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CLERK

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THIRD CIRCUIT COURT
STATE OF HAWAII
FILED

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,
Plaintiff,

vs.

WILLIAM PATY, et al.,
Defendants.

) CIVIL NO. 89-089 (Hilo)
) (Declaratory Judgment/
) Injunction)
)
) PLAINTIFF'S MEMORANDUM IN
) OPPOSITION TO DEFENDANTS TRUE
) GEOTHERMAL ENERGY CO., TRUE
) GEOTHERMAL DRILLING CO., AND
) MID-PACIFIC GEOTHERMAL, INC.'S
) AND DEFENDANTS THE ESTATE OF
) JAMES CAMPBELL, DECEASED, W. H.
) McVAY AND P. R. CASSIDAY,
) TRUSTEES UNDER THE WILL AND OF
) THE ESTATE OF JAMES CAMPBELL,
) DECEASED, ACTING IN THEIR
) FIDUCIARY AND NOT IN THEIR
) INDIVIDUAL CAPACITIES, HERBERT
) C. CORNUELLE AND F. E. TROTTER'S
) MOTIONS FOR PROTECTIVE ORDER OR
) IN THE ALTERNATIVE TO QUASH
) SUBPOENA DUCES TECUM; EXHIBITS
) "A"-"E"; CERTIFICATE OF SERVICE
)
)
)

Hearing

} Date: April 16, 1993
} Time: 8:30 a.m.
} Judge: Riki May Amano

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS TRUE
GEOTHERMAL ENERGY CO., TRUE GEOTHERMAL DRILLING CO., AND MID-
GEOTHERMAL, INC.'S AND DEFENDANTS THE ESTATE OF JAMES CAMP-
BELL, DECEASED, W. H. McVAY AND P. R. CASSIDAY, TRUSTEES UNDER
THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, ACTING
IN THEIR FIDUCIARY AND NOT IN THEIR INDIVIDUAL CAPACITIES
HERBERT C. CORNUELLE AND F. E. TROTTER'S MOTIONS FOR PROTECTIVE
ORDER OR IN THE ALTERNATIVE TO QUASH SUBPOENA DUCES TECUM

The Supreme Court, on appeal in this matter [73 Haw 578, 837 P.2d 1247 (1992)], has reiterated the Kalipi opinion that "the retention of a Hawaiian tradition should in each case be determined by balancing the respective interests and harm" of the parties. This case is not simply a determination of whether Defendants True and Campbell denied access to individuals who meet the "criteria" established by the courts. The continued retention of Hawaiian tradition in a given area is a function of the nature of the tradition being exercised, the interests of the parties in the land (i.e., lessor-lessee rights, holders of rights of entry, derivation of authority to deny or grant access), the nature of the land (i.e., presence of trails and burials, reservation of these trails and burials to the State, location of these features, boundaries, property description), present use of the land (i.e., what has been bulldozed, what constitutes "developed" in a 27,000 acre rain forest, what other persons are coming on to the land for what purposes), future proposed use of the land (i.e., is there any way permitting authorities can require retention of tradition in the permitting

process -- see Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 73 Haw. ___, 656 P.2d ___ (Haw. Ct. of Appeals 1993 ICA No. 15460), and respective harms to the parties in both the retention and nonretention of these traditions.

Obviously, this Court can neither balance these interests and harms nor intelligently fashion a remedy without a comprehensive inquiry into all of these interests, circumstances, and harms. Plaintiff is proceeding under H.R.S. § 1-1 and Article XII, § 7. The mandate to this Court is that these statutory and constitutional provisions not be narrowly construed. Plaintiff submits that the documents subpoenaed and the description of area of inquiry set forth in its notice to Defendant True are relevant to a proper weighing of the parties' respective interests and harms. Hence, unless privileged, the documents subpoenaed are properly discoverable under Rule 26. Defendants True and Campbell have failed to assert with specificity any grounds for a protective order other than that of relevance and, "relevance" is based on Defendants interpretation of Justice Klein's opinion of what the lower court is to do on remand.

What has already been established is that Alan Kawada, on behalf of his employer Defendant True, has expressed its access policy as such:

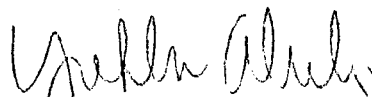
"[N]obody gets on the road, no one gets on through the gate or to the drill site." See Exhibit "D", excerpt of cross-examination of Alan Kawada May 9, 1990, State v. Rector, p. 18.

Defendants' agents and employees. It is one thing to have this Court render a decision in Hilo to be filed in the Court records; it is quite another to have that decision enforced in the trees and bushes of Wao Kele O Puna. Plaintiff will be seeking, ultimately, that this Court require, with specificity, notice and enforcement. The Court cannot fashion such a remedy in a vacuum.

Finally, Plaintiff submits that the Court has wide discretion under Rule 26. Likewise, Plaintiff is not required under Rule 34 to obtain documents from a party by way of request for production of documents. Rule 34 simply provides that any party may serve on any other party such a request. Plaintiff has filed and will timely serve on Defendants True and Campbell's respective custodians of records a subpoena duces tecum.

Plaintiff, for the reasons and arguments stated above, requests its fees and expenses incurred herein.

DATED: Honolulu, Hawaii, April 15, 1993.



YUKLIN ALULI
ALAN T. MURAKAMI
PAUL F. N. LUCAS
STEVEN C. MOORE
Attorney for Plaintiff
PELE DEFENSE FUND

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

COPY

---:---

PELE DEFENSE FUND,

) CIVIL NO. 89-089 (Hilo)

Plaintiff,

vs.

WILLIAM PATY, in his capacity
as Chairperson of the Board of
Land and Natural Resources,

State of Hawaii, MOSES KEALOHA,

DOUGLAS ING, LEONARD ZALOPANY,

JOHN ARISUMI and HERBERT ARATA,

in their capacity as members of

the Board of Land and Natural

Resources, The Estate of JAMES

CAMPBELL, Deceased, FRED E.

TROTTER, W. H. McVAY, P. R.

CASSIDAY, and HERBERT C.

CORNUELLE, in their fiduciary

capacity as Trustees under the

Will of James Campbell,

Deceased; TRUE ENERGY

GEOTHERMAL CORP., TRUE

GEOTHERMAL DRILLING CO., and

MID-PACIFIC GEOTHERMAL, INC.,

) DEPOSITION OF

) ALAN KAWADA

Defendants.

EXHIBIT "A"

(consisting of fourteen pages)

CARNAZZO COURT-REPORTING COMPANY

1 description --

2 MS. ALULI: I'm asking him hypothetically as an
3 attorney would he be able to compare metes and bounds
4 description of a deed with metes and bounds description
5 of a lease to ascertain whether or not they demise the
6 same premises. That's a hypothetical.

7 THE WITNESS: I would have to answer no.

8 Q (By Ms. Aluli) So you're not able to compare
9 property descriptions as an attorney?

10 A Not on this one, no.

11 Q No, just in general. If you had two documents,
12 and you needed to compare the property description in
13 one document to the property description in the other
14 document to make sure they covered the same property,
15 are you able to do that as an attorney?

16 A As a hypothetical, generally speaking, yes.

17 Q I'm not asking with respect to this document
18 because you don't have something to compare it against
19 with you today; is that correct?

20 A That's correct.

21 Q You don't have any of the leases, isn't that
22 correct?

23 A That's correct.

24 Q So you won't be able to testify as to whether or
25 not this land patent, which is Exhibit Three, covers the

1 lease which you are here to talk about; isn't that
2 correct?

3 A That's correct.

4 Q Do you have an independent recollection of the
5 property description in any reservations contained
6 thereon in your lease that you can talk to me about
7 today without having it in front of you?

8 A Generally, no.

9 MS. ALULI: Well, for the record, I intend to ask
10 Mr. Kawada some questions with respect to reservations
11 which are contained on this land patent number S-15. I
12 do not have a copy of the lease. He's the individual
13 designated to be knowledgeable as to the terms of the
14 lease.

15 He's just testified that he could not or does not
16 have an independent recollection of the reservation. So
17 I'm going to say that unless he has the lease with him,
18 he's not going to be able to testify to some of these
19 questions.

