

**Harry Kim**  
Mayor



**Christopher J. Yuen**  
Director

**Brad Kurokawa, ASLA**  
**LEED® AP**  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224  
(808) 961-8288 • FAX (808) 961-8742

January 9, 2008

Roger W. Moser, Jr.  
Ann Ku'uleinani Snyder  
P.O. Box 608  
Pepe'ekeo, HI 96783-0608

Dear Mr. Moser & Ms Snyder:

**Lot of Record Determination**  
**Pu'uohua, Ninole, North Hilo, Hawai'i**  
**TMK: 2-8-002:013**

We have received your request dated April 14, 2006. Please accept our apology for the length of time taken to reply.

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).

We do not recognize the flume and ditch right-of-ways "reserved and excepted" from government grants as subdividing property. These are clearly in the nature of easements rather than fee ownership. If they were held in fee, they would create an incongruous situation where the lot owner's property was cut by property owned in fee by others which the private owner had no rights to cross, hence isolating and potentially landlocking portions of the property.

This interpretation has been upheld by the Board of Appeals (BOA 06-000036, December 17, 2007) with respect to an adjacent property, TMK: 2-8-002:012.

Therefore, we find that the property identified as TMK: 2-8-002:013 is indeed one (1) parcel as presently shown on the Tax Map Plat and containing 11.39 acres.

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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, 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 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.
- (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 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 an abuse of discretion or clearly unwarranted exercise of discretion.

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,

  
CHRISTOPHER J. YUEN  
Planning Director

JRH:lnm

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

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xc: Tax Maps and Records Supervisor I  
Real Property Tax Division-Hilo  
Manager, DWS  
Director, DPW  
TMK Files 2-8-02:09; 2-8-02:12(Box #14);  
SUB 7666; BOA-06-000036