

Director



# SIERRA CLUB, HAWAII CHAPTER

P.O. Box 2577  
Honolulu, HI 96803  
tel: 538.6616

Director: Jeffrey Mikulina  
mikulina@lava.net  
fax: 537.9019

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Gary Gill  
Deputy Director for Environmental Health  
Department of Health  
P.O. Box 3378  
Honolulu, HI 96801

Larry Lau  
Attorney General's Office  
425 Queen St.  
Honolulu, HI 96813

Tim Johns  
Board of Land & Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Virginia Goldstein  
Hawaii County Planning Department  
25 Aupuni St., Room 109  
Hilo, Hawaii 96720

Mr. Robert Yanabu  
Chief Engineer  
Hawaii County Public Works Department  
25 Aupuni St. Room 202  
Hilo, Hawaii 96720

Steve Skipper  
Natural Resource Conservation Service  
Kealahou, HI

Felicia Marcus  
Regional Administrator, Region IX  
Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, California, 94105

RE: SILTATION OF CORAL REEF AND CLASS AA WATERS FROM HOKULIA

Dear officials,

As you already know, living corals were killed and pristine class AA waters fouled by the massive sediment runoff coming from the Oceanside 1250/Hokulia/Hokukano Development on Saturday, September 9. I can't recall a sediment runoff incident so serious in the state in the last ten years. While some government agencies have given us reason for hope, others have not. Please help.

### IMPORTANCE OF ACTING NOW

It is not sufficient, as one government agency has tentatively proposed, that the developers promise to live up to their prior promises by some date in October. According to the developer's own consultant, September is the month with the greatest rainfall frequencies. According to Richard Brock's Comprehensive Nearshore and Coastal Water Quality Monitoring Program in Support of the Villages at Hokukano Development Prepared for Oceanside 1250 Table 2, September is the month that is most likely to rain 2.5 inches or more (at Kainaliu, and therefore 1.25 inches at the project, p. 12, 16). Furthermore, according to rainfall data collected from January 1993 - July 1998, it rained 8 times in September between 1 and 1.99 inches, 3 times between 2 and 2.99 inches and 2 times between 3 and 3.99 inches (in a 24 hour period). In October there were 3 rain events between 1 and 1.99 inches; one rain event between 4 and 4.99 inches; and one rain event between 6 and 6.99 inches.

In the meantime, hundreds of trucks continue to import more and more soil to the site. Shouldn't this be halted until all sediment control measures are implemented?

### IMPORTANCE OF LEVYING PENALTIES

It is not sufficient, as one government official told me, that Hokulia officials are now being cooperative. They have violated promises made repeatedly to the community and to government agencies. What kind of message would be sent to contractors through out the state if these developers went unpunished? It would let contractors know that they can destroy living corals and foul class AA waters with impunity. It would let them know that they can break their promises and violate their permit conditions without worry -- because the only consequence will be that they will be made to promise to fulfill their prior promises later on.

### THE EXCUSE OF "RECORD" RAINFALL

Apparently, some agencies -- and the media -- are buying the excuse that Hokulia is providing that there was record rainfall.

1) Why does the Comprehensive Nearshore and Coastal Water Quality Monitoring Program in Support of the Villages at Hokukano Development Prepared for Oceanside 1250 rely on the rain gage at the Agricultural Station in Kainaliu if there is one on-site? According to this plan, the Agricultural Station is directly upslope from the project site and is the "closest rain gage." (p.12) The plan concludes that "the project site realizes about one-half the rainfall measured at the gage." It is curious indeed that Hokulia has now conveniently trotted out its own rain gage to claim a record rainfall. Hokulia decided to rely on the rainfall data at Kainaliu when it submitted its plan, why should it now be able to change the point at which rainfall is measured?

2) Have any government agencies gathered data from other rain gages in the area? According to the National Weather Service automated rain gauge at Kealakekua reported a total of 0.4 inches for a 24 hour period ending 8 AM Saturday morning

3) Has any agency tested the accuracy of the developer's rain gage?

4) Where is the developer getting the data that suggests that there has never been such a heavy rainfall in the past 10 years? Is this data from South Kona? Is this data based on the past ten years, or on historic records?