20 We'll get on with the questioning, but I would
21 like to have you be able to answer these questions. If
22 you have to bring the lease down here, that's how it's
23 going to have to be. Otherwise there's nobody who can
24 talk about it.

25 MR. LEE: Well, Counsel, like I stated before,

1 unless we get an order ordering us to bring documents --

2 MS. ALULI: Okay.

3 MR. LEE: -- I think that's been applicable to
4 both sides, you know, we'll follow a proper court order.

5 MS. ALULI: Okay.

6 THE WITNESS: One of the things I'm having
7 difficulty, and I said straight out, you referred to the
8 lease, but you're not identifying the particular lease
9 you're talking about. So I'm having difficulty
10 identifying it.

11 MS. ALULI: Okay, leases with respect to property
12 demised or leased to your employer in the District of
13 Puna on the Island of Hawaii for purposes of its
14 geothermal development activities.

15 Q Is True Geothermal a lessee from any other entity
16 besides the Estate of James Campbell on the Island of
17 Hawaii?

18 A Yes.

19 Q Is True Geothermal a lessee for lands in the
20 District of Puna from any other entity besides the
21 Estate of James Campbell?

22 A Yes.

23 Q Are you familiar with the terms government land of
24 Makuu, Kaohe, Kaimu, Makena, Kamaohe and Kaili
25 (phonetically)?

1 A I have --

2 MR. LEE: Object to the form of the question, but
3 you can go ahead and answer, if you understand.

4 THE WITNESS: I'm familiar with those terms. I
5 have heard them before as land descriptions.

6 Q (By Ms. Aluli) Land descriptions. Do you have an
7 understanding of what an ahupuaa is?

8 A As a layman, yes.

9 Q How about as an attorney?

10 A No.

11 Q What is your understanding of ahupuaa as a lay
12 person?

13 A That it is a ancient land description or boundary
14 description of lands that are under one ownership or
15 under one control.

16 Q Okay, now, the words I just read to you, Makuu,
17 Kaohe, Kaimu, Makena, Kamaohe and Kaili (phonetically),
18 you previously testified that those are -- your
19 understanding, you've heard them in the context of being
20 divisions of land; is that correct?

21 A That's correct.

22 Q By divisions of land, do you mean ahupuaas?

23 A I don't know that Makuu, Kaimu, Makena are
24 ahupuaas. I know that they're land descriptions. But
25 whether they go the step further, ahupuaas, I do not

1 know.

2 Q Do you know if -- strike that.

3 Does True Geothermal lease lands from others
4 besides the Estate of James Campbell in Makuu, Kaohe,
5 Makena, Kamaohe and Kaili (phonetically)?

6 MR. LEE: I'm going to object to that. That
7 assumes facts not in evidence, and it also calls for
8 speculation. You're asking him to tell you whether any
9 of the land that True leases, if any, from the Estate of
10 James Campbell is in the Makuu area?

11 MS. ALULI: Yes. He's testified that there are
12 others besides James Campbell from whom True rents -- or
13 leases lands in the District of Puna, Island of Hawaii,
14 okay.

15 MR. LEE: Fine, he testified to that.

16 MS. ALULI: Now I'm asking him if there are others
17 besides the Estate of James Campbell from who True
18 leases land in Makuu, Kaohe, Makena, Kamaohe and Kaili
19 (phonetically). He's testified that he understood the
20 division of land.

21 MR. LEE: Well, further objection is there's a
22 lack of foundation by this particular witness to answer
23 that question because he would first have to -- there
24 would have to be foundation made if he would know the
25 actual boundaries of Makuu or the other land

1 descriptions because you're asking him -- the net effect
2 of the question is do any of the lands you lease include
3 lands in the area, Makuu. He would first have to be
4 able -- you would have to establish he knew where the
5 boundaries of Makuu were.

6 MS. ALULI: Not necessarily. His understanding of
7 Makuu is a division of land.

8 Q Do you understand that Makuu has boundaries?

9 A Yes.

10 Q And that these boundaries exist throughout the
11 division of Makuu, land division of Makuu?

12 MR. LEE: Well, I'm going to object to that as for
13 the form of the question. You can answer if you
14 understand.

15 THE WITNESS: No, I don't.

16 Q (By Ms. Aluli) Do you know the acreage of the
17 land that you are -- True is leasing from the Estate of
18 James Campbell?

19 MR. LEE: I'm going to instruct you not to answer
20 it.

21 THE WITNESS: Based on counsel's advice, I'm not
22 going to answer it.

23 MS. ALULI: What are the grounds?

24 MR. LEE: It's not an issue in this case. What
25 difference does it make?

1 MS. ALULI: I'm trying to ascertain from him what
2 he knows about the lease without having the lease here
3 so I can get on with the questions. Now, some of my
4 questions relate to these land divisions Makuu, Kaohe,
5 and Kamaole (phonetically). He's unable to testify
6 because he does not have the lease in front of him to
7 know where these lands that he leases from the Estate of
8 James Campbell are situated.

9 MR. LEE: Okay. But, Counsel, how is --

10 MS. ALULI: This relevant?

11 MR. LEE: Yes. I mean what --

12 MS. ALULI: Mr. Kawada has testified that he has
13 difficulty this understanding what leases I'm referring
14 to and in answer to previous questions has said to me
15 that he leased from others besides the Estate of James
16 Campbell in the District of Puna on the Island of
17 Hawaii.

18 MR. LEE: Okay.

19 MS. ALULI: So I'm trying to be specific with him
20 as to which lands in the District of Puna are we talking
21 about. Because according to his testimony, there are
22 other lands that they are leasing from other people in
23 the same district.

24 MR. LEE: Okay.

25 MS. ALULI: And he can't be specific as to from

1 whom they lease which lands and where are they
2 situated --

3 MR. LEE: No --

4 MS. ALULI: -- and can't testify as to the
5 questions I'm going to ask him about reservations.

6 MR. LEE: That's your argument. But I don't think
7 part of your -- I mean I agree that he has testified
8 that True does have leases with other entities other
9 than James Campbell for lands in the Puna District. But
10 the Puna District obviously covers a lot of different
11 areas. I mean not just one particular small little
12 piece of property. If --

13 MS. ALULI: There's nothing else that is available
14 to further describe which lands in the District of Puna
15 are covered by my questions unless I get into land
16 divisions.

17 MR. LEE: Okay.

18 MS. ALULI: Because he doesn't have the lease with
19 him we can't compare.

20 MR. LEE: Counsel, the lawsuit -- okay, maybe it's
21 a matter of communication, but my understanding of the
22 claims of plaintiff, and if my understanding is
23 incorrect, please let me know -- but it involves the
24 area that we have been referring to as, in a lot of the
25 depositions and I guess even in the memorandums that we've

1 filed, as the area of Wao Kele O Puna. And maybe I'm
2 wrong, but it's also my understanding that the Puna
3 district includes areas greater than just the area of
4 the Wao Kele O Puna.

5 MS. ALULI: Correct.

6 MR. LEE: That's what I'm saying. If the lawsuit
7 involves any of that area of Wao Kele O Puna, then are
8 you asking him if True has leases with anybody else from
9 Campbell for an area that is in the Wao Kele O Puna? Is
10 that what you're asking?

11 MS. ALULI: No.

12 MR. LEE: The Puna district is a lot wider, as I
13 understand, than just Wao Kele O Puna.

14 Q (By Ms. Aluli) What is your understanding of the
15 meaning of Wao Kele O Puna as far as a land description?

16 A It's not a land description.

17 Q That's correct. So if we were to start talking
18 about if the lease demises to you the Wao Kele O Puna,
19 could you answer that question?

20 A It's not a legal --

21 MS. ALULI: It's not a legal description. So for
22 me to ask your internal legal advisor to address himself
23 to a non-entity, Wao Kele O Puna, is imprecise.

24 MR. LEE: How about Puna Forest Preserve?

25 MS. ALULI: I'm trying to give him the deed and

1 let's get on with the description so we can be precise
2 in our discussion here.

3 MR. LEE: Off the record, and let me talk to him.

4 (Off-the-record discussion.)

5 MR. LEE: Back on the record.

6 MS. ALULI: Okay.

7 MR. LEE: You can get it from Mr. Kawada, but
8 basically what Mr. Kawada will testify to, the leases
9 that he referred to, other than the one with the Estate
10 of James Campbell, are leases for property within the
11 Puna District, but those properties are not within the
12 Puna Forest Preserve.

