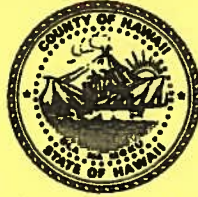


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

October 16, 2008

Chrystal Thomas Yamasaki, LPLS
Wes Thomas Associates
75-5749 Kalawa Street
Kailua-Kona, HI 96740-1818

Dear Ms. Yamasaki:

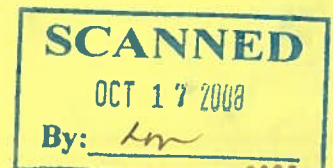
CLARIFICATION OF PUBLIC ACCESS CONDITIONS
SUBDIVIDERS: FOTI ALAE PROPERTIES, LLC, et. al.

Proposed Consolidation of Portions of Grant 2036,
The Whole of R.P. 5939, L.C. Aw. 8158, Ap. 2,
R.P. 8005, L.C. Aw. 8776, Ap. 2,
R.P. 8014, L.C. Aw. 9699-D,
R.P. 8015, L.C. Aw. 10302, Ap. 2,
R.P. 8016, L.C. Aw. 10818, Ap. 2,
L.P. S-8674, L.C. Aw. 8673, Ap. 2, and Grant S-15664,
And Resubdivision Into Lots 1 through 12, Inclusive,
Alae 1st and 2nd, South Kona, Island of Hawai'i, Hawai'i
TMK: 8-7-005:001, 002, & 010 through 019 (SUB-06-000435)

This letter will clarify the requirement for mauka-makai and lateral shoreline public pedestrian access within the subject subdivision which was granted Tentative Approval March 28, 2008.

The Decision and Order of the Third Circuit Court of the State of Hawaii in Civil No. 5473 granted license to all of the identified Defendants access to the ocean over the existing mauka-makai access road (as shown in "Exhibit B" of the Warranty Deed of adjacent property to the north, recorded with the Bureau of Conveyances as Document No. 2002-193393 dated October 29, 2002) (hereinafter the "ranch road"), a portion of which affects this subdivision.

In conjunction with other area property owners, and with the understanding that direct mauka-makai access over the lots created by this subdivision is difficult because of the steepness of the terrain from the approximately 200 foot elevation to the approximately 400 foot elevation, the subdividers shall provide a minimum 10-foot wide public pedestrian access easement from the Mamalahoa Highway down to the existing ranch road. From the ranch road and at a point of the subdividers' choosing, provide further minimum 10-foot wide public pedestrian access easement from said ranch road makai over the pali and down to the lateral shoreline access easement over the Ala Kahakai ancient trail, the location of which shall



OCT 17 2008

Chrystal Thomas Yamasaki, LPLS
Wes Thomas Associates
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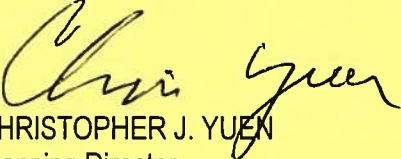
be determined in conjunction with the Na Ala Hele Statewide Trail and Access System program and/or the State Historic Preservation Division of the Department of Land and Natural Resources. The portion of the pedestrian public access easement going down the pali need not be improved by the subdividers at this time.

At such time that the entire seaward portions of the ranch road to the south of this subdivision are encumbered for pedestrian public access purposes, the pedestrian public access easement within the subject subdivision makai of the ranch road (down over the pali) and it's connection to the ancient trail easement shall be extinguished.

The ranch road will be further encumbered as a public access easement as other area landowners affected by the easement develop or otherwise seek land use entitlements for their respective properties. When the ranch road is fully encumbered for public access purposes from the Mamalahoa Highway to the ancient coastal trail, the pedestrian public access easements, other than that shown in said "Exhibit B", shall be extinguished and shall have no further force or effect on the lots created by this subdivision (SUB-06-000435). Furthermore, the east/west portion of the Road and Utility Easement (as shown in "Exhibit B") within this proposed subdivision from the Mamalahoa Highway makai to the north/south portion of the ranch road shall return to the benefit of the identified Defendants only and the public access shall be only over the north/south meandering ranch road.

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

JRH:Inm

P:\wp60\SUBDIV\Documents\Subc2008-4\SUB-06-000435\otiAlaePropPublicPedestrianAccess.doc

