

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUB-TITLE 7. WATER AND LAND DEVELOPMENT

Chapter 184

Designation and Regulation of
Geothermal Resource Subzones

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Subchapter 1

General

§13-184-1 Purpose. The purpose of this chapter is to establish guidelines and procedures for the designation and regulation of geothermal resource subzones for the exploration, discovery, development, and production of geothermal resources for electrical energy production and distribution within conservation, agricultural, rural, and urban districts. These guidelines and procedures are intended to assist in designating areas which have potential for geothermal resource development for electrical energy production and which have an acceptable balance of the relationships of geothermal development to uses allowed in the land use classifications, to present uses of surrounding lands, to potential benefits and impacts. [Eff. SEP 6 1984] (Auth: HRS §205-5.1) (Imp: HRS §205-5.1)

§13-184-2 Definitions. As used in this chapter:

"Appropriate county authority" means the county planning commission unless some other agency or body is designated by ordinance of the county council.

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources or a designated representative.

"Department" means the department of land and natural resources.

"Geothermal development activities" means the exploration, development, or production of electrical energy from geothermal resources.

"Geothermal resources" means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or which may be extracted from such natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, steam and associated gases, in whatever form, found below the surface of the earth.

"Geothermal resource subzone" means any area designated by the board as provided in this chapter for use of geothermal resource exploration, development, or production, of electrical energy from geothermal

resources in addition to those uses permitted in each land district under chapter 205 of the Hawaii Revised Statutes.

"Operator" means any person as defined herein engaged in drilling, maintaining, operating, producing or managing any geothermal well and appurtenances, geothermal research facility, and geothermal production or utilization facility including electric power plant.

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"Geothermal mining lease" means a State lease approved and issued by the board in accordance with chapter 182, Hawaii Revised Statutes, and chapter 183 of title 13, Administrative Rules entitled "Rules on Leasing and Drilling of Geothermal Resources".

"Special use permit" means a permit issued by the county planning commission for certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. [Eff. SEP 6 1984] (Auth: HRS §205-5.1) (Imp: HRS §205-5.1)

§13-184-2.1 Geothermal resource subzones.

Geothermal resource subzones may be designated within the urban, rural, agricultural and conservation land use districts established under section 205-2, Hawaii Revised Statutes. Only those areas designated as geothermal resources subzones may be utilized for geothermal development activities in addition to those uses permitted in each land use district under chapter 205, Hawaii Revised Statutes. Geothermal development activities may be permitted within urban, rural, agricultural, and conservation land use districts in accordance with chapter 205, Hawaii Revised Statutes, rules of the appropriate county authority, and these administrative rules.

The board shall have the responsibility for designating areas as geothermal resource subzones, except that the total area within an agricultural district which is the subject of a geothermal mining lease approved by the board, and any part or all of which area is the subject of a special use permit issued by the county for geothermal development activities, on

or before May 25, 1984, is hereby designated as a geothermal resource subzone for the duration of the lease.

The authority of the board to designate geothermal resource subzones shall be an exception to those provisions of chapter 205, Hawaii Revised Statutes, and of section 46-4, Hawaii Revised Statutes, authorizing the land use commission and the counties to establish and modify land use districts and to regulate uses therein.

The provisions of these administrative rules shall not abrogate nor supersede the provisions of chapters 182, entitled "reservation and disposition of government mineral rights" and 183, entitled "forest reservations, water development, zoning", Hawaii Revised Statutes, and chapter 183 of title 13, department administrative rules entitled "rules on leasing and drilling of geothermal resources". [Eff. SEP 6 1984] (Auth: HRS §205-5.1) (Imp. HRS §205-5.1)

§13-184-3 Subzone objectives. The establishment and regulation of geothermal resource subzones is intended to facilitate geothermal development activities in those areas of the State where such activities will serve, in overall

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perspective, the best interest of the State, premised upon the criteria set forth in section 13-184-6. The major objectives are:

- (1) To allow geothermal development activities to help achieve the State's goal of energy self-sufficiency and broaden the State's economic base through development of a natural resource;
- (2) To allow geothermal development activities in areas where such activities would be of greater benefit to the State than the existing or future use of such areas; and
- (3) To allow geothermal development activities in areas of the State which best demonstrate an acceptable balance among the criteria set forth in §13-184-6. [Eff. SEP 6 1984] (Auth: HRS §205-5.1)

(Imp: HRS §205-5.1)

Subchapter 2

Designation of Geothermal Resource Subzones

§13-184-4 Board initiated subzone designation. Beginning in 1983, and prior to the designation of any area as a geothermal resource subzone, the board shall first make or cause to be made a county-by-county assessment of those areas within the State which have potential for geothermal development activities. The methods to be used for making the assessments shall be left to the discretion of the board, provided that the board shall as a minimum consider the criteria set forth in section 13-184-6. The board may in its discretion base its methods for assessment on currently available public information. Where applicable, the board shall consider the objectives, policies and guidelines set forth in part I of chapter 205A, Hawaii Revised Statutes, and the provisions of chapter 226, Hawaii Revised Statutes.

