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County of Hawaii
PLANNING DEPARTMENT

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August 28, 2008

Paul H. Murray, LPLS
PAUL H. MURRAY & ASSOCIATES, LLC
P.O. Box 1189
Hilo, HI 96721-1189

Dear Mr. Murray:

VARIANCE-VAR 08-027

Applicant: PAUL H. MURRAY & ASSOCIATES, LLC
Owner: AKAKA FALLS DEVELOPMENT, LLC
Request: Variance from Chapter 23, Subdivisions,
Improvements Required
Tax Map Key: 2-3-013:004, (SUB 07-000680)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-027 subject to variance conditions. The variance permits proposed 7-lot (6-building lots; 1-road lot "A") subdivision (SUB 07-000680) of subject TMK property without providing a water supply system to 3-proposed building lots meeting with 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 B containing approximately 129.027 acres, portion of Grant 970 to P. Freeman, portion Grant 1061 to Kahinu & Kanae, Grant 1059 to Alexander Pennie, is situated at Honomu, South Hilo, Hawaii.

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2. **Zoning.** The subject property is split-zoned Single-Family Residential (RS-7.5) and Agricultural (A-20a) by the County and designated Urban "U" and Agriculture "A", respectively by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant-owner submitted a subdivision application and preliminary plat map (PPM) proposing to subdivide subject TMK property into 7-lots (6-building lots and 1-road lot "A"). Further action on the subdivision application (SUB 07-000680) was deferred pursuant to letter dated March 19, 2008 in the subdivision file.
4. **Variance Application.** The applicant submitted the variance application, submittals, and filing fee on April 29, 2008. The applicant's background information dated April 24, 2008 (page 1) states in part:
 - "3.) Milton D. Pavao, Manager, Department of Water Supply, County of Hawaii, stated in a letter dated January 9, 2008, with reference to Subdivision Application No. 07-000680 by the Applicant, Akaka Falls Development LLC, TMK (3) 2-8-013:004, that the Department of Water Supplies existing water facilities cannot support the proposed 6 Lot subdivision at this time, as there are only 3 units of water available to the subject parcel. Current water availability conditions in the area provide for only one meter per existing Lot of record. We plan to have these three meters assigned to the three road front parcels (Lot 2, Lot 3 & Lot 4) and elect to apply for a variance on the remaining Lots.
 - 4.) The proposed subdivision fits the criteria outlined by Rule 22 of the County of Hawaii Planning Department's Rules of Practice and Procedure relating to Water Variance and are addressed as follows:

A.) Section 22-3, Eligibility

Milton D. Pavao, Manager, Department of Water Supply, County of Hawaii, stated in a letter dated January 9, 2008, that the Department of Water Supply's existing water facilities cannot support the proposed 6 Lot subdivision at this time as there are only 3 units of water available to the subject parcel. The Department currently does not have sufficient funding available for the extensive improvements needed to provide additional water services.

B.) Section 22-4, Minimum Rainfall

The median annual rainfall, as depicted by the Rainfall Map-Island of Hawaii (source: 1986 Rainfall Atlas of Hawaii and provided by the County of Hawaii), is up to 60" approximately for this particular area. After analysis of existing site conditions and the information available, it appears to indicate the subject property receives adequate natural rainfall within the property to support private rain water catchment systems for potable and emergency uses (sic). Provisions for water storage, water distribution, and construction of private rain water on the property or on the proposed lots are available. Please refer to the attached Rainfall Map-Island of Hawaii for details.

C.) Section 22-5, Maximum Number of Lots

The end result of the proposed consolidation and resubdivision is six (6) Lots. There are three (3) units of water available to the three (3) pre-existing Lots of record. We are requesting variance from Section 23-84 for only three (3) of the proposed six (6) Lots."

5. **Variance Application (VAR 08-027)-Agency Comments and Requirements:**

- a. The State of Hawaii Department of Health (DOH) memorandum is dated May 13, 2008. Refer to SOH-DOH memorandum in variance file.

- b. The Department of Water Supply (DWS) memorandum, dated May 19, 2008, states in part:

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

Our comments from our January 9, 2008, memorandum to you, regarding the subject Subdivision Application still stand. Pursuant to that memorandum, water service is available for the three (3) pre-existing lots of record within the subject parcel. Each service shall be limited to one (1) unit of water, or one 5/8-inch meter, and a maximum daily usage of 600 gallons. We have no objection to the use of private rainwater catchment systems for lots that cannot be served by our existing system.

Please be informed that the applicant has indicated that Lots 2, 3, and 4 will be assigned the three (3) services available. However, in the case of subdivision, the Department can only allow service to one (1) lot that is partially or completely out of the pressure zone and, therefore, the Department can only provide service to one of those lots. For the applicant's information, all lots situated below the 439-foot elevation are within the Department's existing pressure zone.

