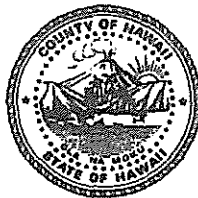


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • FAX (808) 961-8742

May 26, 2006

Mr. Steven S. C. Lim, Esq.  
CARLSMITH BALL LLP  
121 Waianuenue Avenue  
Hilo, HI 96720

Dear Mr. Lim:

**VARIANCE PERMIT-VAR 06-017**

**Applicant:** WB MANINIOWALI, LLC

**Owner:** WB MANINIOWALI, LLC

**Request:** Variance from Chapter 23, Subdivisions,  
Article 6, Division 2, Improvements Required,  
Section 23-84, Water Supply, (1)(2)

**Tax Map Key: 7-2-016:011, Por., (SUB 04-000085 and SUB 05-000225)**

After reviewing the subject variance application and information submitted, the Planning Director certifies the approval of VAR 06-017 subject to variance conditions. The variance is from Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2). The variance permits required fire hydrants within the above referenced subdivisions-(SUB 04-000085-Phase II-Lots 29-34, inclusive) and proposed subdivision-(SUB 05-000225-Phase III-Lots 1-34, inclusive) to connect to an existing non-potable irrigation water system via PVC ("plastic") piping in lieu of required DI (Ductile Iron) piping.

The Planning Director has concluded that the variance from the minimum subdivision water system requirements be **approved** based on the following findings:

**JUN 02 2006**

## **BACKGROUND**

1. **Location.** The referenced TMK property and adjoining subdivision(s) are situated at Kukio 2<sup>nd</sup> and Maniniowali, North Kona, Hawaii. The Maniniowali Residential Community ("Project") or development is located approximately 6 miles north of the Keahole Airport located in North Kona, (West) Hawaii.

The "Project" is "makai" of the Queen Kaahumanu Highway and abuts State of Hawaii Lands lying southwest and WB Kukio Resort Project along the northeastern boundary.

2. **Land Use: State Land Use/General Plan/County Zoning/SMA.**

State Land Use. The "Project" lands or "makai" portions of the referenced TMK property or subdivision(s) (property approximately 300 feet inward from the shoreline) are designated Conservation "C" and remaining "mauka" portions of the property or subdivision(s) (lying between the Queen Kaahumanu Highway and imaginary 300 feet line) are designated Urban "U" by the State Land Use Commission (SLUC).

General Plan. The portions of the property lying "makai" of an imaginary line or 300 feet wide area of the property(s) along the shoreline are designated Open and remaining "mauka" portions lying between the imaginary line and Queen Kaahumanu Highway are designated Urban Expansion by the County General Plan (GP).

County Zoning. The lands designated Conservation "C" and Urban "U" by the State Land Use Commission are zoned Open ("O") and Project District ("PD") by the County.

Special Management Area (SMA). The entire "Project" is within the SMA.

3. **Subdivision(s)/Approved/Pending.** The "Project" is being developed in phases. The applicant's background report states in part:

"Phase I (388.057 acres) approved on 12/24/02, created 33 lots, nine bulk lots, and Roadway Lots A to D (File Plan 2340)."

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"Villas (83.576 acres) approved on 10/12/04 under Subdivision No. 7866 subdivided Phase I bulk lot 1 and Roadway Lot A and created 30 lots, three bulk lots, and Roadway Lots A1, A2, E, F and G (being TMKs: 7-2-23 and 7-2-24)."

"Phase II (224.574 acres) approved on 10/11/05, under Subdivision No. 04-85 subdivided Phase I bulk lots 6, 7, 8 and 9 and created 43 lots, three bulk lots, and Roadway Lots H, J, K and L (being TMK: 7-2-16:11 por.)."

"Phase III (100.363 acres), a proposed 34-lot subdivision, and designated as TMK: 7-2-16:11 por. (Subdivision No. 05-225)."

4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about February 16, 2006. The applicant granted an extension to render a decision on the variance to May 31, 2006.

The applicant's background report dated February 2006 states in part:

Page 4. "There are special and unusual circumstances applying to the Project which exist to the degree which obviously interferes with the best use or manner of development of the Project. The Applicant intends to service the fire safety need with a portion of Phase II (Lots 29-34, inclusive) and all lots within Phase III (Lots 1-34, inclusive) by connecting those fire hydrants to the existing nonpotable irrigation water system located within the WB Kukio Resort mauka lands is able to meet the fire flow requirements to service the fire safety needs. The potable water system and non-potable irrigation system run parallel within the Project.

DWS' requirement of utilizing ductile iron pipes for its water system is primarily motivated by maintenance. Due to the generally rocky conditions of the Big Island, ductile iron pipes have tended to be more durable. Although the PVC pipes are a deviation from the minimum material requirements of the Department of Water Supply, this material has been accepted by the American Water Works Association. Preliminary discussion with the Department of Water Supply and County of Hawaii Fire Department have raised no objections to the proposed connection of the fire hydrants to the non-potable irrigation system via PVC piping."

5. **Agency Comments and Requirements-VAR 06-017:**

- a. The State Department of Health (DOH) memorandum is dated March 23, 2006. (Refer to memorandum in variance file).

Note: No comments were received from the DOH's "Environmental Management programs".

- b. The Hawaii County Fire Department memorandum is dated April 3, 2006. (Refer to memorandum in variance file).

