

MINUTES OF THE  
MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES

DATE: October 12, 1984  
TIME: 9:00 A.M.  
PLACE: Kona Surf Hotel  
Kohala Conference Room  
Keauhou, Hawaii

ROLL CALL

Chairperson Susumu Ono called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

MEMBERS Mr. J. Douglas Ing  
Mr. Moses W. Kealoha  
Mr. Roland Higashi  
Mr. Leonard Zalopany  
Mr. Susumu Ono

ABSENT & EXCUSED

Mr. Thomas Yagi

STAFF Mr. James Detor  
Mr. Ralston Nagata  
Mr. Gordon Soh  
Mr. Robert Chuck  
Mr. Libert Landgraf  
Mr. Glenn Taguchi  
Mr. Mark Gushiken  
Mr. Dean Uchida  
Mr. Jon Giffin  
Mr. Ronald Bachman  
Ms. Dorothy Chun

OTHERS Deputy Atty. Gen. Johnson Wong  
Mr. Peter Garcia, DOT  
Mr. Alex Gentry (Item H-5)  
Mr. Harold Lamb (Item H-7)  
Mr. F. Newell Bohnett (Item F-5)  
Mr. Roy Takeyama (Item F-5)

MINUTES

Mr. Ono called for approval of the minutes of July 27, 1984. Mr. Ing asked to have one entry clarified, the action taken on item H-2 on pages 5 and 6. Mr. Ing requested that following clarification, the minutes to be recirculated.

Mr. Ono suggested that formal action on the minutes of July 27, 1984 be deferred until the tapes could be checked out to that particular item. There being no objections it was so ordered.

Mr. Ing moved for approval of the August 10, 1984 minutes as circulated. Mr. Kealoha seconded and motion carried unanimously.

ITEM H-6      AMENDMENT TO TEMPORARY VARIANCE FOR TEST BORINGS  
IN PALOLO VALLEY

Mr. Soh said that on January 13, 1984, the Board granted a temporary variance for four test borings within the resource subzone of the conservation district in Palolo Valley. The borings have been completed and the results were submitted to the Board of Water Supply. Now the Board of Water Supply wants five more borings. Of these, two will be in the conservation district.

Staff recommends that the temporary variance be amended to permit the two additional and not five test borings.

ACTION      Mr. Ing moved for approval, that item H-6 as amended from five test borings to two be approved. Seconded by Mr. Kealoha, Motion carried unanimously.

ITEM H-5      REQUEST TO AMEND A USE PREVIOUSLY APPROVED BY A  
CONSERVATION DISTRICT USE APPLICATION, POWER LINE  
THROUGH THE SADDLE ROAD BY HAWAII ELECTRIC LIGHT CO.

Mr. Soh informed the Board that his submittal was written two weeks ago and since then their office has been apprised by Hilo Electric of the details of the request. This request involves 12 parcels in the conservation district and one in the agricultural district. All of the parcels are owned by the State of Hawaii, except for two. One is owned by the Hawaii Conference Church of the United Church of Christ and the other is owned by Department of Hawaiian Home Lands, which the Board controls and administers.

On these sites, these 13 parcels, there are 33 control points to be established in the conservation district and one outside of the conservation district. Hawaii Electric is asking permission to establish these 33 control points within the conservation district and it is also asking for right-of-entry to the 12 State and Department of Hawaiian Home Lands parcels to establish these control points.

Mr. Higashi questioned the division's authority to issue the right-of-entry portion.

Mr. Soh replied that for sometime they have been using a master application form which is used for a number of various purposes and since that time they have been submitting combined requests. This request was brought to their request by the Land Management Division because it also involves the conservation district.

Mr. Higashi asked if these areas would be in the P (Protective) subzone to which Mr. Soh did not have the answer. Mr. Higashi then said if the EIS never covered this activity, he would have some reservation acting upon it without knowing whether it's in the P subzone and what was the nature of the activity.

Mr. Soh said that all of these control points are on the exact same parcels that were covered by the application

approved on February 10, 1984 except for three of three of them. He doubted if the three would be in the P subzone as they were along the Saddle Road alignment.

Mr. Higashi said that an extensive EIS covering this project was done and asked that it be checked out if an amendment needs to be made to the document and whether there is activity in the P subzone. He recalled that during the public hearing the Board was critical about activity in that subzone. He then requested that this item be deferred to the next meeting.

Mr. Alex Gentry from Hawaii Electric was present but did not know if any of the sites were located within the protective subzone. He was not familiar with the EIS also. He did not think there would be a problem if the item were deferred to the next meeting.

In answer to Mr. Ing, Mr. Soh said that Hawaiian Home Lands notified out department that they have an E. O. and that Department of Land and Natural Resources has control over the property or parcel, but that he has not personally verified that with Land Management.

ACTION            There being no further questions, no objections, this item was deferred to the next meeting, two weeks from now.

ITEM F-5            RESUBMITTAL - STAFF REPORT ON LEASE VIOLATION ALLEGATIONS, G.L. NO. S-3589, PUUWAAWAA & PUUANAHULU, NO. KONA, HAWAII

Mr. James Detor said that this item was deferred at the last meeting with instructions from the Board for staff to come up with recommendations on a number of questions which were raised at that meeting.

Mr. Detor informed the Board that he had received a number of communications since the Board folder was sent out and copies have been distributed along with two extra communications just received. In addition a written supplement to the previous submittal is submitted as F-5 Supplement.

He then stepped up to the map to point out the different places and boundaries.

Mr. Detor then went over the nine recommendations in the Staff Report on General Lease No. S-3589 namely:

1. Logging and Clearing Activities in Conservation Zone
2. Laying of Pipeline through Conservation District without Authorization to proceed
3. Payment for Logged Koa Trees
4. Payment for Water taken from the Kiholo Well
5. Withdrawal of Land
6. Rental Reopening

7. Reduction in Rent upon Withdrawal
8. Drilling of Wells
9. County Clearance Requirements

Regarding recommendation No. 3, Mr. Landgraf's response to Mr. Ono's question on how long a wait will there be before we can expect figures from an on-site survey and evaluation from DOFAW was approximately one week.

