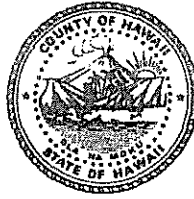


Harry Kim
Mayor



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

April 5, 2007

Mr. Brian Takeda
R. M. Towill Corporation
420 Waiakamilo Road, Suite 411
Honolulu, HI 96817-4950

Dear Mr. Takeda:

SUBJECT: VARIANCE-VAR 06-097
Agent: R. M. TOWILL CORPORATION
Applicant: PAUL KAY
Owner(s): KALOKO HEIGHTS ASSOCIATES, LLC
Request: Variance from Chapter 23, Subdivisions,
Improvements Required
Tax Map Key: 7-3-009:032-Lot 2 and 061-Lot 6, (SUB 06-000495-Pending)

After reviewing your variance application, the Planning Director certifies the approval of your variance application-VAR06-097 subject to variance conditions. VAR 06-097 allows various design standards and access and alternative roadway improvements within a road lot being created by a pending subdivision (SUB 06-000495) with 7 abutting bulk lots. The variance would allow alternative block sizes, pedestrian ways including trails, alternative "loop" roadway including alignment, drainage system, and underground improvements to be constructed for a planned community. The variance is from certain road design standards and other roadway requirements pursuant to the Department of Public Works (DPW) or Chapter 23, Subdivisions, Article 3, Design Standards, Division 2, Blocks, Section 23-29, Block sizes, Section 23-31, Pedestrian ways, Division 4, Street Design, Section 23-41, Minimum right-of-way and pavement widths, Section 23-50, Grades and curves, and Article 6, Improvements, Division 2, Improvements Required, Section 23-86.

BACKGROUND

1. **Location.** The above referenced TMK property- Lot 2 and Lot 6 containing an aggregated area of 60.288 acres were created by SUB 05-000031 on February 24, 2006. These properties or TMK parcels are on the North Kohala side of Hina Lani Street and situated at Kaloko, North Kona, Hawaii.

APR 19 2007

Mr. Brian Takeda
R. M. Towill Corporation
Page 2
April 5, 2007

2. **Zoning.** The above referenced TMK parcel(s)-Lot 2 and Lot 6 are zoned Single-Family Residential RS-7.5 and Single-Family Residential RS-20 by the County and both designated Urban "U" by the State Land Use Commission (LUC). These TMK parcels are not within the Special Management Area (SMA). The affected properties are part of a series of adjoining properties along both sides of Hina Lani Street that comprises a total of approximately 411 acres and which was rezoned in 1983 to various Single Family Residential (RS), Multiple Family Residential (RM) and Commercial (CN) zoned districts accommodate a proposed 1,400+-unit residential community.
3. **Subdivision Application(s)/PPM.** SUB 05-000031 creating Lot 2 containing 31.277 acres and Lot 6 containing 35.354 acres respectively was granted Final Subdivision Approval (FSA) on February 24, 2005 subject to 4-conditions. Subsequent to the approval of SUB 05-000031, the applicant's agent submitted proposed 3-lot subdivision application (File-SUB 06-000495) which includes a Preliminary Plat Map (PPM) proposing to consolidate Lot 2 and Lot 6 and resubdivide the consolidated property into 3-lots (Lot 2-A containing 29.202 acres, Lot 6-A containing 31.086 acres Roadway Lot R-1 ("Loop Road" lot) containing 6.343 acres).
4. **Variance Application.** The subject variance application was acknowledged on December 18, 2006 and other supplemental information. Essentially the variance is request is from DPW road requirements or dedicable roadway improvements required with proposed Roadway Lot R-1 or "Loop Road", pursuant to Chapter 23, Subdivisions. The agent's background report, submitted on behalf of the applicant and owner, states in part:

Page 2. **"Subject of Variance Request":**

"This application for variance is to support the proposed development of a master planned community and involves the construction of an approximately 4, 400 linear foot loop roadway, drainage system, and underground utility improvements. Improvements within the roadway area include a 12-inch water line, drywells, and catch basins to capture onsite runoff. Underground utilities will include the installation of electricity, cable television and telephone/telecommunications cables and related appurtenances."

The applicant on behalf of the applicant or developer is seeking the following variances from Chapter 23, Subdivisions:

Page 2. Regarding Section 23-29, Block sizes:

Mr. Brian Takeda
R. M. Towill Corporation
Page 3
April 5, 2007

"The Applicant requests the requirements of Section 23-29(a)(2) be waived to allow the distance between the proposed intersections to be less than (sic) the recommended 1,800 feet."

