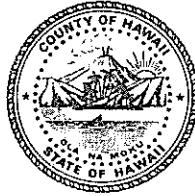


Harry Kim
Mayor



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 10, 2002

CONTINENTAL PACIFIC.
c/o Mr. Henry J. Correa
HANK CORREA REALTY
215 Hualalai Street
Hilo, HI 96720

Dear Mr. Correa:

Variance Permit No. 1285 (VAR 01-073)
Applicant: CONTINENTAL PACIFIC, ET AL.
Owners: CONTINENTAL PACIFIC, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 2-8-007:003, Lot A-2 (SUB 00-0213)

After reviewing the subject variance application and 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) (2) to allow the creation of a five (5) lot subdivision where 4-proposed lots will not have 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:

BACKGROUND

1. **Location.** The subject property, Lot 2-A consisting of 134 + acres, is situated at Makahanaloa and Pepekeo, South Hilo, Hawaii.

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2. **Zoning.** The subject property is zoned Residential (RS-10) and Agricultural (A-20a) by the County. Portions of the property are designated Urban (U) and Agriculture (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant's pending subdivision application's preliminary plat map (SUB 00-0213-PPM) is dated October 22, 2000 and proposes to subdivide Lot 2-A into five (5) lots. Further action on this subdivision application was deferred pending resolve of the variance request and application.
4. **Variance Application.** The variance application was acknowledged on November 21, 2001.

Note: The variance site plan map(s) submitted with the variance application- Attachment "A", dated July 25, 2001 and Attachment "D" (Revised) are not consistent with the subdivision preliminary plat map (SUB 00-0213-PPM dated October 22, 2000). The roadway issues and minimum lot size will be addressed prior to issuance of tentative subdivision approval of SUB 00-0213.

5. **Agency Comments and Requirements (VAR 01-073).**
 - a. The Hawaii County Fire Department's memorandum dated November 28, 2001, states in part the following:

"Fire apparatus roads shall be in accordance with UFC Section 10.207:

"Fire Apparatus Access Roads

"Sec. 10.207. (a) General. Fire apparatus access roads shall be provided and maintained in accordance with the provisions of this section.

"(b) Where Required. Fire apparatus access roads shall be required for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire department vehicle access as measured by an unobstructed route around the exterior of the building.

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“EXCEPTIONS: 1. When buildings are completely protected with and approved automatic fire sprinkler system, the provisions of this section may be modified.

“2. When access roadways cannot be installed due to topography, waterways, nonnegotiable grades or other similar conditions, the chief may require additional fire protection as specified in Section 10.301 (b).

“3. When there are not more than two Group R, Division 3 or Group M Occupancies, the requirements of this section may be modified, provided, in the opinion of the chief, fire-fighting or rescue operations would not be impaired.

“More than one fire apparatus road may be required when it is determined by the chief that access by a single road may be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

“For high-piled combustible storage, see Section 81.109.

“(c) **Width.** The unobstructed width of a fire apparatus access road shall meet the requirements of the appropriate county jurisdiction.

“(d) **Vertical Clearance.** Fire apparatus access roads shall have an unobstructed vertical clearance of not less than 13 feet 6 inches.

“EXCEPTION: Upon approval vertical clearance may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance.

“(e) **Permissible Modifications.** Vertical clearances or widths required by this section may be increased when, in the opinion of the chief, vertical clearances or widths are not adequate to provide fire apparatus access.

“(f) **Surface.** Fire apparatus access roads shall be designated and

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maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all-weather driving capabilities.” (20 tons)

“(g) **Turning Radius.** The turning radius of a fire apparatus access road shall be as approved by the chief.” (45 feet)

“(h) **Turnarounds.** All dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus.

“(i) **Bridges.** When a bridge is required to be used as access under this section, it shall be constructed and maintained in accordance with the applicable sections of the Building Code and using designed live loading sufficient to carry the imposed loads of fire apparatus.

“(j) **Grade.** The gradient for a fire apparatus access road shall not exceed the maximum approved by the chief.” (15%)

“(k) **Obstruction.** The required width of any fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Minimum required widths and clearances established under this section shall be maintained at all times.

“(l) **Signs.** When required by the fire chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.”

