

REGULAR MEETING MINUTES
BOARD OF WATER SUPPLY
Thursday, May 8, 2008

The Board of Water Supply, County of Kaua'i, met in regular meeting at its office in Lihu'e on Thursday, May 8, 2008. Chairperson Roy Oyama called the meeting to order at 10:13 a.m. On roll call, the following answered present:

BOARD: Mr. Roy Oyama, Chairperson
Mr. Dee Crowell
Mr. Leland Kahawai
Mr. Steven Kyono
Mr. Randall Nishimura

Absent & Excused: Mr. Ian Costa
Mr. Donald Fujimoto

STAFF: Ms. Wynne M. Ushigome
Mr. Paul Ganaden
Mr. William Eddy
Mr. Keith Fujimoto
Mr. Bruce Inouye
Ms. Faith Shiramizu
Ms. Amy Esaki
Mr. Dustin Moises
Mr. Edward Doi
Deputy County Attorney Mona Clark
First Deputy County Attorney Harrison Kawate (left meeting at about 1:30 pm.)

Absent & Excused: Mr. Gregg Fujikawa

GUESTS: Mr. Benjamin Garfinkle, Developer (left meeting at about 1:30 pm.)
Mr. Ben Wellborn, Mr. Garfinkle's consultant (left meeting at about 1:30 pm.)
Mr. Max Graham, Legal Counsel (left meeting at about 1:30 pm.)
Mr. Tom Shigemoto, A&B Properties (left at about 2:15 p.m.)
Mr. Thad Bond, Kukui'ula Development LLC (left at about 2:15 p.m.)
Mr. Lindsay Crawford, Kukui'ula Development LLC (left at about 2:15 p.m.)
Mr. Mike Belles, Guest (left at about 2:15 p.m.)
Mr. Clyde Kodani, Guest (left at about 2:15 p.m.)

AGENDA

Mr. Nishimura moved to re-order the agenda under New Business as follows:

1. Request to Testify by Claudia Shay of Self-Help Housing Corporation of Hawai'i Regarding Acquiring Building Permit Approvals for the Puhi Self-Help Subdivision, TMK: 3-3-019, Puhi, Kauai
2. Request Board Approval of Conveyance of Water Facility from Poipu Aina Estates, LLC, for the on-site water facilities for the Poipu Aina Estates Subdivision, S-2005-13, TMK: (4) 2-8-22:002, Poipu, Kauai, Hawai'i

3. Request Board Approval of Conveyance of Water Facility from Grove Farm Properties, Inc., for the Puhi 393 Booster Pump Station, TMK: (4) 3-4-07:006, Puhi, Kauai, Hawai'i
4. Board Discussion on the Results of the May 8, 2008 Public Hearing on Proposed Amendment of Rules and Water System Standards, as Amended, of the Board of Water Supply, County of Kauai
5. Request to Testify by Kukui'ula Development Company (Hawai'i) LLC for Approval of a DOW Waiver, Release and Indemnity Agreement for : 1) Subdivision Y Cottages, S-2005-25, TMK: (4) 2-6-016: 016 thru 088; and, 2) Subdivision Y Custom Home Sites, S-2005-25; and, 3) Subdivision M1M4 Custom Home Sites, S-2005-21, Kukui'ula, Development, Kukui'ula, Kaua'i, Hawai'i
6. Request to Testify by A & B Properties, Inc. for a Request for Water Service, 'Ele'ele Industrial Park Subdivision, TMK: 2-1-02:051 and Eleele Residential Development Site, TMK: 2-1-02:003, Portion, 'Ele'ele, Koloa, Kaua'i, Hawai'i

Seconded by Mr. Kahawai; motion was carried.

Acting Manager Ushigome added that there was also a correction under Old Business, Item No.1, Request Board Approval to 'Clarify' (*not Reconsider*) the Motion Made at the December 13, 2007 Board Meeting.

Mr. Crowell moved to also amend the Agenda, seconded by Mr. Nishimura; motion was carried.

MINUTES

Special Meeting: Monday, March 24, 2008

Mr. Nishimura moved to approve to receive the Special Meeting minutes of the Thursday, March 24, 2008 Meeting and place on file, seconded by Mr. Crowell; motion was carried.

Regular Meeting: Thursday, April 10, 2008

Mr. Crowell moved to approve to receive the Regular Meeting minutes of the Thursday, April 10, 2008 Meeting and place on file, seconded by Mr. Nishimura; motion was carried.

Special Meeting: Friday, April 18, 2008

Mr. Kyono moved to approve to receive the Special Meeting minutes of the Friday, April 18, 2008 Meeting and place on file, seconded by Mr. Nishimura; motion was carried.

Special Meeting: Thursday, April 24, 2008

The secretary read the revision of the minutes for the agenda item: Board's Decision on Manager Recruitment. "Mr. Costa moved to terminate the Board's recruitment with CPS Human Resources Services as based on the 4 candidates, their interviews and

presentations, the Board felt that all 4 candidates were either unacceptable or did not satisfy the requirements or criteria as set forth by the Board....”

Mr. Nishimura moved to receive the Special Meeting minutes of the Thursday, April 24, 2008 Meeting and place on file, as amended, seconded by Mr. Kahawai; motion was carried.

CORRESPONDENCE: None

OLD BUSINESS

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

Mr. Benjamin Garfinkle, Mr. Ben Wellborn, Consultant and Mr. Max Graham, Legal Counsel were present for this agenda item.

Mr. Edward Doi and Acting Manager Ushigome reported on the following:

Recommendation:

It was recommended that the Board approve the Department’s recommendation, which were itemized as follows:

1. Item 1. It was recommended that the Board approve the revision to the Tax Map Key numbers that are referenced in the DOW Revised Subdivision Report description (dated March 6, 2008) to read “**TMK: 4-2-03:012, 065 & 066**”. [Staff concurred]
2. Item 2. Condition 3.A. It was recommended that the Board approve adding the following wording to Condition 3.A.: “**The Facilities Reserve Charges (FRC) for three (3) existing meters that was assigned to newly created Lot 1 and for three (3) existing meters that was assigned to newly created Lot 3 have been paid. Lot 2 will be serviced by a Private Water System.**” [This was to document FRC payment of the 3 meters for Lot 1 and 3 meters for Lot 3.]
3. Item 2, Condition 3.B. is not a condition in the DOW Revised Subdivision Report dated March 3, 2008. [Staff concurred.]
4. Item 2, Condition 3.C. It was recommended that the Board approve the revision to Condition 3.C.1) by replacing the original language the currently reads: “*The domestic service connections. The six (6) existing water meters/service connections shall be relocated to appropriate locations. Lot 1 and Lot 3 will be assigned three water meters each. Lot 2 will obtain water from a Private Well Water System*”, with the following revised Condition that

shall read as follows: “**3.C.1) The private water system improvements for Lot 2.**” [Staff concurred.]

It was further recommended that the Board approve the addition of the a condition that addresses the six (6) water meters to Subdivision S-2006-47 as a new DOW Revised Subdivision Report condition that will be identified as Condition 5.A.5). The new condition shall read: “**The existing six (6) water meters that presently service the original Lots 23-A-1, 23-A-2 & 23-B will remain in their present location along Kuamoo Road. The three (3) meter services that currently front Lot 1 will be assigned to Lot 1 and three (3) water meter services that currently front Lot 3 will be assigned to Lot 3. Future requests to relocate said water meter service(s), will require the applicant to complete all Department of Water requirements existing at that time.**” [Additional requirement]

5. Item 2, Condition 3.D. is not a condition in the DOW Revised Subdivision Report dated March 6, 2008.
6. Item 2, Condition 3.E. It was recommended that the Board approve the revision to the original deed restriction language that is identified in the second paragraph of Condition 3.E. that currently reads, “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”, to now read: “**Domestic water service will not be available until the required construction improvements for this subdivision are completed and until the Department of Water, County of Kaua‘i recommends that the Planning Commission approve a certification stating that work has been satisfactory completed.**” [Correction needed.]
7. Item 3, Condition 5.A.1). It was recommended that the Board approve a revision to Condition 5.A.1) to read: “**Lot 2 will be served by a Private Water System. Water service from the Department of Water, County of Kaua‘i is not available to Lot 2. Prior to building permit approval on Lot 2, the owner of Lot 2 shall complete a Waiver and Release agreement.**”
[This is to document that Lot 2 will be serviced by a Private Water System & to include the Waiver & Release Agt., which was inadvertently missing from the previous report.]
8. Item 3, Condition 5.A.2). It was recommended that the Board:
 1. Approve the replacement of the last two words of the first sentence of Condition 5.A.2) that read “*the lots*” with the following words: “**Lot 2**”.
 2. Approve and affirm the original wording of the last sentence of Condition 5.A.2 that currently reads, “**The Private Water System shall conform to the Rules and Regulations and the construction standards of the Department of Water and be in conformance with all other government agency requirements.**”

9. Item 3 Condition 5.B.1) It was recommended that the Board not approve the proposed revision requested by the subdivider. [The applicant requested that the DOW take out the requirement of having fire protection for their open-zoned land.]

Background & Findings

Based on the subdivider's April 9, 2008 letter to the Board, multiple revisions to the DOW Revised Subdivision Report (dated March 6, 2008) are being requested. The recommendation, findings and background information for each proposed revision is addressed separately in this board report.

1. **Item 1, Condition 1.** It was recommended that the TMK reference for the proposed subdivision be changed to "TMK: 4-2-3:12, 65 and 66.

Findings Item 1, Condition 1:

The DOW Revised Subdivision Report was the DOW response to the Revised Preliminary Subdivision map (dated December 28, 2006) for S-2006-47. The original subdivision application for S-2006-47 accepted by the Planning Department on May 26, 2006 identified a consolidation of two (2) lots and re-subdivision of said consolidation into two (2) lots. The revised preliminary subdivision map for S-2006-47 dated December 28, 2006 identified the consolidation of three (3) lots and the re-subdivision of said consolidation into three (3) lots. The TMK Nos. on the DOW Revised Subdivision Report did not describe the three lots. The TMK Nos. should be revised to read: "TMK: 4-2-03:012, 065 & 066".

Background Item 1 Condition 1:

- Original Subdivision Application for S-2006-47 accepted by the Planning Department on May 26, 2006 (**Exhibit 1**).
- Department of Water's Subdivision Report to the Planning Department dated June 21, 2006 (**Exhibit 2**).
- Revised Preliminary Subdivision Map for S-2006-47 dated December 28, 2006 (**Exhibit 3**).
- Department of Water's Revised Subdivision Report to the Planning Department dated September 27, 2007 (**Exhibit 4**).

Item 2 addressed conditions 3.A, 3.B, 3.C, 3.D. and 3.E of Revised Subdivision Report dated March 6, 2008. The recommendation and findings will be addressed as separate conditions as follows:

2. **Item 2, Condition 3.A.** It was recommended that the Board approve the addition of the following wording to Condition 3.A: "The Facilities Reserve Charges for the three (3) existing water meters that was assigned to newly created Lot 1 and three (3) existing water meters for newly created Lot 3 have been paid. Lot 2 will be serviced by a Private Water System".

Findings Condition 3.A:

The applicant paid the FRC for two (2) water meters to TMK: 4-2-3:66 (receipt #87351) and for two (2) water meter to TMK: 4-2-3:65 (receipt #87350). The applicant for these four (4) water meters was required to provide construction drawing and install said meters. The four water meters have been installed and

accepted by the Department of Water. On December 13, 2007, the Board approved the assignment of three (3) existing meters for Lot 1 and three (3) existing meters for Lot 3. All water meters are located in the appropriate location with respect to the current subdivision map application.

Background Condition 3.A:

- DOW fiscal records for six existing service connections (**Exhibit 5**).
- FRC receipts for four (4) water meters (**Exhibit 6**).
- Certification of Completion Notice for the installation of four new service connections and their locations (**Exhibit 7**).

3. **Item 2. Condition 3.B:** It was recommended that the subdivider be informed that Condition 3.B was not a condition in the DOW Revised Subdivision Report.

Findings Condition 3.B:

Condition 3.b. "Submit to the Department of Water a copy of the subdivider's permit to perform work" was not required in the Revised Subdivision Report dated March 6, 2008.

Background Condition 3.B:

- Revised Subdivision Report No. S-2006-47 dated March 6, 2008 (**Exhibit 8**).
4. **Item 2 Condition 3.C:** It was recommended that Condition 3.C.1) be revised by replacing the original language that currently reads: "The domestic service connections. The six (6) existing water meters/service connections shall be relocated to appropriate locations. Lot 1 and Lot 3 will be assigned three water meters each. Lot 2 will obtain water from a Private Well Water System.", with the following revised Condition that shall read as follows: "3.C.1) The private water system improvements for Lot 2.

It was further recommended that the Board approve the addition of the following condition with regard to the six (6) existing water meters to subdivision S-2006-47 as a new DOW Revised Subdivision Report condition the will be identified as Condition "5.A. 5)". Condition 5.A.5) shall read: "The existing six (6) water meters that presently services the original Lots 23-A-1, 23-A-2 and 23-B will remain in their present location along Kuamoo Road. The three (3) meter services that currently front Lot 1 will be assigned to Lot 1 and three (3) meter services that currently front Lot 3 will be assigned to Lot 3. All future requests to relocate said water meter service(s) will require the applicant to complete all Department of Water requirements existing at that time."

