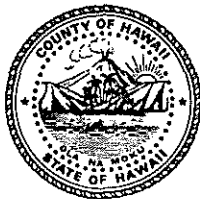


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
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 095 323 402**

June 25, 1997

Mr. Robert E. Hamilton  
PO Box 388  
Kurtistown, HI 96760

Dear Mr. Hamilton:

Variance Permit No. 836

Applicant: HOKU ORCHARDS, INC.

Request: Variance From Chapter 23, Subdivisions, Article 6, Division 2,  
Improvements Required, Section 23-84 Water Supply, (1)

Tax Map Key: 1-7-017:148

**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 two (2) 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, Water Supply, (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:

**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 13 of O'laa Reservation Lots, being Portions of Grant 3978, Situated at O'laa, Puna, Island and County of Hawaii. Lot 13, containing 50.7391 acres, is more commonly identified by the tax map key (TMK) parcel number (TMK: (3) 1-7-017:148).
2. The subject parcel was zoned Agricultural (A-20a) by the County in 1967 and is designated Urban "A" by the State Land Use Commission (LUC).
3. The owners/applicants submitted a preliminary subdivision plat map, dated October 21, 1996, to the Planning Department proposing to further subdivide the subject property into two (2) lots. The subdivision application (SUB 96-115) is being deferred pending consideration of the subject variance application.
4. The Department of Water Supply (DWS) memorandum dated May 15, 1997, in file (VAR 97-032) states:

"...Please refer to our memorandum of November 7, 1996 for our comments and requirements. We are enclosing a copy of this memorandum for your information.

For your added information, the property is serviced by an existing 5/8-inch meter and a maximum allotment of 600 gallons per day. Furthermore, water availability is limited to one 5/8-inch meter and 600 gallons per day per existing lot of record. Water is not available for change of zone, subdivision, or boundary amendment request..."

The copy of the Department of Water Supply (DWS) memorandum dated November 7, 1996, 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..."

5. The State Department of Health (DOH) memorandum dated May 19, 1997, in file (VAR 97-032) 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."

6. The Department of Finance-Real Property Tax comments dated May 15, 1997, in file (VAR 97-032) indicate the real property taxes for TMK: 1-7-017:148 are paid through June 30, 1997. The memo further states "Property is dedicated to agricultural use" and "If this property is subdivided into parcels which are five acres or less, or if the state land use district classification is changed into rural or urban, the deferred taxes will be imposed".
7. The following statements are extracted from the "APPLICANT'S REASON(S) FOR REQUESTING A VARIANCE" in variance file (VAR 97-032):

"...There are no reasonable alternatives to resolve the minimum water system requirements. However, granting a variance would allow a reasonable alternative, a catchment water system.

The cost of upgrading the existing county water system of the development of private wells, storage, and distribution systems is disproportionately excessive for a two-lot subdivision, and would put excessive demands upon the applicant when a more reasonable alternative is available.

The Department of Water Supply, County of Hawaii provided an estimate on cost for the county system upgrade. According to staff at the Department of Water Supply, the approximate cost to upgrade the existing County water system which involves extensive improvements and additions which include:

land acquisition, site improvements, and the construction of source storage, transmission booster pump, and distribution facilities could exceed \$1,000,000+-. This cost would be an excessive expense to the applicant for the proposed two (2) lot subdivision.

- The subject site is situated between 760 feet and 800 feet above sea level. An alternative would be to drill wells to create a private water system. However, this alternative would also be very expensive, and not cost effective for a two (2) lot subdivision.

Staff at the Department of Water Supply also provided an estimate to develop a private well system. The cost to drill wells at this elevation could cost \$960,000+-, with additional costs to construct storage and delivery systems. Also, there is no assurance that adequate water will be found, no assurance as to the quantity and quality of the water.

However, a reasonable alternative does exist due to adequate rainfall in the area of the proposed subject subdivision. Listed below are average annual rainfall data... (REFER TO RAINFALL DATA CITED IN THE VARIANCE FILE)..."

Therefore, based on the foregoing findings, and the information submitted by the applicant and representations made by the applicant, 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 the 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.

#### 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.

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.

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The prorated 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.

#### INTENT AND PURPOSE

The intent and purpose of requiring a water system within a subdivision is to assure that adequate water be 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/subdivider. 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.

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

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.

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This variance request is approved subject to the following conditions:

1. The applicant/owner/subdivider, his assigns or successors shall be responsible for paying all real property taxes, penalties, and interest due the County of Hawaii and shall comply with all stated conditions of variance application (VAR 97-032) and the conditions of tentative subdivision approval in file (SUB 96-115).
2. 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 96-115 containing the following deed language, being covenants, condition, and restrictions which affect the entire property and/or the specific lot arising from the approval of pending subdivision (SUB 96-115) 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 proposed lot created by subdivision application (SUB 96-115).
  - 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 the affected lot(s) created by SUB 96-115 which are not serviced by a County water system.
  - c. The water system serving the permitted dwellings, accessory structures and permitted uses not serviced by a County water system constructed on the affected 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.

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- d. For each permitted dwelling or farm dwelling, the applicant/owner/subdivider shall 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 affected land or property and shall be binding upon the applicants/owners/subdivider, 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 the affected lot(s) created by SUB 96-115 is/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.
  - g. All lots shall comply with all other applicable State and County rules and regulations.
3. All other applicable State and County rules and regulations shall be complied with.

Thank you for your patience and understanding during our review.

Mr. Robert E. Hamilton  
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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 96-115