



The Judiciary, State of Hawaii

Testimony to the House Committee on Energy and Environmental Protection

Representative Chris Lee, Chair

Representative Cynthia Thielen, Vice Chair

Thursday, January 31, 2013, 8:30 a.m.

State Capitol, Conference Room 325

by

Elizabeth Kent

Director

Center for Alternative Dispute Resolution

(WRITTEN TESTIMONY ONLY)

Bill No. and Title: House Bill No. 106, Relating to Geothermal Resources.

Purpose: Repeals Act 97, SLH 2012, relating to geothermal resources which differentiates between "geothermal resources exploration" and "geothermal resources development." Designates "geothermal resources exploration" and "geothermal resources development" as permissible uses in all state land use districts and certain conservation district zones in accordance with chapter 205, HRS. Enacts geothermal resource subzones, designation of areas as geothermal resources subzones, and exploratory wells, which were repealed by Act 97.

Judiciary's Position:

The Judiciary takes no position on the merits of this bill. However, one of the main focuses of the Center for Alternative Dispute Resolution is mediation, and in the past we have been told it is useful when we provide technical advice. This testimony relates only to the sections of the bill referring to mediation.

On pages 5 (lines 8 - 11) and 7 (lines 9 - 12), the mediator is required to "submit a written recommendation to the county authority . . .". Additionally, page 10 (lines 7 - 8) also refers to written recommendations to be submitted by the mediator. Generally mediators do not submit recommendations because mediators do not make decisions for the parties. In fact, providing recommendations is prohibited under the Uniform Mediation Act (UMA)(unless agreed to in writing by the parties), which has been introduced via Senate Bill No. 966 and House Bill No.

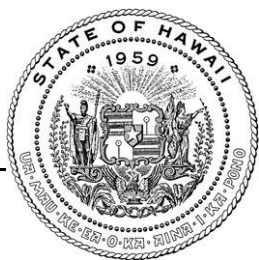


House Bill No. 106, Relating to Geothermal Resources
House Committee on Energy & Environmental Protection
Thursday, January 31, 2013
Page 2

418. Should either of these bills be signed in to law and the UMA adopted, provisions included in House Bill No. 106 and the UMA will be in contravention of each other.

There are at least two ways to address this. One is to delete the above-mentioned sentences on pages 5, 7 and 10. The other is to call the process “dispute resolution” instead of “mediation.” This second approach was used in Act 48 (mortgage foreclosure dispute resolution).

Thank you for the opportunity to testify on House Bill No. 106.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Thursday, January 31, 2013
8:30 AM
State Capitol, Conference Room 325

in consideration of
HB 106
RELATING TO GEOTHERMAL RESOURCES.

Chair Lee, Vice Chair Thielen, and Members of the Committee,

The Department of Business, Economic Development, and Tourism (DBEDT) respectfully offers comments on HB 106, which repeals Act 97 and thus, eliminates definitions distinguishing between geothermal exploration and geothermal development, reauthorizes County Geothermal Resource Permits (GRPs) and re-establishes a procedure for designating geothermal subzones.

We do not support repealing Act 97. Act 97 provides much needed definitions and distinction between the regulation of geothermal resource exploration and geothermal resource development. These new definitions resolve inconsistency in the statutes and provide clarity regarding permitting and mining lease requirements at the state and county level.

An inadvertent consequence of Act 97 was the elimination of statutory County authority to issue GRPs. DBEDT supports the restoration of County GRP authority. We respectfully

recommend that you consider amending Act 97 by restoring the Counties' Geothermal Resource Permit authority.

Act 97 also reduced the layers of State regulation concerning geothermal development through the elimination of subzone designation, helping the State meet its statutory energy goals and reducing project costs passed onto ratepayers. Nonetheless, multiple opportunities for environmental mitigation measures and public input remain in place in the State permitting processes and will be restored at the County level if the GRPs are reauthorized. Hence, we do not support the restoration of subzones.

Thank you for the opportunity to offer these comments.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
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

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
ENERGY AND ENVIRONMENTAL PROTECTION

Thursday, January 31, 2013
8:30 A.M.

State Capitol, Conference Room 325

In consideration of
HOUSE BILL 106
RELATING TO GEOTHERMAL RESOURCES

House Bill 106 proposes to repeal Act 97, Session Laws of Hawaii 2012, relating to geothermal resources which differentiates between "geothermal resources exploration" and "geothermal resources development", designates "geothermal resources exploration" and "geothermal resources development" as permissible uses in all state land use districts and certain conservation district zones in accordance with Chapter 205, Hawaii Revised Statutes, and reenacts geothermal resource subzones, designation of areas as geothermal resources subzones, and exploratory wells, which were repealed by Act 97. The Department of Land and Natural Resources (Department) does not support the repeal of Act 97 and offers the following comments:

Act 97 provides much needed definitions and distinction between the regulation of geothermal resource exploration and geothermal resource development. These new definitions resolve ambiguities in the statutes and provide clarity regarding permitting and mining lease requirements. The Department stresses the need to maintain the definitions codified by Act 97.

Act 97 also reduced a layer of State regulation concerning geothermal development through the elimination of geothermal resource subzone designations. If a location has the potential for the production of renewable geothermal energy, the development of the site can be properly authorized through a permitting and review process which is not dependent upon prior subzone designation. Landowner rights were not affected, as neither geothermal resources exploration nor geothermal resources development can take place without the permission and consent of the surface landowner. Eliminating geothermal subzone designation requirements streamlined a

portion of the regulatory process and could encourage developers who are ready and willing to help Hawaii meet its clean energy goals. As such, the Department does not support the restoration of geothermal resource subzones.

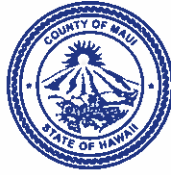
This measure also proposes to restore county authority to issue geothermal resource permits. The Department does not oppose this provision which would restore home rule.

Thank you for the opportunity to provide testimony on this measure.

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

House Committee on Energy and Environmental Protection
Rep. Chris Lee, Chair
Rep. Cynthia Thielen, Vice Chair

January 31, 2013
8:30 am
Conference Room 325

Statement of William Spence
Maui County Planning Director

Maui County Supports House Bill 106.

The Bill would re-establish the counties' authority to issue Geothermal Development Permits on lands under the clear jurisdiction of the county. The bill would establish time frames in which the Geothermal Development Permit would need to be heard and processed. Maui County does have comments and concerns over the timing and processing of Geothermal Development Permits. These concerns are as follows:

205-A (e), page 7, line 1 – Indicates that any person submitting comments and requesting mediation can do so at the initial public hearing. Maui County believes that a person seeking mediation should make this request ten days prior to the initial public hearing; if the concerns of the requesting party are addressed during initial public hearing, the party can withdraw its request for mediation and action by the Commission can occur.