Mr. Ing asked what would the survey consist of to which Mr. Landgraf replied that a crew would be sent in to count the stumps, review the mill site, if they still exist for the utilization practices, i.e. how much was thrown away, how effectively they used the logs and how much of that was rot and to make a survey of the existing trees there to try to estimate the average tree that was existing at the site or in the general area and come up with the figures.

Under recommendation No. 4 Mr. Detor clarified that the water is used for irrigation. His understanding is that the salinity is so bad that it cannot be used for human consumption.

In answer to Mr. Ono's question, Mr. Detor said that it was recommended that termination be set for December 31, 1984 because the lessee himself is going to terminate because he has two wells on his private land.

Recommendation No. 5, Withdrawal of Land, again Mr. Detor stepped up to the map to point out the areas to be withdrawn.

Mr. Ing asked since the lease was let in 1960, as of 1960 do we know what lands covered by the lease were in forest reserve. Mr. Detor said he was not sure and would have to refer question to Mr. Landgraf.

Mr. Ing said the reason he asked was that there is a covenant in the lease that the lessee is to keep cattle out of the forest reserve and since there is a fence there through the conservation district, he wondered if that were in the forest reserve. Mr. Detor was not sure.

Mr. Ing then asked where was the koa removed from and if it was removed from the forest area and there was a covenant not to let the cattle pasture in the forest reserve area, the lessee cannot come back to us and say, I removed those trees for pasturing purposes.

Mr. Detor then pointed out on the map his understanding where the trees were removed from.

Under recommendation No. 6 Rental Reopening, Mr. Detor explained that the rate was based on a carrying capacity of 6,000 head. Five different methods are laid out in

the lease and the stipulation is that the highest rent is the one to be used. The highest one in this particular case is the one that prescribes 6,000 head.

Mr. Detor also presented figures for the other methods of calculating the lease which were prepared by Herbert Yanamura.

Mr. Ing questioned the statement of Mr. Detor's that he was doubtful that the land could carry 6,000 head. Mr. Detor said he had gotten this information from Mr. Yanamura, his Ag man. Mr. Ing questioned, is this as the land presently exists or had the land been improved for pasturing. Mr. Detor said as the land presently exists.

Recommendation No. 7 Reduction in Rent upon Withdrawal. Mr. Detor presented the four possible methods of determining the new rent.

Mr. Higashi asked in establishing the new rent, once we have the withdrawal, we talk about the life of the lease or do we talk about up to the year 1990?

Mr. Detor answered that you're talking about the rent right now. When 1990 rolls around, you got a new reopening. The lease runs out in the year 2000 but there's a rental reopening in 1990.

Mr. Ing said under paragraph 37 of the lease requirements made on the lessee for improvements, the level of improvements spelled out in the lease indicate that the improvements have to be not less than \$250,000 during the first 10 years, not less than \$200,000 during the 11th to 20th years. In addition to that it requires that the lessees before starting the improvements submit plans to the department for written approval and also the lessee make yearly reports regarding all improvements and expenditures. Mr. Ing asked, was that done?

Mr. Detor said no. Plans were not submitted but bear in mind that there was another lessee part of this time.

The following are Mr. Detor's answers to Mr. Ing's questions:

The lessee has submitted basically after-the-fact information. He has not submitted yearly reports regarding the nature of improvements. There was at least one report that lists all the improvements that took place.

The lessee has had the premises since 1972. The lease does not require submission of prior plans other than water pipelines and water systems. The lease is silent on construction of improvements other than the water system. So there is a technicality there. Was he actually required to submit plans for other improvements and there's the further question, were these improvements consistent with the purposes of the lease.

The lease does say the lessee shall, before starting on said improvement program, submit plans for such program to the Commissioner of Public Lands for his prior approval.

Paragraph 37 does call for a system or systems for water development and distribution of a permanent nature and prior written approval was not obtained by the lessee.

When Mr. Yanamura made his inspection in 1975, he did note that there were improvements and at that time there was nothing submitted to the department, no concrete plans, stamped approved.

With regard to the airstrip, there is a question there. The lease itself does not require it but the question arises, is it consistent with pasture purposes. Was it used in some way for spraying or fire suppression.

Mr. Ing said there appears to be a quarry on the lands and what is the analysis with regard to that.

Mr. Detor said that the lease does permit him to take material to use on the lease premises for roads, etc. The charge has been made that material was taken and used on his own private land and we have not been able to substantiate that. If it were used for purposes other than for road improvements or as indicated on the provisions that would be another violation.

Mr. Ing asked pursuant to the state laws regarding violations, isn't it correct that our only remedy with regard to violations is termination of the lease?

Mr. Detor said there may be two , 1) the Conservation District violations where you can fine them, 2) the lease can be terminated.

Mr. Higashi then had a question on the 1980 lease rental figure and the need to be ratified by this board.

Mr. Detor said, yes, he is asking the Board to ratify it because the Board is the department head.

Recommendation No. 8 Drilling of Wells - The two wells that were drilled on private land have satisfied the requirements of the Division of Water and Land Development.

Recommendation No. 9 County Clearance Requirements - There have been charges made that the County of Hawaii building permits had not been satisfied. Grading and building code violation charges are being investigated by the County.

Mr. Kealoha then had a question on the method to determine the lease rent.

Mr. Detor explained that what he was doing is give the Board four to five possible methods but end with the recommendation that it be delegated to the Chairman. That the Chairman be authorized to conclude or determine the method going back to the lease in negotiation with the lessee as to what reduction in rental will be made.

He did not have a recommendation right now and would like to look at it a little closer. He would like a chance to advise the Chairman if it is going to be delegated to the Chairman.

A five minute recess was called for the technician to hook up the PA system.

Chairman Ono called the meeting back to order at 10:15 a.m. He then called upon the applicant and representative to make their presentation.

Mr. Roy Takeyama, attorney for the applicant introduced himself, Mr. F. Newell Bohnett and his associate Jan Sullivan.

Mr. Bohnett read his statement (copies were passed to Board members) which contained answers to some of the questions raised by members of the Board at the last meeting. He then went up to the map to point out areas in question.

Mr. Bohnett said that he thinks there is a major road to the hunting area. Regarding state or federal staff getting access to his lease area for surveys or scientific studies, he has been pleased with their staff as they've always written for permission.

There is a fence in existence, it was there when he bought the ranch. He did not know if it was in the forest reserve.

