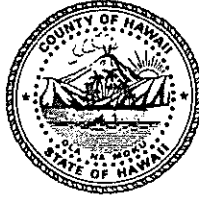


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL
Z 095 324 247

October 17, 1996

Mr. Joaquin S. Ramos dba Jack Ramos Ranch, Inc.
P.O. Box 126
Honokaa, HI 96727

Dear Mr. Ramos:

Variance Permit No. 785 (VAR 96-57)
Applicant: Joaquin S. Ramos dba Jack Ramos Ranch, Inc.
Request: Variance From Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-843,
Water Supply, Section 23-87, Standard for Non-Dedicable
Street, Private Dead-End Street
Tax Map Key: 4-3-011:008

WATER VARIANCE: After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to allow the creation of a six (6) lot subdivision without a water system meeting with the minimum requirements of the Department of Water Supply (DWS) as required by Division 2, Section 23-84 (1) of the Subdivision Code.

The Planning Director has concluded that the variance from the minimum subdivision water requirements be approved based on the following findings.

WATER VARIANCE-SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum water requirements to the proposed subdivision of the subject property:

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1. The subject property is Lot 33, Grant 5168 to Joe Pestana, Pohakea Homesteads, Hamakua, Island and County of Hawaii.

The subject property is more commonly identified by the tax map key (TMK) parcel number (TMK: (3) 4-3-011:008) and contains 75 acres.

2. The subject parcel was zoned Agricultural (A-5a) and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. The applicants/owners submitted the subject variance application on August 2, 1996 and; prior to the submission of the variance application, submitted a subdivision application (SUB 96-052) together with a preliminary plat map showing a proposed subdivision of the subject property or lot containing 75 acres into six (6) lots. Further action on the proposed 6-lot subdivision application is being deferred pending consideration of the subject water/road variance application.

The Department of Water Supply (DWS) memorandum dated May 21, 1996 in file (SUB 96-052) states in part:

"Please be informed that the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pump, and distribution facilities, must be considered. Currently, sufficient funding is not available and no time schedule is set."

4. The State Department of Health (DOH) memorandum dated September 5, 1996 in the variance file (VAR 96-57) states in part:

"The Department of Health's authority on drinking water quality is based on the definition of a "public water system". A "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least sixty (60) days out of the year.

Past episodes of water quality concerns for lead, copper, algae and microbial contaminations in private rain catchment systems have identified the need for

design standards. Without these control standards the Department of Health would not be able to support the use of these private rain catchment systems for drinking purposes."

5. The Department of Finance-Real Property Tax comments dated October 14, 1996 in file (VAR 96-57) states in part:

"As of 10/14/96, the real property taxes are paid up to December 31, 1996."

6. The following is extracted from the "ATTACHMENT TO" in variance file (VAR 96-57) which states in part:

".....
The analysis of published public information and calculations submitted herewith appear to indicate that there is adequate rainfall within the subject property to support a private roof water catchment system for potable uses.

The subject property contains 75+- Acres and is located in an Agricultural Zoned District.

The proposed subdivision conforms to the Zoning Code.

The requested variance would allow the property to be accorded the same treatment as other adjacent and nearly (sic) properties."

Therefore, considering the above facts and information submitted with the applicant's variance application, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant or owner/subdivider 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.

WATER VARIANCE-ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the petitioner. The first alternative, requires the petitioner/subdivider/owner of the proposed subdivision application to pay appropriate facilities charges and fees to the DWS and improve the existing water system and provide the necessary dedicable water system improvement in accordance with the Rules and Regulations and the Standards prescribed by DWS.

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The second alternative would be to plan, explore, design, and drill private wells and install the necessary water system improvements in accordance with the Rules and Regulations and the Standards prescribed by the DWS.

The prorata cost per lot for the water system design and construction of an approved dedicable or private water system is economically cost prohibitive. As such, the imposition of requiring a public or private water system for the proposed subdivision would be putting excessive demands upon the petitioner/subdivider/owner when a more reasonable alternative is available.

