

REGULAR MEETING MINUTES
BOARD OF WATER SUPPLY
Tuesday, September 16, 2008

The Board of Water Supply, County of Kaua'i, met in regular meeting at its office in Lihu'e on Tuesday, September 16, 2008. Chairperson Roy Oyama called the meeting to order at 10:15 a.m. On roll call, the following answered present:

BOARD: Mr. Roy Oyama, Chairperson
Mr. Ian Costa
Mr. Donald Fujimoto (left meeting at about 1:05 p.m.)
Mr. Leland Kahawai
Mr. Randall Nishimura

Absent & excused: Mr. Dee Crowell
Mr. Steven Kyono

STAFF: Ms. Wynne M. Ushigome
Mr. Paul Ganaden
Mr. Gregg Fujikawa
Mr. William Eddy
Mr. Keith Fujimoto
Mr. Bruce Inouye
Ms. Faith Shiramizu
Ms. Amy Esaki
Mr. Edward Doi
First Deputy County Attorney Harrison Kawate (left meeting at about 1:05 p.m.)

GUESTS: Mr. Lindsay Crawford, Kukui'ula Development LLC (left at about 10:35 a.m.)
Mr. Ben Garfinkle, Applicant (left meeting at about 12:20 pm.)
Mr. Max Graham, Mr. Garfinkle's Legal Counsel (left at about 12:20 pm.)
Mr. Ben Wellborn, Mr. Garfinkle's consultant (left meeting at about 12:20 pm.)
Mr. Tom Nance, Mr. Garfinkle's consultant (left meeting at about 12:30 pm.)
Ms. Heidi Rogers, Ms. Cox's spokesperson (left at about 1:05 p.m.)
Ms. Lillian Silva, Ms. Cox's daughter (left at about 1:05 p.m.)
Ms. Lani Nakazawa, Office of the Mayor (left at about 1:55 p.m.)
Mr. Glenn Sato, Office of Economic Development (left at about 1:55 p.m.)
Mr. Tom Shigemoto, A&B Properties (left at about 2:45 p.m.)
Mr. James Hasenyager, A&B Properties (left at about 2:45 p.m.)

AGENDA

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

MINUTES

Mr. Nishimura moved to receive the Regular Meeting minutes of Thursday, August 14, 2008 and place on file, seconded by Mr. Costa; motion was carried.

CORRESPONDENCE: None

OLD BUSINESS

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

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

Acting Manager Ushigome reported on the following:

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

It appears that the Piwai 0.1 MG control tank's spillway elevation is about 2.7 feet lower than the Department's Akemama 0.25 MG Tank. Akemama Tank is the primary storage for the Lawa'i-Omao area. The Piwai Tank spillway elevation was proposed to be at 677 MSL, which should have matched the existing Akemama Tank elevation in Lawai.

The Piwai wells are operational and the connecting transmission main has been pressure tested and chlorinated; however, the Piwai Tank is valved off and the pumps are being run on timer mode to fill to Akemama Tank. This is a temporary interim configuration which was being tested.

Verbally, Kukui'ula has committed to correcting the problem with the tank spillway; however, as KDC is looking at options to correct the problem, the Department is trying to keep the water moving through the system to minimize stagnation in the lines.

If the tank spillway needs to be raised, this will take another 6 to 9 months to fix. The Department will not accept conveyance of the Piwai improvements until the system is operational and the Akemama Tank's storage capacity is restored to its original volume.

Loss of storage capacity in the Lawa'i-'Oma'o System is especially problematic since this service area has a two (2) meter restriction per existing lot of record.

In light of the problem experienced at Piwai, we requested KDC to confirm the spillway elevations of the newly constructed tanks relative to the existing DOW tank serving the same pressure zones.

KDC is working on revising and resubmitting their water master plan (WMP) to include the 75-unit Gap Housing Project, revisions to the current phasing plan, and other miscellaneous uses (such as wastewater pump stations, golf course comfort stations, and commercial parcels) relative to the Project.

Relative to the Department's comments requiring an 8-inch waterline extension along Poi'pu Road, the Department has not proposed or agreed to fund the design or construction of the waterline.

Mr. Crawford:

Mr. Crawford stated that the changes from last month are that:

1. they successfully completed chlorination for Subdivision Y and have water.
2. met last month with the Operations personnel on the implementation of Piwai wells, getting the valve open on the highway; however, it was found that there is a difference in the spillway elevations of the Akemama and Piwai Tanks. They have been meeting on this problem with their surveyor and the DOW staff and hope to work to a satisfactory conclusion on how to mitigate this problem.

On query by Mr. D. Fujimoto, Mr. Crawford stated that the Piwai Tank was built 1.1 feet lower than it should be and the Akemama Tank was 1.8 feet higher than it should be to make it a 2.7 feet differential. He added that the water level in Akemama Tank is intentionally kept about 2.7 feet so as not to spill over.

On query by Mr. D. Fujimoto, Acting Manager Ushigome stated that the height of the Piwai Tank is about 20 feet.

Acting Manager Ushigome added that with the disparity of the tank elevations, there is a loss of about 40,000 gallons of water. She explained that the Piwai Tank is a control tank that turns the wells on and off and not ~~for a storage tank.~~ necessarily intended to increase storage capacity.

Mr. Crawford added that the County has plans to build another larger storage tank there eventually.

Mr. Crawford added that Kukuiula is committed to resolve this problem. They are presently reviewing all of their options on how to fix this problem, including the most expensive option of raising the tanks the necessary height to fix the problem. This is the preferred option by the DOW.

~~Mr. Crawford's said that their surveyor stated that the individual benchmarks are correct on-site but the master benchmark is off.~~ surveyor said that the elevations relative to the project benchmarks are correct on-site; however, there may be a discrepancy between the starting elevation of the project benchmark.

On query by Acting Manager Ushigome, Mr. Crawford stated that a time frame is pending all of their consultants concurring on what is the best remedy for the tanks and water availability situations.

On query by Mr. D. Fujimoto on the water availability, Acting Manager Ushigome stated that there is a 2-meter restriction in Lawai/Omao.

On query by Mr. D. Fujimoto, Mr. Crawford that they have verified that the other 2 tanks that they built are at the correct elevations.

Mr. Nishimura asked for a time frame at the next Board Meeting. Mr. Crawford concurred.

Mr. Crawford thanked and expressed his appreciation to the DOW staff for finalizing the Waivers for their commercial site and the first 10 residential cottages. He also hoped to get the building permits this week.

On query by Acting Manager Ushigome, Mr. Crawford stated that per their meeting about 2 weeks ago, they are revamping their Water Master Plan one more time due to market changes this past year. They need to work with their consultant to re-do their Tables A-E and will submit the revised Water Master Plan to the DOW in about one month from now.

Also on query by Acting Manager Ushigome, Mr. Crawford discussed that the gap housing deadline has come and gone and still dwelling on whether the DOW's requirements for the gap housing should be imposed or not.

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

Mr. Crawford left the meeting at about 10:35 a.m.

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

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

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

APPLICANT: Opaekaa Falls Land Company

Acting Manager Ushigome gave an update, as bolded, in the report below:

This agenda item lacked the 4 affirmative votes needed to pass a motion to grant a modification from the Department's Water System Standards for the private water system. The matter was deferred to the September 16, 2008 Board Meeting. Refer to August 7, 2008 Board Report for the Department's findings.

As part of the 3-lot subdivision, the Applicants propose to provide water for potable and fire flow uses for Lots 1 and 3 from the DOW public water system. The applicant

proposes to service Lot 2 from a private water system located on Lot 2. The question was whether the private water system proposed for Lot 2 should conform to DOW's rules and standards.

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

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

Evaluation:

Upon review of the submitted "Comparison of Opaekaa Water System with DOW Water System Standards" the following comments and questions are listed:

1. For Lot 2, the Applicants are limiting the density to 6 dwelling units and 1 guest cottage. **Will this restriction run with the land? If the density exceeds the 6 dwelling units, say for instance, someone constructs a second "guest cottage", what are the remedies and/or consequences and to whom would the penalties apply? The Applicant should provide the deed restriction for the review and approval of the Board of Water.**
2. In accordance with the Federal Safe Drinking Water Act, administered by the State Department of Health (DOH), a public water system is defined as a system which provides water for human consumption, through pipes and other constructed conveyances if the system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system may be privately or publicly owned or operated. A public water system is a "community water system" or a "non-community water system. **At this time, the proposed private system does not appear to meet the public water system criteria, however, is the applicant willing to abide by this requirement since potentially more than twenty-five individuals could reside on the six (6) CPR units? Once the CPR units are sold, how does the Applicant plan to enforce occupancy limits?**

Is the Applicant responsible to monitor this compliance requirement annually, if so, how do they plan to monitor the individual CPR units occupancy status.

And if, the private water system serves more than twenty-five people, is the Applicant required to be a regulated public water system under the State DOH jurisdiction?

Who is responsible to ensure compliance with the State and Federal requirements?

What are the penalties or consequences if proper notification to DOH is not provided?

Who is responsible to address and remedy the non-compliance?

What are the consequences?

And, who is responsible to enforce these consequences? Future homeowners?

The Applicant should provide the Board with the restrictive covenants or written agreement stating the terms and conditions for their review and approval.

3. **Sizing of the reservoir is based on the maximum day demand (MDD) of 37,688 gallons per day. The applicants' propose constructing 2-20,000 gallon tanks to meet the potable, agricultural, and fire-flow requirements for a 6-unit CPR. The Applicants states, in the event of a pump or motor failure, the pump and motor can be removed from the well and reinstallation of the back-up unit can be completed in 24-hours. How will the submersible pump be removed? The well is 8-inch in diameter and 430-feet deep.**

The Department does not believe this timeframe to replace the submersible pump is realistic, especially if tasked to a homeowner association. Prior to placing the pump back on-line, to insure health and safety, will the Applicants be required to sample and test the water prior to bringing the well back on-line? If so, has the Applicant factored this time into tank sizing or storage requirement? If monitored under DOH, water quality testing would be a requirement.

4. **The lined steel tank does not conform to DOW Standards. The proposed steel tank will likely have a shorter life-span as compared to a concrete or stainless steel tank.**

The Board should not accept conveyance of water facilities that are non-conforming or not in compliance with the Department's Standards, instead Board shall provide appropriate language to restrict conveyance of any substandard, unapproved materials to the Department.

