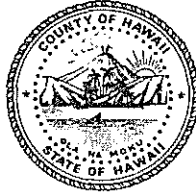


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

November 30, 2001

KUKAIAU RANCH, LLC
c/o Mr. Sidney Fuke
SIDNEY FUKE,
PLANNING CONSULTANT
100 Pauahi Street, Suite 212
Hilo, HI 96727

Dear Mr. Fuke:

Variance Permit No.1239 (VAR 01-057)

Applicant: KUKAIAU RANCH, LLC

Owner: KUKAIAU RANCH, LLC

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

Tax Map Key: 4-2-008:003 and 007, (SUB 01-040)

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 the creation of a twelve (12) lot subdivision without all lots having a water system meeting the minimum requirements of the Department of Water Supply (DWS).

FINDINGS AND BACKGROUND

1. **Location.** The subject property(s), containing 2,461.629 acres +/-, includes Lot 19 of Umikoa Village Subdivision, being a portion of Royal Patent 4527, Mahele Award 26-B to Kailakanoa, and Lot C-4-A, of Land Court Application 1090 (Map 13), is situated at Kukaiiau and Koholalele, Hamakua, Hawaii. The subject property(s) are commonly referred or described using tax map key

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(TMK) number: "TMK: (3) 4-2-008:003 and 4-2-008:007".

2. **Zoning.** The subject TMK property(s) are zoned Agricultural (A-40a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** A subdivision application (SUB 01-040) to subdivide the subject TMK parcels was submitted to and acknowledged by Planning Department's letter dated April 11, 2001.

The current owners of the TMK property(s) propose to consolidate the TMKs and resubdivide the resultant area into the following twelve (12) lots: nine (9) agricultural lots ranging in size between 95+ acres to 119+ acres, one (1) large 1493 + acre bulk lot, and two (2) roadway lots. The subdivision application's preliminary plat map is dated April 11, 2001 and was prepared by M&E Pacific, Inc. Further action to consider the preliminary plat map showing this twelve (12) lot subdivision proposal was deferred by Planning Director's letter of May 14, 2001 pending resolve of agency comments and requirements.

4. **Variance Application.** The subject variance application and request was submitted on July 24, 2001. (Please refer to the applicant's variance application, detailed written explanation, rainfall data, supplemental maps, and exhibits etc. in the variance file which are incorporated herein).
5. **Previous Variance.** The Planning Department issued a water variance (VAR 552) to allow a 5-lot subdivision (SUB 6444) without a County water system in 1993. The owners of two (2) lots created by the approved 5-lot subdivision (SUB 6444) submitted the current subdivision application (SUB 01-040) and subject variance application. The previous water variance (VAR 552) to allow the 5-lot subdivision in 1993 did not include any variance conditions to restrict further subdivision.
6. **Existing Private Water System.** A private water distribution system was created to serve specific TMK property in this area. The private water system includes

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and affects the subject TMK properties. The source for this private water distribution system (Paauilo Water Association) is a County master meter located within the Hawaii Belt Road right-of-way located outside the proposed subdivision. The amount of water available via the master meter for the Paauilo Water Association is set forth in a recorded agreement, dated September 19, 1997, between the Department of Water Supply (DWS) and owners of specific TMK(s) in 1997. This agreement committed 15 water units at 600 gallons per day (g.p.d.) to the Paauilo Water Association in exchange for replacing and installing 3,540 lineal feet (l.f.) of an existing 2.5 inch water line with a new 6 inch ductile iron (D.I.) water line and related appurtenances. Recently, the DWS approved the construction plan drawings to these planned water system improvements. However, these improvements have not yet been completed. Prior to granting final subdivision approval to SUB 01-040, one of the variance conditions set forth at the end of this letter will require the current subdivider/owners (SUB 01-040) to designate 2-agricultural lots of the proposed 10 agricultural lots that will retain the water commitments rights allocated to two (2) TMK parcels identified in the Agreement dated September 19, 1997. These two (2) designated agricultural lots shall comply with all requirements, stipulations, and conditions of the Agreement dated September 19, 1997.

7. Agency Comments and Requirements.

- a. The Department of Water Supply (DWS) memorandum, dated August 28, 2001, states in part:

"We have reviewed the subject application and the comments in our memorandum of July 25, 2000, still stand. (A copy is attached.)"

