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
24. legal opinion regarding Maui County participation in interagency group.

Enclosures

WILLIAM W. PATY
RELATING TO THE DEVELOPMENT AND USE OF GEOTHERMAL ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

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

"CHAPTER
GEOTHERMAL AND CABLE SYSTEM
DEVELOPMENT PERMITTING ACT OF 1988

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

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

(1) The development of Hawaii's geothermal resources, which are located principally on the island of Hawaii and possibly on the island of Maui, represents a substantial and long-term source of indigenous renewable alternate energy that could be used to
generate electric energy to meet the State's electric energy needs and concurrently help to reduce the State's need for imported fossil fuels;

(2) The State has deemed it appropriate that the private sector should develop these geothermal resources, and, to that end, has sought to encourage private sector exploration and development of geothermal resources;

(3) The private sector companies seeking to develop geothermal resources are, however, unable or unwilling to expend the substantial amounts of funds needed to develop these resources to their full extent without an assured and sufficiently large market for the electric energy to be generated therefrom, and the present and projected electric energy demand on the island of Hawaii does not provide an assured and sufficiently large market;

(4) The greatest present and projected demand for geothermally generated electric energy is located on the island of Oahu;

(5) The State, with the support and assistance of the federal and county of Hawaii governments, has been exploring for several years the technical, engineering,
economic, and financial feasibility of an interisland
deep water electrical transmission cable system that
would be capable of transmitting geothermally generated
electric energy from the island of Hawaii to the
islands of Maui and Oahu, and believes that a cable
system may be feasible and desirable;

(6) The development of such a cable system will not be
undertaken without the firm assurance that a sufficient
amount of geothermally generated electric energy will
be continuously available to be transmitted through a
cable system once it becomes operational;

(7) The fundamental interrelationship between the
development of geothermal resources and a cable system
and the magnitude of the cost to undertake each of
these developments clearly indicate that neither will
be undertaken without the firm assurance that the other
also will be undertaken in a synchronized and
coordinated manner to enable both developments in
substance to be completed concurrently, thereby
ensuring that revenues will be available to begin
amortizing the costs of each of these developments;

(8) A major and fundamental difficulty in the development
of both geothermal resources and a cable system is the diverse array of federal, state, and county land use, planning, environmental, and other related laws and regulations that currently control the undertaking of all commercial projects in the State;

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

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

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

(12) 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;

(13) Because of the complexities of both projects, there is
a need to develop a consolidated permit application and
review process to provide for and facilitate the firm
assurances that companies will require before
committing the substantial amounts of funds, time, and
effort necessary to undertake these developments, while
at the same time ensuring the fulfillment of
fundamental state and county land use and planning
policies;
The development of geothermal resources and a cable system are in furtherance of the State's policies, as expressed in the state plan and elsewhere, to develop the State's indigenous renewable alternate energy resources and to decrease the State's dependency on imported fossil fuels; and

A consolidated permit application and review process for the development of the State's geothermal resources and the cable system should be established by an act of the legislature.

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

"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 the project.

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

"Approval" means a discretionary consent required from an agency prior to the actual implementation of the project.
"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 judgment 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 or with the National Environmental Policy Act of 1969 (Public Law 91-190).

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

"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.

"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 all associated equipment, facilities, wells, and transmission lines, on the island of Hawaii 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 island of Hawaii to the island of Oahu, regardless of whether the cable system is used to deliver electric energy to any intervening point.

§ -4 Consolidated permit application and review process.

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

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

1. A list of all permits required for the project;
2. The role and functions of the department as the lead agency and the interagency group;
3. All permit review and approval deadlines;
4. A schedule for meetings and actions of the interagency group;
5. A mechanism to resolve any conflicts that may arise between or among the department and any other agencies, including any federal agencies, as a result of conflicting permit, approval, or other requirements, procedures, or agency perspectives;
6. Any other administrative procedures related to the foregoing; and
(7) A consolidated permit application form to be used for the project for all permitting purposes.

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

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

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

(c) The procedure shall be as follows:

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

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

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

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

(B) Identify all permits required for the project;

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

(D) Establish a timetable for regulatory review, the conduct of necessary hearings, the 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; and

(E) Provide that a hearing required for a permit shall be held on the island where the proposed activity shall occur.

(4) A consolidated permit application and review team shall be established and shall consist of the members of the interagency group established pursuant to section -6(a). The applicant shall designate its representative to be available to the review team, as it may require, for purposes of processing the applicant's consolidated permit application.

(5) The department and each agency whose permitting functions are not transferred by section -10 to the department for the purposes of the project, and each federal agency shall issue its own permit or approval based upon its own jurisdiction. 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 -10 to the department for the purposes of
the project.

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

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

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

(d) Where the contested case provisions under chapter 91
apply to any one or more of the permits to be issued by the
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.

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

(b) The department and agencies shall cooperate with the federal agencies to the fullest extent possible to minimize duplication between and, where possible, promote consolidation of federal and state requirements. To the fullest extent possible, this cooperation shall include, among other things, 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 their requirements so that all documents shall comply with all applicable laws.

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

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

(1) Monitor all permit applications submitted under this chapter and the processing thereof on an ongoing basis
to determine the source of any inefficiencies, delays, and duplications encountered and the status of all permits in process;

(2) Adopt and implement needed streamlining measures identified by the interagency group, in consultation with those agencies whose permitting functions are not transferred by section -10 to the department for the purposes of the project and with members of the public;

(3) Design, in addition to the consolidated permit application form, other applications, checklists, and forms essential to the implementation of the consolidated permit application and review process;

(4) Recommend to the legislature, as appropriate, suggested changes to existing laws to eliminate any duplicative or redundant permit requirements;

(5) Coordinate with agencies to ensure that all standards used in any agency decision-making for any required permits are clear, explicit, and precise; and

(6) Incorporate, where possible, rebuttable presumptions based upon requirements met for permits issued previously under the consolidated permit application and review process.
§ 8 Information services. The department shall:
(1) Operate a permit information and coordination center
during normal working hours, which will provide
guidance to potential applicants for the project with
regard to the permits and procedures that may apply to
the project; and
(2) Maintain and update a repository of the laws, rules,
procedures, permit requirements, and criteria of
agencies whose permitting functions are not transferred
by section -10 to the department for the purposes of
the project and which have control or regulatory power
over any aspect of the project and of federal agencies
having jurisdiction over any aspect of the project.
§ 9 Construction of the Act; rules. This chapter shall
be construed liberally to effectuate its purposes, and the
department shall have all powers which may be necessary to carry
out the purposes of this chapter, including the authority to
make, amend, and repeal rules to implement this chapter; provided
that all procedures for public information and review under
chapter 91 shall be preserved; and 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. The adoption, amendment, and repeal of all rules shall be subject to chapter 91.

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

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

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

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

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

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

§ 11 Annual report. The department shall submit an annual report to the governor and the legislature on its work during the preceding year, the development status of the project, any problems encountered, and any legislative actions that may be needed further to improve the consolidated permit application and
review process and implement the intent of this chapter.

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

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

§ -14 Development of geothermal resources on Maui. 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 these resources to the island of Oahu through the cable system, this chapter shall apply to that proposed project."

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $275,000, or so much thereof as may be necessary for fiscal year 1988-1989, to carry out the purposes of this chapter. The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.
SECTION 3. This chapter shall take effect on July 1, 1988, but shall not apply to any applications filed prior to the effective date.
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.

Dated: May 17, 1989

State of Hawaii
BOARD OF LAND AND NATURAL RESOURCES

WILLIAM W. PATY, Chairperson

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 Hawai’i
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 permitting agencies affected by such a project, and it provides for a consolidated review process to coordinate requirements, such as environmental impact assessment and public hearings. It provides that State and county agencies shall participate in the consolidated permitting process. The proposed administrative rules will provide for 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 for 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 procedures are provided, with address where to obtain and submit permits; a fee schedule is included; provision for transfer of certain permitting functions from the Division of Water and Land Development, Department of Land and Natural Resources, Room 223, 1150 Punchbowl Street, Honolulu, HI 96813 (Phone No. 548-7539) or to the Geothermal Permit Center, Department of Land and Natural Resources, Room 509, 677 Ala Moana Boulevard, Honolulu, HI 96813 (Phone No. 548-7443).

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

Department of Land and Natural Resources
Board Room, Room 122, Kualoa Building
1150 Punchbowl Street, Honolulu, HI 96813

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

University of Hawaii Hilo Campus
Campus Center, Room 301
Kailua St., Hilo, HI 96720

A copy of the proposed rules to be adopted will be mailed at no cost to any interested person or entity which requests a copy. Requests may be made in writing to the Division of Water and Land Development, Department of Land and Natural Resources, Room 122, 1150 Punchbowl Street, Kualoa 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, HI 96813 (Phone No. 548-7443). Copies of the proposed rules will also be available free of charge at the following locations:

State Office Building
65 August Street, Hilo, HI 96720

State Office Building
34 High Street, Waikiki, Maui 96793

State Office Building
3000 Ewa Street, Lihue, Kauai 96766

Kauai Public Library
350 Kauai Street, Lihu’e, Kauai 96748

All interested persons 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 631, Honolulu, Hawaii 96850.

