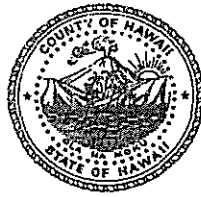


Harry Kim  
Mayor



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

October 27, 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. 1485 (VAR 03-064)**

**Applicant: KUKAIAU ESTATES, LLC**

**Owner: KUKAIAU ESTATES, LLC**

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

**Tax Map Key: 4-2-008:010 and 016, (SUB 04-0053)**

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 16-lot subdivision (SUB 04-0053: 15 lots/1 roadway lot) of the referenced TMK property(s) without providing a water system meeting the minimum requirements of County Department of Water Supply (DWS). The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2). Because there are two water meters available, this variance authorizes the creation of 13 lots, plus one road lot, without water service.

The Planning Director has concluded that a variance from the minimum subdivision water system requirements for the proposed 16-lot subdivision can be approved based on the following findings:

*Hawai'i County is an equal opportunity provider and employer.*

*WJY*  
1064755

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## **BACKGROUND**

1. **Location.** The subject property(s), containing an aggregate area of approximately 613.980 acres, being a portion of R.P. 4527, Mahele Award 26-B to Kailakanoa and Lot C-2 and Lot F of Land Court Application 1090, are situated at Kukaiiau and Koholalele, Hamakua, Hawaii.
2. **Zoning.** The TMK property is zoned Agricultural (A-40a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant submitted a subdivision application (SUB 04-0053) and includes a copy of the subdivision application's preliminary plat map (PPM) showing a proposed 16-lot subdivision. Further action on 16-lot subdivision application was deferred according to a letter dated July 12, 2004 in the subdivision application file.
4. **Variance Application.** The subject variance application was acknowledged by letter dated July 13, 2004. Additional time to incorporate agency variance comments and complete the variance background report was necessary. The applicant agreed to extend the decision date to on or before October 31, 2004. The applicant, on behalf of the subdivider/owner is requesting a variance to allow a 16-lot subdivision (SUB 04-0053) 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 variance application's background report by R.M. Towill Corporation states in part:

Page 4 and 5. "There is an existing master water meter located on Hawaii Belt Road, makai of the proposed project. According to DWS the master water meter connects to the private Paauilo Water System which traverses the Kukaiiau Estates project site. The system, however, does not have the capacity for additional service. An agreement between DWS and the Paauilo Water Association in exchange for replacement and construction of 3,540 linear feet of new water line and appurtenances. Two of the 15 units of water were since reallocated by DWS to Kukaiiau Ranch LLC.

Because of the shortage of water availability in the area, Kukaiau Ranch LLC, a 12 lot subdivision, has similarly requested a variance from Chapter 23, Article 6, Division 2, Section 23-84, Water Supply, (1). The variance was approved on November 230, 2001.

Although it is possible to connect to the master meter on Hawaii Belt road, through a connection with the Paauilo Water System, there is insufficient available water capacity to make this alternative feasible.”

Page 6. “Sufficient water supply will be developed with adequately designed and constructed private individual catchment systems. Rainfall in the subject area is approximately 60 to 100 inches per year, and is considered sufficient for the development of catchment systems for an average family of 4 persons for an average family of 4 persons for potable and emergency (fire) uses.”

3. **Agency Comments and Requirements (VAR 04-064):**

- a. The State Department of Health (DOH) memorandum is dated July 26, 2004. (Refer to DOH memorandum in variance file).

“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 Hawaii County Fire Department’s memorandum is dated July 28, 2004. , 2003, requires a water supply capable of providing the required fire flow.

- b. The County of Hawaii Fire Department (HCFD) memorandum is dated July 28, 2004. (Refer to HCFD memorandum in variance file).

- c. The Department of Water Supply (DWS) memorandum, dated July 29, 2004, states in part:

“For your information, the subject property is not within the service limits of the Department’s existing water system facilities.

