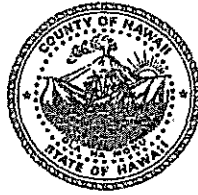


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

May 6, 2003

Mr. Sidney Fuke
SIDNEY FUKU PLANNING CONSULTANT
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

VARIANCE PERMIT NO. 1357 (VAR 03-018)
Agent: SIDNEY FUKU PLANNING CONSULTANT
Applicant: SIDNEY FUKU PLANNING CONSULTANT
Owner: CONTINENTAL PACIFIC, LLC
Request: Variance from Chapter 23, Subdivisions,
Water System and Roadway Improvements
Tax Map Key: 2-7-007:001 & 2-7-009:016 (SUB 02-0149)

After reviewing your variance application and the information included with the variance application, the Planning Director certifies the approval of your variance request with conditions.

The subject variance request is to allow a subdivision of the subject TMK property(s) into five (5) lots, without meeting all water and road requirements under the Hawaii County Code, Chapter 23, Subdivisions, Article 3, Division 4, Street Design, Section 23-41, Minimum right-of-way and pavement widths, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2), and 23-87, Standard for nondedicable street; escrow maintenance fund.

BACKGROUND

1. **Location.** The subject property(s), exceeding 880 + aggregate acres are mauka of the Mamalahoa Highway (Highway 19). Generally, the overall affected area lies midway between the villages of Papaikou and Pepeekeo. According to the subdivision's preliminary plat map(s), the overall area is situated at Aleamai, Kalaoa, Puumoi, Mokuuoniki, Alakahi, Kahalii, Onomea, Kawainui, Kaupakuea, Kahua, and Makahanaloa, South Hilo, Hawaii.

03/28/03
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'MAY '7 2003'

2. **Zoning.** The subject property(s) (SUB 02-0149) are zoned Agricultural (A-20a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC). Property zoned A-20a means an agricultural district (A) with a minimum building site area of twenty acres (20a).
3. **Subdivision Request/PPM.** The proposed 5-lot subdivision application (SUB 02-0149) on or about December 2002 and January 2003. This subdivision application includes a revised preliminary plat map (PPM), dated February 19, 2003, prepared by R. M. Towill Corporation. The owner/applicant proposes to further subdivide the Lot 76 into five (5) lots. Further action on the proposed 5-lot subdivision was deferred by letter dated February 21, 2003 and consideration of the subject variance application and subdivision application (SUB 02-0044).
4. **Variance Application(s).** Existing access to the subject TMK property(s) is from the Mamalahoa Highway via road lots and/or easements. The variance request is from the following water system and roadway requirements of the Subdivision Code:
 - Water Supply (Section 23-84). In lieu of a water system meeting DWS standards, the applicant is requesting a variance to allow private individual rainwater catchment water systems for potable and emergency requirements within the proposed 5-lots;
 - Non-dedicable private street (Section 23-87). In lieu of a 20'-wide oil-treated agricultural pavement within a 50'-wide right-of-way meeting DPW's standards (Standard Detail R-39), the applicant proposes to construct a 10'-wide asphalt paved road with 4'-wide graveled shoulders. The overall width of the "roadway" would be 18 feet wide and "should be sufficient for emergency and farm and other vehicles to safely traverse this area". There would be a 50'-wide right-of-way.
5. **Agency Comments and Requirements (VAR 03-018):**
 - a. The Department of Public Works (DPW) memorandum, dated April 8, 2003, states in part:

“We have reviewed the subject variance application and have the following comments:

We do not believe there are special and unusual circumstances with regard to the requirements of Sections 23-87 and 23-41. These are the minimum requirements imposed on all subdivisions of this type.

To satisfy HCC, Section 23-34, the DPW still believes that the required improvements should be provided. However, should the Planning Director determine that the roadway’s proposed improvement is sufficient to support the subject subdivision, the DPW defers to that determination.”

- b. The State Department of Health (DOH) memorandum, dated October 1, 2001, states:

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

- c. The Department of Water Supply (DPW) memorandum, dated April 29, 2003, states in part:

“We have reviewed the subject Variance Application. Please refer to our April 1, 2003, memorandum to you for our comments and requirements.”

Note: Refer to April 1, 2003 DWS memorandum in SUB 02-0149 file.

- d. No comments to the variance application were received from the Hawaii County Fire Department (HFD).

- 6. **Notice to Surrounding Owners.** Transmittal letter/affidavit/exhibits regarding mailing a notice dated April 2, 2003 to surrounding property owners was received on April 6, 2003. No objections to the subject variance request were received from the surrounding property owners or public. No other agency comments were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The following special and unusual circumstances apply to the subject project, which exist either

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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:

The proposed 5-lot subdivision would be a further subdivision of a "bulk lot" created by a previous subdivision application-SUB 02-0044. According to the Settlement Agreement between the County of Hawaii and Continental Pacific LLC, SUB 02-0044 application was recognized as a reconsolidation /resubdivision of existing lots of record, per §23-7 of the Zoning Code. Thus, the lots created would normally not hope to meet the standards of the zoning and subdivision codes. In the Settlement Agreement, the subdivider agreed to pave 3000 linear feet of road within that subdivision.

The applicant then proposed to pave an additional 23, 000 linear feet within SUB 02-0149, in consideration of being able to subdivide an additional 5-lots, in addition to the pre-existing lots. The proposal therefore offered a significant improvement to the infrastructure of the pre-existing lot subdivision, with a minimal increase in the burden of the subdivision roads.

