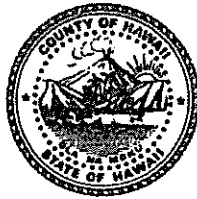


Harry Kim  
Mayor



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

June 24, 2008

Mr. Alan Z. Inaba, LPLS  
INABA ENGINEERING, INC.  
273 Waianuenue Avenue  
Hilo, HI 96720

Dear Mr. Inaba:

**VARIANCE-VAR 08-022**

**Agent:** INABA ENGINEERING, INC.  
**Applicant:** FONG SHENG KUO, ET AL.  
**Owner:** FONG SHENG KUO, ET AL.  
**Request:** Variance from Chapter 23, Subdivisions,  
Article 6, Division 2, Improvements Required,  
Section 23-84, Water Supply, (1)(2)

**Tax Map Key: 1-7-017:149, (SUB 06-000475)**

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 08-022 subject to variance conditions. The applicant, on behalf of the owner, is requesting variance to allow proposed 2-lot subdivision (SUB 06-000475) of subject TMK property without providing a water supply system meeting the minimum requirements of the County-DWS. The variance 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 referenced TMK property, Lot 11-A containing approximately 49.690 acres, being a portion of Grant 3978 to L. Turner (Lots 10, 11, 12, and 13 of Olaa Reservation Lots), is situated at Olaa, Puna, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant /owner's surveyor submitted subdivision application (SUB 06-000475) and preliminary plat map (PPM), dated August 15, 2006, proposing to subdivide subject TMK property into 2-lots. Further action on the subdivision application was deferred pursuant to letter dated July 5, 2007 in SUB 06-000475.
4. **Variance Application.** The applicant or agent submitted a variance application on April 1, 2008.
5. **Agency Comments and Requirements (VAR 08-022):**
  - a. The State Department of Health (DOH) memorandum is dated April 17, 2008. Refer to State of Hawaii-DOH memorandum in variance file.
  - b. The County of Hawaii-Hawaii Fire Department memorandum dated April 28, 2008 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."

Mr. Alan Z. Inaba, LPLS  
INABA ENGINEERING, INC.

Page 3

June 24, 2008

- c. The Department of Water Supply (DWS) memorandum, dated May 1, 2008, states in part:

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

We have no objection to the use of a private rainwater catchment system to serve the proposed additional lot in this subdivision. Please be informed that the applicant has paid a water commitment deposit of \$150.00 for the additional lot. Should the subject variance and subdivision applications be approved and the water system improvements, as stated in our January 3, 2008, letter to the applicant, are not constructed, the application shall be informed that the \$150.00 water commitment deposit will be forfeited.

Prior to recommending final subdivision approval, the applicant shall notify the Department, in writing, which lot within the proposed 2-lot subdivision will be served with the existing service that is available from the 8-inch waterline within Huina Road, approximately 600 feet from the subject parcel. The service shall be limited to one 5/8-inch meter, which is restricted to a maximum daily usage of 600 gallons. Further, the applicant shall be notified that both lots shall not share the one service available."

**Note:** The applicant's agent submitted copy of letter, dated June 10, 2008, responding to the DWS letter (sic) dated May 1, 2008 for the variance file. The applicant's letter dated June 10, 2008 states in part:

"Pursuant to your letter of May 1, 2008, and my meeting with Mr. Finn McCall of Water Resources and Planning Branch, the applicant elects to designate the existing service available from the 8-inch water line within Huina Road, approximately 600 feet from the subject parcel to serve Lot 11-A-1."

Mr. Alan Z. Inaba, LPLS  
INABA ENGINEERING, INC.

Page 4

June 24, 2008

6. **Notice to Surrounding Owners.** The applicant's agent forwarded a copy of notice sent to surrounding property owners within 300 feet of subject TMK property, and US mail certified mail receipts dated April 21, 2008. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 25, 2008.

**Posted Sign.** The applicant submitted an affidavit regarding the posting of sign on subject TMK property dated April 28, 2008 and photographs of the posted 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 applicant's variance application, rainfall information, 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 July 17, 2007 in subdivision file (SUB 06-000475) states in part the following:

"Water can be made available from an existing 12-inch waterline along the Volcano Highway approximately 1,200 feet from the property.

Therefore, pursuant to Rule 5 of the Department's Rules and Regulations, a copy of which is being forwarded to the applicant, a water commitment may be issued. Based on the 1 additional unit requested in the proposed 2-unit development, the required water commitment deposit is \$150.00.

Mr. Alan Z. Inaba, LPLS  
INABA ENGINEERING, INC.

Page 5

June 24, 2008

Remittance by the applicant of the \$150.00 is requested as soon as possible so that a water commitment may be formerly issued. The commitment will be in writing with specific conditions and effective dates stated. Please keep in mind that this letter shall not be construed as a water commitment. In other words, unless a water commitment is officially effected, water availability is subject to change without notice, depending on the water situation.

