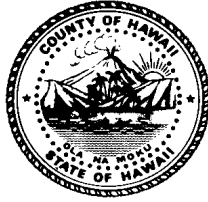


Mitchell D. Roth
Mayor

Lee E. Lord
Managing 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

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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

March 7, 2022

Ms. Kim Chiodo
Land Planning Hawai'i, LLC
194 Wiwo'ole Street
Hilo, HI 96720

Dear Ms. Chiodo:

SUBJECT: Application: SUBDIVISION VARIANCE – PL-SVAR-2022-000009
Applicant: KIM CHIODO, LAND PLANNING HAWAII, LLC
Owners: MUD LANE PROPERTIES, LLC/ETHOS PROPERTIES, LLC
Request: Variance from Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84,
Water Supply
Tax Map Key: (3) 4-7-007:050 (PL-SUB-2021-000019)

Upon review of your variance application, the Deputy Planning Director certifies the **approval** of Variance PL-SVAR-2022-000009, subject to variance conditions. The variance grants relief for PL-SUB-2021-000019 from constructing minimum County dedicable water supply system improvements for three (3) of the four (4) 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).

Ms. Kim Chiodo
Land Planning Hawai'i, LLC
March 7, 2021
Page 2

BACKGROUND

1. **Location.** The referenced property, a Portion of Lot 15, Being a Portion of Land Commission Award 8559-B, Apana 2, Certificate of Boundaries No. 33, and Deed: Kamehameha IV, Certificate of Boundaries No. 34, containing a total of approximately 174.4272 acres, is situated in Waikoekoe, Hāmākua, Hawai'i.
2. **County Zoning.** Agricultural, 40 acres (A-40a).
3. **State Land Use.** Agricultural (A).
4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Important Ag. Lands (ial) and Extensive Agriculture (ea).
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 PL-SUB-2021-000019 was submitted to subdivide the subject TMK property into 4 lots. Further action on the subdivision application has been deferred pursuant to letter of December 8, 2021, in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements for four (4) lots was acknowledged by Planning Department letter dated January 12, 2022. This variance application includes background history and circumstances and information regarding the pending subdivision application. Please be informed that the property is served by one meter but the Department of Water Supply cannot provide any additional water service for the proposed 3 more lots.
8. **Agency Comments and Requirements.**
 - a. State of Hawai'i-Department of Health (DOH): See attached memoranda dated January 12, 2022. **(Exhibit A)**
 - b. County of Hawai'i Fire Department (HFD): The HFD did not comment on this application as of this date. We have, however, attached comments for a similar application. **(Exhibit B)**

Ms. Kim Chiodo
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March 7, 2021
Page 3

- c. Department of Water Supply (DWS): See attached memoranda dated February 14, 2022 **(Exhibit C)**. We have also attached comments for the associated subdivision application **(Exhibit D)**.
 - d. No other agency comments were solicited, and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated January 17, 2022, 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). Pictures of the posted sign was also submitted. The evidence also indicates that a notice of the application was served upon the surrounding property owners as required by Section 23-17(a).
10. **Comments from Surrounding Property Owners or Public.** One adjoining property owner responded, primarily concerning retention of their existing access. See attached e-mail dated February 22, 2022 **(Exhibit E)**. There were no other comments received from any neighbors 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 two (2) lots in keeping with the existing A-5a zoning. Although a dedicable water system is a requirement of the code, the DWS indicates that the property is beyond the service limits of their existing water system and it would be unreasonable for the subdividers alone to shoulder the costs associated with extending/upgrading the DWS system to service the subject subdivision and three (3) of its four (4) lots. It would be unreasonable to expect the owners to construct the required service facilities upgrades and extensions to serve the lots. The request is for only three (3) of the four (4) 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 4-lot subdivision, a more reasonable alternative can be

Ms. Kim Chiodo
Land Planning Hawai'i, LLC
March 7, 2021
Page 4

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 4-lot subdivision, the best use and manner of the development allows for individual rainwater catchment system in keeping with the rural, 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 existing water system is unavailable to serve the additional 3 lots; and the existing water system facilities cannot any further support water service to the subdivision. Constructing water system improvements to extend the DWS facilities or provide a private water system to DWS standards for the pending 4-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 2,700 feet above sea level, the drilling of wells and construction of other water system improvements to DWS standards would also be unreasonable for this subdivision.

