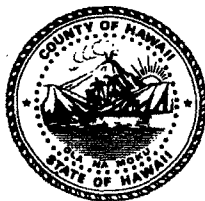


William P. Kenoi
Mayor



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

September 28, 2012

Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
Cades Schutte, LLP
75-170 Hualalai Road, Ste. B-303
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

SUBJECT: VARIANCE DECISION VAR-12-000083
Agent: ROY A. VITOUSEK III, CADES SCHUTTE, LLP
Applicant: DAVID A. LUCAS
Owner: GOLDEN BAY INTERNATIONAL CO., LTD.
Request: Variance from Chapter 23, Subdivisions, Article 3, Design Standards, Division 4, Street Design, Section 23-41, Minimum right-of-way and pavement widths & Section 23-50, Grades and curves; Article 6, Division 2, Improvements Required, Section 23-87, Standards for nondedicable streets, escrow maintenance fund; Section 23-89, Sidewalks; Section 23-91, Curbs and Gutters; Section 23-93, Street lights; and Section 23-95, Right-of-way improvement
TMK: 7-6-001:001 (SUB-10-001041)

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-12-000083 subject to variance conditions. The variance grants relief for SUB-10-001041 from constructing roadway improvements required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

The variance is from the proposed subdivision's minimum requirements pursuant to HCC, Chapter 23 (Subdivisions), Article 3, Division 4, Section 23-41, Minimum right-of-way and pavement widths & Section 23-50, Grades and curves; Article 6, Division 2, Improvements Required, Section 23-87, Standards for nondedicable streets, escrow maintenance fund; Section 23-89, Sidewalks; Section 23-91, Curbs and Gutters; Section 23-93, Street lights; and Section 23-95, Right-of-way improvement.

BACKGROUND

1. **Location.** The referenced TMK property, Lot 10-A-1, being a portion of Land Commission Award 7713:43, containing approximately 500.734 acres, is situated in the Mauka Section of Hōlualoa 1st & 2nd Partition, North Kona, Hawai'i, approximately 2 miles mauka of Māmalahoa Highway on Waiono Meadows Drive, a private road located between the 4- and 5-mile markers of the Māmalahoa Highway.
2. **Land Use Designations.** The subject property is zoned Agricultural – twenty (20) acres minimum building site area (A-20a) by the County and designated Agricultural (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** Subdivision application SUB-10-001041 was submitted to subdivide the subject TMK property into 5 lots. Further action on the subdivision application has been deferred pursuant to letter dated May 19, 2011 in the subdivision file.
4. **Variance Application.** The variance request from water supply improvements was acknowledged by Planning Department letter dated August 10, 2012. This variance application includes background history and circumstances and information regarding the pending subdivision application.
5. **Variance Application (VAR-12-000083)-Agency Comments and Requirements.**
 - a. The State of Hawai'i-Department of Health (DOH): see attached memorandum dated August 15, 2012.
 - b. The County of Hawai'i Fire Department (HFD): the HFD did not respond to this application as of this date. However, see the attached memorandum which is their standard response to such applications.
 - c. The Department of Public Works (DPW) did not comment on this variance application as of this date. Reference is made, however, to their February 25, 2011 memorandum in response to the PPM (attached) and the Subdivision Code which requires a minimum of 20-foot wide agricultural pavement in a minimum 50-foot wide right-of-way be provided and that the entire right-of-way be improved. These improvements typically would conform to DPW Standard Detail (Std. Det.) R-39.
6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted an affidavit regarding notice of variance application mailed to a list of surrounding property owners and posting of a sign. According to the affidavit dated September 5, 2012 and other submittals in the variance application file, notice of variance was mailed on or about August 20, 2012. An affidavit dated August 14, 2012 states that a sign

was posted upon subject TMK property on or about August 11, 2012. Photographs of the posted sign were also submitted.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were solicited and none were received. Written objections to the application were received from three surrounding property owners. Those objection letters are available for perusal in the variance file located in the Hilo Planning Department office.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

Lot Access/Roadways. The DPW normally recommends, and the Subdivision Code requires, a minimum of 20-foot wide agricultural pavement within a minimum 50-foot wide right-of-way in the A-20a zoning district and that the entire right-of-way be improved. These improvements would conform to DPW Standard Detail (Std. Det.) R-39.

The intent and purpose of access improvement 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.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Roadway Variance. In lieu of constructing roadways required by the Subdivision Code and DPW Std. Det., the applicant is requesting this variance to utilize an existing alternative roadway. The applicant proposes to utilize an existing privately-owned and maintained approximately 12-foot wide paved roadway with grassed or graveled shoulders on both sides, within the 80-foot wide right-of-way, Lot 11 of Waiono Meadows Ranch subdivision and internal 80-foot wide easement.

Given the recitations of the applicant and evaluation of the request to utilize the existing privately-owned alternative roadway within the 80-foot wide right-of-ways, the Planning Director has concluded that the roadway improvements stipulated by the DPW and in the Subdivision Code can be modified to permit 12-foot wide paved roadway treatment within the privately-owned right-of-ways. However, given the testimony of the surrounding property owners and other evidence available to this department, it is found that some mitigative measures are called for in this instance.

The portion of the roadway pavement within the subject property shows approximately 12-foot wide paving with grassed/graveled shoulders in good repair. However the evidence shows that portions of the paving within the Road Lot 11 (7-6-002:033) are in disrepair and some areas prone to flooding.

Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
Cades Schutte, LLP
Page 4
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With the below-stipulated modifications, the request for a variance from the roadway requirements of the Subdivision Code, at this time, is 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 this variance, with said modifications, 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 is to permit the proposed 5-lot subdivision of the subject TMK property to allow the proposed existing privately-owned alternative roadway improvements within right-of-way designated on the plat map, 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. 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.
3. The owners, their assigns, or successors shall file a written agreement document with the Planning Department within one (1) year from the issuance of tentative subdivision approval. This written agreement shall contain deed language, being covenants, conditions, and restrictions affecting the lots created by the proposed subdivision which are serviced by a sub-standard privately-owned alternative roadway. The agreement 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.

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 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 of the existing property or approved subdivided lots.

4. The subdivider and all grantees, successors, and assigns acknowledge that the parcels were 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 owners of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the properties, and hence, no grounds exist or will exist for a variance from the Subdivision Code to permit further

subdivision of the properties, and that changes in the owners' personal or financial situation after acquiring the properties also will not constitute grounds for a variance from the Subdivision Code to permit further subdivision of the properties.

5. **ROAD VARIANCE.** The subdivider, owners, their assigns, or successors understand that the sub-standard alternative roadway within the 80-foot wide privately-owned right-of-ways will use and maintain the roadway on their own without any expectation of governmental assistance to maintain the improvements.
 - a. The owners, grantees, successors, and assigns 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 properties utilizing the private right-of-ways.
 - b. The existing sub-standard paving within Road Lot 11 shall be improved and/or repaired to substantially match that which is located within SUB-10-001041 internal access Easement 14. Where required, the roadway shall be constructed in such a manner as to be passable during surface water runoff events. This shall include drainage structures as may be required. This shall also include any widening as may be required to allow for safe sight distances and safe curve radii. These improvements shall be as recommended by an Engineer licensed in the State of Hawai'i and delineated on construction plans submitted for approval of the DPW and the Planning Department.
 - c. 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-10-001041. Should the improvement district require acquisition of any privately owned right-of-ways fronting the lots, such right-of-ways 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).
 - d. The lot owners, grantees, successors, and assigns agree to participate in a homeowners' association or road maintenance agreement and/or pay their fair share to maintain the roadway within the private right-of-way.
6. The pending subdivision application's (SUB-10-001041) final plat map shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code not covered by this variance.
7. 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 this Variance Permit null and void.

In accordance with Ordinance No. 99-112, you may appeal the director's decision as follows:

- (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.
- (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 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 an abuse of discretion or clearly unwarranted exercise of discretion.

Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
Cades Schutte, LLP
Page 7
September 28, 2012

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,



BJ LETIHEAD TODD
Planning Director

JRH:mad

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Enclosures: Agency Comments
BOA Application

xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB-10-001041

Clarence L. Werner, Manager
CLW Farms Hawai'i, LLC
c/o Sara Kucern, gwr Wealth Management LLC
14301 FNB Parkway, Suite 115
Omaha, NE 68154

Daniel Bolton, General Partner
Malia Ohana II Partnership
P.O. Box 898
Kailua-Kona, HI 96745

Gary and Nancye Capri
76-5817 B Māmalahoa Highway
Hōlualoa, HI 96725

PLANNING DEPARTMENT
William P. Kanohi
Mayor

2012 AUG -9 PM 2:20



Darren J. Rosario
Fire Chief
Renwick J. Victorino
Deputy Fire Chief

County of Hawaii
HAWAII FIRE DEPARTMENT
25 Anapala Street • Room 2501 • Hilo, Hawaii 96720
(808) 932-2900 • Fax (808) 932-2928

August 8, 2012

TO: BJ LEITHEAD TODD, PLANNING DIRECTOR
FROM: DARREN J. ROSARIO, FIRE CHIEF
SUBJECT: VARIANCE APPLICATION (VAR 12-000082)
APPLICANT: [REDACTED]
OWNER: [REDACTED]
REQUEST: VARIANCE FROM CHAPTER 23, SUBDIVISION, ARTICLE 6,
DIVISION 2, SECTION 23-84 (1) & (2), WATER SUPPLY
TAX MAP KEY: 4-7-007:017 (SUB 11-001077)

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

NFPA 1, UNIFORM FIRE CODE, 2006 EDITION

Note: NFPA 1, Hawaii State Fire Code with County amendments. County amendments are identified with a preceding "C-" of the reference code

Chapter 18 Fire Department Access and Water Supply

18.1 General. Fire department access and water supplies shall comply with this chapter.

For occupancies of an especially hazardous nature, or where special hazards exist in addition to the normal hazard of the occupancy, or where access for fire apparatus is unduly difficult, or areas where there is an inadequate fire flow, or inadequate fire hydrant spacing, and the AHJ may require additional safeguards including, but not limited to, additional fire appliance units, more than one type of appliance, or special systems suitable for the protection of the hazard involved.

18.1.1 Plans.

18.1.1.1 Fire Apparatus Access. Plans for fire apparatus access roads shall be submitted to the fire department for review and approval prior to construction.

18.1.1.2 Fire Hydrant Systems. Plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.



Hawaii's County is an Equal Opportunity Provider and Employer.

080366

NEL ABERCROMBIE
GOVERNOR
2012 AUG 10 AM 9:39



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

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: August 15, 2012
TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii
FROM: Newton Inouye
District Environmental Health Program Chief
SUBJECT: VARIANCE APPLICATION-VAR 12-000083
Agent: CADES SCHUTTE, LLP - ROY A. VITOUSEK III
Applicant: DAVID A. LUCAS
Owner: GOLDEN BAY INTERNATIONAL CO. LTD.
Request: Variance from Chapter 23, Subdivision, Article 3
Division 4, Street Design and Article 6, Division 2,
Improvements
Tax Map Key: 7-6-001:001 (SUB 10-001041)

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

WORD:VAR 12-000083.my

080490

BJ Leithead Todd
August 8, 2012
Page 3

18.2.3.1.4 When fire department access roads cannot be installed due to location on property, topography, waterways, nonnegotiable grades, or other similar conditions, the AHJ shall be authorized to require additional fire protection features.

18.2.3.2 Access to Building.

18.2.3.2.1 A fire department access road shall extend to within 50 ft (15 m) of at least one exterior door that can be opened from the outside and that provided access to the interior of the building.

18.2.3.2.1.1 When buildings are protected throughout with an approved automatic sprinkler system that is installed in accordance with NFPA 13, NFPA 13D, or NFPA 13R, the distance in 18.2.3.2.2 shall be permitted to be increased to 300 feet.

18.2.3.2.2 Fire department access roads shall be provided such that any portion of the facility or any portion of an exterior wall of the first story of the building is located not more than 150 ft (46 m) from fire department access roads as measured by an approved route around the exterior of the building or facility.

18.2.3.2.2.1 When buildings are protected throughout with an approved automatic sprinkler system that is installed in accordance with NFPA 13, NFPA 13D, or NFPA 13R, the distance in 18.2.3.2.2 shall be permitted to be increased to 450 ft (137 m).

18.2.3.3 Multiple Access Roads. More than one fire department access road shall be provided when it is determined by the AHJ that access by a single road could be impaired by vehicle congestion, condition of terrain, climatic conditions, or other factors that could limit access.

18.2.3.4 Specifications.

18.2.3.4.1 Dimensions.

C~ 18.2.3.4.1.1 FDAR shall have an unobstructed width of not less than 20ft with an approved turn around area if the FDAR exceeds 150 feet. Exception: FDAR for one and two family dwellings shall have an unobstructed width of not less than 15 feet, with an area of not less than 20 feet wide within 150 feet of the structure being protected. An approved turn around area shall be provided if the FDAR exceeds 250 feet.

C~ 18.2.3.4.1.2 FDAR shall have an unobstructed vertical clearance of not less than 13ft 6 in.

C~ 18.2.3.4.1.2.1 Vertical clearances may be increased or reduced by the AHJ, provided such increase or reduction does not impair access by the fire apparatus, and approved signs are installed and maintained indicating such approved changes.

BJ Leithead Todd
August 8, 2012
Page 2

C~ 18.1.1.2.1 Fire Hydrant use and Restrictions. No unauthorized person shall use or operate any Fire hydrant unless such person first secures permission or a permit from the owner or representative of the department, or company that owns or governs that water supply or system. Exception: Fire Department personnel conducting firefighting operations, hydrant testing, and/or maintenance, and the flushing and acceptance of hydrants witnessed by Fire Prevention Bureau personnel.

18.2 Fire Department Access.

18.2.1 Fire department access and fire department access roads shall be provided and maintained in accordance with Section 18.2.

18.2.2* Access to Structures or Areas.

18.2.2.1 Access Box(es). The AHJ shall have the authority to require an access box(es) to be installed in an accessible location where access to or within a structure or area is difficult because of security.

18.2.2.2 Access to Gated Subdivisions or Developments. The AHJ shall have the authority to require fire department access be provided to gated subdivisions or developments through the use of an approved device or system.

18.2.2.3 Access Maintenance. The owner or occupant of a structure or area, with required fire department access as specified in 18.2.2.1 or 18.2.2.2, shall notify the AHJ when the access is modified in a manner that could prevent fire department access.

18.2.3 Fire Department Access Roads.

18.2.3.1 Required Access.

18.2.3.1.1 Approved fire department access roads shall be provided for every facility, building, or portion of a building hereafter constructed or relocated.

18.2.3.1.2 Fire Department access roads shall consist of roadways, fire lanes, parking lots lanes, or a combination thereof.

18.2.3.1.3* When not more than two one- and two-family dwellings or private garages, carports, sheds, agricultural buildings, and detached buildings or structures 400ft² (37 m²) or less are present, the requirements of 18.2.3.1 through 18.2.3.2.1 shall be permitted to be modified by the AHJ.

18.2.3.4.6.3 Fire department access roads connecting to roadways shall be provided with curb cuts extending at least 2 ft (0.61 m) beyond each edge of the fire lane.

18.2.3.4.7 Traffic Calming Devices. The design and use of traffic calming devices shall be approved the AHJ.

18.2.3.5 Marking of Fire Apparatus Access Road.

18.2.3.5.1 Where required by the AHJ, approved signs or other approved notices shall be provided and maintained to identify fire department access roads or to prohibit the obstruction thereof of both.