- c. The Department of Water Supply (DWS) memorandum, dated April 13, 2006, states in part:

"The Department of has no objections to this variance request to have the fire hydrants connected to the non-potable irrigation water system should meet the fire-flow requirements of the 2002 Water System Standards. Please be informed that the Department will not review any portion of the plans that are covered under the variance should one be granted."

Note: Alternative construction plans to install required fire hydrants within the subdivisions and PVC piping installation/connection to the existing irrigation water system within existing and proposed subdivisions will be reviewed by the affected agencies. The number of fire hydrants, spacing of fire hydrants within the PD, and fire flow requirements are required to be meet or exceed minimum DWS Water System Standards. (See variance conditions).

6. **Notice to Surrounding Owners/Posted Sign.** The applicant's agent submitted affidavits regarding a notice mailed to property owners to list of surrounding property owners and photograph of a sign posted on subject property. According to the agent's affidavits and submittals, it appears that a notice was mailed on or about March 28, 2006. The required sign was posted on subject property on or about February 22, 2006. Notice of subject variance application was published in the Hawaii Tribune Herald and West Hawaii Today on or about April 3, 2006.

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7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received from surrounding property owners or public.

Therefore, after considering the circumstances and variance background information provided by the applicant, agency comments, the Planning Director has determined that there are special or unusual circumstances applying to the existing or further development phases within the "Project" which exist either to a degree which deprives the applicant or owners of 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(s).

#### **ALTERNATIVES/SPECIAL OR UNUSUAL CIRCUMSTANCES**

There are no other reasonable alternatives in resolving the difficulty of the applicant. According to the applicant, there are 2-parallel water distribution systems installed throughout the PD. Potable water for existing and proposed subdivision(s) within the PD is provided to individual lots via a central water distribution system owned or to be owned by Kukio Utility Company, LLC. (KUC, LLC.). KUC, LLC. is a public utility company and regulated by the Public Utilities Commission (PUC) and State of Hawaii. The non-potable (irrigation) water distribution system is a separate water distribution system serviced by Island Utility.

In view of the above, given the water pressure limitations within the pipelines of the existing privately owned potable water distribution system and excess water pressure within the pipelines of the privately owned non-potable water system servicing the PD, the applicants request to utilize the privately owned water supply system and install fire hydrants connected to this separate non-potable water system using PVC piping in lieu of utilizing DI piping within the respected subdivision phases is reasonable. The number of fire hydrants required and spacing of hydrants within the above phases within the PD and the minimum fire flow requirements or water pressure within the non-potable water supply system to the hydrants within these phases and throughout the PD overall will still meet minimum DWS standards and requirements for fire protection pursuant to Chapter 23, Subdivisions.

#### **INTENT AND PURPOSE-WATER VARIANCE**

The intent and purpose of requiring a water system for and within the proposed subdivision is to assure that adequate water is available for human consumption and fire protection.

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According to the applicant the "The Hawaii County Fire Department has been consulted on this variance on this variance request, and has no objections to use of the PVC piping". Furthermore, it appears that the State Department of Health has no specific rules or regulations relating to the utilization of alternative building materials and/or installation of fire hydrants or connections, etc. for emergency uses or fire protection.

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

#### **VARIANCE DECISION-CONDITIONS**

The variance request to allow SUB 04-000085-Phase II and SUB 05-000225-Phase III subdivision of the above referenced TMK property without providing a water system meeting DWS standards is **approved** subject to the following variance conditions:

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. Submit alternative construction plans to install fire hydrants and appurtenances for agency review. The alternative construction plans water system shall be reviewed and approved by the affected agencies.
3. WATER VARIANCE: The owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the date of the variance permit letter. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting lots not serviced by a County water system affecting specific lots (Lots 29-34, inclusive) within approved SUB 04-000085-Phase II and proposed lots (Lots 1-34, inclusive) created by pending subdivision application-SUB 05-000225-Phase III and shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the owners:

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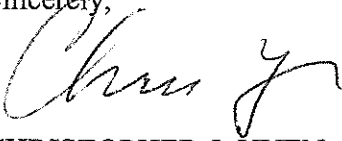
May 26, 2006

- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed referenced subdivisions-(SUB 04-000085-Phase II-Lots 29-34, inclusive) and proposed subdivision-(SUB 05-000225-Phase III-Lots 1-34, inclusive).
  - b. The lots created by referenced subdivisions-(SUB 04-000085-Phase II-Lots 29-34, inclusive) and/or proposed subdivision-(SUB 05-000225-Phase III-Lots 1-34, inclusive) may not be made subject to a condominium property regime.
  - c. The subdivider and all grantees, successors, and assigns acknowledge that the proposed lots were created by a variance from the normal subdivision requirements of Hawaii County, and that there are no special or unusual circumstances applying to the property which deprive the owner of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the property, and hence, no grounds exist or will exist for a variance from the subdivision code to permit further subdivision of the property, and that changes in the owner's personal or financial situation after acquiring the property also will not constitute grounds for a variance from the subdivision code to permit further subdivision of the property.
4. The subdivision's final plat maps shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.
  5. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

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Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare the subject Variance Permit null and void.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Y", written over the word "Sincerely,".

CHRISTOPHER J. YUEN  
Planning Director

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xc: Manager-DWS  
SUB 04-000085  
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