### THE EXCUSE OF THE RUNOFF COMING FROM ELSEWHERE

Some government agencies are prepared to accept the developer's story that the sedimentation came from somewhere else. Please consider the following:

1) Why was there no sediment runoff in the water fronting the undeveloped areas either north or south of the project Saturday morning? We have eyewitnesses who can verify this.

2) We have kamaaina testimony that can verify that there has never been sedimentation like this in the area before.

3) Hokulia has been bringing hundreds of truckloads of soil onto the site. How difficult would it be to test the sediment on the rocks by the ocean to see whether the soil is of the same type found in the conservation district, or of the same type that is being imported?

4) We believe that some of the dirt in the conservation district near the shoreline has been exposed by the activities of Hokulia. It seems as if new four-wheel drive trails may have been created in the area, thereby exposing more soil than had previously been exposed. Agencies should research historical aerial photos of the area to see if the existing dirt trail/roads are new or old.

#### THE EXCUSE OF "ACCEPTABLE LIMITS"

At one point, the developers claimed that the amount of sediment in the ocean was within acceptable limits. I assume that no government agency is going to buy that line:

1) It is inconceivable that our standards allow class AA water to be turned brown; to reduce visibility to near zero.

2) If the developer's scientists concluded that the brown ocean tested below turbidity limits, it shows that their scientists are relying on a completely flawed methodology, or are hopelessly compromised. DOH should investigate the credentials of the scientist Hokulia is basing its statements on and refuse to ever accept a report from this scientist.

3) We have evidence to show how turbid the water was (see below).

#### EVIDENCE

It is disappointing that so few government agencies have bothered to refer to the evidence that we have gathered: video taken that Saturday morning, photographs on site, aerial photographs, underwater photographs, water samples, and the testimony of many witnesses.

Roger Dilts (808) 937-9533, Jack Kelly 328-8442, and Jack's Diving Locker 329-7585 have great evidence and contacts with other eyewitnesses.

We will be presenting some of this evidence on Friday, September 29 at 8:30 a.m. at the King Kamehameha Kona Beach Hotel Eklu and Eha Rooms before the Land Use Commission on a related matter. It would be a good idea if each agency sent representatives to this hearing.

It seems to me, however, that at least one agency -- the Health Department? -- should call a public hearing as soon as possible to focus exclusively on collecting evidence that would be helpful in pursuing enforcement action.

#### VIOLATIONS AND CAUSES OF ACTION

##### A. Grading Ordinance

The County Public Works Department has concluded that Hokulia failed to implement portions of its Erosion Control Plan to control erosion. So, we know that there was a violation of the grading ordinance -- although it does not look like the department is going to pursue the matter.

**B. Special Management Area Permit**

There are many violations of the Special Management Area Permit, even though many of the permit conditions are very poorly written. Any permit that is issued must be consistent with the policies and objectives outlined in HRS Chapter 205A-2(b). Among these objectives are:

- (4) (B) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
  - (C) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
  - (D) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.
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- (6) (B) Control development in areas subject to storm wave, tsunami, flood erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;
  - (D) Prevent coastal flooding from inland projects.

On October 27, 1993, the Planning Commission voted to grant a Special Management Use Permit (345) to Oceanside 1250 for the golf course. A second SMA Permit (356) was issued for the remainder of the development.

• Condition 6 of SMP 356 requires the approval of a Natural Resource Plan. The plan says little. The best it says is: "Construction specifications will provide plans and describe techniques to mitigate soil erosion and control sediment in accordance with County requirements. Design techniques will be used to minimize the grading required and the potential for soil erosion by the establishment of onsite retention basins. Retention basins or water features will be incorporated into the design of the golf course and site improvements to ensure that surface water is allowed to remain on the property long enough to reduce its velocity, thereby controlling erosion. . . . Surface water runoff to existing drainageways [sic] will be limited to pre-construction volumes."