18.2.3.5.2 A marked fire apparatus access road shall also be known as a fire lane.

18.2.4* Obstruction and Control of Fire Department Access Road.

18.2.4.1 General

18.2.4.1.1 The required width of a fire department access road shall not be obstructed in any manner, including by the parking of vehicles.

18.2.4.1.2 Minimum required widths and clearances established under 18.2.3.4 shall be maintained at all times.

18.2.4.1.3* Facilities and structures shall be maintained in a manner that does not impair or impede accessibility for fire department operations.

18.2.4.1.4 Entrances to fire departments access roads that have been closed with gates and barriers in accordance with 18.2.4.2.1 shall not be obstructed by parked vehicles.

18.2.4.2 Closure of Accessways.

18.2.4.2.1 The AHJ shall be authorized to require the installation and maintenance of gates or other approved barricades across roads, trails, or other accessways not including public streets, alleys, or highways.

18.2.4.2.2 Where required, gates and barricades shall be secured in an approved manner.

18.2.3.4.1.2.2 Vertical clearances shall be increased when vertical clearances or widths are not adequate to accommodate fire apparatus.

C~ 18.2.3.4.2 Surface. Fire department access roads and bridges shall be designed and maintained to support the imposed loads (25 Tons) of the fire apparatus. Such FDAR and shall be comprised of an all-weather driving surface.

18.2.3.4.3 Turning Radius.

C~ 18.2.3.4.3.1 Fire department access roads shall have a minimum inside turning radius of 30 feet, and a minimum outside turning radius of 60 feet.

18.2.3.4.3.2 Turns in fire department access road shall maintain the minimum road width.

18.2.3.4.4 Dead Ends. Dead-end fire department access roads in excess of 150 ft (46 m) in length shall be provided with approved provisions for the fire apparatus to turn around.

18.2.3.4.5 Bridges.

18.2.3.4.5.1 When a bridge is required to be used as part of a fire department access road, it shall be constructed and maintained in accordance with county requirements.

18.2.3.4.5.2 The bridge shall be designed for a live load sufficient to carry the imposed loads of fire apparatus.

18.2.3.4.5.3 Vehicle load limits shall be posted at both entrances to bridges where required by the AHJ.

18.2.3.4.6 Grade.

C~ 18.2.3.4.6.1 The maximum gradient of a Fire department access road shall not exceed 12 percent for unpaved surfaces and 15 percent for paved surfaces. In areas of the FDAR where a Fire apparatus would connect to a Fire hydrant or Fire Department Connection, the maximum gradient of such area(s) shall not exceed 10 percent.

18.2.3.4.6.2* The angle of approach and departure for any means of fire department access road shall not exceed 1 ft drop in 20 ft (0.3 m drop in 6 m) or the design limitations of the fire apparatus of the fire department, and shall be subject to approval by the AHJ.

18.3.5 Private water supply systems shall be tested and maintained in accordance with NFPA 25 or county requirements as determined by the AHJ.

18.3.6 Where required by the AHJ, fire hydrants subject to vehicular damage shall be protected unless located within a public right of way.

18.3.7 The AHJ shall be notified whenever any fire hydrant is placed out of service or returned to service. Owners of private property required to have hydrants shall maintain hydrant records of approval, testing, and maintenance, in accordance with the respective county water requirements. Records shall be made available for review by the AHJ upon request.

C~ 18.3.8 Minimum water supply for buildings that do not meet the minimum County water standards:

Buildings up to 2000 square feet, shall have a minimum of 3,000 gallons of water available for Firefighting.

Buildings 2001 - 3000 square feet, shall have a minimum of 6,000 gallons of water available for Firefighting.

Buildings, 3001 - 6000 square feet, shall have a minimum of 12,000 gallons of water available for Firefighting.

Buildings, greater than 6000 square feet, shall meet the minimum County water and fire flow requirements.

Multiple story buildings shall multiply the square feet by the amount of stories when determining the minimum water supply.

Commercial buildings requiring a minimum fire flow of 2000gpm per the Department of Water standards shall double the minimum water supply reserved for firefighting.

Fire Department Connections (FDC) to alternative water supplies shall comply with 18.3.8 (1)-(6) of this code.

NOTE: In that water catchment systems are being used as a means of water supply for firefighting, such systems shall meet the following requirements:

(1) In that a single water tank is used for both domestic and firefighting water, the water for domestic use shall not be capable of being drawn from the water reserved for firefighting;

18.2.4.2.3 Roads, trails, and other accessways that have been closed and obstructed in the manner prescribed by 18.2.4.2.1 shall not be trespassed upon or used unless authorized by the owner and the AHJ.

18.2.4.2.4 Public officers acting within their scope of duty shall be permitted to access restricted property identified in 18.2.4.2.1.

18.2.4.2.5 Locks, gates, doors, barricades, chains, enclosures, signs, tags, or seals that have been installed by the fire department or by its order or under its control shall not be removed, unlocked, destroyed, tampered with, or otherwise vandalized in any manner.

18.3 Water Supplies and Fire Hydrants

18.3.1* A water supply approved by the county, capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities or buildings, or portions thereof, are hereafter constructed, or moved into or within the county. When any portion of the facility or building is in excess of 150 feet (45 720 mm) from a water supply on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the AHJ. For on-site fire hydrant requirements see section 18.3.3.

EXCEPTIONS:

1. When facilities or buildings, or portions thereof, are completely protected with an approved automatic fire sprinkler system the provisions of section 18.3.1 may be modified by the AHJ.
2. When water supply requirements cannot be installed due to topography or other conditions, the AHJ may require additional fire protection as specified in section 18.3.2 as amended in the code.
3. When there are not more than two dwellings, or two private garage, carports, sheds and agricultural. Occupancies, the requirements of section 18.3.1 may be modified by AHJ.

18.3.2* Where no adequate or reliable water distribution system exists, approved reservoirs, pressure tanks, elevated tanks, fire department tanker shuttles, or other approved systems capable of providing the required fire flow shall be permitted.

18.3.3* The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be provided on a fire apparatus access road on the site of the premises or both, in accordance with the appropriate county water requirements.


18.3.4 Fire Hydrants and connections to other approved water supplies shall be accessible to the fire department.

BJ Leithead Todd
August 8, 2012
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greater than 2000square feet, but less than 3000 square feet and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 500 feet.

- (5) For buildings with an approved automatic sprinkler system, the minimum water supply required may be modified.

If there are any questions regarding these requirements, please contact the Fire Prevention Bureau at (808) 932-2912.


DARREN J. ROSARIO
Fire Chief

RP/lc

BJ Leithead Todd
August 8, 2012
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- (2) Minimum pipe diameter sizes from the water supply to the Fire Department Connection (FDC) shall be as follows:

- (a) 4" for C900 PVC pipe;
- (b) 4" for C906 PE pipe;
- (c) 3" for ductile Iron;
- (d) 3' for galvanized steel.

- (3) The Fire Department Connection (FDC) shall:

- (a) be made of galvanized steel;
- (b) have a gated valve with 2-1/2 inch, National Standard Thread male fitting and cap;
- (c) be located between 8 ft and 16 ft from the Fire department access.
The location shall be approved by the AHJ;
- (d) not be located less than 24 inches, and no higher than 36 inches from finish grade, as measured from the center of the FDC orifice;
- (e) be secure and capable of withstanding drafting operations. Engineered stamped plans may be required;
- (f) not be located more than 150 feet of the most remote part, but not less than 20 feet, of the structure being protected;
- (g) also comply with section 13.1.3 and 18.2.3.4.6.1 of this code;

- (4) Commercial buildings requiring a fire flow of 2000gpm shall be provided with a second FDC. Each FDC shall be independent of each other, with each FDC being capable of flowing 500gpm by engineered design standards. The second FDC shall be located in an area approved by the AHJ with the idea of multiple Fire apparatus' conducting drafting operations at once, in mind.

- (5) Inspection and maintenance shall be in accordance to NFPA 25.

- (6) The owner or lessee of the property shall be responsible for maintaining the water level, quality, and appurtenances of the system.

EXCEPTIONS TO SECTION 18.3.8:

- (1) Agricultural buildings, storage sheds, and shade houses with no combustible or equipment storage.
- (2) Buildings less than 800 square feet in size that meets the minimum Fire Department Access Road requirements.
- (3) For one and two family dwellings, agricultural buildings, storage sheds, and detached garages 800 to 2000 square feet in size, and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 1000 feet.
- (4) For one and two family dwellings, agricultural buildings, and storage sheds

PLANNING DEPARTMENT

DEPARTMENT OF PUBLIC WORKS

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: February 25, 2011

MEMORANDUM

TO: PLANNING DEPARTMENT

FROM: ^{CLR}
_{FOR} DEPARTMENT OF PUBLIC WORKS

SUBJECT: SUBDIVISION: SUB 10-001041
Subdivider: Lucas, Dave, et al.
Location: Hōlualoa 1st & 2nd, North Kona, Hawai'i
TMK: 7-6-001:001, CPR 0001 to 0005 Inclusive
Folder No.: 76149-A1

We have reviewed the subject's preliminary plat map and have the following comments:

1. §23-30/§23-64. Identify all watercourses and drainageways and designate areas within as "approximate areas of flood inundation" on the final plat.
2. §23-79. For any improvements, submit construction plans and drainage report for review and comment.
 - a. §23-92. Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or streets. For planned dry wells, satisfy DOH dry well requirements, including issuance of an underground injection control (UIC) permit to the subdivider.
 - b. §23-93. Install streetlights / signs / pavement markings as required by the Traffic Division.
 - c. Identify all private roadways on the construction plans.

Questions may be referred to Carter Romero at 961-8327.

CLR

cc: ENG-KON

069854

COUNTY OF HAWAII
BOARD OF APPEALS

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR

(Type or legibly print the requested information)

APPELLANT: _____

APPELLANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

TELEPHONE: (Bus.) _____ (Home) _____

APPELLANT'S INTEREST IN THE PROPERTY: _____

APPELLANT'S NATURE OF APPEAL AND REQUEST: _____

LAND OWNER: _____

TAX MAP KEY: (land in question) _____ AREA OF PROPERTY: _____

STATE LAND USE DESIGNATION: _____ COUNTY ZONING: _____

STREET ADDRESS OF PROPERTY: _____

APPELLANT'S REPRESENTATIVE: _____

REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

REPRESENTATIVE'S ADDRESS: _____

TITLE: _____ TELEPHONE: (Bus.) _____

THIS PETITION MUST BE ACCOMPANIED BY A FILING FEE OF TWO HUNDRED FIFTY DOLLARS (\$250) PAYABLE TO THE COUNTY DIRECTOR OF FINANCE AND:

1. The Original and ten (10) copies of this completed petition with the following:
 - a. A description of the property involved in the appeal in sufficient detail for the public to precisely locate the property.
 - b. A statement explaining the nature of the appeal and the relief requested.
 - c. A statement explaining:
 - (i) How the decision appealed from violates the law; or
 - (ii) How the decision appealed from is clearly erroneous; or
 - (iii) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
 - d. A clear and concise statement of any other relevant facts.
2. Proof of Service by the Appellant on the Planning Director for an appeal from the Planning Director's decision relating to the Zoning Code.
3. A list of the names, address and tax map keys of all owners of property within boundaries established by Section 8-11(d) of the Board of Appeals Rules of Practice and Procedure.

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

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

April 1, 2013

Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
Cades Schutte, LLP
75-170 Hualālai Road, Ste. B-303
Kailua-Kona, HI 96740
E-mail: rvitousek@cades.com

Dear Mr. Vitousek:

SUBJECT: AMENDED AND RESTATED VARIANCE DECISION VAR-12-000083
Agent: ROY A. VITOUSEK III, CADES SCHUTTE, LLP
Applicant: DAVID A. LUCAS
Owner: GOLDEN BAY INTERNATIONAL CO., LTD.
Request: Variance from Chapter 23, Subdivisions, Article 3, Design Standards, Division 4, Street Design, Section 23-41, Minimum Right-of-Way and Pavement Widths & Section 23-50, Grades and Curves; Article 6, Division 2, Improvements Required, Section 23-87, Standards for Nondedicable Streets, Escrow Maintenance Fund; Section 23-89, Sidewalks; Section 23-91, Curbs and Gutters; Section 23-93, Street Lights; and Section 23-95, Right-of-Way Improvement
TMK: 7-6-001:001 (SUB-10-001041)

This will amend and restate the approval of Variance VAR-12-000083. The variance grants relief for SUB-10-001041 from constructing roadway improvements required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

The variance is from the proposed subdivision's minimum requirements pursuant to HCC, Chapter 23 (Subdivisions), Article 3, Division 4, Section 23-41, Minimum right-of-way and pavement widths & Section 23-50, Grades and curves; Article 6, Division 2, Improvements Required, Section 23-87, Standards for nondedicable streets, escrow maintenance fund; Section 23-89, Sidewalks; Section 23-91, Curbs and Gutters; Section 23-93, Street lights; and Section 23-95, Right-of-way improvement.

BACKGROUND

1. **Location.** The referenced TMK property, Lot 10-A-1, being a portion of Land Commission Award 7713:43, containing approximately 500.734 acres, is situated in the Mauka Section of Hōlualoa 1st & 2nd Partition, North Kona, Hawai'i, approximately 2 miles mauka of Māmalahoa Highway on Waiono Meadows Drive, a private road located between the 4- and 5-mile markers of the Māmalahoa Highway.
2. **County Zoning.** Agricultural – twenty acres (A-20a).
3. **State Land Use.** Agricultural (A).
4. **County General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Important Agricultural Lands (ial) and Extensive Agricultural (ea).
5. **Subdivision Code.** The Subdivision Code Section 23-41 requirements for a minor street are a minimum 50-foot wide right-of-way with minimum 20-foot wide pavement. Section 23-87 requires that "[a] street serving areas zoned for lots of three acres and over shall have a six-inch minimum fine select borrow base course with surface treatment acceptable to the director of public works and director." The director of public works would normally recommend that a street of this type serving this proposed subdivision be built to Department of Public Works (DPW) Standard Detail (Std. Det.) R-39 which allows for graded but untreated shoulders and swales. Section 23-95 requires that the entire street right-of-way be improved.
6. **Subdivision Request/PPM.** Subdivision application SUB-10-001041 was submitted to extinguish an existing 5-unit Condominium Property Regime (CPR) and instead subdivide the subject TMK property into 5 lots so that each owner may have a separate lot of record and be able to use and enjoy their separate property without being subject to the CPR requirements and restrictions. Further action on the subdivision application has been deferred pursuant to letter dated May 19, 2011 in the subdivision file.
7. **Variance Request.** The variance request from roadway improvements was acknowledged by Planning Department letter dated August 10, 2012. Applicant requests that, in lieu of constructing roadways required by the Subdivision Code and DPW Std. Det., they be allowed to utilize an existing alternative roadway. The applicant proposes to utilize an existing privately-owned and maintained approximately 12-foot wide paved roadway with grassed or graveled shoulders and swales on both sides, within the 80-foot wide right-of-way, Lot 11 of Waiono Meadows Ranch subdivision and internal 80-foot wide easement for access to and within the subdivision. It is noted that this entire existing roadway presently serves the existing CPR along with numerous lots makai.

8. Agency Comments and Requirements.

- a. The State of Hawai'i - Department of Health (DOH): see attached memorandum dated August 15, 2012.
- b. The County of Hawai'i Fire Department (HFD): the HFD did not respond to this application as of this date. However, see the attached memorandum which is their standard response to such applications.
- c. The DPW did not comment on this variance application as of this date. Reference is made, however, to their February 25, 2011 memorandum in response to the Preliminary Plat Map (PPM) (attached) and the Subdivision Code which requires a minimum 20-foot wide agricultural pavement within a minimum 50-foot wide right-of-way be provided and the entire right-of-way to be improved. These improvements typically would conform to DPW Std. Det. R-39.
- d. No other agency comments were solicited and none were received.

