

William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
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## County of Hawai'i PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

July 20, 2012

Ms. Karen Sheff  
73-1304 Awakea Street  
Kailua-Kona, Hawai'i 96740

Dear Ms. Sheff:

**SUBJECT: VARIANCE-VAR 11-000052**  
**Applicants: KAREN SHEFF**  
**Owners: KAREN AND LAWRENCE SHEFF**  
**Request: Variance from Chapter 23, Subdivisions**  
**Tax Map Key: 7-6-004:048, (SUB 06-000254)**

After reviewing your variance application, the Planning Director certifies the approval of **VAR 11-000052** subject to variance conditions. The variance permits a two (2) lot subdivision (SUB 06-000254) of the referenced subject property to be created without providing a water supply system and non-dedicable roadway improvements pursuant to Chapter 23, Subdivisions. The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Water Supply, (1)(2), Section 23-34, Access to lot from street, Section 23-86, Requirements for dedicable street and Section 23-95, Right-of-way improvement.

### BACKGROUND

1. **Variance Request:** The applicant requests that access to the subject properties be from an existing 12-foot wide roadway and that a private rainwater catchment system be allowed as an acceptable water system to serve the proposed subdivision.
2. **Location.** The subject property contains approximately 33,850 square feet and is situated at Holualoa 1<sup>st</sup> and 2<sup>nd</sup>, North Kona, Hawai'i.
3. **Zoning.** The subject property is zoned Village Commercial – 10,000 square feet (CV-10) by the County and designated Urban "U" by the State Land Use Commission (LUC).

SCANNED

JUL 23 2012

3. **Subdivision Request/PPM.** The applicants/owners submitted a subdivision application (SUB 06-000254) and revised preliminary plat map (Rev. PPM) dated December 20, 2011, proposing to subdivide subject property into two (2) lots.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated December 21, 2011. The variance application includes agent's background information and request for variance from water supply and non-dedicable roadways required to allow proposed 2-lot subdivision.
5. **Agency Comments and Requirements:**
  - a. The State of Hawaii-Department of Health: See attached memorandum dated December 27, 2011
  - b. The County of Hawai'i Fire Department (COH-HFD): See attached memorandum dated January 17, 2011.
  - c. The Department of Water Supply (DWS): See attached memorandum dated January 24, 2012.
  - d. No comments have been received from the Department of Public Works regarding the roadway variance (VAR 11-000052) as of this date.

**Public Notice.** A copy of the notices was sent by the applicant via USPS to surrounding property owners. According to the affidavit submitted to the Planning Department, the first notice was mailed on December 27, 2011. In accordance with Ordinance No. 05-135, the applicants submitted a notarized affidavit, dated December 31, 2011, and photographs to confirm posting of required sign. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 28, 2011.

**Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written objections to the variance application were received from surrounding property owners or public.

#### **ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES**

**Water Supply.** The first alternative requires the applicant or owners to extend and/or construct a county water system and provide dedicable water system improvements in accordance with DWS standards.

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The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

The requirement of extending or constructing a DWS water system, or providing an approved alternative private water system meeting DWS standards, for the proposed two-lot subdivision would be putting excessive demands upon the applicant or owners when a more reasonable alternative is available (e.g. private individual rainwater catchment system for potable and emergency requirements for agricultural zoned parcels can be permitted pursuant to Rule 22- Water Variance).

**Lot Access/Roadways.** The subdividers is requesting a variance to allow the development of the proposed 2-lot subdivision without providing roadway improvements meeting the minimum requirements of Chapter 23, Subdivisions, more specifically **Section 23-34 – Access to lot from street; Section 23-86 –Requirements for dedicable streets; and Section 23-95 – Right-of-way improvement.** The subject property currently has access to a public roadway (Mamalahoa Highway) via the privately owned 12-foot wide roadway

The applicant has stated that access to the proposed 2-lot subdivision will be from the long established 12-foot wide roadway and access to the Holualoa Art Gallery will be from the Old Mamalahoa Highway. The additional lot to be created by the proposed subdivision will create minimal additional impact.

In lieu of improving and constructing roadways required by Chapter 23, Subdivisions , the applicant or subdividers contend that the existing roadway is sufficient access to subject properties.

#### **INTENT AND PURPOSE OF THE SUBDIVISION CODE**

**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.

Section 23-84 of the Subdivision Code requires that all new subdivisions have a water system meeting with the minimum requirements of the Department of Water Supply. The State Department of Health has no specific rules or regulations relating to the utilization, construction, or inspection of private roof or rain catchment water systems for potable or emergency uses.