The attached copy of the DWS memorandum, dated July 25, 2000 states in part:

"We have reviewed the subject application, and while we did not comment on the preliminary plat map dated March 30, 2001, our comments on it and this variance application follow:

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Subdivision Application No. 2001-0040

Please be informed that the proposed subdivision is not within the service limits of the Department's existing water system facilities.

Parcel 003 is covered by a water Variance No. 552, which was approved by the Planning Department on December 16, 1993. Despite this variance, both Parcels 003 and 007 are each entitled to one unit of water through their participation in a September 19, 1997, recorded agreement between others and the Department of Water Supply. Under this agreement, they can receive this water through a master meter that currently is in the name of the Pa'auilo Water Association.

First, however, this meter needs to be replaced by a larger meter, and the prevailing facilities charges for the additional units of water need to be paid. In addition, off-site waterline improvements for the installation of approximately 3,540 feet of 6-inch ductile iron pipe need to be made by the owners of Parcels 003 and 007 and others.

Lastly, we ask that the following be made a condition of receiving final subdivision approval:

The applicant shall provide the lot number for the two proposed lots that will receive their respective one unit of water from the Department of Water Supply. The owners of the designated lots must pay the appropriate facilities charge and participate in the construction of the required off-site waterline improvements before they can use their one unit of water. Each unit of water is limited to a daily maximum use of 600 gallons.

Variance Application (VAR 01-57)

Please see our comments above on the subdivision application.

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Should a variance be granted, we ask that the subdivision conditions listed above be included as part of the variance.

Should there be any questions, please call our Water Resources and Planning Branch at 961-8070."

- b. The State Department of Health (DOH) memorandum dated August 15, 2001 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.

Past episodes of water quality concerns for lead, copper, algae and microbiological and chemical contaminations in private rain catchment systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards."

- c. The County of Hawaii Fire Department's memorandum dated August 31, 2001, states in part:

"Water supply shall be in accordance with NFPA 1231."

8. **Notice to Surrounding Property Owners.** The applicant submitted a transmittal letter dated August 13, 2001 and respective attachments on August 14, 2001, 2001, as proof of mailing a notice of the variance application to owners of property within five-hundred (500') feet of the boundary of the subject TMK property(s).
9. **Comments from Surrounding Property Owners or Public.** No oral objections

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or letter(s) objecting to the subject request were received by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The following special and unusual circumstances apply to the existing TMK property(s) which exist either to a degree which deprive the applicant of substantial property rights that would otherwise be available or to a degree which interferes with the best use or manner of development of the existing TMK property(s):

1. The proposed 12-lot subdivision is intended to create access and lots for agricultural uses as evidenced by the large lot sizes. The proposed ten (10) agricultural lots exceed the minimum 40 acre (A-40a) lot size.
2. The proposed 12-lots are outside the County's water service area (in terms of pressure zones), even if the existing County's water transmission line were to be completely upgraded to DWS standards to the existing master meter.
3. According to the applicant and published sources, rainfall within the subject TMK parcels receive an annual rainfall of 98 inches in the lower elevations to 59 inches at the highest elevation. Private water catchment systems within the proposed subdivision could adequately be designed and constructed to provide potable water and emergency water for a typical family (4-persons).

ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the applicant. Alternative water systems include the following:

1. Improve the existing county water system and provide the necessary dedicable water system improvements to the proposed lots in accordance with DWS standards.

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2. Design, drill and develop private wells and install the necessary water system improvements in accordance with the DWS memorandum and standards.
3. Provide private individual private water catchment systems for potable and emergency needs.

In consideration of these alternatives, if this variance were denied, the applicant would be required to construct a County dedicable system, which would entail upgrading the portion of the transmission line that is not covered by the recorded agreement and to construct a water system (reservoirs/water, pump station(s), and other water system appurtenances, etc.) to serve the affected lots of the proposed 12-lot subdivision. The pro rata costs for the required water system is prohibitive in comparison to the intended agricultural uses. Moreover, these water system improvements would benefit other surrounding and abutting lot owners without equitable contribution or effort by those benefited owners.

A condition of this variance set forth at the end of this letter will require the applicant/subdivider to designate two of the proposed 10 lots that will be required to be connected to the private water system and abide by the stipulations and conditions of the agreement on file at the DWS. Only 8 of the proposed 10-agricultural lots arising out of the proposed 12-lot subdivision (2 of the proposed 12-lots are for roadway lots) will require and be permitted to be served by private water catchment system(s) for potable and emergency needs.