205-A (e), page 7, line 2 – Indicates that the County authority shall appoint a mediator within five days. The County authority in Maui's case is the Planning Commission. The Planning Commission is made up of volunteer citizens and is subject to the Sunshine Law that requires six day notice prior to meetings. If the issue noted above regarding the deadline for mediation requests is not addressed, the counties will need to have mediators on standby and under contract prior to the initial public hearing, which is impractical and burdensome.

205-A (e), page 7, line 14 – Indicates that the authority will take comments from the general public on the item up to ten days after the second hearing. This should be changed to ten days before the hearing. The authority should then be able to take final action at the end of the second hearing.

205-A (e), page 7, lines 18 and 19 – Indicates that there has to be a third meeting in which the authority shall take action. Again, Maui County does not believe a third meeting is required if the issues raised above are amended to require testimony at or prior to the meeting.

205-A (f), page 8, lines 18 thru 22 – Should be consistent or consolidated with 205-A (e), page 7, line 1. This section indicates that a person can request mediation up to five days after the initial public hearing. Again, Maui County believes that any request for mediation should be submitted ten days prior to the initial public hearing and that the party should have the opportunity to withdraw its request.

Maui County supports HB106 with minor amendments to improve the processing of Geothermal Development Permits.

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Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

January 31, 2013, 8:30 A.M.
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 357

Aloha Chair Lee and Members of the Committee:

The Sierra Club, Hawai'i Chapter, with 10,000 dues-paying members and supporters, **supports** HB 106. This measure ensures a process to determine the best areas to site geothermal activity.

The Sierra Club recognizes that, among the potential energy sources available to Hawaii, geothermal energy represents an important resource. The Club supports the diversification of Hawaii's energy options for our island communities and supports the careful utilization of a local resource.

It should be noted that exploitation of geothermal resources can result in detrimental impacts on the environment and public health. Among these are the emissions of toxic gases and chemical substances that could result in the degradation of air quality, pollution of surface waters and groundwater, damage to living organisms, and hazards to public health. Additional problems arise from the heavily industrial character of geothermal operations for electrical generation, and the frequent occurrence of exceptional natural, scenic, cultural and archaeological values in geothermal resource areas.

To this end, we support HB 357 as it ensures communities and concerned citizens have an early and direct role in the planning and decision-making processes associated with geothermal development. Subzones would assist with the adoption of appropriate environmental and social safeguards, including appropriate buffer zones, for proposed geothermal projects. Further, a more holistic approach could restrict development from lands included in or adjacent to federal, state, or local park systems; in wildlife refuges and management areas; or in areas known to provide habitat for rare or endangered species.

We note the administration is looking ways to simplify geothermal development. It might be possible to eliminate the mining permit requirement if those considerations are built into the subzone designation as a material condition to proceeding. Mahalo for the opportunity to testify.



Indigenous Consultants, LLC

Mililani B. Trask, Principal

P.O.Box 6377 ❖ Hilo, HI 96720

Mililani.trask@gmail.com



Date: Thursday, January 29, 2013

Time: 8:30 am

Place: Conference Room 325

Committees: House EEP

Referred: House EEP, WAL, FIN, referral sheet 2

Re: Geothermal Resources, Exploration; Subzones

Aloha Representatives,

Indigenous Consultants (IC) is a Hawaii based, indigenous LLC owned and operated by Native Hawaiians. It was created to assist indigenous peoples in developing their renewable energy resources in ways that are: Culturally appropriate, environmentally green and sustainable, socially responsible and economically equitable and affordable. For several years the IC has worked with Innovations Development Group in New Zealand and indigenous Maori developing geothermal resources, which are trust assets of Maori Land Trusts. In addition, the IC has acted as a consultant to other indigenous people in Hawaii and Asia who are addressing development of their trust renewable energy resources in ways that; directly benefit their people, bring in revenues, create small business opportunities and ensure fair & affordable rates to consumers, including themselves and their communities.

Indigenous Consultants supports the inclusion of the County in the geothermal resource permitting process, but opposes the reestablishment of geothermal subzones.

Inclusion of the Counties:

The deletion of the Counties from the geothermal permitting process was not an intended outcome of last years' legislation. It was an inadvertent outcome of the deletion of geothermal subzones. The counties need to be involved in the process as part of their jurisdictional authority over County planning.

Opposition to the Inclusion of Geothermal Subzones:

The IC does not support restoring language relating to geothermal subzones.

Today, geothermal resources are being developed all over the world. Scientific & Industry standards exist today that were not in existence 30 years ago when geothermal development first came to Hawaii. Today, Geothermal testing, exploration and assessment precedes the designation of areas for geothermal development. In today's

world, when areas are designated for geothermal development, the practice is to identify an area for the project footprint. This was not done in Hawaii 30 years ago when huge areas of the Big Island were put into subzones for political reasons rather than scientific reasons. Thirty years ago environmentalist decided what they wanted to conserve & agreed to “sacrifice & give up” the east rift zone. Thirty years ago powerful political entities & personalities wanted their lands to be designated so that the value of their lands would greatly increase. These are not valid reasons to designate a geothermal subzone, nor were the areas designated the best areas for geothermal development.

Developing geothermal resources on Hawaii Island simply does not require putting most of Puna & all of the East Rift Zone into a geothermal subzone.

Regards,

A handwritten signature in black ink, appearing to read "Mililani B. Trask", with a horizontal line extending to the right.

Mililani B. Trask – Indigenous Consultants LLC

UNITE HERE!

LOCAL 5 HAWAII

Eric Gill, Financial Secretary-Treasurer

Hernando Ramos Tan, President

Godfrey Maeshiro, Senior Vice-President

Thursday, January 30, 2013

The Honorable Rep. Chris Lee - Chair and Committee Members
Hawaii State Legislature
House Committee on Energy & Environmental Protection
State Capitol
415 S. Beretania Street

RE: HB 106 Relating to Geothermal Resources

Chair Lee, Vice-Chair Thielen, and members of the House Committee on Energy & Environmental Protection:

UNITE HERE Local 5, a local labor organization representing nearly 10,000 hotel, health care and food service workers employed throughout the State, hereby registers our support for House Bill 106, relating to Geothermal Resources.

We appreciate your willingness to hear this bill and commend the efforts being made by this Committee and others in the community towards repealing Act 97.

It is our position that Act 97, which would allow geothermal exploration and development on all state land use categories, as well as similar laws such as Act 55, are not in the public's interest and should be repealed in its entirety.

While we recognize the need to find alternative sources of energy to move us towards greater self-sufficiency, we are concerned by legislation that would seek to eliminate or reduce permitting and public input processes. We do not support the elimination of geothermal subzones, which are designed to reduce adverse impacts on the health of the people and environment we live in.

We see Act 97 as just one example of how broken our political system really is. We are concerned about the overall direction Hawaii is heading in and the political context in which laws like Act 97 and 55 are passed to begin with.

As a union, we believe in democracy in practice. We also believe, like so many of you, that government should work on behalf of and in the interest of the people. Our islands, land and oceans – remain among our most valuable community resources. We support the repeal of Act 97 as a means for protecting and preserving our communities' long-term economic, health, and sustainability for our future.

