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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

May 16, 2012
Honolulu, Oahu

Beylik Drilling and Pump Service
APPLICATION FOR AFTER-THE-FACT WELL CONSTRUCTION / PUMP INSTALLATION PERMITS
Kukio 88 Well (Well No. 4859-10)
Well Construction: 11.75-inch Casing Diameter, 135-ft Deep Well
Pump Installation: 16.8 gpm for landscape irrigation use
TMK (3) 7-2-020:021 088, 72-157 Holo Kula Place, Hawaii

APPLICANT:

Beylik Drilling and Pump Service
91-259A Olai Street
Kapolei, HI 96707

LANDOWNER:

John Pataye
2346 Tripadi Way
Hayward, CA 94545

DESCRIPTION:

Location: (See Exhibit 1)

Dimensions: (See Exhibit 2)

BACKGROUND:

Construction

On July 9, 2007, the Kukio 88 well (State Well No. 4859-10) was constructed without a permit, by an unlicensed driller, Delima Drilling.

On August 12, 2008, a pump was installed in this well without a permit by Metzler Contracting, who is properly licensed to do this work.

First application and deficiencies

On March 3, 2011, an application was submitted for an after-the-fact Well Construction and Pump Installation permit for the Kukio 88 Well (State Well No. 4859-10). This was in response to a due diligence review for the sale of the property where it was discovered that no permits had been obtained for the well construction and pump installation.

C1

However, there were several outstanding issues that prevented the Commission from accepting this application as complete.

First, because the well is in a Special Management Area, a Special Management Area Permit (SMAP) needed to be addressed before the Commission could take action on this permit.

Second, there were no completion reports that described the construction details of the well and pump.

Third, the actual drilling contractor who performed the work was not identified.

A fourth issue was that the Kukio Association's declaration of covenants do not allow property owners to drill their own wells. However, this does not prevent the Commission from issuing permits.

Attached to the application was a letter from John Pataye, the owner of the property (attached as Exhibit 3). In this letter, Mr. Pataye stated that the general contractor (Metzler Construction) for his house advised him that no permits would be required for the construction of the well.

Follow-up correspondence

On September 19, 2011, staff received a letter from the Kukio Association stating that Kukio's Design Review Committee did not have objections to the construction of this well (attached as Exhibit 4).

On December 13, 2011, staff received a letter from the County of Hawaii's Planning Department stating that the after-the-fact construction of the well would not require a Special Management Area permit. This letter is attached as Exhibit 5.

New application

On March 16, 2012, Beylik Drilling and Pump Service submitted a new after-the-fact Well Construction and Pump Installation permit application. On March 19, 2012, Beylik submitted the Well Completion Reports via e-mail and formally identified the actual well driller as Delima Drilling. The filing fee and missing completion report information were submitted on March 29, 2012.

ISSUES/ANALYSIS:

HAR §13-168-12(a) states that:

> *No well shall be constructed, altered, or repaired and no pump or pumping equipment shall be installed, replaced, or repaired without an appropriate permit from the commission. An application for a well construction or pump installation permit shall be accompanied by a non-refundable filing fee of $25.00, excepting government agencies, and shall be required for all areas of the state, including water management areas. The owner of a well shall make application or cause an application to be made by the well driller who will construct the well or by the pump installation contractor who will install the pump and pumping equipment, as the case may be.*

The two violations that occurred were the construction of a well without a permit, and the installation of a pump without a permit. Additionally, the well construction was performed by a contractor who did not have the appropriate C-57 license.

Agency Review: Copies of the application were sent to the Department of Health's Safe Drinking Water and Wastewater Branches. No comments have been returned as of the drafting of this submittal.

Staff Review:

There are 24 other wells within a mile of the proposed well (refer to Exhibit 1). These wells are primarily brackish and used generally for landscape irrigation.

Because the source is brackish and the pump size is relatively small (16.8 gallons per minute, which staff considers too small to require pump tests), no adverse impacts to water resources are anticipated from short or long-term pumpage of this well, though there are concerns about the cumulative impacts of all of the wells in the area on nearby anchialine ponds.

Beylik Drilling has completed the as-built well section with information gathered from well video logging, and recollection from Delima Drilling and John Pataye. The only parameter that is not readily verifiable is the integrity of the grout around the annular space between the borehole and the casing. If constructed improperly, this can be a source of contamination into the aquifer, should contaminants get into this annular space. This would be more of a concern if there were potable sources surrounding this well. However, Kukio's covenants restrict the construction of potable wells.

Based on Beylik's reported construction details, the well as constructed is in compliance with the Hawaii Well Construction and Pump Installation Standards.

Other issues:

I. Chapter 343 – Environmental Assessment (EA) Compliance

EA Triggers
In accordance with §HRS 343-5(a), the applicant's action does not trigger the need for an EA

FINE CALCULATION:

Violations:

There are 2 violations:

Item 1: Construction of well without Well Construction Permit (§13-168-12a)
Item 2: Installation of pump without Pump Installation Permit (§13-168-12a)

While violations can be assessed on Mr. Pataye, Delima Drilling, and Metzler Contracting individually, an overall fine should be assessed as each has an interest in having this matter resolved. Mr. Pataye needs this permit to sell his property. Delima and Metzler have contracting licenses under the Department of Commerce and Consumer Affairs (DCCA) and would be at risk of further fines, suspension or revocation of their licenses for this out of scope specialty work. Upon completion of the entire process, staff will file a complaint to DCCA describing the permit violation and fine payments. Further, any future Commission related applications will be held in abeyance until fines are paid.

Minimum Components:

The minimum fine component established by the Commission's penalty policy is $250 minimum per violation that was set when the maximum fine was $1,000 per day. The Commission has not adjusted the guideline since the maximum daily fines were increased to up to $5,000 per day in 2004 in the Water Code. The initial minimum components include the following:

Component 1:	Finding of violation =	$250 per day/incident
Component 2:	Occurring in Water Management Area =	$250 per day/incident
Component 3:	Repeat Violation =	$250 per day/incident

(A repeat violation is deemed to occur when the party has previously been found to be a violator by the Commission. A repeat violation is tied to the party involved and is irrespective of the nature of the violation.)

Applicability to violation:

Component 1: Each violation is subject to a base fine of $250/day.
Component 2: Since the subject well is not in a Ground-Water Management Area, this component is not applicable.
Component 3: Since this was not a repeat violation, this component is not applicable.

Therefore, staff recommends a minimum penalty component of $250 for Item 1 and $250 for item 2.

Gravity Component:

Gravity factors can be considered in the recommendation of any fine or alternative penalty. The gravity component can increase the minimum component up to a cap of $1,000 per violation and initiate daily fines.

Gravity factors include but are not limited to:

G1 - significant risk to the resource
G2 - Actual damage or harm to resource
G3 - multiple or repeat violations of the code or regulations
G4 - evidence that the violator should have known about the violation
G5 - refusal to correct the violation once noticed
G6 - failure to meet deadlines as set by the Commission or its staff

Applicability to violation:

Mr. Pataye relied on the general contractor's advice that no permits were required for this work. Both contractors are licensed through the Department of Commerce and Consumer Affairs but do not have the specialty C-57 license required to construct wells. However, Metzler does have an A license that allows pump installation work. Since well drilling and pump work licenses are listed as separate licenses, it is reasonable to assume that both contractors should have at least asked DCCA about licensing requirements. From there they could have learned about the Hawaii Well Construction and Pump Installation Standards and permitting requirements. Therefore, they should have known that the respective permits were required (item G4).

Further, on June 17, 2008 (prior to the work done on this well), the pump installer, Metzler Construction, had applied for and obtained a pump installation permit for a nearby well, State Well No. 4860-05, 900 Trust Kukio Well. This is further indication that Metzler should have known that a permit was required.

Therefore, staff recommends a gravity component for G4 of $250 for item 1 and $250 for item 2.

Mitigation Component:

Mitigative factors can be considered in the recommendation of any fine or alternative penalty. The presence of one or more mitigative factors can reduce or eliminate the minimum penalty component fine or alternative penalty recommendation.

Mitigative factors include but are not limited to:

M1 - insignificant impact on the resource
M2 - attempt to remedy the violation without notice
M3 - good faith effort to remedy violation once noticed
M4 - self reporting in a timely manner
M5 - diligent and speedy effort to remedy the violation once noticed
[M6] - emergency situations (not mentioned in the current penalty policy)

Applicability to violation:

For Mr. Pataye a mitigation component is warranted. He turned in the after-the-fact application on his own volition, in order to bring his property into compliance, when it was discovered that permits had not been obtained for the well when he tried to sell his property. No notice of violation ever had to be issued as Mr. Pataye tried to resolve before the notice of violation was issued, thereby meeting mitigative factor M2. For this effort, a mitigative component of $50 may be applied to each violation.

