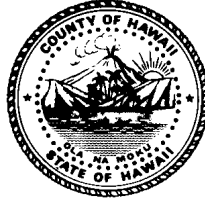


Mitchell D. Roth
Mayor

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 19, 2022

Mr. Byron M. Fox
Waikōloa Mauka Land Corp.
c/o TDA Inc.
2025 Pioneer Court
San Mateo, CA 94403
e-mail: byronmfox@gmail.com

Dear Mr. Fox:

SUBJECT: Application: VARIANCE | PL-SVAR-2022-000018
Applicant: WAIKŌLOA MAUKA LAND CORP.
Owners: WAIKŌLOA MAUKA LAND CORP.
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply
Tax Map Key: (3) 6-8-002:001 (PL-SUB-2021-000051)

Upon review of your Variance Application, the Planning Director certifies the **approval** of Variance PL-SVAR-2022-000018 subject to variance conditions. The variance grants relief for PL-SUB-2021-000051 from constructing minimum County dedicable water supply system for the two (2) 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 10, also being a portion of the Government Land of Nienie, containing 1,689.682 acres. It is in the Waikoloa Ranch Lots Subdivision, Section B (File Plan 1139). Situated on the makai side of the Mamalao Highway (Highway 190), approximately 3 miles north or Kohala side of the Waikoloa/Mamalao Highway intersection.

Mr. Byron M. Fox
Waikoloa Mauka Land Corp.
c/o TDA Inc.
Variance Approval Letter
PL-SVAR-2022-000018
September 19, 2022
Page 2

2. **County Zoning.** Agricultural – 20 Acres (A-20a).
3. **State Land Use.** Agricultural (A).
4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Extensive Agriculture (ea) and Important Agricultural Lands (ial).
5. **Subdivision Code Requirements.** Hawai‘i County Code, Chapter 23, Subdivisions 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-2021-000051 was submitted to subdivide the subject property into two (2) lots 585 acres each.
7. **Variance Application.** The variance request from water supply improvements was acknowledged by Planning Department letter dated August 5, 2022. This variance application includes background history and circumstances and information regarding the pending subdivision application. The subject property is not within the service limits of the DWS’s existing water system facilities. .
8. **Variance Application (PL-SVAR-2022-000018) Agency Comments and Requirements.**
 - a. The State of Hawai‘i-Department of Health (DOH): See attached memorandum dated August 9, 2022. **(Exhibit A)**
 - b. County of Hawai‘i Fire Department (HFD): See attached memorandum dated May 26, 2022. **(Exhibit B)**
 - c. The Department of Water Supply (DWS): See attached memorandum dated September 1, 2022. **(Exhibit C)** We have also attached their comments in response to the 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 August 15, 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 August 10, 2022, indicates that a notice of the application was sent to the surrounding property owners as required by Section 23-17(a).

Mr. Byron M. Fox
Waikoloa Mauka Land Corp.
c/o TDA Inc.
Variance Approval Letter
PL-SVAR-2022-000018
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Page 3

10. **Comments from Surrounding Property Owners or Public.** E-Mail in support of Subdivision Variance (PL-SVAR 2022-000018) received on August 29, 2022, from Brian Broach.
11. **Water Supply.** The Subdivision Code requires that all new subdivisions provide water system meeting the minimum requirements of the County of Hawai'i – Department of Water Supply (DWS).

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

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-20a 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 its two (2) 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 two (2) 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 2-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 2-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 the lots; and the existing water system facilities cannot 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 2-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 1,000 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):

There is **inadequate** rainfall (approximately 15 inches to 25 inches annually) to support minimum rainfall requirements for a Rule 22-4 variance. However, the granting of this variance can be supported by Rule 22-6, Exceptions for Large Lot subdivisions as the proposed lots will average greater than 80.0 acres (four times the 20-acre required by district) with each lot consisting of approximately 585 acres in size. This is consistent with the general purpose of the district. Water catchment is consistent with Rule 22, 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 subdivision qualifies under Rule 22-6, 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 2-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:

The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.

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.

2. 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.

3. 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.
4. 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-2021-000051).

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 by the DWS.
11. The pending subdivision application’s (PL-SUB-2021-000051) 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.

Mr. Byron M. Fox
Waikoloa Mauka Land Corp.
c/o TDA Inc.
Variance Approval Letter
PL-SVAR-2022-000018
September 19, 2022
Page 7

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 (Sep 22, 2022 08:49 HST)
ZENDO KERN
Planning Director

LHN:cn

\\COH33\planning\public\Admin Permits Division\Variance\2022\PL-SVAR-2022-000018 Waikoloa Mauka Land Corp.docx

Enclosures: Agency Comments (Exhibits A-D)

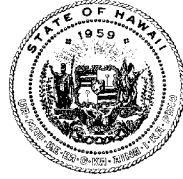
cc: (via email) DPW-Engineering
DWS-Engineering
Hawai'i County Fire Department
Alex Gerken, GIS Section
Sidney Fuke, Planning Consultant