*We don't believe that grading has been "minimized." Nor were the onsite retention basins anywhere near adequate. We have substantial photographic evidence that can demonstrate that surface water velocity and volume were not reduced.*

• Condition 11 of SMP 345 (and condition 10 of SMP 356) requires that prior to the commencement of construction of any portion of the golf course, an "overall monitoring plan on the potential pollution to groundwater and coastal water shall be submitted to the Planning Director for approval in consultation with the Department of Health." In addition, condition 11 requires that "a golf course best management plan and integrated groundwater monitoring plan shall be component parts of this overall plan." The Comprehensive Nearshore and Coastal Water Quality Monitoring Program in Support of the Villages at Hokukano Development (December 1998) says:

- Siltation basins will be constructed, as required, to control runoff water quality, and may be incorporated into the golf course (1-2)

*The siltation basins did not control runoff water quality.*

- "These conditions require the development of a comprehensive water quality monitoring program to insure that degradation of the ground and nearshore marine waters will not occur and they will remain in a pristine state." (bottom of 2)

*The waters did not remain in a pristine state.*

- Minimization of area that is disturbed at any one time. Within each construction area, the grading shall be phased to the maximum extent possible to minimize the exposure of soil at any time. (p. 10)

*Massive amounts of land have been disturbed at the same time. Government agencies should not defer to the developer's judgement as to what constitutes "minimization."*

- Provide for temporary and permanent grassing of grading areas as well as utilize other means of holding soil in place including use of bagasse and hay bales. (p.11)

*We witnessed no hay bales. Nor does there appear to be any grassing.*

- Install cut-off ditches to minimize the runoff through graded areas and to route runoff and sediment to retention ditches and basins. (p.11)

*cut-off ditches?*

- Develop an approved water quality monitoring program to insure that any runoff from the site does not violate applicable state standards of the receiving waters. (p.11)

*We know that turbidity standards were violated.*

The Integrated Golf Course Management Process (January 1993) provides:

- The basic goals of BMPs are to . . . minimize the offsite transport of nutrients, sediments and pesticides. (p. 2)
- Because the design strategy involves concave, collecting shapes grading work will enhance drainage control for the property. Thus, directing and controlling surface drainage will be made easier, and run-off can be intentionally diverted to established retention basins. This design concept will help to control sediments, nutrients, and pesticides carried with run-off thereby avoiding the potential for off-site impacts. (p.7)
- The plan will be implemented in conjunction with county and state guidelines and regulations, and in consultation with the Department of Agriculture and the Soil Conservation Service. (p. 7-8)

*Was the U.S. Department of Agriculture's Soil Conservation Service -- now called the Natural Resources Conservation Service consulted?*

- "The goal of this plan will be to minimize the inadvertent movement and/or loss of soil and thereby prevent any associated degradation of environmental quality, especially with reference to water quality. Strategies to be implemented to meet this goal will include:

- using design and construction methods which minimize the need for disturbance of soils including staged construction if relevant and practical

- utilizing erosion control methods implementing siltation devices or soil stabilizing devices during the construction phase
- using accepted dust control practices during earthwork
- preventing the extended exposure of open earth as much as is practical during construction
- utilizing temporary vegetation to mitigate extended exposure of open earth if necessary
- establishing permanent vegetation on open earth as soon as possible
- maintaining a perspective conducive to conserving soil and preventing erosion related problems." (p. 8)

• "To minimize erosion on disturbed areas the contractors will utilize erosion control, soil stabilization, and dust control measures where appropriate. Such methods include silt fencing and sediment catchments to trap sediment, checkdams or terraces to slow the velocity of run-off, erosion matting or mulching and temporary vegetation to stabilize soils, and the frequent moistening of disturbed sites to prevent formation of dust." (p. 9)

We believe that the evidence clearly shows that numerous provisions in the permit and the plans were violated.

C. Clean Water Act & HRS Chapter 342D

Clearly, the discharges from over five acres of grading violated water quality standards off shore. We hope that DOH took some water quality samples in a timely manner. But if not, we have a sample -- and we have eyewitnesses and photographs. In addition, we believe that the developers did not comply the terms of the NPDES permit.

D. Public Nuisance

Government agencies also have the ability to take injunctive action and get compensation for the damage by filing a public nuisance claim.

We look forward to your diligent prosecution of those responsible for the destruction of the public's natural resources.

Sincerely,



David Kimo Frankel  
Chair, Sierra Club, Hawai'i Chapter

copy: Congresswoman Patsy Mink

Mr. Mike Tsuji, Clean Water Branch Supervisor of Enforcement

Jeff Darrow, Hawaii County Planning Department Inspector

Kiran Emler, Hawaii County Public Works Department Inspector