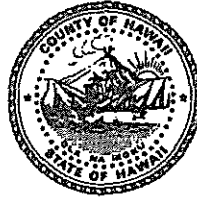


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

August 21, 2007

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

Dear Mr. Lim:

VARIANCE-VAR 07-031

Applicant: CARLSMITH BALL, LLP
Owners: EDWARD J. RAPOZA, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Improvements Required

Tax Map Key: 7-6-011:003, 009, and 019, (SUB 00-000210)

After reviewing your variance application, the Planning Director certifies approval of Variance-VAR 07-031 subject to variance conditions. The variance allows alternative road improvements to be constructed for proposed subdivision (SUB 00-000210) creating 17-building lots and 1-roadway lot. The variance is from the minimum road improvements required by Chapter 23, Subdivisions, Article 3, Division 4, Street Design, Section 23-41, Minimum right-of-way and pavement widths, Article 6, Division 2, Improvements Required, Section 23-48, Cul-de-sacs, Section 23-50, Grades and curves, Section 23-86, Requirements for dedicable streets, and Section 23-95, Right-of-way improvement.

BACKGROUND

1. **Location.** The referenced TMK property(s), containing an aggregate area of approximately 9.80 +/- acres, being a portion of R. P. 8217, L. C. Aw. 3660 to John P. Mumm, (Makai Section), Lot 1, Allotment 45, being a portion of R. P. 4475, L. C. Aw. 7713, Ap. 43 to V. Kamamalu, (Makai Section), and Allotment 46, being a portion a portion of R. P. 4475, L. C. Aw. 7713, Ap. 43 to V. Kamamalu, (Makai Section), are situated at Holualoa 1st and 2nd. Hui Partition, North Kona, Hawaii.

2. **Zoning.** The subject property is zoned Residential and Agricultural Districts (RA-.5a) by the County and designated Rural ("R") by the State Land Use Commission (LUC). Property zoned RA-.5a means a minimum building site area one-half acre.
3. **Subdivision Request/PPM.** The applicant submitted revised preliminary plat map (PPM) for proposed subdivision (SUB 00-000210). The revised preliminary plat map (PPM) is dated August 8, 2006.
4. **Variance Application.** The applicant, on behalf of owners, is seeking variance from the required subdivision's roadway requirements for the revised PPM pursuant to DPW memorandum dated November 15, 2006 in the subdivision file (SUB 00-000210). The applicant submitted subject variance application and attachments on or about May 11, 2007. Subsequent to acknowledgment of the subject variance application and site inspection of the current access easement(s) and road access to the subject TMK property(s), the applicant submitted a letter dated June 18, 2007 describing proposed alternative road improvements for the proposed subdivision:

Pursuant to the letter dated June 18, 2007, in lieu of constructing dedicable and minimum paved roadway improvements for the revised PPM required by the DPW memorandum and Chapter, 23, Subdivisions, the applicant is requesting variance to permit construction of the following non-dedicable alternative roadway improvements for proposed subdivision (SUB 00-000210):

Existing private road easement(s) between Hualalai Road and Alanui Kawila (Trail) or Road. Construct additional non-dedicable pavement or widen existing non-dedicable paved roadway to 18 feet according to non-dedicable road standards within a 30-foot wide road access and utility easement identified on the revised PPM including grassed shoulders and swales (Note: 40 feet wide R-O-W, when including the easement located on those lots created in 1980 and within the "TRAIL" according to the final subdivision map (Revised March 10, 1980) in SUB 4482. The entire length of existing 9 + feet wide paved driveway or paved roadway within the existing easement(s) between Hualalai Road and within the Alanui Kawila (Trail) or road will be widen and paved to become an 18 feet wide roadway including necessary intersection and signage improvements at the intersection of the 18 feet road and Hualalai Road.

Existing Alanui Kawila (Trail) Right-of-Way. Construct minimum 12 feet wide non-dedicable pavement within existing "Trail" from 18 feet wide paved roadway within the (Trail) right-of-way abutting the existing easement(s) and proposed subdivision to proposed "Lot 4".