In answer to Mr. Ing, he said he purchased the lease from Dillingham in 1972 for about 3.2 million. He was represented by an attorney at the time of purchase and did review the lease at that time. He did not submit any annual reports to the department regarding his improvements because he did not realize it was important. He felt he had done everything in the spirit of the lease and to better the area.

There were 11 trees cut down by the canoe club, 9 of which were used for canoes. There were 520 trees that were processed, they were dead trees. Those with residue that were able to be harvested were sold. He didn't know to whom they were sold to as they were sold by Mr. Dale Andrews. The primary stipulation with Mr. Andrews was that he would be allowed to mill and remove only fallen or dead trees.

Mr. Bohnett said he received around \$8,000 to \$9,000 from the milling operation. The agreement was Mr. Andrews was to go in there and would use his equipment and his men to move the logs to the point where the saw mill was in operation. Employees were all Mr. Andrews'.

Mr. Andrews made the approximation of timber removed at 520. Mr. Bohnett said he had no knowledge if any of the 520 logs consisted of live trees.

Continuing to answer Mr. Ing's questions, Mr. Bohnett said that he thought the logging operations spanned about 2½ to 3 years, but he would have to check. It finally terminated in November 1983.

He read the inspection report of the Hawaii Land Agent who went to the mauka section of the logging operation and observed that there still was a saw mill in operation in January or February of 1984. He said he didn't believe the saw mill was in operation, the mill was there because of inclement weather and it was taking them longer to get it down. Mr. Bohnett said he was told by Mr. Andrews that he stopped in November when asked to.

Yes, there is a quarry on the land and gravel rock taken from there. He did not know what it is being used for as it is not part of his lease. He thinks it is a separate lease with the Dillingham Corporation and it is not on his land. He then went up to the map to point out the area as requested.

The reservoir was probably put in 1973 or 1974. The upper one holds about 9 million gallons and the other holds approximately 3, both were put in the same time. Right now it is distributing water out to the cattle and that is their primary concern. There is a water system that pretty well takes care of the families in this area and that is being fed by catchments with rain water because the well water has a saline content of 325 parts per million, the County people will not allow it to be used for human consumption.

Yes, there is a pipeline that serves the primary purpose of fire protection. Originally it was put in for irrigating as well as for feeding the cattle. Presently some of the cattle are drinking water that's transferred through that pipe but the irrigation thing didn't work out.

Mr. Bohnett answered that he is not required by the County to have that fire line but it was put in a year after they almost lost three of the houses due to a tremendous fire.

The water line that runs from the 9 million reservoir is used primarily to feed the cattle and a back up for fire.

Mr. Ono asked if he could get potable water into that 9 million gallon reservoir, would he use it for development of his fee land.

Mr. Bohnett said there are very stringent regulations in that regard and the drinking water must come from a covered tank or covered reservoir. Presently they have constructed a covered reservoir here for their new water system that will include wells on his property to a covered tank, about \$100,000. The requirements for the line for the water system are very stringent and will have two parallel lines running.

In answer to Mr. Higashi, Mr. Bohnett said he was not familiar with the formula using 3100 animal units to arrive at a rate for carrying capacity. The only way he can put this into his head is mother cows. The situation fluctuates in actual number of creatures that walk around on four feet from anywhere from a thousand up to 2500 and sometimes as many as 3,000 or 3,500.

Under the new area that is proposed the projected carrying capacity could be at least 1200 or 1300 mother cows

Mr. Higashi asked if he had seen the recommendation on the logging activities which will call for a \$34,000 fine. At this point Mr. Bohnett asked to have his attorney carry on from here.

Mr. Takeyama told the Board he would answer this question a little later. In regards to the fines, he would like to address it item by item.

He said that they basically agree with most of the recommendations made by the staff. There are some areas where they have some concerns and before he proceeded he would like to set forth two caveats, one is that they would like to reserve the right to a contested case hearing if they cannot agree as to the amount of fines to be imposed and even if they agree on the fines, they do so without admission of guilt or wrong doing on their part.

Going to the staff recommendation, he skipped #1 and went on to #2 Laying of Pipelines through Conservation District without authorization to proceed. He said they obtained a CDUA permit and were under the impression that was all that was necessary and directed their engineer to go ahead. They later found out that easement must be had under the terms of the CDUA permit. Mr. Takeyama said we admit that we goofed on that and we're willing to pay the fine of \$500 on that, which is the maximum.

To Mr. Ing's question, he said yes, he read the approval after-the-fact.

Mr. Ing said that it seems blatantly clear that permission and appropriate authorization had to be obtained from the Division of Land Management as a condition to the granting of the CDUA.

Mr. Takeyama said that's right. What was unclear was that the engineer from Belt Collins was not aware of this provision and when our contractor contacted him, he stated that we could proceed.

Chairman Ono then stated that he couldn't understand how this could have happened as Belt Collins & Associates come before this Board quite frequently and it's kind of unusual to have that consultant firm telling you, your people or your client that they didn't know. The conditions are always stressed when the Board acts, especially on a CDUA.

Mr. Takeyama went on to recommendation #3, for payment of the koa trees. Actually the Staff is taking the position that the marketing of the dead trees changes the character of the use and therefore needs the lessor's consent under the lease. Legally we disagree that marketing is not a use and paragraph 27 provides if an activity, which is in this case, clearing the land for furtherance of pasture use, then it's non-conforming, an accessory to the permitted use, so really consent is not necessary under paragraph 27. The lease is silent as to whether you get

compensation for selling the trees you need to pay it to the lessor. We admit that we cut 520 dead fallen trees and that's admitted by affidavit submitted by Dale Andrews and all of you have the affidavit which states therein and let me read the pertinent parts of the affidavit. 1) that he approached Mr. Bohnett with the request that he be allowed to harvest koa wood from a portion of the lease. 2) that Mr. Bohnett gave him permission to harvest only dead or fallen trees. That he was informed by Corky Bryan, ranch manager at Puu Waawaa that he could harvest only dead or fallen trees. That approximately 520 dead fallen trees were cut and that approximately 35% of each tree that was cut was useable and were marketable and that the remaining 65% were unusable because of rot or disease. And that the removal of dead or fallen trees have helped to clear the area. You all have the submission written by Mr. Andrews. Also, Forester Pung in his letter to you stated in his letter that based upon a reconnaissance aerial survey that 80% of the trees were diseased, based on his estimation.

