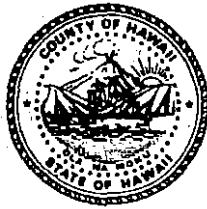


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

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

January 18, 2012

Mr. Jon Patrick Sager
Ms. Cheryl Marie Sager
P.O. Box 913
Mountain View, HI 96771

Dear Mr. & Ms. Sager:

**SUBJECT: DECLARATION OF VARIANCE
VARIANCE - VAR 11-000017
Document No(s): 2011-143413
TMK: (3) 1-8-011:070, (SUB 07-000672)**

Enclosed is Document No. 2011-143413 (Original) for your files. A copy of this document will be maintained in our files at the Hilo office.

If you should have any questions, please contact this office at (808) 961-8288.

Sincerely,


for BJ LEITHEAD-TODD
Planning Director

SHG/shg

p:\admin\permits\division\variance\2011\var 11-017 jon patrick & cheryl marie sager\recorded\variance\declaration\18011070.doc

Enclosure: Agreement (Original)

xc: SUB 07-000672 (Ltr. only)
Island Survey, Inc. (Ltr. only)



R-987 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
SEP 07, 2011 03:00 PM
Doc No(s) 2011-143413



/s/ NICKI ANN THOMPSON
REGISTRAR

20 1/1 Z2

REGULAR SYSTEM: _____

LAND COURT SYSTEM: _____

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

TITLE OF DOCUMENT:

**DECLARATION FOR VARIANCE
VAR-11-000017**

PARTIES TO DOCUMENT:

**AGENCY: PLANNING DIRECTOR
PLANNING DEPARTMENT,
COUNTY OF HAWAI'I**

**DECLARANTS: JON PATRICK SAGER and CHERYL MARIE SAGER
P.O. Box 913
Mountain View, Hawaii 96771**

PROPERTY DESCRIPTION:

Lot 104, olaa New Tract Lots, Being also a Portion of
grant 4351, containing 51.496 acres, situated at
'Ola'a, Puna, Hawai'i

TMK No. 1-8-011:070

DECLARATION FOR VARIANCE – VAR-11-000017

This Declaration is made this 1st day of September, 2011,

Whereas, **JON PATRICK SAGER and CHERYL MARIE SAGER**, whose primary mailing address is P.O. Box 913, Mountain View, Hawai'i 96771, are the owners of real property bearing Tax Map Key (3) 1-8-011:070 more particularly described herein; and

Whereas, the owners desire to subdivide the above-described property or tax map key (3) 1-8-011:070 parcel of land into five (5) lots; and

Whereas, the Planning Director for the County of Hawai'i has, by letter dated June 9, 2011, agreed to grant variance from the water and roadway improvement requirements applicable to a proposed five (5) lot subdivision (SUB-07-000672) of the above-referenced property; and

Whereas, the grant of Variance – VAR-11-000017 by the Planning Director is subject to the following Variance conditions:

1. WATER VARIANCE

- 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-07-000672. 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-07-000672 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-07-000672.
- 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-07-000672 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.

2. ROAD VARIANCE

- 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-07-000672. Should the improvement district require acquisition of any privately-owned rights-of-way fronting the lots arising out of SUB-07-000672, 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.

IN CONSIDERATION OF THE AFORESAID, the Department hereby approves this Declaration for Variance as being in conformity with County Code, Chapter 23, Subdivisions.

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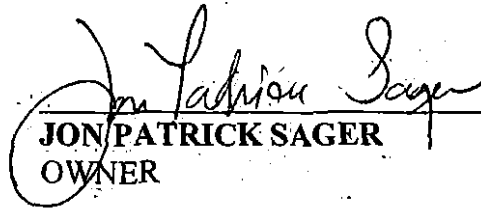
IN WITNESS WHEREOF, the parties have executed this agreement and agree to such provision which shall run with the land.

FIRST PARTY (AGENCY):



BJ LEITHEAD TODD – Planning Director
County of Hawai'i Planning Department

SECOND PARTY (DECLARANTS):



JON PATRICK SAGER
OWNER

CHERYL MARIE SAGER
OWNER

ALL-PURPOSE ACKNOWLEDGMENT

STATE OF HAWAII

} SS.

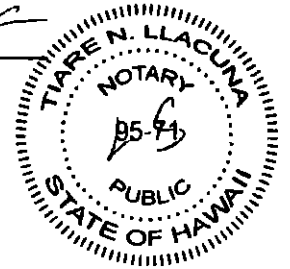
COUNTY OF HAWAII }

On July 26, 2011, before me personally appeared, John Patrick Sager who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, acted, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person executed the instrument.

WITNESS my hand and official seal.

Tiare N. Llacuna

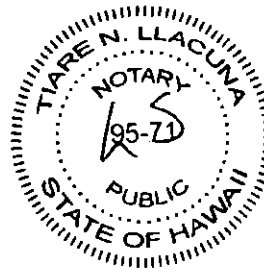
Tiare N. Llacuna
Notary Public, State of Hawaii
Third Judicial Circuit
My commission expires: 3/14/15
My Commission No.: 95-71



STATE OF HAWAII NOTARY CERTIFICATION


Document Date: 7/26/2011 # Pages 8
Notary: Tiare N. Llacuna Third Circuit
Doc. Description: declaration for variance
var-11-000017

Tiare N. Llacuna 7/26/11
Notary Signature Date



IN WITNESS WHEREOF, the parties have executed this agreement and agree to such provision which shall run with the land.

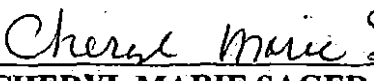
FIRST PARTY (AGENCY):



BJ LEITHEAD TODD – Planning Director
County of Hawai'i Planning Department

SECOND PARTY (DECLARANTS):

JON PATRICK SAGER
OWNER



CHERYL MARIE SAGER
OWNER

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Stanislaus

On July 29, 2011 before me, TARRON J. ROBERTS Notary Public.
Date Here Insert Name and Title of the Officer

personally appeared Cheryl Marie Sager
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Tarron J. Roberts
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration for Variance

Document Date: July 29, 2011 Number of Pages: 6

Signer(s) Other Than Named Above: Jon Patrick Sager, B. Keith Todd

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Individual

Corporate Officer — Title(s): _____

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name: _____

Individual

Corporate Officer — Title(s): _____

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

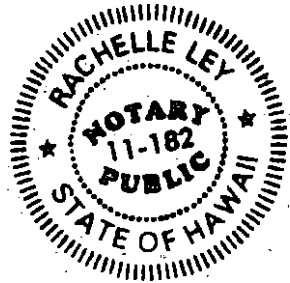
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

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STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On September 1, 2011, before me personally appeared BJ Leithead Todd, to me personally known, who, being by me duly sworn, did say that BJ Leithead Todd is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawai'i has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawai'i, a government agency, and said BJ Leithead Todd acknowledged the instrument to be the free act and deed of said Planning Department; County of Hawai'i.



Rachelle Ley
Rachelle Ley

Notary Public, Third Judicial Circuit
State of Hawai'i

My Commission Expires: June 12, 2015

Document Date:	<u>September 1, 2011</u>	No. of Pages:	<u>10</u>
Notary Name:	<u>Rachelle Ley</u>		<u>Third Judicial Circuit</u>
Doc. Description:	<u>Declaration for Variance (VAR-11-000017)</u>		
	<u>Tax Map Key (3) 1-8-011:070</u>		
<i>Rachelle Ley</i> Notary Signature		<u>9/1/2011</u> Date	

