

REGULAR MEETING  
BOARD OF WATER SUPPLY  
Tuesday, July 17, 2007

The Board of Water Supply, County of Kaua'i, met in regular meeting at its office in Lihu'e on Tuesday, July 17, 2007. Chairperson Lynn McCrory called the meeting to order at 10:08 a.m. On roll call, the following answered present:

BOARD: Ms. Lynn McCrory, Chairperson  
Mr. Ian Costa (about 10:35 a.m. to about 2:32 p.m.)  
Mr. Donald Fujimoto (about 10:15 a.m. to about 2:32 p.m.)  
Mr. Leland Kahawai  
Mr. Steven Kyono (left at about 4:15 p.m.)  
Mr. Roy Oyama (about 10:47 a.m. to 4:00 p.m.)  
Ms. Bernie Sakoda

STAFF: Ms. Wynne Ushigome (left at about 2:55 p.m.)  
Mr. Paul Ganaden  
Mr. William Eddy  
Mr. Gregg Fujikawa  
Mr. Keith Fujimoto (left at about 2:55 p.m.)  
Ms. Faith Shiramizu (left at about 3:15 p.m.)  
Ms. Amy Esaki (left at about 2:55 p.m.)  
Deputy County Attorney Rosa Flores  
Mr. Dustin Moises (left at about 2:28 p.m.)

Absent & excused: Mr. Les Yoshioka  
Mr. Bruce Inouye

GUESTS: Ms. Laurie Yoshida, Governor's Liaison (left at about 10:20 a.m.)  
Ernest and Valerie Garcia (left at about 11:00 a.m.)  
Mr. Kevin Hurst, Kawaihau Subd. (left at about 12:15 p.m.)  
Mr. Chris Jensen, Kawaihau Subd. (left at about 12:15 p.m.)  
Mr. Robert Grinpas, Esq., Kawaihau Subd. (left at about 12:15 p.m.)  
Mr. Jim Peterson, Wainani Subd. (left at about 2:28 p.m.)  
Ms. Michelle Swartman, Wainani Subd. (left at about 2:28 p.m.)  
Mr. Avery Youn, Wainani Subd. Consultant (left at about 2:28 p.m.)  
Jason and Doreen Stone (left at about 1:00 p.m.)  
Mr. Richard Cuthbert, RW Beck  
Ms. Gina Baxter, RW Beck  
Ms. Nancy Hughes, RW Beck  
Mr. David Ward, General Public

**AGENDA**

Chair McCrory requested to re-order the Agenda as follows:

**New Business:**

(to have the following items after Correspondence/Announcements.)

1. Item No. 1, Request to Testify by Mayor Bryan Baptiste and the Dept. of Transportation;
2. Item No. 2, Request to Testify by Ernest and Valerie Garcia;

3. Item No. 3, Request to Testify by Mr. Kevin Hurst and Mr. Chris Jensen; and
4. Item No. 4, Request to Testify by Mr. Jim Peterson for Wainani Subdivision

Also that Item No. 5, Presentation by RW Beck on the DOW's Depreciation and Capital Reserve Study, under New Business to be taken up after New Business Item No. 11. Also, Item No. 6, Summary Report of Monthly Operational Maintenance under Reports to be taken up after Item No. 3 under Reports.

Mr. Kyono moved to approve the Agenda, as re-ordered, seconded by Ms. Sakoda; motion was carried.

## **MINUTES**

Chair McCrory made the following corrections to the minutes:

1. Page 17, 4<sup>th</sup> Paragraph from the bottom of the page: 'Chair McCrory was concerned that the delay of this project would delay affordable housing and stated that ~~they would mull over this matter further.~~ she would send a letter from the Board to DOT.'
2. Page 25, Paragraph 2, 1<sup>st</sup> Sentence: Chair McCrory added that she consulted with the ~~Council~~ County Administration and they said that the ~~County is not~~ were holding with their being on schedule with the affordable housing projects.

Ms. Sakoda moved to accept the Regular Meeting Minutes of June 19, 2007, as amended, and placed on file, seconded by Mr. Kyono; motion was carried.

**CORRESPONDENCE/ANNOUNCEMENTS:** None

## **NEW BUSINESS**

**Re: Request to Testify by Mayor Baptiste on the Department of Transportation (DOT), Highways Division - Utility Agreement for the Wailua Corridor Widening Project**

Ms. Laurie Yoshida, Governor's Liaison, was present on behalf of Mayor Baptiste and Doug Haigh who both could not attend this meeting.

Acting Manager Ushigome gave the following report:

### Recommendation:

It was recommended that the Board receive Doug Haigh's testimony on behalf of the Administration; however, no Board action was needed since the review and execution of the DOT Utility Agreement should be administratively handled by the Department of Water.

Upon cursory review of the subject utility agreement, there should be no cost charged to or incurred by the Department of Water for the construction of the Kuhio Highway, Short Term Improvements; Wailua Cane Haul Bridge Widening Project No. NH-056-1(51). For reference, copies were given to the Board of the DOT Utility Agreement

No. 1983, Exhibit A (Revised), Utility Cost Estimate dated July 6, 2007 and the Engineer's Preliminary Detail Estimate dated May 15, 2007.

Testimony:

As the Department of Transportation (DOT) Highways Engineer, Mr. Kyono stated that the reason why the Mayor asked to be placed on the Board Meeting agenda was to emphasize the extreme importance of this project to the island. He added that the DOT got slammed about the amount of traffic in that corridor; therefore the DOT in conjunction with the County will be working on widening the bridge from one to two lanes and also a subsequent Utility Agreement that would be for the widening of the road fronting the Coco Palms Hotel from 2 lanes to 4 lanes.

*Mr. D. Fujimoto was present at the meeting at about 10:15 a.m.*

On query by Chair McCrory, Acting Manager Ushigome stated that the DOW has a waterline on the main bridge and not the old cane haul bridge. Mr. Kyono added that the forthcoming project to widen the road fronting the Coco Palms Hotel would entail that our fire hydrants be relocated.

Ms. Laurie Yoshida, Governor's Kauai Liaison, reiterated the importance of this project and to request the DOW to expedite all phases of this project.

*Ms. Yoshida left the meeting at about 10:20 a.m.*

**Re: Request to Testify by Ernest and Valerie Garcia for Reconsideration of Enforcement of their Declaration of Non-Development Agreement, Recorded with Bureau of Conveyances on June 21, 2001, Document No. 2001-112764 for Subdivision S-99-12, TMK: 4-6-39:050, Lot 180-B-2; Hoku Road, Kapa'a Homesteads, Kaua'i**

Ernest and Valerie Garcia were present at the meeting.

Acting Manager Ushigome gave the following report:

Recommendation:

It was recommended that the Board enforce the Non-Development Agreement (Attachment A) and deny the applicant's request to install a new water meter on TMK: 4-6-39:050, Lot 180-B-2 that will service an additional dwelling unit. Mr. and Mrs. Garcia executed a Non-Development Agreement with the Kaua'i Board of Water Supply in lieu of upgrading the existing transmission main in order to obtain final subdivision approval (S-99-12) for a 2-lot subdivision in 1999.

Funding: N/A

Background:

June 15, 1985 - Zoning Amendment ZA-95-5 (Ordinance No. PM-312-95) (Attachment B) was adopted by the County Council. The ordinance amended TMK: 4-6-39:030 from "Agricultural District A" to "Residential District R-4". A condition required that the proposed 2-lot subdivision (S-99-12) resolve all applicable conditions as recommended by the Department of Water (DOW).

August 17, 1998 – An application was made to subdivide TMK: 4-6-39:030 (S-99-12) (Attachment C). The DOW requirements included but were not limited to the subdivider upgrading the existing waterline to provide adequate domestic and fire-flow demands for the proposed subdivision. As recommended by the Fire Department, the minimum fire-flow demand for the area's zoning was 250 gallons per minute (gpm). In lieu of upgrading the transmission main, the subdivider was allowed to enter into and execute a Non-Development Agreement with the DOW whereby, the subdivider agreed that the property would not be further developed until adequate water system facilities are constructed, as identified in the subdivision requirements. The subdivider executed the Non-Development Agreement and obtained final subdivision approval. The Non-Development agreement covered both lots that were created by the subdivision.

February 15, 2007 – The DOW provided the following comments for an Additional Dwelling Unit (ADU) Facilities Clearance Form for Ernest M. Garcia and Valerie N. Garcia to construct an ADU on TMK: 4-6-39:050 (Attachment D). The Department's comment read as follows: "*Prior to building permit approval, the applicant will be required to complete necessary water system improvements as required in subdivision S-99-12. Property is contained within a Non-Development Agreement. Installation of a second water meter (upon request) will be included in the waterline upgrade requirements*". The applicant was also informed that at the present time, the applicable Facilities Reserve Charge (FRC) of \$4,600 must be paid prior to building permit approval.

March 22, 2007 – DOW letter (Attachment E) denied Valerie Garcia's March 1, 2007 request letter (Attachment F) to cancel and release them from the Non-Development Agreement so that a new water meter could be installed and an ADU can be constructed on TMK: 4-6-39:050, Lot 180-B-2 without having to increase the size of the water main.

The following information addresses Ernest and Valerie Garcia petitioning the County of Kaua'i, Board of Water Supply (Board) Chairperson, Ms. Lynn McCrory to reconsider the enforcement of the Agreement's letter dated May 12, 2007 (Attachment G).

- Item 1  
The DOW reviews subdivision applications and determines if there are adequate domestic and fire-flow system capacities available from the DOW's water system. The DOW's conditions for Subdivision S-99-12 included the upgrade of the existing waterline along Hoku Road to meet the recommended domestic and fire-flow demands for the area's zoning. A Non-Development Agreement was executed and recorded which allowed the subdivider to receive final subdivision approval without upgrading the existing waterline. However, a condition of the agreement provided that no further development would be allowed until adequate transmission facilities were constructed to provide adequate domestic and fire-flow demands for the subdivision.

- Item 2  
The existing transmission facilities along Hoku Road are able to support domestic water demands for more dwelling units in this area. Prior to subdivision S-99-12, adequate fire protection was available for the R-4 zoning designation along the Kawaihau Road frontage of the unsubdivided parcel. The water main extension along Hoku Road, which was a condition of the subdivision (S-99-12), is intended to provide adequate domestic and fire protection demands for the back lot. The water system facilities along Hoku Road need to be improved to provide adequate domestic and fire-flow demands for the proposed subdivision.
- Item 3  
Real property records indicate that a dwelling was constructed on TMK: 4-6-09:071 in 2005. The DOW signed the building permit for the construction of a second dwelling unit on TMK: 4-6-09:071 on December 22, 2006. The conditional recommendation for approval of the building permit to construct a second dwelling on TMK: 4-6-09:071 from the Department included the payment of the then current applicable fees (Attachment H). The approval to construct this second dwelling did not prompt a DOW requirement to provide adequate fire-flow for the area's zoning, as opposed to subdividing and existing parcel. This parcel (TMK: 4-6-09:71) was not subdivided and Parcel 71 is not encumbered by a non-development agreement

To help further explain the fire protections requirements for above-mentioned parcel, reference is made to the "2005 Errata" to the 2002 Water System Standard adopted by the Kaua'i County Department of Water which states when application is made for a first or second five-eighths inch (5/8") water meter only, to serve a subdivided lot of record, the fire flow requirements of Table 100-19A shall not apply. However, the requirements of Table 100-19 shall apply when application is made for any five-eighth inch (5/8") water meter to serve a subdivided lot of record in excess of the second 5/8" water meter. The foregoing exception for 5/8" water meters shall not apply to applications for any other size water meters.

In the instance of the Garcia property, the subdivision application (S-99-12) process triggered the fire protection requirements for TMK: 4-6-39:50 which required the water system facilities along Hoku Road to be improved to provide adequate domestic and fire flow requirements.

- Item 4  
Yes, as cited there is limited expansion potential as a result of the Non-Development Agreement executed as part of Subdivision S-99-12. The subdivider was required to upgrade necessary water system facilities to provide the recommended domestic and fire-flow demands of Subdivision S-99-12. In lieu of constructing necessary water system facilities, the subdivider chose to enter into a Non-Development Agreement and agreed that no further development shall occur until necessary water system facilities are constructed.

Board Discussion:

On query by Chair McCrory, Acting Manager Ushigome stated that she did not know the estimated cost of the required water improvements.

On query by Mr. D. Fujimoto on whether there was water available in the area, Acting Manager Ushigome stated that the area has 5-meter per lot restriction.

Testimony:

Ms. Garcia testified that when they did the Non-Development Agreement, they did not expect the Ohana dwelling unit (on ag lots) to sunset. They were under the impression that their son would eventually be able to put another house on the lot. Now they are in a Catch 22 situation.

Ms. Garcia understood that fire protection was an issue at the time they initially came to the DOW. If they did have a fire without adequate fire protection, they could in turn sue the County. She then wondered why their next-door neighbor, who is located across the valley about 300 yards from a fire hydrant, was allowed to build their house without upgrading the waterline. Ms. Garcia felt that their neighbor was in more jeopardy than her neighbor as the closest fire hydrant is located right outside of her lot.

Ms. Garcia also added that she heard that these agreements are not done anymore. Acting Manager Ushigome did a correction that these Non-Development Agreements still exist in our Rules and are restrictive, only for families. The Agreement does state that there will be no increase in water usage.

Ms. Garcia stated that at the time that her brother-in-law applied for subdivision for the lot fronting her lot, she had no choice but to sign the Non-Development Agreement. Her brother-in-law initially had to re-zone the property to keep his existing houses that were previously built on the front lot, then they did the subdivision.

Ms. Garcia requested that if not the whole property, then at least for her property, (currently zoned residential/ag), she would want to be released from the Non-Development Agreement so that her son could build no more than one additional house on the lot. Then, if in the future, they would want to subdivide their property then the Non-Development Agreement could again be applicable. She added that there is not a whole lot that she can do with the property as their property includes a valley.