Findings Condition 3.C:

The intent of this condition in our revised subdivision report was to accommodate any request to relocate existing water meters to the new boundary lines. The relocation of water meter services along Kuamoo Road would require the preparation of construction drawings. The applicant paid the FRC for two (2) water meters to TMK: 4-2-3:66 (Receipt #87351) and for two (2) water meter to TMK: 4-2-3:65 (Receipt #87350). Based on approved construction drawings, four of the existing six water meters have been installed and accepted by the Department of Water. The

remaining two existing water meters were installed previously by other customers. The subdivider has approved the current location of these meters with respect to the current subdivision map application.

Background Condition 3.C:

- DOW customer service records identifying six service connections (**Exhibit 5**).
 - Certification of completion notice for the installation of four new service connections and their locations (**Exhibit 7**).
 - The revised preliminary subdivision map for S-2006-47 dated July 19, 2007 (**Exhibit 9**).
5. **Item 2 Condition 3.D:** Condition 3.D. is not a condition in the DOW Revised Subdivision Report dated March 6, 2008.

Findings Condition 3.D:

Condition 3.D. "Submit to the Department of Water a copy of the subdivider's permit to perform work" was not required in the Revised Subdivision Report dated March 6, 2008.

Background Condition 3.D:

- Revised Subdivision Report No. S-2006-47 dated March 6, 2008 (**Exhibit 8**):
6. **Item 2 Condition 3.E Recommendation:** It was recommended that the Board approve the revision to the original deed restriction language that is identified in the second paragraph of Condition 3.E that currently reads, "*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*", to now read: "*Domestic water service will not be available until the required construction improvements for this subdivision are completed and until the Department of Water, County of Kaua'i recommends that the Planning Commission approve a certification stating that work has been satisfactory completed.*"

Findings Condition 3.E:

The requirement for bonding to secure final subdivision approval is based on the County Subdivision Ordinance. The subdivider is required to post a bond or surety as part of the subdivision agreement that is executed with the Planning Commission as consideration for final subdivision map approval without completing the necessary subdivision improvements (including subdivision water improvements).

The DOW has determined that the private water system subdivision improvement required to service Lot 2 is considered a subdivision water improvement that must be completed by the subdivider. The subdivision requirements for subdivision bond procedures by the Department of Water is based and referenced to the following Subdivision Ordinance sections:

Section 9-2.4 - Water Supply and Distribution.

Section 9-3.6(B) – Completion of Improvements, Agreements and Bonds

Section 9-3.9(C) - Approval of Improvement Constructed After Approval Of Final Subdivision Map.

The subdivider's discussion and interpretation of DOW Waiver and Release agreement is unrelated to the subdivision bond requirement and does not apply to this condition. The purpose of Waiver and Release agreement that is referenced in Condition 5.A.1) requires the subdivider to acknowledge in a recorded document that water service from the Department of Water, County of Kaua'i is not available to Lot 2. The document does not address the issuance of building permits on Lot 2 or the completion of the private water system improvements for Lot 2.

Background Condition 3.E:

- Subdivision Ordinance Sections: 9-2.4, 9-3.6(B) and 9-3.9(C) (**Exhibit 10**).
- Revised Subdivision Report No. S-2006-47 dated March 6, 2008 (**Exhibit 8**).
- Waiver and Release Agreement (**Exhibit 11**).

Item 3 addressed conditions 5.A.1), 5.A.2) and 5.B.1) of the DOW Revised Subdivision Report dated March 6, 2008. The recommendation and finding will be addressed separately as follows:

7. **Item 3 Condition 5.A.1):** It was recommended that the Board approve the revision to Condition 5.A.1) to read: "Lot 2 will be served by a Private Water System. Water service from the Department of Water, County of Kaua'i is not available to Lot 2. Prior to building permit approval on Lot 2, the owner of Lot 2 shall complete a Waiver and Release Agreement."

Findings Condition 5.A.1):

Adding the wording "on Lot 2" would add more clarity that only building permit(s) requested on Lot 2 of the proposed subdivision will be required to execute and record a Waiver and Release Agreement prior to the Department of Water recommending approval.

Background Condition 5.A.1):

- Revised Subdivision Report No. S-2006-47 dated March 6, 2008 (**Exhibit 8**).

8. **Item 3 Condition 5.A.2):** It was recommended that the Board approve the revision to the first sentence to replace the last two words of the sentence that read "*the lots*" with the following words: "*Lot 2*".

It was recommended that the Board approve and affirm the original wording of the last sentence of the Condition 5.A.2) that currently reads, "*The Private Water System shall conform to the Rules and Regulations and the construction standards of the Department of Water and be in compliance with all other government agency requirements.*"

Findings Condition 5.A.2):

The subdivider's request to replace the phrase "*conform to the Rules and Regulations and the construction....*" with his revised phrase "*meet the capacity*"

standards..” will create a conflict with the County subdivision ordinance, specifically Section 9-2.4 - “Water Supply and Distribution”. This section of the ordinance states the water supply and distribution facilities shall conform to the rules and the construction standards of the Department of Water. Subdivision water system improvement facilities whether private or County-owned shall be subject to the Department of Water’ Rules and Regulations that include the “2002 Water System Standards” as amended.

Background Condition 5.A.2):

- Revised Subdivision Report No. S-2006-47 dated March 6, 2008 (**Exhibit 8**).
- Subdivision Ordinance Sections: 9-2.4, 9-3.6(B) and 9-3.9(C) (**Exhibit 10**).

9. **Item 3 Condition 5.B.1):** It was recommended that the wording not be changed which stated, “Provide fire protection in the open zoned area (Lot 2) by installing the necessary Private Water System fire hydrant(s) along with the applicable easement(s), with notification to the Fire Department.”

Findings 5.B.1):

The wording was required by the Board as documented in the Regular Meeting minutes of the Board of Water Supply, Thursday, December 13, 2007.

Background Condition 5.B1):

- Regular Meeting Minutes Board of Water Supply, Thursday, December 13, 2007 (**Exhibit 12**).

Board Report for S-2006-47, Ben Welborn – Request clarification of revised subdivision report – 4-18-08.

Staff and Board Discussion:

Acting Manager Ushigome added that the main clarification needed is whether the private water system proposed for Lot 2 needs to be constructed according to County standards. Mr. Doi added that the Subdivision Ordinance, Chapter 9, Section 9-2.4, Regarding Water Supply Distribution. It states: “that the water supply distribution facilities shall conform to the rules and construction standards of the Department of Water.”

On query by Mr. Kyono, Acting Manager Ushigome stated that at the December 13, 2007 Board Meeting, part of the Board’s approval was to reallocate the meters from Lot 2 to Lot 1, and now for Lot 2, being that it was to provide domestic and fire protection for Lot 2; therefore, their question is whether the private water system would have to be built to County standards.

Mr. Crowell asked staff if the DOW’s position is that the water improvements have to be constructed before building permits and not necessarily before final subdivision approval. Mr. Doi replied that the requirements of the subdivision should be completed prior to approving building permits.

Mr. Crowell also asked staff if the applicants could have final subdivision approval without constructing the private water system or is it needed for final subdivision

approval. Mr. Doi stated that the applicants' could bond the construction via the subdivision process.

Testimony:

Mr. Max Graham, Mr. Garfinkle's attorney, testified that he represents the applicants, who are Opaekaa Falls Land Company 1 LLC, Opaekaa Falls Land Company 2 LLC, and Opaekaa Falls Land Company LLC. He introduced Mr. Ben Wellborn, the consultant, and one of the principles of the 3 companies, Mr. Benjamin Garfinkle.

Mr. Wellborn stated that they were before the Board to clarify the decision made at the December 13, 2007 Board Meeting. He summarized the background of their proposal. Mr. Wellborn showed 2 maps, the first map with the existing conditions of the property and the location of the existing water meters, existing well, and the 2 existing structures. The second map showed the boundary amendment, which will end up with the same amount of lots, 3 lots.

Mr. Wellborn added that all of the R-4 zoning is located in proposed Lot 1 and proposed Lot 3. The 3 water meters that are located west of Opaekaa Stream would be assigned to Lot 1 and the 3 water meters located east of Opaekaa Stream would be assigned to Lot 3. Lot 2 is the remaining open-zoned area that they are proposing to do a private water system that would take care of their potable, ag and fire flow from their existing well.

Mr. Wellborn stated that to answer the Board's question on the density, they are restricting the densities of the R-4 zoned area to 3 homes each, which is well below the potential subdivision density of these parcels.

On query by Mr. Crowell, Mr. Wellborn stated that the size of Lot 1 is 4.4 acres, which is zoned R-4 and have 3 existing water meters, and Lot 3 is 2.2 acres, which the R-4 area is about ½ acre, the rest is zoned open and have 3 existing water meters. Lot 2 has a total of 33 acres with 31 acres in open-zone and about 1.8 acre is zoned R-4. Mr. Wellborn added that potentially with R-4 zoned areas, the Planning Department has issued a limit of a maximum density of about 26 homes. Therefore, in the future, that could be realized on Lots 1 and 3 if there were adequate water infrastructure.

Mr. Wellborn added that Lot 1 has an existing smaller, older house and Lot 3 has an existing large, white house that overlooks Opaekaa Stream. Lot 2 has no existing homes.

Mr. Graham stated that the applicants understood that for Lots 1 and 3 there will be no more than 3 meters/homes with no further development until the water facilities are brought up to standards. He added that Lot 2, which is not reflected in the DOW's comments includes that a private water system would need to be developed and that no building permits would be issued on Lot 2 until the private water system was developed but the subdivision would be approved and no need to bond anything. There would be subdivision approval with the restriction that until the water system is developed, there would be no building on that property. However, he is hearing something different at this meeting today.

Secondly, in the proposed recommendation, suddenly, a new requirement that the private water system would need to meet County standards. The applicant assumed that the DOW would be following its past practices to not require County standards to be applied to private facilities.

Mr. Graham referenced our Rules, Part 3, Section 12 that states the Board has the absolute right to modify any Rules and Regulations under certain circumstances, which they understood. However, they are requesting that the Board approve the original proposal to allow them to provide the necessary well water flow and storage capacity for the number of homes and for fire protection, but not to meet the County standards that is a requirement if using County water. To meet County standards would be too much.

Mr. Graham reiterated that their proposed project is a consolidation and re-subdivision and does not have any additional lots or density. He added that the Board's concern on the precedence that would be set is strictly limited to situations where there are boundary adjustments with no additional lots or density.

Mr. Graham also added that it would make sense if someone would come later with a subdivision that would create new lots and wanted to do a private water system then he felt it would be appropriate to apply any standards that the Board felt appropriate. He felt that this was a very narrow window as this was only a boundary adjustment. Mr. Graham added that the reason that their project is before the Board is that the subdivision ordinance defines a consolidation and re-subdivision of parcels as a subdivision.

Mr. Graham stated that in the DOW's Rules, a subdivision is defined as the division of land and creating additional lots, so does a boundary adjustment fall under the DOW's definition of subdivision. Also, he added that our Rules says that our subdivision's water system is a system that is connected to the County water system, which then would need to comply to our standards.

Mr. Graham discussed that there are no Rules to guide the DOW or the Board on private water systems; there are only rules/standards if there is a connection to the County's water system. Therefore, he stated that it was not legally correct for the DOW to say that private water systems need to abide to our standards. Mr. Graham also stated that they should then be allowed to keep to the original requirement that they be allowed to construct a private water system that will meet the capacity and flow requirements for potable water and fire protection.

Mr. Graham felt that the DOW should not be applying standards to private water systems, as it should be applied only to the water systems, which connect and would ultimately become part of our water system. He added that this is the clarification that they are asking for at this meeting.

On query by Mr. Nishimura, Mr. Graham stated that they have no problems with the other DOW requirements.

Mr. Wellborn added that the subdivision would get final approval subject to a deed restriction for Lot 2 that would not have building permits issued until such time that

the private water system is constructed and meets all the requirements. He also added that they would want to clarify if Lots 1 and 3 would be allowed to pull building permits once final subdivision is approved as these 2 lots are serviced by the County water system.

Mr. Nishimura asked Acting Manager Ushigome if there was a special reason why the DOW wanted to apply our standards to a private water system. Acting Manager Ushigome replied that this is the first time that this type of situation has come up.

On query by Mr. Nishimura, Acting Manager Ushigome that it is always a concern if in the future they would want to tie into the County water system.

On query by Mr. Nishimura, Mr. Graham concurred that they would not have a problem with having a restriction that would state that if future owners of Lot 2 wanted to tie into the County water system that they would need to upgrade the water facilities to County standards.

Mr. K. Fujimoto stated that another concern would be that the DOW would want to ensure that future owners of the property would be assured that the private water system would be reliable and adequate to sustain their needs. He gave an example of a previous situation; whereby, the owners were not satisfied with the existing private water system and petitioned the Board to take over their system. In that case, the private water system was not built to County standards.

On query by Mr. Nishimura, Mr. Graham stated that eventually Lot 2 will have a homeowner's association. Mr. Graham added that previous situation was a little different as they were part of the County water system.

