

2. **County Zoning.** Residential Single Family, 10,000 sq. ft. minimum (RS-10).
3. **State Land Use.** Urban (U).
4. **County General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Low Density Urban (ldu).
5. **Subdivision Request/PPM.** Subdivision application SUB-04-000192 was submitted to subdivide the subject property into 32 lots and Road Lots. Further action on the subdivision application has been deferred pursuant to variance application acknowledgement letter dated August 22, 2013 in the variance file. The 32 buildable lots will be served by the existing private water system within the area.
6. **Subdivision Code Minimum Roadway Requirements (And Revised Tentative Approval Condition 3i).** Construct minimum 32-foot wide dedicable pavement within a minimum 50-foot wide right-of-way with concrete curbs, gutters and sidewalks conforming to Department of Public Works (DPW) Standard Detail (Std. Det.) R-32.
7. **Variance Application.** The variance request from minimum subdivision code roadway improvements was acknowledged by Planning Department letter dated August 22, 2013. The applicant does propose full right-of-way improvement to the proposed 50-foot wide access Road Lots including 32 feet of paved travel way with curbs, gutters and sidewalks on each side. However, instead of dedicable drywell drainage structures per DPW Std. Det. standards, they plan to utilize 8-foot diameter by 8-foot deep seepage pit drainage structures which do not require an Underground Injection Control (UIC) Permit from the Department of Health.
8. **Variance Application (VAR-13-000124) Agency Comments and Requirements.**
 - a. State of Hawai'i Department of Health (DOH): See attached memorandum dated August 26, 2013.
 - b. DPW: See attached memorandum dated August 28, 2013.
 - c. No other agency comments were solicited and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted an affidavit regarding notice of variance application mailed to a list of surrounding property owners. According to the affidavit dated August 30, 2013 and other submittals in the variance application file, notice of variance was mailed on or about August 27, 2013. The affidavit also states that a sign was posted upon subject TMK property. A photograph of the posted sign was also submitted.

10. **Comments from Surrounding Property Owners or Public.** The department received comments via email from five (5) surrounding property owners. The objections rose pertained primarily to the impacts of the land-altering practices of the subdivider and contractors. As such practices are regulated under grading permits issued by the Department of Public Works; the concerns are not directly related to the issue at hand. However, the comments have been or will be forwarded to DPW for their review.

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 reason(s):

With the exception of the DPW Std. Det. dedicable drywell drainage structures, the proposed roadway design complies with the road design requirements of both the April 27, 2007 Revised Tentative Subdivision Approval and of the Subdivision Code. Additionally, the proposed Project roadway will serve only 32 lots and as cul-de-sacs, will not be a major thoroughfare, secondary arterial or serve as a through road for future development in the area. In the event that the subdivider contemplates dedication to the County, the roadway drainage structures shall be improved to the prevailing dedicable County standards. The lot owners and/or community association for the Project will own and maintain the roadway, and ensure that proposed drainage patterns are maintained. Therefore, with only 10 to 20 inches of annual rainfall, the proposed private roadway seepage pit drainage structures should be considered adequate to service this subdivision.

Considering the scant rainfall to the Property and the foregoing issues, there are special and unusual circumstances applying to the Property which exist to a degree that interferes with the best and proposed uses or manner of development within the Property.

- (b) ***There are no other reasonable alternatives that would resolve the difficulty.***
The Variance Application meets criterion (b) for the following reason(s):

The construction of the roadway with DPW Std. Det. dedicable drywell drainage structures in strict compliance with Condition No. 3)j) of the Revised Tentative Subdivision Approval letter would be excessive in light of the 10 to 20 inches of annual rainfall the area receives. It would be unreasonable to

require strict compliance with the dedicable drywell drainage structures, when the more reasonable alternative of 8-foot diameter by 8-feet deep seepage pit drainage structures is available. The privately-owned and maintained roadway will only serve the 32 lot subdivision and as such, is not considered to be a major thoroughfare, secondary arterial or a road servicing future development in the area.

(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 reason(s):

The proposed lots within the Property are located within the County's Residential Single-Family (RS -10) zoned district. The Applicant is proposing a 32-lot gated subdivision, with all lots being 10,000 sq. ft. or more each, and is thus consistent with the Zoning and Subdivision Codes.