On query by Mr. Fujimoto, Acting Manager Ushigome stated that the adjoining property to the Garcia's was not subdivided, therefore, as per the 2005 Water Errata, every lot of record is allowed 2 water meters/dwelling without a fire protection requirement. Once a 3<sup>rd</sup> house is requested, then fire protection becomes a requirement. However, if the adjoining neighbor wanted to subdivide then the fire protection requirement is activated.

On query by Chair McCrory, Ms. Garcia said that she thought their area was zoned R-6; however, Chair McCrory stated that it was actually R-4.

On query by Mr. D. Fujimoto, Acting Manager Ushigome stated that the purpose of the Non-Development Agreement is to allow families to subdivide to give property to family members, with the knowledge that no further development can be done until the required infrastructure is completed. The required infrastructure could be done by either the customer or by the DOW.

Mr. Kyono stated that as a Board member, who was here when this Agreement was first initiated, the Board at that time empathized with families that wanted to gift property to their children via the subdivision process and were not able to construct the required infrastructure due to exorbitant prices. Therefore, this Non-Development Agreement was written and gave the families the choice to subdivide and to either wait for the required infrastructure to be built by the DOW or later build the improvements themselves.

On query by Mr. D. Fujimoto, Acting Manager Ushigome stated that the water requirement for the Garcias' when the Non-Development was first signed was 500 feet of 4-inch pipeline; however, since the rule change, the DOW requires the minimum waterline size of a 6-inch pipeline.

Mr. D. Fujimoto discussed that the Garcias' may want to look into options by getting a cost estimate to see how much it would really cost to install the waterline. Ms. Garcia stated although they did not research how much it would cost, she knew that it would be an amount that they could not afford.

*Mr. Costa was present at about 10:35 a.m.*

Chair McCrory suggested that Ms. Garcia check with the 5 homeowners in the front lot about sharing the cost of the waterline, as this waterline requirement would benefit both the front and back lot owners.

Ms. Garcia requested that the Board look at the reality of what they want to do and that the agreement states that it is enforced until termination and she asked for termination on their portion. Chair McCrory explained that termination of the agreement would occur when the waterline requirement is satisfied by either the DOW or by the owners.

On query by Ms. Garcia, Acting Manager Ushigome stated that the proposed waterline in that area is on the DOW's list; however, with the design just being contracted, the estimated time of completion would be in about 5 years. Ms. Garcia reiterated her dilemma that their ability to do an ADU would sunset before that.

On query by Acting Manager Ushigome, Mr. Costa stated that if he remembers correctly that the valley on their property is zoned open. However, if their whole property were all zoned ag, they would qualify to have 2 dwellings, as at least 4 acres would be needed in order to qualify for 2 dwellings. It was suggested to the Garcias' that they may want to survey their property to verify the acreage that is zoned in ag as they could qualify for 2 dwellings if it was found that they have 4 acres zoned ag.

Mr. Costa added that if it was found that the Garcias' qualified for 2 dwelling units on their 4 acres that was zoned ag, then the issue of ADUs is moot, because if their

property already qualifies for more than 1 unit, then the lot would not qualify for an ADU. A lot is eligible for an ADU only if that lot is eligible for only 1 unit.

On query by Mr. Kyono, Acting Manager Ushigome stated that if the Garcias' wanted to install a storage tank on their property to address the fire protection issue, they would have to build a minimum of 100,000-gallon storage tank, according to DOW standards.

Mr. D. Fujimoto stated that the Garcias' should approach the other homeowners on the front lot as they got to keep their homes with the help of the Garcias' signing the Non-Development Agreement.

*Mr. Oyama was present at about 10:47 a.m.*

Mr. Garcia discussed that accessibility to his adjoining neighbor is via his lot and in case of fire the Fire Department would not be able to reach his neighbor's property if he does not open his fence. He asked why is that allowed if there is no accessibility to his neighbor's lot in case of fire. He was concerned that someone is going to get sued. Mr. D. Fujimoto stated that his neighbor's situation was different as his neighbor did not subdivide, which did not subject him to the subdivision rule. Under our Rules, each lot of record is eligible to get a water meter.

Mr. Garcia also discussed that there was a fire hydrant previously fronting the front lot; however, it was taken away. Mr. D. Fujimoto was also interested in why it was taken away.

Mr. Fujimoto asked Deputy County Attorney Flores if the Board could keep the Non-Development Agreement and still make an exception to the Agreement. Deputy County Attorney Flores would need to research this matter.

Chair McCrory concurred with Mr. D. Fujimoto that the Garcias' and their neighbors on the front lot both benefited from the Non-Development Agreement as they got to subdivide into 2 lots; therefore, the other owners should be approached to share the cost of the installation of the waterline improvement.

Mr. D. Fujimoto moved that this matter be deferred until a legal opinion could be made on whether they could grant an exception this Non-Development Agreement, seconded by Mr. Costa.

Chair McCrory voted no as she is very concerned about granting exceptions to Non-Development Agreements as it would create a precedent of what we already have in place. She felt that everyone was knowledgeable of the options of either installing the waterline requirement or to sign the Non-Development Agreement and they chose to sign the Non-Development Agreement. The Board will end up with a large number of people asking for exceptions. Chair McCrory added if the deferral is to give the Garcias' the opportunity to re-check their property size then she would have no problem with the deferral.



Mr. D. Fujimoto stated that he is asking for the legal opinion as he felt that this is an unique situation as the ability to do an ADU is sunsetting. He added that he is asking for the legal opinion and if it is legal, that he would consider doing a variance.

On query by Mr. Costa, Acting Manager Ushigome stated that the DOW's Proportionate Share Rule was still in place at the time the Garcias' signed the Non-Development Agreement. This would have been the tool to have others pay their proportionate share of the cost of the waterline installation if they had chosen to do that previously. However, this rule had since been rescinded.

On query by Deputy County Attorney Flores, Mr. D. Fujimoto stated that he was not sure whether the Board could legally grant an exception to a Non-Development Agreement.

Chair McCrory reiterated and confirmed the previous motion: It was moved and seconded to defer this action pending the opinion from the County Attorney's Office as to whether exceptions can be made to Non-Development Agreements.

Chair McCrory called for the question and all stated aye and Chair McCrory stated nay. Motion was carried.

*Ernest and Valerie Garcia left the meeting at about 11:00 a.m.*

**Re: Request to Testify by Mr. Kevin Hurst and Mr. Chris Jensen of the Kawaihau Ridge Subdivision, Phase I (S-2005-3), Jensen Homes of Hawai'i, Kawaihau Road, Kapa'a Homesteads, Kaua'i, TMK No. (4) 4-6-039:029**

Mr. Kevin Hurst, Mr. Chris Jensen and Mr. Robert Grinpas, Esq. were present at the meeting.

Recommendation:

It was recommended that the Board allow Mr. Grinpas, attorney for the owners and developers of the Kawaihau Ridge Subdivision to explain and clarify his clients proposed development requirements in accordance with Ordinance No. PM-2004-368.

As Mr. Grinpas indicated in his request letter, there appeared to be a discrepancies or an unclear understanding of the Board's intent approving the additional four (4) meters for the affordable "units". Based on my review, it was not evident from the discussions of the October 2005 Board Meeting that there were only two (2) affordable housing lots. And the developer intends to CPR these two (2) lots into 2-unit CPRs, allowing for each lot to have two (2) affordable dwelling units each. So, effectively there would be a total of four (4) affordable "units" on two (2) lots.

In addition, it is my understanding that the County Housing Agency indicated that each of the four (4) affordable units have an individual water meter. Therefore, if the Board intended for each of these affordable units to have a meter, then there would be 4 meters assigned to these two (2) lots.....plus the five (5) meters allowable under the currently "meter restriction" policy in the Kawaihau area. That would be

seven (7) total lots (including the remainder lot-Phase II) in this subdivision application. Yet, the Kawaihau Ridge Subdivision application seeks approval for a 10-lot subdivision. Since this was not clearly represented at the time the Board made its decision, we asked the developers to come back and clarify their request to the Board.

A copy of Ordinance No. PM-2004-368 was provided for the Board's review and reference.

Background:

Robert Grinpas, owners' attorney, requested by letter dated June 25, 2007 to be placed on the July 17, 2007 Regular Board meeting. Mr. Grinpas formally requested that the following matters be placed on the meeting agenda:

1. Ordinance No. PM-2004-368, which enabled this subdivision and amended the zoning therefore provided, at Section 1-3, that three (3) lots of the subdivision shall be used and sold to the County for its affordable housing program. The Housing Department is in agreement that three (3) lots shall be used as aforesaid. The Department of Water has asserted the position that four (4) lots shall be used in the affordable housing program. Therefore, there exists a discrepancy in the number of lots to be utilized in the affordable housing program. Mr. Grinpas submits that the discrepancy arose due to the confusion in the terms "lots" and "units" at the Board of Water Supply Meeting in August and October 2005.
2. Phase 1 of the project is limited to a total of nine (9) residential structures. The Department of Water is asserting that no more than one residence per lot can be built until adequate water system facilities are available. Mr. Grinpas request the Board's reconsideration and amendment of this provision.

Additional information and conditions relating to the proposed subdivision:

1. August 14, 2002 Board of Water Supply Interim Policy on Issuance of Water Meters for Kapa'a Homesteads (530' and 313' service zones) Kapa'a , Kaua'i: The Board approved the interim policy whereby the DOW will not approve requests for water meter service beyond the first five – 5/8-inch water meters for existing lots of record. New subdivisions will be limited to a total of five 5/8-inch water meters. Request for five lot subdivisions can be approved with the restriction that each lot will be limited to one single-family dwelling or one 5/8-inch water meter. The interim policy shall be in effect for five years until the construction of the new 1.0 million gallon (MG) storage tank is completed to provide additional storage capacity for the 313' service zone. (See *Exhibit 1 - Interim Policy on Issuance of Water Meters for Kapa'a Homesteads 9530' and 313' service zones dated August 14, 2002*)
2. March 13,2004 DOW Water Service Inquiry Letter. The DOW informed Mr. Kevin Hurst that the storage facilities are not adequate for the proposed 27 water meters for his proposed subdivision at TMK: 4-6-039:029. DOW is limiting water meter approval to five 5/8-inch meter/units per lot for this area. (See *Exhibit 2 - DOW letter dated March 13, 2007*)

3. February 26, 2004's Ordinance No. PM-2004-368: A Bill for an Ordinance Amending Chapter 8, Kaua'i County Code 1987, Relating to Zoning Designation in Kapa'a Homesteads, Kaua'i (Jensen of Hawai'i, Inc., Applicant) was adopted by the County Council and approved by the Mayor on February 26, 2004. The ordinance amended the zoning designation of TMK No. (4) 4-6-039:029 from Open (O) to Residential District (R-4). Section 1. 5. Stated: "No sale of any lot or house and lot shall occur until the Department of Water requirements have been resolved." (See *Exhibit 3 - Ordinance No. PM-2004-368*)

4. September 29, 2004 Planning Commission Tentative Approval (S-2005-3) Jensen Homes-Subdivision of Lot 180-A into Lots 1 to 26 inclusive: On September 28, 2004 the Planning Commission granted TENTATIVE approval for the subdivision. The DOW conditions were:

- a. The subdivider shall pay the DOW a facilities reserve charge of \$110,000 (24 lots at \$4,600 per lot)
- b. The subdivider shall prepare and get DOW's approval of construction drawings for necessary water system facilities and construct said facilities or post a performance bond for construction. These facilities shall include:
  - i. Additional storage facilities
  - ii. Domestic service connections
  - iii. Fire service connections
- c. The subdivider shall prepare and convey to DOW a right of entry and temporary grant of easement
- d. The subdivider 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 completed and accepted by the DOW." The subdivider shall record this deed restriction with the Bureau of Conveyance within 90 calendar days of final subdivision approval by the Planning Department.  
(See *Exhibit 4 - Planning Tentative Approval letter dated September 29, 2004*)

5. May 24, 2005 Planning Commission Tentative Approval (S-2005-3) Jensen Homes-REVISED MAP Subdivision of Lot 180-A into Lots 1 to 26 inclusive: On May 24, 2005 the Planning Commission granted TENTATIVE approval for the REVISED subdivision. The DOW conditions were:

- a. The subdivider shall pay the DOW a facilities reserve charge of \$110,000 (24 lots at \$4,600 per lot)
- b. The subdivider shall prepare and get DOW's approval of construction drawings for necessary water system facilities and construct said

facilities or post a performance bond for construction. These facilities shall include:

- i. Additional storage facilities
- ii. Domestic service connections
- iii. Fire service connections

c. The subdivider shall prepare and convey to DOW a right of entry and temporary grant of easement

d. The subdivider 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 completed and accepted by the DOW." The subdivider shall record this deed restriction with the Bureau of Conveyance within 90 calendar days of final subdivision approval by the Planning Department.

*(See Exhibit 5 - Planning Commission Tentative Approval letter dated May 25, 2005 and DOW Subdivision Revised Report dated April 1, 2005)*

6. August 17, 2005 Board Meeting: New Business – Request by Jensen of Hawai'i for Variance of Kaua'i County Water Department's Limited Meter Issuance Policy in the Upper Kawaihau Road Area:

Based on the Board Minutes:

*"On Query by Mr. Fujimoto, Mr. Hurst stated that he did not state that his project was an affordable housing project. The standard is to have 15% of your project to be affordable, therefore, his 23-lot subdivision needs to have **3-4 affordable houses.**"*

The Board approved a deferral of this matter until the next Board Meeting.

*(See Exhibit 6a - Manager Report dated August 1, 2005 and Exhibit 6b, August 17, 2007 Board Minutes)*

7. October 19, 2005 Board Meeting: Old Business – Request by Jensen of Hawai'i for Variance of Kaua'i County Water Department's Limited Meter Issuance Policy in the Upper Kawaihau Road Area:

The Board approved to support the allocation of 4 additional water meters for affordable housing, along with the 5 water meters and the details of the future commitments of the balance of the water meter required by the subdivision to be worked out with Management.

