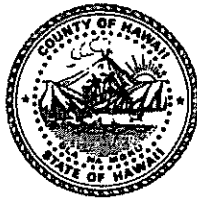


Harry Kim
Mayor



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 12, 2008

Ms. Lori Mikkelson
ALL AINA SERVICES
P. O. Box 291
Laupahoehoe, HI 96764

Dear Ms. Mikkelson:

SUBJECT: VARIANCE-VAR 08-023

Applicant: LORI MIKKELSON/ALL AINA SERVICES
Owner: ALFRED JOSE ANDRADE LTD. PARTNERSHIP
Request: Variance from Chapter 23, Subdivisions,
Improvements Required
Tax Map Key: 4-7-007:010, (SUB 07-000663)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-023 subject to variance conditions. The variance permits proposed 4-lot subdivision (SUB 07-000663) 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).

BACKGROUND

1. **Location.** The referenced TMK property containing approximately 418.044 acres, being a portion of Land Commission Award 9971, Apana 2 to W. P. Leleiohoku, is situated at Kapoaula, Hamakua, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-40a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The owner's surveyor submitted proposed 4-lot subdivision application (SUB 07-000663). Further action on subdivision application (SUB 07-000663) and preliminary plat map (PPM) is being deferred according to a letter dated February 22, 2008 in the subdivision file.
4. **Variance Application.** The applicant, on behalf of the owner, submitted variance application. The variance application-VAR 08-023 was acknowledged by Planning Department letter dated April 11, 2008. The variance application includes an attachment dated March 28, 2008 which states in part:

"The owners of the subject parcel with an area of 418,045 acres, zoned Ag-40a have (sic) applied for a 4 lot subdivision.

The subject parcel is approved for one water meter to service Lot #2 by the County of Hawaii, Dept. of Water Supply which will service (sic). In order to complete the requested subdivision it is necessary to request a Water Variance to allow the other three proposed lots (1, 3 & 4) to be serviced by individual water catchments.

The rainfall, as per County of Hawaii, GIS map, is rated at 80" - 120" per year; therefore the subject parcel and the request for the Water Variance is consistent with the general purpose of the Zoning & Subdivision Codes and the requirements of the County of Hawaii, Planning Dept."

5. **Agency Comments and Requirements: VAR 08-023:**

- a. The State of Hawaii-Department of Health (DOH) memorandum is dated April 17, 2008. Refer to DOH memorandum in variance file.
- b. The County of Hawaii-Hawaii Fire Department (HFD) 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."

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

“We have reviewed the subject variance application for the proposed subdivision.

Our comments from our December 12, 2007, letter to you still stand. We have no objection to the use of private rainwater catchment systems for the proposed subdivision. Further, the applicant has indicated that the existing 5/8-inch meter (Account No. 630-57400) assigned to the subject parcel shall service proposed Lot No. 2 of this subdivision. Therefore, we have no objection to final subdivision approval being granted.”

6. **Notice to Surrounding Owners/Posted Sign.** The applicant's agent submitted copy of notice(s) sent to property owners and proof of mailing notices to list of surrounding property owner(s). According to the submittals and USPO receipts, the first notice of variance was mailed on April 23, 2008 and revised notice was mailed on May 1, 2008, respectfully by the applicant's agent.

Posted Sign. The applicant's agent submitted affidavit dated April 14, 2008 and picture of posted signs regarding proposed subdivision and variance application(s).

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written objections to the variance application were received from surrounding property owners or public.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Supply. The first alternative requires the applicant or owners to extend and/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.

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The imposition of extending or improving the existing public DWS water system or providing an approved alternative private water system meeting DWS standards for the pending 2-lot subdivision would be putting excessive demands upon the applicant or owners when a more reasonable alternative (e.g. private individual rainwater catchment system for potable and emergency requirements) is available.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

The DWS-memorandum dated December 12, 2007 in subdivision file (SUB 07-000663) for the PPM dated July 15, 2007, states in part:

“Please be informed that the Department is unable to support the proposed 4-lot subdivision at this time. Extensive improvements and additions would be required to make water available, which may include, but not be limited to source, storage, booster pumps, transmission, and distribution facilities. Currently, funding is not available from the Department and no time schedule is set for construction of these facilities.

Please note that the subject parcel is currently served by an existing 5/8-inch meter (Account No. 630-57400). Should the subject application be approved, the applicant must inform the Department in writing, which lot within the proposed subdivision will be assigned the existing meter. Further, it shall be noted that the existing 5/8-inch meter shall only serve one lot within the proposed subdivision and is limited to a maximum daily usage of 600 gallons.”

The Department of Water Supply (DWS) memorandum dated May 1, 2008 in the Variance file states in part:

“We have reviewed the subject variance application for the proposed subdivision.

