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March 7, 2012

Mr. Mark Foxx
L-Three Holdings, Inc.
934 Baileyana Road
Hillborough, CA 94010

Dear Mr. Foxx:

SUBJECT: Application: VAR 11-000057 (AMENDED)
Applicant: L-THREE HOLDINGS, INC
Owner: HAWI NANI LLC
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required
Tax Map Key: 5-5-008:048 (SUB 11-001140)

After reviewing the subject variance application, the Planning Director certifies the **approval** of VAR 11-000057 to allow proposed 5-lot subdivision (SUB 11-001140) without providing a water supply system as required by Chapter 23, Subdivisions. The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

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 118.944 acres and is situated in Hawi, 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).
3. **Subdivision Request/PPM.** The applicants/owners submitted a subdivision application (SUB-11-001140) and preliminary plat map (PPM), dated November 10, 2011, proposing to subdivide subject property into five (5) lots.



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4. **Variance Application.** The applicant submitted the variance application and associated materials on December 5, 2011. The variance request seeks approval for use of a private water system to serve Lots 352-355. An existing water meter is planned to serve Lot 356.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated January 18, 2012 (refer to memorandum in variance file).
 - b. Hawai'i Fire Department memorandum dated January 25, 2012 (refer to memorandum in variance file).
 - c. The Department of Water Supply memorandum dated January 12, 2012 (refer to memorandum in variance file).
6. **Public Notice.** The applicant submitted a copy of notices sent to surrounding property owners including an affidavit stating notices were mailed to surrounding property owners by USPO. According to the affidavit, the notices were mailed on January 24 2012. In accordance with Ordinance No. 05-135, the applicants submitted a notarized affidavit, dated December 5, 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 January 24, 2012.
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

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 January 12, 2012.

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

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.

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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. An alternative to a public water system would be for the county to permit a "water variance," to allow a private water system for 4 of the proposed 5-lots.

The applicant/owner is proposing a private water system that is conceptually similar to the Department of Water Supply's standards. The differences relate to the size of the wells, storage tank, and distribution system. The applicant has also stated that to ensure adequate reliability and fire flow, a 50,000 gallon storage tank is to be located on Lot 356. The transmission system will consist of a buried 6" diameter SDR 11 HDPE water main which will connect to all lots of the subdivision. Appropriate 2-1/2" fire connections will be placed at access points along the transmission line. There will be connection provisions to extend the 2-1/2" lines to within 150 feet of a home on Lots 350, 352, 353, 354, and 355. This should be more than sufficient to address the potable and fire protection requirement of the project.

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.

VARIANCE DECISION-CONDITIONS (AMENDED)

The variance request to allow the proposed 5-lot subdivision of the subject property, without providing a water system 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 11-001140. 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 owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 11-001140. 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 lot(s) created by SUB 11-001140 not serviced by a County water system. No further subdivision of the lots created by SUB 11-001140 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 11-001140 may not be made subject to a condominium property regime.
- d. A spare pump unit shall be readily available for installation as a back-up water pump in the event of the failure to the primary pump.
- e. The water system shall be owned, operated and maintained by a Limited Liability Company or Home Owners Association. The managing entity shall have the power to file and enforce liens against any lot owners who fail to pay any charges or assessments for the private water system.
- f. The private water system shall meet with the State Department of Health requirements related to water testing and water purifying devices.
- 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 the lot(s) created by SUB 11-001140 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.
- 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

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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 11-001140.
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 subject Variance-VAR 11-000057 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:nci

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xc: Waimea Water Services
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Real Property Tax Office (Hilo)
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SUB 11-001140