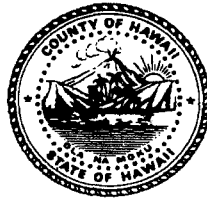


Harry Kim
Mayor

Wil Okabe
Managing Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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County of Hawai'i
PLANNING DEPARTMENT

Michael Yee
Director

Duane Kanuha
Deputy Director

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

April 30, 2019

Jocelynn White & Lynn Nakamoto
100007 NW Thompson Road
Portland, OR 97229

Dear Ms. White and Ms. Nakamoto:

SUBJECT: Application: VARIANCE - VAR-18-000498
Applicant: JOCELYNN WHITE AND LYNN NAKAMOTO
Owners: JOCELYNN WHITE AND LYNN NAKAMOTO
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply
Tax Map Key: (3) 4-4-011:006 (SUB-18-001829)

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-18-000498, subject to variance conditions. The variance grants relief for SUB-18-001829 from constructing minimum County dedicable water supply system improvements for two (2) of the three (3) lots as 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 property, Lot 35-B, Ka'apahu Homesteads, Portion of Grant 4595, containing approximately 15.317 acres, is situated at Ka'apahu Homesteads, Hāmākua, Hawai'i. The subject property's street address is 44-3099 Kula Kahiko Road.
2. **County Zoning.** Agricultural, 5 acres (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. **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-18-001829 was submitted to subdivide the subject TMK property into 3 lots. Further action on the subdivision application has been deferred pursuant to Planning Department deferral letter dated October 17, 2018, in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements for two (2) of the three (3) lots was acknowledged by Planning Department letter dated December 4, 2018. This variance application includes background history and circumstances and information regarding the pending subdivision application. Although the parcel is served by one water meter, additional water cannot be made available for the additional two (2) lots without extensive water system facilities improvements.
8. **Agency Comments and Requirements.**
 - a. State of Hawai'i-Department of Health (DOH): See attached memorandum dated December 21, 2018. **(Exhibit A)**.
 - b. No comments received from the County of Hawai'i Fire Department (HFD):
 - c. Department of Water Supply (DWS): See attached memoranda dated December 13, 2018. **(Exhibit B)** We have also attached their comments in response to the subdivision application. **(Exhibit C)**
 - d. No other agency comments were solicited and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated July 18, 2018, regarding the posting of a public notification sign on the subject property pursuant to Section 23-17(c) of the Hawai'i County Code (HCC). A picture of the posted sign was also submitted. The evidence also indicates that a notice of the application was sent to the surrounding property owners on October 9, 2018, as required by Section 23-17(a).

10. **Comments from Surrounding Property Owners or Public.**

- a. Petition dated December 26, 2018, objecting to the variance is endorsed by eight residents.
- b. Objection letter received from Mr. Oscar Gray, dated February 27, 2019.

11. **Time Extension.** The applicant's variance application was acknowledged by letter dated September 27, 2018, and additional time to review the application was required. The applicant granted the Planning Director an extension of time until April 30, 2019, for decision on the Variance Application.

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 three (3) lots in keeping with the existing A-5a zoning. Although a dedicable water system is a requirement of the code, it would be unreasonable for the subdividers alone to shoulder the costs associated with upgrading the DWS system to further service the subject property and the two (2) additional proposed subdivided lots. It would be unreasonable to expect the owners to construct the required service facilities upgrades and extensions to serve two (2) of the three (3) lots. The request is for only two (2) additional lots, so this variance request is reasonable. Therefore, 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 3-lot subdivision, a more reasonable alternative can be allowed through Rule 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 3-lot subdivision, the best use and manner of the development allows for individual rain water catchment system in keeping with the agricultural character of the area.

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

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

The DWS has indicated that the property is not able to be served with additional water beyond the one existing meter without the extension to the present water system facilities. Constructing water system improvements to extend/upgrade the DWS facilities or provide a private water system to DWS standards for the pending 3-lot subdivision would be placing excessive demands upon the applicant because of the extensive improvements and additions required to upgrade the existing DWS water system facilities. And, at an elevation of approximately 600 feet above sea level, the drilling of wells and construction of other water system improvements to DWS standards would also be unreasonable for a 3-lot subdivision.

The petition cites that there is not enough water to supply five more lots on Kula Kahiko Road, the subdivision request is for three (3) lots, not five (5) lots and all three (3) lots meets with the minimum lot size of 5 acres. The applicant is requesting that private water catchment system be allowed in lieu of the explanations stated above. The subject property is zoned Agricultural 5- acres (A-5a), not Agricultural 20 acres (A-20a) as mentioned in the Objection letter from Mr. Gray.

