

REGULAR MEETING MINUTES
BOARD OF WATER SUPPLY
Thursday, April 16, 2009

The Board of Water Supply, County of Kaua'i, met in regular meeting at its office in Lihu'e on Thursday, April 16, 2009. Chairperson Leland Kahawai called the meeting to order at 10:05 a.m. On roll call, the following answered present:

BOARD: Mr. Leland Kahawai, Chairperson
Mr. Ian Costa
Mr. Dee Crowell
Mr. Donald Fujimoto
Mr. Raymond McCormick
Mr. Randall Nishimura
Mr. Roy Oyama

STAFF: Mr. Gregg Fujikawa
Mr. Paul Ganaden
Mr. William Eddy
Mr. Keith Fujimoto
Mr. Bruce Inouye
Ms. Faith Shiramizu
Deputy County Attorney Amy Esaki

Absent & Excused: Ms. Wynne M. Ushigome

GUESTS: Ms. Judy Taafuli Webb (left at about 10:13 a.m.)
Mr. Jerry Ornellas (Ms. Webb's co-worker) (left at about 10:13 a.m.)
Mr. Max Graham, Legal Counsel for NNCPP (left at about 11:12 a.m.)
Mr. Lindsay Crawford, Kukui'ula Dev. LLC (left at about 10:25 a.m.)
Mr. Thad Bond, Kukuiula Dev. LLC (left at about 10:25 a.m.)
Mr. Tom Shigemoto, A&B Properties (left at about 11:50 a.m.)

AGENDA

Chair Kahawai re-ordered the Agenda to have Old Business, F2 – Testimony by Judy Taafuli Webb, to be taken up first under Old Business.

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

MINUTES:

Regular Meeting – March 19, 2009:

Mr. Crowell moved to receive the Regular Meeting minutes of Thursday, March 19, 2009 and place on file, seconded by Mr. Oyama; motion was carried.

CORRESPONDENCE:

Re: Memo from County Attorney Alfred B. Castillo, Jr. on his Attorney Assignments for the Boards and Commissions

Mr. Nishimura moved to accept the above correspondence and placed on file, seconded by Mr. Oyama; motion was carried.

OLD BUSINESS:

Re: Request to Testify by Judy Taafuli Webb for Niumalu Paradise Condominium Association by the Developer Niumalu/Nawiliwili Community Planning Project (NNCPP), TMK: 3-2-03:58, Units 1 thru 13, Niumalu, Lihue, Hawai'i

Ms. Judy Taafuli Webb, Mr. Jerry Ornellas, and Mr. Max Graham, Esq. were present at this meeting.

Recommendation:

The Department recommended that upon completion of the Waiver, Release and Indemnity Agreement ("WR&I") for TMK (4) 3-2-08:058 (CPR No. 0012) between the Niumalu-Nawiliwili Community Planning Project, Inc. (NNCPP) and Judith Webb and the Board of Water Supply, County of Kaua'i, the Department will approve the application for water service and reassignment of the existing water meter to Ms. Webb.

Background:

Judith Webb emailed the Acting Manager in mid-March and informed the Department that the NNCPP did not sign the WR&I agreement. She intends to request the Board approve the water reassignment to her CPR unit and not require the completion of the "WRI" agreement.

Findings:

There are two water meters currently assigned to the 13 CPR unit Nawiliwili Paradise Condominium that is located at TMK (4) 3-2-03:58, Niumalu, Kaua'i. One of the meters is assigned to John Lake III, who has since passed away and the other meter is assigned to NNCPP. There are only two (2) meters servicing the 13 unit CPR.

Prior to the Department processing an application for water service or reassignment of the existing water meter to Ms. Webb, all unit owners in the CPR should acknowledge the transfer of the billing account from NNCPP to Ms Webb. To effectuate this understanding, all unit owners of the Niumalu Paradise Condominium should execute a Water Meter Agreement allowing Ms. Webb temporary use of the water meter that is currently assigned to NNCPP. The Agreement should state that the owners acknowledge there are only two meters serving the parcel, and that they accept the fact that by assigning this meter to Ms. Webb, no County supplied water service may ever exist at the location.

At the Board's December 11, 2008 meeting, the Board approved a motion to issue a water meter to Ms. Webb upon Receipt of Authorization by NN CPP.

Upon receipt of the Water Meter Agreement and review by our then Waterworks Legal Advisor Amy Esaki, it was found that the Water Meter Agreement did not include the indemnity clause in case other parties were interested in the same meter. Mr. Graham decided to not revise the Water Meter Agreement, but instead prepared an addendum to the Agreement to include the required WR&I clause. The WR&I included that Niumalu Paradise Condominium (NPC) Association shall acknowledge that any future requests for additional water service are not guaranteed and will be subject to the availability of water at the time of the application, as determined by the Department of Water. By signing the Agreement, the owners, successors in interest, heirs, or assigns agree to indemnify and agree not to file any claims, action or lawsuit against the County of Kaua'i, the Board of Water Supply, the Department of Water, its officers, employees, successors and assigns, for costs, damages or injuries to person or property resulting from granting of the water meter service to Ms. Webb. This Agreement shall run with the land and be recorded with the Bureau of Conveyances.

Mr. Graham's office submitted the WR&I to the DOW on March 20, 2009 for the Department and County Attorney approval and for Board action.

Subsequently, upon their review, the County Attorney's Office requested that the NN CPP Board provide a copy of the by-law that authorizes their Secretary to sign on behalf of the NN CPP. Also a discrepancy with the Tax Map Key number was also noted. Once the TMK Nos. are corrected and a copy of the NN CPP Board by-law authorization is received, the Manager, Board Chairperson and the County Attorney can sign the "WR&I" agreement.

To date, we have not received any revised final documents from Mr. Graham; therefore, Ms. Webb requested to be on the Agenda again. Her request letter and attachments were given to the Board for their information.

Testimony:

Mr. Jerry Ornellas spoke on behalf of his co-worker, Ms. Judy Webb. Mr. Ornellas gave some background that the Water Board previously requested that Ms. Webb have an agreement signed with the owners, NN CPP, to show their approval of the reassignment of the water meter from NN CPP to Ms. Webb. Ms. Webb submitted that agreement to the DOW on January 28, 2009; however, the DOW then requested for an additional Waiver and Indemnity Agreement. Mr. Ornellas added that the additional agreement was made and will be submitted to the DOW shortly. He added that once this Agreement is done and accepted, Ms. Webb wanted assurance that the meter would finally be granted to her as Ms. Webb has found it difficult to work with the original elder owners as they do not understand what is going on.

Chair Kahawai stated that a revision was needed on both Agreements to correct the Tax Map Key No. and that the NN CPP needed to confirm and submit an authorization that the secretary could sign on behalf of the other owners of the NN CPP and that once these two items were resolved that Ms. Webb should be able to get her water meter.

Acting Manager Fujikawa stated that the DOW did receive a written authorization from NNCPP that the secretary was authorized to sign on behalf of the NNCPP.

Ms. Webb stated that the NNCPP is working on correcting both agreements and that she was going to the office of their legal counsel after this meeting to sign the agreements.

Acting Manager Fujikawa confirmed that once the corrected agreements are received that the DOW would approve the application for water service by Ms. Webb.

Mr. Graham, legal counsel of NNCPP, confirmed that his office has corrected both of the Agreements and that the parties that needed to sign were about to do so. Once done, he will forward the agreements to the DOW.

Mr. Nishimura moved to accept staff's recommendation on this matter that they would process Ms. Webb's water meter once the corrected documents are received, seconded by Mr. Oyama; motion was carried.

Mr. Ornellas and Ms. Webb both left the meeting at about 10:13 a.m.

Re: Status Report by Kukui'ula Development Company (Hawai'i) LLC on Their Projects: 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, Hawaii

Mr. Lindsay Crawford, Mr. Thad Bond, and Mr. Tom Shigemoto of Kukuiula Development were present at the Board Meeting.

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 of Y Custom Home Sites, S-2005-25; and 3) Subdivision M1/M4 Custom Home Sites, S-2005-21, Kukuiula Development, Kukuiula, Kaua'i, Hawai'i, the Board requested monthly status updates on Kukuiula's project.

Acting Manager Fujikawa submitted the following report:

Waiver, Release and Indemnity Agreements

The following table represents the current status for WR&I agreements that are being processed by DOW:

Kukuiula Project	WR&I DOW Approved	WR&I under Review	WR&I not Yet submitted by KDC
Subdivision Y Cottages, S-2005-25, TMK (4)2-6-016: 016 thru 088	10	7	12
Subdivision Y Custom Home Sites, , S-2005-25:	0	0	4
Subdivision M1/M4 Custom Home Sites, S-2005-21	1(Lot24)	1	4
TOTAL	11	8	20

Instead of revising the remaining WR&I agreements to include language to clarify and confirm that they will maintain the circulation of water through their on-site water system and pay for the cost of the water used as proposed by the Kukuiula Commission Plan at the DOW established rates, Kukuiula has agreed to prepare a Memorandum of Agreement (MOA) which memorializes the requirements for circulating water through the subject development prior to the execution of any additional WR&I agreements by DOW for Subdivision Y and M1/M4. The MOA will specify that Kukuiula agrees to pay the cost of the water at the DOW's established general use rates. The MOA will be a separate document from the WR&I agreement. Once the MOA is finalized and executed, DOW will approve the remainder of the WR&I Agreements and its related Building Permits. DOW has not received the MOA from Kukuiula to date.

Piwai 0.1MG Tank

The Department met with Kukuiula on March 24, 2009 at the DOW office to resolve the spillway elevation discrepancy. Kukuiula's letter dated February 10, 2009 included Kukuiula's response to previous DOW requests as well as a new suggested approach to compensate the DOW for lost storage at the Akemama Tank. The discussion also included the possibility for the construction of a new 0.6 MG tank to replace the "fixing" of the Piwai 0.1 MG Tank spillway discrepancy and the planned construction of the DOW 'Oma'o 0.5 MG tank.

DOW Staff Comments:

1. DOW considers the altitude valve solution at Piwai Tank to be a possible alternative remedy to the spillway discrepancy. However, the altitude valve solution at Piwai Tank is not the same as the completion of the permanent repair of the spillway discrepancy. The altitude valve installation will result in added difficulty of continuous tank "lockout" operations and will create concern over tank circulation and stagnation conditions at the Piwai Tank.
2. DOW plans to maintain the current Lawai-'Oma'o pressure zone at the same elevation (677 feet msl) that is set by the DOW 0.25MG tank at Akemama Road. The new 0.5MG 'Oma'o Tank that is planned to be constructed adjacent to Kukuiula's Piwai 0.1MG tank will be constructed at spillway elevation 677 feet msl. Low service pressure areas will be detrimentally affected if the spillways' elevation is lowered.
3. Although DOW agrees with the option to construct a 0.6MG tank, the amount of additional design funds and the delay associated with redesign and re-permitting is problematic. The new 'Oma'o Tank is scheduled for construction bidding by this summer.
4. DOW acknowledges that the permanent option to extend the height of the Piwai Tank spillway by Kukuiula remains an option.

Kukuiula Proposal:

At the conclusion of the meeting, Kukuiula presented their latest offer to resolve the spillway issue and arrive at a mutually agreed solution. The Kukuiula offer is described as follows:

1. Kukuiula will convey the Piwai Tank without further repair or renovation to the Board. (Kukuiula will not fix the spillway discrepancy)
2. Kukuiula has determined that the estimated cost to fix the Piwai Tank spillway discrepancy is estimated at \$300,000.
3. Kukuiula has determined that the 'material' portion of the pre-agreed reimbursement by DOW for the change in material between the concrete tank and a steel tank is \$344,000.
4. Kukuiula will agree to exchange ('wash') the estimated cost to fix the tank with the reimbursement amount for the change in material between the concrete and a steel tank.
5. DOW will be able to construct their adjacent new storage tank facility and repair the Piwai Tank spillway discrepancy without any approval by Kukuiula.
6. DOW enabled final conveyance documents to be executed and accepted.

Kukuiula Development's Monthly Report:

Mr. Lindsay Crawford submitted the following report:

Water System Completion and Conveyance:

All water system improvements are completed, tested and operating where needed to serve current demands in Kukui'ula and the region. DOW and Kukui'ula are working to finalize all remaining as-builts, conveyances, grants of easement and cost breakdowns, ultimately leading to issuance of Certification of Completion for each facility. Kukui'ula is targeting June for receipt of Certification of Completion for all remaining system improvements.

The total cost of offsite water system improvements now installed by Kukui'ula is in excess of \$24 million. In return and to secure our water usage rights, Kukui'ula proposes that a formal 'will serve' water agreement be executed between DOW and Kukui'ula.

