

240 North Judd Street - Honolulu, HI 96817
Home Phone: 531-7995 Office Phone: 521-2533

September 3, 1991

Mr. Norman Hayashi, Director
Planning Department
County of Hawaii
25 Aupuni Street, Suite 109
Hilo, Hawaii 96720

RECEIVED

SEP 4 PM 1 12

PLANNING DEPT.
COUNTY OF HAWAII

RE: Consolidation/Subdivision Application No. 90-20,
TMK 3:8-1-009-003 and Consolidation/Subdivision
Application No. 90-39, TMK 3:8-1-009-027 &
TMK 3:8-1-010-02

Dear Mr. Hayashi,

I am writing to follow-up on my letters of August 5, 1991 and February 21, 1991 regarding the extent of the public access right-of-way on Kaawaloa Road established by the applicant of Consolidation/Subdivision Application No. 90-39. After six months the Hawaii County Planning Department has not provided a full response to my questions. The Department of Planning and Department of Public Works have not determined the extent of further necessary road widening setbacks on Kaawaloa Road because the extent of right-of-way created in Application #90-39 has not been delineated & legally defined. Therefore, the answers to those questions will directly determine the extent of Kaawaloa Road public access improvement required of my family in Consolidation/ Subdivision Application No. 90-20. I again request that the Planning Department promptly send me a copy of the Corporation Counsel's opinion and a statement of your department's position on the right-of-way created in Subdivision #5917.

At this time I would like to discuss another easement the existence of which is directly related to the Kaawaloa Road right-of-way requirements for Consolidation/ Subdivision Applications No. 90-20 & No. 90-39.

On March 19, 1986 Mr. Christopher Norrie purchased TMK 3:8/1/09/14 & 2 from the Estate of Ethel V. Paris. The lot TMK 3:8/1/09/27 that is part of Consolidation/Subdivision Applications No. 90-39 was a part of TMK 3:8/1/09/02 in 1986 (TMK 3:8/1/09/27 was created in July 1986, see Subdivision #5435). The following reservation was included in the Warranty Deed transferring title of those properties to Mr. Christopher Norrie:

"2. Reservation of a utility and road widening easement commencing at the north corner of the subject property at the intersection of the Lower Government Main Road (Napoopoo Road) with Kaawaloa Road, thence in a westerly direction (makai) along the southerly side of Kaawaloa Road to Grantor's adjoining lands bearing TMK 3:8-1-10-2(emphasis added), said easement to be of such

width as when added to the width of the existing Kaawaloa Road will provide a 50' right-of-way (emphasis added) for utilities and vehicular and pedestrian access to said adjoining lands owned by the Grantor."

This easement was specifically created to provide access to the property TMK 3:8-1-10-2, which the Estate of Ethel Paris also owned at that time. Mr. Norrie did not purchase TMK 3:8-1-10-2, (which is the second parcel of Application #90-39 (Subdivision #5917)) from the heirs of Ethel Paris until 1988. The reserved easement contained in the 1986 warranty deed is of public record, having been recorded in Liber 19375 at Pages 185 to 190.

Division 2., Section 23-64 of the Hawaii County subdivision code regarding "Existing conditions shown on preliminary plat." states:

"The preliminary plat shall include the following information on existing conditions:

(1) Location, width and names of all existing or platted streets within or adjacent to the tract, together with easements (emphasis added), other rights-of-way, and other important features, such as corners, property boundary lines and control of access lines adjacent to State highways; ..."

The preliminary plat map submitted for Consolidation/Subdivision Application No. 90-39 does not show the existence of the 50 foot wide road widening easement described above. Nor was this easement delineated or described on the Final Plat approved by the Planning Department.

Article 5, Section 23-69 of the Hawaii County subdivision code regarding the Final Plat and "Information required on final plat" states:

"In addition to any other information required to be shown thereon under provisions of any State statute or County ordinance the following shall be shown on the final plat and supplemental sheets:

...

(8) All easements (emphasis added) which shall be denoted by fine broken lines, clearly identified and if already on record, its recorded reference (emphasis added),; if any easement is not definitely located of record, a statement of such easement. The widths of the easement and and the lengths and azimuths of the lines thereof and sufficient ties thereto to definitely locate the easement with respect to the subdivision

shall be shown. If the easement is being dedicated by the map, it shall be properly referenced in the owners certificates of dedication; ..."

Neither the easement along Kaawaloa Road reserved in Mr. Norrie's 1986 deed nor the public access right-of-way along Kaawaloa Road created in Consolidation/Subdivision Application No. 90-39 are properly delineated as required in Section 23-69 of the Hawaii County subdivision code.

