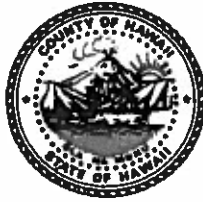


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

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**

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

April 18, 2013

Donald S. Rullo  
75-5782 Kuakini Highway, Suite C2C  
Kailua-Kona, HI 96740

Dear Mr. Rullo:

**SUBDIVIDER: RULLO, Donald S.**  
**"Ho'omau I Mua Planned Unit Development"**  
Proposed Subdivision of Lot 8,  
Being a Portion of Grant 2571,  
Into Lots 1 through 33, Inclusive and Lot R-1 (Road Lot)  
'Opihihale 1<sup>st</sup>, South Kona, Island of Hawai'i, Hawai'i  
TMK: 8-7-013:006 (PUD-05-000002; SUB-11-001110; VAR-06-075)

This is in response to your letter dated February 6, 2013, in which you provided the status of the project and requested deviation from prior approved entitlements.

This project is being processed as a result of an approved Planned Unit Development Permit (PUD-05-000002) allowing for variances from the Subdivision and Zoning Codes. A water system Variance Permit (VAR-06-075) was also issued for this project. The subdivider is reminded that conditions of approval of VAR-06-075 Permit required the installation of a private water system to service the lots. This was reflected in Condition No. 3 of the letter of Tentative Approval (TA) dated September 21, 2012, for the proposed subdivision SUB-11-001110.

We must point out that the requirement for the alternative water system was advanced by you, not the County. As for Planning Department Rule 22 allowing the original 8-lot subdivision, that rule was not enacted until February 25, 2006. The original 8-lots were permitted via VAR 417, approved on November 14, 1990.

You have requested that in lieu of the private water system required through VAR-06-075 for 33-lot subdivision SUB-11-001110, that you be allowed to subdivide only one lot of the SUB/PUD utilizing rainwater catchment. We note here that Rule 22 requires a minimum average annual rainfall of 60 inches. The information at hand indicates that this area receives 40 to 60 inches of average annual rainfall (Rainfall Atlas of Hawai'i, U of H shows only 38.848 inches).

Donald S. Rullo  
Page 2  
April 18, 2013

Procedural steps with regard to going forward with a one (1) lot and remainder area subdivision in lieu of the 33-lots presently in process:

1. Amend present SUB-11-001110 with a revised preliminary plat map for the one (1) lot and remainder area lot thereby deeming the TA dated September 21, 2012 null and void; and
2. Submit new VAR application (though it will be subject to limitations per Rule 22).

Bear in mind, that the new lot will need to be in keeping with the minimum lot size of the zoning of the area (A-5-a) as opposed to that as proposed in the PUD.

Should the new VAR application not be approved, the proposed subdivision action would not be able to go forward. Although a denial of the VAR by the Planning Director could be subject to appeal to the Board of Appeals, Rule 22 was adopted to provide criteria for consistent decisions on such matters.

In conclusion, we are not optimistic of a beneficial outcome for this project under your proposal.

Should you have any further questions, please feel free to contact Jonathan Holmes of this department.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

JRH:lnm

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xc:     Manager, DWS  
          Director, DPW  
          District Environmental Health Program Chief, DOH  
          District Engineer, DOT  
          Planning Department-Kona  
          DLNR-Historic Preservation Division (Kapolei)  
          DLNR-Historic Preservation Division (Hilo)  
          Na Ala Hele Trails & Access  
          Ala Kahakai National Historic Trail  
          Chrystal Thomas Yamasaki, LPLS, Wes Thomas Associates  
          PD-Long Range Planning Division  
          SUB 7235

William P. Kenoi  
*Mayor*



BJ Leithead Todd  
*Director*

Margaret K. Masunaga  
*Deputy*

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September 21, 2012

Chrystal Thomas Yamasaki, LPLS  
Wes Thomas Associates  
75-5749 Kalawa Street  
Kailua-Kona, HI 96740-1818

