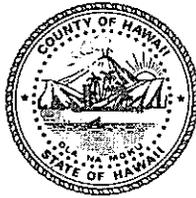


Harry Kim  
Mayor



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 14, 2002

HAMAKUA HOUSING CORPORATION  
BRIAN T. NISHIMURA  
PLANNING CONSULTANT  
Mr. Brian T. Nishimura  
101 Aupuni Street, Suite 217  
Hilo, HI 96720

Dear Mr. Nishimura:

**VARIANCE PERMIT NO.1342(VAR 02-052)**

**Agent: BRIAN T. NISHIMURA  
PLANNING CONSULTANT**  
**Applicant: HAMAKUA HOUSING CORPORATION**  
**Owner: HAMAKUA HOUSING CORPORATION**  
**Request: Variance from Chapter 23, Subdivisions,  
Road Improvements Required**

**Tax Map Key: 3-9-006:003 and 004 (SUB 01-0023); (SUB 01-0024)**

After reviewing your variance application, the Planning Director certifies the approval of your variance request with conditions. The subject variance request is to allow subdivision of the respective TMK property(s) into lots without conforming to minimum roadway standards of the Department of Public Works (DPW) and urban pavement width standards of the Hawaii County Subdivision Code. The agent, on behalf of the owners-applicant, requested a variance from the minimum roadway requirements for the respective subdivision applications pursuant to the Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-86, Requirements for dedicable streets.

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**BACKGROUND**

1. **Location.** The subject property(s), Lot 3 containing 1.135 acres and Lot 4 containing 1.531 acres of the "Kukui Camp Subdivision", are portions of Grant 10,449, Parcel 1 to Kaiwiki Sugar Company, Ltd., and situated at O'okala, North Hilo, Hawaii.
2. **Zoning.** The subject property(s) are zoned Single-Family Residential (RS-10) by the County and designated Urban ("U") by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant-owner acquired the subject property from the former Hamakua Sugar Company. The applicant-owner submitted subdivision applications (SUB 01-0023) and (SUB01-0024) and respective preliminary plat maps (PPM) on or about February 28, 2002. Further action on the subdivision applications were deferred.
4. **Variance Application.** Brian Nishimura Planning Consultant, on behalf of the applicant-owner-HAMAKUA HOUSING CORPORATION, submitted a variance application. The variance request is from the respective DPW memorandums dated April 27, 2001, respectively, and minimum roadway requirements for the respective subdivisions pursuant to Hawaii County Code, Chapter 23, Subdivisions.

Lot 3 fronts on Road Lot "A". Portions of Lot 4 front on the Old Mamalahoa Highway and Road Lot "A" and Road Lot "B". It appears that Road Lot "A" and "B" are owned by the O'okala Community Association.

- The applicant proposes to utilize the existing paved roadways within the Old Mamalahoa Highway and Road Lot "A" and Road Lot "B" as access to the proposed lots being created by the subdivisions.
- In lieu of enlarging the respective rights-of-ways fronting both lots and constructing paved roadways meeting DPW's standards (Standard Detail R-32), the applicant proposes to subdivide the respective lots and allow the future owner to seek access to the proposed lots via the paved roadways within the Old Mamalahoa Highway, Road Lot "A", and Road Lot "B" rights-of-way.

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- The applicant-owner feels that the existing public and privately owned roadways are sufficient and adequate for the proposed subdivisions. According to the applicant-agent, "all ten of the owners of the newly created parcels will be required to be members of the Ookala Community Association, the owners of the road, and will share in the cost of maintaining the road."

The applicant submitted the subject variance application, variance submittals, and filing fee on or about July 26, 2002. The application includes color photographs of the existing roadway lot "A" and "B".

5. **Agency Comments and Requirements (VAR 02-052):**

- a. The State Department of Health (DOH) memorandum, dated August 27, 2002, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. The County of Hawaii Fire Department (HCFD) memorandum dated August 28, 2002. (Refer to memorandum in variance file).

- c. The Department of Public Works (DPW) memorandum dated September 5, 2002, states in part:

"We have reviewed the subject application and offer the following comment:

1. The subdivision improvements as stated in our memo dated April 27, 2001, are the minimum improvements required by the subdivision code. DPW believes that, allowing subdivisions without at least providing the minimum improvements as required by the code, will compromise public safety and welfare."

6. **Notice to Surrounding Owners.** The applicant submitted a list of property owners within 300 feet of the subject property(s) with the variance application. Pursuant to the agent's letter and submittals received on August 22, 2002, a notice was mailed to the surrounding property owners.

