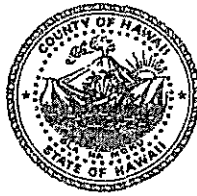


Harry Kim
Mayor



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

June 2, 2003

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

Dear Mr. Fuke:

VARIANCE PERMIT NO. 1363 WH (VAR 03-019)
Agent: SIDNEY FUKU PLANNING CONSULTANT
Applicant: McCANDLESS LAND & CATTLE COMPANY
Owner: McCANDLESS LAND & CATTLE COMPANY
**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)**
Tax Map Key: 8-6-001:Por. 001, (SUB 03-0012)

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 a proposed 2-lot subdivision to be created 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(s), Lot 1 consisting of 9,145 + acres of the Honokua Hui Partition, being a portion of R.P. 6857 and L.C. Aw. 7713 Apana 9 to V. Kamamalu, is/are situated at Kealia 2nd and Honokua, South Kona, Hawaii.

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Furthermore, the subject TMK property is identified and part of a recent judicial partition action (McCandless Land & Cattle Company vs. D. Kealohapauole, Et al.; Civil No. 92-185K).

2. **Zoning.** The subject property is split-zoned Agricultural (A-5a and A-20a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant (Subdivider: McCandless Land & Cattle Company) submitted a subdivision application (SUB 03-0012) which includes a preliminary plat map (PPM), dated January 1, 2003, to subdivide the subject property into two (2) lots. Further action on the proposed 2-lot subdivision application has been deferred pending receipt of the agency requirements for the subdivision pursuant to a letter dated February 6, 2003 in the subdivision file (SUB 03-0012).
4. **Variance Application.** The applicant submitted the subject variance application on March 7, 2003. The applicant's agent submitted an authorization letter on June 2, 2003.
5. **Agency Comments and Requirements WH (VAR 03-019):**

- a. The State Department of Health (DOH) memorandum is dated April 28, 2003. (Refer to memorandum in variance file).
- b. The Department of Water Supply (DWS) memorandum dated May 8, 2003 states in part the following:

"We have reviewed the subject Variance Application. Please refer to our memorandum of April 22, 2003, for our comments and requirements.

Note: The copy of the DPW memorandum dated April 22, 2003 received on June 2, 2003 states in part the following:

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

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Please be informed that proposed Lot B-1 is not within the service limits of the Department's existing water system facilities.

The nearest Department of Water Supply water system facility is at the end of an existing 8-inch waterline along Mamalahoa Highway, approximately 2.3 miles from Lot B-1."

- b. To date, no comments were received from the County of Hawaii Fire Department.
6. **Notice to Surrounding Owners.** The applicant submitted a copy of a notice, affidavit, and other attachments sent to surrounding property owners. Pursuant to these submittals, it appears that notice was mailed on or about April 4, 2003.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written comments from surrounding property owners or objections from the public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The 2-lot proposed subdivision is being done to effectuate a recent judicial partition action (Civil No. 92-185K-Copy in SUB 02-0110 file).

The property's zoning requires that a proposed subdivision must result in the creation of lots being a minimum five (5) acres or larger and subdivision improvements meeting the original Zoning and Subdivision Codes adopted in 1967. According to the information and copy DWS memorandum submitted by the applicant together with recent April 22, 2003 DWS memorandum, it appears that the nearest County water system to the proposed 2-lot subdivision is over 2.5 + miles away. In addition, due to the property's rural location, land character, soil quality, and other demographic factors, etc., the expectation or justification for expenditure of public money to expand the nearest DWS water system or extend the public water infrastructure within the Hawaii Belt Road to the proposed subdivision and surrounding areas remain remote at this time. The availability of public money and justification to expand public infrastructure within the South Kona district was limited in the 1950's and 1960's. These circumstances and other limitations affecting the property and adjoining areas will remain so for the next 10 to 20 years.

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The imposition of water requirements is applied on a uniform basis for subdivision proposals. In this instance the applicant (agent), on behalf of the applicant/subdivider, is requesting a 2-lot subdivision to satisfy the judicial decree and allow private water catchment systems to be utilized for potable and emergency needs in lieu of a water system requirements of the County Subdivision Code. According to the agent, current rainfall (mean rainfall) within the property ranges between 48 + to 60 inches of rainfall annually.

Therefore, considering the judicial decree and variance background, and other information received, there are special or unusual circumstances applying to the subject property and proposed 2-lot subdivision which exist either to a degree which deprive the subdivider or owner(s) 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 applicants. The first alternative requires the applicants to extend or improve the existing county water system located approximately 2.5 + miles away from the TMK 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 a two (2) lots subdivision would be putting excessive demands upon the applicants 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 for a 2-lot subdivision. According to a map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212 issued by the Department of Land and Natural Resources (State-DLNR) and other rainfall information, it appears that the property annually receives between 48 to 60 inches of rainfall. The analysis of

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the applicant's submittals and other recent rainfall data indicate the TMK property and surrounding areas receive approximately 48.75 inches or more 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.

The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for the proposed lots will be addressed by the applicants or future lot owner(s).

The subject variance application was acknowledged by letter dated March 24, 2003. Additional time was required for the agent to submit an authorization letter and consider recent DWS memorandums. The applicant (agent) agreed to extend the decision date to on or before June 6, 2003.

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 request to allow a proposed 2-lot subdivision of the subject TMK property without providing 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 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 03-0012. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the all lots arising from the approval of pending 2-lot 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 proposed 2-lots without public water created by SUB 03-0012. 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. 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 2-lots created by SUB 03-0012 not serviced by a County water system. No further subdivision of the lots created by SUB 03-0012 will be permitted unless county water system requirements and other requirement of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 03-0012 may not be made subject to a condominium property regime.
- d. 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.

Extreme care should be taken during development and grading to protect the site during heavy rains and flash flooding.

- e. Each permitted farm 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 03-0012 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 03-0012, the owner(s) of the lot(s) created by SUB 03-0012 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.
- 3. The subdivision's (SUB 03-0012) final plat map (minimum lot size, minimum average lot size requirements, etc.) shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No other variance to permit this subdivision shall be granted to allow SUB 03-0012.
 - 4. 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.

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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:pak

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xc: Manager-DWS
SUB 03-0012
Planning Dept. – Kona