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County of Hawai'i

PLANNING DEPARTMENT

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June 9, 2011

Mr. James N. Cairns
P.O. Box 102
Hakalau, HI 96710

Dear Mr. Cairns:

SUBJECT: VARIANCE-VAR 11-006

Applicant: JAMES N. CAIRNS
Owners: JAMES N. AND JO ANN B. CAIRNS
Request: Variance from Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required
Tax Map Key: 2-9-002:084, (SUB 10-000995)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 11-006 subject to variance conditions. The variance permits proposed 2-lot subdivision (SUB 10-000995) to be created without providing a water system meeting the minimum requirements of the Department of Water Supply (DWS) and dedicable streets required by Chapter 23, Subdivisions. The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), Section 23-86, Requirements for dedicable streets.

The Planning Director has concluded that a variance application from the minimum water system and road requirements for proposed subdivision be **approved** based on the following findings:

BACKGROUND

1. **Location.** The subject property contains approximately 2.827 acres and is identified as Lot 6 of the Hakalau Estates Subdivision, Hakalau Nui, South Hilo, Hawai'i.
2. **Zoning.** The subject property is zoned Single-Family Residential – 7.500 square feet (RS-7.5) by the County and designated Urban "U" by the State Land Use Commission (LUC). The subject property is located within the Special Management Area (SMA). Special Management Area Use Permit Assessment No. 10-000616 (SAA-10-000616) was issued to allow for the subdivision.

3. **Subdivision Request/PPM.** The applicant submitted a subdivision application (SUB 10-000995) proposing to subdivide the subject property into two (2) lots and a preliminary plat map (PPM), dated May 11, 2010,
4. **Variance Application.** The variance application requests relief from water supply and roadways standards, to permit the proposed subdivision. The application was acknowledged by Planning Department letter dated May 2, 2011. This variance application includes background history, circumstances and information regarding the pending subdivision application.
5. **Agency Comments and Requirements:**
 - a. The State of Hawai'i Department of Health (DOH) memorandum is dated May 3, 2011. Refer to DOH memorandum in variance file.
 - b. Hawai'i County Fire Department (HFD) memorandum is dated May 9, 2011. Refer to HFD memorandum in variance file.
 - c. The Department of Water Supply (DWS) memorandum is dated June 1, 2011 and identifies no opposition to the use of catchment. Refer to Department of Water Supply memorandum in variance file.
 - d. The Department of Public Works (DPW) memorandum is dated May 31, 2011. Refer to Department of Public Works memorandum in variance file.
6. **Public Notice.** The applicant submitted a copy of a notice sent to surrounding property owner(s) within three (300) hundred feet of the subject property. Pursuant to these submittals, it appears that the applicant's notice was mailed to the surrounding property owners by USPS on January 21, 2011 and May 5, 2011. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 8, 2011. The applicant submitted an affidavit, dated May 04, 2011, regarding sign posted on the subject property and photograph of the posted sign.
7. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Supply. The first alternative requires the applicant or owners to construct extensive

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improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities in accordance with DWS standards or memorandum dated August 4, 2010. Refer DWS memorandum in subdivision file (SUB-10-000995).

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

The cost to construct additional water supply improvements, or "construct necessary water system improvements" in accordance with the DWS memorandum, or 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) can be permitted pursuant to Rule 22, Water Variance. One of the proposed lots would be serviced by county water while the second lot is proposed for catchment.

Lot Access/Roadways.

The subdivider has been requested to construct access and roadways pursuant to an earlier DPW memorandum dated October 21, 2010, or roadway requirements pursuant to Chapter 23, Subdivisions. The subject property currently has access to a public roadway (Old Mamalahoa Highway) via an unnamed private roadway.

In lieu of improving or constructing roadways required by the DPW memorandum dated October 21, 2010, the owners contend that the existing paved private roadway is sufficient access to subject property. The additional lot to be created by the proposed subdivision will create minimal additional impact. The owners are requesting a variance not to construct roadway improvements, including 32-foot wide dedicable pavement with concrete curbs, gutters and sidewalks within a 50-ft. wide right of way conforming to Std. Detail R-32 and R-34 along with street lights, as required by the Department of Public Works memorandum.

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.

