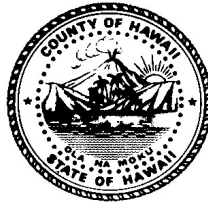


Mitchell D. Roth
Mayor

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

August 8, 2023

Brad Uemoto
P. O. Box 443
Kealahou, Hawai'i 96750

e-mail: brad.uemoto@hawaiicounty.gov

Dear, Mr. Uemoto:

SUBJECT:	Application:	SUBDIVISION VARIANCE PL-SVAR-2023-000035
	Applicant:	BRAD UEMOTO
	Owners:	BRAD UEMOTO
	Request:	Variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply
	Tax Map Key:	(3) 8-1-016:004 (SUB-21-002036)

Upon review of your Variance Application, the Planning Director denies your variance request from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), to allow a proposed two (2) lot subdivision (SUB 21-002036) to be served by private water catchment systems.

The Planning Director has concluded that the variance from the minimum subdivision water system requirements required by Chapter 23, Subdivisions, be **Denied** based on the findings and Rule 22-Water Variance.

BACKGROUND

1. **Location.** The referenced property, Lot 6A, containing a total of approximately 4.164 acres, is located in the Keōpuka Coffee Farm and House Lots, situated in Keōpuka, South Kona, Hawai'i.
2. **County Zoning.** Agriculture – 1 acre (A-1a).
3. **State Land Use.** Agricultural (A).

4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Low Density Urban (ldu).
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-2023-000036 was submitted to subdivide the subject property into two (2) lots. Further action on the subdivision application has been deferred pursuant to the letter of July 22, 2023, 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 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 26, 2023. **(Exhibit A)**
 - b. County of Hawai'i Fire Department (HFD): See attached memoranda dated June 19, 2023. **(Exhibit B)**
 - c. Department of Water Supply (DWS): Department of Water Supply (DWS): See attached memo dated June 23, 2023 **(Exhibit C)**. We have also attached comments for the associated subdivision application **(Exhibit D)**.
 - d. No other agency's comments were solicited, and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about May 8, 2006.
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

Section 23-84 of the Subdivision Code requires that all new subdivisions have a water system meeting with the minimum requirements of the Department of Water Supply. The State of Hawai'i – Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private roofs or rain catchment water systems for potable or emergency uses.

The alternative to a water system proposed by the applicant "private residential catchment systems" by the individual lot owner(s) would not meet the intent and purpose of the Subdivision Code and is not allowed pursuant to Planning Department Rule 22-Water Variance effective February 25, 2006. Generally, Rule 22 is both a rule and statement of criteria to be used so that consistent decisions can be made on water variance requests.

Section 23-84 of the Subdivision Code requires a water system, and Rule 22 limits subdivisions requesting a variance from the County of Hawaii – Department of Water Supply to six (6) lots and requires that a proposed subdivision (limited to 6 lots) requesting a variance to allow individual rainwater catchment systems for potable and emergency needs must meet with the requirements of Rule 22. Rule 22. Water Variance states the following:

"22-3 Eligibility.

No property shall be granted a variance from sec. 23-84 to allow subdivision using catchment if there is a public water system in the vicinity of the property, with available capacity, or if the Department of Water Supply has definite plans to extend the public water system or increase the capacity in a way that will allow subdivision of the property with county water, or if it was subject of a rezoning ordinance that requires a water system."

The Department of Water Supply in its memorandum dated June 23, 2023, stated:

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

The requirements from our memorandum to your department dated August 17, 2021, and copied to Mr. Brad J. Uemoto, regarding the proposed subdivision, still stand. "

The August 17, 2021, memorandum stated in part:

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

Brad Uemoto
PL-SVAR-2023-000035
Denial Letter
August 28, 2023
Page 4

Water can be made available from an existing 6-inch waterline along Keōpuka Mauka Road which is located 925 feet from the subject property. In accordance with the Department's existing water availability conditions. The water availability for the proposed lot is subject to change.

VARIANCE DECISION

In view of the above, the proposed variance would not fulfill the intent of the Subdivision Code and does not meet with all the requirements of Rule 22-Water Variance. Therefore, the applicant's variance application to allow the proposed two (2)-lot subdivision without providing a water supply pursuant to Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), or request to allow the proposed subdivision to be served by private catchment systems is hereby **DENIED**.