Mr. Nishimura discussed that he felt that this could be worked out but there needs to be a mechanism that if the system, for whatever reason, becomes sub-standard that it should not be the County's responsibility to upgrade the system and if the intention is to turn over the system to the County that it needs to meet County standards. Mr. Graham concurred.

Mr. Garfinkle stated that this condition was never brought up at the December 13, 2007 Board Meeting. He also stated that it would not be financially feasible for them to build the private well to County standards, as the maximum density for that lot is 6 homes. Mr. Garfinkle added that they do understand and know that they need to comply with the Fire Department's requirements.

Mr. Garfinkle added that he has hired Tom Nance as his consultant to do the design of the private water system. He is confident that Mr. Nance would do a thorough job to ensure that the job is done well.

Mr. Wellborn added that they flew Tom Nance to Kaua'i to oversee when Oasis Water also did a 48-hour well pump test and the results exceeded their needs. They also are making the tank a little bigger than required, which also helps to make it a robust system for their potable and agriculture water requirements. On query by Chair Oyama, Mr. Wellborn stated that he did not have the exact pump test results with him but could get it later.

Per discussion by Acting Manager Ushigome, Mr. Wellborn stated that a private water system is monitored by the State Department of Health (DOH) if there are at least 15 service connections or 25 individuals. Acting Manager Ushigome questioned how would they monitor to limit the maximum of 25 individuals? Mr. Wellborn stated that it would not be a DOH regulated system as it will be a private water system.

On query by Mr. Crowell, Mr. Graham stated that this project is going for tentative approval as part of the subdivision process at the Planning Commission. Mr. Graham added that as part of the tentative approval subdivision process, their application would be reviewed by the Fire Department and Department of Health for any issues or concerns that they may have.

Acting Chief of Operations Bill Eddy asked the developers that if they do not go the route of meeting the DOW's Water System Standards, what would be their provisions to address redundancy and water storage. Mr. Garfinkle responded that if the well would go down, Tom Nance designed it that they would have an adequate sized 30,000 gallon storage tank that could still take care of fire protection and the water needs of the 6 homes. He added that the average use of water per day per home would be about 750 gallons per day (GPD).

Mr. Garfinkle added that this robust system would be designed to take care in excess of 750 gallons per minute (GPM) for 2 hours for fire flow.

Mr. Crowell requested that the Board go into Executive Session to discuss departmental policies.

EXECUTIVE SESSION:

ES-2008-4 - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with legal counsel and department staff regarding Benjamin Garfinkle's request for Board Approval to Clarify the motion made at the December 13, 2007 Board for Agenda Item: "Revised Appeal to November 20, 2007 Agenda Item- Benjamin Garfinkle Regarding DOW Conditions of Tentative Subdivision Approval for Boundary Adjustment (Consolidation and Resubdivision), TMK (4) 4-2-03:12, 65 and 66. This consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.

Chair Oyama read the Executive Meeting Session notice above. There was no Board discussion and no public testimony. Mr. Kyono moved to enter into Executive Session at 11:25 a.m., seconded by Mr. Kahawai; motion was carried. Staff and guests were excused from the meeting.

The Regular Meeting was called back to order at 11:50 a.m. Recess: 11:50 a.m. to 11:52 a.m.

Mr. Nishimura asked Mr. Graham on the possibility of having the DOW's conditions re-done for Lot 2 that they would have to resolve with the DOW as there are several

issues that cannot be resolved today and would leave it up to them if they would agree and would want to go to the Planning Commission on that basis.

Mr. Graham needed to consult with his clients. Recess: 11:58 a.m. to 12:02 p.m.

Mr. Graham asked if the issue of the standards to be applied have to be resolved with the DOW? What about the issue if that were resolved that the subdivision would be approved without the necessity of posting a bond and no building permits will be issued until the applicable water improvements are constructed. He asked if that is also to be negotiated or is the Board ok with that revision. Mr. Nishimura stated, for himself, when they discussed Lot 2 and the private water system, the details would be resolved with the DOW.

Mr. Graham suggested that, to not take up too much time, this matter be deferred to the next Board Meeting so further research and discussions among the Board and his client could be done.

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

Mr. Garfinkle, Mr. Wellborn, and Mr. Graham left the meeting at about 1:30 p.m.

Re: Request Board Approval for Amendment No. 2 to Contract 466, Job No. 06-01, KW-28, Amfac Shaft 11 Renovations, (State Well No. 5842-02), Phase IB, Facility Testing, Evaluation and Reporting, Kekaha, Kaua'i

RECOMMENDATION: It was recommended that the Board approve the second contract amendment with Brown and Caldwell, consultants for this project for the removal of electric lines, poles and equipment.

FUNDING:

Total Funds Available..... \$591,106.00

Contract No. 466, Brown and Caldwell
Job No. 06-01, KW-28, Amfac Shaft 11
Renovations, (State Well No. 5842-02),
Phase IB, Facility Testing,
Evaluation and Reporting, Kekaha,

Kaua'i\$572,431.00

Amendment #2\$ 12,852.00

Total Required <\$585,283.00>

Balance Remaining \$ 5,823.00

BACKGROUND:

Due to the age of the electrical equipment, approximately 4,000 feet of the existing electrical conductors (wires) and wood power poles that formerly provided the power to the pumps and motors at the site are in danger of falling, creating a hazard to anyone in the area and needs to be removed as soon as possible. The pumps and motor has since been removed and the power lines and poles are no longer useable.

The source for the new electrical power will be from Kauai Island Utility Cooperative, through a more accessible alternate route.

The project consultants, Brown and Caldwell submitted a proposal of \$12,852.00 for the removal of the affected electrical lines and poles, which appears reasonable.

Mr. Crowell moved to approve the second contract amendment with Brown and Caldwell, seconded by Mr. Nishimura; motion was carried.

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

Mr. Crowell suggested that since the Board terminated the search, he felt that a committee should be formed to carry on the selection process and make a recommendation to the Board.

Mr. Nishimura moved to create a sub-committee to continue the search for a water manager and appoint Leland Kahawai as the Committee Chair, seconded by Mr. Crowell; motion was carried.

On query by Deputy County Attorney Clark, the Board decided to have the committee consist of three (3) Board members, who will be Committee Chair Leland Kahawai, Dee Crowell, and Randall Nishimura.

NEW BUSINESS

Re: Request to Testify by Claudia Shay of Self Help Housing Corporation of Hawai'i Regarding Acquiring Building Permits Approvals for the Puhi Self-Help Subdivision, TMK: 3-3-019, Puhi, Kauai

Acting Manager Ushigome submitted the following report:

Recommendation:

In support and consideration of developing affordable housing for our residents, it was recommended that the Board allow the issuance of the initial 14 building permits for the subject project. We continue to work with Grove Farm to complete the final inspection, conveyance documents, easements and certification of completion for the Puhi 393 Booster Pump and 16-inch transmission line improvements. Recommend requiring Grove Farm to complete processing the necessary easements and close-out documents allowing the Department to issue the certification of completion.

Although the Department recognizes that the affordable housing shortage is an issue, the Department needs to effectively manage and operate its water system by utilizing and applying a consistent engineering basis to justify water system requirements and requirements for new developments.

Funding: N/A

Background:

The Department accepted Grove Farm’s commitment to construct and complete, all necessary booster pump station and 16-inch water transmission main improvements prior to issuance of building permits or water meter service to the Puhi Self Help project. The 16-inch transmission main is an essential component of the booster pump station needed to deliver water from the Grove Farm Water Purification Facility (WPF) in Kapaia to the Puhi 510 System. In fact, the 16-inch transmission alignment was also a special concession or consideration granted to Grove Farm by the Board to facilitate moving the water from the 393 pressure zone to the Puhi 510 system.

In addition, over the years, to assist Grove Farm’s proposed projects, the Department of Water, in good faith, partnered to not only develop the WPF. But, also allowed Grove Farm to proceed with developing their lands in Lihu’e-Puhi by acknowledging the source capacity allocations for these projects were from the (then, yet to be built) Grove Farm WPF and related appurtenances. The installation of a booster pump station was required to satisfy or overcome the hydraulic friction losses in the transmission of water across Lihu’e to Puhi. The booster pump is an essential component necessary to deliver water from the WPF in Kapaia to the Puhi 510 System. Over the years, the Department allowed Grove Farm to develop projects located in the Puhi 510 System in good faith that the booster pump station would be constructed.

The following is a list of Grove Farm developments located in the Puhi with source allocation designated from the WPF source:

<u>Location</u>	<u>Units</u>	<u>Area</u>	<u>ID</u>
Regency Pacific Elderly Housing	82 MF	3-3-03:por.1	Z-IV-99-45
Villas at Puali (Parkside Homes)	104 SF	3-3-03:39	S-2003-37
Kukui Village West.....	31 SF	3-3-06:19	S-88-85
Pikake Subdivision (510 Portion).....	27 SF	3-3-03:por.1	S-2004-12
Self Help (Parcel 4)	41 MF	3-3-03: por 40	S-2004-34
Regency Pacific (Huleia)	83 SF	3-3-03:48	Z-IV-2005-1
Regency Pacific (Huleia – Irrigation)	22 SF	3-3-03:48	Z-IV-2005-1
Costco Wholesale.....	12 SF	3-3-10:51	Z-IV-2005-17
KGWV (add water for Ventura).....	12 SF		
Parcel 19 & 20	62 SF	3-3-03:46	FUTURE
(across Puhi Middle School)			
DR Horton/Schuler (Hookena).....	<u>56 MF</u>	3-3-03:36	Z-IV-92-9
	Total Units	138 MF	
		394 SF	

The majority of the Grove Farm developments within their master plan area have been completed; however, the requirement for the completion of the 400 gallon per minute (gpm) booster pump was lagging. Because of this, it became apparent that the Department needed to begin identifying the completion of the booster pump as part of Grove Farm’s project development requirements.

Hence, this requirement was added to the Hookena and Puhi Self-Help projects. Self-Help was aware of this requirement and, whereby, the Department recommended final subdivision approval for the Puhi Self-Help (S-2004-34) project to

the Planning Department in August 2007. The approval was granted with the understanding that no building permits or water meter service will be approved for the subdivision until Grove Farm completes the design and construction of the Puhi 393 Booster Pump Station and 16-inch transmission and a certification of completion is issued by the Department of Water. A copy of this letter dated August 16, 2007 notifying Self-Help Housing Corporation of this requirement is attached for your review. Also, Grove Farm received a copy of this letter; therefore, they were aware of the need to complete the booster pump requirements.

Acting Manager Ushigome reported that Ms. Shay requested to be on the agenda; however, she did not attend this Board Meeting. Acting Manager Ushigome added that she did move forward and had since signed the 14 building permits so not to hold up the affordable housing projects. She felt that Self-Help had no control over Grove Farm submitting their documents.

On query by Mr. Kyono, Acting Manager Ushigome stated that Ms. Shay did request to be on the April 2008 Board Meeting Agenda; however, her request was received too late. She then requested to be on the May, 2008 Agenda; however, when Acting Manager Ushigome called her this past Friday to reconfirm her attendance, she then wanted to testify at the Board Meeting. Therefore, Acting Manager Ushigome prepared this informational report for the Board. She added that Ms. Shay knows that the rest of the project still has the condition that Grove Farm's water requirements need to be completed and accepted.

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

Re: Conveyance of Water Facility from Poipu Aina Estates, LLC, for the on-site water facilities for the Poipu Aina Estates Subdivision, S-2005-13, TMK: (4) 2-8-22:002 , Poipu, Kauai, Hawaii

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

Waterline:

- 1200 Lineal Feet of 8-Inch Ductile Iron Waterline
- 80 Lineal Feet of 6-Inch Ductile Iron Waterline
- Three (3) 1-Inch Air Relief Valve Assemblies
- One (1) 4-Inch Blow Off Assembly, including 4-Inch Ductile Iron Waterline
- Eight (8) 1-Inch Single Service Laterals for 5/8-Inch Water Meter
- Five (5) 1-1/2 Inch Double Service Laterals for 5/8-Inch Water Meter

Fire Hydrants:

- Three (3) Fire Hydrant Assemblies, including 6-Inch Ductile Iron Waterline, 6-Inch Gate Valve and cast iron valve box and cover in place complete, in accordance with the as-built construction drawings for CONSTRUCTION PLANS FOR POIPU AINA ESTATES ON-SITE WATERLINE prepared by Lyon Associates, Poipu, Kauai, Hawaii.

Mr. Kyono moved to approve the Conveyance of Water Facility document from Poipu Aina Estates, LLC, seconded by Mr. Kahawai; motion was carried.

Re: Conveyance of Water Facility from Grove Farm Properties, Inc., for the Puhi 393 Booster Pump Station, TMK: (4) 3-4-07:006, Puhi, Kauai, Hawaii.

It was recommended that the Conveyance of Water Facility document be approved; whereby Grove Farm Properties, Inc. transfers unto the Board of Water Supply, County of Kauai, all of its right, title and interest to the following items listed on the attached Exhibit A, in place complete, in accordance with the as-built construction drawings for PUHI 393 – 510 BOOSTER PUMP STATION, prepared by Akinaka and Associates, Ltd., Puhi, Kauai, Hawaii.

A Grant of Easement is not required for the booster pump station.