13 THE WITNESS: Well, the area that was formerly
14 called the Puna Forest Preserve or the Wao Kele Puna
15 Natural Forest Preserve. Not in that basic area.

16 MR. LEE: For the purpose of this lawsuit, unless
17 you tell me otherwise, I'm assuming there's other
18 leases, other than the one with the Estate of James
19 Campbell, are not the subject of this particular area?

20 MS. ALULI: That's correct.

21 Q So, do you understand what lease I'm referring to
22 at this time, Mr. Kawada, inasmuch as it would be a
23 lease from the Estate of James Campbell to True for
24 lands lying within what was formerly known as the Puna
25 Forest District? That is the scope of the questions I'm

1 going to ask you today.

2 A Yes.

3 Q Do you have any independent recollection of the
4 reservations, if any, contained in your lease from the
5 Estate of James Campbell for those lands that we now
6 have agreed are the lands that we're going to be talking
7 about today?

8 A That's a real big question when you talk about a
9 lease.

10 MR. LEE: Let me -- I tell you what. Let me put
11 an objection as to the form of the question being
12 overbroad. I will --

13 MS. ALULI: Here's --

14 MR. LEE: -- as far as -- let me tell you straight
15 out. I have no problems with him testifying -- he
16 already does -- that there's a lease between True and
17 the Estate of Campbell which -- and Alan, you correct me
18 if I'm wrong -- which involves property within what was
19 formerly called the Puna Forest Reserve and the area
20 of -- known as, I guess, Wao Kele O Puna.

21 THE WITNESS: Yes.

22 MR. LEE: And other than that, as to any other
23 terms of the lease, I'm going to instruct him not to
24 answer that question or those questions.

25 MS. ALULI: Well, I'll put on the record my

1 questions.

2 MR. LEE: Okay, fine.

3 MS. ALULI: First of all, Mr. Kawada, at least he
4 can testify as to whether or not he has an independent
5 recollection without the presence of the lease or
6 reservations in the lease covering the lands leased from
7 the Estate of James Campbell lying within what is
8 commonly called the Wao Kele O Puna, which is a
9 reservation of all existing trails. //

10 Q Do you have an independent recollection of such a
11 reservation?

12 MR. LEE: Well, I'm going to instruct him not to
13 answer. /

14 THE WITNESS: I'm not going to answer based on
15 advice of counsel.

16 Q (By Ms. Aluli) Do you have any knowledge as to
17 whether or not the lease which you are here to testify
18 has a right of entry reserved in the Estate of James
19 Campbell?

20 MR. LEE: I'm going to instruct him not to answer.
21 I instruct you not to answer.

22 THE WITNESS: Based on the advice of legal
23 counsel, I will not answer that question.

24 Q (By Ms. Aluli) Has True Geothermal had an
25 independent survey of the lands conduct -- commonly

1 called the Wao Kele O Puna which are being leased from
2 the Estate of James Campbell conducted since 1986?

3 MR. LEE: You can answer yes or no, if you know.

4 THE WITNESS: No.

5 Q (By Ms. Aluli) Was True Geothermal provided with
6 a survey, both metes and bounds and by way of a map, by
7 the Estate of James Campbell for the lands leased to it
8 in what is now known -- or what is commonly called the
9 Wao Kele O Puna?

10 MR. LEE: Object to the form of the question as
11 being compound. You can answer the question as yes or
12 no if you know.

13 THE WITNESS: Well, break it down.

14 Q (By Ms. Aluli) Was True provided with a copy of a
15 metes and bounds description of the land leased from the
16 Estate of James Campbell, is commonly called the Wao
17 Kele O Puna?

18 A Yes.

19 Q Was True provided with a map of the lands leased
20 from the Estate of James Campbell commonly called the
21 Wao Kele O Puna?

22 MR. LEE: Okay, let me object to that question as
23 I think there's a foundation question. You folks have
24 corrected me that Wao Kele O Puna is not a land
25 description.

(*Original* Patent No. (-15) ()

(Grant)

Issued On

LAND EXCHANGE

By THIS PATENT the State of Hawaii, in conformity with the laws of the State of Hawaii relating to public lands and pursuant to the approval by the Board of Land and Natural Resources on October 25, 1985 and December 20, 1985,

makes known to all men that it does this day grant and confirm unto

THE TRUSTEES UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED, acting in the fiduciary and not in their individual corporate capacities, hereinafter called the "PATENTEE,"

for the consideration of the conveyance of certain lands of Patentee situate at Kahaualea, Kapaahu, Kaunaloa, Hulunanai, Kupahua and Kalapana, Puna, Island of Hawaii, Hawaii, containing an area of 25,807.055 acres, more or less, which the State of Hawaii desires for a Natural Area Reserve and for consolidation of holdings of public lands, all more particularly described in that certain Exchange Deed and Agreement For Exchange between the Patentee and the State of Hawaii dated December 23, 1985, filed in the Department of Land and Natural Resources as Land Office Deed No. S-27568 and recorded in the Bureau of Conveyances, Honolulu, Hawaii, in Liber 19523, Page 443.

all of the land situate at PUNA, ISLAND OF HAWAII, HAWAII, designated as PARCEL A, PARCEL B, and PARCEL C, all more particularly described in and delineated on Exhibits "A" to "C", attached hereto and made parts hereof, said exhibits being survey descriptions and survey maps prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii:

PARCEL A: Being portions of the Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili, containing an area of 9,012 acres, more or less. (C.S.F. No. 20,315 dated December 13, 1985).

PARCEL B: Being portions of the Government Land of Makuu, Kaohe, Kaimu, Kehena, Kapaahu and Kamaili, containing an area of 16,843.891 acres, more or less. (C.S.F. No. 20,316 dated December 13, 1985).

EXCEPTING AND RESERVING therefrom all existing trails within said PARCEL B.

PARCEL C: Being portions of the Government Land of Kamaili, Kehena and Kila, containing an area of 1,930 acres, more or less. (C.S.F. No. 20,317 dated December 13, 1985).

EXCEPTING and RESERVING therefrom all existing trails within said PARCEL C.

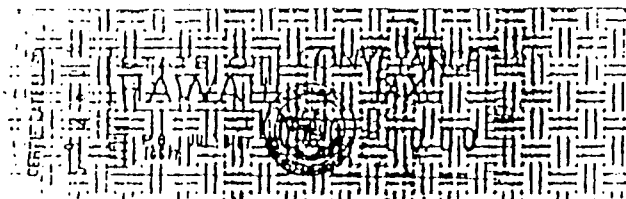


EXHIBIT "B"
(consisting of thirteen pages)

RESERVING TO THE STATE OF HAWAII, ITS SUCCESSORS AND ASSIGNS,
THE FOLLOWING:

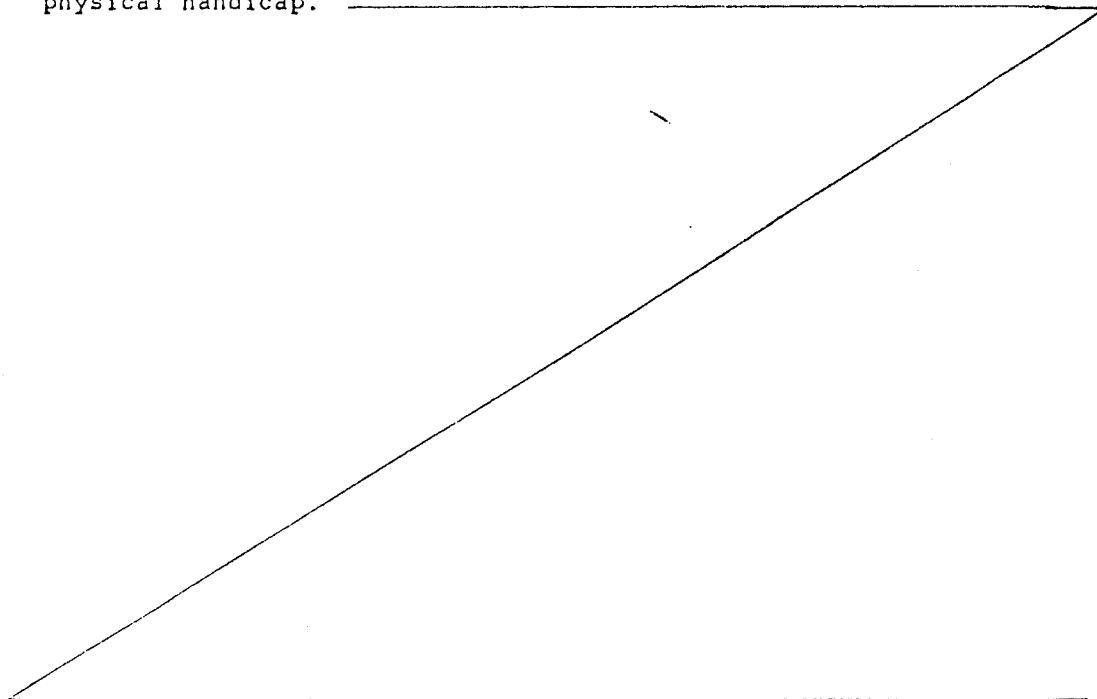
(1) All minerals as hereinafter defined, in, on or under the land and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever, including strip mining. "Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock, or other material suitable for use and used in general construction in furtherance of the Patentee's permitted activities on the land and not for sale to others.

