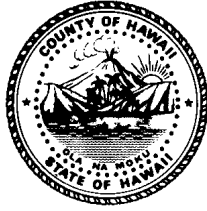


Mitchell D. Roth  
Mayor

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

September 30, 2022

Mr. Dylan Shropshire  
P. O. Box 1005  
Hilo, HI 96720

e-mail: [dylan@bigislandgrown.com](mailto:dylan@bigislandgrown.com)

Dear Mr. Shropshire:

**SUBJECT: Application: SUBDIVISION VARIANCE – PL-SVAR-2022-000016**  
**Applicant: DYLAN SHROPSHIRE**  
**Owner: MOSEMAN, RYAN AND ARIEL**  
**Request: Variance from Chapter 23, Subdivisions, Article 6,**  
**Division 2, Improvements Required, Section 23-84,**  
**Water Supply**  
**Tax Map Key: (3) 8-7-007:028 (PL-SUB-2021-000028)**

Upon review of your variance application, the Deputy Planning Director certifies the **approval** of Variance PL-SVAR-2022-000016, subject to variance conditions. The variance grants relief for PL-SUB-2021-000028 from constructing minimum County dedicable water supply system improvements for 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).

**BACKGROUND**

1. **Location.** The referenced property, being Lot C, also being a Portion of Grant 1973 to K. Pahua, containing a total of approximately 21.85 acres, is situated in Ka'oho 1<sup>st</sup> and 3<sup>rd</sup>, South Kona, Hawai'i.

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 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-2021-000028 was submitted to subdivide the subject TMK property into four (4) lots. Further action on the subdivision application has been deferred pursuant to letter of March 2, 2022, 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 June 23, 2022. This variance application includes background history and circumstances and information regarding the pending subdivision application. Please be informed that the property is not within the present service limits of the Department of Water Supply.
8. **Agency Comments and Requirements.**
  - a. State of Hawai'i-Department of Health (DOH): See attached memo dated July 1, 2022 **(Exhibit A)**.
  - b. County of Hawai'i Fire Department (HFD): See attached memo dated July 14, 2022 **(Exhibit B)**.
  - c. Department of Water Supply (DWS): See attached memo dated July 25, 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 July 11, 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

were also submitted. Evidence dated July 8, 2022, indicates that a notice of the application was sent to the surrounding property owners as required by Section 23-17(a).

10. **Comments from Surrounding Property Owners or Public.** There were no comments received from any neighbors or the public.
11. **Time Extension:** The applicant's variance application was acknowledged by letter June 23, 2022, and additional time to review the application was required. The Applicant granted the Planning Department an extension of time for decision on the variance until September 30, 2022.

#### **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 four (4) lots in keeping with the existing A-5a zoning. Although a dedicable water system is a requirement of the code, the Department of Water Supply (DWS) indicates that the property is beyond the service limits of their existing water system, and extensive improvements and additions, which may include, but not limited to source, storage, booster pumps, transmission, and distribution facilities, would be required. Therefore, it would be unreasonable for the subdividers alone to shoulder the costs associated with extending/upgrading the Department of Water Supply (DWS) system to service the subject neighborhood. The request is for four (4) lots, so this variance request is reasonable. Therefore, in lieu of constructing water system improvements to either extend/upgrade the Department of Water Supply (DWS) facilities, the owners are proposing to provide an individual private water wells to DWS standards for the pending 4-lot subdivision.

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 these four (4) lots subdivision, the best use and manner of the

development would allow for individual potable private well systems for domestic consumption, as well as for firefighting purposes for all future dwellings.

The subject property was bequeathed to the current owners with the passing of their father. The partition of the parcel will allow the owners to obtain individual fee simple ownership of the subdivided parcels in lieu of having owners receiving individual interest in one parcel.

**(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 the lots; and the existing water system facilities cannot support water service to the subdivision. Constructing water system improvements to extend the DWS facilities 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. Also, there is **inadequate** rainfall (approximately 35 inches to 50 inches annually) to support minimum rainfall requirements for a Rule 22-4 variance. The granting of this variance can be supported by **Section 23-84, Water Supply** of the Subdivision Code, which requires all new subdivisions laid out after December 21, 1996, shall be provided with a water system meeting with the minimum requirements of the County department of water supply." Therefore, the only reasonable alternative would be for the owners to construct private water wells to satisfy the subdivision requirements for additional lots.

The applicant has stated in its background report that the private water wells will be outfitted with a pump that can provide 400+ gallons of water per day. Also, the output from the well will be equal to or more than the standard of 400 gallons per day of average daily usage, which is typically required by the Department of Water Supply (DWS) for residential water service.

***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 intent and purpose of requiring a water system for and within the proposed subdivision is to assure that adequate water is available for human consumption and fire protection.

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

Subject to conditions, granting of the variance will not cause substantial, adverse impact to the area's character or to adjoining properties and is consistent with the general purpose of the zoning district, and the intent and purpose of the Zoning Code and subdivision Code and the County of Hawaii's General plan.

Given that the subdivision can qualify under **Section 23-84. Water Supply** of the Subdivision Code (Chapter 23), 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 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.

If 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 PL-SUB-2021-000028.
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 potable well 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. The applicant shall establish restrictive CC&Rs setting forth the specific requirements, and provisions requiring installation of individual potable private well systems.
11. Owners consult with the Department of Land and Natural Resources – Commission on Water Resource Management (CWRM) to confirm if a water well is allowed on the subject properties.
12. Owners shall comply with any conditions set forth by the County of Hawaii – Department of Water Supply.
13. 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.
14. The pending subdivision application’s (PL-SUB-2021-000028) 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.
15. 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.

