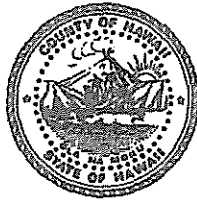


Harry Kim
Mayor



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

July 29, 2008

John C. Cross
Tropical Estate & Land Planning
P.O. Box 367
Hakalau, HI 96710

Dear Mr. Cross:

REVISED Lots of Record Determination
Pu'uohua, Ninole, North Hilo, Hawai'i
TMK: 3-2-003:011

We have revisited your request dated March 7, 2006.

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) and additional documentation that we were able to obtain from other sources through our own diligence. The original request was denied because the submittals did not contain the original deed.

Normally, we do not recognize the flume right-of-way "reserved and excepted" from government grants as subdividing property. These are almost always in the nature of easements rather than fee ownership. Through careful review of a deed document dated **May 28, 1925**, we found the following language (although repeated in the **April 27, 1990** legal description by Murray, Smith & Associates, Ltd.) that has allowed us to reverse our position in this particular instance:

"Excepting and reserving therefrom unto the Company its successors and assigns, **all its right, title and interest** in and to a strip of land 10 feet wide, the center line of which is bounded and described as follows: ..." (emphasis added) The document goes on to describe the metes and bounds of the flume as it meanders through the area, and subject parcel, in question. The 1925 deed shows that the legal division of land occurred prior to November 22, 1944, thus satisfying Section 23-118(a) of the Subdivision Code.

John C. Cross
Tropical Estate & Land Planning
Page 2
July 29, 2008

Therefore, we find that the property identified as one (1) Tax Map Parcel Number is indeed three (3) parcels as follows:

- 1) Major portion of parcel 11, consisting of 26.5375 acres;
- 2) Minor portion of parcel 11, consisting of 1.50 acres; and
- 3) 10-foot wide flume, consisting of 0.13 acres.

We do not have any record of these lots being consolidated with each other or any other lot adjoining them.

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

Sincerely,



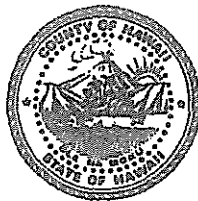
CHRISTOPHER J. YUEN
Planning Director

JRH:jlh

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xc: ✓ Tax Maps and Records Supervisor I
Real Property Tax Division-Hilo
Manager, DWS
Director, DPW

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
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Deputy Director

County of Hawaii
PLANNING DEPARTMENT

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

February 5, 2008

John C. Cross
Tropical Estate & Land Planning
PO Box 367
Hakalau, HI 96710

Dear Mr. Cross:

Lots of Record Determination
Pu'uohua, Ninole, North Hilo, Hawai'i
TMK: 3-2-003:011

We have received your request dated March 7, 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 right-of-way "reserved and excepted" from government grants as subdividing property (in pink highlight on your referenced map.) 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.

We also believe that the intent of creating these rights-of-way was simply to make a right-of-way for the flume, not to subdivide property creating separate lots. We also note that the property has been conveyed many times as a unit, not as separate lots.

Therefore, we find that the property identified as one (1) Tax Map Parcel Number is indeed one (1) Parcel as presently shown on the Tax Map Plat and containing 28.1675 acres.

John C. Cross
Tropical Estate & Land Planning
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February 5, 2008

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

John C. Cross
Tropical Estate & Land Planning
Page 3
February 5, 2008

xc: Tax Maps and Records Supervisor I
Real Property Tax Division-Hilo
Manager, DWS
Director, DPW