Piwai 0.1 MG Tank Spillway:

A meeting with DOW staff was held on March 24, 2009 to discuss a final solution. Staff indicated their ultimate desire was to have 600,000 gallons of storage at Piwai. Originally, it was planned to have Kukui'ula built a 100,000 gallon tank plus a 500,000 gallon future tank built by DOW. Staff suggested that Kukui'ula could contribute to the cost of a 600,000 gallon future tank to be built by DOW instead of fixing the 100,000 gallon tank.

Waiver, Release and Indemnity Agreements:

Waivers for the first eleven building permits (ten Subdivision Y Cottages and one Subdivision MaM4 Custom Home) have been signed and recorded.

Waivers for the next seven Cottage lots in Subdivision Y were submitted to the DOW in October 2008. Waivers for (12) more Cottage lots in Subdivision Y will be submitted next month.

As stated earlier, both the DOW and Kukui'ula are working diligently to finalize all remaining items leading to DOW's final acceptance (and Certification of Completion), which will eliminate the need for additional waivers. Depending on how expeditiously these Certificates of Completion are accomplished, not all of these last Cottage lot waivers may be needed.

Water Circulation:

Kukui'ula is drafting a Memorandum of Agreement (MOA) memorializing the requirement to circulate water until the Certificates of Completion are issued and will be submitted to the DOW possibly next week.

Water Master Plan Update:

Kukui'ula resubmitted the Potable Water Master Plan, now titled "Potable Water Master Plan for the Work Force Housing" to DOW on February 12, 2009, and has elected to keep in place the original (May 2004), previously DOW approved "Kukui'ula Potable Water Master Plan Report" prepared by Austin, Tsutsumi & Associates, Inc.

Commercial and Residential Openings/Occupancies:

The anticipated grand opening of the Kukui'ula Village Shopping Center is summer of 2009.

The first residential homes in Subdivisions Y and M1M4 are under construction and should be ready for occupancy in fall of 2010.

Plantation Core began construction in September 2008 and should be ready for occupancy in late 2010.

Discussion:

On query by Mr. Nishimura, Mr. Crawford stated that they met on March 24, 2009 to discuss the Piwai tank solution.

Acting Manager Fujikawa discussed that Mr. Bond had a good idea of building a 0.6 MG Tank instead of fixing the Piwai Tank; however, Acting Manager Fujikawa stated that the Department had an issue as our 0.5 MG Tank was already designed and will be ready for bidding in early summer, which is needed now to resolve the water meter restrictions that Lawai/Oma'o has had for many years.

Acting Manager Fujikawa stated that Kukui'ula also had concerns about the cost to participate in the 0.6 MG Tank. He added that if this tank proposal would have been a good one if it was proposed earlier.

Mr. Crawford summarized that the different proposals given to correct the Piwai Tank problem were: 1) fix the existing tank by raising the walls; 2) install an altitude valve that would act like there are higher walls without raising the walls; 3) disregard the Piwai 0.5 MG Tank and cooperatively build a 0.6 MG Tank instead of a 0.5 MG Tank.

Mr. Crawford added that they and the DOW are getting closer to a solution and hope they can move forward thereafter. Also, once this is resolved, Kukuiula would be asking for reimbursements.

Acting Manager Fujikawa stated that they have come up with a draft preliminary agreement that states: 1) Kukuiula would re-design and construct an altitude valve system for Piwai Tank, with the approval of the DOW; 2) Kukuiula would provide the land necessary for the DOW's new 0.5 MG Tank adjacent to the Piwai Tank with no cost to the DOW; and 3) DOW will allow conveyance of the Piwai Tank project upon issuance of final inspection by the DOW for the re-design of the altitude valve solution.

Based on their last meeting with Kukuiula, Acting Manager Fujikawa informed the Board that they are getting really close to a solution. Mr. Crawford added that he is following up with A&B on the stipulations of the proposed agreement and would need to report back.

Mr. Costa moved to concur with the preliminary terms of the agreement that was reached by the DOW and KDC and authorized the DOW to move forward, seconded by Mr. Crowell; motion was carried.

Acting Manager Fujikawa stated that they will be working on memorializing the terms of a written agreement.

On query by Chair Kahawai, Mr. Crawford stated that once all of the conveyance documents can be finalized in about two (2) months or so, their waiver requests would cease.

Mr. Nishimura moved to receive the Department's and Kukuiula's reports and place on file, seconded by Mr. Oyama; motion was carried.

The Board thanked staff and Kukuiula for working together to cooperatively find a solution.

Mr. Crawford and Mr. Bond both left the meeting at about 10:25 a.m. Mr. Donald Fujimoto was present at the meeting at about 10:27 a.m.

Re: Review and Approval of Private Water System Agreement for Opaekaa Gardens - Request Board Approval to Clarify the Motion made at the December 13, 2007 Board 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 Resubdivision), TMK Nos. (4) 4-2-03:12, 65 and 66"

Mr. Max Graham, legal counsel for the developer, was present at the Board Meeting.

Acting Manager Fujikawa gave the following report:

Status Update:

The Department issued a letter to the subdivider dated March 23, 2009 that summarized the November, 2008 Board decision to approve the subdivider's revised Private Water System Agreement, Waiver, Release and Indemnity for TMK (4) 4-2-003:012,065 and 066" (PWSWRI) agreement. The Department also prepared and submitted a revised Subdivision Report (dated March 6, 2009) to the Planning Department that included the Board's decision. (See Revised Subdivision Report, S-2006-47, dated 3-25-09).

Currently, the County Attorney's Office is conducting the legal review and approval of the PWSWRI draft agreement. Once the subject agreement is executed and recorded and the other DOW subdivision conditions are completed by the subdivider, the Department will recommend to the Planning Department to grant final subdivision map approval for the subdivision.

Background:

The Board at their September 16, 2008 Board meeting preliminarily approved the subdivider's request conditioned upon the drafting of an Agreement which addressed the Department's concerns and conditioned that the agreement spell out the use of acceptable materials which would not include HPDE pipe.

At the November 13, 2008 Board meeting, the subdivider Opaekaa Falls Land Company, thru their attorney Max Graham, submitted a revised version of the "PWSWRI" agreement to the Board during that Board meeting. Mr. Graham stated that the revised agreement and revised declaration included all of the Department staff's concerns except for four (4) items that was opposed by the subdivider. The items that were omitted included:

1. Modifications to limit further development on Lot 1 and 3;
2. Statements that private water system is subject to DOW Rules and Water System Standards;
3. DOW Water System Standard tank size (reduced the size of the private water tanks) and the DOW Water System Standard stand-by source standard (did not provide a standby private well source);
4. Subdivision Ordinance subdivision bond requirement (subdivider will not post a bond for private water system subdivision improvements).

At the November, 2008 meeting, the Board decided to approve the PWSWRI agreement as submitted by the subdivider to the Board that included all of the staff's concerns, contingent upon County Attorney's legal review and approval.

At the December 11, 2008 Board meeting, Department's request for reconsideration of the Board's Approval of the Private Water System Agreement for a Waiver, Release and Indemnity Agreement for a Private Water System, TMK: 4-2-03:12,65 and 66, Opaekaa Falls Subdivision (S-2006-47), situated at Wailua Homesteads, Wailua, Kaua'i was received for the record.

Discussion:

Acting Manager Fujikawa discussed that the reason why this item is on the agenda again is to keep the Board abreast of the status of this matter.

Acting Manager Fujikawa stated that the initial draft agreements included an Exhibit "A" that was Tom Nance's Engineering Report for the developer; however, in the more current drafts, it was inadvertently not included. Therefore, staff requested that Exhibit "A" be once again included in the final agreement. Acting Manager Fujikawa also requested that the Engineering Report for Exhibit "A" be signed and stamped by a licensed professional engineer to certify that the private water system conforms to the DOW's Rule and Regulations and Construction Standards. Mr. Graham concurred and will follow up to include Exhibit "A".

Acting Manager Fujikawa also stated that Planning Department should be notified that the Terms of our Agreement references that there will be no bonding, then the Planning Department could decide if a variance permit is warranted or not.

Mr. Graham testified that he represented the developer. He also gave a status update that in discussion with Mr. Jim Tagupa, who was with the County Attorney's Office at that time, there were two (2) items of discussion with Mr. Tagupa. One of the items was the bonding requirement that the Board waived as far as for the DOW's bonding requirements under their Rules only; however, they still have to work out the bonding requirements at the Planning Commission. Mr. Graham did talk to Mr. Cua at the Planning Department and was told that the Planning Department would uphold the bonding requirement at their level. Mr. Graham added that the alternative would be to apply for a variance permit, which they have decided not to do, so they will be bonding their project.

Mr. Graham stated that the second item Mr. Tagupa requested was to delete in the Agreement that the DOW would not be reviewing the plans, as it is a requirement for the County to review the plans as per the Subdivision Ordinance, along with bonding the project. Mr. Graham added that the County would need to review the plans in order to determine the amount of the bond.

Mr. Graham also stated that the final agreement before the Board includes the above revisions, and he indicated that the agreement has been signed by the developer. He was not sure if the County Attorney's office signed the agreement or not. Initially, the issue on the engineering standards was that the modifications were as shown on the attached engineering plans, where the applicant would only have to build the private water system in accordance with the plans. The DOW did not agree with these proposed designs and wanted the water system built to their standards, except as modified. Mr. Graham indicated, he did not think it would make sense to attach the old plans (Engineering Report) to the agreement. Instead, he proposed to submit the plans signed by the engineer certifying that it fulfills the Department's requirements and standards, except as modified by this agreement.

Further, Mr. Graham stated that as a condition of approval of the subdivision, the developers have to go back to the Department of Water; and the DOW will have to review the plans as certified and stamped by our engineer. In addition, the DOW will have to review the plans and make sure that the design meets the standards, except

as modified by this agreement. Mr. Graham thought this agreement was final, and he hoped to receive Board approval at this meeting, pending any comments from the County Attorney's office. And if there were more comments, then he would revise and re-execute the document.

Mr. Graham queried whether the Department was satisfied; since the applicant would have to go back to the Department to have the plans approved.

Acting Manager Fujikawa explained that the DOW is trying to document and reference the basis of the modifications that was approved by the Board. DOW interprets Exhibit "A" as an Engineering Report and not a document that reflects design plans. He further explained that there were exhibits in the report that show schematics that should not be interpreted as actual design drawings. Basically, the Engineering Report describes what the private water system should be, which forms the engineering basis of the design.

To clarify, Mr. Graham stated that the agreement does not contain the schematics anymore; however, since the DOW revised subdivision report requires that this Engineering Report be submitted and approved separately from the agreement. He felt that this adequately addressed the Department's concerns.

Acting Manager Fujikawa indicated that the Department's intent (in referencing the Engineering Report in the agreement) is to clarify the terms of the agreement.

Mr. Graham did not want to incorporate the Engineering Report as part of the Private Water System Agreement. He was concerned that if the details or content of the Engineering Report changed, the Private Water System Agreement would likewise need to be modified and the agreement may never get finalized. So if the Board was willing to approve the Private Water System Agreement, that would allow the developers to come back to the Department to work out the details of the design. Mr. Graham stated it was clear from the Department's revised subdivision report that the developers need to submit an Engineering Report in order to satisfy the Department of Water's requirements.

Prior to receiving a motion by Mr. Costa, there was a clarification request as to which version of the document was being considered as the final document.

Acting Manager Fujikawa clarified that, to date, the Department did not have the final document.

Mr. Graham indicated that on Page 5, Paragraph 10 of the agreement, the agreement states.....no development is allowed unless an engineer licensed in the State has filed a statement to the County certifying that the private water system has been constructed and completed in accordance with the provision of this agreement.

Mr. Graham also indicated, on Page 6, Paragraph 14, states that the Department will recommend final approval once the agreement is executed based on the terms and conditions contained and provided the applicant has satisfied the DOW's conditions for final subdivision approval as recommended to the County of Kaua'i. He reiterated

that final subdivision approval is contingent upon satisfying the conditions of the revised subdivision report which requires the submission of the Engineering Report.

Acting Manager Fujikawa responded to the Board's query as to whether the private water system needed to comply with the Department of Health's (DOH) Standards. He stated that the development may be subject to some regulations by DOH depending on how many people or how many meters are connected to the system. The proposed water system would technically be DOH regulated; however, currently, based on the number of meters, it would not be.

Mr. Graham explained that under the agreement, the private water system will have to comply with all DOH standards. There would not be enough service connections, but if the system serves more than twenty-five (25) people, then DOH regulations would apply.

Acting Manager Fujikawa elaborated that there is an item in the agreement that states, "the applicant will be responsible for notify DOH, should there be more than twenty-five people being served by the private water system."