ALTERNATIVES

The decision alternatives include the following:

1. *Improve the roadways within the existing and proposed easements with an agricultural roadway standard as required by DPW and provide a dedicable water system meeting DWS Standards.* This alternative would require the applicant (owner/subdivider) to improve existing roadways to agricultural standards required by the DPW and install a dedicable water system meeting the requirements of the DWS. The costs associated to design and construct the required DPW paved road and shoulder improvements within the existing and proposed access easements and conventional dedicable water system would be substantial when weighed against the proposed agricultural uses and other special and unusual circumstances or agreements.
2. *Reasonable subdivision improvements to meet minimal emergency vehicular and safety requirements.* This is the selected alternative. The proposed alternative and private road and water system improvements to the proposed subdivision will be superior to unpaved roads and water catchments serving similar lots, elsewhere. Drainage concerns and Improvements within the existing and proposed easements and within proposed subdivision development will be addressed by the subdivider and installed. Intersection, signage, and additional street lighting improvements at the Mamalahoa Highway and

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proposed rights-of-ways will be addressed and installed in accordance with DPW requirements.

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 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 applicant is requesting a variance to proposing alternative access and water system improvements to the allow the proposed 5-lots in lieu of the minimum requirements stipulated by agency comments via memorandums to the proposed 5-lot subdivision and Chapter 23, Subdivisions.

The surrounding areas are rural-agricultural in character and were previously used to grow sugar cane prior to demise of the sugar industry situated along the Hamakua Coast. The character of the existing roadways throughout the subject subdivision and adjoining property(s) have not significantly changed during the past 60 to 70 years. Existing public access to the existing property and neighborhood are appropriate for the subdivision's zoning and the intentions by the subdivider to maintain low intensity agricultural use(s).

Pursuant to the applicant, "Based on the State Department of Land and Natural Resources' Water Resources Investigations Report 95-4212, the nearest rain gauge is Station No. 90.00 in Wainaku, about 2 miles from the subject site. Over the past 62 years, annual rainfall was 136.3". Furthermore, according to a map WATER-RESOURCES INVESTIGATION REPORT 95-4212-PLATE 6, the approximate location of the proposed subdivision and adjoining areas appears to receive between 120 to 160 + inches of rain yearly.

By granting the roadway and water system variance pursuant to Chapter 23, Subdivisions, there should be no adverse impact to adjoining properties or other users of the nearby public road or existing or proposed access easements throughout the pending and proposed subdivision(s). Road maintenance requirements will be shared among the users and water requirements for potable and emergency purposes will be privately addressed by the lot owner(s).

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 all requirements stipulated by the DPW and DWS memorandums can be modified to allow the

proposed 5-lot subdivision.

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 variance requested to allow a proposed 5-lot subdivision without providing the minimum road and water system improvements stipulated by the respective DPW and DWS memorandums to allow the proposed 5-lot subdivision shall be modified and 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 5-lots arising out of SUB 02-0149 will use and maintain the existing access easement and the proposed paved roadways and roadway shoulders to and within the subject TMK property on their own without any expectation of governmental assistance to maintain lot access from the privately owned roadways or any other privately owned access or easement improvements within the subject TMK property or adjoining areas.
3. The proposed roadway within the road lots or easements shall be paved as described in this variance application (10' wide and 2-4' wide gravel shoulders) prior to final subdivision approval (or bonded). Grades shall not exceed a maximum of 20%.
4. Applicant shall meet DPW drainage requirements (e.g., studies, plans, and improvements) and construct (or bond) such improvements prior to final subdivision approval.
5. 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 02-0149. This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of SUB-0149 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 roadway easements outside and within the existing TMK property designated on the subdivision application's (SUB 02-0149) final plat map.
- b. Each lot created by SUB 02-0149 shall have no more than one dwelling. No ohana dwelling or "additional farm dwelling" or second farm dwellings shall be permitted on any lot created by SUB 02-0149 for the reason that this variance is granted based on minimal increase in the number of users.
- c. The owners understand that the lots created by SUB 02-0149 have been approved with this road and water improvements variance, and that they will use and maintain the privately owned access roads to and within their property, private water system, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within private roadways, easements, and the intersection between the privately owned roadways and the Mamalahoa Highway right-of-way.
- d. The owners agree to participate in any road maintenance agreement agreed to among the majority of easement holders for the applicable access easement(s) serving their lot. Said maintenance shall include, without limitation, grass cutting (mowing), timely repair and/or filling of any and all rutted areas and "potholes", and periodic grading and regrassing of existing roadway shoulders within roadway lots or easements to ensure that existing drainage patterns are maintained and that soil runoff within the privately owned rights-of-ways do not affect the surrounding property or immediate areas.
- e. The owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed additional lots without public water created by SUB 02-0149. 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.

- f. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the proposed or affected additional lot created by SUB 02-0149 not serviced by a County water system. No further subdivision of the lots created by SUB 02-0149 will be permitted unless county water system requirements and other requirement of Chapter 23, Subdivisions, are met.
- g. Any lots created by SUB 02-0149 may not be made subject to a condominium property regime.
- h. Any farm dwelling constructed on a 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.
- i. 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.
- j. In the event that the County notifies the owner(s) of the lot(s) created by SUB 02-0149 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 02-0149, the owner(s) of the lot(s) created by SUB 02-0149 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.
- k. 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

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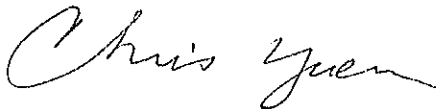
therefore, there are no grounds for the subdivider or grantee, the assigns or successors to request a further variance from the water supply requirements to permit further subdivision of the subject property.

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-Hilo
DWS-Manager
SUB 02-0149