

Current Date, 2006

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

Dear Mr. Cross:

Lots of Record Determination
Kaunamano, Kahilipali Nui and Iki, and Kawala, Ka'u, Hawaii
TMK: 9-5-008:001 and 010

This is to acknowledge receipt of your letters of May 23 and June 2, 2006, and documents regarding the subject matter. We apologize for our tardy response; however, the delay was the result of the necessary research in order to provide you with accurate information.

Please be advised that we have reviewed the documents submitted, our department records, as well as those of the Real Property Tax Division. We are combining the two parcels for the purposes of this review because some of the proposed pre-existing lots were cited towards both determination requests. Although certain government designated roadways do bisect some of the various Grants and Land Commission Awards within the parcels, private flume right-of-ways, roadway easements and property lines do not.

With that in mind, we have determined that the subject properties consist of eighty-seven (87) separate legal lots of record. That is:

- 1) The whole of Royal Patent Grant 820, Apana 1;
- 2) One (1) remainder Portion of Royal Patent Grant 996;
- 3) & 4) Two (2) Portions of Royal Patent Grant 1377 (bisected by Kaala'iki Road, a Government Road);
- 5) The whole of Royal Patent Grant 1741;

- 6) The whole of Royal Patent Grant 2052, Apana 2;
- 7) The whole of Royal Patent Grant 2113. Apana 3;
- 8) & 9) Two (2) Portions of Royal Patent Grant 2116 (bisected by a “Public Road”);
- 10) The whole of Royal Patent Grant 2151, Apana 2;
- 11) The whole of Royal Patent Grant 2152, Apana 1;
- 12) ,13) & 14) Three (3) Portions of Royal Patent Grant 2643 (bisected by Kaala’iki Road, a Government Road);
- 15) & 16) Two (2) Portions of Royal Patent Grant 2724, Apana 2 (bisected by a “Public Road”);
- 17) The whole of Royal Patent Grant 5232 (reservoir site);
- 18) The whole of Royal Patent Grant 5233 (reservoir site);
- 19) ,20) & 21) Three (3) Portions of Royal Patent Grant 5863 (bisected by Kaala’iki Road, a Government Road and a forty (40) foot wide Homestead Road);
- 22) The whole of Royal Patent Grant 5864;
- 23) ,24) & 25) Three (3) Portions of Royal Patent Grant 5865 (bisected by a “Public Road”);
- 26) The whole of Royal Patent Grant 5866;
- 27) The whole of Royal Patent Grant 5867;
- 28) The whole of Royal Patent Grant 5868;
- 29) & 30) Two (2) Portions of Royal Patent Grant 5915 (bisected by a “Public Road”);
- 31) The whole of Royal Patent Grant 5916;
- 32) The whole of Royal Patent Grant 5917;
- 33) & 34) Two (2) Portions of Royal Patent Grant 5962 (bisected by a “Public Road”);
- 35) & 36) Two (2) Portions of Royal Patent Grant 8668:A (bisected by “Public Road”);
- 37) The whole of Royal Patent Grant 8668:B;
- 38) & 39) Two (2) Portions of Royal Patent Grant 8668:C (bisected by Kaala’iki Road, a Government Road);
- 40) & 41) Two (2) Portions of Royal Patent Grant 8668:D (bisected by Kaala’iki Road, a Government Road);
- 42) The whole of Land Commission Award 7542, Apana 1;
- 43) The whole of Land Commission Award 7552;
- 44) & 45) Two (2) Portions of Land Commission Award 7552, Apana 2 (bisected by Kaala’iki Road, a Government Road);
- 46) & 47) Two (2) Portions of Land Commission Award 7629 (bisected by a “Public Road”);
- 48) The whole of Land Commission Award 7629-B, Apana 1;
- 49) The whole of Land Commission Award 8754;
- 50) & 51) Two (2) Portions of Land Commission Award 8754-D (bisected by a “Public Road”);
- 52) & 53) Two (2) Portions of Land Commission Award 8754-F (bisected by Kaala’iki Road, a Government Road);
- 54) The whole of Land Commission Award 8754-G;
- 55) The whole remainder Portion of Land Commission Award 8786, Apana 2;
- 56) The whole of Land Commission Award 8787-B, Apana 2;
- 57) The whole of Land Commission Award 8787-B, Apana 3;

