



# Indigenous Consultants, LLC

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re: Hawaii Interisland Renewable Energy Program (HIREP) Programmatic  
Environmental Impact Statement Preparation Notice (EISPN)

Aloha,

Indigenous Consultants (IC) is an LLC that provides consulting services for indigenous peoples engaging in economic development and other projects on their traditional lands which impact traditional resources, including energy resources. The business model utilized by IC in its work is based on respect for and preservation of indigenous human rights, and a commitment to development that is socially responsible, environmentally sustainable and culturally appropriate. IC is currently working in Hawaii, and as a Native Hawaiian LLC is consulting community groups and a Hawaii based Geothermal Development Corporation, The Innovations Development Group (IDG) who are pursuing Geothermal and Renewable Energy resource development for the State of Hawaii.

IC has worked with indigenous peoples in the Pacific Region for 10 years in the area of renewable energy development and as during this time has successfully facilitated three Geothermal Development projects in New Zealand with Maori Trusts. Recently the IC met with and presented to the Hawaii Island Geothermal Working Group established by the State legislature to examine and report on the feasibility of using

geothermal energy as the primary energy source to meet base load demand for Hawaii Island.

### Introduction:

#### The State Energy Plan and the Tri-Island Cable

The Hawaii Clean Energy Initiative (HCEI) was not the product of a statewide effort to address and plan for Hawaii's energy needs and future. The initial legislative framework provided for a statewide effort for energy self sufficiency utilizing all renewable options to address energy needs of the entire state. Following the establishment of the framework, the Lingle administration and the Bush Department of Energy initiated the Tri-Island cable project, with little input from the State Legislature, Community groups, residents of Lanai and Molokai, Hawaiians or anyone else. Senator Dan Inouye supported the plan once "military buy in" was secured. See <http://www.hawaiibusiness.com/Hawaii-Business/October-2009/The-Inouye-Legacy/>

The Lingle plan was a partisan effort that was created to put Republican landowners & investors on Maui, Molokai and Lanai in the position to benefit exclusively from Federal stimulus and renewable energy funds at the expense of the State and its public trust beneficiaries. Under phase one of this ill conceived plan, Lanai (Dave Murdock) and Molokai (Molokai Ranch) are converted into industrial parks for the generation of wind energy exclusively for Oahu Island with energy being transmitted by underwater cable in the Whale Sanctuary. Costs for transmission will total 1 Billion dollars are being passed onto ratepayers & taxpayers.

Phase 2 of the plan is seldom referred to. It is the extension of the Tri-Island cable to Maui for Geothermal energy for Oahu. Federal Stimulus monies have already been secured for the PVG/Ormat production monopoly for exploratory work on Maui (Maui Land & Pine). This diverted badly needed funding for geothermal exploration statewide.

Community opposition against the initiative was vented at the Senate briefing held in early January 2011 when residents & ratepayers from Lanai and Molokai came to Oahu to oppose the plan at a Senate briefing. They noted that the Tri-Island Plan is not an energy plan for the State as it does not include Hawaii and Kauai Islands, and does not provide for energy self sufficiency for Lanai, Molokai or Maui. Instead, these neighbor islands are developed as "industrial parks" of Oahu. (See testimony of Friends of Lanai to Senate Committee on Energy and Environment, January 2010.)

In addition, Lanai and Molokai residents expressed anger about being made to pay 'Oahu' rates for cable and link costs which do not benefit Lanai, Maui or Molokai, and which will be constructed within the boundaries of the Whale Sanctuary! According to Molokai resident Walter Ritte, the entire Island of Molokai could be energy self-sufficient with 1 windmill but is being forced to accommodate over 100 and assessed transmission costs for taking their energy to another island!

The concerns of Molokai are affirmed by the current situation facing Hawaii Island. Geothermal energy has been on line for many years on Hawaii Island where it has provided up to 30% of the islands energy. Despite this fact, Hawaii Island ratepayers consumers have been billed & charged for over 20 years FOR ELECTRICITY BASED ON OIL PRICES. This situation was allowed to continue despite the fact that HELCO/HECO, PGV, ORMAT and the PUC all know that 1/3d of the energy consumed on Hawaii Island is not tied to oil consumption and the actual cost could easily be ascertained in order to establish an accurate & fair rate for consumers who own the resource. Ratepayers lost out when the HECO/Ormat monopolies agreed that 'avoided costs' (monies saved by not using costly fossil fuel) would become 'profits' for themselves rather than savings for ratepayers.

