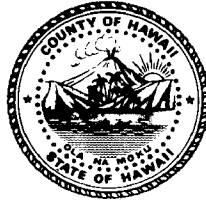


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
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County of Hawai'i
PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

December 1, 2021

Steven S.C. Lim, Esq.
Carlsmith Ball, LLP
P.O. Box 686
Hilo, HI 96721-0686

Dear Mr. Lim:

SUBDIVISION WITHDRAWN
SUBDIVIDER: HOKUKANO RANCH, INC.
"Hökūkano Preserve Subdivision"

Proposed Subdivision of Lots 1, 4, 5 & 6 of Hökūkano Mauka Tract,
Into 94 Lots (Lots 1 through 39, 1 through 44 and 1 through 11, Inclusive)
Hökūkano Tract & Haleki'i-Kalukalu, North Kona & South Kona,
Island of Hawai'i, Hawai'i

TMK: (3) 7-9-001:001, 002 & 003 and 8-1-002:040 (SUB-06-000489)

There has been no response to our letter of April 26, 2020, regarding the subject application.

Therefore, we are deeming the subdivision file **withdrawn** and removing it from process. Associated water and roadway variance (VAR-07-000036) is also hereby deemed **null & void**.

Pursuant to Article 4, Section 23-60(c), Chapter 23, Subdivision Control Code, a portion of the filing fee equivalent of ten percent (10%) of the fee or five dollars (\$5.00), whichever is greater, shall be retained for applications which have been withdrawn or denied before granted tentative approval. However, Tentative Approval was granted and, therefore, no refund is due.

Should the landowners elect to pursue the subdivision at a later date a new application complete with filing fee must be resubmitted to this department.

Steven S.C. Lim, Esq.
Carlsmith Ball, LLP
December 1, 2021
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Should you have any questions, please feel free to contact Hans Santiago at hans.santiago@hawaiicounty.gov or Jonathan Holmes at jonathan.holmes@hawaiicounty.gov.

Sincerely,


Zendo Kern (Doc #2, 2021.12.30 HST)

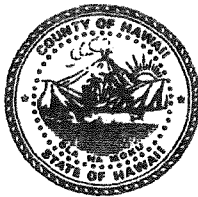
ZENDO KERN
Planning Director

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xc: Manager, DWS
 Director, DPW
 District Environmental Health Program Chief, DOH
 District Engineer, DOT
 Hokukano Ranch, Inc., Attn: Gregory Hendrickson
 Nancy E. Burns, PE, LLC
 Planning Dept.-Kona
 VAR-07-000036 N/V

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

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September 14, 2007

Gregory Hendrickson, Esq.
Real Property Administrator
HOKUKANO RANCH
P.O. Box 2240
Kealekekua, HI 96750

Dear Mr. Hendrickson:

SUBJECT: VARIANCE-VAR 07-036

Applicant: HOKUKANO RANCH, INC.

Owner: HOKUKANO RANCH, INC.

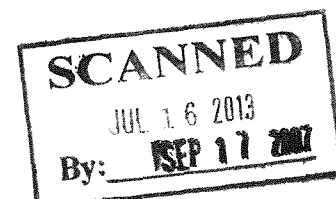
**Request: Variance from Chapter 23, Subdivisions,
Design Standards/Improvements**

Tax Map Key: 7-9-001:001,002,003 and 8-1-002:040, (SUB 06-000489)

After reviewing your variance application, the Planning Director certifies the approval of VARIANCE-VAR 07-006 subject to variance conditions. The variance permits alternative road improvements and water system improvements to be constructed within proposed subdivision (SUB 06-000489) creating 101 lots and roadlots. The variance is from the minimum water supply and road improvements required by Chapter 23, Subdivisions, Article 3, Division 4, Street Design, Section 23-41, Minimum right-of-way and pavement widths, Section 23-48, Cul-de-sacs, Section 23-50, Grades and curves, Article 6, Division 2, Improvements Required, Section 23-84, Water supply, (1)(2), Section 23-86, Requirements for dedicable streets, and Section 23-95, Right-of-way improvement.