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

5. On Page 3, in reference to Table 100-22-Total Pump Capacity Criteria, the Applicant denotes the letter “a” signifies the largest pumping unit shall be considered out of service for the total pump capacity criteria at each site. **Yet, the Applicant states, there is no specific requirement in the Water System Standards, therefore, they propose to use a single well (State No. 0221-5).**

6. On Page 5, the Applicant states, “Although there is no specific requirement in the Water System Standards, DOW appears to take the position that system pressure should result from elevation differentials from storage to service connection, as opposed to pressure that is maintained by a pump system.” **For health and safety reasons, the Department minimizes its reliance on a “mechanical” means to provide and maintain service pressures. For instance, if there is a fire and the pump does not run or if there’s no electricity during the emergency..... in the midst of the chaos, by the time you realize the cause of the low pressure and start the pump, it may be too late.**

7. **Who ultimately bears the burden of operating and maintaining this private water system? Is it the Applicant or the future homeowners?**

8. **Who will ensure the water quality from the private water system?**

9. On Page 8, in reference to use of high density polyethylene (HDPE) pipes, the applicant proposes to use HDPE pipes for all waterlines. **Currently, HDPE is not an approved material in the Water System Standards, therefore, it is recommended that the Applicants not deviate from installing either Ductile Iron, Cl. 52 or PVC C900 Cl. 150 or 200, brass pipe, or copper tubing. Typically, the material cost for a waterline is small compared to the associated construction and installation costs. Therefore, in the future, if the homeowners’ association ever decides to convey the water system to the County, the cost to remove and replace the waterline would be expensive and likely prevent the acceptance and conveyance of the improvements to DOW. As such, the Department recommends that the on-site pipelines serving the CPR units should be an approved material.**

Recommendations:

The Department recommended conformance to Subdivision Ordinance Section 9-2.4, “Water Supply and Distribution”, states that water supply and distribution facilities shall conform to the rules and the construction standards of the Department of Water. Subdivision improvements whether County-owned or private shall be subject to the Department of Water’s Rules and Regulations that include the “2002 Water System Standards” as amended.

And, in accordance with KCC, Section 9-3.6, Completion of Improvements, Agreement and Bond, prior to final subdivision approval, the subdivider shall either construct the improvements or enter into an agreement guaranteeing the construction

of improvements and provide a bond or security. The Department recommends that this be a requirement of the Applicant prior to receiving final subdivision approval.

Applicant's Testimony:

Mr. Graham testified on behalf of his client. He stated that at the last Board Meeting the Board's motion was to approve a waiver subject to the requirement that the applicant provide an indemnification global agreement that would address all of the concerns of the Water Board, including indemnification; the private water system for Lot 2 would not be conveyed to the County unless it was built to County standards; DOH reporting; an alert alarm system for the pump and storage problems; a provision on non-compliance; and that this agreement would be recorded running with the land and binding all future owners. There also would be no bond for the private water system required as a condition of final subdivision approval but unless and until the water system is constructed as verified by a professional engineer registered in Hawai'i; no building permits could be issued for Lot 2; an understanding that Lots 1 and 3 that are serviced by the County system – upon final subdivision approval would be available for development subject to the limitation of not more than 3 single family dwellings per lot would be allowed on Lots 1 and 3 unless and until additional water source, storage and transmission mains are built into the system. There is an understanding that there is no County obligation to upgrade the system.

Mr. Graham stated that the motion was made by Mr. Costa and seconded by Mr. Kyono and was also approved by Chair Oyama, with Mr. Nishimura voted against it. There were not enough members present to complete the vote; therefore, they were hoping to get an additional vote to approve the motion.

Board asked for the previous motion to be restated. Per August 14, 2008 minutes:

“Mr. Costa moved to approve that based on Mr. Graham's confirmations above that will be included in the Development Agreement, which will be conditioned upon review and approval by the Department of Water and the County Attorney's Office, seconded by Mr. Kyono.”

Mr. Costa moved to approve the same motion as the August 14, 2008 Board Meeting, seconded by Mr. D. Fujimoto.

On request by Mr. D. Fujimoto, Mr. Welborn gave a brief overview again on the project.

On query by Acting Manager Ushigome, Mr. Graham stated that the approval request for today is to approve the private water system as proposed, which is a deviation from County standards. Mr. Graham stated that if the Board approves their request, he would submit a draft indemnification agreement for the Board's review. The agreement would be signed by the applicant and the Board, along with the review by the DOW and the County Attorney's Office.

Acting Manager Ushigome stated that typically the subdivision ordinance would state that the applicant would either build or bond required improvements; however, her concern was that the applicant did not want to do a bond in the meantime. Mr.

Graham stated that the waiver agreement would state that there would be no bond; however, there would be no building permits issued until such time that the private water system is completed and certified by a licensed engineer for Lot 2.

Mr. Welborn added that there are no existing structures now on proposed Lot 2 so there are no service connections needed and building permits are not an issue.

Mr. Welborn reminded the Board that there is no mixing of private/public water systems for this project and the R-4 zoning has been isolated to Lots 1 and 3 because of the differential in fire flow requirements between the R-4 and the ag open.

Acting Manager Ushigome stated it was the Department's concern on how the deviation from County standards would be addressed. Mr. D. Fujimoto stated that it would be addressed by the applicant's licensed engineer approving the design, since the DOW does not approve private water systems. Acting Manager Ushigome stated that the applicant went through the subdivision process; therefore, the subdivision ordinance takes precedence in that the applicant would have to satisfy the water requirements.

First Deputy County Attorney Kawate informed Mr. D. Fujimoto for his information that our Rules does reference standards.

As a followup to Mr. Graham discussed that there was a dispute previously on whether the standards apply or not; however, under the DOW's Rules, Part 3, Section XII, they are asking for a Modification of Requirements to allow them to construct a private system consistent with Mr. Nance's proposal. Part 3, Section XII, Modification of Requirements state that: *"When conditions pertaining to any subdivision are such that the public may be properly served with water and with fire protection without full and strict compliance with these rules and regulations, or where the subdivision site or layout is such that the public interest will be adequately protected, such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations, may be made by the Department."*

Mr. Graham stated that is what the Board would be approving and that they are proceeding under the DOW's Rules.

Mr. Nishimura stated that since there is motion on the table, he proposed an amendment in the event that the motion is passed that the applicant be required to provide materials as noted in No. 9 of the Board Report, seconded by Mr. Costa.

Mr. Nishimura discussed that in the event of the private water system one day being turned over to the Department, he agreed with the Department on Item 9, as it would be very expensive and disruptive to have to replace the waterline.

Acting Manager Ushigome stated that it should be stated in the Agreement that if the private water system is conveyed to the County that it should be clearly stated that the applicant is responsible for any and all costs to upgrade the system to County

standards. Mr. Garfinkle concurred, as they have no intention of ever dedicating the system to the County.

Acting Manager Ushigome gave a heads up that it often happens that new owners would reference that since their newly bought property went through the subdivision process, they should be afforded County water.

Mr. Graham stated that it would have both sides covered in the Agreement.

On query by Mr. D. Fujimoto, it was stated that each of the homeowners would enter into a Maintenance Agreement so they would be responsible to maintain the private water system.

Acting Manager Ushigome stated that as per the Molokai Ranch case; whereby, Maui County never envisioned that they would be forced to take over the Molokai water system, which was not up to County standards.

Recess: 11:05 p.m. to 11:15 p.m.

Mr. D. Fujimoto suggested that the Board give preliminary approval based on the final agreement, which would address the Board's and Department's concerns and would need to be approved by the Board.

Mr. Nishimura moved to go into Executive Session at about 11:17 a.m., as delineated in J2 of the Executive Session portion of the Agenda, seconded by Mr. D. Fujimoto.

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 Reconsider 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.

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

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

Mr. Nishimura withdrew his amendment to the main motion and Mr. Costa withdrew his second.

Mr. Costa then withdrew his main motion.

Mr. Costa moved to provide preliminary approval for the applicant's request conditioned upon the drafting of an Agreement as discussed previously and which

addresses the Department's nine (9) concerns of the Board Report dated August 7, 2008 and that the Agreement spell out the use of acceptable materials which would not include HPDE and the Agreement be submitted for Board approval after Department and County Attorney's Office, seconded by Mr. D. Fujimoto.

Mr. Kawate corrected that the Board Report was dated September 10, 2008. Mr. Costa concurred on the correction.

Chair Oyama called for a vote: All was aye except Mr. Nishimura voted no. Motion was carried.

Mr. Kawate asked for a timeline for the Agreement. Mr. Costa stated that the draft Agreement should be given to the Department and Board prior to the next Board Meeting on October 9, 2008.

Mr. Graham thanked the Board.

Mr. Graham, Mr. Welborn, Mr. Garfinkle and Mr. Nance left the meeting at about 12:20 p.m.

Re: Request Board Approval for Reconsideration and Clarification of the Motion Made at the July 15, 2008 Board Meeting on Agenda Item: 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:Portion 003, 'Ele'ele, Koloa, Kaua'i, Hawai'i

Mr. Tom Shigemoto of A&B Properties, Inc. was present at the meeting.

Acting Manager Ushigome submitted the following report:

This agenda item was deferred at the August 14, 2008 Board Meeting to allow Board members who were present at the meeting more time to clarify their motion and a deferral would allow members who were absent a chance to participate in the discussion. Board Report dated August 7, 2008 was referenced for the Department's findings and evaluations of the Applicant's request.

Acting Manager Ushigome reminded the Board that the Department's Rules and Regulations and Water System Standards, as amended are adopted in accordance with Section 91-3 and 91-4, Hawai'i Revised Statutes. These documents establish the criteria by which the Department evaluates sources of supply, fire protection, storage, transmission, and distribution systems capacity. In light of the Board's action, if the Department is not implementing the Rules and Regulations correctly, or is not applying the standards appropriately, then the Board needs to clarify or amend its rules and standards.

Beside the rules and standards, there are also administrative policies and procedures that guide the actions of the Department. Water system polices guide the development of the water system infrastructure. These required infrastructure

improvement ensure the Department is capable of providing safe, adequate water service throughout the island. Board policies often have far-reaching impacts on many areas of the water systems development, including planning, sizing, and establishing redundancy for operational emergencies.

In researching how other agencies apply or seek clarify of conditions or requirements relating to development, more particularly, conditions of the Land Use Commission's (LUC) Decision and Order. I came across a similar situation where the Planning Department required the Applicant obtain a Declaratory Ruling from the State LUC regarding the proposed development as it related to conformance with the land use requirements specified in Chapter 205 of the Hawai'i Revised Statutes. In this instance, the Applicant was required to submit the ruling to the Planning Department prior to final subdivision approval.