The initial county-by-county assessments of areas with geothermal potential shall be revised or updated by the board at least once every five years beginning in 1988, or at any lesser interval of years at the discretion of the board. [Eff. SEP 6 1984] (Auth: HRS §205-5.1) (Imp: HRS §205-5.1)

§13-184-5 Landowner initiated subzone designation. In addition to designations initiated by the board, any property owner, State mining lease applicant, geothermal mining lessee, or person with an interest in real property may initiate an application for designation of any area with geothermal potential as a geothermal resource subzone by specifying the area to the board. The application and three copies shall be accompanied by the following information:

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- (1) Names and addresses of the applicant, operator, owner of the geothermal mineral rights, landowner if not the same as the

- applicant, and the geothermal lease number, if applicable;
- (2) Evidence that the applicant is qualified to submit such a petition;
 - (3) An accurate description and map of the area desired to be designated as a geothermal resource subzone;
 - (4) A statement by applicant of the purpose, justification, and need for designation; and
 - (5) An assessment report based on the criteria set forth in section 13-184-6 and any other information to support the proposed designation.

Applications for geothermal resource subzones shall be submitted to the department for approval by the board. Each application shall be accompanied by a filing fee of \$100.00. The chairperson shall review the application for completeness and may request additional information deemed necessary to process the application for board approval. The chairperson shall notify the applicant in writing of the acceptance of the completed application. Within 180 days of the written notification of acceptance of the application, the board shall publish notice of and hold public hearings and render a decision on designating any part or all of the area requested for designation as a geothermal resource subzone. If the request for geothermal resource subzone is denied, the board shall state its reason for its decision. If the board fails to hold a hearing and render a decision within 180 days after issuance of the notice of acceptance of the application, the application is deemed approved subject to the conditions of section 13-184-11. [Eff. SEP 6 1984] (Auth: HRS §205-5.2) (Imp: HRS §205-5.2)

§13-184-6 Criteria for designation of subzones.

The board, in designating an area as a geothermal resource subzone, shall be guided by the selection of those areas that can demonstrate an acceptable balance among the criteria set forth below:

- (1) That the area has potential for geothermal development activities;
- (2) That there is a known or likely prospect for the utilization of geothermal resources for electrical energy production;
- (3) That any potential geologic hazards to geothermal production or use in the proposed area are examined;

- (4) That any environmental or social impacts of the development of geothermal resources within the proposed area be considered;
- (5) That the compatibility of development and utilization of geothermal resources within the proposed area is considered with other allowed uses within the area and within the surrounding lands; and

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- (6) That the potential benefits to be derived from geothermal development and utilization in the proposed area be in the interest of the county or counties involved and the State as a whole. [Eff. SEP 6 1984] (Auth: HRS §205-5.2) (Imp: HRS §205-5.2)

§13-184-7 Environmental impact statement not required. An environmental impact statement as defined under chapter 343, Hawaii Revised Statutes, shall not be required in assessing any area proposed for designation as a geothermal resource subzone. [Eff. SEP 6 1984] (Auth: HRS §205-5.2) (Imp: HRS §205-5.2)

§13-184-8 Notice and public hearings. When the board or a qualified applicant proposes an area for designation as a geothermal resource subzone, the board shall hold a public hearing in reasonably close proximity to the proposed area and publish a notice of the public hearing setting forth:

- (1) A description of the proposed area;
- (2) An invitation for public comment; and
- (3) The date, time, and place of the public hearing where written or oral testimony may be submitted or heard.

Such notice shall be published on three separate days in a newspaper of general circulation statewide and in the county in which the public hearing is to be held. The first publication shall be not less than twenty days before the date set for the hearing. Copies of the notice shall be mailed to the State department of planning and economic development and the planning commission and planning department of the county in

which the proposed area is located. Publication of the notice of public hearing shall be considered sufficient notice to all landowners and persons who might be affected by the proposed designation.

The public hearing shall be held before the board and the conduct of the public hearing shall not be delegated to any agent or representative of the board. All persons and agencies shall be afforded the opportunity to submit data, views, and arguments whether orally or in writing. The department of planning and economic development and the affected county planning department shall be permitted to appear at the public hearing and make recommendations concerning the proposal to designate an area. [Eff. SEP 6 1984] (Auth: HRS §205-5.2) (Imp: HRS §205-5.2)

§13-184-9 Decision of the board. At the close of the public hearing, the board shall consider all the testimony and after deliberation make a decision to designate any portion, all or none of the proposed area or announce the date on which it will render its decision. The board may designate a proposed area as a geothermal resource subzone only if it finds the proposed area possesses an

