

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

October 9, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

**CONTESTED CASE REGARDING:
APPLICATION FOR GEOTHERMAL EXPLORATION PERMIT
HUALALAI WEST RIFT ZONE, HAWAII**

PETITIONER:

Terri Napeahi
Pele Defense Fund
P.O. Box 4969
Hilo, HI 96720

PERMIT APPLICANT:

University of Hawaii at Manoa
Hawaii Institute of Geophysics and Planetology (HIGP)
1680 East West Road, POST 526B
Honolulu, HI 96825

LANDOWNERS:

Tax Map Key	Owner
(3) 7-3-009:019	RCFC Kaloko Heights, LLC
(3) 7-3-009:025	SCD-TSA Kalako Makai
(3) 7-3-009:028	SCD-TSA Kalako Makai
(3) 7-3-010:032	State - DLNR
(3) 7-3-010:035	AIC Kona, LLC
(3) 7-3-010-041	State - DHHL
(3) 7-4-008:001	Queen Liliuokalani Trust
(3) 7-4-008:005	Lanikai
(3) 7-4-008:047	327 Kona, LLC
(3) 7-4-008:048	Lanikai

BACKGROUND:

On March 27, 2015, the Board approved the issuance of a geothermal exploration permit to the University of Hawaii. The permit allowed UH to conduct a non-invasive geophysical study of the West Rift Zone of Hualalai, just north of Kailua-Kona on the island of Hawaii. (Exhibit 1)

On May 8, 2015, the Department issued the Geothermal Exploration Permit (H-01) to UH to conduct the survey. (Exhibit 2)

UH later identified additional locations along the Hualalai West Rift Zone for inclusion in the project. UH therefore came back to the Board on July 10, 2015 seeking approval for an exploration permit for the additional parcels. The Board approved the request (Exhibit 3), again finding the project was exempt under the Departments Exemption list as approved by the Office of Environmental Quality Control on June 5, 2015, included the following exemption:

Conduct geothermal exploration activity that involves non-invasive geophysical operations for testing and analysis. Activities conducted under this exemption shall comply with all applicable federal, state and county laws, rules, regulations, guidelines and standards. This exemption would not apply in Urban or Conservation land use districts or in sensitive environments.

At the July 10, 2015 Board meeting, Terri Napeahi on behalf of Pele Defense Fund made an oral request for a contested case and followed by a written request received on July 20, 2015. (Exhibit 4)

RECEIVED PETITION:

In the written petition Ms. Terri Napeahi claims an interest in the geothermal exploration permit on behalf of the Pele Defense Fund. The petitioner also claims an interest in an environmental review of the permit under HRS Ch. 343.

ANALYSIS:

The question of whether a particular person has standing involves a three part test:

(1) whether the person “has suffered an actual or threatened injury as a result of the defendant's wrongful conduct,” (2) whether “the injury is fairly traceable to the defendant’s actions,” and (3) whether “a favorable decision would likely provide relief for [the person’s] injury.”

Petitioner failed to provide specific information about the property, the project, or its relationship to either. Petitioner therefore fails to meet any prong of the three part test discussed above. Petitioner has not shown that an actual or threatened injury was suffered a result of the Board’s action, how its injury (if any) is “fairly traceable” to the Board’s action, or how a favorable outcome (presumably the Board’s denial of the permit) would provide relief for the injury.

HAR § 13-1-29.1 allows the board to deny a request for contested case without a hearing under certain circumstances:

The board without a hearing may deny a request or petition or both for a contested case when it is clear as a matter of law that the request concerns a subject that is not within the adjudicatory jurisdiction of the board or when it is clear as a matter of law that the petitioner does not have a legal right, duty, or privilege entitling one to a contested case proceeding.

For the reasons stated above, it is clear as a matter of law that petitioner is not entitled to a contested case. The Board may so decide at a sunshine meeting without a further hearing.

In preparation of this submittal, staff has consulted with the Department of the Attorney General. The Department of the Attorney General supports the staff recommendation.

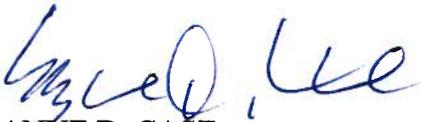
RECOMMENDATION

That the Board of Land and Natural Resources deny the request for a contested case in regards to Application for a Geothermal Exploration Permit, Hualalai West Rift Zone, Hawaii by Ms. Terri Napeahi.

