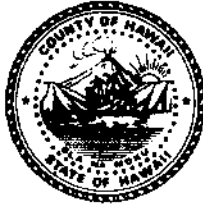


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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County of Hawai'i
PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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

January 29, 2021

Christy A. Logan
P.O. Box 390850
Keauhou, HI 96739

Dear Ms. Logan:

SUBJECT: VARIANCE DECISION - VAR-20-000603

Applicant: CHRISTY A. LOGAN
Owners: LAUPAMA & SHAWNA FUGA/PAULA L. ALU, TRUST
Request: Variance from Article 3, Division 4, Street Design, Section 23-41, Minimum Right-of-Way and Pavement Widths; Article 6, Division 2, Improvements Required, Sections 23-86, Requirements for Dedicable Street
Tax Map Key: (3) 7-2-006:004 (SUB-17-001699)

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-20-000603 subject to variance conditions. The variance grants relief for subdivision SUB-17-001699 from constructing minimum County dedicable roadway improvements 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 3, Division 4, Street Design, Section 23-41, Minimum Right-of-way (r-o-w) and Pavement Widths, Article 6, Division 2, Improvements Required, Sections 23-86, Standard for Dedicable Street, 23-93, Street Lights, & 23-95, Right-of-way Improvement.

BACKGROUND

1. **Location.** The referenced property, being Lot 70, of Pu'ukala-Kaulana Homesteads, being also Grant 4102, containing approximately 10.995 acres, is situated in Pu'ukala, North Kona, Island of Hawai'i, Hawai'i.
2. **County Zoning.** Agricultural, five acres (A-5a).
3. **State Land Use.** Agricultural (A).

4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Extensive Agriculture (ea).
5. **Subdivision Code Requirements.** Hawai'i County Code, Chapter 23, Subdivisions requires that subdivisions in the A-5a zoning district be served by minimum r-o-w and paving widths of 50-feet and 20-feet, respectively, in compliance with the Department of Public Works (DPW) Standard Detail (Std. Det.) R-25.
6. **Subdivision Request/PPM.** Subdivision application SUB-17-001699 was submitted to subdivide the subject TMK property. Action on the subdivision application has been deferred pursuant applicant's attempts to comply with Condition No. 3 of the letter of Tentative Approval dated August 19, 2019, regarding road improvement requirements in the subdivision file.
7. **Variance Application.** The variance request from roadway improvements was acknowledged by Planning Department letter dated December 14, 2020. This variance application includes background history and circumstances and information regarding the pending subdivision application. Narrative evidence of the existing roadway condition was presented in support of the request.

Existing conditions within the easement within Parcel 7-2-009:014 (40-foot wide r-o-w), allows access from Pu'ukala Road to the Homestead Road leading to the subject property is an existing 12-foot wide paved travel way within the 40-foot wide r-o-w. **The applicant proposes to retain the 40-foot r-o-w and widen the pavement to 20-feet, in keeping with the spirit of DPW Std. Det. R-25.**

8. **Variance Application (VAR-20-000603) Agency Comments and Requirements.**
 - a. Department of Public Works (DPW): See attached memorandum dated December 23, 2020. **(Exhibit A)**
 - b. County of Hawai'i Fire Department (HFD): See attached memorandum dated December 17, 2020. **(Exhibit B)**
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated November 25, 2020, 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. Evidence submitted throughout this variance application process also indicates that the surrounding property owners were informed as required by Section 23-17(a).

10. **Comments from Surrounding Property Owners or Public.** There was much negotiation with the neighborhood regarding this issue. For this application, a number of Kona Ocean View Properties' lot owners expressed objection to approval. Those objections primarily referred to legal rights of the subdivider for access over the private roadways. **This right has been demonstrated to the Planning Director through various documents presented.**

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):

There is no practical way to further expand the width of the access easement as a dwelling has been constructed in such location as to render that alternative impractical. Installing a roadway to dedicable County standards would require acquiring additional r-o-w, relocation of a newly constructed dwelling and would be an extremely cost prohibitive undertaking for this low-density development.

The existing easement, with 12-foot wide paved travel way within the 40-foot wide r-o-w, **after widening to a 20-foot pavement**, should be adequate for this 2-lot subdivision and will be beneficial to the adjoining lots of Kona Ocean View Properties.

The above special and unusual circumstances would deprive the applicant from developing this property and interferes with the best use of this property.

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

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

There is no practical way to widen the r-o-w and improve the roadway to County dedicable standards. The 12-foot wide paved travel way, **widened to 20-foot pavement**, with compacted gravel shoulders will allow for infrequent 2-way travel on the low-use road and should be adequate for the purposes of this existing low density subdivision and the proposed two (2) lot subdivision.

Given the projected low volume, low speed of traffic created by this 2-lot subdivision, there should be minimal 2-way traffic. As such, the widened 20-foot wide paved road and compacted graveled shoulders should be sufficient.

- (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):

The roadway variance authorizing use of a privately owned road, will not be detrimental to public welfare or burden County resources. The subdividers' plans are consistent with the existing land uses and will not have any adverse impact on the area's character or on neighboring properties and in fact will benefit the adjoining lots of Kona Ocean View Properties.

