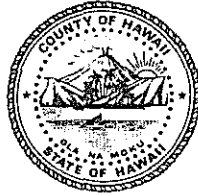


Stephen K. Yamashiro  
Mayor



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**

**7099 3220 0000 4869 7503**

April 20, 2000

Mr. Sidney Fuke  
SIDNEY FUKE, PLANNING CONSULTANT  
100 Pauahi Street, Suite 212  
Hilo, Hawaii 96720

Dear Mr. Fuke:

**Variance Permit No. 1105 (VAR 00-011)**  
**Applicant: HENDERSON TIMBERLANDS, LTD.**  
**Owner: HENDERSON TIMBERLANDS, LTD.**  
**Request: Variance From Chapter 23, Subdivisions, Article 6,**  
**Division 2, Improvements Required, Section 23-84, Water Supply, (1)**  
**Tax Map Key: 1-3-008:005 (SUB 98-143)**

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), to allow twelve (12) lots within a proposed nineteen (19) lot subdivision to be created without a water system meeting with the minimum requirements of the Department of Water Supply (DWS).

Please accept our sincere apology 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.

The Planning Director has concluded that the variance from the minimum subdivision water system requirements for twelve (12) lots within the proposed 19 lot subdivision be approved based on the following findings.

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### SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant consideration of a variance from the minimum water requirements for the proposed nineteen (19) lot subdivision:

1. The subject property containing 152.3 acres is Lot 3-A, Being a Portion of Grant 3209, Land Court Application 1800 (Map 1), situated at Pohoiki, Puna, Hawaii.
2. The subject property is zoned Agricultural (A-1a) by the County and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. The owners originally submitted a subdivision application (SUB 98-143) to subdivide the subject TMK property into twenty-nine lots. A variance application (VAR 99-065-Variance Permit No. 1060-VAR 1060) to allow a twenty-nine (29) lot subdivision without a water system meeting the minimum requirements of Chapter 23, Subdivisions was denied by the Planning Director on October 20, 1999. Subsequent to the denial of the variance request (VAR 1060), the Planning Director on December 1, 1999 accepted eight (8) copies of a revised preliminary plat map under SUB 98-143 decreasing the number of the proposed lots from 29 to 19 lots.
4. The Department of Finance-Real Property Tax memorandum dated February 10, 1999 states in part:  
  
"Property is receiving agricultural use value"  
  
"Possible rollback taxes"  
  
"Real Property taxes are paid through December 31, 1999."
5. The State Department of Health (DOH) memorandum dated February 10, 2000 states:  
  
"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 connection or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.

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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 catchments systems for drinking purposes."

6. The Department of Water Supply (DWS) memorandum dated February 23, 2000 states:

We have reviewed the subject application for the proposed subdivision and have the following comments.

Please refer to our memorandum of January 5, 1999 for our comments and requirements. We are enclosing a copy for your information."

The attached copy of the attached DWS memorandum dated January 5, 1999 memorandum states in part:

"Please be informed that water in this area is limited to 7 units of water at 600 gallons per unit per day, or 4,200 gallons of water per day for appropriately zoned existing lots of record. Further, water is not available for change of zone or boundary amendments.

In other words, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions are required, which may include the construction of source, storage, transmission, booster pumps, and distribution facilities. Currently, sufficient funding is not available and no time schedule is set."

7. Subsequent to the denial of VAR 1060 the applicant amended the pending subdivision application (SUB 98-143) from 29 lots to 19 lots and included additional information with the subject variance application (VAR 00-11) which states in part:

"The applicant subsequently amended its subdivision application by reducing the number of proposed lots from twenty nine (29) to nineteen (19) on or about December 1, 1999. This application is now being processed by the County.

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In this area, there is a public water system proximate to the subject properties. However, water is limited to only seven (7) units or lots. In order for the remaining twelve (12) lots to be serviced with County water, extensive improvement-including source, storage, transmission, booster pumps, and distribution facilities-would have to be made. The County Department Water Supply does not have sufficient funds for these improvements.

Accordingly, the water requirement for twelve (12) of the nineteen (19) lots cannot be satisfied without extensive off-site improvements and cost."

"There are no reasonable alternatives available to achieve the required water system.

"The alternative of providing a County-approved water system to the sites would be cost prohibitive. It would require the development of new wells and related appurtenances at a cost of over \$6 million or the construction of an on-site well at a cost of nearly \$3 million. The latter alternative is quite speculative, as there is no assurance that even if a well were dug, potable water would be found.

Accordingly, the water requirement is quite onerous, particularly in light of the fact that a) this is an agricultural subdivision; and b) there is a reasonable alternative (catchment). The area, as noted above, receives annual rainfall that can reasonably support a catchment system that meets with the Department's guidelines.

