

CERTIFIED MAIL

May 1, 1989

Mr. William K. Smolenski  
P.O. Box 131  
Maalehu, HI 96772

Dear Mr. Smolenski:

Variance Application (V88-21)  
Tax Map Key 9-4-5:37

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of a 2-lot subdivision without a water system meeting with the minimum requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84(1) of the Subdivision Code. The subject property which consists of approximately 110.59 acres and identified by TMK: 9-4-05:37, is located on the north (mauka) side of Mamalahoa Highway, approximately 2,000 feet east of the Mamalahoa Highway/South Point Road intersection, Waiomao Homesteads, Ka'u, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum water requirements to service the proposed 2-lot subdivision. The nearest County water system is located approximately 1.7 miles away from the subject property. The Department of Water Supply commented that the proposed subdivision is not within the service limits of the Department's existing water system facilities. There are no immediate plans to extend the water system to the subject property. Further, although an existing 5-foot wide water line traverses the subject property, water availability is presently up to capacity.

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From the map contained in Circular C88, Median Rainfall, State of Hawaii, the subject property receives an annual median rainfall of approximately 59 inches of rainfall per year. Based on the above median rainfall per year with a minimum roof area catchment of 2,000 square feet, approximately 74,439 gallons of water is available for the year. Water consumption per day based on a household of 3.5 persons per family is 50 gallons-per-person or 175 gallons per day. The total yearly water consumption per family is approximately 63,875 gallons. The amount of water available through a catchment system exceeds the amount consumed.

Therefore, considering all of these foregoing issues, we have determined that there are special or unusual circumstances applying to the subject property which exists 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 subject property.

#### ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. The applicant could extend the existing water system approximately 74,000 linear feet to the subject property at a cost of \$60 per linear foot. This cost would be approximately \$4.44 million. However, this cost does not include any cost of improvements for storage facilities, booster pumps facilities and other requirements.

The other alternative would be to drill two wells. The cost of drilling one well would be approximately \$400,000. For 2 wells the cost would be \$800,000 plus the cost of the necessary storage reservoir, transmission lines, booster pumps and related improvements. There is no assurance that water would be found under the subject property.

As such, the imposition of providing a public or private water system for the proposed 2-lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

#### INTENT AND PURPOSE

The intent and purpose of requiring a water system within a subdivision is to assure that adequate water is available for human consumption and fire protection. Since the property is within the Agricultural (A-5a) district, fire protection facilities (fire hydrants) is not a mandatory requirement of the water standards.

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The analysis of the annual median rainfall for the area shows that there is adequate rainfall to support a water roof catchment system.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

The Planning Director has concluded that this request be approved subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant, its assigns or successors, shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants:
  - a. That the subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future available to service the subdivision, and that no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply.
  - b. That the subdivider agrees and accepts the fact that the County will not at any time bear the responsibility of supplying public water to the subdivision.
  - c. That any future dwellings constructed on the property shall have a minimum of 2,000 square feet roof catchment surface with a minimum 15,000 gallon water storage facility.
  - d. That no ohana dwellings will be permitted on the lots that are not served by the County water system.

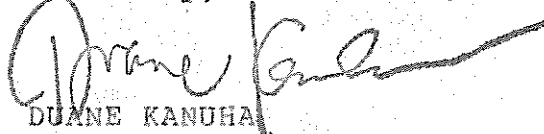
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- e. That the written agreement shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider.
3. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the subdivider shall be responsible for informing the Department of the amendments or changes so that the agreement can reflect the amendments or changes; further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the subdivider or owner, his heirs, executors, administrators or assigns and its successors and assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership of each subdivided lot.
4. In the event that any of the lots are provided by a water service (individual meter from the Department of Water Supply or an approved private water system), the above covenants for the specific property will no longer be in effect.

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

If you have any questions on this matter, please feel free to contact us.

Sincerely,



DUANE KANUHA  
Planning Director

MO:lv

cc: Department of Water Supply  
Subd. 88-75