The intent and purpose of requiring subdivision roadway improvements is to assure that an adequate access system is available to the residents of the proposed subdivision, and to provide adequate emergency access in the event of a fire or emergency. The fact that the area receives only 10 to 20 inches of annual rainfall, the use of the proposed alternative seepage pit drainage structures will not diminish the ability of the roadway to provide adequate on-site drainage. The proposed Project is consistent with the public health, safety and welfare.

The Land Use Pattern Allocation Guide (LUPAG) Map designates the area as Low Density Urban, which allows for residential with ancillary community and public uses, and neighborhood and convenience-type commercial uses and an overall residential density of up to 6 units per acre. The proposed Project and its seepage pit drainage structures are consistent with these General Plan principles and uses.

Therefore, the granting of this variance request will be: (1) consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Control Codes, and the County General Plan; (2) will not cause substantial adverse impact to the area's character and to adjoining properties; and (3) will not otherwise be detrimental to the public's welfare.

DETERMINATION-VARIANCE CONDITIONS

The variance to allow the proposed 32-lot subdivision of the subject property utilizing the proposed, alternative roadway improvements of a 32-foot wide paved travel way with concrete curbs, gutters and sidewalks on each side and seven 8-foot diameter by 8-feet deep seepage pit drainage structures, 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 approval of this variance permit. This written agreement shall contain deed language, being covenants, conditions, and restrictions affecting the lots created by the proposed subdivision which are serviced by a privately-owned roadway and alternative non-dedicable seepage pit drainage structures.
4. The lot owners, grantees, successors, and assigns agree to form a road maintenance association and/or pay their fair share to maintain the roadway within the private right-of-ways.

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. The recorded agreement 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.

5. 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 special or unusual circumstances applying to the property which deprive the owners of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the properties, and hence, no grounds exist or will exist for a variance from the Subdivision Code to permit further subdivision of the properties, and that changes in the owners' personal or financial situation after acquiring the properties also will not constitute grounds for a variance from the Subdivision Code to permit further subdivision of the properties.
6. The subdivider, owners, their assigns, or successors understand that they will use and maintain the roadway and alternative seepage pit drainage structures on their own without any expectation of governmental assistance to maintain the improvements. The alternative drainage system shall be designed by a civil engineer licensed in the State of Hawai'i in accordance with HCC Section 23-92.

The alternative roadway improvements will not be eligible for conveyance to the County unless they are upgraded to meet current dedicable standards.

7. The owners, grantees, successors, and assigns shall indemnify and defend the State of Hawai'i or County of Hawai'i from any and all liability arising out of vehicular access to and from the subject properties utilizing the private right-of-ways and alternative seepage pit drainage structures.
8. Upon written demand of the County of Hawai'i, the applicant and/or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements serving the proposed lot(s) arising out of SUB-04-000192. Should the improvement district require acquisition of any privately owned right-of-ways fronting the lots, such right-of-ways shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the respective lot owner(s).
9. In the event that the subdivision access is to be gated, the following will apply:
 - a. The gate shall be located at least 50 feet from the Eleele Street right-of-way. The location shall be indicated on the subdivision final plat map;
 - b. A turnaround meeting with DPW approval shall be provided outside of the gate;
 - c. The gate and any supporting walls, posts or columns shall in no way interfere with any existing and development generated surface water flow;
 - d. Provisions shall be provided for the United States Postal Service's requirements for cluster mail boxes.
 - e. Access improvements including gate, turnaround, and cluster mailboxes shall be shown on the Final Plat Map for SUB-04-000192.
10. The pending subdivision application's (SUB-04-000192) final plat map shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code not covered by this variance.
11. 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 this Variance Permit null and void.