Page 3. Regarding Section 23-31, Pedestrian ways:

"The Applicant requests the requirements of Section 23-31 be waived to not require pedestrian ways at this time within the block created by the large subdivision."

Page 4. Regarding Section 23-41, Minimum right-of-way and pavement widths:

"The Applicant requests a variance from this requirement to allow a varied ROW for the proposed loop road and the roadway section."

Page 4. Regarding Section 23-50, Grades and curves:

"The Applicant requests the requirements of Section 23-50 be waived to allow the proposed loop road to have a slope of more than 10 percent and vertical and horizontal curves to be less than 300 feet."

Page 4-5. Regarding Section 23-86, Requirements for dedicable streets:

"The Applicant requests the requirement of Section 23-86 be waived to allow for design flexibility for the proposed loop road as represented in this variance application."

Page 5. Regarding Section 23-89, Sidewalks:

"The Applicant requests the requirements of Section 23-89 be waived to allow for flexibility in the placement and design of sidewalk facilities."

Page 5. Regarding Section 23-95, Right-of-way improvement:

"The Applicant requests the requirements of Section 23-95 be waived to allow for flexibility in the design and improvement of the street ROW."

5. **Agency Comments and Requirements: VAR 06-097:**

- a. The State Department of Health (DOH) memorandum is dated December 26, 2006. (Refer to DOH memorandum in subject variance file).
- b. The Department of Public Works (DPW) memorandum dated January 10, 2007 states in part:

"We reviewed the subject application and our comments are as follows:

Section 23-41

Since no pavement and right-of-way reductions are being requested, we question the need for a variance from this section unless considering our suggested alternative under comment to Section 23-86.

Section 23-50

DPW does not agree with giving a blanket variance from this section. The applicant should be required to justify the specific case, meeting the required criteria for a variance. Any accommodation should be designed to meet the intent of the Subdivision Code to the maximum extent feasible and compliance with ADA to the maximum extent practicable. The applicant shall meet design guidelines for appropriate design speeds.

Section 23-86

DPW does not agree that the street grade is justifiable for variance from our Standard Details and Specifications. In fact, the street grade is a reason to reject the proposed variance request. DPW does not support landscaping in the County right-of-way because of the need to maintain it and clean the debris that is deposited in drainage facilities. We are especially concerned where steep grades are proposed (exceeding 8 percent). The applicant is proposing grades up to 16 percent. The landscaping should be kept on private property. Perhaps the applicant should consider a variance to narrow the right-of-way and keep the walkways and landscaping private with separate drainage facilities as an alternative to this proposal.

Section 23-89

1. Sidewalks should be provided on both sides of the street to safely accommodate pedestrians.
2. Sidewalks should be a minimum width of 5 feet. ADA requires 5-foot minimum passing spaces at a maximum spacing of 200 feet. In addition, 5 feet is the recommended width to provide comfortable walking width for persons walking abreast and passing.

Section 23-95

See Comments on Section 23-86 and 23-89 (sic)

Summary

There may be justification for accommodation of steeper grades as necessary in conformance with our comments. Accommodation could be made for some flexibility in the roadway cross-section without burdening the County government with additional maintenance."

- c. The Department of Water Supply (DWS) memorandum dated January 10, 2007 states in part:

"We have reviewed the subject variance application and our comments are as follows.

We have no objections to the proposed request as the request will no affect the Department's existing water system facilities. However, the applicant shall be informed, through a copy of this letter, that the water system for the pending subdivision shall be designed and constructed in accordance with the Department's Water System Standards and Rules and Regulations."

- d. The County of Hawaii Fire Department memorandum is dated January 16, 2007. (Refer to HFD memorandum in variance file).

6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted transmittal letter dated December 29, 2006, copy of notice mailed sent to a list of surrounding property owners and mailing certificates. According to the agent's submittals, it appears that a notice was mailed on December 28, 2006. In addition, the applicant's agent forwarded a notarized affidavit dated January 7, 2005 and photograph of the posted sign on the project site which is visible from Hina Lani Street.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The Planning Department received the following comments and/or objection and support letter(s) related to the variance application:
- 7a. Objection letter (email) from Amy Rosato dated January 4, 2007.
- 7b. Objection letter (email) from Pamela Wong dated January 11, 2007.
- 7c. Objection letter and comments from Joseph W. Augustine and Katherine J. H. Augustine dated January 19, 2007 received on January 23, 2007.

Mr. Brian Takeda
R. M. Towill Corporation
Page 6
April 5, 2007

7d. Objection letter dated January 4, 2007 from Sandra Bennett received on January 25, 2007.

