



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 621
HONOLULU, HAWAII 96809

WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

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AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

REF:WL-MH

July 19, 1989

MEMORANDUM

TO: Members, Board of Land and Natural Resources

FROM: William W. Paty, Chairperson

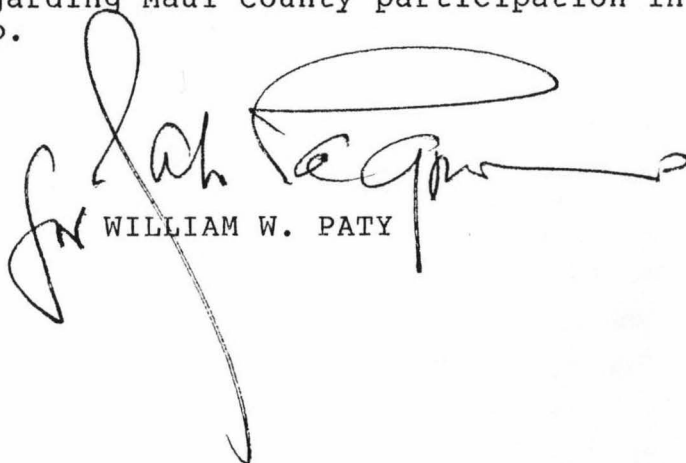
SUBJECT: Your Request for Information Regarding Proposed
Administrative Rules for Act 301, SLH 1988,
"Geothermal and Cable System Development Act of 1988"

Enclosed for your information is a packet of items copied from the file on the public hearing June 21, 1989, on the subject proposed rules.

The packet contains the following items:

1. copy of Act 301
2. notice of rescheduled public hearing
3. proposed rules for 6/21/89 hearing
4. revised proposed rules (dated 7/13/89)
5. summary minutes of Hilo, Hawaii public hearing 6/21/89
6. written testimony from members of the public presented at the Hilo, Hawaii public hearing 6/21/89
7. written testimony from members of the public received after 6/21/89 but before 7/7/89 deadline
8. written testimony from Hawaii County officials
9. sign in sheets, Hilo, Hawaii public hearing 6/21/89

10. transcripts of proceedings, Hilo, Hawaii public hearing 6/21/89
11. summary minutes of Wailuku, Maui public hearing 6/21/89
12. written testimony from members of the public presented at the Wailuku, Maui public hearing 6/21/89
13. written testimony from County of Maui officials presented at the Wailuku, Maui public hearing 6/21/89
14. sign in sheets, Wailuku, Maui public hearing 6/21/89
15. transcripts of proceedings, Wailuku, Maui public hearing 6/21/89
16. summary minutes, Honolulu public hearing 6/21/89
17. testimony by members of the public, Honolulu public hearing 6/21/89
18. written testimony from members of the public received after 6/21/89 but before 7/7/89 deadline
19. sign in sheets, Honolulu public hearing 6/21/89
20. comments received from City and County of Honolulu officials
21. summary minutes, Lihue, Kauai public hearing 6/21/89
22. State of Hawaii Department of Transportation letter
23. State of Hawaii Land Use Commission letter
24. legal opinion regarding Maui County participation in interagency group.


WILLIAM W. PATY

Enclosures

WL 7/13/8

THE SENATE
FOURTEENTH LEGISLATURE, 19⁸⁸
STATE OF HAWAII

ACT 301

S.B. NO. 3182
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by adding
2 a new chapter to be appropriately designated and to read as
3 follows:

4 "CHAPTER
5 GEOTHERMAL AND CABLE SYSTEM
6 DEVELOPMENT PERMITTING ACT OF 1988

7 § -1 Short title. This chapter shall be known and may be
8 cited as the "Geothermal and Cable System Development Permitting
9 Act of 1988."

10 § -2 Findings and declaration of purpose. The
11 legislature hereby finds and declares that:

12 (1) The development of Hawaii's geothermal resources, which
13 are located principally on the island of Hawaii and
14 possibly on the island of Maui, represents a
15 substantial and long-term source of indigenous
16 renewable alternate energy that could be used to

- 1 generate electric energy to meet the State's electric
2 energy needs and concurrently help to reduce the
3 State's need for imported fossil fuels;
- 4 (2) The State has deemed it appropriate that the private
5 sector should develop these geothermal resources, and,
6 to that end, has sought to encourage private sector
7 exploration and development of geothermal resources;
- 8 (3) The private sector companies seeking to develop
9 geothermal resources are, however, unable or unwilling
10 to expend the substantial amounts of funds needed to
11 develop these resources to their full extent without an
12 assured and sufficiently large market for the electric
13 energy to be generated therefrom, and the present and
14 projected electric energy demand on the island of
15 Hawaii does not provide an assured and sufficiently
16 large market;
- 17 (4) The greatest present and projected demand for
18 geothermally generated electric energy is located on
19 the island of Oahu;
- 20 (5) The State, with the support and assistance of the
21 federal and county of Hawaii governments, has been
22 exploring for several years the technical, engineering,
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- 1 economic, and financial feasibility of an interisland
2 deep water electrical transmission cable system that
3 would be capable of transmitting geothermally generated
4 electric energy from the island of Hawaii to the
5 islands of Maui and Oahu, and believes that a cable
6 system may be feasible and desirable;
- 7 (6) The development of such a cable system will not be
8 undertaken without the firm assurance that a sufficient
9 amount of geothermally generated electric energy will
10 be continuously available to be transmitted through a
11 cable system once it becomes operational;
- 12 (7) The fundamental interrelationship between the
13 development of geothermal resources and a cable system
14 and the magnitude of the cost to undertake each of
15 these developments clearly indicate that neither will
16 be undertaken without the firm assurance that the other
17 also will be undertaken in a synchronized and
18 coordinated manner to enable both developments in
19 substance to be completed concurrently, thereby
20 ensuring that revenues will be available to begin
21 amortizing the costs of each of these developments;
- 22 (8) A major and fundamental difficulty in the development
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1 of both geothermal resources and a cable system is the
2 diverse array of federal, state, and county land use,
3 planning, environmental, and other related laws and
4 regulations that currently control the undertaking of
5 all commercial projects in the State;

6 (9) These controls attempt to ensure that commercial
7 development projects in general are undertaken in a
8 manner consistent with land use, planning,
9 environmental, and other public policies, except that
10 some of these specific laws, regulations, and controls
11 may be repetitive, duplicative, and uncoordinated;

12 (10) To a limited extent, the State and counties have sought
13 to ameliorate this difficulty through the enactment or
14 adoption of measures to improve the coordination and
15 efficiency of land use and planning controls and
16 specifically to facilitate the development of
17 geothermal resources;

18 (11) Notwithstanding these efforts, the complexities, the
19 magnitude in scope and cost, the fundamental
20 interrelationship between the development of geothermal
21 resources and a cable system, the inherent requirement
22 for the coordinated development of the geothermal
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1 resources and a cable system, the substantial length of
2 time required to undertake and complete both
3 developments, and the desirability of private funding
4 for both developments require that affected state and
5 county agencies be directed to pursue and develop to
6 the maximum extent under existing law the coordination
7 and consolidation of regulations and controls pertinent
8 to the development of geothermal resources and a cable
9 system;

10 (12) The development of geothermal resources and a cable
11 system, both individually and collectively, would
12 represent the largest and most complex development ever
13 undertaken in the State;

14 (13) Because of the complexities of both projects, there is
15 a need to develop a consolidated permit application and
16 review process to provide for and facilitate the firm
17 assurances that companies will require before
18 committing the substantial amounts of funds, time, and
19 effort necessary to undertake these developments, while
20 at the same time ensuring the fulfillment of
21 fundamental state and county land use and planning
22 policies;

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1 (14) The development of geothermal resources and a cable
2 system are in furtherance of the State's policies, as
3 expressed in the state plan and elsewhere, to develop
4 the State's indigenous renewable alternate energy
5 resources and to decrease the State's dependency on
6 imported fossil fuels; and

7 (15) A consolidated permit application and review process
8 for the development of the State's geothermal resources
9 and the cable system should be established by an act of
10 the legislature.

11 § -3 Definitions. As used in this chapter unless the
12 context clearly requires otherwise:

13 "Agency" means any department, office, board, or commission
14 of the State or a county government which is a part of the
15 executive branch of that government, but does not include any
16 public corporation or authority that may be established by the
17 legislature for the purposes of the project.

18 "Applicant" means any person who, pursuant to statute,
19 ordinance, rule, or regulation, requests approval or a permit of
20 the proposed project.

21 "Approval" means a discretionary consent required from an
22 agency prior to the actual implementation of the project.

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1 "Department" means the department of land and natural
2 resources or any successor agency.

3 "Discretionary consent" means a consent, sanction, or
4 recommendation from an agency for which judgment and free will
5 may be exercised by the issuing agency, as distinguished from a
6 ministerial consent.

7 "Environmental impact statement" means, as applicable, an
8 informational document prepared in compliance with chapter 343 or
9 with the National Environmental Policy Act of 1969 (Public Law
10 91-190).

11 "Interagency group" means the body established pursuant to
12 section -6.

13 "Permit" means any license, permit, certificate,
14 certification, approval, compliance schedule, or other similar
15 document or decision pertaining to any regulatory or management
16 program which is related to the protection, conservation, use of,
17 or interference with the natural resources of land, air, or water
18 in the State and which is required prior to or in connection with
19 the undertaking of the project.

20 "Person" includes any individual, partnership, firm,
21 association, trust, estate, corporation, joint venture,
22 consortium, any public corporation or authority that may be
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1 established by the legislature for the purposes of the project,
2 or other legal entity other than an agency.

3 "Project" means the commercial development, construction,
4 installation, financing, operation, maintenance, repair, and
5 replacement, including without limitation all applicable
6 exploratory, testing, and predevelopment activities related to
7 the foregoing, of:

- 8 (1) A geothermal power plant or plants, including all
9 associated equipment, facilities, wells, and
10 transmission lines, on the island of Hawaii for the
11 purpose of generating electric energy for transmission
12 primarily to the island of Oahu through the cable
13 system; and
14 (2) An interisland deep water electrical transmission cable
15 system, including all land-based transmission lines and
16 other ancillary facilities, to transmit geothermally
17 generated electric energy from the island of Hawaii to
18 the island of Oahu, regardless of whether the cable
19 system is used to deliver electric energy to any
20 intervening point.

21 § -4 Consolidated permit application and review process.

22 (a) The department is designated as the lead agency for the
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1 purposes of this chapter and, in addition to its existing
2 functions, shall establish and administer the consolidated permit
3 application and review process provided for in this chapter,
4 which shall incorporate the permitting functions of those
5 agencies involved in the development of the project which are
6 transferred by section -10 to the department to effectuate the
7 purposes of this chapter.

8 (b) The consolidated permit application and review process
9 shall incorporate:

- 10 (1) A list of all permits required for the project;
- 11 (2) The role and functions of the department as the lead
12 agency and the interagency group;
- 13 (3) All permit review and approval deadlines;
- 14 (4) A schedule for meetings and actions of the interagency
15 group;
- 16 (5) A mechanism to resolve any conflicts that may arise
17 between or among the department and any other agencies,
18 including any federal agencies, as a result of
19 conflicting permit, approval, or other requirements,
20 procedures, or agency perspectives;
- 21 (6) Any other administrative procedures related to the
22 foregoing; and

1 (7) A consolidated permit application form to be used for
2 the project for all permitting purposes.

3 (c) The department shall perform all of the permitting
4 functions for which it is currently responsible and which are
5 transferred to it by section -10 for the purposes of the
6 project, and shall coordinate and consolidate all required permit
7 reviews by other agencies, and to the fullest extent possible by
8 all federal agencies, having jurisdiction over any aspect of the
9 project.

10 § -5 Consolidated permit application and review
11 procedure. (a) The department shall serve as the lead agency
12 for the consolidated permit application and review process
13 established pursuant to section -4(b) and as set forth in this
14 section for the project. All agencies whose permitting functions
15 are not transferred by section -10 to the department for the
16 purposes of the project are required to participate in the
17 consolidated permit application and review process.

18 (b) To the greatest extent possible, the department and
19 each agency whose permitting functions are not transferred by
20 section -10 to the department for the purposes of the project
21 shall complete all of their respective permitting functions for
22 the purposes of the project, in accordance with the timetable for
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1 regulatory review set forth in the joint agreement described in
2 subsection (c)(3) and within the time limits contained in the
3 applicable permit statutes, ordinances, regulations, or rules;
4 except that the department or any agency shall have good cause to
5 extend, if and as permitted, the applicable time limit if the
6 permit-issuing agency must rely on another agency, including any
7 federal agency, for all or part of the permit processing and the
8 delay is caused by the other agency.

9 (c) The procedure shall be as follows:

10 (1) The applicant shall submit the consolidated permit
11 application using the consolidated permit application
12 form, which shall include whatever data about the
13 proposed project that the department deems necessary to
14 fulfill the purposes of this chapter and to determine
15 which other agencies may have jurisdiction over any
16 aspect of the proposed project.

17 (2) Upon receipt of the consolidated permit application,
18 the department shall notify all agencies whose
19 permitting functions are not transferred by section
20 -10 to the department for the purposes of the
21 project, as well as all federal agencies, that the
22 department determines may have jurisdiction over any
23 aspect of the proposed project as set forth in the
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1 application, and shall invite the federal agencies so
2 notified to participate in the consolidated permit
3 application process. The agencies, and those federal
4 agencies that accept the invitation, thereafter shall
5 participate in the consolidated permit application and
6 review process.

7 (3) The representatives of the department and the state,
8 county, and federal agencies and the applicant shall
9 develop and sign a joint agreement among themselves
10 which shall:

11 (A) Identify the members of the consolidated permit
12 application and review team;

13 (B) Identify all permits required for the project;

14 (C) Specify the regulatory and review responsibilities
15 of the department and each state, county, and
16 federal agency and set forth the responsibilities
17 of the applicant;

18 (D) Establish a timetable for regulatory review, the
19 conduct of necessary hearings, the preparation of
20 an environmental impact statement if necessary,
21 and other actions required to minimize duplication
22 and to coordinate and consolidate the activities
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- 1 of the applicant, the department, and the state,
2 county, and federal agencies; and
3 (E) Provide that a hearing required for a permit shall
4 be held on the island where the proposed activity
5 shall occur.
6 (4) A consolidated permit application and review team shall
7 be established and shall consist of the members of the
8 interagency group established pursuant to section
9 -6(a). The applicant shall designate its
10 representative to be available to the review team, as
11 it may require, for purposes of processing the
12 applicant's consolidated permit application.
13 (5) The department and each agency whose permitting
14 functions are not transferred by section -10 to the
15 department for the purposes of the project, and each
16 federal agency shall issue its own permit or approval
17 based upon its own jurisdiction. The consolidated
18 permit application and review process shall not affect
19 or invalidate the jurisdiction or authority of any
20 agency under existing law, except to the extent that
21 the permitting functions of any agency are transferred
22 by section -10 to the department for the purposes of
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1 the project.

2 (6) The applicant shall apply directly to each federal
3 agency that does not participate in the consolidated
4 permit application and review process.

5 (7) The department shall review for completeness and
6 thereafter shall process the consolidated permit
7 application submitted by an applicant for the project,
8 and shall monitor the processing of permit application
9 by those agencies whose permitting functions are not
10 transferred by section -10 to the department for the
11 purposes of the project. The department shall
12 coordinate, and seek to consolidate where possible, the
13 permitting functions and shall monitor and assist in
14 the permitting functions conducted by all of these
15 agencies, and to the fullest extent possible the
16 federal agencies, in accordance with the consolidated
17 permit application and review process.

18 (8) Once the processing of the consolidated permit
19 application has been completed and the permits
20 requested have been issued to the applicant, the
21 department shall monitor the applicant's work
22 undertaken pursuant to the permits to ensure the
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1 applicant's compliance with the terms and conditions of
2 the permits.

3 (d) Where the contested case provisions under chapter 91
4 apply to any one or more of the permits to be issued by the
5 agency for the purposes of the project, the agency may, if there
6 is a contested case involving any of the permits, be required to
7 conduct only one contested case hearing on the permit or permits
8 within its jurisdiction. Any appeal from a decision made by the
9 agency pursuant to a public hearing or hearings required in
10 connection with a permit shall be made directly on the record to
11 the supreme court for final decision subject to chapter 602.

12 § -6 Interagency group. (a) The department shall
13 establish an interagency group comprised of those agencies whose
14 permitting functions are not transferred by section -10 to the
15 department for the purposes of the project and which have
16 jurisdiction over any aspect of the project. Each of these
17 agencies shall designate an appropriate representative to serve
18 on the interagency group as part of the representative's official
19 responsibilities. The interagency group shall perform liaison
20 and assisting functions as required by this chapter and the
21 department. The department shall invite and encourage the
22 appropriate federal agencies having jurisdiction over any aspect
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1 of the project to participate in the interagency group.

2 (b) The department and agencies shall cooperate with the
3 federal agencies to the fullest extent possible to minimize
4 duplication between and, where possible, promote consolidation of
5 federal and state requirements. To the fullest extent possible,
6 this cooperation shall include, among other things, joint
7 environmental impact statements with concurrent public review and
8 processing at both levels of government. Where federal law has
9 requirements that are in addition to but not in conflict with
10 state law requirements, the department and the agencies shall
11 cooperate to the fullest extent possible in fulfilling their
12 requirements so that all documents shall comply with all
13 applicable laws.

14 (c) If the legislature establishes any public corporation
15 or authority for the purposes of the project, then upon its
16 establishment, the public corporation or authority shall be a
17 member of the interagency group.

18 § -7 Streamlining activities. In administering the
19 consolidated permit application and review process, the
20 department shall:

21 (1) Monitor all permit applications submitted under this
22 chapter and the processing thereof on an ongoing basis
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- 1 to determine the source of any inefficiencies, delays,
2 and duplications encountered and the status of all
3 permits in process;
- 4 (2) Adopt and implement needed streamlining measures
5 identified by the interagency group, in consultation
6 with those agencies whose permitting functions are not
7 transferred by section -10 to the department for the
8 purposes of the project and with members of the public;
- 9 (3) Design, in addition to the consolidated permit
10 application form, other applications, checklists, and
11 forms essential to the implementation of the
12 consolidated permit application and review process;
- 13 (4) Recommend to the legislature, as appropriate, suggested
14 changes to existing laws to eliminate any duplicative
15 or redundant permit requirements;
- 16 (5) Coordinate with agencies to ensure that all standards
17 used in any agency decision-making for any required
18 permits are clear, explicit, and precise; and
- 19 (6) Incorporate, where possible, rebuttable presumptions
20 based upon requirements met for permits issued
21 previously under the consolidated permit application
22 and review process.

1 § -8 Information services. The department shall:

- 2 (1) Operate a permit information and coordination center
3 during normal working hours, which will provide
4 guidance to potential applicants for the project with
5 regard to the permits and procedures that may apply to
6 the project; and
7 (2) Maintain and update a repository of the laws, rules,
8 procedures, permit requirements, and criteria of
9 agencies whose permitting functions are not transferred
10 by section -10 to the department for the purposes of
11 the project and which have control or regulatory power
12 over any aspect of the project and of federal agencies
13 having jurisdiction over any aspect of the project.

14 § -9 Construction of the Act; rules. This chapter shall
15 be construed liberally to effectuate its purposes, and the
16 department shall have all powers which may be necessary to carry
17 out the purposes of this chapter, including the authority to
18 make, amend, and repeal rules to implement this chapter; provided
19 that all procedures for public information and review under
20 chapter 91 shall be preserved; and provided further that the
21 consolidated permit application and review process shall not
22 affect or invalidate the jurisdiction or authority of any agency
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1 under existing law. The adoption, amendment, and repeal of all
2 rules shall be subject to chapter 91.

3 § -10 Transfer of functions. (a) Those functions
4 identified in paragraphs (1) and (2) insofar as they relate to
5 the permit application, review, processing, issuance, and
6 monitoring of laws, and rules and to the enforcement of terms,
7 conditions, and stipulations of permits and other authorizations
8 issued by agencies with respect to the development, construction,
9 installation, operation, maintenance, repair, and replacement of
10 the project, or any portion or portions thereof, are transferred
11 to the department. With respect to each of the statutory
12 authorities cited in paragraphs (1) and (2), the transferred
13 functions include all enforcement functions of the agencies or
14 their officials under the statute cited as may be related to the
15 enforcement of the terms, conditions, and stipulations of
16 permits, including but not limited to the specific sections of
17 the statute cited. "Enforcement", for purposes of this transfer
18 of functions, includes monitoring and any other compliance or
19 oversight activities reasonably related to the enforcement
20 process. These transferred functions include:

- 21 (1) Such functions of the land use commission related to:
22 district boundary amendments as set forth in section
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1 205-3.1 et seq.; and changes in zoning as set forth in
2 section 205-5; and

3 (2) The permit approval and enforcement functions of the
4 director of transportation or other appropriate
5 official or entity in the department of transportation
6 related to permits or approvals issued for the use of
7 or commercial activities in or affecting the ocean
8 waters and shores of the state under chapter 266.

9 (b) Nothing in this section shall be construed to relieve
10 an applicant from the laws, ordinances, and rules of any agency
11 whose functions are not transferred by this section to the
12 department for the purposes of the project.

13 (c) This section shall not apply to any permit issued by
14 the public utilities commission under chapter 269.

15 (d) Notwithstanding any other provision of this chapter,
16 this section shall take effect on a date that is one year after
17 the effective date of this chapter.

18 § -11 Annual report. The department shall submit an
19 annual report to the governor and the legislature on its work
20 during the preceding year, the development status of the project,
21 any problems encountered, and any legislative actions that may be
22 needed further to improve the consolidated permit application and

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1 review process and implement the intent of this chapter.

2 § -12 Severability. If any provision of this chapter or
3 the application thereof to any person or circumstances is held
4 invalid, the invalidity shall not affect other provisions or
5 applications of this chapter that can be given effect without the
6 invalid provision or application, and to this end the provisions
7 of this chapter are declared severable.

8 § -13 Exemptions from certain state laws. In order to
9 promote the purposes of this chapter, all persons hired by the
10 department to effectuate this chapter are excepted from chapters
11 76, 77, and 89.

12 § -14 Development of geothermal resources on Maui. To
13 the extent an applicant's proposed project includes the
14 development of geothermal resources on the island of Maui and the
15 delivery of electric energy generated from these resources to the
16 island of Oahu through the cable system, this chapter shall apply
17 to that proposed project."

18 SECTION 2. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$275,000, or so much
20 thereof as may be necessary for fiscal year 1988-1989, to carry
21 out the purposes of this chapter. The sum appropriated shall be
22 expended by the department of land and natural resources for the
23 purposes of this Act.

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S.B. NO.

3182
S.D. 2
H.D. 2
C.D. 1

1 SECTION 3. This chapter shall take effect on July 1, 1988,
2 but shall not apply to any applications filed prior to the
3 effective date.

Approved by the
Governor on

JUN 13 1988

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State Conference Room
State Office Building, 2nd Floor
Lihue, Kauai 96766

University of Hawaii Hilo Campus
Campus Center, Rooms 306-307
Kawili Street, Hilo, Hawaii 96720

A copy of the proposed rules to be adopted will be mailed at no cost to any interested person who requests a copy. Requests may be made to the Division of Water and Land Development, Department of Land and Natural Resources, Room 227, 1151 Punchbowl Street, Kalanimoku Building, Honolulu, Hawaii 96813 (phone #548-7539) or to the Geothermal Permit Center, Department of Land and Natural Resources, Room 509, 677 Ala Moana Boulevard, Honolulu, Hawaii 96813 (phone #548-7443).

Copies of the proposed rules will also be available free of charge at the following locations:

State Office Building,
75 Aupuni Street, Hilo, Hawaii 96720

State Office Building
54 High Street, Wailuku, Maui 96793

State Office Building
3060 Eiwa Street, Lihue, Kauai 96766

Kaunakakai Library
395 Kaunakakai Street, Kaunakakai, Molokai 96748

All interested parties are urged to attend the hearings and submit comments, orally or in writing.

The Department of Land and Natural Resources will continue to accept written testimony until June 15, 1989. Testimony developed after the hearings should be mailed to the Division of Water and Land Development, P.O. Box 621, Honolulu, Hawaii 96809.

State of Hawaii
BOARD OF LAND AND NATURAL RESOURCES



WILLIAM W. PATY, Chairperson

Dated: May 17, 1989

Publish in:

Honolulu Star-Bulletin, issue of May 22, 29, and June 14, 1989
West Hawaii Today, issue of May 22, and June 14, 1989
Hilo Tribune Herald, issue of May 22, and June 14, 1989
Maui News, issue of May 22, and June 14, 1989
Garden Island, issue of May 22, and June 14, 1989

NOTICE OF RESCHEDULED PUBLIC HEARING

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Water and Land Development

Proposed Administrative Rules
for Geothermal and Cable System Development Permitting

Public hearings will be held by the Division of Water and Land Development, Department of Land and Natural Resources, to receive testimony on the proposed administrative rules to implement Act 301, Session Laws of Hawaii, 1988, "Geothermal and Cable System Development Permitting Act of 1988".

Act 301 provides for a consolidated permitting process for geothermal and cable system development projects, in which the Department of Land and Natural Resources shall be the lead agency. It provides coordination among agencies in order to streamline the often duplicative permitting requirements of the various agencies and it provides for developing a consolidated application form. It provides for an Interagency Group of all permitting agencies affected by such a project, and it provides for a consolidated review team to coordinate requirements such as environmental impact statements and public hearings. It provides that State and county agencies shall participate in the consolidated permitting process, and it assures full cooperation to federal agencies that may participate on a voluntary basis.

The Act provides for a joint agreement among the agencies to participate in the process for each project. The joint agreement will provide details of timetables and schedules for coordinating and consolidating whatever requirements can be processed jointly; the joint agreement also provides a process for resolving conflicts. The Act also provides for an information center and a repository of documents for prospective project applicants.

The proposed administrative rules provide operating procedures to implement the provisions of Act 301 outlined above. The member agencies of the Interagency Group are named; the scope of the joint agreement is provided; the application procedure is provided, with addresses where to obtain and submit permits; a fee schedule is included; provision for transfer of certain permitting functions from the Land Use Commission and from the Department of Transportation to the Department of Land and Natural Resources for geothermal permitting purposes is provided; a conflict resolution process is provided, and provisions for monitoring the permitting process are provided.

The public hearings are being rescheduled from the May 30, 1989 date previously announced to June 21, 1989 at 7:00 p.m. at the following places:

Department of Land and Natural Resources
Board Room, Room 132, Kalanimoku Building
1151 Punchbowl Street, Honolulu, HI 96813

Maui Community College
Community Services Building
310 Kaahumanu Avenue, Kahului, HI 96732

NOTICE OF RESCHEDULED PUBLIC HEARING

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Water and Land Development

Proposed Administrative Rules for Geothermal and Cable System Development Permitting

Public hearings will be held by the Division of Water and Land Development, Department of Land and Natural Resources, to receive testimony on the proposed administrative rules to implement Act 301, Session Laws of Hawaii, 1988, "Geothermal and Cable System Development Permitting Act of 1988".

Act 301 provides for a consolidated permitting process for geothermal and cable system development projects, in which the Department of Land and Natural Resources shall be the lead agency. It provides coordination among agencies in order to streamline the often duplicative permitting requirements of the various agencies and it provides for developing a consolidated application form. It provides for an Interagency Group of all permitting agencies affected by such a project, and it provides for a consolidated review team to coordinate requirements such as environmental impact statements and public hearings. It provides that State and county agencies shall participate in the consolidated permitting process, and it assures full cooperation to federal agencies that may participate on a voluntary basis.

The Act provides for a joint agreement among the agencies to participate in the process for each project. The joint agreement will provide details to timetables and schedules for coordinating and consolidating whatever requirements can be processed jointly; the joint agreement also provides a process for resolving conflicts. The Act also provides for an information center and a repository of documents for prospective project applicants.

The proposed administrative rules provide operating procedures to implement the provisions of Act 301 outlined above. The member agencies of the Interagency Group are named; the scope of the joint agreement is provided; the application procedure is provided, with addresses where to obtain and submit permits; a fee schedule is included; provision for transfer of certain permitting functions from the Land Use Commission and from the Department of Transportation to the Department of Land and Natural Resources for geothermal permitting purposes is provided; a conflict resolution process is provided, and provisions for monitoring the permitting process are provided.

The public hearings are being rescheduled from the May 30, 1989 date previously announced to June 21, 1989 at 7:00 p.m. at the following places:

Department of Land and Natural Resources
Board Room, Room 132, Kalaninimoku Building
1151 Punchbowl Street, Honolulu, HI 96813

Maul Community College
Community Services Building
310 Kaahumanu Avenue, Kahului, HI 96732

State Conference Room
State Office Building, 2nd Floor
Lihue, Kauai 96766

University of Hawaii Hilo Campus
Campus Center, Rooms 306-307
Kawili Street, Hilo, Hawaii 96720

A copy of the proposed rules to be adopted will be mailed at no cost to any interested person who requests a copy. Requests may be made to the Division of Water and Land Development, Department of Land and Natural Resources, Room 227, 1151 Punchbowl Street, Kalaninimoku Building, Honolulu, Hawaii 96813 (phone No. 548-7539) or to the Geothermal Permit Center, Department of Land and Natural Resources, Room 509, 677 Ala Moana Boulevard, Honolulu, Hawaii 96813 (phone No. 548-7443).

Copies of the proposed rules will also be available free of charge at the following locations:

State Office Building
75 Aupuni Street, Hilo, Hawaii 96720

State Office Building
54 High Street, Wailuku, Maui 96793

State Office Building
3060 Elwa Street, Lihue, Kauai 96766

Kaunakakai Library
395 Kaunakakai Street, Kaunakakai, Molokai 96748

All interested parties are urged to attend the hearings and submit comments, orally or in writing.

The Department of Land and Natural Resources will continue to accept written testimony until June 15, 1989. Testimony developed after the hearings should be mailed to the Division of Water and Land Development, P.O. Box 621, Honolulu, Hawaii 96890.

State of Hawaii
BOARD OF LAND AND NATURAL RESOURCES
WILLIAM W. PATY, Chairperson

Dated: May 17, 1989

(438—Hawaii Tribune-Herald; May 22; June 14, 1989)

LEGAL NOTICE

NOTICE OF RESCHEDULED PUBLIC HEARING

State of Hawaii
DEPARTMENT OF LAND AND
NATURAL RESOURCES
Division of Water and Land
Development

Proposed Administrative Rules for Geothermal and Cable System Development Permitting

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The proposed administrative rules provide operating procedures to implement the provisions of Act 301 outlined above. The member agencies of the Interagency Group are named; the scope of the joint agreement is provided; the application procedure is provided, with addresses where to obtain and submit permits; a fee schedule is included; a provision for transfer of certain permitting functions from the Land Use Commission and from the Department of Transportation to the Department of Land and Natural Resources for geothermal permitting purposes is provided; a conflict resolution process is provided, and provisions for monitoring the permitting process are provided.

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State Office Building, 2nd Floor
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Copies of the proposed rules will also be available free of charge at the following locations:

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Kaunakakai Library
395 Kaunakakai Street,
Kaunakakai, Molokai 96748

All interested parties are urged to attend the hearings and submit comments, orally or in writing. The Department of Land and Natural Resources will continue to accept written testimony until July 1, 1989. Testimony developed after the hearings should be mailed to the Division of Water and Land Development, P.O. Box 621, Honolulu, Hawaii 96890.

State of Hawaii
BOARD OF LAND AND
NATURAL RESOURCES
WILLIAM W. PATY, Chairperson

Dated: May 17, 1989

(Hon. S. B. May 22, 29; June 14, 1989) (SB-9944)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER AND LAND DEVELOPMENT

Chapter 185

Rules of Practice and Procedure for
Geothermal and Cable System Development Permitting

Subchapter 1. General

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Subchapter 1. General

Section 13-185-1 Purpose. The purpose of this chapter is to establish guidelines and procedures for consolidated geothermal and cable system development permitting. Consolidated permitting procedures are intended to coordinate and streamline permitting requirements of the diverse array of federal, state, and county land use, planning, environmental, and other related laws and regulations that affect geothermal and cable system development. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-2)

Section 13-185-2 Definitions. As used in this chapter: "Agency" means any department, office, board, or commission of the State or a county government which is a part of the executive branch of that government, but does not include any public corporation or authority that may be established by the legislature for the purposes of geothermal and cable system development.

"Applicant" means any person who, pursuant to statute, ordinance, rule, or regulation, requests approval or a permit for a geothermal and cable system development project.

"Approval" means a discretionary consent required from an agency prior to the actual implementation of a geothermal and cable system development project.

"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.

"Consolidated permit application form" means a package of forms comprising the form made for this purpose by the department of land and natural resources plus the forms of whatever federal and other agencies have permitting authority over a particular project and are required to use their own application form. Information provided in this package includes but is not limited to information identifying the applicant, the landowner, the location of the proposed geothermal and cable system development project, the types of permits required, environmental requirements, information on the geographic location of the project, a description of the proposed project, and plan information.

"Department" means the department of land and natural resources or any successor agency.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgement and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.

"Environmental impact statement" means, as applicable, an informational document prepared in compliance with chapter 343, Hawaii Revised Statutes, or with the National Environmental Policy Act of 1969 (Public Law 91-190).

"Geothermal and cable system development project" or "project" means the commercial development, construction, installation, financing, operation, maintenance, repair, and replacement, including without limitation all applicable exploratory, testing, and predevelopment activities related to the foregoing, of:

- (1) a geothermal power plant or plants, including associated equipment, facilities, wells, and transmission lines, on the islands of Hawaii or Maui, for the purpose of generating electric energy for transmission primarily to the island of Oahu through the cable system; and
- (2) an interisland deep water electrical transmission cable system, including all land-based transmission lines and other ancillary facilities, to transmit geothermally generated electric energy from the islands of Hawaii or Maui, to the islands of Oahu or Maui, regardless of whether the cable system is used to deliver electric energy to any intervening point.

"Interagency group" means a group comprised of representatives from county, State, and federal agencies involved in geothermal and cable system development permitting activities whose permitting functions are not transferred by Sec. 196D-10, Hawaii Revised Statutes, to the department for the purpose of consolidating the permitting process for geothermal and cable system development projects.

"Permit" means any license, permit, certificate, certification, approval, compliance schedule, or other similar document or decision pertaining to any regulatory or management program which is related to the protection, conservation, use of, or interference with the natural resources of land, air, or water in the State and which is required prior to or in connection with the undertaking of the project.

"Person" includes any individual, partnership, firm, association, trust, estate, corporation, joint venture, consortium, any public corporation or authority that may be established by the legislature for the purposes of the project, or other legal entity other than an agency.