Mr. Graham offered clarification regarding the requirement(s) of providing certification from a licensed engineer. The developers have to fulfill the Department's requirements, so that will have to be done before the plans are approved; and when the improvements are constructed, there would be a second certification as to construction.

The Board members inquired whether there would be a DOW inspector out there to monitor the construction. (*DOW would not inspect a private water system.*).... it may fall under the Planning Department's regulations.

Mr. Costa moved to approve the Private Water System Waiver, Release and Indemnity Agreement as amended, pending review by the County Attorney's Office, seconded by Mr. D. Fujimoto.

Mr. Nishimura stated that he thought the Department's request to have the supporting documents included in the agreement is a good idea since the Board deviated from the Standards. The basis of the deviation of the Standards necessitated the need for the agreement; therefore, he felt that should the basis of the modifications change (should whatever on the developers part change, whether there are more people or more units), then at that point, the Department would have the right to come back before the Board to suggest that the representations made by the developers have changed. He wondered if the Board still wants to allow this modification. For that reason, he suggested that the Board follow the Department's recommendation to include whatever documents they have, where at least if it is referenced within the document, the Department has something to go back and refer to.

Mr. Nishimura further stated that the understanding is that the Engineering Report is not the design document.

Mr. Graham stated that the Board is asking the developers to basically prepare an Engineering Report, submit it to the Department for its review and approval before the developers can complete this agreement. Because the Board wanted a final document and the developers would not have a final document unless the Department....I think the agreement covers that, it says, "we have to comply with the Department's requirements" and that was the Department's requirements; therefore, he felt that they needed to do the agreement first, and then the Engineering Report. Mr. Costa mentioned that the modifications were not memorialized in an exhibit, but Mr. Graham believed that the modifications were already made and they would have to make sure, technically, that the system complies with those modifications; so it is more of a technical review, which he felt the Board would not want to put into the agreement.

On query by Mr. D. Fujimoto to Mr. Nishimura on whether his intent was to accept this agreement subject to the modifications being substantiated by the Engineering Report, Mr. Nishimura replied that the Engineering Report that the developer submitted to date is basically their justification to the Board on why the Board should allow the modifications. Mr. Nishimura explained that he was only asking that it be included as part of the document because that is the basis upon which the Board decided to allow the deviation from the Standards.

Mr. D. Fujimoto felt that now they could not approve the agreement without looking at the justification. Mr. Nishimura wondered if the justification was in the appendix because based on this, the Board made their decision.

Mr. D. Fujimoto further explained that what he was asking is, "did the Department substantiate these modifications based on this information?" He felt that if that was the case, then, he was okay with it and it was just incorporating the information.

Mr. Nishimura stated that it was correct and that would allow the Department, should the basis of the modifications change, to revisit the issue with the Board; and he thought that was a fair issue.

Acting Manager Fujikawa stated that in an earlier version of the agreement, the Engineering Report was attached and referenced.

Mr. D. Fujimoto wondered why it wasn't attached on the revision. Acting Manager Fujikawa explained that it was inadvertently deleted on one of the Department's revisions and on the most recent revision and the report it was also omitted. Based on that, they requested that it would be good to have it in the agreement.

On query by Chair Kahawai if the Engineering Report was attached and the design certified, Acting Manager Fujikawa replied that he thought that version was the version that was presented to the Board back in November or maybe the meeting before.

Chair Kahawai stated that the Board is asking that the engineer sign and certify it for that purpose.

Mr. Graham replied that this is background material that was submitted and initially they were going to build according to the schematic. The Department felt that it was not sufficient which is why the developers are now going "full on" Engineering Report with details on the construction. The developers will prepare construction plans, which is what the Department is asking for and will get. He further explained that the basis for the modification was at least in some part based on this report which was submitted to the Board. He was not sure why the Board needed to have this as part of the agreement if it is in the Department's file. He stated that they all understood that the basis of the Department's modification was the materials submitted by the applicant including this.

Mr. D. Fujimoto tried to clarify his understanding of the discussion, "am I hearing this correctly, I guess the concern is if the actual is different from the proposed then, we need to follow the proposed?" Mr. Nishimura believed it to be his understanding too.

Mr. D. Fujimoto replied that if this is so, then they would have a problem, because the Board is approving something the developer is promising to do. And if they cannot fulfill that promise, then they did not do their part and they would not be able to build a house because they are saying the improvements will be done before they will build on the lot.

Mr. Graham reminded the Board that the Department will have control on what gets built because when they look at the plans, which will show the two water tanks and all the facilities; then they will give the okay, which is what everyone agreed upon and what was approved by the Board. In addition, they will report to the Planning Commission; and, hopefully, the Planning Commission will approve the subdivision. And then, the applicant will have to build according to those plans and have an engineer's certification that the facilities were built according to the plans; and, therefore, it just seems like the Board has the protection all the way around from that.

On query by Mr. D. Fujimoto to the County Attorney whether Paragraph 10 provides sufficient assurance, Ms. Esaki stated "As far as,(inaudible).... it has to be constructed and completed."

Mr. D. Fujimoto reconfirmed that it has to be constructed and completed; and if they do not meet that requirement, they cannot do any development and the concerns of conditions changing during the course of this, is covered under Paragraph 10 because, if they cannot meet what they are saying that they are going to do, then they cannot do the project.

Mr. Graham stated that was correct and no dwellings will get built until the water system is built and completed according to the plans, which will be reviewed by the Department of Water and as certified by the engineer overseeing the construction.

Mr. D. Fujimoto asked the staff whether they felt comfortable that Paragraph 10 provided enough assurance to approve the improvements. Acting Manager Fujikawa responded that when they looked at Paragraph 9 on Page 4, the modifications were in Paragraph 9. He felt that it was clear, based on the representations of the applicant, that the private water system will be constructed pursuant to the Water System Standards except for the modifications.

Mr. D. Fujimoto asked if they were very explicit. Acting Manager Fujikawa replied that the modifications were very detailed and specific. His question was based on the representation by the applicant because some of those representations were in that specific Engineering Report back in November. He added that if the Board is in agreement with the statement, based on representation of the applicant in the agreement, without really defining what those representations are, then, he would take that to mean they would move forward and(inaudible).

Mr. Graham stated that he will represent, on the record, before the Board, that those representations include materials that were supplied to the Board in the Tom Nance Water Resources' Engineering Report, dated September 2008.

Mr. D. Fujimoto stated that by looking at the modification conditions, he felt that the conditions were explicit enough to dictate what can and cannot be done based on the information, and to further clarify what was represented by the applicant, he felt that the Engineering Report by reference could be inserted.

Mr. Graham stated that he would prefer not to because he wants to get the agreement done, but if that is the Board's preference, then, what he would do in that section would be to say that the representations, including the Nance Engineering Report, is attached and is now Exhibit "B." He stated that he will attach the report and get everything resigned and resubmitted.

Mr. Costa questioned that this would not be a new report that has to be developed.

Acting Manager Fujikawa wondered why the report wasn't attached to the earlier one, Tom Nance's report.

Mr. Graham replied that the earlier version was how they would build a water system according to the report, as opposed to now building it to DOW standards.

Acting Manager Fujikawa asked if it was all the water system standards. Mr. Graham replied that it was, but he didn't think that he attached the entire report, just the schematics and it was there for a different reason than what the Board is asking for now.

Mr. D. Fujimoto added that now he sees some valid reasons for not attaching the Engineering Report, because it might send some false signals. This document (Engineering Report) reflects some improvements that are not up to water standards and is not specifically addressed as modified which might be some inference that by reference it is attached; and, therefore, it is also a modification. The exposure to the Board may be a lot more by not attaching this to the document because now the staff has a lot of latitude of determining what is considered standard.

Jerry Kaluna requested to address the Board. He reminded the Board of their role as the "policy making" body for the Department of Water. As the governing body, the Board is like the owner, they can "hire and fire".....in order for an organization such as the Department of Water to carry out their responsibilities, as the Board, they decide what are the regulations, policy and procedures. He added that the Board does not change its policies at a meeting..... which they are doing today. Similarly,

the last time he was here, the Board was going through the same process. The procedure to amend a rule and/or standard should be (through rule amendment) done by forming a Board Committee. He said the Department is basically trying to follow the Board's lead, but when there are changes (by approving modifications), they have the staff to be accountable to.....a whole list of engineers below, and all of them are going to say why are they changing. He stated that the Board has the power to do whatever they want, and based on the discussion, as the developer's attorney stated, "it was approved by the Board." The developers are ignoring completely the authority of the Department of Water and the Department is supposed to be the one representing the Board. He urged the Board to consider what he said about starting to change policies at meetings, which takes a lot of a time to go through.

Mr. Costa restated the motion to approve the Private Water System Waiver, Release and Indemnity Agreement as amended; pending review by the County Attorney's office.

Mr. D. Fujimoto asked if the Board could get the modification conditions explicit enough to not require the preliminary Engineering Report in order to get the Department to approve the document. He thought that the developer understood that process will take time and because even if the Board approves the document does not all of a sudden provide some unknown priority where the Board would be required to look at it right away.

Chair Kahawai called for the vote on the motion. On roll call, there were three ayes, Mr. Costa, Mr. Crowell and Mr. D. Fujimoto; four nays, Chair Kahawai, Mr. McCormick, Mr. Nishimura and Mr. Oyama. The motion was denied.

Chair Kahawai called for a new motion.

Mr. Nishimura stated that the Board previously approved the deviations and currently it is at the County Attorney's Office for review, and he asked that they complete their review to see if it is not required. He further stated that the basis of the modifications is basically they receive preliminary approval from the Board and that was why they are going through preparing an agreement.

Mr. Graham questioned what the Board wanted since they didn't like the agreement. He asked if they want him to attach the Engineering Report to the agreement; and if so, then they should pass a motion to him what they want. He said he would do it. He also felt that it was unfair to have the County Attorney figure out what they want.

Mr. D. Fujimoto thought that the approval was subject to the developers entering into an agreement.

Ms. Esaki stated that by listening to all the comments today and based on the recommendation to include the Engineering Report, she felt that if the agreement with the minimum standards identified would allow the Board to deviate from the standards and at least show a justification or an engineering basis for the modification report.

Mr. Graham asked again if that was it. He said he could do that and get the new agreement in. He repeated if that was what the Board wanted, and Ms. Esaki replied, “yes.”

For clarity, Mr. D. Fujimoto stated that his understanding of what the Members want was to revise the private water system Waiver, Release and Indemnity Agreement, as amended, by attaching the Engineering Report as Exhibit “B” to the document.

Chair Kahawai again called for the motion. Mr. D. Fujimoto moved to approve the Private Water System Waiver, Release and Indemnity Agreement, which will include the Engineering Report as Exhibit “B” and pending review by the County Attorney’s Office, seconded by Mr. Crowell; motion was carried.

Mr. Graham affirmed that he would take care of the request.

Mr. Graham left the meeting at 11:12 a.m.

A recess was called at 11:55-12:05 a.m.

Re: Request Board Review and Approval of the Non-Interconnect, Indemnification, Waiver and Release Agreement for the Brydeswood Agricultural Subdivision, Phase II (S-93-50) and Phase III (S-2006-04), TMK: 2-4-007:002 & 020, Kalāheo, Koloa District, Island of Kaua‘i

Mr. Tom Shigemoto was present at the Board Meeting (11:25 a.m.).

Recommendations:

The Department requests the Board review and discuss of the provisions of the Non-Interconnect, Indemnification, Waiver and Release Agreement (IIWR). A copy of the IIWR agreement is attached for your reference and review.

- **Recommend adding language in the IIWR agreement stating that as a condition for final approval of the Subdivision, in accordance with the Subdivision Ordinance, County of Kaua‘i, and the Rules and Procedures of the County Planning Commission, the Owner/Developer shall be required either to construct or to post a bond for the cost of constructing the Private Water System.**

If a bond is filed to secure final subdivision approval, the Owner/Developer shall clearly letter the following on the approved construction plans, final subdivision map and deeds: “Domestic water service will not be available until the required construction improvements for this subdivision are constructed and a licensed professional engineer has certified to the Planning Commission that work has been satisfactorily completed.”

The “Non-Interconnect, Indemnification, Waiver and Release” (IIWR) agreement, as written, does not bind the developers to “build or bond” the proposed private water system improvements. Paragraph 11 of the IIWR agreement states, *“This agreement shall be binding upon the respective*

successors and assigns of Owner/Developer and BWC (Brydeswood Water Company), and upon assignment hereof, the assignors shall be relieved of further liability hereunder, but shall not be relieved of any liability that may have occurred prior to the date of the assignment. This Agreement shall inure the benefit of the County.”

