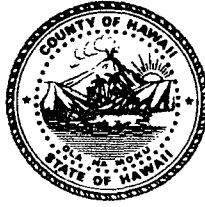


William P. Kenoi  
Mayor



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

August 7, 2015

Mr. Austen Drake, P.E.  
SSFM International, Inc.  
99 Aupuni Street, Suite 202  
Hilo, Hawaii 96720

Dear Mr. Drake:

**SUBJECT: VARIANCE APPLICATION – VAR-15-000284**

**Applicant: AUSTEN DRAKE, P.E./SSFM INTERNATIONAL, INC.**

**Owners: HAWAII ELECTRIC LIGHT COMPANY**

**Request: Variance from Chapter 25, Zoning, Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements and Chapter 25, Article 4, Division 4, Section 25-4-43 (c); Fences and Accessory Structures (Encroachment into the Front, Side and Rear Yard Open Space and Height of Accessory Structures).**

**TMK: 6-2-001:069; Lot A**

The Planning Director certifies the **approval** of VAR-15-000284, subject to variance conditions. The variance will allow for the proposed chain link fence with gate, 9 feet in height to be constructed along the perimeter of the subject property. These exceptions are in lieu of the maximum 6.00 feet height above grade, as required by the Hawai'i County Code, Chapter 25, Zoning, Article 4, Division 4, Section 25-4-43 Fences and Accessory Structures, (c).

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 19,600 square feet of land and is situated at Kawaihae 2<sup>nd</sup>, South Kohala, Hawai'i. The substation is located off of Kawaihae Road, 1,000 feet to the southeast of the intersection of Spencer Road, and approximately 1,150 feet to the northwest of the intersection of Queen Ka'ahumanu Highway.
2. **Zoning.** Agricultural – 40 Acres (A-40a).
3. **State Land Use.** Agricultural

4. **Required Setback.** 30 feet front and rear, 20 feet for side yards.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on April 15, 2015, and other submittals related to the variance request and variance application. The variance application's site plan drawn to scale and prepared by Hawaii Electric Light Company (HELCO), denotes the chain link fence being over 6 feet in height built into the front, rear and side yard setback.  
  
The site plan prepared by SSFM International, Inc. shows that the chain link fence and the gate built into the front (Kawaihae Road), rear and side yard setback is 3 feet over the required height limit of 6 feet. (Section 25-4-43 Fences and Accessory structures)
6. **County Building Records.** None, vacant land.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum, dated May 12, 2015.  
(See attached memorandum)
  - b. No comments received from the Department of Public Works–Building Division (Kona).
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on May 22, 2014. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 14, 2015.
9. **Time Extension.** The applicant's variance application was received on May 7, 2015 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until August 7, 2015
10. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

#### 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 the property.***

The variance application meets criteria (a) for the following reasons:

The site plan prepared by SSFM International, Inc. shows that the chain link fence with gate is 3 feet over the required height limit of 6 feet into the front, rear and side yard setback. (Section 25-4-43 Fences and Accessory structures)

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the rock wall and gate built into the front (southeast) boundary to be built over the 6-foot height limit to occur.

The applicant in its background report stated in part:

*“Electrical substations contain high voltage equipment. Therefore, it is important that public and employee safety be a critical factor when designing the fence location to ensure the substation is properly protected and secured from the outside.*

*The 9’ height of the fence prevents the public from being able to enter the substation by presenting a barrier to climbing or unlawful entry. The location and layout of the fence provides maximum separation between the public and the electrical equipment to avoid unauthorized access, theft or tampering that may result in injury, death or damage to the power grid. The fence layout also needs to account for a flat area on the outside perimeter of the fence required for electrical grounding to prevent electrical shock to persons on the exterior of the fence.”*

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with the best use and development of the property.

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

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

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected north side yard setback of the subject property include the following actions:

One option would be to lower the fence height from 9-feet to 6-feet to meet zoning code requirements; however this would not accomplish or address the safety concerns with regards to the electrical substation.

Because the encroachments is within the front, rear and side yard setback, to consolidate the subject property with the roadway along with the adjoining properties and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; there are no reasonable alternatives to resolve the encroachment issue.

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

The variance application meets criteria (c) for the following reasons:

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/ uses and boundary/property lines.

The addition for the height in the fence is to protect the public from being able to enter the substation by presenting a barrier for the public from climbing and unlawful entry.

The variance request 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.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Based on the foregoing findings and unusual circumstances, the applicant's request for 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 County General Plan. Furthermore, the variance request 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.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's survey map, the chain link fence and gate built upon the subject property ("LOT A") will not meet the minimum side yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance request is **approved** subject to the following conditions:

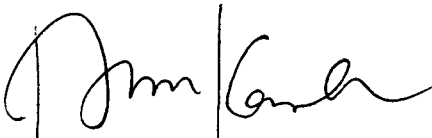
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.

Austen Drake, P.E.  
SSFMI International, Inc.  
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August 7, 2015

2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an ohana or farm dwelling upon the subject property.
4. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and occupancy.

