

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the)
Petition for a Declaratory)
Order of SP75-202 (Shield)
Pacific, Ltd. Special Permit)

) Docket No. DR75-3 and
) Docket No. DR75-4

) This is to certify that this is a true and correct copy of the
) Decision and Order on file in the office of the State Land Use
) Commission, Honolulu, Hawaii.
)

5/23/75

by *Lathua Lujinolo*
Executive Officer

Date
DECISION AND ORDER

Two petitions for a declaratory order were filed by Deland Perry and Jenny Parijs on April 17, 1975 and Lesley Hill Higgins and Richard Higgins on April 18, 1975, respectively with the Land Use Commission, herein referred "LUC". Both petitions were filed in conjunction with the docket entitled "In the Matter of S. P. 75-202 (Shield Pacific Special Permit) pending before the Land Use Commission."

Both petitions requested a ruling as to the "applicability of the provisions of Chapter 343, HRS, to the approval of a Special Permit by the Land Use Commission to Shield-Pacific Ltd., for its quarrying operation."

This commission denies that section 343-4(a) (2) (E), HRS, which would require the LUC to file an environmental impact statement, is applicable in the disposition of the Shield Pacific docket for the following reasons and authorities.

Section 205-6, HRS, authorizes a county planning commission to permit certain unusual and reasonable uses within the agriculture district other than for which the district is classified. A hearing is required and after a hearing a decision must be rendered by a majority vote of the total membership. A copy of the decision and the record is then transmitted to the LUC. The LUC, after receiving the decision and record, must approve, approve with modification or deny the petition.

The record reveals that the issue as to whether the Hawaii County Planning Commission had to file an environmental impact statement, under section 343-4 (a) (2) (E) was raised in the hearing held by the Hawaii Planning Commission. The Hawaii County Planning Commission, the record reveals, did not file an environmental impact statement since the facts indicated that it was not necessary.

Section 343-4 (a) (2) (E), HRS, states:

"All actions proposing any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation, and which will probably have significant environmental effects, except all actions proposing any new county general plan or amendments to any existing county general plan initiated by a county."

The petition by Shield Pacific for a quarry site in the proposed location, the record reveals, did not require an amendment to the Hawaii County General Plan-thus section 343-4 (a) (2) (E) was not applicable. Further there is no legal requirement in Chapter 205 or Chapter 343 that the LUC file an environmental impact statement when approving or denying a special permit.

Though this Commission has replied to the specific question presented in this petition, we are cognizant that a petition for declaratory order, under section 91-8, HRS, can only be directed "to the applicability of any statutory provision or any rule or order of the agency."

Since section 343-4 (a) (2) (E) is a statute which is administered by the Environmental Quality Commission and not the LUC, we question whether the LUC is the proper agency to make

an interpretation of said section.

Accordingly, the petition for a declaratory order filed by the petitioners in this Docket being without merit must be dismissed.

IT IS HEREBY ORDERED that the petitions for declaratory order filed by petitioners on April 17, and April 18, 1975 in the docket, S. P. 75-202 (Shield Pacific Permit), are hereby dismissed.

Done at Honolulu, Hawaii, this 23rd day of May, 1975, per motion passed by the Commission on May 1, 1975.

LAND USE COMMISSION
STATE OF HAWAII



EDDIE TANGER
Chairman

May 23, 1975

The following people were sent a copy of the Decision & Order in the Matter of the Petition for a Declaratory Order of SP75-202 (Shield Pacific, Ltd. Special Permit), Docket No. DR75-3 & DR75-4:

1. Gilbert Hara
2. Stephen Yamashiro
3. Paul Clark
4. Edward C. Brown
5. Hawaii Planning Commission (attn: R. Suefuji)
cc: K. Yamada
6. bcc: Harry Kim
7. bcc: LUC