(2) All surface and ground waters appurtenant to the said land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the said land as may be required in the exercise of this right reserved.

(3) All prehistoric and historic remains found in, on or under said land.

Provided, however, that as a condition precedent to the exercise of the rights reserved in paragraphs 1 and 2, just compensation shall be paid to the Patentee for any of Patentee's improvements taken.

AND THE PATENTEE, for itself, its successors and assigns, covenants that the use and enjoyment of the lands herein granted shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin or a physical handicap.



THIS PATENT is subject to the following condition:

This exchange of lands shall be subject to disapproval by the legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of such disposition.

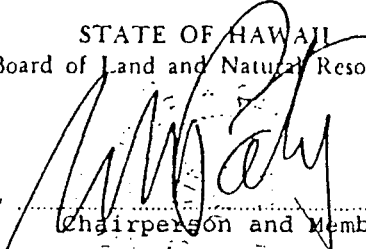
TO HAVE AND TO HOLD said granted land unto the said


THE TRUSTEES UNDER THE WILL AND OF THE
ESTATE OF JAMES CAMPBELL, DECEASED,
acting in the fiduciary and not in
their individual corporate capacities,

its successors and assigns forever, subject, however, to the
reservations, covenant and condition herein set forth.

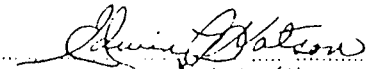
IN WITNESS WHEREOF, the State of Hawaii, by its Board of Land
and Natural Resources, has caused the Seal of the Department of Land and Nat-
ural Resources to be hereunto affixed and this Patent to be duly executed this
27th day of February, 1957.

STATE OF HAWAII
Board of Land and Natural Resources

By  Chairperson and Member

By  Member

APPROVED AS TO FORM:


Deputy Attorney General
Dated January 6, 1957

Witness by



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 20,315

December 13, 1985

PORTIONS OF GOVERNMENT LANDS OF
MAKUU, KAOHE, KAIMU, KEHENA, KAPAAHU AND KAMAILI

PARCEL A

Puna, Island of Hawaii, Hawaii

Beginning at the west corner of this parcel of land and on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 47,769.67 feet South and 8228.41 feet West, thence running by azimuths measured clockwise from True South:-

1. 240° 05' 12" 24,288.19 feet along Land Court Application 1053;
2. 345° 23' 30" 1348.57 feet along the remainder of Government Lands;
3. 313° 00' 1221.60 feet along the remainder of Government Lands;
4. 330° 16' 4682.10 feet along the remainder of Government Lands;
5. 262° 03' 1960.70 feet along the remainder of Government Lands;
6. 290° 02' 627.40 feet along the remainder of Government Lands;
7. 314° 28' 4581.80 feet along the remainder of Government Lands;
8. 314° 47' 744.40 feet along the remainder of Government Lands;
9. 314° 12' 735.30 feet along the remainder of Government Lands;
10. 315° 31' 1825.53 feet along the remainder of Government Lands;
11. 40° 41' 13.81 feet along the north side of 20-Foot Road;

December 13, 1985

12. 338° 15' 14.99 feet along the west side of 20-Foot Road;
13. 60° 05' 12" 25,840.22 feet along Parcel B of Government Lands;
14. 140° 23' 16,220.18 feet along Parcel B of Government Lands to the point of beginning and containing an AREA OF 9,012 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

pt

Compiled from CSP 4777,
CSF 18,637 and Govt.
Survey Records.



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 20,316

December 13, 1985

PORTIONS OF GOVERNMENT LANDS OF
MAKUU, KAOHE, KAIMU, KEHENA, KAPAAHU AND KAMAILI

PARCEL B

Puna, Island of Hawaii, Hawaii

Beginning at the west corner of this parcel of land and at an angle on the south boundary of Land Court Application 1053, the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLAA" being 55,748.70 feet South and 22,096.90 feet West, thence running by azimuths measured clockwise from True South:-

1. 240° 05' 12" 16,000.00 feet along Land Court Application 1053;
2. 320° 23' 16,220.18 feet along Parcel A of Government Lands;
3. 240° 05' 12" 25,840.22 feet along Parcel A of Government Lands;
4. 338° 15' 3262.76 feet along the west side of the 20-Foot Road;
5. 340° 23' 19.26 feet along the west side of the 20-Foot Road;
6. 342° 31' 250.51 feet along the west side of the 20-Foot Road;
7. 337° 27' 156.17 feet along the west side of the 20-Foot Road;
8. 347° 14' 271.04 feet along the west side of the 20-Foot Road;
9. 348° 38' 331.85 feet along the west side of the 20-Foot Road;
10. 353° 51' 125.10 feet along the west side of the 20-Foot Road;
11. 359° 30' 1278.10 feet along the west side of the 20-Foot Road;

December 13, 1985

- | | | |
|-----|-------------|---|
| 12. | 358° 59' | 2128.77 feet along the west side of the 20-Foot Road; |
| 13. | 332° 38' | 221.69 feet along the west side of the 20-Foot Road; |
| 14. | 315° 33' | 287.92 feet along the west side of the 20-Foot Road; |
| 15. | 258° 17' | 9.45 feet along the south side of the 20-Foot Road; |
| 16. | 352° 29' | 6915.35 feet along Parcel C of Government Lands; |
| 17. | 56° 27' | 1460.60 feet along Lots 3-B and 3-A of Upper Kaimu Homesteads; |
| 18. | 39° 38' | 3534.10 feet along Lot 3-A of Upper Kaimu Homesteads, Grant 6571 to K. Kamakani, Grant 6330 to S. Kamelamela and Grant 6328 to D. Kamelamela; |
| 19. | 53° 04' | 10,520.90 feet along Government Lands; |
| 20. | 53° 31' 30" | 9863.30 feet along Grant 9275 to H. M. Holt, et al., Trustees under the Will and of the Estate of James Campbell, Deceased; |
| 21. | 148° 00' | 4100.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunaililo; |
| 22. | 116° 00' | 8150.00 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunaililo; |
| 23. | 126° 59' | 25,105.30 feet along R.P. 8030, L.C.Aw. 8559-B, Ap. 14 to William C. Lunaililo, to the point of beginning and containing an AREA OF 16,843.891 ACRES. |

Excepting and reserving therefrom all existing trails within the above-described Parcel B.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

pt

Compiled from CSF 18,647
and other Govt. Survey
Records.



