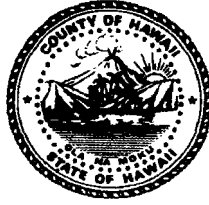


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

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

June 10, 2014

Mr. Sidney M. Fuke  
Planning Consultant  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

**SUBJECT: Application: VARIANCE DECISION VAR-14-000216**  
**Agent: SIDNEY FUKE, PLANNING CONSULTANT**  
**Owners: ELIZABETH MARSHALL, et al.**  
**Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply**  
**Tax Map Key: 8-2-003:029 (SUB-11-001056)**

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Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-14-000216 subject to variance conditions. The variance grants relief for SUB-11-001056 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 2, being a Portion Grant 867, containing approximately 22.128 acres, is situated in Waipunaula and Kalamakumu, South Kona, Hawai'i.
2. **County Zoning.** Agricultural – five acre minimum (A-5a).
3. **State Land Use.** Agricultural (A).

4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Important Agricultural Lands (ial).
5. **Special Management Area (SMA).** SMA Minor Use Permit SMM-12-000245 was issued on November 13, 2012 to allow the proposed subdivision within the SMA.
6. **Chapter 343, Hawai'i Revised Statutes (HRS).** A Final Environmental Assessment (FEA) was published on September 8, 2012 in the Office of Environmental Quality Control Environmental Notice with a Finding of No Significant Impact (FONSI). The EA was required because the subject property is located within the Kealahou Bay Historical District.
7. **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.
8. **Subdivision Request/PPM.** Subdivision application SUB-11-001056 was submitted to subdivide Lot 2 into 4 lots consistent with the A-5a zoning. Further action on the subdivision application was deferred pursuant to this variance application received April 24, 2014.
9. **Variance Application.** The variance request from water supply improvements was acknowledged by Planning Department letter dated May 5, 2014. This variance application requests the use of the existing water services in lieu of extending and/or upgrading the DWS water system or constructing a private water system conforming to DWS standards. The existing four (4) water services are located "out of bounds" as they do not front the lots as they are located some 700 feet distant.
10. **Agency Comments and Requirements.**
  - a. State of Hawai'i-Department of Health (DOH): see attached memorandum dated May 12, 2014.
  - b. County of Hawai'i Fire Department (HFD): see attached memorandum dated May 21, 2014.
  - c. Department of Water Supply (DWS): see attached memorandum dated May 30, 2014.
  - d. No other agency comments were solicited and none were received.
11. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated May 6, 2014, regarding the posting of a public notification sign on the subject property pursuant to Section 23-17(c) of the HCC. Pictures of the posted sign were also submitted. Further, verification was submitted that a notice of the application was sent on May 9, 2014 to the surrounding property owners as required by Section 23-17(a).

12. **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 four (4) lots in keeping with the existing A-5a zoning. Although a dedicable water system is a requirement of the code, the subject property is not adequately served by the existing DWS system facilities and it would be unreasonable to expect the owners to upgrade the existing four (4) substandard water services. Therefore, it is reasonable that, in lieu of constructing water system improvements to either extend/upgrade the DWS facilities (requiring some 1,280 linear feet of 4-inch waterline) or provide a private water system to DWS standards for the pending 4-lot subdivision, a more reasonable alternative can be allowed pursuant to the filing of "out of bounds" agreements with the DWS.

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 rural subdivision, the best use and manner of the development allows for the filing of the above mentioned agreements in keeping with DWS rules and regulations.

- (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 with some 1,280 linear feet of 4-inch waterline or provide a private water system to DWS standards for the pending 4-lot subdivision which does have existing, substandard water services would be placing excessive demands upon the applicant because of the extensive improvements required to the existing DWS water system facilities.

Therefore, there are no reasonable alternatives that would resolve the difficulty.