(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 the 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

Ms. Kim Chiodo
Land Planning Hawai'i, LLC
March 7, 2021
Page 5

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 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 affecting the lots created by the proposed subdivision which is 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.

Ms. Kim Chiodo
Land Planning Hawai'i, LLC
March 7, 2021
Page 6

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 PL-SUB-2021-000019.
6. The owners, grantees, successors, and assigns agree and accept the fact that the County will not bear the responsibility of supplying 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. 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.
9. 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.
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 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


Ms. Kim Chiodo
Land Planning Hawai'i, LLC
March 7, 2021
Page 7

by the DWS.

11. The pending subdivision application's (PL-SUB-2021-000019) 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, land use and the public's health, safety and welfare.

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

Sincerely,

DocuSigned by:

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JEFFREY W. DARROW
Deputy Planning Director

JRH:cn

\\coh01\planning\public\Admin Permits Division\Variance\2022\PL-SVAR-2022-000009 Mud Lane Water\APVL.docx

Enclosures: Agency Comments, Exhibits A-C
Agency Subdivider comments, Exhibit D
Surrounding Property Owner comment, Exhibit E

Via email: DWS-Engineering Branch
HFD
PL-SUB-2021-000019 (file/link)
Chrystal Thomas Yamasaki, LPLS, Wes Thomas Associates

Via email w/encls: Mud Lane Properties, LLC/Ethos Properties, LLC
G. Bailado, GIS Section (via email)



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

MEMORANDUM

DATE: January 12, 2022

TO: Mr. Zendo Kern
Planning Director, County of Hawaii

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: SUBDIVISION VARIANCE PL-SVAR-2022-000009
Applicant: KIM CHIODO, LAND PLANNING HAWAII, LLC
Owners: MUD LANE PROPERIES, LLC- ETHOS PROPERTIES, LLC
Request: Variance from Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84, Water Supply
TMK: 4-7-007:050 (PL-SUB-2021-000019)

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.

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.

Zendo Kern
January 13, 2022
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.

EXHIBIT A

**HAWAII FIRE DEPARTMENT . COUNTY OF HAWAII .
HILO, HAWAII 96720**

DATE January 13, 2022

Memorandum

TO : Planning Department, County of Hawaii

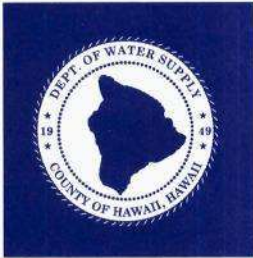
FROM : Fire Inspector Edward Kawasaki, Fire Prevention Bureau, County of Hawaii

SUBJECT : Applicant: KIM CHIODO, LAND PLANNING HAWAII, LLC
TMK: (3) 8-7-009:002 (SUB-15-001478)
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-84, Water Supply

The Hawaii Fire Department has no issues with this variance as long as the following criteria are met:

- Fire Department Access shall comply with chapter 18 of the Hawaii State Fire Code and NFPA1141 (Fire Protection Infrastructure for Land Development in Wildland, Rural, and Suburban Areas)
- Fire Department Water Supply shall comply with chapter 18 of the Hawaii State Fire Code and NFPA1142 (Water Supplies for Suburban and Rural Firefighting)

Edward Kawasaki
Fire Inspector II
Fire Prevention Bureau



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

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

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

February 14, 2022

COH PLANNING DEPT
FEB 15 2022 PM 2:16

REC'D HAND DELIVERED

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: **Subdivision Variance PL-SVAR-2022-000009**
Applicant: Kim Chiodo, Land Planning Hawai'i, LLC
Subdivider: Mud Lane Properties, LLC/Ethos Properties, LLC
Tax Map Key (3) 4-7-007:050 (PL-SUB-2021-000019)

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

Our comments and conditions stated in our December 1, 2021, letter regarding the subject subdivision application still stand.

