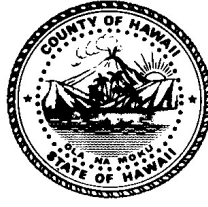


Mitchell D. Roth  
Mayor

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

November 2, 2022

Mr. Carlos Grijalva  
P.O. Box 173  
Honolulu, HI 96728-0173  
e-mail: [carlos.arden@gmail.com](mailto:carlos.arden@gmail.com)

Dear Mr. Grijalva:

**SUBJECT: Application: VARIANCE | PL-SVAR-2022-000019**  
**Applicant: CARLOS GRIJALVA**  
**Owners: ARDEN & CARLOS GRIJALVA**  
**Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply**  
**Tax Map Key: (3) 2-9-001:012 (PL-SUB-2022-000039)**

Upon review of your Variance Application, the Planning Director certifies the **Approval** of Variance PL-SVAR-2022-000019, subject to variance conditions. The variance grants relief for PL-SUB-2021-000039 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).

**BACKGROUND**

- 1. Location.** The referenced properties, Lot 14 & 15, Hakalau Iki House Lots, at Hakalau Iki, South Hilo, Being Grants 6021 and 6022, containing a total of approximately 1.3028 acres (56,754 sq. ft.), is situated in South Hilo, Hawai'i.

2. **County Zoning.** Single-family Residential – 7,500 sq. ft.
3. **State Land Use.** Urban.
4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Low Density Urban (Idu) and Important Agricultural Lands (ial).
5. **Subdivision Code Requirements.** The subdivision code requires that subdivisions be served by a water system meeting the minimum requirements of the County Department of Water Supply (DWS) and be provided with water mains and fire hydrants installed to and within the subdivision in accordance with the rules and regulations of the DWS.
6. **Subdivision Request/PPM.** Subdivision application PL-SUB-2022-000039 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 February 17, 2022, in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements for three (3) of the four (4) lots was acknowledged by Planning Department letter dated September 21, 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 2 more lots.
8. **Agency Comments and Requirements.**
  - a. State of Hawai'i-Department of Health (DOH): See attached memoranda dated September 29, 2022. **(Exhibit A)**
  - b. County of Hawai'i Fire Department (HFD): See attached memoranda dated September 29, 2022. **(Exhibit B)**
  - c. Department of Water Supply (DWS): See attached memoranda dated October 7, 2022. **(Exhibit C)**
  - d. No other agency comments were solicited, and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated August 27, 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 on September 28,

2022 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.**

- a. Objection letter received from Bonnie Mandoe on October 18, 2022. (See Exhibit D)
- b. Objection letter received on October 24, 2022, (See Exhibit E)

**ANALYSIS OF GROUNDS FOR VARIANCE**

No variance will be granted unless it is found that:

- (a) *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property.***

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

The subdivision request is for three (3) of four (4) lots in keeping with the existing A-1a zoning. Although a dedicable water system is a requirement of the code, the DWS indicates that they are unable to provide more water through 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 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 four (4) 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 four (4) lots 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 three (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 four (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 400 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 140 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 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 four (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.

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-2022-000039.
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-2022-000039) 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. This variance does not grant tacit approval of any encroachment issues created by this proposed subdivision (PL-SUB-2022-000039).
13. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements, land use and the public's health, safety and welfare.

Should any of the foregoing conditions not be complied with, the Planning Director may

Mr. Carlos Grijalva  
Variance Approval Letter  
PL-SVAR 2022-000019  
November 2, 2022  
Page 7

proceed to declare this Variance Permit null and void.

Sincerely,

Zendo Kern  
Zendo Kern (Nov 14, 2022 08:08 HST)

ZENDO KERN  
Planning Director

LHN:

\\coh01\planning\public\Admin Permits Division\Variance\2022\PL-SVAR-2022-000019 Water Grijalva\APVL.docx

Enclosures: Agency Comments, Exhibits A – C  
Objection Letter from Bonnie Manoe, Exhibit D  
Objection Letter from Public/Neighbor, Exhibit E

cc: DWS-Engineering Branch  
HFD  
DOH  
PL-SUB-2022-000039

cc w/encls: L. Edward Pare, LPLS ([EPare3906@gmail.com](mailto:EPare3906@gmail.com))  
Alex Gerken, GIS Section (via email)

**DeVera, Ashley**

---

**From:** Honda, Eric T. <Eric.Honda@doh.hawaii.gov>  
**Sent:** Thursday, September 29, 2022 1:13 PM  
**To:** Planning Internet Mail  
**Subject:** PL-SVAR-2022-000019  
**Attachments:** PL-SVAR-2022-000019 TMK2-9-001--012.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: September 29, 2022

