

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 23, 2012

Mr. Terence Fowler  
Terence Fowler Trust  
1576 Bertram Street  
Honolulu, HI 96816

Dear Mr. Fowler:

**SUBJECT: VARIANCE-VAR 11-000054**

**Applicant: TERENCE FOWLER**

**Owner: TERENCE FOWLER TRUST**

**Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2  
Improvements Required, Section 23-84, Water Supply,  
(1)(2)**

**Tax Map Key: 1-8-006:176, (SUB 11-001082)**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance-VAR 11-054 subject to variance conditions. The variance permits proposed 2-lot subdivision (SUB 11-001082) to be created without providing a water system meeting the minimum requirements of the Department of Water Supply (DWS). 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 a variance application from the minimum water system requirements for proposed subdivision be **approved** based on the following findings:

**BACKGROUND**

1. **Location.** The subject property contains approximately 10.331 acres, shown on Map 10, Land Court application 777, and is situated at 'Ola'a, Puna, Hawai'i.
2. **Zoning.** The subject property is zoned Agricultural – 5 Acres (A-5a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant or subdivider submitted a subdivision application (SUB 11-001082) and preliminary plat map (PPM), dated April 21, 2011.

JAN 24 2012





proposing to subdivide subject property into two (2) lots.

4. **Variance Application.** The variance application, requesting relief from water supply requirements to permit the proposed subdivision, was acknowledged by Planning Department letter dated December 21, 2011. This variance application includes background history, circumstances, and information regarding the pending subdivision application.
5. **Agency Comments and Requirements.**
  - a. The Department of Water Supply memorandum dated October 24, 2011. Refer to DWS memorandum in subdivision file.
  - b. The State of Hawai'i Department of Health (DOH) memorandum dated December 27, 2011. Refer to DOH memorandum in variance file.
  - c. No comments have been received from the Hawai'i County Fire Department as of this date.
6. **Public Notice.** The applicant submitted a copy of the public notice, list of surrounding property owners receiving said notice, and affidavit dated December 27, 2011 attesting that notices had been sent to surrounding owners. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on December 28, 2011. The applicant submitted an affidavit, dated November 22, 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**

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. 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 above referenced water system improvements 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.



### INTENT AND PURPOSE-WATER VARIANCE

**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 meeting DWS standards would be to allow and utilize privately-owned individual rainwater catchment systems, which can 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 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 200 inches to 220 inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

Given the circumstances cited by the applicant, the request for variance from water supply, 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 subject property, without



providing a water system meeting Department of Water Supply standards required, is **approved** pursuant to Rule 22, Water Variance and 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 11-001082. 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 decidable public water system is not now able to service the proposed subdivision SUB 11-001082. 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 11-001082 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 11-001082.
  - 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.

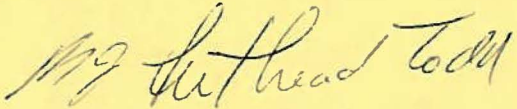
- f. The Hawai'i County Fire Department also advises, as a precautionary measure for other uninhabited agricultural structures, that consideration be given to the provision of a similar water storage system for firefighting and emergency purposes.
  - g. In the event that there are any amendments or 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.
  - h. In the event that the County notifies the owner(s) of any lot created by SUB 11-001082 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.
  - i. 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 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.
  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.



Terence Fowler  
Terence Fowler Trust  
Page 6  
January 23, 2012

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 11-054 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN: nci  
\\172.24.4.103\public\Variances\Zone1\VAR11-054SUBWaterFowler.doc

xc: Manager-DWS  
HFD  
DPW—Engineering Division  
State Department of Environmental Health Services - Hilo  
SUB 11-001082



William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

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Fax (808) 961-8742

August 6, 2012

State of Hawai'i  
Department of Land and Natural Resources  
BUREAU OF CONVEYANCES – LAND COURT  
PO Box 2867  
Honolulu, HI 96803

To Whom It May Concern:

**SUBJECT: DECLARATION FOR VARIANCE - VAR-11-000054**  
**Declarant(s): TERENCE FOWLER for the TERENCE FOWLER**  
**TRUST**  
**TMK: (3)1-8-006:176SUB-11-001082**

Enclosed please find an Original and one (1) copy of the above described document required for pending subdivision of the above referenced subject TMK parcel(s), declarant's check #17414 in the amount of \$25.00 USD payable to the Bureau of Conveyances, and required self-addressed stamped envelopes (SASE).

