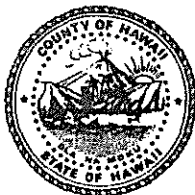


Harry Kim  
Mayor



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 9, 2006

Mr. Jason K. Inaba  
INABA ENGINEERING, INC.  
273 Waianuenue Avenue  
Hilo, HI 96720

Dear Mr. Inaba:

**VARIANCE PERMIT-VAR 06-033 (DENIAL)**

**Applicant:** JASON K. INABA

**Owners:** MELVIN K. INABA, ET AL.

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

**Tax Map Key: 8-9-003:067, (SUB 04-000087)**

After reviewing the subject variance application the Planning Director denies your request and variance to allow a 2-lot subdivision (SUB 04-000087) to be created without providing 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).

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

**BACKGROUND**

1. **Location.** The subject property, containing approximately 14.362 acres, portion of Grant 2738 to Keliikuli, is situated at Hoopuloa, South Kona, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The subdivider/owners filed a subdivision application (04-000087) on June 1, 2004 together with preliminary plat map (PPM), dated June 1, 2004 proposing to subdivide each TMK property into 2-lots. Further action on the subdivision was deferred pursuant to a letter dated July 20, 2004 in the subdivision file.
4. **Variance Application.** The (applicant/owners) submitted the variance request and subject variance application on or about April 12, 2006 and other submittals related to the application on May 16, 2006.

The applicant's background report or data states in part the following:

Page 2- "The WATER-RESOURCES INVESTIGATION REPORT 95-4212, "Active rain-gaging stations and mean rainfall-Plate 6, (see attached) delineates the lines of equal mean annual rainfall for the Island of Hawaii. Our interpretation of the approximate rainfall in the vicinity of the proposed subdivision is approximately 55 inches.

The State's Commission on Water Resource Management states that the nearest rain gauge in this area is Manuka. The rainfall over the past 31 years, indicates that the mean, maximum, and minimum rainfall to the area is 48.75 inches, 87.20 inches, and 24.17 (sic) inches respectively at elevation 1760'."

5. **Agency Comments and Requirements-VAR 06-033:**

- a. The State Department of Health (DOH) memorandum is dated May 8, 2006. (Refer to memorandum in variance file).
- b. The Department of Water Supply (DWS) memorandum, dated May 9, 2006 states in part:

"We have reviewed the subject application and our comments from our memorandum of August 26, 2004, to you remain unchanged:

"Please be informed that the subject is not within the service limits of the Department's existing water system facilities.

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The nearest Department of Water Supply's water system facility is at the end of an existing 8-inch waterline along the Mamalahoa Highway approximately 11.5 miles from the property."

Should there be any questions, you may contact Mr. Finn McCall of our Water Resources and Planning Branch at 961-8070, extension 255."

- c. The County of Hawaii Fire Department memorandum, dated May 19, 2006, states:

"We have no comments to offer at this time in reference to the above-mentioned Variance application request."

6. **Posted Sign /Notice to Surrounding Owners.** The applicant submitted transmittal letter dated May 3, 2006, affidavit dated March 2, 2006, and photograph of sign posted on subject property. According to the agent's transmittal letter dated May 15, 2006 and other submittals, it appears that a notice was mailed on or about May 8, 2006 to surrounding property owners. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about May 8, 2006.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following comments or objection letter were received:

- 7a. Letter (fax) dated May 17, 2006 received from Douglas and Linda Pollard.

#### **INTENT AND PURPOSE-WATER VARIANCE**

Section 23-84 of the Subdivision Code requires that all new subdivisions have a water system meeting with the minimum requirements of the Department of Water Supply.

Variances can be granted, but under section 23-15, no variance may be granted unless it is found that:

- (a) There are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicants of substantial property rights that would otherwise be available or to a degree which obviously interfere with the best use or manner of development of that property; and

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- (b) There are no other reasonable alternatives that would resolve the difficulty; and
- (c) The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

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 proposed variance would not fulfill the intent of the Subdivision Code in that the water supply would be inadequate.

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, DPW, and information provided by the applicants show that there is inadequate 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.

After comparing the information submitted by the applicant, and reviewing a map-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, PLATE 6, location of active rain-gauges nearest the proposed subdivision, and other data published by the Hawaii State Climate Office (HSCO), it appears that the subdivision is closest to active rain-gauge station "MANUKA 2". The "2" rain gauge is situated approximately 5.98 +/- miles south of the TMK property. According to a recent 1996 publication, by the U.S. Geological Survey, MANUKA 2's elevation or altitude is 1760 feet. The map-PLATE 6 shows Manuka 2 or "2" is between the "40" and "60" isohyet line(s). Recent rainfall data published by the HSCO indicates the mean average rainfall for "2" between years 1949-2000 is 42.81 inches. In addition, National Oceanic and Atmospheric Administration (NOAA) data indicates MANUKA 2 received only 20.50 inches of rainfall during 2002. The comparison between the applicant's data and recent rainfall data demonstrates that rainfall within the property or surrounding areas is low for private individual water catchment systems. In addition, the rainfall within the proposed subdivision is less than 60 inches minimum annual rainfall and does not meet Rule 22-Water Variance.

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The alternative to a water system proposed by the applicant/owners--rain catchment by the individual lot owner(s)--would not meet the intent and purpose of the Subdivision Code; and Rule 22. The current rainfall and historical "mean" rainfall data within the proposed subdivision is below 60 inches per year and unreliable to support a catchment system. The Subdivision Code, by specifying the need for a water system, represents a policy decision that subdivisions should have on-site water and not rely on hauling in water. As for fire protection, although a variance could include a condition that the lot owner have a second tank for fire fighting purposes, and keep it filled. This condition would be impossible to monitor and if it were breached, the violation would likely be discovered at the worst possible moment, for example; when a fire truck actually tried to get water from the tank. The proposed 2-lot subdivisions could, therefore, be detrimental to the public welfare.

Approval of the subject variance(s) from water supply requirements would not conform to the following goals, policies and standards of the Hawaii County General Plan which state in part:

Water system improvements and extensions shall promote the County's desired land use development pattern.

All water systems shall be designed and built to Department of Water Supply standards.

The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

The proposed variance would allow another subdivision to be created with substandard infrastructure. Your variance request to allow or develop a proposed 2-lot subdivision without providing a water supply pursuant to Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), or providing a water system meeting the minimum requirements of the Department of Water Supply (DWS) is **denied**.

In accordance with a recent charter amendment and Ordinance No. 99-111, you may appeal the director's decision and request the following:

Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the director's decision, appeal the decision to the board of appeals.

Pursuant to Board of Appeal (BOA) Rule, PART 8. APPEALS, 8-15 General Standards for Appeals (Non-Zoning):

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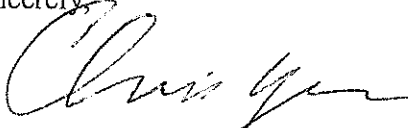
"A decision appealed from may be reversed or modified or remanded only if the Board finds that the decision is:

- (1) In violation of the Code or other applicable law; or
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion."

In view of the above, enclosed is form-**GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR**.

Should you have any questions on the variance decision or the appeal procedure, please feel free to contact our Hilo office at telephone (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY/CJY:cd

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Enclosure

xc: Manager-DWS  
SUB 04-000087  
Douglas and Linda Pollard