Therefore, staff recommends a mitigative component of $50 for item 1 and $50 for item 2 for Mr. Pataye's efforts to resolve this violation.

Duration Component:

If one or more of the gravity components are met, a daily fine may be imposed. The duration component has been difficult in its application by staff as specified in the penalty guideline because:

1. It does not consider emergency situations

2. It does not specify certain circumstances such as non-permit related violations of the code (i.e. water use reporting, submission of completion reports for maintenance activities, etc.)

3. It does not consider permit holder acknowledgement of conditions through formal signing of administrative permits (i.e. well construction & pump installation)

4. It does not consider noticing aspects of violations, which allow opportunity for violator to remedy or show good faith effort in compliance

5. Strict adherence to the duration has in the past resulted in overly large sanctions. For example, repeat violation sanctions are both within the minimum penalty and gravity component calculations and start daily fines.

The circumstances surrounding each type of violation vary but the penalty guideline has proved flexible enough to consider the shortfalls mentioned above. Basically, when reasonable notice is given, compliance is speedy and shows good faith, the policy has been to limit the duration exposure to fine to a single day minimum for many of the typical after-the-fact violations brought before the Commission.

Applicability to violation:

Based on good faith effort on the part of the landowner and a first time violation for the contrators, staff is recommending the duration of the fine be 1 day.

Summary of Total Recommended Fines (from Exhibit 7):

Item 1: Construction of well without Well Construction Permit

Minimum Component:	$250/day
Gravity Component:	$250
Mitigative Component:	($50)
Duration	1 day
Total Fine:	$450

Item 2: Installation of pump without Pump Installation Permit

Minimum Component:	$250/day
Gravity Component:	$250
Mitigative Component:	($50)
Duration	1 day
Total Fine:	$450

Alternative Penalty Settlement

The penalty guideline allows that in lieu of the total monetary fines, the violator may be offered an alternative sanction. Considerations that guide staff in offering such an alternative are:

1. A minimum $500 fine in addition to the alternative offered.
2. The alternative must not be something the violator was required to do anyway because of legal or other obligations.
3. The alternative must result in new information, education, or other benefit to the water resources of the state.
4. The alternative must be completed within a specified timeframe and failure to do so will result in reinstitution of total recommended fines.

For this case, there is no recommended alternative penalty settlement.

RECOMMENDATION:

That the Commission:

A. Find Mr. John Pataye, Delima Drilling, and Metzler Contracting, each in violation of HAR §13-168-12(a).

B. Impose a fine of $900 in total, on Mr. Pataye, Delima Drilling, and Metzler Contracting as summarized in Exhibit 6, payable within 30 days.

C. Approve the issuance of well construction and pump installation permits for Kukio 88 Well (Well No. 4859-10), subject to the standard conditions in Exhibit 3, and the following special conditions:

1. That the permit will only be issued after the fine described in Item B is paid.

D. Suspend any current, pending or future Commission permit applications by both the applicant and the contractors (Metzler and Delima) until the fines are paid and the applicant/driller completes the permit process for this well.

Respectfully submitted,

WILLIAM M. TAM
Deputy Director

Exhibit(s):

1. (Location Map)
2. (Well Completion Reports)
3. (Letter from John Pataye)
4. (Letter from Kukio)
5. (Letter from Planning Department)
6. (G-01-01 Penalty Policy)
7. (Penalty Policy Calculations)
8. (Standard Well Construction Permit conditions)
9. (Standard Pump Installation Permit conditions)

APPROVED FOR SUBMITTAL:

WILLIAM J. AILA, JR.
Chairperson

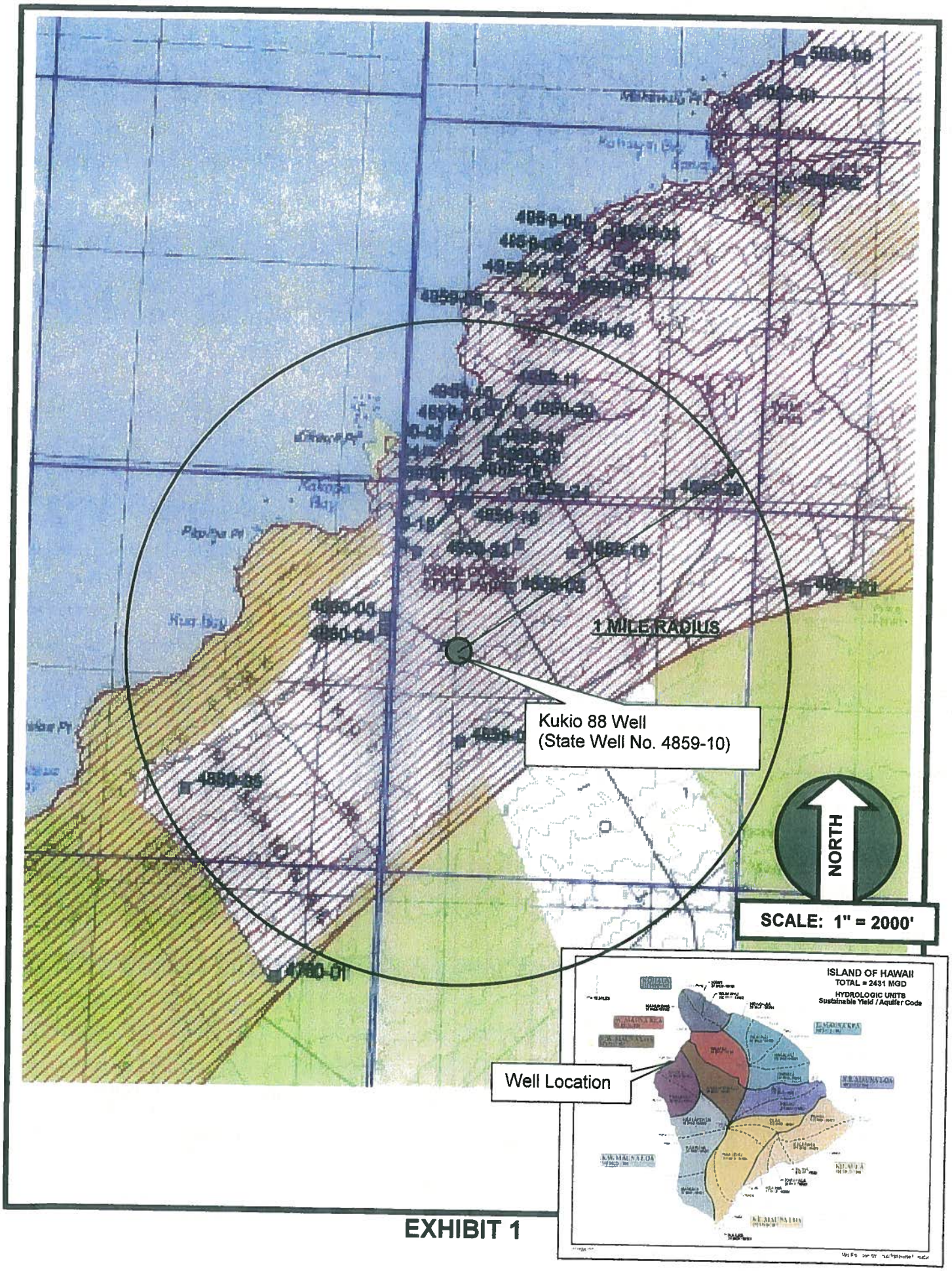

1 MILE RADIUS
Kukio 88 Well
(State Well No. 4859-10)
NORTH
SCALE: 1" = 2000'
ISLAND OF HAWAII
TOTAL = 2431 MGD
HYDROLOGIC UNITS
Sustainable Yield / Aquifer Code
Well Location

EXHIBIT 1

State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

WELL COMPLETION REPORT - PART I
Well Construction

For Official Use Only:

rec'd via e-mail 3/19/12

Instructions: Please print in ink or type and send completed report (with attachments, if applicable) to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. The Commission may not accept incomplete reports. This form shall be submitted within 60 days of the completion of work. For assistance, please consult the Hawaii Well Construction and Pump Installation Standards or call the Regulation Branch at **587-0225**. For updates to this form or additional information, please visit our website at http://www.state.hi.us/dlnr/cwrm/