Prior to granting water service for this subdivision, the applicant shall comply with the following conditions:

1. Construct necessary water system improvements, which shall include, but not be limited to:
 - a. installation of service laterals that will accommodate a 5/8-inch meter for a maximum of three (3) lots, and

- b. 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 system facilities, should they be necessary.
 2. Submit service lateral installation plans prepared by a professional engineer or licensed surveyor, registered in the State of Hawai'i, for review and approval.
 3. Remit the requested facilities charge, which is subject to change, of \$1,190.00 per lot, to be served (maximum of 3 lots).
- This is due and payable upon completion of the installation of the required water system improvements and prior to final subdivision approval being granted.
4. For any lot that is not within the Department's pressure zone, an Elevation Agreement must be executed. Depending on the location and elevation of the lot, a tank and pump system schematic, prepared by a professional engineering licensed in the State of Hawai'i, may need to be submitted for review and approval."
- c. The County of Hawaii-Hawaii Fire Department (HFD) memorandum dated May 13, 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."

6. **Notice to Surrounding Owners.** The applicant's submitted copy of notice sent to surrounding property owner(s) within 300 feet of subject TMK property, and mailing receipts dated May 7, 2008. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 9, 2008.

Posted Sign. The applicant submitted an affidavit dated May 19, 2008 regarding sign posted upon subject TMK property and photograph or colored picture of the posted sign.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following letter(s) and email were received from surrounding property owners or public.

7a. Letter dated May 20, 2008 from Stephanie Dodge.

7b. Email inquiry dated June 20, 2008 received from Councilman-Dominic Yagong. Follow-up telephone discussion between PD staff and Councilman Yagong's office (Staff-Lorraine) on July 7, 2008 regarding nature of application and status.

Therefore, after considering the applicant's variance application and variance background information including rainfall information, and agency comments, the Planning Director has determined that there are special or unusual circumstances applying to subject 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 January 9, 2008 in subdivision file (SUB 07-000680) states in part the following:

"We have reviewed the subject application for the proposed subdivision.

The current water availability conditions in the area, which are subject to change without notice, only allow for one (1) unit of water, or one (1) 5/8-inch meter, per existing lot of record. Each unit of water is equal to a maximum of 600 gallons per day and suitable for only one single-family dwelling.

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Therefore, the Department's existing water system facilities cannot support the proposed 6-lot subdivision at this time, as there are currently only 3 units of water available to the subject parcel. Extensive improvements and additions, which may include, but not limited to, source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set."

Pursuant to DWS memorandums, the subject TMK property and proposed subdivision is eligible to receive 3-DWS water meters from a DWS water system subject the May 19, 2008 DWS memorandum and conditions dated May 19, 2008. However, additional service from this DWS system cannot support the proposed subdivision or 3 proposed additional building lots. 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 or building lots (e.g. proposed "LOT 1", "LOT 5", and "LOT 7").

The 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 subdivision and/or proposed building lots.

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 subdivision (SUB 07-000680) would be putting excessive demands upon the applicant when a more reasonable alternative is available.

INTENT AND PURPOSE-WATER VARIANCE

The intent and purpose of requiring a water system for and within the proposed subdivision is to assure that adequate water is available for human consumption and fire protection.

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 proposed subdivision or 3 proposed building lots zoned (A-20a) 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 application for variance from water supply for property zoned agriculture. 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 lot (s) 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 map extract submitted by the applicant compared with the Planning Department's GIS data base denotes subject TMK or proposed subdivision is situated between the 120 inch isohyet line and near the 160 inch isohyet line. The analysis of the applicant's submittals and Planning Department's rainfall maps indicates the subject TMK property or proposed subdivision receives more than 60+ inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

The variance application was acknowledged by letter dated May 2, 2008 and additional time was requested by the applicant to consider address DWS requirements and conditions regarding water supply and status of the water meters assigned to the subject TMK property. The applicant 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 September 5, 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 request to allow proposed subdivision of the subject TMK property without providing a water system to 3 proposed building lots meeting DWS standards is **approved** subject to the following variance conditions:

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant and/or owner/subdivider shall be responsible for meeting the DWS requirements stipulated by DWS memorandum dated May 19, 2008 and DWS conditions dated May 19, 2008. The owner or subdivider shall confer with the DWS and confirm in writing which 3-lots are eligible to receive the DWS service including any necessary elevation agreements. The 3-county DWS services or meter(s) assigned to the proposed subdivision shall not be shared with 3-proposed building lots and road lot not assigned a county DWS meter created by SUB 07-000680 and/or abutting property sharing common property lines with proposed subdivision (SUB 07-000680). The DWS requirements and conditions shall be met prior to granting final subdivision approval to SUB 07-000680.
3. WATER VARIANCE: The owners, 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 07-000680. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting 3-lots created by subdivision application 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:

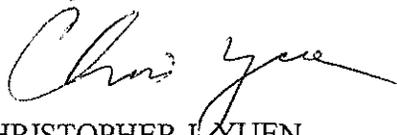
- a. The applicant or subdivider agrees and accepts the fact that a County dedicable public water system is not now able to service the proposed subdivision or 3 proposed building lots created by SUB 07-000680. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- b. No further subdivision of lots created by SUB 07-000680 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 07-000680 may not be made subject to a condominium property regime.
- d. Any dwelling constructed on a 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 any lot created by SUB 07-000680 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 07-000680, the owner(s) of the lot(s) created by SUB 07-000680 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.
 - 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.

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Manager-DWS
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Councilman-Dominic Yagong

Ms. Stephanie Dodge
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