

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

September 20, 2011

Paul H. Murray, LPLS  
Paul H. Murray & Associates, LLC  
P.O. Box 1189  
Hilo, HI 96721-1189

Dear Mr. Murray:

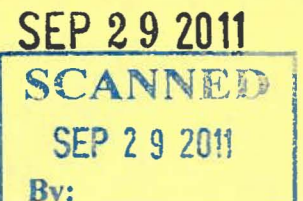
**SUBJECT: VARIANCE VAR 11-039**  
**Agent: PAUL H. MURRAY & ASSOCIATES, LLC**  
**Applicant: NORMAN MEDEIROS SR.**  
**Owner: NORMAN MEDEIROS SR.**  
**Request: Variance from Chapter 23, Subdivisions,  
Article 6, Division 2, Improvements Required,  
Section 23-84, Water Supply, (1)(2)**  
**Tax Map Key: 2-7-002:020 (SUB 11-001072)**

After reviewing the subject variance application, the Planning Director certifies the **approval** of VAR 11-039 to allow proposed six (6) lot subdivision (SUB 11-001072) without providing a water supply system to the additional proposed building lot. The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

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

### **BACKGROUND**

1. **Location.** The subject property contains approximately 148.642 acres, situated in the Pauka'a Farm Lots, Pauka'a, South Hilo, 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).



3. **Subdivision Request/PPM.** The applicants/owners submitted a subdivision application (SUB-11-001072) and Preliminary Plat Map (PPM) dated March 20, 2011, proposing to subdivide the existing property into six (6) lots.
4. **Variance Application.** The applicant submitted the variance application on or about July 21, 2011.
5. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated August 9, 2011 (Refer to memorandum in Variance file).
  - b. The Hawai'i Fire Department memorandum dated August 16, 2011 states: "In that the catchment system will also be used for fire protection, it is recommended that the fire department connection to the tank be located in an area accessible by fire apparatus with approved fire connection." (Refer to memorandum in Variance file).
  - c. The Department of Water Supply memorandums dated June 2, 2011 which identifies the existing water system is insufficient to support the subdivision. DWS further identifies no opposition to the use of private catchment systems. (Refer to memorandum in Variance file)
6. **Public Notice.** The applicant has submitted a copy of the public notice, a list of surrounding property owner(s), photographs to confirm posting of required sign, and other submittals. Pursuant to these submittals, it appears that the applicant's notice was mailed to the surrounding property owners by USPS on August 23, 2011. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 12, 2011.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received from surrounding property owners or the public.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

After considering the variance application and background information, including rainfall information provided by the applicant, and agency comments, the Planning Director has determined that there are circumstances applying to the subject 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**

There are no other reasonable alternatives in resolving the difficulty of the applicant. The first alternative requires the applicant to construct extensive improvements and additions to include storage, transmission, booster pumps, and distribution facilities.

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

As such, the imposition of improving the existing public water system or providing an approved alternative water system for the proposed subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

### **INTENT AND PURPOSE**

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 public water system would be the approval of a water variance to utilize privately-owned individual rain water catchment systems for the proposed 6-lot subdivision, which can meet the intent and purpose of the Subdivision Code according 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. Rule 22 also specifies a requirement for minimal rainfall as follows:

“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 variance information and rainfall data submitted by the applicant indicates the subject property and surrounding areas receive adequate rainfall to support individual or separate private rainwater catchment systems for potable and emergency

uses. The information submitted by the applicant compared with isohyet maps in the Planning Department denotes the subject property and surrounding areas receive 160+ inches of annual rainfall. The analysis of the rainfall information submitted by the applicant compared with rainfall data and maps in the Planning Department indicate the proposed 6-lot subdivision will receive approximately 160 to 200 inches of rainfall annually. Therefore, proposed subdivision meets Rule No. 22-Water Variance.

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, the variance requested 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.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

The variance request to allow a proposed 6-lot subdivision of the subject 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 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 11-001072. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lots not serviced by a County water system of the pending subdivision application and shall 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 owners:
  - a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 11-001072. 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. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the proposed or affected additional lots created by SUB 11-001072 not serviced by a County water system. No further subdivision of the lots created by SUB 11-001072 will be permitted unless county water system requirements and

other requirements of Chapter 23, Subdivisions, are met.