(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 annually) to support individual water catchment for two (2) of the three (3) lots, the granting of this variance would be consistent with the general purpose of the district. Water catchment is consistent with the intent of the policies of the general plan in that it will further housing and agricultural production opportunities in this agricultural area. Water catchment will not be materially detrimental to the public welfare as it serves only private parties.

Subject to conditions, 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 and the Hawai'i County General Plan.

DETERMINATION-VARIANCE CONDITIONS

The variance to permit the proposed 3-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 affecting the three (3) 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 State of Hawai'i Bureau of Conveyances by and at the cost and expense of the owners. A copy of the recorded document shall be supplied to the Planning Department for our files.

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, unless County dedicable public water system requirements and other requirements of HCC Chapter 23, Subdivisions, are met.
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-18-001829.

6. The owners, grantees, successors, and assigns agree and accept the fact that the County will not bear the responsibility of supplying additional public water to the subdivided lots. No further subdivision of the lots 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 will be allowed, nor will an 'Ohana Dwelling Unit be permitted or allowed.
8. Should the subdivision be allowed by the Planning Department, the applicant shall designate, in writing, which lot within the proposed subdivision will be assigned the existing meter. The applicant shall be informed that the existing meter shall not be shared with the other proposed lots and the water system piping between the lots shall not be interconnected in any way.
9. Any dwelling constructed on any created lot, not served by the DWS, 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 Hawai'i," as well as the DOH requirements related to water testing and water purifying devices.
10. In addition to the 6,000-gallon water storage capacity, for domestic consumption or potable uses, each permitted dwelling on a lot, not served by the DWS, shall also be provided with a **minimum** 3,000 gallon water storage capacity dedicated for firefighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible fire apparatus connector system and access routes, shall meet with the approval of 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 firefighting and emergency purposes.
11. 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 the lots, the owner(s) of the lots 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.
12. The pending subdivision application's (SUB-18-001829) 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.
13. 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, land use and the public's health, safety and welfare.

Jocelynn White & Lynn Nakamoto

April 30, 2019

Page 7

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:jaa

\\COH33\planning\public\Admin Permits Division\Variance\2018\VAR-18-000498 WhiteNakamoto. Water\APVL.docx

Encls: Agency Comments, Exhibits A-C

xc (ltr. only): DWS-Engineering Branch
HFD
SUB-18-001829
A. Surprenant, HCDP PPM (via e-mail)

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



9 24 AM

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

MEMORANDUM

DATE: December 21, 2018

TO: Mr. Michael Yee
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: Application: Variance VAR-18-000498
Applicant: JOCELYNN WHITE AND LYNN NAKAMOTO
Owners: JOCELYNN WHITE AND LYNN NAKAMOTO
Request: Variance from Chapter 23, Subdivision, Article 6,
Division 2, Improvements Required, Section 23-84
Water Supply
TMK: 4-4-011:006 (SUB-18-001829)

Public Water Systems: The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." Federal and state regulations define a public water system as a system that serves 25 or more individuals at least 60 days per year or has at least 15 service connections. All public water system owners and operators are required to comply with Hawaii Administrative Rules, Chapter 11-20 (HAR 11-20), and titled "Rules Relating to Public Water Systems". All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards. All new public water systems are required to demonstrate and meet minimum capacity requirements prior to their establishment, per HAR 11-20-29.5, titled "Capacity Demonstration and Evaluation." This requirement involves demonstration that the system will have satisfactory technical, managerial and financial capacity to enable the system to comply with safe drinking water standards and requirements.

EXHIBIT
A

122296

MW

Michael Yee
December 21, 2018
Page 2 of 3

Projects that propose development of new sources of potable water serving or proposed to serve a public water system must comply with the terms of HAR 11-20-29. This section requires that all new public water system sources be approved by the Director of Health (Director) prior to its use. Such approval is based primarily upon the submission of a satisfactory engineering report which addresses the requirements specified in HAR 11-20-29.

The engineering report must identify all potential sources of contamination and evaluate alternative control measures which could be implemented to reduce or eliminate the potential for contamination, including treatment of the water source. In addition, water quality analyses for all regulated contaminants, performed by a laboratory certified by the State Laboratories Division of the State of Hawaii, must be submitted as part of the report to demonstrate compliance with all drinking water standards. Additional parameters may be required by the Director for this submittal or additional tests required upon his or her review of the information submitted.

All sources of public water system sources must undergo a source water assessment which will delineate a source water protection area. This process is preliminary to the creation of a source water protection plan for that source and activities which will take place to protect the source of drinking water.

