

REGULAR MEETING MINUTES
BOARD OF WATER SUPPLY
Thursday, November 13, 2008

The Board of Water Supply, County of Kaua'i, met in regular meeting at its office in Lihu'e on Thursday, November 13, 2008. Chairperson Roy Oyama called the meeting to order at 10:15 a.m. On roll call, the following answered present:

BOARD: Mr. Roy Oyama, Chairperson
Mr. Ian Costa
Mr. Leland Kahawai
Mr. Steven Kyono
Mr. Randall Nishimura

Absent & excused: Mr. Dee Crowell
Mr. Donald Fujimoto

STAFF: Ms. Wynne M. Ushigome (excused from meeting from about 10:45 am to 12:45 pm)
Mr. Paul Ganaden
Mr. William Eddy
Mr. Keith Fujimoto
Mr. Bruce Inouye
Ms. Faith Shiramizu
Ms. Amy Esaki
Mr. Edward Doi
First Deputy County Attorney Harrison Kawate

Absent & excused: Mr. Gregg Fujikawa

GUESTS: Mr. James Nakayama, KMP LLC (about 10:00 – 10:28 am)
Mr. Lindsay Crawford, Kukui'ula Development LLC (about 1:10-1:37 pm)
Mr. Ben Garfinkle, Opaekaa Gardens (about 1:15-2:15 pm)
Mr. Max Graham, Mr. Garfinkle's Legal Counsel (about 1:15-2:15 pm)
Mr. Ben Wellborn, Mr. Garfinkle's consultant (about 1:15-2:15 pm)
Ms. Judy Ta'afuli Webb (about 3-3:30 pm)
Mr. Jerry Ornellas (w/ Ms. Webb) (about 3-3:30 pm)

AGENDA

The following final changes were made to accommodate our guests:

1. 1st on the Agenda: our Annual Audit
2. 2nd on the Agenda: Executive Session Item No. J3, ES-2007 - consult with Legal Counsel regarding questions and issues pertaining to the Board's and Department of Water's liabilities, powers and duties regarding personnel, labor and employment issues
 - a. Old Business F4, Request Board Approval for Additional Funding for Contract 474 for Special Counsel to Provide Advice, Counsel, and/or Representation in Civil Matters in the Court System including, but not limited to Administrative Law, Personnel Law, Labor and Employment Law to be taken up after Executive Session Item No. J3, ES-2007

Mr. Costa moved to approve the Agenda, as amended, seconded by Mr. Kahawai; motion was carried.

Recess from 10:20 to 10:28 am to reconvene the Finance Committee for the Draft Annual Audit.

EXECUTIVE SESSIONS:

Pursuant to H.R.S. §92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a).

Mr. Costa moved to go into Executive Session at 10:28 a.m. to discuss the following item that was formally noticed under Executive Session, seconded by Mr. Kahawai; motion was carried.

J3. *ES-2007 (12-13-07 & 2-14-08) - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with Legal Counsel regarding questions and issues pertaining to the Board's and Department of Water's liabilities, powers and duties regarding personnel, labor and employment issues. This consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item and/or liabilities, claims and/or potential claims, as they relate to the foregoing and to take such action as the Board deems appropriate.*

There was no Board discussion and no public testimony. Motion was carried. Staff was excused from the meeting.

Acting Manager Ushigome was excused from the Board Meeting from about 10:45 am to 12:45 pm. for personal business.

The Regular Meeting was called back to order at 12:25 p.m.

OLD BUSINESS:

Re: Request Board Approval for Additional Funding for Contract 474 for Special Counsel to Provide Advice, Counsel, and/or Representation in Civil Matters in the Court System including, but not limited to Administrative Law, Personnel Law, Labor and Employment Law

Waterworks Legal Advisor gave the following report:

Recommendation:

Recommend Board approval for additional funding of \$25,000 for special legal counsel to advise, counsel and/or represent the Department and Board, in matters including, but not limited to Administrative Law, Personnel Law and Labor and Employment Law.

Funding:

Account No. 27, Contractual Services	
Total Available Funding	\$40,000.00
Acct No. 271, Contract 474,	
Goodsill Anderson Quinn & Stifel	\$ 85,000.00
Additional Funds Requested (Amendment No. 3).....	\$ 25,000.00
Revised Contract Amount for Contract 474	\$110,000.00
Acct No. 271, Contract 474, Goodsill Anderson Quinn & Stifel	
Total Amount Certified	<\$85,000.00>
Additional Funds Requested (Amendment No. 3).....	<\$25,000.00>
Balance in Account No. 27, Contractual Services.....	<\$15,000.00>

Background:

The contract scope of services remains the same; however, the consultant is requesting additional funding to cover unanticipated research and additional out-of-pocket expenses and fees.

Mr. Costa moved to approve the additional funding of \$25,000, seconded by Mr. Kahawai; motion was carried.

MINUTES:

Public Hearing – October 9, 2008

Mr. Nishimura moved to receive the Public Hearing minutes of Thursday, October 9, 2008 and place on file, seconded by Mr. Kahawai; motion was carried.

Regular Meeting – October 9, 2008

One correction was made for the minutes of the Thursday, October 9, 2008 Board Meeting that the meeting started at 9:32 a.m. instead of 10:15 a.m.

Mr. Nishimura moved to receive the corrected Regular Meeting minutes of Thursday, October 9, 2008 and place on file, seconded by Mr. Kahawai; motion was carried.

Special Meeting – October 21, 2008

Mr. Nishimura moved to receive the Special Meeting minutes of Tuesday, October 21, 2008 and place on file, seconded by Mr. Costa; motion was carried.

CORRESPONDENCE: None

As our guests for two of our Old Business agenda items and one of our New Business agenda items did not return yet to the Board Meeting, the Board continued in the meantime with the other New Business agenda items. Their items would be taken up upon their return.

NEW BUSINESS:

Re: Request for Resolution No. 6 (08/09), Mahalo to DOW Volunteers at the Make-A-Splash Festival

It was requested that the Board approve Resolution No. 6 (08/09) to thank the participants who wholeheartedly supported and assisted with the 5th annual Make-A-Splash Festival that was held on Friday, September 26, 2008.

Resolution No. 6 (08/09) will be forwarded to each participant at the November 13, 2008 Board Meeting.

Mr. Costa moved to approve Resolution No. 6 (08/09), seconded by Mr. Kyono; motion was carried.

Re: Request Board Approval for an Agreement to Allow Mr. Michael Fernandes to Continue His Volunteer Services by maintaining the Department's (inactive) Nonou 0.2 MG Tank Site, Wailua, Kaua'i

It was requested that the Board approve to allow Mr. Michael Fernandes to continue his volunteer services by maintaining the Department's inactive Nonou 0.2 MG Tank Site located at Wailua Houselots, more particularly on Tax Map Key: (4) 4-1-009-019.

Mr. Fernandes' current agreement which was approved by the Board at the November 20, 2007 Board Meeting expires on November 15, 2008.

Mr. Costa moved to approve the renewal of Mr. Michael Fernandes' agreement for another year, seconded by Mr. Kahawai; motion was carried.

Re: Request Board Approval of the Rule Amendment and Water System Standards, as Amended, of the Board of Water Supply, County of Kauai

RECOMMENDATION:

It was requested that the Board approve the Rule Amendment and Water System Standards, as Amended, of the Board of Water Supply, County of Kauai.

BACKGROUND:

The Public Hearing for the Amendment of Rules and Water System Standards was held on Thursday, October 9, 2008. No one attended the Public Hearing to testify on this proposed rule amendment.

Note that the public hearing notice was published in the Wednesday, September 3, 2008 issue of The Garden Island; and we had previous concurrence from the SBRRB to move forward with this public hearing.

The post-public hearing response from the Small Business Regulatory Review Board (SBRRB), which was given to the Board for their information, confirmed their concurrence, as there was no testimony received for or against our proposed rule amendment at our Public Hearing.

If approved, the secretary will follow up with the necessary signatures from the Mayor, County Attorney and the County Clerk. Once the County Clerk signs the proposed rule amendment, it takes effect 10 days thereafter.

Mr. Costa moved to approve the final rule amendment, seconded by Mr. Kahawai; motion was carried.

Re: Proposed Capital Improvements Projects (CIP) Submittal to the 2009 State Legislature

Recommendation

It was recommended that the Board approve the attached proposed CIP projects for submittal to the upcoming legislative session. We included in our proposed CIP a request for projects in the areas that will benefit State facilities, specifically for fire protection for public schools at the Kīlauea, Hanalei and Waimea Canyon Schools. In addition, we also included a request to improve the storage for the Kapa'a area in order to facilitate the construction of affordable housing in the Kawaihau District.

Also, the Department proposes to include a funding request for the Haena 100,000-Gallon Storage Tank, Booster Pump and Connecting Pipeline, which will improve storage capacity for current and future demand and fire protection requirements in the area.

Mr. Kyono moved to approve the DOW's CIP Projects for the 2009 Legislature, seconded by Mr. Costa; motion was carried.

Re: Resolution No. 5 (08/09), Legislative Budget for Fiscal Year 2009-10

The legislative budget is a draft projection for Fiscal Year 2009-10 only for the purposes of submittal to the State Legislature, along with our CIP projects request.

It was requested that the Board approve Resolution No. 5 (08/09), Legislative Budget for Fiscal Year 2009-10.

Mr. Kyono moved to approve Resolution No. 5 (08/09), seconded by Mr. Kahawai; motion was carried.

Re: Conveyance of Water Facility from William D. Medeiros and Kevin McKeown for the Second 5/8-Inch Domestic Service Connection for TMK: (4) 2-7-04:017, Unit 1, Koloa District, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby, William D. Medeiros and Kevin McKeown, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each single-service connection for a 5/8" water meter, in place complete, for the Second 5/8-Inch Domestic Service Connection for TMK: (4) 2-7-04:017, Unit 1, Koloa District, Kauai, Hawai'i.

Grant of Easement not required.

Mr. Kyono moved to approve the Conveyance of Water Facility from William D. Medeiros and Kevin McKeown, seconded by Mr. Costa; motion was carried.

Re: Board Discussion on Setting their 2009 Goals

As part of the Job Performance Evaluation process for Acting Manager Wynne Ushigome, the Board requested that this matter be on the next Board Meeting

Agenda to begin discussion on the Board's goals for 2009. Once the Board's goals are finalized, it will be communicated to Acting Manager Ushigome to ensure clarity by both her and the Board.

This matter will be deferred to after the last Executive Session.

Re: Year 2009 Tentative Board Meeting Dates

It was reported that if the Board continues to have their meetings on the 2nd Thursday of the month, the following would be the tentative Board Meeting dates for 2009, which are subject to change.

The Board Meeting date change for May, 2009 is to accommodate the Board's opportunity to attend the AWWA, HI Section May Annual Conference on O'ahu and the Board Meeting date change for June, 2009, is because Thursday, June 11, 2009 is a Kamehameha Day Holiday. These two Board Meeting dates are both re-scheduled to the first Thursday of the month.

1. January, 2009:Thursday, January 8, 2009 - 10:00 a.m.
2. February, 2009:.....Thursday, February 12, 2009 - 10:00 a.m.
3. March, 2009:Thursday, March 12, 2009 - 10:00 a.m.
4. April, 2009:Thursday, April 9, 2009 - 10:00 a.m.
5. May, 2009:.....Thursday, May 7, 2009 - 10:00 a.m.
(Revised Date: 1st Thursday for May, 2009 as May 13-15, 2009 is the AWWA, HI Section Conference)
6. June, 2009:Thursday, June 4, 2009 - 10:00 a.m.
(Revised Date: 1st Thursday for June, 2009 as June 11, 2009 is a Kamehameha Day Holiday)
7. July, 2009:Thursday, July 9, 2009 - 10:00 a.m.
8. August, 2009:Thursday, August 13, 2009 - 10:00 a.m.
9. September, 2009:Thursday, September 10, 2009 - 10:00 a.m.
10. October, 2009:Thursday, October 8, 2009 - 10:00 a.m.
11. November, 2009:Thursday, November 12, 2009 - 10:00 a.m.
12. December, 2009:Thursday, December 10, 2009 - 10:00 a.m.

Mr. Kahawai moved to receive this Board Report and place on file, seconded by Mr. Costa; motion was carried.

Re: Request Board Approval for an Amendment to Contract No. 479, Job No. 02-24 (WK-2), Renovate Akulikuli Tunnel, Phase 2, Wailua-Kapa'a Water System, Kapa'a, Kauai, Hawaii

RECOMMENDATION: It was recommended that the Board approve a contract modification to SSFM International, Inc. including changes to the scope of work, an increase in fee estimate of \$36,855.00 and an increase in time of completion from September 5, 2008 to December 31, 2009.

Changes to the original project are necessary due to the presence of a jurisdictional wetland on the original project site and staff direction. Changes include:

1. Realignment of access road and discharge pipeline around wetland;
2. Addition of approximately 1,100 lineal feet of pipeline replacement;
3. Change in portal location and configuration;
4. Change in tunnel lining methodology.

These changes require additional field surveys, environmental documentation and permitting effort, and design engineering.

FUNDING: Sufficient funding is available in the current budget to fund the fee estimate increase.

Account No. 101b, Capital Rehabilitation Projects	\$430,900.00
Original Phase 2 Contract	\$391,734.00
Amendment No. 1 Fee Estimate Increase.....	\$36,855.00 \$428,589.00
Remaining	<u>\$ 2,311.00</u>

BACKGROUND:

During field investigations for environmental documentation and consultation with permitting agencies, it was determined that the tunnel access road and a portion of the discharge pipeline proposed in the original project cross a jurisdictional wetland. As a result, the access road and pipeline will be rerouted around the wetland, requiring additional environmental fieldwork, permitting and engineering. In addition, staff directed some changes to tunnel entrance configurations and tunnel lining methods for more efficient operation and maintenance and lining reliability, requiring additional engineering.