Mr. Brian Takeda, Project Planner  
R. M. TOWILL CORPORATION  
Page 4  
October 27, 2004

The nearest Department of Water Supply's water system facility is located at an existing 6-inch waterline along the Mamalahoa Highway approximately 2.5 miles from the property, and the property is located at an elevation where the Department's existing water system facility cannot provide water at adequate pressure and volume under peak-flow conditions. In addition to this and in accordance with the Department's existing water availability conditions in the Hamakua area, water is limited to only one 5/8-inch meter and an average of 400 gallons of water per day for existing lots of record only. Water is not available for change of zone, subdivisions, or land use applications. Please note that the existing water availability conditions are subject to change without notice.

Therefore, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set."

6. **Notice to Surrounding Owners.** The applicant's transmittal letter dated October 8, 2004 and attachment (US Mail-Receipts affixed to attachment) were received on October 8, 2004.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following comments or letters were received:
  - a. Letter and comments from George Klare received on or about August 6, 2004.
  - b. Letter and comments from Keith Dee, Et al. received on or about August 9, 2004.

These letters asked for the preservation of the forest and mentioned the cultural significance of the area. These concerns will be dealt with before tentative subdivision approval based on Section 23-26 of the subdivision code.

Therefore, after considering the subdivision's background, applicant's information, rainfall information within the subdivision, and agency comments, the Planning Director has determined that the following special and unusual circumstances apply to the existing TMK property(s) which exist either to a degree which deprive the applicant of substantial property rights that

would otherwise be available or to a degree which interferes with the best use or manner of development of the existing TMK property(s):

1. The proposed 16-lot (15-buildable-agricultural lots and 1 roadway lot) subdivision is intended to create agricultural (A-40a) lots and roadway lot.
2. The proposed subdivision is outside the County's water service area (in terms of pressure zones), even if the existing County's water transmission line were to be completely upgraded to DWS standards to the existing master meter.
3. According to the applicant and published sources, rainfall ranges within the subject TMK parcels show an annual rainfall of approximately 80 inches in the lower elevations to 120 inches at the higher elevations. Private water catchment systems within the proposed subdivision could adequately be designed and constructed to provide potable water and emergency water for a typical family (4-persons).

### **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 proposed 16-lot subdivision (SUB 04-0053) 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.

Mr. Brian Takeda, Project Planner  
R. M. TOWILL CORPORATION  
Page 6  
October 27, 2004

The map-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212 in the Planning Department appears to indicate that the proposed 16-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(s) or proposed subdivision 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 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(s) into 15 buildable-agricultural lots and 1 roadway lot without providing a water system 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 04-0053. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting proposed lots without public water of the pending 16-lot subdivision application (SUB 04-0053) 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 04-0053. 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 04-0053 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 04-0053.
- 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 04-0053 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.

Mr. Brian Takeda, Project Planner

R. M. TOWILL CORPORATION

Page 8

October 27, 2004

- 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 04-0053 that the Hawaii County Water System has been upgraded or an improvement district initiated to enable service to any lot created by SUB 04-0053 without County water, the owner(s) of the affected lot created by SUB 04-0053 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 04-0053) or any request to further subdivide any lots arising out of SUB 04-0053 unless the requirements of Chapter 23, Subdivisions and other agencies are met.



Mr. Brian Takeda, Project Planner

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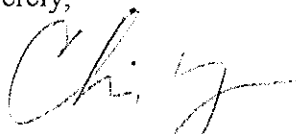
Page 9

October 27, 2004

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 04-0053) final plat map shall comply with the requirements of the Chapter 23, Subdivisions.
4. Prior to final subdivision approval, the subdivider, applicant, owner(s) their assign or successors shall designate and provide the DWS and Planning Department the lot numbers for the two (2) proposed agricultural lots that will receive their respective one (1) unit of water from the DWS. The subdivider or owners of these two (2) agricultural lots must pay the appropriate facilities charge and install any water line improvements that may be necessary before the lots can receive their one (1) unit of water. Each unit of water is limited to a daily maximum use of 400 gallons per unit. The two (2) designated lots will be required to comply and meet all conditions stipulated by the Agreement with the DWS dated September 19, 1997.
5. 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:cd/mad

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xc: Manager-DWS  
SUB 04-0053  
Planning Dept.-Kona  
George Klare  
Keith Dee, Et al.