State of Hawai’i
BOARD OF LAND AND NATURAL RESOURCES
WILLIAM W. PATY, Chairperson
Dated: May 17, 1989

[428—Hawaii Tribune-Herald, May 22, June 14, 1989]

LEGAL NOTICE

NOTICE OF RESCHEDULED PUBLIC HEARING

State of Hawai’i
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 Department 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 permitting agencies affected by such a project, and it provides for a consolidated review process to coordinate requirements, such as environmental impact assessment and public hearings. It provides that State and county agencies shall participate in the consolidated permitting process. The proposed administrative rules will provide for 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 for 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 procedures are provided, with address where to obtain and submit permits; a fee schedule is included; provision for transfer of certain permitting functions from the Division of Water and Land Development, Department of Land and Natural Resources, Room 223, 1150 Punchbowl Street, Honolulu, HI 96813 (Phone No. 548-7539) or to the Geothermal Permit Center, Department of Land and Natural Resources, Room 509, 677 Ala Moana Boulevard, Honolulu, HI 96813 (Phone No. 548-7443).

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

Department of Land and Natural Resources
Board Room, Room 122, Kualoa Building
1150 Punchbowl Street, Honolulu, HI 96813

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

University of Hawaii Hilo Campus
Campus Center, Room 301
Kailua St., Hilo, HI 96720

A copy of the proposed rules to be adopted will be mailed at no cost to any interested person or entity which requests a copy. Requests may be made in writing to the Division of Water and Land Development, Department of Land and Natural Resources, Room 122, 1150 Punchbowl Street, Kualoa 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, HI 96813 (Phone No. 548-7443). Copies of the proposed rules will also be available free of charge at the following locations:

State Office Building
65 August Street, Hilo, HI 96720

State Office Building
34 High Street, Waikiki, Maui 96793

State Office Building
3000 Ewa Street, Lihue, Kauai 96766

Kauai Public Library
350 Kauai Street, Lihu’e, Kauai 96748

All interested persons 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 631, Honolulu, Hawaii 96850.

State of Hawai’i
BOARD OF LAND AND NATURAL RESOURCES
WILLIAM W. PATY, Chairperson
Dated: May 17, 1989

[50—Hawaii Tribune-Herald, May 22, June 14, 1989]
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

Section 13-185-1 Purpose
Section 13-185-2 Definitions
Section 13-185-3 Transfer of functions
Section 13-185-4 Consolidated permit application and review process
Section 13-185-5 Contested case provisions
Section 13-185-6 Streamlining
Section 13-185-7 Information services
Section 13-185-8 Annual Report

Subchapter 2. Consolidated permit application and review process

Section 13-185-9 Application and review procedure
Section 13-185-10 Application filing and fees
Section 13-185-11 Interagency group
Section 13-185-12 Consolidated permit application and review team
Section 13-185-13 Joint agreement
Section 13-185-14 Conflict resolution process

Subchapter 3. Regulation of consolidated geothermal and cable system development permitting

Section 13-185-15 Monitoring and enforcing applicant's compliance with terms and conditions of permits
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.

"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.

Section 13-185-2

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;
Section 13-185-3

(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
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:

<table>
<thead>
<tr>
<th>Project Cost</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 - 999,999</td>
<td>$200</td>
</tr>
<tr>
<td>1,000,000 - 9,999,999</td>
<td>$400</td>
</tr>
<tr>
<td>more than 10,000,000</td>
<td>$600</td>
</tr>
</tbody>
</table>

185-9
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)

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

185-11
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.

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
Section 13-185-12

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.

185-13
Section 13-185-13

(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.

185-14
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)
Section 13-185-15

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

Subchapter 1. General

<table>
<thead>
<tr>
<th>Section 13-185-1</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 13-185-2</td>
<td>Definitions</td>
</tr>
<tr>
<td>Section 13-185-3</td>
<td>Transfer of functions</td>
</tr>
<tr>
<td>Section 13-185-4</td>
<td>Consolidated permit application and review process</td>
</tr>
<tr>
<td>Section 13-185-5</td>
<td>Contested case provisions</td>
</tr>
<tr>
<td>Section 13-185-6</td>
<td>Streamlining</td>
</tr>
<tr>
<td>Section 13-185-7</td>
<td>Information services</td>
</tr>
<tr>
<td>Section 13-185-8</td>
<td>Annual Report</td>
</tr>
</tbody>
</table>

Subchapter 2. Consolidated permit application and review process

<table>
<thead>
<tr>
<th>Section 13-185-9</th>
<th>Application and review procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 13-185-10</td>
<td>Application filing and fees</td>
</tr>
<tr>
<td>Section 13-185-11</td>
<td>Interagency group</td>
</tr>
<tr>
<td>Section 13-185-12</td>
<td>Consolidated permit application and review team</td>
</tr>
<tr>
<td>Section 13-185-13</td>
<td>Joint agreement</td>
</tr>
<tr>
<td>Section 13-185-14</td>
<td>Conflict resolution process</td>
</tr>
</tbody>
</table>

Subchapter 3. Regulation of consolidated geothermal and cable system development permitting

<table>
<thead>
<tr>
<th>Section 13-185-15</th>
<th>Monitoring and enforcing applicant's compliance with terms and conditions of permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 13-185-16</td>
<td>Enforcement of district boundary amendments and special permits</td>
</tr>
</tbody>
</table>
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.
Section 13-185-2

"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. For purposes of geothermal and cable system development projects and for those projects only, 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. If a geothermal and cable system development project is not successful or is terminated as determined by the department, any change in boundary or zoning made pursuant to Section 13-185-3 shall revert to the boundary or zoning in place before the change.

(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
Section 13-185-3

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 preponderence 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;
Section 13-185-3

(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;
Section 13-185-3

(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.
Section 13-185-3

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. 1960-9) (Imp: HRS Sec. 1960-7)

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. 1960-9) (Imp: HRS Sec. 1960-8)

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.
Section 13-185-9

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:

<table>
<thead>
<tr>
<th>Project Cost</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 - 999,999</td>
<td>$200</td>
</tr>
<tr>
<td>1,000,000 - 9,999,999</td>
<td>$400</td>
</tr>
<tr>
<td>more than 10,000,000</td>
<td>$600</td>
</tr>
</tbody>
</table>

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
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.

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.

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.

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.

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 6/21/87 7:00 p.m.
Campus Center, University of Hawaii Hilo Campus

Administrative Rules for Act 301, SLH 1988

On June 21, 1987 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 1987 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 asked 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. Ualelela 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, 1939, 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, it 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, land use 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 equipped 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 land use 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.

Respectfully submitted,

Delan Ferry
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
Department of Land and Natural Resources

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

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
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.


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. It if 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.
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
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 comm- 
cercial 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,

Patricia M. Poppe
President
7 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 A, 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, 586, Section 13-185-3: This entire section violates the intent of Act 301 (see Conference Committee Report No. 206, 1989, 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 & Coordination 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 CREDAA
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 usurpation 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.
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,

Russell S. Kokubun, Chairman
Hawaii County Council
PLANNING DEPARTMENT
COUNTY OF HAWAII
25 AUPUNI STREET • Hilo, Hawaii 96720
(808) 961-8285
DIV. OF WATER &
LAND DEVELOPMENT

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

FROM: Planning Department – Hilo

DATE: 7/7/99

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

TOTAL PAGES: 5

FAX #: 548-6052
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.

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
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF WATER AND LAND DEVELOPMENT
STATE OF HAWAII

In the Matter of: )
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; Subchapter 2; )
Subchapter 3

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

BEFORE:
Andrea H. Vasconcellos,
Notary Public, State of Hawaii

APPEARANCES:
Dan Lum, Chairman
Janet Swift, Staff Representative
<table>
<thead>
<tr>
<th>TESTIMONY BY:</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael LaPlante</td>
<td>9, 41</td>
</tr>
<tr>
<td>Henry Ross</td>
<td>13</td>
</tr>
<tr>
<td>John Tan</td>
<td>21</td>
</tr>
<tr>
<td>Ron Phillips</td>
<td>23</td>
</tr>
<tr>
<td>Tim Sullivan</td>
<td>33</td>
</tr>
<tr>
<td>Jennifer Perry</td>
<td>35</td>
</tr>
<tr>
<td>Jim Blakey</td>
<td>37</td>
</tr>
<tr>
<td>Delan Perry</td>
<td>38, 58</td>
</tr>
<tr>
<td>Barbara Bell</td>
<td>40</td>
</tr>
<tr>
<td>Robert Petricci</td>
<td>50</td>
</tr>
<tr>
<td>Steve Phillips</td>
<td>52</td>
</tr>
<tr>
<td>Ka'olelo 'Ulaleo</td>
<td>54</td>
</tr>
<tr>
<td>Clive Cheetham</td>
<td>58</td>
</tr>
<tr>
<td>Duane Kanuha</td>
<td>61</td>
</tr>
<tr>
<td>Helene Shinde</td>
<td>64</td>
</tr>
<tr>
<td>Emmett Aluli</td>
<td>7, 11, 66</td>
</tr>
</tbody>
</table>
MR. CHAIRMAN: Good evening ladies and gentlemen. 
May I have your attention please. Good evening. My name is 
Dan Lum and I am a geologist with the Department of Land and 
Natural Resources.

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

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

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

VOICE: Get two.

VOICE: They're going like hot cakes.
MR. CHAIRMAN: What?

VOICE: They're going like hot cakes.