The proposed lots meet the minimum lot size for the A-5a zoning. The project is consistent with the intent and purpose of the Zoning and Subdivision Codes. The project is designed with lots for additional residential/agricultural use in keeping with the zoning. The Owners' plans are consistent with these designations.

DETERMINATION-VARIANCE CONDITIONS

The variance to permit the proposed 2-lot subdivision of the subject TMK property without providing a County dedicable roadway, and in lieu, utilizing a privately owned nondedicable road 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 this variance approval. This written agreement shall contain deed language, being covenants, conditions, and restrictions affecting the lots created by the proposed subdivision which are not serviced by a County dedicable roadway and instead utilizing the privately owned alternative roadway. The agreement shall specify that if a Homeowners' or Maintenance Association is created for purposes of upkeep of, and required repairs to the roadway improvements, that the owners of the subdivided lots shall participate in said association.

The agreement shall be duly recorded with 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 recorded, 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 approved subdivided buildable 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 subdivided properties.

It is also understood that they will use and maintain the privately owned roadway on their own without any expectation of governmental assistance to maintain the improvements. They shall also 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 r-o-w.

5. 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 lots. 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).
6. No condominium property regime will be allowed, nor will an 'Ohana Dwelling Unit be permitted or allowed on the lots resulting from SUB-17-001699.
7. The pending subdivision application's (SUB-17-001699) 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.
8. 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.

Christy A. Logan
January 29, 2021
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,



ZK
ZENDO KERN
Planning Director

JRH:jaa

\\coh33\planning\public\Admin Permits Division\Variance\2020\VAR-20-000603 Alu Road\APVL.docx

Encls.: Agency Comments, Exhibits A & B

xc: DPW
HFD
KCDP PPM (via e-mail)
SUB-17-001699

Chrystal Thomas Yamasaki, LPLS
Wes Thomas Associates
75-5749 Kalawa Street
Kailua-Kona, HI 96740-1818

Michael J. Matsukawa, Attorney at Law
Territorial Centre, Suite 201
75-5751 Kuakini Highway
Kailua-Kona, HI 96740

Association of Property Owners of Kona Ocean View Properties
P.O. Box 4599
Kailua-Kona, HI 96745-4599

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

Mitchell D. Roth
Mayor



Steven Ikaika Rodenhurst, P.E.
Director

Lee E. Lord
Managing Director

County of Hawai'i
DEPARTMENT OF PUBLIC WORKS
Aupuni Center
101 Pauahi Street, Suite 7 Hilo, Hawai'i 96720-4224
(808) 961-8321 • Fax (808) 961-8630
public-works@hawaiicounty.gov

MEMORANDUM

Date: December 23, 2020

To: Zendo Kern, Planning Director

From: Department of Public Works, Engineering Division *ML*

Subject: Application: Variance – 20-000603
Applicant: Christy A. Logan
Owners: Laupama & Shawna Fuga/Paula L. Alu, Trust
Request: Variance from Article 3, Division 4, Street Design, Section 23-41,
Minimum Right-of-Way and Pavement Widths; Article 6, Division
2, Improvements Required, Sections 23-86, Requirements for
Dedicable Street
Tax Map Key: 7-2-006.004

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

1. Grading work was performed on the subject parcel without a permit. The owner was notified to obtain a grading permit. No permit has been issued to date. DPW will not approve subdivision plans until a grading permit is issued for the grading work performed on the parcel.
2. The proposed subdivision is accessed off Puukala Road, a private road. The County of Hawaii, Department of Public Works (DPW) does not have jurisdiction over Puukala Road.
3. DPW does not have an objection to allowing subdivision access to be within a 40-foot Right-of-Way (ROW) in lieu of the required 50-foot ROW. The other requirements of DPW Standard Detail R-25, Agricultural Street (attached) still apply: 20-foot wide agricultural roadway with shoulders and swales. Where grades exceed 8% or greater, the roadway section shall be paved with 2" thick AC per note 3 on Standard Detail R-25. All other Access and Roadway Improvement requirements stated in the Tentative Approval dated August 19, 2019 shall still apply. The agricultural road is non-dedicable.
4. All earthwork and grading shall conform to Chapter 10 – Erosion and Sedimentation Control – of the Hawaii County Code