[Eff:] (Auth: HRS Sec. 196D-9)

(Imp: HRS Secs. 196D-3, HRS 196D-6)

Section 13-185-3 Transfer of functions. The following functions are transferred to the department: the functions of the land use commission related to district boundary amendments as set forth in section 205-3.1 et seq., Hawaii Revised Statutes; and functions of the land use commission related to changes in zoning as set forth in section 205-5, Hawaii Revised Statutes; and permit approval and enforcement functions of the department of transportation related to use of or commercial activities in or affecting the ocean waters and shores of the State under chapter 266, Hawaii Revised Statutes.

(a) Regarding functions of the land use commission related to district boundary amendments as set forth in section 205-3.1 et seq., Hawaii Revised Statutes, for district boundary amendments involving land areas greater than fifteen acres, and for land areas fifteen acres or less in conservation districts, as they relate to a geothermal and cable system development project, the department shall process applications as follows. The applicant shall file a petition for boundary amendment with the department. The petition shall be in writing and shall provide a statement of the authorization or relief sought; the statutory provisions under which authorization or relief is sought; for petitions to reclassify properties from the conservation district to any other district, the petition shall include an environmental impact statement or negative declaration approved by the department for the proposed reclassification request; the legal name of the petitioner, and the address, description of the property, the petitioner's proprietary interest in the property, and a copy of the deed or lease, with written authorization of the fee owner to file the petition; the petition shall include the type of development proposed and details regarding the development including timetables, cost, assessment of the effects of the development, and an assessment of the need for reclassification. The department shall serve copies of the application upon the county planning department and planning commission within which the subject land is situated, upon the director of the department of planning

and economic development, or a designated representative, and upon all persons with a property interest in the property recorded in the county's real property tax records at the time the petition is filed, along with a notice of a public hearing on the matter, to be conducted on the appropriate island. The department shall set the hearing within not less than sixty and not more than one hundred eighty days after a proper application has been filed. The department shall also mail notice of the hearing to all persons who have made a timely written request for advance notice of boundary amendment proceedings, and notice of the hearing shall be published at least once in a newspaper in the county in which the land sought to be redistricted is situated as well as once in a newspaper of general circulation in the State at least thirty days in advance of the hearing. The notice shall comply with the provisions of section 91-9, shall indicate the time and place that maps showing the proposed district boundary may be inspected, and further, shall inform all interested persons of their rights regarding intervening in the proceedings. The department shall appear at the proceedings as a party in the petition and shall make recommendations relative to the proposed boundary change. The department shall admit any other department or agencies of the State and of the county in which the land is situated as parties upon timely application. The department shall admit any person who has some property interest in the land, who lawfully resides on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public, as parties for intervention to the proposed boundary change. The department shall receive applications for leave to intervene from any member of the public. However, the department shall deny an application if it appears it is substantially the same as the position of a party already admitted to the proceeding or if admission of additional parties will render the proceedings inefficient and unmanageable. The petition for intervention shall be filed with the department within fifteen days after the notice of hearing is published in the newspaper. The petition shall make reference to the following:

- (1) Nature of petitioner's statutory or other right;
 - (2) Nature and extent of the petitioner's interest,
- and if an abutting property owner, the tax map key description of the property;

(3) Effect of any decision in the proceeding on petitioner's interest.

Within a period of not more than one hundred and twenty days after the close of the hearing, the department shall, by findings of fact and conclusions of law, act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of the law or to assure substantial compliance with representations made by the petitioner in seeking a boundary change.

(b) Regarding transfer of the function of the land use commission concerning changes in zoning, the department shall review and consider issuing special permits as necessary in connection with applications for geothermal and cable system development projects on land zoned for agriculture and within rural districts. Such special permits may be issued at the department's discretion upon favorable review of the purpose of the request.

(c) Regarding permit approval and enforcement functions of the department of transportation related to use of or commercial activities in or affecting the ocean waters and shores of the State under chapter 266, Hawaii Revised Statutes, for any construction, dredging, or filling within the ocean waters of the State, including ocean waters, navigable streams and harbors belonging to or controlled by the State, to be undertaken as part of a geothermal and cable systems development project, a permit application form called "Application for Work in the Ocean Waters of the State of Hawaii", available at the Division of Water and Land Development, shall be filed by the applicant. Requirements to accompany the application include an environmental assessment or statement, a description of the shoreline, nature and extent of proposed work (such as construction, dredging, disposition of dredged material, filling, or other work), reference to public access, effects on adjacent property owners, and other information pertinent to the proposed work as required. In areas where a Conservation District Use Application (CDUA) is required, the Application for Work in the Ocean Waters of the State of Hawaii need not be filed. The requirements outlined above will be met via inter-division coordination within the department. A separate application for permit for work in the shorewaters of the State will no longer be necessary except when: (1) applicant's proposal is in the conservation district, but does not require a CDUA per the department's determination and (2) applicant applies for

CDUA, but in the review process the department expresses opposition or objection to the proposal. In areas where the proposed project is in the ocean waters, but not in the conservation district, the applicant is required to file with the department. The department shall inform and consult with, as appropriate, various agencies that have jurisdiction over navigable waters. When directed, the applicant shall notify the United States Coast Guard of such work for publication of a "Notice to Mariners".
 [Eff:] (Auth: HRS Sec. 196D-9)
 (Imp: HRS Sec. 196D-10)

Section 13-185-4 Consolidated permit application and review process. In order to carry out the intent of the geothermal and cable system development permitting act of 1988, the department shall establish and administer a consolidated permit application and review process as provided in this chapter. The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under the existing law, except to the extent that permitting functions have been transferred to the department for the purposes of the project, and each federal agency shall issue its own permit or approval based on its own jurisdiction. [Eff:]
 (Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-5)

Section 13-185-5 Contested case provisions. Where the contested case provisions under chapter 91, Hawaii Revised Statutes, apply to any one or more of the permits to be issued by an agency for the purposes of the project, the agency may, if there is a contested case involving any of the permits, be required to conduct only one contested case hearing on the permit or permits within its jurisdiction. Any appeal from a decision made by the agency pursuant to a public hearing or hearings required in connection with a permit shall be made directly on the record to the supreme court for final decision subject to chapter 602, Hawaii Revised Statutes. [Eff:]
 (Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-5)

Section 13-185-6 Streamlining. The department shall monitor the processing of all permit applications under this chapter on an ongoing basis to identify inefficiencies, delays, and duplications of effort. The department shall track the status of permits of those agencies whose permitting functions are not transferred to the department for the purpose of consolidated permitting

Section 13-185-6

for geothermal and cable system development projects. Any alternative suggestions and recommended changes in procedures will be brought to the interagency group as appropriate for consideration and adoption. The department may develop legislative proposals as appropriate to eliminate any duplicative or redundant permit requirements. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-7)

Section 13-185-7 Information services. (a) The department shall operate a permit information and coordination center that will provide guidance to potential applicants for geothermal and cable system development projects with regard to permits and procedures that may apply to the project. The center shall be known as the geothermal and cable system development permitting information and coordination center.

(b) The department shall maintain and update at the geothermal and cable system development permitting information and coordination center a repository of the laws, rules, procedures, permit requirements, and criteria of agencies whose permitting functions are not transferred to the department for the purpose of consolidated permitting and which have control or regulatory power over any aspect of geothermal and cable systems development projects and of federal agencies having jurisdiction over any aspect of these projects. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-8)

Section 13-185-8 Annual report. The department shall submit an annual report to the governor and the legislature on its work during the preceding year. The report shall include the status of geothermal and cable system development projects, any problems encountered, any legislative actions that may be needed to improve the consolidated permit application and review process, and to implement the intent of the geothermal and cable system development act of 1988. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-11)

Subchapter 2. Consolidated permit application
and review procedures

Section 13-185-9 Application and review procedure.
(a) The department shall provide the applicant with a geothermal/cable development consolidated permit application form. The consolidated permit application

form will be available during office hours 7:45 a.m. to 4:30 p.m. Monday through Friday, except holidays, at the following address:

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813
Telephone: 548-7533
Telefax: 548-6052

The department shall provide necessary assistance for the applicant to fill out the consolidated geothermal/cable development application form.

(b) The department shall provide advice to any applicant when federal and other agencies have indicated that they will not participate in the consolidated permit application and review process. The department shall assist the applicant in applying directly to these agencies, and shall coordinate to the fullest extent possible the consolidated permitting process with the permitting processes of the non-participating federal and other agencies.

(c) Upon receipt of the properly completed consolidated permit application, the department shall notify all State and county agencies whose permitting functions are not transferred to the department for the purpose of geothermal/cable system development permitting, as well as all federal agencies that may have jurisdiction over any aspect of the proposed project as set forth in the application, and shall invite the federal agencies and shall require State and county agencies so notified to participate in the consolidated permit application and review process. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-5)

Section 13-185-10 Application filing and fees. The applicant shall attach to the consolidated permit application form a preliminary statement of project costs. A filing fee varying with the statement of project cost shall accompany the consolidated permit application as follows:

| <u>Project Cost</u> | <u>Fee</u> |
|-----------------------|------------|
| \$0 - 999,999 | \$200 |
| 1,000,000 - 9,999,999 | \$400 |
| more than 10,000,000 | \$600 |

The fee shall be payable by check which shall accompany the application and should be made payable to the State of Hawaii. The check and the geothermal/cable development consolidated application shall be submitted to:

State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96806

or delivered to:

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

Checks for filing fees required for filing applications with agencies participating in the consolidated permit application and review process but whose permitting functions have not been transferred to the department for the project shall be made out in separate amounts to the respective agencies but shall be attached to the consolidated permit application form.

Filing fees for federal and other agencies not participating in the consolidated permit application and review process shall be submitted directly to those agencies. [Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-5)

Section 13-185-11 Interagency group. In order to provide coordination amongst agencies to facilitate carrying out the consolidated permit application and review process, the department shall convene an interagency group comprised of representatives of federal and other permitting agencies whose permitting functions have not been transferred to the department including but not limited to the following:

U.S. Army Corps of Engineers
District Engineer (POD CO-O)
Building 230
Fort Shafter, Hawaii 96858

Commander in Chief
U.S. Pacific Fleet
Pearl Harbor, Hawaii 96860

Commander, U.S. Coast Guard
Fourteenth Coast Guard District (OAN)
300 Ala Moana Boulevard, Room 9153
Honolulu, Hawaii 96850

District Chief,
Water Resources Division
U.S. Geological Survey
300 Ala Moana Boulevard, Room 6110
Honolulu, Hawaii 96850

Pacific Islands Administrator
U.S. Fish and Wildlife Service
300 Ala Moana Boulevard, Room 5302
P.O. Box 50167
Honolulu, Hawaii 96850

National Marine Fisheries Service
Pacific Islands Coordinator
2570 Dole Street, Room 106
Honolulu, Hawaii 96822-2396

Environmental Protection Agency
Manager,
Pacific Islands Contact Office
300 Ala Moana Boulevard, Room 1302
Honolulu, Hawaii 96850

Pacific Area Director
National Park Service
300 Ala Moana Boulevard, Room 6305
Honolulu, Hawaii 96850

State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

State of Hawaii
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

State of Hawaii
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813

State of Hawaii
Department of Business and
Economic Development
250 South King Street
Honolulu, Hawaii 96813

Mayor, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96721

Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96783

Mayor, City and County of Honolulu
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813

State and county agencies having permitting authority in geothermal and cable systems development projects shall participate in the activities of the interagency group. Federal agencies with permitting authority are invited to participate and the department shall give them the fullest cooperation possible in coordinating federal and State permit requirements.

If the legislature establishes any public corporation or authority for the purposes of implementing geothermal and cable systems development projects, then upon its establishment, the public corporation or authority shall be a member of the interagency group. The department shall convene meetings of the interagency group as required, and in appropriate locations, to organize to participate and to participate in the consolidated permit application and review process. The department shall convene a meeting of the interagency group in a timely manner upon completion of the department's review of each properly completed geothermal/cable consolidated permit application. [Eff:] (Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-6)

Section 13-185-12 Consolidated permit application and review team. (a) The department shall select a working team known as the consolidated permit application and review team from among representatives of agencies having jurisdiction over any aspect of the project. The applicant shall designate a representative to be available to the consolidated application and review team for

purposes of processing the applicant's consolidated permit application. The consolidated application and review team shall work with the department to provide permitting coordination for each geothermal and cable system development project. The team shall consolidate the various permitting requirements for each project.

(b) The department and agencies, through the consolidated permit application and review team, shall cooperate with the federal agencies to the fullest extent possible to minimize duplication and where possible promote consolidation of federal and State requirements. To the fullest extent possible, this cooperation shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has requirements that are in addition to but not in conflict with State law requirements, the department and the agencies shall cooperate to the fullest extent possible in fulfilling those requirements so that all documents shall comply with all applicable laws. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Secs. 196D-5, 196D-6)

Section 13-185-13 Joint Agreement. Representatives of the State and county agencies participating on the consolidated application and review team shall sign a joint agreement committing them to meet and perform the following tasks for each project application:

- (1) provide a listing of all permits required for the proposed project;
- (2) specify the regulatory and review responsibilities of the department and each State, county, and federal agency and the responsibilities of the applicant;
- (3) provide a timetable for regulatory review, the conduct of necessary hearings, preparation of an environmental impact statement, if necessary, and other actions required to minimize duplication and to coordinate and consolidate the activities of the applicant, the department, and the State, county, and federal agencies; the timetable shall accommodate existing statutes, ordinances, or rules established pursuant thereto, of each participating agency so that if one participating agency requires more time than another agency to process its portion of the consolidated permit application and cannot move up its schedule, the consolidated process shall defer to the agency with the longer time requirement.

- (4) coordinate hearings required for a permit, and hold hearings on the island where the proposed activity shall occur;
- (5) prepare alternatives for resolving conflicts and bring these to the affected agencies for resolution and if none of these alternatives is satisfactory to resolve a conflict, follow the conflict resolution process in section 13-185-14;
- (6) approve a consolidated permit compliance monitoring program and schedule prepared by the department to take effect after a proposed project is approved, to be monitored by the department;
- (7) provide that each agency shall monitor and enforce the respective terms and conditions of each agency's respective permits.

Federal agencies are invited to sign the joint agreement for a period not to exceed the term of the entire process for each geothermal and cable system development project application submitted to the department. Signing the joint agreement and thereby participating in the consolidated application process shall not affect or invalidate the jurisdiction or authority of any agency under existing law. Each agency shall issue its own permit or approval based on its own jurisdiction. [Eff:] (Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-4)

Section 13-185-14 Conflict resolution process.
Should administrative or procedural conflicts arise that the consolidated permit application and review team cannot resolve, the following conflict resolution process shall be implemented:

(a) in a conflict between State departments, any affected State department head may declare that an impasse exists between that department and any department or departments of the State during any phase of the permitting process related to the geothermal and cable systems development project. The applicant may also seek an impasse declaration by filing in writing with the administrative director of the State that such a declaration should be issued if the processing of a permit application has not made significant progress for forty-five calendar days. The administrative director shall make the determination whether an impasse declaration should be made. Upon an impasse being declared, the involved department heads shall each submit a report in writing to the administrative director within ten calendar days from the date of the impasse declaration.

The reports shall list the chronological events leading to the impasse, the perceived causes of the impasse, and a suggested solution. The administrative director or the administrative director's designee shall meet with the involved directors within twenty calendar days from the impasse declaration date. Should the impasse still exist following this meeting, the administrative director shall report to the governor the latest position of the directors and a recommendation. Upon a decision of the governor resolving the impasse, the involved departments shall initiate implementing the governor's decision within three calendar days from the date of the final decision.

(b) in a conflict between State and county agencies, any State or county department head involved in processing an application related to the geothermal/cable project can declare that an impasse has developed between the involved county and State departments.

Such a declaration shall be in writing identifying the unresolved issues and the respective positions of the affected departments. The applicant may also seek an impasse declaration by filing a written request with the administrative director of the State or the county agency which shall be designated by the mayor. Such a request for impasse declaration may be made if the processing of a permit application has not made significant progress for forty-five calendar days. Unless objected to in writing by the reviewing county and State department or State departments, an impasse declaration shall be made within ten working days from the date that the request for impasse declaration was filed. Upon an impasse being declared, the affected State and county department heads shall each submit a report in writing to both the State administrative director and the designated county agency within ten days from the date of impasse declaration. The reports shall list the chronological events leading to the impasse, the perceived causes of the impasse, and a suggested solution. The administrative director or the administrative director's designee and the head of the mayor's designated county agency or that agency's designee, shall meet with the involved State and county department heads within twenty calendar days from the impasse declaration date. Should the impasse declaration still exist following the meeting, the administrative director shall render a decision. The involved State and county departments shall initiate implementing the administrative director's decision within three calendar days from the date of the final decision.

[Eff:] (Auth: HRS Sec. 196D-9)

(Imp: HRS Sec. 196D-4)

Subchapter 3. Regulation of Geothermal and Cable
System Development Permitting

Section 13-185-15 Monitoring applicants' compliance with terms and conditions of permits. Once a geothermal and cable systems development consolidated permit application has been approved by the review team, the department shall commence monitoring the applicant's compliance with the terms and conditions of the permits for which the department has full and direct responsibility, including those issued pursuant to functions transferred to the department by section 196D-10, Hawaii Revised Statutes. The department shall prepare a schedule for monitoring terms and conditions of consolidated permits that shall be accepted by the consolidated permit application and review team. The department shall monitor permitting agencies' monitoring activities to assure permit compliance is being monitored. The monitoring schedule will identify terms and conditions of compliance, dates of monitoring, federal and other agencies and individuals who shall carry out the monitoring activity, and the date the report of the monitoring activity shall be sent to the department. The department shall maintain a log of the monitoring activities and shall alert the appropriate permitting agency if monitoring for permit compliance is not being carried out on schedule. If necessary the department in conjunction with the affected agency or agencies shall enforce all terms and conditions related to any permit.

[Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-5)

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER AND LAND DEVELOPMENT

Chapter 185

Rules of Practice and Procedure for
Geothermal and Cable System Development Permitting

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Section 13-185-1

Subchapter 1. General

Section 13-185-1 Purpose. The purpose of this chapter is to establish guidelines and procedures for consolidated geothermal and cable system development permitting. Consolidated permitting procedures are intended to coordinate and streamline permitting requirements of the diverse array of federal, state, and county land use, planning, environmental, and other related laws and regulations that affect geothermal and cable system development. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-2)

Section 13-185-2 Definitions. As used in this chapter: "Agency" means any department, office, board, or commission of the State or a county government which is a part of the executive branch of that government, but does not include any public corporation or authority that may be established by the legislature for the purposes of geothermal and cable system development.

"Applicant" means any person who, pursuant to statute, ordinance, rule, or regulation, requests approval or a permit for a geothermal and cable system development project.

"Approval" means a discretionary consent required from an agency prior to the actual implementation of a geothermal and cable system development project.

"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.

"Consolidated permit application form" means a package of forms comprising the form made for this purpose by the department of land and natural resources plus the forms of whatever federal and other agencies have permitting authority over a particular project and are required to use their own application form. Information provided in this package includes but is not limited to information identifying the applicant, the landowner, the location of the proposed geothermal and cable system development project, the types of permits required, environmental requirements, information on the geographic location of the project, a description of the proposed project, and plan information.

"Department" means the department of land and natural resources or any successor agency.

"Discretionary consent" means a consent, sanction, or recommendation from an agency for which judgement and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.

"Environmental impact statement" means, as applicable, an informational document prepared in compliance with chapter 343, Hawaii Revised Statutes, or with the National Environmental Policy Act of 1969 (Public Law 91-190).

"Geothermal and cable system development project" or "project" means the commercial development, construction, installation, financing, operation, maintenance, repair, and replacement, including without limitation all applicable exploratory, testing, and predevelopment activities related to the foregoing, of:

- (1) a geothermal power plant or plants, including associated equipment, facilities, wells, and transmission lines, on the islands of Hawaii or Maui, for the purpose of generating electric energy for transmission primarily to the island of Oahu through the cable system; and
- (2) an interisland deep water electrical transmission cable system, including all land-based transmission lines and other ancillary facilities, to transmit geothermally generated electric energy from the islands of Hawaii or Maui, to the islands of Oahu or Maui, regardless of whether the cable system is used to deliver electric energy to any intervening point.

"Interagency group" means a group comprised of representatives from county, State, and federal agencies involved in geothermal and cable system development permitting activities whose permitting functions are not transferred by Sec. 196D-10, Hawaii Revised Statutes, to the department for the purpose of consolidating the permitting process for geothermal and cable system development projects.

"Intervenor" means a person or agency who properly seeks by application to intervene and is entitled as of right to be admitted as a party in any court or agency proceeding.

"Permit" means any license, permit, certificate, certification, approval, compliance schedule, or other similar document or decision pertaining to any regulatory or management program which is related to the protection, conservation, use of, or interference with the natural resources of land, air, or water in the State and which is required prior to or in connection with the undertaking of the project.

"Person" includes any individual, partnership, firm, association, trust, estate, corporation, joint venture, consortium, any public corporation or authority that may be established by the legislature for the purposes of the project, or other legal entity other than an agency.
[Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Secs. 196D-3, HRS 196D-6)

(a) Regarding functions of the land use commission related to district boundary amendments as set forth in section 205-3.1 et seq., Hawaii Revised Statutes, for district boundary amendments involving land areas greater than fifteen acres, and for land areas fifteen acres or less in conservation districts, for purposes of geothermal and cable system development projects and for those projects only, the department shall process applications as follows. The applicant shall file a petition for boundary amendment with the department. The petition shall be in writing and shall provide a statement of the authorization or relief sought and the statutory provisions under which authorization or relief is sought. For petitions to reclassify properties from the conservation district to any other district, the petition shall include an environmental impact statement or negative declaration approved by the department for the proposed reclassification request; the legal name of the petitioner, and the address, description of the property, the petitioner's proprietary interest in the property, and a copy of the deed or lease, with written authorization of the fee owner to file the petition. The petition shall include the type of development proposed and details

regarding the development including timetables, cost, assessment of the effects of the development, and an assessment of the need for reclassification. The department shall serve copies of the application upon the county planning department and planning commission within which the subject land is situated, upon the director of the department of business and economic development, or a designated representative, and upon all persons with a property interest in the property, and upon all persons with a property interest lying within 1000' of the subject property, recorded in the county's real property tax records at the time the petition is filed, along with a notice of a public hearing on the matter, to be conducted on the appropriate island. The department shall set the hearing within not less than sixty and not more than one hundred eighty days after a proper application has been filed. The department shall also mail notice of the hearing to all persons who have made a timely written request for advance notice of boundary amendment proceedings, and notice of the hearing shall be published at least once in a newspaper in the county in which the land sought to be redistricted is situated as well as once in a newspaper of general circulation in the State at least thirty days in advance of the hearing. The notice shall comply with the provisions of chapter 91, Hawaii Revised Statutes, shall indicate the time and place that maps showing the proposed district boundary may be inspected, and further, shall inform all interested persons of their rights regarding intervening in the proceedings. The petitioner, the office of state planning and the county planning department within which the subject land is situated shall appear at the proceedings as parties in the petition and shall make recommendations relative to the proposed boundary change. The department shall admit any other department or agencies of the State and of the county in which the land is situated as parties upon timely application. The department shall admit any person who has some property interest in the land, who lawfully resides on the land, or within 1000' of the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public, as intervenors to the proposed boundary change. The department shall receive applications for leave to intervene from any member of the public, which shall be freely granted, provided the department may deny an

application if it appears it is substantially the same as the position of a party already admitted to the proceeding or if admission of additional parties will render the proceedings inefficient and unmanageable. The petition for intervention shall be filed with the department within fifteen days after the notice of hearing is published in the newspaper. The petition shall make reference to the following:

- (1) Nature of petitioner's statutory or other right;
- (2) Nature and extent of the petitioner's interest, and if an abutting property owner, or a property owner whose property lies within 1000' of the subject land, the tax map key description of the property;
- (3) Effect of any decision in the proceeding on petitioner's interest.

Within a period of not more than one hundred and twenty days after the close of the hearing, the department shall, by findings of fact and conclusions of law, act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of the law or to assure substantial compliance with representations made by the petitioner in seeking a boundary change.

The department shall not approve an amendment of a land use district boundary unless the department finds upon the clear preponderance of the evidence that the proposed boundary amendment is reasonable, not violative of section 205-2, Hawaii Revised Statutes, and consistent with the policies and criteria established pursuant to Sections 205-16, 205-17 and 205A-2, Hawaii Revised Statutes.

In its review of any petition for reclassification of district boundaries pursuant to this chapter, the department shall specifically consider the following:

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii State Plan and relates to the applicable priority guidelines of the Hawaii State Plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards;

- (3) The impact of the proposed reclassification on the following areas of state concern:
 - (A) Preservation or maintenance of important natural systems or habitats;
 - (B) Maintenance of valued cultural, historical, or natural resources;
 - (C) Maintenance of other natural resources relevant to Hawaii's economy including, but not limited to agricultural resources;
 - (D) Commitment of state funds and resources;
 - (E) Provision for employment opportunities and economic development; and
 - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate and gap groups; and
- (4) In establishing the boundaries of the districts in each county, the department shall give consideration to the general plan of the county in which the land is located.

Amendments of land use district boundary in other than conservation districts involving land areas fifteen acres or less shall be determined by the appropriate county land use decision-making authority for the district.

(b) Regarding transfer of the function of the land use commission concerning changes in zoning, for purposes of geothermal and cable system development projects and for those projects only, for land within agricultural and rural districts the area of which is greater than fifteen acres, special permits of the county planning commission for geothermal and cable development projects shall be subject to approval by the department for unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified.. The department may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant. The following guidelines are established in determining an "unusual and reasonable use":

- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, Hawaii Revised Statutes;
- (2) The desired use would not adversely affect surrounding property;
- (3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;

- (4) Unusual conditions, trends and needs have arisen since the district boundaries and rules were established;
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

A copy of the decision together with the complete record of the proceeding before the county planning commission on all special permit requests for a geothermal and cable system development project involving a land area greater than fifteen acres shall be transmitted to the department within sixty days after the decision is rendered. Within forty-five days after receipt of the complete record from the county planning commission, the department shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by the department or a modification by the department as the case may be, of the desired use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure.

(c) Regarding permit approval and enforcement functions of the department of transportation related to use of or commercial activities in or affecting the ocean waters and shores of the State under chapter 266, Hawaii Revised Statutes, for any construction, dredging, or filling within the ocean waters of the State, including ocean waters, navigable streams and harbors belonging to or controlled by the State, to be undertaken as part of a geothermal and cable systems development project, a permit application form called "Application for Work in the Ocean Waters of the State of Hawaii", available at the Division of Water and Land Development, shall be filed by the applicant. Requirements to accompany the application include an environmental assessment or statement, a description of the shoreline, nature and extent of proposed work (such as construction, dredging, disposition of dredged material, filling, or other work), reference to public access, effects on adjacent property owners, and other information pertinent to the proposed work as required. In areas where a Conservation District Use Application (CDUA) is required, the Application for Work in the Ocean Waters of the State of Hawaii need not be filed. The requirements outlined above will be met via inter-division coordination within the department. A separate application for permit for work in the shorewaters of the State will no longer be necessary.

except when: (1) an applicant's proposal is in the conservation district, but does not require a CDUA per the department's determination and (2) an applicant applies for a CDUA, but in the review process the department expresses opposition or objection to the proposal. In areas where the proposed project is in the ocean waters, but not in the conservation district, the applicant is required to file an application for work with the department. The department shall inform and consult with, as appropriate, various agencies that have jurisdiction over navigable waters. When directed, the applicant shall notify the United States Coast Guard of such work for publication of a "Notice to Mariners".

[Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-10)

Section 13-185-4 Consolidated permit application and review process. In order to carry out the intent of the geothermal and cable system development permitting act of 1988, the department shall establish and administer a consolidated permit application and review process as provided in this chapter. The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under the existing law, except to the extent that permitting functions have been transferred by the Act to the department for the purposes of the project, and each federal agency shall issue its own permit or approval based on its own jurisdiction. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-5)

Section 13-185-5 Contested case provisions. Where the contested case provisions under chapter 91, Hawaii Revised Statutes, apply to any one or more of the permits to be issued by an agency for the purposes of the project, the agency may, if there is a contested case involving any of the permits, conduct only one contested case hearing on the permit or permits within its jurisdiction. Any appeal from a decision made by the agency pursuant to a public hearing or hearings required in connection with a permit shall be made directly on the record to the supreme court for final decision subject to chapter 602, Hawaii Revised Statutes. [Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-5)

Section 13-185-6

Section 13-185-6 Streamlining. The department shall monitor the processing of all permit applications under this chapter on an ongoing basis to identify inefficiencies, delays, and duplications of effort. Any alternative suggestions and recommended changes in procedures will be brought to the interagency group as appropriate for consideration and adoption, in consultation with those agencies whose permitting functions are not transferred to the department for purposes of the project and with members of the public. The department may develop legislative proposals as appropriate to eliminate any duplicative or redundant permit requirements. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-7)

Section 13-185-7 Information services. (a) The department shall operate a permit information and coordination center that will provide guidance to potential applicants for geothermal and cable system development projects with regard to permits and procedures that may apply to the project. The center shall be known as the geothermal and cable system development permitting information and coordination center.

(b) The department shall maintain and update at the geothermal and cable system development permitting information and coordination center a repository of the laws, rules, procedures, permit requirements, and criteria of agencies whose permitting functions are not transferred to the department for the purpose of consolidated permitting and which have control or regulatory power over any aspect of geothermal and cable systems development projects and of federal agencies having jurisdiction over any aspect of these projects. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-8)

Section 13-185-8 Annual report. The department shall submit an annual report to the governor and the legislature on its work during the preceding year. The report shall include the status of geothermal and cable system development projects, any problems encountered, any legislative actions that may be needed to improve the consolidated permit application and review process, and to implement the intent of the geothermal and cable system development act of 1988.
[Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-11)

Subchapter 2. Consolidated permit application
and review procedures

Section 13-185-9 Application and review procedure.

(a) The department shall provide the applicant with a geothermal/cable development consolidated permit application form. The consolidated permit application form will be available during office hours 7:45 a.m. to 4:30 p.m. Monday through Friday, except holidays, at the following address:

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813
Telephone: 548-7533
Telefax: 548-6052

The department shall provide necessary assistance for the applicant to fill out the consolidated geothermal/cable development application form.

(b) The department shall provide advice to any applicant when federal and other agencies have indicated that they will not participate in the consolidated permit application and review process. The department shall assist the applicant in applying directly to these agencies, and shall coordinate to the fullest extent possible the consolidated permitting process with the permitting processes of the non-participating federal and other agencies.

(c) Upon receipt of the properly completed consolidated permit application, the department shall notify all State and county agencies whose permitting functions are not transferred to the department for the purpose of geothermal/cable system development permitting, as well as all federal agencies that may have jurisdiction over any aspect of the proposed project as set forth in the application, and shall invite the federal agencies and shall require State and county agencies so notified to participate in the consolidated permit application and review process. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-5)

Section 13-185-10

Section 13-185-10 Application filing and fees. The applicant shall attach to the consolidated permit application form a preliminary statement of project costs. A filing fee varying with the statement of project cost shall accompany the consolidated permit application as follows:

| <u>Project Cost</u> | <u>Fee</u> |
|-----------------------|------------|
| \$0 - 999,999 | \$200 |
| 1,000,000 - 9,999,999 | \$400 |
| more than 10,000,000 | \$600 |

The fee shall be payable by check which shall accompany the application and should be made payable to the State of Hawaii. The check and the geothermal/cable development consolidated application shall be submitted to:

State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96806

or delivered to:

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

Checks for filing fees required for filing applications with agencies participating in the consolidated permit application and review process but whose permitting functions have not been transferred to the department for the project shall be made out in separate amounts to the respective agencies but shall be attached to the consolidated permit application form.

Filing fees for federal and other agencies not participating in the consolidated permit application and review process shall be submitted directly to those agencies. [Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-5)

Section 13-185-11 Interagency group. In order to provide coordination amongst agencies to facilitate carrying out the consolidated permit application and review process, the department shall convene an interagency group comprised of representatives of federal and other permitting agencies whose permitting functions have not been transferred to the department including but not limited to the following:

U.S. Army Corps of Engineers
District Engineer (POD CO-O)
Building 230
Fort Shafter, Hawaii 96858

Commander in Chief
U.S. Pacific Fleet
Pearl Harbor, Hawaii 96860

Commander, U.S. Coast Guard
Fourteenth Coast Guard District (OAN)
300 Ala Moana Boulevard, Room 9153
Honolulu, Hawaii 96850

District Chief,
Water Resources Division
U.S. Geological Survey
300 Ala Moana Boulevard, Room 6110
Honolulu, Hawaii 96850

Pacific Islands Administrator
U.S. Fish and Wildlife Service
300 Ala Moana Boulevard, Room 5302
P.O. Box 50167
Honolulu, Hawaii 96850

National Marine Fisheries Service
Pacific Islands Coordinator
2570 Dole Street, Room 106
Honolulu, Hawaii 96822-2396

Environmental Protection Agency
Manager,
Pacific Islands Contact Office
300 Ala Moana Boulevard, Room 1302
Honolulu, Hawaii 96850

Section 13-185-11

Pacific Area Director
National Park Service
300 Ala Moana Boulevard, Room 6305
Honolulu, Hawaii 96850

State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

State of Hawaii
Office of State Planning
State Capitol, Room 410
Honolulu, Hawaii 96813

State of Hawaii
Department of Health
1250 Punchbowl Street
Honolulu, Hawaii 96813

State of Hawaii
Department of Business and
Economic Development
250 South King Street
Honolulu, Hawaii 96813

Mayor, County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96721

Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96783

Mayor, City and County of Honolulu
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813

State and county agencies having permitting authority in geothermal and cable systems development projects shall participate in the activities of the interagency group. Federal agencies with permitting authority are invited to participate and the department shall give them the fullest cooperation possible in coordinating federal and State permit requirements.

If the legislature establishes any public corporation or authority for the purposes of implementing geothermal and cable systems development projects, then upon its establishment, the public corporation or authority shall be a member of the interagency group. The department shall convene meetings of the interagency group as required, and in appropriate locations, to organize to participate and to participate in the consolidated permit application and review process. The department shall convene a meeting of the interagency group in a timely manner upon completion of the department's review of each properly completed geothermal/cable consolidated permit application. [Eff:] (Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-6)

Section 13-185-12 Consolidated permit application and review team. (a) The department shall select a working team known as the consolidated permit application and review team from members of the interagency group. The applicant shall designate a representative to be available to the consolidated application and review team for purposes of processing the applicant's consolidated permit application. The consolidated application and review team shall work with the department to provide permitting coordination for each geothermal and cable system development project. The team shall consolidate the various permitting requirements for each project.

