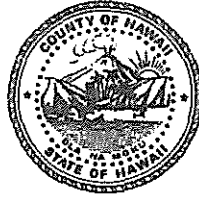


Harry Kim  
Mayor



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

May 15, 2006

Mr. Michael Luce  
or DSG QUARRY INVESTMENTS, LLC  
P. O. Box 1299  
Kapaau, HI 96755

Dear Mr. Luce:

#### **VARIANCE PERMIT-VAR 05-071**

**Applicant: MICHAEL LUCE**

**Owner: MICHAEL LUCE**

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

**Tax Map Key: 5-6-001:091, (SUB 05-000016)**

**:081**

After reviewing the subject variance application and information submitted, the Planning Director certifies the approval of your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), to allow proposed 3-lot subdivision. The variance permits proposed 3-lot subdivision and allows 2 or the proposed lots to be created without a water system meeting the minimum requirements of the Department of Water Supply (DWS) subject to variance conditions.

The Planning Director has concluded that the variance from the minimum subdivision water system requirements be **approved** based on the following findings:

#### **BACKGROUND**

1. **Location.** The subject property, Lot 1 containing approximately 76.383 acres, being portions of Grant 2361 to H. Christiansen and Grant 2766 to Nahale, is situated at Honoipu and Puakea, North Kohala, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-20) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC). The property is not within the Special Management Area (SMA).
3. **Subdivision Request/PPM.** The applicant/owner submitted a subdivision application (SUB 05-000016) and preliminary plat map (PPM) dated January 14, 2005 proposing to subdivide subject TMK property into 3-lots. Further action on the proposed subdivision application was deferred pursuant to an earlier letter dated March 8, 2005 in SUB 05-000016.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about July 19, 2005. The applicant forwarded additional variance background information (Reference to letters dated September 1, 2005, October 10, 2005, March 15, 2006 and copy of an earlier DWS letter addressed to the applicant dated September 14, 2004) regarding the existing DWS service, location of the fire hydrant nearest the proposed subdivision, and information regarding DWS CIP improvements.

The applicant's original variance background report states in part:

"There is a 6" inch (sic) waterline located within the Akoni Pule Highway fronting the subject Property. The subject Property is allowed only one (1) service connection to this line, leaving two (2) (sic) of the proposed 3-lot subdivision without water service. The Department of Water Supply's existing water system facilities 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 there are no funds available and no time schedule set for improvements. In lieu of the above, the Applicant is proposing to utilize a water catchment system for domestic consumption and agricultural pursuits. The inability of the County Department of Water Supply to furnish the additional two (2) service meters substantially deprives the owner of its property rights if they are not able to subdivide the subject property."

In addition, the variance request and application was submitted before the effective date of Rule 22-Water Variance.

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5. **Agency Comments and Requirements (VAR 05-071):**

- a. The Hawaii County Fire Department memorandum is dated August 29, 2005. (Refer to memorandum in variance file).
- b. The Department of Water Supply (DWS) memorandum, dated September 6, 2005, states in part:

“Please be informed that the Department’s existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, and transmission, booster pumps, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set.”

In addition to the above, the applicant’s agent sent a letter dated March 15, 2006 describing the DWS service to the property and copy of a DWS letter describing future CIP improvements or DWS projects in the North Kohala District, including the Halaula Well which would increase water availability for subject property and surrounding area.

- c. The State Department of Health (DOH) memorandum is dated September 15, 2005. (Refer to memorandum in variance file).
6. **Notice to Surrounding Owners.** A copy of a notice sent to a list of surrounding property owner(s), and other submittals were received on September 6, 2005. Pursuant to an affidavit and mailing receipts, the applicant mailed a copy of the notice to surrounding property owners on August 30, 2005.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letter(s) were received:
- 7a. Objection letter dated September 12, 2005 from William Brevoort and Margaret Brevoort.
  - 7b. Objection letter dated September 12, 2005 from Margaret Brevoort, President, Puakea Bay Ranch Homeowners Association.

