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BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

OCTOBER 27, 2005

Held at the Council Committee Room, 7th Floor, Kalana O Maui

Building, 200 South High Street, Wailuku, Maui, Hawaii,

commencing at 9:00 a.m. on Thursday, October 27, 2005.

REPORTED BY: GLORIA T. BEDIAMOL, CSR/RMR #262

IWADO COURT REPORTERS, INC.

A P P E A R A N C E S

CHAIRPERSON: MICHAEL VICTORINO

VICE CHAIRPERSON: KENNETH OKAMURA

MEMBERS: STACY HELM CRIVELLO

GINNY PARSONS

GREGORY SMITH

SALLY RAISBECK

RALPH JOHANSEN

KENT HIRANAGA

STAFF: ED KUSHI, CORPORATION COUNSEL

GEORGE TENGAN, DIRECTOR

MICHELLE SAKUMA, SECRETARY

HOLLY PERDIDO, FISCAL OFFICER

HELENE KAU, FISCAL OFFICER

ALVA NAKAMURA, ENGINEERING

HERB CHANG, ENGINEERING

BOARD OF WATER SUPPLY

TRANSCRIPT OF PROCEEDINGS

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CHAIRMAN VICTORINO: I would like to call this meeting to order of the Board of Water Supply, County of Maui. Our regular meeting of October 27, 2005.

Present today is Mr. Greg Smith, Stacy Crivello Helm, Kenneth Okamura, Ginny Parsons, and Sally Raisbeck, and myself Michael Victorino.

Announcements? Any announcements at this time?

Does any board member have any announcements?

MS. PARSONS: Do you want me to --

CHAIRMAN VICTORINO: No, we'll wait until later.

Sally, do you have something?

Oh, I'm sorry, and Director Tengan is also
present. I apologize.

MR. TENGAN: I would just like to inform the board
officially that Cathy Howard has left the department to
pursue her personal endeavors. And we need to thank
Michelle, who is Eric's secretary, for pitching in and
manning the meeting this morning.

CHAIRMAN VICTORINO: Thank you, Michelle, for

being here. Thank you, George, for the information.

MS. RAISBECK: Mr. Chair?

CHAIRMAN VICTORINO: Yes.

MS. RAISBECK: In response to that, could I suggest that the board should send a letter of appreciation to Cathy?

CHAIRMAN VICTORINO: I'll take a note of that and I'll have something put together and send it on behalf of all of us.

MS. RAISBECK: Thank you.

CHAIRMAN VICTORINO: If that's okay.

MS. RAISBECK: Yeah. And also, I'd like to know,

has she gone to a different department in the county?

CHAIRMAN VICTORINO: She left the county itself to

do some personal endeavors.

MS. RAISBECK: Okay.

CHAIRMAN VICTORINO: I did come up last week

Friday and had a little get together for her. I gave her a

lei on behalf of all of us and said mahalo for all her help.

MS. RAISBECK: Thank you.

CHAIRMAN VICTORINO: Also make note that corp

counsel Edward Kushi is present and Ralph Johansen, board

member, is also present. Good morning, Ralph.

MR. JOHANSEN: Good morning.

CHAIRMAN VICTORINO: Okay. Moving right along.

Approval of the minutes of the September 2, 2005, as

provided in the packet. Any corrections, deletions, or

additions to the minutes?

MS. RAISBECK: I have to confess, Mr. Chair, that

I did not read the minutes yet, so I move that they be

approved subject to a 30-day correction period.

CHAIRMAN VICTORINO: So moved. Do I have a

second?

VICE-CHAIR OKAMURA: So moved.

CHAIRMAN VICTORINO: It's been moved and seconded,

all those in favor say "aye."

(A chorus of ayes.)

Opposed?

(No response.)

Okay.

At this time, we open up for public testimony. If

there's anyone who is present -- did anyone sign up to

testify? No. Okay. Now, if you have a specific agenda

item that you want to testify on, you can wait until that

point; okay? But if you don't have or you want to speak on

another matter that may not be here, now is the time. None?

Okay.

Moving right along. Let's go to Unfinished

Business. Report on the Dowling Well Agreement. That's

Director's 05-16. To be distributed at the meeting.

On this matter, the board may convene in executive session, because in order to consult with our board's attorney on any questions and issues pertaining to the board's powers, duties, and privileges, immunities, and liabilities. So do I have a motion to go into executive session?

MR. JOHANSEN: So moved.

CHAIRMAN VICTORINO: Do I have a second?

MS. CRIVELLO: Second.

CHAIRMAN VICTORINO: It's been moved and seconded
that we go into executive session. All those in favor say
"aye."

(A chorus of ayes.)

Opposed?

MS. RAISBECK: No.

MS. PARSONS: Do we even get discussion here?

CHAIRMAN VICTORINO: Yes.

MS. PARSONS: Can we have discussion first? I

wonder why we need to go into executive session.

CHAIRMAN VICTORINO: Okay. Well, I'll open up the

discussion, then. I apologize, because I know there was

some sensitive materials that -- okay, go ahead.

Mr. Okamura, you have questions?

VICE-CHAIR OKAMURA: Yes. I was wondering if we

can have time to read it, and then to bring it up at the

next meeting so we can ask questions about it, instead of

trying to spend the time now.

CHAIRMAN VICTORINO: Okay. Mr. Kushi, I think

there is some information that, yes, we can discuss it in executive session, but cannot be handed out and cannot be kept by board members; am I correct in saying that?

I'm asking the question specifically to Mr. Kushi, who is our corp counsel.

MR. KUSHI: Mr. Chair, are you talking about the Dowling agreement?

CHAIRMAN VICTORINO: Yes. The report on the Dowling Well Agreement. That is correct, sir.

MR. KUSHI: If you want to look at -- I mean, I'm assuming that you have it.

VICE-CHAIR OKAMURA: We have --

MR. KUSHI: You just got it today.

CHAIRMAN VICTORINO: Yeah.

MR. KUSHI: My recollection of the agreement, I

mean, if you -- I don't see why you need to go into

executive session, because the agreement is a matter of

public record.

CHAIRMAN VICTORINO: Okay.

MR. KUSHI: What your discussion will be is -- I'm

not sure what you're thinking about. But the agreement

itself is part of the department's public records.

CHAIRMAN VICTORINO: Okay.

MR. KUSHI: So I don't see the need for it right

now.

CHAIRMAN VICTORINO: Okay.

MR. KUSHI: If you just got the agreement, that's

another matter.

CHAIRMAN VICTORINO: Okay. Since --

MR. KUSHI: Then I can see why Mr. Okamura says he

needs more time to look at it.

CHAIRMAN VICTORINO: Okay. Well, then, if that's

the case, can we withdraw the motion? The motion -- will

you withdraw your motion?

MR. JOHANSEN: Yes.

CHAIRMAN VICTORINO: Will you withdraw your
second?

MS. CRIVELLO: Yes.

CHAIRMAN VICTORINO: Okay. The motion has been
withdrawn. And if it is all right, and if it's with the
privilege of the board, we will defer this matter to our
next meeting to allow all of us time to review the
agreement.

MS. RAISBECK: Mr. Chair?

CHAIRMAN VICTORINO: Yes, Ms. Raisbeck.

MS. RAISBECK: The reason I did not want to go into executive session is that, first of all, I really object to having things presented to us at the start of the meeting that require, you know, reading and thought, because then there is no opportunity to think about things in advance of the meeting, which wastes our time in the meeting.

CHAIRMAN VICTORINO: That's correct.

MS. RAISBECK: Also, I wonder, if there is something that requires us to be in executive session, then we ought to know what that specifically is. It shouldn't

just be a generic thing that any time we deal with subjects that people would rather not talk about we go into executive session. So I'm willing to defer this.

In fact, I would vote for deferring it so that we do have a chance to read the material that's been given us so far, and if necessary, ask questions of the department that they would be able to respond to at the next session.

CHAIRMAN VICTORINO: Okay. That's fair enough.

Mr. Okamura, you had something?

VICE-CHAIR OKAMURA: No, thank you.

CHAIRMAN VICTORINO: Okay. So --

MS. PARSONS: Was there a reason for executive

session when you drafted this? The agreement was --

CHAIRMAN VICTORINO: I was told that there may be some sensitive materials to be discussed about some agreements and other things, so that -- that's why this was put this way.

MS. PARSONS: By whom?

CHAIRMAN VICTORINO: By the former secretary, Cathy. She said there may be things that we need to discuss in executive session. And I didn't have the report so I couldn't address it. But now, since Mr. Kushi as corp counsel says that probably there isn't, as far as he knows

at this point --

MR. KUSHI: Well, put it this way, Mr. Chair. The agreement itself is part of the department's records.

CHAIRMAN VICTORINO: Right.

MR. KUSHI: It's public record. You can discuss the agreement, what it says. Now, if you want to discuss why the agreement was entered into and the discussions leading up to that agreement, again, I wasn't there, I can't say if it's privileged or confidential or what. And remember, this agreement was made when the board was semiautonomous.

CHAIRMAN VICTORINO: That is correct.

MR. KUSHI: I'm not sure if any of the staff people from the board was present when the board negotiated this agreement. That being said, I leave it up to you.

CHAIRMAN VICTORINO: Okay.

MR. KUSHI: In the interest of open meetings, I would say at this point I think executive session would not be proper.

CHAIRMAN VICTORINO: Okay. With all that being said and taking legal counsel as the final say, then I will make that -- defer this report for our next meeting, and I

will not put it into executive session; okay?

MS. RAISBECK: All right. May I also ask if there are any later agreements, subsidiary agreements, any other contracts between the department and Kula Mala, that we could also be given prior to the next board meeting?

MS. PARSONS: Addendums (sic).

MS. RAISBECK: Or addendums (sic) or whatever.

Are there any other things besides what's in these pages?

CHAIRMAN VICTORINO: Mr. Tengan?

MR. TENGAN: Mr. Chair, as it states in the write-up, there was another agreement dated September 9, 1999, and coming through this material here, I don't see it.

So we'll get that to the board also.

CHAIRMAN VICTORINO: And could we have that before
the next meeting because --

MR. SMITH: It's right here. Last page.

CHAIRMAN VICTORINO: Oh, it is. Okay. I haven't
had a chance to look through this, so everybody help me out.

It is there? Okay. Okay. It is there. So do you know of
anything else, Mr. Tengan?

MR. TENGAN: I think there was one more concerning
storage. I believe there was one more agreement, I'll get
that to the board.

CHAIRMAN VICTORINO: Please.

MR. CHANG: Did Elmer Carvalho sign one -- on this
thing?

CHAIRMAN VICTORINO: Well, I think all proper
and -- documentation that's appropriate with this whole
report and subsequent agreements would be very important.
Because then, you know, then -- and also get it out to the
board prior to, at least two weeks prior to, so they can sit
there and at least address it; okay?

Is that all right with you, Sally, that we --

Ms. Raisbeck, that we get all the reports that we need,

addendums (sic), whatever?

MS. RAISBECK: Okay.

CHAIRMAN VICTORINO: Mr. Tengan?

MR. TENGAN: Mr. Chair, it might help us to put information together, too, if we know, you know, what the board is looking for or looking at within these agreements. And I don't know if there's any particular thing that the board wants to look at. Or is it just a general review of the agreement?

CHAIRMAN VICTORINO: Ms. Raisbeck?

MS. RAISBECK: I was about to ask why it's on the

agenda at this time. What is the reason for putting this agreement from 1996 and 1999 on the agenda at this time?

CHAIRMAN VICTORINO: Well, I mean, part of it was -- it was requested by a board member.

MS. RAISBECK: Oh, Okay.

CHAIRMAN VICTORINO: Okay. And I followed through on those things, and I think the board -- was it you?

MS. PARSONS: I think it was both Sally -- both of us were looking at this.

CHAIRMAN VICTORINO: Yeah. I remember distinctly you guys -- this being asked of me and I requested it.

I would ask this, that if any board member -- I

know you guys haven't had time to go over the report and any addendums (sic) -- if they can get out -- and if you have any specific questions that you want them to look into, then to get them to me and I'll forward it on to Mr. Tengan, to make sure those are addressed at the meeting; okay? So we won't waste time.

MS. RAISBECK: Thank you.

MS. PARSONS: I think we were looking at the -- weren't we looking at that time at what our capacities were Upcountry, and how much was being used and what portion Dowling was using for the subdivision now, where we are, and

how much was going to the community? So maybe it's --

CHAIRMAN VICTORINO: Okay. So if you have the specifics, Ginny, would you kindly e-mail me that?

MS. PARSONS: Yes.

CHAIRMAN VICTORINO: And I will forward it. That way we won't expend time trying to decide what we want to know. Let's get specifics and let's get to that so we can get answers. Is that all right with everybody?

VICE-CHAIR OKAMURA: Yes.

CHAIRMAN VICTORINO: So we will defer this matter to our next meeting. Do I have a motion to defer?

MS. RAISBECK: I move to defer.

VICE-CHAIR OKAMURA: Second.

CHAIRMAN VICTORINO: It's been moved and seconded.

Any discussion? All those in favor say "aye."

(A chorus of ayes.)

Opposed.

(No response.)

Moving on to the second item on Unfinished

Business, verbal update on the status of Pookela well.

Mr. Nakamura?

MR. NAKAMURA: Good morning.

CHAIRMAN VICTORINO: Good morning, sir. Introduce yourself just for the record.

MR. NAKAMURA: Alva Nakamura, engineering program, manager for the department. Of interest, I just received this e-mail from Mike Smith of Flow Serve -- regarding the manufacturer of the motor. Let me just read this short note to you, so it'll give you an idea of what he said.

He says, I just received some outstanding news from Flow Serve regarding the Pookela project. The new 600 horsepower submersible motor has been manufactured and tested and is -- and awaiting shipment to Hawaii. Flow serve is still manufacturing the pump, though. Flow serve

is sending me a detailed progress report of the pump today or tomorrow showing anticipated test date and shipped date.

At this point, Flow Serve appears to be significantly ahead of schedule, already having the -- item completed. So this has some significant impacts in terms of the scheduled date. I still need to get the schedule from them as to exactly when the shipment date is; but if that moves up by a couple of months, then we may see some, you know, action out at the well to get the pump and motor installed.

There are some other issues that have come up

also, which is the review and submittal of drawings. There has been some delay in that and we're trying to work with the general contractor to kind of resolve some of these issues. So that's kind of the way this is at this point in time. And any further -- I'll still leave the completion date about March; but based upon this information, it may possibly move up. But we'll just have to wait and see.

CHAIRMAN VICTORINO: That's good news. Any questions for Mr. Nakamura?

MS. RAISBECK: I didn't understand what you said, Alva.

CHAIRMAN VICTORINO: I'm sorry, Ms. Parsons was

asking the question first. Let her ask, and then Ms.

Raisbeck.

MS. PARSONS: Let her ask first.

MS. RAISBECK: You said one of the issues was

joins?

MR. NAKAMURA: Drawings. See, whenever they do a

project like this, the manufacturer submits drawings for

approval and it has to be sent through the general

contractor through our consultant and --

MS. RAISBECK: I don't know what joins are.

MR. NAKAMURA: Drawings.

MS. RAISBECK: Oh, drawings. I couldn't understand. Sorry, I apologize.

CHAIRMAN VICTORINO: I was confused, too, he said drawings -- and you're asking -- okay. That's fine. Okay.

CHAIRMAN VICTORINO: Ms. Parsons?

MS. PARSONS: Outstanding that you're on top of this. This is really good. The question I have is basically for George. On the water testing, I think I asked you at one of the meetings, are we going to look at having the source water -- the mixture of the source waters tested at one of the labs? The AWWA, basically they suggested that

when you do this, that we have it tested.

MR. TENGAN: I'll leave the question to Alva.

MS. PARSONS: Okay, good. All right.

MR. NAKAMURA: Actually, we probably test it after
the well is up and running.

