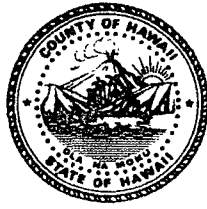


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

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

May 20, 2015

Cheryl Salmo  
P. O. Box 2021  
Honokaa, HI 96727-1833

Dear Ms. Salmo:

**SUBJECT: Application: Variance - VAR 14-000261 AMENDED AND RESTATED**  
**Applicant: JANEL ARAUJO**  
**Owner: JOEL AND CHERYL SALMO**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1**  
**Section 25-5-7 Minimum Yards. (Encroachment into the**  
**Northwest and Southeast Side Yard Setback)**  
**TMK: 4-5-003:049; Lot 4**

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This amended and restated variance supersedes the original variance approval letter for Variance-14-000261 dated April 2, 2015. With this amended and restated variance, conditions are incorporated that relate to revised setbacks. Based on the request by current landowners Joel and Cheryl Salmo, dated April 14, 2015, corrections have been made and the Original Variance-14-000261 dated April 2, 2015 is hereby amended.

Upon reviewing the variance application, the Planning Director certifies the approval of Variance-14-000261 – Amended and Restated, subject to conditions. This variance will allow for the construction of the proposed addition along with the existing single-family dwelling to remain on Lot 4, with a minimum 7-foot side (northwest and southeast) yard setback. This allowance is in lieu of the required minimum 10-foot side yard setback. This variance is from the subject property's minimum side yard setback requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7 (a), Minimum yards.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 10,249 square feet and is situated

within portion of Kaa Homestead, Hamakua, Hawai'i. The subject property's street address is 45-3306 Wailana Place.

2. **County Zoning.** Single-Family Residence – 10,000 square feet (RS-10).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20-feet front and rear; 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 11, 2014. The variance application's site plan was prepared by Janel Araujo and denotes that a portion of the single-family dwelling and proposed addition encroach 3 feet into the 10-foot side (northwest and southeast) yard setback.

The applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling and proposed additions into the 10-foot side (northwest and southeast) yard setback, as required by the Zoning Code.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#37765) was issued on January 12, 1968 to the subject property for a single-family dwelling consisting of a 3-bedroom, 1 bath, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated January 13, 2015. (Refer to attached DOH memorandum).
  - b. No comments received from the Department of Public Works Building Division.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on December 11, 2014. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 16, 2015.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated December 11, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to April 6, 2015.
10. **Comments from Surrounding Property Owners or Public.** No further written agency

comments were received. No written comments or objections from surrounding property owners of the general public were received.

### **GROUNDS FOR APPROVING VARIANCE**

#### **Special and Unusual Circumstances**

*(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 the property.*

#### **The Variance application meets criterion (a) for the following reasons:**

The owner/applicant submitted a request to amend Variance-14-000261 to address the additional encroachment into the side (northwest and southeast) yard setback. On April 2, 2015, Variance - 14-000261 was granted to allow for an 8-foot side (northwest and southeast) yard setbacks, in lieu of the required 10-foot side yard setback.

Additional encroachments were revealed when it was discovered that an incorrect site map was submitted with the original variance application which reflected inaccurate dimensions.

The corrected site map and dimensions submitted by Janel Araujo show that the existing single-family dwelling and proposed additions encroach 3 feet into the 10-foot side (northwest and southeast) yard setback in lieu of the 2 feet which was originally approved.

Based on the above mentioned information, special and unusual circumstances exist to justify the granting of this variance.

#### **Alternatives**

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

#### **The Variance application meets criterion (b) for the following reasons:**

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family dwelling to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in

compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

### **Intent and Purpose**

*(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the 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 reasons:**

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The encroachment of 3 feet into the side (northwest and southeast) yard setback still allows for adequate air circulation within the side yard setback.

Furthermore, the variance request 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaints from surrounding property owners during the roughly 31 years since the single-family dwelling was constructed. Further, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's survey map, the single-family dwelling built upon the subject property ("LOT 4") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

Cheryl Salmo  
Page 5  
May 20, 2015

This variance application is approved subject to the following variance conditions.