(b) The department and agencies, through the consolidated permit application and review team, shall cooperate with the federal agencies to the fullest extent possible to minimize duplication and where possible promote consolidation of federal and State requirements. To the fullest extent possible, this cooperation shall include joint environmental impact statements with concurrent public review and processing at both levels of government. Where federal law has requirements that are in addition to but not in conflict with State law requirements, the department and the agencies shall cooperate to the fullest extent possible in fulfilling those requirements so that all documents shall comply with all applicable laws. [Eff:] (Auth: HRS Sec. 196D-9) (Imp: HRS Secs. 196D-5, 196D-6)

Section 13-185-13 Joint agreement. Representatives of the State and county agencies participating on the consolidated application and review team shall sign a joint agreement committing them to meet and perform the following tasks for each project application:

Section 13-185-13

- (1) provide a listing of all permits required for the proposed project;
- (2) specify the regulatory and review responsibilities of the department and each State, county, and federal agency and the responsibilities of the applicant;
- (3) provide a timetable for regulatory review, the conduct of necessary hearings, preparation of an environmental impact statement, if necessary, and other actions required to minimize duplication and to coordinate and consolidate the activities of the applicant, the department, and the State, county, and federal agencies; the timetable shall accommodate existing statutes, ordinances, or rules established pursuant thereto, of each participating agency so that if one participating agency requires more time than another agency to process its portion of the consolidated permit application and cannot move up its schedule, the consolidated process shall defer to the agency with the longer time requirement.
- (4) coordinate hearings required for a permit, and hold hearings on the island where the proposed activity shall occur;
- (5) prepare alternatives for resolving administrative or procedural conflicts and bring these to the affected agencies for resolution and if none of these alternatives is satisfactory to resolve a conflict, follow the conflict resolution process in section 13-185-14;
- (6) approve a consolidated permit compliance monitoring program and schedule prepared by the department to take effect after a proposed project is approved, to be monitored by the department;
- (7) provide that each agency shall monitor and enforce the respective terms and conditions of each agency's respective permits.

Federal agencies are invited to sign the joint agreement for a period not to exceed the term of the entire process for each geothermal and cable system development project application submitted to the department. Signing

the joint agreement and thereby participating in the consolidated application process shall not affect or invalidate the jurisdiction or authority of any agency under existing law. Each agency shall issue its own permit or approval based on its own jurisdiction.

[Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-4)

Section 13-185-14 Conflict resolution process.
Should administrative or procedural conflicts, as opposed to conflicts of authority, which are not treated in this chapter, arise that the consolidated permit application and review team cannot resolve, the following conflict resolution process shall be implemented:

(a) In an administrative or procedural conflict, as opposed to a conflict of authority, which is not treated in this chapter, conflict between State departments, any affected State department head may declare that an impasse exists between that department and any department or departments of the State during any phase of the permitting process related to the geothermal and cable systems development project. The applicant may also seek an impasse declaration by filing in writing with the administrative director of the State that such a declaration should be issued if the processing of a permit application has not made significant progress for forty-five calendar days. The administrative director shall make the determination whether an impasse declaration should be made. Upon an impasse being declared, the involved department heads shall each submit a report in writing to the administrative director within ten calendar days from the date of the impasse declaration. The reports shall list the chronological events leading to the impasse, the perceived causes of the impasse, and a suggested solution. The administrative director or the administrative director's designee shall meet with the involved directors within twenty calendar days from the impasse declaration date. Should the impasse still exist following this meeting, the administrative director shall report to the governor the latest position of the directors and a recommendation. Upon a decision of the governor resolving the impasse, the involved departments shall initiate implementing the governor's decision within three calendar days from the date of the final decision.

(b) In an administrative or procedural conflict, as opposed to a conflict of authority, which is not treated in this chapter, between State and county agencies, any State or county department head involved in

processing an application related to the geothermal/cable project can declare that an impasse has developed between the involved county and State departments.

Such a declaration shall be in writing identifying the unresolved issues and the respective positions of the affected departments. The applicant may also seek an impasse declaration by filing a written request with the administrative director of the State or the county agency which shall be designated by the mayor. Such a request for impasse declaration may be made if the processing of a permit application has not made significant progress for forty-five calendar days. Unless objected to in writing by the reviewing county and State department or State departments, an impasse declaration shall be made within ten working days from the date that the request for impasse declaration was filed. Upon an impasse being declared, the affected State and county department heads shall each submit a report in writing to both the State administrative director and the designated county agency within ten days from the date of impasse declaration. The reports shall list the chronological events leading to the impasse, the perceived causes of the impasse, and a suggested solution. The administrative director or the administrative director's designee and the head of the mayor's designated county agency or that agency's designee, shall meet with the involved State and county department heads within twenty calendar days from the impasse declaration date. Should the impasse declaration still exist following the meeting, the administrative director shall render a decision. The involved State and county departments shall initiate implementing the administrative director's decision within three calendar days from the date of the final decision.

[Eff:] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-4)

Subchapter 3. Regulation of Geothermal and Cable System Development Permitting

Section 13-185-15 Monitoring applicants' compliance with terms and conditions of permits. Once all the required permits have been approved, the department shall commence monitoring the applicant's compliance with the terms and conditions of the permits for which the department has full and direct responsibility, including those issued pursuant to functions transferred to the department by section 196D-10, Hawaii Revised Statutes.

The department shall prepare a schedule for monitoring terms and conditions of consolidated permits that shall be accepted by the consolidated permit application and review team. The department shall monitor permitting agencies' monitoring activities to assure permit compliance is being monitored. The monitoring schedule will identify terms and conditions of compliance, dates of monitoring, federal and other agencies and individuals who shall carry out the monitoring activity, and the date the report of the monitoring activity shall be sent to the department. The department shall maintain a log of the monitoring activities and shall alert the appropriate permitting agency if monitoring for permit compliance is not being carried out on schedule. If necessary the department in conjunction with the affected agency or agencies shall enforce all terms and conditions related to any permit.

[Eff: _____] (Auth: HRS Sec. 196D-9)
(Imp: HRS Sec. 196D-5)

Section 12-185-16 Enforcement of District Boundary Amendments and Special Permits. The department shall enforce compliance with conditions placed on reclassifications of district boundaries and terms and conditions of special permitted activities.

(a) Whenever the department shall have reason to believe that there has been a failure to perform according to the conditions imposed, the department shall issue and serve upon the party bound by the conditions an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification.

- (1) The department shall serve the order to show cause in writing by registered or certified mail with return receipt requested at least thirty days before the hearing. A copy shall be also sent to all parties in the boundary amendment proceedings;
- (2) The order to show cause shall include:
 - (A) A statement of the date, time, place, and nature of the hearing;
 - (B) A description and a map of the property to be affected;

Section 13-185-16

- (C) A statement of the legal authority under which the hearing is to be held;
- (D) The specific sections of the statutes, or rules, or both, involved; and
- (E) A statement that any party may retain counsel if the party so desires.

The department shall conduct a hearing on an order to show cause in accordance with the requirements of chapter 91, Hawaii Revised Statutes. Any procedure in an order to show cause hearing may be modified or waived by stipulation of the parties and informal disposition may be made in any case by stipulation, agreed settlement, consent order, or default. Post hearing procedures shall conform to chapter 91, Hawaii Revised Statutes. Decisions and orders shall be issued in accordance with chapter 91, Hawaii Revised Statutes. The department shall amend its decision and order to incorporate the order to show cause by including the reversion of the property to its former land use classification or to a more appropriate classification.

(b) Whenever the department finds that there is prima facie evidence that breach has occurred the special permit shall be automatically suspended pending a hearing on the continuity of such special permit provided that written request for such a hearing is filed with the department within ten days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within said ten day period the department may revoke said special permit. [Eff:]
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-10)

Summary Minutes

Public Hearing 6/21/89 7:00 p.m.
Campus Center, University of Hawaii Hilo Campus

Administrative Rules for Act 301, SLH 1988

On June 21, 1989 at 7:00 p.m. Mr. Dan Lum and Ms. Janet Swift of DLNR opened a public hearing to listen and record for the record testimony from the public and others. A court reporter was present to make a record of the proceedings.

Some 50 members of the public signed the attendance sheets (copies attached) and another 15 signed up to testify. The majority of those testifying are in favor of moving very slowly, deliberately and carefully in planning for geothermal development on the Big Island. Some were completely against any geothermal development. Several individuals testified completely away from the subject matter at hand.

A summary of comments included the following:

Mr. Henry Ross said we should first see how the 25 MW project works out, before we go ahead into a 500 MW project. He proposed that the geothermal drilling be done on Oahu if it is for Oahu use. He said he is against the rules. He proposed that the Interagency Group be moved to the Big Island.

Mr. John Tan said we need to be energy self sufficient and therefore geothermal is a good thing, but we must make sure it will be done properly and safely.

Mr. Ron Philips of the Puna Community Council testified that the administrative rules do not reflect the legislative intent. He said that the community had to hire an attorney to review the rules. He read the attorney's analysis of problems to the rules and submitted a copy of the analysis to DLNR.

Mr. Tim Sullivan read excerpts from a June 1989 National Geographic article regarding extinct and endangered species in Hawaii, which reported that Hawaii is unusually high in numbers of extinct animals and species.

Mrs. Jennifer Perry referred to Hawaii's state plan and its purpose, and suggested that these rules should have provision for notification of all landowners within a certain boundary in case of a proposed district boundary amendment. She requested more public input into the rules.

Mr. Jim Blakey expressed disappointment that DLNR would be the lead agency for a project affecting the lives of people on the

Big Island. He requested the County work with the citizens for a cleaner approach to geothermal development than DLNR has been involved in.

Mr. Delan Perry suggested a one year minimum permit review period for geothermal development projects. He also suggested permitting agencies contract studies to investigate developers' claims.

Ms. Barbara Bell urged denial of the rules until several changes are made: she requested a one year minimum permitting review period. She requested establishing an Environmental Compliance Officer to be funded in part by the geothermal industry, she suggested information be made available to the public, not just to developers, she suggested the annual report be distributed free to members of the public.

Mr. Michael LaPlante demonstrated 85dB of noise and said that is what Mr. Rod Moss said would be the sound level during well drilling operations. (The noise was very loud.) Mr. LaPlante also demonstrated the smell of rotten eggs by wearing such a smell on his body. The smell was so strong that the court reporter, near whom he sat, had to ask him to move. Mr. LaPlante ask that it be made part of the record that he was asked to move, just, as he said, as the geothermal developments are making him move from his home. Mr. LaPlante said that he is a party against the land swap. He feels this land exchange is unfair. He felt that the State should make proper settlement with the residents. He asked who would be liable for ill effects of geothermal development, who would pay for insurance and for toxic waste cleanup. He said he resented the utility's threat of having to install a large coal burning facility on Maui if the large geothermal project does not go through.

Mr. Robert Patrichi testified that he grew up in California and observed the environment there deteriorate over the years. He said he is now seeing the same thing in Hawaii. He felt that the rules are written to help the developer. He felt the subzone should be moved away from his home.

Mr. Steve Philips said he takes exception to the rules because he feels they are cutting the people most affected out of the process. He feels it is big moneyed people who are cutting the little people out of the process. He feels his livelihood as a small flower farmer is threatened.

Mr. Ulalela said that Madame Pele is nuha with Campbell Estate and Helco and threatens to do bad things if the Puna Reserve land is devastated. He said that all that will remain will be ashes if this happens.

Mr. Clive Cheetham expressed disappointment that only two

officials from DLNR were present for the hearing. He said that Oahu should reduce its electrical usage through conservation. He asked what would happen to electricity users on Oahu if the cable breaks down. He felt scrapping the entire project would be preferable to going ahead with it.

Mr. Duane Kanuha of the Hawaii County Planning Department read a letter to Mr. Paty asking if the consolidation efforts will be meaningful, and offering continuing assistance to work out the complexities of the various permitting processes.

Ms. Helene Shinde spoke about endangered species and her concern that their habitats be protected.

Dr. Emmet Aluli of the Pele Defense Fund testified that the hearing notice was not substantive enough. He expressed concern that the central permitting process will carry over into other kinds of developments that will affect the Big Island adversely. He cited a 240 MW electrical project at Campbell Industrial Park and asked why does 500 MW need to be generated from the Big Island when this other project is going on.

The last speaker having been heard, Mr. Lum announced that additional written testimony would be accepted through July 7, 1989. He ended the hearing at approximately 9:18 p.m.

The hearing ended at approximately 9:18.

PUBLIC HEARING JUNE 21, 1989, DLNR
PROPOSED REVISIONS TO CHAPTER 185, "RULES OF PRACTICE AND PROCEDURE FOR
GEOTHERMAL AND CABLE SYSTEM DEVELOPMENT PERMITTING"

COMMENTS ON PUBLIC NOTIFICATION AND INTERVENTION

We live in a very unique and special place. Hawaii was the first of the fifty states to have a General Plan. It was prepared in response to the State Planning Act of 1957 and subsequently passed by the 1961 State Legislature as the Land Use Law, whose intent is to protect agricultural lands and to promote the public welfare.

Provisions were made to allow for boundary changes and special permit procedures which included the process of a first review at the County Planning Commission level and then a final review at the State Land Use Commission level.

These provisions allow for public hearing and notification of adjacent residents and landowners within 300' of the property line. In determining which parties may intervene in the hearing proceedings, the Land Use Commission MUST allow all persons who can show that they will be directly and immediately affected by the change in a way that is clearly distinguishable from the general public. THIS COULD INCLUDE ADJOINING RESIDENTS AND OWNERS. Other persons may petition to intervene and the Commission MAY turn down such a petition under certain criteria.

With regard to geothermal development, we have new rules being proposed tonight which have flaws especially regarding the passages relating to public notice and intervention.

There is no special and CRUCIAL provision for notification to property owners and residents within a certain distance from the proposed geothermal development site. Special permits, general plan amendments, and boundary amendments require written notice to those 300' from the property line. Since geothermal development has been known to be so noxious and/or disruptive to neighboring areas as indicated in suits filed in Nevada against Yankee Caithness Joint Venture and against Ormat/Far West Geothermal, we need to review the 300' notification line to determine if that is adequate.

Further under the proposed rules, the DLNR SHALL deny an application from ANY MEMBER of the public, if it appears it is substantially the same as the position of a party already admitted to the proceeding OR if admission of additional parties will render the proceedings inefficient and unmanageable. This appears again to be an attempt to keep the affected public from the decision making process. The LUC regulations which this new rule will replace provide that the department MAY (not SHALL) determine denial, and clarifies that both reasons must be met AND (not OR).

There appears to be a grave neglect of public concern and input in these new rules and I ask you to reconsider this proposal.

One other recommendation I would like to add is that stated in the Eckbo, Dean, Austin and Williams report made in 1969 in regard to the five year boundary review:

"In our opinion the most serious shortcoming in the Rules was the lack

of a requirement that the commission employ written majority opinions on all decisions."

We could follow the practice of the Supreme Court and expand that to include written majority and minority opinions on all decisions.

Thank you for your time.

Jennifer Perry
Kapoho resident
Box 537
Pahoa 96778

I have read the proposed Chapter 185 to Coordinate and Streamline Geothermal Development.

According to my dictionary, streamline means that shape of a solid body which is calculated to meet with the smallest amount of resistance in passing thru the atmosphere; in this case the proper review of important drilling, health, landuse planning, and community concerns.

Geothermal development will not be facilitated except in the short term by accepting driller and developer programs without independent assessment of their claims. In the long term the streamlining that would result from these rules will further remove the two agencies who now take the most careful and comprehensive look at these industrial uses: the County Planning Commission and the affected community.

For good future planning with the least negative impacts, any project should have at least a one year permit process. The affected public must be involved at a very early stage and the permitting agencies should be contracting studies to assess the validity of developer's claims. BACT and land use conflicts must not be left to the developer's discretion.

Drilling regulations must be upgraded to mitigate devastating problems. DLNR is not yet equiped to properly review even the drilling permits. Case in point is the SOH permit which after approval was withdrawn by the UH when, after public inputs, they began to recognize the high level of danger their plan entailed by not casing down to at least 4000' and proper anchoring at that depth.

These rules would also:

1. destroy the concept of land use zones, usurping the counties authority to regulate appropriate development in ag and rural districts (pg 185-6), and making geothermal development the primary landuse regardless of pre-existing uses.
2. allow for ignoring any county conditions (pg 185-15) if the county consents to these rules,
3. freeze out (landowners and residents) most any person with legitimate rights from contesting any decision (pg. 185-7).

I urge that these rules not be adopted as they will make careful and independent review far less likely, and in the long run result in consequences no one will be able to live with. I also urge the DOH and the Counties to have no part in this consolidated permit process.

Streamlining geothermal permits will only hasten the mistakes that increased public input and agency reviews could catch.

I believe these rules go far beyond the legislative mandate of Act 3
Respectfully submitted,

Delan Perry
Box 537
Pahoa, HI 96778

June 21, 1989

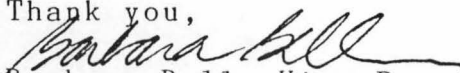
TESTIMONY FOR PUBLIC HEARING ON TITLE 13, CHAPTER 185 (SUB-TITLE 7)

I urge denial of these RULES OF PRACTICE AND PROCEDURE FOR GEOTHERMAL AND CABLE SYSTEM DEVELOPMENT PERMITTING that will be streamlining the permitting process until several changes are made.

1. The process has 365 days, one full year, not 180, for careful review and sufficient time for commentary from all agencies and the public.
2. There is an Environmental Compliance Officer or Board as a liason between the State and the Public. This position should be at least half funded by the Geothermal Industry.
3. The Contested Case provisions allow more than one hearing.
4. The Information Services Center has provisions for the community to receive information just as easily as permit applicants.
5. The Annual Report to the Governor shall be available to the community at no charge.

In closing, I would like to add that I strongly object to the wording on virtually every page that states that the State of Hawaii wants to help in any and all ways any applicant involved in a Geothermal or Cable system. I see in print how when my State Government wants something they go after it. I will believe the Geothermal and Cable development on the Island of Hawaii is beneficial and benign only when these Rules give much more latitude to the Community for input and timely conflict resolution out of Court.

Thank you,


Barbara Bell, Vice-President, Kapoho Community Association



P U N A

Community Council, Inc.
P.O. Box 1294 Pahoa, HI 96778

21 June 1989

President
Ronald Phillips
Vice President
Richard Miner
Secretary
Clara L. Kakalla
Treasurer
James Moulds
Immediate Past President
Kini Pe'a

Department of Land and Natural Resources

Re: Proposed Administrative Rules for Geothermal
and Cable System Development Permitting

Members:
Alualoa
Citizens for Responsible Energy
Development with Aloha Alua
Ecob
Eden Roc
Fern Acres
Fern Forest Community Assn.
Hawaiian Acres Community Assn.
Hawaiian Beaches Hui Kahakal
Hawaiian Shores
Kalanii Honua
Kalapana Community Org.
Kalapana Gardens
Kapaha Community Assn.
Ke Aloha Ka Alua O' Puna
Keahalahaka Community Assn.
Koa'e Community Assn.
Orchid Land
Pahoa Business Assn.
Paradise Hui Hanalei
Parish Council
Puna Hui Ohana
Volcano Community Assn.
Waa Waa

The Puna Community Council, having reviewed the Department of Land and Natural Resources (DLNR) proposed Administrative Rules for Act 301, Senate Bill 3182 finds that the rules do not reflect the intent of the State Legislature. The Puna Community Council provided extensive testimony during the legislative process and assisted in shaping the final version of Senate Bill 3182.

It is our conclusion that DLNR has misinterpreted the intent of the proposed administrative rules and if the rules are implemented in their present form will do more to damage geothermal development than to support it.

Once again, the community has had to engage legal services to provide an analysis for the state and to preserve the integrity of all affected parties. We are resolved to work with all necessary groups to ensure that the development of geothermal, as an alternative energy source, is consistent with the protection of the environment and the community.

The Puna Community Council, therefore, offers the attached analysis for your consideration.


Ron Phillips
President

CYNTHIA
THIELEN

ATTORNEY AT LAW

345 Queen Street
Suite 700
Honolulu, Hawaii
96813

Telephone
808/599 4141
Facsimile
808/521 3506

June 14, 1989

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: Proposed Administrative Rules for Geothermal and Cable System
Development Permitting

To Whom It May Concern:

I.

INTRODUCTION

On behalf of the Puna Community Council, I am submitting comments on the Proposed Rules of Practice and Procedure for Geothermal and Cable System Development Permitting (hereinafter "proposed Administrative Rules") of the Department of Land and Natural Resources (hereinafter "DLNR"). The proposed Administrative Rules are intended to implement the Geothermal and Cable System Development Permitting Act of 1988, Act 301, Session Laws of Hawaii, 1988 (hereinafter the "Act"). DLNR cannot through the proposed Administrative Rules confer upon itself, power and authority in excess of the statutory authority set forth in the Act.

II.

COMMENTS

Comments on the proposed Administrative Rules follow the sequence of the regulatory provisions and are not listed in order of importance.

A. Section 13-185-2 Definitions.

A definition for "Intervenor" should be included in this section and should provide: "Intervenor" means a person or agency who can show a substantial interest in the matter.

B. Section 13-185-3 (a). Transfer of functions.

1. Intervention. The ability to intervene is severely restricted. The proposed Administrative Rules provide that persons must "demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public. . ." (Emphasis added.) This stringent standard would grant the DLNR power to deny admission to virtually any person. Existing Administrative Rules of State and County agencies do not contain such unwarranted restrictions.

The language should be changed by replacing the above section with the following:

All other persons may apply for leave to intervene, which shall be freely granted, provided the department may deny

an application to intervene when, in the department's discretion it appears that:

- (1) The position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable.

See, Section 15-15-52(c), Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules.

In other words, this revision would require that the position of intervenor be substantially the same as existing parties and the admission of additional parties would make the proceedings unmanageable and inefficient. The test is conjunctive which protects the right of persons to freely intervene. See, Akau v. Olohana Corporation, 65 Haw 383, 386-390 (1982); and see expansive standards allowing various organizations standing to challenge agency action enunciated by the Hawaii Supreme Court in Mahuiki v. Planning Commission, 65 Haw. 1, 7-8 (1982); Life of the Land, Inc. v. Land Use Commission, 63 Haw. 166, 171-77 (1981); Life of the Land v. Land Use Commission, 61 Haw. 3, 6 (1979); Waianae Model Neighborhood Area Ass'n v. City and County, 55 Haw. 40, 43-44 (1973); E. Diamond Head Ass'n v. Zoning Board; 52 Haw. 518, 523-24 (1971).

As presently drafted, the proposed Administrative Rules permit DLNR to deny leave to intervene from any member of the public in either instance: if the position is the same as an admitted party or if addition of a party would make the proceedings inefficient and unmanageable. Although the Petitioner would qualify for intervention, the DLNR could deny the application if it decides intervention could make the district boundary amendment proceeding "inefficient" and "unmanageable." This grant of authority should be eliminated from the proposed Administrative Rules as it conflicts with the liberal judicial standards approving standing for community organizations. Id.

2. Appeal of Denial. A provision should be added providing for direct appeal in the event intervention is denied:

A person whose application to intervene is denied may appeal such denial to the Circuit Court pursuant to Section 91-14, HRS.

See, Section 205-4(e)(4), HRS.

C. Section 13-185-3(b). Transfer of functions (continued).

This section of the proposed Administrative Rules empowers DLNR to grant special use permits ("SUP") within agricultural and rural districts. This is a County function. See Section 205-6, HRS.

Counties have jurisdiction over uses within agricultural and rural districts involving land of less than fifteen acres; for land

areas greater than fifteen acres, the County planning commissions' decision is subject to the Land Use Commission's ("LUC") approval, approval with modifications, or denial. Id. Only this latter function of the LUC may be transferred to the DLNR. Accordingly, section 13-185-3(b) should be redrafted to make it clear the DLNR is not usurping authority of the Counties. See, the Act, Sections 196D-9 and 196 D-10, (a)(1), HRS.

D. Section 13-185-4. Consolidated permit application and review process.

This section provides that the jurisdiction and authority of any agency under the existing law is not affected or invalidated "except to the extent that permitting functions have been transferred to the department for the purposes of the project . . ." (emphasis added).

Does this provision mean those functions only of the Land Use Commission and Department of Transportation which are transferred by the Act, Section 196D-10(1)(2), HRS, or does the provision imply that permitting functions not authorized by the Act are to be transferred at the discretion of the agency? This unclarity could be eliminated by adding "by the act" after the word "transferred."

E. Section 13-185-5 Contested Case Provisions.

1. If an agency is to issue permits sequentially, are all the permit applications required to be submitted at one time in order that that agency, county or state, can address all issues

at the single contested case proceeding? The first sentence of this section should be reworded to clarify that the contested case would address all permit applications to be issued by the agency which are subject to contested cases.

2. The second sentence providing for appeal from a decision should include "appeal from a decision made by the agency pursuant to a contested case,"

F. Section 13-185-6, Streamlining.

The second sentence provides:

The department shall track the status of permits of those agencies whose permitting functions are not transferred to the department for the purpose of consolidated permitting for geothermal and cable system development projects.

It is unclear if this sentence means the purpose of DLNR permit tracking is to allow DLNR to "consolidate permitting for geothermal and cable system development projects" or if that provision only defines why certain permitting functions were transferred to DLNR. If it is the latter case, the words are superfluous and should be eliminated. If it is the former case, the legislature has not granted this authority to DLNR.

G. Section 13-185-14 Conflict resolution process.

The Act provides that a mechanism to resolve conflicts shall be incorporated into the consolidated permit application and review process. Section 196 D-4(b)(5), HRS. Section 13-185-14 of the proposed Administrative Rules sets forth the conflict resolution process. In the event conflict between state and county agencies cannot be resolved, the proposed Administrative Rules provide in Section 13-185-14(b):

The administrative director or the administrative directors' designee and the head of the mayor's designated county agency or that agency's designee, shall meet with the involved State and county department heads within twenty calendar days from the impasse declaration date. Should the impasse declaration still exist following the meeting, the administrative director shall render a decision. The involved State and county departments shall initiate implementing the administrative director's decision within three calendar days from the date of the final decision.

Where a county permitting authority is in conflict with a state agency over a permit application, this section removes the county's

jurisdiction over the permit. The state administrative director renders a decision and the county must implement the state decision forthwith.¹

This section exceeds the statutory authority in the Act, Section 196D-4(b)(5), HRS; this section violates Section 196D-5(c)(5) of the Act which states:

The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law, except to the extent that the permitting functions of any agency are transferred by section 196D-10 to the department for purposes of the project.

See also, Section 196D-9, HRS, Construction of the Act; rules:
"[the DLNR has the authority to make rules to implement the Act] provided further that the consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law."

H. Section 13-185-15. Monitoring applicants' compliance with terms and conditions of permits.

This section of the Proposed Administrative Rules sets forth the scheme for monitoring and, if necessary enforcing the

¹A similar provision applies to conflict between State departments with the Governor rendering the decision.

Department of Land and Natural Resources
Division of Water and Land Development
June 14, 1989
Page 9

geothermal and cable systems development applicant's compliance with permit terms and conditions.

Article XI, Section 9, of the Constitution of the State of Hawaii gives the public standing to enforce, through the courts, laws relating to environmental quality which include conservation, protection and enhancement of natural resources and control of pollution. Section 13-185-15 of the Proposed Administrative Rules should include a provision by which an organization or private party can sue for injunctive relief where the applicant is violating permit terms and conditions, and the DLNR is not enforcing compliance.

III

CONCLUSION

Please address any response to these comments to my address with a copy to the president of the Puna Community Council:

Ron Phillips, President
Puna Community Council
Star Route 6637
Keaau, Hawaii 96749

DATED: Honolulu, Hawaii

June 14, 1989

Respectfully submitted,


CYNTHIA THIELEN

RECEIVED (CICDC)



Hawaii Island

Chamber of Commerce

Established in 1897 • 180 Kinoole St., Suite 118 • Hilo, Hawaii 96720 • Phone (808) 935-7178

RECEIVED

30

July 6, 1989

DIV. OF WATER &
LAND DEVELOPMENT

Division of Water and Land Management
Department of Land and Natural Resources
P.O. Box 373
Honolulu, Hawaii 96809

Dear Sirs:

The Hawaii Island Chamber of Commerce has reviewed the proposed Hawaii Administrative Rules of the Department of Land and Natural Resources under Title 13, Sub-title 7, Water and Land Development, designated as Chapter 185, "Rules of Practice and Procedure for Geothermal and Cable System Development Permitting."

We are keenly aware of the passage of many frustrating years without commercial development of our vital Hawaiian geothermal resource while other states and foreign countries have literally "passed us by". We are also mindful of the fact that electricity generated from geothermal energy does not require imported fossil fuel, which drains dollars from Hawaii and contributes to the greenhouse effect through the production of carbon dioxide.

We wholeheartedly support the stated purpose of the proposed rules, namely: "Consolidated permitting procedures are intended to coordinate and streamline permitting requirements of the diverse array of federal, state and county land use, planning, environmental and other related laws and regulations that effect geothermal and cable system development." We believe that the consolidated permitting procedure, channeled through and guided by the lead agency, the Department of Land and Natural Resources,

will, in fact, reduce inefficiencies, delays and duplications of effort. It should also provide a more predictable time frame for completion of project permitting, which is crucial to most sources of financing. We commend the statement in Section 13-185-4 that "...the consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under the existing law..."

The transfer to the Department of certain functions from the Land Use Commission and the Department of Transportation, covered in Section 13-185-3, appears to be a reasonable step toward simplification, especially since other agencies may be more directly involved in these matters and still maintain their approval processes.

We also note that there is ample provision for dispute resolution (between agencies), although disputes would seem unlikely, given the degree of protection all applicable agencies retain in respect to their existing permitting authorities.

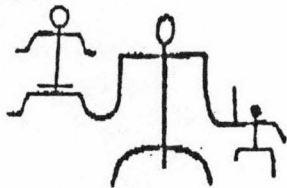
The Hawaii Island Chamber of Commerce therefore gives unqualified endorsement to Chapter 185 Proposed Rules of Practice.

Sincerely yours,

A handwritten signature in black ink, appearing to read "PM Poppe". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Patricia M. Poppe
President

Plans for Responsible Energy Development with Aloha Aina



CREDA

P.O. Box 358

Mt. View, Hawaii 96771

July 1989

Department of Land & Natural Resources
Division of Water & Land Development
P.O. Box 621
Honolulu, Hawaii, 96809

COMMENTS ON
DRAFT RULES
TITLE 13, SUB-TITLE 7
CHAPTER 185

Sirs:

CREDA, as a member organization of the Puna Community Council, incorporates by reference all comments submitted by the PCC regarding these Draft Regulations, particularly those submitted by attorney Cynthia Thielen. In Addition, we offer the following comments:

Page 185-3, Section 13-185-2: The definition of "Geothermal & Cable System Development Project" lumps generation and transmission. Since transmission line issues are, in and of themselves, sufficiently different and complex, they should have a separate hearing:

Pages 185-4, 5&6, Section 13-185-3: This entire section violates the intent of Act 301 (see Conference Committee Report No. 206, 1988, page 2, paragraph 10) in that it removes the county's jurisdiction re: land use functions and allows DLNR too much discretion to exclude the Public from input. Further, there is no avenue for the excluded Public to appeal such exclusion!

Page 185-8, Section 13-185-7: The "Permit Information & Co-ordination Center" set up in this section MUST be Developer financed! The Public has already subsidized too much geothermal development.

Page 185-14, Section 13-185-14: "Conflict Resolution Process" set up here differs depending on whether it is between State agencies or State and County and further biases the process in favor of the State over the County. The procedure should be the same in both cases and the Public must be involved as well.

Page 185-16, Section 13-185-15: "Monitoring...of Permits". The monitoring log required here MUST be available ON THE BIG ISLAND for review by the public.

Submitted by

Earl Dunn, Vice-president, for CREDA



COUNTY COUNCIL

County of Hawaii
Hawaii County Building
25 Aupuni Street
Hilo, Hawaii 96720

July 6, 1989

Mr. William Paty, Chairperson
Board of Land and Natural Resources
1151 Punchbowl St.
Honolulu, Hawaii 96813

Dear Mr. Paty:

I would like to convey to you my personal views regarding the proposed administrative rules relating to geothermal and cable system development permitting.

The proposed rules are intended to carry out the provisions of Act 301 enacted by the State Legislature in 1988, codified as Chapter 196D, Hawaii Revised Statutes, to streamline and consolidate geothermal and cable system development permitting. As noble as this effort may be in attempting to accelerate geothermal development, weaknesses in the enabling legislation have resulted in similarly questionable rules.

First, the major area of concern from the county's standpoint is the potential usurption of county zoning powers as a result of transferring zoning powers to the Department of Land and Natural Resources. I understand that the rule must reflect the intent of Act 301, which does indeed transfer this authority, however, if it is not the intent of Act 301 and the proposed rules to override the counties in zoning and geothermal resource permitting as has been stated in recent news releases, then clarification is certainly in order. It is imperative that this point be addressed legislatively so that it is clear that the county retains its authority for zoning and for granting geothermal resource permits. Lack of clear lines of jurisdiction in this area will only lend itself to further delays in geothermal development permitting, contrary to the basic intent driving the proposed rules.

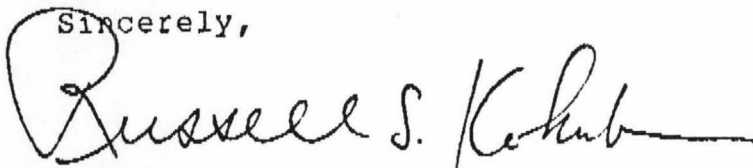
Mr. William Paty, Chairperson
Board of Land and Natural Resources
July 6, 1989
Page 2

Second, Section 196D-4 HRS directs the DLNR to incorporate into its consolidated permit application and review process a mechanism to resolve any conflicts that may arise between or among departments or agencies. The proposed rule designates the administrative director of the affected State department as the ultimate decision maker in conflict situations arising between the State and the County, and in the case of State-State conflicts, the Governor shall be the decision maker. The former provision appears to extend beyond the parameters of the law in granting additional decision making powers to the State and infringes once again upon the county's jurisdiction. I would suggest instead that mediation be used to resolve any conflicts that may arise. Mediation is currently being used in other geothermal proceedings and would be a more consistent and equitable process.

Third, the proposed rules are inconsistent with Chapter 196D with respect to the definition of the consolidated permit application and review team. Chapter 196D states that the consolidated permit application and review team shall consist of members of the interagency group, which is to be comprised of those agencies whose permitting functions are not transferred by Section 196D-10 to the DLNR. However, the rules refer to a "working team" to be known as the consolidated permit application and review team which shall be selected from among representatives of agencies having jurisdiction over any aspect of the project. Clarification is needed in this area.

I would ask that the Board seriously consider deferring action on the proposed rules and seek legislative action to clarify the transfer of zoning powers to the DLNR. I would also urge the Board to redraft its administrative rules to reflect the above identified points.

Sincerely,

A handwritten signature in dark ink, appearing to read "Russell S. Kokubun". The signature is fluid and cursive, with a large initial "R" and a long horizontal stroke at the end.