Sincerely,

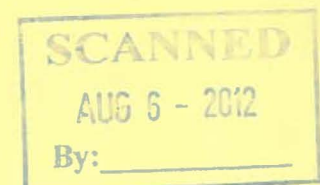
BJ LEITHEAD TODD  
Planning Director

SHG:JRH:nci

p:\admin permits division\variance\2011\var 11-054 terence fowler trust\secondletterboc-recordation-declaration for variance018006176.doc

Encs: Original & Copy of Declaration for Variance VAR-11-000054  
Check #17414 (\$25.00)  
2 SASE

State of Hawai'i  
Department of Land and Natural Resources





BUREAU OF CONVEYANCES – LAND COURT  
Page 2  
August 6, 2012

xc: SUB-11-001082

xc-Ltr only: Terence Fowler  
1576 Bertram Street  
Honolulu, HI 96816

Mr. Robert Shirai, LPLS



**(PLEASE RETURN THIS FORM WHEN RESUBMITTING DOCUMENTS FOR RECORDATION)**

TO: PLANNING DEPARTMENT  
COUNTY OF HAWAII  
We cannot record your document (s) for the following reasons:

State of Hawaii  
Department of Land & Natural Resources  
Bureau of Conveyances  
P O Box 2867  
Honolulu, Hawaii 96803  
Website: [www.hawaii.gov/dlnr/boc22](http://www.hawaii.gov/dlnr/boc22)

- The first page of the document must contain the following:
  - Top 3 1/2 " must be reserved for Registrar's recording information.
  - The mailing address to whom the document should be returned, typewritten 1 1/2 " from the left margin and not to exceed 3 1/2 " per line.
- Fill out enclosed coversheet with a Return Address and attach to document(s).
- Documents should be no larger than 8 1/2 x 11 inches and should be single-sided sheets of written text. (Non-conforming fee \$20.)
- Document will not reproduce legibly under digital imaging. Highlights not acceptable for imaging.
- Names of parties must conform throughout the document (body of instrument, signature, line and notary page).
- Names of individuals, signing in their individual capacity, must be typewritten stamped or printed beneath signatures.
- Notarial acknowledgment required or incomplete:  Venue required;  Notarial Seal required.
- No paper or materials can be secured or attached in a manner that may conceal any written text.
- Notary/Party of interest needs to Initial all changes (white-out) insertions (\*) or deletions in instrument, if needed.
- Authentication of foreign notary public required: Consulate/Apostille
- Document Number of \_\_\_\_\_ not referenced in instrument or is incomplete.
- Missing: Exhibit  Schedule  Complete Property/Apartment Description  Self-addressed stamped envelope
- Document(s) must include original signature(s). Signature of \_\_\_\_\_
- Judgment;  Order requires reference to Tax Identification Number of party against whom judgement is filed or statement that information is not in the possession of the party seeking recordation.
- ONLY LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER (SSN) REQUIRED.
- Conveyance Tax Certificate: Not Presented ; Incomplete . For Forms see Website: [www.hawaii.gov/tax](http://www.hawaii.gov/tax)
  - If using P-64B (Exemption from Conveyance Tax), Part III, send entire package to Tax Office for approval.  
State of Hawaii Department of Taxation, Technical Review Office  
P.O. Box 259, Honolulu, Hawaii 96809  
Attention: Conveyance Tax Clerk Phone: (808) 587-1577