- The IIWR agreement should state, that the Owner/Developer requested the Water Board to grant a modification from the Water System Standards for the private water system for the Brydeswood Agricultural Subdivision, Phase II (S-93-50) and Phase III (S-2006-04). The Department of Water, County of Kauai’s Rule and Regulations, Part 3, Section XII, Modification of Requirements provide 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 modification 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. Based on the representations of the Owner/Developer, the private water system shall be constructed pursuant to the Water System Standards except for the following modifications of requirements identified and requested by the Owner/Developer.
- **Recommend that the modifications or deviations from the Rules and Standards be identified and stated in the IIWR agreement.** Other than the abovementioned modifications granted by the Board, the private water system shall be in compliance with Subdivision Ordinance, Section 9-2.4 of the Kaua’i County Code. Section 9-2.4 states that water supply and distribution facilities shall conform to the Rules and the construction standards of the Department of Water.
- **Recommend the private water system shall be designed to meet the potable water, agricultural water, and fire-flow protection requirements for the maximum development of the proposed subdivisions.** If the developers proposed a dual system, one for domestic and fire protection and a second for irrigation, the Department would not be as concerned on sizing of the potable water system to handle both demands.

The Owner/Developers stated, the (AG) zoning requires that they need to farm their property by law. Yet, they proposed that each lot have two (2) separate stub-outs sized for irrigation and domestic water based on the maximum allowable dwellings on each lot. Further stating, if the well goes down, the homeowner’s association and/or professional water company hired by the association could monitor and curtail irrigation water usage as necessary.

If the developers intend to develop an Agricultural subdivision, and if an Ag subdivision is required by law to farm, and being that farming is a water-intensive activity, how could the Owner/Developers be allowed to curtail irrigation water usage. If the water system is inadequately sized from the “get go,” who’s responsibility is it? Since this development is going through the

subdivision process, agency review and approval are required for final subdivision.

- **Recommend adding language stating that the Owners/Developers shall be responsible for any and all costs associated with removing and/or upgrading the private water system.**

Although the Owners/Developers are proposing a private water system, and do not intend to ever convey the private water system to the County.....the IIWR agreement should state that non-conforming or water facilities that are not in compliance with the Department's Standards shall not be conveyed. The Board should review and approve appropriate language which restricts conveyance of any sub-standard, unapproved materials to the Department.

- On March 24, 2009, Tom Shigemoto emailed a copy of the Planning Department's determination of the number of residential density allowable for Phase II and Phase III. The copy of the letter from Planning Department's letter dated March 16, 2009 is attached for the Board's reference and review. (Note: The Planning Department's letter was not signed and the total number of units did not exactly match the 86 units the developers represented at the Board meeting.)

As a note, Planning included the clarification and statement to the developers....."that residences with the State Land Use Agricultural District are considered Farm Dwelling Units. Furthermore, please be cognizant that uses on the subject parcel shall be limited to those listed as permissible uses with the "A" Agricultural District in the State Land Use Commission Rules and Regulations, pursuant to Hawai'i Revised Statutes (HRS) Chapter 205. "Dwellings" on the property shall mean a single-family dwelling located on and used in conjunction with a farm where agricultural activity provides income to the family occupying the dwelling.

- Attached is a scanned copy of the Basis of Design for Brydeswood Agricultural Subdivision submitted by the Owner/Developer. This information was provided through Tom Nance and is the data and calculations from which the Owner/Developer is asking the Department to review and decide the adequacy of the private water system.

Would guest cottages be permitted on each lot? Is work-force housing permitted? And, have these demands been factored into the water-demand calculations?

- The IIWR agreement references, and is binding upon an entity identified as Brydeswood Water Company (BWC), is this corporation established? If so, is BWC anticipated to be under the management of the Owner/Developer in perpetuity, or are the future homeowners of the subdivision responsible for the maintenance and operation of the private water system?

- Due to the indemnification provisions in the IIWR agreement and modifications of the rules and standards granted by the Board, the Board should be identified as the approving entity, not the Department of Water.
- The IIWR agreement included the County of Kaua'i, Director of Finance, as a signatory to the agreement. Is this necessary?

Upon final review of the IIWR agreement by the Board, County Attorney and Departmental staff, there may be additional clarifications and recommendations needed prior to executing the subject document; therefore, the Department recommends the Board reserve its right to include any other language that they deem necessary to clarify the terms and conditions of their approval.

Status Update:

At the November 13, 2008 Board meeting, the Board approved the applicant's request subject to review of the deed and any other agreements that staff deems necessary to accomplish their project.

By letter dated November 3, 2008, A & B Properties submitted a draft "Non-Interconnect, Indemnification, Waiver and Release Agreement for Brydeswood Subdivision to the Department for review.

The Non-Interconnect, Indemnity, Waiver and Release draft was recently reviewed by the County Attorney's Office in early March, 2009 and is currently under Department review. The purpose of the agreement is to clarify the private water system improvement's ownership and operation and the approved modification to the DOW Water System Standards for this subdivision as well as other items that relate to other subdivision private water systems. Completion of the binding agreement between the subdivider and the Board is necessary. The Department is currently reviewing the draft agreement and will schedule a meeting with the subdivider upon completion of the Board's review.

The Department is also preparing a revised DOW subdivision report for the Planning Department that will include the Board's approval of the private water system's conditions as well as previous DOW subdivision conditions for both subdivision applications.

Background:

In January, 2008, the DOW submitted Revised Subdivision Report recommendations for Brydeswood Subdivision, Phase II (S-93-50) and Phase III (S-2006-04), which provided the subdivision 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. Condition 3.e.(3), of the DOW revised report stated that the subdivider shall be responsible for the 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.

A & B Properties submitted a letter dated July 31, 2008 to the Board and subsequent letter to the Department of Water dated October 23, 2008 stating that the water system will be privately owned and requested to deviate from compliance with the Department of Water (DOW) Water System Standards, 2002 for their proposed private subdivision water system. The letter included a list of areas, which the Brydeswood Private Water System will deviate from the Water System Standards for the State of Hawai'i.

At the November Board meeting, the subdivision applicant and the Board agreed that restrictive covenants and/or an Ag Subdivision Agreement similar to other subdivision private well water systems shall be submitted by A&B Properties to the Board for its review.

At the November 13, 2008 Board meeting, the Board approved the applicant's request subject to review of the deed and any other agreements that staff deems necessary to accomplish their project.

Discussion:

Acting Manager Fujikawa stated that the recommendations were to request the Board's review and to discuss the provisions of the Non-Interconnect Indemnification Waiver Agreement. A copy of the latest version of the agreement was attached in the Board packet for review and reference. There were several points that staff wanted to make, which were noted by the bulleted item in the Board Report dated April 16, 2009.

Mr. Nishimura asked if it was the desire of the Board, that when they have these types of modifications that they follow a certain format, instead of having all different types of format. He stated that while recognizing this item pertains to a modification of Part 3, and if the Board does not establish a certain format, they would be dealing with all different types of agreements. Part of the reason he was cautious and held out on the previous agenda item was that the private water system agreements were one of the first ones for him as far as his term on the Board. He recommended that he would like to see the format of the private water system agreements remain relatively consistent; but on the one hand, he understood the desire of the applicant to have "a simplified format." He continued to say, for the Board and the Department, it would be better to have a more consistent format, by which the County Attorney's Office can evaluate the agreements.

Mr. D. Fujimoto agreed and stated that he would like a format. He suggested that any time the Board is requested to appeal or consider something over and above what is normal, the issue should be identified technically and to check the Administrative Rule or the procedure and the reason why they want that consideration. He believes that the Board needs to absolutely identify exactly what they are amending and what the Board is considering to approve.

In response to Mr. Costa's question regarding the agreement format, Mr. Nishimura replied that they should follow a more consistent format because he believed that Mr. Shigemoto's submission was a Non-Interconnect Agreement, which was quite a bit different from what was submitted by Opaekaa's Water System. Mr. Nishimura

thought that it might eliminate, in the future, some of the potential delays in providing the necessary paperwork to get through the process.

Mr. Costa asked Mr. Nishimura for his suggestion or if he wanted to develop a format.

Mr. Nishimura recommended deferring the matter back to staff so that they can work with the applicant. He commented that the Department and the applicant should come up with the necessary agreement to be submitted for approval since they have already gone through this with Opaekaa and would have better experience developing it.

Mr. Costa felt that they should not hold the applicants hostage and cause the applicants further delays because the Board has not developed a standard. He also agreed that the point was well taken and there should be standardized agreements; then the process would not be so difficult.

Mr. D. Fujimoto also agreed that there is a need for some kind of standardization to this process, but since this item is already on the agenda, he wanted to give the applicant an opportunity to present his side.

Chair Kahawai called upon Mr. Shigemoto to provide testimony.

Mr. Shigemoto stated that they were always willing to work with DOW staff, but the Non-Interconnect Agreement was sent back to DOW in November 2008. He understood that the staff is busy, and they didn't expect a response immediately; but felt nine months was enough time to get something back. He didn't expect the Board to be ready to approve this but they were waiting for comments and some of the things that came out in the Board report, they could have easily inserted if it was returned in a timely manner.

He wondered if the title of the agreement was the problem because that was basically why he sent it in, in the first place. He further stated that they were not trying to get away from anything; they were just trying to get the agreement in a form that the Board could approve. He deferred back to this staff report that was sent to the Planning Department in January of 2008 which outlines the requirements for a private water system. He believed that regardless of the title of the Waiver and (Indemnity) Agreement, it covers everything that is required by them in this amended report that was sent to Planning Department in 2008.

Mr. Shigemoto stated that he was here for clarification based on the November's minutes. He felt that the Board approved what they requested, which included the two (2)– 400 gpm wells, a 250,000 gallon tank, and the three separate individual deviations, which was mainly the use of steel, and HDPE and the gravel. He understood that everything was okay, but now there is a Waiver, Release and Indemnity Agreement, which he believes is a requirement to them. He stated that they are willing to provide and willing to amend, except for some of the items that have been mentioned in there. For example, under the first recommendation, this is the second part of the recommendation, if a bond is filed. He stated that they don't have a problem with posting a bond or having the owner/developer clearly letter the

following on the approved construction plans, final subdivision map and deeds, that domestic water service will not be available until the required construction improvements for this subdivision are constructed and a licensed professional engineer certifies to the Planning Commission that work has been satisfactorily completed. He pointed out in the waiver agreement that point might be covered in Item 2 and already covered.

Acting Manager Fujikawa replied that Item 2 is referring to the fact that the system would be private and the County is not obligated to provide water. He was suggesting that the statement needs to be clearer that domestic water service, either public or private will not be available until the water system is finished. Acting Manager Fujikawa further explained that they are trying to make the buyers who will be serviced by the private water system aware of this condition. The buyers should be aware that domestic water service will not be available until the required construction improvements for this subdivision are constructed and a licensed professional engineer certifies to the Planning Commission that work has been satisfactorily complete before the buyer's can receive water service.

Mr. Shigemoto replied that the County will not be involved with any part of this and the system will be owned by the owners.

Acting Manager Fujikawa replied that they are aware of this, but they want to let the potential buyers know before they buy the property that water may not be available.

Mr. Shigemoto felt that the Department should give the private developer more credit about the disclosure requirements when they sell their property, and they would not hide something like that. He asked the Board if that was really necessary since the Board is not responsible for maintenance and they are waiving all indemnification; waiving the liabilities. He further explained that they were going to be providing a water system that meets the Health Department's standards, all these different safety features are included in the system, and the Water Department is not involved.

Mr. D. Fujimoto stated he believed the issue was that the subdivider was not opposed to the revisions and the subdivider needed some idea of how long this process would take. He felt that the Department of Water is responsible for "everything," regardless of whether it is a private water system....automatically, the assumption is, "water comes from the Department of Water so why don't we have water." He agreed with including the provision as recommended by the Department, and he requested to defer the agreement back to staff.

Mr. Shigemoto wanted to know if what they presented the last time which include the two (2)-400 gpm wells and the 250,000 gallon tank was approved.

Mr. D. Fujimoto replied that he was concerned about one tank provided for the private water system and there is no redundancy of the conditions. Mr. Shigemoto replied that was something that they were going to be relooking; they were planning to have two (2) tanks.

Mr. Fujimoto responded that he felt that was a fair assessment and those were the kinds of details that needed to be worked out.

Mr. Shigemoto asked if that was what the Board approved in this last action in November.

Acting Manager Fujikawa offered clarification on the Board's motion in the November 13th meeting, which was from the minutes. The Board basically, approved the applicant's request subject to review of the deed and any other agreement that staff deemed necessary to accomplish their project. He also requested Board discussion on identifying the issue/requirements needed to give staff guidance; what agreements would be necessary to accomplish the project.

Mr. D. Fujimoto made a motion to request staff to provide some priority on this particular issue to work out the details and come to some agreement on the form of this agreement, seconded by Mr. Nishimura.