The easement reserved in the 1986 deed is directly tied to TMK 3:8-1-009-027 & TMK 3:8-1-010-02, the original lots of Application #90-39. In commenting on that application the Dept. of Public Works requested that Mr. Christopher Norrie encumber all of his lots with legal access on Kaawaloa Road with covenants stating that the County would not improve Kaawaloa Road, but said nothing of the easement connected to those lots. If the Dept. of Public Works and Planning Dept. felt they were justified in asking Christopher Norrie to provide covenants on all of these lots, they were equally justified in requiring him to dedicate his existing easement to public use. That the Dept. of Public Works and Planning Dept. did not ask Christopher Norrie to dedicate this easement to public use can be explained one of two ways:

- 1] Christopher Norrie informed the Dept. of Public Works and the Planning Dept. of this easement, and they decided such a road widening set back was not necessary on Kaawaloa Road, or
- 2] Christopher Norrie intentionally withheld relevant information from the Planning Department when he submitted Application #90-39.

Mr. Norrie was very much aware of the existence of this easement when he submitted his consolidation/subdivision application. I discussed this easement with him in mid-March 1990. Furthermore, Mr. Norrie has personally informed me that when he sold Lot #1 of Subdivision #5917 to Royal Coast Development Corporation in 1990 the deed he gave the buyers expressly states that Mr. Norrie did not convey or grant the right to use the road widening easement! You may verify this by examining the recorded deed that the Planning Department has required Mr. Norrie to submit to the department. (See letter in file #5917 dated June 13, 1990, Director Duane Kanuha to Mr. Tim Lui-Kwan.) The County approval of Mr. Norrie's Subdivision #5917 and his subsequent sale of Lot #1 have resulted in further restriction of public access rather than improving public access on Kaawaloa Road! Why are the Smiths now asked to make up for what Mr. Norrie was able to reserve for his private use?

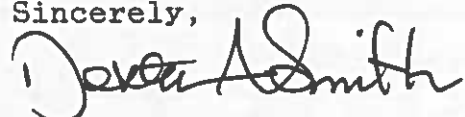
Mr. Norman Hayashi
Consolidation/Subdivision Application No. 90-20
September 3, 1991
Page 4

In order to clarify the Planning Department's current positions on the county subdivision code and the necessity of improved public access on Kaawaloa Road, will you please answer the following questions regarding Christopher Norrie's "road widening easement":

- 1] Re: Consolidation/Subdivision Application No. 90-39 - Did the failure to disclose the easement described in Christopher Norrie's 1986 warranty deed violate the requirements of sections 23-64 & 23-69 of the County subdivision code?
- 2] In light of the DPW recommendation that the Smith's provide a road widening setback on Kaawaloa Road in Application #90-20, would official disclosure of this easement on the preliminary plat for Application #90-39 have materially affected the Dept. of Public Works recommendations for guarantying improved public access on Kaawaloa Road? Would the DPW have increased the extent and width of the public access right-of-way required of Christopher Norrie?

The Smiths are willing to provide their fair share of a road widening setback, if such a setback is necessary for the public welfare. However, as the County's standards regarding public access on Kaawaloa Road are ambiguous and unclear, a clear, consistent, written explanation of those standards should be provided to demonstrate that public access improvements are justified.

Sincerely,



Dexter A. Smith

cc: Michael Matsukawa, Esq.
Mr. Harry Ruddle

J.M.
97066

7

STATE OF HAWAII
DEPARTMENT OF CONVEYANCES
RECORDED

RECORDATION REQUESTED BY:

86- 33427

86 MAR 25 A 8: 01

AFTER RECORDATION, RETURN TO:

LOUIS & MELONE ESCROW, LTD. ¹⁰⁸⁰⁴

19375 185
HONOLULU, HAWAII
REGISTRAR

RETURN BY: MAIL () PICKUP (✓)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That WILLIAM JOHNSON PARIS, JR., the duly appointed and acting Personal Representative of the Estate of Ethel Violet Paris, Deceased, before the Circuit Court of the Third Circuit, State of Hawaii, P. No. 5175, hereinafter called "Grantor," for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to him in hand paid by CHRISTOPHER NORRIS, unmarried, whose residence and post office address is 3951 Lurline Drive, #3, Honolulu, Hawaii 96816, hereinafter called "Grantee," the receipt whereof is hereby acknowledged, and, acting under and pursuant to the power and authority given him under the Will of Deceased to effect a private sale of real property belonging to the estate, did sell to Grantee all of the land described in Exhibit "A" hereto attached and made a part hereof, which sale was duly confirmed by the Circuit Court of the Third Circuit, State of Hawaii by Order Confirming Private Sale of Real Property made and entered in P. No. 5175 on March 6, 1986, DOES HEREBY GIVE, GRANT, BARGAIN, SELL AND CONVEY unto Grantee all of the real property described in Exhibit "A".