**ANY QUESTIONS ON FORMS P64-A OR P64-B, CONTACT THE DEPT. OF TAXATION.**

- Correct Fees**

Conveyance Tax Fee	\$ _____	(Contact Dept. of Taxation for Conveyance Tax Fee)
Recording Fee for Land Court	\$ _____	(\$25.00 per document and \$1.00 for each page after 20 pages per system)
New Issuance of Certificate of Title No.	\$ _____	(\$25.00 for each New Certificate of Title No.)
Recording Fee for Regular System	\$ _____	(\$30.00 per document and \$1.00 for each page after 20 pages per system)
Certified Copy Fee	\$ _____	(\$1.00 per page) for _____
Miscellaneous Fee	\$ _____	for (\$1.00 per page after 20 pages)/or
<b>Total Fee Due</b>	<b>\$ _____</b>	<b>Check Payable to: BUREAU OF CONVEYANCES.</b>

- Returning: Document(s)** \_\_\_\_\_ **Check #** \_\_\_\_\_ **for** \$25
- Correct Certificate of Title (CT)  Provide blank space for New Certificate of Title No. within instrument.
- Instrument does not contain or have endorsement of:
- Full name of parties, No initials permitted;
- Address of: Grantee(s) ; Mortgagee(s) ; Assignee(s) ; Debtor(s)/Secured Party .
- Marital status of Grantee(s) required; Individuals taking title, if married, must show full name of spouse. (No initials permitted)
- Corporate Grantee/Assignee/Mortgagee(s): Letter of good standing ; State of incorporation ; Corporate address .
- Certificate of Title must be amended. Please complete the enclosed Petition to note: Marriage ; Divorce ; Death ; Corporate Name Change .

Attach certified copy of marriage, divorce, death or merger certificate to petition. Filing fee for Petition is \$32.00 and \$1.00 for each exhibit. Check should be made payable to LAND COURT and mailed with Petition to:

**LAND AND TAX APPEAL COURT** Website: <http://www.courts.state.hi.us>  
777 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5093  
PHONE: (808) 539-4777 then PRESS 1

**ANY QUESTIONS ON FILING A PETITION, CONTACT LAND AND TAX APPEAL COURT.**

Remarks: INCORRECT AERIES CITED WITHIN THE EXHIBIT A, SEE COPY OF CERTIFICATE 762,292

**\*\*\*If you need conformation of your recording, please submit a complete correct copy (you supply) along with your original(s) and two self addressed, stamped envelopes (SASE). The original(s) stay here for internal processing.**

**KARLA L. ACHIU** Date: 4-24-12  
Land Court Receiving Clerk Ph# (808) 587-0147  
Fax# (808) 587-0136 Email: [Karla.L.AchIU@Hawaii.gov](mailto:Karla.L.AchIU@Hawaii.gov)

**SCANNED**  
APR 26 2012  
By: 078226



# STATE OF HAWAII CERTIFICATE OF TITLE

Certificate No: 762292

Issued: 07/29/2005

Document No: T-3305478

This Certificate has been certified.  
Transferred from Certificate #: 708085

I hereby certify that pursuant to Chapter 501 of the Hawaii Revised Statutes, the REGISTERED OWNER below is the owner in fee simple of the LAND described, subject, however to encumbrances mentioned in Section 501-82 of the Hawaii Revised Statutes and subject also to such exceptions, encumbrances, interests and entries as may appear under ENCUMBRANCES.

