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JOHN WAIHEE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
P. O. BOX 221  
HONOLULU, HAWAII 96809

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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
P. O. BOX 621  
HONOLULU, HAWAII 96809

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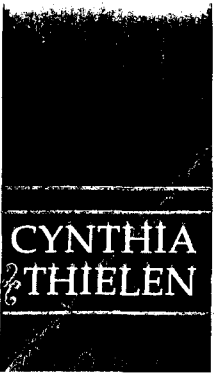
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ATTORNEY AT LAW

July 31, 1989

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Chairman William Paty  
Board of Land and Natural Resources  
1151 Punchbowl Street  
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c/o I.L.W.U.  
896 Lower Main Street  
Wailuku, Hawaii 96793

Mr. Moses W. Kealoha  
c/o Toyota City  
2850-A Pukoloa Street  
Honolulu, HI 96819

Mr. Herbert Y. Arata  
Country Club Apt. Hotel  
121 Banyan Drive  
Hilo, Hawaii 96720

Herbert K. Apaka, Jr.  
2848 Awapuhi Street  
Lihue, Hawaii 96766

Re: Revised Rules of Practice and Procedure for Geothermal and  
Cable System Development Permitting

Dear Chairman Paty and Members of the Board:

I have reviewed the revised Rules which the Board of Land and  
Natural Resources will address at its next meeting to be held on  
the Island of Kauai.

I have the following concerns and am raising these points to enable  
the Board to take appropriate action to cure these problems before  
the Board approves these Rules:

1. Section 13-185-3(b) [on page 185-6]. Intervention.  
Intervention still is restricted far beyond the standard  
applied by other administrative agencies. The department can  
deny an application for intervention if (1) the applicant has  
"substantially the same . . . position of a party already  
admitted to the proceeding" OR (2) "if admission of additional  
parties will render the proceedings inefficient and  
unmanageable."

Since an applicant can be disqualified for either one of the  
above reasons, the Department of Land and Natural Resources  
("DLNR") is given expansive power to deny intervention to  
virtually any person, group or community organization. This  
restrictive approach does not comply with the court decisions

Chairman William Paty  
and Board Members  
Board of Land and Natural Resources  
July 31, 1989  
Page 2

upholding the right to freely intervene. See, Akau v. Olohana Corporation, 65 Haw 383, 386-3990 (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).

This defect can be cured by using the word "and" instead of "or."

2. Section 13-155-14. Conflict resolution process.

The Rules have been amended, apparently in response to my comments that the prior language exceed the authority granted under Act 301. The amended language provides:

"Should administrative or procedural conflicts, as opposed to conflicts of authority, which are not treated in this chapter, arise . . ."

This new language is drafted in a manner which can create rather than solve conflicts.

a. "Authority"

First, the word "authority" is not clearly defined. Is a "conflict of authority" conflict of jurisdiction over a permit? Does "authority" include the authority to determine on the merits whether or not a permit should be issued? If the "authority" which is not treated in this chapter is the authority to decide on the merits on the permit application, then this language would not be in conflict with Act 301.

It is important that this be clarified.

b. Conflict over type of conflict.

The revised language is an invitation for litigation. In many instances, administrative, procedural and substantive areas of conflict overlap. By defining a

Chairman William Paty  
and Board Members  
Board of Land and Natural Resources  
July 31, 1989  
Page 3

conflict as "administrative" or "procedural", the issue can be placed under the ultimate authority of the administrative director (or governor) notwithstanding the substantive aspects of the conflict. The administrative director (or governor) then would decide matters which properly rest within County or State agencies' jurisdiction.

This revised language not only teeters on the brink of exceeding the statutory authority--it actually sets up a process by which jurisdiction or authority of agencies under existing law can be affected or invalidated. This violates Act 301. See, Section 196 D-9, Hawaii Revised Statutes:

"[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."

Since this is a substantial change to the proposed Rules which has not been previously advocated or discussed at the prior public hearing, a further public hearing is required.

I respectfully request the members of the Board not to approve the revised Rules until the above revisions and clarifications are made and a public hearing is conducted.

I would be glad to discuss this matter further with you at your convenience.

Very truly yours,



CYNTHIA THIELEN

CT/bt

cc: Ron Phillips, President  
Puna Community Council

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 13-185-16	Enforcement of district boundary amendments and special permits

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: "Act" means the geothermal and cable system development permitting act of 1988, codified as chapter 196D, Hawaii Revised Statutes.