In accordance with a recent charter amendment and Ordinance No. 99-111, you may appeal the director's decision and request the following:

Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the director's decision, appeal the decision to the board of appeals.

Pursuant to Board of Appeal (BOA) Rule, PART 8. APPEALS, 8-15 General Standards for Appeals (Non-Zoning):

"A decision appealed from may be reversed or modified or remanded only if the Board finds that the decision is:

- (1) In violation of the Code or other applicable law; or
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion."

In view of the above and for your reference, we have enclosed the form **GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR**.

Brad Uemoto
PL-SVAR-2023-000035
Denial Letter
August 28, 2023
Page 5

Should you have any questions on the variance decision or the appeal procedure, please feel free to contact our Hilo office at telephone (808) 961-8288.

Sincerely,

Jeffrey W. Darrow

for ZENDO KERN
Planning Director

LHN:so

\\COH01\planning\public\Admin Permits Division\Variance\2023\PL-SVAR-2023-000035 Uemoto Water\Denieal.docx

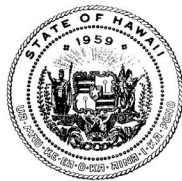
Enclosures: Agency Comments (Exhibits A-D)

cc via email: Chrystal T. Yamasaki (surveys@wtahawaii.com)
DPW-Engineering
DWS-Engineering
HFD
PL-SUB-2021-002036
Alan Gunn, GIS Section, Planning Dept.

Araujo, Jaclyn

From: Honda, Eric T. <Eric.Honda@doh.hawaii.gov>
Sent: Monday, June 26, 2023 2:34 PM
To: Planning Internet Mail
Subject: PL-SVAR-000035
Attachments: PL-SVAR-2023-000035 TMK8-1-016--004.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 26, 2023

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

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: SUBDIVISION VARIANCE | PL-SVAR-2023-000035
Applicant: BRAD UEMOTO
Owners: BRAD UEMOTO
Request: Variance from Chapter 23, Subdivisions, Article 6
Division 2, Improvements Required, Section 23-84
Water Supply
TMK: 8-1-016:004 (SUB-21-002036)

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.

Araujo, Jaclyn

From: Baybayan, Clinton
Sent: Monday, June 19, 2023 3:11 PM
To: Planning Internet Mail
Subject: FW: Request for Comments | PL-SVAR-2023-000035 | TMK: (3) 8-1-016:004
Attachments: Brad Uemoto, Subdivision Variance, 6-19-23.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: Ota, Stephanie <Stephanie.Ota@hawaiicounty.gov>
Sent: Wednesday, June 14, 2023 4:19 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-2023-000035 | TMK: (3) 8-1-016:004

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 10, 2023****

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

Link to [Agency Memo PL-SVAR-2023-000035](#)
Link to [EPIC Submittal PL-SVAR-2023-000035](#)

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

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

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

DATE June 19, 2023

Memorandum

TO : LARRY NAKAYAMA, COUNTY OF HAWAII, PLANNING DEPT.
FROM : CAPTAIN CLINTON BAYBAYAN, FIRE PREVENTION BRANCH
SUBJECT: BRAD UEMOTO, SUBDIVISION VARIANCE, (PL-SVAR-2023-000035)

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,

A handwritten signature in black ink, appearing to read 'Clinton Baybayan', is written over a light gray rectangular background.

Clinton Baybayan
Fire Prevention Captain
Fire Prevention Branch
Hawaii Fire Department

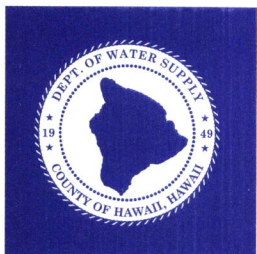


EXHIBIT C

COH PLANNING DEPT
JUN 27 2023 AM8:08

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 23, 2023

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: **Subdivision Variance PL-SVAR-2023-000035**
Subdivider – Brad J. Uemoto
Tax Map Key 8-1-016:004 (SUB 21-002036)

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

The requirements from our memorandum to your department dated August 17, 2021, and copied to Mr. Brad J. Uemoto, regarding the proposed 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 - Mr. Brad J. Uemoto
Wes Thomas Associates