- c. Any lots created by SUB 11-001072 may not be made subject to a condominium property regime.
- d. Any dwelling constructed on a proposed 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 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. 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 the lot(s) created by SUB 11-001072 that the County Water System has been upgraded or an improvement district initiated to enable service to these lots, the owner(s) of the lot(s) 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. The subdivision application's 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 variance from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 11-001072.
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 Permit null and void.

Sincerely,



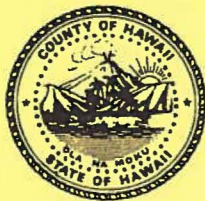
BJ LEITHEAD TODD  
Planning Director

LHN: nci

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xc: Real Property Tax Office (Hilo)  
Manager-DWS  
DPW - Engineering Division  
SUB 11-001072

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

May 14, 2012

Mr. Norman Medeiros, Sr. Trustee  
For the Norman Medeiros Sr. Revocable Trust  
P.O. Box 6  
Papaikou, HI 96781

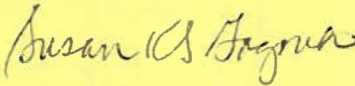
Dear Mr. Medeiros:

**SUBJECT: DECLARATION OF VARIANCE**  
**VARIANCE - VAR 11-000039;**  
**Document No(s). 2011-202517**  
**TMK: (3) 2-7-002:020, (SUB 11-001072)**

Enclosed is Document No. 2011-202517 (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,

  
BJ LEITHEAD-TODD  
Planning Director

SHG/shg

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Enclosure: Agreement (Original)

xc: SUB 11-001072 (Ltr. only)  
Paul H. Murray, LPLS, Paul H. Murray and Associates (Ltr. only)

MAY 15 2012



R-713

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED  
DEC 01, 2011 08:01 AM  
Doc No(s) 2011-202517



Is/ NICKI ANN THOMPSON  
REGISTRAR

REGULAR SYSTEM: \_\_\_\_\_

20 1/1 Z14

*ka*

AFTER RECORDATION, RETURN BY MAIL TO:

COUNTY OF HAWAI'I PLANNING DEPARTMENT  
101 PAUHI STREET, SUITE 3  
HILO, HAWAI'I 96720

TITLE OF DOCUMENT:

**DECLARATION FOR VARIANCE  
VAR 11-039**

PARTIES TO DOCUMENT:

AGENCY: PLANNING DIRECTOR  
PLANNING DEPARTMENT  
COUNTY OF HAWAI'I

DECLARANTS: NORMAN MEDEIROS, SR TRUSTEE  
FOR THE NORMAN MEDEIROS SR.REVOCABLE TRUST  
P O BOX 6  
PAPAICOU, HI 96781

PROPERTY DESCRIPTION:

PROPOSED SUBDIVISION OF LOT 16-A, PAUKAA FARM LOTS  
BEING A PORTION OF R. P. 8336, L. C. AW. 7715, APANA 16  
TO LOTA KAMEHAMEHA, (CERTIFICATE OF BOUNDARIES 181)  
INTO LOTS 16-B TO 16-G INCLUSIVE  
PAUKAA, SOUTH HILO, ISLAND OF HAWAII, HAWAII

TMK (3) 2-7-002:020 / SUB-11-001072



DECLARATION FOR VARIANCE – VAR-11-039

This Declaration is made this 22 day of November, 2011,

Whereas, Norman Medeiros, Sr. Trustee for the Norman Medeiros Sr. Revocable Trust, whose primary mailing address is P. O. Box 6, Papaikou, HI 96781 is the owner of real property bearing Tax Map Key (3) 2-7-002: 020, more particularly described herein; and

Whereas, the owner desires to subdivide the above-described property or Tax Map Key (3) 2-7-002:020 parcel of land into six (6) lots; and

Whereas, the Planning Director for the County of Hawai'i has, by letter dated September 20, 2011, agreed to grant variance from the water system improvement requirements applicable to a proposed six (6) lot subdivision (SUB-10-001072) of the above referenced property; and

