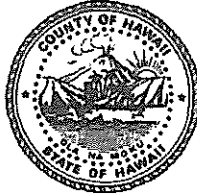


Harry Kim  
Mayor



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

March 29, 2006

Mr. Nathan Casady  
P. O. Box 6196  
Hilo, HI 96720

Dear Mr. Casady:

**SUBJECT: VARIANCE PERMIT NO. VAR 05-101**  
**Applicant: NATHAN CASADY**  
**Owner: NATHAN CASADY**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Article 6, Division 2, Improvements Required,**  
**Section 23-84, Water Supply, (1) (2)**  
**Tax Map Key: 1-7-017:171, (SUB 04-000009)**

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 10-lot subdivision. The variance allows the proposed subdivision (9-building lots and 1-road lot) to be created without a water system meeting without providing 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 **approved** based on the following findings:

**BACKGROUND**

1. **Location.** The subject TMK property, Lot 35 containing approximately 48.967 acres, being a portion of Grant 3977 to J. E. Staples, Olaa Reservation Lots, is situated at Olaa, Puna, Hawaii.

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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 applicant/owner submitted a subdivision application (SUB 04-00009) and revised preliminary plat map (PPM), dated December 10, 2003, proposing to subdivide subject TMK property into 10-lots or (9-building lots and 1-road lot). Further action on the proposed subdivision application's revised PPM is being deferred according to a letter dated December 8, 2005 in SUB 04-000009.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about November 15, 2005. Additional time to mail out a notice of variance to surrounding property owners and post a sign on subject TMK property was requested by the applicant.

5. **Agency Comments and Requirements (VAR 05-101):**

- a. The Hawaii County Fire Department memorandum dated December 12, 2005 states:

"In that the catchment system will also be used for fire protection, it is recommended that the fire department connection to the tank be located in an area accessible by fire apparatus."

- b. The State Department of Health (DOH) memorandum is dated February 1, 2006. (Refer to memorandum in variance file).

- c. To date, no written comments were received from Department of Water Supply (DWS). According to a March 14, 2006 discussion between PD staff and DWS staff (William Atkins), the following DWS comments dated September 28, 2005 in SUB 04-000009 file would apply to subject variance application:

"We have reviewed the preliminary plat map for the proposed subdivision.

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, transmission, booster pumps, and distribution facilities, must be constructed. Currently,

sufficient funding is not available and no time schedule is set.

Further, the property is at an elevation beyond the service limits where water can be delivered and 1,000 feet from the end of an existing 6-inch waterline along Huina Road.

Should there be any questions, please contact Mr. William Atkins of our Water Resources and Planning Branch at 961-8070, extension 254.”

6. **Notice to Surrounding Owners.** The applicant submitted a copy of a public notice mailed to property owners and mailing receipts sent to surrounding property owners and photograph of a sign posted on subject property. According to these submittals, it appears that a notice was mailed on or about January 18, 2006; and, the required sign was posted on subject property on or about January 16, 2006.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letter was received from a surrounding property.
  - 7a. Letter dated February 1, 2006 signed by Vernon W. Medeiros was received on February 2, 2006. (Note: The proposed subdivision is not proposing or creating “lots which are much smaller than the current zoning”; and, no variance from the DPW road requirements is being requested. Access to the proposed lots will be from a proposed “ROAD LOT” and/or County owned right-of-way (Huina Road). Also see variance conditions).

No other comments or written objections from the general public were received.

Therefore, after considering the circumstances and variance background information, rainfall information provided by the applicant, agency comments, and other comments from a surrounding property owner, 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 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.

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### **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 or extending the nearest County 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.

The analysis of existing rainfall within the subject property utilizing maps at the Planning Department, DWS, and 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 subdivision. According to a map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the proposed subdivision appears to be nearest active rain gage station "91.14" (KURTISTOWN) which received 177.51 inches of rain during 2002. Other historical data available from the Hawaii State Climate Office (HSCO) indicates that rain gauge station "91.9" (MOUNTAIN VIEW NO. 3) near the proposed subdivision shows a mean rainfall average of 204.80 inches between the years 1990 and 1998. The analysis of the applicant's submittals compared with recent rainfall data and historical rainfall data for the surrounding areas indicate the proposed subdivision will receive approximately 147 inches + of rainfall yearly.

The subject variance application was acknowledged by letter dated November 28, 2005. Additional time was requested by the applicant to notify surrounding property owners and post a sign on the subject TMK property. The applicant agreed and submitted a written time extension to March 31, 2006.

The original due date for the variance decision was prior to Rule 22 of the Planning Department Rules taking effect. Hence, Rule 22 does not apply to this variance.

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.

#### **VARIANCE DECISION-CONDITIONS**

The variance request to allow a proposed 10-lot subdivision (9-building lots and 1-road lot) 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 04-000009. 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 10-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 04-000009. 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 lots created by SUB 04-000009 not serviced by a County water system. No further subdivision of the lots created by SUB 04-000009 will be

permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.

- c. Any lots created by SUB 04-000009 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.
- g. In the event that the County notifies the owner(s) of the lot(s) created by SUB 04-000009 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 04-000009, the owner(s) of the lot(s) created by SUB 04-000009 shall

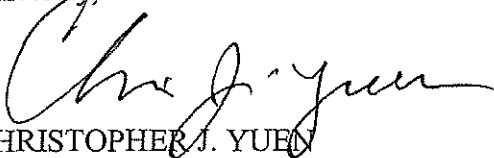
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participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply.

- 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.
3. The subdivision's (SUB 04-000009) 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 04-000009.
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 the subject Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY/CJY:mad  
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xc: Manager-DWS  
SUB 04-000009  
Vernon W. Medeiros