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

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

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

Act 301 passed by the Legislature in 1978 (sic) provides for a, Act 301 passed by the 1988 Legislature, provides for a consolidated permit process in which the Department of Land and Natural Resources can serve as the lead agency, coordinating, facilitating, and processing of geothermal projects among the involved state, county and federal governments through an inter-agency group.
The requirements of each individual agency that would be involved in a geothermal project, whatever it might be, drilling of a well, installation of a cable, would be lead by the Department of Land and Natural Resources in an attempt to expedite and facilitate the geothermal applicant through the maze of the different agencies involved.

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

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

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

Okay. There is an inter-agency group of all potential, potentially involved agencies that might be involved, but a particular application maybe very limited, such as, drilling a well. And the review team of those agencies that would be directly involved in that permit application would then be
smaller than the inter-agency group, and would presumably
be able to expedite the application. But in no instance does
it take away the permit requirements of the involved agencies.

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

VOICE: Where is that?

VOICE: Please do.

MS. SWIFT: It's in Honolulu.

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

VOICE: Why?

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

VOICE: What is the phone number?

MS. SWIFT: 548-7443

VOICE: Collect?

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

Contrary to what you might have read in the published
Notices of this meeting you will have, anyone will have until
July 7th to submit additional written testimony to the Department, the Department of Land and Natural Resources. If you wish to mail you can address it to: Department of Land and Natural Resources, Division of Water and Land Development, Post Office Box 373, Honolulu, and the Zip is, 96809.

VOICE: Would you give that again, the address?

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

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

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

MR. CHAIRMAN: Yes, okay.

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

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

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

VOICE: I have to move? I understand that to --

(Several people speaking at once.)

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

THE REPORTER: Thank you.

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

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

VOICE: You put this on public record that you asked me to move right --
THE REPORTER: I will.

VOICE: -- now --

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

MR. LaPLANTE: My name's Michael LaPlante.

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

VOICE: You can come sit by me Mike.

(Several people speaking at once.)

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

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

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

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

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

VOICE: Okay, I understood that, but you said that these other agencies have a say --
MR. CHAIRMAN: Yes --

VOICE: -- does your agency have the final say; is

that what your saying?

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

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

VOICE: But does it by-pass permitting requirements to

expedite it?

MR. CHAIRMAN: No, not in my interpretation of Act 301.

It does not. Question? (Indicating)

VOICE: Section 13-185-3, Transfer of Functions. Are

those decision making kinds of functions?

MR. CHAIRMAN: That is, that is correct. That is the

DOT and that is in there, okay.

VOICE: So the decision making is transferred from the

Land Use Commission, DOT, to the DLNR; do I understand you
correctly?

MR. CHAIRMAN: As I interpret it now --
VOICE: No, I want to know how the Attorney General interprets it.

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

VOICE: Why?

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

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

VOICE: Did you really answer his question about --

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

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

MR. CHAIRMAN: Okay.

MR. ALULI: I'll try. I want to know whether there are any case scenarios. In other words, has this so-called authority been done before for any other development or project for the state or private developers? I mean, this
is a new rule as far as I can see. I want to know whether it's been done before. If it has been done before, what are the scenarios?

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

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

MR. ALULI: I just wanted to know --

VOICE: What the scenario was.

MR. ALULI: -- yeah, scenario.

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

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

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

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

MR. CHAIRMAN: Yes, Act 301 --
MR. ALULI: And not spaceporting, and not manganese nodule mining and everything else?

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

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

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

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

I have to object to this public hearing, the way it is held. I think it is invalid. Chapter 91, HRS, requires that in the advertisement for the public hearing the substance should be given in sufficient measure, it isn't.
I didn't know what this was much about, what this was about until I got the Rules here, and I've been trying to read them in the 10 minutes that passed which, of course, is impossible. But it is mainly demonstrated by the questions that you have just answered and been posed to you. People don't understand. They say that they didn't know what this is all about, tell us, explain to us.

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

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

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

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

I think what should be done, and I don't do this as a
basis for what I'm going to say about the Rules, what should be done, now that the county is working or the state and county or whoever is working on the 25-megawatt plan, we should see how that works out before we start talking about 500 megawatts.

VOICE: Yeah.

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

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

VOICE: They're invited.

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

There's often talk about the "not in my backyard" syndrome. I want to tell you something, we, obviously, are Honolulu's backyard. This is being put in our front yard, and we, damn, don't want it in our front yard.
I don't see want advantage that it is for this island to have this project here with a monstrous cable along the Hamakua Coast along to Kawai before it goes into the ocean, and the next storm blows it down and all of Honolulu is out of power and so forth. I don't see any purpose in this whole thing.

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

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

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

You carry questions, you may invite them and so forth,
but don't forget, among other things, the County of Hawaii is independent from the State in many matters that are touched here, many matters of committee and don't mandate anything.

VOICE: Right on.

VOICE: Yeah.

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

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

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

What happens normally in procedure like this, is that one agency does something, sends the proposal or
whatever it is under discussion to all the state agencies, county agencies, federal, whatever it involves and requests them to comment on it. Then when they have all the comments in, they make their decision. Then it comes to the next step, and they send their stuff to everybody around. You want to cut that short. I don't.

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

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

This is going on in Honolulu. We are supposed to say "yes", "please", "thank you" for a space project, station, or whatever. We are supposed to be grateful if the state, you know, supports manganese nodule processing industry here on
this island. We have to be thankful for being the geothermal
source for Honolulu, let me tell you something, if you drill a
little deeper in Diamond Head you will have steam too. Why
don't you start drilling Diamond Head first and if you come up
empty, we'll think about it.

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

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

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

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

The only exception or one of the very few, I should be
careful, is the Department of Energy which is the Division of
Energy and the Department of Planning in Honolulu that has a free telephone number. You don't. You say, "You can call us collect" other agencies don't. Other people in this county don't know that they can call you collect. We happen to know because you told us, thank you very much.

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

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

VOICE: Yes.

VOICE: Hear, hear.

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

MR. CHAIRMAN: Thank you very much, Mr. Ross. You were exactly on time, 15 minutes. I will give a three minute warning just so you will know that you have three minute left, and ask that you try your best to keep it within the 15 minutes so that everyone that has signed up will have an
opportunity to speak. The next person that I would like to
call on, the first sign-in person, John and I can't make out
the last name, three letters, John, I can't make it out, 821
West Kawaiulani Street.

MR. TAN: Here.

MR. CHAIRMAN: May I have your spelling?


MR. CHAIRMAN: Tan. Okay, thank you.

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

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

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

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

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

It is not political. I do not want political here. My job in this world here, I got a big job but the money didn't come me so I had to wait. But the thing is to make all the world self-supporting, every nation self-sufficient, in other words, and get down and everybody get down on the penny, everybody have to work for their living. And no wars. I have
given down to Africa how to run Africa where they are having their problems. And this guy there, the Ambassador down to Africa he gave me a piece of paper to make a gift and I say okay, I'll give a gift to you, but it is not for my opinion. But I'm going to get the Great One to give it to you. And I gave it up to him and he gave out the mail that I don't have to pay my stamp for some paid envelops to go back to him, and he lives down in Virginia, in the United States.

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

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

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

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

MR. PHILLIPS: This way you can't hear me. The Puna Community Council has reviewed the Department of Land and Natural Resources proposed Administrative Rules for Act 301, formerly Senate Bill 3182, and finds the Rules do not reflect the intent of the State Legislature.
The Puna Community Council has 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 the development of geothermal, as an alternative energy source, is consistent with the protection of the environment and the community.

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

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

"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. DLNR cannot, through the proposed rules, confer upon itself
power and authority in excess of the Statutory authority set forth in the Act.

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

"Number A. Section 13-185-2 under 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, Paragraph A, Transfer of Functions. One, 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.

"This stringent standard would grant the DLNR power to deny admission to virtually any person. The 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 that the Department may deny an application to intervene when in the Department's discretion it appears that;
"One. 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 proceedings; and

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


"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 ineffective.

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

She's gone to a great deal of trouble here,

Mr. Chairman, to list the things that are clearly that DLNR
has over-stepped its authority.

"As presently drafted the Proposed Administrative Rules permit DLNR to deny leave to intervene to any member of the public in either instance. Yet the position is the same as an admitted party or if the 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 the intervention could make the District Boundary Amendment proceedings inefficient and unmanageable.

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

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

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

"Counties have jurisdiction over uses within
agricultural and rural districts involving land of less than 15 acres. For land areas greater than 15 acres the County Planning Commission's decision is subject to the Land Use Commission's approval, approval with modifications, or a denial. Only this latter function of the LUC may be transferred to the DLNR." "Only this latter function of LUC can be transferred." Pardon me.

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

"D. Section 185-13-4, Consolidated Permit Application and Review Process. This Section provides that the jurisdiction afforded 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.

"Does this provision mean those functions only of Land Use Commission and Department of Transportation which are transferred by the Act? Section 186-D-10 (1) and (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"."
"Section 13-185-5, Contest case provisions. One. 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 a simple 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 with reference to contested cases.

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

"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 did not grant this authority to DLNR."
"G. Section 13-185-14 the Conflict resolution process.
The Act provides that a mechanism used to resolve conflicts
shall be incorporated into the Consolidated Permit Application
and Review process. Section 196-D-4, Paragraph B, sub-
paragraph 5, Hawaii Revised Statutes; Section 13-185-14 of
Proposed Administrative Rules sets forth conflict resolution
process.