- 58) & 59)** Two (2) Portions of the remainder of Land Commission Award 8787:C (bisected by Kaala'iki Road, a Government Road);
- 60)** The whole of Land Commission Award 8787-D;
- 61) & 62)** Two (2) times The whole of Land Commission Award 9084, Apana 1;
- 63) & 64)** Two (2) Portions of the remainder of Land Commission Award 9098 (bisected by Kaala'iki Road, a Government Road);
- 65)** The whole of Land Commission Award 9112, Apana 2;
- 66) & 67)** Two (2) Portions of Land Commission Award 9228 (bisected by a Public Road”);
- 68) & 69)** Two (2) Portions of Land Commission Award 9250 (bisected by a Public Road”);
- 70)** The whole of Land Commission Award 9258, Apana 1;
- 71)** The whole of Land Commission Award 9913;
- 72)** The whole of Land Commission Award 9971;
- 73)** The whole of Land Commission Award 10170;
- 74) & 75)** Two (2) Portions of the remainder of Land Commission Award 10304, Apana 1 (bisected by Kaala'iki Road, a Government Road);
- 76)** The whole of Land Commission Award 10304, Apana 2;
- 77)** The whole of Land Commission Award 10338, Apana 1;
- 78) & 79)** Two (2) Portions of Land Commission Award 10344, Apana 1 (bisected by a “Public Road”);
- 80)** The whole of Land Commission Award 10445, Apana 1;
- 81)** The whole of Land Commission Award 10591, Apana 1;
- 82)** The whole of Land Commission Award 10651, Apana 1;
- 83) & 84)** Two (2) Portions of the remainder of Land Commission Award 10886 (bisected by Kaala'iki Road, a Government Road);
- 85)** The whole of Land Commission Award 10887, Apana 1; and
- 86) & 87)** The whole of Two (2) unidentified remnant Royal Patent Grants or Land Commission Awards (bisected by a “Public Road”).

A copy of the Tax Map Plat is enclosed with the determined pre-existing lots designated thereon.

It is our understanding that, based on this information provided regarding pre-existing lots, you will be submitting an application for consolidation and resubdivision of the subject parcels which would result in the development of specific metes and bounds for the subdivided lots. If consolidation and resubdivision is not the intent, then it is recommended that a modern metes and bounds survey be conducted for a more accurate and current land area determination and that a map reflecting this information be submitted for certification.

A request for separate tax map key parcel numbers should be in writing to our Tax Maps and Records Section.

In accordance with sec. 23-5 of the Hawai'i County code, sec. 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 sec. 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 Ed Cheplic or Jonathan Holmes of this Department.

Sincerely,

Christopher J. Yuen
Planning Director

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xc: Real Property Tax Division-Kona
Manager-DWS
Planning Dept.-Kona

9-5-008:001

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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May 7, 2007

Mr. John C. Cross
Tropical Estate & Land Planning
P.O. Box 367
Hakalau, Hawai'i 96710

Dear Mr. Cross:

Lots of Record Determination
Kaunamano, Kahilipali Nui and Iki, and Kawala, Ka'u, Hawaii
TMK: 9-5-008:001 and 010

This letter is in response to your requests for determination of pre-existing lots within TMK Nos. 9-5-8:001 and :010, by letters dated June 5, 2006 and May 25, 2006, respectively. We apologize for the delay in answering these requests. The applications were very well done and we appreciate the use of color in the maps, which made it much easier to review.

With respect to TMK Nos. 9-5-8:001, we have determined that the various grants, as bisected by government roads, create a total of **67** lots of record, rather than the 80 requested in your letter. This determination is subject to the qualifications given later in this letter.