These changes caused an increase in level of effort and completion time. The requested increases in fee and time of completion are reasonable for the amount and complexity of the work required.

It was recommended that the Board approve the first amendment.

Mr. Costa moved to approve the contract modification to SSFM International, Inc. including changes to the scope of work, an increase in fee estimate of \$36,855.00 and an increase in time of completion from September 5, 2008 to December 31, 2009, seconded by Mr. Kahawai; motion was carried.

Re: Conveyance of Water Facility from NICE, LLC, a Hawaii Limited Liability Company; for Nani Estates (S-2007-41), TMK: (4) 4-6-15:011, 134, 135, 136, 137, 138, 139, 140, 141 and 142, Kapaa, Kawaihau District, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby, NICE, LLC, a Hawaii limited liability company, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to:

Waterline:

- 683 lineal feet of 6-inch Ductile Iron Waterline, Class 52
- 4 Ea. Double Service Lateral for 5/8" water meter
- 1 Ea. Fire Hydrant Assembly
- 1 Ea. 6-inch x 6-inch Tee (MJ x FE)
- 3 Ea. 6-inch Gate Valve (MJ)
- 1 Ea. 6-inch Gate Valve (MJxFE)

in place complete, for Nani Estates (S-2007-41), TMK: (4) 4-6-15:011, 134, 135, 136, 137, 138, 139, 140, 141 and 142, Kapaa, Kawaihau District, Kauai, Hawaii.

Grant of Easement not required.

Mr. Kyono moved to approve the Conveyance of Water Facility from NICE, LLC, seconded by Mr. Costa; motion was carried.

Re: Conveyance of Water Facility from Dennis S. Yamaguchi, Madeline M. Yamaguchi, Joy O. Yamaguchi, Scott L. Yamaguchi and Lisa M. M. Yamaguchi; for the Water Meter for Lot 82-E-2, TMK: (4) 4-6-07:122, Kapaa, Kawaihau District, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby, Dennis S. Yamaguchi, Madeline M. Yamaguchi, Joy O. Yamaguchi, Scott L. Yamaguchi and Lisa M. M. Yamaguchi; transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each, 1-inch copper single service lateral for 5/8" water meter, in place complete, for the water meter for Lot 82-E-2, TMK: (4) 4-6-07:122, Kapaa, Kawaihau District, Kauai, Hawaii.

Grant of Easement not required.

Mr. Kyono moved to approve the Conveyance of Water Facility from Dennis S. Yamaguchi, Madeline M. Yamaguchi, Joy O. Yamaguchi, Scott L. Yamaguchi and Lisa M. M. Yamaguchi, seconded by Mr. Costa; motion was carried.

Re: Conveyance of Water Facility from Kukui'ula Development Company (Hawaii), LLC, a Hawaii Limited Liability Company; for the Poipu Road Roundabout (S-2004-45), TMK: (4) 2-6-15:019, Koloa, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby Kukui'ula Development Company (Hawaii), LLC, a Hawaii limited liability company, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to:

Waterline:

- 181 lineal feet of 12-inch Ductile Iron Waterline
- 40 lineal feet of 8-inch Ductile Iron Waterline
- 5 Ea. 12-inch Gate Valve, including C.I. valve box and cover
- 1 Ea. 8-inch Gate Valve, including C.I. valve box and cover
- 1 Ea. 4-inch Cleanout
- 1 Ea. 2 1/2" Cleanout
- 2 Ea. Coupler w/split Buttstrap Weld-on Sleeves
- 1 Ea. 6-inch Blow-Off Assembly w/headwall
- 1 Ea. 1-inch Copper Air Relief Valve Assembly

in place complete, for the Poipu Road Roundabout (S-2004-45), TMK: (4) 2-6-15:019, Koloa, Kauai, Hawaii.

Grant of Easement not required.

Mr. Kyono moved to approve the Conveyance of Water Facility from Kukui'ula Development Company (Hawaii), LLC, seconded by Mr. Costa; motion was carried.

(Note that the Board later at this meeting amended the motion to give conditional approval contingent upon Kukui'ula including a minor correction to the document to include that this project is in the Community Facilities District (CFD). The Board delegated its authority to the County Attorney's Office for review and approval.)

Re: Conveyance of Water Facility from Kukui'ula Development Company (Hawaii), LLC, a Hawaii Limited Liability Company; for the Western Bypass Road (S-2004-45), TMK: (4) 2-6-15:018 and (4) 2-6-15:019, Koloa, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby Kukui'ula Development Company (Hawaii), LLC, a Hawaii limited liability company, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to:

Waterline:

- 1,889 lineal feet of 16-inch Ductile Iron Waterline
- 5,106 lineal feet of 12-inch Ductile Iron Waterline
- 68 lineal feet of 8-inch Ductile Iron Waterline
- 1 Ea. 16-inch Resilient Seat Gate Valve w/ 3" bypass, including C.I. valve box and cover
- 12 Ea. 12-inch Gate Valve, including C.I. valve box and cover
- 3 Ea. 8-inch Gate Valve, including C.I. valve box and cover
- 13 Ea. 6-inch Gate Valve, including C.I. valve box and cover
- 13 Ea. Fire Hydrant Assembly w/ 1-4 1/2" and 1-2 1/2" outlet
- 3 Ea. 1-inch Copper Air Relief Valve Assembly

in place complete, for the Western Bypass Road (S-2004-45), TMK: (4) 2-6-15:018 and (4) 2-6-15:019, Koloa, Kauai, Hawaii.

Grant of Easement not required.

Mr. Kyono moved to approve the Conveyance of Water Facility from Kukui'ula Development Company (Hawaii), LLC, seconded by Mr. Costa; motion was carried.

(Note that the Board later at this meeting amended the motion to give conditional approval contingent upon Kukui'ula including a minor correction to the document to include that this project is in the Community Facilities District (CFD). The Board delegated its authority to the County Attorney's Office for review and approval.)

Re: Conveyance of Water Facility from McBryde Sugar Company, Limited, a Hawaii Corporation; Kukui'ula Development Company (Hawaii), LLC, a Hawaii Limited Liability Company; and Kukui'ula Development Company, Inc., a Hawaii Corporation; for the Offsite Western Bypass Road (S-2004-45), TMK: (4) 2-6-03:Por 35; (4) 2-6-15:018; (4) 2-6-03:Por 1; and (4) 2-7-03:009; Koloa, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby McBryde Sugar Company, Limited, a Hawaii corporation; Kukui'ula Development Company (Hawaii), LLC, a Hawaii limited liability company; and Kukui'ula Development Company, Inc., a Hawaii corporation; transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to:

Waterline:

- 3,203 lineal feet of 16-inch Ductile Iron Waterline
- 1,142 lineal feet of 12-inch Ductile Iron Waterline
- 5 Ea. 16-inch Resilient Seat Gate Valve w/ 3" bypass, including C.I. valve box and cover
- 7 Ea. 12-inch Gate Valve, including C.I. valve box and cover
- 7 Ea. 6-inch Gate Valve, including C.I. valve box and cover
- 7 Ea. Fire Hydrant Assembly w/ 1-4 1/2" & 1-2 1/2" outlet
- 2 Ea. 1-inch Copper Air Relief Valve Assembly
- 1 Ea. 8-inch Blow-off Assembly w/headwall

in place complete, for the Offsite Western Bypass Road (S-2004-45), TMK: (4) 2-6-03:Por 35; (4) 2-6-15:018; (4) 2-6-03:Por 1; and (4) 2-7-03:009; Koloa, Kauai, Hawaii.

Grant of Easement not required.

Mr. Kyono moved to approve the Conveyance of Water Facility from McBryde Sugar Company, Limited; Kukui'ula Development Company (Hawaii), LLC; and Kukui'ula Development Company, Inc., seconded by Mr. Costa; motion was carried.

(Note that the Board later at this meeting amended the motion to give conditional approval contingent upon Kukui'ula including a minor correction to the document to include that this project is in the Community Facilities District (CFD). The Board delegated its authority to the County Attorney's Office for review and approval.)

Re: Conveyance of Water Facility from James Gair, Ulrich H. Rachner, Trustee of the Ulrich H. Rachner Revocable Trust, Michael C. Walsh and Judith H. Lang, for the Silver Falls Estates II (Units 3, 4, and 5), TMK: (4) 5-2-22:025, Hanalei, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby James Gair, Ulrich H. Rachner, Trustee of the Ulrich H. Rachner Revocable Trust, Michael C. Walsh and Judith H. Lang transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to the following item:

Waterline: 1 ea. 1-1/2 Inch Copper Double Service Lateral for 5/8-Inch Water Meter

in place complete, in accordance with the as-built construction drawings for SILVER FALLS ESTATES II (UNITS 3, 4, AND 5), prepared by Esaki Surveying and Mapping; Hanalei, Kauai, Hawaii.

A Grant of Easement is not required at this time.

Mr. Kyono moved to approve the Conveyance of Water Facility from James Gair, Ulrich H. Rachner, Trustee of the Ulrich H. Rachner Revocable Trust, Michael C. Walsh and Judith H. Lang, seconded by Mr. Costa; motion was carried.

Re: Conveyance of Water Facility from Omao Ranch Lands, LLC and Thomas D. Lyles, Trustee of the Lyles family Trust Dated May 28, 1989 and Alice W. Lyles, Trustee of the Lyles Family Trust Dated May 28, 1989, TMK: (4) 2-7-03:005 and 006, Omao Road, Omao, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby Omao Ranch Lands, LLC and Thomas D. Lyles, Trustee of the Lyles Family Trust dated May 28, 1989 and Alice W. Lyles, Trustee of the Lyles Family Trust dated May 28, 1989 transfers unto the Board of Water Supply, County of Kauai, all of its right, title and interest to a 2-inch copper service connection for a 1½" water meter, in place complete, in accordance with the as-built construction drawings for 1½-inch WATER METER FOR OMAO RANCH, prepared by Aqua Engineers, TMK: (4) 2-7-03:005 and 006, Omao, Kauai, Hawaii.

A Grant of Easement is not required.

Mr. Kyono moved to approve the Conveyance of Water Facility from Omao Ranch Lands, LLC and Thomas D. Lyles, Trustee of the Lyles Family Trust dated May 28, 1989 and Alice W. Lyles, seconded by Mr. Costa; motion was carried.

EXECUTIVE SESSIONS:

Pursuant to H.R.S. §92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a).

After some discussion from Board, staff and Mr. Kawate, it was decided that the Claims Procedure would be a departmental policy, Standard Operating Procedure (SOP) and not a Board policy to give the Department flexibility.

Mr. Nishimura moved to go into Executive Session at 12:35 p.m. to discuss the following items as noticed in the Agenda (see below), seconded by Mr. Kahawai; motion was carried.

J4. ES-2008-16 (11-13-08) - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4) and Kauai County Charter Section 3.07(E), the purpose of this executive session is to consult with the Board's legal counsel and Department staff to

receive briefing and recommendations for purpose of obtaining Board action on the claim filed against the County of Kaua'i, Department of Water, by **Paul A. and Robyn L. Sukatski**. This legal consultation on the aforementioned claim involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.

J5. ES-2008-17 (11-13-08) - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4) and Kauai County Charter Section 3.07(E), the purpose of this executive session is to consult with the Board's legal counsel and Department staff to receive briefing and recommendations for purpose of obtaining Board action on the claim filed against the County of Kaua'i, Department of Water, by **Alfred and Susan Haynes**. This legal consultation on the aforementioned claim involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.

J6. ES-2008-18 (11-13-08) - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4) and Kauai County Charter Section 3.07(E), the purpose of this executive session is to consult with the Board's legal counsel and Department staff to receive briefing and recommendations for purpose of obtaining Board action on the claim filed against the County of Kaua'i, Department of Water, by **John Geffert, Jr.** This legal consultation on the aforementioned claim involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.

J7. ES-2008-19 (11-13-08) - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4) and Kauai County Charter Section 3.07(E), the purpose of this executive session is to consult with the Board's legal counsel and Department staff to receive briefing and recommendations for purpose of obtaining Board action on the claim filed against the County of Kaua'i, Department of Water, by **Scott Oakley**. This legal consultation on the aforementioned claim involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.

J8. ES-2008-20 (11-13-08) - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4) and Kauai County Charter Section 3.07(E), the purpose of this executive session is to consult with the Board's legal counsel and Department staff to receive briefing and recommendations for purpose of obtaining Board action on the claim filed against the County of Kaua'i, Department of Water, by **John Oberg**. This legal consultation on the aforementioned claim involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.

J9. ES-2008-10 (September 16, 2008 & October 9, 2008) - Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with legal counsel regarding qualification of Board members. This consultation involves consideration of the process, duties, privileges, immunities, and/or liabilities of the Board and the County as they relate to this agenda item.

There was no Board discussion and no public testimony. Motion was carried. Staff was excused from the meeting.

Acting Manager Ushigome returned to the meeting at about 12:45 p.m. The Regular Meeting was called back to order at 1:10 p.m. Mr. Lindsay Crawford of Kukui'ula Company, Mr. Tom Shigemoto and Mr. James Hasenyager of A&B Properties were all present at the meeting at about 1:10 p.m.

OLD BUSINESS

Re: Status Report by Kukui'ula Development Company (Hawai'i) LLC

Mr. Lindsay Crawford of Kukui'ula Development Company (Hawai'i) LLC was present at the meeting.