Although the HECO/HELCO group and Ormat/PVG are now saying that they will recalculate the rate for the new increased energy provided by PGV to HELCO they continue to withhold relevant data on production and cost rates (for the past and present) because the information is "proprietary" and "secret".

### Price Setting, Secrecy and Lack of Accountability

All information and data relating to public resources should be publically available for consumers and policy makers. The claims that the terms of the contracts, agreements and deals relating to pricing (or any other aspect of geothermal development) need to be kept secret because of "competition" is ludicrous given the fact that there is no competition involved in the existing arrangement on the Big Island because the HELCO/HECO group and PGV/ORMAT have monopolies and deal exclusively with each other.

This atmosphere of secrecy and special dealing for the lucrative benefit of a few monopoly corporations continues to pervade the implementation of the HIREP. A good example is the current EIS review process being undertaken which excludes all community, environmental and cultural groups but does include 15 State agencies, 3 federal agencies and the HECO/HELCO monopoly!

The HCEI says that a Hawaii Island cable project should be assessed for the priority of providing electricity to HECO/HELCO "ratepayers", not to the public and native be beneficiaries of the public trust who own the geothermal and other natural renewable energy sources in the public trust.

The HCEI also maintains the exclusive monopoly currently in place in Hawaii. For example, the HCEI Energy Agreement (EA) calls for an undersea cable system owned by the State to be contracted to Hawaiian Electric that will operate and maintain it. Hawaiian Electric has no experience in the construction, operation or maintenance (O&M contracts) of undersea cables but will reap a huge windfall by this private non-competitive bid agreement arrangement with the State while it sub-contracts out the work to others. Costs for this questionable sweetheart deal will be passed on to the HECO/HELCO ratepayers and to all State taxpayers.

The EA is remarkable in that it specifically directs and approves actions that are clearly against the best interest of the State and its citizens and that favor the monopoly group. The EA advocates overturning Hawaii PUC decisions, amending EPA's Regional Hazard Rules re: utility emissions in areas with volcanic haze, amending EPA's New Source Review (NSR) Rules and amending federal law to favor tax support for biofuels including palm oil. This interfaces with the plan of the HECO/HELCO monopoly to push biofuel development for its own fossil fuel to biofuel agenda. These problems are also addressed in the FEIS comments submitted by Life of the Land.

### Conflict of Interest

According to HECO :.... "Hawaiian Electric is actively managing the direction of the studies and utilizing the expertise provided by members of the Technical Review Committee ("TRC") to guide study scope and review the results. The current study efforts (Stage I) have been well vetted and at this point are deemed necessary. ...The current study efforts have been well vetted through the Technical Review Committee and are deemed necessary and appropriate.." See HECO Response to CA-IR-IO Oct. 26, 2009.

The TRC is not an independent review board. The TRC is comprised of 30 people. Of the 30-members: nine representatives from HECO the 'applicant', six from the U.S. DOE which is a partner in the project; three represent the State of Hawaii which is also a partner in the project; two represent the UH Hawaii Natural Energy Institute which is coordinating the initial cable routing Studies, the remaining ten people are wind integration, smart grid, and transmission experts who support central station wind projects. All members of the TRC have a clear conflict of interest.

According to Ted Peck the State energy administrator 'The environmental impact statement is going to do a robust analysis of alternatives, and we are looking at everything to get us to a clean-energy future and get us off this drug called oil that is so dangerous to our communities.'" See: Wind impact has felt more like a breeze, Pacific Business News, September 20, 2010. Peck has made similar representations, but in fact no meaningful assessment of 'alternative' plans to the Tri-Island proposal was ever undertaken by Peck or his State energy team. In January, 2011 Peck left his State position to become a board member of a new corporation ( Ku'okoa) posturing to purchase the HECO/HELCO monopoly! Peck had no interest in assuring that alternatives to the Tri-Island proposal would be forthcoming, his personal interests were furthered by supporting the HECO/HELCO proposal because he was involved in a company that was going to make a takeover bid of HECO and is currently seeking to buy the PVG plant.

### Geothermal Resources as an Asset of the Public Trust

In Hawaii, geothermal resources are an asset of the public trust. This is because geothermal resources are 'minerals', and all minerals are reserved to the State of Hawaii in trust. The reservation of minerals in behalf of the people has been in practice since the time of the Monarchy when mineral reservation clauses were routinely inserted into all land deed and recording certificates. As a condition of Statehood, the public lands

and natural resources of the archipelago were set-aside in perpetuity for 4 'public' purposes and ... "for the betterment of conditions of native Hawaiians..." This Trust, contained in section 5(f) of the Admissions Act, clearly recognizes that the legal title to geothermal resources vests in the State of Hawaii while the "equitable" title belongs to 2 beneficiaries, the public and the 'native Hawaiian' (50% blood or more).