BACKGROUND

1. **Location.** The referenced TMK property(s), containing an aggregate area of approximately 2895 +/- acres, adjoining and above Konawaena High School or situated at and extending approximately 4.5 miles mauka from the intersection of the Mamalahoa Highway and Konawaena School Road.



The parcels are situated at Hokukano Tract, North Kona, and situated at Halekii-Kalukalu, (Kealakekua Village), South Kona, Hawaii.

2. **Zoning.** The subject property is split-zoned Village Commercial (CV-10) and Agricultural (A-1a, A-5a, and A-20a) by the County and designated Urban "U" and Agriculture "A" by the State Land Use Commission (LUC). The property or proposed subdivision is not within the Special Management Area (SMA).
3. **Subdivision Request/PPM.** The applicant submitted the subdivision application (SUB 06-000489) on December 6, 2006. Further action on this pending 101-lot subdivision application and the application's preliminary plat map (PPM) is being deferred according to a letter dated February 6, 2007 in the subdivision file.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated June 5, 2007 and applicant's transmittal letter dated April 26, 2007 allowed the Planning Department or Planning Director to exceed the time limit to process a variance application from Chapter 23, Subdivisions. The applicant granted a further time extension by letter dated August 31, 2007. The applicant's background report (page 2) states in part:

"B. Requested Variances

The applicant proposes the following infrastructural improvements in relation to the proposed subdivision:

1. Improvement of Coffee Shack Road, the primary access road, with 24 feet of pavement and 10-foot grassed shoulders within an 80 to 100-foot right-of-way; and improvement of the secondary access road ("Road F") with 24 feet of pavement and 10-foot grassed shoulders within an 80' right-of-way (Section 23-95, HCC, Right-of-way Improvements; and Standard Details R-34, "road pavement and shoulders" and R-39, "agricultural streets"); [See attached "EXHIBIT 3"]
2. Potential use of a parkway-type design for Coffee Shack Road, Road "F" and other internal subdivision roads that utilizes (sic) a grassed or landscaped median to separate the two opposing lanes of traffic in areas where it is found to be appropriate (Standard Details R-34, "road

Gregory Hendrickson, Esq.
Real Property Administrator
HOKUKANO RANCH

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- pavement and shoulders” and R-39, “agricultural streets”);
[See attached “EXHIBIT 3”]
3. Improvement of the internal subdivision roads with a 20-foot pavement and 10-foot grassed shoulders within a 50-foot right-of-way (Section 23-95, HCC, Right-of-way Improvement; and Standard Details R-34, “road pavement and shoulders” and R-39, “agricultural streets”);
[See attached “EXHIBIT 4”]
 4. Use of cul-de-sacs longer than 600 feet (Section 23-48, HCC, Cul-de-sacs);
 5. Use of certain right-of-way improvements for stabilization purposes (Section 23-95, HCC, Right-of-way Improvement; and Standard Details R-34, “road pavement and shoulders” and R-39, “agricultural streets”);
and
 6. Use of lined steel water reservoirs (Water System Standards, State of Hawaii 2002, Division 100, Section 105.10(B) Reservoirs, Type).”

Note: In order to preserve the agricultural, ranch character of the Property, the applicant proposes to improve Coffee Shack Road, which serves as the primary access to the Property, and Road F, which serves as the secondary access road, with 24 feet of pavement and 10-foot grassed shoulders within 80 to 100-foot rights-of-way. In addition, the applicant proposes to improve the other internal subdivision roads with a 20-foot pavement and 10-foot grassed shoulders within a 50-foot right-of-way; which includes design deviations to permit 10-foot grassed shoulders in lieu of full paving of the shoulders. The applicant intends to grade only the area necessary for proposed travelways or paved roadways, the grassed shoulders, including necessary drainage swales and drainage improvements required by the DPW. In addition, the applicant is requesting flexibility to allow the proposed roadway or paved roads to meander within the rights-of-way or proposed road lots. The Applicant believes that requiring centering of the roadway and full pavement of the road shoulders are not necessary or appropriate given the large lot sizes agricultural nature of the proposed subdivision. Please refer to attachments cited above or proposed typical roadway sections-“EXHIBIT 3” and “EXHIBIT 4” included with the applicant’s variance background report.