An alternative from meeting the minimum requirements of the Department of Water Supply is to

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allow privately-owned individual rain water catchment systems for up to six-lot subdivisions, pursuant to Planning Department Rule 22 – Water Variance. Rule 22 identifies, in part, that the variance applies to requests for subdivisions that propose to rely on rain catchment for their water supply, on agriculturally zoned properties...” Given that the subject property is zoned Single-Family-Residence – 7,500 sq. ft. (RS-7.5), Rule 22 is not applicable to the subject site. However, the proposed subdivision or subject property is located in an area that receives approximately 120 inches to 160 inches of annual rainfall, which exceeds the 60-inch annual precipitation criteria within Rule 22.

Given the circumstances that the subject neighborhood receives sufficient rainfall to the proposed subdivision, a water variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the Hawai‘i County General Plan. Furthermore, it is felt that this variance 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.

Roadway Variance. The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance.

The existing subdivision, which was established on June 4, 2003, created 11 residential lots and a roadway lot and established the surrounding land patterns. The existing private road network in the neighborhood is presently paved. The improvements are in good repair and ongoing maintenance is the responsibility of the association and property owners. Also, the subject property consisting of 2.827 acres is zoned Single Family Residence – 7,500 square feet (RS-7.5). Given the subject property’s zoning density, the applicant/owner is allowed another single family dwelling on the parcel without subdividing the property. For that reason, the owner could construct another single family dwelling without doing any roadway and water improvements.

Therefore, given the circumstances cited by the applicant and evaluation of the request to improve the existing roadway, required by the Department of Public Works memorandum, dated October 21, 2010, the Planning Director has concluded that the current roadway is sufficient access to the subject property.

Given the circumstances cited by the applicant, the request for variance from water supply and roadways, at this time, 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, it is felt that this variance 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.

VARIANCE DECISION-CONDITIONS

The variance request to allow the proposed 2-lot subdivision of the property, without providing a water system and road improvements meeting Departments of Water Supply and Public Works standards, is **approved** subject to 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, assigns, or successors shall file a written agreement or approved written document with the Planning Department prior to receipt of final subdivision approval of SUB 10-000995. This written agreement, which shall contain the following deed language, being covenants, conditions, and restrictions affecting the proposed 2-lot subdivision, shall be duly recorded with the Bureau of Conveyances of the State of Hawai'i 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 SUB 10-000995. 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 10-000995 will be permitted unless county water system requirements, and other requirements of Chapter 23, Subdivisions, are met.
 - c. No condominium property regime (CPR) shall be permitted on any lots created by SUB 10-000995.
 - 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 that 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 that includes an additional minimum 3,000 gallon water storage capacity for firefighting 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 Hawai'i County Fire Department and be located in an area accessible to fire apparatus. The Hawai'i County Fire Department also advises, as a precautionary measure for other uninhabited structures, that consideration be given to the provision of a similar water storage system for firefighting 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 10-000995 that the County Water System has been upgraded, or an improvement district initiated to enable service to those lots, they 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 Hawai'i 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. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the two (2) lots arising out of SUB 10-000995 will use and maintain the privately-owned road, and/or any other necessary easement(s), on their own, without

any expectation of governmental assistance to maintain the existing privately-owned access or roadway improvements identified on the subdivisions preliminary plat map, or any other necessary access and utility easement(s) within or upon proposed lots or proposed subdivision.

The applicant, owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department prior to receipt of final subdivision approval of SUB 10-000995. The proposed lots shall form a Homeowner or Road Association or include appropriate deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the pending subdivision application and be duly recorded at the Bureau of Conveyances of the State of Hawai'i by the Planning Department at the cost and expense of the applicant:

- a. The applicant and/or owner(s) shall indemnify and defend the State of Hawai'i or County of Hawai'i from any and all liability arising out of vehicular access to and from the subject property utilizing this existing private utility and access easement.
- b. Upon written demand of the County of Hawai'i, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements serving the proposed lot(s) arising out of SUB 10-000995. Should the improvement district require acquisition of any privately-owned rights-of-way fronting the lots arising out of SUB 10-000995, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the respective lot owner(s). 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.
- c. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the roadway. 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

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sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.

4. The subdivision application's final plat map for proposed 2-lot subdivision shall meet all the requirements of the Hawai'i 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.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 11-006 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Manager-DWS
DPW—Engineering Division
SUB 10-000995