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October 18, 1990

Robert K. Yanabu, Division Chief
Engineering Division
Dept. of Public Works
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720

Re: Consolidation/Subdivision Application No. 90-20;
TMK No. 8-1-09:03

Dear Mr. Yanabu:

After my discussions with you about Kaawaloa Road being a County road, I had a brief discussion with Fred Giannini, who asked that I first submit the enclosed to you for your review and forwarding to him if you feel you need an opinion on the question.

As we understand, your Department is taking the position that Kaawaloa Road, which abuts our clients' property, is not maintained by the County and is under the jurisdiction of DLNR. We are unaware of the basis for this position. In support of our contention that Kaawaloa Road is indeed a County road, we have enclosed the following:

1. Letter dated May 16, 1990 from T. Harano, Chief of Highways Division, Department of Transportation, indicating Kaawaloa Road is not included in the State highway system.

2. Letter dated June 12, 1990 from Land Management Administrator W. Mason Young, indicating that aside from roads within State Parcels and Forest Reserves, DLNR has no jurisdiction over roadways.

3. Documents establishing the existence of Kaawaloa Road as a cart or wagon road well prior to 1892 and its maintenance by the government at that time:

a) Letter dated October 2, 1861 to Prince Lot Kamehameha, Minister of the Interior, requesting improvement of the road laid from Rev. J. Paris's property (predecessor in interest to our clients, the Smiths), at what is now Napoopoo Road to Captain Cook's point on Kaawaloa.

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b) Letter dated May 22, 1865 to F. W. Hutchinson, Minister of the Interior, again requesting improvement of the road leading to Kaawaloa.

c) Letter dated September 27, 1869 from Alexander Smith, Road Supervisor, to the Minister of the Interior, confirming the government maintenance and the need for improvement repair to Kaawaloa Road.

d) Letter dated February 7, 1983 from Henry Cooper, Road Supervisor, to the Minister of the Interior, indicating plans to repair the Cart Road to Kaawaloa wharf.

e) Deed from John D. Paris and wife to John D. Paris, Jr., dated December 9, 1882, of approximately 175 acres, and referencing Kaawaloa Road as the boundary.

f) Deed from J. D. Paris and wife to M. A. Green, et al., dated May 21, 1891, which includes the 120 acres of land which is the subject of the present application and which again references the road leading from the Kaawaloa landing as the eastern boundary of the parcel.

g) Miscellaneous research material obtained from the Bishop Museum and the State of Hawaii.

In the Application of Kelly, 50 Haw. 567 (1988), the court held that highways built by private parties prior to 1892 did not require a formal act of surrender, dedication, or acceptance to become a public highway. It was only after the Highways Act of 1892 that acceptance by the government became necessary.

In Santos v. Perreira, 2 Haw. App. 387 (1981), the court restated the proposition that all public highways which are not State highways are County highways and that for roadways which became public highways before 1892, then acceptance by the government was not required. The evidence which we are submitting establishes the use of the road by the public well prior to 1892 as a cart road or vehicular road and the exercise of jurisdiction and control over the road by the territorial government.

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While the Department of Public Works has maintained that Kaawaloa Road is under the jurisdiction of DLNR, it is established that Kaawaloa Road was a vehicular (cart) road prior to 1892 and is still a vehicular (jeep) road. As such, the road is not under the jurisdiction of DLNR pursuant to HRS §264-1(b), but is a County highway pursuant to HRS §264-1(a)(2) and the holding in Santos v. Perreira, supra.

If you have any questions as to the validity of our position that Kaawaloa Road is a County highway, I respectfully request that you forward the issue to the Office of the Corporation Counsel for an opinion as soon as possible in order that we may obtain a resolution of this issue.

Thank you in advance for your attention to this matter.

Very truly yours,

MENEZES TSUKAZAKI YEH & MOORE

By



THOMAS L. H. YEH

Encls.
cc: Dexter Smith, et al.
✓Planning Department
TLHY:db