Basically we agree with the formula set forth by Libert Landgraf wherein he came up with a figure of a total of 4,095 based upon \$75 per 1,000 board feet, which is the latest figure we understand that were used on the island of Kauai. You have to recall that this figure of \$75 was just recently and that the trees, the dead trees we're talking about was as Mr. Bohnett said 1½ years ago. We're willing to go along with the \$75 per 1000 board feet.

Recommendation #4 regarding water taking. Mr. Takeyama said they had no objections to the amount set or recommended by the staff that they pay \$80 per month or a total of \$9,600 for a period of ten years, ending December 31, 1984.

He then went on to the logging and clearing activities. He said they could not totally agree on the staff's recommendation set for \$34,600 based upon 173 dead trees that were cut. He said the activity of clearing and cutting is for furtherance of pasture use and is permitted under the lease. He then quoted from paragraph 27 on page 13 of the lease regarding use and furtherance of pasturage use. The issue then he claimed is whether the activity in question is incurring the pasturage use. He said that based on a staff report by Mr. Yanamura, a resource specialist, in his memo dated July 31, 1984 to Jimmy Detor summarizes the results of his inspection reaching three conclusions. Quoting from his report, "fallen koa was taken primarily for lumbering purposes and secondarily for pasture improvement management purposes." He said this supports their position that activity in question was related to pasture use. The second conclusion they reached was and he quoted, "it is conceivable that better grass growth will result from the removal of fallen trees but the benefit based on action performed would be relatively slight." This again he said supports their position that the activity in question was in furtherance of pasture use.

The third conclusion was that the lessee was not involved in selective cutting of live standing koa for its lumber. Mr. Takeyama said this is supported by the affidavit of Mr. Dale Andrews.

Mr. Higashi then reminded Mr. Takeyama that the fine of \$34,000 was in relation to the Conservation District and not to the entire pastures. Mr. Takeyama said he didn't quite understand and said that their position is that whether it's on Conservation or agriculture lands, because it's nonconforming and a permitted accessory that they didn't really need a CDUA permit for that.

Mr. Ing then pointed out to him, that being a lawyer he was aware that under leases of all nature, certain uses are allowed and certain uses are not allowed.

Mr. Ing went on to say that the CDUA permit is designed to insure conservation standards are met, that the Board has the opportunity to review the nature and the extent of any removal of logs and timber from conservation lands. The Board is not here to inhibit you from clearing the lands for pasture purposes, but are here to insure that certain conservation standards are used, i.e. that you don't knock down other trees, or that you don't endanger or kill endangered species of plants or animals.

Mr. Takeyama said he did not disagree with Mr. Ing's statement of the sample of getting a building permit. Here they recognize a nonconforming use based on Regulation 4. In Regulation 4 it provides that any use accessory to the nonconforming use is permitted and they were of the opinion that the lease provides for clearing and taking away. Again he stated that their position is that this is in furtherance of that so therefore a CDUA permit is really not necessary. The lease is much broader and it talks about live trees and nothing about dead trees.

In answer to Mr. Ing's question, Mr. Takeyama said yes, there is a difference between raising cattle and commercial logging. He argued that selling the koa does not make it a commercial enterprise. He did not think marketing is a use.

Mr. Ing pointed out, you're saying that it's not, but in this case Mr. Bohnett received \$8,000 to \$9,000. It's clear profit to him, it wasn't his employees, wasn't his expense, he didn't have to do that, he could have cleared it, he could have pulled the logs out, he could have left it on the side for a stock pile somewhere and he could have cleared the pasture. It didn't stop at that point, it went further than that. They cut the timber, they sold it, he got a profit and you are saying that is not a commercial venture?

Mr. Takeyama replied to that if you're going to relate it in that sense to the fine, we say we go along. That it is commercial. From the standpoint of getting a permit in violation of that, we don't quite agree that it is. This is where the fact that you get compensated doesn't take it out of the use.

Mr. Ing asked if he were familiar with Regulation 4 and does Regulation 4 require a CDUA for commercial operation in conservation lands.

Mr. Takeyama answered in the affirmative to both questions.

Mr. Takeyama continued that there are other paragraphs in the lease that supports their position that the activity in question did not require a consent. He then quoted from paragraph 25 which requires the lessee to get written consent to cut down or remove or destroy any trees now or hereinafter growing on the demised premises except as may be necessary to keep said lands clear and in proper condition for pasture purposes and access as may be necessary to prevent interference by any such trees with any road, pipe line, power communication line and boundary fences. Here again the provision in the lease talks about live trees and our position here has been that we are talking about dead trees. So, therefore our position we feel is both tenable in this instance.

In answer to Mr. Ono he said that he was not aware of how the areas that were cleared were selected and given priority.

In response to the same question, Mr. Bohnett said that Mr. Andrews made the decision as he just showed him the general area that they were concerned with.

Mr. Takeyama said that what they're talking about here is furtherance of pasture use and it is possible and it may be feasible for Mr. Bohnett to go in later and clear the area if it is possible for pasture use. This was the initial step that was taken.

Upon questioning by Mr. Ing regarding another provision in the lease which requires prior board approval before making improvements to the land under paragraph 37, Mr. Takeyama agreed that it wasn't done. The lessees have admitted that they haven't submitted plans and lessees have carried out all the provisions there mentioned in paragraph 37 regarding the spending of money or water development system. They haven't submitted plans but their actions have proven that they've met the requirement under that paragraph.

Mr. Takeyama in his final argument said the activity in question is, accessory use as defined in Regulation 4. Regulation 4 defines accessory use as, "A use which is incidental and subordinate to one of the permitted uses" and clearly it is our position that pasture management is an accessory use and incidental pasture use. This is the provision that he was referring to regarding implementation of accessory use. It does not necessarily mean that a CDUA is required because in your Regulation 4, it defines commercial use as including all those activities designed for profit. It also specifically states that the use of land for utility purposes shall not be considered a commercial use. Here the activity in question, we feel is clearly utilitarian in nature and

it helps to maintain and clear pasture area and that has been supported by the staff's position. So therefore, we could argue the fact that although we received compensation, that does not make it a commercial use which requires a CDUA.

