

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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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

July 20, 2023

Michael Malouf
PO Box 385036
Waikoloa, Hawai'i 96738

e-mail: mtmalouf@gmail.com

Dear: Mr. Malouf:

SUBJECT: Application: SUBDIVISION VARIANCE | PL-SVAR-2023-000033
Applicant: MICHAEL MALOUF
Owners: MATTHEW MALOUF AND ERICA MALOUF
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply
Tax Map Key: (3) 4-5-003:005 (PL-SUB-2023-000142)

Upon review of your Variance Application, the Planning Director certifies the **Approval** of Variance PL-SVAR-2022-000033, subject to variance conditions. The variance grants relief for PL-SUB-2021-000142 from constructing minimum County dedicable water supply system improvements for three (3) 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, Lot 38, containing a total of approximately 17.199 acres, is situated in Ka'āo Homesteads, Ka'āo, Hamakua, Hawai'i.
2. **County Zoning.** Agriculture – 5 acres (A-5a).
3. **State Land Use.** Agricultural (A).

4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Low Density Urban (Idu).
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 Department of Water Supply (DWS).
6. **Subdivision Request/PPM.** Subdivision application PL-SUB-2023-000142 was submitted to subdivide the subject property into three (3) lots. Further action on the subdivision application has been deferred pursuant to the letter of June 5, 2023, in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements for three (3) lots was acknowledged by Planning Department letter dated May 23, 2023. This variance application includes background history and circumstances and information regarding the pending subdivision application.
8. **Agency Comments and Requirements.**
 - a. State of Hawai'i-Department of Health (DOH): See attached memoranda dated June 15, 2023. **(Exhibit A)**
 - b. County of Hawai'i Fire Department (HFD): See attached memoranda dated June 14, 2023. **(Exhibit B)**
 - c. Department of Water Supply (DWS): Department of Water Supply (DWS): See attached memo dated June 22, 2023 **(Exhibit C)**.
 - d. No other agency's comments were solicited, and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated June 1, 2023, 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 June 2, 2023, 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.** There were no written comments received from the surrounding property owners 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 three (3) lots in keeping with the existing Agriculture - 5 acres (A-5a) zoning. Although a dedicable water system is a requirement of the code, the Department of Water Supply indicates that that the subject property is not within the service limits of the Department's existing water system facility. The Department of Water Supply (DWS) has state in part "*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 subdivider to shoulder the costs associated with extending/upgrading the DWS system to service the subject subdivision of three (3) lots. The request is for only three (3) lots, so this variance request is reasonable. Therefore, in lieu of constructing water system improvements to either extend/upgrade the Department of Water Supply facilities or provide a private water system to Department of Water Supply standards for the pending three (3) lot subdivision, a more reasonable alternative can be allowed through Rule 22, Water Variance.

The above special and unusual circumstances would deprive the applicant of developing this property and interferes with the best use of this property. Therefore, for this three (3) 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 three (3) 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):

Given that there is adequate rainfall (approximately 80 -100 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.

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 three (3)-lot subdivision of the subject property without providing dedicable water system improvements meeting Department of Water Supply standards, is hereby **Approved** subject to the following variance conditions:

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
3. The owners, their assigns, or successors shall file a written agreement document with the Planning Department within one (1) year from the issuance of tentative subdivision approval. This written agreement shall contain deed language, being covenants, conditions, and restrictions affecting the lots created by the proposed subdivision which is not serviced by a County dedicable public water system.

The agreement shall be duly recorded at the State of Hawai'i, Bureau of Conveyances by and at the cost and expense of the owners. A copy of the recorded document shall be supplied to the Planning Department for our files.

If there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title of the existing property or approved subdivided lots.

4. The subdivider and all grantees, successors, and assigns acknowledge that the parcels were created by a variance, from the normal subdivision requirements of Hawai'i County, and that there are no longer any special or unusual circumstances applying to the property, and hence, no grounds exist or will exist for another variance, from the Subdivision Code to permit further subdivision of the properties, unless County dedicable public water system requirements and other requirements of HCC Chapter 23, Subdivisions, are met.
5. The owners, grantees, successors, and assigns agree and accept the fact that a County dedicable public water system will not be extended, to serve the lots within proposed subdivision PL-SUB-2023-000142.
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

Michael Malouf
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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. If 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-2023-000142) 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.

