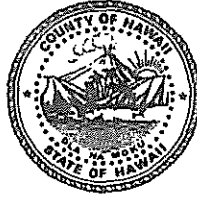


Harry Kim
Mayor



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

March 29, 2006

Mr. Sidney M. Fuke
SIDNEY FUKU PLANNING CONSULTANT
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

VARIANCE PERMIT NO. VAR 05-040

Agent: SIDNEY FUKU, PLANNING CONSULTANT

Applicants: DENNIS PARSONS, ET AL.

Owners: DENNIS PARSONS, ET AL.

**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required**

Tax Map Key: 5-4-008:040, (SUB 04-0234)

After reviewing your variance application, the Planning Director certifies the approval of your variances requested subject to conditions. The variance allows the proposed 2-lot subdivision (SUB 04-0234) without providing water supply to one of the 2-proposed lots created by the subdivision and permits alternative access and roadway improvements to be constructed for the proposed 2-lot subdivision. The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), and roadway requirements required by the Department of Public Works (DPW) or Chapter 23, Subdivisions, Article 6, Improvements, Division 2, Improvements Required, Section 23-87, Standard for non-dedicable street; escrow maintenance fund.

BACKGROUND

1. **Location.** The subject property, Lot 2-C containing approximately 41.524 acres, being a portion of Lot 2 Grant 2391 to Wahikuli, is situated at Kapua, North Kohala, Hawaii.

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Zoning. The subject property is zoned Agricultural (A-20a) by the County. The property is designated Agriculture ("A") by the State Land Use Commission (LUC).

2. **Subdivision Request/PPM.** The applicant or owner submitted a subdivision application (SUB 04-0234). The subdivision application's preliminary plat map (PPM) was prepared by Towill, Shigeoka, and Associates, Inc. and is dated November 23, 2004.

3. **Variance Application.** The applicant's agent submitted the subject variance application and other required submittals on or about May 5, 2005.

4. **Agency Comments and Requirements-(VAR 05-0 40):**

a. The State Department of Health (DOH) memorandum is dated August 17, 2005 (Refer to memorandum in variance file).

c. The Department of Public Works (DPW) memorandum dated September 5, 2005 states:

"We reviewed the subject application. We have no objection to the proposed variance to allow the improvements specified by the applicant in lieu of those specified in the tentative approval with the following condition:

The roadway shall remain in private ownership and will not be eligible for conveyance to the County.

Should there be any questions concerning this matter, please feel free to call Kiran Emler at our Kona Engineering office, 327-3530."

5. **Notice to Surrounding Owners.** The applicant's agent forwarded a transmittal letter dated August 17, 2005, copy of notice, etc., and notarized affidavit dated August 17, 2005. According to these submittals, a notice dated August 17, 2005 was mailed to surrounding property owners of the subject TMK property on or about August 17, 2005.

6. **Comments from Surrounding Property Owners or Public.** No further comments to the subject variance application were received from the agencies. No objections from surrounding property or public were received.

ALTERNATIVES

Water Supply. The first alternative requires the applicant or owners to extend and/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.

The imposition of extending or improving the existing public DWS water system or providing an approved alternative private water system meeting DWS standards for 1-additional lot would be putting excessive demands upon the applicant or owners when a more reasonable alternative (e.g. private individual rainwater catchment system for potable and emergency requirements) is available.

Lot Access/Roadways

The decision alternatives include the following:

1. *Install roadway improvements within both access easements pursuant to DPW comments dated March 9, 2005 in the subdivision file.* The first alternative requires the subdividers to construct a 20-foot wide agricultural pavement according to Standard Detail R-39 and/or R-34 within the 60-foot wide access easement(s) between the subject TMK property and Honomakau Road according to the DPW comments in the subdivision file and Chapter 23, Subdivisions.

(Refer to the applicant's variance background and detailed written explanation).

2. *Acknowledge that the existing 10-foot wide non-dedicable roadway within easements "A" and "B" can be used as a access to the 2-lot subdivision and variance to permit installation of 3-10-foot wide paved pullouts (3-20-foot paved roadway sections) are provided within easements "A" and "B" for 2-way traffic.* In essence, the variance allows the existing 10-foot paved road within easements "A" and "B" to be used and requires the subdivider to construct 3-10-foot wide pullouts (at least 50 feet in length) creating 3-20-foot wide paved road sections for passing and/or emergency needs for 2-way traffic are provided.

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Road maintenance for existing 10-foot wide road and pullouts within both 60-foot wide easements "A" and "B" will be privately addressed and shared among the proposed lot owners or users.

SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Supply. The applicants presented additional information and/or discussed existing or proposed agricultural operations which could justify a need for housing for agricultural employees. Pursuant to the current Hawaii County zoning code provisions and Planning Department rules and practices, the TMK property consisting of 41 + acres, even if not subdivided, could potentially support and require an additional farm dwelling(s) for agricultural employees; and, rainfall is not a factor in granting additional farm dwellings. In addition, the property has irrigation water available which can be used for agriculture and/or firefighting purposes. 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 original decision date on this variance is prior to the effective date of Planning Department Rule No. 22 which would otherwise apply to this application.

The Planning Director therefore grants a variance from the water system requirements of section 23-84 to permit creation of a 2-lot subdivision of the subject property, subject to the variance conditions.

In these conditions, the proposed lot without a water supply or water meter shall be responsible for complying additional water variance conditions and specific roadway variance conditions.

Access/Roadways. In considering the applicant's background information and other special and unusual circumstances applying to the subject property or development of the area, the Planning Director agrees that a variance from required roadway improvements to allow proposed 2-lot subdivision may be granted subject to specific roadway variance conditions.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

Water Supply. 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.

Subdivision Access/Roadways. The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed subdivision is clearly defined

and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance.