WATER VARIANCE-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.

The analysis of existing site conditions and rainfall data information submitted by the applicants and official maps and rainfall summaries in the DWS and the Planning Department appear to support the information submitted by the applicants/owners/subdividers. The analysis of available private and public information appears to indicate there is adequate rainfall within the subject property and the surrounding areas to support a private roof water catchment system(s) for portable uses. The State Department of Health has no building regulations, specific rules or regulations relating to the utilization and construction of private water catchment systems, and inspection of private roof catchment water systems.

The analysis of the applicant's statements and proposed land uses within the proposed subdivision and the analysis of the rainfall information submitted for the subject property appear to indicate that there is adequate rainfall within the subject property to support a private roof water catchment system for emergency and fire fighting uses. Provisions for fire protection will be privately addressed by the petitioner/owner/subdivider and provided by the petitioner/owner/subdivider on the subject property.

ROAD VARIANCE: After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to allow the creation of a two (2) lot subdivision without non-dedicable road

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or paved road improvements pursuant to Chapter 23, Subdivisions, Section 23-87, Standard for Non-Dedicable Street; Escrow Maintenance Fund and Section 23-88, Non-Dedicable Street; Private Dead-End Street.

ROAD VARIANCE-SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum lot access or road requirements to the proposed subdivision of the subject property:

7. In addition to the discussion of items 1 thru 6 above, the Department of Public Works (DPW) memorandum dated June 7, 1996 in SUB 96-052 states in part:
 - "2. The access road to the proposed subdivided lots is of substandard design and construction and has been determined by the DPW to be inadequate to support the existing use and the anticipated increase in vehicular traffic resulting from the proposed subdivision. Since the access road and right-of-way is not owned nor maintained by the County, DPW cannot assure access to the subdivided lots nor public safety upon the road.
 3. (Section) 23-87. Construct minimum 20-ft wide agricultural pavement within a minimum 50-ft width right-of-way conforming to the Department of Public Works (DPW) standard detail R-39 for access to lots 33-c and 33-d."
8. The following is extracted from the "ATTACHMENT TO" in variance file (VAR 96-57) which states in part:

"ACCESS ROAD:

The access road, commencing at the north corner of TMK: 4-3-11:12 is owned by the applicant Joaquin S. Ramos and is located entirely within TMK: 4-3-11:10 and partly within TMK: 4-3-11-9.

Access, from this point, to the proposed subdivision, is within the 100-foot wide Homestead Road.

This Dead-End roadway system, 6,700 feet in length, presently serves approximately 6,700 feet in length,

presently serves three (3) residences and should not be considered a major thoroughfare, now and in the foreseeable future.

Excepting for Tax Map Key 4-3-11: 6,28 and 7, the bulk of the land is owned by the applicant.

The parcels are utilized for ranching purposes, and contain fences on both sides of the roadways.

This "substandard construction" roadway access would be handling far less vehicular traffic than other similar type roadways on this Island.

SUBDIVISION EASEMENT ROAD AFFECTING LOTS 33-B AND 33-C:

We propose that the existing substandard ranch road, as denoted on the subdivision plan, be utilized as an Easement Road (20-Foot Wide) as physical access to Lots 33-C and 33-D in lieu of the minimum 50-foot wide right-of-way with a twenty (20) foot wide Agricultural pavement as required by the Subdivision Control Code.

The roadway easement will only serve two (2) lots; is not considered to be a major thoroughfare, secondary arterial or will even serve as a through road for further development of this area.

A very rough contractor's estimate to construct the minimum 50-foot wide right-of-way with a 20-foot wide Agricultural pavement, approximately 1400 feet in length, would be in the range of \$105,000 to \$125,000.....

ALTERNATIVES

.....
The first alternative requires petitioner/subdivider/owner of the proposed subdivision application to pay appropriate fees to improve the substandard road to Agricultural Standards as required by the Subdivision Control Code.