Russell S. Kokubun, Chairman
Hawaii County Council



COUNTY OF
HAWAII

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PLANNING DEPARTMENT

25 AUPUNI STREET • HILO, HAWAII 96720
(808) 961-6288

DIV. OF WATER &
LAND DEVELOPMENT

BERNARD K. AKANA
Mayor

DUANE KANUHA
Director

WILLIAM L. MOORE
Deputy Director

TO: Mr. Manabu Tagamori, Manager
Div of Water & Land Dev, DLNR

FROM: Planning Department - Hilo

DATE: 7/7/89

SUBJECT: Letter re Prop. Rules of Practice and Procedure
for Geothermal and Cable System Development Permitting

TOTAL PAGES: 5

FAX #: 548-6052

DIV. OF WATER &
LAND DEVELOPMENT

03 JUL 7 P 3: 58

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Bernard K. Akana
Mayor

Duane Kanuha
Director

William L. Moore
Deputy Director



Planning Department

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

July 7, 1989

Mr. Manabu Tagamori, Manager
Div. of Water & Land Development
Dept. of Land & Natural Resources
P. O. Box 621
Honolulu, HI 96809

Dear Mr. Tagamori:

This is to follow up with respect to our comments of June 21, 1989 on the proposed Rules of Practice and Procedure for Geothermal and Cable System Development Permitting. We appreciate the opportunity to provide you with our detailed comments on this matter.

Our comments on the various sections are as follows:

1. Section 13-185-3 Transfer of functions. The proposed language is unclear with respect to the specific permitting responsibilities to be transferred under Section 205.5, HRS. Consequently, we would suggest the following:

"The following functions are transferred to the department: The functions of the Land Use Commission related to district boundary amendments as set forth in Section 205-3.1 et seq., Hawaii Revised Statutes; and functions of the Land Use Commission related to [changes in zoning] special permits as set forth in Section 205-5, Revised Statutes;..."

2. With respect to Section 13-185-3(a) Relating to Amendment to District Boundary Amendments:

- * Is the intent to require an EIS/EA for all petitions? Presently, it is only required if the petition involves Conservation lands or if one of the other "trigger" is activated (State lands, etc.).
- * Director of DPED needs to be amended to OSP.
- * Is the intent to operate as a contested case? If so, it doesn't make sense to have the Department both a party to the proceedings as well as the decision-making authority. It may be cleaner to give the Board the decision authority.

Mr. Manabu Tagamori
July 7, 1989
Page 2

- ✓ * The County should be an automatic party to any SLUC Boundary Amendment proceeding. This is consistent with the current SLUC Rules.
 - ✓ * The Rule must include a basis for granting or denying a petition. This basis is presently contained in Sub-Chapter 8 of the SLUC Rules.
3. With respect to Section 13-185-3(b), the provisions of Sub-Chapter 12 of the SLUC Rules should be incorporated including:
- * Special Permit involving area greater than 15 acres require approval of the County Planning Commission and the Department.
 - * Guidelines for determining "unusual and reasonable" uses.

This would maintain County's present authority and responsibility in this area.

4. Section 13-185-5

Without more information, we're not sure how this provision will be implemented. The individual agencies currently decide on the consolidation of hearings for various permits. The Rule implies that it may be mandated to hold only one contested case proceeding. Who will do the requiring and what will the criteria be? Until we understand how this provision will be implemented, we reserve further comment.

5. Section 13-185-6 Streamlining.

- ✓ * Chapter 1960-7, HRS, requires public review of any streamlining measure adopted by the Department. This provision or public review is not included the Department Rule.
- * We're not sure how the streamlining measures as may be adopted by the Department may affect the current responsibilities of the Agencies whose permitting responsibilities has not been transferred to the Department. This provision may be inconsistent with Section 13-185-13 which states in part that the permit consolidation process shall not affect or invalidate the jurisdiction or authority of any Agency under existing law.

Mr. Manabu Tagamori
July 7, 1989
Page 3

- * This section authorizes the inter-agency group to consider and adopt changes in procedure to streamline the permitting process. The inter-agency group, as conceived by this Rule, includes 8 Federal members, the majority of which have no permitting function, and 4 State and 3 County members. If the group is going to be given this authority, the Federal agencies can dominate the State's permitting process.

6. Section 13-185-11 Inter-agency Group.

A majority of members of the proposed inter-agency group does not have any permitting functions. Rather than list specific agencies, we suggest the following:

In order to provide coordination amongst agencies to facilitate carrying out the consolidated permit application and review process, the department shall convene an inter-agency group comprised of representatives of federal and other permitting agencies whose permitting functions have not been transferred to the department. [including but not limited to the following...]

State and county agencies having permitting authority in geothermal and cable systems development projects shall participate in the activities of the inter-agency group. Federal agencies with permitting authority are invited to participate and the department shall give them the fullest cooperation possible in coordinating federal and State permit requirements.

7. Section 13-185-12 Consolidated Permit Application and Review Team.

The draft language allows the Department to select the working team. This now means that some agencies with permitting responsibilities could be excluded from participation on the joint agreement.

We therefore are suggesting the section to be amended as follows:

- (a) Upon receipt of a consolidated permit application, the department shall select a working team known as the consolidated permit application and review team from among representatives of agencies having jurisdiction over any aspect of [the project] that application.


Mr. Manabu Tagamori
July 7, 1989
Page 4

8. Section 13-185-14(b) Conflict Resolution Process.

Rather than naming the Administrative Director and the head of the Mayor's designated agency, the rule should simply name the Governor and Mayor of the affected County or their designees.

Again, thank you for the opportunity to provide you with our comments. We look forward to continued discussion with you on the important matter.

Sincerely,



DUANE KANUHA
Planning Director

WLM:aeb

1 DEPARTMENT OF LAND AND NATURAL RESOURCES
2 DIVISION OF WATER AND LAND DEVELOPMENT
3 STATE OF HAWAII

4 In the Matter of:)
5 Hawaii Administrative Rules)
6 Title 13 Department of Land)
and Natural Resources Sub-)
7 Title 7 Water and Land) Subchapter 1; Subchapter 2;
Development Chapter 185) Subchapter 3
8 Rules of Practice and)
Procedure for Geothermal)
9 and Cable System Development)
Permitting)
10 _____)

11 TRANSCRIPT OF PROCEEDINGS

12 A public hearing was held at the University of Hawaii at Hilo
13 Campus Center, Rooms 306 and 307, Kawili Street, Hilo, Hawaii,
14 on Wednesday, June 21, 1989, commencing at 7:15 p.m. pursuant
15 to Notice.

16 BEFORE:

17 Andrea H. Vasconcellos,
18 Notary Public, State of Hawaii

19 APPEARANCES:

20 Dan Lum, Chairman
21 Janet Swift, Staff Representative
22
23
24
25

I N D E X

TESTIMONY BY:

PAGE

Michael LaPlante

9, 41

Henry Ross

13

John Tan

21

Ron Phillips

23

Tim Sullivan

33

Jennifer Perry

35

Jim Blakey

37

Delan Perry

38, 58

Barbara Bell

40

Robert Petricci

50

Steve Phillips

52

Ka'olelo 'Ulaleo

54

Clive Cheetham

58

Duane Kanuha

61

Helene Shinde

64

Emmett Aluli

7, 11, 66

1 MR. CHAIRMAN: Good evening ladies and gentlemen.
2 May I have your attention please. Good evening. My name is
3 Dan Lum and I am a geologist with the Department of Land and
4 Natural Resources.

5 This meeting tonight is being conducted by the
6 Department of Land and Natural Resources and it is a formal
7 public hearing to receive testimony on the Departments
8 proposed Administrative Rules to implement Act 301 that was
9 passed by the 1988 Legislature.

10 Tonight we are going to follow the testimony sign-in
11 sheet and if there is anyone present who wishes to make
12 testimony and has not signed the sheet, would you please come
13 forward and do so now. Anybody that wants to testify tonight
14 orally, and if you have written testimony you can present that
15 orally also.

16 We will follow the order of speakers, we will follow
17 this list of speakers that have signed in. We ask that you
18 confine your testimony to the proposed Administrative Rules.
19 We presume that all of you who are interested have seen these
20 proposed Administrative Rules. We have additional copies
21 here and those of you who would like one now can come forward
22 to get them. We have a limited supply, we have a limited
23 supply and we ask that you share if you will, if you can.

24 VOICE: Get two.

25 VOICE: They're going like hot cakes.

1 MR. CHAIRMAN: What?

2 VOICE: They're going like hot cakes.

3 MR. CHAIRMAN: Janet, can you lower the volume here, or
4 retreating the squeal? We have 13 people, persons who have
5 indicated that they would like to testify. We will take them
6 in the order of the sign-in sheet with the exception of a
7 Mr. Henry Ross, who we will call on first when we begin. He
8 has asked for that opportunity.

9 We are constrained by a 11:00 p.m. deadline in securing
10 this particular room. The University has indicated that we
11 cannot stay beyond 11:00 p.m. So that in order to finish by
12 that time, be sure we can finish by that time, we ask that you
13 limit your testimony to 15 minutes. We have 13 to go through
14 and that should perhaps be enough.

15 We ask you again to confine your testimony to the
16 subject at hand. And the purpose of this public hearing,
17 which is to receive testimony on the Administrative Rules
18 to implement Act 301.

19 Act 301 passed by the Legislature in 1978 (sic)
20 provides for a, Act 301 passed by the 1988 Legislature,
21 provides for a consolidated permit process in which the
22 Department of Land and Natural Resources can serve as the lead
23 agency, coordinating, facilitating, and processing of
24 geothermal projects among the involved state, county and
25 federal governments through an inter-agency group.

1 The requirements of each individual agency that would
2 be involved in a geothermal project, whatever it might be,
3 drilling of a well, installation of a cable, would be lead by
4 the Department of Land and Natural Resources in a attempt to
5 expedite and facilitate the geothermal applicant through the
6 maze of the different agencies involved.

7 The requirements of the individual agencies are not
8 subrogated, are not taken away. But we as the Department of
9 Land and Natural Resources would be the lead agency in
10 facilitating such an application that might come before it
11 through this inter-agency group is one mechanism.

12 As envisioned in Act 301 there is a review team of
13 involved agencies. For example, if you're just drilling a
14 well it wouldn't involve the Department of Transportation, for
15 example. If it involved, the application involved a submarine
16 cable then the Department of Transportation would be involved.

17 So depending on the application that is received the
18 inter-agency group would form a review team. And the purpose
19 of course is to expedite those involved agencies with that
20 particular application.

21 Okay. There is an inter-agency group of all potential,
22 potentially involved agencies that might be involved, but a
23 particular application maybe very limited, such as, drilling
24 a well. And the review team of those agencies that would be
25 directly involved in that permit application would then be

1 smaller than the inter-agency group, and would presumably
2 be able to expedite the application. But in no instance does
3 it take away the permit requirements of the involved agencies.

4 Act 301 also provides for a Geothermal Permit Center
5 to provide information, make available information and assist
6 any applicant for a geothermal project. That Geothermal
7 Center has been established. It is presently located in the
8 Gold Bond Building, the Gold Bond Building, we can give you
9 the address --

10 VOICE: Where is that?

11 VOICE: Please do.

12 MS. SWIFT: It's in Honolulu.

13 MR. CHAIRMAN: It's in Honolulu, it's in Honolulu.

14 VOICE: Why?

15 MR. CHAIRMAN: Yes, it is located in Honolulu. Please
16 give us a call anytime. You can call the number collect if
17 you have a question.

18 VOICE: What is the phone number?

19 MS. SWIFT: 548-7443

20 VOICE: Collect?

21 MR. CHAIRMAN: Yes, you may. Okay. And on my left is
22 Janet Swift and she with the Geothermal Permit Center which is
23 within the Department of Land and Natural Resources.

24 Contrary to what you might have read in the published
25 Notices of this meeting you will have, anyone will have until

1 July 7th to submit additional written testimony to the
2 Department, the Department of Land and Natural Resources. If
3 you wish to mail you can address it to the: Department of
4 Land and Natural Resources, Division of Water and Land
5 Development, Post Office Box 373, Honolulu, and the Zip is,
6 96809.

7 VOICE: Would you give that again, the address?

8 MR. CHAIRMAN: The address to submit additional written
9 testimony would be: Department of Land and Natural Resources,
10 Division of Water and Land Development, P.O. Box 373,
11 Honolulu, Hawaii, 96809. Okay, without further ado we
12 would like to begin with the testimonies. Okay, questions?

13 MR. ALULI: I just want more substance to these Rules,
14 these Regulations. I think just hearing you facilitations
15 and expeditious is not enough. I just want you to talk a
16 little bit more about the meaning of this Rule and step us
17 through some case scenarios, for example.

18 What about things like the remedies, the so-called
19 Administrative remedies that we have to question this
20 development? What about your budget? I think we need to know
21 more about these Rules than just be able to sit down and give
22 testimony on them without understanding them a little bit
23 better. I propose that we discuss it a little bit more.

24 MR. CHAIRMAN: Yes, okay.

25 VOICE: Hear, hear.

1 MR. CHAIRMAN: Tonight's hearing is a public hearing
2 on the proposed Administrative Rules. The draft copy that you
3 have seen here, and the purpose of these Rules is to implement
4 Act 301 which was passed by this 1988 Legislature.

5 I've tried to describe to you, very briefly, what Act
6 301 and these Administrative Rules which have been drafted to
7 implement the provisions in Act 301 passed by th Legislature.
8 And in a sentence, it is to provide the consolidated permit
9 process whereby an applicant for a geothermal project can get
10 help, get information, process the application, and get
11 expeditious handling through the Department of Land and
12 Natural Resources as the lead agency --

13 THE REPORTER: Wait, wait. (Indicating to member of
14 audience that smells like hydrogen sulfide) You've go to move
15 sir, because if I pass out, your testimony doesn't meaning
16 anything. I understand your point --

17 VOICE: I have to move? I understand that to --
18 (Several people speaking at once.)

19 VOICE: -- but I have to live with this smell every
20 single day. I'll move, I'll move, no problem.

21 THE REPORTER: Thank you.

22 VOICE: Will that be part of the public record --

23 THE REPORTER: If I can write it all down, I'll put --

24 VOICE: You put this on public record that you asked
25 me to move right --

1 THE REPORTER: I will.

2 VOICE: -- now --

3 THE REPORTER: You bet. What's your name?

4 MR. LaPLANTE: My name's Michael LaPlante.

5 VOICE: I know we don't want you over here man.

6 VOICE: You can come sit by me Mike.

7 (Several people speaking at once.)

8 MR. CHAIRMAN: Okay, thank you. Let's get on, we would
9 like to get on with the public hearing and we ask you
10 forbearance, please, out of courtesy and respect to all the
11 individuals who are going to testify just give them their time
12 of 15 minutes, and please, try to minimize the disruption
13 because we want your input --

14 VOICE: Oh sure, well, your stenographer or whatever,
15 she just interrupted what you were saying to have him move and
16 you never even asked --

17 THE REPORTER: That's okay. It' cool, just be
18 cool and let's just take this thing.

19 VOICE: So, why don't we finish that and then we can --

20 MR. CHAIRMAN: Okay. As I was saying and was
21 essentially concluding was that the Department of Land and
22 Natural Resources serve as the lead agency for processing any
23 application for geothermal development --

24 VOICE: Okay, I understood that, but you said that
25 these other agencies have a say --

1 MR. CHAIRMAN: Yes --

2 VOICE: -- does your agency have the final say; is
3 that what your saying?

4 MR. CHAIRMAN: No, we do not have the final say. We
5 are like a coordinating lead agency. Each individual, each
6 involved agency whether it be state, federal or county, their
7 permit requirements are intact, you know, we do not affect
8 that. All Act 301 is doing, or what Act 301 is primarily
9 doing is to provide expeditious handling or processing of a
10 geothermal application. Okay, is that clear? (No response)

11 That's the essence of Act 301 and the Rules are written
12 to implement that Act. It doesn't change anything in essence.
13 It doesn't create new requirements or anything like that --

14 VOICE: But does it by-pass permitting requirements to
15 expedite it?

16 MR. CHAIRMAN: No, not in my interpretation of Act 301.
17 It does not. Question? (Indicating)

18 VOICE: Section 13-185-3, Transfer of Functions. Are
19 those decision making kinds of functions?

20 MR. CHAIRMAN: That is, that is correct. That is the
21 DOT and that is in there, okay.

22 VOICE: So the decision making is transferred from the
23 Land Use Commission, DOT, to the DLNR; do I understand you
24 correctly?

25 MR. CHAIRMAN: As I interpret it now --

1 VOICE: No, I want to know how the Attorney General
2 interprets it.

3 MR. CHAIRMAN: We haven't asked him for an
4 interpretation --

5 VOICE: Why?

6 MR. CHAIRMAN: -- if it -- why? Because in the process
7 of adopting Administrative Rules the process, one of the first
8 processes is to have this public hearing to receive testimony
9 from the public at large. We will then review it, we will
10 give consideration, careful review of all testimony we receive
11 and if there are questions of a legal nature, then Staff will,
12 of course, prevail to give us an opinion if we see a problem
13 that involves legal matters.

14 Okay. But tonight let us get on with receiving the
15 testimony so all of you that have taken the time to prepare
16 your testimony have an opportunity to get it on the record.
17 Because essentially this is what --

18 VOICE: Did you really answer his question about --

19 MR. CHAIRMAN: I think I did, didn't I?

20 MR. ALULI: No. Maybe I've got to rephrase it.

21 MR. CHAIRMAN: Okay.

22 MR. ALULI: I'll try. I want to know whether there
23 are any case scenarios. In other words, has this so-called
24 authority been done before for any other development or
25 project for the state or private developers? I mean, this

1 is a new rule as far as I can see. I want to know whether
2 it's been done before. If it has been done before, what are
3 the scenarios?

4 I also what to know how much you spent for this Center
5 and the kind of work that is going to be assumed like DLNR. I
6 think those kind of questions should be answered.

7 MR. CHAIRMAN: Yes. To answer your question on the
8 budget, I do not have that. My position is a geologist and I
9 do not have that, what it costs. In so far as your first
10 question, could you repeat that? The first part, but not the
11 budget part.

12 MR. ALULI: I just wanted to know --

13 VOICE: What the scenario was.

14 MR. ALULI: -- yeah, scenario.

15 MR. CHAIRMAN: Okay, the answer to that is "no" there
16 has not been anything processed under the Act 301. We have to
17 implement by adopting the Administrative Rules.

18 VOICE: Can the resorts and things like that use this?
19 I see resorts by-passing everything and boom, popping up
20 resorts all over or anything else.

21 MR. CHAIRMAN: I cannot answer that question, I'm
22 not familiar with all the laws.

23 MR. ALULI: So, geothermal is going to be based on
24 using this?

25 MR. CHAIRMAN: Yes, Act 301 --

1 MR. ALULI: And not spaceporting, and not manganese
2 nodule mining and everything else?

3 MR. CHAIRMAN: Correct, it does not involve that.
4 Act 301 does not involve spaceport, okay.

5 MR. ALULI: So this is a bad way to begin as far
6 as all these inter-agencies work because what I fear is
7 that the state is going to do the same thing to all the other
8 developments on the Big Island. And that this Rule 301 or
9 Act 301 is really a bad way to start in administrating those
10 things. And that's the kind of scenario I want to see
11 development discuss.

12 MR. CHAIRMAN: Yes. What we are here tonight to do is
13 to implement the Rule. The Legislature has already spoken in,
14 the 1988 Legislature has already passed Act 301 and we are
15 simply trying to implement it. And I think I've answered your
16 two questions. Okay, so if we may begin, I would like to call
17 on the first person, Henry Ross.

18 MR. ROSS: Mr. Chairman. I would like to start and
19 give you a little, little background of myself. Very little.
20 I'm against this whole project, you can see that as a basis
21 for my testimony.

22 I have to object to this public hearing, the way it is
23 held. I think it is invalid. Chapter 91, HRS, requires that
24 in the advertisement for the public hearing the substance
25 should be given in sufficient measure, it isn't.

1 I didn't know what this was much about, what this was
2 about until I got the Rules here, and I've been trying to read
3 them in the 10 minutes that passed which, of course, is
4 impossible. But it is mainly demonstrated by the questions
5 that you have just answered and been posed to you. People
6 don't understand. They say that they didn't know what this
7 is all about, tell us, explain to us.

8 This explaining that you have just done should've been
9 done in the newspaper three weeks ago when you started to
10 publish the announcement for the public hearing. And this is
11 a requirement under Chapter 91.

12 To get to the Rules, I think that this a perfect
13 example of how to turn a good idea, I mean a good idea,
14 geothermal energy use, into a bad project. A very bad
15 project.

16 We have been going through this on this island for
17 years now. It took a contested case hearing by Mr. Ono when
18 he was the head of your department many, many months to
19 finally come up with turning down the 200 megawatt request
20 that was then on the table and limit it to 25 megawatts.

21 We have a two and a half megawatt thing in operation
22 and it stinks, as was demonstrated. I can tell you that it
23 does, I can agree with there. By the way, I live in North
24 Kohala this whole thing doesn't touch me.

25 I think what should be done, and I don't do this as a

1 basis for what I'm going to say about the Rules, what should
2 be done, now that the county is working on the state and
3 county or whoever is working on the 25-megawatt plan, we
4 should see how that works out before we start talking about
5 500 megawatts.

6 VOICE: Yeah.

7 MR. ROSS: I would like to tell you the following; we
8 get from Honolulu -- and the reason people object is that
9 there are many people in the area that are affected, people
10 object to having you office in Honolulu and not here where the
11 project lies is that they want to have more say. I don't see
12 the county behind the table here, anybody representing the
13 county and I think that would be nice, at least.

14 VOICE: Yeah. It's rude they're not.

15 VOICE: They're invited.

16 MR. ROSS: Things may happen with the 25-megawatt
17 development that turn us totally off on the 500 megawatt and
18 there should be more time. Now, I'm saying that because these
19 Rules, in these Rules that were drawn up in your department
20 by your attorney you're trying to do it in less time, and we
21 don't want it done in less time.

22 There's often talk about the "not in my backyard"
23 syndrome. I want to tell you something, we, obviously, are
24 Honolulu's backyard. This is being put in our front yard,
25 and we, damn, don't want it in our front yard.

1 I don't see want advantage that it is for this island
2 to have this project here with a monstrous cable along the
3 Hamakua Coast along to Kawai before it goes into the ocean,
4 and the next storm blows it down and all of Honolulu is out of
5 power and so forth. I don't see any purpose in this whole
6 thing.

7 I would like to tell you what I dislike, among other
8 things in the Rules that I have tried to read a little, I'm
9 referring to Pages 12 and 13 of the Rules that I have here.
10 Under -- and I've only been going over a couple of
11 paragraphs -- starting after the agencies enumeration that
12 finishes with the Mayor of Honolulu.

13 Those paragraphs where it says state and county
14 agencies and so forth and then Section 13-185-12 is what I
15 read. I read in there, those two paragraphs at least 13 times
16 the word "shall". You know what I thought, I mean, I didn't
17 have time to read the rest it's proven with the word, shall,
18 shall, shall, shall, we, damn it, are not a dictatorship.

19 You know, you could use -- and I know much about legal
20 language, believe me -- you could use the word "may", and
21 "will" and things like that, you know, but don't mandate every
22 Goddamn, little thing what everybody "shall" do under your
23 Rules. It's your Rules, you are mandating all these people to
24 do certain things that you do not have the right to mandate.

25 You carry questions, you may invite them and so forth,

1 but don't forget, among other things, the the County of Hawaii
2 is independent from the State in many matters that are touched
3 here, many matters of committee and don't mandate anything.

4 VOICE: Right on.

5 VOICE: Yeah.

6 MR. ROSS: This is bad language. I would like to tell
7 you that I want to see as much delay as possible, and I'm not
8 alone believe me. You see, when we have more time there will
9 be more opportunity to object to things and to think them over
10 and to come up with better solutions and whatever.

11 Also, if we -- you see as indicated -- is basically the
12 purpose, and that seems to be in the Act, is to streamline the
13 permitting process. I would like to tell you something, there
14 are some problems with that. You mentioned for instance, this
15 is freely interpreted by myself, why bother the Department of
16 Transportation if you are only drilling a well, as is
17 generally done?

18 Well, I'll tell you, the Department of Transportation
19 is the only one that can judge whether it should be consulted
20 or not because in order to build a well, you have to transport
21 heavy equipment down to the place to start the drilling, and
22 that is where the DOT may have problems. So you cannot judge,
23 the Department of Transportation can.

24 What happens normally in procedure like this,
25 is that one agency does something, sends the proposal or

1 whatever it is under discussion to all the state agencies,
2 county agencies, federal, whatever it involves and requests
3 them to comment on it. Then when they have all the comments
4 in, they make their decision. Then it comes to the next
5 step, and they send their stuff to everybody around. You
6 want to cut that short. I don't.

7 If the road to get there is longer the better are the
8 chances that somebody will wake up to the abomination that we
9 are facing. I also would like to say that I would like to see
10 a normal process and more delay introduced here because of the
11 fact, unfortunately, we have a Governor of very mediocre
12 intelligence who is drumming things through. That's the way
13 we see it here.

14 And I would like to wait for a new Governor to shine
15 his lights on this, maybe we'll fair better. We have got
16 to get far away from Honolulu, Mr. Chairman, and this has
17 happened before not with geothermal maybe but with other
18 things. Things are determined for us as if we were children.
19 It reminds me of the old plantation days. The plantation
20 thinks for you, you do it, shut-up, and so on, and that's the
21 way we handle it.

22 This is going on in Honolulu. We are supposed to say
23 "yes", "please", "thank you" for a space project, station, or
24 whatever. We are supposed to be grateful if the state, you
25 know, supports manganese nodule processing industry here on

1 this island. We have to be thankful for being the geothermal
2 source for Honolulu, let me tell you something, if you drill a
3 little deeper in Diamond Head you will have steam too. Why
4 don't you start drilling Diamond Head first and if you come up
5 empty, we'll think about it.

6 I'm saying these things, Mr. Chairman, because this is
7 a very serious matter to us. And I think that Honolulu has to
8 be shaken a little by us because we will be the ones to
9 suffer.

10 I know that everything, you know, is a couple of years
11 down the road, but if we don't start now to object to anything
12 and everything that comes from Honolulu, like your Rules, then
13 later it may be too late, you see, because it's done.

14 In talking about the phone, you know, I just heard that
15 you can call us collect. That's very nice, but you see we are
16 at back water here and I've complained of that very often.

17 You know, when you live in Honolulu, and I lived
18 there for 20 years, and you live in Honolulu and you pick-
19 up the phone and you call the Police Chief and you call the
20 Mayor or you call the Governor or any department or whatever.
21 When you live here you have to pay for those damn things.
22 That's not equitable treatment, Mr. Chairman, and that's the
23 way it has always been.

24 The only exception or one of the very few, I should be
25 careful, is the Department of Energy which is the Division of

1 Energy and the Department of Planning in Honolulu that has a
2 free telephone number. You don't. You say, "You can call us
3 collect" other agencies don't. Other people in this county
4 don't know that they can call you collect. We happen to know
5 because you told us, thank you very much.

6 But other people who have thoughts and say, hey, I live
7 in Pahala or in Kona and are not here tonight and they want to
8 know something about it or in Honoka'a where they are going to
9 get that cable all the houses and so forth, they don't know
10 that they can call you collect. And people that I know that
11 live here and so on, so it goes by the wayside.

12 I propose therefore that the inter-agency group be
13 moved to this island so that we have more say. After all,
14 this is our front yard.

15 VOICE: Yes.

16 VOICE: Hear, hear.

17 MR. ROSS: Mr. Chairman, there are many other people
18 who no doubt want to say something too, I will limit myself,
19 there will be other opportunities. I thank you very much for
20 the opportunity and that's it for tonight.

21 MR. CHAIRMAN: Thank you very much, Mr. Ross. You were
22 exactly on time, 15 minutes. I will give a three minute
23 warning just so you will know that you have three minute left,
24 and ask that you try your best to keep it within the 15
25 minutes so that everyone that has signed up will have an

1 opportunity to speak. The next person that I would like to
2 call on, the first sign-in person, John and I can't make out
3 the last name, three letters, John, I can't make it out, 821
4 West Kawailani Street.

5 MR. TAN: Here.

6 MR. CHAIRMAN: May I have your spelling?

7 MR. TAN: Tan. T-A-N.

8 MR. CHAIRMAN: Tan. Okay, thank you.

9 MR. TAN: Mr. Chairman, I was born and raised on this
10 island. I do appreciate if they can make a geothermal plant
11 pretty sound just like Portugal. A kahuna come over from
12 Portugal, he went over that during his vacation time with a
13 group, and he has said that down there they have made perfect
14 plant for geothermal.

15 And the people have shown him that they can cook meals
16 with the heat from the geothermal. Now, over here the boys
17 before, some time ago, hunted with a bag which is round with a
18 pig in there right inside the steam which is wrong because you
19 are gonna have all the sulfur get inside into the pig. But
20 they had done the right way, built like a caldron, you have
21 the heat that goes around there, and you can do that because I
22 work in the jelly factory before. And we used the steam to
23 heat up and we make our jelly and jams and all that, the
24 Hawaiian Packing Company.

25 But this geothermal, we need that because the

1 plantations have gone all down, but we wanted to make it
2 safely. Not political now, this is what I'm going to tell
3 you. This is what I'm coming up, not political, but to be
4 self-supporting, self-sufficient on this island. Maybe
5 Honolulu, maybe afterwards, but first we need the geothermal
6 here and make it sound, environmental sound. Not like what
7 they have today.

8
9 Today what the University have done and what they have
10 done out there is not right because I pass one time in the
11 evening to go down Kalapana and I have to raise up my windows
12 on my car. And they can do a better job. If Portugal can
13 have and kahuna can tell me, I don't know why, but I receive
14 messages without knowing but I receive it now that I know that
15 they gives me, but somebody else come and give me the report.

16 So this is what I want you folks to do. Hawaii needs
17 geothermal, but have to be correctly made; otherwise, don't do
18 it. We have a lot of gulches over here, we can put dams up
19 and we can get perfect waterfalls.

20 It is not political. I do not want political here. My
21 job in this world here, I got a big job but the money didn't
22 come me so I had to wait. But the thing is to make all the
23 world self-supporting, every nation self-sufficient, in other
24 words, and get down and everybody get down on the penny,
25 everybody have to work for their living. And no wars. I have

1 given down to Africa how to run Africa where they are having
2 their problems. And this guy there, the Ambassador down to
3 Africa he gave me a piece of paper to make a gift and I say
4 okay, I'll give a gift to you, but it is not for my opinion.

5 But I'm going to get the Great One to give it to you.
6 And I gave it up to him and he gave out the mail that I don't
7 have to pay my stamp for some paid envelopes to go back to him,
8 and he lives down in Virginia, in the United States.

9 So, this is what I'm telling you people here not to
10 fight this and that because we are just like positive and
11 negative and we are the elements in here. So if we don't
12 function right, I bet you we will kapoot. Thank you. If
13 we don't function right this whole thing will all fall down.
14 This is all what I like to tell you.

15 MR. CHAIRMAN: Thank you very much, Mr. Tan. The next
16 person that I would like to call on and receive testimony from
17 is Ron Phillips from the Puna Community Council.

18 MR. PHILLIPS: Mr. Chairman. The Puna Community
19 Council --

20 MR. CHAIRMAN: Could you just cup it? Yea.

21 MR. PHILLIPS: This way you can't hear me. The Puna
22 Community Council has reviewed the Department of Land and
23 Natural Resources proposed Administrative Rules for Act 301,
24 formerly Senate Bill 3182, and finds the Rules do not reflect
25 the intent of the State Legislature.

1 The Puna Community Council has provided extensive
2 testimony during the Legislative process and assisted in
3 shaping the final version of Senate Bill 3182. It is our
4 conclusion that DLNR has misinterpreted the intent of the
5 proposed Administrative Rules and if the Rules are implemented
6 in their present form, will do more to damage geothermal
7 development than to support it.

8 Once again, the community has had to engage legal
9 services to provide an analysis for the state and to preserve
10 the integrity of all affected parties. We are resolved to
11 work with all necessary groups to ensure the development of
12 geothermal, as an alternative energy source, is consistent
13 with the protection of the environment and the community.

14 The Council therefore offers the attached analysis and
15 I would like to read this from the attorney, Cynthia Thielen
16 in Honolulu.

17 "On behalf of the Puna Community Council I am
18 submitting comments on the proposed Rules of Practice and
19 Procedure for Geothermal Cable System Development Permitting,
20 hereinafter, Proposed Administrative Rules of the Department
21 of Land and Natural Resources.

22 "The Proposed Administrative Rules are intended to
23 implement the Geothermal and Cable System Development
24 Permitting Act of 1988, Act 301, Session Laws of Hawaii 1988.
25 DLNR cannot, through the proposed rules, confer upon itself

1 power and authority in excess of the Statutory authority set
2 forth in the Act.

3 "Comments on the Proposed Administrative Rules follow
4 the sequence of the Regulatory Provision and are not listed in
5 any order of importance.

6 "Number A. Section 13-185-2 under Definitions. A
7 definition for Intervenor should be included in this Section
8 and should provide: Intervenor means a person or agency who
9 can show a substantial interest in the matter.

10 "B. Section 13-185-3, Paragraph A, Transfer of
11 Functions. One, the ability to intervene is severely
12 restricted. The Proposed Administrative Rules provide that
13 persons must demonstrate that they will be so directly and
14 immediately affected by the proposed change that their
15 interest in the proceeding is clearly distinguishable from
16 that of the general public.

17 "This stringent standard would grant the DLNR power to
18 deny admission to virtually any person. The existing
19 Administrative Rules of state and county agencies do not
20 contain such unwarranted restrictions.

21 "The language should be changed by replacing the above
22 Section with the following: All other persons may apply for
23 leave to intervene which shall be freely granted provided that
24 the Department may deny an application to intervene when in
25 the Department's discretion it appears that;

1 "One. The position of the applicant for intervention
2 concerning the proposed change is substantially the same as
3 the position of a party already admitted to the proceedings;
4 and

5 "Two. The admission of additional parties will render
6 the proceedings inefficient and unmanageable.

7 "See Section 15-5-52, Paragraph C, Hawaii Land Use
8 Commission Rules, Chapter 15-15, HRS.

9 "In other words this revision would require that the
10 position of Intervenor be substantially the same as existing
11 parties and the admission of additional parties would make
12 the proceedings unmanageable and ineffective.

13 "The test is conjunctive which protects the right of
14 persons to freely intervene. See *Aku vs. Ohana Corporation*,
15 65 Ha. 383, 386-390, 1982. And see *Expansive Standards*
16 allowing various organizations standing to challenge agency
17 action enunciated by the Hawaii Supreme Court in *Makueke vs.*
18 *Planning Commission*, 65 Ha. 1, 7-8, 1982; *Life of the Land*
19 *Incorporated vs. Land Use Commission*, 63 Ha. 166, 177-77,
20 1981; *Life of the Land vs. Land Use Commission*, 61 Ha. 3,
21 Sect. 1979; *Wainae Model Neighborhood Area Association vs.*
22 *City and County*, 55 Ha. 40, 43-45, 12973E; *Diamond Head*
23 *Association vs. Zoning Board*, 52 Ha. 518, 523-24, 1971".