Mr. Ono reminded Mr. Takeyama that he made several references to Mr. Yanamura's conclusions and that the first conclusion has two parts. The secondary part is regarding pasture improvement and management purposes, but the first part and primary conclusion was that the activities were for lumbering purposes.

Mr. Takeyama responded that Mr. Yanamura does not address himself to the accessory use.

Mr. Ing questioned, you're saying that because this is utilitarian or this is a utility use that it is therefore not commercial; that provision in old Regulation 4 refers to public utility, electricity, telephone, etc.?

Mr. Takeyama answered no, it's in the definition of an accessory use, so he didn't know whether it relates to only utilitarian or for utilities or not, but it says for utilitarian purposes so he's reading it to mean that, any accessory use related to permitted use. He then gave an example, if a tree is crossing over the road in the area of conservation area and a truck has to get there, then under this provision you don't really need a permit to go in to cut the trees, and that is what he termed as utilitarian use.

To Mr. Ing's question he said no, not just to bulldoze them down, but to cut the trees so that they will not over hang.

Mr. Ing then said that almost anything could be included and exempted under the provision that you cite and you're trying to argue that because this is utilitarian that it is therefore not commercial.

Mr. Takeyama said as it relates to pasturing they feel they gave permission to cut down live koa trees to the canoe club. They did not get any compensation for the 11 trees that were cut. They failed to get a CDUA permit and feel that the Board consider that as part of the fine. With reference to some questions raised by Board members regarding the forest reserve, the lease says the lessee shall keep cattle, horses and other grazing animals out of any forest reserve. An important phrase is adjacent to the demised premises, so what we're saying here is that the demised premises, the forest reserve area adjacent to the demised premises is what the paragraph is talking about. There was another question raised by Mr. Ing which was relative to the water relating improvement. We like to point out that when the Board acted on the CDUA permit on February 25, 1983, referring to the water line and water improvement, the staff looked

into that matter and the staff recommended at that time that this unauthorized improvement was investigated and it was determined that improvements made were accessory uses for grazing. With respect to the airstrip, it was relocated because Mr. Bohnett was informed that was a dangerous place for an airstrip.

Responding to Mr. Ono's question, Mr. Bohnett said the old airstrip is now pasture. It used to be dirt and was dangerous for modern day aircraft.

Mr. Takeyama continued to finalize his presentation. Regarding withdrawals in recommendations 5-10, he said we have no objection to setting up a wildlife sanctuary or Natural Area Reserve system or other uses to the makai land, provided that the boundaries can be worked out and that the rent be reduced proportionately and that approximately 25,000 acres of land can be retained. To have a viable operation we hope that something can be worked out. All Mr. Bohnett wanted to do was run a viable ranch operation. He has spent vast sums of money to improve Puuwaawaa Ranch and has contributed greatly to the economy. Mr. Bohnett believes that there are additional responsibilities and burdens placed upon him because he is a large leaseholder in the state. During the 24 years that this land has been leased, there have been many social, political and economic changes in this state. However, conditions have changed since the lease was first established. He agrees to this that it's to the best interest to the people of the state of Hawaii that portions of the land be returned back for wildlife sanctuary, natural reserve system, game hunting, recreation and other uses. He is agreeable to this proposal and in working together would like to achieve this goal.

Mr. Bohnett then requested to make a last three minute statement. He said that it's been his desire primarily to maintain a ranching operation. Secondary desire is to cooperate as best he can with the Board to see that everybody that is involved and all of these amenities involved, can come up pretty much with what they want. He admitted that he had been perhaps indiscreet with some of the details of ranching operation. He said he does feel strongly that everything he's done for the ranch has been in the best interest of the ranch. He would like to suggest to the Board to do whatever they had to do and if the purpose of this is to help move along fine and dandy; if it's to punish, he can't do much about that. He said he would like to suggest that whatever happens here that we take the positive attitude and get on with the things like maybe addressing low-cost housing and perhaps developing an area to work on the economics of our west Hawaii here and then move on to more positive issues here that we've been talking about.

Mr. Ono had one final question without trying to pre-judge the case. Should there be a fine assessed, would you be agreeable to putting in an equivalent amount of work, for example, fencing in areas that need to be protected, with that approach in mind?

Mr. Bohnett said sure, whatever works, no problem.

Chairman Ono then called for a five minute recess.

The meeting was recalled to order at 11:35 a.m.

Mr. Higashi made a motion to the following:

1. Regarding logging and clearing activities in the conservation zone, recommend that the applicant be fined \$34,600. This is based on a rate of \$200 per tree for the 173 trees which, by the lessee's own count, were logged in the conservation district.
2. Propose a fine of \$500 for laying of pipeline in the conservation district without first obtaining an easement.
3. Require payment of \$4,095 for koa taken, subject however, to DOFAW verifying volume. If volume higher, amount will be greater at \$75.00 per 1000 board feet.
4. Require payment for the water taken from the Kiholo Well in the amount of \$9,600.
5. Approve withdrawal of the wildlife sanctuary as recommended by staff.
6. Set rental at \$121,680 per year retroactive to August 15, 1980. Chairperson to set payment schedule.
7. Recommend that hunting areas to be withdrawn on configuration requested by lessee, with exception of wildlife sanctuary boundaries.
8. The rental reopening not be based on the proportional reduction as requested by the applicant but be set by the new rental based by the carrying capacity negotiated between the ranch and our department.  
  
Authorize the chairman to negotiate the rent and have all fines imposed in such a manner that it will be in the best public interest.
9. Request the chairman direct the Natural Area Reserve to submit a proposal for the establishment of a Natural Area Reserve. The Board to reserve judgement as to whether a Natural Area Reserve will be imposed pending the review of findings or recommendations from the Natural Area Commission.
10. Authorize the chairman to prescribe other terms and conditions that may be necessary to carry out the intent of this Board.

Regarding the logging activities as prescribed by Mr. Detor, am recommending at this time that the legal question be answered by our Attorney General's office. Request to defer this portion for a legal interpretation whether the activity was legal or illegal.

Motion seconded by Mr. Zalopany.

Mr. Ing had a question with regard to the motion. He was unclear about the land to be withdrawn regarding the amended line or the new line. At this point, Mr. Higashi went up to the map to point out the boundaries.

Under the motion, Mr. Ing questioned the cost of the withdrawal, meaning if it were to be surveyed, who would have to bear the cost.