9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted an affidavit regarding notice of variance application mailed to a list of surrounding property owners and posting of a sign. According to the affidavit dated September 5, 2012 and other submittals in the variance application file, notice of variance was mailed on or about August 20, 2012. An affidavit dated August 14, 2012 states that a sign was posted upon subject TMK property on or about August 11, 2012. Photographs of the posted sign were also submitted.

10. **Comments from Surrounding Property Owners or Public.** Written objections to the application were received from three surrounding property owners (see attached). These objections primarily focused on the present condition and deficiencies of the existing sub-standard roadway within Lot 11 of Waiono Meadows Ranch subdivision.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

(a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant 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 that property.

The Variance Application meets criterion (a) for the following reason(s):

Around the year 2000, the property was initially submitted to a 5-unit CPR pursuant to the Condominium

Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
Cades Schutte, LLP
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April 1, 2013

Property Act, Chapter 514A, Hawai'i Revised Statutes (HRS). However, the owners wish to terminate and replace the CPR with subdivided lots of the same size and configuration as the current CPR Units. This will allow each owner to have a separate lot of record and be able to use and enjoy their separate property without being subject to the complications, costs, and limitations resulting from the CPR requirements. Therefore, the proposed subdivision will have no greater impact on the roadway than that which has already existed for more than ten (10) years.

As this is a large lot, agricultural subdivision (replacing an existing CPR), paving would interfere with the best use and manner of the development as it is contrary to the existing rural agricultural character of the surrounding area and the existing uses.

(b) There are no other reasonable alternatives that would resolve the difficulty.

The Variance Application meets criterion (b) for the following reason(s):

Providing 20-foot wide paving and full right-of-way improvements for this rural agricultural subdivision roadway is not in keeping with the intent of the rural character and agricultural zoning of the area. The existing roadway will continue to serve only the existing number of "units" or lots. To require improvements would be unreasonable as there are no proposed changes to the development of this area.

(c) The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The Variance Application meets criterion (c) for the following reason(s):

This proposed subdivision is located in an area of Important Agricultural Lands (ial) and Extensive Agricultural (ea) and zoning of A-20a. Overly wide paving and improvement to the entire right-of-way would have a substantial, adverse impact to the area's character as a large lot rural agricultural neighborhood. Extensive hard-paved surface area will vastly increase rainwater run-off requiring mitigation measures (drywells) which in turn could adversely affect ground water sources.

The request for a variance from the roadway requirements of the Subdivision Code is consistent with the general purpose of the zoning district (agricultural) and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan (mitigation of potential flooding due to less "hardened" surface). Furthermore, it is found that this variance, with modifications, 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 by reducing impervious surface area thereby reducing potential runoff to them.

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c/o Roy A. Vitousek III
Cades Schutte, LLP
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The property is served by the 80-foot-wide road corridor with a 12'-wide paved roadway. It is a private roadway used by the owners and is generally not used by persons other than the owners of the property and their immediate neighbors, and their respective families and guests, farm workers, and persons providing services for the property and the owners. As noted previously, the subdivision application was initiated to retain the boundaries and acreages of the current CPR units. The private roadway is maintained by the owners and is not part of the public roadways system. Therefore, there will be no detriment to public welfare nor will it burden County resources. Use of the roadway as-is, with modifications as conditioned below, will not change the character of the area or of the adjoining properties. Indeed, preserving the roadway as-is is an essential part of keeping with the rural family farming traditions in the Hōlualoa community.

VARIANCE CONDITIONS

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-12-000083 subject to variance conditions. The variance grants relief for SUB-10-001041 from constructing the 20-foot wide paved roadway and full right-of-way improvements as required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

The variance requested is to permit the proposed 5-lot subdivision of the subject TMK property to allow the use of the existing, approximately 12-foot wide paving with graveled/grassed shoulders and swales, privately-owned improvements within the 80-foot right-of-ways designated on the plat map 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. 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.
3. The owners, their assigns, or successors shall file a written agreement document with the Planning Department within one (1) year from the issuance of tentative subdivision approval. This written agreement shall contain deed language, being covenants, conditions, and restrictions affecting the lots created by the proposed subdivision which are serviced by a sub-standard privately-owned alternative roadway. The agreement 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.

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 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 of the existing property or approved subdivided lots.

4. The subdivider and all grantees, successors, and assigns acknowledge that the parcels were created by a variance from the normal subdivision requirements of Hawai'i County, and that there are no longer any special or unusual circumstances applying to the property, and hence, no grounds exist or will exist for a variance from the Subdivision Code to permit further subdivision of the properties.
5. The subdivider, owners, their assigns, or successors understand that the sub-standard alternative roadway within the 80-foot wide privately-owned right-of-ways will use and maintain the roadway on their own without any expectation of governmental assistance to maintain the improvements.
 - a. The owners, grantees, successors, and assigns 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 properties utilizing the private right-of-ways.
 - b. The existing sub-standard paving within Road Lot 11 **shall be improved and/or repaired to substantially match that which is located within the proposed subdivision's (SUB-10-001041) internal access Easement 14 as shown in the photos included as Exhibit 8 of the Variance Application** (and attached). Where required, the roadway shall be constructed in such a manner as to be passable during surface water runoff events. This shall include drainage structures as may be required. This shall also include any widening as may be required to allow for safe sight distances and safe curve radii. These improvements shall be as recommended by an Engineer licensed in the State of Hawai'i and delineated on construction plans submitted for approval of the DPW and the Planning Department.
 - c. 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-10-001041. Should the improvement district require acquisition of any privately owned right-of-ways fronting the lots, such right-of-ways 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).
 - d. The lot owners, grantees, successors, and assigns agree to participate in a homeowners' association or road maintenance agreement and/or pay their fair share to maintain the roadway within the private right-of-way.

Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
Cades Schutte, LLP
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6. The pending subdivision application's (SUB-10-001041) final plat map shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code not covered by this variance.
7. 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 this Variance Permit null and void.

Sincerely,



BJ LETIHEAD TODD
Planning Director

JRH:nci

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Enclosures: Agency Comments

xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB-10-001041

Clarence L. Werner, Manager
CLW Farms Hawai'i, LLC
c/o Sara Kucern, gwr Wealth Management LLC
14301 FNB Parkway, Suite 115
Omaha, NE 68154
Fax: (402) 493-4486

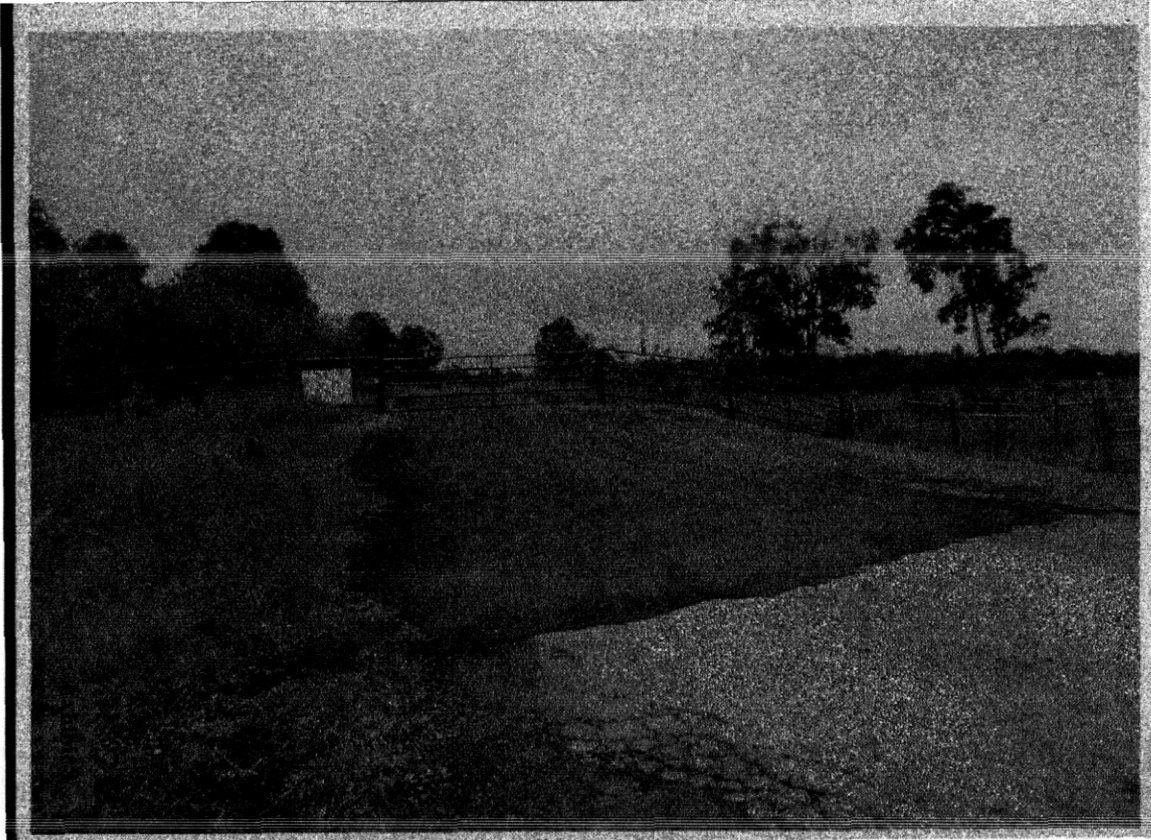
Carol M. Jung, Esq.
Jung & Vassar, P. C.
75-170 Hualalai Road, Suite D-214
Kailua-Kona, HI 96740
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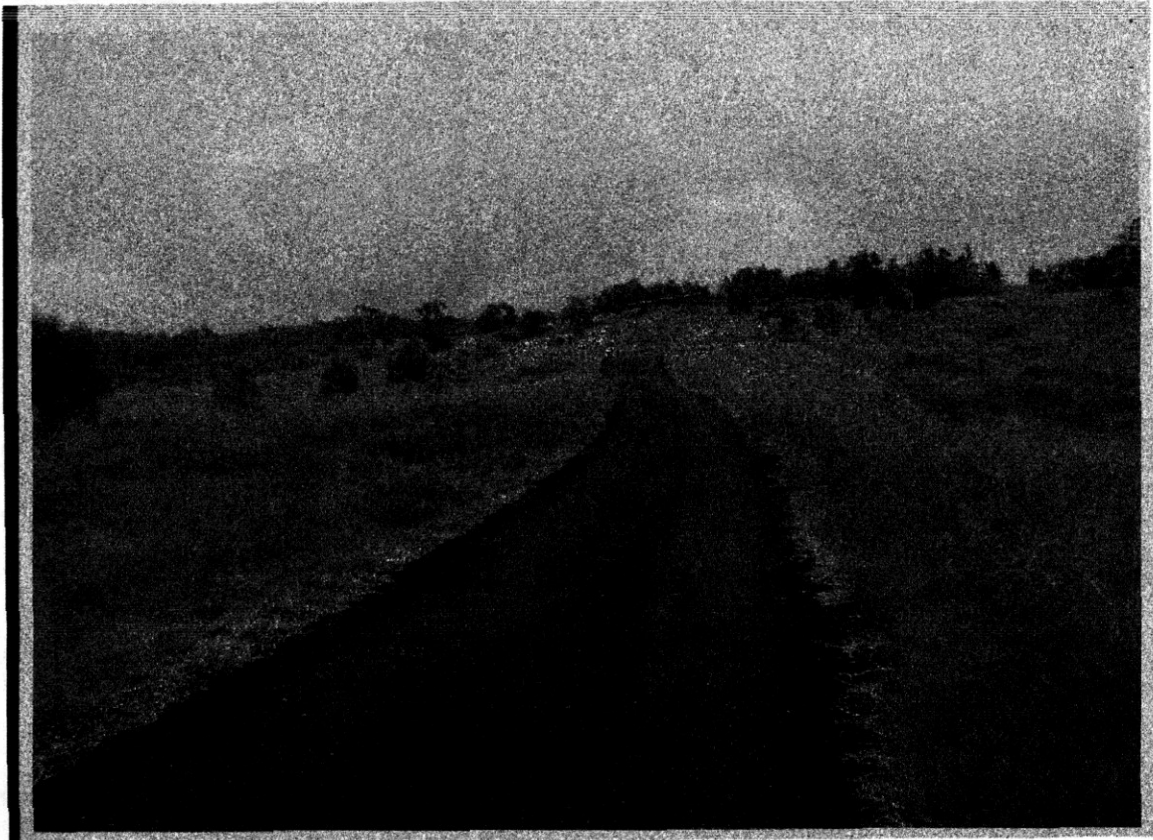
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April 1, 2013

Daniel Bolton, General Partner
Malia Ohana II Partnership
P.O. Box 898
Kailua-Kona, HI 96745
E-mail: dan@boltoninc.com

Gary and Nancye Capri
76-5817 B Māmalahoa Highway
Hōlualoa, HI 96725

xc w/encls.: G. Bailado, GIS Section (via e-mail)





PLANNING DEPARTMENT
William P. Kenoi
Mayor

2012 AUG -9 PM 2: 20



Darren J. Rosario
Fire Chief
Renwick J. Victorino
Deputy Fire Chief

County of Hawai'i
HAWAII FIRE DEPARTMENT
25 Anapali Street • Room 2501 • Hilo, Hawai'i 96720
(808) 933-2900 • Fax (808) 933-2928

August 8, 2012

TO: BJ LEITHEAD TODD, PLANNING DIRECTOR
FROM: DARREN J. ROSARIO, FIRE CHIEF
SUBJECT: VARIANCE APPLICATION (VAR 12-000082)
APPLICANT: [REDACTED]
OWNER: [REDACTED]
REQUEST: VARIANCE FROM CHAPTER 23, SUBDIVISION, ARTICLE 6,
DIVISION 2, SECTION 23-84 (1) & (2), WATER SUPPLY
TAX MAP KEY: 4-7-007:017 (SUB 11-001077)

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

NFPA 1, UNIFORM FIRE CODE, 2006 EDITION

Note: NFPA 1, Hawai'i State Fire Code with County amendments. County amendments are identified with a preceding "C~" of the reference code.

Chapter 18 Fire Department Access and Water Supply

18.1 General. Fire department access and water supplies shall comply with this chapter.

For occupancies of an especially hazardous nature, or where special hazards exist in addition to the normal hazard of the occupancy, or where access for fire apparatus is unduly difficult, or areas where there is an inadequate fire flow, or inadequate fire hydrant spacing, and the AHJ may require additional safeguards including, but not limited to, additional fire appliance units, more than one type of appliance, or special systems suitable for the protection of the hazard involved.

18.1.1 Plans.

18.1.1.1 Fire Apparatus Access. Plans for fire apparatus access roads shall be submitted to the fire department for review and approval prior to construction.

18.1.1.2 Fire Hydrant Systems. Plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.



080366

Hawai'i County is an Equal Opportunity Provider and Employer.