1. State Well No.: _____ Well Name: Kukio 88 Island: Hawaii
2. Address: 72-157 Holo Kula Place, Kailua-Kona 96740 Tax Map Key: (3) 7-2-20:21
3. Drilling Company: After The Fact - Beylik Drilling & Pump Service, Inc.
4. Drilling method used during construction: ☒ Rotary ☐ Percussion ☐ Other (describe)
5. Date Well Construction (drilled,cased,grouted) completed: _____ month/day/year **Attach Completed Driller's Log**
6. Was the subject well cored? ☐ Yes ☒ No
7. Step-Drawdown Test completed? ☒ No ☐ Yes **Attach Step-Drawdown Test form (*12/17/97 SDPTD Form*)**
8. Constant Rate Aquifer Test completed? ☒ No ☐ Yes **Attach Constant Rate Aquifer Test form (*12/17/97 CRPTD Form*)**

Water Level Data: No Data Available	**Reference point elevation**	-	**Depth to water** (feet)	=	**Water Level** ft. above mean sea level (see note below)	**Date/time of measurement**
9. Initial encountered during drilling (this should also be filled in on the driller's log)	Ground = ft. msl					
10. Just prior to casing installation	Ground = ft. msl					
11. After casing installation (this information should be before any pump tests are performed with casing installed) Chloride: _____ ppm, Temperature: _____ °F	If this reference point is not the benchmark, the difference between the benchmark and this point is: _____ ft.					

note: for all elevations referenced to mean sea level, take the ground elevation (surveyed or estimated if survey not required at this time) and subtract the depth to the water level.

12. **As-built section filled in completely** ☒
13. **Photograph of well and concrete pad showing benchmark on concrete pad attached** ☒
14. **GPS coordinates provided in degrees, minutes, seconds** ☒
15. If a pump is not planned to be installed, please describe (below in the remarks section) how well is secured to prevent unauthorized access (example: lockable cover, threaded coupling, etc.)
16. Remarks: Drilling Contractor - Delima Drilling

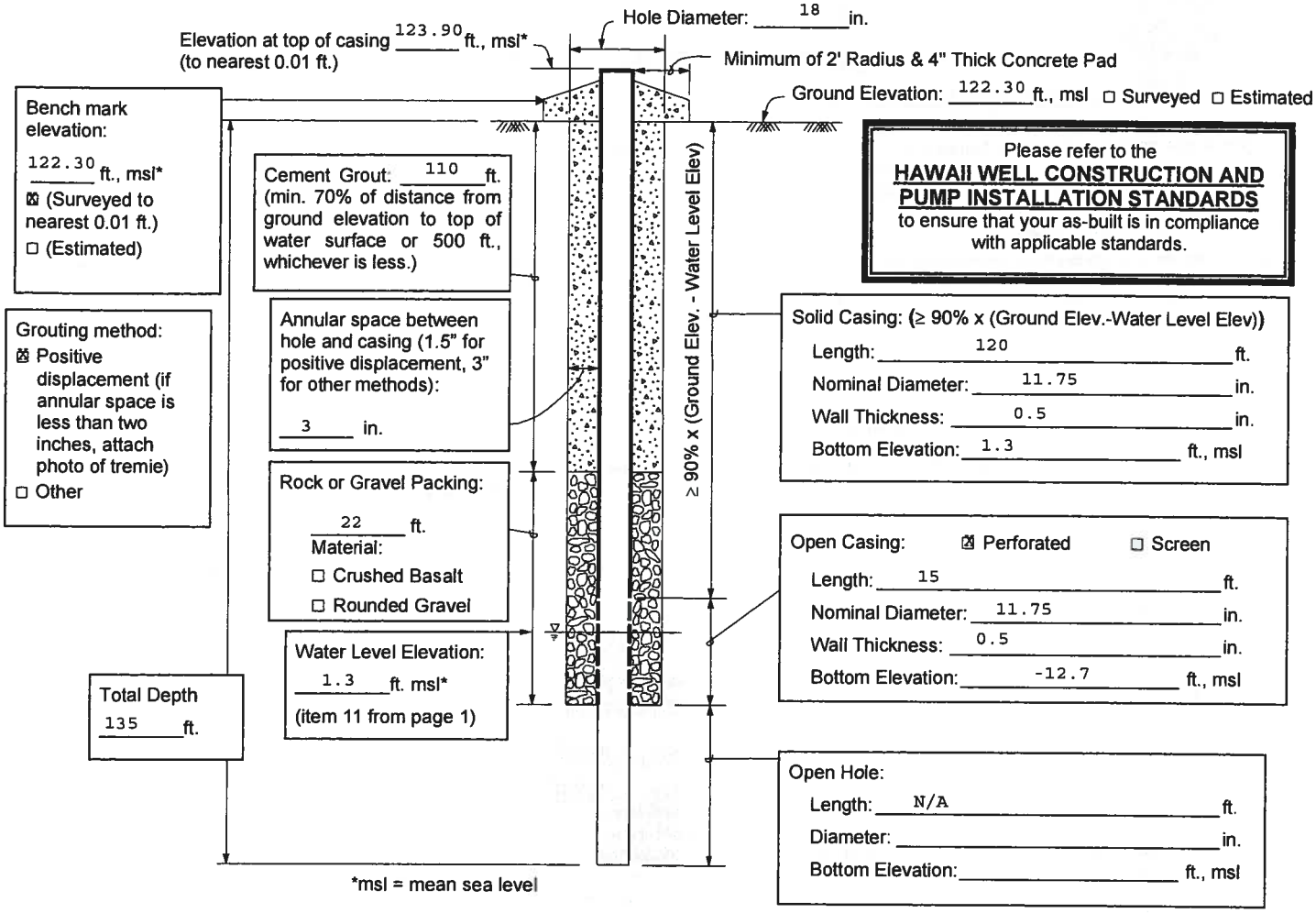
After The Fact Well Completion Report Part I

Licensed Driller (print) Beylik Drilling & Pump Service, Inc. C-57 Lic. No. AC-21896

Signature _____ Date March 19, 2012

EXHIBIT 2

12. AS-BUILT WELL SECTION *(Please attach as-built if different from diagram provided below)*



Solid Casing Material:

Carbon Steel: compliant with (*check one or more*): ☐ ANSI/AWWA C200 ☐ API Spec. 5L ☐ ASTM A53 ☐ ASTM A139
And compliant with (*check one or more*): ☐ ASTM A242 or A606 ☐ Type E ☐ Type S ☐ Grade B ☐ Other
Stainless Steel: (*check one*): ☐ ASTM A409 (production wells) ☐ ASTM A312 (monitor wells)
ABS Plastic conforming to ASTM F480 and ASTM D1527: (*check one*) ☐ Schedule 40 ☐ Schedule 80
PVC Plastic conforming to ASTM F480 and (ASTM D1785 or ASTM D2241): (*check one*): ☒ Schedule 40 ☐ Schedule 80 ☐ Schedule 120
Thermoset Plastic: (*check one*) ☐ Filament Wound Resin Pipe conforming to ASTM D2996
☐ Centrifugally Cast Resin Pipe conforming to ASTM D2997
☐ Reinforced Plastic Mortar Pressure Pipe conforming to ASTM D3517
☐ Glass Fiber Reinforced Resin Pressure Pipe conforming to AWWA C950
☐ PTFE Fluorocarbon Tubing conforming to ASTM D3296
☐ FEP Fluorocarbon Tubing conforming to ASTM D3296

Open Casing Material:

Carbon Steel: compliant with (*check one or more*): ☐ ANSI/AWWA C200 ☐ API Spec. 5L ☐ ASTM A53 ☐ ASTM A139
And compliant with (*check one or more*): ☐ ASTM A242 or A606 ☐ Type E ☐ Type S ☐ Grade B ☐ Other
Stainless Steel: (*check one*): ☐ ASTM A409 (production wells) ☐ ASTM A312 (monitor wells)
ABS Plastic conforming to ASTM F480 and ASTM D1527: (*check one*) ☐ Schedule 40 ☐ Schedule 80
PVC Plastic conforming to ASTM F480 and (ASTM D1785 or ASTM D2241): (*check one*): ☒ Schedule 40 ☐ Schedule 80 ☐ Schedule 120
Thermoset Plastic: (*check one*) ☐ Filament Wound Resin Pipe conforming to ASTM D2996
☐ Centrifugally Cast Resin Pipe conforming to ASTM D2997
☐ Reinforced Plastic Mortar Pressure Pipe conforming to ASTM D3517
☐ Glass Fiber Reinforced Resin Pressure Pipe conforming to AWWA C950
☐ PTFE Fluorocarbon Tubing conforming to ASTM D3296
☐ FEP Fluorocarbon Tubing conforming to ASTM D3296