Again, as provided in the August 7, 2008 Board Report, HRS Section 205-12 states the appropriate officer or agency charged with the administration of County zoning laws shall enforce within each County the use classification districts adopted by the Land Use Commission and the restriction on use and the condition relating to agricultural districts under Section 205-4.5 and shall report to the Commission all violations.

Finally, as you know, the Department of Water operates 11 separate potable water systems on the island. Each system is unique and many of the systems lack required source and storage capacities to meet the maximum day demands (MDD) of the water system. However, understanding these system constraints and planning for the driest, hottest day of the summer is the reason why the Department has its technical staff to advise the Board. The Department's staff is knowledgeable and they are tasked with ensuring safe, affordable and adequate supplies of drinking water are available for the residents of our communities.

Conclusion

The Board should develop a policy related to allocation of water supply and basis for water availability, which will establish the criteria for departure from the Department's procedures and practices.

Recommendation

The Department recommends the Board approve a motion for reconsideration on the approval of the 0.12 MGD source allocation for the A&B Industrial Park Subdivision.

Board Discussion:

Mr. Kawate informed Chair Oyama that the Reconsideration Motion is on the floor but was not acted upon so it can be voted on today.

On query by Mr. D. Fujimoto, Acting Manager Ushigome stated that the Department wanted to get clarification on the Board's previous motion and their intent as there was no other vehicle to get clarification but through this reconsideration process.

Chair Oyama called for a hand vote on the reconsideration motion. Mr. Costa voted yes and Mr. Kahawai, Mr. D. Fujimoto, Mr. Nishimura, and Chair Oyama voted no.

Motion denied for reconsideration.

Mr. Shigemoto thanked the Board.

Re: Request to Testify by Eleanor M. Cox for Subdivision of Lot 37-D, Portion of the Consolidation of Portion of Grant 11224 (Abandoned Railroad Right of Way), Lot 37, Grant 6226, and Lot 38, Grant 6216, into Lot 37-D-1 and Lot 37-D-2, 'Oma'ō, Kaua'i, Hawai'i, TMK: (4) 2-7-05: 28, S-2005-26

Ms. Heidi Rogers, Ms. Cox client spokesperson, and Ms. Lillian Silva, daughter of Eleanor Cox, were present at the meeting.

Staff Report:

PROJECT: Subdivision of Lot 37-D, Portion of the Consolidation of Portion of Grant 11224 (Abandoned Railroad Right of Way), Lot 37, Grant 6226, Lot 38, Grant 6216, into Lots 37-D-1 and Lot 37-D-2, 'Oma'ō, Kaua'i, Hawai'i, TMK: (4) 2-7-05:28, S-2005-26

APPLICANT: Eleanor M. Cox

This agenda item was deferred at the August 14, 2008 Board Meeting. Board Report dated May 29, 2008 was referenced for the Department's finding and evaluation of the Applicant's request.

Section XIV, Part 3 of the Department's Rules and Regulations state the terms and conditions of executing a Non-Development Agreement with the Department. The Non Development Agreement's restrictive language was purposefully crafted specifically to assist families who wished to convey and transfer interest in real property between themselves without immediately complying with DOW rules, construction standards, and specifications imposed when family members request subdivision.

Essentially, the Non-Development Agreement will prevent any development and construction of any dwelling unit on either of the proposed lots once the Non-Development Agreement is executed and final subdivision approval is granted.

Development as defined, includes, but is not limited to:

- (1) the construction, reconstruction, alteration, remodeling, renovation, or repairing of single-family residences, additional dwelling units, or any other dwelling, building, or structure of any kind on or within the property being subdivided, or
- (2) the construction of additions or extensions to any dwelling, structure, or building existing as of the date of this agreement, or
- (3) the construction, reconstruction, installation, alteration, or repair of piping, wastewater systems, landscaping or irrigation systems which result in increased fire protection requirements arising because of the property's development, increased consumption of water upon the property being subdivided, calculated from the date of the agreement described in this section, or which may, in the Department's judgment, possibly contaminate

potable water-well sources located in the vicinity of the property being subdivided.

In addition, property interests may be transferred only between: natural persons who are related to the applicant by birth, blood, adoption, marriage, or prior marriage. Eligible transferees are limited to: spouse, ex-spouse, parents, grandparents, children, hanai children, grandchildren, brothers, and sisters.

The Department does not recommend that the Board deviate from the non-development agreement rules by allowing the terms and conditions of non-development agreement to be modified from its intended purpose.

Testimony:

Ms. Heidi Rogers testified on behalf of Ms. Eleanor Cox, who was not present at the meeting today.

Ms. Rogers gave a recap that Ms. Cox has a 2-unit subdivision in Omao, where there is one house and two water meters. They want to do a family subdivision and have been asked to sign a Non-Development Agreement. She had met with Mr. Edward Doi and Ms. Amy Esaki on various occasions to work on Ms. Cox's request. She was given the following options:

1. build the 2nd house now and then apply for subdivision approval, then the Non-Development Agreement will be in effect and they would have their 2nd house. However, her client does not have money to build a house now and would have to make a loan on the property and would create issues between the two daughters that would inherit the property. Ms. Cox will not convey the property until her death.
2. sign the Non-Development Agreement; however, this would hinder them from doing any future development, etc. until such time the Department makes improvements to the water system and no one knows when that will be.

Ms. Rogers stated that as per the Department's Rules, there are exceptions for family subdivisions that allow the applicants to comply with the Department's conditions for subdivision sometime in the future and they sign the Non-Development Agreement. The Department's concern is that they do not want the subdivision to result in any further development. Ms. Cox's property is zoned for 2 houses and a guest house and 2 water meters are installed. The subdivision does not result in and restricts further development because Ms. Cox is willing to forego the right, if her subdivision is approved, to construct the additional dwelling unit.

Ms. Rogers added that there is a 3rd option also to have a Modification of the Non-Development Agreement like the Carters' that the Board previously approved. It was called a Restriction of Additional Dwelling Unit Agreement, which was drafted about 95% like the Non-Development Agreement. The additional language was the Department would not approve any further residential development and it gave them the right to build the second house and nothing more. She wanted to also use this modified Agreement for Ms. Cox so she could give her daughters a lot each.

Mr. Nishimura moved to go into Executive Session as indicated in Executive Session J7, seconded by Mr. Kahawai.

Lunch Recess: 12:15 p.m. to 12:20 p.m.

Executive Session:

ES-2008-11 (9-16-08) - Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with legal counsel regarding Eleanor Cox's Request to Testify for Subdivision of Lot 37-D, Portion of the Consolidation of Portion of Grant 11224 (Abandoned Railroad Right of Way), Lot 37, Grant 6226, and Lot 38, Grant 6216, into Lot 37-D-1 and Lot 37-D-2, S-2005-26, TMK: (4) 2-7-05: 28, 'Oma'ono, Kaua'i, Hawai'i. This consultation involves consideration of the process, duties, privileges, immunities, and/or liabilities of the Board and the County as they relate to this agenda item. This consultation involves consideration of the process, duties, privileges, immunities, and/or liabilities of the Board and the County as they relate to this agenda item.

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

The Regular Meeting was called back to order at 12:58 p.m.

On query by Chair Oyama, Ms. Rogers stated that she was hired by Ms. Cox to assist her with the completion of her subdivision process. Her project initially started with Peter Taylor's Office, which has ended. Since then, Ms. Rogers was recommended by Ms. Yolanda Portugal to assist the Cox's to finish their project. Ms. Rogers added that she was an attorney for 10 years and the last 5 years she has been in real estate development creating condominiums and assisting engineers with the subdivision process.

On query by Mr. Costa, Ms. Rogers stated that they have looked into the CPR process but it would cost her about \$10,000 to do so. They have been in the subdivision process since 2005 and are so close to the end that they would prefer to finish this process. In addition, Ms. Cox wants to do the right thing by going through the subdivision process.

Mr. Costa stated that the Modified Non-Development Agreement is not the proper vehicle and apparently it was not the wisest decision to do the Carters' modified agreement. Mr. Costa added that the intent of the original Non-Development Agreement was to allow subdivision but not development, and Carters' approval was not consistent to the original intent of the Agreement.

On request for clarification by Ms. Rogers, Mr. D. Fujimoto stated that once the lot is subdivided, the density of the lot is doubled, which becomes an issue without the proper infrastructure.

Mr. D. Fujimoto stated that this is not a cut and dry situation; therefore, he recommended that Ms. Rogers meet with staff again on the available options and return to the next Board Meeting and relay her recommendation on which option she has selected.

Ms. Esaki suggested to Ms. Rogers to make arrangements to meet with Acting Manager Ushigome, Mr. Doi and herself. Ms. Rogers concurred.

Mr. D. Fujimoto moved to defer this matter to the next Board Meeting, seconded by Mr. Nishimura; motion was carried.

Ms. Silva and Ms. Rogers left the meeting at about 1:05 p.m. Mr. D. Fujimoto also left the meeting at about 1:05 p.m.

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

Since there was no quorum to hold an Executive Session, Mr. Costa moved to defer this matter to the next Board Meeting, seconded by Mr. Nishimura; motion was carried.

Mr. Kawate also left the meeting at about 1:07 p.m.

AGENDA:

Mr. Costa moved to re-order the Agenda to accommodate the delayed arrival of our guests for New Business Agenda Item Nos. 1 and 2, seconded by Mr. Nishimura; motion was carried.

NEW BUSINESS:

Re: Request Board's Consideration in Re-prioritizing Water Plan 2020 Projects

Acting Manager Ushigome submitted the following report:

Board Member Nishimura requested Board's consideration and further discussion to re-prioritize the WP2020 projects, more specifically related to portions of WKK-6 and WKK-9, which are a condition of the Kīlauea Elementary/Pre-School Use Permit Application U-2005-18 (Zoning Permit Application Z-IV-2005-23).

Background:

The Kīlauea Elementary/Pre-School Building was a DAGS Project (Job No. 16-16-4438). According to DAGS, the project had a limited budget. One of the conditions of the Use and Zoning permit approval was the applicant's requirement to meet the minimum standard fire protection requirements. This included the installation of approximately 1,100 feet of 12-inch waterline along Kolo Road fronting Kilauea Elementary School.

In July 2006, DAGS requested the Board's approval to remove the Department's of Water Condition for a 12-inch waterline extension for their Use Permit. The Department recommended working with DAGS to upgrade the water system. In consideration of the Applicants request for building permit approvals prior to completing the waterline upgrades. The Department proposed outsourcing a \$250K legislative appropriation to DAGS to supplement their budget for the design and construction of the required waterline upgrade for the school; whereby, the improvements would be completed.