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5. **Agency Comments and Requirements: VAR 07-036:**

- a. The State Department of Health (DOH) memorandums are dated June 14, 2007 and July 23, 2007. (Refer to DOH memorandums in variance file).
- b. The County of Hawaii-Hawaii Fire Department memorandum is dated June 22, 2007. (Refer to COH-HFD memorandum in variance file).
- c. The Department of Water Supply (DWS) memorandum dated June 27, 2007 states:

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

Please refer to our letter to you, dated February 14, 2007, regarding our requirements for private water systems.

Please be informed that the applicant’s proposed use of lined steel reservoirs within the proposed water system does not meet the Department’s Water System Standards. As such, the Department would not provide review for the construction of the steel reservoirs. The Department will, however, review the construction plans for the rest of the proposed water system, provided that all other elements of the private water system will be installed in accordance with the Department’s Water System Standards.

Through copy of this letter, the applicant will also be informed that the proposed steel tanks would need to be designed and built to meet all structural requirements for Seismic Zone 4 areas.

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

- d. The Department of Public Works (DPW) memorandum dated June 27, 2007 states:

“We reviewed the subject variance application. The application repeatedly

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stresses a need to obtain a variance from a code requirement to pave entire right-of-way per Standard Detail R-34. According to Section 23-86 (sic) there is no such requirement for a non-dedicable street serving lots 3 acres or more in size. The only portion that may need to comply with County Standard Detail R-34 would be in the portion having A1a zoning and that only if the subdivided parcels were less than 3 acres in size. Other condition ma (sic) apply under a Special Permit, if any.

We have no objections to the subject variance request, provided the Planning Director finds that there is no use for the roads as dedicated County collector streets or County dedicated connection streets to connecting streets to adjacent properties and with the following conditions:

1. The subdivision streets shall not be considered for conveyance to the County unless improved to meet dedicable standards.
2. The subdivision road traveled-way pavement section shall be constructed in accordance with Hawaii County Code Section 23-86 or approved equal and shall comply with Hawaii County Code Section 23-41.
3. The roads shall be improved with stabilized shoulders and swales. The applicant shall demonstrate that proper roadside clear zones and horizontal sight distance is provided.
4. All storm drainage generated by the development shall be disposed of on site in a manner meeting with the approval of DPW and the Storm Drainage Standard. This includes not only the roadways but storm runoff attributable to future development of the lots themselves. The applicant' typical sections show no roadside drainage swales. A drainage report shall be submitted with the construction plans to substantiate how developed lot and roadway runoff is being disposed of within drainage structures and easements. Final construction approval will require complete stabilization of the roadsides and drainage system.

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5. The proposed development shall not alter drainage patterns upstream or downstream of the development, including but not limited to discharge, velocity and stormwater quality.
6. Portion of subdivision roads are shown within a Special Flood Hazard Area designated on the Flood Insurance Rate Map and a (sic) within other known watercourses. Alterations within a Special Flood Hazard area or known watercourse may be subject to regulation under Chapter 27 of Hawaii County Code.
7. Any vehicular security gate shall be located at least 60 feet from the County road right-of-way with turnaround on the County road side of the gate.
8. The approach to and intersection with Mamalahoa Highway shall be provided with a dedicated left turn lane on Mamalahoa Highway.

If you have any questions, please call Kiran Emler at our Kona office, 327-3530. Fax 327-3533.”

6. **Notice to Surrounding Property Owners/Public Notice.** The applicant submitted transmittal letter dated July 12, 2007, Affidavit of Mailing dated July 6, 2007, copy of Notice of Filing of Subdivision Variance Application dated June 19, 2007 and attachment (Exhibit A) mailed to surrounding owners and lessees of record within 300 feet of the perimeter boundaries of the subject properties, List of Surrounding Property Owners (Exhibit B), and original affidavit regarding posting of sign and photograph of posted signs. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 17, 2007.

Posted Sign: The applicant submitted Affidavit regarding posted sign dated July 6, 2007 and photograph of posted signs and Affidavit (Corrected) dated July 25, 2007 regarding posted sign related to the variance and photograph of the subdivision sign and variance sign (Exhibit A) posted at or near the property boundary adjacent to the Mamalahoa Highway (Hawaii Belt Road) which is the most heavily traveled public road to which the property is adjacent.