On query by Mr. Kahawai, Mr. K. Fujimoto stated that this Conveyance is only a portion of Grove Farm's requirements to get the water from their Surface Water Treatment Plant (SWTP) to the Puhi 510' system. Grove Farm also has to finish the Kaunualii Highway waterline project by completing easement documents.

On query by Mr. Nishimura, Mr. K. Fujimoto stated that the booster pump station and the waterline project are separate projects that would require separate conveyances; however, both are needed in order to get the SWTP water to Puhi.

Mr. Kahawai moved to approve the Conveyance of Water Facility from Grove Farm Properties, Inc., for the Puhi 393 Booster Pump Station, seconded by Mr. Nishimura; motion was carried.

Re: Board Discussion on the Results of the Public Hearing

This matter was on the Agenda in case the Board wanted to further discuss the results of the Public Hearing for the Amendment of Rules and Water System Standards that will be held on Thursday, May 8, 2008, 10:00 a.m., prior to the Board's Committee and Regular Meetings.

The public hearing notice was published in the Wednesday, April 2, 2008 issue of The Garden Island. We had previous concurrence from the SBRRB to move forward with this public hearing.

Next Steps:

The next step would be to return to the Small Business Regulatory Review Board (SBRRB) to inform them of any testimony given at our Public Hearing; their next meeting is scheduled for Wednesday, May 28, 2008 (*Note: Date changed to Thursday, May 29, 2008.*). The SBRRB will in turn inform the DOW if their Board concurs with the proposed rule amendment. Finally, the Board may approve the proposed rule amendment at the Thursday, June 5, 2008 Board Meeting.

For the final rule amendment, the secretary will obtain the necessary signatures from the Mayor, County Attorney and the County Clerk. Once the County Clerk signs the proposed rule amendment, it takes effect 10 days thereafter. This rule needs to be in

place before the deadline date of June 30, 2008; otherwise, the rule in its present form will sunset as of July 1, 2008.

Mr. Nishimura moved to receive the public hearing results and to forward it to the SBRRB and place this matter on the Board's next Agenda, seconded by Mr. Kyono; motion was carried.

Re: Request to Testify by Kukui'ula Development Company (Hawai'i) LLC, for Approval of a DOW Waiver, Release & Indemnity Agreement Request for: 1) Subdivision Y Cottages, S-2005-25, TMK: (4) 2-6-016: 016 thru 088; and, 2) Subdivision Y Custom Home Sites, S-2005-25; and, 3) Subdivision M1M4 Custom Home Sites, S-2005-21, Kukui'ula Development, Kukui'ula, Kaua'i, Hawai'i

Mr. Tom Shigemoto, Vice President of A&B Properties, Mr. Thad Bond, Vice President, and Mr. Lindsay Crawford, Project Manager, both from Kukui'ula Development LLC were present at the meeting.

RECOMMENDATION:

The Acting Manager denied Kukui'ula Development Company's request to execute a Waiver, Release and Indemnity (WR&I) agreement for the Subdivision Y Cottages (S-2005-25). Kukui'ula is coming to the Board to request consideration and approval to execute the WR&I agreement for the two subject subdivisions, which would allow KDC to begin construction on these residential developments.

The WR&I agreement allow an applicant to request building permits approval prior to completion and acceptance of the water system improvements by posting a performance bond for construction of the required improvements. The applicant indemnifies the Department from any liability for injuries or damages that might arise out of the County's issuance of the building permit. The applicant also agrees that the water meter./fire meter service shall not be provided, that the **applicant shall not transfer title to any unit, and occupancy of said units shall not occur until a "certification of completion" is issued by the Department.**

Findings – Kukui'ula Development Co. Request for Early Building Permits:

- Currently the WR&I agreement is only allowed to be prepared on a case by case basis by the Manager and Chief Engineer and is processed solely as administrative function.
- The applicant has indicated that certain Custom Home sites (subdivided lots) have already been sold to third-party buyers that will be requesting Board approval of building permits. (See Exhibit B) In the WR&I agreement the applicant (KDC) acknowledges that prior to certification of completion for water improvements, the applicant will not transfer title to any unit in the project. The fact that certain lots have already been transferred creates a major conflict with the WR&I agreement.
- Except for the first 34 Subdivision Y Cottages (developer built dwelling units) (See Exhibit A), the applicant has failed to identify the number and location of

the Custom Home sites on Subdivision Y and Subdivision M1M4. Although KDC has identified Eleven (11) Custom Home sites in the Y and M1M4 subdivisions (See Exhibit B) that new lot owner may be submitting building permits, KCD is not certain at this time. Board approval for this open ended request by the KDC without actual confirmation by each lot buyer may be premature and a deferral of the KDC request may be in order until additional information is made available.

KDC has stated that the new lot buyer will be preparing the WR&I agreement. Allowing third-party buyers/owners of the subdivision lots to enter into a WR&I agreement is one of the factors considered in the denial by the Acting Manager & Chief Engineer. The assurance to complete the subdivision improvements lie with KDC and should not be assigned or transferred in part to the new lot buyer.

- The WR&I agreement does not support the Final Subdivision deed restriction that prohibits the issuance of County water meters for the subdivisions until all subdivision water improvements are completed and accepted by the DOW. By allowing early building permits the WR&I allows new subdivision lot owners to build their homes without any guarantee of water meter service.

The WR&I agreement will essentially by-pass the DOW requirement to verify that adequate water supply (ie. water meter service) is available prior to building permit approval.

Although KDC claims that the water improvements are substantially completed, failure to actually complete and have water improvements accepted "on time" may lead to frustrated third party homeowners that may face unspecified hardships as a result.

- Once building permits are approved and the homes are built, non-approval or delay of water meter service as stipulated in the WR&I will be difficult to maintain and the completion and acceptance of the water improvement as represented by the developer becomes increasingly difficult to enforce.
- The use of the same performance bond for on-site and off-site water improvements for the subdivision agreement with the County and the WR&I agreement with DOW may decrease the ability for either agency to use the same bond to complete the required water improvements.

BACKGROUND:

Final Subdivision Map DOW Conditions:

The applicant's request for DOW building permit approval affects two subdivisions that received final subdivision map approval from the Planning Commission, which are Subdivision Y (S-2005-25) and Subdivision M1/M4 (S-2005-21). The final subdivision map approval was in part based upon execution of a recorded Subdivision Agreements between Kukui'ula Development Co. and the Planning Commission that allowed the subdivider to post a performance bond to assure the completion of the required subdivision improvements.

In addition, the DOW required the subdivider to include deed restrictions and as notes on the final subdivision map a "No meter issuance condition" that in effect prohibits the issuance of County water meters for the subdivisions until all subdivision water improvements are completed and accepted by the DOW.

Building Permit Application Conditions:

The County Building Code Section 106.2, "Issuance of Building Permits" state that the application, plans and specifications filed by an applicant for building permit shall be checked by the Building Official. Such plans shall be reviewed by other departments of the County to check for compliance with the laws and ordinances under their jurisdiction. Currently the DOW reviews building permit applications. The DOW reviews compliance with its rules and policies that include verification that adequate County potable water supply is available for the project. In general, the issuance of an adequately sized water meter for the project is required prior to the DOW building permit approval.

Unless the required subdivision water improvements are completed and accepted by the DOW, DOW approval of water meter and building permit applications may not be approved by the DOW staff. Currently the subdivision water improvements for both S-2005-25 and S-2005-21 have not been completed and accepted by DOW and the DOW has not approved any building permits or water meter applications for both subject subdivisions.

Waiver, Release and Indemnity Agreement Description:

There is no Board Rule or policy that authorizes the Department to approve building permits or water meters without the completion of required water system improvements. However, in order to allow certain developments to receive DOW building permit approval without completion of the necessary water system improvements, a unwritten administrative practice that was established by the Manager and Chief Engineer allows the execution of a recorded agreement between the Manager & Chief Engineer and the developer. The WR&I agreement allows the DOW to approve certain building permits for developer owned projects, without completion of required water system improvements. The WR&I agreement is not applied to third-party or new buyers/owners of the subject development. (ie. new lot buyers of a subdivision or CPR unit). The approval to allow the use of the Waiver, Release and Indemnity agreement is strictly limited only to the Manager and Chief Engineer.

Before the applicant is allowed to submit the Waiver, Release and Indemnity agreement the Developer/Applicant is required to obtain and submit a written approval by the Manager and Chief Engineer that allows the applicant to prepare and submit the WRI agreement for DOW staff review and approval by the Manager and Chief Engineer.

To date, the prospective developer was notified by the Manager & Chief Engineer that the WR&I request was denied for Subdivision Y. No intent or request to execute a WR&I agreement was received for Subdivision M1/M4.

The DOW Waiver, Release and Indemnity Agreement (WR&I) is a recorded document that is executed by the Manager and Chief Engineer and the Developer

(applicant). In summary, the WR&I template document include the following elements:

Understanding and Representations:

- The applicant has asked for issuance of building permits for construction of his development project and understands that the County has not granted final construction approval to all water improvements (on-site and off-site) that must be constructed to complete the project.
- The applicant understands that water meters and/or fire detector check meters shall not be provided by DOW unless and until DOW accepts and approves all project water improvements pursuant to DOW rules and regulations and the delivery of all as-built tracing, cost breakdown, conveyance documents, dedication deeds or easements required by DOW and completed by the applicant.
- The applicant is advised that project water improvements has not been completed, approved and accepted; yet the applicant desires to commence construction of the project.
- The applicant acknowledges that, prior to certification of completion of the project water improvements by DOW, applicant shall not transfer title to any unit in the project to a purchaser and shall not allow occupancy of said units to occur.

Purpose:

The purpose of the agreement is to have the applicant waive, release and indemnify the DOW from any and all liability for injuries or damage which might arise out of the fact that the County will be issuing and does issue a building permit to applicant for construction activities on the project, although project water improvements have not been fully and finally approved and accepted as required by DOW rules and regulations.

Provisions:

In consideration for the DOW's approval of the issuance the building permit prior to final approval and acceptance of the project water improvements the applicant agrees, promise and covenant as follows:

- Applicant waives any and all rights applicant has or will have to pursue any action or claim against the DOW, which may arise.
- Applicant agrees to indemnify and hold harmless the DOW of any and all claims for injuries and/or damages.
- Applicant agrees if DOW becomes a third-party defendant in any action against the applicant against a third-party plaintiff, then agreement releases the DOW from the responsibility of paying to applicant any damages.
- The applicant shall show the restrictions against conveyance of any unit in any notice of intention to sell, preliminary report, or final report, for a horizontal property regime with the Real Estate Commission.

The Performance Bond:

The performance bond is the security to guarantee the full completion of the project water improvements as shown on the approved construction project drawings. The performance bond shall be posted and attached to the agreement by the applicant.

The performance bond for the WR&I is the same bond that was posted as a requirement for final subdivision approval, the allowance of using the same bond to guarantee full completion of project water improvements under two separate agreements may create confusion if and when the County or DOW actually decide to use the same bond to complete the improvements.

Testimony:

Mr. Tom Shigemoto of A&B Properties thanked the Board for this opportunity to testify before the Board and introduced himself, Mr. Thad Bond, Vice President of Construction & Development of Kukui'ula Development Hawaii LLC & Mr. Lindsay Crawford, Project Manager of Kukui'ula Development Hawaii LLC and Mr. Dan Yasui of A&B Properties, Oahu.

Mr. Bond thanked the Board for having them and the DOW's staff for working with them on their projects. He then gave the Board a Powerpoint pictorial presentation on the status of Kukui'ula's housing and water projects.

Mr. Bond prefaced his presentation with the recent strained economic times, especially in real estate and Kukui'ula's difficult, bold decision to still go forth with their projects; luckily, they have strong financial partners.

1. Po'ipu Roundabout is done.
2. Golf Course: some holes are underway; Hole 1 has some trees planted and will be grassed soon, with irrigation already installed. Holes 5 and 6 also grading has started.
3. Commercial Center: Under construction as they did get to do a Waiver, Release and Indemnity Agreement with the DOW a couple of months ago. This center is expected to open Spring, 2009.
4. Plantation Core: This will be their main community gathering area for the residents and their key job that they want to get underway. They have the contractor and sub-contractors all set up and ready to go.
5. Workforce Housing: They want to complete this about the same time that the Plantation Core is done as both projects go hand-in-hand.
6. Community Park (20 acres): They met with the new Parks director last week and are proposing to maintain that park in perpetuity and they are working on finalizing a Maintenance Agreement. They are also hoping to finish this when the Workforce Housing is completed as an amenity. Per their community meetings, there was a need for a soccer field and baseball practice field.
7. They started an onsite plant nursery for their projects' landscaping needs and using non-potable water for irrigation.
8. Water requirements that have been built for the past couple of years:
 - a. Piwai Tank and Reservoirs at Manuhonuhonu and next to Paanau Housing. The waterlines are completed along 'Oma'o Road that goes to Subdivision Y and ends at Subdivision M.
 - b. Well No. 2 is ready to be tested; however, there are some issues with Well No. 3. They have convinced the contractor to buy a new pipe column that has been shipped and expected to arrive in a couple of weeks and should be operational about June 15, 2008.

