AD HOC COMMITTEE MEETING NO. 2
GEOTHERMAL ASSET FUND
Thursday, October 19, 1989
Council Chairman Russell Kokubun's Office

PRESENT: Lou Ann Jones, Ron Philips, Greg Pommerek, Russell Kokubun, Duane Kanuha

ABSENT: Steve Philips
Libert Landgraf

ITEMS DISTRIBUTED

Senate Bill No. 238 (1987) relating to Government Mineral Rights

Page 27 of County Charter (Section 13-4 Boards and Commissions)

Council Rules of Procedure, Rule 11 (Voting)

Discussion on Administrative Matters

Russell outlined three major sources of funding which could be used to support the efforts of the ad hoc committee: 1) unexpended funds from the mediation fund account, 2) funds from Ormat via other agreements, 3) State resources per Libert Landgraf. Purposes would be for staffing (secretarial services, etc.) and possible per diem and travel.

As of 10/5/89, Mediation Fund account in Planning Department has $8,889.30.

Letters of confirmation to join ad hoc committee were sent out by the Planning Director. Discussion on alternates followed but more clarification and confirmation were necessary.

Who Manages?

Alternate management schemes were discussed with focus on funds coming to the County and appropriated by the County Council. Preferred scenario was the establishment of a separate board/commission with own rules, regulations and criteria attached to the County administration to provide distribution recommendations to the Council. For purposes of further discussion, the administrative body for the proposed board/commission was the Planning Department; although the receipt and distribution of funds could also be set up in the Finance Department.

Membership criteria for the proposed board/commission was discussed and preliminarily defined as Puna resident (at least one year) with recognized community involvement through
community organizations, etc. Language from Section 5-6.3 of the Charter would be used as a model to provide guidance. Much discussion on length to time to establish residency - range from 3 years to 1 year - and what level of community involvement desired.

Committee decided to limit at this time to just the two criteria.

Who/How Appoints?

The committee determined that the initial screening should be by the community prior to appointment through the use of the Puna Community Council election process. PCC would only perform the elections in accordance with rules, criteria, guidelines established by the County. In further discussion on this issue, it was decided that if the community went through the trouble of self selection, the outcome should constitute the commission make-up rather than having final approval subject to the Mayor or the Council. In this way, politics could be removed.

A 9-member setup with terms, etc. similar to the Charter provisions was discussed. Representation from OHA or educators was a concern but the response was it would be difficult to mandate participation from select groups. Special representation from OHA, etc. could also be accommodated by ex-officio invitation provided in the rules.

There was major discussion over participation on the commission by members of the community who could potentially be beneficiaries of the fund. Some committee members felt that without the direct participation, the concerns would not be as meaningful, while other committee members felt that since monies were involved, there was a direct conflict of interest and therefore those commissions members could not participate. Russell passed out Council rules regarding voting. A 9-member setup was then reemphasized since if direct beneficiaries had to abstain from voting, at least a quorum would be available to conduct business.

It was anticipated that once the initial relocation or displacement effort was completed then the commission would be focusing more on the use of the fund to provide community benefits. There was discussion on how those benefits should not take precedence over funding for the district which would normally be available, nor should the fund duplicate normal CIP related project. It could, however, be used to supplement a shortfall in a needed community CIP project.

Next Meeting

Next meeting set for 10/26/89 at 9 a.m. same place (Note: meeting date re-scheduled for 11/2/89 due to conflict with
Duane’s and Russell’s schedule). Topics would be to follow up on administrative matters; report from Libert; and purposes/uses of the fund.

Submitted by D. Kanuha
10/25/89
General discussion on report from meeting No. 2.

Purposes/Uses of Fund

I. Relocation
Generally agreed that relocation is a primary purpose for the fund. Relocation was discussed in two aspects - permanent and temporary.

Discussion on permanent relocation involved:
1. Eligibility of landowners/residents within a subzone.
2. landowners/residents adjacent to the subzone.
3. affected landowners/residents.

Other questions raised in the discussion included: 1. Who would own the land after purchase using asset funds? 2. Can a landowner retain agricultural holdings and only have his/her residence considered for relocation?

Discussion of temporary relocation included:
1. Temporary relocation costs during planned ventings are covered by Condition 39 of the Permit Conditions; funds are not dependent on asset fund monies.
2. Relocation costs due to emergency situations are covered by Condition 29 of the permit conditions; funds are not dependent on asset fund monies.
3. Temporary relocation costs due to drilling are included in item No. 7 of "Other Agreements" found in the Mediator's Report, but is limited to $55,000; there is a need for additional asset fund monies for temporary relocation due to drilling.
4. Asset fund monies may be considered for relocation of residents beyond a 3,500 foot radius during venting and/or drilling on a case by case basis.

