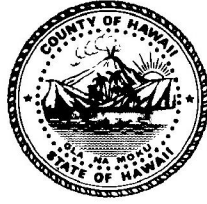


Mitchell D. Roth
Mayor

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

May 1, 2024

Thomas Lapera Jr.
PO Box 6745
Hilo, Hawaii 96720 8933

e-mail: tmlapera@gmail.com

Dear Mr. Lapera,

SUBJECT: Application: SUBDIVISION VARIANCE | PL-SVAR-2024-000046
Applicant: THOMAS LAPERA JR., HIILANI LAPERA, JONATHON A. UCKER AND KAPUAHILANI UCKER
Owners: THOMAS LAPERA JR., HIILANI LAPERA, JONATHON A. UCKER AND KAPUAHILANI UCKER
Request: Variance from Chapter 23, Subdivisions, Article 3, Division 4, Street Design, Section 23-42 Minimum rights-of-way, and Pavement Widths. Article 6, Division 2, Improvements Required, Section 23-87, Requirements for Non Dedicable Streets, escrow maintenance fund.
Tax Map Key: (3) 2-4-008:029; (PL-SUB-2022-000040)

Upon review of your variance application, the Planning Director certifies the **approval** of Variance PL-SVAR-2024-000046 subject to variance conditions. The variance grants relief for subdivision PL-SUB-2022-000040 from constructing minimum County non dedicable roadway improvements as required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

The variance grants relief for subdivision PL-SUB-2022-000040 from constructing minimum County non dedicable roadway improvements as required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

BACKGROUND

- 1. Location.** The referenced property, Lot 10-A-4, also being a portion of Kūkūau 1st, South Hilo, Hawai'i containing 100 acres, being a portion of Pana'ewa, Upper Waiakea, & Waiakea F.R., South Hilo, Hawai'i.
- 2. County Zoning.** Agricultural – Twenty (20) Acres (A-20a).

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.** Hawai‘i County Code, Chapter 23, Subdivisions requires minimum right-of-way and paving widths of 50 feet and 20 feet, respectively, and full right-of-way improvement to include paved shoulders and swales. The code does not require, instead allowing the Planning Director discretion for the installation of curbs, gutters, and sidewalks and in this instance the Director concurs that they would be inappropriate for this large-lot agricultural subdivision.
6. **Subdivision Request/PPM.** Subdivision application PL-SUB-2024-000040 was submitted to subdivide the subject property into five (4) lots ranging in size from 20.661 acres to 24.999 acres. Further action on the subdivision application has been deferred pursuant to letter dated April 20, 2023.
7. **Variance Application.** The variance request from roadway improvements was acknowledged by Planning Department letter dated April 18, 2023. This variance application includes background history and circumstances and information regarding the pending subdivision application. The applicant proposes to access the subject properties over an 8-12-foot-wide gravel roadway. This proposed gravel roadway access is within a 60-foot-wide future road (South Wilder Road Extension) right-of-way.
8. **Variance Application (PL-SVAR-2023-000030) Agency Comments and Requirements.**
 - a. The State of Hawai‘i-Department of Health (DOH): See attached memorandum dated April 12, 2024. **(Exhibit A)**
 - b. County of Hawai‘i Department of Public Works-Engineering Division: See attached memorandum dated April 12, 2024. **(Exhibit B)**
 - c. The County of Hawai‘i Department of Water Supply (DWS): See attached memorandum dated April 18, 2024. **(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 March 8, 2024, 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 April 1, 2024, 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 written comments received from the surrounding property owners or the public.
11. **Lot Access/Roadways.** The Subdivision Code requires a minimum of 20-foot-wide non-dedicable pavement within a minimum 50-foot-wide right-of-way in the Agriculture – 20 Acres (A-20a) zoning district. These improvements would conform to Department of Public Works (DPW) Standard Detail (Std. Det.) R-25 (2017 Edition).

The intent and purpose of access improvement requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance.