- c. They painted our existing Paanau Tank as it was next to their new tank and will be landscaping that site.
 - d. Manuhonuhonu Tank has been painted and the fence is being installed.
9. Residential Homes: Y Cottages and a few (11-12) custom homes, whose owners want to build right away, are the projects that they were at the meeting to request the DOW to sign the building permits. The workforce housing is about 3 months behind these projects.
10. While blasting in the area, they have encountered a leak that their leak detection crew is investigating its location. They hope to find it by the next day.
11. Subdivision M1/M4 has been completed about 4-5 months.
12. Summary schedule of water improvements.
- a. Offsite: hopefully by June 13, 2008 all will be resolved with Piwai Well No. 2.
 - b. Subdivision of lots for the wells and tanks: will hopefully be completed by early fall.

Mr. Shigemoto stated that he felt knowing how much they have done and spent to meet their water requirements that they should be given every consideration. Therefore, the first concern should not be a major factor and the second concern of the failure of a developer to complete his improvements; thereby, putting the burden on the DOW can be mitigated with the bonding process. They have bonded their projects for a total of about \$28 million and to date they have spent \$27 million. Mr. Shigemoto added that they have 2 separate bonds with the DOW and Public Works and both bonds will be held until they finish until all of their improvements are done. Therefore, the DOW has assurances of their finishing their projects.

Mr. Shigemoto stated that Mr. Bond made the presentation to give the Board an update on the progress they have made so far to date on their development. They have spent about \$200 million in hard costs and more than \$300 million in both hard and soft costs. Mr. Shigemoto felt that this was proof that they were moving forward and not stopping and running away.

Mr. Shigemoto added that the third concern was that the DOW does not want to be burdened by homeowners calling that their home is done so to please give them a meter. He discussed that they will have the homeowners sign the building waivers so they understand that they cannot occupy their home until the water system improvements and the water meter installations are done.

Mr. Shigemoto also added that the water improvements would be done real soon, way before the construction is done for the custom homes, plantation core, Y cottages, etc. There is a long lead time before the homes would be occupied; therefore, they do not think it would be an issue.

Mr. Shigemoto discussed that they are at this meeting not in an adversarial role but to present the Board their best case in order for the Board to decide whether they are moving fast enough and doing what they need to do, etc. He also discussed that the real estate market is bad now with some projects in Poipu that have stopped. However, they are not stopping, as they are moving forward. Mr. Shigemoto stated

that they were at the meeting to preserve the sales that they already have as it would be bad for them if they start to lose sales because they cannot get building permits.

On query by Mr. Kyono, Mr. Shigemoto stated that once they got final subdivision approval, they sold some of their properties, as everything is contingent on their sales that they generate and the DOW knew that they were selling properties. Acting Manager Ushigome added that the Waiver did not apply with the subdivision as the subdivision ordinance takes precedence. The subdivision ordinance requires that the subdivision improvements be completed, conveyed and the Certification of Completion needed to be done in order prior to the issuance of the water meter and then the building permit approval would follow.

Mr. Kyono substantiated with Mr. Bond that it would be about a year or so before all of the vertical construction would be done.

Mr. Bond added that they met with the DOW about a year or so ago and was told to finish up whatever they could do before returning to the DOW. In the meantime, they have incorporated into the purchase agreements to give the homeowners the heads up that they would need to sign a Waiver in order to have their cottages built.

On query by Mr. Crowell, Mr. Inouye stated that the final departmental process is that once the project is completed, the DOW would conduct a final inspection, then the conveyance document, as-builts and cost breakdown would need to be turned in to the DOW for review and processing.

On query by Chair Oyama, Mr. Inouye stated that both projects are mostly all physically built with a few cleanup types of activities needed. For Subdivision Y, they need to fix the leak, one of the Piwai Wells was not working properly, and the Piwai Wells, although physically in place, it has not been tested and not yet operational. Mr. Inouye felt that they would be done by the latter part of this year, which he felt that their schedule is realistic if nothing crops up.

Mr. Crawford stated that have started the paperwork for the Grant of Easement and Conveyance of Water Facility documents for their projects and are about one halfway done.

Mr. Bond explained that there is a lot of water in the area for fire flow, etc.; therefore, they are considering not having the Manuhonuhonu Tank online for a while.

On query by Mr. Crowell, Mr. Bond stated that the transmission lines are done and operational.

Mr. Bond summarized that they are asking for this favor to do the Waiver as their paperwork will not be done until about September or October, 2008 and they wanted their project in the meantime to get building permits for the cottages and custom homes so their project could get a jump start on their construction.

On query by Mr. Kahawai, Mr. Bond stated that there is this lag time from now to the completion of the paperwork because they have to do a subdivision of land that has to occur and would probably not be done until the fall of this year. Mr. Bond added

that they are giving the DOW an irrevocable easement across their property that the DOW could do anything with.

On query by Mr. Nishimura, Mr. Crawford stated that the lot that would have the propane tanks is the same lot that will have the sewer pump station and a parking lot. Mr. Nishimura wanted to know that since a lot of their projects would be off of propane tanks, how much of it was completed.

Mr. Kyono stated that he was assured as A&B has a strong commitment to the community and has been around for a long time; therefore, he moved to approve the Waiver, Release and Indemnity Agreement for the Subdivision Y Cottages, Subdivision Y custom homesites, and the M1/M4 custom homesites, seconded by Mr. Crowell.

On query by Acting Manager Ushigome, Mr. Kyono stated that she should sign the Waiver on behalf of the Board. Acting Manager Ushigome stated that this document is approved at the discretion of the Manager and she denied their Waiver. Therefore, she felt that the Board should sign the Waiver instead.

Mr. Nishimura discussed that Kukui'ula is close to substantial completion of their water requirements and a long ways off to occupancy. In addition, they do not really know how much of the water system would be used and the waiver is for only a very small portion of their project.

Acting Manager Ushigome added that she had already approved and signed a Waiver, Release and Indemnity Agreement for their retail center.

Mr. Nishimura inquired if it was possible for Kukui'ula to control all of the building permits? Mr. Bond agreed that Kukui'ula could be the agent for all building permit applications, as they already are the agents for the cottages. Mr. Nishimura added that this would be in alliance of the Board's action to assist the DOW by personally taking care of their applicants. Kukui'ula concurred.

There was some discussion on who would sign the Waiver; therefore, an Executive Session was requested.

EXECUTIVE SESSION:

ES-2008-6 – Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with legal counsel and department staff regarding Kukui'ula Development Company (Hawai'i) LLC's request for a Waiver, Release & Indemnity Agreement for: 1) Subdivision Y Cottages, S-2005-25, TMK: (4) 2-6-016:016 thru 088; and, 2) Subdivision Y Custom Home Sites, S-2005-25; and, 3) Subdivision M1M4 Custom Home Sites, S-2005-21, Kukui'ula Development, Kukui'ula, Kaua'i, Hawai'i. This consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.

Chair Oyama read the Executive Meeting Session notice above. There was no Board discussion and no public testimony. Mr. Crowell moved to go into Executive

Session at about 1:08 p.m., seconded by Mr. Nishimura; motion was carried. Staff and guests were excused from the meeting.

The Regular Meeting was called back to order at 11:50 a.m.

On query by Mr. Nishimura, Acting Manager Ushigome stated that she felt that the subdivision improvements should be completed and accepted by the DOW. Also, the DOW's approval of the water meters and building permit applications should be in accordance with the subdivision ordinance.

On query by Mr. Nishimura, Acting Manager Ushigome stated that if the Board forced her to sign the Waiver, she would.

Mr. Kyono moved to amend his motion to also authorize and direct the Water Manager to execute the Waiver, Release and Indemnity Agreement for the 3 projects, seconded by Mr. Nishimura.

Mr. Crowell added a requirement that the applicant would need to report next month to the Board on the progress of the detection of the leak and applicable repairs. Mr. Kyono added that they also should give monthly updates to the Board.

Motion was carried.

Mr. Crowell moved to have a monthly report on the water systems until it is conveyed to the DOW and especially next month on a progress report on the leak detection and the repair schedule, seconded by Mr. Kahawai; motion was carried.

On query by Mr. Shigemoto, Mr. Doi stated that Kukui'ula will get a letter from the DOW to confirm the Board's actions.

Mr. Nishimura moved to modify the Waiver, Release and Indemnity Agreement to require that the applicant to act as an agent to all of their building permits, seconded by Mr. Kahawai.

On query by Mr. Doi, Mr. Nishimura stated that only the agent will be processing the building permits for these 3 projects covered under this Waiver. Thereafter, they would follow the regular process.

On query by Mr. Crawford, Mr. Kyono stated that the Waiver should include signatures of Kukui'ula as well as the homeowner. Board concurred.

Mr. Crawford added that they would have a separate statement with the homeowner that Kukui'ula would be acting as their agent for the building permit process.

Motion was carried.

Re: Request to Testify by A & B Properties, Inc. for a Request for Water Service, Ele'ele Industrial Park Subdivision, TMK: 2-1-01:051 and Eleele Residential Development Site, TMK: 2-1-01:003, Portion, 'Ele'ele, Koloa, Kaua'i, Hawai'i

RECOMMENDATION:

- 1) It was recommended that the Board not approve the applicant's request to include the Ele'ele Industrial Park Subdivision and Ele'ele Residential development site in the Ele'ele water service area and instead affirm the Department's recommendations that was made for various land use designation, zoning amendment, and SMA(U) permit and subdivision applications that indicated that the development area is outside the service area for which the Department's General Plan for Domestic Water was prepared.
- 2) It was recommended that the Board not approve the applicant's request and to use the existing water source and storage capacity from the Department's existing water system facilities and instead require the applicant to prepare and receive Department approval for a water master plan for full development of the A&B 72-acre 'Ele'ele multi-use development that was conditioned by the various State and County agencies prior to final subdivision or building permit approvals.

FUNDING: N/A

FINDING:

- 1) The subject 72-acre A&B "development area" is not considered as part of the 'Ele'ele water service area by the Department and was/is obligated under conditions of their zoning to develop water supply infrastructure that meets DOW standards. (Ref: Water Plan 2020 Chapter 3, Water Service Areas, Pg. 3-2) The Water Plan 2020 water service area for the Hanapepe-'Ele'ele system is defined as areas that are serviced by the existing water system facilities. The service area is generally limited to the areas that have appropriate planning and zoning approvals in place. Water service is generally available within the service area unless system infrastructure improvements are needed to provide adequate water supply without detrimentally affecting the existing water consumers.

The subject development is located in an area that was planned and zoned for future urban development. The developers of these projects are obligated under conditions of their zoning to develop the necessary potable water system infrastructure.

Although the Department's Water Plan 2020 was adopted in 2001, the "development area" was earlier conditioned by prior SLUD, County Zoning and General Plan Amendment, zoning and special management use permit and subdivision water conditions that stated that the development/petition areas was located outside of the service area for which the Department's General Plan for Domestic Water was prepared. The condition also stated that new source, storage, and transmission water system improvements will have to be developed to serve the additional water demand of the area. Specifically in 1995, when the developer filed a subdivision application (S-96-28) and a SMA

(U) permit (SMA (U)-96-2) at TMK: 2-1-01:003 for a 40 lot industrial subdivision. DOW recommended that prior to final subdivision and building permit approval, the developer was required to prepare and receive DOW approval of a water master plan for the full development of the area. The subdivider was required to provide additional source, storage and transmission facilities as required by the approved water master plan.

- 2) It may be premature to approve the developer's request to use existing DOW source and storage facilities without the completion of a comprehensive water master plan for his development.

In areas, which are planned and rezoned for future urban development, the developer is obligated under conditions of their zoning to develop water supply infrastructure that meets DOW standards. The A&B 72-acre development that received State Land Use designation and County zoning amendment approvals in 1990 and 1995 was required to develop new source, storage and transmission water system facilities to service the additional water demands of this area. Later DOW conditions for subdivision and SMA (U) permits included the preparation and approval by the DOW of a Water Master Plan for the full build out of the development. The water master plan (Ref: Section 113- Water Master Plan, pg. 113-1, Water System Standards 2002, as amended) is defined as a plan describing the development of any property including all of the proposed water system improvements necessary to provide adequate water service to the development. The water master plan shall address any phasing of the development. All proposed work shown in the water master plan shall be designed according to the Department Water System Standard Rules.

The developer has presented preliminary existing water system capacity and water demand estimates to justify his request. Developer calculations do not include the full-build out demand for the entire development area, as well as, other requirements including fire protection and system hydraulic analysis to determine the existing water system capacity. Sufficient engineering worksheets and analysis to substantiate his estimates were not provided. A water master plan should include detailed and comprehensive engineering analysis, planning and design activities necessary to determine the water system improvements for full build out. The master plan will determine the ultimate water system improvements and may include a phased implementation plan of the water improvements to service the incremental build out. One intent of the water master plan will be to eliminate piece-meal and unplanned water improvements and costly pre-mature replacement of under designed and shortsighted water facilities.

BOARD RULES AND REGULATIONS: The DOW Rules and Regulations that apply to this situation are described below:

Part 2, Section II-General Conditions, Item 1.a.: "Any prospective consumer may obtain water service provided all of the following conditions are met: a. In the event that service limits are established by the Department that the premises are within these limits."

Part 3, Section II – Availability of Water and Approval of Subdivision Map, Item 2.: "In areas where there are no public water supply available or where large quantities of water are required of a large investment is necessary to provide service, the subdivider will be informed as to the conditions under which the subdivision may be approved and, where appropriate, refunds made.

