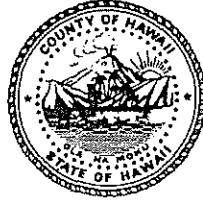


William P. Kenoi  
Mayor



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

March 12, 2009

Mr. Sidney M. Fuke  
SIDNEY FUKU, PLANNING CONSULTANT  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

**SUBJECT: VARIANCE-VAR 08-068**

**Agent: SIDNEY FUKU, PLANNING CONSULTANT**  
**Applicant: JILL JULIE MATTOS ANDRADE-PHILLIPS**  
**Owner: JILL JULIE MATTOS ANDRADE-PHILLIPS**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Article 6, Division 2, Improvements Required,**  
**Section 23-84, Water Supply, (1)(2)**

**Tax Map Key: 4-6-007:042, (SUB 08-000765)**

After reviewing the applicant's variance application, the Planning Director certifies the approval of Variance-VAR 08-068 subject to variance conditions. The variance permits proposed subdivision (SUB 08-000765) to be created without providing a water system meeting 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 agent or applicant's variance application from minimum subdivision water system requirements for proposed subdivision be **approved** based on the following findings:

### **BACKGROUND**

1. **Location.** The referenced TMK property, Lot 3B-1 containing approximately 19.242 acres, being portions of Grant 3699 to Manuel Dos Santos, Grant 3700 to

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M. F. Mendes, and Grant 4227 to Narcisso De Mello, is situated at Ahualoa Homesteads, Hamakua, Hawaii.

2. **Zoning.** The subject TMK 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 applicant/owner's surveyor submitted application for subdivision (SUB 08-000765) and preliminary plat map (PPM), dated April 25, 2008, proposing to subdivide subject TMK property into 2-lots. Further action on this subdivision application is being deferred pursuant to letter dated August 25, 2008 in the subdivision application file.
4. **Variance Application.** The applicant's agent submitted variance application (VAR 08-068) on or about November 5, 2008.

The application's background report states in part:

"There is a County water meter serving the site. However, due to limitations relative to the source, the County Department of Water Supply ("DWS") has restricted water service to only one meter per existing lot of record. Until additional water source becomes available and related appurtenances are implemented, as noted in water for In that regard, (sic) unless the source is improved and other related improvements are made-as noted in DWS's comments-water cannot be made available to the other lot. (sic)

Providing potable water meeting County dedicable standards to the site would be an inordinate expense for the applicant to absorb. At the same time, given the rainfall in this area and the agricultural nature of this subdivision, the applicant believes that a water catchment system would be sufficient. As such, the applicant is requesting relief from this water requirement."

5. **Variance Application (VAR 08-068)-Agency Comments and Requirements:**

- a. The Hawaii County Fire Department memorandum dated November 26, 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.”

- b. The State of Hawaii-Department of Health (DOH) memorandum is dated November 26, 2008. Refer to State-DOH memorandum in variance file.
- c. The Department of Water Supply (DWS) memorandum, dated December 15, 2008, states in part:

“Our comments from our September 29, 2008 letter to you, regarding the subject subdivision application, still stand. We have no objection to the applicant’s proposed use of a private rainwater catchment system to serve the additional lot.

Please note that the applicant has not designated which lot within the subdivision will be served by the existing meter (Account No. 630-90850). Prior to final subdivision approval being granted, we request that the applicant designate the existing service for our records. Further, the applicant shall be informed that the existing meter shall not be shared with the other proposed lot and the water system piping between the lots shall not be interconnected in any way.”

- 6. **Notice to Surrounding Owners.** According to transmittal letter dated December 22, 2008 including a copy of an affidavit dated November 24, 2008 and other attachments, the applicant’s agent sent a notice to surrounding property owner(s) within 500 feet of subject TMK property. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 28, 2008.

**Posted Sign.** The applicant submitted an affidavit regarding sign posting on November 24, 2008 and February 10, 2009. A photograph of posted sign(s) relating to the applicant’s proposed subdivision and variance applications were submitted on December 22, 2008.

- 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.

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Therefore, after considering the circumstances and variance background information including rainfall information provided by the applicant's representative 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 owner(s) 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 September 29, 2008 in subdivision file (SUB 08-000765) 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 for such improvements and no time schedule is set.

The applicant is requested to submit, in writing, which lot the existing service (Account No. 630-90850) will be assigned to, subject to a variance application being formerly executed."

After considering the DWS memorandum, the first alternative requires the subdivider or owner to wait for the DWS to make "extensive improvements and additions" or require the subdivider or owner to construct "extensive improvements and additions" 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 existing public or DWS water system or providing an approved alternative private water system meeting DWS standards for proposed subdivision (SUB 08-000765) 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.

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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 additional lot or 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 subject TMK property utilizing Planning Department GIS data 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 other published sources (historical rainfall, elevation, etc.) indicates the subject TMK property or proposed subdivision and surrounding area receives in excess of 80 inches of rainfall annually and meets Rule No. 22-Water Variance.

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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.

The applicant's variance application was acknowledged by letter dated November 18, 2008 and additional time to review previous subdivision and variance approvals near the proposed subdivision was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than March 16, 2009.

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 2-lot subdivision 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 a proposed 2-lot subdivision of the subject TMK property without providing a water system meeting DWS standards for 1-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. The applicant or subdivider shall confer with the DWS and designate in writing which lot of the proposed 2-lot subdivision shall be provided with a DWS water service (Account No. 630-90850) prior to submittal of approved written agreement and issuance of final subdivision approval to SUB 08-000765.
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 08-000765. 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 08-000765. 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 created by SUB 08-000765 not serviced by a County water system. No further subdivision of the lots created by SUB 08-000765 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 08-000765 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 08-000765 that the County Water System has been upgraded or an improvement district initiated to enable service to the affected lot created by SUB 08-000765, the owner(s) of the affected lot created by SUB 08-000765 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



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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,



BJ LEITHEAD TODD  
Planning Director

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xc: Manager-DWS  
SUB 08-000765