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7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letter, faxes, and/or petitions objecting to the variance application were received from surrounding property owners and public:
 - 7-a. Objection letter from Elaine K. Rabacal dated June 30, 2007.
 - 7-b. Objection letter from James E. Mitchell and Elaine Y. Mitchell dated July 3, 2007.
 - 7-c. "Petition Opposing Subdivision Variance Application" (13 signatures, street address, and phone numbers) received on July 5, 2007.
 - 7-d. Transmittal memorandum dated July 2, 2007 and attached "Petition Opposing Subdivision Variance Application" (697 signatures, street addresses, and phone numbers) received on July 5, 2007.
 - 7-e. "Petition Opposing Subdivision Variance Application" (10 signatures, street addresses, and phone numbers) received on July 5, 2007 (Fax/Original).
 - 7-f. "Petition Opposing Subdivision Variance Application" (13 signatures, street addresses, and phone numbers) received on July 5, 2007.
 - 7-g. Objection (fax) Letter from Ronald and Joyce Hancock and Michael and Violet Hirata received on July 5, 2007 and July 6, 2007.
 - 7-h. Letter (comments) from Gerald Takumi dated July 3, 2007 received on July 6, 2007.
 - 7-i. Objection letter (fax) from Mike and Jeannette (Hirata) Federspiel received on July 6, 2007.
 - 7-j. Letter (comments) from Shawn S. Suzuki, Principal, Konawaena High School dated July 2, 2007 received on July 9, 2007.
 - 7-k. Letter (comments) from Lori Greenwell, Director, Aka Ranch dated July 5, 2007 received on July 11, 2007.

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- 7-1. Objection letter (fax) from Steve Stetler Family dated July 15, 2007 received on July 16, 2007.

Note: The objections received focus on drainage issues and additional traffic created by the proposed subdivision. The applicant or subdivider will be required to submit a drainage study and drainage plan to mitigate water runoff before and after construction of the proposed subdivision improvements including golf course. The subdivision construction plans for the non-dedicable potable water system and non-dedicable roadways will include and require drainage improvements to be installed and require intersection improvements including street lights, signage, and other safety improvements, etc. to be installed at the primary intersection between Coffee Shack Road and Mamalahoa Highway and/or intersections according to DPW requirements. Potable water quality is also subject to State of Hawaii-DOH requirements and must be met before operation of the water system commences.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Supply.

The DWS memorandum dated February 14, 2007 in the subdivision application file (SUB 06-000489) states in part the following:

“Please be informed that the proposed water system will be privately and operated. Therefore, pursuant to Section 23-84 of the Hawaii County Code regulating subdivision, the following minimum requirements must be complied for subdivision approval:

1. Provide a water system designed to deliver water at adequate pressure and volume under peak-flow conditions in accordance with the Water System Standards, State of Hawaii, and the Rules and Regulations of the Department of Water Supply. The water system shall include, but not be limited to, the installation of extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities.
2. Submit construction plans for our review and approval.

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3. Pay a fee of four-tents of one percent of the estimated cost for the construction of the water system, but not less than \$50.00, to cover the cost for plan review, testing, and inspection.”

The first alternative requires the applicant or owners to construct a dedicable water system meeting DWS standards. The second alternative would be to design, drill and develop private wells and install a private water system in accordance with DWS standards.

The applicant’s background report states in part the following:

Page 5. “Water System Improvements: The water system is intended to be privately owned, operated and maintained. The cost of using concrete reservoirs is substantially higher than that of using steel reservoirs. Lined steel reservoirs are comparable to concrete in reliability and durability. As such, the denial of this request would cause the Applicant to bear additional and unnecessary costs.”

Page 6. “Water System Improvements: The construction of a private, County standard water system would significantly add to the construction costs associated with development of the subdivision. The Applicant does not believe that the requirement to use concrete reservoirs in place of lined steel reservoirs for a private water system is reasonable, especially in light of the fact that water system (sic) is not intended to be dedicated to the County.”