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

Sincerely,

Jeffrey W. Darrow

for
ZENDO KERN
Planning Director

LHN:so

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Enclosures: Agency Comments (Exhibits A-C)

cc via email: DPW-Engineering
DWS-Engineering
HFD
PL-SUB-2023-000142
Alan Gunn, GIS Section, Planning Dept.

Araujo, Jaclyn

From: Honda, Eric T. <Eric.Honda@doh.hawaii.gov>
Sent: Thursday, June 15, 2023 1:39 PM
To: Planning Internet Mail
Subject: PL-SVAR-2023-000033
Attachments: PL-SVAR-2023-000033 TMK4-5-003--005.pdf

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



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

MEMORANDUM

DATE: June 15, 2023

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

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: SUBDIVISION VARIANCE | PL-SVAR-2023-000033
Applicant: MICHAEL MALOUF
Owners: ERICA MALOUF AND MATTHEW MALOUF
Request: Variance from Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84
Water Supply
TMK: 4-5-003:005 (PL-SUB-2023-000142)

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.

EXHIBIT B

Araujo, Jaclyn

From: Baybayan, Clinton
Sent: Wednesday, June 14, 2023 9:41 AM
To: Planning Internet Mail
Subject: FW: Request for Comments | PL-SVAR-2023-000033 | TMK: (3) 4-5-003:005
Attachments: Erica-Mathew Malouf, Subdivision Variance, 6-14-23.pdf

Good Morning,
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: Ota, Stephanie <Stephanie.Ota@hawaiicounty.gov>
Sent: Friday, June 09, 2023 12:00 PM
To: dwsengineeringreview@hawaiidws.org; Honda, Eric <Eric.Honda@doh.hawaii.gov>; michael.une@doh.hawaii.gov; sina.pruder@doh.hawaii.gov; Fire Admin <fire@hawaiicounty.gov>; Kurashige, Palani <Palani.Kurashige@hawaiicounty.gov>; Henderson, Royd <Royd.Henderson@hawaiicounty.gov>; Kawasaki, Edward <Edward.Kawasaki@hawaiicounty.gov>; Baybayan, Clinton <Clinton.Baybayan@hawaiicounty.gov>
Cc: Nakayama, Larry <Larry.Nakayama@hawaiicounty.gov>; Nelson, Catherine <Catherine.Nelson@hawaiicounty.gov>
Subject: Request for Comments | PL-SVAR-2023-000033 | TMK: (3) 4-5-003:005

Aloha

Please see the links below to the Planning Department Agency Memo and EPIC Submittal requesting your review and comments on the above-referenced application/file number.

****We kindly ask that you forward your comments electronically (PDF) to: planning@hawaiicounty.gov by July 2, 2023****

Should you have any questions, please feel free to contact Larry Nakayama, (808) 961-8149.

Link to [Agency Memo PL-SVAR-2023-000033](#)
Link to [EPIC Submittal PL-SVAR-2023-000033](#)

No Hard Copy to Follow

Thank you,

Stephanie Ota

Administrative Permits Division

County of Hawai'i | Planning Department

101 Pauahi Street, Suite 3 | Hilo, HI 96720

Stephanie.Ota@hawaiicounty.gov



**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 June 14, 2023

Memorandum

TO : LARRY NAKAYAMA, COUNTY OF HAWAII, PLANNING DEPT.
FROM : CAPTAIN CLINTON BAYBAYAN, FIRE PREVENTION BRANCH
SUBJECT: **ERICA AND MATHEW MALOUF, SUBDIVISION VARIANCE (PL-SUB-2023-000142)**

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 17 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 C

COH PLANNING DEPT
JUN 27 2023 AM 8:06

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 22, 2023

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: Subdivision Variance PL-SVAR-2023-000033
Applicant – Michael Malouf
Owners – Matthew and Erica Malouf
Tax Map Key 4-5-003:005 (PL-SUB-2023-000142)

We have reviewed the final plat map and have the following comments and conditions.

The requirements from our memorandum dated April 20, 2023, to your department and copied to Matthew J. Malouf, regarding the subject application, 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,


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

TS:dfg

copy - Mr. Michael Malouf
Mr. Matthew and Ms. Erica Malouf

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

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