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

December 13, 1985

C.S.F. No. 20,317

PORTIONS OF GOVERNMENT LANDS OF
KAMAILI, KEHENA AND KIKALA

PARCEL C

Puna, Island of Hawaii, Hawaii

Beginning at the east corner of this parcel of land, on the south boundary of Royal Patent 4475, Land Patent 8199, Land Commission Award 7713, Apana 13 to V. Kamamalu and at the north corner of Grant 7365 to J. K. Pau, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALIUI" being 115.60 feet South and 9325.70 feet West, thence running by azimuths measured clockwise from True South:-

- | | |
|--------------|---|
| 1. 46° 00' | 982.00 feet along Grant 7365 to J. K. Pau; |
| 2. 85° 00' | 652.00 feet along Grant 7365 to J. K. Pau; |
| 3. 58° 45' | 1050.00 feet along Grant 7365 to J. K. Pau; |
| 4. 73° 30' | 1005.00 feet along Grant 7547 to Wm. K. Keliihoomalu; |
| 5. 45° 46' | 1197.50 feet along Grant 7547 to Wm. K. Keliihoomalu; |
| 6. 139° 03' | 50.08 feet along the north side of 50-Foot Road; |
| 7. 45° 46' | 1064.16 feet along the west side of 50-Foot Road; |
| 8. 16° 10' | 2051.31 feet along the west side of 50-Foot Road; |
| 9. 38° 34' | 1319.67 feet along the west side of 50-Foot Road; |
| 10. 323° 16' | 2381.65 feet along the south side of 50-Foot Road; |
| 11. 270° 00' | 981.59 feet along the south side of 50-Foot Road; |

December 13, 1985

12. 316° 30' 1493.59 feet along the south side of 50-Foot Road to the northwest side of Upper Puna Road;
13. Thence along the northwest side of Upper Puna Road, the direct azimuth and distance being:
27° 43' 20" 4458.54 feet;
14. 55° 41' 15" 171.71 feet along the northwest side of Upper Puna Road;
15. Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 150.00 feet, the chord azimuth and distance being:
79° 01' 15" 118.82 feet;
16. 102° 21' 15" 518.59 feet along the northwest side of Upper Puna Road;
17. Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 250.00 feet, the chord azimuth and distance being:
77° 01' 15" 213.94 feet;
18. 51° 41' 15" 284.74 feet along the northwest side of Upper Puna Road;
19. Thence along the northwest side of Upper Puna Road on a curve to the right with a radius of 475.00 feet, the chord azimuth and distance being:
55° 01' 15" 55.24 feet;
20. 58° 21' 15" 354.39 feet along the northwest side of Upper Puna Road;
21. Thence along the northwest side of Upper Puna Road on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being:
50° 46' 15" 118.77 feet;
22. 135° 50' 1250.91 feet along Grant 7731 to L. K. Swain;
23. 157° 30' 3467.50 feet along Grant 7593 to Louisa Swain, Grant 7478 to L. E. Blaisdell and the northeast end of 50-Foot Road;
24. 127° 35' 2173.00 feet along Lot III-B of Upper Kaimu Homesteads;
25. 172° 29' 6915.35 feet along Parcel B of Government Lands;
26. 258° 17' 139.94 feet along the south side of 20-Foot Road;
27. 244° 12' 614.60 feet along the south side of 20-Foot Road;

December 13, 1985

- | | | |
|-----|----------|--|
| 28. | 195° 08' | 397.80 feet along the south side of 20-Foot Road; |
| 29. | 254° 12' | 783.69 feet along the south side of 20-Foot Road; |
| 30. | 254° 05' | 1202.89 feet along the south side of 20-Foot Road; |
| 31. | 254° 48' | 283.02 feet along the south side of 20-Foot Road; |
| 32. | 242° 35' | 876.64 feet along the south side of 20-Foot Road; |
| 33. | 245° 28' | 581.05 feet along the south side of 20-Foot Road; |
| 34. | 242° 17' | 539.85 feet along the south side of 20-Foot Road; |
| 35. | 246° 20' | 20.81 feet along the south side of 20-Foot Road; |
| 36. | 240° 31' | 1658.87 feet along the south side of 20-Foot Road; |
| 37. | 240° 47' | 707.62 feet along the south side of 20-Foot Road; |
| 38. | 309° 05' | 1550.70 feet along R.P. 4475, R.P. 6883, L.P. 8200, L.C.Aw. 7713, Ap. 14 to V. Kamamalu; |
| 39. | 296° 22' | 753.00 feet along R.P. 4475, R.P. 6883, L.P. 8200, L.C.Aw. 7713, Ap. 14 to V. Kamamalu; |
| 40. | 286° 00' | 2750.00 feet along R.P. 4475, L.P. 8199, L.C.Aw. 7713, Ap. 13 to V. Kamamalu to the point of beginning and containing an AREA OF 1930 ACRES, MORE OR LESS. |

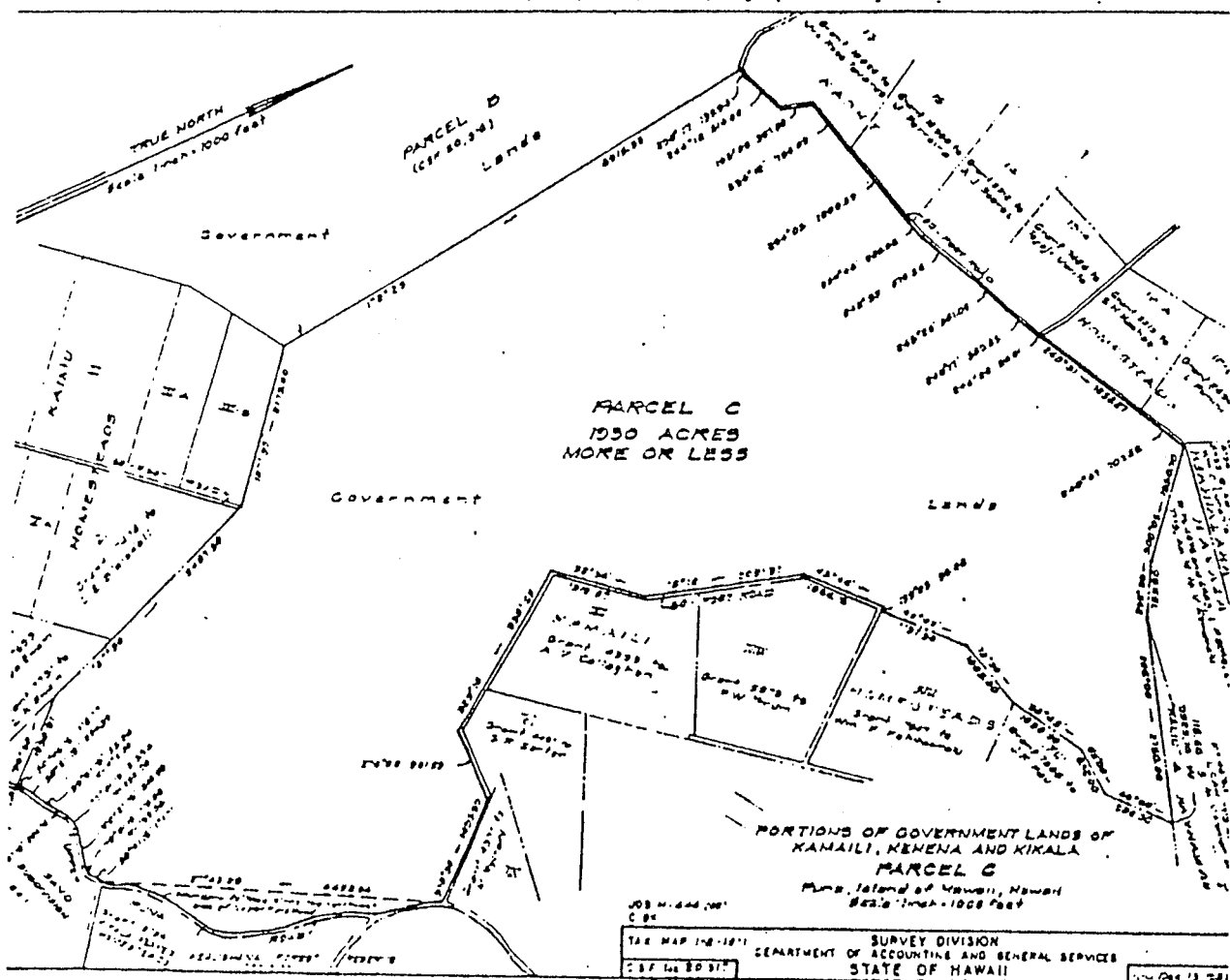
Excepting and reserving therefrom all existing trails within the above-described Parcel C.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Raymond S. Nakamura
Raymond S. Nakamura
Land Surveyor

Compiled from CSF 9446
and Govt. Survey Records.

pt



REDUCED
NOT TO SCALE

EXHIBIT "C"

IN THE DISTRICT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,

vs.