Projects proposing to develop new public water systems or proposing substantial modifications to existing public water systems must receive construction plans approval by the Director prior to construction of the proposed system or modification in accordance with HAR 11-20-30, titled "New and Modified Public Water Systems". These projects include treatment, storage and distribution systems of public water systems. The approval authority for projects owned and operated by a County Board or Department of Water or Water Supply has been delegated to them.

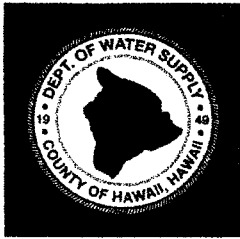
All public water systems must be operated by certified distribution system and water treatment plant operators as defined by HAR 11-25 titled, "Rules Pertaining to Certification of Public Water System Operators".

All projects which propose the use of dual water systems or the use of a non-potable water system in proximity to an existing potable water system to meet irrigation or other needs must be carefully design and operate these systems to prevent the cross-connection of these systems and prevent the possibility of backflow of water from the non-potable system to the potable system. The two (2) systems must be clearly labeled and physically separated by air gaps or reduced pressure principle backflow prevention devices to avoid contaminating the potable water supply. In addition backflow devices must be tested periodically to assure their proper operation. Further, all non-potable spigots and irrigated areas should be clearly labeled with warning signs to prevent the inadvertent consumption on non-potable water. Compliance with HAR Chapter 11-21, titled Cross-Connection and Backflow Control is also required.

All projects which propose the establishment of a potentially contaminating activity (as identified in the Hawai'i Source Water Assessment Plan) within the source water protection area of an existing source of water for a public water supply should address this potential and activities that will be implemented to prevent or reduce the potential for contamination of the drinking water source.

Michael Yee
December 21, 2018
Page 3 of 3

For further information concerning the application of capacity, new source approval, operator certification, source water assessment, backflow/cross-connection prevention or other public water system programs, please contact the SDWB at 586-4258.



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

December 13, 2018

TO: Mr. Michael Yee, Director
Planning Department

FROM: Keith K. Okamoto, Manager–Chief Engineer

SUBJECT: **Variance Application VAR 18-000498**
Applicant – Lynn R. Nakamoto and Jocelyn C. White
Tax Map Key 4-4-011:006 (SUB 18-001829)

2018 DEC 13 AM 7:55
MKT

We have reviewed the subject application and have the following comments and conditions.

The requirements from our memorandum to your department and copied to Mr. Roger D. Fleenor, LPLS, dated August 7, 2018, regarding the proposed subdivision, still stand.

Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,

Keith K. Okamoto, P.E.
Manager-Chief Engineer

TS:dfg

copy - Mr. Roger D. Fleenor, LPLS

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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.

EXHIBIT
B



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720

TELEPHONE (808) 961-8050 • FAX (808) 961-8657

August 7, 2018

2018 AUG 9 PM 2 25
PLANNING DEPARTMENT
COUNTY OF HAWAII

TO: Mr. Michael Yee, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: Preliminary Plat Map and Defer Action
Subdivision Application No. 18-001829
Applicant – Lynn R. Nakamoto and Jocelyn C. White
Tax Map Key 4-4-011:006

We have reviewed the subject application and have the following comments and conditions.

The subject parcel is served by an existing 5/8-inch meter (Account No. 680-22600).

Please be informed that water availability in this area is limited to one (1) unit of water, or one (1) 5/8-inch meter, per existing lot of record, which is limited to an average daily usage of 400 gallons. Each unit of water is equal to an average of 400 gallons per day, which is suitable for only one single-family dwelling.

Therefore, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, which may include, but not limited to source, storage, booster pumps, transmission, and distribution facilities, would be required.

Furthermore, the Department requests that the plat map be revised to show the location of the existing meter with the meter number, so that we can verify this service is assigned to the subject parcel. The applicant will be required to designate, in writing, which lot within the proposed subdivision will be assigned the existing meter. Should the existing meter or service lateral not front the parcel that it will serve, the existing meter or service lateral would need to be relocated to comply with the Department's Rules and Regulations.

Furthermore, the applicant shall be informed that the existing meter shall not be shared with the other proposed lots; and the water system piping between the lots shall not be interconnected in any way.

Should there be any questions, please contact Mr. Troy Samura of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,

Keith K. Okamoto, P.E.
Manager-Chief Engineer

TS:dfg

copy - Mr. Roger D. Fleenor, LPLS

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The Department of Water Supply is an Equal Opportunity provider and employer.

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EXHIBIT

C