Based on testimony of the applicant at the August 17, 2005 Board meeting, the Department concluded that a key issue raised by the applicant is whether the policy should recognize whether a proposed project includes affordable housing component. In the case of the Jensen project, which the Department understands will have 4 affordable units; one approach would be to allow a total of nine meters to the subdivision at this time, perhaps subject to a condition that four affordable units be developed during the first phase of the

subdivision. The nine meters would include the five meters allowed under the current policy, plus four additional meters to serve the four affordable housing units.

A Board member supported the project for two reasons: 1) There are public benefits with the requirement of 3-4 affordable house and lot packages and 2) This proposed subdivision is in a favorable location.

*(See Exhibit – 7a, Manager’s Report dated October 14, 2005 and Exhibit 7b for the October 19, 2005 Board Minutes)*

8. April 25, 2006 (S-2005-3) Phase 1 Kawaihau Ridge Subdivision, Phase 1 Jensen Homes-REVISED MAP Subdivision of lot 180-A into Lots 1 to 11 inclusive: On April 25, 2006 the Planning Commission granted TENTATIVE approval for the REVISED subdivision. The DOW conditions were:

- a. The subdivider shall pay the DOW a facilities reserve charge of \$41,400 (9 lots at \$4,600 per lot)
- b. The subdivider shall prepare and get DOW’s approval of construction drawings for necessary water system facilities and construct said facilities or post a performance bond for construction. These facilities shall include:
  - i. Additional storage facilities
  - ii. Domestic service connections
  - iii. Fire service connections
- c. The subdivider shall prepare and convey to DOW a right of entry and temporary grant of easement
- d. If a bond is filed to secure final subdivision approval, the subdivider 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 completed and accepted by the DOW.” The subdivider shall record this deed restriction with the Bureau of Conveyance within 90 calendar days of final subdivision approval by the Planning Department.
- e. Based on discussion between the subdivider and the Board of Water Supply at the October 19, 2005 meeting, the Department is willing to conditionally approve a 9-lot subdivision (Phase 1) without requiring additional storage facilities for the area. Conditional approval for a 9-lot subdivision is based on, but not limited to the following:
  - i. The subdivider shall prepare a revised preliminary subdivision map that includes a 9-lot subdivision (excluding roadway lots).
  - ii. Four of the proposed nine lots created by this subdivision (Phase 1) shall be used for affordable housing units.

- iii. The nine residential lots will be limited to one (1) dwelling unit per lot until adequate water system facilities available. This shall be clearly lettered on the approved construction plans, final subdivision map and deeds. The deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Commission.
- iv. The subdivider shall submit a certification by the County Housing Agency as to the applicability of the affordable housing component. The four affordable housing lots of Phase 1 shall be clearly shown and identified on the approved construction drawings and final subdivision map.
- v. The Department of Water is not able to commit or guarantee when additional storage facilities for the area will be constructed and be available for Phase II of the project.
- vi. Additional conditions may be applicable and will be conveyed upon review of a revised subdivision map.

*(See Exhibit 8 - Planning Commission Tentative Approval letter dated April 26 and DOW Subdivision Revised Report dated December 29, 2005)*

### Testimony

Mr. Bob Grinpas, Esq. introduced himself as the attorney for Mr. Hurst and Jensen of Hawaii.

Mr. Grinpas testified that he was here today to fix a mistake that has transpired since the ordinance enabling this subdivision to go through. The County Council passed an ordinance on February 26, 2004, Ordinance No. PM-2004-368 and in that ordinance in Paragraph 3, it provides that there is going to be 5 affordable housing units and that those 5 affordable housing units would be built on 3 lots and 2 of the lots will be CPR'd by the County.

Mr. Grinpas read a brief portion of Paragraph 3: "...3 lots, at least 2 of which shall not be less than 10,000 square feet each in area and shall be contiguous to one another shall be sold to the County of Kauai for its affordable housing program subject to the approval of the County Housing Agency. The County shall purchase the lots when the subdivision is completed and shall provide the legal services to create condominium property regime (CPR) on one or more of the County-owned lots if the County Housing Agency deems it the best way to provide affordable housing; whereupon, applicants shall construct a minimum of 5 dwelling units for the County...."

Mr. Grinpas stated that what was envisioned from the beginning is that these affordable housing units would be CPR'd units and along the way houses, units and lots got kind of confused and ultimately what happened as a result of that confusion is that, by virtue, of the Water Board's decision, the Planning Department is trying to make 4 lots, one lot for each housing unit. Mr. Grinpas added that they are not trying

to get away from the requirement that there be one meter per house. They are restricted by the ordinance and the ordinance envisions that 3 lots be CPR units to make 5 houses. Because of this confusion, the Water Board is limiting the owners to one house per lot and not allowing them to have 2 water meters to serve a lot that is a CPR unit with 2 houses on it. Mr. Grinpas stated that they are hoping to get the Water Board to reconsider their decision so that they can carry out what the ordinance provided for.

Mr. Grinpas discussed that in Phase 1 of the project his clients are building 4 affordable housing units on 2 lots; however, the Council wants to have built 4 affordable housing units on 4 lots. His clients cannot do that due to the confusion of houses, lots, and units. Based on the October 19, 2005 minutes of the Water Board Meeting, see the different references among houses, lots, and units. Under Background, Page 3, 3<sup>rd</sup> Paragraph, the word 'units' are used as underlined below:

*"This could be accomplished through modification of the policy to allow water service for affordable housing units in addition to the generally available 5-meter per existing parcel limit, subject to any conditions identified by the Board or the Department as necessary for appropriate application of the revised policy. In the case of the Jensen project, which the Department understands will have 4 affordable units, one approach to encourage the availability of affordable housing would be to allow a total of nine meters to the subdivision at this time, perhaps subject to a condition that the four affordable units be developed during the first phase of the proposed subdivision. The nine meters would include the five meters allowed under the current policy, plus four additional meters to serve the four affordable housing units."*

Then on Page 4, 3<sup>rd</sup> Paragraph, the word 'houses' are used as underlined below:

*"On query by Ms. McCrory, Mr. Hurst stated that they are required to build all of the affordable houses before they complete 80% of their project; therefore, they were hoping to complete 10-12 houses in the first phase. Ms. McCrory also asked if they could make it work by building 5 houses and 3 affordable houses in the first phase?....."*

Then on Page 4, 3<sup>rd</sup> Paragraph, the word 'houses' are also used as underlined below: "Manager Tschupp added that the approval could be for 9 meters with one meter being for a remnant lot, if the affordable housing requirement is for only 3 affordable houses. He added that the remnant lot would be for purposes of a phased subdivision then you would have a 9-lot subdivision with one remnant lot, which would be Phase II."

Mr. Grinpas stated that by the time the preliminary approval was written, 4 'lots' was incorporated. This was never the requirement in the ordinance as it was actually condominium property regimes (CPR) that the County is actually going to do on these 3 single family residential lots.

Chair McCrory stated that she was on the Board at that time and she remembered it to be 4 'lots' and not 2 homes on a lot. Mr. Grinpas asked how can they carry out what was mandated by the Council, which required that there be a total of 3 lots, 5 houses with CPRs?

Chair McCrory stated that they were also dealing with the affordable pieces so they could go ahead and start the work and per the calculations of having 15% of a project to be affordable housing, it came out to be 3-4 affordable houses. Therefore, the Board said at that time if they could do the 4 affordable houses, along with the 5 market houses that they wanted to do. Chair McCrory added that she does not

believe that there was any discussion that she can remember about what the County ordinance was about and she believed that the Board made it clear at the time that it was 4 lots.

Mr. D. Fujimoto stated that he believed at that time it was a 14-lot subdivision with 4 lots being for affordable housing. He added that if this is really a 3-lot subdivision with 14 units, the Board could change the intent.

Mr. Grinpas stated that Phase 1 is a 9-lot project. Mr. Costa added that the assumption of a 9-lot subdivision was based on the 9 water meters being given to the project with 5 water meters being allocated (maximum allowable issuance of 5 water meters in that area) and 4 of the 9 meters for affordable housing. Mr. D. Fujimoto added that it was the Board's understanding that Mr. Jensen would wait for the additional meters as the DOW has been in the process of the implementation of the source and storage that would support their Phase 2 of their project. He added that the Board was lenient at that time to give them the extra water meters, as it would support affordable housing.

Mr. Grinpas stated that they are not asking for more meters but they are asking for the Board's support so that they can do what the Council told them they had to do, which is 2 houses on 2 lots each, serviced by 4 meters. He discussed that Phase 1 is a 9-lot project, 2 of the lots would be CPR'd for the affordable housing projects, which leaves 7 lots with 7 more houses, for a total of 9 water meters.

Mr. Costa explained to Mr. Grinpas that initially they had the choice of having 5 water meters or nothing. The Board then gave them 5 water meters based on the water meter restriction policy in the area; however, the Board felt that since they had the burden of doing affordable housing that the Board decided to allow them to have 4 more water meters for their affordable housing projects. Therefore, if they plan to have 4 affordable housing units on 2 lots, then they actually would have a 7-lot subdivision.

Mr. Grinpas stated that all they want is to put 2 houses on Lot 1 and 2 houses on Lot 3. He added that they are not there to get more meters or permits for houses that do not have meters, as all they are trying to do is comply with the ordinance to have 2 houses on Lot 1 and 2 houses on Lot 3. Mr. Costa discussed that the Board previously allowed them 4 extra meters to allow 4 affordable housing homes and the Board did not make a distinction on whether the homes had to be on individual lots.

Mr. D. Fujimoto added that the Board at that time approved the 4 meters for the 4 affordable housing units as the Board encourages affordable housing and the units could be constructed on the onset.

Mr. Grinpas stated that the issue now is they are not able to comply with the Council's request if they are allowed to build only 1 house per lot. Mr. D. Fujimoto requested for a conceptual plan of their project.

Mr. Kevin Hurst introduced himself that he was with Jensen of Hawaii. He referred to the previous minutes when he testified and stated that the minutes show that he never used the word lots and only used the words houses and units. Mr. Hurst



stated that he came before the Board for their 9-lot subdivision of the first phase of their 2-phase project and the Board allowed them to have 4 meters for their 4 affordable housing lots. He felt it was not in the DOW's purview to now say that the affordable houses should not be on a CPR but on a regular lot. The DOW stated that the developer already got exception for more meters in this water shortage area, so the DOW would not want to have the potential of doubling up the amount of houses and the amount of water usage in that area. This would then all circumvent the County process; therefore, the DOW requested that each affordable house be put on one regular lot.

Mr. Hurst added that their project had been approved by the Planning Department, Planning Commission and the County Council. Therefore, all they are asking is to get the water meters for their houses. They felt that it was not right for the DOW to change the requirement that the affordable houses should be on individual 10,000 square foot lots. Therefore, Mr. Grinpas stated that they are here to request an amendment on the requirement that they can build only one house per lot.

For the Board's information, Acting Manager Ushigome read the DOW's Interim Water Meter Policy Restriction for Kapa'a: *"The Department of Water will not approve requests for water meter services beyond the first five 5/8-inch water meters for existing lots of record. New subdivisions shall be limited to a total of five 5/8-inch water meters. Requests for five lot subdivisions can be approved with the restriction that each lot will be limited to one single-family dwelling or one 5/8-inch water meter."*

Mr. Grinpas stated what is the difference or problem with having 2 houses on 1 lot with each having their own water meter or every house having their own lot? Mr. D. Fujimoto stated that it was the Board's intention to give them the water meters for the affordable housing units up front. Mr. Grinpas stated that is all that they want; they just need now to eliminate the DOW's requirement to not have 2 units on 1 lot as they are required to do that by County ordinance.

On query by Mr. Costa, Mr. Grinpas stated that the 5 market lots will have only 1 house per lot, which would meet the DOW's meter restriction of not more than 5 meters, with one house per lot.

Mr. Hurst reminded the Board that it is not their fault that there is not enough water in his area and that the DOW was suppose to finish the storage tank in 2006-07. Mr. Hurst reiterated that they are not asking for anything more than the last time they appeared before the Board; they request that the DOW does not get into the planning business by overriding the Council, Planning Department and Commission.

There was some discussion and confusion over how many lots and how many meters there should be; therefore, Mr. D. Fujimoto reiterated that a graphical map is needed to show their project that consists of Phase I and II. Mr. Grinpas distributed a map of Phase I.

On query by Mr. Kyono, Mr. Grinpas stated that the phasing of the project is based on the water capacity in the area. Mr. Hurst added that since water availability in the area was an issue, since the completion date of the storage tank was unknown at

that time, and their project was going to take some time to build, that is why they decided to phase their project.

Chair McCrory stated that if they match the Council's requirements then they would have 2 meters per lot for the affordable housing with the 5<sup>th</sup> meter (single meter) for the remnant lot for Phase 2 also for affordable housing. Then going forward, all lots in Phase 2 would have a single house and meter per lot. Mr. Grinpas thought that the remnant lot for affordable housing would have to be CPR'd; however, was corrected by Chair McCrory that it would have to be a single house and meter per lot per the ordinance. Mr. Hurst concurred.

Mr. Costa added for information that per the map, it shows that this project is a 10-lot subdivision with the 10<sup>th</sup> lot being Phase II at this time.

Mr. Kyono checked with staff to ensure that all was clear on what transpired. Acting Manager Ushigome reiterated her understanding that it will be a 7-lot subdivision, with 2 lots having 2 affordable houses each, with 4 market value lots, and with the remainder lot.

After some discussion, it was clarified that there were 2 lots in Phase 2 that would not get meters. Mr. Costa added that those lots would have deed restrictions that no houses could be build until such time that the infrastructure is adequate. Mr. Hurst added that they could write a letter to confirm that they will not build on those lots.

