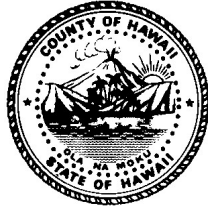


Mitchell D. Roth
Mayor

Deanna S. Sako
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

April 1, 2024

Mr. Raymond K. Hasegawa
688 Kino'ole Street, Suite 203
Hilo, HI 96720

Dear Mr. Hasegawa:

SUBJECT:	Application: SUBDIVISION VARIANCE PL-SVAR-2022-000023 - Revised
Applicant:	RAYMOND K. HASEGAWA, ESQ.
Owners:	GEOMEL REBULDELA-RAGUAL, GEORGE LOPES, NANCY JOAN LOPES AND LAURIE F. ROBERTSON
Request:	Variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply
Tax Map Key:	(3) 2-9-004:030 (PL-SUB-2021-000024)

Upon review of your variance application, the Planning Director certifies the **approval** of Variance PL-SVAR-2022-000023, subject to variance conditions. The variance grants relief for PL-SUB-2021-000024 from constructing minimum County dedicable water supply system improvements for 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).

This revised variance approval letter amends the type of private water system to be installed. This revision to the variance has no major impact on the decision of this variance and will replace the previous approval letter.

BACKGROUND

- Location.** The referenced property, being Lot 11, also being a Portion of Grant 6071 to Francisco Baptista, containing a total of approximately 26.63 acres, is situated in Kaiwiki 3rd, www.planning.hawaiicounty.gov Hawai'i County is an Equal Opportunity Provider and Employer planning@hawaiicounty.gov

Mr. Raymond Hasegawa, Esq.
PL-SVAR-2022-000023
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Page 2

Homestead, Kaiwiki 3rd, South Hilo, Hawai‘i.

2. **County Zoning.** Agricultural, 10 acres (A-10a).
3. **State Land Use.** Agricultural (A).
4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as 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-2021-000024 was submitted to subdivide the subject Tax Map Key property into two (2) lots. Further action on the subdivision application has been deferred pursuant to letter of June 2, 2022, in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements for two (2) lots was acknowledged by Planning Department letter dated November 22, 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 December 13, 2022 (**Exhibit A**).
 - b. County of Hawai‘i Fire Department (HFD): No comments were received from the County of Hawai‘i Fire Department.
 - c. Department of Water Supply (DWS): The Department of Water Supply (DWS) did not comment on this Variance Application. However, See attached memoranda dated June 2, 2022, submitted for corresponding subdivision application (PL-SUB-2021-000024 (**Exhibit B**))
 - d. No other agency’s comments were solicited, and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated

March 6, 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 December 1, 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.

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-10a 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 two (2) 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 to DWS standards for the pending two (2) lot subdivision.

The above special and unusual circumstances would deprive the applicant of developing this property and interfere with the best use of this property. Therefore, for these two (2) 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 lot; and the existing water system facilities cannot any further support water service to the subdivision. Constructing water system improvements to extend the Department of Water Supply (DWS) facilities or provide a private water system to Department of Water Supply (DWS) standards for the pending two (2) lot subdivision would be placing excessive demands upon the applicant because of the extensive improvements and additions required to upgrade the existing Department of Water Supply (DWS) water system facilities.

- (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): 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.

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 2-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
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-2021-000024.
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
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 shall comply with any conditions set forth by the County of Hawaii – Department of Water Supply.
12. 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.
13. The pending subdivision application's (PL-SUB-2021-000024) 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.
14. This revised variance approval letter supersedes previous Subdivision Variance (PL-SVAR-2022-000023).
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. Raymond Hasegawa, Esq.
PL-SVAR-2022-000023
Revised Approval Letter
April 1, 2024
Page 7

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

Sincerely,

Zendo Kern
Zendo Kern (Apr 3, 2024 10:49 HST)
ZENDO KERN
Planning Director

LHN:so
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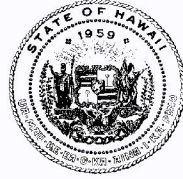
Enclosures: Agency Comments, Exhibits A-B

Via Email: DOH
DWS-Engineering Branch
HFD
Tom Yeh, Esq. (tly@yehandkim.com)
Alan Gunn, GIS Section (via email)

DeVera, Ashley

From: Honda, Eric T. <Eric.Honda@doh.hawaii.gov>
Sent: Tuesday, December 13, 2022 3:14 PM
To: Planning Internet Mail
Subject: PL-SVAR-2022-000023
Attachments: PL-SVAR-2022-000023 TMK2-9-004--030.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

EXHIBIT A

DATE: December 13, 2022

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

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: SUBDIVISION VARIANCE | PL-SVAR-2022-000023
Applicant: RAYMOND K. HASEGAWA, ESQ.
Owners: GEOMEL REBULDELA-RAGUAL, GEORGE LOPES,
NANCY JOAN LOPES AND LAURIE F. ROBERTSON
Request: Variance from Chapter 23, Subdivisions, Article 6, Division
2, improvements Required, Section 23-84, Water Supply
TMK: 2-9-004:030 (PL-SUB-2022-000024)

In most cases, the District Health Office will no longer provide individual comments to agencies or project owners to expedite the land use review and process.

Agencies, project owners, and their agents should apply Department of Health “Standard Comments” regarding land use to their standard project comments in their submittal. Standard comments can be found on the Land Use Planning Review section of the Department of Health website: <https://health.hawaii.gov/epo/landuse/>. Contact information for each Branch/Office is available on that website.

Note: Agencies and project owners are responsible for adhering to all applicable standard comments and obtaining proper and necessary permits before the commencement of any work.

