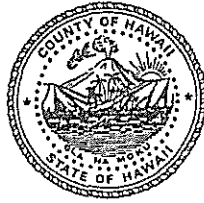


Harry Kim  
Mayor



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 28, 2005

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

Gentlemen:

**VARIANCE FILE NO. 1511 (DENIAL) WH (VAR 05-021)**

**Applicant: H. ALAN LIVINGSTON**

**Owners: H. ALAN LIVINGSTON, ET AL.**

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

**Tax Map Key: 8-9-002:001, (SUB 04-0218)**

After reviewing the subject variance application and information submitted, the Planning Director denies your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), to allow a proposed 8-lot subdivision of the subject TMK property without providing a water system meeting 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 **denied** based on the following findings:

#### **BACKGROUND**

1. **Location.** The subject property, containing approximately 112.976 acres, consisting of Grant 3712, Lot B to J.M. Monsarrat and Grant 1461, Apana 2 to Kekapa, is situated at Okoe, South Kona, Hawaii.

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April 28, 2005

2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture (A) and Conservation (C) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The subdivider-H. ALAN LIVINGSON or landowners submitted a subdivision application (SUB 04-0218) which includes a preliminary plat map (PPM), dated November 16, 2004, proposing to subdivide subject TMK property into eight (8) lots. Further action on the proposed 8-lot subdivision application was deferred pursuant to letter dated February 22, 2005 in SUB 04-0218.
4. **Variance Application.** WES THOMAS ASSOCIATES, on behalf of the applicant or landowners, submitted the variance request and subject variance application on or about March 2, 2005 and other supplemental information.

The applicant's transmittal letter dated February 21, 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 45 to 55 inches of rainfall annually. A copy of the map is enclosed for your reference. Also shown on the composite GIS map are numerous rain gauge stations. However, the records of the Hawaii State Climate Office at the University of Hawai'i only have sufficient data for station OPIHIHALI 2. The average annual rainfall for this station is as follows:

<u>Station Name</u>	<u>Dates</u>	<u>Sta Elevation</u>	<u>Ave Rainfall</u>
Opihihale 2	1956-2003	1,360 Ft	40.9 inches

The subject property ranges in elevation from approximately 980 to 1,480 ft in elevation. This elevation historically receives between 45 to 55 inches of rainfall annually. As you can see from the enclosed copy of the LANDSAT photo with the tax map key overlay, the property 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 8 lot subdivision (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 WH (VAR 05-021):**

- a. The Department of Water Supply (DWS) memorandum, dated January 14, 2005 in SUB 2004-0218 states in part:

“We have reviewed the subject application.

Please be informed that the subject property is not within the service limits of the Department’s existing water system facilities.

The nearest Department of Water Supply water system facility is at the end of an existing 8-inch waterline along the Mamalahoa Highway approximately 15.25 miles from the property.”

- b. The County of Hawaii Fire Department memorandum, dated April 11, 2005, states:

“We have no comments to offer at this time in reference to the above-mentioned variance application.

6. **Notice to Surrounding Owners.** According to the applicant’s agent, a notice regarding the variance request and application was sent to list of surrounding property owner(s) attached to the variance application. Pursuant to the agent, the notice was mailed to surrounding property owner(s) on or about April 5, 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.

WES THOMAS ASSOCIATES

Page 4

April 28, 2005

### INTENT AND PURPOSE-WATER VARIANCE

Section 23-84 of the Subdivision Code requires that all new subdivisions have a water system meeting with the minimum requirements of the Department of Water Supply.

Variances can be granted, but under section 23-15, no variance may be granted unless it is found that:

- (a) There are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicants of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property; and
- (b) There are no other reasonable alternatives that would resolve the difficulty; and
- (c) The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

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 variance would not fulfill the intent of the Subdivision Code in that the water supply would be inadequate.