"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

, which does not affect or invalidate the jurisdiction authority of any agency under existing law.

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.



Section 13-185-2

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

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

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

[Eff: ] (Auth: HRS Sec. 196D-9 )  
(Imp: HRS Secs. 196D-3, HRS 196D-6)

Section 13-185-3 Transfer of functions. (a) 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 this section shall revert to the boundary or zoning in place before the change.

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

- and
- (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 feet of the subject land, the tax map key description of the property; and
  - (3) Effect of any decision in the proceeding on petitioner's interest.

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

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

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

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

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

(c) Regarding transfer of the function of the land use commission concerning changes in zoning, for purposes of geothermal and cable system development projects and for those projects only, for land within agricultural and rural districts the area of which is greater than fifteen acres, special permits of the county planning commission for geothermal and cable development projects shall be subject to approval by the department for unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified.

The department may impose additional restrictions as may be necessary or appropriate in granting such approval, including the adherence to representations made by the applicant. The following guidelines are established in determining an "unusual and reasonable use":

- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, Hawaii Revised Statutes;
- (2) The desired use would not adversely affect surrounding property;
- (3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;
- (4) Unusual conditions, trends and needs have arisen since the district boundaries and rules were established; and
- (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.

(d) 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" (hereinafter Application

for Work), 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 need not be filed. The requirements outlined above will be met via inter-division coordination within the department. A separate application for Application for Work in the shorewaters of the State will no longer be necessary except when: (1) an applicant's proposal is in the conservation district, but does not require a CDUA per the department's determination and (2) an applicant applies for a CDUA, but in the review process the department expresses opposition or objection to the proposal. In areas where the proposed project is in the ocean waters, but not in the conservation district, the applicant is required to file an Application for Work with the department. The department shall inform and consult with, as appropriate, various agencies that have jurisdiction over navigable waters. When directed, the applicant shall notify the United States Coast Guard of such work for publication of a "Notice to Mariners".  
 [Eff: ] (Auth: HRS Sec. 196D-9)  
 (Imp: HRS Sec. 196D-10)

Section 13-185-4 Consolidated permit application and review process. In order to carry out the intent of the Act, 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

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

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

(b) The department shall maintain and update at the geothermal and cable system development permitting information and coordination center a repository of the laws, rules, procedures, permit requirements, and criteria of agencies whose permitting functions are not transferred

to the department for the purpose of consolidated permitting and which have control or regulatory power over any aspect of geothermal and cable systems development projects and of federal agencies having jurisdiction over any aspect of these projects. [Eff: ]  
(Auth: HRS Sec. 196D-9) (Imp: HRS Sec. 196D-8)

Section 13-185-8 Annual report. The department shall submit an annual report to the governor and the legislature on its work during the preceding year. The report shall include the status of geothermal and cable system development projects, any problems encountered, any legislative actions that may be needed to improve the consolidated permit application and review process, and to implement the intent of the Act. [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 applicants 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 applicants to fill out the consolidated geothermal/cable development application form.



Section 13-185-9

(b) The department shall provide advice to applicants when federal and other agencies have indicated that they will not participate in the consolidated permit application and review process. The department shall assist applicants 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.

(a) Applicants 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 consolidated permit applications as follows:

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

(b) The fee shall be payable by checks which shall accompany applications and should be made payable to the State of Hawaii. Checks and the applications 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

(c) 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.

(d) 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. (a) 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-0)  
Building 230  
Fort Shafter, Hawaii 96858

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

Section 13-185-11

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

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

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

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

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

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

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

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

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

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

Office of Hawaiian Affairs  
1600 Kapiolani Boulevard  
Honolulu, Hawaii 96814

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

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

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

(b) 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.

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

Section 13-185-12

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. Applicants shall designate a representative to be available to the consolidated application and review team for purposes of processing consolidated permit applications. 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.

(a) 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 applicants;
- (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



Section 13-185-14 Conflict resolution process.

(a) 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 conflict resolution process described in this section shall be implemented.

provided that  
conflict  
resolution  
process shall  
affect or  
validate  
jurisdiction  
or authority  
of any  
agency under  
existing law.

(b) 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. Applicants 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.

(c) 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.





Section 13-185-15

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

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

Section 13-185-16 Enforcement of District Boundary Amendments and Special Permits. (a) The department shall enforce compliance with conditions placed on reclassifications of district boundaries and terms and conditions of special permitted activities.

(b) 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;