24 She's gone to a great deal of trouble here,
25 Mr. Chairman, to list the things that are clearly that DLNR

1 has over-stepped its authority.

2 "As presently drafted the Proposed Administrative Rules
3 permit DLNR to deny leave to intervene to any member of the
4 public in either instance. Yet the position is the same as
5 an admitted party or if the addition of a party would make
6 the proceedings inefficient and unmanageable.

7 "Although the petitioner would qualify for intervention
8 the DLNR could deny the application if it decides the
9 intervention could make the District Boundary Amendment
10 proceedings inefficient and unmanageable.

11 "This rampant authority should be eliminated from the
12 Proposed Administrative Rules as it conflicts with the
13 liberal, judicial standard in proving standing for community
14 organizations.

15 "Number Two. Appeal of Denial. A provision should be
16 added providing for direct appeal in the event intervention is
17 denied. The person whose application to intervene is denied
18 may appeal such denial to the Circuit Court pursuant to
19 Section 91-14, Hawaii Revised Statutes.

20 "C. Section 13-185-3, Paragraph B, Transfer of
21 Functions. This Section of the Proposed Administrative Rules
22 empowers DLNR to grant Special Use Permits within agricultural
23 and rural districts. This is strictly a county function. See
24 Section 205-6.

25 "Counties have jurisdiction over uses within

1 agricultural and rural districts involving land of less than
2 15 acres. For land areas greater than 15 acres the County
3 Planning Commission's decision is subject to the Land Use
4 Commission's approval, approval with modifications, or a
5 denial. Only this latter function of the LUC may be
6 transferred to the DLNR." "Only this latter function of LUC
7 can be transferred." Pardon me.

8 "Accordingly Section 13-185-3, Paragraph B should be
9 redrafted to make it clear that DLNR is not usurping
10 authority from the county". And she's got a note here
11 "See the aft Sections 196D-9, and 196D-10, Paragraph A(1) of
12 the Hawaii Revised Statutes.

13 "D. Section 185-13-4, Consolidated Permit Application
14 and Review Process. This Section provides that the
15 jurisdiction afforded any agency under the existing law is
16 not affected or invalidated except to the extent that
17 permitting functions have been transferred to the Department
18 for the purposes of the project.

19 "Does this provision mean those functions only of
20 Land Use Commission and Department of Transportation which
21 are transferred by the Act? Section 186-D-10 (1) and (2)
22 HRS or does the provision imply that permitting functions not
23 authorized by the Act are to be transferred at the discretion
24 of the agency? This unclarity could be eliminated by adding,
25 "by the Act" after the word, "transferred".

1 "Section 13-185-5, Contest case provisions. One. If
2 an agency is to issue permits sequentially, are all the permit
3 applications required to be submitted at one time in order
4 that that agency, county or state, can address all issues at a
5 simple contested case proceeding?

6 "The first sentence of this Section should be reworded
7 to clarify that the contested case would address all permit
8 applications to be issued by the agency with reference to
9 contested cases.

10 "Two. The second sentence providing for appeal from a
11 Decision should include appeal from a Decision made by the
12 agency pursuant to a contested case hearing.

13 "F. Section 13-185-6. Streamlining. The second
14 sentence provides the department shall track the status of
15 of permits of those agencies whose permitting functions are
16 not transferred to the department for the purpose of
17 consolidated permitting for geothermal and cable system
18 development projects. It is unclear if this sentence means
19 the purpose of DLNR permit tracking is to allow DLNR to
20 consolidate permitting for geothermal and cable system
21 development projects or if that provision only defines why
22 certain permitting functions were transferred to DLNR.

23 "If it is the latter case, the words are superfluous
24 and should be eliminated. If it is the former case, the
25 Legislature did not grant this authority to DLNR.

1 "G. Section 13-185-14 the Conflict resolution process.
2 The Act provides that a mechanism used to resolve conflicts
3 shall be incorporated into the Consolidated Permit Application
4 and Review process. Section 196-D-4, Paragraph B, sub-
5 paragraph 5, Hawaii Revised Statutes; Section 13-185-14 of
6 Proposed Administrative Rules sets forth conflict resolution
7 process.

8 "In the event conflict between state and county
9 agencies cannot be resolved the Proposed Administrative Rules
10 provides in Section 13-185-14 (B) the Administrative Director
11 or the Administrative Director's designee and the head of
12 the Mayor's designated county agency or that agencies designee
13 shall meet with the involved state and county department heads
14 within 20 calendar days from the impasse declaration date.

15 "Should the impasse declaration still exist following
16 the meeting the Administrative Director shall render a
17 decision. The involved state and county departments shall
18 initiate implementing the Administrative Directors decision
19 within three calendar days from the day of the final decision.

20 "Where a county permitting authority is in conflict
21 with a state agency for a permit application that section
22 removes the county's jurisdiction over the permit. The state
23 Administrative Director renders a decision and the county must
24 implement the state decision forthwith. A similar provision
25 applies to conflicts between state departments with the

1 Governor rendering the decision.

2 "This Section exceeds the Statutory authority in the
3 Act, Section 196B-4, Paragraph B, sub-paragraph 5, HRS, this
4 Section violates Section 196D-5 (c)(5) of the Act which states
5 the Consolidated Permit Application Review process shall not
6 affect or invalidate the jurisdiction or authority of any
7 agency under existing law except to the extent the permitting
8 functions of any agency are transferred by Section 196D-10 to
9 the department for purposes of that project.

10 "See also Section 196D-9, HRS, construction of the Act
11 ruled that the DLNR has the authority to make rules to
12 implement the Act provided further that the Consolidated
13 Permit Application and review process should not affect or
14 invalidate the jurisdiction or authority of any agency under
15 existing law.

16 "H. Section 13-185-15 Monitoring applicants'
17 compliance with terms and conditions of permits. This Section
18 of the Proposed Administrative Rules sets forth the scheme for
19 monitoring and, if necessary, enforcing geothermal and cable
20 systems development applicants compliance with permit terms
21 and conditions.

22 "Article 11, Section 9 of the Constitution of the
23 State of Hawaii gives the public standing to enforce through
24 the courts laws relating to environmental quality which
25 include conservation, protection, and enhancement of the

1 natural resources that control the pollution.

2 "Section 13-185-15 of DLNR's Proposed Administrative
3 Rules must include a provision by which an organization or
4 private party can sue for injunctive relief where the
5 applicant is violating permit terms and conditions and DLNR is
6 not enforcing compliance.

7 That is that and I thank you, Mr. Chairman for the
8 opportunity.

9 MR. CHAIRMAN: The comments you have read will
10 certainly be reviewed and will become a part of the record.

11 We're on track, and we have 11 more to go and if my
12 calculations are correct we really have not time to spare.
13 Are there any others, anyone else in the audience who wants to
14 testify but did not sign up on the sheet? Would you come
15 forward and write your name so that if we assign 15 minutes
16 we won't have enough time.

17 So of you who can or have, those of you who have
18 written testimony if you are going to submit it to us, it
19 becomes a part of the record. So you may want to, in the
20 interest of time, give an oral summation of your written
21 testimony, but your full written testimony will be part of
22 the record. I would like to remind you that you may submit
23 additional written testimony --

24 VOICE: You've said that before, why don't you get on
25 with the speakers.

1 MR. CHAIRMAN: Yes, yes. Okay, Fine. The next speaker
2 would be Sullivan, Tim Sullivan.

3 MR. SULLIVAN: How-do-you-do. My name is Tim Sullivan.
4 I'm a resident of Leilani Estates and --

5 MR. CHAIRMAN: Hold your hand over the, yeah, okay.

6 MR. SULLIVAN: I've got a big mouth I don't need this.

7 VOICE: Yeah.

8 MR. SULLIVAN: My name is Tim Sullivan, I'm a resident
9 of Leilani Estates and I just wanted to say --

10 MR. CHAIRMAN: Could you cup the other one. Just hold
11 it a little bit longer, you know, the big one. Okay.

12 MR. SULLIVAN: I've just got a couple of things.
13 You've seen this world renowned publication (indicating) this
14 is June 1989, so I think it quite pertinent to what we are
15 speaking of right now.

16 They've got this -- the main article in here is "March
17 Toward Extinction". I think your job in Land and Natural
18 Resource should be on the forefront of "March Toward
19 Extinction" when it comes to Hawaii, the people, and the
20 different types of wildlife both birds, mammals, plants, any-
21 thing that is in Hawaii.

22 "Tonight the states can look at Hawaii which most of
23 us regard as paradise, but which biologist consider the
24 endangered species capitol of the world. Though occupying
25 less than two-tenths of one percent of the nations land mass,

1 Hawaii contains 27 percent of its endangered species and
2 birds. Seventy-two percent of U.S. species that have already
3 become extinct did so on these islands.

4 "I'm angry as I rest on a hike on the slope of the
5 volcano Haleakala. In Hawaii pre-history I would have been
6 sitting in a diverse forest rather than an over-grazed scrub
7 land dominated by prickly plants that cattle won't eat.

8 "Almost nothing from the peacock that preened minutes
9 earlier in front of my path to the cabbage butterfly that just
10 now alighted on my arm is native. Is this island so, where
11 only rats, and pigs, and cactus thrive, a microcosm of our
12 future?

13 "Our questions fed by my field work arise, hasn't
14 this happened before?" And what this part of the article was
15 about was the different extinctions that have happened through
16 time about every 26 million years over the past four billion
17 has almost total extinctions occurred.

18 You know, much more than what I was always lead to
19 believe as just one type of extinction of the dinosaurs.
20 Dinosaurs is extinct and unextinct and come up and come
21 extinct many, many times.

22 "Hasn't this happened before? Diversity suddenly
23 becomes --" I don't know -- "And each didn't. Life recovered
24 each time. New heights of evolutionary creativity" and the
25 big picture, is this really so terrible? What is happening

1 today? Life will go on no matter how bad we make things. Some
2 organisms will quote "survive and flourish". Isn't this the
3 lesson of mass extinctions? What is the difference about this
4 one? We are the difference. For the first time since life
5 began on this earth 4 billion years ago a living organism can
6 understand what is happening to this planet.

7 We can see the health of species inter-connected that
8 we to, that if we too may disappear. And we will go also.
9 For the first time living organisms can consciously do some-
10 thing to halt mass extinction. Perhaps most important for
11 the first time a living creature can gaze across the species
12 of earth and say, "This is beautiful, I care, I will not let
13 it go". Thank you.

14 MR. CHAIRMAN: Thank you, Mr. Sullivan. The next
15 person I would like to call on is Jennifer Perry. Jennifer
16 Perry.

17 MS. PERRY: My name is Jennifer Perry and I'm a
18 resident of Kapoho. We live in a very unique and special
19 place. Hawaii was the first of the 50 states to have a
20 General Plan. It was prepared in response to the State
21 Planning Act of 1957 and subsequently passed by the 1961
22 State Legislature as the Land Use Law, whose intent is to
23 protect agricultural lands and to promote the public
24 welfare.

25 Provisions were made to allow for boundary changes

1 and special permit procedures which included the process of
2 a first review at the County Planning Commission level and
3 then a final review at the State Land Use Commission level.
4 These provisions allow for public hearings and notification
5 of adjacent residents and land owners within 300 feet of
6 the property line.

7 In determining which parties may intervene in the
8 hearing proceedings the Land Use Commission must allow all
9 person who can show that they will be directly and immediately
10 affected by change in a way that is clearly distinguishable
11 from the general public. This could include adjoining
12 residents and owners. Other person may petition to intervene
13 and the Commission may turn down such a petition under certain
14 criteria.

15 With regard to geothermal development we have new rules
16 being proposed tonight which have flaws, especially regarding
17 the passages relating to public notice and intervention.
18 There is no special and crucial provision for notification
19 to property owners and residents within a certain distance
20 from the proposed geothermal development site.

21 Special permits, General Plan Amendments, and Boundary
22 Amendments, require written notice to those 300 from the
23 property line. Since geothermal development has been known to
24 be so noxious and/or disruptive to neighboring areas as
25 indicated by suits filed in Nevada against Yankee Caithness

1 Joint Venture and against Ormat Far West Geothermal, we need
2 to review the 300-foot notification line to determine if that
3 is adequate.

4 Further, under the proposed Rules the DLNR shall deny
5 an application from any member of the public if it appears it
6 is substantially the same as a position of a party already
7 admitted to the proceedings or if admissions of additional
8 parties will render the proceedings inefficient or
9 unmanageable.

10 This appears, again, to be an attempt to keep the
11 affected public from the decision making process. The Land
12 Use Regulations, which this new Rule will replace, provides
13 that the department "may" and not "shall" determine a denial,
14 and certify that both reasons must be met with an "and"
15 and not an "or".

16 There appears to be a grave neglect of public concern
17 and input in these new Rules and I ask you to reconsider this
18 proposal.

19 MR. CHAIRMAN: Thank you, Jennifer. Jim Blakey.

20 MR. BLAKEY: Yes, I just have a brief comment. It
21 seems that the County of Hawaii has reached a bit more, has
22 a bit more responsive government then we've known in recent
23 times or in past times. And I'm particularly opposed to the
24 Department of Land and Natural Resources taking a lead in
25 things that affect us so dramatically.

1 The Department of Land and Natural Resources has a
2 long history of impinging on the land and the people of this
3 county. And I would just like to request that the county and
4 the county agencies of Hawaii be allowed to participate with
5 the citizens of this county to work for a cleaner approach
6 that we have yet seen taken in geothermal development. Thank
7 you very much.

8 MR. CHAIRMAN: Thank you, Mr. Blakey. Delan Perry.

9 MR. PERRY: My name is Delan Perry. I live and farm
10 in the Kapoho Geothermal Subzone. I've read the proposed
11 Chapter 185 to coordinate and streamline geothermal
12 development. According to my dictionary streamline means
13 quote:

14 "That shape of a solid body which is calculated to
15 meet with the smallest amount of resistance in passing
16 through the atmosphere."

17 In this case the atmosphere is the proper review of
18 drilling, health, land use planning and community concerns.
19 Geothermal development will not be facilitated except in the
20 short term by accepting driller and developer programs with-
21 out independent assessments of their claims.

22 In the long term streamlining that would result from
23 these Rules will further remove the two agencies who now take
24 the most careful and comprehensive look at these industrial
25 uses. These are the County Planning Commission and the

1 affected community.

2 For good future planning with the least impact any
3 project should have at least a one-year permit process, such
4 as in California. The affected public must be involved at a
5 very early stage and the permitting agencies should be
6 contracting studies to assess the validity of the developers
7 claims. That and land use conflict should not be left to the
8 developers discretion.

9 Drilling regulations which must be upgraded to mitigate
10 devastating problems, must be upgraded to mitigate devastating
11 problems. The DLNR is not yet equipped to properly review even
12 the drilling permits. Case in point is SOH permit which after
13 approval by DLNR was withdrawn by the University when, after
14 public input, they began to recognize the high level of danger
15 their plan entailed by not casing down to a least 4,000 feet
16 and proper anchoring at that depth. These Rules would also:

17 One. Destroy the concept of Land Use Zones usurping
18 the county's authority to regulate appropriate development in
19 agricultural districts, Page 185-6, and making geothermal
20 development the primary land use regardless of pre-existing
21 uses;

22 Two. Allowing for ignoring for any county conditions,
23 Page 185-15, if the county consents to these Rules; and

24 Three. Freeze-out land owners and residents with
25 legitimate rights from contesting the decision, Page 185-7.

1 I urge these Rules not be adopted as they will make
2 careful, independent review far less likely. And in the long
3 run can result in consequences no one will be able to live
4 with.

5 I also urge the Department of Health and the counties
6 to have no part in the Consolidated Permit Process. I believe
7 these Rules go far beyond the Legislative mandate of Act 301.
8 Streamlining geothermal permits will only hasten the mistakes
9 that increased public input and agency reviews could catch.
10 Thank you.

11 MR. CHAIRMAN: Thank you, Mr. Perry. Barbara Bell.
12 Barbara Bell.

13 MS. BELL: Hello, I'm Barbara Bell, vice-president of
14 Kapoho Community Association. I urge denial of these Rules
15 of Practice and Procedure for Geothermal Cable System
16 Development Permitting that will streamline the permitting
17 process until several changes are made.

18 The process has 365 days, one full year not 180 for
19 careful review and sufficient time for commentary from all
20 agencies and the public;

21 There is a Environmental Compliance Officer or Board
22 as a liaison between the state and the public. This position
23 should be at least half funded by the geothermal industry;

24 The contested case provisions allow more than one
25 hearing;

1 The Information Services Center has provisions for the
2 community to receive information just as easily as permit
3 applicants;

4 The Annual Report to the Governor shall be available
5 to the community at no charge.

6 In closing I would like to add that I strongly object
7 to the wording on virtually every page that states that the
8 State of Hawaii wants to help in any and all ways any
9 applicant involved in the geothermal and cable systems. I see
10 in print how, when my state government wants something, they
11 go after it.

12 I will believe that geothermal and cable development
13 on the Island of Hawaii is beneficial and benign only when
14 these Rules give much more latitude to the community for input
15 and timely conflict resolution out of court. Thank you.

16 MR. CHAIRMAN: Thank you, Barbara Bell. Michael
17 LaPlante.

18 MR. LaPLANTE: I hope it's not too bad now, come to
19 my house for breakfast in six months. Good evening. Thanks
20 for giving me this time again. I'd like to start with a
21 little demonstration, just a small demonstration, this one
22 won't affect your noses. What I'm going to do is just set
23 this up here and turn it on kind of low (cassette player).

24 Rod Moss last night explained that -- (turns on
25 cassette player, testimony inaudible)

1 Sorry, new technology for you.

2 VOICE: How many decibels was that?

3 MR. LaPLANTE: That was between 65 and 70.

4 VOICE: And what is the proposed level now?

5 MR. LaPLANTE: Well, Rod Moss stated last night that
6 they are going to start at 85 decibels around the project
7 site --

8 VOICE: Louder than that?

9 MR. LaPLANTE: -- with a plus or 10 around that figure.
10 So, I can't turn it up loud enough to give you what it will be
11 like 24 hours a day for the next two years at everybody's home
12 around the project site.

13 Now, I would like to read something for you that I've
14 got here. My concerns are based on the poorly stated facts
15 brought forth by True Mid-Pacific Geothermal Enterprises and
16 Campbell Estates' team of private consultants. I'm a property
17 owner and litigant against the land swap arranged by Campbell
18 Estates and the State of Hawaii.

19 I have been severely distressed by the actions taken
20 by our past Administration and Campbell Estates. I have
21 personally planned to live, have a family, and grow healthy
22 plants and crops in peace. True Mid-Pacific and Campbell
23 Estates have initiated a land swap which has gone through,
24 as we know, which changes the land behind my property from
25 Reserved to Industrial.

1 Not once were we asked if this would affect our life-
2 styles. Private enterprise has no conscience or moral
3 obligation to residents boarding the Reserve. The state has
4 the responsibility to negotiate a proper settlement with all
5 parties involved. Without a doubt, the old Administration
6 refused to look at the facts and chose to listen to the
7 opinionated representatives of True Mid-Pacific Geothermal
8 and Campbell Estates highly paid consultants.

9 Paul Rosenthal representing Campbell Estates and True
10 Mid-Pacific Geothermal Enterprises was proven vain and
11 inaccurate in field studies. He also represents private
12 enterprise while hiding behind a mask of public sentiment
13 involving the Bishop Museum.

14 The lessons we have learned from his present actions on
15 Maui displacing ancestral remains, was worth completing a
16 thorough study, should stand as an example to this Department
17 of Land and Natural Resources as testimony to his own self-
18 interests and not those of Hawaii and her people.

19 There are those of us here who have seen the mark left
20 by our ancestors in the surrounding areas and the Puna Forest
21 Reserve in these parts, in these areas that we call the
22 Geothermal Resource Zone.

23 The planting of herbs and edible foods is testified to
24 by Al Jardine has totally been ignored. The beauty and the
25 benefits derived from the Puna Forest Reserve is testified

1 to by area residents, have been shelved to serve private
2 enterprise. The trail systems and burial caves systems are to
3 be bulldozed over and filled according to testimony by
4 Mr. Yamada. This will constitute a great loss of history
5 which I believe plays a great part in the development of our
6 children.

7 A respect for these lands will show respect for our
8 past. To destroy our history without totally studying it
9 shows a lack of respect for the land and its people. To
10 destroy the land you live on and which supports us agricul-
11 turally shows us all your lack of respect for the Big Island.

12 The Department of Land and Natural Resources,
13 Mr. Conner and the County Council members, everybody out
14 there, I ask you, I beg you to look thoroughly at the motives
15 of Campbell Estates and True Mid-Pacific Geo Enterprises and
16 Ormat and the rest of them. I ask all of you, will you be
17 associated with past Administration's motives or will you be
18 remembered as a new group of people, a new Administration?

19 My hopes are for a new look at an old problem. I find
20 it inconceivable that our Governor Waihee, being part
21 Hawaiian, would back the destruction of the Puna Forest
22 Reserve and surrounding areas.

23 The Puna Forest Reserve is a living history book with-
24 out proper study we will lose a chunk of our history to
25 private enterprise. All of these questions about Hawaiian

1 ancestry seem to be put on the shelf by our old
2 Administration. I'd ask our fine Governor to ask some very
3 pointed questions of these developers. All across America
4 Americans are waking up and seeing the pile left behind by
5 the dog that represents this type of private enterprise.

6 The reinjection and the sump pond system will bring
7 tainted water to our crops in the fields and to our children
8 in the schools on the Big Island. We live on an island that
9 has limited resources. We have one drinking fountain under
10 us all. One fresh water lens.

11 The Administration can see the need to limit cesspool
12 yet your blind to what a reinjection system or open sump pond
13 could possibly dump on our fresh water lands. What specific
14 controls will be instigated to protect Big Islanders from
15 toxic spills? What controls will you demand to protect all
16 Big Islanders? How will you monitor these tests so that the
17 public believes in you? Your credibility is on the line here.

18 Last but not least, are the helpless creatures to be
19 displaced and destroyed by progress. Will you walk with you
20 grand-children and marvel at the beauty of the Hawaiian hawk
21 the fresh and alive smell of a rain forest? Will you show
22 your children, our children, pictures of rain forest or will
23 there be a living history, a book of living trees and birds
24 or will there be a future of bitter dissolution created by
25 uncontrolled private enterprise?

1 Let's all work together to insure the state maintains
2 control of geothermal development. You know, let's not let
3 this get out of hand just because the guys got the bucks in
4 his pocket, and we need the money. Hell, everybody here needs
5 money.

6 Rod Moss stated in his address to Puna Council, Tuesday
7 the 20th, that no baseline study has been done in the
8 northeast boundaries, specifically Fern Acres, Hawaiian Acres,
9 and Ainaloa. He also stated that no study need be done
10 because these areas receive no south winds.

11 VOICE: I think we went through that, didn't we, with
12 those south winds?

13 MR. LaPLANTE: He also stated that no study is needed
14 to set standards for ambient air quality, noise levels, or
15 natural wildlife existences. Those studies are needed. I
16 think this is bull. I demand a study be done before any
17 further work is done on this project.

18 Rod Moss also stated that there are no known toxic
19 wastes associated with geothermal wastes, more bull. He
20 stated a sump pond 200 feet by 300 feet, eight feet deep,
21 and this is just their first one on their first project
22 site, is to be built unlined to just sit out there in the
23 open. This is going to be used for all the effluent
24 material that comes out when they do their steam drilling.
25 The entire nine yards is going into that sump pond.

1 What about earthquakes? I haven't heard anybody write
2 that in their computer projections. Where will all this mess
3 end up in a time of flash flooding? Do you remember when the
4 car got wiped off the Pahoa highway? What happens with that
5 toxic waste from your little project up the hill?

6 Rod Moss stated that the noise level for the drill
7 alone, the the drill alone will produce will be 85 decibels
8 around the site. What will it be like on my property line
9 when the southerlies are blowing or late at night? I want
10 you to consider that.

11 No toxic waste site has been established by the
12 developer. Has the state got a toxic waste site to plan for
13 this? I want to see the paperwork on it. I would personally
14 like you to have that delivered to me in writing.

15 Rod Moss's question about toxic chemicals, he used
16 the analogy of fish swimming in the ocean and the pollutants
17 didn't bother the fish. Well, those of us that know the 200
18 pound weight limit on commercial catches understand that,
19 there's mercury poisoning in all fish over 200 pounds. It
20 assimilates all the smaller fish, and you can't eat that.
21 What happens with a 200 pound pig when that pig is out there
22 running around? You know, what happens when we catch a pig
23 and eat it? Who's going to take those risks and who's going
24 to be liable for that poisoning?

25 I question the validity of the developer doing his own

1 on-site tests of toxic wastes. Where does the state fit in
2 here? Why doesn't the state make these tests and take
3 responsibility for these tests? I mean, you know, you can't
4 just go, hey, you know, there's the road, get in your car,
5 fill it with whatever the hell you want, just drive around
6 and do whatever. I think we have laws about that, it's called
7 DUI, as I recall.

8 No fencing of this project site will be done by the
9 developer. Who's liable when kids or farm animals wander into
10 these areas? Who will begin to take the liability? Who will
11 be paying for that insurance? I believe it falls back on the
12 state. I'm not sure, but I would like to have that in
13 writing also.

14 Rod Moss stated that the site, that on site
15 archaeological data will be evaluated by the developer and
16 brought forth as the developer sees the need for public
17 awareness. Let's wake up to the facts here. You know, if you
18 guys can't obligate a reasonable archaeologist to get in there
19 and really take a look, you're going to have hard times in the
20 future because there's stuff out there. There are pictures
21 being made and videos being made.

22 And you know what happened on Maui, gentlemen. You
23 know, we have a threat that they are going to put in a giant
24 coal mine and burn more oil if we stop the geothermal. Maybe
25 you just need to really clean it up and clean up the

1 geothermal. You know, I find that really highly
2 unprofessional, and you should check that out closely.

3 I'd compare this program, since I've been compared
4 to a few other things, I'd compare this program to a highly
5 polished apple. It looks real good, you buy it in the store,
6 take it home, you've paid for it, you take a big bite out of
7 it and you find it full of worms. Don't be caught with a worm
8 in your mouth. Wake up to the needs of the County of Hawaii.

9 Now, just to show you that I'm not just up here making
10 a stinken stink, here's a solution. I worked in Alaska. In
11 Alaska what they did is they covered whole city blocks with
12 tents, cover the whole block. They do that when the ground
13 is unfrozen, before the permafrost sets in. What I suggest
14 you do is you go out to that HGP-A well and you put a dome
15 over that sucker. You want the technology, just call the
16 developer in Alaska.

17 In Alaska I worked on a project that covered a city
18 block in Anchorage. The entire city block was tented and the
19 atmosphere inside the portable dome was heated and controlled.
20 I propose they put a similar structure over the HGP-A selected
21 site, it's just standing there steaming away, control the air
22 flow into the dome, you know the ambient air qualities outside
23 the dome, and then what we do is make it like a big tea
24 kettle, we put a little top on the top if it. I propose you
25 cover that HGP-A well now and produce a new and verifiable set

1 data for us all to look at.

2 I personally invited the Department of Health to
3 participate here tonight. I didn't answer their ad's in time
4 so I'm not allowed, I'm not in their mediation. I'd asked
5 publicly to be informed and kept up-to-date on all
6 mediation efforts. What happens to my interests? I work damn
7 hard as a carpenter. I was in Hawi for two weeks with little
8 outside communication. I missed your notice and so I lost my
9 rights.

10 By not showing us your equipment to monitor H2S and
11 noise monitors here tonight, you show us your lack of respect.
12 Your no-show attitude with monitoring equipment shows us that
13 you are not prepared. Let's get better organized and hold to
14 our responsibilities to each other as human beings. Thank
15 you.

16 MR. CHAIRMAN: We'll continue with the meeting.
17 Robert, I can't make out the name, he's a homeowner in
18 Leilani Estates. Robert, it starts with a P.

19 MR. PETRICCI: My name is Robert Petricci and I live in
20 Leilani Estates very near to the HGP-A. I've been hearing a
21 lot about California, L.A. in particular, their air standards
22 and water standards.

23 Well, I grew up in California. When I got there in
24 1961 the air and the water were beautiful, blue and clean, and
25 I saw it destroyed slowly. First, the air started getting

1 brown on the horizon and by 1973 when I moved to Hawaii it was
2 unbelievable. The air was a brown-orange haze that burns the
3 eyes and the throat. I've seen it happen and I see it
4 happening here in Hawaii again now, and I think we need to
5 prevent this instead of trying to fix it later.

6 It seems that these Rules, if passed, are going to set
7 a precedence for other industries. I don't know that I under-
8 stand all the Rule changes, but it seems that it is the
9 fastest, cheapest way for the developer to get this thing
10 done.

11 The state and county have a record of inadequate
12 planning and then they try to fix the messes by throwing tax
13 dollars at the catastrophes that they create. So, it seems
14 that we are supposed to let the state decide what's best for
15 Hawaii County, and if there is a dispute the state has the
16 last word.

17 Well, we all know that Honolulu is going to benefit,
18 and the residents are expected to suffer in silence. Well,
19 it's not going to happen. We will not be quiet, and we want
20 a voice in the environment in which we have to live.

21 I'd like to take exception to the stenographer asking
22 Michael LaPlante to move or she might pass out. I've lived
23 with the same odor for nine years and I can tell you it's a
24 lot worse than what Michael smelled like --

25 VOICE: Hear, hear.

1 MR. PETRICCI: -- at my house at times. And not to
2 mention the associated noises. If this is so bad that the
3 stenographer can't work, what about me?

4 I'm asking you to move the geothermal subzone far
5 enough away from my home that I can be comfortable at all
6 times. Thank you.

7 MR. CHAIRMAN: Steve Phillips, Steve Phillips.

8 MR. PHILLIPS: I appreciate the opportunity to speak
9 tonight. I'll tell you that I don't have a prepared
10 statement because I haven't had time to put one together.
11 People that know me know that I am a little bit involved in
12 the geothermal issues that are going on now, and I take
13 exception to these Rules even though I haven't had a chance
14 to check them over very well.

15 And I think if these Rules are adopted, I think we get
16 one more step closer to ritualistic democracy. In other
17 words, cutting us, people who are most affected, out of the
18 process. And I think that is a sad thing, I think it's a sad
19 thing when the state finds its own citizens the adversary.
20 You know, it's the state against the citizens.

21 I think we are losing sight of what's going on here
22 when the state is trying to force these things on the
23 residents without participation. I live in Leilani Estates.
24 I smell the geothermal. I hear it, I've heard it every
25 night for the last week because it's been running off the

1 hook.

2 I think it's unfair. I think the county is trying to
3 maintain some kind of control here, and it's unacceptable for
4 the state to come in with it's heavy handedness and put this
5 on the local people. And I think this Rule change is that.
6 I think it's a heavy-handed technique by the people over on
7 Oahu to make their pet projects go through.

8 The thing I'm most concerned is, it was mentioned
9 earlier, the precedence is set if we let you roll over us with
10 the geothermal issue, next will be the spaceport, food
11 irradiator, we'll be strip mining the ocean, and all this
12 stuff will be streamlined right to us.

13 And I just wish for once the people from Oahu could
14 come up with something -- ready to throw money at us that
15 wasn't controversial. You know, I mean, all these things
16 you're subjecting us to are controversial. Let's come up
17 with some imagination. You know, I'm -- basically I have
18 a flower farm. I have all my money tied up into it and the
19 state wants to come in and threaten my livelihood.

20 And the basic thing I hear from everyone here is the
21 typical powerplay, big money against the local citizens. And
22 it's really grossing-me-out, and I honestly believe that. I
23 tell you, back and forth, it's the powerful against the
24 powerless.

25 And for the state to even suggest these Rule changes

1 shows a lack of understanding of the people, over in Puna
2 especially. And the thing that bothers me the most is we
3 know that Puna is a poor community. We don't have the money
4 and the time to go battle you people over on your own turf on
5 Oahu. I've taken a lot of my own time out. My business is
6 neglected. And there's mediation going on. I read in the
7 paper the next mediator was appointed, another mediation will
8 be starting up and that's two I'll be involved with.

9 Then there's the meeting tonight. There was one from
10 the Health Department a couple of days ago. I mean, what's
11 going on here? You guys are not -- I keep saying it, all
12 these things, your not stupid, you know what's going on, and
13 I believe you can do a better job of it. At least I for one
14 believes that I have seen through it. The real purpose of
15 these Rules changes is to by-pass the community. Thank you.

16 MR. CHAIRMAN: Thank you.

17 VOICE: Excuse me, I wish everybody could see the two
18 representatives of the Department of Land and Natural
19 Resources with their guns just sitting outside the doors.
20 It's very impressive, very impressive.

21 MR. CHAIRMAN: The next person is Ka'olelo 'Ulaleo.
22 Box 6101, Pahoia.

23 MR. 'ULALEO: Aloha. My name is Ka'olelo 'Ulaleo.
24 And I'm from Ke kau Keokea in Puna E Kalapana e Hawaii ne'i.
25 As tutu Pele is one of my family amakua, it is my duty to

1 speak out. The lawsuit involving the illegal land exchange of
2 27,000 acres of ceded lands which is the upper portion of the
3 'apua'a of which I am a tenant, and the 25,000 acres owned by
4 Campbell Estates is a clear indication of the ruthlessness of
5 these damned right-wing elites.

6 Just who the hell does the Estate of James Campbell
7 and HELCO think they are that they should be made rich by the
8 State of Hawai'i in disturbing and swapping the ancient and
9 traditional boundaries of the 'apua'a?

10 You people who sit in the position of authority in
11 this illegal land exchange are a bunch of crooks. You
12 brazenly steal from an entire race of people to suit your damn
13 greed. This is the Kepolo's doing. The nerve. Real
14 maha'oi. Po'i o Hawai'i. If you sit silently by and allow
15 this crime to continue I will guarantee the high price to pay
16 will be your health.

17 When you allow these ruthless capitalists to charge an
18 entrance fee to sacred Kilauea to help bring down the pilau
19 budget deficit the harmony was disturbed and the balance
20 thrown off.

21 Did the state make you rich? No. You poor Hawaiians
22 who remain silent to this nui crime lost your home and
23 property. And the price we all pay is to breathe the fumes
24 and drink the lead poisoned water.

25 This is only a small indication of what will happen if

1 Campbell Estates is allowed to develop a 500 megawatt in the
2 area known as Wao Kele o Puna and the Puna Forest Reserve
3 which is not and never was their property.

4 VOICE: Hear, hear.

5 MR. 'ULALEO: We will all be doomed if we permit this
6 to happen. The wailing cries of our children and grand-
7 children as their lungs collapse will be a reminder of our
8 stupidity.

9 Those of you who have driven past the Pohiki well
10 geothermal site know what I'm talking about. The offensive
11 toxicants irritate the nasal-sinus cavity and throat. In
12 fact, the sewage plant up Front Street at Puhi Bay is an
13 example of this stink. If they can't solve the smelly problem
14 up Front Street and Pohiki, what makes them think they'll
15 have 500 megawatts of stink, doo-doo smell under control?

