

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

October 1, 1991

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

RECEIVED  
OCT 2 PM 1 42  
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 September 3, 1991, 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 seven months the Hawaii County Planning Department has not provided a full response to my questions. I request that the Planning Department promptly send me the following:

- 1) a copy of the Corporation Counsel's opinion regarding the right-of-way created in Application No. 90-39 (Subdivision #5917)
- 2) a statement of your department's position on the right-of-way created in Application No. 90-39 (Subdivision #5917). How does this right-of-way compare to the right-of-way & setback on Kaawaloa Road that the Smiths are asked to provide in Application 90-20? How does the width and extent of this right-of-way affect the extent of the right-of-way & setback that the Smiths are asked to provide in Application 90-20?
- 3) a statement of your department's position on the "utility & road widening easement" on Kaawaloa Road reserved in that warranty deed to Mr. Christopher Norrie recorded at the Hawaii State Bureau of Conveyances in Liber 19375 at pages 185 to 190.

In support of my statements in my last letter, I enclose copies of pages from Mr. Norrie's deed conveying Lot 1 of Subdivision #5917 to Royal Coast Development Company. As you can see on Page 3 of Exhibit "A" describing Lot 1, the "road widening easement reserved" in the March 19, 1986 deed is declared not to be part of the sale. Mr. Norrie reserved this to himself to restrict any additional use of Kaawaloa Road.

I have some further questions regarding the Planning Department's position on the status of Kaawaloa Road. Planning Director Duane Kanuha's March 13, 1990 letter to me regarding

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Consolidation/Subdivision Application No. 90-20 stated that Kaawaloa Road was under the jurisdiction of the Hawaii State Department of Land & Natural Resources. What evidence does the Hawaii County Planning Department possess to support this statement? Does the Planning Department possess any correspondence, recorded deed or other documentation indicating that the DLNR owns, controls or accepts liability & maintenance responsibility for Kaawaloa Road? I would appreciate copies of any existing documents that support the Planning Department's statement.

Director Kanuha's March 13, 1990 letter also stipulated that the Smiths "shall obtain permission from DLNR for use [of Kaawaloa Road] and provisions of all necessary or required road improvements. As you are aware the Planning Department has approved two Consolidation/Subdivision applications involving lots that take access from Kaawaloa Road - applications No. 86-42 and 90-39 (Subdivisions #5435 & #5917). The Planning Department made no mention of the DLNR's jurisdiction over Kaawaloa Road in processing either of these other applications. Neither of these other applicants was required to obtain DLNR approval of road improvements.

On Saturday, September 14, 1991 I spoke with Mr. Christopher Norrie regarding the Consolidation/Subdivision Applications #90-20 & #90-39. Mr. Norrie said that Mr. Robert Yanabu had sent him a copy of my September 3rd letter to the Planning Department and asked him for his comments on the right-of-way and easement connected with the lots in Subdivision #5917. In the course of our conversation Mr. Norrie stated that the Department of Public Works did not initially ask him for a public access right-of-way on Kaawaloa Road. When Mr. Norrie first approached the Department of Public Works regarding Appl. #90-39 they told him that the status of Kaawaloa Road was uncertain and they requested that he deed to the County in fee simple that section of Kaawaloa Road that passed through Lot #1. Mr. Norrie informed the DPW that he had signed a contract to sell Lot #1 to Royal Coast Development Company and that the DPW's request for a fee simple deed and access improvements would be a burden on him that he did not wish to accept. He said that he bargained with the DPW to waive the requirements for any deed or road improvements for Application #90-39. Relying on representations that Royal Coast Development Company was planning to develop the parcel, DPW agreed to pass on the required access improvements for Appl. 90-39 to Royal Coast Development at a later date. However, the DPW did not rule it "necessary" that Christopher Norrie or Royal Coast Development sign any legally binding agreement with the County to guarantee that the access improvements would be provided to obtain approval of Application 90-39.

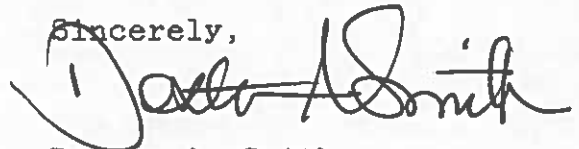
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Please note: Application #90-39 was processed a month after my family's Application #90-20 and after the Planning Department and the Department of Public Works wrote us that Kaawaloa Road was under the jurisdiction of DLNR. However, when Mr. Norrie first approached the DPW regarding his application, he was told that the status of Kaawaloa Road was uncertain.