II. Compensation
Issues to be considered for compensation include:
1. Lost work income - limited coverage by Condition 39 of the Permit Conditions; coverage may need to be expanded.
2. Crop/Agricultural damage.
3. Medical costs.
4. Decrease in assessed valuation for real property due to impacts.
AD HOC COMMITTEE MEETING NO. 3  
GEOThERMAL ASSET FUND  
Thursday, November 2, 1989  
Page 2

5. For those residents suffering noise impacts not addressed by Condition 24 of the Permit Conditions.

III. Community Benefits
There is general agreement that certain benefits should accrue to the community. There was concern expressed that the asset fund not displace nor duplicate normal CIP related projects. Because there may be an opinion that interprets the asset fund as an impact fee, there should be careful consideration that a rational nexus be established between the proposed use of the monies and the impacts of the development of the resource. With this in mind, specific community benefits raised during the discussion include:
1. Enhancing County water supply.
2. Housing (?).
3. Private utility development.
4. Provide scholarships for youth in alternate energy, agriculture, etc.

Next Meeting
Next meeting set for November 9, 1989 at 1:30 p.m. in the Council Chairman's office.
AD HOC COMMITTEE MEETING NO. 3
GEOTHERMAL ASSET FUND
Thursday, November 2, 1989
Council Chairman Russell Kokubun's Office

PRESENT: Lou Ann Jones, Ron Philips, Greg Pommerek, Russell Kokubun, Duane Kanuha, Steve Philips

ABSENT: Libert Landgraf

OLD BUSINESS

Jane Hedtke was designated as the alternate for Louann and Gregg; Robert Patricci for Steve Philips; and Clive Cheetham for Ron Philips.

NEW BUSINESS

Gregg and Luanne asked about the status/objective of the Mayor's Geothermal Advisory Committee and whether or not their role would impact upon the development of the asset fund. Advised that the County's understanding of the committee is advisory on the whole spectrum of geothermal.

Discussion on ORMAT's additional funding commitments to the development of the asset fund. Steve inquired if the HGP-A shutdown would affect asset funding.

Gregg stated that he felt the asset fund and continuing commitments by ORMAT, the State and other geothermal developers could provide the vehicle for securing a lump sum loan for x million dollars backed by the asset fund itself and the State for repayment of principal, etc. In this way, sufficient funds could be established up front prior to impacts and could address those impacts before actual accumulation of sufficient funding over time. The group felt that this concept was worth pursuing.

Louanna questioned whether the responsibilities of the developers ceased upon payment into the asset fund and/or royalties. Group response was generally that many other conditions also needed to be met as well.

PURPOSES/USES

Gregg stated that the general purpose of the asset fund should be to offer assistance to landowners and residents in the surrounding geothermal subzone area. Also that an application form or format be developed to implement purpose. Russell suggested that the purpose be modeled off of the GRP criteria found in the statute and Rule 12 since it already provided a common basis.
Discussion continued - see Russell Kokubun's notes

Next Meeting

Next meeting set for 11/9/89 at 1:30 p.m.

Submitted by D. Kanuha
11/9/89
AD HOC COMMITTEE MEETING NO. 4
GEOTHERMAL ASSET FUND
Thursday, November 9, 1989
Council Chairman Russell Kokubun's Office


OLD BUSINESS
1. Lou Ann asked if responses from Corporation Counsel to Russell's request for an opinion regarding the legality of Condition 51 were ready for distribution? Russell responded that he has asked for clarification of the initial opinion rendered and is still awaiting response. He will share both opinions when they become available.
2. Per diem and mileage payments to participants as means to provide relief for extensive commitments to Ad Hoc Committee meetings. There was general discussion regarding possible funding sources, appropriateness of compensation over and beyond mileage and per diem, and how such expenses could be administered. Discussion also involved whether or not compensation should be considered and that the asset fund development could have proceeded with major participation only by Duane and Russell.

NEW BUSINESS
Libert provided information regarding the State's contribution toward the asset fund. The initial contribution from the State will be $250,000 for the establishment of the fund. This amount coupled with the $60,000 initial contribution from ORMAT will total $310,000 as "seed money". Future contributions from the State will be derived from the sale of steam from the HGP-A well (presumably to ORMAT). This amount will approximate be $25,000 a month which will yield $300,000 a year. ORMAT's future commitment is $50,000 a year, which will then produce a total of $350,000 a year as continuing deposits to the asset fund. Libert additionally explained that if the sale of steam from the HGP-A well is not immediately forthcoming, then the State is committed to provide monies from other sources that would insure the viability of the asset fund.

Discussion also included how royalties from geothermal steam need to be considered as an integral component of the asset fund. Quite obviously, the proposed financial resources as explained above appear to be inadequate in terms of providing the entire means to address all proposed uses. Royalties have always been looked upon as the means to provide a substantial
and sound financial basis for the asset fund; however, it is clear that this issue of royalties directed to the County (and further, for use in the asset fund) requires State legislative approval. Libert indicated that the Administration would not oppose legislation of this sort but also would not necessarily initiate or overtly support such a proposal. Nonetheless, there was agreement that royalty payments need to be pursued, but should be treated as a separate issue from the actual establishment of the asset fund.