The alternative to a water system would be the approval of a water variance to utilize privately-owned individual rain water catchment systems for proposed 2-lot subdivision, which can meet the intent and purpose of the Subdivision Code according to Planning Department Rule 22-Water Variance, effective February 25, 2006. Generally, Rule 22 is both a rule and statement of criteria to be used so that consistent decisions can be made on water variance requests. Section 23-84 of the

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Subdivision Code requires a water system, and Rule 22 generally limits subdivisions requesting a variance from water supply to six (6) lots and requires that a proposed subdivision requesting a variance to allow individual rainwater catchment systems for potable and emergency needs must receive a minimum 60 inches of annual rainfall for each lot served by catchment.

The analysis of existing rainfall within the subject property, provided by the applicant, indicates that there is adequate rainfall to support individual private rainwater catchment systems for potable and emergency uses for the proposed subdivision. The GIS rainfall data maintained by Planning Department indicates the subject property is within an elevation that received between 40 and 60 inches of annual rainfall, but immediately borders an elevation that identifies approximately 60 to 80 inches of annual rainfall. In review of the above, the proposed subdivision would meet Rule No. 22-Water Variance.

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.

**Roadway Variance.** 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.

The subject property is zoned Village Commercial – 10,000 square feet (CV-10). Therefore, given the subject property's zoning density; the applicant/owner is allowed another single-family dwelling on the parcel without subdividing the property. For that reason, the owner can construct another single-family dwelling without doing any roadway and water improvements.

It should also be noted that a similar roadway and water variance (VAR 09-036 and VAR 09-037) was granted for a 2-lot subdivision (TMK 7-6-004:022) approximately 550 feet north of the subject property.

Given the circumstances cited in the applicant's background report and evaluation of the request to construct significant roadway improvements beyond the easement area granted to the parcel, the Planning Director has concluded that roadway improvements required for proposed 2-lot subdivision, stipulated in Chapter 23, Subdivisions are not necessary and can be remedied by variance approval with conditions.

The subject variance application was acknowledged by letter dated December 21, 2011. Additional time was requested by the Planning Department to review the variance application and other information submitted supporting the variance application. The applicant granted the Planning Department and Planning Director an extension of time to decide on the variance 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, it is felt that the applicant's request for variance from water supply and non-dedicable roadway improvements will not be materially detrimental to the public's welfare and does not cause substantial adverse impact to the area's character and to adjoining properties.

#### **DETERMINATION/VARIANCE CONDITIONS**

The variance request and application submitted by the owner's agent to permit proposed 2-lot subdivision of the subject property without providing a water system meeting DWS standards pursuant to Rule 22, Water Variance and roadway improvements required by Chapter 23, Subdivision Code for the proposed subdivision is hereby **approved** subject to following variance conditions:

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. **WATER VARIANCE:** The owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department prior to final subdivision approval of SUB 06-000254. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lot not serviced by a County water system and shall be duly recorded at the Bureau of Conveyances of the State of Hawai'i by the Planning Department at the cost and expense of the owners:
  - a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 06-000254. 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.
  - b. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the proposed or affected

additional lots created by SUB 06-000254 not serviced by a County water system. No further subdivision of the lots created by SUB 06-000254 will be permitted unless County water system requirements and other requirements of Chapter 23, Subdivisions, are met.

- c. Any lots created by SUB 06-000254 may not be made subject to a condominium property regime.
- d. Any farm dwelling constructed on any lots not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6000-gallon water storage capacity for domestic consumption or potable uses. This private water catchment system shall adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
- e. Each permitted farm dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible connector system, shall meet with the approval of the Hawai'i County Fire Department. The Hawai'i County Fire Department also advises as a precautionary measure for other uninhabited agricultural structures that consideration be given to the provision of a similar water storage system for fire fighting and emergency purposes.
- 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.
- g. In the event that the County notifies the owner(s) of the lot(s) created by SUB 06-000254 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000254, the owner(s) of the lot(s) created by SUB 06-000254 shall

participate in such improvement district or shall pay their pro-rata share of any installation of laterals, as determined by the County Department of Water Supply (DWS).

- h. The subdivider and all grantees, successors, and assigns acknowledge that the parcel was created by a variance from the normal subdivision requirements of Hawai'i 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.