INTENT AND PURPOSE-SUBDIVISION CODE-WATER SYSTEM

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 submitted by the applicant. The analysis of available private and public information sources indicate that there is adequate rainfall within the subject property and available water from other surrounding areas to support individual or separate private rainwater catchment systems for potable and emergency uses. In addition, provisions to drill for water (wells) on the property may be considered and

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available; and could be explored and privately addressed individually by the applicant or future lot owner(s).

DETERMINATION-VARIANCE CONDITIONS

The subject variance application was acknowledged by certified letter dated August 1, 2001. Additional time to study previous correspondence submitted on behalf of the applicant, metes and bounds descriptions of pre-existing lots, and past agency review and determinations was necessary. An extension of time to November 30, 2001 to allow the Planning Director to render a variance decision and conditions was granted by the applicant.

Based on the foregoing findings, and past lot determination actions, this variance request affecting the proposed 10 lots/2 roadway lots 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 the proposed 12-lot subdivision without all lots having an approved water system requirements, pursuant to Chapter 23, Subdivision: two (2) agricultural lots, each eligible for one (1)/unit of water from the DWS and subject to the requirements, stipulations and conditions of an Agreement dated September 19, 1997; eight (8) agricultural lots without a water system meeting the DWS water system requirements; and two (2) roadway lots.

This variance request is hereby approved subject to the following conditions:

1. The owner(s), their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. Prior to final subdivision approval, the subdivider, applicant, owner(s), their assigns, or successors shall designate and provide the DWS and Planning Department the lot numbers for the two (2) proposed agricultural lots that will receive their respective one (1) unit of water from the Department of Water Supply (DWS). The subdivider or owner(s) of these two (2) agricultural lots must

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pay the appropriate facilities charge and install or participate in the construction of any required off-site water line improvements before each lot can use their one (1) unit of water. Each unit of water is limited to a daily maximum use of six-hundred (600) gallons per unit. The two (2) designated lots will be required to comply and meet all conditions stipulated by the Agreement in the DWS dated September 19, 1997.

3. The owner(s), 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 78-214. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the proposed lot or 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:
- a. The owner(s) agree and accept the fact that a County dedicable public water system is not now able to service the existing property or the proposed lot(s) created by SUB 01-040. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
 - b. Property may not be made subject to a condominium property regime.
 - c. The owner(s) agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to proposed lot(s) created by SUB 01-040.
 - c. Any dwelling(s) constructed on the proposed lot(s) not serviced by a County water system shall be connected to a private water system or be provided with and maintain a private potable rain catchment system which

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includes a minimum 6,000-gallon water storage capacity for domestic consumption or potable uses. This catchment system shall adhere to any 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.

- e. Each permitted dwelling on a catchment system 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. The location of existing and new water storage systems shall comply with all Zoning Code requirements.
- f. 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 concomitantly. 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.
- g. In the event that the DWS or the County notifies the owner(s) of the lot(s) created by SUB 01-040 that the County Water System has been upgraded or an improvement district initiated to enable service to the lot or lots created by SUB 01-040, the owner(s) of the affected lots created by SUB 01-040 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by

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the Department of Water Supply and this variance shall be become null and void upon written consent from the affected agencies.

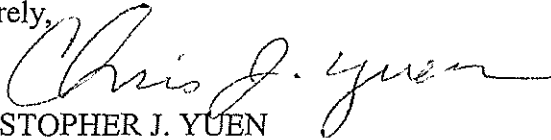
- h. The subject property was created by subdivision of a larger parcel pursuant to a variance from the water supply requirement in Section 23-84 of the Hawaii County Code. The subdivider or grantee, the assigns or successors acknowledges that there is no special or unusual circumstances existing on the property, and therefore, there are no grounds for the subdivider or grantee, the assigns or successors to request further variance from the water supply requirements to permit further subdivision of the subject property or lots arising out of SUB 01-040.
4. Any existing driveway(s), dwelling(s), accessory buildings, and other structures (private water tanks, pumps, etc.), water line easements, and fences not denoted and identified on the preliminary plat map, dated March 20, 2001, are required to meet the minimum building yard(s) and minimum open space provisions of the Zoning Code and DPW-County Building Code and shown on the subdivision's final plat map. The subdivision's (SUB 01-040) final plat map shall meet all requirements of the Hawaii County Zoning Code and Subdivision Code.
5. The owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State and County rules, comply with all Zoning Code requirements and the requirements of Chapter 23, Subdivisions, prior to granting final subdivision approval.

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

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Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: DWS-Engineering Branch
SUB 01-040