Criminal No.
D-20165

MARY JO BAFILE-RECTOR,
THOMAS BRENNON,
ROGER C. CHRISTIE,
DEHRAN LYNN DUCKWORTH,
IVAN RALPH FARINAS,
EUGENE FULKS,
OLE L. FULKS,
BONNIE GOLDBERG,
ALAPAI HANAPI,
JEFFREY SCOTT HAUN,
KELII WILLIAM IOANE,
SAMANTHA JONES,
KELIKO VERNON KANAELE,
BERNARD KELIIKO,
KRISTINE KUBAT,
RANDY PERRY LEE,
DOUGLAS MARGOLIS,
AURORA MARIE MARTINOVICH,
ALICE MEDEIROS,
EMILY I WALANI NAEOLE,
ROBERT MICHAEL PETRICCI,
JERRY ROTHSTEIN,
RUSSELL EDDY RUDERMAN,
JOSEPH P. SHAVER,
PENELOPE A. SHAVER,
JAMES MICHAEL SNYDER,
PAUL HOWARD SNYDER,
ANNE M. WHEELLOCK, and
DAVID WILLIAM ZEISSLER,

Defendants.

PARTIAL TRANSCRIPT OF PROCEEDINGS

before the HONORABLE COLIN L. LOVE, Judge, Puna Division
presiding, on Wednesday, May 16, 1990.

PRETRIAL MOTIONS (cont'd) P.M. SESSION, 1:14 P.M. -
5:54 P.M., EXAMINATION OF ALLAN KAWADA BY MS. ALULI

Carol Kaneshige, CSR 140, RPR, CM
Official Court Reporter, Third Circuit
State of Hawaii

1	APPEARANCES:	
2	For the State of Hawaii	MRS. SUSAN DECKER McNARIE
3		Deputy Prosecuting Attorne
4		34 Rainbow Drive
5		Hilo, Hawaii 96720
6	Court-Appointed for	RICHARD PETERSON, ESQ.
7	Defendant	77 Mohouli Street
8	Mary Jo Bafile-Rector	Hilo, Hawaii 96720
9	Counsel for Defendant	GERARD LEE LOY, ESQ.
10	Dehran Lynn Duckworth	1315 Kalaniana'ole Avenue
11		Hilo, Hawaii 96720
12	Court-Appointed for	SETH THOMPSON, ESQ.
13	Defendant Ivan Farinas	1188 Bishop Street #906
14		Honolulu, Hawaii 96813
15	Defendant Pro Se	EUGENE FULKS
16		Road 9, A/B, Hawn Acres
17		Pahoa, Hawaii 96778
18	Court-Appointed for	NELSON KINOSHITA, ESQ.
19	Defendant Jeffrey Haun	591 Kinooole Street
20		Hilo, Hawaii 96720
21	Court-Appointed for	UALE BODE, ESQ.
22	Defendant Kelii Ioane	46-005 Kawa Street #101
23		Kaneohe, Hawaii 96744
24	Court-Appointed for	PAUL N. LUCAS, ESQ.
25	Defendant Kaliko Kanaele	1270 Queen Emma St. #1004
		Honolulu, Hawaii 96813
	Court-Appointed for	MS. LANI RAE GARCIA
	Defendant Bernard Keliikoa	735 Bishop Street #308
		Honolulu, Hawaii 96813
	Court-Appointed for	MS. JOY HUTSON
	Defendant	400 Hualani Street #138
	Aurora Martinovich	Hilo, Hawaii 96720
	Counsel for Defendant	GERARD LEE LOY, ESQ.
	Alice Medeiros	1315 Kalaniana'ole Avenue
		Hilo, Hawaii 96720
	Court-Appointed for	MS. YUKLIN ALULI
	Defendant Emily Naeole	1720 Ala Moana Blvd.
		Honolulu, Hawaii 96815

Carol Kaneshige, CSR 140, RPR, CM
 Official Court Reporter, Third Circuit
 State of Hawaii

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1	Defendant Pro Se	ROBERT PETRICCI
2		P. O. Box 2011
		Pahoa, Hawaii 96778
3	Defendant Pro Se	MS. ANNE M. WHEELOCK
4		P. O. Box AB
		Kurtistown, Hawaii 96760
5	Court-Appointed for	PAUL MURAKAMI, ESQ.
6	Defendant David Zeissler	707 Richards Street #716
		Honolulu, Hawaii 96813
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Carol Kaneshige, CSR 140, RPR, CM
 Official Court Reporter, Third Circuit
 State of Hawaii

1 WEDNESDAY, MAY 16, 1990

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3 R E C R O S S - E X A M I N A T I O N

4 BY MS. ALULI:

5 Q. Mr. Kawada, you have testified that there
6 are some people that you are giving permission to come
7 onto the property; is that correct?

8 A. That's correct.

9 Q. And by "property," you mean all the
10 property beyond the gate?

11 A. Yes.

12 Q. So you're not talking just about the
13 roadway and the geothermal site. Your reference to
14 the Prosecution's questions as to "property" was with
15 respect to everything?

16 THE COURT: That's not quite correct.

17 A. I take that back to the extent that there
18 are different categories of people that I -- I stated,
19 and -- and in different categories.

20 For example, the people who are
21 third-party service contractors would not have any
22 business going into the forest outside of the roadway
23 and the drill pad.

24 Certain -- the hunters, for example, would
25 -- I would restrict their access to certain places

Carol Kaneshige, CSR 140, RPR, CM
Official Court Reporter, Third Circuit
State of Hawaii

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1 within the drill pad and on the access road.

2 So there would be different purposes that
3 people would go in, and there would be different places
4 that they would be allowed to go to within the property

5 Q. But when you talk about "property," are
6 you talking about the roadway, or are you talking about
7 all of it?

8 A. As -- I'm sorry. I don't understand.

9 Q. The forest -- the forested area,
10 everything that's on either side of the roadway.

11 A. For certain discussions, I would limit
12 "property" to the -- the improved areas, and for other
13 discussions, it would be the entire property. I don't
14 understand your question.

15 Q. So it's your testimony that you have
16 authority to -- to either grant or deny access for the
17 entire Wao Kele O Puna; is that correct?

18 A. Yes. That's part of it.

19 Q. And how many percent of it that's on
20 State's Exhibit Number 1, that map, that whole map,
21 you're saying you have the authority to deny or approve
22 access to everything that lies within that -- that
23 boundary?

24 A. I have some authority; let's say.

25 Q. And under what are you granted this

Carol Kaneshige, CSR 140, RPR, CM
Official Court Reporter, Third Circuit
State of Hawaii

1 authority?

2 A. I have been authorized by Mr. True, Hank
3 True, to --

4 Q. Okay. And how --

5 A. -- be able to regulate access into --

6 Q. And how does Mr. Hank True have the
7 authority?

8 A. Through the lease with Campbell Estate.

9 Q. And you -- you -- you don't have a copy of
10 the lease? Is it in writing?

11 MS. MCNARIE: Objection, Your Honor. My
12 objection is that this is -- again we're exceeding the
13 scope of the redirect examination.

14 We are stepping over in areas the Court
15 ruled on on April 20th, 1990, and this line of
16 questioning has been gone over by other counsel. It's
17 repetitious.

18 THE COURT: I'm going to sustain the
19 objection on the basis of Rule 403.

20 MS. ALULI: May I just make my record,
21 Your Honor?

22 THE COURT: You make your offer of proof.

23 MS. ALULI: Yeah. My offer of proof is
24 this: Unless Your Honor is considering these to be
25 all preliminary questions and that we're assuming that

Carol Kaneshige, CSR 140, RPR, CM
Official Court Reporter, Third Circuit
State of Hawaii

1 they have these authorities and that there is a lease,
2 I am objecting to any testimony which relates to
3 authority from a lease because the lease is in writing.

4 And the best evidence rule under 1002 and
5 the precedent established under Alan vs. WHOL Fackle
6 Mill Company, 272 Fed 2d., 983, 10th Circuit, 1959,
7 states.

8 "Under the best evidence rule, the
9 writing is the best evidence of its contents,
10 and testimony thereof is inadmissible if the
11 writing is available."