In reviewing the Board meeting minutes, the Board did not waive the condition for upgrading the waterline from the Pre-School project. A motion was approved to grant building permits and to outsource and utilize the State DAGS Office construction resources to complete the necessary waterline improvements for the school site. Although the Board discussion did not clearly identify, "who pays" for the construction cost of the 12-inch waterline, the Department believed it was still a DAGS' requirement for the Use and building permit applications since the Board's motion did not indicate the waterline requirements were waived. A copy of the July 18, 2006 Board Meeting minutes was referenced.

In fact, the minutes reflect, Board Member Costa urging DAGS to finish the waterline improvements as soon as possible with Mr. Ernest Lau's (DAGS-Public Works Administrator) concurrence that they would expedite the process.

Subsequently, in May of this year, Acting Manager Ushigome received a call from Ernest Lau, DAGS-Public Works Administrator informing the Department of Water the bid for the 12-inch waterline extension for Kīlauea Elementary School exceeded the \$250K legislative appropriation. Without the necessary construction funds, DAGS is proposing to cancel the bid and not award the contract to the low bidder.

DAGS contends that the construction of the 12-inch waterline was not a condition of the Board's consideration in granting the approval of the Use Permit Application and subsequent Building Permit Application.

Based on my discussion with Mr. Lau, DAGS is proposing to cancel the bid since their attempts to lobby funds during the past legislative session proved unsuccessful. He indicated a letter from DAGS will be forthcoming which explains their understanding and recommendations to the Board of Water Supply. To date, the Department has not received this letter.

Board Discussion:

Mr. Nishimura discussed that it is his understanding that there is \$250,000 that the Department got from the Legislature and is now with DAGS. DAGS went out to bid and found themselves \$700,000 short. It is also his understanding that there is some disagreement between DOW and DAGS on who suppose to fund the project. Based on past practice with the Department, when there is a restriction, the applicant is required to pay and install the waterline. DAGS has indicated that generally they do not create the funding for this type of improvement. It would normally go through the Department of Education (DOE) and then filter down to DAGS for expenditure.

Mr. Nishimura also discussed that the bottom line is that DAGS have \$250,000 and the design of the waterline that was approved by the DOW. So we are looking at additional monies to complete the project or the monies may lapse, depending on what DAGS decides to do.

Mr. Nishimura added that as Board Members do we allow the \$250,000 to lapse? Also, Water Plan 2020 Projects WKK-6 and WKK-9 have moved down the priority list from the next 5-10 years to the next 15-20 years. In order to consider this project, the projects would need to move up the priority list.

There are some options:

1. Re-prioritize and possibly go for additional funding to complete the project
2. Not re-prioritize and to have DOE or DAGS fund the project, which they may allow to lapse.

On query by Mr. Costa, Acting Manager Ushigome stated that she got a call from Ernest Lau of DAGS that they tried to lobby at the Legislature to get additional funding for this project but was unsuccessful; however, the waterline is still a condition of their getting building permit approval.

Mr. Nishimura stated the primary thing is the construction monies, which were initially planned to be paid by Water Plan 2020. So does the Board move this project up the priority list or do we allow the monies lapse and let DAGS know that they still have a condition to fulfill.

Acting Manager Ushigome stated that the Board previously approved giving them building permit approval. It was not clear on who pays but the \$250,000 that we got from legislative appropriation was to support their effort in designing and constructing the waterline. The Department forwarded DAGS the \$250,000 to supplement their budget to complete the waterline project.

Mr. Nishimura stated that it is his understanding that because it is project monies that it cannot be returned to the DOW; it would have to lapse unless there are additional funds. He also stated that he understood when this project went through Planning Commission when he was on that Commission, this project was going to be done by the DOE through DAGS. However, the bottom line now is whether the monies lapse or the DOW takes on and completes this project.

Mr. K. Fujimoto stated that bids were advertised in May, 2008 and the norm is there is 60 days from the award date if you want to cancel the project; therefore, the 60 days have probably already lapsed. Mr. Costa added that the DOW would not be able to take advantage of the prices from that bid. Mr. K. Fujimoto also added that if the bid is still valid that the project would need to be funded in the next couple of months.

On query by Mr. Nishimura, Acting Manager Ushigome stated that the funds can be encumbered for two years.

Acting Manager Ushigome discussed that the DOW did make a suggestion to DAGS that the DOW had 12-inch pipes in stock that could be used, in addition to the \$250,000

that was appropriated. She felt that the DOW has tried our part to assist the DOE and DAGS in whatever way we can.

Acting Manager Ushigome added that the bottom line lesson is that building permit approvals should not be given until the applicant fulfills their water requirements. This would ensure accountability.

On query by Mr. Nishimura, Waterworks Controller Ganaden stated that funds are available from unappropriated reserves.

On query by Chair Oyama, Mr. Nishimura stated that the question would be if the funds could be encumbered through the next legislative session. If so, we could partner with DOE and DAGS to lobby for more funds as part of our CIP Request to the Legislature.

Mr. Costa moved to ask the Department to work with ~~the DOW~~ DAGS if they still can use the appropriated funds and what is the time frame to get the project back on track and to report back at the next Board Meeting, seconded by Mr. Nishimura; motion was carried.

Recess: 1:27 p.m. to 1:33 p.m.

Re: Request to Testify by Lani Nakazawa from the Mayor's Office and Office of Economic Development, respectively, on the Results of the County Energy Survey, as it Relates to Water

On behalf of the Mayor's Office and former Mayor Bryan Baptiste, Lani Nakazawa gave a briefing to the Board on County' energy report, as it relates to Water. Mr. Glenn Sato of the Office of Economic Development was also present at the meeting.

Ms. Nakazawa gave the following Powerpoint presentation:

- SURVEY OF COUNTY ENERGY USE
 - DEPARTMENT OF WATER ISSUES
- SURVEY HISTORY
 - Why was the survey initiated?
 - Survey was initiated by the Mayor Baptiste to address costs and environmental concerns
 - What was surveyed?
 - -Overall historical County usage
 - -Top 15 non-DOW facilities inspected
- OVERALL COUNTY USAGE IS FLAT
 - When mapped over the 3-year study period (2003-2006), Kaua'i County kilowatt-hour consumption has been fairly level, averaging about 1,650,000 kWh per month.
- COSTS ARE INCREASING
- DEPARTMENTAL USAGE
- DOW OPPORTUNITIES
 - Low cost
 - Reduce bulbs and lamps (de-lamp)

- Replace inefficient light bulbs and lamps
 - Disconnect non-essential lights
 - Set energy targets
 - Revise fees or penalties to encourage energy efficiency
 - Tint windows facing the sun
 - Paint walls a light color and use light colored floor coverings
 - Moderate cost
 - Upgrade ballasts, phase in installation of electronic, staged, or dimmable photocell lighting controls
 - Upgrade exit signs to LED technology
 - Implement a systematic program to improve building envelope maintenance and upgrades to reduce cooling loads
 - Install occupancy sensors
 - Survey locations of thermostat sensors, replace or relocate sensors
 - Isolate lighting in work areas so only areas in use are lit
 - High cost
 - Study and implement water power efficiency measures, including self-generation, alternative energy generation, pump and pipe modifications, power factor correction capacitors
 - Develop and implement air conditioning plans for buildings, review chiller efficiency
 - Study and implement measures to convert outdoor lighting to energy efficient
 - Benefits of reduced usage
 - -Overall cost reductions
 - -Migration to lower rates for some facilities
 - Schedule G (small commercial) – lowest
 - Schedule J (large commercial) – middle
 - Schedule P (large users) - highest
- Facilities to consider
 - Schedule P
 - Wailua Homesteads Well
 - Akemama Well 2
 - Hanapēpē Well 4
 - Schedule J
 - Hanapēpē Deepwell 2
 - Microbiology Lab
 - Hanamā'ulu Booster Pump
 - Wailua Tank
 - Makaleha DPW 1
 - Pukaki Well
 - Hanamā'ulu Well 3
- Hawai'i County suggestions
 - Hawai'i County's energy sustainability plan recommendations for its DOW:
 - -Repair distribution system leaks
 - -Install generating pressure reducing valves
 - -Install PV panels on transmission lines
 - -Reduce demand on pumped groundwater
 - -Encourage rainwater harvesting
 - -Explore water reuse infrastructure
 - -Develop incentives for water reduction
 - -Develop incentives for large users to reduce dependence on pumped water

- -Develop point of sale incentives for water efficient appliances
- Other measures
 - Propose water conservation ordinance
 - Urge KIUC to develop time of use rates
 - Explore renewable performance contracts
 - Work with Planning and DPW Building Division to consider code and rule revisions to promote reduced water use
 - Adopt Mayor Baptiste's energy mandates
- Mayor Baptiste's energy mandates
 - Equal or exceed State energy efficiency standards when designing and constructing County facilities and buildings, except when the standards prevent the building from being used as an emergency shelter;
 - Equal or exceed State-mandated energy efficiency measures for roofs, walls, and windows in new or renovated County residential units built with County funds or located on County land;
 - Set thermostats to achieve room temperatures from 74 to 78 degrees, except where higher or lower temperatures are required for public health, safety, or welfare, or for the protection of equipment;
 - Install occupancy or light sensors in new construction or renovation where justified by life cycle cost-benefit analyses and where the installation of sensors does not impair the public health, safety, or welfare;
 - Use life cycle cost-benefit analyses to purchase energy efficient equipment and use utility rebates to reduce purchase and installation costs;
 - Install solar water heating in County buildings, facilities, or residential units whenever feasible;
 - Purchase environmentally preferable products;
 - Purchase the most fuel efficient vehicles that meet the needs of their programs and are justified by life cycle cost-benefit analysis (life cycle cost-benefit analysis of vehicle purchases must include projected fuel costs);
 - Promote efficient operation of vehicles;
 - Require that County vehicles utilize the most appropriate minimum octane fuel; and
 - Implement water and energy efficiency practices and principles of waste minimization and pollution prevention to reduce waste and increase conservation.

Ms. Nakazawa summarized that she would want the Department to look at our electrical consumption, which is 41% of the entire County.

Ms. Nakazawa and Mr. Sato both left the meeting at about 1:55 p.m.

Re: Request to Testify by James Hasenyager on Private Water System for Brydeswood Agricultural Subdivision Phase II (S-93-50), Phase III (S-2006-4), TMK: (4) 2-4-007:002 & 020, Kalaheo, Koloa District, Island of Kaua'i

Mr. James Hasenyager and Mr. Tom Shigemoto were present at the meeting.

APPLICANT: A&B Properties, Inc.