- (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 are four (4) existing, substandard services to the lots and the filing of "out of bounds" agreements with the DWS for this rural agricultural subdivision, the granting of this variance would be consistent with the general purpose of the district. Execution of said agreements pursuant to DWS rules and regulations is consistent with the intent of the policies of the general plan for this low density agricultural area. This will not be materially detrimental to the public welfare as it serves only private parties and the water services already exist. Granting of the variance will not cause substantial, adverse impact to the area's character or to adjoining properties as the water services have existed for some 10 years.

Given that the subject property has, albeit, substandard water services, 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 and the Hawai'i County General Plan.

#### **DETERMINATION-VARIANCE CONDITIONS**

This variance to permit the proposed 4-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 serviced by a substandard County non-dedicable public water system. The agreement shall be duly recorded at the Bureau of Conveyances of the State of Hawai'i by the applicant. A copy of the recorded declaration document shall be submitted to the Planning Department.

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-11-001056.
6. The owners, grantees, successors, and assigns agree and accept the fact that the County will not bear the responsibility of supplying dedicable public water improvements 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. The DWS shall be informed, in writing, as to which existing water service shall be assigned to which proposed lot. Further, compliance with any conditions imposed by DWS through the issuance of "out of bounds" agreements is required.
9. Each permitted dwelling shall be provided with minimum water storage capacity dedicable for fire fighting and emergency purposes as may be required by the HFD per the attached memorandum. 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.
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 dedicable 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-11-001056) 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.

Mr. Sidney M. Fuke  
Planning Consultant  
June 13, 2014  
Page 6

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:klt

P:\Admin Permits Division\Variance\2014\VAR-14-000216Marshall Water\APVL.doc

Encls: Agency Comments

xc: DWS-Engineering Branch  
SUB-11-001056

xc w/encls: Elizabeth Marshall et al.  
P.O. Box 112  
Honaunau, HI 96726

G. Bailado, GIS Section (via email)  
T. Dunlap, KCDP Planner (via e-mail)

William P. Kenoi  
Mayor

PLANNING DEPARTMENT

2014 MAY 21 PM 5:01



Darren J. Rosario  
Fire Chief

Renwick J. Victorino  
Deputy Fire Chief

County of Hawai'i  
HAWAII FIRE DEPARTMENT  
25 Ampuni Street • Room 2501 • Hilo, Hawaii 96720  
(808) 932-2900 • Fax (808) 932-2928

NEIL ASERCROMBIE  
GOVERNOR



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

LINDA ROSEN, M.D., M.P.H.  
DIRECTOR OF HEALTH

2014 MAY 13 PM 4:02

May 21, 2014

**TO:** DUANE KANUHA, PLANNING DIRECTOR

**FROM:** DARREN J. ROSARIO, FIRE CHIEF

**SUBJECT:** VARIANCE APPLICATION (VAR-14-000216)  
AGENT: SIDNEY FUKU, PLANNING CONSULTANT  
OWNER: ELIZABETH MARSHALL, ET AL.  
REQUEST: VARIANCE FROM CHAPTER 23, SUBDIVISIONS, ARTICLE  
6, DIVISION 2, IMPROVEMENTS REQUIRED, SECTION 23-84, WATER  
SUPPLY  
TAX MAP KEY: 8-2-003-029 (SUB 11-001056)

In regards to the above-mentioned Variance application, any future structures shall comply with alternative water supply for Fire Department use and the following shall be in accordance:

**NFPA 1, UNIFORM FIRE CODE, 2006 EDITION**

*Note: NFPA 1, Hawai'i State Fire Code with County amendments. County amendments are identified with a preceding "C-" of the reference code.*

**Chapter 18 Fire Department Access and Water Supply**

**18.1 General.** Fire department access and water supplies shall comply with this chapter.

For occupancies of an especially hazardous nature, or where special hazards exist in addition to the normal hazard of the occupancy, or where access for fire apparatus is unduly difficult, or areas where there is an inadequate fire flow, or inadequate fire hydrant spacing, and the AHJ may require additional safeguards including, but not limited to, additional fire appliance units, more than one type of appliance, or special systems suitable for the protection of the hazard involved.

