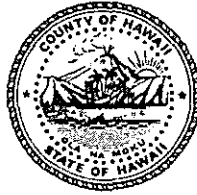


Stephen K. Yamashiro  
Mayor



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) 961-8742

**CERTIFIED MAIL**  
P 101 317 741

August 31, 1998

Ms. Anna Gay Lindsey  
P.O. Box 565  
Kamuela, Hawaii 96743

Dear Ms. Lindsey:

Variance Application WH(VAR 98-028)  
Variance No. 944  
Applicant: ANNA GAY LINDSEY  
Owner: MICHAEL V. GAY  
Subdivision Application No. 89-100  
Variance from Minimum Roadway and Street Light Requirements of Subdivision Code  
Tax Map Key: 8-8-002:011

After reviewing your application and the additional submittal, the Planning Director by this letter certifies the approval of your variance request to allow the creation of a 12 lot subdivision without meeting the minimum right-of-way and pavement width requirements as required by Chapter 23 (Subdivision Code), Article 3 (Design Standards), Division 4 (Street Design), Section 23-41 (Minimum Right-of-Way and Pavement Widths) and Article 6 (Improvements), Division 2 (Improvements Required), Section 23-93 (Street Lights).

The subject property is situated at Portions of Royal Patent Grant 3153 to Makia, at Alika, South Kona, Hawaii, TMK: 8-8-002:011.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future applications. Your patience is appreciated. Please note that this letter dated August 31, 1998, was transmitted by certified mail to you on September 10, 1998 and receipt was refused on September 11, 1998, September 16, 1998, and September 26, 1998 (see attached copy of returned envelope).

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Ms. Anna Lindsey  
Page 2  
August 31, 1998

The Planning Director has concluded that the variance request from the minimum right-of-way, pavement widths and street light requirements be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum right-of-way, pavement widths and street light requirements for the proposed twelve (12) lot subdivision.

1. The applicant submitted a subdivision application (SUB 89-100) and preliminary plat map dated July 11, 1991, proposing to subdivide 104.173 acre parcel into twelve (12) lots. Further action on the proposed twelve (12) lot subdivision application is being deferred pending consideration of the subject right-of-way, pavement width and street light variance application.
2. The subject property consists of 104.173 acres and is zoned Agricultural (A-5a) by the County and designated Agriculture by the State (LUC).
3. The applicant's intent for the subdivision is to provide family lots for the children and grandchildren according to the Last Will and Testament of the applicant's father. The applicant's proposed small scale agricultural activities are planned for this subdivision.
4. Construction costs of the subdivision would be beyond the family's means to finance the current imposed conditions and be an unbearable financial burden on the family. The other alternative would be to abandon the plans to subdivide the parcel.
5. The Department has not received any objections from the general public or adjacent landowners.

Therefore, considering the foregoing issues, the Planning Director has 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.

Ms. Anna Lindsey  
Page 3  
August 31, 1998

### ALTERNATIVES

There are no reasonable alternatives in resolving the required right-of-way, pavement widths and street light requirements. To require the applicant to meet the existing County requirements would not be economically feasible. As the applicant stated: Construction costs of the subdivision would be beyond our means to finance under the current imposed conditions and be an unbearable financial burden on our family.

The other alternative would be to abandon the plans to subdivide the parcel. However, due to the limited nature of the 12-lot subdivision, this alternative would discourage the permitted utilization of agricultural lands. It would also deprive the owner of substantial property rights that would otherwise be available and obviously interferes with the best use or manner of development of that property. There are no other reasonable alternatives that would resolve the difficulty.

The applicant's intent for the subdivision is to provide family lots for the children and grandchildren according to the Last Will and Testament of the applicant's father. The applicant's proposed small scale agricultural activities are planned for this subdivision. Thus, the request is consistent with the topographic conditions, public convenience and safety and the proposed use of land to be served by the street.

