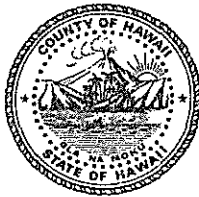


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

**CERTIFIED MAIL**

7000 0600 0024 2904 6846

**PLANNING DEPARTMENT**

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

December 4, 2000

Mr. and Mrs. Richard Creagan  
P.O. Box 189  
Naalehu, Hawaii 96772

Dear Mr. and Mrs. Creagan:

Application to Amend Variance No. 1013 INF 01 (00-021)  
Applicants: RICHARD & MARILYN CREAGAN  
Owners: RICHARD & MARILYN CREAGAN  
Subdivision Application No. 1999-0026  
Request: Variance from Water Requirements of Subdivision Code for a five (5) lot  
subdivision instead of a four (4) lot subdivision  
Tax Map Key: 9-4-004: 008 & 028

After reviewing your application and the additional information submitted, the Planning Director by this letter hereby certifies the approval of your request to amend Variance No. 1013 to allow the creation of a five (5) 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 Code.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested amendment of Variance No. 1013. 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 subject properties are comprised of a Portion of Grant 2759 to Samuel Nakaikuaana, and Portions of Lot 24 of the Kiolakaa-Kea Homestead Lots and Grant 10910 to Mrs. Mary Brooks at situated at Nukukaia, Ka'u, Hawaii, Tax Map Key: 9-4-004: 008 & 028.

The Planning Director has concluded that the request to amend Variance No. 1013 from the Subdivision Code minimum water requirements should be approved based on the following:

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### SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a variance from the minimum water requirements to service the proposed five (5) lot subdivision.

1. The applicants submitted a subdivision application (SUB 1999-0026) with a preliminary plat map on February 2, 1999, proposing to subdivide 105.13 acres of land identified as Tax Map Key: 9-4-004: 008 & 028 into 4 lots.
2. The applicants submitted a variance application from the minimum water requirements of the Subdivision Code to create a four (4) lot subdivision on March 29, 1999. This variance application was approved and Variance No. 1013 was issued on June 1, 1999.
3. Subsequently, a revised preliminary plat map was submitted proposing to subdivide the subject properties into 5 lots. Further action on the proposed five (5) lot subdivision application is being deferred pending consideration of the subject water variance amendment application.
4. Department of Water Supply memo dated September 22, 2000, states:  
  
"We have reviewed the subject application and the comments in our memorandum of March 17, 1999 still stand. (A copy is attached.)  
  
"Should there be any questions, please call our Water Resources and Planning Branch at 961-8665."
5. Department of Water Supply memo dated March 17, 1999, states:  
  
"We have reviewed the subject application and have the following comments.  
  
"Please be informed that the proposed subdivision is not within the service limits of the Department's existing water system facilities. The nearest Department of Water Supply's water system facility is an existing 8-inch waterline along the Mamalahoa Highway, approximately 3,600 feet from the property. Further, the property is situated at an elevation that is beyond the elevation that the Department's existing water system can deliver water.

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"Therefore extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set.

"Should there be any questions, please call our Water Resources and Planning Branch at 961-8660."

6. The Department has not received any objections from the 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.

#### 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 a well to create a private water system. However, due to the limited nature (5-lot subdivision not serviced by County water system) of the subdivision, this alternative would 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 proposed five (5) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

The subject properties are comprised of approximately 105.13 acres and are located on the southern side of the Mamalahoa Highway, at an elevation ranging from 1,600 feet to 1,800 feet above mean sea level.

The State of Hawaii Data Book indicates that Naalehu, where the nearest rain gauge is located, received an average annual rainfall of 53 inches from 1988 to 1998. (This information was derived from records of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Climatic Data Center and the Department of Land and Natural Resources, Commission on Water Resource Management.) This is deemed adequate

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to support a private water catchment system. Given that the Naalehu rain gauging station is located at an elevation of 800 feet, the subject properties most likely receive higher annual rainfall.

If necessary, the applicant can also purchase water if necessary to supplement the private rain water catchment system.

#### INTENT AND PURPOSE

The subject properties consisting of 105.13 acres are located within the County's Agricultural-5 acres (A-5a) zoned district. Under this zoning designation the minimum building site area is 5 acres. The applicant is proposing a five (5) lot subdivision with each lot not exceeding the minimum five (5) acre lot size requirement of the Zoning Code.

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

#### DETERMINATION - VARIANCE CONDITIONS

Based on the foregoing findings, this variance amendment 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 amendment 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 request to amend Variance No. 1013 is therefore approved, subject to the following conditions:

1. The owner, assigns or successors shall be responsible for complying with stated conditions of approval.
2. The owner, 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 at the expense of the subdivider:
  - a. The owner agrees and accepts the fact that a County dedicated public water system is not now or in the foreseeable future able to service the subdivision.

- b. The owner agrees and accepts the fact that a County dedicated public water system shall 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 be provided with and maintain a private rain water catchment system with a minimum 6,000 gallon water storage facility for domestic consumption. 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. Any existing and/or future dwellings shall be provided with and maintain a private water supply system which includes an additional water storage capacity at a minimum of 3,000 gallons of water for fire fighting and emergency purposes. The design, including appropriate connector system, and location of the additional water storage capacity shall meet with the approval of the Hawaii County Fire Department. Hawaii County Fire Department's recommendation that accessory agricultural structures should also be considered for emergency fire protection.
- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the owner 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 applicant/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 with water service from the Department of Water Supply or an approved private water system, the owners shall connect and utilize such approved water system and comply with Department of Water Supply rules and regulations.
- g. No variance from the minimum water requirements for the proposed lots shall be applied for in the future.

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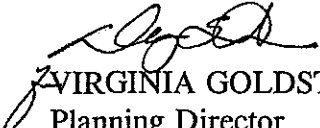
December 4, 2000

- h. The owner, 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 conditions not be complied with, the Planning Director may proceed to declare this Amended Variance Permit null and void.

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

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

PLH: rld

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xc: West Hawaii Office  
Subdivision File