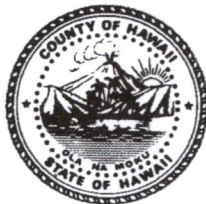


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
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

September 15, 2017

Robyn Ito, P.E.  
SSFM International, Inc.  
99 Aupuni Street, Suite 202  
Hilo, Hawaii 96720

Dear Ms. Ito:

**SUBJECT: VARIANCE APPLICATION – VAR-17-000425**

**Applicant: ROBYN ITO, P.E./SSFM INTERNATIONAL, INC.**

**Owners: HAWAII ELECTRIC LIGHT COMPANY**

**Request: Variance from Chapter 25, Zoning, Article 5, Division 7,  
Section 25-5-6, Minimum Yards (Encroachment into  
Southwest Side Yard Setback**

**TMK: 6-8-002:009**

The Planning Director certifies the **approval** of VAR-17-000425, subject to variance conditions. The variance will allow for the proposed 9'-1 ½" high communication building to be constructed on the subject property with a minimum 6-foot side (southwest) yard setback, in lieu of the required 10-foot side yard setback requirement. These exceptions are in lieu of the required 10-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum Yards.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consists of approximately 10,000 square feet of land, and is situated at Waikoloa, South Kohala, Hawai'i. The existing substation is located off of Hawai'i Belt Road, approximately 1,700 feet south of Waikoloa Road and approximately 2.5 miles north of the Daniel K. Inouye Highway.
2. **Zoning.** Agricultural – Agricultural – 20 Acres (A-20a).
3. **State Land Use.** Agricultural.
4. **Required Setback.** 20-feet front and rear, 10-feet for side yards.

5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on May 12, 2017, 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 placement of the proposed communication building within the Keamuku Substation, a public utility site, into the southwest side yard setback. **(See Exhibit A-Site Plan and Exhibit B-Subdivision Map 3619)**

The site plan shows that a portion of the proposed communication building will encroach 4-feet into the 10-foot side (southwest) yard setback.

The encroachment will leave the proposed communication building with a minimum 6-foot side (southwest) yard setback, in lieu of the required 10-foot side yard setback.

6. **County Building Records.** None; vacant land.
7. **Agency Comments and Requirements.**
- a. The State Department of Health (DOH) memorandum, dated May 30, 2017 states: *"The Health Department found no environmental health concerns with regulatory implications in the submittals."*
  - b. The Department of Public Works Department – Building Division memorandum dated June 12, 2017 states: *"Currently Building Division has no issues at this time."*
8. **Notice to Surrounding Property Owners.** According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on May 23, 2017 and June 5, 2017, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on June 5, 2017.
9. **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.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated May 25, 2017 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to September 15, 2017.

#### **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 placement of the proposed communication building is in relationship to the location of the existing communication tower. The placement of the communications building in the southwest corner of the property, allows for minimization of cable lengths to mitigate any disruptions to service. Further, although the zoning is A-20a, the subject parcel is a non-conforming 10,000 sq. ft. parcel. This location would not negatively impact adjacent properties due to several layers of protection provided by surrounding properties. There is an existing fencing along the property border, followed by a 21-foot wide Easement A, which includes landscaping of bushes and trees.

Therefore, special and unusual circumstances do exist on the subject property which would interfere with the overall functionality of the existing HELCO substation.

*(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 southwest side yard setback of the subject property include the following actions:

One option would be to move the proposed communication building to meet proper setback requirements; however, this would not accomplish or address HELCO's desire to minimize cable lengths and mitigate any disruption of service.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks. Therefore, to consolidate and re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options. There are no reasonable alternatives to resolve the encroachment issue.

It should be noted that there is a utility easement (Easement A) which is in favor of HELCO and surrounds the property on all three sides (21' wide on the north and south side, 39 feet wide on the west side). **See Attached Map – Exhibit B for visual reference.** Therefore, in actuality the communication building will be 27-feet from the edge of Easement A. The utility easement (Easement A) along the southwest boundary is landscaped with assorted trees and shrubs.