Dear Ms. Yamasaki:

**TENTATIVE APPROVAL**  
**SUBDIVIDER: RULLO, Donald S.**  
**"Ho'omau I Mua Planned Unit Development"**  
Proposed Subdivision of Lot 8,  
Being a Portion of Grant 2571,  
Into Lots 1 through 33, Inclusive and Lot R-1 (Road Lot)  
'Opihihale 1<sup>st</sup>, South Kona, Island of Hawai'i, Hawai'i  
TMK: 8-7-013:006 (SUB-11-001110)

Please be informed that Tentative Approval of the preliminary plat map dated August 11, 2011, is hereby granted with modifications and conditions.

This application is being processed as a result of an approved Planned Unit Development Permit (PUD-05-000002) allowing for variances from the Subdivision and Zoning Codes. A water system Variance Permit (VAR-06-075) was also issued for this project. The subdivider is reminded that compliance with conditions of approved PUD and VAR Permits are required, especially installation of a private water system to service the lots, and public access to and along the shoreline. There are also historic sites located on the property that will require mitigative measures.

During the processing of said PUD, it was also determined that the proposed subdivision is exempt from the Planning Commission Rule No. 9 Special Management Area (SMA) and Conservation District Use Permit Application (CDUA) requirements.

The subdivider is now authorized to prepare detailed drawings of the subdivision plan in accordance with Chapter 23, Subdivision Control Code, County of Hawai'i, as modified. Before final approval can be granted, the following conditions must be met:

Chrystal Thomas Yamasaki, LPLS

Wes Thomas Associates

Page 2

September 21, 2012

- 1) Archaeological and Historical
  - a) Submit a Data Recovery Report to the Department of Land and Natural Resources' Historic Preservation Division (DLNR-HPD) in response to the previous Data Recovery Plan.
  - b) Prepare an Archaeological Inventory Survey of such scope as may be required by the DLNR-HPD. Contact Michael Vitousek at (808) 652-1510 or [Michael.vitousek@hawaii.gov](mailto:Michael.vitousek@hawaii.gov) for guidance on this matter.
- 2) Public Access
  - a) In consultation with the Planning Department, Na Ala Hele Trail and Access Program and the Ala Kahakai National Historic Trail Program, prepare a Shoreline Public Access Plan that addresses all elements in our "Guide to What Should be Included in a Public Access Plan" (enclosed) and provides for lateral shoreline and mauka-makai public access through the subject property.
  - b) The Shoreline Public Access Plan shall be submitted to and approved by the Planning Director.
- 3) Water System
  - a) Provide a water system substantially as provided for in approved VAR-06-075. This will include, but not be limited to, source (single well with primary and back-up pumps), storage (two (2) minimum 30,000 gallon tanks) and distribution system to each lot (except proposed bulk Lot 33).
  - b) Submit water system construction plans for approval by affected agencies. These shall also be submitted to the Hawai'i County Fire Department (HFD).
  - c) Pay plan review, testing and inspections fees as required by the Department of Water Supply (DWS).
- 4) Drainage
  - a) Identify all watercourses and drainage ways and designate areas within as "approximate areas of flood inundation."
  - b) Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or roadways. For planned drywells, satisfy Department of Health (DOH) drywell requirements, including issuance of an underground injection control (UIC) permit to the subdivider.
- 5) Access and Roadway Improvements
  - a) For Lots 2, 3 & 4, encumber the three (3) side-by-side flag poles with a common access easement. Upon development of the three (3) lots, they shall share one point of entry.
  - b) All roadways shall follow the guidelines incorporated in the Hawai'i Statewide Uniform Design Manual for Streets and Highways or the applicable AASHTO design guide for the appropriate design speed.
  - c) Construct minimum 20-ft. wide agricultural pavement with stabilized grass/landscaped shoulders/swales within a minimum 50-ft. right-of-way conforming to Department of Public Works (DPW) Standard Detail (Std. Det.) R-39. Where grades are 8% or greater, the paving section shall conform to Std. Det. R-34.