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acceptable balance of the criteria set forth in section 13-184-6. If the board designates an area as a geothermal resource subzone it shall cause a notice of its decision to be published in a newspaper of general circulation statewide and in a newspaper of general circulation in the county in which the area is located and when so published its decision shall be final unless otherwise ruled invalid by a court of appropriate jurisdiction. Upon request, the board shall issue a concise statement of its findings and the principal reasons for its decision to designate a particular area. [Eff. SEP 6 1984] (Auth: HRS §205-5.2) (Imp: HRS §205-5.2)

§13-184-10 Modification and withdrawal of existing subzones. Modification of the boundaries or the withdrawal of an existing designated geothermal resource subzone may be initiated by the board or by any property

owner, State mining lease applicant, geothermal mining lessee, or person with an interest in real property that is within the designated subzone. The procedure for modifying the boundaries or withdrawal of an existing designated geothermal resource subzone shall be conducted pursuant to the provisions of chapter 91, Hawaii Revised Statutes. The board shall withdraw a designation only upon finding by a preponderance of the evidence that the area is no longer suited for designation; provided, however, that within an existing subzone with active geothermal development activities, the area may not be modified or withdrawn. An environmental impact statement as defined under chapter 343, Hawaii Revised Statutes, shall not be required in assessing any modification of the boundaries or withdrawal of subzones. [Eff. SEP 6 1984] (Auth: HRS §205-5.2) (Imp: HRS §205-5.2)

Subchapter 3

Regulation of Geothermal Resource Subzones

§13-184-11 Administration of subzones. Geothermal development activities within a geothermal resource subzone shall be administered as follows:

- (1) The use of an area for geothermal development activities within a geothermal resource subzone shall be governed by the board, if such activities lie within a conservation use district. If geothermal development activities are proposed within a conservation district, then, after receipt of a properly filed and completed application, the board shall conduct a public hearing and, upon appropriate request, a contested case hearing pursuant to chapter 91, Hawaii Revised Statutes, to determine whether, pursuant to board regulations, a

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conservation district use permit shall be granted to authorize the geothermal

development activities described in the application.

- (2) The use of an area for geothermal development activities within a geothermal resource subzone shall be governed by both state and county statutes, ordinances, and rules, if such activities lie within an agricultural, rural, or urban use district; except that land use commission approval or special use permit procedures which are provided for in section 205-6, Hawaii Revised Statutes, shall not be required for the use of such subzones for geothermal development activities.

In the absence of provisions in the county general plan and zoning ordinances specifically relating to the use and location of geothermal development activities in an agricultural, rural, or urban district, the appropriate county authority may issue a geothermal resource permit to allow geothermal development activities. Such uses as are permitted by county general plan and zoning ordinances by the appropriate county authority shall be deemed to be reasonable and to promote the effectiveness and objectives of chapter 205, Hawaii Revised Statutes.

If provisions in the county general plan and zoning ordinances specifically relate to the use and location of geothermal development activities in an agricultural, rural, or urban district, the provisions shall require the appropriate county authority to conduct a public hearing and, upon appropriate request, a contested case hearing pursuant to chapter 91, Hawaii Revised Statutes, on any application for a geothermal resource permit to determine whether the use is in conformity with the criteria specified in section 205-5.1(e), Hawaii Revised Statutes, for granting geothermal resource permits.

If geothermal development activities are proposed within agricultural, rural, or urban districts and such proposed activities are not permitted uses pursuant to county general plan and zoning ordinances, then after receipt of a properly filed and completed application, the appropriate county authority shall conduct a public hearing and, upon appropriate request, a contested case hearing pursuant to chapter 91, Hawaii Revised Statutes, to determine

whether a geothermal resource permit shall be granted to authorize the geothermal development activities described in the application. The appropriate county authority shall grant a geothermal resource permit if it finds that applicant has demonstrated by a preponderance of the evidence that:

- (a) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property; and

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- (b) 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
- (c) That there are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

Unless there is a mutual agreement to extend, a decision shall be made on the application by the appropriate county authority within 180 days of the date a complete application was filed; provided that if a contested case hearing is held, the final permit decision shall be made within 270 days of the date a complete application was filed.

County issued geothermal resource permits shall not abrogate nor supersede the provisions of chapters 177, 178, 182, 183, 205A, 226, 342, and 343, Hawaii Revised Statutes, and administrative rules promulgated thereunder shall apply as appropriate. [Eff. SEP 6 1984] (Auth: HRS §205-5.2) (Imp: HRS §205-5.2)

The amendment to Title 13, Administrative Rules, on the Summary Page dated August 24, 1984, was adopted on August 24, 1984, following public hearings held on Oahu and Kauai on July 31, 1984; on Hawaii on August 1, 1984; and on Maui on August 2, 1984; after public notice was given in The Honolulu Star Bulletin, Hawaii Tribune Herald, Maui News, and The Garden Island on July 11, 1984.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

SUSUMU ONO, Chairperson
Board of Land and Natural Resources

Member
Board of Land and Natural Resources

GEORGE R. ARIYOSHI
Governor
State of Hawaii

Dated:

APPROVED AS TO FORM:

Deputy Attorney General

Dated:

Filed