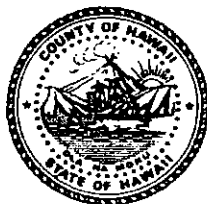


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalote Hwy
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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

June 6, 2013

Mr. Normand Dufresne and Mr. Kelly King
P.O. Box 587
Pāhoa, HI 96778

Dear Mr. Dufresne and Mr. King:

SUBJECT: **Application:** **VARIANCE DECISION - VAR-13-000131**
 Applicants: **NORMAND DUFRESNE AND KELLY KING**
 Owners: **KELLY ANDREW KING AND NORMAND J. DUFRESNE TRUST**
 Request: **Variance from Chapter 23, Subdivisions, Article 6, Division 2,**
 Improvements Required, Section 23-84, Water Supply
Tax Map Key: **1-3-001:026 (SUB-11-001104)**

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-13-000131 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, being a Portion of Grant 3198, containing approximately 69.883 acres, is situated in Kaueleau, Puna, 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-11-001104 was submitted to subdivide the subject property into 2 lots consistent with the A-20a zoning. Further action on the subdivision application was deferred pursuant to letter dated December 7, 2011 in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements was acknowledged by Planning Department letter dated April 8, 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. State of Hawai'i-Department of Health (DOH): see attached memorandum dated April 11, 2013.
 - b. County of Hawai'i Fire Department (HFD): the HFD did not comment on this application.
 - c. Department of Water Supply (DWS): see attached memorandum dated April 25, 2013 indicating the closest public water system in the area is approximately 2.7 miles distant.
 - d. No other agency comments were solicited and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated March 28, 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. Further, verification was submitted that a notice of the application was sent on April 16, 2013 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 two (2) 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 2-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 2-lot subdivision would be placing excessive demands upon the applicant because of the distance of approximately 2.7 miles to the existing DWS water system facilities. At an elevation of approximately 650 feet above sea level, the drilling of wells and construction of other water system improvements would also be unreasonable for a two (2) 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 80 inches to 120 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 further 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. The collection of rainwater could help to reduce runoff and 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 to permit the proposed 2-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-11-001104.
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

Mr. Normand Dufresne and Mr. Kelly King

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June 6, 2013

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-11-001104) 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,



DUANE KANUHA
Planning Director

JRH:nci

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Encls: Agency Comments

xc: DWS-Engineering Branch
SUB-11-001104

xc w/encls: G. Bailado, GIS Section (via email)
Larry Brown, PCDP



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
 345 KEKUAŌA'A STREET, SUITE 20 • HILO, HAWAII 96720
 TELEPHONE (808) 961-8050 • FAX (808) 961-8657

April 25, 2013

TO: Ms. BJ Leithead Todd, Director
 Planning Department

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

SUBJECT: VARIANCE (VAR 13-000131)
 SUBDIVISION APPLICATION NO. 11-001104
 APPLICANT – NORMAND DUFRESNE AND KELLY KING
 TAX MAP KEY 1-3-001:026


PLANNING DEPARTMENT
 2013 APR 26 PM 2:56

We have reviewed the subject application and have no further comments beyond our letter to the Planning Department dated November 28, 2011. In that letter, we stated that the subject parcel is not within the Department's existing service limits. The nearest point of connection is from an existing 12-inch waterline within Pāhoa-Kalapana Road, approximately 2.7 miles from the property.

We also stated that should the applicant apply for a water variance from the requirements of the subdivision code, we have no objection to the use of private rainwater catchment systems to supply each proposed 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

LB:dfg

copy – Mr. Normand Dufresne

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... Water, Our Most Precious Resource ... Ka Wai A Kāne ...
 The Department of Water Supply is an Equal Opportunity provider and employer.

NEIL ABERCROMBIE
 GOVERNOR
 PLANNING DEPARTMENT
 2013 APR 12 AM 9:59



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

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

MEMORANDUM

DATE: April 11, 2013

TO: Bobby Jean Leithead Todd
 Planning Director, County of Hawaii

FROM: Newton Inouye *NI*
 District Environmental Health Program Chief

SUBJECT: VARIANCE (VAR-13-000131)
 Applicant: NORMAND DUFRESNE AND KELLY KING
 Owner: KELLY ANDREW KING and NORMAND J. DUFRESNE
 TRUST
 Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,
 Improvements Required, Section 23-84, Water Supply
 TMK: 1-3-001:026 (SUB-11-001104)

This office has no additional comments to those made previously. Reference is made to August 30, 2011 letter to the Planning Director.

WORD: VAR-13-000131.d

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