*(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*

*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 subject property abuts two large vacant parcels, a 342.654 acre parcel (TMK: 6-8-002: 008) and a 740.870 acre parcel (TMK: 6-8-002: 010) both parcels are zoned Agricultural – 20 acres. Therefore, the encroachment of 4 feet into the south side yard setback and resulting in a 6-foot side yard setback still allows for adequate air circulation.

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 site plan, the proposed communication building to be constructed on the subject property will not meet the minimum side yard setback requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

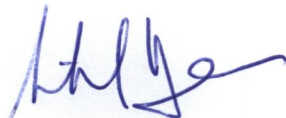
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property 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.

Robyn Ito, P.E.  
SSFMI International, Inc.  
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3. 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-17-000425 null and void.

Sincerely,



MICHAEL YEE  
Planning Director

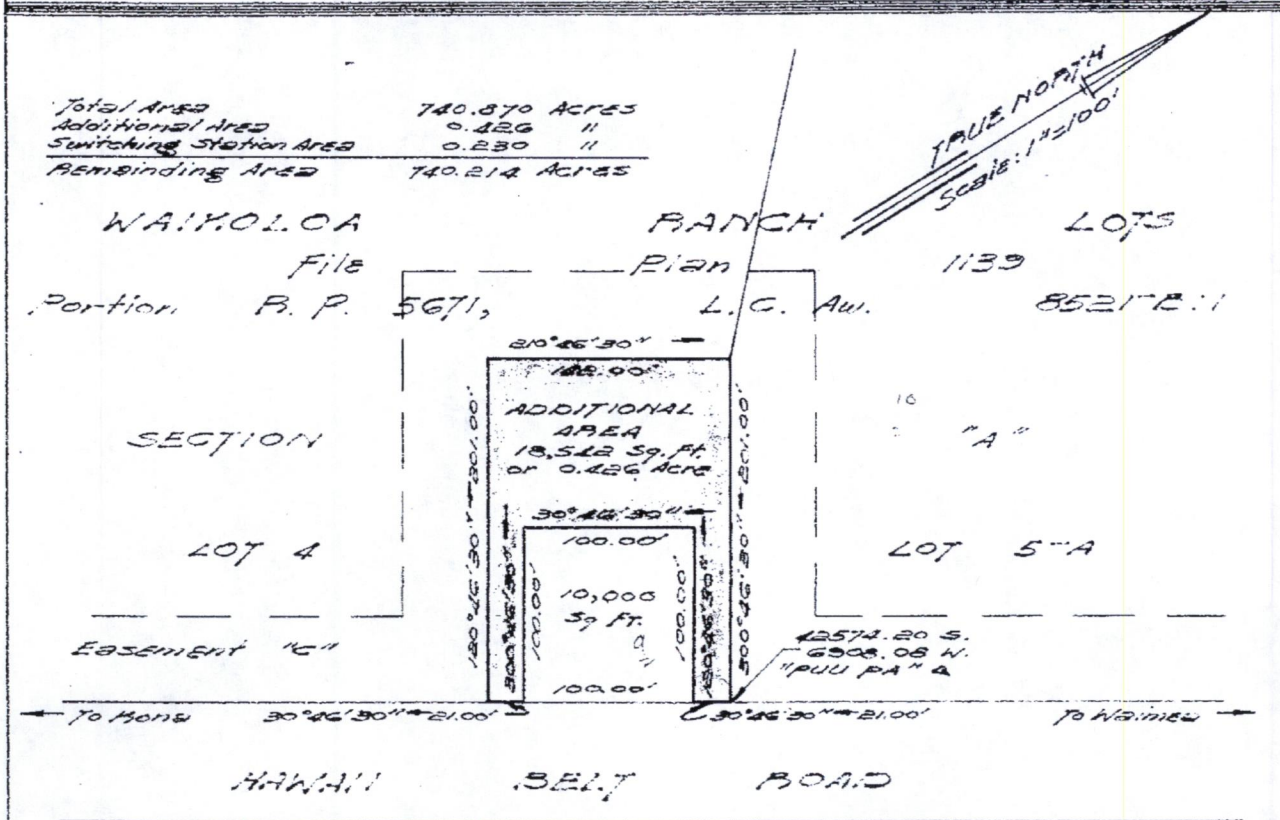
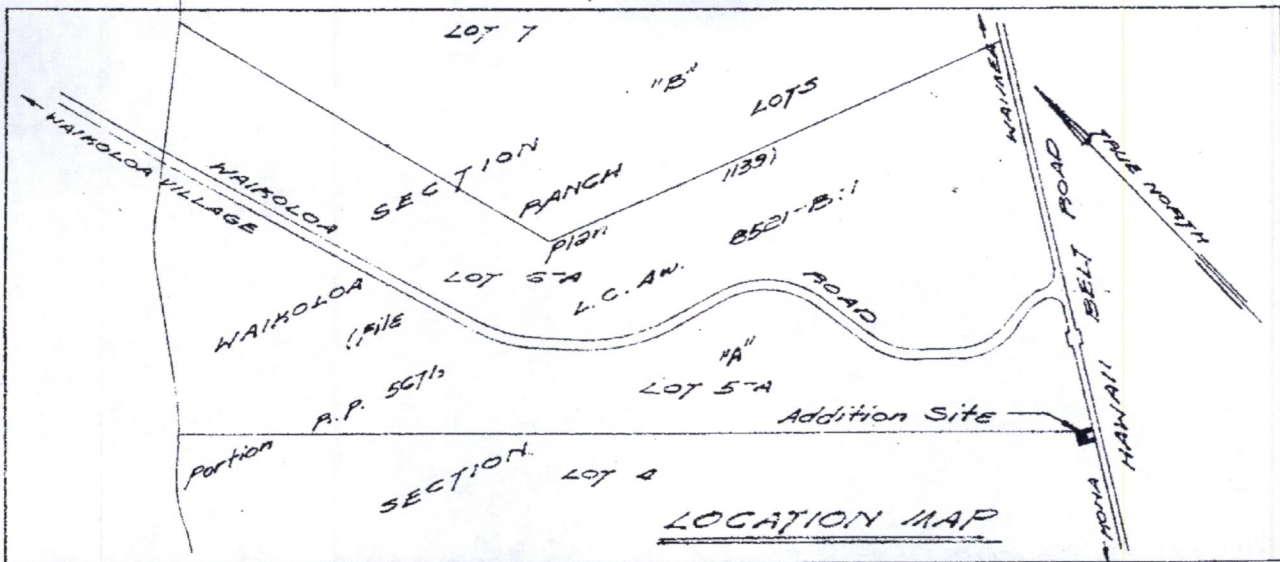
LHN:nci