Should any of the foregoing variance conditions not be complied with the Planning Director may proceed to declare subject Variance VAR-15-000284 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone6\VAR 15-000284TMK6-2-001-069HELCO.doc.rtf

xc: Planning Department (Kona)  
Real Property Tax Division (Kona)  
Gilbert Bailado, Planning GIS

Austen Drake, P.E.  
SSFM International, Inc.  
Page 6  
August 7, 2015

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH  
PLANNING DEPARTMENT  
COUNTY OF HAWAII  
2015 MAY 13 AM 9:20

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

MEMORANDUM

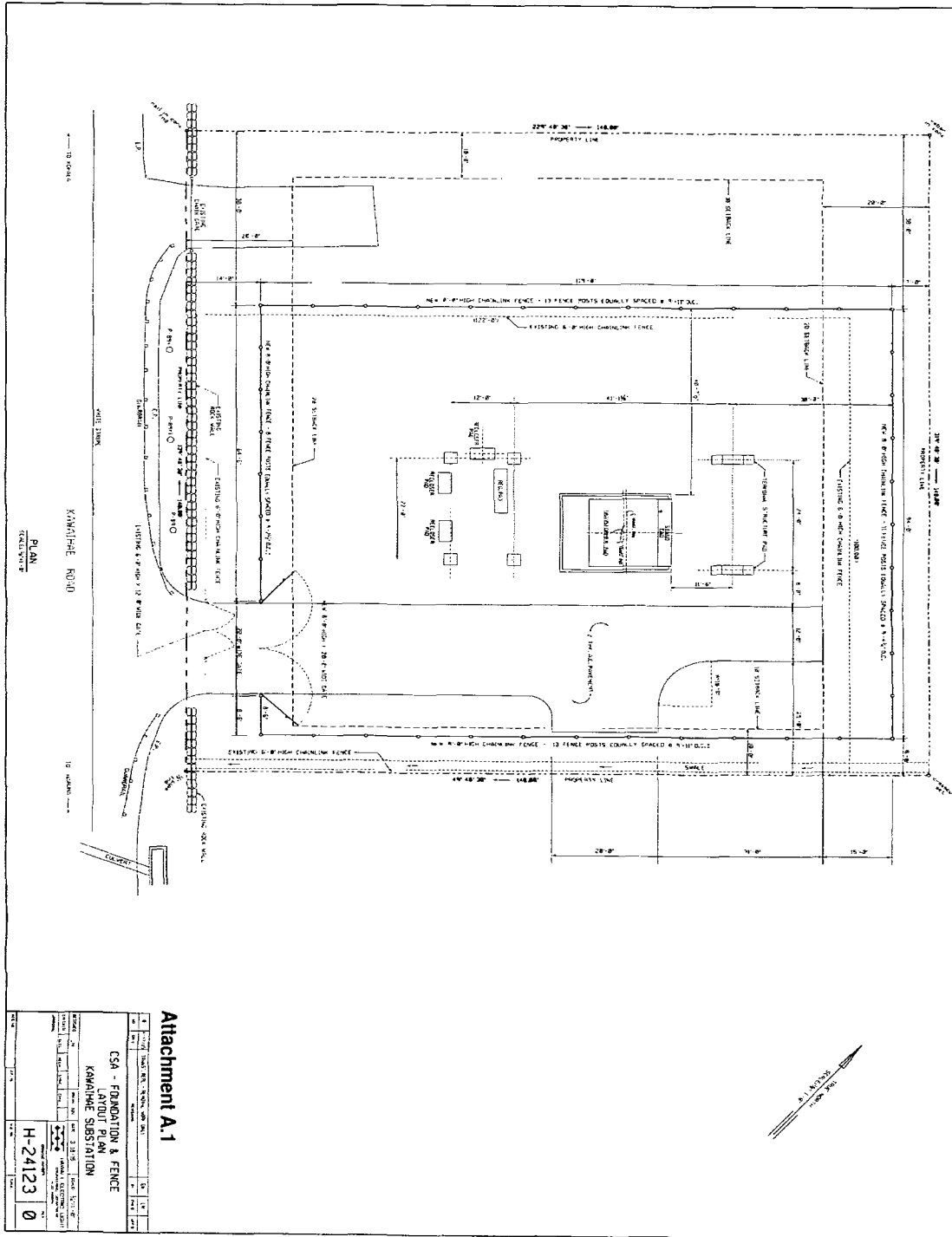
DATE: May 12, 2015

TO: Mr. Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye  
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR 15-000284  
Applicant: SSFM INTERNATIONAL, INC./AUSTEN DRAKE  
Owner: HAWAII ELECTRIC LIGHT  
Request: Variance from Chapter 25, Zoning, Article 4, Division 4,  
Section 25-4-43 (c); Fences and accessory structures  
(Encroachment into Front, Side and Rear Yard Setback)  
Tax Map Key: 6-2-001:069

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



**Attachment A.1**

**CSA - FOUNDATION & FENCE LAYOUT PLAN**  
**KAWAHARA SUBSTATION**

PROJECT NO.	H-24123
DATE	08/07/15
SCALE	AS SHOWN
DRAWN BY	SSFM
CHECKED BY	AD
DATE	08/07/15