral letter to Counselor Nishiki

Total number of pages (including Transmittal Page): 2

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PHONE: (808) 548-7443
Councilmember Wayne K. Nishiki  
County Council  
200 S. High Street  
Wailuku, Maui, Hawaii 96793

Dear Councilman Nishiki,

Thank you for your letter of August 4, 1989 expressing concerns regarding the State's handling of various matters pertaining to development of our geothermal resources.

In the case of the proposed administrative rules for geothermal permitting, the Department considered and reviewed all of the comments received at the public hearings held June 21, 1989, and the opportunity for the public to comment on the changes made in the proposed rules to address a number of these concerns. The changes were made of such a nature as to require conducting a second public hearing.

The Department of Health estimates that rules for air quality standards for geothermal wells and facilities will be finalized and promulgated later this year. In the meantime, the Department has adopted the existing Hawaii Administrative Rules, Title 11, Chapter 59, "Ambient Air Quality Standards" and Chapter 60, "Air Pollution Control," with appropriate provisions to properly permit and regulate currently proposed geothermal activities.

Under the existing rules, the Department of Health has decided that a public hearing on the air quality permit for True/Hi Pacific geothermal wells would not provide any additional information that would result in further changes to the permit. The project is to include the drilling of one exploratory development well which will result in only a temporary release of air emissions. It should be emphasized that this project was already through a 30-day public comment period. The Department will be holding a public hearing on the Puna Geothermal Ventures geothermal development project which consists not only of the development of the geothermal wells, but also of the power plant.

If you have any further questions or concerns on the geothermal and cable system development permitting rules, please contact Mr. Manabu Tagomi of the Division of Water and Land Development at 548-7533. For air quality standards, please call Dr. Bruce Anderson at the Environmental and Health Services Division at 548-4139.

Sincerely yours,

John Waihee  
Governor
DIVISION OF WATER RESOURCE MANAGEMENT

FROM:___ M. TAGOMORI

TO: INITIAL:

PLEASE:

- See Me
- Take Action By
- Route to Your Branch
- Review & Comment
- Draft Reply
- Acknowledge Receipt
- Xerox ___ copies
- File
- Mail
- For Information

S. Kokubun
D. Hamada
L. Nanbu
F. Ching

REMARKS:

Governor's approval
Draft #3
Councilmember Wayne K. Nishiki
County Council
200 S. High Street
Wailuku, Maui, Hawaii 96793

Dear Councilman Nishiki,

Thank you for your letter of August 4, 1989 expressing concerns regarding the State’s handling various matters pertaining to development of our geothermal resources.

First, regarding the administrative rules, the administrative statute, chapter 91, Hawaii Revised Statutes, governed our Department of Land and Natural Resources’ procedures in developing the administrative rules for implementing chapter 196D, Hawaii Revised Statutes. The administrative statute provides the framework for newspaper notices, public hearings, and so forth.

The matters of which comments to include in the rules and which not to include, and whether or not changes are of such a substantive nature that a subsequent public hearing is required are matters worked out by the department in consultation with the Department of the Attorney General within the framework of Chapter 91.

In the case of the administrative rules, the department considered and analysed all of the comments received. Some changes were made in the proposed rules to address a number of these concerns. Staff contacted several of the principals or staff of those offering substantive comments to let them know how their concerns had been addressed. The changes were primarily by way of clarifying an earlier version of the proposed rules, and were not of such a nature as to require conducting a second public hearing.

Second, regarding your concern about the air quality standards, the Department of Health estimates that the geothermal rules will be finalized and promulgated later this year. In the meanwhile, the Department does have the existing Hawaii Administrative Rules, Title 11, Chapter 59, “Ambient Air Quality Standards” and Chapter 60, “Air Pollution Control”. Although not written to specifically address the geothermal industry, the existing rules have appropriate provisions to properly permit and regulate the proposed geothermal activities.

As far as public hearings are concerned, the Director of Health has decided that a public hearing on the air quality permit for True/Mid Pacific geothermal wells would not provide any additional information that would result in further changes to the permit. The project is only for the drilling of the exploratory/development wells and will result in only a temporary release of air emissions. It should be emphasized that this
project has already gone through a 30-day public comment period. The Department will be holding a public hearing on the Puna Geothermal Venture (Ormat) proposed project which consists not only of the development of the geothermal wells, but also of the power plant.

If you have any further questions or concerns on the geothermal and cable system development permitting rules, please contact Mr. Manabu Tagomori of the Division of Water and Land Development at 548-7533. On air quality standards, please call Dr. Bruce Anderson at the Environmental and Health Services Division at 548-4139.