"In the event conflict between state and county
agencies cannot be resolved the Proposed Administrative Rules
provides in Section 13-185-14 (B) the Administrative Director
or the Administrative Director's designee and the head of
the Mayor's designated county agency or that agencies designee
shall meet with the involved state and county department heads
within 20 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 Directors decision
within three calendar days from the day of the final decision.

"Where a county permitting authority is in conflict
with a state agency for a permit application that 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. A similar provision
applies to conflicts between state departments with the
Governor rendering the decision.

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

"See also Section 196D-9, HRS, construction of the Act ruled that the DLNR has the authority to make rules to implement the Act provided further that the Consolidated Permit Application and review process should 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 geothermal and cable systems development applicants compliance with permit terms and conditions.

"Article 11, 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 the
natural resources that control the pollution.

"Section 13-185-15 of DLNR's Proposed Administrative Rules must 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 DLNR is not enforcing compliance.

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

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

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

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

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

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

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

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

VOICE: Yeah.

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

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

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

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

"Tonight the states can look at Hawaii which most of us regard as paradise, but which biologist consider the endangered species capitol of the world. Though occupying less then two-tenths of one percent of the nations land mass,
Hawaii contains 27 percent of its endangered species and birds. Seventy-two percent of U.S. species that have already become extinct did so on these islands.

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

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

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

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

"Hasn't this happened before? Diversity suddenly becomes -- I don't know -- "And each didn't. Life recovered each time. New heights of evolutionary creativity" and the big picture, is this really so terrible? What is happening
Today? Life will go on no matter how bad we make things. Some organisms will quote "survive and flourish". Isn't this the lesson of mass extinctions? What is the difference about this one? We are the difference. For the first time since life began on this earth 4 billion years ago a living organism can understand what is happening to this planet.

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

Mr. Chairman: Thank you, Mr. Sullivan. The next person I would like to call on is Jennifer Perry. Jennifer Perry.

Ms. Perry: My name is Jennifer Perry and I'm a resident of Kapoho. We live in a very unique and special place. Hawaii was the first of the 50 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 hearings and notification of adjacent residents and land owners within 300 feet of the property line.

In determining which parties may intervene in the hearing proceedings the Land Use Commission must allow all person who can show that they will be directly and immediately affected by change in a way that is clearly distinguishable from the general public. This could include adjoining residents and owners. Other person 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 by suits filed in Nevada against Yankee Caithness
Joint Venture and against Ormat Far West Geothermal, we need to review the 300-foot 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 a position of a party already admitted to the proceedings or if admissions of additional parties will render the proceedings inefficient or unmanageable.

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

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

MR. BLAKEY: Yes, I just have a brief comment. It seems that the County of Hawaii has reached a bit more, has a bit more responsive government then we've known in recent times or in past times. And I'm particularly opposed to the Department of Land and Natural Resources taking a lead in things that affect us so dramatically.
The Department of Land and Natural Resources has a long history of impinging on the land and the people of this county. And I would just like to request that the county and the county agencies of Hawaii be allowed to participate with the citizens of this county to work for a cleaner approach that we have yet seen taken in geothermal development. Thank you very much.

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

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

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

In this case the atmosphere is the proper review of drilling, health, land use planning and community concerns. Geothermal development will not be facilitated except in the short term by accepting driller and developer programs without independent assessments of their claims.

In the long term 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. These are the County Planning Commission and the
affected community.

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

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

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

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

Three. Freeze-out land owners and residents with legitimate rights from contesting the decision, Page 185-7.
I urge these Rules not be adopted as they will make careful, independent review far less likely. And in the long run can result in consequences no one will be able to live with.

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

Thank you.

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

Barbara Bell.

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

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

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

The contested case provisions allow more than one hearing;
The Information Services Center has provisions for the community to receive information just as easily as permit applicants;

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 the geothermal and cable systems. I see in print how, when my state government wants something, they go after it.

I will believe that 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.

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

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

Rod Moss last night explained that -- (turns on cassette player, testimony inaudible)
Sorry, new technology for you.

VOICE: How many decibels was that?

MR. LaPLANTE: That was between 65 and 70.

VOICE: And what is the proposed level now?

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

VOICE: Louder than that?

MR. LaPLANTE: -- with a plus or 10 around that figure.

So, I can't turn it up loud enough to give you what it will be like 24 hours a day for the next two years at everybody's home around the project site.

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

I have been severely distressed by the actions taken by our past Administration and Campbell Estates. I have personally planned to live, have a family, and grow healthy plants and crops in peace. True Mid-Pacific and Campbell Estates have initiated a land swap which has gone through, as we know, which changes the land behind my property from Reserved to Industrial.
Not once were we asked if this would affect our lifestyles. Private enterprise has no conscience or moral obligation to residents boarding the Reserve. The state has the responsibility to negotiate a proper settlement with all parties involved. Without a doubt, the old Administration refused to look at the facts and chose to listen to the opinionated representatives of True Mid-Pacific Geothermal and Campbell Estates highly paid consultants.

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

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

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

The planting of herbs and edible foods is testified to by Al Jardine has totally been ignored. The beauty and the benefits derived from the Puna Forest Reserve is testified
to by area residents, have been shelved to serve private enterprise. The trail systems and burial caves systems are to be bulldozed over and filled according to testimony by Mr. Yamada. This will constitute and great loss of history which I believe plays a great part in the development of our children.

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

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

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

The Puna Forest Reserve is a living history book without proper study we will loose a chunk of our history to private enterprise. All of these questions about Hawaiian
ancestry seem to be put on the shelf by our old Administration. I'd ask our fine Governor to ask some very
pointed questions of these developers. All across America Americans are waking up and seeing the pile left behind by the dog that represents this type of private enterprise.

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

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

Last but not least, are the helpless creatures to be displaced and destroyed by progress. Will you walk with your grand-children and marvel at the beauty of the Hawaiian hawk, the fresh and alive smell of a rain forest? Will you show your children, our children, pictures of rain forest or will there be a living history, a book of living trees and birds or will there be a future of bitter dissolution created by uncontrolled private enterprise?
Let's all work together to insure the state maintains control of geothermal development. You know, let's not let this get out of hand just because the guys got the bucks in his pocket, and we need the money. Hell, everybody here needs money.

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

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

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

Rod Moss also stated that there are no known toxic wastes associated with geothermal wastes, more bull. He stated a sump pond 200 feet by 300 feet, eight feet deep, and this is just their first one on their first project site, is to be built unlined to just sit out there in the open. This is going to be used for all the effluent material that comes out when they do their steam drilling. The entire nine yards is going into that sump pond.
What about earthquakes? I haven't heard anybody write that in their computer projections. Where will all this mess end up in a time of flash flooding? Do you remember when the car got wiped off the Pahoa highway? What happens with that toxic waste from your little project up the hill?

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

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

Rod Moss's question about toxic chemicals, he used the analogy of fish swimming in the ocean and the pollutants didn't bother the fish. Well, those of us that know the 200 pound weight limit on commercial catches understand that, there's mercury poisoning in all fish over 200 pounds. It assimilates all the smaller fish, and you can't eat that.

What happens with a 200 pound pig when that pig is out there running around? You know, what happens when we catch a pig and eat it? Who's going to take those risks and who's going to be liable for that poisoning?

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

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

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

And you know what happened on Maui, gentlemen. You know, we have a threat that they are going to put in a giant coal mine and burn more oil if we stop the geothermal. Maybe you just need to really clean it up and clean up the
geothermal. You know, I find that really highly unprofessional, and you should check that out closely.

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

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

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

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

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

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

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

Well, I grew up in California. When I got there in 1961 the air and the water were beautiful, blue and clean, and I saw it destroyed slowly. First, the air started getting
brown on the horizon and by 1973 when I moved to Hawaii it was
unbelievable. The air was a brown-orange haze that burns the
eyes and the throat. I've seen it happen and I see it
happening here in Hawaii again now, and I think we need to
prevent this instead of trying to fix it later.

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

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

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

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

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

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


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

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

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

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

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

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

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

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

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

MR. CHAIRMAN: Thank you.

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

MR. CHAIRMAN: The next person is Ka'olelo 'Ulaleo. Box 6101, Pahoa.

MR. 'ULALEO: Aloha. My name is Ka'olelo 'Ulaleo. And I'm from Ke kau Keokea in Puna E Kalapana e Hawaii ne'i. As tutu Pele is one of my family amakua, it is my duty to
speak out. The lawsuit involving the illegal land exchange of 27,000 acres of ceded lands which is the upper portion of the 'apua'a of which I am a tenant, and the 25,000 acres owned by Campbell Estates is a clear indication of the ruthlessness of these damned right-wing elites.

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

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

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

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

This is only a small indication of what will happen if
Campbell Estates is allowed to develop a 500 megawatt in the area known as Wao Kele o Puna and the Puna Forest Reserve which is not and never was their property.

VOICE: Hear, hear.

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

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

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

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

I have my own interests to protect as Kahu of Wao
Kele o Puna as well as all of sacred Kilauea. You lucky I
don't put a kapu on all of Kilauea.

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

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

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

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

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

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

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

VOICE: Are those guys with guns with DLNR?

MR. CHAIRMAN: Pardon?