While we recognize the collective need for us to find innovative and necessary means for securing our State's energy resources, it is our position that we should dutifully examine the long term impact of opening up unchecked exploration and development on any State land in Hawaii. We are concerned about potential health, environmental and social-economic impacts of Act 97.

Our people are being pushed off our islands while so many of us can't afford homes. More and more of our local jobs go to mainland companies while locals struggle to earn a living wage. Alongside other community leaders we have launched a new movement called AiKea. It is aimed at encouraging participation in our political system and encapsulates a growing need of putting power back into the hands of the people to reclaim Hawaii for our future. Over the last several months, we have spoken with thousands of people. People are overwhelmingly opposed to attempts at "fast tracking development" projects and reducing public input. More to the point, people have become increasingly frustrated with an overall sense of powerlessness that persists in part because of laws like Act 97 & Act 55 and a perceived lack of representation by our elected leaders.

We thank you for efforts towards repealing Act 97 and urge you to pass HB 106.



LIFE OF THE LAND

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Phone: 533-3454 henry.lifeoftheland@gmail.com

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Cynthia Thielen, Vice Chair

DATE: Thursday, January 31, 2013

TIME: 8:30 AM

PLACE: Conference Room 325

HB 106 RELATING TO GEOTHERMAL
RESOURCES (Repeals Act 97, SLH 2012)

STRONG SUPPORT

Aloha Chair Lee, Vice Chair Thielen and Members of the Committee!

Life of the Land is Hawai`i's own community action group advocating for the people and the land since 1970. Our mission is to preserve and protect the life of the land by promoting sustainable land use promote open government through research, education, advocacy, and when necessary, litigation.

HB 106 would reverse a legislative decision last year to pass Act 97-2012 (SB 3003) relating to geothermal. Proponents of that Act mistakenly thought that the delay in processing geothermal power purchase agreements is somehow related to community participation and following environmental law.

The Current HELCO Geothermal Proposal

On January 25, 2013 HELCO submitted its "Proposed Final Request For Proposals For Renewable Geothermal Dispatchable Energy And Firm Capacity Resources Island Of Hawaii" with the Public Utilities Commission (PUC). The two volume pdf was slightly larger than a quarter of a gigabyte (270 MB).

The filing noted that in May 2007 HELCO had filed an Integrated Resource Plan (IRP-3) with the PUC which "contained four candidate renewable energy plans. It is important to note that while the amounts and timing of geothermal energy varied, all four of the candidate renewable energy plans contained a geothermal component. "¹ IRP-3 anticipated geothermal coming on-line between 2022 and 2026.

HELCO proposed that (a) geothermal bidders submit bids to HELCO; (b) HELCO will select the winner(s); and (c) proposed Power Purchase Agreement(s) PPA(s) will be filed with the PUC by May 2014.²

The PUC will take anywhere from 9 months to a few years to approve, modify or reject the PPA(s). Let's assume they move quickly and issue a ruling in January 2015 and that no one appeals the ruling to the Intermediate Court of Appeals.

According to the RFP, the owner of the proposed geothermal facility must then complete 15 major steps, concluding with having the facility on-line 80 months (6 years and 8 months) after the PPA was approved by the PUC.³ Thus the reasonable target initial commercial date is September 2023. (see timeline at the end of these comments).

Thus the complete process (May 2007-September 2023) will have taken over 16 years.

One might wonder what takes the utility so long to move forward.

Instead some geothermal project proponents argue that the solution is to eliminate sunshine, public participation and regulatory review.

In January, 2012 several bills were introduced at the State Legislature which would exempt geothermal exploration from all environmental and cultural review. These provisions were opposed by environmental and cultural groups, and OHA.

Ormat (February 13, 2012): While research and data collection are the types of categories of activities which can be considered exempt from Chapter

¹ HELCO Proposed Final Geothermal RFP, dated January 25, 2013, p. J-3. In the Matter of PUBLIC UTILITIES COMMISSION Instituting a Proceeding Related to a Competitive Bidding Process for 50 MW of Dispatchable Renewable Geothermal Firm Capacity Generation on the Island of Hawaii. Docket No. 2012-0092

² HELCO Proposed Final Geothermal RFP - 25 JAN 2013, p. 4-44

³ ATTACHMENT B -MILESTONE EVENTS, HELCO Proposed Final Geothermal RFP. pp. 284-89 of 544

343, the proposed legislation would specifically provide geothermal exploration as an exempt activity.

OEQC (February 7, 2012): The OEQC opposes SB 3003 as it circumvents the fundamental intent of Chapter 343 which is to base decisions on probable or expected impacts of specific actions in specific set of circumstances rather than broad classes of "one size fits all" actions that govern all situations regardless of circumstances. In addition, existing law under Chapter 343 already allows for the easy exemption those projects which are minor in nature or for other reasons are expected to have no or negligible impacts on the environment.

In the end the Senate version rather than the House version of the bill was adopted. The bill allows greater geothermal exploration but without waivers from environmental laws.

There is nothing wrong with communities weighing in on our energy choices. We should encourage public participation. And with a utility process that takes 16 years, what will a few months matter?

Perhaps we will get better solutions.

Perhaps someone will ask the utility why they take so long.

HELCO RFP Requirements: The facility (Seller) must meet certain obligations by specific times (months after PPA Approval by PUC).⁴

Post PUC Months	Requirement
21	Receipt of a Geothermal Exploration Permit. Seller shall provide Company with the responsible Government Approvals and Land Rights confirming the issuance of a Geothermal Exploration Permit.
21	Acquisition of funding for the exploration development. Seller shall provide Company with written documentation demonstrating that Seller has secured funding for exploration development.
30	Completion of a preliminary Geothermal Resource Report for the Project. Seller shall provide Company with a report from a qualified professional that, at a minimum, presents the actual resource exploration work completed, the associated data, a conceptual field model, a Monte Carlo simulation to provide an estimate of the probable electrical generation capacity of a geothermal system to a ninety percent (90%) probability and a resource development plan for the Project.
30	Qualification as an Electric Wholesale Generator ("EWG") and/or Qualifying Facility ("QF") under applicable law. Seller shall provide Company documentation to confirm registration as an EWG and/or QF from the Federal Energy Regulatory Commission ("FERC").
36	Acquisition of all Government Approvals and Land Rights required for the well

