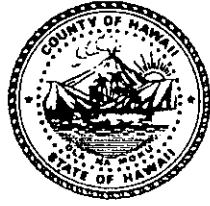


William P. Kenoi
Mayor



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
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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

April 22, 2013

Paul H. Murray, LPLS
Paul H. Murray & Associates, LLC
P.O. Box 1189
Hilo, HI 96720

Dear Mr. Murray:

SUBJECT: Application: VARIANCE DECISION - VAR-13-000123
Agent: PAUL H. MURRAY AND ASSOCIATES, LLC
Applicants: HJC DEVELOPMENT CORP
Owners: HJC DEVELOPMENT CORP
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-84, Water Supply
Tax Map Key: 2-5-003:100 (SUB-12-001188)

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-13-000123 subject to variance conditions. The variance grants relief for SUB-12-001188 from constructing minimum County dedicable water supply system improvements required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

The variance is from the proposed subdivision's minimum requirements pursuant to HCC, Chapter 23 (Subdivisions), Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

BACKGROUND

1. **Location.** The referenced TMK property, Lot B of Ponahawai-Kaumana Homestead Lots, being also a Portion of Grant 4181, containing approximately 120.00 acres, is situated in Ponahawai, South Hilo, Hawai'i.
2. **County Zoning.** Agricultural – twenty acres (A-20a).
3. **State Land Use.** Agricultural (A).
4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Important

Agricultural Lands (ial) and Extensive Agricultural (ea).

5. **Subdivision Code Requirements.** The subdivision code requires that subdivisions be served by a water system meeting the minimum requirements of the County Department of Water Supply (DWS) and be provided with water mains and fire hydrants installed to and within the subdivision in accordance with the rules and regulations of the DWS.
6. **Subdivision Request/PPM.** Subdivision application SUB-12-001188 was submitted to subdivide the subject TMK property into 5 lots consistent with the A-20a zoning. Further action on the subdivision application has been deferred pursuant to letter dated July 20, 2012 in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements was acknowledged by Planning Department letter dated March 4, 2013. This variance application requests the use of individual rainwater catchment systems in lieu of extending and/or upgrading the DWS water system or constructing a private water system conforming to DWS standards.
8. **Agency Comments and Requirements.**
 - a. The State of Hawai'i-Department of Health (DOH): see attached memorandum dated March 8, 2013.
 - b. The County of Hawai'i Fire Department (HFD): see attached memorandum dated March 21, 2013.
 - c. The Department of Water Supply (DWS): see attached memorandum dated April 2, 2013 indicating the closest public water system in the area is approximately 1,110 feet distant.
 - d. No other agency comments were solicited and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated February 22, 2013, regarding the posting of a public notification sign on the subject property pursuant to Section 23-17(c) of the HCC. A picture of the posted sign was also submitted. Evidence, dated March 12, 2013 mailing verification forms indicate that a notice of the application was sent to the surrounding property owners as required by Section 23-17(a).
10. **Comments from Surrounding Property Owners or Public.** No written objections to this application were received from the surrounding property owners or the public.

ANALYSIS OF GROUNDS FOR VARIANCE

No variance will be granted unless it is found that:

- (a) **There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would**

otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property.

The Variance application meets criterion (a) for the following reasons(s):

The subdivision request is for five (5) lots in keeping with the existing A-20a zoning. Although a dedicable water system is a requirement of the code, the subject property is not within the service limits of the existing DWS system facilities and it would be unreasonable to expect the owners to wait for the required service upgrades. Therefore, it is reasonable that, in lieu of constructing water system improvements to either extend/upgrade the DWS facilities or provide a private water system to DWS standards for the pending 5-lot subdivision, a more reasonable alternative can be allowed pursuant to Planning Department Rule No. 22. Water Variance.

The above special and unusual circumstances would deprive the applicant from developing this property and interferes with the best use of this property.

Therefore, for this agricultural subdivision, the best use and manner of the development allows for individual rain water catchment systems in keeping with the rural agricultural character of the surrounding area.

(b) There are no other reasonable alternatives that would resolve the difficulty.

The Variance application meets criterion (b) for the following reasons(s):

Constructing water system improvements to either extend/upgrade the DWS facilities or provide a private water system to DWS standards for the pending 5-lot subdivision would be placing excessive demands upon the applicant because of the distance of approximately 1,110 feet to the existing DWS water system facilities. At an elevation of approximately 1,200 feet above sea level, the drilling of wells and construction of other water system improvements would also be excessive for a five (5) lot subdivision.

(c) The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The Variance application meets criterion (c) for the following reasons(s):

Given that there is adequate rainfall (approximately 160 inches to 200 inches of rainfall annually) to support individual water catchment and this is an agricultural subdivision, the granting of this variance would be consistent with the general purpose of the agricultural district. Water catchment is consistent with the intent of the policies of the general plan in that it will allow for furtherance of agricultural activity. Water catchment will not be materially detrimental to the public welfare as it serves only private parties. Granting of the variance will not cause substantial, adverse impact to the area's character or to adjoining properties. In fact, by reducing runoff there may be a benefit to the surrounding area.

Given that the subject area receives sufficient annual rainfall, a water variance would be consistent with

the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code, Rule 22 and the Hawai'i County General Plan.

DETERMINATION-VARIANCE CONDITIONS

The variance requested is to permit the proposed 5-lot subdivision of the subject TMK property without providing dedicable water system improvements meeting DWS standards is hereby **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. 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.
3. The owners, their assigns, or successors shall file a written agreement document with the Planning Department within one (1) year from the issuance of tentative subdivision approval. This written agreement shall contain deed language, being covenants, conditions, and restrictions, as outlined in this variance, affecting the lots created by the proposed subdivision which are not serviced by a County dedicable public water system. The agreement 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.