- 3. **ROAD VARIANCE:** The subdivider, owners, their assigns, or successors understand that the 2-lots arising out of SUB 06-000254 will use and maintain the privately owned roadways and/or necessary easement(s) on their own without any expectation of governmental assistance to maintain the current privately owned access on the subdivisions preliminary plat map or any other necessary access and any necessary utility easement(s) within or upon proposed lots or proposed subdivision. The applicant, owners, their assigns, or successors shall submit or file a written agreement or approved written document with the Planning Department prior to receipt of final subdivision approval of SUB 06-000254. The proposed lots are required to join or participate with a Homeowner or Road Association or include appropriate deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the pending subdivision application and be duly recorded at the Bureau of Conveyances of the State of Hawai'i by the Planning Department at the cost and expense of the applicant:

- a. The applicant and/or owner(s) shall indemnify and defend the State of Hawai'i or County of Hawai'i from any and all liability arising out of vehicular access to and from the subject property utilizing the current privately-owned roadway fronting the subject property.

Upon written demand of the County of Hawai'i, 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 serving the proposed lot(s) arising out of SUB 06-000254.

Should the improvement district require acquisition of any other privately-owned rights-of-way upon abutting properties, 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 respective lot owner(s). 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.

- b. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the privately-owned roadway which access from the Old Mamalahoa Highway.

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 subdivision application's (SUB 06-000254) final plat map shall meet all the requirements of the Hawai'i 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 06-000254.
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.



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Thank you for your understanding and patience during our review.

Sincerely,

A handwritten signature in black ink that reads "BJ Leithead Todd". The signature is written in a cursive style with a large initial "B" and "J".

BJ LEITHEAD TODD  
Planning Director

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Attachments

xc: DPW-Engineering Branch  
DWS-Engineering Branch  
SUB 06-000254

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NEIL ABERCROMBIE  
GOVERNOR

OFFICE OF THE GOVERNOR  
STATE OF HAWAII

2012 SEP 27 09:00 AM



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
Director of Health

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 918  
HILO HAWAII 98721-0918

MEMORANDUM

DATE: December 27, 2011

TO: Bobby Jean Leithhead Todd  
Planning Director, County of Hawaii

FROM: Newton Inouye  
Acting District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 11-000052  
Applicant: KAREN SHEFF  
Owner: KAREN AND LAWRENCE SHEFF  
Request: Variance from Chapter 23, Subdivisions,  
Article 5, Division 2, Improvements Required  
Tax Map Key: 7-6-004:048 (SUB 06-000254)

The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." A "public water system" means a system which provides water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbiological and chemical contaminants in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards.

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**DEPARTMENT OF WATER SUPPLY - COUNTY OF HAWAII**  
245 KĀKĪANAŌA STREET SUITE 20 • 4<sup>TH</sup> FLOOR HAWAII 96720  
TELEPHONE (808) 961-8200 • FAX (808) 961-8207

January 24, 2012

**TO:** Ms. BJ Lathhead Todd, Director  
Planning Department

**FROM:** Quirino Antonio, Jr., Manager-Chief Engineer

**SUBJECT:** VARIANCE APPLICATION (VAR 11-000052)  
SUBDIVISION APPLICATION NO. 06-000254  
APPLICANT - KAREN SHEFF  
TAX MAP KEY 7-6-004:048

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PLANNING DEPARTMENT

We have reviewed the subject application and have the following comments and conditions.

Although the existing 8-inch waterline within Māmalaha Highway fronting the subject parcel is inadequate to provide 2,000 gallons per minute of flow for fire protection, as required by our water system standards for commercially zoned properties, our existing water system can accommodate an additional service connection for the proposed additional lot. We recommend that the applicant consult the Fire Department for any fire protection requirements or alternatives.

Aside from fire protection requirements, the following would be our minimum requirements for final subdivision approval:

1. Construct necessary water system improvements, which shall include, but not be limited to, the following:
  - a. installation of a service lateral to accommodate a 5/8-inch meter (minimum size) for Lot 13-B-1-B.
  - b. subject to other agencies' requirements to construct improvements within the road right-of-way fronting the property affected by the proposed development, the applicant shall be responsible for the relocation and adjustment of the Department's affected water system facilities, should they be necessary.

Construction plans showing the above improvements and prepared by a licensed professional engineer, registered in the State of Hawaii, must be submitted for review and approval.

2. Remit the prevailing facilities charge, which is subject to change, of \$5,500.00, as shown below:

<b>FACILITIES CHARGE (FC):</b>	
FC service to the existing lot of record (already paid)	\$0.00
One (1) additional unit @ \$5,500.00 per unit	\$5,500.00
<b>FC Total (subject to change)</b>	<b>\$5,500.00</b>

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This is due and payable upon completion of the necessary water system improvements and prior to final subdivision approval being granted. In order to secure a water commitment for the additional service, the applicant must remit a water commitment deposit of \$150.00, which will be credited toward the final facilities charge balance.