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

FROM: Eric Honda  
District Environmental Health Program Chief

SUBJECT: Application: VARIANCE- PL-SVAR-2022-000019  
Applicant: CARLOS GRIJALVA  
Owners: ARDEN & CARLOS GRIJALVA  
Request: Variance from Chapter 23, Subdivisions, Article 6,  
Division 2, Improvements Required, Section 23-84, Water Supply  
TMK: 2-9-001:012 (PL-SUB-000039)

**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.

**Mori, Ashley**

---

**From:** Baybayan, Clinton  
**Sent:** Thursday, September 29, 2022 11:07 AM  
**To:** Planning Internet Mail  
**Subject:** Subject: Request for Comments | TMK: 2-9-001:012 | PL-SVAR-2022-000019 (Grijalva) | (PL-SUB-2022-000039)  
**Attachments:** Variance, Subdivision, Carlos Grijalva, 9-28-22.pdf

Good Morning,  
Please see attach file for HFD comments regarding the Grijalva subdivision application. Please 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**

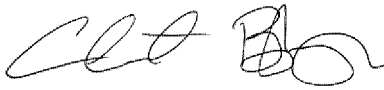
**DATE** September 29, 2022

**Memorandum**

**TO** : PLANNING DEPARTMENT, COUNTY OF HAWAII  
**FROM** : CAPTAIN CLINTON BAYBAYAN, FIRE PREVENTION BRANCH  
**SUBJECT:** **PL-SVAR-2022-000019 EPIC REVIEW SUBMITTALS - GRIJALVA**

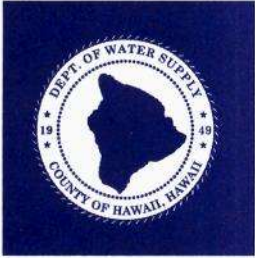
In regards to the above mentioned project, Fire Department Access and Water Supply shall comply with Chapter 18 of the 2018 Hawaii State Fire Code and Chapter 26 of the Hawaii County Code. For any questions please email [Clinton.Baybayan@hawaiiicounty.gov](mailto:Clinton.Baybayan@hawaiiicounty.gov) or 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 HAWAI'I**

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

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

October 7, 2022

COH PLANNING DEPT  
OCT 10 2022 PM1:55

TO: Mr. Zendo Kern, Director  
Planning Department

REC'D HAND DELIVERED

FROM: Keith K. Okamoto, Manager-Chief Engineer

**SUBJECT: Variance Application (PL-SVAR-2022-000019)  
Subdividers – Carlos and Arden Grijalva  
Tax Map Key 2-9-001:012 (PL-SUB-2022-000039)**

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

Our comments from our memorandum dated July 26, 2022, to your department and copied to Manulele Services, regarding the subject subdivision, still stand.

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 - Manulele Services

**EXHIBIT C**

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

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

October 18, 2022

COH PLANNING DEPT  
OCT 18 2022 PM 12:25

To Mr. Zendo Kern, Planning Director for the County of Hawaii,

REC'D HAND DELIVERED

Thank you for reaching out to the neighbors of 29-2211 Old Mamalahoa Hwy, Hakalau, HI 96710. We appreciate the request for comments on the application for a variance because if allowed, the subdivision in question would affect life here in Hakalau adversely, and I want to explain that to you.

Having lived on Maui beginning in 1969, we saw and felt the effects of overdevelopment in the rural area of Huelo, which included increased traffic on the Hana Highway, a road that could not be widened, similar to what we have here on the Big Island. We also had the situation of no home mail delivery to rural residents, as here in Hakalau, where even the Post Office is non-functional. These small inconveniences are part of living rurally, and acceptable as the price one is willing to pay for a country lifestyle. Then, over the years, we continued to watch our rural area become suburban. Since this kind of situation can't be reversed, we learned that it's important to make small decisions that lead to larger consequences, carefully. At this time, the fate of the Big Island is still open. Do we want to create another Oahu? Another Maui? Or will we choose to retain the character of this unique island and its small communities?

The construction of three or four dwellings in this immediate neighborhood on the Old Mamalahoa Highway will increase density and cause distress, as the construction process, increased traffic, and eventual addition of residents by its very nature does. Already, the houses in the five-lot subdivision at the corner of Chin Chuck Road have little privacy. Already, nearly every day the sound of weed-eaters and leaf-blowers meet the challenge of keeping the area tidy. It's all part of the suburbanizing process. I hope you will come out to see in person what would be lost by allowing additional homes in this small area, because it is worth preserving as it is.

I realize that the issues I've mentioned are not what we've been asked to discuss, although they are surely relevant. It's the water issue, and the question of allowing catchment here that is of concern. However, this is only one of numerous concerns that would be the result of allowing a variance. Increasing the water load on the supply side is only half of it. The subject of water drainage from a handful of new homes also needs to be addressed. Here, at the north end of the old Mamalahoa Hwy, where it meets Chin Chuck Road, where State and County Roads converge, the drainage ditch is small and consistently overgrown because it is insufficient. How will additional homes affect this? I don't believe this concern can have been fully explored or addressed, and for this reason alone, in a spot where a current drainage issue already exists, it would be unwise to permit a variance permitting further construction at this time.