Mori, Ashley

From: Honda, Eric T. <Eric.Honda@doh.hawaii.gov>
Sent: Tuesday, August 9, 2022 2:17 PM
To: Planning Internet Mail
Subject: PL-SVAR-2022-000018
Attachments: PL-SVAR-2022-000018 TMK6-8-002--001.doc

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

EXHIBIT A



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

MEMORANDUM

DATE: August 9, 2022

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

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: VARIANCE (PL-SVAR-2022-000018)
Applicant: BYRON M. FOX
Owners: WAIKOLOA MAUKA LAND CORP.
Request: Variance form Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84,
Water Supply
TMK: 6-8-002:001 (PL-SUB-2022-000051)

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

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.

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

From: Baybayan, Clinton
Sent: Tuesday, August 9, 2022 3:36 PM
To: Planning Internet Mail
Cc: Sugihara, Doriann; Kawasaki, Edward
Subject: HFD Comments, Request for Comments | TMK: 6-8-002:001 | PL-SVAR-2022-000018 (Waikoloa Mauka Land Corp) | PL-SUB-2022-000051
Attachments: Waikoloa Mauka Land Corp, 8-9-22 PDF.PDF

Good Afternoon,
Please see attached comments regarding the Waikoloa Mauka Land Corp. Subdivision (PL-SVAR-2022-000018, PL-SUB-2022-000051). Let me know if you have any questions.

Thank You,

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

EXHIBIT B

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

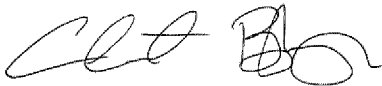
DATE August 9, 2022

Memorandum

TO : LARRY NAKAYAMA, PLANNING DEPARTMENT, COH
FROM : CAPTAIN CLINTON BAYBAYAN, FIRE PREVENTION BRANCH
SUBJECT: **PL-SVAR-2022-000018 WAIKOLOA MAUKA LAND CORP.**

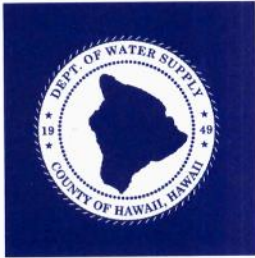
In regards to the above mentioned project, Fire Department Access and Water Supply shall comply with Chapter 18 of the 2018 Hawaii State Fire Code and Chapter 26 of the Hawaii County Code. For any questions please email Clinton.Baybayan@hawaiicounty.gov or call 808-323-4761.

Respectfully Submitted,



Clinton Baybayan
Fire Prevention Captain
Fire Prevention Branch
Hawaii Fire Department

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

September 1, 2022

COH PLANNING DEPT
SEP 2 2022 PM2:04

REC'D HAND DELIVERED

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: **Variance Application (PL-SVAR-2022-000018)**
Applicant: Byron M. Fox
Owners: Waikōloa Mauka Land Corp.
Tax Map Key (3) 6-8-002:001 (PL-SUB-2022-000051)

We have reviewed the subject application and our comments to you in our letter dated July 11, 2022, still stand.

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

Sincerely yours,

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

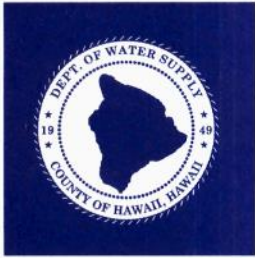
RQ:dfg

copy – Waikōloa Mauka Land Corp.
Mr. Sidney Fuke, Planning Consultant

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 HAWAII

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

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

July 11, 2022

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: Preliminary Plat Map and Defer Action
Subdivider: Waikōloa Mauka Land Corp.
Tax Map Key 6-8-002:001 (PL-SUB-2022-000051)

COH PLANNING DEPT
JUL 12 2022 PM 2:34
REC'D HAND DELIVERED

We have reviewed the preliminary plat map for the subject application and have the following comments.

Please be informed that the nearest water system in the area is privately owned and operated. Water availability and necessary offsite water system improvements should be determined by the Hawai'i Water Service Company.

For your information, pursuant to Section 23-84 of the Hawai'i County Code regulating subdivisions, the following minimum requirements must be complied with for any subdivision approval:

1. Provide a water system designed to deliver water at adequate pressure and volume under peak-flow conditions in accordance with the Water System Standards, State of Hawai'i, and the Rules and Regulations of the Department of Water Supply. The water system shall include, but not be limited to, the installation of the necessary distribution pipeline, fire hydrants, and service laterals.
2. Submit construction plans for our review and approval.
3. Pay a fee of four-tenths of one percent (0.4%) of the estimated cost for the construction of the water system, but not less than \$50.00, to cover the cost for plan review, testing, and inspection.

Should there be any questions, please contact Mr. Ryan Qutoriano 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 – Waikōloa Mauka Land Corp.
Engineers Surveyors Hawai'i, Inc.

EXHIBIT D

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

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