The difference between our determination and your request is due to two factors. First, we do not find sufficient evidence to determine that one of the un-named roadways, shown in orange on the attached map, is a government road owned in fee. We note that the 1887 Monsarrat map (which is enclosed with the lot request for TMK No. 9-5-8:010) does not show this road, while it does show the Kaalaiki Road and an unnamed road which crosses Grant 1741 and L.C.Aw. Nos. 9084:1, 10338:1, and 9258. Second, we do not recognize the flume and ditch rights-of-way "reserved and excepted" from government grants as subdividing property (blue lines on your maps.) 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 the government which the private owner had no rights to cross, hence isolating and landlocking portions of the property. For government roads, on the other hand, fee

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Mr. John C. Cross
Tropical Estate & Land Planning
Page 2
May 7, 2007

title could be in the government but the private owner would have the right to cross the road. In addition, the roads shown on the 1887 Monsarrat map would be government roads owned in fee by operation of the Highways Act of 1892, and H.R.S. sec. 264-2 says generally that the government owns public roads in fee. We also believe that any other claim based on the flume lines would be waived or lost by the filing of the pre-existing subdivision map, May 1, 2000, referred to below, which did not include any claim of a subdivision based on these flumes and ditches.

Following the lot numbering given in your revised lot count for determination, dated June 2006, our conclusions are as follows (**lots claimed in your letter which we do not accept are shown in bold**):

Lot 1, Grant 820:1

Lot 2, Grant 996

Lots 3-5, Grant 1377 (subdivided by Kalaiki Rd. and road on 1887 map)

Lot 6-7, Grant 1741 (subdivided by road on 1887 map)

Lot 8, Grant 2052:2

Lot 9, Grant 2113

Lot 10, Grant 2116

Lot 11, Grant 2151:1

Lot 12, Grant 2152:1

Lot 13, Grant 2742:2 (no proof this is a government road)

Lots 14-15, Grant 2742:2 (road is continuation of government road reserved in Grant 5865)

Lot 16, Grant 5232

Lot 17, Grant 5233

Lot 18, 19 Grant 5863 (government road)

Lot 20, Grant 5864

Lot 21, Grant 5864 (flume does not subdivide lot)

Lot 22, Grant 5865 (no proof this is a government road)

Lot 23-24, Grant 5865 (government road)

Lot 26, Grant 5867

Lot 27, Grant 5867 (flume does not subdivide lot)

Lot 28, Grant 5868

Lot 29, Grant 5868 (flume does not subdivide lot)

Lots 30 and 32, Grant 5915 (government road)

Lots 31, 33, 34, and 35, Grant 5915 (flume does not subdivide lot)

Lot 36, Grant 5916

Lot 37, Grant 5916 (flume)

Lot 38, grant 5917
Lots 39-40, Grant 5962 (government road)
Lots 41-42, Grant 5962 (flume)
Lot 43, L.C. Aw. 7542:1
Lot 44, L.C.Aw. 7542:1 (no proof of government road)
Lots 45-46, L.C.Aw. 7552:2 (government road)
Lots 47-48, L.C.Aw. 7629 (road on 1887 map)
Lots 49-50, L.C.Aw. 7629-B (road on 1887 map)
Lots 51-52, Grant 8668A (road on 1887 map)
Lot 53, Grant 8668B
Lots 54-55, Grant 8668D (road on 1887 map)
Lots 56-57, L.C.Aw. 8754-D (1887 map)
Lot 58, L.C.Aw. 8754-F
Lot 59, L.C.Aw. 8754-G
Lot 60, L.C.Aw. 8787-B:3
Lot 61, L.C.Aw. 8787D
Lot 62, L.C.Aw. 9084:1, R.P. 6215
Lots 63-64, L.C.Aw. 9228 (1887 map)
Lots 64-65, L.C. Aw. 9250 (1887 map)
Lots 67-68, L.C. Aw. 9258 (1887 map)
Lot 69, L.C.Aw. 9913
Lot 70, L.C. Aw. 9971:10
Lot 71, L.C.Aw. 10304:2
Lots 71-72, L.C.Aw. 10338:1 (1887 map)
Lots 74-75, L.C.Aw. 10344:1 (1887 map)
Lot 76, L.C.Aw. 10445
Lot 77, L.C.Aw. 10591:1
Lot 78, L.C.Aw. 10651:1
Lots 79-80, L.C.Aw. 9084:1, R.P. 6216 (1887 map)

Within TMK No. 9-5-8:010, you claimed 29 pre-existing lots, but we recognize **21**. Our count differs from yours because of one factor: for some reason, the parcel line dividing TMK No. 9-5-8:010 from 9-5-8-001 crosses through several grants. We do not believe that the mere fact that the tax maps were drawn in a way that crosses grants has the effect of subdividing property. The tax maps were created for tax purposes, and do not create a subdivision. For example, we do not say that the fact that many grants are contained within a single tax map parcel—as happened in TMK Nos. 9-5-8:001 and 010—had the effect of consolidating the grants. The contrary is also true: the fact that one grant was put in two tax map parcels did not, in itself, subdivide the grant into two lots.

