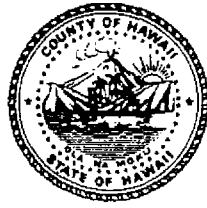


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

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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

February 8, 2012

Ms. Terry Lynn Harrison
P.O. Box 160
Hilo, Hawaii 96755

Dear Ms. Harrison:

SUBJECT: Application: VAR 11-023
Applicant: TERRY LYNN HARRISON
Owner: TERRY LYNN HARRISON
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required
Tax Map Key: 5-3-006:025 (SUB 11-001075)

After reviewing your variance application, the Planning Director certifies the approval of **VAR 11-023** subject to variance conditions. The variance permits a 5-lot subdivision (SUB 11-001075) of the referenced subject property to be created without providing a water supply system and non-dedicable roadway improvements pursuant to Chapter 23, Subdivisions. The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Water Supply, (1)(2), Section 23-41, Minimum right-of-way and pavement widths, Section 23-87, Standard for non-dedicable street; escrow maintenance fund and Section 23-95, Right-of-way improvement.

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

BACKGROUND

1. **Location.** The subject property contains approximately 188.83 acres and is situated in Kapa'au and Ainakea, North Kohala, Island and County of Hawai'i.
2. **Zoning.** The subject property is zoned Agricultural – 20 acres (A-20a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC). Although the subject property does not abut the shoreline, it is located within the

Special Management Area (SMA). Special Management Area Use Permit Assessment Application (SAA-11-000569) determined that the proposed 5-lot subdivision is exempt from the definition of "development".

3. **Subdivision Request/PPM.** The applicants/owners submitted a 7-lot subdivision application (SUB-11-001075) received on April 19, 2011. Subsequently, the applicant has revised the request to reduce the number of proposed lots to 5, with the most recent preliminary plat map dated July 29, 2011.
4. **Variance Application.** The applicant submitted the variance application and associated materials on April 19, 2011. Similar to the subdivision request, the variance application and request were modified from the original 7 lots to 5 lots. The variance seeks relief from water and road requirements of the subdivision code. The applicant seeks approval to utilize individual rainwater catchment for 4 of the 5 lots (the property is currently served by a water meter). The applicant also desires to retain the existing gravel road.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated July 27, 2011 (refer to memorandum in variance file).
 - b. Hawai'i Fire Department memorandum dated June 30, 2011 (refer to memorandum in variance file).
 - c. The Department of Water Supply memorandums dated August 30, 2011 (refer to memorandum in variance file).
 - d. The Department of Public Works memorandum dated July 26, 2011 and October 21, 2011 (refer to memorandums in variance file).
6. **Public Notice.** The applicant has submitted a copy of the notice, a list of surrounding property owner(s), and other submittals. Pursuant to these submittals, it appears that the applicant's notice was mailed to the surrounding property owners by USPS on April 28, 2011. In accordance with Ordinance No. 05-135, the applicants submitted a notarized affidavit, dated April 28, 2011, and photographs to confirm posting of required sign. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 23, 2011.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objection letters were received from surrounding property owners or the public.

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 August 30, 2011.

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 5-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 2nd revised preliminary plat map dated July 29, 2011 proposes three side-by-side flag lots with “poles” providing access from Pratt Road. However, the Planning Department does not recommend more than two side by side flag poles. Therefore, in lieu of the multiple side by side poles please provide a common roadway access to be identified on the Final Plat Map.

The Planning director will permit a variance to allow the development of the proposed 5-lot subdivision without providing roadway improvements meeting the minimum requirements of Chapter 23, Subdivisions, more specifically **Section 23-41 – Minimum right-of-way and pavement widths; Section 23-87 – Standard for non-dedicable street; escrow maintenance fund; and Section 23-95 – Right-of-way improvement.** The subject property currently has access to a public roadway (Akoni Pule highway) via ‘Āinakea Drive and Pratt Road.

The owner/applicant has stated its intent in retaining the dirt/gravel road status that has been used for decades of ranching. The existing and proposed roadway will primarily provide access to the three proposed agricultural parcels (Lots 2, 3 and 4), while the other two parcels will have frontage and direct access off Pratt Road. The existing and proposed subdivision roadway will consist of a 50-foot wide right-of-way, with 20 feet of compacted dirt/gravel surface as shown on the original Preliminary Plat Map and associated materials dated April 11, 2011.

In lieu of improving and constructing roadways required by Chapter 23, Subdivisions, the applicant or subdividers contend that the existing and proposed dirt/gravel roadway is sufficient access to subject properties.

The applicant/subdivider is still required to comply with the drainage requirements stated in Department of Public Works memorandums dated July 26, 2011 and October 21, 2011 (see Attachments 1 and 2).

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 to a water system would be for the county to permit a "water variance," to allow and utilize privately-owned individual rain water catchment systems for the proposed 5-lot subdivision. This alternative would meet 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 TMK 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 60 inches to 65 inches of rainfall annually. 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.

The subject variance application was acknowledged by letter dated June 16, 2011. Additional time was requested by the Planning Department to review the variance application and other information submitted supporting the variance application. The applicant granted the Planning Department and Planning Director an extension of time to decide on the variance application.