Will you please clarify the Planning Department's and the Department of Public Works apparent inconsistent position regarding who has jurisdiction over Kaawaloa Road in Consolidation/Subdivision applications No. 86-42, 90-39 & 90-20:

- 1) Of the three applications mentioned above why has the Planning Department only required that the Smiths obtain DLNR approval?
- 2) Why didn't the Planning Department initially require Mr. Christopher Norrie in Appl. 90-39 (Subd. #5917) to obtain DLNR approval of the Department of Public Works' stipulated road improvements?
- 3) Why did the Planning Department write the Smiths that we were required to obtain DLNR permission to use Kaawaloa Road when the DPW was telling Christopher Norrie that the status of Kaawaloa Road was unclear and undetermined?
- 4) Why was the DPW asking Christopher Norrie to deed a section of Kaawaloa Road to the County when the Planning Department was claiming that the road is under the jurisdiction of DLNR?

Sincerely,



Dexter A. Smith

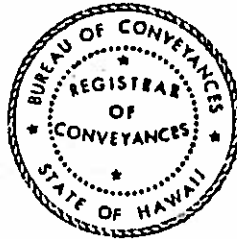
enclosure

cc: Michael Matsukawa, Esq.  
Thomas L. H. Yeh, Esq.

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
BUREAU OF CONVEYANCES  
P. O. BOX 2867  
HONOLULU, HAWAII 96803

Date OCT 01 1991

I hereby certify that the attached instrument is a true copy from the records of the Bureau of Conveyances of the State of Hawaii.



CONV 103  
APR 1977

Attest: *Neil H. [Signature]*  
for REGISTRAR OF CONVEYANCES

1140 Branch  
120 Pauahi St., Suite 301  
Hilo, Hawaii 96720

8 0 1 8 8 0

TITLE OF DOCUMENT:

WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: CHRISTOPHER NORRIE, unmarried

GRANTEE: L & M EXCHANGE, LTD., a Hawaii corporation

Affects: THK Nos. 3rd/ 8-1-10; Portion 2

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS THAT:

CHRISTOPHER NORRIE, unmarried, hereinafter called the "Grantor", in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by L & M EXCHANGE, LTD., a Hawaii corporation, whose principal place of business and post office address is 333 Queen Street, Suite 501, Honolulu, Hawaii 96813, hereinafter called the

"Grantee", the receipt of which is acknowledged, does hereby grant and convey unto the Grantee, as Tenant in Severalty, in fee simple, the property described in Exhibit "A" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor, 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 the Grantee, according to the tenancy herein set forth, forever.

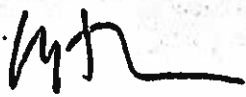
And the Grantor hereby covenants with the Grantee that the Grantor is lawfully seised in fee simple of the premises described herein and has good right to sell and convey the same; that the same are free and clear of all liens and encumbrances except as set forth herein and except for the lien of real property taxes not yet required by law to be paid; and that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The rights and obligations of the Grantor and the Grantee shall be binding upon and inure to the benefit of their respective estates, heirs, personal representatives, successors, successors in trust and assigns.

All covenants of Grantor herein shall run with the land and are expressly declared to be in favor of the Grantee and its successors and assigns.

The person or persons identified above as "Grantor" and as "Grantee" shall mean and include the above-described persons and their respective successors, heirs, personal representatives, and assigns, according to the context thereof. The use herein of the singular in reference to a party shall include the plural and the use of a pronoun of any gender shall include all genders. The term "person" shall mean and include an individual, partnership, association or corporation, as the context may require.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed this 14 day of JUNE, 1990.

  
\_\_\_\_\_  
CHRISTOPHER NORRIE  
Grantor



STATE OF HAWAII  
COUNTY OF HAWAII

)  
) SS:  
)

On this 14<sup>th</sup> day of June, 1990, before me personally appeared CHRISTOPHER NORRIE, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

L.S.

Julian M Cunningham  
Notary Public, State of Hawaii

My commission expires: 12/04/93

EXHIBIT "A"

LOT 1

Land situated approximately 4,000 feet Southeasterly of Napoopoo Road and on the Southeasterly boundary of Grant 2862 to Awahua at Kaawaloa, South Kona, Island and County of Hawaii, State of Hawaii.

