

CERTIFIED MAIL

July 5, 1989

Mr. Robert E. Cooper  
W.H. Shipman, Ltd.  
P.O. Box 950  
Keaau, HI 96749

Dear Mr. Cooper:

Variance Application (V88-36)  
W.H. Shipman, Ltd.  
Tax Map Key 1-6-03:7

After reviewing the above application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of the above variance request to allow the creation of a 2-lot subdivision with one (1) lot not being served by a water system meeting with the minimum requirements of the County Department of Water Supply and having access off of a 50-foot right-of-way with an existing gravel road in lieu of the minimum 50-foot right-of-way with a 20-foot wide agricultural pavement as required respective by Article 6, Division 2, Section 23-84(1) and Article 3, Division 4, Section 23-41(a) of the Subdivision Code. The subject property which consists of approximately 1,368.4 acres and identified by TMK: 1-6-03:7, is located on the west side of the Volcano Highway and adjacent to Shipman Park and W.H. Shipman Industrial Subdivision, Keaau, Puna, Hawaii.

The Planning Director has concluded that the variance request from the minimum water requirements should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances which apply to the subject property which would warrant or necessitate a waiver from the minimum water requirements to service the proposed 2-lot subdivision. The County water system is located along the subject property. The purpose of the subdivision is to create a 20+ acre lot for the existing water well site which will be approximately 8,900 feet from the Volcano Highway. Water source at the proposed site has been approved by the State Department of Health and is already in use. In addition, the County Department of Water Supply had no objections to the variance request.

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Therefore, considering the foregoing issues, we have determined that there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. The applicant could extend the existing water system from the W.B. Shipman Industrial Subdivision to the proposed 20+ acre lot which is approximately 1.5 miles in length. At a cost of \$60 per linear foot, the total cost would be approximately \$480,000. However, this cost does not include any cost of improvements for storage facilities, booster pumps facilities and other requirements.

There is already an existing private water source on the property. As such, the imposition of providing a public water system for the proposed 2-lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

#### INTENT AND PURPOSE

The subject property which consists of 1,368+ acres is located within the County's Agricultural-20 acre (A-20a) zoned district. The applicant is proposing a 2-lot subdivision each with an area of 20 acres or more which conforms to the minimum lot size requirements of the Zoning Code.

The intent and purpose of requiring a water system within a subdivision is to assure that adequate water is available for human consumption and fire protection. Since the property is within the Agricultural (A-20a) district, fire protection facilities (fire hydrants) are not a mandatory requirement of the water standards.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

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This variance request from the minimum water requirements is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant, its assigns or successors, shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants:
  - a. That the subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future available to service the subdivision, and that no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply.
  - b. That the subdivider agrees and accepts the fact that the County will not at any time bear the responsibility of supplying public water to the subdivision.
  - c. That the written agreement shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider.
3. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the subdivider shall be responsible for informing the Department of the amendments or changes so that the agreement can reflect the amendments or changes; further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the subdivider or owner, his heirs, executors, administrators or assigns and its successors and assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership of each subdivided lot.
4. In the event that any of the lots are provided by a water service (individual meter) from the Department of Water Supply or an approved private water system, the above covenants for the specific property will no longer be in effect.

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The Planning Director has concluded that the variance request from the minimum roadway requirements should be approved, based on the following:

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances which apply to the subject property which would warrant or necessitate a waiver from the minimum roadway requirements to service the proposed 2-lot subdivision. The intent of the proposed subdivision is to create a 20+ acre lot encompassing the existing water well site. The subject lot will be approximately 8,900 feet from the Volcano Highway.

There is an existing 50-foot wide gravel road and a 40-foot wide gravel roadway easement leading to the proposed water well site lot which has been used as a cane haul road and is still being used by long term lessees of the area. According to the applicant, there is a roadway maintenance agreement between the applicant and the lessees. Further, the roadway is not used by the general public. The 40-foot wide roadway easement will be upgraded to a 50-foot wide right-of-way. The roadway and easement will be utilized only by the limited number of lessees who have access rights over the roadway.

As such, these foregoing factors are considered to be special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. The applicant could improve the existing roadway and easement from the Volcano Highway to the proposed 20+ acre lot, a distance of approximately 1.7 miles. However, this alternative is unfeasible.

In certain situations, the roadway needs of an area has to be evaluated not only from the cost perspective but whether or not the minimum roadway requirements would be excessive in light of the intended use and property characteristics. The cost/benefit ratio and the fact that the easement will be used only by the lessees traffic are specific circumstances which serves to justify the reasonableness of the applicant's request.

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Therefore, in consideration of these factors, the variance request from the roadway requirements are determined to be reasonable. Although it could be argued that other alternatives are available to the applicant, the reasonableness and practical application of those alternatives have to be evaluated with respect to the application and surrounding area. In this particular case, the imposition of the other alternatives in this situation is considered to be excessive when a more reasonable solution is available.

#### INTENT AND PURPOSE

The purpose of the minimum roadway requirement is to ensure that minimum safety standards relative to traffic and drainage, etc., are provided for.

The existing 50-foot wide roadway and 40-foot wide easement (proposed to be 50-foot wide) are determined to be adequate for the proposed 2-lot subdivision it is intended to serve at this time. However, the granting of this variance shall not be construed nor used as justification for any future variances from the minimum roadway standards for future subdivision requests. Accordingly, in view of the existing zoning restrictions and character of the area, we have determined that the existing and proposed 50-foot wide roadway easement will satisfy the purpose as intended by the Subdivision Code.

Inasmuch as the existing roadway easement will not be a through street and will remain in private ownership, the granting of the variance will not cause any substantial adverse impact to the area's character or to adjoining properties. Further, this variance application does not apply to density limitations nor introduces a use not otherwise permitted within this agricultural zoned district.

As such, in view of these findings, the approval of this variance would still be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the General Plan.

This variance request from the minimum roadway requirements is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.


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2. That the existing 40 feet easement be widen to a 50 feet wide right-of-way.
3. All other applicable Federal, State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, the Planning Director may null and void this Variance Permit.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



DUANE KANUHA  
Planning Director

AK:lv

xc: Dept. of Water Supply  
Dept. of Public Works  
Subd. 88-121