Page 7. “Water System Improvements: The proposed use of lined steel reservoirs is not contrary to the general purpose of the district. It is consistent with the intent and purposed of the Subdivision Code, as the requirement to install a water system to provide water to the proposed lots will still be met by the use of steel reservoirs. Steel reservoirs are comparable to concrete reservoirs in durability and dependability. Therefore, water will still be provided to the proposed lots if the use of steel reservoirs is allowed. The use of the steel reservoirs is also not materially detrimental to the public welfare because the subject variance will not compromise health of safety in any way. There are no health risks associated with the sued of lined steel reservoirs. The Applicant does not believe that the requested variance will cause any adverse impact of the area or to adjoining properties because the steel reservoirs will be painted to blend into the surrounding area, just as concrete reservoirs would be.”

Lot Access/Roadways.

The DPW memorandum dated February 14, 2007 in the subdivision application file (SUB 06-

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000489) states in part the following:

“We received the copy of the subject preliminary plat map forwarded by your office on February 6, 2007 along with Hokukano Ranch’s November 22, 2006-letter to the Planning Department requesting variance from the requirements of the subdivision code. Our records do not show that the variance request affecting this subject subdivision has been settled. Based on this, we will defer reviewing the preliminary plat map. We will provide review comments upon resolution of the applicant’s variance request and upon receipt notification from your office.”

The applicant’s background report (pages 2 and 3) including references to Exhibit 1, Exhibit 2, Exhibit 3, and Exhibit 4; states in part the following:

“Section 23-95, HCC, Right-of-way Improvement: Standard Details R-34 and R-39. Section 23-95, HCC, states that the “subdivider shall be required to improve the entire street right-of-way. The improvements shall conform to the standard specifications on file with the department of public work.” The Department of Public Works’ (“DPW”) Standard Details for Public Works Construction, Standard Detail R-34 provides specifications for road pavement and shoulders (Exhibit 1) and Standard Detail R-39 provides specifications for agricultural streets (Exhibit 2).

In order to preserve the agricultural, ranch character of the Property, the Applicant proposes to improve Coffee Shack Road, which serves as the primary access to the Property, and Road F, which serves as the secondary access road, with 24 feet of pavement and 10-foot grassed shoulders within an 80 to 100-foot right-of-way (sic) The Applicant also proposes to improve the other internal subdivision roads with a 20-foot pavement and 10-foot grassed shoulders within a 50-foot right-of-way. The variance requested relates to the use of 10-foot shoulder in lieu of full paving of the shoulder. It also relates to grading only the area necessary for the proposed travelway, the shoulder, including any necessary drainage swales but not the entire width of the right-of-way. In addition, the roadway may not be centered within the right-of-way but may meander within the right-of-way to better accommodate the grade of the road. The Applicant believes that full pavement of the shoulder area is not necessary or appropriate given the agricultural, large lot nature of the proposed subdivision. The Applicant has allowed for a 20-foot pavement and sufficient area for the right-of-way has been provided. Please see Exhibit 3 (“Typical Roadway Section Divided Parkway 80’ or 100’ R.O.W.”) and Exhibit 4 (“Typical Roadway Section 50 Ft. R.O.W.”) for detailed diagrams of what the Applicant is proposing.”

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The applicant's background report (pages 3) states in part the following:

“Section 23-48, HCC, Cul-de-sacs. Section 23-48, HCC, states that a “cul-de-sac shall be as short as possible and shall not be more than six hundred feet in length nor serve more than eighteen lots; provided that longer streets may be approved by the director when unusual conditions”. The proposed subdivision has been designed to utilize six cul-de-sacs. Each of these cul-de-sacs is longer than the allowed 600 feet. However, none of the six will be intended to serve more than 18 lots. The Applicant proposes to use the cul-de-sacs in lieu of extending each roadway all the way through to the next paved portion for two reasons: the first being that any reduction in the amount of paved area will reduce the potential for surface runoff and the second being that the full paving of the access easements to pave each roadway all the way through to the next paved roadway is a substantial and unnecessary cost.”

INTENT AND PURPOSE OF THE SUBDIVISION CODE

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.

Given that the applicant is installing a privately owned non-dedicable water supply and installing a water distribution system meeting DWS standards, the variance to allow the applicant to utilize steel lined water tanks or reservoirs in lieu of concrete tanks required by DWS standards is reasonable request. The water system for the proposed subdivision will be privately owned, operated, and maintained by the owners or users.