/s/ Hannah K. Domingo  
Assistant Registrar

## REGISTERED OWNER

-TERENCE PATRICK /FOWLER,/ TRUSTEE- of the Terence Patrick Fowler Revocable Living Trust under an unrecorded Trust Instrument dated February 13, 2001, a short form thereof recorded in the Office of the Assistant Registrar of Land Court as Document 2685865

2300 Kalakaua Avenue, Honolulu, Hawaii 96815

IN TRUST, WITH POWERS TO SELL, LEASE, MORTGAGE AND OTHER POWERS AS SET FORTH IN THAT CERTAIN TRUST INSTRUMENT HEREINABOVE MENTIONED

## LAND

Situate at Olaa, Puna, Hawaii

LOT A-9-C-1, 10.3305 acres, Map 11,  
Land Court Application 777 of Dongi Investment Company, Limited



LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ( )

COUNTY OF HAWAII PLANNING DEPARTMENT  
101 PAUAHI ST STE 3  
HILO HI 96720

Affects: Transfer Certificate of Title No. 762,292  
Tax Map Key No. (3) 1-8-006-176

*This document contains 7 pages.*

**DECLARATION OF WATER VARIANCE CONDITIONS**  
(VAR 11-000054)

This Declaration of Water Variance Conditions, made this 13<sup>th</sup> day of March, 2012, is by  
and between the following parties:

“Declarant”: **TERENCE PATRICK FOWLER, Trustee under that certain  
Terence Patrick Fowler Revocable Living Trust dated February 13, 2001,**  
a Short Form of which is recorded as Land Court Document No. 2685865 and as  
Regular System Document No. 2001-026419, with full powers to sell, mortgage,  
lease or otherwise deal with the land, whose address is 1701 Plata Pico Drive, Las  
Vegas, Nevada 89128.

“Agency”: **PLANNING DIRECTOR, PLANNING DEPARTMENT, COUNTY OF  
HAWAII,** whose address is 101 Pauahi Street, Suite 3, Hilo, Hawai`i 96720.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain real property designated as Tax Map Key No. (3) 1-8-006-176, and described in and covered by Transfer Certificate of Title No. 762,292, being more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof; and,

WHEREAS, Declarant desires to subdivide the above-described property into two (2) lots; and,

WHEREAS, the Planning Director for the County of Hawai'i has, by letter dated February 8, 2012, agreed to grant a variance (VAR 11-000054) from the water improvement requirements applicable to the proposed two (2) lot subdivision (SUB-11-001082) of the above-referenced property; and,

WHEREAS, the grant of Variance VAR 11-000054 by the Planning Director is subject to the following variance conditions:

**WATER VARIANCE**

- a. The applicant or subdivider agrees and accepts the fact that a County decidable public water system is not now able to service the proposed subdivision SUB 11-001082. 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 11-001082 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 11-001082.**
- 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 6,000-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.**
- f. **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.**
- g. **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.**
- h. **In the event that the County notifies the owner(s) of any lot created by SUB 11-001082 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.**
- i. **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.**

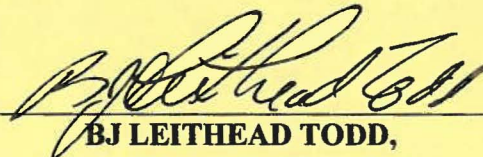
IN CONSIDERATION OF THE AFORESAID, the Agency hereby approves this Declaration of Water Variance Conditions as being in conformity with Hawai'i County Code Chapter 23, Subdivisions.

**IN WITNESS WHEREOF, the parties have executed this Declaration of Water Variance Conditions and agree to such provision which shall run with the land.**

*DECLARANT:*

*AGENCY:*

  
TERENCE PATRICK FOWLER,  
Trustee under that certain  
Terence Patrick Fowler Revocable Living  
Trust dated February 13, 2001

  
BJ LEITHEAD TODD,  
PLANNING DIRECTOR,  
PLANNING DEPARTMENT,  
COUNTY OF HAWAII

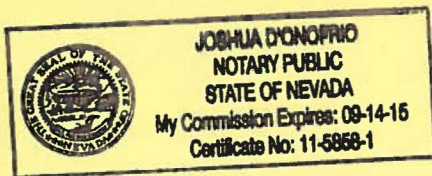


STATE OF NEVADA )  
 ) ss.  
COUNTY OF Clark )

On this 13 day of March, 2012, before me personally appeared **TERENCE PATRICK FOWLER**, in his capacity as **Trustee under that certain Terence Patrick Fowler Revocable Living Trust dated February 13, 2001**, to me known or who has proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to and who executed the foregoing instrument, and who acknowledged that he executed said instrument for the purposes therein contained in his authorized capacity by his signature on the instrument as his free act and deed as said Trustee.