MS. PARSONS: But the mixture of it is what
they're saying. The mixtures of the sources is a real --
it's a chemistry balance. And one of the things that was
suggested when we were at the AWWA this year was to send out
the water mixtures to a major lab and let them tell us what
the mixtures do together. Because you can't just dump

source to source.

MR. NAKAMURA: Well, at this point, I didn't have plans to do that, but we can take that under advice and see what's involved.

MS. PARSONS: I think it might -- the UL is one of the big testing labs. There's a couple of different ones out there, but maybe we should check in to see what the costs are and get a feel for what the mixtures are going to do together. Because you'll know how much you're going to be putting into that and -- compared to how much of the reservoir.

CHAIRMAN VICTORINO: Alva, since we have such a

lead time right now, maybe if you can look into the matter of how much it would cost if we were to do that and come back to us and let us know. Because I think, like anything else, I mean, not that cost is the overriding thing, but we would like to know that, you know.

But I think it's important what Ms. Parsons is saying, that we do have that ultimate test by that outside lab. Because, again, if it's going to work out well, good; if it's not, then we got to make sure we protect the people.

MS. PARSONS: And the more detailed we are for

Upcountry right now, I think that it would help with our communications with the community.

CHAIRMAN VICTORINO: Thank you, Mr. Nakamura.

Moving along. Completion of Unfinished Business.

We go to item No. 7, Communications "A." There's pages 4 through 34. Communication 05-04, letter from Dan Judson dated July 24, 2005, requesting waiver of fire protection requirement. And I see Mr. Judson.

Mr. Judson, would you like to come up?

Who is going to speak on behalf of the department,

George?

MR. TENGAN: Alva will.

CHAIRMAN VICTORINO: Alva. Okay. Speak into the mic and introduce yourself, sir.

MR. JUDSON: Good morning, my name is Dan Judson. I work at Orchids of Olinda. And I guess I began -- I applied for a farm dwelling permit in December of 2003, and the issue of whether it was a second or third structure on the property was originally exempted by the water department on January 28, 2004. They said that it was exempted. It wasn't required for fire protection.

They then withdrew that and suggested that I join the structure to the existing greenhouse, which I have done

through numerous plan revisions with the planning department, and they finally signed off on my covered breezeway with the cement floor, so it won't lift off in the event of wind.

The water department then decided I was violating the intent of the law, and said no. And they are still saying no, even though in April 26, 2005, the planning department was decided to be the governing body in matters such as this regarding plans and plan review.

So, you know, you might ask, well, can a two-acre farm actually be viable economically. And, you know,

Orchids of Olinda has done it. We work hard, but we need to expand. Having an employee live on the premises close to the greenhouse will provide us with incentive economically to do better, which we need in these times like -- like every business is.

Diversified ag is repeatedly called for a goal of Maui County, and I know that we are representing of what diversified ag in Hawaii looks like as a small business. It's our livelihood. But we need to have an employee live on the premises to make it more viable.

I would like to thank Arnold Abe at the

engineering department, the whole engineering department for their suggestions during this time. And even at times as I followed their suggestions, I ran up against opposition after I formalized it with a plan revision.

I would like to ask if there's any questions from the board.

CHAIRMAN VICTORINO: At this time, I open up the floor to questions for Mr. Judson. Mr. Johansen?

MR. JOHANSEN: First of all, I think my questions mainly are going to be with the department.

CHAIRMAN VICTORINO: If you have questions for the department, let's hold up, because I want the department --

MR. JOHANSEN: I do have one question for --

CHAIRMAN VICTORINO: For Mr. Judson?

MR. JOHANSEN: -- for Mr. Judson.

CHAIRMAN VICTORINO: Go ahead.

MR. JOHANSEN: Have you offered to compensate any neighbors uphill for installing a storage tank on their property?

MR. JUDSON: His point is well taken. The water department's position is that it needs to be 20 pounds of pressure-heads standing at the standpipe. And the only way to do that in Olinda would either be to build a tank on

legs, like you see in the midwest, or for us to -- our

property runs, unfortunately, or maybe fortunately, on a

level. The uphill neighbors have declined the option of us

putting such a structure, although I did approach them.

MR. JOHANSEN: There's no price on that.

MR. JUDSON: Well, I don't know, I guess if you go

high enough there is. But this is an economic decision too.

I mean, I'm willing to offer somebody a certain amount, but,

you know, if they're going to hold out that I necessarily

have to buy the land, I can't do that.

MR. JOHANSEN: My feeling would be, any way we can

help you as a grower on this island, we would like to do it.

I would like to do it, but --

MR. JUDSON: Thank you.

MR. JOHANSEN: -- if there's a cost benefit

alternative, I was just asking you about that.

MR. JUDSON: Thanks.

CHAIRMAN VICTORINO: Ms. Parsons?

MS. PARSONS: Is this a pressure issue that we're

talking about while -- more so than the water itself?

Because you said you got a sprinkler system in there, so

we're talking about a pressure issue?

MR. JUDSON: When she's talking about the sprinkler system, I think she's referring to my offer to have the fire department approve the sprinkler system installed as a viable option to it, instead of the other plan.

The fire department doesn't have authority in this particular instance. If I didn't have a water meter, the fire department would be the overriding governing body; but because I have a water meter, the water department steps in and has the final ruling.

MS. PARSONS: The reason I'm asking, if there's a pressure issue, it's my understanding that all the fire

trucks now have pumps that are pressurized pumps that pump it out, and there's not a need from a pressure standpoint other than to refill. As long as there's water accessible, they have their own pressure; is that correct?

MR. CHANG: It depends on the situation. There's two things that kind of pop up.

CHAIRMAN VICTORINO: Wait, hang on. Before we start, this is what I don't want happening, let's stay on one side. Let Mr. Judson say what he needs to say, then I want the department to say what they need to say, and then we'll open up questions for the department; okay? If that's

all right.

So as far as you know, pressure is not an issue,
in your mind, Mr. Judson?

MR. JUDSON: Only by being told by the water
department.

CHAIRMAN VICTORINO: Any more questions for
Mr. Judson? Sensing none, I will go to the department
and -- okay, Herb, would you give the department's
standpoint, please?

MR. CHANG: To answer Ms. Parson's question --

CHAIRMAN VICTORINO: Before you answer her

question, can you give us the history, how you came to this point, and then you can answer the question, because just to make sure we're all up to the same point.

MR. CHANG: I suggest board members look at

Exhibit A.

CHAIRMAN VICTORINO: What page? Page 30?

MR. CHANG: The third figure for --

CHAIRMAN VICTORINO: Exhibit A is page 30.

MR. CHANG: This is the one that shows the overall site plan.

CHAIRMAN VICTORINO: Page 30.

MR. CHANG: Let me show you the second -- the one

dated --

CHAIRMAN VICTORINO: Go ahead, please.

MR. CHANG: 3304.

CHAIRMAN VICTORINO: 3304. Page 30.

MR. CHANG: If everybody would look at the

diagram, you notice it shows the existing structure is a

dwelling on the left side, upper portion of the page, and

there's existing greenhouse. And below that is what is

proposed as a second farm -- the farm dwelling. Sorry.

That's the new structure that's being applied for in the

building permit application.

When Mr. Judson came to the department, we tried to work with him to try to fall within the first and second dwelling exemptions, as far as the exemption from the department requiring improvements for fire protection. So we're trying to help Mr. Judson, you know, like he said, he couldn't afford to do all the improvements to the public system, so we tried to find a way to work within the rules using the first and second dwelling exemptions.

So one method we tried to work was trying to have the end result after this proposed farm dwelling is constructed, to have only two structures on the property.

Because having that, the first and second exemption works.

It would be applicable and Mr. Judson wouldn't have to do any fire improvements.

So the thought about you adding the, what you call that, breezeway or connection structure was brought up as a good solution; but unfortunately, at the time that we had discussed this option, there was a problem the department had, to determine when it was a practical solution.

One situation where the fire department wasn't really applicable was if the structure that you're trying to connect was maybe 60 feet or a hundred feet apart. So they

would still end up with two separate structures, even though it's connected by a breezeway. That's the way the department is looking at it. So that's why Mr. Judson was kind of like, at one point we said yes; one point we said no.

But in April of 2005, the department finally came up with a new procedure where we said we would leave it up to the Department of Public Works -- Department of Development Service Administration, who handled the building permits, we'll let them decide whether by attaching a breezeway, whether it's 20 feet long, or a hundred feet

long, a thousand feet long, we let them make the decision.

And so that's where we are. So if Mr. Judson can find out from the DSA whether they would take this breezeway as an addition and thereby having only two structures as a final product, we'll go along with their decision.

CHAIRMAN VICTORINO: Now, let me ask you this question, Mr. Judson. Did you not just state that the Department of Planning said it was okay for this connection to make it two structures on the property?

MR. JUDSON: The history of this, of course, is the initial drawing, which has been separate, then we went to the shade cloth to make it be an operative part of the

existing greenhouse structure, because that way we would have use of it.

At plans review, they decided, or from their point of view, they wanted to see it more affixed in the ground so that they knew it was actually a permanent connection. So they required a 6-inch cement walkway with a 4-foot wide breezeway with a permanent roof, so it wouldn't lift off in a storm like we seen roaring through in the news lately. So that's why we went to their formatting. And at that point they approved it.

In fact, technically, they approved this before we

ever went back to this plan revision because they didn't have a problem with this farm dwelling existing. It was the water department engineering suggestion that we connect it, that precipitated this whole redesign that we went through.

CHAIRMAN VICTORINO: So, Alva, if they said okay, then what is the problem?

MR. CHANG: I think it may be a timing -- maybe you can explain when did planning say okay and when did water department say okay. Was it pre-April 2005?

MR. JUDSON: Definitely. We had this thing all the way through, except for the water department in their

rechanging of their dating there, we had an original exemption on January 28th from 2004 from your very department, which you then recanted on. If you look at your packet, the letter showing that we were in. Everyone thought we were in.

It was at the shade cloth stage that I started the process of saying, "Okay, what can I do to work with you folks?" And then I went to the breezeway to work with the planning department, because they didn't like the structural grade. And it's been a process, and if I feel upset here, I'm sorry.

CHAIRMAN VICTORINO: No, that's all right. You

have the right to.

MS. RAISBECK: Mr. Chair, I would like to ask,

does anyone live in the greenhouse?

MR. JUDSON: No, not of the human variety.

MS. RAISBECK: I didn't mean plants or animals.

Is the greenhouse used as a dwelling in any respect?

MR. JUDSON: Not -- currently it's not.

MS. PARSONS: It would be like -- I'm in this

business and I do this every day. This would be like an

extended lanai.

MS. RAISBECK: Yeah, I understand. Mr. Chair, I

think the rule -- maybe Mr. Kushi can correct me. But I

thought the rule read, the second dwelling on the property

was exempt. And you don't -- in an agricultural area, I

would think this means that barns or storage sheds or

greenhouses are not considered dwellings; therefore, the

second dwelling would be exempt, as the department

originally said.

MS. PARSONS: It's the third structure --

MS. RAISBECK: May I ask, if the greenhouse is not

a dwelling, why is not the proposed dwelling, you know, a

second dwelling?

MR. CHANG: I don't understand your question.

MS. PARSONS: I think I can answer that. It's the
third structure rule we're looking at; right?

MR. CHANG: That's critical --

MS. RAISBECK: The third structure rule?

MS. PARSONS: Yeah, that Elmer put in years ago
and it kicks into this.

MS. RAISBECK: You can't have two barns and two
dwellings?

MS. PARSONS: It's the third structure, it can be
a shack and a house, and a third structure is where this

kicks -- the fire flow issue kicks in. How close are your neighbors?

CHAIRMAN VICTORINO: Wait. Mr. Johansen has been waiting to ask a question. Go ahead, Ralph.

MR. JOHANSEN: What rules define separate structures, first of all? Is there any rule?

MR. CHANG: As far as the water department's rules and regs?

MR. JOHANSEN: As far as the county rule. So we got a question whether connecting two dwellings with the affixed breezeway constitutes joining the structure to the

satisfaction of the county. And we don't know.

MS. RAISBECK: Well, excuse me, Mr. Chair, I do know that many people construct additions at a distance from their house by putting in a permanent connection. This is how many people deal with the county's regulations.

MS. PARSONS: This is not, as far as I can see -- and he's saying he has had approval. This is a normal course of business. What we're doing right now is we're obstructing him, we're seven months into obstruction. Which is not fair. I mean, if the county said the breezeway goes, we can't second-guess that, that's the planning department. I mean, that really is. And you know how I feel about fire

flow, it shouldn't be on the backs of the homeowner or the farmer.

But if he's in here and he's willing to put in a sprinkler system, and the trucks do have their own pumps, so pressure is not the issue, what are we -- I mean, Piiholo Road, let's be honest, folks, if there's a fire on Piiholo Road, you're going to be doggone lucky to have it put out before the house goes down anyway. No matter how much pressure you have. Because the trucks are going to take a long time to get there from Kula. And that's just the way it is. So why are we doing this to this gentleman?

CHAIRMAN VICTORINO: Thank you, Ms. Parsons. Any

more questions?

MR. NAKAMURA: In response to Ms. Parson's

comment. You know, this issue that we're talking about is

something that we have wrestled with time and time again.

Let me say that from the division's standpoint, we have

tried to be as much as -- give as much flexibility to how we

interpret the rules as we possibly can.

Now, however, we have to also go on how we have

treated and ruled on past applicants in situations. And

Herb has a tough job in trying to determine a lot of times

what is fair, what is reasonable, what we can allow, what we can't allow. And we go through a lot of discussions about this kind of situation, not necessarily this particular one but others, a lot of times to try to come up with something that, in essence, is in conformance with the rules; but at the same time, maybe in terms of how we interpret the rules we could offer a little flexibility.

I just want to say that, you know, it's a very difficult situation. All we can go by is what the rule basically says, what we -- how we have interpreted it in the past and be as consistent as we can. Sometimes being

consistent causes some obstructions like this, you see.

MS. PARSONS: Okay. I think we have to defer to the county planning, public works is probably a very good way to go.

CHAIRMAN VICTORINO: We appreciate that. And I think that's what we're trying to come to right now.

Mr. Okamura, you had a question?

VICE-CHAIR OKAMURA: I have a couple of questions I wanted to ask Herb. Herb, you mentioned in April of 2005 there was some kind of change that had occurred. Can you explain that, please? I couldn't follow it.

MR. CHANG: Extending what Alva was saying, when

we dealt with these proposals to have them have a connecting breezeway or hallway, we were kind of like waffling, we wasn't sure what to do. So in some instances, we said looks okay, looks close enough, let them go. We really didn't have anything solid.

So in April 2005, we said, you know, we're going to try do -- try to put the burden of when the building permit application is a new structure versus the application being an addition, we'll leave it up to the public works. I mean, we leave it up to them. We're not going to decide when it's an addition; when it's a new separate structure.

VICE-CHAIR OKAMURA: So the public -- but then, now Mr. Judson is saying that the public works says it's okay; right? They approved whatever they approved. They are saying the present layout is okay, but we're saying that it's not. So we're not -- we switched again. From April 2005 we switched, then we switched back "no" again.

MR. CHANG: I think Mr. Judson said we said no prior to 2005. So we were still in the time where we weren't sure.

VICE-CHAIR OKAMURA: But now you can say yes.

MR. CHANG: Right. If the building permit

application is classified as an addition, not a new structure.

VICE-CHAIR OKAMURA: Did the building permit get approved as an addition?

MR. JUDSON: It was approved as a separate farm dwelling initially by the planning review plan check. And the total impediment to this the whole time has been the water department.

CHAIRMAN VICTORINO: I don't think that's the question.

VICE-CHAIR OKAMURA: The question was, right now,

if you present your plan to the public works, they approved
it?

MS. PARSONS: Only if it gets signed by water. I

mean, we don't know --

CHAIRMAN VICTORINO: Wait, hang on. Let

Mr. Judson answer the question.