⁴ ATTACHMENT B -MILESTONE EVENTS HELCO Proposed Final Geothermal RFP - 25 JAN 2013

	field development. Seller shall provide Company with documentation from the appropriate agencies, shareholders, and governmental entities confirming that the necessary approvals have been obtained.
42	Drilling and testing of the initial exploration well(s). Seller shall provide Company with the data from well tests performed by qualified professionals, which includes at a minimum wellhead pressure, mass flow rate and enthalpy. An authorized representative of Company shall have the right to be present during and witness such test.
49	Completion of a detailed final Geothermal Resource Report for the Facility. Seller shall provide Company with a detailed final report from a qualified professional.
50	Acquisition of funding for the full well field development. Seller shall provide Company with written documentation demonstrating that Seller has secured funding for the development and drilling program required to complete all of the production and injection wells needed to produce the full electrical output of the Facility.
74	Drilling and testing of (i) all production wells to provide steam and hot water in a quality and quantity equal to or greater than the greater of 120 percent, or one spare well, of the amount required to develop the full electrical output of the Facility and (ii) all the injection wells required to inject all of the fluids produced by the production wells into the geothermal resource. Seller shall provide Company with the data from well tests performed by qualified professionals, which indicates delivery of steam and hot water of the quantity and quality as defined by the conceptual design. An authorized representative of Company shall have the right to be present during and witness such test.
50	Completion of the Facility conceptual design. Seller shall provide Company with the conceptual design package for the Facility which includes at a minimum a heat and mass balance, process flow diagram, piping and instrumentation diagrams ("P&IDs") for major systems. Facility general management drawings, site plans and Project design criteria ("Conceptual Design Package").
56	Acquisition of all Government Approvals and Land Rights that are required to construct and operate the Facility. Seller shall provide Company with documentation from the appropriate agencies, landholders, and governmental entities confirming that the necessary approvals have been obtained.
56	Acquisition of financing for the Facility. Seller shall provide Company with written documentation demonstrating that Seller has secured financing for the engineering, procurement, and construction ("EPC") of the Facility.
56	Issuance of full notice to proceed ("FNTP") to the EPC/construction contractor. Seller shall provide Company with documentation confirming that a FNTP has been issued to the EPC/construction contractor.
74	Delivery of the turbine-generator(s) to the Facility Site. Seller shall provide Company documentation to confirm that the turbine generator(s) have been delivered to the Facility Site
80	Declaration of commercial operation with Company. Seller shall provide Company notification of commercial operation in accordance with the requirements and criteria in the PPA.

Mahalo,

Henry Curtis
Executive Director



SENT VIA EMAIL

January 30, 2013

Representative Chris Lee
Chair, Committee on Energy and Environmental Protection
Representative Cynthia Thielen
Vice Chair, Committee on Energy and Environmental Protection
Hearing on House Bill 106 - Relating to Geothermal Resources
State Capitol, Conference Room 325

Aloha Chair Lee and Vice Chair Thielen!

Enterprise Honolulu respectfully recommends that Act 97 is not repealed as presented in HB106.

Act 97 provides the key definitions and distinctions between the regulation of geothermal resources exploration and geothermal resource development and does not enact geothermal resource subzones.

We ask for your consideration of protecting the original intent of Act 97 to allow the furtherance of our clean energy transformation in Hawaii.

Please feel free to contact me directly should you have any questions.

Sincerely,

Pono Shim
President & CEO
Enterprise Honolulu, Oahu Economic Development Board



ENTERPRISE
HONOLULU

THE BUSINESS CLIMATE OF PARADISE

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January 28, 2013

House Committee on Energy
& Environmental Protection
Rep. Chris Lee, Chair

Re: Testimony in support of HB106

Aloha Rep. Lee and Committee Members:

This is testimony **in support of HB106** *Relating to Geothermal Resources*. The bill, *inter alia*, enacts former statutory provisions for geothermal resource subzone designation and County permitting that were repealed by Act 97.

While the former provisions were far from perfect in terms of protecting the community, the absence of any such provisions is potentially devastating insofar as it allows geothermal development to occur anywhere in the state – with no permitting regime specific to geothermal resource activities.

Therefore, an essential first step is the need to *restore the former statutory provisions*.

However, in drafting HB 106 the Legislative Reference Bureau appears to have taken the liberty of fixing what it may have seen as a small contextual error, but in fact that change from the prior statutory text is substantial and should be amended so the provisions of HB106 conform exactly with the statutory text being restored.

Former Hawai'i Revised Statutes (HRS) § 205-5.1 (on geothermal permitting), whether by intent or error, had slightly different permitting standards for state permits and county permits. Former § 205-5.1(c) governing BLNR permits on state conservation lands said, in relevant part:

...The board shall grant a conservation district use permit if it finds that the applicant has demonstrated that:

- (1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property; **and**
- (2) The desired uses would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection; **or**
- (3) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

(emphasis supplied)

Former § 205-5.1(d) governing permits in agricultural, rural, or urban districts issued by the “appropriate county authority” (*e.g.*, a county planning commission) said, in relevant part:

The appropriate county authority shall grant a geothermal resource permit if it finds that applicant has demonstrated that:

- (1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property;
- (2) The desired uses would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection; **and**
- (3) That there are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

(emphasis supplied)

The state formula in former § 205-5.1(c) allows subparts (1) and (2) **or** subpart (3) while the counties, in former § 205-5.1(d), had to find subparts (1), (2) **and** (3). The county's formula was thus more restrictive (an applicant had to show no adverse impacts, no unreasonable public burden **and** reasonable mitigation measures) while the state's formula was more lenient (as the applicant only had to show no adverse impacts, no unreasonable public burden **or** reasonable mitigation measures.)

HB106 as drafted changes the former statutory text and applies the more lenient former state standard to county permitting, replacing the three criteria list in the former statute with a new two criteria list in parts (d) and (e), providing the permit shall be granted if it is found that:

- (1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property and would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection; or
- (2) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

As an example of the significance of that seemingly minor change, please consider Condition 49 of the Geothermal Resources Permit (as amended) issued by the Hawai'i County Planning Commission to Puna Geothermal Venture (PGV.) Condition 49 (earlier referred to as Condition 51) was a mitigation measure that emerged from the mediation process unique to HRS § 205-5.1, creating a community impact mitigation fund. Without that requirement for mandatory reasonable mitigation measures, the permit Condition may not have been included. Eliminating such a requirement in HB106 not only deviates from the statute's former text but also substantially changes a relevant mitigation provision that has proven to be of significant value in the case of PGV.

Please amend the text of HB106 so that it faithfully tracks the language of the former statute and accurately repeals the effects of Act 97, rather than creating new substantive law for geothermal developers subsequently applying for permits. Although the textual change in the draft may seem insubstantial, it is not, especially in view of the history with PGV.

It may also be noted that Act 97 contained a savings provision for existing permits (PGV being the only entity subject thereto) that has not been addressed in HB106 and therefore would presumably establish a law applicable to the rules governing PGV (promulgated under former HRS § 205-5.1) that is different from the law created by the introduced version of HB106.

Thank you for considering this testimony that supports HB106 (with a slight amendment, as noted above.)

