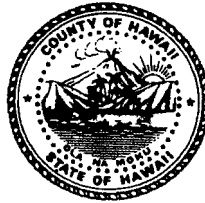


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

## County of Hawai'i

### PLANNING DEPARTMENT

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

July 22, 2009

Ms. Lori Mikkelson  
All Aina Services  
P. O. Box 291  
Laupahoehoe, HI 96764

Dear Ms. Mikkelson:

**SUBJECT: VARIANCE-VAR 08-067 (Revised)**  
**Agent: ALL AINA SERVICES**  
**Applicant: ALL AINA SERVICES**  
**Owners: VALERIE and GERALD BOTEILHO TRUST**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Article 6, Division 2, Improvements Required,**  
**Section 23-84, Water Supply, (1)(2)**  
**Tax Map Key: 4-4-008:130, (SUB 08-000726)**

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After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-067 subject to variance conditions. The variance permits proposed 3-lot subdivision (SUB 08-000726) without providing a water system to 2-proposed lots meeting the minimum requirements of the Department of Water Supply (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 applicant or owner's variance application from minimum subdivision water system requirements for proposed 3-lot subdivision be **approved** based on the following findings:

JUL 24 2009

## **BACKGROUND**

1. **Location.** The referenced TMK property, Lot 65 containing approximately 16.84 acres, Kalopa Homesteads, being all of Grant 7890 to John Bento Gouveia, is situated at Kalopa, Hamakua, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The owner's surveyor filed subdivision application (SUB 08-000726) including preliminary plat map (PPM) dated February 20, 2008 proposing to subdivide subject TMK property into 3-lots. Further action on the subdivision application is being deferred pursuant to letter dated April 15, 2008 in the subdivision application file.
4. **Variance Application.** The applicant filed variance application (VAR 08-067) on November 3, 2008.

The applicant's background information dated October 30, 2008 states in part:

"The owners of the subject parcel with an area of 16.84 acres, zoned Ag-5a have (sic) applied for a 3 lot subdivision.

The Department of Water Supply has confirmed that there is water available to Lot 65-A, as per the included survey map. Therefore our request is for a water variance for Lot 65-B & Lot 65-C. (sic) which will provide water through means of a catchment system.

The rainfall, as per County of Hawaii, GIS map, is rated at 70"-80" per year; therefore the subject parcel and the request for the Water Variance is (sic) consistent with general purpose of the Zoning & Subdivision Codes and the requirements of the County of Hawaii, (sic) Planning Dept."

5. **Variance Application (VAR 08-067)-Agency Comments and Requirements:**
  - a. The County of Hawaii-Hawaii Fire Department (HFD) memorandum dated November 26, 2008 states in part:

"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."

- b. The State of Hawaii-Department of Health (DOH) memorandum is dated November 26, 2008. (Refer to DOH memorandum in variance file).
- c. The Department of Water Supply (DWS) memorandum, dated December 165, 2008, states in part:

"Our comments from our May 22, 2008, letter to you, regarding the subject subdivision application, still stand. We have no objection to the applicant's proposed use of private rain water catchment systems to serve the lots that cannot be served from our existing water system.

According to a letter submitted with the subject variance application, dated October 30, 2008, the applicant intends to designate the existing service to the subject parcel (Account No. 690-24600) to Lot 65-A within the proposed subdivision. However, the preliminary plat map submitted with the original subdivision application, dated February 20, 2008, notes that Lot 65-C will be designated with water service. Prior to granting final subdivision approval, the Department requests that the applicant clarify in writing which lot within the proposed subdivision will be designated with the existing service and that same be noted on the final plat map.

Through a copy of this letter, the applicant shall also be informed that the existing service shall only serve one (1) lot within the proposed subdivision and the water system piping within each lot shall not be interconnected in any way."

- 6. **Notice to Surrounding Owners.** The applicant submitted transmittal letter dated November 26, 2008 including copy of notice and other attachments sent to surrounding property owners and certificate of mailing forms with affixed USPO receipts dated November 26, 2008 to the Planning Department. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 28, 2008.

Ms. Lori Mikkelson  
All Aina Services  
Page 4  
July 22, 2009

**Posted Sign.** The applicant submitted transmittal letter dated November 24, 2008 including affidavit dated October 13, 2008 regarding posting of a sign upon

subject TMK property and photograph of posted signs.

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 circumstances and variance background information including rainfall information provided by the applicant and agency comments, the Planning Director has determined that there are special or unusual circumstances applying to the TMK property which exist either to a degree which deprives the applicant or owners of property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### **ALTERNATIVES**

The DWS memorandum dated May 22, 2008 in subdivision file (SUB 08-000726) states in part the following:

“Please be informed that the Department’s existing water system facilities cannot support the proposed subdivision at this time. 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 and no time schedule is set.”

The first alternative requires the applicant to make “extensive improvements and additions” to the County DWS water system in accordance with the DWS memorandum in the subdivision file.

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

In view of the above, there are no other reasonable alternatives in resolving the difficulty of the applicant. The imposition of improving the existing public water system or providing an approved alternative private water system meeting DWS standards for proposed or 2-new additional lots or proposed 3-lot subdivision (SUB 08-000726) would be putting excessive

demands upon the owners or subdivider when a 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.