DRILLER'S LOG - No Data Taken

WELL NUMBER: _____ *In addition to the driller's log, if a geologic log was prepared, please submit with this form*

Depths (ft.)	Rock Description	Water Level	Cl-	Dates	Depths (ft.)	Rock Description	Water Level	Cl-	Dates
____ to ____	_____	_____	_____	_____	____ to ____	_____	_____	_____	_____
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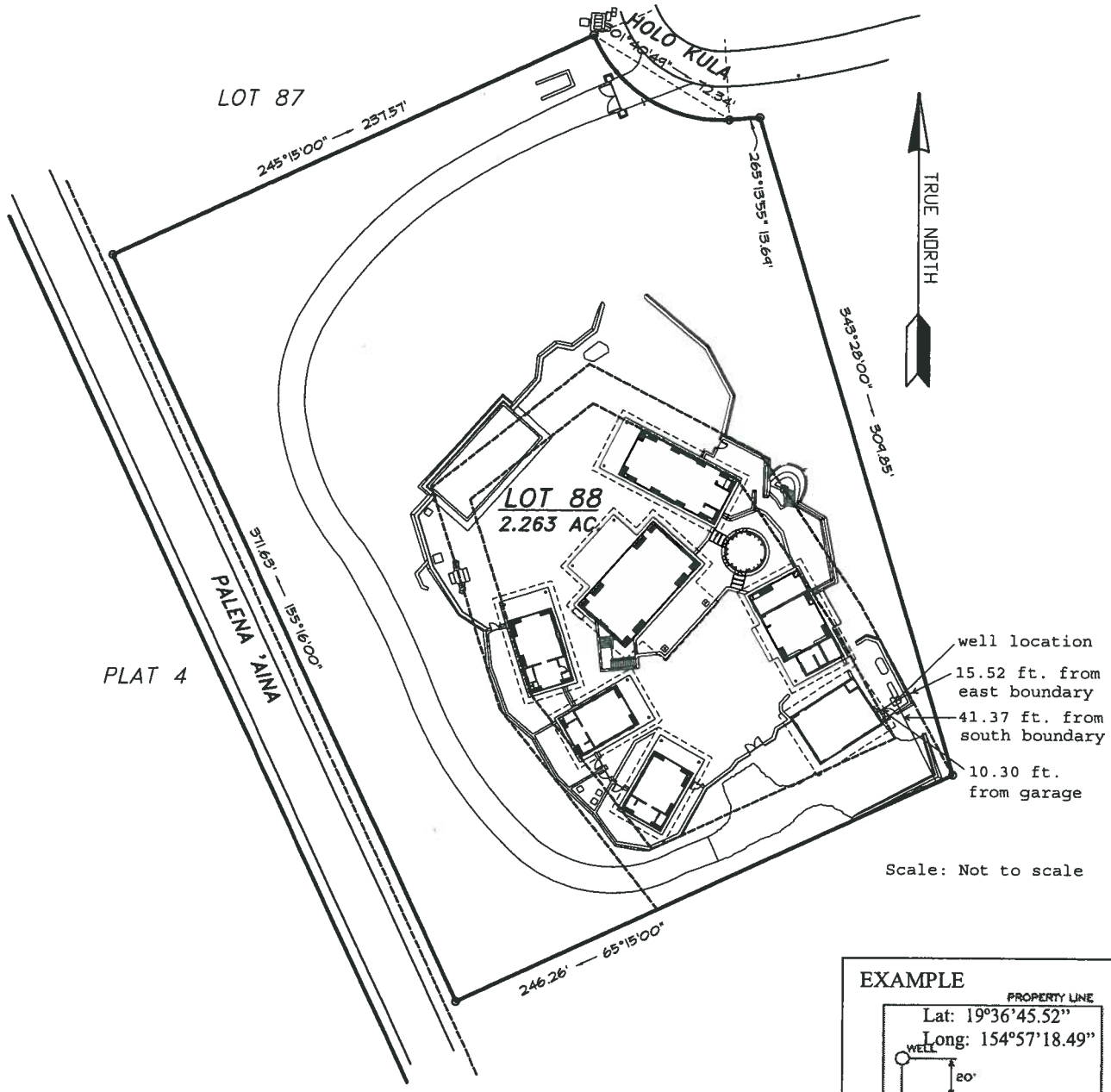
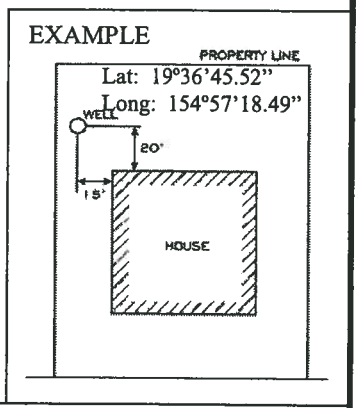
Remarks:





TMK: (3) 7-2-20:21

Attach photos of completed well and concrete pad

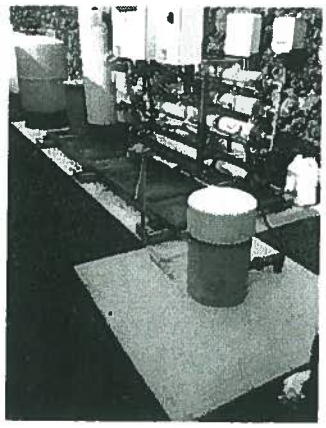
NAD83 (seconds to 2 decimal places):
Latitude: 19 degrees 48 min 35.00sec
Longitude: 155 degrees 59 min49.01sec

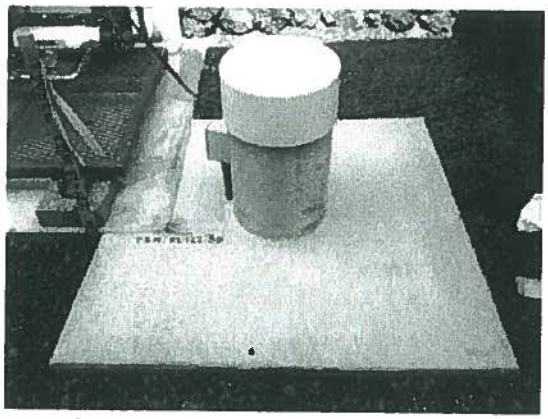
SKETCH OF WELL LOCATION

(Referenced to permanent landmark, i.e. building, road, fence, etc.)

Provide Latitude and Longitude of well referenced to NAD83 to decimal seconds

Well Elevation

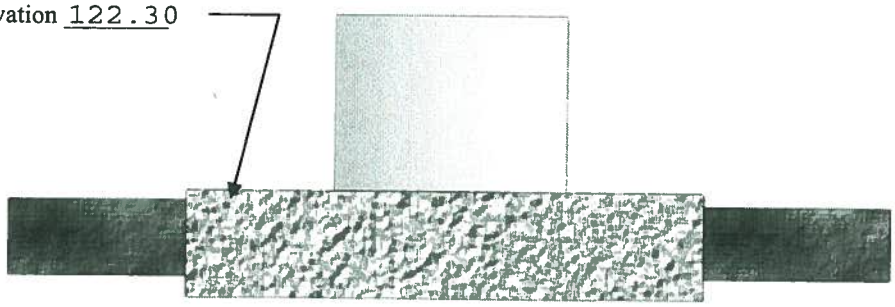




photos taken on 3/3/2012

Mag nail on concrete cap.

Benchmark Elevation 122.30



Attach photos of completed well and concrete pad showing benchmark location.

I certify that the elevation shown above:

1) Was done in accordance with acceptable surveying practices
2) Is accurate to the nearest 0.01 ft.
3) Is referenced to mean sea level

ROGER D. FLEENOR
LICENSED PROFESSIONAL LAND SURVEYOR
No. 7276
HAWAII, U.S.A.

