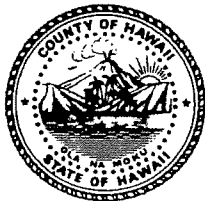


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

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

**CERTIFIED MAIL
RETURN RECEIPT
7002 1000 0004 8649 9514**

August 30, 2010

Eugene P. Gall
76-5907-D Māmalahoa Highway
Hōlualoa, HI 96725

Dear Mr. Gall,

**SUBJECT: TENTATIVE APPROVAL-Preliminary Plat Map-Dated: April 6, 2006
SUBDIVIDER: GALL, Eugene P.
Proposed Subdivision of Allotment 51 (Revised)
Of Hōlualoa 1st & 2nd. Hui Partition (Mauka Section)
Into Lots 51-A & 51-B
Hōlualoa 1st & 2nd, North Kona, Island of Hawai'i, Hawai'i
TMK: 7-6-004:25 (SUB-06-000320)**

Pursuant to Planning Department letter, June 5, 2009, in subject subdivision file (SUB 06-000320), you are the owner or subdivider requesting 2-lot subdivision of subject TMK. The original preliminary plat map (PPM) map dated April 6, 2006 was filed by Wes Thomas Associates on behalf of previous owner or subdivider, Aina Maluhia, LLC. Action on the PPM or proposed 2-lot subdivision application was deferred by the previous Planning Director according to a letter dated May 24, 2006 in subdivision file-SUB 06-000320. After reviewing the subject subdivision file and status of the filing of the original PPM on April 6, 2006, including variance applications submitted by you requesting variance from roadways and water supply, and comments required for April 6, 2006 PPM in the subdivision file, the Planning Director conducted a site inspection with staff on August 3, 2010, to evaluate current access to your proposed subdivision and status of water supply availability for the proposed 2-lot subdivision and another similar 2-lot subdivision application of a property situated nearby. The Planning Director and staff, reviewing your proposed subdivision application and variance applications, note the original PPM dated April 6, 2006 in your subdivision file-SUB 06-000320

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became “deemed approved” on May 18, 2006 . Section 23-62 (b) Subdivision Control Code, County of Hawai‘i, as modified, states the following:

“If no action (approval, disapproval, modification, or deferral) is taken by the director within forty-five days after submission of the preliminary plat, or such longer period as may have been agreed upon in writing, the preliminary plat shall be deemed approved. The approval shall be on condition that the subdivider construct roads to the standards required by this chapter, a water system to the standards of the department of water supply, drainage meeting with the approval of the department of public works under section 23-92, that sewage disposal shall conform with section 23-85, if applicable, and the requirements of the department of health, and that lot sizes and dimensions must be adjusted to conform to the zoning code on the final plat. The subdivider shall comply with the provisions of this chapter in order to receive final subdivision approval.”

Therefore, pursuant to Section 23-62 (b) Subdivision Control Code, County of Hawai‘i, as modified, the enclosed copy of original PPM in SUB 06-000320, dated April 6, 2006, is deemed approved and is hereby, granted tentative subdivision approval (TA) subject to conditions that the subdivider—Eugene P. Gall—construct roadways, water supply, drainage improvements, and sewage disposal system, etc. meeting with the minimum requirements of the reviewing agencies reviewing original PPM dated April 6, 2006, and is required to meet the minimum requirements of Chapter 23, Subdivisions before final subdivision approval is granted to permit proposed 2-lot subdivision of subject TMK property. The owner or current subdivider—Eugene P. Gall—is authorized to prepare detailed drawings of the subdivision plan for proposed 2-lot subdivision of approximately 2.323 acres in accordance with Chapter 23, Subdivision Control Code, County of Hawai‘i, as modified. Before final subdivision approval of a map to permit 2-lot subdivision of subject TMK property, the following subdivision conditions to approve SUB 06-000320 application must be met:

- 1) Access and Roadway Improvements. Access to the proposed subdivision from North Kona Belt Road is provided by and bounded by substandard road rights-of-way. The subdivider shall construct minimum access and dedicable roadways between Kona Belt Road to proposed subdivision in conformance with the following standards:
 - a) Chapter 23-79. The owner or subdivider shall submit construction plans and drainage report to the Department of Public Works (DPW) for review and comment. The subdivider shall verify current width of 3-rights-of-way fronting the subject TMK property and designate and denote minimum 19 feet wide future right-of-way line or minimum future plan line upon subject TMK property and Final Plat Map; and, the Planning Department notes that to comply and/or construct minimum dedicable roadways would result in net lot sizes or “building site” areas below the minimum one (1)-acre lot size requirement meeting State Land Use Commission (SLUC) regulations, etc.

- b) Chapter 23-86. Construct minimum 20-foot wide dedicable pavement with paved shoulders and swales within a minimum 50-foot wide right-of-way conforming with the DPW Standard Details R-33 and R-34 between Kona Belt Road and proposed lots and/or subdivision.
- c) Chapter 23-93. Install streetlights/signs/pavement markings as required by the Traffic Division, Department of Public Works.

August 3, 2010 Site Inspection: The Planning Department notes access between North Kona Belt Road (NKBR) and proposed subdivision is via a network of 12 feet wide rights-of-way. The roadway is a substandard gravel roadway with sections of roadways having slopes in excess of 8% bounded by dry stack rock walls, etc. as evidenced by photographs, taken by the Planning Director, of current access to subject TMK property during the August 3, 2010, site inspection of the subject TMK property and surrounding areas. The DPW, in memorandum dated June 8, 2006, regarding access to the proposed 2-lot subdivision (SUB 06-000320), and DPW memorandum dated October 15, 2007, in the file of a similar proposed 2-lot subdivision of TMK: 7-6-004:022 (SUB 07-000618) nearby, asserts that access from NKBR to both subdivisions "is provided by existing substandard private road right-of-ways"(sic). The DPW memorandums in both subdivisions require respective subdividers to submit construction plans and drainage report to "Construct minimum 20 feet wide dedicable pavement with paved shoulders and swales within a minimum 50 feet wide rights-of-way conforming with DPW Standard Details R-33 and R-34" including "necessary streetlights/signs/pavement markings as required by the Traffic Division." In sum, the site inspection of both proposed subdivisions indicate that current access from the NKBR to both properties and abutting properties are severely restricted and limited by the poor condition of the narrow, mostly gravel, roadways built between old dry stacked rock walls, compounded with sections of roadways within the narrow 12 feet wide rights-of-way exhibiting grades and other limiting factors, etc., requiring vehicles or trucks having adequate clearances and/or vehicles equipped with 4-wheel drive, etc. Further, at this time, the DWS is not able to provide a water supply service to the additional lot(s) created by both subdivisions at their respective elevations "mauka" of the nearest DWS water line within the NKBR without extensive improvements to the current DWS system, etc.

In view of the above, minimum access and roadway conditions, including cost required for the minimum rights-of-way, and dedicable roadway improvements identified by the DPW, and/or the minimum access and roadway requirements required to be constructed for proposed 2-lot subdivision, are extensive. Prior to the action to approve original PPM or date of this letter, the Planning Director notes the current owner—Eugene P. Gall—submitted a variance application on August 14, 2009, and request for variance stating, "Variance from road construction 23-86 & installation of streetlights/signs 23-93." Subsequent to the recent August 3, 2010, site inspection of current access and condition

of the substandard roadway between the North Kona Belt Road and proposed subdivision, the Planning Director **will not** approve variance from the minimum access and roadways conditions stated in this letter and/or required by Chapter 23, Subdivisions to permit subdivision application-SUB 06-000320. The current width of the network of roadways between the North Kona Belt Road (NKBR) to the proposed 3-lot subdivision and similar subdivision application nearby are grossly substandard including severe slopes requiring standard vehicles equipped with adequate clearances, good brakes, and/or trucks or farm vehicles having 4-wheel drives, etc. Furthermore, the condition of the current access from NKBR and condition of the gravel roadways to the subject TMK property or proposed subdivision by standard emergency and fire vehicles is limited and/or severely inhibited, and, therefore, allowing this subdivision or other similar developments to be permitted at this time may pose additional risk to general life, health and safety of the area without constructing extensive roadway and drainage improvements. In view of the foregoing, enclosed with this letter is the original variance application—VAR 038—submittals filed at this office prior to the approval of the enclosed map and imposition of conditions to construct minimum access and roadway requirements cited in this letter required for SUB 06-000320. The \$100 filing fee will be refunded in a separate letter.

