

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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

March 15, 2023

Stanley H. Roehrig and Jan H. Roehrig
87 Keokea Loop
Hilo, HI 96720

Dear Mr. & Ms. Roehrig:

SUBJECT: VARIANCE DECISION – PL-SVAR-2022-000024
Applicants: STANLEY H. ROEHRIG AND JAN H. ROEHRIG
STANLEY H. ROEHRIG AND JAN H. ROEHRIG
Request: Variance from Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84,
Water Supply
Tax Map Key: 8-7-002:028 (PL-SUB-2022-000045)

Upon review of your variance application, the Planning Director certifies the **approval** of Variance PL-SVAR-2022-000024 subject to variance conditions. The variance grants relief for PL-SUB-2022-000045 from constructing minimum County dedicable water supply system improvements for the six (6) 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

- Location.** The referenced property, Lot 4, containing approximately 41.054 acres, is situated in Pāhoehoe 1st, 2nd, 3rd and 4th, South Kona, Hawai'i.
- County Zoning.** Agricultural, 5-acre minimum building site area (A-5a).
- State Land Use.** Agricultural (A).
- General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Extensive Agricultural (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 SUB-16-001597 was submitted to subdivide the subject TMK property into 4 lots. Further action on the subdivision application has been deferred pursuant to letter dated May 23, 2016 in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements for the four (4) lots was acknowledged by Planning Department letter dated June 22, 2016. This variance application includes background history and circumstances and information regarding the pending subdivision application.
8. **Variance Application (PL-SVAR-2022-000024) Agency Comments and Requirements.**
 - a. State of Hawai‘i-Department of Health (DOH): See attached memorandum dated December 13, 2022 (Exhibit A).
 - b. County of Hawai‘i Fire Department (HFD): See attached memorandum dated December 13, 2022 (Exhibit B).
 - c. Department of Water Supply (DWS): See attached memoranda dated December 20, 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 on July 6, 2016, 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). A picture of the posted sign was also submitted. Evidence received July 5, 2016, and mailing verification forms indicate 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.**

Objection letter received from Lonn and Shanlyn Iona received on January 5, 2023.
(See Exhibit E)

The Iona’s opposed the proposed six (6) lot subdivision citing that the roadway is insufficient and cannot handle an additional six (6) lots. There is a 20 foot wide roadway and utility easement

which runs through the subject property (TMK: 3/7-8-002:028) which will not only provide access to the proposed six (6) lot subdivision but also provides access to the four lot subdivision (SUB-16-001597 Revised) created in 2016. It should be noted that the Iona's did not object to the Water Variance (VAR-16-000374 and Roadway Variance (VAR-17-000414) which was granted to allow for the four(4) lot subdivision which is adjacent to the subject property.

Objection letter received from Stephanie Cabilin received on January 6, 2023. (See Exhibit F)

The objection letter states in part: "*We feel that developing a subdivision of six, five acre lots will challenge the integrity of the of the earth in the area which shares our property borders, causing excess run-off and potential flooding into our property and others below and/or around the area(s).*"

Those concerns will be addressed during subdivision review and grading permit review by the Department of Public - Engineering Division.

Objection letter received from Jon Groelz received on January 24, 2023. (See Exhibit G)

11. **Time Extension:** The applicant's variance application was acknowledged on December 9, 2022; additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until March 15, 2023.

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 six (6) lots in keeping with the existing A-5a zoning. Although a dedicable water system is a requirement of the code the subject property is not able to be supported by the present service facilities of the existing DWS system and it would be unreasonable to expect the owners to construct the required service upgrades to serve the six (6) lots. Therefore, it is reasonable that, 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 six (6) 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 six (6) lots subdivision, the best use and manner of the development allows for individual rain water catchment system in keeping with the large lot, 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 property is not served by water services at this time. Constructing water system improvements to either extend/upgrade the DWS facilities or provide a private water system to DWS standards for the pending six (6) lot subdivision would be placing excessive demands upon the applicant because of the extensive improvements and additions required to the existing DWS water system facilities. At an elevation of approximately 1,800 feet above sea level, the drilling of wells and construction of other water system improvements to DWS standards would also be unreasonable for a six (6) lot 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):

Although the average rainfall in the neighborhood is approximately 30 inches to 50 inches of rainfall annually the granting of this variance would be consistent with the general purpose of the district. It should be noted that a similar water variance (VAR-16-000374) was granted for a four (4) lot subdivision abutting the subject property along its western boundary. Other water variance variances were granted to other properties in the neighborhood. This variance is consistent with the intent of the policies of the general plan in that it will further farming 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 six (6) 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.
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 are 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.
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-2022-000045).

5. 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.
6. No condominium property regime will be allowed, nor will an Ohana Dwelling Unit be permitted or allowed.
7. 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.
8. 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, shall be as specified by the HFD in the memorandum attached to this permit for reference. 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.
9. 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.
10. The pending subdivision application's (PL-SUB-2022-000045) 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.
11. 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 and land use.