16 The offensive smell will greet everybody upon opening
17 your doors. And when the rain comes, for which we have more
18 than our share, then we will all be drinking lead contaminated
19 water and all asking for pule.

20 Campbell Estate and HELCO get out of my 'apua'a of
21 Wao Kele o Puna and go back to the 'Ola'a where you belong.
22 You deal with Pele because she is nuha with you folks not
23 with me. If I allow this to happen than will she be nuha
24 with me.

25 I have my own interests to protect as Kahu of Wao

1 Kele o Puna as well as all of sacred Kilauea. You lucky I
2 don't put a kapu on all of Kilauea.

3 The legitimacy and authority of you power elites is
4 a fraud on the Hawaiian people as well as the general public.
5 I question the authority of political leaders involved who
6 created the conditions to make these possible abuses of power.

7 You greedy power elites are being challenged. The
8 State of Hawai'i, the Legislature, the Campbell's, the
9 Governor, and all involved in this corruption. As for Ormat,
10 the Israeli money involved, I extend an invitation to the
11 Arabs to come and blow it up.

12 We have reached the age of a crisis of legitimacy
13 and the order that has prevailed ought to be ashamed of them-
14 selves. How quickly we forget when Pele went from
15 Kahamua la'a to her mansion of Mauna Loa, and came within
16 near distance of Hilo. The Mayor then, Herbert Matayoshi,
17 put out a public appeal to all of us kahunas to spare Hilo.

18 Well this time around nothing will be spared. For I
19 will challenge any kahuna who would sell us out, and it will
20 be a major battle for Hawaiian history. Why, in tradition,
21 royalty would have asked for my advise and I would have said,
22 'A'ole. And they would have accepted it and respected it.

23 If the Ayatollah could topple a king, the Governor
24 should be a piece-of-cake for me. If you people don't
25 know the woman of sorrow let me tell you, all that remains

1 will be ashes. Mahalo.

2 MR. CHAIRMAN: Thank you. Clive Cheetham, Clive
3 Cheetham.

4 MR. CHEETHAM: First of all, I would like to find out
5 how many representatives from DLNR and/or the State are
6 present tonight?

7 VOICE: Are those guys with guns with DLNR?

8 MR. CHAIRMAN: Pardon?

9 VOICE: Are those guys with guns out there from your
10 agency?

11 MR. CHAIRMAN: They're security from DLNR.

12 VOICE: From Honolulu over to here to protect you?

13 MR. CHAIRMAN: No, from here, from here, this island.

14 VOICE: From Hilo?

15 VOICE: To protect what?

16 MR. PERRY: To protect what? To protect us from you?

17 No, no, no laughing. Who are they here for?

18 MR. CHAIRMAN: They're here as security.

19 (Several people speaking at once.)

20 MR. CHEETHAM: Excuse me. I think that this is my 15
21 minutes, all right. You know, you can deal with that after -

22 VOICE: Well, they should come in then.

23 MR. CHEETHAM: Can I ask my question again?

24 VOICE: Yes.

25 VOICE: Ask it again.

1 MR. CHEETHAM: How many state representatives are here
2 tonight from DLNR or any other state representatives?

3 MR. CHAIRMAN: Myself and Janet Swift there.

4 MR. CHEETHAM: That's it?

5 MR. CHAIRMAN: (Nods head up and down)

6 VOICE: And their hired guns.

7 MR. CHEETHAM: Well, I'm not really interested in
8 them. Well, I'd like to express disappointment with that. I
9 think that's really too few to be inviting the public of the
10 Big Island to come out and give their testimony for just
11 you people, it could be more.

12 I find the projected cost of this cable project, the
13 geothermal development and cable project, seems to be around
14 two billion, that's the figure I hear being bandied around,
15 and that it will probably be more.

16 I feel for this amount of money the island of Oahu
17 could very likely develop solar, wind, and other alternatives
18 using existing technology. I'm not just quoting platitudes
19 here, solar, wind, and the different technology that exists,
20 especially for a few billion plus --

21 VOICE: Hear, hear.

22 MR. CHEETHAM: -- and for their peak-load requirements.
23 Since most of these alternatives supply peak loads not base
24 loads. The base load on Oahu could still come from what they
25 already have as the proposed geothermal electricity coming

1 from the Big Island would not replace what Oahu already has,
2 they just want to add to it. They can use what they already
3 have for the base load and they can get their peak load from
4 developing alternatives on Oahu.

5 I would think that Oahu would have to have a back up
6 in place just in case the cable failed. So I don't know how
7 they are addressing that. I think that Oahu could also save
8 hundreds of megawatts applying conservation methods, and
9 changing habits, employing more efficient electrical
10 installations, there are many ways to reduce their need for
11 electricity.

12 It just seems that certain people are excited about
13 this project because they see a chance to acquire a lot of
14 money. I do not believe that this geothermal and cable system
15 is economically, socially, or technology viable. In fact,
16 there is a good little quote in here on Page 185-5 that says:

17 "The department shall receive applications for leave
18 to intervene from any member of the public. However, the
19 department shall deny an application if it appears it is
20 substantially the same as the position of a party already
21 admitted to the proceeding or if admission of additional
22 parties will render the proceedings inefficient and
23 unmanageable".

24 Now, I think that is very appropriate because I
25 believe that this geothermal and cable system is efficient

1 and unmanageable. And I believe that the geothermal and
2 cable system development project would be detrimental to the
3 residents of the islands of Oahu, Maui, and Hawaii.

4 Therefore, in closing I would like to recommend that
5 the whole plan of sending geothermally generated electricity
6 from Hawaii to Oahu be scraped. This will automatically
7 render these Rules of Practice and Procedure being discussed
8 tonight redundant. Thank you.

9 MR. CHAIRMAN: Thank you. Duane Kanuha.

10 MR. KANUHA: Thank you, Mr. Lum. I'd like to read into
11 the record tonight the letter directed to William W. Paty,
12 Chairperson, Board of Land and Natural Resources, regarding
13 the proposed Administrative Rules or Act 301, SOH 1988,
14 Geothermal and Cable System Development Permitting Act of
15 1988.

16 "Thank you for the opportunity to review the proposed
17 Rules which seek to implement Act 301, SOH 1988. Inter-
18 agency cooperation and coordination is precisely what is
19 needed in this effort to consolidate, where possible,
20 permitting processes and procedures for geothermal and cable
21 system development projects.

22 "It is proposed to transmit geothermally generated
23 electrical energy from the County of Hawaii to other islands
24 within the state. The pursuit of this effort, however, must
25 be tempered with a realistic understanding of various

1 processes and procedures which are currently in place and
2 whether or not attempts at consolidating this highly complex
3 regulatory maze will be a meaningful one.

4 "It is from this perspective that we have a number of
5 suggestions to the proposed Rules which we hope will help your
6 efforts to clarify some of the ambiguities that stem from the
7 underlying statutory authority. We have discussed some of
8 these technical areas with the Staff and stand ready to offer
9 our continued assistance in this regard.

10 "There are, however, several long-term planning related
11 issues that I would also like to raise for your consideration
12 at this time.

13 "First. We question if the objective of streamlining
14 the permit system can really be achieved through these Rules.
15 Although implied, it is not clear whether the consolidated
16 permit is intended to be the first permit which must be
17 obtained by a potential geothermal and cable system developer.

18 "We, on the county permitting level, have long dealt
19 with this sequencing of approval issue. And outside of
20 agreeing that discretionary permits should precede
21 ministerial permits, we foresee continuing potential
22 conflicts in determining the order of county, state or federal
23 permitting requirements given the various agencies that
24 existing procedure mandates.

25 "The make up and function of the inter-agency group

1 is also unclear as proposed. What is clear is that this group
2 is supposed to be comprised of geothermal related permitting
3 agencies whose activities have not been transferred by Section
4 196D-10.

5 "Directly involved state and county permitting agencies
6 such as the County Planning Department, Planning Commission,
7 Public Works, Department of Water Supply, and Fire Department
8 are required to participate in the activities of the inter-
9 agency group. But as such key participants do not have a
10 direct role on the proposed inter-agency group, our input
11 in the permitting perspective may not be considered in a
12 meaningful fashion.

13 "Further, if much of the focus of the inter-agency
14 group will be directed by the Consolidated Permit Application
15 and Review team, the working group that apparently will
16 conduct most of the business, then what is the role of this
17 inter-agency group?

18 "Generally, the conflict resolution process and the
19 monitoring for compliance sections need more thought.
20 Conflict resolution needs a third party mediator role,
21 especially if impasse is declared. The monitoring area is
22 cumbersome and seem to be duplicative.

23 "Finally, I would be remiss if we did not raise the
24 issue of home rule from a planning, community, and
25 governmental perspective. We understand that the intent of

1 the Statute is not to infringe upon or invalidate the
2 jurisdiction or authority of any existing agency, particularly
3 that of the respective counties.

4 "However, this coordinated effort on behalf of
5 assisting the implementation of geothermal resource
6 development and cable transmission of energy may fall short
7 on practical application. Should this occur, any potential
8 solution must preserve the jurisdiction and responsibilities
9 of this county.

10 "We fully intend to be involved with this effort while
11 keeping a cautious eye for these potential long-term
12 implications.

13 "Thank you for this commenting opportunity and we look
14 forward to continuing dialog in the development of these
15 proposed Rules. Duane Kanuha, Director, Planning Department,
16 County of Hawaii". Thank you.

17 MR. CHAIRMAN: Thank you, thank you, Mr. Kanuha.
18 Helene Shinde.

19 MS. SHINDE: Hi, my name is Helene Shinde. And I have
20 worked directly with the endangered species. I have worked
21 one year for the Fish and Wildlife and I would like to talk
22 for the unspoken ones, the birds.

23 And also, I have also worked one year in the Volcano
24 National Park and my job was to try to eradicate goats to stop
25 them from eating the birds habitat. And I believe the --

1 can you hold on one second -- the 'amakihi would face
2 extinction because of it and it's a very sensitive
3 ecosystem.

4 And I would like to talk more about it right now. I
5 have seen numerous sightings of i'o in the affected geothermal
6 zones, subzones. And in one day my father and I saw both
7 female and male within a three hour period. And you might
8 think us a bit eccentric, we have all our land is wild, and it
9 is for the reason for conservation wise and having some
10 indigenous plants preserved. I guess we are very different.

11 As far as protection of these species it should really
12 be considered in this permitting process. And we have a
13 female i'o roosting on our lauhala tree. Its territoriality
14 is very wide, you know, a wide range and we don't want to
15 disturb its nesting site. So we went there once and that was
16 enough.

17 The geothermal developers say that probably the impact
18 of this project will be a 35-year span. I believe their
19 assessments for the future is very shortsighted. Once an
20 endangered species is extinct, it is too late. The i'o plays
21 an important part in the ecosystem in Hawaii.

22 If public agencies feel that way, they are curtailing
23 the use of fossil fuels as compared to environmental concerns
24 like the i'o. That is just one bird as an example, there is
25 also the pue'o and the hoary bat.

1 I feel that in the long-term duration man will be
2 extinct on day also and that's a very sad thing to think
3 about. There is a -- okay, one day we might have our land as
4 very barren at the rate we are going. I'm very surprised in
5 this generation there is so many species of animals and plants
6 that is getting extinct.

7 Because we have a very complex situation in Kapoho
8 which will involve homes, developers, and endangered species
9 of birds and some indigenous trees, I'm really concerned about
10 what will happen. I've seen the HGP-A well and the emissions
11 that have come forth from it. And I've seen the trees around
12 it, its defoliation. And if any of you have had contact with
13 the Agent Orange it's like Vietnam.

14 So, I would really feel sorry for all of you folks
15 to see life pass, probably in the next generation, you may
16 not be able to see the ones, your children's children may not
17 see the wildlife and plants on this earth. Thank you.

18 MR. CHAIRMAN: Thank you. Is there anyone else who
19 would like to testify? Could you sign in here and give us
20 your name.

21 MR. ALULI: I was the one asking the questions.
22 Mr. Chairman, thank you. First of all I have to agree with
23 the -- I'm sorry. My name is Emmett Aluli, I'm with the Pele
24 Defense Fund. I have to agree with the first speaker here,
25 Mr. Ross, the fact is that this hearing should be invalidated.

1 Your notice was not substantial enough. It didn't
2 give any information. You attempted at the opening of the
3 hearing to give information, but it was standard rhetoric.
4 It just moved, streamlined, and expedite the whole process.

5 I just want you to know that this process is one that
6 is running rampant on this Big Island, rampant with the
7 different geothermal proposals. I think that your
8 department is not paying attention to what is going on with
9 the Scientific Observation Holes, the transmission lines, with
10 Ormat, with the 100-megawatt proposal, and the ongoing
11 400-additional megawatt proposal.

12 And now you come to us and want us to accept your Rules
13 and Regulations for the authority, this so-called Center, to
14 facilitate this whole thing. And it's not working well at
15 all.

16 You'll find that most of the residents of Kapoho on to
17 Kalapana all the way around Wao Kele o Puna and even across
18 this island, Kohala, have got to scramble all of a sudden, and
19 have to kind of really get involved in the next year to try to
20 like get their questions answered.

21 The problem that I see with the Center is that you've
22 perpetuated an "old boys club" one that just started with
23 Ariyoshi and into here with Metcalf and Matsuura and on down
24 to the developers who write all these Rules and Regulations
25 and pass it through to their own counterparts the Carpenter

1 Administration. You've got the Bishop and Campbell Estate,
2 Lyman Estate, major land owners, and they're pushing these
3 permits through on their properties.

4 You've got everybody even the judges convinced, and I
5 don't see how the DLNR is going to be able to do a better and
6 fairer job in listening to the concerns of the communities
7 involved.

8 I think the Center is one thing that is going to kill
9 us all because it applies to a lot of other developments here
10 on the Big Island, on every island, that you and the
11 Administration and everybody else is just going to facilitate
12 through. And then you talk about trying to get justice in
13 hearing the concerns of the community affected and this is
14 not going to do it.

15 I also want you to know that that this whole
16 geothermal development besides the impact it has to the native
17 Hawaiian culture and traditions, of Pele, to the environment,
18 and the native species, it is also very, very costly.

19 The problem the way DLNR has been handling things is
20 the developers they write the economic assessments. And
21 nobody else can go and get a second opinion. While they say
22 1.5 billion dollars for this geothermal project and cable, and
23 it's going to cost us even more like four billion dollars.
24 It's the taxpayers that have to pay.

25 You talk about geothermal lighting the skies of

1 Honolulu. You talk about a cable, but Honolulu is undergoing
2 their own process to provide their own selves with alternative
3 or other kinds of energy production. And I'm talking about
4 the 240-megawatt proposal down in Campbell Estate land at
5 Barbers Point. That's 240 megawatts they're going for, and
6 they are going to go on for may be another 250 megawatts. And
7 here we're sitting with 500 megawatts; to do what?

8 I don't think the DLNR is able to give us the bigger
9 picture. It's like all of us trying to envision a Hawaii
10 that we are used to and we wanted to perpetuate it and your
11 coming in with a picture that we just have no handles on.

12 What really hurts us here is your whole SMA process
13 throughout all the counties. The DLNR, are they going to
14 assume all the SMA kinda like permits that have to be granted
15 on every shore where the cable comes up or goes down?

16 The SMA still has intact, contested cases where the
17 experts haven't come with all their materials and can be
18 cross-examined, and therefore, the whole question as to the
19 validity, and the purposes, and the economics, and the impacts
20 can all be dealt with. And then the community has to live
21 with whatever decision is made on the local level.

22 And that's what I see so wrong with this Geothermal
23 Center and the promulgated Rules. I'm hoping that after
24 this, whatever the prospect is, you will re-write these Rules
25 and come back to us for public hearings. And there is more

1 input by the people on every island as to what this geothermal
2 authority is doing. Thank you.

3 MR. CHAIRMAN: Thank you. Is there anyone else? (No
4 response) If not, I want to thank you all for coming, taking
5 time out from you busy schedule to attend here tonight. Your
6 testimony will be on the record and I would like to remind you
7 that you have until July 7th to submit additional testimony,
8 July 7th. Thank you very much.

9 (The public hearing was concluded at 9:15 p.m.)
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C E R T I F I C A T E

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

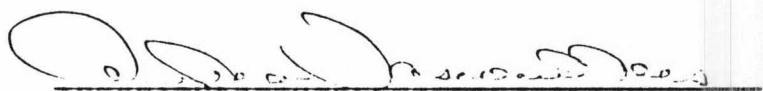
I, ANDREA H. VASCONCELLOS, Notary Public, in and for the State of Hawaii, do here by certify:

That on Wednesday, June 21, 1989, at 7:15 p.m., appeared before me the Commission members, Staff members and speakers mentioned herein;

That the hearing testimony was taken down by me in machine shorthand and was thereafter reduced to print under my supervision by means of computer-assisted transcription; that the foregoing represents a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto nor in any way interested in the outcome of the cause named in the caption.

Dated: June 26, 1989.


ANDREA VASCONCELLOS,
Notary Public, State of Hawaii
My commission expires: April 23, 1990

To [unclear] [unclear]

MEMORANDUM FOR THE RECORD

FROM: Dean Nakano and Ed Sakoda

SUBJECT: Public Hearing on the Proposed Administrative Rules for Act 301, SLH 1988 (Chapter 196-D, HRS), Held at Kahului, Maui on June 21, 1989

On Wednesday, June 21, 1989, Ed Sakoda and I went to Maui to conduct the public hearing on the Department's draft administrative rules, Chapter 13-185, entitled "Rules of Practice and Procedure for Geothermal and Cable System Development Permitting".

The public hearing was called to order at 7:05 pm, at which time the following people were called upon to present testimony which was recorded by a court reporter:

- o Christopher Baz - resident
- o Walter Hillinger - resident
- o Beverly Fykes - aide to Councilman Wayne Nishiki
- o Carl Freedman - resident
- o W.D. Smith - resident
- o Sally Raisbeck - resident
- o Leslie Kuloloio - resident

Written testimony (attached) was received from Councilman Nishiki and Mr. Freedman which were entered into the record of the public hearing. In general, most of the testimony presented at the hearing dealt with resident's concerns about the potential impacts resulting from geothermal development and proposed deep water transmission cable project.

In addition, Mr. Kuloloio's testimony requested that the Office of Hawaiian Affairs and the Department of Hawaiian Home Lands be made a part of the Interagency Group and consolidated review team for the purpose of monitoring potential impacts to native Hawaiian culture.

In attendance at the hearing were approximately 20 people (sign-in sheet attached), who were reminded that additional written comments could continue to be submitted to the Department until July 7, 1989.

There being no further testimony on the proposed rules, the public hearing was adjourned at 8:10 pm.



DEAN NAKANO



ED SAKODA

COMMENTS OF CARL FREEDMAN,
908 HANA HWY.
HAIKU, HI., 96708

REGARDING PROPOSED ADMINISTRATIVE RULES
OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES

CHAPTER 185

RULES OF PRACTICE AND PROCEDURE FOR GEOTHERMAL
AND CABLE SYSTEM DEVELOPMENT PERMITTING

6/19/89

Comments Regarding Due Process

Streamlining the regulatory process is a good idea in principle, but it is problematic as well. To the extent that the existing regulatory process is redundant or presently requires unreasonable entanglements with inefficient bureaucracies, society can benefit from measures to encourage communication, timeliness of permit processing, centralization of information, standardization of forms and consolidation of procedures.

To a certain extent, however, the complexities of the permitting process are due to the fundamental nature of our representative system of government with all of its checks and balances placed upon powers vested in the jurisdictions of various agencies representing various interests of the people it serves. Streamlining the regulatory process, if taken too far, can interfere with the proper, albeit sometimes complex, functioning of our governmental system. To the extent that the judicial system protects against such encroachments, zealous streamlining can be counterproductive. A reversed and remanded agency decision is not a symptom of well planned efficiency.

To the extent that streamlining sometimes represents an impatient effort to hurry a process along due to political or expedient pressures, it may serve as a serious disservice to society, as is known so very well by many electric ratepayers on the mainland who foot the bills for unneeded or nonfunctioning utility "assets." Billion dollar projects can set quite a few pocketbooks back pretty far...and line a few too.

Most of the intent and much of the wording of the proposed rules comes straight from HRS 196D. In certain parts of the proposed rules, however, DLNR goes further than the requirements of statutory law in respects that merit reconsideration. Instances where agencies exceed their statutory mandate are precisely the areas where courts are most likely to assert findings of legal

error. DLNR should proceed with special caution with respect to rules that might compromise traditional standards of due process.

Care in the protection of the rights of persons and agencies to due process is consistent with the goals of streamlining. It is a mistake to cut corners that might jeopardize the legality of time consuming hearings and procedures or compromise the wisdom inherent in our governmental process.

13-185-3 directs the department to deny an application for intervention "if admission of additional parties will render the proceedings inefficient and unmanageable." This rule is not advisable. Courts have traditionally allowed agencies to deny petitions for intervention if they are repetitious or if other intervenors sufficiently represent the interests of the petitioner. Courts have allowed the consolidation of intervenors in cases in which their interests are identical. In these instances, however, the interests of the petitioner are ostensibly being represented before the agency. The directive in 13-185-3 goes further and directs the department to reject a petition that in all other respects qualifies except for the manageability of the proceedings. Is the petitioner's right to be heard sustained? Note that 13-196-9 requires that "all procedures for public information and review under chapter 91 shall be preserved..."

13-185-5 requires that agencies conduct only one contested case proceeding. It should be noted in the DLNR rules or in the order adopting the rules that the contested case hearing should be broad in scope and that petitions for intervention should be allowed on the basis of "standing" regardless of the broadening effect intervention would have on the proceedings. Unless the contested case allows a broad enough scope to allow the hearing of all persons entitled to due process, the limitation to one hearing will violate rights to due process.

Another issue effecting due process that is worthy of note is the requirement in HRS 205-5 that state and county authorities require mediation in lieu of contested case proceedings to adjudicate contested issues. Although HRS 196D-10 transfers to DLNR the "functions of the land use commission...in section 205-5" and not necessarily responsibility for enforcing the statute with regards to its requirements for county administrative procedures, this is an issue that falls within the jurisdiction and concerns of DLNR. The requirement for mediation is a substantial variance from standard administrative procedure. Since it is a statutory provision, it may pass the test which by precedent has required administrative procedures to be consistent with HAPA, (see *Town v. Land Use Commission*, 55 Haw. 538, 524 P.2d 84 (1974) and *Ainoa v. Unemployment Comp. Appeals Div.*, 62 Haw. 286, 614 P.2d 380 (1980)). The statutory language itself, however, may violate the principle of rights to due process which are constitutionally guaranteed, particularly, the right to confront issues directly by cross-examination and/or rebuttal, to have a decision based exclusively

according to a record of established facts and recourse to judicial review based upon the entire record. The mediation procedure particularly precludes these provisions. In the interests of streamlining DLNR may wish to request a declaratory ruling regarding the constitutionality of the mediation procedure adopted by rule by the County of Hawaii.

GENERAL COMMENTS

13-185-3

(1) The first paragraph is worded in such a way as to transfer all of the functions of the land use commission and department of transportation to DLNR without restriction or statement of condition. The wording of the statute in 196D-10(a) should be included to clearly indicate that the transfer of functions is only for the particular types of developments noted.

(2) It should be noted by rule that the changes in land use boundaries and zoning made by DLNR under chapter 196D are contingent upon the ultimate approval of the project and should revert to their previous designations upon decommissioning of the project.

(3) The syntax and paragraph structure of this section needs to be clarified to eliminate ambiguity. It is unclear, for example, except by implied context, whether the wording at the top of page 185-6 refers to the "petition" for intervenor status or the "petition" for a district boundary change.

(4) Subsection (b) regarding zone changes offers only that "permits may be offered at the department's discretion" as a standard. This is clearly not sufficient guidance to an applicant or opponent of a zone change upon which to prepare a case, and is certainly not sufficient grounds upon which to base any findings of fact. Note that the Hawaii Supreme Court has not allowed agencies even the appearance of being arbitrary or capricious (see *Ainoa v. Unemployment Comp. Appeals Div.*, (1980) and precedents noted therein.)

13-185-7

This section provides in accordance with 196D-8 that DLNR provide information services for the benefit of potential applicants. DLNR should establish by rule that these services are for all interested persons. There is no definition of "potential applicants." Certainly these services should not be restricted to exclude the general public.

13-185-9

Subsection (b) directs the department to perform a number of services for the benefit of an applicant. One provision directs the department to "assist the applicant in applying directly to...agencies." This directive goes beyond that of the statute and perhaps further than is prudent. It should be made clear that the department is not applying for permits from other agencies, either in name or actual practice. This is not an appropriate role, even for an agency responding to legislative intent to provide streamlining measures. Similarly the directive to "provide advice" should be explained so as not to put the department in a position of acting as attorney for the applicant regarding applications to other agencies.

If the rules are going to direct the department to provide these services, they also need to define limitations on how far the department will go in these regards. DLNR should provide guidance to its staff to clearly distinguish between the various roles of individual personnel it assigns to the necessarily separate functions of:

(1) an adjudicatory body conducting contested case proceedings regarding functions transferred under 13-185-10 and other DLNR rules,

(2) an intervenor in these proceedings as required by 13-185-4,

(3) an advocate for applicants pursuant to these and other proceedings as required by 13-185-7 and 13-185-9,

(4) a final authority over administrative conflicts as defined by 13-185-14, and

(5) a coordinator of county, state and federal agencies regarding the provisions of 13-185-11, 13-185-12 and 13-185-13.

In order to preserve the legality of contested case proceedings it will be necessary to distinguish certain of these functions from one another, separate personnel according to their roles and make provisions to protect against inappropriate ex parte communication. In this regard DLNR should consider the wording of section 13-185-9 to limit or place conditions upon the context and extent to which it will "assist" applicants.

13-185-10

The fees proposed here are a pittance. A county building permit for a typical 2000 square foot house exceeds the DLNR application fee for a billion dollar development that will occupy numerous DLNR staff on a full-time basis for a considerable period

of time. It is unclear what the purpose of the fee is. The present amount will clearly not even cover the costs of compiling and photocopying the required information to meet the requirements of 13-185-7.

The State of Oregon requires a Site Certificate for geothermal projects that are larger than 25 megawatts. A fee of \$5000 is required at the time of filing a notice of intent which is credited towards an ultimate fee of \$.05 per kilowatt or \$1000 for each \$1 million of estimated capital investment, but in no case less than \$15,000. Additionally an annual fee of \$.025 per kilowatt is assessed to cover ongoing costs of regulation.

DLNR does not have all of the regulatory responsibilities associated with the fees charged by the State of Oregon, however, the order of magnitude of Oregon's fee schedule much more realistically reflects the costs of regulation of large energy facilities. Perhaps the State of Hawaii does not foresee the costs of regulation for these facilities or see the wisdom of sharing the regulatory burden with the corporations that operate these facilities and who often appear before the state in an adversarial position regarding matters of public and/or environmental interest.

The proposed fee schedule needs to be increased by a few orders of magnitude and needs to be proportional to kilowattage or project costs well beyond the \$10 million level. Note that \$.05 per kilowatt is less than one half of one hundredth of one percent of the cost of generating facilities that typically cost well over \$1000 per kilowatt.

Comments Regarding Adequacy of Siting Regulations

The Hawaii Legislature states in its findings and declarations of purpose for the statute to which these rules are pursuant that:

"The development of geothermal resources and a cable system, both individually and collectively, would represent the largest and most complex development ever undertaken in the State."

The legislature has acted to simplify the procedures for application for the permits required for these facilities, but it has not recognized the need for some basic regulatory measures to protect the interests of the people of Hawaii regarding the magnitude of impacts that can be anticipated by large electrical generation projects. In no other arena, excepting perhaps the recent oil spill in Alaska, has the public been left to suffer such extensive economic and environmental consequences of regulated industrial developments as in the many cases of

unnneeded, nonfunctioning, mismanaged or poorly engineered electrical generation projects.

Any project that costs hundreds of millions of dollars that will certainly be charged to electrical ratepayers deserves a thorough regulatory review to establish the need for and cost effectiveness of the project. Proposed geothermal developments are anticipated to cost in the vicinity of \$1.7 billion. Based upon number of customers and average use this works out to be an investment of over \$5000 per residential customer. This is equivalent to a rate impact of over \$50 per month per residential customer.

By what mechanism are the economic interests of ratepayers protected? In what forum can they represent their concerns? The public utilities commission approves rates based upon new facilities after they are completed and have accrued debt. The decisions made on whether or not to build large energy facilities are made by boards of directors representing the interests of utility stockholders who make money by spending money to be included in utility rate bases to be financed by ratepayers. The State of Hawaii has no regulatory forum by which ratepayers or citizens can participate in decisions for which they will be held financially accountable.

Similarly, the State of Hawaii has no regulatory provisions to assure that:

applicants have the financial, technical and managerial abilities to construct, operate and decommission energy facilities, without their becoming a burden to county or state governments,

the energy facilities will in fact be decommissioned at the end of their productive lifetimes, or that

other preferable alternatives are not reasonably available.

These issues are not directly relevant to the rules being considered presently by DLNR which are primarily procedural in nature. However, the absence of statutory language or administrative rules that address these important issues begs comment in all forums that consider large energy facility siting regulation.

RECEIVED

908 Hana Hwy.

Haiku, Hi., 96708

89 JUL 3 A 9:40

June 26, 1989

Division of Water and Land Development
P.O.Box 621,
Honolulu, Hawaii, 96708

DEPT. OF WATER &
LAND DEVELOPMENT

Persons concerned:

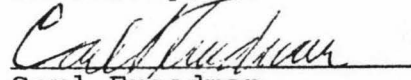
I presented written and oral testimony to DLNR at a public hearing at Maui Community College, Community Services Building on June 21, 1989 regarding the Proposed Administrative Rules for Geothermal and Cable System Development Permitting. I made an error in that testimony that I would like to correct by attachment of the addendum enclosed. I request that this addendum be attached to my written testimony and that it be considered as a correction to my oral testimony.

I realize that costs of proposed facilities are not directly relevant to the consideration of the proposed rules. However, I included information regarding the magnitude of electrical rate impacts in order to emphasize the political importance of these rules and reasons for caution in their implementation.

The errors corrected here are due to reliance upon a misprint of statistics in the Atlas of Hawaii printed by the University of Hawaii Press. Corrections are made based upon statistics taken from the "1988 Hawaiian Electric Industries Annual Report."

The errors do not effect the import of the testimony, however, they concern a politically hot issue and are prone to be cited by others. It is important that the numbers be correct and understood.

Sincerely,


Carl Freedman

CORRECTION AND ADDENDUM TO:

COMMENTS OF CARL FREEDMAN,
908 HANA HWY.
HAIKU, HI., 96708

REGARDING PROPOSED ADMINISTRATIVE RULES
OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES

CHAPTER 185

RULES OF PRACTICE AND PROCEDURE FOR GEOTHERMAL
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6/19/89

The first full paragraph of page six of the testimony cited above states financial information regarding the magnitude of the potential rate impacts of a \$1.7 billion project upon Hawaii residential electrical customers. The word "residential" should be deleted in both instances. The amounts stated are correct for the average of all customers.

Investment of 1.7 billion in a geothermal project is an investment of over \$5000 per electrical utility customer which is the equivalent to a potential rate impact of over \$50 per customer. Based upon average use this breaks down into an impact of over \$20 per month per residential customer and over \$300 per month per non-residential customer.

These statistics are stated as order-of-magnitude figures to provide some sense of scale regarding the size of the projects being considered by these rules and the importance of careful consideration of their impacts. The estimated costs are based on simplistic means, but are a reasonable estimate for the purposes noted.

Investment per customer is calculated by simple division of the project cost by the number of Hawaii utility customers. Cost per month assumes a 12% annual rate of return on this investment regardless of whether it is recuperated as return for assets included in the utility rate-base or as capital costs associated with electricity sold to the utility by an independent project owner. Costs are apportioned to residential and non-residential customers based upon average use per customer.

These cost statistics are not to be interpreted as estimates of the actual costs to consumers. If the project is successful it

will certainly offset the substantial marginal generation costs associated with other displaced generation facilities, most notably fuel use. If a geothermal project is truly cost-effective it may not cost consumers anything in the long run when compared to other alternatives.

Investment per customer and its gross potential impact upon rates are appropriate statistics to use in assessing potential impacts of new generation capacity, especially when:

(1) the costs of power from the project are almost entirely capital costs which must be recuperated even if the project operates below expected capacity factors,

(2) there is some risk regarding the ultimate successful operation of the project, and most importantly

(3) there are no regulatory standards governing the need for or cost effectiveness of the project and no assurances of the financial, managerial or technical ability of an applicant to build and operate the project.

For generation facilities owned and operated by private non-utility entities, the financial risks and impacts to customers hinge upon the contractual agreements with the utility that purchases the power. Traditionally it has proven very difficult for private non-utility enterprises to raise the vast capital investments required for such facilities without very strong assurances from the potential purchasing utilities for the ultimate purchase of the generated power. In some cases utilities have promised contractually to purchase the expected output of a facility even if it produces little or no power. This serves to lower the cost of capital towards that of municipally-backed securities, but does nothing to protect the interests of electrical rate-payers. Hawaii has no up-front regulatory review of such utility electrical purchase agreements.

Council Chairperson
Goro Hokama

Council Vice-Chairperson
Howard S. Kihune

Council Members
Linda Crockett Lingle
Pat S. Kawano
Alice L. Lee
Rick Medina
Wayne K. Nishiki
Velma M. Santos
Joe S. Tanaka



Gwen Yoshimi-Ohashi
Director of Council Services

COUNTY COUNCIL

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

June 20, 1989

Mr. William W. Paty
Chairperson
State Board of Land and
Natural Resources
Board Room, Room 132
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Dear Mr. Paty:

Thank you for the opportunity to offer testimony on Chapter 185, "Rules of Practice and Procedure for Geothermal and Cable System Development Permitting."

Act 301, Hawaii Revised Statutes, states "the development of geothermal resources and a cable system, both individually and collectively, would represent the largest and most complex development ever undertaken in the State." The total cost for exploration, drilling, laying of cable and plant construction is estimated by HECO to be 1.7 billion dollars. A sizeable sum of taxpayer's money has already been spent on research and development. The State Department of Business and Economic Development estimates that the state alone has spent around 13 million dollars on geothermal and cable research and development (5 million of this went solely for research on the cable). The federal government has spent over 30 million with 23 million of this for research on the undersea cable. To add to these already astronomical figures, private sources have spent an additional 20 million. All of this for a project which depends on the success of an underwater cable system which has yet to be tested in the ocean and whose economic feasibility has yet to be proved.

Act 301 and Chapter 185 which we are considering tonight are designed to consolidate and streamline the geothermal permit application and review process for the benefit primarily of the developer--to make it easier for geothermal developers to make their way through the permitting process maze.

While I appreciate the need to reduce our consumption of fossil fuel in an effort to promote cleaner air, decrease the Greenhouse effect, and lessen our dependence on unstable foreign governments, I, as a public servant, feel that some basic questions need to be asked to make certain that the needs of the public are being met.