3. The applicant shall show on the final plat map an appropriate waterline easement through Lot 13-B-1-A for Lot 13-B-1-B. Alternatively, the applicant may have the service lateral for Lot 13-B-1-B installed fronting the 12-foot wide roadway along the north side of the subject parcel, provided that proper documentation is submitted showing that the owner has partial ownership of, or easement through, the roadway allowing installation and maintenance of a customer waterline to the property.

Should a Water Variance be approved, we recommend that it include conditions that a fire protection alternative be accepted by the Fire Department and the proper documentation be provided per Item 3 above.

Should there be any questions, please contact Mr. Finn McCall of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,



Quirino Antonio, Jr., P.E.  
Manager-Chief Engineer

FM:dfg

copy - Karen Sheff

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PLANNING DEPARTMENT  
William P. Kenoi  
Mayor

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Darren J. Rosario  
Fire Chief

Renwick J. Victorino  
Deputy Fire Chief

**County of Hawai'i**  
**HAWAII FIRE DEPARTMENT**  
25 Aupuni Street • Room 2501 • Hilo, Hawai'i 96720  
(808) 932-2900 • Fax (808) 932-2928

January 17, 2012

**TO:** BJ LEITHEAD TODD, PLANNING DIRECTOR  
**FROM:** DARREN J. ROSARIO, FIRE CHIEF  
**SUBJECT:** VARIANCE APPLICATION (VAR 11-0000052)  
APPLICANT: KAREN SHEFF  
OWNER: KAREN AND LAWRENCE SHEFF  
REQUEST: VARIANCE FROM CHAPTER 23, SUBDIVISIONS, ARTICLE 6,  
DIVISION 2, IMPROVEMENTS REQUIRED  
TAX MAP KEY: 7-6-004:048 (SUB 06-000254)

In regards to the above-mentioned Variance application, the following shall be in accordance:

Fire apparatus access roads shall be in accordance with UFC Section 10.207:

**"Fire Apparatus Access Roads**

**"Sec. 10.207. (a) General.** Fire apparatus access roads shall be provided and maintained in accordance with the provisions of this section.

**"(b) Where Required.** Fire apparatus access roads shall be required for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire department vehicle access as measured by an unobstructed route around the exterior of the building.

**"EXCEPTIONS:** 1. When buildings are completely protected with an approved automatic fire sprinkler system, the provisions of this section may be modified.

"2. When access roadways cannot be installed due to topography, waterways, nonnegotiable grades or other similar conditions, the chief may require additional fire protection as specified in Section 10.301 (b).

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"3. When there are not more than two Group R, Division 3 or Group M Occupancies, the requirements of this section may be modified, provided, in the opinion of the chief, fire-fighting or rescue operations would not be impaired.

"More than one fire apparatus road may be required when it is determined by the chief that access by a single road may be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

"For high-piled combustible storage, see Section 81.109.

"(c) **Width.** The unobstructed width of a fire apparatus access road shall meet the requirements of the appropriate county jurisdiction.

"(d) **Vertical Clearance.** Fire apparatus access roads shall have an unobstructed vertical clearance of not less than 13 feet 6 inches.

**"EXCEPTION:** Upon approval vertical clearance may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance.

"(e) **Permissible Modifications.** Vertical clearances or widths required by this section may be increased when, in the opinion of the chief, vertical clearances or widths are not adequate to provide fire apparatus access.

"(f) **Surface.** Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all-weather driving capabilities." (20 tons)

"(g) **Turning Radius.** The turning radius of a fire apparatus access road shall be as approved by the chief." (45 feet)

"(h) **Turnarounds.** All dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus.

"(i) **Bridges.** When a bridge is required to be used as access under this section, it shall be constructed and maintained in accordance with the applicable sections of the Building Code and using designed live loading sufficient to carry the imposed loads of fire apparatus.

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"(j) **Grade.** The gradient for a fire apparatus access road shall not exceed the maximum approved by the chief." (15%)

"(k) **Obstruction.** The required width of any fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Minimum required widths and clearances established under this section shall be maintained at all times.

"(l) **Signs.** When required by the fire chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both."

Water supply shall be in accordance with UFC Section 10.301(c):

"(c) **Water Supply.** An approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed, in accordance with the respective county water requirements. There shall be provided, when required by the chief, on-site fire hydrants and mains capable of supplying the required fire flow.

"Water supply may consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow.

"The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be protected as set forth by the respective county water requirements. All hydrants shall be accessible to the fire department apparatus by roadways meeting the requirements of Section 10.207.



DARREN J. ROSARIO  
Fire Chief

CB:lpc