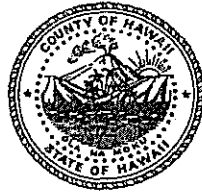


Harry Kim  
Mayor



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

March 18, 2004

Mr. Brian Takeda, Project Planner  
R. M. TOWILL CORPORATION  
420 Waiakaimilo Road, Suite 411  
Honolulu, HI 96817-1937

Dear Mr. Takeda:

**VARIANCE PERMIT NO. 1412 (VAR 03-057)**

**Applicant: DAVID S. DE LUZ, SR. TRUST**

**Owner: DAVID S. DE LUZ, SR. TRUST**

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

**Tax Map Key: 4-3-011:027, (SUB 03-0064)**

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 proposed 11-lot subdivision (SUB03-0064) to be created without having a water system meeting with the minimum requirements of the Department of Water Supply (DWS).

The Planning Director has concluded that a variance from the minimum subdivision water system requirements for the proposed 11-lot subdivision can be approved based on the following findings:

#### **BACKGROUND**

1. **Location.** The subject property, Lot 13 consisting of 80.4 + acres, being all of Grant 4580 to W. Foster, is situated at Paauilo Homesteads, Hamakua, 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 submitted a subdivision application (SUB 03-0064) and includes a copy of the subdivision application's preliminary plat map (PPM) showing a proposed subdivision of Lot 13 into 11-lots (Lot 13-A thru 13-K and roadway lot-Lot 13-L). Further action on proposed 11-lot subdivision application was deferred according to a letter dated June 16, 2003 in the subdivision application file.
4. **Variance Application.** The applicant submitted a variance application on or about September 4, 2003. The subject variance application was acknowledged by letter dated September 15, 2003. Additional time to review comments to the subdivision application and incorporate agency comments was necessary. The applicant agreed to extend the decision date to on or before March 19, 2004. The applicant, on behalf of the subdivider/owner is requesting a variance to allow a 11-lot subdivision (SUB 03-0064) of the subject TMK property according to the PPM and without providing water system improvements pursuant to Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2).

The application states in part:

"Elevations at the site range from approximately 2,000 feet to 2,600 feet elevation relative to mean sea level. Average annual rainfall in the area is estimated at between 80 and 120 inches per year (Atlas of Hawaii, 1998). This amount of rainfall is expected to permit use of individual catchment systems capable of supplying sufficient potable and emergency water for an average family of four persons. Because the use of catchment systems are not regulated by the County DWS or State of Hawaii, guidelines for the safe development and use of such systems have been published by the State Department of Health, Safe Drinking Water Branch. It is proposed that these guidelines be used for the development of the proposed individual private catchment systems."

4. **Agency Comments and Requirements (VAR 03-057):**

- a. The Hawaii County Fire Department's memorandum, dated October 2, 2003, requires a water supply capable of providing the required fire flow.
- b. The State Department of Health (DOH) memorandum dated October 20, 2003, states in part:

"The subdivision consists of less than 50 lots/dwelling units. The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used on each lot will be determined by the wastewater rules in effect at the time of building permit."

- c. The Department of Water Supply (DWS) memorandum, dated October 27, 2003, states in part:

"We have reviewed the subject Variance Application and have the following comments.

We do not object to granting the current request for variance from subdivision code regarding water system improvements. We understand that the applicant is proposing to use catchment systems to provide for all water supply needs associated with the proposed subdivision and therefore will not be placing any additional demand on County water systems."

- 6. **Notice to Surrounding Owners.** The applicant's transmittal letter dated October 5, 2003 and mailing receipts were received on October 7, 2003.
- 7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letters or concerns from surrounding property owners, public or Association were received:
  - a. Objection letter dated October 8, 2003 from Robin T. Jensen, Et al.
  - b. Objection letter dated October 10, 2003 from Peter M. Jensen.
  - c. Transmittal letter dated December 3, 2003 from Paauilo Mauka-Kalopa Association citing concerns and request to defer application.

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Therefore, after considering the subdivider/owner(s) circumstance and variance background information, rainfall information provided by the applicant, and agency comments, the Planning Director has determined that there are special or unusual circumstances applying to the subject TMK property which exist either to a degree which deprive the owner of 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 and owner. The first alternative requires the applicants to extend or 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 one of the proposed lots arising out of proposed 11-lot subdivision (SUB 03-0064) would be putting excessive demands upon the owner or developer 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 the proposed lots.

The map-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212 in the Planning Department appears to indicate that the proposed 11-lot subdivision is near active rain gage station "221.2". As such, the subject property and adjoining areas receive between 160 inches to 200 inches of rainfall annually. The Atlas of Hawaii Third Edition-Map (Page 87) denotes "Lines of equal average annual rainfall in inches" on the map indicates that the subdivision appears to be within a region receiving between 80 inches to 120 inches per year. Therefore, the

property receives sufficient rainfall to support a private rainwater catchment system to store and supply rainwater for an average family (4 persons) cited in the applicant's background report and separate private rainwater catchment system for emergency needs.

Given the condition or capacity of the nearest public or DWS system and uncertainty and expense of drilling a private well and cost to construct a private water system for the proposed subdivision, the variance request is reasonable.

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 proposed subdivision creates fewer lots than would be possible under the A-5a zoning.

The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for potable and emergency needs on the proposed lot without public water will be addressed by the subdivider or future lot owner(s) and 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.

#### **VARIANCE DECISION-CONDITIONS**

The variance request to allow a proposed subdivision of the subject TMK property or Lot 13 into 10 lots and 1 roadway lot without providing a water system for the buildable lots meeting DWS standards is approved subject to the following conditions:

1. The owner(s), his/their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. WATER VARIANCE: The owner(s), his/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 03-0064. This written agreement shall contain the following deed language, being covenants, conditions, and

restrictions affecting proposed lots without public water of the pending 11-lot subdivision application (SUB 03-0064) 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 subdivider or owner(s) agree and accept the fact that a County dedicable public or DWS water system is not now able to service the proposed lots created by SUB 03-0064. 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 lot(s) created by SUB 03-0064 may not be made subject to a condominium property regime. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling on any lots created by SUB 03-0064.
- c. The owner(s) agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the lots created by SUB 03-0064 not serviced by a County water system.
- d. Any farm dwelling constructed on the buildable lots or any lots not serviced by a County (DWS) 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 rainwater 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 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.

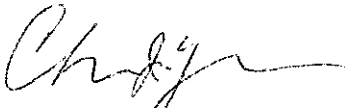
- f. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded agreement shall be binding upon the subdivider, 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 03-0064 that the Hawaii County Water System has been upgraded or an improvement district initiated to enable service to any lot created by SUB 03-0064 without County water, the owner(s) of the affected lot created by SUB 03-0064 without County water shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Hawaii County 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 or other agency requirements to permit any further subdivision of (SUB 03-0064) or any request to further subdivide any lots arising out of SUB 03-0064 unless the requirements of Chapter 23, Subdivisions and other agencies are met.
3. The subdivider or owner(s), their assigns or successors shall comply with other agency requirements not covered by this variance and the subdivision's (SUB 03-0064) final plat map shall comply with the requirements of the Chapter 23, Subdivisions.

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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.

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: Manager-DWS  
SUB 03-0064  
Planning Dept. – Kona  
Robin T. Jensen, Et al.  
Mr. Peter M. Jensen  
Paauiilo Mauka-Kolopa Community Association