Water Supply shall be in accordance with UFC Section 10.301:

“**Sec. 10.301. (a) Type Required.** The chief shall designate the type and number of fire appliances to be installed and maintained in and upon all buildings and premises in the jurisdiction other than private dwellings. This shall be done according to the relative severity of probable fire, including the rapidity with which it may spread. Such appliances shall be of a type suitable for the probable class of fire associated with such

building or premises and shall have approval of the chief.

“(b) **Special Hazards.** In occupancies of an especially hazardous nature or where special hazards exist in addition to the normal hazard of the occupancy, or where access for fire apparatus is unduly difficult, additional safeguards may be required consisting of additional fire appliance units, more than one type of appliance, or special systems suitable for the protection of the hazard involved. Such devices or appliances may consist of automatic fire alarm systems, automatic sprinkler or water spray systems, standpipe and hose, fixed or portable fire extinguishers, suitable asbestos blankets, breathing apparatus, manual or automatic covers, carbon dioxide, foam, halogenated and dry chemical or other special fire-extinguishing systems. Where such systems are installed, they shall be in accordance with the applicable Uniform Fire Code Standards or standards of the National Fire Protection Association where Uniform Fire Code Standards do not apply.

“(c) **Water Supply.** An approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed, in accordance with the respective county water requirements. There shall be provided, when required by the chief, on-site fire hydrants and mains capable of supplying the required fire flow.

“Water supply may consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow.

“The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be protected as set forth by the respective county water requirements. All hydrants shall be accessible to the fire department apparatus by roadways meeting the requirements of Section 10.207.

“(d) **Fire Hydrant Markers.** When required by the chief, hydrant locations shall be identified by the installation of reflective markers.

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“(e) Timing of Installation. When fire protection facilities are to be installed by the developer, such facilities including all surface access roads shall be installed and made serviceable prior to and during the time of construction. When alternate methods of protection, as approved by the chief, are provided, the above may be modified or waived.

“(f) All fire alarm systems, fire hydrant systems, fire extinguishing systems (including automatic sprinklers), Class I, II, III (combination standpipe system) and combined systems, basement inlet pipes, and other fire protection systems and appurtenances thereto shall meet the approval of the fire department as to installation and location and shall be subject to periodic tests as required herein. Plans and specifications shall be submitted to the fire department for review and approved prior to installation.”

- b. The State Department of Health (DOH) memorandum dated February 11, 2002 states:

"The attached comments have been received from our Environmental Programs in Oahu. If you have any questions regarding this, please contact them directly."

The attached comments or memorandum dated February 8, 2002 states in part:

"Thank you for the opportunity to review and comment on the variance application. The VAR was routed to the various branches of the Environmental Health Administration. We have the following comments.

Waste Water Branch (WWB)

The subject site is located in the non-critical wastewater disposal area as determined by the Hawaii county Wastewater Advisory Committee. This area is outside of the County sewer system and infrastructure improvements are not anticipated in the near future. However, the use of on-site Individual Wastewater Systems (IWS) will be acceptable for domestic wastewater disposal.

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All wastewater plans must conform to applicable provisions of the Department of Health's Administrative Rules, Chapter 11-62, "Wastewater Systems." We reserve the right to review the detailed wastewater plans for conformance to applicable rules.

If you have any questions, please contact the WWB at (808) 586-4294.

Safe Drinking Water Branch (SDWB)

The variance application mentioned the utilization of an unidentified, existing agricultural water system for agricultural use and a catchment system for potable water. It is unclear if the applicant is proposing a single catchment system to serve all five lots (total area of 134.9 acres) and how many dwellings involved. There is also a concern that there may be subsequent attempt to utilize the agricultural waters for potable purposes. The Department of Health does not support the creation of new developments that are not served by an approved public water system.

If you have any questions, please contact the SDWB at (808) 586-4258."

- c. The Department of Water Supply (DWS) memorandum, dated November 30, 2001, states in part:

"We have reviewed the subject application and have the following comments.

Please refer to our January 31, 2001, memorandum to you for our comments and requirements. We are enclosing a copy for your information.

Should there be any questions, the applicant may contact our Water Resources and Planning Branch at 961-8070."

The copy of the attached DWS memorandum, dated January 31, 2001, states in part:

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

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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.

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

Note: A recent DWS memorandum dated May 16, 2002 memorandum states:

"This is to follow-up on our November 30, 2001, memorandum to you.