Discussion also involved the $10,000 contribution from ORMAT to assist the community to establish the geothermal asset fund as found in Condition #2 of Other Agreements and Recommendations from the Mediator's Report. Duane agreed to write a letter to PGV to gauge their commitment to honor this agreement.

NEXT MEETING

Next meeting set for November 16, 1989 at 9:00 a.m. in the Council Chairman's office.
AD HOC COMMITTEE MEETING NO. 5
GEOTHERMAL ASSET FUND
Thursday, November 16, 1989
Council Chairman Russell Kokubun's Office

PRESENT: Lou Ann Jones, Ron Phillips, Steve Phillips, Greg Pommerek, Jane (Janie) Hedtke, Russell Kokubun,

ABSENT: Duane Kanuha, Libert Landgraf

OLD BUSINESS

1. An inquiry was raised whether Duane had transmitted a letter to PGV regarding their commitment to honor the agreement that involved a $10,000 contribution from ORMAT to assist the community in establishing the Geothermal Asset Fund (GAF). Russell agreed to discuss this issue with Duane.

2. Legislative initiatives involving portions of royalties from geothermal development to the counties were discussed. Ron Phillips will ask Senator Richard Matsuura if previous legislation will be introduced and Ron also agrees to discuss this issue with Representative Mark Andrews as well.

NEW BUSINESS

It appears that much of the structure for the GAF has been developed through the hard work of the participants who have demonstrated a strong commitment in terms of time and energy to bring it this far. Nevertheless, it is difficult for the committee members to continue to meet on a weekly basis. Furthermore, because ad hoc committee members may qualify to receive direct compensation from the asset fund, a greater degree of objectivity is desired. It is appropriate at this time for Duane and Russell to develop the specifics of the conceptual agreements reached thus far and return to the committee format on a less frequent, and thus, less demanding basis. The intent was for greater community participation in developing parameters for the asset fund as envisioned in Condition 51.

During the interim Duane and Russell will draft appropriate administrative rules and regulations that will provide the management for the GAF. This will include the development of the appropriate accounting system that will be consistent with the current County budgeting process.

Further discussion included other data that needed to be collected in order to establish a quantifiable "bottomline" that will help to determine the parameters for the asset fund. There was agreement again that relocation is a primary purpose for the fund. Thus, there is a need to now specifically
determine eligibility for relocation -both permanent and temporary- in order to quantify the amount needed for relocation. Conclusions drawn for eligibility for permanent relocation were:

1. Landowners within Kapoho Subzone.
2. Landowners adjacent to Kapoho Subzone boundaries.
3. Landowners located within 3,500' radius of the Kapoho Subzone boundaries.
4. Landowners located within one mile radius of the Kapoho Subzone boundaries.
5. Landowners located within a two mile radius of the Kapoho Subzone boundaries (this specific data maybe used to determine relocation costs on a case-by-case basis).

Janie and Steve agreed to pursue this assignment which would include a map of the area involved, list of landowners for each parcel, TMKs for parcels involved, parcel size and assessed valuation of parcels.

For temporary relocation two eligibility scenarios were considered during venting. Those residents within a 3,500' radius from the boundary of the project will receive compensation for relocation as included in Condition #39 of the GRP 87-1. However, it was concluded that residences beyond 3,500' to two miles from the project boundary should also be considered for eligibility for temporary relocation compensation. Utilizing TMKs and real estate industry information, residences located in this zone can be determined, and projected temporary relocation costs can be quantified by applying similar monetary values as found in Condition #39. There was agreement that $200 per residence per day can be used to estimate the cost for temporary relocation.

For temporary relocation during the drilling phases there is a similar need to determine those residences within a two mile radius from the project boundary. The same values as applied for temporary relocation during venting will be applied here - $200 per residence per day. This will provide a quantifiable estimate. Janie and Steve agreed to tackle this assignment as well.

Discussion included how landowners would be notified of their eligibility. It was agreed that this should be covered in the rules and regulations governing the asset fund. Those uses of the fund beyond relocation, namely other compensation and community benefits as discussed at meeting #3 are more difficult to quantify and will be the subject of discussion at the next meeting.

Additionally, items that need to be discussed at the next meeting include time frame for the activation of all the
components of the asset fund and the draft of rules and regulations.

NEXT MEETING

The next meeting has been tentatively set for December 4 or 5, subject to agreement by all participants.
ASSET FUND AD HOC COMMITTEE MEETING

MINUTES MEETING #6

DATE: July 18, 1990
TIME: 3:00 pm, Pahoa Neighborhood Center

MEMBERS PRESENT: Ron Phillips, Greg Pommerenk, Steve Philips
Alternates Robert Petricci and Jane Hedtke

INVITED: Maurice Richard, Duane Kanuha, Russell Kokubun
Not in attendance

CALL TO ORDER
3:08 pm

OLD BUSINESS

Establish criteria for temporary/permanent relocation when the drilling begins it will be in place.