LOCATION: Kalāheo. Located on the mauka side of the Kaumuali'i Highway and Halewili Road intersection just west of Kalāheo Town, across from the existing

Brydeswood Subdivision further identified as TMK (4) 2-4-07: 2 & 20, affecting a total area of about 330 acres.

I. ACTION REQUESTED:

The applicant is requesting the Board of Water Supply grant an exemption from the Department of Water's (DOW) Water System Standards for the private water system to service this subdivision development. Specifically, the applicant is requesting that the following conditions be exempted:

- Allow for a lined steel tank with passive cathodic protection instead of a reinforced concrete tank.
- Allow for high-density polyethylene (HDPE) piping for their water system instead of ductile iron and copper piping.
- Allow for compacted gravel surface access roadway (to access the water pump and tank sites) instead of a paved access road.

II. PROJECT DESCRIPTION AND USE:

The project area totaling approximately 330 acres west of Kalaheo on the north side of Kaunualii Highway and determined to be outside of the DOW's service area. The applicants are requesting for the following Brydeswood Agricultural Subdivision:

Ph. II: S-93-50, 14 lots, 215 acres, 65 maximum houses, TMK: 2-4-07: 20, 23, 24 & 25.
Ph. III: S-2006-4, 11 lots, 113 acres, 41 maximum houses, TMK: 2-4-07: 2, 3 & 8.

The development received tentative subdivision approval from the County of Kaua'i Planning Department and is currently in the process of meeting the requirements of that approval.

The Department of Water (DOW) required A&B to complete a Water Master Plan (WMP) for the project as part of its tentative approval requirements for the project. DOW provided comments on the WMP in a letter dated July 25, 2006. The letter stated that the project site was outside of the DOW's full development growth area and that existing source and storage facilities were not adequate for the proposed development. Any development will be dependent on the adequacy of the source, storage, and transmission facilities existing at the time of the subdivision.

(See DOW response letter to A&B's Brydeswood WMP dated July 25, 2006). There are no existing Department of Water meters servicing the project site. Olu Pua Gardens, which is a separate parcel within the Phase II subdivision has a 3" DOW water meter, however, is not considered a part of the subdivision.

The following water demands were based on maximum build-out of the development:

Potable water demand for 106 maximum houses: Average day demand: 53,000 gallons per day (36 gpm), Maximum day demand: 79,500 gallons per day (55 gpm).

Irrigation water demand for 330 acres: Average day demand: 815,000 gallons per day (565 gpm), Maximum day demand: 1,220,000 gallons per day (850 gpm).

Total potable plus irrigation water demands: Average day demand: 868,000 gallons per day (601 gpm), Maximum day demand: 1,299,000 gallons per day (905 gpm).

III. LEGAL REQUIREMENTS:

Chapter 9 of the Kauai County Charter (KCC) regulates the subdivision process through the Planning Commission. KCC Section 9-2 4 states: "Water supply and distribution facilities shall conform to the rules and construction standards of the Department of Water."

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

The State Department of Health will be monitoring the private water system for water quality in accordance with their rules and regulations.

IV. APPLICANT'S REASON/JUSTIFICATION:

Refer to applicant's request letter to the Board dated July 31, 2008.

V. EVALUATION:

The draft WMP (revised April 11, 2006) indicated the water requirements for the proposed development will be met by two (2) water systems. Potable water will be supplied by the County of Kaua'i's Department of Water. Non-potable will be provided by a separate system designed and constructed by the developer.

To date, the Department has not received a final WMP for the subject project. Based on the alternative proposed by A&B, DOW recommended that the developer construct and develop a new well/source near the required storage facility. The new source shall provide at a minimum, the required demands for the project.

If development of a new source cannot be sited near the project, the developer is proposing to either cost share with DOW to develop a new source or allocate source credits from the well being developed in 'Oma'o by Kukui'ula Development Co. The Department may be open to considering these options, provided a new well cannot be developed in the vicinity of the proposed development.

Based on the conceptual design drawing submittal to the Department of Water, due to convenience, simplicity and cost, the developer is proposing to construct a single system that services both the irrigation and potable water demands. This design, however, only provides backup for the potable water requirements. DOW concern:

There would be no way of shutting off the irrigation demands during times of fire, power outage or in the event one of the sources became inoperable. In addition, the design would not provide for the Department's standard 100% backup for the source requirement.

Similar to the new well/source, the Department recommended the project's storage tank be located at the development site. The developer proposed to construct a 0.1 MG storage tank on-site at either elevation 1,106 feet msl or 1,006 feet msl. At either elevation, a booster pump is needed to service the lots located to the north, however, how would the system operate in relation to the existing system and fire flows? Will the storage tank be able to service the lots located to the south of the booster pump? Is there high/low pressure problems? Is there adequate suction head and flow during peak hour demand calculations?

The tank is also sized for only the domestic demands, as the claim is that no one will be using water for irrigation during the time that power to the source pumps are out of service.

The location of the required additional source and storage facilities will determine the required transmission facilities. A transmission study shall be done by the developer when a source and storage alternative is finalized for the project.

CONCLUSION:

The Department acknowledged that due to the size of this development, the proposed private water system will be regulated by the Public Utilities Commission and the Department of Health. The developer is proposing a private water system to be owned and operated in perpetuity by the subdivision homeowner's association.

In addition, the developer is willing to record an agreement which states the County will never be responsible for operating, maintaining, or repairing any component of the proposed private water system. As such, the Department of Water will not legally be responsible for the system and would be absolved from any and all liability associated with the system.

In light of the recent closure of Moloka'i Ranch Co., Maui County maintains they are not able, nor legally obligated, to take over the utilities. Nonetheless, water and sewer service to about 1,200 West Molokai residents were affected and the County is left in the middle. The reason cited for the closure was several years of substantial operating losses. According to the newspapers, critics claim Moloka'i Ranch is claiming insolvency to transfer the financial burden of upgrading the facilities to the county and its taxpayers.

Like Moloka'i Ranch, the problems and associated costs to repair and upgrade the facilities will occur as the water system ages. As A&B stated, the County subdivision ordinance require water systems in subdivision to be constructed per the rules, regulations and construction standards of the Department of Water. Therefore, should the Board allow the developer to deviate from the County construction standard required for final subdivision approval?

Applicant's Testimony:

Mr. Hasenyager thanked the Board for allowing them to present their proposal for a private water system in their proposed Brydeswood Agricultural Subdivision.

Like Opaekaa Gardens, they are willing to enter into an indemnity agreement or any other agreement that the Board and Department feels is necessary to protect the Department of Water to ever come in and maintain the water system. Their proposed system will be owned and managed by a water company that would consist of the homeowners and the homeowners association. The water system would be managed by a company that is certified by the State Department of Health to operate the system. As part of the DOH approval process, they had to complete a capacity study to show that they have financial capabilities to maintain, manage and operate the system that the homeowners association would have in place.

Mr. Hasenyager requested several deviations from the standards as follows:

1. They want to construct a steel storage tank that would be either powder coated lined or glass lined with cathodic protection that would protect against rust. The County standards reference a reinforced concrete storage tank.

The steel tanks have been in use for many, many years and, if maintained, operate very well for many, many years. The manufacturers say that steel tanks have a 50+ years of life.

He added that they are not trying to cut corners but to provide the homeowners with a very good system but maybe not a 'Mercedes Benz'.

2. They want to use of high-density polyethylene (HDPE) piping. Every engineer that he has spoken to stated that HDPE is the way for the future. They feel it is a far superior pipe that ductile iron as it is very tough, very long lasting, and very efficient in conveying water. There are few seams and joints to fail, not much requirement for reaction blocks. The cost of the material is not that much cheaper than ductile iron but the installation will save money and last a very long time. It does not rust and maybe safer for the water in the long run.
3. Being a private water system, they want to do a graveled access road up to the well site and to also gravel the well site itself, with some paving where it is steep. The access road will be used minimally, once a week by a private company to test the water system. He felt that doing an asphalt road and curbing would be a waste of money and graveled roads have been used for many, many years.

Mr. Hasenyager stated that they need a few concessions to make it affordable for them to build it. He reiterated that they are not trying to cut corners but trying to build a high quality private water system that would last for years to come.

Mr. Hasenyager stated that they have submitted conceptual plans to the DOW and the DOW has responded with their approval of some of the concepts like the size of the storage tank, the concept of doing two (2) 400 gpm wells, the proposed pipe

sizing and the distribution system. They did not approve the three (3) items that he asked for deviations above.

Mr. Nishimura asked if there was ever an instance that our crew had to service a private water system. Acting Manager Ushigome stated that this system would be under the DOH jurisdiction, which would take care of health and safety issues. On query by Chair Oyama, Mr. Hasenyager stated that they received a preliminary opinion from the PUC that their system would not be PUC regulated. Chair Oyama stated that the reason he was asking is that last year, a bill was passed that all agricultural water would be under the PUC. Mr. Hasenyager concurred that he should double check that.

On query by Acting Manager Ushigome, Mr. Hasenyager stated that his understanding is that since their proposed water system is owned by the homeowners and is providing water to only the homeowners and to no outside entities. If you sell water, then it would be PUC regulated.

Mr. Hasenyager stated that the homeowners association would setup a separate nonprofit water association, with a Board, and they would collect monies to be able to operate the system and also have a reserve fund for future capital improvements.

Mr. K. Fujimoto stated that from his experience steel tanks do not last that long, maybe 10 years or so before it needs to be maintained and that gravel roads normally end up loose and muddy, depending on the weather. He added that they plan to have the domestic and irrigation water together, which will not allow entire standby capabilities. Also, Mr. K. Fujimoto felt that 10 years down the road when the homeowners are paying a premium maintenance fees, they will be wondering why the County approved a private water system and not up to standards.

On that note, Acting Manager Ushigome added that she had inquiries from homeowners in the Kealia area that are on a private water system because their water rates are higher than the County's water rates.

On query by Mr. Kahawai, it was noted that this subdivision is out of the water service area that is why they plan to have a private water system.

On query by Mr. Costa, Acting Manager Ushigome stated that whatever is required in the indemnification agreement that it be reviewed by the Board prior to approval. She also referenced our Rules, Part 3, Section XII, Modification of Requirements.

On query by Chair Oyama, Mr. Hasenyager stated that the average sized lots are about 11-1/2 acres, with one small lot about 5 acres and that they could CPR the lots but not subdivide. New owners would be noticed that their lot is fed by a private water system and have to join the association and abide by the laws of the association.

Mr. Nishimura asked if there are any other objections to steel tanks. Mr. K. Fujimoto stated that to repair a steel tank is about the same to construct a new steel tank. Mr. Hasenyager stated that the homeowners association would have to be setup right

and then collect the right amount of monies in order to maintain the tank. He added that there are newer technologies to protect the steel tanks from rusting.