On a best case basis the rules are vague, confusing, and open to multiple interpretations. On a worst case basis, they appear to limit or even take away the authority of the Counties through their Planning Commissions to regulate geothermal development insofar as the cable is concerned. They allow for the transfer of functions from the state land use commission in matters of district boundary amendment and zoning changes in regard to geothermal resource subzones without a similar transfer of accepted standards used by the land use commission to reclassify land. They fail to specify details of the application and review process so that it is unclear both to the developer and the public exactly what information is required and what criteria will be used to evaluate and ultimately to award permits for development. If these matters are to be left to the Counties, then what exactly are the specific responsibilities of the interagency team established in the rules and what is the purpose of the permit for development? Finally the rules appear to establish a questionable precedent by permitting the lead agency, DLNR, which is responsible for making final decisions about permits, to also be the agency which assists developers through the permitting process.

Geothermal development is a major concern to Maui and to all Hawaii. According to HECO, the cable will come aground from Hawaii in the Kipahulu area of Maui. From there huge electrical transformers and lines will follow the road alongside the ocean to the other side of the island where the cable will pass under the ocean between Maui and Kahoolawe and Lanai and between Lanai and Molokai on its way to Oahu. In situations like this where Maui's already fragile marine life and shoreline are involved, I find it pays to ask questions.

When asked why the cable could not be run on the other side of the island to avoid prime breeding and birthing grounds for the humpback whale, HECO said this had not really been considered because the distance is so much shorter and the depth much more shallow on the Kihei side.

The problems with these rules may come from a similar failure to consider their implications. The matter is of primary importance to Maui County since Council will soon consider an ordinance to regulate geothermal development and the Planning Commission will be presented with rules®ulations for geothermal development as well.

I have attached a list of questions and concerns with references to the appropriate sections of the rules. I would appreciate the opportunity to meet with representatives of DLNR either privately or in a Council committee meeting to discuss the answers to these questions and to receive clarification of any other portions of the rules which may result as a part of public testimony.

Again I am grateful for the opportunity to offer questions in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'WKNishiki', with a stylized flourish extending to the right.

Wayne K. Nishiki
Councilmember

WKN:bjf

Questions and Concerns

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? I am concerned about the language of Section 13-185-9, p. 185-9, which says that the department "shall require State and county agencies so notified to participate in the consolidated permit application and review process." "Agency" is defined in Section 13-185-2, p. 185-2 as "any department, office, board, or commission of the State or a county government which is a part of the executive branch of that government, but does not include any public corporation or authority that may be established by the legislature for the purposes of geothermal and cable system development."

If in fact County Planning Commissions are required to participate in the consolidated permit application and review process, then under the terms of Section 13-185-14 (b), p. 185-15, they are required to negotiate with DLNR should a conflict occur. In such a case an impasse can be declared and if this impasse cannot be resolved, then "the administrative director," which I presume to be from DLNR, will "render a decision." This in effect takes away the power of the County Planning Commission to regulate geothermal development. If, for example, the Planning Commission decides not to give a permit to a certain developer and the DLNR or some other member of the interagency group deems that the developer should have the permit, the matter could be called a conflict and opened up to procedures for settling an impasse. "The administrative director" could decide in favor of the developer and thus overturn the decision of the Planning Commission.

I would appreciate comments of whether or not this is the effect of the rule and if this is not DLNR's intention, then I would like the rule to be clarified.

Act 301 is confusing especially between sections 5-b and 5-b-(5). Again the question arises of exactly what the permit required by the Act is for and what the interagency team is really trying to accomplish.

2. Under section 13-185-3, p. 185-4, Transfer of Functions, the rules transfer to DLNR the functions of the land use commission related to changes in zoning as set forth in section 205-5. There are few functions of the state land use commission related to zoning. These are primarily matters left to County Councils. Does this language attempt to take away the responsibility of Councils in this area?
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.

Questions and Concerns continued

4. I would like specific details of what information must be included in the application process. Nothing is provided in Section 13-185-4 or 9. What are the criteria for determining whether or not someone will receive a permit? I would like to see this information included in the rules and be open to public discussion and hearing before it is formally adopted.
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.
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.

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF WATER AND LAND DEVELOPMENT

PUBLIC HEARING RE:)

Proposed Administrative Rules)
for Geothermal and Cable)
System Development Permitting)

Public Hearing Session held by Department
of Land and Natural Resources at the Maui
Community College Community Services Building,
310 Kaahumanu Avenue, Kahului, Hawaii, June
21, 1989, commencing at 7:10 p.m., pursuant to
Notice.

/ QUALITY COMPUTERIZED TRANSCRIPTION /

/ -by- /

/ IWADO COURT REPORTERS, INC. /

/ 2233 Vineyard Street, Suite A /

/ Wailuku, Maui, Hawaii 96793 /

/ (808) 244-9300 /

/ REPORTED BY: CYNTHIA A. MOSQUEDA, CSR #3221/276 /

A P P E A R A N C E S

For Department of Land and Natural Resources:

DEAN NAKANO, Geologist

and

ED SADOKA, Geologist

State of Hawaii

Department of Land and Natural Resources

Division of Water and Land Development

Kalanimoku Bldg., Room 227

1151 Punchbowl Street

Honolulu, Hawaii 96809

Also present: Calvin Ah Loy, Security
Dexter Tom, Security

I N D E X

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P R O C E E D I N G S

Wednesday, June 21, 1989

7:10 p.m.

--oOo--

HEARING OFFICER NAKANO: Good evening. Thank you very much for all being here. At this time I'd like to call this public hearing to order.

My name is Dean Nakano. Ed Sakoda is here with me. We are both geologists from the Department of Land and Natural Resources.

The public hearing this evening is to receive testimony on the Department of Land and Natural Resources' proposed administrative rules identified as Chapter 13-185 and entitled "Rules of Practice and Procedures for Geothermal and Cable System Development Permitting."

The draft rules under consideration are to implement Act 301, Session Laws of Hawaii 1988, now codified as Chapter 196-D, Hawaii Revised Statutes.

The rules set forth procedures to implement the provisions of the Act which provides for consolidating permitting process for geothermal and cable development projects.

The rules as drafted, which are available in the back, provide for an interagency group consisting of all permitting agencies which may be affected by

1 such a project and creates a joint interagency review
2 team to consolidate and coordinate all processing
3 requirements, such as permit review, environmental
4 impact statements, and public hearings.

5 The rules further provide for the signing of a
6 joint agreement between agencies which will set forth
7 a review timetable and a mechanism for resolving
8 conflicts between those agencies.

9 The proposed draft also addresses transfer of
10 certain permitting functions from the Land Use
11 Commission and the Department of Transportation to the
12 Department of Land and Natural Resources for the
13 purposes of geothermal and cable permitting.

14 For those individuals wishing to present
15 testimony this evening, we have a sign-in sheet in the
16 back. If you'd please sign-in there. And please be
17 advised that the testimony presented this evening
18 should be confined to subject matter concerning the
19 draft administrative rules.

20 Any additional testimony or written comments
21 that you'd like to submit to the department may be
22 mailed to the Division of Water and Land Development,
23 P.O. Box 373, Honolulu, Hawaii.

24 At this time I'd like to begin calling up the
25 parties wishing to testify, and I'll get my list in

1 one second.

2 (Document handed to Mr. Nakano by Mr. Sakoda)

3 HEARING OFFICER NAKANO: At this time may I
4 call up Mr. Christopher Baz, please?

5 MR. BAZ: Where --

6 HEARING OFFICER NAKANO: Thank you, sir.

7 MR. BAZ: Suppose to sit here?

8 HEARING OFFICER NAKANO: Mr. Baz, if you
9 would, for the record, state your name?

10 MR. BAZ: My name is Christopher Baz. I'm a
11 resident of Ulupalakua and I'm farmer.

12 HEARING OFFICER NAKANO: Thank you.

13 MR. BAZ: And my understanding is that the --
14 someone in the government was supposed to test the
15 ambient air standards of the area.

16 The area that's in question is very
17 undeveloped. It's only ranch land and it's
18 conservation zone.

19 HEARING OFFICER NAKANO: Yes, sir.

20 MR. BAZ: So I'm concerned that the quality of
21 environment, as it is, remains. My understanding
22 that, you know, from looking at this thing, is more a
23 matter of organizational procedures --

24 HEARING OFFICER NAKANO: Yes, sir.

25 MR. BAZ: -- to make the whole thing go

1 smoothly. Well, that's -- to me, that's fine for the
2 government to have a smooth operation of how they're
3 going to implement this idea.

4 But basically the reason I came to this
5 meeting is to make sure that the DLNR understands how
6 pristine this area is and the fact that it has
7 absolutely no development.

8 In fact, you're not even allowed to move a
9 rock from the area that's in question, a lot of it.
10 It's purely conservation zone, so I feel that a large
11 amount of trucks, equipment, men going to and from,
12 even to set the thing up, is going to disturb the
13 area.

14 And I've been told that it has an extreme
15 noise factor even if it obeys the other standards of
16 emissions and so on. So right now we can hear a truck
17 that drives down, you know, down through the dirt
18 roads because there is no other vehicles.

19 So the whole -- whole area is subject to being
20 quite disturbed by having an industrial development
21 in, you know, in a situation as it is.

22 So basically that's my testimony, that I don't
23 think it's a good idea to do any sort of industrial
24 development in such a pristine zone.

25 HEARING OFFICER NAKANO: Thank you. I

1 appreciate your comments.

2 As I mentioned earlier, we'll be glad to
3 receive comments that you have. For the scope of this
4 evening, though, we'd like to keep the testimony
5 limited to the proposed rules as presented.

6 I'd like to make myself available, and Ed
7 also, at the close of the formal portion of this
8 hearing to answer maybe some of your questions that
9 might be more relevant to Mr. Baz's statement
10 concerning either the subzone or perhaps the counties
11 geothermal zone, which may be more directly in line
12 with some of the concern that you shared with us
13 tonight.

14 Mr. Hillinger?

15 MR. HILLINGER: My concerns are the same as
16 Mr. Baz, so I'll have to -- I'll have to talk to you
17 after.

18 But I am a resident and live in Ulupalakua,
19 and I'm very concerned about the environmental impact.

20 HEARING OFFICER NAKANO: I would be willing to
21 give you a few minutes of our time tonight if you
22 like.

23 MR. HILLINGER: Well, I live on the road
24 adjoining where this proposed site is going to be, and
25 I moved out there to have a nice, quiet environment;

1 not to have a bunch of trucks going on the road and
2 creating a havoc. Plus the smell, plus the noise.

3 And I deeply oppose any type of geothermal
4 plan.

5 HEARING OFFICER NAKANO: Thank you very much.

6 MR. HILLINGER: That's it.

7 HEARING OFFICER NAKANO: Miss Beverly Fykes?

8 MS. FYKES: Yes.

9 HEARING OFFICER NAKANO: Thank you.

10 MS. FYKES: I have a copy that I'd like to
11 leave, is that all right?

12 HEARING OFFICER NAKANO: I appreciate that.

13 MS. FYKES: I'll leave that to you.

14 HEARING OFFICER NAKANO: If I could have that?

15 (Document handed to Mr. Nakano by Ms. Fykes)

16 MS. FYKES: My name is Beverly Fykes. I'm the
17 legislative aide to Councilman member Wayne Nishiki,
18 and he asked me to come tonight.

19 And I'd like to read the letter that he is
20 giving to the Department of Land and Natural
21 Resources:

22 "Thank you for the opportunity to offer
23 testimony on Chapter 185, Rules of Practice
24 and Procedures for Geothermal and Cable
25 System Development.

1 "Act 301, Hawaii Revised Statutes states:

2 "'That the development of geothermal
3 resources and a cable system, both
4 individually and collectively, would
5 represent the largest and most complex
6 development ever undertaken in this state.'"

7 "The total cost for exploration,
8 drilling, laying of cable, and plant
9 construction is estimated by HECO to be one
10 point seven billion dollars. A sizable sum
11 of taxpayers' money has already been spent
12 on research and development.

13 "The State Department of Business and
14 Economic Development estimates that the
15 State alone has spent around thirteen
16 million dollars on geothermal and cable
17 research and development.

18 "Five million of this went solely for
19 research on the cable. The federal
20 government has spent over thirty million,
21 with twenty-three million of this for
22 research on the undersea cable.

23 "To add to these already astronomical
24 figures, private sources have spent an
25 additional twenty million. All of this for

1 a project which depends on the success of an
2 underwater cable system which has yet to be
3 tested in the ocean and whose economic
4 feasibility has yet to be proved.

5 "Act 301 and Chapter 185, which we are
6 considering tonight, are designed to
7 consolidate and streamline the geothermal
8 permit application and review process for
9 the benefit primarily of the developer; to
10 make it easier for geothermal developers to
11 make their way through the permitting
12 process maze.

13 "While I appreciate the need to reduce
14 our consumption of fossil fuel in an effort
15 to promote cleaner air, decrease the
16 Greenhouse Effect and lessen our dependence
17 on unstable foreign governments, I, as a
18 public servant, feel that some basic
19 questions need to be asked to make certain
20 that the needs of the public are being met.

21 "On the best case basis, the rules are
22 vague, confusing, and open to multiple
23 interpretations. On a worst case basis they
24 appear to limit or even take away the
25 authority of the counties, through their

1 planning commissions, to regulate geothermal
2 development so far as the cable is
3 concerned.

4 "They allow for the transfer of functions
5 from the State Land Use Commission in
6 matters of district boundary amendment and
7 zoning changes in regard to geothermal
8 resource subzones without a similar transfer
9 of accepted standards used by the Land Use
10 Commission to reclassify land.

11 "They fail to specify details of the
12 application and review process so that it is
13 unclear, both to the developer and the
14 public, exactly what information is required
15 and what criteria will be used to evaluate,
16 and ultimately to award, permits for
17 development.

18 "If these matters are to be left to the
19 counties, then what exactly are the specific
20 responsibilities of the interagency team
21 established in the rules and what is the
22 purpose of the permit for development?

23 "Finally, the rules appear to establish a
24 questionable precedent by permitting the
25 lead agency, DLNR, which is responsible for

1 making final decisions about these permits,
2 to also be the agency which assists
3 developers through the permitting process.

4 "Geothermal development is a major
5 concern to Maui and all Hawaii. According
6 to HECO, the cable will come aground from
7 Hawaii in the Kipahulu area of Maui. From
8 there, huge electrical transformers and
9 lines will follow the road alongside the
10 ocean to the other side of the Island, where
11 the cable will pass under the ocean, between
12 Maui and Kahoolawe and Lanai, and between
13 Lanai and Molokai, on its way to Oahu.

14 "In situations like this where Maui's
15 already fragile marine life and shoreline
16 are involved, I find it pays to ask
17 questions.

18 "When asked why the cable could not be
19 run on the other side of the Island to avoid
20 prime breeding and birthing grounds for the
21 humpback whale, HECO said this had not
22 really been considered because the distance
23 is so much shorter and the depth so much
24 shallower on the Kihei side.

25 "The problems with these rules may come

1 from a similar failure to consider their
2 implications.

3 "The matter is of primary importance to
4 Maui County since Council will soon consider
5 an ordinance to regulate geothermal
6 development and the Planning Commission will
7 be presented with rules and regulations for
8 geothermal development as well.

9 "I have attached a list of questions and
10 concerns with references to the appropriate
11 sections of the rules. I would appreciate
12 the opportunity to meet with representatives
13 of DLNR, either privately or in a Council
14 committee meeting, to discuss the answers to
15 these questions and to receive clarification
16 of other portions of the rules which may
17 result as a part of public testimony."

18 And I don't want to take the time to go
19 through this list, but it very clearly shows the
20 sections that we are concerned about that appear to
21 take away the counties' authority.

22 HEARING OFFICER NAKANO: Mr. Nishiki's
23 testimony will be entered into the record in its
24 entirety.

25 MS. FYKES: Thank you.

1 HEARING OFFICER NAKANO: Mr. Carl Freedman,
2 please?

3 MR. FREEDMAN: Good evening. My name is Carl
4 Freedman. I live in Haiku here on the Island. I'm
5 not appearing on behalf of anyone but myself.

6 I'm not appearing for or against geothermal
7 projects, but I became interested in the standard,
8 particularly because I have a background of some
9 expertise in writing energy facility siting standards.

10 When I lived in Oregon I was very involved in
11 the writing of the siting standards for the Energy
12 Facility Siting Council there, and the Department of
13 Energy for siting geothermal biomas, thermal whole
14 nuclear wind energy facilities.

15 I represented an environmental group there,
16 but the rules were drafted cooperatively between the
17 Department of Energy, the utilities and our group.

18 Looking at Hawaii's regulations I realize that
19 Hawaii is relatively new to the administrative process
20 of large energy facilities siting. It does not have
21 much legislative or administrative history relating to
22 large energy facilities, and this one was quoted by
23 Beverly straight out of the findings and purposes of
24 the statute.

25 Act 301 is a very large project, perhaps one

1 of the largest projects that Hawaii is going to see.
2 It's not a hotel. It's not a large road. It differs
3 in two major respects.

4 One, is it is something in the order between
5 one and two billion dollars, which works out something
6 about five thousand dollars per ratepayer. And the
7 cost is ultimately going to be borne by the ratepayers
8 here. And that's a distinction that's made and is not
9 addressed in any statute or administrative rule right
10 now.

11 There is no review agency who's looking at the
12 economic prudence or the need for this facility, and
13 ultimately it's as much as given that the ratepayers
14 are going to end up paying for it and the public
15 utility Commissioner will review the process after the
16 fact. And as long as a management -- reasonable
17 management decision is made, the cost -- the costs get
18 passed to the ratepayer.

19 I don't know if it's necessary for me to read
20 this into the record for it to be timely, but I would
21 like to go through it.

22 HEARING OFFICER NAKANO: Sure, you may
23 summarize your written statement and it will be taken
24 into consideration.

25 MR. FREEDMAN: Okay. Streamlining of the

1 regulatory process is really a double-edged sword.
2 There is certainly a lot to be gained by eliminating
3 repetition and red tape, but it can backfire and it
4 can backfire in two important respects.

5 The biggest one in the interest of
6 streamlining, the biggest way it can backfire is you
7 can cut too deep. You can cut corners across due
8 process and you're going to end up with the courts
9 reversing and remanding agency decisions.

10 So I think that DLNR needs to be careful, more
11 careful than it has been, in its standards in
12 guaranteeing the rights of due process to individuals
13 and agencies that it is coordinating and overseeing.

14 The second extent in which streamlining can
15 backfire is that if it's done in too overzealous a
16 manner, the real best interests of the public can be
17 put aside for perhaps a more shortsighted view of what
18 might be the best interests.

19 And if you look across the country, there are
20 many utility ratepayers and in many areas who are
21 paying bills that are too high because their
22 particular utilities, for whatever reasons, decided to
23 go ahead with large energy facilities and they either
24 did not work.

25 For some technical reason they stand there,

1 unnneeded for faulty economics, and streamlining can
2 tend to circumvent some of the regulatory slowness and
3 careful consideration that prevents that type of
4 mistake from happening.

5 Billion dollar projects can set quite a few
6 pocketbooks back pretty far. And it can line quite a
7 few, too. So it tends to be an issue where large
8 money interests might be lobbying the legislature or
9 can afford high-powered testimony in proceedings.

10 Due process has to be afforded all of its
11 opportunities for interested and aggrieved parties to
12 appear before the agency. And I realize that most of
13 the intents and a lot of the wording of these proposed
14 rules comes straight from the statute.

15 And the department doesn't have a lot to say
16 about how that's going to look, but in certain
17 respects it does go further than the requirements.
18 And then you have to really watch because those are
19 particularly the places where a court can review, is
20 going to question your authority, and maybe send you
21 back a few steps and reverse the decision.

22 And I have outlined a few particular places
23 here where I think the department should reconsider
24 its language. Basically it's my feeling and my
25 experience that due process is consistent with the

1 goals of streamlining.

2 If you want to make this process go through
3 smoothly, if you want to license something, you get
4 everybody all the rights and all the privileges they
5 need legally, or it's going to end up in the courts,
6 which is the easiest way to stop something from
7 happening.

8 Section 13 -- I guess you call them "sections"
9 -- 13-185-3 directs the department to deny application
10 for intervention if admission of additional parties
11 will render the proceedings inefficient or
12 unmanageable. This is a mistake.

13 The courts have traditionally allowed agencies
14 to deny petitions for intervention if they're
15 repetitious or if other intervenors are sufficiently
16 representing the interests of a petitioning
17 intervenor.

18 Courts have allowed consolidation of
19 intervenors, but in all of these cases, ostensibly the
20 interests of petitioning parties are already
21 represented.

22 If DLNR were to deny a petitioner intervention
23 based simply on the fact of that, would it make the
24 proceedings inefficient and unmanageable? I think you
25 would have made a legal error in denying someone due

1 process and you're going to end up doing the whole
2 thing over again.

3 Section 5 requires that agencies conduct only
4 one contested case proceeding, and I think DLNR needs
5 to, perhaps in its rule adopting -- in its order
6 adopting this rule or in the rules themselves, that
7 the scope of that one contested case proceeding should
8 be broad, and intervenors should not be denied status
9 because the issues that they bring will broaden the
10 scope of the hearing.

11 And it's very common for agencies to have
12 already written in -- the county or wherever -- have
13 language in their rules that limits the broadening of
14 scope that an intervenor may bring to a hearing.

15 But in this case, DLNR by rule is saying there
16 can be only one proceeding. And in order to provide
17 for due process for all individuals, it is necessary
18 that standing be the only standard for intervention
19 and not broadening of scope.

20 Another issue that I want to mention is the
21 requirement in Hawaii Revised Statute 205-5 that State
22 and County authorities require mediation in lieu of
23 contested case proceedings to adjudicate contested
24 issues.

25 Although Act 301 transfers to DLNR the

1 functions of the Land Use Commission and not
2 necessarily all the responsibilities for enforcing the
3 statute with regards to county administrative
4 procedures, this is an issue which ultimately falls
5 under your jurisdiction and concerns because you are
6 going to be overseeing these county agencies that are
7 reviewing, by mediation in lieu of contested case
8 proceedings, a lot of the issues from county level.

9 Because it's a statutory provision, it may
10 pass a lot of the tests of precedent where the Hawaii
11 Supreme Court has required that administrative
12 procedures be consistent with the Administrative
13 Procedures Act.

14 But the statutory language itself may violate
15 the principle of rights to due process which are
16 constitutionally guaranteed, particularly the right to
17 confront issues directly by cross-examination and/or
18 rebuttal, to have a decision based exclusively
19 according to record of established fact, and recourse
20 to judicial review based upon the entire record.

21 The mediation procedure particularly precludes
22 these provisions. And a good example of this is the
23 statute that has been adopted by the County of Hawaii
24 -- and perhaps the County of Maui is going to have to
25 do a similar statute because the requirements of 205

1 are -- but what I'm suggesting is that the DLNR may
2 want to check into this regarding the
3 constitutionality of the mediation procedures adopted
4 by rule by the County of Hawaii.

5 All those comments relate to due process. And
6 I have a list of comments here in Section 3.

7 The first paragraph transfers all the
8 functions of the Land Use Commission and the
9 Department of Transportation to DLNR without
10 restriction or statement of condition.

11 The statute conditions that pretty clearly,
12 and I think you should adopt the wording of the
13 statute to limit what instances the powers of the Land
14 Commission and Department of Transportation -- I mean,
15 you're not in the business of taking over all their
16 business --

17 HEARING OFFICER NAKANO: Sure, right.

18 MR. FREEDMAN: -- so you need some restrictive
19 wording.

20 I think that you should include in the wording
21 provisions that boundaries, land use boundaries and
22 zoning changes made by DLNR are contingent upon the
23 ultimate approval of the project and revert to their
24 previous designation upon decommissioning of the
25 project.

1 In other words, if they come before DLNR for a
2 land zone change and the project falls by the wayside
3 and is not going to be built, you should, you know,
4 relax the standards. Let them go back to the local
5 authorities as they were before.

6 The syntax of the latter part of 3 really
7 needs to be changed, and you can read your own wording
8 there. My concern -- there is some ambiguities.

9 Subsection B regarding zone changes offers
10 only that permits may be offered at the department's
11 discretion. This is clearly not a sufficient guidance
12 to applicants or opponents of a zone change upon which
13 to prepare a case and is certainly not sufficient
14 grounds upon which to base any findings of fact.

15 And I note that the Hawaii Supreme Court has
16 not allowed agencies even the appearance of being
17 arbitrary or capricious. I think you need some sort
18 of standard regarding zoning or some notation that you
19 are going to use the Land Use Commission's standards
20 or something there.

21 And I have given you some citations of case
22 law.

23 Section 7 provides that DLNR provide
24 information services for the benefit of potential
25 applicants. DLNR should establish by rule that these

1 services are for all interested persons.

2 There is no definition of what a "potential
3 applicant" is. And certainly these services should
4 not be restricted to exclude the general public.

5 Section 9 directs the department to perform a
6 number of services for the benefit of an applicant and
7 to assist the applicant in applying directly to
8 agencies. This directive goes beyond that of the
9 statute and perhaps further than is prudent.

10 It should be made clear that the department is
11 not applying for permits from other agencies, either
12 in name or actual practice. This is not an
13 appropriate role even for an agency responding to
14 legislation to streamline the process.

15 Similarly the directive to provide advice
16 should be explained so as not to put the department in
17 a position of acting as attorney for the applicant
18 regarding applications to other agencies.

19 If the rules are going to direct the
20 department to provide these services, they also need
21 to define the limitations on how far the department
22 will go in these regards.

23 They should provide guidance to the staff to
24 clearly distinguish between the various roles of the
25 individual personnel it assigns to the necessary

1 functions.

2 One, an adjudicatory body conducting contested
3 case hearings. Two, an intervenor in those contested
4 case hearings. Three, an advocate for applicants
5 pursuant to those hearings. Four, a final authority
6 over administrative conflicts as defined by Section
7 14. And five, a coordinator of County, State, and
8 Federal agencies regarding the provisions of sections
9 11, 12, 13.

10 In order to preserve the legality of contested
11 case proceedings it will be necessary to distinguish
12 certain of these functions from one another; separate
13 personnel according to their roles, and make
14 provisions to protect against inappropriate ex-parte
15 communication between parties.

16 In this regard DLNR should reconsider the
17 wording of Section 9, which, you know, has been doing
18 all these services for the applicant, to limit or
19 place conditions upon the context -- context --
20 context and the extent to which it will assist
21 applicants.

22 Section 10 is regarding fees. I was very
23 surprised. The fees proposed here are a pittance.

24 A county building permit for a typical two
25 thousand square foot house here on Maui exceeds the

1 DLNR application fee for a billion dollar development
2 that will occupy numerous DLNR staff on a fulltime
3 basis for a considerable period of time.

4 It is unclear what the purpose of the fee is.
5 The present amount will clearly not even cover the
6 cost of compiling and photocopying the required
7 information to meet the requirements of Section 7.

8 The State of Oregon, where I've had some
9 experience, requires a site certificate for geothermal
10 projects that are larger than twenty-five megawatts.
11 A fee of five thousand dollars is required at the time
12 of filing a Notice of Intent, which is credited
13 towards an ultimate fee of five cents per kilowatt, or
14 one thousand dollars for each million of estimated
15 capital investment.

16 But in no case less than fifteen thousand
17 dollars. Additionally, an annual fee of twenty -- of
18 two point five cents per kilowatt is assessed to cover
19 ongoing costs of regulation.

20 DLNR, I realize, does not have all the
21 regulatory responsibilities of the Energy Facility
22 Siting Council, but the order of magnitude of Oregon's
23 fee schedule much more realistically reflects the
24 costs of regulation of large energy facilities than
25 does a six hundred dollar fee for a one point seven

1 billion dollar project.

2 Perhaps the State of Hawaii does not foresee
3 the costs of regulation to these facilities or see the
4 wisdom of sharing the regulatory burden with the
5 corporations that operate these facilities and who
6 often appear before the State in an adversarial
7 position regarding matters of public and/or
8 environmental interest.

9 I think the proposed fee schedule needs to be
10 increased by a few orders of magnitude and needs to be
11 porportional to kilowattage or project costs well
12 beyond the ten million dollar level.

13 And I note that five cents per kilowatt is
14 less than one half of one hundredth of one percent of
15 the cost of the generating facilities. They typically
16 cost well over one thousand dollars per kilowatt and
17 these may approach three dollars per kilowat.

18 So that is one thousandth -- that is one one
19 thousandth of what our sales tax is, and you can
20 relate it to that. So the fees of regulation here are
21 certainly not out of proportion even on the order of
22 magnitude.

23 My last comments regard the adequacy of site
24 regulations. And I think the legislature has acted to
25 simplify the procedures for application for the

1 permits required for these facilities, but it has not
2 recognized the need for some basic regulatory measures
3 to protect the interests of the people of Hawaii
4 regarding the magnitude of impact that can be
5 anticipated.

6 In no other arena -- except perhaps the recent
7 oil spill in Alaska -- has the public been left to
8 suffer such extensive economic and environmental
9 consequences of regulated industrial developments as
10 in the many cases of unneeded, nonfunctioning
11 mismanaged or poorly engineered electrical generation
12 projects.

13 And I don't mean to say anything bad about
14 electrical utilities because they are all respectable
15 people who are very proud to be doing a very good job
16 of essential services here, but any project that costs
17 hundreds of millions of dollars that will certainly be
18 charged to electrical ratepayers deserves a thorough
19 regulatory review to establish the need for and cost
20 effectiveness of the project.

21 Proposed geothermal developments are
22 anticipated to cost in the vicinity of one point seven
23 billion. Based on number of customers and average
24 use, this works out to be an investment of over five
25 thousand dollars per residential customer or

1 equivalent to a rate impact of over fifty dollars per
2 month per residential customer.

3 By what mechanism are the economic interests
4 of the ratepayers protected? In what forum can they
5 represent their concerns? The Public Utility
6 Commission approves rates based on new facilities
7 after they are completed and have accrued debt.

8 The decisions made on whether or not to build
9 these large energy facilities are made by boards of
10 directors representing the interests of utility
11 stockholders who make money by spending money to be
12 included in the utility rate basis to be financed by
13 ratepayers.

14 The State of Hawaii has no regulatory forum by
15 which ratepayers or citizens can participate in
16 decisions for which they will be held accountable.

17 Similarly, the State of Hawaii has no
18 provisions to assure the applicants of the financial,
19 technical, and managerial ability to construct,
20 operate, and decommission energy facilities, without
21 their becoming a burden to County or State
22 governments; or that energy facilities will, in fact,
23 be decommissioned at the end of their productive
24 lifetimes; or that other preferable alternatives are
25 not reasonably available.

1 These issues are not directly relevant to the
2 rules being considered here, I realize, which are
3 primarily procedural in nature. However, the absence
4 of statutory language or administrative rules that
5 address these important issues begs comment in all
6 forums that consider large energy facility siting
7 regulations.

8 And thank you for bearing with me through all
9 of that.

10 HEARING OFFICER NAKANO: Thank you, Mr.
11 Freedman.

12 If there is anyone else who would like to
13 present testimony -- sir, if you would?

14 Did you all sign in this evening?

15 MR. SMITH: I signed the first one, but I
16 didn't sign the other one.

17 HEARING OFFICER NAKANO: All right, fine. If
18 you'd like to come up here, please?

19 For the record if you could state your name,
20 please?

21 MR. SMITH: Sure. My name is Bill Smith, of
22 Kula.

23 I'd first like to apologize for not being
24 prepared. I just read about it in the paper and came
25 down.

1 Basically my concerns were addressed, to the
2 vagueness and uncertainties, that were just
3 exceedingly well summarized by the preceding
4 testimony.

5 I am not an attorney and I can't tell you what
6 due process is. I'm not sure an attorney could. But
7 I think I can agree wholeheartedly that it doesn't
8 necessarily mean efficiency in the terms of shortcut.

9 Due process is something that is organic. The
10 rules as they're made are consolidated for the purpose
11 of being efficient. And in the rule-making process,
12 that doesn't necessarily conform to the notion of
13 being organic.

14 And I think by accelerating the process beyond
15 its organic nature, you fundamentally increase the
16 number of risks. Those include the risks that were
17 addressed as to the law in the preceding testimony.

18 It also circumvents the caution that is
19 necessary in developing a project that can be
20 accomplished in the end. Not only in a legal sense,
21 but in the practical sense of being well done and
22 being functional at the time that it's finished.

23 The environmental impacts are numerous. There
24 is no question that the project is not only one of the
25 largest in terms of capital investment, but also one

1 of the largest in terms of affecting the ecology of
2 the Hawaiian Islands.

3 There are serious concerns about the esthetics
4 of the appearance of towers and transmission lines.
5 There is serious concerns about decommissioning the
6 project at the end. At the end, what happens to
7 those? These are the end results. The beginning and
8 middle results are equally important and perhaps more
9 so.

10 And as far as I can tell -- and this is where
11 I particularly apologize for being unprepared -- but
12 the project is aimed at supplying an anticipated
13 demand for energy on Oahu for electricity. That is my
14 impression.

15 And in addition to all of the other factors
16 that are pertinent, there is the risk of failure if,
17 in fact, Oahu is relying on a successful result.

18 So in the mixture of this, the acceleration of
19 the process by streamlining appears to invite an
20 enhanced risk of failure both for the concerns that
21 affect people in the neighborhood, such as myself who
22 don't want towers necessarily going through the
23 neighborhood or near or in the area, and also in the
24 sense that the people in Oahu who are anticipating
25 receiving electricity and, in fact, may not if the

1 project fails because of unanticipated risks.

2 The rules appear to be vague and uncertain.
3 For example, this -- just as a result of comments
4 tonight, the influence upon the whales, as I
5 understand it, would require comments under the
6 Endangered Species Act, and certainly comments from
7 the Fishing Law Service.

8 The State administrative rules cannot
9 supercede or, in fact, even influence the National
10 Environmental Policy Act, and yet the rules attempt to
11 incorporate federal agencies into the process.

12 While I don't doubt that the legislature was
13 aware this takes precedence, I still wonder whether
14 the rules as they stand sufficiently distinguish
15 between the State obligation and the Federal
16 obligation in the permitting process.

17 The experiences that I've been familiar with
18 on the Mainland, where major capital projects have
19 proven to be unnecessarily expensive or have failed
20 altogether, have usually resulted from the taking of
21 unnecessary risks in the planning and development of
22 the project.

23 I see these rules as a step in that direction
24 and would urge that they be reconsidered entoto.

25 HEARING OFFICER NAKANO: Thank you.

1 Is there anyone else this evening who would
2 like to testify on behalf of the rules?

3 Ma'am? If you would please state your name?

4 MS. RAISBECK: Yeah. My name is Sally
5 Raisbeck, and the two concerns I have have already
6 been expressed, but I want to underline them.