Those in priority would be based on proximity (distance) from the nuisance.

Elections for the members of the Commission to include 9 residents elected by the Puna District. The Puna Council could hold nominations for the positions.

Funding Sources- at present a commitment from PGV of $50,000 a year. The state contribution is a $250,000 loan to the County by the State. Still waiting for clarification from Corporation Council as to the legality of the County to administer the fund.

Funding Commitment-County Council Chair meetings with Gov. Waihee's representative Liebert Langraf, the contribution was agreed to be $250,000 per year by the State (not a loan), and $25,000 per year from HGP-A revenues, with no discussion of OHA royalties and maintenance costs being deducted as presented in the Condition (51). Sus Ono committed to the above figures at the Sept. 19 public hearing in which the decision to approve the permit were based on his testimony concerning the State's contribution.

Asset fund created solely for mitigation of the PGV project and the immediate area, not as stated in Condition 51 for other districts. Site specific fund.

NEW BUSINESS

Compile a formal statement of what Condition 51 should include in amount of money and administration of the Asset Fund.

Assessment included of property values 3500 feet from the power plant radius and get County Assessment and Market Value worth of all properties within that radius.

Community Organization to be appointed by the County Council to set up the Asset Fund, and another panel could be selected to apportion the money according to rules.

Request the Planning Commission revisit Condition 51 failure to be met by the lack of funding committed.

MEETING ADJOURNED: 4:25 pm

NEXT MEETING DATE: Wed. July 25, 3:00 pm, Pahoa Neighborhood Center.
ASSET FUND AD HOC COMMITTEE MEETING

MINUTES

DATE: July 18, 1990
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NEXT MEETING DATE: Wed. July 25, 3:00 pm, Pahoa Neighborhood Center.
ASSET FUND

In approving the Geothermal Resources Permit (GRP) for Puna Geothermal Venture (PGV) the County of Hawaii (Planning Commission) established the Asset Fund to assist individuals and communities impacted by geothermal development activities.

The State agreed to participate in the establishing and funding of the fund. Heretofore, the State has contributed $250,000 appropriated to the Department of Land and Natural Resources and as authorized by the 1990 Legislature. The County of Hawaii's position is that this one time contribution does not satisfy the relevant condition attached to the GRP and is seeking continuous State funding along with contributions to be made by PGV.

To fully, or even to partially fulfill the County's expectations the State Legislature must enact certain enabling legislation. To this end the following is recommended:

1. The State Administration should seek legislation to authorize the State to contribute to the Asset Fund on a long-term basis from HGP-A steam sale and/or geothermal royalties.

The legislation should spell out basic guidelines such as maximum amount to be contributed each year, specified purposes for which the Asset Fund may be used, and periodic review of the Fund, such as every 10 years or so.

2. The Department of Land and Natural Resources should consider requiring developers of geothermal resources in conservation lands to contribute to the Asset Fund or something similar.
March 26, 1991

Gregory C. Pommerenk
PO Box 1588
Pahoa, HI 96778

Ms. Michelle Wong-Wilson
DBED
80 Pauahi St., Room 207
Hilo, HI 96720

Dear Michelle

How are you today?

I am glad that Norman Hayashi has asked you to be in the group for putting together the "Asset Fund". As I'm sure you are aware, the community with Russell Kokubun and Duane Kanuha have already done much ground work for the establishment of this fund. The only thing left is drawing it up and one more important part which has been undone since our last "Asset Fund Committee" meeting on July 25, 1990. This is probably the most important part because it represents the "food" for this fund and it comes in two parts.

Part One; is the States obligation to an Annual Contribution to the Asset Fund, which there is known and the State is obligated to make as is stated in Condition #51 of GRP 87-1.

Part Two; is in the Royalties that the County has 30% of, possibly you can report to us on "30% of what".

I am looking forward to working with you and I know that this doesn't give you much time before April 1, but possibly you can at least come up with something to present to the group. See you soon.

Sincerely

Greg

cc: Norman Hayashi
Russell Kokubun
participation of Puna residents or representatives thereof, which shall include, but not be limited to, provisions and criteria to enable the first priority of distribution for temporary or permanent relocation of those property owners who are found, in accordance with criteria established in the rules, to be adversely impacted by the activities authorized, provided that such relief is applied for within one (1) year of the impact."

Please assist me in developing the mechanism to administer and expend assets from this Geothermal Asset Fund. I have received the attached from the County's Corporation Counsel. I would like to use this "skeleton" as the starting point for developing this "mechanism."
I have also enclosed for you a copy of Condition 51 and a copy of Chapter 91, HRS.