Being a portion of:

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

Beginning at an angle point on the Northeasterly boundary of this parcel of land, being also the Northwesterly corner of Lot 2 of this subdivision and being a point on the Southeasterly side of Kaawaloa Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAE O KANONI" being 20,458.57 feet North and 3,900.16 feet West and running by azimuths measured clockwise from True South:

Thence, for the next three (3) courses following along Lot 2 of this subdivision and along the remainder of Royal Patents 4386 and 7532, Land Commission Award 8452, Apana 10 to A. Keohokalole:

- |    |      |     |     |                         |
|----|------|-----|-----|-------------------------|
| 1. | 319° | 41' | 50" | 893.59 feet to a point; |
| 2. | 281° | 49' |     | 658.65 feet to a point; |
| 3. | 306° | 00' |     | 402.31 feet to a point; |

Thence, for the next nine (9) courses following along Lot 8-A and along Royal Patents 3607 and 7533, Land Commission Award 8452, Apana 9 to A. Keohokalole:

4.	58°	43'	43"	144.21 feet to a point;
5.	44°	13'	13"	54.42 feet to a point;
6.	45°	45'	43"	222.25 feet to a point;
7.	31°	43'	13"	79.95 feet to a point;
8.	42°	55'	13"	93.48 feet to a point;
9.	31°	21'	13"	74.34 feet to a point;
10.	45°	08'	13"	197.57 feet to a point;
11.	47°	59'	13"	187.12 feet to a point;
12.	39°	12'	40"	46.16 feet to a point;

Thence, for the next five (5) courses following along Parcel 2 of the Kealakekua Bay State Park (State of Hawaii) and along the remainder of Royal Patents 4386 and 7532, Land Commission Award 8452, Apana 10 to A. Keohokalole:

13.	145°	46'	03"	383.17 feet to a point;
14.	103°	55'	23"	460.89 feet to a point;
15.	138°	03'	33"	789.48 feet to a point;
16.	110°	59'	43"	947.15 feet, passing over an existing dirt road (Kaawaloa Road), to a point;
17.	147°	27'	53"	579.97 feet to a point;
18.	233°	37'	12"	1,418.78 feet along Lot 2 and along Grant 2862 to Awahua to a point;



Thence, for the next seven (7) courses following along the remainder of Royal Patents 4386 and 7532, Land Commission Award 8452, Apana 10 to A. Keohokalole:

- |     |      |     |     |   |
|-----|------|-----|-----|---|
| 19. | 320° | 13' |     | 609.03 feet to a point;   |
| 20. | 45°  | 02' |     | 171.98 feet to a point;   |
| 21. | 46°  | 38' |     | 121.79 feet to a point;   |
| 22. | 309° | 14' |     | 23.08 feet to a point;  |
| 23. | 341° | 37' | 15" | 19.28 feet to a point;  |
| 24. | 297° | 46' |     | 214.78 feet to a point;   |
| 25. | 306° | 42' |     | 94.65 feet, passing over an existing dirt road (Kaawaloa Road), to the point of beginning and containing an area of 70.000 acres. |

Being a portion of the land conveyed to Christopher Norrie, as Grantor in the Deed, dated August 11, 1988 and recorded in Liber 22240, Page 676 of the Bureau of Conveyances of the State of Hawaii.

Excepting, therefrom, that certain road widening easement reserved by the Estate of Ethel Violet Paris in a Deed, dated March 19, 1986 and recorded in Liber 19375, Page 185 in the Bureau of Conveyances of the State of Hawaii, which was subsequently conveyed to Christopher Norrie by the Estate of Ethel Violet Paris.

SUBJECT, HOWEVER, to the following:

A. The reservation in favor of the State of Hawaii of all mineral and metallic mines.

B. The existing roadway (being a portion of Kaawaloa Road) passing over and across this parcel of land and the actual location being subject to a field survey, said road right-of-way being more fully delineated on the final subdivision plat map on file with the County of Hawaii.

C. The covenants set out in that certain Declaration of Covenants, dated May 11, 1990, and recorded in Liber \_\_\_\_\_, Page \_\_\_\_\_, of the Bureau of Conveyances of the State of Hawaii.