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Therefore, after considering the variance background information and the current status of the DWS service and system fronting or nearest the subject property and other comments and information received, the Planning Director has determined that there are special or unusual circumstances applying to the TMK property or proposed subdivision 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.

Contrary to the recent DWS memorandum dated September 6, 2005 memorandum and statement "no time schedule is set" regarding County water system improvements to water systems near the subdivision or within the North Kohala District, an earlier DWS letter addressed to the applicant dated September 14, 2004 regarding "WATER AVAILABILITY" for "TAX MAP KEY 5-6-001:081" and list of CIP projects within the North Kohala District (Specifically, the timetable and status of improvements to Halaula Well), states in part:

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“Completion of the Halaula Well project listed above will increase water availability in the area. Upon completion, an engineering analysis will determine the amount of additional water that will become available for development.

At this time, the Department cannot provide a list or timeline, as requested, of Capital Improvement Projects for the 2005-2010 fiscal years as those projects have not been finalized, prioritized, or approved. However, it should be noted that during the CIP project selection phase for the 2005-2010 fiscal years, special emphasis has been placed on the need for capital improvements to the North Kohala water system.”

The analysis of current DWS service to the property and proposed water system (including rainwater catchment) within the subdivision proposed by the applicant indicate that the 2-lots not serviced by a County water system can utilize separate private rainwater catchment systems for potable and emergency uses. After reviewing the DWS's plans for future improvements to the North Kohala water system(s) within the next 5 to 10 years, the likelihood for the 2 proposed lots utilizing water catchment would be eligible to service from a County water system within the next 5 to 10 years is high. In addition, while the annual rainfall within the proposed property submitted by the applicant says the property receives 45 inches of rainfall annually; the variance request was submitted before the effective date of Rule 22-Water Variance. Therefore, given the special and unusual circumstances regarding the current water supply to the property and state of the current water system nearest the proposed subdivision, proximity of the subdivision to an existing fire hydrant (fire protection), and likelihood that the public water system fronting or nearest the proposed 3-lot subdivision may be improved within the next 5 to 10 years, the applicant's request for a variance from the water supply requirements meeting DWS standards is reasonable at this time. The owner(s) of the 2 proposed lots utilizing rainwater catchment will be required by variance conditions and recorded deed covenants to connect to a County DWS system when the DWS notifies the owner(s) that the 2- proposed lots without County water are eligible to connect to a County water system.

The subject variance application was acknowledged by letter dated August 23, 2005. Additional time was required to complete the variance background report. The applicant agreed to extend the decision date to on or before May 5, 2006.

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.

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### VARIANCE DECISION-CONDITIONS

The variance request to allow a proposed 3-lot subdivision of the subject TMK property without providing a water system meeting DWS standards to 2-proposed lots of proposed 3-lot subdivision 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 subdivider shall confer with the DWS and designate or assign the existing water service to a proposed a lot designated by the applicant or "Lot 1-B" being created by proposed 3-lot subdivision (SUB 05-000016).
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 05-000016. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the 2-lots not serviced by a County water system created by the pending 3-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 05-000016. 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 05-000016 not serviced by a County water system. No further subdivision of the lots created by SUB 05-000016 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.

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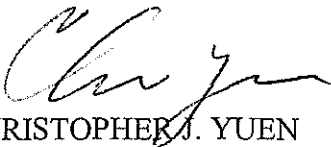
- c. Any lots created by SUB 05-000016 may not be made subject to a condominium property regime.
- d. Any dwelling constructed on a proposed lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6000-gallon water 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 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.
- h. In the event that the County or Department of Water Supply (DWS) notifies the owner(s) of the 2-lot(s) created by SUB 05-000016 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots without a DWS water service created by SUB 05-000016, the owner(s) of the 2-lot(s) without County water created by SUB 05-000016 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals/water meters, as determined by the DWS.

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- 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.
4. The subdivision application's (SUB 05-000016) 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 variance from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 05-000016.
5. 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 Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY/DSA/CJY:cd  
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xc: Manager-DWS  
SUB 05-000016  
William Brevoort, Et al.  
Margaret Brevoort, President, Puakea Bay Ranch Homeowners Association