I have scheduled a work meeting on April 1, 1991, from 1 p.m. to 3 p.m. at the Finance Department Conference Room in the County Building. Please bring the enclosed items as well as other references which may support our effort.

I look forward to working with you. Meanwhile, please feel free to contact me if you have any questions.

Sincerely,

NORMAN K. HAYASHI
Planning Director

RKN: syw
1020D
Enclosures
cc: The Honorable Lorraine R. Inouye, Mayor
GEOTHERMAL RULE - ASSET FUND

1. PURPOSE - The purpose of this rule is to establish a system to distribute the money in the Geothermal Asset Fund, which was created pursuant to Condition 51 of Geothermal Resource Permit (GRP) No. 87-1, issued to Puna Geothermal Venture on October 3, 1989. The money shall be paid to claimants found by the Planning Commission to be adversely impacted by the activities authorized by the permit.

2. ELIGIBILITY OF CLAIMS - Claims for compensation from the Geothermal Asset Fund may be filed by any person who is adversely affected by the activity of Puna Geothermal Venture authorized by GRP No. 87-1. Such adverse impact shall include physical injury, medical and health conditions, business or economic loss, or loss of residential property value.

3. Filing of Claims - a) All claims for compensation for adverse impact pursuant to this rule shall be filed with the Hawaii County Planning Commission, 25 Aupuni Street, Hilo, Hawaii 96720.
b) Each claim shall include the following information:

1) Name of claimant(s).
2) Address of claimant(s).
3) Date of filing of claim.
4) Description of the nature of the claim, including the way in which claimant(s) has been adversely impacted by the activity and the compensation sought.

c) Each claim shall be accompanied by evidence of the aforementioned adverse impact and request for compensation. Such evidence may include written reports and testimony, photographs, bills, invoices, and other documentary evidence.

4) Public Hearing - a) Within 90 days from the filing date, the claim shall be placed on the agenda of the Planning Commission for a public hearing to determine whether or not compensation should be paid to the claimant, and if so, in what amount. Notice of said hearing shall be published in accordance with Planning Commission Rules.

b) Notice of the hearing on the claim shall be mailed to Puna Geothermal Venture, or any successor in interest under GRP 87-1.
c) Prior to the hearing on a claim, the Planning Commissioners shall have access to the claim and any evidence submitted along with each claim. Planning Commissioners are entitled to receive copies of claims and evidence.

d) At the time of the hearing, the claimant shall be permitted to testify under oath on his own behalf, and present further physical or documentary evidence. The Planning Commission may, in its own discretion, allow further testimony, and may call others to present testimony on the issue of the claim.

e) Upon the closing of the hearing, the Planning Commission shall vote whether or not the claim has merit and, if so, what amount of compensation shall be paid to the claimant(s). The Planning Commission may vote to pay the claimant if it finds, by a preponderance of the evidence that:

1) the adverse impact claimed would not have occurred but for the activity permitted by GRP 87-1;
2) the amount of compensation to be granted is equal to the damage caused by the adverse impact caused by the activity permitted by GRP 87-1;

5. Appeal - Claimant may appeal the decision of the Planning Commission to the Board of Appeals within 30 days of said decision.

6. Other Rights - Nothing in this rule shall be construed to deprive or deny any person any other right or recourse under law.
47. The permittee shall obtain, and comply with the provisions of, Authorities to Construct and Permits to Operate from the State Department of Health for all applicable project operations approved under this Geothermal Resource Permit.

48. The permittee shall secure all necessary approvals and clearances including Plan Approval pursuant to Chapter 25 of the Hawaii County Code, within one (1) year from the effective date of the Geothermal Resource Permit.

49. Construction shall commence within one (1) year from the date of receipt of Final Plan Approval.

50. The permittee shall submit a written semiannual status report to the Planning Commission on the permittee's best efforts to address/comply with the "Other Agreements and Recommendations" as contained in Section 5 of the final report on "Mediation of Geothermal Resource Permit Application 87-1" dated August 21, 1989, regarding but not limited to the collateral agreements and commitments the permittee made during the mediation process, and which the permittee considers to be contractual obligations subject to the issuance of a satisfactory Geothermal Resource Permit. The status report shall be submitted by February 15 (covering the preceding period of July 1 through December 31) and August 15 (covering the preceding period of January 1 through June 30) of each year.