Surveyor	License No.	Date
	7276	March 3, 2012

State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
WELL COMPLETION REPORT - PART II
Pump Installation

For Official Use Only:
redd via e-mail 3/19/12

Instructions: Please print in ink or type and send completed report (with attachments, if applicable) to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. The Commission may not accept incomplete reports. This form shall be submitted within 60 days of the completion of work. For assistance, please consult the Hawaii Well Construction and Pump Installation Standards or call the Regulation Branch at **587-0225**. For updates to this form or additional information, please visit our website at http://www.hawaii.gov/dlnr/cwrm/

1. State Well No.: _____ Well Name: Kukio 88 Island: Hawaii
2. Address: 72-157 Holo Kula Place, Kailua-Kona 96740 Tax Map Key: (3) 7-2-20:21
3. Pump Installation Company: After The Fact - Beylik Drilling & Pump Service, Inc
4. Date Pump Installed: _____ (month/day/year)
5. PERMANENT PUMP INFORMATION

   Pump Type, Make, Serial No.: Submersible, Goulds, 13GS15412C

   Rated Capacity: 16.8 gpm at head of: 140 ft.

   Motor Type, H.P., Voltage, rpm: Submersible, Centripro, 1.5 HP, 230V, 3450 RPM

   Pump type (check one):

   ☑ Deep Well Turbine ☐ Rotary ☐ Propeller
   ☐ Submersible ☐ Rotary-Displacement ☐ Reciprocating
   ☐ Centrifugal ☐ Rotary-Gear ☐ Impulse

6. Method of flow measurement:

   ☑ Flowmeter w/ totalizer Manufacturer _____ Model no. _____ Size _____

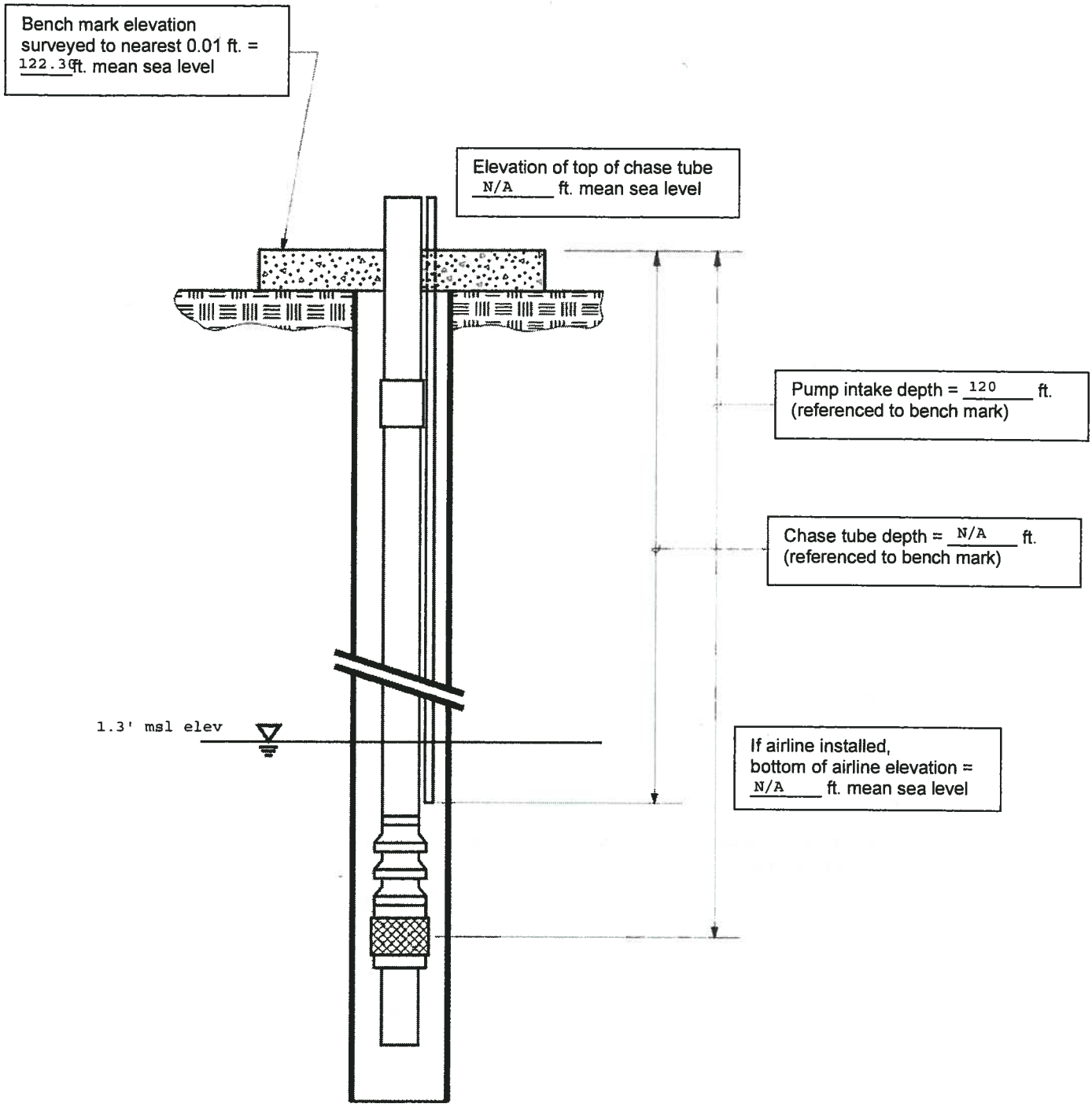
   ☐ Other, explain and attach schematic _____

7. **Fill in the as-built section on the other side of this sheet.**
8. **Attach the rating curve for the installed pump.**
9. **Attach photograph of well clearly showing the benchmark on the concrete pad, the well head, and the method of flow measurement.**
10. Well Owner Company John Pataye Contact John Pataye
    Address 2346 Tripadi Way, Hayward, CA 94545
    Phone 510 887-0682 Fax 510 887-7220
11. Land Owner Company Same as above Contact _____
    Address _____
    Phone _____ Fax _____
12. Remarks After The Fact Well Completion Report Part II - Pump Installer: Metzler Contracting

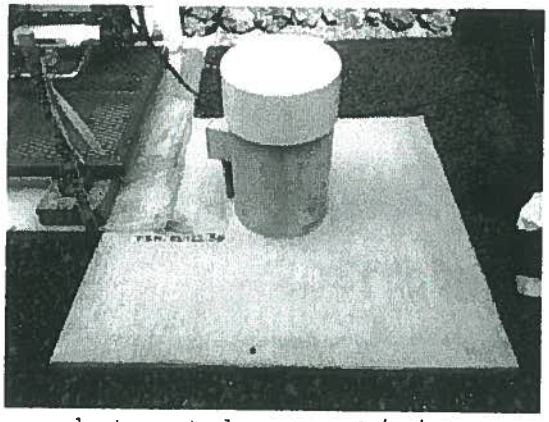
Pump Installation Contractor (print) Beylik Drilling & Pump Svc C-57/C-57a/A Lic. No. AC-21896

Signature _____ Date March 19, 2012

7. AS-BUILT PUMP SECTION *(Please attach as-built if different from diagram provided below)*



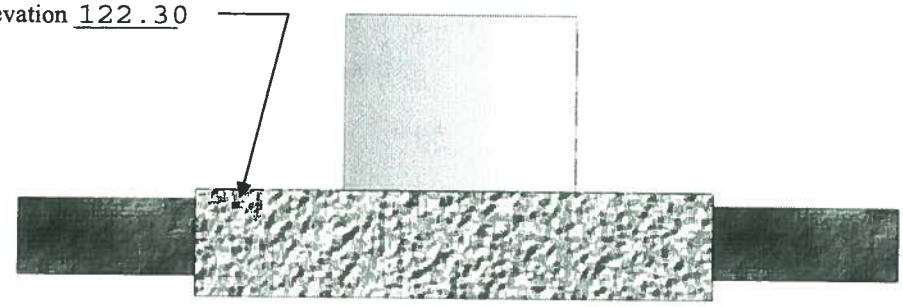
Well Elevation



photos taken on 3/3/2012

Mag nail on concrete cap.

Benchmark Elevation 122.30



Attach photos of completed well and concrete pad showing benchmark location.