BACKGROUND:

The proposed developments are located east of Waialo Road in Ele'ele and further identified as TMK: 2-1-01:003 and 051. The area was previously used to grow sugar cane and zoned Agricultural. (Exhibit 1: Map showing TMK parcel location)

The subject properties were subject to a Petition for Amendment to the State Land Use District Boundaries to reclassify certain lands from Agricultural to Urban in 1990 (Petition A90-654 by A&B Properties, Inc.).

The DOW did not have any objections to the petition provided that water source, storage and transmission facilities are upgraded prior to actual development or subdivision of this area. The DOW also stated that this petition is outside the service area for which the Department's General Plan for Domestic Water was prepared. New source, storage and transmission water system facilities will have to be developed to serve the additional water demands of this area.
(Exhibit 2: DOW comments to Petition A90-654))

In 1994, the zoning designation for that certain area in Port Allen, Kauai, identified as TMK: 2-1-01:03, as shown on the map attached was amended from "Agricultural District (A)" to "General Industrial District (IG)" through Ordinance No. PM-293-94, Bill No. 1641. The amendment was subject to conditions, one of which is:

"As recommended by the Department of Water, the Petitioner shall construct water improvements, which may include a storage tank, connecting pipeline facilities, and adequate transmission facilities. The Petitioner shall resolve these requirements. . . "
(Exhibit 3: Copy of Ordinance No. PM-293-94, Bill No. 1641 that includes DOW comments and map of the affected area)

In 1995, a subdivision application, S-95-43 was submitted to the Planning Department. Subdivision application, S-95-43 was a proposed 2 lot subdivision of TMK: 2-1-01:003.

DOW comments for S-95-43 required FRC charges for 2 lots. Installations of service connections were not required to be installed at that time. Subdivision appears to have been treated as a large lot subdivision (subdivision of a large parcel into a parcel that is planned to be developed with a large remainder parcel). (Exhibit 4: DOW subdivision report for S-95-43 with map)

In 1995, a subdivision application, S-96-28 was submitted to the Planning Department. S-96-28 was a proposed 40-lot Industrial subdivision of TMK: 2-1-01:003. Parcel 3 was created from S-95-43. According to the Planning Department, S-96-28 was declared null and void effective February 23, 2001. We understand that a revised subdivision map was submitted by the developer in March

2008. To date, the DOW has not received a copy of this revised subdivision map from the Planning Department for review.

DOW comments for S-96-28 conveyed that the proposed development is located outside of the service area for which the Department's General Plan for Domestic Water was prepared. Prior to the DOW recommending approval, the developer is required to prepare and receive DOW approval of a Water Master Plan for full development of this area. The developer is required to provide additional source, storage and transmission facilities as required in the approved Water Master Plan for this area. The developer was required to also complete other conditions. (Exhibit 5: DOW subdivision report for S-96-28 with map)

In 1995 a Special Management Area Use Permit Application, SMA (U) – 96-2 was filed by A&B Properties, Inc. to allow a 39-lot Industrial subdivision of TMK: 2-1-01:003 por.

DOW comments for this application stated that at the present time, the proposed development is outside of the service area for which the Department's General Plan for Domestic Water was prepared. If this area is to be developed, new source, storage and transmission facilities will be required to be developed to serve the additional water demands of this area. The applicant was made aware that prior to final subdivision approval or building permit approval, the developer will be required to prepare and receive DOW approval of a Water Master Plan for full development of this area and to provide source, storage and transmission facilities as required in the approved Water Master Plan for this area. Other conditions also applied. (Exhibit 6: DOW comments for SMA (U)-96-2 with application and map)

Zoning Amendment, ZA-2005-2 (TMK: 2-1-01:003): On April 5, 2005 DOW informed applicant (A&B) that the proposed zoning amendment area is located outside of the DOW service area. Prior to development of the area, new source, storage and transmission water system facilities will be required to serve the additional water demands for this area. (Exhibit: See DOW report to Planning, dated 4/5/05). (Exhibit 7: DOW comments for ZA-2005-2 with map)

System Source capacity for the Eleele water system is obtained from the Hanapepe water system. Water from Hanapepe Wells is pumped up to the Eleele water system by booster pumps located in Hanapepe Valley. The capacity of these booster pumps are currently used as the source capacity for the Eleele area. Both the Hanapepe and Eleele Water Systems have their own storage and transmission facilities. The DOW generally analyzes each system separately, although both are analyzed together for larger developments to make sure that the source and transmission facilities supplying the Hanapepe service area are adequate.

The following shows the status of the Eleele Water System and the combined Hanapepe-Eleele Water Systems based on 2006 consumption data. All demands shown are based on maximum day demand (MDD) figures.

Existing Status of DOW Eleele Water System:

Current demand: 0.662 mgd
Pending demand: 0.123 mgd
Total demand: 0.785 mgd

Source Capacity Eleele: 1.15 mgd
Storage Capacity Eleele: 1.00 mgd

Available Source Capacity Eleele: 1.15 mgd – 0.785 mgd = **0.365 mgd**
Available Storage Capacity Eleele: 1.00 mg – 0.785 mg = **0.215 mg**

Existing Status of the combined DOW Hanapepe-Eleele Water Systems:

Current demand: 1.405 mgd
Pending demand: 0.131 mgd
Total demand: 1.536 mgd

Source Capacity Hanapepe-Eleele: 1.944 mgd
Storage Capacity Hanapepe-Eleele: 2.000 mgd

Available Source Capacity Hanapepe-Eleele: 1.944 mgd – 1.536 mgd = **0.408 mgd**
Available Storage Capacity Hanapepe-Eleele: 2.000 mg - 1.536 mg = **0.464 mg**

The applicant estimates that the proposed projects will require (0.080 mgd + 0.17 mgd) **0.250 mgd** of water. The proposed water usage quantity is not verified. Detailed water demand calculations were not done. The applicant has not included demands for the full buildout demand for the development area.

Board Discussion:

Acting Manager Ushigome stated as their rezoning process, A&B was informed that a Water Master Plan needed to be done to know what type of water requirements were needed for their development.

Mr. Crowell asked what is considered a service area. Mr. Doi referenced the DOW's Water System General Plan for Domestic Use that was used as a guide on service areas and service limits. Mr. Doi stated that back in 1990 when A&B came in for an amendment to the State Land Use, the DOW's Water System General Plan for Domestic Use identified that their project was out of the DOW's service area. At that time, it was noted that since they were out of the DOW's service area, they had the water requirements to provide all of the source, storage and transmission facilities.

Mr. Crowell asked what would it take to change that service line area? Mr. Doi replied if there was more infrastructure then the service area could be expanded. Mr. Doi added that Water Plan 2020 now kind of addresses this area. The intent was not to de-obligate the existing developments from doing their requirements.

Mr. Nishimura discussed that the applicant contends that there is excess capacity in that area. On query by Mr. Nishimura, Mr. Doi stated that A&B did submit in their letter their proposed water demands; however, as part of the water master plan, the

DOW is asking A&B to submit more detailed calculations to substantiate their proposed water demands.

Acting Manager Ushigome added that these 2 projects are only a part of their overall zoning amendment. She did a short Powerpoint presentation to show the Board the water transmission lines that feeds Hanapepe/Eleele, which is located treacherously in Hanapepe Valley.

Mr. Crowell asked if the Hanapepe Well services only Eleele or Hanapepe and 'Ele'ele. Mr. Doi stated that it services both areas with a booster pump. Mr. K. Fujimoto added that the 4 wells in Hanapepe service all of Hanapepe, including Hanapepe Valley, Eleele, and including Hanapepe Heights. There are 3 wells in the valley and 1 well near and servicing Hanapepe Heights, which is Hanapepe Well No. 4. There are no well sources in the Eleele area; Eleele is fed water via the booster pump station.

Acting Manager Ushigome also added that the waterline in Hanapepe Valley is the only connection that services Eleele.

On query by Mr. Kyono, Acting Chief of Operations Bill Eddy stated that the head is 28, between the top and bottom, which is about 340' with the tank topped and 312' at the well site.

Mr. K. Fujimoto gave a little history on the 27-inch waterline in Hanapepe Valley that it was previously owned by A&B, who formerly used it as an irrigation line. However, this line was conveyed to the DOW as part of their water requirements for the Port Allen Industrial Subdivision. The DOW did install a liner in the waterline to make it usable for potable water.

TESTIMONY:

Mr. Tom Shigemoto of A&B Properties was present to testify and gave an overview of their proposed project that consists of 72 acres of land.

Mr. Shigemoto stated that the 72 acres did include the 24 acres that was eventually sold to Habitat for Humanity that they are developing now. There is 28 acres that was rezoned and urbanized in 2005, which was zoned general industrial back in 1994.

Mr. Shigemoto commented that he was not sure why their projects were not included in Water Plan 2020. He went briefly over the DOW's staff report on available source capacity and the staff report does reference excess source and storage capacity in the Hanapepe/'Ele'ele areas.

Mr. Shigemoto stated that they are asking for consideration for the general industrial subdivision, which was zoned back in about 1994 and most recently in 2005. He felt that this project should have been included in Water Plan 2020 knowing that it was already zoned.

Mr. Shigemoto also added that he does not understand why would a water master plan be needed if there is water already available for an area? They would do one if

need be, although he wondered what would they be trying to find. He also wondered what the excess capacity would be saved for, because as far as he knows, there are no other proposed developments in the area. He added that all of the non-developed areas are owned by A&B.

Mr. Shigemoto discussed that Habitat for Humanity, who A&B gave 24 acres of land and was initially part of their 72-acre project area, got County water. He did not know if the reason was that they are doing affordable housing.

Mr. Shigemoto summarized that he was at this meeting to verify whether there was enough water for their general industrial subdivision and their proposed future residential subdivision, which has 60 percent affordable housing.

Mr. Crowell asked how much of the undeveloped lands are A&B lands located west of their proposed projects in Port Allen? Mr. Shigemoto stated that they have some lands by Forest West, which is right by the river mouth. There is about eight (8) acres that is zone open and in flood zone that is why there are no plans for that area. He added that they have a few vacant commercial areas in Hanapepe Town; otherwise, it is pretty well developed.

Mr. Nishimura discussed that he was concerned about the amount of water usage for a general industrial area as the uses are widely varied from minimum use to major use of water. Mr. Shigemoto added that their engineer calculated that their general industrial subdivision would need about 80,000 gallons per day.

On query by Mr. Crowell, Mr. Doi stated that the available storage capacity is .215 million gallons.

On query by Mr. Nishimura, Mr. Doi stated that he would have to research if the Habitat for Humanity is included in the water calculations.

Mr. Nishimura moved that the Board accept the staff's recommendation; however, there was no second. Motion died.

Mr. Crowell moved to defer this matter to the next Board Meeting because he would like to know more about what is the excess water capacity being saved for and what are our priorities for its use, seconded by Mr. Nishimura.

Since this matter was deferred, Mr. Nishimura asked Mr. Doi to inform the Board on how he came up with the calculation of the available water of .215 MGD.

Mr. Kyono added that for the benefit of the new Board members who were not involved with Water Plan 2020, it would be helpful to explain how the service areas were established in the 1990's.

Motion was carried.

Mr. Shigemoto, Mr. Crawford, and Mr. Bond left the meeting at about 2:15 p.m.

Motion was carried. *Recess: 2:15 p.m. to 2:20 p.m.*

REPORTS

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

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

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

Public Relations Specialist Faith Shiramizu gave the following report:

Re: Public Relations Update

Employee Events: With everyone's busy schedule, our March walk/hike has been moved back to this coming Saturday, May 10, 2008, with a summer hike to the Alakai Swamp, tentatively July 19, 2008. All participants have to sign a Waiver and Release form.

County Employee Council, as of May 1, 2008, has raised over \$10,000 for the American Cancer Society Relay for Life. Mahalo Wynne, for being the Department of Water's representative.

Kuleana Show: Our Kuleana Show consisted of two parts; the first featured Don Shuler from Professional Meters Incorporated, where we covered information on our meter replacement program, from notification to billing as well as the questions and answers shared with you previously. The second part highlighted the AWWA Only Tap Water Delivers campaign, promoting the value of Tap Water. In our attempt to step up our end product, we encountered many technical difficulties and would like to acknowledge and thank Sandi Nadatani for her awesome assistance.

Women's Pipe Tapping Team: The women's pipetapping team came in 2nd place at the AWWA, HI Section Annual Conference competition that took place on the first day of the conference. Congratulations to our Ka Wai Wahine Pipetapping Team who did well in the State Competition. The Honolulu Board of Water Supply's womens' pipetapping team took 1st place and will represent Hawai'i at next year's AWWA National Conference.

Our women's pipetapping team are continuing to practice for the national competition at the AWWA Conference in June, 2008.

KCC Science Class: Assisted a Beginning Science Class from Kaua'i Community College by arranging a field trip to the Surface Water Treatment Plant, with escort service provided by Andy Canavan, our chemist. A follow up session was set up for Carl Arume, our microbiologist, to visit their class and lecture on our island aquifers and how the department provides water to our customers.

DWSRF Projects: Our Interim Loan Agreement for Stable 1.0 MG Tank and Connecting Waterline project is in place and the project should be ready for bid in mid May.