- 2) Drainage. Chapter 23-30. Identify all watercourses and drainage ways on the final plat and encumber the drainage easements.
- 3) Wastewater Improvements. The original application identifies the previous subdivider's intent of installing a septic system as approved by the Department of Health. Current and future wastewater requirements for subject TMK property and/or proposed subdivision are subject to State Department of Health regulation or review prior to issuance of any Building Permits to subject TMK property.
- 4) Water Supply System. Pursuant to a recent discussion between staff and the Department of Water Supply (DWS) in Hilo, the current TMK property is eligible to receive one service subject to an elevation agreement and other DWS requirements for the first service. The nearest County water supply system cannot supply a second service for proposed additional lot created by the proposed 2-lot subdivision.

Prior to the action to approve original PPM or date of this letter, the Planning Director notes the current owner—Eugene P. Gall—submitted a variance application on September 1, 2009, and request for variance stating “Variance from water system art 6, div 2 & section 23-84 of chapter 23.” Alternatively, the subdivider could request approval of a Variance from the minimum subdivision water requirements to allow the proposed additional lot to utilize rainwater catchment system pursuant to Rule 22, Water Variance. Prior to final plat approval, a variance from water supply is required, including complying with any DWS requirements and submitting deed restrictions, etc. In view of the foregoing, enclosed with this letter is the original variance application—VAR 039—

and submittals filed at this office prior to the approval of the enclosed map. Please confer with the DWS prior to re-filing any variance from minimum water supply requirements cited in this letter for SUB 06-000320. The \$100 filing fee will be refunded in a separate letter.

- 5) The required future street width lines, and/or required or necessary easements affecting proposed lots, shall be identified for its purpose and to which proposed lot(s) and/or grantee(s) the easement is in favor of. This shall be shown and denoted on the final plat map.
- 6) Property Tax Certification. Submit written proof that all taxes and assessments on the property are paid to date.
- 7) Surveyor's Certification. The enclosed or approved subdivision map (Dated: April 6, 2006) was originally submitted by Wes Thomas Associates for the previous owner—Aina Maluhia, LLC. Please contact Wes Thomas Associates to discuss any further use of the enclosed map and protocol to use any survey information prepared by Wes Thomas Associates, in conjunction with subject subdivision application—SUB 06-000320—originally filed by Wes Thomas Associates for Aina Maluhia, LLC, prior to preparation and submittal of required Final Plat Map (FPM) and surveyor's certification to this office for subject subdivision application—SUB 06-000320.
- 8) Place property markers in accordance with the final plat map. Surveyor shall submit certification upon completion.
- 9) Final Plat Map. Submit ten (10) copies of the final plat map prepared in conformance with Chapter 23 Subdivisions, within one year from the date of tentative approval, on or before August 30, 2011. If not, approval to the original preliminary plat map or PPM dated April 6, 2006 shall automatically be deemed null and void. Only upon written request from the subdivider and for good cause, the director may grant to the subdivider additional time or a specific extension of time within which the subdivider may file the final plat. As part of final plat map submittal, the director requests an additional copy of the final plat map be submitted as a “.dwg” or “.dxf” diskette file prepared by CAD software.
- 10) Time Limit. Subdivider shall complete all requirements specified as conditions for tentative approval of the preliminary plat map within three (3) years of said tentative approval, on or before August 30, 2013. An extension of not more than two (2) years may be granted by the director upon timely request of the subdivider.