Sincerely yours,

JOHN WAIHEE
Governor
DIVISION OF WATER RESOURCE MANAGEMENT

FROM: M. TAGOMORI
TO: INITIAL:___

PLEASE:
See Me
Take Action By
Route to Your Branch
Review & Comment
Draft Reply
Acknowledge Receipt
Xerox _____ copies
File
Mail
For Information

REMARKS:

S. Kokubun
D. Hamada
L. Nanbu
F. Ching
MESSAGE: Red draft of Geo's letter in response to Carelmae Nishi's letter re: proposed admin sales of 1960 HRS - this draft includes Nishi Nageurins corrected comments from draft.

Total number of pages (including Transmittal Page): 6

IF YOU DO NOT RECEIVE ALL OF THE PAGES LEGIBLY, PLEASE CALL BACK
PHONE: (908) 548-7443
Councilmember Wayne K. Nishiki
County Council
200 S. High Street
Haleiwa, Oahu, Hawaii 96713

Dear Councilman Nishiki,

Thank you for your letter of August 4, 1989 expressing concerns regarding the State's handling various matters pertaining to development of our geothermal resources.

First, on the matter of developing rules for "streamlining" the permitting process for geothermal development, our Department of Land and Natural Resources followed the procedures required by section 91-3, Hawaii Revised Statutes, as amended by Act 64, Session Laws of Hawaii 1987. Accordingly, newspaper notices of the June 21, 1989 public hearings were published throughout the State thirty days in advance of the hearings. In response to these newspaper notices, many individuals and organizations requested and received copies of the proposed administrative rules. More than a hundred individuals and organizations took the time to attend the public hearings, held simultaneously throughout the state on the evening of June 21, 1989, and about two dozen offered testimony, including several County officials including yourself.

Because of the number of individuals testifying, staff did not respond to each testimony offered. However, each comment was considered and analyzed. Many comments were similar, especially on the areas of concern for "home rule". The comments fell into several categories: comments it was felt should be incorporated into the proposed rules, comments that could not be incorporated into the rules because they contradicted Chapter 15D, Hawaii Revised Statutes (the authorizing legislation), comments that could not be incorporated into the proposed rules because the authority was not provided by Chapter 15D, comments that could not be incorporated into the rules because they complicated the rules by quoting existing statutes unnecessarily, and comments that the department felt would hinder its functions in administering the permitting program.

Staff addressed all of the comments received and went over these in several meetings in-house and with members of our Attorney General's staff.

On July 14, 1989, the Board of Land and Natural Resources deferred action on the revised proposed rules in order to have more time to familiarize themselves with not only the rules but also the comments from County officials and the public regarding the rules. At the next meeting July 28, 1989, the Board met again, and again deferred action so that the public could have some more time to consider the revised rules. At this time the Department sent out more than 200 copies of the revised proposed
rules to those who had expressed interest in the rules in the past, and to other interested parties. Only one response was received between this mailout which took place July 31 and August 1, and the next Board meeting which took place August 11, 1989. This response was from Attorney Cynthia Thielen, representing the Puna Community Council. The department sat down with Ms. Thielen and agreed upon three changes to the proposed rules, proposed by Ms. Thielen to clarify the rules and make them more correctly conform to one of the sections borrowed from the Land Use Commission’s rules. Once this was agreed upon, Ms. Thielen wrote to the Board of Land and Natural Resources on August 10, 1989 to say she had no further problems with the rules.

On August 11, 1989 the Board adopted the rules (which included Attorney Thielen’s three suggested changes). The Board members were confident that there had been enough opportunity by this time for anyone concerned about the rules to have had their concerns considered. They felt, as I do, that there would be nothing to gain and no reason for holding a second public hearing on the rules.

Relating to the questions in your written testimony of June 29, 1989, staff did contact a member of your office to go over in detail each of the points you raised and how it had been addressed in the revised rules. (For that matter, staff called each of the County officials who, like yourself, wrote in such comments. I am sorry that staff’s indication to the Board of Land and Natural Resources that staff had addressed the issues you were concerned about was misconstrued.) To restate the responses we gave your staff on July 27, 1989:

1) "Do Act 301 and the proposed rules take away or limit the authority of County Planning Commissions and/or County Councils to regulate geothermal and cable permitting?" ... "...the question arises of exactly what the permit required by the Act is for and what the interagency team is really trying to accomplish."

DLNR RESPONSE: The Act and the rules provide "The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law..." The department is interpreting this act as providing for a coordination function only, since no authority or jurisdiction is being invalidated or affected.

2) "Under...transfer of functions...does this language attempt to take away the responsibility of Councils in this area?"

