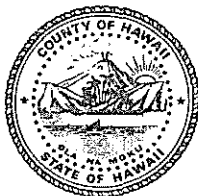


Harry Kim  
Mayor



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

June 7, 2001

HENDERSON TIMBERLANDS, LTD.  
c/o Mr. Sidney Fuke  
SIDNEY FUKU,  
PLANNING CONSULTANT  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

**Variance Permit No. 1199**  
**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: 1-3-009:004 (VAR 01-06) (SUB 00-0111)**

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). Variance Permit No. 1199 is hereby issued to allow the creation of a twelve (12) lot subdivision without a water system meeting with the minimum requirements of the Department of Water Supply (DWS).

The Planning Director has concluded that the variance from the minimum subdivision water system requirements be approved based on the following findings.

1. The subject property containing 946.758 +/- acres, is Lot 2-A of Land Court Application 1800 (Amended) as shown on Map 3, Keahilaka, Puna, Hawaii.

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2. The subject property is zoned Agricultural (A-5a) by the County and is designated Agriculture "A" by the State Land Use Commission (LUC). A maximum of 189 lots each a minimum of 5 acres in area could be created.
3. The owners of the subject property originally submitted a subdivision application (SUB 2000-0111) on July 13, 2000 to subdivide the property into (12) lots. Pursuant to Planning Department letter dated September 18, 2000, further action to consider the 12-lot subdivision was deferred to November 18, 2000. The applicant filed the subject variance application on October 17, 2000; and, further action on the pending 12-lot subdivision application has been deferred pending consideration of the subject variance application.

4. The Department of Water Supply (DWS) memorandum, dated December 26, 2000, states in part:

"Please be informed that the Department's existing water system facilities cannot support the proposed subdivision at this time. 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."

5. The State Department of Health (DOH) memorandum dated February 2, 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. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20.

"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 catchment systems for drinking purposes since the quality may not meet public water standards."

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6. The Department of Finance-Real Property Tax memorandum dated February 6, 2001, "Tax Map Key: 1-3-029:003 states in part that "there are no comments at this time;" and that "Real Property taxes are paid through December 31, 2000."
7. The proof of mailing of notices to the surrounding property owners was received on January 23, 2001.
8. Comments regarding the subject variance application were received from Malama O Puna President Rene Siracusa on February 1, 2001. She states in part:

"This developer has made similar requests in the past for a 29 lot subdivision in Pohoiki, seeking a water variance. The request was denied by Virginia Goldstein. There is a good reason why the County enacted the legislation in the first place. These large subdivision approvals requested by Henderson show contempt for the process. I hope that the Director will not rubberstamp these variance requests.

"TMK 4-3-009:041, Lots 5 and 2-A are across from the Puna Geothermal Plant. With the current population, a problem is already presented should there be a need to evacuate residents due to a blowout or other polluting event. Increasing the number of residents so dramatically would put a real burden on the County's emergency responders.

"TMK 1-3-008:004, Lots 4-A-1 and A-1 are part of the Wao Kele O Puna - the last remaining lowland rainforest in the United States. Although no longer pristine along its outer edges, it harbors a rich ecological diversity of native plants and bird life, some of which may be listed species. There may also be archaeological sites on these lots. We urge the Planning Department to insist on biological and archaeological studies of these lots before considering these applications.

"Another factor to be considered for all the above variance requests is the impact these new subdivisions would have on current traffic patterns. Puna has many subdivisions already with substandard or no infrastructure, with thousands of undeveloped lots within them. There is no housing need that will be met by approving Henderson Timberlands' request. Please deny all the above applications.

9. Comments regarding the subject variance application were received from Phillip & Yamindira Branum on February 16, 2001. She states in part

“The rainforests, whether old or new growth, are quickly disappearing on the Big Island of Hawaii. While I do not know the business of Henderson Timberlands, by its name, it does seem like the landowners one would seek to entrust these remaining forest.

“Outside of this purely personal bias, my only concern for this project would be that of the very large parcel, if allowed to divide, would not be considered prime land for forest harvesting. In your letter of intent you state that those parcel intend to be “sold to individuals interested in pursuing agricultural activities.” Will these "activities" include logging? Without a water source, what will "interested parties" be growing?

10. Comments regarding the subject variance application were received from Peter Mackenzie on February 21, 2001. He states in part:

“THERE IS NO HOUSING NEED THAT WOULD BE MET WITH THESE SUBDIVISIONS. Puna has many subdivisions already with substandard or no infrastructure, with thousands of undeveloped lots within them.