MR. JUDSON: If we submit a covered roof, they

have approved the plans as drawn.

CHAIRMAN VICTORINO: That one there; not this last
one.

MR. JUDSON: They don't like the shade cloth one;

it doesn't look permanent to them. They want to see a

permanent structure connecting this farm dwelling.

VICE-CHAIR OKAMURA: Are you willing to do that?

MR. JUDSON: Definitely.

VICE-CHAIR OKAMURA: But now the water department switches and says no. Herb, you're saying April 2005, the new procedure was that you would -- whatever you decide depended on public works?

MR. CHANG: Yes.

VICE-CHAIR OKAMURA: So now public works has given, it seems to me, has given the okay, but you still holding it up.

MR. CHANG: Not really. What we need to see is if he can present -- if Mr. Judson can present a building permit application -- I don't know if you have to revise it to have it classified as an addition and not a separate structure, if we can get that accomplished, we would be able to sign off.

MS. PARSONS: It's a new building permit down there at the bottom --

CHAIRMAN VICTORINO: Stacy -- go ahead --

VICE-CHAIR OKAMURA: I can ask later.

CHAIRMAN VICTORINO: Go ahead. I just want to

keep some order. If you're going to ask a question, go ahead.

VICE-CHAIR OKAMURA: Okay. Couple of things. I agree with Sally that -- well, the rule, the way it seems to be written is that two dwellings are allowed. But Ginny mentioned the third structure rule, so I would like to see the third structure rule. And if not, we have to go by the second dwelling rule. And then we need to have a definition of dwelling.

Can I ask corporation counsel for that information? Not necessarily now, but --

MS. PARSONS: You got the third structure rule in there.

VICE-CHAIR OKAMURA: Yeah, the third structure rule and the definition of dwelling.

MR. KUSHI: Mr. Chair, I'm not sure what you're talking about, the third structure rule.

MS. PARSONS: I can find it if you give me your book. I have to work with it, so I can find it.

MR. KUSHI: Okay, why don't Ms. Parsons find it.

CHAIRMAN VICTORINO: In the meantime while we're doing that, Ms. Crivello?

MS. CRIVELLO: I guess I'm going to try to get

clarification. What I'm hearing the department is saying, that at one point they identified it as a third structure, and then after that they identified it -- if the Department of Public Works identifies it as a second structure, you can go according to that building permit approval; is that how I understand it?

MR. CHANG: You identify it as a -- a second structure as an addition?

MS. CRIVELLO: Right. Right. As an addition. Because then it's no longer considered a third structure.

MR. CHANG: But we're working with two dwellings.

MS. CRIVELLO: What I'm hearing is that you're waiting for the actual additional permit that -- or whatever has to be added on to say this is an approved structure as such for existing?

MR. CHANG: Yeah. To rephrase, the department is waiting for the permit application to be classified as the dwelling as an addition.

MS. CRIVELLO: Right. Okay.

CHAIRMAN VICTORINO: So let me just -- and for what Ms. Parsons says, so what you're saying right now, if he does whatever that last request, and then is that

something feasible, and it's not going to be another big hoop-dee-dah and take forever and prolong this whole agony, or is it something very simply done that we can get this approved?

MR. JUDSON: I'm not sure.

MS. PARSONS: Can I just interject something in here?

CHAIRMAN VICTORINO: Yes.

MS. PARSONS: A dwelling is a place where you live; a structure is a garage or a storage unit or a --

CHAIRMAN VICTORINO: Non-inhabitable facility.

MS. PARSONS: -- greenhouse. So our rule really

flies in the face of planning. Planning looks at dwellings as being homes, and they don't really care about our third structure rule when they come to doing their review. That's our job. We have to look at the plot plan, then we have to look to see what's on there and we have to review that in the department.

So to call this an addition, it's an addition to what? To the greenhouse? Because they don't look at that. To them it's going to be a second dwelling and the greenhouse is the addition, is really the way they are going to look at it. So you can't get him to go back and revamp

the application to say "addition."

You guys can look at it as saying, well, this is a -- it's something you're going to have to clarify in the department, that the greenhouse is an addition to his dwelling.

CHAIRMAN VICTORINO: Ms. Raisbeck?

MS. RAISBECK: Yeah. I heard Mr. Judson say that his original plan, which had a separate dwelling, it had the original dwelling, the greenhouse, a separate dwelling with garage, that the planning department approved that originally.

MR. JUDSON: That's correct.

MS. RAISBECK: And the only reason he had to do this legal fiction of connecting is because of the water department.

MS. PARSONS: Exactly.

CHAIRMAN VICTORINO: That's correct.

MS. RAISBECK: So what my suggestion would be is that the board waive the third structure rule for Mr. Judson. In this case, we waive the third structure rule, in which case he doesn't even have to build the connector.

VICE-CHAIR OKAMURA: Can I ask --

CHAIRMAN VICTORINO: Go ahead.

VICE-CHAIR OKAMURA: Herb, is there a third

structure rule that you know of?

MR. CHANG: There's a rule that exempts the first

and second dwelling from the department requiring fire

protection improvements.

VICE-CHAIR OKAMURA: You don't have any third

structure rule?

MR. CHANG: I think that is the same.

MS. PARSONS: Yeah.

MS. RAISBECK: It's the same.

MS. PARSONS: It's the fire flow issue thing. If you go into a third structure on the property, then you open yourself up to having to fix the fire flow issues within the neighborhood. Whatever the department deems that we have to do, which is what I've been fighting for, for four years.

VICE-CHAIR OKAMURA: The first two dwellings are exempt.

MS. PARSONS: Right. The first two dwellings are exempt, but it's a structure rule, it's not dwelling.

VICE-CHAIR OKAMURA: It says "dwellings" in the rule.

MS. PARSONS: But it's the third structure, is how it reads. It's the third structure, not the third dwelling. It's the third structure. The first two dwellings on any property -- all right. When you put a building permit in, the water department on the first dwelling does not even review it. On the piece of property if it's a -- an empty piece of property, the water department does not review any of the applications on that.

When the second dwelling comes up, they do. When the -- if there's a -- if there is another -- a separate garage or storage bin, that becomes a third structure on the

property and the fire flow kicks in with that review of the second dwelling. Does that make since?

CHAIRMAN VICTORINO: Yes.

MR. JOHANSEN: Mr. Chair, can we have the wording of that rule read into the record so that we know for sure whether it states "dwelling" or not? Because if it does state "dwelling," that has significance for us.

MS. RAISBECK: Can you find the third structure rule, Ginny?

MS. PARSONS: This is the one we go by.

CHAIRMAN VICTORINO: This is the one, okay. So

this is Section 2, Section 14-4-0101(E), water service regulation is hereby amended to read as follows: E, fire hydrants are necessary -- and necessary pipelines and appurtenance to be installed by the developer in rural, residential, business, industrial --

VICE-CHAIR OKAMURA: This part here. The first part, Section 1.

CHAIRMAN VICTORINO: Okay. The purpose of this amendment is to revive the Section 14-4-0101(E), water service regulation is required to developments in agricultural and rural districts to install fire protection

is to be exempt from the first and the second --

VICE-CHAIR OKAMURA: And to exempt --

CHAIRMAN VICTORINO: -- and to exempt the first
and second dwelling units from fire protection requirements.

You guys telling me read different sections, so
I'm sorry, I apologize. I'm only told to read, I read.

MR. JOHANSEN: You have the applicable rule.

CHAIRMAN VICTORINO: Well, now Ms. Parsons is
saying no. You heard what I read.

MS. RAISBECK: Meanwhile, could I ask Herb --

CHAIRMAN VICTORINO: Yes.

MS. RAISBECK: If the third structure rule is a

Department of Planning or Public Works rule -- or is it solely a water department rule, the third structure rule?

MR. CHANG: That rule is a water department rule --

MS. RAISBECK: I know that one, but that's not a third -- that says nothing about a third structure.

MS. PARSONS: It's only a water department rule.

MS. RAISBECK: All right. If it's only a water department rule, we have the authority to waive that for good and sufficient calls. And it seems to me that if we could waive the third structure rule, then the first and

second dwelling exemption kicks in, and Mr. Judson doesn't have to build this fictitious -- this connector that is expensive and unnecessary.

CHAIRMAN VICTORINO: Mr. Okamura?

VICE-CHAIR OKAMURA: But like you said in the -- at the beginning, if this exempts the first and the second dwelling and the dwelling is defined as a place where people live, the one -- the new building he wants to build would be the second dwelling, which would be exempt from fire protection. So I don't see a problem if we follow this rule.

MS. RAISBECK: They were applying a different rule

that says if you have three structures --

VICE-CHAIR OKAMURA: There's no rule like that.

MS. PARSONS: Do you know which one it is offhand?

MR. CHANG: That's the one that Mike read.

CHAIRMAN VICTORINO: But it says first and second

dwelling.

MR. CHANG: That's what we're working off, it says

the first and second dwelling.

VICE-CHAIR OKAMURA: But if you're defining

dwelling as a structure, but it should be a dwelling, it

says dwelling in this.

MS. RAISBECK: Uh-hm.

MS. PARSONS: I don't think that's the one we're
working on.

MR. CHANG: I can give you a little more history.

VICE-CHAIR OKAMURA: Okay -- sorry, go ahead.

MR. CHANG: It goes back to this rule that Chair
Victorino was reading. To even help further the public
assisting them in building what they want to build on
properties, the department has allowed -- I'll give an
example.

Say an applicant comes in to build a -- like this

one, a greenhouse on a property that already has one dwelling on it, nothing else, we would allow the second exemption to be used up not only by dwelling but another structure. Like a garage, greenhouse. As long as the fire flow demand of this new second structure did not exceed the existing dwelling's fire protection requirements.

So I think this is what happened in this particular case. The greenhouse took up the second exemption.

VICE-CHAIR OKAMURA: It took the second exemption.

MS. RAISBECK: Excuse me --

CHAIRMAN VICTORINO: Mr. Johansen has a question.

Ralph?

MR. JOHANSEN: As a matter of legal definition, a dwelling is a place where people live. And I can't see why, unless they changed the wording of the rule, this rule applies in this case.

CHAIRMAN VICTORINO: Ms. Raisbeck?

MS. RAISBECK: I was going to say that the situation Herb just quoted, in which someone builds, say, a storage shed, and they interpret that as using up the exemption for the second dwelling, to me that is totally a

wrong interpretation and not fair, and we certainly should not be bound by that interpretation of the department, when the rules says clearly it's the second dwelling that is exempt.

CHAIRMAN VICTORINO: Okay.

MR. JOHANSEN: May we ask corporation --

CHAIRMAN VICTORINO: I was going in that direction. Mr. Kushi, as hearing this discussion, what is your interpretation when the rules clearly states a second dwelling, the definition of dwelling being an inhabitable location, in other words, someone can live in it?

MR. KUSHI: Mr. Chair, let's put it this way. The department did ask me, I believe, within the last two years to clarify this and I believe I sent you guys a memo.

CHAIRMAN VICTORINO: That's possible. I apologize.

MR. KUSHI: Not to the board, but to the internal department. The rule as referenced and as you stated, it says what it says. It says first or second dwellings. You have a definition of what a dwelling is in your rules also. And it's found in Section 1-2 under definitions.

However, you know, not to defend the department, the department did what they did, and we have had instances

where a second building permit -- building permit for a

second structure came up, the department used that

exemption, be it a barn, a storage shed, and strangely

enough it becomes a second cottage later on.

And when they apply -- the landowner applies for a

second, a third structure, you know, then we're caught.

Then the landowner claims, Now I'm using my second dwelling

exemption. So the department has been caught in those

instances. So, you know, you have to understand the history

of this.

CHAIRMAN VICTORINO: And I can appreciate that.

And I know, like any other rule, somebody always will try to skate the rule. I have seen that happen. I've seen farm buildings turned into dwellings. I lived on this island all my life, I've seen this happen. So I defend the department in that respect. No offense to you, Dan, we've known each other for a long time. But that does happen.

But to carte blanche say that's the rule for everybody, especially if he's putting in a greenhouse as the second -- and the greenhouse is not inhabitable --

MR. KUSHI: Not now.

CHAIRMAN VICTORINO: I don't think you can inhabit

a greenhouse, but I'm not an expert in that area, you know.

Maybe down the road he can switch it and make it into a bed
and breakfast with the plans. I don't know.

MR. JUDSON: That's not my intention.

CHAIRMAN VICTORINO: Yeah, I'm just throwing
something out there.

Anyway, let me read under the amendments or rules
and regulations of the Board of Water Supply of the County
of Maui. This would be on page 44 of our index here. And
it goes under F. New structures with approved building
permits are required to apply for separate water service or

additional water service based upon the director's estimate

as to the size of service required for the structure. Okay.

You know, everything is so different between books.

MR. JUDSON: May I speak?

CHAIRMAN VICTORINO: Go ahead.

MR. JUDSON: We had to revise our worksheet

downwards because we had overused our five-eighths meter

water allocation. So you have certain credits and you're

allowed a number of fixtures, etc., so we had to adjust

downward to make that happen. And the department agreed to

our adjustment and we had to provide proof of it

photographically.

And so from that point of view, this existing dwelling plus the farm dwelling are within the allowable usage amounts for five-eighths meter. Since then, we have applied for a larger meter. You are only allowed to go up one size per application. It's on file that we applied for a bigger meter.

CHAIRMAN VICTORINO: Like three-quarter?

MR. JUDSON: I think that's the next step. I'm not sure.

CHAIRMAN VICTORINO: Yeah, three-quarter inch. I

know we discussed this matter and I think we're all kind of
at a standstill, so I would now move if somebody wants to
make a motion in some --

MR. JOHANSEN: I have another question.

CHAIRMAN VICTORINO: Okay. You have another
question.

MR. JOHANSEN: The whole business about a second
sprinkler and a backflow valve, we didn't discuss that. Is
that something relevant here?

MR. JUDSON: I can speak to it if you care to --

MR. JOHANSEN: Is it going to be dispositive?

MR. JUDSON: I was willing to comply with the farm

sprinkler protection within the building, the same way you have in any commercial structure, and that would be operative when the temperature got to be 140 degrees inside the structure, the sprinklers would kick on and spray water.

I was willing to do that as a compromise, because I didn't have room for a 30,000 gallon tank that would be uphill enough to provide the standing pressure-head requirements of the department.

The backflow preventive was brought up because I have to have a backflow preventive after my meter already.

And if the issue of water potability -- or portability was

the issue, I would probably install another backflow preventive by the fire sprinkler, so that water would never return to the drinking water.

MR. JOHANSEN: And was that acceptable to the department?

CHAIRMAN VICTORINO: Herb, was that acceptable to the department?

MR. CHANG: No, the department does not allow -- approve the substitution of standpipes along the road by automatic sprinkler systems. We have not accepted that.

CHAIRMAN VICTORINO: So that area is still only

standpipes, too, right, Mr. Judson?

MR. JUDSON: Well, your nearest standpipe, as you see, you know, multiple thousands of feet away. And that's where I would have to bring down Piiholo Road a 6-inch line at many thousands of dollars per foot, I'm sure. And far beyond the cost of the dwelling by multiples.

MR. JOHANSEN: My question is, what is there in the department water system standards that installing a second backflow valve doesn't comply with? What's the safety risk?

MR. CHANG: In the case of automatic sprinklers,

the -- you could have a system that let's the water stand

by. A standby could be six months, two years. So to

prevent the migration of stagnant water back into the public

system, we have that device, backflow device.

MR. JOHANSEN: This is a technical question. I

don't know why a second backflow valve wouldn't protect

public safety. I don't understand that.

MR. CHANG: If the system -- if the department did

allow automatic sprinklers, we would require at least one

backflow preventer. If it's set up right, he could probably

just get away with just one.

CHAIRMAN VICTORINO: Okay. I guess everybody has

asked the questions they wanted. Is there a motion on the floor?