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 or "Water Variance" to allow and utilize privately owned individual rain water catchment systems for proposed 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 TMK property utilizing maps at the Planning Department, DWS, and information provided by the applicant indicate 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. According to information and data available from the Hawaii State Climate Office (HSCO) and recent 1996 publication by the U.S. Geological Survey, the subdivision is near gauge "Paauhau Airstrip" (SKN 216.3) situated at approximately 2200 feet elevation. The map-PLATE 6 (Active rain-gauging stations and mean annual rainfall) shows "216.3" is located between two "80"

isohyet line(s). According to Rainfall Atlas of Hawaii-Report 76 (June 1986) the unadjusted median annual rainfall for "216.30" was 100.27+ inches. The analysis of the applicant's submittals compared with the isohyet map study map and other published historical or annual rainfall data reports indicate the proposed 3-lot subdivision will receive at least 60+ inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

Based on the above findings and Rule No. 22, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance requested will not be detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

#### **VARIANCE DECISION-CONDITIONS**

The variance request to allow a proposed 3-lot subdivision of the subject TMK property without providing a water system meeting DWS standards for 2 proposed lots 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 or subdivider shall confer with the DWS and designate in writing which lot of the proposed 3-lot subdivision shall be provided with a DWS water service (Account No. 690-24600) prior to submittal of approved written agreement and issuance of final subdivision approval to SUB 08-000726.
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 08-000726. 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 2-lot subdivision application and shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the owners:
  - a. The owner(s) agree and accept the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 08-

000726. 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 owner(s) 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(s) created by SUB 08-000726 not serviced by a County water system. No further subdivision of the lots created by SUB 08-000726 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
  - c. Any lots created by SUB 08-000726 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 and be located in an area accessible to fire apparatus. 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 affected lot created by SUB 08-000726 that the County Water System has been upgraded or an improvement district initiated to enable service to the affected lot created by SUB 08-000726, the owner(s) of the affected lot created by SUB 08-000726 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 shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.
  - 5. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.



Ms. Lori Mikkelson  
All Aina Services  
Page 9  
July 22, 2009

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare the subject Variance-VAR 08-067 null and void.

Sincerely,



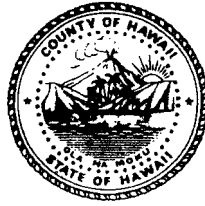
BJ LEITHEAD TODD  
Planning Director

WRY:mad

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xc: Manager-DWS  
SUB 08-000726

William P. Kenoi  
Mayor



BJ Leithead Todd  
Planning Director

## County of Hawaii

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

April 1, 2009

Ms. Lori Mikkelson  
All Aina Services  
P. O. Box 291  
Laupahoe, HI 96764

Dear Ms. Mikkelson:

**SUBJECT: VARIANCE-VAR 08-067**  
**Agent: ALL AINA SERVICES**  
**Applicant: ALL AINA SERVICES**  
**Owners: VALERIE and GERALD BOTEILHO TRUST**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Article 6, Division 2, Improvements Required,**  
**Section 23-84, Water Supply, (1)(2)**  
**Tax Map Key: 4-4-008:130, (SUB 08-000726)**

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After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-067 subject to variance conditions. The variance permits proposed 3-lot subdivision (SUB 08-000726) without providing a water system to 2-proposed lots meeting the minimum requirements of the Department of Water Supply (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 applicant or owner's variance application from minimum subdivision water system requirements for proposed 3-lot subdivision be **approved** based on the following findings:

**APR 02 2009**

## **BACKGROUND**

1. **Location.** The referenced TMK property, Lot 65 containing approximately 16.84 acres, Kalopa Homesteads, being all of Grant 7890 to John Bento Gouveia, is situated at Kalopa, Hamakua, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The owner's surveyor filed subdivision application (SUB 08-000726) including preliminary plat map (PPM) dated February 20, 2008 proposing to subdivide subject TMK property into 3-lots. Further action on the subdivision application is being deferred pursuant to letter dated April 15, 2008 in the subdivision application file.
4. **Variance Application.** The applicant filed variance application (VAR 08-067) on November 3, 2008.

The applicant's background information dated October 30, 2008 states in part:

"The owners of the subject parcel with an area of 16.84 acres, zoned Ag-5a have (sic) applied for a 3 lot subdivision.

The Department of Water Supply has confirmed that there is water available to Lot 65-A, as per the included survey map. Therefore our request is for a water variance for Lot 65-B & Lot 65-C. (sic) which will provide water through means of a catchment system.

The rainfall, as per County of Hawaii, GIS map, is rated at 70"-80" per year; therefore the subject parcel and the request for the Water Variance is (sic) consistent with general purpose of the Zoning & Subdivision Codes and the requirements of the County of Hawaii, (sic) Planning Dept."