We have no objection to the applicant's proposed use of private rainwater catchment systems to provide water to each of the proposed additional lots. However, we cannot approve or comment as to the adequacy of those systems, as they do not meet the requirements of the Department's Water System Standards.

We recommend that the owners consult with the County of Hawai'i, Planning Department, Department of Public Works and/or the State of Hawai'i, Department of Health, to determine any other guidelines, recommendations, or regulations regarding the use of private rainwater catchment systems.

Prior to final subdivision approval being granted, the applicant must inform our Department, in writing, which lot within the proposed subdivision will be assigned the existing service of the subject parcel, Account No. 610-65010.

Should there be any questions, please contact Mr. Ryan Quitariano of our Water Resources and Planning Branch at (808) 961-8070, extension 256.

Sincerely yours,

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

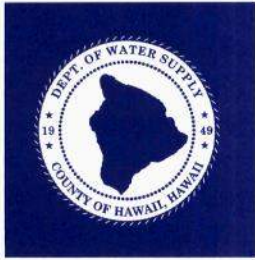
RQ:dfg

copy – DWS Customer Service Sections (Hilo and Waimea)

EXHIBIT C

... *Water, Our Most Precious Resource* ... *Ka Wai A Kāne* ...

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



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAI'I

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAI'I 96720

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

December 1, 2021

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

**SUBJECT: Preliminary Plat Map and Defer Action
Subdividers – Mud Lane Properties, LLC/Ethos Properties, LLC
Tax Map Key 4-7-007:050 (PL-SUB-2021-000019)**

COH PLANNING DEPT
DEC 2 2021 PM 2:31
REC'D HAND DELIVERED

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. 610-65010).

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

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 (808) 961-8070, extension 255.

Sincerely yours,

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

TS:dfg

copy - Wes Thomas Associates
Mud Lane Properties, LLC
Land Planning Hawai'i, LLC
Ethos Properties, LLC

EXHIBIT D

... Water, Our Most Precious Resource ... Ka Wai A Kāne ...

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

Mori, Ashley

From: Keith Gendreau <gendreau@epic-hi.com>
Sent: Tuesday, February 22, 2022 4:31 PM
To: Planning Internet Mail
Subject: Correction...bold and underlined...Public Comment on Water Variance Application PL-SV AR-22-000009

From: Keith Gendreau <Gendreau@epic-hi.com>
Date: February 22, 2022 at 3:48:15 PM HST
To: planning@hawaiicounty.gov
Subject: **Public Comment on Water Variance Application PL-SV AR-22-000009**

Hawaii County Planning Department
101 Pauahi St.
Hilo, HI 96720

RE: Public Comment on Water Variance Application PL-SV AR-22-000009
TMK: (3) 4-7-007:050

The undersigned has reviewed the materials submitted by Mud Lane Properties LLC & Ethos Properties LLC for the subdivision of that certain real property located on Mud Lane and designated on the tax maps of the Third Taxation Division of the State of Hawaii as TMK and Sub No. referenced above.

We are the owners of property adjacent to the subdivision property, being that certain real property designated on the tax maps of the Third Taxation Division of the State of Hawaii as
TMK: (3) 4-7-007: 051

Our property has an easement over and across a portion of the property being subdivided which easement is for access purposes. While nothing is noted on the subdivision map, we want to ensure that the subdivision improvements being made by the developer will not unreasonably interfere with our use of the easement.

Our preference and comment would be that their access be limited to the southern portion of their property, alongside their other proposed access lanes. However, we have no objection per se, to the subdivision itself, we just want to ensure that our easement which is noted in the Bureau of Conveyances of the State of Hawaii and which is noted as an encumbrance on the deed for the subdivided property is not unreasonably interfered with.

Thank you,

EXHIBIT E

Keith Gendreau