MS. RAISBECK: Well, I would -- I don't know if this solves the problem. My approach would be to excuse -- to waive -- if there is a rule about having three structures, to waive that rule and to then allow the exemption for the second dwelling to apply to the proposed dwelling that Mr. Judson wants to construct.

And then it would -- to me, it would be his option whether he goes with the approved building plan using this unnecessary and expensive connector or whether he would be

able to work it out that he could go back to the original design that he says was approved by -- but that would be his option, to do whichever of those ways he thought would be fastest and most convenient for him.

But I would like to take out of the way any roadblocks that the department is putting up to Mr. Judson's building permit.

MR. NAKAMURA: Mr. Chair, may I --

CHAIRMAN VICTORINO: Sure.

MR. NAKAMURA: Before you folks vote on what you want to do, I would like to just advise you or make you

aware that, you know, we have had to make decisions like this in the past, and if you were to waive this rule for Mr. Judson, what do we do about others that have been forced to put in improvements because we have enforced that rule?

And I'm sure if I go back into history books, we can find some of those. And, you know, what if they came back to the department and asked the department to pay for those improvements that they did make under the rules when we waive this? So there's some other implications that you folks need to be aware of or realize that, you know, what kind of implications this would have.

CHAIRMAN VICTORINO: Before we -- and that hasn't

been seconded, so there's no formal motion on the floor.

Before we do something, I get two questions.

Number one for you, Dan. Are we close enough, and Alva, to what has been said with the planning, the rules, April 2005 and all that, if public works, planning says it's okay, do you feel that would be sufficient, based upon what you had stated, that rule or that interpretation of the rule, that we could allow Mr. Judson to move on, on his project?

MR. CHANG: I would say yes, but --

CHAIRMAN VICTORINO: Okay. Again, I guess the

"but" will always come in. So what I'm saying is, with what

we have right in front of us now, do you feel confident that we could get this project running?

MR. CHANG: I think if he could resubmit an application showing it's an alteration and check off alteration on the application --

MS. PARSONS: That's --

MR. CHANG: -- we would sign off.

MS. PARSONS: I can't deal with that.

CHAIRMAN VICTORINO: I'm just looking for the most expedient way of solving this situation without making a big -- again, I agree with the third structure, once we

waive something, then we open Pandora's Box, then everybody will come. I'm looking for an alternative solution.

MS. CRIVELLO: Mr. Johansen has his hand up.

CHAIRMAN VICTORINO: I'm sorry, you're always waving your hands --

MR. JOHANSEN: Well, I'm just -- when it says dwelling, either the ordinance has changed or the rule has changed or you can apply the rule as it's written. And I don't care whether the department has ruled in the past that a dwelling is the same as a structure.

We're invited to make a rule which applies the

existing rule as it's written, and if that affects people who have already had to comply with the department's interpretation, that shouldn't make any difference to us. The important thing is, if the county council wants to change the rule, fine. Until and unless they do, let's apply it as it's written.

CHAIRMAN VICTORINO: Okay. Mr. Okamura?

VICE-CHAIR OKAMURA: I think the role of the board is to -- for appeals and to make the exception on a case-by-case basis. So I think people that come in and say, okay, the board passed this so you have to do this, to the

engineers, I don't think you need to follow that. Because Mr. Judson is asking for an exception in this case or is appealing this case. And so every case is different.

We need to deal -- the board can deal with a case -- deal with it on a case-by-case basis. So I don't think we need to worry about making -- setting a precedent in that sense. Maybe the board has to worry about this, maybe not. Thank you.

MR. JOHANSEN: Just to follow up on what I said.

If no one else has contested this matter before and this is the first time it's being contested, it's the same thing as when you take a case to court on appeal. However the lower

entity has ruled in the past, once it comes to a decision at an appellate level, that decision applies to everything.

And I think we're in the same situation here.

MS. PARSONS: You know what I recall that we've had -- where we've had this issue come up, it has been more in subdivisions than it has in an actual residential issue. I mean, we only have a few of them that we have kicked that in and they did have structures on the property. One of them was in Lahaina. I can remember it's got five units and they have two dwellings -- three dwellings on the property and one to build a fourth. So those things I can see.

When it comes to this, this is an individual case, he clearly has a greenhouse. I mean, and he's building a second farm structure. And that breezeway, we used to be able to attach the breezeways in the old days, up to maybe about two years ago, with just -- a beam went across and we attached it. Now they make a complete enclosure with concrete and walls and a roof and everything. Which is a lot of money. It's a big expense.

If you figure he's got -- he's got to have a breezeway, it's got to be 4 feet and it's 4-by-6 feet, that times a hundred and -- maybe a hundred dollars a square

foot, it's a lot of money. So if we don't -- if he doesn't have to do that and we can help him along that way, too, I think this is one of those cases where it is an exception.

CHAIRMAN VICTORINO: Mr. Kushi?

MR. KUSHI: Mr. Chair, I think I better say this.

This issue has caused the department much -- a situation.

What you have here is, either way you go, you have a

property, a two-acre property, a farm, ag property, he has a

farm dwelling on it existing, he has a greenhouse, a second

structure, not second dwelling, now he's applying for a

second dwelling, which clearly falls within the rules.

If the department grants the second dwelling permit, signs off, what happens to the greenhouse? That's the third structure. So does the department now go back and examine its water requirements for the third structure albeit after the fact? We still have three separate structures.

Now, your solution, which I think will be proper, is to just approve a second dwelling with a connection, which planning department says is correct. Now, when -- in the future he comes for a third structure, be it a barn or another farm dwelling, then the requirements may change.

MR. JOHANSEN: Mr. Chair?

CHAIRMAN VICTORINO: Yes, Mr. Johansen.

MR. JOHANSEN: I think the appropriate thing to be done here is for the county council to consider whether they want to change this rule to say "structure" and define the structure in such a way that the public safety requires that a third structure have the necessary fire protection. And that way you'd eliminate all the ambiguity. Until that time, I think we ought to apply the rule that's written.

MR. KUSHI: Mr. Chair, to that I say fine and well. If you approve this as a second dwelling without mentioning that greenhouse, the department would have every

right to go back and recalculate the third structure. The
greenhouse.

MS. RAISBECK: Mr. Chair, that's why I suggested
that this board vote to waive the third structure rule in
this case. And if it is waived, there's no need for the
department to go back and figure out fire for a third
structure if we have waived that third structure rule.

MR. KUSHI: Mr. Chair, there's no -- and as
Mr. Chang has stated, there's no set third structure rule.
They are using that rule or interpretation by reason of
omission from the existing rule. The existing rule says

first and second dwellings are exempt.

That being the case, if there's a third dwelling,
it's not exempt. So there's no written third structure
rule.

CHAIRMAN VICTORINO: This is a challenging one,
yeah. Ms. Raisbeck?

MS. RAISBECK: Are you saying that it is the
department's interpretation that -- because if the first and
second dwellings are exempt, why does the third structure --
why is it third if the first one and two are exempt?

MR. KUSHI: Mr. Chair, if the first and second

dwellings are exempt by ruling and nothing about a third

dwelling or structure is mentioned, then it's an additional

structure. And the department through your quoted rule must

review whether the system is adequate for protection of the

third structure.

MS. RAISBECK: Then I will rephrase my suggestion

to be that this board will waive the fire protection

requirements for the greenhouse structure on Mr. Judson's

property. Case by case, we are waiving the fire protection

requirements for the third -- for the greenhouse structure

on Mr. Judson's property.

MR. SMITH: I have a question.

CHAIRMAN VICTORINO: Yes, Mr. Smith.

MR. SMITH: If we waive it, and then he sells the property five years or so down the line and the greenhouse has been used as a dwelling, where does the liability fall?

CHAIRMAN VICTORINO: The question has been asked, do we have a response, please?

MR. SMITH: Does it fall back to us?

MR. KUSHI: Well, let me try to think about that.

If the greenhouse is attached by a breezeway, which the

applicant says the planning department will approve, then

it's one structure. It's a dwelling with an extension to a

greenhouse.

MR. SMITH: An addition.

MR. KUSHI: And subsequently he sells it and they

don't do farming and they --

MR. SMITH: They use it as a dwelling.

MR. KUSHI: -- use the greenhouse as a dwelling,

it's still a second dwelling. Unless they sever -- unless

some planning inspector comes and says these are two

separate kitchens, then it becomes a third dwelling. Then I

would think there might be some zoning violations; there

might be some water system inspections. I really can't say.

MR. SMITH: That's what I mean, from the water --

MR. KUSHI: Anyway, these are the scenarios that we may get into. But not to confuse the issue, just to let you know what the department is going through, why these things are done like that. But what the applicant is proposing, I believe Mr. Chang is saying that if he does A, B, C, they will sign off.

VICE-CHAIR OKAMURA: May I make a quick comment?

CHAIRMAN VICTORINO: Yes, Mr. Okamura.

VICE-CHAIR OKAMURA: I think it would be easier if the department were a little bit more -- the interpretation

of this -- of this particular rule, wouldn't it make it

easier in the future if they are a little stricter in the

interpretation of this rule?

MR. KUSHI: That's what we're trying to do.

VICE-CHAIR OKAMURA: But they've been lenient in

that if there's one dwelling and somebody wants to build a

greenhouse, they would consider that to be the second

dwelling and exempt it from the fire requirements.

MR. KUSHI: As the second dwelling.

VICE-CHAIR OKAMURA: Yeah. So maybe they

shouldn't be doing that, just so that there's no confusion

in the future, and change the rule. I really don't know.

Change the rule in the future.

CHAIRMAN VICTORINO: Mr. Johansen?

MR. JOHANSEN: Just to clarify in my mind, would you reread the rule definition of a dwelling?

MR. KUSHI: Mr. Chair, for the record, the definition is found in Section 1-2 of the rules. It's under dwelling unit, it states, Any building, addition, extension, or any portion thereof which is designated or intended for occupancy by one family or persons living together or by a person living alone. That is the definition of a dwelling unit.

MR. JOHANSEN: So the question is, what's the intention? Right? And that's the subjected question to be answered by the applicant, or is it a question to be answered by the department?

MS. PARSONS: Can I see the building application, please? What page is that?

MR. CHANG: I don't have the pages.

CHAIRMAN VICTORINO: Okay. I think we've come to a point where -- I'm still waiting for a motion so we can act one way or the other on it.

MS. CRIVELLO: Okay. I would like to put in

motion that -- for discussion purposes, that -- how can I
word this -- that we have in accordance to what the
department has said, dependent on the building permit from
the Department of Public Works as to how it's going to
define whether it's considered the second dwelling or not --
and an exemption, then we apply that rule.

MS. RAISBECK: I'm sorry, I didn't follow.

MS. CRIVELLO: I'm trying to --

CHAIRMAN VICTORINO: Try state the motion and that
way we can take it from there.

MS. CRIVELLO: Okay. I move that we go according

to the department's recommendation in having the client,

Mr. Judson, work through the building permit application

with the Department of Public Works and be in accordance to

their -- they defining that as a second dwelling, and then

the rule applies as an exemption of the second dwelling.

CHAIRMAN VICTORINO: Is there a second to that

motion?

VICE-CHAIR OKAMURA: Second.

MS. PARSONS: Discussion?

CHAIRMAN VICTORINO: Now discussion, go ahead.

MS. PARSONS: The only problem that I see with

that is the -- in our interpretation and the planning

department's interpretation. If they have deferred it to the planning department, the planning department says that they will go forward with it, and not, you know, not to offset, because I understand what you want to do too. But if the planning department is willing to go through with it, that should be sufficient and -- without altering the application.

Because I'm not sure -- there's another rule that kicks in on the size of your buildings that you can have on the size of the lots. And so you can have -- your main house can be as big as you want it to be, and your secondary

dwelling goes along with the size of the lot. So that could interfere if he had to change that. So saying what you're saying, we might run into a little bit of a problem.

I like the fact that you deferred it to the department, to the planning, public works, and if we're going to make a motion here, that it should be that whatever they say we go along with at this point, and no alterations to the application.

CHAIRMAN VICTORINO: Ms. Raisbeck?

MS. RAISBECK: Mr. Judson, what's the size of the proposed farm dwelling?

MR. JUDSON: Well, we're allowed to have a thousand square feet as the actual area, and then we're allowed the storage area for the farm. My concern is that the water department per the engineering's point may come back and say, Well, you know what, we're going to put some imposition now on your already permitted greenhouse, and they may pull my permit for some reason, deciding that I didn't comply with that.

And so then I'll be in a real Catch-22, because now my formally legal greenhouse that was used as a dwelling under their requirement to get it approved in the first

place, they may decide, You can't have that greenhouse anymore. You can have your farm dwelling.

Again, if I could do a field crop or cattle ranch, I wouldn't even need the structure. I can't do that. I need a structure to operate my business. If they will not allow my existing greenhouse to be exempted from the third structure requirement, I'm concerned that the planning department will say, Well, you didn't need to connect it anyway, you can go ahead and leave it separate like you originally got approved back here. Because I did originally get it approved. And then the water department will go, Well, then your greenhouse has got to go.

MS. PARSONS: See, you could put your breezeway into the existing dwelling to the greenhouse and probably not have any problem if we went with what he was saying. But the way that it's sitting right here, this makes this structure huge and your secondary -- and your existing house is already large. So, you see what I'm saying?

They're looking -- the planning department is looking at this existing greenhouse as being a storage area. And on a farm dwelling -- on a farm acreage you can make that huge. But you can't do that -- if it was a residential property, you couldn't do that.

MR. JUDSON: Right.

MS. PARSONS: So, I mean, maybe the only way it would go through with what he wants to do, is your breezeway attachment is going to attach to the existing home and your secondary farm dwelling is over here. It's smaller, it's your thousand square foot.

MR. JUDSON: So your point, then, is, if I run my breezeway from my A to B right now, my existing to my -- and then I leave my farm dwelling alone, that is an interesting retroing (sic) of the plan. But I don't know how -- I mean, I can redraw my existing dwelling and show a connection

using the same engineering criteria that we used for this breezeway, connect those two and then make this -- I mean, we're split in -- there are so many ways to interpret this.

Because you're right, if I go back and I mention this whole existing greenhouse and I go wall by wall, I'm going to put a giant structure, I'm going to put a tile roof on it, and I'm going to have me a 12,000 square foot house in Olinda. I live next door to Mr. Krueger, his is 7100, I guess I might get into a competition with him.

MS. PARSONS: Legally you could do that. Legally that whole thing could attach to your main house right now

and you could legally do that and there's nothing anybody could say. That's just an addition to your main house.

MR. JUDSON: There's nothing I could say, that's not my intent.

MS. PARSONS: No. No. I'm just saying -- I'm just telling you it's a goofy situation.

MS. RAISBECK: Mr. Chair?

CHAIRMAN VICTORINO: Yes.

MS. RAISBECK: I think what we're all bending our minds to is finding devious ways around the way the water department is interpreting an existing rule, which -- and the fear that once the second dwelling is recognized as a

second dwelling, then the department will start imposing conditions based on the greenhouse as a third structure.

This is why I'm trying to come up with some kind of wording, and I could use help here, that will accomplish what we want at the least trouble to Mr. Judson and the

least cost to Mr. Judson. I hate to see him spend \$24,000 to put in a connector that has no earthly use and actually interferes with the movement of vehicles on his property.

And can't we do that by simply waiving whatever the department is saying our rules that are being applied, in my opinion, incorrectly?

CHAIRMAN VICTORINO: Mr. Kushi?

MR. KUSHI: I know there's a motion on the table and it's been seconded. After brief discussion with the director and Mr. Chang, the department, if this motion goes through and if the applicant does what he's proposing to do, which is to connect by a breezeway, a concrete breezeway, a second farm dwelling to the greenhouse, the department would then consider that as the second dwelling entirely.

CHAIRMAN VICTORINO: Okay.

MR. KUSHI: And they will not go back and recalculate the figures for the existing greenhouse.