Mr. Hasenyager stated to satisfy Mr. K. Fujimoto's qualms on the gravel road is that they plan to have a 'Cadillac' version of a gravel road. It will be 12 inches of 3-inch sub-base and compacted with gravel, which is a high quality road.

On query by Acting Manager Ushigome, Mr. Hasenyager stated that their water master plans changed as initially they were hoping to get domestic water from the County and ag water from Alexander Dam. However, they were out of the water service zone; therefore, was denied water from the County and because Kauai Koffee needs all the water they can get from Alexander Dam, especially during the summer months when the farmers also need the water, they decided to do two (2) 400 gpm wells as the County likes to see redundancy in their system. Their water needs are 700 gpm. He added that if one of the wells goes down, the other well could still take care of their needs as about 50 gpm is for domestic use and the 350 gpm will be rationed for irrigation use.

Acting Manager Ushigome stated that their calculations based on maximum buildout was 905 gpm and not 700 gpm. Mr. Hasenyager stated that they did base their calculations on maximum buildout; however, they calculated a certain percentage per lot which did not include the areas for dwellings, driveways, etc. that would not be able to farm.

Mr. Hasenyager stated that they are not having separate irrigation and domestic water systems, as it is very expensive to run 2 separate piping systems. Also, they have excess capacity in one well that could be used for irrigation purposes if the other well is down. He added that they would have a separate stub out for irrigation and domestic use per lot.

On query by Mr. Nishimura, Acting Manager Ushigome stated that only if they were connecting to the County system would they be required to submit a water master plan.

Acting Manager Ushigome stated that she would also still want to see the water demands to see if the storage sizing is adequate for fire flow, etc. A comparison could be made for the Board to see what the County standards are as compared to what they are proposing to see if the deviation is reasonable.

Mr. K. Fujimoto still recommended that the irrigation and domestic water systems be separated. Mr. Hasenyager stated that it would be up to the homeowners' water association to monitor the proper use of the water.

On query by Mr. Eddy, Mr. Hasenyager stated that these will be new wells that will be about 1,000 feet elevation and about 1,000 feet deep each.

Mr. Nishimura moved to defer this agenda item to the next Board Meeting as the applicant and the Department needed to still resolve some issues, seconded by Mr. Costa; motion was carried.

Mr. Hasenyager and Mr. Shigemoto both left the meeting at about 2:45 p.m.

Re: Request Board Approval of an Interim Loan Agreement between the State of Hawai'i, Department of Health, Safe Drinking Water Branch, State Revolving Loan Fund and the County of Kaua'i Department of Water, for the Department of Water to Receive Funds for the Construction of the Kapilimao 0.5 MG Tank

RECOMMENDATION:

It was recommended that the Board approve the Interim Loan Agreement between the State of Hawai'i, Department of Health, Safe Drinking Water Branch, State Revolving Loan Fund and the County of Kauai Department of Water for the Department of Water to receive reimbursement funds for the construction of the Kapilimao 0.5 MG Tank.

FUNDING: Not Applicable

BACKGROUND: The Department of Water applied for a loan for the construction of the Kapilimao 0.5 Million Gallon Tank from the State of Hawaii Department of Health Safe Drinking Water Branch. The estimated cost of construction is FOUR MILLION ONE HUNDRED THOUSAND DOLLARS (\$4,100,000.00).

Funds in the amount of \$25,000.00, has been awarded to the department toward the completion of the planning and design for the project; however an Interim Loan Agreement is required to be in place to allow the Safe Drinking Water Branch to release the funds to the Department. The Final Loan Agreement will be submitted at a later date.

Mr. Costa moved to approve the Interim Contribution Agreement to receive reimbursement funds for the construction of the Kapilimao 0.5 MG Tank, seconded by Mr. Nishimura; motion was carried.

Re: Request Board Approval of Resolution No. 2 (08/09) Adoption, Pertaining to State Revolving Fund (SRF) Funding for DW400-0001 Stable 1.0 MG Tank & Connecting Waterline; DW404-0003 Refurbish Eleele Steel Tanks; DW406-0002 Waimea Canyon Drive Main Replacement; DW406-0003 Kapilimao 0.5 MG Tank; DW406-0004 Waimea Well A and Kekaha Well B Renovations, Job No. 04-06, KW-05, KW-20 at Waimea and Kekaha, Kaua'i, Hawaii; DW406-0005 Kaumuali'i Highway 12-inch Main Replacement Elepaio Road to Huakai Road, Job No. 05-04, KW-27, Kekaha-Waimea, Kaua'i, Hawaii; DW413-0003 Akulikuli Tunnel Repairs; DW413-0007 Pipeline Replacement, Kapaa Homesteads; DW413-0008 Wailua Houselots Main Replacement, Ph I and II; DW415-0002 Haena Steel Tank and Wainiha Booster Pump Renovation (HW-02 & HW-03); and DW434-0003 Waha, Wawae, and Niho Roads Main Replacement, Job No. 05-07, K-07, LO-13, at Kalaheo, Kaua'i, Hawaii

Recommendation:

It was requested that the Board adopt Resolution No. 2 (09/08). This resolution was required to complete Drinking Water State Revolving Fund (DWSRF) loan agreements for the various projects listed. The loan agreements are between the Board of Water Supply and the State Department of Health.

Mr. Costa moved to approve of Resolution No. 2 (08/09), seconded by Mr. Nishimura; motion was carried.

Re: Resolution No. 3, (08/09), Mahalo and Aloha Retiree John Camelo

Mr. Costa moved to approve Resolution No. 3 (08/09), Mahalo and Aloha John Camelo, who has recently retired, seconded by Mr. Kahawai; motion was carried.

Re: Suggestions for Year 2009 Capital Improvement Projects (CIP) Submittal to the State Legislature

Acting Manager Ushigome gave the following report:

The Department will be preparing CIP projects to be submitted to the 2009 Session of the State Legislature for funding.

The Board's input is important in this process and was asked for any project suggestions. The previous 2007 CIP packet that was sent to the Legislature was given to the Board for their information. *(Correction: The final CIP list will be on the November 13, 2008 Board Meeting for approval.)*

Mr. Nishimura stated that pending Acting Manager Ushigome's findings with the DOE and DAGS, we may add WKK-6 and WKK-9 on the CIP legislative packet as Priority No. 1. WK-9 will be deleted.

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

Re: Request to Amend Board Approval of a Conveyance of Water Facility from Kekaha Plantation Housing Partnership instead of Mark Watase for the Water Meter for Lot B-1-B, TMK: (4) 1-3-08:019 (S-2007-9), Kekaha, Waimea District, Kauai, Hawai'i

It was recommended that the Conveyance of Water Facility document be approved; whereby, Kekaha Plantation Housing Partnership, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each, 1-inch copper single service lateral for 5/8" water meter, for the Water Meter for Lot B-1-B, TMK: (4) 1-3-08:019 (S-2007-9), Kekaha, Waimea District, Kauai, Hawai'i.

At the last Board Meeting, Mark Watase submitted a Conveyance of Water Facility that should have been from Kekaha Plantation Housing Partnership, who was the titled landowner at the time of project completion, instead of himself.

The error was discovered on the day of the August, 2008 Board Meeting after the Board approved the incorrect conveyance. A new Conveyance of Water Facility document was submitted for Board approval.

Grant of Easement not required.

Mr. Costa moved to approve the Conveyance of Water Facility from Kekaha Plantation Housing Partnership, seconded by Mr. Kahawai; motion was carried.

Re: Conveyance of Water Facility from Jon A. Zahaby and Jeanne R. Zahaby, Sueo Miyashiro, Christopher Karl Reimer and Cynthia Gail Riemer, and Richard F. DeMarco and Hope I. DeMarco; for the Miyashiro Farms CPR, TMK: (4) 4-4-03:008, Kapaa, Kawaihau District, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby, Jon A. Zahaby and Jeanne R. Zahaby, Sueo Miyashiro, Christopher Karl Reimer and Cynthia Gail Riemer, and Richard F. DeMarco and Hope I. DeMarco, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each, 1-inch copper single service lateral for 5/8" water meter and one (1) each, 1 ½-inch copper double service lateral for 5/8" water meter, for the Miyashiro Farms CPR, TMK: (4) 4-4-03:008, Kapaa, Kawaihau District, Kauai, Hawaii.

Grant of Easement not required.

Mr. Costa moved to approve the Conveyance of Water Facility from Jon A. Zahaby and Jeanne R. Zahaby, Sueo Miyashiro, Christopher Karl Reimer and Cynthia Gail Riemer, and Richard F. DeMarco and Hope I. DeMarco for the Miyashiro Farms CPR, seconded by Mr. Kahawai; motion was carried.

Re: Conveyance of Water Facility from Larry E. and Minde M. Hine, TMK: (4) 2-4-05:154, Kikala Road, Kalaheo, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby Larry E. and Minde M. Hine transfers unto the Board of Water Supply, County of Kauai, all of its right, title and interest to a single service connection for 5/8" water meter, in place complete, in accordance with the as-built construction drawings for WATER METER PLAN SERVICING FOR LOT 40-A-4, prepared by Esaki Surveying and Mapping, TMK: (4) 2-4-05:154, Kalaheo, Kauai, Hawaii.

A Grant of Easement is not required.

Mr. Costa moved to approve the Conveyance of Water Facility from Larry E. and Minde M. Hine, seconded by Mr. Kahawai; motion was carried.

Re: Conveyance of Water Facility from Wayne R. Daniel, Trustee of the Wayne R. Daniel Self-Trusteed Trust, dated February 18, 1999 and Walton D. Y. Hong, Trustee of the Walton D. Y. Hong Self-Trusteed Trust, dated November 30, 1994; for Dynasty Estates Condominium, TMK: (4) 4-4-15:003, Kawaihau District, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby, Wayne R. Daniel, Trustee of the Wayne R. Daniel Self-Trusteed Trust, dated February 18, 1999 and Walton D. Y. Hong, Trustee of the Walton D. Y. Hong Self-Trusteed Trust, dated November 30, 1994, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each, 1 ½-inch

copper double service lateral for 5/8" water meter, in place complete, for Dynasty Estates Condominium, TMK: (4) 4-4-15:003, Kawaihau District, Kauai, Hawaii.

Grant of Easement not required.

Mr. Costa moved to approve the Conveyance of Water Facility from Wayne R. Daniel and Walton D. Y. Hong, seconded by Mr. Kahawai; motion was carried.