Said instrument, entitled "**DECLARATION OF WATER VARIANCE CONDITIONS**", consists of seven (7) pages and is (not dated)(dated 3/13/12) at the time of this notary certification.

*In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year above written.*



*[Stamp or Seal]*

(Notary signature)

(Print notary name)

Joshua D'Onofrio  
Notary Public  
State of Nevada

My commission expires: 09/14/2015

STATE OF HAWAII )  
 ) ss.  
COUNTY OF HAWAII )

On this 4th day of April, 2012, before me personally appeared **BJ LEITHEAD TODD**, to me known or who has proven to me on the basis of satisfactory evidence to be the person described in and who executed the foregoing instrument, who, being by me duly sworn, did say that she is the **PLANNING DIRECTOR** of the **PLANNING DEPARTMENT, COUNTY OF HAWAII**, a Hawai'i government agency; that the Planning Department of the County of Hawai'i has no corporate seal; that said instrument was signed on behalf of the Planning Department of the County of Hawai'i; and who acknowledged said instrument to be the free act and deed of the Planning Department of the County of Hawai'i.

Said instrument, entitled "**DECLARATION OF WATER VARIANCE CONDITIONS**", consists of seven (7) pages and is (not dated)(dated March 13, 2012) at the time of this notary certification.

*In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year above written.*

(Notary signature)

Rachelle Ley

(Print notary name)

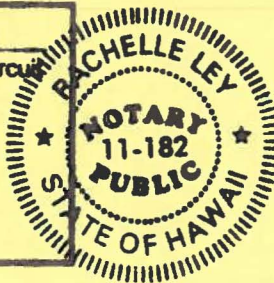
Rachelle Ley

Notary Public  
Third Judicial Circuit  
State of Hawai'i



My commission expires: June 12, 2015

Doc. Date: <u>March 13, 2012</u>	# Pages: <u>7</u>
Name: <u>Rachelle Ley</u>	<u>3rd</u> Circuit
Doc. Description: <u>Declaration of Water Variance Conditions</u>	
<u>Rachelle Ley</u> Signature	<u>4/4/2012</u> Date
NOTARY CERTIFICATION	





## **EXHIBIT "A"**

Tax Map Key No. (3) 1-8-006-176

All of that certain parcel of land situate at Oloo, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

**LOT A-9-C-1**, area 10.3305 acres, as shown on Map 11 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 777 of Dongi Investment Company, Limited.

Being the land(s) described in and covered by **Transfer Certificate of Title No. 762,292**, said land(s) being the premises acquired by Deed dated July 27, 2005, recorded July 29, 2005 in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 3305478.

Said premises being SUBJECT, HOWEVER, to the following: Mineral and water rights of any nature in favor of the State of Hawaii.

**END OF EXHIBIT "A"**

APR 26 2012

*Cash Payment*

**LAW OFFICES OF YEH & MOORE  
A LIMITED LIABILITY LAW COMPANY**  
85 W. LANIKAULA STREET  
HILO, HAWAII 96720-4199

**CENTRAL PACIFIC BANK**  
HILO BRANCH  
HILO, HI 96720  
59-157/1213

17414

March 19, 2012

PAY TO THE ORDER OF BUREAU OF CONVEYANCES

\$ 25.00

\* \* \* \* \* TWENTY-FIVE AND NO/100 \* \* \* \* \* DOLLARS

MEMO

CA = 12-110 FOWLER (affects TCT 762292)  
rec. fee / Decl. of Water Variance Conditions  
(VAR 11-000054)



AUTHORIZED SIGNATURE

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Details on Back. Security Features Included