AND the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of Grantor and said decedent estate, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with the improvements thereon and all rights, easements, privileges and appurtenances thereunto belonging or appertaining, unto Grantee, as a tenant in severalty, in fee simple and forever.

AND Grantor does hereby covenant with Grantee that he is the duly appointed and acting Personal Representative of the Estate of Ethel Violet Paris, Deceased, and has good right, power and authority to sell the granted premises as aforesaid; that the same are free and clear of all encumbrances made or suffered by him in his capacity as Personal Representative or by anyone claiming by, through or under him, save and except as set forth in Exhibit "A", and save and except for real property taxes not yet required by law to be paid; and and that he will WARRANT AND DEFEND the same unto Grantee against the lawful claims and demands of all persons whomsoever claiming by, through or under him, except as aforesaid.

This conveyance and the covenants of Grantor shall be binding upon the person identified above as "Grantor," and Grantor's successors in interest and assigns, and shall run in favor of and inure to the benefit of the person identified above as "Grantee," and his heirs, successors in interest and assigns.

IN WITNESS WHEREOF, Grantor has executed these presents this 19th day of March, 1986.


William Johnson Paris, Jr.
Personal Representative of the
Estate of Ethel Violet Paris,
Deceased

Grantor

STATE OF HAWAII)
COUNTY OF HAWAII) SS.

On this 19th day of March, 1986, before me appeared WILLIAM JOHNSON PARIS, JR., to me personally known, who, being by me duly sworn, did say he is the duly appointed and acting Personal Representative of the Estate of Ethel Violet Paris, Deceased, P. No. 5175, Circuit Court of the Third Circuit, State of Hawaii, and the person described in and who executed the foregoing instrument, and acknowledged that he executed said instrument as his free act and deed as the Personal Representative of said decedent estate.

Ruth Borden
Notary Public, State of Hawaii
Final Judicial Account
My commission expires: 9-5-87

LS

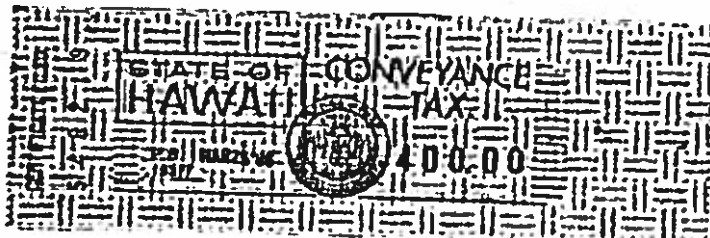


Exhibit "A"

,9375 188

Land situated on the Southwesterly side of Napoopoo Road and the Southeastery side of Kaawaloa Road at Kaawaloa, South Kona, Island and County of Hawaii, State of Hawaii.

Being the whole of:

Lots 1 through 14 inclusive; and

Being portions of:

Royal Patents 4386 and 7532, Land Commission Award 8452, Apana 10 to A. Keohokalole.

Beginning at a spike (found) in concrete marked "2" at the Northernmost corner of this parcel of land, being also the Northernmost corner of Lot 1 and a point at the Southerly corner of the intersection of Napoopoo Road and Kaawaloa Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAE O KANONI" being 22,098.28 feet North and 297.57 feet West and running by azimuths measured clockwise from True South:

Thence, for the next eight (8) courses following along the Southwesterly side of Napoopoo Road:

- | | | |
|----|--------------|--|
| 1. | 327° 35' | 300.72 feet to a spike in concrete marked "135"; |
| 2. | 319° 39' | 178.81 feet to a spike in concrete marked "148"; |
| 3. | 320° 48' 30" | 103.98 feet to a spike in concrete marked "147"; |
| 4. | 329° 59' | 162.15 feet to a spike in concrete marked "146"; |
| 5. | 341° 59' | 52.17 feet to a spike in concrete marked "145"; |
| 6. | 358° 40' | 38.30 feet to a spike in concrete marked "144"; |
| 7. | 351° 43' | 47.11 feet to a spike in concrete marked "143"; |
| 8. | 340° 13' | 96.61 feet to a spike in concrete marked "1"; |