Mr. Nishimura asked what specifically would staff need to include. He recalled that some of the items Mr. Shigemoto requested were the consideration on the type of pipe materials, the 2–400 gpm wells/pumps, the materials for the tank, whether one or two tanks should serve the project, the gravel for the road, and the 400 gpm for potable use only. To further clarify, those items were the ones asked for the modification of standards. He stated that now that the Board, basically approved the modifications, it needs some kind of an agreement to go forward so that the subdivider can build out.

Mr. D. Fujimoto stated that he would like to discuss the terms of one agreement. The Board did not approve it unless it was substantiated by some basis, engineering basis; so the modifications that were recommended have to be justified based on some engineering report. He wanted to emphasize that the Board did not want to approve any deviations unless it was substantiated; and since the Board is considering a standard or policy, the Board needs to require and insure that whatever is being requested is substantiated and has some basis.

Mr. Shigemoto brought up an issue regarding the irrigation water. This relates to the proposed 2-400 gpm wells and the 250,000 gallon storage tank and whether there is one or two tanks, which appears to make sense. He stated that based on what the staff was saying their calculations show that they need a 1.3 million gallon tank. He felt that if that was going to be the standard, then it's "game over." He felt that they did substantiate and that was why they made the request and was what the Board approved; but now it may not be.

Mr. D. Fujimoto suggested that the subdivider work with staff towards a resolution; and if there is an impasse on both sides, those differences would be brought before the Board, and the Board would have the final say. He felt at this point, it was premature. Mr. D. Fujimoto again requested staff to look at it again.

Mr. Shigemoto insisted that there are differences and that is the reason why they came before the Board. He stated that was the reason that they have the agreement, that they are required to provide based on the request they made. He further said that he will provide the engineering data that the Board is asking for, which they already have. He thought that the Board already approved his request and the discussion was already held at that meeting

Mr. D. Fujimoto replied that the County Attorney can clarify what really was approved.

Mr. Shigemoto pointed out that they have been going through this for a long time, but Mr. D. Fujimoto felt that to respond effectively, they need to have all of the pieces on the table--not piece meal. And, he thought what was approved was more of a conceptual idea; and now, they are asking for the details and the details still need to be worked out.

Chair Kahawai called for the vote. The motion on the table is to set some priority on this particular issue to work out the details and come to some agreement on the form of this agreement.

Mr. D. Fujimoto requested to amend his motion. He stated that Mr. Shigemoto was not prepared to testify, he was here to find some clarity as to what was approved; and requested the County Attorney to provide the Board with some clarification of what was approved by that motion. In addition, this is contingent on the Board entering into this Indemnity Agreements.

Mr. D. Fujimoto stated that the agenda item was to discuss; however, he made a motion to request staff to expedite the review.

Ms. Esaki added that based on her recollection, the discussion was that it was not clear as to what Brydeswood would do with that particular land and what was the density of that project of how much water was necessary and what kind of system was proposed and how much water will be used to serve the project. She felt that is not a legal concern, but a concern regarding the (engineering) capacity for the system to service the development.

On query by Mr. Crowell if the private water system would be DOH regulated and PUC regulated, Mr. Shigemoto replied that it would not be PUC regulated.

Mr. Nishimura requested to have Mr. D. Fujimoto withdraw his motion. The motion and second was withdrawn by Mr. D. Fujimoto and Mr. Nishimura, respectively.

Mr. Nishimura moved to refer this back to staff and have them report back at the next meeting; seconded by Mr. Oyama.

Mr. Costa asked to clarify what staff has to report back on.

Mr. Nishimura replied that staff has to respond back to the applicant and go back to the format issue and state their position and the applicant's position. Staff will use the Opaekaa Falls Private Water System Agreement format to work from, to the extent possible; and if there are issues, whether those issues will hold up parts of this agreement, then those issues will have to be dealt with at the staff level.

Mr. Nishimura believed that the Board approval was a material issue, and they only approved the pump sizes; he did not recall any kind of sizing issue relative to the reservoirs.

Mr. D. Fujimoto requested that the County Attorney clarify what was really approved. Ms. Esaki suggested that Mr. D. Fujimoto go back to the minutes to determine what the Board approved.

Mr. Nishimura replied that he recalled the gravel in lieu of asphalt, the 2–400 gallon pumps, the use of steel in lieu of concrete, and use of HDPE in lieu of PVC or steel but he didn't think the sizing of the tank was a consideration.

Mr. D. Fujimoto responded that they already approved those modifications based on the applicant's request, and he felt that they do need a standard because they did not follow the previous requirements that they did for another project. He further stated that one of the big issues he had was the density on how many units would really be served by the 400-gallon pump. So in essence, by approval of that, it appears the Board approved their private water system; and the developer can proceed with his project without our water service.

Chair Kahawai called for the vote on motion on the table that the Board refer this back to the Department to work on the agreement. The motion was carried.

Mr. Shigemoto left the meeting at 11:50 a.m.

Re: Job No. 06-01, KW-28, Amfac Shaft 11 (State Well No. 5842-02), Phase IB, Facility Testing, Evaluation and Reporting, Kekaha, Kauai, Contract Amendment No. 3

RECOMMENDATION: It was recommended that the Board approve the third contract amendment with Brown and Caldwell, consultants for this project, to clean, seal and assist with collection or the water quality testing of the well. We further request that the Board allocate \$108,162.00 from Account 101b, CRP Reserve to fund the balance needed for the amendment and extend the contract completion date to August 31, 2009.

FUNDING:

Total Fund Available \$591,106.00

Contract No. 466, Brown and Caldwell
Job No. KW-28, Amfac Shaft 11 (State well
no. 5842-02), Phase IB, Facility Testing,
Evaluation and Reporting, Kekaha, Kauai..... \$572,431.00
Amendment #2..... \$ 12,852.00
Amendment #3..... \$113,985.00
Total Required..... < \$699,268.00 >

Balance Required (Account No. 101b, CRP Reserve)..... \$108,162.00

BACKGROUND:

Brown and Caldwell has completed the water quality testing and the results are uncertain as to whether the well water is under the influence of a nearby drainage pond or due to the well shaft being open and unsecured. Therefore, we would like to remove all debris including any insects, rodents, toads, etc, which may be

contributing to the water quality. Once that is completed, clean and chlorinate the water and shaft and seal the shaft from any influences which may contribute to the well water quality. The water quality will be re-evaluated, and they will revise the preliminary engineering report as necessary.

Brown and Caldwell submitted a proposal of \$113,985.00 for the work involved, which we feel is reasonable.

Mr. Crowell moved to approve the third contract amendment with Brown and Caldwell and to extend the contract completion date to August 31, 2009, seconded by Mr. Nishimura; the motion was carried.

Re: Contract Amendment for Job No. 02-03, 12-Inch Waterline along Kaumuali'i Highway and along Waimea Canyon Drive (Water Plan 2020 Project No. KW-14 & KW-16), Waimea, Kauai

RECOMMENDATION: It was recommended that the Board approve the contract amendment for Contract No. 397 with Paren, Inc. dba Park Engineering, for the subject project.

FUNDING:

Job No. 02-03, 12-Inch Waterline along Kaumuali'i Highway and along Waimea Canyon Drive:

Total Available Funding:.....	\$113,400.00
Contract No. 397, Paren, Inc. dba Park Engineering	\$108,000.00
Change Order #1	\$ 4,664.00 (Credit)
Contract amendment #1	<u>\$ 31,384.00</u>
Total Funds Required	<u><\$134,720.00></u>

Additional Funds Requested (Account No. 106.b, CIP Reserve)<\$ 21,320.00>

BACKGROUND:

This project includes the design for furnishing and installing materials for the installation of approximately 4,060 linear feet of 12-inch, 210 linear feet of 8-inch, 480 linear feet of 6-inch, and 70 linear feet of 4-inch water pipes, and appurtenances including connections to existing waterlines, removal and disposal of existing Asbestos-Cement, PVC and Ductile Iron waterlines within the State Right-of-Way, new valves, new fire hydrants, installation of new service laterals and meter boxes, transfer of service, reconnection of existing service laterals, installation of air valves and permanent cleanouts with meter boxes, salvaging fire hydrants, valves, and valve boxes, and restoration and repaving work, all in accordance with the plans and specifications.

During the final review process of designing the waterlines, it was required by the State Department of Transportation that new waterlines within the State Right-of-Way could no longer be installed as initially designed. The plans are being revised to meet the State DOT requirement in order to attain approval for SRF stimulus funding. This contract amendment will allow the consultant to do the necessary work for the DOW to revise the new pipelines within the State Right-of-Way to meet project deadlines.

The consultant, Paren Inc. dba Park Engineering, proposed \$31,384.00; and we propose a new contract end date of August 31, 2010 for this change in the project scope, and to extend the expired contract until the end of anticipated construction, which appears reasonable.

Mr. Crowell moved to approve the contract amendment with Paren, Inc. dba Park Engineering, seconded by Mr. Nishimura; the motion was carried.

Re: Discussion and/or Action by the Board on the DOW's Hiring of the Waterworks Legal Advisor

Mr. Costa moved to defer this matter, seconded by Mr. D. Fujimoto; the motion was carried.

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 Kaua'i Water Department

Recruitment for the vacant Manager position closed on Friday, March 6, 2009 and four resumes were received. Two of the four applicants met the minimum qualifications for this position, and interviews were held at the Special Board Meeting on Thursday, April 2, 2009.

This matter was deferred from the April 2nd Special Board Meeting and will be further discussed at the Thursday, April 16, 2009 Board Meeting.

Mr. Costa moved to defer this matter, seconded by Mr. D. Fujimoto; the motion was carried.

NEW BUSINESS:

Re: Request Board Approval of the Appointment of Gregg Fujikawa as Acting Manager and Chief Engineer of the Kaua'i County Water Department upon the Departure of Acting Manager Wynne M. Ushigome

It is requested that the Board approve the Appointment of Gregg Fujikawa as Acting Manager and Chief Engineer of the Kaua'i County Water Department upon the departure of Acting Manager Wynne M. Ushigome at the end of April, 2009.

Mr. Costa moved to approve the appointment of Gregg Fujikawa as Acting Manager and Chief Engineer upon the departure of Acting Manager Wynne M. Ushigome at the end of April, 2009, seconded by Mr. Crowell; the motion was carried.

Re: Funding for Job No. 04-06, KW-20, Kekaha (Waipao) Well 'B' Renovations, Kekaha

RECOMMENDATION: It was recommended that the Board reallocate \$700,000.00 from Job No. 04-05, K-12, Kalaheo Nursery Tank and Clearwell Renovations to Job No. 04-06, KW-20, Kekaha (Waipao) Well "B" Renovations.

FUNDING:

Job No. 04-05, K-12, Kalaheo Nursery Tank and Clearwell Renovations:	\$1,500,000.00
Job No. 04-06, KW-20, Kekaha (Waipao) Well "B" Renovations, Engineer's Estimate:	<\$ 700,000.00>
Balance Remaining:	\$ 800,000.00

BACKGROUND:

The design contract included both the Waimea Well "A" and the Kekaha (Waipao) Well "B" projects. Initially, the Department intended to construct both well renovation projects under one construction contract with funding from the State's Safe Drinking Water Revolving Fund (SRF).

During the final construction plan review process, it became apparent that these well sites were never conveyed to the Department of Water upon completion by the (State) Department of Land and Natural Resources. As such, the Department is unable to provide the required site certifications necessary to qualify for the SRF loan.

Further, Waimea Well "A" encroaches in an easement area, reserved for the Waimea Canyon Drive (State right-of-way). Although the encroachment does not appear to affect the highway, the State Department of Transportation (DOT) has requested that we hold up the construction of the Well "A" renovations until the right-of-way is established by DOT.

Since the design of the Kekaha (Waipao) Well "B" is ready for construction, the Department would like to proceed with advertising the Kekaha Well "B" project under the Department's funding, while trying to resolve acquiring the Executive Orders for both sites.

The status of the Department's pending projects were reviewed, and it was determined that the Kalaheo Nursery Tank and Clearwell Renovations will not be ready for bidding within this fiscal year. We, therefore, recommend that the funding required for the Kalāheo Nursery Tank and Clearwell project be reallocated to the Kekaha (Waipao) Well "B" project. The Department is proposing to fund the construction of the Kekaha (Waipao) Well "B" renovations from Account 101b, Water Utility Fund's Capital Rehabilitation Program budget.

Mr. Costa moved to reallocate \$700,000.00 from Job No. 04-05, K-12, Kalaheo Nursery Tank and Clearwell Renovations to Job No. 04-06, KW-20, Kekaha (Waipao) Well "B" Renovations, seconded by Mr. Nishimura; the motion was carried.