Respectfully submitted,


CARTY S. CHANG
Chief Engineer

APPROVED FOR SUBMITTAL:


SUZANNE D. CASE
Chairperson

- Exhibit(s):
- 1 March 27, 2015 Board Approval (Item L-2)
 - 2 Geothermal Exploration Permit H-01
 - 3 July 10, 2015 Board Approval (Item L-5)
 - 4 Petition for Contested Case Hearing by Terri Napeahi

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

July 10, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Application for Geothermal Exploration Permit and Declaration of Exemption from Chapter 343, HRS. Hualalai West Rift Zone, Hawaii TMK: (3) 7-3-009:019, 025, 028, (3) 7-3-010:032, 035, 041 (3) 7-4-008:001, 005, 047, 057

APPLICANT:

University of Hawaii at Manoa (Nicole Lautze)
Hawaii Institute of Geophysics and Planetology (HIGP)
1680 East West Road, POST 526B
Honolulu, Hawaii 96825

University of Hawaii at Hilo (Don Thomas)
The Center for the Study of Active Volcanoes (CSAV)
200 West Kawili Street
Hilo, Hawaii 96720

BACKGROUND:

At its regular meeting of March 27, 2015, under agenda item L-2, the Board approved the subject matter regarding the issuance of a geothermal exploration permit for certain locations along the Hualalai West Rift Zone. A copy of the approved submittal is attached as **Exhibit 1**.

After March 27, 2015, the applicant has redefined the project in order to maintain the integrity of the study. As such, additional locations along the Hualalai West Rift Zone have been identified for the project. This board action is requesting the approval of additional locations, along the Hualalai Rift Zone, which the applicant has identified they wish to include in the project.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule, Section 11-200-8(A), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 5, "Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resources." An accompanying Environmental Assessment Exemption Notification is attached as **Exhibit 2**.

ITEM L-5

EXHIBIT 1

LOCATION:

A map of the project location is attached as **Exhibit 3**.

Tax Map Key	This Board Action	Previously Approved	Owner	State Land Use
(3) 7-1-001:006		Yes	State	Agriculture
(3) 7-2-002:001		Yes	Kamehameha Schools	Agriculture*
(3) 7-2-003:003		Yes	Kamehameha Schools	Agriculture*
(3) 7-2-004:004		Yes	State	Agriculture*
(3) 7-2-005:008		Yes	State	Agriculture
(3) 7-2-007:001		Yes	GKK Makalei	Agriculture*
(3) 7-3-009:019	Yes		RCFC Kaloko Heights, LLC	Agriculture
(3) 7-3-009:025	Yes		SCD-TSA Kalako Makai	Agriculture*
(3) 7-3-009:028	Yes		SCD-TSA Kalako Makai	Agriculture
(3) 7-3-010:032	Yes		State	Agriculture
(3) 7-3-010:035	Yes		AIC Kona, LLC	Agriculture
(3) 7-3-010-041	Yes		State - DHHL	Agriculture
(3) 7-4-002:006		Yes	Queen Liliuokalani Trust	Agriculture
(3) 7-4-002:017		Yes	Palani Ranch	Agriculture
(3) 7-4-002:018		Yes	Palani Ranch	Agriculture
(3) 7-4-008:001	Yes		Queen Liliuokalani Trust	Agriculture*
(3) 7-4-008:005	Yes		Lanikai	Agriculture
(3) 7-4-008:047	Yes		327 Kona, LLC	Agriculture
(3) 7-4-008:057	Yes		Lanikai	Agriculture

*Project is restricted to agriculture zoned areas only.

RECOMMENDATION:

That the Board of Land and Natural Resources:

- (1) Authorize the approval and issuance of a Geothermal Exploration Permit submitted by the University of Hawaii for non-invasive exploration activities in the areas specified; and
- (2) Authorize the Chairperson to issue a Geothermal Exploration Permit subject to terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- (3) Declare this project exempt from the preparation of an environmental assessment pursuant to Chapter 343 HRS and Chapter 11-200 HAR; and

- (4) Authorize the Department to oversee the performance of the permitted work and take appropriate action including but not limited to modification to permit documents or conditions, issuance of fines and/or revocation of the permit, if necessary.