NEIL ABERCROMBIE
GOVERNOR

2012 AUG 15 PM 9: 39



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

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: August 15, 2012
TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii
FROM: Newton Inouye
District Environmental Health Program Chief
SUBJECT: VARIANCE APPLICATION-VAR 12-000083
Agent: CADES SCHUTTE, LLP - ROY A. VITOUSEK III
Applicant: DAVID A. LUCAS
Owner: GOLDEN BAY INTERNATIONAL CO. LTD.
Request: Variance from Chapter 23, Subdivision, Article 3
Division 4, Street Design and Article 6, Division 2,
Improvements
Tax Map Key: 7-6-001:001 (SUB 10-001041)

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

WORD:VAR 12-000083.my

080490

18.2.3.1.4 When fire department access roads cannot be installed due to location on property, topography, waterways, nonnegotiable grades, or other similar conditions, the AHJ shall be authorized to require additional fire protection features.

18.2.3.2 Access to Building.

18.2.3.2.1 A fire department access road shall extend to within in 50 ft (15 m) of at least one exterior door that can be opened from the outside and that provided access to the interior of the building.

18.2.3.2.1.1 When buildings are protected throughout with an approved automatic sprinkler system that is installed in accordance with NFPA 13, NFPA 13D, or NFPA 13R, the distance in 18.2.3.2.2 shall be permitted to be increased to 300 feet.

18.2.3.2.2 Fire department access roads shall be provided such that any portion of the facility or any portion of an exterior wall of the first story of the building is located not more than 150 ft (46 m) from fire department access roads as measured by an approved route around the exterior of the building or facility.

18.2.3.2.2.1 When buildings are protected throughout with an approved automatic sprinkler system that is installed in accordance with NFPA 13, NFPA 13D, or NFPA 13R, the distance in 18.2.3.2.2 shall be permitted to be increased to 450 ft (137 m).

18.2.3.3 Multiple Access Roads. More than one fire department access road shall be provided when it is determined by the AHJ that access by a single road could be impaired by vehicle congestion, condition of terrain, climatic conditions, or other factors that could limit access.

18.2.3.4 Specifications.

18.2.3.4.1 Dimensions.

C- 18.2.3.4.1.1 FDAR shall have an unobstructed width of not less than 20ft with an approved turn around area if the FDAR exceeds 150 feet. **Exception:** FDAR for one and two family dwellings shall have an unobstructed width of not less than 15 feet, with an area of not less than 20 feet wide within 150 feet of the structure being protected. An approved turn around area shall be provided if the FDAR exceeds 250 feet.

C- 18.2.3.4.1.2 FDAR shall have an unobstructed vertical clearance of not less than 13ft 6 in.

C- 18.2.3.4.1.2.1 Vertical clearances may be increased or reduced by the AHJ, provided such increase or reduction does not impair access by the fire apparatus, and approved signs are installed and maintained indicating such approved changes.

C- 18.1.1.2.1 Fire Hydrant use and Restrictions. No unauthorized person shall use or operate any Fire hydrant unless such person first secures permission or a permit from the owner or representative of the department, or company that owns or governs that water supply or system. Exception: Fire Department personnel conducting firefighting operations, hydrant testing, and/or maintenance, and the flushing and acceptance of hydrants witnessed by Fire Prevention Bureau personnel.

18.2 Fire Department Access.

18.2.1 Fire department access and fire department access roads shall be provided and maintained in accordance with Section 18.2.

18.2.2* Access to Structures or Areas.

18.2.2.1 Access Box(es). The AHJ shall have the authority to require an access box(es) to be installed in an accessible location where access to or within a structure or area is difficult because of security.

18.2.2.2 Access to Gated Subdivisions or Developments. The AHJ shall have the authority to require fire department access be provided to gated subdivisions or developments through the use of an approved device or system.

18.2.2.3 Access Maintenance. The owner or occupant of a structure or area, with required fire department access as specified in 18.2.2.1 or 18.2.2.2, shall notify the AHJ when the access is modified in a manner that could prevent fire department access.

18.2.3 Fire Department Access Roads.

18.2.3.1 Required Access.

18.2.3.1.1 Approved fire department access roads shall be provided for every facility, building, or portion of a building hereafter constructed or relocated.

18.2.3.1.2 Fire Department access roads shall consist of roadways, fire lanes, parking lots lanes, or a combination thereof.

18.2.3.1.3* When not more than two one- and two-family dwellings or private garages, carports, sheds, agricultural buildings, and detached buildings or structures 400ft² (37 m²) or less are present, the requirements of 18.2.3.1 through 18.2.3.2.1 shall be permitted to be modified by the AHJ.

18.2.3.4.6.3 Fire department access roads connecting to roadways shall be provided with curb cuts extending at least 2 ft (0.61 m) beyond each edge of the fire lane.

18.2.3.4.7 **Traffic Calming Devices.** The design and use of traffic calming devices shall be approved the AHJ.

18.2.3.5 Marking of Fire Apparatus Access Road.

18.2.3.5.1 Where required by the AHJ, approved signs or other approved notices shall be provided and maintained to identify fire department access roads or to prohibit the obstruction thereof of both.

18.2.3.5.2 A marked fire apparatus access road shall also be known as a fire lane.

18.2.4* Obstruction and Control of Fire Department Access Road.

18.2.4.1 General.

18.2.4.1.1 The required width of a fire department access road shall not be obstructed in any manner, including by the parking of vehicles.

18.2.4.1.2 Minimum required widths and clearances established under 18.2.3.4 shall be maintained at all times.

18.2.4.1.3* Facilities and structures shall be maintained in a manner that does not impair or impede accessibility for fire department operations.

18.2.4.1.4 Entrances to fire departments access roads that have been closed with gates and barriers in accordance with 18.2.4.2.1 shall not be obstructed by parked vehicles.

18.2.4.2 Closure of Accessways.

18.2.4.2.1 The AHJ shall be authorized to require the installation and maintenance of gates or other approved barricades across roads, trails, or other accessways not including public streets, alleys, or highways.

18.2.4.2.2 Where required, gates and barricades shall be secured in an approved manner.

18.2.3.4.1.2.2 Vertical clearances shall be increased when vertical clearances or widths are not adequate to accommodate fire apparatus.

C~ 18.2.3.4.2 **Surface.** Fire department access roads and bridges shall be designed and maintained to support the imposed loads (25 Tons) of the fire apparatus. Such FDAR and shall be comprised of an all-weather driving surface.

18.2.3.4.3 Turning Radius.

C~ 18.2.3.4.3.1 Fire department access roads shall have a minimum inside turning radius of 30 feet, and a minimum outside turning radius of 60 feet.

18.2.3.4.3.2 Turns in fire department access road shall maintain the minimum road width.

18.2.3.4.4 **Dead Ends.** Dead-end fire department access roads in excess of 150 ft (46 m) in length shall be provided with approved provisions for the fire apparatus to turn around.

18.2.3.4.5 Bridges.

18.2.3.4.5.1 When a bridge is required to be used as part of a fire department access road, it shall be constructed and maintained in accordance with county requirements.

18.2.3.4.5.2 The bridge shall be designed for a live load sufficient to carry the imposed loads of fire apparatus.

18.2.3.4.5.3 Vehicle load limits shall be posted at both entrances to bridges where required by the AHJ.

18.2.3.4.6 Grade.

C~ 18.2.3.4.6.1 The maximum gradient of a Fire department access road shall not exceed 12 percent for unpaved surfaces and 15 percent for paved surfaces. In areas of the FDAR where a Fire apparatus would connect to a Fire hydrant or Fire Department Connection, the maximum gradient of such area(s) shall not exceed 10 percent.

18.2.3.4.6.2* The angle of approach and departure for any means of fire department access road shall not exceed 1 ft drop in 20 ft (0.3 m drop in 6 m) or the design limitations of the fire apparatus of the fire department, and shall be subject to approval by the AHJ.

18.3.5 Private water supply systems shall be tested and maintained in accordance with NFPA 25 or county requirements as determined by the AHJ.

18.3.6 Where required by the AHJ, fire hydrants subject to vehicular damage shall be protected unless located within a public right of way.

18.3.7 The AHJ shall be notified whenever any fire hydrant is placed out of service or returned to service. Owners of private property required to have hydrants shall maintain hydrant records of approval, testing, and maintenance, in accordance with the respective county water requirements. Records shall be made available for review by the AHJ upon request.

C- 18.3.8 Minimum water supply for buildings that do not meet the minimum County water standards:

Buildings up to 2000 square feet, shall have a minimum of 3,000 gallons of water available for Firefighting.

Buildings 2001- 3000 square feet, shall have a minimum of 6,000 gallons of water available for Firefighting.

Buildings, 3001- 6000 square feet, shall have a minimum of 12,000 gallons of water available for Firefighting.

Buildings, greater than 6000 square feet, shall meet the minimum County water and fire flow requirements.

Multiple story buildings shall multiply the square feet by the amount of stories when determining the minimum water supply.

Commercial buildings requiring a minimum fire flow of 2000gpm per the Department of Water standards shall double the minimum water supply reserved for firefighting.

Fire Department Connections (FDC) to alternative water supplies shall comply with 18.3.8 (1)-(6) of this code.

NOTE: In that water catchment systems are being used as a means of water supply for firefighting, such systems shall meet the following requirements:

(1) In that a single water tank is used for both domestic and firefighting water, the water for domestic use shall not be capable of being drawn from the water reserved for firefighting;

18.2.4.2.3 Roads, trails, and other accessways that have been closed and obstructed in the manner prescribed by 18.2.4.2.1 shall not be trespassed upon or used unless authorized by the owner and the AHJ.

18.2.4.2.4 Public officers acting within their scope of duty shall be permitted to access restricted property identified in 18.2.4.2.1.

18.2.4.2.5 Locks, gates, doors, barricades, chains, enclosures, signs, tags, or seals that have been installed by the fire department or by its order or under its control shall not be removed, unlocked, destroyed, tampered with, or otherwise vandalized in any manner.

18.3 Water Supplies and Fire Hydrants

18.3.1* A water supply approved by the county, capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities or buildings, or portions thereof, are hereafter constructed, or moved into or within the county. When any portion of the facility or building is in excess of 150 feet (45 720 mm) from a water supply on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the AHJ. For on-site fire hydrant requirements see section 18.3.3.

EXCEPTIONS:

1. When facilities or buildings, or portions thereof, are completely protected with an approved automatic fire sprinkler system the provisions of section 18.3.1 may be modified by the AHJ.
2. When water supply requirements cannot be installed due to topography or other conditions, the AHJ may require additional fire protection as specified in section 18.3.2 as amended in the code.
3. When there are not more than two dwellings, or two private garage, carports, sheds and agricultural. Occupancies, the requirements of section 18.3.1 may be modified by AHJ.

18.3.2* Where no adequate or reliable water distribution system exists, approved reservoirs, pressure tanks, elevated tanks, fire department tanker shuttles, or other approved systems capable of providing the required fire flow shall be permitted.

18.3.3* The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be provided on a fire apparatus access road on the site of the premises or both, in accordance with the appropriate county water requirements.


18.3.4 Fire Hydrants and connections to other approved water supplies shall be accessible to the fire department.

BJ Leithead Todd
August 8, 2012
Page 9

greater than 2000square feet, but less than 3000 square feet and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 500 feet.

- (5) For buildings with an approved automatic sprinkler system, the minimum water supply required may be modified.

If there are any questions regarding these requirements, please contact the Fire Prevention Bureau at (808) 932-2912.


DARREN J. ROSARIO
Fire Chief

RP/lc

BJ Leithead Todd
August 8, 2012
Page 8

- (2) Minimum pipe diameter sizes from the water supply to the Fire Department Connection (FDC) shall be as follows:

- (a) 4" for C900 PVC pipe;
- (b) 4" for C906 PE pipe;
- (c) 3" for ductile Iron;
- (d) 3' for galvanized steel.

- (3) The Fire Department Connection (FDC) shall:

- (a) be made of galvanized steel;
- (b) have a gated valve with 2-1/2 inch, National Standard Thread male fitting and cap;
- (c) be located between 8 ft and 16 ft from the Fire department access.
The location shall be approved by the AHJ;
- (d) not be located less than 24 inches, and no higher than 36 inches from finish grade, as measured from the center of the FDC orifice;
- (e) be secure and capable of withstanding drafting operations. Engineered stamped plans may be required;
- (f) not be located more than 150 feet of the most remote part, but not less than 20 feet, of the structure being protected;
- (g) also comply with section 13.1.3 and 18.2.3.4.6.1 of *this code*;

- (4) Commercial buildings requiring a fire flow of 2000gpm shall be provided with a second FDC. Each FDC shall be independent of each other, with each FDC being capable of flowing 500gpm by engineered design standards. The second FDC shall be located in an area approved by the AHJ with the idea of multiple Fire apparatus' conducting drafting operations at once, in mind.

- (5) Inspection and maintenance shall be in accordance to NFPA 25.

- (6) The owner or lessee of the property shall be responsible for maintaining the water level, quality, and appurtenances of the system.

EXCEPTIONS TO SECTION 18.3.8:

- (1) Agricultural buildings, storage sheds, and shade houses with no combustible or equipment storage.
- (2) Buildings less than 800 square feet in size that meets the minimum Fire Department Access Road requirements.
- (3) For one and two family dwellings, agricultural buildings, storage sheds, and detached garages 800 to 2000 square feet in size, and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 1000 feet.
- (4) For one and two family dwellings, agricultural buildings, and storage sheds

PLANNING DEPARTMENT
APPROVED

FEB 25 2011 5:53

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: February 25, 2011

MEMORANDUM

TO: PLANNING DEPARTMENT

FROM: ^{CLR}
_{FOR} DEPARTMENT OF PUBLIC WORKS

SUBJECT: SUBDIVISION: SUB 10-001041
Subdivider: Lucas, Dave, et al.
Location: Hōlualoa 1st & 2nd, North Kona, Hawai'i
TMK: 7-6-001:001, CPR 0001 to 0005 Inclusive
Folder No.: 76149-A1

We have reviewed the subject's preliminary plat map and have the following comments:

1. §23-30/§23-64. Identify all watercourses and drainageways and designate areas within as "approximate areas of flood inundation" on the final plat.
2. §23-79. For any improvements, submit construction plans and *drainage report for review and comment*.
 - a. §23-92. Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or streets. For planned dry wells, satisfy DOH dry well requirements, including issuance of an underground injection control (UIC) permit to the subdivider.
 - b. §23-93. Install streetlights / signs / pavement markings as required by the Traffic Division.
 - c. Identify all private roadways on the construction plans.

Questions may be referred to Carter Romero at 961-8327.

CLR

cc: ENG-KON

069854

Bolton, Inc.

73-4174 Huikōka Dr Kailua-Kona, Hawaii 96741
Phone (808) 329-8240 Fax (808) 326-1247

PLANNING DEPARTMENT
COUNTY OF HAWAII

2012 AUG 30 AM 10:44

LETTER OF TRANSMITTAL

Date	08/31/12	Contact No.	
ATTENTION:	B. J. Leithead-Todd		
RE:	Waiono Meadows Ranch VAR 12-000083		
TRANSMITTAL NO.			

2012 AUG 31 AM 7:35
PLANNING DEPARTMENT
COUNTY OF HAWAII

TO: County of Hawaii
Planning Director
74-5044 Ane Keohokalole Highway
Kailua Kona, HI. 96740

GENTLEMEN:

WE ARE SENDING YOU: ATTACHED UNDER SEPARATE COVER VIA _____ THE FOLLOWING ITEM(S)

SHOP DRAWINGS PRINTS SAMPLES SPECIFICATIONS

COPY OF LETTER CHANGE ORDER CONTRACT Submittals

COPIES	DATE	NO.	DESCRIPTION
1	8/31/2012		Reference: VAR 12-000083, Subdivision #: 10-0011041, TMK: (3) 7-6-001:001

THESE ARE TRANSMITTED AS CHECKED BELOW:

FOR APPROVAL APPROVED AS SUBMITTED RESUBMIT _____ COPIES FOR APPROVAL

FOR YOUR USE APPROVED AS NOTED SUBMIT _____ COPIES FOR DISTRIBUTION

AS REQUESTED RETURNED FOR CORRECTIONS RETURN _____ CORRECTED PRINTS

REVIEW/COMMENT RETURN AFTER EXECUTION PRINTS RETURNED AFTER LOAN TO US

REMARKS: Please contact Sandy Caldwell at 808-329-8240 if you have any questions or need additional information.