Re: Conveyance of Water Facility from Kukuiula Development Company (Hawaii), LLC, a Hawaii Limited Liability Company, for the Kukuiula Phase 1A Wastewater System (S-2004-45) TMK: (4) 2-6-15:013(por.), Koloa District, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby, Kukuiula 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: one (1) each, 1 ½-inch copper single service lateral for 1" water meter, in place complete, for the Kukuiula Phase 1A Wastewater System (S-2004-45) TMK: (4) 2-6-15:013(por.), Koloa District, Kauai, Hawaii.

Grant of Easement not required.

Mr. Nishimura moved to approve the Conveyance of Water Facility document from Kukuiula Development Company (Hawaii), LLC, seconded by Mr. Oyama; the motion was carried.

Re: Conveyance of Water Facility from Arnold B. Nurock and Meredith Carol-Nurock Glass, TMK: (4) 5-3-05:001, Anini Road, Anini, Kauai, Hawaii.

It was recommended that the Conveyance of Water Facility document be approved; whereby, Arnold B. Nurock and Meredith Carol-Nurock Glass transfers unto the Board of Water Supply, County of Kauai, all of is right, title and interest to a single service connection for 5/8" water meter, in place complete, in accordance with the as-built construction drawings for INSTALLATION OF 2nd SINGLE SERVICE LATERAL FOR LOT D, prepared by Portec Engineering, LLC, TMK: (4) 5-3-05:001, Anini Road, Anini, Kauai, Hawaii.

A Grant of Easement is not required.

Mr. Nishimura moved to approve the Conveyance of Water Facility document from Arnold B. Nurock and Meredith Carol-Nurock Glass, seconded by Mr. Oyama; the motion was carried.

Re: Conveyance of Water Facility from Francis G. Green and Josephine A. Green, TMK: (4) 3-3-12:006, Hanahao Place, Puhi, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby Francis G. Green and Josephine A. Green transfers unto the Board of Water Supply, County of Kauai, all of is right, title and interest to a 2½ service connection for 2" (fire) detector check water meter, in place complete, in accordance with the as-built construction drawings for CONSTRUCTION PLANS FOR INDUSTRIAL/STORAGE BUILDING FOR FRANCIS GREEN, prepared by Esaki Surveying and Mapping, Inc., TMK: (4) 3-3-12:006, Hanahao Place, Puhi, Kauai, Hawaii.

A Grant of Easement is not required.

Mr. Nishimura moved to approve the Conveyance of Water Facility document from Francis G. Green and Josephine A. Green, seconded by Mr. Oyama; the motion was carried.

Re: Conveyance of Water Facility from Elesther Calipjo and Milagrose A. Calipjo, TMK: (4) 3-3-12:007, Hanahao Place, Puhi, Kauai, Hawaii

It is recommended that the Conveyance of Water Facility document be approved; whereby Elesther Calipjo and Milagrose A. Calipjo transfer unto the Board of Water Supply, County of Kauai, all of is right, title and interest to a 2½ service connection for 2” (fire) detector check water meter, in place complete, in accordance with the as-built construction drawings for CONSTRUCTION PLANS FOR INDUSTRIAL/STORAGE BUILDING FOR ELESTHER CALIPJO, prepared by Esaki Surveying and Mapping, Inc., TMK: (4) 3-3-12:007, Hanahao Place, Puhi, Kauai, Hawaii.

A Grant of Easement is not required.

Mr. Nishimura moved to approve the Conveyance of Water Facility document from Elesther Calipjo and Milagrose A. Calipjo, seconded by Mr. Oyama; the motion was carried.

Re: Conveyance of Water Facility from Paul G. Kyno, TMK: (4) 3-3-12:008, Hanahao Place, Puhi, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby Paul G. Kyno transfers unto the Board of Water Supply, County of Kauai, all of is right, title and interest to a 2½ service connection for 2” (fire) detector check water meter, in place complete, in accordance with the as-built construction drawings for CONSTRUCTION PLANS FOR INDUSTRIAL/STORAGE BUILDING FOR PAUL KYNO, prepared by Esaki Surveying and Mapping, Inc., TMK: (4) 3-3-12:008, Hanahao Place, Puhi, Kauai, Hawaii.

A Grant of Easement is not required.

Mr. Nishimura moved to approve the Conveyance of Water Facility document from Paul G. Kyno, seconded by Mr. Oyama; the motion was carried.

Re: Right of Entry Agreement for the Pipeline Replacement for Lihue Town, Job No. 04-04, Water Plan 2020 Project No. PLH-9 Affecting the Following Landowners in Lihue, Kauai, Hawaii

1. Baron Hiranaka and Stephanie Hiranaka, Trustees of the Baron Hiranaka and Stephanie Hiranaka Trust, and Mark H. Hiranaka, Trustee of the Mark H. Hiranaka Trust, affecting Portion of TMK: (4) 3-6-09:010, Lihue, Kauai, Hawaii
2. Tanaka Properties Family LTD., affecting Portion of TMK: (4) 3-6-09:020, Lihue, Kauai, Hawaii
3. MTS Family LTD Partnership, Arleen Tanaka and Roy S. Tanaka, affecting Portion of TMK: (4) 3-6-09:008, Lihue, Kauai, Hawaii
4. Mumeno Igawa, Trustee of the Mumeno Igawa Trust and Shizue Murashige, Trustee of the Shizue Murashige Trust, affecting Portion of TMK: (4) 3-6-03:062, Lihue, Kauai, Hawaii

5. Association of Retarded Citizen, affecting Portion of TMK: (4) 3-6-03:045, Lihue, Kauai, Hawaii
6. Mildred E. Sasaki, Trustee of the Henry I. Sasaki Trust and Mildred E. Sasaki Trust, and Lihue Barbecue Inn Ltd., affecting Portion of TMK: (4) 3-6-09:030 (Lot 9), Lihue, Kauai, Hawaii
7. Roberts of Kauai, Inc, affecting Portion of TMK: (4) 3-6-09:029 (Lot 10), Lihue, Kauai, Hawaii
8. Noboru Hiraoka, Trustee of the Noboru Hiraoka Trust and Noboru Hiraoka, Trustee of the Hazel T. Hiraoka Trust, affecting Portion of TMK: (4) 3-6-09:015 Lihue, Kauai, Hawaii
9. Stanford K.W. Au, Trustee of the Stanford K.W. Au Trust and Winifred K.Y. Au, Trustee of the Winifred K.Y. Au Trust, affecting Portion of TMK: (4) 3-6-09:013, Lihue, Kauai, Hawaii
10. Hawaii Link Center, LLC, affecting Portion of TMK: (4) 3-6-09:014 Lihue, Kauai, Hawaii
11. Derek M. Umakoshi, Trustee of the Derek M. Umakoshi Trust, affecting Portion of TMK: (4) 3-6-09:016 (Lot 2) Lihue, Kauai, Hawaii
12. Claus Z. Hansen and Dian Hansen, affecting Portion of TMK: (4) 3-6-09:017 (Lot 3) Lihue, Kauai, Hawaii
13. Plumeria Holdings LLC, affecting Portion of TMK: (4) 3-6-09:018 Lihue, Kauai, Hawaii
14. Michael L. Womack and Dennis K. Sunada, affecting Portion of TMK: (4) 3-6-09:019 (Lot 5) Lihue, Kauai, Hawaii
15. Commerical Properties Ltd., affecting Portion of TMK: (4) 3-6-09:027 (Lot 12) Lihue, Kauai, Hawaii
16. White Rock Corporation, affecting Portion of TMK: (4) 3-6-09:024, (4) 3-6-09:025 and (4) 3-6-09:026 Lihue, Kauai, Hawaii
17. Jean K. Nakamura, Trustee of the Glenn M. and Jean K. Nakamura Trust, affecting Portion of TMK: (4) 3-6-09:033 Lihue, Kauai, Hawaii
18. Alan K. Tada, affecting Portion of TMK: (4) 3-6-09:023 Lihue, Kauai, Hawaii
19. Westridge Properties LLC, affecting Portion of TMK: (4) 3-6-04:009 Lihue, Kauai, Hawaii
20. Nuhou Corporation, affecting Portion of TMK: (4) 3-6-04:001 and (4) 3-6-04:010 Lihue, Kauai, Hawaii

21. Tsutao Morioka, Trustee of the Tsutao Morioka Trust and Harriet N. Morioka, Trustee of the Harriet N. Morioka Trust, affecting Portion of TMK: (4) 3-6-09:040 Lihue, Kauai, Hawaii
22. Yoshitaka Hayashi, Trustee of the Yoshitaka Hayashi Trust and Dorothea K. Hayashi, Trustee of the Dorothea K. Hayashi Trust, affecting Portion of TMK: (4) 3-6-07:004 Lihue, Kauai, Hawaii
23. Alan Scott Garcia, affecting Portion of TMK: (4) 3-6-03:052 Lihue, Kauai, Hawaii
24. Kalena Gardens LLC, affecting Portion of TMK: (4) 3-6-04:019 Lihue, Kauai, Hawaii
25. Paradise Service Company, affecting Portion of TMK: (4) 3-6-07:042 Lihue, Kauai, Hawaii
26. Kerry Blaine and Shona Fox, Trustees of the Kerry Blaine and Shona Fox Trust, affecting Portion of TMK: (4) 3-6-07:018 Lihue, Kauai, Hawaii
27. Kauai Government Employees Federal Credit Union, affecting Portion of TMK: (4) 3-6-07:005 Lihue, Kauai, Hawaii
28. Lowell T. Yamaura and Humilitas T. Yamaura Revocable Living Trust, affecting Portion of TMK: (4) 3-6-07:027 Lihue, Kauai, Hawaii

RECOMMENDATION:

It was recommended that the Board approve the Right- of-Entry documents; whereby, the above landowners, grant to the Board of Water Supply, County of Kauai, a right-of-entry, on, over and under that certain parcel of land located as specified above in Lihue, Kauai, Hawaii, for the following work:

1. Relocation of existing water meters from private property to County of Kauai right-of-way, together with the right of ingress and egress at any time to and from the said lot with or without vehicles or other equipment as the Department of Water shall deem necessary to complete the work.

Further, Board approval is specifically requested of the indemnification provision in this agreement; wherein, the Board agrees to indemnify and hold harmless the Grantor from property damage and injuries to person (including death), when such damages and injuries are caused by the Department's negligence while using the area.

FUNDING: Not applicable.

BACKGROUND:

Portions of the existing waterlines along Hoala Street, Kalena Street, Pala Street, Kress Street, Hale Nani Street, Malama Street, Ewalu Street, Pala Street, and Umi Street will be replaced in 2009. During the waterline design phase, it was observed that existing water meters are currently installed outside of the County of Kauai Right of Way. The right of entry will allow the future contractor to relocate all affected meters to within the County of Kauai Right of Way during construction.

Mr. Nishimura moved to approve the right- of-entry documents from the above landowners for certain parcels of land located as specified above in Lihue, Kauai, Hawaii, seconded by Mr. Oyama; the motion was carried.

Re: Grant of Easement for the Pipeline Replacement for Lihu'e Town, Job No. 04-04, Water Plan 2020 Project No. PLH-9 Affecting the Following Landowners in Lihue, Kauai, Hawaii

1. Gary M. Morita, Roy M. Morita, Joyce E. M. Salvador, and Samuel R. Wallis Jr., Trustee of the Dora R. Wallis Trust, affecting TMK: (4) 3-6-03:060, Lihue, Kauai, Hawaii
2. Samuel R. Wallis Jr., Trustee of the Dora R. Wallis Trust, affecting TMK: (4) 3-6-03:056, Lihue, Kauai, Hawaii

It was recommended that the Board approve the grant-of-easement documents; whereby the above landowners grant to the Board of Water Supply, County of Kauai, a perpetual easement on, over and under that certain parcel of land located as specified above in Lihue, Kauai, Hawaii, for the construction, installation, reinstallation, maintenance, repair and removal of potable water pipelines, related meters, valves, and other associated waterworks facility improvements and appurtenances, together with the right of ingress and egress at any time to, from, and through the easement area, with or without vehicles or equipment, as the Department of Water shall deem necessary for the proper operation of its water system.

Further, Board approval is specifically requested of the indemnification provision in this agreement, wherein the Board agrees to indemnify and hold harmless the Grantee from property damage and injuries to person (including death), when such damages and injuries are caused by the Department's negligence while using the area.

Mr. Nishimura moved to approve the grant-of-easement documents from Gary M. Morita, Roy M. Morita, Joyce E. M. Salvador, and Samuel R. Wallis Jr., Trustee of the Dora R. Wallis Trust, seconded by Mr. Oyama; the motion was carried.

Re: Resolution No. 9, (08/09), Mahalo and Aloha Wynne M. Ushigome

It was requested that the Board approve Resolution No. 9 (08/09), Mahalo and Aloha Wynne M. Ushigome, who will be leaving the Department of Water as of April 30, 2009.