Despite this fact, the development of geothermal and other renewable energy resources in Hawaii are being treated as developments of private energy assets belonging to corporations who are undertaking private development projects under a licensing agreement with the State. This continues to be the case with the HIREP.

This has occurred because geothermal development in Hawaii has been undertaken as a monopoly enterprise involving a handful of powerful & wealthy corporations including the HECO/HELCO group and the ORMAT/PGV who have benefitted greatly from revenues resulting from geothermal development and who will continue to benefit exclusively from the HIREP. (Ormat/PGV having the exclusive on the Maui Land & Pine exploration on Maui, and HECO/HELCO getting the exclusive contracts for operation & management of the Tri-Island cables.) This agreement will allow the HECO/HELCO monopoly to maintain its control of energy transmission in Hawaii & to expand the monopoly to include all oceanic cable transmission lines.

The HCEI also ignores the obvious solution available to Oahu through H-Power, an alternative that was developed by the County under Mayor Frank Fasi. The County owns all trash & municipal solid waste on Oahu, and for years has been killing 2 birds with one stone by transforming solid municipal waste into energy for the islands needs. This approach has been used successfully for years on Oahu and could easily be expanded to meet Oahu's growing energy and waste disposal needs, but the HCEI ignored this obvious solution because it would not provide exclusive lucrative benefits to the HELCO/PGV monopoly group, or the partisan supporters of the Lingle administration. OTECH was also a potential solution for Oahu, but was not explored as an alternative.

Life of the Land has submitted a comprehensive proposal for Oahu's energy needs which should be addressed in the EIS as an alternative.

### Conclusions & Considerations:

1. The EISPN violates Federal EIS requirements that mandate the inclusion & assessments of a "range of alternatives". Section 1502.14 (NEPA) specifically requires that other practical or feasible alternatives be assessed. Section 1506.2d requires that alternatives outside the scope of what Congress as funded be addressed in order to inform the Congress of other more affordable & practical options SO THAT CONGRESS CAN MODIFY ITS FUNDING PRIORITIES TO ADDRESS NEPA'S GOALS & POLICIES. Other alternatives have not been excluded in the EISPN primarily because the Lingle HIREP was intended to

capture and direct all available federal funding to Dave Murdock, Molokai Ranch and Maui Land & Pine.

See: “The consideration of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. [section] 1502.14 (1998). It is “absolutely essential to the NEPA process that the decision maker be provided with a detailed and careful analysis of the relative environmental merits and demerits of the proposed action and possible alternatives, a requirement that we have characterized as ‘the linchpin of the entire impact statement.’” *Natural Resources Defense Council v. Callaway*, 524 F.2d 79, 92 (2d Cir. 1975). Moreover, “The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” *Resources Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993) (quoting *Idaho Conservation League*

2. The EISPN violates federal EIS requirements because it fails to provide a comparative analysis of the environmental consequences for a different alternative, i.e. the development of geothermal energy for Hawaii and Oahu. The proposed Tri-Island cable will impact the reef systems that surround Molokai, the wide reef along the south Oahu shore, and the cable from Molokai to Lanai lies almost entirely within the Humpback Whale Sanctuary. It is clear that this proposal will have significant impact on the marine and reef environs of all 4 islands. By comparison, a cable line from Puna, Hawaii to Oahu would completely avoid reef impacts to Lanai, Molokai and Maui as well as the Whale Sanctuary.

### The Need for a Comprehensive Statewide Energy Initiative

The Tri-Island Initiative is not a statewide plan for Hawaii. The Islands of Hawaii and Kauai are completely excluded from the initiative. The islands of Lanai and Molokai are significantly over-developed for Oahu’s energy needs. These small islands could achieve energy self-sufficiency (with one and 2 windmills respectively) but instead are being made to accommodate hundreds of huge windmills and made to pay rates of Oahu consumers for miles of cable which do not benefit or serve their needs.

Internationally, small island developing states (SIDS) are moving rapidly to address their energy insecurity by addressing self-sufficiency island by island. Under this approach the goal of a statewide energy plan would be energy independence for every island. Under the current plan, the majority of the Hawaiian Islands have no benefit. If Maui’s geothermal resources are cabled to Oahu, it is unlikely that Maui can be self-sustaining. Maui’s geothermal resources should be developed first for Maui.

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