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, it is felt that the applicant's request for variance from water supply and non-dedicable roadway improvements will not be materially detrimental to the public's welfare and does not cause substantial adverse impact to the area's character and to adjoining properties.

VARIANCE DECISION-CONDITIONS

The variance request to allow the proposed 5-lot subdivision of the subject property, without providing a water system or roadway improvements meeting typical subdivision 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, 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 11-001075. This written agreement, which shall contain the following deed language, being covenants, conditions, and restrictions affecting the proposed 5-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 11-001075. 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 11-001075 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 11-001075.
- 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 agricultural 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 11-001075 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 3 "flag lots" arising out of SUB 11-001075 will use and maintain the privately owned roadways and/or necessary easement(s) on their own without any expectation of governmental assistance to maintain the current privately owned access or roadway improvements within identified on the subdivisions final plat map or any other necessary access and any necessary utility easement(s) within or upon proposed lots or proposed subdivision. The applicant, owners, their assigns, or successors shall submit or file a written agreement or approved written document with the Planning Department prior to receipt of final subdivision approval of SUB 11-001075. The proposed lots are required to join or participate with 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 the privately-owned roadway(s).
 - 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 11-001075.

Should the improvement district require acquisition of any other privately owned rights-of-way including upon abutting properties, 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 privately-owned roadway which access from Pratt Road.
 - d. 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 plat shall be modified to remove the presence of the three (3) side-by-side "poles" of the flag lots, which ay be accomplished by use of private road lot along the east side of the proposed Lot 1.
 5. The subdivision application's (SUB 11-001075) final plat map shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 11-001075.
 6. 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.
 7. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and complies with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

Ms. Terry Lynn Harrison
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February 8, 2012

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 11-023 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN: nci
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Attachments: 1. DPW Memo Dated July 26, 2011
2. DPW Memo Dated October 21, 2011

xc: Real Property Tax Office (Hilo)
Manager-DWS
DPW - Engineering Division
SUB 11-001075

Ms. Terry Lynn Harrison
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February 8, 2012

PLANNING DEPARTMENT
COUNTY OF HAWAII

2011 AUG - 1 AM 10: 44

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: July 26, 2011

Memorandum

TO : B.J. Leithead-Todd, Planning Director
Planning Department

FROM : Ben Ishii, Division Chief 
Engineering Division

SUBJECT : Variance Application VAR 11-023 (SUB 11-001075)
Applicant: Terry Lynn Harrison
Location:
TMK: 3/5-3-006: 021, 025 & 027

The application does not specify which code section(s) they are requesting to waive. Assuming all of Article 6 Division 2 is requested, as indicated by your cover memo, we have the following comments:

If the Article 6 Division 2 is waived unconditionally, any road improvements would not be subject to Chapter 23, County Standard Specifications and Details or HCC Section 23-92. To our knowledge, such drainage mitigation requirements are not included in any other applicable code.

We note from the site plan and topography, the proposed access road appears to be located at the bottom of a swale or gulch. The swale flows to the ocean. Concentrated runoff will aggravate wheel erosion impacts of an unimproved roadway. A drainage study should be required to determine the potential runoff tributary to the swale or gulch in accordance with Hawaii County Storm Drainage Standards. The study should further examine the potential for increase in erosion and infrastructure damage impacts from locating the access road at the bottom of the swale. The study should recommend necessary mitigation or an alternate access road location and as necessary, lot line adjustments.

All development generated runoff shall be disposed of on-site and not be directed toward any adjacent properties.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530.

KE
copy: ENG-HILO/KONA

Hawaii County is an equal Opportunity Provider and Employer

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Ms. Terry Lynn Harrison
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February 8, 2012

PLANNING DEPARTMENT
COUNTY OF HAWAII

OCT 21 2011 11:43

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: October 21, 2011

MEMORANDUM

TO: PLANNING DEPARTMENT

FROM: ^{LR}
_{for} DEPARTMENT OF PUBLIC WORKS

SUBJECT: SUBDIVISION: SUB 11-001075
Subdivider: Harrison Family Trust, Terry Lynn
Location: Ainakea, Kapa'au, North Kohala, Hawai'i
TMK: 5-3-006:024, 025 & 026
Folder No.: 5462-A1

We have reviewed the subject's 2nd revised preliminary plat map and have the following comments:

1. §23-99. Portions of the subdivision are located within Zone A, according to the current Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).
 - a. §27-20. Determine the base flood (100-year) elevations for Zone A within the subdivision. Submit a flood study, prepared by a licensed civil engineer, for review and comment.
 - b. §27-20. Identify Zone A boundaries and base flood elevations on the final plat map.
 - c. §27-20. Identify any other watercourses or drainageways that are not designated as FEMA flood zones, and encumber with drainage easements.
 - d. If the flood study reveals flood limits that differ from the FIRM, the subdivider shall obtain a FEMA Letter of Map Revision (LOMR) prior to final subdivision approval.

Questions may be referred to Carter Romero at 961-8327.

CLR

cc: ENG-KON

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