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

Stanley H. Roehrig
Jan H. Roehrig
Variance Decision Letter
PL-SVAR 2022-000024
March 15, 2023
Page 7

Sincerely,

Zendo Kern
Zendo Kern (Mar 21, 2023 07:53 HST)
ZENDO KERN
Planning Director

LHN:cn
\\COH01\planning\public\Admin Permits Division\Variance\2022\PL-SVAR-2022-000024 Roehrig Water\APVL.docx

Attachments: Exhibits A-D (Agency Comments)

cc via email: DWS-Engineering Branch
HFD
PL-SUB-2022-000045
SUB-16-001597
Alex Gerken, GIS Section

DeVera, Ashley

From: Honda, Eric T. <Eric.Honda@doh.hawaii.gov>
Sent: Tuesday, December 13, 2022 3:34 PM
To: Planning Internet Mail
Subject: PL-SVAR-000024
Attachments: PL-SVAR-2022-000024 TMK8-7-002--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

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-2022-000024
Applicant: STANLEY H. ROEHRIG AND JAN H. ROEHRIG
Owners: STANLEY H. ROEHRIG AND JAN H. ROEHRIG
Request: Variance from Chapter 23, Subdivisions, Article 6, Division
2, Improvements Required, Section 23-84, Water Supply
TMK: 8-7-002:028 (PL-SUB-2022-000045)

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.

DeVera, Ashley

From: Baybayan, Clinton
Sent: Tuesday, December 13, 2022 2:55 PM
To: Planning Internet Mail
Subject: RE: Request for Comments | TMK: 8-7-002:028 | PL-SVAR-2022-000024
Attachments: Stanley and Jan Roehrig, Subdivision Variance,12-13-22.pdf

Good Afternoon,
Please see attached file for HFD comments.

Thank You,

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

From: Aki, Tara <Tara.Aki@hawaiicounty.gov>
Sent: Tuesday, December 13, 2022 10:11 AM
Cc: 'dwsengineeringreview@hawaiidws.org' <dwsengineeringreview@hawaiidws.org>; Fire Admin <fire@hawaiicounty.gov>; Honda, Eric <Eric.Honda@doh.hawaii.gov>; michael.une@doh.hawaii.gov; sina.pruder@doh.hawaii.gov
Subject: Request for Comments | TMK: 8-7-002:028 | PL-SVAR-2022-000024
Importance: High

Aloha ~

Please follow this link to view the [Memo requesting your review and comments on the subject application](#). The EPIC Review Files are available in the link below.

Application Number: [PL-SVAR-2022-000024 EPIC Review Submittals - Roehrig](#)

We kindly ask that you forward your comments electronically to planning@hawaiicounty.gov no later than January 3, 2023. Should you have any questions, please feel free to contact Larry Nakayama, at (808) 961-8149.

Thank you!

Tara Aki

Administrative Permits Division
County of Hawai'i | Planning Department
101 Pauahi Street, Suite 3 | Hilo, HI 96720
tara.aki@hawaiicounty.gov
808.961.8002



County of Hawai'i
Zoning & Subdivision Code Update
Project Website: COHcodeupdate.com

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

DATE December 13, 2022

Memorandum

EXHIBIT B

TO : LARRY NAKAYAMA, COUNTY OF HAWAII, PLANNING DEPT.

FROM : CAPTAIN CLINTON BAYBAYAN, FIRE PREVENTION BRANCH

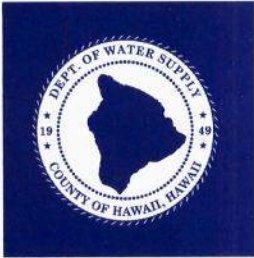
SUBJECT: **SUBDIVISION VARIANCE PL-SVAR-2022-000024**

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



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAI'I

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

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

December 20, 2022

EXHIBIT C

COH PLANNING DEPT
DEC 23 2022 PM 2:43

REC'D HAND DELIVERED

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

**SUBJECT: Subdivision Variance (PL-SVAR-2022-000024)
Subdivider – Stanley H. and Janice H. Roehrig Trusts
Tax Map Key 8-7-002:028 (PL-SUB-2022-000045)**

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

The requirements from our Memorandum dated June 13, 2022, to your department and copied to the Independent Hawai'i Surveyors, LLC, 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 – The Independent Hawai'i Surveyors, LLC



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKŪANAŌ'A STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

June 13, 2022

EXHIBIT D

COH PLANNING DEPT
JUN 14 2022 PM2:05
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 – Stanley H. and Janice H. Roehrig Trusts
Tax Map Key 8-7-002:028 (PL-SUB-2022-000045)**

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 – The Independent Hawai'i Surveyors, LLC
Stanley H. and Janice H. Roehrig Trusts

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

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