Mr. Nishimura moved to approve Resolution No. 9, seconded by Mr. Oyama; the motion was carried.

REPORTS

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

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

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

Public Relations Specialist Faith Shiramizu gave the following report:

Contractors Association of Kaua'i - 17th Annual Home Show: The 2009 CAK Home Show was held on April 3rd and 4th at the Kaua'i War Memorial Convention Hall. The DOW booth was impressive having the Water System Model on display. We received many compliments and were able to promote water conservation to the people that was attracted to our booth. It was refreshing to find that most of the people were very aware of the need to conserve water and practicing many of our water conservation measures we promote.

Department volunteers were able to address some of the questions and came away with a few that we will be following up on. Thank you to Keith K. for addressing a question about catchment (he was there as a consumer and stepped in to share his knowledge).

According to Karen Taketa, there were over 1000 people that attended the show and she commented on hearing rave reviews about our booth. They were very happy to have the department participate along with the other County Agencies.

Credit for our booth and much appreciation goes out to our outstanding volunteers.

- Decoration and set up: Eddie Doi, Keith Konishi, Mona Yamauchi, Peggy Yoshioka and Emi Tanihiro. (Special Mahalo to Keith K., Peggy and Keith F. for cleaning the Water System Model.)
- Booth volunteers: Emi Tanihiro, Wynne Ushigome, Keith Fujimoto, Clarita Remigio and Rona Miura.
- Clean up: Keith Fujimoto, Rona Miura, Wynne Ushigome and Faith Shiramizu.
- DOW CAK Chair: Faith Shiramizu

SRF/Stimulus: Momentum continues as we work on fulfilling requirements to receive SRF and Stimulus funding as time is of the essence.

Pipe Tapping Team: The Women's Pipe Tapping Team is organizing and started practicing the week of April 6th. Equipment and supplies have been ordered and the team is ready to do their best to represent Kaua'i. Team members are; Margie Loo (feeder), Leila Kamakele (cranker), Norma Imada (flarer) and Jenny Lewis (coach). They will again be assisted by Stanley Sarmiento and Peter Sapinoso.

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

Re: Acting Chief of Operations' Summary Report on the Monthly Operational Maintenance Report

Mr. Nishimura moved to receive the Monthly Operational Maintenance Report and placed on file, seconded by Mr. Oyama.

Re: DOW Quarterly Projects Briefing

Attached is a written quarterly report of the status of the DOW's projects, along with an Executive Summary, for the Board's information.

Re: Manager's Update for March, 2009 to April, 2009

Acting Manager Ushigome reported on the following:

CONTRACTS AWARDED BY THE MANAGER:

Re: Solicitation GS-2009-02, Furnishing & Delivery of One (1) Skid Steer Loader & Accessories

Awarded a contract to Allied Machinery for the above at \$54,582.99
Funds available from Account No. 106, Vehicles and Equipment
for the Skid Steer Loader & Accessories..... \$70,000.00

PUMP INSTALLATION PERMITS SIGNED BY MANAGER: None.

WAIVER, RELEASE AND INDEMNITY AGREEMENTS SIGNED BY THE MANAGER: None.

Affordable Housing Update:

Affordable Housing Task Force (AHTF) meeting was held on Monday, March 9, 2009 at Pi'ikoi Conference Room A.

Updates on AHTF Projects:

1. DHHL – Anahola Residence Lots Unit 6, "Pi'ilani o Kekai, Phase 1: County Housing Agency is reviewing a MOU which would allow DHHL to work with the developer to issue credits or financial assistance to qualified applicants. The DOW Anahola Well No. 3 that will serve the development is nearing completion.
2. Habitat - Eleele I Luna Subdivision Phase 2: Project includes 106 lots and one park. County Attorney reviewing road lots. Habitat intends to develop Phase 2 into multiple increments. The developer Kaua'i Habitat was granted a CDBG award for the Phase II sewerline construction. Currently, DPW, Wastewater and Planning are reviewing the construction drawings.
3. Kauai Lagoons – Courtyard at Waipouli: Revised final subdivision map includes the "parking lot", map will be circulated to the agencies for review. Deadline to complete and occupy the project is June 18, 2009 per the project's Housing Agreement.
4. Kauai Lagoons – Kapule Project - The 31-unit affordable housing project received their grading permit from DPW. DOW will approve the installation of two fire hydrants along Haoa Street and Kapule Highway for the development.
5. Kukui'ula Employee Housing – In February, the developer has resubmitted the revised WMP to DOW.

6. Kohea Loa (Hanamaulu Triangle) - DOW received and is reviewing the revised December 22, 2008 draft version of the Grove Farm Amfac/JMB Lihue Hanamaulu Potable Water Master Plan. The Department completed the review and transmitted its comments back to Grove Farm and their consultant in April, 2009.
7. Paanau Village, Phase 2 - The Housing Agency will depend on the engineering design to determine the access to the project site.
8. State Affordable Housing Parcels – Housing Agency preparing RFQ list for EIA for the State Land Parcel project.

Next meeting of the AHTF is scheduled for Monday, April 13, 2009, at the Pi'ikoi Conference Room A at 10:00am-11am.

Niumalu-Nawiliwili Community Planning Project (NNCPP-Judy Webb):

The Department received an executed copy of a Waiver, Release and Indemnity Agreement from NNCPP allowing Ms. Judy Webb to use the existing meter issued to NNCPP on March 20, 2009. The County Attorney Office requested that the NNCCPP Board provide a resolution or equivalent that authorizes their Secretary to sign on behalf of NNCPP. A discrepancy with the Tax Map Key number was also noted in the document. Once the TMK Nos. are corrected and the NNCPP Board resolution is received, the Manager, the County Attorney and the Board Chairman can sign the agreement. The Department has kept Ms. Webb apprised of the status.

Opaekaa Falls Subdivison

The Private Water System Waiver, Release and Indemnity Agreement for TMK: (4) 4-2-003:012; (4) 4-2-003:065; (4) 4-2-003:066 was still being reviewed by the County Attorney's Office.

BrydeswoodSubdivision PhII(S-93-50), Ph III (S-2006-4) Non-interconnect, Waiver, Release & Indemnity Agreement:

The Non-interconnect, Waiver, Release & Indemnity agreement draft was recently reviewed by the County Attorney Office and is under staff review. This agreement clarifies the private water system improvements and the approved modifications to the DOW Water System Standards for this subdivision. The staff will also prepare a revised DOW subdivision report for the Planning Department that will include the Board's approval of the private water system conditions for both subdivisions.

Koloa Creekside Estates, Civ. 07-1-0191 (Court Order), TMK: 2-8-09:001, Koloa, Kauai :

The Department completed a "night time" water main connection for the Koloa Creekside Estates, Phase I on May 29, 2009. As a result the Planning Department received a call from an abutting resident concerned about the work proceeding despite the Court Order restriction condition regarding working hours for the project. The Department informed the Planning Department that the required "water shutdown" in the immediate area was coordinated with the contractor and the affected businesses and residents to minimize the inconvenience and loss of

revenue to our customers. Hand carried “water shutdown” notices were delivered to the affected customers prior to the night work.

According to the Planning Department there is no distinction between Koloa Creekside Estates, Phase I and Phase II in the Court Order. They also clarified that although the hours/days of operation were included as conditions for the earlier zoning permit for the project, it did not end up in the Court Order. However, they suggested that having advanced notice in the future is a good idea to keep the community better informed.

Currently, the Department has approved the water improvement plan for the eight water meters for Phase I but has not approved water meter service for the 72 units for Phase II.

To avoid further confusion, the Department will notify the other agencies (County Attorney, Planning, Public Works, Health Department and Building Division) of any pending work prior to scheduling and conducting work for Koloa Creekside Estates and likewise for The Shops at Koloa project which is also affected by a separate court order.

Mr. Oyama suggested that letter of thanks be sent to these employees. It was so noted.

Motion was carried.

Re: Report of the Finance Committee of the Kaua‘i County Board of Water Supply

Matter deferred to the end of this meeting.

Re: Report of the Rules Committee of the Kaua‘i County Board of Water Supply

No additional report.

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

No report.

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

Re: Report from Issue Champions

Ms. Shiramizu reported on the following:

Issue No. 1, Morale:

1) Fun Committee Events:

- a) **Cleanup Day** which occurred on March 20th was a great success, with over a dozen big trash bags filled for paper recycling. Thanks to Russell Coyaso and crew for taking it all for recycling. It was a nice break, yet very productive day as many work areas look much better hopefully creating a more productive environment. Thanks to Wynne, Peggy, and Keith A. for the delicious lunch and drinks!
- b) The **Sleeping Giant hike** was enjoyed by participants on March 22nd. The views were spectacular and fellowship was good.
- c) Second Quarter will bring a crabbing outing and a cookout.

2) Rewards Committee: First Quarter awards were presented at the Employee Meeting held on March 19th. **CONGRATULATIONS EMPLOYEE OF THE FIRST QUARTER, KEITH KONISHI!!!!**

WATER Bucks were awarded to:

- a) **Keith Konishi** always goes out of his way to be helpful and cooperative, always ready to cheerfully lend a hand to a fellow employee in need, whether it's in his line of duty or not. He provides the same level of service to our external customers, as he has consistently gone out of his way to research ways to see how he can better serve and improve customer service to reduce any negative reactions from our customers. Keith is an asset to the department, always willing to go the extra mile from the goodness of his heart, with no strings attached. (*Rona*)
- b) **Springwater Kaulili** for his rapid and proactive coordination for the Menehune Road storm water damage on 12/15/08. Despite the absence of the Operations Division Head, Springy conducted the initial assessment and setup the response by coordinating the repair and emergency contract with a local contractor and arranged for inspection support by DOW and Department of Public Works. (*Gregg*)
- c) **Gerry Yamamoto** for her efficient and proactive support in the Menehune Road storm incident on 12/15/08. Gerry was critical in the timely response of preparing the emergency work contract for the local contractor to conduct the emergency repair. (*Gregg*)
- d) **Rosalyn Cristobal-Ribucan** stayed after work on her own time to search billing records for water meter information that was needed to review a building permit application. The information that Roz was able to find helped WR/P to expedite the review of a building permit application. (*Keith A.*)
- e) **Keith Fujimoto** has shown his commitment to the department and our customers by his hard work and dedication in overseeing many of the projects necessary to move WP2020 projects forward as well as mentoring Dustin on the ins and outs of getting a project from design to construction and completion. (*Faith*)
- f) **Dustin Moises** pushed out more projects last year than a normal young Engineer would have. By doing this, he not only helped the department to move WP2020 projects forward, he allowed the DOW to utilize low interest

loans that other counties were not prepared to take advantage of as well as creating many jobs that will ultimately help our island economy. *(Faith)*

- g) **David Okamoto** for providing the DOW with his reliable, dependable and conscientious commitment. When on standby, David is on-hand to address the problem(s) and has earned the respect of his peers, creating a strong team to resolve and monitor the water system until repairs are complete. David can be counted on in any emergency – big or small. *(Wynne)*
- h) **Tommy Tokuda** for coming in on a weekend to research the waterline connections and assisting fellow co-workers who needed information during an emergency in Lihue on 3/13/09. As an inspector, Tommy has acquired a wealth of knowledge and experience over the years, which he shares without hesitation. *(Wynne)*

Issue No. 2, Strong and Qualified Workforce:

Recruitment

- 1) Civil Engineer III Water Resources & Planning Division – Interviews held. Recommendation being submitted to the manager.
- 2) Equipment Operator II – Selected. Start date: April 1, 2009.
- 3) Engineering Drafting Technician III – Department of Personnel Services (DPS) will forward the list of eligibles. After receipt of names, interviews will be scheduled.
- 4) New Accountant I position created. Awaiting eligibles list from DPS.
- 5) Short Term Water Resources Technician employment period ends June 30, 2009.

Training

- 1) National Rural Water Association (NRWA) continues to conduct monthly training until September 9, 2009.
- 2) Plans being made for Ray Ohta to conduct training sessions for front office.

Issue No. 3, Water Quality:

- a) Sample site work order for Kuamoo Rd. submitted in September, but no work yet.
- b) New sites chosen for routine sampling to replace sites that were hard to access or have been removed
- c) Main break monitoring on hold, pending finalizing procedures and follow up between both the Lab and Operations
- d) New Issue #3 champion or co-champion should be from Operations.
- e) Decided to go with Triggered Monitoring Plan for the new GWR.
- f) Sampling sources to see if any will present problems with fecal indicators if triggered monitoring is required.

PROJECTS UNDER DESIGN:

- 1) Job 02-03, KW-14, KW-15, 12" Waterline along Kaumualii Highway and Waimea Canyon Drive (Consultant: Park Engineering) – Plans and specifications under review.