Whereas, the grant of Variance VAR-11-039 by the Planning Director is subject to the following Variance conditions:

1. WATER VARIANCE:

- a. The applicant or subdivide agrees and accepts the fact that a County decidable public water system is not now able to service the proposed subdivision SUB 10-001072. 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. The owner agrees and accepts the fact that the County will not, at this time, bear the responsibility of supplying public water to the proposed or affected additional lots created by SUB11-001072 not serviced by a County water system. No further subdivision of lots created by SUB11-001072 will be permitted unless county water system requirements, and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB-11-001072 may not be made subject to a condominium property regime.
- d. Any dwelling constructed on a proposed 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 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. 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 11-001072 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.

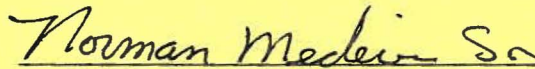
IN CONSIDERATION OF THE AFORESAID, the Department hereby approves this Declaration for Variance as being in conformity with County Code, Chapter 23, Subdivisions.

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

FIRST PARTY (AGENCY):

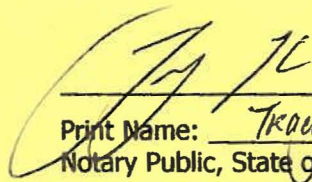
  
**BJ LEITHEAD TODD** – Planning Director  
County of Hawai'i Planning Department

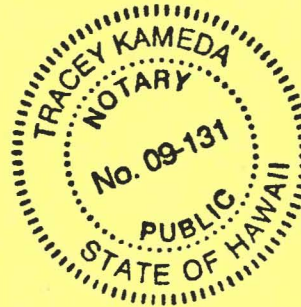
SECOND PARTY (DECLARANT):

  
**NORMAN MEDEIROS, SR. TRUSTEE  
FOR THE NORMAN MEDEIROS SR,  
REVOCABLE TRUST  
OWNER**

STATE OF HAWAII )  
 ) SS.  
COUNTY OF Hawaii \_\_\_\_\_ )

On November 17, 2011, before me personally appeared Norman Medeiros, Sr. Trustee for the Norman Medeiros Sr. Revocable Trust, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

  
\_\_\_\_\_  
Print Name: Tracey Kameda  
Notary Public, State of Hawaii  
My commission expires: 4/19/2012



STATE OF HAWAII NOTARY CERTIFICATION

Doc. Description: Declaration for Variance VPR 11-039  
Date of Document: Undated # Pages: 8  
Date of Notarization: November 17, 2011

Tracey Kameda  
\_\_\_\_\_  
Notary Public Signature  
Notary Public, State of Hawaii  
Notary Commission No. 09-131

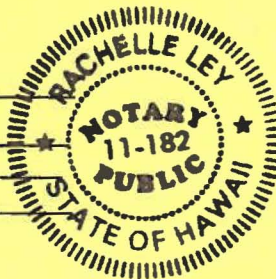


(Stamp or Seal)

STATE OF HAWAII )  
 ) SS.  
COUNTY OF Hawaii \_\_\_\_\_ )

On NOV 22 2011, before me personally appeared BJ LEITHEAD TODD, to me personally known, who, being by me duly sworn or affirmed, did say that she 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  
Print Name: RACHELLE LEY  
Notary Public, State of Hawaii  
My commission expires: 6/12/2015



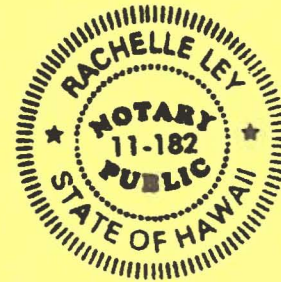
STATE OF HAWAII NOTARY CERTIFICATION

Doc. Description: Declaration for Variance - VAR 11-039

Date of Document: NOV 22 2011 # Pages: 8

Date of Notarization: NOV 22 2011

Rachelle Ley  
Notary Public Signature \_\_\_\_\_  
Notary Public, State of Hawaii \_\_\_\_\_  
Notary Commission No. 11-182 \_\_\_\_\_



(Stamp or Seal)