

William P. Kenoi  
Mayor



BJ Leithead Todd  
Planning Director

## County of Hawaii

### PLANNING DEPARTMENT

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March 3 2009

Donald J. Murray, Project Manager  
M&E Pacific, Inc.  
100 Pauahi Street, #207  
Hilo, HI 96720

Dear Mr. Murray:

Request for Pre-Existing Lots Determination affecting  
Tax Map Keys 1-4-002:042 and 1-4-073:037, 039 & 040; Kapoho, Puna, Hawai'i

Please accept our apologies for this much-delayed response to your submittal dated April 2, 2006, requesting the finding of 6 legal lots of record.

We have reviewed the documents submitted, our department records and those of the Department of Finance – Real Property Tax Division (RPT) in accordance with Article 11 (Pre-existing Lots) of the Subdivision Code (Sections 23-117 through 23-120).

First of all, the past practices of the State Bureau of Conveyances (BOC) with regard to the methods of recording land ownership documents has not always been in agreement with County subdivision law. Prior to the mid 1990's, it was a simple matter of presenting properly prepared deed documents to the BOC and they would be recorded and subsequently indicated on the Tax Map Plats giving the appearance of legally subdivided land. These maps are for property tax assessment purposes only and do not necessarily reflect the proper creation of lots as specified in county law. Needless to say, this situation is not unique to you and does present some difficulty for the Planning Department and for those who think that they have a legally created parcel of land.

Our review of the records has found the following:

A Portion of Royal Patent 4479/Land Patent 8177, Land Commission Award 8559, Apana 5;  
A Portion of Royal Patent 7483, Land Commission Award 4452, Apana 1; and  
A Portion of Royal Patent 7483, Land Commission Award 4452, Apana 2 were subject to the "Vacationland Hawai'i Unit II" subdivision (SUB 2069) granted final subdivision approval on December 19, 1963. The above lands were also described as Parcels 1-4-002:003, 022, 042 and 050.

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Three of the subject parcels (1-4-073:037, 039 and 040), which appear as "remnants" of Parcel 050 after SUB 2069 were, in fact, absorbed into Parcel 1-4-002:042 as the result of the above consolidation and resubdivision action and are not individual legal lots of record. We surmise that individual Tax Map Parcel numbers were issued simply as a means of clearing up ownership of the "remnants" of Parcel 050.

Therefore we find the following three (3) legal lots of record with regards to Parcel 1-4-002:042, the only valid parcel in question.

Parcel 1-4-002:042 contains:

1. A Portion of Royal Patent 4479, Land Patent 8177, Land Commission Award 8559, Apana 5;
2. A Portion of Royal Patent 7483, Land Commission Award 4452, Apana 1; and
3. A Portion of Royal Patent 7483, Land Commission Award 4452, Apana 2.

Should you not concur with the above finding, your recourse is as follows:

In accordance with Section 23-5 of the Hawai'i County Code, Section 6-10.2 of the Hawai'i County Charter, and Rule 8 of the Board of Appeals, within 30 days of receipt of this determination, you may appeal the director's decision as follows:

- (a) 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 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.
- (b) The appellant 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.

According to Section 23-5, Hawai'i County Code, 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 the decision is:

- (a) In violation of this chapter or other applicable law; or
- (b) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (c) Arbitrary, or capricious, or characterized by and abuse of discretion or clearly unwarranted exercise of discretion.

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In view of the above, we have enclosed COUNTY OF HAWAII BOARD OF APPEALS GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.

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

Sincerely,



BJ LEITHEAD TODD  
Planning Director

JRH:lnm

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Enc.: County of Hawai'i Board of Appeals General Petition for Appeal of Decisions by Planning Director

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SUB 1825

