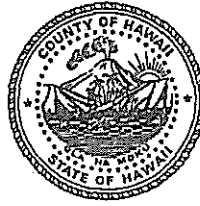


Harry Kim
Mayor



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

September 29, 2005

Roy A. Vitousek, III, Esq.
CADES-SCHUTTE
75-170 Hualalai Road, Suite B-303
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

VARIANCE FILE NO. (DENIAL) WH (VAR 05-056

Agent: CADES-SCHUTTE

Applicants: MARLENE CALVERT, ET AL.

Owner: MARLENE CALVERT

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

Tax Map Key: 9-2-150:013 and 018, (SUB 04-0040/SUB 04-0041)

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:

Hawaii County is an equal opportunity provider and employer.

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BACKGROUND

1. **Location.** The subject property(s), Lot 5 containing 21.000 acres and Lot 6 containing 21.000 acres, are within Kona-South Estates, Unit III (File Plan 953) being a portion of Grant 2761 to C.C. Harris, and situated at Kahuku, Kau, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-3a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The subdivider/owner-MARLENE CALVERT or landowners submitted 2-subdivision applications-SUB 04-0040 and SUB 04-0041 to subdivide the subject TMK property(s). Each application includes a preliminary plat map(s) (PPM), dated March 18, 2004 and March 17, 2004, respectively, proposing to subdivide each TMK property into seven (7) lots. Further actions on both applications are being deferred pursuant to a letter dated December 30, 2004 in the respective subdivision files.
4. **Variance Application.** CADES-SCHUTTE, on behalf of the applicant or landowner, submitted the variance request and subject variance application on or about August 23, 2005 and other requirements were received on August 29, 2005.

The applicant's reasons and background report (page 1) "2." states in part the following:

Page 1- "Rainfall data from the nearby Opihihale 2 rain gauge station collected from 1956 to 2004, an average 41 inches per year. Given this amount of rainfall, and adequate catchment area and capacity, residents will have no difficulty meeting their needs for water. The Calvert's existing and proposed subdivision is located in a vegetated kipuka which includes thriving Ohia trees and ferns, as evidenced by the attached photographs of the neighborhood at Exhibit "C"

5. **Agency Comments and Requirements WH (VAR 05-056):**
 - a. The State Department of Health (DOH) memorandum is dated August 17, 2005. (Refer to memorandum in variance file).

- b. The County of Hawaii Fire Department memorandum, dated August 29, 2005, states:

“In that the catchment system will also be used for fire protection, it is recommended that the tank be located in an area accessible by fire apparatus with a fire service connection.”

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

“We have reviewed the subject application; and the comments in our memorandum of June 10, and June 15, 2005, still stand and are as follows. The nearest Department of Water Supply’s water system facility is at the end of an existing 4-inch waterline along the Mamalahoa Highway at approximately 9 miles from the property. However, this facility 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.”

6. **Notice to Surrounding Property Owners.** The applicant forwarded a memorandum dated August 19, 2005 and other attachments showing a notice regarding the variance application was mailed to a list of surrounding property owner(s). According to the affixed postal receipt on the list, it appears that the notice was mailed to surrounding property owner(s) on or about August 18, 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. Note: The Planning Department acknowledges Exhibit “D” included with the applicant’s application or written comments by Max Kuhns, Et al.

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.

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Variations 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 interfere 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 information submitted by the applicant, and reviewing a map-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, PLATE 6, location of active rain-gauges nearest the proposed subdivisions, and other data published by the Hawaii State Climate Office (HSCO), it appears that both subdivisions are closest to active rain-gauge station "MANUKA 2". The "2" rain gauge is situated approximately 3.2 +/- miles north of both TMK property(s) or subdivisions. According to a recent 1996 publication, by the U.S. Geological Survey, MANUKA

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2's elevation or altitude is 1760 feet. The map-PLATE 6 shows Manuka 2 or "2" is between the "40" and "60" isohyet line(s). The analysis of the applicant's rainfall information for Opihihale 2 purports that both TMK property(s) receive "average 41 inches per year". However, recent rainfall data published by the HSCO data for Manuka 2's shows a mean average rainfall for years 1949-2000 is 42.81 inches. Furthermore, the annual "average" rainfall for Opihihale 2 or "24.1" during the last 7-years 1995 thru 2002 is 32.365 inches. Recent NOAA data indicates MANUKA 2 received only 20.50 inches of rainfall during 2002. Therefore, current annual rainfall within both proposed subdivisions is probably less than the Opihihale 2 or the Manuka 2 historic mean annual averages; because rainfall decreases as you go south along the same elevation in this area, (the subject property is at an elevation of 1760 ft.) The comparison between the applicant's data and recent rainfall data demonstrates that rainfall within the property or surrounding areas is low 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, for example; when a fire truck actually tried to get water from the tank. The proposed 7-lot subdivisions 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.

The proposed variance would only add more lots to an existing subdivision with substandard

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infrastructure. 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**.

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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: jnlb

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Enclosure

xc: Manager-DWS
Planning Dept.-Kona
SUB 04-0040/SUB 04-0041