Further, the lot owners, if needed, also have the option of purchasing water to supplement the catchment system. This is a common method of providing water in areas like this.

Finally, there is a County line in this area. The issue is more with the source and related improvements. As such, there is a chance in the near future that water can be made available to this site, unlike areas where there is absolutely no County water line proximate to the subdivided area."

"The requested relief would still not be inherently violative of the spirit and intent of the subdivision code.

The subject site consisting of 152.312 acres is located within the County's Agricultural (A-1a) zoned district. Under this zoning designation, the minimum building site area is 1 acre. All of the lots would exceed the minimum lot size requirement."

Note: The above quotes are taken from the narrative submitted with the subject variance application. The applicant's complete narrative is a part of this variance application and shall be hereafter referred to as "applicant's attachment".

8. The proof of mailing of notices to the surrounding property owners by the applicant's representative was received on February 14, 2000.

No oral or written objections to the variance application (VAR 00-011) were received from the surrounding property owners.

Therefore, considering the above facts, information submitted by the applicants, and agency comments, 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 owners 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 applicant. The first alternative requires the applicants to improve the existing county water system and provide the necessary dedicable water system improvements in accordance with DWS standards. The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

As such, the imposition of improving the existing public water system or providing an approved alternative water system for the proposed subdivision would be putting excessive demands upon the applicants when a more reasonable alternative is available.

#### INTENT AND PURPOSE-WATER VARIANCE

The intent and purpose of requiring a water system for and within the proposed subdivision is to assure that adequate water is available for human consumption and fire protection.

The analysis of existing site conditions, official maps, and rainfall summaries in the DWS and the Planning Department appear to support the rainfall data and information in the "applicant's attachment". The analysis of the "applicant's attachment" and public rainfall information appears to indicate that there is adequate rainfall within the subject property and surrounding areas to support individual or separate private rain water catchment systems for potable and emergency

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uses within twelve (12) lots of the proposed nineteen (19) lots. The lot owners, if needed, also have the option of purchasing water to supplement the catchment system. This is a common method of providing water in areas like this, with the understanding that roadways will be constructed to county dedicable standards and thus able to allow access by trucks hauling water.

The State Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private roof catchment water systems for potable or emergency uses within lots not served by a county water system.

Additional provisions for water storage, water distribution, and construction of private rain water catchment system(s) on the property or proposed lots may be necessary and will be addressed by the applicant or future lot owner.

#### DETERMINATION-VARIANCE CONDITIONS

The subject variance application was deemed complete by the Planning Department on January 31, 2000. Additional time to review the specific variance request and the revised subdivision map submittals was required.

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, the variance requested 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 requested to allow twelve (12) lots of a proposed nineteen (19) lot subdivision without a water system meeting DWS standards is approved subject to the following conditions:

1. The owners, their assigns, or successors shall be responsible for complying with all conditions of Variance Permit No. 1105, effective April 20, 2000.
2. WATER VARIANCE: The owners, their 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 98-143. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the proposed lots arising from the approval of pending subdivision application 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 owners:

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- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service twelve (12) lots not serviced by a county water system that are created by SUB 98-143.
- b. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to twelve (12) proposed lots created by SUB 98-143. No further subdivision of the (19) lots created by SUB 98-143 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions are met.
- c. Any dwelling(s) constructed on the proposed twelve (12) lots not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6,000-gallon for domestic consumption or potable uses. 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.
- d. Each permitted dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and location of the water storage capacity on the property, shall meet with the approval of the Hawaii County Fire Department. The Hawaii County Fire Department also advises as a precautionary measure for other uninhabited agricultural structures that consideration be given to the provision of a similar water storage system for fire fighting and emergency purposes.
- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended thusly. Further, the written or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.

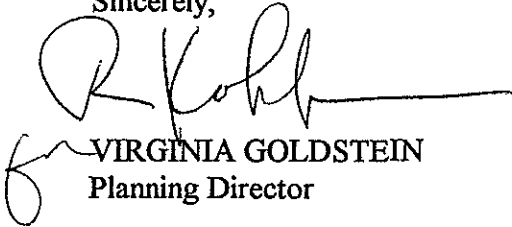
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- f. In the event that any of the lots created by SUB 98-143 are provided with water service (individual meter) from the Department of Water Supply or an approved water system, the lots shall utilize said water service and the owners shall assume pro-rata costs for such improvements as determined by the Department of Water Supply.
3. The owners, their assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

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

Thank you for your understanding and patience during our review.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

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xc: Department of Water Supply  
SUB 98-143