Mr. John C. Cross
Tropical Estate & Land Planning
Page 4
May 7, 2007

Taking the lot numbers in your May 25, 2006 submittal, we find the following, **with lots we are rejecting in bold:**

Lots 1-2, Grant 1377 (TMK line does not subdivide the grant, these lots are all counted in the determination for TMK No. 9-5-8:001.)

Lot 3, Grant 1741 (same, already counted in TMK No. 9-5-8:001)

Lot 4, Grant 2052:2 (same)

Lot 5, Grant 2152:1 (same)

Lots 6-7, Grant 2643 (Kaalaiiki Rd.)

Lot 8, Grant 5917 (same, already counted)

Lots 9-10, Grant 8668-C (Kaalaiiki Rd.)

Lot 11, Grant 8668-B (same, already counted)

Lot 12, L.C.Aw. 7552

Lot 13, L.C.Aw. 8754

Lot 14, L.C.Aw. 8754-F

Lot 15, L.C.Aw. 8754-F (same)

Lot 16, L.C.Aw. 8754-G (same)

Lot 17, L.C.Aw. 8786:2

Lot 18, L.C.Aw. 8787-B:2

Lot 19-20, L.C.Aw. 9098 (Kaalaiiki Rd.)

Lot 21, L.C.Aw. 9112:2

Lot 22-23, L.C.Aw. 9225-B (Kaalaiiki Rd.)**(but see note #3 below)**

Lot 24, L.C.Aw. 10170

Lots 25-26, L.C.Aw. 10304:1 (Kaalaiiki Rd.) **(but see note #3 below)**

Lots 27-28, L.C.Aw. 10886 (Kaalaiiki Rd.) **(but see note #3 below)**

Lot 29, L.C. Aw. 10887:1

We have attached copies of your maps requesting these lots for both TMK Nos. 9-5-8:001 and :010, for convenient reference.

This determination is subject to the following:

1. We would like you to give us information concerning any quiet title actions on any of the lots which have been determined to have been subdivided by government roads, by you or any of your predecessors in title. If you or your predecessors in title have quieted title to any of these lots, with the state, territory of Hawaii, and/or county of Hawaii as parties, and no government road is shown, this would be inconsistent with the claim of a government road.

2. Please provide us with information as to whether any of these roads have been formally abandoned or sold to abutting owners. We are doing some research on this question and reserve the right to modify this letter if we find that any of the roads have been formally extinguished, or, if title has been quieted in a way that eliminates the possibility of a government road.
3. Your client, EWM Investments, LLC, had filed an action to quiet title, Civ. No. 05-1-0415, that included three properties mentioned above, L.C.Aw. 9225-B, L.C.Aw. 10304:1, and L.C.Aw. 10886. In that complaint, which named the County and State of Hawaii as defendants, EWM asserted that it had title to these three lots, and did not mention any public road crossing the property. Your request for pre-existing lot determination, however, says that these lots have been subdivided by the fact that the Kaalaiki Rd. passes through them. This is not consistent with the assertions in the quiet title action. We ask that you respond to this point. We believe that the proper course of action is to modify the quiet title action so that Kaalaiki Rd. is recognized as a public road in the quiet title. Obviously, you cannot create lots that depend upon the existence of a public road across them but deny the existence of the public road in the quiet title action. If title has already been quieted without preserving the road right-of-way, you will have to modify the judgment. The same holds true for any other properties that you claim to be bisected by a government road, if title has been quieted on them.
4. As you know, there was an earlier request to determine pre-existing lots in TMK No. 9-5-8:001, in which the predecessor in title claimed 46 lots. After the Planning Department agreed with this and issued a letter to that effect, a "Pre-existing Lot Subdivision" was filed in the Planning Department, dated May 1, 2000, and signed by the then-deputy director, and containing 46 lots. We are not taking the position that this bars your claim to more lots based on government roads, because if such roads exist, a mistake in missing them at the time of this subdivision would not extinguish them. Your client must, however, ask that this "Pre-existing Lot Subdivision" be voided.
5. Your client must withdraw the pending consolidation/resubdivision to 46 lots within TMK No. 9-5-8:001.
6. We understand that after receiving this pre-existing lot determination, you intend to submit an application to consolidate and resubdivide these properties. We will require proof of title for any lots being consolidated and resubdivided, such as a title report, to avoid the problems that will occur if lots with bad title are consolidated into other properties.