DETERMINATION-VARIANCE CONDITIONS

The subject variance application was acknowledged by letter dated August 11, 2005. Additional time to consider DWS comments and DPW comments, and other was necessary. The applicant's agent agreed to extension of time to March 31, 2006 for the Planning Director to render a decision on the subject variance.

Based on the above, a variance from water supply for 1-proposed lot and roadways and roadway improvements for proposed 2-lot agricultural subdivision of the existing TMK property 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(s) 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 CONDITIONS. The variance from water and road requirements to allow proposed 2-lot subdivision is approved subject to the following variance conditions:

1. The subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of this variance.
2. The subdivider shall confer with the DWS and designate or assign the existing water service to one (1) lot of the 2-lots created by the subdivision.
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 granting final subdivision approval of SUB 04-0234. This written agreement shall contain the following language or its equivalent, being covenants, conditions, and restrictions for the subdivision and proposed lot not serviced by a public water system, which 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 the proposed subdivision SUB 04-0234. 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 lot created by SUB 04-0234 not serviced by a County water system. No further subdivision of the lots created by SUB 04-0234 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. The subject property or any of the proposed 2-buildable lots created by proposed subdivision SUB 04-0234 may not be made subject to a condominium property regime.
- d. Any farm dwelling constructed on a lot not serviced by a County water system shall or lot created by SUB 04-0234 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. 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 04-0234 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 04-0234, the owner(s) of the lot(s) created by SUB 04-0234 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.

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.

- h. Only one dwelling may be constructed on each of the lots resulting from this subdivision.
- i. The dwelling on the lot with the water meter will be permitted upon the owner receiving and acknowledging a "Farm Dwelling Notice" that states the requirements of Chapter 205, Hawaii Revised Statutes.
- j. The dwelling on the lot without the water meter shall be considered a first additional farm dwelling under Rule 13 of the Planning Department Rules (even if it is constructed before the dwelling on the lot with the meter). 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 that lot only, 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. The additional farm dwelling shall be occupied only by persons involved in the agricultural activity and their family members.

- k. If Hawaii County or the state adopts more stringent standards for additional farm dwellings on a lot, the standards in this variance shall apply as long as the dwelling in question is actually the first dwelling on the lot, otherwise, the more stringent standards shall apply.
4. The roadway improvements within Easement "A" and Easement "B" shall remain in private ownership and will not be eligible for conveyance/dedication to the County.
5. The subdivider, owners, their assigns, or successors understand that the buildable lots arising out of SUB 04-0234 will use and maintain existing 10-foot wide paved roadway and proposed three (3) additional 10-foot wide paved pullouts, grassed roadway shoulders/landscaping, and any required drainage improvements within Easement "A" and Easement "B" on their own without any expectation of governmental assistance to maintain the privately owned roadway or any other access and driveway improvements within the subdivision.

The location of the proposed 3-20-foot wide roadways/sections (paved pullouts) shall be designed to accommodate 2-way traffic according to the Guidelines for Driveway Location and Design by the Institute of Traffic Engineers for low volume commercial driveway meeting DPW-Kona Engineering Division approval.

6. A drainage study shall be prepared and submitted to the DPW for review and approval. Any required drainage system within the subdivision shall be constructed meeting with the approval of DPW. The subdivision construction plans to install required water system to the designated lot, alternative non-dedicable and any necessary dedicable roadway improvements, any necessary culvert and drainage improvements, and other appurtenances, e.g. necessary utilities-streetlights, signage, etc. shall be designed by a licensed engineer and submitted to the affected agencies for review and approval. The subdivision construction plans for any subdivision improvements within Honomakau Road and required non-dedicable roadway or "pullout" improvements within Easement "A" and "B" shall be submitted to the affected agencies for approval.
7. The applicant, owners or subdivider shall construct the subdivision improvements (or bond) such improvements pursuant to tentative subdivision approval or final subdivision approval.

8. **ROAD VARIANCE**. The applicants, 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 revised tentative subdivision approval and prior to receipt of final subdivision approval of SUB 04-0234. This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the entire property or both proposed lots arising from the approval of the pending 2-lot subdivision application and be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant:
- a. The applicant and/ or owners shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing the private roadway within Easement "A" and Easement "B" designated on the subdivision application's (SUB 04-0234) final plat map.
 - b. Upon written demand of the County of Hawaii, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements to the proposed lot(s) arising out of SUB 04-0234 or other adjoining public roads. Should the improvement district require acquisition of rights-of-way within the lots arising out of SUB 04-0234, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the lot owner(s). 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.
 - c. The subject property or any of the proposed 2-buildable lots created by proposed subdivision SUB 04-0234 may not be made subject to a condominium property regime.
 - d. The owners understand that the lots created by SUB 04-0234 have been approved with this road variance, and that they will use and maintain the privately owned access, paved roadway, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within Easement "A" and Easement "B".

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- e. The owners agree to participate in any road maintenance agreement agreed to among the majority of easement holders for the applicable access easement(s) serving their lot. Said maintenance shall include, without limitation, grass cutting (mowing), timely repair of the paved roadway and/or filling of any and all rutted areas and "potholes", mowing of the grassed roadway shoulders within Easement "A" and Easement "B" and ensure that existing drainage patterns are maintained and any soil runoff within subdivision does not affect the proposed lots, surrounding property or immediate areas.
 - 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.
9. The owners, their assigns or successors shall pay any outstanding real property taxes due and comply with all other applicable State and County rules and regulations pertaining to subdivisions, tentative subdivision approval conditions, grading, approved subdivision construction plans, variance conditions, and land use.

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

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

Mr. Sidney M. Fuke
SIDNEY FUKÉ PLANNING CONSULTANT
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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 04-0234