On query by Mr. D. Fujimoto, Mr. Hurst stated that they do not have a plan yet for the total build out for Phase 2. Mr. D. Fujimoto felt that it would make it clearer for everyone if there was one.

It was concluded that this is an 8-lot subdivision with 2 lots with 2 affordable houses on each lot, 5 market value lots and one remnant lot (which will turn into Phase 2 of this project).

On query by Chair McCrory, Acting Manager Ushigome discussed that the remnant lot gets a meter as the baseline policy of the DOW is that every lot in the subdivision gets a meter.

On query by Mr. Hurst, Mr. K. Fujimoto stated that the estimated date of completion of the tank would be about one year after the DOW gets the right of entry to the tank site. Chair McCrory stated that the August Land Board Meeting should have the right of entry on their meeting agenda, which should not have any issues. Mr. K. Fujimoto added that some time needed to be added for the bidding and contracting process. Therefore, if all goes well, his 'guesstimate' would be about 18 months.

Mr. Costa moved that the Board approve clarification that 4 additional meters be provided for 4 affordable units as represented by the applicant that will be consolidated on 2 lots; in addition, the original 5 meters that were allowed shall be subject to the 5-meter restriction and the remnant lot for a total 8 lots, which shall have a deed restriction prohibiting any construction of dwelling units and shall be recorded at the Bureau of Conveyances.

On query by Mr. D. Fujimoto, Mr. Costa stated that the applicant had re-zoned the property so they could subdivide more than once. Mr. Grinpas stated that the property is zoned R-4.

On query by Mr. Kyono, Mr. Hurst stated that Lots 1 and 3 would be for the affordable houses. The Board worked with Mr. Hurst and Mr. Grinpas to map out Phase I.

Mr. Costa moved that the Board approve clarification of the Board's previous approval for providing 4 additional meters specifically provided for 4 affordable housing units as represented by the applicant that will be located on 2 lots, Lots 1 and 3; Lots 1 thru 7 shall be allowed 1 meter for a total of 5 meters, which were the original 5 meters and shall comply with the 5-meter restriction; Lot 8 shall be a remnant lot and the application should draft a deed restriction prohibiting any development and shall be recorded at the Bureau of Conveyances and shall be encapsuled in the subdivision application, which would entail a revised subdivision map prior to building permit approval, seconded by Mr. Oyama.

Acting Manager Ushigome discussed that when a subdivision and a lot are created, her understanding was that the lot needed to have infrastructure so creating Lot 8 without water service would be contrary to the subdivision ordinance. Chair McCrory clarified that Acting Manager Ushigome's recommendation is to deal with the 7 lots and ignore the 8<sup>th</sup> lot.

Mr. D. Fujimoto added that in conjunction with the subdivision ordinance, he also felt that the subdivision should be kept as a 7-lot subdivision. He felt that the Lot 8 or 9 could be CPR'd and easily sold, which would help cash flow. Then later on when the subdivision is done that the CPR becomes a separate lot.

Mr. Costa wanted to check on something with his office; therefore, Chair McCrory called for a 10-minute break. Recess: 11:58 a.m. to 12:09 p.m.

Mr. Costa stated that every lot does not have to have a meter; he believed that in the past you could do a non-development agreement or a deed restriction prohibiting any development or construction on that lot, since the infrastructure is inadequate. These 2 options could be done as it is not adverse to the subdivision ordinance, as long as the provision is put in that the lot cannot be built upon.

Chair McCrory did a quick summary that there would be 4 meters for affordable houses on 2 lots; 5 meters for 5 lots for a total of 7 lots.

Acting Manager Ushigome added that she would add to the motion that excluding the 2 lots for affordable housing, that each lot would have one meter per lot with one dwelling unit until there is adequate water. She felt that having a 7-lot subdivision would be better as the Department would not have to keep track of the remnant lot.

On query by Mr. Fujimoto, Mr. Hurst stated that they would prefer to have the 7-lot subdivision with the remnant lot with no meter on the extra lot, which would have a deed restriction. The reason is that if they have to blend the 8<sup>th</sup> lot into the final lot that they would not be able to sell that lot right away. Mr. Hurst would rather go through the cheaper, faster process by paying a couple of hundred dollars to do a

deed restriction that says that they would not be developing the last lot, then pay \$10,000 for a CPR and then to later eliminate the CPR and incorporate it back into the subdivision.

Motion was carried.

Mr. Hurst, Mr. Grinpas and Mr. Jensen thanked the Board and left the meeting at about 12:15 p.m. Lunch Recess: 12:15 p.m. to 1:00 p.m.

(Since the Wainani personnel did not return yet to the Board Meeting, the Board moved ahead with other matters that were next on the Agenda.)

**Re: Contract Amendments with Fukunaga and Associates for Job No. 04-02, 02-18, WK-14, WK-32, Waterline along Kaehulua and Apopo Roads, Kapaā, Kauai**

RECOMMENDATION: It was recommended that the Board approve the contract amendments totaling \$29, 600.00 for Contract Nos. 447 and 404 with Fukunaga and Associates, Inc, for the subject project. It is further recommended that the Board appropriate \$11,300.00 from Account 106B, CIP Reserve to fund the balance required.

**FUNDING:**

Job No. 04-02, Waterline along Apopo Road..... \$262,710.00

Job No. 02-18, Waterline along Kaehulua Road

Main Replacement: ..... \$392,700.00

Total available:..... \$655,410.00

Contract No. 447, Fukunaga & Associates, Inc. .... \$250,200.00

Contract No. 404, Fukunaga & Associates, Inc. .... \$386,950.00

Contract Amendment #1 ..... \$ 29,600.00

Total required:..... < \$666,750.00>

Additional Funds Requested from Account No. 106b, CIP Reserve: <\$ 11,340.00>

Contract 447 Total Amount ..... \$265,000.00

Contract 404 Total Amount ..... \$401,750.00

**BACKGROUND:**

This phase of the project includes the design for:

- Replacement of 2,000 feet of 3” waterline along Kaehulua Road.
- Installation and replacement of 3,000 feet of 8” waterline along Apopo Road.

It was noted that these improvements are required prior to placing the 1.0 MG Stable Tank in operation. However, due to the current prioritization of these projects, funding for the design and installation was not provided.

The project consultant, Fukunaga & Associates, proposed \$29,600.00 and a time extension of 45 calendar days for this change in the project scope, which appears reasonable.

Funding for the construction of this phase of the improvements is estimated at \$1,200,000.00 and will be requested at a later date.

Finally, funding for the balance of the required design revisions of the construction drawings (\$30,300.00) will be requested at the time the remaining pipeline installation is scheduled for construction.

Mr. Kyono moved to approve the contract amendments totaling \$29,600.00 for Contract Nos. 447 and 404 with Fukunaga and Associates, Inc, for the subject project and to appropriate \$11,300.00 from Account 106B, CIP Reserve to fund the balance required, seconded by Ms. Sakoda.

On query by Chair McCrory, Mr. K. Fujimoto stated that all monies were for the design. Also on query by Chair McCrory, Mr. K. Fujimoto stated that they are not asking for the additional design monies of \$30,300.00, as they were not sure on the timetable and would probably not start for a long time.

Motion was carried.

**Re: Conveyance of Water Facility from Peter Thielen, Kaumuali'i Highway, TMK: (4) 1-6-08:015 and 020, Waimea, Kauai, Hawaii**

It was recommended that the Conveyance of Water Facility document be approved; whereby Peter Thielen transfers unto the Board of Water Supply, County of Kauai, all of its right, title and interest to the following item:

Two (2) each 1" service lateral for 5/8-inch water meters

in place complete, in accordance with the as-built construction drawings for WATER METER PLAN FOR LOTS J-1 AND R THROUGH J-1 prepared by Esaki Surveying and Mapping, Inc., Kaumuali'i Highway, Waimea, Kauai, Hawaii.

A Grant of Easement was not required.

Mr. D. Fujimoto moved to approve the Conveyance of Water Facility document from Peter Thielen, seconded by Ms. Sakoda; motion was carried.

**Re: Conveyance of Water Facility from Agnes H. Uchizono and Donna N. Uchizono, for the Single Service Lateral for Agnes Uchizono, TMK: (4) 4-2-06: 39, Wailua, Kawaihau District, Kauai, Hawaii**

Jason and Doreen Stone were present at the meeting.

It was recommended that the Conveyance of Water Facility document be approved; whereby, Agnes H. Uchizono and Donna N. Uchizono, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each, 1-inch copper single service lateral for 5/8" water meter, for the Single Service Lateral for Agnes Uchizono, TMK: (4) 4-2-06: 39, Wailua, Kawaihau District, Kauai, Hawaii

A Grant of Easement not required.

Mr. D. Fujimoto moved to approve the Conveyance of Water Facility document from Agnes H. Uchizono and Donna N. Uchizono, seconded by Ms. Sakoda; motion was carried.

The Stones verified the process that they need to follow since their Conveyance got approved, thanked the Board and left the meeting at about 1:00 p.m.

**Re: Conveyance of Water Facility from Kukuiula Development Company (Hawaii), LLC, a Hawaii Limited Liability Company for the Kukuiula Temporary Sales Center, Use Permit U-2005-2, Class IV Zoning Permit Z-IV-2005-2, TMK: (4) 2-6-04:018, Koloa, 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: thirty-six (36) lineal feet of 6-inch ductile iron waterline; one (1) each, fire hydrant assembly with one 4 ½" and one 2 ½" outlet; one (1) each, 6-inch gate valve, including C.I. valve box & cover; and one (1) each, 1-inch copper single service lateral for 5/8" water meter, for the Kukuiula Temporary Sales Center, Use Permit U-2005-2, Class IV Zoning Permit Z-IV-2005-2, TMK: (4) 2-6-04:018, Koloa, Kauai, Hawaii

A Grant of Easement not required.

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

**Re: Conveyance of Water Facility from Port Allen Residential LLC for the Kai'olino Condominiums and Keala'Ula Homes at Port Allen, Waialo Road, S-2005-1, TMK: (4) 2-1-03: 05, Eleele, Kauai, Hawaii**

It was recommended that the Conveyance of Water Facility document be approved; whereby Port Allen Residential LLC transfers unto the Board of Water Supply, County of Kauai, all of its right, title and interest to the following items:

- Three thousand two hundred seventy two (3,272) feet of 8" ductile iron pipe.
- Two hundred eighty (280) feet of 6" ductile iron pipe.
- Fifteen (15) each 8" gate valve, including cast iron valve box and cover.
- Four (4) each 6" gate valve, including cast iron valve box and cover.
- Four (4) each 1" copper air relief valve assembly.
- Twenty two (22) each 1½" copper service lateral for 5/8" water meters.
- Sixteen (16) each 1" copper service laterals or 5/8" water meters.
- Eleven (11) each 6" fire hydrant assembly, including 6" gate valves, fire hydrants, bury, etc.
- One (1) each 4" ductile iron lateral for 3" compound meter, including 6" gate valve, 2" copper bypass line, concrete vault and cover.
- One (1) each 6" detector check (fire) service lateral, including two gate valves concrete vault and cover.
- Three (3) each 4" blowoff assembly, including 4" gate valves, cast iron valve box and cover.

in place complete, in accordance with the as-built construction drawings for THE KAI'OLINO CONDOMINIUMS AND KEALA'ULA HOMES AT PORT ALLEN prepared by RM Towill Corporation, Waialo Road, Eleele, Kauai, Hawaii.

A Grant of Easement is not required as the developer has indicated that the water facilities installed in the roadways will be conveyed to the County of Kauai.

Mr. D. Fujimoto moved to approve the Conveyance of Water Facility document from Port Allen Residential LLC, seconded by Ms. Sakoda; motion was carried.

**Re: Grant of Easement from James D. White, Successor Trustee of that certain unrecorded Henry A. Fredricks Separate Property Trust, Gary S. Kading, Trustee of the Gary S. Kading Trust of 1994, dated May 7, 1994, Kaua'i Christian Academy, a Hawai'i non-profit corporation and The Second Adam Corporation, a Hawai'i corporation for Easement W-1, affecting portion of Unit 5, Kīlauea Garden Farms condominium, Kīlauea, Kauai, Hawaii**

It was recommended that the Board approve the Grant of Easement document whereby James D. White, Successor Trustee of that certain unrecorded Henry A. Fredricks Separate Property Trust, Gary S. Kading, Trustee of the Gary S. Kading Trust of 1994, dated May 7, 1994, Kaua'i Christian Academy, a Hawai'i non-profit corporation and The Second Adam Corporation, a Hawai'i corporation grant to the Board of Water Supply, County of Kaua'i:

Easement W-1, on, over and under that certain parcel of land located in TMK: (4) 5-2-004:102; Kīlauea, Kauai, Hawai'i

for the construction, installation, reinstallation, maintenance, repair and removal of potable waterlines, fire hydrants, air relief valves, water meters and related facilities, installed in accordance with the as-built construction drawings for CONSTRUCTION PLANS: DETECTOR CHECK AND LATERAL CROSSING UNDER KĪLAUEA LIGHTHOUSE ROAD prepared by Peter Taylor, Engineer and Surveyor, Inc., together with the right of ingress and egress at any time to and from the said easement area with or without vehicles or other equipment as the Department of Water shall deem necessary for the proper operation of its water system.

Further, Board approval was 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.

Mr. D. Fujimoto moved to approve the Grant of Easement document from James D. White, Gary S. Kading, Kaua'i Christian Academy, and The Second Adam Corporation, seconded by Mr. Costa; motion was carried.

**Re: Conveyance of Water Facility from The Second Adam Corporation, Kīlauea Lighthouse Road, TMK: (4) 5-2-04:102 Unit 5, Kilauea, Kauai, Hawaii**

It was recommended that the Conveyance of Water Facility document be approved; whereby, The Second Adam Corporation transfers unto the Board of Water Supply, County of Kauai, all of its right, title and interest to the following item:

One (1) each 6” detector check (fire) service lateral, including concrete vault and cover

in place complete, in accordance with the as-built construction drawings for CONSTRUCTION PLANS: DETECTOR CHECK AND LATERAL CROSSING UNDER KĪLAUEA LIGHTHOUSE ROAD prepared by Peter Taylor, Engineer and Surveyor, Inc., Kīlauea Lighthouse Road, Kilauea, Kauai, Hawaii.