Respectfully submitted,



CARY S. CHANG
Chief Engineer

Approved For Submittal:



SUZANNE D. CASE
Chairperson

- Exhibits: 1. March 27, 2015 Approved Board Action
 2. EA Exemption Notification
 3. Project Map

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

MAY 08 2015

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

W. ROY HARDY
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Geothermal Exploration Permit (H-01)
Hualalai West Rift Zone, Hawaii

To: University of Hawaii at Manoa
Hawaii Institute of Geophysics and Planetology (HIGP)
1680 East West Road, POST 526B
Honolulu, Hawaii 96825

University of Hawaii at Hilo
The Center for the Study of Active Volcanoes (CSAV)
200 West Kawili Street
Hilo, Hawaii 96720

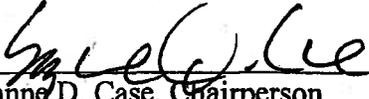
Your application dated December 8, 2014, amended on April 16, 2015, for a permit to explore the West Rift Zone of Hualalai using a non-invasive and passive geophysical methodology is approved.

Exploration activity: Magnetotelluric (geophysics)
Locations (TMK): (3) 7-1-001:006, (3) 7-2-002:001, (3) 7-2-003:003,
(3) 7-2-004:004, (3) 7-2-005:008, (3) 7-2-007:001,
(3) 7-4-002:006 & 017, 018

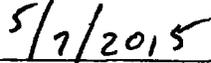
Approval is granted in accordance with the Department of Land and Natural Resources' (Department's) Administrative Rules, Chapter 13-183, Hawaii Administrative Rules (HAR), and subject to the following conditions:

- (1) All work shall be performed in accordance with the permission and terms of the occupiers of the land, the exploration program submitted with your application, the Department's Administrative Rules Chapter 13-183, HAR, and all other applicable Federal, State, and County laws, ordinances or rules;
- (2) The permittee, its successors and assigns, shall indemnify, defend, and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising from any act or omission of the applicant, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

- (3) The permittee shall observe and comply with all valid requirements of County, State and Federal authorities and regulations to the land and permittee's operations including but not limited to, all water and air pollution control laws and those relating to the environment;
- (4) The permittee shall notify the Department, in writing, of the start date of field operations at least 48 hours in advance;
- (5) If changes to the proposed exploration program are contemplated, the permittee shall obtain the Chairperson's approval prior to implementing such changes;
- (6) The permittee shall submit to the Chairperson a completion report within 6 months after the expiration of the permit. The report shall include at a minimum
 - a. Project summary. Report shall describe pertinent work done for the project.
 - b. Project history. Report shall include a daily summary of the field activities undertaken during the project.
 - c. Data. Report shall include all the data gathered by the project and any interpretations made of the data.
- (7) This permit shall expire 365 days from the date of issuance.
- (8) The Permittee shall submit to the Chairperson a notice that all requirements outlined by the State Historic Preservation Division (SHPD), by SHPD prior to commencement of any activities in this permit.
- (9) The Permittee shall submit to the Chairperson a notice of permission by the land owners prior to the commencement of any activities in the following TMK: (3) 7-2-004:004, (3) 7-2-005:008.



Suzanne D. Case, Chairperson
Department of Land and Natural Resources



Date of Issuance

c: Land Board Member
Hawaii County Planning Department
Department of Business, Economic Development and Tourism/Strategic Industries Division
Eric Tanaka, Engineering Division, Hilo

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

March 27, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

**Application for Geothermal Exploration Permit
Hualalai West Rift Zone, Hawaii
TMK: (3) 7-1-001:006, 7-2-002:001, 7-2-003:003, 7-2-004:004,
7-2-005:008, 7-2-007:001, 7-4-002:006, 7-4-002:017 & 18**

APPLICANT:

University of Hawaii, Hawaii Institute of Geophysics and Planetology
(c/o Nicole Lautze, Assistant Researcher)

BACKGROUND:

In accordance with Hawaii Administrative Rules Chapter 13-183, the University of Hawaii has submitted an application for a Geothermal Exploration Permit to conduct a non-invasive geophysical study of the West Rift Zone of Hualalai, just north of Kailua Kona on the Island of Hawaii.

The proposed exploration activities are for scientific data collection only. The University of Hawaii is proposing to use a standard exploration method called a magnetotelluric survey (MT). Full details about the survey method and the proposed activity are described in the application, attached as **Exhibit 1**.