Mr. Higashi said that his intent was to follow the recommendation of the staff who indicated that the State would be responsible.

Responding to Mr. Ono's question, Mr. Detor said he would have to check it out if this were a legal requirement with the Attorney General's Office. Should both parties request the withdrawal, he would have to check if it could be a 50-50 split.

Chairman Ono made a comment to Mr. Higashi's motion. Reference made to fines and rentals: If it is a fine, then it should be clearly indicated as a fine; if it is recovering rentals retroactively, that's a separate category. A distinction is made because if it's a rental, the money has to go into the State general fund. If it is a fine, the Board has some flexibility as to whether we accept the fine in cash or and/or in kind contribution. As the Board adopts each motion, we'll make a distinction between a fine and rental payment.

Mr. Kealoha had a second question with respect to the motion deferring the so-called charges for logging and clearing activities in the conservation zone.

Mr. Higashi replied that he was asking they defer the action subject to legal interpretation.

Chairman Ono questioned, if the recommendation is deemed legal that the recommended amounts would stand? To which Mr. Higashi said, "be imposed."

Mr. Ing asked if the legal question turns on the factual circumstances, then will that be referred to the Board to decide?

Mr. Higashi said that was correct. The reference to the Attorney General is only to determine the legality and not the imposition of negotiating the rent any lower. If it is illegal, then the \$34,000 fine be imposed.

Mr. Ing asked if it comes back to the Board and it clears the Attorney General, is the Board then under your motion limited to the \$200 per tree or do we have additional flexibility with regard to the level of fines per tree.

Mr. Higashi said it is the intent to accept the staff recommendation of \$200, but the further ratification of that amount be together with the annual rental; what the annual rental agreement negotiated and agreed by both parties.

Chairman Ono then called for a vote on the motion. There were three ayes and two noes, motion not carried.

Mr. Ing said that his concern like Mr. Kealoha is for item No. 1 which concerns the logging and clearing activities. If that item is to be deferred, I would prefer that we leave it open entirely including the level of fines. That after the Attorney General's office review, the Board to have the flexibility to impose up to the maximum. In addition, it's my understanding that Mr. Landgraf's survey (DOFAW) could have an impact on this also and I would like to update the number of trees. We're assuming that 173 trees in the conservation district and that figure may come out larger, for that reason I would like the item to remain open for that purpose.

Mr. Kealoha said his second concern was that of the rental reopening. I'm not sure when you say retroactive to 1980 at the set amount recommended by the staff, and I'm not clear as to the motion or the intent of the motion wherein the Chairman may set by negotiation the new rent structure. I am unclear for that reason, cannot vote the affirmative for the entire package of the motion.

At Mr. Ono's request, Mr. Detor had a clarifying statement on the rental reopening portion. The \$121,000 (exact figure \$121,680 referred to as \$121,000), is the rent that is the result of the reopening provision in the lease. Once you withdraw, then a new rental rate comes into effect which is based on what Mr. Higashi talked about. So the \$121,000 is in effect from the date of reopening 1980 up until you make the withdrawals. At that point a new rental scale comes into play. So that period in between is when the \$121,000 governs.

The authority that goes to the Chairman only applies after the withdrawal is effected.

Mr. Kealoha then questioned the Board's authority to agree to the rental reopening even though the second party disagrees with the method and final amount under the lease agreement.

Mr. Detor said he would say no as he thinks the lease provisions govern the \$121,000. He didn't think you could change that assuming the \$121,000 is correct insofar as application of the formula is concerned.

Mr. Kealoha said why did it take four years before it came to the Board. Why wasn't it settled in 1980?

Mr. Detor answered because we were discussing withdrawals and we've said that this is a lapse on the staff's part. He agreed that if started in 1980 then some agreement should have been made that at such time in the future that both parties would agree to whatever the Board decides. But he still felt that it didn't affect the \$121,000 rate.

Mr. Kealoha said for that reason he could not see himself voting in the package with respect to this portion of the motion.

Chairman Ono informed the Board the motion did not carry so in effect as of now there's no violation, no nothing, everything goes back to ground zero. Chair will entertain any other motion or motions to get on with this particular item.

ACTION: Mr. Higashi restated his motion and upon Mr. Zalopany's second the Board approved the following unanimously:

1. The logging and clearing activities in the conservation zone be reviewed by the Attorney General's office for legality in its entirety and the amount of fines be left open. The Division of Forestry and Wildlife to do a field survey and the Board will not be restricted to staff's recommendation in terms of number of trees, dollar amount per violations or anything of that order.
2. Propose a fine of \$500 for laying of pipeline in the conservation district without first obtaining an easement.
3. Require payment of \$4,095 for koa taken, subject however, to DOFAW verifying volume. If volume higher, amount will be greater at \$75.00 per 1000 board feet.
4. Require payment for the water taken from the Kiholo Well in the amount of \$9,600.
5. Approve withdrawal of the wildlife sanctuary as recommended by staff.
6. Set rental at \$121,680 per year retroactive to August 15, 1980. Chairperson to set payment schedule.
7. Recommend that hunting areas to be withdrawn on configuration requested by lessee, with exception of wildlife sanctuary boundaries.
8. The rental reopening not be based on the proportional reduction as requested by the applicant but be set by the new rental based by the carrying capacity negotiated between the ranch and our department.  
  
Authorize the chairman to negotiate the rent and have all fines imposed in such a manner that it will be in the best public interest.
9. Request the chairman direct the Natural Area Reserve to submit a proposal for the establishment of a Natural Area Reserve. The Board to reserve judgement as to whether a Natural Area Reserve will be imposed pending the review of findings or recommendations from the Natural Area Commission.
10. Authorize the chairman to prescribe other terms and conditions that may be necessary to carry out the intent of this Board.

Chairman Ono then asked Deputy Attorney General Johnson Wong to pick up item no. 1 of the motion for review of legality.

Mr. Takeyama asked to reserve the right to a contested case until the determination opinion is made by the Attorney General and at the time of action for the fines for the cutting of the trees.

Chairman Ono said that the Board will take that up as an advisement. He also asked Mr. Wong to include that part in his overall review request for a contested case hearing being kept open.

Mr. Takeyama requested a copy of the action from the standpoint of motion.