Kapilimao 0.5 MG Storage Tank Project : A public hearing will be held in May, 2008 through the Planning Commission and hopefully will receive a favorable decision in June so the project can go out for bid in July.

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

RE: SUMMARY REPORT OF MONTHLY OPERATIONAL MAINTENANCE:

For the Board's information, Acting Chief of Operations William Eddy submitted a monthly report of the DOW's Operations Division for the Board's information. Some of the major highlights were below:

- The top priority is the proposed re-organization of the Operations Division to include a superintendent level in the Table of Organization. This is pending at the Department of Personnel Services (DPS).
- The following vacant positions were advertised by DPS last month: Auto Mechanic II, Welder, Meter Mechanic. A pipefitter position will also be advertised this month.
- The Puhi 393' booster pump temporary line connection was removed.
- Waterline on the bridge was removed at Kolo Road in Kīlauea so a new bridge could be built.

Mr. Nishimura moved to approve the Operational Maintenance Report, seconded by Mr. Crowell; motion was carried.

Re: Manager's Update for April, 2008 to May, 2008

CONTRACTS AWARDED BY THE MANAGER:

Contract No. 485, Furnishing & Delivery of One 19,000 lb GVWR Dump Truck:
Change Order No. 1 (Account No. 106, Vehicles & Equipment)
to add an air tailgate release w/ cab mounted controls \$1,562.49

PUMP INSTALLATION PERMITS SIGNED BY MANAGER: None.

WAIVER, RELEASE, AND INDEMNITY AGREEMENTS SIGNED BY THE MANAGER: Koloa Landing Project and Pili Mai at Poipu

Affordable Housing Update:

Updates on Affordable Housing Task Force (AHTF) Projects:

1. DHHL – Anahola Residence Lots Unit 6, Pi'ilani o Kekai, Phase 1: No report.

2. Habitat - Eleele I Luna Subdivision Phase 2: Construction plans will be submitted to County agencies in April 2008, not received by DOW.
3. Puhi Self-Help Subdivision – Grove Farm is completing the Puhi 393 booster pump and off-site waterline improvements that affects the building permit/water meter approvals. The first 14 of 41 building permits are being processed by the Building Division. Building permits are being review at Planning, County Housing Agency and Department of Water contacted Grove Farm regarding the status of completing the Puhi 393 Booster Pump Station. The following outstanding items are still required for certification of completion:
 - a. Approved field pump test certification;
 - b. Submittal of all required spare parts and owners operation/installation manuals;
 - c. Final inspection by DOW;
 - d. As-built tracings, and;
 - e. Conveyance of water facilities.
4. Kauai Lagoons – Waipouli Courtyard: County issued building permits. Construction schedule is for the first 50 units is projected to met the February 2009 deadline. The remaining units are anticipated to be completed by February 2010.
5. Kauai Lagoons – Kapule Project: The water demand study was completed and indicated that the 31 affordable housing units are being planned to be supplied by the future water meter that is dependent on development of offsite source and storage improvements.

KD Kapule LLC is responsible for this project and submitted an update report informing the Housing Agency that contractor Armstrong Builders has started design work for 31 Affordable Housing Units on Hoao Way in Lihue. Building permit plans and application will be submitted at the beginning of July 2008. Construction of 31 units is anticipated to start by January 31, 2009, plans to complete 31 units by February 2010.

The Housing Agency informed the AHTF that last week, County Council requested the DOW respond to questions relating to the availability of County water supply for the 31 unit Affordable Housing project and has requested the DOW to attend the next Council meeting. A formal Council communication has been sent to DOW for a response.

The DOW updated the AHTF regarding the water availability status: The developer completed an engineering study that documented the existing demand of the Marriott Hotel and Kaua'i Lagoons site. An existing 4-inch meter and (2)-6-inch meters service both the Kaua'i Lagoons and Marriott Hotel site. The engineering report allocated approximately 125 units (Initial Phase) of the total 781-unit Kaua'i Lagoon development to the remaining meter capacity from the existing 4-inch Kaua'i Lagoons meter. The remainder balance of proposed development of the Kaua'i Lagoons development (approx. 656 units) is proposed to be serviced by a future 8" water meter service. The report acknowledged that additional domestic water supply is needed for the full development.

The DOW also reported that Mr. Steve Bush, Marriott Vacation Club, is aware that additional source and storage system improvements will be needed in order to

receive DOW approval for the 8" water meter. The DOW also reported that the developer may be considering using the remaining capacity from the existing 2-6" water meters that primarily service the Marriot Hotel.

6. Kalepa Village Phase III & IV – Phase III- 40 unit multi-family development estimated occupancy by April 2008. Phase IV contract awarded to Unlimited Construction.
7. Princeville Employee Homes: No report.
8. Kukui'ula Employee Housing –Gap Housing subdivision and zoning permit: Amended KDC Water Master Plan returned to the developer for revisions.
9. Kohea Loa (Hanama'ulu Triangle): No progress. DOW reviewed the Water Mater Plan for the AMFAC/JMB Lihu'e-Hanama'ulu Master Planned Community Lands and met with the consultant on November 7, 2007. Kodani & Assoc. is currently revising the water master plan. To date the DOW has not received the revised Water Master Plan for review.
10. Paanau Village, Phase 2 – This affordable housing project is included in the Kukui'ula Master Plan. The Housing Agency voiced concerns over the need to relocated and provide a separate roadway lot for he existing 12-inch mainline through the Paanau site. The Housing agency requests that the water improvements for the Paanau Phase 2 development be reviewed by their agency during the design review phase.

Next Affordable Housing Task Force meeting scheduled for Monday, May 5, 2008 at Pi'ikoi Conference Room A.

AWWA Hawaii Section Conference: Congratulations to the Kaua'i Women's pipe tapping team for competing in this year's contest. Our women came in second with a time of 2 minutes 17 seconds while the Honolulu BWS Women's completed their tap with a time of 1 minute 57 seconds.

The Honolulu BWS men's team also won their division, beating out last year's defending champions from the Big Island.

The Department wishes to congratulate the pipetapping participants and extended our best wishes and support to the ladies as they make their way to Atlanta to compete in this year's competition at the AWWA National Conference in June.

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

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

This matter was taken care of at the Finance Committee Meeting.

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

This matter was taken care of at the Rules Committee Meeting.

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

Updates of Strategic Goals and Implementation Status Report from the Issue Champions:

PR Specialist Shiramizu reported to the Board and gave an updated summary from the issue champions:

RE: REPORT FROM ISSUE CHAMPIONS

Issue No. 1, Morale:

- a. Fun Committee – As mentioned in the PR report, the March walk has been postponed to May and an Alakai hike is planned for the summer. We will also be using a Waiver and Release form after approval from the County Attorney's office.
- b. Rewards and Recognition Committee – A revised WATER Bucks program description has been sent to the County Attorney's office for review, with our goal being to receive authority from the Mayor, to our manager to allow the department to fund this program.

Issue No. 2, Strong and Qualified Workforce:

- a. Civil Engineer interviews were held. Recommendations are in progress.
- b. OPS positions posted 4/20/08.
- c. Training on policies in progress.

Issue No. 3, Water Quality:

- a. At the request of the Board, a Request for Proposal (RFP) Committee, was established to prepare a request for proposal to select a program manager for the Water Plan 2020 Sustainability Plan. The Committee submitted the RFP document in its final form to the Board at the February 2008 Regular Meeting. The RFP document also included a memo from the RFP Committee which shared with the Board, the concerns and comments that the Committee received from the peer review and from the Committee Members as a whole. The Committee recommended that the concerns and comments identified in their memo be resolved prior to the issuance of the RFP in order to avoid any confusion or possible legal entanglements which would further delay the timely completion of the Water Plan 2020.

After receiving the final RFP document, the Board deferred further action on the RFP due to the concerns and comments identified by the RFP Committee and the recommendation that these concerns be resolved prior to issuance of the RFP.

- b. We have monitored a few main breaks and are working out some of the bugs, like timing, # of samples, etc. Bill suggested we incorporate MPET into the flow (chart). We met with Tom² and should be able to get on to the MPET system which will help jump start the program.

Issue No. 4, Workplace Efficiencies:

- a. A DOW rep. from each division has been assigned to assist with documenting their division's work processes and to share their process with their fellow division employees, other DOW employees, etc. This is one of the elements of succession

planning with many to retire soon and will in turn assist with training new hires in their respective divisions. Each representative will need to get familiar with the Microsoft Visio software that can do flow charts to visually show everyone a particular work process. If anyone wishes to document a work process, please notify your division rep.: Accounting: Fay Tateishi; Billing: Vicki Kobayashi; Shop: Gerry Yamamoto; Eng.: Margie Loo; and Admin.: Bekki Malapit. They are practicing the use of the software now and will be turning in a sample flow chart to Wynne by May 5, 2008.

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

(1) The main technology that is presently being worked on is the Automated Meter Reading (AMR) System, which is an ongoing project that was implemented in mid-March, 2008.

- i. The test pilot, Isenberg/Kapaia area is nearly complete, with just the bigger or more difficult meters pending replacement or completion.
- ii. The Wailua, Waipouli and Kapaa areas are also nearly complete.
- iii. In mid May, PMI will be in the Kalāheo, 'Oma'o, Lawai areas.

Issue No. 5, Accountability:

Strategy 1/Tactic 1: Review and communicate to staff regarding the “Employee Handbook.”

We have abandoned plans to implement an “Employee Handbook” based on the recommendation of the County Attorney and a directive from the Board. It will be the responsibility of individual employees and supervisors to know what is expected and required of them. We will also be scheduling the review of certain SOPs that need to be re-visited at our monthly employee meetings.

Strategy 1/Tactic 2: Review and communicate to staff Bargaining Unit Agreements and contracts.

We have also abandoned this tactic due to the recommendation of RW Beck that HGEA and UPW should be providing this education. Issue Champion Bill Eddy disagrees with this determination and hopes that this topic will be re-visited at some point.

Strategy 1/Tactic 3: Issue reminder of “Leave of Absence” requirements.
This was already issued.

Strategy 1/Tactic 4: Update job descriptions to include accurate and timely time recording by all staff. Includes accountability for timesheet authorization by managers and supervisors
Still pending, as recent job descriptions have not included this language.

Strategy 2/Tactic 1: Enforce “Employee Handbook” requirements.
This tactic has been scrapped as described above. It will be the responsibility of supervisors to enforce existing practices and procedures of the Department.

- Strategy 2/Tactic 2: Enforce Bargaining Unit agreement and contracts.
This tactic was meant to be a follow-up to the above Strategy 1/Tactic 2. Even though that tactic was abandoned, it is still the responsibility of supervisors to enforce Bargaining Unit agreements.
- Strategy 2/Tactic 3: Develop consequences of failure to comply with "Leave of Absence" requirements.
These consequences were to be part of the "Employee Handbook." As that tactic has been scrapped, we will have to develop something separate. It was the intention of the handbook to provide a uniform format to address such problems.
- Strategy 2/Tactic 4: Benchmark how other government utilities reward for good performance
This tactic has been moved to another "Issue."
- Strategy 2/Tactic 5: Implement a fraud hotline for employees and general public to report anonymous concerns.
This tactic was abandoned as it was generally thought by the issue champions to be a bad idea. This tactic was initiated by the Moss Adams, "Time Entry Process Assessment."
- Strategy 3/Tactic 1: Implement attendance procedure.
Plans to complete and then implement the Department-wide attendance procedure have been put on hold due to fears that the unions will resist the "time clock" provisions.
- Strategy 3/Tactic 2: Update cell phone policy.
This policy has been completed by a committee and submitted to administration for review and approval. Administration is concerned that the language regarding use of Department cell-phones while driving vehicles is not strong enough.
- Strategy 3/Tactic 3: Implement procedures to ensure performance reviews are performed on a regularly scheduled basis. Make sure accurate reporting and authorization of time entry is an element of the review
This tactic may have been moved to another "Issue."

AFFORDABLE HOUSING:

Acting Manager Ushigome reported that updated Affordable Housing Projects – Summary Status dated May 2, 2008 prepared by Mark Salmon with RW Beck was given to the Board for their review.

Currently, the Kapa‘a Homesteads (Makaleha) 0.5 MG Storage Tank is advertised for construction. A pre-bid conference was held on May 1, 2008 for all interested bidders, offerors, subcontractors and union representatives. Bid opening is scheduled for May 15, 2008 at 2:00 p.m. at the Department of Water.

This project is a combination of two (2) Department of Water projects at the same site. Section A is the construction of a new 0.5 MG reinforced concrete tank at the existing tank site, including but not limited to the following: site preparation, grading, RCP drain culvert with headwall, connecting waterlines, control valving, pressure and level transmitters, access paving, fencing, and electrical work.

Section B is an additive to construct a hardened generator shelter for the Makahela site, which includes the necessary electrical conduits, hardware and other equipment to safely house emergency generators at the well site.

Details are provided below.

This memorandum is a summary of progress on the Affordable Housing Projects for your reference. Please see the attached progress report for each project.

- ✓ The Kapilimao 0.5 MG Storage Tank final design is complete with the exception of permits. Applications for missing permits were submitted in early February. Applications that were resubmitted in March were re-resubmitted in April. Public hearing scheduled for May 27. Barring further glitches, project can be advertised for construction in June.
- ✓ AMFAC Shaft 11 Renovation Phase 1B field pump testing is complete and a draft report is in preparation, due May 11. A change order for removing abandoned power poles and conductors is under preparation.