51. Prior to the issuance of the first building/construction permit under this Geothermal Resources Permit (GRP) by the County of Hawaii, the State of Hawaii and the permittee shall each contribute towards a Geothermal Asset Fund or other appropriate existing fund for the purposes of geothermal impact mitigation efforts within the District of Puna. The permittee's initial contribution to the fund shall be a sum of $60,000, due within thirty (30) days after the effective date of this GRP permit, and annual sums of $50,000 due on or before the anniversary date of this GRP permit over a period of eight (8) consecutive years thereafter for a total of $460,000. Annual contributions thereafter shall be determined between the permittee and the State of Hawaii or $50,000 annually, whichever is greater. The State's initial annual contribution to the Geothermal Asset Fund shall be the net revenues derived from the resources generated by the HGP-A well, or a similar amount from other State funding sources.
less any allocations entitled to the Office of Hawaiian Affairs and operations and maintenance costs. In the event that future enabling legislation provides for a percentage of the State's geothermal royalties to be allocated to the County, upon concurrence with the County Council, said royalties may also be deposited to the fund. The administration and expenditure of assets from this Geothermal Asset Fund shall be in accordance with rules, regulations and procedures developed for that purpose by the County in accordance with Chapter 91, Hawaii Revised Statutes, and with participation of Puna residents or representatives thereof, which shall include, but not be limited to, provisions and criteria to enable the first priority of distribution for temporary or permanent relocation of those property owners who are found, in accordance with criteria established in the rules, to be adversely impacted by the activities authorized, provided that such relief is applied for within a period of one (1) year of the impact. A priority list of impact mitigation projects may be established by the County Council or agency designated by the Council in conjunction with Puna residents or designated representatives thereof, with the exception of upgrading existing subdivisions in the Puna District to current subdivision standards and specifications of the County of Hawaii. Should any other district(s) of the County of Hawaii be proved to be negatively impacted by activities authorized under this or any other subsequent GRP, that district shall receive a pro rata share of the fund assets as may be determined by the County Council or agency designated by the Council with expenditures to follow a prioritized schedule determined as outlined above. The rights granted to the permittee shall not be conditioned upon any contribution or further participation by the State in the fund nor with respect to the creation, management, and operation of the fund other than set forth above.

Sincerely,

[Signature]

Gary Mizuno, Chairman
Planning Commission

cc: Mr. Peter Adler
Mediation Parties (list)
DBED
DOA
DLNR/Honolulu
DOH
Mr. Ralph Matsuda
April 1, 1991

MEMORANDUM

TO:      The Honorable Murray Towill, Director/DBED
The Honorable William Paty, Director/DLNR
Manabu Tagamori, Deputy Director/DLNR
Dean Nakano, Planner/DLNR
Maurice Kaya, Division Head, Energy/DBED
Dean Anderson, Program Mgr., Geothermal/DBED

FROM:    Michelle Wong-Wilson

SUBJECT: Geothermal Asset Fund Meeting
April 1, 1991

A meeting was held today on the proposed rules for the Geothermal Asset Fund as the request of Planning Director, Norman Hayashi. In attendance were:

Greg Pommerenk, Luana Jones, Robert Pettrici,
Butch Clark (PGV), Council Chairman Russell
Kokubun, Deputy Director Tad Nagasako, Rodney Nakano,
Corporation Counsel Michael Matsukawa, Planning
Director Norman Hayashi and myself.

There was much general discussion about the impacts of geothermal development on close neighbors. The group was generally dissatisfied with the first draft of rules (attached). Greg introduced minutes of several meetings held in 1989 and 1990 by the "Ad Hoc Committee" and requested that the group review the minutes and adopt them as a basis for a re-draft of the rules. The group did not agree to adopt the minutes, but did agree to use the "Ad Hoc Committees" recommendations as a starting place. The group also agreed that:

1) The rules developed should be for the Planning Department not Planning Commission;

2) An "advisory" group which included community members should be formed by rule to review applications;
Memorandum
Page 2
April 1, 1991

3) Corporation Counsel Matsukawa agreed to re-draft the rules based on the recommendations of the "Ad Hoc" Committee Meeting; and

4) The target date for the completion of the drafting of the rules is April 30. This would allow approximately six weeks for the public notification and hearing process. Rules could be adopted by June 15. I expect to receive Draft #2 of the rules on April 8. The next meeting of this group will be held on Monday, April 15.

There will be a meeting to discuss Draft 2 of the Geothermal Asset Fund Rule on:

Date: Thursday, April 11, 1991
Time: 10 A.M.
Place: DBED 9th Floor Conference Room
Penthouse, Kamalani Building

Your attendance will be greatly appreciated. Please RSVP by calling DBED Hawaii Island Office at 933-4600.

MWW:jt

Enclosure
MEMORANDUM

TO: The Honorable Murray Towill, Director/DBED
    The Honorable William Paty, Director/DLNR
    Manabu Tagamori, Deputy Director, DLNR
    Dean Nakano, Planner/DLNR
    Maurice Kaya, Division Head, Energy/DBED
    Dean Anderson, Program Mgr., Geothermal/DBED

FROM: Michelle Wong-Wilson

SUBJECT: Geothermal Asset Fund Rules Meeting

May 7, 1991

A meeting was held at the Pahoa Neighborhood Center at 9:30 am on May 7, 1991.