Acting Manager Ushigome submitted the following report:

Kukui'ula submitted a monthly status update on their project that was given to the Board.

Kukui'ula has submitted the attached monthly status update on their project. As part of their approval of a DOW Waiver, Release & Indemnity Agreement Request for: 1) *Subdivision Y Cottages, S-2005-25, TMK: (4) 2-6-016: 016 thru 088; and, 2) Subdivision Y Custom Home Sites, S-2005-25; and, 3) Subdivision M1/M4 Custom Home Sites, S-2005-21, Kukui'ula Development, Kukui'ula, Kaua'i, Hawai'i*, the Board requested monthly status updates on Kukui'ula's project.

At the October Board meeting, Kukui'ula Development Company (KDC) expressed an urgent desire for the Board to grant or provide the use of a fire detector check meter citing life safety as an issue. Despite the fact that the construction of the meter boxes was not completed and meter issuance not permitted, the Department accommodated KDC's request to test the on-site fire hydrants and sprinkler system at the Shopping Village. The Department isolated the Paanau Tank allowing water to feed directly to the commercial village project site with KDC agreeing to pay for the water used during the flushing and testing of the sprinkler system. Upon completion of the fire sprinkler and hydrant testing, the valves were reopen to circulate water back through the system.

To date, the final inspection for Kukui'ula Village and Paanau Tank have not been completed.

KDC is working towards conveyance and issuance of the Shopping Village water meters. Building permits for interior tenant improvement and "white box" lease spaces are pending the issuance of the certification of completion for the following projects:

- Kukui'ula Village
- Poi'pu Road Round-About

- Westerly Bypass Road
- Offsite Westerly Bypass Road
- Paanau Tank

The Department would like to recognize the Design and Construction Division's efforts to expedite the review process for the conveyance, cost estimates and grant of easement documents.

Kukui'ula's Update Report: Submitted by Lindsay Crawford, Senior Project Manager of Kukui'ula Development Company (Hawaii) LLC.

Water System Completion:

All water system improvements are complete and operating, excluding the two Manuhonuhonu Tanks and the associated 425 pressure zone waterlines. DOW staff and Kukui'ula are discussing commissioning alternatives due to the fact that no users for the 425 zone will be in place for another year. In the meantime, filling and chlorinating of the tanks and the 425 lines is occurring this week. Also, KIUC has installed electrical lines and final wiring terminations are being performed this week so that operational and efficiency tests can occur.

Piwai 0.1 MG Tank Spillway:

DOW staff, Tom Nance and Kukui'ula met twice last month to discuss the Piwai 0.1 MG temporary tank spillway issue. Numerous alternative solutions have now been thoroughly addressed and preferred solution will soon be chosen. Another meeting will be set next week to hopefully mutually decide on a final solution.

Water System Conveyance:

Conveyance documents and Grants of Easements have been revised and resubmitted to the DOW for the Western Bypass Lines, Kukui'ula Village and Paanau Tank for November's Board acceptance (these specified facilities are critical to the Commercial site). The Piwai Wells, Tank and Transmission Lines and the two Manuhonuhonu Tanks will follow once all work is completed. To date, only the Omao Transmission Line has been accepted by the Board.

Mr. Kawate brought up that Kukui'ula's project was in the Community Facilities District (CFD), which needed to be referenced in the conveyance documents. He added that he had been in contact with Brian Hirai, who is a counsel for Community Facilities District (CFD) projects, who has also been in contact with Kukui'ula's attorneys. Mr. Kawate has been informed that the conveyance, deed documents, etc. need to comply with the terms of the CFD acquisition agreement. Mr. Crawford added that he was only informed this morning about the CFD guidelines.

Mr. Kawate explained that CFD was developed pursuant to an ordinance, which allows for payment of infrastructure to be paid by a specific bond float related to the project. The purchasers of the property in the CFD will pay for the infrastructure within the district. ~~~~~ (inaudible) ~~~~~ That language needs to be in all of the deed, conveyance documents, etc. This specific language is not in the

previously approved Omao waterline conveyance, so it needs to be reformed and all future documents need to also have that specific language.

Mr. Kawate added that he understood that Mr. Hirai's office would be drafting the language that needed to be included in the conveyance documents and the County Attorney's Office will assist with the review.

Waiver, Release and Indemnity Agreements:

Waivers for the first ten building permits have been signed and recorded. Waivers for the next seven Cottage lots in Subdivision Y and the first Custom Home lot in Subdivision M1M4 were submitted in October and are awaiting DOW signature. Waivers for tenant improvement building permits at our Commercial site were discussed with staff, but will probably not be needed if conveyance and grant of easement does (listed above) are accepted by the Board in November.

Mr. Crawford added that there are the second batch of 10 residential waivers that would eventually need to be signed and which the owners will eventually apply for building permits.

Water Master Plan Update:

Kukui'ula met again with staff last month and will re-submit a new version of the Updated Master Plan (based on a new market-driven, build-out schedule) by mid November.

Commercial and Residential Openings/Occupancies:

The anticipated grand opening of the Kukui'ula Village Shopping Center is May of 2009 (DOW agreed to accommodate the needed fire flush at the Village, and the work was completed in October).

Mr. Crawford added that they have been diligently working on finalizing the conveyance documents, which would give them the freedom to get DOW approval of their building permits.

The first residential homes in Subdivisions Y and M1M4 are still a year or more away from being ready for occupancy. Plantation Core broke ground in September but will be over two years in construction before occupancy.

Mr. Crawford also added that in discussion with the DOW, it would be in the best interest of the DOW and Kukui'ula to stop the use of waivers. They will try to not use waivers for their next phase of building permits, which would be for Kukui'ula's commercial project for the tenant and "white box" improvements.

[Mr. Ben Garfinkle, Mr. Max Graham and Mr. Ben Welborn were present at the meeting at about 1:15 p.m.]

Mr. Crawford asked, "What is the purpose of the DOW reviewing the building permits for the commercial center's internal tenant improvements?" Acting Manager Ushigome explained that the Waiver, Release and Indemnity Agreements that were previously signed did not cover the building permits for the tenant and "white box"

improvements. She added that the DOW's jurisdiction and concern would end at the master meter and the fire detector check and anything internal would be Kukui'ula's concern. However, for building permits, the DOW would need to make sure that Kukui'ula gets the Certification of Completion for the commercial village. Acting Manager Ushigome added that storage is from Paanau and the transmission is from the Western Bypass Roundabout, and Piwai Tank is presently not being considered a requirement for granting the building permits for the Kukui'ula Village tenant improvement or "white box" spaces.

Mr. Crawford expressed his concern of the tenuous timeline in order to make the spring opening for the commercial village if their building permits for the internal work are delayed. He added that their conveyance documents are scheduled for Board approval on the December, 2008 Water Board Agenda; then by the time they get their building permits, it would be early 2009 and would not make their spring opening.

Acting Manager Ushigome discussed that if the process was followed correctly for the commercial village, when Kukui'ula got their building permits for the shell and the building, the site improvements should have been a priority and done first. She added that Kukui'ula is now completing the buildings and wanting the tenants to move in; however, the Waiver stated that there would be no occupancy.

Mr. Crawford added that they do not want to move in now but they want to start construction. Acting Manager Ushigome also added that those building permit numbers could have been included with the previous Waiver. She discussed that the DOW allowed Kukui'ula to go concurrently with the Waiver but the improvements are not done (when were the master meters and detector check boxes done?).

Mr. Crawford discussed that although he just stated that he did not want to go the Waiver route again, he realized that he would not make the deadline; therefore, would need to ask for another favor to do another Waiver for the next 13 building permits.

Mr. Crawford stated that he clearly understood that they would not be able to do their opening until they finished construction and conveyed their facilities; therefore, he felt that another Waiver was needed to allow them to only start internal construction and not to finish and occupy the buildings. He added that he did not have the information at the time of the initial Waiver several months ago to include the upcoming tenant's building permits. Mr. Crawford stated that they are trying to do the right thing by finishing the project, convey the facilities and then open on time.

Mr. Kawate discussed that the three (3) conveyance documents on today's agenda, which could be conditionally approved, with the contingency that the correct CFD language needs to be inserted into the document and approved by the County Attorney's Office. He also requested that the Omao transmission line conveyance document should also be revised.

Mr. Crawford stated that they still have two (2) more conveyance documents that did not make this meeting and these are with the DOW for review. DOW Project

Engineer Mr. Bruce Inouye gave an update on the Kukui'ula Village Project that the DOW inspector did give final inspection after this Board Meeting's agenda was already finalized and posted.

Mr. Kawate suggested that Mr. Crawford had an option as a Special Board Meeting could be held once the documents are ready for Board review and approval. Chair Oyama informed Mr. Crawford that once his documents are finalized, he would need to work with the DOW staff to schedule a Special Board Meeting.

Mr. Crawford summarized and asked the Board for any type of assistance to help them move forward with the Kukui'ula Village Project. He added that although Kukui'ula for the last two years spent \$28 million of water system improvements, they are the only water purveyors in the vicinity that cannot use the system. However, he stated they are still trying to do the right thing for the DOW and that their company is here to stay.

Mr. Nishimura moved to receive this report, seconded by Mr. Kyono; motion was carried.

Mr. Costa also amended his motion for the three (3) conveyance documents that were previously approved by the Board at this meeting to give these three (3) documents conditional approval, pending the insertion of the CFD language into these documents and to delegate the review and approval to the County Attorney's Office, seconded by Mr. Kyono; motion was carried.

Mr. Crawford left the meeting at about 1:40 p.m.

Re: Request Board Approval to Clarify the Motion made at the December 13, 2007 Board Meeting for Agenda Item: "Revised Appeal to November 20, 2007 Agenda Item – Update Report on November 20, 2007 Agenda Item on the Request to Testify by Benjamin Garfinkle Regarding DOW Conditions of Tentative Subdivision Approval for Boundary Adjustment (Consolidation and Re-subdivision), TMK Nos. (4) 4-2-03:12, 65 and 66"

Mr. Ben Garfinkle, Mr. Max Graham, his Legal Counsel and Mr. Ben Welborn, his Consultant, were all present for this agenda item.

PROJECT: Subdivision S-2006-47, Consolidation of Lots 23-A-1, 23-A-2 and 23-B, Being a Portion of Land Patent Grant 11,238 to Eula Urban Kuhns and Resubdivision of Said Consolidation into Lots 1, 2 and 3

APPLICANT: Opaekaa Falls Land Company

Acting Manager Ushigome gave an update in the report below:

At the October 9, 2008 Board meeting, the Applicants submitted a revised draft agreement entitled Private Water System Agreement, Waiver, Release and Indemnity for TMK: (4) 4-2-003:012, 065 and 066. Since the Department did not get a chance to review the revised agreement, the Department recommended that the

Board defer action on this agenda item to allow the staff an opportunity to review and comment.

Included in the Board's agenda packet are two (2) versions of the Private Water System Agreement, the first set is the unedited version which the Applicants submitted at the October 2008 Board meeting. The second (edited) version of the Agreement includes the Department's comments and recommendations. The edited version does not contain the Exhibits; we expect these documents will need to be revised accordingly. In the edited version, new language is denoted by the **bold-face type and underscored**, and the deleted phases are crossed out.

Also, a copy of the edited version was transmitted to the County Attorney's Office for review.

EVALUATION:

The issues that may need to be further clarified:

- Whether construction inspection would be required to ensure the waterlines are built in accordance with the Water System Standards. If there is no inspection during construction, how will the Department be assured that the waterlines were constructed to standard? Paragraph B.10 of the Agreement states, *No development or single-family dwelling units, farm dwelling unit, or any other buildings requiring water service shall be allowed on Lot 1, Lot 2, and Lot 3 unless and until: the Private Water System has been constructed and completed in accordance with the Water System Standards and an engineer licensed in the State of Hawai'i has filed a statement with the County Planning Commission certifying that the Private Water System has been constructed and completed in accordance with the Water System Standards.*

Should the Agreement contain language that states, The Board shall not accept dedication of the private water system unless:

1. The private water system is built to the Water System Standards and the Rules and Regulations, except as modified by this Agreement, and provided final inspection was granted by the Department of Water.

A registered land surveyor and engineer, both licensed in the State, shall prepare and submit to the Department an up-to-date "as-built" plan. The "as-built" plan shall show all existing features of the water system and other utilities, in addition to the existing roadways, property lines, individual lot boundaries fronting the roadway, and other features as required.

2. The Department inspects the private water system to verify its physical/operating condition, and its conformance with the prevailing Water System Standards. Verification of the physical/operational condition shall include spot checks of existing pipeline material/wrap, and other conditions. The Department reserves the right to enforce the current Standards and all Rules and Regulations for critical elements of the water

system. Critical elements are those items that are necessary for the health, safety, and welfare of the public, as well as those elements that are required by law.

If improvements are required, the Applicant and its Successors shall prepare engineered construction plans showing all needed improvements to the private water system. The Applicant and Successors shall submit the proposed water system improvement plans to the Department for review and approval prior to construction. The Applicant and Successors shall submit copies of their water system maintenance and consumption records for review to the Department.

3. All cost for compliance shall be borne by the Applicant and Successors.

- Under Paragraph G.7-Entire Agreement, is it clearly understood that the Agreement shall supersede all other agreements. With the newest changes, the Declaration of Covenants, Conditions and Restrictions for Lot 2 of Subdivision No. S-2006-47 as submitted is not entirely consistent with the agreement.

