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PLANNING DEPARTMENT

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July 22, 2009

Robert D. Triantos
Carlsmith Ball, LLP
P.O. Box 1720
Kailua-Kona, HI 96745-1720

Dear Mr. Triantos:

DETERMINATION OF PRE-EXISTING LOTS
At Kapunapuna, North Kohala, Island of Hawai'i, Hawai'i
TMK: 5-6-001:009 & 010

We have received your request dated July 23, 2008. We apologize for the delay in this reply but as you are aware, it has taken much research to attempt to agree with your position. You contend that two existing "roadway alignments" ("Old Mahukona-Kohala Road" and "Honoipu-Waimea Road") bisect the property, thereby creating three (3) separate lots of record. Be aware that the correct TMK parcel numbers are 009 and 010 (not 019 as stated in the request).

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 have also consulted with the State Department of Land and Natural Resources' Na Ala Hele abstractor who researches lands affected by the Highways Act of 1892.

Our review of the records has found the following:

This department has processed similar requests in this vicinity, specifically for TMK's 5-6-001:019, 5-7-002:010 and 5-7-002:016 that could be affected by the southerly portion of a "Māhukona-Kohala Road" (Maliu Road) alignment. Those determinations found that it is not a government road that subdivided those properties.

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In summary, both the State Department of Land and Natural Resources and this office have failed to locate proper documentation that would confirm both roadways as roadway lots owned by the government, thereby bisecting the parcel into the three (3) requested separate lots. A Land Court Map dated 1910 does appear to show the alignment of the Old Mahukona-Kohala Road, but not the Honoipu-Waimea Road. In order for these two roadways to be government roadways, they must, at the very least, be shown on maps pre-dating the Highways Act of 1892, which we have yet to locate.

The Original Certificate of Title No. 1681 (January 22, 1921) in response to Land Court Petition No. 464 (Amended) also gives the total land area (45.73 acres) of Grant 739 non-exclusive of any roadways, although both road alignments are shown on the map. Also the October 11, 1851 description of Grant 739 does not mention any area lost to roadways, although the sketch of the Grant shows an east to west road alignment along the northern boundary.

The RPT history sheets are the only documents that indicate that "Parcels" 009 and 010 were recorded prior to November 22, 1944 through Documents 48338 & 48530, Certificate Numbers 20196 & 20288 respectively.

If not for those recordation documents, this department would have determined that, in fact, parcels 009 & 010 were only one (1) pre-existing lot of record, being the whole of Grant 739, Land Court Application 464.

Therefore, in conclusion, we find that Parcels 009 & 010 are both pre-existing lots of record due to their having been recorded prior to the first subdivision ordinance.

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:mad

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xc: John Standard & Catherine Morgan-Standard
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