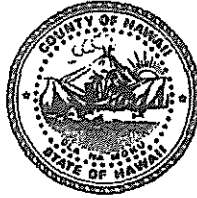


Harry Kim  
Mayor



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

June 2, 2006

Mrs. Chrystal Thomas Yamasaki, L.P.L.S.  
WES THOMAS ASSOCIATES  
75~~2~~6749 Kalawa Street  
Kailua-Kona, HI 96740

Dear Mrs. Yamasaki:

**VARIANCE PERMIT-VAR 06-030**

**Applicant:** WES THOMAS ASSOCIATES

**Owner:** SAMA FARMS, INC.

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

**Tax Map Key: 7-9-003:005, (SUB 05-000158)**

After reviewing the subject variance application, the Planning Director certifies the approval of Variance Permit-VAR 06-030 subject to variance conditions. The variance allows proposed 2-lot subdivision (SUB 05-000158) without providing a water supply system. The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

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, containing approximately 2.813 acres, being a portion of Grant 974 to Ehu, is situated at Kuamoo, North Kona, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The owner or subdivider filed a subdivision application (SUB 05-000158) and preliminary plat map (PPM), dated August 22, 2005, proposing to subdivide subject TMK property into 2-lots. Further action on the proposed subdivision was deferred according to letter dated December 16, 2005 in the subdivision file.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about April 5, 2006.

The applicant's transmittal letter dated March 27, 2006 states in part;

Page 1. "According to the printout of a portion of the State GIS maps the with Isohyet layer, the property receives in excess of 65 inches of rainfall annually. A copy of the map is enclosed for your reference. In absence of the availability of the USGS Rainfall Map, an email from the Director, notes that this GIS layer will be sufficient for illustrating rainfall."

5. **Agency Comments and Requirements-VAR 06-030:**

- a. The Department of Water Supply (DWS) memorandum, dated April 21, 2006, states in part:

"Our memorandum of October 20, 2005, still stands. The property is situated at an elevation beyond the service limits of the Department's existing water system facilities. In other words, it is not possible to deliver water to the property and will required extensive improvements and additions, including storage, transmission, booster pumps, and distribution facilities to be constructed. Currently, sufficient funding is not available and no time schedule is set."

Note: The above DWS memorandum refers to earlier DWS memorandum dated October 20, 2005 in the subdivision file.

- b. The Hawaii County Fire Department memorandum is dated April 25, 2006. (Refer to memorandum in variance file).

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- c. The State Department of Health (DOH) memorandum is dated May 1, 2006. (Refer to memorandum in variance file).
6. **Notice to Surrounding Owners/Posted Sign.** The applicant a transmittal letter dated April 27, 2006 and other submittals regarding a notice mailed to surrounding property owners; and, it appears that a notice was mailed to property owners within 300 feet of the perimeter boundary of subject TMK property on or about April 24, 2006. According to the notarized affidavit dated April 7, 2006 regarding the sign and photograph, etc., the required sign was posted on or near subject property. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about April 24, 2006.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received from surrounding property owners or public.

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.

### **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.

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### **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 information and data available from the Hawaii State Climate Office (HSCO) the proposed subdivision appears to be nearest to active rain gage station "KAINALIU 73.2" or "73.2"; and, HSCO data indicates the annual "mean" rainfall for "73.2" between 1949 to 2000 is 63.77 inches. The analysis of the applicant's submittals together with rainfall data provided by the HSCO indicate the subject TMK property or proposed subdivision will receive at least 60 + inches of rainfall annually and meets Rule No. 22-Water 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 2-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.

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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 05-000158. 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 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 05-000158. 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 05-000158 not serviced by a County water system. No further subdivision of the lots created by SUB 05-000158 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
  - c. Any lots created by SUB 05-000158 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.

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- 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 05-000158 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-000158, the owner(s) of the lot(s) created by SUB 05-000158 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 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 05-000158.
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:cd

PAWP60\WRY\FORMLETT\VAR06-030\WATER-RULE 22-TMK79003005.SAMA-WTA

xc: Manager-DWS  
SUB 05-000158