The early start of Phase 2 of AMFAC Shaft 11 Renovation is still not underway due to delays in the consultant procurement process. Depending upon the consultant selected, contract negotiations may further delay the start.

- ✓ Easement negotiations with adjacent landowner (Yamamoto) are current focus. An alternative responding to Mr. Yamamoto's concerns was prepared in April and will be presented to Mr. Yamamoto shortly. This alternative will be considered DOW's final effort to reach agreement with Mr. Yamamoto. If agreement is not reached by the end of May, project will be designed to fit on current DOW property.
- ✓ Final design for the Kapa'a Homesteads 0.5 MG Storage Tank is complete. Construction advertisement delayed due to recent additional work on generator shelter requested by staff.
- ✓ Initial well siting report was submitted in April. Staff is currently reviewing report.
- ✓ SSFM continues final design of the Akulikuli Tunnel renovation. Staff has requested investigation into alternative project configurations. This investigation is almost complete, but progress on EA and final design delayed in the meantime.

Mark Salmon's Affordable Housing Projects' Reports:

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

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

Work underway: permitting

Work ahead: permitting, construction

Current Major Area of Focus: permitting

Potential obstacles: none currently

Tentative Date Project in Service: December 2009

- Summary: All engineering work complete. County Use and Zoning Permit applications submitted for the 3rd time this period. Reportedly, they have been processed this time and the public hearing is scheduled for May 27, 2008. Contract advertisement will follow.
- Contract Status: Design contract executed.
- Schedule: Schedule extended due to permit acquisition. Construction expected to start early 2009.
- Permits: County use and zoning permits are primary outstanding permits. Public hearing scheduled for May 27, 2008.
- Land & Easements: Draft easement maps complete.
- Agency Coordination: See Permits.
- Problems and Proposed Mitigation: Project delayed due to County permits. After submittal and two re-submittals, County has finally processed applications and scheduled a hearing.

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

Work underway: DOH and Basis of Design Report Preparation

Work ahead: final design, environmental/permitting, construction

Current Major Area of Focus: Report preparation

Potential Obstacles: water quantity and quality unknown – testing report pending

Tentative Date Project in Service: December 2009

- Summary: Preparation of the pumping test report is underway and is due May 11. Consultant procurement continues to delay start of Phase 2.
- Contract Status: Phase 1B contract complete. Phase 2 contract delayed pending completion of consultant procurement.
- Schedule: Phase 1B okay. See Problems & Proposed Mitigation below for Phase 2.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: Staff completion of consultant procurement process delaying start of Phase 2 (final design).

3. **(WK-08), Kapahi 1.0 MG Storage Tank--Summary Project Status: May '08**
Project Manager: Mark Salmon -- Design Consultant: Belt, Collins

Work underway: final design

Work ahead: final design, environmental/permitting, construction

Current Major Area of Focus: Final design, easement acquisition

Potential obstacles: easement acquisition from private landowner

Tentative Date Project in Service: August, 2009

- Summary: Final design continues. New tank configuration alternative developed to respond to Mr. Yamamoto's easement acquisition concerns. The latest option will be presented to Mr. Yamamoto as DOW's final offer. An appraisal of the lands costs for all alternatives are being prepared.
- Contract Status: Final design contract executed.
- Schedule: Updated schedule received March 7. Construction scheduled for completion August, 2009.
- Permits: No issues.
- Land & Easements: Easement negotiations with Mr. Yamamoto continue. Alternative tank site configuration responding to Mr. Yamamoto's concerns is ready for presentation. At that time, Mr. Yamamoto will be asked to pledge in writing his commitment to sell an easement to DOW. If no such commitment is received by the end of May, the project will be configured to fit on land currently owned by DOW, and easement acquisition efforts will be discontinued.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: Project configuration and landowner issues not yet resolved. Path forward will be defined by end of May. See "Land and Easements" above.

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

Work underway: bid advertisement

Work ahead: bidding and construction

Current Major Area of Focus: final construction documents

Potential obstacles: none currently

Tentative Date Project in Service: July 2009

- Summary: Staff issued change order to contract adding more work on generator shelter. Construction advertisement will be delayed until new work is complete. Estimated delay: one month.
- Contract Status: Contract complete.
- Schedule: No issues.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: No issues.

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

Project Manager: Mark Salmon

Design Consultant: HDR Engineering (Hawaii Pacific Engineers)

Work underway: Initial investigation and well site selection

Work ahead: well design, environmental/permitting and construction

Current Major Area of Focus: well site selection

Potential obstacles: none currently

Tentative Date Project in Service: December 2009

- Summary: Initial well siting study submitted and under review by staff.
- Contract Status: Phase 1 contract executed.
- Schedule: No issues.
- Permits: No issues.
- Land & Easements: No issues.

- Agency Coordination: No issues.
- Problems and Proposed Mitigation: No issues.

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

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

Work underway: final design

Work ahead: final design, environmental/permitting and construction

Current Major Area of Focus: EA. access road alignment, wetlands mitigation

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

Tentative Date Project in Service: December 2010

- Summary: Final design continues. Staff has requested investigation into alternative project configurations and construction methods. Investigations near completion and submittal to staff.
- Contract Status: No issues.
- Schedule: Continued investigation into final project configuration is hampering EA preparation and design.
- Permits: No issues.
- Land & Easements: Right of entry is being requested from landowners on whose land access road is planned.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: Ongoing alternatives investigation hampering progress. Need to work with staff to nail down final project configuration and complete EA and design.

WP2020 Program Sustainability Services:

Acting Manager Ushigome reported on the following:

On April 17, 2008, RW Beck emailed a memorandum to follow-up the discussions, questions and concerns expressed during our April 9th meeting between the Department of Water's staff and RW Beck. The memo was provided to clarify RW Beck's recommended approach for a Program Manager and researched utilization of the Program Manager concept in Hawai'i. Attached for your review is a copy of this memorandum dated April 17, 2008.

Contrary to our discussion and request, RW Beck did not reference or utilize their July 2007 Sustainability Plan presentation as the basis of explaining the "disconnect". Instead Tom Jacobs references a draft proposal dated December 2006, which was not the WP2020 Sustainability Plan structure the Board approved in August 2007. For reference, attached is a copy of the RW Beck Powerpoint presentation of the proposed WP2020 Sustainability Plan structure, which the Board approved.

On the topic of procurement of a Program Manager, RW Beck states while the City and County of Honolulu has hired a company to provide wastewater program management services, this program management assignment is not entirely similar to what RW Beck recommended for the Kaua'i Department of Water. According to RW Beck, the contract does appear to include terms and contract values that exceed the State statutes. They indicate the wastewater agency was not aware of any

privatization issues relative to hiring a consultant to perform work that could be done by civil service employees in the engineering area.

RW Beck's research did not mention whether an EPA consent decree or court ordered mandate is a factor for the wastewater agency. Also, what about procurement of services for non-engineering employees (program controls, procurement/contracting, engineering, community outreach, etc) as proposed in the July 2007 presentation?

Upon review of the information provided, Acting Manager Ushigome invited RW Beck to speak before the Board to clarify the perceived discrepancies and disconnects; however, due to prior commitments, the earliest date they would be available is at the Board's July 2008 meeting.

Acting Manager Ushigome discussed that a conference call was initially suggested; however, RW Beck felt a personal appearance would be better as it can be hard to hear over the phone. Ann Hajnosz and Tom Jacobs of RW Beck will attend our Board Meeting.

Also, RW Beck is requesting the Board's consideration to cost share their expenses for attendance at that meeting.

In addition, RW Beck inquired whether they would be eligible to pursue a future program management assignment with the Department.

Pending ongoing discussions with the Board, the Board needs to decide and redirect the Department to implementing a revised WP2020 Sustainability Plan due to legal concerns of procuring a RFP for a Project Manager as proposed by RW Beck. Another consideration is whether the Board wants to terminate the remaining unfinished items of the consultant's service contract.

On query by Mr. Nishimura, Acting Manager Ushigome stated that the RFP for a Program Manager the Board adopted this concept based on a Powerpoint Presentation given at the July, 2007 Board Meeting and RW Beck did not document what was approved. A copy of the Powerpoint Presentation was given to the Board.

On query by Mr. Kahawai, Acting Manager Ushigome stated that the proposal at the 2006 Board Meeting was not approved by the Board.

On query by Mr. Nishimura, Acting Manager Ushigome stated that the budgeted dollar amount spent did not include the customer survey and the affordable housing projects, which is under a separate budget.

Acting Manager Ushigome discussed that in the 2007 presentation, the Program Manager was going to handle all encompassing contracting, engineering administration. She added that they initially stated that the day that the Program Manager comes on board, RW Beck would be fully staffed to run the projects for the first 5 years without any assistance from the DOW. The DOW would then gradually take over the projects after the 5-year period and they would in turn gradually reduce their staff. However, RW Beck now has stated that we misunderstood what was

presented as they were to be only be a resource to staff; therefore, our staffing would need to be increased.

Acting Manager Ushigome added that the RFP and the prioritization of the projects were later based on the Board approval of the July, 2007 presentation, which were done by the DOW's staff. She also added that the prioritization of the projects were suppose to be done by RW Beck but it was found that if they participated in doing that, they would not qualify to be the Program Manager.

Acting Manager Ushigome discussed that the monies needed to finance the Water Plan 2020 projects was about \$165 to \$200 million, which the Department would have needed to have in the bank in order to contract the Program Manager.

She added that the question for the Board is whether they would want to continue with RW Beck's contract to finish up all of the loose ends, like the customer satisfaction survey, etc. Waterworks Controller Ganaden stated that there was about \$200,000 left in their contract budget, with \$100,000 earmarked for our affordable housing projects.

Acting Manager Ushigome commented on the issues that arose because we are a government agency and not private: 1) once the RFP was drafted, several issues arose, e.g. privatization, etc.; 2) Employee Manual was tabled as all aspects of having an employee manual was not reviewed. With the inclusion of the County policies to be included in the employee manual and which some needed to be revised, the County Attorney's Office opined that the County policies needed to be re-visited and departmental employee manual should instead be a County-wide manual. It was also opined that the employee manual did not have to go to the unions for review, as it was not a change in practice or policies.

On query by Mr. Kahawai, Acting Manager Ushigome stated that since the Affordable Housing part of the contract amendment was separate, it would be possible to take out line items from the contract that were not done yet.

On query by Mr. Nishimura, Acting Manager Ushigome stated that as part of the Strategic Plan, cost breakdowns were received; however, the Sustainability Plan was on a 'to be determined basis'. She thought that the Board's intent was to be flexible so as improvement areas were highlighted as part of the Strategic Plan then RW Beck could assist us in those areas.

On query by Mr. Kyono, Acting Manager Ushigome stated that she would personally recommend that the contract be terminated.

Acting Manager Ushigome stated that since the Board adopted the structure of the Sustainability Plan and if the Board wants to go in another direction, to please let the Department know what is the Board's pleasure.

On query by Mr. Kyono, Acting Manager Ushigome stated that we did get all of the work products that we paid for. Mr. Jacobs of RW Beck, who will be coming to our upcoming Board Meeting, asked if he could assist the Board with anything else in order to make up some of the costs.

Re: Request Board Decision to Cost Share RW Beck's Expenses to Attend the July, 2008 Board Meeting on Water Plan 2020 Program Sustainability Services and Consultant Contract Services

Chair Oyama asked for a motion to cost share RW Beck's expenses. This matter died for a lack of a motion. Acting Manager Ushigome will notify RW Beck.

Mr. Crowell asked that without a Program Manager, what would be the options be now? Acting Manager Ushigome noted that, ironically, all of the high priority projects that needed to be done on a timely basis were all kept in-house. It was felt that it could be done faster in-house then with a Program Manager from the Mainland.

On query by Mr. Nishimura, Acting Manager Ushigome stated that without the Program Manager, it may be that the EM-7 that was the head of the Engineering Division should now move back there on the Table of Organization. That position was transferred to the Administration Division in preparation for the Program Manager to come on board.

Mr. Nishimura moved to receive the reports and placed on file, seconded by Mr. Kyono; motion was carried.

EXECUTIVE SESSION:

ES-2008-7 - Pursuant to Haw. Rev. Stat. Sections 92-4, 92-5(a)(3) and 92-5(a)(6), the purpose of this executive session is to consult with legal counsel and department staff regarding the acquisition of the Koloa 1.0 MG Water Tank site, Koloa, Kauai, Hawaii and consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.

Chair Oyama read the Executive Meeting Session notice above. There was no Board discussion and no public testimony. Mr. Nishimura moved to go into Executive Session at about 3:12 p.m., seconded by Mr. Kahawai; motion was carried. Staff and guests were excused from the meeting.

The Regular Meeting was called back to order at 3:43 p.m.

ADJOURNMENT:

There being no further business, Mr. Kahawai moved to adjourn the meeting at 3:43 p.m., seconded by Mr. Kyono; motion was carried.

Respectfully submitted,

Rona Miura, Secretary

APPROVED:

Wynne M. Ushigome
Acting Manager and Chief Engineer
m