Our comments from our December 12, 2007, letter to you still stand. We have no objection to the use of private rainwater catchment systems for the proposed subdivision. Further, the applicant has indicated that the existing 5/8-inch meter (Account No. 630-57400) assigned to the subject parcel shall service proposed Lot No. 2 of this subdivision. Therefore, we have no objection to final subdivision approval being granted.”

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After considering the DWS memorandums, the first alternative requires the owner or subdivder to wait for the DWS to make "extensive improvements and additions" or requires the subdivider to construct "extensive improvements and additions" to enable the county DWS water system to service the proposed 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 for the proposed 4-lot subdivision.

Pursuant to the DWS memorandums, the subject TMK property is assigned 1-DWS water meter and additional service from the DWS system cannot support proposed 4-lot subdivision. In sum, the first alternative requires the applicant or owners to make "extensive improvements and additions" to the county DWS water system in order to provide service from the DWS water system to proposed subdivision or 3-additional lots (e.g. proposed "LOT 1", "LOT 3", and "LOT 4").

In view of the above, there are no other reasonable alternatives in resolving the difficulty of the applicant or subdivider. The imposition of improving the existing public water system or providing an alternative private water system meeting DWS standards for proposed subdivision (SUB 07-000663) would be putting excessive demands upon the applicant when a more reasonable alternative is available.

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 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.

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.

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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 the proposed subdivision or lots without a water meter can meet the intent and purpose of the Subdivision Code; and, meets criteria or standards 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 on agriculturally-zoned property. 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. "22-5 Maximum Number of Lots

Except as provided in Rule 22-6, no more than six lots shall be allowed in a catchment subdivision."

In consideration of above and rainfall maps at the Planning Department, and other rainfall data, the subject TMK property or proposed subdivision is located between 80 inch isohyet line(s) and receives approximately 80 inches of annual rainfall to support proposed individual or privately owned individual rain water catchment systems for potable and emergency uses for the proposed subdivision. According to rainfall gauge information maintained at the Hawaii State Climate Office (HSCO) the proposed subdivision is closest to rain gauge station "215" which is located "makai" within Honokaa Town approximately 4.5 miles away from the subject TMK property or proposed subdivision. The analysis of the applicant's submittals and historic rain gauge information and mean rainfall data available at HSCO for "215" for years 1949-2000 is 79.49 inches. Therefore, the subject TMK property or proposed subdivision and surrounding areas receive in excess of 60 + inches of rainfall annually.

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Given the proposed subdivision's density and proposed lot sizes denoted on the subdivision application's PPM, the applicant's request for variance is reasonable. The proposed subdivision will create 4-104 + acre lots, whereas the full potential density for this property consisting of more than 418 acres is 10-lots. The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for the subdivision or 3-proposed lots without a DWS meter will be addressed by the applicant or future owner(s) and variance conditions.

Given the unusual nature of the subdivision and annual rainfall within the immediate area, the proposed subdivision the variance request is reasonable. The provisions for water storage, water distribution, and construction of private rain water catchment system(s) will be addressed by the applicant or future lot owner(s) of the proposed lots.

The subject variance application was acknowledged by letter dated April 11, 2008. Additional time was requested by the applicant's agent to send a revised variance notice to surrounding property owners. The applicant's agent agreed to extend the decision date to on or before June 16, 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 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 variance requested to allow a proposed 4-lot subdivision of the subject TMK property without providing a water system meeting DWS standards to 3-proposed lot 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. Pursuant to DWS memorandum dated May 1, 2008, Account No. 630-57400 is assigned to proposed "LOT 2". This service shall not be shared with any of the proposed lots created by proposed subdivision (SUB 07-000663). The County water meter assigned to proposed "LOT 2" created by proposed subdivision (SUB 07-000663) shall not be shared with any existing or abutting lots sharing common property lines with proposed subdivision (SUB 07-000663).
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 07-000663. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lots 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 now able to service the proposed subdivision SUB 07-000663. 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 lots created by SUB 07-000663 not serviced by a County water system. No further subdivision of the lots created by SUB 07-000663 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 07-000663 may not be made subject to a condominium property regime.

- d. Any farm 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 6,000 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 farm 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.

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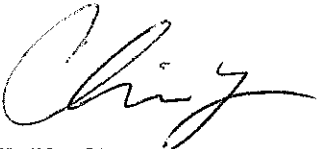
- g. In the event that the County notifies the owner(s) of the lot(s) created by SUB 07-000663 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 07-000663, the owner(s) of the lot(s) created by SUB 07-000663 shall participate 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.
- 4. The subdivision application's final plat map for SUB 07-000663 shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 07-000663.
- 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.

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

Thank you for your understanding and patience during our review.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ching' or 'Ching Yuen', written in a cursive style.

CHRISTOPHER J. YUEN
Planning Director

WRY/DSA:cs
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xc: DWS-Engineering Branch
SUB 07-000663