For the applicant's information, final subdivision approval will be subject to compliance with the following requirements:

1. Construct necessary water system improvements, which shall include, but not limited to:
  - a. extension of approximately 1,200 lineal feet of 6-inch waterline within Huina Road from the existing 12-inch waterline along the Volcano Highway to the property.
  - b. service laterals that will accommodate 5/8-inch sized meters to each lot,
  - c. subject to other agencies' requirements to construct improvements within the road right-of-way fronting the property affected by the proposed development, the applicant shall be responsible for the relocation and adjustment of the Department's affected water systems facilities, should they be necessary, and

Submit construction plans and design calculations prepared by a professional engineer, registered in the State of Hawai'i, for review and approval.

2. Remit the prevailing facilities charge, which is subject to change as shown below:

FACILITIES CHARGE (FC):

1 <sup>st</sup> unit @ \$1,190.00/unit	\$1,190.00
<u>1 additional unit @\$5,500.00/unit</u>	<u>5,500.00</u>
Total FC	\$6,690.00

This due and payable upon completion of the installation of the required water system improvements and prior to final subdivision approval being granted.

Mr. Alan Z. Inaba, LPLS  
INABA ENGINEERING, INC.

Page 6

June 24, 2008

3. Submit the appropriate documents, properly prepared and executed, to convey the water system improvements and necessary easements to the Water Board of the County of Hawai'i prior to final subdivision approval being granted. A registered land surveyor shall stamp and certify the metes and bounds description within the conveyance documents. However prior to water meter services being granted to the development, or any lots within, the conveyance documents shall be accepted by the Water Board."

The first alternative requires the applicant to "construct necessary water system improvements" pursuant to the DWS memorandum dated July 17, 2007 in the (SUB 06-000475).

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

After considering the DWS memorandums, the first alternative requires the subdivider or owner to wait for the DWS to "construct necessary water system improvements" pursuant to the DWS memorandum dated July 17, 2007 to enable the county DWS water system to service the additional lot created by proposed 2-lot subdivision. A 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 alternative private water system meeting DWS standards for proposed additional lot or 2-lot subdivision (SUB 06-000475) 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 a proposed subdivision is to assure that adequate water within the available for human consumption and fire protection.

Mr. Alan Z. Inaba, LPLS  
INABA ENGINEERING, INC.  
Page 7  
June 24, 2008

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 "Variance from §23-84 Water Supply of Chapter 23, Subdivisions" to allow and utilize privately owned individual rain water catchment systems for 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 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 subdivision. The rainfall information or rainfall data submitted by the applicant's agent compared with the isohyet map study from Planning Department's GIS data base denotes subject TMK or proposed subdivision is situated near a 160 inch isohyet line; and, pursuant to other rainfall information maintained by the Hawaii State Climate Office (HSCO), the proposed 2-lot subdivision is near gauge "91.14". The mean annual rainfall (1970-2002) for "91.14" was 179.62 inches. The analysis of the

Mr. Alan Z. Inaba, LPLS  
INABA ENGINEERING, INC.

Page 8

June 24, 2008

applicant's submittals, Planning Department's isohyet map study, and historical or annual rainfall data maintained by HSCO for this rain gauge near subject TMK property indicate the proposed subdivision will receive more than 60 + inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

The variance application was acknowledged by letter dated April 11, 2008 and additional time was requested by the applicant's agent to submit additional information regarding water supply and status of a DWS water meter installation plan. The applicant/agent agreed to an extension of time to incorporate additional background information and granted the Planning Director an extension of time to render a decision on the subject variance to June 27, 2008.

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 application and request for variance to allow proposed 2-lot subdivision of the subject TMK property without providing a water system meeting DWS standards for 1-proposed lot 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 06-000475. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting lot not serviced by a County water system or pending subdivision application SUB 06-000475 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:



Mr. Alan Z. Inaba, LPLS  
INABA ENGINEERING, INC.

Page 9

June 24, 2008

- 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 06-000475. 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 06-000475 not serviced by a County water system. No further subdivision of the lots created by SUB 06-000475 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 06-000475 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 created by SUB 06-000475 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000475, the owner(s) of the lot(s) created by SUB 06-000475 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 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.

Mr. Alan Z. Inaba, LPLS  
INABA ENGINEERING, INC.

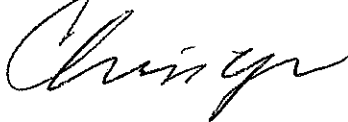
Page 11

June 24, 2008

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:cs

P:\WP60\WRY\FORMLETT\VAR08-022SUBWATERAPP.IEINC-KUO

xc: Manager-DWS  
SUB 06-000475