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Should the single-family dwelling built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. No permit shall be granted to allow an ohana or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
5. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-14-000261 – Amended null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

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xc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS

William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawai'i Office  
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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

April 2, 2015

Cheryl Salmo  
P. O. Box 2021  
Honokaa, HI 96727-1833

Dear Ms. Salmo:

**SUBJECT: Application: Variance - VAR 14-000261**  
**Applicant: JANEL ARAUJO**  
**Owner: JOEL AND CHERYL SALMO**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1**  
**Section 25-5-7 Minimum Yards. (Encroachment into the**  
**Northwest and Southeast Side Yard Setback)**  
**TMK: 4-5-003:049; Lot 4**

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The Planning Director certifies the **approval** of Variance 14-00261, subject to conditions. The variance will allow for the construction of the proposed additions along with the existing single-family dwelling to remain on Lot 4, with a minimum 8-foot side (northwest and southeast) yard setback. This allowance is in lieu of the required minimum 10-foot side yard setback. This variance is from the subject property's minimum side yard setback requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7 (a), Minimum yards.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 10,249 square feet and is situated within portion of Kaa Homestead, Hamakua, Hawai'i. The subject property's street address is 45-3306 Wailana Place.
2. **County Zoning.** Single-Family Residence – 10,000 square feet (RS-10).
3. **State Land Use Designation.** Urban.

4. **Setback Requirements.** 20-feet front and rear; 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 11, 2014. The variance application's site plan was prepared by Janel Araujo and denotes that a portion of the single-family dwelling and proposed addition encroaches 2 feet into the 10-foot side (northwest and southeast) yard setback.  

The applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling and proposed additions into the 10-foot side (northwest and southeast) yard setback, as required by the Zoning Code.
6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#37765) was issued on January 12, 1968 to the subject property for a single-family dwelling consisting of a 3-bedroom, 1 bath, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated January 13, 2015. (Refer to attached DOH memorandum).
  - b. No comments received from the Department of Public Works Building Division.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on December 11, 2014. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 16, 2015.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated December 11, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to April 6, 2015.
10. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

#### GROUNDS FOR APPROVING VARIANCE

##### **Special and Unusual Circumstances**

- (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 the property.*

**The Variance application meets criterion (a) for the following reasons:**

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-dwelling into the 10-foot side (northwest and southeast) yard setback as required by the Zoning Code.

The site plan prepared by Janel Araujo shows that the existing single-family dwelling and proposed additions encroaches 2 feet into the 10-foot side (southwest) yard setback.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in 1968 nearly 31 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time. In addition, the owners are proposing to construct a 1,034 square foot addition attached to the rear of the existing dwelling while maintaining the same wall and roof line with the existing dwelling.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with the best use and development of the subject property.

**Alternatives**

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

**The Variance application meets criterion (b) for the following reasons:**

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family dwelling to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining side property which



is owned by another party, and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the encroachment issue.

### **Intent and Purpose**

*(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the 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 reasons:**

The intent and purpose of requiring building setbacks for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The encroachment of 2 feet into the side (northwest and southeast) yard setback still allows for adequate air circulation within the side yard setback.

Furthermore, the variance request 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaints from surrounding property owners during the roughly 31 years since the single-family dwelling was constructed. Further, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately surrounding properties.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's survey map, the single-family dwelling built upon the subject property ("LOT 4") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25. (Zoning Code).

This variance application is approved subject to the following variance conditions.

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

Cheryl Salmo  
Page 5  
April 2, 2015

2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Should the single-family dwelling built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. No permit shall be granted to allow an ohana or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
5. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-14-000261.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

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xc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS

DAVID Y. IGE  
GOVERNOR OF HAWAII



KEITH YAMAMOTO  
ACTING DIRECTOR OF HEALTH

DEC 28 11 0 28

**STATE OF HAWAII  
DEPARTMENT OF HEALTH**

P.O. BOX 916  
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: December 26, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

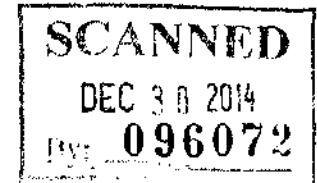
FROM: <sup>102</sup> Newton Inouye *NI*  
District Environmental Health Program Chief