Please consider the prudence of upholding the existing regulations for subdivision. We know that adequate water systems neither for supply nor drainage exist to support the proposed subdivision. There is no benefit to the Hakalau community in allowing this variance, in fact, it would be significantly detrimental. It is my hope that you will consider this matter as if it were in your own neighborhood.

With appreciation for the forethought and prudence of good planning, we appreciate your attention to the needs of the existing residents in this small, unique and lovely area. Respectfully Yours,

Bonnie Mandoe  
Hakalau

EXHIBIT D



REC'D HAND DELIVERED

To Mr. Kern, Planning Director for the County of Hawaii. Thank you for reaching out to the neighbors of 29-2211 Old Mamalahoa Hwy ,Hakalau, Hi 96710.

We Appreciate this first notification we received. Yes, this application will affect our lives here. We moved here from Hilo where we lived close to lots of amenities knowing the commute from Hakalau to Hilo would be part of our daily lives. We traded that for a quieter country life ... less neighbors and less traffic equals less congestion.

More construction to an already populated neighborhood, where already lots of B&B's are bringing in more traffic and congestion will only add to more of the same. The more variances allowed will further encourage more speculation and further chopping up of the rural parcels.

Please consider what further building in our already densely populated area will do to our quality of life. Having to approve for even more water tanks shows how populated our area is becoming.

Thank you for considering this matter. This may be your neighbor hood facing this challenge.

Regards

A handwritten signature in black ink, appearing to be "Joseph", written in a cursive style.

DATE: 9/27/2022

Dear Neighbor,

In accordance with the County of Hawaii planning department requirements Section 23-17 "Procedure for Variances", we are notifying you as a neighboring property owner that we have applied for a Variance from Chapter 23, Subdivisions, Article 6, Division 2, Section 23-84 Water supply.

Name of applicant: Carlos Grijalva  
Address: 29-2211 Old Mamalahoa Hwy Hakalau, HI 96710  
Phone: 858-222-2147

Precise location of the property: 29-2211 Old Mamalahoa Hwy Hakalau, HI 96710  
Hakalau-Iki, South Hilo, Hawai'i TMK: 2-9-001:012  
(see map below)

**The Department of Water supply has informed us that the existing water system facilities cannot support the proposed subdivision at this time. We are applying for a variance to permit catchment water system.**

The Planning Director will render a decision on the subject Variance Application no later than **November 21, 2022.** The deadline for submitting written public comments to the Planning Director is **October 21, 2022.**

County of Hawaii Planning Department  
101 Pauahi Street, Suite 3  
Hilo, HI 96720  
Phone (808) 961-8288

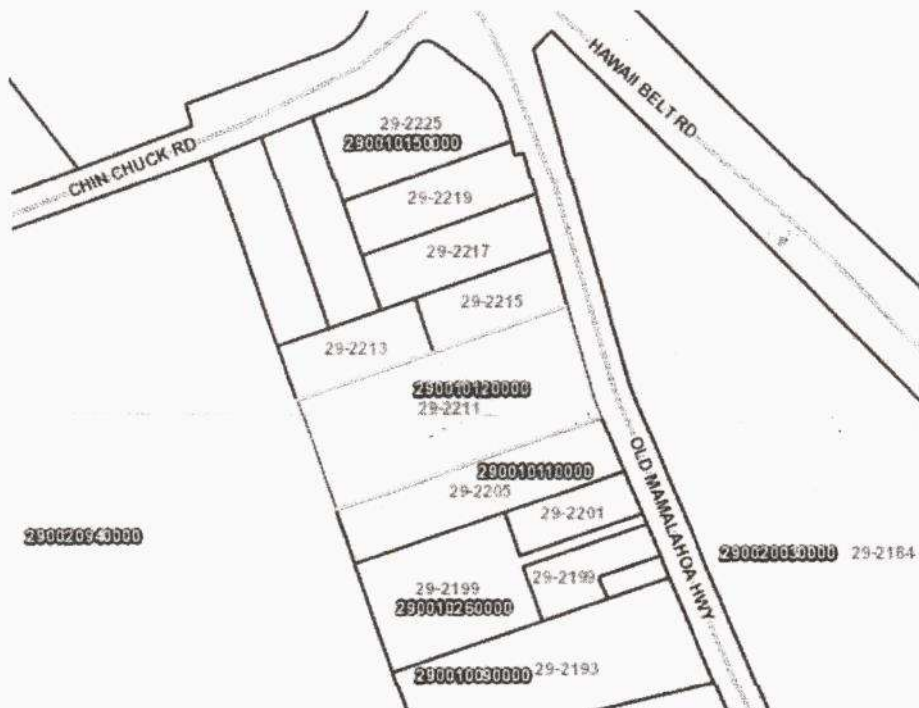


EXHIBIT E