DLNR RESPONSE: No. The intent was never to take away any agency’s responsibility since Act 301 does not allow this. The earlier version of the rules attempted for the sake of brevity to paraphrase in part from the statutes referred to in Act 301 and in part from the Land Use Commission rules. This language caused a great deal of confusion and concern, which was reflected in the..."
comments received, so that in the revised version of the rules, entire sections of Land Use Commission language, and language suggested by the Land Use Commission has been substituted for the language in the earlier version.

3) "Under this same section I would like to see the same standards applied here which the state land use commission normally uses in making decisions to reclassify land."

DLNR RESPONSE: This language has been applied in the revised version of the rules.

4) "I would like specific details of what information must be included in the application process...what criteria for determining whether or not someone will receive a permit?"

DLNR RESPONSE: The DLNR will provide an application form that will serve as a check off sheet for the various permit applications that must be applied for. Since no agency’s jurisdiction or authority is to be affected or invalidated, existing agency permits will be used, attached to the DLNR form, which will act as a cover sheet and a check off sheet. The criteria for each agency issuing its own permits will not be affected or invalidated.

5) "Under section 13-185-5, p. 185-7, I would like to know why the rules call for contested case hearings when, to my knowledge, the law now calls for mediation."

DLNR RESPONSE: The wording in this section is taken directly from Act 301, Act, Section 5 (d), and only applies "where the contested case provisions under chapter 91 apply to any one or more of the permits to be issued...". In a permit application where existing statutes, ordinances or rules established pursuant thereto call for mediation, mediation will take place, since no agency’s jurisdiction or authority is to be affected or invalidated by the consolidated permitting process.

6) "Section 13-185-14 needs a clearer statement of what issues can be considered in declaring an impasse so that a County’s Planning Commission can not have its decisions overturned when it has met the requirements of its own ordinance or rules to the best of its ability."

DLNR RESPONSE: The section on conflict resolution is included in the rules because it is a requirement of Act 301 to include a conflict resolution process, even though the act also makes it clear that no agency’s authority or jurisdiction is to be affected or invalidated. In order to carry out the requirement of the law, the rules provide a conflict resolution process for a very limited type of conflict. As defined in the rules, a conflict means a procedural disagreement between or among agencies as a result of conflicting permit, approval, or other requirements, procedures, or agency perspectives, not based on
statute, ordinance, or rule established pursuant thereto, but based on administrative interpretation outside of statutory authority, which does not affect or invalidate the jurisdiction or authority of any agency under existing law." Under these rules, a County's Planning Commission could not have its decisions overturned. The conflict resolution process would only come into play on matters of administrative interpretation such as what color paper to use, where mail will be collected, what type of map should be used - issues that most likely will be able to be resolved at the review team level, without invoking this process.

I hope these responses relieve your concerns about the proposed administrative rules for geothermal and cable system development permitting. I realize that this is an extremely sensitive matter for many of our residents, especially those whose homes are in a geothermal resource subzone, or who are concerned about the environmental impact of geothermal development in pristine areas of our beautiful state. You can be assured that these rules do not usurp the authority of any County or County agency. The safeguards and checks inherent in the various established permitting regimes are not being changed. In characterizing the rules at hand, the word "streamlining" is really not the appropriate word to use, because it implies cutting something out to make things go more smoothly. A better word is "coordinating", since we are not cutting anything out, we are just attempting to allow the various pieces of the permitting puzzle to fit better, for everyone’s advantage, not just for the developer. We will all be going through the public permitting process together, government, developer and public alike, and our permitting rules may at least allow us to coordinate hearings, and review fewer but fatter documents rather than multiple volumes of duplicative documents, in our review of proposed geothermal developments.

Second, regarding your concern about the air quality standards, the Department of Health estimates that the geothermal rules will be finalized and promulgated later this year. In the meanwhile, the Department does have the existing Hawaii Administrative Rules, Title 11, Chapter 59, "Ambient Air Quality Standards" and Chapter 60, "Air Pollution Control". Although not written to specifically address the geothermal industry, the existing rules have appropriate provisions to properly permit and regulate the proposed geothermal activities.

As far as public hearings are concerned, the Director of Health has decided that a public hearing on the air quality permit for True/Mid Pacific geothermal wells would not provide any additional information that would result in further changes to the permit. The project is only for the drilling of the exploratory/development wells and will result in only a temporary release of air emissions. It should be emphasized that this project has already gone through a 30-day public comment period. The Department will be holding a public hearing on the Pune
Geothermal Venture (Ormat) proposed project which consists not only of the development of the geothermal wells, but also of the power plant.

If you have any further questions or concerns on the geothermal and utility system development permitting rules, please contact Mr. Manabu Tagomori of the Division of Water and Land Development at 548-7533. On air quality standards, please call Mr. Bruce Anderson at the Environmental and Health Services Division at 548-4137.

Sincerely yours,

JOHN WAIHEE
Governor