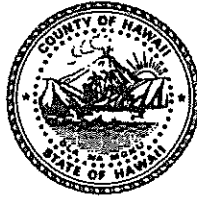


**Harry Kim**  
Mayor



**Christopher J. Yuen**  
Director

**Brad Kurokawa, ASLA**  
**LEED® AP**  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224  
(808) 961-8288 • FAX (808) 961-8742

December 10, 2007

Oceanit-DHHL  
c/o ParEn, Inc. dba Park Engineering  
Suite 1500 Pacific Park Plaza  
711 Kapiolani Boulevard  
Honolulu, HI 96813

Gentlemen:

**VARIANCE-VAR 06-038 (REVISED VARIANCE CONDITIONS)**

**Agent: PAREN, INC. dba PARK ENGINEERING**

**Applicant: OCEANIT**

**Owner: STATE OF HAWAII-DHHL**

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

**Tax Map Key: 4-6-011:003, 011, 012, and 013, (SUB 06-000338)**

The Planning Director previously approved of Variance-VAR 06-038 subject to variance conditions dated October 13, 2007. VAR 06-038 allows a proposed subdivision (SUB 06-000338) to be created without a water system meeting the minimum requirements of the Department of Water Supply (DWS). The variance is from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

Pursuant to discussions with the Planning Department, this letter accommodates a request by the Department of Hawaiian Home Lands (DHHL) to clarify and amend VAR 06-038 Variance Condition "2. b." dated October 13, 2007, by deleting language prohibiting further subdivision of parcels created by SUB 06-000338 pursuant to VAR 06-038 unless county water system requirements and other requirements of the Hawaii County Subdivision Code are met. The DHHL has expressed a desire to possibly subdivide these homestead lots into smaller 5-acre homestead lots at some point in the future.

The amendment to Condition 2(b) recognizes that DHHL can always apply for subdivision and water variance in the future, and this department will assess the appropriateness and reasonableness of future subdivision applications and the nature of any variances sought after the applications are filed. Therefore, in consideration of the foregoing, the variance conditions dated October 13, 2007 for VAR 06-038 are hereby revised by this letter and revised to read as follows:

**VARIANCE CONDITIONS (VAR 06-038)**

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 06-000338. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting those lots not serviced by a County water system or 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 06-000338. 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 additional new lots created by SUB 06-000338 not serviced by a County water system.
  - c. Any lots created by SUB 06-000338 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 06-000338 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000338, the owner(s) of the lot(s) created by SUB 06-000338 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.
3. The subdivision's (SUB 06-000338) 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 06-000338.
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 null and void.

Sincerely,



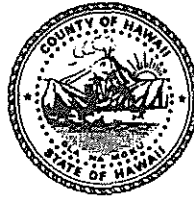
CHRISTOPHER J. YUEN  
Planning Director

WRY/DSA:cd

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xc: Manager-DWS  
SUB 06-000338

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October 13, 2006

Oceanit-DHHL  
c/o ParEn, Inc. dba Park Engineering  
Suite 1500 Pacific Park Plaza  
711 Kapiolani Boulevard  
Honolulu, HI 96813

Gentlemen:

**VARIANCE-VAR 06-038**

**Agent:** PAREN, INC. dba PARK ENGINEERING  
**Applicant:** OCEANIT  
**Owner:** STATE OF HAWAII-DHHL  
**Request:** Variance from Chapter 23, Subdivisions,  
Article 6, Division 2, Improvements Required,  
Section 23-84, Water Supply, (1)(2)  
**Tax Map Key: 4-6-011:003, 011, 012, and 013, (SUB 06-000338)**

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 06-038 subject to variance conditions. The variance allows a proposed subdivision (SUB 06-000338) to be created without a water system meeting the minimum requirements of the Department of Water Supply (DWS). The variance is from 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**

OCT 20 2006

1. **Location.** The subject TMK property(s), containing an aggregate area of approximately 2472.897 acres, being all of Parcels 9, 10, 11, and 12 as shown on C.S.F. No. 22,233 to 22, 236, respectively being a portion of Government (Crown) Land of Honokaia, and situated at Honokaia, Honokaa, Hamakua, Hawaii. The proposed Honokaia Homestead Lots Subdivision is situated on the southerly side of Old Mamalahoa Highway.
2. **Zoning.** The subject property is zoned Agricultural (A-40a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The State of Hawaii-DHHL/Oceanit filed a subdivision application (SUB 06-000338) and preliminary plat map on May 2, 2006 proposing to subdivide subject TMK property into 16-lots.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on May 2, 2006.
5. **Agency Comments and Requirements-VAR 06-038:**
  - a. The State Department of Health (DOH) memorandum is dated May 17, 2006. (Refer to memorandum in variance file).
  - b. The Hawaii County Fire Department memorandum is dated May 23, 2006. (Refer to memorandum in variance file).
  - c. The Department of Water Supply (DWS) memorandum, dated May 30, 2006, states in part:

"We have reviewed the subject variance application and have the following comments.

Water can be made available from an existing 4-inch waterline off Mana Road approximately 1,200 feet from Parcel No. 11. Water availability within this portion of the water system is limited to 2 units of water at a maximum of 600 gallons per day, per unit, for each existing lot of record.

Therefore, the Department's existing water system facilities cannot support the proposed 16-lot subdivision. Extensive improvements and additions, including source, storage, booster pumps, transmission, and distribution facilities, must be constructed. Currently, sufficient funding is not available from the Department for such improvements and no time Schedule is set.

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

6. **Notice to Surrounding Owners/Posted Sign.** The applicant's forwarded a copy of notice and other information sent to a list of surrounding property owner(s), and other submittals on or about July 10, 2006 and copies of postal receipts on or about October 12, 2006.

Posted Sign. The applicant forwarded a letter or affidavit dated May 26, 2006 and 3-photographs of a sign.

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.

#### **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. Pursuant to a rainfall maps available the State Climate Office (HSCO) and other published sources the proposed is situated in an area receiving in excess of 60 inches of rainfall annually. The analysis of the applicant's submittals together with rainfall maps and other published rainfall data for the area indicate the subject TMK property or proposed subdivision will receive at least 60+ inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

The subject variance application was acknowledged by letter dated May 10, 2006. Additional time was requested by the applicant to submit further background information and other submittals on behalf of the owners. The applicant agreed to extend the decision date to on or before October 15, 2006.

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 subdivision of the subject TMK property(s) 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 06-000338. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting lots not serviced by a County water system or 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 06-000338. 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 06-000338 not serviced by a County water system. No further subdivision of the lots created by SUB 06-000338 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
  - c. Any lots created by SUB 06-000338 may not be made subject to a condominium property regime.

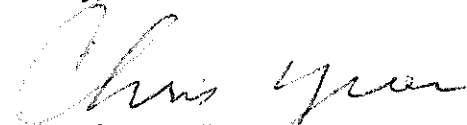
- d. Any dwelling constructed on a proposed lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6000-gallon water storage capacity for domestic consumption or potable uses. This private water catchment system shall 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.
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- g. In the event that the County notifies the owner(s) of the lot(s) created by SUB 06-000338 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000338, the owner(s) of the lot(s) created by SUB 06-000338 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.

Oceanit-DHHL  
c/o ParEn, Inc. dba Park Engineering  
Page 7  
October 13, 2006

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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

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xc: Manager-DWS  
SUB 06-000338