**18.1.1 Plans.**

**18.1.1.1 Fire Apparatus Access.** Plans for fire apparatus access roads shall be submitted to the fire department for review and approval prior to construction.

**18.1.1.2 Fire Hydrant Systems.** Plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.

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*Hawai'i County is an Equal Opportunity Provider and Employer.*

**MEMORANDUM**

**DATE:** May 12, 2014

**TO:** Duane Kanuha  
Planning Director, County of Hawaii

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

**SUBJECT:** Application: VARIANCE (VAR-14-000216)  
Agent: SIDNEY FUKU, PLANNING CONSULTANT  
Owners: ELIZABETH MARSHALL, et al.  
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,  
Improvements Required, Section 23-84, Water Supply  
Tax Map Key: 8-2-003-029 (SUB-11-001056)

The Health Department found no environmental health concerns with regulatory implications in the submittals.

WORD: VAR-14-000216.rtf

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18.3.5 Private water supply systems shall be tested and maintained in accordance with NFPA 25 or county requirements as determined by the AHJ.

18.3.6 Where required by the AHJ, fire hydrants subject to vehicular damage shall be protected unless located within a public right of way.

18.3.7 The AHJ shall be notified whenever any fire hydrant is placed out of service or returned to service. Owners of private property required to have hydrants shall maintain hydrant records of approval, testing, and maintenance, in accordance with the respective county water requirements. Records shall be made available for review by the AHJ upon request.

C~ 18.3.8 Minimum water supply for buildings that do not meet the minimum County water standards:

Buildings up to 2000 square feet, shall have a minimum of 3,000 gallons of water available for firefighting.

Buildings 2001 - 3000 square feet, shall have a minimum of 6,000 gallons of water available for firefighting.

Buildings, 3001 - 6000 square feet, shall have a minimum of 12,000 gallons of water available for firefighting.

Buildings, greater than 6000 square feet, shall meet the minimum County water and fire flow requirements.

Multiple story buildings shall multiply the square feet by the amount of stories when determining the minimum water supply.

Commercial buildings requiring a minimum fire flow of 2000gpm per the Department of Water standards shall double the minimum water supply reserved for firefighting.

Fire Department Connections (FDC) to alternative water supplies shall comply with 18.3.8 (1)-(6) of this code.

**NOTE: In that water catchment systems are being used as a means of water supply for firefighting, such systems shall meet the following requirements:**

(1) In that a single water tank is used for both domestic and firefighting water, the water for domestic use shall not be capable of being drawn from the water reserved for firefighting;

C~ 18.1.1.2.1 **Fire Hydrant use and Restrictions.** No unauthorized person shall use or operate any Fire hydrant unless such person first secures permission or a permit from the owner or representative of the department, or company that owns or governs that water supply or system. Exception: Fire Department personnel conducting firefighting operations, hydrant testing, and/or maintenance, and the flushing and acceptance of hydrants witnessed by Fire Prevention Bureau personnel.

### 18.3 Water Supplies and Fire Hydrants

18.3.1\* A water supply approved by the county, capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities or buildings, or portions thereof, are hereafter constructed, or moved into or within the county. When any portion of the facility or building is in excess of 150 feet (45 720 mm) from a water supply on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the AHJ. For on-site fire hydrant requirements see section 18.3.3.

#### EXCEPTIONS:

1. When facilities or buildings, or portions thereof, are completely protected with an approved automatic fire sprinkler system the provisions of section 18.3.1 may be modified by the AHJ.
2. When water supply requirements cannot be installed due to topography or other conditions, the AHJ may require additional fire protection as specified in section 18.3.2 as amended in the code.
3. When there are not more than two dwellings, or two private garage, carports, sheds and agricultural. Occupancies, the requirements of section 18.3.1 may be modified by AHJ.