ITEM H-7      RESUBMITTAL OF A CONSERVATION DISTRICT USE APPLICATION FOR TEN YEAR MAINTENANCE DREDGING OF MAKANI KAI MARINA AT KANEOHE, OAHU

Mr. Harold Lamb representing the applicant told the Board that they had a chance to look over the conditions and were agreeable to all eleven conditions as specified. He also had a letter from the condominium owners across the street who did not object to the project.

ACTION      Mr. Higashi moved for approval.      Seconded by Mr. Kealoha the motion carried unanimously.

ITEM D-1      AUTHORIZE THE CHAIRPERSON TO EXECUTE THE OPERATION AND MAINTENANCE AGREEMENT FOR THE WAIMANALO SOLID WASTE COLLECTION SITE, WAIMANALO WATERSHED, WAIMANALO, OAHU

ACTION      Unanimously approved as submitted.      (Ing/Kealoha)

ITEM D-2      APPLICATION FOR STREAM CHANNEL ALTERATION PERMIT FOR KAKAINA STREET STREAM BANK PROTECTION PROJECT, WAIMANALO, OAHU      TMK: 4-1-24

ACTION      Subject to the conditions recommended by staff, the Board unanimously approved as submitted.      (Zalopany/Ing)

ITEM D-3      COOPERATIVE AGREEMENT WITH U. S. GEOLOGICAL SURVEY FOR WATER RESOURCES INVESTIGATIONS, FY 1985

ACTION      Unanimously approved as submitted.      (Ing/Kealoha)

ITEM E-1      PERMISSION TO ADVERTISE FOR BIDS, JOB NO. 54-KP-12, RECONSTRUCTION OF HANAIEI PIER, HANAIEI, KAUAI

ACTION      Unanimously approved as submitted.      (Zalopany/Higashi)

ITEM E-2      AUTHORIZATION TO ISSUE SPECIAL USE PERMIT TO THE COUNTY OF HAWAII, DEPARTMENT OF PARKS AND RECREATION, FOR USE OF A PORTION OF WAILOA RIVER STATE PARK, ISLAND OF HAWAII

ACTION Mr. Higashi moved that the Board authorize the issuance of a special use permit to the County of Hawaii, Department of Parks and Recreation for use of the 10-acre parcel of the Wailoa River State Recreation Area for archery and jogging for a term of one (1) year. He instructed Mr. Nagata to look into the State's coverage of liability of the park users. Motion was seconded by Mr. Ing and carried unanimously.

ITEM E-3 HAWAII YOUTH FOR CHRIST REQUEST TO USE DIAMOND HEAD FOR A YOUTH ACTIVITY, HONOLULU, OAHU

ACTION The Board unanimously approved to authorize the issuance of a permit to the Hawaii Youth for Christ for their "George Washington's Birthday Party" field day/picnic within the Diamond Head Crater on February 18, 1985 provided the applicant be made to obtain liability insurance covering the State of Hawaii during the event. (Ing/Kealoha)

ITEM E-4 REQUEST FOR PERMISSION TO SELL AN ART SHOW CATALOG AT THE WAILOA CENTER, HILO, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Kealoha)

ITEM E-5 REQUEST TO USE DIAMOND HEAD CRATER FOR A MUSIC CONCERT, HONOLULU, OAHU

Item withdrawn at the request of the applicant.

ITEM F-1a JOHN CARVALHO APPLICATION FOR REVOCABLE PERMIT COVERING WAIAKEA CANE REMNANT #6, WAIAKEA, SO. HILO, HAWAII

ACTION Mr. Higashi moved for approval. Seconded by Mr. Ing and carried unanimously.

ITEM F-2 DIOCESE OF HONOLULU REQUEST FOR AMENDMENT OF RESTRICTIVE USE PROVISION, LAND PATENT GRANT NO. 10,379, WAIAKEA, SO. HILO, HAWAII

In answer to Mr. Higashi, Mr. Detor said there will be an appraisal made showing the value of the property for residential use and also for private school and church use and the difference is what they'll pay the State.

Mr. Ing asked the purpose of the residential use and if it were church related.

Mr. Detor said they were going to subdivide consistent with the county zoning which is residential.

ACTION Mr. Higashi moved for approval as requested. Mr. Ing seconded and motion carried unanimously.

ITEM F-3 ROBERT NAKAMOTO & ALEX OKADA APPLICATIONS FOR EASEMENTS, WAIMEA, SO. KOHALA, HAWAII

ACTION Mr. Higashi moved for approval with one amendment. That they be allowed to acquire the easement, put in their

pipeline but not to hook up into our system until approved by DOWALD (Division of Water and Land Development), due to the drought. Conditions should be back to normal before allowing them to hook onto the line.

Mr. Ing seconded the motion and carried unanimously.

ITEM F-4 STAFF RECOMMENDATION FOR AMENDMENT OF PREVIOUS BOARD ACTION (6/22/84, AGENDA ITEM F-3) AUTHORIZING SALE OF A ROAD REMNANT AT PIIHONUA, SO. HILO, HAWAII

ACTION Unanimously approved as submitted. (Higashi/Kealoha)

ITEM F-5 (See page 18 for action.)

ITEM F-6 STAFF RECOMMENDATION FOR ACCEPTANCE OF CONVEYANCE OF MAKAWAO CEMETERY SITE AND ISSUANCE OF E.O. SETTING ASIDE LAND TO THE COUNTY OF MAUI

ACTION Mr. Kealoha moved for approval. Mr. Zalopany seconded and motion carried unanimously.

ITEM F-7 HAWAIIAN TELEPHONE CO. APPLICATION FOR EASEMENT, HONOKALA, HAMAKUALOA, MAKAWAO, MAUI

ACTION Unanimously approved as submitted. (Kealoha/Zalopany)

ITEM F-8 DAGS REQUEST FOR FLOOD CONTROL EASEMENTS (FOR THE CITY AND COUNTY OF HONOLULU), PALOLO, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Zalopany)

ITEM F-9 STAFF RECOMMENDATION FOR AMENDMENT OF PREVIOUS BOARD ACTION AUTHORIZING SALE OF REMNANT AT KALIHI-KAI, HONOLULU, OAHU

Since the Board's initial action on November 5, 1982, the names of the applicant have been changed, thus a request for an amendment.

