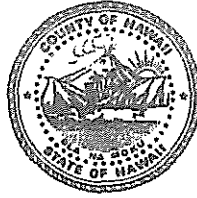


Harry Kim  
Mayor



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County of Hawaii  
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
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March 27, 2007

Mr. Brad Hirata  
P. O. Box 1282  
Kurtistown, HI 96760

Dear Mr. Hirata:

**VARIANCE-VAR 06-104**

**Applicant: BRAD HIRATA**

**Owner: BRAD HIRATA**

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

**Tax Map Key: 1-8-088:011, (SUB 06-000309)**

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 06-104 subject to conditions. The variance permits proposed 2-lot subdivision (SUB 06-000309) to be created without providing a water system to 1-lot meeting the minimum requirements of the Department of Water Supply (DWS). The variance 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 **approved** based on the following findings:

**BACKGROUND**

1. **Location.** The referenced TMK property, "LOT A-5-A-5" containing approximately 12.355 acres, Land Court Application 777, Map 24, is situated at Olaa, Puna, 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).

3. **Subdivision Request/PPM.** The applicant/owner submitted a subdivision application (SUB 06-000309) and preliminary plat map (PPM) dated January 24, 2006 to the Planning Department on March 23, 2006. Further action on the proposed 2-lot subdivision was deferred by the Planning Department pursuant to letter dated November 15, 2006 in the subdivision file.
4. **Variance Application.** The applicant submitted the subject variance application and revised variance submittals on January 31, 2007. The application includes the following statement"

"I AM REQUESTING A WATER VARIANCE BECAUSE THE DEPARTMENT OF WATER SUPPLY HAS DENIED A REQUEST FOR AN ADDITIONAL WATER SERVICE FOR PLANNED SUBDIVISION."

5. **Agency Comments and Requirements (VAR 06-104):**

- a. The State Department of Health (DOH) memorandum is dated February 20, 2007. (Refer to memorandum in variance file).
- b. The Hawaii County Fire Department memorandum dated February 22, 2007 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 with approved fire connection."
- c. The Department of Water Supply (DWS) memorandum, dated March 12, 2007, states in part:

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

Our comments from our June 28, 2006, memorandum to you still stand. Please be informed that the subject parcel is currently served by one (1) existing 5/8-inch meter (Account No. 060-28930). Should the subject subdivision application be approved, the applicant shall notify the Department in writing which lot within the proposed 2-lot subdivision will be served with the existing service."

6. **Notice to Surrounding Owners.** According to the applicant a notice was mailed to surrounding property owners. The applicant's submitted photographs of a sign posted on subject TMK property and mailing receipts dated February 22, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 23, 2007.

**Posted Sign.** The applicant submitted an affidavit dated February 26, 2007 regarding a posted sign and photographs of the posted sign on subject TMK property.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letter was received:

- 7a. Objection letter dated March 1, 2007 from "Owner TMK1-8-088-9, North Peck Road" and attached copy of notice sent by the applicant was received by the Planning Department in Hilo on March 5, 2007.

Note: According to the list of surrounding property owners within 300 feet of subject TMK included with the subject variance application and Real Property tax records, the owner of TMK 318088009 is Theodore Lucero Jr. Trust, Et al.

Therefore, after considering the circumstances and variance background information, rainfall information provided by the applicant, and agency comments, 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**

The DWS memorandum dated June 28, 2006 in subdivision file (SUB 06-000309) states in part the following:

"Please be informed that the Department's existing water system cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities, must be constructed. The applicant is to submit how they will meet the above requirements (sic) in accordance with the Department's Rules and Regulations and Water System Standards."

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The first alternative requires the applicant to make "extensive improvements and additions" to the existing county DWS water system in accordance with the DWS memorandum in the subdivision file.

The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

In view of the above, there are no other reasonable alternatives in resolving the difficulty of the applicant. The imposition of improving the existing public water system or providing an approved alternative private water system meeting DWS standards for proposed 2-lot subdivision (SUB 06-000309) would be putting excessive demands upon the applicant when a more reasonable alternative is available.

#### **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. The State Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private roof or rain catchment water systems for potable or emergency uses.

The alternative to a water system proposed by the applicant or "water variance" to allow and utilize privately owned individual rain water catchment systems for 1-proposed lot of the proposed 2-lot subdivision can meet the intent and purpose of the Subdivision Code; and, allowed pursuant to Planning Department Rule 22-Water Variance, effective February 25, 2006. Generally, Rule 22 is both a rule and statement of criteria to be used so that consistent decisions can be made on water variance requests. Section 23-84 of the Subdivision Code requires a water system, and Rule 22 limits subdivisions requesting a variance from water supply to six (6) lots, and, requires that a proposed subdivision requesting a variance to allow individual rainwater catchment systems for potable and emergency needs must receive a minimum 60 inches of annual rainfall for each lot served by catchment. Rule 22, states in part:

"22-4 Minimum rainfall.

Except as provided in Rule 22-6, all lots to be served by catchment shall be served by catchment shall have an average annual rainfall of not less than 60". The annual rainfall can be proven by rainfall records at comparable rain gauges, or by the USGS rainfall map."

The analysis of existing rainfall within the subject property utilizing maps at the Planning Department, DWS, and information provided by the applicant 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 6 lots not serviced by the DWS water supply system. According to map-Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the subject TMK property or proposed subdivision is above the "160" inch isohyet line; and historical rainfall information obtained from the State Climate Office (HSCO) and GIS mapping information show the proposed 2-lot subdivision is near former rain gauge "MOUNTAIN VIEW 91". The mean annual rainfall (1949-1985) for "91" was 185.61 inches. 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 more than 60+ inches of rainfall annually.

The analysis of the applicant's submittals together with other rainfall maps and published rainfall data for the subject TMK property and surrounding areas indicate the proposed lot or lot designated to utilize private rainwater catchment systems for potable water and emergency uses will receive in excess of 60 + inches of rainfall annually. The proposed subdivision 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 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 without providing a water system meeting DWS standards to 1-proposed lot of pending 2-lot subdivision is **approved** subject to the following variance conditions:

1. The applicant, owner(s), their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. Pursuant to the DWS memorandum dated March 12, 2007, the applicant/owner or subdivider shall contact the DWS in writing and assign existing DWS- 5/8-inch meter (Account No. 060-28930) to proposed lot being created by proposed subdivision (SUB 06-000309). The applicant or DWS shall identify and confirm the proposed lot number and notify the Planning Department-Subdivision Section-SUB 06-000309, in writing, prior to issuance of tentative subdivision approval.

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 06-000309. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lot not serviced by a County water system created by 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 06-000309. 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 lot created by SUB 06-000309 not serviced by a County water system. No further subdivision of the lots created by SUB 06-000309 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
  - c. Any lots created by SUB 06-000309 may not be made subject to a condominium property regime.
  - d. Any dwelling constructed on 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 created by SUB 06-000309 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000309, the owner(s) of the lot(s) created by SUB 06-000309 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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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.
5. 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:cd

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xc: Manager-DWS  
SUB 06-000309  
Theodore Lucero, Jr. Trust, Et al.