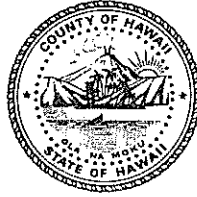


Harry Kim
Mayor



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

May 28, 2002

Mr. Milton De Luz, et al.
c/o WES THOMAS ASSOCIATES
75-5749 Kalawa Street
Kailua-Kona, HI 96740

Dear Mr. De Luz:

Variance Permit No. 1274 (VAR 02-003)

Applicant: WES THOMAS ASSOCIATES

Owners: MILTON DE LUZ, ET AL.

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

Tax Map Key: 4-3-009:035, Lot 19-A (SUB 01-0130)

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), to allow the creation of a five (5) 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:

BACKGROUND

1. **Location.** The subject property, Lot 19-A containing 25.004 acres, being Lot 19 or Grant 3948 to Joao de Pento of Paauilo Homesteads, First Series, and a portion of Lot 18 or portion of Grant 3949 to Luiz de Neus of Paauilo Homesteads, First Series, is situated at Paauilo, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant's surveyor submitted a subdivision application (SUB 01-0130) which includes a preliminary plat map (PPM), dated October 3, 2001, to subdivide "Lot 19-A" into five (5) lots. Further action on the proposed 5-lot subdivision application has been deferred pending consideration of the subject variance application.
4. **Variance Application.** The applicant submitted the variance application on January 25, 2002.
5. **Agency Comments and Requirements (VAR 02-003).**
 - a. The Hawaii County Fire Department's memorandum dated February 13, 2002, 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.

"**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).

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“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 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.

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“(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.

“(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.”

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- b. The State Department of Health (DOH) memorandum dated February 13, 2002 states:

"The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." A "public water system" means a system which provides water for human consumption through pipe or other constructed conveyance if such system has 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. 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. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations (sic) in private water 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 Department of Water Supply (DWS) memorandum, dated February 14, 2002, states in part:

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

Please refer to our November 29, 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 November 29, 2001, states in part:

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

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

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The nearest Department of Water Supply's water system facility is at the end of an existing 4-inch waterline along the Mamalahoa Highway approximately two miles from the property.

Further, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including 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, the applicant may contact our Water Resources and Planning Branch at 961-8070."

8. **Notice to Surrounding Owners.** The applicant submitted a letter dated February 15, 2002, and attached certificate of mailing with affixed mail receipts dated January 15, 2002.
9. **Comments from Surrounding Property Owners or Public.** No other agency comments or 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 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 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.

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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. In addition to the rainfall map extract submitted by the applicant, Department of Land and Natural Resources (DLNR-State) publication, An Inventory of Basic Water Resources Data, Island of Hawaii, and other active rain gage maps, it appears that the property and surrounding areas receive approximately 80 (mean) inches of rainfall yearly.

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 5-lots will be addressed by the applicant or future lot owner(s).

The subject variance application was acknowledged by letter dated February 11, 2002. Additional time was required to consider further rainfall information submitted by the applicant and agency comments.

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 a proposed 5-lot subdivision of the subject TMK property without water system meeting DWS standards is approved subject to the following conditions:

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1. The owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.

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 01-0130. 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 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 01-0130. 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 01-0130 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 01-0130 not serviced by a County water system.

 - c. 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.

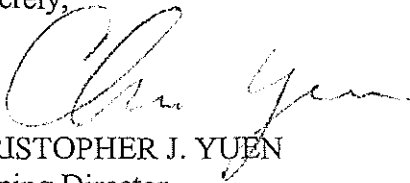
- e. Each permitted dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible 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 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 01-0130 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 01-0130, the owner(s) of the lot(s) created by SUB 01-0130 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. 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.

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3. The subdivision's (SUB 01-0130) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.
4. Each lot created by SUB 01-0130 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 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

WRY:cps
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xc: DWS-Engineering Branch
SUB 01-0130
Planning Dept. - Kona