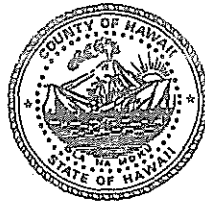


Harry Kim  
Mayor



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

August 10, 2005

Mr. Gregory R. Mooers  
MOOERS ENTERPRISES, LLC  
P. O. Box 1101  
Kamuela, HI 96743

Dear Mr. Mooers:

**VARIANCE PERMIT NO. VAR 05-010**

**Applicant: GREGORY R. MOOERS/  
MOOERS ENTERPRISES, LLC**  
**Owners: JOSEPH PETRIE, ET AL.**  
**Request: Variance from Chapter 23, Subdivisions,  
Article 6, Division 2, Improvements Required,  
Section 23-84, Water Supply (1) (2)**  
**Tax Map Key: 4-3-012:001, (SUB 04-0163)**

After reviewing your application and the information submitted, the Planning Director is approving your variance to allow 2-proposed lots of a pending 3-lot subdivision (SUB 04-0163) to be created without a water supply system. The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2).

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot B consisting of approximately 20.001 acres, being a portion of Grant 4420 to G. P. Wilder, being also a portion of Lot 25, Paauiilo Homesteads, is situated at Paauiilo, Hamakua, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

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2. **Subdivision Application (SUB 04-0163)**. The owner submitted a subdivision application (SUB 04-0163) and preliminary plat (PPM) dated September 29, 2004. Further action on the subdivision application has been deferred according to a letter dated December 14, 2004 in the subdivision file.
3. **Variance Application-Variance Site Plan Map**. Mooers Enterprises, LLC, on behalf of the owners, submitted a variance application to the Planning Department.
4. **Agency Comments and Requirements (VAR 05-010)**:
  - a. The County of Hawaii Fire Department (HFD) memorandum is dated February 18, 2005. (Refer to memorandum in variance file).
  - b. The Department of Water Supply (DWS) memorandum of December 2, 2004, still stand.

“We have reviewed the subject application; and the comments in our memorandum of December 2, 2004, still stand.

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 considered. Currently, sufficient funding is not available and no time schedule is set.

The Department also understands that the applicant assigns the existing meter, Account No. 680-53850 to Lot B-3.”
  - c. The State Department of Health (DOH) memorandum is dated March 16, 2005. (Refer to memorandum in variance file).
5. **Notice to Surrounding Property Owners**. Pursuant to transmittal letter dated February 18, 2005 and attachments was received on or about February 22, 2005. According to the submittals and mailing receipts, it appears that a notice and other attachments were mailed to a list of surrounding property owners on February 15, 2005.
6. **Comments from Surrounding Property Owners or Public**. No comments were received from other agencies. No objections were received from surrounding property owners or public.

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### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

There are no other reasonable alternatives in resolving the difficulty of the applicant. The first alternative requires the applicants to 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 for the additional 2-lots or providing an approved alternative water system for the proposed 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 proposed subdivision is approximately 1600 feet above sea level. The applicant cites rainfall data for rain gauge station "221.0" and cites the proposed subdivision and surrounding areas receive approximately 95.01 (mean) inches of rainfall yearly according to an earlier DLNR publication. According to a 1994 map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212 (Published 1996), the proposed 3-lot subdivision is above active rain gage station- "221" (Paauilo). The analysis of the applicant's data together with other published rainfall maps and data show the proposed subdivision is near active rain gauge station "221" (Station name: Paauilo-Altitude of Gage (feet) "800" ).

The proposed subdivision is mauka of station "221" and receives more than 80 inches of rainfall annually. The analysis of the applicant's submittals compared with recent rainfall data records between 1998 and 2002 for station "221" show the subject TMK property and surrounding areas receive more than 83 inches ( 5 year average) of rainfall yearly. (Note: The 2002 annual rainfall for Station "221" was 96.53 inches).

Given the zoning and nature of the proposed subdivision, the surrounding land pattern and potential for future improvements or upgrades to the County water system near the subdivision, and annual rainfall within the immediate area, etc., the variance request to permit a 3-lot subdivision of the property is reasonable. The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for two (2) lots without county water (meter) will be addressed by the applicant or future lot owner(s).

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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 subject variance application was acknowledged by letter dated February 4, 2005. Additional time to incorporate agency comments and complete the variance background report was necessary.

Based on the information provided by the applicant and findings above, 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 requested to allow the creation of a proposed 3-lot subdivision of the subject TMK property and allow 2-lots of the proposed 3-lot subdivision to be created without a water system meeting DWS standards is approved subject to the following conditions:

6. The owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
6. Prior to final subdivision approval, the subdivider/owner, applicant, or assigns shall designate the lot that will receive one (1) unit of water from the Department of Water Supply (DWS) according to the DWS memorandum dated December 2, 2004. The subdivider or owner(s) of this lot must pay any appropriate or required DWS facility charge and install the water meter meeting DWS requirements. The unit of water is limited to a daily maximum use of six-hundred (600) gallons per unit. The subdivider or owner will be required to assign the meter to the designated lot and comply with any DWS requirements before final subdivision approval is granted to SUB 04-0163.
6. 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 04-0163. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the affected 2-lots arising from the approval of pending 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:

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- a. The owner(s) agree and accept the fact that a County dedicable public water system is not now able to service the existing property or affected 2-lots created by SUB 04-0163. 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 dwelling constructed on lots created by SUB 04-0163 shall be a farm dwelling. Farm dwelling is defined according to State Law, Section 205-4.5 (a) (4) or Hawaii County Zoning Code "means a single-family dwelling located on or used in connection with a farm, or if the agricultural activity provides income to the family occupying the dwelling".
- c. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to any lots created by SUB 04-0163 not serviced by a County water system.
- d. Any farm dwelling constructed on the 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 6,000-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.
- 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 or lot owner(s) 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 owners of the lots created by SUB 04-0163 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 04-0163, the owners of the lots created by SUB 04-0163 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.
4. The subdivision's (SUB 04-0163) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.
  5. No ohana "additional farm dwelling" or second farm dwelling shall be permitted on any lot created by SUB 04-0163 for the reason that this variance is granted based on minimal increase in the number of users.
  6. 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: je

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xc: DWS-Engineering Branch  
SUB 04-0163  
Planning Dept.-Kona