

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

August 17, 2011

Mr. Brian Takeda, Planning Project Coordinator
R. M. Towill Corporation
2024 North King Street, Suite 200
Honolulu, Hawai'i 96819-3494

Dear Mr. Takeda:

SUBJECT: VARIANCE-VAR 11-010

Agent: R. M. TOWILL CORPORATION
Applicant: WILLIAM B. LOWE
Owners: WILLIAM B. AND JOSEPHINE K. LOWE
**Request: Variance from Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required**
Tax Map Key: 2-7-002:003, Lot 1-A-1 (SUB 06-000375)

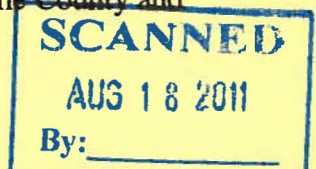
After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 11-010 subject to variance conditions. The variance permits proposed 3-lot subdivision (SUB 06-000375) to be created without providing a water system meeting the minimum requirements of the Department of Water Supply (DWS) and nondedicable street; escrow maintenance fund 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 23-87, Requirements for nondedicable streets; escrow maintenance fund and Section 23-95 Right-of-way improvement.

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

- Location.** The subject property contains approximately 1,072.49 acres and is identified as Lot1-A-1, Pāpa'ikou, South Hilo, Hawai'i.
- Zoning.** The subject property is zoned Agriculture – 20 acres (A-20a) by the County and

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designated Agriculture "A" by the State Land Use Commission (LUC).

3. **Subdivision Request/PPM.** The applicant submitted a subdivision application (SUB 06-000375) proposing to subdivide the subject property into three (3) lots and revised preliminary plat map (PPM), dated January 25, 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 June 16, 2011.
5. **Agency Comments and Requirements:**
 - a. The State of Hawai'i Department of Health (DOH) memorandum dated June 27, 2011 (Refer to memorandum in variance file).
 - b. Hawai'i County Fire Department (HFD) memorandum dated June 22, 2011 (Refer to memorandum in variance file).
 - c. The Department of Water Supply (DWS) memorandum dated July 8, 2011 (Refer to memorandum in variance file).
 - d. The Department of Public Works (DPW) – Building Division memorandum is dated June 23, 2011 (Refer to memorandum in variance file).
6. **Public Notice.** The applicant submitted copy of notices sent to surrounding property owners by USPO or U.S.P.S. on June 28, 2011. In accordance with Ordinance No. 05-135, the applicants submitted a notarized affidavit, dated July 5, 2011, and photographs to confirm posting of required sign. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on June 23, 2011.
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 improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities in accordance with DWS standards or memorandum dated September 13, 2006. Refer DWS memorandum in subdivision file (SUB-06-000375).

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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 3-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

Lot Access/Roadways.

The subdivider has been requested to construct access and roadways pursuant to an earlier DPW memorandum dated October 25, 2010, or roadway requirements pursuant to Chapter 23, Subdivisions. The subject property currently has access to a public roadway (Mamalahoa Highway) via Ka‘ie‘ie Homestead Road.

In lieu of improving or constructing roadways required by the DPW memorandum dated October 25, 2010, the owners contend that the existing paved private roadway and proposed gravel roadway within the subject area is sufficient access for the proposed subdivision. The additional 2 lots to be created by the proposed subdivision will create minimal additional impact. Therefore, the applicant is requesting a variance not to construct roadway improvements, without having to construct minimum 20-ft wide agricultural pavement within a 50-ft right-of-way conforming to Std. Detail R-39 as required by the Department of Public Works memorandum.

The proposed three (3) lot subdivision will consists of lots ranging from 264.95 acres to 470.09 acres. The smallest lot is more than 13 times larger than the minimum lot size of 20 acres required by the Agricultural – 20 acres (A-20a) Zoning District. The proposed roadway access will not serve any other properties other than the two of the three proposed lots.

Considering the foregoing issues, there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant of substantial property rights that would be available or to a degree which obviously interferes with the highest and best use or manner of development of the property.

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

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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 the above would be the approval of a "water variance," to allow and utilize privately-owned individual rain water catchment systems for the proposed 3-lot subdivision. This alternative meets the intent and purpose of the Subdivision Code and is 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 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, provided by the applicant, indicates that there is adequate rainfall to support individual, or separate, private rainwater catchment systems for potable and emergency uses for the proposed subdivision. The analysis of the applicant's submittals and GIS rainfall data maintained by Planning Department indicates the proposed subdivision will receive approximately 157 inches to 236 inches of rainfall annually (State of Hawai'i, GIS, Accessed January 30, 2010). The proposed subdivision meets Rule No. 22-Water Variance.

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.

In lieu of improving or constructing roadways required by the DPW memorandum dated October 25, 2010, the owners contend that the proposed gravel private roadway is sufficient access to the proposed lots. The additional 2 lots to be created by the proposed subdivision will create minimal additional impact. The owners are requesting a variance not to construct roadway improvements, including 20-ft wide agricultural pavement within a 50-ft. wide right of way conforming to Std. Detail R-39, and where grades are greater, the roadway section shall be paved per Std. Det. R-34. as required by the Department of Public Works memorandum. Considering the foregoing issues, there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant substantial property rights that would be available, or to a degree which

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obviously interferes with the highest and best use or manner of development of the 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 3-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 06-000375. This written agreement, which shall contain the following deed language, being covenants, conditions, and restrictions affecting the proposed 3-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 06-000375. 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 06-000375 will be permitted unless countywater 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 06-000375.
 - 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 06-00375 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 three (3) lots arising out of SUB 06-000375 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 06-000375. 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 06-000375. Should the improvement district require acquisition of any privately-owned rights-of-way fronting the lots arising out of SUB 06-000375, 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 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 3-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

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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 11-010 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Manager-DWS
DPW—Engineering Division
SUB 06-000375