- 2) Job 04-06, KW-05, KW-20, Waimea Well A and Kekaha Well B Renovations (Consultant: Engineering Solutions) – Completed the final plans and specifications.
- 3) Job 04-04, PLH-09, Pipeline Replacement for Lihue Town (Consultant: Akinaka & Associates) – Construction plan tracings being routed for approval signatures.
- 4) Job 03-02, HW-03, (Phase II), Wainiha Booster and Haena Tank Renovations (Consultant: Brown & Caldwell) – Consultant preparing the revised plans and specifications to address the DOW's review comments.
- 5) Job 05-07, K-07, Waha, Wawae and Niho Roads Main Replacement (Consultant: Akinaka & Associates)
 - a. Construction contract finalized.
 - b. Pre-construction conference with contractor Koga Engineering & Construction held on April 6, 2009.
- 6) Job 05-01, KW-16, KW-23, Waimea Town Waterline (Consultant: Hawaii Pacific Engineers) – Plans and specifications under review.
- 7) Job 02-18 WK-32 Phase II, Kaehulua Road Waterline (Consultant: Fukunaga & Associates) – Received Board approval and additional funding to proceed with the Phase II design.
- 8) Job 04-02, WK-14 Phase II, Apopo Road Waterline (Consultant: Fukunaga & Associates) – Received Board approval and additional funding to proceed with the Phase II design.
- 9) Job KW-28 Amfac Shaft (Consultant: Brown & Caldwell)
 - a. Received the MPA results, which indicates that the well water is not affected by the surface (pond) water.
 - b. Forwarded to consultant to finalize reports.
- 10) Job 02-06, WKK-15 Kilauea Tank #2 (Consultant: Kodani & Associates) – Negotiating with landowners of the proposed tank site.
- 11) Job 05-02, H-8 Drill and Test Hanalei Well #2 (Consultant: Kodani & Associates) – Negotiating with landowners of the proposed well site.
- 12) Job 05-02, HW-12 Drill and Test Wainiha Well #4 (Consultant: Kodani & Associates) – Consultant preparing the Environmental Assessment.
- 13) Job 02-14, Kapahi (Ornellas) Tank (Consultant: Belt Collins)
 - a. Negotiating with landowners adjacent to the existing Ornellas Tank site.
 - b. Also investigating a potential new tank site.
- 14) Job No. 02-24, WK-02 Renovate Akulikuli Tunnel, Phase 2 (Consultant: SSFM International) – Consultant preparing the preliminary plans.
- 15) Job WK-39 Kapaa Homesteads Well #4 (Consultant: Hawaii Pacific Engineers)
 - a. Received the final well selection report.
 - b. Proceeding with the Environmental Assessment for the proposed well at the Ornellas Tank site.

PROJECTS UNDER CONSTRUCTION:

- 1) Job 94-3, K-10, Kalaheo 0.5MG Reservoir, Booster Pumps and Connecting Pipelines (Consultant: Paren, Inc.) (Contractor: Kauai Builders) – Project 99.47% complete.
- 2) Job A-11, Anahola Well 3 (Consultant: Akinaka and Associates) (Contractor: TOMCO) – Project 89% complete.
- 3) Job 03-02, A-04, KW-06, (Phase I), Anahola 0.15 MG Tank and Kekaha Shaft Renovations (Consultant: Brown and Caldwell) (Contractor: TOMCO) – Project is 95% complete.
- 4) Job 05-03, KW-25, 03-03, KW-24, Kapilimao 0.5MG Tank and 03-03 Generator Shelter (Consultants: Brown and Caldwell, Kodani & Associates)(Contractor: Kauai Builders)
 - a. Bid opening held.
 - b. Kauai Builders is the apparent low bidder.
- 5) Job 03-01, KW-03, Elepaio Road 8" Waterline (Consultant: Engineering Solutions) (Contractor: Cushnie Construction) – Project is 95% complete
- 6) Job 02-14, WK-08, 03-03, WK-15, Kapaa Homesteads 0.5 MG Tank and Makaleha Generator Shelter (Consultants: Belt Collins, Kodani & Associates, Contractor: Kauai Builders) – Project is 17% complete.
- 7) Job WK-42 Phase I, 1 MG Stable Tank and Control Valves (Consultant: Tom Nance Water Resource Engineering, Contractor: Kauai Builders) – Project is 27% complete.
- 8) Job WK-42 Phase II, Kaapuni Road Waterline for Stable Tank (Consultant: Hawaii Pacific Engineers, Contractor: Earthworks Pacific, Inc.) – Project is 12% complete.
- 9) Job 02-18, WK-32, 04-02, WK-14, Phase I, Kaehulua & Apopo Roads Waterlines (Consultant: Fukunaga & Associates, Contractor: Earthworks Pacific, Inc.) – Project is 75% complete.
- 10) Job 97-10, WKK-14 Kilauea Booster Pump Station (Consultant: Austin Tsutsumi, Contractor: Oceanic Companies) – Project is 96% complete.
- 11) Job No. 02-05, HE-10A & PLH-41 12-Inch Waterline along Ulaula & Uliuli Roads, Eleele and 8-Inch Pressure Reducing Valve, 400 GPM Booster Pump & 6" Connecting Main, Nawiliwili (Consultant: Kodani & Associates, Contractor: Earthworks Pacific) – Project is 98% complete.
- 12) Job No. 05-04, KW-27, 12-Inch Waterline along Kaumualii Highway, Elepaio Road to Huakai Road, Kekaha (Consultant: Fukunaga & Associates, Contractor: Earthworks Pacific)
 - a. Held the pre-construction meeting on March 5, 2009.
 - b. Notice to proceed date is April 6, 2009.

Issue No. 4, Workplace Efficiencies:

- a) For the AMR Program, there are only a couple of meters left that need to check for reliability.

- b) Envision a work process manual to document divisional work processes
 - 1) Processes need to be reviewed and updated to ensure proper customer service.
 - 2) Will setup internal meetings.
 - 3) Will be documented using Microsoft Visio software.
- c) Jeff Mendez continues to work to broaden our information base for our Geographic Information System

Issue No. 5, Accountability:

- a) Cell phone policy implementation pending.
- b) Request to the Manager to assign a co-champion for Issue No. 5

At a previous Issue Champions meeting, it was suggested that the opportunity to participate as an Issue Champion should be shared with other employees for renewed energy. It was also suggested to have each division head look for volunteers from their division and if none, they should designate a minimum of one person to serve as an issue champion. Each division needs to be represented.

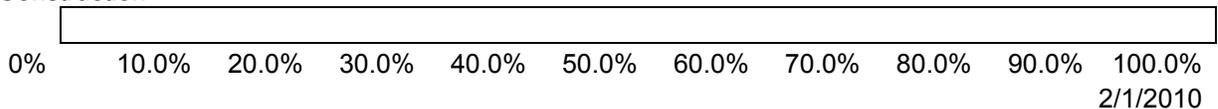
Re: Affordable Housing Projects – Summary Status February 2009 (formerly prepared by RW Beck)

Mr. K. Fujimoto submitted this report as a summary of progress on the Affordable Housing Projects. At this time, there is only one change, for the Kapaa Homesteads Tank at 14%.

Job No. 05-03, KW-25, Kapilimao 0.5 million gallon tank:

- A. Awaiting NPDES review from the Department of Health before issuing notice to proceed.

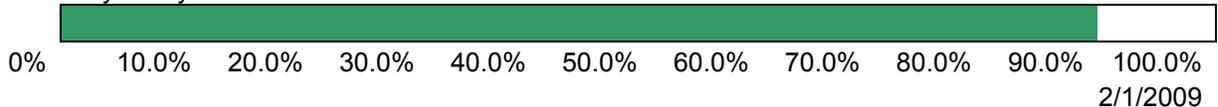
Construction



Job No. KW-28, Amfac Shaft:

- A. Awaiting consultant's proposal to clean and seal the shaft from any external influences.

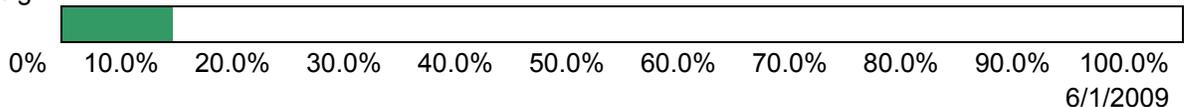
Feasibility Study



Job No. 02-14, WK-08, Kapahi 1.0 million gallon tank:

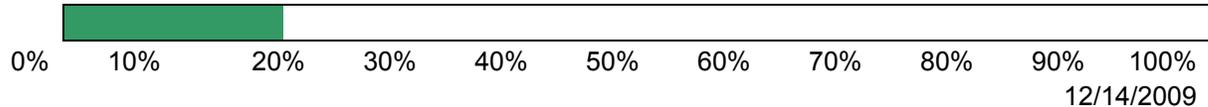
- A. Negotiating with landowner (Al Alamodin) for alternate site.

Design



Job No. 02-14, WK-09, Kapaa Homesteads 0.5 million gallon tank:

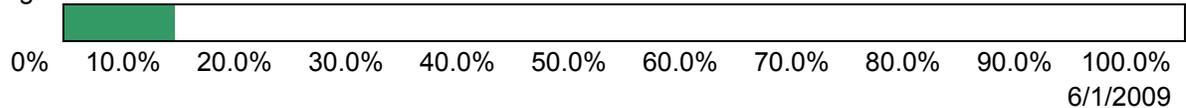
A. Under construction.



Job No. WK-39, Kapaa Homestead Well #4:

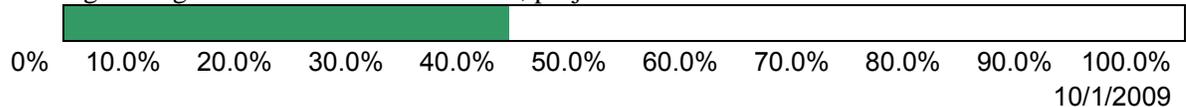
A. Negotiating with landowner (Al Alamodin) for alternate site.

Design



Job No. 02-24, WK-02, Akulikuli Tunnel:

A. Negotiating additional work with SSFM, project consultants.



Mr. Oyama moved to receive the report and placed on file, seconded by Mr. D. Fujimoto; motion was carried.

Recess: 12:35-12:38 pm

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, November 13, 2008
- b. Regular Meeting: Thursday, December 11, 2008, Parts 1-3
- c. Regular Meeting: Thursday, January 8, 2009
- d. Special Meeting: Wednesday, January 28, 2009
- e. Regular Meeting: Thursday, February 19, 2009
- f. Regular Meeting: Thursday, March 19, 2009

The Board received the above for the record and placed on file.

- g. Special Meeting: Thursday, April 2, 2009 (**deferred**)

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.

ES-2009-1 (1-8-09) Pursuant to Haw. Rev. Stat §§92-4 and 92-5(a)(2), the purpose of this executive session is to discuss and consult with staff and the Board's legal counsel on the legal issues relating to the Department's hiring of the Waterworks Legal Advisor and to consult with the Board's legal counsel on questions and issues relating to the Board's powers, duties, privileges, immunities, and/or liabilities and take such action as the Board may deem appropriate with respect to the foregoing item.

ES-2009-4 – Pursuant to Hawaii Revised Statutes Sections 92-5 and 92-5(a)(2), the purpose of this executive session is to consider matters that require confidentiality under state law, to wit, the selection of a new Manager and Chief Engineer for the Kauai Department of Water. 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, relate to the foregoing item and to take such action as the Board deems appropriate.

ES-2009-5 - 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 a status report on Koloa Creekside Estates, Civ. 07-1-0191 (court order), TMK: 2-8-09:001, Koloa, Kaua'i. This legal consultation on the aforementioned court order involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.

ES-2009-6 - 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 the Review and Approval of the Interconnect Agreement for the Private Water System for Brydeswood Agriculture Subdivision Phase II (S-93-50) and Phase III (S-2006-04), TMK: 2-4-007:002 & 020, Kalaheo, Koloa District, Island of Kaua'i. 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.

Mr. Nishimura moved to go into Executive Session at about 12:38 p.m. to discuss the above Agenda items that were formally noticed under Executive Session and was read by Mr. Nishimura, seconded by Mr. Oyama.

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 1:25 p.m.

Mr. D. Fujimoto moved to receive the above reports and place on file, seconded by Mr. Oyama; motion was carried.

ADJOURNMENT:

There being no further business, Mr. Oyama moved to adjourn the meeting at 1:28 p.m., seconded by Mr. Crowell; motion was carried.

Respectfully submitted,

Rona Miura, Secretary

APPROVED:

(for) Wynne M. Ushigome
Acting Manager and Chief Engineer

rm/emi