Proposed Road Lot (cul-de-sac). Permit length of proposed cul-de-sac road lot within proposed subdivision to exceed 600 feet and construct minimum 20 feet wide non-dedicable paved roadway including terminus improvements and grassed shoulders and swales within cul-de-sac road lot (length-approximately 830 +/- feet).

5. **Agency Comments and Requirements (VAR 07-031):**

- a. The State Department of Health (DOH) memorandum dated May 25, 2007 states in part:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. The Department of Public Works (DPW) memorandum dated June 19, 2007, states in part the following:

"We reviewed the subject application and have the following comments and recommendations for minimum conditions to granting the request. This shall not be construed as being applicable to any roadway which is eligible for dedication or conveyance to the County.

1. The approach to Hualalai Road shall meet with the minimum sight distance recommendations of AASHTO Policy On Geometric Design of Highways and Streets and shall have a maximum approach grade as specified in County Standard Detail R-37. Provide minimum 24 foot wide throat and 20-foot pavement radii at the private road intersection with Hualalai Road.

2. The minimum pavement width, based on recommendations of the AASHTO Guidelines for Geometric Design of Very Low Volume Roads, shall be 18 feet, centered within the existing 30 foot wide easement and proposed 30 foot wide right-of-way. The minimum pavement cross section should be 2 inches of AC pavement mix 3 over 6 inches of aggregate base course conforming to Standard detail R-39. The existing easement pavement is in poor condition and shall be reconstructed or resurfaced.
3. No justification for variance from Section 23-95 has been provided. The entire proposed right-of-way and existing easement should be improved with graded shoulders and/or swales with drainage improvements approved by DPW. The approved cross section(s) showing pavement section, shoulders, swales and utilities with respect to the property and easement lines should be made an exhibit for the record.
4. The variance from Section 23-48 shall be limited to subsection (a) only as no justification has been provided for a variance from subsection (b).
5. Contrary to any previous DPW correspondence, the mapped Alanui Kawila (Trail) is not maintained by the County. We believe this mapped trail is privately owned as, according to documents on file, it is included in the Partition of the Hui Lands of Holualoa. It is not shown to be a government road on those documents. We defer to the a (sic) Planning Department regarding the subdivision's right of access as recommended in our comments to the preliminary plat dated November 15, 2006. At the present time, a portion of the Trail appears to be minimally improved and used for private access purposes and overhead utility lines. The Planning Department should consider requiring the applicant to reconfigure lots 1 and 4, taking access from the proposed subdivision Road Lot and provide a common access easement over side by side flag poles.
6. Additional storm runoff due to development shall be disposed of in a manner meeting with the approval of the DPW in accordance with the Storm Drainage Standards. A drainage report will be required.

7. No vehicular security entry gate shall be installed on the subdivision road within 40 feet of the Hualalai Road right-of-way or Alanui Kawila Trail.
 8. The subdivision road shall not be considered for dedication or conveyance to the County unless improved to meet County standards for dedicable roadways, meeting with the approval of DPW.
 9. The subject applicant, property owners, successors and assigns shall hold harmless and defend the County against any claims or legal action taken for allowing the variances from the Subdivision Code.”
- c. The County of Hawaii-Hawaii Fire Department memorandum is dated June 14, 2007. (Refer to HFD memorandum in variance file).
6. **Notice to Surrounding Property Owners/Posted Sign.** The applicant’s agent submitted an affidavit and copy of notice mailed to list of surrounding property owners within “the 300-foot perimeter boundary of Subject Property”. According to the affidavit and submittals the notice was mailed on June 6, 2007.

Posted Sign: The applicant’s agent submitted affidavit dated June 18, 2007 regarding a posting of required sign and photographs of the posted sign.
 7. **Comments from Surrounding Property Owners or Public.** No written objections to the subject variance application were received from surrounding property owners or public. No other agency comments were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The following special and unusual circumstances apply to the subject project which exist either to a degree which deprive the applicant/owner 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:

