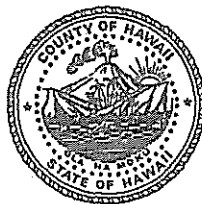


Harry Kim  
Mayor



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 05-083**  
**Agent: SIDNEY FUKU, PLANNING CONSULTANT**  
**Applicant: WAIMEA 660, LLC**  
**Owner: WAIMEA 660, LLC**  
**Request: Variance from Chapter 23, Subdivisions**  
**Tax Map Key: 4-8-003:005, (SUB 05-0125)**

After reviewing your variance application, the Planning Director certifies the approval of your variance application subject to variance conditions. The variance permits a 6-lot subdivision 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(s), consisting of Lot 1-A and Lot 1-B containing approximately 658.742 acres, being a portion of L.C. Award 8559-B Apana 2 and portion of L. C. Award 10,287, is situated at Waikoekoe, portion of Hamakua Forest Reserve, and situated at Hamakua, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-40a) 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 subdivision (SUB 05-0125). According to a recent letter from the applicant's agent the subdivision is proposing to create 6-lots. Further action on the pending subdivision application and the application's PPM is being deferred pursuant to an earlier letter dated August 15, 2005 in the subdivision file.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated September 21, 2005. The applicant's background report states in part:

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"According to the Atlas of Hawai'i 3<sup>rd</sup> Edition, the average annual rainfall in this general area is about 100 inches. This is confirmed by the Water Resources Investigations Report 95-4212 which identifies this area has (sic) having in excess of 190 (sic) inches in 1996. The County of Hawai'i Data Book, 2000, does not pinpoint this area. However, an area proximate to the subject site, Kukuihaele, was identified as having annual rainfall ranging between 59 to 84 inches annually between 1995 to 1999. Based on information provided by the Water Resource Management Division of the State Department of Land and Natural Resources, the rainfall for Kukuihaele between 2000 to 2002 ranged from 63 to 66 inches."

5. **Agency Comments and Requirements: VAR 05-083:**
  - a. The State Department of Health (DOH) memorandum is dated October 3, 2005 (Refer to memorandum in file).
  - b. The Department of Water Supply (DWS) memorandum dated October 18, 2005 states in part:

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

Please be informed that the property is not within the service limits of the Department's existing water system facility. The nearest point of adequacy is an existing 12-inch waterline along the Hawai'i Belt Road approximately five miles from the property."

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 October 5, 2005. It appears that the notice was mailed on or about October 5, 2005.
  
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following letters and comments to the subject variance application were received:
  - a. Letter and fax from Judy S. Hiller, dated October 8, 2005 was received on or about October 10 and October 12, 2005.
  
  - b. Letter from Jim Thain-Forest Solutions, Inc. and attachment received on or about October 18, 2005.

Note: The applicant’s agent submitted several follow-up letters and other information dated October 29 and November 1, 2005, respectively, for the variance record/file.

#### **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 construct private water system improvements for the proposed subdivision in accordance with DWS standards.

As such, the imposition of improving the nearest DWS public water system or providing an approved alternative or private water system meeting DWS standards 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, rainfall maps at Planning Department or DWS, 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 6-lot subdivision is near rain gage station "202" and active rain gauge "206". According to the Atlas of Hawaii Third Edition-Map (Page 57) which denotes "Lines of equal average annual rainfall in inches", the subdivision appears to be within a region receiving between 80 inches to 100 inches per year. As such, this property appears to receive sufficient rainfall to support a private rainwater catchment system to store and supply rainwater 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 analysis of other current rainfall data from a rain gauge nearest the proposed subdivision purports that the subject TMK property receives more than 70-inches of rainfall annually to support individual or separate private rainwater catchment systems for potable and emergency uses. According to the applicant's information and other rainfall information available from National Oceanic and Atmospheric Administration (NOAA) the proposed 6-lot subdivision is near active rain gage station KUKUIHAELE 206.1 which is "makai" of the proposed subdivision. According to recent NOAA rainfall data, "206.1" annually received 76.44 inches and 63.18 inches of rainfall during 2001 and 2002, respectively. The analysis of the applicant's submittals compared with current rainfall data for property situated "makai" of the proposed subdivision or land situated at lower elevations show 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 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.

The proposed subdivision creates fewer lots than would be possible under the A-40a zoning.

The surrounding property and uses are agricultural (former sugar cane fields) and the subject TMK property's frontage along "MUD LANE" has not significantly changed over the past 60 + years. Vehicular access to the subject property or proposed subdivision is via an existing gravel roadway within this segment of the "MUD LANE" right-of-way. Access to this property and surrounding areas has not changed significantly since 1967. Any improvements to the roadway within the segment of "Mud Lane" right-of-way fronting the proposed subdivision will be addressed by the applicant/owner prior to issuance of final subdivision approval.

The subject variance application was acknowledged by letter dated September 21, 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 6-lot subdivision of the subject TMK property without providing a water system 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 05-0125. 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 6-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 05-0125. 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 05-0125 not serviced by a County water system. No further subdivision of the lots created by SUB 05-0125 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
  - c. Any lots created by SUB 05-0125 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 05-0125 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-0125, the owner(s) of the lot(s) created by SUB 05-0125 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.

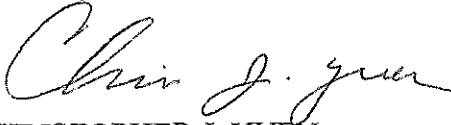
Mr. Sidney M. Fuke  
SIDNEY FUKU PLANNING CONSULTANT  
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3. The subdivision application's (SUB 05-0125) final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 05-0125.
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 05-0125  
Judy Hiller  
Jim Thain