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

MR. CHAIRMAN: They're security from DLNR.

VOICE: From Honolulu over to here to protect you?

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

VOICE: From Hilo?

VOICE: To protect what?

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

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

MR. CHAIRMAN: They're here as security.

(Several people speaking at once.)

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

VOICE: Well, they should come in then.

MR. CHEETHAM: Can I ask my question again?

VOICE: Yes.

VOICE: Ask it again.
MR. CHEETHAM: How many state representatives are here tonight from DLNR or any other state representatives?

MR. CHAIRMAN: Myself and Janet Swift there.

MR. CHEETHAM: That's it?

MR. CHAIRMAN: (Nods head up and down)

VOICE: And their hired guns.

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

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

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

VOICE: Hear, hear.

MR. CHEETHAM: -- and for their peak-load requirements. Since most of these alternatives supply peak loads not base loads. The base load on Oahu could still come from what they already have as the proposed geothermal electricity coming
from the Big Island would not replace what Oahu already has, they just want to add to it. They can use what they already have for the base load and they can get their peak load from developing alternatives on Oahu.

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

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

"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".

Now, I think that is very appropriate because I believe that this geothermal and cable system is efficient
and unmanageable. And I believe that the geothermal and
cable system development project would be detrimental to the
residents of the islands of Oahu, Maui, and Hawaii.

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

MR. CHAIRMAN: Thank you. Duane Kanuha.

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

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

"It is proposed to transmit geothermally generated
electrical energy from the County of Hawaii to other islands
within the state. The pursuit of this effort, however, must
be tempered with a realistic understanding of various
processes and procedures which are currently in place and whether or not attempts at consolidating this highly complex regulatory maze will be a meaningful one.

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

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

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

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

"The make up and function of the inter-agency group
is also unclear as proposed. What is clear is that this group
is supposed to be comprised of geothermal related permitting
agencies whose activities have not been transferred by Section
196D-10.

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

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

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

"Finally, I would be remiss if we did not raise the
issue of home rule from a planning, community, and
governmental perspective. We understand that the intent of
the Statute is not to infringe upon or invalidate the
jurisdiction or authority of any existing agency, particularly
that of the respective counties.

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

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

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

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

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

And also, I have also worked one year in the Volcano
National Park and my job was to try to eradicate goats to stop
them from eating the birds habitat. And I believe the --
can you hold on one second -- the 'amakihi would face
extinction because of it and it's a very sensitive
ecosystem.

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

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

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

If public agencies feel that way, they are curtailing
the use of fossil fuels as compared to environmental concerns
like the i'o. That is just one bird as an example, there is
also the pue'o and the hoary bat.
I feel that in the long-term duration man will be extinct on day also and that's a very sad thing to think about. There is a -- okay, one day we might have our land as very barren at the rate we are going. I'm very surprised in this generation there is so many species of animals and plants that is getting extinct.

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

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

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

MR. ALULI: I was the one asking the questions.

Mr. Chairman, thank you. First of all I have to agree with the -- I'm sorry. My name is Emmett Aluli, I'm with the Pele Defense Fund. I have to agree with the first speaker here, Mr. Ross, the fact is that this hearing should be invalidated.
Your notice was not substantial enough. It didn't give any information. You attempted at the opening of the hearing to give information, but it was standard rhetoric. It just moved, streamlined, and expedite the whole process.

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

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

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

The problem that I see with the Center is that you've perpetuated an "old boys club" one that just started with Ariyoshi and into here with Metcalf and Matsuura and on down to the developers who write all these Rules and Regulations and pass it through to their own counterparts the Carpenter
Administration. You've got the Bishop and Campbell Estate, Lyman Estate, major land owners, and they're pushing these permits through on their properties.

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

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

I also want you to know that that whole geothermal development besides the impact it has to the native Hawaiian culture and traditions, of Pele, to the environment, and the native species, it is also very, very costly.

The problem the way DLNR has been handling things is the developers they write the economic assessments. And nobody else can go and get a second opinion. While they say 1.5 billion dollars for this geothermal project and cable, and it's going to cost us even more like four billion dollars. It's the taxpayers that have to pay.

You talk about geothermal lighting the skies of
Honolulu. You talk about a cable, but Honolulu is undergoing their own process to provide their own selves with alternative or other kinds of energy production. And I'm talking about the 240-megawatt proposal down in Campbell Estate land at Barbers Point. That's 240 megawatts they're going for, and they are going to go on for may be another 250 megawatts. And here we're sitting with 500 megawatts; to do what?

I don't think the DLNR is able to give us the bigger picture. It's like all of us trying to envision a Hawaii that we are used to and we wanted to perpetuate it and your coming in with a picture that we just have no handles on.

What really hurts us here is your whole SMA process throughout all the counties. The DLNR, are they going to assume all the SMA kinda like permits that have to be granted on every shore where the cable comes up or goes down?

The SMA still has intact, contested cases where the experts haven't come with all their materials and can be cross-examined, and therefore, the whole question as to the validity, and the purposes, and the economics, and the impacts can all be dealt with. And then the community has to live with whatever decision is made on the local level.

And that's what I see so wrong with this Geothermal Center and the promulgated Rules. I'm hoping that after this, whatever the prospect is, you will re-write these Rules and come back to us for public hearings. And there is more
input by the people on every island as to what this geothermal authority is doing. Thank you.

MR. CHAIRMAN: Thank you. Is there anyone else? (No response) If not, I want to thank you all for coming, taking time out from your busy schedule to attend here tonight. Your testimony will be on the record and I would like to remind you that you have until July 7th to submit additional testimony, July 7th. Thank you very much.

(The public hearing was concluded at 9:15 p.m.)
CERTIFICATE

STATE OF HAWAII  )  SS.
COUNTY OF HAWAII  )

I, ANDREA H. VASCONCELLOS, Notary Public, in and for the State of Hawaii, do hereby 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 24, 1989.

ANDREA VASCONCELLOS,
Notary Public, State of Hawaii
My commission expires: April 23, 1990
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:

- Christopher Baz - resident
- Walter Hillinger - resident
- Beverly Fykes - aide to Councilman Wayne Nishiki
- Carl Freedman - resident
- W.D. Smith - resident
- Sally Raisbeck - resident
- 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 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
unneeded, 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.
Division of Water and Land Development
P.O.Box 621,
Honolulu, Hawaii, 96708

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
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.
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 a 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&regulations 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,

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.
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
Kalanikukou Bldg., Room 227
1151 Punchbowl Street
Honolulu, Hawaii 96809

Also present: Calvin Ah Loy, Security
Dexter Tom, Security
<table>
<thead>
<tr>
<th>ORAL TESTIMONY OF:</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHRISTOPHER BAZ</td>
<td>6</td>
</tr>
<tr>
<td>WALTER HILLINGER</td>
<td>8</td>
</tr>
<tr>
<td>BEVERLY FYKES</td>
<td>9</td>
</tr>
<tr>
<td>CARL FREEDMAN</td>
<td>15</td>
</tr>
<tr>
<td>WILLIAM SMITH</td>
<td>30</td>
</tr>
<tr>
<td>SALLY RAISBECK</td>
<td>34</td>
</tr>
<tr>
<td>LESLIE KULOLOIO</td>
<td>37</td>
</tr>
</tbody>
</table>

IWADO COURT REPORTERS, INC.
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
such a project and creates a joint interagency review team to consolidate and coordinate all processing requirements, such as permit review, environmental impact statements, and public hearings.

The rules further provide for the signing of a joint agreement between agencies which will set forth a review timetable and a mechanism for resolving conflicts between those agencies.

The proposed draft also addresses transfer of certain permitting functions from the Land Use Commission and the Department of Transportation to the Department of Land and Natural Resources for the purposes of geothermal and cable permitting.

For those individuals wishing to present testimony this evening, we have a sign-in sheet in the back. If you’d please sign-in there. And please be advised that the testimony presented this evening should be confined to subject matter concerning the draft administrative rules.

Any additional testimony or written comments that you’d like to submit to the department may be mailed to the Division of Water and Land Development, P.O. Box 373, Honolulu, Hawaii.

At this time I’d like to begin calling up the parties wishing to testify, and I’ll get my list in
HEARING OFFICER NAKANO: At this time may I call up Mr. Christopher Baz, please?

MR. BAZ: Where --

HEARING OFFICER NAKANO: Thank you, sir.

MR. BAZ: Suppose to sit here?

HEARING OFFICER NAKANO: Mr. Baz, if you would, for the record, state your name?

MR. BAZ: My name is Christopher Baz. I'm a resident of Ulupalakua and I'm farmer.

HEARING OFFICER NAKANO: Thank you.

MR. BAZ: And my understanding is that the -- someone in the government was supposed to test the ambient air standards of the area.

The area that's in question is very undeveloped. It's only ranch land and it's conservation zone.

HEARING OFFICER NAKANO: Yes, sir.

MR. BAZ: So I'm concerned that the quality of environment, as it is, remains. My understanding that, you know, from looking at this thing, is more a matter of organizational procedures --

HEARING OFFICER NAKANO: Yes, sir.

MR. BAZ: -- to make the whole thing go
smoothly. Well, that's -- to me, that's fine for the
government to have a smooth operation of how they're
going to implement this idea.

But basically the reason I came to this
meeting is to make sure that the DLNR understands how
pristine this area is and the fact that it has
absolutely no development.