Mr. John C. Cross
Tropical Estate & Land Planning
Page 6
May 7, 2007

7. The "government roads" which we recognize as subdividing these properties must remain and be shown as government roads on any consolidation/resubdivision map, unless you purchase or otherwise acquire the roads from the proper governmental entity and extinguish the roads. These roads will have to be the boundary of a lot, unless extinguished.

In accordance with sec. 23-5 of the Hawai'i County code, sec. 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 sec. 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:

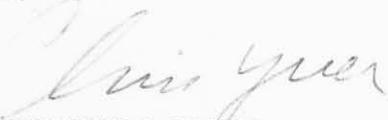
- (a) In violation of this chapter or other applicable law; or
- (b) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (c) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

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

Mr. John C. Cross
Tropical Estate & Land Planning
Page 7
May 7, 2007

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

JH:CJY:pak

Wpwin60/Chris 07/Cross - Ka'u lots of record

Attachments

cc: Mr. Jonathan Holmes
Real Property Tax Division-Kona
Manager-DWS
Planning Dept.- Kona

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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August 29, 2007

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

Dear Mr. Cross:

Lots of Record Determination
Kaunamano, Kahilipali Nui and Iki, and Kawala, Ka'u, Hawaii
TMK: 9-5-008:001 and 010

This letter is to clarify and/or correct our letter to you of May 7, 2007, regarding the determination of pre-existing lots within TMK Nos. 9-5-8:001 and :010. We apologize for any confusion we may have caused you.

With respect to TMK Nos. 9-5-8:001, we have determined that the various grants, as bisected by government roads, create a total of **67** lots of record, rather than the 80 requested in your letter. In addition, we have found that there are 5 lots that were missed in the previous count for a total of **72** lots of record within this parcel. This determination is subject to the qualifications given later in this letter.

The difference between our determination and your request is due to two factors. First, we do not find sufficient evidence to determine that one of the un-named roadways, shown in pink on the attached map, is a government road owned in fee. We note that the 1887 Monsarrat map (which is referenced with the lot request for TMK No. 9-5-8:010) does not show this road, while it does show the Kaalaiki Road and an unnamed road which crosses Grant 1741 and L.C. Aw. Nos. 9084:1, 10338:1, and 9258. Second, we do not recognize the flume and ditch rights-of-way "reserved and excepted" from government grants as subdividing property (blue lines on your referenced maps.) 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 the government which the private owner had no rights to cross, hence isolating and landlocking portions of the property. For government roads, on the other hand, fee title could be in the government but the private owner would have the right to cross the road. In addition, the roads shown on the 1887 Monsarrat map would be government roads owned in fee by operation of the Highways Act of 1892, and H.R.S. Sec. 264-2 says generally that the government owns public roads in fee. We also believe that any other claim

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based on the flume lines would be waived or lost by the filing of the pre-existing subdivision map, May 1, 2000, referred to below, which did not include any claim of a subdivision based on these flumes and ditches.

Following the lot numbering given in your revised lot count for determination, dated June 2006, our conclusions are as follows (**lots claimed in your letter which we do not accept are shown in bold**), (***additional lots and new cross references are in bold, underscored and italics***) and minor typographical errors are either normal or bold depending on the main format of the accompanying text. The leading numbers for the **accepted lots** are the numbers that appear on the accompanying mark-up plat map that also has the accepted government roads highlighted:

- 1) Lot 1, Grant 820:1
- 2) Lot 2, Grant 996
- 3-5) Lots 3-5, Grant 1377 (subdivided by Kaalaiki Rd. and road on 1887 map)
- 6-7) Lots 6-7, Grant 1741 (subdivided by road on 1887 map)
- 8) Lot 8, Grant 2052:2
- 9) Lot 9, Grant 2113:3
- 10-11) Lots 10, Grant 2116 ***and New Lot 11***
- 12) Lot 11, Grant 2151:2
- 13) Lot 12, Grant 2152:1
Lot 13, Grant 2724:2 (no proof this is a government road)
- 14-15) Lots 14-15, Grant 2724:2 (road is continuation of government road reserved in Grant 5865)
- 16) Lot 16, Grant 5232
- 17) Lot 17, Grant 5233
- 18-19) Lots 18-19, Grant 5863 (government road)
- 20) Lot 20, Grant 5864
Lot 21, Grant 5864 (flume does not subdivide lot)
Lot 22, Grant 5865 (no proof this is a government road)
- 21-22) Lots 23-24, Grant 5865 (government road)
- 23) Lot 25, Grant 5866 (**this lot was omitted in the previous narrative, but was included in the count**)
- 24) Lot 26, Grant 5867
Lot 27, Grant 5867 (flume does not subdivide lot)
- 25) Lot 28, Grant 5868
Lot 29, Grant 5868 (flume does not subdivide lot)
- 26-27) Lots 30 & 32, Grant 5915 (government road)
Lots 31, 33, 34, and 35, Grant 5915 (flume does not subdivide lot)

- 28) Lot 36, Grant 5916
Lot 37, Grant 5916 (flume)
- 29) Lot 38, grant 5917
- 30-31) Lots 39-40, Grant 5962 (government road)
Lots 41-42, Grant 5962 (flume)
- 32) Lot 43, L.C. Aw. 7542:1
Lot 44, L.C. Aw. 7542:1 (no proof of government road)
- 33-34) Lots 45-46, L.C. Aw. 7552:2 (government road)
- 35-36) Lots 47-48, L.C. Aw. 7629 (road on 1887 map)
- 37-38) Lots 49-50, L.C. Aw. 7629-B:1 (road on 1887 map)
- 39-41) Lots 51-52, Grant 8668A (road on 1887 map) **and New Lot 41**
- 42) Lot 53, Grant 8668B
- 43-44) Lots 54-55, Grant 8668D (road on 1887 map)
- 45-46) Lots 56-57, L.C. Aw. 8754-D (1887 map)
- 47) Lot 58, L.C. Aw. 8754-F
- 48) Lot 59, L.C. Aw. 8754-G
- 49) Lot 60, L.C. Aw. 8787-B:3
- 50) Lot 61, L.C. Aw. 8787D
- 51) Lot 62, L.C. Aw. 9084:1, R.P. 6215
- 52-53) Lots 63-64, L.C. Aw. 9228 (1887 map)
- 54-55) Lots 64-65, L.C. Aw. 9250 (1887 map)
- 56-57) Lots 67-68, L.C. Aw. 9258:1 (1887 map)
- 58) Lot 69, L.C. Aw. 9913
- 59) Lot 70, L.C. Aw. 9971:~~10~~ **(no apana)**
- 60) Lot 71, L.C. Aw. 10304:2
- 61-62) Lots ~~72-73~~, L.C. Aw. 10338:1 (1887 map)
- 63-64) Lots 74-75, L.C. Aw. 10344:1 (1887 map)
- 65) Lot 76, L.C. Aw. 10445:1
- 66) Lot 77, L.C. Aw. 10591:1
- 67) Lot 78, L.C. Aw. 10651:1
- 68-69) Lots 79-80, L.C. Aw. 9084:1, R.P. 6216 (1887 map)
- 70) New Lot 70, Grant 2643 (also see Lots 6 & 7 below)**
- 71-72) New Lots 71-72, former portions of Parcel 6, unknown Grant or L.C. Aw., etc.**

Within TMK No. 9-5-8:010, you claimed 29 pre-existing lots, but we recognize **20**. Our count differs from yours because of one factor: for some reason, the parcel line dividing TMK No. 9-5-8:010 from 9-5-8-001 crosses through several grants. We do not believe that the mere fact that the tax maps were drawn in a way that crosses grants has the effect of subdividing

property. The tax maps were created for tax purposes, and do not create a subdivision. For example, we do not say that the fact that many grants are contained within a single tax map parcel—as happened in TMK Nos. 9-5-8:001 and 010—had the effect of consolidating the grants. The contrary is also true: the fact that one grant was put in two tax map parcels did not, in itself, subdivide the grant into two lots.

