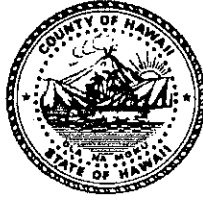


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
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**County of Hawai'i**  
PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
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May 14, 2013

Molly Gorger  
O'Callaghan, LLC  
PO Box 230725  
Tigard, OR 97281

Dear Ms. Gorger:

**Lots of Record Determination**  
**Halekii, Keekee 1<sup>st</sup>, South Kona, Hawai'i**  
**TMK: 8-1-001:019 & 030**

We have received your e-mail of April 16, 2013, regarding the above subject properties.

We have reviewed our department records and those of the Department of Finance–Real Property Tax Division (RPT). Our review of the records has found the following:

1. The subject real property is within Lot G of the subdivision of Land Commission Award 387 (SUB 883) which was approved the Planning and Traffic Commission on March 7, 1955. Lot G contained 4.207 acres of land area.
2. Parcel 030 was first recorded with a land area of 1.00 acre at the Bureau of Conveyances on December 28, 1990 at 8:01 AM, Document Number 90-198198 as "...an undivided 35% interest..." in Lot G. Another Document Number 90-198197, recorded at the same time seems to convey a 100% interest in the 1.00 acre portion of Lot G.

For your information, 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 and/or subdivision plats 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 reflect the proper creation of lots as specified by county law.

Molly Gorger  
O'Callaghan, LLC  
Page 2  
May 14, 2013

Regretfully, we cannot certify this recordation method as having legally created the lots as presently platted on the Tax Map plats as it is not in conformance with the Subdivision Code which states in relevant part:

"Section 23-118. Criteria to determine a pre-existing lot.

The director shall certify that a lot is pre-existing if the lot meets one of the following criteria:

- (a) The lot was **created and recorded prior to November 22, 1944** or the lot was created through court order (e.g. partition) prior to July 1, 1973, and the lot had never been legally consolidated, provided that no preexisting lot shall be recognized based upon a lease except for a lease which complied with all other applicable laws when made, including Territorial statutes regulating the sale or lease of property by lot number or block number, and on September 25, 2002, the proposed lot contains a legal dwelling, or has been continuously leased since January 8, 1948, as a separate unit.
- (b) The lot was created prior to December 21, 1966, as an agricultural lot in excess of twenty acres pursuant to County ordinance." (emphasis added)

As there is no record of a properly filed and processed subdivision application, Parcel 019 has not been subdivided. In fact, this parcel with an Agricultural five acre minimum land area (A-5a) zoning designation, is not presently subdividable. In order to subdivide this property, a Change of Zone (CofZ) would need to occur. This process would go through public hearings at both the County Planning Commission and the County Council. The Zoning Code would require that there be sufficient Department of Water Supply water units available (or to be made available by upgrading the existing, usually by the CofZ applicant) to the property.

In view of the above, we inform you that Parcel 019 is a legal lot of record with 4.207 acres of land area and Parcel 030 is not a legal lot of record.

In accordance with Ordinance No. 99-112, you may appeal the director's decision as follows:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
  - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and

Molly Gorger  
O'Callaghan, LLC  
Page 3  
May 14, 2013

- (2) The person is or will be adversely affected by the decision.
- (c) 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.
- (d) The appellant, the owners of the affected property, 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.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

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

Sincerely,

  
EJ LEITHEAD TODD  
Planning Director

JRH:lnm

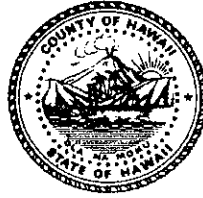
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Enc.: General Petition for Appeal of Decisions by Planning Director

Molly Gorger  
O'Callaghan, LLC  
Page 4  
May 14, 2013

xc: Tax Maps and Records Supervisor  
Real Property Tax Division-Kona  
Manager, DWS

William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

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PLANNING DEPARTMENT

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Phone (808) 961-8288  
Fax (808) 961-8742

June 20, 2013

Molly Gorger  
O'Callaghan, LLC  
PO Box 230725  
Tigard, OR 97281

Dear Ms. Gorger:

**Lots of Record Determination**  
**Halekii, Keekee 1<sup>st</sup>, South Kona, Hawai'i**  
**TMK: 8-1-001:019 & 030**

We have received additional information regarding the above subject properties which allows us to reverse our previous determination dated May 14, 2013.

We have come into possession of a Lease Agreement document which was recorded on December 27, 1983, at the Bureau of Conveyances as Document Number 83-145563 in Liber 17545 Pages 167-169.

Pertinent law states:

"Section 23-118. Criteria to determine a pre-existing lot.

The director shall certify that a lot is pre-existing if the lot meets one of the following criteria:

- (a) The lot was created and recorded prior to November 22, 1944 or the lot was created through court order (e.g. partition) prior to July 1, 1973, and the lot had never been legally consolidated, provided that no pre-existing lot shall be recognized based upon a lease except for **a lease which complied with all other applicable laws when made, including Territorial statutes regulating the sale or lease of property by lot number or block number, and on September 25, 2002, the proposed lot contains a legal dwelling**, or has been continuously leased since January 8, 1948, as a separate unit.
- (b) The lot was created prior to December 21, 1966, as an agricultural lot in excess of twenty acres pursuant to County ordinance." (emphasis added)

Molly Gorger  
O'Callaghan, LLC  
Page 2  
June 20, 2013

In view of the above, we inform you that Parcels 019 and 030 are legal lots of record with 3.207 acres and 1.000 acre of land area, respectively.

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

Sincerely,



DUANE KANUHA  
Planning Director

JRH:Inm

\\Coh33\planning\public\Admin Permits Division\ELOR(ExistingLotOfRecord)\2013\8-1-01-19&30 O'CallaghanGORGER REVISED 06-20-13.doc

Enc.: FedEx Express Envelope w/unprocessed BOA Application & Check #1187

xc: Tax Maps and Records Supervisor  
Real Property Tax Division-Kona  
Manager, DWS  
Planning Department-Kona