COPY TO: _____ SIGNED: Darin Richardson

IF ENCLOSURES ARE NOT AS NOTED, KINDLY NOTIFY US AT ONCE

SCANNED

AUG 31 2012

Br080809

August 31, 2012

B.J. Leithead-Todd
Planning Director
County of Hawaii
74-5044 Ane Keohokalole Highway
Kailua-Kona, Hawaii 96740

Reference: VAR 12-000083
Subdivision number 10-0011041
TMK (3) 7-6-001:001

Dear B. J.,

Malia Ohana Partnership, adjacent owner of the applicant, received a notification of filing application of the above referenced proposed agricultural subdivision into five separate parcels.

As a responsible landowner along with other owners of Waiono Meadows Ranch, we sincerely request your review of the following items prior to granting access improvement variances for the proposed subdivision.

1. The application states that the existing access road is a 12-foot wide asphalt paved roadway. The 12-foot wide section is actually less than half of the 1.9-mile roadway; over half of this access is only 10 feet wide. This access roadway was constructed and paid for the ease of access to my property as well as to the Werner's parcel. The construction of the original 1.9 miles improvement simply followed the existing unpaved Jeep trail and existing contours without consideration for future development or increase density. This road was paved with minimal sub base where thickness varies between 1 1/2" to 2" inches.

This access road has been extremely abusive and overused in the last 12 years with virtually no maintenance or repairs. At one point, there was an attempt to form an Association to fund the much-needed repairs but with no success.

The applicant, current owners of the 500-acre parcel, has completed major road improvements within its own 500 acres. During the course of construction with hauling in road base and asphalt, excess weight and usage have damaged the existing 1.9 miles of the paved roadway. This issue was not brought up or addressed to any surrounding landowners.

In my opinion, before allowing additional traffic on the existing burdened roadway, owners of independent lots in Waiono Meadows Ranch should all become legal owners of this 1.9 mile roadway (Lot 11), then further create a roadway improvement and maintenance agreement to service this lot. If 10 existing landowners cannot agree on how to maintain the existing substandard roadway, then how will the additional four owners going to help the situation? Mandating and implementing some standard road improvements and association or maintenance agreement is necessary before any further subdividing of properties.

WAIONO MEADOWS RANCH, LTD.

c/o Suite 1400 Hawaii Tower
746 Fort Street
Honolulu, Hawaii

Telephone: (808) 624-0155

Telex: (808) 651-6963

April 18, 1997

Mr. Daniel B. Bolton
Malia Ohana III Partners
c/o Mr. David Lucas
RE/MAX Brokers
75-5742 Hualalai Road, A-105
Kailua-Kona, Hawaii 96740

Dear Waiono Meadows Ranch Lot Purchaser:

As you know, the inspection or due diligence period under the Deposit Receipt Offer and Acceptance ("DROA") relating to your purchase of a lot in the Waiono Meadows Ranch Subdivision (the "Property") has expired, and based on your approval of the Property, we are now prepared to close your purchase of the Property.

In connection with the closing, the purpose of this letter is to advise you of the current status of our efforts to obtain a definitive agreement with Lanikai Partners L.P. relating to the alignment of the access easement or road through the Waiono Meadows Ranch Subdivision.

As we have previously disclosed to you, all of the lots in the Waiono Meadows Ranch Subdivision, including the lot covered by the Deposit Receipt, Offer And Acceptance ("DROA") between you and Waiono Meadows Ranch, Ltd., are subject to certain right-of-way and easement rights in favor of Lanikai Partners L.P., which owns the land mauka of the Waiono Meadows Ranch Subdivision (that is, mauka of Lot 10-A^B). These right-of-way and easement rights are contained in a Deed, dated March 18, 1980, recorded in the Bureau of Conveyances, State of Hawaii, in Liber 14588, at Page 768 (the "1980 Deed"). Copies of the 1980 Deed, the prior correspondence between Waiono Meadows Ranch, Ltd., and Lanikai Partners L.P. concerning the right-of-way, and the other documents extending the time for designating any substitute easement have been furnished to you as part of the due diligence materials provided to you in connection with your purchase of the Property.

^B References to particular "Lots" by number in this letter are to the designation of such lots on the Composite Boundary Plat, dated July 21, 1988, prepared by Russell Figueiroa, Registered Professional Land Surveyor, a copy of which was furnished to you as part of the due diligence materials.


2. The applicant owns the road, Lot 11, and this lot should be a part of the variance application. Lot 11 is the access for all existing lots within Waiono Meadows Ranch. I have attached a four-page document dated April 18, 1997 where page 3 references proposed joint ownership of Lot 11 by the original developer to create a road maintenance association. Road, Lot 11, will be negatively impacted with additional traffic if subdivision is granted. Since surrounding property owners within Waiono Meadows Ranch will become part of the existing and future maintenance of access, they all should be notified and allowed to comment on this request.

3. I also included 20 pages of old correspondence in reference to the future designation of the decidable road. This future alignment needs strong consideration before approving this or future subdivisions. As a large landowner adjacent to the proposed subdivision, I also would like to have the same consideration and ability to future subdivide our properties if this variance is granted and approved. Then one would have to ask, who would be next? Having said that, I believe it is time to install the proper road improvements and maintenance agreements to care for the existing improvement, which then applies to future improvements. Any subdividing now would only add to the inability to accomplish the much-needed repairs and maintenance.

4. Drainage improvements are other issues require closer review before granting of this variance. There has been long discussion on proposed drainage systems that need final design and implementation prior to adding additional traffic.

I humbly request your review of this and attached material, deferring this action until reasonable implementation of improvements is greatly appreciated. Thank you!

Respectfully,


Daniel Bolton
General Partner of Malia Ohana II Partnership
P. O. Box 898
Kailua-Kona, Hawaii 96745
Telephone: (808) 896-8000

WAIONO MEADOWS RANCH, LTD.

April 18, 1997
Page 3

As a consequence of the foregoing, this letter will confirm the following understanding between Waiono Meadows Ranch, Ltd., as seller, and you, as purchaser, of a lot in the Waiono Meadows Ranch Subdivision. (Upon your execution hereof, the following provisions of this letter will also supersede Paragraph 4 of the Special Addendum To Deposit Receipt, Offer And Acceptance, if one was attached to your DROA).

1. Access Subject To Future Determination. Seller has disclosed to Buyer, and Buyer hereby acknowledges that, access to the Property shall be subject to future determination. The Property shall be conveyed to Buyer upon closing subject to, and together with all obligations relating to: (i) to the extent applicable, Easements 1 through 16 as shown on that certain subdivision map, dated October 27, 1986, prepared by Russell Figueroa, Registered Professional Land Surveyor, approved April 3, 1987, for recordation by the Planning Director, County of Hawaii, as Subdivision No. 5528 as subsequently updated by that certain Composite Boundary Plat, dated July 21, 1988, also prepared by Russell Figueroa, Registered Professional Land Surveyor (the "Subdivision Map"); and (ii) all rights of Lanihau Partners L.P., as the successor in interest of the grantee under with respect to that certain 80-foot wide easement for road and utility purposes, as provided in Deed, dated March 18, 1980, recorded in the Bureau of Conveyances, State of Hawaii, in Liber 14588, at Page 788 (the "Road Easement"). Buyer understands and agrees that access to the Property shall be either over and across Lot 11 (a roadway parcel) as shown on the Subdivision Map or such alternative access as shall be finally agreed upon by Seller, Buyer and the other owners of lots in the Waiono Meadows Ranch Subdivision, and Lanihau Partners L.P., as the holder of the rights of the grantee of the Road Easement, as their respective interests appear. Buyer further understands and agrees that the final determination of the location and alignment of an access road or easement may not, and probably will not, occur until after the closing.

2. Buyer's Responsibility Respecting Road. Buyer understands and agrees that the owners of the lots in the Waiono Meadows Ranch Subdivision, as a group, and Lanihau Partners L.P., as the holder of the rights of the grantee under and with respect to the Road Easement, shall be respectively responsible on an equitable basis for all liability relating to Lot 11 and any alternative road parcel or easement and for the maintenance and repair thereof. Buyer agrees that Buyer, along with the purchasers of the other lots in the Waiono Meadows Ranch Subdivision, shall indemnify and hold Seller harmless from and against the same. Buyer further agrees that the owners of the ten (10) lots in the Waiono Meadows Ranch Subdivision, not including Lot 11, which is designated for roadway purposes, shall each be responsible for 1/10th of all liability and maintenance, repair, and other obligations, relating to Lot 11 and any alternative road parcel or easement, for which the owners of lots in the Waiono Meadows Ranch Subdivision are responsible. Seller agrees to convey Lot 11 to any duly organized association comprised of the owners of all lots in the Waiono Meadows Ranch Subdivision (a) which shall assume all responsibility for Lot 11 in accordance with the respective rights and obligations of the owners of lots in the Waiono Meadows Ranch Subdivision and Lanihau Partners L.P., as the holder of the rights of the grantee under and with respect to the Road Easement, and (b) the organizational and governing documents of which shall provide that each owner of a lot in the Waiono Meadows Ranch Subdivision shall continue to be responsible, as a member of such association, for such owner's 1/10th share of all liability and maintenance, repair, and other obligations relating to Lot 11 and any such other road parcel or easement. Seller shall have the

WAIONO MEADOWS RANCH, LTD.

April 18, 1997
Page 2

The 1980 Deed grants to the owner of the lands on the mauka side of the Waiono Meadows Ranch Subdivision (that is, Lanihau Partners L.P.) an 80-foot wide right-of-way and easement for road and utility purposes over the Waiono Meadows Ranch Subdivision on a course that follows the existing unimproved jeep road as it existed in 1980. Lot 11 shown on the subdivision map furnished to you as part of your due diligence materials generally follows the unimproved jeep road referred to in the 1980 Deed.

The 1980 Deed also contains various provisions relating to the designation of a substitute easement of equivalent or better grade, curve, and flood control conditions, procedures for the modification of the substitute easement as may be required by the County of Hawaii for road dedication, improvement of the substitute easement, possible dedication of the substitute easement as improved to the County of Hawaii, and the equitable sharing of liability and repair responsibilities for the road easement.

We do not believe that it will be possible to reach a definitive agreement on an alternative road alignment with Lanihau Partners L.P. prior to the scheduled dates for closing the sales of lots in the Waiono Meadows Ranch Subdivision. As you know, Lanihau Partners L.P. thinks that the current Lot 11 roadway parcel must be realigned (substantially in certain sections) to meet the standards applicable to roads that the County of Hawaii will accept for dedication. You and the other purchasers have all signed a letter indicating that you were not in favor of Waiono Meadows Ranch, Ltd., agreeing to a road alignment different from Lot 11. In the circumstances, we believe that the issue of a final road alignment should best left to you and the other purchasers and owners of lots in the Waiono Meadows Ranch Subdivision, who will have a continuing interest in the resolution of this matter. Therefore, in accordance with what we understand is the request of the purchasers, we intend to convey each of the lots in the Waiono Meadows Ranch Subdivision to each respective lot purchaser together with an access easement over current Lot 11 (as shown on the subdivision map furnished to you), but subject to the existing deed restrictions in favor of Lanihau Partners L.P. as set forth in the 1980 Deed.

This will permit you and the other owners of lots in the Waiono Meadows Ranch subdivision to work directly with Lanihau Partners L.P. with regard to any and all outstanding matters relating to the road easement. In addition, once the owners of lots in the Waiono Meadow Ranch Subdivision form an appropriate community association that will be responsible for the road and that is representative and protective of the interests of the lot owners, we will convey Lot 11 to the community association.



Okahara & Associates, Inc.
ENGINEERING CONSULTANTS

WAIONO MEADOWS RANCH, LTD.

MEMORANDUM

April 18, 1997
Page 4

VIA FACSIMILE: (808) 732-2788

TRANSMITTING 2 PAGES

September 20, 1999
Letter No. 2736
Reference No. 99007

To: Lanihau Partners, L.P.
Attention: James Greenwell
Date: September 20, 1999
Project: Waiono Access Easement
Subject: Engineering Standards to Satisfy County Dedicable Requirements
From: Nancy E. Burns, P.E. *NEB*

right, at any time and in Seller's sole and absolute discretion, to convey undivided 1/10th interests in
Lots 11 to 116 Owners of lots in the Waiono Meadows Ranch Subdivision, including Buyer, as tenants
in common or in another appropriate form of joint ownership.

Please execute (and return) the enclosed copy of this letter in order to acknowledge your understanding and agreement to the foregoing provisions. If you have any questions, please feel free to contact Stephen M. Gelber, our local attorney in Hawaii, at the above address. Mr. Gelber may also be reached at the above telephone and telecopier numbers. Of course, if you do not wish to accept the terms of this letter, the terms and conditions of the DROA and other documents that you executed in connection with your purchase of the Property will continue to be applicable, and we will make arrangements for closing either way.

Sincerely yours,

WAIONO MEADOWS RANCH, LTD.

You have advised us that Lanihau Partners' 80 foot wide "substitute easement" for access and utilities through the Waiono Meadows property pursuant to Lanihau's deed is soon to be designated by metes and bounds. As the deed specifies that the alignment "shall be subject to such modifications as may be required by the County of Hawaii for road dedication", you have asked us to specifically outline the basic engineering standards that would need to be met to satisfy the dedicable standard objective.

There are three sets of dedicable standards (listed below) that could be configured within an 80 foot easement depending upon the level of service desired.

Secondary Arterial (generally a regional roadway):
Pavement Width: 80 feet (2-12 ft. lanes, 2-10 ft. shoulders, 2-18 ft. swales)
Maximum Grade: 10%
Minimum Horizontal Curve Radius: 450 feet (assumes superelevation)
Minimum Vertical Curve Radius: As required to provide sight distance
Speed Limit: Design Speed 40 mph, Posted Speed 35 mph

APPROVED, ACKNOWLEDGED, AND AGREED:

MALIA OHANA III PARTNERS

By *General Partner*
Its *David [Signature]*

04026912.a

GELBER, GELBER, INGERSOLL, KLEVANSKY & FARIS

A LAW CORPORATION
SUITE 1400 HAWAII TOWER
748 FORT STREET
HONOLULU, HAWAII 96813

TELEPHONE
1808 524-0188

TELECOPIER
1808 531-8888

E-MAIL
lwf@imgelber.com

September 24, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Z 161 792 312

Mr. James S. Greenwell
Lanikai Partners, L.P.
3465 Waialae Avenue, Suite 260
Honolulu, Hawaii 96816

Re: Request by Lanikai Partners, L.P., for Designation of Substitute Easement

Dear Jim:

I am writing on behalf of Waiono Meadows Ranch, Ltd. ("WMRLtd."), as the owner of Lot 10-A-1 of the Waiono Meadows Ranch subdivision, with respect to your letter of January 5, 1999, requesting that the WMRLtd. designate a substitute easement pursuant to that certain the Ninth Extension of Time to Designate Substitute Easement, dated February 29, 1995 (the "Ninth Extension").