Taking the lot numbers in your May 25, 2006 submittal, we find the following, **notations as stated above:**

- Lots 1-2, Grant 1377 (TMK line does not subdivide the grant, these lots are all counted in the determination for TMK No. 9-5-8:001, Lots 3 &/or 4)**
Lot 3, Grant 1741 (same, already counted in TMK No. 9-5-8:001, Lot 7)
Lot 4, Grant 2052:2 (same, Lot 8)
Lot 5, Grant 2152:1 (same, Lot 12)
73-74) **Lots 6-7, Grant 2643 (Kaalaiiki Rd.) also see New Lot 71 above**
Lot 8, Grant 5917 (same, already counted, Lot 38)
75-76) **Lots 9-10, Grant 8668-C (Kaalaiiki Rd.)**
Lot 11, Grant 8668-B (same, already counted, Lot 55)
77) **Lot 12, L.C. Aw. 7552**
78) **Lot 13, L.C. Aw. 8754**
79) **Lot 14, L.C. Aw. 8754-F**
Lot 15, L.C. Aw. 8754-F (same, Lot 58)
Lot 16, L.C. Aw. 8754-G (same, Lot 59)
80) **Lot 17, L.C. Aw. 8786:2**
81) **Lot 18, L.C. Aw. 8787-B:2**
82-83) **Lots 19-20, L.C. Aw. 9098 (Kaalaiiki Rd.)**
84) **Lot 21, L.C. Aw. 9112:2**
85-86) **Lots 22-23, L.C. Aw. 9225-B (Kaalaiiki Rd.)(but see note #1 below)**
87) **Lot 24, L.C. Aw. 10170**
88-89) **Lots 25-26, L.C. Aw. 10304:1 (Kaalaiiki Rd.) (but see note #1 below)**
90-91) **Lots 27-28, L.C. Aw. 10886 (Kaalaiiki Rd.) (but see note #1 below)**
92) **Lot 29, L.C. Aw. 10887:1**

Again, we have attached a composite map of these **92** pre-existing lots of record within both TMK Nos. 9-5-8:001 and 010, for convenient reference.

This determination is subject to the following:

1. Your client, EWM Investments, LLC, **must amend** the action to quiet title, Civil No. 05-1-0415, that included three properties mentioned above, L.C. Aw. 9225-B, L.C. Aw. 10304:1, and L.C. Aw. 10886, **to include the fact that Kaalaiki Road (a government road) passes through them.**
2. As you know, there was an earlier request to determine pre-existing lots in TMK No. 9-5-8:001, in which the predecessor in title claimed 46 lots. After the Planning Department agreed with this and issued a letter to that effect, a "Pre-existing Lot Subdivision" was filed in the Planning Department, dated May 1, 2000, and signed by the then-deputy director, and containing 46 lots. That document is hereby revised and amended as noted above.
3. The pending consolidation/resubdivision application (SUB 2002-0047) which is based on the previous finding (May 1, 2000) is hereby put into abeyance awaiting an official withdrawal letter from the subdivider or current successor owner.
4. We understand that after receiving this pre-existing lot determination, you intend to submit an application to consolidate and resubdivide these properties. At that time, proof of title for any lots being consolidated and resubdivided, such as a title report, shall be provided.
5. The "government roads" which we recognize as subdividing these properties must be shown as such on any consolidation/resubdivision plat map unless legally purchased and extinguished.

For determination elements that are different than those of our May 7, 2007 determination letter, you are reminded that, in accordance with sec. 23-5 of the Hawai'i County code, sec. 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.

John C. Cross
Tropical Estate & Land Planning
Page 6
August 29, 2007

- (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 sec. 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 of this Department.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

JRH:lnm

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Attachments: Composite Map (92 pre-existing lots of record)
County of Hawaii Board of Appeals General Petition for Appeal of Decisions by Planning Director

xc: Real Property Tax Division-Kona
Manager-DWS
Planning Dept.-Kona
Steven S.C. Lim, Carlsmith Ball LLP w/Composite Map
Jessica Vargas, Hilo Engineering, Inc. w/Composite Map
SUB 2002-0047