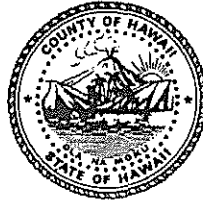


William P. Kenoi
Mayor



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

March 15, 2010

Mr. Clyde Matsunaga
IMATA & ASSOCIATES, INC.
171 Kapiolani Street
Hilo, HI 96720

Dear Mr. Matsunaga:

SUBJECT: VARIANCE-VAR 09-040
Representative: CLYDE MATSUNAGA
Applicant: IMATA & ASSOCIATES, INC.
Owners: STEVEN S. KUBOJIRI, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Improvements Required-Water Supply
Tax Map Key: 1-8-087:027, (SUB 09-000881)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 00-040 subject to variance conditions. The variance permits proposed 2-lot subdivision (SUB 09-000881) of the above referenced TMK property without providing a water system meeting with the minimum requirements of the Department of Water Supply (DWS). The variance is from Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

The Planning Director has concluded that the request for variance can be **approved** based on the following findings:

BACKGROUND

1. **Location.** The referenced TMK property containing approximately 22.975 acres, being portion of Grant 4511 to Joseph Was, is situated at Olaa, Puna, Hawaii.

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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 agent submitted a subdivision application (SUB 09-000881) and preliminary plat map (PPM) proposing to subdivide subject TMK property into 2-lots. Further action on the proposed subdivision is being deferred pursuant to letter dated June 23, 2009 in the subdivision application file.
 4. **Variance Application.** The applicant's agent submitted a variance application and submittals on August 20, 2009. The application includes exhibits and attachment which states in part the following:

"The parcel receives a median annual rainfall of 160 to 200 inches. We are requesting a variance to allow water catchment systems for the proposed lots since there is no County water system readily available."
 5. **Variance Application (VAR 09-040)-Agency Comments and Requirements:**
 - a. The State of Hawaii-Department of Health (SOH-DOH) memorandum is dated November 9, 2009. Refer to SOH-DOH memorandum in the variance application file.
 - b. The Department of Water Supply (DWS) memorandum dated November 18, 2009 states in part:

"We have reviewed the subject application and have no objections as there is no public water system in the area."
 6. **Notice to Surrounding Owners.** The applicant's agent submitted a list of surrounding property owner(s) within 300 feet of subject TMK property and other attachments on November 12, 2009. These submittals indicate that notice was sent or mailed by the USPO on November 9, 2009. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 9, 2009.
- Posted Sign.** The applicant submitted an affidavit dated August 11, 2009 regarding sign posted upon on subject TMK property and "Photos" of the posted

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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 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 June 10, 2009 in subdivision application file (SUB 09-000881) states in part the following:

"Please be informed that there is no public or private water system in the area."

The first alternative requires the applicant to construct or provide a water system for proposed 2-lot subdivision (SUB 09-000881) meeting the minimum requirement of the DWS.

The second alternative would be to design, drill private wells, and construct a private water distribution system for proposed subdivision (SUB 09-000881) meeting the minimum requirements of the DWS.

In view of the above, there are no other reasonable alternatives in resolving the difficulty of the applicant. The imposition of providing an approved alternative private water system meeting DWS standards for proposed 2-lot subdivision (SUB 09-000881) would be putting excessive demands upon the applicant when a more reasonable alternative is available. The applicant's request to utilize "water catchment" for the proposed subdivision can be considered pursuant to Rule 22-Water Variance.

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.

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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 water system proposed by the applicant or "allow water catchment" for the proposed 2-lot subdivision can meet the intent and purpose of the Subdivision Code; and, allowed pursuant to Planning Department Rule 22-Water Variance, effective February 25, 2006. Generally, Rule 22 is both a rule and statement of criteria to be used so that consistent decisions can be made on water variance requests. Section 23-84 of the Subdivision Code requires a water system, and Rule 22 limits subdivisions requesting a variance from water supply to six (6) lots, and, requires that a proposed subdivision requesting a variance to allow individual rainwater catchment systems for potable and emergency needs must receive a minimum 60 inches of annual rainfall for each lot served by catchment. Rule 22, states in part:

"22-4 Minimum rainfall.

Except as provided in Rule 22-6, all lots to be served by catchment shall be served by catchment shall have an average annual rainfall of not less than 60". The annual rainfall can be proven by rainfall records at comparable rain gauges, or by the USGS rainfall map."

The analysis of variance information including rainfall maps and data submitted indicate the subject TMK property and surrounding region receives rainfall to support individual or separate private rainwater catchment systems for potable and emergency uses. The rainfall map including rainfall data submitted or isohyet map study purportedly obtained from the Planning Department's GIS data base indicates the subject TMK or proposed subdivision or "SITE" receives more than 120 inches or approximately 160 inches of rainfall annually. The analysis of this map study submitted by the applicant indicates the proposed subdivision will receive more than 60+ inches of rainfall annually. The proposed 2-lot subdivision meets Rule No. 22-Water Variance.

The variance application submitted by the applicant's agent was acknowledged by letter dated November 3, 2009 and additional time to consider the DWS memorandum and rainfall map study was necessary. The applicant's agent granted the Planning Director additional time to review agency comments and render decision on the variance application to March 31, 2009.

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

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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 2-lot subdivision of the subject TMK property without providing a water system 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. WATER VARIANCE: The owner(s), 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 09-000881. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lots created by subdivision application (SUB 09-000881) 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 owner(s):
 - 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 SUB 09-000881. 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 09-000881 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 09-000881 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 09-000881 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 09-000881, the owner(s) of the lot(s) created by SUB 09-000881 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

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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 proposed 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.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare the subject Variance-VAR 09-040 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

WRY:kwr

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xc: Manager-DWS
SUB 09-000881