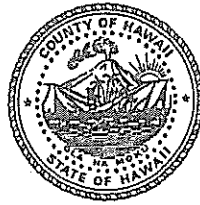


Harry Kim  
Mayor



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

December 9, 2005

Mr. Gregory M. Williams and  
Mr. Theodore V. Denny  
P. O. Box 2712  
Pocatello, ID 83206

Dear Mr. Williams and Mr. Denny:

**VARIANCE PERMIT NO. VAR 05-062**

**Applicants: GREGORY M. WILLIAMS, ET AL.**

**Owners: GREGORY M. WILLIAMS, ET AL.**

**Request: Variance from Chapter 23, Subdivisions**

**Tax Map Key: 1-6-006:120, (SUB 05-0011)**

After reviewing the subject variance application and information submitted, the Planning Director certifies the approval of a variance (VAR 05-062) to allow a 2-lot subdivision (SUB 05-0011) of the consolidated property (CON 276) without providing minimum water system and roadway improvements. The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, and Section 23-87, Standards for non-dedicable street.

The Planning Director has concluded that the variance from the minimum subdivision water system requirements and roadway improvements required by the DPW for the proposed subdivision be **approved** based on the following findings:

### **BACKGROUND**

1. **Location.** The subject property (CON 276) containing 9.000 acres is part of Land Court Application 1053, Map 53 and were formerly Lot 64, Lot 65, and Lot 65 situated at Keaau, Puna, Hawaii.

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- . **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 applicant's submitted subdivision application (SUB 05-0011) which includes a preliminary plat map (PPM) prepared by The Independent Hawaii Surveyors proposing to subdivide subject TMK property (Lot 8870) into 2-lots. Further action on the proposed subdivision application was deferred pursuant to letter dated April 28, 2005 in SUB 05-0011.
4. **Variance Application.** The variance application and other submittals were submitted by the agent /owners on or about June 28, 2005. The applicants/owners are requesting a variance from water supply and roadway requirements stipulated by the DWS and DPW memorandums in the subdivision file.

The subject TMK property, Lot 8870, was created by consolidating 3-TMK parcels (CON 276) on July 19, 1976.

The current owners are proposing to subdivide Lot 8870 into 2-lots without providing 1) a water supply system and 2) constructing roadway improvements according to the DWS memorandum (March 16, 2005) and DPW memorandum (April 13, 2005) in the pending subdivision file.

The applicant's background report states in part:

"In January 2004 we (Gregory M. Williams & Theodore V. Denny), purchased 9 acres-3, 3 acre tracts of Orchid Land Estates TMK #1-6-006-120 and 1-6-006-121 and 1-6-006-122. I, Gregory M. Williams asked the planning and zoning department if we could re-divide the property as it was once divided and was told yes we could by the planning and zoning department."

5. **Agency Comments and Requirements (VAR 05-062):**
  - c. The Department of Public Works (DPW) memorandum is dated August 25 8, 2005. (Refer to memorandum in variance file).
  - b. The Department of Health (DOH) memorandum is dated August 25, 2005. (Refer to memorandum in variance file).

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- c. The Department of Water Supply (DWS) memorandum is dated September 7, 2005. (Refer to memorandum in variance file).
6. **Notice to Surrounding Owners.** The applicant's submitted mailing receipts, copy of a notice, and other attachment sent to surrounding property owners on or about September 15, 2005. Pursuant to the mailing receipts, it appears that a notice and other attachments were mailed to a list of surrounding property owner(s) on or about September 12, 2005.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No objections from surrounding property owner(s) or public were received:

Therefore, after considering the circumstances to subdivide the subject property and variance background information provided by the subdividers, and further 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 owner 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

**Water Supply.** The first alternative requires the applicant or owners to extend and/or improve the closest county water system located approximately 3 miles away from the TMK property 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 closest public DWS water system or providing an approved alternative private water system meeting DWS standards for the pending 2-lot subdivision 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.

**Access/Roadways.** The first alternative requires the construct roadway improvements within the privately roadway lot fronting the proposed subdivision pursuant to the DPW comments to the subdivision. (Refer to the applicant's background and written explanation).

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The second alternative is to acknowledge that (prior to the 1976 consolidation) the original 3-TMK lots originally had frontage and could access the privately owned roadway (40<sup>TH</sup> AVE.) identified on the PPM.

### **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.

Given the unusual nature of the subdivision and annual rainfall within the immediate area, the proposed subdivision the variance request is reasonable. The provisions for water storage, water distribution, and construction of private rain water catchment system(s) will be addressed by the applicant or future lot owner(s) of the proposed lots.

**Roadway Variance.** The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that 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. In essence, the applicant is requesting a variance to delete the roadway requirements within the private road lot and acknowledge that the 2-lot subdivision will continue to access the original roadway system fronting the original 3 TMK lots in 1976. Only driveway improvements between the 2 proposed lots would be necessary in conjunction with construction of future dwelling improvements.

The proposed subdivision and adjoining areas are rural or agricultural in character. The surrounding land patterns, zoning, and network of surrounding roadways have not changed since the 1976 consolidation of 3 original TMK lots. Road maintenance for the gravel road within the privately owned road right-of-way fronting the proposed subdivision will continue to be privately addressed and shared among the current owners and/or association of users.

Therefore, based on the representations made by the applicant and considering the unusual nature of the applicant's request to subdivide a consolidated property which consists of 3 original TMK parcels in 1976 utilizing the access and/or original network of roadways, the Planning Director has concluded that the DPW comments to construct an agricultural road within the privately owned roadway lot fronting the subdivision is not required for the 2-lot subdivision.

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### **DETERMINATION-VARIANCE CONDITIONS**

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.

The subject variance application was acknowledged by letter dated August 18, 2005 and additional time to consider agency comments, consolidation file, and complete the variance background was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than December 16, 2005.

### **VARIANCE DECISION-CONDITIONS**

The variance request to allow the proposed 2-lot subdivision of the subject TMK property without providing a water system meeting DWS standards and roadway improvements pursuant to the DPW memorandum 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 05-0011. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the pending 2-lot subdivision application 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 the proposed subdivision SUB 05-0011. 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 subdivision or lots created by SUB 05-0011 not serviced by a County water system. No further subdivision of the lots created by SUB 05-0011 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.

Any lots created by SUB 05-0011 may not be made subject to a condominium property regime.

- c. 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.
- d. 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.
- e. 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.

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- h. In the event that the County notifies the subdivider or owner(s) of the lot(s) created by SUB 05-0011 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-0011, the owner(s) of the lot(s) created by SUB 05-0011 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.
- i. 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.

ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the 2-lots arising out of SUB 05-0011 will use and maintain the privately owned roadway fronting the subdivision on their own without any expectation of governmental assistance to maintain the existing subdivision access or other roadway improvements within the privately owned roadway lot fronting the proposed subdivision.

The applicant, 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 05-0011. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the pending 2-lot subdivision application 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:

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- j. The applicant and/ or owner(s) 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 existing private roadway fronting the proposed subdivision.
- k. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the privately owned access or roadway lot or system fronting the proposed subdivision.

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.

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

Any question regarding the variance background report and/or variance conditions may be directed to the Planning Department (Hilo) at (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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xc: Manager-DWS  
SUB 05-0011