A Grant of Easement is also required.

Mr. Kyono moved to approve the Conveyance of Water Facility document from The Second Adam Corporation, seconded by Mr. Costa; motion was carried.

**Re: Wainani Subdivision – Request Building Permit Approvals, S-2004-48, Kiahuna Kanahiku, LLC, TMK: (4) 2-8-14:32, Koloa, Kaua’i, Hawaii**

Mr. Jim Peterson and Ms. Michelle Swartman of Wainani Subdivision and their Consultant Mr. Avery Youn were present at the meeting.

**Recommendation:**

The Department administration recommended that the Board not approve Kiahuna Kanahiku, LLC request for building permit approvals for the subject subdivision until the 16-inch ‘Oma‘o Transmission line is completed and in service.

**Developer Request:**

Mr. Jim Peterson, Kiahuna Kanahiku LLC, submitted a written request to testify before the Board at its July 17, 2007 meeting. Mr. Peterson was seeking the Board's consideration and approval of the building permits for the subject project prior to completing all the Kiahuna Mauka Partners water system requirements.

The Kiahuna Kanahiku LLC (Developer) letter that was received by the Department on June 29, 2007 stated that the Department of Water staff cannot recommend building permit approval for the residential dwelling units for the subject project based on the following:

- 1) ‘Oma‘o Tank – Must be certified complete. (Only thing left is a drainage easement must be recorded with Land Court).
- 2) 12” Waterline along Hapa Road, Weliweli and Koloa Roads – This improvement was certified complete on May 21, 2007.



- 3) Kiahuna Plantation Drive W.L. Extension – Must be certified complete. The Grant of Easement, Conveyance documents, cost breakdown and as-builts have been provided to DOW. Certificate pending.
- 4) Wainani Subdivision – Must be certified complete. The Grant of Easement, Conveyance documents, cost breakdown have been provided to DOW. The “as-builts” have been offered to DOW; however, DOW will not accept them until the paving of Road B is complete. Niu Construction the Kaua’i subcontractor performing this work is also performing work on the main highway in Puhi. Since we do not have building permits and this highway work directly benefits the community we agreed to wait until July 9<sup>th</sup> to have the work completed. Certificate Pending.
- 5) Koloa Well “F” - Must be completed. Letter with MWH laboratories results was mailed to Department of Health June 6, 2007. Results are subject to DOH approval. DOH approval pending.
- 6) 16” ‘Oma‘o Transmission Line: Must be certified complete. Kukui‘ula Development Company has contracting responsibility for this line. Wainani through KMP contributed money. It is my understanding that this line is complete except for a chlorination test followed by conveyance and certification.
- 7) FRC Payments – The DOW has been reviewing the FRC worksheet for over 6 months. The updated worksheet is attached. You will be notified that it includes an excess of credits. No FRC payments required.
- 8) Cost-sharing of Koloa Well F – Wainani through KMP is to pay 33% of the Well F cost. All payments have been made and KMP stands ready to pay any adjustments once DOW completes this job.

The developer stated that he has no control of the 8 items listed above. However, based on their current completion status they will all be substantially complete long before the homes for which the developer is requesting building permits will be complete. The developer is not seeking to be released from any condition nor is he asking for a waiver of any condition. The developer wants to start their building program while these items are completed, to the satisfaction of the Department staff, those responsible for the work.

**Background:**

1. The Wainani Subdivision (S-2004-48): The 70 lot residential subdivision was granted final subdivision approval by the Planning Commission on October 24, 2007 after the subdivider executed a subdivision agreement and posted the necessary bond for the construction of necessary water system facilities. As required by the DOW the developer was required to clearly letter the following on the approved construction drawings, final subdivision map and the deeds of the subdivider lots:

**“Domestic water service will not be available until the required construction improvements for this subdivision are completed and**

**accepted by the Department of Water, County of Kaua‘i.” The subdivider must record this deed restriction with the Bureau of Conveyances with in 90 days of final subdivision approval by the Planning Department.**

In an e-mail dated October 23, 2006 from the DOW Acting Manager to the Planning Department, the DOW submitted an informal notice that the Department is recommending final subdivision approval for the Wainani at Kiahuna Subdivision (S-2004-48). In the e-mail the DOW stated that as a requirement of the subdivision, the Wainani Subdivision applicant(s) must acknowledge and understand that building permit approvals will not be granted until all required water system improvements (including Well F) are certified complete by the Department of Water.

Based upon a Memorandum of Understanding that was submitted by Kiahuna Kanahiku, LLC, by letter of transmittal (dated December 6, 2006) the developer agreed that DOW shall be under no obligation to approve building permits for the project unless and until the off-site County water improvements serving the property are completed, inspected and accepted by the Department (including but not limited to County Well “F”).

Currently, and as confirmed by the developer, the necessary water system improvements (both on-site and off-site) for the subject subdivision is not complete. As a result, the Department is unable to confirm the availability of adequate potable water service for the subdivision at this time. DOW approval of building permits and/or water meters is not possible until the Certificate of Completion for the necessary water improvements are issued by the DOW.

2. Pay the Facilities Reserve Charge. The required facilities reserve charge was not paid by the subdivider. The DOW allowed deferral of the payment pending DOW review and approval of the FRC Offsets for source, storage and transmission facilities based on DOW rules and regulations. DOW is currently waiting for the detailed final cost-break down for the off-site water improvement projects before finalizing the FRC Offset for the KMP master planned area, which include the Wainani Subdivision. Any DOW approval of building permits and/or water meters for the subdivision will require the payment of the revised FRC charges as modified by the FRC offset.

3. Koloa Well F Agreement between Kiahuna Mauka Partners and DOW: Paragraph 4 for the agreement states:

**” The DOW will be under no obligation to approve any final subdivision maps...approve any building permits or issue any water meters for the Project until Well F is complete and in service...”**

The construction of the Koloa Well “F” project is not completed and County domestic water supply to the KMP subdivision is not available. Koloa Well “F” is anticipated to be in service on or about July 20, 2007. To date, the DOW has not

approved any building permits for projects that is located within the Kiahuna Mauka Partners master plan area that include the Wainani Subdivision.

4. DOW letter, dated March 14, 2007, to Kiahuna Kanahiku, LLC regarding Wainani Subdivision (S-2004-48) – The Acting Manager informed Mr. Peterson, Project Manager for Wainani, that she will not be able to approve the building permits for the Wainani Subdivision until all required water system improvements (including Koloa Well F and the ‘Oma’o Road waterline) are certified complete by the Department of Water.

**Finding:**

Based on the following, The Department is unable to recommend approval of building permits for the Wainani Subdivision at this time:

1. As a condition for subdivision approval by the Planning Commission, the owners and future owners of the Wainani Subdivision were given notice that domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water.
2. By MOU agreement, the developer agreed that the DOW is under no obligation to approve building permits for the subdivision until the off-site water improvements are completed and accepted by the Department.
3. The required subdivision water system facility improvements that include both on-site and off-site improvements are not complete. As a result, the Department has not been able to issue certification of completion for most of the water improvement projects.
4. The facilities reserve charge (FRC) for the subdivision was not paid. The Department has not received the final construction cost information for the water system improvement projects that is required to determine the FRC Offset amount and the revised FRC payment for the subdivision.
5. The Koloa Well F agreement between the Department and Kiahuna Mauka Partners stipulated that DOW will be “under no obligation to approve any final subdivision maps...approve any building permits or issue any water meters for the Project until Well F is complete and in service...”
6. The Department has informed the developer that building permits for the Wainani Subdivision will not be approved by DOW until all required water system improvements (including Koloa Well F and the ‘Oma’o Road waterline) are certified complete by the Department of Water.

**Summary by Acting Manager:**

The Department’s staff has worked towards completing the review and processing the Wainani conveyance documents, grant of easements and certifications of completion necessary for project. It was through our staff’s efforts and coordination that she felt that a number of items are nearing completion.

The one major stumbling block that delayed the completion of the off-site improvements was the chlorination of the 16-inch 'Oma'ō transmission line. Although in his letter dated July 12, 2007, Mr. Peterson simply indicated the line had been chlorinated and had passed the chlorination test. This was far from being a typical disinfection process. This section of the transmission line failed on numerous occasions, approximately 6 times. Each failed test delayed the completion by about a week, again as Mr. Peterson indicated Kukui'ula Development Company is the contracting authority and responsible for constructing this section of the transmission main and KMP partnered with Kukui'ula Development to cost share the work. This section of transmission main is needed in order for KMP to utilize the 'Oma'ō storage tank for its developments – one of which in Wainani. Since the 'Oma'ō Tank was one of the integral components of KMP's off-site water system improvements, the Department informed Wainani that this transmission must be tied into the water system before we would consider issuing building permits for the model homes.

On June 27, 2007, the Department of Water received a memo from the Department of Public Works that the building permits for the three (3) Wainani model homes were issued without the Department of Water's approval. Based on this action, I feel Wainani purposefully and willfully circumvented the Department's approval authority in the building permitting process. Based on the turn of events, despite the good faith efforts of her staff to help expedite the permits, Acting Manager Ushigome supported and recommended not approving the building permits until the 16-inch 'Oma'ō Transmission main is completed and in service. However, if the Board decides to afford favorable consideration to Wainani's request, she recommended requiring Wainani to execute the Waiver, Release and Indemnity Agreement with the Board.

Board/Staff Discussion:

On query by Mr. Kyono, Acting Manager Ushigome stated that they did not know why the chlorination test failed; however, the chlorination test has since passed. She added that one end of the pipeline was to be connected that night and one other connection to go.

Acting Manager Ushigome added that the DOW had an understanding with Wainani was that all of the water system improvements needed to be completed. They were aware of that condition when they went through the subdivision process. Acting Manager Ushigome added that the DOW in good faith tried to expedite this project for Wainani; however, she was very disappointed that Wainani, not in good faith circumvented the DOW to get approval for their 3 model homes.

Mr. D. Fujimoto stated that he sympathized with them as there is an economical downturn and companies are looking at ways to not lay off their employees. He added that the model homes do not require water; therefore, a conditional Certificate of Occupancy (CO) could be issued as it states that you cannot use these homes as residences. Mr. D. Fujimoto added that he knows that the building permit application process does take about 6 months.

On query by Chair McCrory, Mr. K. Fujimoto estimated that barring unforeseen circumstances, this project could be completed in about one month.

On query by Mr. Kyono, Acting Manager Ushigome stated that Kukuiula and Kiahuna Mauka Partners (KM) are both responsible to install the 16-inch waterline.

Testimony:

Mr. Avery Youn, Authorized Agent for Maryl Group, was present to testify. Mr. Youn introduced Mr. Jim Petersen, Kauai Area Manager, for Maryl Group and Ms. Michele Swartman, Project Manager for Wainani and stated that he was hired by the Maryl Group in 2005 to assist with resolving the conditions of approval for the overall Kiahuna Project.

Mr. Youn stated that he wanted to make it clear that their intent is not to circumvent the authority of the Department because he understands and knows the policies. He understood that from an administrative standpoint, that the Department must stand firm on their decision making and the implementation of their policies. He also stated that he understood that it would be difficult to allow projects through with items still outstanding. However, he felt that this project has been going on for so long and about 99% of everything is completed with a few items still outstanding; therefore, Mr. Youn requested if the Board, if it is within their discretionary authority, to authorize the DOW to issue building permits for the 70 dwelling units in the Wainani Subdivision. All 70 dwelling units have been packaged and the building permits are at the Building Division ready to be processed since November, 2006.

Mr. Youn discussed that contractors have a time slot for your project and because their project is not ready to construct, the contractor may have to start releasing some of his employees. Also, the market has gone soft and in order to assist with the advertising and marketing program, they would need to build their model homes in order to promote sales. Marketing for these types of projects on Kauai are normally done in the months from November to April, which is coming up soon.

Mr. Youn added that the developer has incurred a lot of carrying costs and is about 18 months behind schedule. He also stated that financing nowadays is different as financing is not done for the whole project, but is based on milestones and reservations, especially in condo projects. A certain percentage of reservations are needed before the lender would commit to a longer term of financing. In their case, it is very similar, as financing is not forever as their milestone is getting building permit approval before you can continue on with extensions on their financing. There is also a lot of outside costs with this project like a lot of water improvements, major road improvements, also partially responsible for the construction of a roundabout and the intersection by the Keoki's Restaurant.

Mr. Youn stated that they understood that there was a Memorandum of Understanding with the DOW during the tentative and final subdivision process that the DOW may not necessarily have to approve building permits until all of the offsite water improvements are completed and accepted, which included the completion of Koloa Well "F" and Omao waterline. However, they understood that the DOW has a Waiver, Release and Indemnity Agreement form that could be initiated in order to get building permits without the completion of the water improvements.

Mr. Youn added that the on-site water facilities have been constructed, with roads paved, and the Board has already approved the conveyance of the water facilities,

the as-builts were done and still needed to be reviewed and certified by the DOW. The off-site improvements, Koloa Well "F", the Department of Health (DOH) issued a conditional approval letter to the DOW and all of the testing is nearly done.

Mr. Youn that they got word from the contractor that is doing the connection for the Omao waterline and the contractor felt that the Omao waterline would be functional in about a month.

Mr. Youn stated that their facilities reserve charge (FRC) was \$322,000 and the credits from the overall KMP project based on what was spent for off-site water improvements, FRC credit to the Maryl Group is \$336,600. Therefore, they felt that there is no FRC involved; however, if the DOW does find that the Maryl Group does owe FRC, then they would be more than willing to pay whatever the difference.