Aloha,



Bill Smith
P.O. Box 1211
Volcano, HI 96785

bill@puna.us

thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 6:03 PM
To: EEPtestimony
Cc: gjlast@gmail.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/28/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Geoffrey Last	Individual	Support	No

Comments: Act 97 was a bad law it over stepped it bounds and left the county and residents no redress of the issue there for I support this bill

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 9:07 PM
To: EEPtestimony
Cc: saralegal@live.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/28/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Sara Steiner	Individual	Support	No

Comments: Repeal Act 97 Immediately! As a resident who has lived near the PGV geothermal plant since the beginning, I can tell you it is not a clean renewable energy, it is a dirty, noisy, stinky, fracking nightmare and does not belong anywhere near people. I feel that Act 97 is opening up the door to ruin the Big Island for the benefit of corporations, the military and the continuation of the outdated electrical grid. We the people are tired of big government and big corporations ruining our land and lives. The lands of Hawaii are for the people, not exploitation.

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 28, 2013 6:41 PM
To: EEPtestimony
Cc: suzannewakelin@yahoo.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/28/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Suzanne Wakelin	Individual	Support	No

Comments: Please vote YES to repeal Act 97. I support a complete repeal. Act 97 allows geothermal exploration and development in all state land use categories: conservation, urban, rural, and agricultural (including ceded lands). It eliminates the County government's approval and review process over geothermal development taking away permit process and people's opportunity for meaningful input. Act 97 allows geothermal power plants to be built anywhere in agricultural and rural districts without a county land use permit or public hearing because it is a right by law. It entirely eliminates geothermal subzones, which were created in 1983. Subzones were established where geothermal could be developed based on specific guidelines set by law. DLNR's review of potential geothermal resource subzone areas was to examine factors such as the geological potential for producing energy; geologic hazards; social and environmental impacts; and compatibility of the development and potential related industries with existing and permitted uses of surrounding land. Consideration had to be given that the development would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property. Statutes repealed by Act 97 provided that development and exploration of geothermal energy must be balanced with preservation of Hawai'i's unique social and natural environment – yet the same laws in fact eliminated EIS requirements and contested cases to streamline the process. However, in praising Act 97 after removing those balancing provisions, the Senate committee's report criticized the former, repealed law as a "go-slow approach to geothermal". The history of geothermal development in Hawai'i has shown the consequences of poor decision-making and implementation with terrible environmental, social and health consequences. Developers must not be allowed to take advantage of Hawai'i. Mahalo

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 10:35 AM
To: EEPtestimony
Cc: vsc@hawaiiantel.net
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/29/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Victoria Cannon	Individual	Support	No

Comments: Please repeal Act 97. This act takes away rights of individuals - it fails to protect social, environmental, cultural and spiritual rights of individuals, it condones allowing developers who are not from Hawaii, don't care about Hawaiians to excluded us from their plans. Please pass out HB 106 to repeal Act 97.

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 1:24 PM
To: EEPtestimony
Cc: shannonkona@gmail.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/29/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

Comments: Please Repeal Act 97. Every official below the State level might as well go home. What's the point of having a Mayor, County Council, or Planning Dept. if the State is going to usurp their power and our laws? Please fix this now.

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 3:39 PM
To: EEPtestimony
Cc: nimo1767@gmail.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/29/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Petricci		Support	No

Comments: January 29, 2013 House Committee on Energy & Environmental Protection Rep. Chris Lee, Chair Testimony in support of HB106 Aloha Rep. Lee and Committee Members: My name is Robert Petricci, I am testifying for Puna Pono Alliance in support of HB 106. The geothermal permitting process to date has failed to protect the environment and surrounding communities, and has resulting in fierce opposition to geothermal development in the communities surrounding the power plant. The first geothermal power plant in Hawaii, the HGP-A, went online in 1981. The state through the NELH cut corners and safety protocols for the demonstration plant in order to further the goal of large scale geothermal development. This resulted in a backlash from what had been originally supportive area residents. People suddenly found themselves in seriously impacted communities around the power plant with no one to turn to for help. Area residents began to organize, protest, and went as far as committing acts of civil disobedience. The constant release of dangerous toxins that fouled the air in the surrounding communities and in area homes, continued for 8 years. Until after a massive release of toxic gas over labor day weekend in 1989 then governor Ben Cayatano by emergency order over the objections of NELH closed the HGP-A plant. HGP-A had been so bad it turned a community that had originally supported geothermal into one that felt threatened by it. At one protest in 1991 142 people were arrested, a record in the state of Hawaii I believe still stands today. 31 years later people that live here do not trust the government to protect us. Act 97 reinforces those legitimate concerns, instead of instituting badly needed permitting and regulatory oversight, act 97 makes fast tracking geothermal the priority. There is renewed widespread opposition to geothermal in the surrounding community, and it's growing louder, again fueled by the renewed push to fast track more geothermal development through act 97, act 55, and senate resolution 25. Act 96 was passed in 1983 and the geothermal sub zones were created to try and mitigate the problems that geothermal was causing in the surrounding communities at the time. Clearly it has not worked. However we see act 97 as a step backward and therefore request a complete repeal. The reality on the ground in the community is geothermal to date has been an environmental disaster that has created the worst community impacts of any power plant in the history of Hawaii. There have been 19 declared civil defense emergencies including two well blowouts. A Iso Pentane explosion that destroyed a generator. Multiple injection well failures and so many leaks of toxic gas that the incident reports would fill a book. No other power plant in the history of Hawaii can compare to the accident and evacuation records PGV has set. Well over a hundred people have had lawsuits for damages against PGV settled in their favor. Clearly act 96 was inadequate but act 97 is tragedy waiting to happen. Under act 96 residents were forced to file lawsuits against the state and the developers, for basic rights and protections, act 97 takes that need to a new level. I was a plaintiff in a number of these lawsuits including suing the state DOH to force them

promulgate air standards for geothermal development, as required by law. The community not the regulators forced the developer to stop open venting their well's and use BACT as the permits required. We did that through mass civil disobedience after the state DOH refused to intervene on our behalf. The DOH defiantly fought the community all the way to the supreme court refusing to promulgate air standards, as required by law, where they lost. DOH's attempt to let PGV set their own air standards was over ruled in the Supreme Court. It is a sad realization that our community has had to fight our own government for basic rights and protections. DOH is charged with protecting the community but failed to do so, instead history shows in fact they have been in bed with geothermal developers at our expense. Rather than the exception under act 96 that kind of treatment of the community has been the rule. However bad this is, we act 97 as worse, the Senate committee's report on act 97 actually criticized act 96, as a go-slow approach to geothermal, without recognizing the danger to the community or the fact that PGV has the worst record on accidents of any power plant in the state. Act 97 opens the flood gates to many geothermal projects with out the problems they present having been addressed. This is alarming to say the least to residents. Although we had problems with the the previous law act 96 that resulted in the current well documented and long standing problems I have outlined. Act 97 instead of acknowledging the historic and severe adverse impacts geothermal exploration and development have had on the environment and the community, completely ignores them. In fact act 97 allows geothermal power plants to be built anywhere in agricultural and rural districts without a county land use permit or public hearing because it is a right by law. The implications of that are frightening act 97 must be repealed.