- d) Submit proposed street names conforming to the adopted street naming policy of the County of Hawai'i.
  - e) Install streetlights (including at the Ahe Kolo Place and Māmalahoa Highway intersection), signs and pavement markings as required by the Traffic Division, DPW and as allowed by PUD-05-000002.
  - f) Submit construction plans and drainage report for review and comment. These shall also be submitted to the HFD.
- 6) All 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. These shall be shown on the final plat map.
  - 7) Property Tax Certification. Submit written proof that all taxes and assessments on the property are paid to date.
  - 8) Surveyor's Certification. 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 conformity with Chapter 23, Subdivisions, within one year from the date of tentative approval, on or before **September 18, 2013**. If not, tentative approval to the preliminary plat map shall be deemed null and void. Only upon written request from the subdivider and for good cause, the director may grant to the subdivider an extension of time within which the subdivider may file the final plat. **As part of final plat map submittal, provide an additional copy of the final plat map as a ".dwg" or ".dxf" diskette file prepared by CAD software. In the alternate, a digital copy of the final plat map may be e-mailed to the Tax Maps and Records Supervisor at [planning@co.hawaii.hi.us](mailto:planning@co.hawaii.hi.us).**
  - 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 **September 18, 2015**. 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 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, Hawai'i Revised Statutes (HRS).

Chrystal Thomas Yamasaki, LPLS  
Wes Thomas Associates  
Page 4  
September 21, 2012

There has been considerable legal controversy over subdivisions in the agricultural district, including the recent Kelly, et.al. v. 1250 Oceanside Partners, et.al., Civil No. 00-1-0192K. Because of the state of the law at this time, we recommend that subdividers in the State Land Use Agricultural district consult with, and rely on, independent legal counsel in deciding whether their subdivisions comply with the requirements of Chapter 205, HRS.

We also recommend that you advise lot purchasers to consult with, and to rely on, independent legal counsel regarding permissible uses and the effect of Land Use Commission Rule 15-15-25(b), HRS Section 205-4.5, and Hawai'i County Planning Department Rule No. 13, on the requirements to build and occupy dwellings on lots within the subdivision.

Should you have any questions, please feel free to contact Jonathan Holmes of this department.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

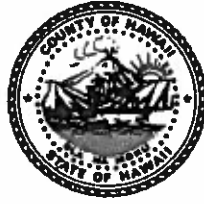
JRH:lnm

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Encs.: PPM (08-11-11)  
Guide to Public Access

xc: Manager, DWS  
Director, DPW  
District Environmental Health Program Chief, DOH  
District Engineer, DOT  
Planning Department-Kona  
DLNR-Historic Preservation Division (Kapolei)  
DLNR-Historic Preservation Division (Hilo)  
Na Ala Hele Trails & Access  
Ala Kahakai National Historic Trail  
Donald S. Rullo w/ Guide to Public Access  
PD-Long Range Planning Division  
PUD-05-000002; SUB 7235; VAR-06-000075

William P. Kenoi  
Mayor



Bobby Jean Leithead Todd  
Planning Director

Margaret K. Masunaga  
Deputy Planning Director

County of Hawaii  
**PLANNING DEPARTMENT**  
Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

September 16, 2011

Chrystal Thomas Yamasaki, LPLS  
Wes Thomas Associates  
75-5749 Kalawa Street  
Kailua-Kona, HI 96740-1818

Dear Ms. Yamasaki:

**PRELIMINARY PLAT MAP AND DEFER ACTION**

**SUBDIVIDER: RULLO, Donald S.**

**"Ho'omau I Mua Planned Unit Development"**

Proposed Subdivision of Lot 8,

Being a Portion of Grant 2571,

Into Lots 1 through 33, Inclusive and Lot R-1 (Road Lot)

'Opihihale 1<sup>st</sup>, South Kona, Island of Hawai'i, Hawai'i

TMK: 8-7-013:006 (SUB-11-001110)

This is to acknowledge receipt of ten (10) copies of the preliminary plat map dated August 11, 2011; Real Property Tax Clearance; one (1) CD digital copy of the preliminary plat map; and filing fee of \$1,075.00 for the referenced application for 33 lots and Road Lot.