I was unable to attend the meeting, however, it is my understanding that the following changes were made to Draft #3, which is attached.

1. **PURPOSE**: Expand purpose to include all geothermal activities.

2. (d): Signatures of 25 people required for nominating candidates, define community organizations.

4. (c): Refer to 6 (e). Create claim form.

5. (a): Insert time frame to hold hearing. Require Chair to administer oath.

5 (d) (1): Change from Group 2 to Geothermal Activity

6. (b): Require applicant be notified.

6. (g): Add more clarifying language and operational procedure. Robert’s Rules will apply.
The following issues were brought up:

1. Who will provide Clerical and Technical assistance?
2. Add in section for amendment procedures.
3. Add in use of alternates and procedures.

The next meeting is tentatively scheduled for May 17, 1991, 9:00 am at the Pahoa Neighborhood Center.
GEOTHERMAL ASSET FUND RULES

1. PURPOSE. There shall be created a Panel to be known as the Geothermal Claims Panel. The purpose of the Panel is to distribute the money in the Geothermal Asset Fund, which was created pursuant to Condition 51 of Geothermal Resource Permit (GRP) No. 2, issued to Puna Geothermal Venture on October 3, 1989. The Panel shall authorize payment of money from the fund to claimants whom the Panel finds have been adversely impacted by the activities authorized by GRP 2.

2. PANEL MEMBERSHIP.

(a) The Panel shall consist of seven (7) members, and the Planning Director of the County of Hawaii or his duty authorized representative as a non-voting member, and two alternate members.

(b) The members of the Panel shall be residents of the Puna district, and shall serve staggered terms of three years from the date of election. In the first election for the Panel, those candidates with the two highest vote totals in their favor shall serve terms of four years from the date of election. In the first election, those candidates with the third and fourth highest vote totals in their favor shall serve terms of three years from the date of election. In the first election, the candidates with the fifth, sixth and seventh highest vote totals in their favor shall serve terms of two years from the date of election. In the first
election, the candidates receiving the eighth and ninth highest vote totals in their favor shall serve as alternate members for terms of three years each. Upon expiration of each Panel member's term, a new election shall be held, with the winner serving a term of three (3) years from the date of election.

(c) The Panel members shall be elected in an election of registered voters residing within the district of Puna, which shall certify the results. The Puna Community Council shall create rules for the administration of the election, including the nomination of candidates, the voting procedures and other aspects of the election.

(d) The community organizations representing the residents living within fifteen miles of the geothermal subzone shall submit to the Puna Community Council a list of not more than eight names of candidates for Panel membership.

(e) Upon election, the Panel members shall elect one of their members as chair and another as vice-chair.

(f) If any Panel member shall be unable to attend a hearing of the Panel, one of the alternates shall serve in that member's place. If any Panel member shall file a claim for compensation from the Geothermal Asset Fund, then one of the alternates shall serve in that member's place at the hearing at which the member's claim is considered.

3. ELIGIBILITY OF CLAIMS. Claims for compensation from the Geothermal Asset Fund may be filed by any person who is adversely
affected by the activity of Puna Geothermal Venture authorized by GRP 87-1. Such adverse impact shall include physical injury, medical and health conditions, business or economic loss, loss of residential property value, nuisance, or any other claim which is able to be substantiated by evidence.

4. FILING OF CLAIMS.

(a) All claims for compensation for adverse impact pursuant to this rule shall be filed with the Hawaii County Planning Department, 25 Aupuni Street, Hilo, Hawaii 96720.

(b) Each claim shall include the following information:

(1) Name of claimant(s).

(2) Address of claimant(s).

(3) Date of filing of claim.

(4) Description of the nature of the claim, including the way in which claimant(s) has been adversely impacted by the activity and the compensation sought.

(5) A filing fee of $50.00.

(c) Each claim shall be accompanied by evidence of the aforementioned adverse impact and request for compensation. Such evidence may include written reports and testimony, photographs, bills, invoices, and other documentary evidence. The claim application and submitted evidence shall be a matter of public record and copies shall be distributed to the Panel members who will hear the claim.
5. **HEARINGS.**

   (a) Whenever an application is made for compensation, the Panel shall conduct a hearing as soon as practicable after receipt of the application. The Panel shall give notice of the hearing to the claimant(s). Such notice shall be given not less than ten days prior to the date set for hearing on the application and shall state the time and place of the hearing. Such hearing may by announcement at such time and place be continued from day to day or adjourn to a later date without notice. All hearings shall be open to the public.

   The hearing shall be conducted by the chairman or a designated representative. Any four voting members shall constitute a quorum. Any member of the Panel may administer oaths or affirmations to witnesses appearing before the Panel. The commission may receive in evidence any statement, document, information, or matter that may in the opinion of the commission contribute to its functions whether or not such statement, document, information, or matter would be admissible in a court of law.