The second alternative would be to create Lots 33-C and 33-D each as flag lot; thus allowing the purchasers to access their building sites in any manner they deemed fit. i.e. walking trail; jeep trail; gravel road; or paved road.

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The prorator[sic] cost per lot for road design and construction is economically cost prohibitive.

As such, the imposition of requiring construction of a road to Agricultural Standards, as required by the Subdivision Control Code would be creating excessive demands upon the petitioner/subdivider/owner when a more reasonable alternative is available."

ROAD VARIANCE-INTENT AND PURPOSE

The intent and purpose of requiring subdivision roadway improvements is to designate and assure there is a legal and physical access between the proposed lots and permitted uses on the proposed lots and the public rights-of-way and to provide a entry and access for all vehicles in the event there is an emergency. The proposed 6-lots of the pending subdivision will result in lots exceeding the minimum five (5) acres lot size.

The road access from the Hawaii Belt Road to the subject property, Lot 33, is via Pohakea Road and Homestead Road (Pohakealani Road). A field inspection and observations of the property and surrounding property was conducted by the Planning Department on August 24, 1996. The existing road from the intersection of Pohakea Road and Homestead Road generally follows existing terrain and meanders along and around small attractive clusters of old growth trees. The Homestead Road consists of a 100 foot wide containing a paved roadway consisting of macadam or bituminous asphalt pavement (A.C.) approximately 8'-9' +/- wide and occasional stretches of concrete foundation and surfacing across low lying areas to accommodate drainage. At times, the uneven road course and numerous "dry" gulches cross the Homestead Road under and over the paved roadway within the Homestead Road right-of-way. Vehicle access upon the roadway, especially portions of Homestead Road leading up to and fronting the property, require vehicles designed and built with adequate ground to chassis clearances or vehicles equipped with a 4-wheel drive option.

The proposed subdivision's preliminary plat map denotes and identifies the three (3) gulches traverse the property and through the Homestead Road right-of-way. In addition to the fenced pastures, there are numerous clusters of mature eucalyptus and ohia trees and plantings situated on the subject and within Homestead Road right-of-way. The surrounding lands and numerous enclosed narrow sloping pastures exhibit a "dry or arid feel". Existing topography, rock clusters and other similar landscape

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features and vegetation limit and define the fenced pastures. The existing overhead electric and telephone lines and pavement leading up to the subject property generally meander together following the natural terrain. Occasionally, within the low lying areas or gulches, the roadway will diverge for short distances to accommodate natural terrain conditions. The existing road terrain, narrow paved roadway and concrete pavement improvements, and uneven road and driving limitations, i.e. sight distance and inclement weather conditions, contribute to existing road conditions which inhibit constant vehicle speeds.

Observations by Planning Department staff of the surrounding property/pastoral property use(s) and the casual location of utility lines within the existing 100 foot wide Homestead Road right-of-way during a recent field inspection reveal little physical changes to the property and no major public improvements have occurred within the rights-of-way leading up to the property. The existing road system and pattern of access to the subject property and surrounding areas was established many years before 1967 and to date few changes and improvements have occurred within the Homestead Road. The outlook for the immediate expenditure of available public road monies to improve the original "network" of roads leading up to and including the Homestead Road outside the Hawaii Belt Highway right-of-way appear to be remote at this time. The existing property conditions, i.e. soil quality, existing pasture uses, and roadway improvements appear to have not changed or improved since 1967 and the future outlook for more intense land and agricultural uses are not anticipated. Therefore, it is felt the proposed subdivision would not result in a significant increase of traffic using the existing rights-of-way. In addition, the existing gulch locations and original land patterns created by the fenced pastures limit lot design and access options to and between all lots from the Homestead Road. Therefore, it would be unfair to require the applicants to pave or improve the proposed 20-foot wide access easement which would affect and benefit only two (2) of the proposed lots (LOT 33-C and LOT 33-D) within the pending six (6) lot subdivision; with a paved roadway exceeding the quality and existing width of the roadway within the Homestead Road right-of-way. Based on the foregoing findings, the request for a road variance to allow the family to subdivide the existing property and distribute interest in the property among family members, without on-site paved roadway requirements within the proposed 20-foot wide easement to the proposed two (2) lots would still be consistent with the general purpose of the zoning district, the intent and purpose of the County's General Plan; and will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the adjoining property, the neighborhood, and surrounding area's character.