Mr. Youn summarized that they know because of the soft market and the high upfront development costs, they have to start construction right away. They know that the subdivision and on-site water improvements are done and they are waiting for their Certification. They also posted a subdivision bond that covers all of the on-site water improvements and is still effective today. The paving of the road is complete. For the Koloa Well "F", DOH gave a conditional approval letter to the DOW, which may have additional testing to do. Also, the testing of the Omao waterline is done. Mr. Youn stated that they are asking for building permit approval so that they can get back on schedule and cut down some of the high carrying costs that is being accrued every month. He added that they would not be asking for water service until all of the water concerns have been met or addressed.

Mr. Youn felt that everything could be completed very shortly; however, there may be some problems that could cause delays like the easements for the Omao tank has to be recorded in Land Court before it is completely certified. He added that they have no control over the recordation and not sure how long the process would take.

Mr. Youn stated that they would need water for construction of these homes; however, it would be only for cleanup, doing drywall and concrete and not for consumption. They know that the on-site water system is active but not certified yet.

Mr. Youn requested on behalf of his clients for the Board to authorize the DOW to execute in a timely fashion a Waiver, Release and Indemnity Agreement that would allow issuance of building permits prior to the total acceptance of the water system. He reiterated that they would not be any requests for occupancy permits until the water system is inspected and certified and they would comply with all of the DOW's requirements and all of the issues that were brought up today.

Mr. Youn added that the estimated date of completion of their first set of homes is May, 2008; therefore, it would be another 7-8 months before there would be actual requests for water or Certificate of Occupancy.

On query by Mr. D. Fujimoto, Acting Manager Ushigome explained that typically a Waiver, Release and Indemnity Agreement is allowed for commercial development and is signed to allow building permits while the on-site contractor is doing the on-site improvements. The Waiver would be allowable in this case as Wainani has direct

control over the on-site improvements. However, for the off-site improvements, it would not be allowable as Wainani does not have direct control over the improvements, as there are various partners (KMP) that oversee that portion.

Mr. Jim Petersen introduced himself and explained that KMP, the umbrella company, was formed to finish the off-site improvements that started about 20 years ago. They felt that the County would not have to deal with individual homeowners but instead deal with the umbrella company of KMP.

Mr. Petersen reiterated the downturn of the market, the continuing costs and the need to have continuity of work for the contractors and their sub-contractors.

On query by Mr. Kahawai, Mr. Petersen stated that KMP consists of the 5 landowners in the area: 1) the first is a subdivision of about 100 units with oversight by the partnership of Terry Kamen's and Greg Kamm's group; 2) Ledcorp; 3) Brookfield's; 4) he was not sure of this entity; and 5) Maryl Group.

Mr. Petersen stated that the reason for asking for the Waiver in this instance as they are in control of what they are doing on-site and the doings of the off-site are substantially done by the time they can bring in the inventory in May, 2008. They wanted to be ready to bring in the inventory that is why they are starting early.

Mr. D. Fujimoto asked for a legal opinion on whether the Waiver has to be for situations that are under the control of the applicant or can it be for situations that are not under the applicant's control? Deputy County Attorney Flores stated that she would need more background on the Waiver in order to make an opinion.

On query by Chair McCrory to Mr. Youn on any health and safety factors unaddressed, Acting Manager Ushigome stated that the storage tank has not been tied in yet. Chair McCrory stated that she would be uncomfortable if there were health and safety factors. On query by Chair McCrory, Mr. Petersen and Mr. Youn concurred that the project would take more than a month that is why they are before the Board to request to sign the Waiver as they know that the DOW's staff is so overworked. Mr. Petersen felt that their situation would not have a health and safety issue.

Mr. Fujikawa added that the DOW's rules have a section on fire protection that would be a health and safety factor. Acting Manager Ushigome also added that she still felt that the Omao transmission line and the Omao storage tank needed to be completed and functional.

On query by Mr. Costa, Acting Manager Ushigome stated that Kukuiula would have their own source and storage.

Chair McCrory concurred with Mr. D. Fujimoto that the language in the Waiver, Release and Indemnity Agreement should be reviewed again to see if it needed to be updated to accommodate various situations like this when the off-site improvements are beyond their control. Therefore, Chair McCrory requested that staff look into the Waiver agreement if there is some way to broaden the language to also accept off-

site improvements. Mr. D. Fujimoto added that it should not only be off-site improvements but also to include situations that are beyond the applicant's control.

On query by Mr. Costa, Acting Manager Ushigome stated that the Waiver is given at the Manager's discretion.

On query by Mr. Petersen, Acting Manager Ushigome stated that if the tie-in of the Omao transmission line is successful tonight, that she would sign off on the building permits as previously agreed upon. Mr. Petersen added that all other agencies have signed the building permits previously except the DOW.

Mr. K. Fujimoto brought up that another issue that they would need to provide assurance that they will have and will use non-potable water for irrigation, which has not been addressed yet. Mr. K. Fujimoto would need that assurance before he signs off on the project's Certification of Completion. On query by Mr. Kyono, Mr. K. Fujimoto stated that it was their contention that they would be using non-potable water instead of potable water for irrigation.

Mr. Petersen elaborated that there was an old KMP requirement that potable water was not to be used for irrigation for the multi-family project but was not a requirement for the single-family project.

On query by Mr. Costa, Mr. Petersen stated that the golf course uses R-1 and stream water for irrigation. Mr. Petersen added that as a single-family project, they could not use R-1 water.

Acting Manager Ushigome added that since irrigation water was going to be used KMP's water demand was projected to be less; therefore, it would fall on all 5 KMP landowners to resolve the irrigation issue as part of the water master plan. Mr. Petersen reiterated that non-potable water was a requirement to be used for the multi-family project and not the single-family project.

Mr. K. Fujimoto added that the construction plans does show a connection for non-potable irrigation water for all of the KMP projects. He added that he would need to know where the irrigation water would be coming from and assurance that it will stay non-potable water and not potable water.

Mr. Petersen added that KMP has signed an agreement with Grove Farm for non-potable water to feed all 5 KMP projects; however, that agreement was not acceptable to the DOW; therefore, Mr. Petersen asked Mr. K. Fujimoto what document would be acceptable to the DOW to assure the DOW that KMP would be using non-potable water.

Mr. Oyama advocated the use of non-potable water for irrigation and commended them for using it.

Again, after some discussion on the validity of the Waiver, Acting Manager Ushigome reiterated that the Waiver would have to be for something that you have control over or else why would you want to sign the Waiver to waive something that you had no control over.



On query by Mr. D. Fujimoto, Acting Manager Ushigome stated that irrigation water is not the issue, as 2-3 months ago, she agreed to sign the building permits if the connection of the 16-inch at 'Oma'o that connects the storage to the development is functional and in service. She added that Maryl indicated that in the MOU that they signed with the DOW, they fully acknowledged that building permits would not be issued until all the improvements were certified.

Chair McCrory requested that Maryl work with the other landowners on the irrigation situation prior to their requesting Certificate of Occupancy. She also requested that Mr. Youn assist with the irrigation situation and to find a way to assure that this requirement does not slip through the cracks.

Mr. Costa discussed that there were some overriding conditions that has gone on for the past 20 years and they now have to deal with multiple people that had bought various parts, one of the overriding reason to have them form KMP was so the County would have to deal with only one party. He added that it is appropriate that KMP would deal with this irrigation situation.

On concern by Mr. Costa, Mr. K. Fujimoto stated that the DOW would not initiate a Certification of Completion for this project unless the irrigation water has been addressed.

Since Acting Manager Ushigome stated that if the tie-in of the Omao transmission line is successful tonight and the water is flowing, that she would sign off on the building permits as previously agreed upon, Mr. D. Fujimoto moved to refer this matter to administration for action, seconded by Mr. Oyama; motion was carried.

*Mr. Youn, Mr. Petersen, Ms. Swartmann and Mr. Moises left the meeting at about 2:28 p.m.  
Mr. Costa and Mr. Fujimoto were both excused from the meeting at about 2:32 p.m.*

## **OLD BUSINESS**

### **Re: Discussion and Action Steps concerning Selection Process for new Manager and Chief Engineer of the Kaua'i County Water Department 1) Contract Hire to Assist the Acting Manager**

#### **Advertisement for Manager and Chief Engineers Job Announcement**

The job announcements for the Manager's position are currently being advertised in the two (2) newspapers of general circulation within the State, as well as in the major newspapers on the neighbor islands. (See enclosed copy of the job posting)

The Manager's job ad is also on the following websites:

- Hawai'i Water Environment Association (HWEA);
- American Water Works Association-Hawai'i Section;
- University of Hawai'i Alumni, and;
- Department of Water, County of Kaua'i.

Also, we are in the process of posting the job announcement on the County of Kaua'i's website.

Chair McCrory also wanted to advertise on Monster.com and Careerbuilders.com

**Update on the Rule Change**

Chair McCrory reported that she is waiting on Gary Slovin, who wrote the opinion if the Board could make the decision on the Manager’s and Deputy Manager’s salary, to talk with the County Attorney. They were suppose to have talked to each other yesterday.

**Re: Quarterly Report on Manager’s Top 4 Goals for Year 2007**

**Recommendation:** Not Applicable

**Project Funding:** Not Applicable

**Background:**

Manager’s Top 4 Goals for the Year 2007:

1. Fill key departmental vacancies and improve office work area (Admin)
2. Improve internal communications-Strategic Business Plan (Admin)
3. Install AMR system (Fiscal-Special Projects-Operations)
4. Develop the Water Use and Development Plan (Water Resources & Planning)

**Departmental Vacancies**

Current vacancies and status of the filling the positions:

Manager and Chief Engineer .....	Salary Commission’s recommendations passed and effective July 1, 2007 with satisfactory JPR review. Recruitment has begun again with higher salary options.
EM-7 Engineer	
2 EM-5 Positions .....	Board Chair and staff working with DPS on revising the DOW’s Table of Organization and to finalize the EM positions and position descriptions.
Operations Staffing .....	(Recently Approved)
Engineer/Planner .....	No progress.
SCADA/Electronic Tech .....	No progress.

Chair McCrory reported that she and Debra Togioka met with the Department of Personnel Services (DPS) staff of Malcolm, Tom and Joyce to discuss the reallocation of the EM-3s to EM-5s positions and she felt that the meeting went well. They discussed with the DPS personnel on the DOW’s Sustainability Plan and the Strategic Plan and were favorable to help us with options to attract new hires to the DOW.

**Internal Communications**

Acting Manager Ushigome stated that she is committed to improving communication between staff and provide feedback. As often reiterated, this is an ongoing process.....we will keep allowing and facilitating open discussions and dialog to communicate with our staff.

**AMR System**

The Department has consulted with the unions; however, we have not received acknowledgement from them. Essentially, work on the AMR was at a “standstill” pending the outcome of the consultation. We will try to get a response from UPW shortly and continue finalizing the details of the project.

On query by Chair McCrory, Acting Manager Ushigome stated that they were waiting for a response by the United Public Workers (UPW) as the Kaua’i UPW Office had to get a response from their main office on O’ahu.

Mr. Kyono added that from his experience, the union is notified so that they can review and comment on what the Department is doing and not to get their approval. He also added that he normally gives them a deadline to respond and if the deadline is not met, then he moves on. Mr. Kyono stated that the union may or may not submit a grievance, which they have done in the past at his office; however, they lost the grievances.

On query by Mr. Kyono, Acting Manager Ushigome stated that the Hawai’i Government Employees Association (HGEA) did not have any comments.

Chair McCrory concurred that UPW should be given a deadline to respond.

**Water Use and Development Plan**

Discussed the status of the Kaua’i Water Use and Development Plan with the State Commission of Water Resource Management (CWRM) and reviewed the scope and requirements with the Commission and our consultants.

Also, during our discussion, the State DOH –Safe Drinking Water Branch was represented by Dan Chang. He mentioned potential funding opportunities are available through the source water protection program.

Mr. Kyono moved to receive this report for the record, seconded by Mr. Oyama; motion was carried.

**ACCEPTANCE OF THE AGENDA:**

Ms. Sakoda moved to re-order the Agenda to now take up Reports H4, Manager’s Update, seconded by Mr. Kahawai; motion was carried.

**REPORTS**

**Re: Manager’s Update for June, 2007 to July, 2007**

**CONTRACTS AWARDED BY THE MANAGER:**

- 1. KMH LLP - Account No. 32, Annual Audit Fees .....\$75,000.00
- 2. Goodsill, Anderson, Quinn & Stifel,  
Special Counsel Services, Account No. 27,  
Contracting Services .....\$25,000.00

**PUMP INSTALLATION PERMITS SIGNED BY MANAGER:** None.

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

Affordable Housing Update:

Updates on Affordable Housing Task Force (AHFT) Projects:

1. DHHL – Anahola Residence Lots Unit 6, Pi'ilani o Kekai, Phase 1: DOW has not received the final subdivision map from Planning.
2. Habitat - Eleele I Luna Subdivision Phase 1: Final subdivision approval received on June 12, 2007 from the Planning Commission. Housing will prepare administrative directive to establish a Council Resolution to waive the building permit fees for Phase I
3. Hookena at Puhi- Grove Farm is responsible for completing the booster pump and off-site waterline improvements by September 2007.
4. Puhi Self Help Subdivision – Grove Farm is responsible for completing the booster pump and off-site waterline improvements prior to final subdivision map and/or DOW building permit/water meter approvals. Housing will verify if the Self Help housing project intends to submit building permits applications in July 2007 and when final subdivision approval is anticipated.
5. Kauai Lagoons – Kapule Project: Kaua'i Lagoons will submit construction plans for their 31-unit affordable housing project shortly. The water demand study being prepared by their consultant indicates that the 31 affordable units will be service by a new water meter which is will require development of off-site source and storage improvements. According to the Housing Agreement, these affordable units must be completed prior to February 2010 or before 50% of the market units are completed.
6. Kauai Lagoons – Waipouli Courtyard-Outstanding items include the Kaua'i Lagoon's request to use a Waiver, Release and Indemnity (WR&I) agreement (including posting a bond) with the Department.
7. KEO Transitional Housing Project Phase I & II: Phase 1 is completed. Phase II: DOW approved building permit for Phase II; revised construction plans were approved in early June 2006, waiting for 4 approved sets of the plans and start of construction. Requested Housing determine when the KEO water improvements are scheduled to be for completed since KEO plans to occupy by August 2007.
8. Kalepa Village Phase III & IV – Phase III- 40 unit multi-family development is under construction.
9. Princeville Employee Homes: No report
10. Kukui'ula Employee Housing – "Gap" housing subdivision and zoning permit were approved by Planning on June 22, 2007.
11. Kohea Loa (Hanama'ulu Triange): Since Fall 2006 there has been no updates or revisions to the Water Infrastructure Masterplan. DR Horton stated they expect the wastewater and water situations to be resolved by July 2007.
12. County-State parcel affordable housing projects: No report.