The Department's understanding is the Applicants are responsible to revise this Declaration to mirror the Water Conditions of the Agreement. As stated in Paragraph B.13.f, *The Lot 2 Owners shall be subject to the terms and conditions of the Declaration of Conditions, Covenants, and Restrictions for Lot 2 of Subdivision No. S-2006-47...*

- Also, the Agreement was revised to specifically identify the modifications the Applicant is requesting....all other infrastructure improvements shall be in compliance with the Water System Standards.

Of special note, although the Applicants claim the pump can be replace within 24-hours, the revised Agreement reflects a 72-hours change-out period. The Applicant is requested to consider this and size the storage tanks accordingly to provide the required water demands for Lot 2.

Testimony by Mr. Max Graham:

Mr. Graham testified that they were at the meeting to assist to resolve the finalization of the Agreement. He added that the Board previously, at the September, 2008 Board Meeting, gave the applicant a preliminary approval, with the condition of drafting an Agreement to address the Department's nine (9) concerns that were submitted at the September, 2008 Board Meeting.

They have since drafted a water system agreement, which the DOW staff did a thorough review and submitted their comments and suggested changes to the Board. Mr. Graham stated that they had a heads up of the staff's concerns and submitted a revised agreement and a revised declaration at this Board Meeting. The revised draft agreement included all of the staff's concerns except as follows:

1. 3rd Page, Paragraph 8: The DOW staff requested that there would be no development allowed on Lots 1 and 3 until the private water system is completed for Lot 2.

Mr. Graham stated that they have been opposed of this condition all along and they thought that this condition was disposed of upon the Board's motion, as it was not one of the staff's nine (9) concerns. He added that Lots 1 and 3 are totally separate from Lot 2 as Lots 1 and 3 have County water meters and does not make sense to not be able to build two (2) additional homes on Lots 1 and 3 due to requirements of another lot. Therefore, this was not included in his revised draft Agreement.

2. 4th Page, Paragraph 9: Delete the 1st paragraph. In reference to whether subdivision improvements, whether it is County owned or a private water system that needed to be subject to the DOW Rules and Water System Standards was sidestepped for now as it is a legal issue that need not be decided on now. Mr. Graham felt that this does not impact their case. They are instead referencing the DOW's Rules on Modifications of Requirements.
3. 4th Page, Paragraph 9b: This paragraph references the size of the water tank and the issue about whether a pump could be replaced within a 24-hour period or should they plan for a 72-hour replacement period as recommended by the Department. This was one of the nine (9) concerns of the Department and is still an open issue.

Mr. Graham stated that they did get a letter from Oasis Drilling and they have confirmed that they are able to replace a failed pump within a 24-hour period provided that the new pump is available on-island. The applicant will make the arrangements to have a spare pump on-island and will have an emergency alarm system installed.

Mr. Graham also included in the Agreement their proposed-sized tanks as two (2) 20,000-gallon tanks. One of the tanks is for fire flow and the other tank is for a mixed potable and ag needs. If there is a failure, the water would then only be used for potable needs. They felt that there would even be adequate water for a 72-hour period with the 20,000-gallon tank, even though they felt that the pump could be replaced within a 24-hour period.

4. 5th Page, Paragraph 11: Another thing that was agreed upon and part of the motion was that the purpose of the Agreement and the restrictions on construction of any homes unless the water system is developed is that the private water system on Lot 2 would not be bonded. The bond issue was not one of the nine (9) concerns of the Department and not part of the motion but this issue reappeared again in the Department's draft agreement with their comments. Mr. Graham added that he made it clear in Paragraph 11 in his revised Agreement that the applicant did not need to post a bond as a condition for final approval.

Mr. Graham also added that the Department and the Board are protected because they are recording this Agreement that would be binding on all of the owners. They also are adopting the Declaration of Restrictive Covenants to make sure that future owners are aware that they are totally responsible for the private water system; they cannot get building permits unless the private water system is constructed; they are waiving any claims against the County; they are agreeing to indemnify the County, etc.

Mr. Graham stated that the Board and Department would be receiving all of these assurances in lieu of having a bond posted. Mr. Graham made a point that the DOW should not want to bond the private water system, as the DOW may have to be in a position one day to have to execute on the bond and build the system. This would defeat the whole purpose of not having the DOW to build the system.

Mr. Graham also stated that future owners would have full disclosure, as all of this will be recorded.

Mr. Graham summarized that the above were the only points that they had issue with but the rest of the Department's comments were incorporated into the latest draft Agreement and Declaration.

Acting Manager Ushigome stated that she was not sure if the Board had made a decision one way or another on the bond issue with the previous motion. The motion was basically that the Board would make a decision upon reviewing the draft Agreement.

Acting Manager Ushigome also stated that since the Department did not get time to thoroughly review the previous draft Agreement, as well as the latest revised Agreement, she recommended that the Board defer this matter.

Testimony by Mr. Ben Welborn:

Mr. Welborn stated that the purpose of the bond issue in a subdivision is to ensure that the required subdivision improvements get constructed. He added that there are not proposing to subdivide this lot and the assurance that subdivision improvements will be built is covered in the draft Agreement by preventing the issuance of building permits until such time the water system is approved.

Mr. Welborn summarized his request to the Board to make a motion to approve this Agreement, as revised by staff, with the following proposed changes:

1. requested that the final subdivision approval be issued but the development on Lots 1 and 3 not be restricted until such time that the private water system is developed;
2. requested release from the requirement that they have to have 72-hours of agricultural water use storage, as there is no justification per their consultant Tom Nance. Mr. Nance informed them that a bigger tank would be impractical as there would be problems with stagnant water in the tanks. They felt that

the 20,000-gallon storage tank would cover about four (4) days of potable water use storage, with the average use of 4,500 gallons per day for six (6) homes. Therefore, they are still requesting approval of two (2) 20,000-gallon storage tanks;

3. Delete the bond requirement for the private water system for Lot 2.

Mr. Welborn stated that there is no new information needed for the Board to make a decision. The draft Agreement already includes all of the staff's concerns, except for the above few issues.

Acting Manager Ushigome added that this is a subdivision, consolidation and re-subdivision and all applicable rules apply.

Mr. Costa moved to approve the latest proposed Agreement that was distributed that included all of the staff's concerns, contingent upon County Attorney's legal review and approval, seconded by Mr. Kyono.

Acting Manager Ushigome requested again to allow the staff some time to review the latest Agreement.

Mr. Kahawai requested more of staff's input on why they want to have a restriction of the development of Lots 1 and 3, contingent upon the completion of the private water system and the bonding requirement.

Mr. Doi stated that it is because this project is going through the subdivision process.

Mr. Welborn discussed that Lots 1 and 3 have six (6) existing meters with three (3) lots allocated per lot. There will be no mixing of water from the County water system for Lots 1 and 3 and the private water system for Lot 2. There would be two (2) additional homes allowed on each of Lots 1 and 3.

On query by Mr. Costa, Mr. Welborn stated that they would not seek building permits for the construction of homes for Lots 1 and 3 until the subdivision process is done. Mr. Welborn added that they are asking the Board for final subdivision approval based on everyone signing the Waiver, Release and Indemnity Agreement that is before the Board. This Waiver would allow them to finish the subdivision process and at a future time when they would want to develop Lot 2, they would have to build and complete the private water system and then they would be able to get building permits on Lot 2. This is separate from the two (2) additional homes that are allowable for Lots 1 and 3.

Mr. Max Graham:

Mr. Graham also summarized that after final subdivision approval, there will be three (3) lots, Lots 1, 2, and 3. Lots 1 and 3 will have water capacity for two (2) additional dwelling units and per the draft Agreement, there could be no more dwelling units on Lots 1 and 3 until such time the County water system is improved.

On query by Mr. Costa, Mr. Graham clarified for the Board that the ability to build the two (2) additional homes for Lots 1 and 3 would only be after final subdivision approval; however, they want the ability to build the two (2) additional homes prior to the completion of the private water system.

Mr. Graham added that Lots 1 and 3 are totally separate from Lot 2. Due to the economy, Mr. Garfinkle also added that they are not sure what they are going to do with Lot 2, which may never get developed. Mr. Garfinkle stated that Lots 1 and 3 are in the R-4 zoning area, which is connected to the County water system. Lots 1 and 3 are in a totally different zoning area than Lot 2, which is a stand-alone lot with a well on it today with maximum potential zoning of six (6) homes. He added that today it would be very difficult to sell a lot there, so they may never develop the private water system. This triggered the bonding issue, as you cannot bond something that you may never build. Mr. Garfinkle stated that there is no development plan today at all for this lot. He understood that this process fell under the subdivision process but he felt it was a mere technicality as all he wanted to do was to consolidate and re-subdivide, which there is no other process to go through except through the subdivision process. Mr. Costa concurred that this is not a 'subdivision' that creates additional lots.

Mr. Ben Garfinkle:

Mr. Garfinkle added that it actually reduces density. He added that based on zoning, it was confirmed by the Planning Department that they could have 29 homes. However, under this current draft Agreement, the maximum allowable would be 12 homes. Mr. Garfinkle added that the developer could only lose money on this project. They have been two (2) years at the DOW and one (1) year with the Board.

Mr. Garfinkle added that there is no need for a private water system on Lot 2 now as there is a well on it that has been designed by Mr. Tom Nance and has been tested. If they do develop the well, they will develop it pursuant to the Department of Health's recommendations. Mr. Garfinkle added that Mr. Nance concurred that their proposed private water system is more than adequate to take care of the 6-home project, which is all it can be.

Mr. Welborn added that any type of future building permits for Lot 2 will be tied to this draft Waiver Agreement. This assurance would be similar to having a bond as part of the subdivision process, which creates additional density.

Mr. Nishimura stated that striking the ag water requirement, is there something in the covenants that protects the County as the applicant is not guaranteeing any ag water? Mr. Welborn replied that CC&Rs provide Lot 2 will ag water, along with fire protection and potable water, from the private water system. Mr. Welborn added that the way that the alarm system works, it would be tied to a phone system that will notify the applicable party. On concern by Mr. Eddy, Mr. Welborn stated that the homeowners association would hire a professional water company to manage the private water system like Aqua Engineers to take care of their trouble calls.

On query by Chair Oyama, Mr. Graham stated that the CC&Rs create a separate association of any owners of up to six (6) homeowners for Lot 2 and is attached to

the Waiver Agreement and recorded at the Bureau of Conveyances. The association will be responsible for all aspects of construction, reconstruction, maintenance, operation of the private water system. It incorporates all the conditions that are also in the Waiver with total disclosure; whereby, no owner could buy any interest in Lot 2 without knowing of the CC&R, the Waiver Agreement and its correlating responsibilities.

The applicants reiterated that it would not be the responsibility of the Department of Water or the Board for any of the private water system outages.

Acting Manager Ushigome stated that there was the Konohiki Estates situation; whereby, the homeowners signed an agreement to have a private water system with a booster pump to increase pressure; and when the booster pump went out, they still called the Mayor's Office to complain. The homeowners complained, why did they get subdivision approval and not have adequate water pressure. Mr. Graham felt that the difference is that those homeowners were on the County water system. Mr. Eddy added that the Operations Division has had complaint calls over time from homeowners when their private wells goes out.

Chair Oyama called for the question. All voted aye except Mr. Nishimura voted nay. Motion was carried.

Mr. Garfinkle, Mr. Graham and Mr. Welborn thanked the Board and Mr. Welborn also thanked the staff.

Mr. Garfinkle, Mr. Graham and Mr. Welborn all left the meeting at about 2:15 p.m.

Re: Request Board Approval from A & B Properties, Inc. for a Private Water System for Brydeswood Agricultural Subdivision Phase II (S-93-50) and Phase III (S-2006-4), TMK: (4) 2-4-007:002 & 020, Kalāheo, Koloa District, Island of Kauai

Mr. Tom Shigemoto and Mr. James Hasenyager of A&B Properties, Inc. were present at the meeting.

LOCATION: Kalāheo. Located on the mauka side of the Kaunuaui Highway and Halewili Road intersection, just west of Kalāheo Town, across from the existing Brydeswood Subdivision, further identified as TMK: (4) 2-4-07:002 & 020

ACTION REQUESTED:

The Applicant is requesting the Board of Water Supply to allow the proposed subdivision to deviate from compliance with the Department of Water's (DOW) Water System Standards for the private water system. In A&B Properties' letter to the Department of Water dated October 23, 2008, the Applicant submitted a list of the areas, which the Brydeswood Private Water System will deviate from the Water System Standard for the State of Hawai'i. See attached A&B Properties' letter as reference.

PROJECT DESCRIPTION AND USE:

The project description and Department of Water requirements was provided in the September 9, 2008 Board report. The water demands, as noted in the September 2008 Board Report, reflected maximum build-out of the Phase II and Phase III developments since the Department has no other basis to compute the intended water demands.

Phase I of A&B's Brydeswood Subdivision (S-93-50) consisted of the consolidation of Parcels 4, 18, 20, 23, 24, 25, and 26 of Tax Map Key 2-4-07 and resubdivision into Lot 1 and Lot 2.

Phase II involves the subdivision of Lot 2 in 14 lots and Phase III involves the subdivision of Parcel 2 of TMK: 2-4-07 into 11 lots. The total acreage for Phase II and Phase III is 185 acres and 134 acres, respectively. The total combined area for Phase II and III is about 320 acres.

The Brydeswood Ag Subdivision Water Requirement revised worksheet, which accompanied A&B's letter dated October 23, 2008, includes Phase I as part of the water demand requirements. It is not clear, why Phase I is included since the request is specifically for Phase II and III. If Phase I is to be included, what is its intended full development of the 330 + acres?

For Phase II and Phase III, the Planning Commission granted the Applicant an extension until September 27, 2009 to fulfill the development's requirements and file final maps.