However, in the future, if any barn, any shed, any other greenhouse comes about, that's the third structure, then the department will then recalculate -- do its calculations again.

CHAIRMAN VICTORINO: That's fair.

MR. JUDSON: If that's the truth, then, if I wanted to add on to my existing house now, I would no longer be allowed to do that?

It might make more sense to do what was proposed, since this is only 50 feet right here, to make this existing house connect to the greenhouse and allow the original

planning department's approval of the original submitted plans to stand. And I would retro an installation of a breezeway between the closer of the two and not affect my ingress and egress, as was correctly pointed out.

MR. KUSHI: Department has no position on that --

CHAIRMAN VICTORINO: Okay. I want to settle this before I do anything else. I understand. You think you'd be able to do that and --

MR. JUDSON: Connect the existing structure to the existing greenhouse with a breezeway --

VICE-CHAIR OKAMURA: And that would still be --

MR. JUDSON: I will submit a new application for

that individual, along with the revised original set of drawings for this, and then not have my farm dwelling end up being lumped together with my structure and have my farm dwelling break out to a thousand square foot limit that technically applies.

Because this house is allowed to be as big as it wants, it's the main dwelling. If I want to make it a mansion, I can. So I don't want to be bound by this and then later on say, Well, you can't add on to that because -- it's just -- this seems the more direct path.

CHAIRMAN VICTORINO: Herb, would that be feasible

and acceptable as presented to you?

MR. CHANG: Going along with the April 2005 procedure, in this process of connecting the existing dwelling and existing greenhouse, would there be a department, whether it's public works or planning, to be able to say by connecting the two it's one structure?

CHAIRMAN VICTORINO: In other words, you're saying yes, based upon all the department's approvals?

MR. CHANG: If you're saying the end result is two structures, then there's no problem.

VICE-CHAIR OKAMURA: It depends on the Department

of Public Works, depends on what they say if you do that.

MR. JUDSON: In a sense, I need to return to my original footprint and make the breezeway come over here on the existing dwelling and resubmit it?

MS. PARSONS: That's what I would do.

CHAIRMAN VICTORINO: That sounds like a plan. And maybe the fastest, most expedient way, Dan, to get this all taken care of. And making yourself what I call in a safe haven, not getting tied down on what we stated earlier.

MR. JUDSON: Uh-hm.

CHAIRMAN VICTORINO: The motion is still basically

to follow the rules as applied. So you would be just

switching from your new structure to the existing structure.

That's all we're doing.

MS. PARSONS: Yes.

MS. RAISBECK: I would like to have Stacy's motion repeated because I'm not sure it covers it.

CHAIRMAN VICTORINO: Okay. I'm going to have to ask you to repeat it. You didn't want to do that.

MS. CRIVELLO: You want to give me a break, because this is all just exchange, I mean, it's going to take me awhile. We can do it if you want to. What I'm basically saying is, we go according to the department

recommendations to work with the planning department as to see how they determine if it's two dwellings, and then that --

MS. PARSONS: Without any extra caveats.

MS. CRIVELLO: Yeah. And Mr. Judson would go through that permit process.

MS. RAISBECK: My opinion is, it's a little ambiguous, and I think in ambiguous situations we don't quite know how the department is going to come down on it.

But I'll vote for it if the rest of the people feel that it covers it --

CHAIRMAN VICTORINO: Would you want to add an amendment to make sure that if all rules are followed, then the department would then --

MS. RAISBECK: I don't know how to phrase it, frankly, Mike. I don't know how to phrase it. I'm not sure how to phrase it. Sorry. I'll vote for the motion if other people feel it covers it adequately.

CHAIRMAN VICTORINO: The last thing I'll do is I'll turn to Mr. Tengan. After hearing everything that has been said, Mr. Director, do you feel with this motion relatively certain if all the rules were followed as far as

the second structure, meaning from the breezeway --

basically, I think what we're determining, Dan, is from the
old structure to your --

MR. JUDSON: Existing greenhouse.

CHAIRMAN VICTORINO: -- existing greenhouse, not
from the new structure, from the old structure, put the
breezeway in, making that the second -- the farm dwelling
would be the second dwelling on the property, complying with
all the rules --

MS. CRIVELLO: Just to clarify. The reason I say
that is because if the Department of Public Works will

define or determine if that is the second dwelling --

CHAIRMAN VICTORINO: With all that, Mr. Tengan, do you feel relatively confident that we can move on Mr. Judson's request?

MR. TENGAN: Yeah, I think that would be a good solution, you know, provided that planning and DSA would sign off on the permit and that they would consider the existing dwelling and the greenhouse as a single structure, then the farm dwelling could be considered the second dwelling and it could be waived under the rules. So I see that as a good solution to the issue here.

CHAIRMAN VICTORINO: Mr. Judson, are you

comfortable with that alternative?

MR. JUDSON: If we can put that in a motion.

CHAIRMAN VICTORINO: Basically, that's what the motion is.

MR. JUDSON: I feel that's a very fair solution.

VICE-CHAIR OKAMURA: It all depends on what happens with your application with the planning and public works. You can come back to us later.

CHAIRMAN VICTORINO: Hopefully it will be approved and we can move on.

MR. KUSHI: Mr. Chair, clarification. Just

one connection?

CHAIRMAN VICTORINO: One connection.

MR. KUSHI: Not going to connect two --

CHAIRMAN VICTORINO: No.

MR. JUDSON: We're going to go back to the

original plot plan as originally submitted, with on the plot
plan the existing dwelling having the proposed breezeway
that was approved by their drawing and their specs as far
as --

CHAIRMAN VICTORINO: Mr. Johansen?

MR. JOHANSEN: Just one thing. I would recommend

at some point here that we recommend to the county council,
since the rules are in the process right now of change, that
they change this rule to eliminate the ambiguity.

"Structure" is what we want. That's the applicable word.

Because it has to do with fire safety, not only of dwellings
but of other structures on the property. And if that rule
is changed, we don't have this problem.

MS. PARSONS: That's another thing too. We need
somehow to educate the architects in Maui County, because
that's a simplistic solution to this that they should have
thought of before they charged you to do all this. And they

should know the rules.

CHAIRMAN VICTORINO: Director Tengan?

MR. TENGAN: I do have a concern about the use of the greenhouse. My concern would be, you know, whether flammable liquids or material contained or once -- or previously soaked in flammable liquids would be used or would be stored in that greenhouse.

CHAIRMAN VICTORINO: Point well taken. Any more discussion?

VICE-CHAIR OKAMURA: Question.

CHAIRMAN VICTORINO: Question. Okay. Oh, you're calling for the question. All those in favor say "aye."

(A chorus of ayes.)

Opposed?

(No response.)

Thank you, Mr. Judson. You got it.

MR. JOHANSEN: Mr. Chair, point of order. We have decided that the rules require us to poll the committee when we make a vote, and I noticed we didn't do that at our last session and we're not doing it at this session.

MS. RAISBECK: I agree with Ralph. The rules do say, you know --

CHAIRMAN VICTORINO: Individually?

MS. RAISBECK: Individually.

CHAIRMAN VICTORINO: Okay. I can do that.

Mr. Smith?

MR. KUSHI: Mr. Chair, it's unanimous, everybody

voted "yes."

MR. JOHANSEN: I didn't vote.

MR. KUSHI: Oh, okay. Then poll it.

CHAIRMAN VICTORINO: Okay. All right, let's poll

it just to make sure that everybody is on the same page.

Mr. Smith?

MR. SMITH: Yes, I voted in favor.

CHAIRMAN VICTORINO: Ms. Crivello?

MS. CRIVELLO: Yes.

CHAIRMAN VICTORINO: Mr. Okamura?

VICE-CHAIR OKAMURA: Yes.

CHAIRMAN VICTORINO: Ms. Raisbeck?

MS. RAISBECK: Yes.

CHAIRMAN VICTORINO: Mr. Johansen?

MR. JOHANSEN: Abstain.

CHAIRMAN VICTORINO: Ms. Parsons?

MS. PARSONS: Yes.

MR. KUSHI: What did Mr. Johansen say?

CHAIRMAN VICTORINO: Abstain.

MS. RAISBECK: An abstention is considered an
affirmative?

CHAIRMAN VICTORINO: Yes, that is correct. And
we're going to take a quick break to give this young lady a
break.

(A recess was taken.)

CHAIRMAN VICTORINO: Reconvene the meeting. We go
now to Communication item B, pages 35 to 44. Communication
05-06, letter from Michael Conway of Silversword Engineering
dated August 15, 2005, regarding Fleck Residence, TMK:
2-2-17:14, Kula, Maui. If you want to come up. Are you

Mr. Conway?

MR. CONWAY: Yes, I am. Thank you.

CHAIRMAN VICTORINO: Introduce yourself and then
go ahead.

MR. CONWAY: My name is Michael Conway of
Silersword Engineering, representing Bill Fleck on his
request. We are revisiting the issue of the second dwelling
for the second time today.

Basically, what has happened, I need to get this
out in the open, obviously, because my client has done
something that's wrong, but it has nothing to do with the

water department.

He had a dwelling that burnt down completely to the ground; he rebuilt it without a building permit. He is in the process of getting the building permit and it's being held up because the water department will not sign the building permit for the reconstruction for the building that he has rebuilt due to the fire, because of the third dwelling rule.

There is an existing storage shed, and I believe there may be -- I mean, a garage, and there may be a small little wood storage shed also on the property. Very small

storage shed. Which you will have a picture outline of.

Basically, the house that burnt down is the unit

No. 1 and that's on the makai side of the property.

CHAIRMAN VICTORINO: Page 40?

MR. CONWAY: Exhibit A.

CHAIRMAN VICTORINO: Exhibit A, page 40?

MS. RAISBECK: Middle Road up in Kula?

MR. CONWAY: Keokea. And this basically -- Middle

Road, while you can see sort of a dash line that seems to

take it up further, and on map it's taken up further, in

actual fact the road dead-ends at that point in time. And

you have an existing waterline actually on the lower edge of

this property.

What I am -- basically, we're in the same

situation, we need to get the water department's approval on

the building permit so that we can make it -- make the --

get the building permit and make the project legal.

In hearing the first discussion, there was a

couple of points that I thought would be germane to this.

The issue of whether an existing structure, even though it's

not a dwelling, could be made into another dwelling, I think

it's moot as far as the water department is concerned,

because if people are going to do illegal dwellings, they

are going to do illegal dwellings.

You know, I can build a house and I can split it up in two or three phases and I've got an illegal dwelling. And that's really not -- that's an enforcement issue; that's not really a permit issue. So I think that's kind of -- should be moot as far as the discussion.

The other thing that I kind of heard about is what would happen if you guys passed this to people who have previously requested, would there be sort of an uprising or up-lash, I don't think so. Because, in fact, I have personally written a letter to the water department,

requesting a three-quarter inch meter in the 1970s, because my fixture count was such that it required a three-quarter inch meter. And I have a letter back from the water department, at that time the deputy director was Kent Simond (phonetic), he denied it and said no, you can't have it.

And if there was any kind of retro backlash, certainly I should be able to get my three-quarter inch meter that should have been supplied to me before the rules went into effect that you had to buy water meters and things like this. So, you know, what's in the past is kind of in the past.

Even the fact that the sizes of lots or the sizes
of the second dwelling has changed over the years just by
interpretation --

CHAIRMAN VICTORINO: Hang on a second. You got
that thing switched?

Okay, go ahead, continue. I'm sorry.

MR. CONWAY: -- just by interpretation. So I
don't think -- again, I think that's a moot question or a
moot discussion. Basically, what we have here is a house
that burnt down; we're building the exact same house in the
exact same location, and it is the second dwelling. As I

mentioned, there are two other structures on it, very small structures: an unattached garage and a small shed.

The property is an agricultural zone. This person has avocados that he is basically farming or selling off of his property. He has one person on it, who I gather kind of handles it. He is an absentee owner who comes periodically.

So again, we're hoping to get approval for this second dwelling at this point in time. The water department, as you can kind of see going through the records, is recommending that he build a water tank, a booster pump, and so forth, that will obviously upgrade the system, the water department system.

In the past, the water department has approved in situations where they described it as being a condo, where there's a horizontal, you know, HPR, basically, and they then -- even if there's two or three structures on that point in time, they will allow -- they come under different rules or different regulations.

I am kind of back pedaling on this a little bit, to be honest with you, because the homeowner was -- is and he probably still is willing to put in a standpipe, and that's what we proposed to do, but it would be on his property for the use of fire flow for fire protection on his

property.

But as I heard this discussion from the previous thing, that again may be something that may be moot, because again the second dwelling situation, I think, comes into play. This is the second dwelling. And the requirement, again, of the water department to put in a booster pump, a new line, and a tank upstream is really an excessive amount of money that would be put on to this homeowner to rebuild a house, an existing house that was already there.

In a nutshell, what we're asking is, again, for this to be considered a second dwelling. I would suggest if

you do go and review your rules and interpretation of the rules, because basically it seems like it is interpretation of rules that we're talking about here, that there's all kinds of things that you're going to have to come into play when you think about the interpretation of the rules.

Because Ulupalakua Ranch has line houses; right?

What happens to those kinds of things is just a small little dwelling space, not even a dwelling space, but an overnight tent, basically, and so you're going to need to think about things like this.

And, you know, if they have electrical

connections, we're talking about public safety, I would

imagine people's life and health is what you're concerned

about, and by limiting it to two dwellings, obviously that's

probably something that's very reasonable for a rancher or a

facility, because then you're not -- you only have to worry

about people's lives in that particular place or case.

Different structure like a greenhouse perhaps can

be -- electricity can be brought to it; water can be brought

to it from a fire sprinkler system, but we wouldn't be too

concerned about public life and issues like that. So I

think you're going to have to, perhaps, review really what

your intents are or rules and regulations if you decide

to -- and I think, deservedly so, that you do need to go back and look at the rules and regulations and how to interpret it.

But some of the things, again, that has been stated in the past I think really are moot as to our conversation here. The illegal dwelling issue, again, that's an enforcement issue that's handled by DSA or planning. It should not be a water department issue. As well as recognizing the fact that a second structure versus a dwelling is two different things.

And by the rules that you read, it basically, you

know, allowed a second dwelling. And by interpretation, it has been taken on that any other thing that's built, other than a second dwelling, needs to be reviewed for water or fire flow requirements or fire safety requirements. So that's the issue, I think, that the board is going to have to look at or somebody is going to have to look at in a separate case, separate issue.

But we would like to hear a motion, obviously, to be allowed that this second structure, which is being rebuilt, be allowed to happen. It has actually already been rebuilt. Again, mistake of the client, but he did rebuild

this structure exactly the way it was in the first go-around, and he's trying to get it permitted and legalized.

CHAIRMAN VICTORINO: Okay.

MS. PARSONS: I don't see anybody signing off on this. Have they signed off on your plans on here?

MR. CONWAY: We have the architectural designer, Rafael Escobar, here, who was involved in the --

MR. ESCOBAR: I'd like the opportunity to speak on the subject.

CHAIRMAN VICTORINO: Please state your name.

MR. ESCOBAR: My name is Rafael Escobar from

Valley Isle Design here in Kahului. All of the departments,
other than the water department, has signed off on this
project.

MS. PARSONS: Do you have that --do you have that
updated version?

MR. CHANG: No.

MR. ESCOBAR: You can clearly see -- it's on the
Internet and of course on the records. The client,
unfortunately, was kind of in a desperate state and felt
like he had to reconstruct the structure so his family could
live on the property. He has applied for a permit for the

garage that's there now. It's already built and that was built with a plan waiver procedure.

But when it came down to getting the water department to sign off, they considered that the second dwelling was a third structure. And that's where we stand now.

CHAIRMAN VICTORINO: I think we talked enough about it. The only thing that comes to my mind, and this is the only difference I see between Mr. Judson's one and your situation, this is a replacement of an existing dwelling that was there. It's a replacement. I'm not trying to

skate the rule, but there is a difference when you're talking about something that's been burned down and you replace it, so as long as you follow all ordinances and all that.