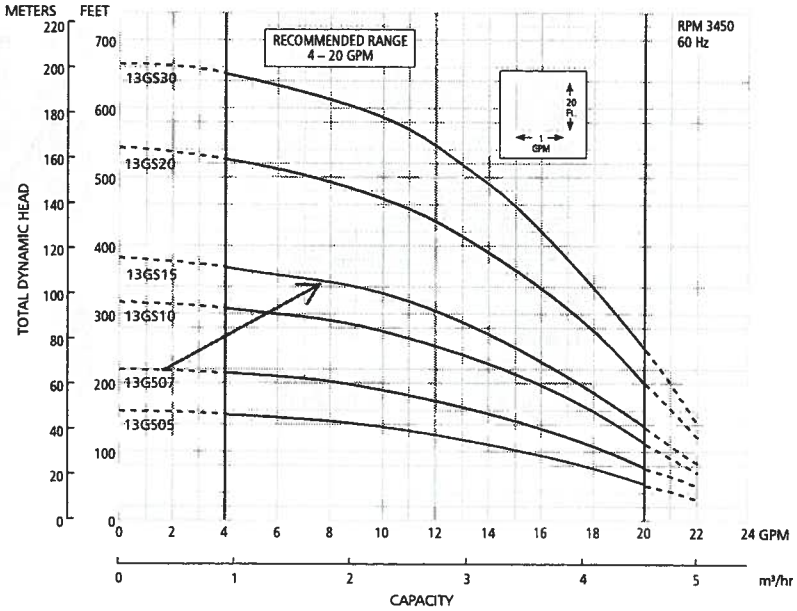
I certify that the elevation shown above:

1) Was done in accordance with acceptable surveying practices
2) Is accurate to the nearest 0.01 ft.
3) Is referenced to mean sea level

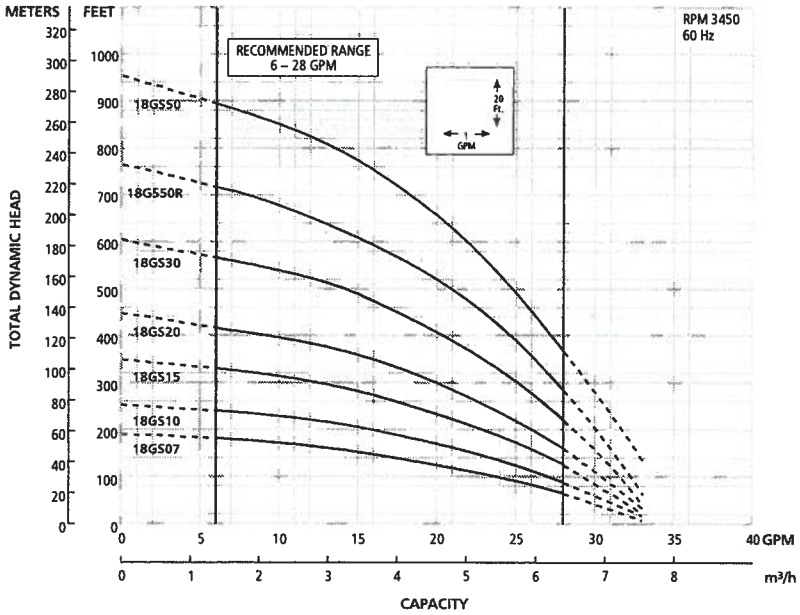
ROGER D. FLEENOR
LICENSED PROFESSIONAL LAND SURVEYOR
No. 7276
HAWAII, U.S.A.

Surveyor	License No.	Date
	7276	March 3, 2012

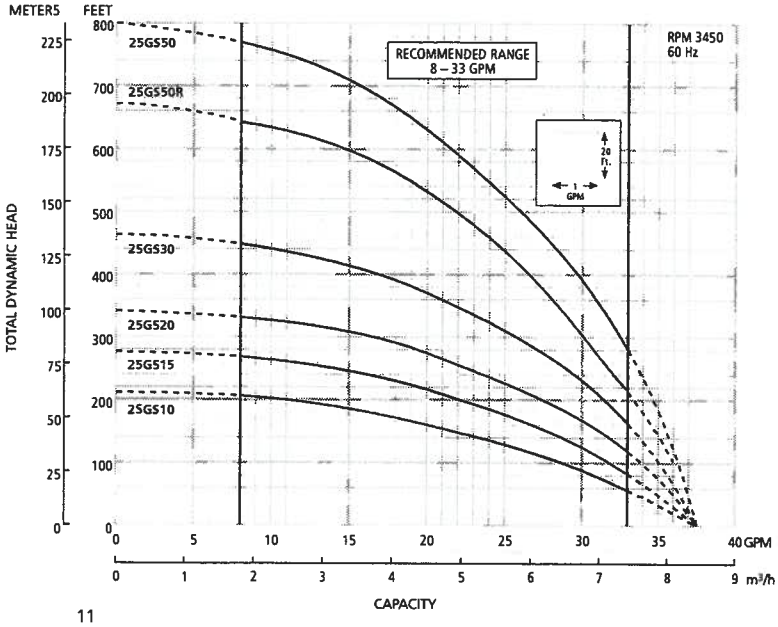
Model 13GS

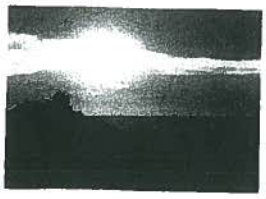


Model 18GS



Model 25GS





February 28, 2011

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2011 MAR -3 AM 9: 11

Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809

RE: Kukio 88 Well Permit

Enclosed is an application and $25.00 filing fee for an after-the-fact well construction/pump installation permit for our residence in Kukio, North Kona, County of Hawaii. When we were planning the construction of our house and conferred with our licensed general contractor, we were informed that there would be no permits required for the well. The explanation was that our well was to be a 'brackish' water for irrigation use only and therefore no permits were required.

During the construction process, all other permits were 'pulled' for the project and we passed all inspections and local committee reviews such as HOA requirements and Kukio Design Review committee. We passed our 'Final' permit review in September of 2010. After that, the "Notice of Completion" was duly filed and noted.

We started using the well in October, 2010. In November of 2010 we decided to sell our home. We sold the home in February, 2011. The house was in escrow when, during the buyer's due diligence period, it was 'discovered' that there was no permit for the well or pump. Upon our being notified of that fact on February 11, 2011, we looked into the issue and shut the pump off on February 15, 2011 and have not used it since. We have now been advised of the process of getting the correct permits. In the meantime the buyer backed out of the purchase.

The lack of a permit is due to the faulty advice of our general contractor, not an effort to avoid a requirement of building this project. It is a very unfortunate circumstance that no one, including the General Contractor, subcontractors, Home Owner Association Committees, the Kukio Design Review Committee, or the various inspectors on our project, ever mentioned that permits for the well/pump were required. We are now requesting a permit to remedy the situation.

We thank you in advance for your consideration and prompt review and issuance of the required permits.

Sincerely,

John Pataye

enc.: Well Permit Package

72-157 Holo Kula Place
Kailua-Kona, HI 96740
Ph: 510.887.0682
kolokulaone@me.com

EXHIBIT 3

kūki'o

2011 SEP 19 PM

September 15, 2011

Ms. Bobby Jean Leithead-Todd, Director
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Mr. Roy Hardy, Regulation Branch Chief
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Dear Ms. Leithead-Todd and Mr. Hardy:

WB Kukio Resorts LLC is the developer of the Kukio Resort Development. John Pataye and Helga Preiss are owners of a residential property in the Kukio Resort Development. We understand that, through no fault of theirs, the non-potable water well on their property was constructed without the requisite permits from the State Commission on Water Resource Management. We also understand that they are currently attempting to rectify this deficiency by obtaining the necessary after-the-fact approvals.

By this letter, we wish to assure whomever it may concern that Mr. Pataye and Ms. Preiss obtained the required approvals from Kukio's Design Review Committee (DRC) for construction of their residence, and that we did not have any objections to the well especially since the well was installed in 2007 prior to any concerns raised by your department.

We would also like to express our support for Mr. Pataye's and Ms. Preiss' efforts to maintain and continue to utilize the well on their property.

Very truly yours,

Randy Mori
WB Kukio Resorts, LLC

c: John Pataye & Helga Preiss
Yvonne Izu, Esq.

PO Box 5349 Kailua-Kona, HI 96745-5349 Tel: 808•325•1000 Fax: 808•325•2511
Courier: 87 Mile Marker Queen Ka'ahumanu Highway Kailua-Kona, Hawai'i 96740

EXHIBIT 4

William P. Kenoi
Mayor

BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

December 12, 2011

Ms. Yvonne Y. Izu
Morihara Lau & Fong, LLP
400 Davies Pacific Center
841 Bishop Street
Honolulu, HI 96813

2011 DEC 13 PM 2: 24

Dear Ms. Izu:

SUBJECT: After-the-Fact CWRM Permit for Irrigation Water Well and Consistency with SMA Use Permits Nos. 273 and 311 Relating to Kūki'o Beach Resort
TMK: 7-2-020: 021; Kūki'o 1st, North Kona, Hawai'i

Thank you for your letter dated October 20, 2011, regarding the above-described matter. In addition, we acknowledge the email correspondence to staff on November 30, 2011. We apologize for our delay in responding to your inquiry.