Puhi Booster Pump Update:

Gove Farm has submitted their monthly update to the Board. (See enclosed Grove Farm Status Report letter dated June 1, 2007.) The report indicates additional time is needed to complete the construction of the booster pump station; the new completion date is September 30, 2007.

## **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**

Mr. Richard Cuthbert was RW Beck's representative at this meeting.

Acting Manager Ushigome gave the following update:

**Strategic Plan Implementation**: An updated summary of the highlights of the task plans and affordable housing projects are provided for your review. (See enclosed "Board Briefing: Strategic Plan Implementation Status Report" dated July 6, 2007, prepared by RW Beck.)

**Funding Request for Amendment No. 5**- Implementation of the Strategic and Business Plan – FY07-08 is provided for your review. (See enclosed Draft –Exhibit A-5, Amendment No. 5 to Professional Services Contract for Strategic and Business Plan and Water Plan 2020 Program Sustainability Services)

**Recommendation:**

Based on her review of Amendment No. 5, she recommended that the Board defer action to approve the funding request as submitted as she was still reviewing and negotiating Amendment No. 5 with RW Beck. Therefore, Acting Manager Ushigome requested more time to receive the necessary clarification documents.

Acting Manager Ushigome stated that her understanding was when RW Beck proposed this \$250,000 Implementation Plan, it was essentially for the entire year of 2007. She reviewed the Board Minutes and it indicated that Mr. Jochim had stated there would be a 2-month period that would be an initiation period to assist the staff. However, there were here for only 4 weeks initially. Thereafter, they were supposed to be here for one week a month so Acting Manager Ushigome wanted clarification on why money was running out at the end of July, 2007. Chair McCrory added that it was later increased to 2 weeks a month as 1 week a month was not enough.

Chair McCrory requested that Acting Manager Ushigome should in the mean time get the actual time worked on-site from RW Beck. Since Chair McCrory wanted to make sure that RW Beck is on-site in September, 2007, she recommended that the Board approve a 3-month contract that would carry their contract to the end of December, 2007. Acting Manager Ushigome also stated that the proposed Amendment No. 5 is open –ended with no definitive costs. Chair McCrory stated that in the meantime, Acting Manager Ushigome should get a clear understanding of what transpired from now to the end of the year and report to the Board after the December, 2007 Board Meeting with supportive background on what transpired so the Board could go through it.

Chair McCrory discussed that per Amendment No. 3, funding should have been available until the end of August, 2007 and she recalled that the initial period in early 2007 was only one month and not two months. Chair McCrory added that thereafter Acting Manager Ushigome requested that RW Beck be on-site for 2 weeks at a time instead of only one week as all agreed that it made sense to stay for a longer period.

Chair McCrory felt that she wanted to keep the momentum since this is incredibly important and the DOW has no manager. She added that if there is leftover money from Addendum No. 3 then it would be reduced in the next round.

Acting Manager Ushigome stated that RW Beck was not planning to be on-site in December; therefore, it would be from August to November, 2007.

On query by Ms. Sakoda, Acting Manager Ushigome stated that Amendment No. 3 covered from February 2007 to December 2007 for the Implementation of the Strategic Plan, and she stated that the schedule is about one month behind.

*Acting Manager Ushigome, Mr. K. Fujimoto and Ms. Esaki were excused from the meeting at about 2:55 p.m. to attend an appeal case at the Civil Service Commission Meeting.*

Chair McCrory discussed that the Board can request a presentation by RW Beck

Ms. Sakoda moved to approve a 3-month interim contract for September to December, 2007 for \$103,000, seconded by Mr. Oyama; motion was carried.

**Water Plan 2020 Sustainability Program Implementation Plan:**

The WP2020 Sustainability Plan workshop is scheduled for July 26, 2007 from 9:00 am until 2:00 pm. Dave Jochim and Tom Jacobs from RW Beck will be at the workshop to provide an overview of the plan and answer any questions.

**Affordable Housing Projects:**

1. **(KW-25), Kapilimao 0.5 MG Tank** – Summary Project Status June '07  
Project Manager: Keith Fujimoto  
Design Consultant: Brown and Caldwell

Work underway: final design, environmental assessment

Work ahead: complete final design, construction

Current Major Area of Focus: environmental assessment.

Potential obstacles: none currently

Tentative Date Project in Service: December 2008

- Summary: 35% design submittal submitted 5/29/07. Internal draft EA was due in April, final draft for public distribution was May, but neither have been submitted. Latest estimate for internal draft EA submittal is week of July 2, 2007.
- Contract Status: Design contract executed.
- Schedule: Project slightly behind schedule (EA overdue).
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: EA not submitted on schedule. Will work with design consultant to catch up.

2. **(KW-28), Amfac Shaft 11 Renovation** – Summary Project Status June '07  
Project Manager: Keith Fujimoto  
Design Consultant: Brown and Caldwell

Work underway: DOW review of Phase 1B proposal and contract amendment  
Work ahead: final design, environmental/permitting, construction  
Current Major Area of Focus: contract execution, getting pump testing underway, early final design proposal  
Potential Obstacles: water quantity and quality unknown – testing pending  
Tentative Date Project in Service: December 2008

- Summary: Contract amendment for Phase 1B (well testing) drafted and submitted to DOW in June. Well testing can begin as soon as staff approves contract amendment and Notice to Proceed (NTP) is given to Brown and Caldwell. Pressure on Brown and Caldwell to develop proposal for early final design renewed now that they have finished the Phase 1B proposal.
- Contract Status: Amendment for Phase 1B drafted and under DOW review. See above.
- Schedule: See Problems and Proposed Mitigation below.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: Department of Health has expressed interest in project status. DOW and design consultant will contact Department of Health.
- Problems and Proposed Mitigation: Progress has been limited recently. Additional effort required to accelerate schedule, both for getting Phase 1B underway and early start to final design.

### **3. (WK-08), Kapahi 1.0 MG Storage Tank – Summary Project Status June '07**

Project Manager: Mark Salmon  
Design Consultant: Belt, Collins

Work underway: contract amendment  
Work ahead: final design, environmental/permitting, construction  
Current Major Area of Focus: contract amendment execution for final design  
Potential obstacles: easement acquisition from private landowner  
Tentative Date Project in Service: March, 2009

- Summary: limited progress recently. Need to get next phase underway. Contract amendment for next phase under staff review.
- Contract Status: Contract amendment drafted – DOW review underway.
- Schedule: Current schedule shows project completion in March '09.
- Permits: No issues.
- Land & Easements: Discussing easement acquisition with landowner. No recent activity.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: Project configuration and landowner issues not yet resolved. Analysis and final resolution part of next phase scope of work. Need contract amendment approval to continue.

### **4. Kapa'a Homesteads 0.5 MG Storage Tank – Summary Status Report – June '07**

Project Manager: Mark Salmon  
Design Consultant: Belt, Collins  
Work underway: contract amendment, easement acquisition  
Work ahead: construction  
Current Major Area of Focus: contract amendment execution, DLNR land transfer,

generator shelter addition  
Potential obstacles: none currently  
Tentative Date Project in Service: July 2008

- Summary: Plans and specs under staff DOW review. Contract amendment drafted and under staff review.
- Contract Status: Kapahi 1.0 MG Storage Tank and this tank combined in one contract. Need to execute amendment for next phases. See above.
- Schedule: No issues.
- Permits: No issues.
- Land & Easements: Recent information from DLNR indicates that the request for a land transfer for the 0.5 MG Tank must be combined with a land transfer request for the existing 1.0 MG Tank and resubmitted. Reportedly the land transfer for the existing 1.0 MG Tank was never properly completed.
- Agency Coordination: DLNR land transfer needed. See above.
- Problems and Proposed Mitigation: There is enough time available to complete construction by the end of 2008, but time slips as the contract amendment remains unexecuted, the land transfer is not completed, and new features (generator shelter) are added to the project. Will work with staff and DLNR to resubmit land transfer request ASAP.

**5. (WK-39) Kapa'a Homesteads Well No. 4 – Summary Status Report – June '07**

Project Manager: Mark Salmon  
Design Consultant: Belt, Collins

Work underway: contract negotiation  
Work ahead: well design, environmental/permitting and construction  
Current Major Area of Focus: consultant contract  
Potential obstacles: none currently  
Tentative Date Project in Service: December 2008

- Summary: Consultant selection process completed. Scope of work and contract drafted and under staff review.
- Contract Status: See above.
- Schedule: No issues.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: None.

**6. (WK-02) Akulikuli Tunnel Renovation – Summary Status Report – June '07**

Project Manager: Bruce Inouye  
Design Consultant: Belt, Collins

Work underway: final design contract execution  
Work ahead: final design, environmental/permitting and construction  
Current Major Area of Focus: contract execution and notice to proceed for final design.  
Potential obstacles: water quantity and quality unknown – testing pending  
Tentative Date Project in Service: December 2008

- Summary: New contract prepared and sent to design consultant for execution in June. Final design work should begin shortly.



- Contract Status: See above.
- Schedule: Preliminary schedule developed by SSFM without contract. Project is currently behind schedule.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: Contract now out for signature so recent lack of project progress should improve. Will work with SSFM to accelerate schedule.

Acting Manager Ushigome reminded the Board that the Water Plan 2020 Board Workshop will be held on Thursday, July 26, 2007 from 9-2 p.m. Chair McCrory stated that all Board members needed to be at that workshop.

Received for the record.

## **REPORTS**

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

No discussion.

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

Public Relations Specialist Faith Shiramizu gave the following report:

**Community**: Attended a Public Hearing in Koloa to support the Kaua'i Watershed Alliance and The Nature Conservancy in regards to the Kanaele Bog Protective Fence Project. The fence will protect the unique ecosystem, which supports rare and endangered species from feral pigs. Everyone in attendance was in support of this project.

Attended a Summer Program on July 6<sup>th</sup> at the Hanalei Community Center. We discussed water conservation and protecting our environment, using Project WET activities with 25 children ages 5-11.

**American Water Works Association (AWWA)**: The 2007 AWWA Annual Conference and Exhibition held in Toronto Canada was the venue for the 2007 National Pipe Tapping Competition. Ka Wai Wahine, the Kaua'i DOW women's pipe tapping team placed 3<sup>rd</sup> in this very competitive event. Their raw time of 2: 12, was even better than their time at the state competition, however with 32 seconds of penalties, their final time was 2:44. The San Antonio Water System team finished 1<sup>st</sup> with a time of 1:55, followed by 2006 champions, Sunrise Water Authority's Nitro Bits with a final time of 2:13. Congratulations to Ka Wai Wahine!

**Employee Events**: Pupule Bowling was a fun event, surely a new experience for everyone! Soul was the top winner with the lowest score. Kudos to the planning team of Keith Aoki, Mona Yamauchi, Keith Fujimoto, Emi Tanihiro, Amy Esaki, Rona Miura,

Margie Loo, Tommy Tokuda, Sandi Nadatani, and Darwin "Zoom" Bukoski. Thank you also to our anonymous donor who provided the food and prizes for this event.

The County's Employee Councils 3<sup>rd</sup> Annual Employee Picnic will be on Saturday, August 4<sup>th</sup> at Poipu Beach Park Main Pavilion. Food will be provided to give everyone energy for all of the planned activities like children's fishing tournament, sweet paradise baking contest, volleyball, bingo, lots of other games and even reiki and massage!

**Project WET:** The Project WET Annual Coordinators Conference held in Tucson, Arizona, June 7-12, 2007, was packed with a wide variety of information, with many sessions being very intense. It started with a New Coordinator Training Session that covered many of the questions posed by the dozen of us being trained. Other sessions covered Project WET Foundation information and updates, Correlation information from different areas, Ducks Unlimited Partnership, Managing Volunteer Networks, Climate Change and the Changing Hydrologic Cycle, and Chemical & Physical Properties of Water. It was reassuring to find that most of the coordinators are also juggling Project WET with many other duties and are all understanding and very willing to assist where they can.

**Make-A-Splash (MAS) Water Festival:** Planning is underway for our 2007 MAS Water Festival that will be held on Friday, September 21, 2007 at the park across the DOW's office. Inventory has been taken and notes organized to start contacting volunteers and schools.

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

The Budget for FY 2007-08 was approved at this Regular Meeting.

**Re: Summary Report of Monthly Operational Maintenance**

Acting Chief of Operations Eddy submitted an overview of the maintenance that the Shop personnel had done the previous month, which he has worked to fine tune this report to be more informative.

On query by Mr. Kyono, Acting Chief of Operations Eddy stated that often times there is a lot of overtime due to employees taking compensatory time off (CTO) instead of cash, which makes it a challenge. Mr. Kyono stated that since overtime is high, further study may be needed to see what time of work is done on overtime and if it could be done on regular work hours. Chair McCrory added that it could also be that more personnel is needed. Waterworks Controller Ganaden also stated that there is '25.10'; whereby, if an employee has worked for more than 18 hours and would have less than 10 hours of rest before the next day starting time, the employee is allowed to take a day off per the Unit 1 contract.