Chapter 23, Article 3, Division 4, Section 23-40 states that the location, width, and grade of a street shall conform to the County general plan and shall be considered in its relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the street. Where the location is not shown in the County general plan, the arrangement of a street in a subdivision shall either: (a) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or (b) Conform to a plan for the neighborhood which has been approved or adopted by the director to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

Chapter 23, Article 6, Division 2, Section 23-93 states that "street lights shall be constructed within the subdivision. The street lights shall conform to the standard specifications on file with the department of public works. The construction of street lights shall be made a part of the contract for subdivision improvement and installed coincident with other required improvements." The surrounding area consists of vacant lands and the need for providing adequate lighting within this proposed agricultural subdivision does not appear to be adverse to the public health, safety or welfare.

Ms. Anna Lindsey  
Page 4  
August 31, 1998

The Land Use Pattern Allocation Guide (LUPAG) Map designates the area as Orchards. The LUPAG Map component of the General Plan is a representation of the document's goals, policies, standards and courses of action to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationships among the various land uses. The LUPAG Map establishes the basic urban and non-urban land use pattern for areas within the County. The requested variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties. In this particular instance, based on the circumstances, conformance to existing subdivision code right-of way, pavement widths and street lighting requirements are impractical.

The request therefore warrants and necessitates a waiver from the minimum requirements for the proposed twelve (12) lot subdivision considering its relation to existing and planned streets, to topographical conditions, to public convenience and safety, and the proposed use of land to be served by the street.

#### INTENT AND PURPOSE

The subject property consisting of 104.173 acres is located within the County's Agricultural (A-5a) zoned district. Under this zoning designation the minimum building site area is 5 acres. The applicant is proposing a twelve (12) lot subdivision consisting of the following:

Lot 1	6.000 acres
Lot 2	6.001 acres
Lot 3	7.773 acres
Lot 4	5.000 acres
Lot 5	5.000 acres
Lot 6	6.535 acres
Lot 7	10.001 acres
Lot 8	10.001 acres
Lot 9	10.000 acres
Lot 10	10.000 acres
Lot 11	10.000 acres
Lot 12	8.696 acres

The intent and purpose of requiring a minimum right-of-way and street pavement width is to provide access to or within a satisfactory future subdivision. These are related to existing and planned streets, to topographical conditions, to pub

Ms. Anna Lindsey  
Page 5  
August 31, 1998

Department of Public Works, for a minimum 20 foot wide agricultural street and prescribed surfacing where grades exceed 8%, would be considered adequate for this Agricultural land.

#### DETERMINATION - VARIANCE CONDITIONS

This proposed agricultural subdivision will provide opportunities for a mix of small scale agricultural activities and associated residential uses, as well as larger agricultural projects. It will also satisfy the demand for a rural lifestyle on marginal agricultural land, while decreasing the pressure to develop other important agricultural land for this purpose. This planning approach would establish a continuity in land uses and designs, while providing for the needed infrastructural facilities and systems to support the various types of agricultural developments.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore this variance 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, his assigns or successors, shall be responsible for complying with stated conditions of approval.
2. The approval of this variance shall be include in the conveyance document for the subject properties and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. Provide a minimum 20 foot wide agricultural street along the main roadway. Where grades exceed 8%, the roadway shall be surfaced as per the requirements of Standard Detail R-39.
4. If the lots are further subdivided, the applicant shall provide a standard roadway pavement within minimum 50-foot wide right-of-way with paved shoulders and swales along the main roadway meeting the requirements of the Department of Public Works, Engineering Division.
5. All other applicable State and County rules and regulations shall be complied with.

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

Ms. Anna Lindsey  
Page 6  
August 31, 1998

Should you have any questions, please feel free to contact Royden Yamasato of this department at 327-3510.

Sincerely,

A handwritten signature in cursive script, appearing to read "Virginia Goldstein", with a long horizontal flourish extending to the right.

VIRGINIA GOLDSTEIN  
Planning Director

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xc: West Hawaii Office  
Subdivision File No. 89-100