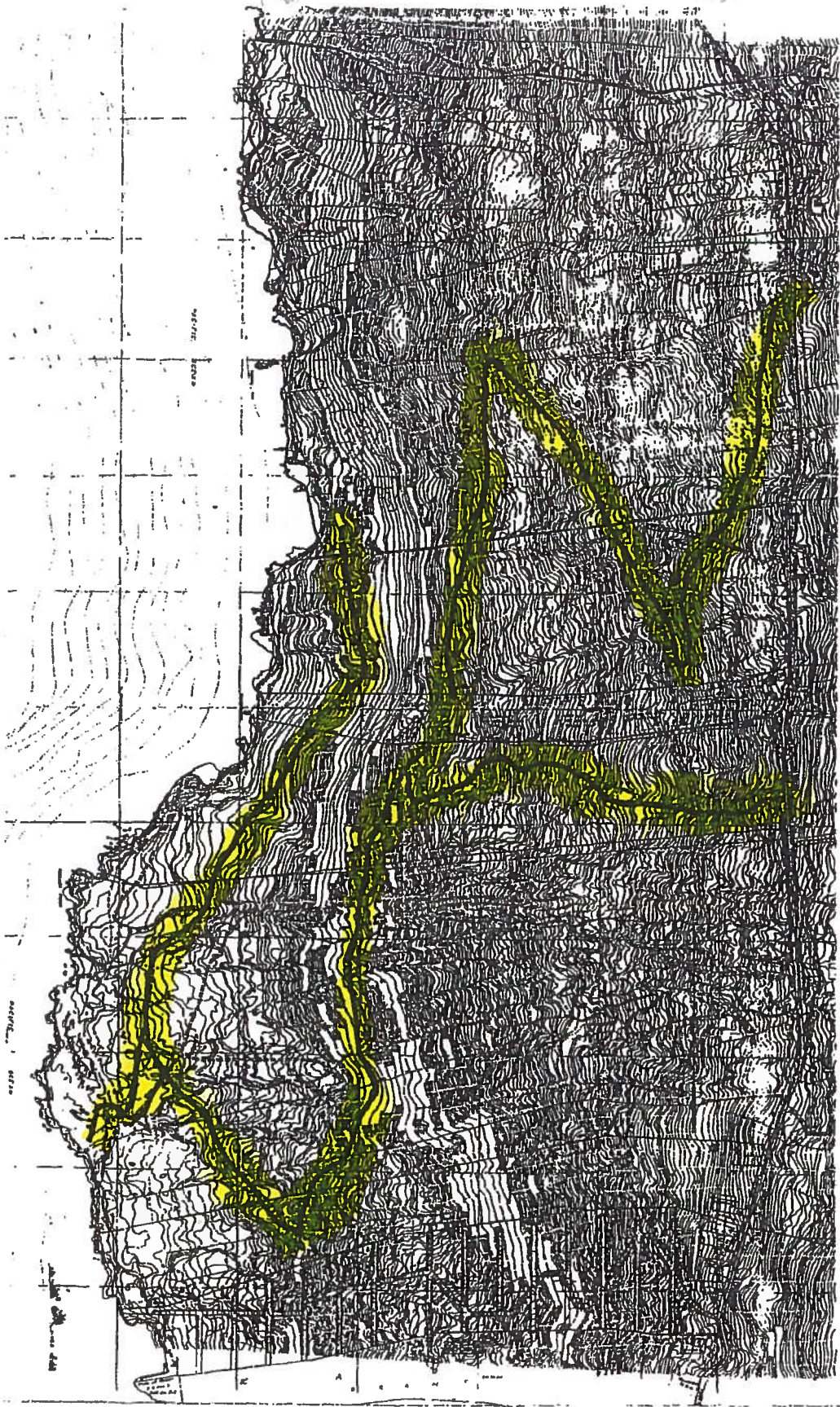
Encs.: Copies of portion of Decision and Order & "Exhibit B"

Chrystal Thomas Yamasaki, LPLS
Wes Thomas Associates
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xc: Patricia Engelhard, Director, P&R
Samuel J. Lemmo, Administrator, OCCL (Oahu)
Nancy McMahon, Administrator, Historic Preservation Division (Oahu)
Doris Moana Rowland, Abstractor, Na Ala Hele Trail & Access
Aric Arakaki, Superintendent, National Park Service, Ala Kahakai National Historic Trail
Planning Dept.-Long Range Planning Division (CZM)
Planning Dept.-Kona Office
Foti Alae Properties, LLC, et. al.
Kiowai Hui, LLC
Peter & Angie Dungle
SMM 07-000051(TMK 8-7-5:1-2, 10-19)
SAA 06-171(8-7-007:008)

- (e) **Consolidation of Remnant:** That the remnant shall be consolidated with its abutting property and the use or subdivision thereof whether in combination, consolidation or otherwise with other land, shall be in accordance with the appropriate zoning and subdivision laws and ordinances of the State of Hawaii, County of Hawaii.
- (f) **Compliance with Laws:** That the Patentee shall comply with all requirements of municipal, state and federal authorities and observe all municipal ordinances in regards to said premises, now in force or which may hereinafter be in force.
- (g) **Non-warranty.** The State of Hawaii does not warranty the condition of the remnant roadway and the same is granted "as is".
9. Stone walls as shown on Maps attached to Land Patent No. S-15,664.
10. Approval of the consolidation of Road Remnant Parcels 1 and 2 with the abutting property, by the State of Hawaii and/or County of Hawaii in accordance with appropriate zoning and subdivision laws or ordinances, as set forth by Land Patent Grant No. S-15,664.
11. Any and all trails, archeological sites, burial cave(s) and/or burial grounds that may be shown by an accurate on the ground survey.
12. Rights of the State of Hawaii in and to any and all trails, roads, archeological sites, burial ground(s) or cave(s), prehistoric and historic remains, all surface and ground waters appurtenant to said land and the right to capture, divert or impound the same and to occupy and use so much of the land as may be required in the exercise of this right reserved.
13. All customary and traditional rights, of native Hawaiians as provided for by law, for subsistence, cultural and religious purposes, which rights may involve access to the subject property.
14. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
15. 50 foot wide Road and Utility Easement over and across that certain existing roadway shown on Exhibit "B". Provided that the owner of the property subject to the easement may relocate the easement to another location on the property at his, her or its sole expense, on the following conditions; (1) that the replacement easement is comparable or better than the original easement, and (2) the replacement easement connects with the remainder of the easement shown on Exhibit "B".
16. Terms and conditions of that certain Declaration of Easements dated June 13, 2002, recorded in the Bureau of Conveyances as Document No. 2002-108388.

HEB FROM SCAN OF R.M. TOWELL TOPO MAP JOB NO. 1-12723-2A
AND
FROM SCAN OF "V. MARRS & CO. 8-7-02 8-7-02 8-7-02 8-7-02"



RECORDER'S MEMO
Document Text NOT Legible For Digital Imaging

(3) 8-7-005:002
EXHIBIT B