

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

APPLICATION FOR VARIANCE)
by)
U.S. FISH AND WILDLIFE SERVICE)
from)
MINIMUM ROADWAY REQUIREMENTS)
in)
Makalawena, North Kona, Hawaii)

VARIANCE NO. 531

VARIANCE PERMIT

The County of Hawaii Planning Commission at a duly held public hearing on April 13, 1978, considered the application of the U.S. FISH AND WILDLIFE SERVICE for a variance from a condition of tentative subdivision approval; more specifically, to allow access to a proposed lot to be provided by a rough-graded jeep trail in lieu of a 16-foot wide pavement width as required in a condition of tentative approval for a proposed two-lot subdivision in Makalawena, North Kona, Hawaii, Tax Map Key 7-2-04:portion of 1.

The Commission has found:

That there are special and unusual circumstances applying to the proposed use which do not generally apply to surrounding properties or improvements. The purpose of the subject request is to allow access to a proposed 35+ acre lot to be provided by a rough-graded jeep trail. The proposed subdivision action would allow the petitioner to acquire the proposed 35+ acres and to establish the area as a National Wildlife Refuge. The intent of establishing 'Ōpae'ula Pond and a surrounding buffer area as a wildlife refuge is to provide protection to endangered species of Hawaiian waterbirds by not disturbing their habitat. 'Ōpae'ula Pond provides a nesting area for these endangered species and is thus a critical habitat. The petitioner does not intend to alter the area or to construct improvements which would disturb the waterbirds' habitat. The only improvement which is expected to be made is fencing. In this particular case, there are special circumstances applying to the intent and purpose of the proposed subdivision and use which do not generally apply to other properties and uses.

Although these special circumstances do not deprive the owner or petitioner of substantial property rights, it is determined that the strict and literal enforcement of the requirement would interfere with the best use of the subject property which is to prevent habitat disturbance. It is not expected that the proposed subdivision and use will generate excessive traffic or alter the existing character of the area.

Any public access to the area will be on a limited and controlled basis so that the purpose of the wildlife refuge can be maintained. The proposed access to the area is determined to be consistent with the intended use.

Approval of the subject request will also not be contrary to the County General Plan, the Subdivision Control Code or the State Land Use Law. The County General Plan mandates that areas necessary for the protection and propagation of endangered native wildlife be considered in order that natural resources are conserved. 'Opae'ula Pond is also listed as an area of natural beauty in the General Plan. In this particular case, the provision of minimal improvements is in keeping with the General Plan considerations for protecting natural areas which provide habitat for endangered native wildlife. Such minimal improvements are supportive of the General Plan directions. The State Land Use Law also includes within the Conservation District lands necessary for the conservation, preservation and enhancement of sites with unique ecologic significance.

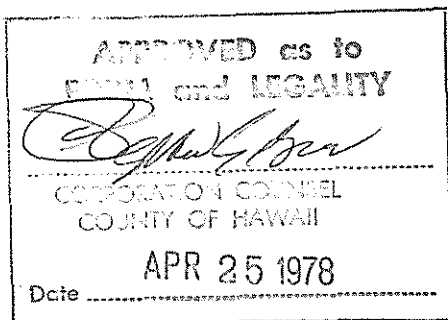
Therefore, the Commission hereby grants to the applicant a variance to allow access to a proposed lot to be provided by a rough-graded jeep trail in lieu of a 16-foot wide pavement width, pursuant to the authority vested in it by Article 1, Section 5, of the Subdivision Control Code (Chapter 9), of the Hawaii County Code, as amended, subject to the following conditions:

1. That approval to subdivide and establish the proposed use shall be obtained from the Department of Land and Natural Resources prior to the granting of final subdivision approval by the Planning Director.
2. That the petitioner shall submit copies of any archaeological or historical studies or reports which are undertaken to the Planning Director if any of the proposed activities impact upon archaeological sites.
3. That access to the proposed lot shall be open to the public subject to the controls and limitations of the refuge program established by the U.S. Fish and Wildlife Service.
4. That all other applicable rules, regulations and requirements shall be complied with.

Should any of the foregoing conditions not be met, the Variance Permit may be deemed null and void by the Planning Commission.

The effective date of this permit shall be from April 13, 1978.

Dated at Hilo, Hawaii, this 27th day of April, 1978.



[Signature]
WILLIAM F. MIELCKE, CHAIRMAN
Planning Commission