The subject parcel consists of 2.263 acres and is zoned Single-Family Residential (RS-10) by the County of Hawai'i. It is designated Urban by the State Land Use Commission. In addition, the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcel as Resort Node. Although the parcel is in the Special Management Area (SMA), the well site is not within a "shoreline area" as defined by Chapter 205A-41, Hawai'i Revised Statutes (HRS).

Based on your correspondences and a separate correspondence received from WB Kūki'o Resorts, LLC, the construction plans for the single-family residence, previously approved by the Kūki'o Design Review Committee, included the non-potable water well. On July 16, 2007, a building permit was issued for a single-family residence on the subject parcel. In addition, the non-potable well was constructed on the property. We understand this well did not receive a Well Construction/ Pump Installation Permit from the Department of Land and Natural Resources Commission on Water Resource Management (CWRM).

EXHIBIT 5

We further understand that your clients are working with CWRM to obtain the required after-the-fact approvals.

According to Chapter 205A-22, HRS and Planning Commission Rule 9 relating to Special Management Area, "development" does not include *"Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development."* Therefore, we have determined that the after-the-fact construction of the non-potable well is an accessory of the single-family residence and also exempt from the definition of "development".

We continue to have concerns regarding the cumulative effect of individual wells on the hydrology and water chemistry of the nearby anchialine ponds and marine waters. However, due to the unusual circumstances with this specific as-built well, no further review against the SMA rules and regulations will be required.

Please note that the land owner is still responsible to secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations. In addition, according to Chapter 205A-28, Hawai'i Revised Statues (HRS) and Planning Commission Rule 9-8 (a) relating to Special Management Area, "*No development shall be allowed within the Special Management Area without obtaining a permit in accordance with this rule.*" Therefore all future development on the subject parcel is subject to the SMA rules and regulations and will require an SMA permit.

If you have questions or require further information, please feel free to contact Bethany Morrison of this office at 961-8138.

Sincerely,

BJ LEITHEAD TODD
Planning Director

BJM:cs
P:\wpwin60\CZM\Letters\2011\Pataye Well Permit-Kukio.doc

cc: Mr. Ryan Imata
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawai'i
PO Box 621
Honolulu, HI 96809

Planning Department- Kona Office
Long Range Planning

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
		DAILY FINES						DURATION CALCULATION									
Item No.	Description	Finding of violation (min $250)	Occurring in WMA (min $250)	Repeat violation (min $250)	Gravity component	Mitigative component	TOTAL DAILY FINES	Start date	End date	Total Days Tolled	No. of days	Compliance within 30 days (yes/no)	Total duration of violation	Alternate settlement	Subtotal fine for one incident	No. of incidents	Subtotal fines
							C+D+E+F+G				(J-I)-K				H*N		P*Q
1	Well Construction	$250	$0	$0	$250	-$50	$450				1		1		$450	1	$450
2	Pump Installation	$250	$0	$0	$250	-$50	$450				1		1		$450	1	$450
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
							$0				0		0		$0		$0
TOTAL FINES																	$900

NOTES

A Item No

B Description - description of the violation, see submittal text for specific rules violated

C Finding of violation (min. $250) - where there is a violation, there is a minimum daily fine of $250

D Occurring in WMA (min. $250) - When the violation is in a designated Water Management Area, there is a minimum additional daily fine of $250

E Repeat violation (min. $250) - When the violator has committed violations in the past, there is a minimum additional daily fine of $250

F Gravity component - allows for the increase of the daily fine

G Mitigative component - allows for the decrease of the daily fine

H TOTAL DAILY FINES - the sum of the values in columns C through G

I Start date - the date where calculation of daily fines begins (date of notice of violation, or permit approval, or permit fully signed, or violation occurred, or CWRM order)

J End date - the date of the end of the violation or latest CWRM meeting or completed permit application

K Days tolled - the amount of days that are tolled, to be subtracted from the total duration of the violation

L No. of days - calculated between start and end dates and subtracting the tolled days

M Compliance within 30 days (yes/no) - if the applicant complies with the Commission staff's notice of violation requirements within 30 days

N Total duration of violation - if there was compliance with staff notice of violation within 30 days, the duration shall be one (1) day. If there was no compliance with staff notice of violation within 30 days, the duration shall be the total days of the violation. However, gravity circumstances can increase the total days even if the 30 day compliance is met.

O Alternate settlement (yes / no)- an alternate settlement in lieu of the daily fine was recommended

P Subtotal fine for one incident - per incident fine

Q No. of incidents - of violation that occurred for this investigation

R Subtotal fines - the subtotal of fines, calculated by multiplying (per incident fine) * (no. of incidents)

EXHIBIT 6

Penalty Policy G-01-01

SUMMARY OF FINE CALCULATION (based on Penalty Guideline G-01-01)

Well 4859-01

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
		DAILY FINES						DURATION CALCULATION								
Item No.	Description	Finding of violation (min - $250)	Occurring in WMA (min - $250)	Repeat violation (min - $250)	Gravity component	Mitigative component	TOTAL DAILY FINES	Start date	End date	No. of days	Compliance within 30 days (yes/no)	Total duration of violation	Alternate settlement (yes/no)	Subtotal fine for one incident	No. of incidents	Subtotal fines
							C+D+E+F+G			J-I				H*M		O*P
1	Construction of well without Well Constrution Permit	$250	$0	$0	$250	-$50	$450			1		1	no	$450	1	$450
2	Installation of pump without Pump Installation Permit	$250	$0	$0	$250	-$50	$450			1		1	no	$450	1	$450
TOTAL FINES																$900

NOTE

S minimum fines have been updated per the 2003 which raised minimum daily fines from $1,000 per violation to $5,000 per violation. Percentages are used to recalculate new minimum values.

A Individul violation item and corresponding number.

B Description - description of the violation, see submittal text for specific rules violated.

C Finding of violation - where there is a violation, there is a minimum daily fine of $250. (need to update penalty policy to bring to $1,250 or 25% of max day fine of $5,000)

D Occurring in WMA - When the violation is in a designated Water Management Area, there is a minimum additional daily fine of $250. (need to update penalty policy to bring to $1,250 or 25% of max day fine of $5,000)

E Repeat violation - When the violator has committed violations in the past, there is a minimum additional daily fine of $250. (need to update penalty policy to bring to $1,250 or 25% of max day fine of $5,000)

F Gravity component - allows for the increase of the daily fine, includes: significant risk of or actual damage or harm to the water resources or the environment, multiple or repeat violations of the code or regulations, evidence that the violator should have known about the violation, refusal to correct the violation once noticed, failure to meet deadlines as set by the Commission or its staff.

G Mitigative component - allows for the decrease of the daily fine, includes: insignificant impact on the resource, attempt to remedy the violation without notice, good faith effort to remedy violation once noticed, self reporting in a timely manner, and diligent and speedy effort to remedy the violation once noticed.

H TOTAL DAILY FINES - the sum of the values in columns C through G.

I Start date - the date where calculation of daily fines begins (date of notice of violation, or permit approval, or permit issed, permit fully signed, or violation occurred, or CWRM order).

J End date - same as start date if in compliance with NOV requests within 30 , or the date of the end of the violation, or latest CWRM meeting, or completed permit application, or removal/remedy of the violation.

K No. of days - calculated between start and end dates.

L Compliance within 30 days (yes/no) - if the applicant complies with the Commission staff's notice of violation requirements within 30 days.

M Total duration of violation - if there was compliance with staff notice of violation within 30 days, the duration shall be one (1) day. If there was no compliance with staff notice of violation within 30 days, the duration shall be the total days of the violation.

N Alternate settlement (yes/no) an alternate settlement in lieu of the daily fine was recommended. See submittal for description.

O Subtotal fine for one incident - per incident fine.

P No. of incidents - of similar violations that occurred for this investigation.

Q Subtotal fines - the subtotal of fines, calculated by multiplying (per incident fine) * (no. of incidents).

EXHIBIT 6

Summary of fine calculation

SUMMARY OF FINE CALCULATION (based on Penalty Guideline G-01-01)

Well 4859-10

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
		DAILY FINES						DURATION CALCULATION								
Item No.	Description	Finding of violation (min - $250)	Occurring in WMA (min - $250)	Repeat violation (min - $250)	Gravity component	Mitigative component	TOTAL DAILY FINES	Start date	End date	No. of days	Compliance within 30 days (yes/no)	Total duration of violation	Alternate settlement (yes/no)	Subtotal fine for one incident	No. of incidents	Subtotal fines
							C+D+E+F+G			J-I				H*M		O*P
	Pataye - Well Construction	$250				-$50	$200							$200	1	$200
	Pataye - Pump Installation	$250				-$50	$200							$200	1	$200
														total fine for pataye		$400
	Delima - Well Construction	$250			$250		$500							$500	1	$500
	Metzler - Pump Installation	$250			$250		$500							$500	1	$500

NOTES minimum fines have been updated per the 2003 which raised minimum daily fines from $1,000 per violation to $5,000 per violation. Percentages are used to recalculate new minimum values.

