

VAR 542

CERTIFIED MAIL

November 1, 1993

Robert B. Bunn, Esq.  
Cades Schutte Fleming & Wright  
P. O. Box 939  
Honolulu, HI 96808

Dear Mr. Bunn:

Variance Application (VAR 93-50)  
Petitioner: Robert B. Bunn  
Request: Variance from Minimum Water Requirements  
Tax Map Key: 1-8-6:53 and 194

After reviewing your application and the information submitted in behalf of it including comments received from consulting agencies, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of two (2) separate six (6) lot subdivision without a water system meeting the minimum water requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84 (1) of the Subdivision Control Code. The properties are two (2) approximately 50 acre parcels off Ihope Road approximately 4,500 feet from North Kulani Road, northeast of Mountain View, Oloa Tract Lots, Oloa, Puna, Hawaii.

The approval of the variance request to allow the proposed subdivisions without the minimum water requirements 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 two (2), six (6) lot subdivision. The Department of Water Supply stated: "The Department's existing water system facilities cannot support the proposed subdivision at this time.

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Extensive improvements and additions including storage transmissions, booster pump and distribution facilities must be constructed. Currently sufficient funding is not available and no time schedule is established."

Therefore, considering the foregoing issues, it has been determined that there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the 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 required water system requirements. To upgrade the existing County water system by the individual applicant would not be economically feasible.

The other alternative would be to drill wells to create a private water system. However, due to the limited nature (two (2), six (6) lot subdivisions not serviced by County water system) of the subdivision would also be cost prohibitive. Also there is no assurance that adequate water would be found.

As such, the imposition of upgrading the existing public water system or the creation of a private water system in this area for the two (2) proposed six (6) lot subdivisions would be putting excessive demands upon the applicant when a more reasonable alternative is available.

In addition, the area receives approximately 160-200 inches of rain annually which will more than adequately support a private water catchment system. The applicant can also purchase water if necessary for the private water catchment system.

#### INTENT AND PURPOSE

The subject properties consisting of approximately 100 acres is located within the County's Agricultural 5 acre (A-5a) zoned district. Under this zoning designation the minimum building site area is 5-acres. The applicant is proposing two (2), six (6) lot subdivisions with area exceeding the minimum (5) acre lot size requirement of the Zoning Code.

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The intent and purpose of requiring a water system in this case is to assure that adequate water is available for human consumption and fire protection. In this situation, the substitute private catchment water system is considered adequate for this Agricultural land.

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 Control Codes and the County General Plan, and 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.

The variance request is therefore approved, subject to the following conditions:

1. The applicant, his assigns, or successors, shall be responsible for complying with all states conditions of approval.
2. The applicant, his 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 which 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:
  - a. The applicant/subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future able to service the subdivision.
  - b. The applicant/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. Any existing and/or future dwellings not serviced by County water system constructed on the property shall have a minimum 6,000 gallon water storage facility for domestic consumption for water catchment. This catchment system shall adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.

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- d. Provide a water supply system sufficient for fire fighting consisting of a minimum 3,000 gallons of water per existing and/or proposed future dwelling on the property meeting with the approval of the Hawaii County Fire Department. If dwellings are spaced closer than 50 feet apart, 4,000 gallons of water per dwelling will be required.
- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant/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 applicants/subdivider or owner, his 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.
- f. 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.
- g. Comply with all other applicable State and County rules and regulations.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

EC:mjs  
1370D

xc: Fire Department  
Department of Water Supply  
Subdivision No. 93-99