Additionally, Planning Department added the following requirements as part of the tentative approval letter dated September 28, 2005:

Under Condition No. 1, entitled "Requirements of the Planning Department."

- *The Applicant is made aware that the proposed development is not consistent with the original Master Plan for the area, as originally represented during the General Plan update in 2000. Should the Applicant pursue the current proposal as an Agricultural Subdivision, the Applicant shall initiate the process to amend the General Plan in order to be consistent with the current plan.*
- *As an alternative in the event these properties are developed with uses consistent with the "Residential Community" General Plan designation, the Applicant shall incorporate as covenants to the deeds, language that identify the current General Plan designation and a stipulation that further development of these parcels that is consistent with the objectives of the General Plan shall be supported by the land owners.*
- *The Applicant shall obtain a Declaratory Ruling from the State Land Use Commission regarding the proposed development as it relates to conformance with the land use requirements specified in Chapter 205 of the*

Hawai'i Revised Statutes (HRS). The Applicant shall submit the ruling to the Planning Department prior to final subdivision approval.

- *In order to ensure that the subdivision and development or property complies with the land use requirements contained in Chapter 205 of the Hawai'i Revised Statutes (HRS), the following matters shall be resolved prior to final subdivision approval.*
 - (1) *The Applicant shall provide the following documents to the Subdivision Committee of the Planning Commission ("Subdivision Committee") for its review and approval:*
 - (A) *An Agriculture Master Plan shall describe the proposed agricultural uses of the property, the marketing and business plans associated with such activities, and the manner in which the agricultural and related uses on the property will comply with HRS Chapter 205.*
 - (B) *A map of the property showing the proposed location of: Agricultural Activities; Building Areas; and Agricultural Easements.*
 - (C) *A Declaration of Conditions, Covenants and Restrictions ("Restrictive Covenants") which will be recorded in the Bureau of Conveyances of the State of Hawai'i ("Bureau"), which will encumber and run with the property, and which will provide and require: that the owners of the lots in the subdivision ("Subdivision Lots") shall comply with the Agricultural Plan and provisions of HRS Chapter 205; that the owners of all of the Subdivision Lots shall be members in an association ("Association") which will have the power and duty to enforce the Restrictive Covenants; that the Association shall file periodic reports (as determined by the Planning Department) with the Planning Department verifying compliance with the Agricultural Master Plan; and that the Agricultural Master Plan shall not be amended without prior approval of the Planning Departments.*
 - (D) *An Agricultural Subdivision Agreement which will be recorded in the Bureau, run with and encumber the property, and which will provide and require: that each Subdivision Lot owner shall indemnify, defend and hold the County harmless from any claims arising out of the failure of the Subdivision Lot owner to comply with the Agricultural Master Plan and/or HRS 205; and that in the event of a Subdivision Lot owner's noncompliance with the Agricultural Master Plan and/or HRS Chapter 205 as determined by the Planning Department, the County and the State of Hawai'i shall have the right to refuse to grant any permits or approvals for uses or development on any Subdivision Lot affected by such noncompliance unless and until the noncompliance is cured, as determined by the Planning Departments.*
- *The Applicant shall submit to the Planning Department an **updated status report** with a detailed time chronology on the progress of the tentative*

approval requirements in order to justify further extension request for the subdivision.

In January 2008, the Department of Water (DOW) submitted Revised Subdivision Report Comments for Brydeswood Subdivision, Phase II (S-93-50) and Phase III (S-2006-4), which superseded Condition 3 of the September 28, 2005 tentative approval letter. The revised subdivision report provided the Applicant the option to serve the proposed subdivision from a private (non-County) water system, in lieu of satisfying the conditions to connect to the County water system. A copy of the Planning Department's memorandum dated January 24, 2008 referencing the "Revision of Subdivision Conditions" is attached for your review.

Condition 3.e.(3), states that the subdivider shall be responsible for the design, construction, operation and maintenance of the private well water system which shall provide adequate domestic and fire protection capacity for existing and proposed water demands for the lots. The private well water system shall conform to the Rules and Regulations and the construction standards of the Department of Water, and be in compliance with all other governmental agency requirements.

I. LEGAL REQUIREMENTS:

In accordance with Chapter 9 of the KCC, which regulates the subdivision process through the Planning Commission. KCC Section 9-2.4 states *"Water supply and distribution facilities shall conform to the rules and construction standards of the Department of Water."*

DOW Rules and Regulations, Part 3, Section XII allow for a modification from the Department's standards for subdivisions provides: *"When conditions pertaining to any subdivision are such that the public may be properly served with water and with fire protection without full and strict compliance with these rules and regulations, or where the subdivision site or layout is such that the public interest will be adequately protected, such modifications thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations, may be made by the Department."*

The Federal Safe Drinking Water Act is administered by the State Department of Health (DOH), and DOH regulates public water systems for compliance. A public water system is defined as a system, which provides water for human consumption, through pipes and other constructed conveyances if the system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system. A public water system may be privately or publicly owned or

operated. A public water system is a “community water system” or a “non-community water system.”

APPLICANT’S REASON/JUSTIFICATION:

Refer to Applicant’s request letter to the Board dated July 31, 2008 and subsequent letter to the Department of Water dated October 23, 2008. The Applicant states the proposed water system will be privately owned, therefore, the Applicant is requesting to deviate from certain aspects of the Water System Standards and as provided in the Department of Water’s Rules and Regulations.

EVALUATION:

Upon review of the submitted “Private Water System for Brydeswood Agriculture Subdivision, Phase II (S-93-50) and Phase III (S-2006-4)” letter dated October 23, 2008, the Department offers the following comments and questions:

- Section 102.05 – Water Main Type, Class
The Applicant proposed to install NSF and AWWA approved High Density Polyethylene (HDPE) pipe.
Currently, HDPE is not an approved material in the Water System Standards, therefore, it is recommended that the Applicants not deviate from installing either Ductile Iron, Cl. 52 or PVC C900 Cl. 150 or 200, brass pipe, or copper tubing.

Typically, the material cost for a waterline is small compared to the associated construction and installation costs. The Department recommends that the on-site pipelines serving the lots should be an approved material and constructed in accordance with the Water System Standards since the cost to remove and replace the waterline would be expensive to future home owners within the subdivision.

- Section 105.04 – Access Road
The Applicant proposes to construct a gravel road consisting of 12-inch compacted subbase and 6-inch compacted base. The minimum width of the access road is proposed to be 15 feet and the maximum grade shall not exceed 15%.

Since the system will be a private system, the Department will not be required to access or maintain these facilities, therefore, we have no objections to this proposed deviation.

However, should the water system need to be conveyed to the County, it should be clearly stated that the Applicant shall be responsible for any and all costs associated with removing and/or upgrading the system. It is recommended that the Board not accept conveyance of water facilities that are non-conforming or not in compliance with the Department’s Standards, and that the Board require the Applicant to include appropriate language restricting conveyance of any substandard, unapproved materials to the Department in all of its documents.

- Section 105.10 – Reservoirs

The Applicant proposes a lined or coated steel tank with cathodic rust protection instead of a reinforced concrete, pre-stressed concrete or post-tensioned concrete tank.

The proposed steel tank will likely have a shorter life-span as compared to a concrete or stainless steel tank. With only one (1) tank serving the entire development, what happens when the tank needs to be maintained, rehabilitated, and/or repaired?

Although the Applicant is proposing a private water system, and does not intend to ever convey the private water system to the County, the Applicant should clearly state that they will not convey water facilities that are non-conforming or not in compliance with the Department's Standards. And, the Board should review and approve appropriate language which restricts conveyance of any substandard, unapproved materials to the Department.

Should the water system need to be conveyed to the County, it should be clearly stated that the Applicant shall be responsible for any and all costs associated with removing and/or upgrading the system.

- Section 111.02 – Domestic Consumption Guideline and Section 111.05 – Demand Factors

For Phase II and Phase III, the Applicants are proposing to limit the density to 86 dwelling units. The Planning Department conditions stated, should the Applicant pursue the current proposal as an Agricultural Subdivision, the Applicant shall initiate the process to amend the General Plan in order to be consistent with the current plan. Based on the General Plan designation of "Residential Community," the project would be allowed 220 single family units.

How does the Applicant assure the Board that these properties will not be developed beyond 86 dwelling units? Also, is the applicant restricting CPRs and guest houses on all proposed lots?

Since the sizing and capacity of the source, storage and transmission mains and infrastructure are dependent on the full development of the area, prior to approving the private water system, the Applicant should submit for the Board's review and approval any restrictive covenants, deeds, and any written agreements which would stipulate and restrict the density of each lot.

Will this restriction run with the land? If the density is exceeded, what are the remedies and/or consequences and to whom would the penalties apply?

- Section 111.07 – Reservoir Capacity

Sizing of the reservoir needs to reflect the intended use and account for the maximum day demand (MDD) for the potable domestic demand and agricultural uses. As calculated by the Applicant, the project would need a 1.1 million gallon

reservoir. The Applicant instead proposes to construct a 0.25 million gallon reservoir.

The Applicant is proposing to develop a single system to handle the domestic and agricultural water demands of the development. Essentially, the agricultural demands are significant, as shown on the Applicant's Water Requirement worksheet, as such the storage capacity requirement reflects that demand. The MDD requirement for the potable domestic use is not the high demand. The agricultural component of this subdivision drives the water demands, hence the storage capacity requirement. The Water System Standards require the reservoirs be sized to meet maximum day consumption. Reservoirs full at the beginning of the 24-hour period with no source input to the reservoir. In addition to storage capacity, the reservoirs provide a buffer for peak demand or high surges, control the on-off run-times of the pumps, and provide disinfection contact time.

With the new upcoming Groundwater Rule (effective December 1, 2009), public water systems that utilize a groundwater source must comply and provide 4-log virus removal or inactivation at or before the first customer. The 4-log virus removal or inactivation must be satisfactorily documented through description of the treatment processes, chlorine contact time (CT) calculations as required by DOH Safe Drinking Water Branch. Water systems will be required to conduct compliance monitoring or will be subject to triggered source water monitoring.

- Section 111.08 – Total Pump Capacity

The Applicant is proposing to provide 2-400 gpm wells and notes that each lot would be provided with two meters, one metered connection sized for potable, domestic water and another metered connection sized for agricultural irrigation. **In accordance with the Water System Standards, the total pump capacity shall meet maximum day demand with an operating time of 24 hours. The largest pumping unit shall be considered out of service (standby). Based on these criteria and the Applicant's own water demand calculations, as proposed, the Applicant's agricultural subdivision would require 2-800 gpm wells for the combined potable domestic and irrigation uses.**

If the intended use is to service and provide water to an agricultural subdivision and the Applicant's Water Requirement worksheet shows 773 gpm is needed, why would a lesser amount be deemed sufficient?

Mechanical components wear out and may need to be repaired or taken off-line. While the Applicant proposes to install 2-400 gpm pumps, the numbers demonstrate that one pump alone is not sufficient to take care of the required water demands.

It should be noted, that there is no guarantee that every well drilled will be a viable (high-yielding) source. The Applicant may need to drill numerous wells to satisfy their source and standby requirements.

Who will ensure the water there will be a sufficient supply and quality from the private water system?

Finally, the Applicant should clarify, why Phase I is included in the Brydeswood Ag Subdivision Water Requirement revised worksheet. The Applicant's request appears to be specifically for Phase II and III. If Phase I is to be included, what is its intended full development of the 330 + acres?

RECOMMENDATIONS:

Prior to the Board approving a deviation from KCC Section 9-2.4, Subdivision Ordinance, which regulates the subdivision process through the Planning Commission, as noted by the Planning Department, the Applicant should amend the General Plan and provide the State Land Use Commission's Declaratory Ruling as it relates to HRS, Chapter 205. This will confirm the number of dwelling in this subdivision, which will dictate the sizing, and capacity of the source, storage, and transmission mains and infrastructure needed for full development.

In addition, the Department recommends prior to making any decisions, that the Board should require the Applicant to submit for the Board's review and approval the Agricultural Master Plan, any restrictive covenants, deeds, and any written agreements, which would stipulate the density of each lot.

A& B Testimony:

Mr. James Hasenyager stated that in answer to Chair Oyama's previous question about checking with the PUC at the last Board Meeting if one of the homeowners leases his property to someone else. Mr. Hasenyager stated that they have consulted their in-house counsel as well asking outside counsel. What will happen is that the homeowner's association will charge each member for the use of water, that member in turn may choose to charge his lessee for water, but as long as the association is charging only its members for water, their legal opinion is that they do not need to be PUC regulated.

The following deviations to the Water System Standards were proposed to the staff:

1. Proposed the use of high-density polyethylene (HDPE) piping in lieu of ductile iron pipe or PVC as per the Water System Standards. They still feel very strongly that HDPE piping is very good piping and is approved by municipalities on the Mainland. It has very good flowing characteristics, a very tough material. The price is not that much cheaper than ductile iron or PVC piping; however, the installation is much easier and has a longer life than ductile iron or PVC pipes. Mr. Hasenyager experienced the use of HDPE pipe for irrigation purposes and is a firm believer in the material.
2. Proposed to use high quality gravel road to the site.
3. Proposed to construct a steel storage tank that is lined or coated steel tank with a cathodic rust protection. Mr. Hasenyager has done some research with companies that make these steel tanks and with proper maintenance and

inspections could last for 50 years. He stated that it is not the best type of tank but pretty close.

