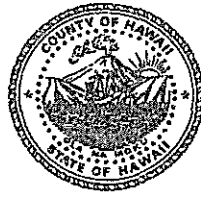


Harry Kim  
Mayor



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

April 22, 2004

Mr. William L. Moore  
WILLIAM L. MOORE PLANNING  
159 Haili Street  
Hilo, HI 96720

Dear Mr. Moore:

**VARIANCE PERMIT NO. 1417 (VAR 03-062)**  
**Applicant: WILLIAM L. MOORE**  
**Owner: STATE OF HAWAII-DHHL**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Article 6, Division 2, Improvements Required,**  
**Section 23-84, Water Supply, (1) (2)**  
**Tax Map Key: 4-6-011:004, (SUB 02-0125)**

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.

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 8-A consisting of approximately 656.289 acres, being portion of Government (Crown) Land of Honokaia, and situated at Honokaia, Hamakua, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-40a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The State of Hawaii/Department of Hawaiian Homelands-DHHL submitted a subdivision application (SUB 02-0125) which includes a preliminary plat map (PPM), dated July 22, 2003, proposing to subdivide subject TMK property (Lot 8-A) into two (2) lots. Further action on the proposed 2-lot subdivision application was deferred pursuant to letter dated July 16, 2003 in SUB 02-0125.
4. **Variance Application.** The applicant submitted the subject variance application on or about September 25, 2003. (Note: The assignment of variance application number-**VAR 03-051** in the heading(s) of the acknowledgment letter, agency memorandums, and respective public noted was an error and should read **VAR 03-062**).

In addition, the applicant submitted another letter, which states in part:

“The purpose of the requested subdivision, which required the water variance, is to allow DHHL: to withdraw approximately one-half of the subject area to allow for the relocation of an existing pasture lessee. The balance of the area will be retained by Mr. Brillhante under his current lease. At the end of the lease period, the remaining parcel will most likely be leased to a native Hawaiian under the Department Pasture Leasing program.”

5. **Agency Comments and Requirements (VAR 03-062):**
  - a. The Hawaii County Fire Department’s memorandum is dated October 22, 2003. (Refer to memorandum in variance file).
  - b. The State Department of Health (DOH) memorandum is dated November 7, 2003. (Refer to memorandum in variance file).
  - c. The Department of Water Supply (DWS) memorandum, dated December 29, 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. The Department

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of Water Supply's existing facilities are unable to support the proposed subdivision. However, we understand 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 requesting any support from County water systems.

Any future requests for County water to this subdivision will necessarily be denied until such time as adequate additional system facilities may be installed. Extensive improvements and additions, which may include source, storage, transmission, and booster pump facilities, must be considered. Currently sufficient funding is not available and no time schedule is set."

6. **Notice to Surrounding Owners.** The applicant forwarded an affidavit, list of surrounding property owners, copy of a notice dated October 17, 2003, and other submittals. Pursuant to these submittals, it appears that said notice was mailed on or about October 17, 2003.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection from a surrounding property owner was received:
  - a. Objection letter dated December 8, 2003 to subject application from Melvin Miranda which states in part:

"I oppose this variance application because I think water should be brought into these lots before they are subdivided. All property owners will benefit from this."

Therefore, after considering the circumstances 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 TMK property which exist either to a degree which deprive the applicants or owners 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.

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### **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 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 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 rainfall within the subject property utilizing maps at the Planning Department, DPW, and 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 subdivision. According to the applicant "An Inventory of Basic Water Resources Data: Island of Hawaii-Report R-34" and examination of a map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the proposed 2-lot subdivision appears to be nearest active rain gage station ("215.0"). The analysis of the applicant's submittals together with other published data and rainfall maps data indicate the subject TMK property receives approximately 60 +/- to 80 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.

The intent of the subdivision is to modify a lease of a large tract of land for DHHL. The proposed 2-lot subdivision will create 2-lot(s) consisting of approximately 276+ acres and 382+ acres. The proposed lot size(s) are larger than the density permitted pursuant to the subject TMK property's zoning-A-40a.

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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)-leasee.

The subject variance application was acknowledged by letter dated October 9, 2003. Additional time was required to consider DWS comments and incorporate other submittals into the variance application was necessary. The applicant, in a letter dated April 16, 2004, agreed to extend the variance decision date to April 30, 2004.

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 variance 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 02-0125. 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 subdivision SUB 02-0125.

- 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 lots created by SUB 02-0125 not serviced by a County water system.
- c. Any farm dwelling constructed on any 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.
- d. 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 02-0125 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 02-0125, the owner(s) of the lot(s) created by SUB 02-0125 shall participate in such improvement district or shall pay their pro-rata share of

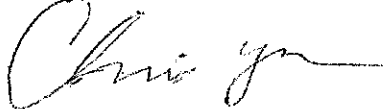
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the upgrade and installation of laterals, as determined by the Department of Water Supply.

3. The subdivision's (SUB 02-0125) final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.
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

WRY/CJY:pak  
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xc: Manager-DWS  
SUB 02-0125  
Planning Dept. - Kona