1. Existing and Proposed Residential/Agricultural Uses. The applicants are proposing a 17-lot subdivision of property fronting the Alanui Kawila Trail and access rights over and across 3-other TMK property(s) within the vicinity of the proposed subdivision. Access to existing TMK parcels or proposed subdivision is from Hualalai Road via a paved driveway or non-dedicable roadway within an existing easement (30-Ft. Wide, a paved roadway located within a "Trail" (Alanui Kawila Trail) or right-of-way abutting the proposed subdivision, and proposed 30 feet wide cul-de-sac or "ROAD LOT" identified on the revised PPM. No further subdivision of any lots created by proposed subdivision (SUB 00-000210) will be possible without rezoning.
2. Proposed Lot and Subdivision Road Improvements. The applicant, on behalf of the owners, is requesting a variance to construct non-dedicable road improvements within existing easement(s), trail, and within the proposed cul-de-sac road exceeding 600 feet in length. In sum, 17 building lots will be dependent on the privately owned non-dedicable roadways located within existing easement(s), public trail, and proposed road lot which will be maintained by the users.

The non-dedicable paved roadway (approximately 9 to 10 +/- feet wide pursuant to recent site inspection) servicing the 3-lot subdivision approved in 1980 will be expanded or widened to 18 feet wide and non-dedicable paved roadways will be constructed within the existing trail right-of-way and proposed cul-de-sac road lot (approximately 830 feet) within the proposed subdivision. Given the limitations of the trail and width of the easement created in 1963 or series of easements (SUB 4482) located on 3-lots created in 1980, and surrounding (residential) vehicular usage, the variance request is reasonable. The proposed non-dedicable paved road improvements within the existing easement(s), Trail, and subdivision cul-de-sac road will be widened and improved; and accessible by conventional vehicles and emergency vehicles. The additional non-dedicable roadway improvements and improvements within the cul-de-sac road will be constructed pursuant to alternative subdivision construction plans approved by the agencies and other requirements of tentative subdivision approval.

ALTERNATIVES

The decision alternatives include the following:

1. *Improve or widen the existing or proposed easement(s) and adjoining public trail (right-of-way) and construct dedicable roadway standards meeting the DPW.* The costs associated to widen existing easements on property and Alanui Kawila Trail and construct dedicable roadway improvements within the easements/Trail would be substantial and unfair when weighed against the proposed residential or agricultural uses.
2. *Reasonable subdivision roadway improvements to allow lot access and meet minimal emergency vehicular and safety requirements.* This is the selected alternative. It appears that an alternative access to the property was created in 1963. Subsequent roadway improvements were installed within a 3-lot subdivision (1980-SUB 4482). The existing driveway or paved roadway within the 3-lots and within or upon the "TRAIL" (Alanui Kawila Trail) is currently being utilized as access to the existing property(s). A 16 feet wide paved road will be installed between Hualalai road up to the terminus within ~~EASEMENT-1~~. The 10 feet wide paved roadway will be expanded or widened to 16 feet pavement. Other subdivision utilities, drainage improvements, and safety measures within the existing 40 feet wide R-O-W, public Trail, and ~~EASEMENT-1~~ to insure safe ingress and egress to the subdivision and users of the non-dedicable privately owned roadway will be identified and installed in accordance with approved construction plans according to DPW and prior to final subdivision approval.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance. In lieu of constructing dedicable roadways, the applicant, on behalf of the owners, is requesting variance to allow access via existing easements and "Trail", and permit alternative non-dedicable paved roadway to be constructed within existing easement(s), Alanui Kawila Trail, and proposed non-dedicable cul-de-sac roadway lot exceeding 600 feet in length.

The surrounding areas are residential or agricultural in character. The alignment of the nearest County owned roadway (Hualalai Road) and location and width of the Alanui Kawila Trail fronting the proposed subdivision has not changed since 1963-1967. Existing vehicular access to the neighborhood is appropriate for the property's zoning (RA-.5a) and intentions by the subdivider to maintain low intensity residential/agricultural zoning. By granting this variance, there should be no adverse impact to adjoining properties or public rights-of-way.

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Road maintenance or upkeep within the existing easements, "Trail" and proposed privately owned cul-de-sac road including any necessary drainage and safety improvements will be privately installed and maintained by the users.

Therefore, after considering the circumstances and background presented by the applicant, evaluation of traffic patterns to and around the surrounding area, and evaluation of the proposed alternative access and paved roadway improvements to existing lots and proposed subdivision, the Planning Director finds that the variance request is reasonable and the requirement to construct dedicable road improvements is not necessary.