Thence, for the next nine (9) courses following along the remainder of Royal Patents 4386 and 7532, Land Commission Award 8452, Apana 10 to A. Keohokalole:

- | | | |
|----|---------|---|
| 9. | 59° 20' | 729.45 feet along stonewall and along Lot 8-A to a spike in concrete marked "71"; |
|----|---------|---|

10.	48° 26'	112.64 feet along stonewall to a spike in concrete marked "73";
11.	338° 41' 30"	32.85 feet along stonewall to a spike in concrete marked "74";
12.	28° 39'	60.09 feet along stonewall to a spike in concrete marked "76";
13.	49° 02'	161.56 feet along stonewall to a spike in concrete marked "78";
14.	66° 12'	47.43 feet along stonewall to a spike in concrete marked "79";
15.	336° 32'	73.08 feet along stonewall to a 1/2 inch pipe in concrete (found) marked "80";
16.	48° 14'	94.26 feet along stonewall to a spike in concrete marked "82";
17.	329° 00'	42.66 feet along stonewall to a spike in concrete marked "83";

Thence, for the next five (5) courses following along stonewall and along Land Commission Award 8452, Apana 9 to A. Keohokalole:

18.	53° 23'	179.71 feet to a spike in concrete marked "85";
19.	60° 15'	344.44 feet to a spike in concrete marked "86";
20.	54° 44'	608.94 feet to a spike in concrete marked "90";
21.	66° 37'	99.60 feet to a spike in concrete marked "91";
22.	76° 45'	46.60 feet to a spike in concrete marked "92";

Thence, for the next five (5) courses following along stonewall and along the remainder of Royal Patents 4386 and 7532, Land Commission Award 8452, Apana 10 to A. Keohokalole:

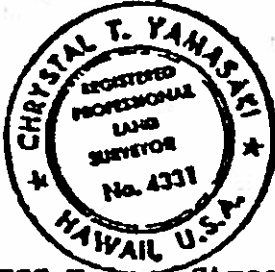
23.	138° 44'	84.69 feet to a spike in concrete marked "93-B";
24.	136° 59'	242.24 feet to a spike in concrete marked "94-B";
25.	140° 05'	516.55 feet to a spike in concrete marked "96-B";
26.	142° 22'	324.84 feet to a spike in concrete marked "97-B";
27.	146° 58'	317.54 feet to a spike in concrete marked "38";

Thence, for the next twelve (12) courses following along stonewall and along the Southeasterly side of Kaawaloa Road:

28.	250° 48'	113.17 feet to a spike in concrete marked "36";
-----	----------	---

29.	251°	15'	589.81 feet to a spike in concrete marked "34";
30.	254°	44'	260.34 feet to a spike in concrete marked "32";
31.	248°	42'	172.77 feet to a spike in concrete marked "30";
32.	232°	31'	161.85 feet to a spike in concrete marked "27";
33.	234°	51'	164.85 feet to a spike in concrete marked "25";
34.	236°	45'	95.61 feet to a spike in concrete marked "22";
35.	240°	15'	333.26 feet to a spike in concrete marked "21";
36.	238°	04'	58.93 feet to a spike in concrete marked "18";
37.	240°	24'	108.23 feet to a spike in concrete marked "17-D";
38.	240°	06'	142.93 feet to a spike in concrete marked "17-C";
39.	240°	38'	520.66 feet to the point of beginning and containing an area of 70.915 Acres, more or less.

NOTE: This description was prepared from a combination of field survey and existing boundary survey done by Archie S. Kaaua, C. E. in July of 1932



WES THOMAS & ASSOCIATES, INC.

Chrystal Thomas Yamasaki

Chrystal Thomas Yamasaki
Registered Professional Land Surveyor
State of Hawaii Certificate No. LS4331

75-5722 Kalawa Street
Kailua-Kona, Hawaii 96740
March 21, 1986
TMK: 8-1-09: 2 & 14 (3rd Div.)

SUBJECT TO:

1. Reservation by the State of Hawaii of title to all mineral and metallic mines.

2. Reservation of a utility and road widening easement commencing at the north corner of the subject property at the intersection of the Lower Government Main Road (Napoopoo Road) with Kaawaloa Road, thence in a westerly direction (makai) along the southerly side of Kaawaloa Road to Grantor's adjoining lands bearing TMK 3;8-1-10-2, said easement to be of such width as when added to the width of the existing Kaawaloa Road will provide a 50' right-of-way for utilities and vehicular and pedestrian access to said adjoining lands owned by Grantor.