A Individul violation item and corresponding number.

B Description - description of the violation, see submittal text for specific rules violated.

C Finding of violation - where there is a violation, there is a minimum daily fine of $250. (need to update penalty policy to bring to $1,250 or 25% of max day fine of $5,000)

D Occurring in WMA - When the violation is in a designated Water Management Area, there is a minimum additional daily fine of $250. (need to update penalty policy to bring to $1,250 or 25% of max day fine of $5,000)

E Repeat violation - When the violator has committed violations in the past, there is a minimum additional daily fine of $250. (need to update penalty policy to bring to $1,250 or 25% of max day fine of $5,000)

F Gravity component - allows for the increase of the daily fine, includes: significant risk of or actual damage or harm to the water resources or the environment, multiple or repeat violations of the code or regulations, evidence that the violator should have known about the violation, refusal to correct the violation once noticed, failure to meet deadlines as set by the Commission or its staff.

G Mitigative component - allows for the decrease of the daily fine, includes: insignificant impact on the resource, attempt to remedy the violation without notice, good faith effort to remedy violation once noticed, self reporting in a timely manner, and diligent and speedy effort to remedy the violation once noticed.

H TOTAL DAILY FINES - the sum of the values in columns C through G.

I Start date - the date where calculation of daily fines begins (date of notice of violation, or permit approval, or permit issed, permit fully signed, or violation occurred, or CWRM order).

J End date - same as start date if in compliance with NOV requests within 30 , or the date of the end of the violation, or latest CWRM meeting, or completed permit application, or removal/remedy of the violation.

K No. of days - calculated between start and end dates.

L Compliance within 30 days (yes/no) - if the applicant complies with the Commission staff's notice of violation requirements within 30 days.

M Total duration of violation - if there was compliance with staff notice of violation within 30 days, the duration shall be one (1) day. If there was no compliance with staff notice of violation within 30 days, the duration shall be the total days of the violation.

N Alternate settlement (yes/no) an alternate settlement in lieu of the daily fine was recommended. See submittal for description.

O Subtotal fine for one incident - per incident fine.

P No. of incidents - of similar violations that occurred for this investigation.

Q Subtotal fines - the subtotal of fines, calculated by multiplying (per incident fine) * (no. of incidents).

EXHIBIT 6a

STANDARD WELL CONSTRUCTION PERMIT CONDITIONS

In accordance with Department of Land and Natural Resources, Commission on Water Resource Management's Administrative Rules, Section 13-168, entitled "Water Use, Wells, and Stream Diversion Works", this document permits the construction and testing of Kukio 88 Well (Well No. 4859-10) at 72-157 Holo Kula Place, Hawaii, TMK **(3) 7-2-020: 021 088,** subject to the Hawaii Well Construction & Pump Installation Standards (February 2004) which include but are not limited to the following conditions:

1. The Commission on Water Resource Management (Commission), P.O. Box 621, Honolulu, HI 96809, shall be notified, in writing, at least two (2) weeks before any work by this permit commences and staff shall be allowed to inspect installation activities in accordance with §13-168-15, Hawaii Administrative Rules.

2. The well construction permit shall be for construction and testing of the well only. A minimum one-inch diameter monitor tube shall be permanently installed, in a manner acceptable to the Commission, to accurately record water levels. The permittee shall coordinate with the Commission and conduct a pumping test in accordance with the attached **Aquifer Pump Testing Procedure (attached)**. The permittee shall submit to the Commission the test results as a basis for supporting an application to install a permanent pump and withdraw water for use. No permanent pump may be installed until a pump installation permit is approved and issued by the Commission.

3. In basal ground water, the depth of the well may not exceed one-fourth (1/4) of the theoretical thickness (41 times initial head) of the basal ground water unless otherwise authorized by the Chairperson.

4. The permittee shall incorporate mitigation measures to prevent construction debris from entering the aquatic environment, to schedule work to avoid periods of high rainfall, and to revegetate any cleared areas as soon as possible.

5. In the event that subsurface cultural remains such as artifacts, burials or concentrations of shells or charcoal are encountered during construction, the permittee shall stop work and contact the Department's Historic Preservation Division (587-0045) immediately.

6. The proposed well construction shall not adversely affect existing or future legal uses of water in the area, including any surface water or established instream flow standards. This permit or the authorization to construct the well shall not constitute a determination of correlative water rights.

7. The following shall be submitted to the Commission within sixty (60) days after completion of work:
   a. Well completion report, **(attached - Part I, Well Construction Report)**.
   b. Elevation (referenced to mean sea level, msl) survey by a Hawaii-licensed surveyor.
   c. As-built sectional drawing of the well.
   d. Plot plan and map showing the exact location of the well.
   e. Complete pumping test records, including time, pumping rate, drawdown, chloride content, and other water quality data.

8. The permittee shall comply with all applicable laws, rules, and ordinances.

9. The well construction permit application is incorporated into this permit by reference and is subject to the Hawaii Well Construction & Pump Installation Standards (January 23, 1997; HWCPIS). If the HWCPIS are not followed and as a consequence water is wasted or contaminated, **a lien on the property may result**.

10. The permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The work proposed in the well construction permit application shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Commission upon a showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Commission no later than three (3) months prior to the date the permit expires. If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.

11. If the well is not to be used it must be properly capped. If the well is to be abandoned then the applicant must apply for a well abandonment permit in accordance with §13-168-12(f) prior to any well sealing or plugging work.

12. The permittee, its successors, and assigns shall indemnify, defend, and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the applicant, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit.

13. The well construction permit application and staff submittal approved by the Commission at its March 28, 2012 meeting are incorporated into the permit by reference.

EXHIBIT 7

STANDARD PUMP INSTALLATION PERMIT CONDITIONS

In accordance with Department of Land and Natural Resources, Commission on Water Resource Management's Administrative Rules, Section 13-168, entitled "Water Use, Wells, and Stream Diversion Works", this document permits the pump installation for Kukio 88 Well (Well No. 4859-10) at 72-157 Holo Kula Place, Hawaii, TMK **(3) 7-2-020: 021 088**, subject to the Hawaii Well Construction & Pump Installation Standards (1/23/97) which include but are not limited to the following conditions:

1. The Commission on Water Resource Management (Commission), P.O. Box 621, Honolulu, HI 96809, shall be notified, in writing, at least two (2) weeks before any work covered by this permit commences and staff shall be allowed to inspect installation activities in accordance with §13-168-15, Hawaii Administrative Rules.

2. The pump installation permit shall be for installation of a 16.8 gpm capacity, or less, pump in the well.

3. The permittee shall provide and maintain an approved meter or other appropriate means for measuring and reporting withdrawals and water levels, and appropriate devices or means for measuring chlorides and temperature. These data shall be measured monthly and reported to the Commission on monthly basis, on forms provided by the Commission **(attached)**.

4. The proposed use shall not adversely affect existing or future legal uses of water in the area, including any surface water or established instream flow standards. This permit or the authorization to pump water from a well shall not constitute a determination of correlative water rights. The permittee is notified and by this provision understands that the quantity of water taken from the well could be reduced by the Commission in the future. This permit is not a commitment that the pump capacity permitted here or even some lesser amount is guaranteed in the future.

5. The applicant shall complete and submit as-built drawings and Part II - (Permanent) Pump Installation Report of the Well Completion Report **(attached)** to the Commission within sixty (60) days after completion of work.

6. The applicant shall comply with all applicable laws, rules, and ordinances.

7. The pump installation permit application and staff submittal approved by the Commission at its March 28, 2012 meeting are incorporated into the permit by reference.

8. The permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The work proposed in the pump installation permit application shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Commission upon a showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Commission no later than three (3) months prior to the date the permit expires. If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.

9. If the well is not to be used it must be properly capped. If the well is to be abandoned then the applicant must apply for a well abandonment permit in accordance with §13-168-12(f) prior to any well sealing or plugging work.

10. The permittee, its successors, and assigns shall indemnify, defend, and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the applicant, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit.

EXHIBIT 8