The proposed project is part of an overall effort referred to as the "Geothermal Resources Exploration Plan for Hawaii" being undertaken by the applicant. The project is being supported by funding from both the U.S. Department of Energy and the Department of Land and Natural Resources. The initial focus of the project will be a MT-based assessment of the Hualalai area and is the first exploration permit application being submitted for this project.

The application has been reviewed by the State Historic Preservation Division and the Office of Conservation and Coastal Lands, who have provided comments noting specific requirements that shall be met by the applicant, prior to the commencement of the proposed survey. These comments are included as part of **Exhibit 2** and the conditions specified therein have been incorporated as part of the attached draft permit (see **Exhibit 3**).

**Approved by the Board of
Land & Natural Resources
at the meeting held on**

ITEM L-2

~~MAR 27 2015~~

w/ amendments

The original application had identified additional areas for the project, but since the land use districts in those areas are classified as either Urban or Conservation lands, those particular areas of the project have been omitted from the final project application at the applicants request (see **Exhibit 5**).

LOCATION:

Tax Map Key	State Land	Owner	State Land Use
(3) 7-1-001:006	Yes	State	Agriculture
(3) 7-2-002:001		Kamehameha Schools	Agriculture*
(3) 7-2-003:003		Kamehameha Schools	Agriculture*
(3) 7-2-004:004	Yes	State	Agriculture*
(3) 7-2-005:008	Yes	State	Agriculture
(3) 7-2-007:001		GKK Makalei	Agriculture*
(3) 7-4-002:006		Queen Liliuokalani Trust	Agriculture
(3) 7-4-002:017		Palani Ranch	Agriculture
(3) 7-4-002:018		Palani Ranch	Agriculture

Project is restricted to agriculture zoned areas only.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8(A), the subject request is exempt from preparation of an environmental assessment pursuant to Exemption Class No. 5, “Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resources.” See **Exhibit 4**.

RECOMMENDATION:

That the Board of Land and Natural Resources approve the application for a Geothermal Exploration Permit submitted by the University of Hawaii for non-invasive exploration activities, in the area specified and authorize the Chairperson to issue the permit subject to the following conditions:

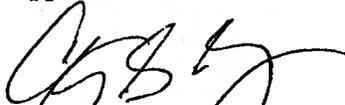
- (1) That the University of Hawaii comply with all applicable statutes, ordinances, rules and regulations of the Federal, State, and County governments; and

- (2) That the University of Hawaii shall submit evidence of compliance with all other terms and conditions as may be prescribed by the Chairperson prior to the commencement of any proposed work.

Respectfully submitted,


CHRIS T. TAKASHIGE
Acting Chief Engineer

Approved For Submittal:


CARTY S. CHANG
Interim Chairperson

Attachments

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complimentary fax cover sheet

number of pages including cover sheet: 9

attention to: Vincent Lee date: 7-20-15

company: Pete Defense Fund from: Terri L. Napierki

phone #: 808-587-0390 company: DLNR

fax #: 587-0390 senders phone #: 315-9996

comments: Please send me a message that you received this application Form APO-11 : bend me an okay form fax, email (petedefensefund@gmail.com) or call^{text} Terri L. Napierki 808-315-9996

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ods06472cpc@officedepot.com

Office DEPOT.



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

RECEIVED
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DEPT. OF LAND
NATURAL RESOURCES
STATE OF HAWAII

OFFICIAL USE ONLY	
Case No.	Date Received July 10, 2015
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:
 Department of Land and Natural Resources
 Administrative Proceedings Office
 1151 Punchbowl Street, Room 130
 Honolulu, Hawaii 96813
 Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
- All materials, including this form, shall be submitted in three (3) photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Pele Defense Fund	2. Contact Person Terri L. Napeahi	
3. Address P.O. Box 4969	4. City Hilo	5. State and ZIP HI 96720
6. Email peledefensefund@gmail.com	7. Phone (808) 315-9996	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name James M. Dombroski	10. Firm Name Law Offices of James M. Dombroski	
11. Address P.O. Box 751027	12. City Petaluma	13. State and ZIP California 94975
14. Email jdomski@aol.com	15. Phone (707) 762-7807	16. Fax (707) 769-0419

C. SUBJECT MATTER	
17. Board Action Being Contested	
18. Board Action Date	19. Item No.
20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action	
21. Any Disagreement Petitioner May Have with an Application before the Board	
22. Any Relief Petitioner Seeks or Deems Itself Entitled to	
23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest	
24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR	

