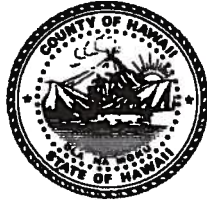


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
**PLANNING DEPARTMENT**

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

May 26, 2017

Niels Christensen, LPLS  
The Independent Hawaii Surveyors, LLC  
P.O. Box 577  
Hilo, HI 96721

Dear Mr. Christensen:

**SUBDIVISION WITHDRAWN**

**SUBDIVIDERS: MOSEMAN, Phil/Matt Playter**

Proposed Subdivision of a Portion of Grant 1973,  
Into Lots 1 and 2,

At Kaohe 1<sup>st</sup>, 2<sup>nd</sup>, & 3<sup>rd</sup>, South Kona, Island of Hawai'i, Hawai'i  
TMK: 8-7-007:004 (SUB-04-000055)

On August 24, 2015, we requested a status update for the subject application. As of this date, there has been no response to that request.

In view of the above, we are deeming it **withdrawn** and removing it from our active files. A new application, complete with filing fee, must be submitted should the owners wish to subdivide the property.

With the withdrawal of this application, approved Water Variance application **VAR-05-000032 is deemed Null & Void** as well.

Pursuant to Article 4, Section 23-60(c), Chapter 23, Subdivision Control Code, a portion of the filing fee equivalent of ten percent (10%) of the fee or fifty dollars (\$50.00), whichever is greater, shall be retained for applications which have been withdrawn or denied before granted tentative approval. However, tentative approval was issued to the preliminary plat map on August 27, 2003, and therefore, no refund is due.

Niels Christensen, LPLS  
The Independent Hawaii Surveyors, LLC  
Page 2  
May 26, 2017

Should you have any questions, please feel free to contact Jonathan Holmes of this department.

Sincerely,



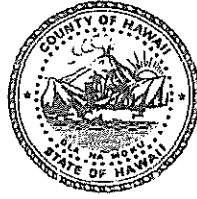
 MICHAEL YEE  
Planning Director

JRH:lnm

\\COH33\planning\public\Admin Permits Division\Subdivision\2017\2017-2\SUB-04-000055MosemanPlayterWD 05-26-17.doc

xc:     Manager, DWS  
          Director, DPW  
          District Environmental Health Program Chief, DOH  
          District Engineer, DOT  
          Phil Moseman  
          Matthew Playter  
          VAR-05-000032

Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

County of Hawaii  
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • FAX (808) 961-8742

January 18, 2007

Mr. Phil Moseman  
P. O. Box 827  
Honaunau, HI 96726

Dear Mr. Moseman:

**VARIANCE-VAR 05-032 (APPROVAL)**

**Applicant: PHIL MOSEMAN**

**Owners: PHIL MOSEMAN, ET AL.**

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

**Tax Map Key: 8-7-007:004, (SUB 04-000055)**

This is an amended decision letter approving the subject applicant's request for variance from water supply subject to variance conditions. The previous decision letter, dated December 12, 2005, denied subject variance application to allow a 3-lot subdivision of the above subject TMK property to be created without a water supply system. This amended Variance-VAR 05-032 permits a proposed 2-lot subdivision of subject TMK property to be created subject to variance conditions. The variance is from Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

The Planning Director has concluded that variance from the minimum subdivision water system requirements to allow a 2-lot subdivision can be **approved** based on the following findings:

**BACKGROUND**

1. **Location.** The subject property, containing approximately 37.100 acres, is a portion of Grant 1973 to K. Pahua, and situated at Kaohe 1<sup>st</sup> and 3<sup>rd</sup>, South Kona, Hawaii.

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 or landowners originally submitted a subdivision application (SUB 04-000055) which includes a preliminary plat map (PPM), dated January 17, 2004, proposing to subdivide subject TMK property into three (3) lots. Further action on the proposed subdivision is being deferred pending resolve of subject variance and revised variance request.
4. **Variance Application.** The applicant's revised variance application and submittals were acknowledged by letter dated June 3, 2005. The applicant submitted proof of mailing a notice to surrounding property owners and other submittals with letter dated November 26, 2005; and, granted the Planning Director an extension of time to render a decision on the original variance request to December 31, 2005. The Planning Director denied the variance to allow proposed 3-lot subdivision on December 12, 2005. The applicant's agent filed an appeal (BOA 06-000018) on January 11, 2006.

**RULE 22-WATER VARIANCE.** The original variance application was filed and acknowledged by the Planning Department prior to the adoption of Rule 22-Water Variance. The Planning Director's original decision to deny the subject variance to permit proposed 3-lot subdivision was rendered on December 12, 2005 prior to Rule 22-Water Variance, e.g. requiring catchment subdivision's to have minimum 60 inch annual rainfall, density limits/minimum lot area, etc., which went into effect on February 25, 2006. In consideration of the timing of filing the original subdivision and variance application and discussion with the applicant's agent regarding language in Rule 22, the Planning Director agreed to reconsider the original variance decision to approve subject variance application allowing a revised 2-lot subdivision of the subject TMK property resulting in the creation of 2-18+ acre lots.

**BOA 06-000018.** In consideration of the above, the applicant's agent agreed to withdraw the appeal-BOA 06-000018, according to letter dated February 21, 2006.

5. **Agency Comments and Requirements (VAR 05-032):**

- a. The County of Hawaii Fire Department (HFD) memorandum, dated June 15, 2005, states:

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

- b. The State of Hawaii Health Department (DOH) memorandum is dated June 16, 2005 (Refer to memorandum in variance file).

- c. The Department of Water Supply (DWS) memorandum, dated June 21, 2005, states in part:

“We have reviewed the subject application; and the comments in our memorandum of June 23, 2004, still stand and are as follows.

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 4 miles from the property.”

6. **Notice to Surrounding Owners/Public Notice.** The applicant mailed notice of variance according and certificate(s) of mailing dated June 20, 2005 attached to a transmittal letter dated November 26, 2005. Notice of the original variance application was published in the Hawaii Tribune Herald and West Hawaii Today on June 13, 2005. In addition, the original variance application was filed prior to adoption of Ordinance No. 05 135 requiring a sign.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received from surrounding property owners or public.

Therefore, after considering the above variance background information, agency comments, and other findings, 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 owners 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 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 the proposed 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.

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.

Based on the foregoing findings, this variance request to allow a proposed 2-lot subdivision 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.

### 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. The applicant or subdivider(s) shall submit revised preliminary plat map(s) denoting proposed 2-lots for pending subdivision (SUB 04-000055) on or before February 15, 2008.

3. 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 04-000055. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting 2-lots created by SUB 04-000055 not serviced by a County water system 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 owners agree and accept the fact that a County dedicable public water system is not now able to service proposed subdivision SUB 04-000055. 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 lots created by SUB 04-000055 not serviced by a County water system. No further subdivision of the lots created by SUB 04-000055 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
  - c. Any lots created by SUB 04-000055 may not be made subject to a condominium property regime.
  - d. Any farm dwelling constructed on a 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 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 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 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 04-000055 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 04-000055, the owner(s) of the lot(s) created by SUB 04-000055 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.



Mr. Phil Moseman

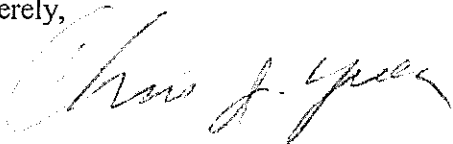
Page 7

January 18, 2007

3. The subdivision application's final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.
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.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare the subject Variance null and void.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

WRY/DSA:cd

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xc: Manager-DWS  
SUB 04-000055  
BOA 06-000018