As I have discussed with you, and as mentioned in my letter to you of July 14, 1999, over the last 2-1/2 years or so, WMRLtd. has sold off most of the lots in the Waiono Meadows Ranch subdivision. As a consequence, the designation of any substitute easement involves the interests of not only WMRLtd., but the other lot owners as well; and, as we understand it, the other lot owners in the Waiono Meadows Ranch subdivision will be communicating with you separately concerning the designation of any substitute easement that affects their respective lots.

As far as Lot 10-A-1 and WMRLtd. are concerned, we have previously advised you that either the so-called "Shigeoka Line" or Easement 14 as designated on the subdivision map for the Waiono Meadows Ranch subdivision would be acceptable. (Easement 14 is an 80-foot wide easement following the Jeep trail through Lot 10-A-1, but is slightly different from the Shigeoka Line in certain places.) When we spoke about this matter on the telephone on August 17, 1999, you indicated that you wanted to give the matter of the easement designation further consideration and that you would contact me in due course. While we

Page 2
September 20, 1999
Letter No. 2736
Reference No. 99007

Collector Road:
Pavement Width: 60 feet (2-10 ft. lanes, 2-8 ft. shoulders, 2-12 ft. swales)
Maximum Grade: 16 %
Minimum Horizontal Curve Radius: 230 feet (assumes superelevation)
Minimum Vertical Curve Radius: As required to provide sight distance
Speed Limit: Design Speed 30 mph, Posted Speed 25 mph

Minor Road:
Pavement Width: 50 feet (2-10 ft. lanes, 2-6 ft. shoulders, 2-9 ft. swales)
Maximum Grade: 18 %
Minimum Horizontal Curve Radius: 230 feet (assumes superelevation)
Minimum Vertical Curve Radius: As required to provide sight distance
Speed Limit: Design Speed 30 mph, Posted Speed 25 mph

In addition to the above criteria, there are several design standards which also would apply to all three of the above including the requirement that culverts or bridges be constructed at stream crossings and drywells be installed to dispose of roadway runoff.

It is also important to note that regardless of the design standard to which the easement may later be improved, most or all of the 80 foot easement will probably be required for cut and fill slopes.

In order to determine the location of the substitute easement which meets these standards, the Waiono owners will need to do some preliminary engineering for the roadway to be sure that the horizontal and vertical design standards can be met. Proper drainage design would be needed to assure that the road will not direct water in such a way as to create a flooding problem and to assure that water does not create a safety hazard on the road.

If we can be of further assistance in this matter please advise.



Okahara & Associates, Inc.
ENGINEERING CONSULTANTS

FAX MEMORANDUM # 2

October 1, 1999
Fax Log No. 2587
Reference No. 99007

Transmitting 2 Pages

To: Lanihau Partners L.P. (808) 732-2788
Attention: Mr. James S. Greenwell
Project: Waiono Meadows
Subject: Appropriate Engineering Standard for Substitute Easement
From: Nancy E. Burns, P.E. *NEB*

In response to your memo regarding the "engineering work" required to satisfy the designation of a roadway easement meeting "collector road" standards the following minimum tasks are required:

1. Prepare a drainage study to determine where the major stream channels are located and to determine appropriate culvert sizes.
2. Establish the horizontal geometry of the roadway. In order to establish this geometry the minimum design speed must be agreed upon. I would suggest a posted speed of 35 MPH with a design speed of 40 MPH. The maximum superelevation rate should also be established. I would suggest a maximum rate of 0.06. Where it is not practical to hold the maximum superelevation at 0.06, a rate of 0.08 could be allowed. The minimum radius would thus be set at 509 feet for a superelevation rate of 0.06 and 468 feet for a superelevation rate of 0.08. The horizontal design must allow for the appropriate length of tangent between the curves to provide for superelevation runoff and tangent runoff in accordance with the American Association of State Highway and Transportation Officials' (AASHTO) "A Policy on Geometric Design of Highways and Streets". Sight distance for intersections and driveways should also be considered in the horizontal design. Provide sight distance easements if required.
3. Determine the appropriate roadway cross-section including pavement design, shoulder width and swale design. If the road is to be dedicated, the County of Hawaii's typical

Donald K. Okahara, P.E. • Masahiro Hamada, P.E. • Terence Hago, P.E. • Glenn Suzuki, P.E. • Nancy E. Burns, P.E.
200 KICHOLA ST. • HONO, HI 96720 • (808) 961-5527 • FAX (808) 961-5529 • E-MAIL: okahara@okaha.net
677 ALA MOHANA BLVD., SUITE 703 • HONOLULU, HI 96813 • (808) 524-1234 • FAX (808) 521-3151 • E-MAIL: ooochu@okaha.net
73-5574 MAUUKU STREET, BAY 68 • KAILUA-KONA, HI 96740 • (808) 329-1221 • FAX (808) 329-1000 • E-MAIL: oookona@okaha.net

GELBER, GELBER, INGERSOLL, KLEVANSKY & FARIS
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Mr. James S. Greenwell
September 24, 1999
Page 2

continue to be interested in meeting with you to discuss any matters that you think appropriate concerning the designation of a substitute easement in accordance with the Ninth Extension, WMRLtd. is concerned that it discharge any obligation under the Ninth Amendment to designate the portion of the substitute easement running through and affecting Lot 10-A-1.

Therefore, this letter will serve as WMRLtd.'s formal response to your Designation Request of January 5, 1999, and as WMRLtd.'s designation of Easement 14 as the substitute easement running through Lot 10-A-1. Pursuant to the Ninth Amendment and the terms of that certain Deed, dated March 18, 1980, we are enclosing both a copy of the Waiono Meadows Subdivision map (on which we have approximated certain new property lines resulting from certain subsequent consolidations and resubdivisions) showing the location of Easement 14 and a metes and bounds description of Easement 14.

We continue to be interested in meeting with you concerning the designation of the substitute easement if you think that will be helpful. Additionally, please keep in mind that the designation contained in this letter is limited simply to that portion of the access easement running through Lot 10-A-1. As noted, it is our understanding that the other Waiono Meadows Ranch lot owners will be communicating with you separately concerning any designation of any substitute easement as it affects their respective lots.

Sincerely yours,

Stephen M. Gelber

STEPHEN M. GELBER
for Waiono Meadows Ranch, Ltd.

SMG(4.8213):cyib

Enclosures

cc: Stephen Zuckerman (w/o enclosures)
All Waiono Meadows Ranch Lot Owners (w/o enclosures)

LANIHOU PARTNERS L.P.

Kaimuki Plaza 3465 Waiialae Ave., Suite 260 Honolulu, HI 96816 Ph: (808) 732-2622 Fax (808) 732-2788

October 1, 1999

Stephen M. Gelber, Esq.
Gelber Gelber Ingersol Klevansky & Faris
745 Fort Street, Suite 1400
Honolulu, HI 96813

Re: Waiono Meadows Ranch, Ltd.

Dear Steve:

We have received your letter of September 24, 1999, which includes the designation of a proposed 80' substitute easement. The designated easement, however, is unacceptable to Lanihau Partners L.P. as a permanent alignment as it fails to conform to the design standards that would be required by the County of Hawaii for road dedication. (Please see the attached September 20, 1999 memo from Nancy Burns of Okahara & Associates.)

I believe it is Waiono's intent, as it is Lanihau's, that the substitute easement now being designated be permanent and not subject to another possible future modification to conform to the County's road dedication standards. To achieve this, it is necessary for Waiono to undertake sufficient engineering and design work to insure that in designating the substitute easement, Waiono has reasonably considered the grades, horizontal and vertical curves and drainage/flood control conditions associated with the substitute easement. While portions of the "Shigeoka Line" in the lower sections of Waiono were at least partially engineered by Lanihau, that was not true for this upper section and we also see no evidence that Waiono has done any engineering whatsoever on its own.

Assuming such engineering is undertaken and we are then able to reach an agreement on a properly engineered alignment over Lot 10-A-1, Lanihau is prepared to accept a partial designation to cover only Lot 10-A-1 substantially along this alignment (but modified, as necessary, to meet reasonably anticipated engineering/design standards) provided several other conditions could be met, including some understandings relative to:

- a. The timely resolution of the easement designation question over the balance of the property in a manner which assures a compatible and interconnecting design consistent with the intent of the original easement reservation.

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Page 2
October 1, 1999
Fax Log No. 2587
Reference No. 99007

section should be used.

4. Design the roadway profile with a maximum grade of 16% to meet collector road standards. Vertical curves should be designed to meet AASHTO's standards for sight distance.
5. Establish limits of cut and fill. Provide easements to accommodate slopes where required.
6. Design the roadway drainage system in conformance with the County of Hawaii drainage standards. Provide easements for culvert inlets and outlets where required.

You had requested an estimate for surveying and engineering services required to design the road in order to designate the easement. Surveying services would include an existing conditions topographic survey as well as easement documents. Engineering services would include establishing the horizontal and vertical geometry as well as completing a drainage study. Based on an estimated length of road of 14,200 feet we estimate the cost to produce the topographic survey, easement documents, drainage study and preliminary plans would range from \$70,000 to \$80,000. We estimate an additional \$50,000 to \$70,000 would be required to finalize the plans and produce the construction documents including drainage design, permit applications, and construction plans and specifications.

Please call me at 329-1221 if you have any questions. Thank you.

OCT 04 1999

Stephen M. Gelber, Esq.
October 1, 1999
Page 2

- b. The immediate improvement of the substitute easement over Lot 10-A-1 to a standard no less than the road section previously paved with a mechanism to insure an equitable sharing of the initial improvement cost among all of the property owners abutting or served by the easement.
- c. The rights and responsibilities of all with a legal interest in the substitute easement with respect to its maintenance, upgrade etc. and such other issues as may surface in our future discussions.
- d. The acceptance by Lanihau's Board of Directors of the terms of the agreement.

Lanihau has already spent over \$23,000 on various surveying and engineering costs related to this Waiono easement. Our engineer estimates that to do a reasonable job of engineering/design over the full easement length to satisfy the intent of the substitute easement design would cost approximately \$70,000 - \$80,000. (Please see the second attached memo dated October 1, 1999 and marked "#2" from Nancy Burns.)

The obligation to designate the substitute easement in accordance with the requirements of the 1980 deed is a joint and several obligation of all of the Waiono lot owners. We are aware that Waiono Meadows Ranch, Ltd. reserved, and obtained, various legal rights from its lot purchasers for handling the designation of the substitute easement. This, we believe, creates additional responsibilities for Waiono Meadows Ranch, Ltd. to resolve this substitute easement designation issue.

I believe your suggestion to meet is very timely and am hopeful a partial resolution can be worked out. In order to expedite our resolution of this matter, we have suggested our attorney Larry T. Takumi also sit in. Please call me so we can arrange a meeting. I will be away October 4-8 but would look forward to meeting the following week.

Sincerely,

LANIHOU PARTNERS L.P.
By: Lanihau Management Corporation
Its Managing General Partner


James S. Greenwell
President

JSG:sm
attach.
cc: Larry T. Takumi, Esq.

LANIHOU PARTNERS L.P.

Kaimuki Plaza 3465 Waialae Ave., Suite 260 Honolulu, HI 96816 Ph: (808) 732-2622 Fax (808) 732-2788

October 1, 1999

Stephen M. Gelber, Esq.
Gelber Gelber Ingersol Klevansky & Faris
745 Fort Street, Suite 1400
Honolulu, HI 96813

Re: Waiono Meadows Ranch, Ltd.

Dear Steve:

We have received your letter of September 24, 1999, which includes the designation of a proposed 80' substitute easement. The designated easement, however, is unacceptable to Lanihau Partners L.P. as a permanent alignment as it fails to conform to the design standards that would be required by the County of Hawaii for road dedication. (Please see the attached September 20, 1999 memo from Nancy Burns of Okahara & Associates.)

I believe it is Waiono's intent, as it is Lanihau's, that the substitute easement now being designated be permanent and not subject to another possible future modification to conform to the County's road dedication standards. To achieve this, it is necessary for Waiono to undertake sufficient engineering and design work to insure that in designating the substitute easement, Waiono has reasonably considered the grades, horizontal and vertical curves and drainage/flood control conditions associated with the substitute easement. While portions of the "Shigeoka Line" in the lower sections of Waiono were at least partially engineered by Lanihau, that was not true for this upper section and we also see no evidence that Waiono has done any engineering whatsoever on its own.

Assuming such engineering is undertaken and we are then able to reach an agreement on a properly engineered alignment over Lot 10-A-1, Lanihau is prepared to accept a partial designation to cover only Lot 10-A-1 substantially along this alignment (but modified, as necessary, to meet reasonably anticipated engineering/design standards) provided several other conditions could be met, including some understandings relative to:

- a. The timely resolution of the easement designation question over the balance of the property in a manner which assures a compatible and interconnecting design consistent with the intent of the original easement reservation.

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OCT 04 1999

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Mr. James S. Greenwell
October 15, 1999
Page 2

Second, we would assume that the applicable County guidelines or requirements for road dedication would be the guidelines or requirements in effect at the time that the road has been improved and offered for dedication. The 1980 Deed provides that, if any party wants to improve the substitute easement or any portion thereof "so that such portion is acceptable for dedication as a public road," it is that party's responsibility to do so. WMRLtd. has no present intention of improving the road, or any portion thereof, to the extent that might be required for dedication. Are we to assume from your letter that Lanihau, L.P., wants to determine the exact modifications, if any, required under present regulations to conform Easement 14 to so-called "County standards" because Lanihau is prepared to move forward at this time with the improvement and dedication of the road? If Lanihau is not prepared to improve the road to County standards at this time and dedicate the road as so improved, is WMRLtd. then to assume that Lanihau is prepared to assume the risk that the substitute easement, as modified to meet County standards in effect today, will not be satisfactory to the County as such later date as the easement is improved and the road offered for dedication?

Third, as we have previously advised you, over the last 2-1/2 years, WMRLtd. has sold most of the lots comprising the Waiono Meadows Ranch subdivision, and, at this juncture, only holds title to Lot 10-A-1 (and roadway Lot 11). Aside from the portion of the "subject easement" or "substitute easement" (as those terms are used in the 1980 Deed) running through Lot 10-A-1, WMRLtd. does not believe that it has the right or the responsibility to speak on behalf of or represent the interests of the other lot owners, who, as we understand it, will be communicating with you separately. Your letter of October 1, 1999, suggests that WMRLtd. may have reserved or obtained rights from the other lot owners "for handling the designation of the substitute easement," but we do not believe that this is the case.

In addressing the foregoing points, I do not mean to suggest that WMRLtd. accepts the statements or suggestions in the remainder of your letter. For example, WMRLtd. does not accept that the responsibility for designating the road is a joint, as well as several, obligation of all of the Waiono Meadow Ranch subdivision lot owners. Additionally, because we believe that any questions concerning current (let alone future) County standards are matters for Lanihau to address in the first instance if it believes that it wants to pursue these issues at this time, we will leave it to Lanihau, at least for present, to suggest which of the three different sets of standards described by your consultant you believe is applicable. Further, the 1980 Deed is quite clear that the substitute easement, like the subject easement, is to be no greater than 80-foot wide. To the extent that your consultant is suggesting (and we

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October 15, 1999

Mr. James S. Greenwell
Lanihau Partners, L.P.
3465 Waiialae Avenue, Suite 260
Honolulu, Hawaii 96816

Re: Request by Lanihau Partners, L.P., for Designation of Substitute Easement

Dear Jim:

I am writing in response to your letter of October 1, 1999. As I mentioned in to you in both my letter of August 17, 1999, and my letter of September 24, 1999, I would be pleased to meet with you and your legal counsel, Larry Takumi, to discuss the designation of the substitute easement. (As you know, by my letter of September 14, 1999, pursuant to the Ninth Extension of Time To Designate Substitute Easement and the Deed, dated March 18, 1980 (the "1980 Deed"), and in response to your letter of January 5, 1999[9], Waiono Meadows Ranch, Ltd. ("WMRLtd."), as the owner of Lot 10-A-1, formally designated Easement 14 as the "substitute easement" running through Lot 10-A-1.)