18.3.2\* Where no adequate or reliable water distribution system exists, approved reservoirs, pressure tanks, elevated tanks, fire department tanker shuttles, or other approved systems capable of providing the required fire flow shall be permitted.

18.3.3\* The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be provided on a fire apparatus access road on the site of the premises or both, in accordance with the appropriate county water requirements.

18.3.4 Fire Hydrants and connections to other approved water supplies shall be accessible to the fire department.



Duane Kanuha  
May 21, 2014  
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greater than 2000 square feet, but less than 3000 square feet and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 500 feet.

- (5) For buildings with an approved automatic sprinkler system, the minimum water supply required may be modified.

If there are any questions regarding these requirements, please contact the Fire Prevention Bureau at (808) 952-2912.

*DR*

DARREN J. ROSARIO  
Fire Chief

GA/lc

Duane Kanuha  
May 21, 2014  
Page 4

(2) Minimum pipe diameter sizes from the water supply to the Fire Department Connection (FDC) shall be as follows:

- (a) 4" for C900 PVC pipe;
- (b) 4" for C906 PE pipe;
- (c) 3" for ductile Iron;
- (d) 3" for galvanized steel.

(3) The Fire Department Connection (FDC) shall:

~~(a) be made of galvanized steel;~~

(b) have a gated valve with 2-1/2 inch, National Standard Thread male fitting and cap;

(c) be located between 8 ft and 16 ft from the Fire department access.

The location shall be approved by the AHJ;

(d) not be located less than 24 inches, and no higher than 36 inches from finish grade, as measured from the center of the FDC orifice;

(e) be secure and capable of withstanding drafting operations. Engineered stamped plans may be required;

(f) not be located more than 150 feet of the most remote part, but not less than 20 feet, of the structure being protected;

(g) also comply with section 13.1.3 and 18.2.3.4.6.1 of *this code*;

(4) Commercial buildings requiring a fire flow of 2000gpm shall be provided with a second FDC. Each FDC shall be independent of each other, with each FDC being capable of flowing 500gpm by engineered design standards. The second FDC shall be located in an area approved by the AHJ with the idea of multiple Fire apparatus' conducting drafting operations at once, in mind.

(5) Inspection and maintenance shall be in accordance to NFPA 25.

(6) The owner or lessee of the property shall be responsible for maintaining the water level, quality, and appurtenances of the system.

#### EXCEPTIONS TO SECTION 18.3.8:

(1) Agricultural buildings, storage sheds, and shade houses with no combustible or equipment storage.

(2) Buildings less than 800 square feet in size that meets the minimum Fire Department Access Road requirements.

(3) For one and two family dwellings, agricultural buildings, storage sheds, and detached garages 800 to 2000 square feet in size, and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 1000 feet.

(4) For one and two family dwellings, agricultural buildings, and storage sheds



**DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII**  
 345 KEKUAŌA STREET, SUITE 20 • HILO, HAWAII 96720  
 TELEPHONE (808) 961-9050 • FAX (808) 961-8057

May 30, 2014

2014 MAY 30 11 38 AM  
 DEPARTMENT OF WATER SUPPLY

**TO:** Mr. Duane Kanuha, Director  
 Planning Department

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

**SUBJECT: VARIANCE (VAR-14-000216)**  
**SUBDIVISION APPLICATION NO. 11-001056**  
**APPLICANT: ELIZABETH MARSHALL, ET AL.**  
**TAX MAP KEY 8-2-003:029**

We have reviewed the subject variance application for the proposed four-lot subdivision and have the following comments.

As noted in our memorandum to your department of May 27, 2011, there are four (4) existing 5/8-inch meters to Tax Map Key 8-2-003:029. Should the variance be allowed, our Department asks that the applicants please notify us in writing as to which of the subdivided lots each of the existing accounts will be assigned so that we may update our records. Our Department will require an out-of-bounds agreement 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

LB:dmj

copy – Mr. Sidney M. Fuke, Planning Consultant

092131