In fact, you're not even allowed to move a
rock from the area that's in question, a lot of it.
It's purely conservation zone, so I feel that a large
amount of trucks, equipment, men going to and from,
even to set the thing up, is going to disturb the
area.

And I've been told that it has an extreme
noise factor even if it obeys the other standards of
emissions and so on. So right now we can hear a truck
that drives down, you know, down through the dirt
roads because there is no other vehicles.

So the whole -- whole area is subject to being
quite disturbed by having an industrial development
in, you know, in a situation as it is.

So basically that's my testimony, that I don't
think it's a good idea to do any sort of industrial
development in such a pristine zone.

HEARING OFFICER NAKANO: Thank you. I

IWADO COURT REPORTERS, INC.
appreciate your comments.

As I mentioned earlier, we'll be glad to receive comments that you have. For the scope of this evening, though, we'd like to keep the testimony limited to the proposed rules as presented.

I'd like to make myself available, and Ed also, at the close of the formal portion of this hearing to answer maybe some of your questions that might be more relevant to Mr. Baz's statement concerning either the subzone or perhaps the counties geothermal zone, which may be more directly in line with some of the concern that you shared with us tonight.

Mr. Hillinger?

MR. HILLINGER: My concerns are the same as Mr. Baz, so I'll have to -- I'll have to talk to you after.

But I am a resident and live in Ulupalakua, and I'm very concerned about the environmental impact.

HEARING OFFICER NAKANO: I would be willing to give you a few minutes of our time tonight if you like.

MR. HILLINGER: Well, I live on the road adjoining where this proposed site is going to be, and I moved out there to have a nice, quiet environment;
not to have a bunch of trucks going on the road and creating a havoc. Plus the smell, plus the noise. And I deeply oppose any type of geothermal plan.

HEARING OFFICER NAKANO: Thank you very much.
MR. HILLINGER: That's it.
HEARING OFFICER NAKANO: Miss Beverly Fykes?
MS. FYKES: Yes.
HEARING OFFICER NAKANO: Thank you.
MS. FYKES: I have a copy that I'd like to leave, is that all right?
HEARING OFFICER NAKANO: I appreciate that.
MS. FYKES: I'll leave that to you.
HEARING OFFICER NAKANO: If I could have that?
(Document handed to Mr. Nakano by Ms. Fykes)
MS. FYKES: My name is Beverly Fykes. I'm the legislative aide to Councilman member Wayne Nishiki, and he asked me to come tonight.
And I'd like to read the letter that he is giving to the Department of Land and Natural Resources:

"Thank you for the opportunity to offer testimony on Chapter 185, Rules of Practice and Procedures for Geothermal and Cable System Development.

IWADO COURT REPORTERS, INC."
"Act 301, Hawaii Revised Statutes states:

"'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 this state."

"The total cost for exploration, drilling, laying of cable, and plant construction is estimated by HECO to be one point seven billion dollars. A sizable sum of taxpayers' 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 thirteen million dollars on geothermal and cable research and development.

"Five million of this went solely for research on the cable. The federal government has spent over thirty million, with twenty-three million of this for research on the undersea cable.

"To add to these already astronomical figures, private sources have spent an additional twenty 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 the 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

IWADO COURT REPORTERS, INC.
planning commissions, to regulate geothermal development so far 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 these permits, to also be the agency which assists developers through the permitting process.

"Geothermal development is a major concern to Maui and 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 so much shallower on the Kihei side.

"The problems with these rules may come

IWADO COURT REPORTERS, INC.
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 and regulations 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 other portions of the rules which may result as a part of public testimony."

And I don't want to take the time to go through this list, but it very clearly shows the sections that we are concerned about that appear to take away the counties' authority.

HEARING OFFICER NAKANO: Mr. Nishiki's testimony will be entered into the record in its entirety.

MS. FYKES: Thank you.

IWADO COURT REPORTERS, INC.
MR. FREEDMAN: Good evening. My name is Carl Freedman. I live in Haiku here on the Island. I’m not appearing on behalf of anyone but myself.

I’m not appearing for or against geothermal projects, but I became interested in the standard, particularly because I have a background of some expertise in writing energy facility siting standards.

When I lived in Oregon I was very involved in the writing of the siting standards for the Energy Facility Siting Council there, and the Department of Energy for siting geothermal biomas, thermal whole nuclear wind energy facilities.

I represented an environmental group there, but the rules were drafted cooperatively between the Department of Energy, the utilities and our group.

Looking at Hawaii’s regulations I realize that Hawaii is relatively new to the administrative process of large energy facilities siting. It does not have much legislative or administrative history relating to large energy facilities, and this one was quoted by Beverly straight out of the findings and purposes of the statute.

Act 301 is a very large project, perhaps one
of the largest projects that Hawaii is going to see. It's not a hotel. It's not a large road. It differs in two major respects.

One, is it is something in the order between one and two billion dollars, which works out something about five thousand dollars per ratepayer. And the cost is ultimately going to be borne by the ratepayers here. And that's a distinction that's made and is not addressed in any statute or administrative rule right now.

There is no review agency who's looking at the economic prudence or the need for this facility, and ultimately it's as much as given that the ratepayers are going to end up paying for it and the public utility Commissioner will review the process after the fact. And as long as a management -- reasonable management decision is made, the cost -- the costs get passed to the ratepayer.

I don't know if it's necessary for me to read this into the record for it to be timely, but I would like to go through it.

HEARING OFFICER NAKANO: Sure, you may summarize your written statement and it will be taken into consideration.

MR. FREEDMAN: Okay. Streamlining of the
regulatory process is really a double-edged sword. There is certainly a lot to be gained by eliminating repetition and red tape, but it can backfire and it can backfire in two important respects.

The biggest one in the interest of streamlining, the biggest way it can backfire is you can cut too deep. You can cut corners across due process and you’re going to end up with the courts reversing and remanding agency decisions.

So I think that DLNR needs to be careful, more careful than it has been, in its standards in guaranteeing the rights of due process to individuals and agencies that it is coordinating and overseeing.

The second extent in which streamlining can backfire is that if it’s done in too overzealous a manner, the real best interests of the public can be put aside for perhaps a more shortsighted view of what might be the best interests.

And if you look across the country, there are many utility ratepayers and in many areas who are paying bills that are too high because their particular utilities, for whatever reasons, decided to go ahead with large energy facilities and they either did not work.

For some technical reason they stand there,
unneeded for faulty economics, and streamlining can
tend to circumvent some of the regulatory slowness and
careful consideration that prevents that type of
mistake from happening.

Billion dollar projects can set quite a few
pocketbooks back pretty far. And it can line quite a
few, too. So it tends to be an issue where large
money interests might be lobbying the legislature or
can afford high-powered testimony in proceedings.

Due process has to be afforded all of its
opportunities for interested and aggrieved parties to
appear before the agency. And I realize that most of
the intents and a lot of the wording of these proposed
rules comes straight from the statute.

And the department doesn’t have a lot to say
about how that’s going to look, but in certain
respects it does go further than the requirements.
And then you have to really watch because those are
particularly the places where a court can review, is
going to question your authority, and maybe send you
back a few steps and reverse the decision.

And I have outlined a few particular places
here where I think the department should reconsider
its language. Basically it’s my feeling and my
experience that due process is consistent with the
goals of streamlining.

If you want to make this process go through smoothly, if you want to license something, you get everybody all the rights and all the privileges they need legally, or it’s going to end up in the courts, which is the easiest way to stop something from happening.

Section 13 -- I guess you call them "sections" -- 13-185-3 directs the department to deny application for intervention if admission of additional parties will render the proceedings inefficient or unmanageable. This is a mistake.

The courts have traditionally allowed agencies to deny petitions for intervention if they’re repetitious or if other intervenors are sufficiently representing the interests of a petitioning intervenor.

Courts have allowed consolidation of intervenors, but in all of these cases, ostensibly the interests of petitioning parties are already represented.

If DLNR were to deny a petitioner intervention based simply on the fact of that, would it make the proceedings inefficient and unmanageable? I think you would have made a legal error in denying someone due
process and you're going to end up doing the whole thing over again.

Section 5 requires that agencies conduct only one contested case proceeding, and I think DLNR needs to, perhaps in its rule adopting -- in its order adopting this rule or in the rules themselves, that the scope of that one contested case proceeding should be broad, and intervenors should not be denied status because the issues that they bring will broaden the scope of the hearing.

And it's very common for agencies to have already written in -- the county or wherever -- have language in their rules that limits the broadening of scope that an intervenor may bring to a hearing.

But in this case, DLNR by rule is saying there can be only one proceeding. And in order to provide for due process for all individuals, it is necessary that standing be the only standard for intervention and not broadening of scope.

Another issue that I want to mention is the requirement in Hawaii Revised Statute 205-5 that State and County authorities require mediation in lieu of contested case proceedings to adjudicate contested issues.

Although Act 301 transfers to DLNR the
functions of the Land Use Commission and not
necessarily all the responsibilities for enforcing the
statute with regards to county administrative
procedures, this is an issue which ultimately falls
under your jurisdiction and concerns because you are
going to be overseeing these county agencies that are
reviewing, by mediation in lieu of contested case
proceedings, a lot of the issues from county level.