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Terri L. Napeahi Terri L. Napeahi July 19, 2015
 Petitioner or Representative (Print Name) Signature Date

17. Board Action Being Contested

We are contesting the Board of Land and Natural Resource Commission's approval to Agenda Item L ENIGEERING - Application for Geothermal Exploration Permit and Declaration of Exemption from Chapter 343, HRS. Hualalai West Rift Zone, Hawai'i Tax Map Key: (3) 7-3-009:019,025,028, (3) 7-3010:032, 035, 041, (3) 7-4-00:001, 005,047,057.

18. Board Action Date

July 10, 2015

19. Item No.

Engineering L 5

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

I am of Native Hawaiian descent and a member of the Pele Defense Fund organization concerned with Hawaiian religious and cultural traditions and practice and seeking to assure compliance with applicable law.

21. Any Disagreement Petitioner May Have with an Application before the Board

We are petitioning the applicability of the exemption granted to the project as a whole and its potential impacts which require environmental review. Impacts on Native Hawaiian traditional spiritual beliefs, historical and burial sites also including the Na'alahale registered trails. Community health is already an issue with the only geothermal plant existing since the early 80's PGV in Puna, Hawaii. Environmental degradation of land and ocean resources have already been noted by the processes and techniques used to operate Geothermal Development. The potential impacts it will have economically for business and the tourism industry of the Big Island.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

The relief sought would be for the Board to rescind the exemption and require an environmental assessment.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

My participation would serve the public interest and assist the board by assuring that persons concerned with Hawaiian Religious and cultural traditions and practice have an opportunity to present the grounds that appear to require an environmental assessment. Also allow others who live, work and own businesses in close proximity of the proposed testing and exploration sites to present their ground as well.

24. Any other information that may assist the Board in determining whether petitioner meets the criteria to be a party under Section 13-1-31, HAR (Attached is a letter from Attorney At Law James M. Dombroski concerning Pele Defense Fund's request for a contested case.)

Law Offices of
JAMES M. DOMBROSKI

ATTORNEY AT LAW
LICENSED IN CALIFORNIA AND HAWAII

P.O. BOX 751027
PETALUMA, CALIFORNIA 94975-1027

TELEPHONE (707) 762-7807

FAX (707) 769-0419

Email Address: jdomski@aol.com

DLNR Permit for Geothermal Exploration at Hualalai

Query: is it the intent of the applicant to play hopscotch with the sensitive environment and urban and conservation district lands until it finally reaches a point in the larger project where it is compelled to comply with environmental review requirements?

There can be little doubt that the present project and its supporters are seeking resources for the sake of geothermal development on the west side of Hawai'i Island. The proposed action is plainly, as reported, just a phase or increment and a necessary precedent of a much larger undertaking. The locations identified for research include sensitive environments. Isolating this particular phase or component of the larger undertaking for the stated purpose of avoiding environmental review is an improper segmentation of the larger project.

It is the opinion of this office that the DLNR permit for geothermal exploration at Hualalai was improvidently granted due to (1) inapplicability of the exemption in view of the location's sensitive environment and (2) improper segmentation of the proposed action to avoid the need for environmental review.

1. Hualalai is a sensitive environment

DLNR Exemption Class 5 (OEQC approval June 5, 2015) includes the following paragraph:

11. Conduct geothermal exploration activity that involves non-invasive geophysical operations for testing and analysis. Activities conducted under this exemption shall comply with all applicable federal, state and county laws, rules, regulations, guidelines and standards. This exemption would not apply in Urban or Conservation land use districts or in sensitive environments.

[See <http://1.usa.gov/1CJL1ee>]

It would be reckless to deny that Hualalai is a sensitive environment. Proposed test sites are close to Honuauia forest reserve on the southwestern flank of the volcano and also approach the Pu'u Wa'a Wa'a Forest Reserve, State Wildlife Sanctuary and Forest Bird Sanctuary. While sensitive resources of those conservation areas do not stop at their legal boundary, the proximity of the proposed activity to the protected conservation lands is notable.