Please be informed that the subject property is eligible for only one 5/8-inch meter at 600 gallons per day, which is subject to change. The developer should indicate which lot this meter will be allotted.

There will be requirements that may vary subject to the lot the meter will be assigned.

Should there be any questions, the applicant may contact our Water Resources and Planning Branch at 961-8070."

8. **Notice to Surrounding Owners.** The applicant's associate-R. M. Towill Corporation, submitted a letter dated December 7, 2002 indicating that notice (documents) pertaining to subject variance application was mailed on November 28, 2002 to surrounding property owners or addresses identified on "Attachment B".
9. **Comments from Surrounding Property Owners or Public.** No further agency comments were received. No oral or written objections from the surrounding property owners or public to the subject variance request were received.

Therefore, considering the background information, information provided by the applicant, 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

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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 this time, 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 applicant and owners 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 at the DWS and Planning Department, and rainfall information provided by the applicant appear 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. The applicant's associate-R. M. Towill Corporation, states "rainfall in the area is estimated at 160 inches per year (Rainfall Atlas of Hawaii, 1996)".

The State Department of Health (DOH) has no specific rules or regulations relating to the utilization, construction or inspection of private roof catchment water systems for potable or emergency uses. However, the DOH did reserve the right to review large catchment water systems and wastewater systems.

One (1) of the proposed lots (Excluding the roadway lot) is eligible for one 5/8-inch meter at 600 gallons per day, subject to DWS requirements. Additional provisions for water storage, water distribution, and construction of private rain water catchment system(s) on the property or the proposed 3-buildable lots without county water will be addressed by the applicant or future lot owner(s).

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The subject variance application was acknowledged by letter dated November 21, 2001. Additional time was required by agencies and DWS to comment on the variance application and subdivision request. The applicants (F. Reynolds Henderson) agreed to extend the decision date to consider the variance request.

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.

VARIANCE DECISION-CONDITIONS

The variance requested to allow the proposed 5-lot subdivision without all lots having an approved water system requirements, pursuant to Chapter 23, Subdivisions: one (1) lot eligible for one-5/8-inch meter at 600 gallons per day, subject to DWS requirements; three (3) agricultural lots without a water system meeting the DWS water system requirements; and one (1) roadway lot.

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-developer, owner(s), their assigns, or successors shall designate and provide the DWS and Planning Department the lot number for the lot assigned the one 5/8-inch water meter at 600 gallons per day, which is subject to DWS requirements.
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 00-0213. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the designated lot 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

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owners:

- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service all proposed lots created by SUB 00-0213. 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. Any lots created by SUB 00-0213 may not be made subject to a condominium property regime.
- c. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the affected lot created by SUB 00-0213 not serviced by a County water system.
- d. Any dwelling constructed on the proposed lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6000-gallon water storage capacity for domestic consumption or potable uses. This private water 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.
- e. 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 location and capacity of the emergency water supply system, including the necessary compatible connector system, 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.
- f. In the event that there are any amendments or changes to the subdivision

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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.

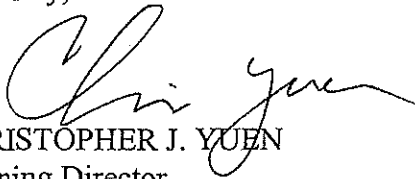
- g. In the event that the County notifies the owner(s) of the lot(s) created by SUB 00-0213 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 00-0213, the owner(s) of the lot(s) created by SUB 00-0213 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply.
 - 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. Any property zoned Single-Family Residential (RS) may not be further subdivided without a county-approved dedicable water system. The subdivider or grantee, the assigns or successors acknowledges that there are 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 a further variance from the water supply requirements to permit further subdivision of the subject property.
4. The subdivision's (SUB 00-0213) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.
 5. Each lot created by SUB 00-0213 shall have no more than one dwelling. No permit to allow an ohana dwelling or building permit issued to construct an "ohana" dwelling shall be granted to the subject property, subject to provisions of the Zoning Code or State Law, which may change from time to time.
 5. The subdivider, owner(s), their assigns or successors shall pay any

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outstanding real property taxes and comply with all other applicable State statutes
and County ordinances pertaining to building improvements and land use.

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: DWS-Engineering Branch
SUB 00-0213
Kona Office File
F. Reynolds Henderson