Re: Grant of Easement from Grove Farm Company, Incorporated, for the Water Facilities for the 16-Inch Transmission Main (Kilohana 18-Inch Main to Kaumuali'i Highway 16-Inch Main), TMK: (4) 3-8-05:003 and (4) 3-4-05:001, Nawiliwili, Lihu'e District, Kaua'i, Hawai'i

It was recommended that the Board approve the grant of easement whereby Grove Farm Company, Incorporated grant to the Board of Water Supply, County of Kaua'i, a perpetual easement on, over and under that certain parcel of land located in TMK: (4) 3-8-05:003 and (4) 3-4-05:001, Nawiliwili, Lihu'e District, Kaua'i, Hawai'i, for the construction, installation, reinstallation, maintenance, repair and removal of potable water pipelines, related meters, valves, and other associated waterworks facility improvements and appurtenances, together with the right of ingress and egress at any time to, from, and through the easement area, with or without vehicles or equipment, as the Department of Water shall deem necessary for the proper operation of its water system for the 16-Inch Transmission Main (Kilohana 18-Inch Main to Kaumuali'i Highway 16-Inch Main), TMK: (4) 3-8-05:003 and (4) 3-4-05:001, Nawiliwili, Lihu'e District, Kaua'i, Hawai'i.

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

Mr. Costa moved to approve the Grant of Easement from Grove Farm Company, Incorporated, with the indemnification provision, seconded by Mr. Kahawai; motion was carried.

Re: Conveyance of Water Facility from Grove Farm Company, Incorporated, for the Water Facilities for the 16-Inch Transmission Main (Kilohana 18-Inch Main to Kaumuali'i Highway 16-Inch Main), TMK: (4) 3-8-05:003 and (4) 3-4-05:001, Nawiliwili, Lihu'e District, Kaua'i, Hawai'i

It was recommended that the Conveyance of Water Facility document be approved; whereby Grove Farm Company, Incorporated transfers unto the Board of Water Supply, County of Kaua'i, all of its right, title and interest to the following item:

Waterline:

- 4,115 linear feet of 16 Inch Ductile Iron Pipe, Class 52
- 20 linear feet of 18 Inch Ductile Iron Pipe, Class 52
- 88 linear feet of 8 Inch Ductile Iron Pipe, Class 52

- 105 linear feet of 3 Inch Copper Bypass Line
- 2 Ea. 8-Inch Blowoff Outlets
- 1 Ea. 4-Inch Cleanout Assembly
- 3 Ea. 1-inch Air Release Valve Assembly, including 1 Inch Copper Lateral
- 5 Ea. 16-Inch Gate Valve, including Cast Iron Valve Box and Cover
- 2 Ea. 18-Inch Gate Valve, including Cast Iron Valve Box and Cover
- 2 Ea. 8-Inch Gate Valve, including Cast Iron Valve Box and Cover
- 7 Ea. 3-Inch Gate Valve, including Cast Iron Valve Box and Cover

in place complete, in accordance with the as-built construction drawings for CONSTRUCTION PLANS FOR 16-INCH TRANSMISSION MAIN (KILOHANA 18-INCH MAIN TO KAUMUALI'I HIGHWAY 16-INCH MAIN) prepared by Akinaka and Associates, Inc., Lihu'e Kaua'i, Hawai'i.

Mr. Costa moved to approve the Conveyance of Water Facility from Grove Farm Company, Incorporated, seconded by Mr. Kahawai; motion was carried.

Re: Request Board Approval of a Right-of-Entry from Grove Farm Company and Cancellation and Termination of Easement "164" and Establishment of New Easement (295' Elevation) Tank Site

The Department requested that the Board approve the Right-of-Entry and Cancellation and Termination of Easement "164" and Establishment of New Easement for the Grove Farm (295' Elevation) Tank Site. For clarification, these tanks were conveyed to and are operated by the Department of Water.

Grove Farm requested the cancellation of the existing easement to the Department's (295' Elevation) Tank Site because of the proposed development of their lands adjoining the tank site. In exchange, Grove Farm is willing to grant the easement upon receiving final subdivision approval and shall construct the driveway access to the tank site. If the proposed subdivision does not occur, Grove Farm will grant an easement within one year from the Board's approval of the new easement area and construct the driveway approach of the driveway access. In the meantime, the Department will have access to its tank site through the right-of-entry. The right-of-entry shall continue until Grove Farm constructs the driveway access to the tank and records and/or files the grant of easement in favor of the Department.

Mr. Costa moved to approve the Right-of-Entry from Grove Farm Company and Cancellation and Termination of Easement "164" and Establishment of New Easement (295' Elevation) Tank Site, with the indemnification provision, seconded by Mr. Nishimura; motion was carried.

REPORTS

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

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

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

Public Relations Specialist Faith Shiramizu gave the following report:

Re: Public Relations Update

Kuleana: The second Department of Water Kuleana Show was taped on August 21st, covering Project WET, Water Conservation and an update by Dustin Moises on Water Plan 2020 Projects in or ready for construction.

DWSRF Projects: Met with Jennifer from the DOH Safe Drinking Water Branch to review the status of projects we are seeking SRF funding for. In the process we updated the list of items needed for each project, and concluded that since there are numerous projects up for SRF loans in this coming year, it would be more efficient to incorporate multiple projects in one Resolution.

Nana's House: Nana's House, a Child and Family Service community center, organized a community event with water as the central theme. Families from the Westside community were invited to the Lucy Wright Park in Waimea on Saturday, September 6th. The DOW participated by manning a booth promoting water conservation. Wynne Ushigome, Jennifer Lewis and I manned the booth, asking families questions about water, ranging from the makeup of a water molecule, to where the water comes from, why it's important to conserve water and how they can conserve water. For spending time with us and thinking about water conservation, we provided low flow fixtures (if they needed them and would use them.)

Make a Splash Water Festival: Plans and arrangements are in full gear.

Consumer Confidence Report: The insert to the Department bills regarding lead in the water will begin by the end of September. There will also be a short message on the bills that are sent to the Check Free customers.

The Nature Conservancy: Met with Allan Rietow from The Nature Conservancy (TNC) regarding ways we can work together. We plan to have a booth at the 2009 Farm Fair, TNC will do a presentation at a future DOW monthly meeting about what a watershed is and the feasibility of having an informational flyer inserted with our water bills.

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

RE: SUMMARY REPORT OF MONTHLY OPERATIONAL MAINTENANCE:

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

On query by Mr. Nishimura, Mr. Eddy stated that with the AMR implementation, a lot of old pipes had to be replaced.

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

Re: Manager's Update for August, 2008 to September, 2008

CONTRACTS AWARDED BY THE MANAGER:

Job No. 03-01, WP 2020 Project No. KW-03, 8-Inch Waterline Replacement for 'Elepaio Road

Funding: Account No. 101b, CRP	\$3,300,000.00
Cushnie Construction Company, Inc.	\$ 379,464.00
Approximately 5% Contingency	\$ 20,536.00
Total	<\$ 400,000.00>
Balance Remaining (Acc. 101b, CRP, 8" WL Replacement, 'Elepaio Rd).	<u>\$2,900,000.00</u>

PUMP INSTALLATION PERMITS SIGNED BY MANAGER: None.

WAIVER, RELEASE, AND INDEMNITY AGREEMENTS SIGNED BY THE MANAGER:

Affordable Housing Update: Affordable Housing Task Force (AHTF) meeting was held on Monday, July 14, 2008 at Pi'ikoi Conference Room A.

Updates on AHTF Projects:

1. DHHL – Anahola Residence Lots Unit 6, "Pi'ilani o Kekai, Phase 1: No report by DHHL.
2. Habitat - Eleele I Luna Subdivision Phase 2 Includes 107 lots and one park. No report provided. Habitat may be considering phasing the construction of the subdivision depending on their financing plan.
3. Puhi Self Help Subdivision - The next fourteen building permits were scheduled to submit shortly to the Building Division. The issuance of the water meters remained contingent upon completion of the conveyance of the Puhi Booster Pump Station and 16-inch waterline.
4. Kauai Lagoons – Courtyard at Waipouli: County issued building permits. Construction of 4 of the multi-family structures is underway. The deadline to complete 50 units is February 2009 and the entire 82 units is target for completion by February 2010.
5. Kauai Lagoons – Kapule Project: DOW recently approved the Kaua'i Lagoons revised engineering report dated July 16, 2008. The 31 unit affordable housing project's building permits are currently being processed at Planning.
6. Kukui'ula Employee Housing- "Gap" Housing subdivision and zoning permit: Amended water master plan was returned to the developer for revisions. The developer has not resubmitted the revised WMP to DOW to date.

The County Housing Agency met with Kukui'ula Development Co. on September 8, 2008 to discuss the status of their development.

7. Koheha Loa (Hanamaulu Triangle) - DOW completed its review of the May 15, 2008 draft WMP for the Grove Farm former "Amfac/JMB Lihue Hanamaulu Master Planned Community Lands. DOW's comments were transmitted to Kodani & Associates on August 26, 2008 and the Department's staff met and met with Grove Farm and their consultant's on August 27, 2008.
8. Paanau Village, Phase 2: The affordable housing projects included in the Kukuiula Master Plan. The Housing agency is exploring alternative project access through the adjacent State Housing site.

Next meeting of the AHTF is scheduled for Monday, October 13, 2008 at the Pi'ikoi Conference Room A at 10:00AM-11AM.

Outstanding Water Conservationist Award 2008:

This year's recipient of the East Kaua'i Soil and Water Conservation District's Outstanding Water Conservationist is Mr. Jerry Ornellas. A West Kauai Soil and Water Conservation District will also have a outstanding water conservationist but was not known at that time. The award ceremony and presentation will be at the Department of Water on Tuesday, October 21, 2008 at 10:00 am. Board members are welcome to come and congratulate Jerry for his commitment and effort to promote water conservation.

Ecomagination Award:

GE Water & Process Technologies is recognizing Grove Farm Company's outstanding commitment to environmental conservation by presenting them with a Global Ecomagination Award. Chair Oyama plans to represent the Board and the Department by attending the luncheon and award presentation by Jeff Garwood, President and CEO of GE Water & Process Technologies on Thursday, September 18, 2008.

Mr. Nishimura moved to approve the Manager's Update, seconded by Mr. Costa; motion was carried.

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

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

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

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

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

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

STRATEGIC AND BUSINESS PLAN AND NEEDS ASSESSMENT

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

Acting Manager Ushigome reported on the following:

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

An updated summary by the Issues Champions was submitted for the Board's review.

Issue No. 1, Morale:

- a. Facilities Plan – Per the board's request, a Facilities Plan Consultant has been added to the RFQ for Professional Services.