ACTION Mr. Ing moved for approval as submitted. Seconded by Mr. Kealoha and motion carried unanimously.

ITEM F-10 DSSH REQUEST FOR APPROVAL OF RENEWAL OF LEASE COVERING A PORTION OF THE 2ND FLOOR OF THE ALA MALAMA BLDG., KAUNAKAKAI, MOLOKAI

ITEM F-11 DSSH REQUEST FOR ACQUISITION OF LEASE COVERING ROOM 5 OF THE BASQUE BLDG., KEALAKEKUA, KONA, HAWAII

ITEM F-12 DSSH REQUEST FOR ACQUISITION OF LEASE COVERING OFFICE SPACE AT PALAMA SETTLEMENT, HONOLULU, OAHU

DOH REQUEST FOR APPROVAL OF AMENDMENT OF LEASE COVERING  
ITEM F-13 ROOM 301 OF THE TANI BLDG., HONOLULU, OAHU

ACTION Mr. Higashi moved for approval of items F-10, F-11, F-12 and F-13 as submitted. Seconded by Mr. Kealoha and motion carried unanimously.

REQUEST BY THE DEPARTMENT OF DEFENSE TO AMEND A USE  
ITEM H-1 PREVIOUSLY APPROVED DEEP SPACE SEARCH AND TRACKING  
FACILITY AT HALEAKALA, MAUI

ACTION Mr. Kealoha moved to defer this item to allow the National Park Service an opportunity to review the request and recommendation. Seconded by Mr. Ing, the motion carried unanimously.

This item to be deferred to the next meeting only.

REQUEST FOR TIME EXTENSION PREVIOUSLY APPROVED FLOOD  
ITEM H-2 CONTROL WORK KAHOMA STREAM

This request is submitted by the Maui Department of Public Works. The extension is being requested because the U.S. Army Corps of Engineers explained that the Administration and Congress have not resolved differences in the share of the cost to be borne by local governments in civil projects.

ACTION Mr. Kealoha moved for approval of the request for time extension. Mr. Zalopany seconded and motion carried unanimously.

CDUA FOR A TEMPORARY VARIANCE FOR THE TEMPORARY INSTALLATION  
ITEM H-3 OF THREE WIND DATA COLLECTION TOWERS AT MAALAEA, MAUI

Applicant proposes to erect three temporary 90 foot towers to conduct wind speed and direction monitoring for a Maui community wind farm project.

Staff recommended the approval of one 90 foot tower at the primary site at Puu Moe and recommended that the Board deny construction of the other two towers because they would result in obstructions in the Federal Aviation Administration transitional and approach air space for Kahului Airport.

Mr. Kealoha moved to approve, seconded by Mr. Zalopany.

Chairman Ono asked Mr. Soh if the applicant had seen or was aware of staff's recommendations. Mr. Soh was not sure.

ACTION Motion withdrawn by Mr. Kealoha. Item deferred until applicant has opportunity to review recommendation.

ITEM H-4 AMENDMENT TO CDUA SIX MILLION GALLON RESERVOIR AT KAHANA VALLEY

ACTION Mr. Ing moved to approve the amendment. Mr. Kealoha seconded and motion carried unanimously.

ITEM H-5 (See page 3 for action)

ITEM H-6 (See page 2 for action)

ITEM H-7 (See page 19 for action)

ITEM H-8 APPROVAL FOR OUT-OF-STATE TRAVEL FOR ATTENDANCE AT COLLOQUIUM ON "AQUATIC INDUSTRIES IN MISSISSIPPI IN THE YEAR 2000", OCTOBER 24-26, 1984

ACTION Mr. Higashi moved for approval. Seconded by Mr. Ing, the motion carried unanimously.

ITEM J-1 LEASE-CONCESSION, OPERATION OF COIN-OPERATED VENDING MACHINES, GEN. LYMAN FIELD, HAWAII (STATE OF HAWAII DEPARTMENT OF SOCIAL SERVICES AND HOUSING)

ACTION Unanimously approved as submitted. (Higashi/Kealoha)

ITEM J-2 AMENDMENT NO. 2 TO LICENSE NO. DOT-A-70-14, KEAHOLE AIRPORT, HAWAII (FAA)

ACTION Unanimously approved as submitted. (Higashi/Kealoha)

ITEM J-3 CONSENT TO SUBLEASE, LEASE NO. A-62-14, HONOLULU INTERNATIONAL AIRPORT, OAHU (LOCKHEED AIR TERMINAL, INC. - SOUTH PACIFIC ISLAND AIRWAYS, INC.)

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-4 RIGHT-OF-ENTRY, GROUND TRANSPORTATION SUBDIVISION, KAHULUI AIRPORT, MAUI (FIRST HAWAIIAN SHIRTS, INC.)

ACTION Deferred at request of the applicant.

ITEM J-5 APPLICATION FOR ISSUANCE OF R.P. NO. 3926, HONOLULU INTERNATIONAL AIRPORT, OAHU (KENNETH E. CULLER)

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-6 RENEWAL OF R.P.'S NOS. 3275, 3736, 3764, AND 2884, CONFORMING USE, AIRPORTS DIVISION

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-7 REQUEST FOR SALE OF A LEASE BY PUBLIC AUCTION, HARBORS DIVISION; MARINE SERVICES BUILDING, NEAR PIER 24, HONOLULU, OAHU

ACTION Unanimously approved as submitted. (Ing/Kealoha)

ITEM J-8 APPROVAL OF CONSENTS TO SUBLEASE, HARBORS DIVISION  
HONOKOHAU BOAT HARBOR, HAWAII (GENTRY PACIFIC, LTD.)

ACTION Mr. Higashi moved for approval. Mr. Zalopany seconded,  
motion carried unanimously.

ITEM J-9 ISSUANCE OF R.P., HARBORS DIVISION, KEEHI LAGOON  
COMMERCIAL SUBDIVISION, HONOLULU, OAHU (IMPERIAL  
TRUCKING, INC.)

ACTION Unanimously approved as submitted. (Ing/Zalopany)

ADJOURNMENT The meeting adjourned at 12:25 P.M.

Respectfully submitted,

*Dorothy C. Chun*  
Dorothy C. Chun  
Secretary

APPROVED:

*S. Ono*  
SUSUMU ONO  
Chairperson