   (b) **Computation of time.** In computing any period of time prescribed or allowed by these rules or any order it shall be done by excluding the first day and including the last, unless the last day is a Sunday or holiday, and then it is also excluded.

   (c) **Documents, applications; amendment; dismissal.** All papers, documents and applications must be written, typewritten,
or printed and signed in ink by the party signing the same and must be legible. The signature of the person signing the document or application constitutes a certification that they have read the document, that to the best of their knowledge, information and belief every statement contained in the document is true and no such statements are misleading.

If any document or application filed with the Panel is not in substantial conformity with the applicable rules of the Panel as the contents thereof, or is otherwise insufficient, the Panel may on its own motion, or on motion of any party, strike or dismiss such document or application or may require its amendment. If amended, the document or application shall be effective as of the date of the original filing.

(d) Upon hearing testimony, the Panel shall vote whether or not the claim has merit and, if so, what amount of compensation shall be paid to the claimant(s). The Panel may vote to pay the claimant if it finds, by a preponderance of the evidence that:

(1) The adverse impact would not have occurred but for the activity permitted by GRP No. 2; and

(2) The amount of compensation to be granted is deemed by the Panel to appropriate for the damage caused by the adverse impact caused by the activity permitted by GRP No. 2.

No compensation may be granted except by an affirmative vote of the majority of the entire voting membership of the Panel. In
counting the number of members of the Panel, alternate members are not included.

6. HEARING PROCEDURE.

(a) Each hearing shall be presided over by the chair of the Panel or by the vice-chair if the chair is absent or unavailable. The hearing shall be conducted in such a way as to afford to interested persons a reasonable opportunity to be heard on matters relevant to the issues involved.

(b) Continuance of hearing. Each hearing shall be held at the time and place set in the notice of hearing, but may at such time and place be continued from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(c) Order of proceeding. At the commencement of the hearing, the presiding officer shall read the pertinent portions of the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(d) Submission of evidence. All interested persons shall be given reasonable opportunity to offer evidence with respect to the matters specified in the notice of hearing. Every witness shall, before proceeding to testify, state their name, address, and whom they represent at the hearing, and shall give such other information respecting their appearance as the
presiding officer may request. The presiding officer shall confine the evidence to the questions before the hearing but shall not apply the formal rules of evidence. Every witness shall be subject to questioning by the presiding officer or by any other representative of the Panel, and applicant shall have the right to produce evidence and to cross-examine witnesses, but cross-examination by private persons shall not be permitted except if the presiding officer expressly permits it. The Panel may also accept written testimony and documentary evidence.

(e) Transcript of the evidence. Unless otherwise specifically ordered by the Panel or the presiding officer, testimony given at the hearing need not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of the required number of copies impracticable and reduces the number, ten copies of the exhibits shall be submitted.

(f) Commission action. At the close of the final public hearing, the commission shall announce the decision or the date when its decision will be announced.

(g) Reconsideration by Panel; judicial review. The Panel may, at any time, on its own motion or on the application of any person aggrieved by an order or decision of the Panel,
reconsider the order or decision and revoke, confirm, or vary the order or decision, based upon the Panel's findings.

7. AWARD OF COMPENSATION. Upon voting to award compensation to claimant(s), the Panel shall prepare a written, brief statement of the facts upon which the vote was decided, a finding that the claimant(s) were adversely affected by the activity permitted by GRP No. 2, and a statement of the amount of compensation. This statement shall be approved by the mayor prior to payment of any funds.

8. APPEAL. Claimant may appeal the decision of the Panel to the Board of Appeals within thirty (30) days of said decision.

9. OTHER RIGHTS. Nothing in this rule shall be construed to deprive or deny any person any other right or recourse under law.
ASSET FUND

In approving the Geothermal Resources Permit (GRP) for Puna Geothermal Venture (PGV) the County of Hawaii (Planning Commission) established the Asset Fund to assist individuals and communities impacted by geothermal development activities.

The State agreed to participate in the establishing and funding of the fund. Heretofore, the State has contributed $250,000 appropriated to the Department of Land and Natural Resources and as authorized by the 1990 Legislature. The County of Hawaii's position is that this one time contribution does not satisfy the relevant condition attached to the GRP and is seeking continuous State funding along with contributions to be made by PGV.

To fully, or even to partially fulfill the County's expectations the State Legislature must enact certain enabling legislation. To this end the following is recommended:

1. The State Administration should seek legislation to authorize the State to contribute to the Asset Fund on a long-term basis from HGP-A steam sale and/or geothermal royalties.

   The legislation should spell out basic guidelines such as maximum amount to be contributed each year, specified purposes for which the Asset Fund may be used, and periodic review of the Fund, such as every 10 years or so.

2. The Department of Land and Natural Resources should consider requiring developers of geothermal resources in conservation lands to contribute to the Asset Fund or something similar.