Okay, go ahead.

VICE-CHAIR OKAMURA: Could you repeat the last thing about the garage structure, there was a plan waiver? Can you explain that? I don't understand that.

MR. ESCOBAR: Okay. What happened was, two weeks after the structure burned down, Mr. Fleck's son arrived ready to move into that very structure.

VICE-CHAIR OKAMURA: That was unit 1, yeah?

MR. ESCOBAR: That was unit 1. That burned down.

He had a container full of furniture, all kinds of other stuff that he needed a place to put. So we put in for a permit under a plan waiver submittal. That is that they can go ahead with putting the garage up, provided that ultimately all departments would sign off on this.

VICE-CHAIR OKAMURA: You're talking about this garage structure in the picture here or a separate garage adjoining the unit 1, the new rebuilt unit 1? Are you talking about the garage structure that --

MR. ESCOBAR: That's that garage structure.

VICE-CHAIR OKAMURA: So this was built with a plan waiver or whatever, so that he could store his --

MR. ESCOBAR: Yes. It's not a dwelling, and it's not supposed to be a dwelling. They have no plans to live in it or have anybody live in it. Not even a cat for that matter.

MS. PARSONS: What size is it?

MR. ESCOBAR: Again?

MS. PARSONS: What size is it?

CHAIRMAN VICTORINO: What size is the garage?

MR. ESCOBAR: It's a two-car garage.

CHAIRMAN VICTORINO: Two car?

MS. PARSONS: Two car.

CHAIRMAN VICTORINO: Maybe like --

MS. PARSONS: 400 square feet.

MR. ESCOBAR: 25-by-20, or something like that.

CHAIRMAN VICTORINO: 25-by-20 is --

MR. ESCOBAR: Yeah.

VICE-CHAIR OKAMURA: Then you're saying you got

all the approvals after the fact, from all the departments

for this --

MR. ESCOBAR: For this permit right now, the only

permit that has not signed off is the water department.

VICE-CHAIR OKAMURA: The permit is to -- for a
building --

MR. ESCOBAR: For the replacement of the existing
structure.

VICE-CHAIR OKAMURA: Thank you.

CHAIRMAN VICTORINO: Any questions for Mr. Conrad
(sic) -- or Conway?

MS. RAISBECK: Mr. Chair, the thing that -- well,
if we, you know, if we decide to help out the owner of this
property, the thing that's different is that in the previous

time we sort of -- we allowed that connector to turn the two structures into one, basically. That connector would turn the original house and the greenhouse into one structure, and then the proposed new one could -- now, this one isn't that way because obviously it's -- there's no way to connect that garage structure with unit No. 1. That wouldn't make sense, period.

So in this case, it seems to me it's also an exceptional case because the house burned down and the house was rebuilt, and I think we would be justified in again trying to do what we can to facilitate the building permit

for unit No. 1, replacing the house that burned down. How to do this, again, I feel if we were to waive the third structure part of the rule, we could do that. It's an exceptional case.

And this -- I don't see that it would make any sense whatsoever to require the owner to build a connector between unit 1 and the garage.

CHAIRMAN VICTORINO: Ralph?

MR. JOHANSEN: In keeping with that, what is the additional risk to public safety here? You've got one structure replacing another; you don't have any problems with any additional water requirements for the property in

that case.

And the second thing is, I'm curious about -- this whole business about a detector check valve and private fire line and standpipes being limited by the department to commercial and hotel developments. This is behind this question. But I don't know what that means, why is that limited to hotels and commercials?

CHAIRMAN VICTORINO: What page are you reading off of, Ralph? Can you tell us?

MS. CRIVELLO: I think it's 37.

MR. JOHANSEN: Page 37. The department's

perspective.

MR. CONWAY: Michael Conway again. In addressing that, I kind of -- after hearing the discussion from the first go-around or the proceeding one, I'm kind of back pedaling.

However, if the board requests, we will do this.

What we had submitted or what we -- our intention was -- to handle fire flow, was to put a standpipe on site. We were informed by the water department that basically they will allow on-site standpipes, but only on commercial townhouse, condominium, horizontal-regime type properties. Since this

was a private property, they didn't allow it, and therefore they requested us to do this booster pump and this tank off site.

So at that point in time, you know, the homeowner obviously would like not to have to put on a standpipe because it's an additional cost.

But just like you, Mr. Johansen, it's hard to understand what's the difference between doing it for a condominium that may be just a two-lot condominium versus a private, you know, private lot owned by one person that's for two dwellings. There doesn't seem to be any practical

or reasonable reason to differentiate between the two,

because it is allowed on even a two-lot horizontal regime.

And interestingly, again this is moot, though, he had submitted this actually one time to make this into a horizontal condo property. However, his attorney did not submit it in a timely manner and it kind of expired, and so he just let it go and he's dealing with it with his son. It's all within the family anyway.

But again, you made a very valid point, there really is no practical -- there doesn't seem to be a practical reason for the differentiation between a private owner versus someone who has the ownership in duality.

MR. JOHANSEN: When it comes time, I would like to hear the department's response to that.

CHAIRMAN VICTORINO: For the purpose of conducting a cohesive meeting, I'll ask for an adjournment at this time to switch the chairmanship over to Mr. Okamura. I have to run. I just want to do this right so we don't have the confusion. See you guys later.

VICE-CHAIR OKAMURA: Come to order. Let the record show that the vice-chairman is directing the meeting. Okay, let's continue.

It has been requested that the department present

their side of the story in this case. So who will represent the department?

MR. TENGAN: Before I ask Herb to respond or to give the -- present the department's point of view, I need to ask him a question to clarify the standpipe issue here.

Herb, don't we require that even if they have private hydrants on property, don't they still require that the main fronting the property provides for adequate fire protection; in other words, we would still require something? Or in the case of commercial properties, the system would be adequate for fire protection along the

roadside, you know, the line fronting the property.

MR. CHANG: We have been requiring that even
though there's, like, private systems --

MR. TENGAN: Like hotels.

MR. CHANG: Right. We've been requiring that --

MR. TENGAN: There's a difference over there.

Although the hotels have private standpipes on property, the
line fronting the hotel property provides for adequate fire
protection.

VICE-CHAIR OKAMURA: Thank you. Herb, would you
like to present -- can you present the department's position

on this case, please?

MR. CHANG: The reason why the department doesn't allow detector check systems for projects other than hotels, large condominiums, businesses, commercial structures, is that the department feels that when -- let me say it this way. In the case of hotels, commercial, large condominiums, you have, quote, a responsible party taking care of the private system.

Because the detector check system, which is like a check valve in a manhole, it has to be maintained not by the county but by the private properties. So the factor about who is going to maintain, is there somebody who is going to

be -- who will be responsible for maintaining, what's the likelihood of somebody not maintaining it, the department felt it's probably less chance -- there's more chance of the detector check not being maintained if it's like a private single residence, it may be intended more to fall behind maintenance.

VICE-CHAIR OKAMURA: Yeah. I meant was the department going to present any kind of overview on this case or their side of the story of this case?

MR. CHANG: Briefly, I can just say that it goes like Mike Conway was saying, it's the third structure fire

protection requirement that is the problem here. If the garage wasn't built, then the replacement structure would be still the second -- the structure's second dwelling. It wouldn't have an issue.

Unfortunately, a garage was built. And when this application came in to replace, it became the third structure, thereby fire protection requirements kicked in.

VICE-CHAIR OKAMURA: Are there any questions for

Mr. Chang?

MS. RAISBECK: Yeah. Herb, are you saying that

Mr. Conway is wrong in saying that if this had a horizontal

property regime for two units -- he's saying the rules would be different from what they are here, and you're saying that's not so?

MR. CHANG: I didn't say that. But I would like to put some emphasis on what the department has been doing. Horizontal CPRs -- condominiumization, two lots, three lots, it's just been kind of recently where it's been occurring. Prior, the department had been dealing with large -- like Iao Parkside, all those huge -- multiple, like, 40 to 100 units. So we have been dealing with these one or two-lot condominiums just recently.

So we are -- I'm trying to say that we really haven't dealt with it. So I'm not too sure whether we would allow this detector check system for one or two-lot condominiums at this time.

MR. ESCOBAR: May I say something? And this is Rafael Escobar. It seems like Mr. Fleck is willing to put in a standpipe. The actual waterline, the Kula waterline is right along his property line as if it was fronting a street, or it could tap right into that right there and within a few feet be able to erect a standpipe.

And he's willing to put in a check detective valve, and if it's necessary, as part of the agreement, he

could also say they would have to enter into a service contract that this would be inspected at the appropriate times.

MR. CONWAY: Let me interrupt. I'm going to say no to that. What I would rather see happen is, you know, there's an easement that the main Kula transmission is along, I would rather see us simply tap into the line, put a standpipe and give you an easement and not have to put in the detector check system, to be honest with you. And then it's simply that you don't have to worry about the detector check.

However, I recognize this, the water department will probably not be really in favor of that because they're afraid somebody will come along, hook up to that standpipe and utilize it to irrigate avocados. Again, that's kind of an enforcement issue.

What I'm trying to do, obviously, is trying to work at trying to make this as least painful in cost to this homeowner who already has suffered a financial loss by virtue of the fact that the property has burned down. While we did propose that detector check, as I mentioned at the beginning of this thing, I would like to even go back and --

because of the way I could see the board kind of needing a request that this be allowed to replace this building.

Subsequent to that, or if that isn't allowable, my next fallback position would be simply to put in a standpipe and give an easement and connect it to the easement that you already have for the transmission line. And finally, if you wrestle me to the ground and kick me a couple of times, I will then go along with Rafael's suggestion to putting in the detector check and so forth. But I would really like to see us just being allowed to build the unit number -- rebuild the unit No. 1, getting approval for that.

VICE-CHAIR OKAMURA: What's the pleasure of the

board? Ginny, do you want to --

MS. RAISBECK: I will make a motion that in this exceptional case where a house burned down, where a structure was built quickly to provide sort of an emergency housing for the owner's son's furniture, and there was a preexisting second dwelling on the property and they want to rebuild the first dwelling, and the other departments have already passed on the building permit, except for the water department, I would recommend that we waive the fire protection third structure requirements of the department.

VICE-CHAIR OKAMURA: Is there a second?

MS. PARSONS: Second.

CHAIRMAN VICTORINO: It has been moved and

seconded that we waive the third structure requirements for

this particular case. Is there any further discussion?

MR. TENGAN: I have a question of the applicant.

CHAIRMAN VICTORINO: Mr. Tengan?

MR. TENGAN: Did the storage shed require a
building permit?

MR. ESCOBAR: The storage shed is below 200 square
feet. It's basically just a roof over a frame that they --

MR. TENGAN: So it didn't require a --

MR. ESCOBAR: No.

MS. PARSONS: And the residential is 150 --

VICE-CHAIR OKAMURA: Any further --

MR. KUSHI: For the record, could you have the applicant address why the house burned down?

MR. ESCOBAR: There wasn't really actually a determination by the fire department as to what the exact cause of the fire was. It seemed as if it was electrically connected. The other thing I would like to point out, too, is that the owner did not have fire insurance on the property. So it wasn't like there was any reason for him to

be --

VICE-CHAIR OKAMURA: Okay. Ready for the question? Okay. All those in favor --

MS. RAISBECK: Excuse me, Mr. Chair, I think we should poll the board.

VICE-CHAIR OKAMURA: Yes, I'm going to do that.

MS. RAISBECK: Oh, thank you.

CHAIRMAN VICTORINO: Mr. Smith?

MR. SMITH: Yes.

CHAIRMAN VICTORINO: Ms. Crivello?

MS. CRIVELLO: No, not in favor.

VICE-CHAIR OKAMURA: Ms. Parsons?

MS. PARSONS: Yes.

VICE-CHAIR OKAMURA: Mr. Johansen?

MR. JOHANSEN: Yes.

VICE-CHAIR OKAMURA: Ms. Raisbeck?

MS. RAISBECK: Yes.

VICE-CHAIR OKAMURA: Yes. So that's 4 to 1.

MR. KUSHI: You need to vote.

VICE-CHAIR OKAMURA: I need to vote? I vote

"yes." It's actually 5 to 1 in favor of the motion. Motion

carries and so --

MR. CONWAY: Thank you very much.

VICE-CHAIR OKAMURA: The board recommends to the department that they provide an exception in this case to be allowed to rebuild a burnt dwelling. Thank you.

MR. CONWAY: Thank you very much.

VICE-CHAIR OKAMURA: Shall we move on, then? Next item on the agenda is the Director's Report. Item A, Water Rate Study. Mr. Tengan?

MR. TENGAN: Yes, Mr. Chair. Our records -- completing the study that was contracted a couple of years ago and they have provided records and summaries regarding that particular rate study. And if there's any questions by

the board, we have Holly and Helene here to help me address the questions.

MR. TENGAN: I might mention that for this coming year's budget, we were just going to be proposing -- for the initial run of the budget, we're going to be using -- I believe it's a 7 percent increase over the previous years -- or the current years. That's something that was looked at by the consultants.

MS. RAISBECK: Could we have that door shut? I'm having trouble hearing you, George.

VICE-CHAIR OKAMURA: Thank you.

MR. TENGAN: I'm sorry, but if I speak any louder

it will sound like I'm arguing with you.

VICE-CHAIR OKAMURA: Could you --

MS. PARSONS: No, not you, George.

VICE-CHAIR OKAMURA: Mr. Tengan, could you repeat

the last thing you said?

MR. TENGAN: For the '07 budget, we're going to be

using, I believe, a 7 percent increase in our revenues.

It's something that wasn't formally adopted by the council

last year, or this current year, for the '06 budget. The

council just acted on the rates for the '06 fiscal year, and

no action was taken for '07 and beyond.

So for budgetary purposes, we'll be using what was reflected in the rates study, I believe, like I said earlier, 7 percent.

And if you have any questions, I have Holly -- Holly disappeared. I have Helene here to help me with the questions.

MS. PARSONS: I have one. Did we ever separate the ag? Did we sep the ag level -- agriculture versus the ag, did we ever do that with the rates?

MR. TENGAN: No, we haven't. But when applicants file for the ag rates, we do go out and do site inspections

as to the kinds of ag activities that are taking place on properties. And they report back to the fiscal division, and from there we take appropriate action whether we should grant the ag rates or not.

MS. PARSONS: Okay.

VICE-CHAIR OKAMURA: Sally?

MS. RAISBECK: I notice that -- I believe that's

Mr. Faulkner in the audience who was on the water rates study committee. And I wondered if perhaps we could ask him if he had any comments he wanted to make about the water rates study.

VICE-CHAIR OKAMURA: Any objections?

MR. SMITH: No.

VICE-CHAIR OKAMURA: Mr. Faulkner, would you care
to say a few words?

MR. FAULKNER: I served on the water rates
committee last year and they asked me to serve again this
year and I told them I would. So I just need to listen to
what was being said here. And I was a little bit curious on
how we're doing on the CIP encumbrances, because that was a
concern by the county council. And I don't know if you have
data on that. But I know that was a big thing when we were

going through the water rates increase.

VICE-CHAIR OKAMURA: Are there any questions for

Mr. Faulkner?

MR. JOHANSEN: One thing, could we have

Mr. Faulkner identify himself by the full name for the

reporter?

MR. FAULKNER: Bruce Faulkner. I'm just a

citizen. I was on the water rates committee; I'm on the

Upcountry advisory committee. I saw on the agenda about the

water rates studies, so I thought I would come down and

listen to what was being said. I didn't know I was going to

be put on the hot seat.

MS. RAISBECK: No, I didn't really have questions for Mr. Faulkner, I just thought that he might have some insight to share with us if he wanted to.

VICE-CHAIR OKAMURA: Okay. Mr. Tengan?