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7. **Comments from Surrounding Property Owners or Public.** No comments or objections to the subject variance application were received from surrounding property owners or public

### SPECIAL AND UNUSUAL CIRCUMSTANCES

The following special and unusual circumstances apply to the subject project which exist either to a degree which deprive the applicant/owner 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:

1. Existing and Proposed Residential-Agricultural Uses. (Please refer to applicant's reasons and background report).
2. Proposed Lot and Subdivision Road Improvements. The existing public and nonpublic rights-of-ways fronting the properties have been sufficient to meet the need of the Plantation Subdivisions and surrounding land patterns. The variance conditions set forth at the end of this letter will require limited improvements and require the lots to abide by other private conditions and covenants.

### ALTERNATIVES

The decision alternatives include the following:

1. *Improve the roadways within the existing roadways to the standards required by DPW.* This alternative would require the applicant-owner to improve the existing rights-of-ways to the urban (dedicable) standards according to the DPW memorandums. The costs associated to design and construction of these roadways would be substantial and unfair when weighed against the special and unusual circumstances discussed cited by the agent.
2. *Reasonable subdivision improvements to meet community needs and insuring that minimal emergency vehicular and safety requirements are available.* This is the selected alternative. The proposed alternative is to utilize existing public and private rights-of-way given existing land patterns and other unusual circumstances of the region.

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### **INTENT AND PURPOSE OF THE SUBDIVISION CODE**

The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance. The applicant is requesting a variance to allow the existing paved roadways to be utilized for the proposed lots in lieu of the minimum paved road requirements stipulated by the DPW pursuant to their memorandums dated April 21, 2001, respectively, and other requirements of Chapter 23, Subdivisions.

The adjoining plantation camp and community is rural (residential)-agricultural in character. The character of existing public roads and other access to the subject property(s) and immediate and surrounding areas have not significantly changed over the last 60 years. Existing public access to the existing property and neighborhood is appropriate for current zoning of the area and the intentions by the subdivider to maintain the plantation camp character and low density urban character. By granting this variance, there should be no adverse impact to adjoining properties or other users of the nearby public road or existing access easements to the subject property. Road maintenance within the road lots will be privately addressed and shared among the users.

Therefore, based on the representations made by the applicant and evaluation of existing access and traffic patterns to and near the existing property, the Planning Director has concluded that the requirements stipulated by the DPW memorandums can be modified to allow the proposed subdivisions.

### **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, 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 subject variance application was acknowledged by letter dated August 12, 2002. Additional time to consider the DPW comments and previously approved plantation subdivisions was necessary. The agent agreed to extend the decision dated to November 15, 2002, whereupon, on or before said decision date, the Planning Director shall render a decision on the subject variance.

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The variance requested to allow a proposed subdivisions without providing the minimum road improvements stipulated by the DPW memorandums is approved subject to the following variance conditions:

1. The subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of this variance.
2. The subdivider, owners, their assigns, or successors understand that the 2-lots arising out of SUB 01-0023 and SUB 01-0024 will use and maintain the respective road lots "A" and "B", paved roadways, and grassed roadway shoulders fronting the subject TMK property(s) on their own without any expectation of governmental assistance to maintain the access easements or any other access improvements within the subdivision.
3. These access roadways that were previously created and paved and shall be maintained or enlarged pursuant to the subject variance application. Additional signage at the intersections shall be installed meeting agency requirements. The applicant shall address and meet any drainage requirement prior to final subdivision approval.
4. The applicant, 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 01-0023 and SUB 01-0024. The proposed lots shall become members of the Ookala Community Association or include appropriate deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the pending subdivision applications and be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant:
  - a. The applicant and/ or owners shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing the private road lots "A" and "B" fronting the TMK property designated on the subdivision application's final plat map.

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- b. Upon written demand of the County of Hawaii, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements to the Road and Utility Easements serving the proposed lot(s) arising out of SUB 01-0023 and SUB01-0024 or/and the Old Mamalahoa Road fronting Lot 4. Should the improvement district require acquisition of rights-of-way fronting the lots arising out of SUB 01-0023 and SUB 01-0024, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the lot owner. 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.
        - c. Each lot created by SUB 01-0023 and 01-0024 shall have no more than one dwelling. No ohana dwelling or second dwelling unit shall be permitted on any lot created by SUB 01-0023 and SUB 01-0024.
        - d. The owners understand that the lots created by SUB 01-0023 and SUB 01-0024 have been approved with this road variance, and that they will use and maintain the privately owned access roads to and within their property, water system, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within Road Lot "A" and "B".
        - e. The owners agree to participate in any road maintenance agreement or membership of the Ookala Community Association.
3. 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.

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5. The owners, their assigns or successors shall pay any outstanding real property taxes due and comply with all other applicable State and County rules and regulations pertaining to subdivisions, tentative subdivision approval conditions, approved subdivision construction plans, variance conditions, 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.

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

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xc: DPW-Engineering Branch  
DWS-Engineering Branch  
SUB 01-0023  
SUB 01-0024