7e. Comments in a letter supporting the loop road design from John Fitzgibbons dated January 25, 2007 received on February 7, 2007.

Note: The applicant's agent-R. M. Towill Corporation requested copies of the above letters and submitted a copy of their comprehensive response letter dated February 27, 2007.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Proposed Development Access/Roadway. The first alternative requires the subdividers to construct dedicable roadway improvements within Roadway Lot "R-1" in accordance with DPW Standards and Chapter 23, Subdivisions.

The second alternative acknowledges the Developer's request to construct an alternative paved road within "R-1" or loop road consisting of variable paved roadway widths including drainage and other appurtenances meeting County dedicable and alternative shoulder improvements, medial strips, and pedestrian walkways including landscaping that will be privately managed and maintained.

After considering the variances sought, the Planning Director notes the following:

Page 2. Regarding Section 23-29, Block sizes:

Roadway lot "R-1" right-of-way intersects with Hina Lani at a distance of approximately 1,350 feet, less than the 1,800 lineal feet cited by the Applicant. However, this standard only applies to arterial roadways, which Hina Lani Street is not. Hina Lani Street is a collector street and, therefore, the Planning Director finds that a variance from Section 23-29, Block sizes, is not necessary and that a distance of 1,350 feet between intersections is compliant with the requirements of Section 23-29.

Page 3. Regarding Section 23-31, Pedestrian ways:

Section 23-31 states that "*In any block over seven hundred fifty feet in length, the director may require creation of a pedestrian way to be constructed to conform to standards adopted by the department of public works at or near the middle of the block. If unusual conditions require blocks longer than thirteen hundred feet, two pedestrian ways may be required.*"

The pedestrian way shall be dedicated for public use and shall have a minimum width of ten feet." (emphasis added) Given the nature of the road lot subdivision **and** existence of a "historical trail" or historical pedestrian way within the development and agreement between the Developer and Na Ala Hele to preserve the trail's alignment and construct limited improvements within the "historical trail", it is felt that no variance to require further pedestrian ways are necessary or required for this phase of the Development or this phased construction of the loop road and improvements within Hina Lani Street. However, the Planning Director does reserve the right to reconsider or require pedestrian ways during review of future subdivision applications to subdivide the bulk lots abutting the loop road lot.

Page 4. Regarding Section 23-41, Minimum right-of-way and pavement widths:

"The Planning Director finds that that variance allowing "a varied ROW for the proposed loop road and the roadway section" can be granted pursuant to a written agreement between the Developer and County-DPW to designate maintenance responsibilities for proposed dedicable paved roadways and non-dedicable improvements within the loop road right-of-way. Pursuant to preliminary construction plans and section drawings, the Developer shall construct paved minimum 12-foot wide travel way/minimum 5-foot wide bike lane/minimum 11-foot wide left bay lane, and minimum 14-foot wide shared travel way/bike lane within specific 80-foot wide and 60-foot wide right-of-way segments within the road way lot meeting DPW standards. In addition, the Developer shall construct meandering minimum 4-foot wide sidewalk and required minimum 5-foot wide ADA sidewalk (refer to variance conditions), no closer than 2-feet from the edge of the curb within one shoulder or the inside shoulder of the loop road.

Page 4. Regarding Section 23-50, Grades and curves:

"The Planning Director finds that the request that "the requirements of Section 23-50 be waived to allow the proposed loop road to have a slope of more than 10 percent and vertical and horizontal curves to be less than 300 feet". Pursuant to the Applicant, a segment of the the proposed loop road will have a maximum slope of 16 percent and horizontal and vertical curves that may fall below the minimum of 300 feet. The Applicant indicates that they will hold to the standard as much as possible; but, the preservation of archaeological sites which includes the present alignment of a historical trail and necessary improvements within the trail bisecting the road way lot requires the loop road improvements to be realigned both vertically and horizontally to minimize impact to several archaeological sites and historical trail. Regardless, the roadway will comply with AASHTO standards so that this variance is not considered an absolute disregard for minimum design standards.

Mr. Brian Takeda
R. M. Towill Corporation
Page 8
April 5, 2007

Page 4-5. Regarding Section 23-86(b), Requirements for dedicable streets:

"The Planning Director finds that variance from the requirement of Section 23-86 be waived to allow for design flexibility for the proposed Roadway Lot R-1 (loop road). The Applicant cites the topographical constraints of the project area as constraining their ability to design a road to County Standard Detail specifications for roadway construction, as evidenced by the granted variances from the maximum slope and minimum horizontal and vertical curves requirements. Secondly, the Applicant will introduce and construct landscaped medians within 2-segments of the loop road, unpaved shoulders, including streetscape, e.g. trees and ground cover, etc. at the "makai" and "mauka" loop road's intersection at Hina Lani Street and within segments of the loop road from both intersections to establish the character of the proposed Kaloko Heights subdivision upon entry onto the loop road after exiting Hina Lani Street. These proposed landscaped medians strips and/or unimproved shoulders do not conform to the County's Standard Details. However, these landscaped medians strips and shoulders will be maintained by the developer or community association subject to a required written agreement between the Developer and County-DPW.