Because it’s a statutory provision, it may
pass a lot of the tests of precedent where the Hawaii
Supreme Court has required that administrative
procedures be consistent with the Administrative
Procedures Act.

But the statutory language itself 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 record of established fact, and recourse
to judicial review based upon the entire record.

The mediation procedure particularly precludes
these provisions. And a good example of this is the
statute that has been adopted by the County of Hawaii
-- and perhaps the County of Maui is going to have to
do a similar statute because the requirements of 205
are -- but what I'm suggesting is that the DLNR may want to check into this regarding the constitutionality of the mediation procedures adopted by rule by the County of Hawaii.

All those comments relate to due process. And I have a list of comments here in Section 3.

The first paragraph transfers all the functions of the Land Use Commission and the Department of Transportation to DLNR without restriction or statement of condition.

The statute conditions that pretty clearly, and I think you should adopt the wording of the statute to limit what instances the powers of the Land Commission and Department of Transportation -- I mean, you're not in the business of taking over all their business --

HEARING OFFICER NAKANO: Sure, right.

MR. FREEDMAN: -- so you need some restrictive wording.

I think that you should include in the wording provisions that boundaries, land use boundaries and zoning changes made by DLNR are contingent upon the ultimate approval of the project and revert to their previous designation upon decommissioning of the project.

IWADO COURT REPORTERS, INC.
In other words, if they come before DLNR for a land zone change and the project falls by the wayside and is not going to be built, you should, you know, relax the standards. Let them go back to the local authorities as they were before.

The syntax of the latter part of 3 really needs to be changed, and you can read your own wording there. My concern -- there is some ambiguities.

Subsection B regarding zone changes offers only that permits may be offered at the department’s discretion. This is clearly not a sufficient guidance to applicants or opponents of a zone change upon which to prepare a case and is certainly not sufficient grounds upon which to base any findings of fact.

And I note that the Hawaii Supreme Court has not allowed agencies even the appearance of being arbitrary or capricious. I think you need some sort of standard regarding zoning or some notation that you are going to use the Land Use Commission’s standards or something there.

And I have given you some citations of case law.

Section 7 provides 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 what a "potential applicant" is. And certainly these services should not be restricted to exclude the general public.

Section 9 directs the department to perform a number of services for the benefit of an applicant and 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 legislation to streamline the process.

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 the limitations on how far the department will go in these regards.

They should provide guidance to the staff to clearly distinguish between the various roles of the individual personnel it assigns to the necessary

IWADO COURT REPORTERS, INC.
functions.

One, an adjudicatory body conducting contested case hearings. Two, an intervenor in those contested case hearings. Three, an advocate for applicants pursuant to those hearings. Four, a final authority over administrative conflicts as defined by Section 14. And five, a coordinator of County, State, and Federal agencies regarding the provisions of sections 11, 12, 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 between parties.

In this regard DLNR should reconsider the wording of Section 9, which, you know, has been doing all these services for the applicant, to limit or place conditions upon the context -- context -- context and the extent to which it will assist applicants.

Section 10 is regarding fees. I was very surprised. The fees proposed here are a pittance. A county building permit for a typical two thousand square foot house here on Maui exceeds the
DLNR application fee for a billion dollar development that will occupy numerous DLNR staff on a fulltime 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 cost of compiling and photocopying the required information to meet the requirements of Section 7.

The State of Oregon, where I’ve had some experience, requires a site certificate for geothermal projects that are larger than twenty-five megawatts. A fee of five thousand dollars is required at the time of filing a Notice of Intent, which is credited towards an ultimate fee of five cents per kilowatt, or one thousand dollars for each million of estimated capital investment.

But in no case less than fifteen thousand dollars. Additionally, an annual fee of twenty -- of two point five cents per kilowatt is assessed to cover ongoing costs of regulation.

DLNR, I realize, does not have all the regulatory responsibilities of the Energy Facility Siting Council, but the order of magnitude of Oregon’s fee schedule much more realistically reflects the costs of regulation of large energy facilities than does a six hundred dollar fee for a one point seven
billion dollar project.

Perhaps the State of Hawaii does not foresee the costs of regulation to 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.

I think 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 ten million dollar level.

And I note that five cents per kilowatt is less than one half of one hundredth of one percent of the cost of the generating facilities. They typically cost well over one thousand dollars per kilowatt and these may approach three dollars per kilowatt.

So that is one thousandth -- that is one one thousandth of what our sales tax is, and you can relate it to that. So the fees of regulation here are certainly not out of proportion even on the order of magnitude.

My last comments regard the adequacy of site regulations. And I think the legislature has acted to simplify the procedures for application for the

IWADO COURT REPORTERS, INC.
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 impact that can be anticipated.

In no other arena -- except 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 unneeded, nonfunctioning mismanaged or poorly engineered electrical generation projects.

And I don't mean to say anything bad about electrical utilities because they are all respectable people who are very proud to be doing a very good job of essential services here, but 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 one point seven billion. Based on number of customers and average use, this works out to be an investment of over five thousand dollars per residential customer or
equivalent to a rate impact of over fifty dollars per month per residential customer.

By what mechanism are the economic interests of the ratepayers protected? In what forum can they represent their concerns? The Public Utility Commission approves rates based on new facilities after they are completed and have accrued debt.

The decisions made on whether or not to build these 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 the utility rate basis 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 accountable.

Similarly, the State of Hawaii has no provisions to assure the applicants of the financial, technical, and managerial ability to construct, operate, and decommission energy facilities, without their becoming a burden to County or State governments; or that energy facilities will, in fact, be decommissioned at the end of their productive lifetimes; or that other preferable alternatives are not reasonably available.

IWADO COURT REPORTERS, INC.
These issues are not directly relevant to the rules being considered here, I realize, 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 regulations.

And thank you for bearing with me through all of that.

HEARING OFFICER NAKANO: Thank you, Mr. Freedman.

If there is anyone else who would like to present testimony -- sir, if you would?

Did you all sign in this evening?

MR. SMITH: I signed the first one, but I didn’t sign the other one.

HEARING OFFICER NAKANO: All right, fine. If you’d like to come up here, please?

For the record if you could state your name, please?

MR. SMITH: Sure. My name is Bill Smith, of Kula.

I’d first like to apologize for not being prepared. I just read about it in the paper and came down.
Basically my concerns were addressed, to the vagueness and uncertainties, that were just exceedingly well summarized by the preceding testimony.

I am not an attorney and I can’t tell you what due process is. I’m not sure an attorney could. But I think I can agree wholeheartedly that it doesn’t necessarily mean efficiency in the terms of shortcut.

Due process is something that is organic. The rules as they’re made are consolidated for the purpose of being efficient. And in the rule-making process, that doesn’t necessarily conform to the notion of being organic.

And I think by accelerating the process beyond its organic nature, you fundamentally increase the number of risks. Those include the risks that were addressed as to the law in the preceding testimony.

It also circumvents the caution that is necessary in developing a project that can be accomplished in the end. Not only in a legal sense, but in the practical sense of being well done and being functional at the time that it’s finished.

The environmental impacts are numerous. There is no question that the project is not only one of the largest in terms of capital investment, but also one.
of the largest in terms of affecting the ecology of
the Hawaiian Islands.

There are serious concerns about the esthetics
of the appearance of towers and transmission lines.
There is serious concerns about decommissioning the
project at the end. At the end, what happens to
those? These are the end results. The beginning and
middle results are equally important and perhaps more
so.

And as far as I can tell -- and this is where
I particularly apologize for being unprepared -- but
the project is aimed at supplying an anticipated
demand for energy on Oahu for electricity. That is my
impression.

And in addition to all of the other factors
that are pertinent, there is the risk of failure if,
in fact, Oahu is relying on a successful result.

So in the mixture of this, the acceleration of
the process by streamlining appears to invite an
enhanced risk of failure both for the concerns that
affect people in the neighborhood, such as myself who
don’t want towers necessarily going through the
neighborhood or near or in the area, and also in the
sense that the people in Oahu who are anticipating
receiving electricity and, in fact, may not if the
project fails because of unanticipated risks.

The rules appear to be vague and uncertain.

For example, this -- just as a result of comments
tonight, the influence upon the whales, as I
understand it, would require comments under the
Endangered Species Act, and certainly comments from
the Fishing Law Service.

The State administrative rules cannot
supercede or, in fact, even influence the National
Environmental Policy Act, and yet the rules attempt to
incorporate federal agencies into the process.

While I don’t doubt that the legislature was
aware this takes precedence, I still wonder whether
the rules as they stand sufficiently distinguish
between the State obligation and the Federal
obligation in the permitting process.

The experiences that I’ve been familiar with
on the Mainland, where major capital projects have
proven to be unnecessarily expensive or have failed
altogether, have usually resulted from the taking of
unnecessary risks in the planning and development of
the project.

I see these rules as a step in that direction
and would urge that they be reconsidered entoto.

HEARING OFFICER NAKANO: Thank you.

IWADO COURT REPORTERS, INC.
Is there anyone else this evening who would like to testify on behalf of the rules?

Ma’am? If you would please state your name?

MS. RAISBECK: Yeah. My name is Sally Raisbeck, and the two concerns I have have already been expressed, but I want to underline them.

One of them is the fact that -- of the great cost which will be borne by the people who pay for electricity.

And if the project should be a failure, which I understand this will be a very -- a first time ever for this kind of cable. If the project should fail, then there will have been a great expense for nothing.