MR. TENGAN: Mr. Chair, in response to Mr. Faulkner's inquiry about the status of our CIP encumbrances, we're at a point now where we're closing out the fiscal year for CIP, which is an 18-month period, and it ends December 31st of this year. We have some projects going out to bid right now and we'll be able to provide more definite numbers following the end of December.

But I might say that it's not as high as the --
the encumbrances won't be as high as the stakeholders
committee had desired.

VICE-CHAIR OKAMURA: Ms. Parsons?

MS. PARSONS: George, are we looking at this -- I
don't know if this falls under CIP or not. But are we
looking at expanding our chemistry and biology department
with the upcoming contaminant, you know, EPA contaminant
issues?

MR. TENGAN: I don't think we put in for any new
positions in the lab.

MS. PARSONS: Can we expand the facility, give them, you know, access or help fund the access to be able to expand the equipment?

MR. TENGAN: We are purchasing equipment at their request. And our lab is now certified to do certain tests. I would like to see us be certified in more areas; that's one of my objectives here. But as far as additional manpower, I think we can handle what we need to do with the existing manpower.

MS. PARSONS: I was thinking more of the equipment than I was --

MR. TENGAN: We spent thousands of dollars on equipment over the years.

MS. PARSONS: I know we have new contaminant issues with the EPA coming in, in 2005, 2006, 2007. So I just wondered if we've focused on the equipment we'll need for evaluation.

MR. TENGAN: In order for us to be fully equipped to analyze for all the contaminants, we probably would need a lab the size of the state, so it might be cost prohibitive to do that.

MS. PARSONS: We're going to send them out?

MR. TENGAN: Yeah.

MS. PARSONS: It's not as accurate.

VICE-CHAIR OKAMURA: Any other questions? The new water rates are already in effect, and then it's going to continue on, it doesn't seem like they're going to be increased again for next year; right? Like, you know, the next fiscal year, because the water -- the committee is not meeting, so it's going to be at the status quo for probably two years instead of one year as planned?

MR. TENGAN: Not necessarily. As I mentioned earlier, I think they're going to use the 7 percent. That was an amount that the consultant felt that we need to do

for the '07 fiscal year. And the board will get involved in approving this 7 percent when the board reviews the budget for '07. Because that amount or that percentage increase would be reflected in the total revenues.

VICE-CHAIR OKAMURA: So it doesn't need to go out before the council again like the first increase?

MR. TENGAN: No. I don't believe it needs to go through the public hearing process. That issue or that concern can be handled in the public hearing process when the council approves the budget.

VICE-CHAIR OKAMURA: So there will be an increase?

MR. TENGAN: We're going to be proposing that the rates be increased by that 7 percent, at least.

VICE-CHAIR OKAMURA: Thank you.

MS. RAISBECK: Looking at the report, like page 49, it also lists for the following three years there would be a proposed 3.8 percent increase, each of those 2008, 2009, 2010. Is that sort of what the department is expecting?

MR. TENGAN: Well, that's what the consultant felt the rates should be increased by. But I'm pretty sure we're going to be getting the stakeholders committee together

again shortly, I don't know how soon, but we'll be needing to get them together and review how we've been doing in terms of our finances, and to see whether these amounts or these percentage increases are adequate or not.

I do know without any additional funding for CIP, we're going to be very low in CIP funds.

VICE-CHAIR OKAMURA: Any other questions for the director? If not --

MS. RAISBECK: Oh, go ahead.

VICE-CHAIR OKAMURA: I don't have any questions, I was just going to move on to the next --

MS. RAISBECK: Okay. Yeah, I would like to ask

again, on page 53, the long-term financial model, it says

Section 8 of this report describes the development of a

long-term financial planning model. They developed a

20-year projection of customer growth, water use --

operating expenditures and CIP and replacement requirements.

Is that model available to the board?

MR. TENGAN: It can be made available to the

board.

MS. RAISBECK: Does it exist as a report or

something?

MR. TENGAN: I would have to ask Holly whether we

received it or not.

MS. PERDIDO: Well, we do have a copy of the report in the water rates study, the full bound copy, which we do have a copy available, George; correct? If the board wants to see a bound copy.

MR. TENGAN: Sally is asking about the model.

MS. PERDIDO: The model is a portion of the full study that we got back and we do have a copy of --

MR. TENGAN: The model would be on a disk; right?

MS. PERDIDO: Which we do have.

MS. RAISBECK: Oh, no, that's not what I meant. I

meant -- what Holly is talking about, can I get a copy of
that report?

MR. TENGAN: Oh, yeah, I don't see a problem with
that.

MS. RAISBECK: I would like to get a copy of that
report.

MS. PERDIDO: Okay.

VICE-CHAIR OKAMURA: If anybody else would like a
copy, please let Holly know. Any other questions? Let's
move on. Thank you.

MR. TENGAN: We should be scheduling a budget

workshop shortly; right?

MS. PERDIDO: Correct. If that's the board's
pleasure, yes.

MS. CRIVELLO: I have a question. On the CIP
side, and I -- say for our customers, we're saying that part
of it is, for the rate increase, is to meet the needs of the
operations and maintenance. And if we're not able to -- I
know we've had this discussion on and on, and it's not as
high as expected. So are we setting up a change of
percentage in this report with the CIPs to be encumbered?
You know, we talked about the percentage.

MR. TENGAN: I'm trying to relate your question.

MS. CRIVELLO: You know, on -- maybe you can help me with that. When we talk about the CIPs from the stakeholders' perspective, they were setting a percentage to meet to be encumbered.

MR. TENGAN: The committee set an amount that they wanted the department to be encumbering.

MS. CRIVELLO: Yeah. If we're not able to meet it this fiscal year, do you see that still being a difficult --

MR. TENGAN: Even though we will not be expending or encumbering the amount the committee had desired the department to expend in CIP, we still would be running short

of CIP funding. I don't know if I answered your question.

MS. CRIVELLO: Okay.

MR. TENGAN: Probably not.

MS. PERDIDO: George?

MR. FAULKNER: I think what her question was, we allotted a certain amount, and if that's not being encumbered, does that need to be adjusted?

MR. TENGAN: Maybe Holly can answer that.

MS. PERDIDO: Well, I know the committee was adamant about trying to produce, like, 25,000 CIP or some number. And one of the problems we have is, the council

does approve our budget, and if they set up a certain amount of CIP, then, you know, we have to go with that.

MS. RAISBECK: Excuse me, Holly, I think we need to -- we were just about to say we don't have a quorum, and our quorum shows up.

VICE-CHAIR OKAMURA: Let the record show that Kent Hiranaga is in attendance, is present.

MS. PARSONS: I have to go, I have a phone call.

VICE-CHAIR OKAMURA: And that Ginny Parsons will be leaving.

MR. HIRANAGA: Good thing I got here.

VICE-CHAIR OKAMURA: So we were talking about --

MS. CRIVELLO: Holly was explaining about the CIP.

VICE-CHAIR OKAMURA: We were talking about the water rate study, and Holly was explaining about whether we were able to spend the amount of CIP that would be raised from the budget increase.

And Holly, go ahead, sorry for the interruption.

MS. PERDIDO: Basically, I know, as I said, the committee wanted a higher CIP, but it ended up much lower after the council had the bond projects, they did not approve any bond projects.

But as George said, our CIP has not been -- being encumbered as quickly as we would like. And one of the reasons I know, as George said, we found out a lot of these projects are coming up a lot higher, and they go out to bid higher than what we budgeted, and that will be a problem as we open bids up in the next month.

VICE-CHAIR OKAMURA: Any questions? I have a question. Did that answer your question?

MS. CRIVELLO: Yeah, thank you.

VICE-CHAIR OKAMURA: The council did not fund the bonding -- or did not allow to seek bonds for the CIP? Is that what you said?

MS. PERDIDO: Correct. They did not approve any
of our bond projects.

VICE-CHAIR OKAMURA: And every year you depend on
the bond projects; isn't that correct?

MS. PERDIDO: Not necessarily.

VICE-CHAIR OKAMURA: How would that affect what
the department wants to do as far as CIP?

MS. PERDIDO: George?

MR. TENGAN: There are certain projects that
should be or can be properly funded with bond issues. These
would be expansion and growth projects, it could even be

replacement projects. But the council is the final authority in whether our projects can be funded with bonds or not. And last year the council was of the position that they wouldn't be funding any projects with bonds for the water department.

VICE-CHAIR OKAMURA: Do you know why? Just to save money?

MR. TENGAN: Probably they were looking at debt requirements of the county in total, and also maybe the debt ceiling, I'm not sure. I have a hard time penetrating the mind of the council.

VICE-CHAIR OKAMURA: Thank you.

MS. KAU: Helene Kau, assistant fiscal officer in the water department. The thinking at the time, if I recall correctly, was that the county was going to proceed with the purchase of One Main Plaza and that would have absorbed the bulk of the bond funding. So we were not allowed.

VICE-CHAIR OKAMURA: Thank you.

MS. KAU: You're welcome.

VICE-CHAIR OKAMURA: Any further questions for the director or -- regarding the water rate study? If not, thank you.

Let's move on to the next item on the agenda,
which is the discussion and possible action regarding
approval to submit Fiscal Year 2007 Operating Budget to the
Mayor. Who will be making the presentation?

MS. PERDIDO: Basically what we're giving you is a
copy of only the operating budget. The CIP budget will have
to be -- hopefully we'll get it pretty soon. I'm not sure
when.

One of the problems we have is, November 30th we
have to get a copy of our budget, completed budget, to the
mayor's office. So that's the guideline we're looking at.

So if you want to schedule the budget workshop, you do need

to do that fairly soon. And hopefully the CIP part of it will be ready.

VICE-CHAIR OKAMURA: How would the board like to handle this -- the budget items or the budget as presented in the agenda? You want to discuss it a little bit today, or hold a workshop specifically to address the questions regarding the budget? Whatever. I guess we could figure out when we want to really discuss it. You want to get into it now for a little bit?

MR. SMITH: No.

MR. HIRANAGA: Mr. Vice-chair, typically, my focus

on the budget is staffing, head count, vacancies, what the absorption forecast is, and the rest of my focus is primarily on the CIP budget. I don't really concern myself that much with the operating budget except for staffing. At this point, I don't know -- I have no questions until I see the CIP budget.

VICE-CHAIR OKAMURA: November 30th would be the deadline for both the operation -- operating budget and the CIP budget?

MS. PERDIDO: Correct. To be submitted to the mayor.

VICE-CHAIR OKAMURA: Shall we just -- you guys want to have a workshop on it at a particular time before the next meeting?

MR. TENGAN: The next meeting is November 17th.

VICE-CHAIR OKAMURA: Okay. That doesn't leave us much time.

MS. RAISBECK: Excuse me, Mr. Vice-chair. It's too bad that the chairman had to leave, because, yeah, if possible, you know, if we could have the whole agenda on the regular meeting of the 17th be the budget and nothing else on the agenda, that might make it -- you know, it's hard to

get people to come to an extra workshop meeting.

And is there any reason that you know of why we couldn't have the whole meeting devoted to -- Mr. Director, is there any reason why we couldn't devote the whole meeting on the 17th to the budget?

MR. TENGAN: Whatever the board wants to do.

VICE-CHAIR OKAMURA: Are there any matters the department would need to present on the 17th -- on the meeting of the 17th of November?

MR. TENGAN: I don't see anything right now.

VICE-CHAIR OKAMURA: Okay. Neither do I. I think that's a good idea.

MS. RAISBECK: So maybe someone could get in contact with Mike Victorino and suggest that.

VICE-CHAIR OKAMURA: Okay. I think I would need to give him a list of agenda items for the next meeting and there would be one item --

MS. RAISBECK: One.

VICE-CHAIR OKAMURA: That sounds good. Is everybody in agreement on that?

MR. HIRANAGA: Mr. Vice-chair, you may just want to make the budget the first item.

VICE-CHAIR OKAMURA: And the CIP the second item?

MR. HIRANAGA: No. And if there's additional items, you put it after. So if you don't have time, you don't address the other items. If the review is not very long, then you have more things to look at.

VICE-CHAIR OKAMURA: Okay. I can talk to Mike about that, trying to keep it to one major item. Okay. Great. So let's do that, then. Talk about -- hopefully we'll have the CIP draft by then. You think that's possible? I think we can be done in 10 or 15 minutes, maybe.

MR. HIRANAGA: I wouldn't make any promises.

VICE-CHAIR OKAMURA: We'll go 10 minutes, if we don't, we'll stop. If we don't, then we'll take a recess.

And the CIP budget draft would probably be ready by then, Holly?

MS. PERDIDO: George?

MR. TENGAN: I put out word already.

VICE-CHAIR OKAMURA: That's reasonable, though, to ask to try to get it done by the 17th; yeah?

MS. CRIVELLO: It doesn't make sense because most of --

MR. TENGAN: Mr. Chair, the staff has been

instructed to get it done before the week before the 17th.

VICE-CHAIR OKAMURA: I know it must be a really

crunch time for anybody. Nobody wants to make any promises.

Thank you very much. Sounds good.

The plan is to deal basically with the budget at

our next meeting and keep it as the main agenda item.

MR. HIRANAGA: Mr. Vice-chair, just a suggestion.

Once you receive the CIP budget, if you have specific

questions, you may want to convey those to staff prior to

the meeting so that they are able to prepare an answer

before the meeting versus presenting the question to them at

the meeting and having them having to say, "I'll get back to

you. "

VICE-CHAIR OKAMURA: Okay, great. That's a good suggestion.

MR. JOHANSEN: In that connection, can we say -- can we find out approximately when we're going to get the CIP budget? Do you have an estimate on that?

MS. PERDIDO: I don't prepare the CIP budget or I could tell you that.

MR. JOHANSEN: The person who does is not here?

MS. PERDIDO: Yeah.

MR. JOHANSEN: I was just going to say, maybe we

can have a deadline for submitting our questions and

comments, like the Monday before the meeting, and give him a

chance to research it and discuss it themselves.

VICE-CHAIR OKAMURA: That would be the questions
to Holly.

MR. TENGAN: The 17th is a Thursday?

MS. CRIVELLO: Yes.

MR. TENGAN: Why don't we say Tuesday.

VICE-CHAIR OKAMURA: The 15th.

MR. TENGAN: Then that will give you more time to
review it.

VICE-CHAIR OKAMURA: Is that agreed, that we --

we'll get the budget hopefully by the 10th and ask any questions to Holly by the 15th.

MS. PERDIDO: I know, Kent, you brought up

staffing, so you would like a vacancy report, our complete staffing, and all that -- something like that?

MR. HIRANAGA: Yeah, I guess what the budget was

for 2004, what vacancies were filled, how many did you lose, what is your plan, you know, to fill these vacancies for 2006 -- is it?

MS. PERDIDO: 7.

MR. HIRANAGA: I mean, when you say we're going to hire X number of people, we want to see if you did hire X number of people. In the meantime, how many did you lose, how many did you let out.

VICE-CHAIR OKAMURA: I would be interested in what went in before the budget, what some of your goals and objectives are regarding the budget, you know. If you do that, I don't know. I assume you want to expand in certain areas -- the process of getting the budget, if there is one.

MR. JOHANSEN: One other thing in that connection of -- Mr. Nakamura has said and we've heard elsewhere that there are a flood of applications for permits. We don't

have the kind of coordination we should have with the
planning commission, to what extent does that affect our
consideration of the budget, source capacity and development
and the need for it.

I think as an overview it's very difficult to get
a handle on what should be the parameters of this budget,
given the requirements for new development.

VICE-CHAIR OKAMURA: Any others? Thank you.

So let's move on, then, to item B, Other Business.

Discussion and possible action regarding Michelle Anderson's

request for comments from the Board regarding their possible

adjudication of public appeals of the Director's decisions.

There was a handout earlier that was passed out before the meeting, regarding Michelle Anderson's proposed ordinance.

Thank you very much, Holly and staff. Thank you.