12 THE COURT: Miss Aluli, have you read that
13 case?

14 MS. ALULI: No, I haven't, Your Honor.

15 THE COURT: Then please don't cite it to
16 me.

17 MS. ALULI: Then I'll cite the rule, Your
18 Honor, for that -- for the proposition that until we
19 have the lease, it's inadmissible.

20 And I'm objecting to any testimony by an
21 individual unless I can -- unless Your Honor is, only
22 in this hearing, taking this as a preliminary
23 questioning; we can take it up later.

24 I just don't want to be in a position of
25 -- of having assumed the authority to grant or deny

Carol Kaneshige, CSR 140, RPR, CM
Official Court Reporter, Third Circuit
State of Hawaii

1 access.

2 THE COURT: All right. For the purposes
3 of this phase of the motion, we're looking into
4 reasonableness, right? Not, uh, there has to be some
5 leeway as far as evidence is concerned.

6 He was asked questions by, as I said,
7 various attorneys as to who he works for, what are his
8 responsibilities, and so forth, and he responded to
9 those questions.

10 These -- this hearing and the evidence
11 introduced in this hearing is not going to form the
12 basis for, uh, is not going to substitute for evidence
13 at the case of the trials themselves.

14 State has the obligation of proving every
15 element of its case at trial. If or to the extent that
16 Mr. Kawada's authority is in question, then that is
17 something the State is going to have to prove at trial.
18 Does that -- does that satisfy your --

19 MS. ALULI: Yes, Your Honor. It's my
20 understanding then that -- then that there's just some
21 assumptions the Court is making at this point as to
22 this lease, and that we are not -- my objection to
23 testimony from him about a lease is not going to be
24 compromised at this point because we have all this?

25 THE COURT: That is correct.

Carol Kaneshige, CSR 140, RPR, CM
Official Court Reporter, Third Circuit
State of Hawaii

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1 MS. ALULI: Okay.

2 Q. (By Ms. Aluli) Mr. Kawada, you testified
3 that at some point in time, your less -- your lessor
4 granted a right of entry to the State of Hawaii, uh,
5 University of Hawaii wells; is that correct?

6 A. Yes.

7 Q. Okay. Would it then be correct to say
8 that any lease that you may have with Campbell Estate
9 does not give you exclusive right of entry onto the
10 property; is that correct?

11 A. I -- I can't recall that specific
12 provision.

13 Q. Well, isn't it correct that your lessor
14 has granted a right of entry to another entity onto the
15 property that you say you control; is that correct?

16 A. Request True Mid-Pacific's concurrence,
17 yes.

18 Q. But in any event, lessor has reserved to
19 itself some rights, in this lease that we've never
20 seen, to grant entry to other individuals; isn't that
21 correct?

22 MS. MCNARIE: Renew my objection.

23 MS. ALULI: Your Honor, you want me to --

24 THE COURT: Offer of proof?

25 MS. ALULI: Okay. Ms. McNarie, in her

Carol Kaneshige, CSR 140, RPR, CM
Official Court Reporter, Third Circuit
State of Hawaii

1 redirect, asked Mr. Kawada about the right of entry. I
2 never even heard about this until --

3 THE COURT: Okay.

4 MS. ALULI: I just want to clarify the --
5 what the positions of the parties are.

6 MS. MCNARIE: Your Honor, the question
7 also misstates the evidence that was previously
8 presented to the Court.

9 THE COURT: So what is -- what is your
10 question?

11 MS. ALULI: They don't have -- my question
12 is isn't it correct then that the lessor has reserved
13 to itself, under the lease that we cannot read, some
14 right to grant rights of entry to other individuals?

15 THE COURT: Do you know the answer to the
16 question?

17 THE WITNESS: Not specifically, no.

18 THE COURT: That's your answer to the
19 question.

20 Q. (By Ms. Aluli) In any event, they have,
21 in fact, undertaken -- Campbell Estate, your lessor,
22 undertaken to grant a right of entry to someone other
23 than True Geothermal; isn't that correct?

24 A. To the extent with our concurrence, yes.

25 MS. ALULI: Okay. I have no further

Carol Kaneshige, CSR 140, RPR, CM
Official Court Reporter, Third Circuit
State of Hawaii

1 questions, Your Honor.

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Carol Kaneshige, CSR 140, RPR, CM
Official Court Reporter, Third Circuit
State of Hawaii

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C E R T I F I C A T E

STATE OF HAWAII)
COUNTY OF HAWAII)
_____)

I, CAROL KANESHIGE, CSR 140, an Official
Court Reporter for the Third Circuit Court, State of
Hawaii, do hereby certify that the foregoing comprises
a full, true, and correct transcription of my
stenographic notes taken in the above-entitled cause.

Dated this 18th day of March 18, 1993.

OFFICIAL COURT REPORTER

Carol Kaneshige
CAROL KANESHIGE, CSR 140, RPR, CM

Carol Kaneshige, CSR 140, RPR, CM
Official Court Reporter, Third Circuit
State of Hawaii

IN THE DISTRICT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

STATE OF HAWAII,

vs.

Criminal No.
D-20165

MARY JO BAFIRE-RECTOR,
THOMAS BRENNON,
ROGER C. CHRISTIE,
DEHRAN LYNN DUCKWORTH,
IVAN RALPH FARIAS,
EUGENE FULKS,
OLE L. FULKS,
BONNIE GOLDBERG,
ALAPAI HANAPI,
JEFFREY SCOTT HAUN,
KELII WILLIAM IOANE,
SAMANTHA JONES,
KELIKO VERNON KANAELE,
BERNARD KELIIOKA,
KRISTINE KUBAT,
RANDY PERRY LEE,
DOUGLAS MARGOLIS,
AURORA MARIE MARTINOVICH,
ALICE MEDEIROS,
EMILY IVALANI NAEOLE,
ROBERT MICHAEL PETRICCI,
JERRY ROTHSTEIN,
RUSSELL EDDY RUDERMAN,
JOSEPH P. SHAVER,
PENELOPE A. SHAVER,
JAMES MICHAEL SNYDER,
PAUL HOWARD SNYDER,
ANNE M. WHEELLOCK, and
DAVID WILLIAM ZEISSLER,

Defendants.

PARTIAL TRANSCRIPT OF PROCEEDINGS

of the morning session of Wednesday, May 9,
1990, before the Honorable Colin L. Love, Judge,
presiding in the Puna Division, Keaau, Hawaii.

Geraldine L. Saffery
Official Court Reporter
State of Hawaii

1 them. I'm -- I'm not being coy with you. But
2 generally, I would say that the people who were
3 allowed in, I would know they would not fit into that
4 category that you've just described.

5 People gaining entrance on the particular
6 date in December 14th, is that what you're referring
7 to, that day?

8 Q. Did you permit people on to the premises
9 on December 14th who were -- who were not authorized
10 personnel of True Geothermal?

11 A. No.

12 Q. Is there a policy, um, has there been
13 a policy since December 14th that permits individuals
14 who were not authorized personnel who have religious
15 reasons on to the site?

16 A. The policy that I talked about yesterday
17 is still in effect today.

18 Q. So the policy --

19 A. It has not changed.

20 Q. The policy that you have right now does
21 not permit anyone on to the site with or without a
22 religious belief or -- or gathering rights; is that
23 correct.

24 MS. McNARIE: Your Honor, objection.
25 Asked and answered.

Geraldine L. Saffery
Official Court Reporter
State of Hawaii

1 THE COURT: Again, you're going to have
2 to speak up. I can't hear you.

3 MS. McNARIE: Asked and answered Your
4 Honor.

5 THE COURT: Overruled. Go ahead.

6 A. I think the policy that I'm talking
7 about, that I talked about yesterday, does not
8 exclude people who want to come on to the property
9 who fit in a certain legal category, which I'm not
10 that familiar with.

11 But the only restriction is that: They
12 use the road; they don't come through the gate; they,
13 don't block traffic; they don't harass the employees;
14 and they don't get to the drill site.

15 There -- that's maybe twenty acres of
16 land. There's twenty thousand -- twenty-seven
17 thousand acres of land. If people come into the
18 property from other areas, not using the road, not
19 using the gate, then I have no control over them.

20 It hasn't been our policy to seek them
21 out and kick them out if they fit into that category.
22 But it's not a policy decision. It's really a legal,
23 I feel.

24 Whether our policy says to keep them out
25 or not would not matter because they have, perhaps, a

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Official Court Reporter
State of Hawaii

1 legal right, if they fit into that category. But the
2 policy iterated only concerned that limited area.