And I am very concerned about that and I think everybody who pays for electricity should be concerned about that.

The other thing is that from a layman’s reading of the rules it seems to me that taking away the power from the county agencies, I feel, as a citizen closer to county agencies, I feel I have more input into that than I do into state agencies, and to have the power taken away from the county and given to a state administrator in case it was -- when push comes to shove, I don’t like to see that because the state agencies are over on Oahu and it’s much more
difficult to have any kind of input into them.
So for those reasons I feel that -- also when
they say in this interagency group, when it says that
if one of the agencies refuse to give a permit, then
ultimately it ends up with the decision by the
administrator.
I presume that every permit involved has a
reason for being there, so it’s not a matter of you
take, you know, six out of ten is fine. Every single
permit has a reason and all of them should be -- are
necessary and should be -- the reasons for those
permits should be met.
HEARING OFFICER NAKANO: Thank you.
For our recordkeeping this evening, if anyone
has failed to sign in, it will be greatly appreciated
if you would.
Would there be anyone else this evening that
arrived late that would like to say a few words?
(No response)
HEARING OFFICER NAKANO: If not, at this time,
then, I would like to close the formal portion of this
hearing and thank you very much for attending and
presenting the testimony this evening.
MS. FYKES: If I could I’d like to know how
many people are from the general public as opposed to
someone from an agency?

Could I have a show of hands?

HEARING OFFICER NAKANO: May we have a show of hands here?

MS. FYKES: How many people are from the general public as opposed to some organization, because I’m just concerned that not many people know about this and I would just like to see --

HEARING OFFICER NAKANO: For the record --
time out. Let me just count out off record.

Mr. Freedman?

MR. FREEDMAN: I thought you were counting?

HEARING OFFICER NAKANO: Oh, okay.

(Mr. Nakano noting raised hands)

HEARING OFFICER NAKANO: I have approximately twenty people here, with just about ten from the public. So, about ten/ten.

MR. SMITH: Wasn’t the initial notice for the library?

HEARING OFFICER NAKANO: Yes, the initial notice -- I believe the hearing was to be held earlier in the month and recent legislations required a thirty-day notice rather than the previous twenty-day notice, and as such there had to be a rescheduling of the hearing with ample notice provided to the public.
And as such it was rescheduled here to the Maui Community College Community Services Building.

MR. KULOLOIO: Perhaps I'd like to share -- I couldn't hear behind there. I want to go say something?

HEARING OFFICER NAKANO: Sure, please. If you could just state your name, please?

MR. KULOLOIO: I think I didn't sign up, I'm sorry. I didn't have time to prepare anything. My name is Leslie Kuloloio.

THE REPORTER: Please spell the last name?

MR. KULOLOIO: K-u-l-o-l-o-i-o.

I think, involving in this agencies, I think it's about time that the Office of Hawaiian Affairs should be a part of the monitoring agencies.

I think it's about time that the Hawaiian community do have the kind of resource to give input in regards to cultural and environmental impact. I think State have failed to recognize our Hawaiian community leadership and our cultural changes in Hawaii.

I believe -- I don't know why the State failed to recognize our Office of Hawaiian Affairs. We dealing with top issues like burials. We dealing with environmental impact on the Island of Kahoolawe.
dealing with a lot of things that deal with land, sea, and ocean, air and water.

I think including in the monitoring agencies should be the Office of Hawaiian Affairs. The Office of Hawaiian Affairs could be our input to our local organizations.

And at this time I like the Hui Ala Nui O'Makena to be part of the monitoring agencies within this regulation systems. I say this because it's about time that -- I, too, have doubts on the -- on the -- something which is very new in our issue of Hawaii, in permitting or giving permission for something that we don't know how it's going to work out.

I do have a lot of questions. I'm not a law degree person to understand the words, but I have questioned the recent meetings held with the contractor doing the -- supposed to be Well, Martin and Tex (phonetic) here on Maui.

I do have some questions. I cannot at this time give input to the regulations until I complete the other questions I'm trying to find out from the contracting well digger that is going to do this test units here on Maui.

And so I -- I don't now how to say it.
Perhaps I'm -- yeah, I just -- you could say I'm totally against something that I cannot see how I'm going to put myself to belong to.

In other words --

HEARING OFFICER NAKANO: (Nodding)

MR. KULOLOIO: I think you got the message.

But the Office of Hawaiian Affairs should be a monitoring agent. It is part of the Hawaiian entity. It's about time that -- of the State of Hawaii, and that is the only input that we have to fight against those things culturally important to us.

As -- spiritually, as well as values that we, the Hawaiian people, have been struggling to fight against accidental Western way of thinking and bringing this kind of resources here.

Thank you. That's all I have.

HEARING OFFICER NAKANO: Thank you.

MR. KULOLOIO: But I sure like to have more input. I, too, was confused by tonight's meeting. We -- with due notice I think we could have had more of our regular individuals from Big Island who would have come here who would have kind of taught us and given us input that have been dealing with regulations in geothermal that affected the Big Island.

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
4 Thank you.
5
6 HEARING OFFICER NAKANO: Thank you.
7
8 If there was any confusion this evening, I'd
9 like to apologize on behalf of the department for any
10 change of dates and so forth.
11
12 I would like to state, prior to closing this
13 hearing, that we'll continue to accept testimony until
14 July 7th. Should there be anything else that you'd
15 like to submit as far as the written comments, please
16 feel free to mail it and it will be entered into the
17 record in its entirety.
18
19 At this time I'd like to thank you again and --
20
21 MR. HILLINGER: July 7th what is going on?
22
23 HEARING OFFICER NAKANO: We will be continuing
24 to accept written testimony until July 7th.
25
26 MR. SMITH: Where will that be sent?
27
28 HEARING OFFICER NAKANO: Sure. The address is
29 Department of Land and Natural Resources. It's
30 Division of Water and Land Development. It's P.O. Box
31 373, Honolulu, Hawaii, 96809.
32
33 MR. SMITH: Thank you.
34
35 MR. BAZ: I'd like to know what the next step
36 in this process is? What's going to happen now?
HEARING OFFICER NAKANO: We will continue to receive testimony for fifteen days after the close of this hearing this evening.

And at that time it will be a matter of compiling all of the comments received and looking at them and making the necessary changes and amendments to the proposed draft as they stand. And we have to see what comes in and so note it in our records.

MR. BAZ: So then it was -- within the DLNR you will makeup a new -- they will revise this and then you have another, um, have another hearing about what you have done?

HEARING OFFICER NAKANO: Normally it's given to the Attorney General who, I believe -- I'm not a lawyer also -- who, I believe, makes the decision as to the requirements for a second public hearing.

If the changes are so significant than what is being currently proposed, then that will definitely require a holding of a public hearing, a second public hearing.

MR. KULOLOIO: I forgot -- I forgot another; the Department of Hawaiian Homelands. They also should be part of the monitoring thing -- agency here on Maui throughout the State because they will have an impact on the line, when this cable does go over land
through their property.

HEARING OFFICER NAKANO: Thank you.

MS. RAISBECK: Who adopts the rules?

HEARING OFFICER NAKANO: Being that the statute designated the Department of Land and Natural Resources, it becomes the administrative rules of that department.

MS. RAISBECK: I mean, nobody has to vote on it? You just make them and that’s it?

HEARING OFFICER NAKANO: In this case it will be the Board of Land and Natural Resources who adopts rules, which is then sent for the Attorney General’s approval. Then it’s forwarded up to the Governor’s office, who has the final approval. He will then sign-off on the rules.

There being no other questions, I thank you again, and I’ll close the formal part of this hearing.

Thank you.

(Whereupon the hearing was concluded)
CERTIFICATION

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.

[signature]

NOTARY PUBLIC State of Hawaii
My commission expires 9/17/91

IWADO COURT REPORTERS, INC.
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.

Sus Ono
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.
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.


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 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.
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
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 commitment of the considerable capital expenditures necessary.

Our comments and suggestions for minor changes in the proposed rules are presented below:

SECTION 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.

SECTION 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,

[Signature]

Ralph A. Patterson
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
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
PUBLIC HEARING (CATHU) ON ADMINISTRATIVE RULES TO IMPLEMENT ACT 30, S.19 (1988)

Hearing was held in the Board Room, the Dept. of Land and Natural Resources, Kalanianaole Building. The undersigned called the hearing to order at 7:05 PM. Testimonies and Comments were opened by the following:

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 the environmental impact statement satisfy County, State and federal requirements. He thought the County requirement on EIS not matter were not considered.

2. Cynthia Thilen, attorney representing Pearl Community Council. She submitted written testimony. In addition to written comments, she emphasized that complex resolution section needs more time and the elimination 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
response 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
agency 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, 1987, the submission deadline.
He commended the step for digressing
a good set of rules.

4. Karen Shinizu, Senior Staff. 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 Deposants. The hearing adjourned at 7:30 P.M.

Ralph Patterson, Consultant, arrived after hearing adjourned. He had no comments.
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

March 2, 1989

Dear Mr. Paty:

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,

[Signature]

FFF:fe
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.
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
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.

SAM LEE
Land Agent

cc: Mr. Mike Shimabukuro
    Mr. Herbert Apaka, Jr.
    Mr. S. Ono
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.

[Signature]
Dan T. Kochi
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.
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
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  

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.
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