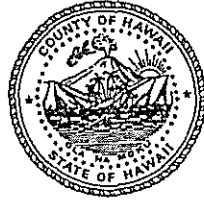


Harry Kim  
Mayor



Christopher J. Yuen  
Director

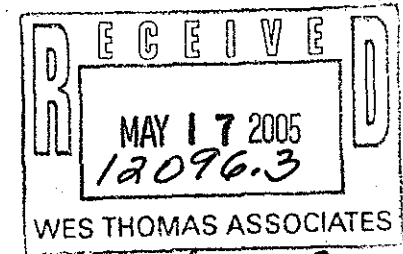
Roy R. Takemoto  
Deputy Director

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**County of Hawaii**  
**PLANNING DEPARTMENT**  
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

April 19, 2005

WES THOMAS ASSOCIATES  
75-5749 Kalawa Street  
Kailua-Kona, HI 96740



*cc: Cheryl Sproat*

Gentlemen:

**VARIANCE PERMIT NO. 1512 (VAR 05-020)**  
**Applicant: WES THOMAS ASSOCIATES**  
**Owner: CHERYL A. SPROAT TRUST**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Article 6, Division 2, Improvements Required,**  
**Section 23-84, Water Supply, (1) (2)**  
**Tax Map Key: 5-2-009:009, (SUB 04-0112)**

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 without a water system meeting without providing the minimum requirements of the Department of Water Supply (DWS).

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 2 containing approximately 2.102 acres, being a portion of R.P. 6854, L.C. Aw. 9971, Apana 19 to W.P. Leleiohoku, is situated at Niulii, North Kohala, Hawaii.

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2. **Zoning.** The subject property is zoned Single-Family Residential (RS-15) by the County and designated Urban (U) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant-owner submitted subdivision application (SUB 04-0112) which includes a preliminary plat map (PPM), dated July 8, 2004, proposing to subdivide the subject TMK property into two (2) lots. Further action on the proposed subdivision application was deferred pursuant to letter dated September 30, 2004 in SUB 04-0112.
4. **Variance Application.** The applicant, on behalf of the owner, submitted the variance application on or about February 22, 2005.

The applicant's transmittal letter dated February 14, 2005 includes the following background information:

Page 1-2: "According to the printout of a portion of the State GIS maps, the property receives approximately 55-60 inches of rainfall annually. A copy of the map is enclosed for your reference. Also shown on the composite GIS map are the rain gauge stations Station 24, Niulii and Halawa. However, these stations are not reflected in the data provided by the Hawaii State Climate Office at the University of Hawaii. The closest rain gauge with appropriate data is Hawi and is as follows:

<u>Station Name</u>	<u>Dates</u>	<u>Sta Elevation</u>	<u>Ave Rainfall</u>
Hawi	1919-2004	176.8 Ft.	50.4 inches

The subject property is approximately 160 feet above mean sea level. This area of North Kohala historically receives between 55 to 60 inches of rainfall annually. The owner is proposing to subdivide the property so that the houses are on the lot with the existing water meter and the vacant lot is adjoining their other property. At this time they have no plans to build on this vacant parcel. As you can see from the enclosed copy of the LANDSAT photo with the tax map key overlay, this section of North Kohala is lush and green."

Page 2:

"ALTERNATIVES

There are no reasonable alternatives in resolving the required water system requirements. To upgrade the existing County water system by the individual applicant would not be economically feasible. An alternative would be to drill wells to create a private water system. However, due to the limited nature of this 2 lot subdivision (with only one proposed lot not serviced by the County water system), this alternative would be cost prohibitive. In addition, the area receives rain annually, which can adequately support a private water catchment system. The applicant and future lot owners can also purchase additional water, if necessary, for the private water catchment system.”

5. **Agency Comments and Requirements (VAR 05-020):**

- a. The Department of Water Supply (DWS) memorandum, dated April 4, 2005, states in part:

“We have reviewed the subject application; and the comments in our memorandum of September 30, 2004, still stand.

Please be informed that 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.”

**Note:** The PPM dated July 8, 2004, shows a water meter (“S/N 28183021”) within the “GOVERNMENT ROAD” near the proposed 2-lot subdivision.

6. **Notice to Surrounding Owners.** The applicant’s transmittal letter dated April 2, 2005 and other submittals were received on April 4, 2005. Pursuant to the transmittal letter and attached mailing receipts, it appears that a notice was mailed to the attached list of surrounding owners on or about April 2, 2005.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written objections from the surrounding property owners or public were received.

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Therefore, after considering the nature of the subdivision and variance background information and rainfall information provided by the applicant, 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 deprives the applicant or subdivider 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. The first alternative requires the applicant to improve the existing county water system and install necessary dedicable water system improvements (additional water meter) 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 2-lot subdivision would be putting excessive demands upon the applicant 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. According to a recent DWS memorandum, "the Department's existing water system facilities cannot support the proposed subdivision at this time".

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.

According to the applicant, the proposed subdivision is approximately 160 feet above sea level. The applicant cites rainfall data for rain gauge station "HAWI" and includes other information and maps. According to a 1994 map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212 (Published 1996), the proposed 2-lot subdivision is near 2-active rain gage stations- "168" (HAWI) and "175.1". The analysis of the applicant's data together with other published rainfall maps and data show the proposed subdivision is closer to station "175.1" (Station name: Kohala Mission-Altitude of Gage (feet) "537" ).

The proposed subdivision and surrounding areas near station "175.1" receive at least 60 inches +/- of rainfall annually (Note: The 1999 Annual rainfall for Station "175.1" was 109.33 inches).

The analysis of the applicant's submittals compared with recent rainfall data for station "175.1" and other historical rainfall data records show the subject TMK property and surrounding areas receive more than 60 inches of rainfall yearly.

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 2-lot subdivision of the property is reasonable. The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for one (1) lot-proposed "LOT 2-B" without county water (meter) will be addressed by the applicant or future lot owner(s).

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 applicant, 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 04-0112. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lot (Proposed "LOT 2-B") not serviced by a County water system or pending 2-lot subdivision application 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 owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 04-0112. 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 or affected lot created by SUB 04-0112 not serviced by a County water system. No further subdivision of the lots created by SUB 04-0112 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 04-0112 may not be made subject to a condominium property regime.
- d. Any dwelling constructed on proposed lot-"LOT 2-B" 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.
- e. Each permitted 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 04-0112 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 04-0112, the owner(s) of the lot(s) created by SUB 04-0112 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 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 constitute grounds for a variance from the subdivision code to permit further subdivision of the property.
- 3. The subdivision's (SUB 04-0112) final plat map (minimum lot size, minimum average lot size requirements, etc.) shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code.
  - 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.

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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:cd

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xc: Manager-DWS  
Planning Dept.-Kona  
SUB 04-0112