5. **Variance Application (VAR 08-067)-Agency Comments and Requirements:**
  - a. The County of Hawaii-Hawaii Fire Department (HFD) memorandum dated November 26, 2008 states in part:

"In that the catchment system will also be used for fire protection, it is recommended

- b. The State of Hawaii-Department of Health (DOH) memorandum is dated November 26, 2008. (Refer to DOH memorandum in variance file).
- c. The Department of Water Supply (DWS) memorandum, dated December 165, 2008, states in part:

"Our comments from our May 22, 2008, letter to you, regarding the subject subdivision application, still stand. We have no objection to the applicant's proposed use of private rain water catchment systems to serve the lots that cannot be served from our existing water system.

According to a letter submitted with the subject variance application, dated October 30, 2008, the applicant intends to designate the existing service to the subject parcel (Account No. 690-24600) to Lot 65-A within the proposed subdivision. However, the preliminary plat map submitted with the original subdivision application, dated February 20, 2008, notes that Lot 65-C will be designated with water service. Prior to granting final subdivision approval, the Department requests that the applicant clarify in writing which lot within the proposed subdivision will be designated with the existing service and that same be noted on the final plat map.

Through a copy of this letter, the applicant shall also be informed that the existing service shall only serve one (1) lot within the proposed subdivision and the water system piping within each lot shall not be interconnected in any way."

- 6. **Notice to Surrounding Owners.** The applicant submitted transmittal letter dated November 26, 2008 including copy of notice and other attachments sent to surrounding property owners and certificate of mailing forms with affixed USPO receipts dated November 26, 2008 to the Planning Department. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 28, 2008.

**Posted Sign.** The applicant submitted transmittal letter dated November 24, 2008 including affidavit dated October 13, 2008 regarding posting of a sign upon

subject TMK property and photograph of posted signs.

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 circumstances and variance background information including rainfall information provided by the applicant and agency comments, the Planning Director has determined that there are special or unusual circumstances applying to the TMK property which exist either to a degree which deprives the applicant or owners of property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### **ALTERNATIVES**

The DWS memorandum dated May 22, 2008 in subdivision file (SUB 08-000726) states in part the following:

“Please be informed that the Department’s existing water system facilities cannot support the proposed subdivision at this time. 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 and no time schedule is set.”

The first alternative requires the applicant to make “extensive improvements and additions” to the County DWS water system in accordance with the DWS memorandum in the subdivision file.

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

In view of the above, there are no other reasonable alternatives in resolving the difficulty of the applicant. The imposition of improving the existing public water system or providing an approved alternative private water system meeting DWS standards for proposed or 2-new additional lots or proposed 3-lot subdivision (SUB 08-000726) would be putting excessive demands upon the owners or subdivider when a 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.

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 or "Water Variance" to allow and utilize privately owned individual rain water catchment systems for proposed 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 TMK property utilizing maps at the Planning Department, DWS, and information provided by the applicant indicate 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. According to information and data available from the Hawaii State Climate Office (HSCO) and recent 1996 publication by the U.S. Geological Survey, the subdivision is near gauge "Paauhau Airstrip" (SKN 216.3) situated at approximately 2200 feet elevation. The map-PLATE 6 (Active rain-gauging stations and mean annual rainfall) shows "216.3" is located between two "80" isohyet line(s). According to Rainfall Atlas of Hawaii-Report 76 (June 1986) the unadjusted median annual rainfall for "216.30" was 100.27+ inches. The analysis of the applicant's

submittals compared with the isohyet map study map and other published historical or annual rainfall data reports indicate the proposed 3-lot subdivision will receive at least 60+ inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

The variance application submitted by the owner's agent was acknowledged by letter dated November 18, 2008 and additional time to review DWS comments and other agency comments regarding the agent's variance request and application was required. The applicant or owner's agent granted the Planning Director additional time to render a decision on the agent's variance application to April 3, 2009.

Based on the above findings and Rule No. 22, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance requested will not be detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

#### **VARIANCE DECISION-CONDITIONS**

The variance request to allow a proposed 3-lot subdivision of the subject TMK property without providing a water system meeting DWS standards for 2 proposed lots 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 or subdivider shall confer with the DWS and designate in writing which lot of the proposed 3-lot subdivision shall be provided with a DWS water service (Account No. 690-24600) prior to submittal of approved written agreement and issuance of final subdivision approval to SUB 08-000726.
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 08-000726. 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 2-lot subdivision application and shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and

expense of the owners:

- a. The owner(s) agree and accept the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 08-000726. 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 owner(s) 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(s) created by SUB 08-000726 not serviced by a County water system. No further subdivision of the lots created by SUB 08-000726 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 08-000726 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 affected lot created by SUB 08-000726 that the County Water System has been upgraded or an improvement district initiated to enable service to the affected lot created by SUB 08-000726, the owner(s) of the affected lot created by SUB 08-000726 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 shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.
- 5. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

Ms. Lori Mikkelsen  
All Aina Services  
Page 9  
April 1, 2009

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare the subject Variance-VAR 08-067 null and void.

Sincerely,

A handwritten signature in cursive script, appearing to read "BJ Leithead Todd".

BJ LEITHEAD TODD  
Planning Director

WRY:mad  
P:\WP60\WRY\FORMLETT\VAR08-067\WATERRULE22.AAS-BOTEILTHO

xc: Manager-DWS  
SUB 08-000726