Peter J.K. Dahlberg, P.E., LLC
Civil Engineer
Page 7
October 18, 2013

Any questions may be directed to Jonathan Holmes at (808) 961-8146, or jholmes@hawaiicounty.gov

Sincerely,



DUANE KANUHA
Planning Director

JRH:KWR:nci

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Enclosures: Agency Comments

xc: DPW-Engineering Branch
SUB-04-000192

xc via e-mail: Hanns Obermaier hanns3@gmail.com
Leonard and Mary Ann Steele highfire1@verizon.net
Sam McLane samclane@mclanecg.com
Jennifer Halley jen_kovach@yahoo.com
Andre Ajimine alajimine@gmail.com

xc w/enclosures: Christopher W. Claypool
20915 East Jesse Lane
Greenacres, WA 99016

Bradley Bryson, Project Manager
P.O. Box 383834
Waikoloa, HI 96738

Gilbert Bailado, GIS Section (via email)
D. Bugado, SKCDP Planner (via email)

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 AUG 28 PM 2:12

DATE: August 28, 2013

Memorandum

TO : Duane Kanuha, Planning Director
Planning Department

FROM : Ben Ishii, Division Chief
Engineering Division

SUBJECT : Variance Application (VAR 13-000162)
Applicant: Bradley Bryson, Project Manager for
Christopher W. Claypool
Variance from Chapter 23 Subdivisions, Article 6 Division 2
Improvements Required, Section 23-88 Requirements for
Dedicable Streets (Drywell Standard Detail) and Section 23-95
Right-of-Way Improvement
TMK: 6-8-035:051
SUB 04-000192

We reviewed the subject application and our comments are as follows:

The applicant requests relief from HCC Sections 23-88 and 23-95, more specifically from DPW details and specifications for drywell construction. The applicant has requested allowing shallow drywells to avoid obtaining permits for underground injection wells from the Department of Health.

The applicant should first be required to state under how their project meets Section 23-15 criteria for a variance.

To our knowledge the Subdivision Code requires dedicable streets for the subject development based on the size and number of lots involved. This is one phase of Kilohana Kai Subdivision. The other phases have been constructed to dedicable standards and have pursued dedication. The shallow drywells the applicant wants to install in the subject project do not meet our dedicable drywell specifications required by Section 23-86. We will not approve them without a variance to document such approval of non-conforming improvements. To our knowledge, we have not been approving such nonconforming improvements of a road lot where a PUD or variance has not been approved and where otherwise streets are required to be constructed to dedicable standards. We have allowed them for non-dedicable streets, when specified by a licensed civil engineer.

Notwithstanding the above, DPW has no objection to the granting of a variance from the drywell depth requirements under the following conditions:

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NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT
COUNTY OF HAWAII

2013 AUG 27 PM 11:09



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: August 26, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: VARIANCE (VAR-13-000162)
Agent: Peter J.K. DAHLBERG, P.E., LLC
Applicant: BRADLEY BRYSON, PROJECT MANAGER
Owner: CHRISTOPHER W. CLAYPOOL
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-86, Requirements for
Dedicable Streets (Drywell Standard Detail) and Section 23-95,
Right-of-Way-Improvement
Tax Map Key: 6-8-035:051 (SUB-04-000192)

Underground Injection Systems (Ph. 586-4258) which receive wastewater or storm runoffs from the proposed development need to address the requirements of Chapter 23, Hawaii State Department of Health Administrative Rules, Title 11, "Underground Injection Control."

We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.

WORD: VAR-13-000162.ni

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1. The Planning Director, in approving a variance, requires the owners heirs and assigns to indemnify the County for such approval.
2. The Planning Director, in approving a variance, requires notification of owners and assigns that the street will not be eligible for conveyance to the county unless upgraded to meet current dedicable standards at the time the request is made and prior to conveyance, they are responsible for maintaining the street and shall have no expectation of County street maintenance services.
3. The drainage system is designed by a licensed civil engineer in accordance with Section 23-92.

The applicant has been informing us that they intend to gate the subdivision after completion of the subdivision roads. Such gate is not presently shown on their construction plans. We defer to the Planning Director for a determination on the whether an entry security gate requires a Subdivision Code variance. Such gates have a potential to impact a County Street. In our comments on PUD's, variances and other Planning applications, we have been requesting that entry gates be set back reasonable distance from the County Street (2 vehicle queue lengths or 50 feet for the subject, exclusive of gate swing) and for larger developments (such as the subject), a turn around outside the gate, meeting with the approval of DPW. The issue of cluster mail boxes is of concern for a gated subdivision. Where will the mail boxes be placed so as to not impact the County street? We request these issues be resolved in this variance application process.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 323-4851.

KE

c: ENG-HILO/KONA