Preliminary to any such meeting, I would like to take this opportunity to comment on certain assumptions or statements in your letter of October 1, 1999.

First of all, WMRLtd. does not believe that it has any obligation under the 1980 Deed to undertake any engineering or design work relating to the designation of Easement 14 as the substitute easement running through Lot 10-A-1. The 1980 Deed simply requires WMRLtd., as its interests appear, to designate a substitute easement of "equivalent or better, grade, curve, and flood control" as the Jeep trail. (Emphasis added.) Since Easement 14 (and Lot 11, for that matter) follows the Jeep trail, it is not only "equivalent" to, but exactly the same as, the Jeep trail. If Lanihau Partners L.P. ("Lanihau") thinks that Easement 14 requires any modifications to comply with requirements of the County of Hawaii for a road dedication, we think that it is Lanihau's responsibility in the first instance to determine and specify the precise modifications that Lanihau proposes.

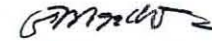
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Mr. James S. Greenwell
October 15, 1999
Page 3

are not certain that she is) that the easement may have to be wider to accommodate current County standards under certain scenarios, that clearly would be, from WMRLtd.'s point of view, beyond the scope and intention of the 1980 Deed.

Please let me know when you and Larry Takumi will be available if you would like to get together to discuss these matters. My schedule, for now, is generally free any afternoon next week and most days the following week.

Sincerely yours,



STEPHEN M. GELBER

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cc: Stephen Zuckerman

Stephen M. Gelber, Esq.
November 18, 1999
Page 2

always the risk that changes to the County's dedicable standards adopted after the designation of the substitute easement might later affect the ability of a party to dedicate the roadway. However, that is no reason for not adhering to existing county standards in fixing the location of the substitute easement now. In any event, following existing county dedicable standards in fixing the alignment of the substitute easement now will facilitate the construction of a better designed roadway within the easement area than the jeep road alignment, even if the new roadway cannot be dedicated due to subsequent changes in the County's dedication requirements. There is no ambiguity as to what the 1980 deed requires. The legal standard for determining the substitute easement was bargained for when the terms for a series of related land transactions, of which the execution of the 1980 deed was a part, were negotiated by the parties. Many of the principals involved in these land transactions, including James M. Greenwell of Lanihau and Dennis Haserot of D H Realty, Inc. (the original grantee under the 1980 deed), are still around to testify to the meaning of the 1980 deed requirements.

In Lanihau's view, WMRLtd. has done the Waiono Meadow Ranch lot purchasers a real disservice in not facing up to the responsibility and the costs of establishing, in good faith, a substitute easement that meets the legal requirements of the deed. While WMRLtd. now takes the position that its obligation is limited to designating the easement over just the property that it owns, it is misreading the scope of its legal obligation under the 1980 deed. Under the law of servitudes, the obligation to designate the substitute easement under the 1980 deed is a covenant running with the land, and it is a joint and several obligation of all of the lot owners.

Be that as it may, Lanihau believes that the flatter terrain of the upper Waiono Meadow Ranch property (including Lot 10-A-1) offers some prospects for establishing the upper portion of the substitute easement substantially along the "Shigeoka line." Some engineering work will be needed if the Shigeoka line will be used as a guide, and Lanihau is prepared to talk to you about this. Although the parties' dispute could ultimately end up in litigation, Lanihau is not presently looking to jump into court. Lanihau continues to be willing (as it has from the beginning) to talk to the affected parties, including you, as the representative of WMRLtd., as well as the other individual lot owners in Waiono Meadow Ranch. From your letter I gather that Mr. Zuckerman does not intend to join us at a meeting with Mr. James S. Greenwell. That is unfortunate, but Mr. Greenwell and I are willing to meet with you alone if that is Mr. Zuckerman's desire. Since WMRLtd. is disclaiming responsibility for the designation of the lower portion of the substitute easement, Lanihau will be making efforts to contact the individual lot owners directly. (WMRLtd.'s disclaimer frankly comes as a surprise because it is inconsistent with the sales contract addendum with WMRLtd.'s buyers that you showed to Mr. Greenwell and me at a prior meeting. That addendum gave WMRLtd. the exclusive right to negotiate and enter into an agreement with Lanihau with respect to the substitute easement.)



CADES SCHUTTE FLEMING & WRIGHT
ATTORNEYS AT LAW

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P.O. Box 939 - Honolulu, Hawaii 96808-0939 - Tel (808) 521-9200 - Fax (808) 521-9210 - www.cades.com

Larry T. Takami - (808) 521-9332 - Direct Fax (808) 540-5046 - E-mail Itakumi@cdes.com

November 18, 1999

BY HAND DELIVERY

Stephen M. Gelber, Esq.
Gelber Gelber Ingersoll
Klevansky & Faris
Hawaii Building, Suite 1400
745 Fort Street
Honolulu, Hawaii 96813

Re: Waiono Meadow Ranch, Ltd. Designation of Substitute Easement

Dear Steve:

I am responding on behalf of Lanihau Partners L.P. ("Lanihau") to your October 18, 1999 letter to James S. Greenwell concerning the designation of the substitute easement.

Lanihau is extremely disappointed, and frustrated, with the response of Waiono Meadow Ranch, Ltd. ("WMRLtd."). Your strained interpretation of the word "equivalent" to reach the conclusion that the alignment of Easement 14, and Lot 11 for that matter, meets the standard of a substitute roadway and utility easement "having equivalent or better grade, curve and flood control conditions" than the jeep trail, is tantamount to a repudiation of WMRLtd.'s obligation under the 1980 deed. The existing jeep trail does not meet the dedicable road standards required of the substitute easement. Designating the easement, without any professional engineering support, to deal with, at a minimum, the existing County dedicable roadway standards (particularly for slope and grade), tells us that WMRLtd. is more interested in selling the rest of its interest in Waiono Meadow Ranch, and leaving the problem (including the costs) of designating a substitute easement that satisfies the legal requirements of the 1980 deed, to its lot purchasers.

While neither WMRLtd. nor Lanihau is prepared to improve the substitute easement area now with a roadway that meets County dedicable standards, this fact does not change the legal standard for designating the alignment of the substitute easement under the 1980 deed. The 1980 deed clearly contemplated that the two events—designation of the roadway easement and improvement of the roadway easement area—would not necessarily be concurrent. There is

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GELBER, GELBER, INGERSOLL, KLEVANSKY & FARIS

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lawfirm@earthlink.net

November 19, 1999

Mr. Dan Bolton
Malia Ohana II Partnership
73-390 Nani Kailua Drive
Kailua-Kona, Hawaii 96740

Re: Request By Lanihau Partners, L.P., for Designation
of Substitute Easement

Dear Waiono Meadows Lot Owner:

Following the meeting in early August concerning the request of Lanihau Partners, L.P. ("Lanihau Partners"), that the owners of the lots in the Waiono Meadows Ranch Subdivision designate a substitute easement pursuant to the Deed, dated March 18, 1980, recorded in Liber 14588, Page 768, and the Ninth Extension of Time to Designate Substitute Easement, dated February 29, 1995, Waiono Meadows Ranch, Ltd. ("WMRLtd."), designated Easement 14, which is a continuation of Lot 11 running through Lot 10-A-1, as the substitute easement as far as Lot 10-A-1 is concerned. WMRLtd. made this designation by a letter dated September 24, 1999, addressed to Lanihau Partners, a copy of which was sent to you at the time and another copy of which is enclosed with this letter.

Since making this designation, we have engaged in certain correspondence with Lanihau Partners concerning WMRLtd.'s designation of Easement 14 as the substitute easement running through Lot 10-A-1. For your information, we are forwarding to you herewith copies of the subject correspondence as follows:

1. As noted above, a copy of WMRLtd.'s letter, dated September 24, 1999, addressed to Mr. James S. Greenwell of Lanihau Partners.
2. A copy of Mr. Greenwell's letter, dated October 1, 1999, addressed to me.
3. A copy of my letter of October 15, 1999, addressed to Mr. Greenwell, responding to his letter of October 1, 1999.

Stephen M. Gelber, Esq.
November 18, 1999
Page 3

Please call me to arrange a mutually convenient time for the meeting with Mr. Greenwell.

Very truly yours,



Larry W. Takumi
for

CADES SCHUTTE FLEMING & WRIGHT

cc: James S. Greenwell



CADES SCHUTTE FLEMING & WRIGHT
ATTORNEYS AT LAW

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February 10, 2000

Mr. Daniel B. Bolton
General Partner
Malia Ohana II Partnership
P.O. Box 898
Kailua-Kona, HI 96745

Re: Waiono Meadows Subdivision/Designation
of Substitute Roadway Easement

Dear Mr. Bolton:

Mr. James S. Greenwell of Lanihau Partners L.P. ("Lanihau Partners") has requested that I respond to your designation of Roadway Lot 11 as the substitute roadway easement as it affects your Lot 9.

As you are aware, the designation of the substitute roadway easement is required by covenants in a 1980 warranty deed that affects your property. The 1980 warranty deed contemplates the designation of a substitute roadway easement that satisfies the requirements of a dedicable county road, particularly with respect to alignment and slope. The deed also specifically identifies as factors to be considered in designating the substitute roadway easement, the improvement of drainage conditions that have long affected the existing jeep road. Although 20 years have passed since 1980, some of the principals involved with the drafting of the warranty deed requirements are available to confirm that the intention of the parties to the deed was to provide a substitute easement area in which a roadway meeting County dedicable requirements could be constructed within the Subdivision. Since there are various county road standards, Lanihau Partners previously advised the Waiono lot owners that the requirements for a 60-foot wide County "collector road" would provide the appropriate engineering standards for designating the substitute easement.

In order to satisfy the designation requirements, the Waiono lot owners should have engaged an engineering firm for assistance in designating the substitute easement. Lanihau Partners believed that Waiono Meadows Ranch, Ltd. or some other lot owner would take this logical step, but this was apparently not done. Based on the responses that Lanihau Partners has received from the Waiono lot owners to date, it is clear that the Waiono lot owners have essentially designated the alignment of the existing jeep road (Roadway Lot 11) as the substitute easement. This alignment cannot possibly accommodate the construction of a dedicable County road, and this designation, therefore, fails to satisfy the requirements of the 1980 warranty deed.

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Mr. Dan Bolton
November 19, 1999
Page 2

4. A copy of a letter, dated November 18, 1999, addressed to me, which we just received yesterday afternoon, from Larry T. Takumi, Esq., counsel for Lanihau Partners.

We are sending this correspondence to each lot owner in the Waiono Meadows Ranch Subdivision both for your general information and also so that the information in the enclosed correspondence will be available to you for purposes of designating the portion of the substitute easement that relates to your lot in the Waiono Meadows Ranch Subdivision.

Of course, if you have any questions concerning any of the enclosures, please do not hesitate to contact me.

Sincerely yours,

STEPHEN M. GELBER

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Enclosures

Mr. Daniel B. Bolton
February 10, 2000
Page 3

an outline of settlement terms which Lanihau Partners is proposing for discussion with you and the other individual Waiono lot owners.

Waiono Meadows Ranch, Ltd. has advised Lanihau Partners that it no longer has any authority to deal with the designation of the substitute easement over lots other than Lot 10-A-1 and Roadway Lot 11. As noted in the term sheet, if a settlement can be reached with individual lot owners, Lanihau Partners is prepared to bear one-half of the future engineering costs of the Okahara Firm. If a settlement cannot be worked out with the lot owners, Lanihau Partners is reserving its rights to collect all costs that it has reasonably incurred, or will incur, in obtaining the proper designation of the substitute easement to which it is entitled pursuant to the 1980 warranty deed covenants.

For each Waiono lot owner, there are several issues to consider.

First, is the alignment shown on the Okahara map acceptable? For the upper lot owners, the changes from what the lot owners have designated do not appear substantial. It is a different story for the lower lots, but the reasons for these changes are not new and have been known by Waiono Meadows Ranch, Ltd. for some time, as explained above. In addition, the Okahara Firm did not have full physical access over the Waiono lots (in particular, the lower lots) in doing its engineering work, and Lanihau Partners acknowledges that any final designation of the substitute easement should, if reasonably possible, take into account a number of existing site conditions (including home sites and other improvements) to minimize disruptions and inconveniences to the Waiono lot owners, and, in particular, the lower lot owners. An inspection of these site conditions is contemplated by the work included in the Okahara Firm's proposal. Your August 20, 1999 letter mentions that an alignment that follows the Shigeoka Line would be acceptable to you. I believe you will find that the segment of Road "A" that fronts your Lot 9-A is fairly consistent with this alternative alignment.

Second, is it worth contributing to the engineering costs for finalizing the substitute roadway easement? Lanihau Partners is proposing that one-half of the future engineering costs (as set forth in the Okahara Firm's proposal) be absorbed by Lanihau Partners and the other half shared "pro rata" based on the area of the lots in the Waiono Meadows Subdivision. Lanihau Partners has already incurred over \$25,000 in additional engineering and survey costs in trying to resolve the designation of the substitute easement area, and Lanihau Partners is prepared to forego recovery of these costs if this matter can be resolved as proposed. Lanihau Partners also believes that contributions to these engineering costs would be more meaningful than paying the legal costs of resolving this matter in court.

Third, is it worth settling with Lanihau Partners, given Lanihau Partners' position that each lot owner is jointly and severally liable for all of the costs of designating the substitute roadway easement, including the reasonable engineering and legal costs that may be necessary to finalize the designation for the entire Waiono Meadows Subdivision? We have researched the issue and believe that Lanihau Partners' position is well established under general real estate law principles. Some of the Waiono lot owners are more directly affected by a new roadway designation than others, but the obligation to satisfy the designation requirement, including

Mr. Daniel B. Bolton
February 10, 2000
Page 2

To help break what it perceives as a stalemate with the Waiono lot owners, Lanihau Partners recently engaged the engineering firm of Okahara & Associates, Inc. (the "Okahara Firm") to begin work on determining an alignment of the substitute roadway easement that would satisfy the warranty deed requirements. The lead engineer on this project is Ms. Nancy Burns. Enclosed are copies of a preliminary map and chart, both dated as of December 16, 1999, prepared by the Okahara Firm for the substitute roadway easement. Also juxtaposed on the Okahara map is the alignment of the existing jeep road (which covers Roadway Lot 11 and Easement 14 in the Subdivision and which we have highlighted in yellow). The alignment of the substitute roadway easement (called Road "A" on the Okahara map) is based on a maximum slope of 16 percent. The maximum grade sought by the County for dedication of a collector road is customarily 10 percent, but the County has been known to allow as much as a 16 percent grade. The Okahara plan also takes into account the County's minimum radius requirements for a collector road. The layout of Road "A" is also designed to reduce the amount of roadway area being located in flood prone areas.

