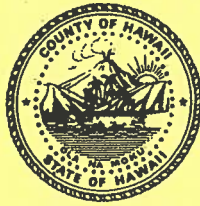


William P. Kenoi
Mayor



Daryn S. Arai
Acting 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

January 29, 2009

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

Dear Ms. Yamasaki:

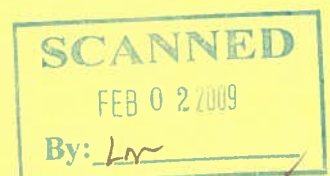
SECOND REVISED TENTATIVE APPROVAL
SUBDIVIDERS: CREAGAN, Richard P. and Marilyn S.
Proposed Subdivision of Grant 2759,
Into Lots 1 to 5, Inclusive,
At Nukakaia, Ka'u, Hawai'i
TMK: 9-4-004:028 (SUB-99-000026)

This acknowledges receipt of your request for an extension of time to complete the requirements of the Revised Tentative Approval dated January 14, 2002. Please be aware that, with the issuance of this Second Revised Tentative Approval, your request is rendered moot, and Revised Tentative Approval dated January 14, 2002, is hereby null & void.

Please be informed that Second Revised Tentative Approval of the second revised final plat map dated September 16, 2008, is hereby granted with modifications and conditions. These revisions are based upon comments from the concerned agencies in response to the submission of the revised final plat map dated December 7, 2004 and the second revised final plat map dated September 16, 2008.

The subdividers are 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:

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09-049201
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- 1) Water System
 - a) Comply with all conditions of approved Amended Water Variance No. 1013, especially, but not limited to, Condition No. 2 regarding submission, for department review and approval, of the proposed deed covenants and restrictions. The Planning Director-approved document shall be recorded with the Bureau of Conveyances and a copy of the recorded document submitted for Planning Department files.
- 2) 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 subdividers.
 - c) Obtain, and comply with the requirements of, a National Pollutant Discharge Elimination System (NPDES) permit or obtain a DOH Letter of Determination.
- 3) Access and Roadway Improvements
 - a) Provide a 10-ft wide "no vehicular access" planting screen easement along the entire Māmalahoa Highway frontage of the subdivision exclusive of the Access and Utility Easements "AU-1" (Revised) and "AU-2" (Revised) (collectively "access easements"). This easement shall intersect the radius portion of Access and Utility easement "AU-1" (Revised).
 - b) Provide proof of access rights, as revised, over Parcel 9-4-003:022 for Access and Utility Easement "AU-1" (Revised). This is requested because the easement has been increased in area.
 - c) For access easements, construct minimum 20-ft. wide agricultural pavement conforming to Department of Public Works (DPW) Standard Detail R-39. Where the grade is 8% or greater, the roadway section shall be paved per Standard Detail R-34.
 - d) Improvements within the State right-of-way are required. This constitutes the use of public lands and may require the preparation of an environmental assessment that meets the requirements of Chapter 11-200, Hawai'i Administrative Rules. Please contact the Office of Environmental Quality Control for compliance issues with regard to HRS 343. The Planning Department will be the approving agency for the environmental assessment.
 - e) Submit construction plans and drainage report for review and comment.
- 4) 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. This shall be shown on the final plat map.
- 5) Wastewater Improvements. Show existing wastewater system(s) on the third revised 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. Place property markers in accordance with the third revised final plat map. Surveyor shall submit certification upon completion.

- 8) Third Revised Final Plat Map. Submit **ten (10)** copies of the third revised final plat map prepared in conformity with Chapter 23, Subdivisions, within one year from the date of second revised tentative approval, on or before **January 29, 2010**. If not, the second revised tentative approval to the second revised final plat map shall be deemed null and void. Only upon written request from the subdividers and for good cause, the director may grant to the subdividers an extension of time within which the subdividers may file the third revised final plat map. As part of third revised final plat map submittal, the director request an additional copy of the third revised final plat map be submitted as a ".dwg" or ".dxf" diskette file prepared by CAD software.
- 9) Time Limit. Subdivider shall complete all requirements specified as conditions for second revised tentative approval of the second revised final plat map within three (3) years of said second revised tentative approval, on or before **January 29, 2012**. 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.

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, Hawai'i Revised Statutes. 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), Hawai'i Revised Statutes 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.

Chrystal Thomas Yamasaki, LPLS
Wes Thomas Associates
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January 29, 2009

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

Sincerely,



DARYN S. ARAI
Acting Planning Director

JRH:lnm

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Enc.: Second Revised FPM (09-16-08)

xc: Manager, DWS
Director, DPW
District Environmental Health Program Chief, DOH
District Engineer, DOT
Richard & Marilyn Creagan
VAR 1013