An internet article titled *The Many-furrowed Hill* [see www.puuwaawaa.org/] begins:

Hawaii residents and visitors alike are drawn to this magnificent natural landmark nestled near the northern flank of Hualalai mountain. Pu`u Wa`awa`a is the namesake of the greater ahupua`a (traditional land management area) in the North Kona district that encompasses over 35,000 acres of land on the leeward side of Hawaii Island, spanning eight miles from an elevation of 6,500 feet to sea level at Kiholo Bay. An area with a deep history, diverse biological features, unique geological formations, and amazing natural beauty, this ahupua`a is managed as both a State Forest Reserve in the mauka (mountainous) and State Park in the makai (coastal) lands.

From *Wikipedia*:

Several ecological reserves lie on the flanks of Hualalai. The Pu`u Wa`a Wa`a forest sanctuary was established in 1992 (along with the Laupahoehoe sister reserve on Mauna Kea) as a testbed for long term ecological research about Hawaiian moist forest and dry forest biomes, and lies within a mile of the volcano's summit on its northwestern flank. Elevation differs from sea level near the coastal edge to 6,300 ft (1,920 m) near the summit. Median annual rainfall is about 48.7 in (119 cm). Plentiful lava flows from the 19th century provide unique niches for vegetative and soil growth in the region. The southern section of the reserve, closest to the summit, has been split into a bird sanctuary.

The Honuaia forest reserve on the southwestern flank of the volcano at 19°30'25"N 155°54'41"W, preserves an extensive koa (*Acacia koa*) forest stand, with smaller Naio (*Myoporum sandwicense*) and Mamane (*Sophora chrysophylla*) trees and an undergrowth of `Akala (*Rubus hawaiiensis*) and various ferns. The reserve measures 655 acres (265 ha) and protects an ecosystem that has since been largely deforested in the surrounding area. The Wai Aha spring reserve on the lower slopes of the mountain is somewhat swampy and is home to the flowering evergreen ohia (*Metrosideros polymorpha*), the woody climber `le`ie (*Freycinetia arborea*), and a dense undergrowth of `Ama`u (*Sadleria cyatheoides*).

[see <http://bit.ly/1gHusvD>]

The applicant's project description portrays the placement of numerous wires below the ground surface connected to instruments powered by automobile batteries, and further says:

... in areas that are heavily vegetated, we may now to clear some vegetation to allow us to weight the entire length of the cables to the ground with sand bags or soil.... The field crew will restore each station site to its original condition, by filling in the electrode holes and the antenna trenches, as they remove the equipment.

For each area that we expect to survey we will meet with the landowners or land manager to determine whether there are any sensitive areas, for example cultural features, sensitive plant or animal species, that we need to avoid or be particularly cautious about impacting. We can then plan the survey and site layout to avoid those sensitive areas of the property. (Emphasis supplied.)

The August 29, 2014, *Permit for Access, Collecting and Research* on state lands issued to the applicant for this proposed action included as a requirement the special condition that there will be "an initial site visit with DOFAW staff to the four sites listed above (and any additional needed) to make sure no native and or threatened and endangered plants or animals occur in, or will be affected by the proposed project areas." While the four specified sites were part of what was omitted in the second

application, the relevance of surveying any additional sites needed in areas affected by the proposed project remains.

The January 26, 2015, comments of the DLNR's Historic Preservation Division refer to "multiple historic properties including burial sites have been recorded" and say that "[t]here is a distinct possibility that historic properties could be impacted by the proposed project. Therefore, we request that the proposed test sites are subject to an archaeological field inspection by a qualified archaeologist...." Despite the applicant's attempt to redraw its exploration map, it is obviously playing with fire in that regard.

The Hualalai environment is replete with sensitive areas, both natural and cultural.

The applicant has admitted in its application that its proposed action will take place in a sensitive environment. Now it has proposed to hopscotch around sensitive locations based upon hearsay obtained by casual interviews. That is not adequate to support the application of the Class 5 exemption that explicitly excludes its applicability in sensitive environments. The bane of most sensitive environments in Hawai'i is the introduction of invasive species and a common source of such harm, as is well-known to portions of the DLNR charged with their control, is the transfer of invasive material by such transient activity as the applicant has proposed. Further, the intrusion upon cultural sites, including burials, is a recognized risk of the exploration activity.

