

CERTIFIED MAIL

September 26, 1990

Mr. Thomas L.H. Yeh  
Menezes, Tsukazaki, Yeh & Moore  
Attorneys At Law  
100 Pauahi Street, Suite 204  
Hilo, Hawaii 96720

Dear Mr. Yeh:

Variance Application (V90-6)

Applicant: Pamela Singh Lange and Kapoho Properties, Inc./  
Viking Investments, Inc.

Tax Map Key 1-4-01:54

After reviewing the subject application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of the subject variance request to permit a 2-lot subdivision without a water system meeting the standards of the Subdivision Code. The subject property is 41.5 acres in area, identified by tax map key 1-4-01:54 and is located on the north side of a private dirt road approximately 5600 ft. (1.06 miles) west of its intersection with the old railroad right-of-way in Puaa-Kapoho, Puna, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which deprive the petitioner of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

The county water system does not serve the area (DWS memo of Sept. 11, 1989). The land is, in all other respects, suitable for the 2 lot subdivision. If the public system were available there would be no need for a variance from the county water standards in this development as the owner would connect.

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Based on the foregoing, it has been determined that there are special and unusual circumstances applying to the subject property which exist to a degree which deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the property.

#### ALTERNATIVES

There are no reasonable alternatives available to resolve the existing insufficient source and system. Only extensive improvements to the County water source and transmission system would alleviate the situation, and no timetable nor funding is presently available from the Department of Water Supply.

Developing a well at this elevation would involve a typical cost of \$100,000, according to a Department of Water Supply estimate; this is considered an unreasonable alternative.

Developing a private roof catchment system to provide the development with water is the only other reasonable means available to the owner.

An analysis of the annual median rainfall for the area indicates that there is sufficient rainfall to support an adequate water roof catchment and storage system.

#### INTENT AND PURPOSE

The intent and purpose of the water requirement of the Subdivision Code is to ensure that adequate potable water is made available for human consumption and, in higher densities, for fire protection. Lacking sufficient public or private piped water systems to connect to, the presence of an adequate rainfall catchment and storage capacity is in some cases deemed a temporarily acceptable substitution for limited size developments.

Although the County General Plan's policies and standards call for water systems built to DWS standards, the fact that the County water system does not serve the area is one rationale for permitting a catchment system for this 3-lot subdivision. It should not be construed as being an automatically permitted alternative for subdivisions which are presently beyond the scope of the County water system.

Were the rainfall less, and the development (number of lots) larger the substitution of a roof catchment system for the County standard system might not be warranted. Because future

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residents of all subdivisions have common basic expectations of adequate access and water, these necessities must be available in appropriate scale and standard. Therefore, in consideration of the zoning designation, property rights of the owner, and the scale of the development, the variance request is found to be consistent with the general purpose of the zoning Code and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and adjoining properties, provided certain conditions are met.

Therefore, the Planning Director has concluded that this variance request be approved subject to the following conditions:

1. The applicant, his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant, his 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 able 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 any future dwellings constructed on the property shall have a minimum of 1250 square feet roof catchment surface with a minimum 10,000 gallon water storage facility plus adequate start-up supply.
  - d. That no ohana dwelling(s) will be permitted on any lots that are not served by the County water system.
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

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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.
5. All other applicable State and County rules and regulations shall be complied with. Should any of the foregoing conditions not be met, the Director may proceed to declare the variance null and void.

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

Sincerely,



DUANE KANUHA  
Planning Director

DT:lm

cc: Subd. 89-126