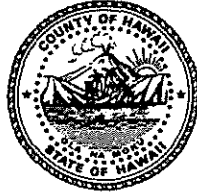


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

**CERTIFIED MAIL**

7099 3220 000 4869 9101

**PLANNING DEPARTMENT**

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

February 11, 2000

Ms. Barbara Takase  
401 Palakiko Street  
Hilo, Hawaii 96720

Dear Ms. Takase:

Variance Application WH(VAR99-101)

Variance No. 1092

Applicant: BARBARA TAKASE

Owners: BARBARA TAKASE, MASAYUKI & FUMIKO KAI, PRISCILLA SHIMAMOTO

Subdivision No. 99-133

Variance from Water Requirements of Subdivision Code

Tax Map Key: 9-6-008:004

After reviewing your application and the additional information submitted, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of a two (2) 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 variance. At the present time there is a shortage of staff. This personnel shortage will be resolved and result in more timely responses to future applications. Your patience is appreciated.

The subject property is situated at Lot 2, Grant 7404 to Hatsue Iseri Uyeda, Wood Valley Homesteads, Kau, Hawaii, Tax Map Key: 9-6-008:004.

The Planning Director has concluded that the variance request 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 two (2) lot subdivision.

1. The applicant submitted a subdivision application (SUB 99-133) and preliminary plat map dated October 15, 1999 proposing to subdivide Tax Map Key: 9-6-008:004, a 25.998 acre parcel into 2 lots. Further action on the proposed two (2) lot subdivision application is being deferred pending consideration of the subject water variance application.
2. Department of Health memo dated December 23, 1999 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 connections or regularly serves an average of at least twenty-five (25) individuals daily 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."

3. Department of Water Supply memo dated November 2, 1999 states in part:

"Please be informed that the subject property is not within the service limits of the Department's existing water system facilities.

"For your information, the nearest Department of Water Supply's water system facility is at the end of an existing 8-inch waterline along the Mamalahoa Highway, approximately 5.2 miles from the property.

"Should there be any questions, please call our Water Resources and Planning Branch at 961-8665."

4. The Department received a letter of objection from Maile M. Bay who represents Mr. Frederick Gross. (See Exhibit A)

The objection filed by Maile M. Bay states in part: "As an adjacent property owner, Mr. Gross does not oppose the subdivision, since the current zoning allows for such action. However, the request for a variance from the current water requirements specified in the Hawaii County Ordinance, Section 23-84 raises an issue of serious concern.

"The farmers of Wood Valley are diligently working to expand agriculture use of the valley from its already significant estimated current annual impact of \$600,000 and 35 jobs. However, the lack of an adequate agricultural water supply has been a major impediment. For over ten years, the farmers have been attempting to address the agricultural water needs of the Valley; forming the Wood Valley Water & Farm Cooperative, participating in numerous initiatives and forums such as the Ka'u Economic Development Consortium, lobbying the State legislature for capital improvement funds for water development, and seeking permits for the use of the water sources above the valley.

"The efforts of the farmers have not been supported by the County of Hawaii. In fact, in recent dealings with the State Department of Land and Natural Resources concerning allocation of water from Noguchi Tunnel, the County Department of Research and Development has taken positions to effectively limit the water available to Wood Valley farmers from Noguchi Tunnel....

"Therefore, Mr. Gross is giving notice to the Planning Department, and through it the County of Hawaii, that it should support, not oppose, the development of adequate agricultural water supplies to Wood Valley. Further, the granting of this variance request has the potential to increase water demand without support for water development efforts, a result that in the long run will 'be materially detrimental to the public welfare or cause substantial, adverse impact on the area's character or to adjoining properties."

The Hawaii County Department of Water Supply has two systems in the Kau District. The Pahala system normally relies on the Alii Tunnel for its supply and supplements it with the water from the Pahala Well during dry weather period. The New Mountain House Tunnel and Haa Spring are the primary sources for the Waiohinu-Naalehu System. Naalehu Well supplements the tunnel and spring sources during dry weather. The supply from the tunnel and spring sources is piped to Waiohinu and distributed further to Naalehu and South Point.

Outside the public water system, separate private water systems serving the Kapalapala, Wood Valley, Punaluu/Ninole and Honuapo areas exist. Within the Wood Valley area, there also

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exists private agricultural irrigation systems. The Noguchi Tunnel is one such system used for irrigation of agricultural lands only.

The requirement under Article 6, Division 2, Section 23-84(1) of the subdivision code relates to domestic water, thus the discussion by Maile M. Bay does not relate to the request for a variance.

Rainwater Catchment Systems provide for potable water, a term used to describe water of sufficient quality to drink safely. Many areas without access to public or private potable water systems are served by rainwater catchment systems. These systems provide potable water for remote individual households.

In this instance, the character of the land use will remain in agriculture. Water use for agricultural activities will remain constant whether the 25.998 parcel remains as one lot or subdivided into two lots. The amount irrigation water would depend upon the type of crop or agricultural use.

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 (2-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 two (2) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

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The State's Commission on Water Resource Management states the nearest rain gauge in the area is Kapalapala Ranch. The rainfall data over the past 50 years, indicates that the mean, maximum, and minimum rainfall for the area is 61.42 inches, 108.01 inches and 13.42 inches respectively. The Pahala Mauka rain gauge indicates the mean, maximum and minimum rainfall were 57.59 inches, 99.75 inches and 10.75 inches respectively.

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

#### INTENT AND PURPOSE

The subject property consisting of 25.998 acres is located within the County's Agricultural (A-5a and 10a) zoned district. Under this zoning designation the minimum building site area is 5 acres and 10 acres. The applicant is proposing a two (2) lot subdivision with each lot not exceeding the minimum (5) acre and (10) 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 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 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 subdivider 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.


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- g. No variance from the minimum water requirements for the proposed lots shall be applied for in the future.
- 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 Variance Permit null and void.

Should you have any questions, please feel free to contact Eleanor Mirikitani of this department.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld  
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xc: West Hawaii Office  
Subdivision File