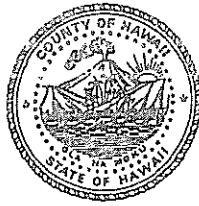


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

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January 4, 2006

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Gentlemen:

**VARIANCE FILE NO. 1509 (WH (VAR 04-094))**  
**Applicants: MICHAEL KRONES, ET AL.**  
**Owners: MICHAEL KRONES, ET AL.**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Article 6, Division 2, Improvements Required,**  
**Section 23-84, Water Supply, (1) (2)**  
**Tax Map Key: 8-9-015:008, (SUB 04-0144)**

This is an amended decision letter on the request for a water variance filed by Michael Krones, et. al. The previous decision, dated April 18, 2005, denied the request for the water variance based on the low rainfall at the site in question. The applicants filed an appeal with the Board of Appeals and presented evidence about their actual and ongoing agricultural operations, which justify a need for housing for agricultural employees. Under current Hawaii County zoning code provisions and Planning Department rules and practices, the property, even if not subdivided, could potentially support additional farm dwellings for agricultural employees, and rainfall is not a factor in granting additional farm dwellings. Thus, if homes in the proposed subdivision are made subject to the same standards as additional farm dwellings, the subdivision does not result in more homes than would be allowed on the property in an unsubdivided state. The applicant

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also represented that the long-term intent was to continue to operate the property as a farming unit, even if subdivided, and that the purpose of the subdivision was to facilitate financing.

The Director and applicant therefore agreed that a variance from the water supply requirements to permit the subdivision could be granted, if the construction of homes on the property were made subject to the prevailing rules and practices of the Planning Department with respect to additional farm dwellings, treating the lots created by the subdivision as one lot for the purposes of additional dwellings. The primary concern with the lack of a water system is that the subdivision would normally allow more homes to be placed on the property. This would not be the case if the variance were granted with the foregoing conditions.

The Planning Director therefore grants a variance from the water supply requirements of sec. 23-84 of the subdivision code to permit a 4-lot subdivision of the subject property without a water system meeting the requirements of the Department of Water Supply, subject to conditions.

The Director finds that there are special and unique circumstances that apply to the subject property, in that it contains active agricultural operations, that the proposed subdivision is meant to facilitate financing for an agricultural operation that is intended to continue to be operated as a unit, and that the owners are willing to abide by limits on the construction of farm dwellings on the entire property.

The Director also finds that there are no other reasonable alternatives to the proposed variance.

Based on the foregoing findings, the variance will be consistent with the general purpose of the zoning district, and the intent and purpose of the Zoning Code, Subdivision Code, and the County General Plan. The variance will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character or adjoining properties.

The variance is granted subject to the following conditions:

1. The owners, successors and assigns shall be responsible for complying with the stated conditions of approval.
2. The owners, successors and assigns shall file a written agreement with the Planning Department no later than one year from the issuance of tentative subdivision approval, and before receipt of final subdivision approval. The agreement shall contain the following deed

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covenants, listed below as paragraphs 2(a)-(g), and 3(a)-(f), which shall be recorded in the Bureau of Conveyances by the Planning Department, at the applicant's cost. The covenants shall apply to any and all lots created by the subject subdivision:

- 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 04-0144. 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 lots created by SUB 04-0144 not serviced by a County water system. No further subdivision of the lots created by SUB 04-0144 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. The lots created by SUB 04-0144 may not be made subject to a condominium property regime.
- d. Any farm dwelling constructed on a lot created by SUB 04-0144 shall be provided with and maintain a private potable rainwater 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 rainwater 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. 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 04-0144 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 04-0144, the owner(s) of the lot(s) created by SUB 04-0144 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.

3. (a) The lots created by the subdivision of the subject property will be treated as one lot for the purposes of Rule 13 of the Planning Department Rules, as more specifically set forth below. The term "subject property" applies to the entire 32-acre property:

(b) The first farm dwelling on the subject property shall be permitted upon the owner receiving and acknowledging a "Farm Dwelling Notice" that states the requirements of Chap. 205, Hawaii Revised Statutes, and Land Use Commission Rule 15-15-25.

(c) Any subsequent dwellings on the subject property shall be considered "additional farm dwellings" under Rule 13, even if the dwelling is the first one on a particular lot created by the subdivision. The owner shall apply for and receive a "farm dwelling agreement" under Rule 13. The farm dwelling agreement may be executed by the owner of a particular lot, rather than by all owners of the subject property, if the applicant relies entirely upon agricultural activity on that lot in the farm dwelling agreement. Otherwise, the farm dwelling agreement shall be executed by the owners of all lots whose agricultural activity is relied upon by the applicant in the farm dwelling agreement.

(d) The second dwelling on the subject property shall be considered the "first additional farm dwelling", and shall need proof of agricultural activity requiring at least one day's work per week by a farm employee or owner. The normal requirement of proof of at least

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one days' work for the first farm dwelling shall be waived. If based on proposed agricultural activity, the activity shall be implemented within three years of the farm dwelling agreement.

(e) Any subsequent dwellings on the subject property, after the "first additional farm dwelling", shall need proof of existing agricultural activity requiring at least one full-time employee per home.

(f) The additional farm dwellings shall only be occupied by persons involved in the agricultural activity and their family members.

(g) By unanimous consent, the owners may redesignate which dwelling is considered the first, second, third, etc. farm dwelling.

(h) If Hawaii County or the state adopt more stringent standards for additional farm dwellings on a lot, which standards apply to the subject property, the standards in this variance shall apply as long as the dwelling in question is actually the first dwelling on the subdivided lot in question, otherwise, the more stringent standards shall apply.

(i) The subdivider and all grantees, successors, and assigns acknowledge that the parcel was created by a variance from the normal subdivision requirements of Hawaii County, and that there are no special or unusual circumstances applying to the property which deprive the owner of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the property, and hence, no grounds exist or will exist for a variance from the subdivision code to permit further subdivision of the property, and that changes in the owner's personal or financial situation after acquiring the property also will not

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constitute grounds for a variance from the subdivision code to permit further subdivision of the property.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

CJY:pak  
Wpwin60/Chris/Krones variance letter

cc: Mr. William Yamanoha  
Mr. Daryn Arai  
Ms. Alice Kawaha  
Amy Self, Esq.  
Planning Department - Kona