EXHIBIT

A

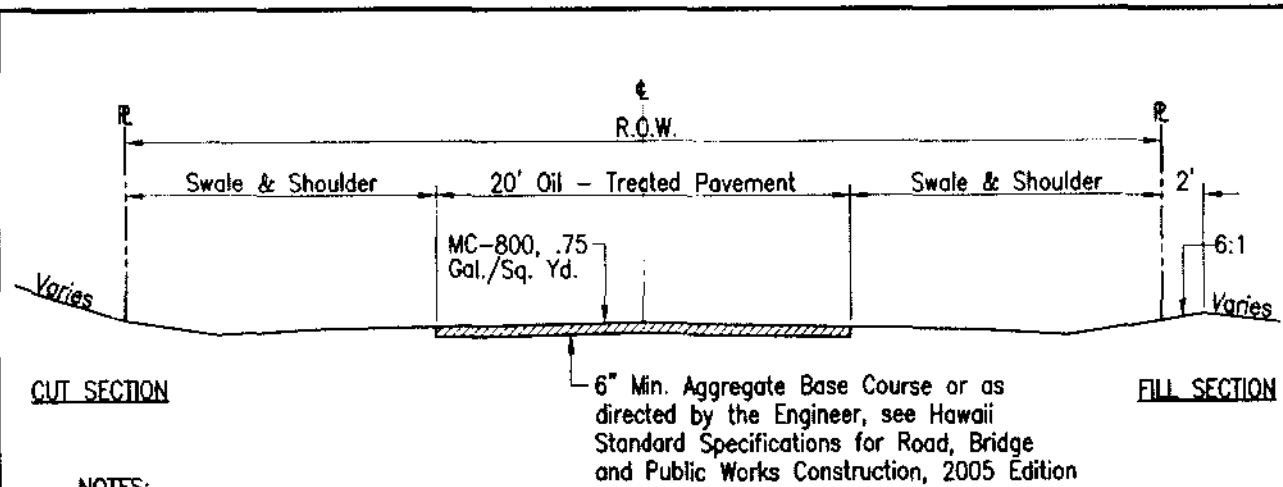
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Should there be any questions concerning this matter, please feel free to contact Natalie Whitworth of our Kona Engineering Division office at 323-4853.

NW

Enclosure

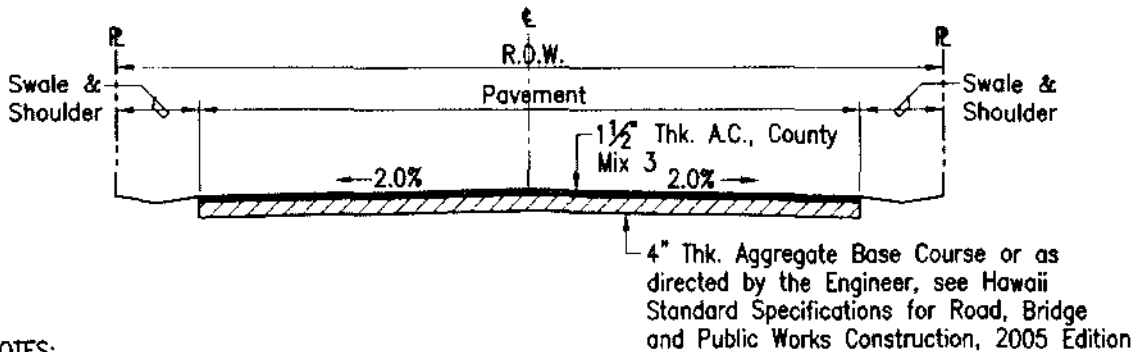
Copy: ENG-HILO/KONA



NOTES:

1. This street is only for areas zoned A-3 and over.
2. The oil-treatment shall conform to Section 409-Seal Coat Type 3 of the Dept. of Transportation Std. Specs. for Road & Bridge Construction, except that .4 gal./sq. yd. shall be used for the first application and .35 gal./sq. yd. shall be used for the second application.
3. Where grades are 8% or greater, the roadway section shall be paved with 2" Thk. A.C., County Mix 3.
4. See Std. Detail R-18 for applicable minimum pavement widths.

AGRICULTURAL STREET



NOTES:

1. This street is for residential and Ag-1 lots and shall not provide access to more than (6) six lots.

2. Minimum pavement and R/W widths shall be as follows:

Access (Lots)	Pavement Width	R/W Width
1	8'	12'
2	12'	16'
3	14'	18'
4 to 6	16'	20'

3. Maximum grade = 20%.
4. 4" Thk. Concrete Reinforced by 6x6 W2.9/W2.9 W.W.F. on 4" Thk. Aggregate Base Course may be used in lieu of the above section.
5. The existing drainage pattern shall not be altered with respect to adjoining properties.

PRIVATE DEAD-END STREET

NON-DEDICABLE STREETS

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director



Robert R.K. Perreira
Acting Fire Chief

County of Hawai'i
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Suite 2501 • Hilo, Hawaii 96720
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December 17, 2020

TO: ZENDO KERN, PLANNING DIRECTOR

FROM: ROBERT R. K. PERREIRA, ACTING FIRE CHIEF

SUBJECT: **Variance 20-000603**
Applicant: Christy A. Logan
Owners: Laupama & Shawna Fuga/Paula L. Alu, Trust
Request: Variance from Article 3, Division 4, Street Design, Section 23-41, Minimum right-of-Way and Pavement Widths; Article 6, Division 2, Improvements Required, Sections 23-86, Requirements for Dedicable Street
Tax Map Key: (3) 7-2-006:004 (SUB-17-001699)

In regards to the above-mentioned Variance application, the Hawai'i Fire Department has no objections.

If there are any further questions, please contact the Fire Prevention Bureau at 932-2911.

Robert R. K. Perreira
Acting Fire Chief

RRKP:cf