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 1:10 AM
To: EEPtestimony
Cc: barb@punapono.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/30/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Cuttance	Individual	Support	No

Comments: January 29, 2013 House Committee on Energy & Environmental Protection Rep. Chris Lee, Chair Re: HB106 Dear Rep. Lee and Committee Members: This testimony is in support of HB106 Relating to Geothermal Resources. The bill, enacts previous statutory provisions for geothermal resource subzone designation and County permitting that were repealed by Act 97. While those provisions were not perfect in terms of protecting the community, the absence of any such provisions is potentially harmful as it allows geothermal development to occur anywhere in Hawaii – with no permitting regime specific to geothermal resource activities. It is my belief that it is an essential first step to restore the former statutory provisions provided for by Act 96 and faith in the legislative process that gives people on all islands the right and ability to be involved in the process. It is essential for these people to be involved in any process that would allow geothermal development in their area. Act 97 rescinded the rights of the people most greatly affected by the constant noise and possible exposure to harmful chemicals associated with geothermal power generation development, to be involved in this process. This has caused a sever loss of faith for many people in the legislative process. The only way to restore that faith is to repeal Act 97 Thank you for considering this testimony that supports HB106 Yours sincerely Barb Cuttance 14/266 Papaya Farms Road, Pahoia, Hawaii, 96778

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 4:41 PM
To: EEPtestimony
Cc: Don.Couch@mauicounty.us
Subject: *Submitted testimony for HB106 on Jan 31, 2013 08:30AM*

HB106

Submitted on: 1/29/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Councilmember Don Couch	Individual	Support	No

Comments:

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 8:16 AM
To: EEPtestimony
Cc: harrykim1939@gmail.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/30/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Harry Kim	Individual	Support	Yes

Comments: I have attached my testimony. Thank you for the opportunity to share my comments, and I will attend the hearing tomorrow to testify in person.

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 7:08 PM
To: EEPtestimony
Cc: Maceyj001@hawaii.rr.com
Subject: *Submitted testimony for HB106 on Jan 31, 2013 08:30AM*

HB106

Submitted on: 1/29/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
James Macey	Individual	Support	Yes

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 8:33 PM
To: EEPtestimony
Cc: OccupyHiloMedia@yahoo.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/29/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Marks	Individual	Support	No

Comments: Protect the people of Hawaii from unbridled industrialization. Repeal Act 97 and reinstate geothermal subzones.

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I am Laura Travis, a registered nurse and mother. I moved to lower Puna about three years ago in anticipation of my husband's retirement. I came because I loved the peace and quiet. I loved the community. I loved the clean air, the animals, and the plants. I came to invest in this beautiful island.

But I soon found a problem. A partnership exists between commercial interests and powerful leaders in our local and state governments, a partnership that seeks to systematically disassemble the legal framework designed to prevent unwanted and environmentally unsound exploitation of the land and communities of Hawaii.

The power elite has orchestrated a series of actions intended to disenfranchise local communities' ability to determine their own future:

- Passing Act 55, establishing the Public Land Development Corporation.
- Passing Act 97, doing away with geothermal sub-zones and taking away the counties' power to regulate geothermal power. One notable effect of removing sub-zones was to remove the community's input to evaluating possible social and environmental effects of the plant.
- Passing Senate Resolution 25, urging the Bureau of Land and Natural Resources and the Public Land Development Corporation to use of Acts 55 and 97 to commercially exploit the land for geothermal.
- Initiating an administrative action, which was narrowly defeated, to do away with environmental impact statements or environmental assessments for geothermal exploratory drilling. This initiative was taken when Bill 755, designed to do the same thing, attracted some early community-group opposition.

Additionally, this is but one example of several attacks on community self-determination throughout Hawai'i. Grassroots organizations are standing up against Big Wind in Moloka'i and Lanai; resorts and transportation in O'ahu and Kaua'i; fencing of hunting areas and the slaughtering of game animals on the Big Island; laying the inter-island power cable, planting fields of GMO crops, or ignoring Hawaiian cultural issues throughout the islands.

It has become very clear that the issues are not just about geothermal exploitation. Other even more important issues include the people's opportunity for input, the role of the local County and the State government, and the determination of the kinds of developments that affect people's lifestyles and their homes. These issues are at the very heart of the relationship of the people and their government.

In response to this challenge to community self-determination, I am asking you to repeal Act 97.

thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 11:49 PM
To: EEPtestimony
Cc: margaretwille@mac.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/29/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Wille	Individual	Support	Yes

Comments: I generally support this bill- given that it allows for more input from those who will be affected and more definable criteria for permitting geothermal exploration. Margaret Wille County Council member County of Hawaii District 9

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Sent: Tuesday, January 29, 2013 9:41 PM
To: EEPtestimony
Cc: mzerbe808@gmail.com
Subject: *Submitted testimony for HB106 on Jan 31, 2013 08:30AM*

HB106

Submitted on: 1/29/2013

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Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Zerbe	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 8:32 AM
To: EEPtestimony
Cc: atayloragain@yahoo.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/30/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Maria Taylor Sykes	Individual	Support	No

Comments: Testimony in support of HB106 Aloha Rep. Lee and Committee Members: Although I am against geo-thermal in its totality based on Hawaiian Kingdom and land issues, and believe that the State has no legal jurisdiction, I am testifying in support of HB 106. The geothermal permitting process to date has failed to protect the environment and surrounding communities, and has resulting in fierce opposition to geothermal development in the communities surrounding the power plant. The first geothermal power plant in Hawaii, the HGP-A, went online in 1981. The state through the NELH cut corners and safety protocols for the demonstration plant in order to further the goal of large scale geothermal development. This resulted in a backlash from what had been originally supportive area residents. People suddenly found themselves in seriously impacted communities around the power plant with no one to turn to for help. Area residents began to organize, protest, and went as far as committing acts of civil disobedience. The constant release of dangerous toxins that fouled the air in the surrounding communities and in area homes, continued for 8 years. Until after a massive release of toxic gas over labor day weekend in 1989 then governor Ben Cayatano by emergency order over the objections of NELH closed the HGP-A plant. HGP-A had been so bad it turned a community that had originally supported geothermal into one that felt threatened by it. At one protest in 1991 142 people were arrested, a record in the state of Hawaii I believe still stands today. 31 years later people that live here do not trust the government to protect us. Act 97 reinforces those legitimate concerns, instead of instituting badly needed permitting and regulatory oversight, act 97 makes fast tracking geothermal the priority. There is renewed widespread opposition to geothermal in the surrounding community, and it's growing louder, again fueled by the renewed push to fast track more geothermal development through act 97, act 55, and senate resolution 25. Act 96 was passed in 1983 and the geothermal sub zones were created to try and mitigate the problems that geothermal was causing in the surrounding communities at the time. Clearly it has not worked. However we see act 97 as a step backward and therefore request a complete repeal. The reality on the ground in the community is geothermal to date has been an environmental disaster that has created the worst community impacts of any power plant in the history of Hawaii. There have been 19 declared civil defense emergencies including two well blowouts. An Iso Pentane explosion that destroyed a generator. Multiple re injection well failures and so many leaks of toxic gas that the incident reports would fill a book. No other power plant in the history of Hawaii can compare to the accident and evacuation records PGV has set. Well over a hundred people have had lawsuits for damages against PGV settled in their favor. Clearly act 96 was inadequate but act 97 is tragedy waiting to happen. Under act 96 residents were forced to file lawsuits against the state and the developers, for basic rights and protections, act 97 takes that need to a new level. I was a plaintiff in a number of these lawsuits including suing the state DOH to force them to promulgate air standards for geothermal development,