3 Q. What do you mean "limited area"?

4 A. The drill site, the road, the gate,
5 and just outside the gate.

6 Q. Okay. So the policy is, even one of
7 these individuals that may not have a so-called "legal
8 right" are not permitted on the drill site, the
9 roadway or through the gate; is that correct?

10 A. That's kind of a difficult question
11 because if they have a legal right then -- then they
12 should be allowed, but I don't know. But what we're
13 saying is that nobody gets on the road, no one gets on
14 through the gate or to the drill site.

15 Q. Whoever they are, doesn't matter. They
16 have to be authorized personnel. Is that correct?

17 A. Or have permission, yes.

18 Q. Okay. Now, you had indicated that you
19 had some safety concerns, um, on October 14th. Isn't
20 it correct that your testimony is that the
21 approximately two hundred to two hundred fifty people
22 walked into -- two miles up to -- to the drill site on
23 that day?

24 A. Yes, maybe a little more -- more than two
25 miles, maybe almost three.

Geraldine L. Saffery
Official Court Reporter
State of Hawaii

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

PELE DEFENSE FUND,

Plaintiff,

vs.

CIVIL NO. 89-089

(HILO)

WILLIAM PATY, in his capacity as Chairman
of the Board of Land and Natural Resources,
State of Hawaii, MOSES KEALOHA, DOUGLAS ING,
LEONARD ZALOPANY, JOHN ARISUMI and HERBERT
ARATA, in their capacity as members of the
Board of Land and Natural Resources; The
Estate of JAMES CAMPBELL, Deceased, FRED E.
TROTTER, W. H. McVAY, P.R. CASSIDAY, and
HERBERT C. CORNUELLE, in their fiduciary
capacity as Trustees under the Will of
James Campbell, Deceased, TRUE ENERGY
GEOTHERMAL CORP., GEOTHERMAL DRILLING CO.,
and MID-PACIFIC GEOTHERMAL, INC.,
Defendants.

DEPOSITION OF HENRY A. AUWAE
Taken on behalf of Defendants, at the office of

RALPH ROSENBERG COURT REPORTERS, INC.

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EXHIBIT "E"

(consisting of twelve pages)

1 Ralph Rosenberg Court Reporters, Hilo, Hawaii,
2 commencing at 11:35 a.m., on February 12, 1991,
3 pursuant to Notice.

4
5 BEFORE:

6 DENNIS J. YANKEE, CSR NO. 285
7 Certified Shorthand Reporter

8
9 APPEARANCES:

10
11 For Plaintiff: PAUL NAHOA LUCAS, ESQ.
12 Native Hawaiian Legal
13 Corporation
14 1270 Queen Emma Street
15 Suite 1004
16 Honolulu, Hawaii 96813

17
18 Also: STEVEN C. MOORE, ESQ.
19 Native American Rights Fund
20 1506 Broadway
21 Boulder, Colorado 80302

22
23
24
25 For Defendants: GARY B. K. T. LEE, ESQ.

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Matsubara, Lee & Kotake
Charles R. Kendall Building
888 Mililani Street
Eighth Floor
Honolulu, Hawaii 96813

-ooo-

I N D E X

EXAMINATION BY: PAGE

Mr. Lee	4
Ms. Aluli	38

EXHIBITS FOR IDENTIFICATION

Exhibit 1: Affidavit	7
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1 Q. In regard to where you live, this is
2 in Hilo, Hawaii, is that in any part of any aho
3 piau?

4 A. No.

5 Q. Mr. Auwae, have you ever been denied
6 access into Wao Kele O Puna?

7 A. Yes. When I went there before they
8 took video, the guard at the gate told me that I
9 cannot, I cannot go in to pick up any herbs or
10 anything. The herbs outside were all, most all
11 of the herbs was down.

12 The trees that I wanted to pick, they
13 were all down, bulldozed.

14 Q. Do you remember the name of the guard?

15 A. No, I don't. I know there was a
16 policeman there, too. I don't even know if he
17 was a guard or what. But I didn't want to argue
18 with the person. He has his rights and he has
19 his orders, so I got out of that place there.

20 Q. Do you remember what month and what
21 year?

22 A. No, I can't recall that.

23 Q. Do you remember if it was this year,
24 1991?

25 A. No.

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1 Q. Would it have been last year then?

2 A. No. 1990 -- it would have been around
3 1989.

4 Q. Do you remember specifically what this
5 guard or policeman told you?

6 A. He told me that they are not letting
7 people in that area because they are working,
8 and they are just not allowing anybody in that
9 area.

10 Q. This was at the gate?

11 A. Yeah, at the gate.

12 Q. Did the guard or policeman mention
13 anything to you about not letting people on the
14 road or did he say --

15 A. In the premises.

16 Q. In the forest?

17 A. Yeah. Actually, I was in the forest,
18 not where they are drilling, but I was going
19 outside. But they said no, so I didn't want to
20 argue with the person.

21 Q. Did you speak to anyone at, well, let
22 me ask you. Do you know Alan Kawata, do you
23 know who he is?

24 A. Yes, yes, I know. He came in a car
25 when I was outside trying to get some of the

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1 herbs outside of the gate, and I talked to him
2 and he told me the same thing like the guard
3 said, that I have to have a special permit to go
4 inside that area to pick up herbs or what I
5 wanted, what was my reasons.

6 So I just didn't argue with him,
7 that's all.

8 Q. So you did talk directly to Alan
9 Kawata?

10 A. Yeah. He told me his name was Alan
11 Kawata.

12 Q. Do you remember what he looks like?

13 A. He was in the car. I know he was
14 sitting in the car, but, you know.

15 Q. Do you know if he has glasses or a
16 mustache?

17 A. No, I don't recall.

18 Q. Your testimony is that he told you
19 that you could not go anyplace in the forest, or
20 was it just not on the road?

21 A. Inside, anyplace inside, past the
22 gate.

23 Q. This would have been at the same time
24 that you talked to the guard or policeman?

25 A. Yeah, yeah, the same day. I was on my

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1 way out. I was walking on my way out.

2 Q. You were walking out from Wao Kele O
3 Puna?

4 A. Yeah. I was walking out from where
5 the gate is, and then I met him just about, oh,
6 I'd say maybe 300 feet from the edge of the
7 forest.

8 Q. So you had been in the forest and you
9 were walking out of the forest?

10 A. Yeah. I was walking towards the gate.
11 I walked out the gate, and at the same time I
12 was trying to look for medicine on the side
13 there.

14 Q. Is the area of Wao Kele O Puna the
15 only area where you gather your medicinal
16 plants?

17 A. No, there are some other areas, but
18 the area in Wao Kele, I gathered -- I started
19 gathering medicine from 1930, around 1930
20 practically every week or so, and I go up to
21 gather medicine.

22 My wife and my family go with me, and
23 I had three children at that time. And in that
24 area you can find the best medicine in the whole
25 state, in the whole state.

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,)	CIVIL NO. 89-089 (Hilo)
)	(Declaratory Judgment/
Plaintiff,)	Injunction)
)	
vs.)	CERTIFICATE OF SERVICE
)	
WILLIAM PATY, et al.,)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 15, 1993, a true copy of the foregoing document was duly served upon the following parties by hand delivering the same to their last known addresses:

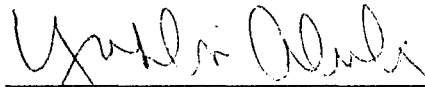
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Attorney for Defendants
THE ESTATE OF JAMES CAMPBELL, Deceased,
F.E. TROTTER, W.H. MCVAY, P.R. CASSIDAY,
Trustees under the Will and of the Estate
of James Campbell, Deceased, acting in
their fiduciary and not in their individual
capacities, and HERBERT C. CORNUELLE

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Attorneys for Defendants
TRUE ENERGY GEOTHERMAL CORP.,
TRUE GEOTHERMAL DRILLING CO., and
MID-PACIFIC GEOTHERMAL, INC.

DATED: Honolulu, Hawaii, April 15, 1993.



YUKLIN ALULI
ALAN T. MURAKAMI
PAUL F. N. LUCAS
STEVEN C. MOORE
Attorney for Plaintiff
PELE DEFENSE FUND