MS. RAISBECK: I have a question, Mr. Chair.

VICE-CHAIR OKAMURA: Go ahead, Sally.

MS. RAISBECK: Oh, no, well, if you --

VICE-CHAIR OKAMURA: I was going to ask Mr. Kushi

if he could sort of explain what this thing says in terms

of -- but then, while you're looking at it, maybe -- are

there any questions?

MS. RAISBECK: Yeah, my question was, reading the first paragraph of the letter from Councilperson Anderson, the purpose of the draft bill is to establish the Board of Water Supply's duties to hear appeals of decisions by the Department of Water Supply and the director and to promulgate corresponding rules.

So I would read that as meaning the -- what they're talking about now is solely the appeals function and rules that apply to the appeal function. They aren't talking about the water department rules in the broad sense. Which we know need changing.

But this communication and this ordinance would be solely to establish us as the appeal to give us an official status as the appeal body for decisions of the water department. Whereas, up to now, we have been solely in an advisory capacity to the department, the mayor, and the council.

MS. CRIVELLO: Mr. Vice-chair, this is dated August 18th, and she requested --

MR. JOHANSEN: I'm sorry, I can't hear you.

MS. CRIVELLO: This correspondence is dated to our chairman August 18th and requested our response by October 14th. So then -- we just got this today. I would like to

defer this to see if it's still worth our response to
Council Anderson.

VICE-CHAIR OKAMURA: What if -- are you making a
motion? What if we just see what the discussion is today,
and I think -- wouldn't it be better if we just said
something, even if it's late, than nothing?

MS. CRIVELLO: I know that, but, you know, that's
just a matter of trying to understand all this.

VICE-CHAIR OKAMURA: So you want to defer to -- I
see.

MR. JOHANSEN: Mr. Vice-chair, may I ask a

question here? Under Section 8-11.3 of the charters of the amended -- it says that the Board of Water Supply shall act as advisory to the director of the Department of Water Supply, the mayor, and the council in all matters concerning the county's water system.

My question is, is it a violation of the charter to give us a final decision on actions of the water department? And I would ask an opinion from corporate counsel.

MS. RAISBECK: If I may interject, Mr. Chair.

VICE-CHAIR OKAMURA: Yes, Sally.

MS. RAISBECK: Under 8-11.4, No. 3, it says, The

Board of Water Supply shall -- 1, 2, 3 is, Perform such
other duties and functions as shall be prescribed by law.

So passing the ordinance is prescribing by law a certain
duty for the board.

VICE-CHAIR OKAMURA: Okay, thank you. Mr. Kushi,
is there anything you can help us with in this?

MR. KUSHI: Mr. Chair, member Johansen is correct;
he properly cited the charter provision. Member Raisbeck is
also correct in -- she correctly recited the other charter
provision. But they seem to be in conflict, and not being

privity to what the charter commission, in this case the

council -- submitting this amendment to the charter which

passed, not being privy to their intent and their

discussions, we can't say definitely at this time whether or

not this board can via ordinance get back the powers they

had before.

You have to understand, before the charter

amendment, this board was semiautonomous, and could say to

the director, Take a vacation and don't come back,

basically. Now the department is basically a department

like public works. We have responded to council's several

requests to the council about this very issue. And as far

as we know, it's still unresolved.

In fact, they took our response to the extent that they hired special council to view the situation. I'm not sure where that's at.

However, we will be responding in one form or another, I'm sure Mr. Raatz is taking some notes behind me, and we'll come out with another agreement. But again, we responded before and the council didn't like it and hired some attorney.

However, the chair of the water resources commission -- committee council -- felt that it was, you

know, because of this interim-influx-twilight-zone situation that we're in now, that to press the issue and submit this, which I believe brings this -- the question to a point. So, that's all I can say at this point.

MR. JOHANSEN: I just have one addition, which may not decide the question; but generally, more restrictive language controls more permissive language. This may not be the case here, but it's something we as a board might be aware of.

VICE-CHAIR OKAMURA: Sally?

MS. RAISBECK: I see that David Raatz is in the

audience, and David Raatz is an assistant to the -- a legal assistant to the counsel. Could we perhaps get some input from him about the issue that was raised here? Is that permissible?

VICE-CHAIR OKAMURA: Let's take a five-minute recess, then come back and finish this matter up. I think this is the last item on the agenda. And we'll talk about the future agenda, which we've already talked about. This meeting is recessed for five minutes.

(A recess was taken.)

VICE-CHAIR OKAMURA: The meeting will come to

order. We're on the last item for today's meeting, which was a request for Michelle Anderson regarding her ordinance -- her proposed ordinance to try to clarify one of the roles of the board, which would be to hear appeals.

Is there any discussion -- further discussion on this issue? What is the board's pleasure and do we want to respond to this letter? Oh, right.

Mr. Raatz, is there anything you would like to add or could help us with at this point?

MR. RAATZ: Yes, Mr. Vice-chair. I'm David Raatz, legislative attorney for the county council assigned to the water resources committee. Council member Anderson would

like to have her correspondence speak for herself. So I really have nothing substantive to add at this point. I could answer any procedural questions. And I would note that this bill is being taken up as a committee at 9 a.m. on November 2nd. That's next week. Thank you.

VICE-CHAIR OKAMURA: Thank you.

MS. RAISBECK: Mr. Chair, I had the opportunity during the recess to talk with member Johansen about his question, that as to whether it actually would be in accordance with the charter for the council to assign us what amounts to an adjudicatory function, a legal function,

really, when the charter also says we serve in on an advisory capacity.

And I thought that this bottom clause, Performed such other duties and functions as shall be prescribed by law, would cover it. But I see his point when he explained it more fully. And perhaps -- we definitely should reply, I think, to the council, the chair, the water committee, but we might reply that we do have this question raised as to whether they can legally assign us a function that the charter might not have envisioned us doing.

And secondly, I'm speaking for council member

Johansen now, that I think he said that he thought perhaps the better procedure was to continue as we have been doing, in which we advise the mayor and the director -- well, the director and the mayor, who has authority over the director, of our findings in these appeals cases, but do not take the -- do not try to exert the actual authority, because the mayor has decided as a matter of policy that he will abide by our recommendations. But that is not a requirement on him; it's merely a policy.

So, we question whether if there were a challenge to us obtaining this added authority, you know, which is

preferable. That would be a suggestion that we might want

to write that question to the chair.

VICE-CHAIR OKAMURA: Okay.

MR. JOHANSEN: I just would like to repeat the reason I think that this may be a problem, is that you have restrictive language here in the charter which says that we shall be serving in an advisory capacity, and that any language that gives the council discretion to assign us additional duties should be confined to our -- to the more restrictive language which prescribes that we're advisory only.

In other words, it may be a case of trying to

sneak in by the backdoor what has been forbidden at the front door.

VICE-CHAIR OKAMURA: Okay. Anything else?

MR. TENGAN: Mr. Chair, I was asked to respond to this by Ms. Anderson. And my response was that -- well, let me give you some background first. As I recall, when this amendment was going through the county council, I remember the statement being made, you know, Let the voters have a choice, because the charter commission had recommended to give the board more authority. Whereby, I believe, this didn't need to go before the county council for approval on

the budgets and the rules.

But there was a movement on the council to let the voters decide, and so this other amendment was placed on the ballot, the one that was finally approved by the legislature. So my response to Ms. Anderson was that since it was the voters who decided on this charter amendment, I think that it should properly go back to the voters for them to decide again on this matter. And that was my response to her.

VICE-CHAIR OKAMURA: Any other -- is there --

Ralph?

MR. JOHANSEN: No, I was just going to say, so I propose -- I think it would be a good function for this board to have dispositive jurisdiction over the decisions of the department, but I don't think it's practicably within the law; therefore, I think that should be the substance of our response.

VICE-CHAIR OKAMURA: Okay. So is there a motion?

MR. HIRANAGA: Mr. Vice-chair, I guess I have a different opinion. I believe that this is a good proposed ordinance, and I believe the board should endorse it. But there's objections from the public, from corporation

counsel, they have an opportunity to challenge the ordinance.

Right now, there is no forum for someone to challenge the director or the department's decision, the planning department has the planning commission; public works has the Board of Variance and Appeals. Someone who is unhappy with the department or the director's decision must go to court. There is no intermediate step.

And currently the mayor is using our recommendation -- or is following our recommendations, but who's to say in the next term, whoever the mayor is, it may be the current mayor and this will continue. So I think it

needs to be addressed. It's working now, but, you know, we're one year away from the next election.

So I think it's a good proposal. And if there's people that want to challenge it, let them challenge it. I don't want to be providing legal opinions on the part of the Board of Water Supply.

VICE-CHAIR OKAMURA: What was the last statement you made?

MR. HIRANAGA: I don't want to be providing a legal opinion, saying we don't think it's part of our charter or duties within the charter. Let someone who is in

a legal capacity challenge it.

VICE-CHAIR OKAMURA: Okay. Mr. Johansen?

MR. JOHANSEN: That's a good point. I just

thought we might raise the question since there are these two conflicting provisions in the charter. And I agree with Mr. Tengan that I think ultimately this is going -- although this is -- I have no authority for saying this, I think it's going to have to go back to the books if they're going to try to give us dispositive authority.

VICE-CHAIR OKAMURA: Is there -- we need to have a motion on the floor as to what the board will do, and would

anybody care to make a motion?

MS. RAISBECK: I make a motion that the vice-chair draft a response to the chairman of the council water committee, giving our thoughts on this, and our thoughts are various, I would say. I would wonder of those present here now, do we all -- would we all like to serve this function if it is legally appropriate? Do we --

MS. CRIVELLO: For me, I think it makes my time more meaningful, and to have a more solid direction in follow-up and backing up what Kent is saying.

VICE-CHAIR OKAMURA: Anybody else?

MR. HIRANAGA: I think the appeals process allows the public to present their case in their relatively low-cost fashion. And if they're unhappy with the decision by the board, they can always still go to court. So we're not the final say in the matter.

But -- and you can correct me if I'm wrong, the department or the county cannot challenge the board's decision, but the public can in court, or can the county also challenge the board's decision, like the Board of Variance of Appeals that make a decision contrary to the director, can the county then challenge that? Because I know the public can.

MR. KUSHI: Mr. Vice-chair, I'm not sure. My

recollection of administrative law is that usually they

don't. The department does not have the right to appeal.

But I need to look at it again. I seem to recall that the

planning department did at one instance appeal the planning

commission's decision.

MR. JOHANSEN: I have another observation about

it. At this point, the county council is seeking to take a

function away from the mayor's office and that may be a

problem. As it's presently constituted, the mayor is the

final authority on actions in the department, it's his

department. If we change that rule to this extent -- I'm kind of the devil's advocate, I don't believe in what I'm saying.

MR. HIRANAGA: No, that's a good point.

MS. RAISBECK: May I add to the -- or refine the motion that you draft a response to the chairman and say that it's the consensus of the board that we would accept such a responsibility happily, but we need further information as to whether this is legitimate legally -- to give us the power is legally legitimate. Would that be acceptable?

VICE-CHAIR OKAMURA: Kent?

MR. HIRANAGA: I guess, you know, before the ordinance is adopted, we have to be determined to be a legal ordinance by corporation counsel. I think to simply say we would happily accept initial responsibility is sufficient, because it's not going to become law if it's not legal.

MS. RAISBECK: That will give --

MR. JOHANSEN: Sure. That's okay with me.

MS. RAISBECK: I withdraw that suggestion. Just say that we would happily accept the responsibility.

MR. HIRANAGA: I'll second the motion.

VICE-CHAIR OKAMURA: It's been moved and seconded

that we respond to the council water resource committee by

saying we'll be happy to accept the responsibility as

proposed in ordinance. Is there any further discussion? If

not, let's take a vote. Greg Smith?

MR. SMITH: Yes.

VICE-CHAIR OKAMURA: Ms. Crivello?

MS. CRIVELLO: Yes.

MR. JOHANSEN: Yes.

MS. RAISBECK: Yes.

VICE-CHAIR OKAMURA: Chair votes yes. The board

votes yes. So I think that's easy for us to write. Do I

have to draft that or would somebody be able to help me with
drafting the letter?

MR. TENGAN: The original draft should be done by
you.

VICE-CHAIR OKAMURA: Okay. Who should I give it
to?

MR. TENGAN: You can give it to me.

MR. RAATZ: Thank you very much.

VICE-CHAIR OKAMURA: Thank you. Now let's move on
to the last item, which is the request for agenda items.

This is not the last item, but -- anyway, we talked about

trying to limit the agenda items for the next meeting to the proposed budget and CIP budget.

MR. HIRANAGA: Mr. Vice-chair, at some point I would like to hear a report from the director regarding the proposed use of the Hamakuapoko wells to service the Paia and Kuau area, which is now currently served by the Central Maui water system.

I guess the question I want to know is, if the Paia-Kuau area is placed to service by the H'poko wells, would they then become considered under the Upcountry water system; and therefore, if they wanted to obtain a water

meter, would they have to sign up on the waiting list?

MS. CRIVELLO: That's what you want on the agenda?

MR. HIRANAGA: If they have to sign up on the

Upcountry water meter waiting list in order to receive a
meter.

MR. TENGAN: Mr. Chair, I can respond to that

right now. As far as the waiting list, no, it wouldn't be
applicable to the Paia area. With regard to how we're going
to use the well, tonight we have a meeting at the Paia
Community Center beginning at six o'clock, and we're going
over the various alternatives that we looked at or we're

looking at in how to use the well. So that discussion will be ongoing with the community tonight.

MR. HIRANAGA: So if this occurs, Paia and Kuau is considered jurisdictionally under the Central Maui water system, although they are serviced by the Upcountry well?

MR. TENGAN: Correct.

MR. KUSHI: The H'poko well is located in the Paia community plan area, which is not Upcountry. The H'poko well was never considered part of the Upcountry system.

MR. TENGAN: No.

MR. HIRANAGA: So it's still Central Maui water system?

MR. KUSHI: Not part of the Upcountry water
system.

MR. HIRANAGA: Okay. Thank you.

VICE-CHAIR OKAMURA: Would that suffice for you?

MR. HIRANAGA: Yes.

VICE-CHAIR OKAMURA: We'll just -- it seems --
I'll ask Mike to limit the agenda items to the budget.

MS. RAISBECK: I think Kent earlier said to put it
first, not just say it's the only, but put it first.

VICE-CHAIR OKAMURA: Okay. Thank you. Last item
1 on the agenda is the Division Reports. Are there any

questions or comments regarding the report?

MR. SMITH: No.

VICE-CHAIR OKAMURA: Okay. Okay.

MR. TENGAN: Mr. Chair, I noticed that the information that member Hiranaga had asked for at the previous meeting is not contained in this report here. So I'll go follow up with staff as to the number of meters and Upcountry --

MR. HIRANAGA: Holly informed me.

MR. TENGAN: She gave you that information?

MR. HIRANAGA: Yes.

VICE-CHAIR OKAMURA: Thank you. Anything else?

Okay. If not, the meeting -- Ralph?

MR. JOHANSEN: New agenda items.

VICE-CHAIR OKAMURA: Okay.

MR. JOHANSEN: I just have two concerns. One is,

I would like to have a report, I would like this placed on the agenda, a report on the response to the letter that the chair wrote to the mayor with respect to having the meeting coordinating the Department of Water Supply or the Board of Water Supply and the planning commission.

That letter was written, but I don't know whether

there's been any response. It's my understanding that there was a letter sent from the mayor to the planning commission having to do with this, but I don't know what that is. If we could just have a report at the next meeting from the chair and he could find out about that.

VICE-CHAIR OKAMURA: Okay. And the second item?

MR. JOHANSEN: I forgot.

VICE-CHAIR OKAMURA: Okay, great. Or too bad. If there's no further business, the meeting is adjourned.

Thank you, everybody.

(The proceedings were concluded at 12:16 p.m.)

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