as required by law. The community not the regulators forced the developer to stop open venting their well's and use BACT as the permits required. We did that through mass civil disobedience after the state DOH refused to intervene on our behalf. The DOH defiantly fought the community all the way to the Supreme Court refusing to promulgate air standards, as required by law, where they lost. DOH's attempt to let PGV set their own air standards was over ruled in the Supreme Court. It is a sad realization that our community has had to fight our own government for basic rights and protections. DOH is charged with protecting the community has but failed to do so, instead history shows in fact they have been in bed with geothermal developers at our expense. Rather than the exception under act 96 that kind of treatment of the community has been the rule. However bad this is, we see act 97 as worse, the Senate committee's report on act 97 actually criticized act 96, as a go-slow approach to geothermal, without recognizing the danger to the community or the fact that PGV has the worst record on accidents of any power plant in the state. Act 97 opens the flood gates to many geothermal projects around the state with out the problems they present having been addressed. This is alarming to say the least to residents. Although we had problems with the the previous law act 96 that resulted in the current well documented and long standing issues raised that I have outlined. Act 97 instead of acknowledging the historic and severe adverse impacts geothermal exploration and development have had on the environment and the community, completely ignores them. In fact act 97 allows geothermal power plants to be built anywhere in agricultural and rural districts without a county land use permit or public hearing because it is a right by law. The implications of that are frightening - act 97 must be repealed.

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 10:26 AM
To: EEPtestimony
Cc: asinsparks@gmail.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/30/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Sparks	Individual	Support	No

Comments: I am writing to support HB106 to repeal Act 97. The geothermal industry has not been responsible in their communications with the public and there needs to be a limit on the activities of this industry until safeguards and health issues are regulated and a realistic model has been proven to be effective. Act 97 has the purpose of letting the Geothermal industry have a free hand in expanding without the due process of regulation and oversight by our existing governmental structure and sets up a by-pass for the sake of greed and with disregard for the wants and needs of the citizens who reside in an area. This bill does not go far enough but is a start to stop the expansion of geothermal production within the present regulatory structure.

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I am Tom Travis, a retired military officer and federal civil servant. I served in the Navy thirty years and commanded a nuclear powered submarine, among other things.

My strongly held belief is that when government takes action that affects a community, the community must be consulted and, if necessary, compensated fairly. Local health, economic, social, cultural, and environmental issues should be raised and considered. Community voices should be encouraged. And under no circumstances should local and state governments ruin a community as an indirect subsidy to developers, geothermal or otherwise.

Recently I was asked to discuss Act 55 (which created the Public Land Development Corporation) and Act 97 with a community group in a well healed neighborhood. The meeting was held in a beautiful home with a glass wall that overlooked a lava field created several decades ago. The lava field was on state land.

In my talk to the group, I explained that the passage of Act 97 meant that they could look out on that lava field and see a geothermal plant being constructed. All approvals and disapprovals for the plant would occur in Honolulu. The local issues of noise, road congestion, adverse cultural impacts, and dropping land values would not need be considered and without travel to Honolulu, the local community would have no chance to meet with the regulators that would decide to allow the plant. The County sanctioned community plan would not have to be considered by those deciding. If the community felt wronged, its only recourse would be through the State Legislature.

A nay sayer said "You are a fear monger--who would want to drill on this state land? No one has ever considered this area a geothermal resource." I pointed out that Act 97, in removing geothermal sub-zones, did away with the a requirement for scientific review to establish a geothermal resource as a criteria to develop. And new technology, enhanced geothermal (much like fracking in gas and oil fields) could make many areas throughout the state potential geothermal resources. I also pointed out that much of the company's risk might be subsidized by the federal government through grants and no risk loans. Ormat, the company that operates PGV in lower Puna, has already received hundreds of millions of dollars of such federal money.

He said that such a scenario is preposterous. Who in government would want to do such things?

I ask you the same question. Repeal Act 97.

According to Hawaii County's Planning Director, publicity about geothermal exploration and noise created by geothermal drilling have resulted in 30 requests for relocation from near the current geothermal plant, PGV. To honor those requests would require funds far beyond those received from geothermal royalties received from PGV. The State and County will be forced to decide whether to honor the requests for relocation though providing additional funds or to again break faith with the home owners in that area. A potentially very expensive and highly emotional problem is developing. To allow such a

problem to spread throughout the State without the protections and local involvement that were removed by Act 97 would be irresponsible.

Should Act 97 be amended rather than repealed? My answer would be no. A genuine effort to “fast track” desired development should address making navigation of the many laws and regulatory agencies more feasible, not undo the safeguards and protections embedded in those laws and agency regulations. The thrust of making the laws more navigable is different than the thrust of bypassing laws that contain safeguards and protections. Both are different processes with different goals. Act 97 must be repealed in its entirety. Its concept was flawed in creation and cannot be fixed by amendment.

The time for action is now. Thank you.

January 30, 2013

The Honorable Chris Lee and Members of the Committee On Energy & Environmental Protection

Re: Support of Bill 106, RELATING TO GEOTHERMAL SOURCES - the repeal of Act 97

Thank you for the opportunity to testify in support of the repeal of Act 97.

The Act in its current form is reprehensible. I am increasingly concerned about the adverse impacts on current and potential growth without the proper regulatory processes necessary to ensure that resource sector growth is sensibly managed and constructive consultation with the residents of the state is protected. Act 97 ignores these critical components and must be repealed.

Geothermal development on Hawaii Island has been extremely controversial. I agree that growth in the exploration and development of alternative energy sources across the state is essential but not at the expense of alienating Hawaii's people and decimating our lands in the process.

Diana Kahler

12 West Naauao Place

Hilo, HI 96720

thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 1:13 PM
To: EEPtestimony
Cc: inunyabus@gmail.com
Subject: *Submitted testimony for HB106 on Jan 31, 2013 08:30AM*

HB106

Submitted on: 1/30/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Elaine D.	Individual	Support	No

Comments:

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From: James P Kauahikaua [mailto:jimk@usgs.gov]
Sent: Tuesday, June 05, 2012 6:11 PM
To: richard@bidleman.net
Cc: askHVO@usgs.gov
Subject: Re: Geothermal in Puna

Richard,

Good questions. HVO has not been formally asked to testify or submit information on geothermal developments in Hawai'i in the last several years. You have identified a relevant point that we have made before but that seems to have been overlooked in the current flood of interest in geothermal - that what makes geothermal so attractive at Kilauea also poses a threat to the power generation facility and the customers that depend on it. You are correct that the Lava Flow Hazard Map, that we developed, designates Hazard Zone 1 as the most hazardous for lava flows because it is directly over a volcanic rift zone that erupts frequently. That hazard threatens homes and power plants alike. Of course, it is that same rift zone that is the most lucrative geothermal target in the state.