4. There have been questions from staff on what are the maximum dwelling units for each lot based on the lots being CPR'd to the maximum permitted by law. They have asked the Planning Department for assistance to get that answer but have not heard back from them yet.
5. There have been questions on the mauka parcel that is owned by Don Spanski. Since the well will be on his property, he has agreed to give A&B easements up to the well site. They have also agreed that A&B will give Mr. Spanski potable water only for up to 10 dwellings and not irrigation. This project has the potential of 86 dwellings and now with his 10 dwellings there are a total of about 96 dwellings.
6. The biggest question is that based on the Water System Standards (WSS), A&B would need a 1.1 million gallon storage tank, which would kill their project.

Mr. Tom Nance has proposed a compromise formula to compute the size of the storage tank for a maximum day use occurring in an 18-hour period with credit for inflow from both wells. The WSS calls for a 24-hour maximum day use with no input from the wells. They felt that the domestic water that they need to provide for this project is very small as compared to the ag water that they need to provide. They understand that domestic water is most important, so if the pump goes down then ag water use has to be curtailed.

Based on Mr. Nance's proposal and their review of the WSS, they have come up with a compromise on the calculations on the size of the storage tank. The tank size that they propose is not up to standards but would have ample water for fire protection.

7. For the total pump capacity, A&B is proposing to provide redundant wells but ½-sized wells. The DOW staff wants to see full-sized wells. The two (2) wells that they propose would be 400 gpm. If one well goes down, they would still have 50 gpm to serve all of the potential 96 dwellings. That would leave 350 gpm of excess water that could be rationed for ag use. This would also be helpful for when the wells are down for maintenance.

Mr. Hasenyager added that the mauka lands do get a lot of rain, which could help the water situation.

Mr. Hasenyager stated that A&B wants to assure that the water system will be operated in a safe manner and that they will provide clean water. They also want to assure the Board and the staff that the system that is designed would be operated in total conformance with Department of Health's standards. They would follow suit with Opaekaa Falls' plans to also hire a professional water company to manage the private water system like Aqua Engineers to

take care of their trouble calls. They could also incorporate an alarm system, although they would be providing redundant wells.

Mr. Shigemoto stated that for the use of the HDPE pipe materials, the DOW staff has acknowledged that the HDPE is a NSF and AWWA approved materials, although the State of Hawaii has not adopted it yet. He also stated that he knows that the DOW has used the HDPE pipe material occasionally for emergency purposes. Mr. Shigemoto added that the DOW currently uses it too as it is a slip line in the 27-inch waterline at Hanapepe. He felt it was questionable if the DOW does not allow a private water system to use materials that they are currently using.

Mr. Shigemoto added that he understands when ag water needs to be provided if one is on the County water system and taxing the system; however, they are proposing a private water system and will be using their own water and not taxing the County water system. Therefore, he asked why is there a requirement to provide storage for irrigation and pumping requirements? He also asked If the Department's primary focus is on fire protection and domestic water?

Acting Manager Ushigome replied that if their project had dual systems, one for domestic water and one for irrigation purposes, the Department would not be concerned on irrigation water. However, since the uses are mixed and the intended use is for the ag subdivision, it should be sized for the intended use of the potable water system. She also added that this project is going through the subdivision process, which makes the Department in the loop to review and comment. Hence, the Department needs to comment and inform the Board on what are the deviations from their proposal and the Department's Water System Standards.

Mr. Nishimura asked Mr. Shigemoto if they would put in their disclosure that the water system is sized to handle 86 homes and A&B may or may not be able to develop beyond that? Also in the event that any of our ag uses exceed the amount of water that we have, that their project may run out of water? Mr. Shigemoto replied that the opening ag zoning dictates how many dwellings they can have, which is 86 for their project and 10 more for Mr. Chansky for a maximum of 96. It may be that some of the owners may not want to develop to their maximum so it may be less, but no more than 96 homes. On query by Mr. Nishimura, Mr. Shigemoto stated that they are willing to include this in their disclosure, as well as anything that Opaekaa Falls has in their disclosures.

Mr. Shigemoto discussed that they would still need to do an ag water master plan; however, even with that plan, no one knows if everyone will develop their lot to farm or possibly ranch.

Mr. Hasenyager added that in his revised calculations he did not take any deductions for lands that may be used for ranching or if the land was too steep to farm. With this very conservative approach, the two (2) 400 gpm wells were sufficient to cover the proposed water use.

Acting Manager Ushigome added that there is also no guarantee that the two (2) wells will produce 400 gpm of water. Mr. Hasenyager stated that the basis of their

project is to have two (2) wells that produce at least 400 gpm of water. He added that they would not start this project until they know that they have enough water. If not, this project will be halted.

On query by Mr. Nishimura, Acting Manager Ushigome stated that per our standards, 800 gpm would be required as it is their proposed demand; however, it is also required that they have backup of another 800 gpm. Mr. Hasenyager stated that he could understand meeting the standards if the wells fed all homes domestic water only.

Acting Manager Ushigome discussed that the ag water requirements for the intended ag subdivision are high. In addition, there will be a new Groundwater Rule that will be in effect shortly from the Environmental Protection Agency (EPA). Mr. Hasenyager stated that he would have to read this new rule to check if they meet this new requirement.

On query by Mr. Shigemoto, Acting Manager Ushigome stated that this new rule would affect both public and private water systems.

Mr. Hasenyager stated that at each lot they will have two (2) separate stub-outs sized for irrigation and domestic water use based on how many dwellings they could have on that lot if the lot is CPR'd to the maximum. In this way, if the well does go down, the homeowner's association and/or the professional water company hired by the association could monitor and curtail irrigation water usage as necessary.

On query by Chair Oyama, Mr. Hasenyager stated that they would not dictate what type of farming the homeowners would do; however, the zoning requires that they need to farm their property by law.

Mr. Shigemoto stated that their intent is to do an ag subdivision. Acting Manager Ushigome added that if the intent is to do an ag subdivision, she felt that A&B would more so would want to provide the water needed to sustain ag activities since ag is water intensive. Mr. Hasenyager added that they are trying to provide the full requirements for ag and domestic use with the two (2) wells.

Acting Manager Ushigome requested that prior to the Board making decisions on private water systems, required sizing and demands, that A&B should submit a Restrictive Covenant and/or Ag Subdivision Agreement so the Board could review and understand what their development would be like. Mr. Hasenyager discussed that A&B needed to resolve the water issue first before they start spending money for consulting fees to do the ag water master plan, etc.

On query by Mr. Nishimura, Acting Manager Ushigome stated that the Department of Health would be involved with this project from the start as there are more than 15 proposed connections. Mr. Hasenyager stated that they would work with the Department of Health with the engineering report, capacity reserve study, chlorination, etc.

Mr. K. Fujimoto asked what would be done when the steel tanks are down for maintenance for painting, etc. as it could take months to complete. Mr. Hasenyager replied that it was a good question, as he thought it would only take a few weeks. Mr. K. Fujimoto added that if it were concrete tanks, maintenance is minimal and would probably not have to be offline.

On query by Mr. Shigemoto, Mr. K. Fujimoto stated that if a DOW tank needed to be offline, there is another backup tank, which is a requirement of the DOW. Mr. Eddy stated that it is a good engineering practice to have a backup tank. Mr. Shigemoto added that is a good point.

In discussion with Acting Manager Ushigome, Mr. Shigemoto stated that they would need to work with the Planning Department on whether they would need to update the General Plan and the Declaratory Ruling.

Mr. Nishimura asked that since A&B is trying to see if this proposed plan would work out, if the Board gives the go ahead and later their proposed plan changes, would A&B be willing to return to the Department/Board? Since Mr. Shigemoto and Mr. Hasenyager concurred, Mr. Nishimura requested that this be documented in their paperwork.

Acting Manager Ushigome discussed that similar to Opaekaa Falls, the Board would have to review the binding agreements before making any type of commitments. As of now, there does not seem to be that much information, so it is hard for the Department to review with so many missing parts.

Mr. Hasenyager added that as soon as he gets the report from the Planning Department on what is the maximum amount of dwellings that could be on each lot by law, he will submit it to the DOW.

On query by Mr. Hasenyager, Acting Manager Ushigome stated that she had not yet received the first draft of the Non-Interconnection Agreement.

Mr. Nishimura moved to approve the applicant's request subject to review of the deed and any other agreement that staff deems necessary to accomplish their project, seconded by Mr. Kyono.

Mr. Nishimura stated that A&B should consider the second storage tank as backup and as a marketing tool to have redundancy.

Motion was carried.

Mr. Shigemoto and Mr. Hasenyager both left the meeting at about 3:00 p.m.

NEW BUSINESS:

Re: Request to Testify by Judy Ta'afuli Webb for the Niumalu Paradise Condominium Association by the Developer Niumalu/Nawiliwili Community Planning Project, TMK: 3-2-03:58, Units 1 thru 13, Niumalu, Lihu'e, Kaua'i

Ms. Judy Ta'afuli Webb and her friend Mr. Jerry Ornellas were present at the meeting.

Department's Recommendation:

The Department (DOW) recommended that Ms. Taafuli's request be denied. Based on the two documents that were executed by Ms. Taafuli, the Department of Water is not obligated to approve County water meter service in any form. Also, the Stipulation that she refers to is not binding on the Department.

Ms. Taafuli completed the required DOW conditions that allow the DOW to sign her building permit on March 30, 2006. Ms. Taafuli was required to execute and record a waiver and release declaration in which she agreed that issuance of the building permit will not be construed by her to infer, guarantee or warrant that water or water service by the County will be provided to her property at any time in the future and that she will indemnify and hold harmless the County of Kaua'i, Department of Water, from and against any claim, action, suit or demand that is brought by the owner's agents, successors in interest, or assigns for the owner's failure to comply with any provision of the waiver and release agreement.

In addition, Ms. Taafuli executed a Private-Public Water System Indemnification Agreement declaration and agreed that in consideration of the DOW allowance that the property be serviced from a private water system and from the DOW meters to the following:

- a. No interconnections between water supplied to the Property by DOW's water meter(s) and water supplied by the private water system exists or shall be constructed, at any time in the future.
- b. Owner is responsible to maintain and operate the private water system. This must clearly be stated on the construction drawings, final subdivision map and deeds of the effected lot that the owner is responsible to maintain and operate the private water system.
- c. The agreement shall be binding upon the owner and its heirs, successors and assigns, and shall inure to the benefit of the DOW and its successors and assigns.

Further, the Stipulation and Order that Ms. Taafuli mentions in her request is not binding on the Department of Water since the water meters are owned by the Department and cannot be assigned by the private parties. Also the lawsuit, according to the Association's attorney was dismissed.

Based on the above, Ms. Taafuli's recourse is with the Niumalu-Nawiliwili Association and not with the Board.

Background:

Judy Taafuli purchased one of the fourteen CPR units in Niumalu Paradise Condominium. Niumalu Paradise Condominium was originally known as the Niumalu Tenants Association. The Developer is required to install 14 water meters.

Currently, there are only two water meters assigned to the parcel. Both of which are assigned to other parties.

Ms. Taafuli was fully aware that there were no meters for her CPR unit. Therefore, in February 8, 2008 Ms. Taafuli signed a Private-Public Water System Indemnification declaration document in exchange for DOW signing her building permit for her single family dwelling unit on her CPR unit. Ms. Taafuli agreed to the following:

- a. No interconnections between water supplied to Lot 64 (excluding CRP Unit No. 12) by DOW's water meter(s) and water supplied by the private water system (for CPR Unit No. 12) exists or shall be constructed, at any time in the future.
- b. Owner is responsible to maintain and operate the private water system for CPR Unit No. 12. This must clearly be stated on the construction drawings, final subdivision map and deeds of the affected lot that the owner is responsible to maintain and operate the private water system.
- c. The agreement shall be binding upon the owner and its heirs, successors and assigns, and shall inure to the benefit of the DOW and its successors and assigns.

In addition, in March 30, 2008, Ms. Taafuli signed a Waiver and Release Agreement, agreeing that in exchange for the DOW signing her building permit for her single family dwelling to be built on her CPR unit, she would not use County water for her CPR unit since her intent was to drill a private well. Ms. Taafuli was required to execute and record a waiver and release declaration in which she agreed that issuance of the building permit will not be construed by her to infer, guarantee or warrant that water or water service by the County will be provided to her property at any time in the future and that she will indemnify and hold harmless the County of Kaua'i, Department of Water, from and against any claim, action, suit or demand that is brought by the owner's agents, successors in interest, or assigns for the owner's failure to comply with any provision of the Waiver and Release Agreement.

Ms. Taafuli completed the required DOW conditions that allowed the DOW to sign her building permit on March 30, 2006.

Attached for your review and information is Ms. Taafuli's signed Waiver and Release Agreement, Private-Public Water System Indemnification document, approved building permit and the DOW building permit conditional approval letter.

It is the DOW's understanding that Ms. Taafuli constructed her home using a hosepipe attached to a water meter that was assigned to another lot in Niualu. Apparently her home is now completed; and according to her letter to the Board, she is in the process of converting her construction loan to a conventional loan; and that Finance Factors will not allow the conversion until she is assigned a water meter.

According to the Association's attorney, the design work for the road improvements and water meters are completed, bids on the proposed work have been received and funding to complete the project is being discussed.

Mr. Costa was excused and left the meeting at about 3:10 p.m.

Testimony by Mr. Jerry Ornellas:

Mr. Ornellas stated that Ms. Webb was nervous being in front of the Board; therefore, he was her spokesperson.