This application is being processed as the result an approved Planned Unit Development Permit PUD-05-000002 allowing for some variances from the Subdivision and Zoning Codes. During the processing of said PUD, it has also been determined that the proposed subdivision is exempt from the Planning Commission Rule No. 9 Special Management Area and Conservation District Use Permit Application requirements. The subdivider is reminded that compliance with the various conditions of approved PUD and VAR Permits are required. This especially includes installation of a private water system to service the lots and public access to and along the shoreline. There are also historic sites located on the property that will require mitigative measures.

By a copy of this letter, we are forwarding the application and preliminary plat map to the listed officers for their review and comments. Please be advised that we are deferring action on the referenced application until all listed officers' comments are received.

In accordance with the requirements of Chapter 23 (Subdivision Code), Article 4, Division 1, Section 23-58A, Hawai'i County Code 1983 (2005 Edition) regarding the Posting of signs for Public Notification, the subdivider is reminded that a sign shall be posted on the subject property **within ten (10) days** of filing the subdivision application notifying the public of the following:

- (1) The nature of the application;
- (2) The proposed number of lots;
- (3) The size of the property;
- (4) The tax map key or keys of the property;
- (5) That they may contact the Planning Department for additional information; and
- (6) The address and telephone number of the Planning Department.

Notwithstanding any other provisions of law, the sign shall be not less than nine (9) square feet and not more than twelve (12) square feet in area, with letters not less than one (1) inch high. No pictures, drawings, or promotional materials shall be permitted on the sign.

The sign shall be posted at or near the property boundary adjacent to a public road bordering the property and shall be readable from said public road. If more than one public road borders the property the subdivider shall post the sign to be visible from the more heavily traveled public road. The sign shall, in all other respects, be in compliance with Chapter 3, Hawai'i County Code 1983 (2005 Edition).

The subdivider shall file an affidavit with the planning department not more than **five (5) days** after posting the sign stating that a sign has been posted in compliance with these requirements, and that the subdivider and its agents will not remove the sign until the application has received final subdivision approval, or that such application has been rejected or withdrawn. A photograph of the sign in place shall accompany the affidavit.

The sign shall remain posted until final subdivision approval is issued, or until the application has been rejected or withdrawn. The subdivider shall remove the sign promptly after such action.

For the subdivider's information, the United States Postal Service (USPS) has informed this office of new mail delivery guidelines, which encourages the use of centralized mail delivery equipment. We have enclosed a flyer provided by the USPS. These new mail delivery guidelines must be considered as it may have an effect upon the proposed subdivision depending on the type of centralized mail delivery to be provided. We encourage the subdivider to contact the local USPS Growth Coordinator at (808) 423-3908. The subdivider is ultimately responsible to ensure that the proposed subdivision will accommodate the necessary easements or facilities to provide for centralized mail delivery in accordance with USPS mail delivery guidelines.

Chrystal Thomas Yamasaki, LPLS  
Wes Thomas Associates  
Page 3  
September 16, 2011

Should you have any questions, please feel free to contact Jonathan Holmes of this department.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

JRH:lnm

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Enc.: USPS New Mail Delivery Guidelines

xc: Manager, DWS w/application & PPM  
Director, DPW w/application & PPM  
District Environmental Health Program Chief, DOH w/application & PPM  
District Engineer, DOT w/application & PPM  
Director, DEM w/application & PPM  
Planning Department-Kona w/application & PPM  
Na Ala Hele w/application & PPM  
DLNR-HPD w/application & PPM  
Ala Kahakai w/application & PPM  
Donald S. Rullo w/Receipt #153486  
PD-Long Range Planning Division  
Tax Maps and Records Supervisor w/1-CD  
PUD-05-000002; SUB 7235; VAR-06-000075