“GOOD STEWARDSHIP REQUIRES BIOLOGICAL AND ARCHAEOLOGICAL STUDIES. TMK 1-3-008:004, Lots 4-A-1 and A-1 are part of the Wao-Kele O Puna, a forest system containing rich diversity of native plants and animals. It is exactly this kind of development that has contributed to Hawaii's infamous distinction as EXTINCTION CAPITAL of the world.

“THE EMERGENCY EVACUATION PLAN IS ALREADY PROBLEMATIC. When Puna Geothermal has another blowout or polluting event the emergency evacuation plan is expected to fall well short of success. Increasing the population so dramatically will outstrip the County's ability to respond in an emergency.

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“QUALITY PLANNING REQUIRES COMMUNITY CONTROL OF DEVELOPMENT. We need the legislative backing and commitment from our county to resist haphazard, poorly designed development. There is only quick personal profit for Henderson Timberland, LTD, to justify this request. There is every reason to deny a water variance. Please do so.”

11. Comments regarding the subject variance application were received from Janna Hulse on February 22, 2001. She states in part:

“One of the big issues in the recent county elections involved bringing better water into areas now dependent on home water catchment systems. It seems shortsighted of the county to consider increasing the future burden on the county by adding land permits for catchment systems in these areas. It seems likely that new residents, even those involved in agricultural pursuits, will demand to be included in future any future plans to bring the area into the County water system.

“The Big Island is not known for its outstanding beaches, with the exception of Hapuna. But it is recognized out side Hawaii as being the most natural. The forests, along with the volcano, are the things that draw visitors here. This is especially true on the East Side, and more especially in Puna. Much of the area in question is virgin Ohia forest, and its destruction would be a significant loss to the beauty of the area. The fact that it runs along the Highway adds much to the visitor attractiveness. This forest also provides a home to many birds and other wildlife in the area. I understand the county owns sugar cane land and has been considering how to use it. Why not swap that already existing farmland for forestlands such as these, which can then be preserved for the beauty of the island for generations to come.

“If this Variance Application is approved, as a property owner adjacent to this area, I would like to request that a stipulation be made for a border of trees be left in place to shield neighboring areas and the highway from the noise and dust involved in farming activities.”

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### ALTERNATIVES

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.

### SPECIAL AND UNUSUAL CIRCUMSTANCES

In 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.

The applicant proposes to create 12 new lots from the existing lot which is 914 acres in area. The Zoning Code allows a maximum of 189 new lots to be created in accordance with the requirements of the Subdivision Code. The proposal is less than 10 percent of the maximum allowable.

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.

Although the Department of Water Supply has a system in the area, the system can not provide service to the Project. Additional water can be made available if new sources and related improvements (source, storage, transmission, booster pumps, and distribution facilities) are completed. The Department of Water Supply does not have the necessary funds for these improvements at this time and no time schedule has been set. These improvements are estimated to cost \$6 million.

The applicant could construct on-site improvements (source, storage, transmission, booster pumps and distribution facilities). An estimated \$3 million would be required for such a system.

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 appears to indicate that there is adequate rainfall within the subject property and surrounding areas to support individual or separate private rainwater catchment systems for potable and emergency uses.

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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.

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.

There are no other reasonable alternatives in resolving the difficulty of the applicant. 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.

Traffic concerns raised in the consideration of this Variance Application should be addressed by the applicant pursuant to further review by the concerned agencies under Chapter 23, Subdivisions.

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.

#### DETERMINATION-VARIANCE CONDITIONS

The variance requested to allow a proposed twelve (12) lot subdivision of the subject property 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. 1199.

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2. 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 2000-0111. 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:
  - a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the existing property or the proposed lots created by SUB 2000-0111. No ohana dwellings or additional farm dwellings shall be permitted on any lots created by SUB 2000-0111.
  - b. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to proposed lots created by SUB 2000-0111. No further subdivision of the lots created by SUB 2000-0111 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 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.



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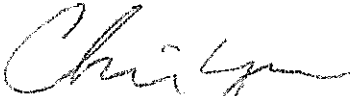
- d. Each permitted dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and 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.
- f. In the event that any of the lots created by SUB 2000-0111 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.
- g. 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 Grantee, the assigns or successors acknowledge that there are no special or unusual circumstances existing on the property which deprive the owner of substantial property rights or which interfere with the best use or manner of development of the property, and therefore, there are no grounds for the grantee the assigns or successors to request a further variance from the water supply requirements to permit further subdivision of the subject property.

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3. The owners, their assigns or successors shall pay any outstanding real property taxes and 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.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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xc: Department of Water Supply  
SUB 00-110