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 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 of the existing property or approved subdivided lots.

4. The subdivider and all grantees, successors, and assigns acknowledge that the parcels were created by a variance from the normal subdivision requirements of Hawai'i County, and that there are no longer any special or unusual circumstances applying to the property, and hence, no grounds exist or will exist for another variance from the Subdivision Code to permit further subdivision of the properties.
5. The owners, grantees, successors, and assigns agree and accept the fact that a County dedicable public water system will not be extended to serve the lots within proposed subdivision SUB-12-001188.
6. The owners, grantees, successors, and assigns agree and accept the fact that the County will not bear the responsibility of supplying public water to the proposed lots. No further subdivision of the lots created will be permitted unless County dedicable public water system requirements and other requirements of HCC Chapter 23, Subdivisions, are met.

7. No condominium property regime shall be allowed on any lot created, nor shall an Ohana Dwelling Unit be permitted or allowed.
8. Any dwelling constructed on any created lot shall be provided with and maintain a private rainwater catchment system which includes a minimum 6,000-gallon water storage capacity for domestic consumption or potable uses. This private water storage system shall adhere to the University of Hawai'i's College of Tropical Agriculture and Human Resources' "Guidelines on Rainwater Catchment Systems for Hawai'i" as well as the DOH requirements related to water testing and water purifying devices.
9. Each permitted dwelling shall also be provided with a minimum 3,000 gallon water storage capacity dedicated for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible fire apparatus connector system, shall be as required by the HFD. The HFD also advises, as a precautionary measure for other uninhabited structures, that consideration be given to the provision of a similar water storage system for fire fighting and emergency purposes.
10. In the event that the County notifies the owner(s) of the lot(s) created that the County water system has been upgraded or an improvement district initiated to enable service to these lots, the owner(s) of 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 DWS.
11. The pending subdivision application's (SUB-12-001188) final plat map shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code that are not covered by this variance.
12. 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 conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

JRH:nci

Paul H. Murray
Paul H. Murray and Associates, LLC
Page 6
April 22, 2013

Encls: Agency Comments

xc: DWS-Engineering Branch
HFD
SUB-12-001188

xc w/encls: HJC Development Corp.
c/o Hank Correa
630 Kīlauea Avenue, Suite 101
Hilo, HI 96720

G. Bailado, GIS Section (via email)

William F. Kenoi
Mayor



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County of Hawai'i
HAWAII FIRE DEPARTMENT
23 August Street • Room 2501 • Hilo, Hawaii 96720
(808) 933-2900 • Fax (808) 933-2928

Darren J. Rosario
Fire Chief
Renwick J. Victorino
Deputy Fire Chief

March 21, 2013

TO : BJ LEITHEAD TODD, PLANNING DIRECTOR
FROM : DARREN J. ROSARIO, FIRE CHIEF
SUBJECT: VARIANCE APPLICATION (VAR 13-00123)
APPLICANTS: HJC DEVELOPMENT CORP
LAND OWNERS: HJC DEVELOPMENT CORP
PROPOSAL: VARIANCE FROM CHAPTER 23, SUBDIVISIONS,
ARTICLE 6, DIVISION 2, IMPROVEMENTS REQUIRED, SECTION 23-84,
WATER SUPPLY
TAX MAP KEY: (3) 2-005-003:100 (SUB 12-001188)

The Hawaii Fire Department recommends that HJC Development comply with the County of Hawaii, Department of Water Supply's request to construct the necessary water improvements as state in: A.) Section 22-3, Eligibility.


DARREN J. ROSARIO
Fire Chief

GAC:pc

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Hawaii County is an Equal Opportunity Provider and Employer.

NEIL ABRAHAM
GOVERNOR



LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

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STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: March 8, 2013
TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii
FROM: Newton Inouye
District Environmental Health Program Chief
SUBJECT: Application: VARIANCE (VAR-13-000123)
Applicants: HJC DEVELOPMENT CORP
Owners: HJC DEVELOPMENT CORP
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-84, Water Supply
Tax Map Key: 2-005-003:100 (SUB-12-001188)

The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." A "public water system" means a system which provides water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards.

083979

WORD: VAR-13-00123.m



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
 345 KEKUAHAO'A STREET, SUITE 20 • HILO, HAWAII 96720
 TELEPHONE (808) 961-6050 • FAX (808) 961-8657

April 2, 2013

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TO: Ms. BJ Leithead Todd, Director
 Planning Department

FROM: Quirino Antonio, Jr., Manager-Chief Engineer

SUBJECT: VARIANCE APPLICATION (VAR 13-000123)
 SUBDIVISION APPLICATION NO. 13-001188
 APPLICANT – HJC DEVELOPMENT CORPORATION
 TAX MAP KEY 2-5-003:100


We have reviewed the subject application and have the following comments.

Please be informed that the subject parcel is not within the Department's existing service limits. The nearest point of connection is from an existing 8-inch waterline within Kaumana Drive approximately 1,110 feet from the property.

We have no objection to the subject application as the applicant has indicated that water will be provided via private rainwater catchment systems for each lot.

Should there be any questions, please contact Mr. Lawrence Beck of our Water Resources and Planning Branch at 961-8070, extension 260.

Sincerely yours,


 Quirino Antonio, Jr., P.E.
 Manager-Chief Engineer

l.B:dfg

copy – HJC Development
 Paul H. Murray & Associates, LLC

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