General summary comments have been included for your convenience. However, these comments are not all-inclusive and do not substitute for review of and compliance with all applicable standard comments for the various DOH individual programs.

Clean Air Branch

1. All project activities shall comply with the Hawaii Administrative Rules (HAR), Chapters 11-59 and 11-60.1.

2. Control of Fugitive Dust: You must reasonably control the generation of all airborne, visible fugitive dust and comply with the fugitive dust provisions of HAR §11-60.1-33. Note that activities that occur near existing residences, businesses, public areas, and major thoroughfares exacerbate potential dust concerns. It is recommended that a dust control management plan be developed which identifies and mitigates all activities that may generate airborne and visible fugitive dust and that buffer zones be established wherever possible.
3. Standard comments for the Clean Air Branch are at: <https://health.hawaii.gov/epo/landuse/>

Clean Water Branch

1. All project activities shall comply with the HAR, Chapters 11-53, 11-54, and 11-55.
 1. The following Clean Water Branch website contains information for agencies and/or project owners who are seeking comments regarding environmental compliance for their projects with HAR, Chapters 11-53, 11-54, and 11-55: <https://health.hawaii.gov/cwb/clean-water-branch-home-page/cwb-standard-comments/>.

Hazard Evaluation & Emergency Response Office

1. A Phase I Environmental Site Assessment (ESA) and Phase II Site Investigation should be conducted for projects wherever current or former activities on site may have resulted in releases of hazardous substances, including oil or chemicals. Areas of concern include current and former industrial areas, harbors, airports, and formerly and currently zoned agricultural lands used for growing sugar, pineapple or other agricultural products.
2. Standard comments for the Hazard Evaluation & Emergency Response Office are at: <https://health.hawaii.gov/epo/landuse/>.

Indoor and Radiological Health Branch

1. Project activities shall comply with HAR Chapters 11-39, 11-45, 11-46, 11-501, 11-502, 11-503, and 11-504.
2. Construction/Demolition Involving Asbestos: If the proposed project includes renovation/demolition activities that may involve asbestos, the applicant should contact the Asbestos and Lead Section of the Branch at <https://health.hawaii.gov/irhb/asbestos/>.

Safe Drinking Water Branch

1. Agencies and/or project owners are responsible for ensuring environmental compliance for their projects in the areas of 1) Public Water Systems; 2) Underground Injection Control; and 3) Groundwater and Source Water Protection in accordance with HAR Chapters 11-19, 11-20, 11-21, 11-23, 11-23A, and 11-

25. They may be responsible for fulfilling additional requirements related to the Safe Drinking Water program: <https://health.hawaii.gov/sdwb/>.
2. Standard comments for the Safe Drinking Water Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

Solid & Hazardous Waste Branch

1. Hazardous Waste Program - The state regulations for hazardous waste and used oil are in HAR Chapters 11-260.1 to 11-279.1. These rules apply to the identification, handling, transportation, storage, and disposal of regulated hazardous waste and used oil.
2. Solid Waste Programs - The laws and regulations are contained in HRS Chapters 339D, 342G, 342H, and 342I, and HAR Chapters 11-58.1 and 11-282. Generators and handlers of solid waste shall ensure proper recycling or disposal at DOH-permitted solid waste management facilities. If possible, waste prevention, reuse, and recycling are preferred options over disposal. The Office of Solid Waste Management also oversees the electronic device recycling and recovery law, the glass advanced disposal fee program, and the deposit beverage container program.
3. Underground Storage Tank Program – The state regulations for underground storage tanks are in HAR Chapter 11-280.1. These rules apply to the design, operation, closure, and release response requirements for underground storage tank systems, including unknown underground tanks identified during construction.
4. Standard comments for the Solid & Hazardous Waste Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

Wastewater Branch

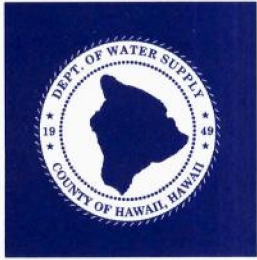
For comments, please email the Wastewater Branch at doh.wwb@doh.hawaii.gov.

Sanitation / Local DOH Comments:

1. Noise may be generated during demolition and/or construction. The applicable maximum permissible sound levels, as stated in Title 11, HAR, Chapter 11-46, “Community Noise Control,” shall not be exceeded unless a noise permit is obtained from the Department of Health.
2. According to HAR §11-26-35, No person, firm, or corporation shall demolish or clear any structure, place, or vacant lot without first ascertaining the presence or absence of rodents that may endanger public health by dispersal from such premises. Should any such inspection reveal the presence of rodents, the rodents shall be eradicated before demolishing or clearing the structure, site, or vacant lot. A demolition or land clearing permit is required prior to demolition or clearing.

Other

1. [CDC - Healthy Places - Healthy Community Design Checklist Toolkit](#) recommends that state and county planning departments, developers, planners, engineers, and other interested parties apply these principles when planning or reviewing new developments or redevelopment projects.
2. If new information is found or changes are made to your submittal, DOH reserves the right to implement appropriate environmental health restrictions as required. Should there be any questions on this matter, please contact the Department of Health, Hawaii District Health Office, at (808) 933-0917.



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

June 2, 2022

EXHIBIT B

COH PLANNING DEPT
JUN 3 2022 PM1:52

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
Subdividers – Raymond K. Hasegawa, Esq., Court Appointed Commissioner
Tax Map Key 2-9-004:030 (PL-SUB-2021-000024)**

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

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 limited to source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

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 – Mr. Niels Christensen, LPLS, The Independent Hawai'i Surveyors, LLC
Mr. Raymond K. Hasegawa, Esq., Court Appointed Commissioner

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

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