7 One of them is the fact that -- of the great
8 cost which will be borne by the people who pay for
9 electricity.

10 And if the project should be a failure, which
11 I understand this will be a very -- a first time ever
12 for this kind of cable. If the project should fail,
13 then there will have been a great expense for nothing.

14 And I am very concerned about that and I think
15 everybody who pays for electricity should be concerned
16 about that.

17 The other thing is that from a layman's
18 reading of the rules it seems to me that taking away
19 the power from the county agencies, I feel, as a
20 citizen closer to county agencies, I feel I have more
21 input into that than I do into state agencies, and to
22 have the power taken away from the county and given to
23 a state administrator in case it was -- when push
24 comes to shove, I don't like to see that because the
25 state agencies are over on Oahu and it's much more

1 difficult to have any kind of input into them.

2 So for those reasons I feel that -- also when
3 they say in this interagency group, when it says that
4 if one of the agencies refuse to give a permit, then
5 ultimately it ends up with the decision by the
6 administrator.

7 I presume that every permit involved has a
8 reason for being there, so it's not a matter of you
9 take, you know, six out of ten is fine. Every single
10 permit has a reason and all of them should be -- are
11 necessary and should be -- the reasons for those
12 permits should be met.

13 HEARING OFFICER NAKANO: Thank you.

14 For our recordkeeping this evening, if anyone
15 has failed to sign in, it will be greatly appreciated
16 if you would.

17 Would there be anyone else this evening that
18 arrived late that would like to say a few words?

19 (No response)

20 HEARING OFFICER NAKANO: If not, at this time,
21 then, I would like to close the formal portion of this
22 hearing and thank you very much for attending and
23 presenting the testimony this evening.

24 MS. FYKES: If I could I'd like to know how
25 many people are from the general public as opposed to

1 someone from an agency?

2 Could I have a show of hands?

3 HEARING OFFICER NAKANO: May we have a show of
4 hands here?

5 MS. FYKES: How many people are from the
6 general public as opposed to some organization,
7 because I'm just concerned that not many people know
8 about this and I would just like to see --

9 HEARING OFFICER NAKANO: For the record --
10 time out. Let me just count out off record.

11 Mr. Freedman?

12 MR. FREEDMAN: I thought you were counting?

13 HEARING OFFICER NAKANO: Oh, okay.

14 (Mr. Nakano noting raised hands)

15 HEARING OFFICER NAKANO: I have approximately
16 twenty people here, with just about ten from the
17 public. So, about ten/ten.

18 MR. SMITH: Wasn't the initial notice for the
19 library?

20 HEARING OFFICER NAKANO: Yes, the initial
21 notice -- I believe the hearing was to be held earlier
22 in the month and recent legislations required a
23 thirty-day notice rather than the previous twenty-day
24 notice, and as such there had to be a rescheduling of
25 the hearing with ample notice provided to the public.

1 And as such it was rescheduled here to the
2 Maui Community College Community Services Building.

3 MR. KULOLOIO: Perhaps I'd like to share -- I
4 couldn't hear behind there. I want to go say
5 something?

6 HEARING OFFICER NAKANO: Sure, please. If you
7 could just state your name, please?

8 MR. KULOLOIO: I think I didn't sign up, I'm
9 sorry. I didn't have time to prepare anything.

10 My name is Leslie Kuloloio.

11 THE REPORTER: Please spell the last name?

12 MR. KULOLOIO: K-u-l-o-l-o-i-o.

13 I think, involving in this agencies, I think
14 it's about time that the Office of Hawaiian Affairs
15 should be a part of the monitoring agencies.

16 I think it's about time that the Hawaiian
17 community do have the kind of resource to give input
18 in regards to cultural and environmental impact. I
19 think State have failed to recognize our Hawaiian
20 community leadership and our cultural changes in
21 Hawaii.

22 I believe -- I don't know why the State failed
23 to recognize our Office of Hawaiian Affairs. We
24 dealing with top issues like burials. We dealing with
25 environmental impact on the Island of Kahoolawe. We

1 dealing with a lot of things that deal with land, sea,
2 and ocean, air and water.

3 I think including in the monitoring agencies
4 should be the Office of Hawaiian Affairs. The Office
5 of Hawaiian Affairs could be our input to our local
6 organizations.

7 And at this time I like the Hui Ala Nui
8 O'Makena to be part of the monitoring agencies within
9 this regulation systems. I say this because it's
10 about time that -- I, too, have doubts on the -- on
11 the -- something which is very new in our issue of
12 Hawaii, in permitting or giving permission for
13 something that we don't know how it's going to work
14 out.

15 I do have a lot of questions. I'm not a law
16 degree person to understand the words, but I have
17 questioned the recent meetings held with the
18 contractor doing the -- supposed to be Well, Martin
19 and Tex (phonetic) here on Maui.

20 I do have some questions. I cannot at this
21 time give input to the regulations until I complete
22 the other questions I'm trying to find out from the
23 contracting well digger that is going to do this test
24 units here on Maui.

25 And so I -- I don't now how to say it.

1 Perhaps I'm -- yeah, I just -- you could say I'm
2 totally against something that I cannot see how I'm
3 going to put myself to belong to.

4 In other words --

5 HEARING OFFICER NAKANO: (Nodding)

6 MR. KULOLOIO: I think you got the message.

7 But the Office of Hawaiian Affairs should be a
8 monitoring agent. It is part of the Hawaiian entity.
9 It's about time that -- of the State of Hawaii, and
10 that is the only input that we have to fight against
11 those things culturally important to us.

12 As -- spiritually, as well as values that we,
13 the Hawaiian people, have been struggling to fight
14 against accidental Western way of thinking and
15 bringing this kind of resources here.

16 Thank you. That's all I have.

17 HEARING OFFICER NAKANO: Thank you.

18 MR. KULOLOIO: But I sure like to have more
19 input. I, too, was confused by tonight's meeting. We
20 -- with due notice I think we could have had more of
21 our regular individuals from Big Island who would have
22 come here who would have kind of taught us and given
23 us input that have been dealing with regulations in
24 geothermal that affected the Big Island.

25 And I wish I -- we had more time, that problem

1 that the public should have been well notified about
2 -- about the switch.

3 Thank you.

4 HEARING OFFICER NAKANO: Thank you.

5 If there was any confusion this evening, I'd
6 like to apologize on behalf of the department for any
7 change of dates and so forth.

8 I would like to state, prior to closing this
9 hearing, that we'll continue to accept testimony until
10 July 7th. Should there be anything else that you'd
11 like to submit as far as the written comments, please
12 feel free to mail it and it will be entered into the
13 record in its entirety.

14 At this time I'd like to thank you again and --

15 MR. HILLINGER: July 7th what is going on?

16 HEARING OFFICER NAKANO: We will be continuing
17 to accept written testimony until July 7th.

18 MR. SMITH: Where will that be sent?

19 HEARING OFFICER NAKANO: Sure. The address is
20 Department of Land and Natural Resources. It's
21 Division of Water and Land Development. It's P.O. Box
22 373, Honolulu, Hawaii, 96809.

23 MR. SMITH: Thank you.

24 MR. BAZ: I'd like to know what the next step
25 in this process is? What's going to happen now?

1 HEARING OFFICER NAKANO: We will continue to
2 receive testimony for fifteen days after the close of
3 this hearing this evening.

4 And at that time it will be a matter of
5 compiling all of the comments received and looking at
6 them and making the necessary changes and amendments
7 to the proposed draft as they stand. And we have to
8 see what comes in and so note it in our records.

9 MR. BAZ: So then it was -- within the DLNR
10 you will makeup a new -- they will revise this and
11 then you have another, um, have another hearing about
12 what you have done?

13 HEARING OFFICER NAKANO: Normally it's given
14 to the Attorney General who, I believe -- I'm not a
15 lawyer also -- who, I believe, makes the decision as
16 to the requirements for a second public hearing.

17 If the changes are so significant than what is
18 being currently proposed, then that will definitely
19 require a holding of a public hearing, a second public
20 hearing.

21 MR. KULOLOIO: I forgot -- I forgot another;
22 the Department of Hawaiian Homelands. They also
23 should be part of the monitoring thing -- agency here
24 on Maui throughout the State because they will have an
25 impact on the line, when this cable does go over land

1 through their property.

2 HEARING OFFICER NAKANO: Thank you.

3 MS. RAISBECK: Who adopts the rules?

4 HEARING OFFICER NAKANO: Being that the
5 statute designated the Department of Land and Natural
6 Resources, it becomes the administrative rules of that
7 department.

8 MS. RAISBECK: I mean, nobody has to vote on
9 it? You just make them and that's it?

10 HEARING OFFICER NAKANO: In this case it will
11 be the Board of Land and Natural Resources who adopts
12 rules, which is then sent for the Attorney General's
13 approval. Then it's forwarded up to the Governor's
14 office, who has the final approval. He will then
15 sign-off on the rules.

16 There being no other questions, I thank you
17 again, and I'll close the formal part of this hearing.

18 Thank you.

19 (Whereupon the hearing was concluded)

20 --oOo--

21

22

23

24

25

C E R T I F I C A T I O N

I, CYNTHIA A. MOSQUEDA, Notary Public for the
State of Hawaii, certify:

That on the aforementioned date and time the
proceedings contained herein occurred before me;

That the proceedings were taken by me in
machine shorthand and were thereafter reduced to
typewriting under my supervision;

That the foregoing represents, to the best of
my ability, a true and accurate transcript of the
proceedings had in the foregoing matter.

I further certify that I am not attorney for
any of the parties hereto, nor in any way concerned
with the cause.

Dated this 23rd day of June, 1989.


NOTARY PUBLIC, State of Hawaii
My commission expires 9/17/91

PUBLIC HEARING (OAHU) ON ADMINISTRATIVE RULES
TO IMPLEMENT ACT 301, SLH 1988

Hearing was held in the Board Room of the Department of Land and Natural Resources, Kalanimoku Building. The undersigned called the hearing to order at 7:05 p.m. Testimonies and comments were offered by the following:

1. Mr. Richard L. O'Connell, Vice President, Hawaiian Electric Co. He submitted written testimony, a copy of which is attached. In addition to written statement Mr. O'Connell requested that the Department of Land and Natural Resources explore possibility of making one environmental impact statement satisfy county, State and federal requirements. He thought the county requirement on EIS matters were not consolidated.
2. Cynthia Thielen, Attorney representing Puna Community Council. She submitted written testimony. In addition to written comments, she reemphasized that conflict resolution section needs more work to eliminate possibility of legal challenge. She also stressed the need to have the public involved in monitoring and assisting in enforcing permit conditions. Should there be a violation public should have recourse to correct situation Cynthia also asked if the public would be able to review draft before rules finalized. I told he I didn't know - that I did not want to offer an opinion not knowing what the other hearing officer's position was on this question but that we will let her know one way or another.
3. Gordon Chapman, consultant. He will submit written testimony before July 7, 1989, the submission deadline. He commended the staff for drafting a good set of rules.
4. Karen Shimizu, SERVCO Pacific. She attended as an observer. She did not present testimony.

Before adjourning I made copies for those in attendance of the written testimonies and the opening remarks made by hearings officer.

The hearing adjourned at 7:30 p.m.

Ralph Patterson, consultant, arrived after hearing adjourned. He had no comments.

TESTIMONY BEFORE THE
DEPARTMENT OF LAND AND NATURAL RESOURCES
ON
PROPOSED ADMINISTRATIVE RULES FOR
GEOTHERMAL AND CABLE SYSTEM
DEVELOPMENT PERMITTING

June 21, 1989

By

Richard L. O'Connell
Vice President
Hawaiian Electric Company, Inc.

Mr. Chairman:

My name is Richard O'Connell and I represent Hawaiian Electric Company and its subsidiary companies. I am pleased to have the opportunity to testify in favor of the proposed administrative rules to implement Act 301.

The State administration and the legislature have through the State General Plan and various legislative acts created policies which are directed toward a reduction in the importation of fuel oil for the production of electricity. The Hawaiian Electric Company and its subsidiary companies support these policies.

The development of geothermal resources on the island of Hawaii for the production of electricity could assist in reducing the dependence on fuel oil if the electricity thus generated could be sent to a market for sale at an acceptable price. Oahu provides the largest market in the state for the use of

electricity produced from geothermal resources.

Transmission of electricity produced by geothermal resources from the island of Hawaii to Oahu will require the installation of an overland and submarine cable transmission system. Such an installation will require the developer of a project to obtain various permits from federal, state, and county agencies.

The proposed rules to implement Act 301 can be of great assistance to a developer through consolidated permitting in a logical sequence by the cooperative effort of the various agencies involved. This cooperative effort would save time and reduce cost for the various governmental agencies and the developer by elimination of duplicative effort. It would also enhance more effective public participation in the overall process.

Hawaiian Electric Company and its subsidiary companies support the proposed administrative rules for Act 301 as we believe this represents an additional step towards implementation of the State policy to reduce importation of fuel oil for the production of electricity. Accordingly, we urge the prompt adoption of these rules.

Thank you.

CYNTHIA
THIELEN

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June 21, 1989

Department of Land and Natural Resources
Division of Water and Land Development
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: Proposed Administrative Rules for Geothermal and Cable System
Development Permitting

To Whom It May Concern:

I.

INTRODUCTION

On behalf of the Puna Community Council, I am submitting comments on the Proposed Rules of Practice and Procedure for Geothermal and Cable System Development Permitting (hereinafter "proposed Administrative Rules") of the Department of Land and Natural Resources (hereinafter "DLNR"). The proposed Administrative Rules are intended to implement the Geothermal and Cable System Development Permitting Act of 1988, Act 301, Session Laws of Hawaii, 1988 (hereinafter the "Act"). DLNR cannot through the proposed Administrative Rules confer upon itself, power and authority in excess of the statutory authority set forth in the Act.

II.

COMMENTS

Comments on the proposed Administrative Rules follow the sequence of the regulatory provisions and are not listed in order of importance.

A. Section 13-185-2 Definitions.

A definition for "Intervenor" should be included in this section and should provide: "Intervenor" means a person or agency who can show a substantial interest in the matter.

B. Section 13-185-3 (a). Transfer of functions.

1. Intervention. The ability to intervene is severely restricted. The proposed Administrative Rules provide that persons must "demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public. . ." (Emphasis added.) This stringent standard would grant the DLNR power to deny admission to virtually any person. Existing Administrative Rules of State and County agencies do not contain such unwarranted restrictions.

The language should be changed by replacing the above section with the following:

All other persons may apply for leave to intervene, which shall be freely granted, provided the department may deny

an application to intervene when, in the department's discretion it appears that:

- (1) The position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable.

See, Section 15-15-52(c), Hawaii Land Use Commission Rules, Chapter 15-15, Hawaii Administrative Rules.

In other words, this revision would require that the position of intervenor be substantially the same as existing parties and the admission of additional parties would make the proceedings unmanageable and inefficient. The test is conjunctive which protects the right of persons to freely intervene. See, Akau v. Olohana Corporation, 65 Haw 383, 386-390 (1982); and see expansive standards allowing various organizations standing to challenge agency action enunciated by the Hawaii Supreme Court in Mahuiki v. Planning Commission, 65 Haw. 1, 7-8 (1982); Life of the Land, Inc. v. Land Use Commission, 63 Haw. 166, 171-77 (1981); Life of the Land v. Land Use Commission, 61 Haw. 3, 6 (1979); Waianae Model Neighborhood Area Ass'n v. City and County, 55 Haw. 40, 43-44 (12973); E. Diamond Head Ass'n v. Zoning Board; 52 Haw. 518, 523-24 (1971).

As presently drafted, the proposed Administrative Rules permit DLNR to deny leave to intervene from any member of the public in either instance: if the position is the same as an admitted party or if addition of a party would make the proceedings inefficient and unmanageable. Although the Petitioner would qualify for intervention, the DLNR could deny the application if it decides intervention could make the ~~district boundary amendment~~ proceeding "inefficient" and "unmanageable." This grant of authority should be eliminated from the proposed Administrative Rules as it conflicts with the liberal judicial standards approving standing for community organizations. Id.

2. Appeal of Denial. A provision should be added providing for direct appeal in the event intervention is denied:

A person whose application to intervene is denied may appeal such denial to the Circuit Court pursuant to Section 91-14, HRS.

See, Section 205-4(e)(4), HRS.

C. Section 13-185-3(b). Transfer of functions (continued).

This section of the proposed Administrative Rules empowers DLNR to grant special use permits ("SUP") within agricultural and rural districts. This is a County function. See Section 205-6, HRS.

Counties have jurisdiction over uses within agricultural and rural districts involving land of less than fifteen acres; for land

areas greater than fifteen acres, the County planning commissions' decision is subject to the Land Use Commission's ("LUC") approval, approval with modifications, or denial. Id. Only this latter function of the LUC may be transferred to the DLNR. Accordingly, section 13-185-3(b) should be redrafted to make it clear the DLNR is not usurping authority of the Counties. See, the Act, Sections 196D-9 and 196 D-10, (a)(1), HRS.

D. Section 13-185-4. Consolidated permit application and review process.

This section provides that the jurisdiction and authority of any agency under the existing law is not affected or invalidated "except to the extent that permitting functions have been transferred to the department for the purposes of the project . ." (emphasis added).

Does this provision mean those functions only of the Land Use Commission and Department of Transportation which are transferred by the Act, Section 196D-10(1)(2), HRS, or does the provision imply that permitting functions not authorized by the Act are to be transferred at the discretion of the agency? This unclarity could be eliminated by adding "by the act" after the word "transferred."

E. Section 13-185-5 Contested Case Provisions.

1. If an agency is to issue permits sequentially, are all the permit applications required to be submitted at one time in order that that agency, county or state, can address all issues

at the single contested case proceeding? The first sentence of this section should be reworded to clarify that the contested case would address all permit applications to be issued by the agency which are subject to contested cases.

2. The second sentence providing for appeal from a decision should include "appeal from a decision made by the agency pursuant to a contested case,"

F. Section 13-185-6, Streamlining.

The second sentence provides:

The department shall track the status of permits of those agencies whose permitting functions are not transferred to the department for the purpose of consolidated permitting for geothermal and cable system development projects.

It is unclear if this sentence means the purpose of DLNR permit tracking is to allow DLNR to "consolidate permitting for geothermal and cable system development projects" or if that provision only defines why certain permitting functions were transferred to DLNR. If it is the latter case, the words are superfluous and should be eliminated. If it is the former case, the legislature has not granted this authority to DLNR.

G. Section 13-185-14 Conflict resolution process.

The Act provides that a mechanism to resolve conflicts shall be incorporated into the consolidated permit application and review process. Section 196 D-4(b)(5), HRS. Section 13-185-14 of the proposed Administrative Rules sets forth the conflict resolution process. In the event conflict between state and county agencies cannot be resolved, the proposed Administrative Rules provide in Section 13-185-14(b):

The administrative director or the administrative directors' designee and the head of the mayor's designated county agency or that agency's designee, shall meet with the involved State and county department heads within twenty calendar days from the impasse declaration date. Should the impasse declaration still exist following the meeting, the administrative director shall render a decision. The involved State and county departments shall initiate implementing the administrative director's decision within three calendar days from the date of the final decision.

Where a county permitting authority is in conflict with a state agency over a permit application, this section removes the county's

jurisdiction over the permit. The state administrative director renders a decision and the county must implement the state decision forthwith.¹

This section exceeds the statutory authority in the Act, Section 196D-4(b)(5), HRS; this section violates Section 196D-5(c)(5) of the Act which states:

The consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law, except to the extent that the permitting functions of any agency are transferred by section 196D-10 to the department for purposes of the project.

See also, Section 196D-9, HRS, Construction of the Act; rules: "[the DLNR has the authority to make rules to implement the Act] provided further that the consolidated permit application and review process shall not affect or invalidate the jurisdiction or authority of any agency under existing law."

H. Section 13-185-15. Monitoring applicants' compliance with terms and conditions of permits.

This section of the Proposed Administrative Rules sets forth the scheme for monitoring and, if necessary enforcing the

¹A similar provision applies to conflict between State departments with the Governor rendering the decision.

Department of Land and Natural Resources
Division of Water and Land Development
June 21, 1989
Page 9

geothermal and cable systems development applicant's compliance with permit terms and conditions.

Article XI, Section 9, of the Constitution of the State of Hawaii gives the public standing to enforce, through the courts, laws relating to environmental quality which include conservation, protection and enhancement of natural resources and control of pollution. Section 13-185-15 of the Proposed Administrative Rules should include a provision by which an organization or private party can sue for injunctive relief where the applicant is violating permit terms and conditions, and the DLNR is not enforcing compliance.

III

CONCLUSION

Please address any response to these comments to my address with a copy to the president of the Puna Community Council:

Ron Phillips, President
Puna Community Council
Star Route 1100
Keaau, Hawaii 96749

DATED: Honolulu, Hawaii _____.

Respectfully submitted,

CYNTHIA THIELEN

R. A. MATTERSON & ASSOCIATES
1274 Kika Street
Kailua, Hawaii 96734-4521
(808) 262-5651
(808) 262-5350 (FAX)

July 5, 1989

RECEIVED

03 JUL 7 08:51

DIV. OF WATER &
LAND DEVELOPMENT

Department of Land and Natural Resources
Division of Water and Land Development
P. O. Box 621
Honolulu, HI 96809

COMMENTS ON PROPOSED ADMINISTRATIVE RULES FOR GEOTHERMAL AND CABLE
SYSTEM DEVELOPMENT PERMITTING

Gentlemen;

We have carefully reviewed the proposed Administrative Rules for Geothermal and Cable System Development Permitting, as mandated by the Legislature under Act 301, SLH 1988. We believe that, in general, these rules will carry out the intent of Act 301.

In particular, the establishment of an Interagency Group, as provided in Section 13-185-11, and a Joint Agreement, in Section 13-185-13, should make the job of the private developers of a geothermal/cable system easier. These rules will allow the "ground rules" for such an undertaking to be thoroughly discussed and agreed upon by permitting agencies and the developers before committment of the considerable capital expenditures necessary.

Our comments and suggestions for minor changes in the proposed rules are presented below:

SECTION

COMMENT

13-185-2

Oahu should be included with Maui and the Big Island in the definition of "Geothermal and cable system development project" or "project". Some of the project's activities may need to be carried out, and permits obtained, on Oahu.

13-185-7

Language should be added to the Department's duties to require a thorough indexing, with abstracts, of all the "laws, rules, procedures, permit requirements and criteria" that will be available in the repository. These indices could then be provided for public access to Departmental offices in other affected Counties.

Some consideration should be given to requiring that the Joint Agreement, under Section 13-185-13, set forth the sequence of permitting actions as one of its specific tasks. Agreement among the affected agencies on the sequence, or hierarchy, of permits would reduce duplication of permit conditions, allow the consolidation of similar permit requirements, and remove the overlap of related permit elements now seen as needed by different agencies.

The adoption of these proposed rules in a timely manner will greatly assist the developers, the utility, State and local agencies, and the general public in coming to a clearer understanding of the complicated scope of these projects, to the benefit of all concerned.

If there are any questions about our comments and suggestions, please do not hesitate to contact us.

Sincerely,

Ralph A. Patterson

JUL 07 '89 16:23 HQHONO

P01

MID-PACIFIC GEOTHERMAL, INC.

Exploration Development Marketing of Geothermal Resources

TELECOPIER TRANSMISSION

TO:

DEPARTMENT of LAND
+ NATURAL RESOURCES
GEOTHERMAL PERMITTING
CENTER

FAX No.:

548 6233

Telephone:

FROM: Rod Moss
Mid Pacific Geothermal, Inc.

FAX No.: 808-536-7646

MID-PACIFIC GEOTHERMAL, INC.*Exploration Development Marketing of Geothermal Resources*

July 7, 1989

Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

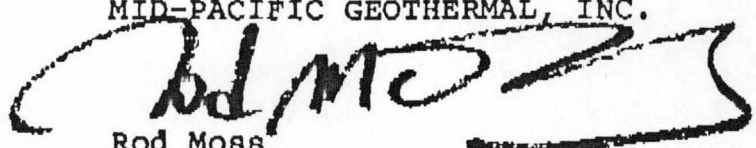
RE: Rules for Geothermal and Cable
System Development Permitting

Dear Sirs:

The referenced rules have been reviewed and are concurred in by True/Mid-Pacific Geothermal venture. We believe that the permitting of the geothermal/interisland cable project would not be feasible without the new procedures reflected in these rules.

Very truly yours,

MID-PACIFIC GEOTHERMAL, INC.


Rod Moss
Vice President

TRUE GEOTHERMAL ENERGY COMPANY

Allan Kawada

1/21/89

PUBLIC HEARING (OAHU) ON ADMINISTRATIVE RULES TO IMPLEMENT ACT 301, SLH (1988)

Hearing was held in The Board Room
of the Dept. of Land and Natural Resources,
Kalanienʻolu Building. The undersigned
called the hearing to order at 7:05 PM.
Testimonies and comments were offered by the
following:

1. Mr. Richard L. O'Connell, Vice President,
Hawaiian Electric Co. He submitted
written testimony, a copy of which is
attached. In addition to written
statement Mr. O'Connell requested that
the Department of Land and Natural Resources
explore possibility of ^{making} One environmental
impact statement satisfy County, State
and federal requirements. He thought the
County requirement on EIS ~~not~~ matters
were not consolidated.
2. Cynthia Thieden, attorney representing
Puna Community Council. She
submitted written testimony. In
addition to written comment, she
reemphasized that Conflict resolution
section needs more work - to eliminate
possibility of legal challenge. She

also stressed the need to have the public involved in monitoring and assisting in enforcing permit conditions. Should there be a violation public should have recourse to correct situation.

Cynthia also asked if the public would be able to review draft before rules finalized. I told her I didn't know - that I did not want to offer an opinion not knowing what the other hearing officers position was on the question but that we will let her know one way or another.

3. Gordon Chapman, Consultant. He will submit written testimony before July 7, 1989, the submission deadline. He commended the staff for drafting a good set of rules.

4. Karen Shimizu, SERVO Pacific. She attended as an observer. She did not present testimony.

Before adjourning I made copies
for those in attendance of the
written testimonies and the opening
remarks made by hearings officer.

The hearing adjourned at 7:30 PM.

Ralph Patterson, Consultant, arrived
after hearing adjourned. He had no
comments.

S. C. C.

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OFFICE OF THE MAYOR
CITY AND COUNTY OF HONOLULU

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HONOLULU, HAWAII 96813 • AREA CODE 808 • 523-4141

99 APR 4 A 9:32



DIV. OF WATER &
LAND DEVELOPMENT

March 2, 1989

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STATE OF HAWAII

35 MAR 6 P12:59

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FRANK F. FASI
MAYOR

Honorable William W. Paty
Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Paty: *Bill*

Thank you for your letter of February 27, 1989, enclosing the draft Administrative Rules for Act 301, SLH 1988, relating to Geothermal and Cable System Development permitting.

I have referred this matter to the Chief Planning Officer and the Director of Land Utilization and I have asked the latter to respond to you directly.

We appreciate the opportunity to review these rules.

Warm personal regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank", with a long, sweeping underline.

FFF:fe

DEPARTMENT OF LAND UTILIZATION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET
HONOLULU, HAWAII 96813 • (808) 523-4432

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FRANK F. FASI
MAYOR



30 JUL 17 AIO: 07

JOHN P. WHALEN
DIRECTOR

DIV. OF WATER &
LAND DEVELOPMENT
BENJAMIN B. LEE
DEPUTY DIRECTOR

LU5/89-3100(RF)

July 13, 1989

Mr. William W. Paty, Chairperson
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Attention: Division of Water and Land Development

Dear Mr. Paty:

Draft Administrative Rules for
Geothermal and Cable System Development
Permitting Act of 1988

We have reviewed the draft rules and have the following comments:

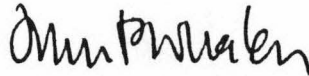
1. The rules apply only to executive agencies (Sec. 13-185-2, Definitions). As we have stated previously, the City Council decides on any Development Plan Map amendments and on any Special Management Area Use Permits. While the Department of General Planning (DGP) and the Department of Land Utilization (DLU) can participate in the review team and the joint application processing agreement for portions of application processing delegated to them, these agencies cannot commit the City Council to a timetable or any other obligation.
2. Section 1-9.2, Revised Ordinances of Honolulu (ROH), requires that an agency must receive City Council approval (by resolution) before entering into any intergovernmental agreement. Before signing a joint application processing agreement for the geothermal cable project, DLU, DGP or any other City agency would have to obtain City Council's approval.
3. The first sentence of Section 13-185-15 contains the clause, "Once a geothermal and cable systems development permit application has been approved by the review team,..." This language is incorrect, since the review team is not empowered to approve any permit application.

Mr. William W. Paty
Page 2

July 13, 1989

Thank you for the opportunity to comment. If you have any questions, please contact Robin Foster of my staff at 527-5027.

Very truly yours,



JOHN P. WHALEN
Director of Land Utilization

JPW:fm

cc: Corporation Counsel (Attn.: Nalani Wilson-Ku)
Dept. of General Planning
County of Hawaii Planning Department
County of Kauai Planning Department
County of Maui Planning Department

0045N



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 3390
LIHUE, HAWAII 96766

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

June 23, 1989

MEMORANDUM

TO: Mr. Manabu Tagamori
FROM: Sam Lee
SUBJECT: June 21, 1989 Public Hearing for Proposed
Rules - Geothermal and Cable System
Development Permitting

The subject hearing was opened at 7:00 PM
and closed at 7:15 PM.

No one showed up to testify.

A handwritten signature in cursive script, appearing to read "Sam Lee".

SAM LEE
Land Agent

cc: Mr. Mike Shimabukuro
Mr. Herbert Apaka, Jr.
Mr. S. Ono



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33 MAY 23 11:25

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION, OF WATER &
HARBORS DIVISION
LAND DEVELOPMENT
79 SO. NIMITZ HWY. • HONOLULU, HAWAII 96813

IN REPLY REFER TO:

May 19, 1989

HAR-ED 4293

MEMORANDUM

TO: Manabu Tagomori, Manager-Chief Engineer
Division of Water and Land Development
Department of Land and Natural Resources

FROM: Deputy Director for Harbors

SUBJECT: Review of Act 301, SLH 1988, "Geothermal and Cable
System Development Permitting Act of 1988" Proposed
Administrative Rules, Section on Functions
Transferred from Department of Transportation to DLNR

We have reviewed Act 301, SLH 1988, Section 185-13-3, which transfers certain functions of the Department of Transportation to DLNR relating to geothermal and cable system development permitting and have no objection. However, a copy of the construction plans for any proposed geothermal and cable system development should be forwarded to our department for our files.

Thank you for the opportunity to provide comments.

Dan T. Kochi
Dan T. Kochi



LAND USE COMMISSION

RECEIVED

Room 104, Old Federal Building, 335 Merchant Street
Honolulu, Hawaii 96813 Telephone: 548-4611

59 JUN 21 P 3: 15

COMMISSION MEMBERS:

Sharon R. Himeno
Teofilo Phil Tacbían
Allen Kajioke
Robert Tamaye
Frederick P. Whittemore
Toru Suzuki
Allen K. HoeESTHER UEDA
Executive OfficerJune 21, 1989 OF WATER &
LAND DEVELOPMENT

Mr. Manabu Tagomori
Manager-Chief Engineer
Division of Water and Land Development
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Tagomori:

Subject: Draft Hawaii Administrative Rule, Title 13,
Subtitle 7, Chapter 185, Rules of Practice and
Procedure for Geothermal and Cable System
Development Permitting.

Thank you for the opportunity to review the subject rule.

Our comments are as follows:

1) Section 13-185-3(a)

We request that copies of all applications for boundary changes and notification of all changes be sent to the Land Use Commission in order that we may review proposed changes with respect to accuracy of the district boundaries and make appropriate changes to the official state land use district maps.

2) We note that there are no provisions relating to enforcement of reclassifications, and suggest that some provisions should be considered.

3) In terms of enforcement, we note that there are no provisions to address what will happen to an area reclassified for geothermal system and cable development, which subsequently no longer becomes needed for that purpose. Some procedures should be considered for reversion of the property to its original classification in those instances.

4) Clarification should also be provided regarding whether or not if an area is reclassified for geothermal and cable development, other uses can be permitted in the area.

Mr. Manabu Tagomori
June 21, 1989
Page Two

5) Clarification should be provided as to what criteria will be used to reclassify lands for geothermal and cable development purposes and issue Special Permits. Are the decision-making criteria used by the Land Use Commission applicable to reclassifications for geothermal and cable development purposes? If so, the criteria should be specified or an incorporation or reference to LUC rules is appropriate.

If you have questions regarding any of our comments, please feel free to contact me at 548-4611.

Sincerely,



ESTHER UEDA
Executive Officer

EU:to

419

File (on memo)
WL
X
Goud
JOHN WAIHEE
GOVERNOR



Handwritten signature and initials

WARREN PRICE, III
ATTORNEY GENERAL

CORINNE K. A. WATANABE
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
LAND/TRANSPORTATION DIVISION
ROOM 300, KEKUAHAO'A BUILDING
465 SOUTH KING STREET
HONOLULU, HAWAII 96813

May 8, 1989

The Honorable William W. Paty
Chairperson of the Board of Land
and Natural Resources
State of Hawaii
Kalanimoku Building, Room 130
1151 Punchbowl Street
Honolulu, Hawaii 96813

Handwritten signature

Dear Mr. Paty:

Re: Whether Maui County is Required to Participate
in Interagency Group Created By Act 301, SLH 1988

This is in response to your inquiry dated May 2, 1989 as to whether the County of Maui should be required to participate in the interagency group process under Act 301, SLH 1988 (Chapter 196D, HRS) even though the County may not be involved, currently, in an inter-island-cable system.

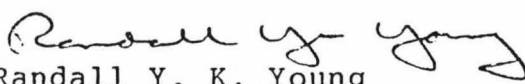
The interagency group created by Section 196D-6, HRS, is to be comprised of "agencies . . . which have jurisdiction over any aspect of the project." "Agency" is defined to include a department of a county government. "Project" is defined in Section 196D-3 as 1) geothermal power plants on the Island of Hawaii and 2) a power transmission cable system from the Island of Hawaii to the Island of Oahu regardless of whether electrical energy is delivered to an intervening point. Section 196D-14 provides that "to the extent an applicant's proposed project includes the development of geothermal resources on the Island of Maui and the delivery of electric energy generated from those resources to the Island of Oahu through the cable system, this chapter shall apply to that proposed project."

Under Section 196D-6, if the requirement of jurisdiction over any aspect of the cable project is not met, there would seem to be no basis for the County of Maui to be represented on the interagency group. The same would apply to the County of Kauai.

The Honorable William W. Paty
May 8, 1989
Page 2

Because the definition of "project" applies only to geothermal energy developed on Hawaii and delivered to Oahu, Chapter 196D would not seem to apply to Maui County if geothermal energy is developed on Maui only for consumption on Maui. Maui County's participation should therefore be on a voluntary basis. Should you have any further questions on this matter, please do not hesitate to call me.

Very truly yours,


Randall Y. K. Young
Deputy Attorney General

RYKY:am