Mr. Kyono discussed that CTO can be a hardship on the work force too as most employees have the right to elect to take CTO and most of them do, which is covered under the union contract. Chair McCrory reiterated that a possible solution is to get more employees. Acting Chief of Operations Eddy stated that under the proposed

revised Table of Organization for the Operations Division show new supervisory positions.

On query by Ms. Sakoda, Acting Chief of Operations Eddy stated that they are looking into why SCADA (Supervisory Control and Data Acquisition) was down for a long time.

On query by Ms. Sakoda, Acting Chief of Operations Eddy stated that a report could be made on a regular basis to show how many meters installed, how many defective meters were replaced and how many laterals were installed.

The Board commended Acting Chief of Operations Eddy for a great informative report.

Mr. Oyama moved to receive all of the above Reports for the record and place on file, seconded by Mr. Costa; motion was carried.

## **NEW BUSINESS**

### **Re: Presentation by RW Beck on the DOW's Depreciation and Capital Reserve Study**

Mr. Richard Cuthbert, Ms. Gina Davis and Ms. Nancy Hughes, all of RW Beck, were present at the meeting.

Mr. Cuthbert submitted the following preliminary report: R. W. Beck, Inc. was retained to perform a Depreciation and Capital Reserve Study for the Department of Water (DOW), County of Kaua'i. Representatives from R. W. Beck met with the Board in February 2007 to provide an overview of the study and to obtain suggestions from the Board related to the study. At this Board meeting, R. W. Beck presented the final depreciation study results and recommendations and provided preliminary results on the capital reserve study.

#### Depreciation Study

R. W. Beck performed a depreciation study to review the reasonableness of DOW's existing depreciation rates, which were established in 1966. The recommended average services lives were developed from information obtained through interviews with DOW staff, R. W. Beck's knowledge and experience with similar facilities and comparison data from other utilities in Hawai'i and the mainland. A field review of selected facilities was conducted to develop a general familiarity with the type and condition of the major facilities.

Based on the analyses described in the draft report, R. W. Beck recommended a number of adjustments to DOW's existing average service lives and annual depreciation accrual rates, which are summarized in Tables 1 through 3 of the Depreciation Study Report. (An Executive Summary of the report including Tables 1 through 3 is also provided.) The recommended depreciation rates result in a total depreciation accrual rate of 2.65 percent, compared to 3.43 percent at existing depreciation rates. Based on plant in service at June 30, 2006, the effect of adopting the recommended rates is to decrease total annual depreciation expense from

\$5,548,866 to \$4,285,021 or \$1,263,845 (a 23 percent decrease) compared to existing rates.

It was recommended that the new depreciation rates be implemented effective July 1, 2007.

### Capital Reserve Study

R. W. Beck has prepared an estimate of DOW's capital replacement funding needs for a 20-year period. This analysis was based on capital reserve assumptions developed in conjunction with the depreciation study and engineering review and evaluation. Preliminary results indicate that an estimated \$6.2 million to \$9.9 million per year could be needed during the next five years for capital replacement and refurbishment needs. R. W. Beck will discuss with the Board the implications of these funding needs in conjunction with capital improvement funding needs on capital reserve requirements.

### **PowerPoint Presentation:**

*(Note: Italics below are notes on the presentation)*

I. Mr. Richard Cuthbert of RW Beck gave the opening to the presentation:

#### A. AGENDA

1. Depreciation Rate Study *(Nancy Hughes)*
  - a. Results and Recommendations
2. Capital Reserve Study *(Gina Baxter)*
  - a. Analysis and Preliminary Findings
3. Questions and Answers

### DEPRECIATION STUDY Overview (Presentation by Nancy Hughes)

#### B. Methodology

1. Determine Average Service Life (ASL)
2. Compile Surviving Balances
3. Calculate Remaining Life
4. Net Salvage Considerations
5. Calculate Depreciation Rate

#### C. Average Service Life

1. Process
  - a. Field review of facilities
  - b. Interviews with DOW staff
  - c. Comparison statistics from other water utilities
  - d. Engineering review

#### D. Average Service Life Recommendations

E. 4 Accounts that have changed & have the largest investment

1. Account 325: Electric Pumping Equipment
  - i. Average Service Life Determination (ASLD)

1. *Submersible Pumps (about 20%)*
  - a. *replaced after 10 years*
2. *Aboveground Pumps (about 80%)*
  - a. *Refurbish pumps after about 10 years*
  - b. *Replace pumps after about 20 years*
- ii. *Average is 18 years ASLD so no change recommended*

2. Account 332: Water Treatment Equipment

- i. *Average Service Life Determination*
  1. *Filters (all about 10-15 years life)*
    - a. *Carbon at the Wailua Homesteads Well Nos. 1 & 2*
    - b. *Soda Ash at Puhi Well No. 3*
  2. *Chlorination Facilities (15-year life)*
  3. *Surface Water Treatment Plant has a 15-year lease term so use 15 year ASLD*
- ii. *ASLD at 15 years (Note: Outdated 1966 Depreciation Study was a 29-year life and is probably outdated.)*

3. Account 342: Distribution Reservoirs & Standpipes

- i. *Average Service Life Determination*
  1. *Field tanks – 19% (40 year life)*
  2. *Concrete tanks - 81% (75 year life)*
- ii. *ASLD updated from 40 years to 50 years (based on HI industry standards)*
  1. *Chair McCrory recommended rechecking the concrete tanks ASLD and the ASLD of 50 years for this account.*

4. Account 343: Transmission and Distribution Mains

- i. *Average Service Life Determination*
  1. *Ductile Iron (DI) Pipe (52% of our pipes) – 75 year life*
    - a. *DI pipes first used in the 1980s so even though manufacturers say it will last 100 years, it has not been documented; therefore, a conservative 75 year life was used.*
  2. *Asbesto Cement (AC) Pipe (mostly replaced) – 40-45 year life (Mainland ASLD is about 30-70 years) – Decided to use 45 ASLD; we have a program to replace all AC Pipes.*
  3. *PVC Pipes (8% of our pipes) – 40 year life (problematic pipe)*
  4. *Cast Iron/Galv. Steel/Concrete – 65 year life (no problems)*
- ii. *ASLD is now averaging about 40 years & recommended 63 years (above HI range and below Mainland range)*

F. Surviving Plant Balances

*(Ms. Hughes thanked Waterworks Controller Ganaden and Ms. Karen Goo of his staff for providing this information.)*

1. DOW provided inventory data as of June 30, 2006
  - a. Plant investment by account
  - b. Plant investment by installation (vintage) year beginning in FY 1937
  
- G. Remaining Life
  1. Calculate remaining life by vintage year
  2. *Determine weighted average remaining life the plant account*
    - a. *Account No. 342: Average Remaining Life of 38.2 years*
  
- H. Depreciation Methods
  1. Recommend change from whole life to remaining life method
    - a. Existing: Whole Life Method
    - b. Recommended: Remaining Life Method (RLM)
      - i. *The beauty of RLM is that it automatically corrects for past instances that was over or under depreciated.*
      - ii. *Commonly used at water and electric utilities*
      - iii. *On query by Chair McCrory, Waterworks Controller Ganaden concurred with Ms. Hughes' recommendation.*
  
- I. Net Salvage *(DOW does not keep track of this)*
  1. New Hawaii DOT policy regarding abandoned pipelines
    - a. Retire in place *(also done in other states)*
    - b. Remove
  2. DOW working with DOT to resolve issue
  
- J. Effect of Whole Life vs. Remaining Life Method
  1. *Annual depreciation expense of \$5.5 million*
    - a. *Whole Life Method*
      - i. *to change the average service life, results in \$832,000 decrease in annual depreciation expense*
    - b. *Remaining Life Method*
      - i. *the average service life takes it down \$432,000*
      - ii. *overall decrease in annual depreciation expense is \$1.26 million, or about a 23%.*
  
- K. Results
  1. Effect of Recommended Rates on Annual Depreciation Accrual
  
- O. Recommendations
  1. Implement annual depreciation rates effective July 1, 2007
  2. *(Strongly recommended to)* Adopt remaining life depreciation methodology
  3. Review inventory and retire assets as appropriate
  4. Monitor net salvage
  5. Review depreciation rates every three to five years

Mr. Oyama moved to approve RW Beck's recommendations on the depreciation schedule, seconded by Mr. Kyono; motion was carried.

II. CAPITAL RESERVE STUDY Overview (Presented by Gina Baxter and Richard Cuthbert:

A. Methodology

1. Develop detailed asset inventory database (about 7,000 items)
2. Escalate original plant costs to 2007 dollars
3. Determine replacement and refurbishment cost assumptions and intervals
4. Estimate DOW's annual capital replacement costs for a 20-year projection period
5. Review implications for DOW's level of capital reserves

B. Key Assumptions

1. All existing meters replaced by the end of FY 2009
2. Hydrant replacement completed by 2022
3. Surface Water Treatment Plant – capital lease: No replacement costs; continuation of the Purchase Water Agreement
  - a. *Since the future of the SWTP is unknown, no replacement cost was made.*
4. Alternative capital replacement scenario when couplings fail;
  - a. Base case: Asbestos cement pipe refurbished
  - b. Alternative case: Asbestos cement pipe removed and replaced (*increases annual replacement cost about \$1.0 million a year on average, which is a significant cost increase.*)

C. DOW Plant Inventory

1. *Original cost as of June 30, 2006 is about \$161 million*
  - a. *Replaceable inventory about \$151 million*
2. *Escalated to 2007 dollars to about \$288 million*
  - a. *Replaceable inventory about \$276 million*

D. Representative Replacement and Refurbishment Assumptions

E. Projected Annual Replacement and Refurbishment Costs

1. *Next 5 years, the average would be about \$7 million*
2. *Next 10 years, the average would be about \$8 million*
3. *Next 20 years, the average would be about \$10 million*

F. Projected Capital Rehabilitation and Refurbishment Costs (20 years)

1. *Majority of the costs would be for pumping plants and transmission/distribution mains*
2. *Chair McCrory requested that this study results need to be part of our Water Plan 2020.*

*Mr. Kyono and Mr. Oyama left the meeting at about 4:00 p.m.*

- G. Reserve Policies – Surveyed Water Utilities
  - 1. Hawaiian Water Utilities
    - a. Honolulu Board of Water Supply
    - b. County of Hawaii
    - c. County of Maui
  - 2. Western Mainland Water Utilities
    - a. Arizona
      - i. City of Tucson
    - b. California
      - i. City of Burbank
      - ii. City of Santa Monica
      - iii. Contra Costa Water District
      - iv. Santa Clara Valley Water District
      - v. San Jose Municipal Water System
    - c. Colorado
      - i. City of Boulder
      - ii. City of Westminster
  
- H. Representative Reserve Targets and Policies
  - 1. Capital Reserves
    - a. 10% of O&M
    - b. Annual depreciation expense
    - c. 7% of Operating Revenue
    - d. 3-year average of adopted 5-year CIP
  - 2. Operating Reserves
    - a. 30 to 180 days of O&M
    - b. 10% of revenue from water sales
  - 3. Emergency Reserves
    - a. 1% to 3% of Operating Budget
  - 4. Rate Stabilization
    - a. 10% of O&M
    - b. 10% of annual debt service
    - c. 5% of operating revenue
    - d. 25% of annual rate revenues

*(Mr. Richard Cuthbert took over the presentation at this point.)*

- I. DOW Projected Capital Replacement Funding Needs (\$000)
  - 1. *The next 5 years, it ranges from \$5.5 million to \$9.2 million/year*
    - a. *Estimated about \$7-8 million per year for capital replacement as compared to the previous water rate study that had \$3 million per year*
  
- J. DOW Cash Available (as of 05/07)
  
- K. DOW Metered Water Sales
  
- L. Possible DOW Reserve Target Levels
  - 1. *Mr. Cuthbert stated that there is enough reserves to cover our upcoming CIP projects.*



- M. DOW Cash Available (as of 05/07)
- N. Other Considerations
  - 1. Current uncertainty in CIP Implementation
  - 2. Ambiguous applicability of HRS capital replacement reserve limits (15% of gross revenues)
    - a. *Chair McCrory stated that Kauai and the other islands' water utilities are working on changing the limits*
  - 3. Significant changes in operating expenditures since last rate study
- O. Preliminary Conclusions
  - 1. Existing capital reserves are adequate
  - 2. No specific capital reserve policy recommended
  - 3. Separate capital reserve fund not recommended
  - 4. DOW should update its long-term financial plan and rate study

Chair McCrory stated that there would be no recommendation until the Sustainability Plan is done. She also felt that it was very important to change the HRS on the capital replacement reserve limits.

The Board thanked RW Beck for their informational presentation.

*Acting Manager Ushigome, Mr. K. Fujimoto and Waterworks Legal Advisor Esaki returned to the meeting at about 4:23 p.m.*

**EXECUTIVE SESSION:**

Pursuant to Hawaii Revised Statutes (HRS) §92-7(a), the Board 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 HRS §92-4 and shall be limited to those items described in HRS §92-5(a).

- 1. Review of Executive Session Minutes: June 19, 2007**
- 2. Executive Session Meeting**

- ES-1** Pursuant to Haw. Rev. Stat §§92-4 and 92-5(a)(2), the purpose of this executive session is to consider the Job Performance Evaluation of the Department of Water's Acting Manager and Chief Engineer. This deliberation involves personnel matters affecting the privacy of the Acting Manager and Chief Engineer. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Board and the Department as they relate to this agenda item.

Due to a lack of quorum, there was no Executive Session Meeting.

**ADJOURNMENT:** There being no further business, the meeting was duly adjourned at 4:25 p.m.

Respectfully submitted,

Rona Miura, Secretary

APPROVED:

Wynne M. Ushigome  
Acting Manager and Chief Engineer

rm