ANALYSIS OF GROUNDS FOR ROADWAY VARIANCE

No roadway 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 Roadway Variance application meets criterion (a) for the following reasons(s):

The subdividers are requesting a variance to allow the development of the proposed four (4) lot subdivision without providing roadway improvements meeting the minimum requirements of Chapter 23, Subdivisions, more specifically **Section 23-41 – Minimum right-of-way and pavement widths; Section 23-87 – Standard for nondedicable street; escrow maintenance fund; and Section 23-95 – Right-of-way improvement.**

The applicant is proposing to subdivide the subject property into four (4) lots ranging from 20.661 acres to 24.999 acres.

The subject property currently has access to a public roadway via South Wilder Road. The proposed road will comprise of approximately 8 to 12 foot-wide gravel, contained within a 60-foot-wide future road widening right-of-way. The variance background report indicates that the proposed gravel roadway is adequate to service the proposed uses of the subdivided parcels. The applicant has stated that the proposed parcels are to be utilized strictly for

agricultural purposes with no habitable structures to be built on the proposed parcels. (See Exhibit D- Paddock Plan)

Requiring the owner to improve the proposed roadway to county non-dedicable standards would make unreasonable since the roadway will be primarily used for agricultural purposes, such as grazing and paddocks, with no habitable structures being built on the proposed parcels.

Therefore, it is maintained that there are special and unusual circumstances applying to the subject property which exist to a degree where denial of this variance would deprive the owners substantial property rights that would otherwise be available and would obviously interfere with the best use or manner of development of the subject property.

(b) *There are no other reasonable alternatives that would resolve the difficulty.*

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

The only alternative would be to improve proposed roadway to county non-dedicable standards, this would be unreasonable for the owners to improve the proposed roadway to county non-dedicable standards as it will only serves a limited number of agricultural lots and will be used primarily for agricultural purposes.

(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 Roadway Variance application meets criterion (c) for the following reasons(s):

The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance.

Access to the subject properties is via a proposed private roadway which will consist of approximately 8 to 12 feet-wide compacted gravel, contained within a 60-foot-wide future road widening right-of-way. The proposed roadway is intended to be private; its maintenance and associated liability will be the responsibility of the homeowner's association, who will eventually end up owning and maintaining the roadway. The maintenance cost to utilize and maintain the privately-owned paved roadway will continue to be privately addressed and shared among the current owners and users. The proposed gravel roadway within a 60-foot-

road widening right-of-way is sufficient to allow for emergency vehicles and additional vehicular traffic caused by the additional four lots.

Given the circumstances cited in the applicant's background report and evaluation of the request to construct significant roadway improvements beyond the easement area granted to the parcel, the Planning Department has concluded that roadway improvements required for proposed 4-lot subdivision, stipulated in Chapter 23, Subdivisions are not necessary and can be remedied with this variance approval with conditions.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, it is felt that the applicant's request for variance from non-dedicable roadway improvements will not be materially detrimental to the public's welfare and does not cause substantial adverse impact to the area's character and to adjoining properties.

DETERMINATION-VARIANCE CONDITIONS

The variance to permit the proposed four (4) lots of the subdivision of the subject TMK property without providing code compliant roadway improvements meeting DPW 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.
3. 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.
4. 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 four (4) lots created by the proposed subdivision which are not serviced by a dedicable roadway system. The agreement shall specify that if a Homeowners' or Maintenance Association is created for purposes of upkeep of, and required repairs to the roadway improvements, that the owners of the subdivided lots shall participate in said association.

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.

5. 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 code compliant roadway system requirements and other requirements of HCC Chapter 23, Subdivisions, are met.

It is also understood that they will use and maintain the privately-owned roadway on their own without any expectation of governmental assistance to maintain the improvements. They shall also indemnify and defend the State of Hawai'i or County of Hawai'i from any and all liability arising out of vehicular access to and from the subject properties utilizing the private r-o-w.

6. Provide a 40-foot-wide future road widening setback along the southern boundary line of lot 10-A-4C of the subdivision.
7. Upon written demand of the County of Hawai'i, the applicant and/or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements serving the proposed lots. Should the improvement district require acquisition of any privately owned rights-of-way fronting the lots, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the respective lot owner(s).
8. No condominium property regime will be allowed, nor will an 'Ohana Dwelling Unit be permitted or allowed.
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 of the roadway.