Where possible, the Okahara Firm was asked to stay close to the existing jeep road alignment, but you will note that substantial deviations from the jeep road alignment at the lower end of the subdivision were required to deal with road radius, topography, and flood control conditions. The lower section of the Waiono property (particularly portions of Lots 1, 2 and 3) has historically been recognized as the most problematic area from an engineering standpoint, primarily due to severe drainage and slope conditions. Several earlier efforts in the 1980's by Lanihau Partners and Waiono Meadows Ranch, Ltd. to engineer an acceptable substitute easement alignment over this lower area resulted in the mapping of various alignments fairly similar to that now shown on the Okahara map. Resolving the concerns of any impacted lot owners (especially the owners of Lots 1, 2 and 3) will likely require direct discussion between the parties. Mr. Greenwell is willing to meet with individual lot owners to explain the Okahara map and answer any related questions.

You should note that in preparing the map the Okahara Firm did not have a copy of Subdivision Map No. 7070 which reconfigured Lots 8, 9 and 10-A, and changed the lot numbers to Lots 8-A, 9-A and 10-A-1, respectively. The engineer will update this information later. The so-called "daylight lines" on the Okahara map identify slope areas outside of the 80 feet easement area that will be necessary to accommodate certain cut and fill areas. The accompanying Okahara slope chart identifies a number of these areas based on the height differential between the existing grade of the land and the grade for a dedicable roadway.

The roadway alignment shown on the Okahara map is based on certain topographical information that was taken from an aerial survey, and this topographical data and a number of site condition assumptions will have to be verified in the field to finalize the metes and bounds description for the substitute easement area. Enclosed is a copy of a cost proposal from the Okahara Firm, which outlines the scope of work and costs for finalizing the designation of the substitute roadway easement. The estimate of fees is \$81,000. This proposal appropriately does not cover the preparation of construction plans and specifications for a new roadway as that work is outside the scope of work necessary to satisfy the designation requirements. Also enclosed is

Aug. 30. 2012 1:16PM

No. 3615 P. 1



14301 FNB PARKWAY, SUITE 115
OMAHA, NE 68154
(402) 496-7200
(402) 493-4486 (FAX)

FAX

To:	Hawaii County Planning Dept Attn: Bobby Joan Leithead-Todd	From:	CLW Farms Hawaii, LLC
CC:		Date:	August 30, 2012
Fax Number:	(808) 961-8742	RE:	Protest of Applications for Variance
Phone Number:	(808) 961-8288	# of Pages:	3 (Including Cover)
<input type="checkbox"/> Urgent	<input type="checkbox"/> For Review	<input type="checkbox"/> Please Comment	<input type="checkbox"/> Please Reply

• **CONFIDENTIALITY NOTE:** This facsimile is intended only for the person or entity to which it is addressed and may contain certain information that is privileged, confidential, or otherwise protected from disclosure. Dissemination, distribution, or copying of this facsimile of the information herein by anyone other than the intended recipient, or an employee or agent responsible for delivering the message to the intended recipient, is prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the facsimile by mail.

Please see the attached correspondence from our client, CLW Farms Hawaii, LLC, in protest of the Applications for Variance filed on behalf of Dave Lucas at VAR 12-000084 and VAR 12-000083.

Please contact our office with any questions.

Sincerely,

Sara Kucera

080817

Mr. Daniel B. Bolton
February 10, 2000
Page 4

payment of the reasonable costs required to complete the designation, is a covenant that runs with all of the lots, and not just certain affected lots, in the Waiono Meadows Subdivision. The pro rata allocation based on acreage seems the fairest means of allocating these costs among the lot owners.

Fourth, what will happen if a settlement cannot be reached between Lanihau Partners and the Waiono Meadows Subdivision owners? One possibility is that Lanihau Partners will ask a court to appoint a master to oversee the designation of the substitute roadway easement in accordance with the requirements of the 1980 warranty deed. The master would then engage his or her own engineer and, perhaps, separate legal counsel to resolve differences between Lanihau Partners and certain lot owners as well as differences among the lot owners themselves with respect to the designation of the substitute easement area. The court would ultimately determine the liability for payment of the master's fees and costs for designating the substitute easement, as well as court costs. There are other possibilities for handling the parties' dispute, but none of them appear to be very cost effective. Lanihau Partners wants to be a good neighbor with the Waiono lot owners, and it genuinely believes that there is a rational basis for resolving this dispute out of court.

Lanihau Partners is not submitting the term sheet as a "take it or leave it" or "all or nothing" proposal. The proposal is being addressed to each Waiono lot owner, and a final settlement with each lot owner is not dependent upon unanimous approval of the proposal by all Waiono lot owners. However, the approval of other owners affected by a common segment of the substitute easement area will be required for a final settlement. For example, as to Lot 8-A, the approval of the owners of Lots 7 and 9-A, as well as Roadway Lot 11, would be required to finalize the designation of the segment of the substitute easement that runs along South side of Lot 8-A. Waiono Meadows Ranch, Ltd., as the owner of Lot 10-A-1 (as well as Roadway Lot 11), is considering a new designation of the substitute roadway easement over Lot 10-A-1 based on the alignment shown on the Okahara map. We hope other lot owners will follow in pursuing a dialogue with Lanihau Partners on the enclosed settlement term sheet.

If you have any questions, please feel to call Mr. Greenwell directly at (808) 732-2622. Mr. Greenwell's FAX number is (808) 732-2788.

Very truly yours,

Larry Takumi
for
CADES SCHUTTE FLEMING & WRIGHT

Enclosures
cc: Mr. James S. Greenwell
IMANBONO 280937.1

County of Hawaii made substantial improvements to the area to address those concerns, which included a culvert and new sidings. These improvements were made in response to repeated requests from area residents due to the standing water at the bottom of the Waiono Meadows roadway and the below standard culvert that crossed the Mamalahoa roadway at this intersection.

3. In addition to the traffic concerns on the substandard internal roadway the intersection with the Mamalahoa Highway is not safe. There is compromised views to the south end while the new improvements to the North have helped somewhat there is still limited views to the north.

In closing I hope you understand my concerns for this attempt to maximize land use in a heavily forested area that gets in excess of 70 inches of rain in a year, and some of that rain occurs in a very compressed time period.

Thank you for your time and I hope my concerns are clearly stated.

Sincerely,

Clarence L. Wenzel, Manager
CLW Farms Hawaii, LLC

August 28, 2012

Attn: Bobby Jean Leithead-Todd
Aupuni Center
101 Pauahi Street, Suite 3
Hilo, HI 96720

RE: SUBDIVISION APPLICATION SUB-10-001041, Waiono Meadows, Applicant: Dave Lucas
TMK: 7-4-001:001 CPR 0001 to 0005 Inclusive

Dear Ms. Leithead-Todd,

I am writing to express my concern regarding the above referenced subdivision request. I own a 350 acre parcel just below, or ma kai, of the parcel that is the subject of the above subdivision request. I purchased my parcel when Waiono Meadows was originally created. In the creation of the Waiono Meadows property it was my understanding that the smaller parcels were allocated to the lower portion of the property and the larger parcels were created at the upper portion of the property in an effort to mitigate any potential for flooding and to provide for reduced usage of the below standard interior roadway that services all of the lots.

At the time of creation the developer, Steve Zuckerman, had worked closely with the Hilo community to address flooding concerns regarding the property and to insure that agriculture was the use intended on the property. With that assurance I purchased my property, improved the grazing capability of the property through cross fencing and water distribution and worked to address any potential for flooding on my property by utilizing proper grazing management.

In the past I have received flooding from the property above me, and the subject of this subdivision application, due to the heavy rainfall that occurs in this area. There is a reservoir on my property that has seen its capacity reduced due to sedimentation from excess runoff. This property has always been heavily forested and with the recent harvest of Koa Wood from this property it appears that the additional open area may have the potential for additional runoff.

My concerns as to this application are three:

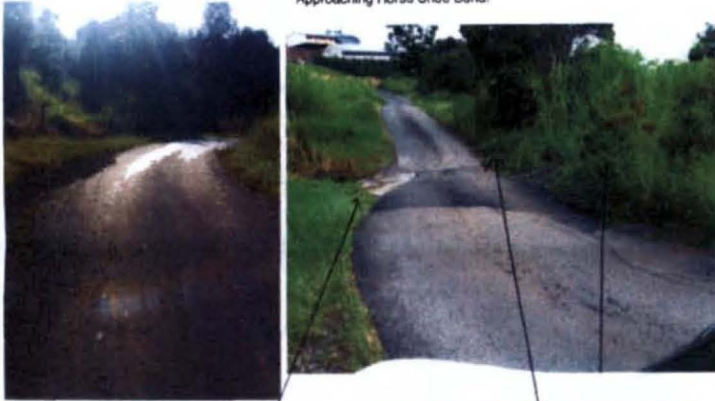
1. Concern for the potential for flooding due to the creation of the 5 lots, with the potential for two houses on each lot. The roof area, paved areas, and clearing associated with those uses may impact my property. This parcel was harvested for koa wood and the usage. That the property may be put into smaller parcels may cause additional flooding. Also it is my understanding that this area is a water recharge area for the wells that exist along the Mamalahoa Highway.

2. Additional traffic on the substandard roadway. When Waiono Meadows was created the roadway that serviced the internal agricultural/grazing parcels was unpaved. I worked with my neighbor to pave the roadway up to our property, and paved it to 7 feet in width. There are no turn outs that are paved and when you meet another vehicle you have to pull to the side in the marshy sides of the road, and sometimes cars and trucks get stuck. My neighbor and I were only partially reimbursed by the lower lot owners. There are several places where the roadway crosses ditches that are impassable in heavy rains. Also the connector of this roadway to the Mamalahoa Highway has always been an area of concern for runoff and recently the

080817

SEP 10 2012
RECEIVED
COUNTY OF HAWAII
PLANNING
DEPT.

Approaching Horse Shoe Bend.



Horse Shoe Bend Mauka water way.



Horse Shoe Bend Makai water way - DTP ok

September 5, 2012.

Planning Director
Hawaii County Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

Re: Proposed subdivision (SUB-10-001041)
TMK. 3/7-6-001-001

Sent via Certified Mail: No: 7012 1010 0001 2745 6856

In response to the applicants requested subdivision with variances from roadway and other improvements.

We are against subdivision approval due to unsafe and poor road conditions.

The roadway at Horse Shoe Bend crossing narrows with a grade and turn that has caused a loaded truck to over turn. Emergency vehicles, ie. large fire trucks cannot pass Horse Shoe Bend. Trucks of that size can make it to our property and below only.

The Horse Shoe Bend crossing becomes impassable with rushing white water. We have had neighbors park and wait on our property for safe crossing. We have witnessed drivers take unsafe and dangerous risks crossing during high and rushing water.

There is no maintenance of the roadway, individually, we and a few others have repaired holes and road damage in a patch work fashion.

The roadway has unrestricted use, is unsafe and poorly maintained.

The subdivision of the subject property will also set precedent for the other CPR properties in Waiono Meadows to be subdivided, which allows for increased density. This increase density, unrestricted use of the road, no road maintenance and unsafe conditions is unacceptable.

Subdivision approval with roadway variance should be denied.

We would like to be included in the decision process to discuss our concerns. We would be pleased to attend meetings.

Thank you and best regards,

Gary and Nancy Capri
Property Owners Waiono Meadows
TMK 3/7-6-2-26

080952



Road damage



MAKAI Drop off looking NAWKA
Horse Shoe Bend



Horse Shoe Bend

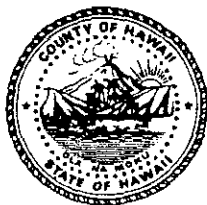


Patch repair.



Road damage

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

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

April 8, 2013

Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
Cades Schutte, LLP
75-170 Hualalai Road, Ste. B-303
Kailua-Kona, HI 96740
E-mail: rvitousek@cades.com

Dear Mr. Vitousek:

SUBJECT: AMEND AMENDED AND RESTATED VARIANCE DECISION VAR-12-000083
Agent: ROY A. VITOUSEK III, CADES SCHUTTE, LLP
Applicant: DAVID A. LUCAS
Owner: GOLDEN BAY INTERNATIONAL CO., LTD.
Request: Variance from Chapter 23, Subdivisions, Article 3, Design Standards, Division 4, Street Design, Section 23-41, Minimum Right-of-Way and Pavement Widths & Section 23-50, Grades and Curves; Article 6, Division 2, Improvements Required, Section 23-87, Standards for Nondedicable Streets, Escrow Maintenance Fund; Section 23-89, Sidewalks; Section 23-91, Curbs and Gutters; Section 23-93, Street Lights; and Section 23-95, Right-of-Way Improvement
TMK: 7-6-001:001 (SUB-10-001041)

This will amend the amended and restate the approval of Variance VAR-12-000083. The variance grants relief for SUB-10-001041 from constructing roadway improvements required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

This amendment will delete condition 5.b. of the Amended and Restated Variance Decision.

5. ...

b. ~~The existing sub-standard paving within Road Lot 11 shall be improved and/or repaired to substantially match that which is located within the proposed subdivision's (SUB-10-001041) internal access Easement 14 as shown in the photos included as Exhibit 8 of the Variance Application (and attached). Where required, the roadway shall be constructed in such a manner as~~

Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
Cades Schutte, LLP
Page 2
April 8, 2013

~~to be passable during surface water runoff events. This shall include drainage structures as may be required. This shall also include any widening as may be required to allow for safe sight distances and safe curve radii. These improvements shall be as recommended by an Engineer licensed in the State of Hawai'i and delineated on construction plans submitted for approval of the DPW and the Planning Department.~~

While no longer a condition imposed on the applicant, we recommend that, in cooperation with other landowners that have entered into an existing agreement with duties to contribute to the cost of improvements to the Lot 11 roadway, the existing sub-standard paving within Road Lot 11 be improved and/or repaired to substantially match that which is located within the proposed subdivision's (SUB-10-001041) internal access Easement 14 as shown in the photos included as Exhibit 8 of the Variance Application. Where required, the roadway should be constructed in such a manner as to be passable during surface water runoff events. This should include drainage structures as may be required. This should also include any widening as might be required to allow for safe sight distances and safe curve radii. These improvements should be as recommended by an Engineer licensed in the State of Hawai'i.

All other conditions of approval of the variance remain in full force and effect.

Sincerely,



BJ LETIHEAD TODD
Planning Director

JRH:nci

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB-10-001041

Clarence L. Werner, Manager
CLW Farms Hawai'i, LLC
c/o Sara Kucern, gwr Wealth Management LLC
14301 FNB Parkway, Suite 115
Omaha, NE 68154
Fax: (402) 493-4486

Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
Cades Schutte, LLP
Page 3
April 8, 2013

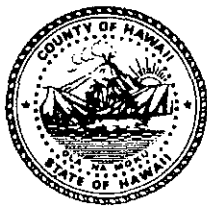
Carol M. Jung, Esq.
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E-mail: carol@jungvassar.com

Daniel Bolton, General Partner
Malia Ohana II Partnership
P.O. Box 898
Kailua-Kona, HI 96745
E-mail: dan@boltoninc.com

Gary and Nancye Capri
76-5817 B Māmalahoa Highway
Hōlualoa, HI 96725

G. Bailado, GIS Section (via e-mail)

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

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74-5044 Ane Keohokalole Hwy
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PLANNING DEPARTMENT

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May 8, 2013

Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
Cades Schutte, LLP
75-170 Hualālai Road, Ste. B-303
Kailua-Kona, HI 96740
E-mail: rvitousek@cades.com

Dear Mr. Vitousek:

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Applicant: DAVID A. LUCAS
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Golden Bay International Co., Ltd, et. al.
c/o Roy A. Vitousek III
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May 8, 2013

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Sincerely,



BJ LETIHEAD TODD
Planning Director

JRH:nci

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB-10-001041

Clarence L. Werner, Manager
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Golden Bay International Co., Ltd, et. al.
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Page 3
May 8, 2013

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