Roadway Variance. The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance.

The proposed subdivision and surrounding areas are generally agricultural in character with the exception of a small commercially zoned area within the proposed subdivision, the adjoining Konawaena School Campus, and privately owned residential zoned lots mauka of Konawaena School. The proposed subdivision's primary access via the Mamalahoa Highway (Hawaii Belt Road) and existing network of public and privately owned rights-of-way including easements and surrounding land and drainage patterns within the proposed subdivision and adjoining areas mauka of the proposed subdivision were created or established many years ago prior Hawaii County adopting the 1967 Zoning and Subdivision Codes.

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Flooding is the main issue raised by the petition and letters in opposition to the variance. This is a legitimate concern. The proposed subdivision affects a very large upland area crossed by flood channels. There has been downstream flood damage in recent years. The proposed variances, however, either reduce the potential for flooding or have no effect:

- Grassed shoulders should produce less runoff than paved ones because they retain some ability of the ground to absorb water.
- Allowing longer cul-de-sacs reduces the total roadway footage and thus reduces the area of paved, impervious surfaces.
- Allowing the paved area to meander within the right-of-way, and the median, will not increase the flooding potential.
- The steel water tanks and alternative lighting are irrelevant to the flooding potential.

The approval of the variances does not constitute approval of the subdivision. Flooding issues will be considered and dealt with prior to the actual approval of the subdivision.

The applicant will be required to address and assess any drainage issues and complete a drainage study of the subdivision or drainage plan including designing and construction drainage improvements (e.g. basins, drywells, etc) to mitigate runoff in concert with the construction of the proposed paved roadways and golf course. The applicant is aware that land management measures and controls including the retention of mauka forests and ground cover are necessary; and that a drainage study or plan will be required to be submitted for agency review and approval before further development of subdivision infrastructure.

In view of the above, the Planning Director finds that the applicant's proposed alternative "non-dedicable" infrastructure improvements including limited grading and meandering paved roadways within the proposed road lots created by proposed subdivision can meet the intent and purposed of Chapter 23, Subdivisions. To this end, the Planning Director finds that the applicant's application for variance to allow construction of non-dedicable access and roadways and drainage improvements within proposed roadway lots and cul-de-sacs in excess of 600 feet, underground utilities; which, may include alternative lighting fixtures, street signage, and other streetscape or installation of trees or landscaping materials within medial strips or grassed shoulders, and privately owned water supply system and fire protection, in accordance with alternative subdivision construction plans and specifications which are reviewed and approved by

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the agencies. Maintenance and upkeep of these non-dedicable water supply system and roadway improvements or subdivision improvements will be privately addressed and paid for by the applicant and/or users.

The subject variance application was acknowledged by letter dated June 5, 2007. Additional time was requested by the applicant to complete the variance background report. The applicant agreed to extend the decision date to on or before September 15, 2007.

Based on the foregoing findings, the variances requested 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 variances 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.

DETERMINATION-VARIANCE CONDITIONS

The subject variance application and variances requested by the Applicant to allow construction of a privately owned non-dedicable water supply system including steel lined water tanks not meeting DWS standards and privately owned non-dedicable paved roadway improvements within proposed subdivision (SUB 06-000489) is hereby **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. Submit drainage plan together with alternative construction plans to construct non-dedicable water supply system and road improvements including necessary drainage improvements within road lots and/or within the proposed subdivision for agency approval. The water wells, source improvements, and water supply system shall comply with State of Hawaii-DOH standards and requirements.
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 06-000489. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting lots created by SUB 06-000489 not serviced by a County

water system 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 able to service the proposed subdivision SUB 06-000489.
- 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 06-000489 or lots not serviced by a County water system. No further subdivision of the lots created by SUB 06-000489 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 06-000489 may not be made subject to a condominium property regime.
- d. 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.
- e. In the event that the County notifies the owner(s) of the lot(s) created by SUB 06-000489 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000489, the owner(s) of the lot(s) created by SUB 06-000489 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.
- f. 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. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the lots arising out of SUB 06-000489 will use and maintain the privately owned road lots and privately owned non-dedicable roadways including any necessary emergency access and/or utility easements on their own without any expectation of governmental assistance to maintain the non-dedicable roadway improvements within roadway lots identified on the subdivisions preliminary plat map and/or any necessary emergency access and/or utility easement(s) within the proposed subdivision.