Thomas Lapera III
Approval Letter
PL-SVAR-2024-000046
May 1, 2024
Page 7

10. The pending subdivision application's (PL-SUB-2022-000040) 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, 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,

Zendo Kern
Zendo Kern (May 6, 2024 07:59 HST)
ZENDO KERN
Planning Director

LHN:ta

\\COH01\planning\public\Admin Permits Division\Variance\2024\PL-SVAR-2024-000046 Lapera\APVL.docx

Enclosures: Exhibits A, B, C & D

cc: (via email) DPW-Engineering
DWS-Engineering
Hawai'i County Fire Department
Alan Gunn, GIS Section
Hans Santiago, Subdivision Section

DeVera, Ashley

From: Honda, Eric T. <Eric.Honda@doh.hawaii.gov>
Sent: Friday, April 12, 2024 2:13 PM
To: Planning Internet Mail
Subject: PL-SVAR-2024-000046
Attachments: PL-SVAR-2024-000046 TMK2-4-008--029.pdf

Eric Honda
District Environmental Health Program Chief
Hawai'i State Department of Health | Ka 'Oihana Olakino
1582 Kamehameha Ave., Hilo HI 96720
Office: (808) 933-0917

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

EXHIBIT A

MEMORANDUM

DATE: April 12, 2024

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

FROM: Eric Honda
District Environmental Health Program Chief

SUBJECT: Application: SUBDIVISION VARIANCE I PL-SVAR-2024-000046
Applicant: THOMAS LAPERA JR., HIILANI LAPERA, JONATHON A.
UCKER AND KAPUAHIILANI UCKER
Owners: THOMAS LAPERA JR., HIILANI LAPERA, JONATHON A.
UCKER AND KAPUAHIILANI UCKER
Request: Variance from Chapter 23, Subdivisions, Article 3, Division 4,
Street Design, Section 23-41, Minimum Right-of-Way and
Pavement Widths; Article 6 Division 2, Improvements Required,
Section 23-86, Requirements for Dedicable Streets.
Tax Map Key: (3) 2-4-008:029; (PL-SUB-2022-000040)

The Health Department has no concerns with regulatory implications in the submittals

DeVera, Ashley

From: Matsumoto, Robyn
Sent: Friday, April 12, 2024 5:29 PM
To: Planning Internet Mail
Subject: FW: 4-5-004:024 | PL-SVAR-2024-000047 | AGENCY MEMO & EPIC SUBMITTAL
Attachments: 2024-04-12_PL-SVAR-2024-000046 DPW Comments.pdf

Attached are our comments to PL-SVAR-2024-000046 which we were asked to comment on per the link at the bottom of this email.

PL-SVAR-2024-000047 did not request for DPW's comments.

Thank you

Sincerely,
Ms. Robyn Matsumoto, P.E.
Department of Public Works
Engineering Division

From: Ota, Stephanie <Stephanie.Ota@hawaiicounty.gov>
Sent: Wednesday, April 3, 2024 11:36 AM
To: DWSEngineeringReview <dwsengineeringreview@hawaiidws.org>; Kurashige, Palani <Palani.Kurashige@hawaiicounty.gov>; Honda, Eric <Eric.Honda@doh.hawaii.gov>; michael.une@doh.hawaii.gov; chintan.poudel@doh.hawaii.gov; DPW Eng <dpweng@hawaiicounty.gov>; Matsumoto, Robyn <Robyn.Matsumoto@hawaiicounty.gov>
Cc: Nakayama, Larry <Larry.Nakayama@hawaiicounty.gov>
Subject: RE: 4-5-004:024 | PL-SVAR-2024-000047 | AGENCY MEMO & EPIC SUBMITTAL

Aloha,

Please see the links below to the Planning Department Acknowledgement Letter 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 April 17, 2024****

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

Link to [Agency Memo PL-SVAR-2024-000046](#)

Link to [EPIC Submittal PL-SVAR-2024-000046](#)