Mr. Ornellas stated that Ms. Webb bought the property in good faith, and the developers assured her that the water system would be installed. She borrowed money to buy the land and to construct her house. She needed to start construction; therefore, she signed a waiver assuming that the water system would be constructed. However, the developer never did install the water system. Mr. Ornellas added that as of today, there are two (2) water meters that are assigned to the property; one of the meters was assigned to John Lake who is now deceased and as far as they know is not being used and the second meter is assigned to the developer; and the developer has agreed to have the meter transferred to Ms. Webb. He felt that this was a pretty open and shut case.

Acting Manager Ushigome discussed that the Department would give Ms. Webb that second meter if all of the CPR homeowners signed off and agreed to give her the meter. However, that was not done and Acting Manager Ushigome understood that there are other homeowners that are interested in the second meter.

Ms. Webb stated that there are two (2) entities, one is the developer and the other is the CPR Homeowners' Association and the meter is owned by the developer and not the Homeowners' Association. Ms. Webb stated that the developer is willing to assign the meter temporarily to her while the meter is put in.

Waterworks Legal Advisor Esaki added that she had discussions with Mr. Max Graham, who represents the developer, and Mr. Graham was trying to work with all of the unit owners on assigning that particular meter to Ms. Webb; however, Ms. Esaki did not know the status if Mr. Graham was successful or not. Ms. Esaki also added that there is another CPR homeowner that is watching the water meter assignments for that CPR.

Ms. Webb asked that the water meter be temporarily assigned to her so she can get a loan on her house. Acting Manager Ushigome stated that Ms. Webb should be talking to the developer to get the other CPR homeowners to sign off on the water meter and assign it to her.

On query by Mr. Nishimura, Ms. Esaki stated that the Stipulation and Order that Ms. Webb mentions in her request is not binding on the Department of Water. Ms. Esaki also stated that it was verified with the County Attorney that the Stipulation and Order is not binding on the Department of Water. Ms. Webb added that she knew that but was at the Board Meeting to request that the Board honor that Stipulation and Order.

Ms. Esaki discussed that Mr. Graham stated that when he was working to get the homeowners to agree to temporarily give the meter to Ms. Webb, Mr. Graham found out then that there were other homeowners that were interested in the second water meter. Ms. Esaki added that there is a huge outstanding bill on this water meter and the other interested homeowners were also willing to pay that outstanding bill.

Ms. Webb stated that she is working with Mr. Graham on the Water Meter Agreement and that she had sent the DOW a letter that showed that the developer assigned Owen Maeda, Amy Chow, Cookie Chow, etc. to make the decisions for the developer. Acting Manager Ushigome stated that she does not recall receiving that letter yet so requested Ms. Webb to send a copy of that letter to the DOW.

Mr. Ornellas stated that the second water meter is not used and the other association members now want the meter just because Ms. Webb wants it. He felt that the CPR Association is obligated to provide a water meter for Ms. Webb. Ms. Esaki concurred and felt that Ms. Webb needed to followup with the CPR association.

Mr. Nishimura moved to defer any action on this matter until they submit documentation to verify that she does have an approval from the CPR association and if she does, then this matter need not be brought to the Board again, seconded by Mr. Kahawai; motion was carried.

Ms. Webb and Mr. Ornellas both left the meeting at about 3:30 p.m.

OLD BUSINESS:

Re: Followup to Job Performance Evaluation of the Manager and Chief Engineer

This matter will be conducted in Executive Session at the end of this Board Meeting.

Re: Discussion, deliberation and decision-making or action regarding steps, actions, procedures and processes necessary to select a new Manager and Chief Engineer for the Kauai Water Department

Mr. Kawate requested that this matter be deferred to the next Board Meeting, along with its companion Executive Session Item No. J11. Mr. Kyono moved to defer both matters to the next Board Meeting, seconded by Mr. Kahawai; motion was carried.

REPORTS

Re: Statement of Kaua'i County Water Department's Revenues and Expenditures

Mr. Kahawai moved to receive the Statement of Kaua'i County Water Department's Revenues and Expenditures report and placed on file, seconded by Mr. Nishimura; motion was carried.

Re: Public Relations Specialist's Monthly Update Regarding DOW Public Relation Activities

Public Relations Specialist Faith Shiramizu gave the following report:

DWSRF Projects: The Stable 1.0 MG Tank and Connecting Waterline Final Loan Agreement should be in place in about a month. Other projects on the front burner include Kaumuali'i Highway 12 Inch Main Replacement Elapaio Road to Huakai Road, Waimea Canyon Drive Main Replacement, Kapilimao .05 MG Tank, and Waha, Wawae and Niho Roads Main Replacement.

Employee Council: The County Employee Council held its 5th Annual Halloween Spooktacular event on October 23rd. It was enjoyed by all that participated. The DOW had four entries in the Pumpkin Contest, as seen in your newsletter, Norma and Tess created "Jazzeybel", Jenny did a "Bewitched" detailed witch carving, and Tess' daughters, Marielle entered Ex-Scream in the Children's Division and Shaina presented "The Nerd", in the Teen Division, where she won for the Most Creative and People's Choice.

Fun Committee: The Fun Committee is organizing a hike at Mahaulepu, in conjunction with the Sierra Club on November 9th.

Water Conservation Awards: Each year the East and West Soil and Water Conservation Districts recognizes a Kaua'i Farmer or organization from each district who makes an outstanding contribution to the conservation of water by using an alternative source, applying an innovative technique or making improvements to increase efficiency in an existing system. The 2008 Water Conservationist of the Year Award was presented on October 21st to Jerry Ornellas of Agland Management from the East and Kukui'ula Development Company from the West. (written details on these awards were given to the Board)

Mr. Kahawai moved to receive the Public Relations Update and placed on file, seconded by Mr. Nishimura; motion was carried.

Re: SUMMARY REPORT OF MONTHLY OPERATIONAL MAINTENANCE:

For the Board's information, Acting Chief of Operations William Eddy submitted a monthly report of the DOW's Operations Division.

Mr. Nishimura moved to receive the Operational Maintenance Report and place on file, seconded by Mr. Kyono; motion was carried.

Re: Manager's Update for October, 2008 to November, 2008

CONTRACTS AWARDED BY THE MANAGER:

Job No. 05-03 (KW-25), Kapilimao 0.5 MG Storage Tank and Job No. 03-03, Hardening of Generator Shelters at the Kapilimao Well Site, Kekaha-Waimea Water System, Kekaha, Kauai, Hawai'i

Funding:

Account 101, CIP	\$4,100,000.00
Proposal by Kaua'i Builders, Ltd.....	\$3,796,510.85
Contingency (approx. 5%)	\$ 190,489.15
Total Funds Required:	<u>\$3,987,000.00</u>
Balance Remaining	\$ 113,000.00

PUMP INSTALLATION PERMITS SIGNED BY MANAGER: None.

WAIVER, RELEASE AND INDEMNITY AGREEMENTS SIGNED BY THE MANAGER:

Affordable Housing Update:

Affordable Housing Task Force (AHTF) meeting was held on Monday, October 13, 2008 at Pi'ikoi Conference Room A.

Updates on AHTF Projects:

1. DHHL – Anahola Residence Lots Unit 6, “Pi'ilani o Kekai, Phase 1: No report by DHHL.
2. Habitat - Eleele I Luna Subdivision Phase 2 Project includes 106 lots and one park. Habitat Manager, Stephen Spears and Wayne Wada, Esaki Surveying, briefed the group on their plans to phase the 106-lot, Phase 2 into Phases A, B and C over the next eight (8) years. Their schedule calls for revised subdivision approval with phasing of the subdivision into three phases. Dale Cua from Planning stated that Habitat should prepare and execute a MOA with all affected agencies in order to receive approval for incremental subdivision improvements from the Planning Commission. Phase A would include 34 houses after final subdivision approval in October 2010. Phase B would include 45 houses after final subdivision approval in August 2013. Phase C would include 27 houses after final subdivision approval in August 2016.
3. Puhi Self-Help Subdivision – Barbara Pendragon from Housing confirmed that the next 14 building permits are scheduled to be submitted to the Building Division shortly. Grove Farm's Puhi Booster Pump and 16-inch waterline project was issued its certification of completion on October 1, 2008 by DOW.
4. Kauai Lagoons – Courtyard at Waipouli: County issued building permits. Construction of four of the multi-family structures is underway. According to Public Works, roadway and shoulder improvements have not started.
5. Kauai Lagoons – Kapule Project - DOW recently approved the Kaua'i Lagoons' revised Engineering Report dated July 16, 2008. The 31-unit affordable housing project's building permits are currently being processed at DOW.
6. Kukui'ula Employee Housing - “Gap” Housing subdivision and zoning permit: Amended water Master Plan was returned to the developer for revisions. The developer met with DOW and said that they will be resubmitting the amended

Water Master Plan shortly. The developer has not resubmitted the revised WMP to DOW to date.

7. Kohea Loa (Hanamaulu Triangle) - DOW completed its review of the May 15, 2008 draft WMP for the Grove Farm former "Amfac/JMB Lihue Hanamaulu Master Planned Community Lands. DOW's comments were transmitted to Kodani & Associates on August 26, 2008 and the Department's staff met with Grove Farm and their consultant's on August 27, 2008. Grove Farm is currently addressing the DOW's comments and is working to address several other outstanding items.
8. Paanau Village, Phase 2 - The Housing Agency will be contacting Public Works to require the subdivider to revise the subdivision map to include an "at grade" access provision. The subdivision currently has tentative subdivision approval from Planning. Recommended that the Housing Agency contact DOW regarding the water meter location for the project.

Next meeting of the AHTF is scheduled for Monday, November 10, 2008, at the Pi'ikoi Conference Room A at 10:00AM-11AM.

DOW'S Claims Procedure

A copy of the Board of Water Claims Procedure was attached to this report to give the Board the opportunity to review and comment.

(Note it was decided at this Board Meeting that the Claims Procedure will be a departmental Standard Operating Procedure and not a Board policy.)

Upcoming DOW/Board Events:

To avoid the hustle and bustle of the holiday season, it was decided to change tradition by moving the December Employee Annual Meeting and Brunch to January. The Annual Employee Brunch will be on the same day as our January, 2009 Employee Monthly Meeting, which will be on January 30, 2009.

In its place of the December Brunch, we want to have a Board Coffee Hour starting from about 8:30 am prior to our December 11, 2008, 10:00 a.m. Board Meeting. There will be two (2) sessions to accommodate the attendance of all of our employees while ensuring office coverage. Each session would be about ½ hour. Coffee and pastries would be served. This will provide an opportunity for Board members to reacquaint themselves with the employees, meet and spend some time dialoging with the staff. We encourage all Board members to be present for both sessions. Please check your calendars to verify your 8:30-10:00 a.m. schedules on December 11, 2008, as well as your attendance to the Board Meeting.

As a precautionary measure, Mr. Nishimura excused himself from voting on this matter as this Board Report included a report on the Contracts Awarded by the Manager on Job No. 05-03 (KW-25), Kapilimao 0.5 MG Storage Tank and Job No. 03-03, Hardening of Generator Shelters at the Kapilimao Well Site, Kekaha-Waimea Water System, Kekaha, Kauai, Hawai'i and his company is a subcontractor for this project.

Mr. Kyono moved to receive the Manager's Update and place on file, seconded by Mr. Kahawai; motion was carried.

Re: Report of the Finance Committee of the Kaua'i County Board of Water Supply - Nothing further to report.

Re: Report of the Rules Committee of the Kaua'i County Board of Water Supply - The rule amendment was approved at this Board Meeting.

Re: Report of the Sub-Committee of the Whole Committee of the Kaua'i County Board of Water Supply

Mr. Kyono moved to defer this matter to the next Board Meeting, seconded by Mr. Kahawai; motion was carried.

STRATEGIC AND BUSINESS PLAN AND NEEDS ASSESSMENT

Re: Updates on the Kaua'i Water Department's Strategic and Business Plan and Water Plan 2020 Program Sustainability Services

Acting Manager Ushigome reported on the following:

Updates of Strategic Goals and Implementation Status Report from the Issues Champion:

Re: Report from Issue Champions

Issue No. 1, Morale:

- a. WATER Buck rewards will be accepted through December 31, 2008, with the Employee of the Quarter being awarded at the January Monthly Meeting.
- b. The Fun Committee is planning the last hike of the year for November 9th at Mahaulepu.
- c. A Facilities Plan committee will be formed and a meeting will be set while we wait for the Professional Services List from the RFQ.

Issue No. 2, Strong and Qualified Workforce:

- a. Recruitment
 - (1) Auto Mechanic II Interviews were held.
 - (2) Engineering Drafting Technician III posted at a range on Continuous Recruitment.
 - (3) Water Meter Mechanic interview process is underway.
 - (4) Civil Engineer I in Special Projects Division-Interviews were held and background check is pending.
 - (5) Waterworks Inspector Aid – Request to create class and recruit for position is pending action with DPS. Currently, they have a question on the minimum qualifications. The class has not yet been created.
- b. Training
 - (1) National Rural Water Association (NRWA) will be holding 9 days of classes on site (in DOW Board Room) throughout the year 2009.

- (2) Ray Ohta of Pacific Training recently met with OPS Personnel at a Roundtable Discussion on Communication, Trust, Respect and Morale. The feedback from the staff was positive.
- (3) A follow-up phone call (with Wynne, Bill and Debra) will be done to listen to feedback and recommendations from the speaker.

Issue No. 3, Water Quality: Switching some of our routine sample sites in preparation for the new ground water rule. We are getting rid of sites that may take coliform hits.

Issue No. 4, Workplace Efficiencies:

a. Implement State-of-the-Art Technologies for Efficient System Operation

(1) Automated Meter Reading (AMR) System (implementation began in mid-March, 2008.)