Page 5. Regarding Section 23-89, Sidewalks:

The Planning Director finds that a variance from Section 23-89, Sidewalks, is not necessary to allow for the installation of sidewalks along one side of the loop road, provided that the sidewalks are a minimum of 5 feet wide passing sidewalks at 200 feet intervals to meet ADA requirements. Section 23-89 states, in part, that "*For the safety of pedestrians and of children at play, sidewalks on both sides of the street may be required.*" The Subdivision Code provides the Planning Director with the authority to require sidewalks on both sides of a street, but it does not preclude the Director from allowing the installation of a sidewalk on only one side of the street as deemed necessary. While the Director does agree that installation of a sidewalk only along the inside part of the loop road is warranted for most of its alignment through the eastern or mauka section, the Director will be requiring sidewalks on both sides of the loop road from the western (makai) intersection at Hina Lani Street to and including the entry roadways for Parcel D-1 and Parcel D-2 including necessary transitional sidewalk improvements within the historical trail to encourage and accommodate pedestrian travel between these multiple family residential and affordable housing units being developed on D-1 and D-2 and the commercial center

Mr. Brian Takeda
R. M. Towill Corporation
Page 9
April 5, 2007

Page 5. Regarding Section 23-95, Right-of-way improvement:

In view of the previous discussions, the Planning Director finds that a variance from the requirements of Section 23-95 can be granted subject to approval of alternative construction plans subject to variance conditions and required written agreement between the Developer and County Department of Public Works which spells out jurisdiction and maintenance responsibilities of the roadways, pedestrian improvements, and landscaping improvements constructed within the Roadway Lot "R-1".

In addition, the intersection locations or the "makai" access and "mauka" accesses of the loop road at Hina Lani Street were carefully sited to align with future 80 feet wide roadways intersecting Hina Lani Street directly opposite (south) of the proposed Kaloko Heights development. The location and timing to construct other collector roads within these zoned developments by others have been considered to insure that traffic generated to and from the Kaloko Heights community and other traffic generated by other development directly opposite Kaloko Heights utilizing Hina Lani Street, classified as a collector roadway, have been considered; and these future 4-way intersections will incorporate automated traffic controls and measures to insure that traffic flow is reasonably maintained and steady within this area.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

Roadway Variance. The intent and purpose of access requirements to a proposed subdivision or planned development is to ensure legal and physical access to proposed lots and uses are clearly defined and accessible from a public road by domestic vehicles, police vehicles, emergency fire vehicles, and other service vehicles under various weather conditions without constant maintenance.

The previously approved bulk lot subdivision (SUB 05-000031) and proposed subdivision to revising the areas of 2 existing bulk lots and creation of a separate roadway lot for the loop road comport to the original ordinance rezoning areas north and south of the current Hina Lani Street for commercial, multiple and single family residential use(s), and open in the 1980s. Given the general nature of the variance application or request for variances from the roadway requirements of Chapter 23, Subdivision to construct the access and support infrastructure within the roadway lot, there should be no adverse impact by allowing a reasonable juxtaposition of dedicable and specific non-dedicable roadway improvements to be constructed together within the "loop road" or Roadway lot "R-1" including intersection and additional drainage and channeled roadway improvements at both intersections and within the 80 feet wide Hina Lani Street right-of-way.

Mr. Brian Takeda
R. M. Towill Corporation
Page 10
April 5, 2007

The required underground utilities and specific portions of the road infrastructure within the "Loop Road", e.g. paved/striped roadways, signage, street lights, etc. and waterlines, fire hydrants, and water distribution lines, etc. within the "Loop Road" will be constructed pursuant to County-DWS Standards and DPW-Standards; and, the current location or alignment of the "Kohanaiki Trail" will be preserved and segments improved pursuant to an agreement between Na Ala Hele and the developer. And pursuant to a written agreement between the County and the Developer, other specific non-dedicable road and streetscape improvements within the loop road right of way, e.g. streetscape or landscaped pedestrian walkways and medial strips within the loop road right-of-way will be privately installed and maintained by the Developer or Community Association/users.