Please be aware that, if at any time during the fulfillment of the foregoing conditions, should concerns emerge, such as environmental problems or other problems which were earlier overlooked or not anticipated/accounted for in data/reports available to date, this could be

sufficient cause to immediately cease and desist from further activities on the proposed subdivision, pending resolution of the problems. The Planning Director shall confer with the listed officers to resolve the problems and notify you accordingly.

No final approval for recordation shall be granted until all of the above conditions have been met.

Land shall not be offered for sale, lease, or rent until final approval for recordation of the subdivision is granted by the Planning Director, or the proposed subdivision has been issued a preliminary order of registration by the Department of Commerce and Consumer Affairs (DCCA) in accordance with the requirements of Chapter 484, Hawaii Revised Statutes (HRS).

In addition, you may appeal the director's decision to not review the variance applications (VAR 08-039 or VAR 08-039) submitted prior to the approval of the enclosed PPM or minimum access and roadway requirements conditions stated in the letter granting approval to preliminary plat map (PPM) map dated April 6, 2006 (the appeal and required submittals and filing fee must be filed within thirty (30) days from the date of receipt of this letter), according to the following:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal.

The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.

- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

Eugene P. Gall
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August 30, 2010

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may reverse or modify the decision or remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by and abuse of discretion or clearly unwarranted exercise of discretion.

Should you have any questions, please feel free to contact appropriate staff in the Administrative Permits Section or staff to the Board of Appeals in the Planning Department in Hilo at (808) 961-8288.

Sincerely,



BJ LEITHEAD TODD
Planning Director

GS/WRY:kwr

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Enclosures: County of Hawaii Board of Appeals General Petition for Appeal of Decisions by Planning Director form.

Original Variance Application—VAR-038

Original Variance Application—VAR-039

Preliminary Plat Map

xc: Manager, DWS
Director, DPW

AUG 18 2009

RECEIVED FROM		DATE		NO. 485971	
ADDRESS		Eugene P. Gall			
76-5707 Momi Ala Hia Hwy Hilo					
		DOLLARS \$		100	
<input type="checkbox"/> FOR RENT		Variance fee: Eugene P. Gall			
<input type="checkbox"/> FOR		7-6-4-25			
AMT. OF ACCOUNT		CASH			
AMT. PAID		CHECK		#1032	
BALANCE DUE		MONEY ORDER			
				BY [Signature]	

TOPS FORM 48808

COUNTY OF HAWAII
BOARD OF APPEALS

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR

(Type or legibly print the requested information)

APPELLANT: _____

APPELLANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

TELEPHONE: (Bus.) _____ (Home) _____

APPELLANT'S INTEREST IN THE PROPERTY: _____

APPELLANT'S NATURE OF APPEAL AND REQUEST: _____

LAND OWNER: _____

TAX MAP KEY: (land in question) _____ AREA OF PROPERTY: _____

STATE LAND USE DESIGNATION: _____ COUNTY ZONING: _____

STREET ADDRESS OF PROPERTY: _____

APPELLANT'S REPRESENTATIVE: _____

REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

REPRESENTATIVE'S ADDRESS: _____

TITLE: _____ TELEPHONE: (Bus.) _____

THIS PETITION MUST BE ACCOMPANIED BY A FILING FEE OF TWO HUNDRED FIFTY DOLLARS (\$250) PAYABLE TO THE COUNTY DIRECTOR OF FINANCE AND:

1. The Original and ten (10) copies of this completed petition with the following:
 - a. A description of the property involved in the appeal in sufficient detail for the public to precisely locate the property.
 - b. A statement explaining the nature of the appeal and the relief requested.
 - c. A statement explaining:
 - (i) How the decision appealed from violates the law; or
 - (ii) How the decision appealed from is clearly erroneous; or
 - (iii) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
 - d. A clear and concise statement of any other relevant facts.
2. Proof of Service by the Appellant on the Planning Director for an appeal from the Planning Director's decision relating to the Zoning Code.
3. A list of the names, address and tax map keys of all owners of property within boundaries established by Section 8-11(d) of the Board of Appeals Rules of Practice and Procedure.