Issue No. 2, Strong and Qualified Workforce:

- a. Janitor II and CE I positions have been filled.
- b. DOW is moving forward with scheduling interviews for OPS & Engineering/ WRP vacancies.
- c. Training is being worked on. We are in the process of contacting facilitators for communication & supervisory training. There is an upcoming "Dealing with Difficult People" workshop happening in mid-September sponsored by the COK.

Issue No. 3, Water Quality:

- a. There is a work order for the installation of a sampling station on Kuamoo Rd.
- b. Lab personnel have been out to a few main breaks to sample and check chlorine and turbidity, Operations still need to work on their internal controls to call the lab with all main breaks, especially since main break monitoring may be mandated by EPA in the near future.
- c. There is no real plan as to incorporating sampling stations into new subdivisions; however, we hope to do so someday.
- d. Awaiting direction from the Board regarding the RFP for a Program Manager after the presentation by Tom Jacobs from RW Beck.

Issue No. 4, Workplace Efficiencies:

- a. Implement State-of-the-Art Technologies for Efficient System Operation
 - (1) Automated Meter Reading (AMR) System
(ongoing project that was implemented in mid-March, 2008.)
 - i. Installations are currently being done in the Wailua Homesteads area and will be moving into the Kīlauea area.
 - (2) Geographic Information System (GIS)
 - i. GIS Training for some of our engineering and billing personnel has taken place. We hope to expand the training to other personnel that would also find GIS a useful tool.
 - ii. Jeff Mendez will be going for more training soon.

Issue No. 5, Accountability: No changes

Water Plan 2020 Program Sustainability Services:

RW Beck submitted a fee proposal for completing the additional tasks requested by the Board at its August 14, 2008 meeting. The Board requested RW Beck prepare a final revised Program Management Plan (PMP) as part of Task 1 of the 60 day Mobilization Plan. The final PMP should incorporate the details of the July 2007 PowerPoint presentation, which was adopted by the Board. To assist RW Beck with documenting the July 2007 PowerPoint presentation, Board Member Nishimura suggested a copy of the audio tape of the July 2007 workshop be provided to them.

In addition, the Board requested RW Beck incorporate into the final work product their recommendations and responses to the RFP committee's eight (8) concerns or questions relating to the issuance of the Program Manager (PM) Request for Proposal solicitation. At the time the Board requested RW Beck finalize the Task 1 work product, they did not mention the need for additional funding, however, RW Beck subsequently submitted the attached fee proposal dated August 19, 2008. (See attached, R. W. Beck, Inc.'s Proposal for Completion of Additional Tasks as Requested at the August 14, 2008 DOW Board Meeting, dated August 19, 2008)

Based on the summary of the Project Background of the R.W. Beck's fee proposal, RW Beck states that they believe they have completed their obligation under Task 1 and have in fact expended significant additional effort, at their cost, in order to provide opinions to the DOW relative to implementing WP2020. Although RW Beck submitted a draft PMP in December 2006, this plan was not adopted by the Board. Instead the Board wanted RW Beck to determine the feasibility of a 5-year implementation plan, hence the development of the July 2007 PowerPoint presentation.

In their fee proposal, RW Beck estimates it will take a month to complete and will cost \$9,700 to finalize the report. In light of the consultant's fee proposal, does the Board desire to amend the RW Beck contract to include this work?

Board Discussion:

Mr. Nishimura stated that he originally asked for that report to document what has transpired so that future Board members would be able to know what happened from start to finish so not to invent the wheel again. However, he did not know that it would cost that much to do.

Mr. Nishimura suggested that this project be closed with RW Beck's draft report and 2 Powerpoint Presentations as documentation as to what transpired. Board concurred. The Department would followup with a thank you letter to RW Beck.

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

Affordable Housing:

An updated Affordable Housing Projects – Summary Status prepared by Mark Salmon with RW Beck is attached for your review.

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

Details are provided below.

- ✓ The Kapilimao 0.5 MG Storage Tank final design is complete. The construction contract was advertised for bids on July 10, and bids were opened August 21. References for the apparent low bidder's subcontractors are being checked prior to contract award.
- ✓ AMFAC Shaft 11 Renovation Phase 1B field pump testing is complete. Preliminary indications are that well may be under the influence of surface water. KDOW has collected supplemental samples and is conducting additional lab analysis.
- ✓ The latest offer for acquisition of a site from Mr. Yamamoto for the Kapahi 1.0 MG Tank was rejected. Current options are to pursue acquisition by eminent domain or confine project to land owned by DOW. Investigation of the condemnation process is underway.
- ✓ A construction contract for the Kapa'a Homesteads 0.5 MG Storage Tank has been awarded. A DLNR CDUA extension has been requested. The contractor is acquiring the NPDES permit.
- ✓ HDR Engineering is proceeding with design of an exploratory well for Kapa'a Homesteads Well No. 4 at the Ornellas Tank site.
- ✓ Staff direction was received in August regarding final design and EA preparation for the Akulikuli Tunnel renovation. Engineering and environmental work has resumed..

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: September '08

Project Manager: Mark Salmon -- Design Consultant: Brown and Caldwell

Work underway: contract award

Work ahead: construction

Current Major Area of Focus: contract award and NTP

Potential obstacles: none currently

Tentative Date Project in Service: January, 2010

- Summary: Bids were opened August 21, 2008. References and experience for the low bidder's subcontractors is underway.
- Contract Status: Design contract executed. It includes design engineering services during construction.
- Schedule: No issues.
- Permits: All permits received.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: No issues.

2. (KW-28), Amfac Shaft 11 Renovation--Summary Project Status: Sept. '08

Project Manager: Mark Salmon -- Design Consultant: Brown and Caldwell

Work underway: DOH and Basis of Design Report Preparation

Work ahead: final design, environmental/permitting, construction
Current Major Area of Focus: verifying influence of groundwater
Potential Obstacles: water under the influence of surface water – may affect project configuration
Tentative Date Project in Service: Spring 2010 (earliest)

- Summary: Supplemental samples collected for additional water quality testing on August 14. Samples will undergo testing to prove/disprove surface water influence.
- Contract Status: Phase 1B contract complete. Phase 2 contract delayed pending completion of consultant procurement.
- Schedule: See Problems and Proposed Mitigation below.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: None.
- Problems and Proposed Mitigation: Shaft water may be under the influence of surface water. KDOW lab to conduct additional water quality analysis. Consultant currently projects completion by September 29, approximately 55 days behind original schedule.

3. (WK-08), Kapahi 1.0 MG Storage Tank–Summary Project Status – Sept. '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: Land acquisition and tank configuration issues remain unresolved. Landowner has rejected latest offer for land acquisition. Potential condemnation of site being investigated.
- Contract Status: Final design contract executed.
- Schedule: Schedule slips as site remains undetermined.
- Permits: No issues.
- Land & Easements: Easement negotiations with Mr. Yamamoto continue.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: Project configuration and land acquisition issues not yet resolved. Eminent domain action being explored.

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

Work underway: Construction

Work ahead: Construction

Current Major Area of Focus: Mobilization, permits

Potential obstacles: none currently

Tentative Date Project in Service: December 2009

- Summary: Bids received and opened on May 29, 2008. Contract awarded in June, 2008. County building permit still pending and construction cannot start until permit received. An extension of the CDUA permit from DLNR is being obtained. Contractor is apply for NPDES permit.
- Contract Status: No issues.

- Schedule: No issues.
- Permits: An extension of the DLNR CDUA permit may be required. It currently expires September 8, 2008.
- 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 – Sept. '08

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

Work underway: Exploratory well design
Work ahead: well design, environmental/permitting and construction
Current Major Area of Focus: Exploratory well design
Potential obstacles: none currently
Tentative Date Project in Service: December 2009

- Summary: Initial well siting study completed. Consultant proceeding with design of an exploratory well at the Ornellas Tank Site.
- 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 – Sept. '08

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

Work underway: final design
Work ahead: final design, environmental/permitting and construction
Current Major Area of Focus: EA, design
Potential obstacles: water quantity and quality unknown – potential addition of treatment
Tentative Date Project in Service: June, 2011 (longer if treatment required)

- Summary: Work on EA and final design has resumed with resolution of configuration issues.
- Contract Status: No issues.
- Schedule: No issues.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: No issues.

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

EXECUTIVE SESSIONS:

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

pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a).

Due to a lack of quorum to hold an Executive Session, Mr. Costa moved to defer Item Nos. J4-8 to the next Board Meeting and also to receive Item No. J3 (ES-2008-5) and place on file, seconded by Mr. Nishimura; motion was carried.

REVIEW OF EXECUTIVE SESSION MINUTES:

- a. Regular Meeting: Thursday, June 5, 2008, Part 1 & 2
- b. Regular Meeting: Tuesday, July 15, 2008, Part 1 & 2
- c. Special Meeting: Tuesday, July 29, 2008, Part 1 & 2
- d. Regular Meeting: Thursday, August 14, 2008

OLD BUSINESS:

ES-2008-5 - Request Board Approval for Reconsideration and Clarification of the Motion Made at the July 15, 2008 Board Meeting on Agenda Item: 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 – *Board denied reconsideration at this Board Meeting; therefore, this executive session matter to be deleted.*

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

ES-2008-9 (9-16-08) - Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with legal counsel regarding claims. This consultation involves consideration of the process, duties, privileges, immunities, and/or liabilities of the Board and the County as they relate to this agenda item.

ES-2008-10 (9-16-08) - Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with legal counsel regarding qualification of Board members. This consultation involves consideration of the process, duties, privileges, immunities, and/or liabilities of the Board and the County as they relate to this agenda item.

ES-2008-11 (9-16-08) - Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with legal counsel regarding Eleanor Cox's Request to Testify for Subdivision of Lot 37-D, Portion of the Consolidation of Portion of Grant 11224 (Abandoned Railroad Right of Way), Lot 37, Grant 6226, and Lot 38, Grant 6216, into Lot 37-D-1 and Lot 37-D-2, S-2005-26, TMK: (4) 2-7-05: 28, 'Oma'o, Kaua'i, Hawai'i. This consultation involves consideration of the process, duties, privileges, immunities, and/or liabilities of the Board and the County as they relate to this agenda item. This consultation involves

consideration of the process, duties, privileges, immunities, and/or liabilities of the Board and the County as they relate to this agenda item.

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

ADJOURNMENT: There being no further business, Mr. Costa moved to adjourn this meeting at 3:12 p.m.; seconded by Mr. Nishimura; motion was carried.

Respectfully submitted,

Rona Miura, Secretary

APPROVED:

Wynne M. Ushigome
Acting Manager and Chief Engineer

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