If you are worried about further geothermal drilling starting a volcanic eruption, there is no evidence of this. Deep drilling has encountered liquid magma, sometimes intentionally, but has not started a lava eruption. I know of one instance where about 1 cubic meter of magma came back up the drill string before the drill hole was plugged, but that's all. There have been problems with drilling that have temporarily allowed open venting of hydrothermal fluids. My understanding is that these can be avoided or controlled by proper drilling procedures.

I hope that I have answered your questions,

jim

jim kauahikaua, Scientist-in-Charge
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From: "Richard Bidleman" <richard@bidleman.net>
To: <askHVO@usgs.gov>
Date: 05/20/2012 07:03 PM
Subject: Geothermal in Puna

Has USGS ever been asked to weigh in on geothermal energy production in Puna? For those of us who live in lava zone 1, it seems ridiculous to be drilling in an area that is presumably the most hazardous zone in all the islands.

We live with the fact that our homes are in lava zone 1, accept it and pay the price accordingly. We know that mother nature will prevail. However, we do not want some manmade incident to be the cause of a volcanic disaster.

Thank you.

Richard Bidleman

thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 3:22 PM
To: EEPtestimony
Cc: kelpal2003@yahoo.com
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/30/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Sheryl K. Palmer	Individual	Oppose	No

Comments: Please do not allow any geothermal exploration or development. This bill has been changed from the previous one to allow public input, but when all is said and done it is a County Administrator or DLNR who decides. It also seems to leave out the Federal protections of NEPA, denying the public a full EIS process. The potential law aside, there should be NO MORE geothermal here. The present plant has shown to be unresponsive to the public. Many years ago, after a terrible accident at the plant, it was recommended that monitors be placed in surrounding neighborhoods. Nothing. Their current monitors available for public reading online often register -0.2, that is minus. How do you have a reading of minus H2S? The laws in HRS Chapter 343 were put into effect to make sure that the public had a real say and that important habitats be protected on any project that met certain requirements. Fracking all over the mainland is making people sick in nearby towns. They are finally going to have to prove that their operations are safe due to new laws regarding the environmental review process as it relates to them. Geothermal is making people sick here. Where are we? Going backwards. Iceland is reconsidering adding more geothermal. Many of the proposed exploration sites are in Puna. Anywhere that would be drilled would be right next to a subdivision. Accidents happen, which is why Goddard said that any geothermal wells should have at least a 10 mile buffer. Rather than repave roads with geothermal money, our taxes go to that, why not equip, or help equip homes and businesses with solar, then we will not need to even consider geothermal anymore.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 8:26 PM
To: EEPtestimony
Cc: ghooser@kauai.gov
Subject: Submitted testimony for HB106 on Jan 31, 2013 08:30AM

HB106

Submitted on: 1/30/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gary Hooser	Individual	Support	No

Comments: I strongly support the passage of HB106, the repeal of Act 97 and a restoration of County home rule on this important issue. Act 97 was passed into law without the people living in the geographical area most impacted being given sufficient opportunity to provide testimony and input on this important issue. These residents are the people in our state most familiar with the environmental and social impacts of this type of development and Hawaii County residents and County government officials should have been directly consulted on this important issue. Geothermal development offers a unique and potentially great opportunity for low cost relatively clean energy, however if this tremendous resource is to be successfully developed it must be via a thoughtful and deliberative process that takes into consideration the needs and concerns of the residents who will be most impacted. Act 97 like Act 55 and the PLDC attempts to fast track and circumvent important public protections and safeguards in order to expedite development. Our State needs to take a deep breath, make a conscious decision to honor important environmental and public interest safeguards, and then proceed in a measured and deliberate manner toward developing the resources that we need and which will be in place for generations to come.

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thielen3 - Charles

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 6:13 PM
To: EEPtestimony
Cc: MSMatson@hawaii.rr.com
Subject: *Submitted testimony for HB106 on Jan 31, 2013 08:30AM*

HB106

Submitted on: 1/30/2013

Testimony for EEP on Jan 31, 2013 08:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
MS Matson	Individual	Support	No

Comments:

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HARRY KIM
471 HO'OKINA PLACE
HILO, HAWAII 96720

January 29, 2013

Representative Chris Lee, Chair and Members of the
Committee on Energy & Environmental Protection
State of Hawaii House of Representatives
State Capitol
Honolulu, Hawaii

Re: **HB 106 Relating to Geothermal Resources**

Position: **SUPPORT**

Thank you for this time to allow the opportunity to comment on HB 106 which calls for the repeal of Act 97 of 2012. Other testimony will cover very well the specific issues of Act 97, which primarily revolve around:

- The removal of an entire area of law that created geothermal subzones to address the unique hazards of geothermal exploration and development;
- The elimination of the permitting process of the county governments of Hawaii Island and Maui, which effectively removed the opportunity for meaningful public comments.

I would like to take this opportunity instead to address what I believe to be the very heart of the movement and concerns of so many against Act 97. It is understood that the legislators who supported Act 97 did not fully understand the consequences of its passage.

In recent weeks of travel to Maui, Molokai, Oahu and communities on Hawaii Island, some common themes have emerged in the discussions of Act 97. It is feelings of a growing disconnect of the people and their government. Beliefs that decisions are made not for those most affected, not for the care of the land, but rather for special interest groups. It is a feeling that no real attempt is made to include people of the community, or worse, even care what they feel.

Along with the feelings of the growing disconnect is the deepening distrust of our government, and sadly with that is almost a loss of hope that their concerns and participation matters. A loss of hope that their lifestyle, their hardships and their cares of earth are of importance in the development of needed alternate energy sources and economic growth.

Perhaps the saddest feeling projected is that decision makers don't care, but the most disturbing to me is a loss of a feeling by the people that this is their government.

I believe that a review of the records of Act 97 will clearly show that the only identified purpose by the sponsors and supporters of this Act was to expedite the development of geothermal and remove all barriers. This included a failed attempt to exempt all exploratory geothermal drilling from any EA or EIS requirement. No mention is ever made in regards to the concern of people, of land, or of lifestyle. No mention is ever made of the need to consult with the local government or the people the Act would affect. This resulted in the creation of Act 97 that should not have been.

We all must be on guard against actions that will add to the disconnect and distrust of the government and the people they govern. We must draw a line to say “stop” to the disregard and disrespect of this special place and its people.

I ask that we refocus on our responsibilities to social, environmental, cultural and spiritual care in the stewardship of Hawaii, our home. Let us start by repealing Act 97. I ask for your support of HB 106.

Much aloha,

Harry Kim