No Hard Copy to Follow

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

EXHIBIT B

DATE: April 12, 2024

Memorandum

TO: Zendo Kern, Planning Director

FROM: Department of Public Works, Engineering Division 

SUBJECT: SUBDIVISION VARIANCE (PL-SVAR-2024-000046)

Applicant: THOMAS LAPERA JR., HIILANI LAPERA, JONATHON A. OCKER AND KAPUAHIILANI OCKER

Owners: THOMAS LAPERA JR., IDILANI LAPERA, JONATHON A. OCKER AND KAPUAHIILANI OCKER

Request: Variance from Chapter 23, Subdivisions, Article 3, Division 4, Street Design, Section 23-41, Minimum Right-of-Way and Pavement Widths; Article 6 Division 2, Improvements Required, Section 23-86, Requirements for Dedicable Streets.

TMK: 2-4-008:029

Reference: PL-SUB-2022-000040

We have reviewed the subject application dated March 18, 2024 and offer the following comments:

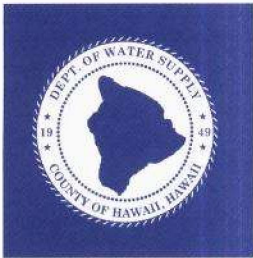
Although we did not provide this recommendation, item 3a of the tentative approval dated April 21, 2023 for PL-SUB-2022-000040, requires the construction of an agricultural pavement within a minimum 60-ft. wide right-of-way conforming to Department of Public Works (DPW) Standard Detail (Std. Det.) R-25, 2017 Edition (formerly known as R-39). Where grades are 8% or greater, the roadway section shall be paved per DPW Std. Det. R-19, 2017 Edition (f.k.a. R-34), we believe that the minimum road improvement requirements codified within Chapter 23 of the Hawaii County Code provide public welfare and safety and are a recommendation made by the Department of Public Works on all similar types of subdivision applications.

We do not believe there are special and unusual circumstances with regard to the minimum requirements of Sections 23-86 and deviation from our standards may be considered arbitrary and capricious.

However, should the Planning Director determine that Section 23-15 is applicable, we defer to the director's authority.

Should there be any questions concerning this matter, please contact Robyn Matsumoto in our Engineering Division at Ext. 8327.

RM



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

EXHIBIT C

April 18, 2024

COH PLANNING DEPT
APR 19 2024 PM4:23

REC'D HAND DELIVERED

TO: Mr. Zendo Kern, Director
Planning Department

FROM: Keith K. Okamoto, Manager-Chief Engineer

SUBJECT: Subdivision Variance PL-SV AR-2024-000046
Applicants: Thomas Jr. and Hiilani Lapera, Jonathon A. and Kapuahiilani Ucker
Request: Variance from Chapter 23, Subdivisions, Article 3, Division 4,
Street Design, Section 23-41, Minimum Right-of-Way and Pavement Widths;
Article 6, Division 2, Improvements Required, Section 23-86, Requirements for
Dedicable Streets
Tax Map Key 2-4-008:029 (PL-SUB-2022-000040)

We have reviewed the subject Variance Application and our comments are as follows.

We have no objections to the proposed request as it will not affect the Department's existing water system facilities.

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. Thomas Jr. and Ms. Hiilani Lapera, Mr. Jonathon A. and Ms. Kapuahiilani Ucker
Manulele Services

5500

5000 WILDER

4500

4000

500 ft

5000

5500

6000

6500

7000

335.52

GATE 50.00
60.00

977.80

PADDOCK 1
8.333 ACRES

GATE

371.24

PADDOCK 13
7.127 ACRES

742.48

GATE

977.80

PADDOCK 2
8.333 ACRES

371.24

395.52

GATE

977.80

PADDOCK 3
8.333 ACRES

GATE

371.24

PADDOCK 12
6.742 ACRES

742.48

GATE

977.80

PADDOCK 4
8.333 ACRES

371.24

395.52

GATE

977.80

PADDOCK 5
8.333 ACRES

GATE

371.24

3237.64

GATE

PADDOCK 11
6.742 ACRES

742.48

GATE

977.80

PADDOCK 6
8.333 ACRES

371.24

742.48

PADDOCK PLAN