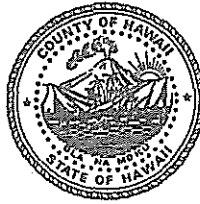


Harry Kim
Mayor



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 28, 2005

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

Dear Mr. Fuke:

SUBJECT: VARIANCE PERMIT NO. VAR 05-065
Agent: SIDNEY FUKU, PLANNING DIRECTOR
Applicant: SOUTH KOHALA MANAGEMENT CORPORATION
**Owners: SOUTH KOHALA MANAGEMENT CORPORATION/
PHYLLIS EVANS SWINDELLS**
Request: Variance from Chapter 23, Subdivisions
Tax Map Key: 4-3-012:006, (SUB 05-0018)

After reviewing your variance application, the Planning Director certifies the approval of your variance application subject to variance conditions. The variance permits a 9-lot subdivision or 8-buildable lots/1-roadway lot (SUB 05-0018) without a water supply system. The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

BACKGROUND

1. **Location.** The subject property, consisting of approximately 76.449 acres, being Grant 5075, is situated at Paauilo 2nd. Series Homesteads, Hamakua, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The applicants submitted a 9-lot subdivision (SUB 05-0018). The subdivision application's preliminary plat map (PPM) is dated February 7, 2005. Further action on the pending subdivision application is being deferred according to a June 3, 2005 letter in the subdivision file.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated August 18, 2005. The applicant forwarded a recent letter dated October 26, 2005 addressed to the Planning Director, which states in part:

"In this situation, however, the application is for a water variance to create an 8-lot subdivision to be serviced without a County approved water system. It is neither asking for relief from roadway requirements nor seeking density through the rezoning process. As such, this response will be limited to the comments relative to the water variance.

The applicant recognizes that rainfall-be it in this or any other area-can vary from year to year or month to month. In spite of this variability, it is recognized that there are areas that are more or less arid than this area. To account for this variability, your office has required minimum potable and non-potable water tank size to accommodate this variability as well as fire flow protection.

According to the US Geological Survey, the rain gauge closest to this is Paauilo State Key #221. Its altitude is 800 feet. The annual rainfall between 1995 to 2002 has ranged from a low of 76.04 inches in 1997 to a high of 96.68 inches in 1998. It is our understanding that the criterion used for favorably considering water relief (sic) is 60 inches annually. The average annual rainfall in this area obviously exceeds this criterion."

5. **Agency Comments and Requirements: VAR 05-065:**
 - a. The State Department of Health (DOH) memorandum is dated August 25, 2005 (Refer to memorandum in file).
 - b. The Department of Water Supply (DWS) memorandum dated September 7, 2005 states in part:

"We have reviewed the subject application; and the comments in our memorandum of April 11, 2005, still stand and are as follows.

Please be informed that the Department's existing water system 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 Owners.** The agent submitted a copy of a notice mailed to property owners within "five hundred feet of the perimeter boundary of the subject property", list of surrounding property owners, and proof of mailing said notice to surrounding property owners on August 29, 2005. It appears that the notice was mailed on or about August 26, 2005.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following letter and comments to the subject variance application was received:
 - a. Letter (concerns) signed by Jack Wheeler, Et al., dated September 7, 2005 was received on or about September 13, 2005.

Note: The applicant's agent submitted a follow-up letter dated October 26, 2005 and portions of this recent letter, e.g., nature of variance requested, rain gauge information, etc. were recited above.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no other reasonable alternatives in resolving the difficulty of the applicant and owner. The first alternative requires the applicants 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.

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 nearest DWS 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 OF THE SUBDIVISION CODE

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 analysis of existing site conditions, official maps at the DWS and Planning Department, and rainfall information provided by the applicant appear to indicate that there is adequate 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 lots.

The map-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212 in the Planning Department compared with the subdivision application's PPM appears to indicate that the proposed 9-lot subdivision is near active rain gage station "221". According to the Atlas of Hawaii Third Edition-Map (Page 57) which denotes "Lines of equal average annual rainfall in inches", the proposed subdivision appears to be within a region receiving between 60 inches to 100 inches per year. As such, the subject property and adjoining areas appears to receive approximately 80 inches +/- inches of rainfall annually to support a private rainwater catchment system for an average family consisting of "4 persons" and separate private rainwater catchment system for emergency needs according to a formula recited in the applicant's background report.

The proposed 9-lot subdivision is near active rain gage station PAAUILO 221. According to National Oceanic and Atmospheric Administration (NOAA) rainfall data, "221" annually received 76.05 inches and 96.53 inches of rainfall during 2001 and 2002, respectively. The analysis of the applicant's submittals compared with other available rainfall data for the immediate area shows the subject TMK property or proposed subdivision will receive at least 70 + inches of rainfall annually.

Given the condition or capacity of the nearest public or DWS system and uncertainty and expense of drilling a private well and cost to construct a private water system for the proposed subdivision, the variance request is reasonable.

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 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.

The proposed subdivision creates fewer lots than would be possible under the A-5a zoning. The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for potable and emergency needs for the subdivision or proposed lots without public water will be addressed by the subdivider or future lot owner(s) and subject to variance conditions.

In addition, the surrounding areas are agricultural in character and the subject TMK property's access or frontage along "EXISTING COUNTY ROAD" has not significantly changed over the past 50 + years. Vehicular access to the property and adjoining lots has not changed significantly since 1967. Road maintenance or upkeep of the roadway within the privately owned road lot created by the proposed subdivision will be constructed by the subdivider will be maintained by subdivider and/or future lot owner(s)/users.

The subject variance application was acknowledged by letter dated August 18, 2005. Additional time was required to complete the variance background report. The applicant agreed to extend the decision date to on or before December 23, 2005.

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.

DETERMINATION-VARIANCE CONDITIONS

The variance request to allow a proposed 9-lot subdivision of the subject TMK property without providing a water system for 8-buildable lots 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. 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 05-0018. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting lots not serviced by a County water system or pending 9-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 05-0018. 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 additional lots created by SUB 05-0018 not serviced by a County water system. No further subdivision of the lots created by SUB 05-0018 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 05-0018 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 05-0018 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-0018, the owner(s) of the lot(s) created by SUB 05-0018 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.

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3. The subdivision application's (SUB 05-0018) final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 05-0018.
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 this Variance Permit null and void.

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 05-0018
Jack Wheeler, Et al.