Therefore, based on the representations made by the applicant's agent and consideration of the project's master community and incremental plan, and preliminary subdivision construction plans, the Planning Director finds that the developer's proposed alternative infrastructure improvements and design goals for the proposed subdivision's or "Loop Road" within the Kaloko Heights development can meet with the intent and purposed of Chapter 23, Subdivisions; and, has concluded that strict adherence to construct dedicable road improvements conforming to DPW-Standard Details within the loop road lot is not required; and, that variance to allow proposed alternative roadway and pedestrian sidewalk improvements within proposed roadway lot "R-1" can be granted; and, further access roadways within the Kaloko Heights development will be addressed in future increments or phases in accordance with the developer's current master plan for this area.

The subject variance application was acknowledged by letter dated December 18, 2006. Additional time was necessary to consider comments and objection letters and incorporate addition information received from surrounding property owners and applicant. The applicant's representative and the developer granted a time extension to incorporate additional information into the variance background report and extension of time to April 15, 2007 for the Planning Director to render decision on the variance request and application.

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.

DETERMINATION-VARIANCE CONDITIONS

The variance requested to allow a proposed 3-lot subdivision of the subject TMK property creating 2-revised bulk lots (Lot 2-A, Lot 6-A) and Roadway Lot "R-1" is hereby **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. Pursuant to variance, submit alternative subdivision construction plans for SUB 06-000495 to construct the variable width paved roadways, median landscaping, meandering pedestrian sidewalks (minimum 5 feet wide to meet the ADA requirements to provide 5-foot minimum passing spaces at maximum 200 feet intervals according to DPW comments) and necessary "Trail" improvements pursuant to agreement with Na Ala Hele, and install other roadway appurtenances including dedicable water lines, fire hydrants, water line appurtenances, any required sewer lines, underground utilities, street lights, etc. within the Roadway lot "R-1", intersection improvements, additional light fixtures, drainage improvements and necessary signage at the "makai" and "mauka" intersection(s) of the proposed "Loop Road" with Hina Lani Road right-of-way, etc. for agency review and approval. The approved alternative or phased roadway improvements with Roadway lot "R-1" or "Loop Road" shall be completed or constructed prior to issuance of Final Subdivision approval to SUB 06-000495 or bonded.

Note: During construction of the "Loop Road" and pursuant to Ordinance No. 86 91, (T) "should any unanticipated archaeological sites be found during grubbing, grading or construction, work shall immediately stop and the Planning Department notified. Works shall not re-commence until clearance is given by the Planning Department".

3. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that certain roadway improvement within Roadway Lot "R-1" will be publicly and privately maintained in accordance with a written agreement between the Developer and County. Portions of roadway improvements not meeting dedicable road standards within Roadway lot "R-1", e.g. road medians strips, shoulders, sidewalk(s), and landscaping including ground cover will be maintained by the subdivider or developer without any expectation of governmental or County assistance to maintain specific road median strips, shoulders, sidewalk(s), and landscaping and ground cover improvements pursuant to a written agreement between the subdivider/developer and the County.

Mr. Brian Takeda
R. M. Towill Corporation
Page 12
April 5, 2007

The applicant, owners, their assigns, or successors shall file a written agreement or approved written document between the Developer and County with the Planning Department and Department of Public Works within one (1) year from the issuance of tentative subdivision approval and/or prior to receipt of final subdivision approval of SUB 06-000495. The applicant or developer shall form a Community Association or include appropriate deed language, being covenants, conditions, and restrictions to properly maintain any non-dedicable roadway improvements and landscaping improvements within proposed Roadway lot "R-1" to be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant.

4. The subdivision application's (SUB 06-000495) final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 06-000495.
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.

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

In addition to the above, pursuant to Ordinance No. 99-112, the applicant or his agent may appeal the director's decision or above **variance conditions** and request the following:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and
 - (2) The person is or will be adversely affected by the decision.

Mr. Brian Takeda
R. M. Towill Corporation
Page 13
April 5, 2007

- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

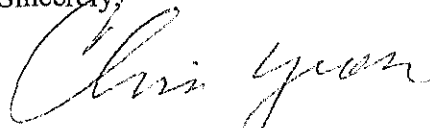
The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may reverse or modify the decision or remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by and abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above, we have enclosed GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/DSA:cd
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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 06-000495

Mr. Brian Takeda
R. M. Towill Corporation
Page 14
April 5, 2007

xc: Sandra Bennett
Amy Rosato
Pamela Wong
Joseph W. Augustine and Katherine J. H. Augustine