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Encl: Exhibits A-B

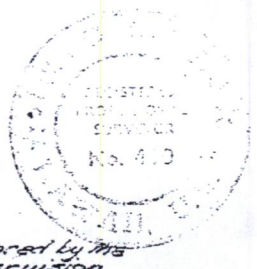
cc: Planning Department (Kona)  
Real Property Tax Division (Kona)  
Gilbert Bailado, Planning GIS





Total Area	740.870 ACRES
Additional Area	0.426 "
Switching Station Area	0.230 "
Remsinding Area	740.214 ACRES

PLAY SHOWING  
**EXHIBIT SWITCHING STATION ADDITION**  
 PORTION LOT 4,  
B-Subdivision 3619 FILE PLAY 1139  
 WAIKOLOA, SOUTH KOHALA, HAWAII  
 Scale: 1"=100' April 5, 1974



NOTE: This coordinates was obtained from State of Hawaii, Department of Transportation, Highways Division, Right of Way Map.

This work was prepared by me or under my supervision  
*John D. Pua*  
 Registered Professional Surveyor  
 Certificate Number 410

OWNERS: FIRST HAWAIIAN BANK,  
 TRUSTEES FOR RICHARD SMART AND  
 BOISE CASCADE HOME AND LAND CORP.  
 TAX MAP KEY: 6-B-02-PORTION 10

HELCO.YO. 74-A-217