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 analysis of existing rainfall within the subject property utilizing maps at the Planning Department, DPW, and information provided by the applicants show that there is inadequate 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.

After comparing the map extracts submitted by the applicant and map-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, Active rain-gaging stations and mean annual rainfall, Plate 6, the proposed 8-lot subdivision appears to be nearest active rain-gage station "OPIHIHALI 2 24.1". The "24.1" rain gage is situated approximately 2+ miles north of the

WES THOMAS ASSOCIATES

Page 5

April 28, 2005

TMK property. According to a recent 1996 publication, the Ophihali No. 2 or "24.1" gauge's elevation or altitude is 1270 feet. The map-Plate 6 show the "24.1" station is on or at the "60" isohyet line. The analysis of the applicant's rainfall information and maps purports that the subject TMK property receives "between 45 to 55 inches of rainfall annually". However, recent rainfall data (2002) collected and published by the National Oceanic and Atmospheric Administration-NOAA, indicates Opihihale 2 24.1 rain gage station's 2002 annual rainfall was 38.64 inches. Furthermore, the annual "average" rainfall for "24.1" during the last 7-years 1995 thru 2002 is 32.365 inches. The rainfall at this site of the proposed subdivision is probably less than the Opihihale 2 rain gauge because rainfall decreases as you go south along Highway 11 in this area. The comparison between the applicant's data and recent rainfall data demonstrates that rainfall within the property or surrounding areas is marginal for private individual water catchment systems.

The alternative to a water system proposed by the applicants--rain catchment by the individual lot owner--would not meet the intent and purpose of the Subdivision Code: in this case, that a subdivision have adequate clean safe drinking water for human consumption, and a reliable supply of water for firefighting purposes. The rainfall is too low and too unreliable to support a catchment system. The Subdivision Code, by specifying the need for a water system, represents a policy decision that subdivisions should have on-site water and not rely on hauling in water. As for fire protection, although a variance could include a condition that the lot owner have a second tank for fire fighting purposes, and keep it filled, this condition would be impossible to monitor and if it were breached, the violation would likely be discovered at the worst possible moment, when a fire truck actually tried to get water from the tank. The proposed 8-lot subdivision could, therefore, be detrimental to the public welfare.

Approval of the subject variance(s) from water supply requirements would not conform to the following goals, policies and standards of the Hawaii County General Plan which state in part:

Water system improvements and extensions shall promote the County's desired land use development pattern.

All water systems shall be designed and built to Department of Water Supply standards.

The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Furthermore, the precedent by allowing this subdivision without the minimum subdivision improvements could become a precedent for other similar subdivisions of adjoining property or development within the surrounding area.

WES THOMAS ASSOCIATES

Page 6

April 28, 2005

Your variance request to allow or develop a proposed 8-lot subdivision without providing a water supply pursuant to Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), or providing a water system meeting the minimum requirements of the Department of Water Supply (DWS) is **denied**.

In accordance with a recent charter amendment and Ordinance No. 99-111, you may appeal the director's decision and request the following:

Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the director's decision, appeal the decision to the board of appeals.

Pursuant to Board of Appeal (BOA) Rule, PART 8. APPEALS, 8-15 General Standards for Appeals (Non-Zoning):

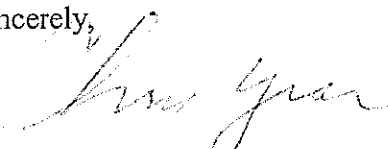
"A decision appealed from may be reversed or modified or remanded only if the Board finds that the decision is:

- (1) In violation of the Code or other applicable law; or
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion."

In view of the above, enclosed is form-**GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR**.

Should you have any questions on the variance decision or the appeal procedure, please feel free to contact our Hilo office at telephone (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY/CJY:cd

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WES THOMAS ASSOCIATES

Page 7

April 28, 2005

Enclosure

xc: Manager-DWS  
Planning Dept.-Kona  
SUB 04-0218

60