DETERMINATION-VARIANCE CONDITIONS

No objections to the subject variance were received from the surrounding property owners and the participating government agencies.

The subject variance application was deemed complete by the Planning Department on August 2, 1996 and by subsequent discussion with, Mr. James Murray, RPLS, the decision date by the Planning Director on the subject variance would be extended to October 23, 1996.

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 area's character and to adjoining properties.

This variance request is approved subject to the following conditions:

1. The applicant/owner/subdividers, his assigns or successors shall be responsible for complying with all stated conditions of variance application (VAR 96-57) and the conditions of tentative subdivision approval in file (SUB 96-052).
2. WATER VARIANCE: The applicant/owner/subdivider, his assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 96-052 containing the following deed language, being covenants, condition, and restrictions which affect the entire property and/or the proposed lots arising from the approval of pending subdivision (SUB 96-052) and shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant/owner/subdivider:
 - a. The applicant/owner/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 existing property or the proposed lots created by subdivision application (SUB 96-052).

- b. The applicant/owner/subdivider agrees and accepts the fact that the County will not, at any time, bear the responsibility of supplying public water to those lots created by SUB 96-052.
- c. The permitted dwellings, accessory structures and permitted uses not serviced by a County water system constructed on the existing property or lots or portions thereof, shall consist of a private potable catchment system which includes a minimum 6,000-gallon water storage tank or equivalent facility for domestic consumption or potable uses. The potable or private water 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.
- d. For each permitted dwelling or farm dwelling, provide and maintain a private water supply system which includes a separate water storage tank containing a minimum of 6,000 gallons of water for fire fighting and emergency purposes. The design and location of the separate water storage tank shall meet with the approval of Hawaii County Fire Department.
- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the petitioner/owner/subdivider shall be responsible for informing the County Planning 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/owners/ subdividers, 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 the subject property or the subdivided lot.
- f. In the event that any lots created by SUB 96-052 are provided by a water service (individual meter)

from the Department of Water Supply or an approved private water system, the recorded conditions and covenants will no longer be in effect.

3. ROAD VARIANCE: The applicant /owner/ subdivider, his assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 96-052 containing the following deed language, being covenants, conditions, and restrictions which affect the entire property and/or the proposed lots arising from the approval of subdivision application (SUB 96-052) and shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant/owner/subdivider.
 - a. No further subdivision of the subject property shall be permitted or those lots arising out of SUB 96-052 shall be permitted unless said roadway meets subdivision control code requirements without a variance. Access to the subject property shall be limited from the Homestead Road or Pohakealani Road.
 - b. The applicants shall indemnify and defend the State of Hawaii and the County of Hawaii from any and all liability arising out of vehicular access to and from the subject property over and across that certain roadway fronting the subject property known as Homestead Road or Pohakealani Road affecting the lots arising out of SUB 96-052.
 - c. Upon written demand of the Planning Director of the County of Hawaii, the applicants shall pay their fair share contribution for future roadway improvements to Homestead Road or Pohakealani Road fronting the subject property or lots arising out of SUB 96-052. The applicants shall agree to participate in their fair share percentage of any improvement district adopted for the purpose of roadway improvements to Homestead Road or Pohakealani Road fronting the subject property or lots arising out of SUB 96-052.

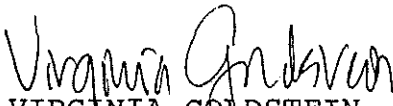
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4. The applicant/owner/subdivider, his assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

Thank you for understanding and patience during our review.

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,


VIRGINIA GOLDSTEIN
Planning Director

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xc: DWS
SUB 96-052