Mr. Dylan Shropshire  
PL-SVAR-2022-000016  
Approval Letter  
September 30, 2022  
Page 8

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,

*Zendo Kern*

Zendo Kern (Oct 6, 2022 12:10 HST)

ZENDO KERN  
Planning Director

LHN:ta

\\coh01\planning\public\Admin Permits Division\Variance\2022\PL-SVAR-2022-000016 Moseman\APVL.docx

Enclosures: Agency Comments, Exhibits A-D

Via Email: DWS-Engineering Branch  
HFD

Email

w/encls: Alex Gerken, GIS Section (via email)



## Mori, Ashley

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**From:** Honda, Eric T. <Eric.Honda@doh.hawaii.gov>  
**Sent:** Friday, July 1, 2022 11:53 AM  
**To:** Planning Internet Mail  
**Subject:** PL-SVAR-2022-000016  
**Attachments:** PL-SVAR-2022-000016 TMK8-7-007--028.doc

Eric Honda  
District Environmental Health Program Chief  
Hawaii District Health Office  
(808) 933-0917  
Eric.honda@doh.hawaii.gov



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

MEMORANDUM

DATE: July 1, 2022

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

FROM: Eric Honda  
District Environmental Health Program Chief

SUBJECT: Application: SUBDIVISION VARIANCE – PL-SVAR-2022-000016  
Applicant: DYLAN SHROPSHIRE  
Owners: RYAN AND ARIEL MOSEMAN  
Request: Variance from Chapter 23, Subdivisions, Article 6,  
Division 2, Improvements Required, Section 23-84  
Water Supply  
TMK: 8-7-007:028 (PL-SUB-000028)

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**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  
July 5, 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.

## Mori, Ashley

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**From:** Baybayan, Clinton  
**Sent:** Thursday, July 14, 2022 9:21 AM  
**To:** Planning Internet Mail  
**Cc:** Nelson, Catherine; Sugihara, Doriann; Kawasaki, Edward  
**Subject:** PL-SVAR-2022-000016 EPIC Review Submittals: Shropshire/Moseman  
**Attachments:** PL-SVAR-2022-000016 EPIC Review Submittals ShropshireMoseman, 7-14-22 PD....pdf; 7267ddf4-98d2-41f4-8c01-623eb5479785.pdf

Good Morning,

Please see HFD's response regarding the proposed Subdivision for Shropshire/Moseman. Let me know if you have any questions.

Mahalo,

Clinton K. Baybayan  
Fire Captain  
Hawaii Fire Department  
Fire Prevention Branch  
(W) 808-323-4761

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

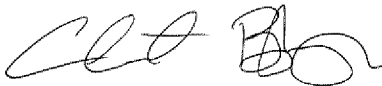
**DATE** July 14, 2022

**Memorandum**

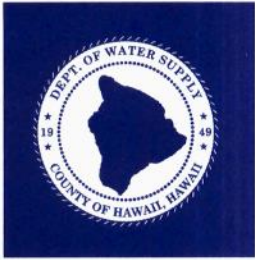
**TO** : PLANNING DEPARTMENT, COUNTY OF HAWAII  
**FROM** : CAPTAIN CLINTON BAYBAYAN, FIRE PREVENTION BUREAU  
**SUBJECT:** **PL-SVAR-2022-000016 EPIC REVIEW SUBMITTALS:**  
**SHROPSHIRE/MOSEMAN**

In regards to the above mentioned project, Fire Department Access and Water Supply shall comply with Chapter 18 of the 2018 Hawaii State Fire Code and Chapter 26 of the Hawaii County Code. For any questions please email [Clinton.Baybayan@hawaiicounty.gov](mailto:Clinton.Baybayan@hawaiicounty.gov) or call 808-323-4761.

Respectfully Submitted,



Clinton Baybayan  
Fire Prevention Captain  
Fire Prevention Branch  
Hawaii Fire Department



**DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII**

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

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

July 25, 2022

COH PLANNING DEPT  
JUL 28 2022 AM 7:53  
REC'D HAND DELIVERED

TO: Mr. Zendo Kern, Director  
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: **Variance Application No. PL-SVAR-2022-000016**  
**Subdivider – Moseman, Ryan P. and Arial L.**  
**Tax Map Key 8-7-007:028**

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

Please be informed that the subject property is not within the service limits of the Department's existing water system facilities.

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 be limited to source, storage, booster pumps, transmission, and distribution facilities, would be required.

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

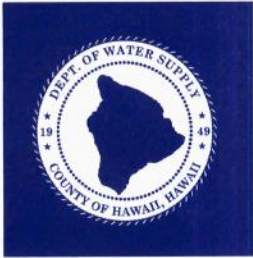
TS:dfg

copy – Mr. Ryan P. and Ms. Arial L. Moseman  
dlb & Associates

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

February 15, 2022

COH PLANNING DEPT  
FEB 16 2022 PM2:15

REC'D HAND DELIVERED

TO: Mr. Zendo Kern, Director  
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

**SUBJECT: Preliminary Plat Map and Defer Action  
Subdivider – Moseman, Ryan P. and Ariel L.  
Tax Map Key 8-7-007:028 (PL-SUB-2021-000028)**

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

Please be informed that the subject property is not within the service limits of the Department's existing water system facilities.

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 be limited to source, storage, booster pumps, transmission, and distribution facilities, would be required.

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 - dlb & Associates  
Mr. Ryan P. and Ms. Ariel L. Moseman

EXHIBIT D

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

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