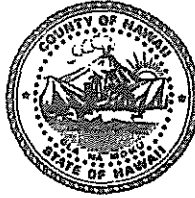


Harry Kim  
Mayor



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  
75-6749 Kalawa Street  
Kailua-Kona, HI 96740

Dear Mrs. Yamasaki:

**VARIANCE PERMIT-VAR 06-031**

**Applicant: WES THOMAS ASSOCIATES**

**Owner: PETER J. ORELUP, ET AL.**

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

**Tax Map Key: 8-2-008:075, (SUB 05-000162)**

After reviewing the subject variance application, the Planning Director certifies the approval of Variance Permit-VAR 06-031 subject to variance conditions. The variance permits allows proposed 2-lot subdivision (SUB 05-000162) 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 17.283 acres, being portions of Grant 867 to Preston Cummings, R. P. 4497, L.C Aw. 8559 to C. Kanaina, and R.P. 1669, L.C. Aw 86516-B, Ap. 2 to Kamikui, and situated at Waipunaula, Kalamakumu and Ililoa, South Kona, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC). The property is within the Special Management Area (SMA). The property does not abut the shoreline.
3. **Subdivision Request/PPM.** The owners/subdivider filed a subdivision application (SUB 05-000162) and preliminary plat map (PPM), dated August 26, 2005, proposing to subdivide subject TMK property into 2- lots. Further action on the proposed subdivision was deferred pursuant to an earlier letter dated December 16, 2005 in the subdivision file.

Note: According to email dated May 8, 2006, the applicants/subdivider are required to submit SMA Use Permit Assessment Application for review.

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 25, 2006 states in part;

Page 1. "According to the printout of a portion of the State GIS maps the property receives over 50 inches of rainfall annually. A copy of the map is enclosed for your reference.

"There are two existing water meters servicing the subject property. Due to the elevation of the property the water pressure is less than the 40 psi required by the Department of Water Supply for domestic use. However, the owners have in place a private pumping system and holding tank (shown on the map) on the property. This system has been in place for a number of years and serves the owners quite well."

5. **Agency Comments and Requirements-VAR 06-031:**

- a. The State Department of Health (DOH) memorandum is dated April 19, 2006. (Refer to memorandum in variance file).

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

"Although, there are two existing meters servicing the property, it is at an elevation where the Department's existing water system facility cannot deliver water at adequate pressure and volume under peak-flow conditions.

Subject to the above, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including storage, transmission, booster pumps, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set."

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

6. **Notice to Surrounding Owners/Posted Sign.** The applicant a transmittal letter dated April 28, 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 notarized affidavit dated April 4, 2006 and photographs, etc., submitted with the variance application, it appears that the required sign was posted on or near subject TMK 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.

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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 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.

In addition, while the rainfall (Below 59 inches) within the proposed subdivision cannot meet the rainfall criteria pursuant to Rule No. 22-Water Variance, the subject TMK property is currently assigned 2 services from the DWS; and, the subdivider will be required to assign these DWS services to the proposed subdivision for potable water needs and separated water catchment tanks can be constructed by the subdivider for fire protection or emergency purposed pursuant to variance and variance conditions.

### **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.

At this time, the subject TMK property is assigned 2 water meters from the DWS. The subdivider can assign these water meters (1 DWS service to each lot) to the proposed subdivision or assign 1-DWS meter to proposed lot "LOT 4-A-3-A" and 1-DWS meter to proposed lot "LOT 4-A-3-B", respectively, subject to Elevation Agreements. Fire protection for the subdivision can be augmented by requiring separate detached water catchment tanks to be constructed for fire protection or emergency purposes.

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 emergency uses.

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.

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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.
2. The applicant/subdivider shall confer with DWS and assign existing 2-DWS meters to proposed subdivision (SUB 05-000162). The owners/subdivider shall assign a DWS meter to each proposed lot and this assignment shall be confirmed in writing and subject to any Elevation Agreement(s) required by the DWS memorandum dated November 7, 2005 in subdivision file (SUB 05-000162). The assignment of the DWS meters and required Elevation Agreement(s) must be executed and meet DWS requirements prior to issuance of final approval to SUB 05-000162.
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 05-000162. 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. Any lots created by SUB 05-000162 may not be made subject to a condominium property regime.

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- b. Each permitted dwelling shall be provided with and maintain a private water supply system of 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.
  - c. 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.
  - d. 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 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 05-000162.

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5. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with SMA requirements and 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

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xc: Manager-DWS  
SUB 05-000162