The applicant, 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 06-000489. The proposed subdivision shall form a Homeowner or Road Association or equivalent entity consisting of all lot owners with the power to levy mandatory road assessments, responsible to maintain, repair, and reconstruct all privately owned roads, including shoulders, swales, and associated drainage features. These requirements shall be enforced by appropriate deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the pending subdivision application and be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant that also require that:

- a. The applicant and/ or owner(s) shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing the privately owned non-dedicable roadways.

Upon written demand of the County of Hawaii, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their

fair share percentage of any improvement district adopted for the purpose of roadway improvements serving the proposed lot(s) arising out of SUB 06-000489. Should the improvement district require acquisition of any portion of the privately owned rights-of-way arising out of SUB 06-000489, such rights-of-way shall be dedicated without cost to the County of Hawaii.

5. The subdivision application's (SUB 06-000489) final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.

As a further condition of this variance, the director may require safety improvements at the Mamalahoa Highway intersection as recommended by DPW.

6. 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.
7. Along with construction drawings for the roadways using grassed drainage swales and shoulders, or prior to submitting full construction drawings, the applicant shall submit an engineer's report showing that the shoulders and swales will be stable and not erode or wash out during stormwater flow conditions considering the grades and soil conditions. The report shall be reviewed by DPW. The Planning Director, in consultation with DPW, may require paving, stabilization, or alternative shoulder and swale treatment to take care of any erosion problems. The road maintenance association or equivalent shall be responsible for continual maintenance and upkeep of the shoulders and swales. The applicant shall ensure adequate sight distance and roadside clear zones.
8. Cul-de-sacs. The five access easements shown on the applicant's variance submittal shall be included in the preliminary and final subdivision plats and kept available and open for emergency access.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare the subject variance null and void.

Gregory Hendrickson, Esq.
Real Property Administrator
HOKUKANO RANCH
Page 17
September 14, 2007

Thank you for your understanding and patience during our review.

Sincerely,



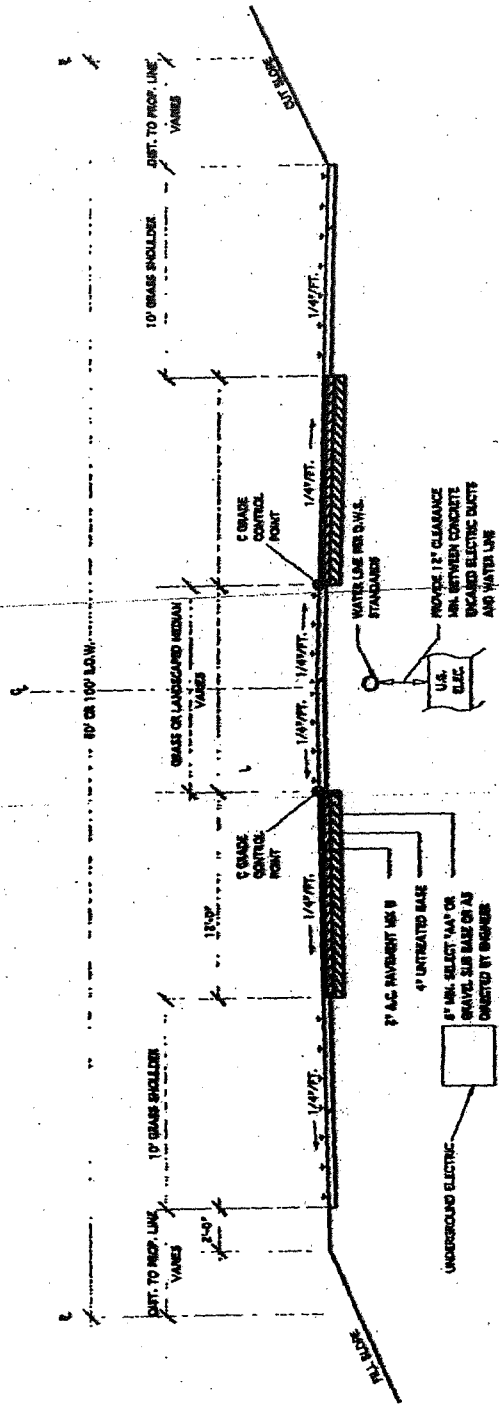
CHRISTOPHER J. YUEN
Planning Director

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Enclosures: Exhibits 3 and 4