The subject variance application was acknowledged by letter dated May 21, 2007 and additional time to conduct a site inspection of existing access improvements and review alternative road improvements proposed by the applicant was necessary. In consideration of the foregoing, the applicant granted the Planning Director an extension of time to August 31, 2007 to render decision on the subject variance application.

Based on the foregoing findings, this applicant's 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 County General Plan. Furthermore, the variance 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 application to allow a proposed subdivision without providing minimum roadway improvements stipulated by the DPW memorandum dated November 15, 2006 for the revised PPM or Chapter 23, Subdivisions is **approved** subject to the following variance conditions:

1. The subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of this variance.
2. The subdivider, owners, their assigns, or successors understand that the lots arising out of SUB 00-000210 will use and maintain the existing access easement, proposed easements, and other rights-of-way without any expectation of governmental assistance to maintain the private access improvements within the existing easement and proposed subdivision.

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Attention: Steven S.C. Lim, Esq.

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3. ROAD VARIANCE: The access roadway within an adjoining subdivision and access to the existing property(s) is over and across the Alanui Kawila Trail was previously improved by others. The applicants, owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 00-000210. This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the subdivision application (SUB 00-000210) and 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:
 - a. The applicant and/ or owners shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing the Alanui Kawila Trail and/or private road easements located outside or proposed road and utility easements designated on the subdivision application's (SUB 00-000210) final plat map.
 - b. Upon written demand of the County of Hawaii, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements to Hualalai Road, Alanui Kawila Trail or rights-of-way serving the proposed lot(s) arising out of SUB 00-000210. Should the improvement district require acquisition of any rights-of-way outside the subdivision or within the lots arising out of SUB 00-000210, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the lot owner. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.

- c. The owners understand that the lots created by SUB 00-000210 have been approved with this road variance, and that they will use and maintain the privately owned on-site driveways and privately owned access roadway to and within their property, water system, and drainage improvements on their own without any expectation of governmental assistance, including any paved road improvements within or on and across the Alanui Kawila Trail or any other privately owned easements/rights-of-way related to the proposed subdivision.
 - d. e. The lot owners agree to participate in any original road maintenance agreement affecting the previous parcels or proposed lots arising out of the subdivision. Said maintenance shall include, without limitation, grass cutting (mowing), timely repair and/or filling of any and all rutted areas and "potholes" within respective 12 feet wide and 18 feet wide non-dedicable paved roadways, and mowing of existing roadway shoulders within the easements created by SUB 00-000210 and/or other privately owned easements providing access to the proposed lots arising out of SUB 00-000210.
 - e. Any lots created by SUB 00-000210 may not be made subject to a condominium property regime. Each lot created by SUB 00-000210 shall have no more than one dwelling. No ohana dwelling or "additional farm dwelling" or second dwelling unit shall be permitted on any lot created by SUB 00-000210.
 - f. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.
4. The owners, their assigns or successors shall pay any outstanding real property taxes due and comply with all other applicable State and County rules and regulations pertaining to subdivisions, tentative subdivision approval conditions, approved subdivision construction plans, variance conditions, and land use.

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Attention: Steven S.C. Lim, Esq.
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August 21, 2007

5. Any outstanding and active building permits issued by the DPW shall be addressed and closed prior to final subdivision approval. The location of all permitted and existing building improvements are subject to the minimum building yards pursuant to the Hawaii County Zoning Code.

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

Thank you for your understanding and patience during our review.

Sincerely,

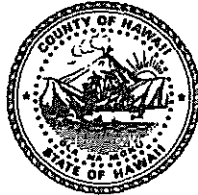


CHRISTOPHER J. YUEN
Planning Director

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 00-0210

Harry Kim
Mayor



Christopher J. Yuen
Director
Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

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December 7, 2007

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

Dear Mr. Lim:

VARIANCE-VAR 07-031-Dated: August 21, 2007
Applicant: CARLSMITH BALL, LLP
Owners: EDWARD J. RAPOZA, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Improvements Required
Tax Map Key: 7-6-011:003, 009, and 019, (SUB 00-000210)

Pursuant to discussion with your staff, Page 7 of the variance letter, "2.", is hereby corrected to read as follows:

- "2. *Reasonable subdivision roadway improvements to allow lot access and meet minimal emergency vehicular and safety requirements.* This is the selected alternative. It appears that access to the subject properties or adjoining properties circa 1963 and according to SUB 4482 approved in 1980. The existing driveway or paved roadway within or upon 3-lots created by SUB 4482 and upon the "TRAIL" (Alanui Kawila Trail) is currently being utilized as access to the proposed subdivision and other adjoining properties. A continuous non-dedicable paved roadway will be constructed between Hualalai Road to the terminus of proposed subdivision's road lot of the proposed subdivision's access road or "Cul-de-Sac" or proposed "ROAD LOT" exceeding 600 linear feet according to variance.

The existing 10 feet wide "A.C." paved roadway within the Easement(s) and upon a "TRAIL" identified on the Final Plat Map of SUB 4482 approved on June 16, 1980 will be widened and expanded to minimum 18 feet wide including grassed shoulders and swales; and minimum 20 feet wide non-dedicable roadway including minimum 5 feet wide shoulders and swales with the "ROAD LOT". Other subdivision utilities, drainage improvements, including safety measures within the Easement(s) created by SUB 4482, within and upon the "TRAIL" (Alanui Kawila), and for the proposed subdivision or within the proposed "ROAD LOT 29,833 SQ. FT." will be constructed and installed in accordance with variance and agency approval and approved subdivision construction plans prior to issuance of final subdivision approval."

The variance conditions dated August 21, 2007 remain the same. However the original headers (e.g. "a., b., c., d., e., f.") pertaining to Variance Condition No. 3 (Page 9 and Page 10) in our original letter dated August 21, 2007 are revised and corrected to read as follows:

- "3. ROAD VARIANCE: The access roadway within an adjoining subdivision and access to the existing property(s) is over and across the Alanui Kawila Trail was previously improved by others. The applicants, owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 00-000210. This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the subdivision application (SUB 00-000210) and 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:
 - a. The applicant and/ or owners shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing the Alanui Kawila Trail and/or private road easements located outside or proposed road and utility easements designated on the subdivision application's (SUB 00-000210) final plat map.

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Attention: Steven S.C. Lim, Esq.

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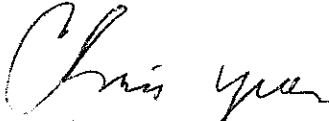
- b. Upon written demand of the County of Hawaii, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements to Hualalai Road, Alanui Kawila Trail or rights-of-way serving the proposed lot(s) arising out of SUB 00-000210. Should the improvement district require acquisition of any rights-of-way outside the subdivision or within the lots arising out of SUB 00-000210, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the lot owner. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- c. The owners understand that the lots created by SUB 00-000210 have been approved with this road variance, and that they will use and maintain the privately owned on-site driveways and privately owned access roadway to and within their property, water system, and drainage improvements on their own without any expectation of governmental assistance, including any paved road improvements within or on and across the Alanui Kawila Trail or any other privately owned easements/rights-of-way related to the proposed subdivision.
- d. The lot owners agree to participate in any original road maintenance agreement affecting the previous parcels or proposed lots arising out of the subdivision. Said maintenance shall include, without limitation, grass cutting (mowing), timely repair and/or filling of any and all rutted areas and "potholes" within respective 12 feet wide and 18 feet wide non-dedicable paved roadways, and mowing of existing roadway shoulders within the easements created by SUB 00-000210 and/or other privately owned easements providing access to the proposed lots arising out of SUB 00-000210.
- e. Any lots created by SUB 00-000210 may not be made subject to a condominium property regime. Each lot created by SUB 00-000210 shall have no more than one dwelling. No ohana dwelling or "additional farm dwelling" or second dwelling unit shall be permitted on any lot created by SUB 00-000210.

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Attention: Steven S.C. Lim, Esq.
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December 7, 2007

- f. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots."

We apologize for any inconvenience in this matter and appreciate your understanding and patience.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/DSA:cd
P:\public\wp60\WRY\FORMLETT\VAR07-031SUBROAD.RAPOZA-CBLLP.2

xc: Wes Thomas Associates
DPW-Engineering Branch
DWS-Engineering Branch
SUB 00-0210