- (a) Small meter installations are about done, with more small meters on order.
- (b) Currently working on installing some of the larger meters.
- (c) Our AMR meters have the ability to do a customer's water consumption profile.
- (d) Meter readers and the Billing Section staff like the new technology.

(2) Geographic Information System (GIS)

- (a) Jeff Mendez continues to work on creating a GeoDatabase which will group all the departments GIS information into a Geographical Database.
- (b) Jeff also continues to work on converting our Watercad Network Models into our GIS system. This will show all of our junctions and valves (may be about 30,000 or so) in the system. (See attached for sample map.) This is being done with the hopes of being able to move away from paper maps, and also to use GIS as the means to modeling/analyzing our Water Systems and move away from WaterCad.

Issue No. 5, Accountability: No changes

Mr. Nishimura moved to receive this report and place on file, seconded by Mr. Kahawai; motion was carried.

Affordable Housing:

An updated Affordable Housing Projects – Summary Status prepared by Mark Salmon with RW Beck is attached for your review. This memorandum is a summary of progress on the Affordable Housing Projects for your reference. Please see the attached progress report for each project.

Details are provided below.

- ✓ The Kapilimao 0.5 MG Storage Tank final design is complete. The construction contract was advertised for bids on July 10, and bids were opened August 21. Construction contract award and NTP are pending County processing of use permits.
- ✓ AMFAC Shaft 11 Renovation Phase 1B field pump testing is complete. Supplemental water quality testing conducted following pump testing was not conclusive regarding whether or not the well water is under the influence of surface water. Brown and Caldwell is scheduled to submit the Department of Health Engineering Report to staff the week of November 17, 2008. Reaction by DOH to that report will likely dictate next steps.

- ✓ Efforts to acquire a site from Mr. Yamamoto for the Kapahi 1.0 MG Tank are at a standstill. A contract amendment for Belt-Collins to survey a potential new site is being processed. Engineering and environmental work is halted pending site selection.
- ✓ A construction contract for the Kapa'a Homesteads 0.5 MG Storage Tank has been awarded. A DLNR CDUA extension has been requested. The contractor is acquiring the NPDES permit.
- ✓ Staff has directed that HDR suspend all work on the exploratory well for Kapa'a Homesteads Well No. 4 until a site for the Kapahi 1.0 MG Tank is selected.
- ✓ Engineering and environmental work continues on the Akulikuli Tunnel. A contract amendment revising the scope of work, time of completion, and cost has been prepared for submittal to the Board. The Corps of Engineers announced a two-month delay in wetlands delineation in November.

Mark Salmon's Affordable Housing Projects' Reports:

Although not directly a part of Plan Implementation, a summary of the Affordable Housing Project activities was included for the Board's reference.

1. **(KW-25), Kapilimao 0.5 MG Tank-Summary Project Status: Nov. '08**
Project Manager: Mark Salmon -- Design Consultant: Brown and Caldwell

Work underway: County Permit Processing

Work ahead: Construction

Current Major Area of Focus: County Permit Processing

Potential obstacles: none currently

Tentative Date Project in Service: January, 2010

- Summary: Bids were opened August 21, 2008. Construction contract award and NTP are pending County processing of use permits. NTP conservatively scheduled for January 2009.
- Contract Status: Amendment to extend time for contract completion was approved by Board in October.
- Schedule: No issues.
- Permits: County permits still outstanding. Applications have been made; County is processing.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: No issues.

2. **(KW-28), Amfac Shaft 11 Renovation--Summary Project Status: Nov. '08**
Project Manager: Mark Salmon -- Design Consultant: Brown and Caldwell

Work underway: DOH and Basis of Design Report Preparation

Work ahead: final design, environmental/permitting, construction

Current Major Area of Focus: verifying influence of groundwater

Potential Obstacles: water under the influence of surface water – may affect project configuration

Tentative Date Project in Service: Spring 2010 (earliest)

- Summary: Supplemental test results were distributed October 6, 2008. The results were inconclusive with respect to proving or disproving the influence of surface water. The results will be incorporated into the Water Quality Evaluation and Department of

Health's Engineering Reports, which are to be submitted the week of November 17, 2008. Future actions will be dependent upon DOH response.

- Contract Status: Phase 1B amendment for time extension approved by Board in October, 2008.
- Schedule: See Problems and Proposed Mitigation below.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: None.
- Problems and Proposed Mitigation: Shaft water may be under the influence of surface water. Project future uncertain pending DOH consultation.

3. (WK-08), Kapahi 1.0 MG Storage Tank–Summary Project Status – Nov. '08

Project Manager: Mark Salmon -- Design Consultant: Belt, Collins

Work underway: site selection

Work ahead: final design, environmental/permitting, construction

Current Major Area of Focus: Final design, easement acquisition

Potential obstacles: easement acquisition from private landowner

Tentative Date Project in Service: August, 2009

- Summary: Land acquisition and tank configuration issues remain unresolved. Potential new tank site identified. Feasibility investigation of new site beginning.
- Contract Status: Board will be presented with contract amendment to add topographic survey of potential new site this month.
- Schedule: Schedule slips as site remains undetermined.
- Permits: No issues.
- Land & Easements: Easement negotiations with Mr. Yamamoto at a standstill. Site not chosen.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: Site not selected. Land not acquired. New site under investigation.

On query by Mr. Nishimura, Waterworks Controller Ganaden stated that almost \$400,000 was spent so far for this project that is still under design.

4. (WK-09) Kapa'a Homesteads 0.5 MG Storage Tank–Summary Status Report–October '08 Project Manager: Mark Salmon --- Design Consultant: Belt, Collins

Work underway: Construction

Work ahead: Construction

Current Major Area of Focus: Mobilization, permits

Potential obstacles: none currently

Tentative Date Project in Service: December 2009

- Summary: Bids received and opened on May 29, 2008. Contract awarded in June, 2008. NTP issued in September, 2008. County building permit still pending and construction cannot start until permit received.
- Contract Status: No issues.
- Schedule: No issues.
- Permits: An extension of the DLNR CDUA permit is required & has been applied for.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: No issues.

5. (WK-39) Kapa'a Homesteads Well No. 4–Summary Status Report – Nov. '08

Project Manager: Mark Salmon
Design Consultant: HDR Engineering (Hawaii Pacific Engineers)

Work underway: Exploratory well design and EA

Work ahead: well design, environmental/permitting and construction

Current Major Area of Focus: Exploratory well design

Potential obstacles: none currently

Tentative Date Project in Service: December 2009

- Summary: Initial well siting study completed. Consultant began EA and design of an exploratory well at the Ornellas Tank Site, but was put on hold by DOW pending analysis of new site for Kapahi 1.0 MG Tank.
- Contract Status: No issues.
- Schedule: Project on hold pending site selection for Kapahi Tank.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: Project on hold pending site selection for Kapahi Tank.

6. (WK-02) Akulikuli Tunnel Renovation–Summary Status Report – Nov. '08

Project Manager: Mark Salmon -- Design Consultant: SSFM Int'l

Work underway: final design

Work ahead: final design, environmental/permitting and construction

Current Major Area of Focus: EA, design

Potential obstacles: water quantity and quality unknown – potential addition of treatment

Tentative Date Project in Service: June, 2011 (longer if treatment required)

- Summary: Work on EA and final design continues.
- Contract Status: Contract amendment addressing additional environmental and design work to be presented to the Board at November, 2008 Board Meeting.
- Schedule: No issues.
- Permits: The Corps of Engineers announced in November, 2008 that a 2-month delay in wetland delineation processing. Progress on access road and pipeline design will be affected.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: No issues.

Mr. Kahawai moved to receive the above report and place on file, seconded by Mr. Nishimura; motion was carried.

Amendment No. 4 to Professional Services Contract 463, RW Beck, Inc.:

In September, 2006, the Board authorized RW Beck to assist with the management of six (6) Affordable Housing Water Plan 2020 projects. Amendment No. 4: Affordable Housing Water Plan 2020 Projects, Step 2 Activities covered the consultant's scope of work until their completion in December, 2008.

Amendment No. 4 of Contract 463 will expire on December 31, 2008.

On query by Mr. Nishimura, Waterworks Controller Ganaden stated that the cost for the design portion for the Kapahi 1.0 MG Storage Tank was about \$400,000. In light of the increased amount that the DOW spent to resolve the land issue for this project, has the Department considered condemnation? Acting Manager Ushigome replied that the Department tried to use other measures first before going to that last step. She added that maybe we are at that point of condemnation as the Department worked with the landowner on his suggestions and spent extra monies to have our consultant draw up alternative solutions for this tank with no solution.

Acting Manager Ushigome stated that the last encounter with the landowner was that he suggested a land exchange to not have to pay taxes for capital gains; however, the Department would have to get the approval of the rest of his family.

On query by Mr. Nishimura, Mr. K. Fujimoto stated that the Department was looking at three (3) different sites for a proposed well in the same area. Finding a well site can be more problematic as once a well site is selected, development is restricted to not be closer than 1,000 feet from the well. Therefore, the proposed well site needs to be where there would probably have minimum impact on the public. Wherever our well is located, the neighboring homeowners would have to pay extra for a more expensive septic system.

Also on query by Mr. Nishimura, there was no specific correlation with the proposed Kapahi 1.0 MG Storage Tank and the new proposed well that potentially could have been at our Ornellas Tank Site, although there would be cost savings on pipelines.

On query by Mr. Kyono, Mr. K. Fujimoto stated that after a site is selected; then the Department would have to go through the Environmental Assessment (EA) process.

On query by Chair Oyama, Acting Manager Ushigome stated that the cost would be about \$350,000 if the Department bought the land under condemnation proceedings.

On query by Mr. Nishimura, Acting Manager Ushigome felt that if the Board wanted to still use the services of RW Beck, a new contract should be executed instead of an extension. On query by Mr. Nishimura, Acting Manager Ushigome stated that the cost per year to hire RW Beck was about \$110,000.

On query by some of the Board members, Acting Manager Ushigome stated that Mr. Salmon has helped the process; however, a lot of the work was done in-house since the consultant is on the Mainland.

On query by Mr. Nishimura, Acting Manager Ushigome stated that she would need to advertise a Notice for Professional Services to get potential consultant prospects. She had not done this annual notice yet.

Acting Manager Ushigome added that each of the Affordable Housing projects does already have a State of Hawaii consultant in addition to RW Beck. Therefore, she discussed that an option would be to instead hire an on-island consultant.

Acting Manager Ushigome discussed that the initial purpose of hiring RW Beck was to finish all of the affordable housing projects by the end of 2008.

On query by Mr. Nishimura, Mr. K. Fujimoto stated that the staff could instead submit monthly status reports to the Board to keep them updated on these affordable housing projects.

Acting Manager Ushigome asked if the Board wanted to extend this contract. It was the consensus to let the contract lapse. Mr. Nishimura moved to receive this report and place on file, seconded by Mr. Kahawai; motion was carried.

AWWA Award Recognition: *Acting Manager Ushigome announced to the Board that our staff engineer, Edward Doi, won the AWWA Gold Presidential Award for recruitment at the AWWA national conference.*

Re: Followup to Job Performance Evaluation of the Manager and Chief Engineer

A Job Performance Evaluation for Acting Manager Wynne Ushigome was conducted and finalized by the Water Board and hand carried to the Salary Commission (via Boards and Commissions) and the Department of Personnel Services on October 31, 2008.

The followup to the Job Performance Evaluation will be conducted in Executive Session at the Thursday, November 13, 2008 Board Meeting.

EXECUTIVE SESSION:

Pursuant to H.R.S. §92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a).

REVIEW OF EXECUTIVE SESSION MINUTES:

- a. Regular Meeting: Thursday, June 5, 2008, Part 1
- b. Regular Meeting: Tuesday, September 16, 2008
- c. Regular Meeting: Thursday, October 9, 2008
- d. Special Meeting: Tuesday, October 21, 2008

All minutes were deferred to the next Board Meeting.

OLD BUSINESS:

ES-2008-12 (October 9, 2008) - Pursuant to Haw. Rev. Stat §§92-4 and 92-5(a)(2), the purpose of this executive session is to consider the Job Performance Evaluation of the Department of Water's Manager and Chief Engineer. This deliberation involves matters affecting the privacy of the Manager and Chief Engineer. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Board and the Department as they relate to this agenda item.

Mr. Kahawai moved to go into Executive Session at about 3:55 p.m. to discuss the above agenda item that was formally noticed under Executive Session, seconded by Mr. Costa.

There was no Board discussion and no public testimony. Motion was carried. Staff was excused from the meeting.

The Regular Meeting was called back to order at 4:15 p.m.

It was noted that New Business Agenda Item No. 8, Board Discussion on Setting 2009 Goals, was deferred.

The following matter was deferred to the next Board Meeting:

ES-2008-8 (June 5, 2008)– Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(2), (4), (6) and (8), one of the purposes of this executive session is to consider matters that require confidentiality under state law, to wit, to meet with the Board’s legal counsel with regard to the Board’s powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims, as such powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims as they relate to the selection of an individual to be given supervisory and/or managerial and/or developmental and/or consultation duties over the Kauai Department of Water and/or the Kaua’i Department of Water’s Water Plan 2020. The further purpose of this executive session is to meet with the Board’s legal counsel on questions and issues relating to the Board’s powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims, as such powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims, as they relate to the foregoing and to take such action as the Board deems appropriate.

ADJOURNMENT: There being no further business, Mr. Nishimura moved to adjourn the meeting at about 4:15 p.m., seconded by Mr. Kahawai; motion was carried.

Respectfully submitted,

Rona Miura, Secretary

APPROVED:

Wynne M. Ushigome
Acting Manager and Chief Engineer

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