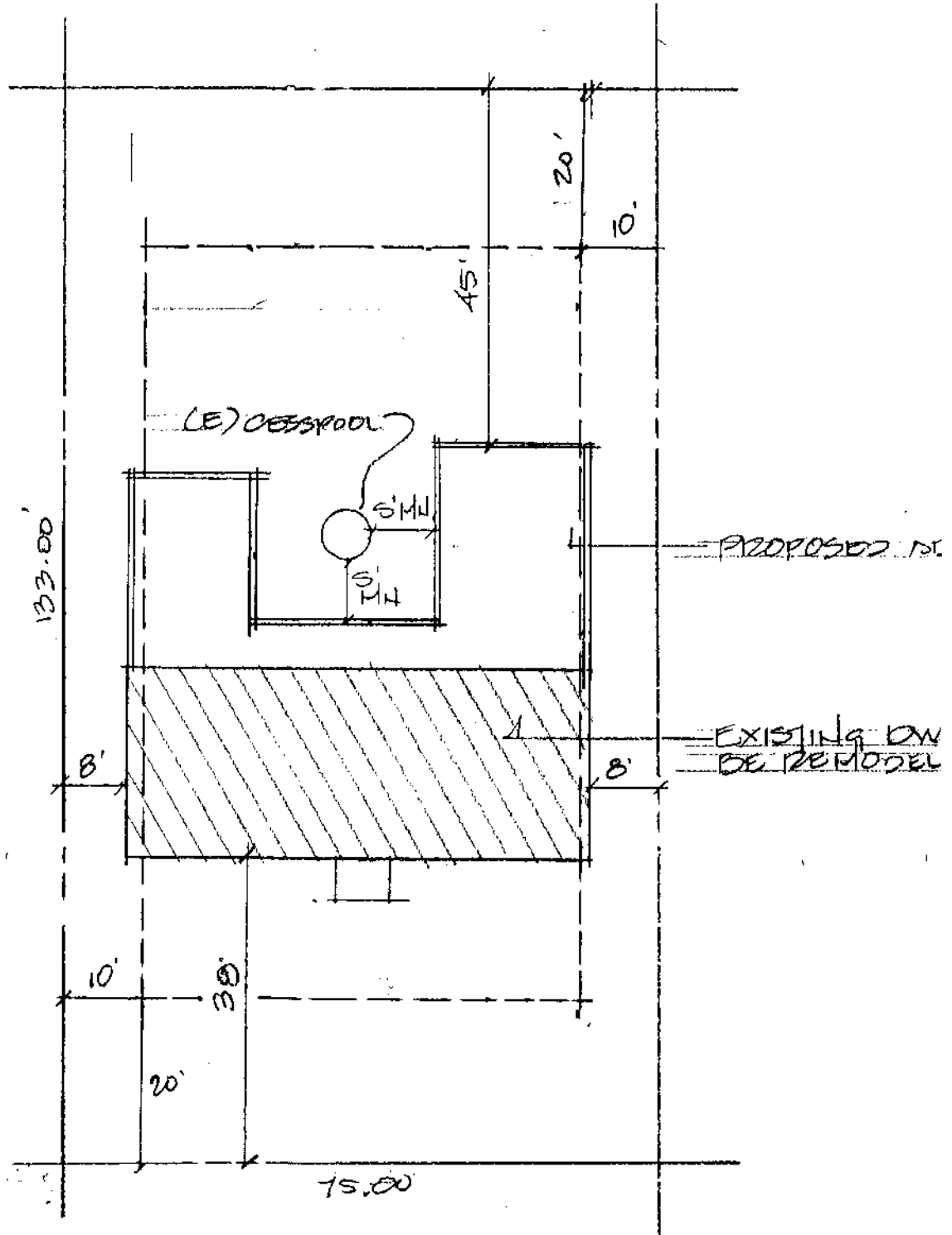
SUBJECT: Application: Variance- VAR 14-000261  
Applicant: JANEL ARAUJO  
Owner: JOEL AND CHERYL SALMO  
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,  
Section 25-5-7, Minimum Yards, and Section 25-4-44,  
Permitted Projections into Yards and Open Space  
Requirements (Encroachment into Northwest and Southeast  
Side Yard Setback and Open Space Requirement.  
TMK: 4-5-003:049; Lot 4

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Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.

WORD: VAR-14-000261 eh.





PLU/PUSH 02 11 200