2. Project Segmentation

From the State Office of Environmental Quality Control (OEQC) publication *Practice and Implementation of HEPA (2102)*, § 1.9 Phased Actions, at page 8

Section 11-200-7, HAR, states that "[a] group of actions proposed by an agency or an applicant shall be treated as a single action when:

- A. The component actions are phases or increments of a larger total undertaking
- B. An individual project is a necessary precedent for a larger project
- C. An individual project represents a commitment to a larger project
- D. The actions in question are essentially identical and a single statement will adequately address the impacts of each individual action and those of the group of actions as a whole"

A proposed action must be described in its entirety and cannot be broken up into component parts, which if each is taken separately, may have minimal impact on the environment. Segmenting a project in this incremental way to avoid the preparation of an environmental impact statement is forbidden. If a project includes a later phase that cannot be fully described in the current EA because it is only likely to be implemented in the distant future (as opposed to the "reasonably foreseeable future"), the EA should disclose as much detail as possible about the future phase. Should the future phase of such a project eventually be proposed, a new environmental review document will be required at that time.

To comply with HAR 11-200-7, where a smaller actions are associated with a larger project, those actions must be combined to avoid segmentation of environmental review. The Hawai'i Supreme Court has said that the agency receiving the request for approval of the action is responsible for preparation of the environmental assessment and isolating a "particular component of the development for environmental assessment

would be improper segmentation of the project." *Kahana Sunset Owners v. County of Maui*, 86 Haw. 66, 74, 947 P.2d 378, 386 (1997).

According to the applicant and news reports, the present Hualalai project is seeking its first exploration permit as part of an overall effort referred to as the "Geothermal Resources Exploration Plan for Hawaii," funded by DLNR and the U.S. Department of Energy.

The proposed project is part of an overall effort referred to as the "Geothermal Resources Exploration Plan for Hawaii" being undertaken by the applicant. The project is being supported by funding from both the U.S. Department of Energy and the Department of Land and Natural Resources. The initial focus of the project will be a MT-based assessment of the Hualalai area and is the first exploration permit application being submitted for this project.
 March 27, 2015, *Application for Geothermal Exploration Permit*

The *Hawaii Geothermal Assessment and Roadmap Report* compiled by the Pacific International Center For High Technology Research (PICHTR) for the University of Hawai'i's Hawaii Natural Energy Institute in January 2013, at page 18, says, "Dr. Thomas's current project, awarded by U.S. DOE through Recovery Act funding, focuses primarily on non-invasive resource exploration. The project is also co-funded by the State through DLNR and HNEI" ... and "the project's industrial partner, Avalor Energy, also a technology partner, will be producing a data visualization software product from the DOE project. All data will be made available through the National Geological database." "Dr. Thomas confirmed that a good future role for UH is to continue exploration research on behalf of the state including possibly drilling more slim holes to gain better data." The Report later describes (at page 34) Avalor Energy as "interested in geothermal development in Hawai'i" and says it "is currently involved with the DOE-funded project in coordination with Dr. Donald Thomas at UH to conduct geophysical survey work at Mauna Kea summit, Kilauea, the Kilauea East Rift zone, Haleakala, and other sites as funding allows. Previous core samples will be correlated to computational results to validate the modeling techniques that should lead to more robust knowledge about potential developable resources.... Avalor's key priority at present is securing land position...."

The date of the PICHTR Report (January 2013) suggests that the present proposed action may have changed to some degree from what is described above, but the gist of the above information is valuable still: that is, the initial non-invasive resource exploration has an explicit commercial context for further work to identify resources for geothermal development – and that includes continued exploration with a likely possibility of drilling test holes to gain better data.

A November 10, 2012, commentary in the Honolulu Star-Advertiser [see republication at <http://bit.ly/1MBecq3>] titled *The Big Isle's west side is where more power is needed* said, "Hawaii Electric Light Co.'s recently launched search for developers to expand geothermal energy production on Hawaii island emphasizes the potential benefits of locating new production facilities on the west side of the island where population growth is the fastest."

News reports have said, "Donald Thomas, director of The Center for the Study of Active Volcanoes at UH-Hilo, said the main reason for adding additional sites was to avoid costly environmental assessments that were required on some of the original parcels." See Hawai'i Tribune Herald, July 12, 2015, *Land Board approves additional sites for Hualalai geothermal survey* [see <http://bit.ly/1LvTXLz>].

3. Conclusion

The DLNR permit for geothermal exploration at Hualalai was improvidently granted due to (1) inapplicability of the exemption in view of the location's sensitive environment and (2) improper segmentation of the proposed action to avoid the need for environmental review.

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