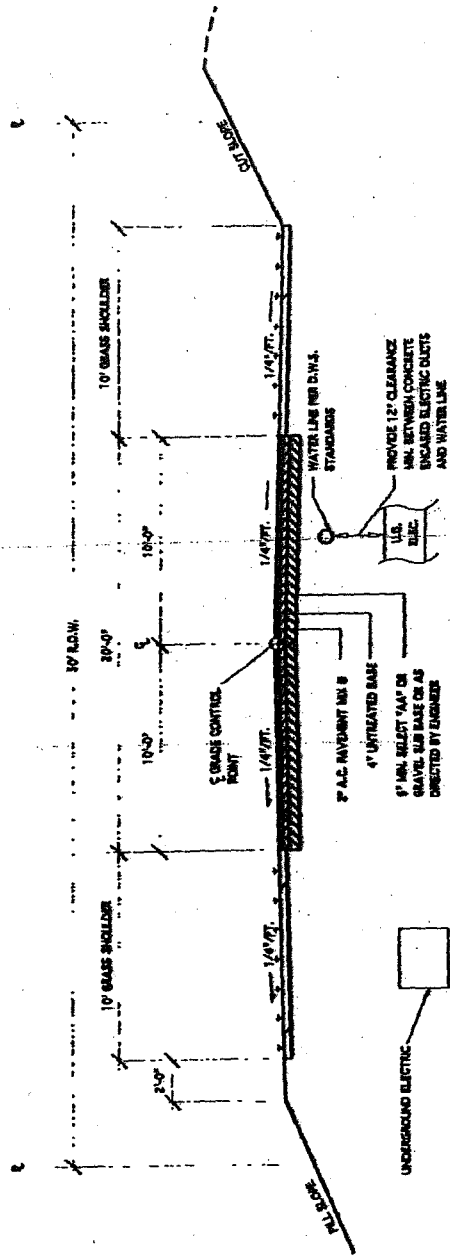
xc: DPW-Engineering Branch (w/ Encs.)
DWS-Engineering Branch (w/Encs.)
SUB 06-000489 (w/Encs.)
Ms. Elaine K. Rabacal (w/Encs.)
Mr. and Mrs. James E. Mitchell (w/Encs.)
Mr. Ronald Hancock, Et al. (w/Encs.)
Mr. Gerald Takumi (w/Encs.)
Mr. and Mrs. Mike Federspiel (w/Encs.)
Mr. Shawn S. Suzuki (w/Encs.)
Ms. Lori Greenwell (w/Encs.)
Mr. Steve Stetler (w/Encs.)



TYPICAL ROADWAY SECTION DIVIDED PARKWAY 80' or 100' R.O.W.
SCALE 1/4"=1'-0"

	80'/100' ROADWAY SECTION
	HOKUKANO PRESERVE
DATE: _____	PROJECT: _____
DRAWN BY: _____	CHECKED BY: _____
SCALE: _____	SHEET NO.: _____

Clark Hillier Stevens, AIA, APA
120 N. Tropicana Canyon Blvd #207
Troy, CA 90250
310 455 4811 mobile
310 455 4812 fax
310 614 8686 mobile



TYPICAL ROADWAY SECTION 50 FT. R.O.W.
SCALE 1/4" = 1'-0"

<p>NEW WEST LAND COMPANY</p>	<p>50' ROADWAY SECTION</p>	<p>HOKUKANO PRESERVE</p>	<p>Clark, Phillip Stevens, AIA, APA 120 N. Topanga Canyon Blvd #207 Troy, CA 90290 310 455 4811 mobile 310 514 6312 fax 310 514 6856 mobile</p>
	<p>DATE: 11/12/2009</p> <p>BY: [Signature]</p> <p>CHK: [Signature]</p> <p>APP: [Signature]</p>		